D YOUNG & CO PATENT NEWSLETTER no.57

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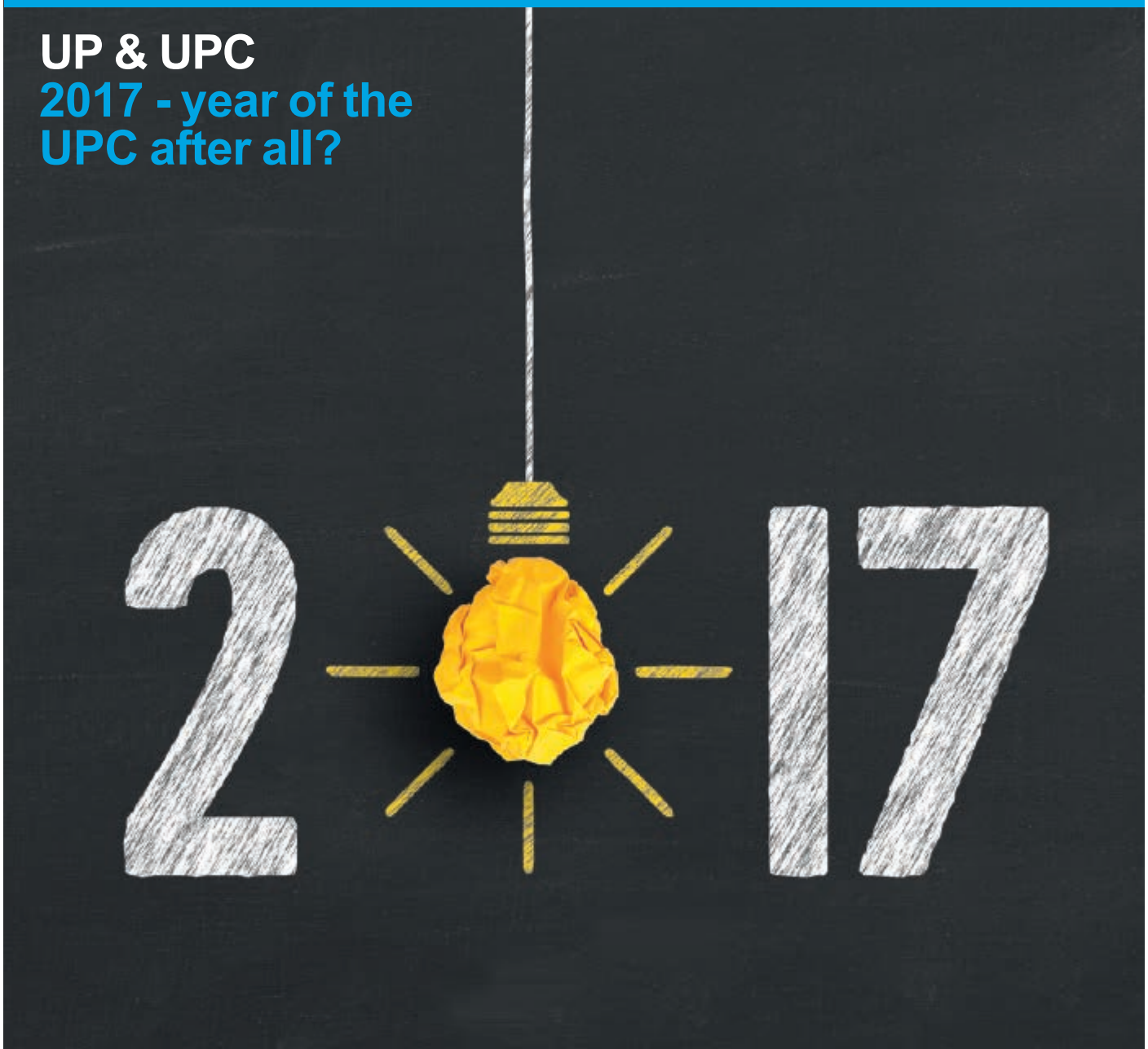
UP & UPC
2017 - year of the UPC after all?



