

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Intouch Technologies, Inc. v. Vgo Communications, Inc.

751 F.3d 1327 (Fed. Cir. 2014) · No. 2013-1201 · Decided May 9, 2014

SUMMARY

The United States Court of Appeals for the Federal Circuit reviewed a patent infringement dispute involving remote telepresence robot systems and three asserted patents. The court affirmed the judgment of non-infringement and denial of a new trial on infringement, but reversed the findings that claims of two patents were invalid for obviousness and remanded for those invalidity judgments to be vacated.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	O'Malley; Rader, Chief Judge; Lourie, Circuit Judge; O'Malley, Circuit Judge
JURISDICTION	Federal
DECIDED	May 9, 2014
DOCKET	2013-1201
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Patent-infringement appeal from a final judgment entered after a jury trial. The jury found non-infringement of all asserted patents and found two claims invalid for obviousness. The district court denied InTouch's motions for judgment as a matter of law and for a new trial.
STANDARD OF REVIEW	JMOL, new-trial motions, and evidentiary rulings were reviewed under Ninth Circuit law. JMOL was reviewed for whether the evidence, viewed favorably to the nonmoving party, permitted only one reasonable conclusion contrary to the jury's verdict. Infringement was reviewed for substantial evidence; claim construction de novo; obviousness was reviewed as a mixed question, with underlying factual findings reviewed for substantial evidence and the ultimate legal conclusion reviewed de novo; denial of a new trial and evidentiary rulings were reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Intouch Technologies, Inc., doing business as InTouch Health v. VGo Communications, Inc.

TOPICS

patent infringement

obviousness

evidence

appellate procedure

standard of review

PRACTICE AREAS

patent law

patent infringement

patent validity

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the district court correctly construed the '357 patent terms 'arbitrator' and 'call back mechanism' and the '030 patent term 'arbitrating to control.'
2. Whether substantial evidence supported the jury's findings that VGo did not infringe the asserted claims of the '357, '030, and '962 patents, literally or under the doctrine of equivalents.
3. Whether substantial evidence supported the jury's findings that claim 79 of the '357 patent and claim 1 of the '030 patent were invalid for obviousness.
4. Whether evidentiary rulings concerning VGo's outside-counsel opinions and undisclosed prior art required a new trial.

HOLDINGS

1. The terms require an ability to determine which user or remote station has exclusive control of the robot, including the ability to consider and resolve competing requests; they do not merely require passively allowing the first user to obtain access.
2. A call-back mechanism must send an availability message to a user or users who previously requested access to and were denied access to the particular robot. The message need not be sent to only one user.
3. Substantial evidence supported the jury's finding that VGo's system lacked both the claimed arbitrator and call-back mechanism, and therefore did not infringe claim 79, literally or under the doctrine of equivalents.
4. Substantial evidence supported the jury's finding that VGo's system did not infringe claim 1 because it lacked the required arbitration limitation.
5. Substantial evidence supported the jury's finding that VGo's system did not infringe claims 1 and 8 because it did not actuate the camera in the direction indicated by movement data.
6. The evidence was insufficient to support the jury's obviousness finding by clear and convincing evidence, so the judgment invalidating claim 79 was reversed.
7. The evidence was insufficient to support the jury's obviousness finding by clear and convincing evidence, so the judgment invalidating claim 1 was reversed.
8. Although the testimony concerning VGo's outside-counsel opinions was improper, it did not warrant a new infringement trial because InTouch failed to show that the error probably affected the verdict.

9. The issue was moot because the court reversed and ordered vacatur of the invalidity judgments.

KEY QUOTATIONS

“For these reasons, we conclude that the district court did not err in construing the terms “arbitrator” and “arbitrating” to require a determination of which user among multiple users has exclusive control of the robot.” (19)

“For these reasons, we conclude that the proper construction of the term “call back mechanism” requires “a device that sends a message to a specific user or users who previously were denied access to a particular mobile robot that the same mobile robot can now be accessed.”” (22)

“By failing to account for objective evidence of nonobviousness, Dr. Yanco’s analysis was incomplete, and ultimately insufficient to establish obviousness by clear and convincing evidence.” (41-42)

“AFFIRMED-IN-PART, REVERSED-IN-PART, AND REMANDED” (48)

FACTUAL BACKGROUND

InTouch and VGo manufacture remote telepresence robot systems. InTouch asserted the '962 patent, relating to camera control through a pointing device; the '357 patent, relating to arbitration of access to a shared robot and a call-back mechanism; and the '030 patent, relating to tele-robotic videoconferencing and arbitration among remote stations. VGo's system gave the first requesting authorized user exclusive control and displayed a robot's availability to authorized users, but did not identify or message users who previously had been denied access. Its camera movement was based on the cursor's position relative to a centerline rather than the cursor's directional movement.

