



*Shimokaji IP* specializes in the litigation and registration of patent and trademark matters. We serve start-ups, Fortune 100 companies, government entities, and universities. Our expertise and representation extends across the US and throughout Asia.

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## An Example of Why it is Not the Best Idea to Initiate Infringement Litigation Without a Lawyer

The Federal Circuit described the case as a "quintessential example" of a "peddled product that conspicuously capitalizes on another's intellectual property."

Edge Systems had patent rights that covered hydradermabrasion products to improve skin health. It also owned common law trademarks, including DERMABUILDER.

Aguila sold over the web similar products under Edge System's trademarks. Edge sued Aguila.

The Federal Circuit found that the district court properly sanctioned Aguila for using fraudulent invoices to establish prior use of its trademarks. The district court also properly struck Aguila's defense of prior use.

Aguila also complained that the district court failed to strike the expert report of Edge which was filed late. The Federal Circuit replied that the district court had the discretion to allow the late report.

And, Aguila sought to take ten depositions during the last week of discovery. The district court only allowed five. The Federal Circuit again found that the lower court properly exercised its discretion.

The Federal Circuit also turned away Aguila's argument that summary judgment of patent infringement was improper. This was due to Aguila failing to present evidence of non-infringement and instead just conclusory arguments.

### COMMENTS:

Once there was a finding of "manufactured" documents by Aguila, it was probably all downhill from there in trying to convince the court of the merits of other issues.

## Amgen Settles Patent Infringement Suit Over AbbVie's Humira

In September 2016, Amgen received FDA approval of its Amjevita, a biosimilar to AbbVie's blockbuster Humira. In March 2017, Amgen received European Commission approval for the biosimilar.

However, patent litigation between the parties has prevented Amgen from getting its drug to market.

The parties have now settled with Amgen receiving a license to the patents which begins in 2018 for Europe and 2023 for the US.

### COMMENTS:

It seems that the delayed start of the license will give AbbVie significant time to build more market share.

## Dexcom Files ITC Complaint to Stop Importation by AgaMatrix

The US International Trade Commission (ITC) has the authority to investigate potential patent infringement of devices (not just medical) being imported into the US. If infringement is found, imports into the US can be excluded.

Dexcom, in California, owns patents for continuous glucose monitoring systems. The patented technology improves the processing of the monitored data.

Under the WaveSense brand, AgaMatrix, in New Hampshire, competes with Dexcom. AgaMatrix imports their products from China and Korea.

The complaint describes some background. AgaMatrix previously filed a patent infringement suit against Dexcom in Oregon. Dexcom sought inter partes review in the US patent office to have AgaMatrix's patents declared invalid. Dexcom also filed patent infringement suits in California and Delaware against AgaMatrix.

### COMMENTS:

Perhaps the next move is AgaMatrix filing another infringement action. We can only wait and see how things develop.

## Allergan Transfers Restasis Patents to Avoid Invalidity Determination

An alleged infringer has the ability to initiate in the patent office an *inter partes* review (IPR) of a patent to have the patent declared invalid.

However, entities who are entitled to sovereign immunity cannot be forced to remain as a patent owner party to an IPR.

Universities have successfully used their sovereign immunity to stay out of IPRs.

Allergan owns patents to its dry-eye drug Restasis. To take advantage of sovereign immunity and prevent IPR challenges to its patents, Allergan has transferred those patents to the Saint Regis Mohawk Tribe.

The transfer included an upfront payment of \$13.75M and yearly royalty payments of \$15M to the Tribe.

### COMMENTS:

The Federal Circuit will likely need to sort out this strategy.

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