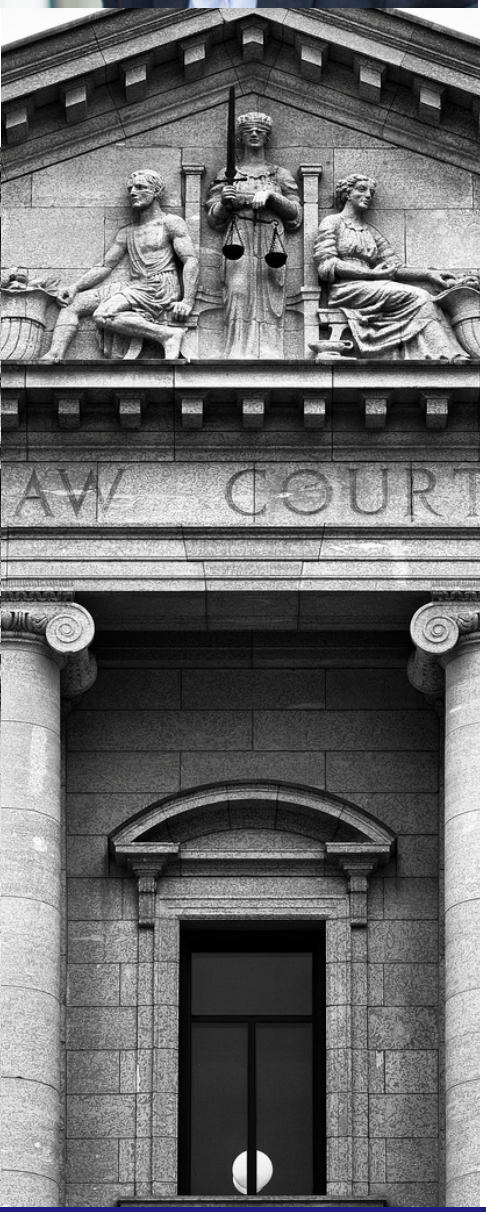
HOYNG ROKH MONEGIER

We do IP.

CASE COMMENT

BY AGATHE CAILLÉ



A FRENCH FLAVOUR OF ROYALTY PHARMA: THE SUPREME COURT ADOPTS A MORE FLEXIBLE APPROACH OF ARTICLE 3A OF THE SPC REG

SPC update ! On 31 January 2024, by a long-awaited decision in the Dana Farber saga, the French Supreme Court has ruled on the definition of a product "protected by a basic patent in force" according to Article 3a) of EC regulation 469/2009. Applying the criteria laid down in the Royalty Pharma case (30 April 2020, C-650/17), the court dismissed the appeal lodged against the Paris court of appeal decision dated 25 May 2022 by considering that the human monoclonal antibody avelumab, which was the subject of the SPC application, although not expressly mentioned in the basic patent, was indeed protected by this patent, since it was specifically identifiable in the light of the teachings of said patent by the person skilled in the art, through known and mastered routine tests, and had not been developed after the filing date of the patent application, following an autonomous inventive step. This case is a rare example of the application of procedural rules allowing the Supreme Court to consult an expert, here a professor of immunology.

This decision is in line with the rulings of the French Supreme Court on 1 February 2023 in the pembrolizumab and nivolumab cases (see our previous post, in which we referred to the court of appeal ruling in the Dana Faber case which led to the above mentioned decision).