

Greece

Maria Athanassiadou

Dr Helen G Papaconstantinou and Partners Law Firm

PATENT ENFORCEMENT PROCEEDINGS

Lawsuits and courts

- 1 | What legal or administrative proceedings are available for enforcing patent rights against an infringer? Are there specialised courts in which a patent infringement lawsuit can or must be brought?

The first and swiftest action against an infringer is to request a temporary restraining order. This will be granted if the petitioner proves the existence of a prima facie serious infringement as a matter of exceptional urgency. That request is filed concurrently with a petition for a permanent injunction and, if granted, remains usually effective until the hearing for the permanent injunction takes place. A petition for a temporary injunction is granted if the element of urgency is prevalent in the circumstances of a particular case. The patent owner may ask for the cessation of the infringing act and the removal of the products from the market. The patent owner is also entitled to take measures to preserve evidence and has the right to obtain information.

The next step is pursuing the main infringement action in which the patent owner may also ask for compensation and moral damages.

Forum selection is important to ensure that court proceedings take place before a court with sufficient expertise in patent law. Patent owners may wish to initiate court proceedings before specialised courts, rather than the local courts. According to legal theory and case law, the competence of the specialised courts in Athens and Thessaloniki is supposed to be reserved for main patent actions (main infringement actions and nullity actions against a patent) and not for temporary restraining orders or injunctions. The competent courts for preliminary proceedings are supposed to be the local courts. However, the local courts' lack of expertise in patent law may negatively affect the protection of patent owners' rights. Therefore, in practice, patent owners generally try to file preliminary proceedings before the specialised courts in Athens or Thessaloniki.

Trial format and timing

- 2 | What is the format of a patent infringement trial?

By virtue of the Greek Civil Procedure Rules, strict timeframes for proceedings apply, where both parties are obliged to submit their arguments in writing along with all relevant evidentiary material within 100 days of the filing of the main action. This timeframe applies for Greek nationals and it is extended to 130 days for foreign nationals. Both parties must then file their rebuttal arguments within 15 days. Upon expiry of this term, the case file is considered complete. Within 15 days from this point a judge-*rappporteur* must be appointed and within 30 days the hearing is scheduled. Each party has the right to submit a maximum of five sworn affidavits in support of its own arguments and a maximum of three sworn affidavits to rebut the opposing party's arguments. As a

rule, the court, which in the main proceedings consists of three judges, will then hear the case without witnesses. However, if the court deems that it is absolutely necessary, it has the option of summoning one of the affiants to testify before court. In such a case, cross-examination of witnesses is permitted. Each party's witness is expected to testify on all facts of the case. Each party's counsel may cross-examine the other party's witness. The court may also address questions to the witnesses. Expert witnesses prove to play key roles in complex patent cases, especially in view of the fact that Greek judges have legal but not technical backgrounds. The hearing in a main infringement proceeding takes place approximately five months after the filing of the action and a decision may be expected after approximately six months.

Proof requirements

- 3 | What are the burdens of proof for establishing infringement, invalidity and unenforceability of a patent?

To establish infringement, the plaintiff must prove that the patent upon which its action is based is valid and that the defendant had infringed it, showing the manner in which the defendant had done so. In invalidity cases, the plaintiff must prove the grounds of invalidity of the contested patent. If the defendant argues that a patent is unenforceable, he or she must prove either that:

- the lawsuit for infringement or for compensation has not been filed on time;
- the acquiescence of the plaintiff had created the impression to the defendant that it would not bring a lawsuit against it;
- the defendant's use had been made for non-professional or for experimental purposes (and in pharmaceutical cases possibly that the *Bolar* provision applies); or
- the patent was null.

Standing to sue

- 4 | Who may sue for patent infringement? Under what conditions can an accused infringer bring a lawsuit to obtain a judicial ruling or declaration on the accusation?

