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Italy

INTELLECTUAL PROPERTY

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

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ITALY
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);

In Italy, inventions may be protected by different types of intellectual property rights mainly provided for in, and governed by, Italian Legislative Decree no. 30 of 2005 (hereinafter “Intellectual Property Code” or “IPC”).

In particular:

Patents for inventions (Articles 45 to 80 and 81-bis to 81-octies of the IPC).

Supplementary Protection Certificates – SPCs for medicinal products and plant protection products (Article 61 of the IPC, referring to SPCs granted under EC Regulations nos. 2009/469, 2006/1901 and 1996/1610, and Article 81 of the IPC, concerning SPCs previously granted under Italian Law no. 349 of 1991, abrogated in 2005 by the IPC).

SPCs are granted to avoid that the protection for these particular patents is shortened in a meaningful manner due to the timeframe required for the process of obtaining a marketing authorization.

Utility model patents (Articles 82 to 86 of the IPC) protect models that are capable of conferring increased effectiveness or comfort of use or applications of machines, instruments or tools. These models may consist of new conformations, dispositions, configurations or combinations of parts.

Rights in trade secrets, confidential information and know-how (Articles 98 and 99 of the IPC).

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);

In Italy, brands may be protected by different types of intellectual property rights as provided for, and governed by, either the IPC or the Italian Civil Code (hereinafter “CC”). With reference to these intellectual property rights, the Italian legal framework is supplemented by the European Union legal provisions.

In particular, the protection of brands involves:

Trademarks, including traditional, collective and certification marks (Articles 7 to 28 of the IPC; Articles 2569 to 2574 of the CC; EU Regulation no. 2017/1001).

Domestic law provides for the protection of both registered and unregistered marks. Trademarks can also take the form of EUTMs or International marks designating the territory of Italy.

Protection against acts of unfair competition (Articles 2598 to 2601 of the CC), which aim at protect the fairness of competition between market actors, prohibiting e.g. the use of confusingly similar signs or slavish imitation.

Other hallmarks such as company/business names (Articles 2563 to 2567 of the CC), signs (Article 2568 of

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the CC) and domain names.

Geographical Indications ("GIs"), Appellations of Origin ("AO") (Articles 29 and 30 of the IPC and EU Regulation no. 2012/1151), and **Traditional Speciality Guaranteed ("TSG")** certifications (EU Regulation no. 2012/1151), protecting the reference to the names of specific territorial areas, which are recognized as the location where certain products are produced or processed.

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).

In Italy, other creations, technology and proprietary interests may be protected by different types of intellectual property rights and means provided for, and governed by, either the IPC or the Italian Law no. 633 of 1941 (hereinafter "Italian Copyright Law" or "ICL"), namely:

Copyright, which protects original works of authorship having creative character, including software, industrial design works having artistic value as well and databases which, by reason of selection or arrangement of their content, constitute the author's own intellectual creation.

Neighbouring rights (Articles 72 to 102 of the ICL), protecting the rights of performers, producers of phonograms, producers of cinematographic or audio-visual works, sport events organizers, radio or television broadcasters, authors of critical and scholarly editions of works in the public domain and simple photographs;

Design rights (Articles 31 to 44 of the ICP; European Union Regulation no. 2002/6).

Design rights protect the appearance of a whole product or part thereof, limited to those aesthetic characteristics resulting from the features of the product/part or its ornamentation, lines, contours, colours, shape, texture and/or materials. Purely functional characteristics, and products or parts thereof whose form are dictated by functionality, are excluded from protection.

Designs can be either national or EU community. EU community designs can be also protected as unregistered designs if they meet the the requirements set forth for registered designs.

Semiconductor topography rights (Articles 87 to 97 of the IPC) protect a series of interrelated and fixed/coded drawings, representing the three-dimensional scheme of the layers of a semiconductor product and where each drawing reproduces the whole, or part of the, surface of the semiconductor products during any phase of its production process.

Database "sui generis" rights (Articles 102-bis and 102-ter of the ICL) protect databases showing qualitatively and/or quantitatively substantial investments in either obtaining, verifying or presenting the contents thereof;

Plant variety rights (Articles 100 to 116 of the ICP);

Rights in trade secrets, confidential information and know-how (Articles 98 and 99 of the IPC). Please, see above (A.1.a).

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?

In Italy, the duration of each of the intellectual property rights mentioned under A.1 is the following:

Patents: 20 years from the filing of the application.

SPCs: starting from the expiration of the patent, the protected subject matter can be protected for a period equal to the period that elapsed between the patent application filing date and the granting of the first authorization to market the product, reduced by 5 years, provided that it cannot last more than 5 years. That said, for certain medicinal products, a proprietor can benefit from the so-called "Paediatric 6-months extension", which is granted when a request for authorization includes all studies conducted in compliance with an agreed paediatric investigation plan.

Utility models: 10 years from filing date (Article 85 of the IPC).

Trademarks:

Registered trademarks: 10 years from the filing date. The duration may be extended for 10-year periods through the filing of a trademark renewal application. There is no limit on the number of trademark renewal applications that can be filed;

Unregistered trademarks are not subject to any term limit; however, the unregistered mark is protected only so long as the mark is in use, and the rights conferred are extinguished if the trademark is not used for a period of time sufficient to cause it to fade from the public

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consciousness.

Other hallmarks are not subject to terms limits, except for domain names, which are usually subject to an annual renewal to maintain registration.

Copyright: for rights of economic exploitation, the term is equal to the life of the author plus 70 years. On the contrary, moral rights are perpetual.

Neighbouring rights: duration is usually equal to 50 years from the event that established such right (e.g. the performance, fixation, event, etc.).

