

Coby, Archos Settle Personal Audio MP3 Patent Spat

By **Leigh Kamping-Carder**

Law360, New York (May 12, 2010) -- Coby Electronics Corp. and Archos Inc. have become the first defendants to settle Personal Audio LLC's suit accusing Apple Inc. and others of infringing two patents for an audio program player and playback system.

Judge Ron Clark of the U.S. District Court for the Eastern District of Texas on Tuesday approved a joint motion Personal Audio and Coby filed seeking to dismiss all claims and counterclaims between them.

Archos also entered a confidential settlement with Personal Audio, according to the plaintiff's attorney, Ronald J. Schutz of Robins Kaplan Miller & Ciresi LLP.

Personal Audio launched the case in late June, claiming MP3 players made and sold by Coby, Archos, Apple and Sirius XM Radio Inc. violate two patents.

Personal Audio has since amended its complaint to name Sirius subsidiary XM Satellite Radio Inc.

One of the patents-in-suit covers an audio program player that includes a "dynamic program selection controller," while the other encompasses an audio program distribution and playback system. They were issued in March 2001 and March 2009, respectively.

Personal Audio alleges that Apple's iPod family and its computers preloaded with iTunes software infringe the patents, as do Sirius' Stiletto 2 MP3 player. Archos' 105 MP3 player and Coby's MP705 MP3 player were also targeted as infringing products.

Also on Tuesday, Judge Clark gave Personal Audio permission to add Apple's newly launched iPad to its list of accused products and order the technology giant to provide its source code to the plaintiff if Personal Audio identifies software limitations in its infringement claims.

In April, Personal Audio asked Judge Clark to order Apple to give more complete responses to several discovery queries, claiming that the technology giant offered "virtually no responsive information" in its initial answers.

The plaintiff filed a motion to compel, arguing that Apple failed to properly answer six queries related to its noninfringement position, how its products work, and the extent of CEO Steve Jobs' role in developing the iPod and iPhone.

Personal Audio said it needed complete responses to its queries before the parties in the case lodged their claim construction positions. The motion is still pending, and the claim construction deadline has been extended to Friday.

Apple has maintained that it doesn't have to offer "any of its bases" for its counterclaim seeking a declaratory judgment of noninfringement before the court issues its claim construction order, according to the motion.

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

The patents-in-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.

Coby is represented by Siebman Burg Phillips & Smith 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.

--Additional reporting by Melissa Lipman