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**Recent Developments in Patent Law
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RECENT DEVELOPMENTS IN PATENT LAW (FALL 2017)

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PATENTABLE SUBJECT MATTER	6
Amdocs (Israel) Ltd. v. Openet Telecom, Inc., 841 F.3d 1288 (Fed. Cir. Nov. 1, 2016).....	6
Thales Visionix, Inc. v. United States, 2017 WL 914618 (Fed. Cir. Mar. 8, 2017)	7
Apple, Inc. v. Ameranth, Inc., 2016 WL 6958650 (Fed. Cir. Nov. 29, 2016)	8
Intellectual Ventures I LLC v. Erie Indem. Co., 2017 WL 900018 (Fed. Cir. Mar. 7, 2017).....	9
RecogniCorp v. Nintendo Co., Ltd., 855 F.3d 1322 (Fed. Cir. Apr. 28, 2017).....	11
Visual Memory LLC v. NVIDIA Corp., No. 2016-2254, 2017 WL 3481288 (Fed. Cir. Aug. 15, 2017)	11
Cleveland Clinic Foundation v. True Health Diagnostics LLC, 859 F.3d 1352 (Fed. Cir. June 16, 2017)	13
Smart Systems Innovations, LLC v. Chicago Transit Authority, No. 2016-1233, 2017 WL 4654964 (Fed. Cir. Oct. 18, 2017)	14
DISCLOSURE.....	16
Definiteness.....	16
Sonix Tech. Co. v. Publications Int'l, Ltd., 844 F.3d 1370 (Fed. Cir. Jan. 5, 2017).....	16
Alfred E. Mann Found. for Sci. Research v. Cochlear Corp., 2016 WL 6803052 (Fed. Cir. Nov. 17, 2016)	17
One-E-Way, Inc. v. International Trade Commission, 859 F.3d 1059 (Fed. Cir. June 12, 2017)	18
Written Description	20
Amgen Inc. v. Sanofi, No. 2017-CV-1480, 2017 WL 4413412 (Fed. Cir. Oct. 5, 2017).....	20
SECTION 102	22
Helsinn Healthcare S.A. v. Teva Pharmaceutical USA, Inc., 2017 WL 1541518 (Fed. Cir. May 1, 2017)	22
OBVIOUSNESS.....	24

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Apple Inc. v. Samsung Elecs. Co., 839 F.3d 1034 (Fed. Cir. Oct. 7, 2016) (en banc).....	24
In re Nuvasive, Inc., 842 F.3d 1376 (Fed. Cir. Dec. 7, 2016)	27
In re Van Os, 844 F.3d 1359 (Fed. Cir. Jan. 3, 2017)	28
Pers. Web Techs., LLC v. Apple, Inc., 2017 WL 587132 (Fed. Cir. Feb. 14, 2017)	29
Novartis AG v. Torrent Pharm. Ltd., 2017 WL 1337268 (Fed. Cir. Apr. 12, 2017)	30
Securus Techs. Inc. v. Glob. Tel*Link Corp., 2017 WL 1458867 (Fed. Cir. Apr. 25, 2017).....	31
Rovalma, S.A. v. Böhler-Edelstahl GMBH & Co. KG, 2017 WL 1946601 (Fed. Cir. May 11, 2017).....	32
In re Stepan Co., No. 2016-1811, 2017 WL 3648528 (Fed. Cir. Aug. 25, 2017).....	33
Millennium Pharm., Inc. v. Sandoz Inc., 862 F.3d 1356 (Fed. Cir. 2017)	34
Honeywell International Inc. v. Mexichem Amanco Holding S.A., 865 F.3d 1348 (Fed. Cir. Aug. 1, 2017)	36
Southwire Co. v. Cerro Wire LLC, 870 F.3d 1306 (Fed. Cir. Sept. 8, 2017)	37
Intercontinental Great Brands LLC v. Kellogg North America Co., 869 F.3d 1336 (Fed. Cir. Sept. 7, 2017)	38
CLAIM CONSTRUCTION	40
Medicines Co. v. Mylan, Inc., 2017 WL 1279335 (Fed. Cir. Apr. 6, 2017).....	40
Aylus Networks, Inc. v. Apple Inc., 2017 WL 1946961 (Fed. Cir. May 11, 2017).....	41
Georgetown Rail Equip. Co. v. Holland L.P., No. 2016-2297, 2017 WL 3499240 (Fed. Cir. Aug. 1, 2017)	42
Homeland Housewares, LLC v. Whirlpool Corp., 865 F.3d 1372 (Fed. Cir. Aug. 4, 2017).....	42
IPCom GmbH & Co. v. HTC Corp., 861 F.3d 1362 (Fed. Cir. Aug. 21, 2017)	44
Skky, Inc. v. MindGeek, s.a.r.l., 859 F.3d 1014 (Fed. Cir. June 7, 2017)	44
INFRINGEMENT.....	46
Joint Infringement	46
Medgraph, Inc. v. Medtronic, Inc., 843 F.3d 942 (Fed. Cir. Dec. 13, 2016).....	46
Eli Lilly & Co. v. Teva Parenteral Medicines, Inc., 2017 WL 117164 (Fed. Cir. Jan. 12, 2017).....	47
Intellectual Ventures I LLC v. Motorola Mobility LLC, 870 F.3d 1320 (Fed. Cir. Sept. 13, 2017).....	48
Inducement	49
Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc., 2016 WL 7187430 (Fed. Cir. Dec. 12, 2016)	49
Doctrine of Equivalent.....	50
Power Integrations, Inc. v. Fairchild Semiconductor Int’l, Inc., 2016 WL 7187430 (Fed. Cir. Dec. 12, 2016)	50

