

Federal Circuit Dismisses as Untimely Patent Defendant's Interlocutory Appeal

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Source: New Jersey Federal Practice Alert

[In a prior alert](#), we discussed Senior U.S. District Judge Stanley R. Chesler's decision to deny defendant LG Electronics's ("LG") motion to stay a retrial on damages in a patent infringement case involving plug-and-play technology for televisions, pending the resolution of an interlocutory appeal on liability issues. The Federal Circuit has now dismissed as untimely LG's interlocutory appeal on the liability issues, finding that 28 U.S.C. § 1292(c)(2) and § 2107(a) require a notice of interlocutory appeal be filed within thirty days of the date at which the case became final except for an accounting. Because LG did not file its notice of appeal within thirty days of the date of issuance of Judge Chesler's order resolving all liability issues, its notice of interlocutory appeal was deemed untimely.

After a jury trial, the jury found LG willfully infringed plaintiff Mondis Technology Ltd.'s ("Mondis") patent, awarded Mondis \$45 million in damages, and also found the patent was not invalid. LG then filed several post-trial motions, two of which were directed to liability issues (*i.e.*, infringement, invalidity, and willfulness), and another that was directed to damages. Judge Chesler addressed the post-trial motions in two orders. First, on September 24, 2019, Judge Chesler denied LG's post-trial motions directed to the liability issues, but ordered further briefing on the issue of damages. Then, on April 22, 2020, Judge Chesler granted LG's motion for a new trial on damages.

Subsequent to issuance of the April 22, 2020 Order, on May 8, 2020, LG filed an interlocutory appeal, challenging Judge Chesler's decision denying the post-trial motions directed to liability. Mondis moved to dismiss the appeal as untimely on the ground that LG was required to file its notice of appeal within thirty days of the September 24, 2019 Order.

The Federal Circuit dismissed the interlocutory appeal as untimely. The Court noted that 28 U.S.C. 1292(c)(2) and § 2107(a) require a notice of interlocutory appeal be filed within thirty days of the date at which the case became final except for an accounting. The Court further stated that "under § 1292(c)(2), a judgment is final except for an accounting when all liability issues have been resolved, and only a determination of damages remains." *Mondis v. LG*, 2020-1812, Slip op. at 4. Because Judge Chesler's September 24, 2019 Order disposed of the liability issues and left only the damages-related motion, "[t]he case was final except for an accounting after the September Order, and LG had thirty days from the September Order to file notice of interlocutory appeal. Since LG did not file its notice of appeal until May 8, 2020, more than seven months after the September Order, LG's appeal is untimely, and [the Federal Circuit] lack[ed] jurisdiction to consider the matter." *Id.*

The Federal Circuit further held that Federal Rule of Appellate Procedure 4(a)(4) does not toll the interlocutory appeal period for outstanding motions that are unrelated to the interlocutory judgment. Thus, the damages motions that remained outstanding after the September 24, 2019 Order did not toll the time for LG to file its notice of appeal on the liability portion of the case.

Lastly, the Court noted that LG is not precluded from appealing Judge Chesler's liability determination under 28 U.S.C. § 1295 after the damages determination is complete because interlocutory appeals are voluntary.

A full copy of the Federal Circuit's August 3, 2021 opinion is attached.