Webinar invitation 14 February 2017 - register at www.dyoung.com/event-webupcfeb17

Editorial

2017 has begun with much to prepare for, following news that the UK Government intends to ratify the UPC Agreement. We advise revisiting filing strategies in preparation for the new system and encourage readers to contact our UP & UPC specialists with any specific questions you may have (please email us at up@dyoung.com). We also invite readers to attend our UPC webinar on 14 February.

Editor:
Aylsa Williams

Events

14 February 2017
Webinar: 2017 - year of the UPC after all?
D Young & Co Unified Patent Court and unitary patent specialists Richard Willoughby (partner solicitor) and Rachel Bateman (associate patent attorney) will present this webinar. The webinar will be chaired by European patent attorney Kirk Gallagher and will run three times during the day: 9am, noon and 5pm GMT.

09-18 March 2017
CIPA Taiwan & Japan seminars
European patent attorney and partner Nicholas Malden will be joining the Chartered Institute of Patent Attorneys' International Liaison Committee to provide patent seminars that will be co-hosted by the Taiwan Patent Attorneys Association (TWPAA) and the Japan Patent Attorneys Association (JPAA).

30 March-01 April 2017
FICPI China Hangzhou Symposium
D Young & Co partner, European patent attorney Jonathan DeVile will be speaking about computer implemented inventions at this International Federation of Intellectual Property Attorneys organised event.

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Unified Patent Court & unitary patent

UP & UPC 2017 - year of the UPC after all?

Following the Referendum last June, in late November 2016 the UK government surprised many observers by indicating that it still intends to ratify the UPC Agreement. Ratification by the UK would, assuming Germany also ratifies, allow the system to start in the near future, with the UK participating, nothwithstanding the fact that the UK's position in the UPC after it leaves the EU is currently unclear.

The UK's plan to ratify has accordingly revived preparations for the UPC and UP, and the UPC Preparatory Committee has recently announced important conditional dates for the unitary patent (UP) and Unified Patent Court (UPC) roll out in 2017.

Conditional 2017 dates for the UP & UPC

- **March 2017**: final Preparatory Committee meeting
- **May 2017**: provisional application phase (PAP) starts
- **September 2017**: sunrise-period starts, allowing opt outs to be filed
- **December 2017**: UP and UPC commence

The above dates are based on the assumption that both the UK and Germany will have ratified – or be in a position to do so – by the end of April 2017.

While the hope is that this will happen, there is no guarantee that all the necessary legislative steps will be taken by then, and they may meet a few obstacles. For now, our view is that clients should be reviving their preparations for the UP and UPC as soon as possible.

UP & UPC webinar 14 February 2017

We are holding a webinar on 14 February 2017 to provide an update on the system generally, in the light of recent developments.

The webinar will explain the steps that have to take place to get the system up and running, and when those are likely to be completed.

We will explore the implications for users that will arise if the system commences at a time when the UK's future in the project is uncertain because of its pending departure from the EU.

We will also remind listeners of the preparatory steps that they should be reviving now in order to be ready for the commencement of the new system.

Register to attend the webinar at: www.dyoung.com/event-webupcfeb17 .

D Young & Co LLP unitary patent & Unified Patent Court representation

Our ability to obtain UP protection is entirely unaffected by Brexit as the choice of a UP is made through a conventional European patent application, a process which is not related to the EU.

In addition, suitably qualified UK solicitors and European patent attorneys will be able to represent clients before the UPC, regardless of the UK leaving the EU.

