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Patent enforcement in Europe

A country-by-country overview



European Patent Academy

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Planning and co-ordination

Thierry Calame, European Patent Lawyers Association (EPLAW)
Marielle Piana, European Patent Academy

Editor

Marielle Piana, European Patent Academy

Design and production

EPO Graphic Design

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All references to natural persons are to be understood as applying to all genders.

Additional references

For further information on patent litigation regimes (both administrative and civil procedures) across the 38 EPC contracting states, the publication “Patent litigation in Europe” is available at www.epo.org/litigation-MS.

For further information on compulsory licensing, the publication “Compulsory licensing in Europe” (www.epo.org/compulsory-licensing) provides a country-by-country overview of compulsory licensing regimes across the 38 EPC contracting states including possible grounds for grant, procedural framework and jurisprudence.

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Introduction

Intellectual property law is an area that has been a pioneer for cross-border agreements and co-operation. In Europe, the European Patent Convention (EPC) created the legal framework for a single, harmonised patent granting procedure for the European patent. However, once granted, European patents have to be enforced before national courts and other authorities.

In 1994, for the first time on an international level, the TRIPS Agreement provided for enforcement procedures that right holders could rely upon to protect their IP rights.

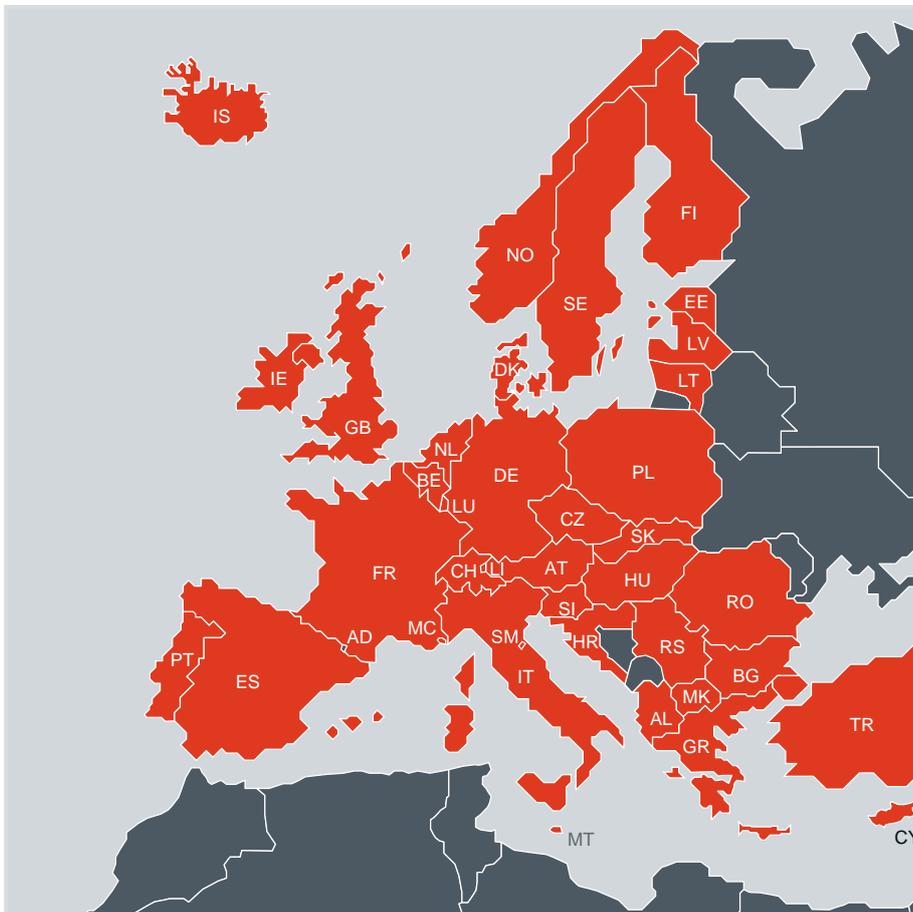
The EU took a further step in harmonising standards and adopted the Directive 2004/48/EC on the enforcement of intellectual property rights (Enforcement Directive), which seeks to approximate the legislation of EU member states to ensure a minimum, homogeneous level of protection within the internal market and strengthen the enforcement of intellectual property rights. However, despite the common rules of the TRIPS Agreement and the transposition of the Enforcement Directive into national legislations, the manner

in which the enforcement of patent rights remains subject to national procedures and vary across the continent.

