

Fed. Circ. Rejects Narcan Maker's Redo Bid In Patent Suit

By Adam Lidgett

Law360 (May 6, 2022, 5:57 PM EDT) -- The Federal Circuit said it won't review a split appellate panel's decision that stood by a New Jersey judge's invalidation of claims in four patents covering Adapt Pharma's opioid overdose medication Narcan.

In its Thursday decision, the appellate court denied Adapt Pharma Operations Ltd.'s bid for rehearing of a decision from February in which a majority of the panel said there was sufficient evidence the Narcan patents were obvious based on a combination of prior art. Details behind the Thursday decision were not given.

Adapt Pharma, a company that Emergent BioSolutions Inc. bought for \$735 million in 2018, filed the en banc petition for rehearing in March. The company primarily makes Narcan, a nasal spray that administers the drug naloxone for the emergency treatment of opioid overdoses.

After a two-week bench trial, U.S. District Judge Brian R. Martinotti ruled in June 2020 the company's lawyers were not able to prove the patents for the drug covered anything new enough for patent protection.

The ruling cleared the way for Teva Pharmaceuticals USA Inc. to market a competing generic version of the nasal spray, which Teva launched in December 2021. In February, two judges on the appeals court ruled Judge Martinotti had the right idea.

But Adapt Pharma said the majority had established something called a "presumption of obviousness," which means they put the burden on Adapt's lawyers to explain what was so new about their patents, as opposed to putting that burden on generic drug makers like Teva to explain why language from older patents would have been put together in an obvious way by scientists.

This was harder to prove and Adapt Pharma's lawyers used their petition to the full court to argue they did not want to do so.

"We are pleased to continue to provide uninterrupted access to generic Narcan for people who need it," Teva said in a statement to Law360 on Friday.

Emergent BioSolutions declined to comment Friday.

The patents-in-suit are U.S. Patent Nos. 9,468,747; 9,561,177; 9,629,965; and 9,775,838.

Adapt Pharma is represented by Jessamyn S. Berniker, David M. Krinsky and Jessica Palmer Ryan of Williams & Connolly LLP, and Catherine E. Stetson and William E. Havemann of Hogan Lovells.

Teva is represented by John C. Rozendaal, Michael E. Joffre, Paul A. Ainsworth, Chandrika Vira, Adam C. LaRock and William H. Milliken of Sterne Kessler Goldstein & Fox PLLC, and Liza M. Walsh of Walsh Pizzi O'Reilly Falanga LLP.

The case is Adapt Pharma Operations Ltd. et al. v. Teva Pharmaceuticals USA Inc. et al., case number 20-2106, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Andrew Karpan, Chelsea Naso and Dani Kass. Editing by Lakshna Mehta.

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