

Patents in Europe 2008

Greece
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Greece

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1. What options are open to a European patent holder, whose rights cover your jurisdiction, when seeking to enforce its rights in your jurisdiction?

A European patent has the same effects in Greece as a national patent granted by the Greek Industrial Property Organisation, provided that the patent holder files with the Greek Industrial Property Organisation a certified translation of the patent within three months of publication of the decision to grant the European patent. Therefore, a European patent holder enjoys the same level of protection as a national patent holder and can seek to enforce its rights exclusively through the channel of civil litigation. European patent applicants can also enjoy provisional protection in Greece, as long as they file a certified translation of the patent claims into Greek.

2. Does your jurisdiction have specialist patent courts? If not, what level of expertise can a patent owner expect from the courts?

There are no specialist patent courts in Greece. The academic background required of judges is strictly legal and no technical experts participate in the panel. Patent disputes are heard by civil courts; therefore, panels are comprised of judges who handle all sorts of civil law cases. However, in the Athens Court of First Instance intellectual property law cases are heard by a specific division and this development is expected to help judges become more familiar with patent law issues.

3. Is it possible to cross-examine witnesses at trial? How far are proceedings based on written evidence? Are there restrictions on

the use of evidence from experts?

Each witness is examined separately. If deemed necessary, however, witnesses can be cross-examined, although this is rare. As a general rule, the court evaluates freely all admissible evidence produced by the parties, as well as the witnesses' testimonies. Written evidence is produced by the parties together with the briefs. Parties can also submit technical experts' opinions within the context of written evidence.

The court can appoint an expert where specialised knowledge is required, specifying the issues on which the expert should opine and the deadline for submission of the expert's report. In patent litigation the court commonly appoints an expert (although not in injunction proceedings), but the court is not bound by the expert's opinion.

4. Are infringement and invalidity dealt with simultaneously? What level of proof is necessary to demonstrate one or the other?

Invalidation arguments can be raised as a defence in infringement proceedings, as well as separately within the context of an invalidation lawsuit. Where both infringement and invalidation proceedings are pending, the parties can request that both cases be heard on the same day by the same panel.

The burden of proof lies with the patentee in infringement proceedings, whereas if invalidity is claimed, the burden of proof rests with the claimant. In preliminary injunction proceedings the patentee need not demonstrate full proof; it is enough for the court to consider that infringement of the patent is likely.

5. To what extent is pre-trial discovery permitted? If it is permitted, how is discovery conducted?

In Greece, there is no pre-trial phase similar to discovery in the US. Nonetheless, in proceedings before the multi-member court of first instance, parties are obliged to

submit their briefs, as well as all evidence, 20 days before the hearing. Each party has the right to review the other party's file and submit documents and counter-arguments up to 15 days before the hearing. Witnesses then testify on the day of the hearing and one final addendum may be filed by the parties up to eight working days after the hearing. In addition, the court can order pre-trial discovery upon agreement of the parties or if there is a risk that evidence might get lost or become hard to use.

6. To what extent does any doctrine of equivalents apply in an infringement action?

Although Greek legal theory has dealt with the doctrine of equivalents, this has not been developed and applied at large by the Greek courts – at least, not explicitly. Greek courts have established several parameters when evaluating a patent – for example, that emphasis should be given to the scope pursued by the invention and that the entire description of the invention should be taken into account.

7. Are there certain types of patent right that may be granted by the EPO – biotech or computer software-related, for example – that are more difficult to enforce than others?

Jurisprudence in relation to patents is generally rather poor. Most patent law cases tried before the Greek courts relate to pharmaceutical and mechanical patents. As a consequence, the lack of precedent and experience may present obstacles in the enforcement of certain types of patent right, such as biotech or computer-related patents.

8. To what extent are courts willing to consider, or are bound by, the opinions and decisions of other courts that have dealt with similar cases?

Courts tend to give serious consideration to the jurisprudence of higher courts, such as appellate courts or the *Areios Pagos* (Supreme Court), although they are not bound by previous decisions on similar cases.

9. To what extent are courts willing to consider the reasoning given by foreign courts that have handed down decisions in similar cases?

Parties usually present foreign court decisions in similar cases referring to the same patent. The Greek courts may consider the reasoning given by foreign courts as additional evidence, but this will not significantly influence their decision.

