

Fed. Circ. Affirms Win For DuPont In Flame Barrier Case

By **Matt Bernardini**

Law360 (April 17, 2019, 7:52 PM EDT) -- The Federal Circuit on Wednesday upheld a Delaware jury's verdict that Unifrax infringed DuPont's patent on flame barrier insulation used in aircraft, saying the jury's decision was supported by substantial evidence.

Unifrax LLC had argued DuPont Co.'s patent was invalid because it was obvious and had been anticipated in another patent. However, in a 2-1 decision, the panel found the jury was right to reject that argument and that its verdict was backed up by substantial evidence that Unifrax's product infringed all of the patent's claims.

DuPont brought the suit in 2014, alleging Unifrax was infringing the patent, which is related to Nomex XF, a "composite flame barrier laminate" used in aircraft structures. Specifically, the patent covers a three-layer laminate coating for thermal and acoustic blankets, consisting of a heat-resistant coating bonded with a refractory coating by a layer of adhesive.

DuPont alleged Unifrax's thermal blankets used a coating that was roughly the same as the one described in the patent.

Along with its claims that the patent was invalid, Unifrax initially argued DuPont brought the suit in bad faith, knowing the patent was unenforceable, an assertion that U.S. District Judge Richard G. Andrews shot down early on in the case.

"As plaintiff points out, if all that were necessary to bring state law counterclaims was an allegation of invalidity and/or noninfringement, with an allegation of 'bad faith,' one would expect to see these sorts of counterclaims in most patent litigation," Judge Andrews wrote in a 2015 order that dismissed many of Unifrax's counterclaims.

Despite Unifrax's arguments, it was found liable for roughly \$3.3 million in May 2017.

The dissent in Wednesday's Federal Circuit ruling came from Judge Kathleen O'Malley, who said the patent's claim construction was wrong and that it led the jury down the wrong path in its infringement verdict.

Representatives for the parties did not immediately respond to requests for comment.

The patent-in-suit is U.S. Patent No. 8,607,926.

Judges Kathleen O'Malley, Jimmie Reyna and Todd Hughes sat on the panel for the Federal Circuit.

DuPont is represented by Christopher Landgraff, Sharon Desh and Mark Levine of Bartlit Beck LLP.

Unifrax is represented by Jacob Holdreith, Brenda Joly and David Prange of Robins Kaplan LLP.

The case is E.I. DuPont De Nemours & Co. v. Unifrax LLC, case number 17-2575, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Ryan Boysen. Editing by Marygrace Murphy.

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