

THE
INTELLECTUAL
PROPERTY
REVIEW

SIXTH EDITION

Editor
Dominick A Conde

THE INTELLECTUAL PROPERTY REVIEW

The Intellectual Property Review

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PROPERTY
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Dominick A Conde

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CONTENTS

PREFACE.....	vii
<i>Dominick A Conde</i>	
Chapter 1	UPCOMING CHANGES TO EUROPEAN PATENT LITIGATION 1
<i>Peter Damerell, Richard Fawcett and Bryce Matthewson</i>	
Chapter 2	BRAZIL..... 8
<i>Philippe Bhering and Jiuliano Maurer</i>	
Chapter 3	CANADA..... 22
<i>Adam Haller and Kristin Wall</i>	
Chapter 4	CHILE..... 33
<i>Marino Porzio</i>	
Chapter 5	CHINA..... 43
<i>Jay Sha and Michelle Ma</i>	
Chapter 6	CYPRUS..... 62
<i>Christodoulos G Vassiliades</i>	
Chapter 7	DENMARK..... 70
<i>Rasmus Munk Nielsen</i>	
Chapter 8	FRANCE..... 79
<i>Stanislas Roux-Vaillard</i>	
Chapter 9	GERMANY..... 91
<i>Felix T Rödiger</i>	
Chapter 10	GREECE..... 101
<i>Christos Chrissanthis, Xenia Chardalia and Antonia Vasilogamvrou</i>	

Contents

Chapter 11	INDIA.....	117
	<i>Pravin Anand and Raunaq Kamath</i>	
Chapter 12	ISRAEL.....	137
	<i>Yedidya Melchior</i>	
Chapter 13	ITALY.....	148
	<i>Tommaso Faelli</i>	
Chapter 14	JAPAN.....	160
	<i>Chie Kasahara, Kunihiro Sumida and Takafumi Ochiai</i>	
Chapter 15	KENYA.....	171
	<i>Anne Kiunube and Shem Otanga</i>	
Chapter 16	KOREA.....	183
	<i>Gon-Uk Huh, A-Ra Cho, Young-Bo Shim, Dong-Hwan Kim and Yoon Suk Shin</i>	
Chapter 17	LUXEMBOURG.....	193
	<i>Anne Morel and Aleksandra Gucwa</i>	
Chapter 18	MALTA.....	204
	<i>Maria Chetcuti Cauchi</i>	
Chapter 19	MEXICO.....	219
	<i>Victor Garrido</i>	
Chapter 20	NETHERLANDS.....	230
	<i>Wim Maas and Maarten Rijks</i>	
Chapter 21	NIGERIA.....	243
	<i>Mark Mordi and Ngo-Martins Okonmah</i>	
Chapter 22	PHILIPPINES.....	251
	<i>Editha R Hechanova</i>	
Chapter 23	PORTUGAL.....	266
	<i>Francisco Brito e Abreu and Joana Mota</i>	
Chapter 24	RUSSIA.....	276
	<i>Anton Bankovskiy and Anastasia Entyakova</i>	

Contents

Chapter 25	SWITZERLAND	284
	<i>Thomas Schär, Martina Braun, Brigitte Bieler and Nicolas Gut</i>	
Chapter 26	TAIWAN	297
	<i>Edward Liu and Brian Wang</i>	
Chapter 27	THAILAND	307
	<i>Chavalit Uttasart</i>	
Chapter 28	UNITED ARAB EMIRATES	317
	<i>Peter Hansen</i>	
Chapter 29	UNITED KINGDOM	328
	<i>Gordon Harris, Andrew Maggs, George Sevier and Ailsa Carter</i>	
Chapter 30	UNITED STATES	346
	<i>Jason A Leonard and Dominick A Conde</i>	
Chapter 31	VIETNAM.....	358
	<i>Tran Manh Hung</i>	
Appendix 1	ABOUT THE AUTHORS.....	373
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	395

PREFACE

Over the past several decades, there has been a major push to provide uniform and harmonised intellectual property coverage worldwide. To date, however, there remain significant differences and gaps in intellectual property coverage globally. As commerce increasingly becomes focused on international trade rather than individual countries, companies and clients must respond by thinking globally while also understanding the differences that remain between jurisdictions.

While jurisdictional differences can be anticipated and addressed, these differences are further magnified by the geopolitical turmoil that persists worldwide. A prime example is United Kingdom's Brexit vote, which leaves Europe's quest for a unified patent system in doubt. Another example is the election of President Donald Trump in the United States. As of the writing of this preface, President Trump has not announced his specific views on intellectual property in the United States. However, President Trump has already changed global intellectual property with his withdrawal of support for the Trans-Pacific Partnership. While this partnership would have strengthened intellectual property rights with many of the United States' trading partners in the Pacific Rim, those partners for now maintain the prior inconsistent rights with the United States and are free to forge agreements without the United States, including negotiating new relationships with China, a country that continues to strengthen and improve its intellectual property system.

To aid practitioners who are navigating this ever-changing landscape of global intellectual property, we now present the sixth edition of *The Intellectual Property Review*. In this sixth edition, we present 31 chapters that provide an overview of forms of the intellectual property coverage available in each particular jurisdiction along with an update of its most recent developments. Each chapter is written and assembled by leading practitioners in that jurisdiction. While all involved have striven to make this review both accurate and comprehensive, we must note that it is necessarily a summary and overview, and we strongly recommend that the reader seek the advice of experienced advisers for any specific intellectual property matter. Contact information for each chapter's authors is provided at the end of this review.

Finally, as we take over from the past review editor, we would like to thank Robert Baechtold for his guidance over the past five editions.

