

Chapter 19

Greece

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I. INTRODUCTION

§ 19:1 In general

Under Greek intellectual property law, there is a fundamental distinction between copyright and industrial property.

Copyright law regulates the protection of incorporeal assets, which may have a financial value and are incident on their creator's personality. This branch of law regulates the creators' protection and the rights recognized to them with respect to their work.

Pursuant to Law Number 2121/93, which is the primary copyright legislative act, "each original headwork of speech, art or science expressed in any form" is protected by copyright. This legal notion is further specified through an indicative enumeration of basic categories of works. Hence, texts, opuses, works of formative articles, photographs, theatre plays, choreography, audio-visual works, architectural works, multimedia works, and computer programs are protected accordingly.

The broad nature of this indicative reference, leads to the protection of every creative work pursuant to the copyright legislation as long as it is characterized by originality, even if the work does not squarely fall under the categories provided by law. However, Law Number 2121/93 exempts certain categories from the copyright legislation, such as legislative, administrative and judicial documents, news, historic events, bibliographical material, and folklore expressions.

Industrial property law refers to the protection of incorporeal assets as well, with the difference that, whereas copyright deals with cultural creations, the object of industrial property law is mainly rights of

financial nature, connected with the economic activity of the holder. Pursuant to the principle of *numerus clausus* applicable in industrial property law, rights of industrial property are only those specifically and limitatively provided for by law and their content is exclusively so determined.

The industrial property legislation regulates trade marks, patents, utility models, industrial designs, certificates on botanical genera and species, and topographies as well as designs of semiconductor products. It does not cover trade names and distinctive titles, scientific theories and mathematical methods, rules and methods for the exercise of financial activities (such as know-how, as defined by the Anglo-Saxon law, which is protected by Law Number 146/1914 on unfair competition), surgical, therapeutic, or diagnostic methods.

Established by Law Number 1733/87, the Industrial Property Organization (*Organismos Viomichanikis Idioktisias*) is the sole authority responsible for protecting patents, industrial designs and utility models, as well as for issues on technological information and technology transfer in Greece. Other important authorities are the Commercial and Industrial Chamber of Athens (*Emboriko kai Viomichaniko Epimelitirio Athinon*) and other local chambers. Chambers are responsible for examining and registering trade names and distinctive titles of companies.

Finally, the General Secretariat of Commerce of the Ministry of Development (formerly, the Ministry of Commerce) is the authority competent on trade mark matters. Under Law Number 4072/12, (which incorporated Directive 2008/95/EC into Greek law and is in line with CTM Regulation 2009/207/EC), applications for registering trade marks are handled by examiners who are competent to rule on the admissibility of the trade marks. Disputes on trade marks are heard by a three-member administrative organ called the Trade Marks Administrative Commission (*Diikitiki Epitropi Simaton*) to which judicial competence is conferred.

II. PATENTS

§ 19:2 In general

The legislative framework on patents mainly consists of Law Number 1733/87, Ministerial Decree Number 15928/EFA/1253/1987, Presidential Decree Number 77/88, and Presidential Decree Number 16/91, regulating various matters related to European Community patents. By virtue of Law Number 3966/11, which amended Law Number 1733/87, Directive 2004/48/EC was introduced into Greek legislation.

§ 19:3 Nature

The patent right has two aspects, namely the moral right related to

the respect and protection of the inventor's personality and the financial right related to the exploitation of the invention protected by the patent.

§ 19:4 Nature—Creation of rights

Patents are granted for novel inventions that involve inventive activity and are capable of industrial application. Such innovation may refer to a product, a method, or an industrial application.¹ An invention is considered novel when it surpasses the current state of art and it was not known to the public prior to its registration. Furthermore, an invention is considered novel when it is the outcome of inventive activity that, pursuant to expert opinion, does not apparently occur from the existing techniques. Finally, an invention is considered to be capable of industrial application if it is produced, manufactured or used in any aspect of industrial activity.²

Surgery and therapeutic methods addressed to human beings or animals, creations the publication or application of which contravenes public order or moral standards, scientific theories, presentation of information, and computer software are exempted from being granted a patent.

Rights on a patent are granted by the Industrial Property Organization following a respective application. Article 7(6) of Law Number 1733/87 also provides that multiple inventions may be registered by virtue of a single application. The Industrial Property Organization only examines whether the typical requirements of the law are met. Together with the application, respective fees must be paid which are currently €50. However, additional fees will be required until the issuance of the patent certificate which range between €450 to €950.

Furthermore, the application mainly consists of:

- (1) The applicant's full name or trade name, nationality, place of residence or seat, and address;
- (2) A description of the invention; and
- (3) A request to the Industrial Property Organization to grant a patent;³

If the applicant is a legal entity, the application must be accompanied by a power of attorney authorizing an individual to file the application on its behalf. In this case, further documentation is required concerning the lawful representation of the legal entity. As

[Section 19:4]

¹Law Number 1733/87, article 5(1).

²Law Number 1733/87, article 5(3)-(5).

³Law Number 1733/87, articles 7(1) et seq.

far as individuals are concerned, a power of attorney is necessary only in case the application is filed by a representative of the inventor.⁴

The application is followed by a four-month period to allow the applicant to proceed with any corrections and submit further fees and documentation consisting of the designs (drawings) of the invention, its abstract, and clarifications as well as explanations for the proper comprehension of the same.⁵ The application and the supporting documentation are then made available to the public for a period of 18 months, during which third parties may request any respective information.⁶ Extracts of the application are also published in the *Industrial Property Bulletin*.⁷

Provided the petition file is in order, the Industrial Property Organization proceeds to determine whether the object of the application meets the standards to be considered an invention and be patented. The Industrial Property Organization prepares a report based on the application, and the applicant has a three-month period to comment. Then on a final search report is drafted and the patent is either granted or rejected.⁸ Registered patents are published in the *Industrial Property Bulletin* that makes reference to their classification and period of duration as well as other key information.

§ 19:5 Nature—Beneficiaries of rights

Nationals and foreigners may apply for a patent to the Industrial Property Organization. The right to acquire a patent is reserved for the inventor¹ (or the person who appears as the inventor). The person who appears on the application and on the patent certificate is deemed to be the true inventor. It is possible that a patent is attributed to more than one individual, in which case they are all beneficiaries. However, should two or more persons proceed to the same invention simultaneously, but separately, the principle of priority applies, and the patent is granted to the first applicant.

As to inventions carried out by employees, the law distinguishes among three types of inventions. “Free invention” refers to any invention accomplished by the employee without any contribution on behalf of the employer. In this case the patent is granted solely to the employee. If a contract is entered into between two parties, by virtue of which the first party assigns the second the task to develop inven-

⁴Law Number 1733/87, article 7(2).

⁵Law Number 1733/87, article 7(9).

⁶Law Number 1733/87, article 7(12) and (13).

⁷Law Number 1733/87, article 7(14).

⁸Law Number 1733/87 article 8.

[Section 19:5]

¹Law Number 1733/87 articles 9 and 11.

tive activity, the patent on the so-called “service invention” belongs to the employer.

Finally, should an employee use means and materials furnished by the employer and achieve an invention, called a “dependent invention,” the patent belongs indivisibly to both individuals (60% to the employee and 40 % to the employer).

