

Intellectual Property Newsletter



Claim Construction: “Only One” or “More Than One.”

Mark Francis

Accent Packaging, Inc. v. Leggett & Platt, Inc., No. 2012-1011, 2013 U.S. App. LEXIS 2446 (Fed. Cir., Feb. 4, 2013).

<http://www.cafc.uscourts.gov/images/stories/opinions-orders/2012-1011.Opinion.1-29-2013.1.PDF>

In *Accent Packaging*, the Federal Circuit construed “one” as “one or more” and not “only one.” It also re-affirmed that a device does not infringe simply because it is possible to alter it in a way that satisfies all the claim limitations.

Accent sued Leggett in 2010 for alleged infringement of U.S. 7,373,877 and 7,412,992. The two almost-identical patents describe a “wire tier” device used to bale recyclables or solid waste for easier handling. Accent alleged that its 470 product is a commercial embodiment of the patents and Leggett’s Pinnacle product is an infringing knock off. However, whereas the 470 product has *four* “elongated operator bodies” (one for each of a gripper, knotter, cutter and cover), the Pinnacle product only has *two* “elongated operator bodies” (one for the gripper, the other for the knotter, cutter and cover).

The ‘877 patent claims require “elongated operator bodies, with *each of the operator bodies* being operably coupled with *a respective one of said gripper, knotter, cutting element and cover*” (emphasis added). The District Court construed this language as requiring *four* elongated operator

February 2013

News from the Bench

Claim Construction: “Only One” Or “More Than One.”

No Need To Include Claim Construction in Design Patent Infringement Complaint.

CAFC Finds That Adapting Well-Known Methods Of Doing Business To The Internet Is Obvious As A Matter Of Law.

Permanent Injunction Imposed Even Where The Infringed Technology Is One Of Many Technologies In The Accused Product.

Once Again, Over-Disclosing References To The PTO Carries No Penalty.

Suit Dismissed Where 11th Amendment Immunity Precludes Joinder Of Patentee University.

Patent Notes

USPTO: When To Seek Post-Grant Review Of Covered Business Method Patents.

USPTO: Patent Fees As Of March 19, 2013.

EPO: Provisions For A Unitary Patent And Enforcement Through A Unified Patent Court.

Clean Tech Bulletin

Global Cleantech Insights And Trends Report 2012.

Press Release: King & Spalding Expands West Coast Intellectual Property Practice With Addition of Kenneth Steinthal & Joseph Wetzel.

Deal News: King & Spalding Advises TSYS on Acquisition of NetSpend for \$1.4 Billion (Partner Scott Petty advised on IP).

Recognition: King & Spalding Trial Win for Google Counted as One of 2012’s Top Verdicts.

In the Press: Navigating Through Today’s High-Tech IP Thicket (Partner Bob Perry is interviewed on technology and IP).

bodies, and granted Leggett's motion for summary judgment of non-infringement of the '877 patent.

The Federal Circuit reversed and held that the claim does not explicitly require each elongated operator body to be coupled with one *and only one* operator element. The Court appears to have gone a step further than *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008) (“‘a’ or ‘an’ in patent parlance carries the meaning of ‘one or more’ in open-ended claims containing the transitional phrase comprising” unless a patentee has “‘evidence[d] a clear intent’ to limit ‘a’ or ‘an’ to ‘one’”). It acknowledged that the term “one” appears directly after “a respective” and might be viewed as limiting, but nevertheless interpreted “one” to mean *one or more*, because two of the elongated operator bodies in the patents’ preferred embodiment are disclosed as coupled to more than one operator elements (knotter and cover). In sum, the term “one” was held to mean *one or more* and not *only one*. This was Leggett’s only non-infringement position so the District Court was directed to enter summary judgment of infringement for Accent.

Separately, the Federal Circuit upheld a finding of non-infringement for the '992 patent because the Pinnacle’s cover could only pivot 68 degrees before reaching a “SafeLatch” stop, and did not satisfy the claims’ required “pivot arc of at least about 90°.” Accent argued on appeal that Pinnacle’s pivot arc was greater than 68 degrees because the stop could be easily removed, but the Federal Circuit disagreed, noting that “[a] device does not infringe simply because it is possible to alter it in a way that would satisfy all the limitations of a patent claim” (quoting *High Tech Med. Instrumentation v. New Image Indus., Inc.*, 49 F.3d 1551, 1555 (Fed. Cir. 1995)).

