



# Judge's Ruling Shows Summary Judgment Motions Still a Useful Tool in Patent-Infringement Cases

Client Advisories

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Despite some federal judges' public statements that summary judgment motions can be problematic in patent-infringement cases, a recent decision in *Innovative Patents LLC and Forcefield LLC v. Brain-Pad Inc.*, in favor of Archer client Brain-Pad Inc., shows the continuing utility of such motions.

In dismissing all nine patent-infringement claims against Brain-Pad, Magistrate Judge Mary Pat Thyng of the U.S. District Court for the District of Delaware ruled that the competitor companies failed to show that Brain-Pad's design directly infringes on the competitor's patent. Having previously adopted Brain-Pad's claims construction of "curved in configuration" as meaning "preformed, arcuate and having first and second ends," the court granted summary judgment for Brain-Pad because its accused products use inserts that are not "curved in configuration" as required by the claims, but instead were "flaccid, shapeless loop[s] of perforated elastomeric material," which are neither "arcuate" nor have "first and second ends."

Brain-Pad's lawyers from Archer also highlighted the history of the patent in suit. The legal team - Partners John C. Connell, John F. Letchford, and Charles J. Brown III, along with Associate Stephanie A. Gannon - showed that the original application was amended three times to overcome rejection by the patent examiner because of already-existing patents. The final version, tailored to secure patentability, contains features that are substantively distinct from the Brain-Pad design, Judge Thyng ruled.

Thus, Brain-Pad was found not to infringe either literally or under the doctrine of equivalents. Judge Thyng's ruling for summary judgment also rejected the competitor's demand that Brain-Pad pay triple damages based on alleged losses from infringement. Thus, Brain-Pad may continue to sell its specialized headbands with impact-absorbing inserts.

If you have questions about either the impact of this ruling or other intellectual property matters, please contact John C. Connell or John F. Letchford of Archer's Intellectual Property Group at (856) 795-2121.

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