

## The Top Patent Damages Awards Of 2023

By **Dani Kass**

Law360 (December 19, 2023, 10:44 PM EST) -- While 2023 didn't feature any blockbuster verdicts that had become the norm in recent years, the number of patent trials jumped as the COVID-19 bottleneck broke, and multiple juries came back with nine-figure verdicts.

The first half of the year had a "striking" number of trials, according to Erise IP co-founder Eric Buresh. A count by Law360 shows more than two dozen trials in each of the first two quarters.

"Every court was backlogged," said Waymaker LLP co-founder Ryan Baker. "I've had more trials than I've had in the years past. There was a breaking up of this logjam."

Delaware has had a particularly bad backlog given a mix of high filing rates, a short staff and cases accumulated while the COVID-19 pandemic slowed down the courts. Chief U.S. District Judge Colm Connolly in 2022 said that pace was **not maintainable**.

"The backlog that's being cleared through this year is pretty impressive," Buresh said of Delaware.

Orrick Herrington & Sutcliffe LLP partner Raghav Krishnapriyan said it seemed to him that 2023 had "substantially fewer cases" where parties were willing to settle before trial.

Around 85 verdicts were issued in 2023, including defense verdicts, according to a Law360 count. But of the 50 or so that led to infringement damages, eight-figure awards were most common, with quantity overriding **spectacle**.

That's compared to previous years, which featured VLSI winning **\$2.18 billion** from Intel in 2021, and **\$949 million** in 2022, in related Texas suits. In 2020, Centripetal Networks won **\$1.9 billion** from Cisco in a Virginia bench trial, and the California Institute of Technology won **\$1.1 billion** in California from Apple and Broadcom.

"When you think about the cases that get to trial, it's a very low number," said McKool Smith principal Christina Ondrick. "If you start extrapolating the odds, very few of those cases exist that could merit those kinds of awards. There's just such a low probability of seeing those verdicts."

The lower-damages cases may be better off, as massive verdicts and judgments don't always stick. Two of those top-dollar verdicts disappeared in December alone.

The Federal Circuit on Dec. 4 **wiped the entirety** of VLSI's \$2.18 billion success, with \$1.5 billion of that amount going back to the district court for a damages retrial after a VLSI damages expert included noninfringing factors in the analysis. The remaining \$675 million was reversed when the circuit judges found no infringement of one patent.

Centripetal took a hit in June 2022, when the Federal Circuit **vacated** its win against Cisco. The court cited a stock conflict involving the now-deceased judge who oversaw the bench trial. The retrial before another judge ended with a Dec. 11 **finding** that Cisco didn't infringe.

CalTech's win was **vacated** by the Federal Circuit in 2022, and the parties **settled** in November before a retrial.

"I wonder if this year is more in line with where things ought to be, because then you don't have these humongous verdicts that then get relitigated for the next decade," Waymaker's Baker said.

Axinn Veltrop & Harkrider LLP partner Jeannine Sano said aggregate annual patent damages have generally been even over the past few years, including 2023, meaning the same amount of money is being thrown around, just in different patterns. She calculated it to be around \$3 billion.

Here are the top patent damages awards from 2023.

### 1. ClearPlay v. Dish, \$470M

The largest verdict in 2023 was thrown out as quickly as it was issued.

A federal jury in Salt Lake City sat through a two-week trial over whether Dish Network infringed ClearPlay's patents related to technology for editing out sex and swearing in movies. Ultimately, the jurors found nonwillful infringement and **awarded** \$470 million.

The verdict came down on March 10, and it was gone by March 21. U.S. District Judge David Nuffer **overruled the jury** at a post-trial hearing by granting Dish's motion for judgment as a matter of law. He held that it was clear Dish's allegedly infringing feature did not infringe.

Later, the judge **expanded** on his decision, saying, "It is now certain that submission of the issues of infringement to the jury was improper." In December, Judge Nuffer **refused** ClearPlay's attempt for reconsideration, saying the patent owner presented an "incorrect" and "revisionist" picture of the case.

The case is ClearPlay v. Dish Network LLC et al., case number 2:14-cv-00191, in the U.S. District Court for the District of Utah.

### 2. Touchstream v. Google, \$339M

Touchstream Technologies won the largest verdict that's still standing. A Waco, Texas, jury in July found Google's Chromecast digital media players infringe Touchstream's patents to the tune of **\$339 million**.

The trial overseen by U.S. District Judge Alan Albright was based on allegations that Google infringed patents for Touchstream founder David Strober's invention for a way to play videos from a small device like a smartphone onto a larger device, like a television.

The companies had discussed a partnership, during which Touchstream showed the tech giant its invention. Google then decided against working together, according to the suit.

Google in September **asked** Judge Albright to overturn the verdict and grant a new trial, and those post-trial proceedings are still in process.

The case is Touchstream Technologies Inc. v. Google LLC, case number 6:21-cv-00569, in the U.S. District Court for the Western District of Texas.

### 3. Netlist v. Samsung, \$303M

Netlist won the next-highest verdict in April, where a Marshall, Texas, jury said Samsung owes **\$303 million** for willfully infringing five flash memory patents.

Chief U.S. District Judge Rodney Gilstrap in August **signed off** on the verdict, which was about \$100 million less than what Netlist had requested. The judge then concluded that Netlist wasn't entitled to enhanced damages even though the infringement was willful.

Samsung has been challenging the asserted patents at the Patent Trial and Appeal Board, and in early December the board **invalidated** two of **those patents** in full. How the trial and invalidations will play out together remains to be seen.

The suit is Netlist Inc. v. Samsung Electronics Co. Ltd. et al., case number 2:21-cv-00463, in the U.S. District Court for the Eastern District of Texas.

#### 4. Textron v. SZ DJI, \$279M

Back in Waco, a jury in April held Chinese drone manufacturer SZ DJI Technology owed Bell Textron **\$279 million** for infringement — in a decision issued within 15 minutes of the Netlist verdict in Marshall.

The Western Texas jury held that DJI willfully infringed all asserted claims in the litigation over remote control aerial technology, which was about \$90 million less than Textron wanted, per local news.

Textron is pushing Judge Albright to **enhance** its win, while DJI claims Textron **biased the jury** by referring to it as a Chinese military company, according to filings over the summer. There are no orders on post-trial motions in the public docket.

The case is Textron Innovations Inc. v. SZ DJI Technology Co. Ltd. et al., case number 6:21-cv-00740, in the U.S. District Court for the Western District of Texas.

#### 5. StreamScale v. Cloudera, \$240M

StreamScale secured the final top verdict on Oct. 13, with another Waco jury saying hybrid data cloud company Cloudera owes **\$240 million** for infringement.

The infringement was based on Cloudera's CDH software products, which are open-source platform distributions specifically built to meet enterprise demands.

Cloudera is currently **pushing** Judge Albright for a new trial, arguing the numbers used in the damages determination were improper because they focused on "unreliable and speculative testimony."

The case is Streamscale Inc. v. Cloudera Inc. et al., case number 6:21-cv-00198, in the U.S. District Court for the Western District of Texas.

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