



The Legal 500 Country Comparative Guides

Greece

INTELLECTUAL PROPERTY

Contributor

Dr Helen G Papaconstantinou and
Partners Law Firm



Maria Athanassiadou

Partner | m_athanasiadou@hplaw.biz

Fotini Kardiopoulis

Partner | f_kardiopoulis@hplaw.biz

This country-specific Q&A provides an overview of intellectual property laws and regulations applicable in Greece.

For a full list of jurisdictional Q&As visit legal500.com/guides

GREECE

INTELLECTUAL PROPERTY



1. What different types of intellectual property rights exist to protect: (a) Inventions (e.g. patents, supplementary protection certificates, rights in trade secrets, confidential information and/or know-how); (b) Brands (e.g. trade marks, cause of action in passing off, rights to prevent unfair competition, association marks, certification marks, hallmarks, designations of origin, geographical indications, traditional speciality guarantees); (c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in trade secrets, confidential information and/or know-how).

(a) Inventions (e.g. patents, supplementary protection certificates, rights in trade secrets, confidential information and/or know-how);

Protection of inventions that are new, involve an inventive step and are susceptible to industrial application can be obtained via patents. Inventions concerning novel and industrially applicable three-dimensional objects with a definite shape and form, such as tools, instruments, devices, apparatuses, or parts thereof, which are proposed as novel and industrially applicable and capable of giving a solution to a technical problem can be protected as utility models. In the case of patents for medicinal and plant protection products the duration of the patents can be extended for a period of (maximum) 5 years via Supplementary Protection Certificates (SPCs). A 6-month additional protection is also available for pediatrics. The law also provides protection of unregistered rights in confidential information, trade secrets and know-how. Inventions can also be protected under unfair competition law.

(b) Brands (e.g. trade marks, cause of action in passing off, rights to prevent unfair competition,

association marks, certification marks, hallmarks, designations of origin, geographical indications, traditional speciality guarantees);

Trademark rights are primarily obtained through registration. Three types of registration are available: 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.

Cooperatives, associations of manufacturers, producers, suppliers of services, or traders with legal capacity, as well as legal persons governed by public law rules, can file applications for collective marks in order to distinguish the origin of goods or services of their members or the geographical origin, the kind, the quality or properties of such goods or services. The Trademark law 4679/2020 currently in force, transposing Directive (EU) 2015/2436 into national law, introduced certification marks. Said marks are capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified.

Protected designations of origin and geographical indications are considered as quasi- intellectual property rights, not creating individual rights.

(c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in trade secrets, confidential information and/or know-how).

Copyright and related rights enjoy specific legislative protection and do not need registration to be protected. Software and databases are protected under copyright law, whereas databases are also protected by a sui generis right in case they do not qualify for copyright protection. Trade secrets and know-how are protected by law 4605/2019.

Industrial designs in Greece are protectable at the international EU and national levels. Registered international designs with Greece as a designated state have the same effect as a valid national registration. Registered Community designs are automatically valid in Greece. Unregistered designs are also protected in Greece under EU law.

Topographies of semiconductor products are protected by specific legislation whereas types of IP rights not protected by specific legislation (e.g. business names) are protected under the law of unfair competition.

According to the leading opinion, the protection offered by unfair competition law is concurrent with protection under any specific legislation.

Regulation (EC) 2100/1994 with respect to plant variety rights is directly applicable in Greece. However, national plant variety registration is not possible since the presidential decree that would have implemented Greek plant varieties law 1564/1985 has yet to be published.

2. What is the duration of each of these intellectual property rights? What procedures exist to extend the life of registered rights in appropriate circumstances?

For national and secret patents the duration is twenty years from the day following the date of application, subject to the payment of annual fees. For patents of addition, the duration is the unexpired term of the main patent, which means that a patent of addition expires simultaneously with the main patent.

Patents protecting pharmaceuticals, as well as patents for plant protection products, can be awarded additional protection for a maximum period of 5 years by way of supplementary protection certificates. A further 6-month extension is available for pediatrics.

Utility models have a duration of 7 years, which is calculated as from the day following the filing of the utility model (or patent in case of conversion) application and are subject to payment of annual fees.

Semiconductor topography rights remain valid for a non-renewable period of 10 years, which cannot be extended further.

Plant varieties are valid for 15 years, or, in the case of varieties of vine and fruit and decorative tree species, for 18 years, as from the date of grant. However, in the absence of the implementing Decree prescribed by the Greek plant varieties law, no national plant varieties

grants are available.

Registered design rights have a maximum duration of 25 years, following the filing of the design application, provided that they are renewed every 5 years.

Trademark rights remain valid perpetually, following the filing of the trademark application, provided that they are renewed every 10 years.

Copyright protection depends on the type of the work. Copyright remains valid for the 70 years following the decease of the author (creator) of the work. For copyright where other national law applies, the provisions of such law are respected, if the State of governing law is party to the Berne Convention or on the principle of reciprocity.

Database rights subsist for 15 years after compilation of the database.

Unregistered marks and unregistered designs enjoy protection, provided that they remain in use.

3. Who is the first owner of each of these intellectual property rights and is this different for rights created in the course of employment or under a commission?

The inventor or his/her legal successor or assignee (individual, firm or corporate entity) and the joint inventors may apply for patent, utility model or design registration. The first applicant is considered to be the inventor.

