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## Federal Circuit Patent Bulletin: *Fenner Investments, Ltd. v. Cellco P'ship*

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February 12, 2015

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On February 12, 2015, in *Fenner Investments, Ltd. v. Cellco P'ship*, the U.S. Court of Appeals for the Federal Circuit (Newman,\* Schall, Hughes) affirmed the district court's summary judgment that Cellco (doing business as Verizon Wireless) did not infringe U.S. Patent No. 5,561,706, which related to personal communication services (PCS) systems. The Federal Circuit stated:

The terms used in patent claims are not construed in the abstract, but in the context in which the term was presented and used by the patentee, as it would have been understood by a person of ordinary skill in the field of the invention on reading the patent documents. Thus, a claim receives the meaning it would have to persons in the field of the invention, when read and understood in light of the entire specification and prosecution history. Any explanation, elaboration, or qualification presented by the inventor during patent examination is relevant, for the role of claim construction is to "capture the scope of the actual invention" that is disclosed, described, and patented.

Words are symbols, linguistic embodiments of information sought to be communicated, and, as such, can be imperfect at representing their subject. The Supreme Court recently observed this challenge to

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patent claim interpretation, stating [that] “the definiteness requirement must take into account the inherent limitations of language,” and that clarity is required although “recognizing that absolute precision is unattainable.” When the disputed words describe technology, the terse usage of patent claims often requires “construction” in order to define and establish the legal right. Judicial “construction” of patent claims aims to state the boundaries of the patented subject matter, not to change that which was invented.

The foundation of judicial claim construction is the “written description” in the specification. The patent statute requires that the claims “particularly point[] out and distinctly claim[] the subject matter” that the applicant regards as the invention. The district court appropriately consulted the description in the ‘706 specification “for the purpose of better understanding the meaning of the claim.” The ‘706 specification includes block diagrams and flow charts, typified by Figure 1. Such drawings are part of the “written description” of the invention. . . .

Verizon argues that this description limits the available scope of claim 1. The patent explains that this system is distinguished from non-PCS telephonic communications systems whose “billing and system management procedures are associated with the telephones present in a household or business” and “billing charges are associated with the telephone and not with the individual making the call.” Describing the PCS system as centered on the user instead of the device, the patent describes the “PCS concept envision[ing] each telephone user having a personal identification number” and “[b]illing and call servicing are identified with the individual personal identification numbers and not with a telephone unit.” . . .

The prosecution history bolsters the district court’s construction that the term “personal identification number” is a number associated with the user, not the device. . . . Distinguishing [the prior art], Fenner stated that “[t]he present invention, on the other hand, is centered around the mobile user, not the mobile telephone. The user is identified by a personal code. Furthermore, the mobile user need not be, unlike a mobile telephone, assigned to a particular home exchange.” Fenner argues that these purportedly limiting statements he made during prosecution do not limit the claims, arguing that the statements and the limitations discussed were not the basis for grant of the patent. However, the interested public has the right to rely on the inventor’s statements made during prosecution, without attempting to decipher whether the examiner relied on them, or how much weight they were given. . . .

Fenner argues that the district court’s claim construction of “personal identification number” to mean “associated with the individual and not the device” cannot be correct because it renders the patented invention inoperable. Fenner states that only a device (not a person) is capable of transmitting the personal

identification number to a radio-frequency communication switch, and that "a human being cannot communicate with such a switch except through a compatible radio-equipped cell phone or other wireless unit." . . . However, the district court's construction requires only that a personal identification number is not permanently associated with a specific communications unit or location. This construction is not flawed.

Fenner also argues that the doctrine of claim differentiation negates the district court's construction, for claim 19 would become redundant or superfluous if claim 18 is construed with the restriction imposed by the district court. . . . Fenner argues that since claim 19 is specific to the method where the personal identification number is independent of the device, the doctrine of claim differentiation requires that the foundation claims such as claims 1 and 18 are not so limited. Fenner argues that "if the term personal identification number always means that the number is never associated with any device . . . the limitation in Claim 19 would have been unnecessary." Although claim differentiation is a useful analytic tool, it cannot enlarge the meaning of a claim beyond that which is supported by the patent documents, or relieve any claim of limitations imposed by the prosecution history.