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## Recent Developments in Claim Construction

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1

1

## To Start: Does This Make Sense To You?

*K. Fee System GmbH v. Nespresso USA, Inc., et al.*, Civil Action No. 2-21-CV-03402 (C.D. Cal.), Motion for Summary Judgment – Non-infringement (June 17, 2022) (Following claim construction the court granted defendant’s motion for summary judgment that it did not infringe plaintiff’s beverage capsule patents: “Considering the entire record at this stage, including [plaintiff’s] statements to the EPO and before this Court, based on the undisputed facts, the Court concludes that the accused products do not contain a ‘barcode’ as claimed in the Asserted Patents because the code employed by the accused products contains only ‘0s’ and ‘1s’ like the Jarisch bit code . . . **[B]efore the EPO, [plaintiff] averred that a binary code containing only ‘0s’ and ‘1s’ is not a barcode, but before this Court [plaintiff] and its expert are saying the opposite. This contradiction provides and insufficient basis on which to find a genuine dispute of material fact.” (page 12).**

2

2

## What's New . . . And (Possibly) Different

- ▶ Contrary to previous outings, this time am going to avoid soup-to-nuts approach:
  - ▶ Not going to talk about: preambles; transitional terms; construing claims narrowly to preserve validity; reading embodiments into/out of claim term meanings; excluding preferred embodiments; design patents; reference numerals in claims.
  - ▶ Will, however, address “And” . . . for the sake of historical continuity
  - ▶ Old standbys will be addressed but with a light touch: means-plus-function limitations; prosecution disclaimer; capability language; *Markush* limitations.

3

## Timing Claim Construction

### 1. § 101 Claim Construction required before § 101 inquiry made.

*Pay Range Inc. v. KioSoft Technologies, LLC et al.* Civil Action No. 1-20-CV-24342 (S.D. Fla. 2020), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (Nov. 18, 2021).

*Daedalus Blue, LLC v. MicroStrategy Inc.*, Civil Action No. 2-20-CV-00551 (E.D. Va. 2020), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (Jan. 21, 2022).

*Verna IP Holdings, LLC v. Alert Media, Inc.*, Civil Action No. 6-21-CV-00422 (W.D. Tex. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)) (Feb. 2, 2022).

*mComIP.LLC v. Nautilus Hyosung Americas Inc.*, Civil Action No. 3-21-CV-02215 (N.D. Tex. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (Mar. 2, 2022).

4

## Timing Claim Construction (cont)

### 1. § 101 Claim Construction required before § 101 inquiry made, cont.

*Maxell, Ltd. Et al. v. VIZIO, Inc.*, Civil Action No. 2-21-CV-06758 (C.D. Cal. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (Mar. 9, 2022).

*AML IP, LLC. v. Bed Bath & Beyond, Inc.*, Civil Action No. 6-21-CV-00600 (W.D. Tex. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (Apr. 11, 2022).

*Island Intellectual Prop. LLC v. TD Ameritrade, Inc.*, Civil Action No. 2-21-CV-00273 (E.D. Tex. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (Apr. 12, 2022).

*Cathx Research Ltd. v. 2G Robotics, Inc.*, Civil Action No. 5-21-CV-00077 (E.D. Tex. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (May 17, 2022).

5

## Timing Claim Construction (cont)

### 1. § 101 Claim Construction required before § 101 inquiry made cont.

*Lyft, Inc. v. Quartz Auto Technologies, LLC*, Civil Action No. 4-21-CV-01871 (N.D. Cal. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(c)) (Jun. 27, 2022).

*Great Gigz Solutions LLC v. East Texas Border Health Clinic d/b/a/ Genesis Prime Care*, Civil Action No. 2-21-CV-00370 (E.D. Tex. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (Jun. 28, 2022).

*Enovsys LLC v. T-Mobile USA, Inc.*, Civil Action No. 2-21-CV-00368 (E.D. Tex. 2021), Motion to Dismiss – Failure to State a Claim (F.R.C.P. 12(b)(6)) (Jul. 28, 2022).

6

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