If an invention is made by an employee who is bound by an employment contract with the purpose of carrying out inventive activities of the kind concerned, then such invention belongs entirely to the employer. If in such a case the invention is of particular benefit to the employer, the employee will be entitled to additional reasonable compensation. If an invention is made by an employee where it was not his/her particular task to carry out inventive activities of the kind concerned, but the invention was made by making use of materials, methods or information belonging to the enterprise in which the inventor is employed, 40% of the invention will belong to the employer and 60% to the employee. In such a case the employer will have a preferential right to the exploitation of the invention against payment of compensation to the inventor based on the economic value of the invention and the profit brought by it. If such an invention is made, the inventor must inform the employer accordingly and furnish the necessary data for filing a joint patent application. If the employer does not, in due time inform the inventor in writing that he/she is

interested in the filing of a joint application, the employee shall have the right to file a patent application alone and the invention shall then belong exclusively to the employee. If an invention is made by an employee who is not bound to carry out inventive activities of the kind concerned and the invention was not made by making use of materials, methods or information belonging to the enterprise in which the inventor is employed, such invention shall belong exclusively to the employee. Any agreement restricting the rights of an employee as referred to shall be null and void.

In the case of semiconductor topography rights, the first owner of the rights is the employer, both in case of work made for hire and employee contract.

In the case of copyright, if the work is created by an employee in the course of an employment contract, the employee is considered to be the initial owner of both pecuniary and moral rights. However, unless the contract provides otherwise, pecuniary rights over copyright created in the course of an employment contract are automatically assigned to the employer. Moral rights remain with the employee, but they are of limited significance. Automatic assignment will not extend to forms of exploitation which were unknown at the time of creation of the relevant work. In the case of rights under a commission, copyright is retained by the author, unless otherwise stipulated in the contract.

The first owner of a trademark is the applicant in whose name the trademark is registered.

4. Which of the intellectual property rights described above are registered rights?

Patents, SPCs, utility models, semi-conductor topography, registered designs, plant varieties and trademarks.

5. Who can apply for registration of these intellectual property rights and, briefly, what is the procedure for registration?

Any natural person or legal entity may file for registration of the IP rights as mentioned above. Such person will be the creator, assignee or beneficiary of the right. The registration procedure varies depending on the type of right.

Patents: There is no substantive examination of patent applications in Greece. Applications are examined as to formalities and any deficiencies must be remedied within 4 months from the application. The Examiner then carries out a search and issues, at the applicant's choice,

either a Simple Search Report or a Search Report with Examiner's detailed opinion. The applicant has the right to rephrase the claims, thus limiting the scope of the invention and / or submit comments within a 3-month term. The Examiner then issues a Final Search Report. The patent is granted upon payment of the grant fee and irrespective of the contents of the search report. The patent, together with the Search Report is published 18 months as from the application, or earlier, if the grant fee is paid before the expiry of the 18-month period.

Utility models: Applications are examined only as to formalities and, in case of deficiencies, these must be remedied within 4 months from the application. After such time, the utility model is granted.

Semi-conductor topographies: The application undergoes a formalities' check and, in case of deficiencies, these must be remedied within 4 months as from the application. After such time, the certificate is granted.

Registered designs: Applications are examined as to formalities and, in case of deficiencies, these must be remedied within 4 months as from the application. After such time, the registered design is granted.

Plant varieties: It is provided that the plant variety certificate is granted by the Minister of Agriculture (now of Rural Development), following a review and assent of an expert committee. However, as already noted, in the absence of the implementing Decree prescribed by the Greek plant varieties law, no national plant varieties grants are available

Trademarks: Law 4679/2020 abolished the ex officio examination of relative grounds for refusal and the Examiner only checks applications with respect to absolute grounds of refusal. Prior rights owners will receive notification of the publication of the later mark and they may file opposition before the Trademark Administrative Committee within three months as of the publication of the accepting decision on the website of the Greek Patent and Trademark Office (OBI) . If no opposition is filed, the trade mark proceeds to registration.

Copyright: Under Greek law, no registration procedure for copyright exists.

6. How long does the registration procedure usually take?

A smooth application from filing to registration will usually take:

Patents: 12-16 months.

Utility models: 6 – 8 months

Registered designs: 6 -8 months

Semiconductor topographies: approximately 5 months

Trademarks: 6-8 months

7. Do third parties have the right to take part in or comment on the registration process?

Third parties may oppose the registration of a trademark, both on absolute and on relative grounds. No opposition or other analogous procedure is provided for the other registered IP rights.

Registered IP rights may also be challenged by third parties before the competent courts, under requirements varying for each type of right.

8. What (if any) steps can the applicant take if registration is refused?

Patents, SPCs, utility models, semi-conductor topographies, and registered designs: An appeal against the rejecting decision of the Greek Patent and Trademark Office can be submitted before the Council of State (the Supreme Administrative Court), which acts as a first and final instance court.

Trademarks: The Examiner's decision to reject a trademark can be challenged by filing a recourse action before the Trademark Administrative Committee. The Committee's decision is subject to further recourse before the Administrative Court of First Instance. Decisions of the First Instance Administrative Court are subject to appeal before the Administrative Court of Appeal. Appeals in cassation may be filed before the Council of State only for specific grounds, regarding points of law, but are of very limited practical significance.

