

HP Cleared By Jury In Ethernet Patent Suit

By **Matthew Bultman**

Law360, New York (November 14, 2017, 9:17 PM EST) -- A jury in the Eastern District of Texas on Monday cleared Hewlett-Packard Enterprise Co. of infringing an Ethernet patent owned by Network-1 Technologies Inc., in a decision that could have major ramifications for the patent-licensing company going forward.

Network-1 sued HP in 2013 in Tyler, Texas, over its patent for remotely powering network equipment. The jury's verdict, which followed a trial that kicked off Nov. 6., found HP did not infringe and that certain claims in the patent were invalid.

The decision is a blow to Network-1, which has generated over \$115 million in licensing revenue from the patent and licenses it to dozens of companies. Network-1 said that the verdict — should it hold up — could relieve some of the licensees of their obligation to continue paying royalties.

"This is a very disappointing result," CEO Corey Horowitz said in a statement. He noted the patent has survived multiple reviews at the U.S. Patent and Trademark Office, including inter partes reviews proceedings at the Patent Trial and Appeal Board.

"In light of the history of the [patent], it is very difficult to understand the basis of the jury's verdict and we will analyze all the alternatives available to Network-1, including a potential appeal of its findings," he said.

A host of big-name companies have faced infringement allegations involving the patent in district court in recent years, including Sony Corp. and Dell Inc. HP is the first to try the case to verdict.

"Hewlett Packard Enterprise is delighted with the verdict," Jennifer H. Doan of Haltom & Doan, lead attorney for HP, said. "We trusted the people of East Texas to hear the facts and make the correct decision — and we are very pleased with the results."

Network-1's lawsuit claimed Palo Alto-based HP used its patented technology in connection with products that provide or use power transferred through Ethernet cables.

Various challenges have been brought against the patent in inter partes review at the PTAB. In May 2014, the board decided a group of petitioners that included HP, Sony and Dell had not shown certain claims were invalid as obvious.

An estoppel provision in the America Invents Act limits the arguments that companies seeking to invalidate patent claims can raise following PTAB review. Based on that provision, the East Texas court decided HP was barred from making certain arguments at trial about the patent being obvious.

But the ruling didn't entirely foreclose HP from contending the patent claims were invalid. At trial it argued — and jurors agreed — the disputed claims were obvious based on a collection of evidence that included an Ethernet system created over two decades ago.

The jury did, however, reject HP's claim that Network-1 breached its contract to license the patent, which is considered essential in the industry, on reasonable and non-discriminatory terms.

The patent at issue is U.S. Patent No. 6,218,930.

Network-1 is represented by Christin Cho and Gregory S. Dovel of Dovel & Luner LLP; and T. John Ward Jr., Claire Henry and Andrea Fair of Ward Smith & Hill PLLC.

HP is represented by Jennifer H. Doan, Kyle Akin and Joshua R. Thane of Haltom & Doan; David H. Dolkas, Jodi Benassi, Natalie A. Bennett and Hersh H. Mehta of McDermott Will & Emery LLP; and Mark E. Ferguson, Mark S. Ouweleen and Faye E. Paul of Bartlit Beck Herman Palenchar & Scott LLP.

The case is Network-1 Technologies Inc. v. Hewlett-Packard Co., case number 13-cv-00072, in the U.S. District Court for the Eastern District of Texas.

--Editing by Marygrace Murphy.