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English High Court Orders Speedy Trial in Lipitor case

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As previously report on this blog (29 June 2011), on 20 June 2011 Floyd J. granted an ex parte interim injunction, sometimes called a "temporary restraining order" preventing Teva UK Limited (and two distributors, "Phoneix" and "AAH") from advertising, offering for sale, selling or supplying its generic atorvastatin product (sold by Pfizer under the brand name Lipitor) pending a full hearing of the interim injunction application brought by Warner-Lambert (a subsidiary of Pfizer inc).

The full hearing of the *inter-partes* interim relief application was scheduled for 11 July 2011 but even before this date the parties were back in court to discuss an important caveat, which the temporary restraining order did not deal with. This caveat related to whether contracts entered into by the distributors before notification of the injunction, for supply before the scheduled date of the *inter partes* interim injunction hearing, could be performed notwithstanding the presence of the temporary restraining order. On 27 June 2011 the Court held that the prohibition of the sale of generic atorvastatin did not extend to that which had been sold to retail pharmacists *prior* to the grant of the temporary restraining order and based its finding on the grounds that the harm to the patentee occurs when the product is sold to wholesalers and not when it is dispensed by pharmacies. As such, the retail pharmacists were free to sell the stock that they had already acquired to the end customer. This decision makes it essential that patentees monitor the activity of generic drug manufacturers and take action without delay if there is evidence that steps have been taken to bring generic product to market.

The full hearing of the *inter-partes* application did not take place as scheduled – the parties were able to reach agreement without assistance from the Court. However, a further hearing took place on 22 July 2011 at which Teva made an application for a speedy trial in November 2011 in the hope that it could achieve a lucrative duopoly in the event that the patent / SPC in suit were held invalid. Warner-Lambert argued that such expedition was inappropriate and would prevent it from, among other things, undertaking a full disclosure exercise. Having assessed all the circumstances, including Teva's offer to waive disclosure, the Judge ordered that the trial should take place in the second half of November and thus a decision could be expected either just before, or just after Christmas.

This Order for a speedy trial is one of several which have been ordered by the English Patents Court in recent times and it seems to be increasingly common for the English Court to order a speedy trial in the situation where a generic wants to enter the market and an originator seeks an interim injunction. It appears therefore that at the very least, originators must be prepared to agree

to a speedy trial when applying for interim relief in the United Kingdom.

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