THE TEXAS LAWBOOK

SERVING BUSINESS LAWYERS IN TEXAS

Caldwell, Cassady & Curry Nails Apple with $625 Million Patent Infringement Verdict in EDTX

By Mark Curriden – (Feb. 3, 2016) – The Tyler federal courtroom was silent as the eight-person jury announced they had reached a unanimous verdict.

For six years, officials at a small security software maker argued in court that Apple Inc.'s FaceTime video-conference application and its VPN On Demand service infringed upon its patented technology.

Jason Cassady

After more than six hours of deliberation, the East Texas jury ruled that Apple's infringement was "willful" and ordered the technology giant to pay VirnetX Holding Corp. $625 million in damages, which is one of the largest patent infringement awards in Texas history.

"It was very emotional when the jury announced the award," says Dallas trial lawyer Jason Cassady, who represented Nevada-based VirnetX. "My clients run a small company and they were in the courtroom and, obviously, very pleased."

VirnetX's trial team included Jason Cassady, Brad Caldwell, Austin Curry and Justin Nemunaitis who are principals at the Dallas law firm Caldwell Cassady & Curry. East Texas counsel for the plaintiffs included Johnny Ward and Claire Abernathy Henry of Ward, Smith & Hill in Longview and Robert M. Parker, R. Christopher Bunt and Charles Ainsworth of Tyler-based Parker, Bunt & Ainsworth.

Kirkland & Ellis represented Apple.

VirnetX sued Apple in 2010, claiming the California-based technology company infringed four of its patents in its FaceTime features that are part of iPhones, iPads and some desktop computers.

In court, Apple said it respects VirnetX's patents, but that the company was asking to be paid for too much.

The jury's verdict came after a week of reviewing evidence and listening to witnesses.

This was the second time that VirnetX's allegations have gone to trial. In 2012, a federal jury in Tyler ruled that Apple infringed on VirnetX's patents and awarded $368 million.

Two years later, a federal appeals court threw out the damage award, but it affirmed the finding that VirnetX's patents were valid and that Apple had infringed upon them.

On retrial, U.S. District Judge Robert W. Schroeder III allowed VirnetX's lawyers to seek damages for the infringements prior to the 2012 trial and infringement's since the trial.

The jury awarded $334.9 million for damages prior to 2012 and $290.7 million for damages since the last trial.

A spokesperson for Apple issued the following statement: "We are surprised and disappointed by the verdict and we're going to appeal. Our employees independently designed this technology over many years, and we received patents to protect this intellectual property. All four of VirnetX's patents have been found invalid by the patent office. Cases like this simply reinforce the desperate need for patent reform."

Cassady praised the jury's decision. ›

"We are thankful for the jurors' hard work and attention in this case, and for reaching a just verdict," Cassady says. "The jury saw what we have been saying all along: Apple has been infringing VirnetX's patented technology for years."

This was Cassady's second large verdict in East Texas. Last February, he represented Smartflash in a patent infringement case against Apple. The jury awarded $532 million, but the federal judge threw out the verdict and ordered a new trial. The case is on appeal.

The case is *VirnetX Inc., et al. v. Apple Inc.*, No. 6:12-cv-00855.

Please visit www.texaslawbook.net for more articles on business law in Texas.