



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Eon Wins \$13M From Silver Spring In Telecom Patent Suit

By **Kurt Orzeck**

Law360, Los Angeles (November 04, 2014, 11:13 PM ET) -- A Texas federal judge on Tuesday ordered Silver Spring Network Inc. to pay nearly \$13 million in damages to patent-assertion entity Eon Corp. IP Holdings LLC after a jury in June found that Silver Spring directly infringed claims of patents covering wireless communication.

The jury had **awarded** nearly \$19 million to Eon in June, but Silver Spring argued the award should be vacated after the Federal Circuit's September decision in *VirnetX Inc. v. Cisco Systems Inc.* to **toss** a \$386 million damages award against Apple Inc. for allegedly infringing VirnetX's network security patents with its FaceTime application.

The appeals court said that award was too high because a VirnetX expert had erroneously used the entire value of Apple's accused products as a royalty base, instead of calculating the damages based on the value apportioned to the products' infringing components.

Silver Spring claimed in a September notice supporting its motion for judgment as a matter of law, a new trial, and judgment on equitable defense that "The Federal Circuit's decision in *VirnetX* is significant to the entire market value rule issue set forth in Silver Spring's motion ... and reply brief," both of which are sealed.

U.S. Magistrate Judge John D. Love said Tuesday, after the parties filed a slew of sealed documents, that Eon hadn't objected to the new damages award of \$12,990,800 that he had issued under seal two weeks before. He added that a final judgment would be issued after resolution of the parties' remaining motions.

The three patents, issued between February 1995 and January 1997, are related to a two-way interactive network that allows communications from a central broadcasting point to remote subscriber units and the return transmission of data from those remote subscriber units either directly or indirectly to the base station. It is often used in two-way paging.

Eon sued Silver Spring Network and others in June 2011, claiming their two-way communication networks, network components and related software infringed U.S. Patent Numbers 5,388,101; 5,481,546; and 5,592,491.

Eon claimed that two press releases it issued in March 2010 and April 2011 announcing **settlements** in previous lawsuits with SmartSynch Inc. and Sensus USA Inc., respectively, should have put Silver Spring on notice of an objectively high risk of infringement of its patents.

Silver Spring allegedly infringed the patents through utilities including Bluebonnet Electric Cooperative, which in January 2010 announced that it had picked the defendant to provide

the network infrastructure as well as smart grid applications and hosting services for its Sustainable Grid initiative, according to a news release.

Silver Spring contended in a September 2013 motion for summary judgment that Eon hadn't produced any evidence that Silver Spring was aware of the asserted patents before the lawsuit was filed, or that any of the settlements were the result of the defendants believing the patents-in-suit were valid or that they were infringing.

Mediation was conducted in November 2013 but suspended thereafter.

In addition to the damages award, jurors decided that Silver Spring hadn't provided sufficient evidence that seven claims in the patents-at-issue were invalid, according to the verdict form.

Attorneys for Eon and Silver Spring didn't immediately respond to requests for comment late Tuesday.

The patents-in-dispute are U.S. Patent Nos. 5,388,101; 5,481,546; and 5,592,491.

Eon was represented at trial by Daniel Scardino and Ray Mort of Reed & Scardino LLP, and Deron Dacus of the Dacus Firm PC.

Silver Spring is represented by Robert F. Kramer, Bonnie Lau, C. Gideon Korrell and C. Michael Moore of Dentons US LLC; in-house attorney Alan Hodes; and S. Calvin Capshaw III and Elizabeth L. DeRieux of Capshaw Derieux LLP.

The case is Eon Corp. IP Holdings LLC v. Landis+Gyr Inc. et al., case number 6:11-cv-00317, in the U.S. District Court for the Eastern District of Texas, Tyler Division.

--Additional reporting by Erin Coe and Ryan Davis. Editing by Brian Baresch.

All Content © 2003-2014, Portfolio Media, Inc.