



THINK FORWARD

Brinks Gilson Achieves Litigation Victory for Cook Medical

October 29, 2018

CHICAGO – October 29, 2018 – Brinks Gilson & Lione won a significant victory on behalf of its client, Cook Medical LLC (Cook), in a successful dismissal of a patent infringement claim brought against the company by Endotach LLC (Endotach), a subsidiary of Acacia Research Group LLC.

The U.S. Court of Appeals for the Federal Circuit affirmed the U.S. District Court for the Southern District of Indiana's summary judgment that expired U.S. Patent No. 5,122,154 was invalid under 35 U.S.C. §102(e) and §102(g) for prior invention by another in the United States, thus dismissing the appeal from Endotach.

Endotach originally sued Cook in 2012, asserting U.S. Patent Nos. 5,122,154 and 5,593,417, at which point, the '154 patent had already expired. The Indiana district court found that Endotach lacked standing to assert either of the patents and dismissed the case.

After Endotach re-filed in 2013, the district court dismissed the case on summary judgment based on laches as to both patents, and based on noninfringement as to the '417 patent. In 2016, the U.S. Court of Appeals for the Federal Circuit affirmed the dismissal. Also in 2016, the Federal Circuit affirmed a decision by the Patent and Trial Appeal Board that the asserted claims of the '417 patent were unpatentable.

Endotach then filed a petition for writ of certiorari to the U.S. Supreme Court, which at the time had decided to review *SCA Hygiene Products AB v. First Quality Baby Products, LLC* to determine whether laches applies in patent cases. The Supreme Court held that the equitable defense of laches no longer applied to cases where the alleged infringement occurred during the statutory period. Accordingly, the Federal Circuit remanded Endotach's case back to the Indiana district court to take up Cook's remaining defenses as to the expired '154 patent.

"This decision has been a long time coming, and we're thrilled to have secured this win for our client," said Dominic Zanfardino, Brinks shareholder and lead representative for Cook. "Patent infringement claims can sometimes be drawn out affairs, especially when you throw a game-changing Supreme Court decision into the mix. We're happy to have received a favorable outcome in this instance."

In addition to Zanfardino, the Brinks team representing Cook at the Federal Circuit included shareholders Jeff Nichols and Jason Schigelone, and associates Danielle Gillen and Andrea Shoffstall.

About Brinks Gilson & Lione

Celebrating more than 100 years of intellectual property law, Brinks Gilson & Lione is one of the largest intellectual property law firms in the U.S., and helps clients around the world to protect and enforce their intellectual property rights. Our lawyers, patent agents and scientific advisors assist clients in all aspects of patent, trademark, unfair competition, trade secret, and copyright law. Brinks attorneys provide informed counsel with respect to innovations in a range of complex and valuable technologies,

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