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All references to natural persons are to be understood as applying to all genders.

Additional references

For further information on compulsory licensing, please refer to the publication “Compulsory licensing in Europe” (www.epo.org/compulsory-licensing), which provides a country-by-country overview of compulsory licensing regimes across the 38 EPC contracting states including possible grounds for grant, procedural framework and jurisprudence.

For further information on patent enforcement measures and their implementation across the 38 contracting states, please refer to our publication “Patent Enforcement in Europe”, available from 2020 in print and online at www.epo.org/patent-enforcement.

Introduction

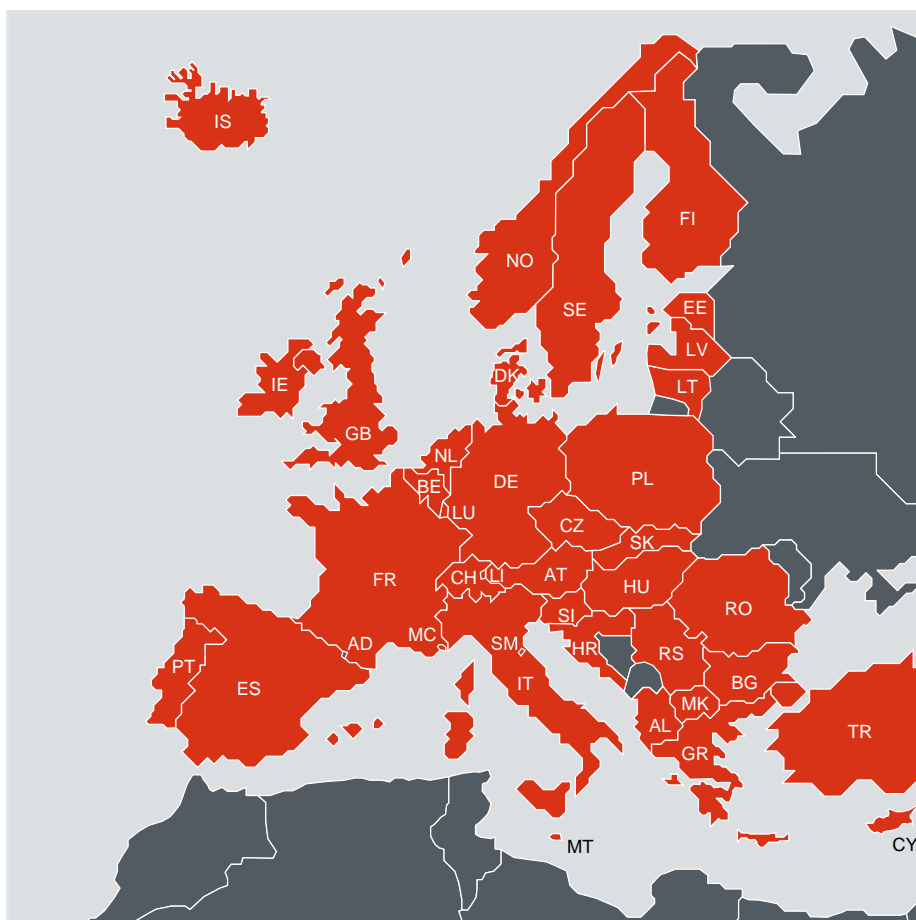
When the European Patent Convention (EPC) was signed in Munich in October 1973, it created the legal framework for a single, harmonised patent granting procedure for the European patent, which exists in parallel with national patents subject to national prosecution procedures. However, post-grant litigation and enforcement procedures differ quite widely across the EPC contracting states, as do the courts adjudicating on patent matters.

This book seeks to compile, in a quick reference and easy-to-read format, information pertaining to administrative and civil litigation procedures for patents across the 38 EPC contracting states. A further section on the Unified Patent Court is included to provide an overview of its structure, competences and current status of ratifications.

As part of its mandate, the Academy of the European Patent Organisation (“European Patent Academy”) has since 2005 supported and developed training initiatives aimed at harmonising patent enforcement and litigation practice in Europe. In this framework, and in partnership with the national offices of the contracting states, the Academy has compiled the fifth edition of “Patent litigation in Europe” to provide an overview of litigation practice with regard to patents in each national system.

We take this opportunity to thank the national patent offices who, since the first edition in 2007, have once again kindly contributed and supported us in producing this publication.

European Patent Academy



EPC contracting states
(1 December 2018)

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ALBANIA

Administrative procedure

Opposition

Post-grant opposition is available. Any person may file notice of opposition with the Board of Appeal of the Albanian General Directorate of Industrial Property (hereinafter GDIP) within nine months from the date of publication of the grant of a patent (Art. 33(1) PA). A copy of the opposition is sent to the patent owner, who may submit written observations within three months from the date of receipt of the notification (Art. 33(3) PA).

Both parties have the right to participate in the opposition proceedings, to submit essential materials and to provide oral explanations in support of the notice of opposition (Art. 33(4) PA). The appeal board decides whether to revoke the patent in whole or in part or reject the opposition (Art. 33(5) PA).

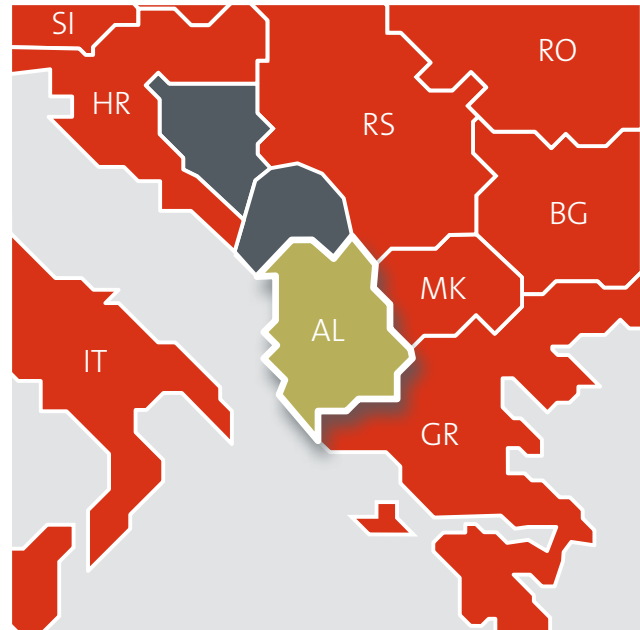
Appeal

A decision of the GDIP rejecting a patent may be appealed to the Board of Appeal of the GDIP, within three months from the date of receipt of notification, subject to payment of a fee (Art. 28(3) PA).

The Board of Appeal consists of five members, of whom three are GDIP employees and two are external members from the IP field, who meet the requirements for IP experts. Authorised representatives and members of the Chamber for Cancellation/invalidation may not be members of the Board of Appeal. The Chairman of the Board of Appeal is the General Director of the GDIP. The members of the Board of Appeal are appointed and released by the Supervisory Council on proposal of the General Director of the GDIP for a one-year period, with the possibility of re-appointment. The General Director of the GDIP appoints an employee of the GDIP to the role of Technical Secretary of the Board of Appeal (Art. 193/b(1,2,3,4) PA).

The parties may appeal a decision revoking a patent or rejecting an opposition to the Tirana District Court within 30 days from the date of receipt of the decision (Art. 33(6) PA).

Formal changes and corrections to the application can be made at the initiative of the applicant or at the request of the GDIP until the date of grant of the patent, which occurs only after payment of a fee (Art. 25(1) PA).



The patent owner may request the GDIP to make changes to a patent for the correction of formal errors or unintentional inaccuracies (Art. 70(1) PA).

Civil procedure

Infringement

The Tirana District Court has jurisdiction over disputes relating to the infringement of a patent or a patent application (Art. 94(a) PA).

The patent owner or applicant shall have the right to bring a lawsuit in court against any person who has infringed, is infringing or threatens to infringe the rights on this patent. However, the court may not make any decisions based on the merits of the case until the granted patent is published.

An exclusive licensee also has the right to initiate court proceedings if the patent owner or applicant, upon official notification from the licensee, does not initiate infringement proceedings within a reasonable period of time.

Where a licence for a patent is non-exclusive, the licensee may only initiate infringement proceedings if the patent owner or applicant consents.

The patent owner or applicant may take part in the infringement proceedings initiated by the licensee. Where infringement proceedings are initiated by the patent owner,

the licensee may take part as a third party (Art. 184/a(2,3) PA).

The measures may also be taken against a mediator whose services are used by a third party to infringe an industrial property right.

A lawsuit for infringement of rights may be filed in the court within three years from the date when the claimant becomes aware of the infringement and the identity of the infringer.

Nullity/counterclaim for revocation

The court has jurisdiction over disputes relating to the revocation or counterclaim for revocation of a patent (Art. 94(b) PA). To reach a decision, the court may require the patent owner to submit for examination publications and other documents showing prior art referred to in the patent application or taken into account by other examining offices (Art. 73(3) PA).

Each patent claim or part of a claim that is invalidated shall be considered non-existent and invalid from the outset (Art. 74(1) PA).

If the grounds for revocation only partially affect the patent, revocation shall be considered as a limitation of the patent. Limitation may also be in the form of an amendment to the claims (Art. 74(2) PA).

