Intellectual Property Weekly Abstracts Bulletin — Week of February 13, 2017

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Patent Decisions

Allegations of Invalidity Found Justified on the Basis of Obviousness
Astrazeneca Canada Inc. v. Mylan Pharmaceuticals ULC, 2017 FC 142
Drug: esomeprazole and naproxen

In this case, the Federal Court dismissed an application for an order of prohibition. The patent at issue claimed pharmaceutical formulations of esomeprazole and naproxen.

The court considered and rejected challenges to the experts of both sides, holding that the analysis would turn on which of the experts provided the most compelling evaluations of the common general knowledge of the POSITA, the state of the art and the other factors in the obviousness allegations. The court held that the obviousness allegations were justified. There was nothing novel or inventive about combining an NSAID and a PPI, nor the specific type of each used in the asserted claims. Nor was the concept of sequential release when co-formulating a PPI with a gastroprotective drug novel. However, the Court held it was novel to apply the sequential release profile in an NSAID-PPI co-formulation.

The Court held that the claimed sequential release was obvious. Furthermore, it was obvious to try.

Dismissed Motion to Amend Statement of Claim Upheld on Appeal
Nov Downhole Eurasia Limited v. Tll Oilfield Consulting Ltd, 2017 FCA 32

The Court of Appeal upheld the Federal Court's decision denying leave to amend the Appellants' statement of claim in a patent infringement action. The proposed amendments fell into two categories: the addition of individuals as defendants in the action and a claim for joint and several liability. The three individuals sought to be added were both directors and officers of one of the respondents or involved in the development of an allegedly infringing product.

The Court of Appeal concluded that the judge did not err in law in identifying and applying the legal principles concerning the amendment of pleadings, or in its understanding of this Court's decision regarding the personal liability of directors and officers in *Mentmore Manufacturing Co. v. National Merchandise Manufacturing Co*. (1978), 40 C.P.R. (2d) 164. Furthermore, the Court found that the proposed pleading was deficient because it did not contain material facts with sufficient specificity to establish "the deliberate, wilful and knowing pursuit of a course of conduct," as described in Mentmore . The Court of Appeal also found that the judge made no reviewable error in declining the second category of amendments. The Court noted that the material facts, to the effect that each of the corporate defendants infringed the patent, were not sufficient to support a claim for joint and several liability.

Industry News

Health Canada has released a Notice: Submission Filing Requirements – Good Manufacturing Practices (GMP)/Drug Establishment Licences (DEL).

Health Canada has released a Notice - Prescription Drug List (PDL): Multiple additions. The Notice indicates the additions of Apomorphine hydrochloride, Daclizumab beta, Edoxoban, Ivabradine hydrochloride and Rupatadine to the Human and Veterinary Prescription Drug Lists (PDL).

Par

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