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The Danish High Court (Eastern Division) upholds the City Court's decision to deny an interim injunction against sale of generic pharmaceuticals containing drospirenone

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On February 13, 2015 the Eastern High Court of Denmark issued a decision in an appeal in interlocutory proceedings regarding an application for an interim injunction against the marketing and sale of generic medicines (birth-control pills) containing, inter alia, drospirenone.

Bayer is the proprietor of two patents regarding a method for producing drospirenone. On June 25, 2013 Bayer (immediately before the administration of justice reform on the jurisdiction of the Maritime and Commercial Court in proceedings regarding interim injunctions concerning intellectual property entered into force) filed an application for an interim injunction against Sandoz' marketing and sale of generic pharmaceuticals containing, inter alia, drospirenone. The City Court did not grant the injunction, and Bayer appealed that decision to the High Court.

The case concerned the question of whether or not the applied method to produce the disputed pharmaceuticals, did in fact constitute an infringement of Bayer's exclusive rights pursuant to the patents-in-suit. This also included whether or not the use of specified catalysts constituted "essential" elements of the inventions, and whether the conditions to declare an infringement under the doctrine of equivalents by use of other catalysts constituted technically similar alternatives that were obvious to the skilled person.

Both of the City Court and the Danish High Court concluded that Bayer had failed to lift its burden of proof that Sandoz' actions constituted an infringement of any of the two patents-in-suit.

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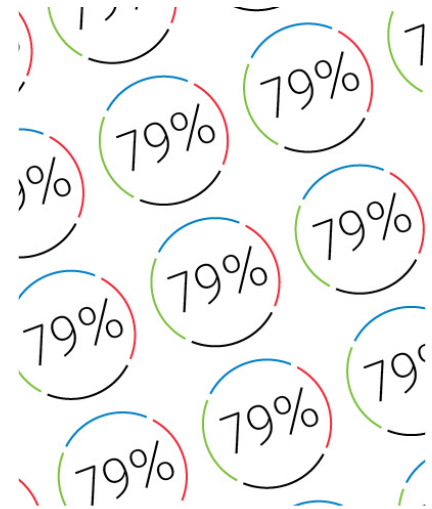
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This entry was posted on Monday, February 23rd, 2015 at 5:20 pm and is filed under (Indirect) infringement, Denmark, literally fulfil all features of the claim. The purpose of the doctrine is to prevent an infringer from stealing the benefit of an 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, Injunction, Pharma
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