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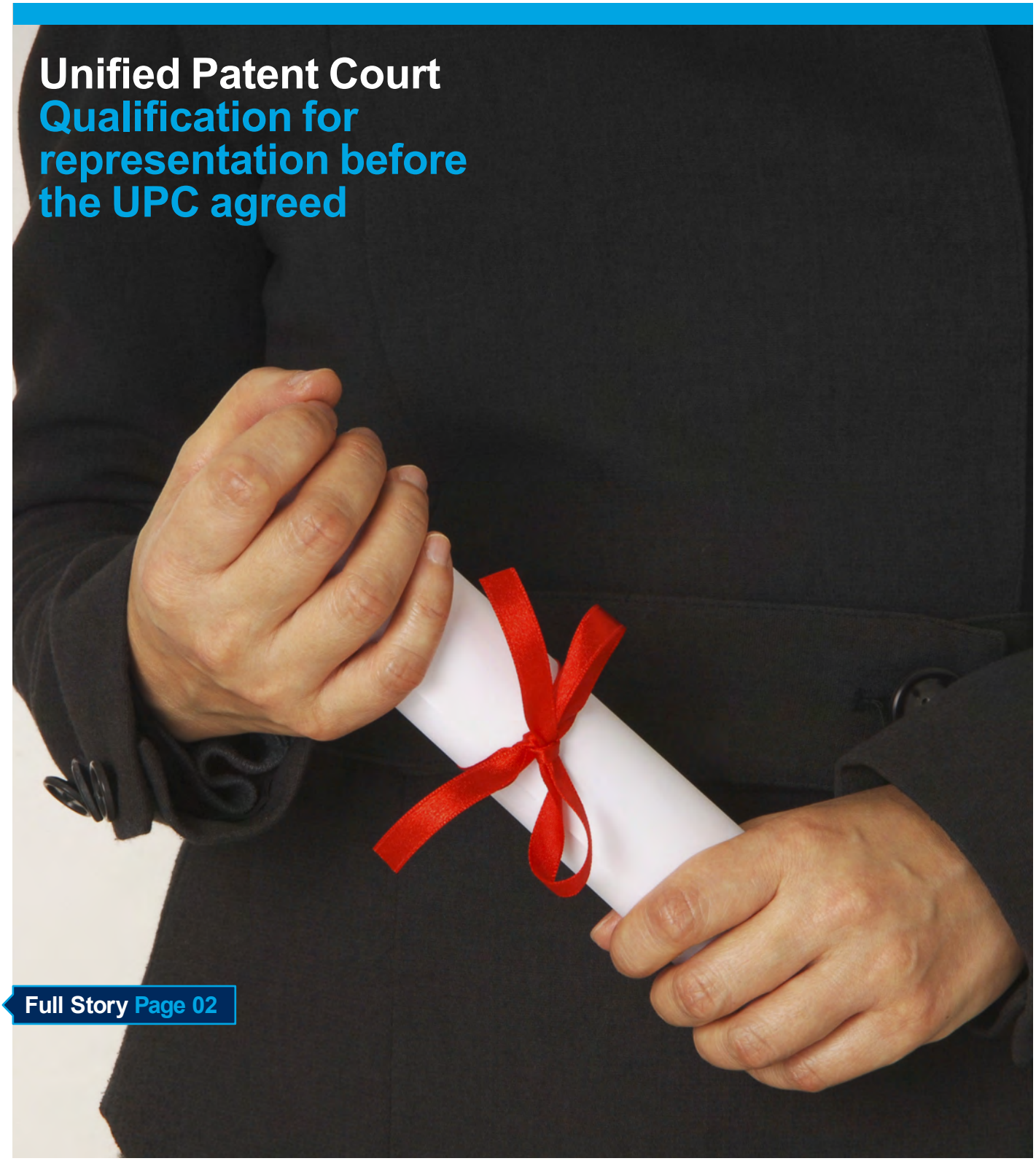

Unified Patent Court
Qualification for representation before the UPC agreed

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Editorial

The 2015-16 IP legal directory award season has kicked off with the recently published Legal 500 patent and trade mark firm recommendations. We are proud to once again celebrate a top tier ranking for the firm for patent and trade mark services and are grateful to our clients for their valuable contribution to the survey. We believe our positive results are in many ways due to our ongoing commitment improving the value and breadth of our IP services, in direct response to our clients' business needs. News that our European patent attorneys will be qualified to represent clients before the UPC is welcome for this reason and we look forward to the opportunities this development brings.

