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BREAKING: Apple Hit With $625M Verdict In VirnetX Patent Rematch

Share us on: By **Jess Davis**

Law360, Dallas (February 3, 2016, 4:45 PM ET) -- A Texas federal jury hit Apple with a $625.6 million verdict Wednesday, concluding features of the tech giant's iPhone operating system infringed four patents held by network security firm VirnetX and awarding royalties based on a previous patent infringement finding.

In a unanimous decision following **a weeklong trial**, the Eastern District of Texas jury found the FaceTime and iMessage features of Apple Inc.'s latest operating systems for its iPhones, iPads and desktop computers infringed VirnetX's U.S. Patent Nos. 7,418,504 and 7,921,211. Meanwhile, Apple's virtual private network on demand function continued to infringe VirnetX's U.S. Patent Nos. 6,502,135 and 7,490,151, despite changes Apple made after losing a 2012 patent trial to VirnetX tied to an earlier VPN on demand feature, according to Wednesday's verdict.

The jury determined that Apple owes VirnetX $334.9 million in reasonable royalties based on the 2012 jury's finding the earlier version of Apple's VPN on demand infringed the '135 and '151 patents. That portion of the case had been remanded for a new trial after the Federal Circuit in 2014 affirmed the previous jury's infringement finding but reversed a $368 million damages award.

Wednesday's verdict also has Apple forking over an additional $290.7 million for new infringement findings.

And the jury determined Apple's infringement was willful for its later iterations of VPN on demand and for its FaceTime features. Damages for that portion of the case will be determined by the judge later.

"We're very happy for our client," VirnetX counsel Jason Cassady of Caldwell Cassady & Curry PC said Wednesday. "We're happy to be able to succeed for them in the courtroom. We've been battling this for over six years."

VirnetX had **asked the jury** to award at least $532 million for both the previous infringement finding and the patent holder's allegations of new infringement, saying based on licensing deals VirnetX reached with other companies, it was entitled to a royalty of between $1.20 and $1.67 per unit of infringing Apple products sold during the relevant period. Apple argued that an appropriate royalty would be more like 10 cents to 19 cents, largely based on a comparison to a

$200 million licensing agreement between Microsoft Corp. and VirnetX.

VirnetX and Apple have been locked in a multi-faceted battle over network security patents for more than half a decade, and a number of other parties have jumped into the fray to challenge the ‘135 and ‘151 patents.

In January, VirnetX told the Patent Trial and Appeal Board that the‘135 and ‘151 patents were **under “serial attack,”** as they have been the subject of more than 20 combined challenges, nearly a dozen of which came from Apple.

In June 2013, Apple had filed two petitions seeking inter partes review of the ‘135 patent, and a month later followed up with a request challenging the ‘151 patent. All three were ultimately **denied** because they were filed too long after Apple was initially sued.

Also in 2013, RPX Corp., which VirnetX said was found to be acting as Apple’s proxy, filed petitions challenging the same two patents. Despite Apple’s alleged attempts to hide its involvement in the proceedings, PTAB denied those petitions as well, given Apple’s time-barred status, according to VirnetX's January 2016 filings with the PTAB.

In October 2015, the PTAB **agreed to institute** inter partes review of claims in each patent, based on petitions filed by The Mangrove Partners Master Fund Ltd. In its decision, the board found there was a "reasonable likelihood" the challenged claims were invalid as obvious or anticipated.

VirnetX has fought the decision, insisting the Mangrove master fund is part of a complex web of entities controlled by a hedge fund run by Nathaniel August, Mangrove Partners, and that August and others should have been named as parties in the petition. Not long after PTAB agreed to institute review in the Mangrove proceedings, Apple made a move to get in the mix, filing separate petitions in late October for review of the patents and requests for joinder.

The patents-in-suit are U.S. Patent Numbers 6,502,135; 7,490,151; 7,418,504; and 7,921,211.

VirnetX is represented by Brad Caldwell, Jason Cassady, John Curry, Daniel Pearson, Hamad Hamad, Justin Nemunaitis, Chris Stewart, John Summers and Jason McManis of Caldwell Cassady & Curry PC, Robert Parker and Christopher Bunt of Parker Bunt & Ainsworth PC, and T. John “Johnny” Ward Jr. and Claire Abernathy Henry of Ward & Smith Law Firm.

Apple is represented by Michael Jones, Allen Gardner and John Bufe of Potter Minton PC and Robert Appleby, Gregory Arovas, Akshay Deoras, Leslie Schmidt, Christopher Mizzo, John O’Quinn, Joseph Loy and Jeanne Heffernan of Kirkland & Ellis LLP.

The case is VirnetX Inc. et al. v. Apple Inc., case number 6:12-cv-00855, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Matthew Bultman. Editing by Edrienne Su.