

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1227, -1240

UNIVERSITY OF PITTSBURGH OF THE COMMONWEALTH SYSTEM OF HIGHER
EDUCATION (doing business as University of Pittsburgh),

Plaintiff-Appellant,

v.

VARIAN MEDICAL SYSTEMS, INC.,

Defendant-Cross Appellant.

Appeals from the United States District Court for the Western District of
Pennsylvania in case no. 08-CV-1307, Judge Arthur J. Schwab.

ON MOTION

Before RADER, CLEVINGER, and DYK, Circuit Judges.

RADER, Circuit Judge.

ORDER

The University of Pittsburgh of the Commonwealth System of Higher Education (Pitt) moves for reconsideration of the court's November 9, 2009 order vacating the final judgment of the United States District Court for the Western District of Pennsylvania and remanding with instructions to dismiss the complaint without prejudice to Pitt's ability to establish standing. Varian Medical Systems, Inc. opposes. Pitt replies.

The November 9, 2009 order explained that because the underlying decision here was based on the district court's initial decision which was vacated in Univ. of Pittsburgh v. Varian Medical Systems, Inc., 569 F.3d 1328 (Fed. Cir. 2009), the underlying complaint in this case should be treated in the same manner. Although absent in its original motion, Pitt now asserts that the underlying action here should not

be treated in the same manner because attached to the complaint was a copy of an agreement showing Pitt had obtained an assignment to all rights and interests in the patent and thus, Pitt asserts, it had standing to bring this suit. The underlying complaint contains a copy of a one-page "Intellectual Property Assignment" referencing a "Patent Assignment Agreement" entered on the same day, but does not include a copy of the Patent Assignment Agreement.

We deem it appropriate to modify our previous order so that the matter is remanded to the district court for further proceedings as may be appropriate.

Accordingly,

IT IS ORDERED THAT:

- (1) The mandate is recalled and the previous order is vacated.
- (2) The motion is granted. The case is remanded for further proceedings as may be appropriate.

FOR THE COURT

FEB 24 2010

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Roderick R. McKelvie, Esq.
Matthew H. Poppe, Esq.

s19

ISSUED AS A MANDATE: FEB 24 2010

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

FEB 24 2010

JAN HORBALY
CLERK