
Federal Circuit Patent Updates - November 2014

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***Versata Software, Inc. v. Callidus Software, Inc.* (No. 2014-1468, 11/20/14) (Chen, Mayer, Linn)**

November 20, 2014 11:45 AM

Chen, J. Reversing denial of stay of litigation pending covered business method (CBM) patent review by the PTO of some of the asserted claims, even though other claims were asserted that were not subject to CBM review and the defendant had also filed its own infringement counterclaims. "Stays can be warranted even when a CBM proceeding does not address all asserted patents, claims, or invalidity defenses." ("This is not to say, however, that the grant of a CBM petition on a subset of asserted claims automatically simplifies the issues. By its very nature, the CBM process will always simplify some issues.") A "proper simplification analysis would look to what would be resolved by CBM review versus what would remain." "[G]eneric concerns ... about undue prejudice, i.e., that a stay will raise issues with stale evidence, faded memories, and lost documents, are, without more, true of any stay and may affect either party's preservation of its evidence." "The correct [burden-of-litigation] test is one that focuses prospectively on the impact of the stay on the litigation, not on the past actions of the parties."

[A full version of the text is available in PDF form.](#)

***E.Digital Corporation v. Futurewei Technologies, Inc.* (No. 2014-1242, 11/19/14) (Moore, O'Malley, Reyna)**

November 19, 2014 4:30 PM

Moore, J. Affirming in part and reversing in part judgment of noninfringement because the patentee was collaterally estopped from seeking a different construction of a limitation in two patents from another court's previous construction of the same claim limitation in one of the patents. Collateral estoppel applied to the construction of the limitation in one patent because it was identical to that in the previous construction and not affected by a subsequent reexamination. "Though we do not hold that reexamination history cannot ever create a new issue that would preclude the application of collateral estoppel, such a scenario does not exist here because the reexamination history in no

way modifies, clarifies, or even informs the construction of the ... limitation.” But the other patent with the limitation was unrelated, and “collateral estoppel cannot apply to the construction of a claim in one patent based on a previous claim construction of an unrelated patent.” “[C]laims of unrelated patents must be construed separately.”

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Antares Pharma Inc. v. Medac Pharma Inc. (No. 2014-1648, 11/17/14) (Dyk, Reyna, Taranto)

November 17, 2014 6:22 PM

Dyk, J. Affirming denial of preliminary injunction because the asserted reissue patent claims were invalid for failure to comply with the “original patent” requirement of 35 U.S.C. § 251. Extensive discussion of this requirement. “[T]he original patent requirement requires that the original specification expressly disclose the particular invention claimed on reissue.” “Whether or not the written description requirement of § 112 was satisfied here, Industrial Chemicals made clear that, for § 251, ‘it is not enough that an invention might have been claimed in the original patent because it was suggested or indicated in the specification.’ 315 U.S. at 676. Rather, the specification must clearly and unequivocally disclose the newly claimed invention as a separate invention. *Id.*”

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Ultramercial, Inc. v. Hulu, Inc. (No. 2010-1544, 11/14/14) (Lourie, Mayer, O'Malley)

November 14, 2014 9:40 AM

Lourie, J. Affirming dismissal of complaint because the asserted patent did not claim patent-eligible subject matter. The patent was “directed to a method for distributing copyrighted media products over the Internet where the consumer receives a copyrighted media product at no cost in exchange for viewing an advertisement, and the advertiser pays for the copyrighted content.” The patent’s claims were directed to an abstract idea and instructed the practitioner to implement the abstract idea with routine, conventional activity.

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Azure Networks, LLC v. CSR, PLC (No. 2013-1459, 11/5/14) (Reyna, Mayer, Chen)

November 6, 2014 9:15 AM

Chen, J. Affirming dismissal of co-plaintiff due to lack of standing. Also reversing construction of the claim term “MAC address,” vacating judgment of non-infringement and remanding. Mayer, J. dissented-in-part, concurring in the Court’s decision regarding standing and dissenting from the remainder of the decision.

WilmerHale represented the defendants-appellees.

[A full version of the text is available in PDF form.](#)

***Williamson v. Citrix Online, LLC* (No. 2013-1130, 11/5/14) (Moore, Linn, Reyna)**

November 5, 2014 1:20 PM

Linn, J. Vacating judgment of non-infringement of patent related to distributed learning in a virtual classroom because the district court incorrectly construed claim terms relating to a “graphical display.” Also finding that the district court erred by construing “distributed learning control module” as a means-plus-function claim term. Reyna, J. dissented.

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