

## Judge Overturns Steuben Foods' \$38M Patent Trial Win

By **Leslie A. Pappas**

*Law360 (March 14, 2023, 9:43 PM EDT)* -- A Delaware federal judge on Tuesday overturned a jury's \$38.3 million damage award to Steuben Foods and said a new trial could be needed in the company's patent dispute with dairy company HP Hood and bottler Shibuya Hoppmann Corp., finding that the jury's verdict was contrary to evidence and failed as a matter of law.

In a memorandum opinion issued Tuesday, Chief District Judge Colm F. Connolly entered a judgment of noninfringement of the asserted patents and conditionally granted Shibuya's motion for a new trial.

"I believe a new trial would be warranted because, as explained above, the jury's verdicts with respect to infringement of the asserted claims of the #985, #188, and #591 patents are contrary to the evidence," Judge Connolly wrote at the end of his 27-page opinion.

Elma, New York-based Steuben Foods Inc., a food and beverage processor, filed the suit against Shibuya Hoppmann Corp. in September 2010, alleging that it had infringed on a series of patents related to aseptically bottling sterilized foods at rates greater than 100 bottles per minute.

Shibuya Hoppmann Corp., founded in 1955 as Hoppmann Corporation, is a member of the Shibuya group. Shibuya Kogyo Co. Ltd. is a Japanese conglomerate focused primarily on manufacturing and selling products related to packaging.

HP Hood LLC, also named as a defendant in the case, is a Lynnfield, Massachusetts-based beverage manufacturer that markets milk and milk equivalents, including Lactaid, Planet Oat, Blue Diamond Almond Breeze almond milk and other drinks.

After a five-day trial, a Delaware jury in December 2021 awarded Steuben Foods a \$38.3 million royalty payment, finding that the Shibuya machines had infringed on a series of bottle-filling patents.

In his opinion Tuesday, Judge Connolly found that the jury made several errors when it concluded that Shibuya's bottle-filling machines infringed on all five of Steuben's claims related to three patents.

One of the claims related to how sterilant would be added to a conduit. The patent requires that the sterilant be added "intermittently," but Shibuya's machines added the sterilant "continuously," the court said.

"No reasonable juror could conclude that adding sterilant continuously is substantially the same as

adding sterilant intermittently," Judge Connolly wrote, adding that the words "intermittently" and "continuously" are "antonyms of each other, not equivalents."

Another claim related to how the bottles moved through the machine. According to the patent, the bottles would be pushed through on a conveyer plate, while the accused machines moved bottles using rotary wheels and a device that gripped the bottles at their necks.

A third inconsistency related to how valves were sterilized as they moved up and down to fill the bottles. Judge Connolly found that in relation to that claim, the testimony of one of Steuben's experts mischaracterized the nature of the patent.

Because the testimony about the principles of operation "was contrary to the patent's specification, it was wrong as a matter of law and entitled to no weight at trial," Judge Connolly wrote.

Counsel for the defendants declined to comment. Counsel for Steuben Foods did not respond Tuesday to Law360's requests for comment.

The patents-in-suit are U.S. Patent Nos. 6,702,985; 6,209,591; and 6,536,188.

Steuben Foods is represented by Olivia E. Marbutt of Kent & Risley LLC, Timothy Devlin and Peter A. Mazur of the Devlin Law Firm LLC and Cook Alciati and Chad E. Ziegler of Gardella Grace PA.

Defendants Shibuya Hoppman Corp., Shibuya Kogyo Co. Ltd., and HP Hood LLC are represented by John W. Shaw, Karen E. Keller, and Nathan R. Hoeschen of Shaw Keller LLP and J.C. Rozendaal, Byron L. Pickard, Anna G. Phillips, William H. Milliken, Robert E. Niemeier, Deirdre M. Wells, Lauren A. Watt, and Davin B. Guinn of Sterne Kessler Goldstein & Fox PLLC; and Jean Paul Y. Nagashima of Frost Brown Todd LLC.

The case is Steuben Foods Inc. v. Shibuya Hoppmann Corp. et al., case number 1:19-cv-02181, in the U.S. District Court for the District of Delaware.

--Additional reporting by Adam Lidgett. Editing by Vaqas Asghar.