wiley

ALERT

Federal Circuit Patent Bulletin: *Cisco Sys., Inc. v. Int'l Trade Comm'n*

—

November 17, 2017

"Blocking imports of articles that induce patent infringement has a reasonable relationship to stopping unlawful trade acts."

On September 27, 2017, in *Cisco Sys., Inc. v. Int'l Trade Comm'n*, the U.S. Court of Appeals for the Federal Circuit (Reyna,* Schall, Wallach) affirmed the International Trade Commission's limited exclusion order against Arista Networks, Inc. based on its final determination that Arista infringed U.S. Patents No. 7,162,537, No. 6,741,592, and No. 7,200,145, but not U.S. Patents No. 7,340,597 and No. 7,290,164. The patented technology related to certain network devices, related software and components thereof. The Federal Circuit stated:

"[T]he words of a claim are generally given their ordinary and customary meaning." The ordinary meaning may be determined by reviewing various sources, such as the claims themselves, the specification, the prosecution history, dictionaries, and any other relevant evidence. We depart from the ordinary meaning when patentees act as their own lexicographers or disavow the full scope of a claim term in the specification or during prosecution. The standard for disavowal is exacting, requiring clear and unequivocal evidence that the claimed invention includes or does not include a particular feature. Ambiguous language cannot support disavowal.

Arista challenges the Commission's claim construction on two grounds. Arista's first challenge to the Commission's construction is a grammatical one. Arista argues that the prepositional phrase "before being stored in said database" acts as an adverb modifying the verb "executed." Thus, Arista argues, the thing "being stored" is the subject of the verb "executed," namely, the configuration commands. We do not find this argument persuasive in view of the specification and

Authors

—

Neal Seth
Partner
202.719.4179
nseth@wiley.law

Practice Areas

—

Intellectual Property
Patent

claims. . . .

Arista's second challenge to the Commission's construction is based on the prosecution history. During prosecution, the applicant argued that a certain piece of prior art failed to teach the claimed invention because the prior art failed "to disclose teach or otherwise suggest executing configuration commands before storing them in a database." Thus, Arista argues, the applicant understood that the invention stored user-supplied commands and that meaning should control. But the applicant later distinguished this prior art as failing to teach commands at all, whether or not they are stored: "Applicant submits that structures here are not commands, and can in no way be construed to be equivalent to router configuration commands." Indeed, the applicant later argued that the prior art reference failed to teach that "execution of user-supplied configuration commands results in configuration data that is stored in a database," as opposed to storing user-supplied commands. Contrary to Arista's argument, the applicant thus did not clearly state that the claimed invention required storing user-supplied commands. This ambiguous language from the prosecution history cannot form the basis of a disavowal of claim scope. We thus affirm the Commission's claim construction.

The Commission's limited exclusion order prohibits importation of "network devices, related software and components thereof" that infringe the '537 patent, '592 patent, and '145 patent. Arista's main challenge is that the Commission did not make specific findings that the components of its accused products contribute to or induce infringement of the '537 patent, and thus the Commission exceeded its authority to regulate "articles that infringe." We disagree. The Commission sufficiently articulated its findings that the components of Arista's accused products induce infringement of the '537 patent. The Commission found that Arista's "switch hardware is designed to run the EOS software containing Sys[DB] and is run each time EOS is booted." Although theCommission opinion does not separately define "switch hardware," the ALJ's final initial determination does: "Switch hardware . . . includes all the individual components, such as a processor, memory, CPU card, chassis, switch card, and fan modules[.]" J.A. 682. The Commission expressly adopted the ALJ's final initial determination findings that were consistent with its opinion. Thus the exclusion order properly bars the importation of components of Arista's infringing products.

We note that the Commission has "broad discretion in selecting the form, scope, and extent of [a] remedy, and judicial review of its choice of remedy necessarily is limited." Courts will not interfere in the Commission's remedy determination except when "the remedy selected has no reasonable relation to the unlawful practices found to exist." "[I]f the Commission has considered the relevant factors and not made a clear error of judgment, we affirm its choice of remedy." Blocking imports of articles that induce patent infringement has a reasonable relationship to stopping unlawful trade acts. Accordingly, we see no error in the Commission's limited exclusion order.