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## Federal Circuit Patent Updates - November 2007

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***Stumbo v. Eastman Outdoors* (No. 2007-1186) (Schall, Bryson, Moore)**

November 28, 2007 2:34 PM

(Moore) Affirming summary judgment of noninfringement. The "equivalence of the function, way, or result between a claimed invention and accused product" may be relevant even "when the claims and specification of the patent are silent on the subject" (e.g., concerning "safety or ease of use").

A full version of the summary judgment is available [here](#).

***Elbex Video v. Sensormatic Electronics* (No. 2007-1097) (Dyk, Moore, Cote [of the SDNY, sitting by designation])**

November 28, 2007 2:29 PM

(Moore) Affirming in part and reversing in part and remanding summary judgment of noninfringement. "For a prosecution statement to prevail over the plain language of the claim, the statement must be clear and unmistakable such that the public should be entitled to rely on any 'definitive statements made during prosecution'." The prosecution statement at issue that "if taken literally would result in an inoperable system" was not a disclaimer.

A full version of the summary judgment is available [here](#).

***Egyptian Goddess v. Swisa* (No. 2006-1562)**

November 26, 2007 3:24 PM

The CAFC grants en banc rehearing to consider questions (inter alia) of whether "point of novelty" should be a test for infringement of a design patent and whether claim construction should apply to design patents.

A full version of the opinion is available [here](#).

***Canon, Inc. v. GCC International Limited, et al. (2006-1615) (Michel, Dyk, Garbis [of the District of Maryland, sitting by designation])***

November 16, 2007 3:28 PM

(Garbis) Affirming grant of preliminary injunction.

A full version of the grant is available [here](#).

***Apotex Corp. v. Merck & Co., Inc. (2006-1405) (Newman, Rader, Prost)***

November 16, 2007 2:41 PM

(Newman) Affirming denial of motion to set aside prior judgment and also affirming refusal to compel discovery of privileged material. Plaintiff failed to establish that prior judgment was obtained by fraud.

A full version of the decision is available [here](#).

***Z4 Technologies, Inc. v. Microsoft Corporation, et al. (2006-1638) (Lourie, Linn, Bucklo [of the N.D. of Illinois, sitting by designation])***

November 16, 2007 2:38 PM

(Linn) Affirming denial of JMOL of non-infringement and invalidity. The district court did not abuse its discretion by refusing to instruct the jury that the burden of invalidating claims with prior art is “more easily carried when the references on which the assertion is based were not directly considered by the examiner during prosecution.”

A full version of the opinion is available [here](#).

***HIF Bio, Inc., et al. v. Yung Shin Pharmaceuticals Industrial Co., LTD (doing business as Yung Shin Pharmaceuticals and Yung Shin Pharm, Ind. Co. Ltd.), et al. (2006-1522 ) (Michel, Gajarsa, Holderman [N.D. of Illinois, sitting by designation])***

November 13, 2007 2:47 PM

(Gajarsa) Dismissing for lack of jurisdiction. The Court lacked jurisdiction to review district court’s remand based on declining supplemental jurisdiction over inventorship and other state law claims.

A full version of the decision is available [here](#).

***Zenon Environmental, Inc. v. United States Filter Corporation (now known as Water Applications & Systems Corporation) (2006-1266, -1267) (Newman, Lourie, Linn)***

November 7, 2007 2:57 PM

(Lourie) Reversing judgment of no invalidity and holding patent directed to water filtration invalid. Patentee failed to maintain continuity of disclosure through a chain of continuing applications and was therefore unable to claim priority to the first patent in the chain. Although the first patent in the chain fully disclosed the asserted claim, an intervening patent in the chain did not. The intervening patent stated, "Further details relating to the construction and deployment of a most preferred skein are found in the parent[s], the relevant disclosures of each of which are included by reference thereto as if fully set forth herein." However, that statement of incorporation by reference did not identify, with sufficient particularity to one reasonably skilled in the art, a gas distribution system, the disclosure of which was necessary to support the claims. Newman dissented. WilmerHale represented the plaintiff defendant-appellant US Filter (now known as Water Applications & Systems Corporation).

A full version of the finding is available [here](#).

***U.S. Philips Corporation v. Iwasaki Electric Company LTD. (No. 07-1117) (Newman, Lourie, Linn)***

November 2, 2007 3:00 PM

(Linn) Reversing finding that defendant was not on notice of claimed infringement; affirming claim construction, but vacating summary judgment of non-infringement under the doctrine of equivalents. The notice of infringement letter adequately identified the owner of the patent by enclosing a copy of the patent. The fact that the claim defined the invention by a numerical range did not preclude infringement under the doctrine of equivalents based on claim vitiation.

A full version of the finding is available [here](#).

***Digeo, Inc. v. Audible, Inc. (No. 07-1133) (Michel, Moore, Cote)***

November 1, 2007 3:05 PM

(Michel) Affirming denial of motion for attorneys fees based on exceptional case. The burden was on the movant to show the plaintiff brought a frivolous case, not on the patentee to show it conducted an adequate pre-filing investigation.

A full version of the finding is available [here](#).