

**INTELLECTUAL PROPERTY****Patents, Intellectual Property — Infringement, Contracts — Promissory Estoppel****Wireless tech firm's 'reverse control panel' patent infringed****VERDICT** **\$45,300,000****CASE** TruePosition Inc. v. Andrew Corp.,
No. 1:05-cv-00747-SLR**COURT** U.S. District Court, District of Delaware,
Wilmington, DE**JUDGE** Sue L. Robinson**DATE** 09/14/2007**PLAINTIFF**

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FACTS & ALLEGATIONS Plaintiff TruePosition, Inc. is a wireless technology company that owns U.S. Patent No. 5,327,144 (also known as the '144 patent), which deals with a cellular phone location system for determining the location of mobile cellular telephones using UTDOA (Uplink Time Difference of Arrival).

According to TruePosition, the '144 patent is directed to locating a mobile phone through a technique called Uplink Time Difference of Arrival (UTDOA), which involves determining the time that a cell phone signal is received at three or more antennas and then calculating the differences in the arrival times to pin-point the location of the phone. The '144 patent is directed to locating a cell phone from its control channel transmissions sent when the user is not talking, as opposed to traffic channel transmissions sent during a phone call.

TruePosition alleged that Andrew Corporation's system for locating cellular telephones, known as the Geometrix

Wireless Location System, infringed the '144 patent. Andrew marketed and sold Geometrix for emergency, law-enforcement, and security purposes. The Geometrix system comprised a positioning determining entity (PDE) that was overlaid on cellular network equipment. Using a UTDOA technique, the Geometrix PDE located signals that were sent over a SDC channel (when a user was not on a call) or a traffic channel (when a user was on a call).

TruePosition alleged that from 2004 to 2006 Andrew Corp. supplied and offered to supply services and equipment that facilitated the location of cellular telephones to Saudi Telecom Co., a cellular telephone network service provider in Saudi Arabia. TruePosition alleged that the geolocation of cellular telephones using UTDOA on the SDC channels infringed its '144 patent.

TruePosition sued Andrew Corp. for patent infringement. Plaintiff's counsel argued that a SDC channel included a "one-way" channel that infringed the '144 patent because the SDC channel included a frequency that carried information only in the reverse direction. Dr. Oded Gottesman, the plaintiff's technical expert, said that no frequencies of an SDC channel carried information in both directions, as some frequencies carried information in the reverse direction, while other frequencies carried information in the forward direction.

Andrew Corp. denied the allegations.

Dr. David Goodman, Andrew's technical expert, testified that a "reverse control channel" is a unidirectional channel and that the use of an SDC channel did not infringe because an SDC channel is a bidirectional channel that does not have a predetermined range of frequencies. The Court's claim construction specified that the "prescribed set of reverse control channels" required by each asserted claim must have a predetermined range of frequencies and transmit only in the uplink (or reverse) direction.

Andrew also asserted affirmative defenses of fraud, promissory estoppel, implied license, equitable estoppel, and unclean hands arising out of the parties' work in connection with organizations that set technological standards.

INJURIES/DAMAGES Carla Mulhern, the plaintiff's economist, said that lost profits were an appropriate

measure of TruePosition's damages and that TruePosition's lost profits due to Andrew's infringement amounted to \$45.3 million.

Wayne Hoberlein, the defense economics expert, said that lost profits were not an appropriate measure of damages and that, in any event, TruePosition's lost profits amounted to no more than \$9.9 million.

VERDICT INFORMATION The jury found for TruePosition on the claims of literal infringement and willfulness. The jury found that Andrew willfully infringed the '144 patent, and awarded TruePosition \$45.3 million. Judgment was entered in accordance with the verdict.

The jury also found in favor of TruePosition on two of Andrew's five equitable defenses. Specifically, the jury found that Andrew did not prove by a preponderance of the evidence that TruePosition defrauded Andrew. The jury also found that Andrew did not prove by clear and convincing evidence that: TruePosition made a promise and intended to induce Andrew's action or inaction based on the promise; Andrew reasonably relied on the promise; and that Andrew was injured by its reliance. Judgment has been entered in accordance with the jury's verdict

PLAINTIFF

EXPERT(S) Oded Gottesman Ph.D.; Patent Infringement; Santa Barbara, CA
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DEFENSE

EXPERT(S) David Goodman Ph.D.; Patent Infringement; New York, NY
Wayne Hoberlein C.P.A.; Damages

POST-TRIAL The other three equitable defenses (equitable estoppel, implied license, and unclean hands) remain to be decided by the Court. The parties have completed post-trial briefing for those defenses, as well as for TruePosition's motions for permanent injunctive relief and enhanced damages.

EDITOR'S COMMENTS This report is based on information that was provided by plaintiff's and defense counsel.