

Gilead Pays ViiV \$1.25B Plus Royalties To End HIV Patent Suit

By **Hailey Konnath**

Law360 (February 1, 2022, 11:32 PM EST) -- Gilead has agreed to pay \$1.25 billion plus royalties to GlaxoSmithKline venture ViiV Healthcare to settle claims Gilead infringed patents with its HIV drug, the companies announced Tuesday, a deal that comes less than a month after a trial in the high-profile case was delayed due to COVID-19.

Gilead was accused of infringing ViiV's patents related to dolutegravir — an antiretroviral medication used to treat HIV — with its own Biktarvy. The companies told the Delaware federal court overseeing their case that they'd agreed to dismiss all claims and defenses with prejudice and that each party would bear their own attorney fees and costs, according to a notice also filed Tuesday.

The companies' settlement also resolves patent infringement cases around the globe, including in the United Kingdom, France, Ireland, Germany, Japan, Korea, Australia and Canada, GSK said in a statement.

ViiV is a joint venture between Pfizer, GSK and Japanese pharmaceutical company Shionogi Inc., according to the statement. ViiV's beef with Gilead centered on bictegravir, the novel compound in Biktarvy. Under Tuesday's deal, Gilead will make its upfront payment of \$1.25 billion during the first quarter of 2022 and will pay a 3% royalty on all future U.S. sales of Biktarvy and on the bictegravir component of any future products sold in the U.S. until 2027, both companies said in statements.

The settlement also includes a patent license agreement, GSK said. Specifically, Gilead has been granted a worldwide license to certain ViiV patents and a covenant not to enforce any patents controlled by ViiV, GSK or Shionogi in connection with any past or future infringement claims pertaining to Biktarvy, the company said.

"The upfront payment and royalty income will be distributed in proportion to the ordinary shareholding in ViiV Healthcare (GSK 78.3%, Pfizer 11.7%, Shionogi 10%) net of the contingent consideration liability to Shionogi and applicable tax," GSK said.

The Delaware federal court case was lodged in 2018, and the court has since rejected motions to dismiss and for summary judgment from Gilead, according to the case docket.

Last month, U.S. District Judge Colm F. Connolly agreed to push the Gilead trial to May 2. The trial had been scheduled to kick off Jan. 10, but Gilead asked for a delay "in light of the public health conditions resulting from COVID-19," according to a letter filed Dec. 28.

ViiV Healthcare had opposed Gilead's request for a continuance, arguing that the Delaware federal court overseeing the dispute has safely held a number of jury trials, including in recent weeks.

John Desmarais, founding partner of Desmarais LLP and counsel for Viiv, said in a statement Tuesday that it "was an honor for the firm to play a lead role in this historic case."

The patent-in-suit in the Gilead case is U.S. Patent No. 8,129,385.

Viiv is represented by Daniel M. Silver and Alexandra M. Joyce of McCarter & English LLP and John M. Desmarais, Paul A. Bondor, Justin P.D. Wilcox, Todd Krause, Lindsey Miller, David Shaw and Alyssa Monsen of Desmarais LLP.

Gilead is represented by Jack B. Blumenfeld and Jeremy A. Tigan of Morris Nichols Arsht & Tunnell LLP and Philip S. Beck, J. Scott McBride, Mark S. Ouweleen, Matthew R. Ford, Nevin M. Gewertz, Tulsi E. Gaonkar, Rebecca T. Horwitz, John M. Hughes and Meg E. Fasulo of Bartlit Beck LLP.

The case is ViiV Healthcare Co. et al. v. Gilead Sciences Inc., case number 1:18-cv-00224, in the U.S. District Court for the District of Delaware.

--Additional reporting by Andrew Karpan, Ryan Davis and Adam Lidgett. Editing by Emily Kokoll.