



PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2012/13

IP IN BUSINESS TRANSACTIONS

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lawyers in 58 jurisdictions

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identified



Greece

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PATENTS

1. What are the legal requirements to obtain a patent?

A patent must (*Article 5(1), Law 1733/1987*):

- Be new.
- Involve an inventive step.
- Be susceptible of industrial application.

2. What categories are excluded from patent protection?

The following categories are excluded from patent protection (*Article 5(2), 6 and 9 Law 1733/1987*):

- Discoveries, scientific theories and mathematical methods.
- Aesthetic creations.
- Schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers.
- Presentations of information.
- Methods for treatment of the human or animal body by surgery or therapy.
- Diagnostic methods practised on the human or animal body.
- Inventions, the publication or exploitation of which would be contrary to public order or morality.
- Plant or animal varieties or biological processes for the production of plants or animals, with the exception of microbiological processes or the products of this.

3. Which authority registers patents? Does its website provide guidance on the application procedure? If not, please give brief details of this.

The Hellenic Industrial Property Organisation (OBI) is responsible for the registration of patents. The Greek version of its website (www.obι.gr) provides online guidance on the application procedure and on the rights conferred by a patent.

4. On what grounds and when can third parties oppose a patent application?

There is no procedure under Greek law for the possibility of third parties opposing a patent application. After a patent is granted, it can be opposed in court, on the grounds that the:

- Subject-matter of the patent is not patentable.
- Invention is not sufficiently disclosed.
- Content of the patent extends beyond the content of the application as filed.

5. When does patent protection start and how long does it last?

The period of protection granted by a patent is 20 years, starting with the day after the patent application was filed. This term of protection is subject to patent annuities.

6. On what grounds can a patent infringement action be made?

The owner of the patent has the right, among others, to exclude third parties from producing, offering or making available in the market, or using or possessing the subject matter defined in the patent claims. The owner can demand that the other party cease the infringement and desist from any future infringements.

7. Which courts deal with patent infringement actions?

Patent infringement actions are tried by the special chambers of the district courts of Athens or Thessaloniki by judges with IP experience, competent to rule on patent law.

8. What are the defences to patent infringement actions?

The following defences are available:

- The invention does not meet the requirements of being new, susceptible of industrial application, or involving an inventive step (*see Question 1*).
- The disclosure contained in the patent is insufficient for the patent to be carried out by the person skilled in the art.

- The subject matter of the patent is excluded from patentability, or it goes beyond the content of protection as requested in the application.
- The allegedly infringing activities do not fall within the claimed subject matter of the patent in question.
- Use of the invention for non-professional or research purposes.
- The subject matter of the invention has been conceived and exploited at the time of filing of the asserted patent and continual use of the subject matter is necessary for the business.

9. What are the remedies in patent infringement actions?

The following remedies are available:

- An order that the infringer cease and desist from engaging in acts of infringement (*Article 17(1), Law 1733/1987*).
- Restitution of damage the owner of the licence has suffered due to the infringement or the returns of the benefits derived from the unlicensed use of the patent's subject matter.
- An order that the infringer pays an amount equal to the value of the licence.
- Destruction of the infringing goods or delivery thereof to the owner of the patent.
- Order the publication of the judicial decision acknowledging the infringement in the press.

TRADE MARKS

10. What are the legal requirements to obtain a trade mark?

A trade mark must:

- Be capable of being represented graphically.
- Distinguish the applicant's goods or services from those of other undertakings.

11. Is it necessary or advisable to register trade marks? If yes, please state why. If not, please briefly outline the protection given and available for unregistered trade marks.

It is necessary to register trade marks. Without registration, a mark, even if used, is not awarded any rights (except for the limited protection under unfair competition law and well-known trade marks as provided for under *Article 6bis* of the Paris Convention).

12. Which authority registers trade marks? Does its website provide guidance on the application procedure? If not, please give brief details of this.

The General Directorate for Commerce maintains the trade marks registry. Guidance on the application procedure is provided online in Greek (www.gge.gr/4/organ.asp?195).

