

PATENT AND PHARMA UPDATE, OCTOBER 2019

22 October 2019 | UK and Europe
Legal Briefings

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

In this [issue](#) we provide updates from the CJEU on SPCs: in one case the CJEU has declined to consider a referral from the UK while in another the Advocate General has issued his opinion on the interpretation of Article 3(a) of the SPC Regulation. We take a look at the decision in *Takeda v Roche* and the requirements for an enabling disclosure. In France, we consider a second attempt to secure a preliminary injunction as well as an update to the law on reimbursement. In another decision, the CJEU has considered the requirements of the Enforcement Directive in the context of a wrongly awarded preliminary injunction. On the RAND side, a Court of Appeal decision has also pulled back on the court's exercise of its jurisdiction. There are a number of important procedural updates relating to: parallel UK and EPO proceedings; the Disclosure Pilot Scheme; and transfers from the IPEC to the Patents Court. We round off this issue with updates on the Patents Court judges; Brexit guidance on IP and the Pharma Sector; and the Unified Patent Court.

1. SPC UPDATES

We report on the recent decision of the CJEU not to consider a referral from the High Court on the interpretation of Article 3(b) of the SPC Regulation, which related to the ability of an applicant for an SPC to rely on a third-party MA. The CJEU ruled that the referral was manifestly inadmissible. We also report on the recent AG's Opinion on the interpretation of Article 3(a) of the SPC regulation.

[Read more](#)

2. NOVELTY - WHAT NEEDS TO BE ENABLED? A CLOSER LOOK AT *TAKEDA V ROCHE*

In a dispute relating to monoclonal antibodies, Mr Justice Birss finds the patent-in-suit invalid on the grounds of lack of novelty and inventive step and insufficiency. We consider Birss J's analysis of the requirements for an enabling disclosure in the context of novelty.

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3. UPDATES FROM FRANCE

In a decision concerning animal health products, Bayer was permitted to apply for a preliminary injunction for a second time given that the circumstances had changed since its first application, although it was ultimately unsuccessful. We also provide an update on new French legislation relating to reimbursement of medicinal products, generic products and biosimilars.

[Read more](#)

4. GREEN LIGHT FOR DAMAGES COMPENSATION IN CASE OF LIFTED PI? NOT ALWAYS, SAYS THE CJEU

In a referral from the Hungarian Courts, the CJEU provides guidance on the requirements of the Enforcement Directive to compensate a party where a preliminary injunction has been granted but the patent subsequently revoked.

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5. 'JURISDICTIONAL IMPERIALISM' - THE COURT OF APPEAL PULLS BACK

In the latest instalment of *TQ Delta v ZyXEL* the Court of Appeal rules that a RAND trial should not proceed in circumstances where ZyXEL has purported to waive its RAND rights. This reverses the decision of Mr Justice Birss, which we reported in the last edition of this update.

[Read more](#)

6. PROCEDURAL UPDATES

We consider the High Court's application of the IPCOM Guidance in ordering UK patent proceedings to go ahead while opposition proceedings run in parallel in the EPO; over the summer there have been two patent cases applying the rules of the new Disclosure Pilot Scheme; and His Honour Justice Hacon considers an application to transfer proceedings from the Intellectual Property Enterprise Court to the Patents Court.

[Read more](#)

7. THE PATENTS COURT JUDGES

We provide a brief update on the judges in the Patents Court.

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8. BREXIT - UPDATES TO THE BREXIT LEGAL GUIDE

Following further Brexit guidance from the UK government on IP and the Pharma Sector we have updated the Herbert Smith Freehills Brexit Legal Guide.

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9. THE UNIFIED PATENT COURT

We reflect on the progress of the Unified Patent Court and the steps that remain for it to come into effect.

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10. TABLE OF PATENTS DECISIONS

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11. TABLE OF OTHER RELEVANT DECISIONS

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