FRESHUB, INC. v. AMAZON.COM, INC., Appeals Nos. 2022-1391 and 2022-1425 (Fed. Cir. February 26, 2024). Before Reyna, Taranto, and Chen. Appealed from W.D. Tex. (Judge Albright).

Background:

Freshub sued Amazon for infringement of its patent directed to voice-processing technology, namely, a system that adds items to lists based on "user spoken words." The alleged infringement was based on Amazon's consumer devices, such as Echo, which allow a user to connect to a voice-responsive service (Alexa) and perform various voice-processing tasks. The task at issue is a shopping-list feature, in which voice prompts are used to modify a shopping list. Amazon defended on grounds of noninfringement, and asserted that the patent should be found unenforceable due to the alleged inequitable conduct of Freshub's parent company (Ikan). Specifically, Amazon alleged that Ikan acted with intent to deceive when it revived an abandoned ancestor application of the asserted patent, after a five year non-response period. A jury found that Amazon did not infringe the claims of the asserted patent. During a subsequent bench trial, the district court found that Amazon failed to prove that the five-year abandonment of the ancestor application was intentional. Freshub appealed, and Amazon cross-appealed.

Issues/Holdings:

(1) Did the district court err in finding that Amazon did not infringe the asserted patent? No, affirmed. (2) Did the district court err in finding that Amazon failed to prove inequitable conduct? No, affirmed.

Discussion:

First, the Federal Circuit held that substantial evidence supports a finding of noninfringement because Amazon's system does not "identify an item corresponding to the text," as required by the asserted claim. The Federal Circuit considered Freshub's arguments that Amazon's shopping-list feature may add "items" to a list based on extraction of a keyword. The Federal Circuit then considered Amazon's expert testimony that, although its shopping-***cart*** feature may "identify an item corresponding to the text," its distinct shopping-***list*** feature was programmed to merely add text to a list regardless of whether there is a product corresponding to the text. As an example, "sad" or "unicorns in a can" could be added to a list. In this way, the accused shopping-list feature does not take the additional step of "identifying an item" corresponding to the text, and then adding it to a list. Thus, the Federal Circuit held that the jury reasonably relied on the expert's testimony as evidence of noninfringement.

Second, in considering Amazon's cross appeal, the Federal Circuit upheld the district court's rejection of Amazon's allegations of inequitable conduct because Amazon failed to prove that the intent behind the abandonment was deceptive. In reaching this conclusion, the Federal Circuit considered Amazon's arguments that the statement of unintentional abandonment, as made by Ikan's patent counsel, was false because the patent counsel was aware of the Notice of Abandonment, and had procedures in place for reporting the notice to Ikan. However, although the Federal Circuit found there was sufficient evidence showing that the patent counsel knew the application had been abandoned, there was no evidence that Applicant was aware of the abandonment. Thus, the Federal Circuit held that the district court's finding of no deceptive intent, which amounted to inequitable conduct, was reasonable.