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Federal Circuit Vacates Judgment Of Noninfringement

In *Richard A. Williamson v. Citrix Online LLC, Citrix Systems Inc.*, (Appeal No. 2013-1130), the Federal Circuit vacated the district court's claim construction.

The district court issued a claim construction order, construing "graphical display representative of a classroom" and "first graphical display comprising . . . a classroom region" (collectively, the "graphical display" limitations). The district court held that these terms require "a pictorial map illustrating an at least partially virtual space in which participants can interact, and that identifies the presenter(s) and the audience member(s) by their locations on the map."

The district court additionally concluded that the limitation "distributed learning control module," was a means-plus-function term under 35 U.S.C. § 112, para. 6. The district court then evaluated the specification and concluded that it failed to disclose the necessary algorithms for performing all of the claimed functions. The district court thus held the claims reciting this limitation invalid as indefinite under § 112, para. 2. Based on these claim construction, the plaintiff stipulated to judgment of no infringement and appealed.

On appeal, the Federal Circuit held that the district court erred in construing the "graphical display" limitations as requiring a "pictorial map." The Federal Circuit reasoned that the claim language itself contains no such "pictorial map" limitation. "While the specification discloses examples and embodiments where the virtual classroom is depicted as a "map" or "seating chart," nowhere does the specification limit the graphical display to those examples and embodiments." There was no suggestion in the intrinsic record that the applicant intended the claims to have the limited scope determined by the district court. Accordingly, the Federal Circuit held that the district court incorrectly construed the graphical display terms to have a "pictorial map" limitation, and further held that the graphical display" limitations were to be properly construed as "a graphical representation of an at least partially virtual space in which participants can interact."

The Federal Circuit also held that the district court erred in concluding that "distributed learning control module" is a means-plus-function claim term. Referring to dictionaries, the Federal Circuit ruled that the definitions all show that the term "module" has a structure connoting meaning to persons of ordinary skill in the computer arts."

Accordingly, because the district court erred in construing the "graphical

display" limitations and the "distributed learning control module" limitation, the stipulated judgment of non-infringement and the judgment of invalidity were vacated and the case was remanded to the district court.

Federal Circuit Affirms Invalidity Under 35 U.S.C. § 251

In *Antares Pharma v. Medac Pharma* (Appeal No. 2014-1648), the Federal Circuit affirmed the district court's denial of Antares's motion for preliminary injunction holding that the asserted claims in a Reissue patent violated the recapture rule.

Antares filed a motion for preliminary injunction against Medac Pharma asserting infringement of Reissue Patent RE 44,846 ("the '846 patent") which reissued from U.S. Patent No. 7,776,015 ("the '015 patent"). During prosecution of the '015 patent, the applicants repeatedly distinguished their invention from the prior art by focusing on the "jet injector" limitation present in the claims but not the prior art. All of the originally issued claims recited the "jet injection" limitation.

The district court found that Antares had broadened its reissue claims which no longer recited the "jet injection" limitation, and now covered any "injection device." The district therefore held that the reissue claims were invalid because they violated the original patent requirement and the recapture rule.

On appeal, the Federal Circuit noted that generally, the recapture rule prohibits applicants from claiming on reissue claim scope surrendered during the course of the original prosecution. The Federal Circuit agreed with the district court that the claims had been improperly broadened, and affirmed the district court's denial of Antares' preliminary injunction holding that the claims on appeal were invalid for failure to satisfy the original patent requirement of 35 U.S.C. § 251.

Federal Circuit Affirms Invalidity Under 35 U.S.C. § 101

In *Ultramercial v. Hulu and WildTangent* (Appeal No. 2010-1544), the Federal Circuit affirmed the district court's granting of a motion to dismiss on the ground that the patent-in-suit did not claim patent-eligible subject matter under 35 U.S.C. § 101.

Originally, the district court granted a motion to dismiss under Fed. R. Civ. P. 12(b)(6) on the grounds that the patent-in-suit did not claim patent-eligible subject matter under 35 U.S.C. § 101. On appeal, the Federal Circuit reversed, concluding that the district court erred in granting the motion to dismiss. WildTangent then filed a petition for a writ of certiorari, requesting review by the Supreme Court. The Supreme Court granted the petition, vacated the Federal Circuit's decision, and remanded the case for further consideration in light of its decision in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. ___, 132 S. Ct. 1289 (2012). On remand, the Federal Circuit again reversed, concluding that the district court erred in granting WildTangent's motion to dismiss for failing to claim statutory subject matter. WildTangent filed another petition for certiorari again requesting review by the Supreme Court. While WildTangent's petition was pending, the Supreme Court issued its decision in *Alice Corp. v. CLS Bank International*, 573 U.S. ___, 134 S. Ct. 2347 (2014).

In the Alice case, the Supreme Court affirmed the Federal Circuit's

judgment that method and system claims directed to a computer-implemented scheme for mitigating settlement risk by using a third party intermediary were not patent-eligible under § 101 because the claims "add nothing of substance to the underlying abstract idea." The Supreme Court in *Alice* made clear that a claim that is directed to an abstract idea does not move into § 101 eligibility territory by "merely requir[ing] generic computer implementation."

Subsequently, the Supreme Court granted WildTangent's petition for a writ of certiorari, vacated the Federal Circuit's decision, and remanded the case for further consideration in light of *Alice*.

Upon further review of the patent-in-suit and the standards adopted by the Supreme Court, the Federal Circuit concluded that the patent-in-suit did not claim patent eligible subject matter. Accordingly, the Federal Circuit affirmed the district court's grant of WildTangent's motion to dismiss.

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