

Patent Pool Can Provide Competitive Benefits

Law360, New York (August 21, 2008) -- In a terse non-precedential decision, the U.S. Court of Appeals for the Federal Circuit affirmed a 2006 district court order dismissing antitrust claims against participants in an international patent pool arrangement.

The detailed district court decision concluded that a patent pool for DVD technology was lawful under the U.S. antitrust laws. *Wuxi Multimedia, Ltd. v. Koninklijke Philips Elecs.*, Case No. 08-1041 (Fed. Cir., June 5, 2008) (per curiam).

Two Chinese DVD manufacturers, Wuxi Multimedia and Orient Power (Wuxi), filed an antitrust class action lawsuit against the 3C Patent Group (3C), an international patent pool consisting of technology owned by Phillips, Sony, Pioneer, and LG Electronics.

Wuxi alleged that the defendants violated U.S. antitrust laws by conspiring through 3C to license patented DVD technologies at "fixed" prices and conspiring to monopolize the DVD market.

Prior to the Wuxi proceedings, the Department of Justice (DOJ) analyzed this specific patent pool in a business review letter and determined that it would not engage in enforcement proceedings because the pool did not appear to violate the antitrust laws and provided substantial competitive benefits.

Offering guidance on the structure of these types of arrangements, the DOJ business review letter suggested that patent pools have the following characteristics relevant to the Wuxi court's analysis of the 3C pool:

- include only valid patents (i.e., not expired patents)
- include only essential patents
- permit contributors to license technology outside the pool (i.e., non-exclusive licenses)

Wuxi filed a second amended complaint in 2005 against 3C alleging various anti-competitive claims such as price fixing, tying, price discrimination and monopolization. Wuxi sought damages and a

declaratory judgment invalidating the 3C patent pool. The district court dismissed the complaint with prejudice in January 2006.

The district court applied the "rule of reason" analysis to the pool, rejecting Wuxi's contention that the pool represented a conspiracy unlawful per se under the antitrust laws.

Relying on the Supreme Court's Broadcast Music decision, the district court held that the 3C pool creates a new "product" in the form of a license to pooled technology that has the potential for substantial benefits. Therefore, the more fact-intensive rule of reason analysis was the proper framework to address Wuxi's claims.

Wuxi challenged the pool by asserting, without any corroborating facts, that the pool included "non-essential" patents, conduct the DOJ indicated could be unlawful in its business review letter. The plaintiffs, despite benefiting from 18 months of discovery, could not assert which of the 100 patents in the 3C pool were non-essential and alleged no facts describing how those patents were non-essential. The court summarily rejected Wuxi's contention.

Wuxi contended that prices for DVD players were "stabilized" due to the 3C pool, which constituted anti-competitive price fixing under the antitrust laws. The district court rejected this contention as well, concluding that plaintiffs asserted harm in a market (i.e., DVD players) different from the product at issue (DVD technology). The defendants did not have the power to fix prices that third-parties charged for DVD players. The court concluded: "Plaintiffs' allegations of harm are directed at the market for DVD players, not the market for DVD patent licensing."

Finally, in addressing Wuxi's remaining conspiracy and monopolization contentions, the court rebuffed the idea that the patent pool harmed competition under the rule of reason. The declining DVD prices suggested otherwise and no additional evidence supported plaintiffs' assertion.

In short, the district court looked past Wuxi's "conclusory" allegations of anti-competitive conduct and instead sought facts supporting Wuxi's contentions. Without supporting facts, the district court rejected Wuxi's claims and the Federal Circuit had no difficulty affirming the decision.

The decision corroborates the DOJ's analysis in its business review letter that addressed this very patent pool. Wuxi's unsupported allegations of conduct inconsistent with the DOJ's business review letter indicated that the 3C pool's adherence to that letter minimized, if not eliminated, antitrust risk.

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