

## Pfizer and BioNTech get permission to appeal for invalidation of Moderna's Covid-19 vaccine patent

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By [Abhishek Kumar](#)

Pfizer and its German vaccines arm BioNTech were allowed by the UK High Court to appeal a July decision which found one patent of Moderna valid and infringed and invalidated another patent of Moderna. The patents relate to mRNA Covid vaccines. The High Court refused permission to Moderna to appeal the invalidation.

Pfizer and German vaccine maker BioNTech were allowed by the UK High Court on Wednesday (Sep.25) to appeal a July 2024 decision concerning the validity of two mRNA vaccine patents owned by American rival Moderna.

Pfizer and BioNTech are involved in a global patent dispute with Moderna over the invalidation of two of Moderna's patents, EP 3,718,565 associated with "respiratory virus vaccines" and EP 3,590,949 associated with "ribonucleic acids containing n1-methyl-pseudouracils." The patents relate to the messenger Ribonucleic Acid, or mRNA Covid-19 vaccines.

In its July decision, the High Court declared EP 3,718,565 invalid, but found EP 3,590,949 to be valid and infringed by Pfizer and BioNTech.

Judge Richard Meade found merit in Pfizer and BioNTech's arguments about EP 3,590,949 primarily on the grounds of novelty. Meade said there is a "realistic prospect" that the Court of Appeal could take a different view on the matter of novelty, construction of the prior art meaning the evidence that an invention was already known or available to the public and the law of individualized disclosure and pointers, which pertains to the disclosure of an invention before filing a patent application. Pfizer and BioNTech seek invalidation of EP 3,590,949.

"I give permission to appeal on '949 and I make it clear that the reason for my doing so is because I think (...) – there must be a realistic prospect that the Court of Appeal could take a different view for the reasons I have given already," Meade wrote.

Meade also allowed the appeal on grounds of obviousness despite being doubtful about the argument made by Pfizer and BioNTech. He said he still allowed the appeal as it would be impractical to give permission on the ground of novelty and refuse it on another ground as it is the same piece of prior art in play.

Meade denied Moderna permission to appeal the invalidation of EP 3,718,565, finding no reasonable prospect of success on obviousness of the patent over prior art. He said Moderna would have to succeed on both obviousness and added matter to overturn the judgment. Moderna was merely attempting to re-argue the case on its facts, Meade added.

"It seeks to take the odd word here and there in my judgment and subject it to a degree of scrutiny that is unrealistic and designed to conceal the fact that this is looking at all of the facts all over again," Meade wrote.

Meade also declined the permission on the ground of "some other compelling reason," which allows Moderna to still file an appeal in a UK Appeals Court.

In 2022, Moderna filed lawsuits against Pfizer and BioNTech in the UK, EU and US over BioNTech's "Comirnaty" Covid-19 vaccine. Moderna seeks damages for sales made by Pfizer and BioNTech after Mar. 8, 2022.

In October 2020, Moderna had pledged not to enforce its patents against companies manufacturing the Covid-19 vaccine to combat the pandemic. Moderna partially withdrew from its commitment in March 2022, stating that it will enforce its patents on all companies except those manufacturing vaccines for 92 low and middle income countries.

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**Areas of Interest:** Intellectual Property

**Industries:** Pharmaceuticals & Biotechnology

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**Topics:**

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