**Joint Liability Confirmed in Thai Patent Infringement Case**

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**Facts**

Thailand – In January 2024, the Court of Appeal for Specialized Cases upheld a ruling that found two local pharmaceutical companies, Unisun and Medline, jointly liable for infringing H. Lundbeck A/S’s patent for antidepressant escitalopram. The court confirmed the lower court’s finding that the companies manufactured, sold, and distributed the drug in Thailand without authorization. The companies were ordered to pay Lundbeck 106,500 Danish Krone (approximately US$15,500) in damages, plus legal costs and court fees.

The case began in June 2020, when Lundbeck initiated legal action against Unisun and Medline for allegedly manufacturing, selling, and distributing escitalopram in Thailand without authorization. Lundbeck also claimed the companies had registered escitalopram as a Thai innovation with the National Science and Technology Development Agency (NSTDA), enabling them to bypass the auction process and sell the drug directly to hospitals and state agencies, thereby undercutting Lundbeck’s market share.

Lundbeck initially sought substantial damages exceeding 4 million Danish Krone (around US$584,000) and a range of remedies, including halting the infringement, destruction of the infringing products, and withdrawal of the innovation record with the NSTDA. However, the Central Intellectual Property and International Trade Court awarded Lundbeck a significantly lower sum of 1.1 million Thai Baht (approximately US$30,100), including 500,000 THB for enforcement costs and 600,000 THB for lost profits. The court denied Lundbeck’s other requests, such as the withdrawal of the NSTDA record, likely due to the expiration of Lundbeck’s Thai patent.

Dissatisfied with the initial ruling, both companies appealed. Unisun and Medline contested the amount awarded for lost profits, arguing it was excessive, while Lundbeck sought a higher overall compensation. The Court of Appeal, however, largely upheld the original ruling, adjusting the award to Danish Krone at Lundbeck’s request.

**Key Takeways**

* **Confirmation of Joint Liability**: The court’s decision confirms that multiple parties involved in the manufacturing, distribution, and sale of infringing products can be held jointly liable for patent infringement. This has implications for companies collaborating with local partners in Thailand.
* **Limited Damages in Thailand**: Despite Lundbeck seeking substantial damages, the awarded amount was relatively low, reflecting a conservative approach by Thai courts in patent infringement cases. This highlights the need for realistic expectations regarding financial compensation in such disputes.
* **Challenges with “Innovation” Claims:** The case demonstrates that registering a product as a “Thai innovation” with the NSTDA does not necessarily shield companies from patent infringement liability. IPR holders should be vigilant in monitoring such claims and taking appropriate legal action.
* **Importance of Patent Term:** The expiration of Lundbeck’s patent likely played a role in the court’s denial of certain remedies, such as the withdrawal of the NSTDA record. This underscores the need for careful patent lifecycle management and timely enforcement actions.
* **Potential for Appeals:** The fact that both parties appealed the initial decision highlights the potential for protracted legal battles in patent infringement cases. IPR holders should be prepared for lengthy and complex litigation processes in Thailand.

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