

[E-Commerce Times](#) > [Communications](#) > [Telecom](#) | [Read Next](#) October 23, 2007 08:22:00 AM
[Article in Telecom](#)

Please note that this material is copyright protected. It is illegal to display or reproduce this article without permission for any commercial purpose, including use as marketing or public relations literature. To obtain reprints of this article for authorized use, please call a sales representative at (818) 461-9700 or visit <http://www.ectnews.com/about/reprints/>.

AT&T Puts Vonage Back on Litigation Merry-Go-Round




By Erika Morphy
 E-Commerce Times
 10/22/07 2:47 PM PT

 [Print Version](#)
 [E-Mail Article](#)
 [Digg It](#)
 [Reprints](#)

Vonage seems to be stuck in a vicious cycle of litigation. Earlier this year, the VoIP company settled patent disputes with Sprint Nextel and Klausner Technologies and was ordered to pay Verizon \$58 million in damages for violating three of Verizon's patents. Now, AT&T is suing


Vonage for patent infringement.


Joining the line of telecom companies suing [Vonage](#), [AT&T](#) (NYSE: T)  on Wednesday filed a lawsuit against the VoIP (Voice over Internet Protocol) provider in the U.S. District Court in Madison, Wis., according to a filing with the Securities and Exchange Commission and the company's statements.

The suit centers around a patent filed in 1996 by AT&T that describes the process of routing phone calls over the Internet. The [company](#) has been in discussions with AT&T for some time to resolve the matter, Vonage spokesperson Charlie Sahner told the E-Commerce Times.

"Generally, our preference is to settle disputes through negotiation rather than litigation so we will continue to work towards an amicable solution," he said.

\$80 Million and Counting

Indeed, Vonage's approach to the near nonstop litigation against it has been to throw money at the problem. For instance, it settled a suit a few weeks ago with [Sprint Nextel](#) (NYSE: S)  for US\$80 million. It also settled a patent dispute with Klausner [Technologies](#) for an undisclosed sum.

The patent infringement charges, though, are costing the company more than just the amount to settle. Besides the not inconsiderable fees paid to attorneys, earlier this year [Verizon](#) (NYSE: VZ)  was awarded \$58 million in damages, plus future royalties, on the grounds that Vonage violated three of Verizon's patents.

One More

If Vonage can move past this latest suit, said John Rabena, a partner with Sughrue Mion, it may have a chance of survival.

"There aren't too many competitors left with a strong patent portfolio," he told the E-Commerce Times.

These suits are typical against newcomers in an established industry, he added.

"Vonage could have expected to be attacked by anybody with market share in the telecom industry," Rabena said. "However the broadest lesson from all this is that Vonage has been on the defensive largely because it doesn't have a patent portfolio itself."

Playing Defense

Playing defense might not have been the best strategy, given the potential costs of losing litigation if the case does go to trial.

"Merely because Vonage has removed itself, by taking a license post-judgment from other patent holders/owners does not mean that it is free from liability for patent infringement by another patent holder, namely AT&T," said Andrew Langsam, a partner with Pryor Cashman.

Each patent case is determined on its merits, he continued.

"One looks at the claims of the patent, and if what Vonage does or provides falls within the language of even one claim of the issued patent, then Vonage is liable for patent infringement," he told the E-Commerce Times.

If that is found to be the case, then it may be also liable for the damages to AT&T in lost profits, he said, "but only if AT&T can prove 'but for' Vonage providing that product/service, AT&T would have provided it and at a profit."


However, even if AT&T cannot meet the "but for" threshold, it will still be entitled to no less than a reasonable royalty for the infringing use by Vonage.

"Vonage can always seek a license under the asserted AT&T patents -- if AT&T is willing to provide the same -- and/or design around the patent so that its products/services no longer infringe the asserted patent," he said.

Industry Death Blow

While Vonage has weathered the earlier lawsuits -- albeit at a cost of losing some customers -- this latest by AT&T could prove to be too much for some customers, especially the valued corporate clients that [VoIP providers](#) have been targeting.

The risk of permanent injunction, although not likely to be imposed, could prove to be too big of a risk for corporate decision makers to ignore, Langsam said.

"Such an injunction is rare before a trial of the case on the merits," he said. 

► **Next Article in Telecom: [AT&T Teams With Napster on 2-Buck Song Downloads](#)**

Related Resources

- [Mastering the Iteration: The Heartbeat of Agile Development](#)
- [Insurance Industry - Benefiting From Secure Mobile Wireless Access](#)
- [ActionBridge: Extend and Enhance your Salesforce.com Deployment](#)
- [Actuate Performancesoft Suite: Performance Management Solution](#)

Copyright © 1998-2007 ECT News Network, Inc. All Rights Reserved. See [Terms of Use](#) and [Privacy Policy](#). [How To Advertise](#).