

## IP Forecast: Fed. Circ. To Mull Narcan Patents

By **Andrew Karpan**

*Law360 (July 29, 2021, 9:31 PM EDT)* -- Emergent BioSolutions' grip on its blockbuster opioid overdose medication Narcan is at stake in a patent case that reaches the Federal Circuit on Monday.

Adapt Pharma, an Emergent unit, is appealing a ruling from a New Jersey federal judge last June that found claims in four of its patents covering the drug's dosage were unpatentable, in light of how naloxone has been used in treating overdoses since the 1960s. The argument came from rival drugmaker Teva Pharmaceuticals USA Inc., which Adapt sued over Teva's efforts to market a generic version of the drug, which the U.S. Food and Drug Administration approved in 2018.

Emergent licenses the patents from Opiant Pharmaceuticals, also named as a plaintiff in the case. Narcan brought in \$311.2 million in sales last year for Emergent — an 11% increase over the year before — as its use increases amid the ongoing opioid epidemic.

Last year, Emergent succeeded in settling with Perrigo, which had planned its own generic. The terms of that deal kept it off the market until 2033, but Emergent agreed to license the drug earlier if Teva ultimately wins its legal battle.

"This unique formulation delivers 56% more naloxone to the bloodstream of a patient relative to the next most similar formulation," Emergent said about the patent behind its drug.

Following a weeklong bench trial, the New Jersey judge failed to resist the "temptation" of using "hindsight" to find that idea obvious, the Federal Circuit was told.

In the filings, Teva labeled these "thinly veiled criticisms of the district court's factual findings."

"There is no evidence that Adapt identified or overcame any technical challenges in formulating its intranasal naloxone product," Teva added.

Representatives for the parties did not respond to a request for comment on Thursday.

The patents-in-suit are U.S. Patent Nos. 9,468,747; 9,561,177; 9,629,965; and 9,775,838.

Adapt and Opiant are represented by Catherine E. Stetson, Kirti Datla and Reedy C. Swanson of Hogan Lovells and Jessica Tyrus Mackay of Green Griffith & Borg-Breen LLP.

Teva is represented by J.C. Rozendaal of Sterne Kessler Goldstein & Fox PLLC and Liza M. Walsh of Walsh Pizzi O'Reilly Falanga LLP.

The case is Adapt Pharma Operations Ltd. et al., case number Teva Pharmaceuticals USA Inc. et al., case number 20-2106, in the U.S. Court of Appeals for the Federal Circuit.

#### **Also At The Circuit:**

On Tuesday, a three-judge panel will review another win for Teva, but this time in a fight against generic competition. Cephalon Inc. is fighting off an appeal lodged by Slayback Pharma LLC, which wants to compete with Cephalon's cancer drug Bendeka. The drug brought in \$415 million last year for Teva, which bought Cephalon in 2011. Slayback accuses Teva of trying "to create a patent thicket to prevent generic competition for years to come."

The bankrupt Louisiana oilfield services company Besco Tubular will appear Thursday in efforts to fight a \$6.4 million infringement verdict. Besco wants a new trial, after it says a jury handed "an untenable verdict" in favor of Spoked Solutions LLC, which owns patents related to an oil drilling tool. In the briefings, Spoked labeled this account "entirely divorced from reality and shown by the evidence to be primarily manufactured after the fact."

#### **Also On Appeal:**

On Wednesday, a Ninth Circuit panel in Anchorage will hear appeals in a trademark row from both reusable coffee pod maker Eko Brands LLC and a rival that uses the brand name "Eco-Fill." Eko won nearly \$6 million from a jury, but a judge cut the total to about \$650,000. Eko is fighting that finding, while coffee pod rival Adrian Rivera says the trademark claims should have been raised in a 2015 patent case, which ended in a \$193,000 verdict that Eko has not yet collected.

A Ninth Circuit panel in Pasadena on Wednesday will hear Canadian hotel entertainment company Guest-Tek Interactive Entertainment Ltd.'s efforts to get out of paying Nomadix Inc. \$1.1 million in fees connected, in part, to work at the Patent Trial and Appeal Board. Guest-Tek argues that the terms of their licensing agreement only confers fees based on successful court actions, while Nomadix says a ruling at the patent board could "have mooted the injunction the district court ultimately granted."

#### **In the Courts**

On Tuesday, Columbia Sportswear and rival Seirus will face off in front of a San Diego jury for the second time in their patent fight over competing cold-weather gear and heat-reflective fabric. The last verdict came brought a \$3 million win for Columbia, but was thrown out by the Federal Circuit. While the last trial lasted 10 days, this one is scheduled to last four and will cover only one of the patents at issue in the first.

An Illinois federal judge will convene a jury on Aug. 6 to look at software infringement claims lodged by Trading Technologies International Inc. against IBG LLC, one of the few online brokerage firms left in a decade-old patent saga. In this case, Trading Tech will make the case that IBG's Trader Workstation BookTrader infringes its patents through the doctrine of equivalents, though a ruling last month trimmed some of those claims.

--Additional reporting by Dani Kass, Vince Sullivan, Sarah Jarvis, Dani Kass and Tiffany Hu. Editing by Nicole Bleier. All Content © 2003-2021, Portfolio Media, Inc.