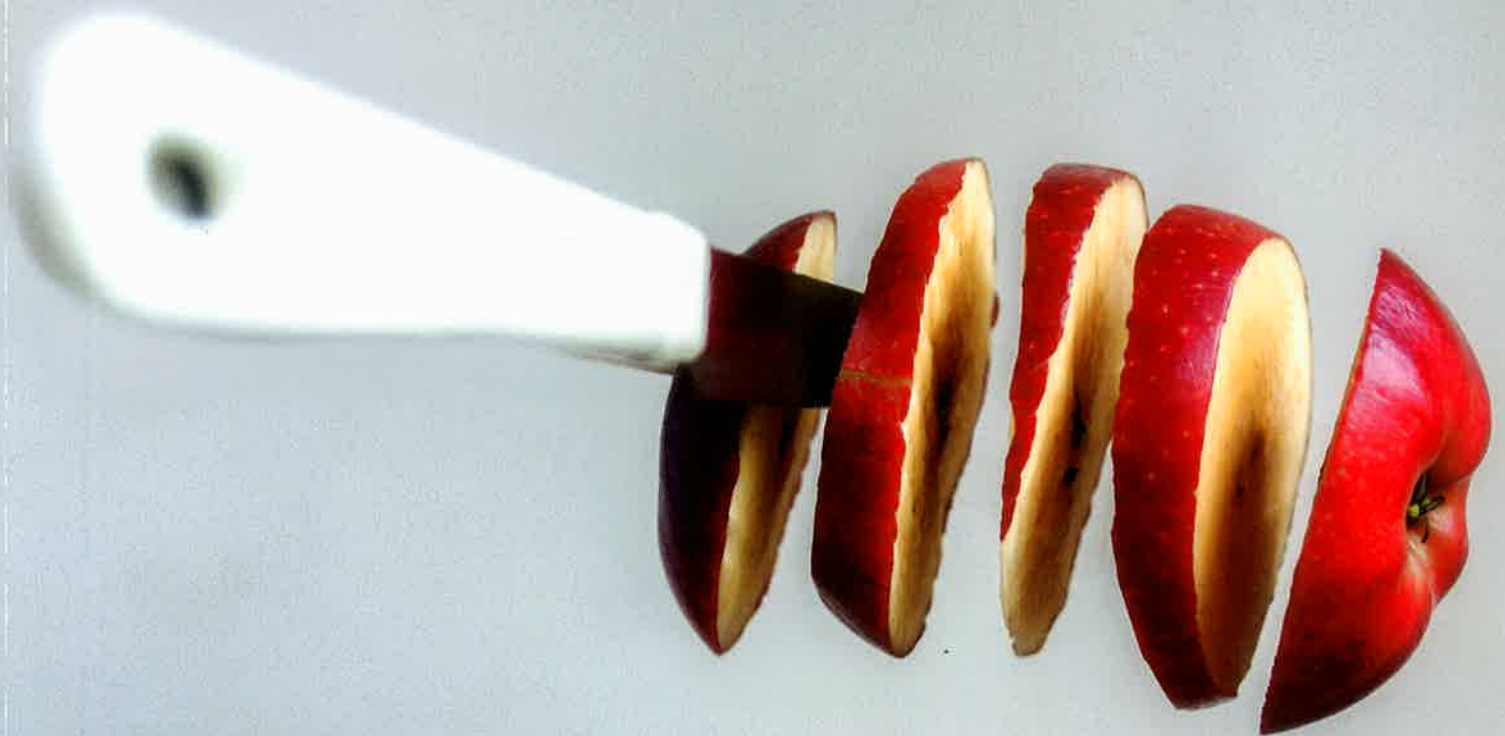


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Greece

By Maria Athanassiadou and Fotini Kardiopoulis of Dr Helen G Papaconstantinou and Partners



Patents

According to Law 1733/1987, patentable inventions must be new, involve an inventive step and be susceptible to industrial application. They may concern a product, a process or an industrial application. An invention is considered as involving an inventive step if, with regard to the state of the art, it is not obvious to the skilled person; it will be considered as susceptible to industrial application if the subject matter can be made or used in any field of industry.

Exempt from protection are discoveries, scientific theories and mathematical methods, aesthetic creations, schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers, presentation of information, methods for treatment of the human or animal body by surgery or therapy, and diagnostic methods practiced on the human or animal body.

Inventions are protected by a national or a validated European patent, with a 20-year duration and subject to payment of annual fees. Inventions concerning three dimensional objects which are proposed as novel and industrially applicable and are capable of providing a solution to a technical problem may be protected by means of a utility model, which has a maximum duration of seven years and is renewed annually. Where the applicant is a Greek national, Patent Cooperation Treaty and European patent applications must be filed through the Greek Patent Office.

Particular rules and restrictions apply for inventions that are of interest to national security.

The patent owner is entitled to forbid third parties to exploit the invention or import the products protected by the patent without its prior consent.

