Click-to-Call Technologies, LP v. Ingenio, Inc.

APPEAL NO.	OP. BELOW	OPINION	SUBJECT	AUTHOR
15-1242	PATO	August 16, 2018	Patent	O'Malley

Question(s) Presented

"[W]hether 35 U.S.C. § 315(b)'s time bar applies to bar institution when an IPR petitioner was served with a complaint for patent infringement more than one year before filing its petition, but the district court action in which the petitioner was so served was voluntarily dismissed without prejudice."

Holding

"The en banc court holds that § 315(b)'s time bar applies in such a scenario."

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December 5, 2016	Click-to-Call's Petition for Rehearing En Banc
January 19, 2018	Order on Petition for Panel Rehearing
February 5, 2018	Supplemental Brief of Appellant
February 21, 2018	Supplemental Brief of Appellees in Response to Court's January 19, 2018 Order
March 5, 2018	Second Supplemental Brief for Intervenor
May 1, 2018	Panel Oral Argument
August 16, 2018	Opinion

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Nantkwest, Inc. v. Iancu

APPEAL NO.	OP. BELOW	OPINION	SUBJECT	AUTHOR
16-1794	DCT	July 27, 2018	Patent	Stoll

Question(s) Presented

"When the United States Patent and Trademark Office's Patent Trial and Appeal Board ('Board') affirms an examiner's rejection of a patent application, § 145 of the Patent Act permits the disappointed applicant to challenge the Board's decision in district court. Applicants who invoke § 145 are required by statute to pay '[a]ll the expenses of the proceedings' incurred by the U.S. Patent and Trademark Office ('PTO') in defending the Board's decision, regardless of the outcome. Historically, the agency relied on this provision to recover sums it spent on travel and printing and, more recently, expert witnesses. Now, 170 years after Congress introduced § 145's predecessor, the agency argues that § 145 also compels applicants to pay its attorneys' fees." Does § 145 compel applicants to pay the PTO's attorneys' fees?

Holding

"We hold that it does not, for the American Rule prohibits courts from shifting attorneys' fees from one party to another absent a 'specific and explicit' directive from Congress. The phrase '[a]ll the expenses of the proceedings' falls short of this stringent standard."

DATE	SELECTED PROCEEDINGS AND ORDERS
June 6, 2016	Brief for Appellant
September 6, 2016	Brief of Plaintiff-Appellee Nantkwest, Inc.

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October 11, 2016	Reply Brief
February 9, 2017	Panel Oral Argument
June 23, 2017	Panel Opinion
August 31, 2017	Order Granting Sua Sponte Rehearing En Banc
November 15, 2017	Brief for the Appellant on Rehearing En Banc
January 16, 2018	En Banc Brief of Plaintiff-Appellee Nantkwest, Inc.
January 31, 2018	Reply Brief for the Appellant on Rehearing En Banc
March 8, 2018	En Banc Oral Argument
July 27, 2018	En Banc Opinion

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Wi-Fi One, LLC v. Broadcom Corp.

APPEAL NO.	OP. BELOW	OPINION	SUBJECT	AUTHOR
15-1944, 15-1945, 15-1946	PATO	January 8, 2018	Patent	Reyna

Question(s) Presented

"Congress has prohibited the Director of the United States Patent and Trademark Office from instituting inter partes review if the petition requesting that review is filed more than one year after the petitioner, real party in interest, or privy of the petitioner is served with a complaint for patent infringement. 35 U.S.C. § 315(b). Congress also provided that the Director's determination 'whether to institute an inter partes review under this section shall be final and nonappealable.' Id. § 314(d). The question before us is whether the bar on judicial review of institution decisions in § 314(d) applies to timebar determinations made under § 315(b). In Achates Reference Publishing, Inc. v. Apple Inc., 803 F.3d 652, 658 (Fed. Cir. 2015), a panel of this court held in the affirmative that a § 315(b) time-bar determination is final and nonappealable under § 314(d). Today, the court revisits this question en banc."

Holding

"We recognize the strong presumption in favor of judicial review of agency actions. To overcome this presumption, Congress must clearly and convincingly indicate its intent to prohibit judicial review. We find no clear and convincing indication of such congressional intent. We therefore hold that the time-bar determinations under § 315(b) are appealable, overrule Achates's contrary conclusion, and remand these cases to the panel for further proceedings consistent with this opinion."

