

Apple Can't Ax \$300M Patent Verdict After Fed. Circ. Ruling

By **Dave Simpson**

Law360 (May 17, 2022, 11:36 PM EDT) -- Apple can't undo a Texas federal jury's retrial finding that it owes \$300 million for infringing Optis Wireless Technology LLC's standard-essential 4G wireless patents, U.S. District Judge Rodney Gilstrap ruled Tuesday, despite a recent Federal Circuit decision that wiped out a separate \$85 million patent infringement verdict against it.

Judge Gilstrap rejected numerous arguments challenging the methodology used by Optis' damages expert David Kennedy — most notably that the February Federal Circuit decision faulting Kennedy's damages theories in another case meant this verdict had to be thrown out too.

In the February decision, the Federal Circuit vacated a California federal court's \$85 million damages award against Apple for infringing Wi-LAN Inc. patents, but on Tuesday, Judge Gilstrap saw no key similarities between that case's issues in the apparent issue in the Optis case.

"The court does not find that the decision in Wi-LAN should change any of the findings reached by the jury in the second trial on damages," he said. "The damages methodology at issue in Wi-LAN was different from that used by Mr. Kennedy here."

When the patent case reached a jury in 2020, it was the first in the country to take place amid the ongoing pandemic, and jurors were equipped with face shields, sat behind plexiglass and submitted to temperature checks. The jury found in favor of Optis, awarding \$506 million.

In March 2021, Apple asked for a new trial, arguing the last one was "tainted" with uncertainty because the verdict form rolled too many patent claims into a single question.

Apple said the verdict form that the jury used lumped together too many of Optis' claims into a single question, making it "impossible to know" which infringement claims or which infringement theories the jury had agreed with. The form asked the jurors to say whether the patent-holding company "prove[d] by a preponderance of the evidence that Apple infringed any of the asserted claims," and the jury said yes.

By framing the question this way, Apple argued that the form, in effect, combined "nine claims from five patents into one question."

Judge Gilstrap in April 2021 threw out the award in the case because the parties never addressed what a fair and reasonable licensing rate would be, a key aspect of the damages analysis for patents deemed

essential to technical standards. He rejected Apple's issues with the trial outside the damages-related challenge.

In an August retrial, the jury handed out a \$300 million award, also saying Apple should pay a lump sum, rather than a running royalty, for infringing patents previously owned by Samsung, LG and others that have been declared essential to the 4G LTE wireless standard, according to a completed jury verdict form.

In the retrial, the jury focused on a single issue: the amount Apple would have agreed to pay Samsung and LG in 2012 to license the patents later assigned to Optis. It found unanimously that the award should be \$300 million.

Apple and Optis argued vigorously over their rematch. In a motion in July, Optis asked Judge Gilstrap to block Apple from telling a jury, yet again, "that the inventors of the patents-in-suit would not benefit from the verdict," saying it "would only serve to confuse the jury."

Apple asked the judge to prevent Optis from again making "derogatory remarks calculated to inflame the jury into punishing Apple."

Apple had pointed to comments made in the 2020 trial by Optis attorneys that Apple showed "a lack of respect" for patents and demonstrated a pattern of "not following the rules." Apple also said the Optis attorneys urged the jury to use the verdict to send "a message" to Apple.

Following the August verdict, Apple sought a new trial or a judgment as a matter of law, pointing, in February, to the Federal Circuit's issue with Kennedy's methodology in the Wi-LAN case.

On Tuesday, Judge Gilstrap rejected both the bid for a new trial and the judgment as a matter of law.

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.

Optis is represented by Jason Sheasby and Hong Zhong of Irell & Manella LLP, Sam Baxter, Steve Pollinger and Jennifer Truelove of McKool Smith PC and M. Jill Bindler of Gray Reed & McGraw LLP.

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.

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