

ALERT

Federal Circuit Patent Bulletin: *Unwired Planet, LLC v. Apple Inc.*

July 22, 2016

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On July 22, 2016, in *Unwired Planet, LLC v. Apple Inc.*, the U.S. Court of Appeals for the Federal Circuit (Moore,* Bryson, Reyna) affirmed-in-part, vacated-in-part and remanded the district court's summary judgment that Apple did not infringe U.S. Patents No. 6,532,446, No. 6,647,260, No. 6,317,831, and No. 6,321,092, which related wireless mobile communication technology. The Federal Circuit stated:

Claim terms are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art when read in the context of the specification and prosecution history. We have recognized "only two exceptions to this general rule: 1) when a patentee sets out a definition and acts as his own lexicographer, or 2) when the patentee disavows the full scope of a claim term either in the specification or during prosecution." We conclude that the district court erred in its construction of "voice input." The claims require a voice input, not a voice channel. By its plain language, the term "voice input" does not dictate the manner in which voice is to be transmitted from a mobile device to a server, and Apple does not argue otherwise. It is undisputed that a voice input signal could be transmitted over either a voice channel or a data channel or, as Apple itself does, over TCP/IP. Apple does not argue that the patentee acted as his own lexicographer and defined "voice input" different from its plain and ordinary meaning. Thus, the district court's construction, adopted at Apple's urging, can be justified if there exists a clear and unmistakable disclaimer in the specification or the

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prosecution history. We see no such disclaimer in the specification.

We do not agree that the second sentence in the summary of the invention constitutes a disclaimer that limits the scope of every claim. A disclaimer or disavowal of claim scope must be clear and unmistakable, requiring “words or expressions of manifest exclusion or restriction” in the intrinsic record. We have held statements such as “the present invention includes . . .,” “the present invention is . . .,” and “all embodiments of the present invention are . . .” to be clear and unmistakable statements constituting disavowal or disclaimer.

The summary of the invention section begins with a sentence stating that “[t]he present invention relates to a wireless communication system” using a remote speech recognition server. As a preliminary matter, this first sentence does not even mention a voice communication channel. It is true, as Apple argues, that the specification discusses voice channels in many places. But it is certainly not the case that everything in that first paragraph in the summary of the invention constitutes a mandatory claim limitation to be read into claims. . . . It is not true that because one sentence in the paragraph begins with the “present invention” language that everything that follows in the same paragraph limits all subsequent claims. This should not be interpreted as any sort of hard rule regarding claim construction. Every claim construction, and each potential disclaimer, has to be considered in the context of each individual patent. We do not read this specification as clearly and unmistakably requiring that voice signals be transmitted exclusively over voice channels. And we will thus not import any such limitation into the claims at issue. In this context, we do not think the sentences describing the translation process rise to the level of “manifest exclusion or restriction” of the claim scope. . . .

Unwired argues that a hashed password is merely a mathematical function applied to the user’s password. It argues the district court improperly resolved on summary judgment whether merely hashing the user information along with a time stamp transforms it into something non-infringing. It argues the district court erred in resolving this fact issue because the X-token contains the same substantive content, only in a different (i.e., hashed) format. We agree with Unwired that the district court erred in granting summary judgment of non-infringement. [I]n granting summary judgment of non-infringement, the district court essentially required the claimed “user information” to be in a particular format. We do not agree with such a reading of the term. While “user information” refers to some information, knowledge, or data on a user, the plain meaning of the term does not require that information to be in any specific format or form. For example, the English word “apple” and the Russian word for “apple” contain the same information to the extent that they both refer to the round fruit of a tree of the rose family, despite their differences in form. We think a reasonable jury could find that a hashed password in the X-token contains the same information as in the user’s unmodified password, albeit in a different form. . . . We do not think the non-reversibility of a hash function—i.e., that a hashed password cannot be decrypted into the password—is determinative of the relevant inquiry. Whether the hashed password in Apple’s X-token contains the same “user information” as in a user’s password is a fact question properly left to the jury. The claims do not dictate a particular form in which “user information” exists, and we decline to adopt interchangeability or reversibility as the essential characteristic in determining whether multiple forms of expression have the same underlying information. . . .

Apple argues that Unwired presented no evidence that Apple knew or was willfully blind to the fact that the induced acts were infringing the asserted claims of the '092 patent. Apple is correct that indirect infringement requires knowledge of the underlying direct infringement—not merely the knowledge of the existence of the patent. This knowledge requirement may be satisfied under the doctrine of willful blindness. The Supreme Court cautioned that the accused's deliberate indifference to a known risk of infringement alone is not sufficient. Rather, the doctrine of willful blindness requires the patentee to show not only that the accused subjectively believed that there was a high risk of infringement, but also that the accused took deliberate actions to avoid confirming infringement. Apple argues that Unwired's evidence at most creates a question of fact regarding Apple's knowledge of the patent but that none of the evidence supports an inference that Apple knew or was willfully blind to any infringing acts. If correct, this would be a basis for summary judgment. We defer to the district court to make this determination in the first instance. Because the district court's grant of summary judgment was based exclusively on its view of the strength of Apple's non-infringement argument, we vacate. . . . The district court's reliance on the objective strength of Apple's non-infringement arguments as precluding a finding of induced or contributory infringement was erroneous. In this case, we conclude only that summary judgment is inappropriate on the basis the district court decided, and we pass no judgment on how the factual issues ought to be resolved by a fact finder.