No Need To Include Claim Construction In Design Patent Infringement Complaint.

Katie McCarthy

Hall v. Bed Bath & Beyond, Inc., No. 2011-1165 (Fed Cir., Jan. 25, 2013).

<http://caselaw.findlaw.com/us-federal-circuit/1621161.html>

In *Hall v. Bed Bath & Beyond, Inc.*, No. 2011-1165 (Jan. 25, 2013), the Federal Circuit reversed the district court’s *sua sponte* dismissal of a complaint alleging design patent infringement and unfair competition.

After filing a design patent application for his “Tote Towel” products, plaintiff Hall presented the products, marked “patent pending,” to defendant Bed, Bath & Beyond (BB&B). BB&B declined to work with Hall and instead arranged to make and sell its own copies of Hall’s products, which BB&B then described as having “performance that lasts the useful lifetime of the towel.” Once Hall’s patent issued, Hall sued BB&B for design patent infringement and for unfair competition.

The district court dismissed Hall’s complaint, asserting that the design patent infringement claim should have included answers to questions such as: “What is it about Plaintiff’s towel that he claims is ‘new, original and ornamental,’ meriting the protection of a design patent? What aspects of the ‘439 Patent does the West Point Home Towel infringe? How does the West Point Home Towel infringe these aspects? And how have Defendants .. . infringed, contributed to infringement, or otherwise offended a provision of the patent laws?”

The district court also dismissed Hall’s unfair competition claims under the Lanham Act and state law, on the ground that the challenged statements relating to performance of the BB&B towel were nonactionable puffery, that Hall had not shown any injury and that Hall had not met the requirements for an action of misappropriation of an idea. The

Federal Circuit reversed, with Judge Lourie dissenting.

On the design patent infringement claim, the Federal Circuit held that the pleading requirements for design patent infringement were readily met by Hall's complaint, which identified the patent, showed the patented design, and described the accused towel as follows:

¶27. The Counterfeit Towel is virtually identical in design to the Tote Towel. It [has] the same shape and almost the same dimensions — 50" × 9." The Counterfeit Towel also features the Tote Towel's unique zippered compartments and hanging loop. In fact, the inseam of the Counterfeit Towel, from one pocket to the other, is exactly the same length as that of the Tote Towel.

The district court erred in requiring that the complaint identify "new, original, and ornamental" aspects of the design, because *Egyptian Goddess* negated the "point of novelty" requirement for design patents and *Richardson v. Stanley Works* confirmed that "[t]he ordinary observer test similarly applies in cases where the patented design incorporates numerous functional elements." The complaint allegations were sufficient, as they showed "plausible entitlement to relief."

Hall's unfair competition allegations were also found to state plausible claims. Since Hall asserted that the BB&B towel was damaged after a single washing, BB&B's advertising that its towel has "performance that lasts the useful lifetime" is plausibly false either literally or by necessary implication. Hall also sufficiently pleaded possible injury to his business through the sale of inferior but confusingly similar product to Hall's customers. The allegations regarding Hall's good faith provision of a sample and BB&B's acting thereafter to Hall's detriment by using the sample to produce its own product also stated a claim under New York misappropriation law.

The Federal Circuit affirmed the dismissal of claims against the BB&B's executives in their personal capacity, applying state-law requirements for piercing the corporate veil, and also affirmed the dismissal of BB&B's counterclaims. BB&B's Rule 11 counterclaim sought to impose sanctions for failure to conduct pre-suit claim construction; the Federal Circuit noted that neither claim construction nor prior art is required to be including in pleadings. BB&B's false advertising counterclaim sought to challenge Hall's statement to BB&B that his product was "protected by my patent" when at the time of the statement Hall only had a pending application. The Federal Circuit, noting that the product samples provided by Hall were appropriately marked "patent pending," found Hall's statement not to be even plausibly misleading. BB&B's false marking counterclaim attempted to find Hall liable under the *qui tam* statute for continued marking of a product as "patent pending" after the patent issued. The Federal Circuit noted that the *qui tam* statute was not directed to such claims and also that BB&B did not plead any competitive injury.

