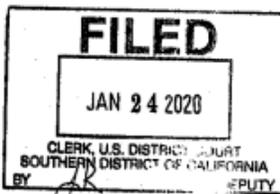


\$85.23 million for WiLAN against Apple.

About Dennis Crouch

Big verdict for WiLAN against Apple \$85.23 million in damages – the full amount that the company requested. McKool Smith represented the patentee here. Apple will likely appeal on several grounds.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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8 WI-LAN, INC.,
9 Plaintiff,
10 v.
11 APPLE INC.
12 Defendant.

Case No.: 14cv2235 DMS (BLM)

VERDICT FORM

13
14 Ladies and gentlemen of the jury, it is now your duty to answer the question
15 presented in this verdict form after due deliberation. Please answer only one part of the
16 following question:

17 What is the amount of damages Apple should pay Wi-LAN for infringement of the
18 asserted patents?

19 A lump sum payment of \$ _____.

20 -- OR --

21
22 A per-unit royalty payment of \$ 0.45, calculated as follows:

$$23 \quad \frac{189.4 \text{ million}}{\text{Number of units}} \times \frac{\$0.45}{\text{Per-unit amount}} = \frac{\$85.23 \text{ million}}{\text{Total damages}}$$

24	Number of units	Per-unit amount	Total damages
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25
26
27 Dated: JANUARY 24th, 2020

28 Kevin O. Fitzpatrick
FOREPERSON KEVIN O. FITZPATRICK

The jury awarded a royalty of \$0.45 per iPhone 6 & 7. This is less than 0.1% royalty rate (\$650 per iPhone 7) but things add up when you sell 200 million units.

This is the second time around on damages. The first jury awarded \$145,100,000. However Judge Sabraw gave WiLAN the option of either (1) remitting the damages down to \$10 million or (2) holding a new trial on damages. According to the court the problem stemmed from expert opinions regarding apportionment that were not supported by the evidence. Even though it was a single-issue jury trial, the judge still provided the jury with 31 pages of jury instructions: [Jury Instructions](#). Here are a few of the

key instructions:

In this case, Wi-LAN seeks a reasonable royalty. A reasonable royalty is defined as the money amount Wi-LAN and Apple would have agreed upon as a fee for use of the invention at the time prior to when infringement began. You must be careful to ensure that award is no more or no less than the value of the patented invention.

The amount you find as damages must be based on the value attributable to the patented technology, as distinct from other, unpatented features of the accused product, or other factors such as marketing or advertising, or Apple's size or market position. In determining the appropriate royalty base and the appropriate royalty rate, the ultimate combination of both the royalty rate and the royalty base must reflect the value attributable to the patented technology. In other words, the royalty base must be closely tied to the invention. It is not sufficient to use a royalty base that is too high and then adjust the damages downward by applying a lower royalty rate.

Similarly, it is not appropriate to select a royalty base that is too low and then adjust upward by applying a higher royalty rate. Rather, you must determine an appropriate royalty rate and an appropriate royalty base that reflect the value attributable to the patented invention alone.

...

You may also consider the impact of any available noninfringing alternatives to the asserted claims on the royalty negotiated in the hypothetical negotiation. In doing so, you may consider the value of any differences in benefits and costs between the noninfringing alternatives and the asserted claims.

The two patents at issue in the case are WiLAN's 8,457,145 and 8,537,757. The patents cover a mechanism for grouping data within queues ranked by required quality-of-service needed with timers associated with each queue. Claim 9 of the '145 was infringed (among other claims)

9. A subscriber unit for a wireless communication system, wherein the wireless communication system includes a plurality of subscriber units in communication with an associated base unit, comprising:

a plurality of queues, each queue for grouping data based on the QoS; and

a media access (MAC) module configured to set an initial value for a timer associated with a queue, and periodically, on expiration of the value of the timer, transmit a bandwidth request indicating an amount of bandwidth required for transmitting the data from the queue.