

At A Glance

IP and Related Matters in Health Care and Life Sciences

Overview

NERA has extensive experience providing economic analysis and testimony in legal disputes and regulatory proceedings involving hospitals, health insurers, physicians, pharmaceuticals, and medical device companies. Our work has given us unique insights into the complex patchwork of legal and regulatory regimes that apply to businesses operating in markets across the EU and around the world. We leverage our knowledge of the healthcare and pharmaceutical industries to prepare and present accurate and defensible analyses in disputes in a broad range of cases, particularly those involving intellectual property and competition disputes. Our work is used in a variety of contexts:

- Lost profits and reasonable royalties in patent infringement litigation
- Damages related to misappropriation of trade secrets
- Analysis of antitrust counterclaims in patent cases
- Antitrust analysis of reverse payment settlements
- Competitive analysis of proposed acquisitions and joint ventures
- Damages calculations in contract disputes
- Proceedings before competition regulators
- Pharmaceutical pricing and reimbursement matters

Client Experience

Pharmaceutical market review:

NERA expert Edward Bramley-Harker supported a multinational pharmaceutical company during a review of competition in the UK pharmaceutical market, led by the UK competition regulator. The case focused on whether the way pharmaceutical prices in the UK are regulated delivers value for the NHS and for patients. The review recommended moving towards value-based pricing approaches for pharmaceuticals, which set the tone for many of the trends in the sector around greater use of health economics, innovative contracting mechanisms, and risk-sharing.

Reasonable Royalties in Patent Case:

In April 2013, NERA expert Dr. Christine Meyer presented testimony regarding reasonable royalties to Judge Judith Snider of the Federal Court of Canada in the action *Merck & Co, Inc. et al. v. Apotex Inc. et al.* The case involved a complex fact pattern where Apotex was found to have sold in Canada, prior to the expiration of a Merck patent that covered lovastatin pharmaceutical products, both infringing and non-infringing generic lovastatin products. The Court awarded Merck lost profit damages for a portion of these infringing sales. Further, the Court concluded that, if lost profit damages were found on appeal to not be permissible, the reasonable royalty for



these infringing sales should be “calculated on a one-time basis on the eve of first infringement and in accordance with the framework described by Dr. Meyer.” Apotex was also found to have made sales of infringing lovastatin products after the expiration of Merck’s patent and to have exported infringing products. To compensate Merck for this infringement, the Court adopted Dr. Meyer’s methodology to determine a reasonable royalty on these sales.

Reimbursement of Generic Medicines:

This study, led by NERA expert Edward Bramley-Harker for the British Generic Manufacturers Association, examined the market for generic medicines and assessed financial flows in the distribution and reimbursement chains. NERA’s work coincided with a UK government review of the mechanism it uses for the public reimbursement of generic medicines. The study concluded that there were inefficiencies in the current reimbursement model, with significant public monies retained in the supply chain through discounts. The report recommended a revised reimbursement approach, subsequently adopted by the government, where reimbursement levels more closely reflect actual transaction prices rather than list prices.

Trade Secrets:

NERA expert Dr. Christine Meyer was retained by McGuire Woods in London, counsel for the defendant, to estimate lost profits and reasonable royalty damages resulting from the misuse of confidential information as related to the development of an anti-malaria product. Dr. Meyer opined that, given a prior ruling that the misuse of secrets had only given the defendant a head start in the marketplace and that the defendant could have eventually developed its product without using the confidential information, the appropriate measure of lost profits was the difference between the actual profit and the profit the plaintiff would have made had the defendant entered the market after developing its own product from scratch. Furthermore, Dr. Meyer argued, the defendant would not be willing to pay a royalty beyond the delay period, as it would have been able to market its own product in the “but-for” world. The plaintiff’s expert estimated damages to be between \$30 and \$40 million while Dr. Meyer estimated damages of considerably less than \$1 million. The judge awarded the plaintiff only \$485,419 in damages.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA’s economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world’s leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA’s clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world’s largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

Contacts

Edward Bramley-Harker

Director, European Health Care
and Life Sciences Group
+44 20 7659 8500
edward.bramley.harker@nera.com

Dr. Christine Siegwarth Meyer

Senior Vice President
+1 914 448 4119
christine.meyer@nera.com