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Whipstock, Smith International Drop Drilling IP Spat

By **Ben James**

Law360, New York (March 23, 2010) -- Oilfield services company Smith International Inc. has struck a settlement in Whipstock Services Inc.'s patent infringement suit over a method for wellbore window milling.

Magistrate Judge John D. Love of the U.S. District Court for the Eastern District of Texas entered final judgment in the case on Tuesday, after granting a joint motion to dismiss from Smith International and Whipstock the day before.

The settlement does not involve any payment between the parties, according to the motion, which said that "neither party would take anything from the other." The final judgment reiterated that point.

According to the deal, the parties wished to avoid the cost of litigation.

Whipstock filed suit in March 2009, asserting U.S. Patent Number 5,769,166, titled "Wellbore window milling method," which was issued in 1998. A mill is a tool similar to a drill that grinds unwanted metal in the wellbore, or borehole, sometimes with the goal of removing hand tools and other objects, the complaint said.

When milling casing, which is a large metal pipe lowered into a hole to preserve the wellbore's structure, the point is to cut a window through, or remove a section of, the casing so that the wellbore can veer off from the original well, according to the suit.

A whipstock is an inclined wedge placed in the wellbore that guides the mill away from the borehole to drill a window through the casing, diverting the drill bit sideways, the suit said.

The plaintiff alleged that Smith International was using or selling a method or methods that provided whipstock and milling services as claimed in the '166 patent.

Smith International, however, argued that the '166 patent was unenforceable because of inequitable conduct. Specifically, the defendant claimed that inventor John Duke and others lied and made omissions to the U.S. Patent and Trademark Office during the prosecution of the application that matured into the '166 patent.

Smith International's chief patent counsel Carter J. White declined to discuss the settlement agreement on Tuesday.

Attorneys for Whipstock could not be immediately reached for comment.

The patent-in-suit is U.S. Patent Number 5,769,166.

Smith is represented by Findlay Craft LLP and Yetter Warden & Coleman LLP.

Whipstock is represented by Matthews Lawson Johnson & Payne PLLC and Provost Umphrey Law Firm LLP.

The case is Whipstock Services Inc. v. Smith International Inc., case number 09-114, in the U.S. District Court for the Eastern District of Texas.

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