

Patents 2021

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Patents

2021

Contributing editors**Louis E Fogel and Shaun M Van Horn****Jenner & Block LLP**

Lexology Getting The Deal Through is delighted to publish the eighteenth edition of *Patents*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Israel, Singapore, Turkey and the United Kingdom.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Louis E Fogel and Shaun M Van Horn of Jenner & Block LLP, for their continued assistance with this volume.



London

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PATENT ENFORCEMENT PROCEEDINGS

Lawsuits and courts

- 1 | What legal or administrative proceedings are available for enforcing patent rights against an infringer? Are there specialised courts in which a patent infringement lawsuit can or must be brought?

The first and most swift action 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 a request is filed concurrently with a petition for injunction and, if granted, remains usually effective until the hearing of the injunction. A petition for injunction is granted if the element of urgency is prevalent in the circumstances of a particular case. The patent owner may ask for the cessation of the infringing act and the removal of the products from the market. The patent owner is also entitled to take measures for preserving evidence and has the right to information.

The next step is pursuing a main infringement action in which the patent owner may also ask for compensation and moral damages.

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 specialist courts, instead of the local courts. According to legal theory and case law, the competence of the specialist 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. However, the local courts' limited expertise in patent law may negatively affect the protection of patent owners' rights. Therefore, patent owners generally try to file preliminary proceedings before the specialist courts in Athens or Thessaloniki.

Trial format and timing

- 2 | What is the format of a patent infringement trial?

By virtue of the Greek Civil Procedure Rules, strict time frames for proceedings apply, where both parties are obliged to submit their arguments in writing along with all relevant evidentiary material within 100 days of the filing of the main action. This time frame applies to Greek nationals and is extended to 130 days for foreign nationals. Both parties must then file their rebuttal arguments within 15 days. Upon expiry of this term, the case file is considered complete. Within 15 days from this point, a judge-rapporteur must be appointed and within 30 days the hearing is scheduled. Each party has the right to submit a maximum of five sworn affidavits in support of its own arguments and a maximum of three sworn affidavits to rebut the adverse party's arguments. As a rule, the court, which in main proceedings consists of three judges, will then

hear the case without witnesses. However, if the court deems it absolutely necessary, it has the option of summoning one of the affiants to testify before the court. In such a case, cross-examination of witnesses is permitted. Each party's witness is expected to testify on all facts of the case. Each party's counsel may cross-examine the other party's witness. The court may also address questions to the witnesses. Expert witnesses may play a key role in complex patent cases, especially in view of the fact that Greek judges have only a legal but not a technical background. 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 six months.

Proof requirements

- 3 | What are the burdens of proof for establishing infringement, invalidity and unenforceability of a patent?

For establishing infringement, the plaintiff must prove that the patent upon which its action is based is valid, as well as the way in which the defendant is infringing the patent. In invalidity cases, the plaintiff must prove the grounds of invalidity of the contested patent. In case a party claims unenforceability of a patent, this party must prove that the lawsuit for infringement or for compensation has not been timely filed, or that the acquiescence of the plaintiff had created the impression to the defendant that it would not bring a lawsuit against same, or that defendant's use had been made for non-professional or for experimental purposes (and in case of pharmaceuticals possibly that the Bolar provision applies), or that plaintiff's patent was null.

Standing to sue

- 4 | Who may sue for patent infringement? Under what conditions can an accused infringer bring a lawsuit to obtain a judicial ruling or declaration on the accusation?

According to the Law, standing to sue has the patent owner, the exclusive licensee, whoever has a right on the invention and the owner of a pending patent application. In the latter case, the court may order the postponement of the hearing until grant of the patent. It must also be noted, that according to the leading opinion, for the exclusive licensee to have the right to bring an action independently, the licence must be recorded at the Greek Patent Office. An accused infringer may request a declaratory judgement recognising that he or she is not infringing. Such a judgement is enforceable between the parties only.

Inducement, and contributory and multiple party infringement

- 5 | To what extent can someone be liable for inducing or contributing to patent infringement? Can multiple parties be jointly liable for infringement if each practises only some of the elements of a patent claim, but together they practise all the elements?

Greek patent law does not have any specific provisions concerning inducement and contributory infringement. However, general legal provisions may be applicable depending on the case. Apart from the actual infringer, the plaintiff may also sue any intermediaries, the services of whom are used by a third party to perform infringement, and directors or employees of a legal entity provided that they committed the infringing acts and that they acted for the infringing entity, but only if their personal actions constitute a tort. In the case of multiple party infringement, each party will be liable to the extent of its own infringing actions.

