Kluwer Patent Blog

Escitalopram, Federal Court of Justice (Bundesgerichtshof), 10 September 2009

Clemens Rübel · Thursday, September 10th, 2009 · Landmark European Patent Cases

The Federal Court of Justice further clarifies the scope of disclosure of a prior art document and the criteria for determining inventive step after the landmark decision 'Olanzapin'. More specifically, the Court ruled that: a) a prior art disclosure of an enantiomeric compound does not clearly and unambiguously disclose the actual enantiomers unless the disclosure also makes available a method for readily obtaining said enantiomers; b) if the skilled person is faced with the problem of finding an alternative pharmaceutical and if several compounds or classes of compounds are available as such an alternative the selection of a specific compound is already part of the solution of the problem to be solved; c) the provision of a single enantiomer which formerly was only disclosed as racemate can be inventive even if the existence of the enantiomer was apparent to the skilled person. Rather, it is decisive whether there was an obvious method available in the art for obtaining said enantiomer. Furthermore, the Court ruled that the same principles apply to the interpretation of Article 3 d) EC 469/2009 (SPC Regulation): A market authorization for a medicament that contains the compound as racemate is not detrimental for a SPC that is directed to the specific enantiomer and that is based on its own patent and market authorization.

The full summary of this case has been published on Kluwer IP Law.

This entry was posted on Thursday, September 10th, 2009 at 7:37 am and is filed under Case Law, Chemical Engineering, Germany, Inventive step, Public prior use
You can follow any responses to this entry through the Comments (RSS) feed. Both comments and pings are currently closed.