§ 19:6 Nature—Maintenance

A patent is valid for 20 years, after the lapse of which it ceases to exist. In the case of priority invoked on the basis of an application filed abroad, the patent is valid from the day following its registration in Greece.¹

There is no obligation for the beneficiary to operate or exploit the invention in order to keep the patent in force. However, annual fees must be paid in advance for the next year, the amount of which varies depending on the year of protection (the “older” the patent, the higher the fees).²

If the beneficiary fails to pay the fees by the given deadline, he does not forfeit his right automatically because the respective decision of the Industrial Property Organization must first be published in the *Special Bulletin of Industrial Property*.³

§ 19:7 Nature—Extension

In principle a patent may not be extended or renewed. However, some exceptions apply with respect to pharmaceutical and plant protection patents.

§ 19:8 Nature—Transfer

Patents may be the object of transfer (sale or donation). In such case, it is exigent for the parties to enter into an agreement; otherwise, the transfer is void. The transfer is considered completed when the agreement is registered with the patents registrar. Following the transfer, the beneficiary abdicates his rights on the invention.

Patents also may be bequeathed, and the heir becomes the benefi-

[Section 19:6]

¹Law Number 1733/87. article 11(2).

²No fees are to be paid during the first and second year of protection. The protection fees for the third year are €20; for the fourth year, €50; for the fifth year, €80; for the sixth year, €90; for the seventh year, €100; for the eighth year, €115; for the ninth year, €140; for the tenth year, €190; for the eleventh year, €240; for the twelfth year, €300; and, thereafter, fees are increase annually by €100.

³The forfeiture is cancelled should the beneficiary pay the fees, plus 90 per cent penalty, within six months from the deadline’s expiration.

ciary of the patent upon registration of the certificate of inheritance.¹ A patent also may be confiscated and, in case of bankruptcy, it is included in the bankruptcy property.

A patent holder may grant a third party a license to use and exploit the invention without losing his capacity as owner of the patent.² Such license, exclusive or not, limited (in time, place, or use) or not, must be in writing on pain of nullity. The contract is of constitutive nature and procures its legal effects upon its publication in the *Special Bulletin of Industrial Property*.³ In addition, the law provides for non-contractual licenses, as well as licenses granted to the public sector.

The law describes the primary obligations and rights of each party. To that respect, the beneficiary of the patent is obliged to grant the use and enjoyment of the same to the licensee, direct the licensee by giving important technical or other information and maintain the patent. The licensee must pay the owner royalties, exploit the patent, as well as keep the owner updated and report to him on matters concerning the patent.

§ 19:9 Nature—Cancellation

Patents may be declared null only following a court decision and in the following cases:

- (1) The owner of the patent is not the true inventor or the provisions regarding employee patents have been violated;
- (2) The legal requirements have not been satisfied (i.e. the creation is not novel, not capable of industrial application, or contrary to moral standards);
- (3) The description given by the beneficiary is not sufficient; and
- (4) The patent's object is broader than that for which protection was requested in the application.¹

§ 19:10 Attacks on ownership

As mentioned, rights on patents are of a dual nature. They have a

[Section 19:8]

¹However, according to article 12(4) of Law Number 1733/87, unless otherwise agreed, the license is not exclusive, assignable, or inheritable.

²In exceptional cases (when public interest is involved), licenses may be compulsory and are granted by virtue an administrative act or by court decision.

³Pursuant to article 12(5) and (6) of Law Number 1733/87, a patent holder may at any time declare to the Industrial Property Organization his consent to grant to third parties licenses against compensation. The statement, valid for two years, is recorded with the Patents Registrar and published in the Special Bulletin Industrial Property. During the two years, the patentee enjoys a deduction from the payment of the annual protection fees.

[Section 19:9]

¹Law Number 1733/87, article 15.

moral content, in the sense that the patent holder is acknowledged as the inventor, and a financial content, according to which the patent holder may exclusively exploit his invention, transfer the patent, or grant a license to a third party. Once a patent is issued, it is not possible for another person to apply for registration of the same invention.

If the person who received the patent is not the inventor or the patent was mistakenly granted to the wrong person, the true inventor is entitled to file for the patent's cancellation or bring an action against such third person. In practice, the first possibility is rarely used, and the second alternative has prevailed. The claim is to acknowledge the claimant as the sole beneficiary of all the rights emanating from the registration of the application for the patent and/or the patent itself.

Pursuant to articles 6(9) *et seq.* of Law Number 1733/ 1987, when a third party had filed a patent application relating to an invention or its essential parts without the beneficiary's consent, the beneficiary is in principle entitled to demand the recognition of his rights on the patent application and/or on the patent itself. The action must be brought before the competent Court within two years from the date of publication of the summary of the patent in the *Special Bulletin of Industrial Property*.

Once the action is accepted, the irrevocable decision of the Court must be registered with the Patents Registrar, and any licenses and other rights granted on the patent are deemed null as from the date of registration. A person falsely claiming that the products he manufactures or trades are patented may be punished with up to one year of imprisonment and also is subject to a fine.

§ 19:11 Infringement

No third party may produce or use items protected by a patent for profit. However, it is possible to use an invention for other reasons, such as research or for scientific purposes.¹

In addition, no third party may display or offer the aforementioned products to the public, regardless of whether such display or offer is carried out for free or for a consideration. Patents also are infringed when third parties exploit, import, or export items produced according to the patent without the beneficiary's authorization. In addition, if a license to use the patent was granted, a violation of the contract terms is considered a violation of the owner's rights.

In any case of infringement or threatened infringement of a patent, the holder can claim the cessation of the infringement and its omission in the future. Reparation can include withdrawal from the market of the products found to be infringing the right holder's rights or even destruction of the same.

[Section 19:11]

¹Law Number 1733/1987, article 10(2).

§ 19:12 Infringement—Actions for damages

Under Law Number 2943/01, an action for damages may be lodged before the trade marks sections of the Athens and Thessaloniki Courts of First Instance competent for patents. For an action to be successful, the law requires that the rights protected by the patent have been violated, the person who initiated the violation is liable (in the sense of malice or negligence), and there is a causal nexus between the damage and the violation.

The notion of “damage” is not only the one defined in the Civil Code,¹ but also the benefit that the offender had due to the illicit exploitation of the patent holders rights; the beneficiary also may claim to be actually delivered the products manufactured by virtue of the patent, as well as the payment of an amount proportional to the consideration for an exploitation license. Apart from the above, according to article 932 of the Civil Code, “[. . .] the Court may on the occurrence of an unlawful act allot a reasonable amount of money to be determined in the Court’s appreciation as reparation for moral prejudice.”

§ 19:13 Infringement—Injunctions

Injunctions may be filed pursuant to the general dispositions of the Code of Civil Procedure,¹ and they may take various forms.

In order for the Court to order the injunctions, it is required from the claimant to prove the imminent danger or the urgency that threatens the disputed right or claim. However, the object of injunctions may not be the destruction of the products.

§ 19:14 Infringement—Confiscation

Patent confiscation is governed by the general dispositions of the Code of Civil Procedure. Decisions must be published in the *Special Bulletin of Industrial Property*. The court can decide the confiscation of objects held by the infringer that are means of committing the offense. Furthermore, in case of an infringement committed on a commercial scale, the court may order as an injunction the confiscation of assets of the alleged infringer, including the blocking of his bank accounts.

[Section 19:12]

¹Article 298 of the Civil Code states: “Damages shall comprise the decrease in the existing patrimony of the creditor (positive damage), as well as loss profit. Such profit will be that which can be reasonably anticipated in the usual course things or by reference to the special circumstances having regard to the preparatory steps taken.”

[Section 19:13]

¹Code Civil Procedure, articles 682 et seq.

