

Last
month at

The Federal Circuit

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DUNNER LLP**FEDERAL PATENT LAWS PREEMPT ROYALTY-LIKE RECOVERY FOR STATE-LAW-BASED UNJUST ENRICHMENT CLAIM**

In the absence of an incremental benefit conferred, any attempt to obtain a patent-like royalty for the making, using, or selling of a product in the public domain under the rubric of state unjust enrichment law is preempted by federal patent laws. *Ultra-Precision Mfg., Ltd. v. Ford Motor Co.*, No. 04-1329 (Fed. Cir. June 15, 2005)1

OXYCONTIN® PATENTS ARE UNENFORCEABLE FOR INEQUITABLE CONDUCT

Information may be material if it refutes or is inconsistent with the applicant's patentability arguments, which may be independent of the claims. *Purdue Pharma L.P. v. Endo Pharms., Inc.*, No. 04-1189 (Fed. Cir. June 7, 2005)2

ENABLEMENT STANDARD DIFFERS FOR 35 U.S.C. §§ 102 AND 112

The standard for what constitutes proper enablement of a prior art reference for purposes of anticipation under § 102 differs from the enablement standard for § 112. *Rasmusson v. SmithKline Beecham Corp.*, No. 04-1191 (Fed. Cir. June 27, 2005)3

CROWDED PRIOR ART INHERENTLY ANTICIPATES PATENT FOR PRODUCTS AND METHODS FOR DISPLAYING FLORAL GROUPINGS

Prior art inherently anticipates every feature of asserted claims. *Prima Tek II, L.L.C. v. Polypap*, No. 04-1411 (Fed. Cir. June 22, 2005)3

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Covenant not to sue, after jury's verdict of noninfringement, did not divest a district court of jurisdiction to hear a defendant's counterclaim for DJ that the disputed patent was unenforceable for inequitable conduct. *Fort James Corp. v. Solo Cup Co.*, No. 04-1365 (Fed. Cir. June 22, 2005)5

INVENTOR'S DISCOVERY OF SCIENTIFIC PRINCIPLES DOES NOT ENTITLE HIM TO REMOVE PRIOR ART FROM PUBLIC DOMAIN

A prior art composition that optionally includes an ingredient anticipates a claim for the same composition that expressly excludes that ingredient. *Upsher-Smith Labs., Inc. v. PamLab, L.L.C.*, No. 04-1405 (Fed. Cir. June 17, 2005)6

COINVENTOR NOT QUALIFIED TO TESTIFY AS AN EXPERT ON INFRINGEMENT

The fact that the coinventor may have particularized knowledge and experience as a coinventor of the claimed invention does not necessarily mean that he also has particularized knowledge and experience in the structure and workings of the accused device. *Air Turbine Tech., Inc. v. Atlas Copco AB*, No. 04-1387 (Fed. Cir. June 7, 2005)6

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DOCTRINE OF CLAIM DIFFERENTIATION CANNOT BROADEN CLAIMS BEYOND THEIR CORRECT SCOPE

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SPECIFICATION RESTRICTS CLAIM SCOPE FROM ORDINARY MEANING

Because the specification makes the scope of the invention clear, the intrinsic evidence binds patentee to a narrower definition of claim term than the extrinsic evidence might support. *Boss Control, Inc. v. Bombardier Inc.*, No. 04-1437 (Fed. Cir. June 8, 2005)9

COURT AFFIRMS FINDING OF ANTICIPATION FOR SPECTRUM SHARING PATENTS

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EDITED BY | VINCE KOVALICK

Federal Patent Laws Preempt Royalty-Like Recovery for State-Law-Based Unjust Enrichment Claim

Vince Kovalick

[Judges: Linn (author), Mayer, and Clevenger]

In *Ultra-Precision Manufacturing, Ltd. v. Ford Motor Co.*, No. 04-1329 (Fed. Cir. June 15, 2005), the Federal Circuit affirmed several district court findings that ultimately prevented the Plaintiff from recovering any damages from Ford Motor Company ("Ford").

U.S. Patent No. 4,929,157 ("the '157 patent") relates to a pulse damper ("PD") tube for use in an air-conditioner compressor. Although Ford patented this solution, it did not commercialize its PD tube for several technical reasons.

In 1988, employees from Ford began to work with employees from Ultra-Precision Manufacturing, Ltd. ("Ultra-Precision") to help solve excessive noise, vibration, and harshness ("NVH") problems in air-conditioner compressors. Ross Herron and Gary Beard of Ultra-Precision disassembled a Ford compressor to study it and to conceptualize a solution. Their proposed solution was to use a PD tube to redirect the gas, much like Ford's earlier PD tube, but with some differences, including certain grooves to better reroute and directionalize fluid flow. By May 1989, Herron and Beard understood that their PD tube design had been approved for production by Ford. In July 1989, Herron and Beard filed a patent application on their PD tube, which matured into U.S. Patent No. 4,934,482 ("the '482 patent"). They also subsequently filed a CIP application, which matured into U.S. Patent No. 5,133,647 ("the '647 patent"). In October 1990, Herron delivered compressors to Ford with Ultra-Precision's PD tubes installed for testing. Herron and Beard then received a letter from Ford asking them to confine their attempts to solve the merits of the PD tube to Ford's climate control division.

Independent of its work with Ultra-Precision, Ford continued to work on NVH problems and eventually settled on a modified muffler design. Ford filed for a patent application on one of its solutions, which matured into U.S. Patent No. 5,236,312 ("the '312 patent").

In January 2001, Ultra-Precision sued Ford for (1) unjust enrichment, (2) correction of inventorship, (3) commercial misappropriation, and (4) breach of contract. After SJ, only the inventorship and unjust enrichment counts were left for trial. Certain procedural issues concerning these claims were ultimately appealed before a trial on the merits, and, after the Federal Circuit considered those issues and remanded, the district court granted SJ on the unjust enrichment count to Ford, reasoning that Plaintiff's concept was not patented and had not been publicly disclosed.

Also, 35 U.S.C. § 262 precluded Ultra-Precision from obtaining an accounting from joint inventors. In a nonjury trial, the district court then found that Herron and Beard were not joint inventors.

On appeal, Ultra-Precision argued that the district court had abused its discretion in allowing Ford to raise preemption as a defense, because Ford had not pled preemption or raised the defense earlier than the time of the pretrial motions. The Federal Circuit observed that although Ford had not raised preemption on its own accord until its motions *in limine* at the district court, the district court had afforded Ultra-Precision the opportunity to respond to Ford's preemption argument through both briefing and oral argument. Accordingly, the Federal Circuit found no basis to conclude that the district court had abused its discretion in finding no waiver.

