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# Kluwer Patent Blog

## Denmark: Aventis v. Hospira – Docetaxel

Anders Valentin (Bugge Valentin) · Friday, May 14th, 2010

On the basis of a use patent, Aventis filed for interim relief against Hospira at the Bailiff's Court (Enforcement court) at Lyngby City Court in Denmark. The claim was based on DK/EP 0593656 and the defence raised by Hospira was invalidity of the invoked right.

The invalidity defence concerned both lack of novelty and lack of inventive step, but a focal point of contention between the parties was whether the Danish Patent Office had in fact considered all prior art in connection with Aventis' application for administrative re-examination of the patent-in-suit and whether the Bailiff should apply a presumption of validity of the patent-in-suit if the Danish Patent Office had not considered all prior art relevant to the defence raised.

The allegedly decisive piece of prior art that Hospira invoked in its defence had in fact been submitted by Aventis to the Danish Patent Office during the administrative re-examination the purpose of which was to limit the protective scope of the patent claims from product to use claims.

The Danish Patent Office confirmed, however, that the decisive piece of prior art had not been reviewed and this information (which was obtained by telephone by the Hospira) was not contested by Aventis.

Nevertheless, the Bailiff found that the decisive piece of prior art had been part of the basis for the Aventis application for administrative re-examination (limitation) and further that had the Danish Patent Office found the decisive piece of prior art been considered novelty destroying (or detrimental to inventive step) then the Danish Patent Office would not have granted the application.

The Bailiff further found that Aventis in its application had given grounds in its application for administrative re-examination as to why the new citations should not lead to invalidity of the patent-in-suit and therefore whether the Danish Patent Office examiner made a further independent assessment of the issue or chosen to base his decision on the applicant's own assessment was immaterial in this context.

Against this background, the Bailiff granted the application for interim relief, but as the Danish Patent Office subsequently, at the request Hospira, overturned its decision to grant Aventis' application for limitation, the interlocutory injunction has now been lifted.

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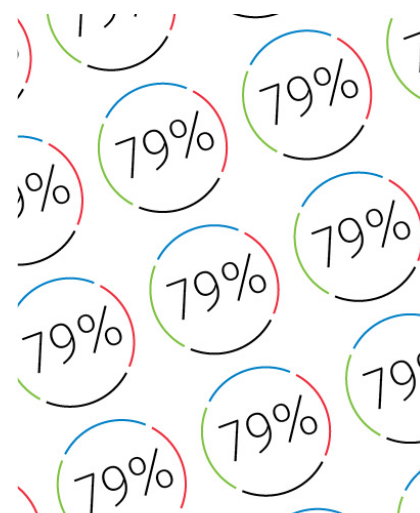
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