§ 19:15 Infringement—Other means of protection

Patent holders also may be protected by a lawsuit for enrichment without just cause. This general principle of Greek law is provided in article 904(1), of the Civil Code. Patent beneficiaries also may lodge a lawsuit and demand that the violation of rights on the patent be stopped and not repeated in the future. A lawsuit also may be filed for the violation of the moral aspects of the patent.

§ 19:16 Infringement—Customs action

Pursuant to Regulation 2003/1383/EC and Regulation 2004/1891/EC, as amended by Regulation 2007/1172/EC, and upon the filing of a respective request, any counterfeit or pirated goods, and overall goods that infringe intellectual property rights are prohibited by the Customs authorities from entering Greece.

The right holder may file an application for action by the Customs authorities before the Attica Customs District. Such an application requires submitting a number of legitimizing documents translated into Greek, but incurs no administrative costs. It is noted that such an application may be filed as a precautionary measure.

III. COPYRIGHT**§ 19:17 In general**

Law Number 2121/93 serves as the basic domestic legislation on copyright protection in Greece. It is noted that Greece has ratified almost all the international conventions concerning copyright and related rights (Law Number 213/75 ratified the Paris Convention for the protection of industrial property, Law Number 2505/97 ratified the Nice Agreement on the classification of goods and services, Law Number 2290/95 ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights, and Law Number 2783/00 ratified the Madrid Protocol on the International Registration of Marks as implemented by Ministerial Decision K4-307/2001).

According to article 1 of Law Number 2121/93, an author upon creation of a work, obtains copyright over the same. This right includes, as exclusive and absolute rights, the right to exploit the work (economic right) and the right to protect the personal connection with the work (moral right).¹

Article 6 of Law Number 2121/93 confirms the principle by which

[Section 19:17]

¹The moral right is no longer based on article 57 the Civil Code that protects personality. Thessaloniki Court Appeal, Decision Number 3321/98; Athens Court First Instance, Decision Number 6196/96 (unpublished); Athens Magistrates Court, Decision Number 1357/97.

the above rights are vested in the author of a work without resort to any formalities.² Under Greek law (articles 3 and 4 of Law Number 2121/93), economic and moral rights establish an author's right to authorize or prohibit a series of actions. More specifically, economic rights confer on authors the right to authorize or prohibit:

- (1) The fixation and direct or indirect, temporary, or permanent reproduction of their works by any means and in any form, in whole or in part;
- (2) The translation of their works;
- (3) The arrangement or adaptation of their works;
- (4) Concerning the original or copies of their works, the distribution to the public in any form by sale or otherwise;³
- (5) The rental or public lending concerning the original or copies of their works;⁴
- (6) The public performance of their works;⁵
- (7) The broadcast or re-broadcast of their works to the public by radio and television, by wireless means, cable, or any kind of wire or any other means⁶
- (8) The communication to the public of their works, by wire or wireless means or by any other means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them; and
- (9) The import of copies of their works produced abroad without the creator's consent or the import of copies from a country outside the EU when the right over such import in Greece had been retained by the author through contract.

Furthermore, moral rights confer on the author the rights to:

²Athens Court Appeals, Decision Number 5321/89; Thessaloniki Court First Instance, Decision Number 380/93.

³The distribution right will be exhausted within the European Union only where the first sale or other transfer of ownership in the European Union of the original or copies is made by the right holder or with his/her consent; Athens Court First Instance, Decision Number 12729/97.

⁴Rental and public lending have the meaning provided by Council Directive 92/100/EC 19 November 1992, as codified by Council Directive 2006/115/EC 12 December 2006.

⁵The use, performance, or presentation of a work will be deemed to be "public" when the work thereby becomes accessible to a circle of persons wider than the narrow circle of the family and the immediate social circle of the author, regardless of whether the persons of this wider circle are at the same or at different locations. Supreme Court, Decision Number 433/92; Supreme Court, Decision Number 135/83; Supreme Court, Decision Number 61/81.

⁶Article 8 of Law Number 2121/93, article 25, as amended by Law Number 2557/97.

- (1) Decide on the time, place, and manner in which the work will be made accessible to the public;⁷
- (2) Demand that his status as the author of the work be acknowledged to the extent that it is possible;⁸
- (3) Prohibit any distortion, mutilation, or other modification of his work and any offence to the author due to the circumstances of the presentation;⁹
- (4) Have access to his work, even when the economic right in the work or the physical embodiment of the work belongs to another person;¹⁰ and
- (5) In the case of a literary or scientific work, rescind a contract transferring the economic right or an exploitation contract or license of which his work is the object, subject to payment of material damages to the other contracting party, for the pecuniary loss he has sustained when the author considers such action to be necessary for the protection of his personality because of chances in his beliefs or in the circumstances.

§ 19:18 Elements of work

The two fundamental elements of “work” refer to originality and form. Originality could be considered as the result of the personal contribution of the author due to which the work is characterized by a particular “individuality” that is not presented in the intellectual products of daily routine.¹ Similarly, originality is associated with the static uniqueness of intellectual works compared to other past or future possible works.

The term “work” also designates translations, adaptations, arrangements, and other alterations of works or of expressions of folklore, as well as collections of works or collections of expressions of folklore or of simple facts and data, such as encyclopaedias and anthologies, provided the selection or the arrangement of their contents is original.² Protection afforded to these works may not prejudice rights in the

⁷Athens Court of First Instance, Decision Number 32992/97.

⁸Athens Court Appeal, Decision Number 631/90; Athens Court First Instance, Decision Number 1293/87.

⁹Athens Court Appeal, Decision Number 7545/82; Athens Court First Instance, Decision Number 7642/77.

¹⁰In the latter cases, access must be effected with minimum possible nuisance to the right holder.

[Section 19:18]

¹Law Number 2121/93, article 2(3); Thessaloniki Court Appeals, Decision Number 3321/98.

²Supreme Court, Decision Number 475/36.

pre-existing works which were used as the object of the alterations or the collections.³

§ 19:19 Elements of work—Databases

Databases which, due to the selection or arrangement of their contents, constitute the author's intellectual creation will be protected as such by copyright.¹ Directive 96/9/EC was introduced in Greek legislation by Law Number 2819/00 that amended Law Number 2121/93. Copyright protection may not extend to the contents of databases and must be without prejudice as to rights subsisting in such content. The author of a database will have the exclusive right to carry out or to authorize:

- (1) The temporary or permanent reproduction by any means and in any form, in whole or in part;
- (2) The translation, adaptation, arrangement, and any other alteration;
- (3) The distribution to the public of the database or of copies thereof;²
- (4) The communication, display, or performance to the public; and
- (5) The reproduction, distribution, communication, display, or performance to the public of the results of the acts referred to in point 2, above.³

Article 45A of Law Number 2121/93 recognizes a *sui generis* right of the maker of the database, meaning the individual or legal entity that takes the initiative and bears the risk of investment.⁴ The maker of a database has the right to prevent extraction and/or re-utilization of the whole or of a substantial part thereof (evaluated qualitatively and/or quantitatively) of the contents of the database.⁵

§ 19:20 Elements of work—Computer programs

Computer programs and their preparatory design material is deemed to be literary work within the meaning of the provisions of Greek copyright protection. Therefore, protection in accordance with

³Law Number 2121/93, article 2(2).

[Section 19:19]

¹Law Number 2121/93, article 2(2); Athens Court First Instance, Decision Number 14106/95.

