
Federal Circuit Patent Updates - November 2010

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***Nuance Communications v. Abbyy Software House* (Rader, Newman, Prost)**

November 12, 2010 10:02 AM

(Rader) Reversing with respect to one defendant and remanding with respect to another defendant dismissal for lack of personal jurisdiction.

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

***A123 Systems v. Hydro-Quebec* (Lourie, Bryson, Dyk)**

November 10, 2010 9:57 AM

(Lourie) Affirming dismissal of declaratory judgment complaint against field of use licensee for inability to join necessary and indispensable party patent owner. The patent owner's interests might be prejudiced if not joined to the suit, but it could not be joined because it was a state university with sovereign immunity that had not been waived. The plaintiff had an alternative remedy available to assert its claims in a co-pending action in another forum where the patent owner was joined and had waived immunity.

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

***Abraxis Bioscience v. Navinta* (Newman, Gajarsa, Linn)**

November 9, 2010 9:14 AM

(Gajarsa) Reversing district court's refusal to dismiss case for lack of standing because assignment of patent was not effective when complaint was filed. Newman dissented.

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

***Cancer Research Technology And Schering v. Barr Laboratories* (Newman, Lourie, Prost)**

November 9, 2010 9:06 AM

(Lourie) Reversing finding of unenforceability due to prosecution laches and inequitable conduct. Application for the patent was filed in 1982, there were eleven continuations, ten abandonments and no substantive prosecution for nearly a decade. To show prosecution laches, the defendant must show evidence of intervening rights, i.e., that the accused infringer or others invested in, worked on, or used the claimed technology during the period of delay. The district court erred in finding intent to deceive based solely on an inference from materiality. Prost dissented.

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

***In Re Microsoft Corporation [Order]* (Miscellaneous Docket No. 944, 11/8/10) (Newman, Friedman, Lourie)**

November 8, 2010 11:46 AM

Per Curiam. Granting petition for writ of mandamus and ordering case transferred from the Eastern District of Texas to the Western District of Washington. Plaintiff incorporated under the laws of Texas sixteen days before filing suit and maintains an office in Tyler, Texas. However, plaintiff does not employ any individuals in Texas or anywhere in the United States. Plaintiff's argument that the case should not be transferred "rests on a fallacious assumption: that this court must honor connections to a preferred forum made in anticipation of litigation and for the likely purpose to make that forum appear convenient."

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

***Hyatt v. Kappos* 2007-1066, 11/8/10) (Rader, Newman, Lourie, Bryson, Gajarsa, Linn, Dyk, Prost, Moore)**

November 8, 2010 9:51 AM

(Moore) Vacating decision finding claims unpatentable for failure to comply with the written description requirement. Following a largely successful appeal to the Board, the applicant filed a civil action under § 145. In that civil action, the district court refused to consider a declaration that had not been submitted previously to the examiner or the Board. "We hold that 35 U.S.C. § 145 imposes no limitation on an applicant's right to introduce new evidence before the district court, apart from the evidentiary limitations applicable to all civil actions contained in the Federal Rules of Evidence and Federal Rules of Civil Procedure. In doing so, we reject the Director's proposal that only 'new evidence that could not reasonably have been provided to the agency in the first instance' is admissible in a § 145 action." Newman concurred in part and dissented in part. Dyk and Gajarsa dissented.

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

***Finjan v. Secure Computing Corp* (2009-1576, -1594, 11/4/10) (Newman, Gajarsa, Linn)**

November 4, 2010 9:21 AM

(Linn) Affirming denial of motion for JMOL of non-infringement of structure claims related to

computer security, reversing denial of motion for JMOL of non-infringement of method claims, and affirming denial of motions for JMOL or new trial on damages. Also remanding for determination of damages for the seventeen month period between entry of judgment and of permanent injunction. System claims were infringed even though relevant software modules were “locked” at time of sale and could only be activated if the customer subsequently purchased a “key” to “unlock” the modules. “The fact that users needed to ‘activate the functions programmed’ by purchasing keys does not detract from or somehow nullify the existence of the claimed structure in the accused software.”

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

In Re Oracle Corp. [Order] Miscellaneous Docket No. 951, 11/1/10) (Linn, Dyk, Prost)

November 1, 2010 11:33 AM

(Prost) Granting petition for writ of mandamus, vacating order denying motion to transfer case from the Eastern District of Texas to the Northern District of California, and remanding with instructions to the district court to reassess the motion to transfer.

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

AstraZeneca Lp v. Apotex, Inc. (2009-1381, -1424, 11/1/10) (Rader, Bryson, Linn)

November 1, 2010 9:27 AM

(Linn) Affirming grant of preliminary injunction barring launch of a generic asthma drug and affirming ruling that some patent claims are invalid. The asserted method claims required administration of the drug no more than once a day. Defendant was found to induce infringement based on a drug label that recommended twice daily doses (as opposed to the single daily dose required by the patents) and further recommended “titrating down” to the lowest effective dose once asthma stability has been achieved. The Court affirmed the finding of invalidity of kit claims, which recited the drug compound and a label instructing that the drug should be administered no more than once a day. The drug compound alone was in the prior art and the Court assigned no patentable weight to the part of the claims directed to the label. “Our decision in *Ngai* foreclosed the argument that simply adding new instructions to a known product creates the functional relationship necessary to distinguish the product from the prior art.” Bryson. concurred in part and dissented in part.

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

Sun Pharmaceutical Industries, Ltd. v. Eli Lilly and Co. [Order](2010-1105, 11/1/10) (Rader, Newman, Lourie, Bryson, Gajarsa, Linn, Dyk, Prost, Moore)

November 1, 2010 8:45 AM

Per Curiam. Denying petitions for panel rehearing and for rehearing en banc. Newman, Rader, Lourie, and Linn. dissented arguing that the panel opinion on double patenting was contrary to precedent.

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