

'Bullying' Yahoo Owes \$260M For IP 'Squatting', Jury Told

By **Bonnie Eslinger**

Law360 (March 28, 2022, 10:02 PM EDT) -- Yahoo Inc. is "free-riding" on Droplets Inc.'s technology for quickly updating web pages, its lawyer told a California federal jury Monday at the close of a \$260 million patent infringement trial, accusing Yahoo of "squatting" on Droplets' intellectual property and then "bullying" the small Texas company.

Wrapping a three-week trial, a lawyer for Droplets, Courtland L. Reichman of Reichman Jorgensen Lehman & Feldberg LLP, told jurors the case is "ultimately about whether it's okay to take someone's property and use it without permission."

Droplets' three founders were engineers who devised a way to make websites more interactive with users and were on the cusp of success, Reichman said. Then Macromedia Inc. got ahold of their trade secrets and put the invention out in the market in 2004, about the same time Droplets was awarded its patent, the attorney added.

"Although it was stolen, there was still a way for Droplets to live on," the lawyer said. "Everybody was using the patent, so they went to these other companies and asked them to take a license."

Droplets sued Yahoo **back in 2011** along with tech giants Amazon, Apple, Facebook, Google and YouTube. The other companies all settled.

"The lawsuit was a way to get their attention," Reichman said. "The other companies did the right thing."

The patented invention is used by Yahoo in several ways, mostly with its "Search Suggest" function, which accounts for the bulk of the damages sought. By making searching easier and faster for users, Yahoo generates more traffic and that results in more advertising revenue, Droplets' lawyer said.

The technology turned Yahoo's website "from limited interactivity to full interactivity," Reichman said.

Droplets' expert testified that Yahoo has made \$868 million in profits from the invention and that Droplets' contribution deserves a 30% cut, the lawyer told jurors.

"You heard testimony [on behalf of Yahoo] that if Droplets had demanded that much in a hypothetical negotiation, Yahoo would have gone a different direction with Search Suggest," Reichman said. "The problem with that is that it's undisputed in this record that there are ... no noninfringing alternatives."

Droplets also underscored that Sears and Overstock were "holdouts," like Yahoo, and a jury found those companies infringed the patents and awarded Droplets \$11 million and \$4 million, respectively.

The lawyer told the five women and three men sitting before him that they were responsible for policing Droplets' patent.

"You're the only way for someone who has property ... [to] stop people from free-riding on it," Reichman said. "From taking and using your property, squatting on it, and then make a bunch of excuses and bullying you by saying nobody's ever heard of Droplets."

Yahoo's lawyer, Woody Jameson of Duane Morris LLP, told jurors that what other companies have

done in relation to the invention is not relevant to this case because Yahoo is not infringing Droplets' patent.

In fact, Yahoo decided that its case on infringement is so strong, the company decided to drop its invalidity defense, Jameson said.

According to the court's direction to the jury, if Yahoo Search Suggest does not involve restoring a website to a previous operating state, than it can't be infringing Droplets' patent, Jameson said. With the rest of the sites, including Yahoo Mail and Yahoo Maps, there is such restoration, but Yahoo is using cookies to accomplish that task, not the plaintiff's invention, Yahoo's lawyer said.

Jameson also asked the jurors to weigh the credibility of the experts each side brought up, suggesting that Droplets' engineering expert "was basically reading to you a script ... because he was having to tell a very complicated theory of infringement."

Douglas Schmidt, a professor of engineering at Vanderbilt University, had told jurors that Droplets had solved the problem of the "worldwide wait" with its invention for fast-refreshing web pages.

Jameson reminded jurors that under cross-examination, another lawyer for Yahoo had asked Schmidt why, if the patent was so notable, was it revealed in Schmidt's deposition that he had first heard of the patent when he was hired as an expert for the case.

Now, Droplets is asking Yahoo for a "ridiculous" amount of money, Jameson said.

When Adobe Systems Inc., which acquired Macromedia, **settled the patent dispute** brought by Droplets, it only paid \$10 million, Jameson said.

"This is the company that destroyed Droplets, we heard in closing," Yahoo's lawyer said. "Adobe paid \$10 million ... that's a data point you can't walk away from."

Before he ended his remarks, Jameson told jurors he had made a mistake in his opening statement, saying Yahoo had not heard of Droplets until it was sued.

"I was proven wrong," he said. "They actually sent a marketing letter to Droplets back in 2002 ... two years before the patent was even issued."

The invention at issue is for a "system and method for delivering a graphical user interface of remote applications over a thin bandwidth connection," states the title of the patent, issued in 2004.

The invention allows a portion of a website to be quickly updated without waiting on a whole page refresh, Reichman told jurors during the trial's **March 8 kickoff**.

Droplets co-founder Philip Brittan took the stand that day and testified that he and his colleagues came up with the idea behind its patented website technology while trying to create an application to post financial data for a previous company they created.

At one point, Droplets was in talks with Goldman Sachs investing in their company, but the banking giant wanted Droplets to also talk to a venture capital firm, which unexpectedly brought an executive from Macromedia to their meeting.

Droplets later heard that the VC wasn't interested, which also scuttled the Goldman Sachs investment.

The patent-in-suit is U.S. Patent Number 6,687,745.

Droplets is represented by Courtland L. Reichman, Aisha Mahmood Haley, Ariel Green, Christine E. Lehman, David King, Jaime F. Cardenas-Navia, Jennifer P. Estremera, Kate Falkenstien, Khue V. Hoang, Michael Matulewicz-Crowley, Philip Eklem, Shawna L. Ballard and Taylor Nowell Mauze of Reichman Jorgensen Lehman & Feldberg LLP.

Yahoo is represented by George Niespolo, Kevin P. Anderson, Aleksander Goranin, Woody Jameson,

and Matt C. Gaudet of Duane Morris LLP and Jennifer Haltom Doan and Joshua Thane of Haltom & Doan.

The case is Droplets Inc. v. Yahoo Inc., case number 4:12-cv-03733, in the U.S. District Court for the California Northern District.

--Editing by Andrew Cohen.