

United States Court of Appeals for the Federal Circuit

**ELBIT SYSTEMS LAND AND C4I LTD., ELBIT
SYSTEMS OF AMERICA, LLC,**
Plaintiffs-Appellees

v.

HUGHES NETWORK SYSTEMS, LLC,
Defendant-Appellant

2018-1910

Appeal from the United States District Court for the
Eastern District of Texas in No. 2:15-cv-00037-RWS, Judge
Robert Schroeder, III.

Decided: June 25, 2019

RICHARD L. RAINEY, Covington & Burling LLP, Wash-
ington, DC, argued for plaintiffs-appellees. Also repre-
sented by KEVIN F. KING, RANGANATH SUDARSHAN; KURT
CALIA, Palo Alto, CA; PATRICK NORTON FLYNN, Redwood
Shores, CA.

WILLIAM F. LEE, Wilmer Cutler Pickering Hale and
Dorr LLP, Boston, MA, argued for defendant-appellant.
Also represented by LAUREN B. FLETCHER, KEVIN
GOLDMAN; CLAIRE HYUNGYO CHUNG, Washington, DC.

Before TARANTO, MAYER, and CHEN, *Circuit Judges*.

TARANTO, *Circuit Judge*.

Elbit Systems Land and C4I Ltd. and Elbit Systems of America, LLC (collectively, Elbit) brought this action against Hughes Network Systems, LLC (and other defendants no longer in the case). Elbit alleged that Hughes infringed Elbit's U.S. Patent Nos. 6,240,073 and 7,245,874. The jury found system claims 2–4 of the '073 patent infringed and not invalid, and it awarded damages. It also found no infringement of the '874 patent. The district court later found that the case is exceptional and that Elbit is entitled to attorney's fees, but the court has not quantified the fees. The '874 patent is not before us; nor is the validity of the asserted claims of the '073 patent. Hughes appeals the infringement finding and damages award for claims 2–4 of the '073 patent and the exceptionality determination. We affirm as to infringement and damages. We lack jurisdiction over the unquantified attorney's fees decision, so we dismiss that portion of the appeal.

I

A

The '073 patent is entitled “Reverse Link for a Satellite Communication Network.” The patent claims a system for transmitting information from user terminals to a central hub using satellite communication—that direction being called a “reverse link.” '073 patent, col. 4, lines 45–65; *id.*, col. 22, lines 51–59. Add “a forward link,” *i.e.*, satellite communication from the hub to user terminals, and the result is “a complete two way communication system via satellite.” *Id.*, col. 4, lines 45–50. To transmit data to the hub, user terminals employ a “transmitter means,” which, in turn, has two communication means: the first is for “transmitting short bursty data,” while the second is for “continuous transmission of data.” *Id.*, col. 23, lines 30–35. The

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patent also describes a “switching means” to switch between the two communication means. *Id.*, col. 23, lines 36–39.

Claim 2 recites:

2. A multiple access communications system for use in a satellite communication network, comprising:

a plurality of user terminals for generating data to be transmitted over said multiple access communication system;

at least one hub for receiving data over said multiple access communication system from said plurality of user terminals;

transmitter means within each user terminal for receiving data to be transmitted from said user terminal to said hub, said transmitter means including first communication means for transmitting short bursty data in combination with second communication means for continuous transmission of data;

switching means coupled to said transmitter means for switching transmission between said first communication means and said second communication means in accordance with predefined criteria, and

receiver means within said at least one hub adapted to receive data transmitted by said plurality of terminals utilizing either said first communication means or said second communication means,

wherein said switching means comprises means for switching from said first communication means to said second

communication means when the length of a message received by said transmitter means exceeds a predetermined threshold.

Id., col. 23, lines 22–48. Claim 3 describes an “access communications system for use in a satellite communication network” with the same limitations for transmitting, communication, and switching means as claim 2. *Id.*, col. 23, line 49, through col. 24, line 9. Claim 4 describes a “multiple access communications system for use in a satellite communication network” with the same limitations for transmitting, communication, and switching means as claim 2. *Id.*, col. 24, lines 10–37.

B

As relevant here, on January 21, 2015, Elbit sued Hughes for infringement of the '073 patent. The limitations now at issue, “communication means for continuous transmission of data” and “switching means,” were held to be means-plus-function terms. *Elbit Sys. Land & C4I Ltd. v. Hughes Network Sys., LLC*, No. 2:15-CV-37-RWS-RSP, 2016 WL 6082571, at *7, *14 (E.D. Tex. Oct. 18, 2016) (*Claim Construction Decision*); J.A. 56–64 (affirming the magistrate judge’s claim constructions). The “second communication means” was construed to require “continuous transmission of data,” and the corresponding structure was held to be the “Channel Assignment Transmitter.” *Claim Construction Decision* at *7. The “switching means” was construed to require “switching transmission between said first communication means and said second communication means in accordance with predefined criteria,” and the corresponding structure was held to be a modem or a driver “performing the algorithms disclosed in the '073 Patent at 10:30-11:40 or Figure 8, and equivalents thereof.” *Id.* at *14. The cited portion of the '073 patent explains the two different communication means and lists the criteria for switching from first to second means, '073 patent, col. 10,

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line 58, through col. 11, line 11, and for switching back to first, *id.*, col. 11, lines 26–36.

On August 7, 2017, the jury found that Hughes infringed because its products came within claims 2–4 of the '073 patent, and that those claims are not invalid. The jury found that Hughes did not infringe the '874 patent, a finding that Elbit does not appeal. The jury awarded Elbit \$21,075,750 in damages. The district court denied Hughes's post-trial motions for judgment as a matter of law for non-infringement and for a new trial on damages. J.A. 220–34; J.A. 245–50. The district court also found that the case is exceptional and granted Elbit's motion for attorney's fees. J.A. 260–65. The district court did not quantify the award. The final judgment was entered on March 30, 2018.

Hughes timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(1) to consider the infringement and damages decisions. Because the unquantified fee award is not a final decision, we do not have jurisdiction to review the district court's exceptionality finding.

II

Hughes challenges the jury's finding of infringement of the '073 patent. In particular, Hughes argues that its products do not include the claimed "continuous transmission of data" communication means or the switching means. *See* 35 U.S.C. § 271(a). We review denials of motions for judgment as a matter of law *de novo* under the relevant regional circuit's law and ask whether the underlying jury findings were supported by substantial evidence. *See Bear Ranch, L.L.C. v. HeartBrand Beef, Inc.*, 885 F.3d 794, 801 (5th Cir. 2018); *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 841 (Fed. Cir. 2010) (following Fifth Circuit law), *aff'd on other issues*, 564 U.S. 91 (2011). Because the jury's findings as to infringement of the communication means and the switching means were each supported by substantial evidence, we reject Hughes's challenge.

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