

# Intellectual Asset Management



## Court validates statute of limitations for patent infringement

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The Zagreb Commercial Court has validated a decree judgment on the statute of limitations with regard to patent infringement cases. As a result of its finding, it denied the plaintiff's claims of infringement on the basis that the statute had expired.

The plaintiff claimed to own a patent for the method of obtaining the drug AX. He stated that this patent was registered at the former Federal Patent Office and then later before the Croatian State IP Office (number P95), with priority rights since 4th April 1986; it had also been published in the Croatian Patent Gazette. The plaintiff then claimed that the respondents had, without authorisation, sold in Croatia a drug known as 'A'; the production of this drug involved AX as an active substance and thus the respondents had violated the plaintiff's patent. This in turn had prevented the plaintiff from marketing his drug in Croatia, for which he had obtained a licence from the Croatian Health Insurance Office on 24th June 1998. As a result of these actions, the respondents had caused him material damages.

With regard to the plaintiff's allegations, the respondents stated that:

- the first respondent had registered the method of obtaining the drug A before the Croatian State IP Office, with priority rights since 26th November 1992;
- the process of preparing and producing A differed significantly from the process of preparing and producing the plaintiff's drug AX; and
- the plaintiff had not marketed his drug in Croatia and thus the respondents were not in competition with him.

Further, the respondents submitted that the statute of limitations for this claim had expired: although the lawsuit was submitted in 1999, the plaintiff knew that the respondent's drug A was being marketed in Croatia as early as 1993. As evidence, they offered the plaintiff's petition dated 6th March 2002, in which the plaintiff stated that the respondent's AX had been on the market since 1993. In addition, the respondents pointed to the Ministry of Health's approval, issued on 12th March 1993, for the respondents to sell their drug A in 5 milligram (mg) tablets.

The plaintiff did not deny the statement in his petition, but argued that this did not prove that he was aware that A was on the market in 1993 and that the lawsuit was filed after the statute of limitations had run out. In addition, he maintained that this did not prove that the subjective three-year term triggered by him becoming aware of the violation and of the identity of the perpetrator started in 1993. Instead, he argued that any unauthorised use of his invention violated his rights in it, and that therefore "each delivery and sale of the disputed product on the Croatian market perpetrated by the respondents" was a violation. Thus, he claimed, his rights had been infringed by shipments of the disputed drug "in 1994, 1995, 1996 and so on to this day" and he was entitled to redress for each of these violations.

The court found that the respondents' complaint that the statute of limitations had expired was well founded for the following reasons:

- The applicable laws are the Law on Obligatory Relations and the Law on Industrial Property. The first of these establishes that the right to request the fulfilment of an obligation ends with the expiry of the statute of limitations, which occurs after a set period in which the creditor could have demanded the fulfilment of an obligation. The Industrial Property Law establishes that lawsuits for infringement of industrial property rights can be filed up to

three years from the date the plaintiff discovers the violation and the perpetrator; a lawsuit may not be filed more than five years following the violation.

- According to the filed documentation, the lawsuit was filed on 27th January 1999. Further, the plaintiff did not deny that in a petition dated 18th February 1999, he stated that the respondents' drug had been on the market since 1993. Besides, the court was of opinion that the Ministry of Health's approval, issued on 12th March 1993, of the respondents' marketing of 5 mg tablets of their drug A was evidence that sale of the drug was approved in 1993. More than five years had elapsed between the disputed drug appearing on the Croatian market in 1993 and the filing of the lawsuit in 1999; the court found that that the statute of limitations expired in 1998. Under the Industrial Property Law, the 1999 lawsuit was not actionable because the statute of limitations had expired.
- The Law on Obligatory Relations states that the statute of limitations starts on the day following the date on which the debtor broke its obligation. The court held that this should be understood as meaning that the first day is the day when the debtor has acted against its obligation, and that the statute of limitations expires on the last day of the period which, in the court's opinion, began on the day when the debtor first broke its obligation and not each and every time that such an action occurred – as the claimant argued.

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