According to the Law, the patent owner, the exclusive licensee, whoever has a right on the invention and the owner of a pending patent application have standing to sue. In the latter case, the court may order the postponement of the hearing until the grant of the patent. According to leading opinion, in order for the exclusive licensee to have the right to bring an action independently, the licence must be recorded at the Greek Patent Office. An accused infringer may request a declaratory judgement recognising that he or she is not infringing. Such a judgment is enforceable between the parties only.

Inducement, and contributory and multiple party infringement

- 5 | To what extent can someone be liable for inducing or contributing to patent infringement? Can multiple parties be jointly liable for infringement if each practises only some of the elements of a patent claim, but together they practise all the elements?

Greek patent law does not have any specific provisions concerning inducement and contributory infringement. However, general legal provisions may be applicable depending on the case. Apart from the actual infringer, the plaintiff may also sue any intermediaries, the services of whom are used by a third party to perform infringement, and directors or employees of a legal entity provided that they have committed the infringing acts and that they act for the infringing entity, but only if their personal actions constitute a tort. In cases of multiple party infringement, each party will be liable to the extent of its own infringing actions.

Joinder of multiple defendants

- 6 | Can multiple parties be joined as defendants in the same lawsuit? If so, what are the requirements? Must all of the defendants be accused of infringing all of the same patents?

Multiple parties may be joined as defendants in the same lawsuit, provided that each of them contributes to the infringement in some way. Not all of the defendants must be accused of infringing the same patents, but there must be a connection on the basis of which the court may allow multiple defendants.

Infringement by foreign activities

- 7 | To what extent can activities that take place outside the jurisdiction support a charge of patent infringement?

Infringement must be committed on Greek territory since, as a rule, the principle of territoriality applies.

Infringement by equivalents

- 8 | To what extent can 'equivalents' of the claimed subject matter be shown to infringe?

In general, the Greek law accepts the doctrine of equivalence, according to which due account has to be taken of any element that is equivalent to an element specified in the patent claims. However, no particularly sophisticated case law is available in this respect.

Discovery of evidence

- 9 | What mechanisms are available for obtaining evidence from an opponent, from third parties or from outside the country for proving infringement, damages or invalidity?

Greek law does not provide for pre-trial discovery. However, the patent owner has the right to demand that evidence be preserved and to request that the defendant provides information such as invoices, or details on the amount of products that have been distributed, within the framework of a trial.

Litigation timetable

- 10 | What is the typical timetable for a patent infringement lawsuit in the trial and appellate courts?

In main infringement action proceedings, both parties are obliged to submit their arguments in writing along with all relevant evidentiary material within 100 days of the filing of the main action. This is

extended to 130 days for foreign nationals. Both parties must then file their rebuttal arguments within 15 days. Upon expiry of this term, the case file is considered complete. Within 15 days from this point a judge-*rapporteur* must be appointed and within 30 days the hearing is scheduled. The parties may expect the issuance of the court decision within six to eight months from the hearing. The average duration of an appeal proceeding is 18 months; however, proceedings may last longer under certain circumstances.

Litigation costs

- 11 | What is the typical range of costs of a patent infringement lawsuit before trial, during trial and for an appeal? Are contingency fees permitted?

The costs involved in taking a case through to a first-instance decision are difficult to estimate, as they depend on the complexity of the case, the duration of the proceedings, the potential involvement of technical experts and possible translation costs. Litigation costs in Greece are, however, considerably lower compared to other EU member states. Nevertheless, the costs of preliminary proceedings and main patent proceedings can be roughly estimated at a range between €14,000 and €30,000, but higher fees have to be expected in complicated cases where several technical experts must be involved and close cooperation between client and counsel is necessary for an extended period of time.

Court appeals

- 12 | What avenues of appeal are available following an adverse decision in a patent infringement lawsuit? Is new evidence allowed at the appellate stage?

