

## ITC Judge Says Swedish Co.'s Radiotherapy Imports Flout IP

By Rick Archer

*Law360, New York (November 2, 2016, 6:39 PM EDT)* -- A U.S. International Trade Commission administrative law judge on Friday recommended that Swedish radiotherapy company Elekta AB's products be barred from import for infringing a U.S. company's patents covering the design of treatment machines and certain radiation emitters.

In a notice scheduled for publication in the Federal Register on Thursday, the ITC said the judge had found some of the linear accelerator-based volumetric arc therapy radiotherapy machines manufactured and imported to the U.S. by Elekta infringed on six patents held by Palo Alto, California-based Varian Medical Systems, and recommended a limited exclusion order against their import.

"We are pleased with the ITC ruling on the validity and infringement of Varian's VMAT patents," said John W. Kuo, Varian senior vice president and general counsel, in a press release Wednesday. "We see this as a victory for innovation and cutting-edge cancer treatments that can benefit all patients."

Varian had claimed radiation treatment machines imported by Elekta had violated its patents, which it said cover the design of the machines and the radiation emitters, the methods by which they are used to target tumors, and the control software.

Elekta argued the patents were invalid, arguing they were obvious and contain claims that were anticipated by a 1998 patent and two medical journal articles from 2002 and 2003. The company argued the U.S. Patent and Trademark Office's Patent Trial and Appeals Board had heard their case and that a review of the patents is currently underway.

The ITC is soliciting comments on the issue prior to making a final decision. Interested parties have until Dec. 12 to submit comments. A six-member ITC panel will review the case, with a final decision expected by February.

In 2006, Varian settled suits it had brought against Montreal-based Resonant Medical in federal district court and the ITC claiming Resonant's products infringed on one of the patents at issue in the case. The terms of the settlement were not disclosed.

Counsel for Elekta did not immediately respond to requests for comment Wednesday.

Varian is represented by Stephen R. Smith of Cooley LLP.

Elekta is represented by James R. Barney of Finnegan Henderson Farabow Garrett & Dunner LLP.

The patents-in-suit are U.S. Patent number 7,880,154; 7,906,770; 7,945,021; 8,116,430; and 8,867,703.

The investigation is Certain Radiotherapy Systems and Treatment Planning Software, and Components Thereof, investigation number 337-TA-968, before the U.S. International Trade Commission.

--Editing by Philip Shea.

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