Design rights:

Registered designs: the initial duration is 5 years from filing. This term can be extended for 5-year renewal terms up to an overall duration of 25 years;

Unregistered community designs: 3 years from the date on which the design was first made available to the public of the European Union.

Semiconductor topography rights: 10 years from either the end of the year in which the topography was commercially exploited anywhere in the world or the end of the year of filing, whichever occurs first.

Database rights: 15 years from the end of the year of completion of the database. Further 15-year terms are granted for integrations, or substantial modifications, to the database.

Plant variety rights: 20 years from the date of grant (30 years if the subject matter is trees or grapevines).

GIs, **AO** and **TSG** are not subject to any term limits.

Trade secrets/Know-How: No statutory term limits, they continue to be valid only so long as they meet the legal requirements for protection. However, enforcement and claims for compensation for violation/misappropriation of trade secrets are subject to the statute of limitations (5 years from the date on which the right holder could have enforced its rights).

Unfair competition: formally no term limit, but claims for compensation of damages are also subject to the 5-year statute of limitations.

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?

Patents: the inventor is the first owner of moral rights on the invention, of the right to file the patent and all the economic exploitation rights deriving therefrom. However, while moral rights cannot be assigned, the right to file the patent and subsequent economic exploitation rights are assignable.

– If the invention has been developed under commission, the right to file the patent and the economic exploitation rights are owned by the customer, unless otherwise agreed by the parties.

– If the invention has been created in the course of an employment relationship, different scenarios may occur:

– if the inventive activity is the main activity for which the employee was hired and they are specifically remunerated for this activity, the right to file the patent pertains to the employer, while the employee retains moral rights;

– if the inventive activity is not specifically remunerated and the invention is developed by the employee in the course of the employment relationship, the right to file the patent is owned by the employer. However, in addition to retaining the moral rights, the employee is entitled to receive an additional amount as fair remuneration;

– in any other case in which an employee develops an invention, and provided that the invention is related to the employer's industry, the employer has an option right for the (exclusive or non-exclusive) exploitation of the invention or the assignment of the patent or the filing of the same patent in other jurisdictions, against payment to the employee of an appropriate royalty/purchase price.

Utility model patents and **semiconductor topographies rights**: in light of the express reference in Articles 86 and 89 of the IPC to the provisions related to patents, the ownership parameters set forth for patent rights are also applicable to utility model patents and semiconductor topographies rights.

SPCs: the first owner of the certificate is the owner of the relevant patent.

Trademarks:

Registered trademarks: the first owner is the applicant filing the relevant trademark application;

Unregistered trademarks: the first owner is the person or entity using the sign as a trademark in a consistent and sufficient manner.

Other Hallmarks: the first owner is the entity using the

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sign, except for corporate and domain names, which shall be registered;

GIs, **AO** and **TSG**: the first owner is the "collective" (i.e. any association of producers or processors of the same product) that applied for the relevant protection.

Copyright: the first owner of the work is/are its author/s. However, there are specific categories of works, such as cinematographic rights, for which the rights of economic exploitation vest in the producer, provided that the author of the plot, of the script, of the score and the director are considered co-authors.

With reference to software, database and industrial designs protected by copyright and developed by employees in the course of an employment relationship, the first owner of the rights of economic exploitation is the employer or the customer, unless otherwise agreed.

Neighbouring rights: the first owner is the performer, the producer of the phonogram, the broadcaster, the author of critical and scholarly editions of works in the public domain or the photographer.

Design rights: the first owner of the design rights is the author of the design. However, if it was created by the employee in the course of the employment relationship, or as a work-for-hire, the rights are vested in the employer, without prejudice to the designer's right to be recognized as the author and to be mentioned in the registration certificate.

Database rights: the first owner is the maker of the database, i.e. the entity which undertook the investments necessary for its development.

Plant variety rights: the first owner is the breeder of the new variety. However, if the new variety has been created in the course of an employment relationship or under commission, the first owner is the employer/customer, without prejudice to the moral rights of the breeder.

Rights in trade secrets, confidential information and know-how: the first owner is the legitimate holder of the secret information.

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

The registered intellectual property rights amongst those mentioned in section A are: patents, utility model patents, SPCs, semiconductor topographies rights, registered trademarks, geographical indications, appellations of origins, traditional speciality guaranteed, registered designs and plants varieties rights.

Furthermore, also corporate and domain names are subject to registration.

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

Patents: Unless there has been an assignment of the right to file the patent or development of the invention during the course of an employment relationship or under commission (see A.3), the inventor is entitled to apply for the patent.

The patent application is filed before the Italian Intellectual Property Office ("Ufficio Italiano Brevetti e Marchi" – "UIBM"), directly or through the Chambers of Commerce. Unless otherwise stated by the applicant, the application shall be kept secret for 18 months after filing.

After checking the formalities of the application, the UIBM verifies that the subject matter is patentable, legal and sufficiently disclosed. Then, a prior art search is carried out by the EPO, and the applicant is entitled to review the patent search report and file a reply with is remarks or amendments to the description or to the claims of the application, at least 3 months before the expiration of the 18-monts secrecy period.

The UIBM then examines the merits of the patent application. If the patent application meets all the requirements for patentability, the patent will be granted. Otherwise, the application is rejected, and the applicant has 60 days from receipt of the decision to file an appeal before the Board of Appeal ("Commissione dei Ricorsi"). The decision of the BOA, in turn, can be appealed before the Italian Supreme Court within 60 days.

Utility model patent applications can be filed by the author or their assignees. The registration process is substantially identical to that for patents for inventions. However, no prior art reports are drafted.

SCP applications can be filed by the owner of the relevant patents before the UIBM within 3 months of receiving the marketing authorization for the medicinal/plant protection product.

