

GREECE (GR)

I. DEFINITION OF INFRINGEMENT

As per article 10 of the Greek Patent Law No. 1733/1987, and in particular paragraph (d) thereof, the patent owner has the right to enjoin any third party from productively exploiting the invention or importing, [without the patent owner's consent] products protected by the patent. The term "productively exploiting" is defined by sub-sections (a)-(c) of the same article as follows:

a. To produce, offer to make available in the market, to use and to possess for said purpose the products protected by the patent;

b. To apply, offer or make available in the market the process protected by the patent;

c. To produce, offer or make available in the market, to use and to possess for said purpose the product whose production results from the process protected by the patent.

With regard to "indirect" infringement, as per article 17 (6) of the same law, there is an assumption of infringement "... If the invention concerns a method for producing a product, any product of the same nature is considered to be produced with the same method...".

II. SCOPE OF CLAIMS

As per article 7(1)(b) of the Greek Patent Law No. 1733/1987, the extent and the scope of the protection deriving from a patent, is defined by the

actual claims of the patent. This is further confirmed by Article 6 of the Ministerial Decision No. 15928/EFA/1253, which provides in section (1) that “The claims of the patent define the extent and the content of the required protection based on the technical features of the invention.” As per article 7(3) and (4) of the Greek patent Law No. 1733/1987 there is also a requirement that the patent claims be based on the description of the patent, and in turn that the description of the patent be so compiled that it can be practically applied by an expert in the particular field or science.

III. JURISDICTION AND VENUE

With regard to patent infringement matters, on 20 June 2006, the Official Gazette of the Greek Government (FEK B 739/20.06.2006) published a decision of the Minister of Justice in Greece, whereby a special department was instituted in the civil court of first instance of Athens for adjudicating all intellectual property matters (expressly including patents, utility models, and of course trademarks, etc.). The foregoing constitutes a first step toward the establishment of a truly “specialized” patent court section. However, due to the fact that the instituted department does not only hear patent infringement matters but also other IP related matters, there is no per se specialization on patent infringement matters. Moreover, the judges are not technically oriented and as such they are not in a position to fully appreciate the issue of patent infringement. As such, the majority of times the judicial panel is assisted by party-appointed and / or court-appointed experts.

With regard to nullity actions, article 15 provides that the civil courts have jurisdiction for adjudicating nullity actions; if the nullity action involves a foreign entity then the matter must be heard by the Athens civil

court of first instance. In practice however, as the majority of nullity actions are filed in defence to a patent infringement action initiated by the patent owner, the result is that the infringement matter is consolidated with the nullity action matter and both matters are heard together by the same court.

IV. PARTIES

An infringement action can be brought by parties that have the necessary legitimate interest to do so. In Greek jurisdiction, as per the provisions of article 17 of the Greek Patent Law No. 1733/1987 both the patent owner and the exclusive licensee of the patent based on which the action is initiated can act as Plaintiffs in an infringement matter. Although not explicitly required by the above law, in order for the exclusive licensee of the patent to act as the plaintiff or as a co-plaintiff in the action, the particular license must first be recorded with the Greek Patent Office). Another option is for the patent owner to initiate legal action in its own name and for the licensee to file a Supplementary Intervention in support thereof.

The provisions of the Greek Patent Law concerning infringement do not specifically define the parties that can be named as defendants to a patent infringement action. However, based on the context of the particular legal provisions, it is clear that the action can be initiated against any party that infringes or threatens to infringe a valid patent. This broad definition, has, in practice been interpreted by the Greek courts in a rather open-minded way, which effectively includes both the manufacturer, distributor, etc. of the infringing products.

V. ALTERNATIVE DISPUTE RESOLUTION (ADR)

With regard to arbitration, there is currently no “routine” resolution process through arbitration, when it comes to patent-related disputes, in Greek jurisdiction. As a matter of fact, as things currently stand, arbitration is almost never contemplated by the parties to the dispute, as it is not a very well-understood procedure in Greek practice.

With regard to mediation, there is currently a requirement, as per the provisions of article 214A of the Greek Code of Civil Procedure, (deriving from the provisions of for the Plaintiff of any legal action, to arrange for and report on an extra-judicial attempt to settle the dispute, with the other party’s representatives. This, in practice means that the Plaintiff must include with the formal service of process to the Defendant, an invitation to attend a “mediation” meeting. This meeting must take place at least 5 days following the formal service of process of the action to the defendant and at least 30 days prior to the date of the hearing. The initial date and time of the meeting can certainly be changed if the parties agree.

