



## Turkish court issues preliminary injunction to prevent infringement of pharmaceutical products

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Pharmaceutical products that are not licensed in Turkey, and/or that are licensed but have not been made available to the market, can be supplied by the Turkish Pharmacists' Association, Social Security Agency (SSA) and institutions and organisations that are deemed suitable for foreign drug supply by the Turkish Medicines and Medical Devices Agency (TMMDA), as per the provisions of the Guidelines on Drug Supply and Use from Abroad.

Pursuant to the guidelines, the TMMDA has published on its official website a Foreign Drug List for the drugs that can be supplied from abroad. It consists of an Active Ingredient List, which lists the active ingredients that can be supplied from abroad, alongside a list of Suppliable Drugs, that records the human medicinal products, including the active ingredients listed in the Active Ingredient List.

In order to supply the products listed in Suppliable Drugs from abroad, foreign drug suppliers can either directly contact the foreign company or contact the intermediary institution/person resident in Turkey.

However, the TMMDA does not conduct any examination to determine whether the products listed in the Foreign Drug List infringe patent rights; therefore, it does not become involved in private law disputes in this manner.

In the case at hand, an action was filed with the call for determination, prevention and cessation of the infringement of the patents disclosing the active ingredients via the products listed in the TMMDA's Suppliable Products list. The rights holder also requested a preliminary injunction decision. As a result of the court-appointed expert examination made on the file, the experts and the court determined that the products listed in the Foreign Drug List infringed the patents, doubtless by means of the lists that included the patented active ingredient. The court granted a preliminary injunction in exchange for a guarantee and briefly decided to prevent the supply of the infringing products.

The court accepted the action, along with the determination of the patent infringement and removal of the infringing drugs from the Foreign Drug List. It also decided to prevent the products that contain the patented active ingredient from being included in the Foreign Drug List, regardless of their trade name, during the term of the patent protection.

In principle, it is essential to reach a decision only on the products that are the subject of the case. However, our defence against the possibility of inclusion of the infringing products in the Foreign Drug List by changing their name was accepted and the court prevented inclusion of the products with the same active ingredient within the list under any name and/or trademark.

Since the court considered the specialities of the exceptional drug supply procedure, the final verdict is highly significant and affirms the effective protection of patent rights.

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