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Federal Circuit Patent Bulletin: *Vaillancourt v. Becton Dickinson & Co.*

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"The unambiguous language of [35 U.S.C.] § 141 provides that a patent owner alone can appeal a final decision in an inter partes reexamination to [the Federal Circuit]."

On April 24, 2014, in *Vaillancourt v. Becton Dickinson & Co.*, the U.S. Court of Appeals for the Federal Circuit (Rader,* Linn, Taranto) dismissed the appeal by Vaillancourt of the Patent Trial and Appeal Board decision upholding the patent examiner's rejection during inter partes reexamination of the claims of U.S. Patent No. 6,699,221, which related to bloodless over-the-needle catheters. The Federal Circuit stated:

Vaillancourt obtained ownership of the '221 patent from his mother through an assignment recorded with the U.S. Patent and Trademark Office on April 15, 2011. . . . On August 12, 2010, Appellee Becton Dickinson & Company (BD) requested an inter partes reexamination of the '221 patent. . . . The patent examiner rejected all thirty-seven claims of the '221 patent. Vaillancourt appealed these rejections to the Board on April 25, 2011. However, on April 24, 2012, while the reexamination appeal was still pending, Vaillancourt assigned to VLV "the entire right, title and interest in and to" the '221 patent, "including full and exclusive rights to sue upon and otherwise enforce" the patent. Then on April 27, 2012, VLV initiated suit against BD for infringement of the '221 patent in the U.S. District Court for the District of New Jersey. VLV sued in its own name and did not join Vaillancourt to the suit. On June 29, 2012, the Board affirmed all of the examiner's rejections. Despite no longer being the owner of the '221 patent, Vaillancourt requested a rehearing with the Board in his own name.

The Board denied Vaillancourt's request to alter the prior affirmance of the examiner's rejections. Vaillancourt appealed to this court, identifying himself in the notice of appeal as both the patent owner and appellant. . . .

Statutory interpretation focuses on the language of the statute itself. A statute's unambiguous language "must ordinarily be regarded as conclusive." . . . The unambiguous language of [35 U.S.C.] § 141 provides that a patent owner alone can appeal a final decision in an inter partes reexamination to this court. Thus, the statute itself sets the requirements for bringing an appeal here. The statute requires the patent owner to initiate any appeal.

Vaillancourt concedes, as he must, that he is not the owner of the '221 patent and that VLV, the actual owner, does not appear before this court in the appeal. He therefore cannot bring this case under § 141. Nevertheless, Vaillancourt claims in an affidavit that despite his assignment of the entire right, title, and interest in the '221 patent to VLV, he was "authorized to continue with all related proceedings including further appeals" in connection with the reexamination. With this purported retention of rights, and because he is apparently the sole owner of VLV, Vaillancourt asserts that he is authorized to proceed with this appeal on behalf of VLV.

In essence, Vaillancourt suggests that § 141 allows a patent owner to delegate to a third party its authority to bring an appeal to this court. Beyond the assertion of this concept, Vaillancourt offers no further support for his interpretation of the statute. Instead, he states that while the unambiguous language of § 141 does not explicitly provide for such delegation, the section does not explicitly bar it either. This assertion carries no weight in the face of a statutory requirement. The statute also does not forbid a patent owner's travel agent from filing an appeal, but that hardly justifies interpreting the statute to extend to such unmentioned categories. Section 141 grants a procedural right to the patent owner to appeal decisions from the PTAB. This court sees no reason—and Vaillancourt provides none—to extend that procedural right beyond what is clearly set forth in § 141. . . . Therefore, this court dismisses the appeal.