



Delhi High Court restrains Natco from dealing with anti-cancer drug Olaparib

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Delivering an injunction in favour of AstraZeneca, the Delhi High Court has restrained Natco from manufacturing and selling, or in any manner, dealing with anti-cancer drug Olaparib, either under the brand name BRACANAT or under other brand name, during the pendency of the suit and the continuity of the suit patent.

AstraZeneca was represented by team Anand and Anand comprising [Pravin Anand](#), [Vaishali Mittal](#), [Siddhant Chamola](#), Pallavi Bhatnagar and Shivang Sharma.

Here are the key points from the judgement delivered by Justice C Hari Shankar -

1. The decision of Division Bench in *Astrazeneca v. Intas* was focused on situation where genus and species patent were **both simultaneously asserted** and the same is not applicable to the present facts, since only species patent is being enforced. (Para's 26-30, 34-40)
2. Natco has incorrectly construed that coverage and disclosure are same. (Para 45)
3. A comparison between the Markush structure of IN 245218 (Genus patent) and claim 1 of the species patent does not indicate Olaparib was disclosed in the genus patent. Even, Natco fails to provide a reasoning "why", a person skilled in the art would make "a particular selection" i.e., amino radical out of choice of carbonyl groups; or carbylamino and its alkylcarbylamino derivative out of a choice of alkylamino, dialkylamino, arylamino, diarylamino, ureido, alkylureido or arylureido; carbonylamino groups and derivatives thereof. Thus the selection by Natco is an exercise of hindsight reconstruction, with benefit of prior knowledge of the species patent. Hence, obviousness challenge to the species patent is not made out. (Para 48)
4. The fact that Natco themselves failed to synthesize Olaparib for 19 years after genus patent and other prior arts were disclosed evidences species patent was not prone to obviousness. (Para 49)
5. Kudos correctly points out that ground of anticipation by prior claiming is only applicable if "claims" of species patent were claimed in the genus patent. No comparison can be drawn on the basis of construction of the genus claim on its scope of coverage in respect of a product. (Para 48-53)
6. Natco's reliance on Form 27 and Patent Term Extension in foreign jurisdictions are not relevant factors to delve while granting interim injunctions. (Para 54-55)
7. Natco also failed to make a credible challenge for anticipation by prior publication. Natco failed to provide any reasons about teachings in the prior arts that would lead a person skilled in the art to envision relevant selections for Olaparib. (Para 63-65)



8. Olaparib was not a “new form” of a “known substance”. Thus, Section 3(d) is not applicable. (Para 66-68)
9. The omission on the part of Kudos to disclose about JP 2006-505955 and JP 2007-2266723 facing rejection was not a factor to be considered at interim stage. The same may be examined during trial. (Para 68-70)
10. Natco failed to discharge its onus for raising a credible challenge to the validity of IN228720 (Species patent). (Para 23 and 71)
11. Natco is restrained from dealing with Olaparib under brand name BRACANAT or any other brand name. (Para 72)

[THE ORDER CAN BE ACCESSED HERE:](#)



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