Federal Circuit Overrules Union Carbide Case

August 19, 2009

On August 19, 2009 the Court of Appeals for the Federal Circuit, in an *en banc* portion of the decision rendered in *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc*., held that 35 U.S.C. 271(f) does not apply to method or process patents – since these patents do not include the required "components of a patented invention" that the statute requires for infringement to be found.

The Federal Circuit's *en banc* majority opinion is consistent with the Supreme Court's 2007 decision in *Microsoft Corp. v. AT&T Corp*., where the Court held that Section 271(f) did not apply to master disks of the Microsoft Windows operating system that were shipped abroad to permit the software to be installed in foreign computers. The Supreme Court stated that Microsoft Windows "in the abstract" (i.e., on the master disk) is not a component that violates Section 271(f).

Judge Newman issued a 17 page dissent arguing that Section 271(f) applies to "all patented inventions," including method and process patents, contending that the steps of a process or a method patent are the required "components" of the invention.

Please click here to view the decision.

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