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Swiss Federal Supreme Court: Payment of Court Fees and Reimbursement of Plaintiff's Attorneys' Fees by Alleged Patent Infringer because of Defendant's Contradictory Conduct and Plaintiff's Good Faith

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The Swiss Federal Supreme Court held in a [recent decision](#) that the Swiss company Teva Pharma AG had to bear the court costs and reimburse Novartis's attorneys' fees in preliminary injunction proceedings because of Teva's contradictory conduct in this case.

The decision was based on the following facts: On March 16, 2010, Teva was granted a marketing authorization by the Swiss Agency for Therapeutic Products (Swissmedic) for its generic product Valsartan/HCT-Teva in doses of 80/12.5 mg and 160/12.5 mg.

The Swiss pharmaceutical company Novartis, holder of a supplementary protection certificate (SPC) for the active agent Valsartan, learned about Teva's marketing authorization and was of the opinion that this particular generic product falls within the scope of protection of its SPC C00443983/01. For this reason, Novartis requested that Teva issue a desist-declaration.

Teva's first response to Novartis was that it is not the company's practice to infringe valid patents or SPC's. Later, after giving some contradictory signals, Teva argued that its generic product did not fall within the scope of Novartis' SPC and, later, referred again to its initial statement. Novartis sought preliminary injunctive relief before the Court of Commerce of Zurich. During the proceeding Teva suddenly declared that it would not launch its generic product on the Swiss market prior to the expiration of Novartis' SPC.

The Court of first instance held that since Teva had rendered such desist-declaration there was no reason for injunctive relief. Further, the Court split the court costs and denied Novartis' request for reimbursement of its attorneys' fees.

Novartis appealed the decision to the Federal Supreme Court and claimed that Teva should bear all of the court costs and pay Novartis' attorneys' fees.

The Swiss Federal Supreme Court granted Novartis' appeal and stated that the decision of the Court of Commerce of Zurich was arbitrary because it ignored that Novartis initiated the proceedings in good faith and, therefore, the court costs and the attorneys' fees had to be borne by Teva.

The decision made clear that the mere grant of a marketing authorization does not give cause for injunctive relief in Switzerland but the defendant's contradictory behaviour might well.

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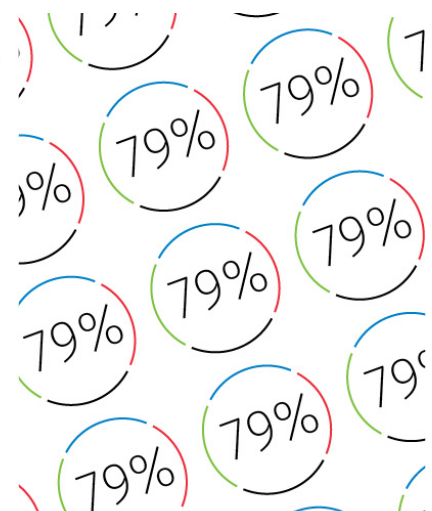
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