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Gilstrap Holds Top Spot For Pandemic-Era Jury Patent Trials

By **Tiffany Hu**

Law360 (October 26, 2021, 6:28 PM EDT) -- Texas has seen the most patent jury trials during the COVID-19 pandemic, with Eastern District of Texas Judge Rodney Gilstrap holding the most trials since August of last year, according to a new report by Baker Botts LLP.

Of the 18 patent jury trials that took place in the Eastern District of Texas from August 2020 to September 2021, Judge Gilstrap handled 16 of those trials, including one that resulted in a **\$506 million verdict** against Apple over Optis Wireless' standard-essential 4G wireless patents, according to the Oct. 22 report. Judge Gilstrap later overturned the jury's calculation of damages **and granted Apple** a new damages trial, and **a new jury returned** a \$300 million verdict against Apple in August.

But the largest award that has come out of patent jury trials so far is from Western District of Texas Judge Alan Albright's courtroom. In March, jurors issued a **\$2.18 billion verdict against Intel** for infringing two computer chip patents owned by VLSI Technology LLC. The report also notes that Judge Albright handled the second-most patent jury trials during this period, overseeing all six of the patent jury trials in the Western District of Texas since August 2020.

Many of the larger verdicts seemed to have been awarded when courts were beginning to engage in patent jury trials again, Baker Botts intellectual property litigation co-chair Doug Kubehl, who co-authored the report with senior associate Lindsay Volpenhein Cutié and associate Fred Carbone, told Law360 on Tuesday.

Top Jury Awards To Patentees During COVID

The largest jury award to come out of patent trials from August 2020 to September 2021 was a **\$2.18 billion verdict against Intel** in Western District of Texas Judge Alan Albright's courtroom.

Date	Judge	District Court	Award
August 2020	Gilstrap	TX-E	\$506 million
October 2020	Schroder	TX-E	\$503 million
March 2021	Albright	TX-W	\$2.18 billion
	Gilstrap	TX-E	\$63 million
	Gilstrap	TX-E	\$309 million
	Mazzant	TX-E	\$173 million
May 2021	Gilstrap	TX-E	\$92 million
	Kasubhai	OR	\$27 million
July 2021	Gilliam	CA-N	\$178 million
August 2021	Gilstrap	TX-E	\$300 million

Source: Baker Botts

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"I definitely think we've seen a trend in the last 12 to 18 months of larger patent jury verdicts than we've seen generally in the past," Kubehl said, noting that there was still a "small" sample size. "By my count, it was maybe 27% awarded that were more than \$100 million, which seems to be an uptick in the number of just very large awards that we've seen."

According to the report, the "locations of the patent jury trials also reflect the timing in which COVID-19 restrictions were lifted by states," as Texas gradually lifted its safety restrictions through March of this year, while California took a few months longer to fully reopen.

"Unlike the district courts in Texas, the Central District of California, which comes in fourth ... for patent lawsuit filings, has not held a patent trial, either a jury or bench, since pandemic shutdowns began," the report states. Following the Eastern and Western Districts of Texas, the District of Delaware placed third, according to the report.

The report also details the various health and safety protocols that courts have taken during the pandemic. Judge Albright appeared to be more consistent in his Western District of Texas courtroom — including requiring masks, social distancing and COVID-19 tests — compared to judges in the Eastern District of Texas, who were more varied in the measures that they implemented.

Kubehl said that courts are starting to lift some restrictions that were put in place — including the Northern District of Georgia, which in September held an in-person trial with no mask mandate or use of plexiglass — which may continue as more and more people get vaccinated.

--Editing by Bruce Goldman.

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