

# Long Island BusinessNEWS

## Win Against Apple More Work For IP Lawyers

by Sylvia Hsieh

In a major milestone in the smartphone patent wars, a federal jury has found that Apple Inc. infringed on three patents in its iPhone with regard to the camera feature and the handling and rejection of calls.

You read that right: Apple lost an infringement suit.

Perhaps more significant is the fact that the plaintiff was MobileMedia Ideas Inc., a Delaware-based company owned by Sony, Nokia and the top patent licensing firm MPEG-LA. Created to hold patents but not manufacture products, companies like MobileMedia are sometimes referred to as “patent trolls.”

“As far as I know, this is one of the first big victories by a patent assertion entity or patent troll,” said Professor James Bessen, an economist who teaches at Boston University School of Law and who authored a study on patent trolls with his colleague, Professor Michael Meurer. “We’ve already seen patent troll litigation going at a very healthy clip. This is just going to fuel it even more.”

Patent trolls have been especially active when it comes to software patents, as the technology is much harder to comprehend both at the issuance and enforcement level compared to other types of patents.

“If I have an idea for a new type

of stapler, it’s easy to analyze the patent for specifics,” said **Steven Rubin**, a patent attorney at multi-practice law firm **Moritt Hock & Hamroff**, based in Garden City. “But software is an algorithm. It’s more abstract.”

MobileMedia claimed that the iPhone used technology dating back to 1994 that included patents for a cell phone camera; for rejecting a second call while one is using the phone; and for merging or conferencing a second call that one accepts.

Considering the jury consisted entirely of individuals over the age of 50, none of which owned an iPhone, attorneys for MobileMedia had an easier time convincing members that call handling and rejection on an iPhone was the same as that done on a brick-sized cell phone from 1995.

Damages have yet to be decided in the case, but the jury’s finding of infringement covers “tens of millions” of iPhones, according to the plaintiff’s lead counsel, Steven Bauer, who co-chairs the patent litigation practice at Boston-based Proskauer Rose and Fish & Richardson.

But don’t expect Apple to stop selling iPhones anytime soon.

Since patent trolls hold the patents without the intention to act on them, they are typically preclud-

ed from preventing an infringer from making its product. Instead, litigation by patent trolls is more likely to result in the infringer paying a royalty to the patent troll.

David Denenberg, chairman of the intellectual property law group at Davidoff, Hutcher & Citron, said he is very familiar with MobileMedia.

“They’re the quintessential patent troll,” Denenberg said. “And because Apple is such a big company this verdict will only embolden their enforcement program, and helps fund it.”

He’s not too far off; more litigation from MobileMedia is already on the way. Bauer said the three claims were test cases that were narrowed down from a total of 16 original claims.

“There are still at least six other patents in this case, sitting there waiting to be filed. Some of the claims involve iPhones, iPods and iPads,” he said, noting that client MobileMedia has a pending lawsuit against BlackBerry maker Research In Motion and Android and Windows smartphone maker HTC over some of the same patents it alleged Apple infringed.