POLICY PROPOSALS ON THE ORGANIZATION OF THE GREEK INNOVATION SYSTEM ON ISSUES RELATED TO INDUSTRIAL PROPERTY

Thessaloniki 16/5/2022

The Thessaloniki Chamber of Commerce and Industry is a member of the partnership formed for the project "IP Capacities for Smart, Sustainable and Inclusive Growth in the Mediterranean Region" (IPMED), which is implemented within the framework of the European Program ENI CBC MED. IPMED aims to increase the innovation potential of young and women entrepreneurs, as well as start-ups, through the strengthening of support services and skills related to intellectual property rights. Lead Beneficiary of the project is the Organization "Jordan Enterprise Development Corporation-Irbid Brunch", based in Jordan, while the Thessaloniki Chamber of Commerce and Industry, ''Finanziaria Ligure per lo Sviluppo Economico'' from Italy, "Agora Institute for Knowledge Management" from Spain and the Tunisia Chamber of Commerce & Industry, also participate in the project.

For the implementation of the relevant actions of the project IPMED, the TCCI has set up a Working Group, which aims, through round table meetings of its members, to identify - discuss, primarily at national level, possibilities for improving laws, regulations and policies related to intellectual property rights, so that they can be aligned with best international practices. Similar local Working Groups were created by the other project partners involved in the specific actions.

The aim is to formulate two (2) revision proposals per local Working Group, which will be submitted to the competent decision-making bodies and will constitute deliverables of IPMED.

The TCCI Working Group consists of a) five representatives of Very Small and Small-Medium-sized Enterprises of the Region of Central Macedonia and, specifically, Ms. Sofia Tsakiri, Ms. Efthymia Koutsomitropoulou, Ms. Eleftheria Athanasiadou, Mr. Georgios Efthymiou and Mr. Nikolaos Sismanis, b) two representatives of intellectual property rights service providers, namely Mr. Dimitrios Kouzelis, European Patent Attorney, who also undertook the role of coordinator of the roundtable discussions and Mr. Konstantinos Vavekis, also European Patent Attorney, c) Ms. Evmorfia Tziva, Professor of Commercial and Economic Law at the Law School of the Aristotle University of Thessaloniki, d) Mr. Georgios Asimopoulos, Head of the Thessaloniki Regional Office of the Hellenic Industrial Property Organization (OBI), e) Mr. Emmanouil Chatzigiannis, representative of the Technology Transfer Office of the Special Account for Research Funds of the Aristotle University of Thessaloniki, f) Ms. Kalliopi Nakou, representative of the Legal Support Office of the Special Account for Research Funds of the Aristotle University of Thessaloniki and g) three representatives of the TCCI, namely Mr. Emmanouil Vlachogiannis, 1st Vice President, Mr. Antonios Boumpoulas, Head of the Department of Studies & Research and Ms. Stavroula Angelidou, executive of the same Department.

Ms. Evmorfia Tziva unfortunately left voluntarily the Working Group after the fourth meeting of its members.

The members of the Group were sent the "Road Map for the Development of Intellectual Property in Greece", which was drafted in December 2019 and updated in April

2021 by the Intellectual Property Committee of ICC Hellas, in order to serve as a basis for discussion.

The Working Group had, five online meetings on the 20/12/2021, 21/01/2022, 18/02/2022, 8/4/2022 and 19/4/2022 during which it was decided to focus the Group's work on issues related to industrial property and to divide the issues under discussion into two sections, namely the section "Organization of the innovation ecosystem" and the section "Administration of justice". It was also decided that the two texts of policy proposals to the competent bodies will be formulated on the basis of these two sections. The Working Group also decided to create a questionnaire, through which the issues discussed during the first meeting were evaluated as regards their importance. Furthermore, new proposals of the Group's members were recorded.

The results of the evaluation and the additional proposals were presented during the second meeting of the Working Group, which then focused on the discussion of the issues of the section on the administration of justice in the field of industrial property, in order to formulate the relevant proposals for improvement.

In the light of the above, the Working Group has adopted improvement proposals aimed at addressing legal uncertainty issues that arise at the stage following the granting of the industrial property rights, due to delays observed in the administration of justice in the relevant cases and also due to the judge's lack of special technical knowledge and knowledge in the field of industrial property rights.