In his dissent, Judge Lourie found the district court's requirement that the patentee identify characteristic aspects of its design was not sufficiently faulty to justify vacating the dismissal. Further, because plaintiff declined to replead its claim after invitation by the district court, this amounted to waiver. Judge Lourie also considered BB&B's "performance" statement to be mere puffery amounting to "an untestable tautology: the towel lasts as long as it lasts," such that the Lanham Act §43(a) claim was properly dismissed.

CAFC Finds That Adapting Well-Known Methods Of Doing Business To The Internet Is Obvious As A Matter Of Law.

Peter Dehlinger

Soverain Software LLC v. Newegg Inc., No. 2011-1009 (Fed Cir., Jan. 22, 2013).

<http://caselaw.findlaw.com/us-federal-circuit/1620869.html>

Soverain brought a patent infringement suit against Newegg for infringement of certain claims in three U.S. patents, all relating to electronic commerce in which a merchant's products are offered and purchased online. The district court refused to permit the question of obviousness to be decided by the jury, and then held that the claims in the patents are not invalid on the grounds of obviousness.

On appeal, the Federal Circuit held that the record rendered the patents obvious as a matter of law, concluding that the claimed inventions did no more than adapt well-known business-transaction methods to the Internet.

The court's analysis of the obviousness question considered three groups of claims in the asserted patents. The first group, called the "shopping cart" claims cover an online purchasing system in which products are offered online by a merchant, a buyer designates products for purchase, and payment for the designated products is initiated upon the buyer's request for checkout.

The primary reference against the first group was the CompuServe Mall system described in two books and elsewhere. Sovereign's expert witness attempted to distinguish the reference by arguing that the CompuServe system lacked two of the claimed features: a "shopping cart message having a product identifier" and a "shopping cart database." Neither of these distinctions held up, however, when viewed in light of the agreed claim construction, and in light of how a person skilled in the art would have implemented the CompuServe System online.

The second group of claims, referred to as "hypertext statement" claims, cover the aspect of an online shopping system in which the client computer receives transaction statements from the server computer, in response to a request from the client computer. The Sovereign expert witness argued that the hypertext statement rendered the claims at issue nonobviousness, because there was no way of obtaining transactions details online in the CompuServe system. The more reasonable view, which the court adopted, is that "hypertext and URLs are basic functionalities of the World Wide Web and that anyone who wanted to move shopping onto the web would know they had to use URLs to tie things together and deliver information."

The third group of claims, identified as "session identifier" claims, included a feature that allowed the user, upon verification of the transaction, to use a session identification to access the user's file for the given transaction. Here the court considered U.S. patent 5,560,008 to Johnson, which taught session identifiers, concluding (with a nod to *KSR*) that "we discern no distinction between the claimed session identifier and Johnson."

Permanent Injunction Granted Even Where The Infringed Technology Is One Of Many Components In The Accused Product.

Vinny Lee

Brocade Comms. Sys., Inc. et al. v. A10 Networks, Inc., et al., No. 5:10-cv-03428 (N.D. Cal., Jan. 10, 2013).

<http://docs.justia.com/cases/federal/district-courts/california/candce/5:2010cv03428/230713/830/0.pdf?1357902509>

Brocade sued against rival A10 Networks for infringing certain claims in Brocade's three global server load balancing ("GSLB") and high availability ("HA") patents. Following a jury verdict that found infringement by A10 of several Brocade patent claims, Brocade moved to

permanently enjoin A10 from making and selling its infringing AX series product. The court applied the four-factor test set out in *eBay* in determining whether a permanent injunction should issue: (1) irreparable harm; (2) inadequate legal remedies; (3) balance of hardships; and (4) the public interest.

The court began its analysis by noting the “curious absence of references” in the Federal Circuit’s most recent permanent injunction decisions to the standard of “causal nexus” between the established infringement and irreparable harm from the loss of the patentee’s exclusive right to practice its patents. Without deciding the broader question of whether parties requesting permanent injunctive relief should always be required to prove a “sufficiently strong causal nexus”, the court simply pointed to evidence that Brocade practiced the infringed claims, that Brocade had not licensed any of the patents at issue, and that A10 was a direct competitor, making Brocade’s loss of exclusivity “particularly injurious.” On these factual findings, the Court concluded that Brocade had established irreparable harm.

This same evidence led the court to conclude that money damages would be inadequate to remedy the harm to Brocade from A10’s infringement. As the court stated, “[a]lthough money damages may compensate Brocade for previous harm from the infringement, they don’t protect Brocade’s right to practice exclusively its patented improvements to the GSLB and HA functions.”

