

Ex-parte Orders bring Local Headache

Indian drug cos' business plans upset after court injunction on generic versions

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New Delhi: A growing number of cases in the pharma sector, where courts forbid Indian drugmakers from launching generic versions of patented drugs (ex-parte injunction, without even hearing defendants) or ask them to furnish undertakings proclaiming that they have no plans to launch such a drug, has rattled domestic drugmakers.

From a handful of five-six in 2012, such instances grew to over 10 in 2013 and have already crossed 10 in the first six months this year in Delhi High Court, a list compiled by ET from law firms and companies shows. The list is not exhaustive, but indicative of a trend that suggests that for pharma multinationals, the strategy of suing Indian companies before they launch generic versions of patented drugs in the domestic drug market seems to be paying off.

Some generic drugmakers actually feel that a sustained global campaign by the Big Pharma against Indian intellectual property regime in the aftermath of a high-profile case in 2013 where Swiss innovator Novartis was denied a patent on cancer drug Glivec



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by the Supreme Court could have swung the pendulum, making judiciary 'over-protect' patents in some cases.

"With Novartis' Glivec, The Big Pharma may have lost the battle, but seem to be winning the war in projecting Indian judiciary as biased and bringing a bad name to it," a top executive of a leading domestic drug firm told ET on the condition of anonymity.

However, a closer look at the cases prove that almost all such injunctions have been granted in situations where innovator firms have filed suits before generic versions were launched in the market by relying on right to informa-

tion with drug regulators, company and traders' websites, internal communications such as SMS trails and other market intelligence tools.

Pravin Anand, managing partner of Anand and Anand, who represents innovator companies in many such cases back this strategy, saying that a launch of a drug changes the entire equation of balance of convenience. "If an ex-parte order is not granted, then it can lead to disastrous consequences, such as the removal of goods from one jurisdiction to another," he said. The innovator then risks the market getting flooded with infringing products.

However, patent experts warn that Indian courts should be cautious while granting ex-parte injunctions in patent cases, particularly in the pharma space, as these are highly complex matters with a lot at stake. "If India is accused of under protecting patents by select groups, there are several cases where it is guilty of over protecting patents as well," said Shamnad Bashier, a patent expert. "No other country, even patent-friendly jurisdictions, dole out ex-parte injunctions so frequently." But Generic drug firms see this emerging trend as a threat that can disrupt business model.

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