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# GREEK LAW DIGEST

The Official Guide to Greek Law

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**Vayanos Kostopoulos**

PATENTS

SUPPLEMENTARY PROTECTION CERTIFICATES (SPCs)  
& PEDIATRIC EXTENSION THEREOF

DESIGNS

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**3rd EDITION**



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### Greek Law Digest (GLD)

GREEK LAW DIGEST is the most systematic and comprehensive guide on the Greek legal and institutional framework, written entirely in English. Its objective is to provide its readers with pragmatic and comprehensive overview of the Greek legal system. The Guide provides concise and comprehensible content organized through short questions and answers, covering a wide range of issues that citizens of other countries might raise with respect to the law applicable in Greece. Such content is constantly enriched by updating and adding new articles. The Greek Law Digest is available in hard copy, whereas the website [www.greeklawdigest.gr](http://www.greeklawdigest.gr) is freely accessible to visits from 190 countries around the world. The Guide is offered to foreign diplomatic authorities in the country, Greek diplomatic authorities abroad, various financial and investment organizations and associations, international authorities and institutions, foreign partners during their official visits to the country, the official trade missions of Enterprise Greece, the official Greek trade missions of the Ministry of Economy & Development. It is acknowledged by foreign and Greek professionals, foreign diplomatic representatives and foreign officials, state authorities and business associations, as the most trustworthy and thorough legal guide ever existed for Greek legal and regulatory issues and receives generous tributes. GREEK LAW DIGEST is published on the initiative of NOMIKI BIBLIOTHIKI under the auspices of the Ministry of Economy & Development, Enterprise Greece and Hellenic Republic Asset Development Fund. GREEK LAW DIGEST is principally financed by NOMIKI BIBLIOTHIKI Publishing Group and its contributors. It does not receive any advertisement proceeds or financial aid from any other private or public authority or organization. To become a Contributing Editor and find out more about the benefits send email to [GreekLawDigest@nb.org](mailto:GreekLawDigest@nb.org) or call (+30)2103678920



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# PATENTS

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Partner at **Vayanos Kostopoulos**

## What is the right on an invention and what is the difference to a patent right?

The right on an invention is an intangible property asset which evidences the connection between the natural person of an inventor and his/her intellectual creation. As such an invention is an industrially applicable idea solving a technical problem. Unlike a patent right, a right on an invention confers no negative powers to the inventor in terms of a right of exclusive exploitation of his/her inventive teaching. The latter right is reserved for the patentee. On the other hand, a patent is an act of administrative law in the form of a title issued by the Greek Patent Office (GPO) granting patent law protection to an invention. It is not mandatory that an invention be patented through the submission of a patent application. However, if a patent application is not filed with the GPO, an invention can only be protected according to general civil law rules concerning the right to personality as well as according to unfair competition law. It is only a patent application that is filed with and granted by the GPO that can confer full patent law protection to an invention.

## What is the legal framework and the Authority administering patents in Greece?

Law 1733/1987 on Know-How Transfer, Inventions and Technological Innovation, as amended and valid today, is the main patent law followed by a number of implementing law provisions, presidential decrees, ministerial decisions as well as ratification acts for the incorporation of European law and international treaties into Greek law. The competent authority for patents, SPC's, designs, utility models and relevant IP rights is the Industrial Property Organization (Organismos Viomichanikis Idioktisias, OBI), seated in Athens.

## Which are the rights conferred to the patent holder?

The patent holder has the exclusive right to exploit the invention during its validity term, among others, meaning to produce, use, offer for sale, sell, license or take advantage in any other way of this property (*positive powers of patentee*). Such property may include a product and/or a manufacturing process and/or a use or an application thereof.

Furthermore, the patent holder has the right to prohibit the production, use, import in the country or any other way of exploitation of the patent by an unauthorized third party (*negative powers of patentee*).

## Which are the formal requirements for a national patent?

A patent may be granted subject to the following formal requirements:

- Submission of an application at the GPO including full particulars of the applicant;

- The file must include a description, claim(s), a title and an abstract (mandatory); optionally, the file may include drawing(s).
- Payment of official fees;

### **Which are the material requirements for the grant of a patent?**

The invention must a) be novel, b) involve an inventive step and c) be susceptible to industrial applicability. Two of the important criteria for assessing the patentability of a patent are: i) the state of the art with available teachings in the relevant technical field and ii) the notion of the so-called “person having ordinary skill in the art”, according to whom inventiveness can be assessed.

