

Kluwer Patent Blog

Brussels Court of Appeal limits the reach of counterfeit seizure

Kristof Roox, Christian Dekoninck (Crowell & Moring) · Monday, December 22nd, 2014

In its decision of 1 December 2014, the Brussels Court of Appeal clarified the scope of seizure measures that can be ordered in the context of a counterfeit seizure ("*saisie-contrefaçon*"). The Court confirmed that no general injunction can be obtained on the basis of these *ex parte* proceedings.

This case relates to the co-irbesartan litigation that has been raging in several European jurisdictions in 2012 and 2013, resulting in one of the ECJ decisions on supplementary protection certificates (SPC) of 12 December 2013 (see the discussion on this blog relating to this "Super Thursday for SPCs": <http://kluwerpatentblog.com/2013/12/12/spc-flood-in-luxembourg-cjeus-eli-lilly-actavis-and-georgetown-judgments/>). In short, the facts were the following. Sanofi was the holder of two SPCs relating to two medicinal products, Aprovel® (with irbesartan as the only active substance) and CoAprovel® (with the combination of irbesartan and hydrochlorothiazide). Both SPCs were based on the same patent relating to irbesartan. The validity of the first SPC (relating to the mono-product) was not disputed. However, several generic pharmaceutical companies argued that the second SPC (relating to the combination product) was invalid and therefore launched a generic version of the combination product following the expiry of the first SPC, but prior to expiry of the second SPC on 15 October 2013.

In Belgium, Sanofi initiated proceedings against Sandoz in order to stop it from launching its generic combination product on the Belgian market. First, Sanofi filed an *ex parte* request for a counterfeit seizure in July 2012. These Belgian proceedings implement Article 7 of the Enforcement Directive relating to measures for preserving evidence. However, Sanofi requested not only seizure measures relating to the actual stock found during the seizure, but also "*relating to every future stock of Sandoz' combination products based on irbesartan and HCTZ which NV Sandoz would manufacture, import, market, commercialize, stock or use in Belgium.*" This *ex parte* request was granted on 27 July 2012 by the President of the Brussels Commercial Court and Sanofi thus obtained a general preliminary injunction measure relating to the combination products of Sandoz.

In third party opposition proceedings, Sandoz contested the counterfeit seizure for several reasons. Among other arguments, Sandoz stated that the seizure measures granted within the context of such *ex parte* proceedings could not relate to future stock of Sandoz' combination products. The court, however, confirmed its *ex parte* decision, including the seizure measures relating to future stock.

Apart from the counterfeit seizure, Sanofi also initiated accelerated proceedings on the merits against Sandoz in order to obtain a final injunction. These proceedings were suspended pending the outcome of the proceedings before the European Court of Justice. It is interesting to note that, in these proceedings, the court

refused to grant any preliminary injunction measures as the validity of the SPC for the combination product was questionable. However, this did not help Sandoz as the preliminary injunction measures granted in the counterfeit seizure proceedings were still in place.

Sandoz lodged an appeal against the decision confirming the seizure measures, limiting its appeal to the argument that no seizure relating to future stock (i.e., a general injunction) may be granted within a counterfeit seizure. If patent (or SPC) owners want to obtain such injunction, they have to initiate adversarial (summary) proceedings. The Brussels Court of Appeal confirmed Sandoz' point of view and decided that seizure measures granted in the context of a counterfeit seizure cannot concern any future products. Indeed, such measures may only concern the objects that are found in the possession of the seized party during the counterfeit seizure as is clear from the wording used by the Belgian legislature ("dispose," "displace" or "modify"). To interpret this wording broadly would be contrary to the intentions of the legislature.

With its judgment of 1 December 2014, the Brussels Court of Appeal therefore limited the reach of the *ex parte* counterfeit seizure proceedings, which cannot be used to obtain a general injunction. To obtain a general injunction, adversarial proceedings should be initiated.

An English translation of the decision can be found here: [Brussels Court of Appeal – Judgement of 1 December 2014](#).

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please subscribe [here](#).

Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

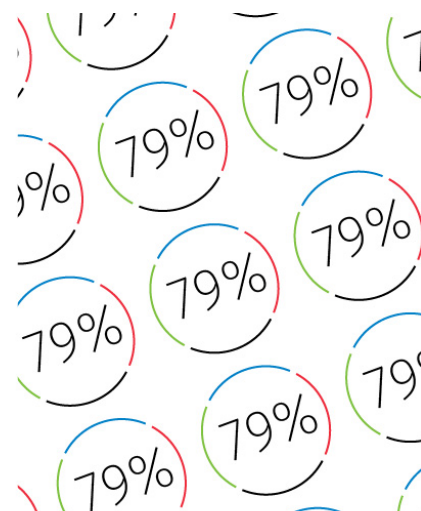
79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



Wolters Kluwer



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Monday, December 22nd, 2014 at 4:36 pm and is filed under [Belgium](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.