

GREECE

PI maintained despite nonfinal ruling on infringement

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According to the Greek Code of Civil Procedure, while a main infringement action is pending, the defendant has the right to request that a preliminary injunction, previously granted for the same cause of action and between the same parties, be lifted on the basis of either an error in law or/and of an error in fact.

In a recent judgment regarding a main patent infringement action, the Greek Full Bench Court of First Instance specialised in IP matters maintained a preliminary injunction previously granted by the Single Court of First Instance and set aside the defendant's relevant request on the following grounds:

- 1) The Full Bench Court appointed experts to address questions on the patent's infringement. In this context, it was held that at this stage of proceedings the Full Bench Court could not overturn the ruling delivered in preliminary injunction proceedings, namely that the patent was valid and infringed. In this regard, it was emphasised that the Full Bench Court was not in a position to rule, either with certainty or with a probability on the patent's infringement, without the technical assistance of the appointed experts.
- 2) The balance of convenience was in the claimant's favour, as the latter's harm, should the preliminary injunction be lifted, was found to be hardly reversible, as opposed to the harm to be suffered by the defendant if the injunction remained in force.

In this remarkably sophisticated judgment, the injunction granted, survived by having passed a twofold test, as set under (1) and (2) above. In essence, the Court of the main action maintained the in-

junction because the claimant passed test (1) – the infringement test – before the Court in injunction proceedings and test (2) – the balance of convenience test – before the Court of the main action.

The Full Bench Court emphasised that it may reassess its position following delivery of the appointed expert's report, even in the form of a nonfinal judgment. This seems to be a stepbystep approach, with no previous case law precedent, that may well safeguard just and fair results in patent litigation that is highly complex in both legal and technical terms.