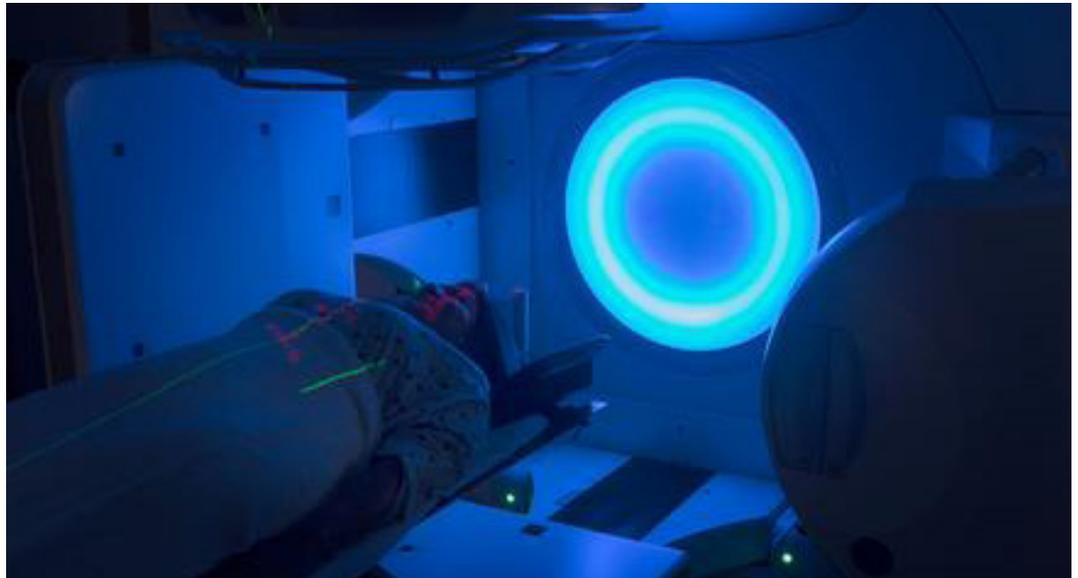


Scherer resolves medical technology dispute

Ali Khan
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The parties develop technology used in radiation treatment (Credit: iStock/Mark Kostich)

Lalive partner Matthias Scherer has issued an award as sole arbitrator in an LCIA dispute between German and Swedish companies over a deal to distribute technology used in the processing of cancer patients.

The Swiss arbitrator issued his final award in a London-seated proceeding on 20 May, ordering a subsidiary of Sweden's Elekta to pay €8.9 million plus interest to German medical technology supplier humediQ over the wrongful termination of their distribution agreement.

In 2011, humediQ signed an agreement to supply Elekta and its German subsidiary Medical Intelligence Medizintechink with several hundred units of Identify – protected software and hardware technology for hospitals that, among other things, identifies patients and assists in the preparation of their radiotherapy treatment.

But the Elekta companies terminated the agreement in 2014 after ordering only seven per cent of the units, maintaining that humediQ had deceived them over the ownership and use of two patents during the contract negotiations.

The supplier filed an LCIA claim in November 2014, seeking €19 million for orders that had not been made. The Elekta companies argued that humediQ's fraudulent deception meant they were not bound by the contract. They also filed a counterclaim for €5 million, alleging that humediQ had made unlawful use of two patents in the technology, which the company denied.

In his final award, Scherer dismissed the counterclaim in its entirety. He found that humediQ had performed its contract properly and that the Elekta companies had failed in their attempt to terminate the contract. Scherer also held that humediQ had not breached any pre-contractual duties.

Scherer ordered that, in light of the outstanding balance on the products it had committed to buy, Elekta's subsidiary Medical Intelligence should pay an indemnity for failing to order that minimum volume.

In a press release published in 2014, Elekta says it decided to stop selling the Identify products because of concerns about their “commercial viability”.

Since the arbitration it has noted that the LCIA award represents “less than half” of the €19 million that humediQ claimed, and that Scherer ruled that “the respective success of each party was comparable”, meaning each should bear its own costs.

Munich-headquartered humediQ was represented by barristers **Klaus Reichert SC** and **Kyle Lawson** of Brick Court Chambers in London and Preu Bohlig & Partners in Munich, while the Elekta companies retained Freshfields Bruckhaus Deringer in Frankfurt and Düsseldorf.

HumediQ says it came up with the idea for Identify after reading a 2010 *New York Times* report on the harm caused by human error in radiation therapy.

Humediq v Medical Intelligence Medizintechnik and Elekta Limited

In the LCIA arbitration

Sole arbitrator

Matthias Scherer (Switzerland)

Counsel to Humediq

- **Klaus Reichert SC** and **Kyle Lawson** at Brick Court Chambers in London
- Preu Bohlig & Partners
Partners **Sebastian Freiherr von Bechtolsheim** and **Alexander Harguth** in Munich

Counsel to Medical Intelligence Medizintechnik and Elekta

- Freshfields Bruckhaus Deringer
Partners **Boris Kasolowsky** and associates **Robert Whitener**, **Alexander Monro** and **Moritz Schmitt** in Frankfurt and partner **Wolrad Prinz zu Waldeck** in Düsseldorf