

EXHIBIT 1

incomplete that they could not be used without undue difficulty.

[10] Contrary to Mukand's argument, the deficiencies in its responses were not limited to a discrete category of information. As Commerce noted, Mukand assigned the "same amount of conversion costs per kilogram of bar produced, irrespective of the final size of the product produced." J.A. 1604. Mukand thus premised all of its production cost data on the assumption that product size is not a significant cost factor—an assumption it failed to support. In general, use of partial facts available is not appropriate when the missing information is core to the anti-dumping analysis and leaves little room for the substitution of partial facts without undue difficulty.¹² Without cost data broken down by product size, Commerce was unable to differentiate between different types of steel bar products and could not calculate an accurate constructed value for any of Mukand's products. We therefore hold that Commerce's reliance on total AFA is supported by substantial evidence.

III

For the reasons set forth above, we affirm the decision of the Trade Court.

AFFIRMED



¹² See *Shanghai Taoen Int'l Co. v. United States*, 360 F.Supp.2d 1339, 1348 n. 13 (Ct.

VIRNETX, INC., Plaintiff–Appellee,

and

Science Applications International Corporation, Plaintiff–Appellee,

v.

CISCO SYSTEMS, INC., Defendant,

and

Apple Inc., Defendant–Appellant.

No. 2013–1489.

United States Court of Appeals,
Federal Circuit.

Sept. 16, 2014.

Background: Patentee brought action against mobile phone manufacturer, alleging infringement of patents describing method of transparently creating virtual private network (VPN) between client computer and target computer and patents disclosing secure domain name service. The United States District Court for the Eastern District of Texas, Leonard Davis, Chief Judge, 2009 WL 2370727 and 2012 WL 3135639, construed the claims, and then denied manufacturer's post-trial motions after jury returned verdict in patentee's favor 925 F.Supp.2d 816. Manufacturer appealed.

Holdings: The Court of Appeals, Prost, Chief Judge, held that:

- (1) term "domain name" meant name corresponding to Internet Protocol (IP) address;
- (2) term "secure communication link" meant direct communication link that provided data security and anonymity;

Int'l Trade 2005).

- (3) substantial evidence supported jury verdict that accused product met “direct communication” limitation;
- (4) accused feature in mobile phone manufacturer’s product met “determining whether” limitation;
- (5) substantial evidence supported jury’s finding that feature in accused product created “VPN” or “secure channel” that extended from client to target computer;
- (6) security provided by accused system that included encryption on insecure paths but otherwise relied on security provided by private networks was not equivalent to “encrypted channel”;
- (7) patentee could not rely on entire market value of multi-component product containing several non-infringing features with no relation to patented feature to approximate reasonable royalty base; and
- (8) evidence relying on 50-50 starting point based on bargaining solution theorem was not admissible.

Affirmed in part, reversed in part, vacated in part, and remanded.

1. Patents ⇌324.5

Patent claim construction is a question of law that is reviewed de novo.

2. Patents ⇌165(3), 167(1)

The process of construing a patent claim term begins with the words of the claims themselves; however, the claims must be read in view of the specification, of which they are a part.

3. Patents ⇌165(5)

The patent claim differentiation doctrine disfavors reading a limitation from a dependent claim into an independent claim.

4. Patents ⇌159

Although courts are permitted to consider extrinsic evidence like expert testimony, dictionaries, and treatises when construing a patent claim term, such evidence is generally of less significance than the intrinsic record.

5. Patents ⇌101(2)

Term “domain name,” in patents that disclosed domain name service (DNS) system that resolved domain names and facilitates establishing secure communication links, meant name corresponding to Internet Protocol (IP) address.

6. Patents ⇌101(2)

Term “secure communication link,” in patents that disclosed domain name service (DNS) system that resolved domain names and facilitates establishing secure communication links, meant direct communication link that provided data security and anonymity.

7. Courts ⇌96(7)

In a patent case, the Court of Appeals for the Federal Circuit reviews the denial of a motion for judgment as a matter of law (JMOL) or a new trial under the law of the regional circuit.

8. Federal Courts ⇌3602

The Fifth Circuit requires that a jury’s determination must be upheld if it is supported by substantial evidence.

9. Patents ⇌312(6)

Substantial evidence supported jury verdict that accused product met “direct communication” limitation in patents disclosing secure domain name service; each claim required some indication that domain name service system supported establishing secure communication link, relay server created two separate communications, network address translators (NAT) used by accused products did not impede direct

communication but operated like routers or firewalls, and NAT router still allowed for “end-to-end communication between the two devices” because it merely translated addresses from public address space to private address space, but did not terminate the connection.

