KeyCite Red Flag - Severe Negative Treatment
Affirmed in Part, Reversed in Part and Remanded by DDR Holdings, LLC v. Hotels.com, L.P., Fed.Cir.(Tex.), December 5, 2014

954 F.Supp.2d 509
United States District Court,
E.D. Texas,
Marshall Division.

DDR HOLDINGS, LLC, Plaintiff and Counterdefendant,
v.
HOTELS.COM, L.P., et al., Defendants and Counterclaimants.

Civil Action No. 2:06–cv–42–JRG.
|
June 20, 2013.

Synopsis

Background: Patentee brought infringement action against competitors, alleging infringement of patents relating to an e-commerce system and method providing hosts with transparent, context sensitive e-commerce supported pages. After a jury returned a verdict against competitors, competitors filed renewed motions for judgment as a matter of law (JMOL), and one competitor moved for a new trial.

Holdings: The District Court, Rodney Gilstrap, J., held that:

[1] asserted claims of one patent were not invalid as anticipated;

[2] substantial evidence supported finding of direct infringement by first competitor;

[3] substantial evidence supported finding of direct infringement by second competitor; and

[4] asserted claims of patents were not so manifestly abstract as to render them invalid for failing to claim patentable subject matter.

Motions denied.

West Headnotes (35)

[1] **Courts**
Particular questions or subject matter

The grant or denial of a motion for judgment as a matter of law (JMOL) is a procedural issue not unique to patent law, reviewed under the law of the regional circuit in which the appeal from the district court would usually lie. Fed.Rules Civ.Proc.Rule 50(a), 28 U.S.C.A.

Cases that cite this headnote

[2] **Federal Civil Procedure**
Evidence
Federal Courts
Verdict
Federal Courts
Taking case or question from jury; judgment as a matter of law

In reviewing the grant or denial of a motion for judgment as a matter of law (JMOL), the Fifth Circuit uses the same standard to review the verdict that the district court used in first passing on the motion; thus, a jury verdict must be upheld, and judgment as a matter of law may not be granted, unless there is no legally sufficient evidentiary basis for a reasonable jury to find as the jury did. Fed.Rules Civ.Proc.Rule 50(a), 28 U.S.C.A.

1 Cases that cite this headnote

[3] **Federal Civil Procedure**
Construction of evidence
Federal Courts
Weight or preponderance of evidence in general
Federal Courts
Credibility and impeachment
Federal Courts
Taking case or question from jury; judgment

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as a matter of law
Federal Courts
Taking case or question from jury; judgment as a matter of law

In reviewing the grant or denial of a motion for judgment as a matter of law (JMOL), a court reviews all evidence in the record and must draw all reasonable inferences in favor of the nonmoving party; however, a court may not make credibility determinations or weigh the evidence, as those are solely functions of the jury. Fed.Rules Civ.Proc.Rule 50(a), 28 U.S.C.A.

Cases that cite this headnote

[4] **Federal Civil Procedure**
Weight and Sufficiency of Evidence
Federal Civil Procedure
Evidence

A moving party is entitled to judgment as a matter of law (JMOL) only if the evidence points so strongly and so overwhelmingly in favor of the nonmoving party that no reasonable juror could return a contrary verdict. Fed.Rules Civ.Proc.Rule 50(a), 28 U.S.C.A.

Cases that cite this headnote

[5] **Federal Civil Procedure**
Weight of evidence
Federal Civil Procedure
Presumptions; construction of evidence

On a motion for a new trial, the court must view the evidence in a light most favorable to the jury's verdict, and the verdict must be affirmed unless the evidence points so strongly and overwhelmingly in favor of one party that the court believes that reasonable persons could not arrive at a contrary conclusion. Fed.Rules Civ.Proc.Rule 59(a), 28 U.S.C.A.

Cases that cite this headnote

[6] **Patents**
Ambiguity, Uncertainty, or Indefiniteness

Purpose of patent law's definiteness requirement is to ensure that the claims delineate the scope of the invention using language that adequately notifies the public of the patentee's right to exclude. 35 U.S.C.A. § 112.

Cases that cite this headnote

[7] **Patents**
Ambiguity, Uncertainty, or Indefiniteness

A claim is indefinite under patent law when it depends solely on the unrestrained, subjective opinion of a particular individual purportedly practicing the invention. 35 U.S.C.A. § 112.

Cases that cite this headnote

[8] **Patents**
Questions of law or fact

Whether a patent claim fails for indefiniteness is a question of law for the court to decide. 35 U.S.C.A. § 112.

1 Cases that cite this headnote

[9] **Patents**
Ambiguity, Uncertainty, or Indefiniteness

Patent claims need not have mathematically precise boundaries to satisfy the definiteness requirement so long as the patent gives examples and general guidelines. 35 U.S.C.A. § 112.

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Cases that cite this headnote

[10] **Patents**
Ambiguity, Uncertainty, or Indefiniteness
Patents
Evidence

A finding of indefiniteness under patent law must overcome the statutory presumption of validity; that is, the standard for finding indefiniteness is met where an accused infringer shows by clear and convincing evidence that a skilled artisan could not discern the boundaries of the claim based on the claim language, the specification, and the prosecution history, as well as her knowledge of the relevant art area. 35 U.S.C.A. §§ 112, 282.

1 Cases that cite this headnote

[11] **Patents**
Particular products or processes

Substantial evidence supported jury's finding that alleged infringer's prior art system did not satisfy the "look and feel" elements of patent relating to an e-commerce system and method providing hosts with transparent, context sensitive e-commerce supported pages, as required to render the patent invalid as anticipated by the prior art system; alleged infringer's vice president of product and innovation testified that alleged infringer's earlier systems had much more limited functionality than the recent, infringing systems, had technical constraints that made it difficult to emulate sites, relied on rigid predefinition of templates, only had a logo match, and required a logo to appear at a fixed location absent a hack to change location, and patentee's expert witness also offered his opinion that the prior art system and related publications failed to show any overall match of appearance because the pair of websites alleged infringer presented basically had a matching logo, which fell short of being "based on" the host's "look and feel."

