



NYS SCIENCE+TECHNOLOGY **LAW CENTER**

AT SYRACUSE UNIVERSITY COLLEGE OF LAW
PRESENTS

**Six New Patent Rulings from the
Supreme Court! The Year in Review
(and a Peek into the Future)**

July 9, 2014

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Questions Presented

- Burden of proof in non-infringement DJ actions
- Attorney fee standards
 - Awarding fees
 - Reviewing fee awards
- What constitutes “indefiniteness”
- Liability for inducement absent direct infringement
- Patent eligibility of computer-implemented inventions



Medtronic v. MFV: Burden of Proof

Medtronic, Inc. v. Mirowski Family Ventures, LLC, 134 S.Ct. 843 (Jan. 22, 2014)

- Medtronic licenses MFV patents relating to implantable heart stimulators
- MFV accused additional Medtronic products of infringement
- Medtronic sought a declaration of non-infringement, while escrowing royalties



Medtronic v. MFV: Burden of Proof

- **Federal Circuit:** where (as here) the DJ defendant-patentee is foreclosed by a license from asserting an infringement counterclaim, the DJ plaintiff bears the burden of proving infringement
- **Supreme Court:** (unanimously) reversed:
HELD: “the burden of proving infringement remains with the patentee”



Medtronic v. MFV: Burden of Proof

Rationale:

- “Simple legal logic, resting upon settled case law”
 - Burden usually rests on patentee
 - DJ Act only procedural
 - Burden of proof is a substantive aspect of a claim



Medtronic v. MFV: Burden of Proof

Rationale (cont'd):

- “[P]ractical considerations”
 - Risk of post-litigation uncertainty (if alleged infringer fails to prove non-infringement, and then patentee fails to prove infringement, is there infringement or not?)
 - Accused infringer otherwise has “to negate every conceivable infringement theory”



***Medtronic v. MFV*: Burden of Proof**

Rationale (cont'd):

- “[V]ery purpose’ of [the DJ] Act”: to relieve the alleged infringer of the choice between abandoning course and risking suit
- Federal Circuit rule “recreate[d]” that dilemma



***Medtronic v. MFV*: Burden of Proof**

Implications:

- Affirms licensee's right to challenge
- Shifts negotiating leverage in licensee's favor
- Emphasis on public policy: “A patentee should not be allowed to exact royalties for the use of an idea that is beyond the scope of the patent monopoly granted”



Medtronic v. MFV: Burden of Proof

Implications (cont'd):

- Accusations of nonpayment or coverage may draw a DJ complaint, in a disfavored forum
 - Expand covered disputes for forum selection purposes to include those “relating to the licensed patents”
- Validity of termination-upon-challenge clauses still uncertain
- Provisions purporting to contract-around *MedImmune* and *Medtronic* likely unenforceable
 - Make severable



Octane/Highmark: Attorney Fees

Octane Fitness, LLC v. ICON Health & Fitness, 134 S.Ct. 1749 (Apr. 29, 2014)

- ICON sued Octane for infringement of its patent relating to an elliptical machine that can be adjusted to users' strides



Octane/Highmark: Attorney Fees

- Octane won on summary judgment, and requested attorney fees under 35 U.S.C. 285:

“The court in exceptional cases may award reasonable attorney fees to the prevailing party.”
- District Court denied the motion, relying on the Federal Circuit’s standard from *Brooks Furniture* (2005), which requires either:
 - “material inappropriate conduct”, OR
 - suit that is both “objectively baseless” and “brought in subjective bad faith”
 - ... and proof by clear and convincing evidence of both the conduct and the exceptionality



Octane/Highmark: Attorney Fees

- Federal Circuit (panel): Affirmed
- Supreme Court: Unanimously reversed and remanded:

HELD:

- “[A]n ‘exceptional’ case is simply one that stands out from others with respect to the substantive strength of a party’s litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated.” (emphasis added)
- “District courts may determine whether a case is ‘exceptional’ in the case-by-case exercise of their discretion, considering the totality of the circumstances.”



Octane/Highmark: Attorney Fees

Rationale:

- Federal Circuit's framework is "unduly rigid, and . . . impermissibly encumbers the statutory grant of discretion to district courts"
- Statute requires only exceptionality
 - Not defined in the statute; must be given "ordinary meaning":
 - "uncommon", "rare", "not ordinary", "unusual", "special"



Octane/Highmark: Attorney Fees

Rationale (cont'd):

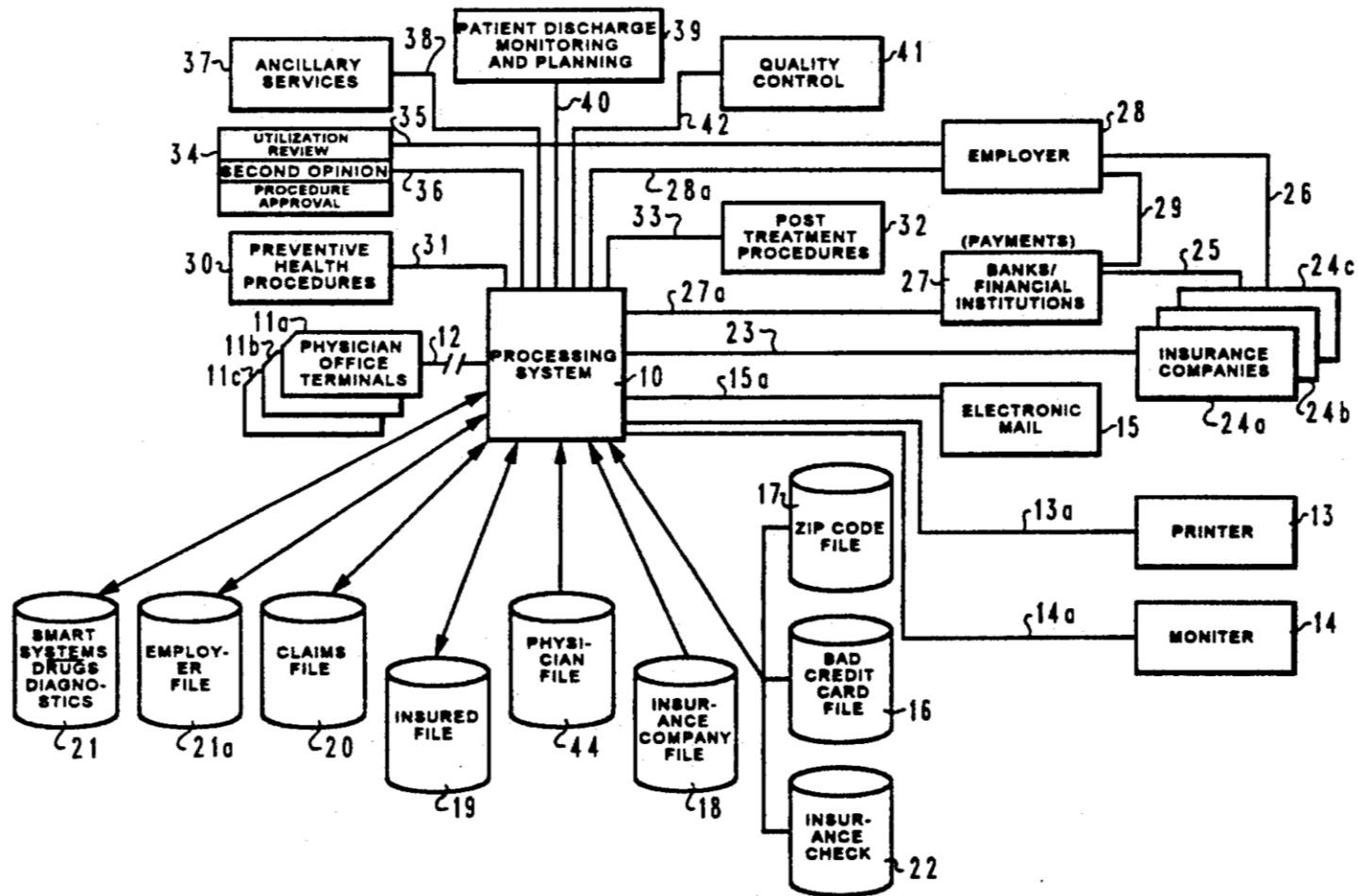
- Problems with Federal Circuit test:
 - Litigation misconduct category: test “extend[s] largely to independently sanctionable conduct”
 - Meritless claims category: either subjective bad faith OR exceptional meritless-ness could suffice!
 - Plus, courts already have the inherent authority to fee-shift for “act[ing] in bad faith, vexatiously, wantonly, or for oppressive reasons . . .”
 - And, “nothing in §285” requires clear and convincing evidence



Octane/Highmark: Attorney Fees

Highmark Inc. v. Allcare Health Mgmt. Sys., Inc., 134 S.Ct. 1744 (Apr. 29, 2014)

- Allcare owns U.S. Patent No. 5,301,105 relating to “utilization review” in a “health care management system”



U.S. Patent No. 5,301,105
 "All Care Health Management System"



Octane/Highmark: Attorney Fees

- Highmark sued Allcare for a declaration that Allcare's patent was invalid, unenforceable, or not infringed. Allcare counterclaimed for infringement.
- After winning a summary judgment of non-infringement, Highmark sought fees
- District court awarded over \$4.6 M in attorney fees (plus expenses and expert fees)
 - Allcare “had maintained infringement claims . . . well after such claims had been shown by its own experts to be without merit” and had “asserted defenses it and its attorneys knew to be frivolous”



Octane/Highmark: Attorney Fees

- Federal Circuit:
 - Split panel reviewed award *de novo*; affirmed as to Allcare's assertion of one claim of the patent, but reversed as to another
 - Full court divided as to whether to hear *en banc*
- Supreme Court: Unanimously reversed:
HELD: "[A]n appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's §285 determination."