### **Are divisional patent applications available by the patent law and under which conditions?**

If a patent application covers more than one inventions which, however, are interconnected, the applicant may file divisional applications until the date of grant of the patent title maintaining the filing date of the initial application.

### **What is a patent of modification and how can it be of importance to the patentee?**

If an invention is a modification of another invention already protected by a patent (main patent), the patentee may apply for issuance of a patent of modification provided that the scope of protection of said patent has at least one claim in common with the main patent. No maintenance fees are due for the patent of modification which follows the fate of the main patent with regard to the duration of its validity and its possible cancellation.

### **How is the scope of patent protection defined?**

Patent claim(s) are of essence for defining the scope of protection requested through the patent application. Said claim(s) refer to the relevant content of the description and – if available – of any drawings which explain the particulars of an invention. In this sense, the technical teaching corresponding to the invention must be clear and precise as well as practically reproducible in order to be protected as a patent.

### **What are the available legal means, if a patent application is rejected by the GPO?**

A rejecting decision by the GPO being an individual administrative law act – e.g. in case of a petition for issuance of a supplementary protection certificate, SPC – may be challenged through a petition for cancellation before the Council of State (Supreme Administrative Court).

### **Is cancellation of a granted patent possible? If yes, how and on what grounds?**

A granted patent is a sui generis private law right and as such it may be cancelled through a civil court decision upon filing of an ordinary civil action by any person having legitimate interest to such a request. Cancellation of a patent may be total or partial. Patent cancellation can be sought, if a) the applicant is not the inventor or a person entitled to become the patent holder; b) the invention is not patentable, e.g. it seeks protection for solely a mathematical method or is devoid of novelty or inventiveness; c) the invention lacks susceptibility

to industrial applicability according to the person having ordinary skill in the art; and d) the patent was granted for a scope of protection going beyond that requested by the applicant.

### **How can a patent right be enforced against infringement in the Greek territory?**

Greek patent law was harmonized (Law 3966/2011) according to the provisions of Directive 2004/48/EC. Consequently, cease and desist claims can be raised and - under circumstances - compensation can be requested against an infringer. In addition, publication of court decision may be ordered, court expenses can be awarded and precautionary measures may be sought by the patentee.

### **How are employees' inventions protected and under what conditions?**

Employees' inventions belong to their employer provided that they were made in the framework of a contractual relationship agreed upon between the two parties for conducting research and for developing the involved invention. In case of a dependent invention (i.e. invention made by the employee using materials and/or data belonging to the employer's enterprise) the employee is entitled to a 60% share and the employer to a 40% share of co-ownership of the right to the invention. In any other case apart from the above, the invention belongs to the employee.

### **Which are the ways of exploitation of a patent?**

With regard to the exploitation of a patent right during a 20-years legal monopoly it is worth mentioning the following aspects:

- Licensing: it may be direct licensing or even cross licensing between two persons or entities who exchange the exploitation of their respective rights;
- Transfer of a patent: it may be effected e.g. by way of assignment, merger, inheritance and other;
- Favorable taxation and other incentives by the State may motivate patent exploitation;
- Financial planning can be supported by patented innovation;
- Improvement of corporate profile;
- Competitive advantage(s) in favor of the patentee as opposed to other market participants manufacturing products or using processes that are either unprotected or are not susceptible to patentability.

### **How and under what conditions can a compulsory patent license be obtained?**

I. In case of imperative need to serve public health and/or national defense a compulsory license can be granted in favor of the State or of a legal entity of the public sector by virtue of a Ministerial Decree (art. 14 Law 1733/1987). Such license is granted provided that the patented invention has not been the object of manufacturing exploitation in Greece or the relevant production is not considered adequate in order to cover the domestic needs. Such cases might be an epidemic outburst (e.g. pharmaceutical inventions) or imminent armed conflict circumstances (e.g. inventions for weapons and ammunition). Before issuance of a relevant Decree the patentee and any interested third party are invited to express their

attitude. Financial compensation is reserved in favor of the patentee. In case of disagreement with respect to the granted amount of compensation the patentee may seek judicial protection (interlocutory proceedings).