Dominick A Conde

Fitzpatrick, Cella, Harper & Scinto

New York

March 2017

GREECE

*Christos Chrissanthis, Xenia Chardalia and Antonia Vasilogamvrou*¹

I FORMS OF INTELLECTUAL PROPERTY PROTECTION

Greece is a market with a population of about 10 million people. In 2016, GDP was almost the same as in 2015, namely US\$194.69 billion; more specifically, in 2015, GDP was US\$194.85 billion, representing 0.31 per cent of the global economy.

In 2014, GDP was US\$235.57 billion, representing 0.38 per cent of the global economy. GDP in Greece averaged US\$108.84 billion from 1960 until 2015, reaching an all-time high of US\$354.46 billion in 2008 and a record low of US\$4.45 billion in 1960. Since 2008, Greece has been undergoing its most serious economic crisis (mainly a public debt crisis) since World War II.

The total number of national trademarks applied for in Greece in 2016 by both nationals and foreigners was 5,539; almost the same amount as in 2015, which was 5,688 trademarks. The same figure for 2014 was 5,550 and for 2013 was 5,078. The total number of international marks extended into Greece through the Madrid Protocol in 2015 was 1,368. The same figure for 2014 was 1,351.

The total number of European patents (EPs) designating Greece, granted by the European Patent Office in Munich within 2016, was 90,153. However, only 3,357 EPs were actually validated in Greece in 2016. This number includes only 16 EPs filed by Greek proprietors in the same year. Further, the number of national patents in Greece filed by Greeks in 2016 was 606, and only 40 national patents were filed by non-Greeks in 2016.

Over the past few years, the total number of EPs designating Greece, granted by the European Patent Office in Munich in 2015 was 62,850. The figure for 2014 was 57,629 and for 2013 was 55,834. However, only a small part of those EPs initially designating Greece were actually and finally validated in our country. The total number of EPs validated in Greece in 2015 was 2,815, while the same figure for 2014 was 2,685 and for 2013 was 2,795. Validation requires the submission of a Greek translation with the local Patent Office, as well as appointment of a local agent to receive a service process.

i Protectable subject matter

The types of intellectual property (IP) rights that enjoy specific legislative protection in Greece are the following:

- a* copyright and related rights; note that software as well as databases enjoy copyright protection;

¹ Christos Chrissanthis and Xenia Chardalia are partners and Antonia Vasilogamvrou is an associate at Christos Chrissanthis & Partners Law Firm.

- b* patents and utility models;
- c* topographies of semiconductor products;
- d* plant varieties;
- e* biotechnological inventions;
- f* supplementary protection certificates for pharmaceuticals;
- g* industrial designs, including surface (fashion) designs. Under Greek law, the legal protection afforded to industrial designs includes the type of protection granted to what in other jurisdictions (i.e., the US) is called 'design patents'. Non-registered designs are also protected, although under different terms than registered designs;
- h* trademarks;
- i* non-registered distinctive signs and company names are protected under the law of unfair competition;
- j* other types of intellectual property that are not protected by specific IP legislation, such as know-how, trade secrets, business methods, etc., may enjoy protection under the law of unfair competition; and
- k* unfair competition. In addition to the aforementioned, Greek law provides protection against unfair competition. The concept of unfair competition is broad and includes any type of business conduct, which is objectively considered to be contrary to good business ethics. Moreover, the concept of unfair competition includes imitation and all forms of passing off. Forms of IP rights, which are not included in the above list and for which there is no specific legislation, are protected under the law of unfair competition (i.e., trade secrets, business methods, non-patentable know-how, as well as business names and non-registered distinctive signs, etc.).

The prevailing view is that protection under unfair competition can be concurrent with protection under any other specific legislation for IP rights; so, if a patent is infringed, the owner may invoke protection under both patent law and unfair competition law.

Multiple IP rights over the same subject matter

The same subject matter cannot be protected under more than one specific form of IP rights; for example, an industrial design cannot qualify for both trademark protection and copyright protection.

Geographical indications and similar protectable subject matter

There are other forms of quasi-intellectual property rights that do not result in individual rights. These include protected geographical indications (EU Regulation 510/2006), protected appellations (designations) of origin (EU Regulation 479/2008 and EU Regulation 607/2009) and protected traditional specialties guaranteed (EU Regulation 509/2006). In such cases, civil protection is granted through invoking unfair competition against the party who uses illegitimately (i.e., deceptively) such a geographical indication, etc.

Marketing authorisation for pharmaceuticals

Filings by pharmaceutical firms that are necessary to obtain a marketing authorisation do not result in any specific and exclusive intellectual property rights. Some of the filings required to obtain a marketing authorisation are confidential, as they contain information that qualifies as trade secrets. Such trade secrets are protected under the law of unfair competition only.

ii Legislation

National legislation

The basic national laws for the protection of IP rights are the following:

- a* copyright and related rights: Law 2121/1993 as amended, which protects software and databases as well;
- b* patents and utility models: Law 1733/1985 as amended;
- c* topographies of semiconductor products: Presidential Decrees 45/1991 and 415/1995;
- d* plant varieties: Regulation (EC) No. 2100/1994, which is directly applicable to national law as well;
- e* biotechnological inventions: Presidential Decree 321/2001, implementing EU Directive 1998/44;
- f* supplementary protection certificates for pharmaceuticals and plant products: EU Regulations 1768/1992 and 1610/1996, which are directly applicable to national law;
- g* industrial designs: Law 2417/1996 as well as Presidential Decrees 161/2001 and 259/1997;
- b* trademarks: Law 4072/2012, as amended (which implements EU Directive 2008/95 on the harmonisation of trademarks); and
- i* unfair competition: Law 146/1914.

