

ITC Domestic Industry Rule Won't Get High Court Review

By **Jonathan Randles**

Law360, New York (October 09, 2012, 6:36 PM ET) -- The U.S. Supreme Court on Tuesday declined to hear a New York manufacturer's case seeking to relax the U.S. International Trade Commission's domestic industry rule that bars companies, including nonpracticing entities, from meeting the standard by pursuing litigation to enforce their patents.

Syracuse-based PPC Inc., which makes coaxial cable connectors, sought to reverse both the ITC and Federal Circuit, which found that the company didn't meet Section 337 of the Tariff Act's domestic industry requirement for one of its design patents because the company does not make products that use the technology.

The case could have presented the Supreme Court with a means to either stiffen or loosen the domestic industry rule, which could have had significant implications for nonpracticing entities trying to pursue patent claims in the ITC.

Benjamin Levi of McKool Smith PC said the application of the domestic industry rule, which was the subject of PPC's petition, is "very fact-intensive." Therefore, Levi said he wouldn't expect to see an uptick in the number of litigants urging the ITC to find a domestic industry based on licensing-related litigation expenses.

"I would not interpret the Supreme Court's denial of certiorari as a signal that the High Court seeks to raise the bar on domestic industry," Levi said. "To the contrary, this case presented a vehicle by which the court could have raised the bar, but it chose not to do that."

PPC urged the Supreme Court in June to revive its case, arguing that the ITC should have found the company satisfied the domestic industry standards anyway, since it had gone after alleged infringers in lawsuits and attempted to license its U.S. Patent Number D440,539.

The suit by PPC stems from an ITC complaint PPC filed against four Chinese companies which allegedly imported products that infringe the design patent and three of PPC's utility patents.

The ITC eventually dismissed PPC's case regarding the design patent, saying the company could not meet the standards of the domestic industry requirement's economic prong, under which a domestic industry exists if a patentee has invested in exploiting the patent through "engineering, research and development, or licensing."

The company then appealed to the Federal Circuit, arguing that its litigation costs related to enforcing its rights under the '539 patent were enough to establish domestic industry because it showed adequate investment in trying to license the patents.

A message left for PPC was not returned.

The ITC declined to comment Tuesday.

PPC is represented by in-house counsel.

The case is John Mezzalingua Associates Inc. d/b/a PPC v. International Trade Commission, case number 11-1427, in the U.S. Supreme Court.

--Additional reporting by Scott Flaherty. Editing by Rebecca Flanagan.

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