Octane/Highmark: Attorney Fees

Rationale:

- “Our holding in *Octane* settles this case: Because 285 commits the determination whether a case is ‘exceptional’ to the discretion of the district court, that decision is to be reviewed on appeal for abuse of discretion.”
- Akin to other fee-shifting situations, e.g., FRCP 11
- Text of 285 emphasizes that the determination is for the district court, suggesting some deference is appropriate



Octane/Highmark: Attorney Fees

Rationale (cont'd):

- District court is better positioned “because it lives with the case over a prolonged period of time”
- Area of law is “likely to profit from the experience that an abuse-of-discretion rule will permit to develop”
- But: “The abuse-of-discretion standard does not preclude an appellate court’s correction of a district court’s legal or factual error.””



Octane/Highmark: Attorney Fees

Implications of *Octane* and *Highmark*:

- Expect:
 - Increased deterrence of frivolous claims
 - More fee motions (at least until new standards shake out)
 - More appellate affirmances
 - Increased reliance on fee-shifting decisions under the “similar”/ “comparable” provision in the Copyright Act



Octane/Highmark: Attorney Fees

Implications (cont'd):

- Non-exclusive factors:
 - Frivolousness
 - Motivation
 - Objective unreasonableness (fact and law)
 - Need for compensation and deterrence”
(quoting *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994))
- Fees available even where conduct is not “otherwise sanctionable”



Octane/Highmark: Attorney Fees

Implications (cont'd):

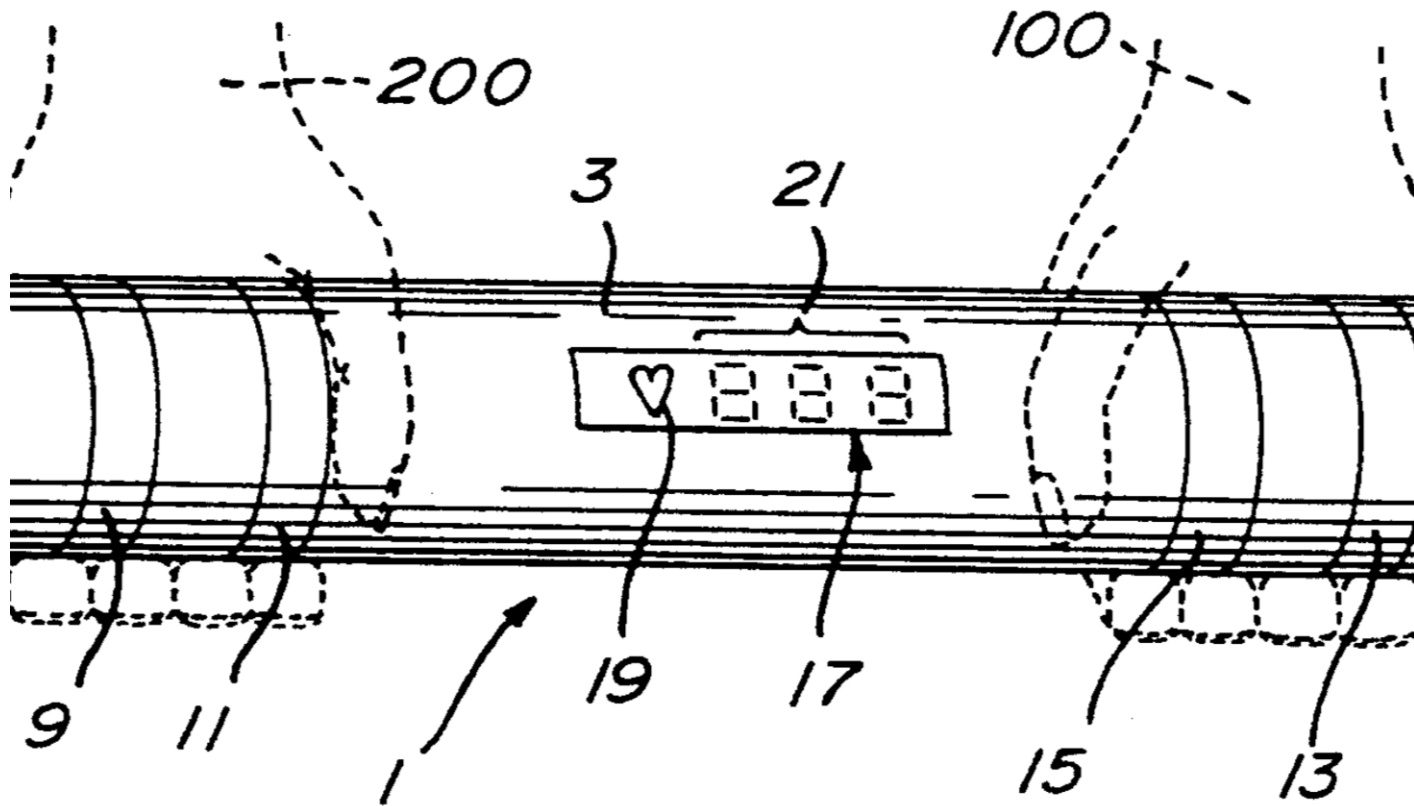
- Substantive rulings during case will yield greater increase in settlement leverage
 - But need to “prevail[]” to be eligible for fees
 - And parties hit with adverse rulings must persist to preserve right to appeal
- Patentees can succeed absent willfulness
 - P.S. Does willfulness test need revising?
- Impact on meritorious claims?
- Undercuts (but by how much?) calls for legislative reform



