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## Reddy Ice Drops Ice Machine Patent Suit Against ISB

By Liz McKenzie

Law360, New York (June 18, 2010) -- Reddy Ice Corp. has dropped its suit alleging ISB-In Store Bagging Machine Co. LLC infringed a patent for an in-store ice-bagging machine, on the heels of the defendant's counterclaims that Reddy Ice violated antitrust law by initiating sham litigation.

Judge Royal Furgeson of the U.S. District Court for the Northern District of Texas signed off Thursday on an agreed order of dismissal, shortly after ISB alleged that Reddy Ice was maintaining a monopoly on the ice products market by bringing baseless infringement suits against competitors.

ISB attorney Michael Bowers of Bell Nunnally & Martin LLP confirmed that the parties had agreed to settle the claims. The plaintiff also admitted that ISB did not infringe the patent-in-suit, he said.

"We're very pleased with the outcome," Bowers said, adding that his client was disappointed that Reddy Ice filed the "baseless" lawsuit in the first place.

Reddy Ice filed suit in April, accusing ISB of infringing U.S. Patent Number 5,109,651, which covers a machine sold to retail stores that makes and packages ice. The '651 patent was issued to Reddy Ice in 1992, according to the complaint.

The suit claimed that ISB began to manufacture and sell in-store ice-bagging machines that infringed the '651 patent.

The defendant responded to the complaint in May, denying the enforceability of the patent-in-suit and arguing that the packaged ice distributor violated antitrust regulations by filing "frivolous" litigation against its competitors in an effort to gain a tighter grip on the ice machine market.

ISB claimed that Reddy Ice's patent claims were barred under prosecution history, equitable and other estoppel theories.

Previously, the U.S. Patent and Trademark Office determined on re-examination that Claim 6 of the '651 patent was unpatentable due to prior art, the defendant said.

In response to the agency's findings, Reddy Ice argued that the examiner failed to consider the word "tube" in Claim 6 of the patent and noted that the device illustrated in the prior art consisted of an open-sided "trough" that differed from the enclosed cylindrical tube described in the Reddy Ice patent, the counterclaims said.

The USPTO accepted Reddy Ice's "tube" argument and eventually reconfirmed the patentability of the claim, according to ISB.

The defendant contended that even though Reddy Ice was aware that ISB's ice-bagging machines also utilized a trough configuration, the plaintiff asserted the '651 patent against it anyway.

"Reddy Ice has engaged in predatory and/ or exclusionary conduct with a specific intent to monopolize the relevant market," the counterclaims said. "There is a dangerous probability that Reddy Ice will be able to attain a complete monopoly power by forcing ISB out of business."

The suit sought an injunction barring ISB from selling the allegedly infringing machines and treble damages.

A representative for Reddy Ice could not immediately be reached for comment.

The patent-in-suit is U.S. Patent Number 5,109,651.

Reddy is represented by Haynes and Boone LLP.

ISB is represented by Bell Nunnally & Martin LLP.

The case is Reddy Ice Corp. v. ISB-In Store Bagging Machine Co. LLC, case number 3:10-cv-00870, in the U.S. District Court for the Northern District of Texas.

--Additional reporting by Christopher Norton and Brendan Pierson