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Is a Judge that has considered the validity of a patent in one case prevented from also considering its validity in a higher instance?

Miquel Montaña (Clifford Chance) · Wednesday, June 1st, 2011

On 26 April 2011, the Supreme Court handed down an interesting decision en banc declaring that a Judge who had confirmed the validity of a patent while sitting on a Court of Appeal is not prevented from reconsidering the validity of the same patent while sitting on the Supreme Court. Ratiopharm had requested the removal of Justice F. because while he was the President of Chamber 15 of the Court of Appeal of Barcelona, his Chamber handed down a judgment on 12 June 2001 confirming the validity of two patents relating to amlodipine. Although Ratiopharm had not been a party in the previous case, this company argued that by having confirmed the validity of these patents in the previous case, Justice F. was prevented from re-considering the validity of the same patents while sitting on the Supreme Court. In its decision of 26 April 2011, the Supreme Court dismissed Ratiopharm's challenge relying on case law from the European Court of Human Rights.

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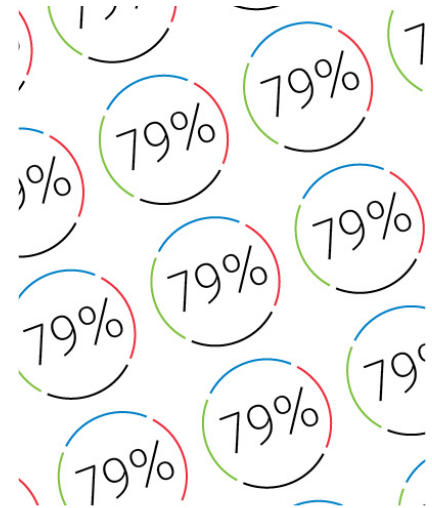
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