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Apple, Sirius Lose Bid To Transfer MP3 Patent Suit

By **Melissa Lipman**

Law360, New York (February 12, 2010) -- A federal judge in Texas has refused to transfer a lawsuit accusing Apple Inc., Sirius XM Radio Inc. and two others of infringing a patent for an audio program player and playback system technology to Massachusetts, ruling that plaintiff Personal Audio LLC is based in Texas while none of the defendants has a presence in the other state.

Judge Ron Clark of the U.S. District Court for the Eastern District of Texas denied the change of venue motion from Apple, Sirius and fellow defendants Coby Electronics Corp. and Archos Inc. on Thursday.

In a Jan. 4 motion, the defendants claimed that "the locations of third parties, plaintiff's principals, plaintiff's predecessor businesses and defendants point to Boston" as the appropriate venue for the litigation. The principals of Personal Audio had previously done business near that state's capital under the name Personal Audio Inc. and refiled as a Texas entity "just weeks" before launching the current patent suit, the motion said.

But Judge Clark rejected those arguments, noting that Personal Audio is a Texas limited liability company that maintains an office in the Eastern District of Texas, where it stores many of its original documents. On the other hand, none of the parties have "a presence, evidence or other documents" in Massachusetts, the court ruled.

While two of the defendants are based in New York, the others are closer to Texas than Massachusetts, and many of the witnesses and other evidence "will have to travel a significant distance to trial regardless of which forum hosts the case," according to the opinion.

"At most, defendants can show that there may be some nonparty witnesses in the District of Massachusetts," but that does not meet the burden of demonstrating that the New England state is "clearly more convenient" than the Eastern District of Texas, Judge Clark wrote.

Even though the plaintiff moved to and reincorporated in Texas just two months before suing, the judge found that Personal Audio's "presence in the Eastern District of Texas is not a 'fiction'" and pointed out that there are no laws nor cases laying out a "mandatory waiting period" for a company to sue in a judicial district it has recently entered.

Personal Audio attorney Ronald Schutz of Robins Kaplan Miller & Ciresi LLP applauded the decision as "extremely well-written" and "absolutely rock-solid analysis" on Friday.

"I didn't think this case was a close call and I think the judge thought the same way," Schutz said.

Representatives for the defendants were not immediately available for comment Friday.

Personal Audio launched the case in late June, claiming the MP3 players made and sold by the defendants have violated two of its patents.

The patents in question are one that covers an audio program player that includes a "dynamic program selection controller" and another that encompasses an audio program distribution and playback system, issued in March 2001 and March 2009, respectively.

Personal Audio alleges that Apple's iPod family and Apple computers preloaded with iTunes software infringe its technology, along with Sirius' Stiletto 2 MP3 player, Coby's MP705 MP3 player and Archos' 105 MP3 player.

The plaintiff is seeking damages, prejudgment interest, post-judgment interest, costs and disbursements, and attorneys' fees.

The patents-at-suit are U.S. Patent Numbers 6,199,076 and 7,509,178.

Personal Audio is represented by Germer Gertz LLP and Robins Kaplan Miller & Ciresi LLP.

Apple is represented by Fish & Richardson PC.

Sirius is represented by Capshaw DeRieux LLP and Kramer Levin Naftalis & Frankel LLP.

Coby is represented by Siebman Reynolds Burg & Phillips LLP and Orrick Herrington & Sutcliffe LLP.

Archos is represented by Pillsbury Winthrop Shaw Pittman LLP.

The case is Personal Audio LLC v. Apple Inc. et al., case number 09-cv-00111, in the U.S. District Court for the Eastern District of Texas.