

# Bayer to defend IP rights on kidney cancer drug Nexavar

German drug-maker to move apex court on compulsory licence decision

PT JYOTHI DATTA

Mumbai, July 15

For the third time on the trolley, the decision to allow drug-maker Natco to make its less expensive version of Bayer's advanced kidney cancer Nexavar has prevailed.

But the fight over the country's first-ever compulsory licence (CL) on a drug – issued to Natco in 2012—is far from over.

Responding to the Bombay High Court decision to uphold the CL on Nexavar (sorafenib tosylate), German drug-maker Bayer said the decision will be appealed at a higher court (the Supreme Court).

"We are disappointed by the decision of the High Court. We will continue to defend our intellectual property rights and appeal this decision," a Bayer

spokesperson said. In the interest of public health, a compulsory licence allows a third party to make an innovative drug, on the payment of royalty to the innovator.

## IP heartburn

In 2012, India's Patent Controller PH Kurian took the giant step of issuing the country's first CL to Natco allowing it to make a less expensive version of the drug, on the payment of a 6 per cent royalty to Bayer.

The decision meant that patients would get a generically similar version of the innovator's drug, but at a price that was 97 per cent less.

At the time this case was being argued at the Patent Office, Bayer's Nexavar was priced at ₹2.8 lakh for a month's supply

of 120 tablets, while Natco was to sell its version of the medicine at ₹8,800.

The decision was contested at the Intellectual Property Appellate Board and the IPAB too, upheld the CL decision in 2013, merely revising the payable royalty to 7 per cent.

## High-profile debates

The matter then landed up at the Bombay HC doorstep.

The CL on Nexavar has been at the heart of several high-profile debates on intellectual property, where India has been criticised for its implementation of the amended Patents Act and its track-record of protecting innovative research.

Sharing this contentious platform is the other watershed decision from the Supreme Court last March, where Novartis' application for a patent on blood cancer drug was dismissed.

Patent