

Federal Circuit Affirms En Banc Over \$34.2 Million Judgment For Marine Polymer And Permanent Injunction Against HemCon

The Associated Press

DANVERS, Mass.--(BUSINESS WIRE)--Mar 16, 2012-- Medical device company Marine Polymer Technologies, Inc. announced that on March 15, 2012, the Court of Appeals for the Federal Circuit affirmed, in an en banc decision, all aspects of the 2010 judgment of the New Hampshire District Court in favor of Marine Polymer, following a ten-day jury trial against competitor HemCon, Inc. This judgment includes a damages verdict in excess of \$29.4 million, additional post-trial damages for infringing sales in 2010, and prejudgment interest, for a total of over \$34.2 million. In addition, the judgment includes a permanent injunction prohibiting HemCon from further infringing Marine Polymer's United States Patent No. 6,864,245 concerning biocompatible polymers.

Execution of the damages award and the permanent injunction had previously been stayed by the Federal Circuit pending disposition of the appeal.

The en banc decision follows a January 20, 2012 order, in which the Federal Circuit vacated a prior split-panel decision, which held that HemCon is entitled to absolute intervening rights and is not liable for infringement with respect to products manufactured before the '245 patent came out of reexamination before the U.S. Patent and Trademark Office. During the reexamination proceeding, which ran in parallel with the district court litigation between the two parties, none of the original '245 patent claims asserted in the litigation were changed. Marine Polymer sought en banc review of the panel decision, and in the January 20th order, the full court vacated the panel's decision, reinstated the appeal, and agreed to rehear the appeal en banc.

The March 15th en banc decision upheld the district court's judgment in its entirety, including the district court's construction of the '245 patent's claims, its infringement determination, and the damages award. As an alternative ground for affirmance, the en banc court rejected HemCon's intervening-rights defense, adhering to a faithful reading of the relevant statute, and holding that intervening rights do not apply where the patent claims in question are neither "new" nor "amended." The en banc court rejected the notion that patent claims may be "amended" based solely on arguments made to the U.S. Patent and Trademark Office, when the language of the claims does not change. In light of the en banc decision, the stay on the execution of the damages award and the stay of the permanent injunction against HemCon has now expired.

"After nearly six years of litigation, we are thrilled that the Court of Appeals has vindicated our patent rights," said Sergio Finkielsztejn, President and CEO of Marine Polymer. Mr. Finkielsztejn further stated that his company intends to enforce the

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district court's judgment and permanent injunction.

Both at trial and on appeal, Marine Polymer was represented by attorneys from Jones Day.

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