Editor:
Nicholas Malden

Events

29 October 2015
BEEAs, London, UK
D Young & Co is proud sponsor of the small company of the year category of the British Engineering Excellence Awards.

11 & 23 November 2015
Hampshire Mentor Magic, Hampshire, UK
D Young & Co will offer specialist IP advice in a series of 'Dragons' Den' style events held in the Hampshire region (11 November in Portsmouth, 23 November in Southampton). The final will take place at the 2016 Hampshire Chamber Annual Conference.

18 November 2015
IET Innovation Awards, London, UK
David Meldrum is judging the Institution of Engineering and Technology Awards. The IETs celebrate the best innovations in science, engineering and technology and attract over 400 entries each year.

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Unified Patent Court
Qualification for representation before the UPC agreed

In the Unified Patent Court (UPC), parties must be represented – they cannot appear without an appropriately qualified representative. On Thursday 03 September 2015, the UPC Preparatory Committee ended speculation on who may be a qualified representative by approving the qualification routes available for European Patent Attorneys (EPAs) to be able to represent clients before the UPC.

> In short, the rules will allow the vast majority of UK qualified European patent attorneys to represent clients before the Unified Patent Court, in addition to UK qualified solicitors and barristers. We welcome this decision.

When it begins, the UPC will be an entirely new patent litigation forum. Its procedures and applicable law derive from multiple influences, including the various different court and legal systems of the participating member states including the UK, as well as the European Patent Convention (EPC) and European Patent Office (EPO).

It is important to remember that the UPC will be a court, although it will be an entirely new one, and has the potential to attract a huge range of cases, involving many different technologies and legal issues. Some may be comparatively straightforward legally, involving essentially infringement and validity issues only. Others will be much more convoluted, and involve complex issues of law extending beyond patent law and relating to jurisdiction, liability, contract, competition, remedies and evidence, for example. All cases will require highly detailed statements of case (both technically and legally) to be prepared at an early stage of the case.

We believe therefore that having a broad choice and availability of representation for users in the UPC, drawn from across the legal and patent attorney professions, is a good thing. Our attorneys and solicitors have a huge amount of experience of contentious patent work in the courts of Europe and the EPO and in working together to create a seamless patent dispute resolution service.

We look forward to having the opportunity to represent our clients before the UPC in the full range of cases that will be adjudicated there.

Author:
Richard Willoughy

Editor's note: On Wednesday 16 September 2015 the United Kingdom Intellectual Property Office (UKIPO) hosted a reception to celebrate the UK Government securing a location for the UK local division and London branch of the Central Division of the Unified Patent Court (UPC). The invited guests comprised members of the intellectual property community in the UK, from industry, the professions and the judiciary, who have been closely involved in assisting the UKIPO and UK Government in its preparations for the UPC over a number of years.

D Young & Co partner Richard Willoughby, who has been contributing to the UKIPO's efforts on the UPC on a number of issues including the UPC Rules and Court fees, directly and indirectly via a number of organisations including LES, IPLA, EPLAW, IPO and CIPA, attended the event.

Baroness Neville-Rolfe, Minister for Intellectual Property, thanked the invitees for all their efforts in helping to bring the UPC closer to a reality, in particular for their advice and input into the process so far. She noted that there was more work still to be done but with the London location now secured, yet another tangible element of the UPC was visible. It is expected that the facilities will be built out within less than a year. The ultimate start date of the UPC remains a little uncertain although it is expected to be either late 2016 or early/mid 2017. Businesses should be beginning their preparations for commencement now, including factoring in the potential impact of the UPC on all aspects of their patent portfolios in Europe, including licensing arrangements.

Please keep me notified

CJ's Advocate General paves the way for extra days on SPCs

Further information
Online case information (InfoCuria) for CC-471/14 Seattle Genetics Inc: http://dycip.com/seattlec47114

The Advocate General of the Court of Justice of the European Union (CJ) has issued his opinion on the issue of how to calculate the correct expiry date of a Supplementary Protection Certificate (SPC). SPCs may be granted in the European Union for medicinal and plant protection products which require a marketing authorisation by a regulatory authority prior to being placed on the market.

