

Fed. Circ. Affirms Schlumberger's Win On Fracking Patent

By Khorri Atkinson

Law360 (March 31, 2020, 11:00 PM EDT) -- The Federal Circuit on Tuesday sided with a Texas federal judge's order clearing oilfield services giant Schlumberger Technology Corp. of allegations that it infringed oilfield technology company EnerPol LLC's patent covering hydraulic fracturing methods.

In a 15-page opinion, a three-judge panel concluded that it found no error with U.S. District Judge Rodney Gilstrap's October 2018 construction of the patent claims.

The dispute, which EnerPol lodged in 2017, centered on the key claim term "polymer-continuous liquid phase" in the Texas-based company's U.S. Patent No. 6,949,491.

According to Tuesday's order, both companies stipulated after the claim construction that Schlumberger couldn't infringe under the way the judge construed the claims. EnerPol nonetheless appealed to the Federal Circuit and insisted that the claim construction was wrong.

The panel found that the petitioner's proposed "construction ignores crucial teachings in the specification and would result in a polymer-continuous liquid phase that cannot function as a fracturing fluid."

"Statements in the specification support this view of the claims and indicate that the degradable polymer begins as a solid and then becomes liquid, and that the 'polymer-continuous liquid phase' acts as the fracturing fluid," according to the order.

The panel also stated that reading "the claim language in light of the specification, and in further view of the prosecution history, we conclude that the district court's construction is correct."

The appeals court had rejected Schlumberger's argument that the panel lacked jurisdiction to hear EnerPol's appeal because the district court didn't explain how the claim construction led to the finding of noninfringement.

Latham & Watkins partner Max Grant, who represented Schlumberger, said he's pleased with the panel's "well-reasoned opinion and its vindication of the position Schlumberger took before discovery started."

Counsel for EnerPol did not immediately reply to a request for comment.

The patent at issue is U.S. Patent No. 6,949,491.

U.S. Circuit Judges Jimmie Reyna, Richard Taranto and Kara Stoll sat on the panel for the Federal Circuit.

EnerPol is represented by Robert P. Courtney, Mathias Wetzstein Samuel, Bethany Mihalik, Leonard Davis and Nitika Gupta Fiorella of Fish & Richardson PC.

Schlumberger is represented by Max Grant, Gabriel Bell, Robert J. Gajarsa and Gregory Sobolski of Latham & Watkins LLP.

The case is EnerPol LLC v. Schlumberger Technology Corp., case number 19-1079, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Bruce Goldman.