In 2013, the Agreement on the Unified Patent Court (UPCA) was signed and for the first time provides an international civil court which will allow harmonised enforcement of European patents and future Unitary Patents. Decisions of the Court will, according to Article 82(3) UPCA be enforced in the same way as a decision of a national court or authority of the UPCA contracting state where the enforcement takes place.

In the interests of promoting harmonisation and knowledge exchange in patent enforcement and litigation practices the European Patent Academy, together with authors from all over Europe, has compiled this book to offer a comprehensive reference and guide to the measures available to protect patent rights across the 38 EPC contracting states, as well as the relevant national procedures to enforce them.

European Patent Academy



EPC contracting states (2019)

List of abbreviations

ED	Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (Enforcement Directive)
EPC	Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973 as revised
EPO	European Patent Office
EU	European Union
EU Regulation 608/2013	Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).
UPC	Unified Patent Court
UPC Agreement	Agreement on a Unified Patent Court

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Methodology and structure

In order to produce comprehensive country profiles that could easily be compared, a questionnaire was drafted and submitted to one (in some cases, two) attorneys-at-law practising in the field of patent or IP litigation. The European Patent Lawyers' Association (EPLAW) provided and co-ordinated the contributors from the countries of their membership, whilst the European Patent Academy did so for the other EPC countries.

The measures available for the enforcement of patents vary widely across the EPC's contracting states and over 70% of the EPC's contracting states are also member states of the European Union. Therefore the questionnaire was modelled following the order of the measures provided for in the EU Enforcement Directive (see Annex). A description of further measures available not covered by the Enforcement Directive was also requested.

The responses were then edited into a harmonised structure applicable to all countries. Each country profile contains the following information:

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- Title of the order
- Basic procedural framework
- Provision of evidence by third parties
- Assessment of evidence in support of the application
- Protection of confidential information
- Non-compliance with an order
- Appeal/review
- Admissibility of evidence
- Legal basis and case law

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- Legal basis and case law

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XII Additional options

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- Legal basis and case law

Greece

I Evidence

Title of the order

Διαταγή προσκόμισης αποδεικτικών στοιχείων στα πλαίσια ασφαλιστικών μέτρων ή αγωγής (order to produce evidence in the context of interim measures or actions)

Basic procedural framework

The Court of First Instance¹ is competent to issue such an order in preliminary proceedings or in proceedings on the merits.

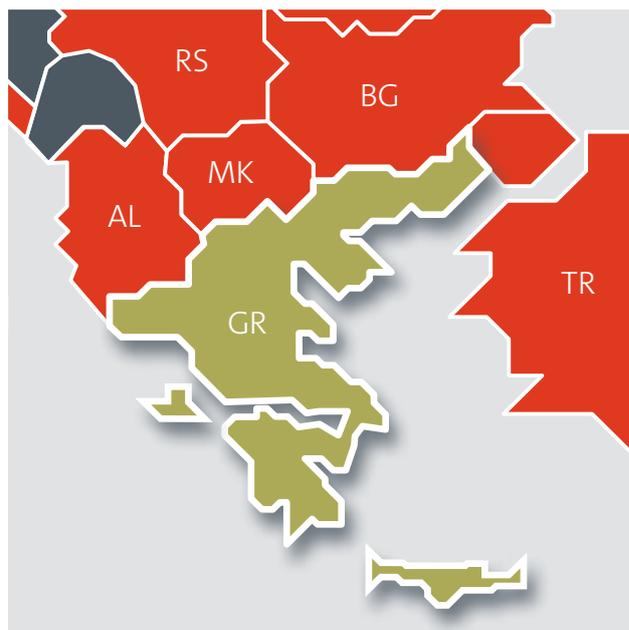
A court bailiff instructed by a lawyer is responsible for enforcing the order.

