

## Axinn IP Update: Settlement Practice in Light of Pending Motions

February 20, 2020

### ATTORNEYS

Ropka, PhD, Stacie

Stacie Ropka, PhD

*Axinn Update*

### PRACTICE AREAS

Intellectual Property

On February 13, 2020, a Federal Circuit panel in *Serta Simmons Bedding, LLC v. Casper Sleep Inc.*, No. 19-1098 (Fed. Cir. Feb. 13, 2020) vacated and remanded a district court's judgment of noninfringement that had been issued despite the parties having notified the court of their binding settlement agreement.

In 2017, Serta sued Casper Sleep, Inc., alleging infringement of a number of patents. Casper subsequently filed motions for summary judgment of noninfringement,<sup>1</sup> and while those motions were pending, the parties settled, agreeing that Casper would pay \$300,000 and would cease its production and sale of the allegedly infringing products. The parties notified the court of their agreement. Nevertheless, within two days of receiving that notice, the court granted Casper's motions, finding that Casper did not infringe the asserted patents.

Arguing that this judgment voided the settlement agreement, Casper refused to honor its agreement. Serta countered by filing a motion to vacate the judgment of noninfringement and enforce the settlement, arguing that the agreement had mooted the case. The district court denied the motion, reasoning that, after its grant of summary judgment of noninfringement and dismissal, it no longer had jurisdiction. Serta appealed.

In vacating the district court's decision, the Federal Circuit reasoned that, after the settlement agreement was made, there was "no longer a case or controversy with respect to the settled issues." Although Casper put forward two Seventh Circuit cases finding that settlement did not moot the underlying action, the Federal Circuit distinguished both cases on their facts.<sup>2</sup> Because Casper admitted that the agreement was binding, the Federal Circuit vacated the district court's summary judgment order, ultimately holding that "a binding settlement agreement generally moots the action even if the agreement requires future performance[.]" unless the

agreement is “contrary to law or public policy.”<sup>3</sup> The court also directed the district court to enforce the agreement on remand.

Rarely do litigants ever get to (or perhaps even want to) learn the outcome of a motion still pending when a settlement agreement is signed. And the concept of settling a case while a dispositive motion is pending is commonplace. Despite that, it’s noteworthy that Serta had to push this through to the Federal Circuit in order to obtain relief, and parties should be mindful of what occurred here when negotiating settlement agreements in order to preempt any subsequent action by the district court from interrupting the settlement.

---

<sup>1</sup> *Serta Simmons Bedding, LLC et al v. Casper Sleep Inc.*, No. 1:17-cv-07468 (S.D.N.Y. June 20, 2018) (granting summary judgment of noninfringement despite settlement agreement).

<sup>2</sup> The Federal Circuit panel distinguished the first case as involving a settlement agreement that was not yet binding, and the second as involving an agreement that might have required further action by the court.

<sup>3</sup> *Serta Simmons Bedding, LLC v. Casper Sleep Inc.*, No. 19-1098, 2020 WL 717771, at \*3 (Fed. Cir. Feb. 13, 2020).

