



Barrington

R.I. inventor wins \$20-million jury award

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BARRINGTON — Since he graduated from Rhode Island School of Design about 40 years ago with a degree in industrial design, Ronald Russo has carved out a comfortable life inventing medical devices used the world over, such as a tiny needle valve used in taking blood from millions of patients every year.

In November, a federal jury unanimously found that a subsidiary of Kimberly-Clark Corp. stole Russo's trade secret from the late 1990s and awarded him \$20 million.

At issue were his designs for a device that keeps secretions from building up on a patient's breathing tube for three days before it must be removed and cleaned. The previous limit was 24 hours.

Ballard Medical Products' misappropriation of trade secrets "was the result of willful and malicious conduct," according to the public summary of the verdict in U.S. District Court in Salt Lake City, near where Ballard Medical Products is based. The jury awarded \$17 million to Russo for the trade-secret violation and \$3 million because Ballard breached a confidentiality agreement between Russo and the company.

Russo's lawyers have also filed a post-trial motion asking U.S. District Judge Tena Campbell to award up to an additional \$17 million in punitive damages. Once that is decided, any appeal of the case would be heard in the U.S. Court of Appeals in Denver.

Around Barrington, Russo may be better known for taking stands on small-town property-rights issues, sometimes at odds with some Town Council members. And last year, running as a Republican, he lost his bid for a seat on the five-member council.

Russo, 64, grew up in New Jersey — he still roots for the New York Yankees — and has lived in Barrington for nearly 30 years, occasionally cruising around town on his Yamaha motorcycle. He has worked from his home at 8 Candleberry Rd. for 15 years.

Russo referred questions about the case to his lawyers because of the pending post-trial activity.

Russo said he holds about 65 patents, largely on medical devices he designed, then licensed to companies to manufacture. He worked with Dr. Henry Heimlich, formulator of the Heimlich maneuver, on a chest valve that “saved a lot of lives in the Vietnam War,” Russo stated in candidate biographical information posted on the town’s Republican Committee Web site.

The valve he invented — while working for Becton-Dickinson Corp. right after graduating from RISD — prevents what was once routine spillage when technicians and nurses took blood.

He also invented a feeding tube that refined the evolution of endoscopic tubes as they replaced surgery as the technique of choice in hospitals.

At the other end of the spectrum, he also invented the first non-breakable Thermos bottle for children.

Russo said he does his design, engineering and development work from a small office in his house. A model maker builds the models of his designs and a Barrington patent attorney works on the patents, he said.

“As a little inventor, you are up against big odds. ... He has got to find lawyers that believe in his cause and are willing to take the risk with him to fight the fight,” said Richard D. Burbidge, of the Salt Lake City firm Burbidge Mitchell and Gross, who was lead trial lawyer for Russo in the case.

The story of the case began in 1997.

Russo had come up with improvements to the tracheal suction device for patients who are not breathing on their own. The improvements, which include an isolation chamber, more effectively clean the suction device. Russo said that extends the use to 72 hours, also extending the time that the ventilator, which mechanically breathes for a patient, can continuously operate.

In February 1997, Ballard Medical Products had apparently been looking to extend the time its devices can stay in patients when a Ballard project engineer contacted Russo about any ideas he might have, Burbidge and court papers said.

A year later, in March 1998, Russo signed a confidentiality agreement and sent it to the company with a binder of Russo’s patent information. Russo required the agreement before he would show them his ideas, his lawyer said.

The next month, Rick Lorenzen, an executive assistant at Ballard, and Chris Thomas, a Ballard marketing executive, met with Russo in New York City where Russo presented improvements with a view toward a potential licensing agreement, according to court papers. Russo showed them four drawings: the fourth one described the improvements in detail, and the Ballard officials asked if they were part of Russo’s original patent. He had not yet patented them, but had filed an “invention disclosure” in 1997 with the U.S. Patent and Trademark Office.

The improvements were “in fact, secret,” Russo’s court complaint stated. The Ballard officials left with Russo’s four drawings; he also showed them a prototype device but kept it, Burbidge said.

But negotiations to give Ballard Medical Products the option to buy the rights to Russo’s improvements ended in August 1998. Russo said in court papers he told Ballard its proposal for licensing his

technology and intellectual property “was not satisfactory to him.”

“The bottom line from Ron’s point of view was he wanted a minimum payment per year so that that way they could not simply shelve his improvements. That’s the only guarantee he had if they were to buy it,” said Burbidge. “He wanted the improvement to help people; he doesn’t want it sitting on the shelf.”

Russo, a few years later, discovered that in September 1998 — a month after negotiations had broken down — Ballard filed a patent application that, according to Burbidge, was “spot on” with Russo’s improvements. The only real difference was the type of valve on the device.

“That is the difference between using a nail and a screw; it did not have anything to do with design improvements,” said Burbidge.

In May 2001, the company received its patent.

But Russo and his lawyers argued that Ballard’s application had not mentioned Russo and instead “claimed as an invention” his improvements. One of the inventors named in the Ballard patent, the suit said, was Edward B. Madsen, the engineer Russo originally spoke to.

Kimberly-Clark Worldwide Inc. acquired Ballard Medical Products — each was listed as a defendant — and court papers say the “defendants began selling products in 2001 based on the design disclosed by Plaintiff to Ballard pursuant to the terms of the confidentiality agreement.” The jury did not find Kimberly-Clark responsible in its verdict, only its subsidiary.

Ballard Medical Products said in court papers answering the suit that it denied Russo’s patented device was unique. Rather, the company argued “it was previously known” that a tube inserted to breathe for a patient could be passed through a system that clears build-up, such as mucous.

The company, in court papers, had asserted that its representatives at the meeting with Russo in New York City “expressed skepticism” that the cleaning system of the suction device would work in the way that he said. The court papers denied that representatives left with the binder Russo had sent them and with his four drawings.

According to Burbidge, as the trial unfolded, company witnesses on the stand revealed information that convinced the jury Russo was right.