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XTool Tracker Maker Infringed Absolute IP: Fed. Circ.

By **Zach Winnick**

Law360, Los Angeles (October 11, 2011, 10:00 PM ET) -- The Federal Circuit on Tuesday reversed a ruling that XTool Computer Tracker developer Stealth Signal Inc. didn't infringe three Absolute Software Inc. patents in a fight over each company's intellectual property related to "LoJack for Laptops" mobile device tracking software.

"We find that the district court correctly granted summary judgment of noninfringement to Absolute," a three-judge panel ruled. "We conclude, however, that issues of fact preclude granting summary judgment of noninfringement to Stealth."

Tuesday's decision marks an important victory for Absolute, maker of Computrace tracking software, which can now pursue its claims that Stealth's competing XTool infringes three of the company's patents.

Absolute filed the suit in Washington federal court in October 2004, alleging that Stealth's software infringes several of its patents, including patents covering methods for monitoring and locating electronic devices over a global network.

Stealth lodged counterclaims of infringement for one of its patents, which covers a method for remote verification of the operation of electronic devices.

Stealth successfully moved to transfer the action to Texas federal court, where both parties filed motions for summary judgment seeking a declaration of noninfringement on their respective infringement claims.

The Texas district court granted both motions, finding that none of the patents had been violated. Absolute and Stealth both appealed.

In the decision Tuesday, the Federal Circuit held that Absolute had raised genuine issues of fact as to each of its three patent infringement claims, requiring a reversal of the district court's summary judgment order for Stealth.

"[T]he district court held that Stealth's XTool Tracker did not meet the 'providing said host system with one or more of the global network communication links' limitation of the '758 and '863 patents, finding that Absolute failed to demonstrate that the XTool agent sends a link (i.e., two IP addresses) to the host," the panel said. "[W]e conclude that there are genuine issues of fact as to whether the XTool Tracker agent also provides a second IP address."

The appellate court also found a genuine issue of fact as to whether an audible beep emitted by Stealth's software was an effective workaround to an Absolute patent covering software that contacts a host computer "without signaling."

But the court found there was no issue of fact regarding Stealth's claim that Absolute's

Computrace software violated its patent for software that communicates with a host computer at a "semi-random rate."

Stealth argued that Absolute's software, which is designed to initiate a call to a monitoring center every 24.5 hours following the completion of the previous call, infringed on the "semi-random rate" claim because call times could vary if a prior transmission was delayed.

"Stealth's arguments are without merit," the panel concluded. "Although the exact timing of future calls made by Absolute's product cannot be predicted with certainty, the fact remains that, when a call finishes, the next call will be initiated exactly 24.5 hours later."

The panel affirmed the district court's grant of summary judgment in favor of Absolute, but vacated its summary judgment decision with respect to Absolute's three infringement claims and remanded the case.

Absolute attorney Irene Lee of Russ August & Kabat applauded the decision Tuesday, calling it a vindication for a company that pioneered software for tracking mobile devices.

"I really appreciate that the Federal Circuit was able to read through all the records and come to the right conclusion," Lee said, calling the court's analysis thorough and well reasoned. "It's encouraging to see judges working so hard. It's obvious that the three judges read everything submitted, which was a lot."

A representative for Stealth did not immediately respond to a request for comment Tuesday.

Chief Judge Randall R. Rader and Circuit Judges Sharon Prost and Kathleen M. O'Malley sat on the panel for the Federal Circuit.

The Absolute patents-in-suit are U.S. Patent Numbers 6,244,758; 6,300,863; and 6,507,914. The Stealth patent-in-suit is U.S. Patent Number 5,406,269.

Absolute is represented by Irene Y. Lee of Russ August & Kabat.

Stealth is represented by Jeremy L. Doyle, Christopher Reynolds and Billy Berryhill of Reynolds Frizzell Black Doyle Allen & Oldham LLP.

The case is Absolute Software Inc. et al. v. Stealth Signal Inc. et al., case numbers 10-1503 and 10-1504, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Andrew Park.

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