

GREECE

## Court rules combination product is inventive

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A defendant in preliminary injunction proceedings heard before a Greek court, relating to the infringement of a pharmaceutical patent, may raise an objection to the patent's validity. This option is not free from difficulties as the Greek court, which has jurisdiction to grant an injunction, is not a specialised IP court which has jurisdiction to try the same case in ordinary proceedings, but a court having general jurisdiction on civil and commercial matters.

In the specific case, the patent in suit was one containing an independent claim that covers a new and inventive active ingredient (active ingredient A), which was not challenged by the defendant. The same patent also contained a dependent claim, which covered a combination of the active ingredient A along with another off-patent active ingredient (active ingredient B). The defendant's objection on inventive step was only directed against the above-mentioned combination.

The Greek court dismissed the objection as a matter of law, holding that it cannot in any way be inferred, as per the defendant's allegation, that the combination of the two active ingredients, does not meet the condition of inventive step, given that active ingredient A was not known before the grant of the patent in suit, since it was first discovered with the invention protected by the patent, and, therefore any combination of a previously unknown substance, such as active ingredient A, with a known substance, such as active ingredient B, was not obvious or evident.

This is in line with EPO case law, according to which, in cases where an independent claim is acknowledged as new and inventive, it follows that the claims dependent thereon are also new and inven-

tive (see EPO Guidelines, G VIII -13), as argued by the claimant.

Good guidance helps, especially in IP cases where fast and effective protection is a stepping stone for IP owners.