

Vinu Raj in Intellectual Property & Technology Law Journal: Working Draft Distributed to Members of Well-Known Standard Setting Group was not a Publication

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PRACTICES Intellectual Property, Patents, Patent Prosecution and Counseling

In *Samsung Electronics Co., Ltd. v. Infobridge Pte. Ltd.*, the U.S. Court of Appeals for the Federal Circuit (the CAFC) addressed the legal standard for assessing the public accessibility of prior art documents before a patent's critical date. This case arises from an appeal by Samsung to decisions by the Patent Trial and Appeal Board (the Board) in two *inter partes* review proceedings which upheld all challenged claims of U.S. Patent 8,917,772 (the '772 patent) owned by Infobridge. In each proceeding, the Board found that Samsung failed to show that a certain prior art reference was publicly accessible before the critical date for the '772 patent, and thus could not be considered prior art. The CAFC vacated the Board's decision, holding that the correct standard for public accessibility is whether a person of ordinary skill in the art could, after exercising reasonable diligence, access a reference.

The '772 patent, titled "Method of Constructing Merge List," generally relates to encoding and decoding video data using methods that both parties agreed are essential to the High Efficiency Video Coding standard (the H.265 standard). The question before the court was whether a working draft of the H.265 standard (Working Draft 4 or the WD4 reference), developed by the Joint Collaborative Team on Video Coding (JCT-VC), was publicly accessible prior to the critical date for the '772 patent. In answering this question, the court addressed three facts set forth by Samsung in support of the reference's public accessibility before the critical date: (1) it was discussed at various JCT-VC meetings and distributed to meeting attendees; (2) it was uploaded to the JCT-VC and MPEG websites; and (3) it was emailed to the JCT-VC listserv. ...

Excerpted from the *Intellectual Property & Technology Law Journal*. To read the full article, click on the PDF linked below:

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