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Jury Says Sears, Overstock.com Owe \$15M In Tech Patent Row

By **Kurt Orzeck**

Law360, Los Angeles (January 16, 2015, 11:06 PM ET) -- A Texas federal jury on Friday decided that Sears Holding Corp. and Overstock.com Inc. owe \$15 million to Droplets Inc., in the first trial over a series of suits accusing high-profile online retailers and others of incorporating patent-infringing technology into their websites.

After deliberating for roughly three hours, the jury said Droplets had sufficiently shown that the defendants infringed one claim in U.S. Patent No. 6,687,745; two claims in U.S. Patent No. 7,502,838; and three claims in U.S. Patent No. 8,402,115. The patents cover technology allowing access to graphic user interfaces over both the Internet and private client/server networks.

Texas-based Droplets filed six lawsuits in three venues against online retailers, brokerage firms and Web developers that also included Apple Inc., eBay Inc. and E-Trade Financial Corp. While the software-development company's suits were **consolidated in November 2012**, they were later severed and transferred following the passage of the America Invents Act.

Theodore Stevenson III of McKool Smith PC, which is representing Droplets, told Law360 on Friday that they were happy with the jury's decision.

"We're pleased that Droplets has gotten the recognition they deserve for the invention they created," Stevenson said.

A spokesman for Sears Holdings told Law360 on Friday that they respectfully but strongly disagree with the jury's verdict and intend to appeal.

"We believe we have strong grounds to overturn the verdict under well-established case law," the spokesman said.

Overstock General Counsel Mark J. Griffin told Law360 on Friday that they too are disappointed in Friday's decision and planning an appeal.

"We believe [the verdict] was flawed by a damage model that was improper, resulting in an inflated damage award, and we have other substantial challenges," Griffin said. "While we have the highest respect for the jury process, we feel that for the reasons I've cited, they simply got it wrong in this time. That said, we know that this is a process, and the next process step will be the prompt filing of an appeal."

The suits accused the defendants of infringing the technology with Web features including search suggest, mouse over and shopping carts, according to Stevenson.

The trial started Tuesday morning and ended earlier Friday, after lawyers presented evidence

for three days. Under the award, the Sears defendants — which also include Sears Roebuck & Co. and Sears Brands LLC — owe \$11 million to Droplets. The jury told Overstock to pay \$4 million.

In addition to their infringement findings, the jurors determined that Sears and Overstock hadn't provided enough evidence that the claims at issue were invalid as obvious or anticipated. They also decided that the defendants hadn't sufficiently shown that they had been granted a license to practice the patents-in-suit.

Related litigation is pending in California and New York.

The patents-in-suit are U.S. Patent Numbers 6,687,745; 7,502,838; and 8,402,115.

Droplets is represented by Theodore Stevenson III, Sam F. Baxter and Josh W. Budwin of McKool Smith PC.

Sears and Overstock are represented by John H. Barr Jr. of Bracewell & Giuliani LLP, with Christopher A. Shield and Timothy R. Geiger of the same firm serving of counsel.

The case is Droplets Inc. v. Overstock.com Inc. et al., case number 2:11-cv-00401, in the U.S. District Court for the Eastern District of Texas.

--Editing by Edrienne Su.

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