

Niro Haller, Client Ordered To Pay HTC \$4.1M In Patent Suit

By **Beth Winegarner**

Law360, San Francisco (July 21, 2015, 6:00 PM ET) -- An Illinois federal judge on Tuesday ordered Niro Haller & Niro Ltd. and former client Intellect Wireless Inc. to pay nearly \$4.1 million in legal fees HTC Corp. incurred while defending claims it infringed a patent that was found to have been fraudulently obtained.

Although U.S. District Judge William T. Hart subtracted a little more than \$8,200 from HTC's final attorney fee bid of \$4,098,286.40, largely for expenses such as car service and witness hotel services he deemed unnecessary, he granted HTC the bulk of the fees it requested. The final tally includes \$3,538,814.61 in fees and \$551,215.92 in costs and expenses.

Judge Hart rejected Niro's argument that HTC shouldn't receive any fees incurred after September 2014 because all of that time was devoted to pursuing legal fees, saying reimbursement for that phase of the litigation was allowed. He also rejected Niro's argument that HTC had double-billed some of its expenses.

However, he agreed that Niro and Intellect Wireless shouldn't have to pay for premium car services, including for witnesses from the Smithsonian Institute's National Museum of American History, as well as some witness hotel expenses HTC sought. "It is unclear why hotel expenses were paid for Smithsonian employees on dates other than when brought here for trial," he said in the ruling.

HTC also agreed to remove \$600 in expenses for first-class airfare, Judge Hart said.

Judge Hart refused to consider HTC's request that Intellect Wireless owner Daniel Henderson be held personally liable in the fee dispute, noting that Henderson wasn't originally named as a counterdefendant. In 2012, the judge ruled in HTC's favor, finding only that Intellect Wireless, through Henderson, had engaged in inequitable conduct.

"At this point, nearly three years after a judgment dismissing the case was entered, the court declines to consider adding an additional party to the case," Judge Hart wrote. "Moreover, to the extent this is properly characterized as a post-judgment, ancillary proceeding seeking to pierce the corporate veil, that is an inappropriate proceeding on which to base supplemental jurisdiction."

Intellect Wireless had accused HTC of infringing patents for caller-ID technology. Judge Hart ruled the

patents unenforceable because the inventor, Daniel Henderson, engaged in a "pattern of deceit" at the U.S. Patent and Trademark Office when seeking the patents, including filing a false declaration. The Federal Circuit upheld the ruling in 2013.

HTC attorney Stephen Korniczky of Sheppard Mullin Richter & Hampton LLP told Law360 Tuesday that he was happy with the ruling and "It remains to be seen what, if any, action will be taken against Henderson."

Attorneys for Niro and Intellect Wireless didn't respond to requests for comment.

Judge Hart ruled in January that Niro, a prominent patent litigator, and three other attorneys were jointly and severally liable for HTC's fees, as was Intellect Wireless, for knowing about Henderson's false statements before suing HTC. The judge, however, did not determine the amount to be awarded to HTC and urged the parties to reach an agreement.

Following that ruling, HTC said it diligently tried to settle the matter but that Niro and Intellect Wireless had resisted its efforts.

HTC lowered its initial \$4.8 million fee request to \$4,098,886. The company said it was willing at one point to accept even less if the parties could reach settlement, but it said Intellect Wireless has not made a single settlement offer and has refused to pay HTC's fees.

Meanwhile, Niro argued that HTC frustrated efforts to mediate the award amount by insisting that Niro agree to "unreasonable conditions." Those conditions included promising to pay an "all-in" amount of \$3.8 million, post a bond for the full settlement amount and remain jointly and severally liable for the settlement along with Intellect Wireless, according to Niro's brief.

The Niro attorneys are represented by Robert P. Cummins of Norman Hanson & DeTroy LLC.

Intellect Wireless is represented Shelly Byron Kulwin, Jeffrey R. Kulwin, Anthony J. Masciopinto and Rachel Anne Katz of Kulwin Masciopinto & Kulwin LLP.

HTC is represented by Stephen S. Korniczky, Martin R. Bader, Gray M. Buccigross and Matthew M. Mueller of Sheppard Mullin Richter & Hampton LLP, and Paul J. Korniczky of Leydig Voit & Mayer Ltd.

The case is Intellect Wireless Inc. v. HTC Corp. et al., case number 1:09-cv-02945, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Vin Gurrieri and Ryan Davis. Editing by Brian Baresch.

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