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IP NEWS

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Federal Circuit Clarifies Pleading Requirements for Patent Cases and Affirms Grant of Summary Judgment of Invalidity Under 35 U.S.C. §101

On July 13, 2021, a Federal Circuit panel of Judges Dyk, Linn, and O'Malley issued a unanimous opinion, authored by Judge O'Malley, in *Bot M8 LLC v. Sony Corp. of America*, Case No. 2020-2218. The panel reversed the Northern District of California's finding that Bot M8's infringement allegations were insufficient with respect to two of the patents-in-suit, affirmed the district court's dismissal of Bot M8's claims as to two other patents-in-suit for failure to state a plausible claim of infringement, affirmed the district court's judgment of invalidity of one of the patents under 35 U.S.C. §101, and remanded for further proceedings. Slip Op. at 3-4.

Bot M8 LLC (Bot M8) sued Sony Corporation of America, et al. (Sony) for infringement of U.S. Patent Nos. 8,078,540 (the '540 patent); 8,095,990 (the '990 patent); 7,664,988 (the '988 patent); 8,112,670 (the '670 patent); and 7,338,363 (the '363 patent) (collectively, the asserted patents). *Id*. at 2. The asserted patents are directed generally to casino, arcade, and video games. *Id*. at 4. Bot M8 accused Sony's PlayStation 4 (PS4) video game consoles of infringing the '540, '990, '988, and '670 patents. *Id*. at 5. Bot M8 also accused certain PS4 videogames of infringing the '363 patent. *Id*.

Bot M8 filed a first amended complaint and Sony moved to dismiss for failure to state a claim. *Id*. at. 2-3. The district court granted dismissal as to the '540, '990, '988, and '670 patents. *Id*. The district court subsequently denied Bot M8's motion for leave to file a second amended complaint and a motion for reconsideration of the same. *Id*. Sony also moved for summary judgment as to the '363 patent, arguing that claim 1 is invalid under 35 U.S.C. §101, which the district court granted. *Id*.

On appeal, the Federal Circuit first clarified the pleading requirements for patent infringement cases. It disagreed with district court's instruction that a complaint must "explain … every element of every claim that you say is infringed and/or explain why it can't be done." *Id*. at 13. The court explained that a plaintiff need not "prove its case at the pleadings stage" and is not required to plead infringement on an element-by-element basis. *Id*. Instead, the Federal Circuit explained that it is enough "that a complaint place the alleged infringer on notice of what activity … is being accused of infringement." *Id*. Finally, the court explained that the level of detail required to be provided in a complaint varies depending upon a number of factors, such as: 1) the complexity of the technology; 2) the materiality of a given element to practicing the asserted claim(s); and 3) the nature of the allegedly infringing device. *Id*. at 14.

Applying this standard, the Federal Circuit reviewed, de novo, the sufficiency of Bot M8's infringement allegations with respect to the patents at issue. See generally, *id*. at 12-20. The '540 patent required certain game execution and authentication software to be stored on a separate board and memory than the motherboard and its memory. *Id*. at 16. Since the amended complaint, however, alleged that all of the software in the PS4 is stored on memory contained in the motherboard, infringement was not possible, much less plausible. *Id*. at 16-17. As to the '990 patent, the claims required storing "gaming information including a mutual authentication program" on the same memory. *Id*. at. 17. The Federal Circuit agreed that Bot M8 failed to offer factual allegations that support a plausible inference that the PS4 actually stores the two features together. *Id*. at 18. While Bot M8 pointed to different storage components in the PS4, it never said which one or ones satisfy the limitation. *Id*. Finally, the claims of '988 and '670 patents required a control device that executes a "fault inspection program" and "completes the execution of the fault inspection program before the game is started." *Id*. at 18-19. Although the district court acknowledged that the amended complaint "plausibly allege[d] the inspection for both the memory device and the game stored therein," it dismissed the claims on grounds that the allegations regarding the timing of the inspection "too closely tracked the claim language to be deemed plausible." *Id*. at 19. On appeal, the Federal Circuit found that the district court erred in dismissing the claims as to the '988 and '670 patents because the amended complaint identified specific error messages that are displayed by the PS4 when faults are detected. *Id*. at 20.

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Next, the Federal Circuit reviewed the district court's grant of summary judgment of invalidity of claim 1 of the '363 patent under §101. The district court had found that the claim "recites the abstract idea of increasing or decreasing the risk-to-reward ratio, or more broadly the difficulty, of a multiplayer game based upon previous aggregate results. But the claim leaves open how to accomplish this, and the specification provides hardly any more direction." *Id*. at 24 (citing Order on Summ. J., 465 F. Supp. 3d at 1020). The district court had further found that the "claim merely recites result-oriented uses of conventional computer devices" and that, "[a]t bottom, neither the patent specification, patent owner, or patent owner's experts articulate a technological problem solved by the '363 patent." *Id*. The Federal Circuit agreed, finding "no need to discuss [the court's] analysis in any detail." *Id*. at 24.

