

Greece: Patent litigation

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Injunctions at a glance

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| <p>Preliminary injunctions – are they available, how can they be obtained?</p> | <p>The proceedings are heard before the Single-Member Civil Court of First Instance. A preliminary injunction will be granted if the petitioner proves the existence of serious and urgent infringement, as well as the novelty and inventive step of the invention if the defendant raises objections in this respect.</p> |
| <p>Permanent injunctions – are they available, how can they be obtained?</p> | <p>Permanent injunctions can be granted to a successful plaintiff in a main infringement action.</p> |
| <p>SEP injunctions – are they available, how can they be obtained?</p> | <p>Not applicable.</p> |
| <p>Is payment of a security/deposit necessary to secure an injunction?</p> | <p>No.</p> |

What border measures are available to back up injunctions?

The right holder can file a general request with Customs, which will notify it or its representative on interception of suspected infringing goods.

Q: How can patent owners best enforce their rights in your jurisdiction?

The first and quickest way of acting against an infringer is to request a temporary restraining order. This will be granted if the petitioner proves the existence of a *prima facie* serious infringement as a matter of exceptional urgency.

Such request is filed concurrently with a petition for injunction and, if granted, is usually effective until the hearing of the injunction takes place. Within this framework, the patent owner may request cessation of the infringing act and removal of the allegedly infringing products from the market. The patent owner may also request delivery of information (eg, sales figures and channels of distribution of the infringing products) and measures to preserve evidence.

The next step is the main infringement action, in which the patent owner may request compensation and moral damages.

For the most effective patent protection, adopting a prevention strategy by establishing an efficient observation system is key. This can be achieved by filing a general request with the local customs authorities, which will notify the right holder or its representative on interception of suspected infringing goods.

Q: Are mediation and arbitration realistic alternatives to litigation?

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.

Articles 867 *et seq* of the Code of Civil Procedure provide for the rules on arbitrations; however, neither mediation nor arbitration have been sufficiently tested in Greece.

Law 4512/2018 initiated compulsory use of mediation in legal disputes that arise 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.

Q: Who hears patent cases – for example, individual judges, a panel of judges, a mix of judges and technical experts, judges and juries?

Preliminary injunctions are heard before the Single-Member Civil Court of First Instance and main infringement actions are heard before the Full-Member Civil Court of First Instance. Greece has two specialised EU trademark and patent courts based in Athens and Thessaloniki respectively.

Q: What level of expertise can litigants expect from courts?

The judges who serve in Greek specialised courts will have received special training in IP matters during their studies at the National School of Judges before their appointment to the bench; nonetheless, as they have only legal (and not technical) backgrounds, they have insufficient expertise to deal with complex technical issues. For this reason, expert opinions can play a key role in the assessment of the facts and in the outcome of a case.

Q: Are validity and infringement dealt with together in proceedings?

Greece has a bifurcated system. The law provides for separate procedures before the competent civil courts for patent validity challenges and infringement actions. Consequently, full or partial nullity declarations can be made by means 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.

Q: Who may represent parties engaged in a dispute?

Only lawyers (ie, attorneys at law) who are members of a Greek bar association may represent parties before the Greek civil courts, without restriction. The complexity of most patent disputes makes it imperative that litigants entrust their cases to lawyers who specialise in IP protection.

Presidential Decree 31/2019 established the Hellenic Industrial Property Academy, whose aim is to introduce a system of education at the national level that will provide suitable training in the industrial property field and will lead to the acquisition of the title of 'patent attorney' or 'certified patent consultant'. Certified individuals will have the right to act on behalf of their clients before the Greek Patent Office, but not before courts.

The academy has not yet started fully functioning as it has still a long way to go in terms of organisational matters.

Q: To what extent is forum selection possible in your jurisdiction?

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 and not before 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), but 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.

Q: To what extent is pretrial discovery permitted?

Greek law does not provide for pretrial discovery; however, it gives the patent owner the right to take measures to preserve evidence and request the defendant to provide information (eg, invoices or the number of products that have been distributed) within the framework of a trial.

Q: To what extent is evidence written and oral at proceedings?