II. A compulsory (non-contractual) license can be granted to any interested third party (art. 13 Law 1733/1987) under the following conditions:

- A formal request is addressed to the patentee for granting a patent license announcing the third party's intention to seek a relevant court decision thereto. Such request has to be communicated to the patentee the latest one (1) month prior to court action;
- Issuance of a court decision, provided that the above mentioned official request was rejected by the patentee without invoking substantiated reasons for not having exploited its invention as yet at all or to an adequate degree;
- The invention was not exploited altogether or was exploited in a considerably limited range within a period of three (3) years as of the date of grant or four (4) years as of the filing date of the application for grant of a patent.
- The third party requesting a compulsory patent license must put forward evidence of its capability to exploit the involved invention.

III. A patent holder (petitioner) may request a court to grant a non-contractual patent license over an earlier patent right (art. 13 par.4 Law 1733/1987), if the following presuppositions are met:

- The petitioner's invention is related to the invention of the prior patent;
- The exploitation of the petitioner's invention is not possible without infringing upon the rights of the prior patent holder(s); and
- The petitioner's invention constitutes an important progress as compared with the invention protected by the prior patent. Once the Court has sustained the petitioner's request, the holder of the earlier patent may in exchange request the court to grant a compulsory license with respect to the invention protected by the later patent.

### **Are there so-called first filing requirements for patent applications filed by Greeks and/or for inventions made by Greeks?**

Patent law explicitly provides for the mandatory requirement to first file a European Patent application or a PCT application at the Greek Patent Office (Receiving Office):

- if the applicant is a Greek citizen; and
- if no priority is claimed based on an earlier patent filing in Greece. This latter case concerns patent applications filed by Greek citizens to protect inventions connected with the national defense (art. 3 par. 2 of Presidential Decree No. 77/1988 for EP applications and art. 3 par. 2 of Presidential Decree 16/1991 for PCT applications in connection with art. 1 and 2 of Law 4325/1963 about inventions concerning national defense).

According to said provisions patent applications falling within the scope of national defense are handled separately and, if confirmed, confidentially by the Ministry of Defense.

There is no explicit regulation governing aspects of first filing requirement at the Greek Patent Office (Receiving Office) for European patent applications or PCT applications filed

in the name of applicants seated abroad but having at least one Greek citizen as (co-)inventor. It is only by way of interpretation that one could come to the conclusion that said patent application must first be filed with the GPO. There is no relevant case law concerning this specific circumstance (Greek inventor, not applicant). Furthermore, the GPO's practice has never applied the law 4325/1963 (inventions concerning national defense) on patent applications with a Greek inventor covering inventions other than those connected with national defense. On the other hand, one should take into account the theoretically severe criminal law consequences of a piece of law despite the fact that it has remained inapplicable over decades now, but could arise in the future.

In this respect it is also noteworthy that there is no foreign filing license possibility provided for by the Greek patent law.

### **What is a Supplementary Protection Certificate (SPC)?**

EU Regulation 469/2009 for medicinal products and Regulation 1610/1996/EC for plant agents provide for the issuance by national patent offices of Supplementary Protection Certificates under specific conditions, granting patent protection for up to 5 years after expiration of the 20-years term of the basic patent. If these conditions are not met, the GPO will not grant said titles. The SPC's ratio is to allow the patent holders to recover part of their investments for a period that elapsed until issuance of a market authorization for a product covered by their basic patent. Specifically for pediatric pharmaceuticals (Regulation 1901/2006/EC), the holder of an SPC title is rewarded with a further 6-months extension of the SPC term, provided that the requirement of studies referred to in the agreed pediatric investigation plan (PIP) has been fulfilled (see more under GLD's chapter on SPCs).

In the absence of EU law provisions SPC's with or without a pediatric extension are protected in the Greek territory according to national patent law which is applicable *mutatis mutandis*.

### **What is a Utility model (UM)?**

The UM provides for a solution to a technical problem of somehow lower complexity than a patent. It confers protection to three-dimensional object such as tools, kitchen utensils, devices, components and the like.

### **Which are the substantial requirements for the grant of a UM Certificate?**

The three-dimensional object can be protected with a UM if it is new and is susceptible to industrial applicability.

### **What is the protection term of a UM?**

The UM can be protected for up to 7 years subject to payment of annuities.

### **What are the advantages for filing a European Patent Application?**

Choosing to file a European Patent Application is connected with advantages such as: a) central filing and examination procedure at the European Patent Office (EPO), thus avoiding the need to have a granted EP examined anew on a national level; b) time and cost effectiveness; c) legal certainty due to uniform practice of the EPO and extensive case law of the Board of Appeal; d) once granted by the EPO, the holder of a European Patent has

the possibility of obtaining protection in those countries members of the European Patent Convention (EPC) which are of commercial and/or strategic interest (business plan).