Nautilus v. Biosig: Indefiniteness

Nautilus, Inc. v. Biosig Instruments, Inc.,
134 S.Ct. 2120 (June 2, 2014)

- Biosig sued Nautilus for infringement of its patent relating to an exercise heart rate monitor
- Monitor improves accuracy by accounting for the interference of EMG signals (noise generated by a user's skeletal muscles) with the measured ECG signals



U.S. Patent No. 5,337,753
"Heart Rate Monitor"



Nautilus v. Biosig: Indefiniteness

Claim 1 (in relevant part):

1. A heart rate monitor for use by a user in association with exercise apparatus and/or exercise procedures, comprising:

an elongate member;

electronic circuitry including a difference amplifier having a first input terminal of a first polarity and a second input terminal of a second polarity opposite to said first polarity;

said elongate member comprising a first half and a second half;

a first live electrode and a first common electrode mounted on said first half in spaced relationship with each other;

a second live electrode and a second common electrode mounted on said second half in spaced relationship with each other;

said first and second common electrodes being connected to each other and to a point of common potential....



Nautilus v. Biosig: Indefiniteness

- District court granted Nautilus' motion for summary judgment: “spaced relationship” failed 35 U.S.C. 112 requirement that “claims particularly point out and distinctly claim the subject matter” of the invention
 - Claim term “did not tell [the court] or anyone what precisely the space should be” or provide “any parameters” for determining the appropriate spacing



Nautilus v. Biosig: Indefiniteness

- **Federal Circuit:** panel reversed, holding that a claim is indefinite “only when it is ‘not amenable to construction’ or [is] ‘insolubly ambiguous’”
- **Supreme Court:** unanimously vacated and remanded for application of new standard:

HELD:

- “[A] patent is invalid for indefiniteness if its claims, read in light of the specification . . . and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention”
- “Definiteness is measured from the viewpoint of a person skilled in [the] art at the time the patent was filed”



Nautilus v. Biosig: Indefiniteness

Rationale:

- Requirement “entails a ‘delicate balance’”:
 - “inherent limitations of language”: “Some modicum of uncertainty . . . is the ‘price of ensuring the appropriate incentives for innovation.’”
 - And patents are addressed “to those skilled in the relevant art,” not to lawyers or the public generally
 - But, “a patent must be precise enough to afford clear notice of what is claimed, thereby ‘[a]ppris[ing] the public of what is still open to them.’ ”
 - “[A]bsent a meaningful definiteness check . . . patent applicants face powerful incentives to inject ambiguity into their claims.”