10. Patents ⇌235(2)

Accused feature in mobile phone manufacturer’s product met “determining whether” limitation of patents generally describing method of transparently creating virtual private network (VPN) between client computer and target computer, since manufacturer’s accused feature could be configured to infringe based on manufacturer’s internal documents and source code and “determining whether” step could be performed by comparing requested domain name against list of domain names; while feature could initiate VPN connections with unsecure websites, feature was not intended to be used in that manner and there was no requirement in claims for verification of security of requested website or server.

11. Patents ⇌312(6)

Substantial evidence supported jury’s finding that feature in accused product created “VPN” or “secure channel” that extended from client to target computer and thus literally infringed claim of patent that required creating “secure channel” “between” client and secure server; path extending from virtual private network (VPN) server to target computer, i.e., within private network, would be secure and anonymous owing to protection provided by private network, paths beyond VPN server could be rendered secure and anonymous by means of “physical security” present in private corporate networks, and patentee did not have to prove that accused product did not have any non-infringing modes of operation.

12. Patents ⇌237

Security provided by accused system that included encryption on insecure paths but otherwise relied on security provided by private networks was not equivalent to “encrypted channel” required by claim in patent that generally described method of transparently creating virtual private network (VPN) between client computer and target computer, and thus accused product did not infringe under equivalents doctrine; “security” of private network could not be equated with “encryption” provided by VPN server because encryption was narrower, more specific requirement than security, according to patent.

13. Patents ⇌237

To find infringement under the equivalents doctrine, any differences between the claimed invention and the accused product must be insubstantial; insubstantiality may be determined by whether the accused device performs substantially the same function in substantially the same way to obtain substantially the same result as the patent claim limitation.

14. Patents ⇌314(5)

Under the equivalents doctrine, whether an accused device performs substantially the same function in substantially the same way to obtain substantially the same result as the patent claim limitation is a question of fact.

15. Patents ⇌237

“Vitiation” is not an exception to the doctrine of equivalents, but instead is a legal determination that the evidence in a patent suit is such that no reasonable jury could determine two elements to be equivalent.

16. Patents ⇌112.5

A party challenging the validity of a patent must establish invalidity by clear and convincing evidence.

17. Patents ⇌324.55(4)

Anticipation in a patent case is a factual question that is reviewed for substantial evidence.

18. Patents ⇌72(1)

A patent claim is anticipated only if each and every element is found within a single prior art reference, arranged as claimed.

19. Patents ⇌62(1)

Substantial evidence supported finding that patents generally describing method of transparently creating a virtual private network (VPN) between a client computer and a target computer and patents disclosing secure domain name service were not invalid as anticipated; patent owner presented evidence and testimony that prior publication failed to disclose several claim limitations including, “secure communication link,” “virtual private network,” “a DNS proxy server,” “an encrypted channel,” and “secure channel.” 35 U.S.C.A. § 102(a).

20. Evidence ⇌146

District court would not have abused its discretion in finding that probative value of evidence that mobile phone manufacturer initiated re-examinations of patents generally describing method of transparently creating a virtual private network (VPN) between client computer and target computer and patents disclosing secure domain name service was substantially outweighed by risk of unfair prejudice to patentee, confusion with invalidity on the merits, or misleading jury, thereby justifying exclusion in patent infringement action. Fed.Rules Evid.Rule 403, 28 U.S.C.A.

21. Courts ⇌96(7)

In a patent case, regional circuit law is applied to evidentiary issues.

22. Federal Courts ⇌3598(5)

The Fifth Circuit reviews a district court’s exclusion of relevant evidence on the basis that its probative value is substantially outweighed by danger of unfair prejudice for clear abuse of discretion resulting in substantial prejudice. Fed. Rules Evid.Rule 403, 28 U.S.C.A.

23. Patents ⇌318(4.1)

Patentee could not rely on entire market value of multi-component product containing several non-infringing features with no relation to patented feature to approximate base for reasonable royalty that manufacturer of accused products would have been willing to offer to pay to patentee during hypothetical negotiation, without attempting to apportion value attributable to patented features. 35 U.S.C.A. § 284.

24. Patents ⇌319(1)

The most common method for determining a reasonable royalty is the hypothetical negotiation approach, which attempts to ascertain the royalty upon which the parties would have agreed had they successfully negotiated an agreement just before patent infringement began. 35 U.S.C.A. § 284.

25. Patents ⇌319(1)

In a patent case, a reasonable royalty may be a lump-sum payment not calculated on a per unit basis, but it may also be, and often is, a running payment that varies with the number of infringing units; in that event, it generally has two prongs: a royalty base and a royalty rate. 35 U.S.C.A. § 284.

26. Patents ⇌319(1)

Whatever the form of the royalty, a patentee must take care to seek only those damages attributable to the infringing features. 35 U.S.C.A. § 284.

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