European Union legislation

As Greece is a member of the European Union (EU), it has implemented all EU Directives on IP matters. Moreover, all EU Regulations covering IP aspects are directly applicable to national law. The most notable and widely used EU instruments in local practice are:

- a* Directive 2004/48/EC on the enforcement of intellectual property rights; and
- b* Regulation (EU) No. 608/2013 concerning customs enforcement of intellectual property rights.

The Unitary Patent System, which would make it possible to obtain a single, unitary and EU-wide patent has not been activated yet.

Community trademarks (CTMs) (now called European Union trademarks, as per the new EU Regulation 2015/2424) and Community designs (EU Regulation 6/2002) are also widely used.

The European Union has acceded in the WIPO Madrid Protocol for International Trademarks. As a result, it is possible to file an international trademark application on the basis of an EU trademark application, or to designate the EU in an international trademark application. In connection to designs, the EU has acceded to the Geneva Act (1999) of the Hague Agreement for International Registration of Industrial Designs administered by WIPO. As a result, an international design application may designate the EU, and EU nationals or residents may apply for international design registration.

In terms of unfair competition, Greece, in addition to its local law, has implemented and applies Directives 2005/29 concerning unfair business-to-consumer commercial practices and 2006/114 concerning misleading and comparative advertising.

Among the EU instruments that are of particular importance in local judicial practice, one has to mention EU Regulation 864/2007 (Rome II), concerning applicable law on non-contractual obligations (Articles 6 and 8 containing provisions on the law applicable to acts of unfair competition and infringement of IP rights, respectively), and EU Regulation 44/2001 concerning international court jurisdiction and enforcement of judgments. It is

noteworthy that Regulation 207/2009 (recently replaced by EU Regulation 2015/2424) also contains specific provisions on international court jurisdiction in cases of infringement of CTMs.

International conventions

Greece is party to the following international IP conventions:

- a* the Paris Convention 1883 (Stockholm 1967 version);
- b* the WTO-TRIPS Agreement;
- c* the Hague Convention for international registration of industrial designs, known as the Hague System (Geneva Convention 1999);
- d* the Locarno Agreement (1968), on the international classification of industrial designs;
- e* the Madrid Protocol (1989) regarding international registration of trademarks through WIPO. However, Greece is not party to the Madrid Agreement (1891);
- f* the Nice Classification Agreement (1957), now consisting of 45 classes of goods and services for trademark registrations;
- g* the European Patent Convention – Treaty of Munich (1973) as amended in 2000, for European Patents (EPs).
- h* the Patent Cooperation Treaty (PCT)1990;
- i* the Budapest Treaty on the International Recognition on the Deposit of Microorganisms for the Purposes of Patent Procedure (1993); and
- j* the Strasbourg Agreement concerning the International Patent Classification (1997).

It is noteworthy that local practice on patents greatly relies on the European patent system established by the Treaty of Munich. So, this is the route usually followed by non-local patent owners to obtain patent rights in Greece. The PCT system is also available in Greece. International patents filed with WIPO under the PCT system are directed into Greece through the European Patent Office as European Patents, provided that they designate the European Patent Office as well.

In connection to trademarks, most non-local owners prefer either to obtain a CTM or to go through the route of international trademark registration with WIPO under the Madrid Protocol, designating Greece.

II RECENT DEVELOPMENTS

The most significant recent development on IP concerns the field of trademarks. EU Directive 2015/2436 on the harmonisation of the laws of the Member States on trademarks has replaced Directive 2008/95. The new Directive has to be implemented into national law by 14 January 2019.

The most notable changes into national trademark law as a result of the implementation of the new Directive will be as follows:

- a* Graphic representation will no longer be a formal filing requirement. This is expected to facilitate the process of filing non-traditional marks, such as sounds, smells, tastes, etc.
- b* The specification of goods and services will become more precise and specific, as mere reference to the whole heading of the respective class of the Nice Classification system will be insufficient.

- c* Absolute grounds for refusal are likely to be applied more strictly. Functionality (including aesthetic functionality) is given much greater emphasis as an absolute ground for refusal under the new Directive. Moreover, new absolute grounds have been specifically added, such as protected designations of origin and geographical indications, protected traditional terms for wine, protected traditional specialties guaranteed, and protected plant varieties.
- d* Proof of use will become a standard defence in civil proceedings as well. It is already a standard defence in administrative proceedings (i.e., opposition and cancellation proceedings).
- e* An exclusive licensee shall be entitled to initiate their own judicial proceedings before civil courts against infringements.
- f* Arresting infringing goods in transit (including stages of transshipment, warehousing in free zone areas, temporary storage, etc.) shall become possible, even though such goods may have not yet been placed on the local market and are only destined for export.

EU Regulation 2015/2424 has also replaced Regulation 207/2009 and amended the law on CTMs (now called now called European Union trademarks). The new Regulation came into force on 23 March 2016.

Another recent development concerns the field of trade secrets. EU countries must bring into force the laws and administrative provisions necessary to comply with Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure by 9 June 2018.

III OBTAINING PROTECTION

i Copyright and related rights

No registration required

Unlike other forms of intellectual property, copyright is obtained irrespective of any registration, from the moment an author creates a work. Moreover, while other forms of IP follow the territoriality principle (that is intellectual property rights are acquired on a territorial basis, i.e., on a country-by-country basis), copyright is of a unitary nature; so, once copyright is obtained in a foreign country, it exists in Greece as well. Finally, under Greek law (as well as under most jurisdictions in continental Europe) copyright is very closely connected to the moral right of the author, which is part of their right to personality.

The same applies in connection to other IP rights that enjoy copyright-like protection, such as software and databases.

