



Showing of a Substantial Case of Irreparable Harm to Losing Plaintiff Justifies Injunction Against Defendant During Appeal

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Following a bench trial, but before the court issued a judgment, the parties stipulated to a preliminary injunction barring the defendants from marketing or selling its generic drug product until the court issued its decision on the merits. The court ultimately issued a judgment of invalidity, and the plaintiff appealed to the Federal Circuit. Nevertheless, the plaintiff moved for an injunction until the appeal is resolved. Judge Catherine C. Blake in the District of Maryland granted this injunction last week pending plaintiff's appeal, on the condition that plaintiff post a \$10 million bond and move to expedite its appeal. The plaintiff claimed that it has a strong likelihood of success on appeal because the district court erred in its application of the law with respect to motivations to combine the prior art and inherency. The court noted that, although it stands by its judgment, it recognizes that this case presents a close call. The plaintiff has not demonstrated a strong likelihood of success on appeal, but plaintiff made a showing of a substantial case. And because the balance of hardships tips strongly in plaintiff's favor as well, the showing of a substantial case is sufficient to award an injunction.

Par Pharmaceutical, Inc. et al v. TWi Pharmaceuticals, Inc., 111cv02466 (MDD August 12, 2014, Order) (Blake, J.).

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