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No.

Supreme Court, U.S.

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In the
Supreme Court of the United States

MOBILEMEDIA IDEAS LLC,

Petitioner,

vs.

APPLE INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the U.S. Court of Appeals for the Federal Circuit violate due process by summarily reversing a patent infringement judgment based upon a new and unprompted claim construction without remand to the district court in denial of Petitioner's right to present evidence at trial and fully and fairly litigate the matter of infringement for the first time based on the new construction?
2. What standard should apply to denying remand for trial on a new claim construction used by the U.S. Court of Appeals for the Federal Circuit to summarily reverse a patent infringement judgment?
3. Has the U.S. Court of Appeals for the Federal Circuit effectively rendered *Markman* hearings and rulings meaningless by creating an unworkable, burdensome and judicially inefficient precedent that will require plaintiffs to present evidence at trial of every imaginable claim construction?

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RULE 29.6 STATEMENT

Petitioner, MobileMedia Ideas LLC (“MobileMedia” or “Petitioner”), is a Delaware LLC. The parent corporations and any publicly held companies that own ten percent or more of the stock of MobileMedia are: MPEG LA, LLC, Nokia Corporation and Sony Corporation of America.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully submits this Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The opinion of the Federal Circuit reversing the jury verdict of infringement, reported at *MobileMedia Ideas LLC v. Apple Inc.*, 780 F.3d 1159 (Fed. Cir. 2015), is set out at pages 1a–46a of the Appendix to the Petition for Writ of Certiorari (the “Appendix”). The order of the Federal Circuit denying petitioner’s Combined Petition for Panel Rehearing and Rehearing En Banc is not reported in the Federal Reporter, and is set out at pages 1b–2b of the Appendix. The memorandum opinion of the United States District Court for the District of Delaware denying Apple’s Renewed Motion for JMOL of Non-Infringement, reported at *MobileMedia Ideas LLC v. Apple Inc.*, 966 F. Supp. 2d 439 (D. Del. 2013), is set out at pages 1i–69i of the Appendix. The claim construction and summary judgment memorandum opinion of the district court, reported at *MobileMedia Ideas LLC v. Apple Inc.*, 907 F. Supp. 2d 570, 577 (D. Del. 2012) is set out at pages 1f–114f of the Appendix.

STATEMENT OF JURISDICTION

The judgment of the Federal Circuit was entered on March 17, 2015. A petition for rehearing or rehearing en banc was denied on May 29, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the United States Constitution provides in relevant part that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.”

STATEMENT OF THE CASE¹

A. Factual Background

This matter concerns U.S. Patent No. 6,427,078, titled “Device for Personal Communications, Data Collection, and Data Processing, and a Circuit Card,” (the “078 patent”), which teaches a small device for integrated telecommunications and data collection—as pertinent here, a cellular telephone with an integrated camera. The ‘078 patent was the first patent to claim a multi-functional combined camera and phone that allows not only the collection of image data, but also the processing, display, storage, and transmittal of such image data over wireless networks. App. 12n.

MobileMedia brought suit against Apple in 2010 alleging, among other things, that certain models of Apple’s iPhone infringe claim 73 of the ‘078 patent. Apple counterclaimed for invalidity of the ‘078 patent on grounds of obviousness, and ultimately moved for summary judgment on invalidity and non-infringement.

¹ This petition addresses the procedural and factual history only as it pertains to the Federal Circuit’s vacatur and reversal of the district court’s denial of Apple’s motion for Judgment as a Matter of Law (“JMOL”) on infringement of claim 73 of the ‘078 patent.

B. Proceedings In The District Court

In November 2012 the district court issued a joint claim construction opinion and summary judgment opinion. App. 1f–114f. Claim 73 includes the disputed term, “means for processing and for storing at least a portion of the image information obtained by the camera unit for later recall and processing.” Apple argued before the district court that the memory component of this limitation requires “either (1) FLASH or EPROM memory, or (2) SRAM memory powered by a battery unit, that is dedicated to storing captured pictures.”² App. 7j, 10j–11j. MobileMedia’s position was that the limitation could be met by a general purpose processing and memory unit within the device. *Id.*

The parties and the court agreed that the “means for processing and for storing [image information]” term is a means plus function limitation governed by § 112 ¶ 6. App. 53f–56f; App. 16a–17a. The function of this limitation, as construed by the district court, is “to process an image captured by the camera unit and to store at least a portion of the processed image information in said at least one memory unit of said camera unit for later recall.” App. 56f–57f. Identifying the corresponding structure, the district court agreed

² EPROM, or erasable programmable random-access memory, is a type of “non-volatile” computer memory—*i.e.*, it can be retained when the memory component loses power.

