

Winston Achieves Stays Patent Infringement Claim in Western District of Wisconsin

APRIL 9, 2012

On April 9, 2012, Winston & Strawn attorneys were able to receive a stay of Plaintiff Out RAGE LLC's claims against firm client New Archery Products Corp. in the "rocket docket" of the Western District of Wisconsin. Out RAGE had originally filed a one-count complaint against New Archery for infringement of U.S. Patent No. 6,626,776 regarding moveable arrowheads. Before answering the complaint, New Archery filed a request for *inter partes* reexamination of Out RAGE's patent. On February 1, 2012, the USPTO granted New Archery's request and simultaneously rejected all but one claim of the '776 patent.

A few days later, Winston attorneys filed a motion to stay Out RAGE's claim of infringement regarding the '776 patent. They explained that a stay would simplify the issue, and to not would lead to inconsistent results and even duplicative litigation on a patent that the USPTO had already held unpatentable over three different references. On April 9, 2012, Judge Barbara Crabb agreed with Winston's arguments and issued an order staying all claims regarding the '776 patent pending the reexamination. Notably, the Court even stayed Out RAGE's infringement allegations for the patent claim not subject to the reexamination, finding that the review of the other claims would inform the scope and meaning of that remaining claim. In doing so, the Court removed Plaintiff Out RAGE's main claim from the litigation, leaving only Out RAGE's claims added in the midst of briefing on the stay motion, and New Archery Product's offensive claims of patent infringement, trademark infringement and false advertising.

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