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## Reversal sends medical patent case back to Portland

**By Bryan Denson, The Oregonian**

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An appeals court Wednesday reversed a judgment against a Florida company accused of infringing on a Portland doctor's patented device for repairing shoulders and other joints.

Portland jurors determined in June 2008 that Arthrex Inc. had intentionally infringed on a patent owned by Dr. John O. Hayhurst and licensed to Smith & Nephew Inc., a global medical technology business.

Wednesday's reversal by the U.S. Court of Appeals for the Federal Circuit, based in Washington, D.C., sends the case back to Portland's U.S. District Court for a third trial.

Arthrex potentially faced \$50 million to \$100 million in exposure in the case, said Rodger D. Young, the company's lead counsel in the two earlier trials.

"I think Arthrex is very happy about the decision and looking forward to vindicating itself in a forthcoming trial," Young said.

At issue is a device invented by Hayhurst, which attaches ligaments and cartilage to the bones in shoulders, elbows, hips and knees. Hayhurst and Smith & Nephew accuse Arthrex of using a similar anchor, often used in surgeries for torn rotator cuffs, which infringes on their patent.

Young said the device sold by Arthrex works differently. He described his company's device as attaching ligaments and cartilage to bone much like a nail, while Hayhurst's invention operates more like a clothespin.

Brenna Legaard, a lawyer for Hayhurst and Smith & Nephew in Portland, said last year's jury found that the devices were too similar under U.S. patent law and that her clients would press forward to a third trial.

"Smith and Nephew and John Hayhurst are confident they will prevail," she said.

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