

## Our Latest Industry Insights

IP File

August 4, 2015

### **Navigating Patent Damages Part III: Statutory Indemnification - Implied Warranty Against Infringement**

In this third article relating to patent damages, we explore the effects of implied indemnification provisions when evaluating who is responsible for litigation costs when faced with an infringement suit.

**TAGS:** 84 lumber co v mrk techs ltd, chemtron inc v. aqua products inc, implied indemnification, implied warranty against infringement, inc v olaes enterprises, inc v sony electronics, inc., infringement claim, motorola inc v. varo inc, pacific sunwear of california, patent damages, patent infringement, patent litigation, phoenix solutions, rightful claim, sun coast merchandise corp v. myron corp, ucc, ucc § 2-3123, uniform commercial code

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July 21, 2015

### **The “Oracle” Predicts It: Supreme Court Declines to Hear Landmark Software Copyright Case**

The U.S. Supreme Court declined to grant certiorari in the case of Google, Inc. v. Oracle America, Inc., a closely watched case regarding the eligibility of software for copyright protection. The Supreme Court’s decision leaves in place the Federal Circuit’s landmark 2014 ruling, which held that Oracle was entitled to copyright protection for its application programming interfaces (“APIs”), which are “preset blocks of code that help developers write in Oracle’s popular Java programming language.”

**TAGS:** 35 u.s.c. § 101, computer software, copyright & idea theft, copyright infringement, eligibility of software for copyright protection, fair use doctrine, google inc v oracle america inc, intellectual property, merger doctrine, oracle america inc v. google inc, patent infringement, scenes a fair doctrine, trade secret & unfair competition, us supreme court, write of certiorari; supreme court

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IP File  
July 14, 2015

## **Federal Circuit Attacks Functional Claim Drafting Under 35 U.S.C. § 101**

**By:** Rex Hwang

In *Internet Patents Corp. v. Active Networks*, the Federal Circuit affirmed yet another dismissal of a patent infringement lawsuit due to the asserted patent being invalid for lacking patent eligible subject matter under 35 U.S.C. § 101. Here, the sole patent-in-suit, U.S. Patent No. 7,707,505 (the “505 Patent”), was generally directed to the use of a web browser Back and Forth navigational functionalities without data loss in an online application consisting of dynamically generated webpages. Claim 1 of the '505 Patent recites:

**TAGS:** 35 U.S.C. § 101, Federal Circuit, *Internet Patents Corp v Active Networks*, inventive concept, patent eligible subject matter, patent infringement, Patent Litigation, *Williamson v Citrix Online LLC*

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IP File  
July 8, 2015

## **Federal Circuit’s Latest Patent Subject Matter Decision in *Ariosa v. Sequenom* Renders Many Biotech Patents at Risk**

**By:** Dan Liu

On June 12, 2015, the Federal Circuit issued its decision in *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*,<sup>[1]</sup> finding that Sequenom’s patent claiming methods of using cell-free fetal DNA (“cffDNA”) for prenatal diagnosis test is patent ineligible under 35 U.S.C. § 101. The Sequenom’s patent is directed to a revolutionary finding that there is cffDNA in the blood stream of a pregnant woman. The presence of cffDNA in maternal blood samples provides a safer, cheaper, and faster alternative to the conventional invasive methods to determine fetal genetic abnormalities, such as Down Syndrome. Several popular prenatal diagnosis tests, including Sequenom’s MaterniT21 and Ariosa’s Harmony, embody Sequenom’s discovery.

**TAGS:** 35 U S C 101, *Ariosa v Sequenom*, cffDNA, Federal Circuit, inventive concept, *Mayo Collaborative Services v Prometheus Laborites Inc*, natural phenomenon, patent eligibility, Patent Litigation, patent-ineligible, Supreme Court

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June 10, 2015

## **No Suit For You! Changes to Patent Pleading Standard Issued By the U.S. Supreme Court Require More Than Bare Bones Pleading**

In late April, the U.S. Supreme Court adopted changes to the Federal Rules of Civil Procedure which have significant implications for patent plaintiffs. In an April 29, 2015 order, the high court approved, without comment, changes initially approved by the Judicial Conference of the U.S. in September 2014. While these changes impact several different areas of civil litigation, they specifically impact patent litigation: unlike the previous edition of the Federal Rules, which allowed patent plaintiffs to "file bare-bone complaints," patent plaintiffs will soon be subject to the same heightened pleading standards required of plaintiffs in other types of civil litigation.

**TAGS:** ashcroft v iqbal, bell atl corp v twombly, federal court, form 18, frcp, intellectual property, model forms, model patent complaint, patent infringement, patent litigation, rule 84, us supreme court

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June 5, 2015

## **Good-Faith Belief of Invalidity Not a Defense to Inducement**

In its recent ruling in *Commil USA v. Cisco Systems*, 575 U.S. \_\_\_ (2015), the Supreme Court addressed the knowledge requirement for a claim of inducing patent infringement, holding that defendants in a patent case could not evade liability by asserting a "good-faith belief" that the patent was invalid.

