



Linear Tech. Corp. v. Micrel, Inc., 275 F.3d 1040 (Fed. Cir. 2001)

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CASE HISTORY

LTC sued Micrel for infringement. The district court denied Micrel's motion for summary judgment of invalidity, bifurcated the case for a trial on § 102 (b), and stayed all other issues. The district court held LTC's patent invalid. LTC appealed.

CASE FACTS

- The patent covers a voltage, current regulator circuitry (LT1070).
- The critical date is November 18, 1985.
- LTC conducted an extensive marketing before the critical date:
 - a) LTC conducted a sales conference in California, and distributed LT1070 data sheets and newsletters to sales representatives.
 - b) LTC sought pricing feedback from sales representatives.
 - c) Some sales representatives contacted end-users, resulting in 26 requests for LT1070.
 - d) LTC received orders from European distributors. LTC treated the orders as "will-advise" order and faxed the acknowledgement with the words "NOT RELEASED...NOT BOOKED."
- In Group One, decided after the district court's decision, the CAFC changed the analysis for "an offer for sale."

ISSUE

Whether or not an invalidating "offer for sale" occurred?

HOLDING

No, LTC's conducts do not reach the level of a commercial offer for sale.

ANALYSIS

- In Pfaff, to satisfy 102(b), the invention (1) must be the subject of a commercial offer for sale, and (2) must be ready for patenting. There is no dispute in requirement (2).

- In Group One, only an offer which rises to the level of a commercial offer for sale constitutes an offer for sale under § 102(b). To interpret “a commercial offer for sale,” the court must refer to the case law of the state and federal courts interpreting their individual versions of the UCC, and then find the federal common law of contract that governs the on-sale bar.
 - a) Sales conference, data sheets, and newsletters are all advertisement, not an offer.
 - b) Soliciting feedback is not an offer because it lacks LTC’s intent to be bound.
 - c) Requests from customers do not show that the sales representative actually made an offer for sale.
 - d) European distributors made an offer; therefore, LTC’s acceptance is required to complete a sale. A reasonable offeror would not regard LTC’s “will-advise” acknowledgement as acceptance of the offer.

NOTE

A determination that a product was placed on sale prior to the critical date is a conclusion of law based on underlying findings of fact. We review the ultimate determination de novo, and the underlying factual findings for clear error.