



Court of Justice of the European Union

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Press and Information

Genentech Inc. v Hoechst GmbH and Sanofi-Aventis Deutschland GmbH

Judgment in Case C-567/14

The beneficiary of a patent licence must pay the agreed royalty even if it does not infringe the patented technology

Since the royalty constitutes the price to be paid in order to protect the licensee against any infringement proceedings and the licensee may at any moment terminate the licence agreement, the payment is due

In 1992, Behringwerke, a German company, (which was subsequently taken over by the German company Sanofi-Aventis Deutschland) granted Genentech (an undertaking active in the pharmaceutical sector) a worldwide non-exclusive licence to use a patented human cytomegalovirus enhancer.¹ Genentech used that enhancer to facilitate the transcription of a DNA sequence necessary for the production of a medicinal product, Rituxan (or MabThera).² By using the enhancer in this way, Genentech did not infringe the licensed patents. Genentech refused, on that basis, to pay part of the agreed royalty.

The Cour d'appel de Paris (Court of Appeal, Paris), before which the case has been brought, asks the Court whether, in such circumstances, the payment of the royalty imposes on Genentech costs that cannot be justified under EU competition law.

In today's judgment, the Court of Justice takes the view that EU competition law does not prohibit the obligation to pay a royalty for the use of technology, even where such use does not give rise to an infringement, or the technology is deemed never to have been protected in the event of retroactive revocation of the patent. The Court arrives at this conclusion on the basis that the royalty is the price to be paid for commercial exploitation of the patented technology with the guarantee that the licensor will not bring legal proceedings for infringement against the licensee. The fact that the agreement may be freely terminated by the licensee makes it possible to reject the contention that payment of the royalty undermines competition by restricting the licensee's freedom of action or by giving rise to market foreclosure effects.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The cytomegalovirus is one of the herpes viruses.

² This medicinal product is used in the treatment of cancer and rheumatoid arthritis.