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via e-mail: john.alty@ipo.gov.uk

Dear John

Indian decision to grant a compulsory licence because the patented product was not manufactured in India

As you know, the IP Federation represents the views of a wide range of industries operating in the UK, Europe and internationally in intellectual property (IP) matters, both policy and practice, including patents. Its members are listed at the end of this letter.

The Federation is very concerned about the recent decision^{*} in India to grant a compulsory licence on the ground that the patented product was not manufactured by the patentee or its licensee in India. To grant a compulsory licence on that ground is a clear violation of Article 27.1 TRIPs which provides that:

patent rights [shall be] enjoyable without discrimination as to ... whether products are imported and locally produced.

That provision is central to the protection of patents provided by TRIPs.

There are some indications (we would not put it more strongly at this stage) that the decision is not just a single decision of the Indian Patent Office acting independently but reflects broader political and industrial policy objectives of the Indian government. For example, we have heard that the Indian Ambassador to Brazil has approached leading officials within the Brazilian Congress in order to press the Brazilian Government to issue a compulsory licence on Nexavar.

The decision is, of course, of significance and concern not just to the pharmaceutical sector but to all industries. It represents a protectionist industrial policy and, if adopted more widely in India and other countries, would mean that TRIPs provides nothing more than a right to a reasonable royalty in countries where there is no manufacture of a patented product.

Promotion of growth and trade in international markets is an objective of Government policy. It is therefore important that the Government makes its views on this development clear in appropriate fora.

^{*} Indian Patent Office, on Bayer's cancer drug Nexavar[®], 13 March 2012

We understand that Germany has raised this issue in the Trade Policy Committee and we urge the UK to express its support for the German position explicitly. We would also ask that the UK considers how best the issue can be raised in the context of the EU/India FTA negotiations.

We also believe that the issue should be raised bilaterally with the Indian Government. The newly appointed IP attaché in India could, of course, be one way of doing this.

We would appreciate your letting us know your views on this issue and what steps the Government proposes to take.

Yours sincerely

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IP Federation members 2012

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. Its Council also includes representatives of the CBI, and its meetings are attended by IP specialists from three leading law firms. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

AGCO Ltd
ARM Ltd
AstraZeneca plc
Babcock International Ltd
BAE Systems plc
BP p.l.c.
British Telecommunications plc
British-American Tobacco Co Ltd
BTG plc
Caterpillar U.K. Ltd
Delphi Corp.
Dyson Technology Ltd
Eli Lilly & Co Ltd
ExxonMobil Chemical Europe Inc
Ford of Europe
Fujitsu Services Ltd
GE Healthcare
GKN plc
GlaxoSmithKline plc
Hewlett-Packard Ltd
IBM UK Ltd
Infineum UK Ltd
Merck Sharp & Dohme Ltd
Microsoft Limited
Nokia UK Ltd
Nucletron Ltd
Pfizer Ltd
Philips Electronics UK Ltd
Pilkington Group Ltd
Procter & Gamble Ltd
Rolls-Royce plc
Shell International Ltd
Smith & Nephew
Syngenta Ltd
The Linde Group
UCB Pharma plc
Unilever plc
Vectura Limited

The IP Federation is the operating name of the Trade Marks, Patents and Designs Federation
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