

Case C-15/74 Centrafarm [1974]

Facts: Sterling Drug was the titular holder of national patents relating to the preparation of a medicament in several countries, including the Netherlands and Great Britain. Centrafarm imported these products without agreement of Sterling Drug from England and Germany, where they had been put onto the market in a regular manner by its subsidiaries, into the Netherlands, taking advantage of a price differential. Sterling Drug submitted an application requiring Centrafarm to refrain from this practice, upheld by the Court of Appeal, and Centrafarm appealed against the judgment. In connection with these proceedings, the Supreme Court of the Netherlands referred for a preliminary ruling several questions with regards to the interaction between the free movement of goods and the rights of a proprietor of parallel patents, and referring also whether Sterling Drug's practice constituted a concerted practice prohibited by Article 85 EEC Treaty and the action should be held impermissible.

Held: Article 36 EEC Treaty admits derogations from the free movement of goods if justified to safeguard rights which constitute the specific subject matter of industrial and commercial property. In relation to patents, the specific subject matter of the industrial property is the guarantee that the patentee has the exclusive right to use an invention with a view to manufacturing industrial products and putting them into circulation for the first time, directly or by the grant of licences, to reward the creative effort. An obstacle to the free movement of goods may be justified on these grounds where the protection is invoked against a product coming from a Member State where it is not patentable and has been manufactured by third parties without the patentee's consent. But in cases where there exist patents, a derogation is not justified where the product has been put onto the market in a legal manner, by the patentee himself or with his consent, in the Member State from which it has been imported, in particular in the case of proprietor of parallel patents. Otherwise, the patentee would be able to partition off national markets and restrict trade between Member States, in a situation where no such restriction was necessary to guarantee the essence of the exclusive rights flowing from the parallel patents. The result of the grant of a sales licence in a Member State is that the patentee can no longer prevent the sale of that product throughout the Common Market. Article 85 EEC Treaty is not concerned with concerted practices between undertakings belonging to the same concern and having the status of parent company and subsidiary, if they form an economic unit, the subsidiary has no freedom to determine its course of action on the market, and the practices are concerned merely with the internal allocation of tasks as between the undertakings.