

In Dispute Over High-Tech Wafers, Kramer Levin Convinces Federal Circuit To Vacate Infringement Ruling

By Ross Todd

Talk about wafer thin margins.

On Monday the U.S. Court of Appeals for the Federal Circuit vacated a patent infringement judgment because the trial court incorrectly construed the term "wafer."

The case involves Camtek Ltd.'s Falcon systems for automatically inspecting material that goes into semiconductors. Rival August Technology Corporation sued Camtek in 2005 alleging that some of the Falcon systems infringed its patent for "a system and a method for inspecting integrated circuits printed on substrates such as wafers." (August now operates under the name Rudolph Technologies, Inc.)

A Minneapolis jury in 2009 found that Camtek's Falcon device infringed the August patent, and awarded about \$6.8 million in lost profits. Later that year federal district court judge Michael Davis permanently enjoining Camtek from making, using, or selling its infringing Falcon machines. Merchant & Gould handled both the trial and the appeal for August Tech. Camtek then brought on Kramer Levin Naftalis & Frankel to handle the appeal, replacing trial counsel at Fish & Richardson.

In Monday's decision, Federal Circuit Judge Kimberly Moore spent much of the 22-page ruling discussing just what a wafer is and whether the term "a wafer" can also mean "a plurality of wafers." Camtek and its lawyers at Kramer Levin, led by Jonathan Caplan, argued that the district court erred by allowing each wafer to be considered a multitude of wafers. Judge Moore agreed. "We conclude that a wafer

is a discrete object, and thus a single wafer, even though it may later be diced into hundreds of separate dies, is not itself also a plurality of wafers," she wrote. The Federal circuit vacated the lower court's judgment of infringement, and remanded the case for further proceedings under the new claims construction.

"We are pleased that the Court of Appeals vacated the judgment of infringement, damages and the permanent injunction," Camtek's CEO Roy Porat said in an e-mailed statement.

Judge Moore pointed out in a footnote that the question of whether the term "a wafer" can also include a plurality of wafers, which was central in this appeal, was a peripheral issue at most at the lower court. That appears to be one difference in strategy between Camtek's trial lawyers at Fish & Richardson and its appellate counsel at Kramer Levin. Fish & Richardson, by the way, has sued the company for more than \$2.2 million in unpaid legal fees plus interest. The Litigation Daily left a message for Fish partner Ann Cathcart Chaplin but did not hear back.

August Tech maintains that Camtek and its Falcon inspection machine are still infringing under this new claim construction. The Federal Circuit remanded the case to the district court to settle that issue. Daniel McDonald at Merchant & Gould, who represents August Tech, said he was pleased that the Federal Circuit affirmed the lower court's dismissal of inequitable conduct claims against his client, and confident that his client would prevail in the reconsideration of the infringement claim.