DATE	SELECTED PROCEEDINGS AND ORDERS

August 1, 2016	Panel Oral Argument (Part 1)
August 1, 2016	Panel Oral Argument (Part 2)
September 16, 2016	Panel Opinion
October 17, 2016	Wi-Fi One, LLC's Combined Petition for Rehearing En Banc and Panel Rehearing
November 18, 2016	Appellee Broadcom Corporation's Response to Appellant Wi-Fi One, LLC's Combined Petition for Rehearing En Banc and Panel Rehearing
January 4, 2017	Order on Petition for Rehearing
February 13, 2017	Appellant Wi-Fi One, LLC's Supplemental En Banc Brief
March 15, 2017	Supplemental Brief for Appellee Broadcom Corporation on Rehearing En Banc
March 22, 2017	En Banc Brief for Intervenor Michelle K. Lee, Director, United States Patent and Trademark Office
April 12, 2017	Appellant Wi-Fi One, LLC's En Banc Reply Brief
May 4, 2017	En Banc Oral Argument
January 8, 2018	En Banc Opinion

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Aqua Products, Inc. v. Matal

APPEAL NO.	OP. BELOW	OPINION	SUBJECT	AUTHOR
15-1177	PATO	October 4, 2017	Patent	O'Malley

Question(s) Presented

"In this appeal, we consider the proper allocation of the burden of proof when amended claims are proffered during inter partes review proceedings ('IPRs') under the Leahy-Smith America Invents Act ('AIA')."

Holding

"Upon review of the statutory scheme, we believe that [35 U.S.C.] § 316(e) unambiguously requires the petitioner to prove all propositions of unpatentability, including for amended claims."

DATE	SELECTED PROCEEDINGS AND ORDERS
May 25, 2016	Panel Opinion
June 6, 2016	Appellant's Petition for Rehearing En Banc
July 6, 2016	Response to the Petition for Rehearing En Banc for Intervenor
August 12, 2016	Order On Petition for Rehearing
September 26, 2016	Supplemental Brief for Appellant Aqua Products, Inc. on Rehearing En Banc

October 26, 2016	Supplemental Brief on Rehearing En Banc for Intervenor
November 10, 2016	Corrected Supplemental Reply Brief for Appellant Aqua Products, Inc. on Rehearing En Banc
December 9, 2016	En Banc Oral Argument
October 4, 2017	En Banc Opinion

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Medicines Company v. Hospira, Inc.

APPEAL NO.	OP. BELOW	OPINION	SUBJECT	AUTHOR
14-1469, 14-1504	DCT	July 11, 2016	Patent	O'Malley

Question(s) Presented

"Today, we consider the circumstances under which a product produced pursuant to the claims of a product-by-process patent is 'on sale' under 35 U.S.C. § 102(b). This is important because, if 'on sale' more than one year before the filing of an application for a patent on the governing claims, any issued patent is invalid and the right to exclude others from making, using, and selling the resulting product is lost."

Holding

"We conclude that, to be 'on sale' under § 102(b), a product must be the subject of a commercial sale or offer for sale, and that a commercial sale is one that bears the general hallmarks of a sale pursuant to Section 2-106 of the Uniform Commercial Code. We conclude, moreover, that no such invalidating commercial sale occurred in this case. . . . [W]e first clarify that the mere sale of manufacturing services by a contract manufacturer to an inventor to create embodiments of a patented product for the inventor does not constitute a 'commercial sale' of the invention. We then address the issue of 'stockpiling' by an inventor and clarify that 'stockpiling' by the purchaser of manufacturing services is not improper commercialization under § 102(b). We explain that commercial benefit—even to both parties in a transaction—is not enough to trigger the on-sale bar of § 102(b); the transaction must be one in which the product is 'on sale' in the sense that it is 'commercially marketed.'"

DATE	SELECTED PROCEEDINGS AND ORDERS
March 6, 2015	Panel Oral Argument

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July 2, 2015	Panel Opinion
July 31, 2015	Combined Petition for Panel Rehearing and Rehearing En Banc
September 8, 2015	Defendant-Cross-Appellant Hospira, Inc.'s Opposition to Petition for Rehearing En Banc
November 13, 2015	Order On Petition for Panel Rehearing and Rehearing En Banc
January 11, 2016	Principal Brief of Defendant-Cross-Appellant Hospira, Inc. in Response to the Court's November 13, 2015 Order
February 24, 2016	En Banc Brief of Plaintiff-Appellant The Medicines Company
March 14, 2016	Reply Brief of Defendant-Cross-Appellant Hospira, Inc. in Response to the Court's November 13, 2015 Order
May 5, 2016	En Banc Oral Argument
July 11, 2016	En Banc Opinion

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Lexmark Int'l, Inc. v. Impression Products, Inc.