If followed by the full court, the opinion has the potential to change the term of many SPCs, both pending and granted, throughout the EU. This is of considerable potential value to research-based pharmaceutical companies, as even an extra few days' patent term may add millions of pounds to the sales of a patented drug.

Article 13(1) of EU Regulation 469/2009 (the SPC Regulation) specifies that the duration of an SPC is equal to the period which elapsed between the date on which the application for a basic patent was lodged and the date of the first authorisation to place the product on the market in the Community, reduced by a period of five years. This is often expressed more simply as 15 years from the date of the first marketing authorisation in the EU. The duration of an SPC is capped at five years from the expiry date of the basic patent.

When a marketing authorisation (MA) for a medicinal product is granted by the European Medicines Agency, the formal grant decision is made by the European Commission. There is often a delay of a few days between the date of the grant of the MA and the date the MA is notified to the applicant. Sometimes, there is a further delay of a few more days between the date of notification of the MA to the applicant and the publication of the notification of the MA in the EU's Official Journal (OJ). This has created uncertainty about which of these three dates (the grant date, the date of notification to the applicant, or the date of the OJ's publication of the notification) should be used to calculate the expiry date of an SPC.

In view of this uncertainty, patent offices and courts throughout the EU have differed in their approach to the question of which date

SPCs may be granted in the EU for medicinal and plant protection products

is the correct date on which the term of an SPC should be based. The United Kingdom Intellectual Property Office (UKIPO) has since October 2013 used the date of publication of the notification of an MA in the OJ to calculate SPC expiry dates, as have the Belgian and Slovenian Patent Offices. The Portuguese IP Office has preferred the date of notification to the applicant. However, other national patent offices have continued to base the term of an SPC on the grant date of the MA.

In order to end the uncertainty and obtain a uniform ruling applicable throughout the EU, the following two questions were referred to the CJ:

1. Is the date of the first authorisation to place the product on the market in the Community pursuant to Article 13(1) [of the SPC Regulation] determined according to Community law or does that provision refer to the date on which the authorisation takes effect under the law of the member state in question?

2. If the court's answer is that the date referred to in Question 1 is determined by Community law, which date must be taken into account — the date of authorisation or the date of notification?

The Advocate General's opinion, released today, has indicated the answer to question 1 should be that the date of the first authorisation is a matter of Community law, and that is should not depend on the regulations of member states, and notably not on the member state in which the marketing authorisation has effect.

Regarding question 2, the Advocate General is of the opinion that the date the marketing authorisation is notified to the applicant should be the correct date.

Although the full court is not bound to follow the Advocate General's opinion, the court does so in the majority of cases. Should the Advocate General's opinion be followed in this case, this may result in the expiry date of SPCs throughout the EU which are calculated based on the date of grant of the marketing authorisation being extended by a number of days. However, in those countries such as the UK which have used the OJ publication of the notification to base SPC expiry dates, the term may be shortened by a few days. It would not affect those SPCs whose expiry date is capped at five years from basic patent expiry.

D Young & Co's SPC experts have been monitoring this case together with our network of SPC experts in other countries. We are already aware that, should the Advocate General's opinion be followed in this case, many patent offices throughout the EU are prepared to recalculate the expiry date of SPCs, both pending and granted, so they are based on the date the marketing authorisation is notified to the applicant.

The CJ is likely to reach its decision towards the end of 2015 or the beginning of 2016. We are monitoring this case closely and will provide readers with a further update as soon as the full court issues its decision.

