

2010 FEDERAL CIRCUIT PATENT RULINGS



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2010 was a busy year for the US 'patent court'. The Federal Circuit heard nearly one hundred appeals involving issues of patent infringement, invalidity, unenforceability and damages. In half of these appeals, the court overturned or vacated, in whole or in part, the lower court's decision, granting a win to the appellant, while in the other half, the court agreed with and upheld the lower (district) court's decisions. The following summarise representative Federal Circuit decisions, which have been grouped into appellant 'victories' and 'losses'. The reader is encouraged to visit the website www.uscourts.gov to view the decisions.

Appellant victories:

- Overturned an ITC shoe patent invalidity ruling against Crocs Inc's action against Asia-based competitors.
- Vacated a \$1.1 million lower court judgment, finding Pressure Products' catheter and pacemaker lead technology patents valid but not infringed by Greatbatch Ltd.'s Enpath Medical unit.
- Partially overturned a judgment for Applera Corp in its nucleic acid detection patent litigation against Enzo Biochem Inc.
- Overturned a \$21 million Anascape jury infringement verdict, reversing an injunction against Nintendo of America's Wii console.
- Overturned a Parallel Networks LLC summary judgment non-infringement ruling in its suit against Oracle Corp.
- Revived a lower court dismissal of Patent Rights Protection Group's patent suit against SPEC International and Video Gaming Technologies involving gaming technology patents, based upon lack of personal jurisdiction.
- Revived Alfred E Mann Foundation for Scientific Research's right to sue Cochlear Corp for patent infringement.
- Overturned a \$34 million Clear With Computers LLC patent infringement judgment against Hyundai Motor America Inc, finding anticipation by prior art.
- Vacated the invalidation of a Seiko Epson Corp multimedia projector patent in its suit against Coretronic Corp.
- Overturned a \$1 million attorney fee award to accused infringer Shanghai Meihao Electric Inc. against Leviton Manufacturing Co, Inc, rejecting a lower court ruling that Leviton committed inequitable conduct during prosecution of a ground fault circuit interrupter patent.
- Vacated a \$15.7 million Haemonetics Corp blood processing patent judgment against Fenwal Inc.
- Overturned Philip Wyers' \$5.35 million patent infringement judgment against Master Lock Co, finding invalidity.
- Reversed Becton Dickenson and Co's \$58 million jury award against Tyco International Ltd/Covidien, involving a syringe patent.
- Reversed a non-infringement finding for Schering-Plough Corp/Intervet, in a porcine circovirus patent suit against Merial Ltd.
- Revived an offshore drilling patent infringement suit by Transocean Offshore Deepwater Drilling Inc against Maersk Contractors USA.
- Overturned an ITC decision barring Chinese companies from importing electrical circuit interrupters, finding no infringement of Pass & Seymour's patents.
- Articulated an *en banc* patent misuse decision in *Princo Corp v Philips Corp and Sony Corp*, involving claims that illegal agreements suppressed alternative technology developments.
- Reversed a non-infringement ruling and remanded Clearwater Systems Corp's case against Evapco Inc, finding the patent in suit valid.
- Overturned and remanded a patent invalidity decision against Green Edge Enterprises LLC, in its synthetic mulch patent suit against Rubber Mulch Etc LLC and Rubber Resources Ltd.
- Permitted a Tri-Star Electronics International Inc's electrical socket patent lawsuit to proceed against Preci-Dip Durtal SA, rejecting claims that Tri-Star did not own the patent rights.