APPEAL NO.	OP. BELOW	OPINION	SUBJECT	AUTHOR
14-1617, 14-1619	DCT	February 12, 2016	Patent	Taranto

Question(s) Presented

"We decided to hear this case en banc to consider whether two decisions of this court concerning the uncodified doctrine of patent exhaustion—one decision from 1992, the other from 2001—remain sound in light of later decisions of the Supreme Court."

Holding

"First, we adhere to the holding of Mallinckrodt, Inc. v. Medipart, Inc., 976 F.2d 700 (Fed. Cir. 1992), that a patentee, when selling a patented article subject to a single-use/no-resale restriction that is lawful and clearly communicated to the purchaser, does not by that sale give the buyer, or downstream buyers, the resale/reuse authority that has been expressly denied. Such resale or reuse, when contrary to the known, lawful limits on the authority conferred at the time of the original sale, remains unauthorized and therefore remains infringing conduct under the terms of [35 U.S.C.] § 271."

"Second, we adhere to the holding of Jazz Photo Corp. v. International Trade Comm'n, 264 F.3d 1094 (Fed. Cir. 2001), that a U.S. patentee, merely by selling or authorizing the sale of a U.S.-patented article abroad, does not authorize the buyer to import the article and sell and use it in the United States, which are infringing acts in the absence of patentee-conferred authority."

DATE	SELECTED PROCEEDINGS AND ORDERS
March 6, 2015	Panel Oral Argument

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April 14, 2015	Order Sua Sponte Granting Hearing En Banc
June 12, 2015	Brief for Defendant-Appellant Impression Products, Inc. on En Banc Review
August 12, 2015	En Banc Brief for Plaintiff-Cross-Appellant Lexmark International, Inc.
August 27, 2015	Reply Brief for Defendant-Appellant Impression Products, Inc. on En Banc Review
October 2, 2015	En Banc Oral Argument
February 12, 2016	En Banc Opinion
March 28, 2016	Errata

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SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC

APPEAL NO.	OP. BELOW	OPINION	SUBJECT	AUTHOR
13-1564	DCT	September 18, 2015	Patent	Prost

Question(s) Presented

"We convene en banc to resolve whether, in light of the Supreme Court's recent decision in Petrella v. Metro-Goldwyn-Mayer, Inc., 134 S. Ct. 1962 (2014), laches remains a defense to legal relief in a patent infringement suit."

Holding

"We conclude that Congress codified a laches defense in 35 U.S.C. § 282(b)(1) that may bar legal remedies. Accordingly, we have no judicial authority to question the law's propriety."

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April 8, 2014	Panel Oral Argument

MASIMO 1048
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September 17, 2014	Panel Opinion
October 15, 2014	Combined Petition for Panel Rehearing and Rehearing En Banc of Plaintiffs-Appellants SCA Hygiene Products Aktiebolag and SCA Personal Care, Inc.
November 4, 2014	Response of Defendants-Appellees to Combined Petition for Rehearing and Rehearing En Banc
December 30, 2014	Order On Petition for Rehearing En Banc
February 27, 2015	Non-Confidential En Banc Brief of Plaintiffs-Appellants SCA Hygiene Products Aktiebolag and SCA Personal Care, Inc.
April 16, 2015	En Banc Brief of Defendants-Appellees
May 15, 2015	En Banc Reply Brief of Plaintiffs-Appellants SCA Hygiene Products Aktiebolag and SCA Personal Care, Inc.
June 19, 2015	En Banc Oral Argument
September 18, 2015	En Banc Opinion

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Lighting Ballast Control LLC v. Philips Electronics North America Corp.

APPEAL NO.	OP. BELOW	OPINION	SUBJECT	AUTHOR
12-1014	DCT	February 21, 2014	Patent	Newman

Question(s) Presented

"This court undertook rehearing en banc for the purpose of reconsidering the standard of appellate review of claim construction."

Holding

"[W]e apply the principles of stare decisis, and confirm the Cybor standard of de novo review of claim construction, whereby the scope of the patent grant is reviewed as a matter of law."

DATE	SELECTED PROCEEDINGS AND ORDERS
July 9, 2012	Panel Oral Argument
January 2, 2013	Panel Opinion
January 31, 2013	Petition for Rehearing En Banc
February 19, 2013	Response to Petition for Rehearing En Banc
February 20, 2013	Reply Brief in Support of Petition for Rehearing En Banc

March 15, 2013	Order Granting Petition for En Banc Rehearing
May 20, 2013	Rehearing En Banc Brief of Defendant-Appellant
June 24, 2013	Rehearing En Banc Response Brief of Plaintiff-Appellee
July 19, 2013	Rehearing En Banc Reply Brief of Defendant-Appellant
September 13, 2013	En Banc Oral Argument
February 21, 2014	En Banc Opinion

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