Semiconductor topographies applications can be filed before the UIBM by the author, their assignees or, if the subject matter has been developed in the course of an employment relationship or under commission, by the employer/customer. The UIBM will verify that the

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application refers to a semiconductor product and that the drawings constituting the topography are duly filed and comply with the requirements set forth in the IPC.

Registered trademark applications can be filed before the UIBM (directly or through the Chambers of Commerce) or the European Union Intellectual Property Office (EUIPO) by the individual or the entity using or that intends to use the sign to distinguish the goods/services offered in commerce.

After a verification of the admissibility of the application, the relevant office evaluates the application in light of the so-called “absolute grounds of refusal” (e.g. lack of distinctive character, deceptiveness, etc.).

Then, the trademark application is published in the Official Gazette. For 2 months, any interested party may file observations. For a period of 3 months from publication, the owners of prior rights are entitled to file an opposition (see A.7). If a successful opposition is not filed, the trademark application will be granted and the registration will be published in the Official Gazette.

GIs, **AO** and **TSG**: an application can be filed either by the collective that is producing/processing the relevant products or, under special circumstances, by a single individual/entity.

The application is filed before the Ministry of Agriculture, Food Sovereignty and Forestry and to the relevant Region(s). A public assessment meeting is called to verify the production/processing methods referred to in the product specification. After this meeting, the product specification (which may have been modified) is published in the Official Gazette and there is a 30-day period in which any interested party is entitled to file an opposition. At the end of the opposition phase, if appropriate, the Ministry will submit the application to the European Commission, which will examine the application and, within 6 months, publish it on the European Union Official Gazette. At that point, there is a 3-month period in which any interested party is entitled to file an opposition. Following this procedure, if appropriate, the EC will grant the relevant right.

Registered design applications can be filed by the designer, her/his assignees or the employer/customer (see A.3) before the UIBM (domestic designs) or the EUIPO (community registered designs). The applicant may seek protection for multiple designs in a single application, provided that they are intended for products falling under the same class of products according to the Locarno Classification.

The application shall be filed along with drawings of the design.

The UIBM and the EUIPO limit the examination of the application to formalities, assessing whether the subject matter constitutes a design, if from the drawings it is possible to identify the limits of the protection sought by the applicant and if the design complies with the requirements of public order and accepted principles of morality. Neither the UIBM nor the EUIPO conduct a prior art search.

Plant variety right application can be filed by its developer, the assignees or employer/customer (see A.3), before the UIBM. A description and a picture of the new variety shall be attached to the application.

The UIBM carries out a formal verification of the application while the substantive requirements are evaluated by the Ministry of Agriculture, Food Sovereignty and Forestry, which submit a binding opinion to the UIBM. Third parties are entitled to file observations and the applicant shall be granted a period 6 months to reply.

6. How long does the registration procedure usually take?

Patents and **Utility model patents**: 24 months.

SCPs: there is no publicly available data, but the procedure usually takes 3-5 months.

Semiconductor topographies: 90 days.

Registered trademarks: before the UIBM – 9 months, which can be reduced to 4 months with the “FastTrack Procedure”. Before the EUIPO, the registration procedures last approximately from 5-8 months (“FastTrack Procedures” are available as well).

GIs, AO and TSG: approximately 2 years.

Registered designs: usually a few months.

Plant variety rights: 90 days from the receipt by the UIBM of the Ministry of Agriculture, Food Sovereignty and Forestry’s opinion. Usually the file is submitted by the UIBM to the Ministry within 6 months from the application.

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

As a matter of principle, nothing prevents third parties from submitting a comment on the registration processes. However, the UIBM is not obligated to

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examine these comments or to forward them to the applicant unless there are specific provisions related to a formal observation/opposition phase.

Specific provisions for observations are provided for the registration of trademarks and new plant varieties. On the other hand, the only provisions related to oppositions refer to trademarks, GIs, AO and TSG.

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

As a matter of principle, if the UIBM refuses to grant an application, it is possible to lodge an appeal before the Board of Appeals within 60 days from the communication of the decision. A decision of the Board of Appeals can be further appealed before the Italian Supreme Court limitedly to points of law, within 60 days from communication of the decision to the interested party.

If the EUIPO refuses to grant an application for an EUTM or community design, the applicant can appeal the decision before the Board of Appeals.

Decisions of the EUIPO Boards of Appeal can be challenged before the Court of Justice of the European Union (first before the EU General Court, and then the Court of Justice). The deadline for filing the appeals are 2 months from the communication of the decision.

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

Patents:

If the application is filed electronically, the application fees are equal to 50 EUR, plus 45 EUR for each claim in excess of the tenth. The prior art search is conducted by the EPO, and has no cost if the claims are translated into English, and a cost of 200 EUR if the claims are not translated into English.

If the application is filed in hard copy format, the application fees depend upon the number of pages of the application and varies from 120 EUR (less than 10 pages) to 600 EUR (more than 50 pages) plus 45 EUR for each claim in excess of the tenth. The prior art search is conducted by the EPO, and has no cost if the claims are translated into English, and a cost of 200 EUR if the claims are not translated into English.

These application fees cover the first four annuity payments as well.

The fees for the following annuities are the following:

- 5th year: 60 EUR;
- 6th year: 90 EUR;
- 7th year: 120 EUR;
- 8th year: 170 EUR;
- 9th year: 200 EUR;
- 10th year: 230 EUR;
- 11th year: 310 EUR;
- 12th year: 410 EUR;
- 13th year: 530 EUR;
- 14th year: 600 EUR;
- 15th and following years: 650 EUR

SPCs: 404 EUR plus 1,011 EUR for each annuity.

