
Federal Circuit Affirms Ruling That Patent Settlement Between Brand-Name and Generic Drug Makers Did Not Violate Antitrust Law

Date: 10/21/08

In *In re Ciprofloxacin Hydrochloride Antitrust Litigation*, the United States Court of Appeals for the Federal Circuit added its voice to the fiercely debated issue of the antitrust treatment of patent dispute settlements that involve a payment to the alleged infringer (a "reverse" payment) and a delay in the introduction of generic alternatives to branded drugs. The court considered whether the Sherman Act prohibited a settlement between Bayer and a generic manufacturer seeking to invalidate Bayer's Cipro patent, whereby Bayer paid the generic manufacturer \$398 million in return for an agreement admitting infringement and abandoning any efforts to enter the market. The Federal Circuit departed from the Federal Trade Commission's strongly expressed views and rejected the rule set forth by the Sixth Circuit that such settlements are *per se* illegal. Instead the appellate court reached a result similar to the Eleventh and Second Circuits and ruled that a plaintiff bringing a "reversepayment" case must demonstrate that the challenged agreements had an anti-competitive effect on the market beyond that permitted by the patent.

Attorney

- Elai Katz