During the third meeting, the Working Group finalized the text of policy proposals regarding the administration of justice on industrial property issues and then focused on the thematic areas about the improvement of the organization of the innovation ecosystem in relation to industrial property. During the fourth meeting, a draft policy text on the organization of the innovation ecosystem in relation to industrial property, which was based on the suggestions of the Group members, was presented and discussed, while at the fifth meeting, this same text was finalized by incorporating the members' remarks.

In view of the above, the following policy proposals are suggested:

1. Training and certification of Patent Attorneys.

One factor delaying the development of innovation in Greece is the lack of Certified Patent Attorneys. According to the article 7 par. 10a of Law 1733/87, "The right to appear or submit documents before the Hellenic Industrial Property Organization (OBI) has anyone who derives a right from a patent application, an application for a Certificate of Utility or his attorney or the certified patent attorney authorized for this purpose".

Although the national legislation has adopted, since 1987, relevant legislation and practice of other countries and provided for the existence of Certified Patent Attorneys, it has failed to include in the same law the procedure by which one is certified as a Patent Attorney. This delay continues until 2019.

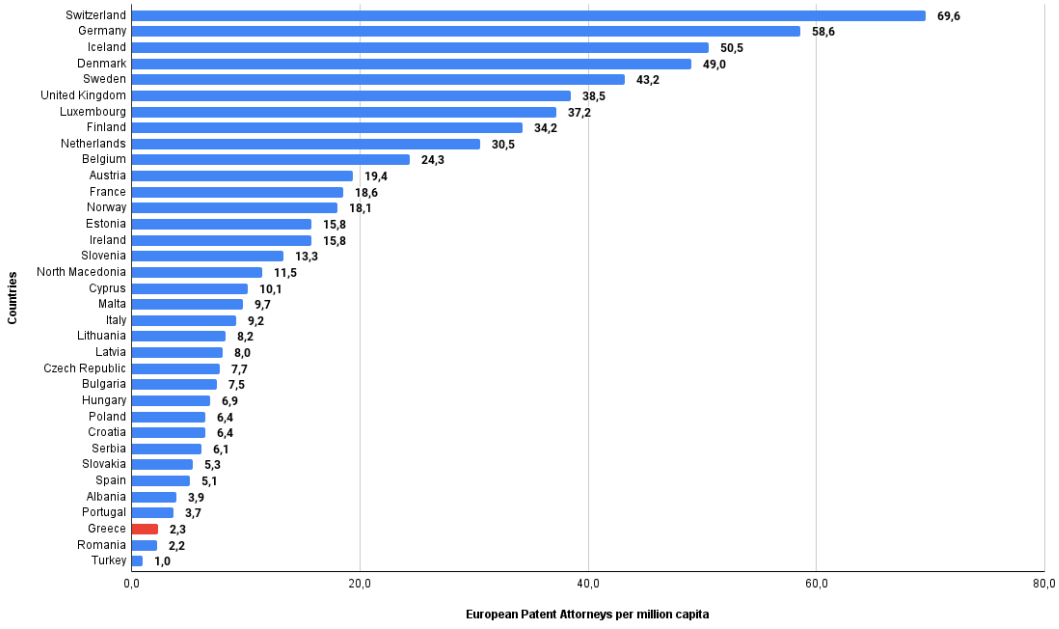
Several years later, in 2019, the Hellenic Academy of Industrial Property (EABI) was established, with the Presidential Decree 31/2019. After three years of operation and despite

the fact that a Board of Directors has been formed and an Executive Director has been hired, EABI has only implemented one thirty-hours training program in industrial property.

To date, there appears to be no preparation for the Academy to launch, next academic year, the core education and training program, leading to patent certification at national level. No Board of Education has been formed (article 10), no professors or other staff have been selected (articles 13,14), no announcement has been made for the number of admissions (article 15.1), etc.

In addition, the Management of EABI could exploit the know-how of some of the few based in Greece Consultants, who are certified by the European Patent Office (European Patent Attorneys[1]).