If the court orders revocation of a patent, wholly or partially, it shall notify the GDIP, which shall enter the decision in the patent register and publish it in the GDIP Gazette (Art. 74(3) PA).

According to national law, patent claim amendment is possible during the post-grant procedure for a patent (Art. 25(1) PA), but it never happens in practice.

A defendant in patent infringement proceedings may file a counterclaim for revocation of the patent as part of his defence (Art. 188/a(3) PA).

Remedies

A patent owner and exclusive licensee have the right to sue any person who violates their rights and may request:

- a) prohibition of further actions that violate their rights;
- b) removal of objects that constitute a violation of their rights from civil circulation, or destruction of those objects;

c) removal of the means used exclusively or almost exclusively for the creation of the infringing products, or their destruction;

d) publication of the final court decision in the public media at the expenses of the infringer in the manner defined by the court.

Other actions

Declaration of non-infringement of patent rights

Any interested person may file proceedings against the patent owner to prove that a particular act does not constitute a patent infringement. The exclusive licensee shall be summoned to court as a defendant together with the patent owner (Art. 188/a(1) PA).

A request for declaration of non-infringement may also be submitted together with the request for the revocation of the patent (Art. 188/a PA).

The patent owner shall notify the licensee of the ruling. The licensee has the right to take part in the court proceedings as a third party, unless otherwise provided by the licensing agreement.

Appeal

The deadline for appealing to the Court of Appeal against final decisions of the first instance is 15 days (Art. 443 CCP)

Parallel proceedings

The stay of national infringement proceedings is not foreseen in the Albanian legislation where there are pending EPO proceedings.

Arbitration/mediation

Arbitration and mediation are not provided for in the national legislation.

Enforcement

The Court is responsible for issuing an order for execution of the final decision after termination of the procedure (Art. 184/b PA).

Compulsory licence

Upon request, the court may grant a compulsory licence to any person who proves that he has the ability to exploit an invention which is the subject of a patent granted in the Republic of Albania and meets all the requirements stipulated in the relevant regulations issued pursuant to the law, provided that:

- four years have passed from the filing of the patent application or three years from the grant of the patent;
- the patent owner has not exploited the patent for a long period; and
- every effort has been made to obtain authorisation from the patent owner on reasonable terms and conditions and these efforts have not been successful (Art. 50(1)(a)(b)(c) PA).

A compulsory licence is valid until the expiration of the time period appointed by the court (Art. 50(6) PA).

Compulsory licences are recorded in the Patent Register (Art. 50(7) PA).

The patent owner has the right to receive appropriate compensation for any compulsory licence (Art. 50(8) PA).

The holder of a compulsory licence may dispose of it at any time (Art. 50(9) PA).

The court has the right to grant compulsory licences for patents and supplementary protection certificates for the production and sale of pharmaceutical products if such products are intended to be exported to importing countries (Art. 50(3) PA).

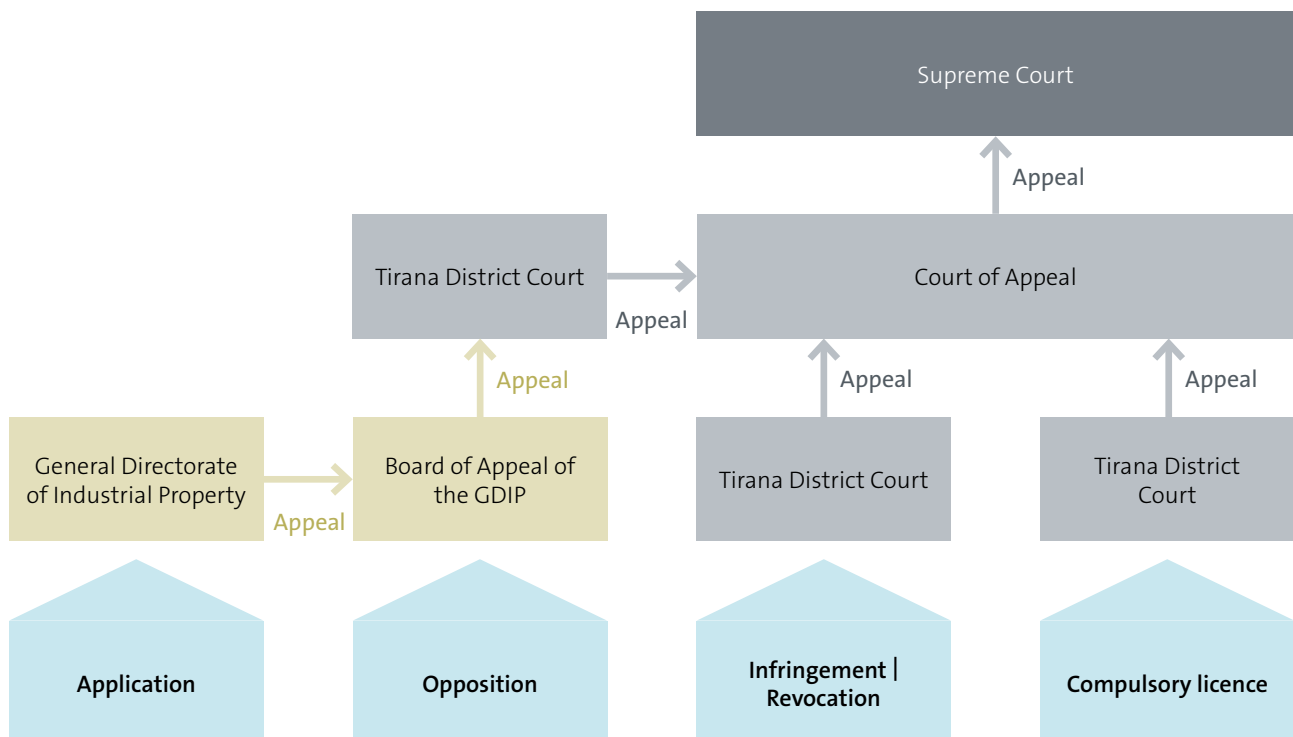
Relevant national law

Law No. 9947 of 7 July 2008 on Industrial Property, as amended: No.10/2013 of 14.02.2013, No.55/2014 of 29.05.2014, No.17/2017 of 16.02.2017 [cited as: PA];

Law No. 8116 of 29 March 1996 on Code of Civil Procedure, as amended;

Law No. 8485 of 12 May 1999 on Code of Civil Procedure, as amended.

Competent authorities or courts



Austria

Administrative procedure

Opposition

Anyone may bring an action within four months from the date on which mention of grant is published (Section 102 PA). The decision is taken by the “Senate” (Head of Technical Department, one examiner and one further member who, depending on the case, has to be technically or legally qualified (Section 62(3), (4) PA)). If the opposition action is withdrawn, the proceedings are closed.

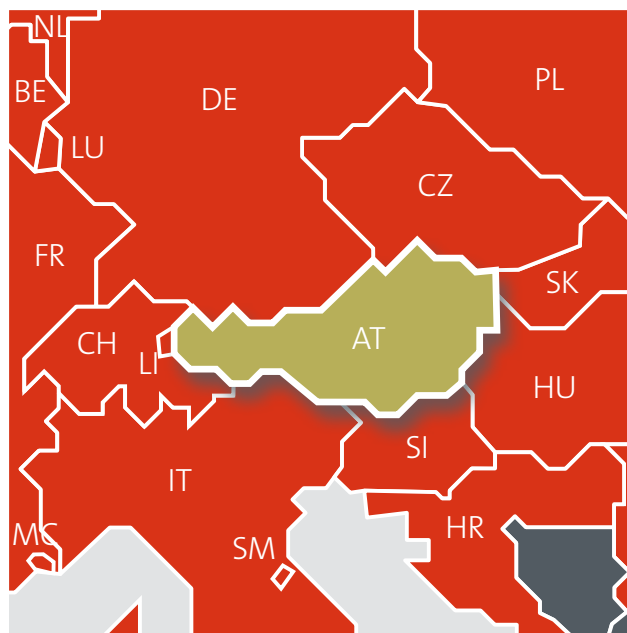
Appeal

The appeal must contain a formal request and be substantiated. Every decision of a technical or legal department may be contested by an appeal. There are *ex parte* (e.g. negative decision on a patent application) and *inter partes* proceedings (e.g. appeal against an opposition decision). Appeals must be lodged within two months of notification of the decision which is challenged; the opposing party will be notified and will have the opportunity to submit objections (Section 139 PA).

First instance: the department which issued the decision at first instance may grant the appeal under the provisions of Section 139 PA. This is usually done to correct an obviously erroneous decision, where there is no need for further proceedings or for parties to be heard. Such a decision by the first instance is mainly justified in *ex parte* proceedings if the arguments of the appeal can be followed completely, e.g. in case of clerical errors. In *inter partes* proceedings (opposition) the situation is more complex and therefore such a decision by the first instance is rarely reasonable.

Higher Regional Court (of Vienna): appeal from the decision of the Technical and Legal Department (Section 138 PA). New facts and evidence may only be introduced to support or refute facts and evidence submitted at first instance (prohibition of amendment – Section 139 PA). A case of serious procedural defect will be referred back to the department of first instance.

Higher Regional Court (of Vienna): appeal from the decisions of the Nullity Department (Section 141 PA). Appeals have suspensive effect.