Utility models: if the application is filed electronically, the application fees amount to 50 EUR, otherwise if the application is filed in hard copy format, the application fees amount to 120 EUR.

These fees cover the first five annuities. The second five annuities amount to 500 EUR.

Trademarks:

Domestic trademarks:

- Application fees: 101 EUR for one class and 34 EUR for each additional class. For collective and certification trademarks, the fees are 337 EUR;
- Renewal fees: 67 EUR for one class and 34 EUR for each additional class. For collective and certification trademarks, the fees are 202 EUR.

European Union trademarks:

- Application fees: for individual trademarks 850 EUR (electronic filing) or 1,000 EUR (hardcopy filing); for collective or certification trademarks 1,500 EUR (electronic filing) or 1,800 EUR (hardcopy filing). These fees cover one class. For the second class there is an additional 50 EUR fee, and for each subsequent class the fee is 150 EUR.
- Renewal fees are identical to application fees.

International trademarks: basic application/renewal fees is equal to 135 EUR, plus WIPO fees (depending upon the designated countries and the classes).

Design rights: *Domestic designs:*

- Application fees: single design 50 EUR (electronic filing) or 100 EUR (hardcopy filing); multiple designs 100 EUR (electronic filing) or

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200 EUR (hardcopy filing);
- Renewal fees:
    - 2nd five-year term: 30 EUR;
    - 3rd five-year term: 50 EUR;
    - 4th five-year term: 70 EUR;
    - 5th five-year term: 80 EUR.

EU Community designs:

- Application fees: 230 EUR (single design) and 115 EUR for each design from the 2nd to the 10th and 50 EUR for each design from the 11th design onward. Plus, publication fees equal to 120 EUR (single design) and 60 EUR for each design from 2nd to 10th and 30 EUR for each design from the 11th design onwards.
- Renewal fees (per each design whether included or not in a multiple registration):
    - 2nd five-year term: 90 EUR;
    - 3rd five-year term: 120 EUR;
    - 4th five-year term: 150 EUR;
    - 5th five-year term: 180 EUR.

Semiconductor topography rights: application fees are equal to 1011 EUR.

Plant varieties rights: application fees are equal to 236 EUR and the annuities are the following:

- 1st year: 101 EUR;
- 2nd year: 135 EUR;
- 3rd year: 168 EUR;
- 4th year: 202 EUR;
- 5th year: 236 EUR;
- 6th year: 270 EUR;
- 7th year: 303 EUR;
- 8th year: 337 EUR;
- 9th year: 371 EUR;
- 10th year: 404 EUR;
- 11th year: 438 EUR;
- 12th year: 472 EUR;
- 13th year: 505 EUR;
- 14th year: 539 EUR;
- 15th year: 573 EUR;
- 16th year: 607 EUR;
- 17th year: 640 EUR;
- 18th year: 674 EUR;
- 19th year: 708 EUR;
- 20th year: 741 EUR.

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?

As a matter of principle, failure to pay any renewal fees in due time may be remedied by paying the relevant fee plus the required late fees during the so-called “grace period”, which is 6 months from the expiration of the original term.

After the grace period has expired, the right holder may file a restitutio in integrum request to reinstate the rights, when the proprietor can demonstrate that its failure to comply with the deadline occurred despite the use of all due care required by the circumstances.

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

In the assignment of intellectual property rights, it is necessary to distinguish industrial property rights (such as patents, trademarks, etc.) from copyright and neighbouring rights.

Indeed, there are no specific requirements for the assignment of industrial property rights. There is an exception in cases of the assignment of trademark rights, where there is a prohibition on actions that may deceive the public as to the owner of the mark in question.

With reference to copyright and neighbouring rights, the assignment must be made in writing.

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 recordal of the assignment of an industrial property rights is mandatory. However, failure to record the assignment does not impact of the validity of the assignment because, pursuant to Articles 138 and 139 of the IPC, the recordal is only the criteria that resolves disputes between multiple assignees of the same title: the first assignee to recorded the assignment will prevail over others.

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

There are no specific requirements for granting a license to a third party to use intellectual or industrial property

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rights. However, trademark licenses must not be deceptive to the public as to the origin of or specific characteristics of the goods/services that are protected under the trademark.

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?

License agreements for industrial property rights are not subject to mandatory registration. However, similarly to assignment agreements, recordal of a license in the relevant registries is highly advisable in order to make them effective against third parties that have acquired rights on the same title (see C.12). Further, recordal is useful for an exclusive licensee to demonstrate their standing to enforce the IP rights against third party infringers before Italian courts.

License agreements for copyright and neighbouring rights are not subject to mandatory recordal and Articles 138 and 139 of the IPC do not apply (see C.12)

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?

With reference to industrial property rights, exclusive licensees are entitled to enforce the IP right directly against third parties, after having requested consent from the licensor. In the event the licensor provides consent or does not respond in a reasonable timeframe, the exclusive licensee may proceed with enforcement.

Non-exclusive licensees are entitled to enforce the licensed rights only with the express consent of the right holder.

Consent to enforcement by both exclusive and non-exclusive licensees can be provided in advance within the license agreement itself.

As to copyright and neighbouring rights, according to Italian case law, both exclusive and non-exclusive licensees are entitled to enforce the licensed intellectual property rights in certain circumstances.

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

With reference to trademarks, patents, designs and other industrial property rights, the Italian Criminal Code (hereinafter “ICC”) provides for specific criminal sanctions in cases of IP infringement.