Provision of evidence by third parties

The court may, in the course of preliminary proceedings or proceedings on the merits, order a third party to provide information on the origin and distribution network of infringing products in accordance with Art. 8 ED. There is no provision implementing Art. 6 that would specifically allow the judicial authority to order a third party to present the evidence mentioned in Art. 6 ED.

Assessment of evidence in support of the application

Assessment is on a case-by-case basis. There is no definition in the legislation of what constitutes “reasonably available evidence”. Art. 17A.1 Law No. 1733/1987 on Technology Transfer, Inventions and Technological Innovation (hereinafter Law No. 1733) provides that the existence of a substantial number of copies may be considered to constitute reasonable evidence when considered together with the other circumstances of the case.



Protection of confidential information

While the law (Art. 17A.3 Law No. 1733) provides an obligation to ensure the protection of confidential information, no specific measures are listed in the legislation. They lie at the discretion of the judge depending on the circumstances.

Non-compliance with an order

The Court of First Instance is competent in case of non-compliance.

In case a party who has been summoned to produce the evidence, does unjustifiably not do so, the claims of the party that sought the production or communication of such evidence “shall be considered as admitted” (Art. 17A.1 Law No. 1733).

Appeal/review

An order for the presentation of evidence may be appealed or reviewed when issued in the course of proceedings on the merits through an appeal of the relevant judgment. The period for filing the appeal is 30 days from the notification of the judgment (30 extra days are granted for foreign entities)

GR

¹ The first instance courts in Athens and Thessaloniki have exclusive competence to deal with patent (and other IP) proceedings. However, they are only competent for proceedings on the merits. Preliminary proceedings may be initiated and dealt with by all other (non-specialised) courts of first instance.

or two years from publication of the judgment, if not served, as service of a judgment lies at the initiative of the parties.

If such order was made in the course of preliminary proceedings the order may be reviewed in those proceedings. The review may be filed at any time up to the hearing of the case on the merits.

The request must be brought before the same court that granted the order or, in the case of an appeal, to the relevant Court of Appeal.

Admissibility of evidence

Evidence obtained in other national criminal, administrative or other civil proceedings is admissible in civil proceedings.

Evidence obtained in proceedings before a court of another country is admissible in civil proceedings, unless the form of evidence may not be presented before a court in Greece, for example unlawfully obtained tape recordings.

If any provisions of Law No. 1733 are deemed contrary to the provisions of EU Regulation 1206/2001, the latter would prevail.

Legal basis and case law

Art. 17A Law No. 1733/87 on Technology Transfer, Inventions and Technological Innovation

II Measures for preserving evidence

Title of the order

Διαταγή συντηρητικής κατάσχεσης ή αναλυτικής απογραφής στα πλαίσια ασφαλιστικών μέτρων

Further available measures

There are no other measures available than the two mentioned in Art. 7.1 ED.

Basic procedural framework

The Court of First Instance (single judge) is competent to issue such an order, in both preliminary proceedings and proceedings on the merits. Such an order may be granted *ex parte* according to Art. 687.1 of the Code of Civil Procedure

and a Temporary Restraining Order (TRO) may be granted to this effect according to Art. 691.2 of the Code of Civil Procedure.

The court may issue the order for precautionary evidence “without needing to specify the evidence proving infringement or threat of infringement, only to determine such evidence on a category basis”, i.e. without specifying the exact document by number or date.

The court however may require the claimant to provide any reasonably available evidence to substantiate that the claimant is the right holder and that his right is being infringed, or there is a risk of imminent infringement (Art. 17B.7 Law No. 1733).

A court bailiff instructed by a lawyer is responsible for enforcing the order.

Ex parte requests

Where an *ex parte* order is requested, the level of evidence to be presented is rather high. The claimant must demonstrate that a delay is likely to cause irreparable harm or that there is a demonstrable risk of evidence being destroyed. It must be obvious to the judge that infringement is clear. *Ex parte* orders are not very common.

