Texas Jury Says NCR Corp. Owes At Least $13M In Patent Suit

By **Andrew Karpan**

Law360 (May 21, 2021, 5:15 PM EDT) -- A Western District of Texas jury found that cash register manufacturer NCR Corp. willfully infringed point-of sale technology owned by a Pennsylvania patent holding company and owes at least $13.2 million in damages, lawyers for the winning side confirmed to Law360 on Friday.

In a verdict that came down late Thursday, following a three-day trial, the seven-person jury in Waco found that Atlanta-based NCR infringed two patents owned by CloudofChange LLC. Two founders of CloudofChange invented a web-based point of sale system that NCR's Silver-brand sales systems was found to have infringed.

Thursday's verdict found that NCR willfully infringed "every single claim" of the two patents that CloudofChange asserted and rejected NCR's invalidity arguments, one of CloudofChange's attorneys, John Barr of Patterson & Sheridan LLP, told Law360.

The ruling was the first willfulness finding that a jury has reached in U.S. District Judge Alan Albright's court, whose patent docket in Texas now consists of 19.5% of all new patent cases.

Appointed by former President Donald Trump in 2018, Judge Albright has now held five patent jury trials, three of which have ended with verdicts clearing the defendant of infringement. In the other trial where jurors found infringement, they ruled Intel Corp. should pay $2.175 billion in damages, one of the largest patent verdicts in history, but concluded that the company's infringement was not willful.

The jury's willfulness finding Thursday gives Judge Albright the discretion to as much as triple the $13.2 million verdict.

"As you can imagine, we'd like him to enhance that to the maximum enhancement possible," Barr said.

CloudofChange filed suit in August 2019. During opening arguments Monday, Barr told jurors that unlicensed use of its patents in NCR's Silver platform allowed NCR to rake in more than $100 million in revenue since 2016. Barr had calculated damages to be as much as $20 million.

"I asked for $20.3 [million], but I gave a range — I said, it was between $12 [million] and $20 million, but I told the jury it was up to them," Barr said, adding that NCR had estimated damages, instead, at no more than $240,000.

CloudofChange's argument for willfulness had come down to proving that NCR actively ignored the notice letter that the patent company sent the company in 2018, according to Barr.

"It's a serious thing, to get a letter from a law firm accusing you of infringing patents, but from [NCR], it was just crickets," Barr said.

Like in-person trials everywhere else in the country, the ongoing COVID-19 pandemic had its own impact on courtroom procedure.

During the first two days of trial, Judge Albright required jurors to wear N95 protective masks and encouraged attorneys to wear them too, except when questioning witnesses — all eight of whom testified behind a face shield. Teams from each firm would go up to clean the stand after each witness testified, according to Barr.

But during the final day of trial, and with the agreement of lawyers on both sides and the jury, Judge Albright relaxed the rules and held the last day of trial maskless.

"That made it a lot nicer, especially when we were doing closing arguments, to be able to just not have that thing on," Barr said.

Representatives for NCR did not respond to a request for comment Friday.

The patents-in-suit are U.S. Patent Nos. 9,400,640 and 10,083,012.

CloudofChange is represented by John H. Barr Jr., Abelino Reyna, Barden Todd Patterson, Edgar Neil Gonzalez, Kyrie Kimber Cameron and John Allen Yates of Patterson & Sheridan LLP.

NCR Corp. is represented by Charles E. Phipps, Daniel G. Nguyen, Donald E. Frechette, Scarlett Collings, Steven F. Meyer and Charles S. Baker of Locke Lord LLP.

The case is CloudofChange LLC v. NCR Corp., case number 6:19-cv-00513, in the U.S. District Court for the Western District of Texas.

--Additional reporting by Dani Kass and Britain Eakin. Editing by Andrew Cohen.