

Pharmaceutical Sector Inquiry – Preliminary Report

Fact Sheet "Originator-Originator competition"

R&D and marketing in the pharmaceutical sector

Originator companies invest in R&D and compete with each other to create and market new, innovative medicines. Innovation has enabled patients to benefit from treatments that were unimaginable a few decades ago. Intellectual property rights are a key element in the promotion of innovation.

Competition between originator companies stimulates innovation and increases consumer choice. The sector inquiry found that, during the period 2000-2007, originator companies spent on average 17% of their turnover from prescription medicines on R&D worldwide. In the same period, originator companies spent on average 23% of their turnover on marketing and promotional activities.

Patents are vital for this system to work properly as they allow originator companies to recoup their considerable R&D investments and be rewarded for innovation.

Defensive patent strategies

Originator companies continuously identify the most promising patent strategies in order to protect their assets. This is very important for their innovative efforts. In certain cases, however, companies apply patent strategies which may interfere with the development of a competing medicine. When such strategies mainly focus on excluding competitors without pursuing innovative efforts, they are called by some originator companies "defensive patent strategies".

The following quotes by originator companies illustrate the use of such defensive patent strategies:

*"We identify options to obtain or acquire patents for the **sole** purpose of limiting the freedom of operation of our competitors [...] (emphasis added).
[...] Rights covering competitive alternatives are maintained in major markets until risk of competing products appearing is minimal."*

"Defensive patents ("Limited list" Patents) serve to protect compounds closely related to [our company's] candidates or products. They do not cover [our company's] candidates or products. They protect compounds that would be of interest to a direct competitor."

Patent-related exchanges

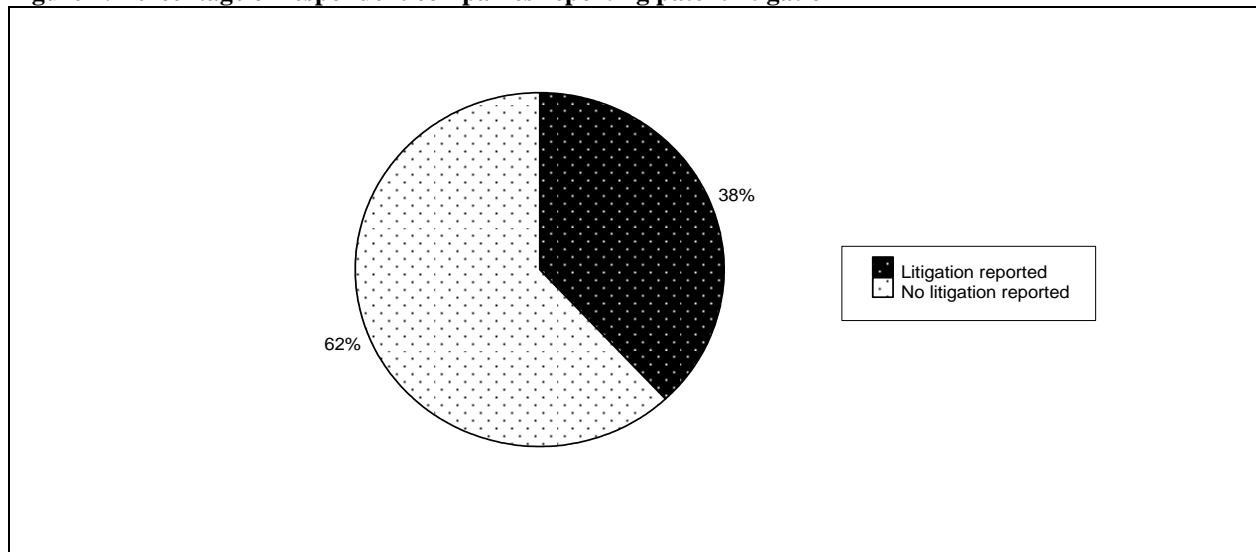
The overall potential for disputes between originator companies is highlighted by the number of 1100 instances reported, where an overlap between R&D poles and patents of competing originator companies existed. In these cases originator companies might find their research activities blocked, with detrimental effects on the innovation process.

In many cases originator companies tried to settle potential disputes, for instance through licensing. Originator companies reported 99 cases where a request for licence was made. However, in nearly 20% of the cases where a licence was requested, the requesting companies did not obtain a licence. Reportedly in several cases this led to the discontinuation of the R&D project or required additional efforts to go around the obstacles.

Patent litigation and settlement agreements

During the period 2000 to 2007, almost 40% of respondent originator companies engaged in patent litigation with another originator company (see Figure 1 below). Originator companies engaged in 66 cases of patent litigation with each other, concerning 18 different medicines¹. In 64% of the cases reported, litigation ended with a settlement agreement. The majority of these settlements contained a licence agreement. On the limited sample under investigation, the patent holders lost the majority (77%) of cases where final judgments were given.

Figure 1: Percentage of respondent companies reporting patent litigation



Source: Pharmaceutical Sector Inquiry

For further information on the Pharmaceutical Sector Inquiry, please consult:
<http://ec.europa.eu/comm/competition/sectors/pharmaceuticals/inquiry/index.html>

¹ Due to the specific characteristics of the sample chosen for the sector inquiry, this figure is likely to understate the actual prevalence of litigation.