

## Octane Fitness Gives Medtrica, Steris Second Shot At Fees

By **Vin Gurrieri**

*Law360, New York (July 14, 2014, 2:23 PM ET)* -- A Washington federal judge on Friday agreed to revisit a ruling that Medtrica Solutions Ltd. and Steris Corp. couldn't recover attorneys' fees from Cygnus Medical LLC for an allegedly frivolous patent suit over an endoscope kit after the U.S. Supreme Court's recent Octane Fitness ruling.

U.S. District Judge Robert S. Lasnik had ruled in April that Cygnus' claims were not frivolous. But the high court's Octane Fitness ruling, issued two weeks after his decision nixing fees in the case, issued a more relaxed standard that could allow Medtrica and Steris to recover fees even if the claims weren't objectively baseless.

Judge Lasnik said that the high court's ruling in Octane Fitness LLC v. Icon Health & Fitness had loosened the standard for proving that a case is exceptional and that an award of fees is warranted and allows judges to award fees when a case "stands out."

"Under the discretionary, flexible framework endorsed by the Supreme Court, the court finds that this case is exceptional," Judge Lasnik said. "Employing the more flexible approach embraced by the Supreme Court, the court finds that this case stands out from others with respect to the substantive strength of Cygnus' position."

Judge Lasnik said that his initial ruling was correct in light of the standard set by the Federal Circuit's 2005 ruling in Brooks Furniture Mfg. Inc. v. Dutailier Int'l Inc., which allowed fees in patent cases if a claim is found to be "objectively baseless" or "brought in subjective bad faith."

The Octane Fitness ruling, however, rejected the Federal Circuit's standard as "overly rigid" and instructed federal courts to use their discretion in determining whether fees are warranted in any particular case.

The judge said that while he was not altering his finding that there was no evidence of bad faith or litigation misconduct by Cygnus, the case is still uncommon based on Cygnus' failure to produce any evidence supporting infringement during the summary judgment phase, despite having ample opportunity to obtain evidence during discovery, according to the order.

"It was under this more restrictive framework that the court found that Medtrica and Steris failed to show by clear and convincing evidence that Cygnus acted in bad faith or that its claims were objectively baseless," Judge Lasnik said.

In light of the ruling, Judge Lasnik instructed Medtrica and Steris to file a motion within two weeks that breaks down their fee request, according to the order.

Medtrica sued Cygnus for declaratory relief in April 2012, a month after Medtrica received a letter from Cygnus accusing it of infringing U.S. Patent No. 7,648,023.

Medtrica and Steris filed a motion for attorneys' fees after the court ruled in March that the two companies don't infringe Cygnus' patent, because the products do not satisfy one of the limitations in the asserted claims.

In its motion for reconsideration of the fee ruling, filed one day after the high court's Octane Fitness decision, Medtrica and Steris argued that the case stood out because of Cygnus' "exceptionally weak" case and that no reasonable juror would side with Cygnus.

In a response filed in May, Cygnus argued unsuccessfully that the case was not exceptional and that Medtrica and Steris had no evidence to the contrary.

Medtrica manufactures and sells endoscope precleaning kits to Steris, among others, under the name Appli-Kit, while Steris sells the kits under the name Revital-Ox, according to court documents.

In ruling for Medtrica and Steris in March, Judge Lasnik said the pouches in the companies' kits don't have "weakened lines" allowing users to open them to access detergent as required in the '023 patent.

The '023 patent is directed to a kit for an endoscope that can be used immediately after a procedure to clear debris from the channel and insertion tubes of the endoscope before a more thorough cleaning can be carried out. The kit is composed of a stand-up pouch containing an enzymatic detergent and a sponge, according to court documents.

Attorneys for Medtrica and Cygnus were not immediately available for comment Monday.

Medtrica is represented by Jessica C. Bromall and Rod S. Berman of Jeffer Mangels Butler & Mitchell LLP and R. Broh Landsman of Landsman & Fleming LLP. Steris is represented by Michael J. Estok of Lindsay Hart LLP.

Cygnus is represented by Daniel Gandara of Vandeberg Johnson & Gandara LLP and Wesley W. Whitmyer Jr., Stephen F.W. Ball Jr. and Brian L. Repper of St. Onge Steward Johnston & Reens LLC.

The case is Medtrica Solutions Ltd. v. Cygnus Medical LLC, case number 2:12-cv-00538, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Kira Lerner. Editing by Brian Baresch.