

Fed. Circ. Affirms WL Gore's Win In Heart Device IP Row

By **Kat Greene**

Law360, Los Angeles (June 09, 2014, 5:35 PM ET) -- The Federal Circuit on Monday agreed with a Minnesota federal judge's finding that W.L. Gore & Associates Inc. didn't infringe on a patent for a heart defect treatment device held by rival AGA Medical Corp.

In a brief order that merely stated the three-judge panel affirmed the earlier decision, U.S. Circuit Judges Timothy B. Dyk, Evan Wallach and Raymond T. Chen sided with W.L. Gore, which contended it had not infringed on the patent with its medical device used to treat structural heart defects, according to court papers.

The panel did not elaborate on its ruling in the decision filed Monday. Attorneys for the parties did not immediately respond to requests for comment on Monday.

The decision affirmed a July 2013 district court victory for W.L. Gore over its Gore Helex Septal Occluder, finding it does not infringe AGA Medical's U.S. Patent Number 5,944,738.

AGA Medical sued Gore in 2010 alleging infringement of the '738 patent, titled, "Percutaneous catheter directed constricting occlusion device." The complaint sought damages and a permanent injunction barring further production of the Helex Septal Occluder product in the U.S. and abroad.

At the time the lawsuit was filed, AGA Medical's former president and CEO John Barr said the company turned to litigation to protect substantial investments it has made in its medical devices and intellectual property. St. Jude acquired AGA Medical in November 2010, months after the lawsuit was filed.

The Helex Septal Occluder device at the center of the lawsuit is used to close interatrial defects. The device is a permanently implanted prosthesis and catheter delivery system, intended to provide an alternative to invasive surgery to correct certain defects in the heart, according to product information available on Gore's website.

W.L. Gore argued in an April brief that AGA sealed its own fate "when it chose to use means-plus-function language to claim the 'means for securing said device to a delivery system' in the asserted claims of its patent."

That specified means limits AGA's patent to cover a device that is attached to its delivery system by a specific clamp-type object, according to W.L. Gore's argument.

AGA, meanwhile, contended in a reply brief that W.L. Gore's argument looks at only one narrow aspect of what the clamp is responsible for, and that the district court's finding ignored precedent that called for a broader understanding of the claimed functions in a patent, according to court records.

The patent-in-suit is U.S. Patent Number 5,944,738.

AGA Medical is represented by J. Derek Carpenter, Alan G. Carlson, J. Derek Vandenberg, Tara C. Norgard and Samuel T. Lockner of Carlson Caspers Vandenberg Lindquist & Schuman PA.

W.L. Gore is represented by James W. Poradek, Jared B. Briant, Kevin P. Wagner, Leslie B. Prill, Nina Y. Wang of Faegre Baker Daniels.

The case is AGA Medical Corp. v. W.L. Gore & Associates Inc., case number 0:10-cv-03734, in the U.S. District Court for the District of Minnesota.

--Additional reporting by Eric Hornbeck and Jonathan Randles. Editing by Mark Lebetkin.

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