

Alcon Inc. To Pay \$199 Million To Settle J&J Laser IP Dispute

By **Leslie A. Pappas**

Law360 (February 13, 2023, 9:00 PM EST) -- Alcon Inc. will pay a Johnson & Johnson subsidiary \$199 million to resolve various worldwide intellectual property disputes related to cataract surgery devices, Alcon announced on the eve of a jury trial that had been scheduled to begin in federal court in Delaware.

The settlement agreement with J&J Surgical Vision Inc. resolves pending disputes over Alcon's LenSx device, which Alcon acquired as part of its purchase of LenSx Lasers Inc. in 2010, Alcon said in a statement posted Sunday on its website.

"Alcon and J&J Surgical Vision have resolved their pending legal proceedings relating to femtosecond laser-assisted cataract surgery devices," Amanda Pisano, a spokeswoman for another J&J subsidiary, Johnson & Johnson MedTech, told Law360 in an email Monday. "As part of the resolution of this matter, the parties have exchanged cross-licenses of certain intellectual property and other mutually agreed covenants and releases."

Alcon will make the \$199 million one-time payment to J&J Surgical Vision for those rights "and to resolve various worldwide intellectual property disputes relating to this matter," the Alcon statement said.

The settlement ended litigation over the case in Wilmington, Delaware, where subsidiaries of the two companies had been set to begin an eight-day jury trial on the intellectual property disputes. A posting on the docket late Friday said the trial had been canceled.

The parties in the Delaware case filed a joint stipulation of dismissal of all claims and counterclaims late Monday. No settlement was in the docket.

J&J Vision and subsidiaries AMO Development LLC, AMO Manufacturing USA LLC, and AMO Sales and Service Inc. launched the suit in 2020, alleging that Alcon infringed a host of patents and also infringed copyrights that relate to its iFS Laser system. The copyrighted software manages the functions and directs the movement of lasers used in LASIK surgery.

The case was filed against Alcon Inc. and its subsidiaries Alcon Vision LLC, Alcon Laboratories Inc. and Alcon Research LLC.

The iFS system was first made by a company called IntraLase. Johnson & Johnson eventually bought

IntraLase's successor company, according to court documents. One of IntraLase's founders left and founded another company called LenSx Lasers, which was later bought by Alcon, according to the suit.

Alcon filed a counterclaim, saying that J&J was infringing on Alcon's own patented technology.

Judge Colm Connolly of the U.S. District Court for the District of Delaware partially granted a motion for summary judgment from Alcon in December, and said J&J was prohibited from getting any monetary relief for copyright infringement of computer programs relating to J&J's iFS Laser system that took place before Sept. 28, 2017.

The Copyright Act has a three-year time limit on bringing claims, the judge said.

Counsel for the parties did not respond to Law360's requests for additional comment on Monday.

The J&J Vision patents-in-suit are U.S. Patent Nos. 8,394,084; 8,403,921; 8,425,497; 8,500,724; 8,709,001; 9,095,415; 9,101,448; 9,107,732; 9,125,725; 9,233,023; 9,233,024; 9,474,648; 9,693,903; 9,693,904; 10,376,356; and 10,709,548.

The Alcon patents-in-suit are U.S. Patent Nos. 8,398,236; 9,427,356; 9,456,925; 9,622,913; and 9,849,036.

J&J Vision and the J&J plaintiffs are represented by Michael A. Morin, Roger J. Chin, P. Anthony Sammi, Sarang V. Damle, Rachel Weiner Cohen, Rachel Renee Blitzer, Joseph R. Wetzell, S. Giri Pathmanaban, Matthew J. Moore, Susan Y. Tull, Carolyn M. Homer, Holly K. Victorson, Allison Harms, Aaron Macris, Rachel Horn, Drew Roberts, and Sarah O'Connor of Latham & Watkins LLP and Jack B. Blumenfeld, Brian P. Egan and Anthony D. Raucci of Morris Nichols Arsht & Tunnell LLP

Alcon Inc. and the Alcon defendants are represented by John W. Shaw, Karen E. Keller, Andrew E. Russell and Nathan R. Hoeschen of Shaw Keller LLP, and Jeanne M. Heffernan, James John Lomeo, Ryan James Melde, Gregg F. LoCascio, Sean M. McEldowney, Noah S. Frank, Mary Elizabeth Miller, Elizabeth Hedges, Kelly Tripathi, Nicholas Teleky, Joshua L. Simmons, Caroline Lourgous and Kristen P.L. Reichenbach of Kirkland & Ellis LLP.

The case is AMO Development LLC et al. v. Alcon Inc. et al., case number 1:20-cv-00842, in the U.S. District Court for the District of Delaware.

--Additional reporting by Adam Lidgett. Editing by Karin Roberts.