
Federal Circuit Patent Updates - September 2006

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Kemin Foods v. Pigmentos Vegetales Del Centro S.A. De C.V. (No. 05-1479) (Newman, Mayer, Bryson)

September 25, 2006 11:07 AM

(Bryson) Affirming judgment holding claims directed to purified lutein used in dietary health supplements nonobvious, not infringed, and enforceable and awarding costs. Also vacating order striking supplemental expert report and remanding as to related infringement claim, and declining to modify permanent injunction. Jury finding of infringement under the doctrine of equivalents was unchallenged.

Kim v. Conagra Foods, Inc. (No. 05-1414) (Shall, Archer, Dyk)

September 20, 2006 8:44 AM

(Dyk) Affirming judgment that claims directed to oxidizing agents used in breadmaking are not infringed and not invalid. Affirmed construction of "potassium bromate replacer composition consisting essentially of" requiring ingredients that "perform essentially the same function in the production of that bread as would potassium bromate." Claim not infringed because accused product contained additional ingredients materially affecting functionality. Recapture rule was not violated during reissue prosecution. Shall concurs in part and dissents in part.

Massachusetts Institute of Technology v. Abacus Software (No. 05-1142) (Michel, Friedman, Dyk)

September 13, 2006 2:52 PM

(Dyk) Reversing stipulated judgment of non-infringement based on faulty claim construction. "While it is highly undesirable to consider these [claim construction] issues in the abstract, . . . we have proceeded to do so." "Colorant selection mechanism" was a means plus function element, while "aesthetic correction circuitry" was not. Michel dissented.

Alza Corporation v. Impax Laboratories, Inc. (No. 06-1047) (Gajarsa, Clevenger, Prost)

September 13, 2006 2:50 PM

(Gajarsa) In ANDA case, affirming judgment of invalidity and non-infringement. Motivation to combine does not need to be found in the prior art but can be based on the testimony of an expert witness.