

Federal Circuit Patent Updates - July 2013

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***Plantronics, Inc. v. Aliph, Inc.* (2012-1355, 7/31/13) (Rader, O'Malley, Wallach)**

July 31, 2013 1:12 PM

Rader, J. dissented. Wallach, J. Reversing summary judgment of non-infringement of claims related to an audio headset and remanding. The Court reversed the district court's construction of two claim terms and the summary judgment of non-infringement on which it was based. The patent owner's response to a restriction requirement did not support the narrowed claim construction: "The election of an invention in response to an ambiguous restriction requirement in turn cannot be said to provide any guidance forming a basis for narrowing a broadly drafted claim." The Court also reversed the grant of summary judgment of obviousness: "In fact, when all of the factual disputes regarding the objective evidence are resolved in favor of [patent owner], we cannot hold that the claims would have been obvious as a matter of law."

[A full version of the text is available in PDF form.](#)

***Teva Pharmaceuticals USA v. Sandoz Inc.* (2012-1567, -1568, 7/26/13) (Rader, Moore, Benson [of the District of Utah, sitting by designation])**

July 26, 2013 11:56 AM

Moore, J. Affirming judgment of infringement and no invalidity for some claims directed to treatment of multiple sclerosis, reversing judgment of no invalidity for other claims, and remanding. Invalidated claims failed to indicate which measure should be used for determining the molecular weight.

[A full version of the text is available in PDF form.](#)

***Charles Machine Works v. Vermeer Manufacturing* (2012-1578, 7/26/13) (Dyk, Mayer, Moore)**

July 2, 2013 5:10 PM

Moore, J. Affirming summary judgment that accused commercial products do not literally infringe

claims related to horizontally drilling underground holes. Also reversing summary judgment that accused commercial products do not infringe under the doctrine of equivalents. Patent owner's expert declaration established a genuine dispute about equivalents. Also vacating summary judgment of non-infringement as to prototype products because the patent owner did not have sufficient notice that the accused prototype products would be part of the summary judgment decision.

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In Re: Bimeda Research & Development (2012-1420, 7/25/13) (Rader, Clevenger, Prost)

July 25, 2013 8:33 AM

Clevenger, J. Affirming Board's written description rejection of claims related to preventing bovine mastitis. Claims added during reexamination recited "an acriflavine-free" formulation. Although acriflavine was well-known in the treatment of mastitis, it was not mentioned in the patent's original disclosure. Rader, J. concurred.

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Novozymes A/S v. Dupont Nutrition Biosciences (Opinion) (Rader, Schall, Bryson)

July 22, 2013 4:55 PM

Schall, J. Affirming district court grant of JMOL finding claims to enzyme preparations invalid under the written description requirement. Rader, J. dissented.

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Calico Brand, Inc. v. Ameritek Imports, Inc. (Opinion) (Dyk, Prost, Reyna)

July 18, 2013 2:18 PM

Reyna, J. Affirming district court JMOL of no willfulness as a matter of law, but reversing award of lost profits. Where demand for patented product was driven by low prices, not the patented feature, *Panduit* factor 1 was not satisfied. Proof of market share is not an adequate substitute for proof of non-infringing alternatives where there was a seamless substitution of a non-infringing alternative for the accused product.

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Fresenius USA v. Baxter International (2012-1334, 7/2/13) (Newman, Dyk, Prost)

July 2, 2013 5:10 PM

Dyk, J. Vacating district court judgment and remanding to dismiss because the patentee's claims had been cancelled in reexamination, where "the suit is not over and there has been no final judgment."

[A full version of the text is available in PDF form.](#)

***Rambus Inc. v. REA* (2012-1480, 6/28/13) (Rader, O'Malley, Wallach)**

June 28, 2013 10:13 AM

Rader, C. J. Reversing Board rejection of claims as anticipated in reexamination. “[A] reference that was overcome during initial examination, distinguished as prior art in the patent specification, and found not to anticipate by at least two different tribunals, now—according to the Board—discloses each and every element of the claims. The result is somewhat surprising, especially with nothing in the record indicating whether the Board considered these prior decisions.” “The court notes that the Board’s failure to pick one theory of anticipation it found persuasive, or even most persuasive, itself causes questions about the Board’s confidence in its anticipation rejection. “

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***Wyeth v. Abbott Laboratories* (2012-1223, 6/26/13) (Moore, Bryson, Wallach)**

June 26, 2013 11:03 AM

Moore, J. Affirming summary judgment of invalidity because of nonenablement; practicing the full scope of the claims would require more than routine experimentation. “[H]aving to synthesize and screen each of at least tens of thousands of candidate compounds constitutes undue experimentation. ... Undue experimentation is a matter of degree.”

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***Commil USA, LLC v. Cisco Systems, Inc.* (2012-1042, 6/25/13) (Newman, Prost, O'Malley)**

June 25, 2013 3:54 PM

Prost, J. Vacating judgment of infringement and remanding for a new trial because of erroneous rulings and jury instruction regarding inducement of infringement. Jury instruction was erroneous that allowed defendant to be found liable if it “knew or should have known that its actions would induce direct infringement,” because “the jury was permitted to find induced infringement based on mere negligence where knowledge is required.” Also holding that “evidence of an accused inducer’s good-faith belief of invalidity may negate the requisite intent for induced infringement.” (However, “We certainly do not hold “that if the inducer of infringement believes in good faith that the patent is invalid, there can be no liability for induced infringement.””)

Affirming previous grant of a partial new trial on infringement alone but not validity as not violative of the Seventh Amendment. “The issue of whether Cisco possessed a good-faith belief of invalidity is distinct and separate from the issue of whether the patent claims are invalid. In order to determine that Cisco had a good-faith belief of invalidity, the jury must merely decide whether Cisco possessed that belief in good-faith. The jury need not decide whether the underlying position was meritorious. Thus, although the two juries will review the same evidence of invalidity, they will not decide the same essential issues.” Newman and O'Malley, JJ., separately concurred in part and dissented in part.

WilmerHale represented appellant Cisco on appeal.

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