



Neutral Citation Number: [2024] EWHC 3347 (Pat)

Case No: HP-2021-000031

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INTELLECTUAL PROPERTY LIST (ChD)**  
**PATENTS COURT**

The Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: Thursday, 7<sup>th</sup> November 2024

Before:

**MR. JUSTICE MELLOR**

-----

Between:

(1) SANDOZ AG  
(a company existing under the laws of Switzerland)  
(2) SANDOZ LIMITED  
(3) SANDOZ GMBH  
(a company existing under the laws of Austria)  
(4) POLPHARMA BIOLOGICS SA  
(a company existing under the laws of Poland)  
- and -

**Claimants**

BIOGEN MA INC  
(a company existing under the laws of the  
United States of America)

**Defendant**

-----  
-----

**MS. KATHRYN PICKARD and MR. THOMAS LUNT** (instructed by **Bristows LLP**) for  
the **Claimants**

**DR. JUSTIN TURNER KC and MR. TOM ALKIN** (instructed by **Powell Gilbert LLP**) for  
the **Defendant**

-----

**Approved Judgment**

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties  
or their representatives by e-mail and by release to the National Archives.

.....

THE HON MR JUSTICE MELLOR  
**Re Permission to Appeal**

Transcript of the Stenograph Notes of Marten Walsh Cherer Ltd.,  
2<sup>nd</sup> Floor, Quality House, 6-9 Quality Court,  
Chancery Lane, London WC2A 1HP.  
Telephone No: 020 7067 2900. DX 410 LDE  
Email: [info@martenwalshcherer.com](mailto:info@martenwalshcherer.com)  
Web: [www.martenwalshcherer.com](http://www.martenwalshcherer.com)

**MR. JUSTICE MELLOR:**

1. I now have to consider Biogen's application for permission to appeal. It will be apparent from my judgment that this is a complicated case. I considered a number of constructions, which I set out in [279] of the judgment.
2. Dr. Turner now says that Construction 3 has always been Biogen's preferred construction and, in argument today, he accepted that, in that Construction, the 1.5 index value in the claim does not mean anything.
3. He accuses my judgment of being internally inconsistent as to the consequences of the significance of the index value of 1.5. I think his point was that, although I criticised and rejected Construction 3 at least for the reason that the index value of 1.5 was just an arbitrary number, the criticism applied equally to Construction 5, which was the construction I held to be the correct one.
4. Although Dr. Turner says there is an internal inconsistency in the judgment because of that, I do not believe there is. There were other reasons why I rejected Construction 3. Furthermore, the reason for adopting Construction 5 was because it was the best construction I thought that met the circumstances of the case. It did not mean that it was without its problems.
5. Overall, when I was considering Biogen's grounds of appeal as explained in their skeleton and as explained in oral argument today, what I was looking for was a route by which Biogen could achieve a finding of validity. I regret to say, having considered all the arguments carefully, I do not see that Biogen does have such a route and, therefore, on grounds 1 and 2, I do not think there is a realistic prospect of success.
6. If I had considered that there was a realistic prospect of success on the combination of grounds 1 and 2, I would have given permission to pursue grounds 3, 4 and 5. In the light of my conclusion, I must refuse permission to appeal.

*(For continuation of proceedings: please see separate transcript)*