



May 15, 2009

CLIENT ALERT

Infringers Have A Duty to Disclose Post-Trial Sales

In an opinion rendered April 30, Judge Sue Robinson of the U.S. District Court for the District of Delaware held that an adjudicated patent infringer has a duty to disclose post-trial sales of the accused product or face punitive damages. *TruePosition v. Andrew Corp.*, 05-747-SLR (D. Del. 2009). After having been found by a jury to have willfully infringed a patent directed to finding cell phone users, the defendant continued to supply the accused product during the post-trial briefing period without disclosing that it had done so. Defendant had also failed to disclose sales that had been made just before trial but after the close of the original discovery period, and thus were not included in the plaintiff's damage award.

In a 25-page opinion, Judge Robinson noted that “the defendant had duty to inform plaintiff of its shipments of infringing product. . . .” Instead, the defendant made its post-trial sales “under a veil of secrecy.” Defendant not only failed to promptly disclose its post-trial sales, but also misrepresented that certain of the post-discovery, pre-trial sales had even taken place. “Defendant’s lack of candor with the court, the jury, and plaintiff” warranted enhanced damages according to the Court. Judge Robinson thus doubled the compensatory damages for the post-trial sales, awarding plaintiff almost \$20 million in supplemental damages, over and above damages resulting from the original trial.

The plaintiff TruePosition, Inc. is represented by Woodcock Washburn LLP in this litigation, with Paul Milcetic as lead trial counsel. The defendant Andrew Corporation is represented by Kirkland & Ellis LLP.

To read the Court's full opinion, please [click here](#).

If you have any questions please contact a member of Woodcock Washburn’s Litigation Service Group. Further questions may also be directed to Paul Milcetic (milcetic@woodcock.com).

About Woodcock Washburn LLP

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