



Defendant Wipes Out After Getting Caught in the Riptide and Is Sanctioned for Ill-Conceived Motion to Compel in Surf Tech Litigation

Mar 17, 2017

Reading Time : **2 min**

By: Brock F. Wilson

The plaintiff, FlowRider, acquired an exclusive right to the asserted patent and a portion of the inventor's business, Wave Loch. Prior to the instant litigation, FlowRider and Wave Loch were engaged in arbitration unrelated to the patent issues before the court. The arbitration lasted almost a year and involved the production of more than 40,000 pages of documents and the exchange of nearly 80 pleadings.

In the subsequent patent litigation, defendant Pacific Surf requested the production of "whatever documents, pleadings, etc., were exchanged or provided" in the arbitration. FlowRider objected on various grounds, but eventually produced the demand for arbitration, the arbitration settlement agreement, and a contribution agreement. FlowRider also produced nearly 79,000 other documents through the course of discovery. Not satisfied, Pacific Surf moved to compel FlowRider to produce "all pleadings and documents exchanged in the arbitration."

Pacific Surf argued that the arbitration documents were relevant to standing, damages and the credibility of the inventor. FlowRider countered that a separate, non-arbitrated agreement gave it standing, that it had already produced documents relating to damages, and that the confidential documents exchanged in the arbitration were directed to an irrelevant contract dispute. On this last point, FlowRider submitted a declaration from arbitration counsel that explained that the arbitration related to contractual pricing obligations and manufacture and sales rights, and that "[n]one of the issues in the arbitration related to Wave Loch's development or ownership of patents or other intellectual property."

Although the court found the motion untimely, it went on to rule on the merits. The court agreed with FlowRider that the arbitration involved an irrelevant breach of contract claim, and held that “even if the documents were relevant, [Pacific Surf’s] request for all ‘documents, pleadings, etc. . . . exchanged or provided’ in the [a]rbitration is grossly disproportionate to the needs of the case and seeks confidential information.” The court also found that the request sought “cumulative information” because the 79,000 documents that FlowRider had already produced contained sufficient information to support damages and challenge the inventor’s credibility. Thus, the court found that the request was overboard, sought irrelevant information and was not proportional to the needs of the case. The court also found that Pacific Surf had ignored FlowRider’s representation that it had already produced any relevant documents that were exchanged in the arbitration, and instead filed an “untimely motion to compel irrelevant, duplicative and confidential documents, which are not proportional to the needs of this case.”

The court denied the motion and sanctioned the defendant for filing a motion that was not substantially justified.

FlowRider Surf, Ltd., et al., v. Pacific Surf Designs, Inc., No. 15-cv-1879 BEN (BLM) (S.D. Cal. March 9, 2017)

Categories

District Court

Patent Litigation

© 2025 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and

other associated entities under which the Akin Gump network operates worldwide, please see our [Legal Notices](#) page.