

VirnetX Says Apple Paid \$454M In Long-Running Patent War

By [Ryan Davis](#)

Law360 (March 16, 2020, 6:19 PM EDT) -- Wrapping up one phase of a nearly decadelong patent battle, [VirnetX](#) said Friday that [Apple](#) had paid it \$454 million to resolve infringement allegations related to network security patents, weeks after the [U.S. Supreme Court](#) turned down Apple's appeal.

In a brief statement, VirnetX said it received payment from Apple in the amount of \$454,033,859.87. The company told Eastern District of Texas Judge Robert W. Schroeder III earlier this month that the case "is as final as final can be" and that Apple must pay up by March 16.

VirnetX told the court that the parties agreed in 2017 that Apple would pay the judgment 20 days after any cert petition was denied by the Supreme Court. The justices turned down Apple's appeal on [Feb. 24](#).

However, Apple resisted paying up even after the high court's decision came down. It told Judge Schroeder last month that it would be "exceedingly unjust" for it to have to pay the judgment because some of the patents it was found to infringe were invalidated by the Federal Circuit.

It reiterated its request for relief from the judgment in a filing with the court on Thursday, the day before VirnetX announced that it received the payment, telling the judge that the case presented "extraordinary circumstances."

VirnetX told the judge that Apple's argument that the patents were invalidated had been considered and rejected by both the Federal Circuit and the Supreme Court, and said Apple cannot use a motion for relief from the judgment "to reargue issues it raised unsuccessfully on direct review."

"There is nothing left to do but execute the judgment," VirnetX said.

The payment closes the book on one half of the bitterly fought patent war between the companies. VirnetX sued in 2010, alleging that Apple's VPN on Demand and FaceTime features infringe its patents.

An Eastern District of Texas jury found that Apple infringed in 2012, awarding [\\$368 million](#) in damages. However, the Federal Circuit vacated the award in 2014, finding that it was based on [flawed theories](#).

After the result of the first damages retrial was vacated in 2016, a second one later that year resulted in a [\\$302 million](#) award for VirnetX. The judge added \$137 million in fees and enhanced damages in 2017, bringing the award to [\\$439 million](#).

The Federal Circuit [upheld that judgment](#) in last year, leading Apple to appeal to the Supreme Court, arguing that the award was "grossly unfair" and relied on a flawed legal theory that it said inflates damages awards. That argument fell on deaf ears at the high court, resulting in Friday's payment.

However, the dispute between Apple and VirnetX is not over. VirnetX filed a separate suit against Apple over the same patents but in newer products in 2012. VirnetX was awarded nearly \$600 million in that case, but the Federal Circuit found in November that Apple [didn't infringe](#) two of the four patents at issue in the verdict.

The parties are now sparring back in the district court about the impact of that ruling. In [filings last week](#), Apple said it is entitled to a new trial to determine the amount of damages, while VirnetX said the court should award it at least \$461 million.

An Apple representative could not be reached for comment over the weekend.

The patents-in-suit are U.S. Patent Nos. [6,502,135](#); [7,490,151](#); [7,418,504](#); and [7,921,211](#).

VirnetX is represented by Bradley Caldwell, Jason Cassady and J. Austin Curry of [Caldwell Cassady & Curry](#), John "Johnny" Ward Jr. of [Ward Smith & Hill PLLC](#), and R. "Chris" Bunt of [Parker Bunt & Ainsworth PC](#).

Apple is represented by William Lee of [WilmerHale](#), Gregory S. Arovas, Robert A. Appleby, Jeanne M. Heffernan, Joseph A. Loy and John C. O'Quinn of [Kirkland & Ellis LLP](#), and Michael E.

Jones of [Potter Minton PC](#).

The case is VirnetX Inc. et al. v. Apple Inc., case number [6:10-cv-00417](#), in the [U.S. District Court for the Eastern District of Texas](#).

--Editing by Adam LoBelia.