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Greek court awards ‘exceptional’ €100,000 as moral prejudice damages for patent infringement

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Constantinos Kilimiris of Patrinos & Kilimiris says the unusually high award signals a potential shift in how Greek courts assess non-pecuniary harm in infringement cases

Under Greek patent law, a patentee may seek, among other remedies, compensation for the moral harm suffered as a result of infringement. In practice, however, Greek courts tend to award relatively modest sums for such damages and rarely uphold claims exceeding €40,000.

Against this background, a recent judgment of the Athens Full Member First Instance Court, delivered in the context of a main action for patent infringement concerning a blockbuster pharmaceutical product, stands out as exceptional. In that case, the court awarded the patentee €100,000 in moral damages, significantly departing from the typically conservative approach.

In the case at issue, the patentee – an innovator pharmaceutical company – brought an infringement action against a generic manufacturer that had launched its product ‘at risk’. In addition to its infringement claims, the patentee sought compensation for moral damages.

The defendant contested this claim, arguing that the claimant had failed to identify any concrete harm and that the legal requirements for establishing moral damages had not been met.

The court dismissed this objection. It held that the generic product had been marketed at significantly lower prices than the patented reference product, which directly affected patients receiving treatment with the reference product by incentivising them to switch to the cheaper alternative. The court found that this development had a serious adverse impact on the claimant's name and reputation, both among healthcare professionals and patients. In particular, it led to a sudden and unexpected increase in patient co-payments at a time when the claimant's patent remained valid and in force.

The court further concluded that these circumstances resulted in a diminution of the patent's economic value, as well as a decline in the claimant's prestige, reputation, and public confidence in its products. Moreover, the defendant's conduct created the impression among business partners, healthcare professionals, and the public that the invention lacked uniqueness or commercial success, and that the patentee was unable to adequately protect its rights despite holding a valid patent.

In light of the foregoing, the court held that the claimant had suffered moral harm and was entitled to reasonable monetary compensation, irrespective of any additional pecuniary loss. Taking into account all relevant factors, including the claimant's long-standing and costly efforts to develop the patented product, the court assessed moral damages at €100,000.

This decision is likely to serve as a benchmark in future cases involving similar infringement scenarios, particularly with respect to the assessment and quantification of moral damages in pharmaceutical litigation.

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