



# PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2012/13

## IP IN BUSINESS TRANSACTIONS

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# Greece

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## OVERVIEW OF MAIN IPRs

### 1. What are the main IPRs in your jurisdiction? How are they protected?

#### Patents

Patents are granted for a maximum term of 20 years. To enjoy protection a patent must:

- Be an invention that presents a novelty.
- Involve an inventive step.
- Be capable of industrial application.

Patents valid in Greece include national Greek patents (granted by the Greek Industrial Property Organisation), as well as European and International Patents (under the Patent Cooperation Treaty 1970 (PCT)) designating Greece. PCT applications designating Greece are considered as European patent applications intended for protection in Greece.

#### Trade marks

Trade marks protected in Greece include:

- Registered international trade marks.
- EU Community trade marks (CTMs).
- National trade marks.
- Unregistered trade marks.

Unregistered marks are only protected if they are regarded as well-known abroad or are distinctive and established locally in transactions.

The Administrative Committee for Trade Marks grants trade mark registration for national and international applications designating Greece. However, this is only possible on the condition that after a hearing:

- No absolute or relative grounds of refusal are raised.
- No third party oppositions are filed and retained.

The term of international, community and national trade mark registrations is ten years, which can be renewed indefinitely for a further ten years.

#### Copyright

Copyright protection in Greece is not subject to any formalities and applies to every original work of speech, art or science, on its creation and independent of its form, expression or purpose.

Protected creations include:

- Written or oral texts.
- Musical compositions.
- Theatrical plays.
- Audiovisual works.
- Visual arts works.
- Databases.
- Computer programs.

The current legislation also recognises six types of related rights:

- Performers or performing artists.
- Producers of audio and video media.
- Broadcasting organisations.
- Publishers.
- Database creators.
- Previously unpublished creations.

Entitlement to and exercise of copyright and related rights are not subject to any formality. In general, proprietary rights last for the whole of the author's life and for 70 years after his death. Moral rights are perpetual and non-assignable.

#### Utility models

In order for a utility model to enjoy statutory protection in Greece, it must:

- Be new.
- Be capable of industrial application.
- Be a three-dimensional object with a predetermined shape and form.
- Provide a solution to a technical problem.

The Greek Industrial Property Organisation grants utility model rights in Greece for a maximum term of seven years. As with patents, the rights conferred on the owner of a utility model are acquired and remain in effect only where the relevant fees have been paid to the Greek Industrial Property Organisation.

#### Design rights

Design rights apply to works of applied arts that is designs and models that:

- Are new.



- Present an individual character.
- Represent the outward visible appearance of the whole or part of a product resulting from the specific features of the product and its ornamentation.

Registered designs and models are protected through registration in Greece for a maximum term of 25 years and include national Greek, EU Community (Community) or international design rights (see *Question 27*). If unregistered, design rights can be protected under the Community design regulation (if novel and individualised) or under the current national copyright legislation (if original).

#### Confidential information

Confidential information includes commercial, business information and technical-industrial know-how. It can be protected under contract, competition and criminal law against unfair practices, involving the disclosure of any confidential information without authorisation by:

- Employees, workmen or apprentices, who during, or subsequently in, the termination of their employment communicate any information that has been confided to them to third parties.
- Persons who make unauthorised use of or communicate to third parties technical models or standards that have been confided to them in the course of trade.
- Persons who, for the purposes of competition, attempt to induce another to commit an unauthorised disclosure of confidential information.

For further information about the main IPRs, see *Main IPRs: Greece*.

#### Other

Other IPRs protected in Greece include:

- Domain names.
- Trade and corporate names.
- Topographies of semi-conductor products.
- Supplementary protection certificates for pharmaceuticals.
- Geographical indications.

For further information about the main IPRs, see *Main IPRs: Greece*.

### MAINTAINING IPRs

#### 2. What facilities are available to conduct IP searches and obtain IP information on registered IP rights?

Preliminary patents, trade marks and designs availability searches can be conducted online either through official authorities' websites, ([www.obl.gr](http://www.obl.gr), [www.gge.gr](http://www.gge.gr), <http://oami.europa.eu>, [www.epo.org](http://www.epo.org), [www.wipo.int](http://www.wipo.int)) or through unofficial third party websites (usually available under subscription).

Following registration, specialised surveillance services (including registry monitoring and market watch services) are highly recommended to maintain IPRs and monitor possible infringements.

The consultation of specialised IP lawyers is highly recommended for:

- Thorough availability searches.
- Professional risk assessments.
- IPRs maintenance and monitoring.

#### 3. What steps must a business take to maintain the registration and status of its main IPRs?

For businesses to maintain the registration and status of their main IPRs they must pay:

- Annuities (applicable to patents and utility models).
- Renewal fees (applicable to trade marks, registered designs and domain names).

If the patent is not implemented within three years, this could result in a grant of a compulsory licence, (see *Question 19*). Non-use of the trade mark following a five-year period starting from the day after the registration date and for any continuous five-year period could result in the cancellation of the trade mark. This will occur if the mark is not put in genuine use on a relevant judicial request filed by any third party.

Moreover, trade mark owners must ensure that the mark does not become a common denomination in the course of trade for a product or service in which it is registered. Trade marks should not mislead the public, particularly as to the nature, quality or geographical origin of the goods or services designated.

#### 4. What steps can a business take to avoid committing an infringement of another party's IPRs and to monitor whether a competitor is infringing its IPRs?

A business can use surveillance services (including registry monitoring and market watch services (see *Question 2*). This is highly recommended for businesses wishing either to protect their IPRs from infringement or to avoid committing a breach of third party IPRs.

Internal guidelines setting clear policies for important IPR issues (for example, protection, exploitation, dissemination and awareness of IPRs) are highly recommended. These have important implications for ongoing or future projects.

It may be worthwhile for businesses looking to stop potential imports of counterfeit goods from non-EU countries to file an intervention application with the Greek customs to withhold or seize products that are suspected of being counterfeits.

### EXPLOITING IPRs

#### 5. What are the main steps in an IP audit in your jurisdiction to determine the content of an IP portfolio?

An IP audit consists of a systematic review of the IP assets owned, used or acquired by a business. The purposes are to uncover

under-utilised IP assets, to identify any threats to a company's bottom line, and to enable business planners to devise informed strategies that will maintain and improve the company's market position. At the very least, an IP audit should identify what IP assets are owned by a business and how important those are to the firm.

The first step in the audit process is to identify the readily identifiable IPRs. Assets falling into this category will include:

- Registered trade marks.
- Copyrights.
- Designs.
- Patents.
- Any licences to third parties.
- Any licences from third parties, including cross-licences.
- In-house work manuals.
- Databases.
- Franchise agreements.
- Publications.
- Know-how.

Once identified, the IPRs are then examined to determine:

- By whom they are owned.
- Whether they remain registered.
- Whether they are being effectively used.
- Whether they remain enforceable or may give rise to litigation.

IPRs are also given an importance rating by looking at factors such as whether they are linked to core technologies, the life expectancy of the underlying IP in the technology and the potential or actual exclusivity of the technology.

The second step is to identify external or market influences. These will include:

- The company brand.
- Product brands.
- Company and product packaging.
- Goodwill in the IPRs.
- Product certification.
- Export certifications.
- Regulatory approvals.
- Distribution and raw material networks.
- Client lists.
- Marketing and advertising programmes.

Finally, the valuation of the IPRs is highly recommended. Several IP valuation methods can be used to establish the value of an IP asset.

## ASSIGNMENT

### 6. How can main IPRs be assigned?

Generally, IPRs can be freely assigned and transferred, as an object of property, in whole or in part. IPRs presenting a unitary character (for example, national trade marks or CTMs) can only be transferred for the whole of the territory they cover.

