

United States Court of Appeals for the Federal Circuit

02-1052, -1065

INTEGRA LIFESCIENCES I, LTD. and THE BURNHAM INSTITUTE,

Plaintiffs-Cross Appellants,

and

TELIOS PHARMACEUTICALS, INC.,

Plaintiff-Appellee,

v.

MERCK KGaA,

Defendant-Appellant,

and

THE SCRIPPS RESEARCH INSTITUTE and DR. DAVID A. CHERESH,

Defendants.

Donald R. Dunner, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., of Washington, DC, argued for defendant-appellant Merck KGaA. With him on the brief were Thomas H. Jenkins, David A. Manspeizer, and Rachel H. Townsend. Of counsel on the brief were M. Patricia Thayer, Heller Ehrman White & McAuliffe, LLP, of San Francisco, California; and William C. Rooklidge, Howrey Simon Arnold & White, LLP, of Irvine, California. Of counsel was Esther H. Lim, Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P., of Washington, DC.

Mauricio A. Flores, Campbell & Flores LLP, of San Diego, California, argued for plaintiffs-cross appellants Integra LifeSciences I, Ltd. and The Burnham Institute. With him on the brief was David M. Beckwith. Of counsel on the brief were Raphael V. Lupo, Mark G. Davis, and Natalia V. Blinkova, McDermott, Will & Emery, of Washington, DC. Of counsel was Donna M. Tanquay.

Appealed from: United States District Court for the Southern District of California

Senior Judge James M. Fitzgerald, District of Alaska

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Defendants.

Before NEWMAN, RADER, and PROST, Circuit Judges.

ORDER

The court has received a certified copy of the judgment from the Clerk of the Supreme Court of the United States in Merck KGaA v. Integra Lifesciences I, Ltd., No. 03-1237. The Supreme Court vacated this court's judgment, which was reported at 331 F.3d 860 (Fed. Cir. 2003), and remanded for proceedings consistent with the Court's opinion.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The mandate is hereby recalled and the appeal is reinstated.
- (2) The case is returned to the original merits panel.
- (3) New briefs shall be filed, with particular attention paid to the Supreme Court decision.
- (4) The appellants' principal brief shall be due within 60 days of the date of filing of this order. The dates for filing the remaining briefs shall be in accordance with Fed. Cir. R. 31(a). An original and 22 copies of all briefs shall be filed, and two copies shall be served on opposing counsel. The court sua sponte allows amicus briefs.

FOR THE COURT

Aug 17 2005
Date

s/Jan Horbaly
Jan Horbaly
Clerk

cc: Donald R. Dunner, Esq.
Mauricio A. Flores, Esq.