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Patents in Greece

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Applying for a patent

Patentability

What are the criteria for patentability in your jurisdiction?

In order for an invention to be patentable in Greece, it must be new, involve an inventive step and be susceptible of industrial application. A patentable invention may concern a product, process or industrial application. In order for an invention to be considered as involving an inventive step, it must not be obvious to a person skilled in the art. In order for it to be considered susceptible to industrial application, the subject matter must be possible to produce or use in any industrial field.

What are the limits on patentability?

According to the law, the following cannot be patented:

- discoveries, scientific theories and mathematical methods;
- aesthetic creations, schemes, rules and methods for performing mental acts, playing games or doing business;
- computer programs; and
- presentations of information.

To what extent can inventions covering software be patented?

Software is expressly excluded from patentability. However, computer-related inventions are patentable in Greece to the extent that the European Patent Office considers them patentable. In this respect, an invention that uses a computer program must be a functional system accompanying specific hardware.

To what extent can inventions covering business methods be patented?

Business methods are expressly excluded from patentability.

To what extent can inventions relating to stem cells be patented?

No Greek case law addresses the patentability of inventions relating to stem cells. However, such inventions are patentable under certain conditions and to the extent that the European Patent Office considers them patentable.

Are there restrictions on any other kinds of invention?

Surgical or therapeutic treatment methods for humans and animals and diagnostic methods practised on humans or animals are not considered as susceptible of industrial application; as such, they are not patentable. However, this does not apply to products – in particular, substances or compositions used in any of these methods.

Patents cannot be granted for the following:

- inventions whose subject matter is contrary to public order or morality; and
- plant or animal varieties or biological processes for the production of plants or animals.

Grace period

Does your jurisdiction have a grace period? If so, how does it work?

Under Greek law, grace periods are recognised in specific cases. Patents can be granted for inventions that have been disclosed no earlier than six months preceding the filing of the patent application if the disclosure was due to:

- an evident abuse of the rights of the applicant or its legal predecessor; or
- the invention being displayed at an officially recognised international exhibition. In such cases the applicant should state that the invention was displayed on filing the application and submit the relevant supporting certificate.

Oppositions

What types of patent opposition procedure are available in your jurisdiction?

Greek law has no opposition procedure before the Patent Office. A patent can be challenged only before the competent courts.

Apart from oppositions, are there any other ways to challenge a patent outside the courts?

Under Greek law, the validity of a patent can be challenged only via court procedures.

How can patent office decisions be appealed in your jurisdiction?

Patent Office decisions are enforceable administrative acts. As such, they can be challenged only before the Council of State.

Timescale and costs

How long should an applicant expect to wait before being granted a patent and what level of cost should it budget for?

The average time between application and grant of a patent is 12 to 18 months. The costs of obtaining a patent range between €500 and €840, depending on whether the applicant requests the issuance of a simple search report or a search report with the examiner's opinion. This estimate reflects official fees only (applicants should expect extra costs for excess claim fees if the application has more than 10 claims) and does not include attorneys' fees.

Enforcement through the courts

Strategy

What are the most effective ways for a patent owner to enforce its rights in your jurisdiction?

In 2016 the Civil Proceedings Rules were amended with the aim to, among other things, reduce the considerable delays that had previously been incurred in proceedings. Although improvements have been made in this respect, delays in main patent proceedings are still possible. It is therefore still of the utmost importance to initiate preliminary proceedings. Two preliminary proceedings are available:

- temporary restraining orders; and

- injunctions.

The quickest defence against infringement is to file for a temporary restraining order. For the court to grant a restraining order, the petitioner must prove the existence of a *prima facie* serious infringement and that the matter is of exceptional urgency. The request must be filed concurrently with a petition for injunction. If a temporary restraining order is granted, it remains effective until the injunction hearing takes place. For an injunction to be granted, the element of urgency must be evident. Within this framework, patent owners can request cessation of the infringement and removal of the allegedly infringing products from the market. Patent owners also have a right to information and are entitled to certain measures to preserve evidence.

Next, patent owners can initiate an action on the merits, which becomes statute barred either:

- five years after the date on which the patent owner became aware of the infringement or damage and the name of the infringer; or
- 20 years after the date on which the infringement was committed.

Patent owners can request compensation and moral damages. Owners may also claim payment of the profits derived from infringement or payment of an amount equivalent to the value of a licence for exploitation of the invention by the infringer. The court may also order the destruction of infringing products.

Nevertheless, in order to ensure the most effective protection of their rights, it is paramount that patent owners adopt preventative strategies, including efficient monitoring systems. One of the most effective preventative strategies is to establish a customs watch system by filing a general request with the Central Customs Directorate. Customs will notify the patent owner or its representatives when suspected infringing goods are intercepted. The patent owner must initiate court proceedings within 10 days of notification. This term can be extended by another 10 days. If an agreement is reached between the patent owner and the holder or owner of the infringing goods, Customs can order the immediate destruction of the counterfeit goods via a simplified procedure, without the need for court proceedings. In such cases, if the owner of the goods does not expressly oppose the destruction within 10 days, its agreement is presumed.

