European Union

“Bayer Pharma”

Decision of the European Court of Justice (Third Chamber) 12 September 2019 – Case No. C-688/17

*Bayer Pharma AG v. Richter Gedeon Vegyészeti Gyár
Nyrt., Exeltis Magyarország Gyógyszerkereskedelmi Kft.*

Directive 2004/48/EC, Art. 9(7)

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Keywords Placing on the market of products infringing a patent right · Provisional measures · Patent subsequently declared invalid · Consequences · Damages · Right to appropriate compensation for losses caused by the provisional measures

1. Article 9(7) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, in particular, the concept of ‘appropriate compensation’ referred to in that provision, must be interpreted as not precluding national legislation which provides that a party shall not be compensated for losses which he has suffered due to his not having acted as may generally be expected in order to avoid or mitigate his loss and which, in circumstances such as those in the main proceedings, results in the court not making an order for provisional measures against the applicant obliging him to provide compensation for losses caused by those measures even though the patent on the basis of which those had been requested and granted has subsequently been found to be invalid, to the extent that that legislation permits the court to take due account of all the objective circumstances of the case, including the conduct of the parties, in order, inter alia, to determine that the applicant has not abused those measures.