

DESIGNS

Greece



Designs

Consulting editors

Jonathan E. Moskin , Richard J. McKenna

Foley & Lardner LLP

Quick reference guide enabling side-by-side comparison of local insights, including into the legal framework; registered and unregistered designs; registration and opposition procedures; enforcement; assignment and licensing; and recent trends.

Generated 30 October 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

Table of contents

LEGAL FRAMEWORK

Relevant legislation

Nature of system

Agency

Overlap with other rights

UNREGISTERED DESIGNS

Protection

Use requirements

Exclusions

REGISTERED DESIGNS

Ownership

Scope

Costs

Grace period

PROCEDURES

Application

Examination and appeals

Opposition

Registration time frame

Removal from register

ENFORCEMENT

Grounds for a claim

Procedures

Remedies

Enforcement time frame

Recent cases

OWNERSHIP CHANGES AND RIGHTS TRANSFERS

Assignment and licensing

Licences of right

UPDATE AND TRENDS

Key developments and future prospects

Contributors

Greece



Maria Athanassiadou

m_athanasiadou@hplaw.biz

Dr Helen G Papaconstantinou and Partners Law Firm



LEGAL FRAMEWORK

Relevant legislation

What is the relevant legislation?

Industrial designs in Greece may be protected at the international, EU and national levels. Registered international designs with Greece as a designated state have the same effect as a valid national registration. Registered (EU) Community designs are automatically valid in Greece. Unregistered designs are also protected in Greece under EU law.

Registered industrial designs are protected by:

- Law No. 2417/1996 on the ratification of the Hague Agreement Concerning the International Deposit of Industrial Designs;
- Presidential Decree No. 259/1997 on the implementing provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs;
- Presidential Decree No. 161/2002 implementing EU Directive 98/71/EC on the legal protection of designs; and
- Council Regulation (EC) No. 6/2002 on Community designs (Community Design Regulation).

With regard to national industrial designs, Greece has a 'partially cumulative' protection system. According to this doctrine, a registered design is eligible for protection under both copyright and design law, provided that the requirements for each type of right apply. Protection under copyright law also applies independently to unregistered designs, provided that the conditions of Law No. 2121/1993 on copyright protection are met.

The Greek courts apply the different criteria under the two types of protection on a case-by-case basis (ie, novelty and individual character under design law and originality resulting from the personal contribution of the creator under copyright law). In a case involving an international design registration (recognising the new and individual character of the design in question) that did not designate Greece, the Athens Court of Appeal found that, since the design in question fulfilled the conditions to be considered a creation of exceptional originality, it was eligible for protection in Greece under copyright law (Decision No. 5863/2008).

Law stated - 15 September 2023

Nature of system

Are design rights considered to be distinct or treated as patent rights?

Design rights are distinct from patent rights. They protect the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and or materials of the product itself and or its ornamentation.

Law stated - 15 September 2023

Agency

Which agency is responsible for registration and grant of design rights?

The Greek Industrial Property Organisation is responsible for the registration and grant of industrial designs.

Law stated - 15 September 2023

Overlap with other rights

Is there any overlap between design rights and other rights?

The protection provided under design, copyright and trademark law overlaps. Each type of protection covers different aspects of intellectual property (IP) rights, while the conditions of protection and granted rights also differ. Therefore, in the context of related decision making, the comparative advantages and disadvantages of these rights must be assessed. The protection offered by each type of right often complements that of the other rights.

Design protection may also fall under the realm of unfair competition law and benefit from provisions pertaining to unregistered distinctive signs. In light of the above, it is crucial that rights holders undertake a comprehensive evaluation of their IP portfolio with the assistance of an IP expert. In doing so, they can strategically combine the protection options offered, leading to the most effective management of their IP rights.

Law stated - 15 September 2023

UNREGISTERED DESIGNS

Protection

What protection and rights are there for unregistered designs?

Although Greek design law does not provide for the protection of unregistered designs, such designs are protectable under article 11 of the Community Design Regulation. To enjoy the three-year protection available in this context, an unregistered design must:

- be new;
- have individual character; and
- have been disclosed to the public within the European Union.

'Disclosure' is understood to mean any public announcement that is made in such a way that specialists in the relevant sector can be informed of it in the normal course of business.

Unregistered designs can also enjoy protection under Greek copyright law, although this requires a considerably higher degree of originality. In this context, a design must exhibit particular individuality that results from the creative intellectual work of the creator and gives the design such originality that it is distinguished from similar creations. The Thessaloniki Appeal Court held that specific seams on clothes, the placement of pockets and the size, shape and placement of buttons lacked individuality and thus were not original; therefore, they were not protectable under copyright law (Decision No. 2015/2010).