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 Willoughby

Webinar invitation
2017 - year of the UPC after all?
9am, noon & 5pm, Tuesday 14 February 2017
Spaces are limited so please register early to guarantee your place: www.dyoung.com/event-web-upcfeb17

Samsung v Apple
US Supreme Court issues rare decision clarifying law relating to US design patents

Useful links

Opinion of the Supreme Court of the United States, Samsung Electronics Co., Ltd et al. v. Apple Inc (PDF), decided 06 December 2016: http://dycip.com/samsungvappleoct16

The US Supreme Court rarely considers the law relating to US registered designs (or 'design patents' in US terminology), but it has recently done so, and on 06 December 2016 it issued a decision which restores an element of common sense to how to decide the quantum of damages to be awarded when a US design patent has been infringed.

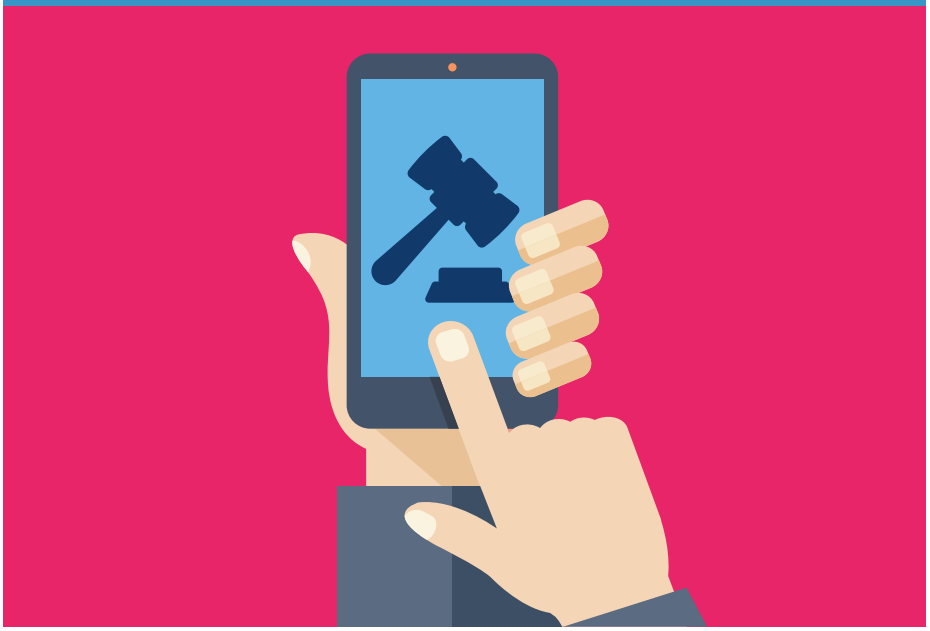
Under US design law, it is an infringement to manufacture or sell an "article of manufacture" to which the design of a US design patent (or a colourable imitation thereof) has been applied, and the infringer is liable to pay the owner of the design patent damages "to the extent of his total profit".

Apple successfully sued Samsung for infringement of various design patents relating to components of the overall design of a smartphone (specifically designs relating to the front face being rectangular with rounded edges, and relating to a grid of colourful icons on a black screen), and at the initial trial Apple was awarded damages of $399 million.

On appeal to the Federal Circuit, Samsung argued that the damages should be limited because the relevant articles of manufacture were the front face or the screen, rather than the entire smartphone. The Federal Circuit rejected Samsung's appeal after holding that the components of Samsung's smartphone were not sold separately to ordinary consumers and thus the components were not distinct "articles of manufacture".

On further appeal to the Supreme Court, Samsung finally had some success, as the Supreme Court held that, in the case of a multi-component product (like a smartphone), the relevant "article of manufacture" under US design law for the purposes of assessing the amount of damages to be awarded need not be the end product sold to the consumer but may be only a component of that product. The Supreme Court arrived at this decision after concluding that, where the statutory text refers to an "article of manufacture", it simply means a thing made by hand or machine, which encompasses both a product sold to a consumer and a component of that product. Specifically, Justice Sotomayor (delivering the opinion of the Supreme Court) stated that: "A component of a product, no less than the product itself, is a thing made by hand or machine. That a component may be integrated into a larger product, in other words, does not put it outside the category of articles of manufacture."

