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Complaint Sheltered From Dismissal In Patent Row Over Personal Tents

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A recent opinion from Judge Shea in the District of Connecticut sheds important light on the sufficiency of pleadings in declaratory judgment patent cases. Noting that declaratory judgment actions are of particular importance in the intellectual property sphere, Judge Shea denied a motion to dismiss a complaint – even though the complaint included patents issued after the action was filed, and contained only a comparatively simple allegation of invalidity.

The case involves a dispute between Anthem, an online retailer of sporting goods and equipment, and Under the Weather, a company that develops, designs, and sells "sportspods," or small personal tents intended for use during outdoor sporting events played in bad weather. Initially, Under the Weather sold its products through Anthem's online marketplace. Ultimately, however, the parties' business relationship fell apart; Anthem then began selling similar products made by a different manufacturer. According to Anthem, Under the Weather subsequently threatened suit against it, alleging that the similar products Anthem was selling infringed its patents on "sportspod" devices.

Anthem sued, seeking, among other things, a declaratory judgment that the products it sold are non-infringing and that Under the Weather's "sportspod" patents are invalid. Under the Weather moved to dismiss on the ground that both of these requests for declaratory judgment failed to state a claim.

For the non-infringement claim, Under the Weather argued that there could not be a "case or controversy" with respect to four of its newer patents, because they had not yet been issued at the time Anthem filed its initial complaint. According to Under the Weather, any threats to sue could not have included the four new patents. But as Judge Shea noted, the four new patents related to "sportspods," the same technology over which Under the Weather had already threatened to sue. Anthem had also amended its complaint, and the patents were all issued at the time that amended complaint was filed. To Judge Shea those four new patents were therefore part of the same "case or controversy" as Under the Weather's other patents.

Under the Weather also argued that Anthem's request for declaratory judgment of patent invalidity lacked sufficient specificity. The court rejected this argument as well, noting that although the complaint was not a "model of clear pleading," it nevertheless had sufficient specificity to withstand a motion to dismiss. Anthem's complaint identified specific pieces of prior art that allegedly invalidated

the patents, and specified the alleged grounds of invalidity, §§102 and 103. According to Judge Shea, that is all that is required at the pleading stage.

With attention newly focused on the rules for sufficiency of pleadings, this case is an important touchstone for any litigant seeking to understand the current law. Relatively concise pleadings can still be sufficient to withstand a motion to dismiss.

The case is *Anthem Sports, LLC, et al. v. Under the Weather, LLC, et al.*, No. 3:17-cv-596(MPS) (D. Conn.). A copy of the opinion can be found here.

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