

**FHH Telecom Law**  
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**Federal Jury Rules Against Vonage  
In Patent Dispute**

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A \$58 million judgment and the issuance of a permanent injunction (since lifted, at least temporarily) have Wall Street doubting the future viability of Vonage, the Internet phone provider which has yet to turn a profit and has suffered staggering economic losses over the last couple of years.

A federal jury in Alexandria, Virginia found that Vonage violated three patents belonging to Verizon. In Verizon's initial lawsuit, it alleged that Vonage infringed on seven of its patents, before amending its complaint to five. The U.S. District Court found for Verizon on three of the five patent infringement claims. In addition to the \$58 million judgment, Vonage must pay future royalties of 5.5 percent for the Verizon-patented technologies should Vonage be entitled to use them.

The three patents that Vonage was deemed to have violated concern the method by which it connects Internet calls to the public-switched telephone network, features such as call forwarding and voice mail, and the use of Internet phones at Wi-Fi hot spots. The two patent claims the court dismissed related to systems designed to prevent billing fraud.

A Vonage spokesperson stated that the company was "delighted" at the verdict, as Verizon's claim was for \$197 million in damages. But the \$58 million awarded to Verizon could have a crippling effect on the company, which has seen its losses accumulate rapidly. Vonage reported that its net loss in 2006 was \$286 million, an increase of nearly 10 percent from its 2005 losses. Shares of its stock have plummeted 47 percent this year, following a decrease of 59 percent in 2006. The closing price bottomed out at \$3 per share on the New York Stock Exchange in late March.

The free fall in Vonage's stock price occurred following the second dose of bad news for the New Jersey corporation. Judge Claude Hilton issued an injunction against Vonage, prohibiting it from using Verizon technology to connect new customers to phone lines, though it could continue to provide service pending further appeals. However, the U.S. Court of Appeals for the Federal Circuit promptly removed that limitation pending further developments. This was akin to restoring the life support systems that the trial judge had turned off.

Even with the injunction lifted, though, Vonage's business could still be in serious jeopardy. Some financial analysts are predicting the demise of the company as a result of the March decisions. The company has spent hundreds of millions of dollars in

marketing, but has seen its numbers of new subscribers dwindle at an alarming rate. From the second quarter to the fourth quarter of 2006, the number of new subscribers Vonage added each quarter dropped from 256,000 to 166,000. Vonage has been damaged by a rising number of players in the IP telephony business and the fact that many cable operators are bundling voice services with video packages at a rate that makes it increasingly difficult for Vonage to earn customers.

But Vonage CEO Mike Snyder, in a prepared statement following the issuance of the injunction, said that his company should not be counted out. “Our fight is far from over,” Snyder said. “We remain confident that Vonage has not infringed on any of Verizon’s patents – a position we will continue vigorously contending in federal appeals court – and that Vonage will ultimately prevail in this case.”