

Varian Hit With \$37M Verdict In Pitt Patent Suit

By **Carolina Bolado**

Law360, New York (February 23, 2012, 9:10 PM ET) -- A Pennsylvania federal jury on Thursday awarded nearly \$37 million to the University of Pittsburgh after finding that Varian Medical Systems Inc. willfully infringed a patent for a device used in radiation cancer treatments.

The jury awarded \$12 million in damages for Varian's sales of its Real-time Position Management respiratory gating system, which the jury found violated seven claims of the university's patent. They also awarded \$24.8 million in damages for Varian's linear accelerators sold in combination with the RPM systems.

In a separate order also filed Thursday, U.S. District Judge Arthur Schwab sent the parties to mediation.

Attorneys for the parties could not immediately be reached for comment Thursday.

The jury on Jan. 26 reached a verdict against Varian after Judge Schwab ruled on Dec. 30 that Varian had infringed the patent, granting the university's motion for summary judgment on liability and denying Varian's motion for summary judgment that the asserted patent was invalid.

The university sued Varian in 2008, alleging that its RPM 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 describes a system that uses a video camera to monitor patient movement, and turns off the radiation beam when a tumor moves out of the beam's path due to breathing and turns it back on when the tumor re-enters the beam's path.

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, according to the December ruling.

The key claim in the university's patent involves determining movement of the patient through digital image signals, including movement associated with breathing, the ruling said.

Varian maintained that its product did not infringe because it did not track markers on a patient's body, as described by the patent, but rather the position of a single point.

Judge Schwab was not persuaded, writing that Varian's position defied logic because there was no meaningful difference between tracking markers and tracking a single point. As a result, there was no

genuine factual dispute that the product infringed, he said.

The judge also rejected Varian's argument that the patent was invalid because it did not teach how to detect patient movement, finding that the patent did provide such information.

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 Erin Coe and Ryan Davis. Editing by Andrew Park.