In particular:

- Counterfeiting of trademarks or other distinctive signs is sanctioned with imprisonment of six-months to three-years and a fine of 2,500 to 25,000 EUR (Article 473 of the ICC);
- Counterfeiting of patents or industrial designs is sanctioned with imprisonment of one to four-years and a fine of 3,500 to 35,000 EUR (Article 473 of the ICC);
- Import of counterfeit goods is sanctioned with imprisonment of one to four-years and a fine of 3,500 to 35,000 EUR (Article 474 of the ICC);
- Possession, or offering, for sale of counterfeit goods, manufacturing or offering for sale of goods or works of authorship bearing trademarks or other distinctive sings capable of deceiving the purchaser, counterfeiting or alteration of geographical indications or appellations of origins for agri-food products, are sanctioned with up to two-years imprisonment and a fine of up to 20,000 EUR (Articles 474, 517, 517-ter and 517-quater of the ICC);

Furthermore, in the aforementioned cases, the counterfeit goods are confiscated pursuant to Article 474-bis of the ICC.

Criminal proceedings can be brought ex officio or ex parte by means of filing of criminal complaints. Once filed, they are carried out by the public prosecutor’s office. The complainant cannot withdraw complaint for crimes that are prosecutable ex officio. In the other cases, the compliant can be withdraw before the conviction.

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 right holders are entitled to bring

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actions to enforce their rights before the civil courts, both in interlocutory proceedings and on the merits.

Furthermore, with reference to copyright and neighbouring rights, it is worth noting that – in the context of electronic media networks – right holders can apply to the Communications Regulatory Authority (AGCOM) to remove content that is infringing their proprietary rights. AGCOM's powers were recently increased by Italian Law no. 93/2023 – going into effect on August 8th, 2023 – which introduced inaudita altera parte measures, especially for the protection of live broadcasted events. The addressee of an order issued under Law no. 93/2023 must block access to the infringing content within 30 minutes of receipt of notice of the order.

Alternative dispute resolution processes are not widely used in Italy jurisdiction, and they are not mandatory. That said, arbitration is used more frequently than mediation, provided that the parties have agreed or agrees to submit disputes to an arbitration body.

Finally, in the area of domain name disputes, the Italian registration authority for the ccTLD .it (Registro.it) has implemented a reallocation procedure.

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

The duration and costs of the procedures mentioned sub E.17 depend upon the complexity of the case, the type of intellectual property right enforced and the type of procedure brought.

In particular:

- interlocutory proceedings before civil courts last from 3/5 months to 1 year;
- civil court proceedings on the merits last approximately:
    - 2-3 years before First Instance Courts;
    - 1-4 years before Courts of Appeal; and
    - 3-5 years before the Italian Supreme Court.
- AGCOM proceedings last approximately 65 days (or 25 days in case of a shortened procedure). The duration of interlocutory proceedings is approximately 5 days.
- There is insufficient data on the average length of ADR procedures.

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.

In Italy, pursuant to the Legislative Decree no. 168 of 2003, intellectual property litigation is adjudicated by Specialized Sections created within the main Italian Civil Courts.

For infringement actions, the venue is the Specialized Section of the Court where the respondent has its domicile (forum rei) or where the infringement occurred (forum commissi delicti). For action seeking a declaration of invalidity of registered intellectual property rights, the venue is the Specialized Section of the Court where the right holder has elected domicile, as stated in the relevant application or title.

Interlocutory proceedings start with the filing of a request for preliminary measures. The Court will process the application and assign a judge, which will issue a decree that grants any requested measures ex parte (if appropriate) and indicate a hearing date. Generally, the decree will also set a deadline for service of the application and decree on the respondent and a deadline for the respondent to appear in the action (which may be directly at the hearing itself). After the hearing, depending upon the case, the Judge can either take the case under reserve, or authorize the filing of further briefs and/or appoint a Court Technical Expert to examine technical issues (common for patent infringement actions). If there is an exchange of supplementary briefs or the filing of a Court Expert opinion, the Judge will usually schedule a final hearing before taking the case under reserve. Then the Judge will render a decision. Interlocutory decisions are subject to an appeal (called a reclamo), which must be filed within 14 days of the decision. The "reclamo" decision is final and cannot be further appealed.

Proceedings on the merits start with the service of a writ of summons on the defendant to appear before the Court at a hearing that shall be scheduled at least 150 days service. A Judge rapporteur is assigned to the case, and will confirm or modify the hearing date as necessary. The defendant must file its statement of defence at least 70 days before the first hearing. Within 15 days before the expiration of this term, the Judge must carry out preliminary verifications. After the defendant's answer and statement of defense is filed, there is also an exchange of three procedural briefs

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(used to (i) specify or modify the party's claims and to reply to the opposing party's arguments, (ii) to file evidence and (iii) to file evidence in rebuttal) which are filed respectively 40, 20 and 10 days before the first hearing. After the first hearing, the Judge will issue a decision on evidentiary requests (e.g. the admissibility of witness testimony) and, if necessary, appoint a Court Technical Expert (common in patent infringement and invalidity actions). At the end of the evidentiary phase, the Judge rapporteur will schedule a hearing to refer the case to the panel of the three Judges that will decide the merits of the case. The final filing deadlines are as follows: 60 days before the referral hearing the parties may file a concluding brief summarizing its pleadings; 30 days before the hearing they may file a final brief; and 15 days before the hearing, the parties may file a rebuttal. Finally, each party may request the scheduling of a hearing for the final discussion of the case before the panel of Judges.

The decision of the first instance Court is usually rendered within 120 days; however, this term is not mandatory. The first instance decision can be challenged before the Court of Appeal within 6 months from publication or 30 days from service of the decision on the losing party. Court of Appeal's decision can be appealed before the Italian Supreme Court within the same deadlines.

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

Customs procedures are governed by European Union Regulation no. 2013/608. Pursuant to this regulation the right holder (or in specific cases its exclusive licensee) is entitled to file a domestic or EU application for action (AFA).

