

Wabtec Knew Of Inevitable IP Clash, Siemens Tells Del. Jury

By **Jeff Montgomery**

Law360 (January 24, 2019, 6:37 PM EST) -- A Siemens Mobility Inc. attorney told federal jurors in Delaware Thursday that Wabtec Corp. knew some of its rail safety products would eventually collide with Siemens patent claims, during closing arguments before the company's \$8.3 million patent infringement trial went to jurors.

Mark M. Supko of Crowell & Moring LLP, counsel to Siemens, told the five-man, three-woman panel that Wabtec should have seen the suit coming, but said Siemens only sought proper compensation, and not product removals, in the eight-patent infringement trial that began Jan. 14.

"They've tried to dismiss these patents as something Siemens had on the shelf and dusted off in a last-ditch attempt to compete" in the positive train control market, Supko said. "Despite its claim of surprise, Wabtec knew full well that someday it was going to face an infringement claim."

The suit revolves around patents associated with components of automated PTC systems that together slow, stop or reroute trains when not operating safely or when encountering unsafe conditions. Siemens alleged that Wabtec's devices and components encroach either literally or in an equivalent way claims for each of the eight patents at issue.

Wabtec and Wabtec Railway Electronics Corp. operate under the corporate umbrella of Westinghouse Air Brake Technologies Corp., with all three defending in the case. In dispute are features of the company's Interoperable Electronic Train Management System, Back Office Server/Individual and Composite CRC Calculator (IC3) and TrainLink/End of Train systems.

Siemens alleged that four of its patents are associated with Wabtec onboard monitoring and communications systems, two with Wabtec off-track database and "back office" systems, and two with Wabtec end of train telemetry, including a patent that allows automatic sounding of train horns at rail crossings.

Alan J. Barry of K&L Gates, an attorney for Westinghouse, accused Siemens of using invalid patents acquired in part through a merger to "build a fence" around Wabtec's communications-based train management equipment and other systems.

“But that’s not permitted. The law just won’t allow it,” Barry said, reminding jurors that Wabtec engineers had testified during the trial that all of the Siemens patents at issue were “obvious to persons having skill in this industry.”

Wabtec and a company that it acquired along the way had been working with developing PTC components and systems for many years, Barry argued. The company’s current Interoperable Electronic Train Management System allows crews to control their trains while providing monitoring and automated intervention if operator or system failures warrant it.

“In reality, you see that PTC is a highly complicated and highly complex system that encompasses far more than these patents we’ve been talking about these past couple of days,” Barry said.

Congress passed a law in 2008 directing dozens of railroads to install positive train control decisions, in a move prompted by a deadly collision the same year between an Amtrak passenger train and a freight train in California.

Siemens argued that Quantum Engineering began developing technologies that led to the patents in the late 1990s and began applying for train and rail safety system patents in 2004 while trying to market its ideas to BNSF Railway Co.

BNSF was interested in the technology but was equally interested in buying into Quantum, according to trial testimony. When Quantum rebuffed the idea, BNSF allegedly demanded a right to license Quantum’s ideas, with BNSF eventually gaining the right to have Wabtec make its licensed products. Quantum was later acquired by Invensys Rail Group for \$38 million in 2008, and Invensys in turn was acquired by Siemens in 2013 for \$2.8 billion.

Although Supko said BNSF was not authorized to license Quantum’s technology to other railroads, BNSF allegedly did so anyway.

Jurors in the case faced a 10-page verdict form that obliged them to consider whether each of the patents was infringed directly or in an equivalent way, as well as whether or not Wabtec’s systems induced infringement directly or equivalently and whether Wabtec’s PTC systems contributed to infringement of each patent.

In addition, jurors were directed to determine whether Siemens’ patents were invalid. Based on the initial round of decisions, the eight individuals were asked to determine if reasonable royalties and lost profits was appropriate, with Siemens seeking \$7,224,000 for royalties and \$1,062,841 for lost profits.

The complexity of the verdict form drew an objection from Siemens, with attorney Karen Jacobs of Morris Nichols Arsht & Tunnell LLP saying that multiple decisions on infringement could become prejudicial.

“The infringement questions are a direct result of the way the plaintiff chose to plead the case,” Judge Stark said, noting the need to consider two different theories of direct infringements for three different sets of technologies. “I don’t think there’s a simpler way to present it or a simpler way to get it to the jury and not have an inconsistent verdict.”

The patents-in-suit are U.S. Patent Numbers 6,996,461; 7,236,860; 7,079,926; 6,824,110; 8,714,494; 9,233,698; 7,467,032; and 7,742,850.

Siemens Mobility Inc. is represented by Jack B. Blumenfeld and Karen Jacobs of Morris Nichols Arsht & Tunnell LLP, and Mark Supko, Kathryn L. Clune, Vincent J. Galluzzo, Joshua M. Rychlinski and Jacob Z. Zambrzycki of Crowell & Moring LLP.

Westinghouse Air Brake Technologies Corp., dba Wabtec Corp., and Wabtec Railway Electronics Inc. are represented by Steven I. Caponi, Alan J. Barry, Jason A. Engel, Benjamin E. Weed, Devon C. Beane, Katherine L. Hoffee and Erik J. Halverson of K&L Gates LLP.

The case is Siemens Mobility Inc. v. Westinghouse Air Brake Technologies Corp. and Wabtec Railway Electronics Inc., case number 16-00284, in the U.S. District Court for the District of Delaware.

--Editing by John Campbell.