THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The Regents of the University of California & Others v Eurolab (Pty) Ltd & Others
(294/2025) [2025] ZASCA 30 (17 March 2026)

Today the Supreme Court of Appeal (SCA) upheld an appeal against the decision of the Court of the Commissioner of Patents (the Commissioner), which had revoked patent 2007/10870 relating to a treatment for prostate cancer. The patent was revoked on the basis that the first appellant, the Regents of the University of California (UC), was not considered a person entitled to apply for the patent as contemplated in s 61(1)*(a)*, read with s 27(1), of the Patents Act 57 of 1978 (The Act). The appeal proceeded with leave granted by the Commissioner.

UC is the registered proprietor of the patent. The second to fourth appellants, Astellas Pharma Europe Ltd, Astellas Pharma Inc and Astellas Pharma (Pty) Ltd (Astellas), are licensees of the patent. The first respondent, Eurolab (Pty) Ltd (Eurolab), is a generic oncology company and holds a generic registration with the South African Health Products Regulatory Authority for a product named Enzutrix. The product has been introduced in South Africa and is distributed by the second, third and fourth respondents (Dis-Chem): Dis-Chem Oncology (Pty) Ltd, Dis-Chem Oncology Distribution (Pty) Ltd and Dis-Chem Pharmacies (Pty) Ltd.

On 29 March 2006 UC filed the patent application in issue. The patent concerns a hormone-based therapy used in the treatment of prostate cancer. The active pharmaceutical ingredient is enzalutamide, marketed under the brand name Xtandi. The invention resulted from a collaborative effort between UC and the Howard Hughes

Medical Institute (HHMI). The team of inventors comprised eight individuals: five were employed by UC and three were employed by HHMI. The patent is due to expire on 29 March 2026.

Three related applications served before the Commissioner: Eurolab's application for an interdict to prevent UC from making groundless threats of patent infringement litigation; UC's application for an interim interdict restraining Eurolab and Dis-Chem from making, importing or selling Enzutrix; and a counterapplication brought by Dis-Chem for the revocation of the patent under s 61 of the Act. The Commissioner held that an applicant for a patent must acquire the right to apply for the patent from the inventors before filing the patent application. The Commissioner further found that UC had not secured assignments from all inventors before the filing of the patent application and therefore did not satisfy the entitlement requirement at the relevant time. The Commissioner accordingly dismissed UC's application for interim relief and granted the applications brought by Eurolab and Dis-Chem.

On appeal, the respondents conceded that Enzutrix would infringe the patent. They nevertheless opposed UC's application for an interim interdict on the basis that the patent was invalid under s 61(1)*(a)* and *(g)* of the Act due to UC's alleged lack of entitlement and material misrepresentations in the patent application, and further contended that the invention lacked an inventive step. The SCA held that entitlement to apply for a patent is a foundational requirement that must exist at the time when the patent application is filed. It found that UC had properly acquired the right to apply for the patent from both the UC inventors and the HHMI inventors in terms of the collaboration agreement governing their research relationship. UC was therefore a person entitled to apply for the patent as contemplated in s 27 of the Act.

The Court further held that the respondents had failed to establish that UC made any material misrepresentation in the Form P3 declaration and accordingly failed to demonstrate a basis for revocation under s 61(1)*(g)* of the Act. In relation to inventive step, the SCA considered whether the invention would have been obvious to a person skilled in the art in light of the prior art. It was common cause that the difference between the prior compound RD162 and the patented compound RD162' (enzalutamide) lay in the substituent at position C5 of the central thiohydantoin ring: RD162 contains a cyclobutyl substituent, whereas RD162' contains a dimethyl substituent.

The SCA concluded that it would not have been obvious in 2006 for the skilled person to modify RD162 by replacing the cyclobutyl substituent with a dimethyl substituent with any expectation that the resulting compound would remain effective in the treatment of hormone-resistant prostate cancer. The Court held that only with the

benefit of hindsight would the skilled person have focused on that particular modification. The invention therefore involved an inventive step.

Having found that the patent was valid, the Court considered whether UC had satisfied the requirements for interim relief. The SCA held that UC had demonstrated a clear right and strong prospects of success in the main infringement proceedings. The Court, however, recognised that an interdict could have immediate and serious impact on cancer patients using Enzutrix, while the consequences for UC will be primarily financial. The Court therefore exercised its residual discretion against the granting of interim relief.

The SCA accordingly upheld the appeal with costs, including the costs of two counsel. The order of the Court of the Commissioner of Patents was set aside and replaced with an order dismissing Eurolab's application under s 70 of the Act and Dis-Chem's counterapplication for revocation of the patent with costs, including the qualifying fees of the appellants' expert witnesses. In respect of the application for interim relief, the parties were ordered to bear their own costs.

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