



IP

in Business Transactions

THE LAW AND LEADING LAWYERS WORLDWIDE

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Country Q&A

Main IPRs

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BALLAS PELECANOS & ASSOCIATES L.P.C.

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Greece

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OVERVIEW OF MAIN IPRS

1. Please give a brief overview of the main IPRs in your jurisdiction, including how they are protected (whether through registration or otherwise). Consider:
- Patents.
 - Trade marks.
 - Copyright.
 - Design rights.
 - Confidential information.
 - Any other main IPRs that apply in your jurisdiction.

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.

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.

Trade marks

Trade marks protected in Greece include:

- Registered international trade marks.
- Community trade marks.
- 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.

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, 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 *The Main IPRs: Greece*.

Other IPRs

Other IPRs protected in Greece include:

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

MAINTAINING IPRS

2. What facilities are available to conduct IP searches and obtain IP information on registered IP rights, for example to search:

- Before an application to register an IPR.
- After registration to maintain IPRs and monitor possible infringement?

Preliminary patents, trade marks and designs availability searches can be conducted online either through official authorities' websites, (www.obl.gr, www.gge.gr, <http://oami.europa.eu>, www.epo.org, 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 example, registration renewal, using an IPR in a certain time period, and avoiding misuse of the IPR)?

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 a main IPR

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:

- Who they are owned by.
- 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 (for example, in whole or part, with or without goodwill (in the case of trade marks), in relation to future rights, and with jurisdictional restrictions)?

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 or community trade marks) 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 (for example, in writing, signed by both parties and registration)?

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 (for example, in whole or part, with or without goodwill (in the case of trade marks), and with jurisdictional restrictions)?**

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.

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.

Sub-licences 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 (for example, is registration required)?

A written agreement is required for all IPRs. Registration (when-ever 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? If yes, which types of IPRs are commonly secured? What problem areas commonly arise (for example, problems valuing the secured IPR assets, or when enforcing the security)?**

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? How are they created (for example, in writing) and how are they perfected (that is, made enforceable against third parties, for example by registration)? Consider:

- **Patents.**
- **Trade marks.**
- **Copyright.**
- **Design rights.**

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:

- **A share sale?**
- **An asset 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.

15. What IP-related warranties and/or indemnities are commonly given by the seller to the buyer in:

- **A share sale?**
- **An asset 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.

16. How are the main IPRs transferred in:

- **A share sale?**
- **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? If yes, please briefly outline the main IP-related provisions that should be included in the joint venture agreement.

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. Please briefly outline 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. Please give brief practical examples of national competition law issues that can arise in the exploitation of the main IPRs (such as problematic licence terms) and briefly outline any possible solutions to manage them.

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 (for example, are parallel exemptions available)?

Greek law provides for the ability to stop parallel imports from extra-EU and 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. Please briefly outline the extent to which 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 (for example, by including an assignment of IPRs clause in the employment contract)?

Copyright

As a general rule, the employee is the initial beneficiary of both proprietary and moral rights. However, in the absence of any spe-

cific 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 (for example, by negotiating an assignment of 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 with significantly restrict moral rights.

TAX

24. What are the main taxes payable by a licensor on the licensing of the main IPRs (for example, withholding tax on royalty payments)?

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 (Industrial Property).
- WIPO Berne Convention for the Protection of Literary and Artistic Works 1971 (Berne Convention).
- 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 Organisations 1961.
- Strasbourg Agreement Concerning the International Patent Classification 1971.
- Locarno Agreement (International Classification for Industrial Designs).
- Geneva Convention (Unauthorized Duplication of Phonograms).
- 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 (Olympic Symbols).

Greece is also a member of the:

- Black Sea Economic Cooperation Pact (BSEC).
- European Patent Organisation (EPO).
- Uniform Commercial Code (UCC).
- World Trade Organisation (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? Please briefly outline any relevant recognition or registration procedure for each of the main IPRs.

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 Community trade marks.
- 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. Please briefly summarise any proposals for reform and state if they are likely to come into force and, if so, when.

The Preparatory Committee was set up to reform trade mark law in the light of Directive 2004/48/EC on the enforcement of intellectual property rights. It has finished its work and submitted its proposals. Therefore, a new trade mark law is expected within the following few months. Unfortunately, as the legislative document has not yet been submitted to the competent parliamentary committee (this is expected to happen within the next month), it is not yet publicly available.

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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 micro-biological 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.obl.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, 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 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 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.

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 each time for ten years.

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 OBI. Four months after the date on which a design is deposited, if the application is complete and in order, 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 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?

According to the Industrial Designs Law Decree 259/1997, in 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 in case 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 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.

THE REGULATORY AUTHORITIES

Hellenic Industrial Property Organisation

W www.obl.gr/obl/

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.

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.

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

Defence strategies include:

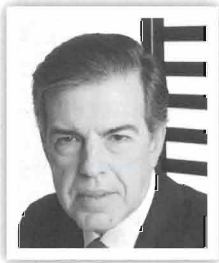
- Disputing the nature of the information as confidential.
- Claiming that the alleged infringer was authorised to use the information.

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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Areas of practice. IP (including industrial property)

Recent transactions

- Pharmaten SA vs Merck, Sharp & Dome Corp.
- Weyth Corp vs Dexcel Pharma Inc.
- Daimler-Chrysler AG vs China Motors Industry Group LTD.



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Recent transactions

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- Aventis Pharma SA vs Teva Pharma BV.
- Merck, Sharp & Dome Corp vs Teva Hellas SA.



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Qualified. Greece, 2001

Areas of practice. IP (including industrial property).

Recent transactions

- Daimler AG, Mercedes-Benz Hellas SA, Smart GmbH vs G Georgiadis & EETT.
- Ford Motor Company vs Daskalopoulos SA.
- Nike International Ltd vs Alex Pak SA.



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Qualified. Greece, 2004

Areas of practice. IP (including industrial property).

Recent transactions

- Pharmaten SA vs Merck, Sharp & Dome Corp.
- Maxinutrition Ltd (Maximuscule Ltd) vs Sophia Gholam.
- Boeing Capital Corp (McDonnell Douglas) vs Greek State.



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Qualified. Greece, 2007

Areas of practice. IP (including industrial property).

Recent transactions

- Apple iTunes Store Terms Localisation.
- Ford Motor Hellas personal data transfer & processing outside the EU.
- Data protection advice on whistleblower hotline issues for Staples, IMS Hellas & Logitech.



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Qualified. Greece, 2007; France 2009

Areas of practice. IP (including industrial property).

Recent transactions

- Pharmaten SA vs Merck, Sharp & Dome Corp.
- SEKAP's global TM portfolio restructuring.
- Biotechnology - GM Food & Feed - Labelling advice for Monsanto Company.

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IP: non-patent litigation

✓✓✓✓ Leading

Bird & Bird
Gleiss Lutz
Harmsen & Utescher
Hogan Lovells

✓✓✓ Highly Recommended

CMS Hasche Sigle
Klaka Rechtsanwälte
Lorenz Seidler Gossel
White & Case LLP

✓✓ Recommended

Anwaltskanzlei Schultz-Süchting
Bock Legal
FPS Fritze Paul Seelig
Freshfields Bruckhaus Deringer
Harte-Bavendamm Rechtsanwälte
Heuking Kühn Lüer Wojtek
Jonas Rechtsanwalts-gesellschaft
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IP: patent litigation

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Bird & Bird
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