

Federal Circuit Tosses Network Appliance's Appeal

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Tuesday, October 31, 2006 --- The U.S. Court of Appeals for the Federal Circuit has dismissed infringement claims filed by Network Appliance Inc. against a smaller rival, derailing the data-management firm's legal campaign three years after it bought the patents at auction.

Without issuing an opinion, the Federal Circuit dismissed the company's claims against file-server company BlueArc Corp. on Oct. 27, affirming a decision from last summer by the U.S. District Court for the Northern District of California.

Network Appliance's complaint, penned by its lawyers at Howrey Simon Arnold & White LLP, was filed against the San Jose, Calif.-based start-up in Delaware district court before being transferred to California in December 2003.

The three patents in the suit cover file-server architecture and operating-system software. They were developed by a now-bankrupt company in the late 1980s. BlueArc allegedly used the technology in its server products, the "Silicon Server" and the "Titan."

The dispute began after Network Appliance won 50 patents at auction with a \$9 million bid in June 2003 from Auspex Systems Inc., a bankrupt file-server firm that pioneered technology for network application support, or NAS.

BlueArc speculated that Network Appliance's intention was to assert the patent portfolio against other file server companies, and referred to the plaintiff as a big company using so-called "patent troll" tactics.

Network Appliance, based in Sunnyvale, Calif., rejected BlueArc's characterization of its motives, noting in court documents that one of the patents acquired from Auspex actually names as inventors two of Network Appliance's founders.

"The patent represents their early and innovative thinking regarding storage products that led to their founding NetApp," the company stated.

Nevertheless, the Federal Circuit affirmed the decision by U.S. District Judge Marilyn Patel that the patents were either not infringed or invalid.

In May, the court granted Network Appliance's motion for summary judgment that BlueArc infringed several claims of one of the patents, but denied

summary judgment of infringement of one of the other patents.

Moreover, the district court ruled that claims in one patent were invalid due to anticipation, that BlueArc didn't infringe the claims of another patent and that BlueArc didn't infringe means-plus-function claims within two of the patents.

BlueArc said that Judge Patel had crafted the ruling with significant care and diligence, noting she held a tutorial and six hearings devoted to claim construction, infringement and validity, comprising more than 600 pages of transcript.

The proceedings culminated in six written decisions issued between November 2004 and June 2005.

In its 72-page reply to the Federal Circuit, Network Appliance claimed the district court's decision was based on faulty claims construction, and that BlueArc's response to the company's opening brief raised issues that weren't addressed by the district court.

According to Network Appliance, the faulty claim construction boiled down to the court not recognizing that the patents are based on a specialized file-system module instead of the general purpose operating system described in prior art.

BlueArc was founded in 1998. Though small, the company says it has carved out a successful stake in the file-server market, and that the lawsuit was penned to threaten that success.

"Had an injunction been issued in the case it would effectively shut down BlueArc's entire operation," BlueArc's law firm said in a statement.

Network Appliance reported more than \$2 billion in total revenue in 2005 and employs about 5,000 people. A lawsuit was filed against the company last week over alleged backdating of stock options.

The patents in the suit are U.S. Patent Nos. 5,802,366; 5,931,918 and 6,065,037.

Network Appliance is represented in this matter by Weil Gotshal & Manges LLP. BlueArc is represented by Kecker & Van Nest LLP.

The case is Network Appliance Inc. v. Bluearc Corporation, case number 3:03-cv-05665, in the U.S. District Court for the Northern District of California, in San Francisco.