²The first sale in the European Union of a copy of the database by the right holder or with his consent will exhaust the right to control resale of that copy within the European Union.

³Law Number 2121/93, article 3(3).

⁴The database contractor is not considered as maker.

⁵Article 7 of Council Directive 96/9/EC was incorporated into Greek law in article 2(a) of Law Number 2121/93 (introduced by article 7 of Law Number 2819/00).

Law Number 2121/93 will apply to expression in the form of a computer program. However, ideas and principles that underlie an element of a computer program, including those that underlie its interfaces, are not protected under Law Number 2121/93. A computer program will be protected if it is original and if it is the author's personal intellectual creation.¹

The protection afforded under Law Number 2121/93 will apply regardless of the value of the work and its destination and regardless of the fact that the work is possibly protected under other provisions as well. However as already mentioned, the protection afforded under Law Number 2121/93 will not apply to official texts expressive of the authority of the state, notably to legislative, administrative, or judicial texts; nor will it apply to expressions of folklore, news information, or simple facts and data.

§ 19:21 Elements of work—Collective works

If there are multiple authors, Law Number 2121/93 establishes rules regarding interpretation of the legitimate allocation of rights over created works. In works of “joint authorship,” article 7 of Law Number 2121/93 indicates that this term designates any work which is the result of the direct collaboration of two or more authors.¹ The initial right holders in respect of economic and moral rights in a joint work will be the co-authors of that work and unless otherwise agreed, the same will share the rights equally.²

The term “collective work” designates any work created through the independent contribution of several authors, acting under the direction and coordination of one individual.³ That individual will be the initial right holder of the economic right and the moral right in the collective work. Each author will be the initial right holder of the economic right and the moral right in his own contribution, provided that that contribution is capable of separate exploitation. The term “composite work” designates a work that is composed of distinct parts created separately. In this case, the authors of all of the parts will be the initial co-right holders of the rights in the composite work, and each author will be the exclusive initial holder of the rights of the part of

[Section 19:20]

¹Law Number 2121/93, articles 40 et seq.

[Section 19:21]

¹Civil Code, articles 785 et seq.

²Law Number 2121/93 article 33(3).

³Audiovisual works are considered as “collective works.” Article 9 of Law Number 2121/93 provides that the principal director of an audiovisual work will be considered as its author; Supreme Court, Decision Number 512/86.

the composite work that he has created, provided that that part is capable of separate exploitation.⁴

§ 19:22 Elements of work—Employee works

Where an employee in the execution of an employment contract creates a work, the initial holder of the economic and moral rights in the work will be the same. Unless provided otherwise by contract, only such economic rights as are necessary for the fulfilment of the purpose of the contract will be transferred exclusively to the employer. However and to the contrary, the entire economic right on works created by employees under any work relation of the public sector or a legal entity of public law in execution of their duties, is *ipso jure* transferred to the employer, unless provided otherwise by contract.

§ 19:23 Elements of work—Anonymous or pseudonymous works

A person who lawfully makes available to the public anonymous or pseudonymous works is deemed as the initial holder of the economic and moral right towards third parties (but not towards the true author).¹ When the true author of the work reveals his identity, he acquires the rights in the condition they are in as a result of the actions of the fictitious right holder.²

§ 19:24 Related rights

Under section VIII of Law Number 2121/93, five categories of holders of related rights are recognized, i.e., performers, producers of sound and visual recordings, radio and television organizations, publishers, and persons who have published previously unpublished works.

§ 19:25 Related rights—Performers

The term “*performers*” designates persons who act or perform works, such as actors, musicians, singers, chorus singers, dancers, puppeteers, shadow theatre artists, variety performers, or circus artists. Performers or performing artists have the right to authorize or prohibit:

- (1) The fixation of their performances;
- (2) The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, concerning the fixation of their performances;

⁴Athens Court First Instance, Decision Number 11923/98.

[Section 19:23]

¹Supreme Court Decision Number 238/95.

²Law Number 2121/93, article 11.

- (3) The distribution to the public of the fixation of their performance, by sale or other means;
- (4) The rental and public lending of the fixation of their performance by any means, such as wireless, satellites, or cable, as well as communication to the public of a recording with an illegal fixation of their live performances;
- (5) The radio and television broadcast by any means, such as wireless, satellites, or cable, of their live performances, except where the broadcast is a re-broadcast of a legitimate broadcast;
- (6) The communication to the public of their live performances made by any means other than radio or television transmission; and
- (7) The making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

§ 19:26 Related rights—Phonogram producers

Phonogram producers (producers of sound recordings) have the right to authorize or prohibit:

- (1) The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their phonograms;
- (2) The distribution to the public of the above recordings by sale or other means;
- (3) The rental and public lending of the recordings;¹ and
- (4) The making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

§ 19:27 Related rights—Radio and television organizations

Radio and televisions organizations have the right to permit or prohibit:

- (1) The transmission of their broadcasts by any means, such as wireless, satellites, or cable;
- (2) The communication of their broadcasts to the public in places accessible to the public against payment of an entrance fee;
- (3) The fixation of their broadcasts on sound or sound and visual recordings, regardless of whether the broadcasts are transmitted by wire or by air, including by cable or satellite broadcasting;

[Section 19:26]

¹Such rights are not exhausted by any sale or other act of distribution of the recordings.

- (4) The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of the fixation of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including cable or satellite;
- (5) The distribution to the public of the recordings containing the fixation of their broadcasts, including the copies thereof, by sale or other means;
- (6) The rental or public lending concerning the recordings containing the fixation of their broadcasts; and
- (7) The making the work available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them concerning the fixation of their broadcasts;

§ 19:28 Related rights—Publishers

According to article 51 of Law Number 2121/93, publishers of printed material have the right to authorize or prohibit the reproduction by reprographic, electronic, or any other means of the typesetting and pagination format of the works published by them, if the said reproduction is made for exploitation purposes.

Article 51A of Law Number 2121/93 provides that any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, will benefit from a protection equivalent to the economic rights of the author.

§ 19:29 Duration—Authors

Article 29 of Law Number 2121/93 provides that copyright will last for the whole of the author's life and for 70 years after his death, calculated from 1 January of the year after the author's death.¹ After the expiry of the period of copyright protection, the state, represented by the Minister of Culture, may exercise rights relating to the acknowledgment of the author's paternity and rights relating to the protection of the integrity of the work deriving from the moral rights, pursuant to article 4 of Law Number 2121/93.

§ 19:30 Duration—Joint authorship

In reference to "works of joint authorship," copyright will last for the lifetime of the last surviving author and 70 years after his death,

[Section 19:29]

¹There is no time constraint as to the duration the moral rights performers. Law Number 2121/93, article 50, paragraph 2.

calculated from 1 January of the year after the death of the last surviving author.¹

§ 19:31 Duration—Anonymous or pseudonymous works

In the case of anonymous or pseudonymous works, the term of copyright will last for 70 years calculated from 1 January of the year after which the work was lawfully made available to the public. However, if, during the above period, the author discloses his identity or when the pseudonym adopted by the author leaves no doubt as to his identity, the general rules apply. Where a work is published in volumes, parts, instalments, issues, or episodes, the term of protection will run for each such item separately.

§ 19:32 Duration—Audiovisual works

The term of protection of audiovisual works will expire 70 years after the death of the last surviving individual amongst the principal director, the author of the screenplay, the author of the script, and the composer of the music specifically created for use in the audiovisual work.¹

§ 19:33 Duration—Databases

The *sui generis* right of the maker of a database, provided for in article 45 A of Law Number 2121/93, will run from the date of completion of the making of the database. It will expire 15 years from 1 January of the year following the date of completion.