Applied arts

A highly debatable and controversial issue is whether works of the non-traditional applied arts are appropriate for copyright protection, or whether they may qualify for industrial design protection only. This relates to artistic works that are usually destined to be applied in the surface of a product (i.e., designs on the packaging of a product, the artistic shape of a bottle, fashion designs applied in clothing, etc.). The matter is not settled in case law and should be treated with caution. A more conservative and realistic approach is that applied arts qualify for design protection only.

ii Patents

European Patent System and Patent Cooperation Treaty

Patent rights in Greece are mostly acquired under the European Patent Convention, that is, through EPs designating Greece. In order to validate an EP in Greece, it is necessary to file with the national Patent Office a translation of all major patent documents (i.e., the B1 or B2 forms of the European Patent Office), including the title of the invention, the abstract, the description, the claims and the drawings, if any. It is also obligatory to appoint a local agent for receiving service of the process. It usually takes 60 days for the Patent Office to grant a national patent title to an EP that has been filed for validation in Greece. Since an EP is granted a national patent title, it enjoys the same legal (civil) protection as national patents. In case of infringement of an EP before it has been validated locally, civil protection is afforded under the law of unfair competition. The same applies, *mutatis mutandis*, in relation to patent rights acquired through the PCT system. These are addressed to Greece through the European Patent Office as EPs, provided that they designate the European Patent Office as well.

Patents rights acquired either through the EP system or through the PCT system may benefit from the Paris Convention priority.

Review by local courts

Patent rights granted to either national patents, EPs or PCTs are always subject to review by civil courts that can annul the patent. In respect of national patents, it is true that the Patent Office is rather very flexible with requirements, such as novelty and inventive step. As a result, civil courts always thoroughly examine patents in terms of novelty, inventive step and other substantive law requirements, when civil protection is sought. In this respect, civil courts greatly rely on the search report issued by the Patent Office, before the patent is granted.

Types of claims

Greek patent law provides protection for three types of patent claims: (1) product claims; (2) production methods claims; and (3) Swiss-type claims for second, or third, etc., (pharmaceutical) use. Unlike other jurisdictions, other types of claims are not recognised under Greek law. Swiss-type claims are in practice widely used and they appear in connection to various substances; so, they do not relate to pharmaceuticals only. Swiss-type claims have never been contested before a court, but at the same time, there is no local court judgment affirming their legitimacy. It is true that the Greek law on patents refers only to product claims and production methods claims and has no specific or implied reference to 'Swiss-type use claims'. Moreover, it seems that the existing Greek legal literature has not taken notice of Swiss claim and does not discuss them at all.

In connection to claims for production methods, there is a rebuttable presumption that a third party, producing the same product as the one for which the production method claim is granted, has used the patented method.

Pharmaceutical patents

Until 7 October 1992, Greek law prevented the grant of patents for pharmaceutical products. Any such patents granted, either through the national route or through validating EPs designating Greece, were illegal and Greek civil courts had cancelled such patents in a few cases. Because of the prohibition of patents for pharmaceutical products, it was debated

whether it was legitimate to obtain patents relating to 'methods claims' with respect to the production of pharmaceuticals. Moreover, the legitimacy of Swiss-type claims was also debated. However, this discussion is now irrelevant, since after 7 October 1992, filing pharmaceutical patents in all forms (products, methods and uses) has been legitimised.

iii Utility models

Utility models rights are granted in connection to three-dimensional objects with a specific shape, which are capable of solving a particular technical problem. Novelty and inventive step are required, but only to a significantly lower degree in comparison to patents. As in the case of patents, civil courts examine utility models very thoroughly when civil protection is sought against alleged infringement. Unlike patents that last for 20 years, utility models last for only seven years, subject to payment of annual renewal fees. What distinguishes utility models from industrial designs is that the former are destined to provide a technical solution to a technical problem (i.e., they have some technical functionality), while the latter are of an aesthetic character. So, fashion and other surface design in clothing, shoes, etc., qualify for protection under designs and not as utility patents.

iv Industrial designs

Design protection is granted to elements and objects (either two-dimensional or three-dimensional) with an aesthetic character, provided there is some novelty and individual character. Another prerequisite is that design protection can be afforded only in connection with visible parts or elements of a product; so, for instance, the shape of an inside component cannot qualify for design protection. Design certificates are issued by the Patent Office. Again, the examination by the Patent Office at the time of granting is not a thorough one, resulting in civil courts usually being rather reluctant to enforce design rights against third parties and usually reviewing very closely the substantive law requirements when civil protection is sought. The time usually required by the Patent Office to grant a design certificate is four months from filing. There are no legal impediments in obtaining industrial design rights in relation to fashion design, surface design and other aesthetic elements. However, items that are purely functional are not capable of obtaining design protection, and their protection is possible only if they qualify either as utility models, or as patents – that is, if they enjoy some level of novelty and inventive step. In general, Greek courts are rather reluctant to enforce design certificates and are usually sceptical as to the level of novelty and individual character associated to design certificates.

v Plant varieties

Plant varieties are also protected in Greece. The Greek legal framework for plant varieties is Regulation 2100/1994. This Regulation provides for filing and registration requirements and procedures, as well as for civil remedies against infringements and international court jurisdiction. Directive 2004/48 concerning enforcement of intellectual property rights is also applicable to plant varieties.

Plant varieties' certificates are granted centrally from the EU Plant Varieties Office in Angers, France. Such certificates grant EU-wide civil rights. There is no need for national validation, and the certificates granted by the Office are directly and immediately enforceable under the local law. The system established by the EU is compatible with the respective WTO-TRIPS requirements and the International Union for the Protection of New Varieties of Plants.

vi Trademarks

EU harmonisation law

Greek law on trademarks is based on EU Directive 2008/95 on the harmonisation of trademarks, now amended by the recent EU Directive 2015/2436, which is to be implemented into national law by January 2019. The process of filing, registration, opposition, etc., before the local trademark office is very similar to the process used by the OHIM (now EUIPO) for granting CTMs (now European Union trademarks).

