

## Tyco Unit Wins Jury Verdict In Patent Dispute

2/21/2008 --- A federal jury has ruled that a Tyco International Ltd. subsidiary did not infringe Applied Medical Resources Corp.'s patent for trocar seal technology.

Covidien AG, formerly Tyco Healthcare, parent company of defendant U.S. Surgical Corp., said Wednesday that a jury in the U.S. District Court for the Central District of California found that Applied Medical's surgical instrument patent, U.S. Patent Number 5,385,553, was not infringed.

"We are very pleased with the jury's verdict and look forward to continuing to provide innovative surgical instruments to our customers," said Scott Flora, president of surgical devices at Covidien.

The decision came after a 14-day trial, which started Jan. 15.

Representatives for Applied Medical did not return requests for comment Thursday.

Applied Medical originally filed suit against U.S. Surgical in August 2003, claiming U.S. Surgical's Versaseal Plus trocar product violated its patent. Trocars are devices used to perform laparoscopic surgery.

In February 2005, the district court granted summary judgment of noninfringement to U.S. Surgical. Applied Medical followed the ruling with an appeal.

In May 2006, the U.S. Court of Appeals for the Federal Circuit reversed the lower court's decision, ruling that the claim construction adopted by the district court had factual gaps. The appellate court remanded the motion for summary judgment, and the district court denied it.

Then, after the Federal Circuit's ruling in the case *In re Seagate Technology LLC*, U.S. Surgical asked the district court to reconsider its ruling in light of the appellate court's decision in *Seagate*.

However, in December, Judge Cormac Carney ruled that Applied Medical had met the *Seagate* standard and could continue to bring its allegations of willful infringement against U.S. Surgical.

The ruling marked the first time a court allowed a willfulness claim to go to trial since the Federal Circuit's ruling in *Seagate*, which changed the standard for determining when infringement is willful, according to Applied Medical's counsel, Joseph Re of Knobbe Martens Olson & Bear LLP.

Before the Seagate ruling, companies had an affirmative duty to exercise due care to not infringe on existing patents, including obtaining legal advice from a patent counsel before creating a product that could be infringing.

Now, a patent holder needs to offer proof that a company was “objectively reckless” in willfully infringing on its patents before bringing the charge.

In his decision, Judge Carney acknowledged that Seagate had changed the playing field, but left the original ruling intact.

“Although Seagate does fundamentally change the standard for willful infringement, the court nevertheless concludes that there is still a genuine issue of material fact as to whether U.S. Surgical willfully infringed [the patent],” he said.

“Applied has provided evidence that a reasonable jury could conclude that U.S. Surgical’s approved device was objectively highly likely to infringe upon Applied’s claim,” Judge Carney added.

In the last two years, Applied Medical and U.S. Surgical Corp. have battled their way up to the Federal Circuit on two occasions.

In addition to the appellate court’s May 2006 decision, the Federal Circuit upheld a \$64.5 million patent infringement judgment against U.S. Surgical in a separate case.

U.S. Surgical was seeking to overturn a September 2004 district court ruling in which a jury awarded Applied Medical \$43.5 million for willful patent infringement.

The Federal Circuit endorsed the jury’s previous finding of willful infringement and heaped an additional \$20 million on top of the award to cover additional damages and attorneys’ fees.

The patent in this case is U.S. Patent Number 5,385,553.

Applied Medical Resources Corp. is represented by Knobbe Martens Olson & Bear LLP.

U.S. Surgical Corp. is represented by Dewey & LeBoeuf LLP; Paul, Hastings, Janofsky & Walker LLP and Bartlit Beck Herman Palenchar & Scott LLP.

The case is Applied Medical Resource Corp. v. U.S. Surgical Corporation, case number 8:03-cv-01267 in the U.S. District Court for the Central District of California.

--Additional reporting by Erin Coe, Brendan Pierson and Ben James