

Google's Rule 62.1 Motion Granted Ahead of Appeal

DECEMBER 15, 2021

On December 6, 2021, Judge Albright granted Google's motion for indicative ruling under Federal Rule of Civil Procedure 62.1 ("FRCP 62.1") related to one claim in the patent-at-issue in *WSOU Investments LLC d/b/a Brazos Licensing and Development v. Google LLC f/k/a Inc.* The appeal is scheduled for October 15, 2022, in front of the Federal Circuit.

WSOU Investments LLC ("Brazos Licensing") is the owner of U.S. Patent No. 8,965,045 (the "'045 Patent"). The patent broadly covers "Image captur[ing]." On July 29, 2020, Brazos sued Google for infringement related to Google's Nest service and associated products. These include the Google Next Cam IQ Series.

By September 17, 2021, the parties entered a joint motion for dismissal and final judgment. Two days after Judge Albright entered the order, Brazos Licensing appealed. Google then filed a motion in the Western District of Texas seeking to supplement the record with the court's additional claim construction analysis for the '045 Patent's claim limitation: "a processor configured to provide a preemptive user output when the sub-set of pixels approaches an edge of the set of available pixels." In doing so, Google also moved for an indicative ruling under FRCP 62.1.

In a one-page order, Judge Albright granted Google's motion for an indicative ruling (FRCP 62.1), explaining: "[W]ere the U.S. Court of Appeals for the Federal Circuit to order a limited remand to this Court while otherwise retaining jurisdiction over the parties' appeal, the Court would grant [defendant's] motion to supplement the record with the Court's additional claim construction analysis for the claim limitation a 'processor configured to provide a preemptive user output when the sub-set of pixels approaches an edge of the set of available pixels.'"

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