

## CLIENT ALERT

### Substantial Evidence Supports Infringement Finding Despite Narrower Claim Construction

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In *z4 Techs., Inc v. Microsoft Corp.* (No. 06-1638; November 16, 2007), the Federal Circuit affirms jury verdicts of infringement and lack of proof of invalidity of z4's patents, and the district court's denial of Microsoft's motion for JMOL. z4's patents are directed to the problem of illicit copying and unauthorized use of computer software. The Federal Circuit modifies the district court's claim construction of the term "user" from "a person, a person using a computer, a computer, or computers," because it conflicts with the plain language of the claim and the teachings of the specification, to "a person or a person using a computer." Even so, the Federal Circuit determines that the modified claim construction still supports the jury's verdict of infringement, based on substantial evidence of record. In particular, the claims explicitly contemplate tracking authorized users through the identity of computers on which they install the software, and Microsoft admits that its product makes product activation determinations based on registration information related to users' computers.

With regard to the alleged invalidity of z4's patents in view of Microsoft's Brazilian Publisher 98 ("BP 98") product, the Federal Circuit agrees with Microsoft's assertion that the district court incorrectly defined the intended purpose of the z4 patents as "to stop piracy." Instead, says the Federal Circuit, the intended purpose of z4's patents is to "reduce piracy." Nevertheless, substantial evidence of record is found to support the conclusion that the anti-piracy feature of BP 98 did not work even to reduce piracy. An internal Microsoft e-mail, for example, confirmed the lack of effectiveness of BP 98 in reducing piracy. Thus, the Federal Circuit affirms the district court's denial of Microsoft's motion for JMOL of invalidity by anticipation.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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