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Federal Circuit Vacates $300 Million Verdict Against Apple, Orders Third Trial in LTE Patent Dispute

The Patent Playbook on **July 7, 2025**

In a pivotal ruling for patent damages and standard-essential patent (SEP) litigation, the Federal Circuit vacated a $300 million award against Apple in a long-standing dispute with Optis Cellular Technology, LLC. *See* *Optis Cellular Tech., LLC v. Apple Inc.* ("Op."). The Federal Circuit sided with Apple on multiple fronts—vacating the damages and infringement findings, reversing § 101 findings on the claims of one of Optis's patents, and reversing a finding that another patent did not invoke 35 USC § 112 ¶6 (The patent at issue was issued pre-AIA so §112(f) is referred to as 112 ¶ 6 as in the original statute language). The Court also affirmed claim construction of certain terms and held the lower court abused its discretion under Federal Rules of Evidence 403 by admitting certain damages evidence and testimony from Optis.

Crucial to the litigation is that Optis's patents are declared to be standard-essential patents ("SEPs") directed toward Long-Term Evolution ("LTE") technology for the telecommunication industry. When an industry standard such as those set by the European Telecommunications Standard Institute ("ETSI"), as here, incorporate patented technology then "compliant devices *necessarily* infringe" any claim that covers that technology. *Op.* at 3; *Ericsson, Inc. v. D-Link Sys., Inc.*. Because of this, companies seeking to produce standard-compliant products mustseek licenses from SEP owners. ETSI requires SEP owners to license their products on fair, reasonable and non-discriminatory (FRAND) terms. Optis and Apple negotiated between 2017 and late 2019 until Apple denied those terms were in fact FRAND, sparking the current litigation.

Initially, the jury awarded over $506 million dollars and found Apple's infringement was willful, potentially opening the door to enhanced damages. *Optis Wireless Tech. et al, v Apple Inc.*, ("Lower Court Op."). The trial court, however, granted a new trial on damages, finding the jury "never heard any evidence that Optis's patents were in fact FRAND-encumbered, nor did the jury hear any evidence as to what royalties would or could be FRAND." *Trial Court Op.* at *4. *Op.* at 11. This time, the jury awarded Optis $300 million for past and future sales. *Op.* at 13.

Apple appealed on liability, damages, and evidentiary issues. On liability, Apple challenged the verdict form and its associated jury instructions. The verdict form asked: "Did Optis prove by a preponderance of the evidence that Apple infringed **ANY** of the Asserted Claims?" Similarly, the instructions mentioned three times that all decisions should be unanimous. For infringement, they stated:

The first issue that you're asked to decide is whether the Defendant, Apple, has infringed any of the asserted claims of the patents-in-suit. Infringement is assessed on a claim-by-claim basis. And the Plaintiffs, Optis, must show by a preponderance of the evidence that a claim has been infringed. Therefore, there may be infringement as to one claim but no infringement as to another claim.
Op. at 17.

Apple argued that based on the wording of the form and instructions, a jury could find for Optis so long as each juror found Apple infringed **any** patent, even if the jurors hadn't unanimously found infringement of any one particular claim or patent. The Federal Circuit held that this "violated Apple's right to jury unanimity on each legal claim against it" in contravention of the Seventh Amendment, the Federal Rules of Civil Procedure, and United States Supreme Court precedent. *Op.* at 15. Jury verdicts *must* render unanimous verdicts on each legal *claim* not just the final verdict itself. *Op.* at 15. This requires that "infringement must be separately proved as to each patent." *Op.* at 16 (quoting *Kearns v. Gen. Motors Corp.*. As presented to the jury, the verdict form did not allow for adequate decision making or inform the Court whether Apple infringed any one patent. Nor did the instructions remedy the unanimity issues.

Neither the verdict form nor jury instructions stated that the jury had to unanimously find infringement on *a specific* patent. Optis's argument—that the original award of $506.2 million matched the exact amount its expert proposed for infringement of all five of the asserted patents—was not persuasive. As the Court put it "we have no greater confidence that the jurors unanimously agreed on the total damages award than we do that the jurors unanimously agreed that every asserted claim was infringed." *Op.* at 18.

Looking forward, the parties will have to re-litigate infringement and damages, asking the jury to decide on a patent-by-patent basis (i) whether Apple infringed the patents; and (ii) to determine FRAND-compliant royalties.

This case reinforces that procedural precision and evidentiary technicalities are key parts of trial strategy. For example, during the second trial, Apple requested a running objection regarding the initial trial's verdict form, preserving these objections for appeal. They also filed motions *in limine* prior to the damages trial to exclude any references to an Apple-Qualcomm settlement along with accompanying testimony from Optis's expert—Mr. Kennedy—on the settlement. The lower court allowed the testimony, which Optis utilized, emphasizing the large settlement figure on trial slides and to the jury. Apple's preservation and appeal paid off on this issue as well. The Court held the Qualcomm settlement would "unfairly skew[] the jury's damages horizon" and its probative value is "dubious." *Op*. at 35.

Both parties and future litigants should take away key legal and procedural guidance from this appeal. Planned expert testimony and trial slides should particularly be scrutinized—are you pushing large numbers in front of the jury for the sake of pushing large numbers or do they support your legitimate damages model? Parties should also consider how 'smaller' evidentiary rulings will influence the trial down the line. Initial wins for one party, like Optis's *in limine* rulings may come back to haunt the winner. While it is unknown how influential the Apple-Qualcomm settlement was to the jury, what is known is that Optis needs to present new evidence to support its damages models.

If you have questions about how this decision affects your litigation strategies, we're here to help.

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