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Federal Circuit Vacates International Trade Commission's Ruling That Nokia's Products Do Not Infringe InterDigital's Patent**Intellectual Property Client Alert**

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In *InterDigital Communications, LLC v. ITC*, No. 10-1093 (Fed. Cir. August 1, 2012), the Federal Circuit vacated an International Trade Commission (ITC) order for non-infringement of the asserted claims of two U.S. Patents against Nokia products because the ITC erred in its constructions of certain critical claim terms.

InterDigital owns the patents related to Code Division Multiple Access (CDMA) wireless cellular communication, in which a cellphone establishes contact with a cellular base station in order to initiate a cellphone call. CDMA allow multiple cellphones within a certain geographical area to use the same portion of the radio frequency spectrum simultaneously by a process that assigns a unique code to each communication link that is known as a CDMA channel or "spreading." InterDigital filed a complaint with the ITC against Nokia in 2007 asserting that Nokia had violated section 337 of the Tariff Act of 1930 by importing Wide-band CDMA handsets (Nokia Products) that infringed the '966 and '847 patents. An administrative law judge (ALJ) at the ITC construed the terms "code" and "increased power level" and ruled that the Nokia Products did not infringe the asserted claims of the InterDigital patents. The ALJ construed the term "code" in the claim construction portion of the order to be limited to "a spreading code or a portion of a spreading code." In the infringement portion of his order, the ALJ found that the codes used in the Nokia Products were not spreading codes but rather "scrambling codes." The ALJ also construed the term "increased power level" to require that the power level of the signal be increased continuously. The ALJ found that the Nokia Products did not continuously increase the power level of the code signal during the ramp-up process. On petition for review, the ITC affirmed the ALJ's determination of no violation of section 337.

On Appeal, the Federal Circuit held that the ALJ erred in construing the claim terms "code," which was broad enough to cover both a spreading code and a non-spreading code and "increased power level," which should have been construed to include both intermittent and continuous increases in power. In reaching this decision, the Court noted that InterDigital had not disavowed the ordinary scope of the term "code" in the specification and prosecution of its patents. The Federal Circuit also noted that the doctrine of claim construction supported its construction of the term "code" here, because the limitation of spreading code, that is sought to be read into the independent claim already appears in a dependent claim. The Federal Circuit further ruled that the ALJ's construction of the terms "spreading code," together with his construction of the term "code" as limited to spreading codes, would mean that neither of the preferred embodiments described in the common specification would fall within the scope of the claims.

Additionally, the Federal Circuit found that the ALJ's construction of the term "increased power level" based on the specification was unsupported by the specification, which clearly covered both continuous and stepped power increases. Finally, the Federal Circuit noted that because it had concluded that the claim language was broad enough to include both continuous and stepped power increases, the inventors' failure to include a reference to stepped power increases embodiments in the specification did not justify excluding that embodiment from the coverage of the claims.

In dissent, Judge Newman suggested that the dispositive issue in this matter was the scope of the term “code” and whether the term included a scrambling code or the term was limited to the definition and usage of “code” in the specification of the patents at issue. Judge Newman further suggested that the meaning created for “code” by the panel majority was unsupported by and outside of the specification, where the majority’s definition was neither described nor enabled. Judge Newman also wrote that the doctrine of claim differentiation does not permit enlarging a claim term beyond its presentation in the specification. A technical term in a claim must be construed in accordance with its description and enablement in the specification.

The *InterDigital* decision is just the latest example of the importance of claim construction to the ultimate success or failure of patent litigation.

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