Law stated - 15 September 2023

Use requirements

How much use is generally required to establish unregistered design rights?

There is no guidance by law or case law regarding how much use is required to establish unregistered design rights. An unregistered design comes into existence automatically when it is first made available to the public within the European Union.

Exclusions

What exclusions apply to unregistered design rights?

The following are excluded from protection:

- designs that are contrary to public policy or the accepted principles of morality;
- designs in which the features of the product's appearance are solely dictated by its technical function;
- designs where the features of the product's appearance must necessarily be reproduced in their exact form and dimensions to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function; and
- designs that lack exceptional originality.

However, a design will enjoy protection if it serves the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

Law stated - 15 September 2023

REGISTERED DESIGNS

Ownership

Who can apply for and own a design?

An application for registration of an industrial design can be filed with the Greek Patent Office by the creator or creator's successor(s) in title. If the applicant is not the sole creator or co-creator of the design, the origin of the right to the design must be proven by submission of a related declaration.

Law stated - 15 September 2023

Scope

What may and may not be protected?

Only designs that are new and have individual character can be protected. They must also be susceptible to an industrial application (Thessaloniki Court of Appeal Decision No. 1044/2011). For a design to be considered as having individual character, the overall impression that it produces on the informed user must differ from any design disclosed before the filing or priority date. The designer's degree of freedom in developing the design must be taken into account when assessing individual character.

Protectable as a design is the appearance of the whole or part of a product resulting from the lines, contours, shape, texture or materials of the product itself or its ornamentation. In this context, a 'product' is defined as any industrial or handicraft item, including parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.

Designs for spare parts – that is, designs applied to or incorporated into products constituting component parts of a complex product – are eligible for registration only to the extent that:

- the component part, after incorporation into the complex product, remains visible during normal use of the

complex product, excluding maintenance, servicing or repair;

- the visible features of the component part are new and have individual character; and
- the design is not dictated solely by its technical function.

As a 'complex product' is considered to be a product composed of multiple components that can be replaced and that permit disassembly and reassembly of the product, 'must-fit' spare parts are not protectable. Also not protectable are features of a product's appearance that are dictated solely by its technical function, or that must be reproduced in an exact form and dimensions to permit the product into which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product, so that either product may perform its function. For a design to be eligible for registration, it must also not be contrary to public policy or accepted principles of morality.

Law stated - 15 September 2023

Costs

What are the costs involved in registration?

Design registration is an affordable and attractive option. The costs (official fees) for a single design application from filing to registration amount to €130. In multiple design applications, there is a €10 filing fee and a €10 publication fee for each additional design. Deferment of publication by up to one year is possible on payment of a €30 fee. An additional €10 fee for each additional design must be paid in the case of multiple design applications. No grant fees are due.

Law stated - 15 September 2023

Grace period

Is there a grace period for filings?

An important aspect of the protection of registered designs is the 12-month grace period for designs that have been disclosed by the designer, the designer's successor in title or a third party. Due to the particular character of designs within the market, this grace period can prove valuable to creators, who have the opportunity to evaluate the impact of their design on the market before registering it.

Law stated - 15 September 2023

PROCEDURES

Application

What is the application process?

To register an industrial design in Greece, an electronic application must be filed with the Greek Patent Office that includes:

- a request for registration;
- details of the applicant and the creator;
- a graphic representation or original photograph of the design;
- an indication of the product into which the design will be incorporated or used;

- the relevant Locarno class of the product;
- priority documents, if convention priority is claimed;
- any applicable documentation regarding succession, which must be notarised and legalised by apostille;
- a certified copy of an extract from the Register of Commerce reflecting the incorporation of the applicant company, legalised by apostille;
- a power of attorney, signed by the applicant, if the filing is made by an authorised agent; and
- payment of relevant fees.

Law stated - 15 September 2023

Examination and appeals

How are the examination and appeals procedures conducted?

The Greek Patent Office does not perform a substantive examination of industrial design applications. It assesses only the formalities of design applications. Any missing documents or details may be submitted within four months of application. After this term, the design is published in the Official Bulletin of the Greek Patent Office .

The lack of substantive examination is offset by the possibility of having a design declared invalid upon a nullity action before the competent civil court (Thessaloniki Court of Appeal Decision No. 1044/2011).

Law stated - 15 September 2023

Opposition

What are the opposition rules?

Greek law does not provide for an opposition procedure.

Law stated - 15 September 2023

Registration time frame

What are the registration time frames?

Priority must be claimed within six months of the date of first filing.

The Greek Patent Office assesses only the formalities of design applications. Any missing documents or details may be submitted within four months of application. After this term, the design is published in the Official Bulletin of the Greek Patent Office. Grant follows shortly thereafter and may be expected five to six months after the filing.

