Kluwer Patent Blog

Conversant v Apple

Matthew Raynor (Bristows) · Tuesday, December 3rd, 2019

On 29 November 2019, the Patents Court of England and Wales handed down it decision revoking Conversant's UK patent relating to an improved user interface on smartphone devices. Unlike earlier infringement actions brought by Conversant against **Huawei and ZTE** in the UK, this action brought against **Apple** (and various of its subsidiaries) concerned a non standards-essential patent.

Against the backdrop of the early smartphones which required a rather involved process of navigating a sequence of menus to access a desired application, the invention involved the idea of using an "application summary window" on a smartphone to provide a list of several commonly used functions within that application and/or stored data commonly accessed for it. The devices alleged to infringe were various models of Apple's iPhone running various versions of its IOS operating system (in particular, the functionality called "Widgets" and "Home Screen Quick Action Windows", which allow users to view summary data or access certain features of applications quickly, was said to infringe). Apple counterclaimed that the patent was invalid on the basis of two items of prior art, **AgrEvo**-obviousness and added matter. Ultimately, the court held the patent to be infringed but invalid over an early smartphone device called SIMON produced by IBM in 1994 (the **AgrEvo**-obviousness and added matter attacks were dismissed). The main point which is likely to be of interest to patent practitioners relates to the identity of the skilled person in circumstances where a patentee has applied to amend its patent.

Whilst the patent specification and the unamended claims related to computing devices more generally, Conversant had applied unconditionally to limit the claims to a "smart phone" to avoid the prior art. When it came to formulating the skilled person therefore, Conversant contended that the skilled person was a user interface designer specifically for mobile phones. **Apple** contended based on the description in the wider specification that the skilled person was a user interface designer with knowledge and experience of computing devices more generally, including, for example, Personal Digital Assistants (PDAs). The court rejected Apple's approach on the basis that one could end up in this case with a person working in the field of (say) PDAs, even though they are no longer within the claims. As the skilled person is taken to have a practical interest in the subject matter of the invention and the invention is defined by the claims, there was nothing wrong in principle with the effect of a claim amendment meaning that the notional skilled person relevant to an amended claim may be different from the one applicable to the unamended claim. The skilled person was therefore held to be someone with a practical interest in smartphones.

This decision will likely be of particular interest to patent practitioners in jurisdictions such as the

UK where expert evidence plays an important role. Parties may be faced with the possibility of having to abandon their expert as a result of a claim amendment put forward by a patentee. The decision should therefore encourage patentees to consider and file claim amendments at an early stage in the proceedings, as the court may be less willing to permit late claim amendments which require an opposing party to seek out a new expert, for example, after expert evidence has been exchanged.

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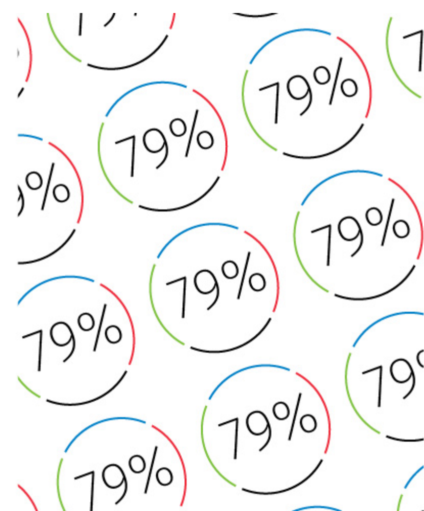

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