Joinder of multiple defendants

- 6 | Can multiple parties be joined as defendants in the same lawsuit? If so, what are the requirements? Must all of the defendants be accused of infringing all of the same patents?

Multiple parties may be joined as defendants in the same lawsuit, provided that each of them contributes to the infringement in some way. Not all of the defendants must be accused of infringing all of the same patents, but there must be a connection on the basis of which the court may allow multiple defendants.

Infringement by foreign activities

- 7 | To what extent can activities that take place outside the jurisdiction support a charge of patent infringement?

Infringement must be committed on Greek territory since, as a rule, the principle of territoriality applies.

Infringement by equivalents

- 8 | To what extent can 'equivalents' of the claimed subject matter be shown to infringe?

In general, the Greek law accepts the doctrine of equivalence, according to which, due account has to be taken of any element that is equivalent to an element specified in the patent claims. However, it is notable that no particularly sophisticated case law is available in this respect.

Discovery of evidence

- 9 | What mechanisms are available for obtaining evidence from an opponent, from third parties or from outside the country for proving infringement, damages or invalidity?

Greek law does not provide for pretrial discovery. However, the patent owner has the right of preserving evidence and requesting that the defendant provides information such as invoices, or details on the amount of products that have been distributed, within the framework of a trial.

Litigation timetable

- 10 | What is the typical timetable for a patent infringement lawsuit in the trial and appellate courts?

In main infringement action proceedings, the time of the hearing is scheduled specifically and the parties may expect the issuance of the court decision within six to eight months from the hearing. The average duration of an appeal proceeding is 18 months; however, proceedings may last longer under certain circumstances.

Litigation costs

- 11 | What is the typical range of costs of a patent infringement lawsuit before trial, during trial and for an appeal? Are contingency fees permitted?

The costs involved in taking a case through to a first-instance decision are difficult to estimate, as they depend on the complexity of the case, the duration of the proceedings, potential mediation costs, potential involvement of technical experts, and possible translation costs. It must be noted, though, that litigation costs in Greece are considerably lower than in other EU member states. Nevertheless, the costs of preliminary proceedings and main patent proceedings can be roughly estimated at a range between €14,000 and €30,000, but higher fees have to be expected in complicated cases where several technical experts must be involved and close cooperation between client and counsel is necessary for an extended period of time.

Court appeals

- 12 | What avenues of appeal are available following an adverse decision in a patent infringement lawsuit? Is new evidence allowed at the appellate stage?

Only decisions in main infringement action proceedings and not preliminary injunction decisions may be subject to appeal. All final decisions of the first-instance courts are open to appeal within 30 days of notification to the losing party in the case of Greek nationals and within 60 days of notification in the case of 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 in connection with legal issues or incorrect findings regarding the facts of the case. A second-instance decision may be appealed before the Supreme Court within 30 days of notification to the losing party in the case of Greek nationals and within 60 days of notification in the case of foreign nationals. As in the case of first-instance decisions, in the absence of official notification, the decision may be appealed within two years of its publication. Submission of new evidence at the appellate stage is permitted only if such evidence had not been available at the first instance trial.

Competition considerations

- 13 | To what extent can enforcement of a patent expose the patent owner to liability for a competition violation, unfair competition, or a business-related tort?

Infringers may allege in their defence, in particular within the context of preliminary injunctions' proceedings, that the patent owner is acting in breach of the rules on unfair competition. However, the courts will assess such claims on a case-by-case basis.

Alternative dispute resolution

- 14 | To what extent are alternative dispute resolution techniques available to resolve patent disputes?

Under the Greek Code of Civil Procedure, litigants in infringement cases have the option of seeking an out-of-court settlement. Mediation and arbitration are also available means for resolving intellectual property rights disputes. Rules on arbitrations are provided for by articles 867 et seq. of the Greek Code of Civil Procedure. It must be noted, though, that neither mediation nor arbitration have been sufficiently tested in Greece. The recent Law 4512/2018 initiated compulsory use of mediation in legal disputes arising from patent, trademark and industrial design infringements. The new law introduced a compulsory initial mediation session before the hearing of the case. Said session along

with proof of the lawyer's compliance with the obligation to inform the client in writing about the option of mediation are now, under the new legal provisions a prerequisite for the admissibility of the lawsuit.

SCOPE AND OWNERSHIP OF PATENTS

Types of protectable inventions

15 | Can a patent be obtained to cover any type of invention, including software, business methods and medical procedures?

In order for an invention to be patentable in Greece it must be new, involve an inventive step and be susceptible to 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. Exempt from patent protection are: (a) discoveries, scientific theories and mathematical methods; (b) aesthetic creations; (c) schemes, rules and methods for performing mental acts, playing games or doing business, and computer software; (d) presentation of information; (e) methods for treatment of the human or animal body by surgery or therapy; (f) diagnostic methods practiced on the human or animal body; (g) inventions the publication or exploitation of which would contravene public order or morality; (h) plant or animal varieties or biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof. As mentioned above, 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.

Patent ownership

16 | Who owns the patent on an invention made by a company employee, an independent contractor, multiple inventors or a joint venture? How is patent ownership officially recorded and transferred?

According to the Patent Law, an invention made by a company employee shall belong entirely to the employer, in case it is the outcome of a contractual relation between the employee and the employer for the development of inventive activity (service invention). In case the invention is made by an employee with the use of materials, means or information of the company in which he or she is employed, it will belong by 40 per cent to the employer and by 60 per cent to the employee (dependent invention). In such a case, the employer has the right to exploit the invention by priority against compensation to the inventor, which has to be proportional to the economic value of the invention and the profits it brings. The inventor of the dependent invention has the obligation to notify in writing the employer on the accomplishment of the invention and to provide the necessary information for the filing of a joint patent application. If the employer does not reply in writing within four months from said notification to the employee that he or she is interested in jointly filing the patent application, the invention will belong entirely to the employee, who will have the right to file the application in his or her own name. If the invention is neither a service invention nor a dependent one, it will belong entirely to the employee.

The ownership of an invention made by an independent contractor will depend on the relevant provisions of the agreement between him or her and the employer. If an invention has been achieved by multiple inventors, the rights thereto will be divided equally among them, unless

otherwise provided for by an existing written agreement. In the case of a joint venture, the rights on an invention must be governed by a written agreement between the parties.

Patent ownership is officially recorded at the Greek Patent Office. Transfer of the patent must also be recorded at the Greek Patent Office, so that it has effect against third parties.

DEFENCES

Patent invalidity

17 | How and on what grounds can the validity of a patent be challenged? Is there a special court or administrative tribunal in which to do this?

By virtue of the Greek law, the validity of a patent may either be challenged independently before the competent civil courts by means of a full or partial nullity action or as a counterclaim within the framework of infringement proceedings. It must be noted that objections of invalidity and nullity actions are defendants' most common defences.

Cancellation of a patent may be pursued on the following grounds:

- the patent owner is not the inventor or his assignee or beneficiary;
- the invention is not patentable in accordance with the provisions of the law;
- the description attached to the patent does not suffice for the person skilled in the art to carry out the invention; and
- the subject matter of the patent as granted extends beyond the scope of protection as requested with the application.

It must be noted, however, that amendment of a patent is not possible within the framework of a patent litigation. Only within the framework of a nullification proceeding, if the nullification action is directed against part of a patent, the court may order the restriction of the patent to that extent.

Absolute novelty requirement

18 | Is there an 'absolute novelty' requirement for patentability, and if so, are there any exceptions?

By virtue of the Greek law, there is an absolute novelty requirement for patentability. Exception to this requirement is provided for, only if the disclosure of the invention was made within six months prior to the filing or the priority date and under the conditions that such disclosure was due either to an evident abuse of the rights of the applicant or its legal predecessor, or to the fact that the invention was displayed at an officially recognised international exhibition falling under the terms of the Convention on international exhibitions, signed in Paris on 22 November 1928. In such a case, upon filing the application, the applicant must state that the invention has been so displayed and submit the relevant certificate evidencing this statement.

Obviousness or inventiveness test

19 | What is the legal standard for determining whether a patent is 'obvious' or 'inventive' in view of the prior art?

According to Greek law, an invention is considered new if it does not form part of the state of the art. This is considered to comprise anything that is available to the public anywhere in the world (universality principle) by means of a written or oral description or by any other means, before the filing date of the patent or before the priority date. In this respect, in the case of the manufacturing of a product novelty exists, if this product significantly differs from similar products, by way of possessing substantially new elements. According to case law, in the case of creating a result, the element of novelty is established, if there is a significant improvement to an already known result, irrespective of

whether such improvement consists only in the method of manufacture, or only in the result, or in the reduction of the production costs, or in all the above and is not a mere adaptation of already known elements of methods, without resulting in a significant improvement or a simple use of a means that is known in environments other than the ones it had been previously used, but in the same way in which it had always been used for obtaining the same result (Supreme Court 545/1996, Supreme Court 1588/1991). According to the theory, the element of novelty is connected to the object of the invention, which derives from the claims. In the case of infringement by an equivalent technical standard, the specification and drawings are used for the interpretation of the claims but do not extend the scope of protection to subject matter that has not been included therein. Further, an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. Consequently, it must be presented as something exceeding the normal technological progress, and results in an achievement that is beyond the skills of the average person skilled in the art, namely if the solution to the technical problem was not foreseeable. Further, the combination of several technical means or processes aiming to provide a solution of a technical problem in a unitary way is considered an invention only in the case that combination is not obvious to the average person skilled in the art. The application of equivalent means of a technical problem that has already been resolved, is considered to constitute an invention only under the condition that the equivalent is not known to the average person skilled in the art.

Patent unenforceability

20 | Are there any grounds on which an otherwise valid patent can be deemed unenforceable owing to misconduct by the inventors or the patent owner, or for some other reason?

Under Greek law, a patent infringement lawsuit may be rejected if it constitutes an abuse of right, namely if it is considered an act of bad faith or as contravening common practice. According to established case law, this may be the case if the patent holder had not taken any action for a long time, although it had been aware of the infringing act, or by not exercising its right, it had created the impression to the infringing party that it would not take to any action so that the infringer had proceeded to investments.

Prior user defence

21 | Is it a defence if an accused infringer has been privately using the accused method or device prior to the filing date or publication date of the patent? If so, does the defence cover all types of inventions? Is the defence limited to commercial uses?

According to the Patent Law, whoever shall exploit his or her contrivance or has proceeded with the preparations required for such exploitation at the time of filing of a patent application by a third party or at the priority date, shall have the right to continue using said contrivance for their enterprise and its needs.

REMEDIES

Monetary remedies for infringement

22 | What monetary remedies are available against a patent infringer? When do damages start to accrue? Do damage awards tend to be nominal, provide fair compensation or be punitive in nature? How are royalties calculated?

The patent owner may request compensation on the basis of reasonable licensing fees, and moral damages, but not punitive ones. For obtaining compensation or moral damages, the plaintiff has to prove the

negligence of the infringer. The compensation claim is determined on the basis of the following three factors:

- the actual loss;
- the defendant's unfair profits; and
- reasonable licensing fees.

It must be noted, though, that proving the exact amount of the damage or enrichment may often be quite 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.

Injunctions against infringement

23 | To what extent is it possible to obtain a temporary injunction or a final injunction against future infringement? Is an injunction effective against the infringer's suppliers or customers?

For a temporary restraining order to be granted for future infringement, the plaintiff must prove imminent risk of infringement. A permanent injunction may only be obtained for present infringement. In such a case, the petitioner must prove serious and urgent infringement. For an injunction decision to be effective against third parties, such as infringer's suppliers and customers, the petition must have been directed against said parties as well.

Banning importation of infringing products

24 | To what extent is it possible to block the importation of infringing products into the country? Is there a specific tribunal or proceeding available to accomplish this?

Patent owners have the option of establishing 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.

Attorneys' fees

25 | Under what conditions can a successful litigant recover costs and attorneys' fees?

By virtue of the Civil Procedure Rules, the losing party must pay the winning party's legal fees, as these are determined by the court. This amount has historically often been calculated on a relatively conservative basis, not covering all attorneys' fees. However, after implementation 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.

Wilful infringement

- 26 | Are additional remedies available against a deliberate or wilful infringer? If so, what is the test or standard to determine whether the infringement is deliberate? Are opinions of counsel used as a defence to a charge of wilful infringement?

Wilful infringement forms the basis for the demand for compensation in a patent infringement case. If intentional infringement is proven, the plaintiff may obtain additional compensation for moral damages. In order to determine that the infringement is deliberate, it must be proven that the defendant was aware of the fact that its actions were infringing the patent holder's rights and that its acts were intentional. The plaintiff may also obtain compensation for moral damages if it proves negligence by the infringer. Counsels' opinions may be invoked during the proceeding as a defence, however, taking them into account lies within the court's discretion.

