

Industrial Property

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INDUSTRIAL PROPERTY LAWS AND TREATIES (INSERT)

Editor's Note

GREECE

Law on Technology Transfer, Inventions and Technical Innovation (Law No. 1733 of May 7, 1987)	Text 1-001
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UNITED KINGDOM

Trade Marks Act 1938 (of April 13, 1938, as last amended by the Copyright, Designs and Patents Act 1988) (<i>Replacement sheets</i>)	Text 3-001
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Studies

The New Greek Legislation on Technology Transfer, Inventions and Technical Innovation

C. MARGELLOU*

The fact of considering industrial property rights to be absolute rights that confer on their owners an absolute and exclusive right of exploitation vis-à-vis third parties, whether the form of that right is positive or negative, has a decisive influence on the transfer of technology to a given country, and a direct bearing on its technological level. The interest shown by the State in the selection, adoption and implementation of an adequate policy in the industrial property sector, reflected in the establishment of an appropriate legal framework, is therefore entirely justified. The rights conferred by the patent, irrespective of the form given to the latter by the legislative power, are usually described by economists as an "economic monopoly privilege," which privilege is tied up with the exclusive right to "manufacture" and "commercialize," and also the right to prohibit third parties from engaging in any form of exploitation without the owner's consent. However, in spite of its undeniable monopolistic character, the right to the invention not only fits in well with freedom of competition, but also is the most effective stimulant in the pursuit of inventive activity. It is precisely this correlation of monopolistic and competitive elements that gives patent law an importance that is both economic and social. The usual philosophical base on which the law of inventions rests, banal though it may appear, is and must remain the central element on which systems for the protection of inventions hinge. Thus it is that the State grants patents to inventors by way of recompense for the work that they have done, and in exchange asks them to disclose their inventions to the public.

It was in this setting, and on the basis of these assumptions, that the new Greek Law on Technology Transfer, Inventions and Technical Innovation (No. 1733 of 1987¹) was drawn up. It came into force on September 22, 1987, with the exception of

the provisions of its second, third and fourth parts and Section 25(1) and (2) of its sixth part, which came into force on January 1, 1988. The new Law differs from the earlier one, which dates back to 1920, in that it confers on the researchers and inventors of our country a title of protection that is stronger and of clear economic value; it had also created the Industrial Property Organization which is intended to function as an authority responsible for gathering, classifying and disseminating technological information.

Before the main features of the new Law are discussed, it should be mentioned that the special Law on Inventions Related to National Defense (No. 4325 of 1963) remains in force alongside the new one.

The main features of the new Law are the following:

(a) *The creation of the Industrial Property Organization.* This Organization is responsible for operating as an authority for the grant of titles of protection and as a center for the selection and dissemination of technological information. The latter function of the Organization is thus laid down officially by law in our country for the first time. In Section 1(2)(f), the aims of the Organization are defined in this respect as being the "provision of advice and information on new technology and new know-how."

The Industrial Property Organization has the legal status of a corporation under private law, exercising, under the authority of the Ministry of Industry, Energy and Technology, the powers under public law that are conferred on it by the public sector, that is, powers of administrative and executive character. With regard to its organization and operation, it is governed by the provisions of private law. In other words, it is a body governed by provisions of both public law and private law, and thus has a mixed legal status which has been defined on several occasions by the Council of State. The Industrial Property Organization is directed by a seven-member Administrative Board.

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¹ See *Industrial Property Laws and Treaties*, GREECE – Text 1-001.

(b) *The harmonization of the substantive law on inventions with the provisions of the European Patent Convention (EPC)*, and more especially with its Articles 52 to 57 on the conditions of patentability and exclusions from patent protection. Under those Articles a patent is granted for an invention that is new, involves an inventive step and is industrially applicable. The invention's novelty is defined by the Law as being absolute in character, in the sense that the invention must not, prior to the filing date of the patent application, comprise elements already known, anywhere in the world, through oral or written description. Furthermore, the invention has to be the result of inventive activity or to have a certain level of inventiveness and not be obvious to a person skilled in the art. Absolute novelty is subject to two reservations, namely, abuses committed against the applicant or his predecessor and "exhibition priority."

