



Strategic insights to  
pharma patent litigation

**SORAINEN**

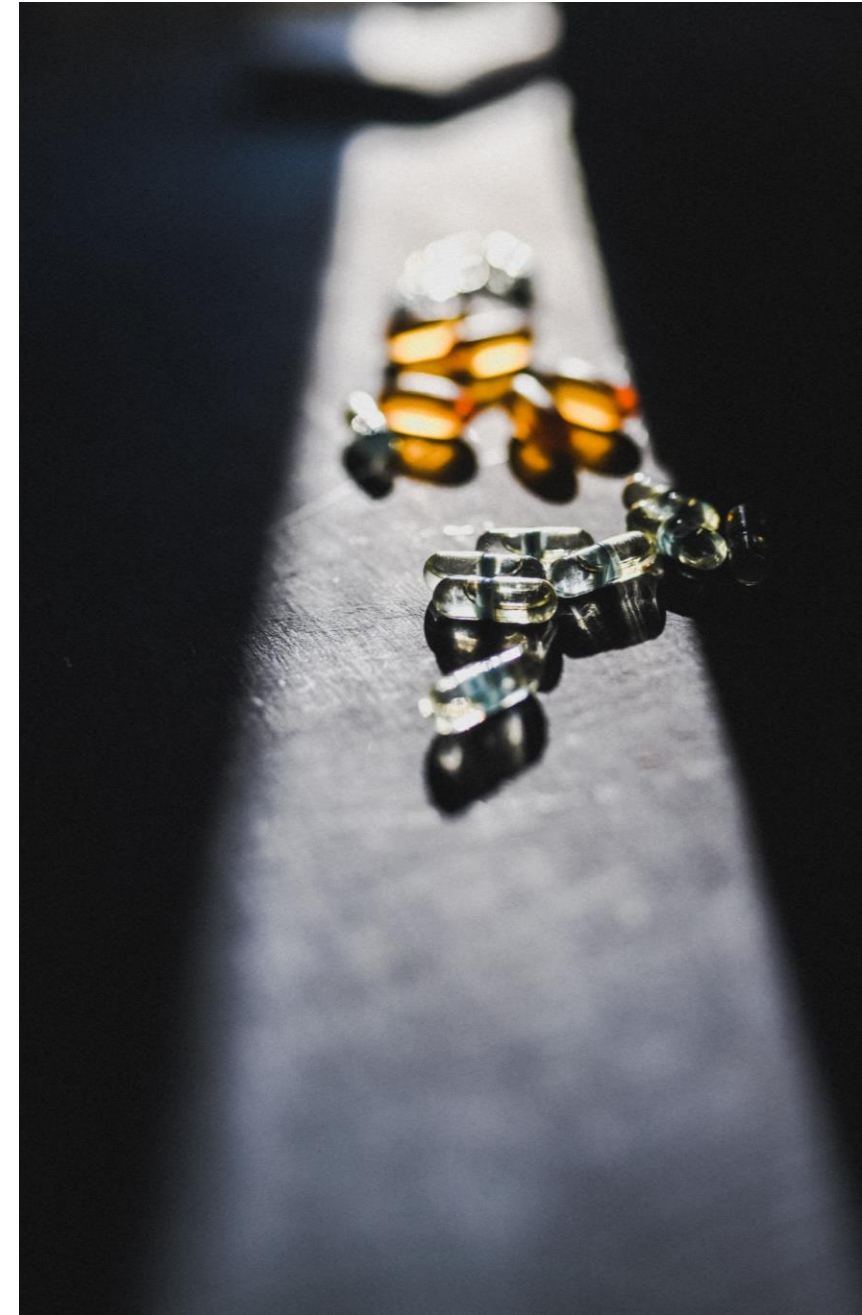
Olivia Kranich

Tallinn  
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## Preliminary injunction

- it is likely that the patent is valid  
and
  - there is an immediate threat of infringement  
and
  - there is reason to believe that later enforcement of a judgment is difficult or impossible
- or
- injunction is necessary for the prevention of significant harm, arbitrary action or other reasons

**SORAINEN**



## When can the patent holder request a preliminary injunction?

- Estonia
  - when the generic is included in the reimbursement list
- Latvia
  - when the generic enters the local market, i.e., becomes available for the consumers
- Lithuania
  - when generic is included in the reimbursement list
  - the court may refuse to grant an injunction if a too long time has passed after registration of the generic

