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Possible Patent Typo Debated As Juno, Kite IP Trial Kicks Off

By **Craig Clough**

Law360, Los Angeles (December 3, 2019, 11:23 PM EST) -- Lawyers for Juno Therapeutics and Kite Pharma delivered opening statements Tuesday in Juno's infringement suit over its groundbreaking cancer immunotherapy — a potentially multibillion-dollar fight that may turn on whether a California federal jury believes Juno's patent contained a simple typo or not.

Morgan Chu of Irell & Manella LLP, who is representing Juno Therapeutics Inc., Memorial Sloan Kettering Cancer Center and Sloan Kettering Institute for Cancer Research, told the jury during openings that Kite Pharma Inc. willfully infringed his clients' patent in order to beat Juno to the market.

But Kite's attorney Ted Dane of Munger Tolles & Olson LLP told the jury Kite is simply being sued by a jealous competitor.

The entire dispute may hinge on whether the inclusion of the number "213" instead of "214" in Juno's patent was a typo.

"Patent infringement is not like horseshoes and hand grenades," Dane said, arguing that the numerical inconsistency in the patent was "not a typo or clerical error" but an effort by Juno to wrongly expand the scope of the patent years after it was issued.

U.S. Patent No. 7,446,190 was issued in 2008 and claims a chimeric T cell receptor designed to redirect T cells to attack cancer cells before multiplying within the body of a patient, according to Juno's amended complaint.

Michel Sadelain, Renier Brentjens and John Maher are the inventors of the '190 patent, and in 2013 Juno entered into an exclusive licensing agreement with Sloan Kettering to develop the treatment, according to the complaint.

Therapies based off the '190 patent showed promise in clinical trials, Chu told the jury, calling it the "first living drug" to attack cancer.

However, the patent contained a clerical error, Chu said, referring to an amino acid number 214 but incorrectly listed as 213. Juno and the plaintiffs filed a certificate of correction with the U.S. Patent and Trademark Office, which was granted in 2013, he said.

After approaching Juno to license its '190 patent but failing to reach an agreement, Chu said Kite went ahead with its own trials in 2015 and got U.S. Food and Drug Administration approval in 2017 to market and sell Yescarta for the treatment of lymphoma. Juno and the other plaintiffs filed their lawsuit shortly thereafter, arguing Yescarta was based off the

'190 patent.

Chu did not say what level of damages the plaintiffs would be asking for, but noted that Gilead Sciences purchased Kite in 2017, and a filing it made with the U.S. Securities and Exchange Commission estimated the value of Yescarta at \$6.2 billion.

Dane told the jury that scientists who were part of developing Yescarta were working on it years before the '190 patent was issued, and that the plaintiffs didn't correct the patent until 4½ years after it was issued.

He said that Juno makes it sound like the correction "was no big deal. It was a huge deal."

Dane said the correction fundamentally changed the patent and widened its scope in an effort to "monopolize future innovation."

Dane also drove home several times that the plaintiffs have never received FDA approval for any drug based off the '190 patent, but that Kite — working in the same arena but outside the boundaries of the patent — has been able to save lives.

Around 2,000 patients resistant to chemotherapy and given just months to live have been treated by Yescarta, and about 51% have gone into remission, he said, adding that before Yescarta the expected remission rate was just 6%.

"We shouldn't be here," Dane told the jury. "Yescarta doesn't owe anything to the '190 patent."

The patent-in-suit is U.S. Patent No. 7,446,190.

Juno and the other plaintiffs are represented by Morgan Chu and Alan J. Heinrich of Irell & Manella LLP, and Sarah A. Geers and Andrea Weiss Jeffries of Jones Day.

Kite is represented by Ted Dane, Blanca Fromm Young and Jeffery I. Weinburger of Munger Tolles & Olson LLP.

The case is Juno Therapeutics Inc. et al. v. Kite Pharma Inc., case number 2:17-cv-07639, in the U.S. District Court for the Central District of California.

--Editing by Breda Lund.