For the most part, evidence is in writing. An introductory writ is filed with the court and served on the defendant. The civil action starts with the filing of the lawsuit with the competent first-instance court. The plaintiff must serve the lawsuit within 30 days (or 60 days if the defendant resides abroad) from filing. Parties must file their written arguments and evidence within 100 days (or 130 days if the defendant resides abroad) from the action, and a reply to each other's arguments and evidence must be filed within a further 15-day period. Witness testimonies are submitted in the form of sworn affidavits.

Upon the expiry of the term, the file is deemed closed and, within another 15 days, the judge in charge of the case is appointed. The hearing of the case takes place within the next 30 days, without examination of witnesses in court, unless the bench decides that this is absolutely necessary.

Q: What role, if any, can expert witnesses play?

Expert witnesses may provide sworn affidavits. If the judge decides that an oral hearing is necessary, one expert witness may testify orally before the court. Given that the judges dealing with patent matters have only legal (not technical) backgrounds, the role of expert witnesses in the procedure is of paramount importance. Where complex issues are involved, such testimonies may prove to be decisive to the outcome of the case.

Q: Is the doctrine of equivalents applied by courts in your jurisdiction and, if so, what form does it take?

The Greek courts accept the doctrine of equivalents. More specifically, the courts accept that a patent may be infringed by means that are equivalent to the content of the claims.

The doctrine of equivalents applies when certain technical characteristics of the patented invention are identical to those of the infringing product or service, and certain characteristics of the latter fall within the meaning of 'variations' or 'imitations'; in other words, it applies when a third party, in its effort to illegally exploit an invention, changes certain secondary elements of the invention or adds certain minor or unnecessary elements thereto to disguise the infringement.

The court must determine whether there is an encroachment of the scope of protection of the invention. This scope is determined by extrapolating the range covered by the technical characteristics of the patent claims to items that, according to the average expert, are considered to achieve a technical solution that is equivalent to that protected by the patent.

A means of infringement, which as a rule comprises the copying of a technical characteristic, is considered as equivalent if it is obvious to the average expert that if that means is used, it will lead to a substantially similar result as the one achieved by the technical characteristics of the patent claims (Decision No. 3955/2015 of the Athens Multimembered Court of First Instance).

Q: Are there problems in enforcing certain types of patent relating to, for example, biotechnology, business methods or software?

Certain rights that are considered patent rights in other jurisdictions are exempt from protection under Greek patent law (eg, software and business methods). In any case, the factor that is most likely to give rise to difficulties in the enforcement of certain patent rights is the lack of technical training of Greek judges, as well as lack of extensive case law in complicated technical fields.

Q: To what extent are courts obliged to consider previous cases that have covered issues similar to those pertaining to a dispute?

Precedential decisions are not binding on Greek courts; however, Greek judges take the established case law into consideration and tend to stay in line with it.

Q: To what extent are courts willing to consider the way in which the same or similar cases have been dealt with in other jurisdictions? Are decisions from some jurisdictions more persuasive than those from others?

Although Greek courts are not bound by decisions from other jurisdictions, they tend to take them into consideration in similar cases – especially the case law of German, UK and French patent courts.

Q: What realistic options are available to defendants seeking to delay a case? How might a plaintiff counter these?

The current version of the Civil Procedure Rules have greatly limited the opportunities for defendants to obtain postponements, which used to be a tactic employed by parties to significantly delay proceedings; however, the appointment of technical experts may cause delays of 18 months or more.

Q: Under what circumstances, if any, will a court consider granting a preliminary injunction? How often does this happen?

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

Q: What is the realistic timescale to get a decision at first instance from the initiation of proceedings?

In main infringement action proceedings, parties may expect the issuance of the court decision within six to eight months from the hearing.

Q: How much should a litigant budget for in order to take a case through to a decision at first instance?

The costs involved in taking a case through to a first-instance decision are not easy to estimate as they depend on the complexity of the case, the duration of the proceedings, potential involvement of technical experts and potential translation costs; however, litigation costs in Greece are considerably lower compared to those in other EU member states.