9. What are the current application and renewal fees for each of these intellectual property rights?

Patents

Filing fee	50,00
Simple Search Report Fee	300,00
Search Report with Examiner's opinion	467,00
Patent grant fees	150,00
Fee for registering assignments, licenses, status changes	200,00
Annuities	
First year of protection	0
Second	0
Third	20,00
Fourth	50,00
Fifth	80,00
Sixth	90,00
Seventh	100,00
Eighth	115,00
Ninth	140,00
Tenth	190,00
Eleventh	240,00
Twelfth	300,00
Thirteenth	400,00
Fourteenth	500,00
Fifteenth	600,00
Sixteenth	700,00
Seventeenth	800,00
Eighteenth	900,00
Nineteenth	1000,00
Twentieth	1100,00

Utility models

Filing fee	50,00
Utility Model Certificate grant fee	100,00
Fee for registering assignments, licenses, status changes	200,00
Annuities	
First year of protection	0
Second	0
Third	20,00
Fourth	50,00
Fifth	80,00
Sixth	90,00
Seventh	100,00

Semi-conductor topographies: 231 EUR

Registered designs

Filing fee	100,00
Supplementary fee for multiple designs (up to 50)	10,00 – each additional design
Publication fee	30,00
Supplementary publication fee for multiple designs (up to 50)	10,00 – each additional design
Deferred publication fee	30,00
Supplementary deferred publication fee for multiple designs (up to 50)	10,00 – each additional design
Fee for registering assignments, licenses, status changes	100,00
First 5-year period protection fee	-
Renewal fee for second 5-year period	100,00
Renewal fee for third 5-year period	150,00
Renewal fee for fourth 5-year period	200,00
Renewal fee for fifth 5-year period	250,00

Trademarks

Official filing fees (in one class)	100€ (electronically) 120€ (in paper form)
Official fees – for each additional class	20€ per class
Official filing fees for the conversion of an EUTM or IR (in one class)	150€
Official fees – for each additional class	20€ per class
Renewal fee in one class	90€ (electronically) 110€ (in paper form)
Renewal fee – each additional class	20€
Official fees for registering assignments and mergers	90€
Official fees for licenses	90€
Official fees for pledge	40€
Official fees for registering changes of name, address or legal form	No official fees
Limitation of goods / services	No official fees

10. What are the consequences of a failure to pay any renewal fees and what (if any) steps can be taken to remedy a failure to pay renewal fees?

Failure to pay any renewal fees will result in the loss of the relevant IP right. However, the law provides for a grace period of 6 months, within which the IP owner may pay the fee due, with a 50 % fine. As regards lapsed patents, restitution of rights is not provided for by the law, under any circumstances. In the case of trademarks, it is worth noting that, late renewal will not overturn rights of third parties which were acquired in the

meantime.

11. What are the requirements to assign ownership of each of the intellectual property rights described above?

The assignment of registered intellectual property rights must be made by a written agreement. The same applies for the assignment of know-how and copyright. However, in the case of copyright transactions, only the creator can claim the invalidity of a non-written contract. There are no formal requirements for the assignment of trade secrets. According to the leading opinion, company and trade names can only be assigned with the transfer of the business.

12. Is there a requirement to register an assignment of any of these intellectual property rights and, if so, what is the consequence of failing to register?

The assignment of registered intellectual property rights must be recorded at the Greek Patent and Trademark Office (OBI). Although, between contracting parties, the agreement comes into force on the date of the signature, it is only effective against third parties upon its recordal. Consequently, failure of recordal results in relative nullity in favor of third parties, who are not aware of the assignment. The assignment of know-how is also compulsory, but only for the contracting party that resides or has its registered seat in Greece.

13. What are the requirements to licence a third party to use each of the intellectual property rights described above?

In general, all intellectual property rights can be freely licensed, exclusively or non-exclusively, following a written agreement. The law on patent protection also provides the possibility of the grant of compulsory licenses under certain circumstances explicitly mentioned in said law.

14. Is there a requirement to register a licence of any of these intellectual property rights and, if so, what is the consequence of failing to register?

Recordal of an IP license is necessary in order for the licensee to claim and enforce its rights against third parties.

15. Are exclusive and non-exclusive licensees given different rights in respect of the enforcement of the licensed IP, and if so, how do those rights differ?

According to the leading opinion, non-exclusive licensees generally need the consent of the rights owner to initiate legal proceedings against third parties/infringers.

By virtue of the patent law, the exclusive licensee is entitled to bring an infringement action independently. According to the prevailing view, the licence must have been recorded at the Greek Patent and Trademark Office.

In the case of trademarks, the law expressly distinguishes between exclusive and non-exclusive licensees and provides that the exclusive licensee may independently and without the consent of the proprietor initiate such proceedings, if the trademark owner, after formal notice, does not himself bring infringement proceedings within a reasonable time period. Of course, the licensing contract may provide otherwise.

16. Are there criminal sanctions for infringement of any intellectual property rights, and if so, what are they and how are they invoked?

Criminal sanctions are provided for various acts of trademark and copyright infringement. Unfair competition law also includes criminal provisions.

Trademarks: Article 45 of law 4679/2020 criminalizes a number of acts of trademark infringement.