Time limits for lawsuits

- 27 | What is the time limit for seeking a remedy for patent infringement?

An action on the merits becomes statute barred either five years after the date on which the patent owner became aware of the infringement or damage and the identity of the infringer, or 20 years after the date on which the infringement was committed. As regards nullity actions, there is no time limit and thus these can be pursued at any time within the 20-year duration of a patent.

Patent marking

- 28 | Must a patent holder mark its patented products? If so, how must the marking be made? What are the consequences of failure to mark? What are the consequences of false patent marking?

Marking of goods covered by a patent is not compulsory and therefore, there are no relevant specific rules or requirements. As a result, there are no adverse consequences, if such markings are not effectuated. It is advisable though, that the goods are marked, as a warning to possible patent infringers.

Since marking of goods in Greece is not compulsory, there are no specific words or abbreviations to be used. European patent application or registration numbers or Greek patent application or registration numbers can be used. It must also be noted that, while it would be preferable that the Greek language is used for marking, in practice various goods appear in the market bearing indications in English (eg, 'patent pending').

As regards false marking, the law threatens with up to one year's imprisonment or with a monetary penalty, or both, whoever places on products or on their wrapping, or on any kind of commercial documents destined for the public or on other relevant means of publishing and advertising, a false statement that the objects in question are patent protected.

LICENSING

Voluntary licensing

- 29 | Are there any restrictions on the contractual terms by which a patent owner may license a patent?

Under Greek law, voluntary licences may be granted and can be exclusive or non-exclusive. As patent law does not provide for any restrictions on the contractual terms, general provisions of contractual and competition law apply.

Compulsory licences

- 30 | Are any mechanisms available to obtain a compulsory licence to a patent? How are the terms of such a licence determined?

Four years from the filing date or three years from the grant, any third party may demand before a court the concession of a compulsory licence based on lack of or insufficient exploitation of the patented invention. The third party must notify the patent holder of its intention to seek a compulsory licence, one month before filing a court action. The compulsory licence is granted by a three-Member Court. The applicant for a compulsory licence may seek an opinion of the Greek Patent Office, concerning the existence of the prerequisites for the grant of the licence, as well as the amount, the terms of the compensation to be given to the owner of the patent, and the exclusive or non-exclusive character of the exploitation of the invention. No compulsory licence shall be granted if the patent owner can justify the failure to work the invention. Imports of the product will not constitute a justification. For reasons of public health or national defence, compulsory licences may be granted by ministerial Decree in favour of public sector bodies on patents that have not been exploited in Greece or when production is insufficient to cover domestic needs. A compulsory licence shall be granted provided that reasonable royalties are paid.

PATENT OFFICE PROCEEDINGS

Patenting timetable and costs

- 31 | How long does it typically take, and how much does it typically cost, to obtain a patent?

As according to Greek law there is no substantial examination, provided that a patent application meets all the formal requirements, a patent may be granted within 14 to 16 months of filing. The costs involved up to grant, in accordance with the currently applicable official fees, are €500-€667, depending on whether the applicant will request the issuance of a simple or a justified search report. Higher fees must be expected if the application comprises more than 10 claims.

Expedited patent prosecution

- 32 | Are there any procedures to expedite patent prosecution?

The Greek law on patent protection does not provide for any procedures for expedited patent prosecution.

Patent application contents

- 33 | What must be disclosed or described about the invention in a patent application? Are there any particular guidelines that should be followed or pitfalls to avoid in deciding what to include in the application?

According to the law, the specification of the invention must be complete and clear enough so that an expert skilled in the art may work the invention as described.

The specification must determine the technical field to which the invention relates and the state of the prior art, which is useful for understanding the invention, must be indicated. It must further determine the invention as defined in the claims, by appropriate technical terms so that that the technical problem the invention aims to solve as well as the provided solution can be understood. It must also present the advantages of the invention in relation to the state of the prior art, contain a brief description of the figures in the drawings (if any) and provide a detailed description of at least one way of carrying out the claimed invention, providing examples where possible. Finally, it must provide an explicit clarification of the way in which the invention can be applied in industry.

The claims must define the subject matter for which protection is sought and must be fully supported by the specification.

