

Judge Frank denied three individual defendants' motions for dismissal due to lack of personal jurisdiction because he found no merit in their argument that the activities they directed into Minnesota were done in their official, not individual, capacities. Pharmaceutical Solutions (PSI) sued several corporate defendants and three individual defendants for patent infringement and other claims. The individuals moved to dismiss the claims against them arguing that the court lacked personal jurisdiction. Each of the defendants, while an officer or employee of one of the corporate defendants, traveled to Minnesota or lived in Minnesota and allegedly sold or offered for sale the accused pharmaceutical products. Each was accused of indirect patent infringement – inducing or contributing to the infringement, or both. Each pointed out that their alleged acts were in an official capacity for one or more of the corporate defendants and, thus, they should not be individual defendants. But the Court did not see the distinction. Citing the low threshold that PSI needed to establish prima facie personal jurisdiction, the Court denied the motions to dismiss finding that the individual defendants “purposely directed their activities to Minnesota, by their various marketing and sales contacts.” *Pharmaceutical Solutions, Inc. v. Vitamax RX, et al.*, Civ. No. 05-1621 (D. Minn. Jan. 3, 2006).

In a different patent case, Judge Frank denied a defendant's motion for summary judgment of invalidity because determinations of anticipation and obviousness were premature and oral testimony of an on-sale bar was uncorroborated. Floe sued Newmans for infringement of a patent protecting a snowmobile trailer. Newmans moved for summary judgment. As to the patent being invalid based on anticipation and obviousness, the Court denied the motion because it had not yet construed the claims of the patent-in-suit and Newmans had not provided any evidentiary support for its positions, only attorney argument. Interestingly, the Newmans was willing to accept the claim construction proffered by Floe for purposes of this motion only but the Court was still unwilling to decide this portion of the motion before a claim construction had occurred. Newmans also argued that the patent was invalid because it had been sold before the statutory bar deadline. Newmans offered the declaration testimony of three witnesses who each claimed that a trailer having the elements of the invention was sold before the bar date. The Court rejected this testimony as uncorroborated oral testimony – insufficient to establish invalidity by clear and convincing evidence. Two of the witnesses have the last name Newman but it is unclear whether the third witness was an “interested” witness or not. Unfortunately, the Court did not provide some additional explanation as to whether the oral testimony of an “uninterested” witness can corroborate the oral testimony of another that a patent is invalid. *Floe Int'l, Inc. et al., v. Newmans' Mfg. Inc.*, Civ. No. 04-5120 (D. Minn. Jan. 6, 2006).

The U.S. Supreme Court recently resolved an important patent/anti-trust issue. In *Illinois Tool Works v. Independent Inc.*, the Supreme Court reversed the Court of Appeals for the Federal Circuit which had held that a rebuttable presumption of market power sufficient to restrain trade under antitrust law arises from the defendant's ownership of a patent allegedly used in a tying agreement. However, the Supreme Court held that a plaintiff must prove that a defendant has market power because a patent does not necessarily confer such power. *Illinois Tool Works v. Independent Inc.*, Civ. No. 04-1329 (March 1, 2006).