Only decisions in main infringement action proceedings and not preliminary injunction decisions may be subject to appeal. All final decisions of the first-instance courts are open to appeal within 30 days of notification to the losing party in the case of Greek nationals and within 60 days of notification in the case of foreign nationals. If no official notification takes place, the decision may be appealed within two years of its publication. The losing party may contest all aspects of the judgment: legal issues and findings of fact. A second-instance decision may be appealed before the Supreme Court within 30 days of notification to the losing party in the case of Greek nationals and within 60 days of notification in the case of foreign nationals. As in the case of first-instance decisions, in the absence of official notification, the decision may be appealed within two years of its publication. Submission of new evidence at the appellate stage is permitted only if the evidence had not been available at first instance.

Competition considerations

- 13 | To what extent can enforcement of a patent expose the patent owner to liability for a competition violation, unfair competition, or a business-related tort?

Infringers may allege in their defence, in particular within the context of preliminary injunctions' proceedings, that the patent owner is acting in breach of the rules on unfair competition. However, the courts will assess such claims on a case-by-case basis.

Alternative dispute resolution

- 14 | To what extent are alternative dispute resolution techniques available to resolve patent disputes?

Under the Greek Code of Civil Procedure, litigants in infringement cases have the option of seeking an out-of-court settlement. Mediation and arbitration are also available to resolve IP disputes. Rules on

arbitration are provided for by articles 867 et seq of the Greek Code of Civil Procedure. Neither mediation nor arbitration have been sufficiently tested in Greece. However, the recent Law 4512/2018 has initiated the compulsory use of mediation in legal disputes arising from patent, trademark and industrial design infringements. The new law introduced a compulsory initial mediation session before the hearing of the case. That session, along with proof of the lawyer's compliance with the obligation to inform the client in writing about the option of mediation, are now a prerequisite for the admissibility of the lawsuit under the new provisions.

SCOPE AND OWNERSHIP OF PATENTS

Types of protectable inventions

15 Can a patent be obtained to cover any type of invention, including software, business methods and medical procedures?

For an invention to be patentable in Greece it must be new, involve an inventive step and be susceptible to industrial application. A patentable invention may concern a product, process or industrial application. For an invention to be considered as involving an inventive step, it must not be obvious to a person skilled in the art. For it to be considered susceptible to industrial application, the subject matter must be possible to produce or use in any industrial field. The following are excluded from patent protection:

- discoveries, scientific theories and mathematical methods;
- aesthetic creations;
- schemes, rules and methods for performing mental acts, playing games or doing business and computer software;
- the presentation of information;
- methods for treatment of the human or animal body by surgery or therapy;
- diagnostic methods practiced on the human or animal body;
- inventions the publication or exploitation of which would contravene public order or morality; and
- plant or animal varieties, or biological processes for the production of plants or animals, apart from microbiological processes or the products thereof.

As mentioned above, software is expressly excluded from patentability. However, computer-related inventions are patentable in Greece to the extent that the European Patent Office considers them patentable. In this respect, an invention that uses a computer program must be a functional system accompanying specific hardware.

Patent ownership

16 Who owns the patent on an invention made by a company employee, an independent contractor, multiple inventors or a joint venture? How is patent ownership officially recorded and transferred?

According to the Patent Law, an invention made by a company employee shall belong entirely to the employer, if the contract between the employee and the employer provides for the employee to engage in inventive activity (service invention). If the employee's role under the contract of employment is not to engage in inventive activity, and if the invention is made by an employee with the use of the materials, means or information of the company in which he or she is employed, it will belong 40 per cent to the employer and 60 per cent to the employee (dependent invention). In a dependent invention case, the employer has the right to exploit the invention with compensation to the inventor, which has to be proportional to the economic value of the invention and

the profits it brings. The inventor of the dependent invention has the obligation to notify the employer on the accomplishment of the invention and to provide the necessary information for the filing of a joint patent application. If the employer does not reply in writing within four months from that notification, stating that it is interested in jointly filing the patent application, the invention will belong entirely to the employee, who will have the right to file the application in his or her own name. If the invention is neither a service invention nor a dependent one, it will belong entirely to the employee.