Let's find out what the result of this delay is and how it has a deterrent effect on the creation of an integrated innovation ecosystem. The graph below shows the extremely low position of Greece, in relation to the other Member States of the European Patent Organization, in terms of the number of Certified Advisors (European Patent Attorneys).



Source: Information on Patent Attorneys is available on the European Patent Office website https://www.epo.org/applying/online-services/representatives.html

Population data are drawn from Wikipedia, from the following entry: https://en.wikipedia.org/wiki/List_of_countries_and_dependencies_by_population.

The graph does not include data for Liechtenstein, San Marino and Monaco, as these countries have a population of less than 50,000 and therefore their figures may not be representative.

[1] This term is used as an alternative to the term “Professional Representatives before the European Patent Office”

The real picture is unfortunately worse because, out of the twenty-five registered members on the list of the European Patent Office, only eight have passed the "European Qualifying Examination" (of high difficulty) and are able to independently write and support a patent application. This number is likely to bring our country one place lower in the table (we are not able to estimate the corresponding numbers of Turkey).

Most countries on the graph have a parallel, national certification process, which allows holders of this certification to represent clients at national level. These Consultants are prepared and then obtain the European certification, so as to be included in the above list. As the Academy has not yet started the relevant program of basic education and training of patent consultants, Greece does not have the necessary educational framework that can progressively prepare a candidate for the European exams and the participation of the few Greek candidates in these examinations is the result of excessive personal effort and / or their stay abroad for a long time (brain-drain).

In any case, we consider it appropriate to immediately recognize, through a relevant legislative provision, the right to appear and submit documents before OBI by Certified European Patent Attorneys, by way of derogation from the provisions of Article 18 of Presidential Decree 31/2019, at least until the first round of training and certification of the Consultants is completed. Those Consultants will be fully certified and able to submit and support applications. Similarly, it is proposed to immediately activate the possibility provided, in the Article 18 of the Presidential Decree 31/2019, of recognition of this right to patent consultants, who have been certified by the National Industrial Property Offices of other Member States of the European Union with significant experience in patent issues, through the conclusion of relevant bilateral cooperation agreements.

It is therefore imperative that Greece obtains a comprehensive system which will encourage young scientists to prepare for becoming Patent Consultants and which will train and certify these Consultants. The Academy is the first step in the right direction. This step must be completed, and the Academy must apply the provisions of the Presidential Decree 31/2019 as soon as possible. .

2. Training of Experts on issues of valuation of the Industrial Property Rights

It is important for any company, institution or individual wishing to invest in the patenting of an invention and its commercialization, to know its value and the potential profits it could make. Only then will he be able to strategically decide where and how to protect his invention since the amount of the investment he will make is crucial to the degree of protection. Indicatively, the amount of investment can range from a few thousand euros (for protection in one country) up to hundreds of thousands of euros, for many countries and for many years, yet with corresponding income in each case.

There are other reasons why it is necessary to assess the value of an Industrial Property Right (IPRs) such as attracting investment, selling or licensing the use of technology to a third party, as collateral for borrowing, as well as in the case of the calculation of financial loss in a legal dispute. In any case, Intellectual Property is based on legal texts with significant economic and commercial implications, while in the case of industrial property rights, there

are also technical and scientific issues that need to be considered. Therefore, the valuation of IPRs must be treated in a different way from a property, a machine or other type of material or intangible asset, thus requiring different skills - knowledge of the appraiser.

First of all, financial knowledge is required. The appraiser must be aware of the different valuation models and be able to use them, selecting the most appropriate, based on the data available, the uncertainty of the environment and the financial data of the investment. Ideally, he should apply more than one of these models, in order to obtain different estimates and select the ones that converge, based on the most objective possible data. He should also be familiar with the basic valuation methods (Cost Method, Market Method, Income Method) and the application of the following different models:

Real Options Analysis	Probability Weighted Expected Return Analysis	Real Options Analysis
Markov Chains	Binomial Lattices	Bayesian Analysis
Bayesian Analysis	Provenance Analysis	Encumbrance Analysis
25% Rule	The Monte Carlo Method	Relief from Royalty Method
Decision Trees		

Second, the appraiser must either know the market very well, or be able to estimate financial figures based on a detailed market research. So, marketing and market research knowledge is required.