In the case of a database made available to the public in whatever manner before expiry of the period provided above, the term of protection will expire 15 years from 1 January of the year following the date when the database was first made available to the public.

§ 19:34 Duration—Performers

The protection of performers provided in articles 46 and 49 of Law Number 2121/93 will expire 50 years after the date of the performance, but the term cannot be less than that of the life of the performer.

However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights will expire 50 years from the date of such first publication or such first communication to the public, whichever is earlier.

[Section 19:30]

¹Law Number 2121/93, article 30.

[Section 19:32]

¹Council Directive 93/83/EC, article 2(2).

§ 19:35 Duration—Phonogram producers

The rights of phonogram producers will expire 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, said rights will expire 50 years from the date of the first lawful publication.

If no lawful publication has taken place within the period mentioned above and if the phonogram has been lawfully communicated to the public within this period, the rights will expire 50 years from the date of the first lawful communication to the public.

§ 19:36 Duration—Producers of sound and visual recordings

The rights of producers of audiovisual works will expire 50 years after the fixation is made. However, if lawful publication or lawful communication of the device is made to the public within such period, the rights will expire 50 years from the date of first publication or first communication to the public, whichever comes first.

§ 19:37 Duration—Broadcasting organizations

The rights of broadcasting organizations provided for in article 48 of Law Number 2121/93 will expire 50 years after the date of the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, by cable or satellite, or any other means of transmission.

§ 19:38 Duration—Publishers

The rights of publishers provided for in article 51 of Law Number 2121/93 will expire 50 years after the last edition of the work.

§ 19:39 Duration—Unpublished works

The term of the protection of previously unpublished works will be 25 years from the time when the work was first lawfully published or lawfully communicated to the public and is calculated from 1 January of the year after the first lawful publication or communication to the public.¹

§ 19:40 Transfer of rights

Article 12 of Law Number 2121/93 provides that the entire economic rights may be transferred contractually or *mortis causa*. Moral rights are not transferable contractually. After the death of an author,

[Section 19:39]

¹Law Number 2121/93, article 51A.

moral rights will pass to his heirs,¹ who must exercise the rights in compliance with the author's wishes, provided that such wishes have been expressed.

§ 19:41 Transfer of rights—Contracts of transfer

The author of the work may conclude contracts by which he entrusts economic rights to the other contracting party and the other party undertakes the obligation to exercise the rights thus entrusted (exploitation contracts). Moreover, the author of the work may authorize another person to exercise economic rights (exploitation licenses).¹

Exploitation contracts and licenses may be exclusive or non-exclusive. Where doubt exists about the exclusivity of an exploitation contract or license, the contract or license will be deemed to be non-exclusive. Exclusive exploitation contracts and licenses will empower the other contracting party to exercise the rights conferred by the contract or license excluding any third person.

Non-exclusive exploitation contracts and licenses will give the right to the other contracting party to exercise the rights conferred by the contract or license in parallel to the author and other contracting parties. In the absence of an agreement to the contrary and irrespective of the exclusive or non-exclusive character of a contract concerning copyright, the other contracting party will be entitled in his own name to seek legal protection against illegal infringements by third parties of the rights he exercises.

The contract or license may not confer any total right over the future works of the author and will not be deemed to also refer to forms of exploitation unknown on the date of the contract.² The rights of a person who undertakes to carry out the exploitation of a work or who acquires the possibility of exploitation may not be contractually transferred without the consent of the author.

Acts dealing with the transfer of economic rights, the assignment or licensing of the right of exploitation, and the exercise of moral rights will be null and void unless they are concluded in writing. Nullity may be invoked only by the author.³

Consequently, article 15 of Law Number 2121/93 establishes the principle of contractual division of authors' rights; the transfer of the economic right and exploitation contracts or licenses allowing the exploitation of that right may restrict the rights they confer, their

[Section 19:40]

¹Law Number 2121/93, article 16.

[Section 19:41]

¹Law Number 2121/93, article 13.

²Law Number 2121/93, article 54(3).

³Law Number 2121/93, article 14.

scope and duration, the geographical application, and the extent or the means of exploitation.

If the duration of the transfer or of the exploitation contract or license is unspecified, its duration will be deemed to be limited to five years, provided conventional mores do not indicate otherwise.⁴ If the geographical application of the transfer agreements is unspecified, they will be deemed to concern the country in which they were concluded.

If the extent of the transfer agreements is unspecified, they will be deemed to concern the extent necessary for the fulfilment of the purpose of such agreements.⁵ In all cases involving the transfer of the economic right or the granting of an exclusive exploitation license, the person who acquires the right or the license must ensure that, within a reasonable period of time, the work is made accessible to the public via an appropriate form of exploitation.

§ 19:42 Transfer of rights—Fees

The fee payable to the author by the other contracting party must be determined as a percentage agreed between the parties.¹ The computation of the percentage must be based on gross revenues without exception or the gross expenditure, or on the combined gross revenues and expenditure realized from the activity of the other contracting party in the course of the exploitation of the work.

The obligatory percentage arrangement must be implemented in all circumstances, provided that Law Number 2121/93 does not stipulate otherwise and provided that the contract does not concern works created by employees in the execution of the employment contract, computer programs, or advertisement in any form.²

Articles 33-38 of Law Number 2121/93 impose specific terms in contracts related to printed editions and translators' rights, as well as audiovisual production contracts, theatrical performance fees, musical accompaniment of films, and photographers' rights.

Except where provided for elsewhere in law, any agreement which lays down conditions contrary to the provisions of articles 33-38 of Law Number 2121/93 or which imposes a fee lower than that prescribed by law will be null and void in respect of those of its clauses which are deleterious to the authors.

⁴Athens Court First Instance, Decision Number 15808/99 and Decision Number 6208/11.

⁵Athens Court Appeals, Decision Number 7545/82.

[Section 19:42]

¹Law Number 2121/93, article 32.

²Law Number 2121/93, article 56(1).

§ 19:43 Transfer of rights—Collecting societies

Authors may assign the administration and/or protection of their rights to a collecting society established exclusively for that purpose.¹ A collecting society may not, without good reason, refuse to undertake the administration and/or protection of the economic rights of an author.²

The authority of a collecting society may be established by a transfer of such economic rights for which protection is sought, or by grant of appropriate powers of attorney. The authority will be established in writing and will be for a specified period which cannot exceed three years. The agreement establishing the authority must specify precisely which of the author's works are included as suitable for exploitation.

Finally, Law Number 2121/93 provides that in some occasions the administration and/or protection of copyright is mandatorily assigned to such collecting societies such as in cases where a work is broadcasted through radio or television.

§ 19:44 International aspects

According to article 67 of Law Number 2121/93, copyright in a published work will be governed by the laws of the state in which the work is first made lawfully accessible to the public (*lex primae publicationis*). Copyright in an unpublished work will be governed by the laws of the state of which the author is a national (*lex patriae*).

Related rights will be governed by the laws of the state in which the performance is realized, in which the sound or visual or sound and visual recording is produced, in which the radio or television broadcast is transmitted, or in which the printed publication is effected.

In all cases, the determination of the subject, object, content, duration, and limitations of the right will be governed by the legislation applicable pursuant to the provisions above.