If the Customs officials detect goods suspected of infringing intellectual property rights covered by a granted AFA, they shall suspend the release of such goods and inform the holder of the AFA, which shall confirm the counterfeit nature within 10 working days (or 3 working days, if the goods are perishable), which may be extended by an additional 10 working days. If the goods are confirmed to be counterfeit, the holder of the AFA may request destruction. If the holder of the AFA fails to provide confirmation, the goods are released.

The addressee of the shipment can either adhere to or oppose the destruction of the goods within 10 working days (or 3 working days, if the goods are perishable). If the addressee does fails to do so, Customs will proceed with destroying the goods.

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.

With reference to intellectual property disputes, there are no mandatory out-of-court enforcement options or dispute resolution mechanisms.

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

The parties to an intellectual property dispute are free to enter into an out-of-court settlement agreement (which shall be in written form for evidentiary purposes) or take part in an in-court conciliation procedure (though this is very rare).

Finally, nothing prevents the parties from engaging in mediation for the dispute before specific mediation service providers, or to reach an agreement by means of the convention on counsel- assisted negotiation governed by Law Decree no. 132 of 2014.

In the event there are criminal proceedings ongoing in relation to counterfeit goods, the procedure is under the control of the public prosecutor's office, and the parties cannot decide to withdraw or abandon the criminal action.

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

Before establishing infringement, the right holder is required to prove its ownership of the rights enforced.

As to the infringement of:

Patents for inventions, utility model patents and SPCs: the right holder must prove (as appropriate) the manufacturing, use, commercialization, importation of the patented product or the application of the patented process as well as the commercialization of the product directly obtained applying the patented process. However, if the:

- product obtained by applying the patented process is new; or
- there is a substantial probability that the contested (and identical) product has been

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manufactured by using the patented process and the right holder has not been able to prove it, despite all due reasonable efforts

the infringement of the patent is presumed and the burden of proof shifts to the alleged infringer to prove the contrary.

Infringement can be literal or by equivalents, which occurs where there are insubstantial differences in the allegedly infringing solution.

Finally, if the right holder claims liability for "contributory infringement", it must prove that (i) the infringer is offering the means necessary for the implementation of the patented invention and (ii) the contributory infringer has knowledge of said contribution.

Usually, the evidence filed constitute samples of the infringing products. However, especially in cases of infringement of patented processes or machineries, the right holders can apply to the Court for a description order for inspection inaudita altera parte, in order to examine and describe the process or the machinery.

Trademarks: the right holder, depending upon the case, must prove:

- the use of a sign that is identical to its trademark rights for goods/services that are identical with those for which the protection is granted;
- the use of a sign that is similar to, or identical with, its trademark rights for goods/services that are similar to, or identical with, those for which the protection is granted, and the existence of a risk of confusion for the public;
- the use of a sign that is similar to, or identical with, a well-known trademark and, irrespective of the goods for which it has been used, that the contested sign is gaining an unfair advantage from, or causing unfair detriment to, the distinctive character or the reputation of the well-known trademark;
- the use of other hallmarks that are similar to, or identical with, its trademark and the existence of a risk of confusion for the public also in light of the goods/services offered by the parties. If the trademark is well-known, instead of the risk of confusion, it is sufficient to prove that the contested mark is gaining an unfair advantage from, or causing detriment to, the distinctive character or reputation of the trademark.

Evidence is usually represented by samples of the counterfeit products as well as reproduction of the marketing material utilized by the alleged infringer.

Other hallmarks are protected against the risk of confusion for the public. Therefore, besides the use of the interfering sign, the right holder shall prove the existence of a risk of confusion.

GIs and AO: it is necessary to prove:

- use of the GI or AO for comparable products that are not covered by the relevant registration;
- the misuse, imitation or evocation of the GI or AO, also accompanied by expressions such as "style", "type", "as produced in", "similar", etc.;
- any practice that misleads the public as to the true origin of the product.

TSG: it is necessary to prove the misuse, imitation or evocation of the TSG, as well as any other practice that misleads the consumer.

Copyright and Neighbouring rights: the right holder must prove the unauthorized act consisting of one of the exclusive activities reserved to the right holder (e.g. the reproduction, distribution or communication to the public of the work) or a violation of their moral rights.

Evidence usually consists of samples of the infringing work.

Design rights: the right holder must prove the use (e.g. manufacturing, offering for sale, selling or importing) of its design or of a design that does not provoke a different overall impression in the informed user.

For unregistered community designs, it is also necessary to prove that the contested use results from copying the protected design.

Evidence usually consists of samples of the counterfeit products as well as reproduction of the marketing material utilized by the alleged infringer. As to the proof of copying, the exposure of the infringer to the unregistered design may contribute to a finding of infringement.

Semiconductor topography rights: the right holder must prove the reproduction of its topography, the fixation of the topography to a semiconductor product or the use for commercial purposes of the product in which the topography has been fixed.

Database "sui generis" rights: the right holder must prove the systematic and reiterated extraction or re-use of the contents of the database.

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Plant variety rights: the right holder must prove that the alleged infringer performed one of the prohibited activities (e.g. the production or reproduction of the variety, the offering for sale, selling or the exportation/importation of the variety) with reference to its plant variety rights or to a variety that is essentially derived (i.e. having the same essential characters deriving from the genotype) therefrom.

Trade Secrets: in order to establish the infringement of its trade secrets, the right holder must prove that the protected information was acquired in an illicit manner.

Furthermore, since trade secrets rights also prevent the acquisition, use or disclosure of trade secrets by a third party who acquired them knowing – or one who was in a position to know – that they were acquired in an illicit manner, in these cases the right holder must also prove such knowledge.

