

Greece

EU directive provides little help to Greek patent owners

In Greek legal theory and practice, IP rights comprise copyright and industrial property rights, as defined in Article 8(18) of Law 2557/199. However, when the EU IP Rights Enforcement Directive (2004/48/EC) was implemented into Greek law, the legislature adopted a much more restrictive view of IP rights than that taken in the directive. As a result, Law 3524/2007, which was supposed to harmonise Greek law with the directive, has so far amended only the Copyright Law (2121/1993). Although the EU directive refers to every form of intellectual property, the Greek implementing law has not yet had any effect or application on trademark or patent law. Even if, as is generally expected, the directive is incorporated into a forthcoming amendment of the Trademark Law, there has been no discussion about whether the new law will modify the Patent Law (1733/87).

Currently there is much discussion, and even some direct attempts in legal practice, to apply these new copyright regulations analogously to other IP rights infringements. However, as yet there have been no concrete practical results in the form of case law.

Obtaining evidence under the Copyright Law

Any patentees seeking authorisation to enter a third party's premises to obtain samples of an allegedly infringing product or a description of an infringing process, must apply for a traditional temporary restraining order or a petition for an injunction. However, if Article 63a of the Copyright Law (2121/93) is applied analogously, a patentee might have the following additional means of precautionary protection available to it:

- A party may apply to a court with reasonable evidence of infringement or a threat of infringement to its rights, including specified evidence which lies in the control of the opposing party. Assuming that the available evidence is sufficient to support a claim of infringement, the court may then order that the opposing party present this evidence. In the case of

an infringement committed on a commercial scale, the court may also order, on application by the rights holder, the communication of banking, financial or commercial documents under the control of the opposing party. The existence of a substantial number of copies of the infringing product shall be considered to constitute reasonable evidence of an infringement committed on a commercial scale. In any event, the court must ensure the protection of confidential information.

- In the context of proceedings concerning an infringement of rights under the Copyright Law and in response to a justified and proportionate request from a claimant, the chairman of a multi-member court or the judge of a one-member court may order, even before the hearing date, that information regarding the origin and distribution networks of the goods or services that infringe the disputed IP right be provided by the alleged infringer and/or any other person that:
 - is found in possession of the infringing goods on a commercial scale;
 - is found to be using the infringing services on a commercial scale;
 - is found to be providing services used in infringing activities on a commercial scale; or
 - is indicated by a person referred to in the above points as being involved in the production, manufacture or distribution of infringing goods or the provision of infringing services.
- The information referred to in the second point above shall, as appropriate, comprise:
 - the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; and
 - information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

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- The second and third points above shall apply without prejudice to other statutory provisions that:
 - grant the rights holder the right to receive fuller information;
 - govern the use in civil or criminal proceedings of the information communicated pursuant to the second and third points above;
 - govern responsibility for misuse of the right of information;
 - afford an opportunity for refusing to provide information which would force the person referred to in the second point above to admit to his or her own participation or that of his or her close relatives in an infringement of an IP right; or
 - govern the protection of confidentiality of information sources or the processing of personal data.
- If a party is summoned to produce the evidence referred to in the first point above and unjustifiably fails to produce it, the claims of the party that sought the production or notification of evidence shall be considered to be proven. Any party that unjustifiably violates a court order issued under the second point above shall be sentenced to pay, in addition to legal costs, a monetary fine of between €50,000 and €100,000, which shall devolve to the tax office.

It is up to the court to decide, by weighing the reasonable and protected interests of all parties, whether the defendant is entitled to oppose the seizure in order to preserve confidential information and trade secrets.

Ambush injunctions

In addition, the current copyright protection system

contains a type of injunction that defendants have no way of opposing because it is not published in advance. The amended Article 64 of the Copyright Law contains the following provisions concerning injunctive measures and precautionary evidence:

- In case of an alleged infringement of a copyright or related right, or the special right of database creators, the one-member first instance court shall order the precautionary seizure of items in the possession of the alleged infringer that could be used to manufacture infringing copies or other evidence of the alleged infringement. Alternatively, the court may order a detailed description, including photographs, of such items to be made. Article 687(1) of the Code of Civil Procedure applies in such cases; provisional orders are issued according to Article 691(2) of the code.
- The court may order injunctive measures or the seizure of precautionary evidence without needing to specify the works being infringed or under threat of infringement.
- The court may issue an injunction against an alleged infringer to prevent any imminent infringing action. This injunction must be made on a provisional basis and subject, where appropriate, to a penalty payment under Article 947 of the Code of Civil Procedure for each infringement or continuation of infringement. The procedure set out in Articles 686 and following of the code shall apply in order to ascertain that an infringement of either the injunction or the pertinent provision of Article 691(2) has taken place. The court may also order the precautionary seizure or delivery up of suspected infringing goods so as to prevent their entry into or movement within channels of commerce.

- In the case of an infringement committed on a commercial scale, a court may order the precautionary seizure of the infringer's property, including the blocking of his or her bank accounts. To that end, a court may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.
- The injunctive measures referred to in the third and fourth points above may, in appropriate cases, be taken without the defendant having been heard, under Article 687(1) of the code, in particular where any delay would cause irreparable harm to the rights holder. In that event, if the defendant is not notified of the court's decision or order before or during enforcement, it shall be notified on the first business day following enforcement; otherwise, any relevant procedural acts shall be null and void.
- The court may make the provisional measures referred to in the first, third and fourth points above, subject to the applicant lodging a security determined in the decision or provisional order and/or without guarantee. In addition, the court

may specify a time limit for lodging the action for the main case under Article 693(1) of the code up to a maximum of 30 days. If no action is lodged within this time limit, the injunction shall be lifted.

- Where the provisional measures are revoked due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement, the court may, upon the defendant's request, order the applicant to pay appropriate compensation to the defendant for any injury caused by those measures.

Unfortunately, there are currently no such provisions in the Patent Law; nor is there any indication that such provisions might be introduced. Instead, it appears that the only route for patent owners wishing to apply such remedies is to argue that the EU IP Rights Enforcement Directive governs such matters, even if only indirectly, and that the Copyright Law should be applied analogously to patent infringement cases. Until the EU directive is fully implemented in Greece, this may be the best way to obtain additional injunctive provisions against infringers.



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