

## No Independent Analysis—No Preliminary Injunction

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Addressing the issue of whether a preliminary injunction should be stayed pending appeal if the district court neglected to consider all defenses raised, the U.S. Court of Appeals for the Federal Circuit (in a non-precedential order) instead vacated the preliminary injunction because in granting it, the district court failed to adequately address the defendant's obviousness arguments. **Sciele Pharma Inc. v. Lupin Ltd., Case Nos. 12-1118; 09-0037 (Fed. Cir., Feb. 6, 2012) (Moore, J.).**

In this case, Lupin appealed the district court's grant of a preliminary injunction and moved for a stay of the injunction pending appeal. Instead of simply granting a stay, the Federal Circuit vacated the preliminary injunction, noting that the district court had failed to make adequate findings of fact and conclusions of law to support the injunction. The Federal Circuit explained that the district court's preliminary injunction order did not adequately address Lupin's obviousness defense. Further, in its subsequent order denying Lupin's request for a stay of the injunction, the district court again failed to properly address Lupin's obviousness defense. Specifically, instead of providing findings of fact and conclusions of law, the district court merely explained that Lupin relied on prior art that had been before the examiner to support its obviousness defense. On that basis, the district court concluded that Lupin failed to raise a substantial question that its obviousness argument would be likely to succeed. The Federal Circuit explained that even if the prior art was before the examiner during prosecution, that cannot be the only reason to dismiss an obviousness defense. Rather, district courts must "independently" assess the defense, giving regard the appropriate burdens of proof.

In vacating the preliminary injunction, the Court explained that the "district court's failure to make adequate findings of fact and conclusions of law as to Lupin's obviousness challenge prevents this court from engaging in meaningful review of that issue" and that if a district court fails to make proper findings of fact or conclusions of law, the "normal course is to vacate the district court's decision and remand the matter for proper analysis."

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