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Recent News in Intellectual Property

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New patent claim frustrates manufacturers

The Wall Street Journal reported that a number of lawsuits have recently been filed over the marking of products with erroneous or expired patent numbers. Until recently, the most a violator had to pay was a \$500 penalty for misleading the public with a wrong or expired patent number. However, in December 2009, the Court of Appeals for the Federal Circuit in Washington ruled that defendants could be held responsible for up to \$500 per offense. Mis-labeled products reportedly include a variety of products, such as turkey pop-up timers, toilet plungers, fabric softeners, tubes of mascara, boxes of garbage bags, flashlights, staplers, etc. In August 2010, a federal appellate court, in a case involving bow-ties sold by Brooks Brothers that listed expired patent numbers, upheld the right to sue Brooks Brothers over the mis-labeling. Numerous lawsuits had been stayed pending the outcome of this bow-tie case against Brooks Brothers. Defendants of other cases include companies such as Procter & Gamble, Bayer Healthcare LLC, Cisco Systems, and Scientific-Atlanta. Many corporations may be affected by these lawsuits, being forced to spend a considerable amount of time, money and resources to ensure that their products are properly labeled. Some intellectual property lawyers are even advising clients to stop marking patents on their products in order to limit their expense on monitoring their packages for their patent marking or to discourage others from bringing suit against erroneous patent numbers, although the absence of such markings would eliminate the companies' ability to seek damages from potential infringers.

Konami and Viacom Settle Suit over Rock Band Patents

Bloomberg reported that Japanese game maker Konami Corp. and developer of music-video games Harmonix studio and its parent company Viacom Inc. have ended two legal actions regarding alleged infringement of patents concerning music game accessories. In 2008, Konami reportedly initiated a lawsuit alleging that Harmonix's Rock Band games infringe patents related to Konami's Guitar Freaks and Drummania games. The complaint was filed in the U. S. District Court for Eastern District of Texas. In 2009, Viacom and its subsidiary Harmonix filed a lawsuit against Konami in the U.S. District Court for the District of Massachusetts, alleging that Konami's Rock Revolution video game devices infringe U.S. Patent No. 7,459,624 entitled "Game controller simulating a musical instrument." According to the recent

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Court filings, the parties reportedly agreed to dismiss all claims and counterclaims. The terms of the agreement were not disclosed.

Nichia Files Patent Suit

IP Law360 reported that Japanese LED and laser diode manufacturer Nichia Corp. has filed a patent infringement complaint against Wilmar Corp. of Renton, Virginia in the U.S. District Court for the Eastern District of Texas. Nichia reportedly alleges that Wilmar violates its U.S. Patent Nos. 5,998,925, entitled "Light emitting device having a nitride compound semiconductor and a phosphor containing a garnet fluorescent" and 7,531,960, entitled "Light emitting device with blue light LED and phosphor components," relating to white light emitting devices and U.S. Patent Nos. 5,652,434 and 6,093,965, both entitled "Gallium nitride-based III-V group compound semiconductor." Nichia is reportedly seeking an injunction, damages, treble damages, attorneys' fees and payment for the cost of litigation.

Uniloc sues Adobe, Symantec and others over Software

Bloomberg reported that Uniloc USA and Uniloc Singapore Ltd. sued Adobe, Symantec and 8 other companies for alleged infringement of a patent related to anti-piracy technology. Uniloc USA, who has offices in Irvine, California, reportedly sued 60 companies, and has obtained licensing agreements with more than 20 companies. The patent-in-suit involves U.S. Patent No. 5,490,216, entitled "System for software registration," which is related to a way to distribute and buy music, which was reportedly invented by Australian guitarist Ric Richardson. Uniloc filed the suit in the U.S. District Court for the Eastern District of Texas (Tyler), and is reportedly seeking monetary compensation and a court order to block further use of its technology.

01 Communique sues Dell and LogMeIn

PC Magazine reported that Canadian software maker 01 Communique Laboratory Inc. filed a lawsuit against Dell Inc. and LogMeIn Inc., for alleged infringement of its patent that was previously involved in litigation against Citrix Systems. In the case against Citrix, which 01 Communique won in July 2010, Citrix had filed a request for re-examination (No. 95/001,018) of 01 Communique's patent in 2008, and the U.S. Patent and Trademark Office (USPTO) reaffirmed all claims in question. The patent-in-suit, U.S. Patent No. 6,928,479 issued in August 2005, and covers a "systems computer product and method for providing a private communication portal," for providing remote access to personal computers. The suit against Dell and LogMeIn came two months after the USPTO's reaffirmation of the patent, and was filed in the U.S. District Court for the Eastern District of Virginia. 01 Communique is reportedly seeking both damages and an injunction against future infringement. LogMeIn reportedly sells LogMeIn Free, Pro, and Ignition, a service that allows a remote login to PCs via smartphones. Dell also provides remote access services that range from photo sharing to remote control of a user's entire computer.