

Apple Infringed Data Patents To Tune Of \$94M, Jury Hears

By **Beth Winegarner**

Law360, San Jose (October 06, 2014, 8:27 PM ET) -- Apple Inc. should pay \$94 million for selling iPhones and iPads that infringed two GPNE Corp. patents on efficient ways for mobile devices to communicate across cell networks, GPNE told a California federal jury Monday at the opening of the nonpracticing entity's trial against the Silicon Valley giant.

GPNE claims that Apple's mobile devices infringe inventions that date back to 1993 but were updated in its U.S. Patent Nos. 7,570,954 and 7,792,492, which were assigned in 2010 and 2009, respectively. Both describe how a mobile device can "reserve" space to send out a message on a cellular network, GPNE's attorney, Kalpana Srinivasan of Susman Godfrey, told the eight-member jury in a San Jose courtroom Monday afternoon.

"These are very valuable patents that enable people who use iPhones and iPads to communicate and transmit lots of data," Srinivasan said. "But Apple isn't paying for it ... Apple's use of GPNE's property without permission is why we're here."

Honolulu, Hawaii-based GPNE was born out of two other companies, first Pioneer Tech Development Ltd. and later Digicom Ltd. GPNE chairman Gabriel Wong invented the technology described in the patents in the early 1990s while trying to come up with a reliable way to communicate between mobile devices in Hawaii, where cell reception was poor and mountains often got in the way, Srinivasan told the jury.

The invention allowed devices to maximize their use of the airwaves while seamlessly transmitting data, which could minimize both the need for more infrastructure and the costs associated with that infrastructure, she said. But recently, GPNE discovered that a number of mobile companies were using its technology; some of those, including Nokia Corp., Samsung Electronics Co. and Motorola Mobility Inc., have licensed GPNE's patents, she said.

However, Apple hasn't taken a license, and has meanwhile sold more than 93 million infringing devices. GPNE seeks damages of \$1 per device, or \$93.7 million, Srinivasan told the jury.

Apple's attorney, Ruffin Cordell of Fish & Richardson PC, argued that its iPhones and iPads don't infringe GPNE's patents because the inventions only cover mobile communications from pagers, which are named specifically in both patents. Two-way paging systems function differently from cellphone systems, providing more powerful signals that can reach places mobile phones can't, such as basements and elevators, Cordell argued.

“We need your help to decide these big issues, and to force GPNE to be true to its patents and true to what it really patented,” Cordell told the jury. “Just because you have a patent doesn’t mean you can go out and sue.”

In her openings, Srinivasan explained that pagers are mentioned in the patents as an example of the many types of mobile devices that can communicate using GPNE’s method.

After being stymied by U.S. District Judge Lucy Koh, who told Apple in June that it wasn’t allowed to call GPNE a “patent troll” at trial, Cordell found other ways to describe the company to the jury Monday afternoon.

“It’s a company that doesn’t make anything. It’s a company that doesn’t sell anything,” Cordell said, noting that GPNE sent roughly 300 letters to a variety of companies, threatening to sue for patent infringement if the targets didn’t license GPNE’s patents. “That’s legal. What are they interested in? Are they just trying to get money?”

Apple will also urge the jury to find that GPNE’s patents are invalid. If the company is going to insist that the inventions apply to cellular communications, then there’s prior art because cellphones existed before the company’s initial patent filings in the early 1990s, Cordell argued.

Cordell also asked the jury whether it makes sense for Apple to pay nearly \$94 million when Samsung paid \$3.3 million to license GPNE’s patents and BlackBerry maker Research In Motion Ltd. paid \$350,000. “Is [GPNE] being reasonable?” he asked.

The 2011 suit is the last of nine patent-infringement actions that GPNE filed against Apple, Amazon.com Inc., Barnes & Noble Inc. and other e-reader and cellphone makers. The other eight defendants from the severed cases settled, according to a GPNE attorney.

The trial is scheduled to continue until late October.

The patents-in-suit are U.S. Patent Numbers 7,570,954 and 7,792,492.

GPNE is represented by Kalpana Srinivasan, Max L. Tribble, Frances S. Lewis and Trevor P. Stutz of Susman Godfrey LLP, by Barry J. Bumgardner of Nelson Bumgardner Casto PC and by Howard J. Susser of Burns & Levinson LLP.

Apple is represented by Katherine K. Lutton, Kelly C. Hunsaker, Enrique Duarte, Ruffin B. Cordell, Christopher O. Green, Aamir A. Kazi, Jacqueline Tio and Benjamin C. Elacqua of Fish & Richardson PC, and Joseph J. Mueller, Matthew Hawkinson and Mark D. Selwyn of WilmerHale.

The case is GPNE Corp. v. Apple Inc., case number 5:12-cv-02885, in the U.S. District Court for the Northern District of California, San Jose Division.

--Additional reporting by Carolina Bolado and Kurt Orzeck. Editing by Mark Lebetkin.

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