

Fed. Circ. Backs Microsoft In Skype Encryption Patent Suit

By Ryan Davis

Law360, New York (February 17, 2016, 7:13 PM ET) -- The Federal Circuit on Wednesday upheld a win for Microsoft Corp. in a suit accusing its Skype service of infringing two data encryption patents owned by Secure Web Conference Corp., holding that a district judge's claim construction was correct.

Claim construction was the only issue in the appeal because the parties stipulated that Microsoft could not infringe under the interpretation of the patent reached by Judge John Gleeson of the Eastern District of New York.

Secure Web is a subsidiary of patent assertion entity ITUS Corp., formerly known as CopyTele Inc. It argued on appeal that Judge Gleeson improperly imposed limitations on key terms in the patents, but the Federal Circuit disagreed.

"Because the district court correctly construed the terms at issue by considering the language of the claims themselves and by looking to the patent specification for guidance on claim term meaning, we affirm," the appeals court wrote.

Secure Web sued Microsoft in May 2013, claiming that Skype, which Microsoft purchased two years earlier for \$8.5 billion, infringed two of its encryption patents. One covers a method of securing email attachments, and the other covers a portable telecommunication security device.

The Federal Circuit's opinion hinged largely on Judge Gleeson's construction of the term "security device" in one of the patents. He held that it referred to a "stand-alone telecommunications device" external and separate from a microprocessor device capable of encryption and decryption.

Secure Web said at oral arguments in December that a skilled artisan would not understand the term "security device" to refer only to an external device.

The Federal Circuit said that the patent specification is clear that it can refer only to an external device. All the descriptions of a security device in the patent are limited to stand-alone devices and nothing suggests a broader reading, the court held.

"Significantly, at no point does the specification contemplate a security device embedded within a microprocessor-based device," it said. "To the contrary, the specification touts the separate and stand-alone nature of the security device as an advantage."

The court held that the judge's interpretation of related terms in the second patent was also correct.

ITUS has sued a number of major companies in recent years over technologies similar to Skype, including Apple Inc.'s FaceTime video calling service and Citrix Systems Inc.'s GoToMeeting service.

Representatives for the parties could not immediately be reached for comment on Wednesday.

The patents at issue are U.S. Patent Nos. 6,856,686 and 6,856,687.

Judges Alan Lourie, William Bryson and Kara F. Stoll sat on the panel for the Federal Circuit.

Secure Web is represented by Wayne M. Helge and James D. Berquist of Davidson Berquist Jackson & Gowdey LLP, and Jonathan T. Suder of Friedman Suder & Cooke.

Microsoft is represented by Chad J. Peterman and William F. Cavanaugh Jr. of Patterson Belknap Webb & Tyler LLP.

The case is Secure Web Conference Corp. v. Microsoft Corp., case number 15-1321, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Stephen Berg.

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