

# PATENTS

# ICLG

The International Comparative Legal Guide to:

## Patents 2017

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A practical cross-border insight into patents law

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# Greece

Constantinos Kilimiris



Patrinou & Kilimiris

Tassos Kilimiris



## 1 Patent Enforcement

### 1.1 Before what tribunals can a patent be enforced against an infringer? Is there a choice between tribunals and what would influence a claimant's choice?

A patent can be enforced against an infringer either before the Single Member Court of First Instance, in the case of Preliminary Injunction proceedings, or before the Full Member Court of First Instance, in main infringement actions. There are two jurisdictions, depending on where the infringer is based or where the infringing activity takes place, with specialised IP courts in Athens and Thessaloniki.

Unlike the Single Member Court of First Instance, the Full Member Court of First Instance is a court which specialises in IP proceedings, and which has the additional possibility to refer questions to court-appointed experts. It is therefore in a better position to deal with a complicated patent case.

### 1.2 What has to be done to commence proceedings, what court fees have to be paid and how long does it generally take for proceedings to reach trial from commencement?

The patentee or exclusive licensee files a Preliminary Injunction application or a main infringement action before the competent court and pays the court fees (EUR 422 in Preliminary Injunction proceedings and EUR 460 in main action proceedings). It takes six to eight months to reach trial in main action proceedings and two to four months in Preliminary Injunction proceedings.

### 1.3 Can a party be compelled to disclose relevant documents or materials to its adversary either before or after commencing proceedings, and if so, how?

The provisions of arts. 6 and 8 of EU Directive 2004/48/EC have been incorporated into Greek patent law and provide the possibility for a party to request the presentation of evidence, as well as information on the origin and distribution networks of infringing goods. The request for disclosure may be incorporated in the writ of a main infringement action, or it can be presented during the hearing of the case. The procedure followed is the same as that of a Preliminary Injunction action.

### 1.4 What are the steps each party must take pre-trial? Is any technical evidence produced, and if so, how?

In accordance with the new Code of Civil Procedure, applicable since 01.01.2016, the procedure for main action proceedings before the Civil Courts of First Instance is amended from a partially oral procedure, which included an oral examination of witnesses, to a written procedure. In exceptional cases, the Courts may consider that the case not been sufficiently clear in order to reach a decision, and may summon witnesses to be examined orally.

Moreover, in accordance with the new system, starting from the date of the filing of the lawsuit, certain deadlines are set within which the foreseen procedures should have been concluded, contrary to the practice followed until now.

In this context, the briefs are submitted within a term of 100 or 130 days (in cases where the party is based abroad) from the filing of the lawsuit and the additional pleadings within the following 15 days from expiry of the above deadline. With the lapse of the said deadline, the file of the case is technically considered as complete i.e. mature for a judgment to be delivered.

Within a term of 15 days starting from the date on which the file is closed, the judge rapporteur is appointed, while at the same time a hearing date for the discussion of the case is fixed within 30 days.

It should take approximately four to eight months from the hearing date for a judgment to be rendered, although this may vary depending on the backlog of cases.

Technical evidence can be presented in the form of expert reports or affidavits. Each party has the right to submit up to five affidavits to support its arguments and up to three affidavits to rebut the other party's arguments.

### 1.5 How are arguments and evidence presented at the trial? Can a party change its pleaded arguments before and/or at trial?

Under the new Code of Civil Procedure, applicable since 01.01.2016, arguments are presented in writing, since no witnesses are examined before the Court on the hearing date. Only in exceptional cases may the examination of witnesses take place, i.e. when this is considered absolutely necessary by the Court, following the study of the file. In such a case, cross-examination of the witnesses is permitted.

Written evidence is filed as well as sworn affidavits, provided that certain procedural rules have been followed.

A party may not broaden its legal and factual basis, but it can limit these before or at trial.

**1.6 How long does the trial generally last and how long is it before a judgment is made available?**

The trial of a Preliminary Action may last one to two hours, while in the case of a main action, if there is a hearing, this may last three to four hours. A judgment for a Preliminary Injunction action is usually issued within four to six months of the hearing, while a judgment for a main action is usually issued within six to eight months of the hearing.

**1.7 Are there specialist judges or hearing officers, and if so, do they have a technical background?**

There are no specialist judges in Preliminary Injunction proceedings. In ordinary (main action) proceedings, there are judges specialised in IP matters. The judges do not have a technical background. In ordinary proceedings, they may appoint a court expert.