Flash memory is a type of EPROM that allows for faster and more selective writing and erasure of data.

SRAM, or static random access memory, is a type of “volatile” computer memory—*i.e.*, it is lost when the memory component loses power.

with MobileMedia’s position, construing it as “the image processing unit and memory unit, or equivalents thereof.” App. 57*f*. Because the district court’s construction did not require dedicated memory, and Apple did not demonstrate that the iPhone does not practice this limitation as construed by the court, it rejected Apple’s argument and denied summary judgment of non-infringement of the ‘078 patent. App. 58*f*–59*f*.

The case ultimately went to trial on three of the patents-in-suit. At the close of evidence, Apple moved, pursuant to Federal Rule 50(a), for Judgment as a Matter of Law (“JMOL”) on MobileMedia’s claim of infringement of claim 73 of the ‘078 patent, as well as on other infringement claims and its own invalidity defenses. App. 1*k*. The district court reserved judgment on Apple’s JMOL motion. *See* App. 1*l*–3*l*.

Following a seven-day trial, the jury returned verdicts of direct infringement and no invalidity as to all the asserted patents. App. 2*i*. Apple renewed its JMOL motion. App. 2*i*; App. 1*l*–3*l*. In September 2013, the district court issued a memorandum opinion on Apple’s renewed motion, finding that Apple had waived its claim construction argument as to the “process image information” limitation because Apple never proposed a construction for it, and did not object to the jury instruction to apply the ordinary meaning to any claim term that had not been defined by the court. App. 61*i*–62*i*. The district court accordingly denied Apple’s JMOL motion with respect to claim 73 of the ‘078 patent. App. 62*i*

C. Proceedings Before The Federal Circuit

Apple appealed the district court's denial of its Renewed Motion for JMOL of non-infringement of the '078 patent. *See App. 1m–12m.* The Federal Circuit reviewed the district court's construction of the claim language *de novo* because the district court relied only on intrinsic evidence. *App. 18a. See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015). Analyzing the specification language of the '078 patent, the panel concluded that the district court's construction of "means for processing and for storing [image information]" was erroneous, finding that the structure corresponding to the "means for processing and for storing [image information]" must be the processor and memory units in the camera unit. *App. 21a.*

Then, instead of analyzing the record to determine whether there was sufficient evidence to support the jury's verdict of infringement under its new construction, the panel summarily concluded that, applying its new construction, "no reasonable jury could conclude that Apple's accused products literally infringe the 'means for processing and for storing' limitation of claim 73." *App. 21a–22a.* The panel's one citation to the record—that "the parties do not dispute that the camera module in Apple's accused iPhones has no internal memory for storing image data"—is not only disputed by MobileMedia but does not accurately reflect anything in the trial record. *App. 22a; App. 9e–14e.*

Rather than remand to the district court for a new trial, or for the trial court's determination of whether a new trial is warranted, the panel reversed the

district court’s judgment that Apple’s iPhone infringes claim 73 of the ‘078 patent. App. 22a. In so doing, the panel effectively granted Apple’s renewed motion for JMOL of non-infringement of the ‘078 patent without proper consideration of the evidence at trial.

MobileMedia moved for rehearing or rehearing *en banc*, arguing that there was substantial evidence in the record upon which the jury could find infringement even under the Panel’s new construction. App. 6e–7e.³ MobileMedia also argued that it was entitled to a new trial on infringement under a doctrine of equivalents theory. App. 14e–15e. The Federal Circuit denied the motion without comment. App. 1b–2b. The mandate issued on June 5, 2015. App. 1c.

