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Wireless Cos. Support Stripping CSIRO Injunction

By Elaine Chow

Law360, New York (October 23, 2007) -- A law firm representing three wireless technology companies on Friday asked the U.S. Court of Appeals for the Federal Circuit to overturn an injunction issued in an important patent case over wireless Internet standards.

In an amicus brief on behalf of 3Com Corp., SMC Networks Inc. and Accton Technology Corp., Morgan Miller Blair argued that last year's Supreme Court decision in another technology case left open the question of a noncompeting research organization's entitlement to injunctive relief in patent disputes.

The brief was filed in response to a patent case brought in December 2006 by the Commonwealth Scientific and Industrial Research Organization, a research consortium funded by the Australian government. CSIRO accused a slew of technology giants of making and selling products that infringe on a key patent covering wireless local area network (LAN) technology used worldwide.

It was able to secure an injunction against Buffalo Technology in early June, which barred the Japanese company from making or selling any Wifi products with the current U.S. WLAN technology industry standards of 802.11a and 802.11g.

In its amicus brief, Morgan Miller Blair challenged the injunction and argued that it allowed noncompetitive research organizations to use 'hold-up' strategies for their own monetary gain, even though they openly promised industry standard-setting organizations that they would license patents to industry members on "reasonable and non-discriminatory" (RAND) terms.

"Our clients believe that upholding the injunction in Buffalo sets an unfortunate precedent for patent holders who are not making or selling a product, and who have been on record as agreeing to license their patents on a RAND basis," said Richard Vasquez, the lead attorney in the case.

"Seeking an injunction in the courts after making a RAND promise is disingenuous and is an unfair leverage which our clients believe was foreclosed by the Supreme Court... last year [In eBay v.

MercExchange.]”

The patent at issue, which will expire in about 10 years, covers the implementation of integral parts of the 802.11a and 802.11g wireless standards outlined by the Institute of Electrical and Electronics Engineers (IEEE).

Between 140 million and 155 million Wi-Fi-enabled devices were shipped in 2005, and 450 million devices are expected to be shipped by 2009, according to ABI Research and InStat.

Wi-Fi products bring in billions of dollars in revenue for equipment manufacturers. Access point devices that send out wireless signals in local area networks stand to rake in \$1.9 billion in 2006, and are expected to surge to \$3.7 billion in 2010, according to ABI Research.

Costing just a few dollars to make, the Wi-Fi technology is used in a wide range of devices.

Most laptop computers include wireless devices covered by CSIRO's patent. CSIRO's technology is also found in wireless routers made by companies such as D-Link Systems Inc. and Belkin Corp. and in Nintendo's hand held game console, the Nintendo DS.

CSIRO has pressured dozens of companies for many years to license the Wi-Fi technology, but has not been able to reach any agreements.

The patent in the case is U.S. Patent Number 5,487,069.

Commonwealth Scientific and Industrial Research Organization is represented by Brown McCarroll, Townsend & Townsend & Crew, Ireland Carroll & Kelley and Jones & Jones.

Buffalo Technology USA Inc. and Buffalo Inc. are represented in this matter by Akin Gump Strauss Hauer & Feld LLP and Potter Minton PC.

The case is Commonwealth Scientific and Industrial Research Organization v. Buffalo Technology Inc. et al, case no. 2007-1449 in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Ron Zapata

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