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DECISION • PATENT LAW

European Union

"Eli Lilly and Company"

Regulation (EC) No 469/2009 Concerning the Supplementary Protection Certificate for Medicinal Products, Art. 3(a) – *Eli Lilly and Company Ltd v. Human Genome Sciences Inc.*

Decision of the European Court of Justice (Third Chamber)
12 December 2013 – Case No. C-493/12

1. **Article 3(a) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as meaning that, in order for an active ingredient to be regarded as 'protected by a basic patent in force' within the meaning of that provision, it is not necessary for the active ingredient to be identified in the claims of the patent by a structural formula. Where the active ingredient is covered by a functional formula in the claims of a patent issued by the European Patents Office, Article 3(a) of that regulation does not, in principle, preclude the grant of a supplementary protection certificate for that active ingredient, on condition that it is possible to reach the conclusion on the basis of those claims, interpreted inter alia in the light of the description of the invention, as required by Article 69 of the Convention on the Grant of European Patents and the Protocol on the interpretation of that provision, that the claims relate, implicitly but necessarily and specifically, to the active ingredient in question, which is a matter to be determined by the referring court.**

Official headnotes.

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