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EDTX Federal Judge Tosses, then Reinstates \$75M Patent Judgment

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By Mark Curriden

(May 11) – The on-again, off-again \$75 million patent infringement judgment for Ericsson is back again. And another \$35 million has been added to the award.

Two months ago, U.S. Magistrate Roy Payne threw out a \$75 million verdict against Chinese cell phone maker TCL Communication Technology Holdings for willfully infringing an Ericsson patent covering a method and system for controlling access to a platform for a mobile terminal for a wireless communications system.

The jury in Marshall issued its verdict after four days of trial in December 2017.

Judge Payne vacated the jury’s verdict on damages because he said Ericsson’s “damages theory was unreliable” and Ericsson’s “pursuit of unaccused products made a new trial on damages necessary.”

Lawyers at McKool Smith, which represents Ericsson, mounted an aggressive counter-offensive to get Judge Payne to change his mind by arguing that the judge was overlooking key rulings by other courts that contradicted his decision.

On Thursday, their efforts proved successful.

“The court previously ordered a new trial on damages after finding Ericsson’s damages theory unreliable, but the court now reconsiders that [and] reinstates the jury’s verdict in full,” Judge Payne wrote in a 35-page opinion.

In addition, the judge added \$10.2 million in pre-judgment interest and another \$25 million in enhanced damages because the jury also found that TCL’s infringement was willful.

Judge Payne also ruled that Ericsson may file an additional lawsuit against TCL for new phones the company manufactures that are not “colorably different” from those already determined to be infringing on Ericsson’s patent.

“Two principles are at the heart of the court’s reconsideration of the damages issue,” Judge Payne wrote. “First, [a] jury’s decision with respect to an award of damages ‘must be upheld unless the amount is grossly excessive or monstrous, clearly not supported by the evidence, or based only on speculation or guesswork.’”

Judge Payne also said that, “estimating a reasonable royalty is not an exact science.”

The McKool lawyers leading the litigation for Ericsson include [*Theodore Stevenson III*](#), [*Nicholas Mathews*](#), [*Warren Lipschitz*](#), [*Mitchell Sibley*](#), [*Samuel Baxter*](#) and *Laurie Fitzgerald*.

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