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Comcast Thwarts Patent Suit in Plaintiff-Friendly Texas Venue

By Anna Oberthur
Daily Journal Staff Writer

SAN FRANCISCO — A patent infringement claim against Comcast Cable Corp. has gone in favor of the defendants in spite of being filed in a notoriously plaintiff-friendly federal court in Marshall, Texas, attorneys for Comcast announced Friday.

The plaintiff, Wisconsin-based Caritas Technologies Inc., was asking for past damages in excess of \$100 million and had offered to settle the case for \$2.2 billion, according to Comcast's lead counsel, Daralyn Durie of San Francisco's Keker & Van Nest.

U.S. District Judge David Folsom, in a process known as claim construction, interpreted the language of the patent in a manner unfavorable to Caritas. The plaintiff company then agreed to a judgment of noninfringement based upon this ruling. It plans an appeal to the U.S. Court of Appeals for the Federal Circuit.

The judgment was entered Thursday in U.S. District Court for the Eastern District of Texas.

"Financially, the exposure was huge," Durie said. "And it was just really gratifying to win a case as a defendant in the Eastern District."

Some observers noted that such a judgment on behalf of a defendant in a patent case was noteworthy - especially given the venue.

"It is a significant win, and one that's difficult to obtain in the Eastern District of Texas," said Douglas Lumish, a patent litigation partner at Weil Gotshal & Manges in Redwood Shores.

James Martin of Shartsis Friese in San Francisco said the facts of the case also



XIANG XING ZHOU/ Daily Journal

Daralyn Durie, an attorney at San Francisco's Keker & Van Nest, was lead counsel for Comcast and successfully staved off a patent infringement claim in a notoriously pro-plaintiff Texas district.

made for a "noteworthy win."

Martin said it's rare in any patent case for a plaintiff to view a claim-construction ruling as so unfavorable that it believes it cannot win.

The case centered on Comcast's Digital Voice service, which is sold as part of a Comcast package that includes cable television, high-speed Internet and phone. Digital Voice is a telephone service that uses voice-over-Internet protocol technology, also known as VOIP.

Caritas alleged that Comcast infringed its patent for a "dial-up telephone conferencing system controlled by an online computer network," according to the 2005 complaint.

However, last month Judge Folsom issued the claim construction order stating that Caritas' patent was limited to traditional telephone networks, and that it did not cover voice-over-Internet protocol, according to Durie.

In light of that order, attorneys for Caritas agreed to the judgment of noninfringement and asked the court to certify the case for appeal to the Federal Circuit, where it will challenge the judge's ruling defining the scope of its patents.

"Based upon the claim construction, we said we cannot prove infringement by the defendant of our patent," said Caritas' lead attorney Lee Carl Bromberg of Bromberg & Sunstein in Boston. "We think the court's claim construction is in error."