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- Partially overturned a \$7.4 million award against Medtronic Sofamor Danek Inc, finding error in the district court's finding of wilful infringement of Spine Solutions' implant patent.
- Ruled that Toyota Motor Corp did not infringe a hybrid vehicle patent asserted by IP attorney Conrad O Gardner.
- Found that Palm Inc did not infringe a patented personal security cell phone system, in a suit brought by Dicam Inc against a number of defendants.
- Overturned a non-infringement decision against American Medical Systems Inc in its prostate tissue laser vaporisation patent fight with Biolitec Inc.
- Partially reversed a non-infringement decision involving multiple wireless WiFi patents. A number of infringement claims of U.S. Philips Corp were revived in litigation in which Fujitsu and LG are parties.
- Vacated in part a district court non-infringement ruling favouring Extreme Networks Inc in a router patent lawsuit by Enterasys Networks Inc.
- Reversed a lower court patent invalidity ruling, involving a refrigeration chemical patent owned by Solvay SA, which sued Honeywell International Inc.
- Overturned a lower court Abraxis BioScience Inc victory, finding insufficient proof of ownership of three infringed injectable pain management drug patents asserted against Navinta LLC.
- Overturned Barr Pharmaceuticals Inc's victory, rejecting unenforceability of a Merck & Co Inc brain tumour treatment patent covering its Temodar drug.
- Rejected an effort by battery maker A123 Systems Inc to have two lithium ion patents of Hydro-Quebec declared invalid.
- Overturned the dismissal of recognition software patent infringement actions brought by Nuance Communications Inc against Russia and Cyprus companies Abbyy Production LLC and Abbyy Software Ltd, based upon personal jurisdictional and service of process grounds.
- Reversed a \$16 million Western Union Co jury verdict against MoneyGram Payment Systems Inc in an electronic money transfer patent infringement lawsuit, finding invalidity based upon prior art.
- Reversed Microsoft Corp's digital imaging patent suit victory against Research Corporation Technologies.
- Refused to bar Taylor Brands LLC's right to appeal its loss in a patent fight with Columbia River Knife & Tool Co.

Appellant losses:

- Affirmed the invalidity of five Finisar Corp high-speed voice and video patents asserted against DirecTV Group Inc.
- Affirmed that Teva Pharmaceutical's proposed generic version of Prevacid does not infringe Takeda Pharmaceutical's acid reflux drug patent.
- Affirmed that Venali Inc's fax technology does not infringe five Catch Curve patents.
- Affirmed a \$4.88 million deep fryer patent damage award against Pentalpha Enterprises.
- Upheld a Trading Technologies International \$2.5 million commodity trading software patent infringement damage award against eSpeed Inc and others.
- Upheld the invalidity of Media Technologies Licensing's memorabilia baseball card patents asserted against Upper Deck Co.
- Upheld the invalidity of Siemens AG's magnetoresistive sensor disc drive technology patent asserted against Seagate Technology.
- Upheld a Stanley Works Inc. combination hammer-crowbar non-infringement decision involving a David A. Richardson design patent.
- Upheld a non-infringement defence favourable to Nintendo of America and Microsoft Corp. against Fenner Investments Ltd's joystick patent.
- Upheld infringement of four Power-One Inc power converter patents by Artesyn Technologies Inc.
- Affirmed Google and AOL's non-infringement ruling against Bid for Position LLC's continuous auction web advertising system patent.
- Upheld a Cox Communications Inc jury telephone network patent non-infringement against Verizon Communications.
- Affirmed the invalidity of Johnson & Johnson's Concerta attention deficit hyperactivity disorder treatment patent asserted against Andrx Corp's generic version.
- Affirmed a jury non-infringement verdict that Limelight Networks did not infringe Level 3 Communications' patents covering the delivery of video, games, software and music.
- Affirmed an Emcore Corp victory in its patent infringement suit against rival Optium Corp over fiber-optic technology patents.
- Affirmed a \$16 million Fujifilm Corp damages award in its suit against Polytech HK, Jazz Products LLC and Jazz's president, resolving a 'patent exhaustion doctrine' issue.
- Upheld Dow Jones & Co's lower court ruling, finding that the district

court lacked subject matter jurisdiction as to one personalised web page patent, and finding another invalid.

