
THE
INTELLECTUAL
PROPERTY
REVIEW

THIRD EDITION

EDITOR
ROBERT L BAECHTOLD

LAW BUSINESS RESEARCH

THE INTELLECTUAL PROPERTY REVIEW

The Intellectual Property Review

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For further information please email
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EDITOR'S PREFACE

It is not an overstatement to say that essentially all business is global, and the protection of intellectual property is the lifeblood of all business. The scope and implementation of that protection, however, varies from country to country.

It would be ideal if there were one universal set of laws, rules and procedures. But, while the efforts of many dedicated individuals have accomplished much in harmonising intellectual property protection, we remain defined as much by our differences as by what we have in common. It therefore is incumbent on all of us, as advisers to our clients, to be conversant with the individual practices in each of the economically significant countries.

The goal of this review is to provide that guidance. We have assembled a body of leading practitioners to explain the opportunities for intellectual property protection in their respective jurisdictions, together with the most significant recent developments and any aspects that are unique to their country. While we have striven to make the book both accurate and comprehensive, we must note that it is necessarily a summary and overview, and we strongly recommend that the reader seek the advice of experienced advisers for application of the principles contained in this review to any specific matter.

Reflecting on the past two editions of this review, we have seen the radical reshaping of US patent law under the America Invents Act, steady progress towards harmonisation of patent rights in Europe with a Unified Patent Court, and continued development and enforcement of patent rights in China. The authors of each chapter will highlight these and other notable developments in their respective countries. This third edition demonstrates the need for annual reviews of intellectual property on a global scale to remain current for our clients.

It is our hope that the reader will find this a useful compilation and often-consulted guide.

Robert L Baechtold
Fitzpatrick, Cella, Harper & Scinto
New York
May 2014

Chapter 5

CYPRUS

*Ourania Vrontou*¹

I FORMS OF INTELLECTUAL PROPERTY PROTECTION

On the surface, there is nothing innovative, unique or different about Cyprus legislation compared with other jurisdictions. Like most EU Member States, Cyprus legislation is a melange of European harmonisation and international treaties. Nonetheless, the characteristic ordinariness of Cypriot legislation² is precisely its greatest advantage; there are no hidden clauses, no ambivalent provisions and no obstacles.

i Copyrights³

The main legislative provision for the protection of copyrights is the Copyright Law, L59/1976.⁴

The Copyright Law provides that copyrights consist of: ‘any literal, dramatic, musical or artistic work, sound recordings, films or broadcasts and the typographical arrangement of published editions’.⁵ The definition is broad enough to encompass computer software⁶ and databases.⁷

1 Ourania Vrontou is a lawyer at Christodoulos G Vassiliades & Co LLC.

2 Cyprus main legislative provisions consist of the Trademarks Law (as amended) L121(I)/2006 and the Trademark Rules (as amended in February 2013).

3 Moral rights have no relevance in Cyprus.

4 Other relevant legislation includes the Protection of the Commercial Exploitation of Cinematographic Films, the Berne Convention, the Universal Copyright Convention, the Paris Convention, the Rome Convention and most importantly the TRIPS Agreement.

5 Copyright Law L59/1976, Article 3(1).

6 Ibid, Article 2(1)(h).

7 Ibid, Article 3(1)(a)(vi).

In order to invoke such protection, any of the above needs to satisfy two main requirements: (1) to be in written⁸ form; and (2) to be an original piece of its creator.⁹ Both requirements shall be interpreted according to the meaning generally ascribed to them.

The duration of protection is defined based on whether or not the author is known, unknown, a physical person or a corporate entity and of course on the type of work for which the copyright subsists. The norm is that protection subsists for 70 years from the end of the calendar year of the author's death.¹⁰

As far as infringement is concerned, there are numerous related statutory provisions. However, there are no specialised courts for intellectual property disputes. Thus, such claims are decided by regular judges, who despite their goodwill and effort, remain laypersons as far as intellectual property is concerned. Case law on intellectual property matters, generally, and copyrights specifically, is negligible.

ii Patents

In 1998, Cyprus escaped the re-reregistration of UK patents by the passing of the Patent Law L16(I)/1998. The Patent Law provides that a patentable invention needs to satisfy three requirements: novelty, inventive step and industrial application.¹¹

The duration of protection is 20 years.¹² For every year a patent is renewed the relevant fee increases in a proportional manner.

As far as infringement is concerned, the relevant law provides for specific rights for the patent owner.¹³ Whether or not the rights are infringed depends on the decision of the court.

iii Industrial designs¹⁴

Industrial designs are protected by L4(I)/2002, the Paris Convention and the TRIPS agreement.