What scope is there for forum selection?

Forum selection is important to ensure that court proceedings take place before a court with sufficient expertise in patent law. Patent owners may wish to initiate court proceedings before specialised courts, not the local courts. According to legal theory and case law, the competence of the specialised courts in Athens and Thessaloniki is reserved for main patent actions (ie, main infringement actions and nullity actions against a patent), not for temporary restraining orders or injunctions. The competent courts for preliminary proceedings are the local courts. The local courts' lack of expertise in patent law may negatively affect the protection of patent owners' rights. Therefore, patent owners generally try to file preliminary proceedings before the specialised courts in Athens or Thessaloniki.

Pre-trial

What are the stages in the litigation process leading up to a full trial?

Until recently, there was no requirement under Greek law to contact the defendant before initiating court proceedings. However, pursuant to a new law – which came into force in January 2018 – from October 17 2018, mediation will be compulsory in legal disputes that arise from patent, trademark and industrial design infringement. It remains to be seen how the new rules will be implemented and in which way the new practice will change the landscape of patent litigation. According to current practice, patent owners may directly file a preliminary or main proceeding action against the patent infringer. However, patent owners usually send a warning letter to the infringer before initiating court proceedings. Greek patent infringers often cease infringement when they receive a strong warning letter.

How easy is it for defendants to delay proceedings and how can plaintiffs prevent them from doing so?

As no pre-trial proceedings existed in Greece until now, defendants had no means to delay the filing of court actions. However, the newly introduced compulsory mediation will bring changes in this respect. Certain aspects of the Greek judicial system previously allowed defendants to cause significant delays to infringement proceedings. Court hearings were often scheduled up to a year after the action was filed and postponed *ex officio*. Moreover, defendants had several options to delay proceedings further. For example, the courts routinely granted a defendant's first request for a postponement. It was thus generally agreed that efforts were needed to expedite court proceedings. With the introduction of the Civil Proceeding Rules, which came into force on January 1 2016, a defendant's opportunity to postpone proceedings has been significantly limited. Nevertheless – especially due to the backlog of pending cases –significant delays are still possible. Further, there is still a concern that the potential appointment of technical court experts might cause delays in excess of 18 months. As such, patent owners should initiate preliminary proceedings so that the court can impose a cease and desist order on the defendant until a binding decision in the main proceeding has been issued.

How might a party challenge the validity of a patent through the courts in anticipation of a potential suit for infringement being issued against it?

Any party with a legal interest has the right to file a nullity action against a patent. If a nullity action against a patent has already been filed, it will be much more difficult for the patent owner to succeed in preliminary proceedings. There is no assumption that the patent is valid and protected. Further, the party can rely on the argumentation already included in the nullity action.

If the patent owner subsequently initiates a main infringement proceeding, the nullity action and the infringement action will likely be heard together.

If the patent owner has already filed a main infringement proceeding action, the defendant has the right to dispute the validity of the patent and to file prior art documents and other evidence (eg, expert opinions).

At trial

What level of expertise can a patent owner expect from the courts?

Greece has two specialised community trademark and patent courts in Athens and Thessaloniki. The judges who serve in these courts are highly qualified graduates of the National School of Judges, where they received special training in IP law. Although they have a high level of knowledge in IP matters, they have no technical background. Consequently, in patent cases involving complex technical issues, their expertise may prove insufficient. This gap is filled by expert opinions, which play a key role in the outcome of cases. Expert opinions can of course further delay proceedings by at least 18 months; however, at least in complex patent cases, the use of expert opinions by patent owners is indispensable.

In preliminary patent proceedings, the local courts – which have no expertise regarding patent law – are considered the competent court.

Are cases decided by one judge, a panel of judges or a jury?

In preliminary proceedings cases are decided by one judge, whereas main proceedings are decided by three judges.

If jury trials do exist, what is the process for deciding whether a case should be put to a jury?

Jury trials do not exist in Greece.

What role can and do expert witnesses play in proceedings?

Expert witnesses may testify before the court either orally or by affidavit. Expert opinions are often pivotal to the outcome of proceedings, particularly in complex cases, since patent judges have excellent legal knowledge, but no technical background. Therefore, experts play a key role in the outcome of proceedings. Judges tend to give the opinion of a distinguished expert more weight than that of a non-technical person.

Does your jurisdiction apply a doctrine of equivalents and, if so, how?

Greek law generally accepts the doctrine of equivalence. According to this doctrine, due account must be taken of any element which is equivalent to an element specified in the claims. However, case law is not particularly sophisticated in this respect.

Is it possible to obtain preliminary injunctions? If so, under what circumstances?

In order for a petitioner to obtain a preliminary injunction, it must prove that there is a *prima facie* serious infringement and that the issue is a matter of urgency. If the court accepts the preliminary injunction, the petitioner must also file a main infringement action.

How are issues around infringement and validity treated in your jurisdiction?

