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Bell Canada in no rush to defend \$350M patent infringement law suit from MediaTube

Put it down as another example of a small Canadian technology company taking on the big boys and the big boys doing their best to stretch the process out

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A few years back it was i4i Inc. versus Microsoft when the Toronto-based content development firm brought a patent infringement action against Microsoft. Microsoft lost and was ordered by a Texas court to pay more than \$290 million. But Microsoft appealed and kept appealing all the way to the Supreme Court. The highest court was not swayed, however, and the appeals court ruling that Microsoft wilfully infringed on i4i's patent remained. The matter took more than four years to resolve and millions in legal fees.

Now there is MediaTube Corp. versus Bell Canada. Based in Aurora, Ont., MediaTube, which provides IPTV services for television broadcasts, Internet, interactive games and video-on-demand and pay-per view, is also the licensee under a patent known as 477.

At issue is a patent infringement suit brought in April 2013 by MediaTube against Bell Canada. A trial, in the Federal Court, is set for September. How big could this matter get? MediaTube estimated its claim is worth \$350 million plus future royalties and penalties.

But in an affidavit prepared and filed by Doug Lloyd, MediaTube's chief executive, on Jan. 11, reference is made to a higher number. "In April of 2014, Bell Canada's counsel advised the Federal Court that damages may exceed \$1 billion by the time these proceedings reach trial," Lloyd said. In any currency \$1 billion is real money. BCE has about 865 million shares outstanding.

Lloyd's affidavit and accompanying documentation detail some of the steps Bell, which worked with MediaTube for many years on commercializing its patent before launching its FibeTV service in 2010, has taken to stall the process. For instance:

January 2013: An email from Quebec-based PNG Management Canada to MediaTube saying that it was "prepared to fund MediaTube Corp. business plan. ...but after receiving many harassing calls and emails from Bell Canada management ... it was decided not to pursue the funding [as the calls] raised the risk factor."

April 2013: Bell Canada brought a motion to remove Bereskin & Parr, (its legal counsel) from the proceedings "on the basis of an alleged conflict of interest." One year later the Federal Court dismissed Bell Canada's motion. That motion delayed the patent infringement proceedings by about a year "and substantially increased MediaTube's legal fees and expenses."

April 2014: Following the Federal Court setting a timetable and ordering Bell to "file its defence, provide documents and conduct examinations for discovery," Lloyd said that MediaTube "filed a number of motions to compel Bell Canada to comply with the timetable."

The latest example is currently playing out. In October of last year, the Ontario Superior Court awarded a \$174,511.72 default judgement for Bell Canada against MediaTube. That judgement came in a claim filed by Bell Canada in February 2013 (but not served until one year later) alleging nonpayment "for services rendered pursuant to the Agreement."

MediaTube has sought to set aside the ruling in part, because of the "asymmetric quantum of damages sought in the two proceedings."

Calls to Bell seeking a comment weren't returned. Lloyd couldn't be reached for comment.

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