

The perils of disclosing patent details in the internet age

- ▶ Latest in a series of patent cases involving global telecoms giants
- ▶ Accusation that patent was invalid through lack of novelty
- ▶ If information is published on the internet on the same day as claiming priority (but available in some time zones on the previous calendar day) can this amount to a disclosure of prior art?

What's it about?

This is one of a series of cases concerning a portfolio of patents purchased by Unwired Planet International Ltd (**Unwired Planet**) from Ericsson. The patent in this particular action related to the 4G mobile telecommunications system. Specifically, Unwired Planet claimed that Huawei, Samsung and others were infringing the patent by manufacturing and selling certain mobile phone devices.

As well as arguing that the activities in question did not fall within the scope of the patent claims, Huawei and the other Defendants argued that the patent was not valid as it lacked novelty. In this regard, the Defendants sought to rely on the fact that Ericsson (the original patentee) had made available to the public a document disclosing the patent prior to the priority filing date.

In fact, Ericsson had published the document on the internet on the same day as claiming priority (8 January 2008), but in a different time zone. Because documents on the internet are viewable in all time zones this meant that in some parts of the world (Hawaii, for example) the document was actually available on 7 January 2008.

Why does it matter?

To be valid, a patent must be novel, meaning that it does not form part of the prior art. For this reason, inventors must be careful not to disclose details of their prospective patents prior to filing a patent application and claiming priority at the relevant patent office.

In this case, the court held that it was only the date of claiming priority (in the location that priority is claimed) that was relevant, and not the specific time. The document in question was published on the internet on the same day – it was not relevant that it was available in some parts of the world on the previous day.

Now what?

No doubt Unwired Planet breathed a sigh of relief at the result of this case as regards the timing of the publication of the disclosing document. However, prospective patent applicants should still take extreme care when handling information relating to a patent before claiming priority. The internet makes it all too easy to communicate immediately with the whole world; novelty can be lost as a result of a few ill-timed clicks of the mouse – a potentially costly mistake.

[*Unwired Planet International Ltd v Huawei Technologies Co Ltd & Ors \[2015\] EWHC 3366 \(Pat\)*](#)

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