

# Kluwer Patent Blog

## When May Ex Parte Injunctions Be Granted in Patent Cases in Denmark? – A Case Comment on BS-19037/2025 from the Danish Maritime and Commercial High Court

Anders Valentin (Bugge Valentin) · Tuesday, April 29th, 2025

Article 9(4) of Directive 2004/48/EC obliges Member States to ensure that courts may issue provisional measures, including injunctions, without giving prior notice to the defendant in certain circumstances. This applies, in particular, when a delay is likely to result in irreparable harm to the rights holder, or when there may be a real risk that evidence may be concealed or destroyed by the defendant. Although effective enforcement is a central aim of the Directive, the provision also recognises the exceptional nature of ex parte measures, which must be applied with due regard to fundamental procedural rights.

Under the corresponding rule in Danish procedural law, the court may dispense with notifying the opposing party where it is deemed unobjectionable (ubetænkeligt), or where prior notice would undermine the purpose of the injunction.

In a – rare – recent decision (BS-19037/2025) from the Danish Maritime and Commercial High Court (Sø- og Handelsretten) these rules were applied in practice. The dispute evolved over several rounds of litigation between Biogen and Sandoz on patents relating to the use of dimethyl fumarate in the treatment of multiple sclerosis.

Biogen obtained its first preliminary injunction against Sandoz on 3 February 2023, following proceedings initiated in August 2022. That injunction was upheld both by the Commercial Court and, later, by the Eastern High Court in December 2023. A second injunction was granted in February 2025 on the basis of a patent claim that had been limited to cover only relapsing-remitting multiple sclerosis (RRMS). Both injunctions remain in force.

Nevertheless, Sandoz was awarded a public procurement contract by Amgros in February 2025 for the product “Dimethyl fumarate 1a Farma.” According to Biogen, the tender offer infringed its patent rights, as the active substance and its approved therapeutic use remained within the scope of the earlier injunctions.

In response, Biogen initiated new injunction proceedings, this time seeking an ex parte decision. The court, however, declined the application. The court held that—despite the parties’ previous legal history—it would not be unobjectionable to exclude Sandoz from the hearing. Moreover, the purpose of the injunction would not be undermined by notifying Sandoz, since the supply period under the Amgros tender would not commence until 1st of August 2025, providing ample time for a hearing and a decision.

The decision illustrates the cautious approach taken by Danish courts in relation to ex parte measures in patent cases. Even in cases involving repeated infringement claims and enforceable injunctions, the threshold for excluding the defendant from proceedings remains very high.

---

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

A graphic for the 2024 Future Ready Lawyer Survey Report. It features a dark background with a glowing blue and red digital circuit pattern. A gavel is positioned over the circuitry. The text '2024 Future Ready Lawyer Survey Report' is at the top left. Below it, the main title 'Legal innovation: Seizing the future or falling behind?' is displayed in large white font. A blue button with white text 'Download your free copy →' is below the title. The Wolters Kluwer logo is at the bottom left. On the right, there is a logo for 'Future Ready' with 'LAWYER' written below it.

2024 Future Ready Lawyer Survey Report

# Legal innovation: Seizing the future or falling behind?

Download your free copy →

 Wolters Kluwer

 Future Ready  
**LAWYER**

This entry was posted on Tuesday, April 29th, 2025 at 4:49 pm and is filed under [Patents](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.