

Verizon Wins Infringement Suit, Vonage to Appeal

By Anique Gonzalez

On Thursday, March 8, an Alexandria, VA, jury found that Vonage was infringing upon three Verizon Communications, Inc., patents, forcing the voice-over Internet protocol (VoIP) telephone provider to pay \$58 million in damages as well as potential royalties to Verizon if it continues to utilize the corporation's technology. Vonage has said it will appeal the verdict.

The Verizon suit, which was filed in June 2006, initially sought \$197 million in damages and alleged that Vonage had violated seven of the company's patents. In January, Verizon filed an amended complaint rescinding two of the alleged patent violations and proceeding with five. During the course of the trial, the jury was given the task of not only determining whether Vonage had infringed upon Verizon's patents but also whether the patents were valid.

When the lawsuit was initially filed, William Bosch, a Vonage lawyer, stated, "We think there is an extremely good likelihood this jury is going to find that [the Verizon patents] are invalid, that they never should have been granted in the first place." However, unfortunately for Vonage and fortunately for Verizon, the patents were all found to be legitimate.

Although the jury did not find Vonage to be in violation of all of the patents in question, the company was found to be infringing upon three that cover vital VoIP areas, including technology that enables VoIPs to connect to standard telephone networks in addition to technology that facilitates call waiting and voice mail.

However, the jury did not find the infringement to be willful. If it had, Verizon would have been able to receive triple the damages, a unique characteristic of patent-infringement cases. The \$58 million verdict was determined by a mathematical formula that charged a 5.5% royalty fee for each of Vonage's 2.2 million customers. In the event that Vonage is forced to pay future royalties, the same formula will be employed.

In response to the verdict, John Thorne, Verizon Senior Vice President and Deputy General Counsel, said in a statement, "Patents encourage and protect innovations that benefit consumers, create jobs, and keep the economy growing. We are proud of our inventors and pleased the jury stood up for the legal protections they deserve."

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Use of the disputed technology has also prompted attorneys for Verizon to request an injunction, which, if granted, would inhibit Vonage from continuing to use the technologies in question. A hearing for the injunction is scheduled to take place on March 23, when Judge Claude Hilton will determine whether Vonage may utilize the patented technology before a licensing agreement with Verizon is reached.

Responding to the impending injunction hearing, Vonage issued a statement that said, "We don't believe there is any basis to support Verizon's request for an injunction. If the trial court does impose an injunction, we will seek an immediate stay from the Federal Court of Appeals. Vonage's customers should see no change to any aspect of their phone service."

While Vonage has attempted to reassure its customers, it is unclear how the injunction, if granted, will impact the company's service. The most obvious potential consequence would be an interruption in service. Customers may be wary of signing with Vonage and instead may choose other telephone providers.

On a larger scale, it is uncertain how the final outcome of this lawsuit will impact Vonage as a company. Although Vonage is the current leader in the VoIP field, it has failed to earn a profit since its inception. Taking into consideration the jury verdict and possible royalty payments, this case has the potential to further damage the company's bottom line.

Additionally, since the number of VoIP users is expected to increase drastically in the coming years-in 2006 there were 8.6 million users, and it is estimated that in 2010 there will be 22.5 million-many view this as merely the first battle in a looming war between Vonage and Verizon, both of which are in pursuit of shares of the market.

On the Net

Vonage

www.vonage.com

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Federal Communications Commission: Voice-Over Internet Protocol

www.fcc.gov/voip