

Quantification of damages not an admissibility requirement for a preliminary injunction in Greece

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Constantinos Kilimiris of Patrinos & Kilimiris reports on a case that brings renewed clarity to the issue of whether an estimate of damages must be provided by a patent holder applying for a preliminary injunction

The Athens First Instance Single Member Court was recently called to examine the issue of whether quantification of damages is a prerequisite in order to uphold urgency for the grant of a preliminary injunction in the context of a pharmaceutical patent's infringement.

Background to the case

The case involved a preliminary injunction application in the name of an originator pharmaceutical company against a company attempting to market at-risk generic products falling within the scope of a pharmaceutical patent. The generic company, *inter alia*, objected to the preliminary injunction sought, arguing that the claimant had failed to provide an estimate of the damages to be suffered in the event of actual launch of the generic products at issue on to the market.

Such an objection was based on a couple of judgments of the same court, according to which the quantification of damages was compulsory in order for the court to assess whether the harm to be suffered would justify the grant of a preliminary injunction.

The court's ruling

The court rejected the objection, ruling that the claimant does not have the burden to specifically quantify damages in order to satisfy the condition of urgency, provided that there are other circumstances showing urgency in the case under consideration.

This judgment is in line with a well-established case law and practice of the Greek courts, which have routinely granted preliminary injunctions under similar circumstances, as well as with the case law of the Court of Justice of the EU, under which a launch at risk under similar circumstances may constitute an objective indication of irreparable harm for the patent holder.

The court accepted this line of reasoning, ruling that the marketing of a generic product that is covered by a patent in force involves the risk of an important monetary damage for the patent holder but also of damage to the reputation of the patent holder and the pharmaceutical product at issue.

The fact that the generic company had already launched the product in suit before the grant of a temporary restraining order did not change the finding of the court in relation to urgency, since it was ruled that any such sales have taken place without a legal right.

I1 ict of the decision

This judgment seems to put things back on track, if they had ever gone astray, and lift any doubt that might have been raised by a couple of judgments to the contrary, and definitely contributes to the effective judicial protection of patent rights.

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