

ALC, GN Add Fuel To Hearing Aid Patent Battle

By **Nick Brown**

Law360, New York (July 07, 2010) -- Auditory Licensing Co. LLC has accused GN ReSound A/S, Oticon Inc. and others of infringing two more hearing technology patents, while the rival auditory device makers have filed their own declaratory judgment suit over the asserted patents.

The competing suits, launched Tuesday in the U.S. District Court for the District of Connecticut, represent the latest chapter in the litigious story of ALC's hearing technology, shifting focus to a pair of new patents claiming devices with receivers in the ear canal and microphones outside it.

ALC, formerly Vivatone Hearing Systems LLC, takes aim at GN, Oticon, Siemens Hearing Instruments Inc. and Widex Hearing Aid Co. Inc., among others, accusing the defendants of infringing U.S. Patent Numbers 7,751,580, issued Tuesday, and 7,720,245, issued May 18.

The plaintiff is seeking injunctions, compensatory damages and royalties, treble damages for willful infringement, pre- and post-judgment interest, and costs and attorneys' fees.

Interton Hoergerate GmbH, American Hearing Systems Inc., Bernafon LLC, Phonak LLC and Unitron Hearing Inc. are also named as defendants in the suit.

The complaint didn't come out of the blue for the defendants, however, which said they predicted litigation based on a 2008 letter from ALC stating its belief that they were infringing the two then-pending patents.

As soon as the '580 patent was issued, the defendants filed the parallel action seeking declarations of both invalidity and noninfringement.

An attorney for ALC, however, said his client never formally threatened or attempted to negotiate with the defendants before lodging its infringement suit.

"There is no requirement to enter negotiations before filing suit," Cantor Colburn LLP's Steven M. Coyle said Wednesday.

Allegedly infringing products include GN's Pulse CRT; Oticon's Epoq, Vigo and Delta; and Siemens' Cielo 2 Active, Pure RIC 500 and 700, and Vibe, according to the declaratory judgment complaint. While the decision by both sides to sue in Connecticut effectively nullifies the battle over forum, questions remain as to how the matter will proceed. The court could consolidate the cases or dismiss one in favor of the other, according to attorneys.

"My sense is they'll be consolidated, and they may even be consolidated with an existing pending lawsuit on an earlier patent," Coyle said.

Namely, he said, the court may consolidate the matter with ALC's earlier suit against the same defendants over U.S. Patent Number 7,421,086, issued in September 2008, which covers technology similar to that of the newer patents.

In that suit, ALC claims it has been damaged by lost sales, profits and royalties. The company touted its '086 patent as claiming first-of-its-kind technology, introducing a device that sits behind the ear instead of plugging into the ear canal and causing a barrel-effect for the wearer.

Attorneys for the accused infringers declined to comment Wednesday.

The patents-in-suit in the current matter are U.S. Patent Numbers 7,751,580 and 7,720,245. The alleged infringers are represented by Day Pitney LLP, Wiggin & Dana LLP and Cummings & Lockwood LLC.

ALC is represented by Cantor Colburn LLP.

The cases are Auditory Licensing Co. LLC v. GN ReSound A/S et al., case number 10-cv-01054, and GN ReSound A/S et al. v. Auditory Licensing Co. LLC, case number 10-cv-01052, in the U.S. District Court for the District of Connecticut.

--Additional reporting by Julie Zeveloff

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