

Managing Intellectual Property

JURY AWARDS WILAN \$145M FOR APPLE'S PATENT INFRINGEMENT

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WiLAN got "every penny we asked for," WiLAN counsel Mike McKool tells Managing IP, "because we were reasonable." By estimating damages too low, Apple may have poisoned its case

A Southern District of California jury awarded **Canadian IP licensing company WiLAN \$145.1 million** in damages for Apple's infringement of two of its patents relating to voice-over LTE wireless communication technology on August 1.

WiLAN proposed the \$145.1 million figure by commissioning a survey of 1,500 people to determine the value of the patented components of iPhones by finding what people would pay for the voice-over LTE feature the patents enabled.

Additionally, WiLAN considered the hypothetical outcome of a negotiation with Apple in 2014. Mike McKool, WiLAN's counsel and founding partner of McKool Smith, explains: "Apple had most of the leverage in that hypothetical negotiation."

He continues: "Our damages expert believed that even though the technology was worth more than that, Apple would have had so much negotiating power. But that the free-fall would have stopped at 85 cents."

With 85 cents multiplied by the number of iPhone 6s and 7s with Qualcomm chips Apple sold between September 2014 and the date of the trial, the total estimated value comes out to \$145.1 million. WiLAN's reasoning evidently swayed the jury.

Referring to the rarity of juries awarding total damages sought, McKool says: "It may be unusual, but we really tried to be reasonable because it's such a credibility issue. Once you start asking for more than seems reasonable, you can get hurt on every issue and poison your whole case."

Apple estimated the patents' value in various ways, all resulting in valuations of less than \$10 million. Asked if Apple went too low and ran into a credibility issue with the jury, McKool responds: "Yes, I think that's possible."

McKool also credits WiLAN's success to their "superb witness", Ken Stanwood, inventor of both patents at issue. He describes Stanwood as "very credible, humble ... a big asset for us, that's for sure."

The saga continues

Judge Sabraw is expected to enter a judgment in line with the jury's verdict, and Apple has already announced its intention to appeal.

Regarding the possibility of a licensing agreement to cover Apple's use of the technology in the future, McKool says: "There won't be any licence going forward unless we strike a deal. Apple showed zero interest in talking to us before this verdict; we'll see if they change their mind."

Apple may be forced to take a licence because they are unlikely to be able to design around WiLAN's patents before the technology becomes obsolete, according to McKool. He says: "All this cell phone technology has a limited lifespan - 5G [is expected] in 2021. Until then, [Apple] would have to give up voice-over LTE calling to get around this, and they're not going to do that because [every competitor] has it."

Apple's counsel at DLA Piper declined to respond to requests for comment by press time.