Polaris IP, LLC v. Google Inc. et al Doc. 442

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BRIGHT RESPONSE, LLC F/K/A POLARIS IP, LLC v. GOOGLE INC., et al.	NO. 2:07CV-371-TJW-CE

DEFENDANTS' JOINT MOTION *IN LIMINE* NO. 3: MOTION TO EXCLUDE LEGALLY INCORRECT EVIDENCE AND ARGUMENT REGARDING THE INVENTORS AND DEPLOYMENT OF THE EZ READER SYSTEM

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Introduction

In this patent infringement case against Google, AOL, and Yahoo!, Defendants have reason to believe that Plaintiff may offer arguments that contradict established patent law concerning prior art. Specifically, Plaintiff may argue or imply that, because most of the inventors of the patent-in-suit were also involved in the development of the EZ Reader system, that system cannot invalidate the patent-in-suit. Plaintiff may also suggest that the EZ Reader system should not invalidate the patent-in-suit because the EZ Reader system was in public use for only a few months over one year before the patent-in-suit was filed. Such arguments not only contradict established law, but would be unfairly prejudicial, confuse the issues and mislead the jury. Thus, the Court should preclude such arguments pursuant to Federal Rules of Evidence 401, 402 and 403.

Argument

Defendants contend that the EZ Reader system, developed in part by named inventors Amy Rice, Julie Hsu, Anthony Angotti, and Rosanna Piccolo, invalidates the patent-in-suit because it was in public use more than one year before the claimed priority date of April 3, 1997. Specifically, Defendants contend that the EZ Reader system was used publicly in the first quarter of 1996—shortly before the critical date.

Initially, it may strike a juror as unfair that a patent could be invalidated by the public use of a system developed by some of the named inventors and described in the patent. Plaintiff may seek to take advantage of this predisposition by arguing that, because four of the five inventors of the patent-in-suit were also involved in the development of the EZ Reader system, that system cannot invalidate the patent-in-suit. The law, however, permits no such exception to the public use requirement. *See* 35 U.S.C. § 102(b). Therefore, the Court should preclude Plaintiff from

arguing or implying that because the named inventors of the '947 patent also helped develop the EZ Reader system, the EZ Reader system cannot invalidate the '947 patent.

It may also initially strike a juror as unfair that a patent could be invalidated by a public use that occurred only a few days, weeks, or months prior to the critical date. Therefore, Plaintiff may argue or imply that the EZ Reader does not invalidate the patent because it was in public use for only a short time before the '947 patent's critical date. Once again, the law does not provide for any such exception. A patent is invalid if "the invention was . . . in public use or on sale in this country, ***more than one year*** prior to the date of the application for patent in the United States." 35 U.S.C. § 102(b). The patent statute is explicit in its one-year timeframe, and there is great danger of the jury being confused if Plaintiff is allowed to insinuate that exceeding this limit by mere days, weeks, or months is a technicality that the jury should overlook.

Conclusion

For the foregoing reasons, Plaintiff should be precluded from arguing or implying either (1) that because inventors of the patent-in-suit were also involved in the development of the EZ Reader system, that system cannot invalidate the patent-in-suit, or (2) that the patent-in-suit is not invalid because the EZ Reader system it was in public use only a few days, weeks, or months before the patent-in-suit was filed.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic service are being served today with a copy of this document via the Court's ECF system per Local Rule CV-5(a)(3), as well as by electronic mail. Any other counsel of record will be served via electronic mail, facsimile transmission and/or first class mail on today's date.

By *_/s/ Margaret P. Kammerud_*
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