**TAGS:** 395, 430, 6, a claim of inducing patent infringement, a good faith belief of invalidity is no defense, cardinal chemical co v morton int'l, certiorari, cisco systems, commil usa, eastern district of texas, good-faith belief, induced infringement under 271b requires knowledge that the induced acts constitute patent infringement, intellectual property, supreme court

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IP File  
May 19, 2015

## **Federal Circuit Reaffirms Single Entity Rule for Divided Infringement under Section 271(a) in Akamai, Making Method Claims Difficult to Enforce**

**By:** Dan Liu

On May 13, 2015, the Federal Circuit issued the much-anticipated decision in Akamai Technologies, Inc. v. Limelight Networks, Inc. following a remand from the Supreme Court.[1] The Federal Circuit, in a 2-1 decision, held that “direct infringement liability of a method claim under 35 U.S.C. § 271(a) exists when all of the steps of the claim are performed by or attributed to a single entity[.]” This is consistent with its 2008 Muniauction decision, where the Federal Circuit first made clear that “direct infringement requires a single party to perform every step of a claimed method.”[2] The Akamai Court concluded that when “one party, acting as ‘mastermind’ exercises sufficient ‘direction or control’ over the actions of another,” the “single entity” requirement may be met and the direct infringement may be found. Sufficient direction or control may occur in a principal-agent relationship, a contractual arrangement, or a joint enterprise.

**TAGS:** 35 U.S.C. § 271(a), akamai technologies, Akamai Technologies Inc v Limelight Networks Inc, direct infringement liability, Fed Cir, Inc., Intellectual Property, limelight, Muniauction Inc., Patent Litigation

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IP File  
April 6, 2015

## **Will 101 lead to mutually assured destruction?**

**By:** Andrew Choung

Although the Supreme Court’s decision in Alice Corp. v. CLS Bank International has been hailed by some as an important development in the efforts to curb abusive patent litigation by non-practicing entities, others have raised concerns about unintended effects. For example, software companies have been particularly concerned about the long-term impact of Alice on the viability of patent protection for software. More generally, it is important to note that Alice is not limited to NPEs, but affects even competitor (B2B) disputes.

**TAGS:** Alice Corp v CLS Bank International, B2B, Hewlett-Packard Company, Hewlett-Packard Company v ServiceNow, Inc., ITSM, motions to dismiss, NPE, Patent Litigation, PTAB, ServiceNow, summary judgment based on patent

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March 26, 2015

## **B&B Hardware, Inc. v. Hargis Industries, Inc. – U.S. Supreme Court Holds TTAB Decisions Can Have Preclusive Effect on District Courts**

On March 24, 2015, the U.S. Supreme Court issued its long-awaited decision in the case of B&B Hardware, Inc. v. Hargis Indus., Inc. B&B Hardware owned the federally registered trademark SEALTIGHT for use in connection with fasteners and related hardware in the aerospace industry. Hargis filed an application with the United States Patent and Trademark Office (“USPTO”) to register SEALTITE for use in connection with fasteners and related hardware in the construction trade. B&B opposed Hargis’ registration and the two parties began litigating the matter before the Trademark Trial and Appeal Board (“TTAB”). While the TTAB proceeding was ongoing, B&B also filed a trademark infringement lawsuit against Hargis in federal court. In both the TTAB proceeding and the district court case, the primary issue was whether a likelihood of confusion exists between B&B’s SEALTIGHT mark and Hargis’ SEALTITE mark.

**TAGS:** article iii, doctrine of

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March 9, 2015

## **Not So Fast: Split Federal Circuit Panel Sided with PTO on Novel IPR Issues**

**By:** Dan Liu

In *In re Cuozzo Speed Technologies, LLC*,<sup>[1]</sup> the first ever appeal of the final written decision from an inter partes review (“IPR”) before the Patent Trial and Appeal Board (“PTAB” or the “Board”),<sup>[2]</sup> the Federal Circuit decided two novel and fundamental questions arising under the newly enacted IPR proceedings created by the America Invents Act of 2011 (“AIA”). On both issues, the Federal Circuit agreed with the PTO,<sup>[3]</sup> holding (1) institution decisions by the Board are almost never reviewable on appeal, either interlocutory or after the Board’s final written decision, and (2) that the “broadest reasonable interpretation” standard is the proper standard for claim construction in IPR proceedings.<sup>[4]</sup>

**TAGS:** 542 u.s. 367 380 2004, aia, america invents act of 2011, block v. cmtly nutrition inst., bri, broadest reasonable interpretation, cheney v. us district court for the dc, claims construed under the broadest reasonable interpretation standard, federal circuit, in re cuozzo speed technologies, inter partes review, ipr, judge newman, patent litigation, pto, section 316d1, uspto

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