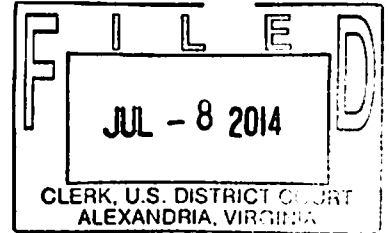


**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**



**TOMTOM, INC.,
Plaintiff,**

v.

**AOT SYSTEMS GMBH, *et al.*,
Defendants.**

Case No. 1:12-cv-528

ORDER ENTERING FINAL JUDGMENT

This declaratory judgment action is a patent infringement suit. Plaintiff and counterclaim defendant TomTom, Inc. ("TomTom"), the putative infringer of U.S. Patent No. 6,356,836 ("the '836 patent") owned by defendant and counterclaim plaintiff Michael Adolph, seeks a declaration that the claims of the '836 patent are invalid and that TomTom does not infringe any valid claim of the '836 patent, which purports to cover a method for tracking data in a mobile Global Positioning System unit. Adolph not only opposes TomTom's request for a declaration but also counterclaims that TomTom infringes the '836 patent and seeks damages.

On February 25, 2014, a Memorandum Opinion and Order issued construing nine disputed terms in claims 1 and 22 of the '836 patent. (Docs. 198 and 199). Now, following claim construction, the parties have filed a joint stipulation for entry of final judgment. (Doc. 232). In the stipulation for entry of final judgment, the parties stipulate that, under the current claim construction, TomTom does not infringe any claims of the '836 patent, and accordingly, the parties seek a judgment of noninfringement with respect to Adolph's counterclaims of infringement, subject to Adolph's right to appeal the decisions of the Court to the Federal Circuit. Upon entry of the judgment of noninfringement, the remainder of TomTom's pending claims against Adolph will be dismissed without prejudice as moot but may be revived and

reasserted in the event Adolph is able to pursue its infringement claims against TomTom post-appeal. The parties further ask that TomTom's invalidity claims be nonsuited and dismissed without prejudice. As a result, if the Court of Appeals for the Federal Circuit alters or revises the current claim construction and thus vacates the judgment of infringement and remands the case to the district court for further proceedings, the parties will then seek to revive the validity claims and will engage again in the validity and infringement disputes.

Because the parties' agreement might be regarded as a disguised interlocutory appeal of the *Markman* determination, the Court required the parties to submit supplemental briefing setting forth whether agreements among parties of this sort pass muster with the Federal Circuit as an appropriate appeal from a final judgment. The parties submitted a joint brief and cited cases in which the Federal Circuit did not squarely address the issue, but accepted these arrangements as appropriate final judgments.¹

Accordingly, and for the reasons set forth in the parties' Stipulation for Entry of Final Judgment,

It is hereby **ORDERED** that plaintiff and counterclaim defendant TomTom is awarded a Judgment of Noninfringement in its favor and against defendant and counterclaim plaintiff Adolph on each of Adolph's claims that TomTom has infringed the '836 patent.

It is further **ORDERED** that all claims by TomTom against Adolph are **DISMISSED** without prejudice.

The Clerk is **DIRECTED** to enter judgment in favor of plaintiff TomTom and against defendant Adolph pursuant to Rules 54(b) and 58, Fed. R. Civ. P.

¹ *Ancora Techs., Inc. v. Apple, Inc.*, 744 F.3d 732 (Fed. Cir. 2014); *Jang v. Boston Scientific Corp.*, 532 F.3d 1330 (Fed. Cir. 2008); *Nystrom v. Trex Co., Inc.*, 339 F.3d 1347 (Fed. Cir. 2003); *Pandrol USA, LP v. Airboss Ry. Products, Inc.*, 320 F.3d 1354 (Fed. Cir. 2003).

The Clerk is directed to send a copy of this Order to all counsel of record and to place this matter among the ended causes.

Alexandria, Virginia
July 8, 2014



T. S. Ellis, III
United States District Judge