

Judge Won't Disturb Jury Verdict On Health Supplement IP

By **Kevin Penton**

Law360 (February 23, 2018, 8:05 PM EST) -- A Texas federal judge on Thursday denied a bid for a new trial after a jury in January held that a medical company did not infringe the asserted claims of a health supplement patent, holding that the patent's owner failed to introduce sufficient evidence to disturb the verdict.

U.S. District Judge Vanessa D. Gilmore rejected Kaneka Corp's contention that "no reasonable person" could have concluded that Zhejiang Medicine Co. Ltd. did not infringe two limitations included as part of the patent, determining that the patent owner is trying to raise claim construction arguments that have already been litigated, according to her order.

Kaneka's patent covers an industrial process for producing an antioxidant used in health supplements known as oxidized coenzyme Q10, or CoQ10. While Kaneka contends that Zhejiang's manufacturing processes infringes, the judge determined Thursday that the jury was presented with "ample evidence" that Zhejiang does not perform a certain oxidation step and that the tanks it uses in the process are not fully sealed, according to the order.

"Although Kaneka may take issue with the outcome of the trial, there was sufficient evidence for the jury to find that [Zhejiang's] processes do not infringe the patent," the order reads.

Judge Gilmore also rejected a bid by Zhejiang to recover \$76,499 in legal costs from Kaneka, holding that because a previous order in the case had instructed both sides to bear their own costs and its reasoning still applies, "it is the equitable result for each side to bear its own costs," the order reads.

The Federal Circuit in January 2017 vacated a ruling that Zhejiang did not infringe the patent, finding that a judge had misinterpreted the appeals court's reading of a key claim term in a separate case.

While Kaneka's suit against Zhejiang was pending in the Southern District of Texas in 2015, the Federal Circuit in a separate case vacated a decision that several other companies did not infringe the same Kaneka patent. The appeals court found that U.S. Magistrate Judge Mary Milloy "misinterpreted" that ruling when she granted Zhejiang summary judgment of noninfringement in the instant case.

After the case returned to the Southern District of Texas, the matter proceeded to trial, according to court documents.

"This is a tremendous victory for Zhejiang Medicine Company and ZMC-USA," said Gary Hnath, an attorney representing the companies, to Law360.

Counsel for Kaneka could not be reached for comment on Friday.

The patent in suit is U.S. Patent Number 7,910,340.

Zhejiang is represented by Gary Hnath and Charles Kelley of Mayer Brown LLP and Brian A. Rosenthal of Gibson Dunn & Crutcher LLP.

Kaneka is represented by Robert M. Bowick of Raley & Bowick LLP, and Keith D. Nowak, William Sondericker and Gerald W. Griffin of Carter Ledyard & Milburn LLP.

The case is Zhejiang Medicine Co. Ltd. et al. v. Kaneka Corp., case number 4:11-cv-01052, in the U.S. District Court for the Southern District of Texas.

--Additional reporting by Ryan Davis. Editing by Jack Karp.

Update: This story has been updated to include comments from an attorney representing Zhejiang.