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Better Luck Next Time? Trial Judge Rejects RICO Claim Against Innovatio IP Ventures, Wireless Hot Spot NPE

For those interested in the unique legal issues presented by the licensing and litigation efforts of non-practicing entities, the Chicago-based litigation involving non-practicing entity Innovatio IP Ventures, LLC, has showcased the efforts of wireless networking equipment suppliers to defend their end users from Innovatio's patent infringement claims. [See *In re Innovatio IP Ventures, LLC, Patent Litigation*](#), MDL Docket No. 2303, N. D. Ill., Case No. 11 C 9308. One line of attack has focused on allegedly false statements and deceptive tactics in the pre-litigation licensing correspondence, and in the suits themselves. In a ruling issued February 4, the trial judge denied the manufacturers' attempts to add claims under the federal Racketeer Influenced and Corrupt Organizations (RICO) law attacking Innovatio's tactics. The judge left in the manufacturers' claims for breach of contract and promissory estoppel based on Innovatio's contractual duties as a member of the Institute of Electrical and Electronics Engineers (IEEE) standards-setting organization. The full ruling can be found [here](#).

Innovatio is the successor in interest to a portfolio of patents previously controlled by Broadcom. Based on its conclusion that some or all of those patents cover the standard wireless data transmission systems in use in the United States, Innovatio accused numerous hospitality, travel and retail end users of infringement because they offered wireless Internet access to their customers. Innovatio ultimately sued more than 200 such businesses. The major manufacturers of wireless data networking equipment joined together to defend their customers by filing their own declaratory judgment action. The various lawsuits were consolidated into a multidistrict litigation last year.

When the manufacturers asserted the RICO claim in an amended declaratory judgment complaint, they drew some attention from the media, and Innovatio resisted vigorously. The trial court's analysis focuses on whether, under numerous facts particular to this case, the licensing demands and litigation asserted by Innovatio amount to "sham litigation." Although the trial court concluded that these facts did not support such a claim, the ruling does not appear to close the door on the theory altogether. Different facts could support a different result.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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