

TWO-WAY MEDIA LLC v. AT&T, INC., Appeal No. 2014-1302 (Fed. Cir. March 19, 2015).  
Before Dyk, O'Malley and Wallach. Appealed from W.D. Tex (Judge Garcia).

Background:

Two-Way Media sued AT&T for patent infringement. Following an infringement verdict and damages award of \$40 million in favor of Two-Way Media, AT&T filed four motions for a new trial or renewed JMOL, three of which AT&T moved to file under seal. The district court issued notice of electronic filings (NEFs) labeled as orders granting the motions to seal, but the NEFs did not indicate that the same orders also denied AT&T's motions for a new trial or renewed JMOL. Three days after the issuance of the NEFs, the clerk for the district court corrected the docket entries for the orders to indicate that AT&T's motions for a new trial or renewed JMOL were denied, but did not issue new NEFs to the parties.

The law firms retained by AT&T downloaded the orders, but AT&T's counsel did not read the linked orders until after the period for appeal had expired. AT&T subsequently filed a motion to extend or re-open the appeal period pursuant to Federal Rules of Appellate Procedure 4(a)(5) and (6), which the district court denied. AT&T appealed.

Issue/Holding:

Did the district court abuse its discretion in refusing to extend or re-open the appeal period? No, affirmed.

Discussion:

AT&T argued that excusable neglect or good cause for extending the appeal period under Rule 4(a)(5) was established because: (i) AT&T received incomplete NEFs that misled them on the substance of the underlying orders, and (ii) the clerk for the district court did not reissue new NEFs when they corrected the docket entries. AT&T also argued that because the NEFs they received were erroneous, they did not receive notice of the orders, and thus the time to file an appeal should have been re-opened under Rule 4(a)(6).

The Federal Circuit held that the simple failure of the clerk to issue notice of entry of judgment, without more, does not permit relief to a party who has failed to appeal within the prescribed time. The Federal Circuit also agreed with the district court that it was inexcusable for AT&T's counsel to have failed to read all of the underlying orders they received, or—at minimum—to monitor the docket for any corrections or additional rulings. Thus, the Federal circuit held that it was not excusable for AT&T's counsel to rely only on the email notifications and neglect to read the underlying orders. Further, the Federal Circuit agreed with the district court that AT&T received notice of the orders when AT&T's law firm received and downloaded the orders from the electronic docket of the district court. Accordingly, the Federal Circuit ruled that there was no abuse of discretion in the district court's refusal to extend or re-open the appeal period.

Judge Dyk dissented in that AT&T had proven its case of not receiving notice because the NEFs were incorrect.