Infringements of the Greek phase of a European patent are protectable through an ordinary civil action and possibly interlocutory injunction before competent courts.

### What are the advantages of filing a PCT application?

Filing an international patent application (PCT) with the World Intellectual Property Organization (WIPO) is advisable for those who require protection in countries not covered by the EPC. Such handling enables the applicant to have ample time for assessing the value of its invention, for improving its initial application taking into account the international preliminary search report and for adapting the geographical breadth of protection to its business and export needs.

It is noteworthy that, specifically for PCT applicants who are Greek citizens with residence in Greece, a strong reduction of the filing fees down to 10% (i.e. € 116.30) of the regular fee (i.e. € 1,163) is offered due to the prevailing economic circumstances in the country.

Given WIPO's administrative role for PCT applications, a patent title is only granted by national or regional offices subject to a relevant procedure. A PCT application must first enter the EP phase before being validated in the Greek jurisdiction.

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# SUPPLEMENTARY PROTECTION CERTIFICATES (SPCs) & PEDIATRIC EXTENSION THEREOF

**Dr Nikolaos Lyberis**, *Attorney-at-Law, Ph.D.*  
Partner at **Vayanos Kostopoulos**

## What is a Supplementary Protection Certificate (SPC) and which categories of products does it cover?

An SPC title is granted for inventions concerning pharmaceuticals and plant protection agents. It safeguards extension of the 20-years patent protection term depending on the time elapsed between the date of filing of a patent application and the date of notification of a market authorization to the addressee thereof (in accordance with CJEU Decision C-471/14 Seattle Genetics Inc). The SPC title protects a specific product that falls within the scope of the basic patent. Said basic patent may protect a product, a manufacturing process and/or a use or application thereof.

The legislative ratio of SPC protection is to partially compensate the patent holder resp. manufacturer of a product for that period of the patent duration that remained commercially unexploited until grant of the necessary market authorization.

## What is the term of protection of an SPC?

The maximum term of protection for an SPC title is 5 years. The calculation module for the SPC duration is the following: date of notification of the first market authorization to the addressee minus the date of filing of the basic patent application minus 5 years.

## How can an SPC title be granted and maintained?

SPC protection in Greece can be obtained subject to an application at the Patent Office supported by relevant documentation. Depending on the actual duration of an SPC title annuities are due annually for each term of SPC protection.

## What are the requirements for obtaining SPC protection?

An SPC is granted upon substantial examination by the Greek Patent Office. Although EU legislation provides for the substantial SPC requirements, no central prosecution of SPC applications in the EU is available. The requirements for grant of an SPC by the Greek Patent Office are the following:

- a pharmaceutical or a plant protection agent which the SPC is applied for;
- a basic patent conferring protection to the product according to the scope of the patent's claim(s);
- a market authorization (MA) for the product; an MA may be a Greek one or a central European one;
- a Supplementary Protection Certificate is granted by the Greek Patent Office without prior examination of the provisions of Article 3, paragraphs c. and d. of the Regulation (EC) 469/2009 resp. Article 3, paragraph 2 of the Regulation 1610/96; insofar the Title is granted at the risk of the applicant.
- MA must be the first in the market (EEA) for the SPC term to be calculated;

- no other SPC must have been granted to the same SPC-applicant for the same product. If the same SPC-applicant holds more than one patents protecting a product, then more SPC applications may be filed. The same SPC applicant is entitled to the grant of an SPC for a different application/ use of the same product provided that the application is within the scope of the protection conferred by the basic patent.

### What is a pediatric extension of an SPC?

Given that pharmaceuticals destined to be delivered to children and minors are subject to additional specific clinical trials necessary to safeguard medicinal efficacy and safety for this target group of patients, a 6-months extension of the SPC protection term is granted. Such extension is available provided that a pediatric investigation protocol (PIP) has been approved. Once a certificate of pediatric extension is granted by the GPO, the SPC holder will enjoy additional six months of SPC protection for his product.

### How is a pediatric extension of an SPC protected against infringement?

An SPC with pediatric extension enjoys full SPC protection including cease and desist claims, compensation for material and/or moral damages, preventive measures and preliminary judicial protection. To this end appropriate legal means must be raised such as a civil action and, under circumstances, a petition for interlocutory injunction.

