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## Ariz. Court Validates Bard's Graft Patent

By **Elaine Chow**

Law360, New York (July 31, 2008) -- A federal court ruled on Tuesday that C.R. Bard Inc.'s patent on a type of prosthetic blood vessel graft was valid, finally ending a case against drugmaker W. L. Gore & Associates Inc. that has dragged on for roughly five years.

A jury awarded \$185 million to Bard in December 2007, finding that Gore had willfully infringed a patent titled "Prosthetic vascular graft." But it did not rule on whether the patent was unenforceable, as Gore had contended.

On Tuesday, U.S. District Judge for the District of Arizona Mary H. Murguia ruled on several of Gore's motions over alleged "inequitable conduct" in the case, as well as a motion declaring a claim in the patent as obvious.

Among the motions Gore filed was one claiming that Bard did not proffer sufficient evidence to meet its burden of proving willful infringement, several alleging that claims in the patent were invalid because they did not satisfy certain requirements and another claiming that the plaintiffs lacked standing to bring the case.

Judge Murguia dismissed all 10 of the motions, arguing that Gore had not found any new evidence that would negate the findings from the rest of the case. Nine of the dismissals were explained in one of her opinions.

The 10th one, concerning obviousness, was contained in a separate opinion.

"In light of the extensive evidence demonstrating nonobviousness and the limited evidence Gore presented to establish that Claim 20 is invalid for obviousness, the court finds that Gore has not met its burden of showing that there is no legally sufficient basis for a reasonable jury to find for plaintiffs on the issue of obviousness," she said of that one.

The patent in question describes a small tube-like synthetic structure used to repair a damaged blood vessel. The jury found that Gore infringed the device with its stent grafts, used to reinforce

weak blood vessels, and its own vascular grafts.

Bard said that Gore may file post-trial motions with the court or appeal the judgment to the Court of Appeals for the Federal Circuit.

Bard described itself in a message to investors as "a leading multinational developer, manufacturer and marketer of innovative, life-enhancing medical technologies in the fields of vascular, urology, oncology and surgical specialty products."

Gore's business encompasses a wide range of polymer-based products, including cables, electronics, clothing and medical technology.

The patent at issue is U.S. Patent Number 6,436,135.

Bard is represented by Latham & Watkins LLP, Fennemore Craig PC, Polese Pietzsch Williams & Nolan PA, Wold Greenfield & Sacks PC and Fish & Neave. Gore is represented by Morgan & Finnegan LLP and Osborn Maledon PA.

The case is Bard Peripheral Vascular Inc. et al. v. W.L. Gore & Associates et al., case number 2:03-cv-00597 in the U.S. District Court for the District of Arizona.