

EIP

Provisional Injunction on Lice Treatment

G. Pohl-Boskamp GmbH & C. KG v pharma-aktiva GmbH and others UPC_CFI_541/2024

Order of 20 December 2024 (ORD_67522/2024)

The claimant G. Pohl-Boskamp GmbH & C. KG is proprietor of EP 1993363, which claims a composition for combating ectoparasites and their eggs. The first defendant pharma-aktiva GmbH is a pharmaceutical company which markets a lice remedy sold as Vitalis Läuse Spray and ACTIV MED lice spray. Other defendants are ALDI SOUTH Dienstleistungs-SE & Co. oHG, ALDI Nord Deutschland Stiftung & Co. KG, ALDI SE & Co. KG and Hofer Kommanditgesellschaft, responsible for distributing the products in ALDI stores in Germany and Hofer stores in Austria. The claimant considered that these products infringed the patent and sought a provisional injunction to restrain the infringement.

The first defendant had supplied a declaration to cease and desist, but the Court considered this inadequate to avoid an injunction, since it did not refer to the patent features and did not exclude sale of the contested products under a different name and in different packaging.

The claimant submitted analysis of the product on the basis of which infringement was alleged. The defendants disputed the analysis but did not provide any evidence that the accused products did not infringe. Therefore, the Court considered that infringement had been sufficiently demonstrated.

The defendants challenged the validity of the patent, alleging insufficiency and lack of inventive step, but the Court did not find any of these grounds convincing.

The Court considered that the requirement of urgency was met, the claimant having

become aware of the infringement on 13 August 2024 and filed the application for a provisional injunction on 20 September 2024.

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On the balance of interests between the parties, the Court accepted the claimant's position that provisional measures were required because the patent would expire in 2026, so a considerable portion of the remaining period of protection would elapse before infringement proceedings were concluded. Accordingly, the Court considered that a provisional injunction was warranted. The Court accepted that the other defendants may not (yet) have sold any products, but saw a risk of such infringement. Although the defendants had stated that they have discontinued distribution and were destroying their stocks, this was not seen as sufficiently definitive, and did not exclude that activities could be resumed.

Accordingly, an injunction was granted in the terms requested in Germany and Austria. The penalty payment for non-compliance was set at €100 per item. The defendants were ordered to deliver up to the relevant authorities any products in their possession. Additionally, the defendants were ordered to pay provisional costs of the proceedings of €11,000. No security was required from the claimant for enforcement of the injunction.