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Supreme Court Loads Up IP Docket

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Over the past two months, the U.S. Supreme Court has agreed to hear five cases that will have a significant impact on intellectual property law. Three of the cases involve issues of patent law, one involves copyright, and the last involves false advertising claims under the Lanham Act. Following is a brief summary of the issues presented to the Court in the cases. We previously [wrote about another case](#) before the Supreme Court this term involving standing to bring trademark/false advertising claims under the Lanham Act.

1. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l, et al.*, Sup. Ct. Docket No. 13-298 (patent).

Question presented: Whether claims to computer-implemented inventions – including claims to systems and machines, processes, and items of manufacture – are directed to patent-eligible subject matter within the meaning of 35 U.S.C. § 101 as interpreted by the Supreme Court. The *en banc* Federal Circuit decision on appeal involves the standard for determining whether a patent directed to computer-implemented inventions improperly claims an abstract idea, which is not eligible subject matter for patenting. The Federal Circuit found the patented method at issue – involving the exchange of financial instruments using a computer – to be ineligible subject matter. But the court did not agree on a clear standard for determining whether an idea is abstract and thus unpatentable. The case is set for argument on March 31, 2014.

2. *Limelight Networks, Inc. v. Akamai Technologies, Inc.*, Sup. Ct. Docket No. 12-786 (patent).

Question presented: Whether the Federal Circuit erred in holding that a defendant may be held liable for inducing patent infringement under 35 U.S.C. § 271(b) even though no one has committed direct infringement under Section 271(a). In the underlying decision, the Federal Circuit *en banc* abandoned the “single entity” rule for finding induced infringement of a process claim where the claim steps are performed by multiple parties rather than by a single entity alone. Thus, so long as each of the claim steps is either performed or induced by the defendant, the defendant may be held liable for induced infringement. As the majority explained, “we hold that all the steps of a claimed method must be performed in order to find induced infringement, but that it is not necessary to prove that all the steps were committed by a single entity.” Oral argument has not yet been scheduled.

3. *Nautilus, Inc., v. Biosig Instruments, Inc.*, Sup. Ct. Docket No. 13-369 (patent).

Questions presented: (1) Whether the Federal Circuit’s acceptance of ambiguous patent claims with multiple reasonable interpretations – so long as the ambiguity is not “insoluble” by a court – defeats the statutory requirement of particular and distinct patent claiming; and (2) whether the presumption of validity dilutes the requirement of particular and distinct patent claiming. The Federal Circuit decision on appeal involves the reversal of a lower court ruling that a claim to a heart rate monitor was invalid for indefiniteness as a matter of law. Section 112 of the Patent Act requires that claims be sufficiently definite to inform the public of the bounds of the protected invention; a claim is indefinite if it is “insolubly ambiguous.” The Federal Circuit held that both intrinsic and extrinsic evidence supported a reading of the claim at issue that would not be indefinite from the perspective of a person of skill in the art. Oral argument has not yet been scheduled.

4. *American Broadcasting Companies, Inc. v. Aereo, Inc.*, Sup. Ct. Docket No. 13-461 (copyright).

Question presented: Whether a company “publicly performs” a copyrighted television program when it retransmits a broadcast of that program to thousands of paid subscribers over the Internet. A Second Circuit panel affirmed 2-1 the lower court’s denial of a motion for preliminary injunction seeking to bar the online streaming of television programs to individual subscribers. The lower court held, and the Second Circuit majority agreed, that such Internet streaming is not an infringing “public performance.” Rather, the courts ruled that the defendant creates and transmits a unique copy of each program on a portion of a hard drive assigned to a single subscriber and thus does not stream “to the public.” Oral

argument has not yet been scheduled.

5. *POM Wonderful LLC v. The Coca-Cola Company*, Sup. Ct. Docket No. 12-761 (Lanham Act false advertising).

Question presented: Whether the court of appeals erred in holding that a private party cannot bring a Lanham Act claim challenging a product label regulated under the Food, Drug, and Cosmetic Act. The Ninth Circuit decision on appeal affirmed summary judgment for Coca-Cola that POM's Lanham Act challenge to Coca-Cola's use of the name and labeling for "Pomegranate Blueberry" for juice drinks was barred by the FDCA. The Ninth Circuit noted that the FDCA comprehensively regulates food and beverage labeling, and that the FDA has promulgated regulations that address how a manufacturer may name and label its juice beverages. As a result, it ruled that the naming and labeling challenges to Coca-Cola's product under the Lanham Act were barred. Oral argument has not yet been scheduled.