

Glenmark Pharma wins patent war with Abbott

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Chennai, Jan 6: In a jolt to US pharma major Abbott Biotechnology, the patent office has set aside its earlier order that granted a patent to the company's Humira drug, touted to be its blockbuster medicine for treating severe forms of arthritis, on a review petition by Glenmark Pharmaceutical.

The patent office was directed by Delhi High Court to review its own decision of granting the patent to Abbott while disposing of an appeal by Glenmark, which alleged that its pre-grant opposition was not considered by the controller while granting the patent.

"After having considered all the circumstances, representation by way of opposition treated as review petition as directed Delhi HC, reply of the applicant, expert evidence, written submissions and arguments made by both parties, I conclude that the

impugned invention as disclosed in the specification and claims is obvious to person skilled in the art and hence lacking in inventive step. I am also of the opinion that the description of the invention is also insufficient and ambiguous, as described in the specification," ruled KS Kardam, senior joint controller of patents & designs.

Abbott was granted a patent to Humira drug on June 8, 2009. In the meantime, Glenmark had filed a pre-grant opposition on September 4, 2008, which was not brought to the notice of

the controller responsible for grant of patents as the documents relating to the said opposition were neither scanned nor uploaded electronically.

When Abbott brought to the notice of the controller on July 7, 2009, that a patent has been granted without considering the pre-grant opposition filed by them, the then controller treated the patent letter as cancelled on October 30, 2009.

Glenmark filed a writ petition on September 22, 2009, before the Delhi HC against the order of the controller that

Patent battle

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order of the controller of October 30, 2009, was also set aside.

In the review petition, Glenmark argued that the claims of the impugned application do not constitute an invention under section 2(1)(g) of the Indian Patents Act as they are neither novel nor inventive and lacks industrial application.

Glenmark had also brought up Abbott's earlier Indian patent application to the office's notice to prove the ground of prior claiming. It stated that Abbott had filed an application for patent on November 27, 2003 and the claims of this application are identical in nature and scope. They alleged that Abbott was seeking two patents for the same invention.

Submitting some amended claims, Abbott denied the allegations of Glenmark and stated that while the individual components of the formulations were known in the art, the claimed formulations are pioneering.

