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Federal Circuit Patent Bulletin: *Halo Elecs., Inc. v. Pulse Elecs., Inc.*

May 30, 2017

"[T]here is no final decision [where] the district court has not 'determine[d], or specif[ied] the means for determining the amount' of prejudgment interest."

On May 26, 2017, in *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, the U.S. Court of Appeals for the Federal Circuit (Lourie,* Moore, Hughes) dismissed for lack of jurisdiction over Pulse's appeal from the district court's award of prejudgment interest to Halo following the judgment that Pulse infringed U.S. Patents No. 5,656,985, No. 6,297,720, and No. 6,344,785, which related to electronic surface mount packages. The Federal Circuit stated:

We must first address whether we have jurisdiction. Pursuant to 28 U.S.C. § 1295(a)(1), which embodies the final judgment rule, our jurisdiction is limited to an appeal from a "final decision" of a district court. The Supreme Court has stated that a final decision "generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." In other words, "[i]f a 'case is not fully adjudicated as to all claims for all parties,' there is no 'final decision' and therefore no jurisdiction." The Supreme Court has explained that "a final judgment for money must, at least, determine, or specify the means for determining, the amount . . . ." The final judgment rule "serves a number of important purposes," including avoiding "piecemeal appeals" and "promoting efficient judicial administration."

28 U.S.C. § 1292(c)(2) is an exception to the final judgment rule. Pursuant to § 1292(c)(2) we have jurisdiction over "an appeal from a judgment in a civil action for patent infringement which would otherwise be appealable to [this court] and is final except for an

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accounting." (emphasis added). We have held that § 1292(c)(2) "confer[s] jurisdiction on this court to entertain appeals from patent infringement liability determinations when a trial on damages has not yet occurred . . . [and] when willfulness issues are outstanding and remain undecided." . . .

We first address whether the April 6, 2016 order was a final decision. That order required the parties to either file a stipulation as to the amount of interest due or, "[i]f they disagree[d] on the calculation" of interest, to "file a brief . . . explaining their respective positions." The parties disagreed with each other and filed briefs contesting the appropriate amount of prejudgment interest and how to calculate it, particularly disputing the date from which to begin assessing prejudgment interest. The district court never resolved the parties' dispute regarding the date from which to begin calculating prejudgment interest or set the amount of prejudgment interest to be awarded to Halo. As a result, there is no final decision because the district court has not "determine[d], or specif[ied] the means for determining the amount" of prejudgment interest. We therefore lack jurisdiction under § 1295(a)(1).

For similar reasons, we also lack jurisdiction pursuant to § 1292(c)(2). "As an exception to the final judgment rule, § 1292(c)(2) is to be interpreted narrowly." Regardless whether prejudgment interest is part of an accounting or not, the award of prejudgment interest itself in this case is not final. We have held that § 1292(c)(2) "does not go so far as to permit us to consider [a] non-final order" that is related to the accounting. Thus, because the order appealed from is itself non-final, we lack jurisdiction under § 1292(c)(2).

We note that counsel for Pulse expressed concern at oral argument about preservation of its right to appeal an award of prejudgment interest at a later date. As discussed at oral argument and conceded by Halo, Pulse has preserved its right to later file a proper appeal concerning a final award of prejudgment interest. We have considered Pulse's remaining arguments regarding jurisdiction, but conclude that they are without merit. For the reasons set forth above, we dismiss for lack of jurisdiction.