At the original trial Apple was awarded damages of $399 million



The Supreme Court noted that this broad interpretation is consistent with the fact that applications for design patents are allowed to be filed by the US Patent and Trademark Office directed to just a component of a product. (This is usually done by showing the claimed component or part in solid lines, and disclaiming the rest of the product by showing it in dashed or broken lines.)

The Supreme Court concluded that, because the term "article of manufacture" can mean the end product sold to a consumer or a component of that product, the Federal Circuit's narrow interpretation had been incorrect, and thus Samsung's appeal should be allowed.

However, the Supreme Court felt that the parties had not adequately addressed the question as to whether the relevant article of manufacture (for each of the US design patents at issue) is or is not the overall smartphone, or is instead just a particular smartphone component.

Specifically, the court said that to resolve this matter: "would require us to set out a test for identifying the relevant article of manufacture at the first step of the […] damages inquiry and to parse the record to apply that test in this case. The United States as *amicus curiae* suggested a test […], but Samsung and Apple did not brief the issue. We decline to lay out a test for the first step of the […] damages inquiry in the absence of adequate briefing by the parties. Doing so is not necessary to resolve the question presented in this case, and the Federal Circuit may address any remaining issues on remand."

The Supreme Court thus remanded the case back down to the Federal Circuit for that court to hear submissions and to decide the matter whilst taking into account the overall principles laid down by the Supreme Court.

Author:
Paul Price

Clearing the path
UK Courts say declarations are available to address divisional applications

Useful links

Arrow Generics Ltd & Anor v Merck & Co, Inc [2007] EWHC 1900 (Pat) (31 July 2007): http://dycip.com/arrow2007

Fujifilm Kyowa Kirin Biologics Company Ltd v Abbvie Biotechnology Ltd & Anor [2016] EWHC 2204 (Pat) (08 September 2016): http://dycip.com/fujifilm2016

Divisional applications can pose a significant problem to a party that wishes to clear its path to market. In Arrow Generics Limited v Merck & Co Inc ([2007] EWHC 1900 (Pat)), Arrow found itself in a difficult situation. In that case, the principal patents that covered Arrow's product had either expired or been revoked. Arrow was aware that a number of divisional applications were pending but had apparently assumed that these would not be allowed following the earlier decisions of the UK courts, and the EPO, on the parent applications. After Arrow had launched its product however, one of these divisional applications was indeed granted and a number of others remained pending. Arrow sought to invalidate the granted divisional but as it could not challenge the validity of the applications before grant, it was exposed to years of potential uncertainty.

Arrow adopted a novel and imaginative approach to dealing with the problem. It recognised that the Courts of England & Wales have a very broad inherent jurisdiction to grant declaratory relief where it serves a useful commercial purpose. Arrow therefore decided to use that jurisdiction to obtain a declaration to the effect that, at the earliest priority date of any divisional application, its own product was "obvious". Arrow's purpose was to set up a Gillette defence to a potential infringement claim under any of the divisionals, including any unpublished (submarine) divisionals. A Gillette defence works through the argument that if the accused product is itself not novel or inventive yet falls within the claims of a patent, that patent cannot be infringed since it must be invalid.

Are such declarations available? The decision in Arrow

In Arrow, the Patents Court in London held in a first instance, preliminary decision that such declarations were available in principle. The court held that they neither offended the EPO's exclusive jurisdiction for European patent applications, nor were they impermissible challenges to validity under UK law, since they were not in fact validity challenges. In passing however, the judge in the Arrow case indicated that the basis for such declarations might disappear if the UK designation of the divisional applications were to be withdrawn. It is worth noting that the Court of Appeal never ruled on Arrow's approach at the time because Arrow eventually withdrew its claim for a declaration.

Fuji v Abbvie: Arrow declarations revisited

The recent case of Fujifilm Kyowa Kirin Biologics v Abbvie Biotechnology Limited has brought Arrow declarations back into the news, and we now have some additional helpful guidance from the UK Courts. The bottom line is that such declarations are very much available to deal with problems caused by divisional applications, and the UK Courts will adopt a flexible approach to them.

