

# UnitedHealth Unit Can't Undo \$12M IP Infringement Verdict

By Cara Salvatore

Law360, New York (September 7, 2016, 7:29 PM EDT) -- A California federal judge refused Wednesday to overturn a \$12.3 million jury verdict against a [UnitedHealth](#) unit found to have infringed a patent for technology that measures doctors' efficiency — but also refused the victorious plaintiff, Cave Consulting Group LLC, an injunction or an answer on ongoing royalties.

In March 2015, a jury awarded Cave more than \$12.3 million, saying UnitedHealth Group Inc. unit [OptumInsight Inc.](#)'s Impact Intelligence product infringed two claims of Cave's patent for products that try to calculate doctor efficiency and also categorize patient health risk. The jury also rejected counterclaims that Cave software infringed an Optum patent.

U.S. District Judge Edward Davila ruled Wednesday that Cave hadn't made a strong case that an injunction was necessary. Injunctions are generally reserved for cases in which the plaintiff is suffering irreparable harm or is in other dire straits because of the alleged conduct. That's not the case for Cave, also known as CCGroup, the judge said.

“Evidence proves that CCGroup has given up exclusivity over its patent to other market participants and would have been willing to license the '126 patent to Optum,” the judge said. The facts behind his takeaway weren't clear, as much of that section was redacted.

Judge Davila also refused to wade into a calculation for ongoing royalties from the infringement, saying it was a question best answered after some more dust settles.

“The parties have indicated that appeals are anticipated at the Federal Circuit,” the judge said.

“This case presents complex issues with regard to ongoing royalty rate for which there is no clear precedent. Thus, proceeding without the Federal Circuit's guidance may cause unnecessary expenditures of time and resources.”

The judge said he would wait to look at those royalties until after the appeals process was over.

Judge Davila responded as well to Cave's request for supplemental damages to account for the infringement that happened during the trial itself. He awarded an amount that the parties were able to agree on, about \$849,000 in supplemental damages through the end of the trial, March 31, 2015.

Cave received a mixed ruling on prejudgment interest. The company had asked for a rate of 4.25 percent, while Optum had requested a rate of 0.16 percent. The judge awarded the latter, which is the same as the rate for Treasury bills — the shortest-term Treasury securities, at maturities of a year or less. That came out to about \$39,000.

Post-judgment interest was also approved, at a statutory rate, but the amount approved was not immediately clear, as the judge didn't specify the rate and didn't calculate the amount himself.

The judge also denied both sides motions for judgment as a matter of law, laying out in detail how the jury was justified in finding the way it did on a variety of points.

In April 2015, Optum had [told the court](#) that no reasonable jury could have found that Impact Intelligence performs a step of calculating “weighted episode of care statistics utilizing a predefined set of medical conditions,” a requirement of the asserted claims.

Cave's January 2011 suit alleged that its doctor efficiency measurement method was protected by the patent and that it covered Cave's own Marketbasket system. Optum's counterclaim alleged that Cave's CaveGrouper software violated a separate patent for processing medical claims.

The patents-at-issue are U.S. Patent Numbers [7,739,126](#) and [7,222,079](#).

Cave is represented by Andrew Leibnitz of [Farella Braun](#) + Martel LLP and David Harlan, B. Scott Eidson, Richard Brophy and Mark Thomas of [Armstrong Teasdale LLP](#).

Optum is represented by Patricia Welch, J. Thomas Vitt, Shannon Bjorklund and David Couillard of [Dorsey & Whitney LLP and Paul Ackerman](#) of [Andrews Kurth LLP](#).

The case is Cave Consulting Group Inc. v. OptumInsight Inc., case number [5:11-cv-00469](#),

in the U.S. District Court for the Northern District of California.

--Additional reporting by Kelly Knaub. Editing by Bruce Goldman.