Advantages of a trademark registration in comparison to non-registered distinctive signs

Trademark rights are obtained through registration. Use in the course of trade without registration results in a non-registered distinctive sign, which is protected against likelihood of confusion and dilution under the law of unfair competition and not under trademark law.

Protection under trademark law is more enhanced for a number of reasons, such as:

- a* under trademark law, there is no need to prove use in the course of trade every time one applies to civil courts against infringement, as acquisition of rights is evidenced by submitting the trademark certificate alone;
- b* protection under trademark law is countrywide, while a non-registered distinctive sign is protected only in the geographical territory where it has been used; and
- c* proving priority is usually easier on the basis of a trademark registration certificate, rather than on the basis of other evidence that has to be produced before the court in relation to when use in the course of trade commenced.

Use requirement

Prior use or intent to use is not a filing requirement. However, if use in the course of trade has not commenced within five years as from registration, the trademark can be cancelled for non-use, if any interested third party files an application for cancellation on this ground. Further, in the event that use in the course of trade of a trademark registration has been interrupted for more than five years, there are grounds for cancellation for non-use, unless there are proper reasons justifying non-use. Pending litigation is considered to be a proper excuse for non-use of a registered trademark. Finally, non-use is a defence in opposition or cancellation proceedings. Currently, non-use is not a valid defence in civil proceedings; however, the new Directive 2015/2436 provides that Member States are compelled to provide in their national laws that non-use will be a valid defence on civil proceedings as well. The Directive has to be implemented until January 2019.

Graphic representation

A mark must be capable of being represented graphically (in an adequately precise and specific way) and able to distinguish the applicant's goods or services from those of other undertakings. The graphic representation requirement has been abandoned by the new EU harmonisation Directive 2015/2436.

The registration process

In Greece, three types of trademark registration are available: national, Community and international. The domestic registration process is similar to the process used by OHIM and the Community Registry, with the main difference that in Greece there is an *ex officio* search for prior rights. So, earlier trademark registrations and applications will lead to rejection of

an application, even in the absence of an opposition by the owner of the earlier rights. Each application is examined by an examiner with respect to absolute and relative grounds. If the examiner is satisfied that there are no grounds of rejection, the application is published and remains open for opposition for a three-month period. If the application is rejected, it can be challenged before the Trademarks Committee and can also be appealed before the administrative courts.

Trademark protection lasts for 10 years starting from the application date. Protection can be renewed indefinitely for 10-year periods, if the renewal fees have been paid.

Peculiarities of Greek trademark law

A peculiarity of Greek trademark law is that there is a distinction between competence of the administrative and civil courts in trademark cases. Cases regarding the registration process (i.e., relative or absolute ground cases, oppositions and cancellations), are referred to administrative courts, where proceedings are extremely time-consuming (it takes about seven years to obtain a judgment from the First Instance Administrative Court).

Another important peculiarity of Greek trademark law is that civil courts are not permitted to challenge the validity of a registered trademark. So long as a trademark has been registered, civil courts are not allowed to review whether it has been legitimately granted and have to enforce it against third parties; this is so, even if the said registered trademark has never been used in the course of trade, or if it is evidently descriptive or non-distinctive. Challenging the validity of a registered trademark is possible only through cancellation proceedings before the Trademark Office and, on appeal, the administrative courts. This has occasionally caused embarrassment to civil courts and led to complaints, but on the other hand, it makes national trademark registration a very strong right and affords it great legal certainty.

Word marks (different types)

Word marks may come in different types, for example, italics, highly stylised, bold, gothic letters, coloured letters, etc. However, the word marks that enjoy stronger and wider protection (if registered) are those printed in simple and common typefaces. If the registration is in a simple and common typeface, the scope of protection granted covers any possible representation of the same word (i.e., in whatever typeface and in any colour, etc.).

Cases where likelihood of confusion was found

The following are representative examples of court precedents where likelihood of confusion was established:

- a* Coffee Mate and Delta Coffee Mate, both for non-alcoholic beverages (Trademark Office No. 7673/2005).
- b* Pinocide and Delta Pinocide, both for disinfectants (Supreme Court No. 2394/1994).
- c* Aegean Baltic Bank and Aegean Business Bank, both for banking services (Trademark Office No. 8631/2006).
- d* Polar and Aquapolar, both for water filters and softeners (First Instance Court of Thessaloniki No. 12412/1994).
- e* Bodyline and New Body, both for slimming centres (First Instance Court of Athens No. 194/1997).

Cases where likelihood of confusion was not found

In the following cases, likelihood of confusion was not established:

- a* Facadoro and Mecador, both for gold jewellery (Supreme Court No. 5441/1995).
- b* PB-rope and Ropex, both for chemicals (First Instance administrative Court of Athens No. 1883/1992).
- c* Bake Krispies and Rice Krispies, both for foodstuffs (Administrative Court of Appeals in Athens No. 435/2004).
- d* Thalís (for scientific optics) and Thales (for military products), because they were both addressed to expert customers who were not likely to be confused (First Instance Court of Athens No. 10216/2001).
- e* Ferrero (for chocolates) and Ferro (for breadsticks) Supreme Court No. 4195/2005; although the same case was decided differently by the EU General Court, T-35/04.

IV ENFORCEMENT OF RIGHTS

i General aspects of civil judicial proceedings in Greece

Two types of civil judicial proceedings are available in Greece: (1) ordinary proceedings and (2) summary proceedings.

Ordinary proceedings are rather long. It takes about one year from the filing of a legal action to fix a court hearing. It will take about one more year to obtain a first instance court judgment. If the judgment is appealed, it is likely that two more years will follow until a final and enforceable court judgment is issued by the appeal court. A final judgment can be reviewed before the Cassation (Supreme) Court. The review covers only matters of law and not matters of fact.