Anyone who (a) knowingly uses a mark identical with or confusingly similar to a registered TM for identical or confusingly similar products (b) knowingly puts into circulation, possesses, imports or exports goods or provides services under a mark of another proprietor b) intentionally uses a famous TM without due cause, with the intent to exploit or harm its reputation or its distinctive character, is punished by imprisonment of at least six months and a fine of at least six thousand euros. The same sentences apply in case of the following acts:

- affixing a sign identical with or confusingly similar to a registered TM to identical or confusingly similar goods or to the packaging thereof,
- using the infringing sign on genuine goods that the right holder intended to market as no-name,

- removing the trademark from genuine goods and marketing them as no-name goods or under a different mark
- offering of the goods or putting them on the market, or stocking them for those purposes, or offering or supplying services thereunder with the infringing sign,
- importing or exporting the goods under the infringing sign,
- using the infringing sign as a trade or company name or part of a trade or company name
- using the infringing sign on business papers and in advertising, including social media,
- using the infringing sign in illegitimate comparative advertising

In case of trademark counterfeiting (: unlawful use of identical marks for identical or similar products), when particularly high profits are intended or very significant damages are threatened, and the infringement is on a commercial or professional scale, stricter penalties are to be imposed (: a minimum of two years' imprisonment and a financial penalty between 6.000 to 30.000).

The criminal prosecution for the aforementioned acts does not takes place ex officio but only after the filing of a complaint by the trademark owner.

Copyright: Art. 66 of Law 2121 /1993 (as amended and in force), criminalizes various acts of copyright infringement such as the unlawful fixation of a work or of copies, direct or indirect reproduction temporarily or permanently in any form, in whole or in part, translation, adaptation, alteration or transformation thereof, distribution to the public by sale or other means, or possession with the intent of distributing, renting, performing in public, broadcasting by radio or television or any other means, communication to the public works or copies by any means, import of copies of a work illegally produced abroad without the consent of the author and, in general, exploitation of works, reproductions or copies being the object of copyright or acts against the moral right of the author to decide freely on the publication and the presentation of his work to the public without additions or deletions.

Such acts are punishable with imprisonment of no less than a year and to a fine of 2.900-15.000 EUR. More severe sanctions apply in case of professional or commercial scale infringement or in case the financial gain sought or the damage caused by the infringement is particularly great.

It is worth noting that Greek Law 4481/2017 added a new provision to Greek Copyright Law 2121/1993 (article 66E) establishing a new, fast, extrajudicial process

against online copyright infringement. The new mechanism is a kind of an administrative “notice and takedown procedure” regarding online copyright infringements. Under this provision, any primary or secondary right holder, including Collective Management Organizations, whose rights have been infringed, may submit an application before a Committee set up ad hoc for this purpose, namely the “Committee for the Notification of Copyright and Related Rights Infringement on the Internet” (“EDPPI”). In case the Committee finds that copyright infringement is indeed taking place, it shall invite the recipients of the notification (i.e. the Internet Access Providers and, possibly, the Hosting Provider and the administrators/owners of the website) to either remove the infringing content or to disable the access to the content, as described in the application, by using the most appropriate technical means, depending on the features of the infringement at issue. The Committee also sets an administrative penalty in case of non-compliance to the decision, ranging from 500 € to 1.000 € per day of non-compliance.

Similarly, criminal sanctions are provided in case of infringement of related rights, of database rights, in case of an unauthorized use of computer programs or other violations.

Criminal prosecution takes place ex officio.

Patents: False marking is criminalized by virtue of Article 17 (7) of Law 1733/1987, according to which whoever places a false statement that the objects in question are protected by patent on products or on their wrapping, or on any kind of commercial documents directed to the public or on other means of publicising and advertising, will be punished by up to one year of imprisonment or by monetary penalty or by both penalties.

Infringement of plant variety rights is not a criminal offence in Greece.

Generally, in case of IP infringement, general criminal law provisions, such as those for forgery and/or fraud (articles 216 and 386 of the Greek Penal Code) may be also applicable, depending on the facts of each case.

17. What other enforcement options are available for each of the intellectual property rights described above? For example, civil court proceedings, intellectual property office proceedings, administrative proceedings, alternative

dispute resolution.

Intellectual property rights can mainly be enforced by way of civil proceedings.

In addition, trademark owners may seek protection through administrative proceedings before the Administrative Trademark Committee and the Administrative Courts, as previously mentioned under 8.

Arbitration and mediation are also available to resolve intellectual property rights disputes. Arbitration rules are provided for by the Greek Code of Civil Procedure (Arts. 867 et seq.). Such procedures have not been sufficiently tested in Greece. Law 4640/2019 provides for mandatory mediation for legal disputes arising from patent, trademark and industrial design infringements. Said law introduced a compulsory initial mediation session before the hearing of the case. That session, along with proof of the lawyer's compliance with the obligation to inform the client in writing about the option of mediation, have become a prerequisite for the admissibility of the lawsuit by virtue of the new provisions. Law 4679/2020 provides for a possibility of voluntary mediation proceedings before the Trademark Committee.

18. What is the length and cost of such procedures?

Proceedings before the Greek Patent and Trademark Office (OBI) and the Administrative Courts: Adversarial proceedings before the Greek Patent and Trademark Office usually last 9-12 months until the issuance of a decision. Proceedings before the Administrative Courts of First Instance last 2-3 years. Proceedings before the Court of Appeal last significantly less (12-14 months).

