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Federal Circuit Patent Bulletin: *Waymo LLC v. Uber Techs., Inc.*

September 25, 2017

"[A]rbitration against a non-party to the arbitration agreement cannot be compelled where 'the allegations of collusion are not inextricably bound up with the obligations imposed by the agreement containing the arbitration clause.'"

On September 13, 2017, in *Waymo LLC v. Uber Techs., Inc.*, the U.S. Court of Appeals for the Federal Circuit (Newman,* Wallach, Stoll) affirmed the district court's denial of Uber's motion to compel arbitration based on the arbitration agreement between Waymo and intervenor Anthony Levandowski in Waymo's suit against Uber for patent infringement and trade secret misappropriation, which related to driverless vehicle technology. The Federal Circuit stated:

Contract law principles hold that non-parties to a contract are generally not bound by the contract. A contract to arbitrate is not an exception. In turn, when parties have contracted to arbitrate, the courts have enforced such agreements. The issue in this case is whether the circumstances are such that Waymo can be compelled to arbitrate on equitable grounds, in Waymo's suit against Uber, Ottomotto, and Otto Trucking, where there is no agreement to arbitrate. . . . Courts have applied equitable estoppel to compel arbitration when necessary "to prevent a party from using the terms or obligations of an agreement as the basis for his claims against a non-signatory, while at the same time refusing to arbitrate with the non-signatory under another clause of that same agreement." A non-signatory may compel arbitration where the "relevant state contract law allows him to enforce the agreement." California law establishes that reliance on the contract bearing the arbitration clause is fundamental to compulsion by a non-party to arbitrate. . . .

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Uber argues that Waymo should be compelled to arbitrate this dispute because Waymo's trade secret claims against the Defendants relate to actions by Levandowski in purported violation of his employment agreements withWaymo. Thus Uber argues that the arbitration clauses of the employment agreements between Waymo and Levandowski should also apply to Waymo's suit against Uber. Waymo again states that it is not relying on the Levandowski employment agreements in this suit.

We start the analysis with the complaint. Although Waymo's complaint states that Levandowski "downloaded more than 14,000 highly confidential and proprietary files shortly before his resignation," and that Uber then misappropriated and infringed Waymo's technology using this information, the complaint neither alleges breach of nor cites to any provision of the Waymo-Levandowski employment agreements. . . . California courts define reliance on an agreement as raising claims that are intimately founded in or intertwined with that agreement. . . . Uber argues that Waymo must necessarily rely on its agreements with Levandowski in order to make out its trade secret claims against the Defendants. However, Waymo stresses that its complaint does not rely on Levandowski's employment agreements, stating that the references to the employment agreements are presented to show that Waymo has taken reasonable measures to safeguard its trade secrets. Uber argues that these references should be construed as reliance on the agreements sufficient to compel Waymo to arbitrate this dispute with the Defendants. However, this is not how California courts have viewed reliance in the context of compelling arbitration by non-parties to an arbitration agreement. . . .

The district court accepted Waymo's position, stating, "Waymo need not rely on the terms of its written agreements merely because it makes reference to such agreements . . . . Waymo has alleged and provided a sworn record of how it takes reasonable measures to maintain secrecy." \ The District Court's analysis is correct. . . . [A]rbitration against a non-party to the arbitration agreement cannot be compelled where "the allegations of collusion are not inextricably bound up with the obligations imposed by the agreement containing the arbitration clause." Waymo states that it is not asserting, in its suit against the Defendants, that Uber Technologies conspired with Levandowski to breach his employment agreements with Waymo. We agree with the district court that absent a relationship between Waymo's claims and any concerted misconduct between Uber Technologies and Levandowski involving the employment agreements, Waymo cannot be compelled to arbitrate the dispute.