Concerning preemption, Ford argued that Ultra-Precision was seeking an award of damages for the making, using, and selling of information and ideas that were not protected by federal patent law and that federal patent law preempts such a claim. The Federal Circuit agreed that, generally, federal law preempts state laws that offer patent-like protection to discoveries that are unprotected under federal patent law. The Federal Circuit framed the preemption question in this case, however, more specifically, as whether permitting a court to entertain the specific unjust enrichment claim pled by Ultra-Precision—damages for Ford's making, using, and selling vehicles equipped with the solution to a compressor's NVH problems that Ultra-Precision contends it designed, engineered, and invented, but did not protect under the federal patent laws—stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, such that it is preempted.

Ultra-Precision never alleged that it enjoyed a confidential relationship with Ford or that its technical information enjoyed trade-secret protection. Nor did it allege that the information provided to Ford conferred a benefit for services rendered or for a head start over competitors. Ultra-Precision sought only a royalty-like award premised on Ford's savings from using Ultra-Precision's technical information after Ultra-Precision made the discovery available to the public. According to the Federal Circuit, Ultra-Precision's problem was that it had not pled that it provided any incremental benefit to Ford over and above the benefit that the general public received when Ultra-Precision published its information in its issued patents. Indeed, Ultra-Precision had declined the district court's invitation to amend its complaint to add a claim for such incremental benefit.

Ultra-Precision did not contend that its inventors should be substituted for the named Ford inventors. It sought only to add Herron and Beard as joint inventors alongside the Ford inventors. Therefore, Ultra-Precision could not claim that any nonjoinder by Ford

gave it the necessary incremental benefit, because Ford's ability to use the invention claimed in the '312 patent is unencumbered by the existence of any coinventors. Since Ultra-Precision sought only a patent-like remedy for Ford's conduct in making, using, and selling the products embodying information that Ultra-Precision was not successful in protecting through its own patents, and which, therefore, is free for all the world to enjoy, federal patent law preempts such theory under the rubric of state unjust enrichment law.

As to inventorship, the Federal Circuit agreed with the district court that there was no evidence of collaboration between Herron and Beard of Ultra-Precision and the Ford technical team listed as the inventors on the '312 patent. Accordingly, the Court affirmed the district court's ruling that Herron and Beard were joint inventors of that patent.

OxyContin® Patents Are Unenforceable for Inequitable Conduct

Vince Kovalick

[Judges: Plager (author), Gajarsa, and Linn]

In *Purdue Pharma L.P. v. Endo Pharmaceuticals, Inc.*, No. 04-1189 (Fed. Cir. June 7, 2005), the Federal Circuit affirmed a district court's decision that certain patents found to be infringed by generic versions of OxyContin® were unenforceable because of inequitable conduct that occurred during prosecution of the applications leading to these patents.

The three patents at issue, U.S. Patent Nos. 5,656,295 ("the '295 patent"), 5,508,042 ("the '042 patent"), and 5,549,912 ("the '912 patent") are directed to controlled-release oxycodone medications for treatment of moderate to severe pain. The '912 patent is a CIP of U.S. Patent No. 5,266,331 ("the '331 patent"), which was not asserted. Purdue Pharma L.P. and other related companies (collectively "Purdue") asserted the three patents-in-suit against Endo Pharmaceuticals, Inc. and a related company (collectively "Endo").

The detailed description of each of the patents includes the following statement, which played a prominent role in the determination of inequitable conduct. "It has now been surprisingly discovered that the presently claimed controlled release oxycodone formulations acceptably controlled pain over a substantially narrower, approximately four-fold [range] (10 to 40 mg every 12 hours—around the clock dosing) in approximately 90% of patients." This statement was contrasted with the approximately eight-fold range required for approximately 90% of patients for opioid analgesics in general.

In September 2000, Endo filed an ANDA with the FDA seeking approval to make and sell a generic version of Purdue's OxyContin® formulation. Purdue had by that time listed the three patents-in-suit in the Orange Book as covering OxyContin®. In October 2000, Purdue initiated a patent-infringement suit on the basis of Endo's ANDA filing. The trial court found that Purdue had shown that Endo's proposed generic drug products would infringe Purdue's patents. The trial court further concluded, however, that Endo had also shown that Purdue's patents were invalid due to Purdue's inequitable conduct during prosecution of the patents before the PTO. The district court had found that the foregoing statement from the specification concerning Purdue's alleged discovery for controlling pain over a four-fold range of doses compared to an eight-fold range for opioids failed to inform the PTO that such discovery was based on insight without scientific proof.

The Federal Circuit agreed that Purdue's comments in its specification were material for purposes of 37 C.F.R. § 156(b). Purdue simply had no clinical evidence supporting its claim at the time it was made or at any time before the patents issued. Purdue contended, however, that any lack of scientific proof of the four-fold dosage range for oxycodone was irrelevant because the inventors never stated during prosecution of the patents that the discovery had been clinically tested. The Court agreed that Purdue made consistent representations of the four-fold dosage range for controlled-release oxycodone as a "surprising discovery" in order to distinguish prior art. Accordingly, it could not say that the trial court had clearly erred in finding that Purdue had failed to discover material information. While Purdue had never expressly stated that the discovery of the four-fold dosage range was based on the results of clinical studies, that conclusion was clearly to be inferred from the language used by Purdue in both the patents and the prosecution history.

The Federal Circuit agreed with the district court concerning the materiality of Purdue's statement, recognizing that Purdue's statement was consistently used throughout the prosecution history of the patents-in-suit to distinguish prior art and was made to suggest or infer that the results touted were based on clinical studies. The Court noted that under the PTO's current materiality standard, information may be material if it refutes or is inconsistent with the applicant's patentability arguments, which may be independent of the claims. As to intent, in this case, intent to mislead the PTO can be inferred from Purdue's statements in the context in which they were made. Purdue's carefully chosen language suggested that it had obtained clinical results, and that suggestion was left unclarified by any disclosure that discovery of the four-fold dosage range of oxycodone was based on insight. The Court observed a clear pattern of misdirection throughout the prosecution of the patents.

Enablement Standard Differs for 35 U.S.C. §§ 102 and 112

Vince Kovalick

[Judges: Bryson (author), Plager, and Prost]

In *Rasmusson v. SmithKline Beecham Corp.*, No. 04-1191 (Fed. Cir. June 27, 2005), the Federal Circuit affirmed a decision by the PTO Board, holding that Gary H. Rasmusson and Glenn F. Reynolds (collectively “Rasmusson”) could not defeat the prior date accorded to certain patents owned by SmithKline Beecham Corporation (“SmithKline”). However, the Federal Circuit reversed an aspect of the Board’s decision that had found a European patent application, EP No. 285383 (“the EP ‘383 application”), as not enabled for purposes of anticipation. Accordingly, the Court remanded this issue to the Board for determination of the effect of the EP ‘383 application on the claims of the patents and applications at issue at the PTO.

The case relates to a method of treating a type of prostate cancer by administering a chemical compound called finasteride, which inhibits the production of an enzyme known as 5-a-reductase (“5aR”).

Rasmusson’s U.S. Patent Application No. 08/460,296 (“the ‘296 application”) was filed on June 2, 1995, as the ninth in a series of applications going back to April 1987. SmithKline’s U.S. Patent No. 5,637,310 (“the ‘310 patent”) and 5,496,556 (“the ‘556 patent”) and their corresponding reissue applications (“the ‘310 reissue patent application” and “the ‘556 reissue patent application,” respectively), were accorded the benefit of the filing date of another issued patent, U.S. Patent No. 5,300,294 (“the ‘294 patent”), filed on June 27, 1990.

Given SmithKline’s June 1990 filing date, Rasmusson sought priority on the basis of his first, second, and third applications, going back to April 1987, May 1988, and June 1989, respectively. The Board found that Rasmusson was not entitled to such priority, because the corresponding applications failed to satisfy the written description and enablement requirements of 35 U.S.C. § 112.

On appeal, Rasmusson asserted that the respective applications are enabling because a person of ordinary skill in the art could perform the steps of the disclosed method for treating human prostate cancer without the need for any experimentation. While both parties agreed that one of ordinary skill in the art at the time of Rasmusson’s applications would have recognized that finasteride was a selective 5aR inhibitor, they disagreed as to whether one of ordinary skill in the art would have believed, before June 27, 1990, that finasteride would be effective for treating prostate cancer.

The Federal Circuit agreed with the Board that one of ordinary skill in the art would not have believed that finasteride was effective in treating prostate cancer simply because finasteride was known to be a

selective 5aR inhibitor. The Board referred to evidence pertinent to each of Rasmusson’s relevant application filing dates from the mid-1980s to the mid-1990s to show that on each of those dates, it remained unclear in the art whether DHT or testosterone caused prostate cancer. If testosterone, and not DHT, caused the disease, then the antitumor effect resulting from multi-active 5aR inhibitors was not due to 5aR inhibition, but rather to antitestosterone mechanisms, such as the inhibition of testosterone receptor binding. The Board concluded that not until June 1995 would a person of ordinary skill in the art have believed that 5aR inhibition could play a role in treating prostate cancer. Accordingly, the Federal Circuit agreed with the Board that Rasmusson was not entitled to a priority date earlier than the priority date of SmithKline’s ‘310 and ‘556 patents in corresponding reissue applications.

In conjunction with filing his first application in the United States, Rasmusson also filed the EP ‘383, application, which was published on October 5, 1988. The Board found that the EP ‘383 application did not anticipate SmithKline’s claims at issue, because the EP ‘383 application lacked an enabling disclosure. The Federal Circuit ruled, however, that the standard for what constitutes proper enablement of a prior art reference for purposes of anticipation under § 102 differs from the enablement standard of § 112. The Court agreed with Rasmusson that proof of efficacy is not required in order for a reference to be enabled for purposes of anticipation. Accordingly, the Federal Circuit remanded the case to the Board to allow the Board to resolve the anticipation question in the first instance.

Crowded Prior Art Inherently Anticipates Patent for Products and Methods for Displaying Floral Groupings

Vince Kovalick

[Judges: Dyk (author), Gajarsa, and Plager]

In *Prima Tek II, L.L.C. v. Polypap*, No. 04-1411 (Fed. Cir. June 22, 2005), the Federal Circuit reversed a district court’s holding of infringement and an injunction against further infringement, because the two patents under consideration were invalid as anticipated.

Prima Tek II, L.L.C. and others (collectively “Prima Tek II”) asserted U.S. Patent Nos. 5,410,856 (“the ‘856 patent”) and 5,615,532 (“the ‘532 patent”) against Polypap and others (collectively “Polypap”). The companies compete in the floral-products market. The accused product is a semicircular piece of plastic that can be formed into a disposable device for holding floral arrangements.

In a previous decision, the Federal Circuit had clarified certain claim constructions for the two patents and remanded the case for further proceedings in

accordance with the claim constructions. After a bench trial, the district court held the asserted claims to be not invalid and infringed.

On this appeal, the Federal Circuit observed that extensive prior art exists regarding products and methods for displaying floral groupings. The Court went so far as to comment that it appeared likely that the asserted claims were anticipated by an 1899 reference, but, for simplicity, it would address only a more recent reference ("Charrin"). In its previous decision, the Federal Circuit had construed the term "floral holding material" to have its ordinary meaning and to not be limited to just floral foam or soil. The Court did not include in that construction a requirement that the material be capable of holding its predetermined shape, and, according to the Federal Circuit, the district court had erred in adding such a limitation on remand.

The district court had found that the Charrin reference did not include certain crimping and overlaying-fold limitations recited in claim 15 of the '856 patent. Polypap argued that this teaching was inherent. The Federal Circuit agreed, pointing to the drawings and testimony from Phillipe Charrin himself.

Although there was no expert testimony on point, according to the Federal Circuit, none was required because the technology was easily understood without expert testimony, and Prima Tek presented no rebuttal evidence. Accordingly, the Court found the claim invalid as being inherently anticipated.

Contradictory Declarations of Inventorship Prevent SJ of Invalidity

Tram Nguyen

[Judges: Schall (author), Michel, and Dyk]

In *Checkpoint Systems, Inc. v. All-Tag Security S.A.*, No. 04-1395 (Fed. Cir. June 20, 2005), the Federal Circuit reversed a district court's grant of All-Tag Security S.A. and All-Tag Security Americas, Inc. (collectively "All-Tag"), and Sensormatic Electronics Corporation's ("Sensormatic") motion for SJ dismissing Checkpoint Systems, Inc.'s ("Checkpoint") claims of infringement of U.S. Patent No. 4,876,555 ("the '555 patent") based on improper inventorship, and remanded for a new trial.

