Determining Standing in Light of the Federal Circuit's Azure Networks, LLC v. CSR PLC Opinion

Related People:
Matthew Sklar

New York Intellectual Property Law Association

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When it comes time to enforce a patent, it is imperative to determine who has standing to sue. Certainly, defendants may have an interest in seeking to exclude a plaintiff from a case based on standing for a variety of reasons (e.g., damages or venue). It is well settled that ordinarily, those who hold legal title to the patent have standing to bring a patent infringement suit. *See* 35 U.S.C. §§ 100(d), 281; *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1342 (Fed. Cir. 2014); *Prima Tek II, L.L.C. v. A-Roo Co.*, 222 F.3d 1372, 1376-77 (Fed. Cir. 2000); *Enzo APA & Son, Inc. v. Geapag A.G.*, 134 F.3d 1090, 1093 (Fed. Cir. 1998). However, it is common for a patent owner to grant patent rights to another by way of an exclusive license. The nature of an exclusive license has a significant impact on the standing question and, more particularly, whether the licensee and the licensor (i.e., the patent owner) have standing in a litigation proceeding. In many instances, an exclusive licensee and the licensor will bring a patent suit together as co-plaintiffs to ensure that standing requirements are satisfied. *Cf. Prima Tek II*, 222 F.3d at 1377 (recognizing that as a "general rule," a patentee should be joined in a patent infringement suit that is brought by an exclusive licensee). However, a recent opinion from the Federal Circuit—*Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336 (Fed. Cir. 2014)—suggests that exclusive licensees and patent owners must carefully examine the license agreement before bringing suit and cannot assume that both the exclusive licensee and the patent owner can always bring suit together.