

Daily Journal

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TOP VERDICTS OF 2013

TOP DEFENSE RESULTS

NetAirus Technologies LLC v. Apple Inc.

When an eight-person jury said they were deadlocked after deliberating over whether Apple Inc.'s iPhone products had infringed NetAirus Technologies LLC patents, it would have been easy for the defense to agree to a mistrial.

But unusually, both sides agreed to accept a majority verdict, demonstrating both had been confident they would come out ahead.

Apple's team from Milbank, Tweed, Hadley & McCloy LLP, led by Los Angeles-based partner Mark C. Scarsi, were glad they took the risk. In November, the jury came out 7-1 in their favor.

The patent NetAirus asserted in the case had survived reexamination by the U.S. Patent and Trademark Office, which made the case more challenging for the Milbank Tweed team.

The defense said the seal of approval from the patent office often makes it difficult to convince a jury otherwise, but they found a way. The jury decided the claims were invalid



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on two grounds. *NetAirus Technologies LLC v. Apple Inc.*, 10-3257 (C.D. Cal, filed April 30, 2010).

The majority found the patent failed to meet the written description requirements, an invalidity defense seldom argued successfully.

The defense attorneys had success narrowing the case in pretrial motions, reducing the number of claims NetAirus could assert and the damages the company could seek. Apple was also aided by pretrial rulings excluding the NetAirus damages expert and experts from testifying.

	<i>case</i> INFO
Patent infringement	
Central District of California	
U.S. District Judge John A. Kronstadt	
Defense attorneys: Milbank, Tweed, Hadley & McCloy LLP, Mark C. Scarsi, Christopher J. Gaspar, Chris L. Holm, Hannah L. Cannom, Ashlee Lin	
Plaintiff's attorneys: Niro, Haller & Niro, Raymond P. Niro, Dean D. Niro, Robert A. Conley, Tahiti Arsulowicz; Wolf, Rifkin, Shapiro, Schulman & Rabkin LLP, Mark B. Mizrahi,	

The Milbank lawyers declined comment. Last month, NetAirus' attorneys filed a motion for a new trial.

— Hadley Robinson