

Gilstrap Makes Apple's \$506M Patent Trial Loss Final

By Khorri Atkinson

Law360 (February 26, 2021, 4:59 PM EST) -- A Texas federal judge entered a final judgment Friday backing a jury's finding last summer that Apple owes patent management firm PanOptis and related companies \$506 million for willfully infringing patents covering 4G LTE technology.

U.S. District Judge Rodney Gilstrap issued the order without any enhanced damages, writing that he's "mindful that enhancement is generally reserved for 'egregious cases of culpable behavior.'"

The finding of willfulness essentially meant that the judge could have tripled the damages award. It's unclear whether patent owner PanOptis Patent Management LLC had asked for an increase, as many of the filings in the case remained sealed.

The award PanOptis will receive represents the estimated amount of royalties for past sales, according to the verdict form. In accordance with the federal court rules, Judge Gilstrap has directed PanOptis to file an itemized list of expenses it incurred in the case.

Representatives for the parties did not immediately reply Friday to requests for comment.

Plano, Texas-based PanOptis, Optis Wireless Technology LLC, Unwired Planet LLC and related companies lodged the case in February 2019, accusing Apple of infringing five patents they owned by offering 4G LTE capability on the iPhone, iPad and Apple Watch. PanOptis has said that it tried to get Apple to take a license but that Apple didn't make a good-faith effort to negotiate.

The five patents were originally issued to Samsung Electronics Co. Ltd., LG Electronics Inc. and Panasonic Corp., and all were declared essential to the 4G LTE wireless standard by the European Telecommunications Standards Institute, a standards-setting body.

In August, the case became the first in-person jury trial to take place in the U.S. since the COVID-19 pandemic started. The jury returned its verdict after a seven-day trial, with Apple vowing to appeal.

Last month, the judge rejected Apple's argument that PanOptis' patents are unenforceable because they weren't disclosed in a timely fashion to the European institute.

In his Jan. 22 opinion, which was unsealed Feb. 9, Judge Gilstrap said he found no evidence to support Apple's claim that participants in the European group are required to disclose their intellectual property

rights by a "freeze" date, after which no new features can be added and before a standard is adopted.

Judge Gilstrap said "the vast majority" of participants disclose after that date, the body is aware of that, "and there is no evidence it has taken any action to encourage or enforce earlier disclosure."

"The court finds no clear and convincing evidence that Optis has breached its duty to disclose" its essential intellectual property rights to the group, he wrote. "Rather, the evidence indicates that Optis and its predecessors-in-interest in the applicable patents" disclosed their rights in a timely manner.

PanOptis had been in a similar patent fight with Huawei, the Chinese telecom company, which ended in a post-trial settlement in February 2020 after a \$13.2 million judgment in PanOptis' favor. That case concerned the infringement of four standard-essential wireless patents and one video-encoding patent.

The patents-in-suit are U.S. Patent Nos. 8,019,332; 8,385,284; 8,411,557; 9,001,774; and 8,102,833.

PanOptis is represented by Jason Sheasby, Annita Zhong and Ingrid Petersen of Irell & Manella LLP and Jonathan Yim of McKool Smith PC.

Apple is represented by Joseph J. Mueller, Mark Selwyn, Mindy Sooter, Timothy Syrett and Brittany Blueitt Amadi of WilmerHale and Melissa Smith of Gillam & Smith LLP.

The case is Optis Wireless Technology LLC et al. v. Apple Inc., case number 2:19-cv-00066, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Dani Kass and Britain Eakin. Editing by Karin Roberts.