

WI-LAN USA, INC. v. APPLE, INC., Appeal No. 2015-1256 (Fed. Cir. August 1, 2016). Before Lourie, Bryson and Chen. Appealed from S.D. Cal. (Judge Sabraw).

Background:

Wi-LAN sued Apple alleging that its iPhone infringes two of Wi-LAN's patents by operating on a 4G network. Initially, Wi-LAN argued, during claim construction, that a claim term, "UL connections," should be construed as "uplink services." Apple argued that the term should be construed as "uplink connections between [an intermediary node] and its users." The district court agreed with Apple's construction and granted Apple summary judgment of non-infringement on all asserted claims. After losing on summary judgment, Wi-LAN moved for reconsideration of the court's summary judgment order, and modified its construction of "UL connections" as connections between an intermediary node and a base station. This construction was inconsistent with Wi-LAN's earlier position and the district court's construction. Nevertheless, the district court analyzed Wi-LAN's new construction on its merits. On appeal, Apple argued that waiver bars Wi-LAN's attempt to change its position on the construction of "UL connections."

Issue/Holding:

Did the district court err in allowing Wi-LAN to amend its claim construction position when filing a motion for reconsideration? No, affirmed.

Discussion:

Apple argued that waiver bars Wi-LAN's attempt to take a position on claim construction, and after that position failed, get another "bite at . . . Apple" by changing its construction.

The Federal Circuit pointed out that the district court recognized, when Wi-LAN moved for reconsideration, that Wi-LAN's claim construction was at odds with its original position. The district court had considered whether this change had come too late and acknowledged that Wi-LAN's new construction was not based on newly discovered evidence and appeared to be motivated only by its loss on summary judgment. Despite this, the district court proceeded to analyze the new claim construction on its merits.

The Federal Circuit indicated that it supports a district court's discretion to permit parties to change their positions over the course of litigation. It further noted that the Court has long held that a district court may engage in rolling claim construction, in which a court revisits and alters its interpretation of the claims as its understanding of the technology evolves. The Court concluded that the district court did not abuse its discretion in deciding to resolve Wi-LAN's motion for reconsideration on its merits, and thus found there was no waiver.