In resolving the third and fourth *eBay* factors in Brocade’s favor, the court continued to emphasize the importance of protecting Brocade’s exclusive patent rights. Weighing the balance of hardships, the court stated that Brocade “would suffer ongoing loss of its rights to exclusively practice its patents...at the hands of a direct competitor” in the absence of an injunction, while A10’s hardship would be minimal in the face of an injunction, as its own witnesses testified that what drove consumer demand for the AX product were features other than

the infringing features, that the infringing features were not the core components of the AX product, and that A10 could easily design around Brocade’s patented claims.

In granting Brocade’s motion for a permanent injunction, the court attempted to fashion an injunction that fairly recognized the fact that the AX product series infringed only four claims in the three patents in suit, and that the series AX series is composed of many features, only a few of which had been found to infringe. The limited injunction fashioned by the court applied only to future sales of AX series products and only to those products containing infringing elements. As the court stated, “A10 may continue to sell the AX series without the infringing software, and the public may continue to enjoy the non-infringing features of the product. If A10 cannot design around the infringing features and loses market share as a result, the patented software and hardware are more essential to the product than A10 predicts, and A10 has no entitlement to continue infringement of Brocade’s patents only to ensure that A10 remains competitive. Regardless of the outcome, Brocade’s exclusive rights to claims in its patents that it proved A10 infringed are protected.”

Once Again, Over-Disclosing References To The PTO Carries No Penalty.

Peter Dehlinger

Parker Vision, Inc. v. Qualcomm Incorporated, No. 3-11-cv-00719 (M.D. Fla., Jan. 22, 2013).

http://www.parkervision.com/public_relations/PatentCase_PDFs/Document238.pdf

ParkerVision owns U.S. Patent 6,061,551 for downconverting electromagnetic signals. It brought suit against Qualcomm for infringing the ‘551 patent and five related patents. Qualcomm counterclaimed that the ‘551 patent is unenforceable for inequitable conduct, and the other five patents

are unenforceable because they stem from the '551 patent.

Among various theories of inequitable conduct alleged by Qualcomm was that the inventor and prosecuting patent attorney “buried” the PTO with references (the '551 patent lists, as cited references, 340 US patents, 36 foreign patent documents, over 150 literature references, and 55 press releases).

To prevail on a defense of inequitable conduct, the accused infringer must prove both intent and materiality. Specific intent to deceive must be “the single most reasonable inference able to be drawn from the evidence” and materiality is but-for materiality under *Therasence*.

The court had to look no further than its *Therasense* decision to dispose of the question of intent to deceive. “With inequitable conduct casting the shadow of a hangman’s noose, it is unsurprising that patent prosecutors regularly bury PTO examiners with a deluge of references, most of which have marginal value.” Qualcomm’s assertions that ParkerVision provided voluminous references to the PTO in order to “distract” the examiner was not, in the court’s view, the single most reasonable inference to be drawn from the record. In fact, “taking into account the practice of bringing inequitable conduct charges against a patentee for under-disclosing references, an equally if not more reasonable inference is that ParkerVision aimed to insulate itself from such claims by over-disclosing references.”

Clearly there is little risk in over-disclosing references to the PTO. Time will tell whether the *Therasense* but-for standard of materiality will temper this practice.

Suit Dismissed Where 11th Amendment Immunity Precludes Joinder Of Patentee University.

Tom Lundin

Cyanotech Corp. v. U.S. Nutraceuticals LLC, et al., case number 1:12-cv-00352, in the U.S. District Court for the District of Hawaii.

http://www.gpo.gov/fdsys/pkg/USCOURTS-hid-1_12-cv-00352/pdf/USCOURTS-hid-1_12-cv-00352-0.pdf

Cyantotech Corporation filed an action in the U.S. District Court for the District of Hawaii seeking a declaratory judgment of non-infringement or invalidity of U.S. Patent No. 5,527,533 (“the ‘533 Patent”) owned by the University of Illinois and licensed to U.S. Nutraceuticals, LLC, d/b/a Valensa International (“Valensa”). The defendants moved to dismiss under Rules 12(b)(7) and 9(b) of the Federal Rules of Civil Procedure on the grounds that the University is a required party whose joinder is not feasible because it has Eleventh Amendment immunity. The Court granted the motion and dismissed the action without prejudice to Cyanotech asserting its claims in a parallel infringement action filed by Valensa, *U.S. Nutraceuticals LLC v. Cyanotech Corp.*, No. 5:12-cv-366OC-10TBS (M.D. Fla.) (the “Florida Case”).

