



# Archetype IP

## Federal Circuit Friday

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On July 10, in *Genband US LLC v. Metaswitch Networks Corp.*, the Federal Circuit addressed one of the requirements for obtaining a permanent injunction in patent infringement cases.

To obtain an injunction a patent owner must demonstrate, among other things, that it is being “irreparably harmed” by the infringement. In general, irreparable harm means an injury that cannot be adequately remedied by payment of money damages (e.g., where there is no accurate standard or method for calculating the magnitude of the monetary loss at issue).

*Genband* addressed the requirement for a connection, or “causal nexus,” between the infringing features of the defendant’s product and the irreparable harm to the patent owner. There can be no irreparable harm from infringement if the infringing activities are not causing the harm alleged to be irreparable. Causal nexus also ensures that an injunction does not provide the patent owner with “competitive gain beyond that which the inventive contribution and value of the patent warrant.” *Apple v. Samsung (Apple II)*, 695 F.3d at 1375.

Causal nexus is important in cases involving multi-component products where only one or a few components are covered by the patent and demand by purchasers may be driven in whole or in part by other components not covered by the patent.

The standard for causal nexus developed through a series of Federal Circuit decisions over the past few years in the *Apple v. Samsung* cell phone patent infringement case. Two issues arose:

- Whether the infringement must be the sole cause of the harm; and
- If not, then what magnitude of causation is required.

The Federal Circuit noted in *Genband* that the more recent *Apple* cases clarified that the infringement need *not* be the sole cause of the harm, but the infringement must have “some connection” to the harm (e.g., where lost sales are relied upon for irreparable harm, the patented feature must at least be one of the features that drive demand for the product). The *Apple* cases did not provide a precise standard for what magnitude of a connection was needed, but did indicate that an “insubstantial” connection was not sufficient.

*Genband* clarified that, where lost sales are relied upon for irreparable harm, causal nexus requires evidence that “soundly supports an inference of causation [by the patented feature] of a significant number of purchasers’ decisions.” (emphasis added). Two thoughts:

- Where harm other than lost sales is at issue (e.g., price erosion, reputational damage, “incumbency effects”), causal nexus appears to require that the infringer’s use of the patented feature similarly contribute to the harm to a “significant” extent.
- It is possible that causal nexus might be found in the *aggregate* of multiple harms where the contribution of the infringer’s use of the patented feature to each individual harm is *not* significant but the overall effect in the aggregate *is* significant.