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IP UPDATES

APRIL 30, 2025

USPTO UPDATE

USPTO Accelerating Issue Dates of Patents

BY SAMEER GOKHALE

The U.S. Patent and Trademark Office (USPTO) announced that, effective on May 13, 2025, the time between Issue Notification and Issue Date will be reduced to approximately two weeks. Previously, this time period averaged around three weeks. The official announcement states that this move will allow patent holders to bring their investments to the market earlier, avoid the need to file a Quick Path Information Disclosure Statement, and provide earlier protection for inventions.

The ability to publish electronic grants (eGrants) via the USPTO's online platform has helped to reduce the time between grant notification and the issuance date.

Patent practitioners need to pay attention to the shortened amount of time for filing continuing applications, which should be filed before the payment of the issue fee to ensure co-pendency.

CAFC UPDATE

Federal Circuit Expands Domestic Industry Definition for ITC § 337 Jurisdiction

BY RICHARD KELLY

In Lashify, Inc. v. International Trade Commission, the Court of Appeals for the Federal Circuit (CAFC) greatly expanded the ITC jurisdiction compared with its previous practice. Lashify, Inc., a U.S.-based company specializing in eyelash extensions and related products, filed a complaint with the International Trade Commission (ITC) alleging that several entities were importing products that infringed its patents. Lashify owns three patents relevant to this case: one utility patent (U.S. Patent No. 10,721,984) and two design patents (U.S. Design Patent Nos. D877,416 and D867,664). The utility patent covers methods and structures for eyelash extensions, while the design patents protect the ornamental designs of storage cartridges and applicators.

The ITC denied relief on the design patents for failure to meet the economic prong which the ITC has held required the Complainant to demonstrate significant investment in plant/equipment, employment of labor/capital, or substantial investment in exploitation (e.g., research and development). The ITC found Lashify's evidence insufficient to establish this requirement. Lashify had the products covered by the design patents manufactured overseas by two different contract manufacturers. Lashify had argued it met the economic prong which demands significant investment in plant and equipment, significant employment of labor or capital, or substantial investment in exploitation of the patents. The ITC excluded expenses related to sales, marketing, warehousing, quality control, and distribution, deeming them insufficient to establish a domestic industry. The ITC did not consider these activities to be any different from any other importers of products. The Federal Circuit reversed and remanded. The Federal Circuit agreed the ITC applied an incorrect legal standard for the economic-prong. The Court held that significant employment of labor or capital should include expenses related to sales, marketing, warehousing, quality control, and distribution. The court vacated the ITC's decision on the economic prong and remanded for reevaluation regarding the design patents.

The Court does not follow the ITC's statutory interpretation which excluded several categories of spending from qualifying, standing alone, under section 337(a)(3)(B). Instead it exercised its "independent judgment" concerning the proper interpretation of 337(a)(3)(B). *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369, 412 (2024). The statute reads:

> [A]n industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent . . .concerned—
> (A) significant investment in plant and equipment;
> (B) significant employment of labor or capital; or
> (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

This interpretation makes it possible for companies who import their product into the U.S. and expend money on warehousing, marketing, sales, and distribution in the U.S. on these activities to bring an ITC action which is much quicker and cheaper than a district court action and does not allow for jury trial.

A copy of the decision can be found **here**.

AI UPDATE

CAFC Weighs In On Machine Learning in *Recentive Analytics v. Fox Corp.*

BY SAMEER GOKHALE

On April 18, 2025, the Court of Appeals for the Federal Circuit (CAFC) issued a precedential decision finding that claims that do no more than apply established methods of machine learning to a new data environment are not patent eligible. A copy of the decision can be found **here**.

Recentive sued appellees Fox Corp. for infringement of their patents related to the use of machine learning for the generation of network maps and schedules for television broadcasts and live events. The district court dismissed, concluding that the patents were directed to ineligible subject matter under 35 U.S.C. §101. The CAFC affirmed the dismissal.

The Court concluded by stating that "Machine learning is a burgeoning and increasingly important field and may lead to patent-eligible improvements in technology. Today, we hold only

that patents that do no more than claim the application of generic machine learning to new data environments, without disclosing improvements to the machine learning models to be applied, are patent ineligible under § 101."

Please see our blog post on this important decision **here**.

LIFE SCIENCES NEWS

Impermissible Hindsight Leads to Reversal of Obviousness Finding

BY DEREK LIGHTNER, PhD

In the appeal of a U.S. application to the Patent Trial and Appeal Board (PTAB), a finding of obviousness by the examining corps was reversed by the PTAB for the improper reliance on hindsight. The decision can be found **here**.

The application described a problem sought to be solved as including accurately measuring fat content in raw meat. The PTAB found that the examining corps never explained how the prior art would have provided an "apparent reason to mix lean meat with liquified meat fat that is substantially free of lean meat to produce a comminuted meat product having a target lean point as required by Appellant's independent claim." The PTAB thus considered the examining corps' finding to be based on impermissible hindsight.

This case is significant since it is rare that "impermissible hindsight" is a successful argument at the USPTO.

For our analysis of this case, please see our blog post **here**.

The Limits of Inherency in Product-by-Process Claims, and When is an Isolated Cell Actually a Population?

BY LUCAS KOZIOL, PhD

The Court of Appeals for the Federal Circuit (CAFC) affirmed a Patent Trial and Appeal Board (PTAB) decision for a patent under inter partes review, where the PTAB held that the challenged claims were not shown to be unpatentable. For the patents directed to stem cells with specific cell markers, the Court affirmed the Board's conclusion that the prior art processes did not necessarily produce cells having the claimed expression and non-expression profile.
For our analysis of this case, please see our blog post **here**.

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