FEDERAL CIRCUIT PATENT LAW CASE UPDATE

nCube Corp. v. SeaChange Int'l, Inc., 03-1341 (Fed. Cir. Jan. 9, 2006) (Rader, J.)

Agreeing with the construction of the claim term "upstream manager" and its related use of logical and physical protocol addresses in nCube's patent for a media content network distribution system, the court affirmed jury verdicts of infringement, willfulness and indirect infringement for SeaChange's cable television media distribution technology. Judge Dyk dissented, arguing for a narrower claim construction and thus no infringement.

nCube owns U.S. Patent No. 5,805,804, entitled "Method and Apparatus for Scalable, High Bandwidth Storage Retrieval and Transportation of Multimedia Data on a Network." The system used an "upstream manager" to handle user requests for content, and delivered the content through a downstream manager. The system may need to route content across multiple networks, so its protocol uses its own technique of logical addresses mapped to corresponding physical addresses.

The court affirmed the construction of the claim term "upstream manager."

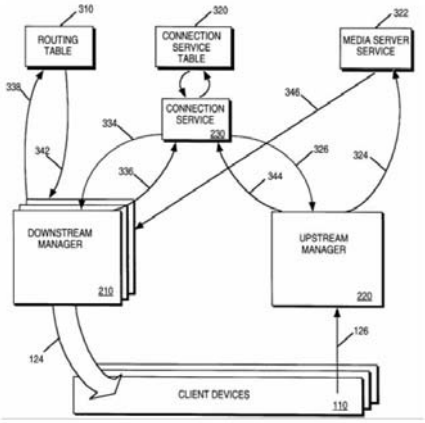
> The district court's claim construction correctly does not require the upstream manager to receive and route all messages from a client bound for a server. The patent claims require that the upstream manager receive messages from the client and the downstream manager send data to the client, but do not make these the exclusive functions of the units. . . . The trial court's construction of "upstream manager" also correctly reflects that this element may route messages using either logical or physical addresses.

SeaChange's accused infringing system delivered content over the cable television network. The court affirmed the infringement rulings below.

> The jury heard extensive evidence on infringement. The evidence included the testimony of nCube's expert, Dr. Schonfeld, who opined that the DNCS routes messages to services on the server. This expert specifically stated that the upstream manager in the SeaChange system is the DNCS, which receives messages from the set-top device, and sends messages over the network.

The court also affirmed the willfulness ruling.

> nCube does not argue that SeaChange knew of the '804 patent before it filed suit, but rather attacks Seacube's reliance on the opinion letter it obtained after suit was filed. nCube asserts that the opinion letter, which counsel shared with SeaChange management, was flawed because SeaChange manipulated the information given to counsel to ensure an opinion of non-



> infringement. nCube also casts doubt on the trustworthiness of the letter because SeaChange produced early drafts of the letter only after trial.
>
> The record shows that at least one important technical document was not supplied to SeaChange's opinion counsel. . . . Therefore, the record contains substantial evidence upon which a jury could have found willful infringement under the clear and convincing evidence standard.

The court also affirmed an award of enhanced damages and partial award of attorney's fees, noting that "SeaChange deliberately copied the invention in its products without investigating the scope of the patent."

Judge Dyk dissented from the infringement determination.

> While I agree with much of the majority opinion, I respectfully dissent from the majority's decision upholding the verdict of infringement. In my view there was insufficient evidence that the requirement of an "upstream manager" was satisfied. The majority has broadened a poorly drafted patent to cover an invention that was not actually claimed or described in the specification. . . . Under the proper claim construction, there was insufficient evidence to support the verdict of infringement because there is no evidence the accused device uses logical addresses for any purpose.

The University of Houston Law Center's Institute for Intellectual Property and Information Law is pleased to provide this information on patent law decisions.

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