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MODERNA LOSES COVID-19 PATENT CASE

🕒 JULY 27, 2020



Pharmaceutical company Moderna Inc ([MRNA: NASDAQ](#)), which is involved in COVID-19 drug research, caught the market's attention on Friday after it [lost a patent case](#) against Arbutus Biopharma.

Specifically, the US Patent and Trademark Office issued a judgment in favor of the [Canada-based Arbutus](#), which owns the technology-centered on providing messenger RNA (mRNA) therapy.

The judgment could likely postpone the development of a COVID-19 vaccine by Moderna. On Friday, the [stock closed almost flat](#) at \$73.21, down \$2.12 or 2.81% from the prior trading session.

The Cambridge, Massachusetts-based Moderna's issue with patent technology dates back to 2016. Moderna obtained technology from Acuitas Therapeutics, a small firm – a one-man show to be precise – in Vancouver, British Columbia. The company was operating out of CEO Thomas Madden's house. The company did not own the technology which is used by Moderna.

Acuitas acquired the technology from Arbutus Biopharma. Four years ago, Arbutus canceled the tech license issued to Acuitas, prompting the latter to file a lawsuit. Arbutus argued that its agreement with Acuitas did not include Moderna in any manner.



Video Source: CNBC Television

To understand it clearly, we need to understand the scenario a decade back. In 2011, Moderna was scouting for an mRNA delivery platform as it did not have funds or qualified people to develop technology without anyone's assistance. After studying over a dozen methods, the company picked up three. Notably, one of them belonged to Arbutus, but instead of dealing directly, Moderna gained access to the technology through Acuitas.

Thomas Madden established Acuitis in 2009 after he lost his job at Tekmira Pharmaceuticals due to a merger deal. Interestingly, Tekmira finally became Arbutus. Through a lawsuit, Madden received a license for the technology from Tekmira (Arbutus).

In 2016, Stephane Bancel, Moderna's CEO, issued the following statement for not obtaining a license from Arbutus directly: *"We knew it was not very good. It was just okay."*

He further stated that Moderna's in-house technology for the creation of nanoparticle lipids is better than the one used by Acuitas.

The aforesaid technology is related to lipid nanoparticle (LNP) technology. Several vaccines utilize a powerless or dead virus to function as a transmitter of antigenic particles into the human body. Moderna uses a lipid nanoparticle, primarily an infinitesimal fat molecule, to transmit the mRNA that codes for any kind of antigen that is being delivered into the human body.

LNP technology is crucial for Moderna's vaccine development initiatives. So, the US Patent and Trademark Office administrative court's [rejection of Moderna's request](#) for cancellation of Arbutus's '069 patent as it *"described obvious concepts,"* is a notable one. According to Zachary Silbersher, a New York patent attorney (not involved in this lawsuit), the ruling implies that Moderna has to pay a license fee for using the technology owned by Arbutus.

However, he is not sure whether the COVID-19 or any other vaccine developed by Moderna breaches the '069 patent. Still, Moderna's failed effort to nullify the patent indicates that it views the patent as a hindrance.

Following the US patent office ruling, Moderna issued the following statement: *"Moderna is not aware of any significant intellectual property impediments for any products we intend to commercialize, including mRNA-1273,"* which is the vaccine against COVID-19."

Commenting on the ruling, Silbersher said, *"At the end of the day, Arbutus might be able to claim royalty in the [coronavirus] vaccine."*

Moderna can appeal against the ruling at the US Court of Appeals for the Federal Circuit. Usually, the Appeals court endorses the decision made by the patent office.

Mani Foroohar, an analyst at SVB Leerink, believes that the ruling will not have an immediate effect on Moderna's finances. In a note to clients, the analyst wrote: *"Revenue concentration in (the coronavirus vaccine) is a central feature of the investment case for Moderna's shares. Any meaningful royalty burden could hamper Moderna's pricing flexibility and margin profile versus other players in the SARS-CoV-2 vaccine market."*

The [disappointing patent office ruling](#) is expected to turn the stock of Moderna range-bound with slight bearish bias in the short term.

The historical price chart indicates that the stock of Moderna is declining after facing resistance at 95. The next support is anticipated only near 60. Additionally, as shown in the image below, the stochastic oscillator is making a negative divergence with the price. Therefore, we are anticipating the stock to turn bearish in the days ahead.



To gain from the impending downtrend, we are planning to invest in a put option contract offered by a reliable binary broker. Before investing our surplus funds in a binary contract, which is valid for a period of one week, we will make sure that the stock of Moderna trades near \$75 in the Nasdaq market.

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