

GREECE

Court rules on burden of proof in patented process case

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The reversal of burden of proof in civil proceedings concerning the enforcement of rights for patents for processes is a provision that exists in the laws of many countries, including Greece.

The same provision is included in Article 34 of TRIPS. This gives judicial authorities the power to order the defendants to prove that their process is not infringing.

The defendant's burden of proof is laid down in Article 17 Paragraph 6 of Law 1733/87, which provides that "if the invention relates to a process for the manufacture of a product, each product of the same nature is presumed to have been manufactured according to the protected process."

Article 34 of TRIPS imposes an additional condition for the infringement presumption to apply. In order for this to apply, the product obtained by the patented process must be new.

The issue of which conditions should apply for the reversal of burden of proof to be ordered was examined in a recent judgment from the Athens Single Member Court of First Instance hearing a preliminary injunction application based on a patent with process claims. In these proceedings, the patentee was relying on the reversal of burden of proof as regards infringement of the patented process. The defendant objected, arguing that the reversal of burden of proof cannot apply under the circumstances, since the product obtained under the process was not new. The objection was based on Article 34.1a of TRIPS and the defendant argued that these provisions of TRIPS overrule the broader provisions of national law.

The court rejected the objection and

found the national law provisions applicable. In its judgment it referred to CJEU judgment C-414/11 and ruled that, in view of this judgment, TRIPS does not have a direct effect on the member states, given that the rules of the TRIPS Agreement fall within the meaning of "commercial aspects of intellectual property" and by extension, the "common commercial policy" and fall within the exclusive competence of the EU, based on the provisions of TFEU Articles 3.1(e) and 207.1.