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## Phoenix Appeals DirecTV's Speech Tech Patent Win

By **Ben James**

Law360, New York (December 04, 2009) -- Phoenix Solutions Inc. wants a federal appeals court to overturn DirecTV Group Inc.'s victory in a lawsuit Phoenix brought claiming that the interactive voice response system DirecTV uses to field customer calls infringed patents related to computer-based speech recognition technology.

Phoenix filed its notice of appeal in the U.S. District Court for the Central District of California on Thursday, just one day after Judge Mariana Pfaelzer entered final judgment in DirecTV's favor.

In addition to Wednesday's final judgment, Phoenix is challenging the court's Nov. 23 Statement of Uncontroverted Facts and Conclusions of Law, as well a decision denying Phoenix's motion for summary judgment and a ruling awarding summary judgment to DirecTV.

DirecTV got the case thrown out by arguing that its accused system is handled at a separate company, and that DirecTV doesn't direct and control those operations or perform the steps of the asserted patent claims itself, said Nick Gross, an attorney who prosecuted the four patents asserted by Phoenix but did not appear in the case.

"This issue of divided infringement is so tricky," Gross said.

However, Phoenix asserted both method and system claims against DirecTV, Gross said. With respect to the method claims, Gross said that reasonable minds could differ on the level of engagement and control that DirecTV actually had. But Gross said that the system claims, in his view, clearly should have remained in play.

The U.S. Court of Appeals for the Federal Circuit previously held that Paymentech LP hadn't infringed two patents because it hadn't performed all the steps in the patent claims asserted against it, but only the method claims were at issue in that case, according to Gross.

The summary judgment motion from Phoenix that the court rejected on Nov. 23 focuses on one claim on just one of the four patents the plaintiffs originally asserted: U.S. Patent Number 7,050,977.

According to Phoenix, there was "simply no reasonable dispute" that DirecTV was using a system that includes all elements of the first claim of the '977 patent. DirecTV operates a system through which customers can access DirecTV content through two "modes of interaction" — either using a computer, mouse and keyboard, or using their voice over a conventional phone, Phoenix said.

"While the defendant vainly attempted to impose an artificial demarcation between these two modalities supported by its system, there is simply no rational or practical basis by which it can separate these two customer engagement channels," Phoenix claimed in a memorandum of law supported its summary judgment bid.

Phoenix's amended complaint, which it filed just one day after lodging the suit in February 2008, asserted the '977 patent, as well as U.S. Patent Numbers 6,615,172; 7,139,714 and 7,225,125.

Interactive voice response systems are more efficient, less likely to drive customers to hang up in frustration and more cost-effective than conventional touch-tone systems, the plaintiffs contends, going on to assert that DirecTV's IVR system saves the defendant an estimated \$9.2 million annually over its previous touch-tone system.

On Feb. 20, 2007, Phoenix said it sent a letter to the defendant stating that the IVR system at issue encroached on the patents-in-suit and offering to strike a licensing deal. DirecTV refused to respond in good faith, Phoenix contended, and the defendant's delay in putting forth a meaningful response made bringing the lawsuit a necessity.

Phoenix Solutions was founded by Dr. Ian Bennett, who the complaint bills as a pioneer in computer-based speech recognition.

A spokesman for DirecTV was not immediately available to discuss the appeal on Friday.

An attorney for Phoenix in the case also could not be immediately reached.

Phoenix is represented in this matter by Trojan Law Offices.

DirecTV is represented by Bartlit Beck Herman Palenchar & Scott LLP and Quinn Emanuel

Urquhart Oliver & Hedges LLP.

The case is Phoenix Solutions Inc. v. The DirecTV Group Inc., case number 08-984, in the U.S. District Court for the Central District of California.

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