

Novartis v. Actavis & Mylan, District Court The Hague (Rechtbank Den Haag), 08 July 2009

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This is the first case in the Netherlands in which a patentee, whose patent was nullified in first instance in proceedings on the merits, requested a prohibition of infringement of this patent in preliminary injunction proceedings pending appeal of the first instance merits decision. The Preliminary Injunction Judge of the Court dismissed the request as the patentee did not meet the test the Judge formulated to enable him to deviate from the judgment on the merits. That test is, whether the merits decision is based on manifest, so striking errors in law or in terms of facts, that without any further investigation there cannot be any reasonable doubt. The Judge ruled that the objections of the patentee, including the objection that the first instance court had not applied the problem/solution approach for assessing inventive step, required further investigation of the relevant documents. The objections therefore did not meet the abovementioned test. The Judge indicated that is up to the Court of Appeal to deal with the objections at issue. The full summary of this case has been posted on [Kluwer IP Law](#).