

ORGANIK KIMYA, SAN. VE TIC. A.S. v. ITC, Appeal No. 2015-1774, 1833 (Fed. Cir. February 15, 2017) (Lourie, Mayer, and O'Malley). Appealed from the U.S. ITC.

Background:

Dow Chemical Company ("Dow") filed a complaint with the U.S. International Trade Commission ("ITC") alleging infringement of four of Dow's patents by Organik's opaque polymer products, and alleging trade secret misappropriation based on Organik consulting with former Dow employees, Dr. Perez, Dr. Nene, and Mr. Strozzi, during production of the opaque polymers. During investigation of the trade secret misappropriation claims, Dow discovered extensive spoliation of evidence when attempting to obtain discovery relating to the activities of these former Dow employees.

Forensic evidence revealed that after receiving a discovery order issued by the presiding ALJ of the ITC: (i) Organik used multiple computer programs to overwrite and delete a majority of the files on Dr. Perez's computer; (ii) Dr. Nene removed the hard drive from his computer, "smashed it" with a hammer, and disposed of it in the garbage, as well as destroying a "bag full of" zip drives; and (iii) Mr. Strozzi deleted 2,742 files from his computer and then lost his computer bag, which included his computer and multiple external storage devices, by "accidentally" leaving the computer bag at a bathroom of a highway rest stop.

The ALJ of the ITC found that these activities amounted to willful, bad faith misconduct and entered default judgment against Organik. The ITC affirmed the ALJ's entering of default judgment and issued a limited exclusion order for Organik's opaque polymer products for a 25-year period. Organik appealed.

Issues/Holdings:

Did the ITC abuse its discretion in entering default judgment against Organik and entering a limited exclusion order against Organik? - No, affirmed.

Discussion:

The Federal Circuit held that the proper standard for imposing default judgment sanctions is governed by 37 C.F.R. §210.33(b) and Federal Rule of Civil Procedure 37(b), which provide that a court may render a default judgment against a party for failure to comply with a discovery order. The Federal Circuit cited the U.S. Supreme Court decision in *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 642–43 (1976), that a sanction of default judgment may be imposed in appropriate cases "to penalize those whose conduct may be deemed to warrant such a sanction" and "to deter those who might be tempted to such conduct in the absence of such a deterrent." The Federal Circuit found that default judgment was appropriate based on the conduct of Organik.

The Federal Circuit found that the ITC did not abuse its discretion in issuing a limited exclusion order after assuming the alleged facts of the complaint as true, which was the result of the default judgment. The ITC correctly relied on expert testimony to determine the appropriate length of the limited exclusion order. Thus, the Federal Circuit affirmed the ITC's decisions.