Civil proceedings until the issuance of a first instance decision will take on average 12-16 months: Appeal proceedings usually last 8-10 months.

Criminal proceedings: The length of criminal proceedings will depend on the type/gravity of the offence and the competent court. Misdemeanor proceedings will usually take 2-3 years. Appeal proceedings usually last 10-20 months. Felony cases last significantly more.

The costs of such proceedings depend on the circumstances and complexity of the case.

19. Where court action is available, please provide details of which court(s) have jurisdiction, how to start proceedings, the

basics of the procedure, the time to trial, the format of the trial, the time to judgment and award of relief and whether any appeal is available.

Pursuant to law 2943/2001 (articles 6-11), special divisions have been established for Community (now EU) trademarks in the civil first and second instance courts of Athens and Thessaloniki.

The specialized courts also hear national trademark infringements when they are competent *ratione loci*. According to the prevalent opinion in legal theory and related case law, said divisions are not competent for preliminary proceedings (temporary restraining orders and injunctions). Said proceedings are tried by local courts. If, however, the Athens and Thessaloniki's courts are competent *ratione loci*, the proceedings are introduced in the EU trademark divisions.

The aforementioned specialised divisions also adjudicate civil cases relating to patents, utility models, industrial designs and models, supplementary protection certificates and generally, related matters of IP law. The first instance courts of Athens, Thessaloniki and Piraeus have a special division for copyright cases.

Proceedings are initiated via an introductory writ filed with the court and served upon 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 in case the defendant resides abroad) as from filing.

Parties must submit their written arguments and evidence within 100 days (or 130 days when the defendant resides abroad) after the filing of the action and a reply to each other's arguments and evidence must be filed within a further period of 15 days. Witness testimonies are submitted in the form of sworn affidavits. With the expiry of this term, the file is deemed as 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.

The first instance decision may be appealed before the Court of Appeal within 30 days as of the notification of the decision or within 60 days as of its notification, if the party resides abroad.

In case no notification of the decision took place, the term is two years as of the publication of the decision.

An appeal in cassation, only on specific points of law, may be filed before the Supreme Court (Areios Pagos).

20. What customs procedures are available to stop the import and/or export of infringing goods?

The EU Customs Regulation (EU) No. 608/2013 is directly applicable in Greece and sets out the domestic customs intervention procedure. Owners of Greek trademark registrations may file a National application for action, whereas owners of EU marks may file a Union application for action in any member state, requesting the customs authorities of that member state as well as the customs authorities of any other member states to take action in their respective territories.

21. Are any non-court enforcement options or dispute resolution mechanisms mandatory in respect of intellectual property disputes in any circumstances? If so, please provide details.

As previously mentioned under 17, disputes concerning infringement of trademarks, patents and industrial designs, initiated before a civil court, shall be subject to "mandatory mediation". The hearing of the case shall be invalid if the mandatory mediation process stipulated in the law has not been followed.

22. What options are available to settle intellectual property disputes in your jurisdiction?

Out-of-court settlement is possible, even after the introduction of court proceedings. If the agreement is duly submitted to court, it may take the form and obtain the status of a judicial decision.

Regarding compulsory mediation please see above (17)

In the case of case of criminal offences prosecuted *ex officio*, the parties do not have the power of disposal of the dispute. Nevertheless, *de facto* the court will take into account a settlement agreement.

23. What is required to establish infringement of each of the intellectual property rights described above? What evidence is necessary in this context?

To establish infringement of any intellectual property

right, the plaintiff must establish its rights and prove all facts of the case that amount to a prohibited act;

In particular:

- Patents, utility models: Greek law accepts in general 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. The same approach is also applied for plant varieties and semiconductor topographies.
- Registered designs: In order to establish infringement, the design owner must show that the allegedly infringing design produces on the informed user a similar impression. According to the law, in assessing the scope of protection, the degree of freedom of the designer in developing a design in relation to the technical requirements must be taken into consideration.
- Trademarks and unregistered marks: In order to establish infringement, the following must be established:
 - Identity or similarity of the signs under comparison
 - Identity or similarity of the products respectively covered
 - Likelihood of confusion (including likelihood of association)
 - In the case of famous marks, establishment of a link between the famous mark and the posterior sign and use, without just cause, of the posterior mark which would imply unfair advantage of or cause damage to the distinctive character or the repute of the prior mark
- Copyright: Violation of the owner's exclusive rights, such as unauthorized reproduction, adaptation, distribution, lending etc.
- Trade secrets: the claimant must show that the acquisition, usage, or disclosure of a trade secret was unlawful.

The rights holder must prove its related rights (e.g. with registration certificates, invoices, samples of products, photos, advertising/marketing material etc) as well as the infringer's actions (with samples or photos of infringing goods, web site screen shots, etc). Survey evidence is useful for proving establishment of a mark in the market and extent of its use as well as the risk of confusion among consumers. Written affidavits, witness testimonies, market surveys and expert opinions/testimonies are also useful.