Nautilus v. Biosig: Indefiniteness

Rationale (cont'd):

- Problems with Federal Circuit standard:
 - “[F]ormulations can breed lower court confusion”
 - “It cannot be sufficient that a court can ascribe some meaning to a patent’s claims; . . . [t]o tolerate imprecision just short of that rendering a claim ‘insolubly ambiguous’ would diminish the definiteness requirement’s public notice function and foster [an] innovation-discouraging ‘zone of uncertainty’”
 - Federal Circuit’s standard is “more amorphous than the statutory definiteness requirement allows”



Nautilus v. Biosig: Indefiniteness

Implications:

- More indefiniteness challenges
 - Including in post-grant review proceedings
 - Including re mechanical and electrical claims
- While indefiniteness should be easier to show (particularly before the PTAB in post-grant reviews!), it is unclear what the new standard means, in application
 - Federal Circuit standard was more determinate
- Open questions:
 - “whether factual findings subsidiary to the ultimate issue of definiteness trigger the clear-and-convincing evidence standard”
 - “whether deference is due to the PTO’s resolution of disputed issues of fact”



Nautilus v. Biosig: Indefiniteness

Implications:

- Greater role for experts (emphasis on “those skilled in the art”)
- Challengers are now free to argue both for a given construction and that a term/claim is indefinite
- For drafters:
 - Include claims of varying scope and specificity
 - Bolster supporting disclosure
 - Maintain continuations



CLE Code:



Limelight v. Akamai/Inducement

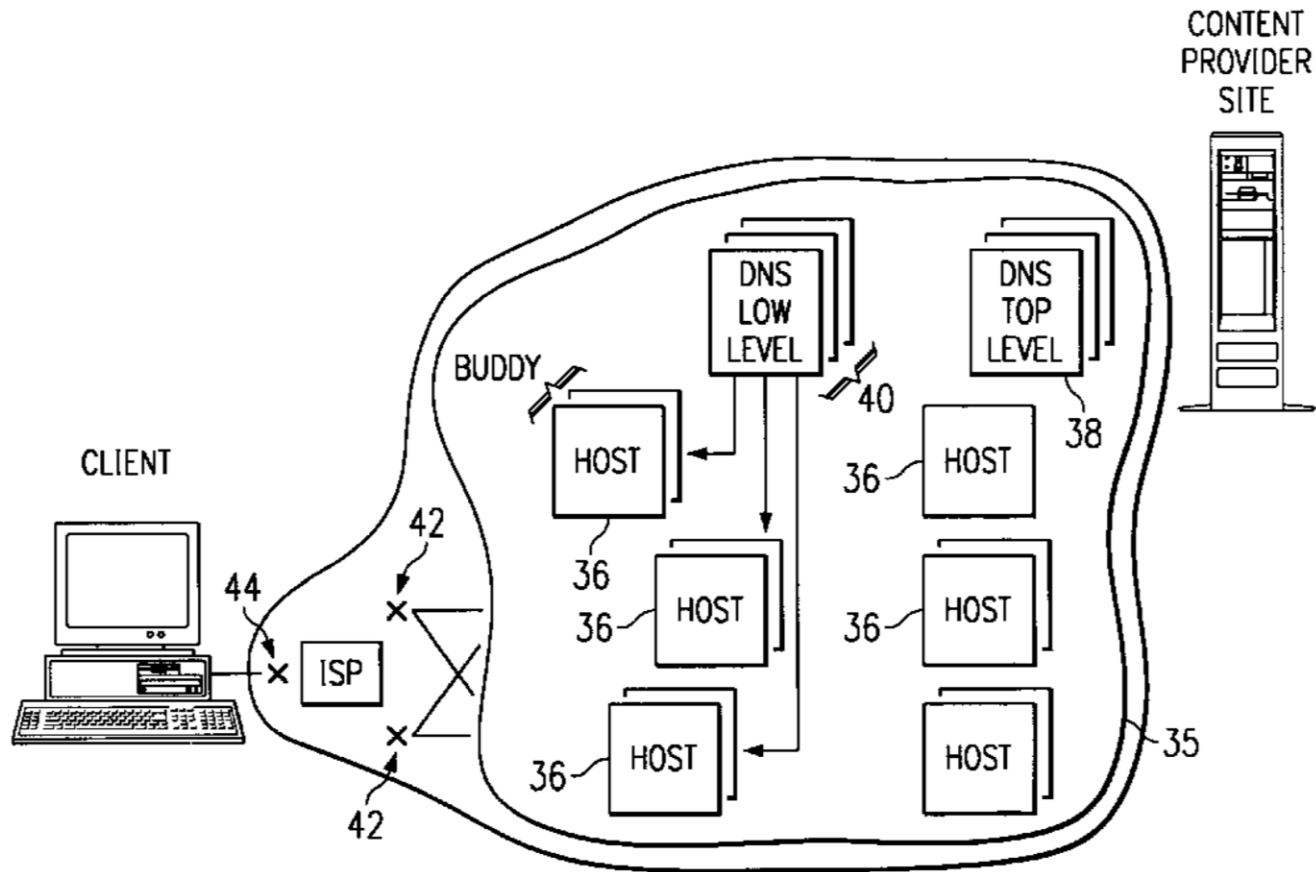
Limelight Networks, Inc. v. Akamai Technologies, Inc., 134 S.Ct. 2111 (2014)