As a result, while European patent applications can be transferred as a whole, granted European patents can only be transferred partially, that is per each designated state. A transfer of trade mark rights does not necessarily require a transfer of goodwill. However, this is advisable to avoid deceiving consumers (for example, where the transferee uses the trade mark with a different goodwill and different product).

Future rights which are sufficiently individualised can also be assigned where the proprietary features of a future work are not directly assigned but rather constitute the subject-matter of a (unilateral) undertaking to assign in the future. However, any transfer of copyrighted work concerns only the proprietary rights related to it. Any moral rights remain attached to its author and cannot be assigned.

### 7. What formalities are required to assign each of the main IPRs?

Patents (including patent applications), utility models, designs, as well as copyrighted works can only be assigned following written agreement.

For patents, utility models and designs, assignment is completed on registration of the assignment agreement in the Patents Register.

Assignments of trade marks are not subject to any formalities. However, it is strongly recommended to:

- Have a written transfer agreement.
- Record the transfer agreement with the Greek Trade Mark Office to render it enforceable against third parties.

Community trade mark transfer agreements must be concluded in writing and can only be enforced if recorded with the Community registry.

### 8. What main terms should be included in an assignment of IPRs?

The most common terms found in an IPR assignment agreement include (but are not limited to):

- Clauses relating to the identification of IPRs assigned, for example:
  - trade marks;
  - patents;
  - copyright;
  - designs; and
  - other intangible assets.



- Purchase price due.
- Date of effect of the assignment.
- Assistance in transfer (technical support, guidance, training, and so on).
- Assurances concerning liability and indemnification issues.
- Remedies for breach of contract.
- Governing law and jurisdiction.

In addition to any other rights and remedies available, parties can also agree a dispute resolution clause.

## LICENSING

### 9. How can each of the main IPRs be licensed?

Generally, all IPRs (including applications) can be freely licensed exclusively or non-exclusively, for the whole or a part of Greece, following a written agreement.

The Greek Trade Mark Office will decide whether to permit the licensing of a trade mark and the registration of the written licence agreement after an ordinary hearing during which it reviews the agreement. The Greek Trade Mark Office must be convinced that the use, under licence of the trade mark:

- Does not create a risk of confusion to the public.
- Is not contrary to the public interest.

Under the new law for Trade Marks, which is expected to enter into force on October 2012 (see *Question 28*), the licensing procedure will be radically simplified, with the abolition of the hearing requirement.

Registration of the licence agreement only has evidential value for patents, utility models and industrial design licence agreements and is not strictly necessary (see *Question 10*). Non-contractual patent licences can be granted, under certain circumstances, without prior consent of the patentee, for non-exploited patents. A copyright holder can grant exclusive and non-exclusive licences for all or a single means of commercial copyright exploitation.

Sublicences are also possible under the same conditions if permitted by the main licence agreement. Licences of community rights that are limited to some EU countries are theoretically possible. However, in view of the rules concerning exhaustion of rights, it is not possible to forbid a licensee to sell outside of his licensed territory.

### 10. What are the formalities to license each of the main IPRs?

A written agreement is required for all IPRs. Registration (whenever applicable) is necessary for the licence agreement to be enforceable against third parties. The Greek Trade Mark Office will only grant permission to register a national trade mark agreement after a hearing (see *Question 9*).

### 11. What main terms should be included in an IP licence?

The most common terms found in an IPR licence agreement include (but are not limited to):

- Clauses relating to the identification of IPRs licensed, for example:
  - trade marks;
  - patents;
  - copyright;
  - designs; and
  - other intangible assets.
- Warranties regarding the validity of the licensed rights.
- Scope of the licence.
- Eventual sub-licensing rights.
- Enforcement rights.
- Price due.
- Date of effect of the assignment.
- Term of the agreement and termination clause.
- Eventual remedies in case of breach of contract.
- Governing law and jurisdiction.