### What are the legal means of the applicant in case of rejection by the GPO of an application for grant of an SPC or its pediatric extension?

The GPO's decision rejecting an application for grant of an SPC or a pediatric extension of an SPC is an ordinary administrative act. As such it may be challenged through a petition for cancellation before the Supreme Administrative Court.

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# DESIGNS

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## What is a design right?

A design right protects the outer visible appearance gained over the totality or a part of a product, consisting of its special characteristics, such as the shape, line, color, form and/or the product's material(s) or its ornamentation. Accordingly, design protection may be granted e.g. for fashion articles, kitchen utensils, jewelry, automobile parts provided that they do not fulfill exclusively a functional role.

## What is the difference between an industrial design and an industrial model?

An industrial design protects a two-dimensional esthetic creation, whereas an industrial model is destined to protect three-dimensional creations.

## Which are the formal requirements for obtaining a design right?

As soon as the creator has produced a prototype and prior to it becoming accessible to the public of the relevant market, a design application must be filed at the Greek Patent Office. The application may be filed either in the name of the creator or in the name of a third party to which the creator may assign his/her own right for various legal reasons, e.g. a contract for delivering a specific work or an employment contract. In case the applicant is other than the creator, a declaration by the latter must be filed at the Patent Office indicating the legal relationship between applicant and creator. Registrable designs may be represented through photos or sketches clearly showing the outer appearance of the product. International conventional priority may be claimed within a 6-months term as from the filing of the same design in another country member of the Paris Convention subject to submission of the Priority Certificate. A description of the design consisting of up to 100 words is optional. Deferment of publication may be requested by the applicant for up to twelve months as from the filing date of the design application.

## Which are the substantial requirements for obtaining a Certificate of Registration of a design or a model?

In order for a design certificate to be granted, the design must:

- be novel, i.e. no identical design has been made available in the EU market prior to the date of filing of the design application, nor has there been any prior identical design application conferring protection in the Greek territory; and

- have individual character, i.e. it must create a unique impression enabling the well-informed user to identify the protected design from other relative designs already present in the market.

### **What is the legal frame for obtaining a registered design right on a national or international level?**

Registered national design rights are protected in Greece according to the Presidential Decree 259/1997. On an international level a design may be protected via an application at the World Intellectual Property Organization (WIPO) given that Greece is a contracting state of Hague Agreement on International Designs. Design protection in the Greek territory can also be obtained through a Registered Community Design (RCD) granted by the European Union Intellectual Property Office (EUIPO) according to the Regulation 6/2002/EC.

### **How does case-law interpret the notion of the user of a registered design in an infringement case?**

A user is a person showing not only an average degree of attentiveness, but a higher degree of carefulness and attention either due to professional experience or as a result of wide range of knowledge in the relevant field of activity connected with the protected design. As such a user is not an expert or a person having special skills in the art who is able to observe and discern detailed differentiations, even of minor importance, between the compared designs or between a design and an object.

### **Are unregistered designs protected in the Greek territory?**

An unregistered design may be protected as a distinctive sign of a product according to the law No. 146/1914 against unfair competition. Furthermore, consumer protection law and the law of torts may under circumstances be applicable as well.

### **How does case-law interpret the notion of an average consumer of an unregistered design in an infringement case?**

When protecting an unregistered design in the light of unfair competition law, an average consumer is meant to be an informed and reasonably attentive person who has average degree of information relevant to the product in question.

### **What is the term of protection of a design right and how is it maintained throughout its term?**

A design is protected for a term of up to 25 years subject to payment of renewal fees due every 5 years.

### **What can the holder of a Design Registration do against infringements?**

The holder of a Design Registration enjoys civil law protection against infringers before the Greek courts (see also EU Enforcement Directive 48/2004). He may file a civil action raising cease and desist claims, and requesting compensation for material and moral damages, if caused. Withdrawal from the market and destruction of infringing goods may also be

ordered by the Courts. Interlocutory injunction proceedings may be launched and, in case of extremely urgent need for judicial measures in obvious infringement matters, an Interim Order can be issued by the Judge. Criminal prosecution may - under strict presuppositions - be sought as well.

As a precaution against infringements, a Registered Community Design can be used in the frame of an application according to the EU Regulation 608/2013 concerning Customs Intervention for the protection of European intellectual property rights in the EU borders, including Greece.

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