

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HAROLD JOSEPHS,

Plaintiff,

v.

FEDERAL-MOGUL CORP.,

Defendant.

CASE NO: 10-10617

HONORABLE SEAN F. COX

ORDER
REGARDING SUPPLEMENTAL BRIEFING

On September 2, 2010, this Court heard oral argument on Defendant's Motion to Dismiss Josephs' Complaint. At that hearing, the Court advised the parties that it would order supplemental briefing. Accordingly, the Court shall ORDER supplemental briefing by the parties **limited to** the following issue:

In *Clontech Laboratories v. Invitrogen Corp.*, 406 F.3d 1347,1352 (Fed.Cir. 2005), the Federal Circuit stated: "When the statute refers to an 'unpatented article' the statute means that the article in question is not covered by at least one claim of each patent with which the article is marked." *Clontech*, 406 F.3d at 1352.

Should the Court interpret this to mean that an article is "unpatented" if it is not covered by just one of the claims of any of the patents, or should the Court interpret this to mean that an article is unpatented only if it is not covered by one or more claims of every patent with which it is marked? In other words, if an article is marked by several patents, is it "patented" if all of the claims of one of the patents covers the product? What authority do you have to support your

position?

The Court ORDERS that the parties submit a supplemental brief of **no more than 5 pages** addressing this issue. The parties must submit their briefs no more than **14 days after the entry of this order.**

IT IS SO ORDERED

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: September 8, 2010

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 8, 2010, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager