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Fed. Circ. Affirms Damages In X-Ray Patent Row

By **Dani Kass**

Law360 (May 7, 2018, 8:48 PM EDT) -- The Federal Circuit on Friday affirmed a North Carolina federal jury's \$852,000 award to a Spanish X-ray manufacturer after a rival infringed its patent, shooting down both the company's request for enhanced damages based on willful infringement and the competitor's request to vacate the damages entirely.

Sociedad Española de Electromedicina y Calidad SA, or Sedecal, had argued in its appeal that a judge should have increased damages after the jury found that Drgem USA Inc. and Drgem Corp. willfully infringed the electrical transformers patent. But Drgem shot back that for years the companies had actually been winning the case, proving their position wasn't unreasonable.

South Korea-based Drgem also argued that Sedecal's own expert had called for half a million less in damages than what the jury granted, so the amount awarded "can only be the result of a runaway jury awarding damages based on speculation and guesswork." The company asked for the award to be vacated and redecided at the district court level.

The three-judge panel didn't expand on its order affirming the district court's decision.

Sedecal sued in 2010, targeting both Drgem units, which make X-ray generators that include the transformer in question, along with the company that sells those generators, Blue Ridge X-Ray Co. Inc. Four years later, U.S. District Judge Martin Reidinger granted summary judgment to Drgem and Blue Ridge and invalidated the patent. The Federal Circuit in 2015 overturned that ruling, taking issue with the claim construction, and sent it back to the district court.

The case went to trial, and a jury came back with a **verdict** in favor of Sedecal in January 2016. Although Blue Ridge was also found to have infringed the patent, the willful infringement claims only applied to the Drgem units. Citing the U.S. Supreme Court's June 2016 **Halo decision**, Judge Reidinger found that the jury has the **final say** on willfulness and a judge need not make any further findings.

In Sedecal's appeal, the company argued that it deserves enhanced damages because Drgem "intentionally copied" its design in a "purposeful attempt to directly compete" and "disregarded the substantial risk of infringement Sedecal's patent." Drgem's "legitimate defenses" used at trial were developed long after the actual infringement occurred, Sedecal wrote.

But Drgem fought back that it had investigated the patent before selling its product, pulled it from the market to conduct another review once accused of infringement and again withdrew it from the market once the Federal Circuit reversed summary judgment.

"These are not the actions of wanton and malicious pirates for which enhanced damages are appropriate," Drgem said.

The company added that it was winning the case for five years, with the Federal Circuit even writing that the patent was "no model of clarity." Drgem said the patent's "poor drafting" was what led the judge to originally invalidate the patent.

"We are pleased that the Federal Circuit affirmed the denial of enhanced damages in this case," said Drgem's attorney, Richard B. Megley Jr. of Lee Sheikh Megley & Haan LLC.

An attorney for Sedecal didn't immediately respond to a request for comment Monday.

U.S. Circuit Judges Kathleen M. O'Malley, Richard Linn and Todd M. Hughes sat on the panel for the Federal Circuit.

The patent-in-suit is U.S. Patent Number 6,642,829.

Sedecal is represented by Bradley F. Rademaker and Michael R. Turner of Neal Gerber & Eisenberg LLP.

Drgem is represented by Richard B. Megley Jr., David J. Sheikh, Brian E. Haan and Joseph A. Culig of Lee Sheikh Megley & Haan LLC.

The case is Sociedad Española de Electromedicina y Calidad SA v. Blue Ridge X-Ray Co. Inc., case numbers 17-1551 and 17-1552, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Kevin Penton and Ryan Davis. Editing by Alyssa Miller.

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