

## INTERNATIONAL TRADE SECRET DISPUTE IN ULTRASOUND INDUSTRY RESULTS IN WORLDWIDE INJUNCTION AND \$5.6 MM IN DAMAGES

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Verasonics, Inc. recently prevailed in an international trade secret dispute involving a South Korean company, Alpinion Medical Systems Co., Ltd. Verasonics is a privately held company based out of the state of Washington that provides cutting edge ultrasound devices and technology to medical researchers. Verasonics is a leader in the research ultrasound market. It has advanced ultrasound devices with unique features and technology that make them especially suitable for research purposes.

In 2010, Verasonics licensed its technology to Alpinion and entered into a non-disclosure agreement (NDA). The NDA had a personal jurisdiction and venue clause that placed any dispute in Washington. Alpinion later acquired more confidential information in the course of due diligence after it expressed interest in acquiring Verasonics. Verasonics alleged that Alpinion feigned interest in the sale to acquire more confidential information after it later made a below-market offer, which was rejected. Approximately one year later, Alpinion introduced a competing product specifically designed for the research market and Verasonics filed a lawsuit.

The case transferred to arbitration and was confidentially litigated there. In the end, Verasonics prevailed. It was awarded by the American Arbitration Association (AAA) a worldwide injunction and \$5.6 million in damages, including \$2.7 in attorneys' fees and costs, and the award was recently reduced to judgment by a Washington federal district court.

The *Verasonics* case raises some interesting issues for employers in the med device industry. One, international disputes can raise complex issues of personal jurisdiction (i.e. the court's authority over a defendant) and the extraterritorial reach of U.S. trade secrets protections. While it was not litigated in *Verasonics*, this is a complicated issue that should be considered in international dealings. The laws

around the world are not the same with many countries having weaker trade secret protections than the United States and some countries having no protections at all.

Employers got some help when the Defend Trade Secrets Act (DTSA) was enacted in May 2016. Congress recognized that American losses due to trade secret misappropriation abroad was a significant problem with losses of \$300 billion and 2.1 million jobs annually. Section 1837 of the DTSA applies the statute "outside the United States" to any "act in furtherance of the offense was committed in the United States." These provisions give the DTSA an extraterritorial reach.

*Verasonics* also reminds med device employers of some best practices for international dealings or simply with third parties. *Verasonics* had an NDA in place before disclosing its confidential information. It also might have considered performing some due diligence prior to disclosure ensuring that Alpinion was taking appropriate measures to protect the information as well. Finally, the NDA could have reflected that Alpinion was taking those steps. Even with these precautions, as the *Verasonics* case shows, sometimes trade secrets theft is an unfortunate reality that companies must remedy through litigation.