



POLICY PROPOSALS REGARDING THE ADMINISTRATION OF JUSTICE IN INDUSTRIAL PROPERTY ISSUES

Thessaloniki 21/02/2022

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 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 Partner of the project is the Organization "Jordan Enterprise Development Corporation- Irbid Brunch" based in Jordan, while further to the TCCI, in the project also participates the organization Finanziaria Ligure per lo Sviluppo Economico from Italy, the Institute "AGORA" of Spain and the Tunis Chamber of Commerce & Industry.

For the implementation of the relevant actions of IPMED, the TCCI has set up a Working Group, which aims, through round table meetings of its members, to identify - discuss, at national level, possibilities for improving laws, regulations and policies related to intellectual property rights, so that they can be aligned with international best 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's Working Group consists of a) five representatives of Very Small and Medium 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 Hatzigiannis, representative of the Technology Transfer Office of ELKE, Aristotle University of Thessaloniki, f) Ms. Kalliopi Nakou, representative of the Legal Support Office of ELKE, Aristotle University of Thessaloniki and g) three representatives of the TCCI, namely Mr. Emmanouil Vlachogiannis, First Vice President, Mr. Antonios Bouboulas, Head of the Department of Studies and Research of TCCI and Ms. Stavroula Angelidou, executive of the same Department.

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 by the date of drafting this text, had two online meetings on the 20/12/2021 and 21/01/2022, during which it was decided to focus the work of the Group on issues related to industrial property and to divide the under-discussion issues into two sections, namely in the section "Organization of the innovation ecosystem" and in 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 at the second meeting of the members of the Working Group, which then focused on the discussion of the issues of the section related to the administration of justice in the field of the industrial property, in order to formulate the relevant proposals for improvement.

Following the above, the Working Group adopted the following improvement proposals which aim to address problems of legal uncertainty that arise in the stage after the granting of the industrial property rights, due to delays in the administration of justice in the relevant cases and also due to the judges' lack of special technical knowledge and knowledge relevant to industrial property rights.

1. Training of judges on industrial property issues and creation of Special Chambers of Civil Courts.

Any reform effort to improve the quality of the civil procedure that is followed for the administration of justice in industrial property cases and to speed up the process of adjudication concerning the relevant cases must focus on the human resources of the justice system, especially the judiciary officials. Due to the special nature and the highly technical character of industrial property cases, the judges dealing with the relevant cases must have special skills that will allow the proper handling of them and the issuance, within a reasonable time, of technically sound and thorough decisions. It is therefore essential for the consolidation of legal certainty that the legal training of the judges dealing with these cases is supplemented by continuous multidisciplinary training, which includes knowledge, for example, of the concepts of "new", "inventive", "clarity" and "completeness of the description" of a patent, as an integral part of their mission.

The training of court officials on industrial property issues could be conducted, for example, according to the standard that was followed, on a European Commission's initiative, in the Member States for the training of judges on the General Data Protection Regulation (GDPR). The development of relevant specialized training programs in the context of the continuous education services of the National School of Judicial Officers would also serve this purpose. Judicial training services, through the seminars provided by the European Patent Office (EPO), could be used systematically, especially regarding patent issues.

Furthermore, for the systematic utilization of judicial officers who have the necessary specialized knowledge in industrial property issues and the consequent improvement of the quality of decisions and speeding up the adjudication process regarding the relevant cases, it would be advisable to establish

special departments in the Civil Courts of First Instance and Courts of Appeal of Athens and Thessaloniki for the adjudication of cases that fall within their substantive jurisdiction and have as their object disputes concerning national and European industrial property law. It is noted that according to article 15 paragraph 2c of the Law 1733/1987 “Patent holders who do not reside in Greece are suing and are being sued in the courts of the capital”. For their establishment, a regulation similar to article 359 of L.4700 / 2020 (Government Gazette A’ 127) could be adopted, which provides for the establishment of special sections of civil courts in the Courts of First Instance and the Court of Appeal of Athens and Thessaloniki for disputes related to the law of electronic communications, energy and personal data protection.

The specialized departments for industrial property cases will be staffed with judicial officers who have specialization or experience in the specific category of disputes, which arises either from relevant postgraduate or doctoral degrees or from a previous related activity or from certificates of attendance of specialized training programs, like the ones described above.

Their appointment in these departments should be carried out for a term of a certain period, at least three years, with the possibility of renewal, in order to strengthen and utilize their specialization and experience to the maximum extent. Furthermore, the prospect of avoiding transfers for a long time could serve as an incentive for court officials to specialize in industrial property issues and to staff the specialized departments. Equally useful in this direction would be the offer of incentives related to the career development of judicial officers.

2. Creation of a Register of Certified Experts in industrial property issues

Due to the complexity of most industrial property cases before the courts, it is a common phenomenon for the judges to use evidence in the form of professional expertise in order to understand critical issues that require specific knowledge. Therefore, in accordance with the provisions of Articles 368 et seq. of the Code of Civil Procedure, when the need arises, the court shall appoint the experts from the list of experts kept by the court of first instance or appoint suitable experts for this purpose. As far as industrial property cases are concerned, in practice, they often call Hellenic Industrial Property Organization (OBI) executives to submit an opinion or to appear at the hearing.

However, due to the specific nature and diversity of issues arising in the context of industrial property cases, the evidentiary process and the judicial decision making could be more effectively supported by the establishment of a Special Register of Certified Industrial Property Experts, of which the courts and the parties will appoint the experts and the technical advisers, respectively, in the relevant cases. Given that those registered in the Register will exercise a public function, the above Register must be established and operate on the initiative and under the supervision of the Ministry of Justice or several co-competent ministries.