Cyanotech and Valensa both sell “retail health-related” supplements containing “astaxanthin, an antioxidant that is claimed to have a wide variety of human health benefits.” Cyanotech’s complaint alleged that astaxanthin “is a natural product long known for its ability to neutralize free radicals, thereby promoting eye health, reducing sunburn, and reducing other types of photic damage.” The ‘533 Patent relates to a method of using astaxanthin for “retarding and ameliorating central nervous system and eye diseases.” Under the license agreement with Valensa for the ‘533 Patent, the University retains “the right to practice the rights licensed . . . for its own non-commercial and research activities.”

Cyanotech also supplies astaxanthin-containing microalgae to Valensa under a Biomass Supply Agreement. Using the licensed '533 Patent methods, Valensa extracts astaxanthin from the biomass and sells formulations to others who package, distribute, and sell retail health-related products. A dispute arose, with Valensa asserting that Cyanotech infringes on Valensa's rights in the '533 Patent when Cyanotech holds out to others that its own astaxanthin products prevent "photic damage to the eye or improve eye health." Valensa sent an email demanding that Cyanotech cease and desist selling such products "for eye health indications" and agree to pay a retroactive royalty, after which Cyanotech filed its declaratory judgment action.

Cyanotech's complaint alleged that the University "is a public entity of the State of Illinois" and also that the University "is or may be a necessary party pursuant to Fed. R. Civ. P. Rule 19[.]" Based on these allegations and an "overwhelming body of caselaw," the Court found that the University is "'an arm of the state' for Eleventh Amendment purposes" and that the action "is barred against the University in this court unless it waived its Eleventh Amendment immunity."

Cyanotech argued that the Illinois Constitution waived the state's sovereign immunity except as provided by the Illinois legislature, and that any such immunity does not apply to declaratory relief actions. The Court rejected the argument, finding that the Illinois appellate court case cited by Cyanotech held only that immunity was waived for certain types of actions in Illinois state court, and that the Illinois court did not, and could not, decide "whether the University waived Eleventh Amendment immunity in a *federal* forum." Noting that "under binding Federal Circuit precedent," *Tegic Commc'ns Corp. v. Bd. of Regents of the Univ. of Texas Sys.*, 458 F.3d 1335, 1340 (Fed. Cir. 2006), "Eleventh Amendment immunity in this context is venue specific," the Court found that the later-filed Florida Case waived the University's

immunity in the Middle District of Florida, but did not waive immunity in the District of Hawaii. The Court also found that *Ex Parte Young* did not apply because suit for a declaratory judgment of non-infringement and invalidity did not seek "only prospective, injunctive relief to enjoin [the University] from ongoing violations of federal law." Instead, according to the Court, it seeks "the *opposite* -- a declaration that there is no ongoing violation of federal law (by Cyanotech)."

The Court further found that the University was a required party because it had not licensed or assigned all of its rights to Valensa, and its rights as patent owner could be impaired without it participating in the suit, and that the University's immunity rendered joinder not feasible. Applying Ninth Circuit law because joinder under Rule 19 is not an issue unique to patent law, the Court found that the applicable four-factor balancing test -- (1) the prejudice to any party or to the absent party; (2) whether relief can be shaped to lessen prejudice; (3) whether an adequate remedy, even if not complete, can be awarded without the absent party; and (4) whether there exists an alternative forum -- favored dismissal of the entire action.

Patent Notes--

[USPTO: When To Seek Post-Grant Review Of Covered Business Method \(CBM\) Patents.](#)

Peter Dehlinger

One of the new post-grant review procedures under the AIA is a transitional program for challenging covered business method patents. The procedure went into effect Sept. 16, 2012, and is scheduled for repeal on Sept 16, 2020.

The CBM procedure will allow a party that has been sued on a business-method patent or would otherwise have standing to seek declaratory judgment against the patent, to seek a review of the patent by the newly created Patent Trial and

Appeals Board (PTAB). For purposes of post-grant review, a “covered business method” has claims to a method or apparatus for performing data processing or other operations used in practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions. As a general rule, CBM patents are likely to have been assigned to class 705. The procedure applies to any CBM patent, regardless of when it was filed or issued.

