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He Which Soweth Bountifully Shall Reap Also Bountifully Return On Investment For Patenting Healthcare Inventions

Last month, a radiologist was awarded one of the largest patent infringement verdicts awarded in the Eastern District of Texas and, reportedly, the sixth largest patent verdict awarded nationwide. Bruce N. Saffran, M.D. stands to reap an award of over \$432 million for infringement of one of three patents he obtained while a medical student against Boston Scientific Corporation, a medical technology company that produces drug-coated stents to improve blood flow through blocked arteries.

One of Dr. Saffran's inventions involved placing a fabric around damaged tissue to retain macromolecules to facilitate natural healing. The patent specified that the fabric could be medicated and manufactured as a stent. In a little over a year after the filing of the infringement lawsuit on this invention, the jury found two of Boston Scientific's drug-coated stents infringed on Dr. Saffran's patent and awarded "a reasonable royalty" for the infringements. If the verdict holds through appeal, the patent may provide another five years' worth of damages for future infringements.

The patent at issue was filed approximately two years after another Dr. Saffran patent application was filed. Dr. Saffran's determination and investment in adding new disclosure and claims after already having one patent application filed paid off. However, as with all patents, his second patent application needed to be made timely to avoid violating a bar date.

For example, if Dr. Saffran had published a description of the invention, built the medical device and offered it for sale and/or used it in a public operation more than a year before the patent application was filed, such activities would have raised an issue of invalidity of the patented invention. A

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patent application must be filed within one year after the invention is first described in any publication, offered for sale, sold, or used publicly for the issuance of a valid patent in the United States. There are exceptions to the rule, as in the case of legitimate experimental use to perfect or develop the invention.

If foreign patent protection is desired, any publication or public use of an invention that takes place before the filing of an application may bar the inventor from obtaining a valid patent in some foreign countries, most of which apply an "absolute novelty" standard. In other words, in most foreign countries, an inventor does not have a one year grace period to file an application as is provided under U.S. law. The absolute novelty standard requires the application for the invention to be filed before any public disclosure.

Once a valid patent has been obtained, a patent holder, similar to Dr. Saffran, must enforce the patent in Federal Court. While the U.S. District Court for the Eastern District of Texas in Marshall has been attractive to many due to its sophisticated patent suit rules, the U.S. District Courts for the Southern and Northern Districts of Texas have recently adopted rules that are in line with the Eastern District. These new patent rules will facilitate resolution of patent disputes in an expeditious manner in the metropolitan cities of Dallas and Houston.

Healthcare inventor(s) should sow bountifully with timely filings of their inventions. This sowing may reap expeditious and bountiful returns to its owners/investors in Texas courts.

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