



June 29, 2010

Advertising Clause Required Defense of Patent Suit**INTELLECTUAL PROPERTY LAW CLIENT ALERT**

This Alert provides only general information and should not be relied upon as legal advice. For more information, contact your Patton Boggs LLP attorney or the authors listed below.

Richard Oparil
202-457-6496
roparil@pattonboggs.com

WWW.PATTONBOGGS.COM

An insurer for Hyundai Motor America was required by California law to defend the auto maker in a patent infringement suit under a clause in the contract between the two that applied to advertising liability, the U.S. Court of Appeals for the Ninth Circuit held April 5.

Hyundai was sued for patent infringement for two of the advertising methods on its website that allow customers to build their own vehicle and customize parts on them. After the insurers refused to defend Hyundai, it defended itself. It lost the suit, and sued the insurers to recover its costs. The insurers claimed that the alleged patent infringement did not constitute “advertising injury” under the contract. The Ninth Circuit disagreed.

Applying California law, it said that the patent holder alleged a violation of a method patent involving advertising ideas. It patented a method of displaying information to the public at large for the purpose of facilitating sales, “i.e., a method of advertising.” It also claimed that Hyundai violated that method patent by using the patented techniques as part of its marketing method or marketing system. In the context of this case, the patent infringement claim “alleged the ‘misappropriation of advertising ideas,’” it said.

Because Hyundai also showed that the features on its website were advertising and that there was a causal connection between the advertisement and the advertising injury, the insurers had a duty to defend Hyundai, the court said. [*Hyundai Motor America v. National Union Fire Insurance*](#), No. 08-56527, (9th Cir. Apr. 5, 2010)