Unfair competition claims: the claimant must prove the act of unfair competition (e.g. slavish imitation, use of confusingly similar distinctive signs, acts contrary to professional fairness). However, it is worth noting that, once the act of unfair competition has been assessed, it is presumed that the liable party also acted with negligence.

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?

Italian judges do not have a technical background. Therefore, where specific technical (including in accounting) skills are required, the Judge appoints a Court Technical Expert to carry out the assessment of the technical issues. During the Technical Expertise phase, the parties are entitled to appoint their own technical expert(s), which liaise with the Court Expert. The Court Expert will issue a technical report that while not binding on the Judge, is highly persuasive.

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

Italian procedure does not provide for far-reaching discovery mechanisms for gathering evidence from an opposing party.

That said, it does provide for description orders, which are interlocutory proceedings aimed at obtaining authorization for a court official to inspect (and eventually seize) the alleged infringer's products, processes, machineries and accounting and financial documents. Such evidence is intended to be used by the right holder in a subsequent action to demonstrate infringement of their rights.

Further, during court proceedings, a right holder that has provided serious hints of the infringement is entitled to request the judge to order the disclosure of the documents or materials that are related to the acts of infringement. Further, a party that has demonstrated the existence of infringement can request the judge to order the infringing party to disclose accounting and other records that demonstrate the extent of the infringement, in order to calculate damages caused by the illicit activities.

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?

Generally speaking, evidence is filed before the Court in documentary form and is available for examination by both parties and the Judge. The Judge is free to evaluate the evidence, unless the law provides them with a specific evidentiary value (e.g. oath, judicial confession, public deeds, etc.).

Parties are given an opportunity to comment on and/or rebut evidence filed by the other party, to ensure that the basic pillars of adversarial proceedings are respected.

Other evidence, such as witnesses testimony, is subject to the Judge's authorisation and, if given, performed directly by the Judge. During witness examination, the other party is allowed to "indirectly" cross-examine the witness, submitting questions to the Judge to direct to the witness. Similarly, the Judge may request the witness to provide clarifications.

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26. What defences to infringement are available?

A party accused of infringement allegations may claim the invalidity, the extinction or the revocation of the rights that have been enforced.

Furthermore, the respondent could object that its conduct does not constitute an infringement because:

- it does not violate the enforced intellectual property right;
- it falls within the scope of exceptions and limitations which are applicable to that particular intellectual property right (e.g. private or experimental use of patented inventions).

In exceptional cases, the accused party could also argue consent, but this is rare and, as always, a difficult defense to prove once the right holder has asserted that its rights are infringed by the challenged conduct.

Finally, one of the most important exceptions (especially in trademark disputes) is the exhaustion of the proprietor's rights.

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

As a matter of principle, the validity of an intellectual property right can be challenged by any interested third party. Registered intellectual property rights can also be challenged by Public Prosecutors.

However, some claims are limited. For example, "relative grounds" for trademark invalidity (i.e. lack of novelty) can only be raised by the holder of prior rights (e.g. prior trademarks, generally known unregistered trademarks, copyright holder, etc.).

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)?

As a matter of principle, the validity of intellectual property rights can be challenged from the moment they are established/registered up until expiration, and also after expiration for the purpose of defending against an allegation of infringement that occurred prior to the expiration of the enforced right.

While trademarks, GIs, AO and TSG may also be subject to opposition procedures during specific timeframes during their registration processes (see B.5 and B.7), the validity of an established intellectual property right can be challenged in Court or, as to trademarks, also before the UIBM (except for bad faith registration cases).

However, such challenges may be subject to specific timeframes:

- a holder of prior rights may challenge a registered trademark for lack of novelty only within 5 years following both (i) the registration of the mark and (ii) knowledge (actual or implied) of the registration;
- a trademark lacking distinctiveness may acquire it over time through "secondary meaning", after which it can no longer be challenged for lack of distinctiveness by a third party;
- a third party cannot seek cancellation of a trademark for non-use if, at least 3 months before the commencement of the revocation action, its use is resumed in good faith (and not due to the "threat" of the revocation action).

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 for invention and **utility model patents** can be challenged only in Court within an action on the merits described sub E.19.

The grounds for invalidity of patents (and, where applicable), of utility model patents) are:

- non-patentable subject matter (e.g. discoveries, scientific theories, mathematical models, information presentation, software, and plans, principles and methods for intellectual activities, games and commercial activities are not patentable);
- lack of novelty;
- obviousness for the person skilled in the art;
- invention not suitable for industrial application;
- contrariety to public order or accepted principles of morality;
- insufficient disclosure of the invention;
- extension beyond the content of the original application;
- patent application filed by an entity not

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entitled to it;
- failure to pay the relevant annuities in due time (this is a cause for extinction of the patent).

If one or more patent claims are declared invalid, the right holder is entitled to file a limitation in order to preserve its/their validity.

Supplementary Protection Certificates – SPCs can be challenged in Court during an action on the merits (see E.19).

The grounds for invalidity are the following:

- lack of one of the prescribed requirements, which are:
    - the product shall be protected by a patent in force;
    - the commercialization as medicinal or plant protection product has been authorized by the relevant authorities and it is the first authorization for said product;
    - the products shall not be subject to a prior SPC.
- extinction of the patent prior to its natural expiration;
- the underlying patent is declared invalid or is limited such that the product for which the certificate was issued is no longer protected by the patent.

Rights in trade secrets, confidential information and know-how can be challenged only in Court in ordinary proceedings on the merits (E.19) if the following requirements are not met:

- secrecy;
- economic value of the information because of its secrecy; and
- adoption of adequate protection measures.

