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Fed. Circ. Affirms \$15M Photo Patent Verdict Against Samsung

By **Ryan Davis**

Law360, New York (September 21, 2015, 8:42 PM EDT) -- The Federal Circuit on Monday affirmed a \$15 million patent infringement verdict against Samsung Electronics Co. Ltd. in a technology licensing company's suit alleging that Samsung's smartphones infringe a photo upload patent, rejecting the tech giant's claims that it didn't infringe and that the patent is invalid.

The appeals court's decision leaves intact a **2013 victory** by Summit 6 LLC in which a Texas federal jury found that Samsung infringed a patent covering "an improved web-based media submission tool" for submitting digital photos to a website.

Samsung said on appeal that the jury's verdict was not supported by substantial evidence, arguing that its smartphones do not "pre-process" photos, as required by the patent. The Federal Circuit disagreed.

"Both parties were fully heard on this issue, and there exists legally sufficient evidentiary basis for a reasonable jury to find for Summit on this issue," the court said. "This evidence supports the jury's verdict finding that Samsung's accused devices perform the methods of the asserted claims."

Samsung also maintained that the patent was invalid as anticipated by an earlier patent for transmitting digital photos over a wireless network, but the Federal Circuit ruled that the prior art patent did not include all the limitations.

"The jury heard expert testimony from both sides" on the validity question, the Federal Circuit said. "The jury verdict is supported by substantial evidence, and we have no cause to disturb it."

Finally, Samsung argued that the judge should have excluded the testimony of Summit 6's damages expert, Paul Benoit, who told the jury that Samsung would have agreed to pay \$29 million to license the patent in a hypothetical negotiation. Samsung's expert testified that the patented feature was worth no more than \$1.5 million.

Samsung said that Benoit's theory, which was based on the premise that a feature's value is proportional to how often it is used, had never been peer-reviewed or employed in patent litigation by any other expert and should have been rejected. Once more, the Federal Circuit disagreed.

"Mr. Benoit's methodology was structurally sound and tied to the facts of the case. That Mr. Benoit's methodology was not peer-reviewed or published does not necessitate its exclusion," it said, noting that the fact-based nature of the theory "made it impractical, if not impossible, to subject the methods to peer review."

Summit 6's case, filed in February 2011, also alleged Facebook Inc., Photobucket Corp., Multiply Inc. and BlackBerry — then named Research In Motion Corp. — had infringed its patents on media upload technology.

Every company but Samsung settled before trial: Facebook in February agreed to pay \$20 million

to license the technology, BlackBerry forked over \$3 million for a license in October, and Photobucket agreed in July to pay a per-photo royalty.

Summit 6 has also sued Apple Inc., Twitter Inc., Motorola Mobility LLC, HTC Corp. and others over its patents in cases that have ended with joint stipulations of dismissal over the past several months.

Representatives of the parties could not immediately be reached for comment Monday.

The patent-in-suit is U.S. Patent No. 7,765,482.

U.S. Circuit Judges Sharon Prost, Jimmie Reyna and Todd Hughes sat on the panel for the Federal Circuit.

Summit 6 is represented by Theodore Stevenson III, Douglas Cawley, Phillip Aurentz, Richard Kamprath, Joel Thollander, John Campbell, Gretchen Curran and Kathy Li of McKool Smith PC and Bradley Caldwell of Caldwell Cassady & Curry.

Samsung is represented by Carter Phillips, Joseph Guerra and Rachel Townsend of Sidley Austin LLP.

The case is Summit 6 LLC v. Samsung Electronics Co. Ltd., case number 2013-1648, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Brian Baresch.

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