

Siemens Awarded \$6.7M In Wabtec Train Control IP Trial

By **Jeff Montgomery**

Law360 (January 25, 2019, 11:46 AM EST) -- Federal jurors in Delaware awarded Siemens Mobility Inc. nearly \$6.7 million in damages Friday on the ninth day of a federal trial on claims that some of Wabtec Corp.'s "positive train control" products rely on features that infringed eight Siemens patents.

The five man, three-woman jury returned with its decision — including a finding of willful infringement of two patents — after deliberating Thursday afternoon and Friday morning, following seven days of testimony and argument before U.S. District Judge Leonard P. Stark.

Siemens argued that Wabtec had woven key patented features into parts of rail safety devices and systems now used by railroads as they pushed to comply with federal orders for a multibillion-dollar, nationwide safety upgrade. Congress ordered the upgrade in 2008 in the wake of a deadly crash in California and other mishaps.

"We're very happy with the verdict. It's what we expected," Marc Buncher, president and chief executive officer of Siemens North America, told Law360 immediately after the jury decision was read.

Under broader claims that were trimmed by pre-trial court rulings, Siemens was seeking up to \$8.3 million for lost profits and royalties dating to 2016 for alleged infringement of eight patents in components of Wabtec systems that monitor and communicate with trains and rail systems.

The on-train, "back office" and on-the-rails devices together can automatically slow, stop or reroute trains when they detect unsafe conditions or operations.

Jurors found literal or equivalent direct or indirect contributory infringement for all eight patents, although they rejected allegations that Wabtec actively induces infringement of six of the eight patents.

"This case was about respecting other people's property, and this was about doing the right thing when you don't," Mark M. Supko of Crowell & Moring LLP, counsel to Siemens, told jurors before they began deliberations. "You see from the evidence that Wabtec has done neither in this case."

Supko said after the verdict that Siemens was pleased with the result and said later court proceedings

would determine the award for the two willful patent infringements, which could involve up to triple damages.

Comment was not immediately available from Wabtec Corp., which operates under Westinghouse Air Brake Technologies Corp.

Alan J. Barry of K&L Gates LLP, counsel to Wabtec, said after the verdict that he could not comment.

During the trial, however, Barry said, "What they're trying to do with the patents is to capture technology that is in the public domain, that belongs to all of us."

Wabtec, which has corporate lineage that dates to 1869 and the formation of Westinghouse Air Brake Company, had argued that the technology involved in the case was "fully in play" at Wabtec, and was well-known in the industry. The company said its onboard Electronic Train Management collision avoidance system had been identified by the Federal Railroad Administration as the "locomotive standard" for PTC.

During the trial, Wabtec, told the jury that Siemens had never widely sold its own positive train control systems in the U.S. Instead, Siemens acquired the patents-in-suit in 2013 with the purchase of a rail safety firm that itself acquired the disputed patents in 2008, after Wabtec had begun marketing its own now-industry-leading system.

Siemens' case sustained a setback on Dec. 17, when Judge Stark granted a summary judgment of no pre-suit damages against Wabtec. The ruling limited damages to the period after April 21, 2016, for three of the patents and Oct. 21, 2016, for five more, with Wabtec saying that it would eliminate six years of damages.

Siemens had argued that Wabtec had been aware of its PTC portfolio since at least November 2014. Supko said during the trial that the company's damages claims would have been "orders of magnitude" larger had the longer infringement span been upheld.

The jury verdict Friday awarded Siemens \$5,598,600 in reasonable royalties for the infringement period — less than the \$7,224,000 sought by the company — as well as the full requested \$1,062,841 for lost profits.

None of Siemens patents were found invalid by the jury.

Judge Stark said he would convene a hearing for the two sides in a week, with both directed to work together to fashion a single order or competing orders to put the jury's findings into effect and complete the current phase of the case.

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.

One claim for each of the patents went to the jury. The onboard device patents included the '461 patent, covering a method for assuring that a train does not pass an improperly configured device, such as a rail-side switch or signal. Also involving on-train systems were patents '860 and '926, describing methods for automated train control, and '110, which describes a method for automatically activating a warning device.

Patents '698 and '494 are associated with off-track or back-office "safety critical" systems and communications capabilities. The '032 and '850 patents focus on a method for locating devices at the ends of trains.

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 Alyssa Miller.

Update: This story has been updated with more information about the case.