Federal Circuit Permits Purchasers to Assert *Walker Process* Antitrust Claims Even When Not Threatened With a Patent Infringement Action

The Federal Circuit Concludes That a Party Asserting a *Walker Process* Antitrust Claim, Which Is Premised on Obtaining a Patent by Fraud, Need Not Have Standing to Challenge the Validity of the Patent

**SUMMARY**

On November 20, 2012, a three-judge panel of the U.S. Court of Appeals for the Federal Circuit issued an opinion in *Ritz Camera & Image, LLC v. SanDisk Corp.*, addressing, for the first time, the issue of whether a direct purchaser of goods has standing to bring a *Walker Process* antitrust claim even where the purchaser “faces no threat of an action for patent infringement and has no other basis to seek a declaratory judgment holding the patent invalid or unenforceable.”¹ A *Walker Process* antitrust claim requires a plaintiff to prove (i) that the defendant procured the patent through “knowing and willful fraud on the” U.S. Patent and Trademark Office (“PTO”), and (ii) all elements of a Sherman Act monopolization charge.² Although these claims are often brought in response to an actual or potential claim of patent infringement, the Federal Circuit in *Ritz* held that “a direct purchaser is not categorically precluded from bringing a *Walker Process* antitrust claim, even if it would not be entitled to seek declaratory relief against the patentee under the patent laws.”³ As a result, patent-holders may be sued by any number of parties who can allege that they paid inflated prices for goods protected by patents.

**BACKGROUND**

In June 2010, *Ritz Camera & Image, LLC* (“*Ritz*”), filed suit on behalf of itself and a class of direct purchasers of flash memory technology over which SanDisk held various patents. *Ritz* alleged that
SanDisk violated Section 2 of the Sherman Act, 15 U.S.C. § 2, by procuring two patents by fraud when it failed to disclose known prior art and made affirmative misrepresentations to the PTO. The complaint alleged that SanDisk “established its monopoly position by enforcing those patents against its competitors and by threatening the competitors’ customers.” These actions allegedly caused the class to pay higher, supra-competitive prices for flash memory products.

In its motion to dismiss the complaint, SanDisk asserted that Ritz lacked standing to bring a Walker Process antitrust claim because there was neither a threat of an infringement action nor any other basis to bring a declaratory judgment action challenging the validity of the patents. Prior to the Federal Circuit’s decision in Ritz, courts had split on the issue of whether a party not subject to an infringement action had standing to bring a Walker Process claim. The district court in Ritz denied the motion, stating that Walker Process “places no limitation on the class of plaintiffs eligible to bring” such claims and that conferring standing would not produce an “avalanche” of such claims. The district court and the Federal Circuit granted interlocutory review on the issue.

THE FEDERAL CIRCUIT’S DECISION

In affirming the district court, the Federal Circuit relied heavily on the Walker Process decision itself to hold that direct purchasers of goods are not precluded from bringing antitrust claims simply because those purchasers cannot otherwise challenge the validity or enforceability of a patent through a declaratory judgment action or as a defense to infringement. The court noted that “[n]othing in Walker Process supports SanDisk’s argument that the rules governing standing to bring patent validity challenges should be imported into an antitrust case simply because one element of the antitrust cause of action requires proof of improper procurement of a patent.” Although patent law is intertwined with proving a Walker Process claim, “the gist of [the antitrust] claim is that since [the defendant] obtained its patent by fraud it cannot enjoy the limited exception to the prohibitions of § 2 of the Sherman Act, but must answer under that section and § 4 of the Clayton Act in treble damages to those injured by any monopolistic action taken under the fraudulent patent claim.”

SanDisk argued that conferring standing in cases like this “would authorize an intolerable end-run around the patent laws” by allowing parties who could not otherwise pursue invalidity claims to use the Sherman Act to achieve the same result. The court rejected this argument, reasoning that actions under the Sherman Act do “not directly seek the patent’s annulment.” In doing so, the Federal Circuit rejected SanDisk’s argument that granting standing in these cases would “trigger a flood of litigation and stem innovation,” noting that Walker Process claims deal only with a limited number of patents—those procured by intentional fraud.
IMPLICATIONS

Under the Federal Circuit’s decision, private or class-action antitrust litigation can be brought by direct purchasers if there is a credible basis to allege that a patent-holder with market power obtained patents by fraud on the PTO. Although these claims will need to be pleaded with particularity pursuant to Rule 9(b) of the Federal Rules of Civil Procedure, a patent-holder will now have much less control over who can initiate such lawsuits, and may not be able to avoid the action by, for example, providing a covenant not to sue. The Federal Circuit’s decision confirms that patent-holders must carefully consider the antitrust implications before beginning a patent enforcement program.

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ENDNOTES

3  Id. at 3.
4  Id. at 4.
5  Compare In re DDAVP Direct Purchaser Antitrust Litig., 585 F.3d 677 (2d Cir. 2009) (holding direct purchasers had standing), with In re K-Dur Antitrust Litig., No. 01-1652, 2007 WL 5297755 (D.N.J. March 1, 2007) (holding indirect purchasers lacked standing).
6  Id. at 5 quoting Ritz Camera & Image, LLC v. SanDisk Corp., 772 F. Supp. 2d 1100, 1105 (N.D. Cal. 2011).
7  Id. at 7.
8  Id. quoting Walker Process, 382 U.S. at 176.
9  Id. at 9.
10 Id. quoting Walker Process, 382 U.S. at 176.
11 Id. at 10.
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