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CRSToday News

Ophthalmologists' E-mails Posted on Public Internet Newsgroup

Glenn Hagele, Founder and Executive Director of the Council for Refractive Surgery Quality Assurance (CRSQA), recently alerted a number of physicians, as well as Julia Lewis, the Executive Director of the International Society for Refractive Surgery (ISRS), and Cataract & Refractive Surgery Today, that excerpts of e-mails exchanged by physician members of ISRS via its mail list at isrsnet@list.isrs.org containing "candid exchanges about patients, techniques, manufacturers, and other doctors" have been posted on the public Internet uncensored newsgroup alt.lasik-eyes. This newsgroup can be accessed by the public from the Web site www.lasikcourt.com by clicking on "Links." Mr. Hagele is concerned about this incident, stating, "It is very important for doctors to be able to openly and freely exchange private concerns and musings without fear of retribution."

The CRSQA certifies refractive surgeons and provides extensive information to potential refractive surgery candidates at its own Web site, www.usaeyes.org. "As part of my responsibilities for CRSQA, I monitor most public Internet exchanges regarding refractive surgery," says Hagele. "Normally, I just research answers for patients' questions and concerns, but much of my time lately has been [spent] responding to the inflammatory and misleading postings of anti-LASIK zealots."

If you have communicated via the ISRS mail list and wish to obtain further information concerning this incident, you may contact Mr. Hagele at glenn.hagele@usaeyes.org or the ISRS directly.

Judge Overturns Summit/Alcon's Jury Verdict for Patent Infringement Against Nidek; Summit/Alcon Files Appeal

\On September 25, 2002, following an 11-day trial, a 10-person jury unanimously returned a verdict in favor of Summit Technology, Inc. (Walnut Creek, CA), finding that Nidek, Inc. (Fremont, CA), had infringed upon all Marshall and Azema patent claims asserted by Summit relating to Nidek's EC-5000 excimer laser. The verdict awarded Summit damages of nearly \$15 million in lost profits and \$2,397,483 in royalty damages for December 1998 through January 2001.

The suit was originally filed by Summit in December 1998. Nidek, believing there was no basis for the jury's decision, filed a Motion for Judgment As a Matter of Law, which asks the Court to disregard the jury's verdict in its entirety. In Court documents, Nidek asserted that "there is no legally sufficient evidentiary basis for a reasonable jury to find for Summit on its claims of patent infringement."

In a 31-page detailed Memorandum and Order issued by Massachusetts District Court Judge Edward F. Harrington on December 19, 2002, the Court agreed, stating that the "insufficiency of plaintiff [Summit's] evidence, along with Dr. [Michael] Feld's admissions during cross examination, are adequate grounds to decide that no reasonable jury, given the record before it viewed as a whole, could have found that the EC-5000 literally infringed the asserted claims of the Marshall patent." The Court similarly found that "substantial evidence" did not support a finding that Nidek infringed the Azema patent as well. Alcon has announced it will appeal the judge's ruling.

Plaintiff Stephan Post Appeals Court's Order Granting Defense a New Trial in Post v. UPI

Cataract & Refractive Surgery Today previously reported that counsel for Stephan Post filed a motion with the Arizona Superior Court asking the Court to "reconsider" its Order granting Defendant University Physicians Inc. (UPI) a new trial. Court documents reveal that on December 26, 2002, legal counsel for Plaintiff Post filed a Notice of Appeal to the Arizona Court of Appeals, Division Two, the trial court's order dated November 27, 2002, granting Defendant UPI a new trial and vacating the \$4 million jury verdict previously entered in favor of the Plaintiff on May 14, 2002. As a result of the Plaintiff's appeal, Judge Lee canceled the status conference he had previously scheduled to address the new trial date and assignment.

FDA Approves LaserSight's 300-Hz LASIK Performance

Late last month, the FDA approved a PMA supplement developed by LaserSight Incorporated (Winter Park, FL) that increases the laser pulse repetition rate of its LaserScan LSX microspot scanning system from 200 Hz to 300 Hz for myopia and myopic astigmatism. According to a company press release, LaserSight intends to upgrade the laser platform to 300 Hz by only changing software. Jack Holladay, MD, Houston, the company's Medical Director, commented that "increasing the repetition rate from 200 to 300 Hz will make the LaserSight lasers the fastest flying spot laser on the market and will significantly reduce the current treatment times."

MedPAC Recommends Freeze on Payments to ASCs

On January 17, 2003, the Outpatient Ophthalmic Surgery Society reported the recommendation of the Medicare Payment Advisory Committee (MedPAC) that Congress begin to equalize ASC and outpatient hospital payment rates by freezing payments to ASCs in 2004. Cataract & Refractive Surgery Today asked R. Bruce Wallace III, MD, founder of Alexandria Laser and Surgery Center, an ASC in Alexandria, Louisiana, to comment.

“In its recent recommendation, MedPAC commissioners were erroneously informed by their staff that ASCs had received full inflationary [consumer price index] CPI increases every year since 1986,” stated Dr. Wallace. “In actuality, ASCs have received extremely small increases, because the Balanced Budget Act of 1996 limited the increases to CPI minus 2% until October 1, 2002 (the beginning of the current federal fiscal year). For my surgery center, the Group 8 rate for cataract surgery in 1996 was \$874.91. In 2001, the rate was \$895.57 or a total increase of only \$20.66 over a 5-year period (or \$4.13 per year) on a base period number of \$874.91. Even with the October increase to \$912.98, the average increase from 1996 was only \$5.44 per year. A freeze based on erroneous information would seem to be out of line and would unfairly punish ASCs, which have saved the government billions of dollars.”

Regarding MedPAC’s goal of equalizing ASC and hospital outpatient payment rates, Dr. Wallace commented that “some 281 codes were ‘cherry-picked’ without considering the payment systems in their entirety. Codes that were reimbursed a lower amount for ASCs than for hospitals were not considered for any increase in payment to ASCs.

“Another item not considered is the fact that the Medicare ASC approved-procedure list has not been updated in 7 years. Hospitals are allowed to perform many more procedures for Medicare payment than are ASCs. Before limiting ASC rates in parity to hospitals, the playing field should be more level in respect to approved procedures allowed for each type of facility.” Cataract & Refractive Surgery Today will closely follow congressional activity regarding this and other reimbursement issues.

Novartis Acquires Rights for Myopia Treatment

Novartis Ophthalmics (Basel, Switzerland) recently acquired the exclusive rights to develop and market pirenzepine, a drug for the topical treatment of myopia. The drug, which was developed by Valley Forge Pharmaceuticals Inc. (Irvine, CA), is currently in the clinical trials and will be marketed by Novartis upon completion of the trials. According to the company, Phase II trials show that pirenzepine can reduce the progression of myopia by at least 50% in the first 12 months of therapy.

Bausch & Lomb Recalls Defective Blades

After receiving reports of patients experiencing DLK after LASIK procedures, Bausch & Lomb Incorporated (Rochester, NY) recently issued a recall of 4,200 Accuglide disposable microkeratome blades. The incidence of DLK is believed to be associated with two specific blade lots, 517984 and 517985. The company states that it recalled the lots as a precautionary measure and that, thus far, its tests have not linked the incidence of DLK with the recalled blades.

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