

MEDICAL INSTRUMENTATION AND DIAGNOSTICS CORP.

v.

ELEKTA AB, ELEKTA INSTRUMENTS, AB,
ELEKTA INSTRUMENTATION, INC. AND ELEKTA ONCOLOGY CORP.
(United States District Court for the Southern District of California)
97-cv-577

Action for patent infringement and misappropriation of trade secrets.

MIDCO is a small manufacturer of medical devices owned by Dr. Tyrone Hardy who invented a number of products for use in stereotactic neurosurgery. The suit involves five patents; two of the patents are directed to software/hardware systems called Computer Assisted Stereotactic Surgery (CASS); three of the patents cover a Localization and Microscope System used in invasive brain surgery. The technologies involved include neurosurgery, stereotaxy, radiology, computer imaging, lasers, and microscopes.

The defendants are Swedish companies that manufacture and sell a radiosurgery system called the GammaKnife that is used for non-invasive brain surgery. The company also sold microscope systems employing frameless stereotaxy and a laser/optical system for assisting a surgeon in locating brain lesions, such as a tumor, by correlating pre-treatment computer-based radiologic images, such as those obtained from Computed Tomography (CT), Magnetic Resonance (MR), and Positive Emission Tomography (PET) scanners. These systems are known as Image Guided Surgery (IGS) systems.

The suit was filed in December, 1997. Defendants pursued, unsuccessfully, a motion to dismiss for lack of jurisdiction. Defendants have also brought multiple motions for summary judgment for non-infringement of the IGS patents, the CASS patents, and trade secrets. All of these motions have been denied. A Markman hearing resulted in a favorable interpretation of the claims in the patents. After the interpretation of the claims, Plaintiff filed a motion for summary judgment for non-invalidity of the CASS patents and was successful.

Discovery involved depositions in Canada and the United States as well as in Stockholm, Sweden. Defendants produced over 20,000 pages of source code and total documents in the case were in excess of one-quarter million pages.

The defendants were represented by one of the largest law firms in the world -- Jones, Day, Reavis & Pogue (New York, Washington, D.C.).

The case went to trial before a jury on January 23, 2002. The Honorable Robert Whaley presided at the trial after the death of Judge Schwartz, the Senior Judge in San Diego, in March 2000. After five weeks of trial the jury found willful infringement of the CASS patents and Plaintiff was awarded \$16,595,000 in damages.

After trial, Defendants filed motions for a new trial on damages and to overturn the jury verdict on infringement. Plaintiff filed motions for enhanced damages, attorneys

fees, an injunction, and pre-judgment interest. The court denied Defendants motions and awarded MIDCO enhanced damages of over \$4 Million. The court also granted Plaintiff's request for attorneys fees and pre-judgment interest. A final judgment was entered on September 6, 2002 in the amount of more than \$24 Million.

On September 22, 2003 the Federal Circuit Court of Appeals reversed and remanded the judgment based on claim construction. 344 F.3d 1205 (Fed. Cir. 2003)

On remand, Midco attempted to amend the complaint to allege other claims; the motion was denied. An appeal was unsuccessful. 128 Fed. Appx. 774 (Fed.Cir. 2005)