

Fed. Circ. Tosses \$1M Fee Appeal In Volvo Seat Patent Suit

By **Aebra Coe**

Law360, New York (March 16, 2016, 11:45 AM ET) -- Volvo has nearly \$1 million in attorneys' fees coming its way after the Federal Circuit on Wednesday threw out a child safety seat patent holder's appeal seeking to overturn an order imposed by a lower court that found "no reasonable basis" for its infringement suit against the automaker.

The Federal Circuit tossed Lugas IP's appeal of a New Jersey federal court's attorneys' fee award after the patent holder failed to file an opening brief and then didn't respond to a request made by Volvo Car Corp. to dismiss the appeal, in which the automaker argued that allowing the appeal to remain before the court without any movement "plainly prejudices" it because of the big chunk of cash that remains unpaid.

"Lugas IP LLC filed an exceptional case that warranted a nearly \$1 million award of attorney's fees — a sizeable monetary judgment that remains unsatisfied," Volvo said in its request for dismissal. "Lugas's unreasonable behavior has continued in this appeal: it has failed to file a principal brief or a notice of appearance as required by this Court's Rules; it has failed to request an extension for either of those filings; and now it has failed to even respond to Volvo's motion to dismiss."

Originally filed in Virginia in 2011, the suit alleges Volvo infringed U.S. Patent Number 5,806,926 through its integrated booster seats. The '926 patent, invented by a bus driver and later transferred to Lugas' ownership, covers a "child safety seat that automatically converts to an adult seat when not in use by a child," according to court documents.

In July 2014, Senior U.S. District Judge Joseph E. Irenas granted Volvo's motion for summary judgment, finding that its booster seats — children's safety seats built into adult car seats — do not "automatically retract" in the ways that the patent describes. The decision came following claim construction in the case.

The automaker filed a post-judgment motion a month later, asking the judge to declare the suit exceptional and to award it attorneys' fees.

In its opposition, Lugas said that Volvo didn't request fees in its summary judgment motion, so if the suit was really as "objectively baseless" as the automaker said in its post-judgment bid, Volvo should have requested the fees beforehand.

But in a March, 2015 order, Judge Irenas **granted Volvo's motion for costs**, saying there was no "reasonable basis" for the suit to have been filed because the products differ heavily.

Lugus subsequently argued that the decision was flawed because it was based purely on pre-claim construction allegations and did not address the patent holder's argument that certain aspects of Volvo's seats were automatic and that just because they needed to be manually locked in place did not mean the patent allegations were "unreasonable."

But the district court disagreed and denied the patent holder's request for reconsideration in November, saying there was no justification for reconsidering the original fee decision.

On Wednesday, counsel for Volvo, Matthew J. Moore of Latham & Watkins LLP, said that the automaker's successful effort to get the subsequent Federal Circuit appeal dismissed is demonstrative of its stance on "nuisance value patent cases."

"This is just further evidence that Volvo is prepared to fight nuisance value patent cases and hold the parties that file them accountable," Moore said.

Counsel for Lugus did not immediately respond to a request for comment Wednesday.

Lugus IP is represented by Brian M. English of Tompkins McGuire Wachenfeld & Barry LLP.

Volvo is represented by Matthew J. Moore, Jonathan D. Link and Gabriel Bell of Latham & Watkins LLP and Arnold B. Calmann of Saiber LLC.

The case is Lugus IP LLC v. Volvo Car Corp. et al., case number 16-1305, in the U.S. court of Appeals for the Federal Circuit.

--Editing by Emily Kokoll.

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