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AT&T Hit With \$28M Verdict For Streaming IP Violations

By **Helen Christophi**

Law360, Los Angeles (March 20, 2013, 10:42 PM ET) -- A Texas jury on Wednesday awarded \$27.5 million in damages to Two-Way Media LLC in its lawsuit alleging AT&T Inc. and its subsidiaries infringed a group of patents governing live-streaming technology for broadcasting audio and video over the Internet.

The jury awarded Two-Way \$27.5 million, finding the company had proved AT&T infringed seven claims on two of its patents under the doctrine of equivalents, according to a verdict form filed Wednesday. The jury also found that AT&T had failed to prove that three of Two-Way's patents were invalid.

Two-Way had sued AT&T and its units in November 2009 for infringing several patents governing audio and visual live-streaming technology — which allows users to receive audio and video over the Internet at about the same time it is transmitted — through its U-verse Internet protocol television service, according to the complaint.

"[S]ubsidiaries of AT&T ... have, without authority, consent, right or license, and in direct infringement of [Two-Way's patents], made, used, offered for sale, and/or sold the methods and systems claimed in the [Two-Way] patents in this country," the complaint said. "This conduct constitutes infringement."

The Two-Way patents are based on an interactive distributed server architecture invented by the company's predecessor in interest, Netcast Communications Corp., which allows live audio and video streams to be sent to a large numbers of users while gathering verified usage statistics, inserting advertising content into streams and offering products for sale, according to the complaint.

Two-Way alleged that as the parent company of the infringing subsidiaries, AT&T had induced the subsidiaries to infringe its patents and was therefore itself guilty of infringement.

"AT&T has controlled or directed the performance of those actions by its subsidiaries and thereby has caused them to perform the activities that either individually or in combination constitute infringement of one or more of the claims in the [Two-Way] patents," the complaint said.

Two-Way claimed it had been damaged by AT&T's alleged infringement, and argued that barring it from further infringement was the only way to stem the harm it had incurred.

Two-Way had sought judgments that AT&T and its subsidiaries had infringed its patents, that Two-Way owned the patents and all rights of recovery under them, and that the

patents were valid and enforceable. It requested damages with pre- and post-judgment interest.

It also sought an injunction permanently barring the defendants from further infringement and, as an alternative to an injunction, reserved the right to request relief including royalties for any infringement that might occur after the date of final judgment.

The patents-in-suit are U.S. Patent Numbers 5,778,187; 5,983,005; and 6,434,622.

Representatives for the parties were not immediately available to comment on the verdict late Wednesday.

Two-Way Media is represented by Parker C. Folse III, Ian B. Crosby, Rachel S. Black and Max L. Tribble Jr. of Susman Godfrey LLP and Michael Heim, Leslie Payne, Micah Howe and Nathan J. Davis of Heim Payne & Chorush, LLP.

The defendants are represented by Ricardo G. Cedillo, Les J. Strieber III and Mark W. Kiehne of Davis Cedillo & Mendoza Inc. and David T. Pritikin, Douglas I. Lewis, Benedict Frey, Joseph A. Micallef and Scott M. Border of Sidley Austin LLP.

The case is Two-Way Media LLC v. AT&T Inc. et al., case number 5:09-cv-00476, in the U.S. District Court for the Western District of Texas.

--Editing by Kat Laskowski.

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