10. What options are open to a defendant seeking to delay a case? How can a plaintiff counter delaying tactics?

Either party may request an adjournment of the trial until a later date upon invocation of a serious reason. The trial can be adjourned only once. Moreover, a request to stay proceedings may be submitted where an opposition is pending before the European Patent Office. The appointment of an expert by the court (not in injunction proceedings) can also delay the case. Plaintiffs can counter delaying tactics to some extent by protesting to the court.

11. How available are preliminary injunctions and how do you get them?

Preliminary injunctions are available in urgent cases or in order to prevent imminent risk. Patentees commonly file an injunction petition as soon as they become aware of any infringing act. It is important that they react fast; otherwise they will be unable to prove that the case is urgent. The Athens Court of First Instance normally hears preliminary injunction cases within three to four months of filing. However, the patentee can also file a request for a provisional order, in which case a single judge will decide, within one to two days of filing, whether a provisional order should be issued. If a provisional order is issued, the court is obliged to schedule the hearing of the injunction petition within one month.

12. How long does it take to get a decision at first instance? Is it possible to expedite this process?

It is quite difficult to estimate the time required to obtain a decision at first instance, since this varies from one court to another. For example, it usually takes much longer to get a decision in Athens due to docket congestion. The first hearing of a case before the Athens Court of First Instance may be scheduled for a year after filing of the lawsuit. A decision should be issued within eight months of the hearing. However, there may be delays due to, for example, an adjournment or the appointment of an expert. This is why the outcome of the preliminary injunction proceedings is of crucial importance to the parties. The process may be expedited upon request, but the party must have a serious reason, such as a statute of limitations.

13. What avenues for appeal are open to the defeated party in a first instance case? What criteria are there for granting an

appeal? How long does the appeal process take?

All decisions at first instance can be appealed as long as they are final and the appellant invokes specific errors or reasons. The appeal process normally takes 14 to 18 months.

14. To take a case through to a first instance decision, what level of cost should a party to litigation expect to incur?

It is not an easy task to estimate the level of litigation costs, since above all, these depend on the complexity of the case. Lawyers' fees vary and both hourly charges and lump-sum fees may apply. Moreover, there is no fixed fee for party-appointed technical experts. Court fees, on the other hand, are quite low. According to procedural law, in patent cases, as in all civil law cases, legal costs are to be borne by the defeated

party, unless the case involved quite complex issues and each party should therefore bear its own costs. However, the legal costs awarded are usually very low and do not cover the actual costs of litigation.

15. Who can represent parties in court? Is specialist representation required?

Only lawyers admitted to the bar of the region in which the court is seated can represent parties in civil court proceedings. European patent attorneys, to the extent that they are not qualified lawyers, cannot represent parties in court.

16. What remedies are available for infringement and how are these typically applied? Are punitive damages available and in what circumstances?

In case of infringement the patent holder or the exclusive licensee can request a cease



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Ms Kotroni has developed special expertise in copyright and related right issues. Her practice involves advising record and publishing companies on, among other things, drafting of contracts, blank-tape protection, relevant litigation and contact with collecting societies. Together with Aristides Chiotellis and Christina Panagoulea, she was a member of the legal team that advised the Organising Committee for the 2004 Olympic Games in Athens on all IP issues.

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and desist order from the court by filing a lawsuit or preliminary injunction petition. Claiming damages in tort is also an option within the context of a lawsuit. The claimant can choose from among:

- Substantial damages;
- The return of gains deriving from the unlawful exploitation of the patent; or
- Payment of an amount equal to the licence fee.

The court can also order the destruction of products found to infringe the patent or their delivery to the claimant as compensation, if requested. Greek courts do not award punitive damages, although they do award moral damages.

17. Are there any realistic alternatives to litigation in cases relating to patent disputes?

Patent disputes can be settled amicably in order to avoid litigation. However, this is uncommon, even though civil procedural law provides that parties in disputes pending

before the multi-member court of first instance are obliged to attempt to settle the dispute amicably before the hearing of the case.

18. Has your jurisdiction signed up to the London Agreement on Translations? If not, how likely is it that it will do so?

Greece has not signed up to the London Agreement. Greece shares no official language with the EPO and at this point in time – in particular, given that the majority of the EPC contracting states have not acceded to the Agreement – it is unlikely that Greece will waive translation requirements.

19. Are there any other features of the enforcement system in your jurisdiction that you would like to point out?

Civil remedies of the patent holder in case of infringement are subject to a five-year statute of limitations, starting from the date on which the patentee becomes aware of the infringement and the infringer, with a maximum of 20 years in any case.