Infringement actions can be brought before the competent courts by the patent owner and an exclusive licensee. Co-owners can bring infringement actions independently.

Trademarks

Trademark rights are primarily obtained through registration. Three types of registration are available in Greece: national, EU and international. Use of a sign in the course of trade may result in a non-registered sign, protected under the law of unfair competition.

Trademark protection lasts for ten years as of the filing date and can be renewed indefinitely. Registration of a trademark provides the owner with the exclusive right to use the mark for the goods/services applied for.

Trademarks are in general examined with respect to both absolute and relative grounds for refusal.

Difficulties foreign companies face in practice relate to capturing the intricacies of the business environment, the Greek public sector and bureaucracy. The most cited complaints against the national system concern unduly long procedures. It is also criticised for offering capped damages that would not always cover the costs of applying the procedure.

Counterfeiting

Counterfeiting is a significant problem in Greece. The economic crisis has led to a decrease in seizures and destruction of counterfeit goods, due to a decline in enforcement activities of the public authorities (customs, economic police, economic task force, etc).

The pharmaceutical industry is particularly vulnerable to counterfeiting.

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Other sectors at threat are cosmetics, products for personal care, clothing, footwear, sports articles, toys, jewellery, watches, handbags, travel articles, recorded music, alcoholic beverages, wine, pesticides, smartphones, batteries and tyres.

For the most effective protection of their rights, IP owners must adopt preventive strategies, including efficient monitoring systems. Establishing a customs watch system by filing an application for customs action is highly recommended.

Even where the rights in question are not entered in the register, customs can still stop suspicious goods *ex officio*.

It must be noted that only a small portion of counterfeit goods imported into Greece are seized by customs. Consequently, rights owners should be vigilant in monitoring the internal market for counterfeit goods. Law 4155/2013 provides for a simplified procedure with respect to the seizure and destruction of counterfeit goods by a number of enforcement agencies such as customs, the economic task force, the police and the coastguard.

Since counterfeiting occurs increasingly online and through social media, rights owners must also monitor those areas.

Copyright

In the copyright sphere, Greece does not appear to have fully addressed piracy on the internet or adequately addressed end-user software piracy, in either the public or the private sector. Unlicensed sharing of copyright-protected software among multiple computers is the largest problem for the software industry, while unlicensed file-sharing of music and movies on the internet is a major problem.

Copyright protection is not subject to any formality; the work is protected automatically upon its creation and there is no official register for copyright.

The most common practices to secure proof of the actual date of creation for the author's protection are:

- Deposit of the intellectual work to a notary. This practice provides a rebuttable presumption confirming the date of the creation of the work.
- Postage of a registered letter whose sender and recipient is the author itself (or a third person). The author must keep the sealed and stamped envelope, which will be unsealed by a judge before the court that will confirm its content in case of a dispute.

Recent Law 4481/2017 also provides for a "time-stamping" service by the Hellenic Copyright Organization. However, this provision has yet to be enacted.

In cases of copyright infringement, both civil and criminal proceedings are available. Criminal prosecution takes place *ex officio* and potential sanctions are quite severe.

Until recently, the protection of copyright, particularly from infringement on the internet, has been inefficient. Law 4481/2017 includes a number of provisions enhancing the protection of copyright and related rights on the internet.

The new law provides that the procedure for lawful interception of communications set out by Law 2225/1994 will also apply to the detection of crimes committed at a felony level that infringe copyright and related rights protected by Law 2121/1993.

Another provision important for the protection of IP rights on the internet, despite certain difficulties in its implementation, introduces a "notice and takedown procedure" regarding online copyright infringements.

Other developments

PD 31/05.04.2019 set the rules for the creation of the Hellenic Industrial Property Academy, which will be leading to the grant of the title of "patent attorney" to successful candidates, for the first time in Greece.

Law 4605/01.04.2019 implementing Directive (EU) 2016/943, harmonised Greek legislation with EU rules concerning trade secrets, introduced the institution of the National Council for Industrial Property and amended Law 1733/1987 on patent protection, with regard to the possibility of amending patent claims and the way of electronic filing.

It further set the conditions for the offering of contractual non-exclusive licences for patents and the creation of a publicly accessible register for open licences. It also updated the rules governing the grant of non-contractual and compulsory licences for patents and laid down the conditions for the establishment of technology pools.

Application of new rules concerning compulsory use of mediation in legal disputes arising from patent, trademark and industrial design infringements has been suspended until September 16, 2019, for preparatory improvements of legal procedures.

In a recent decision of the Greek Supreme Court (*Areios Pagos*) compulsory mediation

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in civil disputes has been considered to contravene the requirements of the Hellenic Constitution.

A new law currently under preparation is expected to bring significant changes to trademark legislation in the context of the implementation of Directive (EU) 2015/2436. A new bill has passed through public consultation but at the time of submission of this article it has yet to be approved by parliament. ●

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