

Google Remains on the Hook After Summary Judgment Denied re: Patent Infringement

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Judge Rya W. Zobel's recent decision denying a set of Google's summary judgment motions has cleared the way for trial. Skyhook initially sued Google for infringement of thirteen patents. Currently, eight patents remain at issue: U.S. Patent Nos. 7,433,694 (the "694 patent"); 7,474,897 (the "897 patent"); 7,856,234 (the "234 patent"); 8,031,657 (the "657 patent"); 8,054,219 (the "219 patent"); 8,154,454 (the "454 patent"); 8,223,074 (the "074 patent"); and 8,242,960 (the "960 patent"). The patents relate generally to finding the location of devices that use wireless networks.

Google filed summary judgment motions on several issues—indefiniteness and non-infringement for the '454, '074, and '960 Patents; and non-infringement for the '219, '694, '657, '897, and '234 Patents. In a 50 page opinion, Judge Zobel denied or denied in-part each of Google's motions. Two aspects of the Court's opinion are worth highlighting here.

First, after denying Google's motion for summary judgment of invalidity for indefiniteness of the '454, '074, and '960 Patents, the Court went a step further. The Court granted summary judgment in favor of the non-moving party, Skyhook, holding that the asserted claims of the '454, '074, and '960 Patents were not invalid for indefiniteness. The Court reasoned that Google's indefiniteness argument was essentially a claim construction issue. Finding no factual issues for the jury to decide, the Court granted summary judgment of no invalidity for indefiniteness.

Second, for the '219 Patent, the Court concluded that a portion of Google's Android operating system could meet the requirements for contributory infringement. One of those requirements is that the accused contributory infringer's *component* has no substantial non-infringing uses. Google argued Android has substantial non-infringing uses. According to the Court, it all turned on whether the *component* was the entire Android software or just the portion of the code that provided the location functionality accused of infringement. The Court began by noting that software can be a component for purposes of contributory infringement, and a subunit of the software may also be a component for purposes of contributory infringement. The Court concluded that the location functionality is separate and distinct from other features in Android. According to the Court, packaging this functionality in Android does not change the functionality's ability to infringe. Thus, the Court denied summary judgment of no contributory infringement because a reasonable jury could conclude that the particular location functionality is suitable only for infringing use.

Next up for Skyhook and Google is trial, which is scheduled to begin on March 9.

The case is ***Skyhook Wireless, Inc. v. Google, Inc.***, 1:10-cv-11571-RWZ, in the District of Massachusetts.

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