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Greek preliminary injunction delays do not amount to lack of urgency

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Constantinos Kilimiris of Patrinos & Kilimiris draws on recent case law in noting that an applicant's timely action fulfils the urgency requirement for the granting of a preliminary injunction

According to the Greek Code of Civil Procedure, preliminary injunctions are available if the applicant proves that its rights are prima facie infringed or that there is an imminent threat of infringement and that there is an urgent need to protect its right from such infringement.

Urgency is therefore one of the requirements for the grant of a preliminary injunction. While there is no deadline set in the law for filing a preliminary injunction application, the court will always examine whether:

- The need to provisionally protect a right is truly urgent, in the sense that without such protection, the applicant may suffer irreparable, or difficult-to-reverse, harm; and
- The applicant has acted without delay from the moment it became aware of an infringement or a threat thereof.

In patent litigation relating to pharmaceutical products, there is settled case law according to which the threat of the launch of an infringing product in the market, while patent protection is still available, will satisfy the urgency requirement for the patent holder, as this would be considered as an objective indication of irreparable or difficult-to-reverse harm.

The balance of convenience is also a factor considered by the court and it is advisable that a patent holder should preferably act before an infringing product be placed in the market.

An example from Greek judicial practice

In the above context, the Athens First Instance Single Member Court was recently called to hear a preliminary injunction application of an originator company acting against a company intending to launch a generic product in the Greek market.

The preliminary injunction application was filed before the launch of the generic product, but the hearing of the case was postponed for over a year, due to reasons not attributable to the applicant, and thus took place well after such launch.

At the hearing, the generic company raised an objection alleging lack of urgency based on the fact that a long time had passed since the filing of the preliminary injunction application and its product was already in the market, adding that if a preliminary injunction was granted, it would be the party to suffer irreparable harm.

The objection was rejected by the court, which focused on whether the applicant had acted in a timely manner. In this respect, the court found that the applicant had acted without delay, having requested protection as soon as it became aware of imminent infringement and, in any case, before the launch of the generic product, and that the fact that a long time had passed since the filing of the application,

during which the generic product was launched, could not be to the detriment of the applicant, which acted diligently.

Comment on the court's methodology

While the circumstances of this case are exceptional, as such long delays are not common in preliminary injunction proceedings, it is certainly reassuring that the court applied the correct test and acknowledged that what is important is whether the applicant had acted in a timely manner rather than the situation created due to the delay in hearing the case.

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