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Federal Circuit Patent Updates - September 2013

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Sunovion Pharmaceuticals v. Teva Pharmaceuticals USA **(2013-1335, 9/26/13) (Lourie, Schall, Reyna)**

September 26, 2013 4:55 PM

Lourie, J. Reversing judgment of noninfringement by an ANDA despite a "certification" by the applicant "pledging not to infringe." "[I]f a product that an ANDA applicant is asking the FDA to approve for sale falls within the scope of an issued patent, a judgment of infringement must necessarily ensue." "What Reddy has asked the FDA to approve as a regulatory matter is the subject matter that determines whether infringement will occur, and the fact that Reddy either tells the court that its manufacturing guidelines will keep it outside the scope of the claims or has even filed a declaration in the court stating that it will stay outside the scope of the claims does not overcome the basic fact that it has asked the FDA to approve, and hopes to receive from the FDA, approval to market a product within the scope of the issued claims." "[I]f an ANDA specification defines a compound such that it meets the limitations of an asserted claim, then there is almost never a genuine issue of material fact that the claim is infringed." "We therefore hold that any so-called certification pledging not to infringe cannot override the conclusion that when a drug manufacturer seeks FDA approval to market a generic compound within the scope of a valid patent, it is an infringement as a matter of law."

A full version of the text is available in PDF form.

MeadWestVaco Corporation v. Rexam Beauty **(No. 2012-1518, 9/26/13) (Prost, O'Malley, Taranto)**

September 26, 2013 12:03 PM

Prost, J. Affirming claim constructions and findings of infringement but vacating summary judgment of nonobviousness. The defense of indefiniteness was waived when summary judgment on the issue was denied and the defense was then not pursued at trial.

A full version of the text is available in PDF form.

Rambus Inc. v. Rea **(No. 2012-1634, 9/24/13) (Moore, Linn. O'Malley)**

September 24, 2013 6:20 PM

Moore, J. Affirming in part and vacating in part Board decision of invalidity in reexamination because of "multiple errors in its obviousness decision." The Board erred in placing the burden on the patentee to prove that its claims were not obvious, in raising a new motivation to combine, and in rejecting objective evidence of nonobviousness because of an alleged lack of nexus to the invention.

A full version of the text is available in PDF form.

Network Signatures, Inc. v. State Farm Mutual Auto **(No. 2012-1492, 9/24/13) (Newman, Clevenger, Wallach)**

September 24, 2013 11:34 AM

Newman, J. Reversing summary judgment of inequitable conduct based on an asserted misrepresentation to the PTO that the nonpayment of maintenance fees was "unintentional", where the patentee had allowed the patent to lapse as a matter of routine practice until the patentee received an inquiry about licensing the patent. Clevenger, J., dissented.

A full version of the text is available in PDF form.

St. Jude Medical, Inc. v. Access Closure, Inc. **(2012-1452, 9/11/13) (Lourie, Plager, Wallach)**

September 11, 2013 11:47 AM

Plager, J. Reversing safe harbor ruling and finding claims invalid due to double patenting. The § 121 safe harbor did not apply because consonance was not maintained and the asserted patent was directed to the same invention as an earlier issued, related, patent. Also affirming ruling that other patents, related to sealing a vascular puncture, were not obvious. Lourie, J. concurred.

A full version of the text is available in PDF form.

High Point Design LLC v. Buyer's Direct, Inc. **(2012-1455, 9/11/13) (O'Malley, Schall, Wallach)**

September 11, 2013 12:03 PM

Schall, J. Reversing summary judgment of invalidity of design patent related to a slipper, vacating dismissal of trade dress claims and remanding.

A full version of the text is available in PDF form.

Wawrzynski v. H.J. Heinz Company. **(2012-1624, 9/6//13) (Newman, Plager, Prost)**

September 6, 2013 4:12 PM

Plager, J. Transferring to the United States Court of Appeals for the Third Circuit due to lack of subject matter jurisdiction.

A full version of the text is available in PDF form.

***Accenture Global Services v. Guidewire Software, Inc.*. (2011-1486, 9/5/13) (Rader, Lourie, Reyna)**

September 5, 2013 3:36 PM

Lourie, J. Affirming summary judgment of invalidity under 35 USC §101 of claims related to a system for generating tasks to be performed in an insurance organization. “While it is not always true that related system claims are patent-ineligible because similar method claims are, when they exist in the same patent and are shown to contain insignificant meaningful limitations, the conclusion of ineligibility is inescapable.” Rader, J. dissented.

A full version of the text is available in PDF form.

***Soverian Software v. Newegg* (2011-1009, 9/4/13) (Newman, Prost, Reyna)**

September 4, 2013 10:12 AM

Per Curiam. Granting rehearing and finding that dependent claim, not separately argued to the district court or on appeal, was invalid as was the independent claim from which it depends.

WilmerHale represented plaintiff-appellee.

A full version of the text is available in PDF form.

***Bayer CropScience AG v. Dow Agrosciences LLC* (2013-1581, 9/3/13) (Prost, Bryson, Taranto)**

September 3, 2013 7:18 PM

Taranto, J. Affirming summary judgment of non-infringement of patent related to a genetically modified plant. The asserted claims required a “monooxygenase” enzyme. The accused products used a “dioxygenase” enzyme instead. When the patent application was filed, the applicant believed its enzyme to be “monooxygenase.” Years before patent was granted, the applicant learned that its enzyme was actually “dioxygenase” instead, but the applicant did not remove the “monooxygenase” limitation from the claims. Patent owner’s arguments that the “monooxygenase” limitation should be construed broadly were not persuasive.

A full version of the text is available in PDF form.