The other party may request a revocation or amendment of the order applying the relevant procedure available in Preliminary Injunction proceedings.

Protection available to defendant

The court may order the claimant to lodge an “adequate security” (as referred to in Art. 7.2 ED), the determination of which lies at the discretion of the judge.

There are no “equivalent assurances” (as referred to in Art. 7.2 ED) foreseen in the legislation.

“Appropriate compensation” is also calculated at the judge’s discretion. Such obligation for compensation will exist only if there is a finding that the claimant’s actions were abusive (Art. 17B.8 Law No. 1733).

Period to initiate proceedings on the merits

Where the order is issued in preliminary proceedings, the period to initiate proceedings on the merits is set by the judge but must be within 30 days.

Witness identity protection

There are no available measures to protect witnesses' identity.

Non-compliance with an order

Where the defendant does not co-operate with the enforcement of an order for detailed description or seizure of the infringing goods, which is for the claimant to enforce, there may be criminal sanctions relating to obstruction of justice.

Appeal/review

See Part I "Appeal/review".

Non-compliance with UPC-issued order

According to Art. 82(3) UPCA, an order issued by the UPC will be enforced in the same way as an order issued by the national court. Therefore the authority and procedure would be the same as indicated at "Non-compliance with an order" above.

Legal basis and case law

Art. 17B Law No. 1733/87

III Right of information

Title of the order

Διαταγή παροχής πληροφοριών στα πλαίσια ασφαλιστικών μέτρων (order for information under interim measures).

Persons obliged to provide information

There are no other persons obliged than those listed in Art. 8.1 ED to provide information.

Types of information to be provided

According to Art. 17A.5-6 of Law No. 1733, the information comprises:

- (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
- (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question and applies without prejudice to other statutory provisions which:
 - (i) grant the right holder rights to receive fuller information;
 - (ii) govern the use in civil or criminal proceedings of the information communicated;
 - (iii) govern responsibility for misuse of the right of information; or
 - (iv) afford an opportunity for refusing to provide information which would force the person referred to above to admit to his/her own participation or that of his/her close relatives in an infringement of an intellectual property right; or
 - (v) govern the protection of confidentiality of information sources or the processing of personal data.

The proportionality of the request is examined by the court (Art. 17A.4 of Law No. 1733).

Competent authority

The Court of First Instance is competent to order the provision of this information in preliminary proceedings or proceedings on the merits.

Non-compliance with an order

The Court of First Instance is competent in case of non-compliance.

The procedure laid down in the Code of Civil Procedure relating to monetary claims is applicable (Art. 614 et seq. Code of Civil Procedure).

The following sanctions may be imposed: penalty payment of EUR 100 000 due to a state fund for non-compliance with the order to provide information according to Art. 8.1 ED (Art. 17A.4 Law 1733), and imprisonment up to one year (Art. 947 Code of Civil Procedure).

In case the party ordered to provide information provides inaccurate information willfully or by gross negligence such party is liable for the damages caused for this reason (Art. 17A.7 of law 1733/87).

Appeal/review

See Part I “Appeal/review”.

Non-compliance with UPC-issued order

According to Art. 82(3) UPCA, an order issued by the UPC will be enforced in the same way as an order issued by the national court. Therefore the authority and procedure would be the same as indicated at “Non-compliance with an order” above.

Legal basis and case law

Art. 17A of Law No. 1733/87

IV Provisional and precautionary measures

Title of the order

Διαταγή παροχής ασφαλιστικών μέτρων

Basic procedural framework

The Court of First Instance is competent to issue such an order, in preliminary proceedings or in proceedings on the merits.

The conditions for issuing an order are *prima facie* evidence suggesting infringement together with an urgent need to prevent imminent damage to the claimant.

A court bailiff instructed by a lawyer is responsible for enforcing the order. The period to initiate proceedings on the merits is set by the court and can be no longer than 30 days.

Factors considered by the court

The balance of both parties' interest is taken into account by the court.

