



Ex parte injunctions in Turkish IP law

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Although they are legally available, *ex parte* injunctions are quite rare in Turkish IP practice. The IP courts almost always reject requests for *ex parte* injunctions, preferring to evaluate the alleged infringement only after hearing both parties. However, in a recent case, the IP Court unexpectedly granted a request for an *ex parte* injunction, due to the urgent nature of the matter.

The request for an *ex parte* injunction was filed against a company in Argentina. The company supplied and traded (what was assumed to be) infringing pharmaceuticals to Turkey on a named patient-programme basis. Further, it had no affiliate in Turkey, nor had the infringing products been granted marketing authorisation there. Due to patient demand, the same pharmaceuticals are supplied by the Turkish Pharmacists Association.

The Argentinian company should have been notified of the patent holder's request for a finding of patent infringement via the international notification procedure. This process can take between five and eight months depending on the authorities' workload in both of the relevant countries. However, as the pharmaceuticals in question were supplied within certain periods and in certain amounts; as soon as the Argentinian company supplied the products for Turkish market, the patent was infringed and the patent holder lost its market share.

Explaining these issues as well as emphasising that a finding of patent infringement, which could take a year to be issued, would be useless as the damage was already evident; the patent holder requested an *ex parte* injunction. The IP Court agreed to conduct a patent infringement evaluation *ex parte* and referred the case to a court-appointed expert panel to evaluate the technical aspects of the infringement.

If an injunction is granted *ex parte*, then as per IP Law, the other party will be notified of the decision and will be given right to appeal it before the district court. The appeal would not suspend the execution of the decision.

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