**1.8 What interest must a party have to bring (i) infringement, (ii) revocation, and (iii) declaratory proceedings?**

- (i) An infringement action can be filed by the patent owner or the licensee.
- (ii) A revocation action can be filed by any party having a legitimate interest. This may be a competitor in the market but also a consumer.
- (iii) A declaratory action on non-infringement can be filed by any party having a legitimate interest who can justify that such an action is necessary for his defence against the patent owner or licensee.

**1.9 If declarations are available, can they address (i) non-infringement, and/or (ii) claim coverage over a technical standard or hypothetical activity?**

Declarations are available and can address infringement or non-infringement. However, they cannot address a hypothetical activity. There is no case law regarding technical standards.

**1.10 Can a party be liable for infringement as a secondary (as opposed to primary) infringer? Can a party infringe by supplying part of, but not all of, the infringing product or process?**

There are no specific provisions on contributory infringement in Greek patent law. General provisions may apply, and depending on the circumstances, may provide legal aid to patentees against contributory infringers.

**1.11 Can a party be liable for infringement of a process patent by importing the product when the process is carried on outside the jurisdiction?**

Yes, protection is extended to the product directly obtained by a patented process. The sale of such a product in Greece would therefore constitute infringement of the patent.

**1.12 Does the scope of protection of a patent claim extend to non-literal equivalents?**

Greek patent law does not have any specific provisions on the limits of protection of a patent.

All authors agree that the interpretation of “invention” should not be literal but purposive. This seems to be consistent with art. 69 of the European Patent Convention, which is directly applicable to European patents and should be applied to Greek patents by analogy.

**1.13 Can a defence of patent invalidity be raised, and if so, how? Are there restrictions on such a defence e.g. where there is a pending opposition?**

A defendant may challenge the validity of a patent either by filing a nullity action and, in most cases, asking this to be heard with the infringement action, or by filing an objection that the claimant’s patent is invalid. Such an objection can even be filed in the context of Preliminary Injunction proceedings. If an objection of invalidity in Preliminary Injunction proceedings is sustained, it does not produce permanent *res judicata*. A patent may be declared definitively invalid only by way of a nullity action (ordinary proceedings). There are no restrictions on such defences, such as in the case of a pending opposition.

**1.14 Other than lack of novelty and inventive step, what are the grounds for invalidity of a patent?**

- Additional to the above, a patent can be invalidated if:
- i. the applicant is not the inventor or his successor in title;
  - ii. the invention is not excluded from patenting;
  - iii. the invention is not susceptible to industrial application;
  - iv. the invention is disclosed insufficiently in the patent specification; or
  - v. the subject matter of the patent extends beyond the content of the application as filed.

**1.15 Are infringement proceedings stayed pending resolution of validity in another court or the Patent Office?**

There are no proceedings available before the Patent Office. In Preliminary Injunction proceedings, the court will normally rule on infringement without waiting for the outcome of possible validity proceedings which are pending. In the case of a main action, the court will normally consolidate the nullity and infringement action into the same hearing and decide at the same time on both.

**1.16 What other grounds of defence can be raised in addition to non-infringement or invalidity?**

Greek patent law provides a positive right to a patentee to work his invention, together with the negative right of preventing others from working it. A defendant who is the owner of a similar patent may therefore claim that he is not infringing as he is working his own invention. In most cases, the patent owner would need to challenge the validity of the defendant’s patent.

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**1.17 Are (i) preliminary, and (ii) final injunctions available, and if so, on what basis in each case? Is there a requirement for a bond?**


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Preliminary Injunctions are available and are granted in cases where there is *prima facie* evidence suggesting infringement, together with an urgent need to prevent an imminent danger to the claimant.

Final injunctions are granted if the claimant is successful in a main infringement action.

Theoretically, a bond may be requested, but in practice, this does not happen.

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**1.18 On what basis are damages or an account of profits assessed?**


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If a patent is held valid and infringed, the patentee may file a main action for damages against a liable infringer. Damages will be awarded on the basis of either: (i) the damages the patentee has suffered; (ii) the profits made by the infringer; or (iii) the reasonable royalties which the patentee would have collected if the infringer's sales were made under licence. The claimant may select one out of the three above alternatives, but not all of them cumulatively. Damages may also be awarded for moral prejudice caused.