- Background:
 - One who makes, uses, sells, offers to sell, or imports a claimed invention is a direct infringer
 - One who does not directly infringe, but who contributes to or induces infringement is an indirect infringer
 - Traditional rule: no liability for indirect infringement absent direct infringement



Limelight v. Akamai/Inducement

- Akamai is the exclusive licensee of a patent that claims a “content delivery method”
 - Facilitates rapid delivery of content from provider websites by permitting the “tagging” of certain (e.g., large) files for storage on and delivery from Akamai’s servers instead of the content provider’s servers



U.S. Patent No. 6,108,703
 “Global Hosting System”



Limelight v. Akamai/Inducement

Claim 17:

17. A content delivery method, comprising:

tagging an embedded object in a page to resolve to a domain other than a content provider domain by prepending given data to a content provider-supplied URL to generate an alternate resource locator (ARL);

*serving the page from a content provider server with the ARL;
and*

resolving the ARt to identify a content server in the domain; and

serving the embedded object from the identified content server.



Limelight v. Akamai/Inducement

- Limelight also operates a content delivery network:
 - It practices several steps of the claimed method
 - But it requires its customers to do the “tagging” (Limelight provides instructions and technical assistance)

Thus, neither performs all steps

- Akamai sued Limelight; won \$40 M



Limelight v. Akamai/Inducement

- Meanwhile, Federal Circuit affirmed in another case (*Muniauction*) that
 - “[D]irect infringement requires a single party to perform every step of a claimed method”
 - This requirement can be met if a single defendant “exercises ‘control or direction’ over the entire process such that every step is attributable to the controlling party.”
 - “mere arms-length cooperation” is not enough
 - the “single party” rule for direct infringement)



Limelight v. Akamai/Inducement

- Limelight requested reconsideration
- District court granted motion: Limelight does not control/direct its customers' tagging
- Federal Circuit panel affirmed. "Control or direction" means
 - Agency relationship, or one of the parties is contractually obligated to the other to perform the steps
 - Ignored possibility of liability for mere joint or collaborative activity
- En banc **Federal Circuit** reversed:
 - 6 judges in majority, 5 dissenting
 - Majority: unnecessary to consider liability for direct infringement, because inducement lies where a defendant performs some steps and encourages others to perform the rest
 - "Requiring proof that there has been direct infringement . . . is not the same as requiring proof that a party would be liable as a direct infringer."
 - Changed course: effectively eliminated the single party rule



Limelight v. Akamai/Inducement

- Supreme Court unanimously reversed and remanded:
 - “The Federal Circuit’s analysis fundamentally misunderstands what it means to infringe a method patent”
 - “A method patent . . . is not infringed unless all the steps are carried out.”
 - “Assuming without deciding that . . . *Muniauction* . . . is correct, there simply has been no infringement of the method . . . , because the performance of all the patent’s steps is not attributable to any one person.
 - “And . . . where there has been no direct infringement, there can be no inducement of infringement under §271(b).”



Limelight v. Akamai/Inducement

Rationale:

- Federal Circuit's standard "would deprive 271(b) of ascertainable standards"
- 271(f) shows that "when Congress wishes to impose liability for inducing activity that does not itself constitute direct infringement, it knows precisely how to do so"
- "[T]he reason Limelight [is not liable] is not that no third party is *liable* for direct infringement; [it] is that no direct infringement was *committed*."
 - That's what *Muniauction* says!
 - No violation of the plaintiff's legal rights, no liability



Limelight v. Akamai/Inducement

Rationale (cont'd):

- “[T]he possibility that the Federal Circuit erred by too narrowly circumscribing the scope of 271(a) is no reason for this Court to err a second time by misconstruing 271(b) to impose liability for inducing infringement where no infringement has occurred.”
- The concern that this “interpretation of 271(b) . . . permit[s] a would-be infringer to evade liability” results from *Muniauction*
 - That issue is not before us/was not briefed
 - Federal Circuit has opportunity to revisit



Limelight v. Akamai/Inducement

Implications:

- No-indirect-infringement-absent-direct-infringement rule reaffirmed
- “All elements” rule reaffirmed
- Patent drafters must include claims to portions of systems used by single actor
 - More difficult to protect (increasingly prevalent) methods involving a service provider and customer/user (collaborative Internet applications, medical methods)



Limelight v. Akamai/Inducement

Implications (cont'd):

- UNLESS, Federal Circuit overrules *Muniauction*, reinterprets 271(a) to embrace broader common law concepts of joint liability



