

## Fed. Circ., Judge Nix CardioNet Heart Monitor Patent Claims

By Ryan Davis

*Law360 (July 1, 2020, 9:14 PM EDT)* -- CardioNet's heart monitor patent cases against two different companies were dealt blows Wednesday by both the Federal Circuit, which invalidated three of the patents under Alice, and a Massachusetts federal judge, who axed infringement allegations on another patent for being filed too late.

In two separate cases, one against InfoBionic and one against ScottCare, the Federal Circuit ruled that three CardioNet patents cover nothing more than "the abstract idea of collecting, analyzing, and displaying data" and are therefore invalid under the U.S. Supreme Court's Alice decision.

However, the appeals court vacated a Pennsylvania federal judge's ruling that a fourth patent in the case against ScottCare is invalid under Alice. The Federal Circuit addressed that patent in April in the case against InfoBionic, and found that it covers not an abstract idea, but a patent-eligible method of improving heart monitor technology.

Also on Wednesday, Judge Indira Talwani of the District of Massachusetts unsealed a decision granting summary judgment to InfoBionic on another patent in the same case at issue in the Federal Circuit appeal, finding that CardioNet disclosed its theory for why InfoBionic infringes more than two and a half years too late.

CardioNet sued ScottCare in 2012 in the Eastern District of Pennsylvania, alleging infringement of its patents on "mobile cardiac telemetry," devices that monitor a person's heart and detect anomalies. It sued InfoBionic in 2015 in the District of Massachusetts over some of the same patents.

In the first Federal Circuit decision issued Wednesday, the court held that Judge Talwani correctly found in 2018 that two CardioNet patents asserted against InfoBionic cover only abstract ideas.

"We conclude that the claims are directed to collecting, analyzing, and displaying data, which we have repeatedly held to be abstract concepts," the court said, adding that the patents do not contain any inventive concepts that make them patent-eligible.

In the second Federal Circuit decision, the court relied on its InfoBionic decisions to dispose of three of the same patents asserted against ScottCare, which had been found invalid under Alice by Judge Petrese Tucker of the Eastern District of Pennsylvania.

The appeals court affirmed the invalidity finding on two of them based on its decision Wednesday, while vacating the ruling on the third one based on its April ruling.

The court then affirmed Judge Tucker on the fourth CardioNet patent, ruling that she had correctly held that it is invalid for claiming only abstract ideas.

"The purported improvement is the abstract idea of classification and filtering of data, not an improvement in the functioning of computer capabilities," so the patent is invalid, the Federal Circuit said.

Finally, back in the District of Massachusetts, Judge Talwani granted summary judgment to InfoBionic Wednesday on yet another CardioNet patent.

The judge ruled that CardioNet did not disclose its theory for why InfoBionic infringes until it filed an expert report last year, even though the court had set a 2016 deadline for such disclosures.

"CardioNet did not comply with its obligations to timely disclose its infringement contentions to InfoBionic," she wrote, adding that "as a result of not making its required disclosures, CardioNet hid the ball from InfoBionic for years as this litigation proceeded."

She said that granting summary judgment did not deprive CardioNet of its day in court, because "even under its late-disclosed theories no reasonable jury could find infringement."

CardioNet initially asserted other patents against InfoBionic that were invalidated by the Patent Trial and Appeal Board, as well as trade secret claims that were rejected in arbitration. The next steps in the case will likely be an appeal of Wednesday's ruling and further proceedings in Massachusetts on the patent the Federal Circuit revived in April.

Max Grant of Latham & Watkins LLP, an attorney for InfoBionic, said that Judge Talwani's "well-reasoned and detailed analysis confirms InfoBionic's longstanding suspicion that this litigation was brought for improper purposes."

The court found that CardioNet "played fast and loose" by providing inconsistent explanations of what the patent covered, first to survive an invalidity challenge and then to argue noninfringement, Grant said. InfoBionic now plans to seek attorney fees, he noted.

"The next question for the court will be to determine whether CardioNet's conduct in prolonging litigation to drive up legal fees has been exceptional," he said.

Attorneys for the other parties could not immediately be reached for comment Wednesday.

The patents at issue in the appellate rulings are U.S. Patent Nos. 7,212,850; 7,907,996; 7,941,207; and 7,587,237. The patent at issue in the district court ruling is U.S. Patent No. 7,099,715.

Judges Alan Lourie, Timothy Dyk and Raymond Chen sat on the panel for the Federal Circuit in both cases.

CardioNet is represented by Ching-Lee Fukuda, Bradford Badke, Todd Simpson, Nathan Greenblatt, Ryan Morris, Sharon Lee, Jack Pirozzolo and Sam Dillon of Sidley Austin LLP.

InfoBionic is represented by Max Grant, Charles Sanders, Gabriel Bell, Jonathan Strang, Brenda Danek, Christopher Henry, Diane Ghrist, and Nathaniel McPherson of Latham & Watkins LLP.

ScottCare is represented by Kevin Kent, John Guernsey, Meghan Farley and Andrew Gallinaro of Conrad O'Brien.

The appellate cases are CardioNet LLC et al. v. InfoBionic Inc., case number 20-1018, and Braemar Manufacturing LLC et al. v. The ScottCare Corp. et al., case number 19-2263, in the U.S. Court of Appeals for the Federal Circuit.

The district court case is CardioNet LLC et al. v. InfoBionic, case number 1:15-cv-11803, in the U.S. District Court for the District of Massachusetts.

--Editing by Jack Karp.