

## Medtronic Wins Appeal In Spinal Screw Patent Suit

By **Christine Caulfield** , [christine.caulfield@portfoliomedia.com](mailto:christine.caulfield@portfoliomedia.com)

*Monday, April 02, 2007* --- Medical device maker Medtronic Inc. hailed an appeals court ruling Monday that its new surgical screws do not infringe on any claims of a patent held by Biomet subsidiary Cross Medical Products.

The long-running patent dispute is not over yet, however, with the U.S. Court of Appeals for the Federal Circuit sending an infringement claim against the company's original screws back to the lower court for reconsideration.

Medtronic Senior Vice President Pete Wehrly said in a statement the company was pleased with the court's decision, which allows it to keep selling its popular re-designed multi-axial surgical screws.

But Biomet's President and CEO Jeffrey Binder warned his company intended to pursue the remaining claims on Medtronic's obsolete screws.

"Although we are disappointed with the Court's decision related to the redesigned polyaxial screws, we are very pleased that the Federal Circuit vacated the district court's prior ruling in favor of Medtronic on the original polyaxial screw designs," Binder said.

This was Medtronic's second appeal to the Federal Circuit. The court set aside in October 2005 a permanent injunction issued against it by the U.S. District Court for the Central District of California.

The patent dispute began more than four years ago, in February 2003, when Cross Medical sued Medtronic for two claims of patent infringement and Medtronic countersued for a judgment of non-infringement and patent invalidity.

Cross Medical prevailed in the case, with the district court granting its motion for summary judgment of infringement on one of its two claims, claim "5", and issuing a permanent injunction against Medtronic in October 2004.

The injunction barred Medtronic from selling its polyaxial screw products, despite assurances from the medical device maker that the company no longer made the screws at the center of the dispute.

The spinal screw generated \$40 million in revenue in 2003 for Interpore International Inc., which Biomet purchased in June 2005 for about \$280 million.

---

Medtronic immediately appealed the ruling and eventually won, but while the case was still pending in the Federal Circuit it redesigned the polyaxial bone screws at issue.

Replacing threads on the screws with “grooves” or “undercuts,” the medical technology company hoped to avoid infringement of claim 5, which referred to a “fixation device” comprising two anchors, a rod and threads.

Unimpressed with the revamp and arguing the new screws infringed on both claims of the patent just as the old ones did, Cross Medical took the case back to the district court.

Ruling again in Cross Medical’s favor, the court concluded infringement was still an issue, not literally this time but under the doctrine of equivalents.

Ruling on this, the second appeal, the Federal Circuit found the district court was wrong, and should have granted summary judgment of non-infringement in Medtronic’s favor.

But whether or not Medtronic’s original screw design violated Cross Medical’s patent remains an issue, with a trial expected to take place later this year, according to Biomet.

Cross Medical is represented in this matter by Latham & Watkins LLP. Medtronic is represented by Robins, Kaplan, Miller & Ciresi LLP.

The patent in question is U.S. Patent Number 5,474,555.

The case is Cross Medical Products Inc. v. Medtronic Sofamor Danek Inc. and Medtronic Sofamor Danek USA Inc., case number 05-1415, in the U.S Court of Appeals for the Federal Circuit.

--Additional reporting by Marius Meland