

Nintendo Urges Fed. Circ. To Keep Monitor IP Suit Dead

By **Michael Macagnone**

Law360, Washington (August 1, 2016, 4:15 PM ET) -- Nintendo pushed for a Federal Circuit panel to reject the appeal of a nonpracticing entity Monday, arguing the company can't now reinterpret its patent to say Nintendo infringed.

The American arm of the Japan-based electronics giant argued that the Texas trial court correctly interpreted the bounds of patent assertion entity Secure Access LLC's patent when deciding that Nintendo DS's multiple screens did not infringe the patent. Although there were several issues on appeal, the electronics company emphasized that the interpretation of the patent's "translative video adapter," or TVA, should control the fate of the case.

Stephen Smith, counsel for Nintendo, argued that the lower court correctly decided that the coined term TVA was a detachable module, based on the language of the patent itself.

"When you coin a term you have to look at the specification to give full life, force and effect to the term," he said.

The lower court found limitations in the claims for Secure Access LLC's patent do not line up with the features in Nintendo's DS system, including the detachable nature of the TVA. Secure Access subsequently appealed the summary judgment ruling of noninfringement from U.S. District Judge J. Rodney Gilstrap last year. Smith said Judge Gilstrap correctly interpreted the various claimed elements of Secure Access's patent, and argued that if the company lost on any one of the seven issues on appeal, it should lose its case.

The judges on the panel questioned whether Secure Access had waived the severability of each of the interpretation issues, with Judge Richard G. Taranto saying he understood the company to be saying that "they would have grounds to proceed on remand if they win on any of them."

Secure Access argued that Judge Gilstrap added limitations to their patent that do not appear in the actual claim language and that are not compelled by anything else in U.S. Patent Number 6,522,309. Instead, the judge simply followed Nintendo's arguments rather than trying to figure out for itself what the patent invented, according to Secure Access' brief.

"It is a classic claims construction issue, the district court read the preferred embodiment back into the claims and read the limitations of dependent claims into the independent claims," according to Secure Access's counsel, Philip P. Mann.

The patent's TVA works by intercepting data from a computer that otherwise would shoot onto a monitor before converting it into data that can be displayed on multiple screens, explained Secure Access. That could include a wide variety of data and did not require the functionality be separate, the company said.

Mann argued that the judge's interpretation of limits on the patent explicitly excluded stated functions in the claims, like being able to use data from a printer port and reading out two-way communication along video connections. He argued that removing interconnectivity like that basically voided the invention.

"As soon as you remove all interactivity then the invention doesn't work," he said

Secure Access filed suit in January 2013 against Nintendo and retailers such as Best Buy Stores LP, KMart Corp. and Target Corp. in the Eastern District of Texas. It alleges that the Nintendo DS handheld game system infringes the '309 patent, which is titled "multiscreen personal computer display method and apparatus."

In June 2014, the Federal Circuit granted Nintendo's petition for a writ of mandamus and ordered U.S. District Judge J. Rodney Gilstrap to sever the claims, to transfer the case against the gaming company to the Western District of Washington and to stay the case against the retailers, deeming Nintendo to be the "true defendant."

Federal Circuit Judges Alan D. Lourie, Kathleen M. O'Malley and Richard G. Taranto sat on the panel.

The patent-in-suit is U.S. Patent Number 6,522,309.

Secure Access is represented by Philip P. Mann and Timothy J. Billick of the Mann Law Group.

Nintendo is represented by Stephen R. Smith, Phillip E. Morton and Rose S. Whelan of Cooley LLP.

The case is Secure Access LLC v. Nintendo of America Inc., case number 15-1971, in the U.S. Court of Appeals for the Federal Circuit.

— Additional reporting by Kevin Penton. Editing by Ben Guilfooy.