The maximum protection term for designs is 25 years, renewable every five years.

Law stated - 15 September 2023

Removal from register

In what instances does removal from the register occur?

A design may be declared invalid upon a nullity action before the competent civil court. A design may be invalidated if:

- the registered rights holder is not the creator, successor in title or owner of the design;

- the protected design does not fulfil the registration requirements provided by law; and
- the features of the product's appearance or its interconnection are not protectable because:
 - they are dictated solely by its technical function;
 - they must be reproduced in an exact form and dimensions to permit the product into which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function; or
 - their exploitation or publication contravenes public policy or accepted principles of morality.

Law stated - 15 September 2023

ENFORCEMENT

Grounds for a claim

What are the key causes of action?

Key cause of action may depend on each case, but most commonly is launch of an infringing product on the market.

The most common way to commence an infringement case is by sending a warning letter before initiating court proceedings. This has proven to be an effective method since Greek infringers often cease infringement on receipt of a strongly worded cease and desist letter.

Rights holders and their exclusive licensees are entitled to bring infringement actions before the competent courts. In cases of co-ownership, infringement actions can be brought independently by each co-owner.

Law stated - 15 September 2023

Procedures

What enforcement procedures are available?

The most common way to commence an infringement case is by sending a warning letter before initiating court proceedings. This has proven to be an effective method, since Greek infringers often cease infringement on receipt of a strongly worded cease and desist letter.

The Code of Civil Procedure provides litigants in infringement cases the option of seeking an out-of-court settlement. Mediation and arbitration are also available means for resolving IP rights disputes.

Rights holders and their exclusive licencees are entitled to bring infringement actions before the competent courts. In cases of co-ownership, infringement actions can be brought independently by each co-owner.

The quickest way to halt infringement is to file a temporary restraining order (TRO). For the court to grant a TRO, the petitioner must prove the existence of a prima facie serious infringement and the exceptional urgency of the matter; the element of urgency in particular must be evident for the grant of an injunction. The related request must be made at the same time as a petition for injunction. A granted TRO remains in effect until the hearing on the injunction takes place.

Within the framework of an injunction proceeding, the rights holder can request:

- cessation of the infringement;
- removal of the allegedly infringing products from the market; and
- disclosure of detailed information and accounts concerning the defendant's infringing activities.

The implementation of the EU IP Rights Enforcement Directive (2004/48/EC) established the right of right holders to

request preservation of evidence, inspection, and compensation for damages.

As a next step, rights holders can initiate an action on the merits, which becomes statute barred either:

- five years after the date on which the rights holder became aware of the infringement or damage and the identity of the infringer; or
- twenty years after the date on which the infringement was first committed.

Law 4512/2018 initiated compulsory use of mediation in legal disputes arising from patent, trademark and industrial design infringements. It introduced a compulsory initial mediation session before the hearing of the case. This, along with proof of the lawyer's compliance to the obligation to inform the client in writing about the option of mediation, is a prerequisite for the admissibility of the lawsuit.

Greece has two specialised EU (formerly Community) trademark and patent courts, based in Athens and Thessaloniki. These courts have exclusive jurisdiction over design infringement cases and copyright disputes under the conditions established by the applicable legislation. Judges serving these courts receive special training in intellectual property matters during their studies at the National School of Judges before their appointment to the bench.

Despite the effective protection provided by the courts, it is paramount that rights holders adopt preventive strategies and efficient monitoring systems. Inspired by the simplified procedure of Regulation (EU) No. 608/2013, Law No. 4155/2013 provides for a straightforward, effective process with respect to the seizure and immediate destruction of infringing goods located within the Greek territory. These actions may be implemented by several agencies, including:

- Customs;
- the police;
- the Market Control Unit;
- the Financial and Economic Crime Unit; and
- the Coast Guard.

Law stated - 15 September 2023

Remedies

What remedies are available?

If the design infringement is proved to have been intentional, the rights holder may seek one of the following forms of monetary compensation:

- compensation for damages, which includes actual loss, lost profits and moral damages;
- an account of profits; or
- payment of hypothetical lost royalties that the infringer would have paid to the rights holder had a licence agreement been in place. In this case, the plaintiff must submit evidence to justify the requested amount.

The court can also order the destruction of the infringing products.

The law does not provide for punitive damages.

Enforcement time frame

What are the time frames for the resolution of enforcement actions for registered and unregistered rights?

The hearing on a Temporary Restraining Order usually takes place three to four days after filing and the decision is rendered within one to seven days.

