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TAC to argue that public interest and the right to access to health care services must be considered in patent dispute at the Supreme Court of Appeal

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On 15 May 2012, the Supreme Court of Appeal will hear arguments in the case of Aventis Pharma SA and Others v Cipla Life Sciences and Others in the patent dispute over the cancer medicine Docetaxel (brand name Taxotere). The Treatment Action Campaign (TAC) has been admitted to the proceedings as amicus curiae (friend of the court) and is represented by SECTION27. TAC will argue for the protection of the rights of people in need of medicines in disputes of this nature.

Docetaxel is used in the treatment of various cancers, including breast and lung cancers. The medicine has also been proven to be effective in treating AIDS-related Karposi Sarcoma.

The product patent on Docetaxel expired in 2007. The patent currently under dispute relates to a composition of unpatented products, which ? when mixed ? facilitate the intravenous administration of Docetaxel. This patent will expire in 2013.

During the hearing next Tuesday, the validity of the patent will be argued. The court will play a crucial role in assessing the validity of the patent as it is likely the first time the patent will undergo substantive review. This is because, in South Africa, patents are granted without examination - which means that patents may be granted without full examination. This has adverse implications for access to affordable medicines.
TAC will be arguing that, in adjudicating patent disputes, the court has a constitutional obligation to take the rights of people in need of medicines into account. Furthermore, we argue that the party seeking the interim interdict (in this case Aventis) must demonstrate that an interim interdict would not limit the rights of people in need of medicines. TAC ?s Heads of Argument have been submitted to the court and can be read here.

Through this intervention, we hope to ensure that the rights of people in need of Docetaxel are taken into consideration in this dispute. But as importantly, if the SCA accepts TAC?s arguments, its judgment will have great implications for all future disputes concerning the infringement of patents on medicines.

On Tuesday, TAC members in the Free State will hold a demonstration outside the SCA at 9h00 to highlight the issues.

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