The aforementioned rules will apply except where they run contrary to an international convention ratified by Greece. In the case of non signatory states to conventions ratified by Greece, the provisions above will be applicable as regards the protection of copyright, a particular object of copyright, or a particular related right, provided that the legislation of those states offers adequate copyright protection to works first made accessible to the public in Greece and to related rights

[Section 19:43]

¹Law Number 2121/93, articles 54 et seq.

²Law Number 2121/93, article 57.

stemming from acts effected in Greece. Regarding exploitation contracts and licenses, article 25 of the Civil Code will apply.¹

§ 19:45 Infringement

Every action that violates an author's economic and moral rights, without the author's permission or without legitimate reason, is deemed to be in breach of copyright law. Since copyright includes the right to exploit the work and the right to protect an author's personal connection with the work, violation is always illegal.

§ 19:46 Infringement—Remedies

In all cases of infringement of copyright or related rights, the author or right holder will be entitled to demand the recognition of his right,¹ the suppression of the infringement, and the restraint of the infringement in the future. In practice, suppression of infringement is usually associated with the destruction or the disposal of illegal works, their withdrawal from the market, the prohibition of their import and distribution to the public in any form by sale or otherwise, the prohibition of public performance or broadcasting of works, and the removal of the author's signature from the illegal works.

A person who, by intent or negligence, infringes copyright or a related right of another person must indemnify that person for the moral damage caused. In case of moral damage, indemnification is recognized although only an economic right has been violated.

Instead of seeking damages and regardless of whether the infringement was committed by intent or negligence, the author or the right holder of the related right may demand either the payment of the sum accrued by the infringing party from the unlicensed exploitation of a work or of the object of a related right, pursuant to articles 46-48 and 51 of Law Number 2121/93, or the profit gained by the infringing party from such an exploitation.

For each act of omission contributing to an infringement, the Court may impose a fine of €880 to €3,000, payable to the author or to the right holder of the related rights, as well as imprisonment of up to one year. The civil penalties of article 65 of Law Number 2121/93 also reapplied in case of infringement of intellectual property of the author of a database. For act or omission contributing to reproduction, selling

[Section 19:44]

¹Article 25 provides that "Contractual obligations will be regulated by the law under which the parties have subjected themselves. If no such right exists, then the applicable law is that which is appropriate taking into consideration all special circumstances.

[Section 19:46]

¹Law Number 2121/93, article 65(1); Code of Civil Procedure, article 70.

or otherwise distribution to the public or possession with the purpose of distributing a computer program shall, irrespective of other sanctions, be subject to an administrative fine of €1,000 for each illegal copy of the said program according to article 65A of Law Number 2121/93.²

A claim for damages based on article 914 of the Civil Code will be prescribed at the lapse of five years as from the time the injured party has had knowledge of the injury and of the person liable for compensation; in any case, the claim will be prescribed 20 years after the occurrence of the fact.³ Similarly, claims regarding moral damage and suppression of infringement, as well as the prohibition of future infringement, also are subject to five years' prescription. A restitution claim is subject to the general prescription of 20 years.⁴

§ 19:47 Infringement—Injunctions

Under article 64A of Law Number 2121/93, right holders may apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right. The same applies as to the *sui generis* right of a database maker.

Where a potential infringement of copyright is identified, such as where there is a clear intention to offer an unlawful public performance of a theatrical or cinematographic or a musical work, the competent local police authority will prohibit the infringing act when requested to do so by the author or right holder. When requested, the prosecuting authorities will grant the police any necessary mandate. The same will apply when the public presentation of a work has been in progress for more than two days without payment of due remuneration.¹

Where there is reason to believe that an infringement of copyright is occurring or may occur, the competent single-member Court of First Instance will be empowered to order preventive measures and to issue a prohibition order without the necessity of specifically designating the works that are protected. The court also may order, as a cautionary measure, the conservatory seizure of any item in the possession of the defendant that is manifestly a means to the effecting of the infringement, or a product of or evidence of the infringement. Instead of

²Article 45A was introduced in Law Number 2121/93 in compliance with European Directives 2001/84/EC and 2004/48/EC.

³Civil Code, article 937.

⁴Civil Code, article 249.

[Section 19:47]

¹Law Number 2121/93, article 63(1).

conservatory seizure, the court may order that a detailed inventory and photographic record be made of the items.²

IV. TRADE AND SERVICE MARKS

§ 19:48 Nature

Trade marks fall into the broader category of the distinctive marks of a company's products and/or services. Pursuant to article 121 of Law Number 4072/12, trade marks are defined as every sign capable of graphic figuration, able to distinguish products and/or services of a company from corresponding products and/or services of other companies. Trade marks may be verbal, figurative, three-dimensional, composite, colour, and black-and-white.

§ 19:49 Nature—Creation of rights

Rights on trade marks are obtained according to the typical system, namely, by their registration with the General Secretariat of Commerce of the Ministry of Development, following a decision of the examiner assigned to review the respective trade mark application.¹

The most crucial criterion for registering a trade mark is its distinctive power. To that respect, a search is conducted by the examiner to confirm whether the applicant's trade mark is not the same or similar to another trade mark already submitted.

The beneficiary must file an application for the trade mark, in which he should indicate the classes of products and/or services that the trade mark is destined to distinguish. As already mentioned, Greece has adopted the Nice Classification for products and services. The application is filed in electronic form and in one hard copy along with the necessary legitimizing documents. The fees are €110 for the first class and €20 for each additional class of products or services and must be paid with the filing of the application.

§ 19:50 Nature—Beneficiaries of rights

Any individual or legal entity capable of a legal transaction, operating or intending to operate a business, may register a trade mark. The term "legal entities" covers companies of any form and public legal entities, but not unions of persons without legal personality.

Cooperatives, unions of persons having legal personality, and public legal entities pursuing financial, commercial, and generally professional purposes may register a "collective" trade mark, which distinguishes the products or the services of the entity, and not of its members.

²Code Civil Procedure, article 687(1).

[Section 19:49]

¹Law Number 4072/12, articles 122 and 139(5).

§ 19:51 Nature—Maintenance

Trade marks are protected for a limited period of ten years starting from the date of the filing of the respective application with the General Secretariat of Commerce. Unless the beneficiary renews the trade mark's protection, the right ceases. Should the trade mark's owner not use the same for at least five years, he forfeits his rights.

§ 19:52 Nature—Transfer

Trade marks may be bequeathed, donated, or sold. In the case a trade mark is transferred a respective registration request must be filed with the General Secretariat of Commerce, together with the transfer deed and a fee of €90.

All transfers must be registered with the books of trade marks at the General Secretariat of Commerce and the effects of the transfer towards any third party begin as from the date of the transfer's registration. If a business is purchased as an ongoing concern, the trade mark is automatically transferred to the acquirer, unless otherwise agreed by the parties.

Under article 132 of Law Number 4072/12, as amended by Law Number 4155/13, a license may be granted to use the trade mark, following a written agreement between the right holder and a third party. By virtue of the license agreement, the third party is entitled to use the trade mark for his products or services. Again, such an agreement must be registered with the General Secretariat of Commerce.

§ 19:53 Nature—Cancellation

Following a petition by any third interested party, trade marks registered in conflict with the law may be de-registered (either partially or entirely) by virtue of a decision of the Trade marks Administrative Commission. The basis for de-registration includes:

- (1) The trade mark has not been used in essence or its use was interrupted for a period of five years from the date of its registration;
- (2) Due to the beneficiary's inactivity or comportment, the trade mark is considered a common or ordinary trade name for the products or services for which it had been registered;
- (3) The trade mark is used in such a way that may confuse the public;
- (4) The trade mark was registered without meeting the requirements of the law; and
- (5) A claim of seniority of an earlier trade mark has been admitted by OHIM under articles 34 and 35 of CTM Regulation 2009/207/EC.