Mylan Institutional LLC v. Aurobindo Pharma Ltd., 857 F.3d 858 (Fed. Cir. May 19, 2017).....	50
Section 271(f)	51
Life Techs. Corp. v. Promega Corp., 2017 WL 685531 (U.S. Feb. 22, 2017)	51
DEFENSES	53
Exhaustion	53
Impression Products, Inc. v. Lexmark International, Inc., 137 S. Ct. 1523 (May 30, 2017).....	53
Laches	54
SCA Hygiene Prod. Aktiebolag v. First Quality Baby Prod., LLC, 137 S. Ct. 954 (Mar. 21, 2017).....	54
Inequitable Conduct	55
Regeneron Pharmaceuticals, Inc. v. Merus B.V., 864 F.3d 1343 (Fed. Cir. July 27, 2017).....	55
REMEDIES	57
Injunction	57
Nichia Corp. v. Everlight Americas, Inc., 2017 WL 1521595 (Fed. Cir. Apr. 28, 2017).....	57
Genband US LLC v. Metaswitch Networks Corp., 861 F.3d 1378 (Fed. Cir. July 10, 2017).....	58
Amgen Inc. v. Sanofi, No. 2017-CV-1480, 2017 WL 4413412 (Fed. Cir. Oct. 5, 2017).....	58
Damages	59
Univ. of Utah v. Max-Planck-Gesellschaft zur Foerderung der Wissenschaften e.V., 2017 U.S. App. LEXIS 5125 (Fed. Cir. Mar. 23, 2017)	59
Rembrandt Wireless Techs. v. Samsung Elecs. Co., 2017 WL 1370089 (Fed. Cir. Apr. 17, 2017)	60
Mentor Graphics Corp. v. EVE-USA, Inc., 851 F.3d 1275 (Fed. Cir. Mar. 16, 2017), reh’g en banc denied, 2017 WL 3806141 (Fed. Cir. Sept. 1, 2017).....	61
Willfulness	62
WesternGeco L.L.C. v. ION Geophysical Corporation, 2016 WL 5112047 (Fed. Cir. Sept. 21, 2016)	62
Idenix Pharmaceuticals LLC v. Gilead Sciences, Inc., No. 14-CV-846, 2017 WL 4216993 (D. Del. Sept. 22, 2017).....	64
Attorneys’ Fee Awards	64

