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USA: Merck Sharp & Dohme Corp. v. Hospira, Inc., United States Court of Appeals, Federal Circuit, No. 2017-1115, 26 October 2017

Cheryl Beise (Wolters Kluwer Legal & Regulatory US) · Thursday, November 2nd, 2017

The federal district court in Wilmington, Delaware, did not err in finding that several claims of a patent for preparing a stable formulation of the antibiotic compound ertapenem owned by Merck Sharp & Dohme were invalid as obvious, the U.S. Court of Appeals for the Federal Circuit has held. Substantial record evidence supported the district court's conclusion that the claimed process would have been obvious at the time the invention was made. Merck's objective evidence of obviousness—commercial success and copying by others—was insufficient to overcome the "strong prima facie case of obviousness." Circuit Judge Pauline Newman filed a dissenting opinion (Merck Sharp & Dohme Corp. v. Hospira, Inc., October 26, 2017, Lourie, A.).

A full summary of this case has been published on Kluwer IP Law.

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