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Judge Rules K-C Absorbent Fiber Patents Invalid

By Christopher Norton

Law360, New York (March 2, 2011) -- A federal judge in Pennsylvania on Tuesday handed a victory to First Quality Baby Products LLC and its affiliates, ruling that two Kimberly-Clark Worldwide Inc. patents for absorbent materials were invalid for indefiniteness.

Judge William W. Caldwell granted First Quality's motion for summary judgment on indefiniteness in the U.S. District Court for the Middle District of Pennsylvania.

First Quality had argued that the claim terms "at least about" and "less than about," found in various combinations throughout numerous claims of the patents, were indefinite.

Kimberly-Clark argued that summary judgment should be denied because both terms were capable of construction, and so were not necessarily ambiguous.

"We agree with First Quality that 'at least about' does not sufficiently inform the public on what would infringe," Judge Caldwell said.

Kimberly-Clark's expert's opinion was unhelpful because he failed to support his opinion with any evidence to indicate how he concluded that a person skilled in the art would readily understand the terms, according to the judge.

"First Quality is very pleased with the court's ruling," First Quality attorney Kenneth George said. "Judge Caldwell's decision rests squarely with the line of cases finding similar terminology indefinite."

Counsel for Kimberly-Clark did not immediately return calls seeking comment.

Both patents concern absorbent articles containing superabsorbent material. Specifically, they center on an absorbent composite consisting of a matrix of fibers and superabsorbent material that is designed to absorb fluids but dramatically reduce the thickness and weight of an absorbent article.

In February, the two companies battled it out before the U.S. Court of Appeals for the Federal Circuit over several similar patents, in oral arguments stemming from a separate infringement dispute between the companies in Wisconsin. First Quality tried to convince the court that a preliminary injunction on one of its diaper products was unwarranted.

Kimberly-Clark's Wisconsin action alleged that First Quality infringed various patents relating to refastenable toddler training pants and the process used to manufacture them.

The Wisconsin court granted Kimberly-Clark's motion for a preliminary injunction and enjoined First Quality from making, using, selling or offering to sell the methods of manufacturing disposable training pants with refastenable side seams that infringe on four

Kimberly-Clark patents.

In October, Kimberly-Clark also dragged Fameccanica Data SpA into court for allegedly inducing First Quality's infringement by supplying the machinery used to make First Quality's toddler training pants.

The Italian machinery supplier shipped state-of-the-art manufacturing equipment to First Quality despite knowing that Kimberly-Clark had already sued the startup company for marketing a new product that allegedly infringed training pants patents, according to that complaint.

The current patents-in-suit are U.S. Patent Numbers 5,147,343 and 5,601,542.

Kimberly-Clark is represented by Banner & Witcoff Ltd.

First Quality is represented by Amster Rothstein & Ebenstein LLP.

The case is Kimberly-Clark Worldwide Inc. v. First Quality Products Inc. et al., case number 1:09-cv-01685, in the U.S. District Court for the Middle District of Pennsylvania.

--Additional reporting by Samuel Howard. Editing by John Williams.

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