

Mitchell C. Shelowitz of Pearl Cohen Zedek Latzer LLP Argues Issue of First Impression before Federal Circuit Court of Appeals. In an argument of first impression following the heightened pleading standards under Rule 8 of the Federal Rules of Civil Procedure in the U.S. Supreme Court's recent decisions in *Iqbal* and *Twombly*, and the Federal Circuit's key decisions on pleading standards for utility patent cases in *Phonometrics* and *McZeal*, Mitchell Shelowitz argued that the U.S. District Court for the Southern District of New York improperly imposed heightened pleading requirements in a complaint filed for design patent infringement against Bed, Bath & Beyond and West Point Homes. In the case, plaintiff-inventor Roger Hall met with a senior executives and other managers to discuss the marketing and distribution of his proprietary Tote Towel, that had two zippered pockets at either end, a loop in the middle of the border, and piping that surrounded the perimeter while a design patent application for the Tote Towel was pending, and which was subsequently granted. Although Bed, Bath, and Beyond declined to accept a commercial deal with the inventor, a year later (after the inventor's patent was issued), Bed, Bath, and Beyond began selling a virtually identical towel as the Tote Towel nationwide. A lawsuit for patent infringement followed, but was abruptly dismissed *sua sponte* by the District Court, which failed to consider *Egyptian Goddess*, *Crocs*, and other binding pronouncements by the Federal Circuit and the Second Circuit Court of Appeals in the area of design patent claim construction and pleading standards. The foregoing appeal followed. A decision on the appeal is expected by Spring 2012.

Due to the novel and important issues raised on appeal, the arguments were covered by Law360 in an article on November 9, 2011.

The PCZL litigation team was comprised of Mitchell Shelowitz, Darya Dominova, and Yeseree Robinson.

For more information on this matter, please contact Mitchell C. Shelowitz at 646-878-0814 or mitchells@pczlaw.com.

#