A trade mark is registered following an application filed with the competent department of the General Directorate for Commerce. The Trade Marks Administrative Committee reviews the application.

Under the new law on trade marks, which will be in force from October 2012, the application will be reviewed by an examiner. The latter's decision will be reviewed, on recourse by the Trade Marks Administrative Committee.

13. On what grounds can the regulatory authority refuse to register a trade mark?

The regulatory authority can refuse to register on the grounds that the mark:

- Does not fall within the definition of the Greek Trade Mark Law (*see Question 10*).
- Is devoid of any distinctive character.
- Consists exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.
- Consists exclusively of the shape which:
 - results from the nature of the goods themselves;
 - is necessary to obtain a technical result; or
 - gives substantial value to the goods.
- Is contrary to public policy or good will.
- Is deceptive to the public as to the nature, quality or geographical origin of the goods or services, or signs and symbols of the Greek State, or signs of great symbolic value, particularly religious symbols.
- Is identical or confusingly similar to prior trade mark rights.
- Has been applied for in bad faith.

14. On what grounds and when can third parties oppose a trade mark application?

Third parties can oppose a trade mark application on the basis of prior rights. These are:

- Earlier national, community trade mark registrations and international trade mark registrations designating Greece or the EU.
- Earlier applications for the above trade marks.
- Earlier rights of personality or other intellectual or industrial property rights.

National trade mark applications can be opposed within a four-month period starting on the 16th day of the month following the month in which the publication of the national trade mark application takes place. Community trade mark applications can be opposed within a three-month time period starting from the publication date of the community trade mark application.

15. When does trade mark protection start and how long does it last?

Trade mark protection subsists for ten years from the application date. The term of protection can be renewed indefinitely for ten-year periods.

16. On what grounds can a trade mark infringement action be made?

An infringement action seeking an injunction or damages can be made against any person who:

- Uses, alters or imitates a third party's trade mark for identical or similar goods and/or services.
- Uses a mark that is identical or similar to another's trade mark, but for goods and services not similar to those for which the trade mark is registered, where:
 - the earlier mark has acquired a reputation in Greece;
 - use of that sign without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier mark.

An infringement action can also be complementarily based on the civil law under tort and unfair competition law provisions.

17. Which courts deal with trade mark infringement actions?

Proceedings can be instituted before the single-member or multiple-member Civil Court of First Instance, depending on the value of the dispute. Where disputes arise in conjunction with disputes referred to in the Unfair Competition Law 146/1914 or in Article 914 of the Civil Code (tort), they are heard by a multiple-member Court of First Instance. Infringement actions on the basis of community trade marks may be heard only before special IP chambers of the district courts of Athens or Thessaloniki.

18. What are the defences to trade mark infringement actions?

The defences include:

- The trade mark is not used in the course of trade.
- The trade mark is descriptive.
- There is no risk of confusion.
- A prior trade mark exists.
- Abusive filing of the action.
- Acquiescence of the proprietor of the trade mark.
- Limitation of trade mark rights.

19. What are the remedies in trade mark infringement actions?

Remedies include:

- Injunctive relief.
- Damages.
- Orders for the seizure and destruction of the infringing goods.
- The publication of the judgment's ruling in the press.

COPYRIGHT

20. What are the legal requirements to obtain copyright protection?

Any work of literary, artistic or scientific nature, which is original, can be protected under copyright law.

21. Can copyright be registered? If yes, please state which authority registers copyright and the advantages of registering it. Does its website provide guidance on the application procedure? If not, please give brief details of this.

There is no requirement for copyright registration or notice. The Hellenic Copyright Organisation does not offer an optional registration procedure.

22. When does copyright protection start and how long does it last?

Generally, copyright protection lasts for the author's life plus an additional 70 years after death (*Article 29(1), Law 2121/1993*).