The ownership of an invention made by an independent contractor will depend on the relevant provisions of the agreement between him and the employer. If an invention has been achieved by multiple inventors, the rights will be divided equally among them, unless otherwise provided for by an existing written agreement. In the case of a joint venture, the rights to an invention must be governed by a written agreement between the parties.

Patent ownership is officially recorded at the Greek Patent Office. Transfer of the patent must be recorded at the Greek Patent Office for it to have effect against third parties.

DEFENCES

Patent invalidity

17 How and on what grounds can the validity of a patent be challenged? Is there a special court or administrative tribunal in which to do this?

The validity of a patent may either be challenged independently before the competent civil courts by means of a full or partial nullity action or as a counterclaim within the framework of infringement proceedings. Invalidity and nullity actions are defendants' most common defences.

Cancellation of a patent may be pursued on the following grounds:

- the patent owner is not the inventor or his assignee or beneficiary;
- the invention is not patentable in accordance with the provisions of the law;
- the description attached to the patent does not suffice for a person skilled in the art to carry out the invention; and
- the subject matter of the patent as granted extends beyond the scope of protection as requested by the application.

Amendment of a patent is not possible within the framework of a patent litigation, except in nullification proceedings, if the nullification action is directed against part of a patent. In that case, the court may order the restriction of the patent to that extent

Absolute novelty requirement

18 Is there an 'absolute novelty' requirement for patentability, and if so, are there any exceptions?

Under Greek law, there is an absolute novelty requirement for patentability. There are exceptions to this requirement:

- if the disclosure of the invention was made within six months prior to the filing or the priority date, and if the disclosure was due either to an evident abuse of the rights of the applicant or its legal predecessor; or
- if the invention was displayed at an officially recognised international exhibition falling under the terms of the Convention Relating to International Exhibitions, signed in Paris on 22 November 1928, and upon filing the application, the applicant has stated that the invention has been so displayed and has submitted the relevant certificate evidencing this statement.

Obviousness or inventiveness test

19 | What is the legal standard for determining whether a patent is 'obvious' or 'inventive' in view of the prior art?

According to Greek law, an invention is considered new if it does not form part of the state of the art. This is considered to comprise anything that is available to the public anywhere in the world (universality principle) by means of a written or oral description or by any other means, before the filing date of the patent or before the priority date. In this respect, in the case of the manufacturing of a product, novelty exists if this product significantly differs from similar products, by way of possessing substantially new elements. According to case law, in the case of creating a result, the element of novelty is established if there is a significant improvement to an already known result, whether that improvement is in the method of manufacture, the result or in the reduction of production costs, or in all of the above. The improvement must not be a mere adaptation of already known elements of methods, without resulting in a significant improvement, or a simple use of a means that is known in environments other than the ones it had been previously used, but in the same way in which it had always been used for obtaining the same result (Supreme Court 545/1996, Supreme Court 1588/1991). According to the theory, the element of novelty is connected to the object of the invention, which derives from the claims. In the case of infringement by an equivalent technical standard, the specification and drawings are used for the interpretation of the claims but do not extend the scope of protection to subject matter that has not been included therein. Further, an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. Consequently, it must be presented as something exceeding the current state of technological progress, and results in an achievement that is beyond the skills of the average person skilled in the art, namely the solution to the technical problem must not be foreseeable based on the current state of the art. Further, the combination of several technical means or processes aiming to provide a solution of a technical problem in a unitary way is considered an invention only if that combination is not obvious to the average person skilled in the art. The application of equivalent means to a technical problem that has already been resolved, is considered to constitute an invention only if the equivalent is not known to the average person skilled in the art.

Patent unenforceability

20 | Are there any grounds on which an otherwise valid patent can be deemed unenforceable owing to misconduct by the inventors or the patent owner, or for some other reason?

Under Greek law, a patent infringement lawsuit may be rejected if it constitutes an abuse of right, namely if it is considered an act of bad faith or as contravening common practice. According to established case law, this may be the case if the patent holder had not taken any action for a long time, although it had been aware of the infringing act, or by not exercising its rights it had created the impression to the infringing party that it would not take any action so that the infringer had proceeded with its investments.