Author:
Garreth Duncan

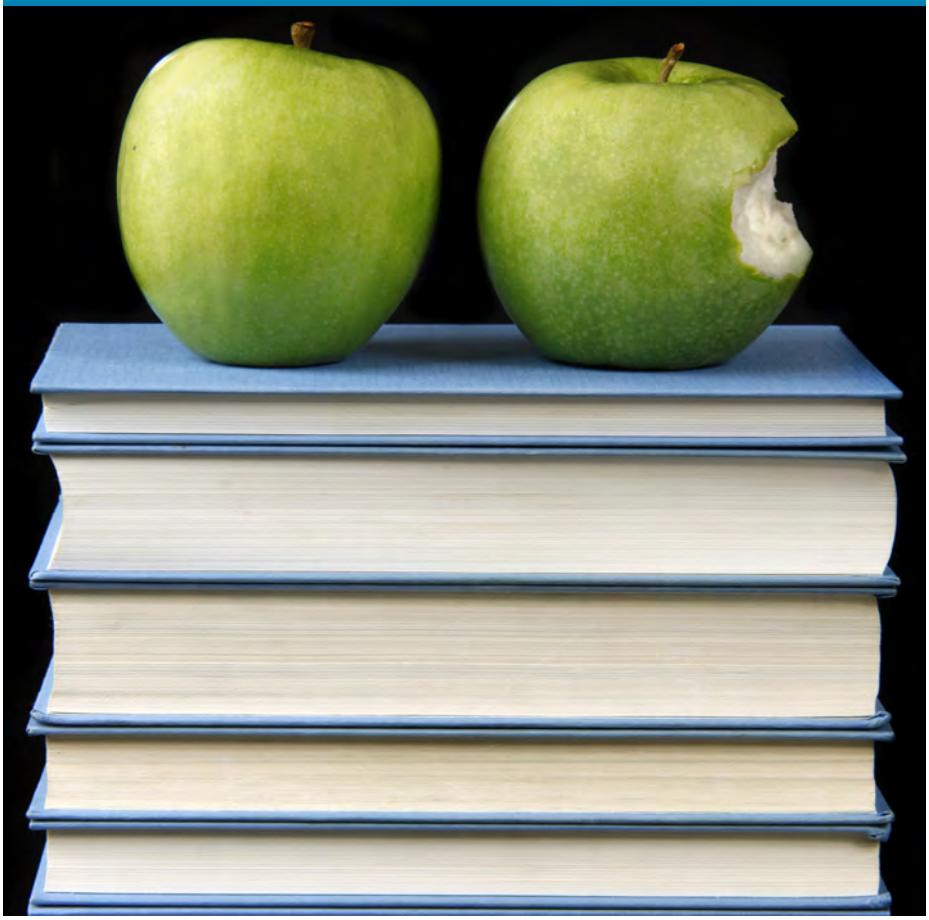
Time for a detox (part 2)
Questions on 'poisonous divisionals' referred to the Enlarged Board of Appeal (G1/15)

In our April 2015 edition of this newsletter we discussed the concept of multiple priorities and how, based on a strict interpretation of comments made in decision G2/98 concerning priority, the situation has arisen whereby a patent can be found invalid with respect to the disclosure of its own priority document, or its own parent/divisional application.

The Technical Board of Appeal in case T 557/13 had indicated that questions were to be referred to the Enlarged Board of Appeal on this matter, and their written interlocutory decision has recently been published setting out the questions to be referred to the Enlarged Board, along with a detailed discussion of the background to partial priority[1].

As promised, this article provides a more detailed discussion of the case from which the referral emanates.

Part 2 of our toxic priorities discussion concerns questions to the Enlarged Board of Appeal



First instance

The patent at issue was revoked by the Opposition Division (OD). In particular, the OD found that the patent – a divisional application – lacked novelty under Article 54(3) EPC in view of the disclosure of its published parent application.

Claim 1 related to the use of an oil-soluble polar nitrogen compound, defined by a generic formula and present within specified limits, as an additive to enhance the lubricity of a fuel composition having a specified sulphur content.

Example 1 of the patent disclosed a specific polar nitrogen additive falling within the scope of claim 1 for the use defined in claim 1. The same example is disclosed in the parent application which was filed on 08 June 1995.

The parent application claims the priority of a GB national application filed on 09 June 1994 (the priority document). The priority document discloses the use of polar nitrogen compounds, but crucially not as generally as in claim 1 of the patent. Furthermore, the priority document contains the same example 1 as in the parent application and the patent[2].

Accordingly, the OD found that the subject matter of claim 1, resulting from the generalisation of the more specific disclosure of the priority document, does not represent the 'same invention' as set out in the priority document. Therefore, the subject matter of claim 1 is not entitled to the priority claim, thus is effective as of the filing date. In contrast, example 1 of the parent application is the same as that disclosed in the priority document and thus this disclosure is entitled to the priority date.

Consequently, the OD concluded claim 1 lacks novelty over the disclosure of example 1 in the parent application under Article 54(3) EPC.

