

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

ADVANCED MEDIA NETWORKS, LLC,
Plaintiff-Appellant

v.

AT&T MOBILITY LLC,
Defendant-Appellee

2018-1014

Appeal from the United States District Court for the
Northern District of Texas in No. 3:15-cv-03496-N, Judge
David C. Godbey.

Decided: September 17, 2018

BRIAN ANDREW CARPENTER, Buether Joe & Carpenter
LLC, Dallas, TX, argued for plaintiff-appellant. Also
represented by MICHAEL CLAYTON POMEROY.

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HAWES, Baker Botts, LLP, Houston, TX; LAUREN J. DREYER, Washington, DC.

Before PROST, *Chief Judge*, LOURIE and CHEN, *Circuit Judges*.

CHEN, *Circuit Judge*.

Advanced Media Networks LLC (AMN) sued AT&T Mobility LLC (AT&T) for alleged infringement of U.S. Patent No. 5,960,074 ('074 patent), which relates to wireless networking. The district court issued a claim construction order and granted AT&T's motion for summary judgment of non-infringement as to claims 1–3, 9, 42, and 58 and invalidity under 35 U.S.C. § 305 as to claims 128–29, 135, 146, 160–61, 165–67, and 171. Because the district court correctly construed the term “ethernet packet switching protocol” to require the use of the IEEE 802.3 or draft IEEE 802.11 standards, and the construction of this term is dispositive, we affirm.

BACKGROUND

A. Networking Protocols and Layers

Computer networks typically use several protocols that work together to transmit information, and these protocols can be modeled as “layers” in a “stack.” See J.A. 262. For example, the Open Systems Interconnect (OSI) model has seven layers, which include, starting from layer 1, the physical layer, data link layer, network layer, transport layer, session layer, presentation layer, and application layer. J.A. 226.

In the Internet Protocol (IP), data is divided into “packets” that are routed to intended destinations and might not arrive in the order in which they are sent. See J.A. 227–28. IP is a network-layer (layer 3) protocol. See *id.* Transmission Control Protocol (TCP), a transport-layer (layer 4) protocol, reassembles packets in the proper

order. J.A. 228. The combination of TCP and IP is abbreviated TCP/IP. J.A. 14.

“Ethernet” protocols, typically used in local area networks, reside below TCP and IP at the data link and physical layers of the OSI model (layers 2 and 1 respectively). J.A. 273 ¶ 65; J.A. 290. In 1983, the Institute of Electrical and Electronics Engineers (IEEE) published its 802.3 standard, which was based on preexisting work by Robert Metcalfe and others. *See* J.A. 462–63. IEEE 802.3 describes ethernet on a wired network, *see* J.A. 338, while a standard ratified in 1997 called 802.11 describes wireless ethernet, *see* J.A. 559; J.A. 272. By 1996, the time of application for the ’074 patent, a working group had been developing a draft of the 802.11 standard for five years. J.A. 271.

As an example of how protocols at different layers interact, an application such as a file transfer program, operating at the application layer, might take part of a file and add an application header to the data before passing it to the presentation layer. *See* J.A. 226; J.A. 341. This process repeats from layer to layer. At the transport and network layers, the data transmission would rely on TCP and IP, respectively. *See id.* From the network layer, the data could be passed to an ethernet connection at layers 2 and 1. *See id.* At the physical layer, the data passes to its destination.

B. The ’074 Patent

The ’074 patent issued from an application dated September 23, 1996. The claimed invention connects a wireless local area network (LAN) to a microwave communication system via a hub. “In one embodiment, the LAN 104 is a wireless ethernet LAN connecting multiple remote personal computers (PCs) as nodes.” ’074 patent, col. 4 ll. 32–34. Relevant to the parties’ claim construction dispute, “[i]n one embodiment, the microwave communication system and the wireless LAN trans-

fers information using an ethernet packet switching protocol” *Id.* col. 2 ll. 9–11. Claim 1 is illustrative:

1. A telecomputer network system comprising:
 - a redundant digital microwave communication system;
 - a wireless local area network (LAN); and
 - a mobile hub station configured to transfer information as a single nomadic transmission/reception point between the microwave communication system and the wireless LAN using an ethernet packet switching protocol.

C. Prior USPTO Proceedings

The '074 patent issued in 1999 with 40 claims. J.A. 21. During the course of four *ex parte* reexaminations, AMN amended certain claims in ways that are not at issue in this appeal and added 131 claims, for a total of 171 claims. *Id.* No claims were found unpatentable.¹

D. The Instant Dispute

AMN sued AT&T in October 2015. AMN accused smartphones and other devices operating on AT&T's wireless 3G and 4G/LTE network of infringing claims of the '074 patent. J.A. 1434–35; J.A. 174. AMN argued that AT&T's wireless communication system constitutes a “redundant digital microwave communication system” under the claims. J.A. 1434. Further, AMN accused smartphones and other devices capable of acting as wireless access points (or “hotspots”) of satisfying the '074

¹ Additionally, six *Inter Partes* Review petitions have been filed against the '074 patent. Appellant Br. 29. The results of those proceedings are not before us.

patent's "wireless LAN" and "mobile hub" limitations. J.A. 1434–35.

On March 1, 2017, the district court issued a claim construction order. J.A. 1–14. The district court construed "ethernet packet switching protocol" to mean "a packet switching protocol defined by the IEEE 802.3 and draft IEEE 802.11 standards as of the filing date of the Patent." J.A. 9. The district court also adopted AT&T's proposed construction of "wireless local area network (LAN)" and construed it to mean "an access point device and client devices connected by local over-the-air links through which the client devices communicate with the access point device." J.A. 8.

AMN argued that AT&T's accused devices satisfy the "ethernet packet switching protocol" limitation because (a) the devices, when acting as mobile hotspots, rely on IP to transfer data between connected clients and servers on the Internet via AT&T's 3G or 4G/LTE network; and (b) in AMN's view, IP is an ethernet packet switching protocol. *See* J.A. 104.

On August 25, 2017, the district court rejected AMN's argument that IP—independent of 802.3 or 802.11—is an "ethernet packet switching protocol" and granted summary judgment of non-infringement for claims 1–3, 9, 42, and 58. *Advanced Media Networks, LLC v. AT&T Mobility LLC*, No. 3:15-CV-3496-N, 2017 WL 3987201 (N.D. Tex. Aug. 25, 2017). The district court also analyzed claims 128–29, 135, 146, 160–61, 165–67, and 171, which were added in reexamination and recite "internet protocol" instead of "ethernet packet switching protocol." The district court concluded that because "ethernet packet switching protocol" does not encompass IP, these claims impermissibly broadened the scope of claim 1 and were thus invalid under 35 U.S.C. § 305. *Id.* at *2. AMN appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

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