AT

Nullity/revocation

The Nullity Department functions as a first instance. It is composed of two legally and three technically qualified members of the Austrian Patent Office (hereinafter the “Patent Office”) (Section 63 PA).

The proceedings can be continued if the action is withdrawn (Section 112(1) PA).

Decisions have retroactive effect. Partial nullification is available.

Any party which considers itself adversely affected by a decision of the Nullity Department may appeal to the Higher Regional Court, within two months from the decision (Section 141 PA). Patent claim amendment is allowable under certain conditions, but does not often occur.

Civil procedure

Infringement

Infringement disputes are dealt with before the Commercial Court of Vienna. Any person (registered and non-registered patent owner, exclusive licensee) who has suffered infringement of one of the rights belonging to him under a patent or who fears that such infringement might occur may bring an action (Section 147 PA).

An infringement claim is subject to civil law; however, criminal proceedings (Section 159 PA) before the Regional Court for Criminal Matters in Vienna may also be initiated in the case of wilful infringement.

If the Patent Office or the appeal instances have taken a decision on the validity or effectiveness of a patent different from the evaluation by the court in infringement litigation, an action for a re-trial (Section 530(1) of the Code of Civil Procedure) may be based thereon (Section 156(6) PA).

Nullity/counterclaim for revocation

During infringement proceedings, invalidity of a patent may be used as a defence, which will be considered by the court as a preliminary issue (Section 156 PA). Optionally, the court may request an opinion from the Patent Office on whether nullity is likely (Section 156(3) PA).

The court has to suspend proceedings if it considers the patent likely to be invalidated. In that case, the defendant has one month to prove that s/he has applied for nullification of the patent or has filed an opposition at the Patent Office, is already party to such proceedings or has entered as an intervenor. If the defendant fails to do so, the claimant may re-establish the infringement proceedings and the court has to take the decision irrespective of the question of nullity (Section 156 PA).

Remedies

Remedies include preliminary injunctions, destruction of infringing products, publication of the decision, compensation, and damages (Sections 148-152 PA).

Other actions

Any person who industrially produces, places on the market, offers for sale or uses an article, industrially applies a process or intends to take such measures may apply to the Nullity Department for a declaratory decision against the owner of a patent or its exclusive licensee, to the effect that the subject-matter of the process or product marketed or to be marketed is neither partially nor wholly covered by the patent.

A patent owner or its exclusive licensee may apply to the Nullity Department for a declaratory decision against any person who industrially produces, places on the market, offers for sale or uses an article, industrially applies a process

or intends to take such measures, to the effect that the subject-matter of the process or product marketed or to be marketed is partially or wholly covered by the patent.

Appeal

A decision at first instance may be appealed. An appeal on points of law and fact is available from the decision of the Commercial Court of Vienna at first instance. Incomplete taking of evidence and/or incomplete assessment thereof will be referred back to the first instance for completion of the procedure for the taking of evidence.

Parallel proceedings

There is a general provision in the Code of Civil Procedure (Section 190) to allow staying of proceedings, if the decision in national court proceedings depends on the result of other parallel proceedings.

See also “Nullity/counterclaim for revocation” above.

Arbitration/mediation

According to national law (Code of Civil Procedure), proceedings concerning the infringement of patents are in principle open to arbitration. Arbitration is not available for requests for patent invalidation.

Enforcement

A bailiff is responsible for the enforcement of the decision.

Compulsory licence

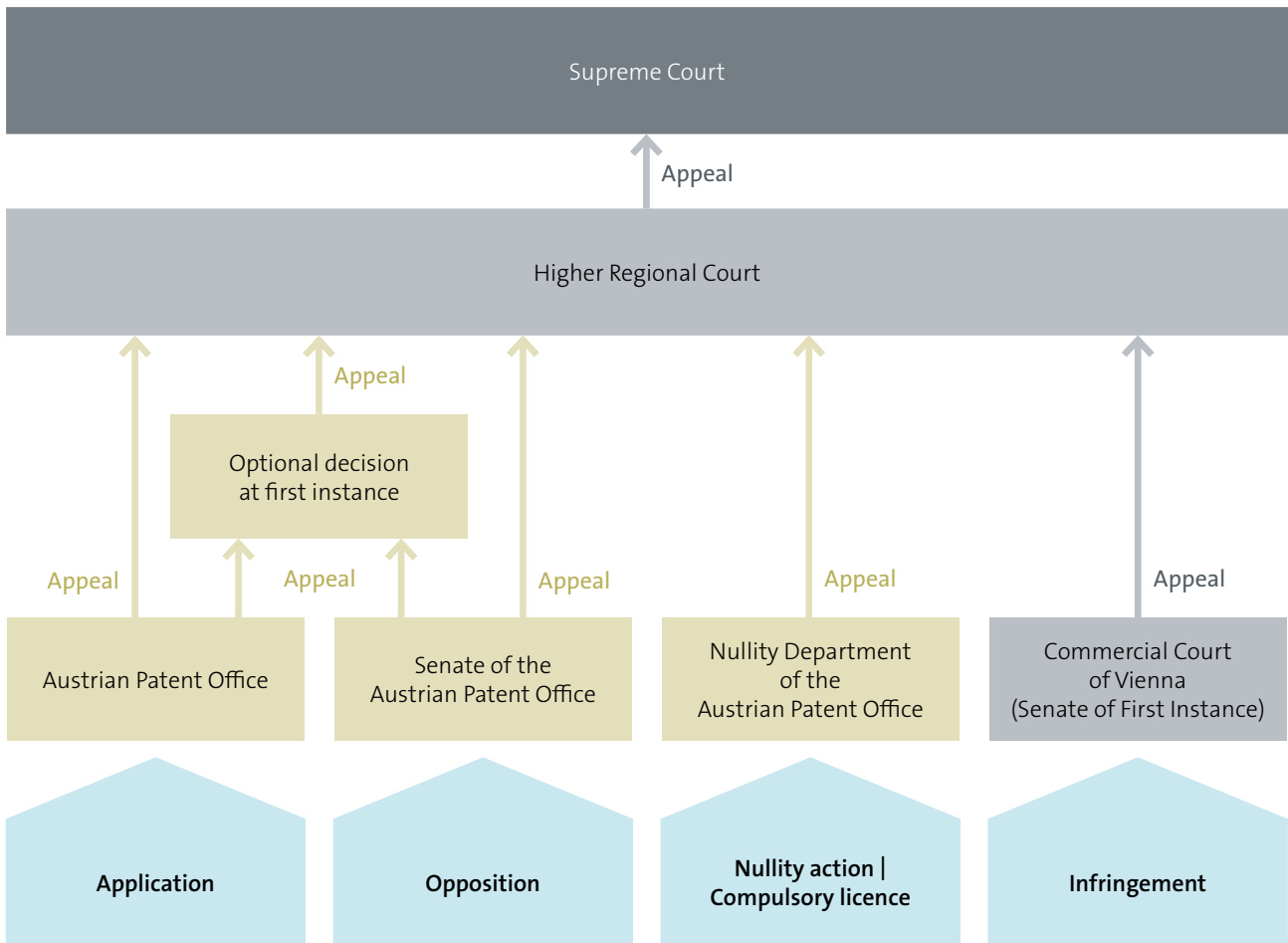
A compulsory licence may be issued by the Nullity Department in cases of dependent patents, non-working of patents, or public interest (Section 36 PA). Under certain circumstances a patent may be revoked if the grant of a compulsory licence for non-working is not sufficient (Section 47 PA).

Relevant national law

Patent Act – Patentgesetz 1970, BGBl 1970/259 as amended by BGBl I 2018/37 [cited as: PA]

Competent authorities or courts

AT



Belgium

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available. The findings of the search report and the written opinion delivered by the European Patent Office have no formal influence on the grant procedure (Art. XI.24, Sect. 4, CEL). It is up to the applicant to decide, at his own risk, on the basis of the search report and the written opinion, if he still wants his patent granted.

Appeal

No possibility of appeal.

Civil procedure

Infringement

A civil action can be brought by the owner or usufructuary of a patent (by the compulsory licensee if the owner does not bring an action) (Art. XI.60, Sect. 2, CEL).

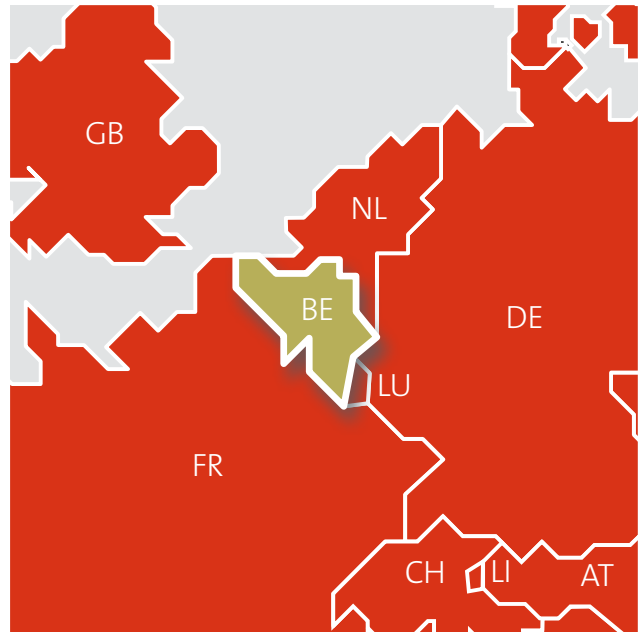
At first instance the Brussels Enterprise Court (*Tribunal de l'entreprise/Ondernemingsrechtbank*) has exclusive jurisdiction in patent matters. It is established at the seat of the Brussels Court of Appeal (Art. XI.337 CEL and Art. 633quinquies JC).