Second instance

Following the decision of the OD, the patentee filed an appeal alleging that the OD erred in its finding that claim 1 lacks novelty over the parent application.

In particular, the patentee argued that anticipation of a divisional application by its parent (so called 'self-collision') should not be possible because:

- A broad interpretation of the test set out in reason 6.7 of G2/98 – "provided that it gives rise to the claiming of a limited number of clearly defined alternative subject-matters" – is the correct approach to partial priority, so priority had to be acknowledged for the subject matter of claim 1 to the extent that it encompassed the subject matter disclosed in the priority document, ie, example 1. Accordingly, the

Notes

1. *Partial priority can be seen as a specific type of multiple priority wherein there is only one claim to priority, yet some subject matter has an effective date of the priority filing and some subject matter has an effective date of the filing itself. We will use the term partial priority in this article.*
2. *The Board found that the example in the priority document contained an obvious typographical error with respect to the sulphur content of the fuel used in example 1, in that it should have stated 0.001% and not 0.01%.*

parent application, although disclosing the same subject matter, did not have an earlier date and therefore is not prior art.

- Article 54(3) EPC provides a statutory bar to self-collision as European patent applications which are the subject of this provision cannot include all European patent applications, or else the ludicrous situation could arise of a patent colliding with itself. Accordingly, Article 54(3) EPC cannot be directed to applications in the same family, and as such a parent application cannot be prior art for its own divisional application and vice versa.

The opponent rebutted each of the above points. In particular:

- by advancing a stricter interpretation of "a limited number of clearly defined alternative subject-matters" based on that adopted by the Technical Boards of Appeal in earlier decisions; and

- by arguing that the wording of Article 54(3) EPC precluded collision of a European application with itself but not of separate applications such as a divisional with its own parent.

In the reasons for the decision the Technical Board of Appeal gave careful consideration to the proper approach that should be adopted for assessing whether the subject-matter of claim 1 of the patent can be awarded a partial priority to the extent that the use of the additive of example 1 is encompassed by claim 1, rather than being spelt out in it.

Questions to the Enlarged Board of Appeal

The Technical Board of Appeal concluded that there is a divergent approach in the case law to the assessment of when to award partial priority. Furthermore, as this matter relates to a point of law of fundamental importance, it was found necessary to refer the following questions to the Enlarged Board of Appeal:

1. Where a claim of a European patent application or patent encompasses alternative subject-matters by virtue of one or more generic expressions or otherwise (generic 'OR' claim), may entitlement to partial priority be refused under the EPC for that claim in respect of alternative subject-matter disclosed (in an enabling manner) for the first time, directly, or at least implicitly, and unambiguously, in the priority document?

2. If the answer is yes, subject to certain conditions, is the proviso "provided that it gives rise to the claiming of a limited number of clearly defined alternative subject-matters" in point 6.7 of G2/98 to be taken as the legal test for assessing entitlement to partial priority for a generic 'OR' claim?

3. If the answer to question 2 is yes, how are the criteria "limited number" and "clearly defined alternative subject matters" to be interpreted and applied?

4. If the answer to question 2 is no, how is entitlement to partial priority to be assessed for a generic 'OR'-claim?

5. If an affirmative answer is given to question 1, may subject-matter disclosed in a parent or divisional application of a European patent application be cited as state of the art under Article 54(3) EPC against subject-matter disclosed in the priority document and encompassed as an alternative in a generic 'OR' claim of the said European patent application or of the patent granted thereon?

Questions 1 to 4 see k to obtain clarity on the matter of partial priority, regardless of whether the potentially conflicting prior art is a priority document, divisional application or an unrelated application.

Question 1 essentially asks if, as a matter of principle, is it possible to deny partial priority for a generic 'OR' claim when it encompasses subject matter in the priority document. An answer of "no" would mark a move away from applying the test provided at reason 6.7 of G2/98 and mean that the toxic priority/ divisional scenario could not occur.

However, if question 1 is answered in the affirmative, then questions 2 and 3 seek to establish if the test of G2/98 should be applied and how it should be applied. If that test is not to be followed, question 4 asks what test should be followed.

Question 5 is directed to the further issue of whether, even if partial priority may be refused for claim 1, it is possible for a parent to anticipate its divisional or vice versa.

