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UC System Targets Retailers In Litigation-Funded IP Blitz

By **Hailey Konnath**

Law360 (July 30, 2019, 10:26 PM EDT) -- Amazon, Target, Ikea, Walmart and Bed Bath & Beyond have been illegally importing and selling filament LED lighting that infringes the University of California system's intellectual property, university administrators claimed Tuesday in five patent infringement suits paid for by litigation funder Longford Capital.

The "revolutionary technology" in LED light bulbs uses about 90% less energy than traditional incandescent light bulbs and was invented by a Nobel-credentialed research team at the University of California, Santa Barbara, according to a statement from the university system's lawyers at Nixon Peabody LLP.

To properly sell the bulbs, retailers must seek authorization from UC Santa Barbara and obtain a license. But major retailers have been selling the products without authorization — and greatly profiting — since the products became available in 2014, according to the statement.

It's a "classic example" of overseas manufacturers taking "unfair advantage of academic openness," the University of California regents said in their 19-page complaint filed against Amazon in California federal court. University of California administrators allege the manufacturers use "complex supply chains" to flood the domestic market with the unauthorized products, crippling the ability of university technology transfer programs to effectively license technology.

"This undermines the universities' rightful opportunity to share in the revenue generated through commercialization of their intellectual property — revenue that would support further research, education and development of cutting-edge technologies and new scientific insights that benefit the public," the complaint explains.

The University of California regents, which govern the Golden State's university system, filed all five complaints seeking royalties in the Central District of California on Tuesday. The university system also filed a complaint with the U.S. International Trade Commission, requesting an investigation into the matter and cease and desist orders to stop the retailers from importing and trafficking the products without the UC system's permission, according to a statement from their attorneys.

The effort is a "first-of-its-kind" patent enforcement campaign against an entire industry, the lawyers said, and it's the first time a university has been the sole complainant before the commission.

Target and Bed Bath & Beyond declined to comment Tuesday. Representatives with the other retailers didn't immediately return requests for comment.

Longford Capital said in a statement that the litigation finance firm is "proud" to be footing the bill for the campaign.

"Longford Capital will fund the attorneys' fees and expenses related to UC Santa Barbara's enforcement campaign in exchange for an agreed-upon portion of the proceeds generated from the campaign," the firm said.

The firm will only be compensated if the campaign is successful, it said in the statement. Taking on

the university's litigation is part of its University Initiative, which provides financial aid to universities so they can "realize the full value of their research and development activities, without burdening their budgets," it said.

Seth Levy, counsel for the university system, said in a statement that the goal is to protect the UC system's patent rights "so it can reinvest in education and research to create more world-changing technologies."

"It also is a message to entities throughout the private sector that university intellectual property rights cannot be infringed with impunity," Levy said.

Researchers at UC Santa Barbara spent years developing the LED technology — often called "Edison" or "vintage" bulbs because they resemble Thomas Edison's light bulb — before it became available five years ago, the university said in its statement. LED light bulbs require less energy, create less heat and distribute light in all directions, it said. They save the average American homeowner several hundred dollars per year, UC said.

During the last several years, the LED light bulb market has exploded. In 2019, projected LED sales are expected to surpass \$1 billion, the UC system said. And retailers are reaping the benefits of partnering with unlicensed manufacturers, despite UC Santa Barbara's efforts to establish licenses with companies in the lighting industry, it said.

"These prior efforts, which are consistent with conventional practices in university technology transfer, have not been sufficient to address the ubiquitous and explosive infringement in this industry," the university said in the statement. "As a result, UC Santa Barbara has opted to take more aggressive action through the initiation of these legal actions."

The retailers named in the suits represent "a large cross-section" of the retailers who sell the unlicensed LED technology, the university said.

UC Santa Barbara also put together a website dedicated to the patents, encouraging retailers to become authorized sellers.

"UC Santa Barbara encourages any company that seeks to sell (or that already sells) filament LED lighting products to contact the university through our Contact page," the university says on the site. "We will work together to negotiate a reasonable license agreement that will benefit the university, you and your customers."

The patents-in-suit are U.S. Patent Nos. 7,781,789; 9,240,529; 9,859,464 and 10,217,916.

The university is represented by Shawn G. Hansen, Seth D. Levy, Staci Jennifer Riordan, Vincent K. Yip, Peter J. Wied, Matthew A. Richards and Tracy Steindel Ickes of Nixon Peabody LLP.

Counsel information for the defendants wasn't immediately available Tuesday.

The cases are The Regents of the University of California v. Target Corp., case number 2:19-cv-06572, The Regents of the University of California v. Amazon Inc. et al., case number 2:19-cv-06571, The Regents of the University of California v. Ikea of Sweden AB et al., case number 2:19-cv-06573, The Regents of the University of California v. Bed Bath & Beyond Inc., case number 2:19-cv-06574, and The Regents of the University of California v. Walmart Inc., case number 2:19-cv-06570, in the U.S. District Court for the Central District of California.

--Editing by Michael Watanabe.