24. How does the court acquire any necessary information (fact or technical) and in what circumstances does it do so? In particular a) Is there a technical judge, a judge with technical experience, a court appointed expert, an expert agreed by the parties, and/or parties' expert witness evidence? b) What mechanisms are available for compelling the obtaining and protecting of evidence? Is disclosure or discovery available?

(a) Is there a technical judge, a judge with technical experience, a court appointed expert, an expert agreed by the parties, and/or parties' expert witness evidence?

The judges who serve in the two specialised EU trademark and patent courts, which are based in Athens and Thessaloniki, have received special training in IP matters before their appointment to the bench. However, they have only legal and not technical background, which means that they do not have sufficient expertise to deal with complex technical issues. This is the reason why opinions of technical experts are of paramount importance in the assessment of the facts as well as in the outcome of the case.

(b) What mechanisms are available for compelling the obtaining and protecting of evidence? Is disclosure or discovery available?

Directive 2004/48 on the enforcement of IP rights has been fully transposed into Greek law. Said provisions assist in obtaining and preserving evidence either during summary or ordinary proceedings. Theoretically, provisional measures to preserve evidence may be taken without the other party having been notified/heard. However, as a rule, Greek Courts are rather reluctant to order such measures ex parte.

The Court may request and order that the defendant produces evidence held in his possession and that he communicates banking and financial documents. In issuing such order, courts take into account the need to preserve legitimate trade secrets of the defendant as well as the principle of proportionality.

In the context of criminal cases, the Public Prosecutor and the investigating authorities are responsible for collecting and preserving evidence.

25. How is information and evidence

submitted to the court scrutinised? For example, is cross-examination available and if so, how frequently is it employed in practice?

The Civil Procedure Rules which entered into force as of January 1, 2016, introduced significant changes as far as the involvement of witnesses in proceedings is concerned. Under the current procedure, witness testimonies are submitted as sworn affidavits. In this stage, cross-examination is not possible. Each party may present up to five sworn affidavits in support of its argumentation and three sworn affidavits in rebuttal. After the assessment of the affidavits by the judge, a formal court hearing takes place and the judge decides the case on the basis of the submitted evidence. It is in the judge's discretion to select one of the persons who provided a sworn affidavit to provide an oral testimony before the court in case the judge deems this is absolutely necessary. In such cases cross examination of witnesses is permitted. The system does not apply to preliminary injunction proceedings where witnesses (one from each side) are examined and cross-examined during the hearing. Sworn affidavits and/or expert opinions are also available in preliminary injunction proceedings.

In criminal proceedings, witnesses are examined and cross-examined during the hearing. The case file is the responsibility of the prosecuting authorities. Nevertheless, parties to the proceedings, before or during trial, may bring to the authorities' or to the court's attention documents and related evidence.

In administrative proceedings, the case file is the responsibility of the administrative authorities. However, parties to the proceedings, either at pretrial, or during trial, may bring to the authorities' or the court's attention documents and evidence, pertinent to the case. Witnesses are very rarely examined in administrative proceedings during the hearing. Sworn affidavits before a Justice of the Peace, a Notary Public or the Greek Consul are acceptable, following prior notification of the other party.

26. What defences to infringement are available?

Patents, utility models

- The most common defence in infringement cases are invalidity objections and nullity actions. Full or partial nullity declarations can be either made by way of an independent legal action or a counterclaim during the

infringement proceedings.

- Defendants may also claim that they or their assignors had already conceived and exploited the subject matter of the invention at the time of filing of the patent and that they have used it for the purposes of their business.

Further possible defences are:

- Allegation that the patent has been used for experimental or research purposes.
- Exhaustion of patent rights.
- Allegation concerning the abusive exercise of the right holder's substantive rights.
- Prescription. Injunction and/or damages claims are statute barred 5 years after the date the patentee became aware of the infringement or of the damage concerned and of the person of the infringer, or in any case twenty years after the date on which the infringement was committed.
- Acquiescence of the right holder.

Registered designs

The most common defence in industrial design infringement cases are invalidity objections and nullity actions.

Further possible defences are:

- Use of the design for private, non-commercial purposes, and/or use for experimental or research purposes as well as reproduction of the design for providing examples or for teaching purposes.
- Exhaustion of design rights.
- Prescription. Injunction and/or damages claims are statute barred 5 years after the date the patentee became aware of the infringement or of the damage concerned and of the person of the infringer, or in any case twenty years after the date on which the infringement was committed.
- Acquiescence of the right holder.

Semiconductor topographies

The above defenses also apply to semiconductor topographies infringement cases.

Trademarks

In civil law cases, the defendant, may inter alia invoke the following defenses:

- No likelihood of confusion between the marks exists.
- The earlier mark is not famous.
- The sign is not used as trademark but in a descriptive way.
- The use of the mark by the plaintiff is misleading.
- The defendant has a prior right (e.g. trademark, non-registered mark, tradename).
- Acquiescence by the proprietor of the earlier mark in the use of the infringing mark.
- Limitation of a trademark right.
- Exhaustion of trademark rights.
- Time bar/Prescription.
- Non-use of the earlier mark that forms the basis of the claim.

Unfair competition

In addition to asserting lack of violation of established business morals, the defendant may claim the following:

- Time-bar/Prescription.
- Consent of the plaintiff.
- Usual/acceptable of the defendant's behavior.
- Self-defense.
- Abuse of rights.
- Acquiescence.