Recurring penalty payments

The court may issue an order for recurring penalty payments. Penalty levels are evaluated at the discretion of the judge and may be up to EUR 10 000 due to the claimant for each violation (Art. 17 Law No. 1733).

Provisional and precautionary measures against intermediaries

The claimant may apply for a provisional and precautionary measure against intermediaries (Art. 17 Law No. 1733).

Circumstances justifying an order for precautionary seizure

In accordance with Art. 9.2 ED, to justify an order for precautionary seizure of property of the alleged infringer including the blocking of bank accounts, the claimant must show an infringement committed on a commercial scale (Art. 17B.3 Law No. 1733).

Assessment of required evidence

There is no definition of what constitutes “reasonably available evidence” or “sufficient degree of certainty” (as referred to in Art. 9.3 ED). It is for the judge to examine this in accordance with the circumstances.

Conditions justifying *ex parte* order

According to Art. 17B.4 Law No. 1733, an *ex parte* order may be granted. The claimant must demonstrate that any delay would cause irreparable harm. In such cases, the decision or the order, if not notified to the defendant before or during its enforcement, it shall be notified on the first business day following enforcement.

What constitutes “appropriate cases” (as referred to in Art. 9.4 ED) is not defined in the legislation. It depends on the judge to examine this in accordance with the circumstances.

What constitutes “irreparable harm” (as referred to in Art. 9.4 ED) is not specified in the legal provision.

Protections available to the defendant

See Part II “Protection available to the defendant”.

Non-compliance with an order

The Court of First Instance is competent in case of non-compliance.

The following sanctions may be imposed: monetary penalty up to EUR 100 000 and imprisonment of up to one year (Art. 947 Code of Civil Procedure).

The procedure laid down in Code of Civil Procedure relating to monetary claims is applicable. See also Art. 614 et seq. Code of Civil Procedure.

Appeal/review

See Part I “Appeal/review”.

Non-compliance with UPC-issued order

According to Art. 82(3) UPCA, an order issued by the UPC will be enforced in the same way as an order issued by the national court. Therefore the authority and procedure would be the same as indicated at “Non-compliance with an order” above.

Legal basis and case law

Art. 17B Law No. 1733/87

V Corrective measures

Titles of the orders

Διορθωτικά μέτρα (corrective measures)

Απόσυρση (recall)

Απομάκρυνση (removal)

Καταστροφή (destruction)

Other available measures in Greece

There are no measures other than those provided for in Art. 10.1(a)-(c) ED that may be ordered.

Basic procedural framework

The Court of First Instance may issue the order in proceedings on the merits.

A court bailiff instructed by a lawyer is responsible for enforcing the order.

For the grant of an order for recall or removal from the channels of commerce, the patentee will file a main action. The court will generally hear both parties and will issue a decision.

If an order for the destruction of infringing goods is served on the defendant, the defendant is obliged to arrange for the destruction of goods and present a certificate confirming its execution to the claimant.

The claimant may ask for the abovementioned measures in parallel.

The legislation does not define “particular reasons” (as referred to in Art. 10.2 ED) not to carry out the measures at the expense of the defendant. It lies at the discretion of the judge.

Assessment of proportionality for ordering remedies

The court will apply the principle of proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties (Art. 17.1 Law No. 1733).

Evidence of destruction

A report is prepared by the entity responsible for destruction, usually a private company or the tax authorities.

Non-compliance with an order

The Court of First Instance is competent in case of non-compliance.

The following sanctions may be imposed: a penalty up to 10 000 EUR due to the claimant for each violation (Art. 17 Law No. 1733), and imprisonment of up to one year (Art. 947 Code of Civil Procedure).

The procedure laid down in Code of Civil Procedure relating to monetary claims is applicable. See also Art. 614 et seq. Code of Civil procedure.

Appeal/review

See Part I “Appeal/review”.

Non-compliance with UPC-issued order

According to Art. 82(3) UPCA, an order issued by the UPC will be enforced in the same way as an order issued by the national court. Therefore the authority and procedure would be the same as indicated at “Non-compliance with an order” above.

