

Patent Infringement – Unfair Competition

Eli Lilly and Comp. and Lilly İlaç Tic. Ltd. Şti. vs Abdi İbrahim İlaç San. ve Tic. AŞ.

(*) 2nd Civil Court of Istanbul on Intellectual and Industrial Rights, Decision no. 2004/153-2004/152

A court action (*) has been instituted before the Istanbul 2nd Civil Court of Intellectual and Industrial Rights by the plaintiffs Eli Lilly and Comp. and Lilly İlaç Tic. Ltd. Şti. against the defendant Abdi İbrahim İlaç San. ve Tic. AŞ. on grounds that the shortened application for regulatory authorization filed with the Health Ministry constitutes an infringement of the granted patent and an act of unfair competition.

The plaintiff asserted that he is a world leading pharmaceutical product producer, that it invests yearly very important amounts for research and development purposes, that he has developed the active substance “Olanzapin” poliform, that he is the holder of two patents granted with (substantive) examination in Turkey and the product containing the Olanzapin poliform is produced and commercialized as a drug under the mark “Zyprexa” and that the shortened application of the defendant filed with the Ministry of Health for regulatory authorization in respect of the medical pharmaceutical product containing Olanzapin in his mixture being identical with its patented product infringes his two patents and constitutes an act of unfair competition.

The defendant in his reply declared that he has conducted the necessary patent search before filing the shortened application, that he has filed his application in accordance with article 9 of the Regulation for Regulatory Authorization of Pharmaceutical Products, that the national legislation does not provide protection for data exclusivity which is asserted by the plaintiff, that the activity in generic drug is not a contradiction to TRIPS agreement and requested the refusal of the action.

The court by considering the foreign decisions of the jurisdictions in this matter (for example in the court action instituted in the USA by the plaintiff against Medtronic asserting that the filing of application for marketing authorization constitutes patent infringement, it has been decided that the act of Medtronic does not constitute patent infringement; in the court action instituted by Roche against the generic medicine firm Bolar known as Bolar provision in the law literature, it has been established that the filing of application for regulatory approval does not constitute patent infringement) rules that the filing of shortened application for regulatory authorization can not be accepted as a patent

infringement and that a behavior legally allowed can not constitute unfair competition and rejects on these grounds the request of the plaintiff.