

Case Report: French Supreme Court, 16 September 2014: NOVARTIS v SANOFI-AVENTIS

The French Supreme Court closes the door on ex parte patent injunctions.

Although in practice rare, *ex parte* injunctions in patent matters were available in France since 2007. These allowed patentees to obtain *ex parte* injunctions against defendants who were denied the possibility to defend the case before the injunction was handed down.

In a landmark decision, the French Supreme Court has confirmed the earlier Court of Appeal's criticism of the High Court for allowing an *ex parte* preliminary injunction in respect of a Supplementary Protection Certificate on the combination of Valsartan and HCTZ.

The French Supreme Court relied on two relevant facts:

- 1) Although the patent was set to expire 17 days after the injunction was sought, this still left plenty of time to seek an emergency hearing *inter partes*.
- 2) The loss of exclusivity that the patentee would have suffered 17 days before expiry, could be adequately compensated by monetary damages. Thus an injunction was not absolutely necessary.

Thus patent and SPC *ex parte* injunctions under French law, should only be available 1) if the applicant can demonstrate the need for the defendant not being heard and 2) if an injunction is necessary because damages could not constitute adequate compensation.

It is difficult at this stage to imagine what patent situation could lead to limb one of the test being fulfilled. If even proximity to the expiry of the patent does not warrant *ex parte* proceedings, then likewise few other causes could warrant *ex parte* proceedings.

As a result, it is submitted that this decision essentially closes the door on *ex parte* injunctions in patent litigation on most commonly-encountered facts.

Denis Schertenleib, BSc, PhD

ds@schertenleib-avocats.com