Court of Appeal confirms that "Arrow" declarations are available in principle

On 12 January 2017, the Court of Appeal handed down judgment on the question of whether Arrow declarations were available in principle, or whether they offended the provisions of the UK Patents Act which specify the kinds of action in which validity can be raised. In short, the Court of Appeal in Fuji held that such declarations are not prohibited by the UK Patents Act, unless they are indeed a disguised attack on validity. The Court went on to say that whether such a declaration is justified depends on whether the case for a declaration can be made, applying the established principles for declaratory relief generally. The Court of Appeal refused to strike out Fuji's case for declarations on this basis.

Withdrawal of UK designations may not remove the basis for a declaration after all

Shortly before the Court of Appeal decision, and of equal significance perhaps, on 29 December 2016 Mr Justice Carr in the Patents Court refused a second attempt by AbbVie to strike out Fuji's case for declarations. This time, AbbVie had been arguing the point hinted at by the Patents Court in the Arrow case such that, because the patents or applications on which the declarations were based had now either been revoked (by consent in this case, not judgment) or the UK designation withdrawn, the basis for the relief sought by Fuji had disappeared: AbbVie argued that the declarations could serve no useful purpose if there could be no rights in the UK which AbbVie could enforce.

In response, Fuji relied heavily on the fact that the steps taken by AbbVie to consent to revocation and/or remove the UK designation, had occurred after the commencement of proceedings in the UK but before any judgment by the UK courts. Fuji argued that this had been done with the purpose of frustrating Fuji's attempt to have the UK courts both decide on the validity of the granted patents and/or grant declaratory relief, all of which could have been useful for Fuji's position in the UK and other countries in Europe.

Mr Justice Carr refused to strike out Fuji's claim for Arrow declarations, finding that they could indeed serve a useful purpose regardless of the revocations and/or withdrawal of UK designations. He noted that this was implied by the fact that AbbVie refused to submit to judgment on the declarations, which suggested that they would indeed serve some useful purpose if granted. Further, he held that in any event a judgment in the UK granting the declarations could be influential in other parts of Europe, including on the attitude of suppliers and distributors outside the UK. He also said they would provide clarity, in particular in circumstances where there were further pending, but unpublished, divisional applications.

Conclusion

At the time of writing, the substantive case is now being heard by the Patents Court in London and it will be very interesting to see whether the court does indeed grant the declarations sought by Fuji. In any case, the approach of both the Patents Court and the Court of Appeal so far indicates that the UK courts will apply a flexible and open minded approach. Relief that is intended to help clarify the position for a party seeking to clear the path to market, where that path is or may be affected by divisional applications, would seem to be available in the UK.

Author:
Richard Willoughby

Teva v Gilead Sciences
A further referral to the CJEU on SPC combination products

Case details at a glance
Court: *High Court of Justice Chancery Division Patent Court*
Parties: *Teva UK Limited & Others (claimants) and Gilead Sciences Inc (defendant)*
Citation: *[2017] EWHC 13 (Pat)*
Date: *13 January 2017*
Full decision: *http://dycip.com/tevaewhc13*

To be eligible for a Supplementary Protection Certificate (SPC) a product must be protected by a basic patent in force (Article 3(a) of the SPC Regulation). Despite numerous previous referrals to the Court of Justice of the European Union (CJEU), national courts continue to face difficulties in determining when this requirement is satisfied.

Products containing a combination of active ingredients have proved particularly difficult to assess in this regard, and the issue is now the subject of a further referral to the CJEU in Teva UK Limited & others v Gilead Sciences Inc.

The proceedings

The claimants challenged the validity of Gilead's SPC covering TRUVADA®, which is a combination product consisting of two active ingredients, (i) tenofovir disoproxil (TD) and (ii) emtricitabine.

