# Unwired Planet Urges Fed. Circ. To Refresh Google IP Row

By **Michael Macagnone**

Law360, Washington (August 4, 2016, 8:44 PM ET) -- Unwired Planet argued for a Federal Circuit panel to overturn a Nevada federal judge's decision to toss allegations that Google infringed three of its patents, maintaining Thursday that the judge misinterpreted the scope of the inventions when she tossed the case.

The trial judge misinterpreted key claims in three of the 10 mobile web patents Unwired Planet had asserted against Google, according to Unwired Planet, when she ruled that the web search giant had not infringed any of Unwired Planet's patents in a summary judgment ruling last year. The company's counsel, Phillip Aurentz, maintained that U.S. District Judge Miranda M. Du had allowed the descriptions of preferred embodiments of the inventions to pollute her understanding of their scope.

"The district court consistently erred by reading embodiment features into the claims which overly narrowed them," he said.

Aurentz pointed to Judge Du's construction of the functions of a "proxy server" in one of the patents on appeal. There, Aurentz said that the claims of the invention do not limit the proxy server's functions to map or translate functions between two otherwise unconnected networks, although Judge Du's summary judgment of noninfringement included that limitation.

"There is no disclosure, there is no disavowal, there is no lexicography that would cause those two limitations," he said during oral arguments Thursday. "[The limitations] are not in the claims, they are not in the specification as a requirement, they are in a preferred embodiment."

Judge Du put too much emphasis on the preferred embodiments of the patent at the time of its invention, according to Aurentz, discounting the possibility that it could cover later technology allegedly used by Google.

Google counsel Gregory Stone pushed back against Unwired Planet's reinterpretation of its claims. In particular he pointed out that Unwired Planet's preferred construction of the term "proxy server" in one of the patents would read out key requirements of the claimed invention, namely that it would facilitate communication. Judge Du made the right call by excluding other functions of proxy servers, such as anonymizing messages, that would have gone beyond the language of the patents.

"That doesn't enable communications, that enables security, and I don't think there is any evidence in the record that someone of ordinary skill in the art would think that would enable communications," he said.

Unwired Planet has argued since September 2012 in **suits launched against Google and Apple** that mobile and web-based products that run on Google's Android operating system and Apple's iPhone, iPad and other devices infringe more than 20 different Unwired Planet patents. After filing those suits, the Apple matter was moved to California and the claims have been repeatedly trimmed by **Patent Trial and Appeal Board** rulings and stipulations, as well as **another ruling by Judge Du** that one of the patents asserted against Google was indefinite.

Then, in 2015, Judge Du ruled that Google had not infringed any of Unwired Planet's patents based on an earlier claims construction. After that ruling, the remaining claims have been stayed pending the instant appeal.

The patents in dispute are U.S. Patent Nos. 6,684,087; 6,662,016; and 6,895,240.

Federal Circuit Judges Evan J. Wallach, Todd M. Hughes and Kara F. Stoll sat on the panel.

Unwired Planet is represented by Theodore Stevenson III, Phillip Aurentz, Kevin Lee Burgess and Joel Lance Thollander of McKool Smith PC.

Google is represented by Gregory Paul Stone, Peter Andrew Detre, Peter Gratzinger, Adam R. Lawton and Fred Anthony Rowley Jr. of Munger Tolles & Olson LLP.

The case is Unwired Planet LLC v. Google Inc., case number 15-1966, in the United States Court of Appeals for the Federal Circuit.

--Editing by Jack Karp.