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Our Latest Industry Insights

IP File
March 24, 2017
Supreme Court Cuts Through the Noise to Clarify Copyrightability of Designs in Useful Articles

By: Justin Thiele
On October 20, 2016, we published an article discussing the Supreme Court's decision to grant review of the Sixth Circuit's August 2011 ruling in Varsity Brands, Inc. v. Star Athletica, LLC. The Supreme Court heard oral arguments on October 31, 2016, and, on March 22, 2017, issued its highly anticipated decision. As discussed below, the Supreme Court has clarified the test to determine whether a design feature on a useful article is subject to protection under the Copyright Act of 1976.

TAGS: cheerleading uniforms, copyright & idea theft, copyright act, intellectual property, supreme court, varsity brands inc v. star athletica

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IP File
October 20, 2016
Supreme Court To Consider Copyrightability of Cheerleading Uniform Designs

By: Brittany Elias
On May 2, 2016, the U.S. Supreme Court granted review of the Sixth Circuit's August 2015 ruling in Varsity Brands Inc. v. Star Athletica LLC[i] The Supreme Court will determine the proper test to assess whether Varsity's two-dimensional cheerleading uniform designs are entitled to copyright protection. Notably, this is the first time the Supreme Court will address copyright protection in the context of useful articles and apparel. Thus, its decision bears the potential for a far-reaching impact on the apparel and fashion industries.

TAGS: cheerleading uniforms, copyright & idea theft, copyright act, intellectual property, supreme court, varsity brands inc v. star athletica

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IP File
June 22, 2016

High Court Clarifies: Objective Unreasonableness Factor Favored in Attorneys' Fees Analysis Under the Copyright Act

By: Brittany Elias
Section 505 of the Copyright Act provides for recovery of attorneys' fees by prevailing litigants. It states that a court, "in its discretion may allow the recovery of full costs." However, no guidance has been provided on this language in more than 20 years. The last word from the High Court occurred in 1994,[1] where the Court held that fees should be equally available to prevailing plaintiffs and defendants, but stated that "no precise rule or formula" existed for when they should be awarded. Four non-exclusive factors were articulated for courts to consider when determining whether attorneys' fees should be awarded, including: (1) the frivolousness of the case, (2) the motivation of the loser, (3) the objective unreasonableness of the case, and (4) considerations of compensation and deterrence.[2] Yet, the Court complicated matters, noting that the factors must be applied in a manner that is "faithful to the purposes of the Copyright Act."[3] From this decision sparked a circuit split – while some courts weighed the factors evenly, others focused mainly on serving the "purposes of the Copyright Act." To confuse matters more, the Second Circuit placed a strong emphasis on the "objective unreasonableness" factor, at the expense of the other factors.

TAGS: Copyright & Idea Theft, Copyright Act, Copyrights, Intellectual Property, Intellectual Property, objective unreasonableness factor, Second Circuit, Supreme Court, U.S. Supreme Court

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IP File
June 21, 2016

The Cuozzo Conundrum: Prosecution History Estoppel Remains An Open Issue

By: Andrew Choung
On June 20, 2016, the Supreme Court issued its decision in Cuozzo Speed Technologies, LLC v. Lee. One of the questions presented to the Court was the appropriate claim construction standard for inter partes review (IPR). The fundamental dispute, as framed by the Court, was the apparent intent of the Leahy-Smith America Invents Act (AIA) and the express rule-making authority it granted. Pursuant to the rule-making authority granted by the AIA, the Patent Office set forth the broadest reasonable interpretation (BRI) as the standard for construing claims under an IPR. This is the standard used during original examination of an application for a patent. The patent-owner argued that, since IPRs were intended to be an alternative to litigating validity in the courts, it should be subject to the same standard of claim construction used there, which is generally understood to be narrower. Ultimately, the Court held that the rule-making authority trumped any arguments about intent and consequences and affirmed the Patent Office's application of the BRI standard.

TAGS: broadest reasonable interpretation, claim construction, Intellectual Property, inter partes review, IPR, patent, patent act, patent case, Patent damages, patent infringement, Patent Law, Patent Litigation, patent litigation, prosecution disclaimers, prosecution history estoppel, PTAB, PTAB, Supreme Court, U.S. Supreme Court, US Supreme Court

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IP File
June 14, 2016

The Supreme Court Relaxes The Standard For Increased Patent Damages

By: Rex Hwang
Through its recent decision in Halo Elecs., Inc. v. Pulse Elecs., Inc.[1], the Supreme Court discarded the mechanical two-part test governing enhanced damages fashioned by the Federal Circuit in Seagate, and gave district courts broad discretion to decide when to award enhanced damages in cases involving willful patent infringement. The Supreme Court also held that enhanced damages do not need to be proven by clear and convincing evidence, but only by a preponderance of the evidence. While this will make it easier for plaintiffs to obtain enhanced patent damages involving willful patent infringement, the high court made it clear that enhanced damages should still be reserved for cases involving egregious infringement behavior.

TAGS: Intellectual Property, Intellectual Property, patent, patent act, patent case, patent claim, Patent damages, patent infringement, Patent Law, Patent Litigation, patent litigation, patent-eligible, patent-ineligible, PTAB, PTAB, Seagate, Supreme Court, U.S. Supreme Court, USPTO

IP File
March 16, 2016

Lexmark International, Inc. v. Impression Products, Inc. – The Latest on Patent Exhaustion

By: Steven Basileo
Summary

TAGS: Federal Circuit, federal court, Intellectual Property, Intellectual Property, Litigation, patent, patent case, patent claim, Patent damages, patent infringement, Patent Law, Patent Litigation, patent litigation, PTAB, PTAB, Supreme Court, U.S. Supreme Court

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IP File
October 20, 2015

The En Banc Federal Circuit in Akamai v. Limelight Broadens the Scope of Direct Infringement under Section 271(a)

By: Dan Liu
Recently, the Federal Circuit, for a second time this year, evaluated infringement of a method claim.[1] The Court, vacating the recent panel decision in May, outlined the governing framework for direct infringement of a method claim. It held that direct infringement occurs "where all steps of a claimed method are performed by or attributable to a single entity."[2] This holding is significant because proving direct infringement of a method claim where steps of the method are performed by more than one party no longer requires the parties to be in principal-agent or contractual relationships, or joint enterprise, as demanded by the vacated panel decision.

TAGS: akamai technologies, direct infringement, Federal Circuit, Intellectual Property, Intellectual Property, limelight, patent claim, Patent Law, Patent Litigation, patent litigation, Section 271(a), Supreme Court, USPTO

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.,[1] 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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IP File
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
January 22, 2015
Who A-Tacks a Decision on Tacking? U.S. Supreme Court Rules That Tacking Trademarks to Gain Earlier First Use Is a Question Of Fact

It's a historic week for trademarks! On January 21, 2015, the U.S. Supreme Court issued a decision in the case of Hana Financial, Inc. v. Hana Bank, which marks the high court's first substantive ruling on trademarks in more than ten years. In its decision, the Supreme Court unanimously held that trademark tacking is a factual question, and thus, should be decided by juries.

TAGS: doctrine of tacking, factual question, hana bank, hana financial, hana financial inc. v. hana bank, judge, jury, justice sonia sotomayor, legal question, ninth circuit, supreme court, tacking trademarks, trademark & trade dress, trademarks, u.s. supreme court

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