To institute a PGR of a CBM patent, the petitioner must demonstrate that it is more likely than not that at least one of the claims being challenged is unpatentable, and if instituted, the trial proceeds only against those claims for which this threshold has been established. A CBM review may be requested at any time for a patent issued under first-to-invent provisions, but can be requested only after the 9-month period for post-grant review for a patent subject to the first-to-file provisions. The petitioner may challenge a patent on any grounds, but prior art for challenged patents having an effective filing date prior to March 16, 2013 will be defined by pre-AIA 35 U.S.C. §102.

The Board, at the time it decides to institute a CBM trial, will set out a Scheduling Order for taking discovery. The types of discovery permitted will generally be considered under a “good cause” standard for information reasonably required to respond to the grounds raised by the opponent.

A CBM patent review is required to be completed within 1 year of institution. Where a CBM review is instituted and not dismissed, the PTAB shall issue a final written decision that addresses the patentability of any challenged patent claim and any new claim added via amendment during the CBM review. A party dissatisfied with the final written decision in a CBM review may appeal to the Federal Circuit.

After the PTAB renders a final decision, a petitioner may not request or maintain a subsequent proceeding before the PTO with respect to any claim on any ground raised or reasonably could have been raised in the covered business method review. A petitioner may not assert in a subsequent district court or ITC action that a claim is invalid on any ground that the petitioner raised.

The AIA expressly allows courts to stay litigation during the CBM review and includes a four-factor test for determining whether a stay will “reduce the burden of litigation on the parties and on the court.” The inquiry examines:

- (A) whether a stay, or the denial thereof, will simplify the issues in question and streamline the trial;
- (B) whether discovery is complete and whether a trial date has been set;
- (C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and
- (D) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.

When enacting the America Invents Act, Congress contemplated that “the entire purpose of the transitional program at the PTO is to reduce the burden of litigation” and that the four-factor test was intended to “place a very heavy thumb on the scale in favor of the stay.”

Additional details may be found at:

http://www.uspto.gov/aia_implementation/faqs_covered_business_method.jsp

PTO Fees As Of March 19, 2013.

The USPTO recently published its revised Patents fee schedule effective March 19, 2013. The fee schedule includes the current 50% discount for small entities and a 75% discount for microentities, defined at:

http://www.uspto.gov/aia_implementation/fees.jsp#heading-2

Fees for filing applications are up from \$1,206 to \$1,600 as are excess claim fees, from \$250 to \$420 for independent claims in excess of 3 and from \$62 to \$80 for dependent claims in excess of 20.

Extension fees will increase for a first extension of time, from \$150 to \$200, and from \$570 to \$600 and \$1290 to \$1,400 for second and third extensions. Filing RCE's will also be more expensive, increasing from \$930 to \$1,200 for a first-time RCE and \$1,400 for 2nd and subsequent filings.

Appeal fees not forwarded to the PTAB will drop from \$1,260 to \$800, but increase from \$1,260 to \$2,800 for appeals forwarded to the PTAB.

Issue fees will rise very slightly, from \$1,770 to \$1780 until Dec 31, 2013, then drop to \$960 beginning Jan 1, 2014. Maintenance fees are all scheduled to increase substantially, from \$1150 to \$1,600 at 3.5 years, from \$2,900 to \$3,600 at 7.5 years and from \$4,800 to \$7,400 at 11 years.

More can be found on the USPTO website at:

<http://www.uspto.gov/web/offices/ac/qs/ope/fee031913.htm>

EPO: Provisions For Unitary Patents And Enforcement Through A Unified Patent Court (UPC).

Peter Dehlinger

25 EU member states have embarked on enhanced co-operation with a view to creating unitary patent protection for their territories. The Unified Patent Court will enter into force on the later of 1 January 2014 or four months after its thirteen member-country ratification, which must include Germany, France and the UK (Italy and Spain have elected not to participate).

Under the UPC regulations, a unitary patent is a European patent granted by the EPO, but to which unitary effect for the territory of the 25 participating states is given after grant. The grant of a unitary patent is at the patentee's request, after an EPO patent grant. That is, a patentee can opt into the UPC, with the grant of a unitary patent, or opt out, retaining a conventional European patent.

