

Greece

By **Nicolas K Dontas, Manos K Markakis** and **Maria H Vasilikopoulou**, Dontas Law Offices, Athens

1. What are the most effective ways for a European patent holder whose rights cover your jurisdiction to enforce its rights in your jurisdiction?

A European patent designating Greece enjoys the same scope of protection as is afforded to a Greek patent, provided that it has been validated in Greece (ie, a certified Greek translation of the patent has been filed with the Greek Industrial Property Organisation within three months of publication of the grant of the European patent).

In case of infringement, the patent holder is entitled to seek an injunction and compensation for the damage suffered. Often the most effective course of action against patent infringement is to file a preliminary injunction action. The main advantage of preliminary injunction proceedings is a quick court decision – usually issued within one to two months of the hearing – ordering the withdrawal of the infringing products from the market and threatening a monetary penalty if the infringing activity resumes. Due to the significant time involved in main infringement proceedings, a preliminary injunction issued in favour of the patent holder usually discourages infringers from further litigation, thus leading to settlement of the case.

2. What level of expertise can a patent owner expect from the courts in your jurisdiction?

The commercial divisions of the Athens and Thessaloniki Civil Courts are formally designated as Community trademark and patent courts. However, not all judges hearing IP disputes are specialised in patent

matters. Due to the lack of technical background, many Greek judges are reluctant to elaborate on complicated technical issues and rely, to a great extent, on the expert reports submitted by the parties. Inevitably, the absence of specialised patent judges with technical backgrounds often restricts the possibility of achieving a high level of expertise.

3. How do your country's courts deal with validity and infringement? Are they handled together or separately?

An invalidity action may be brought before the competent civil court either independently or as a defence or counterclaim to a main action or a preliminary injunction petition. Since a granted patent is vested with the presumption of validity, the burden of proof lies with the party claiming invalidity. A declaration of invalidity may be sought by anyone demonstrating a legitimate interest. However, in the majority of cases, infringement and validity issues are handled together by the court. In practice, unless there are overwhelming arguments to support the invalidity of a patent, the Greek courts are likely to reject invalidity claims raised within the framework of preliminary injunction proceedings.

4. To what extent is cross-examination of witnesses permitted during proceedings?

The defendant's witnesses are always cross-examined by the plaintiff's lawyer, and vice versa. However, unless the president of the court decides otherwise, witnesses are examined separately and not in the presence of the opposing party's witnesses.

5. What role can and do expert witnesses play in proceedings?

In practice, the absence of patent judges with

technical backgrounds reinforces the role of expert witnesses. A well-substantiated expert witness testimony, either in the form of an affidavit or in the course of oral proceedings, may affect the outcome of the litigation decisively. However, the court evaluates witness testimonies freely.

6. Is pre-trial discovery permitted? If so, to what extent?

Pre-trial discovery, as seen in common law jurisdictions, is not available under Greek law. Within the framework of pending litigation, the plaintiff is entitled to request the disclosure of documents which are crucial to the outcome of the litigation. In practice, such “in-trial” discovery is of limited value. In particular, a discovery request is satisfied only if the documents are precisely identified by the plaintiff in advance. As a result, the majority of discovery requests are rejected by the courts due to the obvious difficulty in specifying the requested documentation.

7. Do the courts in your jurisdiction apply a doctrine of equivalents?

The doctrine of equivalents is not explicitly applied by the Greek courts. However, the courts interpret the scope of patent claims in an open-minded fashion, taking into account the function and result of the invention.

8. Are certain patent rights (eg, those relating to business methods, software and biotechnology) more difficult to enforce than others?

The difficulty of patent enforcement in Greece depends not so much on the field of invention as on the complexity of the technical issues involved. However, it is true that the absence of well-established case law in certain technical fields (eg, business methods, software and biotechnology patents) may create some uncertainty as to the outcome of litigation involving such patents.

