

Top IP Verdicts Of 2014 — And The Firms That Won Them

By **Ryan Davis**

Law360, New York (July 08, 2014, 8:45 PM ET) -- The largest intellectual property verdicts of 2014 so far include six that exceeded \$100 million in damages, continuing a trend in recent years of juries increasingly awarding substantial sums in high-stakes patent litigation, experts say.

Law360 compiled a list of all the intellectual property verdicts this year that exceeded \$50 million and the firms that led that charge for the winning side, including such high-profile firms as Paul Weiss Rifkind Wharton & Garrison LLP and Quinn Emanuel Urquhart & Sullivan LLP.

The existence of so many large patent verdicts in the last six months is consistent with the state of patent damages over the past several years, which have seen some of the largest awards in patent litigation history. Those awards have driven an "overall upward trend" in the total amount of damages awarded by juries across all patent cases each year since 2008, according to a report released last month by the litigation analytics firm Lex Machina.

Substantial damages awards are usually the result of patent owners filing suit over expensive products like medical devices and smartphones with vast sales, said Kenneth Serwin of Berkeley Research Group LLC.

"What makes a large verdict is a lot of units and a relatively large royalty, so it's got to be technology that's important," he said.

Juries tend to make large damages awards in patent cases based on the evidences presented at trial, rather than any inclination to follow a trend toward big verdicts, said Thomas Cotter, a professor at the University of Minnesota Law School.

"By and large, this is driven by the facts and the technology," he said. "The jury is not aware of verdicts in other cases."

Many of the large verdicts this year involve patent cases between competitors, where the stakes and dollar amounts involved can be high. Others involve nonpracticing entities, and the well-publicized reluctance of many companies to settle with such companies might lead to some sizable awards, said Lex Machina general counsel Owen Byrd.

"Clearly, some defendants are gambling and playing hardball and losing, when in the past they might have settled," he said.

While cases that result in nine-figure patent damages awards make headlines, they represent only a tiny fraction of all patent litigation, since most cases settle. Less than 2 percent of patent cases involve an award of compensatory damages, and while \$15 billion in patent damages has been awarded across the U.S. since 2000, the 10 largest awards make up more than half of that total, Lex Machina found.

"It is extremely rare and difficult to get a large damages award in a patent case," Byrd said.

With that in mind, here are the largest IP verdicts of 2014 so far and the firms that won them:

1. \$393 million in Edwards Lifesciences v. Medtronic: Paul Weiss and Morris Nichols

Edwards Lifesciences Corp. has sparred for years with rival Medtronic Inc. over heart valve patents, and in the latest trial, a Delaware jury awarded Edwards \$393 million in January after finding that one of its transcatheter heart valve patents was willfully infringed by Medtronic's CoreValve system.

In May, Medtronic agreed to settle all of its patent litigation with Edwards in a deal that requires it to pay a one-time sum of \$750 million and ongoing royalty payments of at least \$40 million annually through 2022. The companies also agreed not to sue each other over heart valve patents for the next eight years.

Edwards is represented by Nicholas Groombridge, Catherine Nyarady, Brian Egan, Christopher Terranova, Jeremy Benjamin and William O'Hare of Paul Weiss Rifkind Wharton & Garrison LLP and Jack Blumenfeld, Maryellen Noreika and Regina Murphy of Morris Nichols Arsht & Tunnell LLP.

Medtronic is represented by Martin Lueck, Jan Conlin, Stacie Oberts, Munir Meghjee and Andrew Hedden of Robins Kaplan Miller & Ciresi LLP; John Shaw and David Fry of Shaw Keller LLP; and Edward Reines of Weil Gotshal & Manges LLP.

The case is Edwards Lifesciences LLC et al. v. Medtronic Corevalve LLC et al., case number 1:12-cv-00023, in the U.S. District Court for the District of Delaware.

2. \$283 Million in ViaSat v. Space Systems: Quinn Emanuel

ViaSat Inc. scored a win in April when a Southern District of California jury found that Space Systems/Loral LLC should pay \$283 million for infringing three ViaSat patents relating to satellite networking communications technology and for breach of contract.

The jury concluded that Space Systems incorporated ViaSat's patented technology into communications satellites it manufactured and sold. It awarded \$181 million for patent infringement and \$102 million on ViaSat's claim that Space Systems breached a contract to build satellites for ViaSat. The court is now considering post-trial motions.

ViaSat is represented by Sean Pak, Charles Verhoeven, Amy Candido, Eric Wall, Yury Kapgan, Vincent Pollmeier and Adam Wolfson of Quinn Emanuel Urquhart & Sullivan LLP.

SSL is represented by Patrick Bageant, Jacob Buchdahl, Amanda Bonn, William Carmody, Marc Seltzer, Joseph Grinstein, William Merrill, Ian Crosby, Rachel Black and Mark Musico of Susman Godfrey LLP.

The case is ViaSat Inc. et al. v. Space Systems/Loral Inc. et al., case number 3:12-cv-00260, in the U.S. District Court for the Southern District of California.

3. \$131 Million in Alfred E. Mann Foundation v. Cochlear Corp.: Morgan Lewis

In January, a Central District of California jury ruled that Cochlear Ltd., an Australian manufacturer of hearing assistance devices, infringed two patents related to cochlear implant technology owned by the Alfred E. Mann Foundation for Scientific Research and awarded the foundation \$131.2 million in damages in the long-running case.

