

Medical patent infringement legal landscape simplifies

It was a year ago in November that Vein Therapy News brought to light the many medical patent infringement lawsuits by two companies against 16 other companies and individuals, paralyzing and polarizing the phlebology community.

It was a year ago in November that Vein Therapy News brought to light the many medical patent infringement lawsuits by two companies against 16 other companies and individuals, paralyzing and polarizing the phlebology community.

Medical patents followed Diomed's introduction of the laser and its endovenous laser ablation and the VNUS Medical Technology Inc. radiofrequency generator and its closure system.

The issue of medical patent litigation is abhorrent to physicians, frustrated with the increasing cost from these suits that are passed on to the doctors as their suppliers of lasers and consumables had to pay royalties to those who won their medical patent suits.

Now with the economy in a tailspin and slim margins even slimmer, physicians look to newer laser systems that cause less pain and are capable of employing reusable fibers.

A lot has changed regarding the litigation landscape. The two companies that filed the suits — VNUS and Diomed — are gone. Diomed had filed for bankruptcy protection in March of 2008, and all of its operating assets were sold to AngioDynamics in June of 2008.

The irony of that transaction was interesting because the first of the patent infringement cases was filed by Diomed against AngioDynamics in January of 2004. That suit alleged infringement of U.S. Patent No. 6,398,777 — also known as the infamous 777 patent, which was at the foundation of legal wrangling for six years. In March of 2007, a jury found infringement on the part of AngioDynamics and awarded Diomed \$8.36 million. The case was eventually settled for \$7 million — much of which went to the lawyers.

In June of 2005, VNUS sued Diomed, alleging infringement of four of its endovenous procedure patents. In October of 2005, VNUS added AngioDynamics and Vascular Solutions to the suit and the medical patent infringement melee began. By the time Vein Therapy News brought to light the extent of the problem in November of 2008, Diomed had filed five separate lawsuits against seven defendants and VNUS had filed three separate lawsuits against nine defendants.

In addition to AngioDynamics, Diomed sued Vascular Solutions, CoolTouch, Dornier, and the individual owners of Total Vein Systems — David Centanni and Tyri Schiek. In addition to Diomed, VNUS sued AngioDynamics, Vascular Solutions, Biolitec, Dornier, CoolTouch, Centanni and Schiek and later, Total Vein Systems.

Once Diomed was in bankruptcy and there was no one home except for the lawyers, most companies settled their suits on favorable terms so they could get on with business.

The Current Landscape

Last year, VNUS Medical Technologies Inc. converted into VNUS Medical Technologies LLC. The company was sold to a Delaware limited partnership, Tyco Healthcare Group LP. Tyco became the sole member and owner of all the outstanding interests of VNUS LLC.

Tyco authorized and approved the dissolution of VNUS LLC and the winding up of VNUS LLC's affairs and the distribution of its assets. Prior to dissolving, VNUS LLC transferred and assigned the entire right, title and interest in the patents-in-suit, including the right to sue for present, past and future infringement, to Tyco.

Now in 2010, Tyco asserts that biolitec Inc., Dornier MedTech America Inc., New Star Lasers Inc. doing business as CoolTouch, and Total Vein Solutions doing business as Total Vein Systems infringe — either directly or indirectly, by way of contributory infringement or inducement to infringe — the following U.S. Patent Numbers: 6,752,803, entitled "Method and apparatus for applying energy to biological tissue including the use of tumescent tissue compression"; 6,769,433, entitled "Expandable vein ligator catheter having multiple electrode leads, and method"; Patent 6,258,084, entitled "Method for applying energy to biological tissue including the use of tumescent tissue compression"; Patent 7,396,355, entitled "Method and apparatus for applying energy to biological tissue including the use of tumescent tissue compression"; and 7,406,970, entitled, "Method of using expandable vein ligator catheter having multiple electrode leads."

The remaining infringement suits include:

Civil Case No. C08- 03129 MMC, filed June 28, 2008, in California. In this matter, VNUS originally sued biolitec, Dornier, and CoolTouch asserting three patents it alleges cover various endovenous procedures. VNUS later amended the

complaint to include two later-issued patents. The parties answered and filed counterclaims alleging, among other things, that the patents asserted in the suit are not infringed, invalid, and/or unenforceable.

Civil Case No. C08-04234 MMC, filed Sept. 8, 2008, in California. In this case, VNUS sued Total Vein Solutions in the same court it previously had sued biolitec, Dornier, and CoolTouch, alleging infringement of the same patents asserted against those parties. This case has now been consolidated for all purposes with the earlier-filed Civil Case No. C08-03129 MMC. TVS answered and filed counterclaims alleging, among other things, that the patents asserted in the suit are not infringed, invalid and/or unenforceable.

Trial for both cases is set for October 2010, and is expected to last 4-6 weeks. The Court substituted Tyco for VNUS as plaintiff and counter-claim defendant in the above-described actions.