# Pfizer's Patent on Viagra Upheld by the EDVA

**08.15.2011**

In a 100+ page opinion which can be found here, the EDVA upholds Pfizer's '012 patent on sildenafil, the active ingredient in Viagra, as valid and enforceable.

Some highlights from the Court's opinion, including its discussion and application of the Federal Circuit's en banc decision in *Therasense* follow:

- The Court presents a thorough discussion of the law of standing to sue for patent infringement at pp. 20-24, and ultimately concludes that Pfizer, Inc. is the legal owner of the '012 patent. Op. at 25. See our previous discussion of Teva's motion to dismiss for lack of standing here.
- The Court further expands upon the definition of a "beneficial owner" under English law, as provided for in the Patent Filing Agreement, at pp. 28-29.
- The Court has a detailed discussion of whether Pfizer Ireland qualifies as an "exclusive licensee," based on the rights it received, and ultimately concludes that it is a nonexclusive licensee at least in part because the rights it received were "ephemeral," and Pfizer Ltd. had the right to revoke them at any time, in addition to the right to control the litigation. Op. at 30-33.
- The Court addresses the Federal Circuit's *Therasense* decision and concludes that it "significantly heightened the requirements for a showing of inequitable conduct on the merits," op. at 43, but also concludes that *Exergen*, not *Therasense*, continues to set forth the pleading requirements for inequitable conduct. Op. at 44.
- The Court finds that Teva did not meet its burden to demonstrate that the claims of the '012 patent were obvious under 35 USC § 103. Op. at 55-81.
- Applying *Therasense*, the Court denies Teva's claim of inequitable conduct. Specifically, the Court states

> Instead, the court sees this claim of inequitable conduct for what it is: an attempt to induce the court to believe that if enough smoke is created, there

must be a fire. The court sees through this smokescreen and finds that Teva has failed to bring any evidence to the court's attention which shows that Mr. 0'Rourke acted with the specific intent to deceive the PTO. Op. at 108.

In sum, this court finds that this case is the archetype of the action the Federal Circuit was aiming to curtail with the tightening of the standards in Therasense. Pfizer's initial behavior of disclosing all substantive documents from every foreign patent prosecution and litigation is understandable, particularly now in hindsight, given the unfounded, costly, and time-consuming accusations, which have resulted from not turning over one completely non-material document after the time for disclosures had passed, except in the most extreme of cases, with this not being one. The court refuses to read Therasense in any way other than how the Federal Circuit intended, as a bulwark against the waste of resources by both the judiciary and litigants, as has occurred in this case. Op. at 108-110.

## Related People