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In First Patent Trial Since Pandemic, Jury Hits Apple with \$506M Verdict

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In a tale that's been told a few times before, a federal jury in East Texas has hit tech giant Apple with a \$506 million jury verdict in a patent case. But the unprecedented part of the tale was that it is believed to be the first patent case in the country to go to a jury trial since the COVID-19 era began.

The verdict, which came down Tuesday after four hours of deliberation in Eastern District of Texas Chief Judge Rodney Gilstrap's courtroom, was a clean sweep for Plano-based wireless technology company PanOptis Patent Management, certain affiliates and a group of Texas lawyers at McKool Smith.

The jury found that Apple willfully infringed on five of PanOptis' patents related to wireless communication technology that is essential to the 4G LTE wireless standard. Clad in face shields, the jury sat through six days of socially-distanced evidence put on by 10 plexiglass-guarded witnesses before returning its verdict in the Marshall courthouse.

"The jury awarded exactly what we requested, so the client is very pleased with that," Austin McKool Smith partner **Steve Pollinger**, one of PanOptis' attorneys at trial, told The Texas Lawbook. "The verdict vindicates the client's position that these patents are essential to the LTE standard, that they are infringed by [Apple's] use of the LTE technology, and that these patents have very significant value and they're valid.

"I think it's a very important decision to the client in terms of its efforts to have its family of patents licensed," Pollinger added.

Apple and its lawyers did not immediately respond to a request for comment.

Pollinger said the trial came as a result of a licensing dispute between PanOptis and Apple. When his client's attempts to reach a licensing agreement with Apple were unsuccessful, litigation ensued. While this case is the only dispute between the parties in the U.S., Pollinger said PanOptis and Apple are involved in related litigation in the United Kingdom.

Asked what it was like for the lawyers to sit through the jury's deliberations while social distancing, Pollinger said they didn't have to play the waiting game. Once the jury got the case, the parties went straight into a six-hour bench trial over licensing issues that were up to Judge Gilstrap to decide. Pollinger said the jury's verdict came during the lawyers' lunch break.

Because the jury found Apple willfully infringed on PanOptis' patents, the half-billion-dollar judgment could balloon to three times its current size.

Tuesday's verdict came a day after Apple successfully postponed another patent trial to October in the Eastern District on pandemic-related arguments. That trial will be in Tyler against VirnetX, one of Apple's repeat courtroom opponents that is suing the tech giant over alleged VPN technology infringement. Had U.S. District Judge Robert Schroeder III denied Apple's re-scheduling request, the trial would have begun Monday.

Pollinger said Apple had also tried to get the PanOptis case moved to October, but that Judge Gilstrap denied the request. He said PanOptis argued that the trial could still move forward safely in August and that flu season — which includes October — might make it a more dangerous time to go to trial with an expected surge in COVID-19 cases.

"I think the credit goes to the judge and the judge's staff to pull off the case the way we did it," Pollinger said. "Our temperatures were screened as we went in the courthouse. There was hand sanitizer in the courtroom, and the court provided masks if anyone needed one. It was a credit to the court to make this happen, and it proved it can be reasonably done during these times."

After the jury returned its verdict, Pollinger said Judge Gilstrap gave each juror a certificate and a letter from the court to thank them for their service.

"It was quite a ceremonial recognition," he said.

The McKool Smith trial team also included **Sam Baxter**, **Jennifer Truelove** and **Jonathan Yim**, who are principles in the firm's Dallas, Marshall and New York offices. In-house PanOptis lawyer Erik Fako was also heavily involved in the trial. Mara Bindler, Jared Hoggan, Eric Tautfest, and David DeZern of Gray Reed's Dallas office played a significant role in developing PanOptis' case before the trial phase.

While McKool Smith played a significant role at trial, PanOptis' lead counsel of record was Los Angeles attorney Jason Sheasby Irell & Manella. Also involved from Irell & Manella was Dr. Hong Zhong.

Apple turned to Boston attorneys Joe Mueller and Michael Summersgill of Wilmer Hale to lead its trial team. Marshall attorney Melissa Smith of Gilliam & Smith was local counsel.