SUMMARY OF THE ARGUMENT

MobileMedia was denied its fundamental due process right to present evidence at trial and fully and fairly litigate this matter. The Federal Circuit Court adopted a new claim construction on appeal that had not previously been advocated or anticipated by either party in the lower court. Rather than remand to the district court for the parties to present evidence on the new claim construction, however, the appellate court summarily entered judgment, overturning a jury

³ The bulk of MobileMedia’s petition described trial evidence showing at least four dedicated memory units in the iPhone’s camera unit that the jury could find satisfied the panel’s new construction of “means for processing and for storing [image information].” App. 9e–14e. MobileMedia also sought, unsuccessfully, to supplement the appellate record with 14 pages of admitted trial evidence that supported its claim that such evidence was admitted below. App. 1p–7p; App. 1d–2d.

verdict reached after seven days of trial. This is an undeniable due process violation. MobileMedia was deprived of its basic due process right to present evidence on the new claim construction before judgment was entered.

What is more, the Federal Circuit created an unworkable and burdensome precedent for both litigants and district courts alike, which for all practical purposes will nullify the utility of a district court's *Markman* ruling by effectively requiring patent infringement plaintiffs to present evidence in anticipation of every imaginable alternative claim construction at trial, whether adopted by the district court or capable of being advocated by the other party, in order to protect against that possibility being introduced by the Federal Circuit. Where the typical patent infringement case might have once involved a series of manageable claim constructions, the typical suit is now likely to involve a sea of claim constructions—most of them entirely unnecessary but for the concern of what could happen on appeal. The result will be to inundate the district courts with endless amounts of evidence that is otherwise irrelevant and unnecessary, not to mention impose a costly burden on litigants.

Certiorari should be granted not only to preserve the integrity of due process, but also to remedy this faulty and unacceptable precedent that will have a dire impact on the efficiency of the district court system.

REASONS FOR GRANTING THE WRIT

I. MobileMedia Has Been Denied Due Process

A. MobileMedia Was Deprived of the Opportunity to Present Evidence on the New Claim Construction

The Federal Circuit adopted an entirely new claim construction on appeal—a construction that had not been litigated below. Rather than remand the matter for a new trial, the Federal Circuit simply reversed the jury verdict of infringement based upon its new claim construction. MobileMedia was also not afforded the opportunity to present evidence on the new construction, including evidence favorable to MobileMedia that would have otherwise been presented at trial. This was a deprivation of due process.

i. The Federal Circuit’s New Claim Construction

The Federal Circuit adopted a new construction of “means for processing and for storing [image information]” that was not advocated by either party. In the district court, Apple argued that the camera unit must have “either (1) FLASH or EPROM memory, or (2) SRAM memory powered by a battery unit that is dedicated to storing captured pictures.” App. 7j, 10j–11j. MobileMedia’s proposed construction, which was adopted by the district court, included “the image processing unit and memory unit [of the camera unit] or equivalents thereof,” *i.e.*, any memory unit that stores pictures from the camera unit, whether or not that unit is dedicated to doing so. App. 7j, 10j–11j; App. 55f–58f; App. 21a. In undertaking its

de novo construction of the claim, however, the Federal Circuit determined that the camera unit's "microprocessor 23" and "memory units 24" must be "different than and separate from the device's central "processor 4" and system level "memory unit 13" and "[not] perform functions beyond the processing and storing of image information for later recall." App. 19a–20a. Erroneously believing that "the parties do not dispute that the camera module in Apple's accused iPhones has no internal memory for storing image data,"⁴ App. 22a, the panel held that, "[c]orrectly construed, no reasonable jury could conclude that Apple's accused products literally infringe the 'means for processing and for storing' limitation of claim 73." App. 21a–22a.

Importantly, however, the district court's claim construction made clear that MobileMedia had no burden to prove that Apple's iPhone contains a separate memory unit dedicated to camera operations in order to prove infringement. *See* App. 58f ("... as construed, the "camera unit" only needs to be able to **obtain** image information, not store it") (emphasis in original). In accordance with the district court's claim construction, MobileMedia elicited expert testimony that the iPhone's JPEG CODEC satisfied the "means

⁴ The panel appears to rely solely on attorney argument in Apple's briefs on appeal, which incorrectly claimed that MobileMedia conceded there is no camera-specific memory on the iPhone. App. 6m, 11m–12m; App. 5o. Nothing Apple cites to in the record supports this position. MobileMedia does dispute this, as it made clear in its rehearing petition, App. 9e–14e, pointing to several structures in the accused iPhone's camera circuitry that are dedicated to processing image information and storing at least a portion of that information for later recall and processing.

