2018-1614, -2044

In The United States Court of Appeals For The Federal Circuit

SYNGENTA CROP PROTECTION, LLC,

Plaintiff - Appellant,

v.

WILLOWOOD, LLC, WILLOWOOD USA, LLC, WILLOWOOD AZOXYSTROBIN, LLC WILLOWOOD LIMITED,

Defendants – Cross-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA IN NO. 1:15-cv-00274-CCE-JEP, JUDGE CATHERINE C. EAGLES

CROSS-APPELLANTS' WILLOWOOD, LLC, WILLOWOOD USA, LLC, WILLOWOOD AZOXYSTROBIN, LLC AND WILLOWOOD LIMITED'S CORRECTED SUPPLEMENTAL BRIEF REGARDING NOTICE OF BANKRUPTCY STAY

This, the 4th day of April, 2019.

Respectfully submitted,

By: /s/ Steven E. Tiller

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Cross-Appellants, Willowood, LLC ("WW-LLC"), Willowood USA, LLC ("WW-USA"), Willowood Azoxystrobin, LLC ("WW-Azoxy"), and Willowood Limited ("WW-Ltd."), by their undersigned counsel, file this corrected Supplemental Brief in response to the Court's *sua sponte* Order of March 19, 2019 (Dkt. 130), seeking the Parties' statement about how the Notice of Bankruptcy Stay filed by WW-LLC and WW-USA should affect the appeal with respect to WW-Azoxy and WW-Ltd.

I. WW-Azoxy Has Sought Relief Under Title 11 of the US Code

On March 14, 2019, WW-LLC and WW-USA filed a Notice of Bankruptcy Stay advising this Court of their respective filings of a Petition for Relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Colorado (the "Bankruptcy Court"). As a result, pursuant to 11 U.S.C. §362, this matter, as to those parties, was automatically stayed.

This Court subsequently entered an Order, *sua sponte*, directing the Parties to file supplemental briefs addressing how WW-LLC and WW-USA's bankruptcy filings should affect the remainder of this matter with respect to the other Cross-Appellants, WW-Azoxy and WW-Ltd. On March 28, 2019, however, WW-Azoxy filed its own Petition for Relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Colorado. A Notice advising this Court of WW-Azoxy's Chapter 11 filing was filed on March 29,

2019. *See* Dkt. 131. Accordingly, pursuant to 11 U.S.C. § 362, this matter is also stayed as to WW-Azoxy. This leaves only WW-Ltd. as the only remaining Cross-Appellant in this case not to have filed for relief under Chapter 11 of Title 11 of the United States Code.

II. WW-Ltd Has a Very Limited Interest in this Matter

With regard to WW-Ltd, Cross-Appellants respectfully contend that this matter should be stayed as WW Ltd likely has no interest in the Court's decision. In that regard, at trial, the jury found that WW-Ltd's sale of a certain chemical product (Azoxystrobin Technical) to WW-USA did not take place in the United States, and therefore, WW-Ltd was not liable for any infringement of certain United States patents owned by Appellant Syngenta Crop Protection LLC ("Syngenta") regardless of the other legal issues (some of which have been appealed by Syngenta to this Court) related to Syngenta's copyright and patent claims. *See* Appx266-267.

Among several issues raised in its appeal brief, Syngenta raised certain issues relating to WW-Ltd exclusively; namely, that the District Court erred, as a matter of law, in entering judgment in favor of WW-Ltd on all claims. *See* Dkt. 30 at pp. 58-73. In particular, Syngenta asserted that the District Court erred in denying Syngenta's summary judgment and JMOL motions by finding a genuine issue of material fact regarding WW-Ltd's alleged infringement of certain patents

related to WW-Ltd's sale of Azoxystrobin Technical to WW-USA. *Id*. at pp. 58-68. Syngenta further argued that that the District Court somehow nullified the jury's verdict by improperly interpreting the jury verdict form. *Id*. at pp. 68-71.

WW-Ltd has, and will have, no interest in the issues to be decided in this appeal unless this Court agrees with Syngenta that the District Court improperly entered judgment in its favor after the jury found that it had not engaged in any activities in the United States. Given this narrow interest in these issues and the Court's opinion regarding them, Cross-Appellants respectfully contend that this Court should not proceed with the entry of any order regarding this matter.

III. The Bankruptcy Court Should Decide Whether this Case Should Proceed

Finally, the Bankruptcy Court will soon be addressing whether the stay as to WW-USA, WW-LLC, and WW-Azoxy (the "WW Debtors") should be lifted. In that regard, Syngenta recently filed a Motion for Relief from the Automatic Stay with the Bankruptcy Court. In its motion, Syngenta argues that lifting the stay as to this matter would, among other things, not disrupt the WW Debtors' Chapter 11 case and that the balance of harms favors lifting the automatic stay. Given the Bankruptcy Court's familiarity with the WW Debtors' assets and any claims against their estates, as well as any sales of assets or other workout plans, Cross-Appellants respectfully assert that the Bankruptcy Court is better informed to decide whether the WW Debtors' Chapter 11 case will be materially impacted by

any decision from this Court. As such, any decision from this Court regarding this matter should be deferred at least until the Bankruptcy Court enters an order regarding Syngenta's Motion for Relief from the Automatic Stay.

IV. Conclusion

Given WW-Ltd's limited interest in any opinion entered in this matter, as well as the impact that such an opinion could have on both the WW Debtors and their many creditors, Willowood, LLC, Willowood USA, LLC, Willowood Azoxystrobin, LLC, and Willowood Limited respectfully request that this Court defer issuing any opinion in this matter until the Bankruptcy Court issues its decision regarding the Motion to Lift Stay filed by Syngenta Crop Protection LLC.

This, the 4th day of April, 2019.

Respectfully submitted,

By: /s/ Steven E. Tiller

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CERTIFICATE OF COMPLIANCE

This motion complies with the typeface requirements of Fed. R. App. P. 27(d)(2) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman. This motion further complies with the type-volume limitations of Fed. R. App. P. 27(d)(2) because according to the word processing system used to prepare it, the brief contains 830 words, excluding the parts of the brief exempted by Fed. Cir. Rule 27(d). This Supplemental Brief is further less than five (5) pages as mandated by the Order of this Court entered on March 19, 2019.

Dated: April 4, 2019

/s/ Steven E. Tiller
Steven E. Tiller

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2019, I electronically filed the foregoing Corrected Supplemental Brief with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ *Steven E. Tiller*
Steven E. Tiller