

## Federal Circuit Criticizes Excessive Damages Awards

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In [VirnetX, Inc. v. Cisco Systems](#) (September 19, 2014 – Federal Circuit), the Federal Circuit reversed a patent infringement award of \$368 million on the grounds that the damages were based on the entire accused product rather than the value of the patented features. The Court criticized VirnetX, Inc.’s expert for basing his damages estimate on the entire price of the iPhone, rather than the few features that were held to be infringing.

The Court reiterated the requirement that damages be based on the “smallest salable unit” that is infringed, but added that “A patentee’s obligation to apportion damages only to the patented features does not end with the identification of the smallest salable unit if that unit still contains significant unpatented features.” This is the latest in a line of cases in which the Federal Circuit has curtailed damages awards.

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