The Law lists a number of things that are not considered inventions in terms of the Law (notably discoveries, scientific theories, etc.); pharmaceutical products, on the other hand, are specifically excluded from patentability until the expiration of the transitional period provided for in Article 167(2) of the EPC, that is, until October 7, 1992.

(c) *Recognition of the inventor's right to obtain a patent.* In order to simplify the procedure, the person who files a patent application is considered the inventor. The Law clearly defines the "service" invention and the "dependent" invention. In the case of the service invention, that is, the one made in the course of contractual relations between a salaried employee and his employer, the purpose of those relations being the exercise of inventive activity on the part of the employee, the invention is accorded entirely to the employer; the employee is nevertheless entitled to remuneration if the invention embodies particular benefits for the employer. In the case of the "dependent" invention, in other words the one made by an employee with the aid of means and material belonging to the employer, the invention belongs to both the employee and the employer in the proportion of 60% and 40%, respectively. If the employer is not interested in filing a joint patent application, the application may be filed by the employee himself, in which case the invention belongs to him alone. The inventor's name has to be mentioned in the patent in all cases.

(d) *Longer term of protection for inventions.* The term of protection for inventions has been increased from 15 to 20 years from the day following the filing date, in accordance with international standards.

(e) In addition to the non-contractual license for cases of non-working, the new Law introduces the concept of the *public-sector license*. It provides that

the Industrial Property Organization has to provide assistance in the form of advice, in order that the conditions required for the grant of such licenses may be met. Where overriding reasons of public health or national defense dictate, an authorization may be granted to public sector entities for the working of the invention in Greece.

(f) *Registration of technology transfer agreements.* These agreements have to be submitted to the Industrial Property Organization for approval and recorded in the register of technology transfer agreements; a reduction in fees may be granted by the Organization on the basis of the registration.

(g) *Introduction of utility model certificates.* The purpose of these is to protect "small inventions"; their term of validity is seven years from the day following the filing date of the application. The conditions for obtaining them are easier to meet than those for patents, and their cost is lower.

(h) *Introduction of technical innovation certificates*, granted by undertakings as remuneration awarded to salaried employees for their creative contributions.

(i) *Reform of the patent grant procedure.* The Law introduces a limited examination prior to the grant of the patent to replace the simple, declaratory system that existed previously. Thus the filing of a patent application is not accepted unless the application includes the required elements, such as the designation of the applicant, the description of the invention, one or more claims and a request for the grant of a patent. The applicant may supply any missing elements within the four months following filing; if those elements are not provided in the period allowed, the application is regarded as not having been filed. Where the application is complete and the fee payable has been paid, the Industrial Property Organization examines whether the invention consists in a discovery, a scientific method, etc., for which obviously no patent may be granted. If it emerges from the examination that this is indeed the case, the application is rejected; if it emerges that this is not the case, the Organization draws up, with the assistance of the European Patent Office, a report on all the prior art (patents granted and applications filed) that may have a bearing on the novelty and inventive step of the invention. The inventor has a right of reply in relation to this report ("first search report"), and the final search report is drawn up in the light of his reply.

It should also be mentioned that, if the search fee is not paid, the inventor does not lose his rights, but his application is simply changed into an application for a utility model certificate. Another important feature also provided for in the Law is that all applications filed have to be published within 18 months.

News Items

REPUBLIC OF KOREA

*Commissioner,
Korea Industrial Property Office*

We have been informed that Dr. Chulsu Kim has been appointed Commissioner of the Korea Industrial Property Office.

THAILAND

*Director-General,
Department of Commercial Registration*

We have been informed that Mr. Sompol Kiatphaibool has been appointed Director-General of the Department of Commercial Registration.