In order for an industrial design to be eligible for protection, the latter has to be new and present individuality in such a way that the informed user will not create an impression similar to the one of a design that is already known to the public.

Protection granted may be renewed for a period of 25 years¹⁵ provided that the relevant fee is satisfied.

8 Ibid, 2(1).

9 Ibid, Article 3(2)(b).

10 Copyright Law. L59/1976, Article 5.

11 Patents Law. L16(I)/1998, Article 5(1).

12 Patents Law. L16(I)/1998, Article 26(2).

13 Ibid, Article 27(1),(2),(4).

14 Utility models have no relevance in Cyprus.

15 Industrial Designs Law, L4(I)/2002.

iv Plant varieties

It is widely acknowledged that Cyprus enjoys a rich plant variety culture, which is protected by L21(I)/2004. The requirements for protection are that the variety be new, distinctive, homogenous, stable and have a name.¹⁶

The duration of such protection is 20 years from the date of grant in case of a creator and 25 years in case of trees and vines.¹⁷ However, the validity of the grant of protection remains at the discretion of the Registrar even after its grant. Thus, the Registrar has the right to cancel such grant if the variety does not remain homogenous or stable or when the holder did not keep the variety for the entire duration of the right of the creator.

v Geographical indications and appellation of origin

The law governing geographical indications and appellations of origin is the Law on Appellations of Origin and Geographical Indications of Agricultural Products or Foodstuffs¹⁸ and the relevant ministry is the the Ministry of Agriculture, Natural Resources and Environment, which in turn appoints a committee of five members whose task is to advise the Ministry on matters related to geographical indications and appellations of origin.

vi Trademarks¹⁹

Trademarks are governed by the Trademarks Law, which is a product of the European Trade Marks Directive (2008/95/EC).

In order for a trademark to be registrable, it has to satisfy both absolute as well as relative grounds that could lead to refusal. Thus, the Trademarks Department needs to be satisfied, *inter alia*, that the applicant mark may indeed 'function' as a trademark, namely, that it is capable of distinguishing goods or services of one undertaking from those of another without being identical or confusingly similar to an earlier mark or goods in such a way that the relevant public might consider the marks as coming from the same or economically linked undertakings.

Once *ex officio* examination has successfully been completed and the mark has been published in the official Gazette of the Republic without opposition, a Registration Certificate is issued, which is valid for an initial period of seven years. After that, the mark is protected for 14 years each time it is renewed.

16 Plant Variety Law, L21(I)/2004, Article 5(1).

17 Ibid, Article 17(1).

18 L139(I)/2006.

19 Trade names are protected under different legislative provisions, namely the Partnerships and Business Names Law.

II OBTAINING PROTECTION

All procedures for acquiring protection in Cyprus for any intellectual property right have a strong 'European flavour'. Thus, the main features of the procedures are already known to most European IP practitioners.

Each intellectual property right has its own forms and the procedure is adjusted to accommodate the needs of the particular intellectual property right for which protection is sought, subject to the provisions of the relevant law.

Generally, however, the procedure by which a mark is granted protection is divided into four main steps, provided that a search report is also included.

If a potential applicant would like to increase the possibility of a smooth registration procedure, it is usually recommended that via a representative, he or she submits a request to search either the Trademark Department's database, TM View or the Office for Harmonization in the Internal Market's eSearch Plus in order to be reasonably certain that the applicant mark has a *prima facie* strong potential for registrability.

The second stage is the submission of the actual application, which requires the details of the owner and a graphical representation of the applicant mark. The application is *ex officio* examined for both absolute as well as relative grounds of refusal, with the Trademarks Department having an absolute discretion to impose any registrability requirements it may think fit, having regard to the particular merits of each application. The third stage is publication, which marks the beginning of the opposition period. Any third party may, within two months from the date of publication, oppose the registration of the applicant mark on the basis of the relative grounds of refusal. In the absence of such opposition, the application proceeds to issuance of a Registration Certificate, which denotes the official grant of protection status to the mark.

Similarly, in patents, the relevant application form requires, *inter alia*, a description and a summary of the invention and a clear and precise description of the claims involved. In order for an application to be regarded as having been submitted, all relevant documents need be accepted by the Registrar. Once submitted, a search report is required. This is an expert's report that confirms the patentability of the invention while verifying that a person skilled in the art would not consider the invention 'obvious'. When these requirements are satisfied, the Registrar proceeds to publication of the application along with the search report in a timely manner, within 18 months of the date of submitting the application. Nonetheless, the relevant legislation provides that a person who by means of a written statement demands the publication of an application that has complied with the submission requirements but has failed to satisfy publication requirements still has an undeniable protection of the patent.