There are special courts dealing with CTMs with judges that have a level of specialisation in IP matters. If the plaintiff invokes a CTM, it is possible to fix an early hearing in about only three or four months from the filing of the legal action.

Summary proceedings are available if there is some urgency to be dealt with. In IP infringements, urgency is self-explanatory, unless the IP owner has unreasonably delayed in taking judicial action against infringement. For instance, if the IP owner is aware of an infringement for more than six months, an application for summary judgment is likely to be rejected without examining the merits of the case. It takes about three to four months from filing an application for summary judgment to fix a court hearing and a summary judgment is usually issued within six to eight months following the hearing. However, it is possible to apply for an early preliminary and provisional court order, which is usually obtained within 15 days of the filing of an application for summary judgment. This provisional court order remains in force until a summary judgment is issued. It is also possible to obtain a court order to preserve evidence without any prior notification to the defendant (like an *Anton Piller* order). A summary judgment must necessarily be followed by ordinary proceedings. Therefore, a summary judgment cannot bring litigation to an end without ordinary proceedings, unless there is an extrajudicial settlement.

Legal actions (writs) and applications for summary judgment are long legal documents in Greece. They need to refer to the facts and the evidence in much detail. A customary legal action or application for summary judgment usually exceeds 10 pages.

There are no pretrial proceedings under Greek law. All the evidence is presented to the court in a single hearing, after which the court issues its judgment.

Limitation periods for IP rights are rather long (i.e., five years); however, if the legal ground is unfair competition, the limitation period for a cease-and-desist order is only three years.

Cease-and-desist letters do not result in any adverse legal consequences for the addressor. So, even if an extrajudicial cease-and-desist letter is proved to be unfounded, the addressor runs no legal risk, unless the letter contains evident and exorbitant defamations.

Greek judgments on IP matters greatly rely on precedents set by the European Union Court of Justice (CJEU) and the General Court.

ii Volume of damages

In the past, the law was very cumbersome in relation to establishing the volume of damages in IP infringement. It was almost impossible to prove what the quantum of damages actually was, and the majority of IP owners limited themselves to cease-and-desist orders alone and never attempted to obtain a damages award.

However, legislation has changed during the past few years and has provided for more relaxed alternative criteria for determining the volume of damages. In particular, the plaintiff may quantify loss on the basis of one of the following three criteria:

- a* the loss caused by the infringement; this is the traditional way to determine the quantum of damages, which raises great difficulties, since actual damage and loss of profits need to be evidenced with accuracy;
- b* the benefit obtained from the infringement; such benefit usually amounts to the net earnings of the infringer. This criterion may be more straightforward to apply, but, again, difficulties arising from the issue of burden of proof cannot easily be overcome; and
- c* the customary royalty for a licence, as appropriate in the particular case in question. This is the method that IP owners usually prefer to apply in order to fix the volume of damages requested. It is the criterion that is most straightforward regarding evidence and burden of proof. It is usually possible to produce evidence in court to prove the amount of the royalty that has been agreed by other parties for a licence of a similar IP right to the one infringed.

These criteria apply in connection with infringement of all IP rights (i.e., copyright, trademarks, patents, etc.).

In addition to damages, it is also possible to request psychological (moral) damages against the infringer. Under Greek law, it is up to the discretion of the court to fix a psychological damages award in each and every case involving a tort, and IP infringements are tort cases. Usually psychological damages are justified in IP infringements on the basis of defamation that the owner has suffered from the particular infringement and not on the basis of any psychological stress. It is the defamation and dilution of reputation that is compensated in this way and not any psychological stress. Such awards, however, are usually of limited amounts only (i.e., about €10,000), even if the infringed IP rights relate to particularly strong and famous trademarks.

For copyright infringements, there are very severe criminal sanctions as well. In addition, there are less severe criminal sanctions for trademark infringement, as well as for infringements of unfair competition and non-registered distinctive signs.

iii Customs procedures

Customs procedures are available according to the EU legislation. Customs procedures are available for all IP rights and are particularly efficient. However, they are not addressed against parallel imports.

iv Obtaining and preserving evidence; the EU Enforcement Directive

Greece has implemented EU Directive 2004/48 on the enforcement of IP rights. The Directive offers great assistance in obtaining and preserving evidence during either summary or ordinary legal proceedings, when such evidence is in the possession of the infringer. If the plaintiff provides reasonably available evidence to support an allegation of infringement, a court may issue an order (even without having previously notified the defendant), allowing the plaintiff to obtain evidence in the possession of the alleged infringer. In this respect, the plaintiff may be allowed to make a detailed list of infringing products in the possession of the infringer, to take samples or even to provisionally arrest infringing goods or materials used in the production of infringing goods, or documents and other information relating thereto. Such information may comprise the names and details of distributors, suppliers, customers, quantities produced and manufactured, prices, and even bank account details and payments to third parties. In issuing such an order, courts have discretion to take into account the necessity to preserve legitimate trade secrets of the defendant, as well as the general principle of proportionality. The Directive, in providing such severe measures, aims to deal with the issue of counterfeit products. However, the Directive applies not only to counterfeit goods, but also to innocent (without intent) infringements. Courts do have great discretion in applying the Directive, and they do take into account the factors of proportionality and legitimate trade secrets. In practice, courts are rather reluctant to apply the Directive against long and well-established local companies that would not reasonably raise any suspicions of intentional infringement.

v Copyright

A lot of litigation arises in relation to alleged copyright infringement on the internet. In a recent case, the First Instance Court of Athens (Judgment No. 5249/2014) dealt with the case of a website that provided links, enabling internet users to reach the websites of local television broadcasters and watch films and other content that broadcasters had already uploaded to their own websites. The court held that this act of 'linking' and making available to a new public content that has already been uploaded does not establish a copyright infringement. In reaching this conclusion, the Greek court took notice of the rulings of the CJEU in the cases of *Svensson* (C-466/12) and *BestWaters* (C-348/13). Hence, what this case seems to suggest is that so long as content has been uploaded to the internet, it becomes freely available to anyone and retransmitting such content, or making it available to others, particularly by way of 'linking' does not amount to infringement. Many commentators are very sceptical as to whether such a precedent is satisfactory. 'Linking' may be commercially acceptable to television broadcasters, but it is doubtful as to whether it is commercially equally acceptable to other industries, such as the music and film industries.

