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G.D. SEARLE LLEGA A ACUERDO CON LA FISCALÍA NACIONAL ECONÓMICA

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Pharmaceutical company Pfizer's Chilean subsidiary has agreed behavioural remedies as part of a settlement with Chile's National Economic Prosecutor, which alleged the company used existing patents to block or delay rivals from entering the market for an anti-inflammatory drug.

The settlement comes five months after the FNE found that Pfizer subsidiary GD Searle used a fraudulently obtained patent to block generic competition to Celecoxib, a patented drug which is used to treat chronic conditions such as rheumatoid arthritis. At the time, the Chilean enforcer said the company may have attempted to extend its Celexocib rights beyond the original limits of its patent.

GD Searle has agreed to grant royalty-free licences to any current or potential competitor within Chile for the development, commercialisation, distribution or use of Celexocib. The settlement marks the end of the FNE's first case involving intellectual property and antitrust in the pharmaceutical sector.

In June 2016, the FNE accused the pharmaceutical company of making non-clinical changes to the composition of the drug and applying for a second patent, effectively extending its exclusive rights to the drug until 2029. The Chilean enforcer found that the second patent was intended to hinder generic rivals' entry to the relevant market, and that it held no innovations that could benefit patients.

The enforcer also found GD Searle sent 14 letters to its rivals warning that they may have infringed the second patent, and that a senior executive had called several laboratories' general managers urging them to settle to avoid infringement lawsuits.

As an additional part of the settlement, GD Searle will withdraw a lawsuit accusing competitor Synthon of market dominance and patent infringement, which began after the latter refused to settle

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after one of the phone calls.

In a statement, the competition court said the remedies will bolster competition by taking away the risk of litigation or revoked licences for new market entrants.

Juan Cristóbal Gumucio, a partner at Cariola, Díez, Pérez-Cotapos & Cía Ltda in Santiago, said the case is "of interest because there are not too many antitrust cases in Chile relating to patents."

He added that this is the first settlement in recent memory in which a patent holder offers an irrevocable patent licence for free as part of proposed settlement conditions.

FNE head Felipe Irarrázabal said the case allowed the authority to open a discussion on the need for competition to play a role in intellectual property rights enforcement.

Irarrázabal added that the agreement sets an important precedent that benefits consumers and increases competition by creating easier market entry conditions for the selling of bioequivalent pharmaceuticals.

In a report on the settlement commissioned by the FNE, Rutgers law professor Michael Carrier expressed the belief that the FNE would most likely have been successful in its case, but that the significant benefits achieved in the settlement make the enforcer's inability to obtain a finding of a competition law violation a "worthwhile sacrifice".

He also called the free Celexocib licence "strongly procompetitive in nature".

A third party originally involved in the case, Andromaco Laboratories, was not a party to the settlement. The company did not respond to a request for comment.

GD Searle parent Pfizer did not respond to a request for comment.

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