New and Useful - January 23, 2013

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- In **Wax v. Amazon Techs**., the Federal Circuit upheld the TTAB's denial of registration of the mark AMAZON VENTURES. Applicant filed and intent-to-use application to register the mark for "investment management, raising venture capital for others, . . . and capital investment consultation." Amazon Technologies, Inc.—online retailer and owner of several AMAZON.COM marks—opposed the registration. The TTAB concluded that Amazon Technologies, Inc. had priority in the AMAZON.COM marks, and that there was a likelihood of confusion between Amazon Technologies' marks and those of the applicant. The Applicant challenged the TTAB's findings that (1) Amazon Technologies' marks are famous, (2) the similarity of Amazon Technologies' mark to AMAZON VENTURES, and (3) the similarity of the parties' services and channels of trade. The Federal Circuit confirmed the TTAB's findings, based in part on the wide latitude of protection afforded to Amazon Technologies' on account of its fame within the buying public.
- The Eighth Circuit Court of Appeals **affirmed a district court's judgment and damages** for Hallmark Cards, Inc. against a former employee for breach of contract and misappropriation of trade secrets. The district court entered the jury's award of damages in the amount of $860,000. The Eight Circuit affirmed $735,000 of the damages as they related to breach of contract and disclosure of trade secrets, but overturned $125,000 the former employee earned in compensation from a competitor.
- The Federal Circuit has **dismissed as moot an appeal from a patent infringement suit**. Allflex U.S.A., Inc. sued Avid Identification

Systems, Inc. seeking a declaratory judgment that six of Avid's patents were unenforceable due to inequitable conduct. The district court granted partial summary judgment in favor of Allflex, at which time the parties entered into a settlement agreement that resolved all of the claims and issues between the parties upon payment of $6.55 million from Avid to Allflex, except for a provision that allowed Avid to appeal three specific issues. The agreement further provided that Allflex could contest any appeal on the merits, but could not dispute the existence of a live case or controversy, and that if Avid were successful on any issue on appeal, the payment to Allflex would be reduced by $50,000. The district court accepted the settlement agreement and entered a stipulated order of final judgment that stated the case was dismissed with prejudice with the exception of findings the court considered "final and ripe for appellate review." Avid then appealed to the Federal Circuit, but Allflex declined to file a brief defending the judgment of the district court.

The Federal Circuit concluded that the appeal was moot. Avid argued that, although the case would be moot if it were not for the $50,000 contingency payment, that payment ensured that there was a real controversy between the parties. The court dismissed Avid's argument, concluding that while the district court's decision was effectively final and therefore appealable, Allflex no longer had a legally cognizable interest in any of the issues in the case, and the payment was insufficient to create any interest

- The USPTO has **announced the new fee schedule**. The changes, initiated under the Leahy-Smith America Invents Act, are set to take effect March 19, 2013. Among the notable changes are:
    - A 75% reduction in most fees for micro entities, including Universities.
    - Increase in basic filing fee: $1,600 (large entity); $800 (small entity); $400 (micro entity)
    - Increase in appeal fees, due in large part to a new "Appeal Forwarding Fee for Appeal in Examination or *Ex Parte* Reexamination Proceeding or Filing a Brief in Support of an Appeal in *Inter Partes* Reexamination": $2,800 (large entity); $1,400 (small entity); $700 (micro entity)
    - Decrease in issue fees: $960 (large entity); $480 (small entity); $240 (micro entity)
    - Increase in maintenance fees:
        - First (3.5 years): $1,600 (large entity); $800 (small entity); $400

(micro entity)
- Second (7.5 years): $3,600; $1,800; $900
- Third (11.5 years): $7,400; $3,700; $1,850

- Decrease in supplemental examination fees: $16,500 (large entity); $8,250 (small entity); $4,125 (micro entity)

The complete finalized rules are available **here**.