Huawei Owes Fees For 'Rank Gamesmanship' In Patent Loss

By **Jack Queen**

Law360 (November 15, 2019, 5:24 PM EST) -- Chinese tech giant Huawei must pay attorney fees for its $13 million patent infringement loss after U.S. District Judge Rodney Gilstrap on Friday upbraided the company for "rank gamesmanship," finding the smartphone maker needlessly litigated a host of issues only to withdraw them at the eleventh hour.

The blistering order granting PanOptics Patent Management LLC fees cited an "egregious" and "widespread pattern of litigation abuse," including the strategic withdrawal of key defenses on the eve of trial and a last-ditch effort to challenge jurisdiction while jurors deliberated. The court has yet to determine the fee amount for the 2½ year fight over wireless technology patents.

"This conduct reveals a mindset intent on gaming our legal system for an immediate advantage while at the same time subverting the very purpose of the courts to pursue justice over the long run," Judge Gilstrap wrote. "To compound the egregious nature of this conduct, Huawei would not commit to refraining from this sort of conduct in the future."

A jury found in August 2018 that Huawei's Honor smartphone line and MediaPad tablets willfully infringed five patents for wireless and video-coding technology and awarded PanOptics $10.6 million, later ratcheted up to $13.2 million by Judge Gilstrap based on the willful finding.

The verdict was the culmination of a series of dubious and ultimately unsuccessful legal maneuvers by Huawei, according to Judge Gilstrap, who found that the tech behemoth's apparent efforts to wear down PanOptics by litigating issues it ultimately dropped "crossed the line of zealous advocacy."

Judge Gilstrap inveighed in particular against Huawei's affirmative defenses that PanOptics hadn't offered to license the patents on fair, reasonable and non-discriminatory terms, a doctrine of patent law known as FRAND. Huawei hammered its FRAND defenses throughout the jury trial over eight infringement counts only to drop them at the outset of a bench trial over a separate issue.

"Once Huawei reaped all the benefits of its FRAND-centric defenses during the jury trial, it dropped them like a hot rock and asserted a lack of jurisdiction," Judge Gilstrap wrote. "This intentional move by Huawei was clearly calculated to divest the court of jurisdiction to hear the Count IX claim."

Judge Gilstrap was also rankled by Huawei's refusal under his questioning to disavow the tactic or commit to not repeating it in the future.

Huawei's pretrial maneuvers were called out for scrutiny as well, including its abandonment of nearly half of its noninfringement and invalidity defenses on the eve of the jury trial. The company also contested 26 claims during claim construction only to drop 13 of them after PanOptics spent half of its briefing arguing them, Judge Gilstrap noted.

Counsel for PanOptics declined to comment.

Counsel for Huawei did not respond to requests for comment Friday.

The patents-in-suit are U.S. Patent Nos. 7,769,238; 6,604,216; 8,437,293; 8,385,284; and 8,208,569.

PanOptics is represented by Kevin L. Burgess, Lindsay M. Leavitt, Kevin P. Hess, Christine M. Woodin, Samuel F. Baxter, Jennifer Truelove, Theodore Stevenson III and Marcus L. Rabinowitz of McKool Smith PC and Eric S. Tautfest, Jared Hoggan, David T. DeZern, M. Jill Bindler and David Lisch of Gray Reed & McGraw LLP.

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The case is Optis Wireless Technology LLC et al. v. Huawei Device (Shenzhen) Co. Ltd., case number 2:17-cv-00123, in U.S. District Court for the Eastern District of Texas.

--Additional reporting by Ryan Davis. Editing by Orlando Lorenzo.