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Federal District Court of Delaware Rules on CellPro Patent Litigation

Availability of Important Cancer Treatment Threatened

SEATTLE--July 29, 1997--

CellPro, Inc., announced today that the United States District Court in Delaware has ruled on several post-trial motions under consideration by the Court in the patent case involving Johns Hopkins University, Baxter Healthcare Corp. and Becton-Dickinson Corp. as plaintiffs and CellPro, Inc. as defendant.

On Thursday, July 24, the Court filed a judgment which granted plaintiffs enhanced damages amounting to some $6.9 million, or triple the amount of the verdict a jury had rendered in March 1997 for alleged willful patent infringement in the case.

The Delaware Court simultaneously filed an Order for Permanent Injunction. The injunction severely restricts CellPro's right to sell its CEPRATE(R) SC Stem Cell Concentration System, which is the only FDA-approved stem cell selection technology currently available for use in bone marrow transplantation in connection with the treatment of breast cancer, multiple myeloma and lymphoma, among other diseases.

A recently completed Phase III clinical trial showed promising new developments resulting from successful tumor depletion using the CellPro CEPRATE(R) SC System. The System is also being used in clinical research to develop new therapies for a variety of fatal diseases including viral diseases such as AIDS, autoimmune diseases such as multiple sclerosis and genetic diseases such as sickle cell anemia.

A partial stay under the injunction, as currently written, allows CellPro to supply the System for patient care until FDA approval of an alternative device that is licensed under the disputed patents provided that CellPro pays the plaintiffs "not less than $2,000 per (unit)" for each disposable component used for purposes other than FDA-sanctioned clinical trials. This provision will impose a severe financial hardship on CellPro, which is currently assessing its options on how to proceed. If and when Baxter's still-experimental stem cell selection device receives approval from the FDA, CellPro will be required under the injunction's terms to remove the CEPRATE SC System from the U.S. market altogether within three months.

Outside the U.S., the injunction would force CellPro to stop supporting CEPRATE SC System sites established after March 12, 1997, to pay the plaintiffs the $2,000 surcharge on all disposables even if they are used in clinical research programs, and to phase down its sales of the System's 12.8 antibody-based disposable components to zero over the course of one year.

CellPro intends to appeal the judgment and injunction order in the case.

"The injunction granted by the Court presents a clear threat to cancer patients and their doctors seeking the best available options for treatment of breast cancer, leukemia and multiple myeloma. By removing a device that has been used to treat over 6,000 cancer sufferers, including myself, because of a legal dispute sets a dangerous precedent," said Richard Murdock, Chief Executive Officer of CellPro.

"There was a prior trial on the same issue in the same federal court in 1995 in which the jury vindicated CellPro completely," Murdock continued. "We believe that the District Court made serious errors in coming to the results it announced on Thursday, but we are gratified that we are finally going to get our day in the Court of Appeals. We trust that in the end, CellPro's position and the 1995 jury's verdict -- that the patents are not valid and not infringed -- will prevail."

Earlier Trial

In a trial concluded in August 1995, involving the same parties in the same court, the jury invalidated all four patents in dispute and determined they were not infringed by CellPro. The Court, in response to plaintiffs' post-trial motions, declined to enter the jury verdict and instead ordered a new trial which was held in March of this year. The only issues allowed for consideration by the new jury were those of damages and willfulness. The Court's recent rulings were in response to post-trial motions entered by the plaintiffs after completion of the second trial .

CellPro's "March-in" Request

On March 3, 1997, CellPro sent a letter from former Senator Birch Bayh and former White House Counsel Lloyd Cutler petitioning the Secretary of the United States Department of Health and Human Services (HHS) to exercise "march-in" rights under the 1980 Bayh-Dole act, 35 U.S.C. 200 et seq., which allows the Federal government, if it determines that it is in the interest of public health, to require the issuance of licenses on reasonable terms under privately owned patents to innovations developed as a result of government financed research. The issue has been delegated to the National Institutes of Health (NIH) for consideration.

To date, 12 United States Senators and 25 Congressmen and several patient advocacy groups have asked HHS Secretary Shalala to make sure that legal and patent disputes do not interrupt patient access to this technology.

Located in Bothell, WA, CellPro, Inc. is a technology company specializing in the development and manufacture of proprietary continuous flow cell selection systems for uses in a variety of therapeutic diagnostic and research applications. Its CEPRATE SC Stem Cell Concentration System is approved for sale in the U.S., Canada and 18 European countries.

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