

Facebook, Google Beat Patent Holder's Bid For Review

By **Kat Greene**

Law360, Los Angeles (August 9, 2016, 10:19 PM ET) -- Facebook, Google and others beat an Australian company's bid to undo dismissals of its email patent suit when a Texas federal judge decided Tuesday the Federal Circuit's recent decision in *Enfish* doesn't warrant reversing the prior rulings now that the cases are on appeal.

In four similar rulings, U.S. District Judge Robert Pitman denied A Pty Ltd.'s motions to set aside the judgments after the cases had been docketed for appeal. Judge Pitman found the appeals court's May ruling in *Enfish v. Microsoft* simply clarified the way courts should analyze whether a patent covers something abstract, rather than upending the law altogether. The reconsideration bids had asked the judge to trigger a rule that would allow him to change his earlier decisions before the appeals court rules on the matter if extraordinary circumstances — like a major change in case law — call for it.

The Australian patent holder, which had sued Facebook Inc., Google Inc., Amazon.com Inc., and HomeAway Inc. for allegedly infringing on its patent for a system for handling electronic mail, had asked the judge to take the rare step of undoing his judgments even before the Federal Circuit appeals are complete. But Judge Pitman found that the *Enfish* ruling wasn't as earth-shattering to the case as A Pty Ltd. was making it out to be.

"Cases come along daily that help further develop and clarify the law, and undoubtedly some of these decisions could help bolster arguments that were previously rejected," Judge Pitman wrote. "But that does not mean district courts can continually reconsider their prior orders."

A Pty Ltd. had sued Facebook, Google, Amazon, HomeAway, eBay Inc. and Microsoft Corp. in separate lawsuits in February 2015, court records show. Microsoft and A Pty Ltd. asked the court for dismissal in September, and eBay settled the case while it was still on appeal at the Federal Circuit in April, according to the dockets in those suits.

When Judge Pitman ruled on five motions to end the suits — all except Microsoft — in February of this year, he had the high court's *Alice* ruling to guide him, court records show. In those rulings, he found that A Pty Ltd.'s U.S. Patent Number 7,010,572 was directed to the abstract idea of an address directory. And its claims didn't have enough "additional features" that would transform it into something that was patent-eligible, the judge decided.

In April, the Australian company posted notices that it was appealing its losses to the Federal Circuit. Those cases are still pending.

On June 3, the patent holder filed four motions to set aside the judgments against it, contending that, in light of the Enfish ruling, its cases deserved a second analysis by the trial court judge.

The motions were made under Rule 60(b)6, according to Tuesday's order. A district judge may entertain a motion for relief that's otherwise barred by a pending appeal if it defers the ruling, denies the motion or if the motion raises a substantial issue, Judge Pitman explained.

But the Enfish decision didn't undo the Alice ruling he'd used as guidance in reaching his initial decisions against A Pty Ltd., the judge found. Rather, the decision clarifies and elaborates on Alice and the way courts should look at patent infringement cases, he said. The Federal Circuit had ruled in Enfish that unlike the claims at issue in Alice, which the U.S. Supreme Court held covered only an age-old financial concept applied using a computer, Enfish's claims were patent-eligible because they are focused on improving the functioning of a computer, "not on economic or other tasks for which a computer is used in its ordinary capacity."

Enfish wasn't a reversal of Alice, but rather, an elaboration upon it, Judge Pitman said.

"Enfish regularly and repeatedly invokes existing precedent and makes clear that its analysis is not a departure from that precedent, but fits within the existing framework," Judge Pitman wrote.

A representative for A Pty Ltd. declined to comment. Representatives for the other parties didn't immediately respond to requests for comment late Tuesday.

The patent at issue is U.S. Patent Number 7,010,572.

A Pty Ltd. is represented by Jay D. Ellwanger and William M. Parrish of DiNovo Price Ellwanger & Hardy LLP.

Facebook is represented by Alan D. Albright of Bracewell LLP and by Heidi Keefe, Lam Nguyen, Michael G. Rhodes and Mark R. Weinstein of Cooley LLP.

Google is represented by Stefani E. Shanberg, Robin L. Brewer and M. Craig Tyler of Wilson Sonsini Goodrich & Rosati.

Amazon is represented by Michael Merriman of Scott Douglass & McConnico LLP and by Adam K. Mortara, Nossou D. Knobloch, John M. Hughes and Daniel Taylor of Bartlit Beck Herman Palenchar & Scott LLP.

HomeAway is represented by Aaron Fountain and John Michael Guaragna of DLA Piper LLP.

The cases are A PTY Ltd. v. Amazon.com Inc., case number 1:15-cv-00154; A Pty Ltd. v. Facebook Inc., case number 1:15-cv-00156, A Pty Ltd. v. Google Inc., case number 1:15-cv-00157; and A PTY Ltd. v. HomeAway Inc., case number 1:15-cv-00158, all in the U.S. District Court for the Western District of Texas.

--Additional reporting by Matthew Bultman and Ryan Davis. Editing by Jill Coffey.

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