In addition to any other rights and remedies available, parties can also agree a dispute resolution clause such as a clause submitting disputes to arbitration.

## TAKING SECURITY

### 12. Is security commonly taken over IPRs?

Security over IPRs is not very common in Greece, as:

- There are difficulties in accurately valuing IPRs.
- The value of a business's IPRs does not generally appear in its balance sheet or financial records.

The IPRs most commonly secured are trade marks.

### 13. What are the main security interests taken over IPRs?

The main security instruments taken over IPRs are pledges and fiduciary assignments.

#### Pledges

Pledges over intangible assets (including IPRs) are governed by Article 1214 of the Greek Civil Code. They require a:

- Written agreement before a notary public.
- Registration of the relevant agreement to a separate public registry.

However, no registry has as yet been set up, and therefore this security option is not used, except in relation to pledges over film production and trade marks (*see below*).

Article 6 of Decree No. 4208/1961 allows for the conclusion of pledges in relation to film production (including pledges of proprietary copyright). Such pledges are registered with the Court of First Instance in Athens. Enforcement of the pledge in case of default is achieved under the procedure set out in Article 1022 of the Greek Code of Civil Procedure.

Trade mark law has specific provisions for enforcement of pledges. Article 24 of Law No. 2239/1994 allows the confiscation and liquidation of trade marks. The judgment allowing the enforcement must be served on the Trade Mark Registrar and subsequently recorded. Trade marks consisting of the name of the owner cannot be the subject of this confiscation and liquidation procedure.

#### Fiduciary assignments

Fiduciary assignments do not have the difficulties of the pledge registry (*see above, Pledges*) Fiduciary assignments are concluded under the legal requirements and restrictions applicable to the relevant type of IPR transferred.

### M&A

#### 14. What IP-related due diligence is commonly carried out in both a share sale and an asset sale?

##### Share sale

The main issues of IP-related due diligence in share and asset sales are:

- Identification of the IPRs.
- Confirmation of ownership or licences (to or from third parties) of the IPRs.
- Examination of the terms of licences (to or from third parties) of the IPRs.
- Assessment of the status of IPRs, namely examination of compliance with IPR maintenance rules and procedure.
- Assessment of the strength of the IPRs, including review of possible legal actions contesting their validity, or the validity of the licences, and confirmation of use.
- Identification of other pending disputes, such as enforcement or infringement proceedings initiated by or against the business.
- Royalty payments.
- Reference of the value of the relevant IPRs in the businesses balance-sheet or financial records.

##### Asset sale

See above, *Share sale*.

#### 15. What IP-related warranties and/or indemnities are commonly given by the seller to the buyer in both a share sale and an asset sale?

##### Share sale

The IP-related warranties provided in both share and asset sales are generally similar. The most common include warranties that:

- The seller is the lawful owner of the relevant IPRs.
- The seller is the lawful licensee of the relevant IPRs.
- The seller's IPRs' licences to third parties are valid and enforceable and other third parties do not have any rights to them (or the seller has the power to assign any existing rights in third party IPRs).
- The relevant IPRs, either owned or licensed from third parties, are valid.
- There is full disclosure of IPRs.
- There is full disclosure of pending disputes (if any).
- The seller will indemnify the buyer for breach of the above representations.

##### Asset sale

See above, *Share sale*.

#### 16. How are the main IPRs transferred in both a share sale and an asset sale?

##### Share sale

Share sales do not include the separate transfer of IPRs, as there is no transfer of the business, only a change of control.

##### Asset sale

In asset sales, the relevant IPRs are assigned individually. In practice however, this means that the asset sale agreement will list the details of each of the IPRs assigned. Additionally, where registration of the transfer is necessary (trade marks, patents, design rights) it should be effected.

As far as copyright is concerned, only the proprietary rights are transferrable; whereas the moral rights can only be the subject of a licence.

For the assignment of licences, care must be taken with the relevant clauses of the licence agreements in relation to change of control and assignment of the IPRs licensed.

