

# PATENT AND PHARMA UPDATE, MAY 2020

12 May 2020 | 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 [update](#) we welcome our new IP partner in Germany. We have a number of interesting updates from the UK Court of Appeal, including a decision on Arrow declarations, a competition decision, an appeal relating to the lapse of an SPC and a decision on off-label prescription of medical treatments. We cover the German Constitutional Court decision on the UPC and the UK government's comments on participation in the UPC. We have updates from France on SPCs and a FRAND related injunction. We also discuss several UK High Court decisions on issues such as the use of a public interest defence to avoid an injunction, issue estoppel in patent cases and an example of the interplay between arbitration and IP claims. Throughout the update we consider the impact of COVID-19 and include updates on how the English, French and Italian patent courts are dealing with the crisis.

### **1. HERBERT SMITH FREEHILLS HIRES DR INA VOM FELD AS IT CONTINUES ITS EUROPEAN EXPANSION**

We announce the hiring of our new IP partner in Germany, Dr Ina vom Feld.

[Read more](#)

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## **2. ARROW DECLARATIONS - A STEP TOWARDS OBVIOUSNESS?**

The Court of Appeal has upheld a High Court decision refusing to strike out a request for Arrow relief. The decision confirms that there is no threshold or level of particularity at which an Arrow declaration ought to be formulated.

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## **3. UK HIGH COURT CONFIRMS THAT PUBLIC INTEREST GROUNDS TO REFUSE OR LIMIT AN INJUNCTION TO BE USED SPARINGLY**

Following a successful claim for infringement in relation to a mitral valve clip, the High Court considered whether a public interest defence should result in a final injunction being refused or limited. We consider some of the Court's guidance on how such a defence can operate.

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## **4. UPDATES ON THE UPC**

We provide our thoughts on next steps for the Unified Patent Court (UPC) following the German Federal Constitutional Court's refusal to ratify the UPC Agreement. We also update on the UK government's position on the UPC.

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## **5. UK COURT OF APPEAL REFUSES TO REINSTATE EXCESSIVE PRICING FINES IN KEY PHARMA CASE**

The Court of Appeal handed down its judgment in a case where the UK Competition and Markets Authority was seeking to reinstate record fines totalling £89.4m imposed on pharmaceutical companies Pfizer and Flynn Pharma in 2016, for abuse of a dominant position through excessive and unfair pricing of an anti-epilepsy drug.

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## **6. FRENCH SPC UPDATE**

We report on appeals from preliminary injunction decisions handed down in relation to the SPC for ezetimibe+simvastatin.

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## **7. PARIS COURT OF APPEAL CONFIRMS ANTI-ANTI-SUIT INUNCTION IN FRAND CASE**

The Paris Court of Appeal has confirmed an injunction preventing Lenovo from seeking an anti-suit injunction in the US.

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## **8. COVID-19: IP RELATED KNOW-HOW**

We pull together some of our IP related COVID-19 know-how and link to our COVID hub where further resources can be found.

[Read more](#)

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## **9. COVID-19: DEVELOPMENTS AT THE COURTS IN LIGHT OF THE COVID-19 HEALTH EMERGENCY**

We provide an update on how the patent courts in England, France and Milan are adapting to deal with the COVID-19 crisis and also provide a brief update on the position at the EPO.

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## **10. TRYING TO UNDO A MISTAKE WORTH MILLIONS**

The Court of Appeal refused to reinstate an SPC that had lapsed due to failure to pay sufficient fees.

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## **11. ISSUE ESTOPPEL IN PATENT CASES**

The High Court has considered whether a party should be estopped from raising certain validity arguments in relation to a divisional patent in light of an earlier decision by the same court revoking the parent patent.

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## **12. COURT OF APPEAL CONSIDERS THE LEGALITY OF POLICIES**

The Court of Appeal considered the legality of a policy relating to the prescription of Avastin for off-label treatment.

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## **13. ENGLISH HIGH COURT GRANTS CONDITIONAL STAY OF IP CLAIM**

In an example of an interaction between intellectual property claims and arbitration, the English High Court granted a conditional stay of the claimants' IP claim pursuant to s 9 of the Arbitration Act 1996 and its inherent case management jurisdiction.

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## **14. UPDATE ON MEDICINES AND MEDICAL DEVICES REGULATION IN THE EU AND THE UK AND THE IMPACT OF COVID-19**

We consider two important pieces of medicines and medical devices regulation currently pending in the UK and the European Union: in the UK, the Medicines and Medical Devices Bill, and in the EU, the Medical Devices Regulation, as well as the impact of COVID on both.

[Read more](#)

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## **15. PODCAST ON PLAUSIBILITY**

A recent episode in our IP podcast series provides an overview of plausibility.

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## 16. TABLE OF PATENTS DECISIONS

In an example of an interaction between intellectual property claims and arbitration, the English High Court granted a conditional stay of the claimants' IP claim pursuant to s 9 of the Arbitration Act 1996 and its inherent case management jurisdiction.

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## 17. TABLE OF OTHER RELEVANT DECISIONS

In an example of an interaction between intellectual property claims and arbitration, the English High Court granted a conditional stay of the claimants' IP claim pursuant to s 9 of the Arbitration Act 1996 and its inherent case management jurisdiction.

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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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