The specific time limits apply to the following:

- **Audiovisual works.** 70 years, following the death of the last survivor among the following people (*Article 31(3)*):
 - the principal director;
 - the author of the screenplay;
 - the author of the dialogue; and
 - the composer of the music especially created for use in the audiovisual work.
- **Performer's rights.** 50 years following the date of the performance, although this term cannot be less than the duration of the performer's life (*Article 52*).
- **Phonogram producers and producers of audiovisual works.** 50 years after the fixation is made (*Article 52*).
- **Editors.** 50 years after the last edition work (*Article 52*).
- **Broadcasting organisations.** 50 years after the date of the first transmission of a broadcast (*Article 52*).
- **Database makers.** Protection begins on the date of completion of the database and lasts for 15 years (*Article 45A(7)*).

In all of the above cases, the duration of the term is calculated from the 1 January following the year the work was created or the critical event took place (for example, performance, fixation) (Article 52).

23. On what grounds can a copyright infringement action be made?

Copyright is infringed by any act or omission of a third party which violates any of the rights granted by copyright legislation to the copyright holder, to the extent that said act is not made with the consent of the copyright holder.

Copyright infringement can occur by violating the authors' rights such as:

- Reproduction rights.
- Right of communication to the public.
- Distribution rights.
- Moral rights, or the related rights of the performers and producers.

24. Which courts deal with copyright infringement actions?

Copyright and related rights are usually enforced in civil courts.

In addition, the Hellenic Copyright Organisation (OPI), which is a legal entity established under private law and under the supervision of the Ministry of Culture, keeps a list of mediators for copyright disputes.

25. What are the defences to copyright infringement actions?

The alleged infringer can claim that the subject matter in question is not copyrighted, either because:

- It does not meet the requirement of originality.
- Its term of protection has expired, and so the work has fallen in the public domain.

If the copyrighted nature of the work is not disputed, Law 2121/1993 provides an exhaustive list of limitations to the rights granted to copyright holders. The limitations expressly permit, among others and under certain conditions:

- A reproduction of the work for private use.
- Quotation of extracts.
- Reproduction in school textbooks.
- Reproduction for:
 - teaching purposes;
 - libraries and archives;
 - judicial and administrative purposes;
 - information purposes;
 - the benefit of the blind and mute.

26. What are the remedies in copyright infringement actions?

The following remedies exist:

- The court recognises that the work meets the conditions to be protected under copyright.
- The court confers that the infringer cease and desist from engaging in acts of infringement in the future.
- The copyright holder receives financial and moral damages and compensation for the unjust enrichment of the infringer.
- Administrative sanctions (for infringing copies of computer programs and audio material).
- Publication of the court decision which condemns the infringer in the press.

REGISTERED DESIGNS

27. What are the legal conditions to obtain a registered design right?

A design is protected provided it is novel, has an individual character and represents the outward visible appearance of the whole or part of a product resulting from the specific features of the product and its ornamentation.

28. Which authority registers designs? Does its website provide guidance on the application procedure? If not, please give brief details of this.

The OBI registers designs. An application must be filed with the OBI. Four months after the date on which a design is deposited, if the application is complete and in order, the OBI grants the relevant protection title. Guidance is provided online (www.obl.gr).

29. On what grounds and when can third parties oppose a registered design application?

A court decision can declare a registered design void if:

- The holder of the registered design is not the intellectual author or the intellectual author's successor.
- The conditions for protection are not met (for example, the design or model is not new or of individual character).
- The form of the product or its interconnection with other products is not appropriate for protection because they are dictated solely by a technical function or because they are linking elements.
- Exploitation or publication is contrary to public order or morals.

30. When does registered design protection start and how long does it last?

The protection of the design or model begins as of the date of its registration. The duration of the validity of a registered design is five years as of the date of the regular filing of the application with the OBI. There is the possibility of renewal every five years, up to a maximum of 25 years as of the filing date of the application for registration of the design.

31. On what grounds can a registered design infringement action be made?

In a case of actual or threatened infringement of the registered design, its possessor is entitled to ask for the removal of the infringement and for its omission in the future (*Industrial Designs Law Decree 259/1997*). Complementary protection can also be based on civil code provisions and under specific circumstances on unfair competition law.

32. Which courts deal with registered design infringement actions?

Design infringement actions are tried by the special IP chambers of the District Courts of Athens and Thessaloniki, which divide the cases based on territoriality (see *Question 7*).

