# *VLSI v. Intel*: The NPE Wins Big

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Non Practicing Entities ("NPEs") are not new in the world of patent infringement litigation, but a recent holding shows just how far an NPE can go, and how much the NPE can 'win', when asserting patent infringement claims for the patents it owns.

NPEs typically do not practice the invention of a patent, such as by manufacturing or selling any products or processes covered by the patent. Instead, NPEs can exploit its patents through patent infringement actions or licensing. VLSI Technology decided to take advantage of this practice and recently received a very favorable verdict in Texas federal district court. VLSI pursued patent infringement claims against Intel, claiming that Intel's microchips infringed VLSI's patents. The jury agreed, rendering a verdict of $2.18 BILLION in favor of VLSI.

This is significant for several reasons. First, the award is nearly the highest initial damages verdict ever for a patent infringement suit, second only to the $2.54 Billion verdict in *Idenix Pharmaceuticals LLC v Gilead Sciences Inc* in 2016. Second, Intel, joining with Apple, recently pursued Antitrust claims against VLSI, but those claim were dismissed (without prejudice) in January (and VLSI also has additional pending claims against Intel). Third, while not so interesting in terms of the merits of the case, it's interesting that this case was only the second patent infringement case for new Federal District Court Judge, Judge Alan D. Albright – and it is one for the record books. Finally, and most significantly with regard to Intel's defense claims, VLSI is a NPE, it has never manufactured or sold a competing product, and only owned the patent since 2019.

As it relates to this final interesting point, Intel doubled and tripled down trying to say that the fact VLSI was an NPE somehow limited its ability to pursue damages. The judge did not agree, nor did the jury. The Patent Code likewise does not directly provide for this practicing-invention requirement. Patent law gives the owner of a patent the right to exclude others from

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making, using, selling, offering for sale, and importing a product covered by a patent. According to Intel, VLSI "took two patents off the shelf that hadn't been used for 10 years and said, 'We'd like $2 billion,'" Intel referenced the demand as an "outrageous" demand by VLSI "would tax the true innovators." An emotional appeal, but not one that the jury felt moved the liability needle.

As stated above, NPEs are not new. At Butzel, we have been on both sides of the 'v' in suits involving NPEs – representing clients as NPEs and likewise those on the defensive against NPEs. Identifying potential avenues to pursue patent claims, and likewise as defenses against certain claims, is part of the strategy that goes into patent litigation. The stakes, clearly, are high, and experience in pursuing claims and defending against claims requires control of the facts, mastery of the Patent Code, and creativity. It often also includes persistence, such as the case with Intel, where it vows to "appeal" and "prevail."

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