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Written by TMAC GOLF
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The ongoing saga over the patent litigation between Callaway Golf (ELY: NYSE) and the Acushnet Company centering specifically on the ProV1 golf ball has taken an interesting turn. Callaway announced that the United States District Court in Wilmington, Delaware, has granted its request for a permanent injunction to stop sales of Acushnet's current line of Titleist Pro V1 family of golf balls, effective no later than January 1, 2009. In its ruling on November 10th, 2008, the Court also rejected Acushnet's request to overturn the jury's December 2007 verdict which found that Callaway Golf's golf ball patents were valid and infringed by Acushnet's Titleist Pro V1 family of golf balls.

"Callaway Golf has invested millions of dollars in Research and Development to create innovative products for millions of golfers around the world, and has protected those products with one of the broadest patent portfolios in golf," stated Steve McCracken, Senior Executive Vice President, Chief Administrative Officer, Callaway Golf. "We are very pleased with this decision which will stop the sale of these infringing Pro V1 golf balls." At Callaway Golf's request, professional golfers will be allowed to play Pro V1 golf balls through the end of this calendar year.

Not to be outdone, the Acushnet Company said it intends to file an appeal to the ruling granting Callaway Golf's request for an injunction to four Callaway patents and Acushnet's Titleist Pro V1 golf balls. "We strongly disagree with the judge's ruling and will file an appeal and seek relief from the injunction," said Joe Nauman, executive vice president, corporate and legal of Acushnet. Before anyone goes ProV1 shopping in anticipation of retailers taking them off of store shelves, Acushnet remains confident the court ruling won't disrupt its business completely. "It's important to recognize that this ruling will not have any impact on our ability to supply our customers with Pro V1 golf balls because of the following actions which we have undertaken. In September 2008, we converted production of the existing Pro V1 models so that they are outside of the patents in question; and we have also developed and will be introducing new and improved Titleist Pro V1 products in the first quarter of 2009 that are also outside the scope of the patents in question," Nauman said.

This isn't the first time Acushnet has been challenged regarding its intellectual property rights with respect to its golf ball franchise. In October 2007, litigation between Acushnet Company and Bridgestone Sports Co., Ltd., which was filed in March, 2005 in the United States District Court in Delaware, regarding golf ball patents was resolved through mediation. Under the terms of that agreement, Acushnet agreed to pay Bridgestone a license fee that includes an on-going royalty for a license under certain of Bridgestone's patents. The parties also agreed to a non-royalty bearing cross-license of other patents held by each company. The agreement resolves all pending litigation in the United States between Bridgestone and the Acushnet Company but a related suit in Japan was not a part of this

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settlement and is believed to remain pending.

Acushnet's in house legal council remains steadfast it will be vindicated once the dispute is finally resolved, despite the news delivered by Callaway regarding the Court ruling. "We will continue to defend ourselves vigorously and we fully expect to prevail in having all claims of all four patents at issue determined to be invalid in the appeal process," Nauman stated. "Our confidence is underpinned by the fact that the U.S. Patent and Trademark Office has issued final office actions which have determined these patents to be invalid."

Nauman added, "Our Pro V1 golf balls are the product of technology developed and accumulated by the Acushnet Company over the past 20 years. Acushnet is the industry leader in developing golf ball technology and has over 650 active golf ball patents – more than any other manufacturer. Over 65 of these patents are related to the Pro V1 family." Its doubtful these will be the last words on the topic from either side.