Novelty

Laws:

Law 1733/1887 , No. 5 par. 3:

"3. An invention is considered novel if it does not belong to the state of the art. Prior art means anything known anywhere in the world from written or oral description or in any other way, before the filing date of the patent application or the priority date.'

[the above provision is the basic rule for novelty]

Law 1733/1987 , No. 6 par.1:

"1. The right to obtain a patent is vested in the inventor or the holder in accordance with paragraphs 4, 5 and 6 and his successors. The person who applies for a patent is deemed to be the true inventor."

[the above provision supplement the rule for the novelty of the invention]

Law 1733/1987 , No. 5 par. 9 and 10:

"9. A patent is also granted for an invention disclosed within six months prior to the filing of the patent application, if the disclosure is due to:

a. In abusive action against the applicant.

b. A presentation of the invention in an officially recognized exhibition within the meaning of the convention on international exhibitions signed in Paris on November 22, 1928 and ratified by law 5562/1932 (Government Gazette 221). In this case, the applicant must declare when submitting the application that his invention has been presented in an exhibition and provide a relevant certificate".

"10. Disclosure as per paragraph 9 does not negate novelty according to paragraph 3".

[the above provision introduces an exception to the rule of novelty]

Law 1733/1987 , No. 9 par. 1:

"1. If an application for a patent has been properly filed abroad, the applicant or its beneficiary has the right of priority, as long as within twelve months of the above filing he files an application for the same invention in Greece and the condition of reciprocity applies. In the new application he must state the date and country of the first application. The right of priority goes back to the time of the first filing abroad".

[the above provision introduces an exception to the rule of novelty]

From a policy point of view, it could be provided as an exception to the rule of novelty, not only the presentation of the invention at an official and recognized international exhibition, but in any scientific publication in a scientific journal or any scientific announcement at a scientific conference, within 6 months before the filing. It is in the interest of society as a whole to encourage the scientific publication of the invention and this does not have any negative consequences.

Purpose of the law

With the concept of novelty (no . 5 par. 3) the legislator seeks a balance between the exclusive right and free competition. That is, a patent (exclusive right) is granted only for new inventions.

Still, it seeks a balance between the need to provide incentives (in the form of exclusive rights) for the production of new inventions and the need to diffuse technological knowledge.

With the presumption in favor of the applicant (no . 6 par. 1 – First to File) the legislator seeks to encourage the filing of the patent as soon as possible, aiming at the diffusion of knowledge. Whoever files first is presumed to be the true inventor. Also, whoever files first gets time priority and prevails over later filings. Finally, whoever files first causes the invalidity of other patents filed later for the same technical rule.

What's novel?

Anything that is not known or foreseeable (ie, not included in the state of the art) anywhere in the world (principle of universality).

In other words, novel is anything that has not been disclosed anywhere in the world and in any way and cannot be predicted based on what we know or what we are able to know.

The possibility of being able to know is enough to negate novelty, without actual knowledge being required.

Common methods of disclosure:

- Previous patents granted or applications for patents filed and pending.
    - Attention: Only the granted patents are published. Applications that are pending and are still under review are not published. So, when you apply for a patent, there may already be other applications for the same invention that have not yet been published, so you don't know about them. In this sense, applications that have been previously filed and are pending, without yet being published, do not negate the novelty of the invention. However, once the application is accepted and published, the legal consequences refer back to the time of filing the relevant application. So even applications that were still unpublished will be considered as published retroactively and will trigger invalidity due to lack of novelty for other later applications.
- Previous scientific publications or scientific communications in scientific conferences.
- Prior use or presentation on the market or to the public in any way, especially when an invention is incorporated into a marketed product.

The disclosure that negates novelty must be such as to enable the average technician to apply the invention (enabling disclosure). It is a question of who is considered an average technician: E.g. it is the

average chemist, the average engineer, etc., or the average expert and specialized technician engaged in research in the field of knowledge to which the invention refers. That is, if it is an invention about DNA that belongs to the broader field of chemistry, we will take as a criterion the average chemist, or the average chemist who specializes in DNA research and has done corresponding specialized studies and has some experience in it the research object?

Disclosure exists when the interested researcher, if he takes the time to research, can locate a description of the technical rule in the prior art. There is no need for publicity. The essence of the concept of disclosure is that there is no reason to grant exclusive rights to things that are already known.

The assessment of novelty is made in three stages:

1. Interpretation of the existing disclosure, i.e. determination of what is disclosed, or otherwise, interpretation of the prior art.

2. Interpretation of patent claims.

3. Comparison of 1 and 2.

Enablement of the invention

The disclosure must be such as to enable the application of the invention.

Principle of identity (identity requirement)

There must be a disclosure that includes all the elements of the patent claim applied for protection.

If a claim combines elements contained in different disclosures, it may lack inventive step, but, as a rule, it will be considered novel.

Implied Disclosure (doctrine of inherence)

There is a possibility that the description of a patent does not disclose some things, but these are self-explanatory and one automatically understands them by reading the description of the

patent. It will be about things that are necessary for the operation of the invention and that are necessarily included in the description, even if not explicitly. – See below as an example the Decision in the case of Atlas Powder v. Ireco .