for processing" and its FLASH memory satisfied the "means for storing." App. 9e-10e. There was no reason for MobileMedia to introduce superfluous evidence that would have proved infringement under Apple's rejected construction of claim 73, much less a construction that had not been advocated by either party or directed by the district court judge. The jury returned a verdict of infringement of the '078 patent based on the evidence introduced by MobileMedia.

ii. The Due Process Violation

It is well-settled that a patent is a property right protected by the Due Process Clause and any deprivation thereof requires notice and an opportunity to be heard. *Fla. Prepaid Postsec. Educ. Expense Bd. v. College Sav. Bank*, 527 U.S. 627, 642 (1999); *Abbott Labs. v. Cordis Corp.*, 710 F.3d 1318, 1327-1328 (Fed. Cir. 2013) (citing *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876-81 (2009)).

A due process violation arises in the patent context when the court's procedure risks erroneously depriving a patentee of its rights and the risk outweighs the added costs associated with a substitute procedure. *Katz Interactive Call Processing Patent Litig. v. Am. Airlines, Inc.*, 639 F.3d 1303, 1309-1311 (Fed. Cir. 2011) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Here, given the district court's intimate familiarity with the case, and the fact that other claims were remanded, App. 45a, the Federal Circuit's foreclosure of MobileMedia's claim 73 infringement theory created a risk of due process violation that greatly outweighed the negligible "cost" of remanding. See *Doyle v. Camelot Care Centers, Inc.*, 305 F.3d 603, 618 (7th Cir. 2002)

(“[the due process] right is flexible, requiring different procedural protections depending upon the situation at hand”). Indeed, “an adoption of claims construed without Defendants’ participation could cause an injustice of precisely the sort that due process seeks to avoid.” *Tex. Instruments, Inc. v. Linear Techs. Corp.*, 182 F. Supp. 2d 580, 589-90 (E.D. Tex. 2002).⁵ Here, the Federal Circuit’s entry of judgment based upon its new, unlitigated claim construction, without affording MobileMedia the opportunity to present evidence on that claim construction, was a clear deprivation of due process.

**iii. There Have Been Notable Dissents
In the Federal Circuit Concerning
the Standard To Apply in
Remanding When A New Claim
Construction Is Adopted On Appeal**

The issue of whether to remand on a new claim construction has generated notable dissension in the Federal Circuit. In *Exxon Chemical Patents, Inc. v. Lubrizol*, 64 F.3d 1553 (Fed. Cir. 1995) (“*Exxon I*”), a jury returned a verdict of willful infringement by

⁵ In *Tex. Instruments, Inc. v. Linear Techs. Corp.*, the patent infringement plaintiff asked the district court to apply claim constructions reached in separate litigation over the same patents, but against different defendants. Notwithstanding the importance of *stare decisis*, the court found that due process concerns prevented the application of the earlier claim constructions. “In those cases where, as here, defendants have had no chance to litigate their claims, the application of *stare decisis* in the form of an adoption of claims construed without Defendants’ participation could cause an injustice of precisely the sort that due process seeks to avoid.” 182 F. Supp. 2d 580, 589-90 (E.D. Tex. 2002).

Lubrizol of a patent for lubricating oil owned by Exxon. The district court denied Lubrizol's motion for JMOL, and Lubrizol appealed. The Federal Circuit found that the trial court had misconstrued the claims, and adopted its own construction. As it did here, the Exxon court held that, under its newly adopted claim construction, no reasonable jury could have found infringement. *Id.* at 1555. The majority opinion reversed the denial of JMOL of infringement without remanding for a new trial. *Id.* at 1561.

Judge Nies dissented from the majority opinion, however, explaining that it was fundamentally unfair to Exxon to refuse it a new trial on the panel's new construction. *Id.* at 1569 (Nies, J., dissenting). The dissent also pointed out that Exxon should have been permitted a new trial on infringement under the doctrine of equivalents, as that issue is a jury question that had not been waived. *Id.* at 1570 (*citing Hilton Davis Chem. Co. v. Warner-Jenkinson Co.*, 62 F.3d 1512 (Fed. Cir. 1995)(*affirmed*, 520 U.S. 17 (1996)).

