

THERMOLIFE INTERNATIONAL LLC v. GNC CORPORATION, Appeal Nos. 2018-1657, 2018-1666 (Fed. Cir. May 1, 2019). Before Taranto, Bryson, and Stoll. Appealed from S.D. Cal. (Judge Sammartino).

Background:

Plaintiffs filed numerous infringement suits, asserting various claims of four patents, against various defendants. The district court, which oversaw the full group of more than six dozen suits, consolidated the cases before it (i.e., those that did not settle) for pre-trial purposes and ultimately held all asserted claims invalid. At the district court level, infringement was not adjudicated in reaching the final judgment, and even discovery on infringement had been postponed early in the proceedings so that validity could be litigated first. The district court found the cases exceptional, but not based on an assessment of the validity position taken by plaintiffs or how they litigated validity. Rather, the district court relied on its conclusion that plaintiffs were unjustified in alleging infringement in the first place, having failed to do an adequate pre-filing investigation.

Plaintiffs appealed the district court's award of fees, challenging the determination that these were "exceptional" cases.

Issue/Holding:

Was there an abuse of discretion regarding the district court's determination of exceptionality based on plaintiffs' inadequate pre-suit investigation of infringement in these and related cases? No, affirmed.

Discussion:

The Federal Circuit recognized that these are unusual cases in that the basis for the fee award had nothing to do with the only issues litigated to reach the judgment on the merits (i.e., question of infringement was never addressed by the district court). Nevertheless, the Federal Circuit found no abuse of discretion in the district court's determination of exceptionality based on plaintiffs' inadequate pre-suit investigation of infringement in these and related cases.

The Federal Circuit agreed with plaintiffs that, considered alone, various findings by the district court (e.g., relating to small market presence, limited remaining patent life, and seemingly small settlement amounts in those cases that had settled) would not support a pattern-of-misconduct finding. But those findings did not stand alone in the instant case. Here, the district court's "pattern" determination ultimately was tied to the finding that plaintiffs failed to conduct an adequate pre-suit investigation into infringement. That is, what the district court found is a pattern of action by plaintiffs of bringing suit against many defendants without carefully reviewing their claims (e.g., plaintiffs would have been able to tell there was no infringement by either performing simple tests and/or reading the product labels). Because plaintiffs did not show reversible error in the district court's inadequate-investigation finding, the Federal Circuit concluded that there was no abuse of discretion in the district court's determination of exceptionality.