

Federal Circuit Patent Bulletin: *SSL Servs., LLC v. Citrix Sys., Inc.*

October 14, 2014

"[Where a patentee obtains] a judgment for damages against [the defendant, but the plaintiff] did not succeed on all of its infringement claims, [the plaintiff is nonetheless] the 'prevailing party' for purposes of Federal Rule of Civil Procedure 54(d) and 35 U.S.C. § 285."

On October 14, 2014, in *SSL Servs., LLC v. Citrix Sys., Inc.*, the U.S. Court of Appeals for the Federal Circuit (Lourie, Linn, O'Malley*) affirmed-in-part, vacated-in-part, and remanded the district court's judgment, inter alia, that Citrix infringed U.S. Patents No. 6,061,796 and No. 6,158,011, which related to multi-access virtual private networks. The Federal Circuit stated:

[T]here is no evidence in the record from which a good faith argument can be made that the Citrix GoTo Products' identifiers are "network addresses" as that term was construed by the district court. Because we now affirm that construction, we conclude that, even if the district court erred in its construction of the other challenged limitations, the result the jury reached—the finding of non-infringement—would not change. In these circumstances, we soundly can base our conclusion that the non-infringement verdict stands on the fact that the single network address limitation is not practiced by the accused products. . . .

The general verdict rule guards against the threat of a tainted or improper verdict. But, the burden to establish that such a threat exists is on the party challenging the verdict. SSL has not satisfied the

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burden of establishing that an error in any other claim construction could have changed the verdict here if we conclude, as we have, that the “destination address” in claim 27 of the ’796 Patent means the “network address of a computer or server.” [B]ecause the GoTo Identifiers are not the IP addresses of the client computers, the record commands the finding that the Citrix GoTo Products do not contain the “destination address” limitation. Second, the first client computer never knows the IP address of the second client computer based on the GoTo Identifiers. Only the intermediary, such as a broker or communications server, knows the second client computer’s IP address. Accordingly, the GoTo Products could neither intercept nor provide the network address to direct the encrypted files. Because the GoTo Identifiers are not the IP address of the second client computer, the “destination address” limitation is simply not met. . . .

We review the district court’s determination of whether a party is the “prevailing party” under Federal Rule of Civil Procedure 54(d) and 35 U.S.C. § 285 de novo. . . . To be the “prevailing party,” we require: (1) that the party “received at least some relief on the merits,” and (2) “[t]hat relief must materially alter the legal relationship between the parties by modifying one party’s behavior in a way that ‘directly benefits’ the opposing party.” A party does not need to prevail on all claims to qualify as the prevailing party.

[T]he district court erred in holding that SSL was not the prevailing party. It is well-established that there is a distinction between being eligible for fees as the prevailing party and the discretionary decision to award fees. A party “prevails” when “actual relief on the merits of his claim materially alters the legal relationship between the parties . . . in a way that directly benefits the [party].” [T]he degree of the overall success impacts only the reasonableness of the fee award. Therefore, a district court may award minimal or no fees after considering the amount of success to the prevailing party.

In this case, the district court found that SSL proved willful infringement of the three asserted claims of the ’011 Patent by Citrix’s Access Gateway and Netscaler Products. In light of this infringement finding, the jury awarded lump-sum damages of ten million dollars, which the district court enhanced to a total of fifteen million dollars. In contrast, while Citrix did obtain a finding of non-infringement as to claim 27 of the ’796 Patent, it did not prove the asserted claims of the ’011 Patent were invalid, and it was found to have infringed the ’011 Patent. Despite some success by Citrix in defending against some of SSL’s claims, we agree with SSL that it is the prevailing party. SSL has a judgment for damages against Citrix. This judgment is a “relief on the merits [that] materially alters the legal relationship” of the parties. Even though SSL did not succeed on all of its infringement claims, this does not change the outcome. In view of the parties’ respective successes, we find SSL is the “prevailing party” for purposes of Federal Rule of Civil Procedure 54(d) and 35 U.S.C. § 285. Finding SSL to be the prevailing party, however, does not automatically entitle it to any particular level of fees. Accordingly, we vacate the district court’s finding of no prevailing party and remand so that the district court

may assess the amount of fees or costs to award to SSL in connection with the claims on which it prevailed. . . .

To establish willful infringement, the patent holder must show clear and convincing evidence that: (1) “the infringer acted despite an objectively high likelihood that its actions constituted infringement” and (2) “that this objectively-defined risk . . . was either known or so obvious that it should have been known to the accused infringer.” . . . The district court’s finding that SSL met the threshold objective prong is supported by the record. The jury soundly rejected Citrix’s invalidity argument and non-infringement arguments. . . . Although not dispositive, the USPTO similarly found Citrix’s invalidity arguments unfruitful, despite the lower preponderance of the evidence standard. . . . After the district court found the objective prong satisfied, it submitted the issue of willful infringement to the jury. The jury returned a verdict finding that Citrix willfully infringed the relevant claims of the ‘011 Patent. . . . [W]e conclude that the district court did not abuse its discretion in finding that the probative value of unfinished agency proceedings was substantially outweighed by the risk of unfair prejudice to the patentee and the potential for misleading the jury, thereby justifying exclusion under Federal Rule of Evidence 403.