

O2 Micro Can't Escape \$8.4M Sanction At Fed. Circ.

By Jonathan Randles

Law360, New York (August 13, 2013, 5:40 PM ET) -- The Federal Circuit on Tuesday affirmed that semiconductor maker Monolithic Power Systems Inc. and customer ASUSTeK Computer Inc. are entitled to \$8.4 million in attorneys' fees in long-running patent litigation instigated by rival O2 Micro International Ltd., ruling O2's "rampant misconduct" justified the penalty.

In a unanimous decision, the appeals court denied O2's bid to escape the multimillion-dollar award. The Federal Circuit rejected O2's argument that a lower court incorrectly determined that its lawsuit was an exceptional case that entitled MPS and ASUSTeK to attorneys' fees.

"This has been a very long road to vindication," said Latham & Watkins LLP's Mark A. Fligel, who helped represent MPS. "MPS suffered abuse for a long time at the hands of O2 Micro."

In the ruling, the Federal Circuit said in certain circumstances a party seeking sanctions does not, as O2 argued, need to prove a lawsuit was brought in bad faith to show that the case is exceptional. The Federal Circuit said "litigation misconduct alone may suffice to make a case exceptional."

O2 had continuously accused MPS of patent infringement throughout the 2000s — allegations that resulted in six lawsuits. O2 filed three patent infringement lawsuits against its competitor; MPS was forced to file three declaratory judgment actions to protect the company and its customers against the threat of litigation.

In every instance, O2 lost in court. MPS filed its latest declaratory judgment action in 2008; O2 responded by filing a complaint immediately afterward in the U.S. International Trade Commission. The district court allowed both actions to proceed in parallel.

O2, facing defeat, agreed to enter a covenant not to sue in the underlying district court litigation shortly before the trial was set to begin. This time, though, U.S. District Judge Claudia Wilken determined that O2's "vexatious" litigation strategy made the last case exceptional.

In making its determination, the lower court also determined that O2 engaged in misconduct related to its representations that certain schematics presented as evidence had been automatically dated February 1998 by computer software. It was later revealed through the course of litigation that the February 1998 date had been manually inserted.

Citing both O2's scorched-earth litigation strategy and the time-dating issue, the Federal Circuit said Tuesday that there was extensive evidence on the record to support Judge Wilken's findings. The Federal Circuit noted that O2's misconduct was not limited to a single episode, but had been pervasive throughout its legal wrangling with MPS.

"Based on the examples of unprofessional behavior provided by the district court and the many more instances of it we were able to glean from the record, we agree with the district court that O2 Micro's rampant misconduct so severely affected every stage of the litigation that a full award of attorney fees was proper here," the Federal Circuit said.

An attorney who represented O2 on appeal declined to comment Tuesday.

The patent-in-suit is U.S. Patent No. 7,417,382.

O2 was represented on appeal by Edward R. Reines and Timothy C. Saulsbury of Weil Gotshal & Manges LLP.

MPS is represented by Dean G. Dunlavy and Mark A. Flagel of Latham & Watkins LLP.

The case is Monolithic Power Systems Inc. et al.v. O2 Micro International Ltd. case number 12-1221, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Rebecca Flanagan.

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