

PATENT LITIGATION REVIEW 2024

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Greece: Navigating the Patent Enforcement Landscape

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In summary

This chapter provides key information regarding patent litigation in Greece.

Discussion points

- Available means for defence against infringers
- Information on proceedings, representation and legal practice
- Doctrine of equivalents
- Budget, recoverable costs and damage claims
- Unitary patent and Unitary Patent Court

Referenced in this article

- Code of Civil Procedure
- Law 4512/2018
- Presidential Decree 31/2019
- Decision No. 3955/2015 of the Athens Multi-member Court of First Instance
- EU Directive 48/2004/EC
- Agreement on a Unified Patent Court



The most effective patent protection is prevention. 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.

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.

This request is filed concurrently with a petition for injunction and, if granted, remains effective until the hearing of the injunction takes place. Within this framework, the patent owner may request cessation of the infringing acts 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.

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.

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.

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.

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, although they have excellent legal



knowledge, they lack technical background. Consequently, in patent cases that involve complex technical issues, expert opinions are indispensable. Expert witnesses may testify before the court either orally or by affidavit. Expert opinions may often prove to be pivotal to the outcome of proceedings, particularly in complex cases. Judges tend to give the opinion of a distinguished expert more weight than that of a non-technical person.

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.

Competent representatives of the parties before the Greek civil courts are only lawyers (ie, attorneys at law) who are members of a Greek bar association, 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, which aims 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 started functioning fully in 2023, and the first patent attorney exam is expected to take place in 2025.

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.

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.



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 90 days (or 120 days if the defendant resides abroad) from the expiry of the deadline for officially serving the lawsuit, 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.

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.

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 Multi-member Court of First Instance).

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.

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.

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, French and UK patent courts.

The current version of the Civil Procedure Rules has 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.

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.

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

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 than 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.

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.

The typical remedies granted to a successful plaintiff are a temporary or permanent injunction, damages, and seizure or destruction of the infringing goods, or both. 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.

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.

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.

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.

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

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.

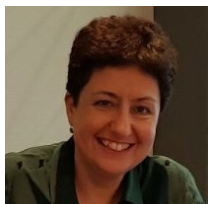
Nullification of validated European patents is rare in comparison with national patents because European patents are granted after substantial examination by the European Patent Office (EPO) regarding novelty and inventive step.

The unitary patent and Unitary Patent Court have become a reality as of 1 June 2023, bringing a significant change to the patent environment as we know it.



Patentees and potential litigants must bear in mind that Greece is among those countries which, at the time of writing, have signed but not yet ratified the Agreement on a Unified Patent Court (UPCA). Consequently, the Unified Patent Court (UPC) will have no jurisdiction over Greece until the country fully ratifies the UPCA. In the meantime, unitary patents granted by the EPO must be validated in Greece to have effect in the country.

It is also important for patentees and potential litigants to know that, even if Greece ratifies the Agreement, under article 83(1) UPCA, the exclusive competence of the UPC is subject to exceptions for a transitional period of seven years, which may be prolonged by up to a further seven years. During this period, actions for infringement or revocation even of non-opted out patents may still be brought before the Greek national courts.



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Dr Helen G Papaconstantinou and Partners (HP&P), with a history that spans over a century, is broadly recognised as a leader in the IP law sector in the country.

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