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VEPACHEDU EDUCATIONAL FOUNDATION

The Andhra Journal of Industrial News

IP and Industry News

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Issue 101 Contents:

Billion Dollar Jury Verdict

Apple had asked for $2.7 billion in damages, claiming that Samsung "ripped off" its iPad and iPhone designs and software for scores of Samsung devices, including the Nexus S 4G and S II. Apple has won its patent case against Samsung and the nine-member jury has awarded $1.05 billion to the iManufacturer. The jury has also rejected Samsung's countersuit – finding the Samsung patents not-infringed.

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Samsung's infringement is identified as "willful" – opening the door to potential punitive damages against Samsung. In patent cases, the judge (here, Judge Koh) is given the responsibility of determining whether to award punitive damages based upon a set of factors outlined in the law. In this case, the statute would limit potential patent damages to three-times the damages calculated by the jury. District Judges have discretion to grant injunctive relief based upon the four "*eBay* factors" defined by the US Supreme Court in 2006. When granting injunctive relief, the judge also has discretion to shape the relief.
Judgment notwithstanding the verdict, also called judgment non obstante veredicto, or JNOV, is a type of judgment as a matter of law (JMOL) that is ordered at the conclusion of a jury trial. The judge in a civil jury trial may overrule the decision of a jury and reverse or amend their verdict. This intervention, often requested but rarely granted, permits the judge to exercise discretion to avoid extreme and unreasonable jury decisions.

Anti IP activist Stephen Kinsela says the legal nature of intellectual property rights is the civil law doctrine of *negative servitudes*. NTP, by virtue of its patents, could prohibit RIM from making Blackberry smartphones (using its own property, even its own designs)–and could use this veto-right to extract $600M from RIM to permit RIM to use its own property as it wanted to. And Genzyme can prevent competitors from making a drug similar to Fabrazyme, because of its patent monopoly.
http://c4sif.org/2011/06/intellectual-property-rights-as-negative-servitudes/
In another case, Monsanto v DuPont, Judge Webber confirmed the jury verdict that DuPont/Pioneer willfully infringed Monsanto's GMO roundup-ready seed patent. The jury rejected the defendants' claims that the asserted patent was invalid; that the patent had been finally obtained through inequitable conduct; and that the reissue patent improperly expanded the scope of the original claims. The judge also confirmed the jury's reasonable royalty damage award of "One Billion Dollars ($1,000,000,000)."

Safe Harbor for Grasshoppers
Grasshoppers are infringers that steal inventions and resist licensing from a patent owner. Chief Judge Rader says that grasshoppers (infringers) and trolls (patent owners) are responsible for the rise in litigation costs and warns that China, Germany etc. might be appealing to multi national companies if the runaway US litigation costs are not controlled (http://memberconnections.com/olc/filelib/LVFC/cpages/9008/Library/The%20State%20of%20Patent%20Litigation%20w%20Ediscovery%20Model%20Order.pdf).

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In *Momenta Pharms. v. Amphastar Pharms.*, No. 2012-1062 (Fed. Cir.), in a strongly-worded dissent, Chief Judge Rader refers to Amphastar as a "trespasser" and "infringer." He traces the legislative history of Section 271(e)(1), taking exception to the majority opinion's basis for distinguishing *Classen*, and claims that the majority's "interpretation of 271(e)(1) would essentially render manufacturing method patents worthless." Purpose and legislative history of 271(e)(1) is to give an opportunity for generic companies to infringe legitimately for the purpose of submitting data to FDA. Legislative history only addressed pre approval activities. However, the Supreme Court disregarded the legislative purpose in *Merck v. Integra* decision, where it held that uses which are not ultimately included in a submission to the FDA are nonetheless exempted by the safe harbor to "render manufacturing method patents worthless." Chief Judge Rader dissented that the rule established by the *Momenta* majority might undermine the incentives for developers of biosimilars and other researchers to innovate in challenging, dynamic scientific field of bilogics.