Prior user defence

21 | Is it a defence if an accused infringer has been privately using the accused method or device prior to the filing date or publication date of the patent? If so, does the defence cover all types of inventions? Is the defence limited to commercial uses?

An accused infringer may claim as a defence, which applies to all types of inventions, that it had been exploiting its contrivance as a product

of its intellect, or had proceeded with the preparations required for that exploitation at the time of the filing of the patent application by the plaintiff, or at the priority date. This is a sui generis absolute moral and property right over the invention as an object of intellect, which can be used and commercially exploited by the holder for its enterprise and its needs and can be transferred only with its business.

REMEDIES

Monetary remedies for infringement

22 | What monetary remedies are available against a patent infringer? When do damages start to accrue? Do damage awards tend to be nominal, provide fair compensation or be punitive in nature? How are royalties calculated?

The patent owner may request compensation on the basis of reasonable licensing fees, and moral damages, but not punitive ones. For obtaining compensation or moral damages, the plaintiff has to prove the negligence of the infringer. The compensation claim is determined on the basis of the following three factors:

- the actual loss;
- the defendant's unfair profits; and
- reasonable licensing fees.

Proving the exact amount of the damage or enrichment may often be quite difficult. Where the patent owner cannot collect enough evidence, it may request the infringer to provide information such as invoices or the quantity of distributed products. In addition to the compensation claim, a patent owner may request moral damages; however, the amount of moral damages is difficult to estimate.

Injunctions against infringement

23 | To what extent is it possible to obtain a temporary injunction or a final injunction against future infringement? Is an injunction effective against the infringer's suppliers or customers?

For a temporary restraining order to be granted for future infringement, the plaintiff must prove imminent risk of infringement. A permanent injunction may only be obtained for present infringement. In such a case, the petitioner must prove serious and urgent infringement. For an injunction decision to be effective against third parties, such as infringer's suppliers and customers, the petition must have been directed against those parties as well.

Banning importation of infringing products

24 | To what extent is it possible to block the importation of infringing products into the country? Is there a specific tribunal or proceeding available to accomplish this?

Patent owners have the option of establishing a customs watch system by filing a general request with the Central Customs Directorate. Customs will notify the patent owner or its representatives when suspected infringing goods are intercepted. The patent owner must initiate court proceedings within 10 days of notification. This term can be extended by another 10 days. If an agreement is reached between the patent owner and the holder or owner of the infringing goods, Customs can order the immediate destruction of the counterfeit goods via a simplified procedure, without the need for court proceedings. In such cases, if the owner of the goods does not expressly oppose the destruction within 10 days, its agreement is presumed.

Attorneys' fees

- 25 | Under what conditions can a successful litigant recover costs and attorneys' fees?

By virtue of the Civil Procedure Rules, the losing party must pay the winning party's legal fees, as these are determined by the court. This amount has historically often been calculated on a relatively conservative basis, not covering all attorneys' fees. However, after implementation of EU Directive 48/2004/EC into Greek law, the courts are obliged to determine the actual legal fees. If the plaintiff seeks compensation, the related court costs may be much higher, depending on the requested amount.

Wilful infringement

- 26 | Are additional remedies available against a deliberate or wilful infringer? If so, what is the test or standard to determine whether the infringement is deliberate? Are opinions of counsel used as a defence to a charge of wilful infringement?

Wilful infringement forms the basis for the demand for compensation in a patent infringement case. If intentional infringement is proven, the plaintiff may obtain additional compensation for moral damages. In order to determine that the infringement is deliberate, it must be proven that the defendant was aware of the fact that its actions were infringing the patent holder's rights and that its acts were intentional. The plaintiff may also obtain compensation or moral damages if it proves the negligence of the infringer. Counsel's opinion may be invoked during the proceeding as a defence; however, taking this into account lies within the court's discretion.