Although the actual legal provision (article 214A of the Greek Code of Civil Procedure) states that the invited party “should” attend the meeting, the reality is that the defendants rarely do so and there is no actual repercussion on them, such as an adverse inference, etc. for their failure to attend the “settlement attempt” meeting.

A mediator (who cannot subsequently testify in Court as a witness or be in any way involved in the matter, as an expert, etc.) can also be present at the particular meeting.

Following the meeting, if the defendant does not attend, the burden is on the Plaintiff (who has interest to expedite the matter) to prepare and file with the Court a report on the “failure” of the settlement attempt. Unless such a report is filed prior to the hearing, the hearing cannot take place.

If on the other hand the defendant does attend the meeting and a settlement is reached, a common declaration of settlement can be generated by both parties, which can be subsequently confirmed by the court, at the hearing date already scheduled for the infringement action.

VI. SUMMONS

Once the action is filed and the hearing is scheduled, the Plaintiff is obligated to serve a copy thereof via Court Bailiff to the Defendant. This must be done at least 60 days prior to the date of the hearing, if the Defendant is a Greek entity or 90 days if the Defendant is a foreign entity.

In Greek jurisdiction, it is customary to serve a warning letter to the Defendant prior to or as soon as the legal action is initiated. Such a warning letter is also served via Court Bailiff to the Defendant.

VII. WRITTEN MOTIONS, EVIDENCE, AND COUNTERARGUMENTS

The absolute deadline for filing written arguments along with exhibits and Sworn Affidavits / Expert Opinions, etc. is 20 days prior to the hearing, as per article 237 of the Greek Code of Civil Procedure. The same deadline applies to all adversaries. In the event the parties wish to file rebuttal arguments, after reviewing the other side's written arguments' brief, they may file additional written arguments 15 days prior to the hearing date, at the latest. This deadline is particularly challenging when it comes to patent infringement matters as the time allowed for preparation, coordination with the patent owner (which most of the times is located overseas) and drafting and filing of the Rebuttal Arguments is indeed very limited.

After the hearing takes place the parties have a maximum of 8 working days for filing rebuttal arguments. The transcripts of the hearing must be provided to the parties by the Court Clerk within 4 working days from the date the hearing takes place. This is also a rather strict deadline in terms of allowing the adversaries to effectively rebut the other side's allegations as expressed during the Court hearing. None of the submission deadlines can be extended.

In most cases, the parties, aside from their written submissions, exhibits and witness live court testimony at the hearing, rely on the submission of Sworn Affidavits that may be taken either in Greece or overseas (before a Notary Public). They are taken into account by the Court provided the relevant notice period to the other side and formal notice requirements are met.

VIII. COUNTERACTION

The most likely result of a patent infringement action being initiated, is the filing of a Nullity Action by the infringement proceeding's Defendant. This is for the purpose of alleging the legal basis of the infringement action is null and void, and therefore no infringement can per se be found to exist.

The Nullity Action can either be filed along with the Defendant's written arguments prior to the infringement hearing or it can be filed as a separate action, with a different hearing date. In the latter case, the usual effect would be to postpone the infringement proceeding and consolidate the infringement proceeding with the nullity action proceeding.

IX. BURDEN OF PROOF

In the infringement proceeding, the burden of proof is on the Plaintiff. In the event the Defendant claims that the patent which constitutes the legal basis of the infringement proceeding lacks novelty, inventive step etc. either as a counter-action (a nullity action) or as part of the defendants written arguments in the infringement proceeding, the burden of proof then shifts to the defendant to the infringement proceeding to prove its

allegations of the patent's lack of novelty, etc.

X. SEARCH AND SEIZURE PROCEEDINGS FOR EVIDENCE

Notwithstanding the provisions of EC/48/2004, in Greek jurisdiction the concept of obtaining a search and seizure order in order to gather evidence from the premises of the Defendant (i.e. his production plant, etc.) is still rather "foreign" to Greek courts.

In essence, it is up to the Plaintiff to gather the available evidence and formulate his claims accordingly. Given the lack of technical orientation of Greek judges, it would seem highly improbable that they would be comfortable in granting a search and seizure order for a patent-related matter, as they will not be in a position to ascertain if the infringement actually exists and if so, to what extent, prior to a regular infringement hearing.

XI. INJUNCTIONS

Injunctive relief is available for patent infringement matters. In order for a petition for injunction order to be granted, the court has to be satisfied that there is

- a) "urgency (i.e. that the Petitioner acted swiftly as soon as he became aware of the infringement)
- b) a well-substantiated infringement claim to begin with, the merits and parameters of which can be further explored at the regular hearing

(the Main Infringement Action trial).

