ITC Judge Invalidates Cognex Machine Patents

By **Erin Coe**

Law360, New York (July 16, 2010) -- The judge overseeing Cognex Corp.'s Section 337 case alleging infringement of its machine vision software patents has handed a win to Germany-based MVTec Software GmbH and Japan-based Omron Corp. and Daiichi Jitsugyo Viswill Co. Ltd., holding that the two Cognex patents were invalid.

Judge Carl C. Charneski of the U.S. International Trade Commission on Friday issued a brief initial determination that there was no violation of Section 337, finding that U.S. Patent Numbers 7,016,539 and 7,065,262 could not be enforced because they failed to claim patent-eligible subject matter and that Cognex was not able to show that the accused software produced by the respondents practiced the patents.

MVTec and the other respondents also demonstrated that the '262 patent was invalid as anticipated, according to the ruling.

The two patents were related to a method of "finding and locating patterns representing real-world objects in images for the machine vision industry."

"Obviously our clients are quite pleased," said Matthew Lowrie, Foley & Lardner LLP's intellectual property litigation chair and one of the attorneys representing the respondents. "The companies believed all along that they didn't infringe Cognex's patents, and the ITC agreed that all of the claims were not infringed and all of the claims were invalid."

Cognex could seek a review of the initial determination by the full commission, a move the respondents would oppose, according to Lowrie.

An attorney representing Cognex was unavailable for comment.

Cognex told the judge in a letter Thursday that the U.S. Patent and Trademark Office in a re-examination proceeding had confirmed the patentability of the '539 patent, but the respondents argued in a letter filed earlier Friday that it was too late for the ITC to consider this "new material."

Judge Charneski had earlier asked both sides to submit their take on the effect of the U.S. Supreme Court's ruling in Bilski v. Kappos on the case. The 5-4 decision held that business methods were not excluded from patent protection and that the machine-or-transformation test was not the sole test but rather a "useful and important clue" to determining patentability.

The respondents said in a memorandum earlier in July that both patents should be invalidated in light of Bilski because the claims were "simply algorithms that perform calculations on digital images without effecting any real-word result."

"It is as though he had the Cognex patents in mind when Justice [Anthony] Kennedy rejected the machine-or-transformation test as the sole test for determining the patentability of inventions in the Information Age," they said at the time.

Cognex defended the validity of its patents in its own brief.

"Cognex has not claimed mathematical ideas in the abstract, but instead has claimed particularized methods applied in the machine vision industry," the company said.

Cognex has already reached a settlement with Fuji Machine Manufacturing Co. Ltd. in the case, licensing nine patents in exchange for royalties.

It has also agreed to withdraw claims against Delta Design Inc., E. Zoller GmbH & Co. KG, Zoller Inc., IDS Imaging Development Systems GmbH and IDS Development Systems Inc., though it did not provide details as to whether it reached settlements with those respondents.

The patents-in-suit are U.S. Patent Numbers 7,016,539 and 7,065,262.

Cognex is represented by Adduci Mastriani & Schaumberg LLP.

Foley & Lardner LLP represents the respondents.

The case is In the Matter of Certain Machine Vision Systems, Software and Products Containing Same, case number 337-TA-680, in the U.S. International Trade Commission.

--Additional reporting by Elaine Meyer, Nick Brown and Melissa Lipman