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EDTX Jury Hits HP Spinoff With \$172.6M Patent Verdict

By **Dorothy Atkins**

Law360 (March 8, 2021, 3:38 PM EST) -- A Texas federal jury has handed Wapp Tech LP a \$172.6 million win in its suit against a Hewlett Packard Enterprise Co. spinoff and its parent, finding that the companies' software infringed three of Wapp Tech's mobile app-design patents.

After a five-day trial and less than three hours of deliberations, a unanimous jury held Friday that the HPE spinoff Seattle SpinCo Inc., its parent company Micro Focus (US) Inc. and three subsidiaries were liable for willfully infringing three Wapp Tech patents, which could warrant treble damages.

The verdict is the latest chapter in a legal battle that Canadian company Wapp Tech launched in July 2018 against U.K.-based Micro Focus International PLC, which Wapp Tech said had offices in Plano, Texas.

In August 2019, the Texas judge tossed the case for lack of jurisdiction, but Wapp Tech later amended the suit to include the HP spinoff Seattle SpinCo, Micro Focus's U.S. entity and three Mirco Focus subsidiaries, collectively referred to as SSI.

Wapp Tech alleged that SSI's Micro Focus Software Suite infringed three of its patents that create a way to design and test mobile apps before publishing them by simulating real-world conditions and traffic, according to the amended complaint.

Wapp Tech's technology allows app developers to run virtual stress and load tests based on data collected from modeling human interaction, and Wapp Tech said that SSI's software infringes those patents by including a library of scenarios that simulate different network conditions based on real-world data points. Wapp Tech's amended complaint sought more than \$400 million in damages based on reasonable royalty rates.

After the suit was filed, the defendants sought to move the case to Delaware, where Micro Focus had filed a lawsuit in October 2018 challenging the validity of Wapp Tech's patents. SSI argued that the courts should look to which venue first established jurisdiction over their dispute with Wapp Tech rather than the order the suits were filed in.

However, last year, the Federal Circuit **refused to transfer** the Texas case to Delaware, finding that there is no precedent to support SSI's interpretation of the first-to-file rule, which gives the first court that a dispute was filed in first dibs on jurisdiction.

On remand, the case headed to a trial that kicked off on March 1. The jury found in favor of Wapp Tech on all questions of liability and awarded \$172,554,269 in damages for infringing the trio of patents through July 31, 2020, according to the verdict form.

Micro Focus said in a statement Monday that it has received "comprehensive and clear advice from its external counsel that it has a very strong case to appeal both the infringement verdict and the amount of the damages."

"Accordingly, Micro Focus intends to appeal any judgement resulting from the verdict," the statement says. "Micro Focus continues to contend that there has been no infringement of any intellectual property and its advice from external counsel continues to support this."

Counsel for Wapp Tech didn't immediately respond Monday to requests for comment.

The patents-in-suit are U.S. Patent Nos. 9,971,678; 9,298,864; and 8,924,192.

Wapp Tech is represented by Robert Kramer, Elizabeth Day, David Alberti, Sal Lim, Russell Tonkovich, Marc Belloli, Sven Raz, Andrew Hamill and Robert Xie of Feinberg Day Kramer Alberti Lim Tonkovich & Belloli LLP and Deron R. Dacus of The Dacus Firm.

The SSI defendants are represented by L. Rex Sears of Maschoff Brennan, Barry Shelton and Bradley Coburn of Shelton Coburn LLP and Tom Gorham of Gillam & Smith LLP.

The case is Wapp Tech Limited Partnership et al. v. Micro Focus International PLC, case number 4:18-cv-00469, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Katie Buehler. Editing by Jill Coffey.

Correction: An earlier version of this story misstated the name of a law firm that represents Wapp Tech. The error has been corrected.

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