Legal basis and case law

Art. 17(1) Law No. 1733/87

VI Injunctions

Title of the order

Απαγορευτική διάταξη

Basic procedural framework

The Court of First Instance is competent for issuing an injunction.

A court bailiff instructed by a lawyer is responsible for enforcing the injunction.

Injunctions against intermediaries

The claimant may apply for an injunction against intermediaries, provided that the third party’s services are used to infringe.

Compulsory licence as a defence

Further to the new provisions regarding compulsory licences (Law 4605/2019, Art. 5) compulsory licences are granted by the patent office. Accordingly aspects justifying the grant of

a compulsory licence can not be brought forward as a defence in infringement proceedings since the court would not be competent to grant such licence.

Court’s discretion if finding of infringement

The court has a discretion as to whether to issue a permanent injunction once infringement is established.

The court will take urgency and the balance of interests into account when considering the permanent injunction.

Non-compliance with an order

The Court of First Instance is competent in case of non-compliance.

Non-compliance is established according to the procedure of Art. 686 of Code of Civil Procedure (preliminary proceedings).

The following sanctions may be imposed: monetary penalty up to 10 000 EUR due to the claimant for each violation (Art. 17 of Law No. 1733), and imprisonment of up to one year (Art. 947 Code of Civil Procedure).

The procedure laid down in Code of Civil Procedure relating to monetary claims is applicable. See also Art. 614 et seq. Code of Civil procedure.

Appeal/review

See Part I “Appeal/review”.

Non-compliance with UPC-issued order

According to Art. 82(3) UPCA, an order issued by the UPC will be enforced in the same way as an order issued by the national court. Therefore the authority and procedure would be the same as indicated at “Non-compliance with an order” above.

Legal basis and case law

Art. 17(1) Law No. 1733/87

VII Alternative measures

Title of the order

Εναλλακτικά μέτρα

Basic procedural framework

Article 17C Law No. 1733 provides that pecuniary compensation may be paid to the claimant instead of applying the measures referred to in Arts. 17A and 17B (corresponding to Arts. 6 to 9 ED). Art. 12 ED (alternative measures) is applicable to measures in Section 5, Arts. 10 (corrective measures) and Art. 11 (injunctions) ED.

Non-compliance with an order

The Court of First Instance is competent in case of non-compliance.

The procedure applicable is that of Art. 904 et seq. of the Code of Civil Procedure. The following sanctions may be imposed: seizure of debtor's property or bank accounts, and imprisonment of up to one year for a debt over EUR 30 000 (Art. 1047 of the Code of Civil Procedure).

Appeal/review

See Part I "Appeal/review".

Non-compliance with UPC-issued order

According to Art. 82(3) UPCA, an order issued by the UPC will be enforced in the same way as an order issued by the national court. Therefore the authority and procedure would be the same as indicated at "Non-compliance with an order" above.

Legal basis and case law

Art. 17C Law No. 1733/87

VIII Damages

Calculation methods available in Greece

The calculation methods indicated in Art. 13.1(a) and (b) ED are available in Greece.

Basic procedural framework

The determination of the amount of damages ordered for the successful party may be requested in the main infringement proceedings or in subsequent separate proceedings.

The judicial authority competent to decide on such a claim is the same court that decided on the claim for patent infringement.

The successful party may request information as per Art. 8 ED (Art.17A.4-5 Law No. 1733) in order to calculate damages and/or profits gained as a result of infringement.

Methods of calculation

The claimant may choose between different calculation methods to determine damages, such as lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement. Alternatively, in appropriate cases, the damages may be set as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

However, the judicial authorities may not mix and match different calculation methods to determine damages. The court will be bound by the method requested by the claimant.

Evidence of reasonable royalties may be submitted by the parties and the court may consider judgments (either Greek or foreign) recognising a royalty rate as reasonable in the relevant technological sector.

Evidence of lack of knowledge

The defendant should have acted without intention (*dolus*) or negligence (Art. 17.2 Law No. 1733).

Non-compliance with an order

The Court of First Instance is competent in case of non-compliance.