AdjustaCam, LLC v. Newegg, Inc., 861 F.3d 1353 (Fed. Cir. July 5, 2017).....	64
AIA America, Inc. v. Avid Radiopharmaceuticals, 866 F.3d 1369 (Fed. Cir. Aug. 10, 2017).....	66
Nantkwest, Inc. v. Matal, 860 F.3d 1352 (Fed. Cir. June 23, 2017), reh’g en banc granted, opinion vacated, 869 F.3d 1327 (Fed. Cir. Aug. 31, 2017).....	67
Checkpoint Systems, Inc. v. All-Tag Security S.A., 858 F.3d 1371 (Fed. Cir. June 5, 2017).....	68
PRACTICE AND PROCEDURE	70
Personal Jurisdiction	70
Xilinx, Inc. v. Papst Licensing GmbH & Co. KG, 2017 WL 605307 (Fed. Cir. Feb. 15, 2017).....	70
Venue	71
TC Heartland LLC v. Kraft Foods Group Brands LLC, No. 16-341, 581 U.S. --- (May 22, 2017)	71
In re Cray Inc., No. 2017-129, 2017 WL 4201535 (Fed. Cir. Sept. 21, 2017)	72
Privilege	73
In re OptumInsight, Inc., No. 2017-116, 2017 WL 3096300 (Fed. Cir. July 20, 2017).....	73
PLEADING	75
Lifetime Industries, Inc. v. Trim-Lok, Inc., 869 F.3d 1372 (Fed. Cir. Sept. 7, 2017).....	75
PATENT TRIAL AND APPEAL BOARD	76
Inter Partes Review Procedure	76
Wi-Fi One, LLC v. Broadcom Corp., 837 F.3d 1329 (Fed. Cir. Sept. 16, 2016), rehearing en banc granted (Jan. 4, 2017)	76
Covidien LP v. U. of Fla. Res. Found. Inc., Nos. IPR2016-01274, -01275, & -01276 (P.T.A.B. Jan. 25, 2017).....	76
Cascades Projection LLC v. Epson America Inc., 2017 WL 1946963 (Fed. Cir. May 11, 2017) (per curiam).....	77
SAS Inst., Inc. v. ComplementSoft, LLC., 825 F.3d 1341 (Fed. Cir. 2016), cert. granted sub nom. SAS Inst. Inc. v. Lee (U.S. May 22, 2017).....	77
Oil States Energy Servs., LLC v. Greene’s Energy Group, LLC, 639 Fed. Appx. 639 (Fed. Cir. 2016), cert. granted, 137 S. Ct. 2239 (U.S. June 12, 2017) (No. 16-712).....	78
Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co. Ltd., No. 2016-2321, 2017 WL 3597455 (Fed. Cir. Aug. 22, 2017).....	78

Ultratec, Inc. v. CaptionCall, LLC, No. 2016-1706, 2017 WL 3687453 (Fed. Cir. Aug. 28, 2017).....	79
Vicor Corp. v. SynQor, Inc., 869 F.3d 1309 (Fed. Cir. Aug. 30, 2017)	80
Aqua Products, Inc. v. Matal, No. 2015-1177, 2017 WL 4399000 (Fed. Cir. Oct. 4, 2017) (en banc).....	81
Assignor Estoppel	84
Husky Injection Molding Systems Ltd. v. Athena Automation Ltd., 2016 WL 5335500 (Fed. Cir. Sept. 23, 2016)	84
Mentor Graphics Corp. v. EVE-USA, Inc., 851 F.3d 1275 (Fed. Cir. Mar. 16, 2017), reh’g en banc denied, 2017 WL 3806141 (Fed. Cir. Sept. 1, 2017).....	86
Standing on Appeal.....	87
Phigenix, Inc. v. Immunogen, Inc., 845 F.3d 1168 (Fed. Cir. Jan. 9, 2017)	87
Covered Business Method Review.....	88
Unwired Planet, LLC v. Google Inc., 2016 WL 6832978 (Fed. Cir. Nov. 21, 2016).....	88
Secure Axxess, LLC v. PNC Bank Nat’l Ass’n, 2017 WL 676601 (Fed. Cir. Feb. 21, 2017), reh’g en banc denied, 859 F.3d 998 (Fed. Cir. June 6, 2017).....	89
DESIGN PATENTS	91
Design Patent Damages	91
Samsung Elecs. Co. v. Apple Inc., 137 S. Ct. 429 (December 2016).....	91
Shinn Fu Co. of America, Inc. v. Tire Hanger Corp., No. 2016-2250, 2017 WL 2838342 (Fed. Cir. July 3, 2017)	92
Amgen Inc. v. Sanofi, No. 2017-CV-1480, 2017 WL 4413412 (Fed. Cir. Oct. 5, 2017).....	92

PATENTABLE SUBJECT MATTER

***Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. Nov. 1, 2016)**

In this appeal from the Eastern District of Virginia, the Federal Circuit held that claims in Amdocs’s patents are eligible under § 101.⁴

Amdocs sued Openet for infringing the ‘065, ‘510, ‘984, and ‘797 patents. The patents together disclose a system for creating accounting and billing records reflecting network activity.⁵ The system is based on “distributed architecture,” which “minimizes network impact by collecting and processing data” in multiple locations.⁶ This architecture “thereby reduc[es] congestion in network bottlenecks, while still allowing data to be accessible from a central location”—an advantage over prior art systems that stored information in one location.⁷ Although the invention’s distributed architecture is not specifically mentioned or described in the claims at issue, the Federal Circuit had affirmed, in a prior appeal, claim constructions that read the limitation into the claims.⁸ The district court granted Openet’s motion for judgment on the pleadings, holding that the asserted claims in all four patents failed under § 101.⁹

