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The Precedent: Federal Circuit Affirms Antitrust Liability for Patent Tying in Ingevity Corp. v. BASF Corp.

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In this edition of *The Precedent*, we outline the decision in *Ingevity Corp. v. BASF Corp.*

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Overview

In *Ingevity Corp. v. BASF Corp.*, the Federal Circuit affirmed a jury verdict finding that Ingevity Corp. (Ingevity) violated antitrust laws by tying licenses to its fuel-vapor canister patent to purchases of its unpatented carbon honeycombs. The Federal Circuit upheld a trebled damages award totaling more than \$84 million and rejected Ingevity's arguments that its honeycombs were not staple goods — which would have permitted Ingevity to control the honeycombs — that its conduct was immune from antitrust laws because it has the ability to enforce its patents and that the award must be vacated because BASF Corp. (BASF) failed to disaggregate damages.

Issues

1. Did BASF present sufficient evidence for the jury to find that Ingevity's carbon honeycombs were staple goods with substantial non-infringing uses, which would defeat Ingevity's patent misuse defense?
2. Was Ingevity's conduct immune from antitrust liability because Ingevity's actions involved patent enforcement activity and communications about patent rights?
3. Was the jury's antitrust damages award, including its treatment of causation and apportionment, supported by the record?

Holdings

1. Substantial evidence supported the jury's finding that Ingevity's honeycombs were staple goods that could be used in non-infringing applications, which defeated Ingevity's patent misuse

defense.

2. Ingevity had waived its immunity argument by failing to raise it before the trial court. The trial court did not commit any plain error that warranted relief.
3. The damages award was supported by the evidence and the jury was not required to separate damages based on lawful and unlawful conduct.

Background and Reasoning

Ingevity and BASF both supply carbon honeycombs used in automotive emissions systems. Honeycombs can be used in fuel vapor canisters (where Ingevity's RE38,844 patent applies) and in air-intake systems (which does not implicate Ingevity's patent). After BASF introduced a competing honeycomb, Ingevity told customers that access to a license of the RE38'844 patent required purchasing honeycombs exclusively from Ingevity.

Ingevity sued BASF for patent infringement arising from BASF's testing and marketing of its honeycombs. BASF filed counterclaims for unlawful tying under the Sherman Act and for tortious interference under Delaware law. A Delaware jury found for BASF, and the district court trebled the anti-trust damages. On appeal, Ingevity principally argued that its honeycombs were not staple goods such that Ingevity had the right to control the honeycombs and that, in any event, its conduct was protected patent enforcement.

Staple goods and non-infringing uses

The first question was whether Ingevity's honeycombs had substantial non-infringing uses. If so, they are staple goods and Ingevity could not use its patent to control their sale.

Ingevity attacked BASF's proof, claiming that Ingevity's own sales records reflecting air-intake applications were typographical errors and that the honeycombs could not actually be used in air-intake systems, which would be a non-infringing use. The Federal Circuit, applying the deferential standard for reviewing jury verdicts, concluded that the evidence was sufficient for the jury to find otherwise.

The record included:

- Repeated sales entries to several customers with the "end use" identified as air-intake systems, totaling more than 18,000 units;
- An internal Ingevity memo confirmed that a customer used honeycombs for air-intake systems; and
- A prior Ingevity patent identified automobile air-intake systems as an intended application for the honeycombs.

Despite Ingevity's fact-based arguments, the Federal Circuit held that the jury was entitled to discount certain testimony and credit contemporaneous documents instead. On this record, the Federal Circuit found that treating the honeycombs as staple goods was reasonable.

Antitrust liability and immunity

Ingevity also argued that its conduct was immune from antitrust liability because Ingevity was enforcing its patent and communicating with customers about infringement risk. The jury was expressly instructed that patent enforcement and threats of litigation, by themselves, could not support antitrust liability. The jury was told that only conduct that restricted competition beyond the patent's scope, such as tying, could do so.

With those instructions, the Federal Circuit agreed with the district court that the tying verdict necessarily rested on more than protected communications. The evidence included testimony from an Ingevity executive that customers had to buy honeycombs only from Ingevity to obtain a license. The district court noted that this condition was "a classic tying arrangement." Accordingly, the Federal Circuit held that neither the patent laws nor doctrines that protect petitioning activity insulated Ingevity from liability.

Damages and causation

On damages, Ingevity argued that BASF's expert failed to separate the harm caused by lawful conduct from harm caused by unlawful tying, and that BASF's market-share assumptions were speculative. The Federal Circuit explained that BASF needed to show that the tying conduct was a material cause of its injury, not the exclusive cause.

The Federal Circuit pointed to evidence that BASF's product was cheaper and competitive on performance, that automakers and canister manufacturers were actively interested and conducting tests of the honeycombs, and that Ingevity responded to BASF's actions by licensing practices directly aimed at blocking BASF's access to those customers. Moreover, BASF's expert testified about the sales BASF would likely have captured in a competitive market. In the end, the jury heard competing expert views and chose to credit BASF's.

The Federal Circuit noted that any uncertainty in the exact amount of damages flowed from Ingevity's own conduct. Moreover, that uncertainty did not require overturning the jury's award, where the causal link is supported by substantial evidence.

Takeaway

This case is a strong reminder that patent owners cannot condition licenses on exclusive purchases of staple goods that have substantial non-infringing uses. Companies should carefully structure licensing and sales practices to avoid crossing the line into anticompetitive tying, particularly where their products serve multiple markets or applications.