PROCEDURAL HISTORY

InTouch sued VGo in the Central District of California for infringement of the '962, '357, and '030 patents. VGo counterclaimed for declaratory judgment of non-infringement and invalidity. After a five-day jury trial, the jury found no infringement and found claim 79 of the '357 patent and claim 1 of the '030 patent invalid for obviousness. The district court entered judgment for VGo and denied post-trial motions. The Federal Circuit affirmed the non-infringement judgment and denial of a new infringement trial, reversed the invalidity findings, and remanded with instructions to vacate those invalidity judgments.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand with directions to vacate the district court's invalidity judgments concerning claim 79 of the '357 patent and claim 1 of the '030 patent. The judgment of non-infringement of all three asserted patents and the denial of a new trial on infringement were affirmed.

CASES CITED

- Verizon Services Corp. v. Cox Fibernet Virginia, Inc., 602 F.3d 1325, 1331 (Fed. Cir. 2010)
- Research Corp. Technologies v. Microsoft Corp., 536 F.3d 1247, 1255 (Fed. Cir. 2008)
- White v. Ford Motor Co., 312 F.3d 998, 1010 (9th Cir. 2002)
- Lighting Ballast Control LLC v. Philips Electronics North America Corp., 744 F.3d 1272, 1276-77 (Fed. Cir. 2014) (en banc)
- Cybor Corp. v. FAS Technologies, Inc., 138 F.3d 1448, 1456 (Fed. Cir. 1998) (en banc)
- 01 Communique Laboratory, Inc. v. LogMeIn, Inc., 687 F.3d 1292, 1296 (Fed. Cir. 2012)
- Medtronic, Inc. v. Mirowski Family Ventures, LLC, 571 U.S. 177, 134 S. Ct. 843, 849 (2014)
- Kinetic Concepts, Inc. v. Smith & Nephew, Inc., 688 F.3d 1342, 1356-57 (Fed. Cir. 2012)
- Jurgens v. McKasy, 927 F.2d 1552, 1557 (Fed. Cir. 1991)
- Molski v. M.J. Cable, Inc., 481 F.3d 724, 728 (9th Cir. 2007)
- Chiron Corp. v. Genentech, Inc., 363 F.3d 1247, 1258 (Fed. Cir. 2004)
- Murphy v. City of Long Beach, 914 F.2d 183, 186 (9th Cir. 1990)
- Chalmers v. City of Los Angeles, 762 F.2d 753, 761 (9th Cir. 1985)
- United States v. Wiggan, 700 F.3d 1204, 1210 (9th Cir. 2012)
- Boyd v. San Francisco, 576 F.3d 938, 943 (9th Cir. 2009)
- Phillips v. AWH Corp., 415 F.3d 1303, 1312-19 (Fed. Cir. 2005) (en banc)
- Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)
- Markman v. Westview Instruments, Inc., 52 F.3d 967, 980 (Fed. Cir. 1995)
- i4i Ltd. Partnership v. Microsoft Corp., 598 F.3d 831, 849 (Fed. Cir. 2010)
- Dawn Equipment Co. v. Kentucky Farms Inc., 140 F.3d 1009, 1015-16 (Fed. Cir. 1998)
- Hilton Davis Chemical Co. v. Warner-Jenkinson Co., 62 F.3d 1512, 1518 (Fed. Cir. 1995) (en banc), rev'd on other grounds, 520 U.S. 17 (1997)
- Cordance Corp. v. Amazon.com, Inc., 658 F.3d 1330, 1339 (Fed. Cir. 2011)
- In re Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litigation, 676 F.3d 1063, 1076-77, 1079 (Fed. Cir. 2012)
- Procter & Gamble Co. v. Teva Pharmaceuticals USA, Inc., 566 F.3d 989, 994 (Fed. Cir. 2009)
- Pfizer, Inc. v. Apotex, Inc., 480 F.3d 1348, 1361 (Fed. Cir. 2007)
- KSR International Co. v. Teleflex Inc., 550 U.S. 398, 415, 418-19 (2007)
- In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)
- Mintz v. Dietz & Watson, Inc., 679 F.3d 1372, 1378 (Fed. Cir. 2012)
- Pressure Products Medical Supplies, Inc. v. Greatbatch Ltd., 599 F.3d 1308, 1319 (Fed. Cir. 2010)
- Ortho-McNeil Pharmaceutical, Inc. v. Mylan Laboratories, Inc., 520 F.3d 1358, 1365 (Fed. Cir. 2008)
- Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138 (Fed. Cir. 1985)
- Innogenetics, N.V. v. Abbott Laboratories, 512 F.3d 1363, 1373-74 (Fed. Cir. 2008)
- ActiveVideo Networks, Inc. v. Verizon Communications, Inc., 694 F.3d 1312, 1327 (Fed. Cir. 2012)
- Ormco Corp. v. Align Technology, Inc., 463 F.3d 1299, 1311-12 (Fed. Cir. 2006)

- Perfect Web Technologies, Inc. v. InfoUSA, Inc., 587 F.3d 1324, 1329 (Fed. Cir. 2009)
- Leapfrog Enterprises, Inc. v. Fisher-Price, Inc., 485 F.3d 1157, 1161 (Fed. Cir. 2007)
- McEuin v. Crown Equipment Corp., 328 F.3d 1028, 1032 (9th Cir. 2003)
- Obrey v. Johnson, 400 F.3d 691, 701-02 (9th Cir. 2005)
- Weeks v. Angelone, 528 U.S. 225, 234 (2000)