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IP Newsflash

08.29.14

FEDERAL CIRCUIT CASES

Apple's Motion for Permanent Injunction Denied

After the court found that Samsung infringed one of Apple's patents on summary judgment and a jury found that Samsung infringed two others, Apple filed a motion for a permanent injunction. On August 27, 2014, the court entered an order denying Apple's motion for a permanent injunction. Apple asserted that it had suffered two forms of irreparable harm: (1) damage to its reputation as an innovator and (2) harm from sales-based losses. The court found that Apple failed to show irreparable harm, because, among other reasons:

(1) the evidence does not show that Apple's reputation suffered as a result of Samsung's infringement;
(2) Apple's claimed harm to its reputation as an innovator is undermined by the presence of patented features in non-Apple products regardless of an injunction; and
(3) Apple's reputation makes it less likely to be irreparably harmed by the presence of Apple's three patented features in Samsung's products.

"Weighing all of the factors, the court conclude[d] that the principles of equity do not support a permanent injunction here. First and most importantly, Apple has not satisfied its burden of demonstrating irreparable harm and linking that harm to Samsung's exploitation of any of Apple's three infringed patents. Apple has not established that it suffered significant harm in the form of either lost sales or reputational injury. Moreover, Apple has not shown that it suffered any of these alleged harms because Samsung infringed Apple's patents. The Federal Circuit has cautioned that the plaintiff must demonstrate a causal nexus between its supposed harm (including reputational harm) and the specific infringement at issue. Apple has not demonstrated that the patented inventions drive consumer demand for the infringing products." Order Denying Apple's Motion for Permanent Injunction at 42. For these reasons, the court denied Apple's request for a permanent injunction.

Apple, Inc. v. Samsung Electronics Co. Ltd., Case No. 12-cv-00630, (N.D. Cal. Aug. 27, 2014).

- *Author:* Kellie Johnson

The Federal Circuit Invalidates Planet Bingo Patents for Lack of Patentable Subject Matter Under *Alice Corp. v. CLS Bank*

On August 26, 2014, the Federal Circuit invalidated two Planet Bingo patents directed to computer implemented methods for managing bingo games, ruling that the patents cover patent ineligible subject matter under the Supreme Court's opinion in *Alice Corporation v. CLS Bank International,* 134 S. Ct. 2347 (2014).

Planet Bingo filed a patent infringement lawsuit against VKGS in the United States District Court for the Western District of Michigan, alleging infringement of U.S. Patent Nos. 6,398,646 and 6,656,045. The district court granted VSGS's motion for summary judgment of non-infringement on the ground that the asserted claims are invalid for lack of patentable subject matter under 35 U.S.C. § 101.

In a unanimous decision authored by Judge Hughes, the Federal Circuit affirmed the district court's ruling that the Planet Bingo patents are invalid because they preempt the abstract idea of playing bingo using a general purpose computer. The patents cover computerized method of storing bingo numbers, comparing them to the numbers selected by players and verifying winning numbers. The Federal Circuit found that the patents cover nothing more than an abstract idea because "managing the game of bingo consists of mental steps which can be carried out by a human using pen and paper." The Federal Circuit noted that abstract ideas can be patent-eligible if the patent involves an "inventive concept" under *Alice Corporation*, but the Federal Circuit declined to find that Planet Bingo's patents met this standard.

In rejecting Planet Bingo's argument that its computerized system is not abstract because it can store "literally thousands, if not millions" of bingo numbers that a human could not remember, the Federal Circuit noted that the patents do not teach anything about storing millions of numbers, and only mention comparing one set of stored numbers with numbers selected by a player. Because "the claims fall short of capturing an invention that necessarily handles 'thousands, if not millions' of bingo numbers or players," the Federal Circuit declined to address whether a claimed invention requiring that many transactions "might tip the scales of patent eligibility."

Planet Bingo, LLC v. VKGS LLC, No. 2013-1663 (Fed. Cir. 2014).

- *Author:* Emily Johnson

DISTRICT COURT CASES

Court Reaffirms That Honesty Is Still the Best Policy

Earlier this week, a court in the Southern District of Texas sent out a not so gentle reminder that lying to the court is never a good idea. In *Tesco Corp. v. Weatherford Int'l, Inc et al.,* Tesco's counsel tried to salvage its case by making blatantly false misrepresentations to the court after surprising trial testimony by the patent inventor threatened to end the case. Those misrepresentations proved temporarily successful when the jury rendered a verdict that some of the patent's claims were valid. However, that victory was short-lived. During post-trial discovery, the misrepresentations were uncovered and the court, disappointed in Tesco's counsel's "deliberate and advantage-seeking untruthful conduct," used its inherent sanctioning powers to dismiss Tesco's case with prejudice. Unfortunately for Tesco—and Tesco's counsel—the Court was not done. The court also stated that it would entertain motions for attorney's fees based on its ruling—attorney's fees that may be paid by Tesco's counsel alone.

Tesco Corp. v. Weatherford Int'l, Inc., et al., No. 4:08-cv-02531 (S.D. Tex. Aug. 25, 2014) (Ellison, J.).

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