Federal Circuit Patent Updates - September 2005

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Cross Medical Products v. Medtronic Sofamor Danek [corrected] **(No. 05-1043) (Shall, Gajarsa, Linn)**

September 30, 2005 2:54 PM

(Linn) Reversing summary judgment of non-infringement of claims directed to surgical implants to stabilize spine. Also reversing summary judgment of non-obviousness while affirming summary judgment that patent claims were not anticipated or indefinite. CAFC had jurisdiction over the appeal to review entry of permanent injunction notwithstanding the fact that the judgment was not otherwise final. Disputed Issues of fact existed concerning whether Medtronic induced infringement, whether there was equivalence under §112,¶6 and motivation to combine.

Enzo Biochem v. Gen-Probe, II **(No. 04-1570) (Lourie, Linn, Prost)**

September 30, 2005 2:52 PM

(Lourie) Affirming summary judgment that claims directed to DNA sequence used as a diagnostic probe were invalid under the on-sale bar. Although probes were developed pursuant to a research agreement, a portion of the agreement was a requirements contract satisfying the "commercial offer to sell" prong of the on-sale bar. Because the probe was subsequently reduced to practice prior to the critical date, the "ready for patenting" prong was also satisfied. Method claims were also invalidated where carrying out the method was inseparable from the probes themselves. WilmerHale represented the defendant Gen-Probe.

International Rectifier Corp. v. Samsung Electronics Co., LTD, et al. **(No. 04-1429) (Lourie, Linn, Prost)**

September 23, 2005 2:50 PM

(Linn) Applying Ninth Circuit law, reversing reduction of attorney fee awards and refusal to award attorneys fees pursuant to consent judgment.

U.S. Philips Corp. v. ITC **(No. 04-1361) (Bryson, Gajarsa, Linn)**

September 21, 2005 10:13 AM

(Bryson) Reversing holding of patent unenforceability because of patent misuse based on alleged impermissible tying arrangement. Licensing of "packages" of patents (as opposed to individual patents) was not an unlawful tying arrangement, either per se or under the rule of reason. WilmerHale represented the appellant.

CytoLogix Corp. v. Ventana Medical Systems, Inc. **(No. 04-1446) (Mayer, Gajarsa, Dyk)**

September 21, 2005 10:08 AM

(Dyk) Affirming in part and reversing in part jury verdicts of infringement and nonobviousness. It was "not erroneous" for the district court to wait until the close of evidence to construe the patent claims; however, allowing experts to testify before the jury about claim construction and counsel to argue competing claim constructions to the jury was improper.

Pandrol USA, LP, et al. v. Airboss Railway Products, Inc., et al. **(No. 04-1069) (Clevenger, Rader, Dyk)**

September 19, 2005 10:03 AM

(Rader) Affirming summary judgment of compliance with the written description requirement and exclusion of evidence of invalidity based on assignor estoppel.

Free Motion Fitness, Inc. (formerly known as Ground Zero Design Corp.) v. Cybex International, Inc. **(No. 05-1006) (Rader, Dyk, Prost)**

September 16, 2005 9:52 AM

(Dyk) Vacating judgment of noninfringement because of improper claim construction. Claim terms "first" and "second" did not denote spatial location. Claim term "adjacent" construed to mean "not distant," not "near and with nothing intervening." Prost dissents.

Nystrom v. Trex Company, Inc., et al. **(No. 03-1092) (Mayer, Gajarsa, Linn)**

September 14, 2005 9:44 AM

(Linn) Withdrawing opinion at 374 F.3d 1105 and issuing new opinion in light of Phillips v. AWH.

Biagro Western Sales, Inc. et al. v. Grow More, Inc. **(No. 04-1414) (Gajarsa, Plager, Dyk)**

September 13, 2005 9:42 AM

(Plager) Affirming summary judgment of noninfringement. A claim limitation requiring that a chemical "be present" in a certain amount was not met by "chemically equivalent" amounts of other chemicals.

In *Re Technology Licensing Corporation* (Misc. 765) (Newman, Rader, Bryson)

September 12, 2005 9:36 AM

(Per Curiam) Denying petition for mandamus to require a jury trial. A patentee who was seeking only an injunction and not damages was not entitled to a jury trial, even where there was a declaratory judgment counterclaim alleging patent invalidity. Newman dissents.

Symbol Technologies, Inc., et al. v. Lemelson Medical, Education & Research Foundation, LP **(No. 04-145) (Mayer, Lourie, Bryson)**

September 9, 2005 9:34 AM

(Lourie) Affirming judgment of patent unenforceability because of prosecution laches. The doctrine of prosecution laches "should be used sparingly" and "applied only in egregious cases of misuse of the statutory patent system."

Network Commerce, Inc., et al. v. Microsoft Corp. **(No. 04-1445) (Mayer, Friedman, Dyk)**

September 8, 2005 9:31 AM

(Dyk) Affirming claim construction and summary judgment of non-infringement. Phrase "download component" interpreted as requiring file to have certain characteristics in light of the specification. No infringement under doctrine of equivalents. Requirement of "particularized testimony and linking argument" to prove equivalence applies in summary judgment context.

In re: *Dane K. Fisher* (No. 04-1465) (Michel, Rader, Bryson)

September 7, 2005 9:28 AM

(Michel) Affirming Board's rejection of claims directed to short nucleotide sequences (EST's) as lacking utility and non-enabled. PTO's guidelines regarding utility comport with the court's interpretation of the utility requirement. Rader dissented. WilmerHale represented the applicant.