

Jury Sides With Pitt In \$37M Radiation Patent Row With Varian

By Django Gold

Law360, New York (April 18, 2012, 7:04 PM ET) -- A Pennsylvania federal jury on Wednesday upheld a patent for a cancer-treatment device owned by the University of Pittsburgh, leaving Varian Medical Systems Inc. facing \$37 million in potential damages as a result of its infringement.

In upholding the validity of the school's patent, the jury closed out the third of three separate trials set up after the Pennsylvania court determined that oncology and X-ray imaging systems manufacturer Varian was liable for infringement. Varian had argued that the patent was invalid.

Representatives for the parties were not immediately available for comment on Wednesday.

The university sued Varian in 2008, alleging that its Real-Time Position Management respiratory gating system infringed a patent that covers an apparatus for turning a radiation treatment beam on and off in time with a patient's breathing.

The patent-in-suit is U.S. Patent Number 5,727,554, titled "Method and apparatus for conformal radiation therapy," which describes a system that uses a video camera to monitor patient movement, turning off a radiation beam when a tumor moves out of the beam's path due to breathing and turning it back on when the tumor re-enters the beam's path.

The patent was issued to the university in 1998.

Varian's RPM System is also a video-based system that monitors patient breathing during radiation and turns the beam off and on in time with breathing, though Varian argued its product did not infringe because it does not track markers on a patient's body, as described by the patent, but rather the position of a single point.

However, the court opined otherwise in summary judgment proceedings finding that Varian's RPM products had, in fact, infringed the '554 patent.

U.S. District Judge Arthur Schwab subsequently divided the jury trial into three separate trials before the same jury: one on the willfulness of Varian's alleged infringement; one on damages; and one on Varian's allegations that the patent was invalid.

The Pennsylvania jury found Varian's infringement was willful in January 2012 and awarded the university \$37 million in damages in February.

That award included \$12 million in damages for Varian's sales of the RPM respiratory gating system, which the jury found violated seven claims of the university's patent. The jury also awarded \$24.8 million in damages for linear accelerators Varian sold in combination with these RPM systems.

The jury in its verdict on Wednesday determined that Varian had not demonstrated that 15 separate claims of the radiation treatment patent are invalid either as obvious, as anticipated, or because they do not enable a person skilled in the art to make and use the invention.

The jury's final trial commenced on Monday. The jury passed down its verdict early in the afternoon on Wednesday.

The patent-in-suit is U.S. Patent Number 5,727,554.

The university is represented by William P. Quinn Jr., David W. Marston Jr., Elizabeth Stroyd Windsor, John D. Zele and Bradford A. Cangro of Morgan Lewis & Bockius LLP and Arthur H. Stroyd Jr. and William S. Stickman IV of Del Sole Cavanaugh Stroyd LLC.

Varian is represented by William L. Anthony Jr., Matthew H. Poppe, Zheng Liu and M. Leah Somoano of Orrick Herrington & Sutcliffe LLP, Henry M. Sneath, Joseph R. Carnicella and Robert Wagner of Picadio Sneath Miller & Norton PC, and Joe Greco of Beck Ross Bismonte & Finley LLP.

The case is University of Pittsburgh of the Commonwealth System of Higher Education v. Varian Medical Systems Inc., case number 2:08-cv-01307, in the U.S. District Court for the Western District of Pennsylvania.

--Additional reporting by Carolina Bolado, Erin Coe and Ryan Davis. Editing by Cara Salvatore.