9. How far are courts bound by previous decisions made in cases that have covered similar issues?

From a strictly legal point of view, a Greek court is not bound by previous decisions covering similar cases. However, in practice, the court is unlikely to issue a ruling that is contrary to established case law.

10. Are there any restrictions on who parties can select to represent them in a dispute?

Parties can be represented in civil courts

only by attorneys at law. Apart from conflict of interest issues, no further restrictions apply to the selection of legal representatives in patent litigation. In Greece, there is no regulation of patent attorneys or agents. European patent attorneys who are not registered with a Greek bar association cannot represent parties in court.

11. Are courts willing to consider the reasoning of courts in other jurisdictions that have dealt with similar cases?

Decisions obtained in foreign jurisdictions are not binding on the Greek courts. Moreover, the courts would hesitate to make explicit reference to foreign court decisions in judgments. However, a Greek court may be influenced by a foreign decision resolving complex technical issues that arose in a similar dispute between the same parties. In practice, a Greek court is likely to invalidate a European patent if and to the extent that a corresponding patent has already been irrevocably declared invalid in another EU member state.

12. How easy is it for defendants to delay proceedings and how can plaintiffs prevent them from doing so?

Often Greek procedural law is used by defendants to delay the enforcement of patent rights. In particular, the defendant's first postponement request is always granted by the court, regardless of the grounds supporting it and despite the plaintiff's objections. Moreover, the defendant may ask the court to appoint technical experts, a procedure that may substantially delay the final decision. Hearings may also be postponed *ex officio* due to the (often significant) backlog of cases pending before the commercial division of the first instance courts. Finally, pending the final outcome of opposition proceedings initiated against a European patent before the European Patent Office, the Greek courts usually suspend infringement or invalidity proceedings involving a corresponding Greek patent. The plaintiffs may counter these delaying tactics by initiating preliminary injunction proceedings, including a petition for a temporary restraining order.

13. Is it possible to obtain preliminary injunctions? If so, under what circumstances can this be done?

Yes – a preliminary injunction is the most effective legal remedy available to the patent holder. A petition seeking a preliminary injunction must meet the urgency

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requirement, which in practice means that the infringement should have been taking place for only a short period of time. The successful plaintiff is not usually required to post a bond to maintain the validity of the preliminary injunction order. However, it must file a main infringement action within 30 days of publication of the decision granting the preliminary injunction. In general, it is easier to obtain a preliminary injunction, including a temporary restraining order, when enforcing a product rather than a process claim.

14. How much should a litigant plan to pay to take a case through to a decision at first instance?

Conducting patent litigation in Greece is cheaper than in the majority of EU member states.

15. Is it possible for the successful party in a case to obtain costs from the losing party?

The court usually sets an aggregate amount of legal costs, including lawyer fees and court expenses. In practice, the recoverable costs range from €1,000 to €3,000. No evidence is required to prove these costs.

16. What are the typical remedies granted to a successful plaintiff by the courts?

Typical remedies granted by the court are:

- A permanent injunction extending to the expiry date of the patent.
- Damages awards in cases of wilful or neglectful infringement.
- A destruction order or, if the plaintiff so requests, transfer of the infringing goods to the patent holder.

17. How are damages awards calculated? Is it possible to obtain punitive damages?

There are three methods of calculating damages:

- Actual prejudice, including loss of profits, suffered by the patent holder.
- Profits derived by the defendant from the infringing activity.
- Royalties paid by the licensee for the legitimate exploitation of the patent.

The plaintiff may select any of these methods of calculating damages. Due to obvious evidential constraints, the quantification rule based on the amount of royalties paid by the licensee is the method of calculation most often used in patent infringement cases. In addition to material damages, the court may award moral damages. Finally, a court decision may award punitive damages – for example, a monetary penalty in case the defendant breaches any of the terms of the decision in the future. Punitive damages are usually defined as a fixed amount per infringing product on the Greek market.

