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## Federal Circuit Patent Updates - September 2015

SEPTEMBER 30, 2015

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***Achates Reference Publishing v. Apple Inc.* (No. 2014-1767, -1788, 9/30/15) (Prost, Lourie, Linn)**

September 30, 2015 11:52 AM

Linn, J. Dismissing due to lack of jurisdiction “We thus hold that 35 U.S.C. § 314(d) prohibits this court from reviewing the Board’s determination to initiate IPR proceedings based on its assessment of the time-bar of § 315(b), even if such assessment is reconsidered during the merits phase of proceedings and restated as part of the Board’s final written decision.”

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

***Nordock, Inc. v. Systems Inc.* (No. 2014-1762, -1795, 9/29/15) (O'Malley, Reyna, Chen)**

September 29, 2015 2:14 PM

O'Malley, J. Vacating damages award for infringement of design patent and remanding for new trial on damages. “[We] recently reiterated that apportioning profits in the context of design patent infringement is not appropriate, and that ‘Section 289 explicitly authorizes the award of total profit from the article of manufacture bearing the patented design.’ ... Only where § 289 damages are not sought, or are less than would be recoverable under § 284, is an award of § 284 damages appropriate.”

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

***State of Vermont v. MPHJ Technology Investments* (No. 2015-1310, 9/28/15) (Prost, Newman, O'Malley)**

September 28, 2015 4:28 PM

O'Malley, J. Affirming remand of action to state court where action was for violation of the Vermont Consumer Protection Act based on sending letters to Vermont businesses alleging patent infringement.

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

***Shire LLC v. Amneal Pharmaceuticals, LLC* (No. 2014-1736, -1737, -1738, -1739, -1740, -1741, 9/24/15) (Moore, Mayer, Linn)**

September 24, 2015 1:12 PM

Linn, J. Affirming summary judgment that methods of using drug compound were non-obvious and affirming denial of defendants' motion to amend invalidity contentions. With respect to supplier of drug compound, it could not be liable for infringement because it supplied the drug prior to ANDA approval and did not itself submit an ANDA.

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

***Summit 6, LLC v. Samsung Electronics Co., LTD.* (No. 2013-1648, -1651, 9/21/15) (Prost, Reyna, Hughes)**

September 21, 2015 3:55 PM

Reyna, J. Affirming jury verdict of infringement and validity. On the issue of damages, the district court did not err in admitting the plaintiff's expert's opinion nor did it err in denying an ongoing royalty for the length of the patent where the jury indicated "lump sum" on its verdict form and the defendant's expert had testified to a lump sum theory.

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

***SCA Hygiene Products v. First Quality Baby Products* (No. 2013-1564, 9/18/15) (Prost, Newman, Lourie, Dyk, Moore, O'Malley, Reyna, Wallach, Taranto, Chen, Hughes)**

September 18, 2015 10:10 AM

Prost, J. Notwithstanding Supreme Court's decision in *Petrella v. Metro-Goldwyn-Mayer*, laches is a viable defense to bar recovery of legal relief in patent cases. Laches is also an equitable consideration that may bar future relief and, as to injunctions, fits "naturally within the *E-Bay*" framework. However, laches will bar an ongoing royalty only in "extraordinary circumstances." Hughes, J., joined by Moore, Wallach, Taranto and Chen, concurred in part and dissented in part.

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

***Astornet Technologies Inc. v. BAE Systems, Inc.* (No. 2014-1854, 2015-1006, -1007, 9/17/15) (Prost, Newman, Taranto)**

September 17, 2015 4:34 PM

Taranto, J. Affirming district court's dismissal of actions under 28 USC 1498. Where plaintiff's theory against private parties was inducement of infringement by the federal government, its sole remedy was an action against the government in the Court of Claims.

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

***R+L Carriers, Inc. v. Qualcomm, Inc.* (No. 2014-1718, 9/17/15) (Newman, O'Malley, Wallach)**

September 17, 2015 12:15 PM

O'Malley, J. Affirming judgment that reexamination claims were "substantially different" from claims of original patent, thus precluding damages for period prior to issuance of reexamination certificate.

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

***Apple Inc. v. Samsung Electronics Co., LTD.* (No. 2014-1802, 9/17/15) (Prost, Moore, Reyna)**

September 17, 2015 10:20 AM

Moore, J. Reversing denial of permanent injunction. “The district court . . . erred when it required Apple to prove that the infringing features were the exclusive or predominant reason why consumers bought Samsung’s products to find irreparable harm. . . . Instead, the district court should have considered whether there is “some connection” between the patented features and the demand for Samsung’s products . . . . That is, the district court should have required Apple to show that the patented features impact consumers’ decisions to purchase the accused devices.” Reyna, J. concurred. Prost, J. dissented.

WilmerHale represented the plaintiff-appellant Apple.

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

***Ivera Medical Corporation v. Hospira, Inc.* (No. 2014-1613, 9/8/15) (Newman, Reyna, Taranto)**

September 8, 2015 11:40 AM

Reyna, J. Reversing summary judgment of invalidity for obviousness. There was a genuine factual dispute about what a person of ordinary skill in the art would have been motivated to do.

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

***Media Rights Technologies v. Capital One Financial Corp* (No. 2014-1218, 9/4/15) (O'Malley, Plager, Taranto)**

September 4, 2015 10:33 AM

O'Malley, J. Affirming judgment on the pleadings that all claims were invalid for indefiniteness. All claims contained a limitation of a “compliance mechanism,” which was a means-plus-function term that lacked sufficient structure in the specification. “We have never found that the term “mechanism”— without more—connotes an identifiable structure; certainly, merely adding the modifier “compliance” to that term would not do so either.” “Where there are multiple claimed functions, as there are in this case, the patentee must disclose adequate corresponding structure to perform *all* of the claimed functions.”

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

***Dynamic Drinkware, LLC v. National Graphics, Inc.* (No. 2015-1214, 9/4/15) (Lourie, Bryson, O'Malley)**

September 4, 2015 4:20 PM

Lourie, J. Affirming PTAB decision not to reject claims in an inter partes review because the petitioner failed to carry its burden to prove unpatentability; the petitioner failed to prove that a reference on which it relied was entitled to the benefit of the reference's provisional filing date and so was prior art under 35 U.S.C. § 102(e). There is no presumption in an inter partes review that an alleged prior art patent is entitled to the filing date of its provisional application.

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

***Dome Patent L.P. v. Lee* (No. 2014-1673, 9/3/15) (Reyna, Schall, Hughes)**

September 3, 2015 1:15 PM

Hughes, J. Affirming district court judgment of obviousness in a review under 35 U.S.C. § 145 of a PTO decision in an ex parte reexamination. The district court was correct in requiring the Patent Office to show obviousness by only a preponderance of the evidence, not clear and convincing

evidence. The nature of the problem to be solved, understanding that high oxygen permeability in contact-lens materials was desirable, would have motivated a person of ordinary skill to combine a monomer disclosed in one prior art reference with a cross-linking agent disclosed in another prior art reference to increase the oxygen permeability of a contact lens.

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