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By Perry Cooper

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Amgen Inc. subsidiary Immunex Corp. failed to convince the Federal Circuit to revive its patent on a treatment for inflammatory disorders.

Sanofi-Aventis U.S. LLC, Genzyme Corp., and Regeneron Pharmaceuticals Inc. had successfully challenged the patent at the Patent Trial and Appeal Board. The board properly invalidated the patent after finding that "human antibody" may include antibodies that aren't fully human, the U.S. Court of Appeals for the Federal Circuit held in a precedential opinion.

"'Brown dogs' plainly include 'partially brown' dogs, such as a mostly brown dog with a white spot," the court said.

Immunex owns U.S. Patent No. 8,679,487, which covers isolated human antibodies that bind the human interleukin-4 receptor. Inhibition of the receptor is significant for treating inflammatory disorders such as arthritis, dermatitis, and asthma.

Immunex previously sued Sanofi and Regeneron in federal court, alleging their Dupixent eczema drug infringes its patent. They responded by challenging Immunex's patent at the patent office, arguing it was obvious in light of earlier references that described mouse antibodies and how to humanize them.

The board found that the patent term "human antibody" encompasses those that are partially human and humanized, and accordingly invalidated the patent.

The Federal Circuit upheld this broad interpretation, finding that nothing in the patent's language restricts the term to fully human. The patent doesn't define "human antibodies" but describes some human antibodies as "fully human." That wouldn't be necessary if the term were narrow, the court said.

Chief Judge Sharon Prost wrote the opinion, joined by Judges Jimmie V. Reyna and Richard G. Taranto.

Sterne Kessler Goldstein & Fox PLLC represented Immunex. McKool Smith PC represented Sanofi.

The case is Immunex Corp. v. Sanofi-Aventis U.S. LLC , Fed. Cir., No. 19-1749, 10/13/20 .

To contact the reporter on this story: Perry Cooper in Washington at pcooper@bloomberglaw.com

To contact the editor responsible for this story: Renee Schoof at rschoof@bloomberglaw.com; Keith Perine at kperine@bloomberglaw.com

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