The plaintiff and defendant present technical expert opinions with regard to the infringement or validity of the patent. If one of these issues is disputed, the court will typically order a court-appointed expert opinion.

Will courts consider decisions in cases involving similar issues from other jurisdictions?

Greek courts consider established case law and case law from other jurisdictions; however, precedent is not binding on the courts.

Damages and remedies

Can the successful party obtain costs from the losing party?

According to Civil Proceeding Rules, the losing party must pay the legal fees of the winning party. The exact amount of legal fees is determined by the court. The amount is often calculated on a conservative basis, not including all attorneys' fees. However, as EU Directive 48/2004 has been implemented in Greek law, the courts are now obliged to determine the actual legal fees. If a plaintiff asks for compensation, the related court costs (to be paid initially by the plaintiff) are approximately 1.1% of the requested amount. This amount must be added to the lawyers' fees. In this case, the legal fees determined by the court are much higher, depending on the requested amount.

What are the typical remedies granted to a successful plaintiff?

The courts typically grant the following remedies to successful plaintiffs:

- temporary or permanent injunctions;
- compensation for damages (including moral damages); and
- seizure and/or destruction of infringing goods.

The courts can also include a clause threatening the losing party with a monetary penalty for each breach of the judgment. In addition, the courts often order publication of decisions in newspapers.

How are damages awards calculated? Are punitive damages available?

Patent owners can request compensation and moral damages. In both cases the plaintiff must prove the infringer's negligence. Compensation claims are calculated based on the following factors:

- actual loss;
- the defendant's profits; and
- the licence analogy.

It is difficult to prove the exact amount of damage or enrichment, due to the fact that patent owners can rarely prove the exact number of products that have been distributed and the exact damage that has been caused in this respect. Where there is no possibility of finding sufficient evidence as far as the compensation claim in concerned, patent owners can request the infringer to provide information, including invoices or the number of products that have actually been distributed.

The amount of compensation also depends on the facts of the case. Regrettably, no data regarding the outcome of compensation actions in Greece exists.

Patent owners can also request moral damages, but the amount of compensation is difficult to estimate. Greek courts rarely adjudicate amounts exceeding €45,000 as moral damages.

How common is it for courts to grant permanent injunctions to successful plaintiffs and under what circumstances will they do this?

In order for a petitioner to be granted a permanent injunction, it must prove the existence of serious infringement. The petitioner must also prove novelty and inventive step of the invention, if the defendant raises objections in this respect.

Timescale and costs

How long does it take to obtain a decision at first instance and is it possible to expedite this process?

Until recently, the Greek judicial system permitted enough space for defendants intentionally to cause significant delays to proceedings. To this end, Parliament has introduced significant amendments to the Civil Procedure Rules, which came into force on January 1 2016. These rules stipulate strict timeframes for proceedings, with both parties obliged to file their respective written arguments and all evidence within 100 days of the action being filed (130 days where the defendant is not resident in Greece). Both parties must then file their rebuttal arguments within 15 days. Each party is entitled to present up to five sworn affidavits in support of its own arguments and up to three sworn affidavits to rebut the arguments of the other party. As a rule, the court will then hear the case without witnesses. If the court deems it absolutely necessary, it can summon one of the affiants to testify in court. Therefore, the hearing in a main infringement proceeding takes place approximately five months after the filing of the action and a decision will be issued after approximately six months. However, especially due to the backlog of pending cases, it is possible that decisions may be delayed in the future.

Moreover, in patent nullity actions, because patent judges have no technical background, the courts often order a court-appointed expert opinion, which can cause delays of at least 18 months. In light of the above, action against the infringer should be taken immediately on discovering infringement by filing a petition for preliminary injunction.

How much should a litigant plan to pay to take a case through to a first-instance decision?

No accurate estimation can be made of the costs involved in taking a case through to a first-instance decision, because these depend on:

- the complexity of the case;
- the duration of the proceeding;
- potential involvement of experts; and
- possible translation costs.

However, compared to other EU countries, the related costs in Greece are considerably lower.

Appeal

Under what circumstances will the losing party in a first-instance case be granted the right to appeal? How

long does an appeal typically take?

All first-instance decisions can be appealed. The terms for filing an appeal are:

- within 30 days of notification, if the losing party is a Greek national; and
- within 60 days of notification, if the losing party is a non-national.

Where no notification has taken place, appeals must be made within three years of publication of the decision. The losing party can contest all aspects of the judgment relating to legal issues or incorrect fact finding. However, new facts cannot be brought before the court of appeal. The right to appeal applies only to main infringement proceedings; decisions in preliminary injunction proceedings cannot be appealed. The average duration of an appeal is 18 months; however, proceedings can last longer under certain circumstances.

Options away from court

Are there other dispute resolution options open to parties that believe their patents to be infringed outside the courts?

Under the Code of Civil Procedure, parties involved in infringement cases may opt for an out-of-court settlement. The parties may also use mediation or arbitration; however, neither option has been sufficiently tested. The newly introduced obligatory mediation system will certainly affect the litigation landscape in Greece.

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