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BUSINESS NEWS

Alaris Dodges Injunction in Dispute with ICU Medical

Lost sales totaling \$200 million. That's what Alaris Medical Systems Inc. (San Diego), a wholly owned subsidiary of Cardinal Health Inc. (Dublin, OH), estimates could have been the outcome if an injunction request filed by ICU Medical Inc. (San Clemente, CA), which claimed patent infringement, had been successful.

In denying the request for a temporary restraining order and injunction, Judge Alicemarie Stotler of the U.S. District Court for the Central District of California ruled that ICU failed to satisfy

requirements for preliminary injunctive relief.

- Based on the merits of the case, ICU was likely to succeed.
- ICU would be irreparably harmed if the injunction was not granted.
- The balance of the hardships was tipped toward ICU.
- The injunction would have a favorable impact on the public interest.



Tim Malloy

Since the Alaris and ICU products at issue have been on the market for a number of years, industry analysts were surprised that ICU would file a suit for patent infringement. Some

suggested that the move was a response to Cardinal's announcement of its intention to acquire Alaris, which preceded ICU's request for injunctive relief by about five weeks. Since the deal was not yet finalized, analysts speculated that ICU was attempting to throw cold water on the merger talks.

It was widely acknowledged that Alaris would be a more formidable competitor as a Cardinal Health subsidiary than it had been as a smaller, independent company. Cardinal Health is a leading manufacturer of medical technology products and supplies and pharmaceuticals, as well as a healthcare services provider. The company has 50,000 employees worldwide and annual revenues

in excess of \$50 billion.

Alaris's lead attorney, Tim Malloy, of McAndrews Held and Malloy Ltd. (Chicago), says that his firm had to act swiftly to counter ICU's move. "Our team learned of ICU's application for a temporary restraining order (TRO) and preliminary injunction at the close of business on a holiday weekend. Only by working 24/7 were we able to draft Alaris's response to the TRO and file it with the court on the following Monday.

"Obviously, we're pleased with the ruling and think the judge's 47-page opinion is quite telling vis-à-vis the merits of ICU's case," says Malloy. "But we realize that this is only the first step in what will likely be a long, protracted case."

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