

HTC CORP. v. CELLULAR COMMUNICATIONS EQUIP., LLC., Appeal No. 2016-1880 (Fed. Cir. December 18, 2017). Before Dyk, Reyna and Taranto. Appealed from Patent Trial and Appeal Board (PTAB).

Background:

Cellular owns a patent directed to maintaining a total transmit power difference in mobile devices that prevent the mobile device from routinely transmitting messages at maximum power transmission. These messages are transmitted over a cellular network in the transmission unit of data frames. Cellular's total transmit power difference ensures that an amount of transmission power is available for transmitting messages when radio transmission conditions deteriorate, such that mobile devices are able to increase the transmission power during these deteriorated radio conditions. This minimizes the occurrence of incomplete message transmissions.

During *inter partes* review of Cellular's patent, the PTAB did not expressly construe the claim term "message," nor did HTC seek a specific claim construction of "message" before the PTAB. The PTAB subsequently ruled that HTC failed to show that any of Cellular's challenged claims were unpatentable, which HTC appealed. Among other issues, HTC argued that the PTAB failed to construe the term "message" according to its broadest reasonable interpretation.

Issue/Holding:

Did the PTAB err in its understanding of the scope of the claim term "message"? No, affirmed.

Discussion:

First, the Federal Circuit ruled that, despite no express construction of "message" by the PTAB, the Federal Circuit's review of the PTAB's understanding of a claim term was proper because the PTAB's findings that establish "the scope of the patentable subject matter may fall within the ambit of claim construction."

Second, HTC advanced inconsistent claim construction arguments before the Federal Circuit regarding the claim term "message" at various points in its briefs and during oral argument. Nonetheless, the Federal Circuit understood HTC's contention to be that the PTAB's application of the term "message" improperly excluded embodiments specifically relating to single frame messages.

However, as acknowledged by HTC during oral argument, the PTAB did not exclude single frame messages from the scope of the claim term "message." Rather, the PTAB relied on expert declarations from both HTC and Cellular attesting that messages can span one or more frames. Based on this expert testimony, the Federal Circuit concluded that the PTAB properly understood that the scope of the claim term "message" encompasses messages that last a single frame.