
Federal Circuit Patent Updates - October 2011

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***ROBERT BOSCH LLC. V. PYLON MANUFACTURING CORP.* (2011-1096, 10/13/11) (Bryson, O'Malley, Reyna)**

October 13, 2011 9:49 AM

O'Malley, J. Reversing denial of permanent injunction and remanding. "We take this opportunity to put the question to rest and confirm that *eBay* jettisoned the presumption of irreparable harm as it applies to determining the appropriateness of injunctive relief... Although *eBay* abolishes our general rule that an injunction normally will issue when a patent is found to have been valid and infringed, it does not swing the pendulum in the opposite direction. In other words, even though a successful patent infringement plaintiff can no longer rely on presumptions or other short-cuts to support a request for a permanent injunction, it does not follow that courts should entirely ignore the fundamental nature of patents as property rights granting the owner the right to exclude." The district court "committed a clear error of judgment when it concluded that [patentee] failed to demonstrate irreparable harm in the face of overwhelming evidence to the contrary. This is particularly true in light of [patentee's] evidence of: (1) the parties' direct competition; (2) loss in market share and access to potential customers resulting from [defendant's] introduction of infringing beam blades; and (3) [defendant's] lack of financial wherewithal to satisfy a judgment." Bryson, J. dissented in part.

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

***ABSOLUTE SOFTWARE v. STEALTH SIGNAL* (2010-1503, -1504, 10/11/11) (Rader, Prost, O'Malley)**

October 11, 2011 9:45 AM

O'Malley, J. Affirming summary judgment of non-infringement for patents related to tracking lost or stolen computers. Also vacating summary judgment of non-infringement for other patents and remanding. Some claim construction arguments were waived due to failure to object to special master's report within the allotted twenty-day period.

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

***ATLANTIC RESEARCH MARKETING SYSTEMS, INC. V. TROY* (2011-1002, 10/6/11) (Prost, Mayer, O'Malley)**

October 6, 2011 9:42 AM

Prost, J. Affirming summary judgment of invalidity due to lack of written description. The asserted patent discloses a handguard that attaches to a rifle at two locations, but the asserted claims cover a handguard that is completely supported by connection at a single location and do not comply with the written description requirement. Also vacating verdict on trade secret claims and remanding due to failure to address a jury taint issue. "Because the district court failed to conduct an adequate investigation into whether the presence of the clamp in the jury room prejudiced members of the jury, we vacate the jury verdict and reverse the district court's denial of [defendant's] motion for a mistrial."

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

***IGT V. BALLY GAMING INTERNATIONAL, INC.* (2010-1364, -1365, 10/6/11) (Newman, Lourie, Moore)**

October 6, 2011 9:37 AM

Moore, J. Affirming summary judgment of infringement of claims relating to slot machines. Also affirming summary judgment of non-infringement of other claims. The Court rejected an argument that the claim term "one" should be construed to mean one and only one. "Here, the claim requires 'issuing a command . . . to one of said preselected gaming devices,' not issuing *one* command, which would more closely track the language in *WMS Gaming*. We caution that claim language must be construed in the context of the claim in which it appears." The Court also upheld a construction of "predetermined event" that allowed the event to be one that occurs randomly. "The district court properly held that the predetermined event must be a condition chosen in advance, but there is nothing in the claims or the specification that requires the predetermined event to be finite or non-random. If the condition determined in advance is an entirely random occurrence, it is no less an event. [Defendant] is incorrect that this construction reads 'predetermined' out of the claim."

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

***IN RE STEPAN CO.* (2010-1261, 10/5/11) (Dyk, Friedman, Prost)**

October 5, 2011 9:23 AM

Prost, J. Vacating Board decision and remanding. The examiner based a rejection on a 102(b) reference. The Board used the same reference but treated it as 102(a) art. Treating the reference as 102(a) art rather than 102(b) art constituted a new ground of rejection and impermissibly denied applicant an opportunity to establish that its declaration was effective for antedating the

reference. “Mere reliance by the Board on the same type of rejection or the same prior art references relied upon by the examiner, alone, is insufficient to avoid a new ground of rejection where it propounds new facts and rationales to advance a rejection—none of which were previously raised by the examiner.”

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

MEZZALINGUA ASSOCIATES, INC. V. INTERNATIONAL TRADE COMMISSION (2010-1536, 10/4/11) (Bryson, Lynn, Reyna)

October 4, 2011 9:15 AM

Bryson, J. Affirming determination of no violation of section 337 due to failure to satisfy the “domestic industry” requirement. Appellant attempted satisfy the “domestic industry” requirement by establishing that its litigation related expenses constituted a “substantial investment” in licensing. “We agree with the Commission that expenditures on patent litigation do not automatically constitute evidence of the existence of an industry in the United States established by substantial investment in the exploitation of a patent... The fact that litigation adversaries eventually enter into a license agreement does not, as [appellant] suggests, mean that all of the prior litigation expenses must be attributed to the licensing effort.” Reyna, J. dissented in part.

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