

Adobe Wins Ax Of \$1.75M Data Encryption Patent Verdict

By **Mike LaSusa**

Law360 (June 18, 2019, 9:35 PM EDT) -- Adobe Systems Inc. won't have to pay TecSec Inc. \$1.75 million for infringing encryption technology patents owned by the data security company, a Virginia federal judge ruled on Tuesday, saying the jury award had been based on a faulty damages model.

U.S. District Judge Liam O'Grady threw out the damages verdict handed to TecSec in December, ruling that the jurors had not heard sufficient evidence to allow them to conclude that Adobe's Acrobat program infringed TecSec's intellectual property to the tune of \$1.75 million.

"At trial, TecSec pursued a damages theory tied solely to Adobe's sales of Adobe Acrobat to customers," Judge O'Grady wrote. "Because Adobe Acrobat does not infringe TecSec's system claims until it is installed, the testimony of a reasonable royalty based on sales to customers alone cannot support any award of direct infringement damages."

Adobe had previously sought a similar finding from the court, but the judge said he had held off in the previous instance in order to give TecSec the opportunity to present relevant evidence at trial via their damages expert.

"Now that the court has had the opportunity to review the record and the more thorough arguments of counsel, the court finds that the damages experts' testimony could not have served as a basis for an award of direct infringement damages as a matter of law," Judge O'Grady said.

The judge also said he would not let TecSec ask for a new trial to seek damages, saying that would be "pointless," because "an award of zero damages is the maximum award supported by the evidence adduced at trial."

On the other hand, Judge O'Grady denied Adobe's requests to overturn the jury's finding that the patents were valid and that Adobe directly infringed the patents.

TecSec filed the suit in February 2010, accusing a slew of major technology companies — including IBM, SAP AG, Cisco, Oracle Corp., Adobe, eBay Inc. and PayPal Inc. — of infringing patents for technology used to encrypt commercial data, including credit card and health care information.

After nearly a decade of litigation, the jury last year found that Adobe's Acrobat software infringed directly on both system and methods claims for four of TecSec's encryption patents, but that the

software company did not actively induce the infringement, a form of secondary liability in which someone sells a product with advertising or instructions about an infringing use.

Tara D. Elliott of Latham & Watkins LLP, an attorney for Adobe, told Law360 in a statement on Tuesday that she was happy with the outcome.

"We are grateful that the court rightfully vacated the jury's trial damages award today, as there was no evidence to support any award of damages once the jury correctly found that Adobe was not liable for induced infringement," Elliott said.

Representatives for TecSec didn't respond on Tuesday to requests for comment.

The patents-in-suit are U.S. Patent Nos. 5,369,702; 5,680,452; 5,717,755; 5,898,781.

TecSec is represented by Michael A. Oakes, Ozzie A. Farres, Kevin E. Gaunt and Steven L. Wood of Hunton Andrews Kurth LLP.

Adobe is represented by Maximilian A. Grant, Tara D. Elliott, Michael A. Morin, Rachel Weiner Cohen, Dale Chang, Brett M. Sandford, and Will Orlady of Latham & Watkins LLP, and Michael W. Smith and Roman Lifson of Christian & Barton LLP.

The case is TecSec Inc. v. IBM Corp. et al., case number 10-cv-00115, in the U.S. District Court for the Eastern District of Virginia.

--Editing by Nicole Bleier.