What are the advantages of electing a unitary patent? One is the translation regime established for unitary patents. After grant of a European patent, a unitary patent requires no further human translations. Instead a high-quality machine translation will be adequate for the purpose of informing on the content of patent, although the translation regime will be more complicated until the machine translation system is fully operational.

The most significant advantage is the ability to enforce a unitary patent across all of the participating European countries in a single proceeding in a Unified Patent Court established under the UPC agreement. Rulings of the UPC on unitary patents (European patents that are not opted out), will have effect for all territories for which the European Patent is designated. This advantage of pan-European protection also carries a significant risk, however. A unitary patent can be revoked across Europe by a single ruling, rather than

Intellectual Property Newsletter

requiring separate revocations in each European country.

Since the Unified Patent Court will have a number of Regional Divisions, a unitary patent will also offer patentees a choice of where to sue. If, for example, an infringement takes place in two or more countries, each of which has a UPC Regional Division, the patent may choose a Division that is perceived to be more patent friendly, or which is more likely to grant a preliminary injunction, or may give a speedier result. Of course it will take several years for such distinctions among the Regional Divisions of the UPC to emerge.

In short, EP patentees will soon have an opportunity to test pan-European patent protection, weighed against the risk of pan-European patent revocation.

<http://www.epo.org/news-issues/news/2013/20130219.html>

Clean Tech Bulletin

Global Cleantech Insights And Trends Report 2012.

Ernst & Young's Global annual Cleantech insights and trends report 2012 (link below) provides a snapshot of recent national and international trends in business models, financing, and profitability in the cleantech energy sectors. Below are several noteworthy trends:

- Among global pure-play cleantech energy companies, market capitalization and net income fell significantly in the last year, reflecting uncertainty in the industry and high capital costs;
- With 152 pure-play cleantech companies worldwide, the Asia-Pacific region continues to host the largest number of companies, and also has the highest market capitalization and revenue;
- The one energy segment that had strong performance is biomass/waste-to-energy

companies, supported by strong corporate and municipal demand;

- Wind farms in the best locations are already price competitive with coal and gas generation, even without subsidies or carbon prices, and that may be true worldwide by 2016;
- Solar photovoltaics remains significantly more expensive than coal- or gas-fired generation, although in some countries it is now competitive with the retail price of electricity, and thus increasingly attractive for households and small businesses.

Click the link below for more details.

<http://www.ey.com/GL/en/Industries/Cleantech/Global-cleantech-insights-and-trends-report-2012---Overview>

Press Release.

King & Spalding Expands West Coast Intellectual Property Practice With Addition of Kenneth Steinthal & Joseph Wetzel.

http://www.kslaw.com/News-and-Insights/NewsDetail?us_nsc_id=6271

Deal News.

King & Spalding Advises TSYS on Acquisition of NetSpend for \$1.4 Billion (Partner Scott Petty advised on IP).

http://www.kslaw.com/News-and-Insights/NewsDetail?us_nsc_id=6269

Recognition.

King & Spalding Trial Win for Google Counted as One of 2012's Top Verdicts.

http://www.kslaw.com/News-and-Insights/NewsDetail?us_nsc_id=6263

Intellectual Property Newsletter

In the Press.

http://www.kslaw.com/News-and-Insights/NewsDetail?us_nsc_id=6257

Navigating Through Today's High-Tech IP Thicket (Partner Bob Perry is interviewed on technology and IP).

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Our Intellectual Property Practice Group

King & Spalding offers clients a full-service intellectual property (IP) practice that combines proven first-chair trial and business lawyers with true scientific specialists. The firm's Intellectual Property Practice Group consists of more than 100 IP professionals, including more than 70 lawyers and patent agents with technical degrees, located in our Atlanta, Austin, Charlotte, Houston, New York, Silicon Valley and Washington, D.C., offices.

King & Spalding has specialized expertise in Section 337 cases before the International Trade Commission. Unique among firms, we have leading practices in the three disciplines necessary in Section 337 cases: we combine our broad-based patent litigation experience and technical expertise, international trade expertise and expertise in the ITC's procedures, and a strong governmental relations group. King & Spalding has been involved in some of the largest, most complex and precedent-setting Section 337 cases.

About King & Spalding

Celebrating more than 125 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 800 lawyers in 17 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

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