

Fed. Circ. Revives Malware Patent Suit Against Google

By Matthew Bultman

Law360, New York (November 18, 2015, 3:31 PM ET) -- The Federal Circuit revived a patent infringement lawsuit an inventor brought against [Google](#) over computer malware protection software on Tuesday, ruling the Texas federal judge that tossed the case misread two key phrases in the patents.

Three judges on a Federal Circuit panel said U.S. District Court Judge Rodney Gilstrap, the country's single [busiest patent judge](#), erred in construing the phrases, thus improperly saving Google Inc.'s flagship Chrome application from the infringement claims.

Judge Gilstrap [dismissed](#) the case in 2014, after the plaintiffs — inventor Alfonso Cioffi and the family of his late partner, Allen Frank Rozman — conceded they couldn't win on the court's interpretation of the patents.

"Because we agree that the district court erred in construing both of these terms, we reverse the district court's claim construction and remand for further proceedings," the unanimous panel wrote.

Cioffi, along with Rozman's daughters, sued Google Inc. in February 2013, claiming that the tech titan had infringed four patents, all issued in 2012 and collectively titled "System and method for protecting a computer system from malicious software."

An amended suit claimed that several Google products — including Google's Chrome browser for Windows, Mac OS X and Linux; Google Chrome OS; and Chrome for Android versions 4.0 and later — had infringed the patents.

The case was thrown out in December, four months after Judge Gilstrap issued his claims construction ruling. Among the construed claims was his interpretation of the phrase "Web browser process," which appears in multiple patents.

The judge construed the phrase as being limited to software with direct access to website data. But [Ciotti argued](#), and the Federal Circuit agreed, that interpretation went against the plain and ordinary meaning of the phrase.

"We find nothing in the prosecution history sufficient to overcome the presumption that 'web browser process' alone does not have a 'direct' access capability requirement," it wrote.

Similarly, the appeals court sided with Cioffi's arguments regarding the term "critical file," which the inventor said was erroneously construed as including "critical user files." This interpretation made the term indefinite.

"We see nothing that indicates that Cioffi intended its invention to do anything other than protect 'critical files' as that concept is widely understood by those of skill in the art," the court wrote.

Representatives for both sides did not immediately respond to requests for comment Wednesday.

The patents at issue are U.S. Patent Numbers RE43,103; RE43,500; RE43,528; and RE43,529.

Circuit Judges Kathleen M. O'Malley, S. Jay Plager and William C. Bryson sat on the Federal Circuit panel.

Cioffi and Rozman's estate are represented by Eric C. Benisek of Vasquez Benisek & Lindgren LLP. Google is represented by Stephanie Skaff, Eugene Y. Mar and Andrew P. Nguyen of Farella Braun & Martel LLP.

The case is Cioffi v. Google, case number 15-1194, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Jimmy Hoover. Editing by Rebecca Flanagan.