



## TECHNOLOGY LAW UPDATE

*Pfizer, Inc.*  
v.  
*Teva Pharms. USA,  
Inc.*

No. 05-1331

Federal Circuit  
Nov. 22, 2005

*[I]nfringement of a valid patent inherently causes irreparable harm in the absence of exceptions such as a finding that future infringement is no longer likely, that the patentee is willing to forgo its right to exclude by licensing the patent, or that the patentee had delayed in bringing suit.*

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On November 22, 2005, the Federal Circuit affirmed the district court's preliminary injunction enjoining Teva and Ranbaxy from infringing U.S. Patent No. 4,743,450, which related to pharmaceutical compositions containing angiotensin converting enzyme (ACE) inhibitor such as quinapril. The Federal Circuit stated:

[T]o grant a preliminary injunction, a court must consider whether the patent owner has shown: (1) a reasonable likelihood of success on the merits; (2) the prospect of irreparable harm to the patent owner in the absence of the injunction; (3) that this harm would exceed harm to the alleged infringer when subject to the injunction; and (4) that granting the injunction is in the public interest. . . . Warner-Lambert is likely to prevail in its charge that Ranbaxy [infringes both literally and] under the doctrine of equivalents. . . .

Ranbaxy maintains that the district court clearly erred in its consideration of the prospect of irreparable harm [arguing] that the district court failed to consider evidence that Warner-Lambert does not currently enjoy market exclusivity. . . . Warner-Lambert responds by pointing to evidence that shows that sales of Ranbaxy's product dwarf the sales of other competitors' generic products. And while Warner-Lambert admits that it has granted a license to the '450 patent, it clarifies that the license is exclusive and limited to moexipril products and not quinapril products such as Accupril®. Warner-Lambert further explains that it did not sue Ranbaxy within forty-five days of receiving Ranbaxy's paragraph IV certification letter because Teva, as the first ANDA filer, had a potential 180-day exclusivity period, which precluded FDA approval of any later ANDA.

[I]nfringement of a valid patent inherently causes irreparable harm in the absence of exceptions such as a finding that future infringement is no longer likely, that the patentee is willing to forgo its right to exclude by licensing the patent, or that the patentee had delayed in bringing suit. [But] neither party anticipates voluntarily ceasing the sale of products covered by the '450 patent, and there is no evidence that Warner-Lambert intends to engage in non-exclusive licensing of its rights under the '450 patent. While Warner-Lambert admits that two competitors remain in the marketplace, "[t]he fact that other infringers may be in the marketplace does not negate irreparable harm. A patentee does not have to sue all infringers at once. Picking off one infringer at a time is not inconsistent with being irreparably harmed." Neither is first targeting infringers whose sales dwarf the sales of other infringers. The fact that Warner-Lambert has granted a narrow, exclusive license under the '450 patent also does not require that the district court find that any harm would not be irreparable. . . .

The district court also did not abuse its discretion by not faulting Warner-Lambert for its decision not to bring suit within forty-five days of receiving Ranbaxy's paragraph IV certification letter. [T]here is no requirement that a patent owner take advantage of the statutory carrot of a thirty-month stay, and certainly no statutory stick for choosing not to. Moreover, Teva, as the first party to file an ANDA, held exclusive generic rights. There was therefore no immediate need for Warner-Lambert to sue Ranbaxy. [T]he fact that Warner-Lambert filed suit against Ranbaxy within two months of the launch of Ranbaxy's quinapril formulation supports the district court's rejection of the idea that Warner-Lambert unduly delayed in bringing suit against Ranbaxy.