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## High Court Denies Hyundai Bid To Nix \$11.6M Patent Ruling

By **Ryan Davis**

Law360, New York (November 12, 2013, 5:50 PM ET) -- The U.S. Supreme Court on Tuesday refused to hear an appeal by Hyundai Motor America Inc. seeking to overturn a \$11.6 million patent infringement verdict against it on sales technology, turning aside the company's argument that the lower courts wrongly applied an elevated evidence standard.

Hyundai appealed the Federal Circuit's February 2013 decision affirming a Texas jury's finding that Hyundai violated a Clear With Computers LLC patent. The carmaker said in its **September petition** that the trial court incorrectly directed the jury to decide a question of law: whether Hyundai had proved by "clear and convincing" evidence that CWC's patent was obvious.

The petition claims the lower courts violated principles affirmed in the Supreme Court's 2011 decision in *Microsoft Corp. v. i4i Ltd.* In **that decision**, the justices held that the clear-and-convincing standard is limited to determining fact questions and should not be used to resolve legal questions of whether a patent is obvious or otherwise invalid, Hyundai said.

"In short, the district court's instructions and verdict form cannot be squared with the settled, fundamental distinction between factual and legal issues, which applies and must be enforced in the context of patent invalidity as in any other context," Hyundai said. "Review is warranted to prevent further departures from these principles in patent trials nationwide."

An attorney for Hyundai could not immediately be reached for comment Tuesday.

Marc A. Fenster of Russ August & Kabat, an attorney for Clear With Computers, said that the company was gratified that the Supreme Court declined the case. He said Hyundai had the opportunity to license the patent throughout the case, but always refused.

"Because of Hyundai's curious strategy decisions (fight to the end, rejecting every effort at compromise along the way), CWC had no choice but to trust the patent system and trust the legal system to protect CWC's property rights," he said. "We are proud of this win, and very satisfied that we were able to defend it through every level of the court system."

In its Supreme Court brief, filed last month, Clear With Computers argued that contrary to Hyundai's claim, the jury instructions used in the case were actually identical to those the Supreme Court approved in the *i4i* case. It also argued Hyundai had waived the right to argue that instructions were incorrect because it never objected to them at the Federal Circuit.

CWC, a nonpracticing entity, sued Hyundai in 2009, alleging infringement of its U.S. Patent

Number 7,606,739. The patent is directed toward a computer-based system that creates "customized, printed proposals for potential purchasers of a product," according to the patent application.

The lawsuit targeted features of Hyundai's website that allows potential customers to generate a customized sales proposal. Hyundai denied that infringed the patent, and asserted the '739 patent is invalid because the claimed invention it covers is obvious.

Hyundai claims car sellers employed similar technology years before the '739 patent application was filed in 1992.

Following a week-long trial, a Texas jury in 2011 found Hyundai infringed all asserted claims of the '739 patent and awarded \$11.6 million in damages to CWC. In a one-page order issued earlier this year, the Federal Circuit affirmed the jury's verdict.

Hyundai objected to the trial court's jury instruction on invalidity and "its refusal to instruct that only questions of fact, not the ultimate obviousness determination, are subject to a heightened standard of proof," according to the company's petition.

The patent-in-suit is U.S. Patent Number 7,606,739.

Hyundai is represented by Paul D. Clement of Bancroft PLLC and Gene C. Schaerr, Elizabeth P. Papez, Geoffrey P. Eaton and Linda T. Coberly of Winston & Strawn LLP.

Clear With Computers is represented by Marc A. Fenster and Alexander C.D. Giza of Russ August & Kabat.

The case is Hyundai Motor America Inc. v. Clear With Computers LLC, case number 13-296, in the Supreme Court of the United States.

--Editing by Chris Yates.

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