

Order Entered

IN THE FEDERAL COURT OF AUSTRALIA NEW SOUTH WALES DISTRICT REGISTRY

No: (P)NSD1639/2007

Senate Community Affairs Legislation Committee
Additional Estimates 2011–2012
Health and Ageing Portfolio

GENRX PTY LTD ACN 096 916 148
Applicant/Cross-Respondent

Tabled document: 2

By: SENATOR HEFFERNAN

Date: 15 FEBRUARY 2012

SANOFI-AVENTIS
Respondent/Cross-Claimant

ORDER

JUDGE: Gyles J

DATE OF ORDER: 25 September 2007

WHERE MADE: Sydney

UPON the Respondent/Cross-Claimant undertaking to the Court to:

- (a) submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct, to any person whether or not a party, adversely affected by the operation of Order 1 set out below or any continuation (with or without variation); and
- (b) pay the compensation referred to in (a) to the person or persons there referred to.

THE COURT:

1. ORDERS that, pending the determination of the proceedings or further order, the Applicant/Cross-Respondent whether by itself, its directors, officers, servants, agents or otherwise, be restrained from infringing Australian Letters Patent No 597784 (the **Patent**) and, in particular, from engaging in the following acts within the patent area (as that term is defined in *Patents Act* 1990 (Cth)), without the license or authority of the Respondent/Cross-Claimant:
 - (a) making, selling or otherwise disposing of the products known as GenRx Clopidogrel, Apo-Clopidogrel, Chemmart Clopidogrel and Terry White Chemists Clopidogrel or any other pharmaceutical composition the active ingredient of which is clopidogrel

bisulfate, a compound claimed in claims 1, 3, 10 and 11 of the Patent (collectively, the **GenRx Clopidogrel Products**);

- (b) offering to make, sell or otherwise dispose of the GenRx Clopidogrel Products;
 - (c) using or importing the GenRx Clopidogrel Products;
 - (d) keeping the GenRx Clopidogrel Products for the purpose of doing any of the acts described in sub-paragraphs (a) to (c) above;
 - (e) authorising other people to engage in any of the acts described in sub-paragraphs (a) to (d) above.
2. NOTES that the Applicant/Cross-Respondent undertakes to the Court that, pending the determination of the proceedings or further order, it will not, whether by itself, its directors, officers, servants or agents or otherwise, take any steps to obtain listing of any of the GenRx Clopidogrel products under the pharmaceutical benefits scheme maintained by the Commonwealth under the *National Health Act 1953* (Cth).
 3. ORDERS the Respondent/Cross-Claimant to provide by 23 October 2007 to the Applicant/Cross-Respondent security in the sum of A\$40 million, either by way of a cash deposit into a joint account or by way of bank guarantee or irrevocable standby letter of credit or any combination of these, pending the determination of the amount of compensation, if any, that the Court may consider should be paid to the Applicant/Cross-Respondent should it be found to have been adversely affected by Order 1.
 4. RESERVES LIBERTY to the Applicant/Cross-Respondent to apply to increase the amount of security.
 5. DIRECTS the Applicant/Cross-Respondent to file and serve its defence to cross-claim by 2 October 2007.
 6. DIRECTS the parties to give general discovery of documents by filing and serving lists of documents and providing inspection of discovered documents by 2 November 2007.
 7. DIRECTS the Applicant/Cross-Respondent to file and serve by 7 December 2007 the affidavits on which it wishes to rely in chief.
 8. DIRECTS the Respondent/Cross-Claimant to file and serve by 29 February 2008 the affidavits on which it wishes to rely in answer.
 9. DIRECTS the Applicant/Cross-Respondent to file and serve by 28 March 2008 the affidavits

on which it wishes to rely in reply.

10. DIRECTS the proceeding be listed for further directions on 14 December 2007.
11. DIRECTS the proceeding be listed for pre-trial directions on a date to be fixed not before 1 March 2008.
12. DIRECTS the proceeding be fixed for final hearing for a period of two to three weeks commencing on 28 April 2008.
13. RESERVES LIBERTY to apply on two days' notice.
14. COSTS reserved.

Date that entry is stamped:

Deputy District Registrar