Claims 1 and 2 of the basic patent relied on for the SPC ('the patent') relate to compounds of formulae (1a) and (1) (which encompass TD). Notably, claim 27 relates to the basic compound together with a pharmaceutically acceptable carrier and optionally other therapeutic ingredients.

In its judgment, the court considered that the inventive advance of the patent is the disclosure of the new compounds of formulae (1a) and (1), including TD. Given this invention, claim 27 is not considered to reflect any further inventive advance. Emtricitabine is not mentioned or referred to in the patent.

The question to be answered by the court was therefore whether TRUVADA® (the combination product of TD and emtricitabine) was "protected" by the patent.

Referrals to the CJEU

In his judgment, Mr Justice Arnold reviewed previous referrals to the CJEU on this question and the subsequent guidance provided. By way of example, he noted that the CJEU has previously commented that, in addition to the product falling within the scope of at least one claim of the basic patent, the claims of the patent must relate "implicitly

Was combination product (TRUVADA®) protected by the patent?

but necessarily and specifically, to the active ingredient in question" and that the "active ingredient must constitute the subject-matter of the invention covered by that patent" .

Arnold J therefore concluded that when determining whether a product is "protected" by a basic patent: "It is clear that it is not sufficient that dealings in the product would infringe a claim applying the Infringing Act Rules. It is also clear that it is necessary that the product falls within at least one claim of the basic patent applying the Extent of Protection Rules. But it is not clear whether that is sufficient. It appears from the case law of the CJEU that it is not sufficient, and that more is required; but it is not clear what more is required".

Thus, with respect to the present proceedings, Arnold J appeared to suggest that a determination that the combination of TD and emtricitabine falls within the scope of claim 27 is not sufficient for it to be "protected" by the patent. However, he is of the view that it is not clear what possible further requirements must be met.

The following single question has therefore been referred once again to the CJEU: "What are the criteria for deciding whether 'the product is protected by a basic patent in force' in Article 3(a) of the SPC Regulation?"

As for previous referrals Arnold J has made to the CJEU on this matter, he has also proposed an answer that he considers will provide the clarification required. To this end, Arnold J has suggested that to be "protected" by a basic patent the combination of active ingredients, as distinct from one of them, "must embody the inventive advance of the basic patent".

It remains to be seen if the CJEU will provide a definitive answer on how to determine whether a product is "protected" by a basic patent, in particular when considering combination products, and whether it will follow the answer suggested by Arnold J. We will continue to keep you up to date with further developments in this regard.

Author:
Tom Pagdin

Notify me again
CJEU once again asked to decide on SPC expiry dates

Useful link
Seattle Genetics Inc v Österreichisches Patentamt, C-471/14, 06 October 2015: http://dycip.com/seattlec-47114

In a new reference to the Court of Justice of the European Union (CJEU), the CJEU has been asked to decide for a second time on the issue of how to calculate the correct expiry date of a supplementary protection certificate (SPC). SPCs are granted in the European Union (EU) for medicinal and plant protection products which require a marketing authorisation by a regulatory authority prior to being placed on the market.

Duration of an SPC

Article 13(1) of EU Regulation 469/2009 (the EU medicines 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 same calculation is applied by Article 13(1) of Regulation (EC) 1610/96 (the EU plant protection SPC Regulation). The duration of an SPC for both medicines and plant protection products is capped at five years from the expiry date of the basic patent: an extra six months is added to the SPC term for medicines on which agreed paediatric studies are carried out.

Marketing authorisation grant date or date of notification?

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 (EC). There is often a delay of a few days between the date of the grant of the MA and the official date of notification of the MA to the applicant as published in the EU's Official Journal (OJ). This has created uncertainty about which of these dates (the grant date or the date of notification) should be used to calculate the expiry date of an SPC. This is of great importance to the pharmaceutical industry as even a few extra days of SPC protection can add millions of pounds to the value of an approved pharmaceutical product.

