

IP Law May 1, 2019

## Stanford Owes Fees in Dietary Supplement Patent Suit (1)

By Malathi Nayak May 1, 2019

- Federal Circuit affirms lower court decision granting attorneys' fees
- Stanford, its licensee didn't conduct adequate pre-suit investigation

Stanford University and ThermoLife International LLC must pay \$1.3 million in attorneys' fees to two companies they sued for infringing patents related to nutritional supplements.

A lower court didn't abuse its discretion in granting Hi-Tech Pharmaceuticals Inc. and Vital Pharmaceuticals Inc. attorneys' fees, the U.S. Court of Appeals for the Federal Circuit ruled May 1. Stanford and ThermoLife failed to investigate infringement allegations thoroughly before suing Hi-Tech and Vital in 2013, the court said.

The ruling, upholding a district court's decision, clarifies when a plaintiff's investigation before filing an infringement suit is inadequate, rendering the case exceptional and justifying an attorneys' fees award from the losing party.

The U.S. District Court for the Southern District of California last year awarded nearly \$904,000 to Hi-Tech and about \$406,000 to Vital for attorneys' fees and expenses, including pre- and post-judgment interest.

The Federal Circuit said the court "acted within its discretion in determining, on the limited arguments plaintiffs made in response to the fee motions, that plaintiffs did not conduct an adequate pre-suit investigation into infringement by Hi-Tech and Vital."

Hi-Tech and Vital were accused of infringing four Stanford patents on methods and compositions involving amino acids arginine and lysine that can improve physical performance. Stanford exclusively licensed the patents to ThermoLife, which asserted those patents in 81 infringement suits, including against Hi-Tech and Vital. Stanford was added as a plaintiff after the cases were consolidated.

The district court in 2016 held that the four patents were invalid because they were obvious. Hi-Tech and Vital then sought legal fees, saying that if Stanford and ThermoLife would've found no infringement had they read the labels on their accused products and conducted simple tests before suing. Hi-Tech and Vital said ThermoLife and Stanford filed numerous complaints without adequately investigating to extract nuisance-value settlements.

ThermoLife and Stanford argued that the district court wrongly struck from the record a declaration describing their counsel's pre-filing investigation. The Federal Circuit disagreed, saying Hi-Tech and Vital didn't have a chance to conduct additional discovery in response to facts and arguments in the declaration.

Hi-Tech and Vital's failure to give early notice of defects in ThermoLife and Stanford infringement allegations can't be used to deny them legal fees, the Federal Circuit said. "We see no basis for finding the fee award in this matter to be an abuse of discretion because such notice was missing," it said.

Judge Richard Taranto wrote the opinion joined by Judges William Bryson and Kara Stoll.

Latham & Watkins LLP and Kercsmar & Feltus PLLC represented ThermoLife. Pillsbury Winthrop Shaw Pittman LLP represented Stanford. Miller & Martin PLLC represented Hi-Tech. Drinker Biddle & Reath LLP represented Vital.

The case is ThermoLife International LLC v. GNC Corporation , Fed. Cir., 5/1/19 .

(Updated with additional reporting throughout)

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## General Information

**Court**

Court of Appeals, Federal Circuit