

LEMELSON BATTLES CONTINUE

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The complicated litigation over Lemelson's "machine vision," "bar code," and "semi-conductor" patents amounts to legal warfare being waged on many judicial fronts. Although there has been recent action in many of the courts handling these lawsuits, no one has yet dealt a knock-out blow - indeed, no one has yet gone to trial, although the punching seems to be getting heavier.

The lawsuits that were initiated by manufacturers like Accu-Sort, Cognex, and Symbol Technologies seeking a judicial declaration that Lemelson's patents are invalid, unenforceable, and not infringed have been combined for pretrial discovery in Nevada federal court. The judge hearing these cases recently denied the manufacturers' motion for summary judgment because conflicting expert reports raised factual issues that a jury must eventually decide. The manufacturers had argued that Lemelson's patents did not adequately describe the technology - that some of the Lemelson "machine vision" patents covered only applications where pre-positioned test objects were scanned from fixed distances at set orientations. After hearing Lemelson's experts assert that the patents also covered generic applications with no specific placements, U. S. District Judge Phillip M. Pro concluded that a jury must eventually decide whether "persons of ordinary skill in the art would have recognized that the inventor invented what is claimed."

At the same time, the parties have been arguing over whether manufacturers can defend against Lemelson's claim of patent infringement by establishing that his delays in prosecuting these patents constitute acquiescence in others' use of the patents. Because it is claimed that Lemelson, who engaged in "submarining" his patents during their decades - long submergence in the Patent and Trademark Office, was aware that others were relying to their detriment on the lack of

resistance while building technologies and even industries around the subject matter of the Lemelson patents, the manufacturers now want to assert this theory of prosecution laches as a reason why the Lemelson patents are not enforceable. After one federal judge rejected this argument, the U. S. Court of Appeals for the Federal Circuit, which handles patent appeal cases in Washington, D.C., heard argument and is expected to render a decision early next year.

Elsewhere, summary judgment and dismissal motions are still pending on other fronts, and no trial in any of the lawsuits are expected to take place until mid-2002 or, more likely, later.

The Lemelson Foundation claims to now have 878 licensees from the machine vision, bar coding, semi-conductor, electronics, computer, telecommunications, and auto industries. There are currently eleven separate lawsuits pending against approximately 500 defendants, in addition to the declaratory judgment actions which some of the manufacturers initiated against Lemelson to have the patents declared unenforceable. Although no case has gone to trial, a successful verdict in the declaratory judgment actions would relieve companies of this substantial drain on usage.

Lemelson's patent licensing revenues are said to exceed \$1 billion, and the legal fees generated by the lawyer primarily representing the Lemelson interests, Gerald Hosier, are estimated to be at least \$400 million. According to *Forbes* Magazine, this field general in the Lemelson legal wars is listed as the country's highest paid lawyer, collecting \$40 million in fees last year alone. Hosier's only significant client is the Lemelson estate and Foundation.

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