The procedure applicable is that of Art. 904 et seq of the Code of Civil Procedure. The following sanctions may be imposed: seizure of debtor's property or bank accounts, and imprisonment of up to one year for a debt over EUR 30 000 (Art. 1047 of Code of Civil Procedure).

Appeal/review

The order to pay damages may be appealed within 30 days (plus an extra 30 days for foreign entities) from service of judgment or, where the judgment has not been served, within two years from publication of judgment.

The appeal must be brought before the relevant Court of Appeal.

Non-compliance with UPC-issued order

According to Art. 82(3) UPCA, an order issued by the UPC will be enforced in the same way as an order issued by the national court. Therefore the authority and procedure would be the same as indicated at "Non-compliance with an order" above.

Legal basis and case law.

Art. 17D.1 Law No. 1733/87

IX Legal costs

Overview of assessment of costs

What constitutes "reasonable and proportionate" (as referred to in Art. 14 ED) is decided at the court's discretion.

Law No. 1733/87 stipulates that "general legal costs and expenses" shall include: expenses for experts, witnesses, attorney fees, fees for investigators or technical advisors and expenses for discovering the identity of the infringer.

Costs are decided in the infringement action.

Attorneys' fees are awarded in accordance with national rules (Law 4194/2013). In case of lawsuits claiming damages, the rules provide that the fees for preparing and filing a lawsuit for damages are calculated at 3% of the amount claimed for the claimant's attorney and 2% for the defendant's attorney. If no damages are claimed, the attorney fees awarded are minimal.

Legal basis and case law

Art. 17D.2 Law No. 1733/87

Art. 58 et seq. of Law No. 4191/2013

X Publication of judicial decisions

Title of the order

Δημοσίευση Δικαστικής Απόφασης

Basic procedural framework

The court, upon request by the claimant, may order the publication of the decision in whole or in part at the cost of the opposing party. The operative part of the judgment must be published for the measure to be implemented.

The publication will generally take place in a newspaper but there is no restriction in this regard. Publication on the internet is also foreseen in the legislative text.

The competent court to issue the order is the one dealing with the preliminary and/or main proceedings. The request may be filed in preliminary proceedings or proceedings on the merits. The judicial authorities take into account whether the objective of this measure is met, which is to correct false impressions to consumers regarding the identity of a product and to set a precedent in order to prevent future infringement by others.

Non-compliance with an order

The Court of First Instance is competent in case of non-compliance.

The procedure applicable is that of Art. 904 et seq. of the Code of Civil Procedure. The following sanctions may be imposed: seizure of debtor's property or bank accounts, and imprisonment of up to one year for a debt over EUR 30 000 (Art. 1047 of Code of Civil Procedure).

Appeal/review

See Part I "Appeal/review".

Non-compliance with UPC-issued order

According to Art. 82(3) UPCA, an order issued by the UPC will be enforced in the same way as an order issued by the national court. Therefore the authority and procedure would be the same as indicated at “Non-compliance with an order” above.

Legal basis and case law

Art. 17D.3 Law No. 1733/87

Art. 692 Code of Civil Procedure

XI Other appropriate sanctions

None available.

XII Additional options

Other available options in Greece

Greek patent law does not contain any criminal sanctions, i.e. patent infringement as such is not a criminal act in Greece.

Criminal proceedings may only be instituted if the patent infringement at the same time constitutes a criminal act according to general provisions of criminal law, including forgery (Art. 216 Greek Penal Code) or fraud (Art. 386 Greek Penal Code). For criminal proceedings the competent authority is the criminal court. The procedure for criminal proceedings is based on Code of Criminal Procedure.

Border measures are available in Greece. The competent authority for border measures are the customs authorities. The procedure for border measures is based on Regulation (EU) No. 608/2013. The destruction of goods may follow.

Non-compliance with an order

Criminal sanctions may be applicable in case of non-compliance with border measures.

Legal basis and case law

Border measures: EU Regulation 608/2013

Criminal proceedings: Art. 216 Penal Code (forgery) and Art. 386 Penal Code (fraud)