

Fed. Circ. Won't Revive Boston Scientific Implant Patent

By Adam Lidgett

Law360 (March 18, 2022, 6:20 PM EDT) -- The Federal Circuit has backed a Patent Trial and Appeal Board finding that a Boston Scientific implant device patent was invalid, handing a win to a rival that challenged the patent.

A three-judge panel on Friday affirmed a PTAB decision that all claims in U.S. Patent No. 6,381,496 were too obvious to warrant patent protection.

In the four-page decision, the panel said it agreed with patent challenger Nevro Corp. that there was significant evidence backing the board's finding that a prior patent referred to as Nappholz taught part of the '496 patent, therefore making the '496 patent obvious.

Jon E. Wright, an attorney for Nevro, said in a statement to Law360 that his client was happy "with the court's judgment, especially as this is the fifth appeal between Nevro and Boston Scientific in their global dispute."

He added that "the '496 patent was one of numerous patents that Boston Scientific asserted in its second round of litigation against Nevro in Delaware district court."

"Nevro challenged at the PTAB 92 claims across seven Boston Scientific patents. Boston Scientific abandoned 38 challenged claims," Wright said, adding that the PTAB has invalidated the vast majority "of the 54 remaining challenged claims across five patents."

He said "with this last affirmance, those judgments are now final."

According to Boston Scientific, the patent covers a spinal implant that can reduce chronic pain in a patient. But Nevro challenged the patent at the PTAB, ultimately getting a win at the board, according to court records.

On Wednesday, the PTAB knocked out most of the claims in two separate Boston Scientific spinal cord therapy patents in separate challenges from Nevro.

Counsel for Boston Scientific did not respond to a request for comment on Friday.

The patent-in-suit is U.S. Patent No. 6,381,496.

Circuit Judges Kimberly A. Moore, Raymond T. Chen and Todd M. Hughes sat on the panel.

Boston Scientific is represented by Pratik A. Shah, Z.W. Julius Chen and Michael P. Kahn of Akin Gump Strauss Hauer & Feld LLP, and Matthew M. Wolf and David A. Caine of Arnold & Porter Kaye Scholer LLP.

Nevro is represented by Jon E. Wright, Richard A. Crudo and Naveed Hasan of Sterne Kessler Goldstein & Fox and Ching-Lee Fukuda of Sidley Austin LLP.

The case is Boston Scientific v. Nevro Corp., case number 21-1777, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Andrew Karpan. Editing by Alex Hubbard.

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