

## Patent For Robotic Pill Dispensing System Ruled Invalid

By **Y. Peter Kang**

*Law360, Los Angeles (March 30, 2015, 8:03 PM ET)* -- A Kansas federal judge on Monday has granted summary judgment of invalidity in favor of Innovation Associates Inc. in rival ScriptPro LLC's patent suit over robots that automatically fill prescriptions for pharmacies, saying plaintiff's claims on the patent were too broad.

It is the second time the case has been tossed in district court for lack of an adequate written description and follows the Federal Circuit's August 2014 revival of the patent dispute over a robotic prescription pill dispensing system made by ScriptPro, which alleges that Innovation's similar ROBOTx product infringes U.S. Patent No.6,910,601.

U.S. District Judge Carlos Murguia said the broad claim language of the patent was beyond its central purpose and determined that no reasonable jury would find the written-description requirement met.

"The court finds ScriptPro's argument unpersuasive," the judge wrote in the 10-page order. "While every claim need not encompass every goal, here the claims do not address one of the invention's central goals — one that ScriptPro repeatedly emphasized on appeal. It is disingenuous for ScriptPro to now downplay the significance of the goal. Without including a limitation to address the storage by patient name, the claims are simply too broad to be valid."

Last year, a three-judge panel for the Federal Circuit reversed a June 2012 decision by Judge Murguia, saying that a person skilled in the art could reasonably understand what the patent covers.

The panel had rejected Judge Murguia's finding that the specification of the '601 patent describes only a machine containing "sensors," saying the claims at issue may pertain to a machine that need not have sensors to properly function.

The '601 patent describes the invention as a "collating unit," which works with an "automatic dispensing system" that automatically fills and labels pill bottles or other prescription containers, according to court documents.

The collating unit has a number of storage positions, or slots, into which containers are placed as they emerge from the dispensing system. Ultimately, the unit stores prescription containers according to a storage algorithm that is dependent on a patient name for whom a container is intended and the availability of an open slot in the collating unit, according to court documents.

Judge Murguia said Monday that the appellate court's decision allowed for the possibility that the patent might lack written support for a reason other than the sensors. In its motion for summary judgment based on invalidity, Innovation argued that the ScriptPro patent failed to specify any other type of storage containers the system used aside from prescription containers.

"These broad claims are not supported by the much-more-limited specification," the judge wrote. "They do not require that the control system organize containers based on patient name and space availability. During its appeal, ScriptPro repeatedly emphasized a central purpose of the '601 patent: to 'keep track of slot use by particular customers and slot availability.' This means that the use of any other method for automatic storage is outside this purpose."

Representatives for the parties did not immediately respond to requests for comment Monday.

ScriptPro is represented by Justin Poplin, Brian C. Fries, David V. Clark, Gerald M. Kraai, Jennifer M. Gibson Hannah, R. Scott Beeler, R. Cameron Garrison and Travis W. McCallon of Lathrop & Gage LLP.

Innovation Associates is represented by B. Trent Webb, Angela (Angel) D. Mitchell, Brittany A. Boswell and Christine A. Guastello of Shook Hardy & Bacon LLP.

The case is ScriptPro LLC v. Innovation Associates Inc., case number 2:06-cv-02468, in the U.S. District Court for the District of Kansas.

--Additional reporting by Vin Gurrieri. Editing by Patricia K. Cole.