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## Federal Circuit Patent Updates - October 2008

OCTOBER 31, 2008

[View previous month...](#)

***Amazin' Raisins International, Inc. v. Ocean Spray Cranberries, Inc. (No. 2008-1098) (Newman, Lourie, Alsup [of the N.D. Cal., sitting by designation])***

October 31, 2008 9:29 AM

(Alsup) Affirming summary judgment of noninfringement. Upholding claim construction that required claim term "dried fruit" to require a specific range of moisture.

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

***In Re Bilski (No. 2007-1130)(en banc)***

October 30, 2008 10:23 AM

(Michel) Affirming rejection of claims not directed to patentable subject matter. Clarifying the applicable standard for determining whether a claimed method constitutes a statutory process under 35 U.S.C. § 101. Section 101 excludes from patentability processes that claim "laws of nature, natural phenomena, [or] abstract ideas." Whether a claim seeks to patent an abstract idea or fundamental principle is determined by considering "whether the effect of allowing the claim would be to allow the patentee to pre-empt substantially all uses of that fundamental principle." A process is "surely patent-eligible if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." But declining to set the outer limits of how machine implementation of a process may affect patent-eligibility and "whether or when recitation of a computer suffices to tie a process claim to a particular machine." Two concurring and three dissenting opinions.

WilmerHale represented amici curiae Financial Services Industry et al. and argued for all amici.

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

***In Re Alonso (No. 2008-1079) (Michel, Mayer, Stearns [of the D. Mass., sitting by designation])***

October 30, 2008 10:14 AM

(Stearns) Affirming rejection of claims for lack of enablement and inadequate written description of the broad class of antibodies encompassed by the claim language.

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

***Tavory v. NTP, Inc. (No. 2007-1527) (Michel, Newman, Bryson)***

October 27, 2008 9:24 AM

(Michel) Affirming summary judgment dismissing claims for correction of inventorship and related state law claims. The allegedly omitted inventor's alleged inventive contribution was just the exercise of ordinary skill in the art. Unjust enrichment claim was preempted by federal patent law. Newman concurs.

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

***Commonwealth Scientific & Ind. Research org. v. Toshiba America Information Systems Inc. (No. 2008-1108 ) (Linn, Dyk, Stearns [of the D. Mass, sitting by designation])***

October 23, 2008 9:19 AM

(Stearns) Affirming denial of motions to disqualify law firm and to intervene to seek to stay proceedings.

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

***Abbott Laboratories v. Sandoz (No. 2007-1300) (Newman, Archer, Gajarsa)***

October 21, 2008 10:11 AM

(Newman) Affirming grant of preliminary injunction in the face of noninfringement, invalidity, and inequitable conduct defenses. In dealing with conflicting precedent, the opinion states that the correct preliminary injunction standard "is not whether a substantial question has been raised [or "vulnerability"], but whether the patentee is likely to succeed on the merits." A selection of components was not obvious where there was no prediction in the prior art as to the results obtained from a selected component. KSR "did not create a presumption that all experimentation in fields where there is already a background of useful knowledge is 'obvious to try'...." Irreparable harm existed even though there were two other generic manufacturers already on the market. "[T]he fact that a patentee has licensed others under its patents does to mean that unlicensed infringement must also be permitted while the patents are litigated." Archer concurs in part. Gajarsa dissents.

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

***Net MoneyIN Inc. v. Verisign, Inc. (2007-1565) (Linn, Clevenger, Moore)***

October 20, 2008 9:02 AM

(Linn) Reversing summary judgment of invalidity of claim related to processing credit card transactions over the Internet and remanding. District court improperly combined elements from two examples disclosed within a single reference to find a claim anticipated. “We thus hold that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. §102.” Also affirming judgment of invalidity of means-plus-function claims because the specification failed to disclose structure for performing the claimed function. Also affirming denial of motion to amend complaint to add a claim for inducement of infringement.

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

***Minks v. Polaris Industries, Inc. (2007-1490, -1491) (Newman, Plager, Gajarsa)***

October 17, 2008 3:31 PM

(Gajarsa) Affirming finding of willful infringement of patent related to internal combustion engines and affirming award of attorney fees. Also remanding for a new trial on damages. District court improperly reduced compensatory damages award without offering plaintiff a new trial. The district court did not abuse its discretion by awarding plaintiff only half of the reasonable attorney fees.