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**1.19 What other form of relief can be obtained for patent infringement? Would the tribunal consider granting cross-border relief?**


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Following the implementation of the IP Enforcement Directive in Greece, the patentee may request that infringing goods be recalled or even definitively removed from the channels of commerce or destroyed, at the expense of the infringer. Before ordering such measures, the court must take into account the seriousness of the infringement and the remedies ordered, as well as third party interests. The patentee may also request the publication of the judgment at the expense of the infringer.

Although possible, we are not aware of any judgment from a Greek tribunal granting cross-border relief.

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**1.20 How common is settlement of infringement proceedings prior to trial?**


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This issue largely depends on the facts of the case, but statistically, this is not very common.

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**1.21 After what period is a claim for patent infringement time-barred?**


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The time period is five years from the date on which the patentee became aware either of the infringement or of the damage and of the infringer's identity, and in any case 20 years after the infringement took place.

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**1.22 Is there a right of appeal from a first instance judgment, and if so, is it a right to contest all aspects of the judgment?**


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There is a right of appeal from a first instance judgment and the appellant may contest all aspects of the judgment. The Court of

Appeal hears the appeal in writing based on the material submitted at the Court of First Instance. No witnesses are examined, and new evidence is only allowed if this was not available at the First Instance hearing. Preliminary Injunction judgments are not subject to appeal.

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**1.23 What are the typical costs of proceedings to first instance judgment on (i) infringement, and (ii) validity? How much of such costs are recoverable from the losing party?**


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Costs associated with patent litigation will inevitably vary considerably depending on the complexity of the dispute, the number of litigators involved and other factors. Costs within the range of EUR 20,000–50,000 may be expected in a main infringement action, while this may be higher in nullity proceedings where, in many cases, more technical experts are involved.

Theoretically, the losing party must pay the costs of the other party. These include the official fees and only a small part of the attorneys' fees. In practice, each party bears its own costs.

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**1.24 For jurisdictions within the European Union: What steps are being taken in your jurisdiction towards ratifying the Agreement on a Unified Patent Court, implementing the Unitary Patent Regulation (EU Regulation No. 1257/2012) and preparing for the unitary patent package? For jurisdictions outside of the European Union: Are there any mutual recognition of judgments arrangements relating to patents, whether formal or informal, that apply in your jurisdiction?**


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The Agreement on a Unified Patent Court, implementing the Unitary Patent Regulation, has not been ratified, and no information is available on any preparations for the unitary patent package.

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## 2 Patent Amendment

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**2.1 Can a patent be amended *ex parte* after grant, and if so, how?**


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This is only possible in the case of European patents, which can be centrally limited *ex parte* after a grant following the procedure of art. 105a of the European Patent Convention. In such a case, a new translation of the limited patent must be filed before the Greek Patent Office.

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**2.2 Can a patent be amended in *inter partes* revocation/invalidity proceedings?**


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A patent can be limited in *inter partes* revocation proceedings by a court decision, if one or several claims are found to be invalid.

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**2.3 Are there any constraints upon the amendments that may be made?**


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During patent prosecution, amendments are allowed, as long as they do not extend beyond the original application as filed.

### 3 Licensing

#### 3.1 Are there any laws which limit the terms upon which parties may agree a patent licence?

The terms of a patent licence are subject to the provisions of competition law (national and EU).

#### 3.2 Can a patent be the subject of a compulsory licence, and if so, how are the terms settled and how common is this type of licence?

A patent can be the subject of a compulsory licence granted to satisfy public health or national defence needs, in cases where the invention has not been commercially worked or has been insufficiently worked. The licence is granted to bodies of the public sector. Before granting such a licence, the patentee and any third party are invited to provide their views. The amount of royalties due is determined by the Patent Office and, in the case of disagreement, by the court.

A compulsory licence can also be granted by a court decision to a third party in cases where the invention has not been commercially worked or has been insufficiently worked within three years from the grant or four years from the application date. The party requesting the grant of such a licence should formally request a licence to the patentee before initiating the court procedure. The patentee can rebut a request for such a licence if he can justify the non-working of the invention.

We are not aware of any compulsory licences that have been granted in Greece.

### 4 Patent Term Extension

#### 4.1 Can the term of a patent be extended, and if so, (i) on what grounds, and (ii) for how long?

The term of a patent can be extended only as regards Pharmaceutical and Plant Protection products by the grant of a Supplementary Protection Certificate (EC Regulations 469/2009 and 1610/1996).

