

ALERT

## Federal Circuit Patent Bulletin: *Vederi, LLC v. Google, Inc.*

March 14, 2014

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On March 14, 2014, in *Vederi, LLC v. Google, Inc.*, the U.S. Court of Appeals for the Federal Circuit (Rader,\* Dyk, Taranto) vacated and remanded the district court's summary judgment that Google did not infringe U.S. Patents No. 7,239,760, No. 7,577,316, No. 7,805,025, and No. 7,813,596, which related to methods for creating synthesized images of a geographic area through which a user may then visually navigate via a computer. The Federal Circuit stated:

In construing claims, this court relies primarily on the claim language, the specification, and the prosecution history. "Apart from the claim language itself, the specification is the single best guide to the meaning of a claim term." And while the prosecution history often lacks the clarity of the specification, it is another established source of intrinsic evidence. After considering these three sources of intrinsic evidence, a court may also seek guidance from extrinsic evidence. However, extrinsic evidence may be less reliable than the intrinsic evidence.

In the present case, the district court construed "images depicting views of objects in a geographic area, the views being substantially elevations of the objects in the geographic area" as "vertical flat (as opposed to curved or spherical) depictions of front or side views." A careful review of the record shows that the district court erred by excluding all curved or spherical views and images.

The district court based its construction of "substantially elevations" largely on extrinsic evidence regarding the technical meaning of "elevation" as an architectural term of art. Various technical dictionaries define elevation generally as a projection of a building surface onto a vertical plane or on a plane vertical (at a

right angle) to the horizon. Indeed, according to Google, elevations are “non-perspective, two-dimensional view[s] depicted as if the viewer were simultaneously positioned at 90 degrees (along the horizontal plane) from every point of the object.” . . . However, the district court erred in construing “substantially elevations” without sufficiently considering the intrinsic evidence in this case. In this case, the claim language is a critical part of the record that shows the error in the trial court’s reading of the claims. The operative language in this case is “substantially elevations.” The district court’s construction requiring elevation, and “elevation” alone in the strict sense, gives no effect to the “substantially” modifier contained in the claims. “A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.” By effectively reading “substantially” out the claims, the district court erred. . . .

Google argues that the meaning of “substantially” merely reflects the fact that, as a practical matter, photographic images, such as those disclosed in the Asserted Patents, could not depict true elevations as that would require a camera lens as large as the object being photographed (here, buildings, cars, and the like). Indeed, Google concedes that using a camera to record an image of a true elevation is a “physical impossibility absent an absurdly large camera.” But under this interpretation, “substantially” has no independent operative effect other than to account for the specification’s disclosure of cameras as a means for capturing images. This interpretation would not allow the claims to cover the fish-eye lens embodiment. Thus, the district court’s confining claim construction does not account for important parts of the intrinsic record.

This court also disagrees with the district court’s conclusion that its construction is warranted “because Vederi’s method of taking, processing and displaying images creates only vertical flat views, not spherical ones.” For starters, the provisional application incorporated by reference into the Asserted Patents notes that 360 degree synthetic panoramas may be created if a sufficient number of cameras are used. And while Google argues that the specification only discloses a method of creating the composite images by combining vertical flat columns that would result in vertical flat images, the specification simply states that “preferably” the composite images are created on a column-by-column basis. Even assuming this method results in vertical flat views, the specification does not state that this is the only way to create composite images, and this court perceives no reason to limit the disputed claim language based on that particular embodiment.

Nor does the specification demonstrate any disavowal of curved or spherical images supporting the district court’s construction. . . . Notably, the Asserted Patents actually disclose doing just that: “a duodecahedron of cameras may be used to record the objects from all viewing directions.” Thus, the record, viewed in its entirety and with reference to the proper context, does not contain any disclaimer, let alone a clear and unmistakable disavowal. . . . Having analyzed the claims, the specification and the prosecution history, this court concludes

that the district court erred in construing “images depicting views of objects in a geographic area, the views being substantially elevations of the objects in the geographic area” as “vertical flat (as opposed to curved or spherical) depictions of front or side views.” To the contrary, the record shows that “views being substantially elevations of the objects” refers to “front and side views of the objects.” Thus, as properly construed, the claims do not exclude curved or spherical images depicting views that are substantially front or side views of the objects in the geographic area.