

## AbbVie Settles Patent Dispute Over Muscle Stimulation Tech

By **Dani Kass**

*Law360 (September 7, 2021, 5:00 PM EDT)* -- AbbVie has agreed to pay BTL Industries an undisclosed sum to settle patent litigation over muscle stimulation technology used for aesthetic purposes, the latter company said Tuesday.

BTL's statement announcing the settlement says only that it will receive money from AbbVie, that the terms are otherwise confidential and that all litigation between the pair will be dismissed. Court records show the litigation spanning from Delaware federal court to the U.S. International Trade Commission to the Patent Trial and Appeal Board.

"We are very pleased with the outcome of this settlement," BTL executive Ron Borsheim said in a statement. "BTL will continue to vigorously defend BTL patents and our customers' investment into the Emsculpt family of products."

BTL sells Emsculpt Neo, Emsculpt, Emsella, Emtone and Exilis, which it lists as "aesthetic medicine," on its website. The products, for example, claim to build muscle, reduce cellulite and treat incontinence.

The company in December 2019 had sued Allergan — now part of AbbVie — and a company it acquired called Zeltiq, telling a Delaware federal court the companies were infringing two patents with its CoolTone product, which also aims to increase muscle tone.

In February 2020, BTL sued Allergan again, saying the larger company was lying about how effective its device was compared to Emsculpt, and Allergan shot back with its own false advertising counterclaim. In August 2020, BTL filed another patent infringement suit against Allergan, saying CoolTone infringes a second group of patents.

That same August, BTL asked the ITC to ban Allergan's infringing imports, and in September 2020, the ITC instituted an investigation into the claims. Both patent suits have been placed on hold while the ITC investigation proceeds, according to court records.

Allergan had filed a series of petitions at the PTAB challenging the BTL patents it was accused of infringing, which were either denied or terminated upon settlement.

The patent suits remain on hold, with the dockets showing nothing about a settlement as of Tuesday. The companies had filed a stipulation of dismissal in the second Delaware suit on Friday. The parties

likewise told the ITC in late July that a settlement was being finalized, which led to deadlines there being stayed.

Representatives for AbbVie didn't immediately respond to a request for comment Tuesday.

The patents-in-suit are U.S. Patent Nos. 10,478,634; 10,493,293; 10,632,321; 10,695,575; 10,695,576; 10,709,894; and 10,709,895.

BTL is represented by Shaw Keller LLP and Sterne Kessler Goldstein & Fox PLLC.

AbbVie is represented by Reed Smith LLP, Morris Nichols Arsht & Tunnell LLP and Kirkland & Ellis LLP.

The cases are BTL Industries, Inc. v. Allergan USA, Inc. et al, case number 1:19-cv-02356, and BTL Industries, Inc. v. Allergan Limited et al, case numbers 1:20-cv-00239 and 1:20-cv-01046, in the U.S. District Court for the District of Delaware; Allergan, Inc. v. BTL Medical Technologies S.R.O., case numbers IPR2021-00296 and IPR2021-00312, at the Patent Trial and Appeal Board; and Certain Non-Invasive Aesthetic Body Contouring Devices, Components Thereof, and Methods of Using the Same, case number 337-TA-1219, before the U.S. International Trade Commission.

--Editing by Amy Rowe.