

A Fresh Look At The Jury Data In Waco Patent Trials

By **Leah Buratti and Lewis Tandy** (May 15, 2023, 5:28 PM EDT)

The reasons plaintiffs often choose to file patent cases before U.S. District Judge Alan Albright in the Waco Division of the U.S. District Court for the Western District of Texas have been discussed widely, including:

- A predictable patent process set via the judge's patent standing orders;
- Early deadlines for contentions and claim construction;
- Quick turnaround on claim construction decisions;
- Streamlined discovery procedures; and
- An efficient timeline for bringing cases to trial and, accordingly, tendency not to stay cases pending inter partes review.



Leah Buratti



Lewis Tandy

But what role does the Waco jury pool play in parties' decisions to litigate in Waco — or seek transfer out of Waco?

This question is especially top of mind for many patent litigators in the wake of the April 21 jury **verdict** in *Textron Innovations Inc. v. DJI Technology Inc.*, awarding the plaintiff, a defense contractor, \$278.9 million upon finding infringement, followed by two jury verdicts of:

- Noninfringement and invalidity, in **Hafeman v. LG Electronics Inc.** (April 28); and
- Noninfringement in **Global eTicket Exchange Ltd. v. Ticketmaster LLC** (May 4).

We've now had a little over four years and seven months with Judge Albright at the helm of the Waco patent docket, enough time to see the results of 20 patent jury trials in Waco.

The results provide an interesting glimpse into how Waco juries are approaching patent cases. Taken together, these results tend to undermine a narrative that Waco juries are particularly plaintiff-friendly.

A look at the statistics from the patent jury trials in Waco reveals that (1) taking verdicts and awards into consideration, Waco juries do not appear to clearly favor plaintiffs over defendants; and (2) Waco juries are comfortable deviating from large damages numbers sought by plaintiffs — but they also are willing to award large sums on occasion. The overview shows fairly balanced juries.

Out of the 20 jury trials in patent cases that have reached a jury verdict, plaintiffs have won 11 times, i.e., in approximately 55% of trials that have gone to jury verdict in patent cases. But in those cases that plaintiffs have won, the numbers reveal that Waco juries are not simply capitulating to whatever damages number the plaintiff asks for.

For example, in the 2022 *Caddo Systems Inc. v. Microchip Technology Inc.* decision, the jury **awarded** just \$235,000 — despite the plaintiff requesting \$30.2 million.

Indeed, Waco juries are not shy about deviating from the damages amount requested by the plaintiff. Overall, the jury awarded the plaintiff the damages it sought in just three of the 11 verdict-for-plaintiff trials.

The jury awarded an amount less than what the plaintiff asked for in eight of the 11 verdict-for-plaintiff trials — the damages ranged between 0.1% and 91% of the damages requested by the plaintiff.

For those eight cases, the jury awarded a median of approximately 66.5% of the damages requested, or an average of approximately 61.1%.

Across all 11 cases, the jury awarded a median of approximately 75% of the damages requested, or an average of approximately 71.7%.

Waco Division Patent Trials - Jury Verdict Damages Awards

Case	Plaintiff's Damages Request	Jury's Award	Percentage Awarded	Date
<i>VLSI Tech. LLC v. Intel Corp. (Part I)</i>	\$2.4B	\$2.18B	91%	3/2/21
<i>CloudofChange, LLC v. NCR Corp.</i>	\$12M – \$20M	\$13.2M	66%	5/19/21
<i>Jiaxing Super Lighting Elec. Appliance Co., Ltd. v. CH Lighting Tech. Co., Ltd.</i>	\$14.17M	\$14.17M	100%	11/4/21
<i>VideoShare, LLC v. Google LLC</i>	\$25.9M	\$25.9M ¹	100%	11/15/21
<i>NCS Multistage Inc. v. Nine Energy Serv., Inc.</i>	\$648,000	\$486,000	75%	1/21/22
<i>EcoFactor, Inc. v. Google LLC</i>	\$29.7M plus running royalty	\$20M	67%	2/8/22
<i>Densys Ltd. v. 3Shape Trios A/S</i>	\$22,400,000	\$11.88M	53%	4/7/22
<i>Caddo Systems, Inc. v. Microchip Tech.</i>	\$30.2M	\$235,000	0.8%	6/10/22
<i>NCS Multistage Inc. v. TCO Prods. Inc.</i>	\$3.15M	\$1.93M	61%	8/26/22
<i>Ravgen, Inc. v. Lab. Corp. of Am. Holdings</i>	\$272M plus running royalty	\$272M plus running royalty ²	100%	9/19/22
<i>Textron Innovations, Inc. v. DJI Technology, Inc.</i>	\$367M	\$278.9M	76%	4/21/23

Defendants who find themselves in the Waco Division will often consider filing a motion to transfer the case to the Western District of Texas' Austin Division.

And although a comparison to jury verdicts in Austin is not necessarily meaningful given the small number of patent cases that have gone to trial in Austin in recent years, it does underscore that Waco is not a plaintiffs oasis.[3]

For example, in *Voxer Inc. v. Facebook Inc.* — presided over by recently retired Judge Lee Yeakel in Austin — the jury **returned** a verdict in September 2022 in favor of the plaintiff and rejected the defendant's damages model — which ranged between \$5 million and \$22.9 million.

The jury awarded the plaintiff \$174.5 million, plus a running royalty, in line with the plaintiff's request.

Similarly, in *VLSI Technology LLC v. Intel Corp.* — presided over by Judge Albright in Austin — the jury **awarded** \$948 million to the plaintiff in November 2022 — the exact amount that the plaintiff requested in closing argument.

These two results are interesting considering that many in patent litigation have historically considered

Austin juries to be either anti-patent or favorable to large technology companies.

As noted above, it is difficult to draw any definitive conclusions based on the small sample size from the Austin Division. But these two outcomes favorable to plaintiffs suggest that juries in the Waco Division are not unique in their willingness to return large damages verdicts.

*Correction: Because of an editing error, a previous version of this article misstated the date of the verdict in *Global eTicket Exchange v. Ticketmaster*, and the plaintiff's name in *Voxer v. Facebook*. The errors have been corrected.*

Leah Bhimani Buratti is a partner at Botkin Chiarello Calaf PLLC.

Lewis Tandy is an associate at Fritz Byrne PLLC.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] In VideoShare LLC, the plaintiff presented three tiers of damages to the jury: (i) \$45M; (ii) \$33M; and (iii) \$25.9M. The jury awarded the plaintiff the lowest amount of the requested damages.

[2] In Ravgen Inc., Judge Albright granted the plaintiff's Daubert motion, which excluded the defendant's damage model. As a result, the defendant did not provide a damages number to jury, which may explain why the jury awarded the plaintiff exactly what it asked for.

[3] Comparing the Waco Division to other districts is beyond the scope of this article. We have chosen to compare the Waco Division to the Austin Division because many of the defendants who are sued in the Waco Division could also have been properly sued in the Austin Division (and often do file motions to transfer to the Austin Division).