Merck Wins Record-Breaking $2.5B Patent Lawsuit Against Gilead

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Gilead Sciences has been ordered by a federal jury to pay $2.54 billion to rival hepatitis C virus (HCV) drugmaker Merck & Co. over claims that Gilead used a patented biotech invention as the basis for its next-generation treatments for viral liver disease. The decision is the biggest patent infringement verdict in U.S. history, Bloomberg reports.

The jury in Wilmington, Delaware, deliberated the case for less than two hours and rejected Gilead's arguments that Merck's 2009 patent over a preliminary hepatitis C treatment compound is invalid. The federal judge in the case had already ruled that Gilead's Sovaldi (sofosbuvir) and Harvoni (ledipasvir, sofosbuvir) medications—which used a compound originally invented in Merck's Idenix lab as their basis—infringed on Merck's patent.

Gilead got the compounds for sofosbuvir as part of its acquisition of Pharmasett Inc. in 2012, launching a race between Gilead and Merck's Idenix over which would be first to invent next-generation HCV cures. Merck purchased Idenix in 2014 and absorbed this patent infringement case as part of the buyout.

This is the second trial between the two pharmaceutical companies over hepatitis C treatment. The first one, over a different set of patents, originally stated that Gilead should pay $200 million in royalties to Merck. However, that case was ultimately thrown out because the judge said a key Merck witness had lied during the trial.

In this latest case, Gilead's infringement was not only found to be valid but also willful, meaning that the judge could increase the damage award by as much as three times the amount set by the jury. The current $2.54 billion price covers the jury's belief that Gilead owes Merck 10 percent in royalties on the $25.4 billion it has made in total sales from the two drugs since 2013.

Gilead has already pledged to appeal the case, claiming that Idenix never adequately described what it claimed to have invented and that the 2009 patent Merck was defending did not cover a new idea. Gilead also added that the verdict would not affect its ability to sell hepatitis C treatment.

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