

Winston Proves “Natural Cure” Patent Is Invalid at PTAB

APRIL 27, 2023

Winston & Strawn prevailed before the U.S. Patent and Trademark Office’s Patent Trial and Appeal Board (PTAB) for client Florida Food Products (FFP), blocking attempts by a competitor to exclude FFP and other market participants from practicing long-known techniques for naturally preserving meat products.

Dublin-based food company Kerry Group accused FFP of infringing U.S. Patent No. 11,071,304 (the ‘304 patent), which is directed toward a meat preservation process using a plant-based nitrite curing solution—referred to as a “natural cure.” Both companies manufacture and sell natural preservatives to meat processing companies and others, a multimillion-dollar industry in the United States.

After the ‘304 patent was issued, Kerry Group began approaching FFP and others in the market regarding its patent. With Winston as counsel, FFP proactively took on the task of invalidating the ‘304 patent and asked for *inter partes* review by the PTAB a few months after the ‘304 issued.

On behalf of FFP, Winston argued that the ‘304 patent should never have been issued in the first place because it “claims an ancient, federally regulated meat preservation process.” Since the process of using nitrite curing agents has been known and used dating back to the 1800s, Kerry Group should not have been able to patent it as an original invention.

In its April 26, 2023, final opinion, the PTAB agreed with FFP. All five claims of the patent were found to be obvious, and thus, the ‘304 was invalidated. This decision thwarts Kerry Group’s attempt to monopolize a well-known food preservation process and protects FFP, its customers, and other participants in the natural cure or clean label meat processing industry from further U.S. litigation threats involving this patent. The invalidation decision in the United States follows similar decisions invalidating Kerry’s attempt to obtain related patents in China and the European Union.

FFP’s CEO, Jim Holdrieth stated, “We are gratified by this decision and thankful to the PTAB for the diligent and thorough work they conducted to reach this outcome. We so appreciate the hard work and excellent legal advocacy by Winston that got us to this day. FFP has always strived to be a steward of the industry for all participants and will continue to stand shoulder-to-shoulder with our customers to protect our growing industry. We are grateful for Winston’s partnership with us in these efforts.”

Lead Winston partner Brett Johnson said, “We had a shared commitment with FFP to do right by the industry in taking on a much larger competitor in Kerry. The team both at Winston and at FFP was fully committed to our strategy and determined to stand up against a patent that should never have been issued and should not be used as leverage in this growing industry. We are pleased the PTAB saw things our way and are so proud of FFP for taking on this fight.”

The Winston team was led by Partner Brett Johnson and included Partners Michael Bittner, Christina Tate, and Brian Ferguson, who argued FFP’s case before the PTAB; Of Counsel Louis Campbell; and Associates William Logan and Juan Yaquian.

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