Under the Federal Circuit's ruling in *Exxon I*, the district court believed it had no authority to grant a new trial under a doctrine of equivalents theory. *Exxon Chemical Patents, Inc. v. Lubrizol*, 137 F.3d 1475, 1477 (Fed. Cir. 1998) ("*Exxon II*"). In a subsequent appeal, however, the Federal Circuit vindicated Judge Nies's dissent, holding that Exxon could be entitled to a new trial on the doctrine of equivalents, and remanded to the district court for reconsideration. *Id.* at 1484. The panel deciding *Exxon II* found that where the burden on the appellee to raise new trial issues before the Court of Appeals was great, dismissal of the case without remand would be inappropriate. *Id.* at 1482. The court explained that

the case before it was “a paradigmatic example of the kind of case in which it would be improper for an appellate court to dispose of the new trial issues, and in which the proper forum for raising the new trial issue in question is the district court.” *Id.*

Similarly, Judge O’Malley of the Federal Circuit recently proposed a framework for analyzing whether remand is necessary when the panel adopts a new claim construction. Dissenting from the majority opinion in *Furnace Brook LLC v. Aeropostale, Inc.*, 447 Fed. Appx. 165 (Fed. Cir. 2011), Judge O’Malley observed that when the Federal Circuit reassesses a determination of infringement in light of the new claim construction adopted by the panel, it does so “based only on the record developed under the, now discarded, construction employed by the district court.” *Id.* at 169. Judge O’Malley suggested that it would be appropriate to engage in this exercise only when the following conditions are met:

- (1) [the record] was fully developed with the possibility of this court’s alternative construction in mind; (2) all parties had full incentive to, and no restrictions upon, their ability to develop the factual and legal record on all relevant alternatives; and (3) the trier of fact has had the opportunity to make all relevant and necessary factual findings.

Id. at 169-170 (O’Malley, J., dissenting). Under these circumstances, the record before the court would be the same as “the one the parties would have presented had they known what this court’s claim construction would be.” *Id.* Failing to remand when the record is not sufficiently developed, on the other hand, would

“deprive[] the parties of the right to fully and fairly litigate their disputes.” *Id.* at 170. This analysis recognizes that the verdict winner is still entitled to its day in court when the evidence below does not match the new claim construction adopted by the panel. “Furnace Brook . . . only asks for the opportunity to litigate—for the first time—the question of infringement in the face of [the new] construction.” *Id.* at n.1.

Here, MobileMedia merely seeks exactly that—the opportunity to litigate, for the first time, the question of infringement under the Federal Circuit’s new construction of “means for processing and for storing [image information].” In being denied this opportunity, MobileMedia was deprived of its Fifth Amendment due process protections.

B. MobileMedia Was Also Deprived of the Opportunity to Present Evidence on the Doctrine of Equivalents, Which is a Separate Due Process Violation

The panel’s ruling also erroneously deprived MobileMedia of the opportunity to litigate infringement of claim 73 under a doctrine of equivalents theory—a separate and distinct due process violation. The district court’s adoption of MobileMedia’s claim construction effectively mooted the need to pursue the doctrine of equivalents at trial. When the Federal Circuit adopted a new claim construction on appeal, however, and then entered judgment without remand, MobileMedia was deprived of the ability to present evidence on the doctrine of equivalents as well. This, too, was a due process violation.

In its decision, the Federal Circuit noted in passing that “MobileMedia did not contend that Apple’s accused iPhones infringe the ‘078 patent under the doctrine of equivalents before the district court . . . and does not do so here on appeal.” App. 22a. But in reversing the jury’s infringement verdict without remand, the panel ignored the fact that MobileMedia did not have the opportunity to present a theory of infringement based on the doctrine of equivalents under the Federal Circuit’s new construction of “means for processing and for storing [image information].”

As in *Exxon II*, the trial court’s adoption of MobileMedia’s preferred claim construction of the “means for processing and for storing [image information]” limitation effectively mooted the doctrine of equivalents. *See Exxon, supra*, 137 F.3d at 1479. And, as in *Exxon II*, “[t]he question whether there could be doctrine-of-equivalents infringement under the claim construction adopted by this court became a critical issue in the case only after [the Federal Circuit’s] decision on appeal.” *Id.*

Here, even assuming the district court would have permitted it, pursuing a doctrine of equivalents theory at trial when it was not necessary would have been superfluous, if not foolhardy—it could have undermined MobileMedia’s case of literal infringement. *See id.* (“Exxon could not realistically be expected to request alternative jury instructions asking for an advisory verdict on whether the patent would be infringed under the doctrine of equivalents on Lubrizol’s proposed claim construction.”). As with the theory of literal infringement, the panel’s refusal to remand deprived MobileMedia of its opportunity to

be heard on this issue, without any concomitant cost that would outweigh the risk of deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

In short, MobileMedia lacked any reason to prove such a theory because it had evidence of literal infringement under the trial court's construction. Only now, under the Federal Circuit's new construction, does it have a viable reason to pursue a theory of infringement under the doctrine of equivalents.

