



TECHNOLOGY LAW UPDATE

MicroStrategy Inc.
v.
***Business Objects,
S.A.***

No. 04-1572

Federal Circuit
Nov. 17, 2005

While an expert need not consider every possible factor to render a "reliable" opinion, the expert still must consider enough factors to make his or her opinion sufficiently reliable in the eyes of the court.

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On November 17, 2005, the Federal Circuit, inter alia, affirmed the district court's summary judgment that Business Objects did not infringe U.S. Patents No. 6,260,050 and No. 6,270,033, which related to business intelligence software that allows companies to access and mine enormous volumes of data generated by their business operations. MicroStrategy had also asserted four business tort claims stemming from the hiring of several MicroStrategy employees by Business Objects. The Federal Circuit stated:

On MicroStrategy's four business tort claims, the district court disposed of much of the dispute with various evidentiary rulings that excluded MicroStrategy's evidence on damages and causation. MicroStrategy's tort case relied heavily on the presentation of its damages expert, David E. Yurkerwich, and his three expert reports. . . . The district court first excluded Yurkerwich's initial expert report, dated July 17, 2002, due to the use of a flawed methodology. The district court found that the initial expert report did not consider relevant factors in its damages analysis, and did not link any single instance of misconduct to a specific amount of damages. [A]t trial, the district court also prevented MicroStrategy from introducing its non-expert damages theories because MicroStrategy had not supplemented discovery interrogatories. The combined effect of the expert rulings and the exclusion of MicroStrategy's non-expert damages theories left MicroStrategy with little or no evidence of damages or causation. . . .

Confronted first with the initial expert report, the district court properly concluded that, despite the rather obvious role that MicroStrategy's financial instability played in the company's ongoing struggles, Yurkerwich attributed all of the company's post 2000 losses solely to the alleged tortious conduct by Business Objects [and] ignored any significant factor that might have attributed MicroStrategy's difficulties to factors other than the torts. Thus, the district court properly perceived that Yurkerwich's report did not accurately link the alleged damages to the torts. Instead the record suggests that other market factors caused most, if not all, of the damage to MicroStrategy, which highlights the need for reliable proof of the specific amount attributable to the alleged tortious acts. . . .

[T]he district court has an obligation to weigh the admissibility of expert evidence under the Federal Rules. "[U]nder the [Federal] Rules [of Evidence] the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." While an expert need not consider every possible factor to render a "reliable" opinion, the expert still must consider enough factors to make his or her opinion sufficiently reliable in the eyes of the court. This pre-admission determination (i.e., whether or not enough factors have been considered to make an expert report sufficiently reliable) is committed to the sound discretion of the district court, not the jury. Stated simply, an expert need not consider every possible factor. At the same time, the district court has the responsibility to exclude an expert opinion that overlooks factors that render the testimony unreliable and/or speculative.

In this case, the record shows that the excluded expert report did not link a single loss to a specific misconduct and ignored significant factors that might have excluded the torts as the reason for the losses. For these reasons, the district court was well within its discretion to exclude it.