Time limits for lawsuits

- 27 | What is the time limit for seeking a remedy for patent infringement?

An action on the merits becomes statute-barred either five years after the date on which the patent owner became aware of the infringement or damage and the identity of the infringer, or 20 years after the date on which the infringement was committed. As regards nullity actions, there is no time limit and thus these can be pursued at any time within the 20-year duration of a patent.

Patent marking

- 28 | Must a patent holder mark its patented products? If so, how must the marking be made? What are the consequences of failure to mark? What are the consequences of false patent marking?

The marking of patented goods is not compulsory and there are no specific requirements relating to this. Although there are no adverse legal consequences if patented goods are not marked, it is advisable that the goods be marked, as a warning to possible patent infringers.

Since marking of goods in Greece is not compulsory, there are no specific words or abbreviations to be used. European or Greek patent application or registration numbers can be used. Although it is preferable that the Greek language is used for marking, in practice various goods appear in the market bearing indications in English. As regards to false marking, the law threatens up to one year imprisonment, a monetary penalty, or both, for false statements that the products in question are patent protected, if those statements appear on products or their packaging, on any kind of commercial documents destined for the public, or on other relevant means of publishing and advertising.

LICENSING**Voluntary licensing**

- 29 | Are there any restrictions on the contractual terms by which a patent owner may license a patent?

Under Greek law, voluntary licences may be granted and can be exclusive or non-exclusive. As patent law does not provide for any restrictions on the contractual terms, general provisions of contractual and competition law apply.

Compulsory licences

- 30 | Are any mechanisms available to obtain a compulsory licence to a patent? How are the terms of such a licence determined?

A party may demand from the court the concession of a compulsory licence based on the lack of or insufficient exploitation of the patented invention by the patent holder up to four years from the filing date or three years from the grant. The applicant for a compulsory licence must notify the patent holder of its intention to seek a compulsory licence one month before filing a court action. The compulsory licence is granted by a three-member court. The applicant for compulsory licence may seek an opinion of the Greek Patent Office, concerning the existence of the prerequisites for the grant of the licence, as well as the amount and terms of the compensation to be given to the owner of the patent, and the exclusive or non-exclusive character of the exploitation of the invention. No compulsory licence shall be granted if the patent owner can justify the failure to work the invention. Imports of the product will not constitute a justification. For reasons of public health or national defence, compulsory licences may be granted by ministerial decree in favour of the public sector bodies in respect of patents that have not been exploited in Greece or when production is insufficient to cover domestic needs. A compulsory licence shall be granted provided that reasonable royalties are paid.

PATENT OFFICE PROCEEDINGS**Patenting timetable and costs**

- 31 | How long does it typically take, and how much does it typically cost, to obtain a patent?

As according to the Greek law there is no substantial examination, provided that a patent application meets all the formal requirements, a patent may be granted within 14 to 16 months from filing. The costs involved up to grant, taking into account the currently applicable official fees, are €500 to €840, depending on whether the applicant will request the issuance of a simple or a justified search report. Higher fees must be expected if the application comprises more than 10 claims.

Expedited patent prosecution

- 32 | Are there any procedures to expedite patent prosecution?

The Greek law on patent protection does not provide for any procedures for expedited patent prosecution.

Patent application contents

- 33 | What must be disclosed or described about the invention in a patent application? Are there any particular guidelines that should be followed or pitfalls to avoid in deciding what to include in the application?

According to the law, the specification of the invention must be complete and clear enough so that an expert skilled in the art may work the invention as described.

The specification must determine the technical field to which the invention relates and the state of the prior art that is useful for understanding the invention must be indicated. It must further determine the invention as defined in the claims, by appropriate technical terms so that the technical problem the invention aims to solve as well as the provided solution can be understood. It must also present the advantages of the invention in relation to the state of the prior art, contain a brief description of the drawings (if any) and provide a detailed description of at least one way of carrying out the claimed invention, providing examples where possible. Finally, it must provide an explicit clarification of the way in which the invention can be applied in industry.