### JOINT VENTURES

#### 17. Is it common for companies to set up joint ventures in your jurisdiction to develop projects that heavily involve IPRs?

It is not uncommon for companies to set up joint ventures in Greece. The main IP-related provisions to be included in the relevant agreement are:

- A full list of each of the parties' relevant IPRs.



- Cross-licensing or cross-assignment clauses.
- Agreement on the ownership of IPRs, which will be created within the context of the joint venture.
- Liability for infringement of third parties' rights, with regard to the:
  - IPRs created, within the context of the joint venture; and
  - IPRs cross-licensed.
- Burden of enforcement against infringement with regard to the:
  - IPRs created, within the context of the joint venture; and
  - IPRs cross-licensed.
- Dispute resolution clause.
- Provisions related to the ownership of IPRs following termination of the joint venture. Such provisions may provide for ownership of the IPRs by one party with simultaneous licensing of this to the other party or buy-out schemes.

## COMPETITION LAW

### 18. What are the main provisions of your national competition law that can affect the exploitation of the main IPRs?

The main provisions of Greek competition law that can affect the exploitation of IPRs are:

- Article 1 of Law No. 703/1977, which mirrors Article 101 of the Treaty on the Functioning of the European Union (TFEU). It prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition.
- Article 2 of Law No. 703/1977, which mirrors Article 102 of the TFEU. It prohibits an undertaking's abuse of a dominant position.

Competition law issues most commonly arise with regard to patents and copyright.

### 19. What are the most common national competition law issues that arise in the exploitation of the main IPRs?

#### Distortion of competition

Licences of IPRs (particularly exclusive agreements), including cross-licensing and IPRs pooling (most notably in relation to patents) may breach Article 1 of Law No. 703/77. The prohibited anti-competitive effects of such agreements can include:

- Price fixing.
- Market partitioning.
- Barriers to entry.
- Downstream market foreclosure.
- R&D restrictions imposed on the licensee.

#### Abuse of dominant position

The most common example of abuse of dominance is the refusal to license IPRs, as a specific case of refusal to supply.

Greek patent law (*Article 13 of Law No. 1733/1987*) allows for the compulsory (non-contractual) licensing of a patent, following petition before the courts, provided that:

- A period of three years has elapsed since the grant of the patent or a period of four years has elapsed since the filing date of the patent application.
- The relevant invention has not been exploited in Greece or, where it has the production of the products is insufficient to cover local demand.
- The third party is in a position to exploit productively the invention covered by the patent.
- The third party notified the patentee, one month prior to the initiation of the judicial proceedings, regarding its intention to request a non-contractual licence.

It is generally argued that compulsory licensing would also apply to copyright, particularly in the software and media sectors, as well as to trade marks and designs.

### 20. What exclusions or exemptions are available for national competition law issues involving the exploitation of the main IPRs?

Greek law provides for the ability to stop parallel imports from extra-EU and European Economic Area (EEA) countries of goods protected by IPRs in Greece.

The following EU Block Exemption Regulations are relevant:

- Regulation (EC) 772/2004 on the application of Article 101(3) of the TFEU (formerly Article 81(3) of the EC Treaty) to categories of technology transfer agreements.
- Regulation (EU) 330/2010 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices.
- Regulation (EU) 12/17/2010 on the application of Article 101(3) of the TFEU to categories of research and development agreements.

## ADVERTISING

### 21. To what extent do advertising laws impact on the use of third party trade marks?

The main regulatory instruments on advertising are:

- Law No. 2251/1994, as amended by Law No. 3587/2007.
- The Greek Advertising Communication Code, issued by the Greek Communication Review Board, the advertising industry's self-regulatory authority and also a member of the European Advertising Standards Alliance.

