

Judge Tosses Rolls Royce Infringement Megasuit Against UTC over Airbus Engines

By Susan Beck

We know experts aren't really hired to be neutral in big ticket litigation. Still, it turns out that an expert can go too far in cheerleading for the client that's paying her. Rolls Royce learned that lesson the hard way on Friday, when Alexandria, Va., federal district court judge Leonie Brinkema tossed the company's \$11 billion patent infringement suit against United Technologies Corporation two weeks before trial.

Rolls Royce sued UTC unit Pratt & Whitney in 2010 for allegedly infringing its patent for a fan blade component used in jet engines for the Airbus A380, which holds 550 passengers and is touted as the "Superjumbo of the 21st Century." Rolls Royce sought \$3.7 billion in damages, including \$1.4 billion for price erosion (the price that Rolls Royce could have charged if it wasn't competing with UTC) and \$2.3 billion for lost profits. Rolls Royce claimed willful infringement, raising the potential award to \$11 billion in trebled damages.

UTC pared down the case in April, when Judge Brinkema ruled that any infringement wasn't willful. And on May 4, the judge issued a pre-trial ruling eviscerating the damage report submitted by Rolls Royce's expert, Mary Woodford of Cornerstone Research. "Woodford's expert report reads more like a lawyer's brief advocating for the highest conceivable damages award rather than an expert trying to assist the trier of fact reach a reasonable damages figure," Judge Brinkema ruled. "Because of this extensive overreaching, the entire report is undermined." She threw out Rolls Royce's

claims for lost profits and price erosion, leaving the company to seek reasonable royalties of \$493 million.

In her summary judgment ruling Friday, Judge Brinkema performed a technical claims construction analysis focusing on the "sweep regions" of fan blades, concluding that UTC didn't infringe Rolls Royce's patent.

UTC is represented by Bartlit Beck Herman Palenchar & Scott and Finnegan, Henderson, Farabow, Garrett & Dunner. Rolls Royce is represented by Kaye Scholer.

Lead UTC counsel Chris Lind of Bartlit Beck told us that Judge Brinkema's harsh treatment of Rolls Royce's damages expert should serve as a warning to law firms preparing cases for trial. "That ruling was a significant shot across the bow to everybody putting on experts," he said.

Lind pointed out that the controversy between UTC and Rolls Royce actually dates back to 2004, when UTC filed an interference claim against Rolls Royce with the U.S. Patent and Trademark Office. The PTO determined that Rolls Royce's blade patent had been improperly issued. Rolls Royce then filed a suit before Judge Brinkema, who overturned the PTO's ruling. The Federal Circuit affirmed, and Rolls Royce sued UTC for infringement the same day.

"In some litigation, the tides can turn," Lind said.