In view of this uncertainty, the CJEU was asked in 2014 to decide in case C-471/14 (Seattle Genetics) which date is the correct date on which the term of an SPC should be based. In late 2015, the CJEU decided that the correct date is the date the MA is notified to the addressee. As the date of the actual notification letter from the EC to the applicant is generally not publicly known, Patent Offices have adopted the date of notification as published in the EU's Official Journal (OJ) as the notification date on which SPC expiry dates are calculated.

Seattle Genetics Inc (C-471/14)

Patent Offices across the EU have universally followed decision C-471/14 to calculate expiry dates of SPCs which were pending or had not yet been filed as of the date the decision issued. However, a further discrepancy in practice has emerged regarding requests for correction of the expiry date of SPCs that had already been granted when the decision issued, particularly where the period for appealing against any aspect of the SPC grant decision had already expired. The Patent Offices of Germany, Spain, Portugal, Czech Republic, Slovakia, Estonia, Latvia and Iceland are accepting requests to correct expiry dates of granted SPCs. However, the Patent Offices in some other countries, in particular France, Sweden, Austria and Italy, have refused such requests.

Questions to the Court of Justice of the European Union

In view of this discrepancy and to obtain a uniform view across the EU on recalculating the expiry date of granted SPCs, the Austrian court has referred two questions to the CJEU, in case C-492/16. These questions are as follows:

1. Must [the EU plant protection SPC Regulation] be interpreted as meaning that 'the date of the first authorization to place the product on the market in the Community' is incorrect in an application for a supplementary protection certificate, within the meaning of that regulation and of [the EU medicines SPC Regulation], where that date was determined without taking account of the Court of Justice's interpretation of the law in the judgment in Seattle Genetics (Case C-471/14), with the result that it is appropriate to rectify the date of expiry of the supplementary protection certificate even if the decision to grant that certificate was made prior to that judgment and the time limit for appealing against that decision has already expired?

2. Is the industrial property authority of a member state which is entitled to grant a supplementary protection certificate required to rectify, of its own motion, the date of expiry of that certificate in order to ensure that that certificate complies with the interpretation of the law set out in Case C-471/14?

The CJEU is expected to issue its decision on this matter in the second half of 2017. The CJEU's decision will hopefully resolve this issue once and for all and provide clarity to both innovator and generic pharmaceutical companies on the exact date SPCs expire. We will keep you informed of developments and provide an update when the decision issues.

How should the date for supplementary protection certificate expiry be calculated?

Author:
Garreth Duncan

Useful link
Full decision (PDF) T971/11:
http://dycip.com/appealt97111

EPO appeals
Can late-filed documents be admitted if rejected in previous proceedings?

In the recent decision T971/11, a European Patent Office (EPO) Appeal Board held that it does have the discretion to admit a late-filed document even though the Opposition Division had exercised its discretion not to admit the document.

Background

The EPO has the discretion to disregard facts or evidence which are not submitted in due time (Article 114(2) EPC). Case law has established that late-filed documents should only be admitted into proceedings if, on first impression, there are reasons to suspect that the late-filed document prejudices the maintenance of the patent.

Appeals before the EPO have, in recent years, become a review of the decision of the first-instance and not a re-hearing of all the facts and circumstances of the case.

Under procedural rules (known as RPBA), an Appeal Board can disregard submissions which were not admitted because they were filed late in the first-instance proceedings (Article 12(4) RPBA). In addition, consideration is unlikely to be given to new submissions that should have been presented in the first-instance proceedings (Article 12(4) RPBA). Appeal Boards should only overrule the way in which a department of the first-instance exercised its discretion if it considers that the department of first-instance applied wrong principles or did not take into account the right principles or it acted in an unreasonable way.

In T2102/08 it was held that if an Opposition Division found a document to be inadmissible by a correct discretionary decision then the document should not be admitted into the Appeal proceedings.

