

An Injunction Prohibiting a Patentee From Making Public Accusations of Infringement Is Improper Absent a Showing of Bad Faith, and False or Misleading Speech

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Myco Indus., Inc. v. Blephex, LLC, No. 2019-2374 (Fed. Cir. Apr. 3, 2020)

An alleged infringer filed a declaratory judgment action against a patentee, seeking a declaration of noninfringement and invalidity. The alleged infringer also sought a preliminary injunction seeking to bar the patentee from (1) making “false allegations” that the accused product infringes the patent, and (2) “making baseless threats” of litigation against the alleged infringer’s potential customers, including medical practitioners.

The district court granted the injunction, finding that the alleged infringer had shown a strong likelihood of success on the merits of its noninfringement argument, and because of the liability immunity for the medical practitioner customers under 35 U.S.C. § 287(c)(1). The Federal Circuit reversed, vacated, and remanded, noting that this “is a case about free speech and a district court’s authority to place prior restraints on that speech.” The court held that the district court had abused its discretion by enjoining the patentee from communicating its patent rights without a finding that the patentee was acting in bad faith, or that the restrained speech was either false or misleading.

In addition, section 287(c)(1) does not mean that allegations of infringement directed towards medical practitioners are made in bad faith, because the plain text of the statute “provides immunity to certain infringers, but does not make them noninfringers.” Finally, the court vacated the district court’s finding that the alleged infringer was likely to succeed on the merits because the district court had not properly conducted a claim construction analysis on a critical claim term.

A copy of the opinion can be found [here](#).

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