

IP Litigation Yielded \$3.4B In 2006: Survey

By **Marius Meland**, mmeland@portfoliomedia.com

Friday, December 29, 2006 --- Intellectual property disputes resulted in judgments and settlements worth \$3.4 billion in 2006, markedly down from the previous year, according to our annual survey.

Topped by the \$613 million paid to NTP Inc. by Research in Motion to settle their patent dispute over the Blackberry mobile messaging system, technology companies accounted for almost one third of the publicly reported judgments and settlements in U.S. courts in 2006, our survey shows.

In the Blackberry case, NTP was represented by Wiley Rein & Fielding LLP, which received roughly one-third of the settlement that RIM agreed to pay NTP to avert a potential court-ordered shutdown of the ubiquitous wireless e-mail devices.

The deal between NTP and Research in Motion dwarfed every other settlement and judgment in IP disputes in 2006, with a \$330 million settlement between Masimo Corp. and Tyco coming in a distant second.

Overall, the list of the top judgments and settlements in IP disputes was dominated by technology companies, including such household names as Nokia, Rambus, Microsoft, DirecTV and Apple Computer.

IP SETTLEMENTS/JUDGMENTS, 2006

Rank, case, amount (millions), settlement or judgment

1. NTP Inc. v. Research In Motion, \$613 (S)
2. Masimo Corp. v. Tyco International Ltd., \$330 (S)
3. InterDigital v. Nokia, \$253 (S)
4. Rambus Inc. v. Hynix, \$134 (J)
5. David Colvin v. Microsoft/Autodesk, \$133 (J)
6. Advanced Med. Optics v. Alcon, \$121 (S)
7. Finisar v. DirecTV et al., \$116* (J)
8. ABC/CBS/NBC v. EchoStar, \$100 (S)
8. Creative Technology v. Apple Computer, \$100 (S)
8. MGM Studios et al. v. Kazaa, \$100 (S)
8. University of California v. Monsanto, \$100** (S)

*Includes interest

**With future royalties, amount could exceed \$250M

Source: Portfolio Media Inc.

Still, this past year's biggest payouts paled compared with the record-setting string of judgments and settlements announced in the previous year.

Only two judgments or settlements exceeded \$300 million in 2006, compared with nine such outside amounts in 2005.

Topping our chart in 2005, Medtronic agreed to pay about \$1.35 billion to Gary K. Michelson to end a patent dispute over spinal fusion technologies.

In that case, the California branch of Chicago-based Kirkland & Ellis negotiated the largest settlement in history, winning an astonishing \$1.35 billion for a single individual.

Medtronic wasn't the only medical device maker that had to pay up in 2005. Indeed, the second-biggest payout was made by one of Medtronic's rivals, Boston Scientific, to Israel's Medinol.

In 2006, the deal between NTP and Research in Motion was the only one to break into our list of the 10 largest settlements and judgments of all time:

TOP IP SETTLEMENTS/JUDGMENTS OF ALL TIME

Rank, case, amount (millions), settlement or judgment

1. Michelson v. Medtronic, \$1350 (S)
2. Sun Microsystems v. Microsoft, \$1250 (S)
3. Texas Instruments v. Hyundi, \$1000 (S)
3. Texas Instruments v. Samsung, \$1000 (S)
5. Polaroid v. Eastman Kodak, \$873 (J)
6. Medinol v. Boston Scientific, \$750 (J)
7. NTP Inc. v. Research In Motion, \$613 (S)
8. Novell v. Microsoft, \$536 (S)
9. Eolas Technologies v. Microsoft, \$521 (J)
10. City of Hope Medical v. Genentech, \$500 (J)

Source: Portfolio Media Inc.

Overall, judgments and settlements in the health care industry took a backseat to the technology industry in 2006. Health care judgments and settlements accounted for about 30% of the total reported figure, our survey shows.

Other industries, such as media, financial services and retail, accounted for less than 8% of the total payouts in 2006, according to our survey.

IP SETTLEMENTS/JUDGMENTS, BY INDUSTRY, 2006

Rank, case, amount (millions), % of total

1. Technology and telecom, \$2,064 (63%)
2. Health care, \$1,005 (30%)
3. Media and entertainment, \$120 (4%)
4. Financial services, \$63 (2%)

5. Retail, leisure and consumer goods, \$58 (2%)
6. Energy and natural resources, \$4 (0%)

Source: Portfolio Media Inc.

The Eastern District of Virginia outranked all other courts in our survey of IP settlements and decisions in 2006, but the results were clearly skewed by the Blackberry case. Other courts producing large payouts included the District of Delaware and both the Northern and the Central District of California.

IP SETTLEMENT/DECISIONS, BY COURT, 2006

Rank, district, amount (millions)

1. Eastern District of Virginia, \$613
2. District of Delaware, \$465
3. Northern District of California, \$368
4. Central District of California, \$358
5. Eastern District of Texas, \$352

Source: Portfolio Media Inc.

Our survey tracked all publicly reported judgments and settlements where the amount awarded exceeded \$1 million.

Publicly traded companies are required by law to disclose events with material impact on their accounts. In cases involving private companies or smaller amounts, litigating parties frequently settle their disputes without publicly disclosing the amount involved.