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# Kluwer Patent Blog

## Institut Pasteur v. Novartis, Supreme Court (Cour de cassation), 23 November 2010

Olivier Moussa · Tuesday, April 12th, 2011 · Landmark European Patent Cases

The Supreme Court held that the US doctrine of file wrapper estoppel is not applicable under the EPC. According to the Court only Article 69 of the EPC and the Protocol on its interpretation should be applied when determining the scope of a claim. The modifications of the patent application during prosecution cannot be taken into account as such. The Court also took this opportunity to confirm that the doctrine of equivalents cannot apply when the particular claimed means is already known.

Click [here](#) for the full text of this case.

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

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This entry was posted on Tuesday, April 12th, 2011 at 10:59 am and is filed under (Indirect) infringement, Biologics, Case Law, literally fulfil all features of the claim. The purpose of the doctrine is to prevent an infringer from stealing the benefit of an invention by changing minor or insubstantial details while retaining the same functionality. Internationally, the criteria for determining equivalents vary. For example, German courts apply a three-step test known as Schneidmesser's questions. In the UK, the equivalence doctrine was most recently discussed in Eli Lilly v Actavis UK in July 2017. In the US, the function-way-result test is used.">Equivalents, Extent of Protection, France  
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