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## Cisco Cuts Deal In IP Flap Over Flip Video

By **Erin Coe**

Law360, New York (September 29, 2010, 2:23 PM ET) -- Cisco Systems Inc. has resolved a trademark and design patent case alleging that Digital Gadgets LLC marketed and sold camcorders that too closely resembled Cisco's popular line of Flip Video products.

Judge Sandra Brown Armstrong of the U.S. District Court for the Northern District of California dismissed the action with prejudice on Monday after getting word that the parties had reached a tentative settlement deal that would bring an end to all the claims and counterclaims.

If the parties are unable to enter into a final settlement, they can move to reopen the case within 30 days, according to the order.

An attorney representing Digital Gadgets confirmed the dismissal, and attorneys representing Cisco declined to comment.

San Jose, Calif.-based Cisco and unit Cisco Technology Inc. lodged the suit in May, accusing New York-based Digital Gadgets of using the trade dress and design patent-protected features of Cisco's Flip Video camcorders without authorization, and of improperly using the Flip Video trademark in connection with advertising and selling the allegedly infringing devices.

Cisco alleged that it has used its Flip Video trademark in the U.S. for its camcorders since May 2007, and has sold more than 4 million Flip Video camcorders. The trade dress design consists of a bar or band design across the upper portion of the front of the camera, broken by a circular round opening, and a button arrangement on the backside of the camcorder, according to the complaint.

The plaintiff claimed that Digital Gadgets' activities caused actual confusion, and alleged that the defendant's camcorder design applied Cisco's two design patents in such a way that consumers were deceived into believing the products were the same.

U.S. Patent Number D591,321, issued in April 2009, covers a digital video camera with a built-in connector, and U.S. Patent Number D610,600, issued in February, encompasses a digital video recorder device with a built-in connector, according to the complaint.

The complaint alleged that Digital Gadgets' infringement of the patents was willful, and sought to enjoin the defendant from any further unauthorized use of Cisco's trademark, trade dress and design patents. The complaint also sought to stop any false advertising and unfair and misleading business practices.

In a June response, Digital Gadgets denied the allegations and filed counterclaims seeking declaratory judgment that Cisco's trade dress and design patents were invalid and not

infringed.

The patents-at-issue are U.S. Patent Numbers D591,321 and D610,600

Cisco is represented in this matter by Morgan Lewis & Bockius LLP.

Digital Gadgets is represented by Krieg Keller Sloan Reilley & Roman LLP and Kaplan Massamillo & Andrews LLC.

The case is Cisco Systems Inc. et al. v. Digital Gadgets LLC, case number 4:10-cv-02053, in the U.S. District Court for the Northern District of California.

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