The '555 patent is directed to a resonance label for attaching to merchandise in department stores and a method of making it. The '555 patent issued from an application that was filed in 1988 ("the '468 application"), which claimed priority to an earlier filed Swiss patent application by Durgo AG ("Durgo"), a Swiss company contracted to supply resonance labels to another Swiss company, Actron. Checkpoint contracted to supply resonance labels to Actron in the 1980s, which terminated in November 1986. The '468 application was assigned to Durgo and named

Paul Jorgenson, an independent technical consultant for Durgo, Actron, and All-Tag, as the sole inventor. Durgo was acquired by Actron in January 1989, and Actron was acquired by Checkpoint in November 1995, making Checkpoint the owner of the '555 patent that had issued from the '468 application in the interim. In May 2001, Checkpoint brought suit against All-Tag and Sensormatic for infringement of the '555 patent.

At the district court, the parties disputed the validity of the '555 patent under 35 U.S.C. § 102(f) for failure to properly list all inventors. Defendants argued that Franz Pichl, who was at the time managing director of Actron as well as a part owner of Actron and Durgo, is an unnamed joint inventor of the '555 patent. Defendants relied on declarations made in 2002 in preparation for this litigation from Jorgenson, Pichl, and Geiges, an associate of Pichl at Durgo, which stated that the resonance label that is the subject of the '555 patent was jointly developed by Jorgenson and Pichl. The declarations further indicated that Pichl was intentionally not included on the '468 application to avoid letting competitor Checkpoint claim ownership rights by virtue of the contractual relationship between Actron and Checkpoint, and Pichl's affiliation with Actron.

In granting Defendants' motion for SJ of invalidity, the district court relied on the 2002 declarations by Jorgenson and Pichl as undisputed evidence that clearly showed that the '555 patent was jointly invented by Pichl and Jorgenson, and concluded that if the '555 patent is invalid to one, it is invalid to all.

The Federal Circuit found that SJ in favor of Defendants was improper because the evidence relating to the matter critical for determining whether the '555 patent was invalid for improper inventorship was contradictory. Because there remains a genuine issue of material fact as to whether Jorgenson was the sole inventor of the resonance label claimed in the '555 patent or whether Jorgenson and Pichl were joint inventors of the resonance label, the district court's grant of SJ was reversed. In particular, the declarations from the PTO and from this litigation were flatly contradictory as to inventorship. Accordingly, the Federal Circuit vacated and remanded to the district court for factual findings on the inventorship issue.

Claims Invalid as Indefinite Where Specification Fails to Disclose Structure for Means-Plus-Function Limitation

David M. Ruddy

[Judges: Michel (author), Lourie, and Bryson]

In *Default Proof Credit Card System, Inc. v. Home Depot U.S.A., Inc.*, No. 05-1069 (Fed. Cir. June 16, 2005), the Federal Circuit affirmed the district court's

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claim construction and its grant of SJ of invalidity of the single asserted claim for indefiniteness.

Default Proof Credit Card System, Inc. (“Default Proof”) filed suit, asserting that the gift cards provided by Home Depot U.S.A., Inc. and several other retail businesses (collectively “Home Depot”) infringed claim 1 of Default Proof’s U.S. Patent No. 6,405,182 (“the ‘182 patent”). The district court construed the claims and granted SJ that all claims of the ‘182 patent were invalid for indefiniteness because the specification did not disclose any structure corresponding to one of the claimed means-plus-function limitations.

Specifically, the ‘182 patent is directed to point-of-sale (“POS”) machines that allow individuals to obtain prepaid debit cards from participating merchants over the counter, and the dispute centered on the limitation “means for dispensing at least one debit card” in claim 1.

The Federal Circuit concluded that the only structure in the ‘182 patent associated with the function of distributing debit cards was a generically described “dispenser” shown in a drawing. Default Proof disagreed, arguing that certain specific parts of disclosed POS terminals corresponded to the claimed means. The Federal Circuit found that the structure and language of independent claim 1 clearly indicate that the POS assembly and the dispensing means constitute separate components. In addition, the Federal Circuit noted that the hardware of the system depicted in Figure 1 illustrates the POS terminal as separate and distinct from the “dispenser” element. The Federal Circuit also discounted Default Proof’s argument that human participation, or a human being manually operating an apparatus, entails the structure corresponding to the “means for dispensing.” Citing *In re Prater*, 415 F.2d 1393, 1398 (C.C.P.A. 1969), the Federal Circuit explained that a human being cannot constitute a “means.”

The Federal Circuit also rejected testimony from Defendant Proof’s expert, explaining that alternative dispensing structures were known to be part of POS terminals. In particular, Default Proof’s expert had pointed to three separate alternative structures of a known POS terminal as being capable of performing the dispensing function: (1) a kiosk associated with the terminal, (2) a receipt printer peripheral portion of the POS, (3) and an LCD or CRT display peripheral of the POS operated by a merchant. The Court ruled that this testimony was contradicted by the teaching of the ‘182 patent, which describes the dispenser as “loaded with three or more stacks of debit cards.” Moreover, none of this testimony explained how the three alternative structures were associated with, housed, or actually dispensed the described stacks of debit cards. Finally, the Federal Circuit ruled that testimony of one of ordinary skill in the art cannot supplant the total absence of structure from the specification. Accordingly, the Court concluded that the specification of the ‘182 patent dis-

closes no structure corresponding to the claimed “means for dispensing” limitation; Default Proof could not use the declaration of its expert to rewrite the patent’s specification. Accordingly, the Court affirmed the SJ of invalidity of the sole asserted claim.

Post-Trial Covenant Not to Sue Did Not Divest Court of Jurisdiction to Hear Patent Challenge

Meredith H. Schoenfeld

[Judges: Gajarsa (author), Rader, and Schall (dissenting)]

In *Fort James Corp. v. Solo Cup Co.*, No. 04-1365 (Fed. Cir. June 22, 2005), the Federal Circuit held that a patent holder’s post-trial covenant not to sue did not divest a district court of jurisdiction to hear a defendant’s counterclaim for DJ that the disputed patent was unenforceable for inequitable conduct. Reversing the dismissal of the counterclaim for lack of jurisdiction and remanding the case for resolution of the unenforceability claim, the Court said that the counterclaim raised issues beyond the initial claim for infringement that were not resolved by the noninfringement decision.

