

CORONAVIRUS OVERCOMING THE DIFFICULTIES

GILEAD SCIENCES CHALLENGES THE GRANT BY THE RUSSIAN GOVERNMENT OF THE RIGHT TO USE WITHOUT CONSENT ITS PATENTS FOR MEDICINES EMPLOYED IN THE COVID- 19 THERAPY

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In January 2021 it became public that the Russian Government had granted right to use 5 patents owned by Gilead Sciences, Inc. in relation to medicines employed in the therapy of COVID-19 without the consent of the patent holder. This was based on article 1360 of the Russian Civil Code providing a derogation from the exclusive rights of the patentee in case of national defense and security needs (please see details in our article “Medicines for the therapy of the Covid-19 syndrome, political discretion and the bypassing of patent rights in Russia in an unprecedented legal scenario” at <https://www.lexology.com/library/detail.aspx?g=4616f1af-e652-47ad-8ff7-af39807c8b56>)

The Russian press reported that Gilead was disappointed with the decision of the Russian Government, which it considered it to be counter-productive. Besides, the US company is confident that there is no unfilled demand in Russia for its medicinal product based on the relevant patents and there was, therefore, no legal basis for the grant of an extraordinary license to the Russian company Pharmasintez.

Gilead filed a lawsuit with the Supreme Court of the Russian Federation seeking the judicial review of the legality of the Government order. The claim was procedurally admitted by the Supreme Court and proceedings are scheduled for 27 May 2021.

We recall that the requirement of unfilled domestic demand is applicable to compulsory licenses under article 1362 of the Civil Code, whilst article 1360 does not envisage any conditions for granting an extraordinary right to use third parties' patents to face national defense and national security needs.

Needless to say, the decision of the Supreme Court is eagerly awaited by the IP and legal community.

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Il presente articolo ha esclusivamente finalità informative e non costituisce parere legale.


This article is exclusively for information purposes, and should not be considered as legal advice.




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