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LITIGATION

Knobbe wins \$466.7M for medical tech company

Firm scores sum on behalf of Masimo Corp. in patent infringement case

By Kevin Lee
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Knobbe, Martens, Olson & Bear LLP has scored a \$466.7 million verdict for its client, Irvine-based medical technology company Masimo Corp., in a patent infringement case against Philips Electronic North America Corp.

The largely unaddressed question for both parties after Wednesday's verdict is what happens next in the District of Delaware federal litigation.

Masimo lead counsel Joseph R. Re, an Irvine-based Knobbe Martens partner, said the trial decided infringement on only a fraction of the patents both companies have asserted. *Masimo Corp. v. Philips Electronics NA et al*, 09-80 (D. Del., filed Feb. 3, 2009).

Barring a settlement, the litigants could continue to bring their infringement allegations to jurors until all claims have been tried. The court also has stayed an antitrust claim brought by Philips until decisions have been made on the patent disputes.

Re would like to see the case settled after eight jurors awarded nearly a half-billion dollars in damages and declined multiple arguments from Philips to invalidate Masimo's two patents.

"I hope that people look at a case like this and now understand what the patent system was intended to do," Re said. "Masimo made a great contribution to patient healthcare."

Masimo's two patents cover technology related to pulse oximetry, a non invasive technique of using light waves to measure oxygen saturation in blood. Re said that the procedure is particularly useful for assessing the oxygen levels of newborns.

Two weeks before trial, Philips dropped its non infringement defenses to focus on invalidating Masimo's patents.

Despite the adverse decision, Philips has given no sign it will give up on litigation.

"We are very disappointed in the verdict of the jury and surprised by the magnitude of the proposed award," Philips CEO Frans van Houten said in a prepared statement. "Philips intends to pursue all avenues of appeal of this verdict at both the district and appellate courts in the US."

Brian A. Rosenthal, lead counsel for Philips and a New York-based partner at Mayer Brown LLP, declined to comment.

Re said Masimo and Philips actually have a mutually beneficial business relationship, despite the ongoing patent lawsuit.

In 2011, the companies reached a deal for Masimo to provide blood and hemoglobin monitoring technology to be used in Philips products. The companies had reached a deal in 2004 for Masimo to offer its pulse oximetry technology in Philips patient monitors.

"Philips knows they need us and we need them," Re said. "It's like we invented the air-bag and they are a large car manufacturer."