§ 19:54 Nature—International aspects

Nationals or foreigners having their professional establishment in

Greece may register trade marks in Greece. Such trade marks are considered national. Nationals or foreigners having their professional establishment abroad may register trade marks already registered and protected in the state of their professional establishment, under the condition of reciprocity.

A foreign trade mark must be registered with the General Secretariat of Commerce following the approval of the examiner assigned to review the respective application. The beneficiary must submit to the General Secretariat of Commerce, together with the documentation required for the registration of national trade marks, a certificate or other document issued by the competent foreign authority, stating that the trade mark is already registered and protected there under the respective national legislation.¹

Furthermore, the application must explicitly state that Athens Courts are competent for any dispute. It is noted that all the submitted documentation must be officially translated into Greek.² Finally, it is noted that pursuant to CTM Regulation 2009/207/EC, a trade mark may be registered with OHIM or the competent authority of any EU member state and enjoy protection throughout the EU.

§ 19:55 Attacks on ownership

Under article 125 of Law Number 4072/12, a right holder's right on a trade mark consists of the right to use the trade mark, to distinguish products and/or services, the right to place it on product packaging, letterhead, invoices, pricelists, advertisements and overall printed material as well as the right to use it in electronic and/or audiovisual media.

Under article 150 of Law Number 4072/12, this right is attacked when an unauthorized third party uses a mark which is identical with the right holder's trade mark, to distinguish identical classes of products and/or services, uses a mark which resembles the right holder's trade mark to distinguish resembling classes of products and/or services, uses a mark that is identical or resembling to a reputable trade mark and such use provides the third party with undue benefits or harms the reputation and/or distinctive power of the reputable trade mark, regardless of the products and/or services distinguished.

§ 19:56 Infringement

A beneficiary's arsenal against offenses of legal and valid trade

[Section 19:54]

¹A certificate is not required when the foreign state does not require a similar certificate for the registration a Greek trade mark.

²Law Number 4072/12, article 177.

marks is broad, and it includes procedures on an administrative, penal, and civil law level.

§ 19:57 Infringement—Petition for deregistration

A petition for deregistration of a trade mark may be brought before the Administrative Trade marks Commission, on the grounds that it was registered solely to infringe the lawful rights of the right holder of another trade mark (i.e., it was registered in bad faith). Such action can be brought forth by any third party having a vested interest. The beneficiary of the trade mark that is subject to deregistration has the right to appeal to the Administrative Court.

§ 19:58 Infringement—Actions before civil courts

The beneficiary of a registered trade mark may bring an offender before a civil court with three possible actions, namely:

- (1) Action to cease the infringement and abstain from such actions in the future;¹
- (2) Action for pecuniary damages which include compensation for the negative financial impact sustained due to the infringement, the loss of profits suffered by the right holder as well as any benefit enjoyed by the infringer;²
- (3) Action for compensation for moral damages.³

§ 19:59 Infringement—Injunctions

Injunctions may be filed with the civil courts by any party claiming infringement. In the framework of injunction proceedings, the right holder may request the conservatory arrest of infringing products in order to deter their circulation in the market.

If the party filing the petition for injunction proves that infringement is conducted on a commercial scale and that any compensation is in danger of remaining uncollected, the court may order the conservatory arrest of the infringer's assets.

In circumstances of great urgency, the aforementioned injunction measures may be ordered without hearing the offender. Finally, such injunction measures may be ordered against intermediaries whose services are used for the infringement of the right holder's rights.

§ 19:60 Infringement—Confiscation

The right holder also may request the confiscation of infringing

[Section 19:58]

¹If such a request is upheld in Court, the infringer will face a penalty of €3,000 to €10,000 per subsequent infringement.

²Such claims are prescribed following the lapse of five years.

³Civil Code, article 932.

products circulated in the market as well as any materials that were used for the infringement.

§ 19:61 Infringement—Customs action

Pursuant to Regulation 2003/1383/EC and Regulation 2004/1891/EC, as amended by Regulation 2007/1172/EC, and upon the filing of a respective request, counterfeit or pirated goods, and overall goods that infringe intellectual property rights, are prohibited by the Customs authorities from entering Greece.

The right holder may file an application for action by the Customs authorities before the Attica Customs District. Such an application requires submitting a number of legitimizing documents translated into Greek, but incurs no administrative costs. It is noted that such an application may be filed as a precautionary measure.

V. TRADE AND SERVICE NAMES

§ 19:62 In general

Rights on a trade name are obtained by its use during transactions. As provided by article 4(2) of Law Number 1089/80, when entrepreneurs or companies are registered with the Chamber of Commerce, they must declare the trade name and/or distinctive title they use, but such declaration is not of constitutive nature.

Research is performed to determine whether the trade name has a distinctive ability and to confirm that no prior similar trade name or distinctive title has been registered. On registration, the trader is deemed to be the absolute and exclusive holder of the trade name and/or distinctive title.

Trade names are mainly protected against subsequent, identical, or similar trade names under the provisions of articles 13 *et seq.* of Law Number 146/14 on unfair competition. They also are protected pursuant to articles 57 and 58 of the Civil Code.

VI. INDUSTRIAL DESIGNS AND UTILITY MODELS

§ 19:63 Nature

Law Number 2417/96 and Presidential Decree Number 259/97 have incorporated the provisions of the Hague Agreement for the International Deposit of Industrial Designs into Greek legislation.¹ Furthermore, the basic principles of directive 98/71/EC have been introduced in Greek legislation by virtue of Presidential Decree Number 161/02 that amended Presidential Decree Number 259/1997.

[Section 19:63]

¹Greece has ratified the Locarno Agreement on International Classification for Industrial Designs with Law Number 2697/99.

An industrial design (two-dimensional) or model (three-dimensional) is the exterior visible image of a whole or a part of an industrial or handicraft article, which derives from the article's particular characteristics (i.e., line, colour, and shape).²

Utility models were protected under Law Number 2537/20, although not efficiently. Law Number 1733/87 introduced the used term "utility model," which covers three-dimensional objects with definite shape and form, which are novel and industrially applicable as well as capable of resolving a technical problem (such as tools, instruments, devices, apparatuses, and parts). The law does not require the existence of an "*inventive step*" in order to register a utility model, which is its main difference from inventions.

§ 19:64 Nature—Creation of rights

Industrial designs and utility models are protected in Greece following the issuance of respective certificates by the Industrial Property Organization, i.e. certificate of industrial designs and certificate of utility models. An application regarding a certificate of industrial design must include:

- (1) The request for the registration of the design in the respective registrar;
- (2) The name or trade name, the nationality, the residence (or seat), and the depositor's address,
- (3) An agent for service if the depositor does not have his residence or seat in Greece together with a statement accepting the jurisdiction of the courts of Greece; and
- (4) The designation of the article or articles that the design or model will be incorporated in; and
- (5) A graphic or photographic representation of the design or model which must be suitable for reproduction;

The depositor also may include in his application a list of the products in which the design will be incorporated or applied, the products' classification pursuant to the Locarno Agreement Establishing an International Classification for Industrial Designs of 1968, a request for claiming priority, a brief description of the design, a request for postponement of the design's publication and a declaration that the design has been presented in an officially recognized exhibition.

