

Apple Hit With \$85M Patent Verdict In WiLAN Damages Retrial

By **Mike LaSusa**

Law360 (January 24, 2020, 9:25 PM EST) -- A California federal jury found Friday that Apple Inc. should pay licensing firm WiLAN Inc. just over \$85 million for infringing wireless technology patents, following a retrial on damages after the court upended WiLAN's earlier \$145 million trial win.

According to a docket entry made Friday, the jury returned a verdict of \$85.23 million in damages in favor of Ontario, Canada-based WiLAN.

WiLAN attorney Mike McKool of McKool Smith PC celebrated the outcome on Friday in comments to Law360.

"This amount that the jury gave us — the \$85.23 million — is what we asked for, so they gave us everything we asked for," McKool said.

Representatives for Apple didn't respond on Friday to requests for comment.

U.S. District Judge Dana M. Sabraw ruled in January 2019 that the previous \$145 million award should either be slashed to \$10 million or a new trial on damages should be held, questioning WiLAN's methodology for calculating the damages.

WiLAN had relied on a "direct valuation" analysis to calculate damages in the case. That methodology yielded a damages calculation of \$145 million, which was far higher than the amount Apple estimated using the "smallest salable patent practicing unit" as the basis for its calculation, according to court documents.

The judge gave WiLAN the choice of either accepting the reduced \$10 million payout or going through a new trial to determine damages. WiLAN chose the latter, court records show.

The intellectual property at issue in the case, U.S. Patent Nos. 8,457,145 and 8,537,757, relate to technology used in voice over LTE wireless communications technology, including various iPhones.

Apple started the case in June 2014, when the technology giant asked the California federal court for a declaratory judgment that it didn't infringe several of WiLAN's patents, but the Canadian licensing company filed counterclaims, asking for the opposite. By the time it went to trial, WiLAN focused just on claims of the '145 and '757 patents, and the jury in August 2018 found in its favor.

In calculating damages, WiLAN estimated the value of voice over LTE, or VoLTE, technology as the basis for its apportionment. However, Judge Sabraw said, the "problem with this approach" is that the "starting point was [VoLTE], not the patented technology."

WiLAN experts had testified during trial that the patented technology at issue was "related to" but not equivalent to VoLTE, Judge Sabraw said, noting that this raised questions about the reliability — "perhaps, arbitrariness" — of the opinions of the Canadian companies' experts.

The patents-in-suit are U.S. Patent Nos. 8,457,145 and 8,537,757.

Apple is represented by Sean C. Cunningham, Erin Gibson, Robert Williams, Tiffany Miller, Peter Maggiore, Robert Buergi and Amy Walters of DLA Piper.

WiLAN is represented by Allison H. Goddard of the Patterson Law Group and Mike McKool, Scott Cole, Brett E. Cooper, Warren Lipschitz, Ashley N. Moore, Jonathan Yim, Seth Hasenour, Christopher P. McNett and Drew Hollander of McKool Smith PC.

The case is Apple Inc. v. WiLAN Inc. et al., case number 3:14-cv-02235, in the U.S. District Court for the Southern District of California.

—Editing by Michael Watanabe.