

Texas Jury Hits Huawei With \$10.6M Patent Verdict

By Ryan Davis

Law360 (August 27, 2018, 7:31 PM EDT) -- An Eastern District of Texas jury decided Monday that Huawei willfully infringed five wireless and video patents once assigned to Ericsson and Panasonic, finding the Chinese smartphone maker liable for \$10.6 million in damages.

Following a trial that began Aug. 20 before U.S. District Judge Rodney Gilstrap, the jury began deliberating Friday before returning its verdict in favor of patent licensing company PanOptis Patent Management LLC on Monday morning.

The jury's finding that the infringement by Huawei Technologies Co. Ltd. was willful means that PanOptis can request that the judge increase the damages award by up to three times.

"The jury was focused and worked very hard to understand the complex technology and the many patents that are involved in the case," said Ted Stevenson of McKool Smith PC, lead trial counsel for PanOptis. "Our client is pleased with the verdict."

Robert Haslam of Covington & Burling LLP, counsel for Huawei, said Monday that the company is analyzing the jury's verdict and evaluating its legal options.

"Huawei continues to believe in the merits of its defenses to the allegations made by PanOptis," he said. "Huawei is a global leader in innovation, and as a major patent holder itself, respect for intellectual property is a cornerstone of our business."

PanOptis and Optis Wireless Technology LLC filed the suit in February 2017, alleging that numerous Huawei products, including the Honor smartphone line and the MediaPad tablet line, infringe several patents that the plaintiffs acquired from three different tech giants.

According to the complaint, the patents were originally assigned to Ericsson and Panasonic Corp. Four of the patents cover wireless technology and one covers video-coding technology.



A sales clerk looks at his smartphone at a Huawei store in Beijing. The company was found liable for \$10.6 million in damages for patent infringement on Monday. (AP)

PanOptis alleged that the accused products infringed because they have 4G LTE capability and the ability to decode video and audio data.

The jury was instructed that the original owners of the patents had declared the wireless patents essential to the LTE standard and therefore pledged to license them on terms that are fair, reasonable and nondiscriminatory, or FRAND. Because the previous owners made that commitment, PanOptis is bound to license the patents on FRAND terms, the judge instructed the jury.

The complaint alleged that PanOptis offered to license the patents to Huawei on FRAND terms, and that the suit was filed because "Huawei has not reciprocated PanOptis's good faith efforts" and "has resisted taking a license to PanOptis's valuable intellectual property."

Judge Gilstrap instructed jurors that they "must make sure that any reasonable royalty determination takes into account PanOptis' FRAND obligations" and that the damages award "cannot exceed the amount permitted under PanOptis' FRAND obligations."

The jury broke down its award by patent and awarded by far the most damages, \$7.7 million, on the video-coding patent, the only one that was not declared essential to any industry standards. The amount the jury awarded for the four standard-essential patents ranged from \$102,742 to \$1.73 million.

Following the verdict, the parties returned to the courtroom for a bench trial in which Judge Gilstrap will determine a FRAND rate for PanOptis' patent portfolio that can be used for future licensing of the patents.

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

Optis is represented by Ted Stevenson, Kevin Burgess, Steve Pollinger, Scott Cole, Kevin Hess, Christine Woodin, Lindsay Martin Leavitt, Samuel Baxter, Jennifer Truelove and Marcus Rabinowitz of McKool Smith PC, and Eric Tautfest, Jared Hoggan, David DeZern, M. Jill Bindler and David Lisch of Gray Reed & McGraw LLP.

Huawei is represented by Robert Haslam, Stanley Young, Anupam Sharma, Thomas Garten, James Hovard, Gregory Nieberg, Heng Gong, Paul Wilson, Ali Mojibi and Christopher Higby of Covington & Burling LLP and Michael Smith of Siebman Burg Phillips & Smith LLP.

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

--Editing by Jack Karp.