Trade secrets

The defendant, may, inter alia, invoke the following defenses:

- The disclosed information was not confidential or proprietary.
- The disclosed information was in the public domain or have become lawfully publicly available.
- The information was communicated under obligation to a judicial, administrative or regulatory authority.

Copyright

The defendant, may, inter alia, invoke:

- Lack of infringement.
- Lack of originality of the claimant's work.
- The copyright is exhausted.
- Limitations to copyright under Greek copyright law, such as private reproduction, quotation of extracts, use in school textbooks and anthologies, use for teaching and related purposes.

27. Who can challenge each of the intellectual property rights described above?

Any natural person or legal entity having a legitimate interest may challenge the IP rights described in questions 1-3.

28. When may a challenge to these intellectual property rights be made (e.g. during any registration process or at any time during the subsistence of the right)?

Trademarks may be challenged either, prior to registration, by way of an opposition or, after registration, by way of an invalidity or revocation action.

The other registered rights described in section A may only be challenged after they are registered.

Non-registered IP rights can be challenged at any time during the subsistence of the right.

29. Briefly, what is the forum and the procedure for challenging each of these intellectual property rights and what are the grounds for a finding of invalidity of each of these intellectual property rights?

Patents, utility models and industrial designs can be challenged before the civil courts via a nullity action or as a defense in infringement proceedings.

Patent nullity grounds: (a) the invention does not meet the requirements of novelty, industrial applicability and/or involving an inventive step, (b) the disclosure contained in the patent is insufficient for the patent to be carried out by the person skilled in the art, (c) the subject matter of the patent is excluded from patentability, or it goes beyond the content of protection as requested in the application, and (d) the patentee is not the true inventor or inventor's successor.

Utility model nullity grounds: (a) the utility model is not new or industrially applicable or a three-dimensional object with definite shape and form, and/or capable of giving a solution to a technical problem, and (b) the right holder is not the true inventor or inventor's successor.

Semiconductor topographies nullity grounds: the right does not meet the requirements of not being common in the semiconductors industry.

Registered design nullity grounds: (a) the design or

model is not new or of individual character, (b) the form of the product or its interconnection with other products is not appropriate for protection because they are dictated solely by a technical function or because they are linking elements, (c) exploitation or publication is contrary to public order or established morals and (d) the holder of the registered design is not the true designer or designer's successor.

Trademarks: The forum for challenging trademarks is the Greek Patent and Trademark Office (Administrative Trademark Committee). In the case of opposition proceedings, recourses/appeals thereto are heard by the Administrative Courts. On the other hand, in the case of invalidity/revocation proceedings, the Committee's decisions are subject to appeal before the civil courts and not before the administrative courts. It is also possible to file a counter-claim for declaration of invalidity or revocation of a mark in infringement proceedings. It is also worth noting that such a counterclaim may be filed via interim measures, but the declaration of invalidity or the revocation of the mark will be temporary.

The validity of registered marks may be challenged in whole or in part on either absolute or relative grounds.

Absolute grounds.

The following signs cannot be protected as trademarks:

- signs that cannot constitute trademarks in accordance with Article 2 paragraph 1 of the Trademark Law;
- signs that are devoid of distinctive character;
- signs that consist exclusively of signs or indications that serve in trade to designate characteristics of the relevant goods or services;
- signs that consist exclusively of signs or indications that have become customary to designate the relevant goods or services in the current language, or in the bona fide and established practices of the trade;
- signs that consist exclusively of a shape or another feature imposed by the nature of the goods or needed to obtain a technical result or which gives substantial value to the goods;
- signs that are contrary to public policy or morality;
- signs that may deceive the public – for instance, as to the nature, quality or geographical origin of the relevant goods or services;
- signs that have not been authorised for use by the competent authorities and that are to be refused pursuant to Article 6ter of the Paris

Convention; and

- signs that include badges, emblems or coats of arms other than those covered by Article 6ter of the Paris Convention, which are of public interest, unless the appropriate authorities have granted consent to the registration;
- signs excluded from registration under Greek law, EU law or international agreements in which the European Union or Greece is a party, conferring protection to designations of origin and geographical indications;
- signs excluded from registration under relevant legislation conferring protection to traditional terms for wine and to traditional specialities guaranteed;
- signs that consist of, or reproduce in their essential elements, the denomination of a previous registered plant variety, according to relevant legislation;
- signs of high symbolic value;
- Signs filed in bad faith;

Relative grounds.

A sign may not be adopted as a trademark if it is:

- identical to an earlier trademark and both marks cover identical goods or services;
- identical or similar to an earlier trademark, there is identity or similarity of the goods or services respectively covered and there exists a likelihood of confusion (including the likelihood of association) to consumers; and
- identical or similar to an earlier trademark which has acquired a reputation, irrespective of the similarity of goods or services respectively covered, when the use of the later mark, without due cause, would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trademark.

In the context of the above, 'earlier trademarks' include:

- earlier registered national trademarks, EU trademarks and trademarks registered internationally and effective in Greece;
- earlier applications for trademark stated above, subject to registration; and
- well-known marks within the meaning of Article 6bis of the Paris Convention.