On the other hand, trolls such as Whitserve won millions of dollars jury verdicts against practicing entities such as CPi (Whitserve, LLC v. Computer Packages, Inc. (Fed. Cir. 2012) http://www.patentlyo.com/files/11-1206-1261.pdf), while CAFC sided with the troll, Judge Mayer dissented, "*I respectfully dissent. There can be no infringement of U.S. Patent Nos. 5,895,468, 6,049,801 and 6,182,078 (collectively the "WhitServe patents") because they are invalid. The WhitServe patents are "barred at the threshold by [35 U.S.C.] § 101," Diamond v. Diehr, 450 U.S. 175, 188 (1981), because they are directed to the abstract idea that it is useful to provide people with reminders of approaching due dates and deadlines. See Mayo Collaborative Servs. v. Prometheus Labs., Inc., 132 S. Ct. 1289, 1303 (2012) (explaining that section 101 performs a vital "screening function"); Bilski v. Kappos, 130 S. Ct. 3218, 3225 (2010) (noting that whether claims are directed to statutory subject matter is a "threshold test")."*

Public Interest Groups with an Agenda

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Myriad case has been driven largely by public interest groups operating with an agenda of denuding patents that they see as harmful to public health and fundamental liberties. These parties include the *ACLU*, *PubPat*, and the first-named plaintiff, the Association for Molecular Pathology (AMP). Those advocacy groups have no intention of using the patent themselves, but challenging the patent fits within their agenda of protecting the public. In its opinion here, the court holds that those organizations do not have standing in the case. In *Association for Molecular Pathology (AMP) and ACLU v. USPTO and Myriad Genetics* (Fed. Cir. 2012), on remand from the Supreme Court (GVR), a three-member panel of the Court of Appeals for the Federal Circuit found:

1. Affirmed: The courts properly have jurisdiction over the declaratory judgment case.
2. Reversed: Myriad's composition claims to isolated DNAs, including cDNAs fall within the scope of Section 101 patentable subject matter.
3. Affirmed: Myriad's method claims directed to comparing or analyzing gene sequences are not subject matter eligible.
4. Reversed: Myriad's method claim to screening potential cancer therapeutics via *in vitro* changes is subject matter eligible.

http://www.cafc.uscourts.gov/images/stories/opinions-orders/10-1406%20order.pdf

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Cheap HIV Drugs

World Health Organization guidelines recommend emtricitabine, as well as tenofovir disoproxil fumarate (TDF), as preferred components of first- and second-line HIV therapy. However, cost is currently a barrier to broadening access to regimens that include emtricitabine when compared to other regimens, including widely used lamivudine (3TC)-based regimens. The new agreements are designed to enable Gilead's Indian generic partners to produce high volumes of FTC/TDF-based therapies, thereby establishing sustainable price parity to these alternative regimens.

Gilead Sciences, Inc. together with Mylan Laboratories, Ranbaxy Laboratories Limited and Strides Arcolab, announced today that they have entered into agreements to collaborate on promoting access to high-quality, low-cost generic versions of Gilead's HIV medicine emtricitabine (FTC) in developing countries – including single tablet regimens containing emtricitabine, and fixed-dose combinations of emtricitabine co-formulated with other Gilead HIV medicines. Under the new agreements Gilead will provide a technology transfer for the manufacture of emtricitabine, together with funding to assist with investment in process improvements to reduce overall manufacturing costs.

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New USPTO Office in Denver

The USPTO worked with the General Services Administration (GSA) to select a location in the Denver region that is centrally located, affordable, and well suited to the agency's needs. The building will be leased at a rate well below market price, and the USPTO will partner with GSA to construct its space in the building as quickly as possible. The Denver office in the Byron G. Rogers Building, located within the Central Business District and close to public transportation, will be a place for small businesses and entrepreneurs to learn how to navigate the patent process, meet with examiners, and access USPTO's comprehensive search databases. The office will also create jobs and boost the local economy. It will be modeled after the USPTO's first satellite office in Detroit, Michigan, which opened in July and is on pace to have more than 100 patent examiners and 20 administrative law judges on board by the end of its first year of operation.

The Denver satellite office will function as a hub of innovation and creativity, allowing the USPTO to serve regional entrepreneurs better than ever by getting them the patents they need so that they can attract capital, put their business plans into action, and help create more good-paying jobs.

