Greenblum & Bernstein, P.L.C.
LITIGATION NEWSLETTER
Recent Litigation News in Intellectual Property

December 2011

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Federal Circuit Reverses Summary Judgment Of Invalidity Under 35 U.S.C. § 112.

In *Typhoon Touch Technologies, Inc. v. Dell, Inc., Appeal No. 2009-1589*, the Federal Circuit affirmed the district court's finding of no infringement, but reversed the district court's grant of summary judgment of invalidity based on 35 U.S.C. § 112 (indefiniteness). The two patents-in-suit claimed a portable computer with a touch screen. The district court held certain claims of both patents invalid on the ground that the claim term "means for cross-referencing said responses with one of said libraries of said possible responses" was indefinite. Specifically, the district court held that the specification did not contain an "algorithm" adequate to provide structure for this function. The Federal Circuit reversed the district court holding that, although the mathematical algorithm of the programmer was not included in the patents' specifications, the specifications recited in prose the algorithm to be implemented by the programmer.

Federal Circuit Holds No Inequitable Conduct For Failing To Update PTO.

In *Powell v. Home Depot U.S.A., Inc., Appeal No. 2010-1409*, the Federal Circuit affirmed the district court's finding that Powell had not committed inequitable conduct. Powell had filed a Petition to Make Special to expedite prosecution of his patent application relating to a safety guard for a radial arm saw. However, Powell failed to notify the Patent Office when the grounds for his petition changed, *i.e.*, that he was no longer obligated to build and supply devices embodying the claimed invention. The Federal Circuit held that Powell's inaction met neither the but-for materiality standard, nor rose to the level of "affirmative egregious misconduct" that would result in a finding of inequitable conduct.

Federal Circuit Finds Prior Agreement Precluded Award Of Certain Costs.

In *In re Ricoh Co., Ltd., Appeal No. 2011-1199*, the Federal Circuit reversed the district court's award of certain discovery-related costs. Defendant Synopsys sought costs from Ricoh after the district court granted a motion for summary judgment of no infringement, including costs related to a third-party electronic database. However, the parties had previously agreed to share the cost of the database. As such, in view of this prior agreement, the Federal Circuit held that the costs related to the third-party electronic database were improperly awarded in reversing the district court.

Federal Circuit Affirms Dismissal For Lack Of Standing.

In *Gellman v. Telular Corp., Appeal No. 2011-1196*, the estate of Mayer

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Michael Lebowitz ("Lebowitz Trust"), a co-inventor named on the patent-in-suit, filed a complaint for patent infringement against several parties. However, the other co-inventor named on the patent-in-suit, James Seivert, was not joined as a party. The district court held that the Lebowitz Trust was, at best, a joint legal owner, and that the Lebowitz Trust's attempts to show that Mr. Seivert's ownership interest had been legally transferred to the Lebowitz Trust lacked evidentiary support and misapplied the law. The district court dismissed the case without prejudice for lack of standing.

The Federal Circuit stated that it is well-established that a patent infringement case cannot proceed without the participation of all legal owners, and held that the district court did not err in dismissing the case without prejudice for lack of standing. The Federal Circuit also rejected the appellees' contention that the dismissal should have been with prejudice.