If only an injunction is requested, the plaintiff has the choice to introduce the case at first instance

- (i) before the President of the *Tribunal de l'entreprise/Ondernemingsrechtbank* (dealt with “as in summary proceedings”) or
- (ii) before a chamber of that court, where the tribunal is composed of one legally qualified judge and two “*juges consulaires*”.

If damages are requested (either separately from the injunction or not), the plaintiff must introduce the case at first instance before a chamber of the court.

Infringement proceedings must be initiated within five years of the infringement was committed (Art. XI. 61 CEL).



Criminal sanctions are also available (Art. XV.103 CEL). Criminal sanctions may include custodial sentences (from 1 to 5 years) and/or monetary fines up to EUR 800 000 (Art. XV.70 CEL).

Nullity/counterclaim for revocation

Patents may be annulled or revoked by the Brussels Enterprise Court. Annulment or revocation is retroactive (Art. XI.58, Sect. 1, CEL). Partial annulment or revocation is also possible (Art. XI.56, Sect. 2, CEL).

Annulment or revocation decisions may be appealed before a Court of Appeal. An appeal against the annulment or revocation of a patent does not have suspensive effect.

An appeal of the Court of Appeal’s decision may be lodged before the “Court of Cassation” based only on “points of law”. An appeal before the Court of Cassation against revocation of the patent has suspensive effect (Art. XI.59, Sect. 2, CEL).

The post-grant scope of a patent may be amended in two ways:

- a) the applicant can waive the scope of application of the patent in full or in part through a declaration directed to the Minister responsible for intellectual property (Art. XI.55 CEL). This “renunciation” procedure has no retroactive effect.

- b) the applicant can revoke the scope of application of the patent in full or in part through a declaration directed to the Minister responsible for intellectual property (Art. XI.56 CEL). Revocation has retroactive effect (Art. XI.58, Sect. 1, CEL).

There are no statistics available on the frequency of use of these options.

Invalidity may be used as a defence or counterclaim. Nevertheless it is possible for an action for infringement and a related action on validity to be separately introduced before two courts. In such a case, one of the parties may ask the second judge to join the cases in the hands of the first judge (with a so-called “exception of incompetence”). In this case the first judge will rule on both cases.

When actions for infringement and for validity are pending before the same judge, the judge may take the initiative to join the cases (Art. 856 JC).

Remedies

Injunction, compensation, damages, publication of decisions and assignment of benefits (Arts. XI.334 and XI.335 CEL).

Other actions

Where an application has been filed for an invention taken from an inventor unlawfully or in violation of a legal or contractual obligation, the injured party may claim before the court the transfer of the application or the granted patent (Art. XI.10, Sect. 1, CEL).

Appeal

The parties in a trial may appeal the decision of the court of first instance. The appeal must be initiated within one month from service of the judgment (Art. 1051 JC). The Court of Appeal will conduct a full rehearing of the matter (limited to the points which have been appealed by the opposing parties). The defendant on appeal has the right to file a so-called “incidental appeal” with respect to those elements which have not been appealed by the claimant (Art. 1054 JC).

In appeal proceedings the court is composed of one or three legally qualified judges.

Parallel proceedings

The Belgian court may decide to stay the proceedings (at the discretion of the judge) in order to await the outcome of the opposition/appeal proceedings before the EPO.

Arbitration/mediation

Arbitration or mediation is available, except in litigation concerning compulsory licences and forfeitures.

There is no specific authority designated to deal with arbitration or mediation in patent disputes.

Enforcement

During and after the judicial procedure, the bailiff is the competent authority for enforcing court orders (Art. 519 JC).

Compulsory licence

Compulsory licences may be granted in cases of non-working and dependent patents (Art. XI.37 CEL). The request must be filed with the Minister responsible for intellectual property, who will decide on it in cooperation with the Compulsory Licence Commission (Art. XI.41 CEL). The parties should in principle decide on their own on the conditions of the licence. If no agreement is reached, the court will decide (Art. XI.42 CEL).

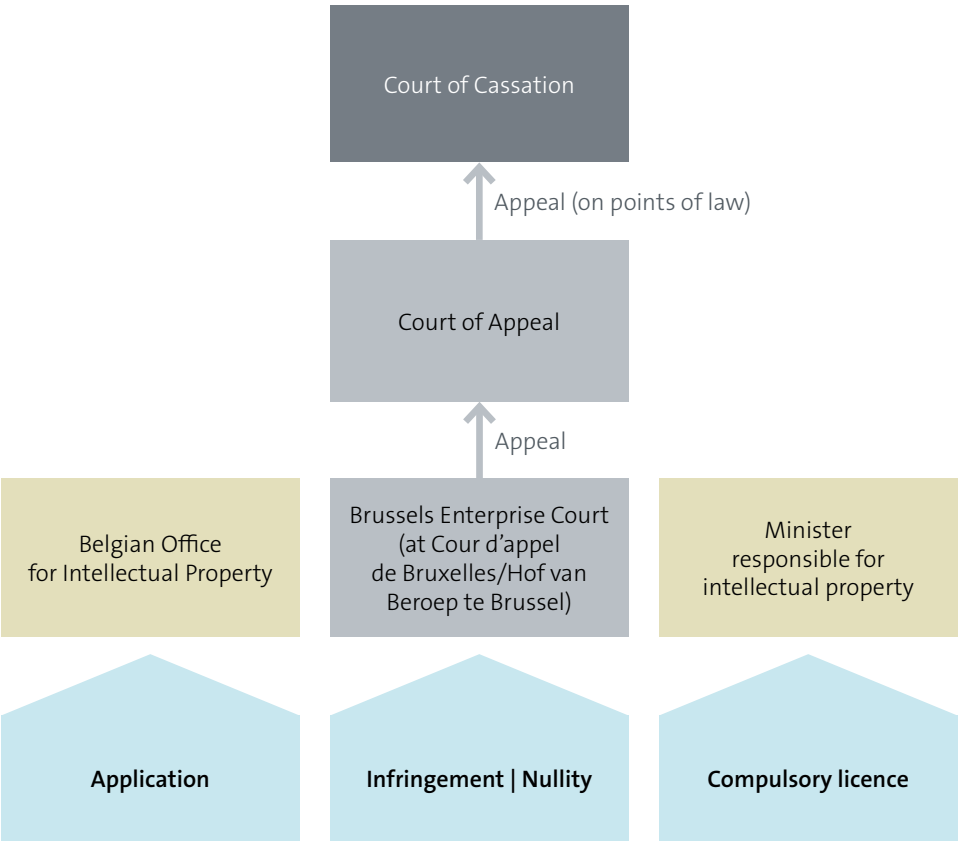
A compulsory licence may also be granted in case of public health interests (Art. XI.38 CEL). The request has to be filed with the Minister responsible for intellectual property, who will decide on it after consulting a bioethics committee and hearing the title holder. The Minister also makes a proposal concerning the conditions of the licence. The decision is taken by royal decree after consultation of the Council of Ministers on the basis of the proposal of the competent Minister.

Relevant national law

Code of Economic Law (28 February 2013) [cited as: CEL];

Judicial Code (10 October 1967) [cited as: JC].

Competent authorities or courts



Bulgaria

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available. Within three months following publication of mention of the application, any persons other than parties to the application proceedings may file written substantiated objections as to the patentability of the subject-matter of the application. The persons filing objections may not be participants in the application proceedings (Art. 46(d) PA).

Appeal

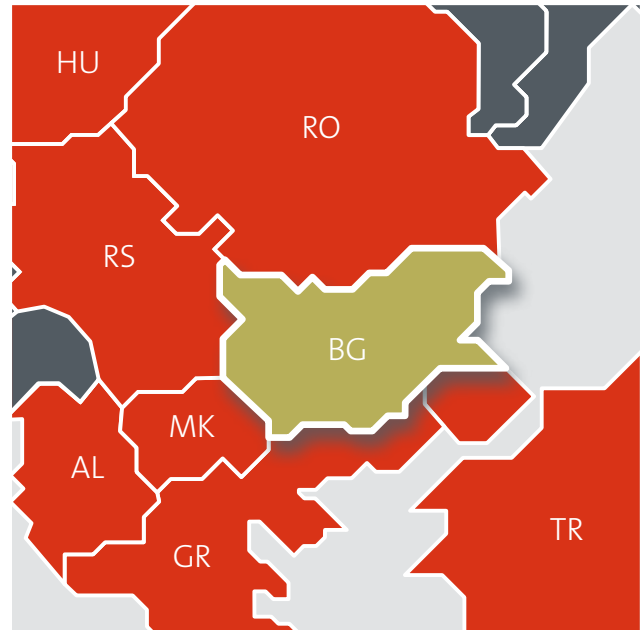
A decision of the Examination Department to refuse to grant a patent and to close the patent application procedure may be appealed, within three months from the date of receiving the decision, before a specialised (three-member) board of the Disputes Department appointed *ad hoc* by the President of the Patent Office of the Republic of Bulgaria (hereinafter the “Patent Office”) (Art. 55(1), 57(2) PA).