Alice v. CLS/Software Eligibility

Alice Corp. Pty. Ltd. v. CLS Bank Int'l, ____ S.Ct. ____ (2014)

- At issue are four Alice patents:
 - Disclose computerized scheme for mitigating “settlement risk” – i.e., that only one party to a transaction will satisfy its obligation
 - Uses computer system as intermediary
 - Allows “only . . . transactions for which . . . shadow [account ledgers] indicate sufficient resources”
 - Claims to computerized methods, computer-readable media containing program instructions, and computer systems implementing those instructions



Alice v. CLS/Software Eligibility

Claim 33 of U.S. Patent No. 5,970,479:

A method of exchanging obligations as between parties, each party holding a credit record and a debit record with an exchange institution, the credit records and debit records for exchange of predetermined obligations, the method comprising the steps of:

- (a) creating a shadow credit record and a shadow debit record for each stakeholder party to be held independently by a supervisory institution from the exchange institutions;*
- (b) obtaining from each exchange institution a start-of-day balance for each shadow credit record and shadow debit record;*
- (c) for every transaction resulting in an exchange obligation, the supervisory institution adjusting each respective party's shadow credit record or shadow debit record, allowing only these transactions that do not result in the value of the shadow debit record being less than the value of the shadow credit record at any time, each said adjustment taking place in chronological order, and*
- (d) at the end-of-day, the supervisory institution instructing on[e] of the exchange institutions to exchange credits or debits to the credit record and debit record of the respective parties in accordance with the adjustments of the said permitted transactions, the credits and debits being irrevocable, time invariant obligations placed on the exchange institutions.*



Alice v. CLS/Software Eligibility

- CLS Bank operate global currency transfer network
- CLS sought DJ of invalidity, unenforceability, or non-infringement
- Alice counterclaimed for infringement
- Parties cross-moved for summary judgment on the issue of 35 U.S.C. 101 eligibility
- District court: all ineligible; directed to the abstract idea of “employing a neutral intermediary to facilitate simultaneous exchange of obligations in order to minimize risk”



Alice v. CLS/Software Eligibility

- Split Federal Circuit panel reversed
- En banc **Federal Circuit**:
 - sought briefing on
 - What should be the test?
 - Should method vs. system vs. media claims matter?
 - affirmed
 - 10 members, 7 opinions (none with a majority), 135 pages
 - One paragraph per curiam opinion: all claims invalid, no majority rationale



Alice v. CLS/Software Eligibility

- Judge Lourie + 4:
 - Statutory category?
 - Recite a law of nature, natural phenomenon, or abstract idea?
 - Is the “inventive concept” a “product of ingenuity” representing “more than just a trivial appendix to the underlying idea”
 - “tangential, routine, well-understood, or conventional” limitations do not impart eligibility
 - Here, all claims fail



Alice v. CLS/Software Eligibility

- Judge Rader + 3: split 2-2 re eligibility of method claims; system claims eligible:
 - Eligibility turns on “whether the claims tie the otherwise abstract idea to a *specific way* of doing something with a computer, or a *specific computer* for doing something” vs. being “directed to *nothing more than the idea* of doing that thing on a computer”
 - Separate opinions by Rader, Moore, Newman, and Linn/O’Malley



Alice v. CLS/Software Eligibility

- Federal Circuit tally:
 - 7-3: method and media claims ineligible
 - 5-5: re system claim eligibility
 - ... Thus, district court affirmed as to all claims
- Supreme Court unanimously affirmed!



CLE Code:



Alice v. CLS/Software Eligibility

Rationale:

- Familiar eligibility framework:
 - Statute: “Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter . . . may obtain a patent therefor, subject to the conditions and requirements of this title.”
 - Judicially-created exceptions: “Laws of nature, natural phenomena, and abstract ideas are not patentable.”
- Concern underlying exceptions: pre-emption
 - “[B]asic tools” “impede innovation” “improperly tying up . . . future use” (quoting *Bilski*, *Myriad*, *Mayo*)
 - Must distinguish claims to the “‘building blocks’ of human ingenuity and those that integrate the building blocks into something more” (quoting *Mayo*)



Alice v. CLS/Software Eligibility

Rationale (cont'd):

- Framework:

- (1) “[D]etermine whether the claims . . . are directed to one of those patent-ineligible concepts”
- (2) “If so, . . . ask, ‘[w]hat else is’” in the claim
 - Consider elements “both individually and ‘as an ordered combination’”
 - Looking for “inventive concept”: “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself’”



Alice v. CLS/Software Eligibility

Rationale (cont'd):

- Application:

Step 1: “These claims are drawn to the abstract idea of intermediated settlement.”

