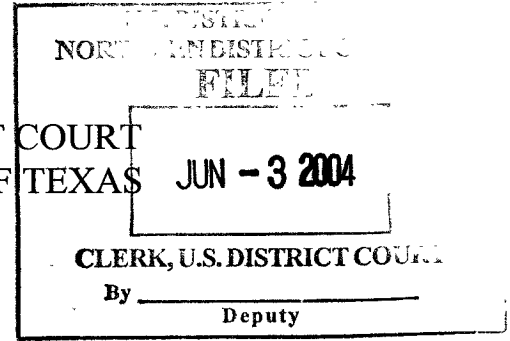


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



DIPPIN' DOTS, INC., et al.,

Plaintiffs,

v.

THOMAS R. MOSEY, et al.,

Defendants.

CIVIL ACTION FILE
NO. 3:96-CV-1959-L

ORDER

This is an action for patent infringement. It is before this Court on the Plaintiffs' Request for Reconsideration of Motion for Judgment as a Matter of Law Affirming the Validity of U.S. Patent No. 5,126,156 and Regarding Defendants' Antitrust Claims [Doc. 884]. For the reasons set forth below, the Plaintiffs' motion is denied.

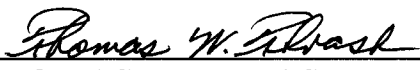
This action was filed by Plaintiffs Dippin' Dots, Inc. ("Dippin' Dots"), and its founder, Curt Jones. Dippin' Dots is an Illinois corporation with its principal place of business in Paducah, Kentucky. Dippin' Dots is engaged in the business of manufacturing and distributing flash frozen novelty ice cream. The Defendants in this action are engaged in either the manufacture or distribution of a competing flash frozen novelty ice cream product known as Frosty Bites.

In October 2003, a trial was held in this case resulting in a jury verdict that all of the claims in U.S. Patent No. 5,126,156 (“the ‘156 patent”) were invalid as obvious. In reaching this result, the jury heard and considered the evidence presented by both sides, and determined that the Defendants satisfied their burden to show by clear and convincing evidence that every claim of the ‘156 patent was invalid. The Plaintiffs argue in their request now before the Court that the evidence produced at trial is inconsistent with the jury’s findings. While it may be the case that some of the evidence produced at trial is not in agreement with the jury’s verdict, that is not the issue. Rather, the question before this Court is whether there was evidence to support the jury’s resolution of the matters it considered. That question may only be answered in the affirmative.

There was evidence produced at trial from which a jury could reasonably conclude that Jones’ pre-critical date activities belonged in the prior art, taught new steps which were not disclosed by the prior art considered by the patent examiner, and that, when added to the prior art, made every claim of the ‘156 patent invalid as obvious. Additionally, evidence was presented from which the jury could conclude that the presence of Jones’ pre-critical date activities destroyed the nexus of his commercial success declaration, preventing that declaration from overcoming the patent examiner’s obviousness objection. Because the evidence produced at trial

supports the jury's verdict, this Court will not disturb its findings. The Plaintiffs' Request for Reconsideration [Doc. 884] is DENIED.

SO ORDERED, this 3 day of June, 2004.



THOMAS W. THRASH, JR.
United States District Judge