As with patents and trademarks, industrial designs also need to satisfy the particularities of the law as these are found in Article 4(1) of the relevant legislation: namely, that they are novel and have an individual character. An application regarding industrial designs must satisfy formal requirements within four months of the initial submission. The date of filing of the application is considered the date on which all relevant documents have been properly submitted to the Registrar.

III ENFORCEMENT OF RIGHTS

Traditionally, the courts are the proper venue for claiming infringement. Article 60 of the Patent Law 1998 defines the rights accrued by the protection of a patent, while Article 61 determines the civil actions and remedies available to the right holder. If such an infringement is indeed proved in court, the court may rule for an injunction, damages, account of profits and other appropriate remedies. Should a court order be disobeyed, the infringer may be found liable in damages for up to 35,000 Cyprus pounds. The burden of proof in such cases is on the plaintiff.

Similarly, with regard to industrial designs, rights conferred upon protection are defined in Article 18 of the 2002 Industrial Designs legislation. The difference is that breach of Article 18(1) confers criminal liability on the infringer, which is punishable with two years of imprisonment, a 50,000 Cyprus pound fine, or both.

As far as trademark infringement is concerned, the venue for such proceedings is also the courts with the availability of remedies applying *mutantis mutandis* as in patents and industrial designs.

However, enforcement of rights may also refer to oppositions at the application stage or annulment proceedings.

i Opposition proceedings

If an opposition is brought at the application stage, the parties involved will be invited to present their case. Each party has the right to present their submissions either in writing, which will have to be accompanied by a sworn affidavit confirming the truthfulness of the content submitted or to present his or her case orally. The Registrar is then given time to reach a decision, which may be appealed in the courts.

ii Annulment proceedings

The post-registration opposition procedure is the annulment procedure, also known as expungement. The procedure for expungement is identical to the pre-registration opposition procedure, albeit a different form will have to be submitted.

To date, most expungement cases have either been revoked due to the excessive length of the procedure or are still awaiting the final decision of the Registrar. The minimum length of time before a final decision is five years, which makes this process very time-consuming, cost-ineffective and not worth pursuing.

IV TRENDS AND OUTLOOK

The trademark regime in Cyprus operates with two principal disadvantages. The first is the need for further modernisation of the Trademarks Department. At present, all forms are provided in PDF format and the amounts appearing on these forms remain in Cyprus pounds. In addition to this, some forms (not all of them) are only available in Greek. It is our opinion that all forms need to be transposed into a proper electronic

format such as that used in Norway.²⁰ Also, the schedule of expenses currently provided is not a practical guide even for intellectual property practitioners. This is due to the fact that although the schedule does state the current level of expenses, it nevertheless omits to include the stamp duty.

To a great extent these problems have been mitigated by the current practices of intellectual property practitioners, each of whom has his or her own specimen application forms with sums annotated in euros by hand. Nonetheless, individual professionalism cannot be regarded as a solution to systemic inadequacies.

Second, there is the issue of the Trademark Rules.²¹ The Rules have been in existence since 1951 but were amended in 2003. The problem is that they have remained unaltered since then and many of these procedural rules remain current. Since 2003 Cyprus's legislation has undergone sweeping changes, the most important of which was the harmonisation of the national law with the demands of the *acquis communautaire*. Thus, these rules are also in need of modernisation.

Nevertheless, these problems are not insurmountable. They can be described as minor from a legal perspective but major from a practical one. Objectively, however, any systemic disadvantages are overcome by the Department's staff and by local attorneys who ensure the quality of their services. This allows the Cypriot market to evolve and operate beyond strict national borders. Furthermore, both autonomously and in conjunction with European legislation, the Cyprus government has taken steps, such as the implementation of the IP Box Regime, to boost the Cyprus economy and promote growth.

i The IP Box Regime

In May 2012, Parliament, recognising the significant potential of intellectual property (IP) marketing, introduced what became known as the Cyprus IP Box Regime.²²

Its main provisions include an 80 per cent tax exemption on profits from the exploitation of IP rights, an 80 per cent exemption on profits accruing from the disposal of IP rights and a five-year amortisation period.

The most important advantages of the IP Box Regime are threefold. First, it applies to net profits. Second, it is not restricted to patents; IP rights have been broadly defined to include trademarks as well as marketing intangibles.²³ Third, the holder of

20 <https://www.patentstyret.no/en/Trademarks/Forms/> accessed on 24 February 2014.

