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# Kluwer Patent Blog

## Does a Markush formula with plain bonds comprise both the racemate and its enantiomers?

Miquel Montaña (Clifford Chance) · Wednesday, March 21st, 2012

In recent years, the Commercial Courts of Barcelona have been called on to decide whether a claim depicting a Markush formula that did not show the stereochemistry of the compound protects only the racemate or also its enantiomers. The debate emerged in the context of an application for a preliminary injunction filed by Novartis based on a patent relating to Rivastigmine. Claim 1 of this patent contains a Markush formula where the stereochemistry of the compound is not depicted. According to the patentee, in the absence of signs limiting the scope of protection to the racemate or one of the enantiomers, the claim would generally protect the racemate and its enantiomers. On the contrary, the defendants alleged that in the absence of signs showing that the formula specifically designates Rivastigmine, the claim would protect the racemate only.

On 30 November 2010, Commercial Court number 1 of Barcelona ordered a preliminary injunction against the defendants based on the provisional conclusion that, in the absence of a limitation, a Markush formula using plain bonds would encompass both the racemate and its enantiomers. This decision has now been confirmed by the Court of Appeal of Barcelona (Section 15) which, on 9 February 2012, handed down a judgment confirming the preliminary injunction.

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