The claims must define the subject matter for which protection is sought and must be fully supported by the specification.

Prior art disclosure obligations

- 34 | Must an inventor disclose prior art to the patent office examiner?

Ministerial Decision no. 15928/EFA/1253 invites the applicant to indicate the state of the prior art which he or she considers useful for understanding the invention. The documents reflecting the state of the prior art may be cited in the specification. However, such disclosure is not obligatory.

Pursuit of additional claims

- 35 | May a patent applicant file one or more later applications to pursue additional claims to an invention disclosed in its earlier filed application? If so, what are the applicable requirements or limitations?

If an invention constitutes a modification of another invention already covered by a patent (the main patent), the owner of the latter may apply for the grant of a patent of addition for the later claims, provided that the subject matter of the patent of addition is related to at least one claim of the main patent.

Patent office appeals

- 36 | Is it possible to appeal an adverse decision by the patent office in a court of law?

Decisions of the Greek Patent Office are enforceable administrative acts and as such they can only be challenged before the Council of State (the Supreme Administrative Court of Greece).

Oppositions or protests to patents

- 37 | Does the patent office provide any mechanism for opposing the grant of a patent?

The Greek law does not provide for opposition procedures before the Greek Patent Office. The validity of a patent may be challenged only before the competent civil courts by means of a nullity action.



DR HELEN G.
PAPACONSTANTINO
& PARTNERS
LAW FIRM

Maria Athanassiadou
m_athanasiadou@hplaw.biz

2 Coumbari St.
Athens
Greece
10674
Tel +30 210 36 25 757
www.hplawfirm.com

Priority of invention

- 38 | Does the patent office provide any mechanism for resolving priority disputes between different applicants for the same invention? What factors determine who has priority?

There are no mechanisms for resolving priority disputes before the Greek Patent Office. Such disputes may be resolved before the competent civil court, upon a lawsuit of a party claiming rights to the invention. According to the law, in case two or more persons have made an invention independently of each other the priority right belongs to the first to file.

Modification and re-examination of patents

- 39 | Does the patent office provide procedures for modifying, re-examining or revoking a patent? May a court amend the patent claims during a lawsuit?

An ex parte post grant modification of national patents is not provided for by the Greek law. Modification is only allowable in the case of European patents upon issuance of a 'decision to limit' or of a 'decision to maintain the patent in amended form' (after opposition proceedings) in accordance with the relevant rules of the European Patent Convention. In such a case, the translation of the modified patent must be submitted to the Greek Patent Office within three months from the date of publication of the decision to limit in the European Patent Bulletin. A national patent can be modified by a decision of the competent civil court in a partial nullity action, in which case the patent can be restricted to the extent requested. The re-examination of granted patents is not provided for by the law.

Patent duration

- 40 | How is the duration of patent protection determined?

National and secret patents enjoy a 20-year protection period and must be renewed annually. Patents of addition expire simultaneously with the main patent. During its life, a patent of addition may be made independent, upon a relevant request to the Greek Patent Office. In such a case, the duration is extended to 20 years from the day following the date of application for the grant of the patent of addition, provided that all annual fees are duly paid. Patents covering medicinal and plant protection products may be extended for a period up to five years from expiry thereof by way of a supplementary protection certificate (SPC), provided that the relevant legal requirements are satisfied. The option

of obtaining a six-month extension of an SPC for paediatrics is also available where the relevant legal conditions are met.

UPDATE AND TRENDS

Key developments of the past year

41 | What are the most significant developing or emerging trends in the country's patent law?

A significant change that will certainly affect patent litigation and will hopefully contribute to the reduction of the workload of Greek courts is the introduction of a compulsory initial mediation session in legal disputes arising from patent infringement. That session and proof of the attorney's compliance with the obligation to inform the client in writing about the option of mediation are now prerequisites for the admissibility of the lawsuit, under the new legal provisions.