## ESTONIA

- ex parte
- next working day, unless the court opts for inter partes
- written proceedings
- preliminary injunctions are more often granted than not granted, but this practice is changing

## LATVIA

- ex parte / inter partes
- ten days / fifteen days
- written proceedings / oral hearing
- preliminary injunctions are more often granted than not granted

## LITHUANIA

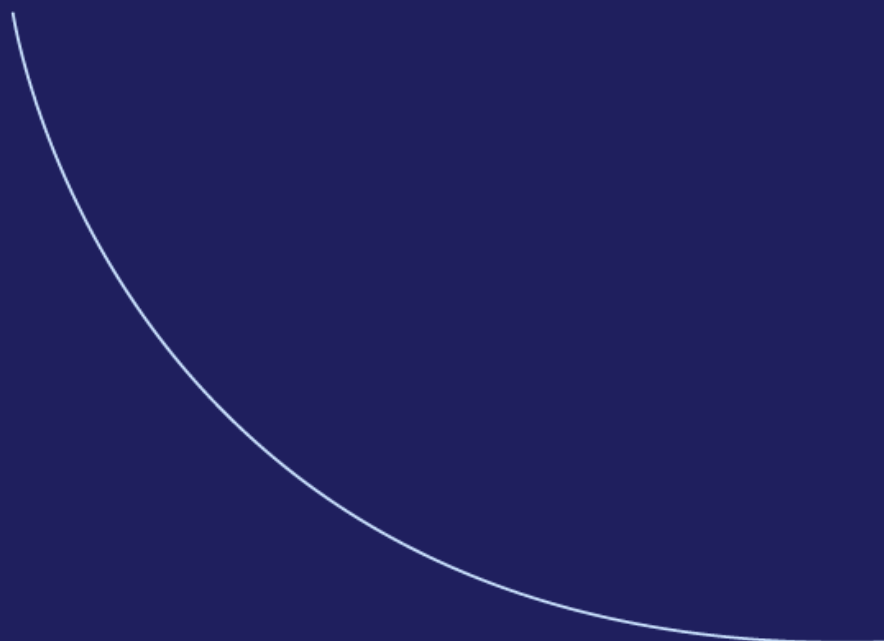
- ex parte, sometimes defendant is allowed to respond
- one week
- written proceedings
- preliminary injunctions are rarely granted



## Court's considerations

- likelihood of success
  - oppositions, invalidation proceedings and decisions made in other jurisdictions
- urgency
  - imminent threat
- balance of interests
  - including public interests
- security deposits
  - deposit requests

## Involving the authorities



- balancing public interests
- right to claim damages

## Countermeasures

- protective letter to the court
- counterclaim to the court for patent invalidation of the patent
- application to the Board of Appeals for the invalidation of the patent
- claim for the compensation of damages

## Patent holder's burden of proof:

- infringement of patent rights (except in case the patent protects a method)
- validity of patent rights
- damages (in case of requesting compensation of damages)

## Generic's burden of proof:

- no infringement (in case the patent protects a method, active obligation to show that a different method has been used)
- patent is invalid
- damages caused by preliminary injunction (if applicable)



## European Patent Office

- opposition proceedings at the European Patent Office
- suspension of the national proceedings
- revocation or amendment of the European patent is binding to the member states
- invalidation separately in each of the designated member states

## Unified Patent Court

- competence in respect of European patents and patent applications (unless opted out), European patents with unitary effect and SPCs
- decisions cover all member states
- proceedings may be suspended when opposition proceedings are ongoing at the European Patent Office



Olivia Kranich

Senior Associate

M. +372 5 253 193

[olivia.kranich@sorainen.com](mailto:olivia.kranich@sorainen.com)

[See profile](#)



Stasys Drazdauskas

Counsel

M. +370 61 122 910

[stasys.drazdauskas@sorainen.com](mailto:stasys.drazdauskas@sorainen.com)

[See profile](#)



Santa Prauliņa

Senior Associate

M. +371 27 330 015

[santa.praulina@sorainen.com](mailto:santa.praulina@sorainen.com)

[See profile](#)