Fort James Corporation (“Fort James”) sued Solo Cup Company (“Solo Cup”) for infringement of its patent, U.S. Patent No. 4,609,140 (“the ‘140 patent”) directed to high-rigidity paper plates. Solo Cup counterclaimed for a declaration that the patent was invalid, unenforceable, and not infringed. Specifically, Solo Cup alleged that the patent was invalid based on the on-sale bar to patentability, because commercial sales of the invention claimed in the ‘140 patent occurred more than one year prior to the patent’s application date. Solo Cup also claimed that during the prosecution of the ‘140 patent, Fort James had knowingly failed to disclose to the PTO information regarding its precritical date commercial activities and, thus, had committed inequitable conduct. Therefore, Solo Cup contended that the patent should be unenforceable.

After a trial—from which the unenforceability issue had been bifurcated—the jury returned a verdict that the ‘140 patent was not invalid and not infringed. After the jury was dismissed, Solo Cup asked the district court to schedule a hearing on the issues bifurcated from the trial. Fort James opposed, stating that the jury’s verdict negated the controversy. As an exhibit to its post-trial brief, Fort James attached a declaration of its general counsel stating that Fort James covenanted not to sue Solo Cup on the patents at issue and would not seek to overturn the jury’s verdict. Accordingly, the district court dismissed as moot Solo Cup’s unenforceability counterclaim.

On appeal, the Federal Circuit concluded that the district court's literal application of the holding in *Super Sack Manufacturing Corp. v. Chase Packaging Corp.*, 57 F.3d 1054, 35 U.S.P.Q.2d 1139 (Fed. Cir. 1995), failed to comprehend the unique procedural posture of the instant case. The Federal Circuit stressed that in *Super Sack* and its progeny, the patentee's covenant not to sue was filed prior to consideration or resolution of the underlying infringement claim. In such circumstances, the promise not to sue obviated any reasonable apprehension that the DJ plaintiff might have of being held liable for its acts of infringement. Here, however, the post-verdict covenant had no effect on Fort James's claim for infringement, because that controversy had already been resolved by the jury's verdict.

According to the Court, the jury's verdict of non-infringement did not moot Solo Cup's counterclaim for unenforceability, nor did it act to divest the district court of jurisdiction to hear that unlitigated counterclaim. Since the district court had erred as a matter of law in holding that it did not have jurisdiction to hear Solo Cup's counterclaim, its ruling was reversed and the case was remanded.

Judge Schall dissented, arguing that the covenant not to sue eliminated any live controversy between the parties. Although he agreed with the majority's position that a finding of noninfringement does not, by itself, moot a counterclaim of invalidity, in his view, Solo Cup no longer faced the risk of liability for infringement once Fort James issued its covenant not to sue.

Inventor's Discovery of Scientific Principles Does Not Entitle Him to Remove Prior Art from Public Domain

A. Neal Seth

[Judges: Rader (author), Michel, and Schall]

In *Upsher-Smith Laboratories, Inc. v. Pamlab, L.L.C.*, No. 04-1405 (Fed. Cir. June 17, 2005), the Federal Circuit affirmed the district court's SJ of invalidity for claims directed to the composition of a vitamin supplement. The claims, which stated that the composition be "essentially free of antioxidants," were anticipated and obvious in light of an earlier European patent application that "optionally includes" antioxidants.

Upsher-Smith Laboratories, Inc. ("Upsher-Smith") filed an infringement suit against Pamlab, L.L.C. and others (collectively "Pamlab") in response to Pamlab's manufacture of vitamin compositions excluding antioxidants, as claimed in Upsher-Smith's patents-in-suit. Pamlab countered that Upsher-Smith's patents were invalid based on a European patent application.

The prior art European patent application disclosed several vitamin supplements. However, it also taught that the addition of other antioxidants in combination with these vitamin supplements provided synergistic health benefits. Thus, it disclosed the optional supplementation of its vitamins with these antioxidants. Dr. Herbert, the named inventor of the patents-in-suit, discovered that these supplemental antioxidants were actually detrimental to the functioning of the vitamins, and that no synergy existed. Based on this finding, Dr. Herbert distinguished the prior art in order to secure a patent by expressly excluding the supplemental antioxidants. Upsher-Smith admitted that the only difference between the asserted claims and the prior art was the negative limitation expressly excluding the antioxidants.

The Federal Circuit reiterated the well-settled patent principle that a product that would literally infringe if later in time, anticipates if earlier. Thus, the Federal Circuit found the European patent application anticipated the claims of the patents-in-suit because compositions according to the European application made without antioxidants would infringe those claims of the patents-in-suit that expressly excluded antioxidants. The Federal Circuit rejected Upsher-Smith's assertion that the European patent application taught away from expressly excluding antioxidants because of their optional inclusion. The Federal Circuit stated that "a reference is no less anticipatory if, after disclosing the invention, the reference then disparages it." Thus, the Court concluded, the question whether a reference teaches away from the invention is inapplicable to an anticipation analysis.

The Federal Circuit concluded that it was improper to allow the withdrawal of some vitamin compositions from the public domain simply because the inventor had subsequently figured out the scientific underpinnings of their operation.

Coinventor Not Qualified to Testify as an Expert on Infringement

Edward Naidich

[Judges: Schall (author), Lourie, and Prost]

In *Air Turbine Tech., Inc. v. Atlas Copco AB*, No. 04-1387 (Fed. Cir. June 7, 2005), the Federal Circuit affirmed the final judgment of the district court that was adverse to Air Turbine Technology, Inc. ("ATT") on all of its claims.

ATT is a manufacturer of power tools. ATT filed suit against Atlas Copco AB ("Atlas"), a large power-tool distributor based in Sweden, asserting various claims, including: (i) false advertising under the Lanham Act, (ii) breach of contract, (iii) and patent infringement. On ATT's claim of false advertising

under the Lanham Act, the district court found in favor of Atlas on SJ. The district court concluded that, with the exception of one affidavit, there was no evidence that suggested that Atlas's false advertising caused consumers to stop buying ATT's product. Additionally, the district court concluded that the one affidavit that did suggest a causal link was based on inadmissible hearsay.

On appeal, ATT argued that it was deprived of its due process rights because the causation theory relied upon by the district court in granting SJ was raised *sua sponte* by the district court. Consequently, ATT argued that it was denied an opportunity to produce evidence addressing the causation and hearsay issues.