Opportunities for the Enlarged Board of Appeal

The Enlarged Board of Appeal is now presented with the opportunity to endorse and clarify the test of G2/98 or develop a new approach to assessing partial priority.

> The referring Technical Board of Appeal has provided the Enlarged Board of Appeal with a number of routes by which to potentially abolish the concept of toxic divisionals.

We can expect a decision from the Enlarged Board of Appeal in about a year or two. In the meantime we will of course keep our readers updated on the developments in this fascinating and fundamentally important matter. Should you have any questions please contact your usual D Young & Co advisor or the author of this article.

Author:
Matthew Johnson

Part 1 of this discussion 'Time for a detox? Courts take a fresh look at toxic priorities' was published in our April 2015 patent newslettter.

Readers can view this article at www.dyoung.com/article-toxicpriorities

Second medical use claims and skinny labels
The Warner-Lambert v Actavis saga continues

We have previously reported several decisions of the UK Patents Court and Court of Appeal in relation to Warner-Lambert's action against Actavis (and others), concerning whether Warner-Lambert's second medical use patent for pregabalin was infringed by Actavis selling the drug with a 'skinny label' not referring to the patented medical use of treating pain.

The latest instalment in this saga came in the form of a monster judgment of Mr Justice Arnold, handed down on 10 September 2015. The judgment, which runs to over 170 pages, relates to the full trial on the merits of the action, the previous decisions relating to Warner-Lambert's request for interim injunctions and Actavis's applications to strike the claims out completely. As readers may recall, Arnold J in the Patents Court, and Floyd LJ in the Court of Appeal, expressed different views on how second medical use claims in Swiss-form should be interpreted, and on indirect infringement of such claims.

In this latest judgment, Arnold J found the relevant claims invalid on the ground of insufficiency, meaning (unless overturned on appeal) the infringement discussion is somewhat academic. However, the judge considered the various potential constructions of Swiss-form claims in some detail. The judgment is very long and detailed so what follows is necessarily a summary.

Previous interim decisions in the action

By way of recap, the claims in issue were in Swiss-form, namely "The use of drug X in the manufacture of a medicament for the treatment of Y".

Arnold J had originally struck out Warner-Lambert's claim of indirect infringement by Actavis, on the basis that as the Swiss-form claims were to a method of manufacture, and the claimed method was not being put into effect in the UK, there could be no indirect infringement through the supply in the UK of "means relating to an essential element" of that invention. As regards the claim of direct infringement, he allowed it to continue but had indicated it would be likely to fail on the basis that, as he interpreted such claims, "for the treatment of Y" requires a subjective intention on the part of the generic manufacturer that its product will be used for that treatment.

Arnold J found the relevant claims invalid on the ground of insufficiency

On appeal from that interim decision, the Court of Appeal indicated that in its view, "for" meant either subjective intent or, if that subjective intent was not present, that the ultimate intentional use of the drug for the patented indication was reasonably foreseeable by the manufacturer. The Court of Appeal also reinstated the indirect infringement claim, although it did express some doubts as to its merits.

Judgment of 10 September 2015 – direct and indirect infringement of Swiss-form claims

In his judgment Arnold J considers all of these points again in great detail. Interestingly, he determined that the Court of Appeal's view as regards interpretation of Swiss-form claims was not part of the formal reasons for its decision and therefore was not strictly binding on him. Nevertheless, while he expressed considerable doubts about the correctness of the Court of Appeal's interpretation, he decided it was not "plainly wrong" and therefore decided to apply both that interpretation and his own. As regards his own interpretation that there must be a subjective intention, Arnold J found that it was clear that Actavis never had that intention, given all the steps they had taken to try to prevent or at least mitigate unauthorized use.

As regards the Court of Appeal's interpretation and approach, he had to consider the position concerning reasonable foreseeability (by Actavis) of an ultimate intentional use (by doctors or pharmacists) at various times in the history of Actavis's development and launch of its product.

Also relevant was the history of the dispute between the parties, bearing in mind how Actavis's state of knowledge and actions altered over that time. Having done so, aside from a negligibly small number of circumstances where such use was foreseeable very early on, he concluded, on the facts, that at no stage was such intentional use foreseeable.

Accordingly, Arnold J held that Actavis was not liable for indirect infringement on either interpretation. Relevant to these conclusions were that Actavis had both used a skinny label for its product and taken steps to notify superintendent pharmacists that its drug was not licensed for the patented indication.

