

## IBM Wins \$45M From Zynga In Gaming Patent Trial

By **Law360 Staff**

*Law360 (September 16, 2024, 6:30 PM EDT)* -- A Delaware federal jury has found that social game developer Zynga Inc. infringed two IBM patents with its interactive games and owes the tech giant \$45 million.

Delaware jurors reached a verdict Friday that found San Francisco-based Zynga infringed one patent with its Empires & Puzzles game and willfully infringed another patent with 10 of its other games, including Crosswords With Friends, CSR Racing 2, Empires & Puzzles, Farmville 2, Farmville 3, Harry Potter: Puzzles & Spells, Hit It Rich! and Wizard of Oz Slots.

Zynga's invalidity arguments against the pair of patents were rejected by the jurors. The company also alleged that a claim in one of the patents was not patently distinct from another patent, but the jury disagreed.

The jury awarded IBM a reasonable royalty of \$40 million for Zynga's infringement of U.S. Patent No. 7,072,849 between May 2016 and July 2023, and it awarded a reasonable royalty of \$4.9 million for Zynga's infringement of U.S. Patent No. 7,702,719 between March 2017 and July 2022.

Take-Two Interactive Software Inc., which acquired Zynga in 2022, is disappointed with the verdict, but it believes it will prevail on appeal, according to Take-Two representative Alan Lewis.

Tamir Packin, a Desmarais LLP partner who served as lead trial counsel for IBM, said IBM was pleased with the outcome.

"It was a great team effort that resulted in a verdict that confirmed the necessity of strong and enduring protections for intellectual property that represents significant investment over many years," Packin said.

An IBM representative said the company is "pleased with the jury verdict that recognizes Zynga's infringement of IBM's patents."

New York-based IBM sued Zynga and its advertising and data-processing platform, Chartboost, in May 2022 after IBM was unsuccessful in getting them to license several patents. IBM targeted the in-game features and advertisements in several of Zynga's video games.

IBM had asserted a total of four patents that cover "novel methods for presenting applications and

advertisements in an interactive service." One of those patents was found by the judge to cover patent ineligible subject matter in November 2022, and another patent was stayed pending the resolution of Patent Trial and Appeal Board proceedings and appeals. Ultimately, two patents ended up before the jury.

The '849 patent relates to a "method for presenting advertising in an interactive service" while the '719 patent describes "methods and apparatus for reducing the number of server interactions in network-based applications using a dual-MVC approach."

Zynga had tried to convince the court that the '849 patent covered ideas too routine for patent protection, but U.S. District Judge Gregory B. Williams shot down that argument in August.

"While it is true that the challenged claims 'involve [some] patent-ineligible concept[s],' including targeted advertising and local storage, the claims as a whole are directed at using smart user terminals to improve the functional capacity of prior art interactive computer systems," Judge Williams said.

In a separate dispute in 2018, Groupon Inc. agreed to pay IBM \$57 million to end claims in Delaware court that it infringed e-commerce patents, including the '849 patent.

An attorney for Zynga did not respond to a request seeking comment on Monday.

The patents-at-issue are U.S. Patent Nos. 7,072,849 and 7,702,719.

IBM is represented by John M. Desmarais, Karim Z. Oussayef, Tamir Packin, Raymond N. Habbaz, Benjamin Rodd, Caitrienne Feddeler, Michael Hilyard, Tuhin Ganguly and Sumeet Dang of Desmarais LLP, and David E. Moore, Bindu A. Palapura and Andrew L. Brown of Potter Anderson & Corroon LLP.

Zynga is represented by Alyssa Caridis, Clement S. Roberts, Evan D. Brewer and Richard F. Martinelli of Orrick Herrington & Sutcliffe LLP, and Brian E. Farnan and Michael J. Farnan of Farnan LLP.

The case is International Business Machines Corp. v. Zynga Inc., case number 1:22-cv-00590, in the U.S. District Court for the District of Delaware.