The Federal Circuit affirmed the grant of SJ on ATT's false advertising claim, concluding that ATT was on notice of the causation and hearsay issues because Atlas had raised it in its motion for SJ, and the district court judge and ATT also had a substantial discussion on the causation issue at the SJ hearing.

The Federal Circuit also agreed with the district court that ATT had failed to produce sufficient evidence of a causal link between the false advertising and the alleged injuries, as required by the Lanham Act. The Federal Circuit further concluded that the cumulative evidence submitted by ATT was insufficient to permit an inference of causation to be drawn.

ATT also asserted a breach of contract claim against Atlas's worldwide distribution subsidiary, Atlas Copco Tools AB ("ACTAB"). Under an agreement between ACTAB and ATT, ACTAB had agreed not to exploit ATT's technology covered by ATT's patents. ATT argued that ACTAB breached this agreement by falsely advertising its product as having the same benefits as ATT's patented technology. The Federal Circuit affirmed the district court's grant of SJ in favor of ACTAB. The Court concluded that ATT was required to assert that ACTAB "exploited—i.e., put into practical use—technology covered by a particular ATT patent," rather than simply advertising a similar product using descriptions similar to the descriptions used by ATT.

ATT also argued that the district court should have granted it a new trial on its patent-infringement claim because of three prejudicial evidentiary rulings. First, ATT argued that the district court had erred in preventing its expert witness on infringement from testifying as to infringement of the claimed "braking means." The district court had excluded this testimony because ATT failed to disclose the content of the expert's opinion as to the "braking means" in an expert report. ATT argued that it was justified in not supplementing the expert report because the court's claim construction—namely, its conclusion that "braking means" was a means-plus-function limitation—was not finalized until just before trial.

The Federal Circuit concluded that the district court did not abuse its discretion in excluding the expert's testimony, noting that the district court had

construed "braking means" as a means-plus-function limitation about one month before trial, and the issue of whether "braking means" was a means-plus-function limitation was in play even earlier. The Federal Circuit thus concluded that ATT had sufficient time that it should have at least attempted to supplement the expert report.

Second, ATT argued that the district court had erred in excluding the testimony of a coinventor of the asserted patent, who sought to testify that the accused device contained the corresponding structure of the "braking means" limitation. The district court excluded this testimony on the grounds that the coinventor was not an expert and his testimony consequently violated Fed. R. Evid. 701 as testimony of a lay witness on a matter requiring special scientific knowledge.

The Federal Circuit concluded that the district court did not abuse its discretion in excluding this testimony because the fact that the coinventor may have particularized knowledge and experience as a coinventor of the claimed invention does not necessarily mean he also has a particularized knowledge and experience in the structure and workings of the accused device.

Third, ATT argued that the district court had erred in denying its expedited motion to require Atlas to produce Swedish-employee witnesses by video teleconference for trial. The Federal Circuit disagreed, concluding that, even assuming the district court had power to issue such an order, the motion involved a matter expressly reserved to the sound discretion of the trial court under Fed. R. Civ. P. 43(a).

The Federal Circuit thus affirmed in full the final judgment of the district court.

No DJ Jurisdiction for Suit by a Paying Licensee

Robert C. Stanley

[Judges: Schall (author), Bryson, and Gajarsa]

In *MedImmune, Inc. v. Centocor, Inc.*, No. 04-1499 (Fed. Cir. June 1, 2005), the Federal Circuit reaffirmed that a licensee paying royalties under a valid license agreement lacks the reasonable apprehension of an infringement suit necessary for an action under the DJ Act.

Centocor, Inc. ("Centocor"), the exclusive licensee of U.S. Patent No. 5,807,715 ("the '715 patent"), which claims methods for producing functional antigen-binding proteins, approached MedImmune, Inc. ("MedImmune") in May 1999 to take a sublicense for its Synagis® product. Over the next nineteen months, with MedImmune purportedly "facing mounting pressure and fearing an imminent infringe-

ment suit," the parties negotiated and finally executed a sublicense agreement for MedImmune to pay royalties to Centocor.

Throughout the negotiations and after the signing of the sublicense, MedImmune maintained its belief that it did not infringe the '715 patent and that the patent was invalid and unenforceable. Sixteen months after executing the sublicense, and while continuing to make timely royalty payments, MedImmune filed a DJ action alleging noninfringement, invalidity, and unenforceability. The district court dismissed that action for lack of subject matter jurisdiction, stating that MedImmune did not present an actual controversy under the DJ Act.

In affirming the district court's decision, the Federal Circuit reiterated its now-standard test for such a DJ action: (1) a reasonable apprehension on the part of the DJ plaintiff that it will face an infringement suit, and (2) present activity by the DJ plaintiff that would constitute infringement, or concrete steps taken with the intent to conduct such activity. Focusing on the reasonable-apprehension prong of that test, the Court found controlling its holding from *Gen-Probe, Inc. v. Vysis, Inc.*, 359 F.3d 1376 (Fed. Cir. 2004): the presence of a license, unless materially breached, negates any reasonable apprehension of suit, and the license operates as an enforceable covenant not to sue by the licensor, resulting in no controversy between the parties.

Because MedImmune was paying its royalties in a timely manner, and Centocor could not sue under the license agreement, MedImmune did not have any reasonable apprehension of suit and no subject matter jurisdiction existed for the DJ action. The Court noted that neither *Cardinal Chemical Co. v. Morton International*, 508 U.S. 83 (1993), nor *Lear, Inc. v. Adkins*, 395 U.S. 653 (1969), required a different result as both were clearly distinguishable on their facts. *Cardinal* dealt with the jurisdiction of the courts of appeal, not with a district court's jurisdiction under the DJ Act, while *Lear* noted only that a licensee is not estopped from challenging the validity of a licensed patent, not that a district court would necessarily have jurisdiction over a DJ challenge for validity.

MedImmune also asked that the panel recommend to the full Court that *Gen-Probe* be overruled, as that decision forced a choice by the licensee between paying tribute to a suspect patent and tying its fate to the uncertainty of patent litigation. The Court dismissed that argument as a complaint against Article III's requirement of an actual case or controversy for any federal court jurisdiction, and not a limitation of *Gen-Probe* on the rights of licensees. Therefore, the Federal Circuit affirmed the judgment of the district court and dismissed the case for lack of subject matter jurisdiction.