The Federal Circuit reversed the district court’s judgment, providing similar reasons for all four patents. The court’s analysis for the ‘065 patent is representative. The court bypassed step one of the *Alice* framework, holding that even if claims are directed to ineligible abstract ideas under step one, the claims are eligible under step two because they contain sufficient inventive concepts.¹⁰ In particular, the court focused on the claim requirement, as construed, that data processing occur on distributed architecture.¹¹ The court found that such distributed processing is an unconventional technological solution to a technological problem of “massive record flows which previously required massive databases” found in the prior art.¹² Although this technological solution requires the use of generic components, like network devices, the court found that these generic components must operate in combination in an unconventional (i.e. distributed) manner to improve computer performance.¹³ Moreover, the court noted that the claims are narrowly drawn as not to unduly preempt “any and all generic enhancements of data.”¹⁴

Judge Reyna dissented.¹⁵ He first criticized the majority for avoiding step one of the *Alice* framework.¹⁶ More importantly, Judge Reyna argued that the majority’s reliance on the distributed architecture of the invention is misplaced, given that the

⁴ *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1307 (Fed. Cir. 2016).

⁵ *Id.* at 1291-92.

⁶ *Id.* at 91.

⁷ *Id.* at 92.

⁸ *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 761 F.3d 1329, 1340 (Fed. Cir. 2014).

⁹ *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 56 F. Supp. 3d 813, 815 (E.D. Va. 2014).

¹⁰ *Amdocs*, 842 F.3d at 1300.

¹¹ *Id.*

¹² *Id.* at 1300.

¹³ *See Id.* at 1300-01.

¹⁴ *Id.* at 1301.

¹⁵ *Id.* at 1307 (Reyna, J., dissenting).

¹⁶ *Id.*

limitation does not literally appear in the claim.¹⁷ He emphasized that § 101 inquiry is “not whether the specifications disclose a patent-eligible system, but whether the claims are directed to a patent ineligible concept.”¹⁸ Even as construed, he highlighted that the limitation “has no meaning in the context” of the claim; for example, the representative claim in the ‘650 patent “recites no components or structure over which the work might be ‘distributed.’”¹⁹ Judge Reyna would find the ‘065 and ‘797 patents ineligible, but he ultimately agreed with the majority on the eligibility of the ‘510 and ‘984 patents on other grounds.²⁰

***Thales Visionix, Inc. v. United States*, 2017 WL 914618 (Fed. Cir. Mar. 8, 2017)**

In this appeal from the Court of Federal Claims, the Federal Circuit held that claims of the ‘159 patent are patent-eligible under § 101.²¹

The ‘159 patent discloses “an inertial tracking system for tracking the motion of an object relative to a moving reference frame.”²² When mounted on a moving object, inertial sensors can calculate the position, orientation, and velocity of an object relative to a known starting position.²³ The inertial sensor system disclosed in the ‘159 patent improves on prior art by specifying a particular configuration of multiple sensors to better calculate the position of an object.²⁴ The lower court held that all claims were directed to patent-ineligible subject matter under § 101.²⁵ It specifically found that the claims were directed to the abstract idea of using “mathematical equations for determining the relative position of a moving object to a moving reference frame.”²⁶

The Federal Circuit reversed and remanded, finding that the claims are not directed to an abstract idea under *Alice* step one.²⁷ The court first cautioned that although claims of the ‘159 patent do “utilize mathematical equations to determine the orientation of the object,”²⁸ that a “mathematical equation is required to complete the claimed method and system does not doom the claims to abstraction.”²⁹ The court found the Supreme Court’s decision in *Diehr* to be particularly relevant.³⁰ There, the Court explained that claims are patent eligible under § 101 “when a claim containing a mathematical formula implements or applies that formula in a structure or process which, when considered as a whole, is performing a function which the patent laws were

¹⁷ *Id.*

¹⁸ *Id.* at 1312.

¹⁹ *Id.* at 1314.

²⁰ *Id.* at 1307.

²¹ *Thales Visionix, Inc. v. United States*, 2017 WL 914618, at *1 (Fed. Cir. Mar. 8, 2017).

²² *Id.* at *1 (citing U.S. Patent No. 6,474,159).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at *2 (citing *Thales Visionix, Inc. v. United States*, 122 Fed. Cl. 245 (2015)).

²⁶ *Thales*, 122 Fed. Cl. at 252.

²⁷ *Id.* at *5.

²⁸ *Id.* at *4.

²⁹ *Id.* at *5.

³⁰ *Diamond v. Diehr*, 450 U.S. 175 (1981).

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