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Fiber Systems Beats Inequitable Conduct Rap

By **Allison Grande**

Law360, New York (July 09, 2010) -- A federal judge has ruled that Fiber Systems International Inc. did not commit inequitable conduct in its prosecution of a patent related to fiber-optic connectors, following up on a noninfringement verdict in favor of defendant Applied Optical Systems Inc. in the suit.

Judge T. John Ward of the U.S. District Court for the Eastern District of Texas on Wednesday shot down Applied Optical's counterclaim that Fiber Systems deceived the U.S. Patent and Trademark Office during the re-examination of U.S. Patent Number 6,305,849, titled "Multi-channel fiber-optic connector" and issued in October 2001.

"The court finds that Applied Optical has failed to meet both the intent and materiality prongs to prove inequitable conduct as to the failure of Fiber Systems to disclose [certain prior art]," Judge Ward said.

After a federal jury concluded in November that Applied Optical's accused products did not infringe the '849 patent, the court shifted its focus to the defendant's inequitable conduct and antitrust counterclaims.

Judge Ward granted Fiber Systems' motion for summary judgment on the antitrust counterclaims in March, but a claim that the plaintiff failed to disclose the use of adhesive tape in the assembly of its prior art FS3H four-channel fiber optic connector, as well as the existence of two related patents held by Stran Technologies, during the re-examination of the '849 patent proceeded to a bench trial in April.

Applied Optical argued that the use of adhesive tape in the FS3H four-channel connector caused the inner sleeve of the device to be held to the insert body to form a single fixed structure as required by the claims of the '849 patent, and that the patent examiners would not have issued

a re-examination certificate for the patent-in-suit in March 2009 if they had been aware of this feature.

But Fiber Systems contended that its representatives before the USPTO did not learn of the assembly instructions depicting the use of tape as an aid in assembling the FS3H connector until June 2009 and that the use of the tape was not material because the tape did not bind the pieces of the inner assembly strongly enough to create a single fixed structure as described in the '849 patent.

Judge Ward sided with the plaintiff on Wednesday, ruling that Applied Optical had not proven by clear and convincing evidence that Fiber Systems intentionally hid the additional tape on the device or that the use of tape was material as to any of the claims of the patent-in-suit.

The judge used similar reasoning in settling Applied Optical's claim that the concealment of two Stran patents during the re-examination rendered the '849 patent unenforceable.

"The court finds that Applied Optical has not proven, much less by clear and convincing evidence, that Fiber Systems' representatives knew about these patents during the reexamination of the '849 patent," the opinion said. "Applied Optical [also] did not meet its burden to show that the Stran patents were material [because it] presented no expert testimony that the withheld patents were material and non-cumulative."

Fiber Systems attorney Brian Colao of Dykema Gossett PLLC said Friday that his client was pleased that the court completely rejected all of Applied Optical's claims for inequitable conduct.

"We felt like the claims from the very beginning lacked merit, and we're very pleased that the court agreed with us," Colao said.

Representatives for Applied Optical could not immediately be reached for comment Friday.

Fiber Systems first accused Applied Optical, which was founded by former Fiber Systems employees, of infringing the '849 patent in November 2006.

Judge Ward cleared two of the defendant's fiber-optic system connectors of infringement before trial, while the jury concluded in its November verdict that the targeted TFOCA/16 CCTA product did not infringe the '849 patent, either.

The patent-in-suit is U.S. Patent Number 6,305,849.

Fiber Systems is represented by Dykema Gossett PLLC and Buether Joe & Carpenter LLC.

Applied Optical is represented by Munck Carter PC.

The case is Fiber Systems International Inc. v. Applied Optical Systems Inc., case number 06-cv-00473, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Brendan Pierson

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