

Patterson Belknap Wins \$593 Million Patent Reversal for Johnson & Johnson

By Jan Wolfe
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Yet another big patent verdict has been nixed on appeal. This time around, the medical device manufacturer Cordis Corporation, a subsidiary of Johnson & Johnson, and its lawyers at Patterson Belknap Webb & Tyler have dug themselves out of a \$593 million hole.

The U.S. Court of Appeals for the Federal Circuit ruled Thursday that Cordis didn't infringe a patent owned by Bruce Saffran, a Philadelphia radiologist. The ruling does away with Saffran's 2011 trial win against Cordis in U.S. district court in Marshall, Tx.—the biggest jury verdict that year.

Gregory Diskant of Patterson Belknap Webb & Tyler, who represented J&J at trial, handled the Federal Circuit argument. David Frederick of Kellogg Huber Hansen Todd Evans & Figel represented Saffran.

In the 1990s, when Saffran was a resident at Massachusetts General Hospital, he filed for several patents relating to heart stents—tiny mesh tubes that prop open arteries during surgery. In 2003, Saffran teamed up with Paul Taskier of Dickstein Shapiro to bring infringement complaints against medical device manufacturers.

The litigation has been a roller coaster ride. A federal jury in Marshall returned a verdict in 2008 that Boston Scientific Corporation infringed one

of Saffran's patents. The jury awarded Saffran a staggering \$501 million in damages. Perhaps fearing a reversal on appeal, Saffran opted to settle the case for \$50 million in 2009.

Saffran and Dickstein Shapiro, along with Eric Albritton of the Albritton Law Firm, pulled off another big win in January 2011, when a jury found that Cordis infringed the same patent and socked it with a \$482 million verdict. Two months later now-retired judge T. John Ward tacked on another \$111 million in interest.

That verdict is now history. In Thursday's decision, the Federal Circuit ruled that Ward erred in his pre-trial claim construction order. Under the proper claim construction, Cordis was entitled on a finding of noninfringement as a matter of law, the appeals court concluded.

All three Federal Circuit judges assigned to the appeal—Alan Laurie, Kimberly Moore, and Kathleen O'Malley—agreed that Cordis doesn't infringe as a matter of law, but they used different routes to get there. Laurie ruled that Ward reached an incorrect claim construction for two key terms, "device" and "release means." In a concurring opinion, Moore agreed with Laurie about "release means," but not "device." In a concurrence of her own, O'Malley agreed with Laurie about "device" but not "release means."