Court Affirms JMOL of Invalidity for Obviousness

Nikolas J. Uhler

[Judges: Rader (author), Schall, and Gajarsa]

In *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, No. 04-1493 (Fed. Cir. June 9, 2005), the Federal Circuit upheld the district court's JMOL in favor of Beckman Coulter, Inc. ("Beckman") that the asserted patent was invalid for obviousness.

Princeton Biochemicals, Inc. ("Princeton") filed suit against Beckman, alleging that several capillary-electrophoresis devices manufactured by Beckman infringed U.S. Patent No. 5,045,172 ("the '172 patent"). A jury found in favor of Princeton, but the district court granted JMOL to Beckman on the ground that the jury's verdict was not supported by substantial evidence because the claim at issue was obvious and, therefore, invalid.

The claim at issue covered a capillary-electrophoresis device comprising a combination of features that were conceded by Princeton to have been disclosed in the prior art before the filing date of the '172 patent, albeit in several references. The only issue was whether one of ordinary skill in the art would have been motivated to combine the features of the prior art so as to arrive at the claimed invention.

The Court noted that 35 U.S.C. § 103 requires that the claimed invention be considered as a whole. This assessment requires a showing that one of ordinary skill in the art at the time the invention was made would have been motivated to select various elements from the prior art and combine them in the claimed manner. The district court found that the requisite motivation can be found in the content of the public prior art, the nature of the problem addressed by the invention, and the knowledge of one of ordinary skill in the art.

Moreover, Beckman's expert's testimony on obviousness was unrebutted and supported by the evidence. Accordingly, the Federal Circuit affirmed the JMOL of invalidity.

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Doctrine of Claim Differentiation Cannot Broaden Claims Beyond Their Correct Scope

Aryn D. Davis

[Judges: Linn (author), Bryson, and Gajarsa]

In *Seachange International, Inc. v. C-COR Inc.*, No. 04-1375 (Fed. Cir. June 29, 2005), the Federal Circuit revised the district court's claim construction of three terms, reversed a judgment of infringement, affirmed

denials of Defendant's motions for JMOL on written description and anticipation by two references, vacated a denial of JMOL as to anticipation by a third reference, and reversed a denial of Defendant's motion for new trial. The Court remanded for further proceedings on the issues of anticipation by the third reference and for a determination as to whether a new trial was warranted.

Seachange International, Inc. ("Seachange") sued C-COR Inc. ("C-COR"), alleging that C-COR infringed U.S. Patent No. 5,862,312 ("the '312 patent"), which is directed to a method and apparatus for redundantly storing video data for video-on-demand systems. The claim at issue recites a method of redundantly storing data in a "distributed computer system having at least three processor systems," where each of the processor systems are connected to each other by a "network for data communications."

The Federal Circuit rejected the district court's construction of "network for data communications" as allowing connection by "any kind of network" and construed the term to be limited to "direct, point-to-point, two-way channel interconnections." The Court agreed with Seachange that neither the claim language nor the dictionary definition of "network" limits the term to point-to-point connections. It also found that because another independent claim was nearly identical but recited the narrower "point-to-point" connections, the doctrine of claim differentiation creates a presumption that the "network for data communications" limitation has a different, broader meaning and is not limited to "point-to-point" connections. The Court, however, found the presumption rebutted.

Specifically, although the Federal Circuit determined that the written description consistently refers to the network connections as point-to-point, this alone was not a sufficient basis to limit the term "network" to point-to-point connections because it was unclear whether the specification was describing one embodiment or describing the entire invention. Instead, the Court relied on arguments made during prosecution to limit the term "network" to point-to-point connections. In responding to a prior art rejection, the applicant had grouped the claim at issue with claims that had a "point-to-point" limitation and argued that the reference failed to disclose point-to-point connections. By not separately arguing the allowability of the claim at issue in this case, the applicant disclaimed any broader meaning for the term "network."

The Federal Circuit also held that the district court had improperly imported a limitation into the claims by construing the "distributed computer system" to require that each processor be a "stand alone" unit where there was nothing in the specification to suggest that the processor must stand alone. Instead, the Federal Circuit construed the term to have its ordinary meaning, which the parties agreed is "a computer system in which several interconnected computers share

computing tasks assigned to the system." Similarly, the Court found that a "processor system" must have a CPU, but that there was nothing in the specification to support the district court's construction requiring that the CPU be capable of running application software.

Seachange had conceded during briefing that if "network for data communications" required point-to-point connections, then C-COR would not literally infringe. As a result, the Federal Circuit only addressed infringement under the DOE. The Court held that because it had construed "network for data communications" to require direct point-to-point connections, allowing the scope of equivalents to cover indirect network connections would vitiate the requirement that the processors be directly connected point-to-point. It thus concluded that there was no infringement under the DOE because it would violate the "all elements" rule.

The Federal Circuit also affirmed a denial of C-COR's motion for JMOL on written description because, under the revised claim construction, the premise of C-COR's written description challenge ceased to exist. The district court's denial of JMOL as to anticipation by the Frey and Mendelson references was also affirmed because the Federal Circuit agreed that the substantial evidence supported the jury's verdict that those references do not anticipate the claim at issue. As to a third reference, Gardner, the Court's revised claim construction, an incomplete record as to the disclosure of Gardner, and inconsistencies in the district court's findings as to the disclosure of Gardner, led the Court to vacate the denial of C-COR's motion for JMOL on anticipation by Gardner and remand for further proceedings on the issue.

Finally, the district court's opinion included statements admitting that it failed to properly instruct the jury as to the meaning of "distributed computer system," and that such failure would be prejudicial and require a new trial if the Federal Circuit revised the claim construction of the term. In light of these statements and the revised claim construction, the Court reversed the denial of C-COR's motion for a new trial and remanded for further proceedings.

Specification Restricts Claim Scope from Ordinary Meaning

Joseph E. Palys

[Judges: Prost (author), Schall, and Gajarsa]

In *Boss Control, Inc. v. Bombardier Inc.*, No. 04-1437 (Fed. Cir. June 8, 2005), the Federal Circuit affirmed the district court's grant of SJ of noninfringement in favor of Bombardier Inc. and Sports Car, Inc. (collectively "Bombardier"). The Court held that the

patentee had waived any claim of infringement under the DOE.

