



09.10.15

FEDERAL CIRCUIT CASES

Federal Circuit Reverses Obviousness Ruling on Medical Device Patents

On September 8, 2015, the Federal Circuit reversed a district court's summary judgment ruling invalidating three patents owned by Ivera Medical Corporation covering a disinfectant cap for medical devices under 35 U.S.C. § 103. In a unanimous opinion authored by Judge Reyna, the panel held that "Ivera established a genuine dispute over whether one of ordinary skill in the art would have been motivated to add a vent to the disinfecting cap described in the [prior art]."

In 2011, Ivera sued Hospira for patent infringement in the U.S. District Court for the Southern District of California. Ivera's patents are related to caps used for medical devices. The caps are filled with a cleaning agent to prevent the spread of infectious agents and include vents to relieve pressure and permit evaporation. Hospira alleged that Ivera's patents would be obvious in view of the prior art that disclosed an antiseptic cap for medical devices and the benefits of venting a cap for medical devices.

The district court granted summary judgment to Hospira, ruling that it would be obvious to add vents to a cap to arrive at the claimed invention. The district court concluded that skilled artisans would not "need the benefit of hindsight to realize that adding a vent would relieve possible pressure on the inside of the cap," finding there to be "little difference" between the prior art and Ivera's invention except for the vent. The Federal Circuit disagreed, finding that Ivera had presented persuasive expert declarations that persons skilled in the art would have desired fluid-tight caps without vents at the time of the invention, creating a genuine factual dispute precluding summary judgment.

Ivera Medical Corporation v. Hospira, Inc., No. 2014-1613, -1614 (Fed. Cir. Sept. 8, 2015).

- Author: [Emily Johnson](#)

DISTRICT COURT CASES

Dropping Claims Right Before Trial Does Not Warrant Attorneys' Fees

After the jury returned a defense verdict of non-infringement and invalidity, defendant Cerner Corporation moved for attorneys' fees under 35 U.S.C. § 285. Cerner argued that the case was exceptional because plaintiff litigated the case in an unreasonable manner and pursued substantively meritless claims. Specifically, Cerner argued that, (1) plaintiff's indirect infringement theories and validity arguments were completely lacking in substantive strength; and (2) plaintiff litigated this case in an unreasonable manner by (i) dropping all asserted claims of one patent and several of another on the eve of trial; (ii) dropping its willfulness allegations after the Court relied on those allegations to admit a key piece of evidence that painted Cerner in a bad light; and (iii) seeking to change its infringement theory prior to and during trial.

The Court determined that the bulk of plaintiff's claims were not devoid of evidentiary support and that there is "nothing exceptional about a patentee defending its presumptively valid patent." *Id.* at 5. In addition, the Court noted that "[it] has repeatedly voiced its displeasure with some of [plaintiff's] trial tactics. . . . But the Court concludes that they do not rise to the level of exceptional conduct for which an award of fees is warranted. Significantly, [defendant] makes no allegations of unprofessional conduct from [plaintiff's] counsel for the more than two years this case was litigated prior to trial. . . . The concerns [defendant] raises involve decisions made during the heat of trial." *Id.* at 8 (citations omitted).

- Author: [Kellie Johnson](#)

Court Enters Final Judgment of Invalidity Pursuant to Fed. R. Civ. P. 54(b) as to Fewer Than All Asserted Claims

Judge Robinson had previously granting Cox's motion for partial summary judgment that six Sprint patents were invalid for indefiniteness. The claims of those patents each included the limitation "processing system." The Court found that the limitation was described in different ways in the asserted patents, and that there was no established meaning for the limitation in the art. As such, the Court held that the Sprint patents with this limitation were invalid under *Nautilus* because a person of ordinary skill in the art was not provided with the bounds of the claimed invention.

In a subsequent decision, Judge Robinson granted Cox's motion to enter a Rule 54(b) judgment on the six Sprint patents that were invalid for indefiniteness. Rule 54(b) allows a district court to enter final judgment as to fewer than all asserted claims if the court expressly determines that there is no reason to delay the entry of judgment. Judge Robinson rejected Sprint's argument that entry of a Rule 54(b) judgment was inappropriate because the indefiniteness decision was not final since the court had not decided all issues relating to the invalid patents. The Court explained that once a patent has been determined to be invalid (or not infringed), the court need no longer address any other defenses, since a defendant only needs to prevail on one defense, not all defenses.

The invalidated Sprint patents are also being asserted against a group of defendants in the district court in Kansas and are scheduled to be tried in January 2016. In view of that, Sprint argued that it makes more sense for the Kansas parties to try all issues asserted with respect to the indefinite Sprint patents and for all parties to appeal all issues with respect to those patents to the Federal Circuit. Judge Robinson rejected this argument too, noting that in the interest of sound judicial administration, there is no reason to delay entry of judgment so as to give the Federal Circuit an opportunity to review her decision. The Court recognized that a final judgment in the Kansas trial, including resolution of post-trial briefing, was potentially many months away and in view of that, there was no justifiable reason to delay the entry of a final judgment as to the Sprint patents.

Cox Communications Inc. v. Sprint Communications Co. L.P., 12-487-SLR (D. Del. Aug. 27, 2015) (Judge Robinson).

- Author: [Angie Verrecchio](#)

CONTACT INFORMATION

If you have any questions regarding this issue of *IP Newsflash*, please contact—

[Todd Eric Landis](#)
tlandis@akingump.com
214.969.2787

[Michael Simons](#)
msimons@akingump.com
512.499.6253

www.akingump.com



© 2015 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party. Lawyers in the London office provide legal services through Akin Gump LLP, practicing under the name Akin Gump Strauss Hauer & Feld. Akin Gump LLP is a New York limited liability partnership and is authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG.

[Update](#) your preferences | [Subscribe](#) to our mailing lists | [Forward](#) to a friend | [Opt out](#) of our mailing lists | [View](#) mailing addresses