- Affirmed Par Pharmaceuticals' right to market a generic version of Purdue Pharma Products' Tramadol painkiller, due to invalidity of Purdue's patents.
- Affirmed the invalidity of Encyclopaedia Britannica's computerised map-viewing patents, in its suit against Toyota Motor Sales USA, Garmin International Inc, American Honda Motor Co Inc, Denso Corp, Alpine electronics of America Inc, TomTom Inc, and Magellan Navigation Inc.
- The US Supreme Court narrowly ruled in its *en banc* 'Bilski' decision that business methods may be patentable.
- Affirmed Raba-Kisner Consultants Inc's patent invalidity victory against plaintiff Atser Research Technologies Inc, ordering Atser to pay Raba's attorneys fees.
- Affirmed ADT Security Services Inc's non-infringement of Paradox Security Systems Ltd's home security patent.
- Affirmed the invalidity of patents based upon double-patenting, in Eli Lilly & Co's cancer treatment lawsuit against Sun Pharmaceutical Industries Ltd's generic version of Gemzar.
- Affirmed the invalidity of King Pharmaceuticals' Skelaxin muscle relaxant patents, which were asserted against Eon Labs Inc.
- Affirmed an Enovsys LLC \$2.8 million infringement verdict against Sprint Nextel Corp, involving cell phone technology.
- Upheld a Johnson & Johnson/Cordis non-infringement stent patent ruling against MarcTec LLC.
- Affirmed a non-infringement ruling favourable to AT&T Mobility in its ring-back patent suit with Ring Plus Inc.
- Affirmed a speech recognition non-infringement decision favourable to DirecTV Group Inc. against Phoenix Solutions.
- Affirmed a non-infringement ruling favouring Medical Device Technologies Inc in its biopsy patent dispute with Dr Gregory W Baran.
- Affirmed the dismissal of Roger Marx Desenberg's lawsuit against Google Inc, alleging that Google's AdWords system infringed his patent No. 7,139,732.
- Upheld a ban on Teva Pharmaceuticals USA's generic version of Eli Lilly & Co's Evista osteoporosis drug.
- Affirmed a \$7.2 million liability against Daewoo Electronics America Inc, for its share of a default judgment against its predecessor in Funai Electric Co's VCR patent infringement lawsuit.

- Upheld a ban on Mylan Pharmaceuticals Inc's generic versions of Caiichi Sankyo Co. Ltd's patented hypertension drugs Benicar and Azor.
- Affirmed a non-infringement decision favourable to Intel corp and Via Technologies, in a circuit interface patent fight with Computer Cache Coherency Corp.
- Affirmed the dismissal of ESN LLC's patent infringement lawsuit against Cisco Systems Inc, involving voice-over-packet networking.
- Affirmed the invalidity of Acacia Media Technologies Corp audio and video transmission patents asserted in multiple jurisdictions against DirecTV Group Inc, Time Warner Cable Inc and some 30 other companies.
- Affirmed a decision favouring accused infringer Mitsubishi Digital Electronics America Inc, in a television processing patent suit brought by Cheetah Omni LLC.
- Affirmed the invalidity of three Howmedica Osteonics Corp polymer patents, in its suit against Zimmer Inc and Smith & Nephew Inc.
- Upheld and enhanced a \$13.8 million jury verdict against Secure Computing Corp, which was sued by Finjan Inc for infringing three computer network patents.
- Upheld the dismissal of claims of fraudulent patent re-examination requests made by Sheppard Mullin Richter & Hampton, in a suit brought by patent holding company PanIP LLC and its principal, Lawrence Lockwood.

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Paul J. Sutton, with a juris doctor degree, an 'AV Preeminent' highest Martindale-Hubbell rating, and four decades of intellectual property law counselling and litigation strategy experience, was selected by *Super Lawyers* magazine in 2006, 2007, 2008 and 2009, and is listed in *Strathmore's Who's Who*. He is adjunct professor of law at the Polytechnic Institute of New York University. Prior to practising law, while an engineer at Douglas Aircraft's Missiles & Space Systems Division, he was a member of the team that designed the Apollo Saturn third-stage booster rocket structure, which carried the first US astronauts to the Moon.

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