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High Court Refuses \$3B Cisco Verdict Sunk By Stock Conflict

By **Ryan Boysen**

Law360 (December 5, 2022, 2:16 PM EST) -- Centripetal Networks can't save a behemoth \$2.75 billion patent infringement verdict against Cisco Systems Inc. that was later tossed on appeal due to a stock ownership conflict, as the U.S. Supreme Court on Monday declined to review the case.

Centripetal won the **verdict**, one of the largest patent awards in U.S. history, two years ago. U.S. District Judge Henry Coke Morgan Jr. ruled Cisco had infringed on the Virginia-based startup's network security patents, but the Federal Circuit found in June that Judge Morgan should have been disqualified from hearing the case, because his wife owned roughly \$5,000 in Cisco stock.

Judge Morgan has since died and the case has been sent back to the Eastern District of Virginia for a do-over, where it's still pending.

In its **petition** to the court, Centripetal argued that any conflict of interest was resolved by Judge Morgan's decision to place the Cisco shares in a blind trust before he ruled. Centripetal also noted that Judge Morgan ultimately ruled against Cisco despite his wife's ownership of the stock, and said Cisco had failed to prove the stock ownership actually guided his thinking.

Cisco, meanwhile, **argued** there's no circuit split on the narrow question of when a judge's stock ownership requires recusal, and called the issue "fact bound, extremely rare, unlikely to recur," and "not of national importance."

The Supreme Court, as is customary, did not provide any explanation of why it declined to hear the case.

The Federal Circuit's June decision came in the wake of a bombshell Wall Street Journal investigation that found 131 federal judges decided cases involving companies they or a family member held stock in.

That revelation led to an outcry from legal ethics experts and resulted in Congress passing a bipartisan bill requiring federal judges to provide greater transparency into their financial affairs. That bill was signed into law in May.

Judge Morgan had placed his wife's Cisco shares into a blind trust shortly after he learned about her ownership of the stock, which he said came after a six-week bench trial but before he issued his ruling.

On appeal, the Federal Circuit held that a blind trust — which puts assets under the control of an independent trustee — is not a divestment because it does not eliminate the interest.

In its petition, Centripetal argued the arrangement should count as a divestment and said many other government officials use blind trusts to fulfill ethics requirements.

When it vacated the judgment, the Federal Circuit said its decision was "essential to preserve public confidence," citing last year's Wall Street Journal article.

Neither party responded Monday to requests for comment.

The patents-in-suit are U.S. Patent Nos. 9,137,205; 9,203,806; 9,560,176; 9,686,193; and 9,917,856.

Centripetal is represented by Paul D. Clement and Matthew Rowen of Clement & Murphy PLLC and Paul Andre and Lisa Kobialka of Kramer Levin Naftalis & Frankel LLP.

Cisco is represented by William F. Lee, Mark C. Fleming, Annaleigh E. Curtis, Sofie C. Brooks, Courtney C. Merrill, Thomas G. Saunders, Heath A. Brook and Thomas G. Sprankling of WilmerHale and L. Norwood Jameson and Matthew C. Gaudet of Duane Morris LLP.

The case is Centripetal Networks Inc. v. Cisco Systems Inc., case number 22-246, in the U.S. Supreme Court.

--Editing by Alex Hubbard.

Update: This article has been updated with additional counsel information.

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