The costs of preliminary proceedings and main patent proceedings can be roughly estimated to range between €20,000 and €50,000, but higher fees should be expected in complicated cases where several technical experts are involved and close cooperation between client and counsel is necessary for an extended period.

Q: To what extent are the winning party's costs recoverable from the losing party?

According to the Civil Procedure Rules, the losing party must pay the winning party's legal fees, as determined by the court. Historically, this amount has often been calculated on a very conservative basis, not covering all attorney's fees.

However, since the incorporation of EU Directive 48/2004/EC into Greek law, the courts are obliged to determine the actual legal fees. If the plaintiff seeks compensation, the related court costs may be much higher, depending on the requested amount, and may reach approximately 1.1% thereof.

Q: What remedies are available to a successful plaintiff?

The typical remedies granted to a successful plaintiff are a temporary or permanent injunction, damages, and seizure and/or destruction of the infringing goods. In many cases the courts may threaten the losing party with a monetary penalty for every breach of the judgment. They may also permit publication of a summary of the decision in the Greek daily press.

Q: How are damages awards calculated?

The patent owner may request compensation (ie, based on reasonable licensing fees) and moral damages, but not punitive damages. To obtain compensation or moral damages, the plaintiff must prove the negligence of the infringer.

In Greece, three factors determine the compensation claim: the actual loss, the defendant's unfair profits and reasonable licensing fees.

Proving the exact amount of the damage or enrichment is often considerably difficult. Where the patent owner cannot collect enough evidence, it may request the infringer to provide information such as invoices or the quantity of distributed products.

In addition to the compensation claim, a patent owner may request moral damages; however, the amount of moral damages is difficult to estimate.

Q: Under what circumstances will courts grant permanent injunctions?

The court will grant a permanent injunction if the petitioner shows that its patent is new and inventive and that the defendant is infringing it. Unfortunately, no data is available regarding the outcome of compensation actions in Greece.

Q: Does the losing party at first instance have an automatic right of appeal?

All final decisions of the first-instance courts are open to appeal within 30 days of notification to the losing party for Greek nationals or within 60 days of notification for foreign nationals. If no official notification takes place, the decision may be appealed within two years of its publication.

The losing party may contest all aspects of the judgment that relate to legal issues or incorrect findings regarding the facts of the case.

The right to appeal is provided only in main infringement action proceedings; preliminary injunction decisions cannot be appealed.

Q: How long does it typically take for the appellate decision to be handed down?

The time frame for appeal proceedings is on average 18 months but may be longer, depending on the circumstances.

Q: Is it possible to take cases beyond the second instance?

The losing party may appeal a second-instance decision before the Supreme Court within 30 days of notification to the losing party for Greek nationals or within 60 days of notification for foreign nationals. If no official notification takes place, the decision may be appealed within two years of its publication.

Q: To what extent do the courts in your jurisdiction have a reputation for being pro-patentee?

The lack of official data means a precise reply to this question cannot be given; however, practice indicates that Greek courts tend to be pro-patentee.

Nullification of validated European patents is rare in comparison with national patents because European patents are granted after substantial examination by the EPO regarding novelty and inventive step.

Q: Are there other fora outside the court system in which it is possible to assert patents in your jurisdiction? If so, under what circumstances might it be appropriate to use them?

There are no other fora outside the Greek court system for asserting patents.

Q: In what circumstances do courts in your jurisdiction accommodate remote hearings, for example during pandemic-related lockdowns?

Greece was one of the few countries that managed to keep the covid-19 pandemic under control. Greek authorities reacted in relatively swiftly, taking necessary and effective measures to prevent the spread of the virus.

Although remote hearings have not been considered as an option, the courts have suspended several services and have applied specific measures in coordination with the state guidance throughout the pandemic.

Q: Are there any other issues relating to the enforcement system in your country that you would like to raise?

The compulsory initial mediation session in legal disputes arising from patent infringement is a significant change in recent years that was expected to affect patent litigation and contribute to the reduction of the workload of the Greek courts; however, it has not been sufficiently tested yet, especially within the patent litigation environment.

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