Patents are a significant factor in private sector job creation. In fact, the U.S. Commerce Department issued a recent report finding that IP-intensive industries are the source – directly or indirectly – of 40 million jobs, contributing $5.06 trillion to the U.S. economy in 2010.

http://www.uspto.gov/news/pr/2012/12-53.jsp

USPTO Rule Making

The U.S. Patent and Trademark Office has completed the first round of an AIA-related rulemaking process that began in January with the release of several notices of proposed rulemaking and a practice guide for proposed trial rules.

http://www.gpo.gov/fdsys/pkg/FR-2012-07-17/pdf/2012-16710.pdf

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http://www.gpo.gov/fdsys/pkg/FR-2012-07-31/pdf/2012-18554.pdf
http://www.gpo.gov/fdsys/pkg/FR-2012-08-06/pdf/2012-18530.pdf
http://www.gpo.gov/fdsys/pkg/FR-2012-08-14/pdf/2012-17900.pdf
http://www.gpo.gov/fdsys/pkg/FR-2012-08-14/pdf/2012-17904.pdf
http://www.gpo.gov/fdsys/pkg/FR-2012-08-14/pdf/2012-17906.pdf
http://www.gpo.gov/fdsys/pkg/FR-2012-08-14/pdf/2012-17907.pdf
http://www.gpo.gov/fdsys/pkg/FR-2012-08-14/pdf/2012-17908.pdf
http://www.gpo.gov/fdsys/pkg/FR-2012-08-14/pdf/2012-17917.pdf

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AIA *Changes Effective from 9/16/2012*
Inventor
o The inventor's oath or declaration must now contain statements that (1) the application was made or was authorized to be made by the affiant or declarant, and (2) such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application, and (3) any additional information relating to the inventor and the invention that the Director may specify is required.
o The Director is no longer permitted to "dispense with signing and execution by the inventor" for divisional applications.
o Applications may now be filed by assignees when inventors are under an obligation to or have already assigned the invention. In addition, others who show a sufficient proprietary interest can file an application on behalf of inventors. Patents granted on applications filed in such a manner will be granted to the real party in interest.

The lack of deceptive intent is no longer required for
o correction of inventorship of an application or patent.12*
o the retroactive grant of a foreign filing license when an application is filed abroad through error and does not disclose an invention within the scope of section 181 (applications subject to secrecy orders);
o initiation of a reissue application; or
o sustaining the validity of the remaining claims in a patent for which some claims are rendered invalid.

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USPTO Webinars
WHAT: USPTO First-Inventor-to-File Roundtable
WHEN: Sept. 6, 2012 at 1:30 – 4:30 p.m. EDT
WHO: USPTO Director David Kappos, Senior Patent Counsel Robert Bahr
WHERE: Madison Auditorium on the concourse level of the Madison Building, 600 Dulany Street,Alexandria, Va. 22314
WEBEX: Event number: 997 151 983
Event password: 123456
Event address for attendees: https://uspto-events.webex.com/uspto-events/onstage/g.php?d=997151983&t=a
Teleconference (US/Canada): +1-408-600-3600
Access code: 997 151 983

WHAT: USPTO America Invents Act (AIA) Webinar
WHEN: Sept. 7, 2012 at 12:30 p.m. EDT
WHO: USPTO Director David Kappos, Deputy Director Terry Rea, Commissioner for Patents Peggy Focarino, General Counsel Bernie Knight, Chief Judge James Smith, and Lead Judge Michael Tierney. Chief Communications Officer Todd Elmer
WEBEX: Event number: 990 842 706
Event password: 123456
Event address for attendees: https://uspto-events.webex.com/uspto-events/onstage/g.php?d=990842706&t=a
Teleconference (US/Canada): +1-408-600-3600
Access code: 990 842 706

Text2PTO

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Efficiency drives innovation, and the USPTO is determined to offer innovators the most efficient patent application process in the world. The latest improvement USPTO plans to introduce to the application process will enable our Office to accept patent application submissions in text based format. This is the same format that most applicants currently use to prepare patent applications for filing. The USPTO is looking to implement this new service, which is called Text2PTO, with the goal of providing online filers significant benefits over their existing filing experience, while minimizing changes to their existing work practices. To get involved, contact our eFiling Modernization Project team at efilingmodernization@uspto.gov.

Om! Asatoma Sadgamaya, Tamasoma Jyotirgamaya, Mrityorma Amritamgamaya, Om Shantih, Shantih, Shantih!
(Aum! Lead the world from wrong path to the right path, from ignorance to knowledge, from mortality to immortality, and peace!)

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