

Fed Circuit backs PTAB's broad view of 'human antibodies' in Dupixent patent row

10/13/20 REUTERS LEGAL 21:53:59 • Copyright (c) 2020 Thomson Reuters • Brendan Pierson

REUTERS LEGAL • October 13, 2020



(Reuters) - A federal appeals court has refused to revive an Amgen Inc patent on human antibodies that the company had accused rivals Sanofi and Regeneron of infringing with their eczema drug Dupixent.

The unanimous decision by a three-judge panel of the Federal Circuit U.S. Court of Appeals on Tuesday upheld a finding by the U.S. Patent Trial and Appeal Board that the disputed claims of the patent were obvious in light of prior art.

Eldora Ellison of Sterne Kessler Goldstein & Fox, a lawyer for Amgen, and Lauren Fornarotto of McKool Smith, a lawyer for Sanofi and Regeneron, did not immediately respond to requests for comment.

Amgen unit Immunex sued Sanofi and Regeneron in 2017 in the Central District of California, alleging that Dupixent infringed a patent on the use of antibodies that bind to a molecule called interleukin-4 in the human body to treat diseases. Sanofi and Regeneron countered by petitioning the PTAB to invalidate the patent, arguing that it was invalid in light of prior art involving antibody treatments.

Amgen argued that its patent covered only fully human antibodies, while the prior art described "humanized" antibodies with non-human sources. The PTAB, however, construed the term "human antibodies" in Amgen's patent to include humanized, not only fully human, antibodies, and thus found the patent invalid.

Amgen appealed, though the patent has since expired.

Chief Judge Sharon Prost, writing for the panel on Tuesday, agreed with the PTAB that the "broadest reasonable interpretation of 'human antibodies' that includes those that are partially human - including 'humanized' antibodies."

She also found that prosecution history of the patent supported the construction, noting Amgen did not dispute that the initial patent application did cover humanized antibodies and rejecting the company's claim that it "surrendered" coverage of such antibodies in a later amendment. She noted that another related patent application distinguished between "human" and "fully human" antibodies.

Prost, joined by Circuit Judges Jimmie Reyna and Richard Taranto, therefore affirmed the PTAB's finding.

The underlying infringement litigation in the Central District of California has been stayed pending appeal of the PTAB decision.

The case is Immunex Corp v. Sanofi-Aventis US LLC et al, Federal Circuit U.S. Court of Appeals for the Federal Circuit, No. 19-1749.

For Immunex: Eldora Ellison of Sterne Kessler Goldstein & Fox

For Sanofi and Regeneron: Lauren Fornarotto of McKool Smith

References

AMGEN INC; IMMUCOR INC; MCKOOL SMITH A PROFESSIONAL CORP; REGENERON PHARMACEUTICALS INC; SANOFI AVENTIS U S LLC

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