A difficulty that usually arises in court practice is that, if the plaintiff who invokes copyright protection is a legal entity, the court requires submission of evidence regarding the acquisition of copyright from the author. Courts argue that copyright can be acquired by individuals (natural persons) alone and that it can only be transferred to legal entities by way of assignment. Under Greek law, assignment of copyright is invalid, unless it is documented

in writing. This raises practical difficulties for legal entities seeking copyright protection, as they need to produce to the courts written contracts evidencing acquisition of rights from natural persons.

vi Patents

Patent litigation is rather rare in Greece. The majority of cases relate to pharmaceutical patents. Judges do not have any technical background; so, they greatly rely on expert evidence on technical matters, as well as matters like novelty and inventive step. One of the problems usually encountered in patent litigation is the long delay in the proceedings, because of multiple judicial proceedings in other jurisdictions, as well as before the European Patent Office. For instance, Greek courts are likely to stay local proceedings in case that there are any prior proceedings already pending before the European Patent Office in relation to the validity of the patent, or in case there are any other prior judicial proceedings pending in any other jurisdiction.

The most notable recent cases in Greece relate to the validity of EPs for pharmaceuticals that have been validated by the local Patent Office before 1992, that is, at a time when pharmaceutical patents were not recognised under Greek law. Greek courts (Judgments Nos. 728/09 and 6105/11 of the First Instance Court of Athens) held that any such EPs validated locally before 1992 were illegal and invalid. The same judgments, though, confirmed that EPs validated after 1992 are valid, even if they contain Swiss-type claims, which are considered compatible with Greek legislation. Finally, the courts held that the TRIPS Agreement to which Greece acceded in 1990 has no retrospective effect. The judgment of a civil court holding a registered patent invalid has effect not only between the litigating parties, but also *vis-à-vis* third parties (*erga omnes*).

Another important recent judgment of the First Instance Court of Athens (No. 3955/2015) relates to the ongoing litigation among Novartis and Zanofti-Aventis in connection to the use of the drastic ingredient ‘rivastigmine’ for the treatment of Alzheimer’s disease and Parkinson’s disease. *Rivastigmine* was initially patented by Novartis, but the patent expired and the substance became generic. However, Novartis had also patented with a Swiss-type claim a particular dose of *rivastigmine*, which is still currently in force. Novartis alleged that its patented dose for *rivastigmine* has been copied by Zanofti-Avantis. In its preliminary judgment, the court did not challenge the validity of a Swiss-type claim that relates to a new dose (and not to a new therapeutic use) and ordered the submission of additional expert evidence before reaching a final judgment.

vii Trademarks

Most local IP litigation relates to trademarks. Infringement is established in case of likelihood of confusion, dilution and parallel imports from non-EU countries. In assessing trademark infringement, Greek courts consistently apply the jurisprudence of the CJEU and the General Court of the EU. It is worth mentioning that in the EU, unlike the US, it seems easier to establish dilution. This is because, according to the jurisprudence of the CJEU, there is no need to prove actual damage in order to establish dilution; instead, it is sufficient to prove that there is a likelihood of association among the earlier famous mark and the later infringing mark. Unlike other jurisdictions, under both Greek and EU law, parallel imports from not EU Member States are illegitimate and amount to a trademark infringement. This is not the case, though, in connection to parallel imports from other EU Member States.

viii Famous marks

The Supreme (Cassation) Court (Judgment No. 1030/2008) has held that a mark cannot qualify as famous, unless it is unique and has a level of originality. It is submitted that this reasoning contradicts the jurisprudence of the CJEU, which holds that fame depends on the level of recognition of the mark. However, there is a counterargument that states that even under the CJEU jurisprudence, uniqueness and originality are factors to be taken into account for assessing the level of recognition and reputation of a mark. A good example of how these considerations may be applied in practice is a recent judgment of the First Instance Court of Athens (No. 270/2015), which held that the green and white colour combination of the Aspirin packaging cannot qualify as a famous mark because it lacks uniqueness and originality, as based on the evidence, green seemed to be widely used in the packaging of many pharmaceuticals. The judgment was referring to the alleged reputation of the green and white colour combination alone, and not to the reputation of the Aspirin word mark, which was not an issue in this case.

ix 'Lookalike' and trade dress cases

The most difficult and controversial cases are 'lookalike' cases, relating to the colours and drawings in the packaging of the products. This type of litigation is quite common, particularly in the field of foodstuffs. In a notable recent judgment (Judgment No. 270/15), the First Instance Court of Athens denied protection to the green and white packaging of Aspirin against a similarly coloured pain reliever, on the ground that some colours evoke particular feelings in consumers and this is the case with the green colour, which was found to generate a sense of relief. Further, in Greece, the public closely associates the colour green with medical science.