Supplementary protection certificates were established in order to allow the patentee to recoup some of his R&D expenses in cases where the original term of protection for the product of the invention is limited due to regulatory requirements for marketing authorisation of the product in question. A Supplementary Protection Certificate extends the market exclusivity offered by a patent up to a maximum of 15 years from the granting of the first marketing authorisation in the European Economic Area.

In the case of pharmaceutical products, the Supplementary Protection Certificate may be extended by a further six months as a reward for the performance of clinical trials of children in accordance with an approved Paediatric Investigation Plan (EC Regulation 1901/2006).

### 5 Patent Prosecution and Opposition

#### 5.1 Are all types of subject matter patentable, and if not, what types are excluded?

All types of subject matter are patentable, with the exception of: discoveries, scientific theories, and mathematical methods; aesthetic creations; schemes, rules, and methods for performing mental acts; playing games or doing business; computer software; presentation of information; methods for treatment of the human or animal body by surgery or therapy; diagnostic methods practised on the human or animal body; and any invention which is contrary to public order or morality.

#### 5.2 Is there a duty to the Patent Office to disclose prejudicial prior disclosures or documents? If so, what are the consequences of failure to comply with the duty?

There is no such duty.

#### 5.3 May the grant of a patent by the Patent Office be opposed by a third party, and if so, when can this be done?

As there is no substantive examination performed before the Greek Patent Office, there are no provisions for oppositions. A patent can be declared invalid only by a court decision following a nullity action of a third party.

#### 5.4 Is there a right of appeal from a decision of the Patent Office, and if so, to whom?

Decisions of the Patent Office which do not relate to substantive criteria for granting a patent can be appealed before the Supreme Administrative Court. In all other cases, a nullity action before the civil courts must be filed.

#### 5.5 How are disputes over entitlement to priority and ownership of the invention resolved?

Disputes over entitlement to priority and ownership of the invention are resolved at court following a lawsuit filed by any third party claiming to have rights on the invention. The lawsuit must be filed within two years of the publication of the patent application or without any time limits if one can prove that the patentee was aware of the right of the claimant at the time of grant or assignment of the patent.

#### 5.6 Is there a “grace period” in your jurisdiction, and if so, how long is it?

A six-month grace period before the filing date of a patent is provided in accordance with art. 55(1) of the European Patent Convention in cases where the invention was disclosed as a result of an abuse in relation to the applicant or at an international exhibition as defined in the Paris Convention.

**5.7 What is the term of a patent?**

The term of a patent is 20 years, calculated from the day after the application date.

**6 Border Control Measures**

**6.1 Is there any mechanism for seizing or preventing the importation of infringing products, and if so, how quickly are such measures resolved?**

A patent owner may file a customs action to register his IP rights in accordance with the provisions of EC Regulation 1383/2003. Such an action allows for the detention of counterfeit goods originating in or coming from a country outside the EU. The IP owner must file a declaration to accept liability to claims by a third party in cases where the detention of goods by customs is determined to be unfounded in the end.

The IP owner must take legal action within 10 working days of notification of detention, otherwise the goods will be released. This period can be extended by another 10 working days.

**7 Antitrust Law and Inequitable Conduct**

**7.1 Can antitrust law be deployed to prevent relief for patent infringement being granted?**

Theoretically, yes. However, the defendant would need to prove that the real intention of the patentee, who has filed a legal action against an infringer, is not the protection of his IP rights but rather the harassment of the infringer in order to eliminate competition.

The protection of IP rights should be regarded as a fundamental right and only in very exceptional circumstances should this be regarded as abusive.

**7.2 What limitations are put on patent licensing due to antitrust law?**

The provisions of art. 101 of the Lisbon Treaty and the limitations set therefrom are applicable.

**8 Current Developments**

**8.1 What have been the significant developments in relation to patents in the last year?**

There have been no significant developments in relation to patents in the last year.

**8.2 Are there any significant developments expected in the next year?**

Ratification of the Agreement on a Unified Patent Court, should this take place, would be a significant development.

**8.3 Are there any general practice or enforcement trends that have become apparent in your jurisdiction over the last year or so?**

The trend of companies trading generic pharmaceutical products to file a nullity action against an originator company's patent before launching – thus clearing the path – is increasing.



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