



THINK FORWARD

Federal Circuit Clarifies Standard To Prove Irreparable Harm For Injunctive Relief

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On July 10, 2017, the Federal Circuit issued a decision in *Genband US LLC v. Metaswitch Networks Corp.* regarding the standard for proving irreparable harm for purposes of obtaining injunctive relief in a patent case. (Click [here](#) for the decision.) In particular, the Court addressed what a patentee must demonstrate to prove the required “causal nexus” between the alleged irreparable harm and the presence of infringing features in the accused infringing products when there are other, non-infringing features in the products and the products are purchased by multiple consumers.

According to the Court, “[w]here the patentee relies on lost sales to show irreparable injury, it matters what reasons various buyers have for making the purchases lost to the patentee.” The Court confirmed that, to prove the required “causal nexus,” the patentee does not need to prove that the infringing features were the “sole reason” the buyers purchased the accused products. On the other hand, the patentee must prove more than an “insubstantial connection” between the infringing features and the purchasing decisions. The correct standard, according to the Court, “lies between” these guideposts. The Court clarified that “the patentee may be able to make the causal connection between infringement and the relevant lost sales through evidence of various kinds, e.g., that the infringing features significantly increased the products desirability, [or] that soundly supports an inference of causation of a significant number of purchasers’ decisions.”

This decision serves as a good reminder that, during patent litigation involving an accused product with both allegedly infringing and non-infringing features that is purchased by multiple consumers, the patentee should consider attempting to develop evidence that the allegedly infringing features drive the consumers’ demand. The accused infringer, on the other hand, should consider attempting to develop evidence that discredits this argument, such as evidence demonstrating that the non-patented features are what actually drive any demand for the products.

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