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Federal Circuit Holds that Pendency of Motions Unrelated to Interlocutory Judgment Does Not Toll 30-Day Limit to File Notice of Appeal

On Aug. 3, 2021, a Federal Circuit panel of Judges Dyk, Prost, and Hughes issued a unanimous opinion, authored by Judge Hughes, in *Mondis Tech. Ltd. v. LG Elecs., Inc.*, Case No. 2020-1812. LG Electronics Inc., et al. (LG) sought interlocutory review of a decision of the District of New Jersey's denial of certain relief with respect to the liability portion of this case. The panel dismissed the matter for lack of jurisdiction. Slip Op. at 2.

Mondis Tech. Ltd. is the assignee of U.S. Patent No. 7,475,180 (the '180 patent), which is directed generally to a display unit configured to receive video signals from an external video source. *Id*. at 2. In 2014, it brought this action for patent infringement against LG accusing its television devices. *Id*. After trial, a jury found that the accused televisions infringed claims 14 and 15 of the '180 patent, that the claims are not invalid, and that LG's infringement was willful. Id. The jury awarded Plaintiffs (Mondis) $45 million in damages. *Id*.

LG filed several post-trial motions: 1) a motion for Judgment as a Matter of Law (JMOL) or new trial of non-infringement; 2) a motion for JMOL or new trial of invalidity; and 3) a motion for JMOL, new trial, or remittitur regarding the damages award and willfulness finding. *Id*. at 2-3 (citing *Mondis Tech. Ltd v. LG Elecs., Inc.*, 407 F. Supp. 3d 482, 484 (D.N.J. Sept. 24, 2019) (the September Order)). The district court disposed of the motions in two separate orders. *Id*. On Sept. 24, 2019, the district court denied LG's motions regarding infringement, invalidity, and willfulness but ordered further briefing on damages. *Id*. at 3 (citing September Order, 407 F. Supp. 3d at 502-03). Then, on April 22, 2020, the district court granted LG's motion for a new trial on damages. *Id*. at 3 (citing *Mondis Tech. Ltd. v. LG Elecs., Inc.*, No. CV 15-4431, 2020 WL 1933979, at 5–6 (D.N.J. Apr. 22, 2020) (the April Order)). On May 8, 2020, LG filed notice of this interlocutory appeal, seeking to challenge the district court's denial of its motions regarding infringement, invalidity, and willfulness (all of which were decided in the September Order). *Id*. at 3. Mondis moved to dismiss the appeal as untimely, arguing that LG needed to file notice of appeal within thirty days of the September Order. *Id*.

Appeals under §1292(c)(2) are subject to time limits prescribed by 28 U.S.C. §2107(a), which provides that an appellant file a notice of appeal "within thirty days after the entry of [the] judgment, order or decree" from which it appeals. *Id*. at 4. Thus, the Federal Circuit stated LG had thirty days from the date on which the district court's judgment became "final except for an accounting" to file an interlocutory appeal. *Id*. The court also cited a prior opinion in which it held that, under §1292(c)(2), a judgment is final except for an accounting when all liability issues have been resolved, and only a determination of damages remains. *Id*. (citing *Robert Bosch, LLC v. Pylon Mfg. Corp.*, 719 F.3d 1305, 1313 (Fed. Cir. 2013) (en banc) ("An 'accounting' in the context of § 1292(c)(2) includes the determination of damages ….")).

LG argued that its notice of appeal was timely under Rule 4 of the Federal Rules of Appellate Procedure (FRAP). *Id*. at 6. FRAP 4(a)(4) instructs that, if a party timely files any of several enumerated motions, including post-trial motions for judgment under FRCP 50(b) or for a new trial under FRCP 59, "the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion." *Id*. LG argued that, because disposition of the last remaining post-trial motion occurred in the April Order, Rule 4(a)(4) tolled the start of the thirty-day clock for appeal until the entry of the April Order. *Id*. at 7.

The Federal Circuit found that all liability issues were resolved with the September Order. *Id*. at 4. Thus, for the purposes of appeal under §1292(c)(2), the case was then final except for an accounting. *Id*. The court disagreed with LG's interpretation of FRAP 4 when applied to an interlocutory appeal under §1292(c)(2). Id. at 7. It explained that when FRAP 4(a)(4) pertains to interlocutory appeals under §1292(c)(2), the enumerated motions can only toll the time to appeal if they relate to the interlocutory judgment such that the judgment is not final except for an accounting until the court disposes of the motions. *Id*. at 7. In this case, the Federal Circuit found that the unrelated damages motions that remained outstanding after the September Order did not toll the time frame for LG to file its notice of appeal on the liability portion of this case. *Id*. at 8. Thus, it determined that LG had 30 days from the September Order to file notice of interlocutory appeal. *Id*. at 4. Since LG did not file its notice of appeal until May 8, 2020 — more than seven months after the September Order — the Federal Circuit found that LG's appeal was untimely, and that it therefore lacked jurisdiction to consider the matter. *Id*.

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