At High Court, Patent Biz Argues Case Is Unlike American Axle

By Andrew Karpan · Listen to article

Law360 (July 13, 2022,) -- Lawyers for a New York patent-holding company are the latest to make their case for why their U.S. Supreme Court petition is actually different from the American Axle patent eligibility case that justices rejected last month.

The slight change in tune came in the form of a brief filed Monday by Interactive Wearables, a unit of Poltorak Technologies LLC that went to the high court last year after a trio of Federal Circuit judges quickly agreed with a New York federal judge's decision to invalidate two of its patents for only claiming an abstract idea.

The patents were issued to a prolific patent licensing businessman named Alexander Poltorak, and his company used them to sue a Finnish sports technology company called Polar Electro over a line of watches the company sells called the Polar M600.

The brief from Interactive Wearables argued that its appeal presents an issue the justices haven't been asked to address in other cases, although they are filing along the well-trodden legal terrain criticizing how patent eligibility is read by judges on the Federal Circuit.

"Too many petitions over the last decade have had to detail the harm this is causing to the U.S. patent system, and petitioner will not endeavor to describe the problem more eloquently than those that have already done so," lawyers for Poltorak's company wrote.

The most recent and high-profile of these petitions came from a Detroit company called American Axle — in March, the petition from Interactive Wearables made an argument for pegging the company's appeal to the fate of the American Axle case. But late last month, justices on the Supreme Court decided they were not interested in taking that case up. Already in the past week, new petitions on the subject at the high court have begun to differ their appeals from the issues mentioned in the American Axle case.

While the initial petition from Interactive Wearables zeroed in on the similarities with the American Axle case, the latest brief from the company "focuses primarily" on a legal question the company's lawyers say "was not presented in American Axle's petition."

Interactive Wearables argues that New York's U.S. District Judge Gary R. Brown wrongly applied the legal framework surrounding whether or not the language of a patent is enough to describe an invention that would work — a so-called enablement analysis — in reaching his decision that the language used in the patent describes an invention that is too abstract to be eligible for a patent.

"The district court began its analysis by ignoring the claim language and jumping straight into an examination of the specification for statements about the goals of the inventions, to determine what the claim was directed to," the brief reads. If only Judge Brown focused "on the claim language, one cannot reasonably conclude that the claim, on its face, is directed as a whole to the court's stated idea of 'providing information in conjunction with media content.'"

Both patents purport to cover an "apparatus and method for providing information in conjunction with media content," according to the titles of the patents, which date to paperwork Poltorak filed with the patent office in 2002. But his lawyers say that the language of the claims themselves contain an "undisputed concreteness" that should have "should have resolved the inquiry in favor of patent eligibility."

Poltorak is well-known to patent lawyers as the founder of General Patent Corp., which once touted itself as the oldest patent licensing firm in the world but had since come on hard times after the Supreme Court's 2014 ruling in Alice began to leave behind a trail of invalidated patents.

The Alice ruling governs Section 101 of the Patent Act, and part of the appeal argues that lower court judges are confusing the law with Section 112, which covers whether patents are written specifically enough to detail a real invention.

In the filings, Polar's lawyers have described the appeal from Poltorak's latest company as "just another forgettable Section 101 decision" — which resulted in a unanimous one-line order affirming Judge Brown's decision. But the brief from Poltorak's company notes that the confusion over the two different patent laws did spill into the case's oral arguments in

front of the Federal Circuit judges.

"I know I sound like I'm talking about enablement, I know, I understand the problem," one of the appeals court judges said during oral arguments, according to the brief, which adds that "under the circumstances, the panel's failure to provide an explanation for its affirmance only underscores the need for review."

"No objective party seriously disputes that the current chaos in patent eligibility jurisprudence is a problem that needs immediate fixing … the only question is finding the appropriate case to address the problem."

Interactive Wearables lawyer Charles Wizenfeld of King & Wood Mallesons LLP told Law360 in an email that, "unlike the petition in American Axle, [this petition] involves the application of the frequently litigated abstract idea exception to Section 101 in the context of technology concerning consumer electronics devices."

Anthony J. Fuga of Holland & Knight LLP, who represents Polar Electro in the case, said in his own email that Interactive Wearables' pivot away from American Axle was "no surprise."

"Unfortunately for IW, it's just not a compelling case," he added.

The patents-at-issue are U.S. Patent Nos. 9,668,016 and 10,264,311.

Interactive Wearables is represented by Andrea Pacelli, Michael DeVincenzo and Charles Wizenfeld of King & Wood Mallesons LLP.

Polar Electro is represented by Anthony J. Fuga and John P. Moran of Holland & Knight LLP.

The case is Interactive Wearables LLC v. Polar Electro Oy et al., case number 21-1281, at the U.S. Supreme Court.

--Additional reporting by Dani Kass. Editing by Ellen Johnson.