

GREECE

PI awarded despite negative validity judgment from EPO

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The Athens Single Member Court of First Instance recently granted a preliminary injunction based on a patent despite the fact that the Opposition Division of the EPO, a few days before the preliminary injunction hearing, had revoked the same patent.

The case concerned a preliminary injunction filed on behalf of an originator pharmaceutical company based on a patent covering a novel dosage regimen of a transdermal patch containing rivastigmine used in the treatment of Alzheimer's disease. The defendant, a company seeking to market a generic copy of said rivastigmine patch, in its defence argued that the patent was invalid and that it had been revoked by the EPO and could therefore not provide protection. Furthermore, the defendant argued that the patent's claim was not to a dosage regimen of a transdermal patch but rather to the transdermal patch *per se* and that the generic product had different structural features and hence was not infringing. Furthermore, the generic company argued there was no urgency and that it was in the health funds' interest that a generic product be allowed to be launched in the market.

The Court, after assessing the nullity grounds raised by the defendant, was not convinced. Furthermore, the fact that the EPO Opposition Division had recently revoked the patent did not stop the judge from granting the PI requested, as the patentee had filed an appeal, which under Article 106(1) EPC has a suspensive effect. The judge found that the patent was directed to a dosage regimen and the structural differences of the two patches were not relevant on infringement, given that the generic patch fell under the protected dosage regimen. Furthermore the judge acknowledged that the patentee had spent considerable time and re-

sources in R&D to arrive to the protected invention and that it would suffer significant financial damage if the generic product was allowed to be launched in the market.

This decision is an important one since it is not often that a Greek court will decide to accept the *prima facie* validity of a European patent despite the fact that the EPO Opposition Division has revoked said patent and proceed to apply a balance of the parties' interests, deciding in favour of the patentee.