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# Who Invented Hyperlinks? Summary Judgment for the Defendant in the BT Case

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As discussed in our April 17, 2002 Internet Alert, British Telecommunications plc (BT) sued an Internet service provider (ISP), claiming that use of hyperlinks infringes a BT patent. On August 22, 2002, the U.S. District Court for the Southern District of New York granted summary judgment to the ISP, ruling that, as a matter of law, the ISP's actions do not infringe the BT patent.

**Background**

The U.S. patent at issue, number 4,873,662 entitled "Information handling system and terminal apparatus therefor" (the "'662 patent", also called the "Sargent patent"), was issued on October 10, 1989. BT recently re-discovered the '662 patent during an audit of its extensive patent portfolio. After unsuccessful attempts at licensing the patented invention to ISPs, BT filed suit against one major ISP, expected to be only the first of many such cases if BT won.

As required by law, the court interpreted the meaning of the patent claims and previewed the instructions it would give jurors in a trial which had been scheduled to start in September 2002. In its March 13, 2002 *Markman* ruling, the court ruled that the invention described in the '662 patent involves the use of a single computer serving information in a specified format to multiple terminal devices.

The defendant ISP then filed a motion for summary judgment, claiming that, based on the court's construction of the claims, no jury could, as a matter of law, find that the ISP's actions infringe the '662 patent.

**Legal Standard**

To grant a party summary judgment, the court must conclude that there are no genuine issues of material fact and that no reasonable jury could find infringement, assuming that all evidence is interpreted in favor of the non-moving party (in this case, BT).

Direct infringement is analyzed by comparing the allegedly infringing product or process against the claims as construed in the *Markman* ruling to determine whether the accused product or process literally infringes (i.e., includes every element of at least one of the patented claims) or infringes

under the doctrine of equivalents (i.e., although the accused product or process does not include the exact element of the claim, it includes another element that performs substantially the same function in substantially the same way to produce substantially the same results as the absent element).

**Ruling**

Relying on the undisputed facts of the case and its *Markman* ruling, the court concluded that "[t]he Internet, is, in short, an entirely different beast from the system described in the Sargent patent."The *Markman* determination that BT's patented invention requires the use of a single computer in a single location serving information to multiple terminal devices may have presaged the court's summary judgment analysis. The court analogized the invention in the Sargent patent to a hub and spoke system, while "the Internet is a network of computer networks." These "fundamental differences" between the Internet and hyperlinks, on the one hand, and the elements of the claims in the '662 patent, on the other hand, led the court to conclude that the ISP does not infringe the '662 patent, either literally or under the doctrine of equivalents.

**Conclusion**

Although ISPs-and Internet users-may breathe easier as a result of this ruling, BT may decide to file an appeal with the U.S. Court of Appeals for the Federal Circuit. Whether or not BT is ultimately successful, this case demonstrates that potentially valuable patents may have been forgotten, and therefore unenforced, by their owners. Other patent holders may now look more closely at their own portfolios and might bring suit to enforce patents more directly applicable to the Internet.

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