

**Report Q205**

in the name of the Greek Group  
by Helen PAPACONSTANTINO

**Exhaustion of IPRs in cases of recycling and repair of goods**

**Questions**

**I) Analysis of the current statutory and case laws**

1) *Exhaustion*

*In your country, is exhaustion of IPRs provided either in statutory law or under case law with respect to patents, designs and trademarks? What legal provisions are applicable to exhaustion? What are the conditions under which an exhaustion of IPRs occurs? What are the legal consequences with regard to infringement and the enforcement of IPRs?*

Exhaustion of IPRs is provided under case law with respect to Patents, Designs and Trademarks. There is a difference between patents on the one hand and trademarks and designs on the other hand, when considering exhaustion of rights.

This stems from the EU laws on trademarks and designs and has the effect that stronger protection may be provided by a registered trademark against parallel imports into Greece than a Greek patent covering those goods.

In essence, an intellectual property rights owner can benefit from the first sale (by or with its consent) of its products within the EU, but is prohibited from utilizing those rights to restrict the subsequent importation and re-sale of those products within the EU. The intellectual property rights owner is entitled to seek relief by bringing an action for infringement.

2) *International or national exhaustion*

*Does the law in your country apply international exhaustion for patents, designs or trademarks? If yes, are there any additional conditions for international exhaustion compared to regional or national exhaustion, such as a lack of marking on products that they are designated only for sale in a specific region or country or the non-existence of any contractual restrictions on dealers not to export products out of a certain region? What is the effect of breach of contractual restrictions by a purchaser?*

*If your law does not apply international exhaustion, is there regional exhaustion or is exhaustion limited to the territory of your country?*

*In case your country applies regional or national exhaustion, who has the burden of proof regarding the origin of the products and other prerequisites for exhaustion and to what extent?*

Regional exhaustion of Patents, Designs and Trademarks is applied in Greece. The same applies for copyright in particular with regard to the distribution right according to article 4 of the EC Copyright Directive 2001/29. The Defendant has the burden of proof by providing substantive evidence either that the plaintiff had consented or that the plaintiff was complicit in the export of the goods, because it was aware of the export.

3) *Implied license*

*Does the theory of implied license have any place in the laws of your country? If so, what differences should be noted between the two concepts of exhaustion and implied license?*

The theory of implied license has no place in the laws of Greece.

4) *Repair of products protected by patents or designs*

*Under what conditions is a repair of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term "repair" in this context?*

Greek law does not provide for a specific definition of the term "repair" in the above context. Under repair, we understand changing the parts of a used product, which parts correspond (or not) to the essential parts of the patented product.

There is no jurisprudence on the above topic in Greece.

It is difficult to judge infringement based on whether a third party's act is reconstruction or repair and that repair is not always non-infringement.

In our opinion, a patent or design cannot be enforced if only non-essential parts are processed or replaced because the patented products remain substantially the same.

In our opinion, what is important is to decide whether alteration replacement or repair of certain parts of patented goods result in loss of identity of the patented goods. Patent rights might be enforced against new non-identical goods containing patented elements.

5) *Recycling of products protected by patents or designs*

*Under what conditions is a recycling of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term "recycling" in this context?*

There is no specific definition of the term "recycling" in this context. There are no specific rules dealing with the above topic. The general impression is that after articles of a patent or design holder have been used and their useful lives have been spent, the reconditioning recycling, remanufacture and reuse of the used articles should be permissible, since they do not infringe a patent or design right.

In addition to the above, the environmental problem should also be taken into consideration that recycling is very important to society as a whole, without, however, giving precedence to it.

6) *Products bearing trademarks*

*Concerning the repair or recycling of products such as reuse of articles with a protected trademark (see the examples hereabove), has your national law or practice established specific principles? Are there any special issues or case law that govern the exhaustion of trademark rights in your country in case of repair or recycling?*

Our national law and practice have not established specific principles on the above topic. There is no case law that governs the exhaustion of trademark rights in case of repair or recycling.

7) *IPR owners' intention and contractual restrictions*

*a) In determining whether recycling or repair of a patented product is permissible or not, does the express intention of the IPR owner play any role? For example, is it considered*

*meaningful for the purpose of preventing the exhaustion of patent rights to have a marking stating that the product is to be used only once and disposed or returned after one-time use?*

Yes, the express intention of the IPP owner play a decisive role. Use of the proposed marking for the purchase of preventing the exhaustion would be of assistance.

b) *What would be conditions for such kind of intentions to be considered?*

Not in a position to propose any conditions.

c) *How decisive are other contractual restrictions in determining whether repair or recycling is permissible? For example, if a license agreement restricts the territory where a licensee can sell or ship products, a patentee may stop sale or shipment of those products by third parties outside the designated territory based on his patents. What would be the conditions for such restrictions to be valid?*

Such contractual restrictions might be not permissible under the EU regime.

d) *Are there any other objective criteria that play a role besides or instead of factors such as the patentee's intention or contractual restrictions?*

We cannot indicate any.

e) *How does the situation and legal assessment differ in the case of designs or trademarks?*

There is a difference between patents on the one hand and trademarks and designs on the other hand when considering exhaustion of rights. This stems from the EU laws on trademarks and designs and has the effect that stronger protection may be provided by a registered trademark against parallel imports into Greece than by a Greek patent covering those goods.

