

## **DirecTV Didn't Infringe Recognition IP: Fed. Circ.**

By **Richard Vanderford**

*Law360, New York (August 06, 2010)* -- A federal appeals court has upheld a win for DirecTV Group Inc. in a patent infringement suit brought by Phoenix Solutions Inc. claiming DirecTV's customer service telephone system infringes four patents for speech recognition technology.

The U.S. Court of Appeals for the Federal Circuit tossed Phoenix's appeal with a single word — “affirmed” — on Wednesday, two days after oral argument.

Phoenix had challenged a decision awarding summary judgment to the satellite broadcasting company and the denial of its own bid for summary judgment.

The plaintiff accused DirecTV of infringing four of its patents through a call answering service that uses computers to recognize speech and handle customer requests.

Using a computerized system to field calls is more cost efficient and customer-friendly than staffing a call center with live operators, and saved DirecTV \$9.2 million a year, the suit said.

DirecTV countered that it used a third-party vendor for its phone systems, and had no knowledge of their inner workings. It doesn't direct and control those operations or perform the steps of the asserted patent claims itself, the defendant said.

The district court agreed, and threw out the case in September. The court later denied a Phoenix motion for reconsideration and a request for additional discovery.

In its motion for summary judgment, the plaintiff argued there was "simply no reasonable dispute" that DirecTV was using a system that includes all elements of the a claim of at least one of its patents.

The hearing before the Federal Circuit did not go well for Phoenix — its argument hinged on proving that DirecTV “used” the calling system.

The quickly exasperated judges on the panel asked why Phoenix did not structure the suit differently, as it was clear to them that DirecTV's customers used the system by calling it.

“DirecTV does not connect itself to this system. It connects its customers to this system, it does not literally use this system,” Circuit Judge Randall Rader said at Monday's hearing, noting he was “troubled” by Phoenix's attempt to end-run the requirements for indirect infringement.

“If you want to get DirecTV it's got to be indirect infringement. You've got to prove intent. Am I missing something there?” Judge Rader asked. “DirecTV does not call the system and go through the audible prompts.”

Phoenix disagrees with the panel's decision, said Nick Gross, one of its attorneys.

"Fundamentally their decision for this defendant is at odds with the plain wording in Section 271 of the patent statute which — according to long standing Supreme Court precedent — defines 'use' of a claimed invention very broadly as an infringement," Gross said.

The loss gave them some suggestions as to how to pursue other infringers, though, he said.

Phoenix will also consider further appeals of this decision, Gross said.

An attorney for DirecTV did not immediately respond to a request for comment.

The patents-in-suit are U.S. Patent Numbers 6,615,172; 7,139,714; 7,225,125; and 7,050,977.

Judges Randall R. Rader, Pauline Newman and Kimberly A. Moore sat on the panel for the Federal Circuit.

R. Joseph Trojan of Trojan Law Offices represents Phoenix.

Jason L. Peltz of Bartlit Beck Herman Palenchar & Scott LLP represents DirecTV.

The case is Phoenix Solutions Inc. v. The DirecTV Group Inc., case number 2010-1125, in the U.S. Court of Appeals for the Federal Circuit.