

United States Court of Appeals for the Federal Circuit

04-1189, -1347, -1357

PURDUE PHARMA L.P.,
THE PURDUE FREDERICK COMPANY,
THE P.F. LABORATORIES, INC., and THE PURDUE PHARMA COMPANY,

Plaintiffs/Counterclaim Defendants-
Appellants,

and

EUROCELTIQUE S.A.,

Counterclaim Defendant,

v.

ENDO PHARMACEUTICALS INC.,

Defendant/Counterclaimant-
Cross Appellant,

and

ENDO PHARMACEUTICALS HOLDINGS INC.,

Defendant-Cross Appellant.

Herbert F. Schwartz, Fish & Neave LLP [now known as Fish & Neave IP group of Ropes & Gray LLP], of New York, New York, filed a combined petition for panel rehearing and rehearing en banc for plaintiffs/counterclaim defendants-appellants. Of counsel were Edward C. DuMont, Jonathan G. Cedarbaum, and Seth P. Waxman, Wilmer Cutler Pickering Hale and Dorr LLP, of Washington, DC; Pablo D. Hendler, Duane-David Hough, Gerald J. Flattmann, Jr., Richard A. Inz, and Denise L. Loring, Ropes & Gray LLP, of New York, New York. Of counsel was Robert J. Goldman, of Palo Alto, California.

Edward V. Filardi, Skadden, Arps, Slate, Meagher & Flom LLP, of New York, New York, filed a response to the petition for defendant-cross appellant defendant/counterclaimant-cross appellant and defendant-cross appellant. With him on the response were Constance S. Huttner, and Douglas R. Nemecek. Of counsel were David L. Cohen, and Mark D. Baker. Of counsel on the response were Nicholas L. Coch and Donald L. Rhoads, Kramer Levin Naftalis & Frankel LLP, of New York, New York.

Michael A. O'Shea, Akin Gump Strauss Hauer & Feld, LLP, of Washington, DC, for amicus curiae International Intellectual Property Institute. With him on the brief was Shari F. Esfahani.

W. Murray Spruill, Alston & Bird LLP, of Raleigh, North Carolina, for amicus curiae Biotechnology Industry Organization.

Richard A. Samp, Washington Legal Foundation, of Washington, DC, for amicus curiae Washington Legal Foundation.

Richard L. Rainey, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., of Washington, DC, for amicus curiae Pharmaceutical Research and Manufacturers of America. With him on the brief was Darrel C. Karl.

John F. Duffy, George Washington University Law School, of Washington, DC, for amici curiae Law Professor John F. Duffy, et al.

Eric J. Lobenfeld, Hogan & Hartson L.L.P., of New York, New York, for amicus curiae Congressman Darrell Issa.

Milton M. Oliver, Ware, Fressola, Van der Sluys & Adolphson LLP, of Monroe, Connecticut, for amicus curiae Richard L. Edelson, M.D.

Appealed from: United States District Court for the Southern District of New York

Judge Sidney H. Stein

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ENDO PHARMACEUTICALS INC.,

Defendant/Counterclaimant-
Cross Appellant,

and

ENDO PHARMACEUTICALS HOLDINGS INC.,

Defendant-Cross Appellant.

Before GAJARSA, Circuit Judge, PLAGER, Senior Circuit Judge, and LINN, Circuit Judge.

ORDER

A combined petition for panel rehearing and rehearing en banc was filed by Purdue Pharma L.P., The Purdue Frederick Company, The P.F. Laboratories, Inc., and The Purdue Pharma Company (collectively, “Purdue”), and a response thereto was invited by the court and filed by Endo Pharmaceuticals Inc. and Endo Pharmaceuticals Holdings Inc. (collectively, “Endo”). Amicus curiae briefs in support of Purdue’s petition

were filed by the Biotechnology Industry Organization; Richard L. Edelson, M.D.; the International Intellectual Property Institute; Congressman Darrell Issa; Law Professors John F. Duffy, et al.; the Pharmaceutical Research and Manufacturers of America; and the Washington Legal Foundation. Thereafter, these filings were referred to the merits panel that heard the appeal.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The petition for panel rehearing is granted.
- (2) The previous opinion of the court in this appeal, issued on June 7, 2005, and reported at 410 F.3d 690, is withdrawn. The new opinion accompanies this order.
- (3) The petition for rehearing en banc is moot.

FOR THE COURT

FEB-1 2006

Date

s/Jan Horbaly

Jan Horbaly
Clerk