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Under Turkish procedure law, a preliminary injunction is regulated as a temporary legal protection measure pursuant to Article 389 of the Civil Procedure Code (6100). The aim of this protection is to prevent much higher damages during proceedings that continue for at least four to five years until the decision is finalised. The adoption of preliminary injunction decisions depends on the existence of certain conditions, such as a situation which may make it difficult to exercise a right or serious damage. For patent actions, such conditions may include sales permission, reimbursement or obvious promotion of the product. In order to obtain a preliminary injunction decision, the requesting party is not obliged to show conclusive proof of the existence of conditions; rather, approximate proof is accepted.

Pursuant to Article 397 of the Civil Procedure Code, if the court grants a preliminary injunction in favour of the requesting party, the requesting party must file a main action for patent infringement within two weeks. Therefore, the application and the infringement action are connected and the preliminary injunction decision remains valid during all of these proceedings.

In a recent patent invalidation action that was merged with an infringement action, the court invalidated the patent and dismissed the infringement action. Before the merger of actions – during the discovery of evidence phase and following the filing of the preliminary injunction application which occurred before the main infringement action – the court granted a preliminary injunction regarding the generic product of the counterparty and decided to prevent the distribution, import and export of its goods, as the generic company had already obtained marketing authorisation and the product had entered the reimbursement list.

After the adoption of the dismissal decision for the infringement action in favour of the generic company, the counterparty requested the lifting of the preliminary injunction on their products. The Turkish IP courts typically lift preliminary injunctions, even if their decision is not final, as parties

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**Selin Sinem  
Erciyas**



**Aysel  
Korkmaz  
Yatkin**

may still be able to file an appeal before the district courts and the Court of Appeal. However, in this case, the Istanbul Second IP Court adopted a refusal decision citing that it would not remove the preliminary injunction as the invalidation and dismissal decisions had not been finalised.

Given the IP courts' track record of deciding the exact opposite, this kind of decision is the beginning of a new era. Considering the spirit and aim of preliminary injunctions, the refusal decision against the preliminary injunction removal request is appropriate and suitable under existing law. It is hoped that the IP courts will adopt this type of decision in the future.