

## INFRINGEMENT BATTLES: A CASE STUDY ILLUSTRATES THE NEED FOR REFORMS

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We present a case of a university invention and the long, costly legal process that was required to challenge prominent infringing products. This history highlights a number of areas where reforms are urgently needed so that small entities can defend their intellectual property with realistic budgets, timelines, and solid facts—and without baseless recriminations. A call for coordinated action is made to restore our patent rights become effectively useless if

inventors and small entities do not have extravagant amounts of time and money to mount a legal challenge or defense under current U.S. practices. To illustrate some of the key issues facing inventors and smaller firms, a timeline of events is recounted

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and reverse RCT's strong position.

Without including a formal opinion, Judge Royal reversed the prior judge's grant of RCT's summary judgment motion for infringement and also granted, without opinion, Microsoft's summary judgment motion for non-infringement. Again without opinion, he also granted Microsoft's summary judgment on invalidity. Finally, the judge granted all of Microsoft's motions . . . . . and set a jury trial to commence August 8, 2005. In plain English, this means that Judge Royal effectively told the inventors and RCT that they were getting harsh treatment in his court.

It seemed that he could not fathom what the intentD 187 BDC BT0.019 Tw 10 0 0 10 87.6 516.6501.9 D 186 B7

without any justification. So much for naïve expectations about the law and facts!

**2008: HE RESE**

After a brief hearing from both sides, Judge Rader of the CAFC ruled that Judge Royal had erred in ignoring the materiality prong and in misapplying the intent prong of the inequitable conduct test, concluding with, “This court therefore reverses those findings and conclusions.” Furthermore, he stated,

In other words, the CAFC had again ruled in favor

In plain English, this means that the CAFC had overturned all of Judge Royal’s rulings in the case and had taken a rare option of requiring a new judge for any resumption of the case.

Even with this slap-down of the notorious judge’s rulings and Voldemort’s malicious strategy, the litigation nightmare wasn’t over. The case was essentially restarted back in Arizona (minus the discredited arguments and the notorious judge), and then a new round of motions were made to the newly appointed judge about arcane points of law concerning the claims. The new judge ruled against RCT on some of these, and these were once again appealed back to the CAFC, consuming additional time and money in great quantities.

**2010: BACK TO APPEALS COURT**

The astute reader will note that an entire decade has passed, and there is still no resolution or justice on the core question of infringement. Finally, on December 8, 2010, the U.S. CAFC, under Judges Rader, Newman, and Plager, ruled that,

will result in legislative changes.

For these reasons, the National Academy of Inventors, along with the Association of University