

Fed. Circ. Keeps Ban On Emcore Optoelectronic Imports

By **Erin Coe**

Law360, San Diego (November 14, 2011, 7:43 PM ET) -- The Federal Circuit on Monday upheld the U.S. International Trade Commission's limited exclusion and cease-and-desist orders against semiconductor company Emcore Corp., which was found to have imported optoelectronic devices that infringed an optical communications patent held by rival Avago Technologies Ltd.

In a brief order, a three-judge panel affirmed the commission's July 2010 decision issuing an exclusion order barring Emcore from importing any of the infringing optoelectronic products and a cease-and-desist order prohibiting the company from selling or distributing the products in the U.S.

Richard Florsheim, a Foley & Lardner LLP attorney representing Avago, said his client was pleased with the win.

An attorney representing Emcore was not immediately available for comment.

Prior to its ruling in July 2010, the ITC decided in May 2010 that Emcore had violated Section 337 of the Tariff Act of 1930 by importing into the U.S. fiber optics components that infringed several claims of Avago's U.S. Patent Number 5,359,447.

The ruling rejected Emcore's bid to have the patents deemed invalid and held that the semiconductor company also induced and contributed to the infringement of the '447 patent.

But the administrative law judge also found that Emcore had not infringed a second Avago patent, U.S. Patent Number 5,761,229, and that the respondent did not infringe one of the asserted claims of the '447 patent.

The ITC launched the case in March 2009 after Avago filed a complaint alleging that New Mexico-based Emcore's fiber optic components infringed the two patents-in-suit.

Avago claimed that Emcore manufactured or had others manufacture optoelectronic devices such as transmitters, receivers and transceivers that infringed certain claims of the patents-in-suit.

Prior to the ITC matter, Avago sued Emcore and manufacturer Fabrinet Co. Ltd. for infringement of the same patents in December 2008 in the Northern District of California, though the plaintiff later dropped claims against Fabrinet.

The district court case, which seeks monetary damages, has been stayed pending the appeal of the ITC dispute.

The products at issue are used in certain optical communications systems that allow digital information to be converted into light and sent through a fiber to a receiver, which then transforms the light back into information.

Judges William Bryson, Kimberly Moore and Jimmie Reyna sat on the panel for the Federal Circuit.

The patents-in-suit are U.S. Patent Numbers 5,359,447 and 5,761,229.

Emcore is represented by Frederick Lorig and Sidford Brown of Quinn Emanuel Urquhart & Sullivan LLP and Louis Mastriani and Daniel Smith of Adduci Mastriani & Schaumberg LLP.

Intervenor Avago is represented by Richard Florsheim, Cynthia Franecki, John Vetter, George Quillin and Gina Bibby of Foley & Lardner LLP, and Robert Kramer and Jerold Schneifer of Novak Druce + Quigg LLP.

The case is Emcore Corp. v. International Trade Commission, case number 2011-1069, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by John Quinn.