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Part Of Network-1 Patent Nixed In Ethernet Power Spat

By **Melissa Lipman**

Law360, New York (February 19, 2010) -- A federal judge has ruled invalid part of a patent for powering Ethernet devices that Network-1 Security Solutions Inc. has asserted against several network technology companies, including Cisco Systems Inc. and Netgear Inc.

Judge Leonard Davis of the U.S. District Court for the Eastern District of Texas on Tuesday largely upheld his original 2006 claims construction for the patent as part of a previous Network-1 case against D-Link Corp.

The judge also ruled on the defendants' partial summary judgment motion, which claimed that the first two claims of the patent were invalid because the term "control means" was indefinite and that the ninth claim containing the term "continuing to sense voltage level" was invalid for indefiniteness.

Judge Davis agreed with the defendants that Network-1's patent failed to include an algorithm as required under precedent from the U.S. Court of Appeals for the Federal Circuit.

Still, he found the ninth claim to be "clearly understandable" and rejected that part of the summary judgment motion.

The judge essentially maintained his earlier construction ruling and "rejected entirely" the work-around Network-1 had tried to use on one of the claims, according to attorney Richard Vasquez of Vasquez Benisek & Lindgren LLP, who represents defendant Enterasys Networks Inc.

Vasquez said his client was "very pleased" with the ruling, calling the decision to invalidate two of the claims for indefiniteness "somewhat rare in the Eastern District" of Texas.

"We feel very strongly that the products we make are ... very likely noninfringing as a matter of law," Vasquez said, adding that the company was reviewing its options for moving forward on that issue.

Attorneys for the plaintiff and for the other defendants were not immediately available for comment

Friday.

The 2001 patent, titled "Apparatus and method for remotely powering access equipment over a 10/100 switched Ethernet network," relates to the delivery of power over Ethernet cables to remote power network-connected devices like wireless access points, radio-frequency identification card readers and Voice Over Internet Protocol telephones, according to Network-1.

That type of power delivery eliminates the need for separate power cabling to devices where wall outlets are inaccessible or expensive to deploy, the company said.

Litigation over the patent dates back to at least March 2004, when Powersine Inc. — since acquired by semiconductor manufacturer Microsemi Corp. — hit Network-1 with a declaratory judgment suit, arguing that the patent was invalid and not infringed.

The two sides settled in November 2005, with mutual agreements not to sue over certain issues related to the patent.

Meanwhile, in August 2005, Network-1 sued D-Link, and the two companies eventually settled in August 2007. Taiwan-based D-Link agreed to pay the plaintiff \$100,000, enter into a license agreement for the remote power patent and pay monthly royalty payments of 3.25 percent of the net sales of D-Link's branded power over Ethernet products.

Those royalty payments will continue for the full term of the patent-in-suit, which expires in March 2020.

A few months later, in February 2008, Network-1 launched the current suit against Cisco, Netgear, Enterasys, Adtran Inc., Extreme Networks Inc., Foundry Networks, Inc. and 3Com Corp. The suit seeks damages and an injunction from further alleged patent infringement.

The patent-in-suit is U.S. Patent Number 6,218,930.

Network-1 is represented by Ward & Smith Law Firm and Dovel & Luner LLP.

Cisco is represented by Findlay Craft LLP and WilmerHale LLP. Enterasys is represented by Wilson Robertson & Cornelius PC and Vasquez Benisek & Lindgren LLP. Foundry is represented by Howrey LLP. Adtran is represented by Fulbright & Jaworski LLP. 3Com is represented by Yarbrough-Wilcox PLLC and Simpson Thacher & Bartlett LLP. Extreme Networks is represented by Jones Day.

The case is Network-1 Security Solutions Inc. v. Cisco Systems Inc. et al., case number 6:08-cv-030, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Ben James

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