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Microsoft, Cos. Settle Wireless IP Spats With CSIRO

By **Tina Peng**

Law360, New York (April 24, 2009) -- Seven major technology companies — including Microsoft Corp. and Netgear Inc. — have settled long-running disputes with the Commonwealth Scientific and Industrial Research Organization, Australia's national science research agency, over its wireless local area network patent.

Judge Leonard Davis of the U.S. District Court for the Eastern District of Texas on Wednesday and Thursday signed off on motions to dismiss all claims between CSIRO and Netgear, Toshiba America Information Systems Inc., Asus Computer International, Accton Technology Corp., SMC Networks Inc. and 3Com Corp. without prejudice.

Judge Davis on Tuesday also approved a settlement dismissing claims between CSIRO and Microsoft with prejudice.

Microsoft and Netgear were the two remaining plaintiffs in a suit seeking to invalidate CSIRO's patent. The other companies were defendants in a separate infringement suit.

CSIRO and Netgear agreed to "settle, adjust and compromise" all of the claims and counterclaims in the suits, and the agency reached settlement, release and licensing agreements with Microsoft, Asus, Netgear, Accton, SMC and 3Com.

Each side will pay its own attorneys' fees and other legal expenses, according to the orders, though other details of the settlements were not released.

Representatives for CSIRO and attorneys for the defendants could not immediately be reached for comment, while an attorney for Netgear declined to comment.

The dispute goes back to early 2003, when CSIRO began a licensing campaign against a slew of U.S. companies, which triggered preemptive lawsuits and a controversy over the reach of U.S. patent laws against foreign governments.

Microsoft, Hewlett-Packard Co., Netgear and Apple Inc. filed a lawsuit in May 2005 against CSIRO in the U.S. District Court for the Northern District of California seeking to invalidate the patent. The same day, Dell Inc. and Intel Corp. filed a separate suit in the the same court.

Apple voluntarily dismissed its case in June 2005, but the other companies pushed forward, suffering a setback in late 2006 when the California court agreed to transfer the cases to the Texas court.

In March, HP agreed to settle with CSIRO rather than continue to pursue the patent's invalidation, while settlements between the agency and Dell and Intel were approved April 20.

The Toshiba, 3Com, Accton, Asus and SMC settlements come in a 2006 complaint filed by Toshiba in the Eastern District of Texas against 10 companies, including Fujitsu Computer Systems Corp., Belkin Corp. and D-Link Systems Inc.

Fujitsu settled with CSIRO on April 9.

At issue is CSIRO's U.S. patent on technology for wireless networks, including WiFi, a standard feature of notebook computers and other devices. Issued in 1996, the patent describes a way of transmitting data at frequencies in excess of 10GHz.

The patent-at-issue is U.S. Patent Number 5,487,069.

CSIRO is represented by Townsend and Townsend and Crew LLP and Capshaw DeRieux LLP.

3Com, Accton, D-Link and SMC are represented by Vasquez Benisek & Lindgren LLP and Wilson Robertson & Cornelius PC. Asus is represented by Stevens Law Firm and Okamoto & Benedicto LLP, and Toshiba is represented by Knobbe Martens Olson & Bear LLP and Yarbrough Wilcox PLLC.

Netgear is represented by Wilson Sonsini Goodrich & Rosati and Yarbrough & Wilcox, and Microsoft is represented by Fish & Richardson PC.

The Netgear and Microsoft case is Microsoft Corp. et al. v. Commonwealth Scientific and Industrial Research Organization, case number 06-cv-00549, in the U.S. District Court for the Eastern District of Texas.

The other case is Commonwealth Scientific and Industrial Research Organization v. Toshiba America Information Systems Inc. et al., case number 6:06-cv-00550, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Melissa Lipman, Samuel Howard and Ryan Davis

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