Federal Circuit Continues its De Novo Review of District Court Patent Claim Construction Rulings

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In a 6-4 decision, the U.S. Court of Appeals for the Federal Circuit (CAFC) sitting *en banc* on February 21, 2014, reaffirmed its application of the *de novo* standard of review to district court patent claim construction rulings. *Lighting Ballast Control LLC v. Philips Elecs. North Am. Corp.*, No. 2012-1014. Citing the Court's prior ruling in *Cybor Corp. v. FAS Techs. Inc.* 138 F.3d 1448 (Fed. Cir. 1998), Judge Newman wrote that the Court "should retain plenary review of claim construction, thereby providing national uniformity, consistency, and finality to the meaning and scope of patent claims." Judge O'Malley, a former district court judge for the Northern District of Ohio, dissented, noting that "[i]t is time we acknowledge the limitations of our appellate function and our obligation to comply with the Federal Rules of Civil Procedure, and give trial judges the deference their expertise and efforts deserve."

The CAFC's ruling has its roots in the Supreme Court's seminal decision in *Markman v. Westview Instruments, Inc.,* 116 S. Ct. 1384 (1996), which held that construction of patent claims is to be decided by judges rather than juries. The Supreme Court further noted Congress' intent to promote uniformity in the patent laws mandated that the CAFC have exclusive jurisdiction to hear issues on appeal concerning patent claim construction "for the sake of such desirable uniformity." Left unanswered by Markman was whether the CAFC should give any deference to the district court's claim construction findings. Two years later, in *Cybor* the CAFC interpreted *Markman* and concluded that claim construction is a purely legal issue subject to *de novo* review on appeal.

Critics of *Cybor* have maintained that the district courts should be given some deference because they often hear live expert testimony, tutorials on the technology at issue, and engage in often lengthy "Markman hearings" that delve into the technology and the issues in detail. Critics also complain that the CAFC has reversed more than half of district court "Markman" rulings thus creating added expense, inefficiency and unpredictability to the patent litigation process. Supporters of the CAFC's *Cybor* decision note that the CAFC's fifteen years of claim construction provides consistency and predictability, and that inconsistent claim construction rulings by different district courts undermines the goal of consistency and promotes uncertainty and forum shopping.

Relying upon the doctrine of *stare decisis*, which requires adherence to precedential opinions absent exceptional circumstances, the CAFC concluded today that "[t]hose who urge change in the *Cybor* standard have identified no pattern of error, no indictment of inferior results. No ground has been shown for departing from the principles of *stare decises*." Addressing criticisms of its *de novo*

review standard, the majority noted that the dissent's statistical analysis of the effect *de novo* review has had on patent litigation is based on "obsolete data" and that "all of the amici curiae who are frequent litigants state the contrary position." The majority further noted that more recent data indicates that the number of patent appeals filed and the CAFC reversal rates in patent cases have actually decreased in recent years, concluding that "[r]eview of claim construction as a matter of law has demonstrated its feasibility, experience has enlarged its values, and no clearly better alternative has been proposed."

Today's opinion demonstrates not only that the CAFC will continue to review claim construction as a purely legal question giving no deference to the district court, but that the issue will continue to be hotly debated. Considering the recent increase in the number of patent cases heard by the Supreme Court and its reversal of CAFC rulings in many of them, there is a good chance that this issue may be taken up by the Supreme Court in the near future.

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