33. What are the defences to registered design infringement actions?

Defences include that:

- The design allegedly infringed is not novel.
- The design allegedly infringed does not have an individual character.
- A prior design right exists.
- The filing of the action is abusive.

34. What are the remedies in registered design infringement actions?

The following remedies exist:

- Injunctive relief.
- Damages. The owner can request:
 - restitution of pecuniary losses;
 - payment of the benefit accrued by the third party from unfair use of the design;
 - payment of an amount reflecting the licensing fee; and
 - a request that the infringing third party products be seized and destroyed.

UNREGISTERED DESIGNS

35. What are the legal conditions for unregistered design rights to arise?

Unregistered designs are protected in the EU, according to Regulation (EC) 6/2002 on Community designs (Community Designs Regulation), under the same conditions as for registered Community designs. Unregistered design rights may also be protected (cumulatively) under copyright or unfair competition law.

36. When does unregistered design protection start and how long does it last?

Unregistered designs which do not meet the criteria of protection under copyright law may be protected for either:

- A period of three years, starting from the date on which the design was first made available to the public and where the conditions set by the Community Designs Regulation are met.
- On use and for as long as such use subsists, if the conditions laid out by unfair competition law are met.

37. On what grounds can an unregistered design infringement action be made?

An action for unregistered design infringement can be brought under design, copyright, tort and/or unfair competition relevant laws.

38. What are the defences to unregistered design infringement actions?

The most common defences are:

- Non-infringement arguments.
- Invalidity arguments.
- Prior-use rights.

39. What are the remedies in unregistered design infringement actions?

The remedies are:

- Recognition of the exclusive right to use the design.
- Injunctions.
- Damages.
- Seizure and destruction of infringing goods.

CONFIDENTIAL INFORMATION

40. What are the legal conditions for rights in confidential information to arise?

Articles 16 to 18 of Law 146/14 on unfair competition lay down the scope of protection for commercial or industrial information which is considered to be confidential. The protection granted to this information is not absolute as it is not protected separately as another absolute form of industrial property such as patents or trade marks.

In the same context, Law 2290/1995 provides that natural and legal persons can prevent information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices, so long as this information:

- Is secret in the sense that it is not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question.
- Has commercial value because it is secret.
- Has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

41. On what grounds can an action for unauthorised use of confidential information be made?

It is possible to extend protection beyond the termination of the employment relationship (*Article 1, Law 146/1914*). A valid claim for damages can be raised against:

- An employee in an enterprise who, without authorisation, communicates to third parties confidential information of the enterprise entrusted to him or which have become known to him, with the intention to compete with or harm the enterprise.
- Third parties who use or communicate information to others, with the intention of competing with the enterprise (this information may have been acquired or obtained by their own unlawful acts) (*see above*).
- Anyone who uses or communicates to others, without any authorisation, designs or technical rules entrusted to him in the context of a transaction.
- Anyone who has instigated others to commit the above offences.

42. Which courts deal with actions for unauthorised use of confidential information?

The protection granted by Law 146/1914 is both civil and penal and the geographical jurisdiction of the competent courts depends on the particular facts of each case.

THE REGULATORY AUTHORITIES

Hellenic Industrial Property Organisation

W: www.obi.gr/obi/

Main areas of responsibility. Patents, industrial designs, utility models.

Guidance on application procedure: Available from the above website.

General Directorate for Commerce (Ministry of Economy, Competitiveness and Shipping)

W: www.gge.gr/home/index.html

Main areas of responsibility: Trade marks.

Guidance on application procedure: Available from the above website.

Hellenic Copyright Organisation

W: www.opi.gr

Main areas of responsibility. Copyright.

Guidance on application procedure. No application necessary.

43. What are the defences to actions for unauthorised use of confidential information?

Defence strategies include:

- Disputing the nature of the information as confidential.
- Claiming that the alleged infringer was authorised to use the information.

44. What are the remedies in actions for unauthorised use of confidential information?

The following remedies are available:

- Civil restitution of damages suffered by the enterprise.
- Moral and tortuous damages.

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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.*