²Law Number 2417/96 and Presidential Decree Number 259/97 define "design or model" as any outward visible appearance of the whole or part of a product resulting from the specific features of, in particular, the lines, contours, colours, shape, form, and/or materials the product itself and/or its ornamentation.

The application should be accompanied by the payment of the registration fees.¹ Within four months from the filing date, the depositor may complete or correct the application and accompanying documentation. Provided the industrial design is new and has an individual nature, and the user has a unique impression of the specific design or model against any other design or model, the Industrial Property Organization grants the certificate.

An application regarding the granting of a utility model certificate is regulated by the provisions of Law Number 1733/87 on patents (see §§ 19:4 and 19:63, above). Under article 19(2) of Law Number 1733/87, an application for granting a patent certificate may be changed to an application for granting a utility model certificate. Pursuant to article 19 of Law Number 1733/87, the utility model certificate is valid for seven years, commencing on the day following the application for granting the same.

§ 19:65 Nature—Beneficiaries of rights

A beneficiary of an industrial design or a utility model is its creator, as well as the creator's successors. It is noted that the applicant is deemed to be the beneficiary, i.e., the creator.

If more than one person created an industrial design or a utility model, all creators are considered beneficiaries. However, if two or more persons separately created the same design or model, the principle of precedence applies to determine the beneficiary. Finally, regarding industrial designs and/or utility models created by employees, the matter is regulated in the same way as in patents¹

§ 19:66 Nature—Maintenance

Industrial designs and utility models are no longer valid if used in a manner contrary to public order or moral standards. In all other cases, once the certificate has been issued and the design or model has been published in the Industrial Property Organization Bulletin, the person named as right holder is the exclusive and absolute beneficiary of the same and may prevent a third party from using or exploiting his work without permission.

[Section 19:64]

¹The filing, registration, and publication fees are €130, whereas there are no fees for the first five years the design or model's protection.

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¹Pursuant to article 17(3) of Presidential Decree Number 259/97, applicable to industrial designs, and article 19(6) of Law Number 1733/87, applicable to utility models, article 6(4) and (7) of Law Number 1733/87 applies by analogy. Therefore the matter is regulated identically as in the case of patents.

§ 19:67 Nature—Extension

An industrial design has a “life” of 25 years, after the expiration of which it ceases to exist. Upon the issuance of a respective certificate from the Industrial Property Organization, the design is protected for a period of five year. The beneficiary can renew the model’s or design’s protection four consecutive times, each renewal concerning an additional five year period. Renewal fees are gradually increased (the “older” the design, the higher the fees).¹

Utility models certificates must be annually renewed and cannot be extended for more than seven years. Again, renewal fees are gradually increased (the “older” the model, the higher the fees).²

§ 19:68 Nature—Transfer

It is possible to transfer an industrial design and/or utility model by virtue of a written agreement. This agreement must be registered with the registrar of industrial designs and utility models at the Industrial Property Organization and published in the *Industrial Property Organization Bulletin*. Industrial designs and utility models also may be inherited, in which case the new beneficiary must issue and register a certificate of inheritance.

Industrial designs and utility models may be the object of a license for use. The beneficiary may permit the licensee to use the design or model in many forms. Unless otherwise agreed in the contract for the assignment of a license, the assignment is not exclusive, transferable, or inheritable. The license must be registered with the registrar of industrial designs and utility models at the Industrial Property Organization.

Pursuant to article 19(3) of Presidential Decree Number 259/97 and article 19(6) of Law Number 1733/87, the transfer of industrial designs and/or utility models is governed by Law Number 1733/87 on patents.¹ Finally, as with patents, the law provides for non-contractual licenses, as well as licenses granted to the public sector.

§ 19:69 Nature—Cancellation

Under article 16 of Presidential Decree Number 259/97, an

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¹No fees are to be paid for the first five years of protection. The protection fees for the second five year period are €100; for the third five year period, €150; for the fourth five year period, €200; and for the fifth five year period €250.

²No fees are to be paid for the first two years of protection; for the third year, €20; for the fourth year, €50; for the fifth year €80; for the sixth year €90; and for the seventh year €100.

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¹Presidential Decree Number 259/1997, article 19(3).

industrial design or utility model certificate is cancelled in case the holder of the certificate is not the creator of the same. Furthermore, the certificate is cancelled in case the legal requirements for the design or model's registration are not met as well as when the exploitation or publication of the same contravenes public order and/or moral standards.

The respective request is brought before civil courts and cancellation has a retroactive effect. Further procedural matters for the cancellation of an industrial design and/or utility model are regulated by article 15(2) and (3) of Law Number 1733/87 on patents, the provisions of which again apply proportionally.

§ 19:70 Nature—International aspects

Beneficiaries of an industrial design or utility model certificate of a state that has signed the Paris Convention of 1883 for the protection of industrial property¹ are entitled to a right of priority pursuant to article 22 of Presidential Decree Number 259/97 and article 9 of Law Number 1733/87.

Thus, on the basis of a regular first application filed in one of the contracting states, the applicant may, within a period of time (twelve months for utility models and six months for industrial designs), apply for protection in any of the other contracting States; these later applications will be regarded as if they had been filed on the same day as the first application. In other words, these later applications will have priority (hence the expression “right of priority”) over applications that may have been filed during the said period of time by other persons for the same utility model or industrial design.

With respect to industrial designs, the beneficiary must submit to the Industrial Property Organization a certificate issued by the competent authority of the foreign state formally translated into Greek, together with an official copy of the industrial design, within 10 months from the initial filing abroad.

With respect to utility models, the beneficiary must submit to the Industrial Property Organization a certificate issued by the competent authority of the foreign state formally translated into Greek, within 16 months from the initial filing abroad. In both cases, the due filing of the application submitted abroad is decided pursuant to the legislation of the respective state.

§ 19:71 Attacks on ownership

Upon registration of an industrial design, the right holder has the

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¹Greece ratified the Paris Convention by virtue article 1 of Law Number 213/1975.

exclusive right to use it and prevent any third party from infringing his right of use. Such use consists especially of the manufacture, offer and distribution in the market, the import, export as well as use of the product to which the design has been applied to as well as storage of the said product for such purposes.

Furthermore, the right holder is protected against any designs that may be considered by an “updated user” as similar to his own.

Utility models are subject to the same provisions as patents.

§ 19:72 Infringement

The holder of an industrial design or a utility model certificate may be protected by the same means granted by the law to patent and trade mark holders.

§ 19:73 Infringement—Customs action

Pursuant to Regulation 1383/2003/EC and Regulation 1891/2004/EC, as amended by Regulation 1172/2007/EC, and upon the filing of a respective request, counterfeit or pirated goods, and overall goods that infringe intellectual property rights are prohibited by the Customs authorities from entering Greece.

The right holder may file an application for action by the Customs authorities before the Attica Customs District. Such an application requires submitting a number of legitimizing documents translated into Greek but incurs no administrative costs. Finally it is noted that an application for action may be filed as a precautionary measure.

VII. AESTHETIC DESIGNS AND PATTERNS

§ 19:74 In general

Pursuant to article 5 of Law Number 1733/87, aesthetic designs and patterns may not be the object of a patent. Such creations are designs, models, and patterns aiming at an aesthetic (particularly visual) pleasure.

Their protection may be possible if they are registered as trade marks. Furthermore, provided that they grant an aesthetic form to an article that has a specific technical function, they may be protected through the provisions applying to industrial designs or models.