

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

BERRY PLASTICS CORPORATION, )  
)  
Plaintiff and )  
Counter Defendant, ) 3:10-cv-00076-RLY-MPB  
vs. )  
)  
INTERTAPE POLYMER )  
CORPORATION, )  
)  
Defendant and )  
Counter Plaintiff. )

**ORDER DIRECTING ISSUANCE OF FINAL JUDGMENT**

Plaintiff and Counter Defendant, Berry Plastics Corporation, filed a Complaint for Declaratory Judgment against the Defendant and Counter Plaintiff, Intertape Polymer Corporation, seeking a declaration that Intertape’s United States Patent No. 7,476,416 is invalid and unenforceable. Intertape filed a Counterclaim, since amended, charging Berry with infringing the ‘416 Patent. Berry’s claims of invalidity and Intertape’s claim of infringement were tried to a jury from November 3 to November 17, 2014. The jury found that Berry did not prove by clear and convincing evidence that Claims 1, 6, 7, 8, 10, 11, 12, 21, 22, 23, 24, 25, 27, 31, 32, 33, and 34 of the ‘416 Patent were invalid as anticipated under 35 U.S.C. § 102; were invalid as obvious under 35 U.S.C. § 103; were invalid because the ‘416 Patent failed to name the proper inventors under 35 U.S.C. § 256; were invalid because the claims were derived from others under 35 U.S.C. § 102(f);

or were invalid because Intertape did not first conceive of the invention. In addition, the jury found that Intertape failed to prove by a preponderance of the evidence that Berry infringed Claims 1, 6, 7, 8, 10, 11, 12, 21, 22, 23, 24, 25, 27, 31, 32, 33, and 34 of the '416 Patent.

Following the jury trial, the parties filed a number of post-trial motions, including Berry's Renewed Motion for Judgment as a Matter of Law that U.S. Patent No. 7,476,416 is Invalid as Obvious. On September 30, 2015, the court granted that motion. Intertape thereafter filed a Motion for Reconsideration and, on June 3, 2016, the court granted the motion with respect to the unasserted dependent claims. Therefore, the court found, as a matter of law, that independent claims 1 and 21, and dependent claims 6, 7, 8, 10, 11, 12, 22, 23, 24, 25, 27, 31, 33, and 34 are invalid as obvious. The court denied the following post-trial motions as moot:

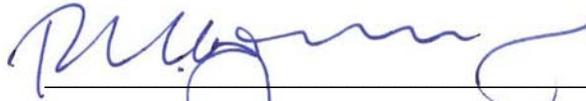
- (1) Defendant's Motion for New Trial (Filing No. 447);
- (2) Plaintiff's Renewed Motion for Judgment as a Matter of Law that the '416 Patent Is Invalid Based on Derivation and Improper Inventorship (Filing No. 383);
- (3) Plaintiff's Motion for Findings of Fact, Conclusions of Law, and Judgment Under Rules 52(a) and 58 that All Claims of the '416 Patent Are Invalid as Indefinite (Filing No. 387); and
- (4) Defendant's Motion for Leave to Re-File Defendant's Motion for Summary Judgment on Plaintiff's Affirmative Defense of Inequitable Conduct (Filing No. 465).

Lastly, the court held a bench trial on Berry's inequitable conduct claim on December 7-8, 2015. The court issued its Findings of Fact and Conclusions of Law on

August 25, 2016, ruling that Berry failed to prove, by clear and convincing evidence, that the '416 patent is unenforceable due to inequitable conduct.

Judgment reflecting the same shall now issue in a separate document.

**SO ORDERED** this 30th day of September 2016.



RICHARD L. YOUNG, CHIEF JUDGE  
United States District Court  
Southern District of Indiana

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