As regards indirect infringement, an issue which he had originally struck out but had been revived by the Court of Appeal, Arnold J said that he was puzzled and baffled by the reasoning of the Court of Appeal for reviving it. He noted again that the contrary decisions in the Netherlands and Germany did not address the language of the claims in the context of indirect infringement. Having addressed all of the Court of Appeal's reasoning, he confirmed his original decision that there was no indirect infringement by Actavis because the 'invention' was a process of manufacture, and that process was not being put into effect in the UK by anyone, nor was there any prospect that it would be.

Threats

Actavis had raised a counterclaim against Warner-Lambert, alleging unjustified threats of patent infringement. This cause of action is available in the UK to 'persons aggrieved' by such threats.

Actavis's case was that Warner-Lambert's approaches to various entities, including government bodies and pharmacists, warning that the prescription and/or dispensing of generic pregabalin to patients for the treatment of pain would infringe its patent, amounted to such threats, and Actavis was 'aggrieved' by them.

Further information

1. *Full decision: Generics (UK) Ltd (t/a Mylan) v Warner-Lambert Company LLC [2015] EWHC 2548 (Pat) (10 September 2015): http://dycip.com/ewhc2548*
2. *Article: Could this be foreseen? Court of Appeal changes picture on second medical use claims in the UK: www.dyoung.com/article-secondmedicaluse*
3. *Article: Signs of divergence in Europe for 'skinny labels' – Pain for Pfizer but gain for Novartis: www.dyoung.com/article-skinnylabels*
4. *Article: Important update on second medical use/skinny label claims in the UK: www.dyoung.com/article-skinnylabelsfeb15*

As Warner-Lambert lost its claim for infringment (and the patent was found invalid), Arnold J found Warner-Lambert liable for unjustified threats in relation to some of these approaches.

It is worth noting perhaps that these UK threats provisions will apply to both unitary patents and European patents subject to the jurisdiction of the Unified Patent Court, providing a remedy (in the UK courts) to any person aggrieved by any unjustified threat relating to activities in the UK, regardless of whether proceedings for infringement would be brought in the UPC. Accordingly, patentees will need to be careful when raising the threat of proceedings in the Unified Patent Court that these threats do not give rise to a potential action, and associated remedy, before the UK courts.

Postscript

At the end of Arnold J's judgment, he expressed a note of what appears to be exasperation at the need for a system to address the conflicting policy issues surrounding second medical use inventions, balancing the patentee's right to enforce second medical use patents with the generic manufacturer's lawful right to market the drug for off-patent uses.

He sees the solution less in extended patent litigation (he notes that "I have now lived with this case for nine months") than in altering the prescribing practice for second medical use indications.

Arnold J's suggestion was that the drug be prescribed by its generic name for off-patent uses, but by brand name for patented (second) medical uses.

However, at least in the UK, this requires centralized guidance from health authorities and it is worth mentioning that the Secretary of State for Health intervened in these proceedings and noted the desirability of this approach as a sensible solution. We shall see whether it is adopted in the UK in some way. We will be considering this case in more detail ourselves and further commentary and opinion will be published in our next patent newsletter.

Author:
Richard Willoughby

IP survey results
UK businesses in the IP spotlight

Knowledge Bank
Scan the QR code below using your internet enabled smart phone to access our IP knowledge site

The IP survey concerns the perceptions of IP and IP experiences of UK businesses

For a number of years now we have been working in collaboration with the magazines New Electronics and Eureka to increase the level of understanding of what IP is and how it can be valuable to businesses. In support of this initiative we have been running IP surveys inviting the readerships of both magazines to answer questions about their perceptions and experiences of IP. We have now studied the results of this year's IP survey, which gives an interesting insight into the issues facing businesses and their concerns.

Are UK businesses protecting and exploiting their IP?

It is worth first noting that the size of businesses that responded to the survey varied considerably. For example, 22% of respondents work in businesses with 500+ employees. At the other end of the scale, 43% work in businesses with 1 to 49 employees.

One of the questions posed was: "To what extend does your business actively assess your IP position in terms of identifying IP and/or protecting it?". This year we again found a low percentage of just over 50% of respondents who actively look at their IP position. This might be because of the spread of business sizes responding to the survey, with larger companies being more likely to monitor and assess their IP position. In terms of respondents' views on whether they thought their IP is sufficiently protected, the figure is also low at 53%.

