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Atorvastatin, Provincial Court Barcelona (Audiencia Provincial Barcelona), 20 July 2009

Miquel Montaña (Clifford Chance) · Monday, July 20th, 2009 · Landmark European Patent Cases

The Barcelona Court of Appeal confirmed a preliminary injunction ordered by Commercial Court number 4 of Barcelona on 9 June 2008 preventing the launch of several generics of Atorvastatin. One of the main arguments raised by the defendants in their appeal was that the company that had filed the application for a preliminary injunction did not have locus standi. Although this company had obtained a licence agreement from the patentee, the defendants alleged that such licence agreement had been fraudulently executed. According to the defendants, since the licensee was acquiring the active ingredient from one of the patentee's affiliates, the patentee's rights would have been 'exhausted', therefore rendering the licence agreement unnecessary. The Barcelona Court of Appeal rejected the appeal, noting that, although the licence was not necessary given the 'exhaustion' of rights, since the licence had not been granted in fraud of third parties' rights, nothing prevented the patent holder from granting a licence in favour of the licensee, whose locus standi could not be questioned.

The full text and summary of this case will be posted on <http://www.KluwerIPCases.com>.

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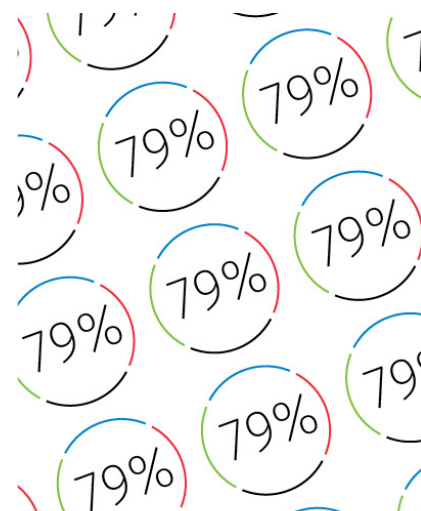
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