18. How common is it for courts to grant permanent injunctions to successful plaintiffs and under what circumstances will they do this?

A permanent injunction is granted if an ongoing or imminent infringement is established. The plaintiff need not prove that the defendant was negligent or had malicious intent or even knowledge of the unlawful character of the activity.

19. How long does it take to obtain a decision at first instance and is it possible to expedite this process?

In general, a decision at first instance takes from 18 to 24 months. The process cannot be expedited by the plaintiff.

20. Under what circumstances will the losing party in a first instance case be granted the right to appeal? How long does an appeal typically take?

Any losing party has an automatic right to appeal against a final decision of the first instance court. An appeal is not available against decisions issued within the framework of preliminary injunction proceedings. Appeal proceedings usually take from eight to 16 months.

21. Are parties obliged to undertake any type of mediation/arbitration prior to bringing a case before the courts? Is ADR a realistic alternative to litigation?

Under Article 214a of the Code of Civil

Procedure, a civil dispute cannot progress to a hearing unless the litigants make an attempt to explore, through direct negotiations, the possibility of an out-of-court settlement. The date and place of the meeting are chosen by the plaintiff and notified in advance to the court and the defendant via a court clerk. Settlement discussions are held between the litigants directly and no third party or court mediation is involved at this stage. The settlement agreement may subsequently be submitted to the court jointly by the litigants so that it becomes enforceable as a court decision. At any time prior to the hearing, the parties may agree to submit the dispute to arbitration. In practice, approximately 35% of patent disputes are settled through direct negotiations.

22. In broad terms, how pro-patentee are the courts in your jurisdiction?

Greece may be considered a “pro-patent validity” jurisdiction. The presumption of patent validity, coupled with the reluctance of many Greek judges hearing patent disputes to elaborate on technical issues,

usually tilts the scales in favour of the patent holder, in the sense that a Greek court is more likely than not to treat the asserted patent as valid.

23. Has your jurisdiction signed up to the London Agreement on Translations? If not, how likely is it to do so?

Greece has not yet signed the London Agreement and is unlikely to do so in the near future.

24. Are there any other issues relating to enforcement system in your country that you would like to raise?

The main elements shaping the identity of the Greek patent litigation system may be summarised as follows:

- The judges trying patent disputes have limited expertise.
- Although the main action is time consuming, the preliminary injunction proceedings are efficient and are used extensively.
- An attractive quantification rule is used for the calculation of damages.
- Litigation costs are relatively low. *iam*



Nicolas K Dontas, a partner in Dontas Law Offices, was admitted to the Athens Bar in 1988. He received his law degree from the University of Athens and an LLM from the London School of Economics, United Kingdom. He has been nominated as one of the leading IP lawyers in Greece and is particularly active in litigating and advising on a wide variety of patent-related disputes. He works in Greek, English and French.

Nicolas K Dontas
Attorney at law
N.Dontas@dontas.gr
+30 210 32 35 525

Dontas Law Offices
Greece
www.dontas.gr



Manos K Markakis is an associate in Dontas Law Offices. He received his law degree (*magna cum laude*) from the University of Athens Law School and an LLM degree (*sehr gut*) from Ruprecht-Karls University of Heidelberg, Germany. He practises the full spectrum of IP law, with a particular emphasis on litigation and advice related to the enforcement of pharmaceutical patents in Greece. He works in Greek, English and German.

Manos K Markakis
Attorney at law
M.Markakis@dontas.gr
+30 210 32 35 525

Dontas Law Offices
Greece
www.dontas.gr



Maria H Vasilikopoulou is an associate in Dontas Law Offices. She received her law degree from the University of Athens, an LLM degree from the Humboldt University of Berlin, Germany and a master's in European studies from the RWTH University of Aachen, Germany. Her practice includes advice on patent and industrial design matters. She works in Greek, English and German.

Maria H Vasilikopoulou
Attorney at law
M.Vasilikopoulou@dontas.gr
+30 210 32 35 525

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