UNITED STATES OF AMERICA

*Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks*

We have been informed that Harry F. Manbeck, Jr., Esq. has been appointed Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Calendar of Meetings

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1990

May 28 to June 1 (Geneva)

Committee of Experts on the International Protection of Geographical Indications

The Committee will examine a document prepared by the International Bureau of WIPO on the need for a new multilateral treaty on the international protection of geographical indications and its possible content.

Invitations: States members of the Paris Union and, as observers, certain organizations.

June 5 to 8 (Geneva)

Consultative Meeting of Developing Countries on the Harmonization of Patent Laws

This consultative meeting will, on the basis of a working document prepared by the International Bureau of WIPO, study problems of particular relevance to developing countries in connection with the preparation of a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).

Invitations: Developing countries members of the Paris Union or WIPO.

June 11 to 22 (Geneva)

Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Eighth Session)

The Committee will continue to examine a draft treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).

Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

June 19 to 22 (Geneva)

Preparatory Meeting for the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as Far as Patents Are Concerned

The Meeting will prepare the organization of the diplomatic conference which will be convened to negotiate and adopt a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).

Invitations: States members of the Paris Union.

June 25 to 29 (Geneva)

Committee of Experts on the Harmonization of Laws for the Protection of Marks (Second Session)

The Committee will continue to examine a draft trademark law treaty.

Invitations: States members of the Paris Union, the European Communities and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

July 2 to 6 (Geneva)

PCT Committee for Administrative and Legal Matters (Third Session)

The Committee will examine proposals for amending the Regulations under the Patent Cooperation Treaty (PCT), in particular in connection with the procedure under Chapter II of the PCT.

Invitations: States members of the PCT Union and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.

July 2 to 13 (Geneva)

Committee of Experts on Model Provisions for Legislation in the Field of Copyright (Third Session)

The Committee will continue to consider proposed standards in the field of literary and artistic works for the purposes of national legislation on the basis of the Berne Convention for the Protection of Literary and Artistic Works.

Invitations: States members of the Berne Union or WIPO and, as observers, certain organizations.

September 24 to October 2 (Geneva)	Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-First Series of Meetings)
	<p>Some of the Governing Bodies will meet in ordinary session, others in extraordinary session. <i>Invitations:</i> As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States and certain organizations.</p>
October 15 to 26 (Geneva)	Committee of Experts Set Up Under the Nice Agreement (Sixteenth Session)
	<p>The Committee will complete the fifth revision of the classification established under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.</p>
	<p><i>Invitations:</i> States members of the Nice Union and, as observers, States members of the Paris Union not members of the Nice Union and certain organizations.</p>
October 22 to 26 (Geneva)	Committee of Experts on the Settlement of Intellectual Property Disputes Between States (Second Session)
	<p>The Committee will examine principles for a possible multilateral treaty.</p>
	<p><i>Invitations:</i> States members of the Paris Union, the Berne Union or WIPO or party to the Nairobi Treaty and, as observers, certain organizations.</p>
October 29 to November 2 (Geneva)	Committee of Experts on a Protocol to the Berne Convention (First Session)
	<p>The Committee will examine whether the preparation of a protocol to the Berne Convention for the Protection of Literary and Artistic Works should start, and—if so—with what content.</p>
	<p><i>Invitations:</i> States members of the Berne Union and, as observers, States members of WIPO not members of the Berne Union and certain organizations.</p>
October 29 to November 2 (Geneva)	Working Group on a Possible Revision of the Hague Agreement (First Session)
	<p>This working group will consider possibilities for revising the Hague Agreement Concerning the International Deposit of Industrial Designs, or adding to it a protocol, in order to introduce in the Hague system further flexibility and other measures encouraging States not yet party to the Hague Agreement to adhere to it and making it easier to use by applicants.</p>
	<p><i>Invitations:</i> States members of the Hague Union and, as observers, States members of the Paris Union not members of the Hague Union and certain organizations.</p>
November 26 to 30 (Geneva)	Working Group on the Application of the Madrid Protocol of 1989 (Second Session)
	<p>The working group will continue to study Regulations for the implementation of the Madrid Protocol of 1989.</p>
	<p><i>Invitations:</i> States members of the Madrid Union, States having signed or acceded to the Protocol, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.</p>
December 10 to 14 (Geneva)	PCT Committee for Administrative and Legal Matters (Fourth Session)
	<p>The Committee will continue the work started during its third session (July 2 to 6, 1990).</p>
	<p><i>Invitations:</i> States members of the PCT Union and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.</p>

