

- [Cases](#)
- [Tracking](#)
- [News](#)
- [Rankings](#)
- [Jobs](#)

 [Printable Version](#)
 [Share Article](#)
 [Rights/Reprints](#)
 [Editorial Contacts](#)

Foundry Slammed For 'Troll' Claim As Bid For Fees Rejected

By **Ryan Davis**

Share us on: [LinkedIn](#) [Facebook](#) [Twitter](#)

0 Comments

Law360, New York (October 08, 2013, 8:13 PM ET) -- A federal judge ruled last week that a patent suit by ChriMar Systems Inc. against Foundry Networks Inc. was not frivolous, rejecting Foundry's request for \$4.9 million in attorneys' fees and finding that Foundry had made groundless claims that ChriMar is a "patent troll."

U.S. District Judge Avern Cohn wrote Oct. 3 that by suggesting ChriMar is a patent troll, Foundry, now a part of [Brocade Communications Systems Inc.](#), "seriously damages its credibility."

ChriMar actually invented the Ethernet technology at issue and mounted a reasonable infringement suit against Foundry, even though the patent was ultimately found invalid, the judge wrote.

"Patent troll" is a pejorative term for a company that enforces patents "in an unduly aggressive or opportunistic manner," the judge wrote, but ChriMar "put up a credible case" and "there is nothing in ChriMar's conduct ... that was unduly aggressive or

Documents

 [Order](#)

Related

Sections

 [Intellectual Property](#)
[Technology](#)

 [Case](#)

Information

Case Title

 [Chrimar Systems, Incorporated v. Foundry Networks, Incorporated](#)

Case Number

[2:06-cv-13936](#)

Court

[Michigan Eastern](#)

Nature of Suit

[Patent](#)

Judge

[Avern Cohn](#)

Date Filed

[September 6, 2006](#)

Law Firms

 [Hogan Lovells](#)
 [Kerr Russell](#)

opportunistic."

ChriMar sued Foundry in 2006, alleging infringement of a patent for power over Ethernet networking switches. Last year, Judge Cohn granted Foundry summary judgment that the patent was invalid, a decision that was affirmed by the Federal Circuit in April without an opinion.

Foundry then asked the judge to declare that ChriMar's suit was baseless and frivolous and order ChriMar to pay the \$4.9 million that Foundry spent defending itself. It claimed that during the case, ChriMar "unreasonably and vexatiously persisted in arguing clearly untenable positions in subjective bad faith."

Judge Cohn entirely rejected that argument, concluding nothing in ChriMar's conduct represented the kind of "exceptional" case marked by baseless allegations for which a successful defendant can be awarded attorneys' fees.

"There is a difference between advancing a losing argument and in prosecuting a frivolous case," he wrote. "Here we have the former, not the latter."

The case, while "extended and contentious, was unexceptional and not out of the ordinary," the judge wrote. He compared it to other patent cases in which the prevailing defendants was awarded attorneys fees, including situations where the plaintiff destroyed evidence or engaged in other misconduct.

In contrast, "Foundry is merely relying on the fact that its invalidity argument carried the day and ChriMar should have known all along that it would," he wrote. "This is not sufficient to justify finding an exceptional case."

He noted that while the [U.S. Supreme Court recently decided](#) to hear **two different cases** regarding the standard for awarding fees for "exceptional" patent cases, neither case would have any bearing on his decision.

TRACK

Reising Ethington

TRACK

Brocade Communications Systems, Inc.

TRACK

New York Times Co.

TRACK

U.S. Supreme Court

TRACK

5,406,260 - Network security system for detecting removal of electronic equipment

Companies

Government Agencies

Patents

- Copyright 2013, Portfolio Media, Inc.
- |

Home
- |

About
- |

Contact Us
- |

Site Map
- |

Site Index
- |

Jobs
- |

Careers at Law360
- |

Mobile
- |

Terms
- Beta Tools:
- |

Track docs
- |

Track attorneys
- |

Track judges

The judge also said he agreed with ChriMar that Foundry's suggestion that it is a patent troll was "only provided for the purposes of evoking an emotional response."

Foundry did not actually use the words "patent troll" in its motion, but wrote that its views about when fees should be awarded were reflected in a recent [New York Times](#) op-ed by Federal Circuit Chief Judge Randall Rader, the title of which was "Make Patent Trolls Pay in Court."

Judge Cohn also noted that an attorney for Foundry referred to ChriMar as a "notorious patent troll" in a [April Law360 article](#) about the Federal Circuit ruling.

ChriMar took great exception to those statements in its opposition to Foundry's motion for fees, writing that "ChriMar is not a patent troll, nor is it a nonpracticing entity — and Foundry knows this."

While patent trolls make money by filing lawsuits over patents they do not practice, ChriMar developed the Ethernet technology at issue and has always manufactured products based on it and offered them for sale, ChriMar said.

"There is no weak infringement case here," it said. "Rather, ChriMar was simply defending the intellectual property it developed — and had a right to assert."

An attorney for ChriMar said that the ruling confirms that any allegation that ChriMar is a patent troll is improper. An attorney for Foundry could not immediately be reached for comment Tuesday.

The patent-in-suit is U.S. Patent No. [5,406,260](#).

Foundry is represented by K.T. Cherian and Constance Ramos of [Hogan Lovells US LLP](#) and Fred Herrmann and William Sankbeil of [Kerr Russell](#) and Weber PLC.

ChriMar is represented by Richard W. Hoffmann of [Reising Ethington PC](#).

The case is ChriMar Systems Inc. v. Foundry Networks Inc., case No. [2:06-cv-13936](#), in the U.S. District Court for the Eastern District of Michigan.

Related Articles

- [Foundry Fights Off Alleged 'Patent Troll' In Fed. Circ.](#)
- [Cisco, HP, Others Caught In Communications Patent Suit](#)
- [ITC To Probe Cisco, HP, Others Over Network Device IP](#)

0 Comments

[Terms of Service](#)

Your name will appear next to your comment. Your email address will not be visible to the public.