

# Google Hit With \$20M Jury Verdict Over Malware Patents

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Law360, San Francisco (February 10, 2017, 9:54 PM EST) -- A Texas federal jury awarded an inventor and the family of his late partner \$20 million in damages Friday, after finding [Google](#) had infringed on three of their patents for malware protection software.

After a four-day trial, the jury found Google had infringed on all three patents at issue in the suit. The verdict form indicates the tech giant will pay \$20 million in damages, and that the jury chose a rolling royalty rather than a lump sum for the monetary award. Plaintiffs' attorney Eric W. Benisek, of [Vasquez Benisek & Lindgren LLP](#), said the \$20 million covers the last four years of the patent, and the royalty will apply to the next nine years until the patent expires, which means the lawsuit could yield approximately \$65 million.

"We're excited," Benisek told Law360. "After four years and an appeal, we finally got our day in court."

The case, filed in 2013 by inventor Alfonso Cioffi and the family of his late partner, Allen Frank Rozman, has had a bumpy road. In 2014, U.S. District Court Judge Rodney Gilstrap [dismissed the case](#) after the plaintiffs conceded they couldn't win on the court's interpretation of the patents.

The claim construction found that the phrase "web browser process," which appears in several of the patents, "must be capable of accessing a website without using another web browser process." Under that interpretation, a component of Google Chrome accused of infringing the patents "cannot meet the 'web browser process' limitation of the asserted claims," the judge said.

Cioffi and the Rozman family appealed, and in 2015, the [Federal Circuit reversed](#) Judge Rozman's reading of the phrase. The panel said the plain and ordinary meaning of "web browser process" did not require a "direct" access capability requirement." The appeals court also found Judge Gilstrap erred in finding a "critical file" was the same as a "critical user file," saying that definition made a common term of art indefinite.

After being denied an en banc appeal, Google asked the [U.S. Supreme Court](#) to review the decision, alleging the Federal Circuit has upheld conflicting views on the significance of a patent's prosecution history for more than a decade, leading to uncertainty over claim construction standards. The high court [declined](#) to hear the suit last month.

Judge Gilstrap, known as the [busiest patent judge](#) in the country, presided over the trial. Patent plaintiffs with no connection to Texas flock to the Eastern District because of the speed of its docket and a perception that it's friendly to plaintiffs, and Benisek admitted one of the unusual aspects of the case was that Rozman's daughters, who are named as plaintiffs in the suit, all live in Texas.

"I'm fully aware of the fact it's a popular district, and not necessarily because companies are located there," Benisek said. "It was fun to represent someone from the district."

In an email statement, Google suggested the fight might not be over.

"We remain confident that the patents here are invalid, and that Google Chrome does not infringe," the statement said. "We are evaluating our options."

The patents-in-suit are U.S. Patent Numbers [RE43,500](#); [RE43,528](#); and [RE43,529](#).

The plaintiffs are represented by Robert C. Bunt and Charles L. Ainsworth of [Parker Bunt & Ainsworth PC](#), William E. Davis III of The Davis Firm, and Eric W. Benisek and Robert S. McArthur of Vasquez Benisek & Lindgren LLP.

Google is represented by Michael E. Jones and Patrick C. Clutter IV of [Potter Minton PC](#), Darin W. Snyder, David S. Almelin, Brian M. Berliner, John Zhu, Luann Loraine Simmons, Mark Liang and Mishima Alam of [O'Melveny & Myers LLP](#), and Winston Liaw, James L. Day, Daniel C. Callaway, Stephanie P. Skaff and Eugene Y. Mar of [Farella Braun & Martel LLP](#).

The case is Cioffi et al. v. Google Inc., case number [2:13-cv-00103](#), in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Beth Winegarner, Matthew Bultman, Kevin Penton and Jess Krochtengel. Editing by Philip Shea.