21 The Trademark Rules 1951 as amended in 2003.

22 A lot of countries have chosen to introduce an IP box regime. The numerous IP box regimes currently applicable lead to doubts regarding their effectiveness and to suspicions of competitiveness between the different countries in soliciting market support. However, the Cyprus IP Box Regime is arguably one of the most attractive currently in force; See Lisa Evers, Helen Miller, Christoph Spengel, 'Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations' (Discussion Paper No. 13-070, Zentrum für Europäische Wirtschaftsforschung GmbH, Centre for European Economic Research, November 2013 <<http://ftp.zew.de/pub/zew-docs/dp/dp13070.pdf>> accessed on 24 February 2014).

23 The Organisation for Economic Co-Operation and Development (OECD) (2010a).

such IP right need not have paid the research and development expenses of the right nor have been actively involved in the management of the right.²⁴ The acquisition of such rights via an assignment agreement will suffice for the right to fall within the scope of the Regime.

These advantages, in conjunction with the fact that the corporate tax rate in Cyprus is as low as 12.5 per cent, means that any tax-deductible income can be subject to a tax rate of just 2.5 per cent; currently one of the lowest in Europe.²⁵ If the fact that dividends distributed by Cyprus companies to non-Cyprus residents are exempt from withholding tax²⁶ is considered along with the numerous double-taxation treaties established over the years,²⁷ then Cyprus has indeed recognised and welcomed the critical contribution of IP rights in the successful promotion of its national market and economy.

ii A window into Europe

The existing regime and all its developments have to a certain extent been shaped by the accession of Cyprus to the European Union in 2004. National legislation was harmonised to give effect to the *acquis communautaire* and new initiatives, like the TM View tool were given effect and the Office for Harmonization in the Internal Market were implemented by the Trade Marks Directive.

It is not only Cyprus that has benefited from this harmonisation. The Community trademarks legislation has allowed Cyprus to become a gateway into Europe.²⁸ This is not to say that the rest of the European Union Member States are not, but rather that this is especially the case for Cyprus in view of the geopolitical position of the island – namely, at the crossroads of three continents – and the consequent market targets of the islands.²⁹

24 HM Revenue and Customs, 'Research and Development – Relief from Corporation Tax', www.hmrc.gov.uk/ct/forms-rates/claims/randd.htm, accessed on 24 February 2014.

25 See Lisa Evers, Helen Miller, Christoph Spengel, 'Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations' (Discussion Paper No. 13-070, Zentrum für Europäische Wirtschaftsforschung GmbH, Centre for European Economic Research, November 2013).

26 *Law on International Trust*, No. 69(I)/92 as amended by N.20(I)/2012.

27 www.mof.gov.cy/Mof/Mof.Nsf/Page26_en/Page26_en?OpenDocument, accessed on 24 February 2014.

28 This is especially the case because of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community Trademark [2009] OJ L78/1 Article 93, which states that all OHIM representatives must be lawyers qualified within the European Union.

29 Bloomberg ranked Cyprus as the 35th-most attractive country to do business in, www.bloomberg.com/slideshow/2014-01-21/best-countries-for-business-2014.html#slide1, accessed on 24 February 2014.

iii Conclusion

In consequence of Community legislation and harmonisation of domestic laws, Cyprus can definitely be described as a very promising and constantly evolving trademark marketing headquarter. The island's geographic position in conjunction with the fact that the island's economic orientation is towards providing services makes it an ideal channel through which a successful trademark marketing strategy can be realised.

Appendix 1

ABOUT THE AUTHORS

OURANIA VRONDOU

Christodoulos G Vassiliades & Co LLC

Ourania has achieved an LLM in commercial law from the University of Bristol in 2012 and an LLB from the University of Leeds in 2011. She was admitted to the Cyprus Bar in 2013 and has since been working for Christodoulos G Vassiliades & Co LLC.

Christodoulos G Vassiliades & Co LLC is one of the leading law firms in Cyprus, offering a variety of commercial and corporate services since 1984, with seven affiliates around the world, including Russia and China. The firm's intellectual property department, founded in 2008, currently accommodates a large number of portfolios, predominantly for clients of national and international reach.

CHRISTODOULOS G VASSILIADES & CO LLC

15, Agiou Pavlou Str, Ledra House

Agios Andreas, 1105

Nicosia

Cyprus

Tel: +357 22 55 66 77

Fax +357 22 55 66 88

ouraniav@vasslaw.net

iplaw@vasslaw.net

www.vasslaw.com