1991

January 28 to 30 (Geneva)	Information Meeting(s) on the Revision of the Paris Convention
	<p>An information meeting of developing countries members of the Paris Union and China and, if it is so desired, information meetings of any other group of countries members of the Paris Union will take place for an exchange of views on the new proposals which will have been prepared by the Director General of WIPO for amending the articles of the Paris Convention for the Protection of Industrial Property which are under consideration for revision.</p>
	<p><i>Invitations:</i> See the preceding paragraph.</p>
January 31 and February 1 (Geneva)	Assembly of the Paris Union (Fifteenth Session)
	<p>The Assembly will fix the further procedural steps concerning the revision of the Paris Convention and will take cognizance of the aforementioned proposals of the Director General of WIPO. It will also decide the composition of a preparatory meeting which will take place in the first half of 1991.</p>
	<p><i>Invitations:</i> States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.</p>

June 3 to 28 (dates and place to be confirmed)	Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as Far as Patents Are Concerned This diplomatic conference will negotiate and adopt a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty). <i>Invitations:</i> To be decided by the preparatory meeting to be held from June 19 to 22, 1990 (see above).
September 23 to October 2 (Geneva)	Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Second Series of Meetings) All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary sessions every two years in odd-numbered years. In the sessions in 1991, the Governing Bodies will, <i>inter alia</i> , review and evaluate activities undertaken since July 1990, and consider and adopt the draft program and budget for the 1992-93 biennium. <i>Invitations:</i> States members of WIPO or the Unions and, as observers, other States members of the United Nations and certain organizations.
November 18 to December 6 (dates and place to be confirmed)	Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property (Fifth Session) The Diplomatic Conference is to negotiate and adopt a new Act of the Paris Convention. <i>Invitations:</i> States members of the Paris Union and, without the right to vote, States members of WIPO or the United Nations not members of the Paris Union as well as, as observers, certain organizations.

UPOV Meetings

(Not all UPOV meetings are listed. Dates are subject to possible change.)

1990

June 25 to 29 (Geneva)	Second Preparatory Meeting for the Revision of the UPOV Convention <i>Invitations:</i> Member States of UPOV and, as observers, certain non-member States and inter-governmental organizations.
October 15 and 16 (Geneva)	Third Preparatory Meeting for the Revision of the UPOV Convention <i>Invitations:</i> Member States of UPOV and, as observers, certain non-member States and inter-governmental organizations.
October 17 (Geneva)	Consultative Committee (Forty-Second Session) The Committee will prepare the twenty-fourth ordinary session of the Council. <i>Invitations:</i> Member States of UPOV.
October 18 and 19 (Geneva)	Council (Twenty-Fourth Ordinary Session) The Council will examine the reports on the activities of UPOV in 1989 and the first part of 1990 and approve documents for the Diplomatic Conference for the Revision of the UPOV Convention. <i>Invitations:</i> Member States of UPOV and, as observers, certain non-member States and inter-governmental and non-governmental organizations.

1991

March 4 to 19 (dates and place to be confirmed)	Diplomatic Conference for the Revision of the UPOV Convention <i>Invitations:</i> Member States of UPOV and, without the right to vote, States members of the United Nations not members of UPOV as well as, as observers, certain organizations.
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Other Meetings Concerned with Industrial Property

1990

May 8 to 11 (Washington, D.C.)	Foundation for a Creative America: Bicentennial Celebration of the Enactment of the United States Patent and Copyright Laws
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