II. The Federal Circuit Has Created an Unworkable and Burdensome Precedent For Both Litigants and The District Courts

If permitted to stand, the Federal Circuit's decision will result in all future conscientious patent infringement plaintiffs necessarily presenting evidence of every possible claim construction at trial. This will be the only way to mitigate against the possibility that the Federal Circuit could adopt a previously unlitigated claim construction on appeal and then enter judgment without remand. Such a precedent not only vitiates the purpose of *Markman* rulings, but also imposes an untenable burden on all future patent infringement plaintiffs, and will excessively bloat the already overwhelmed trial dockets of the district courts, causing unacceptable delay and expense to parties and the courts alike.

As noted, in *Exxon Chemical Patents, Inc. v. Lubrizol*, 64 F.3d 1553, after a jury returned a verdict of willful infringement, Lubrizol moved for JMOL, which the district court denied. On appeal, the Federal Circuit found that the trial court had misconstrued the claims, adopted its own

construction, and then held, under its newly adopted construction, that no reasonable jury could have found infringement. *Id.* at 1555. The majority opinion thus reversed the denial of JMOL of infringement without remanding for a new trial. *Id.* at 1561.

As also noted, Judge Nies dissented from the majority opinion, observing the fundamental unfairness of refusing a new trial on the panel's new construction and noting that “[b]y advocating a different interpretation of the claim *sua sponte*, the majority required Exxon to litigate during trial not only its opponent's position but also the unknowable position of the appellate court.” *Id.* at 1569 (Nies, J., dissenting) (emphasis added). In a subsequent appeal vindicating Judge Nies's dissent, the Federal Circuit held that Exxon was entitled to a new trial on the doctrine of equivalents, finding that “it would be improper for an appellate court to dispose of the new trial issues, [and that] the proper forum for raising the new trial issue in question is the district court.” See *Exxon*, *supra*, 137 F.3d at 1482. Importantly, as relevant here, the court noted that the appellee verdict winner should not have to “anticipate every possible claim construction that the appellate court might adopt and put forth grounds for a new trial under each possible claim construction.” *Id.* (emphasis added). The panel in *Exxon II* properly identified that the adoption of a new claim construction by the Federal Circuit that nullifies the jury verdict below creates an unresolved trial issue requiring remand. See *Neely v. Martin K. Eby Constr. Co.*, 386 U.S. 317 (1967) (“an appellate court may not order judgment n.o.v. where the verdict loser has failed strictly to comply with the procedural

requirements of Rule 50(b), or where the record reveals a new trial issue which has not been resolved").

Correctly decided cases such as *Exxon II* acknowledge what should be obvious in every case: a plaintiff cannot be expected to predict the claim construction that the Federal Circuit might ultimately adopt for a given claim on appeal, nor prove infringement under every such construction. But correctly decided cases will provide no comfort to patent infringement litigants when decisions such as *MobileMedia Ideas v. Apple* stand as precedent. Patentees will be forced to litigate as if anything is possible on appeal.

To appreciate the full impact of such precedent, the already significant burden of litigating the alternative claim constructions must be multiplied by the many disputed claims that are analyzed by the district court and litigated in a typical patent infringement case. For example, in this case, the district court construed 25 distinct claims across nine different patents-in-suit, *see App. 20f-22f, 33f-34f, 47f-49f, 55f-57f, 62f-63f, 71f, 78f-82f, 92f, 108f*, and ultimately instructed the jury on nine distinct claims across three different patents. *See App. 2g-6g.* Anticipating every possible revised construction by the Federal Circuit with respect to every disputed claim term, and admitting evidence sufficient to meet every such combination, is untenable and will unnecessarily distend the district courts' already overburdened dockets.

CONCLUSION

For the foregoing reasons, this Court should grant the requested Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit.

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