

Fed. Circ. Upholds ZTE Loss In Wireless Patent Suit

By **Matthew Bultman**

Law360, New York (November 3, 2017, 5:13 PM EDT) -- The Federal Circuit on Friday upheld a jury's determination that ZTE Corp. infringed two InterDigital Communications Inc. patents covering wireless communication, the latest chapter in a long-running legal battle over the technology.

The appeals court affirmed a Delaware federal judge's interpretation of a key term in the patents and found there was substantial evidence to support the jury's finding that certain ZTE wireless devices infringed.

The case dates back to January 2013, when InterDigital, a wireless technology research and licensing company based in Wilmington, filed a lawsuit against ZTE and claimed it infringed with wireless devices, such as the ZTE 4G Hotspot and Flash.

Following an October 2014 trial, jurors found ZTE did infringe and had not shown the patents were invalid. U.S. District Judge Richard G. Andrews later denied ZTE's motion for judgment as a matter of law, finding there was substantial evidence to support the jury's verdict.

An amount of damages was not determined at trial; that phase of the case has yet to take place. It is unknown how much InterDigital intends to seek.

Numerous claims in a third patent that ZTE was found to infringe at trial were later invalidated by the PTAB as being obvious. The case went back to the board after the Federal Circuit in April vacated its finding with respect to one claim. The rest of the PTAB's decision was affirmed.

That patent was not part of ZTE's current appeal.

The main issue in this case was the district court's interpretation of a key term in the two at-issue patents. ZTE argued it was inconsistent with a previous Federal Circuit decision stemming from a U.S. International Trade Commission investigation involving related InterDigital patents.

In addition, ZTE said the jury's infringement finding should be overturned because it rested on "nothing more than conclusory and contradictory expert testimony."

The Federal Circuit rejected both arguments Friday. With respect to the infringement finding, the court found that, contrary to ZTE's argument, an expert for InterDigital gave testimony that was consistent

with evidence presented in the case.

“The jury was entitled to reject the testimony of ZTE’s expert and rely on the testimony of InterDigital’s experts” along with certain other evidence, the court wrote. “We conclude that substantial evidence supports the verdict of infringement.”

Turning to claim construction, the court said the claims involved with this appeal were “notably different” from those in the ITC case. The court also said it didn’t have the chance to rule on whether the ITC’s claim construction was correct because that wasn’t at issue in the earlier appeal.

Max Grant of Latham & Watkins LLP, an attorney for InterDigital, said they were pleased with the decision.

“Despite how long it’s taken, InterDigital is gratified the Federal Circuit has affirmed the district court’s claim construction and the jury verdict that these two patents are both valid and infringed,” he said.

An attorney for ZTE could not immediately be reached for comment.

Chief Judge Sharon Prost joined Circuit Judges Alan D. Lourie and Richard G. Taranto on the Federal Circuit panel.

The patents at issue are U.S. Patent Numbers 7,190,966 and 7,286,847.

ZTE is represented by Charles McMahon, Brian Jones, Natalie Bennett and Jay Reiziss of McDermott Will & Emery LLP.

InterDigital is represented by Max Grant, Gabriel Bell, Richard Bress and Michael Gerardi of Latham & Watkins LLP.

The case is InterDigital Communications Inc. et al. v. ZTE Corp., case number 2016-2362, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Ryan Davis and Kelcee Griffis. Editing by Alyssa Miller.