

CoQ10 patent infringement hatchet far from buried, association president says

By Hank Schultz, 24-Aug-2015

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A patent dispute among CoQ10 producers which had faded from view because many in the industry assumed it was settled is still very much alive via court procedures in Texas and has the theoretical potential to upset the apple cart for an ingredient that has relatively few sources.

"I think it is important for people to be aware that it is still going on," CoQ10 Association president Scott Steinfeld told NutraIngredients-USA.

Long history

Japanese supplier Kaneka has pursued patent infringement actions against a range of companies for a number of years. Kaneka pioneered the ingredient via a fermentation process back in the '70s. The company quickly acquired Japanese competitors and sometime thereafter a number of Chinese companies got into the game, featuring lower cost ingredients. Kaneka claimed all of these companies were infringing on the highly technical production aspects of its various patents, while the others fired back that the original patents were over-broad and unenforceable. (In this regard this patent dispute resembles many others in the dietary ingredient supply industry.)

Kaneka's efforts to prove that most if not all of the CoQ10 being produced worldwide was infringing on some aspect of its patented technology culminated in 2011 in a case brought before the International Trade Commission. That case was resolved unfavorably for Kaneka in 2012. Claims by Chinese producer ZMC and its US marketing arm ZMC-USA against Kaneka for damages arising from this case were also dismissed.

Steinfeld said this is the sequence of events that most industry observers familiar with or who work with the ingredient remember. ITC cases are sometimes referred to in the patent litigation game as the 'nuclear option', in that they can result in what is in effect a cease-and-desist order that has very broad application. Kaneka swung for the fences and struck out; but it's back at the plate again.

Secondary action

According to Steinfeld, the patent infringement case designated as case No. 4:11-cv-01052 U.S. District Court for the Southern District of Texas remains active and has the ability to supersede the ITC case decision involving Kaneka and ZMC, ZMC-USA. According to court files, on June 10, 2015 the Federal Court of Appeals ruled the claim construction definitions determined by the District Court in granting its summary judgment was in error. The judgment was vacated and returned to the District Court for review. He said while this decision is not really a victory for either side it is a generally favorable decision for Kaneka as the case moves forward.

"This is an important case for both parties as millions of dollars have been spent in litigation and other costs and the case continues. The Texas case has been set for jury trial December 7, 2015 and also ordered for mediation August 28, 2015. While the judgments have typically been in favor of ZMC, it is never a good bet to depend on precedent when a new judge or jury is involved," Steinfeld said.

Building a bigger category

Steinfeld is familiar with this history as he was president of ZMC-USA for a number of years before leaving to join the Doctor's Best supplement brand several years ago. Steinfeld left that position to free up time to start laying the groundwork for the CoQ10 Association last year. Taking the cue from other single ingredient associations, the newly formed group's goal is to foster common ground among producers to help grow the overall market for the ingredient.

"From the industry's point of view it is never good to have these kind of cases hanging out there," Steinfeld said. *"I think it is a logical argument to make that all of the millions of dollars spent in litigation could have been used to advance the category."*

The CoQ10 Association lists three founding members at the moment: Kingdomway, a major Chinese producer of the

ingredient, finished goods brand Doctor's Best and contract manufacturer Tishcon. The ongoing patent fight is one hurdle to building a broader membership, Steinfeld said.

"Kaneka and ZMC have stated that until the litigation is over they have been advised against joining the association," Steinfeld said.

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