Boss Control, Inc. and others (collectively “Boss”) brought suit against Bombardier for infringement of U.S. Patent No. 5,734,206 (“the ‘206 patent”). The ‘206 patent is directed toward a security power interrupt apparatus that prevents unauthorized use of an electrically operated device. In controlling power to the device, the apparatus may operate in an “interrupt mode” when, for example, a keypad is removed from the device. In interrupt mode, the apparatus retains a power connection between auxiliary equipment and a power supply. Thus, power to the device is not completely shut off until a present electrical current is exceeded. The suit focused on claim 7, which recites, *inter alia*, “a controller operative to monitor the operative connection with said code-providing device,” and “operative to interrupt power to the load responsive to said code-providing device being operatively disconnected from said controller.”

The accused devices include personal watercraft and snowmobiles that are each installed with a security system. The watercraft’s security system allows the engine to operate only when a digitally encoded key, in the form of a cap carried by the operator, is recognized by the system. Thus, when the cap is removed from the watercraft, the engine, auxiliary gauges, and lights are instantly shut off. However, the security system temporarily provides power to the auxiliary gauges and lights when an operator attempts to restart the watercraft without the proper encoded key. The snowmobile’s security system allows the engine to start and idle with any cap in place, but only allows acceleration of the snowmobile when it recognizes a properly encoded key.

In the district court, Bombardier moved for SJ of invalidity and noninfringement. Rejecting Boss’s argument that the term “interrupt” simply means “to break off” or “to shut or cut off,” the district court found that the accused devices do not “interrupt power to the load,” as construed in the context of the ‘206 patent and do not “monitor the operative connection with said code-providing device.” Accordingly, the district court granted SJ of noninfringement.

In construing claim 7, the Federal Circuit examined the specification of the ‘206 patent to ascertain the meaning of the term “interrupt.” The Court determined that the multistage power interrupt aspects of the invention disclosed in the ‘206 patent are distinguishable from “simple on-off interruption of electrical power.” As disclosed in the ‘206 patent, the interruption of power to an electrical device involves two stages. The first stage enables auxiliary functions to remain operational when a combined current draw is less than a current threshold. The second stage disconnects power to the device when the current threshold is exceeded.

Accordingly, the Court rejected Boss’s arguments that the term “interrupt” should be given its ordinary meaning of “to break off” or “to shut or cut off.” In the context of the ‘206 patent, the Court noted that

the term “interrupt” means more than simply on-off control of electrical power. Further, the Court found that the use of the term “cut off” interchangeably with the term “interrupt” during prosecution of the ‘206 patent did not overcome the specification’s definition of the claim term “interrupt.” Accordingly, the Federal Circuit found no error with the district court’s construction.

Based on this construction, the Federal Circuit agreed with the district court that there was no genuine issue of material fact with respect to literal infringement. The Court recognized that the security system of the watercraft does not interrupt power to a load when a code-providing device is operatively disconnected from a controller because the watercraft completely shuts down power when the security key is removed. Therefore, the watercraft does not provide electrical current up to a threshold level such that auxiliary components may continue to operate and does not shut off power when the threshold level is exceeded. The Court further noted that simply maintaining a physical connection in the form of a hardwire with the power supply does not show the watercraft maintains a current up to a preset threshold level in the hardwire.

The Federal Circuit also rejected Boss’s position that the district court committed reversible error by not determining infringement under the DOE. Instead, the Court agreed with Bombardier that Boss waived its right to appeal this issue when it failed to present any arguments concerning the DOE to the district court.

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Court Affirms Finding of Anticipation for Spectrum Sharing Patents

Venk Krishnamoorthy

[Judges: Bryson (author), Schall, and Dyk (concurring-in-part and dissenting-in-part)]

In *Northpoint Technology, Ltd. v. MDS America, Inc.*, No. 04-1249 (Fed. Cir. June 28, 2005), the Federal Circuit upheld a jury’s verdict that found certain claims invalid on grounds of anticipation and lack of enablement.

Northpoint Technology, Ltd. (“Northpoint”) asserted patents directed to technology that enabled transmission of terrestrial local TV signals to satellite-based Direct Broadcasting System (“DBS”) receivers. DBS satellites, which are in geosynchronous orbit above the equator, transmit in a northerly direction to North America. Thus, DBS directional antennas at a North American receiving location must be pointed southward. Northpoint’s invention allowed directed transmission of terrestrial local TV signals from north of a receiving location to a second northward pointing directional antenna at the same location, which was oriented towards the directional terrestrial transmitter.

The appeal focused on the district court's construction of the claim term "directional reception range," which had been construed to refer to "[a] three-dimensional space about the centerline of a receiving antenna within which a usable signal can be received." The majority adopted the district court's construction, interpreting the claim term broadly to refer to the three-dimensional space in which the antenna could receive a usable signal and rejecting Northpoint's narrower interpretation, which limited the directional reception range to an area at which a receiving antenna was physically aimed. Under the broader interpretation, the majority found that there was substantial evidence from which a jury could find that a prior art reference taught the separate "directional reception ranges" recited by Northpoint's patents and, therefore, anticipated the asserted claims.

The majority also found that there was substantial evidence from which a jury could find nonenablement based on Northpoint's lack of disclosure of specific techniques and parameter values that were used to overcome interference between terrestrial and DBS signals.

In partial dissent, Judge Dyk argued that the claim term clearly requires that the patented device achieve noninterference as a result of a geographic orientation of the two antennas so that each is outside the range of the unwanted signal due to the limitation of the antennas, and that the expert testimony on record was legally insufficient to support a jury finding of nonenablement. Accordingly, the dissent would have found the claims infringed and not invalid.

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In **Last month at The Federal Circuit**, certain terms, titles, and names of federal agencies that are frequently referred to in text, appear in abbreviated forms or as acronyms. These abbreviated forms and acronyms are listed below.

ALJ	Administrative Law Judge
ANDA	Abbreviated New Drug Application
APA	Administrative Procedures Act
APJ	Administrative Patent Judge
Board	Board of Patent Appeals and Interferences
Commissioner	Commissioner of Patents and Trademarks
CIP	Continuation-in-Part
DJ	Declaratory Judgment
DOE	Doctrine of Equivalents
FDA	Food & Drug Administration
IDS	Information Disclosure Statement
IP	Intellectual Property
ITC	International Trade Commission
JMOL	Judgment as a Matter of Law
MPEP	Manual of Patent Examining Procedure
PCT	Patent Cooperation Treaty
PTO	United States Patent and Trademark Office
SEC	Securities and Exchange Commission
SJ	Summary Judgment
SM	Special Master