A trademark application can also be challenged on relative grounds if it:

- conflicts with a prior distinctive sign, used in

the course of trade, which gives the owner the right to prohibit the use of any later trademark;

- conflicts with an earlier right of personality or a prior right of intellectual or industrial property other than those regulated by trademark law; and
- is capable of causing confusion with a trademark which has been registered and used abroad at the time of filing the application, provided that it was made in bad faith by the applicant.

Further grounds for refusal or invalidation are provided in case of unauthorised trademark filing by an agent or representative, and of geographical indications and designations of origin under specified circumstances.

A trademark will not be declared invalid, even if it was devoid of distinctive character, descriptive or generic at the time of its filing, if such grounds no longer exist at the time of filing a petition for the declaration of invalidity or of a related counterclaim because the trademark has since acquired distinctive character through use.

Trademarks can be revoked

- If, within a period of five years, as of the registration of the mark, the proprietor has not put the mark into genuine use for the products or services covered or if such use has been suspended for an uninterrupted period of five years;
- if, as a consequence of the acts of the proprietor, the trademark has become the common name for a product or service for which it is registered and the proprietor has not taken sufficient measures to prevent this; or
- if, as a consequence of its use by the proprietor or with his consent, the trademark has become misleading, in particular, as to the nature, quality or geographical origin of the goods and services for which it is registered.

Unregistered designs and marks may be challenged before the civil courts, as a rule in the context of a defense in infringement proceedings. The main grounds of invalidity of such rights are lack of any distinctive character, descriptiveness or deceptiveness as to the nature, quality or geographical origin of the goods or services, and non-use in trade.

30. Are there any other methods to remove or limit the effect of any of the intellectual property rights described above, for example, declaratory relief or licences of right?

Declaratory relief is generally not available in Greece.

Compulsory licenses are allowed, in connection with invention-related rights on specific grounds.

31. What remedies (both interim and final) are available for infringement of each of the intellectual property rights described above?

Both interim and final relief measures are available for intellectual property rights infringement, which are broadly similar for all types of IP rights.

In the context of injunctive relief, the rights holder is entitled to claim, inter alia:

- Temporary cessation of the infringement
- Temporary withdrawal of the infringing products from the market;
- Provisional seizure of infringing products, and
- Publication of the injunction order in the press and/or online.

The related decision may also provide for penalties (in the form of financial penalties and personal incarceration) in case of contempt of the decision and for each violation of its provisions.

It is worth noting that the rights holder may request delivery of information (e.g. on sales figures, channels of distribution of the infringing products) and measures to preserve evidence.

A Petition for injunction is granted if the element of urgency is prevalent in the circumstances of a particular case.

Upon the filing of the injunction application, the rights holder may apply for a temporary restraining order (TRO), which is granted in cases where the petitioner proves the existence of a prima facie serious infringement as a matter of exceptional urgency. The TRO usually remains in force until the Petition for Injunction hearing takes place but can be extended until the issuance of the decision on the injunction application.

In the context of the main infringement action, the rights

holder may request:

- Permanent cessation of the infringing activities
- Desisting from future infringing activity;
- Destruction or confiscation of the infringing products;
- Moral and/or material damages, and
- Publication of a summary of the judgement in the press or online, at the expense of the infringer.
- A threat of penalties (in the form of financial penalties and personal incarceration) should the respondent fail to comply with the above.

In the calculation of damages, the negative economic consequences suffered by the rights holder, including loss of profits, as well as profits made by the infringer, must be taken into account.

Damages may also be calculated on the basis of hypothetical royalties.

32. What are the costs of enforcement proceedings and is any kind of costs recovery available for successful parties? Is there a procedural mechanism enabling or requiring security for costs?

Because of the involvement of a variety of factors, such as the complexity of the case, duration of the proceedings, involvement of technical experts (mainly in patent cases) and translation costs, it is very difficult to make an estimation of the costs of IP enforcement proceedings.

The general rule is that the losing party pays the costs of the successful party in relation to the aspects of the

claim that were lost. Costs recovery is available for successful parties. However, said costs are ordered at the court's discretion and, in most cases, only a relatively small portion of the actual costs incurred in litigation is awarded.

Civil Procedure rules allow litigants to seek security for costs. However, said provisions are rarely invoked and courts are reluctant to accept such a request.

Costs are not recovered in criminal and administrative proceedings. Only official fees can be recovered in administrative proceedings.

33. The Unified Patent Court ("UPC") [came into] [will come into] existence in certain European states on 1 June 2023, as did the introduction of European patents with unitary effect ("unitary patents"). Have industry-specific trends developed in your country in terms of the number of patent applicants seeking unitary patent protection and/or enforcing European patents or unitary patents before the UPC?

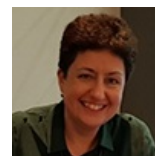
Until the date of submission of this article, although Greece participates in enhanced cooperation to bring about the Unitary Patent System, it has not yet ratified the relevant Agreements and thus, for the time being, Unitary European Patents do not have effect in the country and must be validated in the usual way.

Given the small number of European patent applications deriving from Greek applicants, the fact that there are no major Greek applicants with large patent portfolios and the current intermediate situation, no information is available at this time, as regards the position of Greek applicants against the unitary patent.

Contributors

Maria Athanassiadou
Partner

m_athanasiadou@hplaw.biz



Fotini Kardiopoulis
Partner

f_kardiopoulis@hplaw.biz

