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Young Attys Get More Arguing Time In CVS Coupon IP Fight

By **Kevin Penton**

Law360, New York (February 18, 2016, 3:20 PM ET) -- A Texas federal judge said Wednesday she will grant extra arguing time during an upcoming claims construction hearing to CVS, Walgreen or any other party in the infringement case over patents for processing coupons if the attorney arguing has seven years of experience or less.

In a case in which CVS Pharmacy Inc., Walgreen Co. and Brookshire Grocery Co. face allegations that they infringed three patents for processing coupons held by Advanced Marketing Systems LLC, U.S. Magistrate Judge K. Nicole Mitchell told the parties they should be mindful of providing opportunities to young lawyers to argue before the court.

Judge Mitchell's order for the Feb. 25 claims construction hearing did not specify how much additional time she would grant to parties who put forward less experienced attorneys, or what she would do if one of the parties doesn't have a lawyer who fits the bill.

The judge noted that with fewer cases going to trial, there are fewer opportunities for younger lawyers to speak in court.

"The court strongly encourages the parties to be mindful of opportunities for young lawyers to argue in front of the court, particularly for motions where the young lawyer drafted or contributed significantly to the underlying motion or response," her order said.

The pharmacy chains, which face claims that they infringe on the patents by using websites or mobile apps to load digital coupons on customers' reward cards, **sought to have the patents invalidated** in September. The companies argued that the patents are ineligible under the Alice standard that abstract ideas implemented using a computer are not patent-eligible.

Judge Mitchell found in her November report and recommendation that more analysis, in the form of claim construction, would have to be done before making such a finding, according to the filing.

For example, Judge Mitchell said, inherent in the pharmacies' argument for invalidity under the printed matter doctrine is an assumption that the term "discount vehicle" in the patent's claims can only be interpreted as paper with certain text or graphics on it.

In January, U.S. District Judge Rodney Gilstrap **rejected the defendants' motion** for judgment on the pleadings, finding the claims in the patents weren't clearly describing abstract concepts.

Judge Gilstrap adopted Judge Mitchell's recommendation that, without first examining the

claims more closely, the wording in the patents held by Advanced Marketing Systems wasn't outright reciting conventional and generic equipment.

Counsel for the parties could not be reached on Thursday for comment.

The patents-in-suit are U.S. Patent Numbers 8,219,445; 8,370,199; and 8,538,805.

Advanced Marketing Systems is represented by Jennifer Rynell and Ari B. Rafilson of Shore Chan DePumpo LLP and Kurt Rommel, R. Grant Decker, Michael A. Messina, and Laura Golden Liff of Miles & Stockbridge PC.

Walgreen is represented by Joseph E. Palys, Christopher W. Kennerly, Naveen Modi and Phillip W. Citroen of Paul Hastings LLP and Michael E. Jones of Potter Minton PC. CVS is represented by Brian K. Buss of Williams Morgan PC and Charles Ainsworth of Parker Bunt & Ainsworth PC. Brookshire is represented by Michael E. Jones and Allen F. Gardner of Potter Minton PC.

The case is Advanced Marketing Systems LLC v. CVS Pharmacy Inc. et al., case number 6:15-cv-00134, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Kat Greene. Editing by Brian Baresch.

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