FEDERAL CIRCUIT PATENT LAW CASE UPDATE

MicroStrategy, Inc. v. Bus. Objects, S.A., 04-1572 (Fed. Cir. Nov. 17, 2005) (Rader, J.)

MicroStrategy sued Business Objects for infringement of its patent for a business intelligence software system that delivered information to devices formatted to a particular presentation style for each device. It also sued under state law for four business torts. The court affirmed the claim construction below, requiring a specific association for each device with an information presentation style. Business Objects' accused device did not infringe because it only delivered information to email "devices" without any defined association of formatting. The court disposed of the tort claims by affirming expert evidentiary rulings below, and affirming the merits of each claim, with only one variation of the district court's ruling: "the district court erroneously determined that Virginia law would not acknowledge MicroStrategy's contractual non-solicitation clause."

MicroStrategy owns U.S. Pat. No. 6,260,050, relating to business intelligence software that sends information to users.

> [T]he district court granted summary judgment of non-infringement in favor of Business Objects . . . after interpreting the claims to require an association of output devices with a "device-specific style" on a device-by-device basis.

The court agreed with the claim construction. The claimed method contemplated information outputted to various devices. This required a style applied to each device. Moreover, even in light of claim language such as "one or more devices," the construction required multiple device styles, or at least required a system capable of supporting multiple styles.

With this construction, Business Object's accused product, "Publisher," did not infringe literally or under the DOE. It was only designed to deliver information to one type of "device" – email. "Publisher does not provide an association between devices and device-specific styles on a device by device basis."

> The district court further determined that MicroStrategy could not "rely on the doctrine of equivalents to prove infringement" because MicroStrategy's expert "failed to [opine] in a sufficient manner regarding the doctrine of equivalents." . . . Because MicroStrategy does not challenge this finding on appeal, this court need not address infringement by equivalents.

The case also involved state law claims, in part related to Business Objects hiring several MicroStrategy employees.

> On MicroStrategy's four business tort claims, the district court disposed of much of the dispute with various evidentiary rulings that excluded MicroStrategy's evidence on damages and causation. MicroStrategy's tort case relied heavily on the presentation of its damages expert, David E. Yurkerwich, and his three expert reports (collectively referred to as "the expert reports"). These three expert reports, however, were excluded primarily due to a flawed methodology that rendered them speculative and unreliable. . . . [T]he district court did not abuse its discretion in making these evidentiary rulings. . . . In the direct, but supportable, terms of the district court, "[t]his report does not pass the red face test. It does not pass the Daubert test. It does not pass the Rule 702 test.

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