The Petition for Injunction is, in essence, a request to temporarily enjoin the defendant from infringing the Petitioner's patent, until the Main Infringement Action hearing takes place. The Petition for Injunction hearing is usually scheduled within 1-2 months from the date the Petition is filed and the decision is usually rendered within 1-2 months from the date the hearing takes place. There is no set statutory time-frame for the foregoing, which may vary, depending on the case-load of the particular court.

In non-patent related matters, such as trademark infringement matters, etc. the Petitioner may also obtain a Temporary Restraining Order ("TRO). A TRO can be granted in cases of extreme urgency and pursuant to a request to the Judge at his chambers, whether with or without the presence of the Defendant. The Defendant is usually given a courtesy call to appear before the Judge either the same or the next day. The Judges who are assigned to grant TROs on any given day, do so for a variety of legal matters (including family law cases, for example etc.). As such, they are not particularly familiar with patent infringement matters and it is therefore almost impossible to convince a Judge to grant a TRO for a patent-related dispute. Most times the TRO Petitioner is asked to wait for the Petition for Injunction hearing where both sides can elaborate on their legal positions, etc.

XII. DISCOVERY

The Greek legal system does not provide for “Discovery”, or “Interrogatories” etc. between the adversaries. Whenever an infringement matter occurs, the burden is on the Plaintiff to gather evidence on which he can build the infringement action and his relevant claims.

XIII. MAIN ACTION; ORDINARY LAWSUIT

The Main Infringement Action is brought to the relevant IP court department of the civil court section. Such an action may have, as an auxiliary legal basis, unfair competition law, aside from patent infringement. There are several advantages to this, aside from fortifying the legal claims of the Plaintiff, one of the most significant ones being the expedited processing and scheduling of the matter by the Greek courts, i.e. a hearing is usually set within 6 months from the date the action is filed the decision is usually rendered within 6 months from the date the hearing takes place, etc.

The preparation and gathering of evidence prior to the hearing is a task that the Plaintiff alone has to undertake for his claims, without any exchange of documents etc. with the Defendant. The usual approach is that for the Plaintiff to submit Expert Opinions and / or Affidavits of experts on the issue of infringement and any other material pertinent to the case (such as relevant publications etc.). All evidence has to be translated in Greek and certified by a licensed Attorney, in order to be admissible in Court. If there are Sworn Affidavits taken overseas they will also be taken into

account as witness testimony provided sufficient and proper notice was served to the other side, etc. as per the applicable provisions of the Greek Code of Civil Procedure. During the Court hearing, each party is allowed one witness. Foreign witness can testify with a party appointed translator. The main focus of the court is on the witness testimony (primarily on the live testimony and also of course on the Sworn Affidavits).

The decision is rendered within 6 months (in cases where unfair competition law serves as an auxiliary legal basis for the action) or within a year in cases solely based on patent/design/utility model law.

The decision is subject to Appeal, provided it is filed within 30 or 60 days from the date the decision is formally served by one of the adversaries to its adverse party, or in any event within 3 years from the date the decision is published

XIV. DEFENDANT'S DEFENSES

The Defendant's primary defense is that the patent forming the legal basis of the infringement proceeding is null and void due to lack of novelty, inventive step, etc. Another usual defense is that the product he is manufacturing / selling etc. is not produced pursuant to the particular patent. In both cases the Defendant must put forward his defense with his written arguments. If the Defendant chooses to initiate a Nullity Action against the validity of the patent, then the burden is on the Defendant to prove to the Court why the particular patent must be declared null and

void, i.e. on the basis of lack of novelty, inventive step, etc.

XV. RELIEF

Based on the provisions of article 17, the available relief to the patent owner is a) enjoinder (both of a temporary and of a permanent effect), that would force the defendant to stop his infringing activities, b) restitution of the damage caused and retribution of compensation (that may be tantamount to the applicable royalty fees) and c) if the court grants the infringement action, destruction of the products manufactured in violation of the applicable legal provisions.

XVI. APPEAL

An Appeal is only available in a Main Action decision (not a Petition for Injunction matter) provided it is filed within 30 or 60 days from the date the decision is formally served by one of the adversaries to its adverse party, or in any event within 3 years from the date the decision is published.

XVII. COSTS AND FEES

Although as per the provisions of article 17(2) of the Greek Patent Law No. 1733/1987 the patent owner may seek the restitution of the damage caused to him by the infringement or the retribution of compensation to him from the unfair exploitation of his patent by the infringer (tantamount to the applicable royalty fees) there is currently no

established case-law on the issue of damages due to infringement.

The winning party is therefore limited to receiving an award of the Court fees for the infringement matter (which is usually calculated on a very conservative basis and certainly does not include Attorneys' fees) and may range between 500 Euro to 1500 Euro approximately.