The Disputes Department begins proceedings within one month of receipt of the appeal (Art. 58 PA). The application may be referred for renewed consideration (Art. 58(3) PA) – the re-examined decision may be subject to further appeal to the Disputes Department (Art. 58(4) PA). The final decisions of the Disputes Department must be confirmed by the President (Art. 58(6) PA).

Any party adversely affected by a decision of the Disputes Department may, within three months following receipt of the decision, bring an appeal before the Sofia Administrative Court (Art. 59 PA). Further appeal is possible to the Supreme Administrative Court within fourteen days after the date of receipt of the lower court’s decision.

Revocation

The Disputes Department also considers requests for invalidation of a granted patent, these being heard by a specialised (five-member) board appointed *ad hoc* by the President of the Patent Office (Art. 26(3), 55(2), 57 PA). The Disputes Department begins proceedings within one month of receipt of the request for invalidation. Anyone can file a request for invalidation of a granted patent: there is no time limit for this. Any interested parties may participate in the proceedings. Written and oral evidence is admissible. The



BG

Disputes Department sends a copy of the request to the patent owner or to the parties concerned and gives them a three-month time limit to respond (Art. 58(2) PA). The decisions of the Disputes Department must be confirmed by the President. Partial invalidation is possible (Art. 26(5) PA). Invalidation has retroactive effect (Art. 26(6) PA). If the action is withdrawn, proceedings do not continue.

Pursuant to Art. 42(1) PA an application or a patent may be amended during the proceedings for the application until such time as a decision is taken or during patent invalidation proceedings. The amendments may not extend beyond the content of the application as filed. During invalidation proceedings, no amendments may be made to the patent claims which would extend the scope of protection (Art 42(3) PA).

It does not happen frequently, but in the event of a declaration of partial invalidation of the granted patent, the granted patent is replaced by a new one (Art. 58(8) PA).

Civil procedure

Infringement

The patent owner and the holder of an exclusive licence may institute patent infringement proceedings at the Sofia City Court, as may the holder of a compulsory licence if the patent owner does not exercise his own right to institute infringement proceedings within six months of receipt of a written invitation to do so from the licensee. Any licensee may join

patent infringement proceedings instituted by the patent owner, and the same applies to the patent owner when proceedings have been instituted by the licensee (Art. 27 PA).

Expert opinions are possible, but they are not binding on the court.

Administrative penal provisions are available with regard to a person who publishes the essential features of a secret patent application under Art. 24 PA or files an application abroad contrary to the patent secrecy provisions of Art. 25 PA, and also with regard to a person who marks a product as protected by a patent without identifying the patent upon request as referred to in Art. 28a(5) PA.

Nullity/counterclaim for revocation

Where the defendant in an infringement action has filed a request for nullity of the patent with the Patent Office, the court suspends proceedings until a final decision is taken on the request (by the Patent Office or, if appealed, by the courts) (Art. 64(2) PA).

Where the action is instituted by the applicant prior to the grant of a patent, the proceedings are suspended until a decision is taken by the Patent Office (Art. 64(3) PA).

In the latter case the Patent Office is required to reach a decision within one year following the date of notification of the suspension of court proceedings (Art. 64(4) PA).

Remedies

Preliminary injunction, damages, destruction of infringing products, declaration that an act has infringing character (Art. 28 PA).

Other actions

Not available.

Appeal

An appeal may be lodged before the Sofia Court of Appeal.

Parallel proceedings

Where there are parallel EPO opposition proceedings and proceedings at the national patent office, e.g. for an

invalidation claim filed against a European patent validated in Bulgaria, the proceedings before the national patent office are suspended until a final decision on the opposition has been delivered. EPO decisions in proceedings for invalidation of a European patent designating Bulgaria are valid in the territory of the Republic of Bulgaria (Art. 72h PA).

See also "Nullity/counterclaim for revocation" above.

Arbitration/mediation

According to the Civil Procedure Code, in court proceedings the parties to a property dispute may agree that it may be resolved by a court of arbitration. The Mediation Centre within the Bulgarian Chamber of Commerce and Industry is also available.

The law stipulates that mediation is an alternative form of settlement for legal and non-legal disputes. Mediation will not be an option if law or other legislative acts stipulate a different means of settlement.

Enforcement

During and after the judicial procedure the responsible authority is the bailiff.

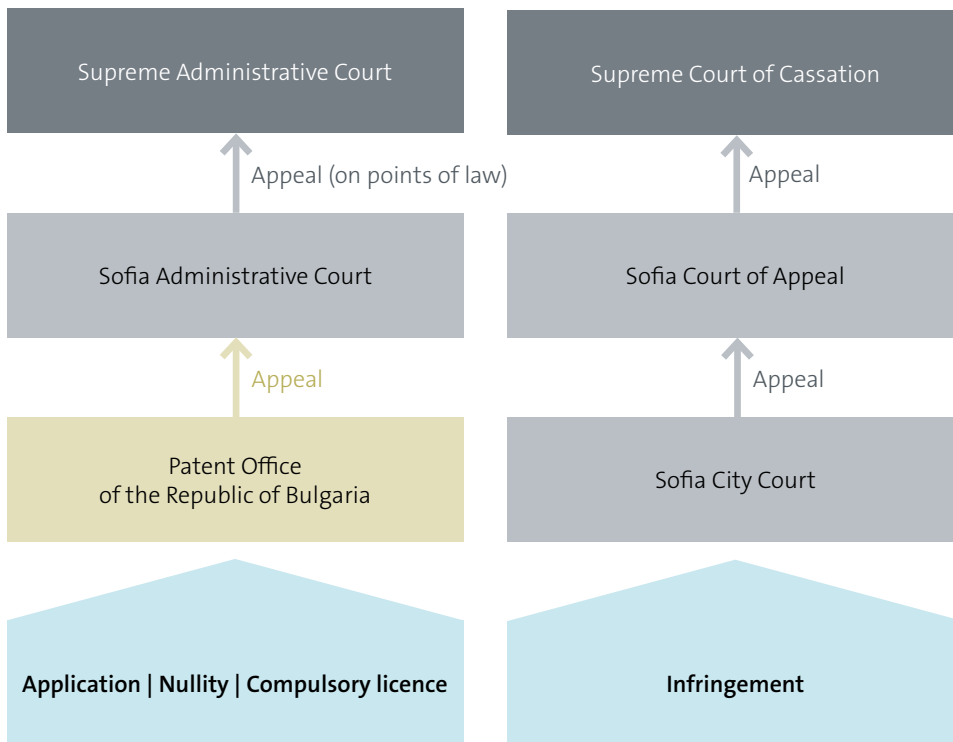
Compulsory licence

A compulsory licence may be granted by the Patent Office in cases of non-working, dependent patents and public interest (Art. 32, 55(2) No.3 PA). Disputes concerning the amount of remuneration for the grant of a compulsory licence are settled by the Sofia City Court (Art. 66 PA).

Relevant national law

Law on Patents and Utility Model Registration (title amended, State Gazette No. 64/2006; in force as from 9 November 2006 – as amended; promulgated in State Gazette No. 27/2 April 1993; supplemented, No. 83/1 October 1996; amended, No.11/29 January 1998; amended, No. 81/14 September 1999; amended, No. 45/30 April 2002; amended, No.66/9 July 2002; supplemented, No. 17/21 February 2003; amended, No. 30/11 April 2006; amended, No.64/8 August 2006; amended, No. 31/13 April 2007; amended No. 59/20 July 2007); amended, No. 36/4 April 2008; amended, No.19/9 March 2010; amended, No. 38/18 May 2012 [cited as: PA].

Competent authorities or courts



Switzerland

Administrative procedure

The Swiss Federal Institute of Intellectual Property (hereinafter the “Patent Office”) is the competent authority for granting patents in Switzerland and Liechtenstein. Switzerland and Liechtenstein have the same patent regulations based on a Patent Treaty (Treaty between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection of 22 December 1978). A Swiss patent is valid in Liechtenstein, and a Liechtenstein patent is equally valid in Switzerland. The two countries form a unified territory of patent protection.

Opposition

Any person may give notice of opposition to the grant of a patent within nine months of publication of the entry in the Patent Register (Art. 59c PatA). Opposition may be based only on the grounds that the subject-matter of the patent is not patentable under Arts. 1a, 1b and 2 PatA (Art. 59c PatA).

