ARE Patent Litigation Alert: *Centillion v. Qwest Communications*: Federal Circuit Held That â€œUseâ€• of a System Means Use as a Whole and the User Must Derive Benefit From It

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(January 31, 2011) In *Centillion Data Systems, LLC v. Qwest Communications Int'l, Inc.*, 2010-1110 (Fed. Cir. January 20, 2011), the Federal Circuit addressed the issue of what constitutes "use" of a system under 35 U.S.C. § 271(a), in what the panel recognized to be a case of first impression for the court.

Centillion interpreted the term "use" of a claimed system in this context to mean that "a party must put the invention into service, *i.e.*, control the system as a whole and obtain benefit from it." (Slip Op. at 8.) The court looked to its prior decision in *NTP, Inc. v. Research in Motion, Ltd*. 418 F.3d 1282 (Fed. Cir. 2005), as the source of this statutory interpretation.

As a consequence of this statutory construction, *Centillion* found that users of several of Qwest's accused billing systems could be found to "use" the claimed invention, even though the "back-end processing" is performed by Qwest (*i.e*., not the customer), when the customer "puts the system as a whole into service", by requesting specific billing reports or requesting reports on a monthly basis. (Slip Op. at 10-11.)

However, *Centillion* found that Qwest, which handled back-end processing for the accused billing systems, did not "use" the claimed invention because it does not "control the system and obtain benefit from it." (Slip Op. at 12.) The Federal Circuit noted that Qwest does not put into service certain limitations of the asserted claims, which were instead put into service by Qwest's customers. (Slip Op. at 13.)

Building on its precedent with regard to infringement of method claims, *Centillion* found that Qwest could be found to "use" the claimed invention only if it was vicariously liable for the actions of its customers for the limitations Qwest does not put into service itself, which was not found to be the case. (Slip Op. at 13-14.) Conversely, the customer could be found to use the system even if it was not vicariously liable for Qwest's back-end processing.

The Federal Circuit left open the issue of whether Qwest induced infringement by a customer, noting that this was not an issue raised on appeal. (Slip Op. at 11-12.)

Centillion remanded the case for further determinations, since the district court had not yet

found whether the accused system meets each of the elements of the claims as properly interpreted.

If you have questions about this case or its impact on U.S. patent law, please do not hesitate to contact us.

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