The remaining respondents to this question either didn't know or confirmed their IP was not adequately protected. Again, this may be because of smaller companies either not being in a position to register their IP rights or through lack of understanding. Pairing this against the figure of 91% of respondents who claimed that they did understand what IP they possess, suggests that many businesses are actively deciding against registering their IP in the form of patents for example.

Exploitation of IP remains largely static at 53% of respondents – an impressive statistic if over half of those surveyed are actively making IP work for them.

What IP issues are worrying UK businesses?

The first concern was largely expected, this being the cost and time consumption required to secure IP rights. This has been cited in previous years.

It is impossible to avoid some non-trivial costs of securing a monopoly right, particularly if international portfolios are sought. However, for protection in the UK, the UK Intellectual Property Office (UKIPO) remains remarkably good value. For example, the UK Government fees to file, search and examine an application are some of the lowest in the world. Combine this with an appropriate claim scope, in line with the commercial interests of the applicant, and the actual cost of securing protection in the UK can be really very good value.

Continued overleaf...

And finally…

IP survey results - continued

Furthermore, using initiatives such as the UK's green channel to accelerate prosecution, a patent can be filed, searched, examined and granted in a remarkably short period – as quickly as six months in extreme circumstances (subject to early publication). Protection can then be quickly extended using the network of 'patent prosecution highways'.

The second issue which features prominently this year is the issue of employees leaving and taking valuable know-how with them to competitors. This is a very difficult area for businesses, particularly in fast moving high-tech fields. Employer/employee relationships in terms of IP vary dramatically across Europe. In the UK for example an invention made in the normal course of employment is owned by the employer, who can decide what, if anything, to do with it. In Germany things are very different. Under German law if an employer does not file a patent application to an invention then the right to apply reverts to the employee. It means that in Germany many businesses are forced to file patent applications purely as a precaution to ensure that all developments remain the property of the business. Outsourced R&D and design also appeared as a prominent concern. In particular, companies are concerned about designers taking their learning and subsequently working for competitors.

However, by far the most frequent concern facing respondents is the perceived dangers posed by Chinese companies. This includes concerns relating to manufacturing in China and more specifically Chinese companies copying products and importing them back into domestic markets. Many companies design in the UK and manufacture all or sub-components of their products in China. Cases such as Land Rover Evoque v Landwind X7 (see www.dyoung.com/article-evoquex7) cause concern for potential users of the IP system in China. The particular problem Land Rover faced was caused by the narrow scope of design protection in China, which is not the case for patents.

It is clear from our survey that respondents have concerns about operating in China, but are reluctant to extend their patent portfolios into China, assuming of course that they even have domestic IP. Perhaps one solution in respect of China is for applicants to explore the Chinese utility patent, which is a very popular system in China itself. Clearly the scope of protection is narrower than a normal patent, but it offers significant advantages in terms of speed and cost, two of the main concerns about IP.

Overall the feedback on IP was positive in the sense that an increasing number of businesses are aware of what IP they have and many are making good use of it. We hope that continuing our collaboration with Eureka and New Electronics will further enhance SMEs' confidence in and understanding of IP, ultimately safeguarding the investment they are making in UK-based R&D.

Author:
Anthony Albutt

Contact details

D Young & Co LLP
120 Holborn, London, EC1N 2DY
T +44 (0)20 7269 8550
F +44 (0)20 7269 8555

D Young & Co LLP
Briton House, Briton Street
Southampton, SO14 3EB
T +44 (0)23 8071 9500
F +44 (0)23 8071 9800

www.dyoung.com
mail@dyoung.com

Contributors

Partner, Editor
Nicholas Malden
nmm@dyoung.com
www.dyoung.com/nicholasmalden

Partner
Anthony Albutt
aja@dyoung.com
www.dyoung.com/anthonyalbutt

Partner
Richard Willoughby
rww@dyoung.com
www.dyoung.com/richardwilloughby

Partner
Garreth Duncan
gad@dyoung.com
www.dyoung.com/garrethduncan

Associate
Matthew Johnson
mrj@dyoung.com
www.dyoung.com/matthewjohnson