AMF filed the suit in 2007, but it was dismissed by a district court judge who found the foundation lacked standing because it had licensed its patents to other companies. The Federal Circuit reversed that finding and revived the case in 2010, setting the stage for the trial.

AMF is represented by Daniel Johnson Jr., Daniel Grunfeld, Jason Gettleman, Michael Lyons and Rachel Walsh of Morgan Lewis & Bockius LLP.

Cochlear is represented by Bruce Chapman, Manuel Nelson, Dennis Smith, Laura Burson and Scott Miller of Sheppard Mullin Richter & Hampton LLP.

The case is Alfred E. Mann Foundation for Scientific Research et al. v. Cochlear Corp. et al., case number 2:07-cv-08108, in the U.S. District Court for the Central District of California.

4. \$120 Million in Apple v. Samsung: Morrison & Foerster, WilmerHale and Gibson Dunn

In the latest chapter of the epic smartphone war between bitter rivals Apple Inc. and Samsung Electronics Co. Ltd., a Northern District of California jury found in May that Samsung infringed three patents. It awarded Apple \$119.6 million in damages.

While it was one of the largest verdicts of the year, it was considerably less than the \$2.19 billion Apple had sought in damages and the \$930 million it won in an earlier trial over different Samsung products. Apple is now seeking a new trial, while Samsung has asked the court overturn the verdict.

Apple is represented by Harold McElhinny, Rachel Krevans, James Bennett and Erik Olson of Morrison & Foerster LLP; William Lee and Mark Selwyn of WilmerHale; and Josh Krevitt of Gibson Dunn & Crutcher LLP

Samsung is represented by Charles Verhoeven, Kevin Smith, Kevin Johnson, Victoria Maroulis, William Price and Michael Fazio of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Apple Inc. v. Samsung Electronics Co. Ltd. et al., case number 5:12-cv-00630, in the U.S. District Court for the Northern District of California.

5. \$107 Million in Mylan v. SmithKline: Alston & Bird and Critchley Kinum

GlaxoSmithKline LLC was ordered in March to pay \$106.7 million to Mylan Inc. after a New Jersey jury found that GSK breached an exclusive contract with Mylan by allowing Apotex Inc. to sell generic versions of its antidepressant Paxil.

GSK and Mylan settled a patent case in 2007 with a deal that let Mylan sell generic Paxil for nine years. GSK later reached a separate patent settlement with Apotex that allowed that company to sell its own generic version. The jury found that GSK's deal with Apotex breached its earlier deal with Mylan. The court is now considering post-trial motions.

Mylan is represented by Frank Smith, Steven Penaro, Michael Johnson, Natalie Clayton and Gary Adamson of Alston & Bird LLP and John Michael Vazquez of Critchley Kinum & Vazquez LLC.

GSK is represented by F. Christopher Mizzo, Greg LoCascio, Michael Pearson, Craig Murray and Hugham Chan of Kirkland & Ellis LLP and Thomas Cunniff of Fox Rothschild LLP.

The case is Mylan Inc. et al. v. SmithKline Beecham Corp. et al., case number 3:10-cv-04809, in the U.S. District Court for the District of New Jersey.

6. \$105 Million in Power Integrations v. Fairchild Semiconductor: Fish & Richardson

Power Integrations Inc. was awarded \$105 million in March when a Northern District of California jury found that Fairchild Semiconductor Inc. infringed two of its rival's patents for energy-efficient power supplies and chargers.

The verdict after a three-week trial capped a long-running case that began in 2009. Power Integrations alleged that it essentially created the market for smaller and lighter power supplies with its patented inventions, only to have Fairchild sell infringing competing product at a much lower price. Fairchild's motion for a new trial is pending.

Power Integrations is represented by Frank Scherkenbach, Howard Pollack and Michael Headley of Fish & Richardson PC.

Fairchild is represented by Blair Jacobs, Christina Ondrick, Robert Walters, Leigh Martinson, A. Marisa Chun and Jeremiah Armstrong of McDermott Will & Emery LLP.

The case is Power Integrations Inc. v. Fairchild Semiconductor International Inc. et al., case number 3:09-cv-05235, in the U.S. District Court for the Northern District of California.

7. \$85 Million in SimpleAir v. Google: Dovel & Luner and Capshaw DeRieux

A jury in the Eastern District of Texas found in March that Google Inc. infringed a network messaging and data transmission patent owned by technology licensing company SimpleAir Inc. The case involved Google's cloud-to-device messaging services, which are used in notifications for apps on its Android operating system. Post-trial motions are pending.

SimpleAir is represented by Greg Dovel, Jeff Eichmann and Simon Franzini of Dovel & Luner LLP and S. Calvin Capshaw, Elizabeth DeRieux and Jeff Rambin of Capshaw DeRieux LLP.

Google is represented by E. Danielle T. Williams, Mitchell G. Stockwell, Russ A. Korn and Jessica L. Hannah of Kilpatrick Townsend & Stockton LLP and Jennifer P. Ainsworth of Wilson Robertson & Cornelius PC.

The cases is SimpleAir Inc. v. Google Inc. et al., case number 2:13-cv-00587, in the U.S. District Court for the Eastern District of Texas.

Methodology: Law360 reviewed U.S. jury and bench trial verdicts that occurred from Jan. 1-June 30, 2014. Verdicts had to occur at the trial court stage, and verdicts or awards reinstated on appeal were not considered. The verdicts considered all had actual and punitive damages of at least \$50 million combined.

--Editing by Elizabeth Bowen and Philip Shea.

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