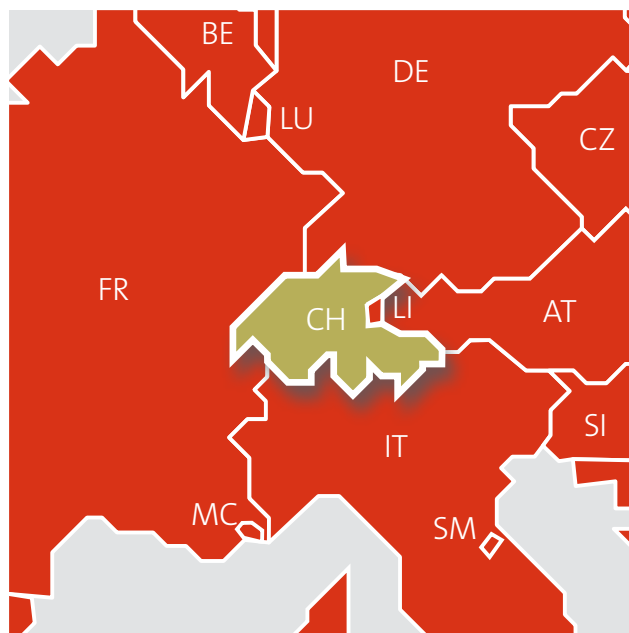
Appeal

The decisions of examiners, legal services and opposition divisions of the Patent Office may be appealed before the Swiss Federal Administrative Court. Any party to proceedings adversely affected by a decision or a person whom the decision has excluded from the procedure may appeal. Judgments of the Federal Administrative Court may be appealed to the Swiss Federal Supreme Court.

Civil procedure

In patent matters only, the Principality of Liechtenstein has a common court structure with Switzerland. The Court of Appeal (Obergericht) has competence for patent issues in Liechtenstein at first instance. Appeals against its judgments in patent matters, in as far as substantive issues are concerned, can be filed with the Swiss Federal Supreme Court.

On 1 January 2012, the Swiss Federal Patent Court Act (PatCA) entered into force and created a specialised patent court in Switzerland. The Swiss Federal Patent Court is now exclusively competent for all patent validity and infringement disputes and other matters having a factual



CH

connection to patents (Art. 26 PatCA). However, in other civil patent matters (concerning the right to patents or their assignment) the 26 cantonal courts may have parallel competence to the Federal Patent Court.

The Federal Patent Court ensures the necessary expertise and effective legal protection for technical inventions. The court comprises both legally and technically qualified judges to take account of the fact that patent disputes are at the interface of technology and law. The applicable procedural law is the Swiss Civil Procedure Code (CPC), as well as special provisions in the PatCA (Art. 27 et seq.) and the PatA relating to the particularities of patent law.

Infringement

The patentee or exclusive licensee may take action under civil or penal law against a person who uses the patented invention unlawfully (Art. 66 PatA).

The Federal Patent Court has exclusive jurisdiction over infringement disputes and actions for issuing a licence in respect of patents (Art. 26(1) PatCA).

If a preliminary question or plea on the validity of the patent infringement in a civil litigation case is put before a cantonal civil court, proceedings will be suspended. The cantonal judge will set an appropriate deadline for filing the validity action before the Federal Patent Court. The cantonal court stays the proceedings until a final decision has been rendered on the action (Art 26(3) PatCA).

Where the defendant files a counterclaim for nullity of a patent, the cantonal court refers both actions to the Federal Patent Court (Art. 26(4) PatCA).

Criminal proceedings: upon request of the injured party, criminal proceedings may be initiated before a criminal court against a party who wilfully commits an infringement (Art. 81 PatA). If the accused party claims the nullity of a patent, the court may grant him an appropriate deadline to file an action for declaration of patent nullity, with a warning of the consequences of his failure to do so (Art. 86 PatA).

Nullity/counterclaim for revocation

Any person having a legitimate interest may claim the nullity of a patent before the Federal Patent Court (Art. 26 PatA; Art. 26(1) PatCA).

Partial nullification is possible (Art. 27 PatA).

Cancellation of a patent due to non-working (Art. 38 PatA): If the grant of licences does not suffice to meet the demand of the Swiss market, any person with a proven interest may request the cancellation of the patent after a period of two years from the grant of the first licence under Art. 37(1) PatA before the Federal Patent Court.

In nullity proceedings before the Federal Patent Court the patentee may, and in practice often will, present amended claims, also as auxiliary requests.

Remedies

Injunction, suspension, seizure, confiscation or destruction of products manufactured unlawfully; additionally, publication of the judgment can be ordered; an infringer may also be liable for damages (Art. 69-73 PatA).

Other actions

Any person demonstrating a legitimate interest may request a declaratory judgment as to the infringing character of one or more acts (Art. 74 No. 3 PatA).

Appeal

A further appeal may be filed with the Swiss Federal Supreme Court, irrespective of the value in dispute. The Swiss Federal Supreme Court is generally bound by the

findings of fact of the lower instance, and its reviews are usually confined to points of law.

Parallel proceedings

A party may invoke the nullity of the Swiss part of a European patent, be it as a request or as a defence, regardless of any parallel proceedings at the EPO. The Swiss judge may however suspend the proceedings in case of parallel opposition or appeal proceedings at the EPO (Art. 128 PatA).

Arbitration/mediation

The structure of the procedure before the Federal Patent Court fosters settlements between the parties. It includes, for example, preparatory hearings with opportunities for the parties to negotiate, if desired with the assistance of the court. The court may at any time attempt to reach a settlement agreement between the parties (Art. 124(3) CPC). The settlement rate at the Federal Patent Court is therefore high (above 75%).

In Switzerland, there is no official authority for arbitration or mediation. The Federal Patent Court may recommend mediation to the parties at any time, and the parties may also make a joint request for mediation at any time. The parties are responsible for organising and conducting the mediation (Art. 215 CPC).

Enforcement

The Federal Patent Court is competent for the enforcement of its preliminary or final decisions, as well as for measures for preserving evidence. There is a specific patent-related procedure for the preservation of evidence handled by the Federal Patent Court, similar to the French “*saisie-contrefaçon*” (Art. 77 PatA). To enforce a decision, the court may request the assistance of other authorities (e.g. the police, customs administration etc., Art. 343(3) CPC). If a decision relates to the payment of money or provision of security, it is enforced according to the provisions of the Federal Act on Debt Enforcement and Bankruptcy (DEBA) (Art. 335(2) CPC), and the Debt Recovery and Bankruptcy Office is the competent authority.

Compulsory licence

Swiss patent law includes several grounds for granting compulsory licences, such as the non-working of a patent;

the interest of the public; anti-competitive practices in the field of semiconductor technology; for research tools; for diagnostics; or for the export of pharmaceutical products to developing countries (Art. 36-40e PatA). A compulsory licence is granted by the Federal Patent Court (Art. 40e PatA, Art. 26(1)(a) PatCA).

Compulsory licences are issued only if efforts by the applicant to obtain a contractual licence on appropriate market terms within a reasonable period of time have been unsuccessful (Art. 40e(1) PatA). The patent holder has the right to appropriate remuneration (Art. 40e(5) PatA).

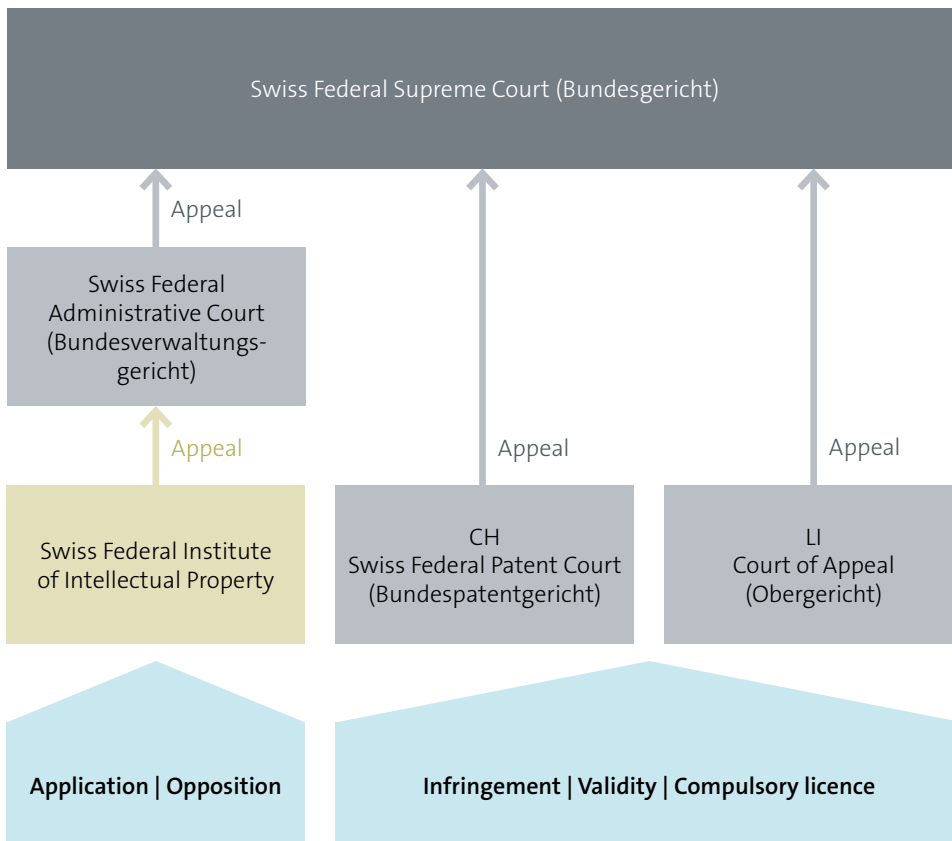
Relevant national law

Federal Act on Patents for Inventions of 25 June 1954 (Patents Act; PatA SR 232.14) [cited as: PatA];

Federal Act on the Federal Patent Court of 20 March 2009 (Patent Court Act; PatCA SR 173.41) [cited as PatCA];

Swiss Civil Procedure Code of 19 December 2008 (CPC SR 272) [cited as CPC].

