

FEDERAL CIRCUIT PATENT LAW CASE UPDATE

Network Commerce, Inc. v. Microsoft Corp., 04-1445 (Fed. Cir. Sept. 8, 2005) (Dyk, J.)

Substantially agreeing with the district court's claim construction for the term "download component," the court affirmed the summary judgment that Microsoft's Windows Media Player did not infringe literally, or under the DOE, Network's patent for a network information purchasing system. The specification made clear that a "download component" was executable by the operating system. Metafiles downloaded by Media Player were not executable, leaving no genuine issues for literal infringement. Against this context, there were no genuine issues for the DOE because Network did not provide "particularized testimony and linking argument [as to insubstantial differences] on a limitation-by-limitation basis."

Network Commerce owns U.S. Pat. No. 6,073,124, claiming "a method and system for purchasing electronic information, such as software or audio files, over a computer network." The patent uses the claim term "download component" that the merchant computer downloads to the user or customer's computer.

The download component coordinates the download of the requested electronic data (typically content such as software or audio files) from a third computer to the first computer. . . . The accused products are Microsoft's Windows Media® Player and metafiles. . . . [M]etafiles are capable of directing Windows Media Player to a website. . . . The computer receiving the request sends content to Windows Media Player, which then plays that content for the user.

Metafiles, however, are non-binary. They are not directly executable on the Windows operating system, but require processing by Media Player.

The district court's claim construction for "download component" required an executable file or object.

The court substantially agreed with this construction. It noted that the ordinary meaning of the words was not helpful, in part because the language was very general.

As the parties seem to agree, the term "download component" does not have a specialized meaning in the relevant art. . . . Here, the specification does not use the term "download component," presumably because this claim terminology was added

during prosecution after the specification had been prepared. The specification does describe a "download file." It appears from the function and description of the "download file" that this item corresponds most closely to the download component of the claims. . . . [T]he specification makes clear that the download component must include a boot program, and that the boot program interacts directly with the operating system of the computer without the assistance of any other program.

Following the claim construction, the court affirmed that there were no genuine issues of material fact for literal infringement. Regarding the DOE, the district court relied on claim vitiation.

We need not reach the claim vitiation issue in this case. . . . The expert declaration and other evidence relied on by Network Commerce supporting infringement by equivalents are generalized and do not provide particularized testimony and linking argument [as to insubstantial differences] on a limitation-by-limitation basis. For this reason the evidence did not raise a genuine issue of material fact. Summary judgment of non-infringement under the doctrine of equivalents regarding metafiles was therefore proper.