With regard to trade marks, Law No. 2251/1994 prohibits:

- Use in advertising of third parties trade marks if it is likely to mislead or confuse consumers as to the origin or qualitative characteristics of products involved.
- Comparative advertising, where use of a third party's trade mark takes place, if such advertising:
  - does not objectively compare substantive characteristics of the products involved;
  - allows the product advertised to gain unlawful benefit from the reputation of the third party's trade mark;
  - presents products as lookalikes or counterfeits of products bearing registered trade marks; and
  - depreciates products bearing the third party's trade mark.

The principles of Law No. 2151/1994 are generally enshrined in the Greek Advertising Communication Code. This prohibits:

- Untruthful or misleading advertising.
- Advertising which takes unlawful advantage of the reputation of third party's trade marks.

The Communication Review Board decide disputes arising in connection with the code. The decisions are generally respected by the advertising industry despite not being legally binding.

## EMPLOYEES AND CONSULTANTS

### 22. Who owns each of the main IPRs created by an employee in the course of his employment? Is compensation payable in relation to employee IPRs? What main steps can an employer take to ensure it owns each of the main IPRs?

#### Copyright

As a general rule, the employee is the initial beneficiary of both proprietary and moral rights. However, in the absence of any specific agreement, proprietary rights over copyright created in the course of an employee's contract are automatically assigned to the employer. Moral rights remain with the employee. Automatic assignment is not deemed to cover forms of exploitation which were unknown at the date of the employment contract.

#### Patents

Generally, the same rules apply as for copyright (*see above, Copyright*). However, specific rules apply where the invention is:

- The object of an R&D employment contract, in which case the invention belongs exclusively to the employer. The employee has the right to request additional reasonable recompense if the invention is particularly profitable for the employer.
- Conceived during an employment contract with means and information provided by the employer. In this situation, 40% of the invention belongs to the employer and 60% to the employee. The employer is entitled to exploit the invention achieved by priority against compensation to the inventor, proportional to the economic value of the invention and the profits it brings to the employer.

Any agreement which restricts the employees' right above is considered null.

### 23. Who owns each of the main IPRs created by an external consultant? What main steps can a business take to ensure it owns each of the main IPRs?

IPRs created by external consultants belong to them unless:

- A specific agreement provides otherwise.
- The subject-matter of the agreement for the engagement of the external consultant was the creation of IPRs and transfer thereof to the contractor.

However, in the case of copyright, moral rights will remain inalienable. In practice however, the contract will significantly restrict moral rights.

## TAX

### 24. What are the main taxes payable by a licensor on the licensing of the main IPRs?

Article 13(6) of Law No. 2238/1994, as amended by Article 4 paragraph 4 of Law No. 3842/2010 governs the main taxes payable by a licensor on the licensing of the main IPRs.

It states that:

- Royalty fees paid to a non-resident foreign licensor are subject to 25% final withholding tax. Royalty fees paid by Greek subsidiaries to their EU parent companies are, under certain conditions, subject to 5% final withholding tax until 1 July 2013 and are exempt from tax after that date.
- Royalty fees paid to Greek-resident licensors are subject to 20% withholding tax. However, this does not necessarily exhaust their income tax obligations. Royalty fee payments are considered to be income and are subject to progressive income tax rates. The tax withheld is credited against the final payable income tax.

The above rules will apply, unless an applicable double taxation treaty provides otherwise.

### 25. What are the main taxes payable by a seller on the disposal of the main IPRs?

The main taxes payable by a seller on the disposal of the main IPRs are governed under Article 13(1)(b) of Law No. 2238/1994. Article 13(1) provides that both non-resident foreign sellers and Greek-resident sellers are subject to 20% final withholding tax.

## CROSS-BORDER ISSUES

### 26. What international IP treaties is your jurisdiction party to?

Greece is party to all major international IP treaties, including the following:

- WIPO Convention Establishing the World Intellectual Property Organization 1967.