Competent authorities or courts



Cyprus

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available.

Appeal

Any person may file an appeal to the Administrative Tribunal from acts of the Department of Registrar of Companies and Official Receiver (hereinafter the "Registrar"). The judicial review is conducted by the Administrative Tribunal and may be followed by an appeal to the Supreme Court on a point of law. The review is before one Administrative Tribunal judge and a further appeal before five Supreme Court judges. The time limit for a review is 75 days, and 14 days for an appeal from a review.

Civil procedure

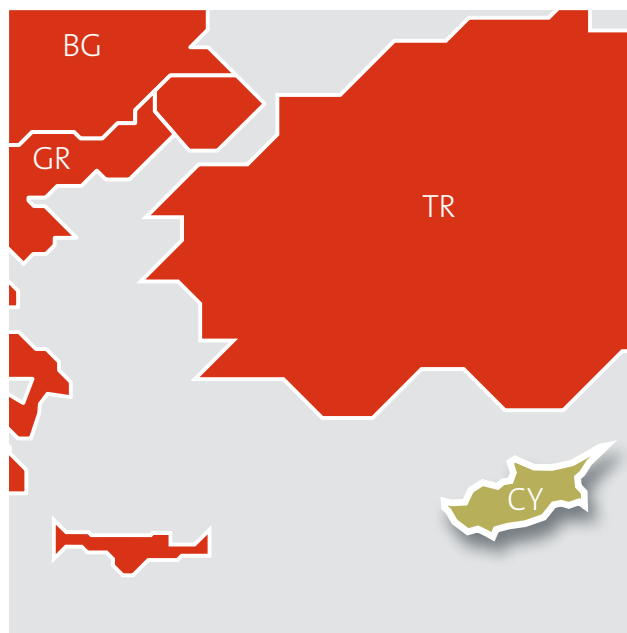
Infringement

A patent owner may institute legal proceedings against anyone who infringes his rights as patentee.

Unless the licence contract provides otherwise, any licensee may request the patent proprietor to institute court proceedings for any infringement indicated by the licensee, who must specify the relief desired. If the licensee proves that the patent proprietor has received the request but refuses or fails to institute proceedings within three months of receipt of the request, the licensee may institute proceedings in his own name, after notifying the proprietor of his intention (Art. 61(4)(a), (b) PA).

Infringement actions become statute-barred five years from the act of infringement (Art. 61(1) PA).

The Supreme Court of Cyprus may decide to stay any proceedings brought before it in respect of unauthorised acts performed in relation to an invention that is the subject of a published application until a final decision has been made by the Registrar to grant or to refuse a patent on the application (Art. 28(2) PA).



CY

Nullity/counterclaim for revocation

The Supreme Court of Cyprus may, on application of any person, invalidate a patent, in whole or in part, on any of the grounds named in Art. 58 PA. Invalidation works retroactively (Art. 59 PA).

If the action is withdrawn, the invalidation proceedings will not continue.

Under national patent law (PA), it is not possible to amend a patent in a post-grant procedure.

A defendant in the infringement proceedings may request the invalidation of the patent in the same proceedings. The provisions and requirements of the invalidation procedure apply (Art. 61(3), 58 PA).

Remedies

Injunction, damages.

Other actions

Any interested party has the right to institute proceedings against the proprietor of the patent. The Supreme Court may declare that the performance of a specific act does not constitute infringement of a patent (Art. 62(1) PA).

The patent proprietor has to prove that the act in question does not constitute infringement. If infringement proceedings are already pending, the defendant in the infringement proceedings may not institute proceedings for a declaration of non-infringement (Art. 62(2) PA).

Appeal

There is a review before one Supreme Court judge and a further appeal before five Supreme Court judges.

Parallel proceedings

There is no provision for parallel proceedings under national patent law.

Arbitration/mediation

There is no arbitration or mediation in patent litigation in Cyprus.

Enforcement

During the procedure, enforcement is performed by the court bailiffs or any other person authorised by the court (Section 4 Civil Procedure Law, Cap. 6).

After termination of the procedure or the final decision of the court, the court decision which awards damages is overseen by the same court and its bailiffs. Payment of damages is enforced by the same court which imposed the damages through the relevant provisions of the Civil Procedure Law.

Compulsory licence

A compulsory licence may be granted in cases of non-working, refusal to grant a licence for a product for which demand in Cyprus is not (or not reasonably) met, dependent patents, economic needs, unfair conditions imposed by the proprietor, or public interest (Art. 49-51 PA).

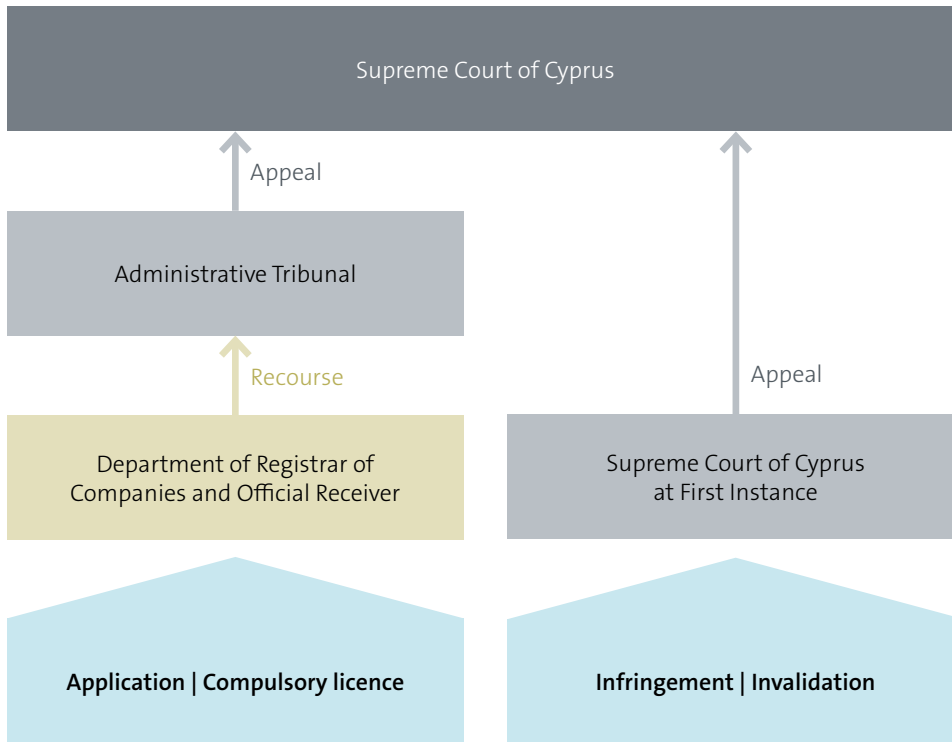
The proprietor of a patent or any other person wishing to oppose an application for a compulsory licence may give the Registrar notice of opposition, which the Registrar considers in deciding whether to grant the application (Art. 52(1) PA).

Where an application for a compulsory licence is opposed and either the parties consent or the proceedings require an extended examination of documents or any scientific research which cannot in the opinion of the Registrar conveniently be made before him, the Registrar may at any time order the whole proceedings or any issue of fact to be referred to an arbitrator or mediator. The arbitrator or mediator reports his findings to the Registrar, who then proceeds with his decision (Art. 52(2), (3) PA).

Relevant national law

Patents Law – No. 16(I) of 1998 as amended by Law 21(I)/1999; 153(I)/2000; 163(I)/2000; 122(I)/2006 [cited as: PA]

Competent authorities or courts



CY

Czech Republic

Administrative procedure

Opposition

No formal pre-grant opposition procedure is available.

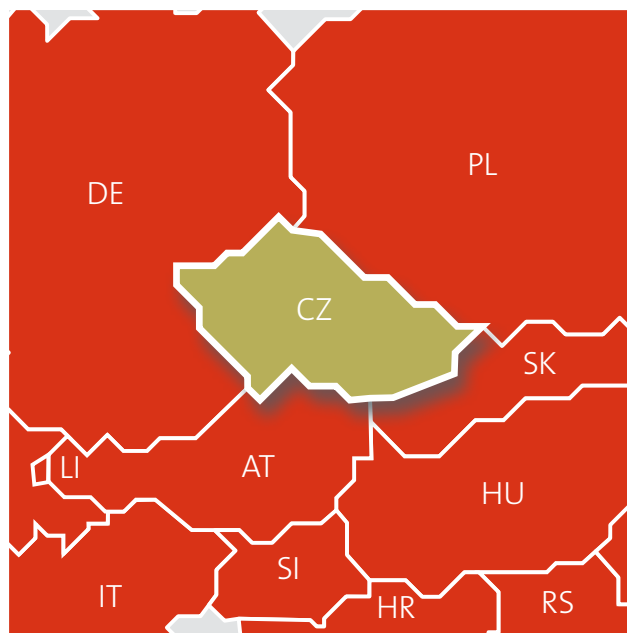
Any person may submit observations concerning the patentability of the invention after the application is published (Section 32(1) PA). The Industrial Property Office (hereinafter the “Patent Office”) takes such observations into consideration when carrying out the full examination of the application. Those who submit observations do not become party to the proceedings for the application. However, the applicant is informed of any observations submitted (Section 32(2) PA).

