

Discussion Topics

Philosophically Speaking

- Pro v. Con

GSK

- Should there be CON and/or Claim limits?

Claim Construction

- Should there be interlocutory appeal rights in view of the importance of claim construction?
 - What level of deference to the Trial Court should be given?

Inequitable Conduct

- Should there be a requirement for separate proof of intent?
- Dayco, McKesson, Aventis Case – attorney resubmits claim previously submitted, not IC
- IDS's
 - Should there be limits?
- Patent Quality and applicant submissions?

EBay

- What is the general effect of EBay?
- Does EBay amount to a compulsory licensing system?

Medimmune / SanDisk

- To Notice or not to Notice, that is the question

Is there a crisis in Patent Litigation?

- Do we want/need changes?

Comiskey

- Attorneys inventing legal innovations are suspect

Nuijten

- Fed. Cir. Says that a transitory propagating signal is not patentable subject matter because it does not fit within any of the four statutory categories:
 - Process
 - Machine
 - Manufacture
 - Composition of matter
- *En Banc* review denied Feb. 11, 2008
- Petition for Writ of Certiorari to S.Ct May 9, 2007

Nuijten

- A signal with embedded supplemental data, the signal being encoded in accordance with a given encoding process and selected samples of the signal representing the supplemental data, and at least one of the samples preceding the selected samples is different from the sample corresponding to the given encoding process.
 - (emphasis added). Claims 22, 23, and 24 depend on Claim 14, respectively adding requirements that the embedded data be a watermark, that the signal be a video signal, and that the signal be an audio signal.

In re Bilski

- 1. A method for managing the consumption risk costs of a commodity sold by a commodity provider at a fixed price comprising the steps of:
 - (a) initiating a series of transactions between said commodity provider and consumers of said commodity wherein said consumers purchase said commodity at a fixed rate based upon historical averages, said fixed rate corresponding to a risk position of said consumer;
 - (b) identifying market participants for said commodity having a counter-risk position to said consumers; and
 - (c) initiating a series of transactions between said commodity provider and said market participants at a second fixed rate such that said series of market participant transactions balances the risk position of said series of consumer transactions.

END