Cases that cite this headnote

[12] **Patents**
Particular fields of invention

Substantial evidence supported jury's verdict of direct infringement of patent relating to an e-commerce system and method providing hosts with transparent, context sensitive e-commerce supported pages, by three of alleged infringer's customers' websites, in light of the exhibits of the product pages for each customer's host website and patentee's infringement expert's comparison to each customer's outsourced store page served by alleged infringer's accused system.

Cases that cite this headnote

[13] **Patents**
Answer or Other Responsive Pleading

Alleged infringer of patent relating to an e-commerce system and method providing hosts with transparent, context sensitive e-commerce supported pages did not waive its defense that there was no substantial evidence in the record that it stored the "look and feel" information as required by the asserted claims because the servers were neither owned nor operated by alleged infringer, even though alleged infringer failed to disclose the defense in advance of trial, where the defense was based on patentee's expert's revelation during cross-examination that he did not investigate the location or owner of the servers that he alleged were involved in infringement. Fed.Rules Civ.Proc.Rule 37(c)(1), 28 U.S.C.A.

Cases that cite this headnote

[14] **Patents**
Particular fields of invention

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Substantial evidence existed in the record to allow a reasonable inference by the jury that servers provided by a third party were under the direction and control of alleged infringer, as required by asserted claims of patent relating to an e-commerce system and method providing hosts with transparent, context sensitive e-commerce supported pages; alleged infringer's vice president of product and innovation testified that alleged infringer had a contract with the third party to serve data from two of alleged infringer's domains, and patentee's expert testified that third party acted on behalf of alleged infringer by caching copies of alleged infringer's content for faster access.

Cases that cite this headnote

[15] **Patents**
Nature and elements of injury

To "use" a system for purposes of patent infringement, a party must put the invention into service, i.e., control the system as a whole and obtain benefit from it; the "control" contemplated does not have to be physical or direct control, but, rather, it is the ability to place the system as a whole into service.

Cases that cite this headnote

[16] **Patents**
Profits and damages

The patentee bears the burden of proving damages in an infringement suit, including the burden to sufficiently tie the expert testimony on damages to the facts of the case.

Cases that cite this headnote

[17] **Patents**
Particular fields of invention

Substantial evidence supported jury's verdict of direct infringement as to the "look and feel" elements of patents relating to an e-commerce system and method providing hosts with transparent, context sensitive e-commerce supported pages; jury had published images of all nine website pairs as evidence before it to make the ultimate factual determination that the look and feel of the host corresponded to the accused websites, and patentee presented expert testimony comparing the website pairs for substantial similarities and listing out the similarities in a demonstrative exhibit before the jury.

Cases that cite this headnote

[18] **Patents**
Particular fields of invention

Substantial evidence supported jury finding that alleged infringer's computer processor was in communication through the Internet with the host web page, as required to directly infringe patent relating to an e-commerce system and method providing hosts with transparent, context sensitive e-commerce supported pages; patentee's expert witness testified that "When the computer server receives a request, when a link is clicked on or activated on the host webpage, that's how the host webpage is communicating through the Internet with the computer processor on the server."

Cases that cite this headnote

[19] **Patents**
Questions of law or fact

When opposing experts differ on how a patent claim limitation is met, it is up to the jury to decide which opinion is more credible in light of the evidence.

Cases that cite this headnote

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[20] **Patents**
Particular fields of invention

Substantial evidence supported jury's finding that alleged infringer infringed patents relating to an e-commerce system and method providing hosts with transparent, context sensitive e-commerce supported pages for more than the one day during which a screenshot was captured; patentee's expert testified that, in forming his opinions, he considered the accused systems as a whole, including the dates of operation, how the systems operated, the current website, as well as past websites.

Cases that cite this headnote

[21] **Patents**
In general; power of Congress

In choosing expansive terms to define the four categories of inventions or discoveries eligible for patent protection, modified by the comprehensive "any," Congress plainly contemplated that the patent laws would be given wide scope; Congress took this permissive approach to patent eligibility to ensure that ingenuity should receive a liberal encouragement. 35 U.S.C.A. § 101.

Cases that cite this headnote

[22] **Patents**
Laws of nature, natural phenomena, and abstract ideas; fundamental principles

Laws of nature and physical phenomena are not patentable subject matter because those categories embrace the basic tools of scientific and technological work. 35 U.S.C.A. § 101.

Cases that cite this headnote

[23] **Patents**
Questions of law or fact

A court can determine invalidity of a patent for failing to claim patentable subject matter as a matter of law. 35 U.S.C.A. § 101.

Cases that cite this headnote

[24] **Patents**
Laws of nature, natural phenomena, and abstract ideas; fundamental principles

The rule against patents on naturally occurring things is not without limits, for all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas, and too broad an interpretation of this exclusionary principle could eviscerate patent law.

Cases that cite this headnote

[25] **Patents**
Patents

Patent protection strikes a delicate balance between creating incentives that lead to creation, invention, and discovery and impeding the flow of information that might permit, indeed spur, invention.

Cases that cite this headnote

[26] **Patents**
Laws of nature, natural phenomena, and abstract ideas; fundamental principles
Patents
Mathematical formulas and algorithms

A process is not unpatentable simply because it contains a law of nature or a mathematical algorithm, and an application of a law of nature

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