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DECISION • PATENT LAW

European Union

"Teva UK and Others"

Decision of the European Court of Justice (Grand Chamber) 25 July 2018 – Case No. C-121/17

Teva UK Ltd, Accord Healthcare Ltd, Lupin Ltd, Lupin (Europe) Ltd, Generics (UK) Ltd, trading as "Mylan" v. Gilead Sciences Inc.

Regulation (EC) No 469/2009, Art. 3(a)

Keywords Supplementary protection certificate · Originator and generic medicines · Basic patent · Conditions for obtention · Medicinal product · Human immunodeficiency virus (HIV)

Article 3(a) of Regulation No 469/2009 of the European Parliament and of the Council of 6 May 2009, concerning the supplementary protection certificate for medicinal products, must be interpreted as meaning that a product composed of several active ingredients with a combined effect is 'protected by a basic patent in force' within the meaning of that provision where, even if the combination of active ingredients of which that product is composed is not expressly mentioned in the claims of the basic patent, those claims relate necessarily and specifically to that combination. For that purpose, from the point of view of a person skilled in the art and on the basis of the prior art at the filing date or priority date of the basic patent:

- **the combination of those active ingredients must necessarily, in the light of the description and drawings of that patent, fall under the invention covered by that patent, and**
- **each of those active ingredients must be specifically identifiable, in the light of all the information disclosed by that patent.**

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