

IP Litigation Awards, Settlements Reach Record Highs

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Topped by medical device maker Medtronic's dizzying \$1.35 billion payout to a Los Angeles surgeon, this is turning out to be a blockbuster year for settlements and awards in intellectual property litigation, according to our survey of litigation payouts and the firms that win them.

The California branch of Chicago-based Kirkland & Ellis negotiated the largest settlement in an intellectual property case so far this year, winning an astonishing \$1.35 billion for a single individual.

The settlement, following a \$400 million jury award in U.S. District Court for the Central District of California, is the largest payout in the history of U.S. patent litigation. Dr. Gary Michelson pocketed more than \$100 million more than the recipient of the second-biggest settlement in history, Sun Microsystems, which patched up with once-archrival Microsoft last year after a lengthy and at times acrimonious court battle.

In a bitter twist of irony for Medtronic, the medical device maker's defeat ended a fight that the company actually started itself. In 2001, Medtronic sued Dr. Michelson and his company, Karlin Technologies Inc., accusing him of breaching a noncompete clause by trying to sell new spinal fusion implant technology to Medtronic's competitors and improperly seeking to take back patent rights.

Michelson filed a countersuit, asserting that Medtronic was trying to use the contract to cover all his life's work, thus preventing any other company from buying other inventions. He also alleged that Medtronic cheated him out of millions in royalties, did not properly credit his inventions and had purposely not released new Karlin Technologies Inc. technology into the market.

The past two years have not been kind to Medtronic, which also lost patent lawsuits brought by Interpore Cross International, Biomet, Cytometix and Guidant. But the company isn't the only medical device maker that had to pay up this year. Indeed, the second-biggest payout was made by one of Medtronic's rivals, Boston Scientific, to Israel's Medinol.

Medinol claims that Boston Scientific took its equipment and reverse-engineered a copy with the intention of eliminating Medinol as a supplier, or buy the company cheaply. Medinol's \$750 million settlement suggests it had a strong case, and the fight isn't over yet, according to Rory Millson, an attorney with Cravath, Swaine & Moore, which represents the company.

"We're going to bring a patent infringement case. . . . It's going to cover the Liberte and other products of theirs that we say infringe on our intellectual property," Millson said, vowing to pursue future royalties on a next-generation stent.

But winning a large settlement is not easy, according to Kirkland & Ellis LLC partner Robert Krupka, who represented Michelson in the Medtronic case and negotiated the settlement.

"Reaching that settlement was the hardest thing I've ever done as a practicing lawyer," he said. "Small differences on issues were magnified because of the amounts involved. This was an unusual settlement because the court was watching and the press was watching. It was a complicated mess because the deal was contingent on events."

Our survey shows that copyright and trade-secrets litigation can also yield huge payouts.

In March, a California jury awarded memory-card maker Lexar Media more than \$380 million in monetary damages in its lawsuit against Japanese computer maker Toshiba for breach of fiduciary duty and theft of trade secrets.

Semiconductor Manufacturing International, China's largest chip maker, agreed to pay \$175 million to settle a patent infringement and trade-secrets suit brought by rival Taiwan Semiconductor Manufacturing in U.S. and Taiwanese courts.

In a high yielding copyright suit, a group of freelance writers won an \$18 million settlement from database operators, including ProQuest Co., Reed Elsevier Group's LexisNexis database, as well as The New York Times and Dow Jones & Co., after alleging the operators used their articles in databases without the authors' permission.

The survey covered judgments, awards and publicly disclosed settlement amounts from January 1 until November 4 this year. There is no way to account for undisclosed settlement amounts.

Of the millions in payouts in 2005, eight of the top ten were a result of out of court negotiations. Only two, the \$480 million award to Paragon Trade Brands by Weyerhaeuser Co., and the \$465 million award to Lexar by Toshiba, were handed down as verdicts.

Two firms appear in the top ten as representing both plaintiffs and defendants. Cravath, Swaine & Moore won a \$750 million settlement representing Medinol, but lost a \$400 million settlement defending Compuware.

Wilmer, Cutler, Pickering, Hale & Dorr defended Boston Scientific, which paid Medinol \$750 million, but led EMC Corp. to a \$325 million settlement against Hewlett Packard.