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

***In Re Ciprofloxacin Hydrochloride Antitrust Litigation (2008-1097)***

October 15, 2008 3:23 PM

(Prost) Affirming summary judgment that patent settlement agreements between a branded drug company and generic drug companies did not violate section 1 of the Sherman Act and affirming dismissal of state antitrust claims. The court held that the agreements – involving payments to one of the generics and that generic’s agreement to delay market entry – did not violate the antitrust laws because the agreements restricted only products within the scope of the patent at issue. The court reasoned that this standard, previously adopted by the Second and Eleventh Circuits: (1) preserves a patentee’s “legal entitle[ment]” to a “monopoly over the manufacture and distribution of the patented invention”; and (2) comports with the “long-standing” judicial policy of encouraging settlements.

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

***Kyocera Wireless Corp. v. International Trade Commission (2007-1493, -1494, -1495, -1496, -1497, -1498, -1499, -1514, -1573, 2008-1004, -1009, -1010, -1012, -1013, -1015, -1018, -1019) (Rader, Bryson, Linn)***

October 14, 2008 3:10 PM

(Rader) Affirming claim construction and finding that patent directed to battery saving features for wireless communications is not invalid. Remanding for reconsideration of induced infringement finding in light of DSU. The ITC lacks statutory authority to issue a limited exclusion order covering downstream products of parties who are not named respondents. Also, “[t]his court need not engage in an obviousness inquiry when [respondent] did not assert relevant obviousness arguments at the proper time.” WilmerHale represented the Intervenor, Broadcom Corporation.

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

***Technology Licensing Corp. v. Videotek Inc. (2007-1441, -1463) (Newman, Plager, Schall)***

October 10, 2008 3:01 PM

(Plager) Affirming judgment of invalidity of some claims and non-infringement of other claims of patents directed to processing television signals. Some claims were not entitled to an earlier filing date and were invalid over intervening prior art. Extensive discussion of burdens of proof and prior decision in *Poweroasis*. Also affirming judgment of no inequitable conduct. “Even if [the prior art reference] is anticipatory prior art . . . under our case law a cumulative reference is not material for inequitable conduct purposes.” The Court declined to consider the effect of the PTO’s, post oral argument, grant of a reissue. “[T]he judicial process cannot be held hostage to the timing of either the agency or the litigants who have invoked the agency’s further review.”

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

***Asyst Technologies Inc. v. Emtrak Inc. (2007-1554) (Michel, Newman, Bryson)***

October 10, 2008 2:25 PM

(Bryson) Affirming JMOL of invalidity of patent relating to tracking semiconductor wafers during manufacturing. “[D]istrict court did not abuse its discretion in concluding that the change in claim construction resulting from this court’s decision on appeal ‘changed the rules of the game’” and properly allowed defendant to introduce a new theory of invalidity based on a new prior art reference.

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

***Predicate Logic, Inc. v. Distributive Software Inc. (2007-1539) (Newman, Lourie, Linn)***

October 9, 2008 2:07 PM

(Linn) Reversing summary judgment of invalidity and remanding. Amendments made during reexamination, to claims directed to measurement and analysis technologies for use in software development, did not substantively change the scope of the claims.

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

***Cohesive Tech. Inc. v. Waters Corp.* (08-1029, -1030, -1031, -1032, -1059) (Mayer, Linn, Prost)**

October 7, 2008 1:50 PM

(Linn) In case involving high-performance liquid chromatography, the court (1) affirmed the district court's contraction of the claim term "rigid" (2) affirmed the denial of JMOL based on insufficient evidence that the "rigid" limitation was met (3) reversed the grant of JMOL on anticipation without letting the jury decide the issue (4) affirmed a finding of no inequitable conduct based on the lack of evidence of intent (5) with respect to a second patent, reversed the construction of the claim term "about 30" merely to exclude the accused device (6) affirmed a finding that the doctrine of equivalents was inapplicable because "by electing to include the broadening word "about" in the claim, the patentee has in this case already captured what would otherwise be equivalents within the literal scope of the claim" (7) remanded a refusal to award lost profits (7) affirmed a finding of no willful infringement (8) affirmed a refusal to award enhanced damages. Mayer dissented on the anticipation issue.

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

***Impax Laboratories Inc. v. Aventis Pharmaceuticals Inc.* (07-1513) (Rader, Schall, Zobel)**

October 3, 2008 1:44 PM

(Rader) Affirming judgment that prior art was not enabling and therefore did not anticipate.

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

***The John Hopkins University v. Datascope Corp.* (07-1530) (Newman, Schall, Zobel)**

October 3, 2008 1:32 PM

(Zobel) Reversing judgment of infringement with respect to three patents directed to method of removing blood clots based on insufficient proof. Newman dissented.

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