

# PATENT AND PHARMA UPDATE, FEBRUARY 2021

16 February 2021 | UK and Europe  
Legal Briefings

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## Key recent developments in the United Kingdom and Europe relating to patents and the pharmaceutical sector.

In this [edition](#) we cover an important decision on sufficiency in England & Wales. We also cover several significant updates from the French courts, including two important decisions on SPC law. We also report on interim decisions of the Court of Appeal and High Court of England & Wales in FRAND proceedings, an appeal from the UK-IPO on an AI related invention, the requirements to be an exclusive licensee under the law of England & Wales and a number of other noteworthy procedural decisions. Finally, we bring together our article on standards and essential patents in the automotive sector, a number of important Brexit updates and our views on the status of the UPC.

### 1. THE LAW OF SUFFICIENCY ILLUMINATED

We consider a decision of the Patents Court applying last year's Supreme Court decision in *Regeneron v Kymab* on claim breadth insufficiency, this time in the context of a process claim.

[Read more](#)

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### 2. UPDATES FROM FRANCE

We cover the award of a preliminary injunction against Zentiva in respect of Eli Lilly's patent covering pemetrexed. We also cover two key decisions on SPC law, one in which a SPC was refused on the grounds that a prior marketing authorisation had been granted for the same product and the other considering the application of Art. 3(a) of the SPC Regulation in light of the CJEU's decision in *Royalty Pharma*.

[Read more](#)

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### **3. FRAND UPDATES - THE UK ACCOMMODATES SEP HOLDERS**

The Court of Appeal has upheld a decision of the Patents Court on confidentiality, confirming that a class of licences may initially be restricted to outside counsel's eyes only and that restrictive undertakings can be placed around employees of the parties given access to another group of licences. A separate decision of the Patents Court placed limits on an SEP holder's obligation to disclose some of its licensing information.

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### **4. VIEWS ON AN EVOLVING AUTOMOTIVE INDUSTRY - STANDARDS AND ESSENTIAL PATENTS**

Our article in the "Views on an evolving automotive industry" series considers the particular issues that arise in the automotive sector around standards and licensing of essential patents.

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### **5. 'AI GENOME' IS NOTHING MORE THAN A COMPUTER PROGRAMME HOLDS UK HIGH COURT**

We cover a decision of the Patents Court dismissing an appeal from the UK Intellectual Property Office's decision refusing a patent for an AI system.

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### **6. UK DISCLOSURE UPDATES**

We report on the refusal to order disclosure of regulatory filings in a case involving a challenge to the validity of a SPC. We also report on the grant of disclosure of a licence as an "adverse document" at a preliminary stage of a damages enquiry.

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## **7. THE PATENTS COURT REFUSES TO COMPEL PARTY TO PLEAD INFRINGEMENT WITH RESPECT TO ALL CHALLENGED PATENTS**

We update on a decision of the Patents Court which considers the circumstances in which a patentee can be required to counterclaim for infringement.

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## **8. A WAKE UP CALL FOR EXCLUSIVE LICENSEES**

We provide our analysis of a decision refusing to recognise Flynn Pharma as Neurim's exclusive licensee under the law of England & Wales, thereby depriving it of the ability to claim damages.

[Read more](#)

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## **9. BREXIT UPDATES**

Following the UK's exit from the European Union, we bring together a number of key updates from the past few months on Brexit.

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## **10. CHALLENGES TO GERMAN RATIFICATION OF THE UPC AGREEMENT TRIGGER DELAY BUT POSSIBLY NOT FOR LONG**

We report on two challenges that have been made to the UPC Agreement in the German Constitutional Court and update on the status of the Unified Patent Court.

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## **11. TABLE OF RECENT PATENT DECISIONS RELATING TO VALIDITY AND/OR INFRINGEMENT**

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## **12. TABLE OF OTHER RECENT DECISIONS**

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## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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