- “Like the risk hedging in *Bilski*, the concept of intermediated settlement is “a fundamental economic practice long prevalent in our system of commerce.” (quoting *Bilski*, and citing to sources published in 1896, 2012, and 2013)
- Rejecting Alice’s contention “that the abstract-ideas category is confined to ‘preexisting, fundamental truth[s]’ that ‘exis[t] in principle apart from any human action.’”
- “[W]e need not labor to delimit the precise contours of the ‘abstract ideas’ category in this case.”



Alice v. CLS/Software Eligibility

Rationale (cont'd):

- Application:

Step 2:

- “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’”
 - “‘more than simply stat[ing] the [abstract idea] while adding the words ‘apply it.’” (quoting *Mayo*)
 - “*Mayo* . . . is instructive.” There, “[s]imply appending conventional steps, specified at a high level of generality,’ was not ‘*enough*’ to supply an “inventive concept.””
 - *Benson*, *Flook* and *Diehr* “demonstrate that the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”
 - “Stating an abstract idea while adding the words ‘apply it with a computer’” is not enough
- “[T]he claims at issue amount to ‘nothing significantly more’ than an instruction to apply the abstract idea of intermediated settlement using some unspecified, generic computer.”



Alice v. CLS/Software Eligibility

Rationale (cont'd):

- Application:
 - “Petitioner conceded . . . that its media claims rise or fall with its method claims.”
 - “As to its system claims,” the “[s]pecific hardware” touted by Alice “is purely functional and generic”
 - “[T]he system claims are no different from the method claims in substance.”
 - “The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea.”
 - Patent eligibility does not “depend simply on the draftsman’s art”
 - Patentable subject matter is not a “nose of wax”



Alice v. CLS/Software Eligibility

Concurrence (Justice Sotomayor, for Justices Ginsburg and Breyer):

- Business methods are not patent eligible. Period.



Alice v. CLS/Software Eligibility

Implications:

- Section 101 has teeth! (*Bilski*, *Mayo*, *Myriad*, *Alice*)
 - Theme: impeding vs. promoting progress
- Extends *Mayo* framework to fields other than diagnostic methods, and beyond method claims
- Methods that do nothing more than use a general purpose computer to carry out a conventional transaction, or one that could be performed in one's head, will not qualify
- Fuels debates regarding:
 - Extent of impact on software patents
 - Respective roles of Sections 101 and 103



Alice v. CLS/Software Eligibility

Implications (cont'd):

- Still no definition of what constitutes an abstract idea
 - Best guides are *Bilski* and *Alice*
- Compare claims at issue in *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1355 (Fed. Cir. 2013) cert. granted, judgment vacated sub nom. *WildTangent, Inc. v. Ultramercial, LLC*, 13-255, 2014 WL 2921707 (U.S. June 30, 2014)
 - Held eligible post-*Mayo*
 - Lourie, J. concurred: “added limitations in these claims represent significantly more than the underlying abstract idea of using advertising as an exchange or currency”
 - But commentators disagree as to whether will survive remand in light of *Alice*



LOOKING AHEAD . . .



Claim Construction Review Std.

Teva Pharm. USA, Inc. v. Sandoz, Inc.

- Question Presented: Whether a district court's factual finding in support of its construction of a patent claim term may be reviewed *de novo*, as the Federal Circuit requires (and as the panel explicitly did in this case, or only for clear error, as [FRCP] Rule 52(a) requires.
- cert. granted, March 31, 2014



Inducement Scientist

Commil USA, Inc. v. Cisco Systems, Inc.

- Issues:
 - Whether the Federal Circuit erred in holding that a defendant's belief that a patent is invalid is a defense to induced infringement under 35 U.S.C. § 271(b)
 - Whether the Federal Circuit erred in holding that *Global-Tech Appliances, Inc. v. SEB S.A.* required retrial on the issue of intent under 35 U.S.C. § 271(b) where the jury (A) found the defendant had actual knowledge of the patent and (B) was instructed that “[i]nducing third-party infringement cannot occur unintentionally.”
- May 27, 2014: CVSG



Jury Trial

Cisco Systems, Inc. v. Commil USA, Inc.

- Issue: Whether, and in what circumstances, the Seventh Amendment permits a court to order a partial retrial of induced patent infringement without also retrying the related question of patent invalidity. (cross-petition)
- May 27, 2014: CVSG



Post-Expiration Royalties

Kimble v. Marvel Enterprises, Inc.

- Issue: Whether [the Supreme] Court should overrule *Brulotte v. Thys Co.*, which held that “a patentee’s use of a royalty agreement that projects beyond the expiration date of the patent is unlawful per se.”
- June 2, 2014: CVSG



THANK YOU

Questions?

Comments?