Consequently, opponents have been presented with a dilemma as to whether they should (i) file a document shortly before or during oral proceedings but risk the document being permanently excluded from proceedings because the department of first-instance consider it inadmissible or (ii) hold back the document for an appeal but risk that it could be held inadmissible because it could have been filed earlier.

What is the criteria for late-filed documents before the EPO Appeal Board?

During opposition proceedings prior to the appeal (T971/11), the opponent filed a document just two days before oral proceedings. The Opposition Division considered that the document was late-filed and it failed to disclose or render the claims obvious. Using its discretion, the Opposition Division did not admit the document because it was not, on first impression, relevant. This document was resubmitted at the start of the appeal proceedings.

T971/11 decision

In the decision T971/11, the Appeal Board held that there was no reason to overrule the way in which the department of first-instance had exercised its discretion. The board went on to state that it did not, however, fully share the view of T2102/08; if a document which would have been admitted into the appeal proceedings if it had been filed for the first time at the outset of those proceedings should not be held inadmissible for the sole reason that it had been filed before the department of first-instance and not admitted. In addition, the board held that to impose such a limitation on discretion could have the undesirable effect of encouraging a party to hold back a document during the opposition proceedings only to present it at the appeal stage.

The Appeal Board considered that the document was filed by the opponent in reaction to developments in the last phase of the opposition proceedings and was an attempt to fill the gap. The fact that it had been filed shortly before oral proceedings before the Opposition Division instead of holding it back for the Appeal stage was not detrimental to procedural economy nor a disadvantage to the other party or board.

Thus, the Appeal Board admitted the document into the proceedings.

In short

The criteria for the admissibility of late-filed documents before the Appeal Board are the same as those during the first-instance proceedings.

Your chances of getting a late-filed document admitted are improved if, in the light of T971/11, you can show an Appeal Board that there are facts and circumstances beyond those at the time when the department of first-instance considered the admissibility of a late-filed document.

Author:
Stephanie Wroe

And finally…

Patentability of products of biological processes
Has the EPO taken a u-turn?

The patentablity of plants in Europe: EU Commission and the Biotech Directive

In our December patent newsletter[1] we reported the publication of a notice from the European Commission on its interpretation of certain aspects of the so-called 'Biotech Directive' (Directive 98/44/EC). A conclusion of the notice was *inter alia* that under Article 4 of the Biotech Directive, there should be an exclusion to patentability of both essentially biological processes and the products derived from such processes. This ran contrary to the decisions by the Enlarged Board of Appeal at the European Patent Office (EPO), G 2/12 (Broccoli II) and G 2/13 (Tomatoes II). We had tentatively suggested that on the face of such a notice, there was no immediate reason for the EPO to change its stance. The EPO is independent from the European Union (EU) and is thus not under its direct jurisdiction (though decisions from the European Courts have sometimes been decisive in changing EPO practice, for example, in the Brüstle v Greenpeace decision[2] relating to stem cells).

EPO stays "essentially biological process" case examination and oral proceedings

On 12 December 2016, the EPO announced[3] that all examination and opposition proceedings in cases which related to a plant or animal obtained by an "essentially biological process" would be stayed. There does not appear to be any suggestion of how long the stay is expected to last, though there is a statement suggesting that the EPO will somehow implement the interpretation of the Biotech Directive given by the European Commission if the EPO member states follow said interpretation. This announcement is possibly as surprising as the G 2/12 and G 2/13 decisions themselves, given that there is no provision in the European Patent Convention (EPC) for proceedings to be stayed in the event of any action from an EU body. What is clear is that the EPO is now reviewing, through the Administrative Council, changes to the EPC which could alter the Broccoli and Tomatoes decisions, perhaps by implementing limited breeder's exceptions to the law. What is clear is that the "legal certainty" for patentees and third parties provided by G 2/12 and G2/13 is now once again in doubt.

Author:
Feng Rao

Notes

1. December 2016 patent newsletter article: www.dyoung.com/article-plantpatenting
2. Case C-34/10
3. EPO announcement: http://dycip.com/epo12dec

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