
Federal Circuit: There are Some Defenses an Accused Infringer Cannot Raise

2008-10-23

On September 22, 2008, the Federal Circuit held that "improper revival" is not one of the defenses listed in 35 U.S.C. § 282 and thus "may not be raised as a defense in an action involving the validity or infringement of a patent." *Aristocrat Technologies Australia v. International Game Technologies* (Fed. Cir. Dkt. No. 2008-1016). The decision has broad implications, will make it more difficult to defend against an action for patent infringement, and raises several questions. What possible invalidity defenses other than "improper revival" cannot be raised? If the Patent and Trademark Office (PTO) has applied the wrong legal standard in making what the Federal Circuit called a "procedural decision," and thus grants a patent that should not have been granted, is that "procedural decision" subject to any review? *International Game Technologies* (IGT) has asked the Federal Circuit to reconsider the decision en banc. For more, see our [recent Email Alert](#).