

Occlutech defeats second AGA cardiovascular medical device patent claim in UK High Court

- Comment from KIPA AB, the European Patent Attorneys of Occlutech -

The UK High Court delivered its judgment earlier this week in *AGA Medical Corporation v Occlutech UK Limited*, declaring AGA's patent to be invalid. The case concerned medical devices used to seal Atrial Septal Defects, i.e. holes in the septal wall of the heart. AGA/St Jude claimed that Occlutech's devices infringed its patent EP957 773 validated in UK. Occlutech counterclaimed, successfully, for revocation of the patent. This was the second judgment in UK patent proceedings between these parties, Occlutech having defeated AGA's claims for patent infringement on both occasions.

The same patent has previously been revoked in its entirety by Opposition Division of EPO, as it introduced subject matter which extended beyond the application as filed. This decision is subject to appeal. While the U.K. court continued proceedings towards the present judgment, the German district court in Düsseldorf chose to stay proceedings until the EPO having taken a final decision on the validity/invalidity of the patent.

The High Court had previously in July 2009 found an earlier AGA patent EP808 138 to be valid but not infringed by the previous generation of Occlutech devices. The Court of Appeal dismissed AGA's appeal against the finding of non-infringement in June 2010.

In the latest judgment, Mr Justice Roth held AGA's patent to be invalid because the patented invention had been disclosed in clinical trials which took place at a hospital in Bratislava before the priority date of the patent. Due to the circumstances the clinical trials were ruled not to be confidential.

In determining the position on confidentiality, the Court distinguished principles of English law from the *obiter dictum* made by the Opposition Division in their decision, which presumed that clinical trials are confidential *prima facie*.

Mr Justice Roth also held that the invention was obvious as the differences between a prototype of the patented device which was disclosed at a medical conference and the invention did not involve an inventive step. Accordingly, the invention failed to meet the criteria for patent protection and was held to be obvious.

Erik Krahbichler, of KIPA AB, which has coordinated Occlutech's pan-European litigations in both the first and second action and successfully represented Occlutech in a number of oppositions at EPO, commented:

"We are delighted to receiving another positive judgement for one of our clients. It is a confirmation of our successful work in Pan European litigations where we advise clients on litigation strategy and provide evaluations and recommendations with regard to the prospect of success."

- ENDS -

The pan European coordination and opposition was handled by Erik Krahbichler and Pär Hjalmarsson of KIPA AB

Occlutech's external legal advisers in UK were Marks & Clerk Solicitors LLP, and counsel were Andrew Lykiardopoulos of 8 New Square and Graham Burnett-Hall of Marks & Clerk Solicitors LLP.

If you would like to speak to Erik Krahbichler or Pär Hjalmarsson at KIPA AB, please contact them directly by e-mail; erik@kipa.se and par@kipa.se or by phone +46 (0)732 011 930

Notes to editors:

About KIPA AB

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KIPA is a European Intellectual Property (IP) company based in the South of Sweden. KIPA provides highly specialized professional IP advice, in particular to the medical device industry, but also for diverse clients involved with innovations in a variety of technologies including alternative fuels, biotech, and chemistry. KIPA is a team of experienced professionals authorized to represent clients to the European Patent Office (EPO), the Swedish Patent Office (PRV), and the U.S. Patent and Trademark Office (USPTO), including former examiners from all three of these patent offices. Our trademark and design specialists are authorized to prosecute community trademark and design applications before the Office for Harmonization of the Internal Market (OHIM).