

Occupational & Medical Innovations Limited

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LITIGATION UPDATE

Brisbane, Australia: 13 December 2009

This announcement summarises and updates the following market announcements:

- 16 May 2006 – Market Update
- 31 August 2007 – Market Update
- 7 April 2008 – Market Update
- 22 April 2008 – Market Update
- 30 July 2008 – Market Update
- 1 October 2008 – Annual Report to Shareholders 30 June 2008
- 27 November 2008 – Chairman's Address to Shareholders
- 2 March 2009 – Half Yearly Report and Accounts 31 December 2008
- 3 August 2009 – Market Update: Contingent Liabilities
- 1 September 2009 – Preliminary Financial Report 30 June 2009
- 8 October 2009 – Annual Report to Shareholders 30 June 2009
- 30 November 2009 – Chairman's Address to Shareholders

Background:

Since the mid to late 1990's, the US based Retractable Technologies Inc ("RTI") has been designing, making and selling auto-retractable syringes, primarily in the US.

In October 2004 and again in March 2006 RTI wrote to OMI making various threats by virtue of which, in essence, RTI challenged OMI's right to market the OMI Auto-Retractable Safety Syringe.

OMI defended itself against this attack on the quality and value of its syringe IP by commencing action against RTI in the Federal Court of Australia seeking, in essence, to clarify its IP rights.

In August 2007, the Federal Court of Australia ruled the RTI's threats were unjustified and, following a separate hearing on 1 April 2008, by its judgement in July 2008 the Federal Court of Australia made a declaration that the OMI Auto-Retractable Safety Syringe device (AU Pat. No. 775427) did not infringe RTI's patent (AU Pat. No. 701878).

RTI did not appeal against this judgement – in fact RTI did not even wait to see what the decision of the Federal Court of Australia was going to be.

Instead, on 1 April 2008 (the same day that the issue of non-infringement was being argued in the Federal Court of Australia) RTI again sought to attack OMI's ability to market its Auto-Retractable Safety Syringe, by commencing a new separate court action in the US against OMI, primarily claiming that OMI's Auto-Retractable Safety Syringe (which was being sold in the US, RTI's major market, by that time) infringed RTI's United States Patent No. 6,572,584 B1 (granted 3 June 2003) ("the '584 patent") and United States Patent No. 7,351,224 B1 (granted 1 April 2008) ("the '224 patent").

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RTI's '584 patent and '224 patent embody central claims equivalent to RTI's AU Pat. No. 701878 and OMI has US patent protection for its Auto-Retractable Safety Syringe covered by AU Pat. No. 775427 however, notwithstanding the Australian Federal Court non-infringement judgement in July 2008, RTI continued with its new US court action.

Specifically, in the new US court proceedings, RTI made the following claims against OMI:

1. That OMI's Auto-Retractable Safety Syringe infringed 8 claims in RTI's '584 patent;
2. That these infringements were totally without justification, wilful, intentional and in deliberate disregard of RTI's rights under the '584 patent;
3. That OMI's Auto-Retractable Safety Syringe infringed 24 claims in RTI's '224 patent;
4. That these infringements were totally without justification, wilful, intentional and in deliberate disregard of RTI's rights under the '224 patent;
5. That OMI misappropriated RTI's trade secrets;
6. That OMI misappropriated RTI's confidential information;
7. That OMI converted RTI's confidential information;
8. That OMI intentionally interfered with RTI's contractual relations with the Chinese manufacturer of its syringes; and
9. That OMI was engaged in unfair competition, wrongful disparagement and false advertising.

In response, OMI denied all patent infringement claims, all non-patent claims, and claimed against RTI that its '584 and '224 patents were invalid.

Update:

Court ordered mediation facilitated by an expert independent mediator, to explore the possibility of settlement of the matter, took place in Tyler (Texas) in September 2009 and again, following further communications between RTI and OMI's representatives, in Dallas (Texas) during the first week of December 2009.

The parties were unable to agree mutually acceptable terms upon which RTI's claims against OMI could be resolved.

RTI has now abandoned all of its claims against OMI (except claims 1 and 5 above) on a "with prejudice" basis, meaning RTI can never bring those claims against OMI again.

RTI has also now abandoned one of its claimed infringements of the '584 patent (7 infringements are still being claimed). This abandonment is also on a "with prejudice" basis.

The US Court has now made orders reflecting RTI's abandonment of the majority of its claims against OMI and the scope of the claims at trial has been reduced accordingly.

OMI's defence in the matter for trial is now as follows:

1. OMI denies the claim of misappropriation of trade secrets; and
2. OMI denies all 7 remaining claimed infringements of the '584 patent.

Additionally to its defence, OMI is now making the following claims against RTI:

1. That RTI is barred from claiming misappropriation of trade secrets for a number of reasons;
2. That RTI's '584 patent is unenforceable due to its having been granted by the US Patent's Office by reason of inequitable conduct; and
3. That, in any case, RTI's '584 patent is invalid for a number of reasons.

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The trial will commence in the US District Court for the Eastern District of Texas on 14 December 2009. At RTI's request, the trial will be a jury trial. Judge Davis, who is hearing the trial, has stipulated that the trial is to take no more than 5 days.

Whilst predicting the outcome of any litigation is always uncertain, OMI continues to reject RTI's remaining claims in the US proceedings, is strongly of the view that its market leading Auto-Retractable Safety Syringe does not infringe RTI's patents and remains of the view that OMI should succeed in its defence against RTI's primary claims.

OMI is very aware of the level of interest that its shareholders and the market have in the US court case and will keep the market informed of relevant developments accordingly.

For further information, please contact

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