

LifeNet Wins \$35M Verdict In Tissue Graft Patent Suit

By **Michael Lipkin**

Law360, San Diego (November 18, 2014, 7:47 PM ET) -- A Virginia federal jury on Tuesday awarded LifeNet Health nearly \$35 million in damages for LifeCell Corp.'s infringement of a patent improving the preservation of bone and soft-tissue grafts, rejecting LifeCell's invalidity defenses.

Following a 10-day trial, the jury found four LifeCell skin graft products infringed all seven asserted claims of LifeNet's patent, which was not found to be invalid based on being anticipated or obvious, or for lack of enablement. LifeNet was entitled to a lump sum of \$34.7 million, opposed to a running royalty, according to the verdict form.

LifeNet's patent described a system for freeze-drying tissue grafts, allowing them to be stored at room temperature while maintaining their normal texture and lowering the chance of graft failure.

LifeCell's accused products included AlloDerm Regenerative Tissue Matrix, Strattice, GraftJacket Ready to Use and Conexa, which use either human or pig skin treated to remove cells that can cause tissue rejection. The various products are used in abdominal wall repair, breast reconstruction and for orthopedic surgical procedures.

LifeNet's September 2013 complaint alleged LifeCell knew about the patent because its employees got their own patent application rejected as obvious in light of a LifeNet patent in the same family as the patent-in-suit.

U.S. District Judge Henry Coke Morgan Jr. had denied both sides' motions for summary judgment last month, ruling that a jury should decide whether LifeCell's products actually infringed the patent.

LifeCell had argued the patent required that plasticizers remain in the tissue grafts, while its products were supposed to be rinsed by surgeons for at least two minutes, removing the substance. Judge Morgan found LifeNet could not argue that the rinse was immaterial to infringement because it was not necessary to the products' functions. LifeNet's patent language said plasticizers aren't removed, not that they don't need to be removed, Judge Morgan wrote.

But there was still a genuine dispute over whether the rinse removed the plasticizers because LifeNet argued any substance coming off in the rinse could be from the graft's exterior and from its internal matrix, according to the opinion.

The judge also rejected LifeCell's indefiniteness defense.

Attorneys for the parties did not immediately respond Tuesday to requests for comment.

The patent-at-issue is U.S. Patent Number 6,569,200.

LifeNet is represented by Michael H. Jacobs, Jennifer H. Burdman, William Sauers and Michael Songer of Crowell & Moring LLP and Stephen E. Noona and Mark E. Warmbier of Kaufman & Canoles PC.

LifeCell is represented by William R. Poynter and Brian A. Wainger of Kaleo Legal and George F. Pappas, Gary M. Rubman, Jeffrey H. Lerner, Megan P. Keane, Brianne Bharkhda and Michael S. Sawyer of Covington & Burling LLP.

The case is LifeNet Health v. LifeCell Corp., case number 2:13-cv-00486, in the U.S. District Court of the Eastern District of Virginia.

--Editing by Kelly Duncan.

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