

New Jury Clears J&J In Rembrandt Contact Lens Patent Row

By **Dave Simpson**

Law360, New York (August 29, 2017, 10:34 PM EDT) -- A Florida federal jury found that Johnson & Johnson Vision Care Inc.'s contact lenses do not infringe on a patent belonging to Rembrandt Vision Technologies LP, according to a verdict form entered Tuesday, repeating a finding that the Federal Circuit vacated for a new trial after discovering the first jury's noninfringement verdict was swayed by false expert testimony.

This is the second time a jury has cleared the Johnson & Johnson unit against Rembrandt, ending the fight over U.S. Patent Number 5,712,327, which covers a type of soft contact lens that can be worn for extended periods of time.

A jury first cleared J&J in 2012 and the decision was affirmed by the Federal Circuit in 2013, but Rembrandt discovered evidence after the trial showing that J&J's expert gave false testimony.

Rembrandt sought a new trial on that basis, but U.S. Circuit Judge Timothy Corrigan of the Middle District of Florida denied the request. In April 2016, the Federal Circuit said in a 2-1 decision that the judge abused his discretion in not ordering a new trial, ruling that the expert's false testimony may have undermined the verdict.

"We conclude that the district court clearly erred in finding that Rembrandt had a full and fair opportunity to present its infringement case," the court said at that time. The verdict was "irretrievably tainted" by the expert's false testimony, the court found.

The long-running case, in which Rembrandt alleges that J&J's lenses infringe its patent on a soft gas permeable contact lens, is notable in that the experts for both sides were found to have given false or misleading testimony in the original trial.

At the first trial, Rembrandt relied on the testimony of Dr. Thomas Beebe, a professor at the University of Delaware, but according to the Federal Circuit, he "drastically" changed his testimony on cross-examination. The judge ultimately struck his testimony as unreliable and therefore held as a matter of law that J&J did not infringe.

J&J's expert testimony in the first trial also had significant problems, resulting in the April 2016 decision. During the trial, J&J relied on the testimony of Dr. Christopher Bielawski, a professor at the University of Texas, to support its argument that it did not infringe. Bielawski repeatedly impugned Beebe's credibility

and accused him of dishonesty during his testimony.

After the first trial, however, Rembrandt learned through open records requests and state court litigation that Bielawski had given false testimony at the trial. He said he personally performed tests on J&J's contact lenses, when in fact those tests were done by his students when he was out of the country. He also claimed to be an expert in a field in which he had "no experience whatsoever," and withheld tests and data that would have undermined his testimony, according to the Federal Circuit.

Rembrandt is represented by Michael E. Lockamy of Bedell, Dittmar, DeVault, Pillans & Coxe PA.

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The case is Rembrandt Vision Technologies LP v. Johnson & Johnson Vision Care Inc., case number 3:11-cv-00819 in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Stewart Bishop and Ryan Davis. Editing by Pamela Wilkinson.