The third dimension is specialized knowledge on industrial property. An industrial property title has some inherent characteristics that affect its value. For example, in a Patent, the degree of protection it provides should be considered, based on the status of the patent (whether it is an application or the patent has already been awarded, the geographical coverage, the sector, the years it will provide protection, the results of the research report, the stage of examination), based on the claims (scope, number and type of claims, whether they are written by a patent attorney or the inventor), the reports, as well as the reputation of the inventors and holders. The history regarding legal disputes, ownership changes and licensing of the patent plays an important role in its value. All these must be evaluated in the light of the state of the art, as well as in relation to whether there is Freedom to Operate. Of course, there are several other parameters that affect the value of the patent to a lesser extent such as whether it belongs to a patent family, the number and type of classification levels, the terms, plans, and even the examiner. Finally, key aspect to valuation, further to the very protection of an Industrial Property Right provided, is the power of its enforcement.

In any case, the training of experts should include a good knowledge of the European legislation on licensing issues such as Fair Reasonable and Non-Discriminatory Licenses, Compulsory Licenses, Anti-Trust Issues, as well as negotiation skills that are necessary at any stage of negotiations to support licensing parties. This training is already provided by foreign bodies and it is proposed that this possibility exist in Greece as well. Specifically, it is proposed

to create appropriate courses that will be included in postgraduate programs and / or specialized seminars that will teach those interested in the methodologies of assessing the value of Industrial Property and will lead to certification by the Ministry of Finance.

3. Improvement and upgrading of the patent protection system in Greece

The competent body in Greece for the protection of inventions, as well as industrial designs at a national level, is exclusively the Hellenic Industrial Property Organization (OBI), which also functions as an office for the receipt of applications for the protection of inventions, industrial designs abroad. Recently, the scope of responsibilities of OBI has been extended with the transfer of the competence of the registration of Trademarks, by the Law 4796/2021.

Regarding the granting of patents by OBI, an important stage of the whole process is the preparation of a Research Report by the examiners of the Organization, on the "new" and the "inventive" of the innovation. It is generally accepted that the Research Reports prepared by OBI examiners are of high quality, while the time between the filing date of the application until the completion of the research and the writing and sending of the relevant Report to the interested party is, on average, according to the OBI data, nine months. Given that a relevant request for extending the protection of an invention in other countries must be submitted to the competent bodies (EPO, WIPO) within twelve months from the date of submission of the national application to OBI, and in order for the applicant to have sufficient time for the evaluation and the preparation of its expansion abroad, it is deemed necessary for OBI to make, as a first priority, the necessary adjustments that will allow the completion and sending of the Research Report to the applicant within the shortest possible time (within six to eight months). Such an improvement in the time of drafting and sending of the Research Report to the applicant would be a significant amelioration in the patent system.

In addition, in order to have a clear picture of the inventive activity in Greece, it would be useful to systematically publish on the website of OBI sufficient information and statistics on the number of patent applications, the type of the applicants (large companies, small and medium-sized companies, universities and research institutes, individuals), the number of national applications which continue with a European or international application making use of priority, the distribution of applications by technical field etc.

We also believe that the use of the Key Performance Indicators system in the patent ecosystem as a whole, could significantly contribute to the increase of the number of applications, but also their quality. This system, if properly implemented, can serve as a useful tool for measuring the performance and the improvement of individual processes, both of OBI as well as of the rest of the ecosystem, especially in terms of the number of applications, the time of examination of the applications and the writing of Research Reports, the exploitation of the patents but also the promotion of the communication between the members of the innovation ecosystem.

In the long run and if improvements in the aforementioned Indicators are observed, such as the reduction of the time needed for the preparation of the Research Report, the increase in the number of applications from small and medium-sized enterprises and

institutional applicants (universities, research centers) etc., we suggest the transition from the "declaration system" currently in force in our country to the "examination system" of patent applications, which includes an in-depth examination of the three criteria that the invention must meet, namely the "new", the "inventive "and the "industrial application", as well as the examination of "clarity ", "uniformity of invention "and "completeness ", in order to facilitate the process of their valuation and, therefore, to make their commercial use more feasible.