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CH.B

COMM.

COUR DE CASSATION

Public hearing of **14 December 2010**

Final quashing of the appeal decision

Ms FAVRE, Presiding Judge

Decision No. 1307 F-P+B

Appeal No. A 09-72.946

F R E N C H R E P U B L I C

IN THE NAME OF THE FRENCH PEOPLE

THE *COUR DE CASSATION*, COMMERCIAL, FINANCIAL AND ECONOMIC CHAMBER, has handed down the following decision:

Ruling on the appeal on points of law lodged by Sandoz, a *société par actions simplifiée*, whose registered office is located 49 avenue Georges Pompidou, 92300 Levallois-Perret,

against the decision handed down on 18 November 2009 by the *Cour d'Appel* of Paris (division 1, 2nd chamber), in the action opposing it to Daiichi Sankyo Company Limited, whose registered office is located 5-1 Nihonbashi-Honcho 3 Cho-Ku, Tokyo 103-84-26 (Japan),

defendant in the appeal;

The claimant puts forward, in support of its appeal, the two annulment arguments annexed to this decision;

Considering the communication to the Public Prosecutor;

THE *COUR DE CASSATION*, at the public hearing of 23 November 2010, before: Ms Favre, Presiding Judge, Ms Mandel, Reporting Judge, Ms Tric, Senior Judge, Ms Arnoux, Chamber Clerk;

Based on the report of Ms Mandel, Judge, on the observations of Mr Blondel, attorney-at-law representing Sandoz, of SCP Hémery et Thomas-Raquin, attorney-at-law representing Daiichi Sankyo Company Limited, on the opinion of Ms Batut, Advocate general, and after having deliberated in accordance with the law;

On the first annulment argument:

Considering Articles L. 615-2, L. 615-5 and R. 615-2 of the French Intellectual Property Code in their versions applicable to this case;

Considering the following:

According to the challenged decision, Daiichi Sankyo, the holder of a supplementary protection certificate granted on 26 August 1992 for a drug whose active principle is pravastatine, which expired on 10 August 2006, claiming that Sandoz had put on the market as of July 2006 a generic drug of pravastatine, was authorized by an order handed down upon request on 17 March 2009 to carry out a *saisie-contrefaçon* in this company's premises; Sandoz served a summons upon Daiichi Sankyo for the revocation of this order before the judge ruling in preliminary proceedings;

In order to reverse the order that revoked the authorization granted on 17 March 2009 to carry out a *saisie-contrefaçon* in Sandoz's premises, the decision holds that although the claimant has to communicate in its request the exhibits justifying that its rights were maintained in force over the period during which the allegedly infringing acts were committed, the existence of the said rights at the time of the request is irrelevant if the request does not relate to this period;

By issuing such decision, while the only persons allowed to carry out a *saisie-contrefaçon* in the field of patents or supplementary protection certificates are those enumerated in Article L. 615-2 of the French Intellectual Property Code, justifying not only the existence of the right on which their request is based but also the fact that it is still in force at the date when the request is submitted, the *Cour d'Appel* violated the above-mentioned texts;

Considering Article 627 of the French Code of Civil Procedure;

ON THESE GROUNDS, and with no reason to issue a ruling on the second argument:

QUASHES AND VACATES, in all its provisions, the appeal decision handed down on 18 November 2009, between the parties, by the *Cour d'Appel* of Paris;

Holds that there is no reason to refer the decision back to the *Cour d'Appel*;

Confirms the order of 15 April 2009;

Orders Daiichi Sankyo Company Limited to pay the costs;

Further orders it to pay the costs relating to the proceedings before the judges ruling on the merits;

Considering Article 700 of the French Code of Civil Procedure, orders it to pay to Sandoz the sum of €2,500, and dismisses its claim;

Holds that upon the initiative of the Public Prosecutor with the *Cour de Cassation*, this decision will be transmitted so that it may be transcribed in the margin of, or following, the quashed decision,

As drafted and decided by the *Cour de Cassation*, Commercial, Financial and Economic Chamber, and pronounced by the Presiding Judge at this public hearing of the fourteenth of December two thousand and ten.

[...]