In another case in 2007, the First Instance Court of Athens (Judgment No. 2275/2007) rejected a lawsuit by Nestlé in connection with the blue, swimming pool pattern of its ice-cream freezers against an equally well-established local ice cream manufacturer, which was using a progressively graduated blue colour pattern for its ice-cream freezers. The leading case relating to the protection of a single colour (not a colour combination) is the *Petro gas* case (Supreme Court Judgment No. 399/89). It concerned liquid gas for home use traded in purple coloured cylinders. Vitom gas copied the purple colour used by Petro gas. The plaintiff's action was rejected by both the First Instance and the Appeal Court. In reviewing these judgments, the Supreme Court noted that the copying of a single colour in product packaging should be assessed in the context of the doctrine of 'overall impression'. In other words, the figurative or word elements, as well as the overall packaging and appearance, should also be taken into account, in order to determine whether there is any likelihood of confusion or dilution. The Court, however, noted that copying of even a single colour alone could suffice to establish likelihood of confusion, if, on the evidence, it could be found that it is the colour that is the prevailing element of the whole packaging and appearance of the product; and if it could be proved that copying of the colour alone could attract the attention of consumers.

However, there are other cases in which plaintiffs were successful in obtaining legal protection for the colours used in their respective packaging. Such was the case with Camper Twins shoes packaging; Camper was successful in obtaining protection for the red colour used in its packaging (First Instance Court of Athens, Judgment No. 6778/2004). Another similar judgment was the *Toblerone* case. The plaintiff was successful in obtaining legal protection in relation to the triangle shape of its chocolate, which was found by the Court to be particularly

distinctive (First Instance Court of Athens, Judgment No. 1478/2005). Further, the Athens Court of Appeal (Judgment No. 1687/2004) has granted protection to Nestlé, in relation to the colour combination of its Nescafé instant coffee cans. In a more recent, much more controversial case, the Supreme Court seemed to suggest that the ‘cigar-like’ cylinder shape of a chocolate wafer from a particular manufacturer merited legal protection, although wafers with chocolate or another filling commonly come in a cylinder shape that usually resembles a cigar (Judgment No. 486/2015).

x Personal names

The use of personal names as trademarks is quite common in the local market. Hence, trademark litigation often relates to personal names. Such was the recent landmark case involving Mr Panayiotis Nikas. Mr Nikas was the founder in the early 1970s of Nikas SA, which was one of the largest local manufacturers of sausages and other cold meats. In early 2000, he sold his shares in Nikas SA and abandoned the company. After 12 years, he introduced his own new sausages under the brand name ‘Lakoniki SA’, which was his own company. The sausages bore the slogan: ‘With the recipe and care of Panayiotis Nikas’. Nikas SA sued for likelihood of confusion and dilution. The First Instance Court of Athens rejected the claim and reasoned that in such a case, there were good grounds for the limitation of the trademark rights of Nikas SA, as Mr Nikas was using his own name and had made efforts for differentiation and through advertisements to let the public know that he was no longer associated with Nikas SA.

xi Community trademarks and earlier national marks

Conflicts may arise among registered CTMs and earlier national registered trademarks, or earlier national non-registered distinctive marks. In a recent case, the First Instance Court of Athens (summary Judgment No. 12035/14) issued a cease-and-desist order, preventing the circulation in the local market of a constipation product, traded under the registered CTM ‘EVA’ owing to an earlier national registered trademark ‘EVA’, used in medicinal and hygienic products. The court applied Articles 55(2), 53 and 100 of EU Regulation 207/2009 on CTMs and found that a CTM, even if registered, may be prevented from being traded in a local EU market if there is an earlier national registered trademark (or non-registered distinctive sign), and there is the likelihood of confusion as a result. When enforcement of a registered CTM is sought, national courts are authorised to cancel it, if the defendant challenges its validity by way of counterclaim. This has recently started to become a common litigation trend in such cases.

xii Unfair competition

The concept of unfair competition under Greek law is very broad and widely applied. It is based on the concept of good commercial customs and morals. It encompasses the English law concept of ‘passing off’, but it has a wider scope. So, it is used to grant legal protection to non-registered distinctive marks used in the course of trade. However, it is also applied in a greater variety of situations in which the business conduct does not seem to comply with good business ethics. Such situations usually relate to the following types of business conduct:

- a* exploitation of one’s reputation (i.e., unauthorised use of famous marks);
- b* misappropriation of one’s work, achievement, methods and system of organisation (including slavish imitation of products or achievements not protected by specific intellectual property law provisions, know-how, etc.);

- c* destructing business reputation (i.e., defamation);
- d* deceptive or misleading advertising, emotional advertising, excessive aggressive and annoying advertising;
- e* intrusion in one's business activity (i.e., by way of soliciting employees or clients, or threatening to sue, etc.);
- f* violation of laws and contractual obligations; and
- g* intrusion with trade secrets of competitors.

Courts have great discretion in applying the law of unfair competition and usually such cases raise great practical and legal difficulties in balancing freedom to compete on the one hand and unethical conduct on the other.

As Greece has acceded to the Paris Convention (1883), Article 10 *bis* also applies in Greece. Article 10 *bis* of the Convention provides a non-exhaustive list of conduct that is deemed to be contrary to good commercial morals and qualify as unfair competition. Finally, Greece has implemented the EU Directives 2005/29 on unfair business-to-consumer commercial practices and 2006/114 on misleading and comparative advertising.

V TRENDS AND OUTLOOK

Greece has recently introduced a new Code of Civil Procedure, effective since 1 January 2016, which is likely to accelerate judicial proceedings. Courts are likely to consider hearsay evidence as inadmissible and to apply more consistently the parole evidence rule. These new features are expected to have a substantive impact on IP litigation as well.

In terms of trademark law, the implementation of the new EU Directive 2015/2436 on the harmonisation of trademarks is expected to increase the impact of the defences of functionality and proof of use in civil proceedings. Conflicts between registered European Union trademarks and earlier national marks are likely to increase in the future. Finally, market trends seem to suggest that there is an increasing interest in filing and enforcing non-traditional marks.

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