

Patent Wars: the result of the 'economic analysis of law'

Patents, as well as intellectual property in general, are hugely complex yet important legal areas, especially within the international corporate arena. Different jurisdictions have different rules, which can be confusing when a company has a global reach. To find out more, *Lawyer Monthly* speaks to Dr Helen Papaconstantinou, senior partner of Dr Helen Papaconstantinou, John Filias & Associates, to learn about the legal implications surrounding patents in Greece

Q What are the biggest challenges you face within patent litigation?

The biggest challenge related to patent litigation proceedings in Greece involves the delays faced by litigants before the special IP courts that were recently established in Athens and Thessaloniki. Court hearings are often scheduled for as far as a year after filing and are subject to ex officio postponements, thus it may take a considerable amount of time before having a first instance decision. In this respect, it must also be noted that the competence of the special IP Courts is reserved only for the hearing of main proceeding actions, and not for temporary restraining orders and/or injunctions, which are heard by the general courts of first instance, along with numerous other cases in all legal fields. Appeals often tend to take a long time as well, hence this delay is a great consideration when it comes to deciding whether to actually pursue the case through litigation or attempt an out of court settlement.

A further challenge is that even when cases are being eventually heard in courts, the judges may not always have the technical knowledge or broad understanding of «technical» matters, background and experience to deal with the complexities of patent litigation.

Q How do you navigate these challenges?

In view of the complexities and delays involved in the patent litigation process, we always advise our clients to take legal action as soon as possible after suspecting an infringement, thus ensuring that they may be able to file a petition for injunction and a temporary restraining order when applicable. If granted, these may

constitute powerful early enforcement tools, as proceedings are brief and decisions are issued in a relatively short time after the hearing.

Q What were your opinions of last year's 'patent wars'?

The 'patent wars' might be the result of a model of thinking that is called "economic analysis of law". This marks surely not the model thinking of the legal departments of the big Telecommunications Companies, but rather the orientation of the executives, who outweigh benefits of actions independently of their legality and costs of enforcement of administrative or judiciary decisions. It is remarkable that in these 'wars' the actors just change their roles from one alleged infringement to another, since the actions of the economic subjects seem to take place on a basis of mutuality.

A second remark on this issue refers to the importance of the intersection between all restrictions that are linked to effective IP-rights protection and the necessarily open character of technical standards, mainly in view of their influence on innovation. A big part of the most recent cases of 'patent wars' refers exactly to the sensible balance between licensing of patents and implementing technical standards, that are indispensable for keeping an ICT Undertaking in competition.

In my opinion, here is the core of the problem: how to strike a right balance between exclusion of innovation and fair competition. In my view, the means of compulsory licences should not reach too far, and I would rather plead for the effective implementation of the FRAND principle (fair, reasonable and

non discriminatory licences) in the spirit of facilitating international trade without ceasing to insist on a vigorous IP-protection.

Q Do you feel the need for any legislative change within this area?

A new Bill on trademark law, which is due to be voted in early 2012, is expected to further strengthen the rights of trademark owners. This is a welcome development in view of current challenges, although its precise effect remains to be seen. **LM**

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