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Applied Scores Victory In Covidien Surgical Tool IP Fight

By **Roxanne Palmer**

Law360, New York (October 11, 2011, 10:13 PM ET) -- A Texas federal jury found Friday that Applied Medical Resources Corp. did not infringe two patents for surgical devices held by a Covidien PLC unit, and also declared the patent claims at issue were invalid.

The plaintiffs, Covidien predecessor Tyco Healthcare Group LP and United States Surgical Corp., originally asserted four patents. But U.S. Magistrate Judge Keith F. Giblin found that asserted claims from two of the patents — U.S. Patent Numbers 5,304,143 and 5,685,854 — were invalid because they pointed to an invention that had been found invalid for obviousness in another case, according to his Sept. 20 order.

The jury found that the plaintiffs' asserted claims from the remaining patents — U.S. Patent Numbers 5,603,702 and 5,895,377 — were invalid for reasons of both general obviousness and anticipation, according to Applied Medical attorney Joseph Re of Knobbe Martens Olson & Bear LLP.

His team was "elated that justice was truly done in this matter," Re said in a statement Tuesday.

Re told Law360 on Tuesday that he was unaware of another recent case in the Texas' Eastern District where the jury delivered a verdict that absolved a defendant of infringement and declared the patent claims invalid.

"It was a good, old-fashioned ass-kicking," Re said.

The dispute dates back to June 2006, when Covidien filed a suit accusing Applied Medical of infringing several patents for valve systems used in minimally invasive surgery in the production and distribution of its Kii and Universal laparoscopic trocars.

In March 2010, a jury handed a \$4.8 million verdict to Covidien, finding Applied Medical's Kii and Universal laparoscopic trocars violated claim 6 of the '377 patent, which covers a valve system for cannula assembly and was initially issued to U.S. Surgical.

The case headed into a second trial on Sept. 28 to settle allegations brought by Covidien in a November 2010 amended complaint. Covidien alleged Applied Medical's products still infringe its patents, even after the medical device company made modifications in response to the March verdict.

Attorneys for the plaintiffs could not be immediately reached for comment Tuesday.

The patents-in-suit are U.S. Patent Numbers 5,304,143; 5,603,702; 5,685,854; and 5,895,377.

The plaintiffs are represented by Robert M. Parker and Robert C. Bunt of Parker Bunt & Ainsworth PC, Peter J. Armenio of Quinn Emanuel Urquhart & Sullivan LLP and Claude E. Welch of the Law Office of Claude E. Welch.

Applied Medical is represented by Joseph Re, Karen Weil, Joseph Jennings, Sean Murray and Matthew Bellinger of Knobbe Martens Olson & Bear LLP, and Lawrence L. Germer and J. Mitchell Smith of Germer Gertz LLP.

The case is Tyco Healthcare Group LP et al. v. Applied Medical Resources Corp., case number 9:09-cv-00176, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Kaitlin Ugolik and Megan Leonhardt. Editing by Kat Laskowski.

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