



**Int'l Nutrition Co. v. Horphag Research Ltd., 257 F.3d 1324 (Fed. Cir. 2001)**

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## **CASE HISTORY**

Appeal from a trial court's decision rejecting Nutrition's allegation of infringement.

## **CASE FACTS**

SCIPA and Horphag are co-owners of '360 patent. The invention was made based on a joint development contract, which provides that any litigation regarding the contract shall be the exclusive jurisdiction of French courts. SCIPA assigned its right to Nutrition in violation of French patent law, which requires a notice to the other party. The French court declared the assignment void. Then, Nutrition brought suit in the US.

## **ISSUE**

Is granting comity appropriate, where the issue is the ownership of a patent?

## **HOLDING**

Yes

## **ANALYSIS**

Comity may be granted where "it is shown that the foreign court is a court of competent jurisdiction, and that the laws and public policy of the forum state and the rights of its residents will not be violated." As long as the foreign court abides by "fundamental standards of procedural fairness," granting comity is appropriate.

The issue of ownership is a state matter. A contractual agreement to apply French law as to ownership is just as valid as an agreement to apply the law of a particular state. Therefore, interpreting the contract according to the French law is not in conflict with the US patent law. Therefore, international comity should be extended to the French courts decision regarding the choice of law issue. Because SCIPA's assignment was made in violation of French patent law, the assignment was invalid and Nutrition has no right to bring suit based on '360 patent. The district court's decision has been affirmed.

## **NOTE**

“Comity” is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.”