

Fed. Circ. Says PTAB Correctly Axed Eveready Battery Patent

By **Bonnie Eslinger**

Law360, Los Angeles (May 31, 2016, 8:02 PM ET) -- The Federal Circuit on Tuesday affirmed a Patent Trial and Appeal Board decision to invalidate all claims of an Eveready Battery Co. patent that were challenged by rival Spectrum Brands, finding evidence that the Eveready battery makeup was similar to a previously patented European battery.

In its ruling, the three-judge appellate panel concurred with a board examiner's decision holding the challenged claims invalid for "obviousness" when considering the prior art found in the European patent's application.

"In light of the evidence before the board, we hold that substantial evidence supports the board's finding," the Federal Circuit said.

Tuesday's decision is the latest twist in a long-running patent dispute between Energizer Holdings Inc, the parent company of Eveready Battery Co., and Spectrum Brands Inc., the maker of Rayovac batteries. In October 2008, Energizer won a permanent injunction barring Spectrum from importing Rayovac-brand lithium batteries from China and two months later the two companies reached a confidential settlement in the patent dispute.

But after the termination of that case, Spectrum filed a petition for an inter partes reexamination of one of the two patents that had been at issue, Eveready's U.S. Patent No. 6,849,360 for features of an Energizer lithium battery product. The examiner found that the patent would have been obvious in view of the European "Gan" patent and others. Eveready appealed the examiner's rejections of its claims, but the PTAB affirmed the examiner's determination, leading to Eveready's appeal to the Federal Circuit.

The Federal Circuit focused on Claim 1, the main claim of the Eveready patent, and whether it was non-obvious, meaning significantly different, from the European patent. The claim feature involves the ratio of the capacities of the battery's anode and cathode, the positive and negative sides at either end of a traditional battery, that are hooked up to an electrical circuit and how those two capacities overlap.

In its argument filed with the Federal Circuit, Eveready said the PTAB made "assumptions that are not supported by substantial evidence and ignores significant and important differences between battery electrochemistries" between their product and patent and the Gan patent.

But the Federal Circuit found that "substantial evidence" supported the board's finding that the information within the Gan patent filing was applicable to the Eveready patent and thus the American

company's patent claims couldn't be considered non-obvious.

In its filing with the Federal Circuit, Spectrum said Eveready used the "overly broad claims" of the '360 patent to keep Spectrum's Rayovac batteries off the market.

"Spectrum turned to the underlying reexamination proceeding to make the case that the '360 patent should never have been granted in view of significant prior art rendering the claims obvious," Spectrum wrote. "The patent office agreed."

Spectrum attorney Deborah Sterling of Sterne Kessler Goldstein & Fox PLLC told Law360 on Tuesday that the company was pleased with the court's ruling.

"The Federal Circuit has affirmed the PTAB's finding that all claims of the '360 patent are invalid as obvious over numerous prior art references," she wrote in an email.

Representatives for Energizer Holdings Inc. and Eveready Battery Company were not immediately reachable on Tuesday for comment on the Federal Circuit's decision.

In October 2008, Energizer Holdings won an injunction barring Spectrum Brands from importing its Rayovac-brand lithium batteries from China during patent litigation brought by Energizer; two months later, the companies resolved the lawsuit with a confidential settlement.

At that time, the preliminary injunction was a boon for Energizer, which had tried unsuccessfully for year to block imports of Chinese batteries.

The patent-at-issue is U.S. Patent Number 6,849,360, titled "Nonaqueous electrochemical cell with improved energy density."

U.S. Circuit Judges Evan Wallach, William Bryson and Richard Taranto sat on the panel that reached Tuesday's decision.

Appellant Eveready Battery Company is represented by David Bogdan Cupar, Robert Baraona and Matthew John Cavanagh of McDonald Hopkins LLC and Arnold Turk and Jill M. Browning of Greenblum & Bernstein PLC.

Appellee Spectrum Brands Inc. is represented by Deborah A. Sterling, Nirav N. Desai and Robert Greene Sterne of Sterne Kessler Goldstein & Fox PLLC. The in-house counsel was Scott Piering of Spectrum Brands.

The case is Eveready Battery Company, Inc. v. Spectrum Brands, Inc., number 15-1824, in the United States Court of Appeals for the Federal Circuit.

--Additional reporting by Ryan Davis. Editing by Kelly Duncan.