Trademarks, can be challenged:

- before the UIBM:
    - during the opposition phase in the registration procedures for lack of novelty vis-à-vis earlier trademark registrations, GIs and AOs. If an opposition is filed, the applicant can submit arguments and require, if appropriate, the opponent to file proof of use of its earlier trademark. The applicant has 60 days to appeal the decision issued by the UIBM before the Board of Appeal (Commissione dei Ricorsi). The Board of Appeals' decision can be appealed before the Italian Supreme Court within 60 days from communication of the decision.
    - after registration for absolute or relative grounds, except for registration in bad faith. The main features of this procedure are similar to those used in the opposition procedure, including the right to appeal the decisions and appeal deadlines.
- in Court for all grounds and according to the ordinary proceedings on the merits (see E.19).

European Union trademarks can be challenged before the EUIPO.

The grounds for the invalidity are the following:

- the sign cannot constitute a trademark;
- lack of distinctive character;
- contrariety to the law, public order and accepted principles of morality;
- deceptiveness;
- lack of novelty;
- infringement of third parties' rights (e.g. copyright or image rights);
- bad faith registration.

Furthermore, a trademark can be revoked in case of:

- vulgarization;
- non-use for five years;
- supervening contrariety to the law, public order and accepted principles of morality;
- supervening deceptiveness.

Copyright and **Neighbouring rights** can be challenged by proving that they lack the requisites for protection (see A.1.c).

Design rights can be challenged:

- before the Court (Italian registered designs and EU community unregistered designs) in Court in an action on the merits (see E.19);
- before the EUIPO (community registered designs), which can be challenged before the Board of Appeals and, in turn, the Court of Justice of the European Union.

The grounds for invalidity of a design are the following:

- lack of novelty;
- lack of individual character;

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- contrariety to public order or accepted principles of morality;
- the design of an element of a complex product is not visible during its normal use;
- the design serves a technical function or consists of a necessary shape and/or dimension for its linking to another product;
- registration filed by an unauthorized entity;
- infringement of third parties' trademarks or copyrights.

Semiconductor topography rights can be challenged in Court in an action on the merits (see E.19) if the topography:

- does not constitute the result of a creative effort of its author;
- is common or generally known in the semiconductor products industry;
- is filed by an unauthorized entity;
- has been filed after the expiration of the two-year term from its first commercial exploitation, which may occur anywhere in the world;

Furthermore, the topography can be declared invalid if:

- the applicant did not declare, where appropriate, the date of the first commercial exploitation;
- the application is not sufficiently specific and does not enable the identification and the evaluation of the relevant requirements.

Database "sui generis" rights can be challenged in Court in an action on the merits (see E.19) if the database lacks the relevant requirements (see A.1.c);

Plant varieties rights can be challenged in Court in an action on the merits (see E.19) if the variety is not:

- new;
- distinguishable from any other known variety;
- uniform in the characteristics relevant for the protection;
- stable.

Furthermore, the plant variety can be declared invalid if the application has been filed by an unauthorized entity.

Finally, the plant variety rights can be revoked if the right holder does not pay the relevant annuities (see B.9).

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?

Any interested party is entitled to bring an action for declaration of non-infringement (so called "accertamento negativo") before the Court, both in proceedings on the merits and in interlocutory proceedings. This action is aimed at obtaining a judicial declaration recognizing the absence of infringement of intellectual property rights in relation to certain conduct. An interested party is usually considered to be one that can demonstrate to have a reasonable concern that they will be the target of an infringement action (usually, the receipt of a warning letter is sufficient).

On the other hand, certain intellectual property rights, namely patents and utility models, may be subject to compulsory licenses if the invention or the model are not implemented in a manner consistent with the "needs of the Country", within 3 years from grant of the patent or 4 years from the filing of the application (whichever expires later). The relevant application for the compulsory license shall be filed before the Ministry of the Enterprises and Made in Italy.

The same provisions apply to new plant variety rights. However, the relevant application for the compulsory license shall be filed before the Ministry of Agriculture, Food Sovereignty and Forestry instead.

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

The most common remedies (both interim and final) for the infringement of intellectual property rights are:

- injunctions;
- order of withdrawal from the market;
- destruction of infringing goods;
- assignment of infringing goods or of the means univocally intended for their production;
- publication of the decision;
- seizure of the counterfeit goods;
- transfer of the infringing domain name.

The aforementioned remedies may also be supported by penalties for non-compliance with the remedies stipulated in the order or decision.

It is common for the Judge to order the losing party to

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pay to the prevailing party a sum as reimbursement of legal costs incurred in the action.

Furthermore, in proceedings on the merits (not in interlocutory proceedings), the court can also order compensation of the damages suffered by the right holder as well as the restitution of the profits achieved because of the infringement.

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?

The costs of enforcement proceedings consist of the official court fees, which are usually equal to 1036 EUR (518 EUR for interlocutory proceedings), and administrative fees, which amount to EUR 27.

The legal fees vary depending upon the complexity of the case and the intellectual property right(s) involved in the disputes.

While court and administrative fees, as well as the expenses for the Court Technical Expert, are usually awarded to the prevailing party (a different allocation may be imposed in case of particularly complex or new matters), the legal fees are awarded according to charts issued by Ministry of Justice, which usually are lower than the actual fees incurred by the parties in intellectual property disputes.

There are no mechanisms enabling or requiring security for costs.

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?

At the time of writing, there are very few cases brought before the local division of the UPC in Milan, and the Central Division has not been formally established. We are not currently aware of any action brought before any division of the UPC by Italian companies.
On the other hand – and in the majority of industries – it seems that most patent owners have decided to opt-out from the unitary patent protection system, at least in this introductory phase.

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