- Paris Convention for the Protection of Industrial Property (Paris Convention).
- WIPO Berne Convention for the Protection of Literary and Artistic Works 1971 (Berne Convention).
- Patent Cooperation Treaty 1970 (PCT).
- WIPO Patent Law Treaty 2000 (PLT).
- Madrid Protocol (International Registration of Marks).
- Hague Agreement (International Deposit of Industrial Designs).
- WIPO Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks 1957.
- WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961.
- Strasbourg Agreement Concerning the International Patent Classification 1971.
- Locarno Agreement (International Classification for Industrial Designs).
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms 1971.
- Brussels Convention (Distribution of Programme-Carrying Signals Transmitted by Satellite).
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure 1977.
- Nairobi Treaty on the Protection of the Olympic Symbol.

Greece is also a member of the:

- Black Sea Economic Cooperation Pact (BSEC).
- European Patent Organisation (EPO).
- Uniform Commercial Code (UCC).
- World Trade Organization (WTO).

Greece is also signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

## 27. Are foreign IPRs recognised in your jurisdiction?

The general principle of territoriality dictates that foreign IPRs are not recognised in Greece. Exempted from this principle are foreign well-known trade marks or foreign registered trade marks (in use abroad) that can be relied on to oppose trade mark applications filed with the Greek Trade Mark Office.

Such International IPRs designating Greece or the EU are valid in Greece including:

- International (under the PCT) and European patents (under the European Patent Convention).
- International (under the Madrid Protocol) and CTMs.
- International (under the Hague Agreement) and Community designs.

With regard to copyright, Greece is a party of the Berne Convention, providing for copyright protection on an international scale. As a result, foreign copyrighted works enjoy the same rights and privileges as national copyrighted works.

## REFORM

### 28. Are there any proposals for reform?

Following various attempts, during the previous decade, to reform Greek Trade Mark (TM) law, it appears that the pressure to implement EC Directive 2004/48 concerning trade marks (copyright implementation was achieved through Law No. 3524/2007), pushed things forward enough for a brand new Greek TM law (the new law). The new law, which is expected to be adopted by the Greek Parliament in April 2012, will bring about several changes to the existing TM normative framework.

The provisions of the new law on TM registration procedure must enter into force from October 2012, while the other provisions, including those on TM licensing, and TM enforcement, will be in effect immediately after the new law is adopted.

The key elements of the new law include:

- The option of division of products/services designated by a TM application is introduced.
- E-filing is introduced.
- The TM registration procedure generally follows the paradigm of the CTM system, however, examiners will also be competent to decline registration for relative grounds of refusal.
- Proof of use request, as a defence in opposition proceedings is introduced, therefore enabling more efficient dispute resolution. Under the old regime, the defendant in opposition proceedings was obliged to file a cancellation action on the basis of non-use to be heard concurrently with the opposition.
- The opposition deadline is reduced to three months from four and a half.
- TM Cancellation is divided into two broad categories on the footsteps of the CTM Regulation, that is:
  - declaration of invalidity; and
  - revocation.
- TM Licensing procedure is radically simplified.
- A method of calculating damages on the basis of hypothetical royalties is introduced.
- Criminal sanctions for violation of well-known TMs is introduced while existing civil and criminal protection becomes stricter.
- Rules on international TM applications/registrations designating Greece are consolidated into the new law.

## CONTRIBUTOR DETAILS

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- *Pharmaten v Merck, Sharp & Dome.*
- *Weyth v Dexcel Pharma.*
- *Daimler-Chrysler v China Motors Industry Group.*

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- *Pharmaten v Merck, Sharp & Dome.*
- *Aventis Pharma v Teva Pharma.*
- *Merck, Sharp & Dome v Teva Hellas.*

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- *Pharmaten v Merck, Sharp & Dome.*
- *Glaxo Group (Maxinutrition) v Sophia Gholam.*
- *Boeing Capital (McDonnell Douglas) v Greek State.*

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- *SEKAP's global TM portfolio restructuring.*
- *Glaxo Group (Maxinutrition) v Sophia Gholam.*