

# Pharma Session 2: Injunctions: Innovator vs. innovator

Monday, October 16 2017

11:00-12:30



- S. Peter Ludwig, Fish & Richardson (Moderator)
- Philip Kerr, Allens
- Larry Welch, Eli Lilly
- Judge Matthias Zigann, Regional Court Munich I



Allens > < Linklaters

*Lilly*



## Current Litigation

# Amgen Inc. et al. v. Sanofi, Sanofi-Aventis US LLC and Regeneron Pharmaceuticals, Inc.

- Both companies spent billions developing new class of cholesterol drug
- Antibody-binds PSK-9proteins
- Amgen = Repatha<sup>®</sup> - Regeneron = Praluent<sup>®</sup>
- Regeneron – first to market + Amgen – first to Patent office
- Amgen sued Regeneron/Sanofi – Jury trial on 2 Patents
- Regeneron stipulated to infringement
- Verdict for Amgen – Patents valid

## Current Litigation

# Amgen Inc. et al. v. Sanofi, Sanofi-Aventis US LLC and Regeneron Pharmaceuticals, Inc.

- Hearing on whether Amgen entitled to permanent injunction
- Regeneron argued differences between Praluent<sup>®</sup> and Repatha<sup>®</sup>
- Amgen argued Regeneron copied its drug
  - \* CEO – if no patent granted might not have pursued Repatha<sup>®</sup> product

## Current Litigation

# Amgen Inc. et al. v. Sanofi, Sanofi-Aventis US LLC and Regeneron Pharmaceuticals, Inc.

- Injunction granted
- Short opinion – brief consideration of eBay factors
  - \* Irreparable Harm
  - \* Adequacy of money damages
  - \* Balance of hardships
  - \* Public interest

## Current Litigation

# Amgen Inc. et al. v. Sanofi, Sanofi-Aventis US LLC and Regeneron Pharmaceuticals, Inc.

- Court struggling with close question of whether injunction warranted??
- Public interest a significant factor
- Opinion “...the court finds itself between a rock and a hard place”
- Injunction voluntarily stayed by Court for 30 days to allow appeal
- Awaiting decision on appeal

What are the present requirements (factors) for obtaining a preliminary injunction?

Should there be different criteria/tests for granting injunctions in innovator vs innovator cases as contrasted with innovator/copycat cases?



If different criteria/tests should be employed, what should they be? What should be considered?

Should the remedies be the same as for  
innovator vs copycat infringement?

Should “public interest” be given extra weight in deciding whether to grant injunctions in innovator vs innovator disputes?



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# Thanks for your attention!