8) *Antitrust considerations*

*According to your national law, do antitrust considerations play any role in allowing third parties to recycle or repair products which are patented or protected by designs or which bear trademarks?*

Yes.

9) *Other factors to be considered*

*In the opinion of your Group, what factors, besides those mentioned in the Discussion section above, should be considered in order to reach a good policy balance between appropriate IP protection and public interest?*

We cannot propose further factors, which should be considered in order to reach a good policy balance between appropriate IP protection and public interest.

In thinking about the optimal policies to address these issues and to ensure equity for the different users of the IP system, the instruments of the IP systems (patents, copyright, trademarks and designs must exhibit balance coherence and flexibility.

10) *Interface with copyrights or unfair competition*

*While the present Question is limited to patents, designs, and trademarks as noted in the Introduction above, does your Group have any comments with respect to the relationship between patent or design protection and copyrights or between trademarks and unfair competition relative to exhaustion and the repair and recycling of goods?*

We have no comments with respect to the questions raised.

11) *Additional issues*

*In the opinion of your Group, what would be further existing problems associated with recycling and repair of IPR-protected products which have not been touched by these Working Guidelines?*

Although activities such as re-boxing or re-labeling or de-branding or co-branding or overstickering drugs and selling them to discounted price in other EU countries do not fall within the concept of recycling and repair, we find that the problems arising from those activities are somehow associated with recycling and repair of IPR-protected products.

**II) Proposals for uniform rules**

1) *What should be the conditions under which patent rights, design rights and trademark rights are exhausted in cases of repair and recycling of goods?*

We agree with the Japanese analysis of the Exhaustion of Patent Rights, as published in their AIPPI Journal No. 1 of 2008, that: "one of the most controversial issue is that in relation to establishment of exhaustion. Whether or not alteration, replacement or repair is made, the patented goods, after they are placed in the commerce, fall in the scope of exhaustion. Under the "production" approach, enforcement of patent rights, when amendment, replacement or repair of parts is deemed "production" rather than "use", in which case re-using of patented goods is allowed."

2) *Should the repair and the recycling of goods be allowed under the concept of an implied license?*

No.

3) *Where and how should a line be drawn between permissible recycling, repair and reuse of IP-protected products against prohibited reconstruction or infringement of patents, designs and trademarks?*

Perhaps by adopting the "production" criteria with regard to recycling and repair and re-use criteria, in particular in cases where use of products is defined for health and sanitary reasons.

4) *What effect should the intent of IPR holders and contractual restrictions have on the exhaustion of IPRs with respect to recycling and repair of protected goods?*

The intent of IPR holders and contractual restrictions should be binding.

5) *Should antitrust issues be considered specifically in cases of repair or recycling of goods? If so, to what extent and under which conditions?*

Yes, under the conditions provided for by the national laws.

6) *The Groups are invited to suggest any further issues that should be subject of future harmonization concerning recycling, repair and reuse of IP-protected products.*

We cannot think of any further issues that should be subject of future harmonization.

7) *Based on answers to items 1 to 6 above, the Groups are also invited to provide their opinions about how future harmonization should be achieved.*

By a Directive of the European Union? A Directive might inspire non-European Countries to adopt its rules.

## **Summary**

Regional exhaustion of Patents, Designs and Trademarks is applied in Greece. The same applies to Copyright.

Under repair we understand "changing the parts of a used product, which parts correspond (or not) to the essential parts of the patented product".

There are no specific rules dealing with "recycling". The general understanding is that, after articles of a patent or design have been used and their useful lives have been spent, the recycling, the manufacture and reuse of the used articles should be permissive.

It is highly desirable that a harmonization is achieved concerning recycling, repair and reuse of IP-protected products.

## **Résumé**

L'épuisement régional qui concerne les brevets, les marques, les dessins et modèles est applicable en Grèce. Ceci est aussi appliqué aux droits d'auteur.

Sous le terme "réparation" on comprend "changer les parties d'un produit utilisé, lesquelles correspondent (ou non) aux parties essentielles du produit breveté".

Des règles spécifiques concernant le recyclage n' existent pas. L'impression générale est qu'après l' utilisation des parties d' un brevet, d' un dessin ou d' un modèle dont la vie d' utilisation est terminée, le recyclage, la fabrication et la réutilisation de ces parties devraient être autorisés.

Il serait souhaitable que le recyclage, la réparation et la réutilisation des produits protégés par des droits de propriété intellectuelle soient harmonisés.

## **Zusammenfassung**

Die regionale Erschöpfung von Patenten, Designs und Marken gilt auch in Griechenland. Gleiches gilt auch für Urheberrechte.

Unter dem Begriff „Reparatur“ verstehen wir „den Austausch von Teilen eines genutzten Produktes, wobei diese Teile den wesentlichen Teilen des patentierten Produktes entsprechen (oder eben nicht)“.

Es gibt keine speziellen Regelungen für das Recycling. Die allgemeine Auffassung ist, dass nach der Nutzung von Waren eines Patentes oder eines Designs und nachdem die Nutzdauer ausgeschöpft wurde, dass das Recycling, die Bearbeitung und die Wiedernutzung gebrauchter Ware erlaubt sein sollte.

Es wäre äusserst wünschenswert, wenn eine Harmonisierung bezüglich des Recycling, der Reparatur und der Wiedernutzung von patentgeschützten Produkten erzielt werden könnte.