



National Group: Greece

Title: Prior User Rights

Reporter:

Date: April 24, 2014

Questions

I. Analysis of current law and case law

Groups are invited to answer the following questions under their national laws:

1. Is there a provision in your national patent law that makes an exception to the exclusive right of a patent holder for parties who have used the invention before the filing/priority date of the patent ("prior user rights")?

In accordance with art.10 par.3 of Law 1733/1987 on "Technology transfer, inventions and technological innovation",

"Whoever shall exploit his/her contrivance or has proceeded with the preparations required for said exploitation, at the time the application for a patent was filed by a third party or in accordance with the date of priority, shall have the right to go on using said contrivance for their enterprise and its needs. This right may be only assigned along with the enterprise."

In accordance with art. 16 of PD 77/88 (Implementing regulations of the Convention on the grant of European patents)

"A person using an invention in good faith or who has proceeded to all necessary action for the exploitation thereof, without infringing any right emanating from the European application or European patent based on the text of the initial translation, may continue such use without payment in the course of his business or for the needs thereof, even after the entry into force of the reviewed translation".

2. How frequently are prior user rights used in your country? Is there empirical data on how often prior user rights are asserted as a defense in negotiations or court proceedings?

There are no available data regarding this matter.

3. To what degree must someone claiming a prior user right have developed the embodiment which is asserted as having been used prior to the filing/priority date of the patent? Is it sufficient to have conceived of the embodiment, or must it have been reduced to practice or commercialized?

There is no specific provision in the law. It is only specified that the person claiming a prior user right must exploit his contrivance or have taken all necessary actions for the exploitation thereof. Mere conception of the invention is not sufficient. There must be use or preparatory acts for use thereof.

4. Does it make a difference in your country if
- the prior use occurred before the priority date; or
 - it occurred after the priority date, but before the filing date?

The prior use must precede the priority date.

5. Is there a territorial limitation with regard to the scope of prior user rights in your country? In other words, if a party has used the patented invention before the filing/priority date in a foreign country, can it then claim a prior user right in your country?

The relevant territory is Greece. Accordingly, the prior use will only be taken into account if it is related to Greece.

6. Is there a provision that excludes prior user rights for those who have derived their knowledge of the invention from the patent holder and/or the inventor?

There is no such provision.

7. Is it necessary that the prior user has acted in good faith to be granted a prior user right?

Art. 10 par. 3 of Law 1733/87 does not require good faith. However, in our opinion and based on general legal principles, the prior use should be protected only if it is in good faith.

8. Is there a material limitation with regard to prior user rights in your country? More specifically, if someone has used an embodiment of a patented invention before the filing/priority date of the patent, can he then claim a prior user right to anything covered by the patent? In particular, is the owner of a prior user right entitled to alter/change the embodiment of the patented invention used before the filing/priority date of the patent to other embodiments that would also fall within the

patent's scope of protection or is he strictly limited to the concrete use enacted or prepared before the patent's application or priority date? In the event that changes/alterations are permitted by your national law, to what degree?

There is no relevant provision in the law, however, only the concrete use enacted or prepared before the priority /filing date should be protectable.

9. Does a prior user right in your country require the continued use (or the necessary preparations of the use) of the invention claimed by the patent at the moment in which the objection of the prior user right is asserted or is it sufficient if the invention claimed by the patent has been used before the priority/filing date of the patent but has been abandoned at a later stage?

There is no relevant provision in the law, however it should be considered that there must be continued use or preparations at the time the objection is asserted.

10. Is a prior user right transferable and/or licensable in your country? If yes, under what circumstances?

The prior user right may be only transferred along with the enterprise.

11. Does your national law provide any exceptions or special provisions with regard to a prior user right owned by a company within a corporate group? In particular, can a prior user right be transferred or licensed to another group company?

There is no such provision.

12. Are there any exceptions for any specific fields of technology or types of entity with regard to prior user rights in your country?

No.

13. The Groups are invited to explain any further requirements placed on prior user rights by their national law.

There are no further requirements.

II. Policy considerations and proposals for improvements to your current system

14. Should a prior user right exist in any legal system? If yes, what is the main legal justification for a prior user right?

Yes. A prior user right should exist in order to provide some protection to third parties using an invention in good faith, provided that the requirements of the law are met.

15. What is the perceived value of prior user rights in your country?

No data available.

16. Are there certain aspects that should be altered or changed with regard to the existing implementation of the prior user right in your country? In particular, are there certain measures or ways that could lead to an improvement and/or strengthening of your current system?

It would be desirable that some aspects of the right be defined, e.g. from what degree can preparatory actions be considered “serious”.

III. Proposals for harmonization

Groups are invited to put forward proposals for the adoption of harmonized rules in relation to prior user rights. More specifically, the Groups are invited to answer the following questions:

17. Is harmonization of “prior user rights” desirable?

Harmonisation is desirable.

18. What should be the standard definition of “use” in relation to prior user rights? Must the use be commercial?

The use must be commercial.

19. What should be the definition of “date” (or “critical date”) for prior user rights? (*i.e.* when must the invention have been used to establish a prior user right?)

The critical date should be the priority date.

20. Should a prior user right persist in the event that the use and/or preparation for use of the invention has already been abandoned at the time of the patent application/priority date or should the prior user right lapse upon the termination of the use and/or preparation of use?

The prior user right should lapse upon termination of the use and/or preparation.

21. What should be the territorial scope of a prior user right? In particular, if a party has used the patented invention before the decisive date in a foreign country, should it then be entitled to claim a prior user right?

The territorial scope of a prior user right should be that of the relevant patent.

22. Should there be a provision that excludes prior user rights for those who have derived their knowledge of the invention from the patent holder and/or the inventor? If yes, should it be necessary that the prior user has acted in good faith to be granted a prior user right?

Third parties acting in good faith should be protected.

23. Should there be material limitation with regard to prior use rights? In particular, if someone has used an embodiment of a patented invention before the filing/priority date of the patent, should he then be entitled to claim a prior user right to anything covered by the patent?

Protection should be limited to the embodiment used on the priority date, not anything covered by the patent should be protected.

24. Should a prior user right be transferable and/ or licensable?

Yes, with limitations (the right should only be transferred along with the enterprise).

25. Should there be any exceptions for any specific fields of technology or types of entity with regard to prior user rights?

No.

26. The Groups are also invited to present all other suggestions, which may appear in the context of the possible international harmonization of "prior user rights".

Procedure

It would be most helpful if the National Groups would fill out the Questionnaire and send in their answers to the General Secretariat of AIPPI by April 30, 2014 to: f.martin@aippi.org.

For inquiries, please contact the Chair of Q228

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