Prior art disclosure obligations

34 | Must an inventor disclose prior art to the patent office examiner?

Ministerial Decision No. 15928/EFA/1253 invites the applicant to indicate the state of the prior art that he or she considers useful for understanding the invention. The documents reflecting the state of the prior art may be cited in the specification. However, such disclosure is not obligatory.

Pursuit of additional claims

35 | May a patent applicant file one or more later applications to pursue additional claims to an invention disclosed in its earlier filed application? If so, what are the applicable requirements or limitations?

If an invention constitutes a modification of another invention already covered by a patent (main patent), the owner of the latter may apply for the grant of a patent of addition for the later invention, provided that the subject matter of the patent of addition is related to at least one claim of the main patent.

Patent office appeals

36 | Is it possible to appeal an adverse decision by the patent office in a court of law?

Decisions of the Greek Patent Office are enforceable administrative acts and as such they can only be challenged before the Council of State (the Supreme Administrative Court of Greece).

Oppositions or protests to patents

37 | Does the patent office provide any mechanism for opposing the grant of a patent?

The Greek law does not provide for opposition procedures before the Greek Patent Office. The validity of a patent may be challenged only before the competent civil courts by means of a nullity action.

Priority of invention

38 | Does the patent office provide any mechanism for resolving priority disputes between different applicants for the same invention? What factors determine who has priority?

There are no mechanisms for resolving priority disputes before the Greek Patent Office. Such disputes may be resolved before the competent civil court, upon a lawsuit of any third party, claiming rights on the invention. According to the law, if two or more persons have made an invention independently of each other the priority right belongs to the first to file.

Modification and re-examination of patents

39 | Does the patent office provide procedures for modifying, re-examining or revoking a patent? May a court amend the patent claims during a lawsuit?

An ex parte post grant modification of national patents is not provided for by the Greek law. Modification is only allowable in the case of European patents upon issuance of a 'decision to limit' in accordance with the relevant rules of the EPC. In such a case the modified translation of the patent must be submitted to the Greek Patent Office within



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three months of the date of publication of the aforementioned decision in the EP Bulletin. A national patent can be modified by a decision of the competent civil court within the framework of a partial nullity action brought before the same by a third party, in which case the patent can be restricted to the extent requested. Re-examination of granted patents is not provided for by the law.

Patent duration

40 | How is the duration of patent protection determined?

National and secret patents enjoy a 20-year protection and must be renewed annually. Patents of addition expire simultaneously with the main patent. During its life, a patent of addition may be made independent, upon a relevant request to the Greek Patent Office. In such a case, the duration is extended to 20 years from the day following the date of application for the grant of the patent of addition, provided that all annual fees are duly paid. Patents covering medicinal and plant protection products may be extended for a period up to five years from expiry thereof by way of a supplementary protection certificate (SPC), provided that the relevant legal requirements are satisfied. The option of obtaining a six-month extension of an SPC for paediatrics is also available where the relevant legal conditions are met.

UPDATE AND TRENDS

Key developments of the past year

41 | What are the most significant developing or emerging trends in the country's patent law?

The newly introduced compulsory initial mediation session in legal disputes arising from patent infringement is certainly a significant change that will affect patent litigation and will hopefully contribute to the reduction of the workload of Greek courts. This session, along with proof of the attorney's compliance to the obligation to inform the client in writing about the option of mediation, is, under the new legal provisions, a prerequisite for the admissibility of the lawsuit.

Coronavirus

42 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Greek Patent Office, recognising the insurmountable difficulties that many applicants may have been facing due to the major global challenges caused by the covid-19 pandemic, has suspended all legal deadlines concerning the grant proceedings or registration of Industrial Property rights falling within its competence, from 11 March 2020 for two calendar months. The suspension was further extended until 12 June 2020. The suspensions did not concern legal deadlines concerning all kinds of official fees, since online payment was at all times available. The full operation of the electronic online services of the Greek Patent Office ensured the smooth completion of filings and all other procedures.

In order to support national patent filings during the pandemic, the Patent Office applied a 33 per cent discount on simple search fees for applications filed from 15 June 2020 until 30 June 2021.

The Greek courts have suspended several services and applied specific measures in coordination with the state guidance through the course of the pandemic.

Clients are advised to be in close consultation with local Attorneys in order to obtain accurate information on the measures which are in place and secure smooth and orderly processing of their cases.

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