

\$2.54b Damages in Idenix Sets New Record

Last week on December 15, a jury in the awarded Idenix Pharmaceuticals LLC a record-setting \$2.54 billion in damages against Gilead Sciences, Inc. (case no. 1:14-cv-0846 in the District of Delaware). The amount was based on a reasonable royalty theory (finding a 10% rate on a base of \$25.4 billion).

This is the largest patent award ever by a district court, and the fifth patent award ever over \$1 billion (the other four are listed below):

- \$1.725 billion in *Boston Scientific v. Cordis* (D.Del.), awarded in 2010.
 - Award was a consent judgment.
- \$1.456 billion in *Marvell Semiconductor v. Carnegie Mellon University* (W.D.Pa.), awarded in late 2012.
 - Appealed (2014-1492): Fed Circuit affirmed on validity and infringement, but affirmed only \$278 million of damages and remanding to determine additional damages issues. The parties settled for \$750m in 2016.
- \$1.168 billion in *Abbott Labs v. Centocor and New York University* (E.D.Tex), awarded in 2009.
 - Appealed (2010-1144): Fed Circuit reversed the district court's denial of JMOL on validity (for § 112 written description), vacated award.
- \$1 billion in *El Dupont De Nemours v. Monsanto* (E.D.Mo.), awarded in 2013.
 - Settled after appeal filed.

Large awards continue to be rare, however. Based on data from Lex Machina's 2015 Patent Year in Review, the median damages award for patent cases is about \$1.5 million, and approximately 90% of awards are less than \$50 million.

Idenix has filed multiple patent suits against Gilead, but has not filed patents cases against any other party. In this case, Idenix was represented by Jones Day with Delaware firm Ashby & Geddes as local counsel. Jones Day has 101 open patent cases pending, and has represented parties in 49 patent cases filed so far in 2016.** Jones Day's other clients have included Purdue Pharma, Abbott Labs, and Bayer Corp.

Gilead has participated in 49 patent cases since 2010, most frequently as a plaintiff. No other damages have been awarded in Gilead's cases (in either direction).

* Excluding the ongoing saga of Apple v. Samsung (which involves both design patents and trademark claims).

** as of Monday 12/19/2016.