

Rothwell Figg Clients Prevail on Early Summary Judgment Motion in Pharmaceutical Patent Case

The U.S. Court of Appeals for the Federal Circuit granted the motion of Plaintiffs-Appellants George D. Petito, Anita M. Petito, and Connective Licensing, LLC to dismiss with prejudice their appeal against Rothwell Figg clients Nature's Bounty, Inc.; Puritan's Pride, Inc.; Rexall Sundown, Inc.; and Physiologics LLC, ("NBTY"). NBTY, represented by Rothwell Figg, is the largest vitamin manufacturer in the United States.

The Petitos had appealed the decision of the Southern District of New York, Judge Paul A. Engelmayer, granting NBTY's pre-discovery Defendants' motion for summary judgment finding U.S. Patent No. 6,645,948 invalid under 35 U.S.C. §§ 101 and 112. After Rothwell Figg's clients filed their responsive brief in the Federal Circuit, the Petitos dropped their appeal, agreeing to a dismissal of the appeal with prejudice in return for NBTY not seeking an award of attorneys' fees.

These cases were initiated when Plaintiffs sued NBTY for infringement of the '948 patent in the Southern District of New York. Judge Engelmayer granted NBTY's request to file early summary judgment motions on behalf of its clients as to certain discrete invalidity issues in an effort to streamline the litigation, and avoid unnecessary and expensive discovery costs.

The '948 patent relates to a nutritional composition for the treatment of connective tissue in mammals containing a therapeutically effective amount of: [1] a glucosamine salt, [2] chondroitin sulfate, [3] collagen, and [4] sodium hyaluronate, which synergistically act as a chondroprotective agent. Rothwell Figg's clients develop and sell a variety of well-known dietary supplements, including the Osteo Bi-Flex®, Joint Soother®, Flex-a-min, and Physiologics® lines of products. Connective Licensing, LLC and the Petitos asserted that the '948 patent was infringed by at least 22 and possibly over 100 products made or sold by NBTY.

NBTY argued that the '948 patent did not contain any evidence, such as scientific test data (in vivo or in vitro) in humans or any other mammal, showing that the combination of claimed ingredients had the claimed therapeutic effect. In his ruling, Judge Engelmayer

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agreed with NBTY and found all of the asserted claims of the '948 patent invalid as a matter of law for failure to satisfy the utility requirement of 35 U.S.C. § 101/112 and the written description requirement of 35 U.S.C. § 112.

Puritan's Pride, Inc.; Rexall Sundown, Inc.; Nature's Bounty, Inc.; and Physiologics LLC were represented in this case by Rothwell Figg attorneys Steven Lieberman and Rachel Echols.