With regard to the basic parameters for the staffing and operation of the Register, it would in principle be appropriate to divide it into three separate sub-registers, based on the specialization of the registered members. In particular it is suggested:

- in the first sub-register to register members specializing in the scientific fields related to the technical part of industrial property,

- in the second, members with specialized legal training in industrial property issues, and
- in the third, members specializing in the financial valuation of the relevant rights.

An expert with more than one specializations will be able to register in two or all of the respective sub-registers, without restriction.

Furthermore, it is required to establish specific objective criteria and procedures in order to obtain the certification needed to be a member of the Register. Therefore, clear enrollment conditions need to be set for each of the three sub-categories, such as the obligation for the person concerned to have specific qualifications and relevant previous service of at least a certain duration and / or to be an active member of relevant professional bodies. At this point it is noted that especially with regard to the sub-register of technical expertise it should be borne in mind that further to scientific technical knowledge additional experience in matters of industrial property is required. Thus, for example, it should be borne in mind that for issues related to patents European patent attorneys have this experience. Further to the registration requirements, it is of course important to define the corresponding documentation. Finally, in order for the Registry to meet its mission, it is crucial to require in addition to meeting the conditions for registration, also the continuous training of the certified persons in matters of industrial property.

3. Promoting mediation and training mediators on industrial property issues

In order to improve the quality and speed up the administration of justice in private disputes related to industrial property, in addition to the individual interventions for a more efficient operation of the courts, a substantial reduction of the possible number of the respective cases is required at the same time. This reduction can be achieved through the use of alternative methods of out-of-court dispute resolution, such as the process of mediation. Thanks to the voluntary nature, speed and flexibility of the process, mediation has become an important tool internationally for the promotion of entrepreneurship and economic development in general and is constantly gaining ground in many areas of social coexistence.

In our country, the institution of mediation is already one of the fundamental procedural principles of the Greek legal order (Art. no. 116A and 214C of the Code of Civil Procedure). It was initially introduced by Law 3898/2010 (Government Gazette A' 211), while the current legal framework for the implementation of the process in Greece is included in the provisions of Law 4640/2019 "Mediation in civil and commercial matters - Further harmonization of Greek Legislation to the provisions of Directive 2008/52/ EC of the European Parliament and of the Council of 21 May 2008 and other provisions" (Government Gazette A' 190).

The existing institutional framework regulates in detail all the key points for the organization of the mediation procedures, defining the required qualifications of the candidate mediators, the compulsory program of studies they must attend, the licensing procedures of the mediators' training institutions, as well as the compulsory training procedures of mediators. This framework can therefore also be used to resolve industrial property disputes through mediation. In order for mediation in the field of these specific disputes to work effectively, however, the mediators dealing with the relevant cases must necessarily have the specialized knowledge and expertise to understand the subject matter of the dispute and to handle the case properly.

For this purpose, it is proposed to enrich the compulsory content of the program of studies of the candidate mediators, by teaching the basic concepts and principles of industrial property law. The design and implementation of specialized training programs for the further training of mediators in specialized matters of industrial property by the licensed training bodies and the further acquisition of the necessary skills would also contribute significantly towards the same direction.

4. Proposal for amendment of Law 4325/1963 "On inventions concerning the national defense of the Country and amendment of Law 2527/1920 on patents" (Government Gazette A' 156).

The process of granting patents in Greece is regulated by the provisions of Law 1733/1987 "Transfer of technology, inventions, technological innovation and establishment of an Atomic Energy Committee (Government Gazette A' 171). This law stipulates that the relevant applications are submitted to the Hellenic Industrial Property Organization (OBI), which is the competent body for their examination, the issuance of patents and the maintenance of the relevant Register. At the same time, however, according to the provisions of Law 1733/1987 and by virtue of article 2 of this law, the much older Law 4325/1963 "About inventions concerning the national defense of the country and amendment of Law 2527 /1920 related to patents", is maintained in force (Government Gazette A' 156). This law aims to ensure the confidential nature of inventions and discoveries made by Greek citizens, either in Greece or abroad, which are considered to be related to the national defense of the country. For this purpose, it provides, in addition to the provisions of Law 1733/1987, the involvement of the Ministry of National Defense in the process of examining all applications for a patent and obliges persons who have Greek citizenship to file compulsorily and without exception applications for a patent to the Special Office for Confidential Inventions of the Ministry of Commerce (now OBI).

It is obvious that the requirement of Law 4325/1963 for Greek inventors to always file the application for a patent in Greece first, regardless of their place of residence or stay and regardless of whether the invention took place in Greece or abroad, significantly restricts their right to manage, protect and use their intellectual property as they wish. The relevant provisions of Law 4325/1963, due to their outdated character, create problems and disputes regarding the legality of patents issued without following the prescribed procedure, especially for Greeks abroad who are members or executives of companies. Furthermore, they concern all cases of patents, even those that obviously could not have any application in national defense.

It is derived, therefore, from the above, that the strict application of the provisions in question, in some cases, may cause serious and unjustified difficulties in the effort of the Greek inventors to secure their intellectual property. This may be the reason that has led to the de facto marginalization of their implementation. Therefore, our suggestion is the alignment of the law with the best practices in force internationally, in order to safeguard, of course, the interests of our country related to national defense, but also to limit the negative consequences arising from these outdated legal provisions.