Although these million-dollar settlements are financially lucrative for plaintiff's attorneys, they can also be valuable in other ways, Krupka said.

"Before this case, many people didn't know Kirkland had a California office," he said. "Now everyone knows. But as many people as were pleased and proud of us, there are others who are appalled that we were involved in transferring wealth of that magnitude to an individual."

Highest Payouts 2005 Year To Date

Case	Lead Plaintiff Firm	Payout (M)
Michelson v. Medtronic (patent)	Kirkland & Ellis	1350 (a)
Medinol v. Boston Scientific (patent)	Cravath, Swaine & Moore	750 (s)
Novell v. Microsoft (patent, antitrust)	Parsons Behle & Latimer	536 (s)
Paragon. Weyerhaeuser (patent)	Susman Godfrey McKenna Long & Aldridge	480 (s)
Lexar v. Toshiba (trade secrets)	Weil, Gotshal & Manges	465 (s)
NTP v. RIM (patent)	Wiley, Rein & Fielding	450 (s)
Compuware v. IBM (trade secrets)	Fenwick & West	400 (s)
At Home v. AT&T (patent, trade secret)	Weil Gotshal & Manges	340 (s)
EMC v. HP (patent)	Wilmer Cutler Pickering Hale & Dorr	325 (s)
MicroUnity v. Intel (patent)	Townsend and Townsend and Crew	300 (s)
O2 Micro International v. Monolithic Power Systems (patent, trade secret)	Morgan Lewis & Bockius LLP and Fenwick & West LLP	252 (a)
InterDigital Communications Corp. v. Nokia Corp. (royalty dispute)	Wilson Sonsini Goodrich & Rosati.	232 (a)

Taiwan Semiconductor Manufacturing v. Semiconductor Manufacturing International (patent)	Keker & Van Nest, LLP; White & Case, LLP; and Haynes and Boone, LLP.	175 (s)
Philip Morris v. Otamedia	Anold & Porter; Heller Ehrman, White & McAuliffe; Piper & Marbury; Hill & Barlow	173 (a)
Masimo Corporation v. Tyco International Ltd. (patent)	Knobbe Martens Olson & Bear LLP.	164 (a)
Organon International v. Barr Pharmaceuticals (patent)	Greenberg Traurig, LLP and Kenyon & Kenyon	142 (s)
Intergraph v. Hewlett Packard (patent)	Robins, Kaplan, Miller & Ciresi,	141 (s)
Freedom Wireless v. Boston Communications Group (patent)	Quinn Emanuel Urquhart Oliver & Hedges, LLP	128 (a)
Rambus, Inc. v. Infineon (patent)	Gray Cary Ware & Freidenrich and Munger Tolles & Olson LLP.	100 (s)
Advanced Medical Optics, Inc. v. Alcon Manufacturing (patent)	Potter Anderson & Corroon, LLP	94.8 (a)

Note: (a) award; (s) settlement

Includes only publicly disclosed settlement amounts

Source: IP Law Bulletin, U.S. District Courts

Top 10 Payouts of All Time

Case	Lead Plaintiff Firm	Payout (M)
Michelson v. Medtronic (patent)	Kirkland & Ellis	1350 (s)
Sun Microsystems v. Microsoft	Day Casbeer Madrid & Batchelder	1250 (s)
Texas Instruments v. Hyundai (patent)	Jones Day Reavis & Pogue	1000 (s)
Texas Instruments v. Samsung (trademark, patent)	Law Office of Carl R. Roth	1000 (s)
Polaroid v. Eastman Kodak (patent)	Ropes & Gray	873 (a)
Medinol v. Boston Scientific (patent)	Cravath, Swaine & Moore	750 (s)
Novell v. Microsoft (patent, antitrust)	Parsons Behle & Latimer	536 (s)
Eolas Technologies v. Microsoft (patent)	Robins, Kaplan, Miller & Ciresi	521 (a)
City of Hope Medical v. Genentech (patent)	Irell & Manella	500 (a)
Paragon. Weyerhaeuser (patent)	Susman Godfrey McKenna Long & Aldridge	480 (a)

Note: (a) award; (s) settlement. Figures are not adjusted for inflation. Includes only publicly disclosed settlement amounts. Source: IP Law Bulletin, U.S. District Courts