

Yahoo Fights \$15M IP Loss As Droplets Seeks To Add \$20.6M

By **Dorothy Atkins**

Law360 (June 3, 2022, 6:39 PM EDT) -- Yahoo has urged a California federal judge to grant it a post-trial judgment invalidating software company Droplets Inc.'s patent following Yahoo's \$15 million jury trial infringement loss, while Droplets asked the judge to tack on \$17.6 million in interest to the judgment and award \$3 million in fees and costs.

In separate post-trial motions filed Wednesday, Yahoo and Droplets each took turns asking U.S. District Judge Jon S. Tigar to reconsider certain aspects of the jury's March verdict against Yahoo.

In a 33-page **motion for judgment** in its favor as a matter of law, Yahoo argued that Droplets' patent claims for quickly updating web pages describe an abstract idea and therefore aren't patentable under the two-step test set by the U.S. Supreme Court's Alice precedent.

"[The claims] recite no more than an abstract idea: retrieving and sending information between client and remote server computers, through an interactive link, such that a user's previous state information can be re-presented at his or her computer," Yahoo argued, adding that "the Federal Circuit and district courts have repeatedly found such claims — directed to enhancing website interactivity — to be abstract, including this court in a recent summary judgment decision, *Eolas Techs. Inc. v. Amazon.com Inc.*"

But in its own 50-page, omnibus **post-trial brief** filed Wednesday, Droplets argued that the patent claims are valid and that it is entitled to \$3 million in attorney fees based on the firm's fixed fee billing model and nontaxable costs, plus \$17.6 million in prejudgment and post-judgment interest. The company also asked the court for a new trial on the four products that the jury determined did not infringe.

In support of its attorney fee request, Droplets additionally filed a **declaration** by University of Houston Law professor Renee Knake Jefferson. The professor said that fees based on the time spent on a task creates serious abuses, incentivizing things like double-billing, overestimating the time worked and performing unnecessary work, which raises difficult ethical questions, and therefore Droplets' counsel is justified in charging based on a fixed-fee billing model.

"Federal courts should not impose a presumption of hourly billing given the ethical concerns inherent in the billable hour model and the associated harms," the declaration says.

The dueling post-trial motions are the latest development in hotly contested litigation that Droplets launched in 2011 against Yahoo — along with tech giants Amazon, Apple, Meta Platform's Facebook, Google and YouTube. The other companies all settled.

In March, an Oakland federal jury found Yahoo owes Droplets \$15 million for infringing its patented technology.

The nine-person jury concluded that Droplets proved it was more likely than not that Yahoo infringed one patent claim with one product, Yahoo Search Assist, but found against Droplets with respect to four other Yahoo products.

However, the jury awarded Droplets much less than the \$260 million verdict Droplets counsel, Courtland L. Reichman of Reichman Jorgensen Lehman & Feldberg LLP, sought for Yahoo's alleged

"free-riding" on Droplets' intellectual property.

During the trial, Droplets' expert testified that Yahoo had made \$868 million in profits from the invention and that Droplets' contribution deserved a 30% cut.

A hearing on the post-trial motions is set for July 29 before Judge Tigar.

Reichman said Friday that Droplets looks forward to the post-trial motions being decided by the court.

"Droplets is proud that the jury found in its favor and validated the decades of effort it put into its groundbreaking technology," he said. "We think the post-trial motions raise interesting questions about Yahoo's misconduct throughout these proceedings, and whether billing by the hour is necessary to recover attorneys' fees when there is substantial evidence that billable hours damage the profession."

Counsel and representatives for Yahoo didn't immediately respond Friday to requests for comment.

A month after the verdict against Yahoo, Judge Tigar signed off on an agreement **dismissing** Nordstrom Inc. from claims that it infringed Droplets' patents.

The patents-in-suit are U.S. Patent No. 6,687,745 and 7,502,838.

Droplets is represented by Courtland L. Reichman, Shawna L. Ballard, Kate Falkenstien, Michael G. Flanigan, Khue V. Hoang, Jaime F. Cardenas-Navia, Michael Matulewicz-Crowley, Christine Lehman, Aisha Mahmood Haley and Phil Eklem of Reichman Jorgensen Lehman & Feldberg LLP.

Yahoo is represented by Jennifer Haltom Doan and Joshua R. Thane of Haltom & Doan and George D. Niespolo, Meghan C. Killian, Kevin P. Anderson, Aleksander Goranin, Woody Jameson, Matt C. Gaudet and Alice Snedeker of Duane Morris LLP and in-house by Hieu Hong Phan.

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

--Additional reporting by Bonnie Eslinger and Lauren Berg. Editing by Michael Watanabe.