The Petition for Injunction hearing is usually scheduled within one to three months from the date the petition is filed, and the decision must be rendered two to six months from the hearing date, however significant delays are usually observed.

As regards main actions, according to the Civil Procedure Rules, strict timeframes for proceedings are in place. The lawsuit must be served to the defendant within 30 days from filing, if a Greek resident, and within 60 days from filing if a non-Greek resident. The parties are obliged to file their written arguments and all relevant evidence within 90 days of the expiry of the deadline for officially serving the lawsuit. The timeframe is 120 days in case the defendant is a non-Greek resident. Both parties must then file their rebuttal arguments within 15 days. Each party has the right to submit up to five sworn affidavits in support of its own arguments and up to three sworn affidavits to rebut adverse party's arguments. As a rule, the court will then hear the case without witnesses. If the court deems it absolutely necessary, it has the option of summoning one of the addressees 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 may be expected after approximately another six months. It must be noted that according to the Greek law there are separate procedures before the competent civil courts for validity challenges and infringement actions. Consequently, full, or partial nullity actions can be made in the form of an independent legal action or a counterclaim within the framework of the infringement proceedings. In practice, invalidity objections and nullity actions are the most common defences for infringers.

Law stated - 15 September 2023

Recent cases

What key cases from the past 18 months should rights holders be aware of?

There have been no significant cases on design matters within the past 18 months.

Law stated - 15 September 2023

OWNERSHIP CHANGES AND RIGHTS TRANSFERS**Assignment and licensing**

What are the rules surrounding assignment and licensing of design rights?

For assignments of rights and any other changes (eg, name or address changes and licence agreements) to have legal effect, they must be recorded with the Greek Patent Office. Recordals can be made both while a design application is pending and after registration.

For recordal of an assignment, the following must be submitted:

- an assignment deed signed by both assignor and assignee, which must be notarised and legalised by apostille;
- and

- a power of attorney, simply signed by the assignee.

For recordal of changes of name, legal style or address, the following must be submitted:

- an extract from the Register of Commerce or any other official certificate issued by a competent authority reflecting the change, which must be legalised by apostille; and
- a power of attorney, simply signed by the rights holder.

For recordal of a licence, the following must be submitted:

- a licence agreement signed by both the licensor and licensee, which must be notarised and legalised by apostille; and
- a power of attorney, simply signed by the licensee.

It is recommended that the new rights holder record the assignment in the register to invoke the rights deriving from the design in the case of infringement.

Law stated - 15 September 2023

Licences of right

Are licences of right available?

Under the Law on Patent Protection, which applies to designs by analogy, the design owner may, at any time, make a statement to the Industrial Property Organisation consenting to the grant of an exclusive or non-exclusive licence, against compensation. Such a statement remains valid for two years, it is recorded in the relevant Register of the Patent Office and is published in the Bulletin of Industrial Designs .

Law stated - 15 September 2023

UPDATE AND TRENDS

Key developments and future prospects

What were the key judicial, legislative, regulatory and policy developments of the past year in relation to the protection and enforcement of designs? What are the prospects for future developments?

On 14 September 2023, the Draft Law of the Ministry of Development on the 'Ratification of the Geneva Act of the Hague Agreement on the International Registration of Industrial Designs, which was approved in Geneva on July 2, 1999', was passed by the Greek Parliament. With this legislative initiative, Greece completed the integration of the existing up-to-date international treaties on industrial designs into the Greek Industrial Property System. The Greek Industrial Property Organisation must now proceed with the preparation of the required presidential decrees. This act modernises the filing process for international design applications and creates a connection between the international design registration system and the regional ones.

At the EU level, it is with a lot of interest that the results of the ongoing review of the Design Directive and the Community Design Regulation, which together constitute the EU legislation on design protection, are expected. The

main objectives of this review are to update the existing legal provisions and clarify rights as to their scope and limitations, simplify registering processes within the EU, adjust and optimise the level and structure of payable fees, harmonise procedures and ensure they complement national design systems and, very importantly, to allow the reproduction of original designs for repair purposes of complex products, such as cars, with an EU-wide 'repair clause'. When the new provisions come to reality, they will certainly rejuvenate the design protection system, adapting it to the modern digital era.

Law stated - 15 September 2023

Jurisdictions

	Australia	Cooper IP
	Brazil	Kasznar Leonardos
	European Union	Berggren Oy
	Greece	Dr Helen G Papaconstantinou and Partners Law Firm
	India	LexOrbis
	Poland	JWP Patent & Trademark Attorneys
	Romania	Răzvan Dincă & Asociații
	Ukraine	PETOŠEVIĆ
	United Kingdom	CMS Cameron McKenna Nabarro Olswang LLP
	USA	Foley & Lardner LLP