

Metaswitch to pay GENBAND \$8.2M in patent infringement heard in Marshall



By Robin Y. Richardson
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After about four hours of deliberating Friday, a local federal jury determined that Metaswitch Networks must pay its rival GENBAND US LLC \$8.168 million for infringing seven of its patents related to VoIP technology.

The trial began in Marshall's federal court on Monday with U.S. District Judge Rodney Gilstrap presiding.

"The seven patents GENBAND owns are important innovations in the Voice over Internet Protocol (VoIP) industry," GENBAND's attorney Deron Dacus said in closing statements Friday. "Those seven patents are used by Metaswitch."

GENBAND, a global leader in real time communications, filed suit against Metaswitch on Jan. 21, 2014, claiming that the company infringed seven of its patents related to Voice over Internet Protocol technology. Metaswitch denied infringement and contended that the patents are invalid as being anticipated by prior art or being obvious by prior art. The company also accused GENBAND of breaching contractual obligations. GENBAND denied breaching a contractual obligation with Metaswitch.

The jury in the case determined Friday that the patents are valid and that Metaswitch should pay a reasonable royalty of \$8,168,400 for patent infringement.

In closing arguments, GENBAND's attorney, Dacus, noted that the time period Metaswitch was racking up accolades for its products ironically matched the time period GENBAND believes the company was using its patents.

Dacus further argued that GENBAND's flexible gateway technology is still relevant today.

"It's still being sold today because it's still so flexible," he said. Dacus said no matter what capability of Internet used, the gateway box can handle it.

He argued that Metaswitch doesn't have to support ATM or frame relay protocols to infringe.

"We showed they support two types of IP protocols," Dacus said.

In his closing remarks, Charles Verhoeven, representing Metaswitch, argued that five of the patents in suit were

not invented by GENBAND.

"They were Nortel's," he said, noting GENBAND acquired them from Nortel.

"They were very old," Verhoeven said, advising the patents were filed in the 1999-2000 era.

He said when talking about telephony protocols, smartphones and tablets - all of the modern technology being accused in the lawsuit - didn't exist then.

Verhoeven further argued that GENBAND, Metaswitch and Nortel were part of the Cable Labs patent pool, which allowed VoIP vendors to license patents royalty-free.

Verhoeven said the standards organization is a collaboration of industry participants that set this road map of how VoIP equipment will function.

"The standard came up with only one way, only one set of rules of how to communicate across the whole industry. One of Nortel's goals was to actively influence the Cable Lab standard. Nortel wanted full participation in the Packet Cable project," he said evidence showed.

"The royalty for the Nortel patents has got to be zero because the evidence shows it was included in the Packet Cable and evidence shows Metaswitch is a member of the Packet Cable," Verhoeven said.

Verhoeven further argued that the patented technology created by GENBAND is also an old patent.

"It relates to uncertainty in the marketplace as to what protocol would be used," he said.

"The accused products don't have the ability to handle ATM or frame relay," Verhoeven said. "Nobody needs that anymore. All anybody is using is IP.

"The invention back in November 2000 was to be able to handle all three protocols, but ATM and frame relay (lost out)," he said. "The Metaswitch (products) do not practice GENBAND's old technology.

"GENBAND decided to acquire Nortel's assets and go down a different path than Metaswitch," Verhoeven said. "GENBAND is now trying to apply their old patents to Metaswitch's new and cutting edge technology. It just doesn't fit."

Verhoeven said Metaswitch takes the accusations of infringement seriously, which is why they brought in several corporate representatives, including CEO Martin Lund and company chairman John Lazar to testify.

"They are a researching and developing company," he said. "They respect IP.

"We brought technical people here to tell our story."

He said GENBAND only brought a former employee and one current employee.

"They didn't bring the CEO David Walsh," he said, adding they also didn't bring Charles Vogt, the former CEO.

He argued that they also didn't bring any of the inventors listed on the patents-in-suit.

"Rather than have someone from their own company tell their story, they brought someone they paid over \$130,000 to," Verhoeven said, referring to GENBAND's expert witness William Beckmann.

Dacus, representing GENBAND, noted the fact that seven of the patents came from Nortel is irrelevant.

"Just because I didn't build my home doesn't mean I don't have rights to (protect it)," he said.

He further argued that GENBAND didn't bring any of its corporate representatives because their testimonies were provided deposition.

"They could've pushed play if their testimonies were (relevant)," Dacus argued.

He said Metaswitch didn't make any arguments to back its invalidity claims for a good reason.

"These patents spent over 35 years in the patent office before they were issued. All of these patents are valid," Dacus said.

Dacus further argued that the problem with the VoIP pool is that Metaswitch only gets a royalty-free license if they fully comply with specification and standards. He said evidence shows Metaswitch products do not comply with the standard.

"So they don't get a license; they don't have that," he said."

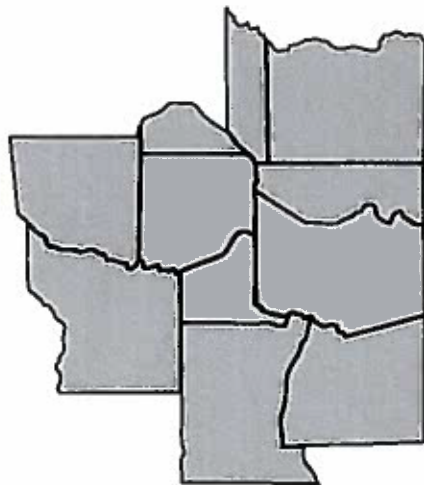
"In 2008, they're asking for a license from Nortel. Why would Metaswitch (do that) if they had a royalty-free license with Cable Labs? I would submit to you because they didn't have a license," Dacus said. "It's a story they made up for the purpose of this lawsuit."

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