Furthermore, the applicant or another person may, within 36 months as from the filing date of the application for an invention, request substantive examination of a patent application (Section 33(2), (3) PA).

Appeal

Patent Office decisions may be appealed to the President of the Patent Office within one month of their notification (Section 68 PA). The President decides on the appeal on the basis of the proposals of the expert commission that he establishes. The appeal has suspensive effect. The President’s decisions are generally final, but:

- a) They may be reviewed by the Municipal Court in Prague, in proceedings initiated by the filing of a claim. The claim has to be filed within two months of notification of the challenged decision. The claim does not have suspensive effect. The court may revoke the contested decision, return the matter to the Patent Office for further proceedings, or dismiss the claim. In case of a complaint of inaction against the Patent Office, the court may oblige the Patent Office to issue a decision within a prescribed time limit.
- b) No ordinary appeal is available against the decision of the court. The decision may be contested only through an annulment (“cassation”) complaint filed with the Supreme Administrative Court in Brno.



CZ

Revocation

Any person may file a request for revocation of a patent with the Patent Office (Section 23 PA). Revocation has retroactive effect (Section 23(3) PA).

The request may be filed even after lapse of the patent, but proof of legal interest is necessary (Section 23(4) PA).

Partial revocation is available (Section 23(2) PA – it will be carried out as an amendment of the claims).

A patent may be amended to limit the scope of protection by the Patent Office, the Municipal Court in Prague or the Supreme Administrative Court in Brno. This occasionally happens in practice.

Civil procedure

Infringement

Claims resulting from imminent or existing infringement of industrial property rights acquired to the prejudice of their beneficiary fall within the exclusive competence of the Municipal Court in Prague (Section 6, Act No. 221/2006).

Proceedings are initiated at the request of either the patent owner or another person entitled to use the rights (Section 75 PA).

Representation by a lawyer is not obligatory.

Nullity/counterclaim for revocation

Invalidity of a patent cannot be used as a defence.

The Court may itself decide or alternatively may suspend the proceedings until the Patent Office decides (see “Declaratory proceedings” below). However, the Court is not bound to follow a final decision of the Patent Office. The Court usually takes its decision on the basis of an authorised expert’s opinion or reports made by independent experts.

Remedies

Right to information, preliminary injunction, recall of products from the market, permanent removal, destruction (products and tools), pecuniary compensation, damages (Sections 3, 4, 5, Act No. 221/2006 Coll., Section 75 PA).

Other actions

Declaratory proceedings: any person proving legal interest may file a request with the Patent Office to determine whether the production process, the given products, their exploitation or their presence on the market fall within the scope of the patent (Section 67 PA). The Patent Office does not decide on infringement as such.

Appeal

An appeal may be made to the High Court in Prague. For further appeal, recourse to the Supreme Court in Brno is available as an extraordinary legal remedy.

Parallel proceedings

The Patent Office suspends the revocation procedure for the European patent if opposition proceedings on the same matter are pending before the EPO. If the European patent is not revoked in the opposition proceedings, the Patent Office will upon request continue with the revocation procedure.

Arbitration/mediation

Both arbitration and mediation are possible in patent litigation proceedings.

Arbitration is governed by Act No. 216/1994 Coll. on Arbitration Proceedings and Enforcement of Arbitral Awards. Arbitration may be conducted by one or more arbitrators appointed by the disputing parties for the particular dispute (*ad hoc* arbitration) or as proceedings before an institutionalised arbitration court established by an act (institutional arbitration).

Mediation is governed by Act No. 202/2012 Coll. on Mediation and Amendments to Certain Legislation (“Mediation Act”), which relates to mediation activities carried out by mediators registered in the list of mediators maintained by the Czech Ministry of Justice.

The association of mediators and arbitrators in intellectual property matters (*Asociace prostředníků a rozhodců ve věcech duševního vlastnictví*) is a voluntary association of professionals who are prepared to participate in resolving disputes in the field of intellectual property and unfair competition as:

- mediators (brokers, intermediaries)
- arbitrators in the broad sense of the word
- *ad hoc* arbitrators pursuant to Law No. 216/1994 Coll.

Enforcement

During the procedure

As regards enforcement of intellectual property (including patents), the Customs Administration authorities have the competence to

- (a) implement measures in co-operation with parties authorised to enforce intellectual property rights;
- (b) supervise compliance with obligations and prohibitions in connection with the enforcement of intellectual property rights.

Pursuant to Act No. 634/1992 Coll. on Consumer Protection (Consumer Protection Act), it is prohibited to offer for the purposes of sale, to sell and to store products that breach certain intellectual property rights. Compliance with these duties is monitored by the Czech Trade Inspection Authority. Supervision in the area of agricultural products, foods and tobacco products is performed by the State Agricultural and Food Inspection Authority and in the area of pharmaceuticals by the State Institute for Drug Control.

Pursuant to the Civil Procedure Code (Act No. 99/1963 Coll.), in matters relating to intellectual property rights, the court acting on a motion of the person who witnessed the infringement of intellectual property rights may secure the evidence prior to the trial. Competence to secure evidence is exercised by the court which has jurisdiction over the place where the evidence is physically located.

Prior to the trial, the court may also issue a preliminary injunction if the situation of the parties must be temporarily adjusted or if it fears that execution of the judicial decision could be endangered. The court that is competent to hear the case is also competent to issue a preliminary injunction.

After termination or final court decision

If the obliged person does not voluntarily comply with that which is imposed upon him by an enforceable decision, the entitled person may file a petition for judicial enforcement or a petition for enforcement under a special law (Act No. 120/2001 Coll. on Court Executors and Execution, Enforcement Procedure). In this case, it is an executor who independently carries out enforcement activities.

Compulsory licence

Compulsory licences may be granted by the Patent Office in cases of non-working and serious public interest (Section 20 PA).

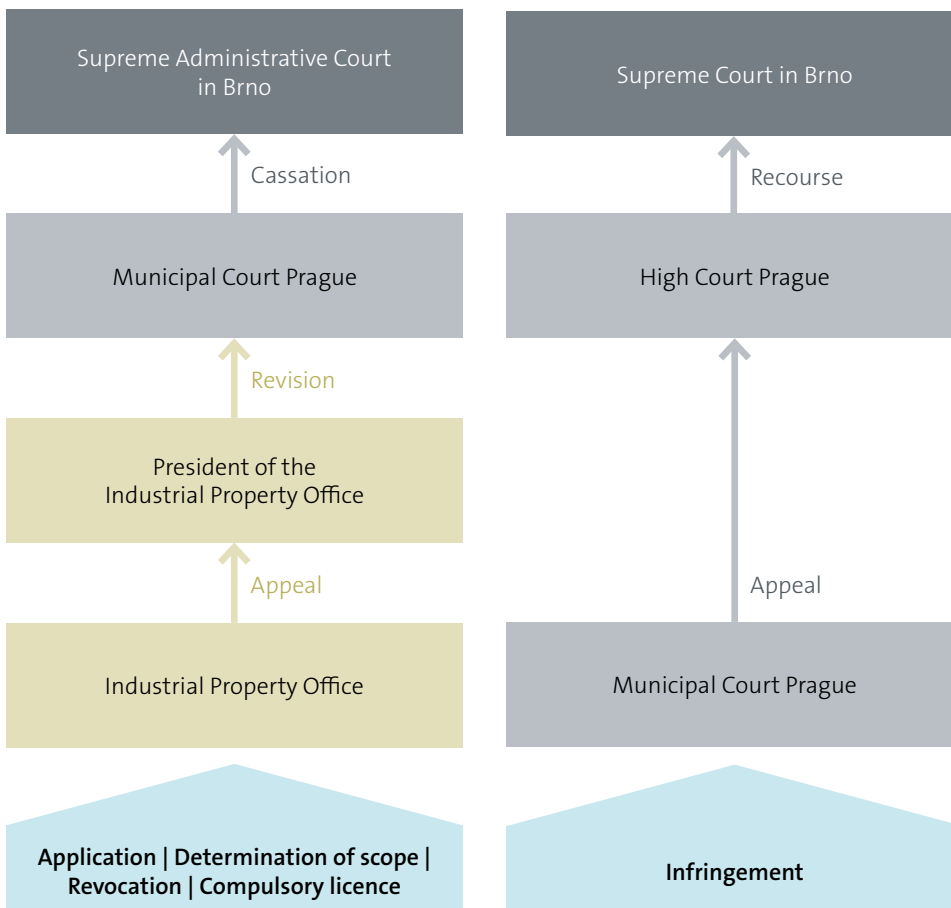
Relevant national law

Act No. 527/1990 Coll. on Inventions and Rationalisation Proposals, as follows from amendments implemented by Act No. 519/1991 Coll., Act No. 116/2000 Coll. Act No. 207/2000 Coll. and 3/2001 Coll. [cited as: PA];

Act No. 221/2006 Coll. of 25 April 2006 on Enforcement of Industrial Property Rights and on the Amendment of Industrial Property Protection Acts;

Act. No. 500/2004 Coll. Administrative Procedure Code, as subsequently amended.

Competent authorities or courts



Germany

Administrative procedure

Opposition

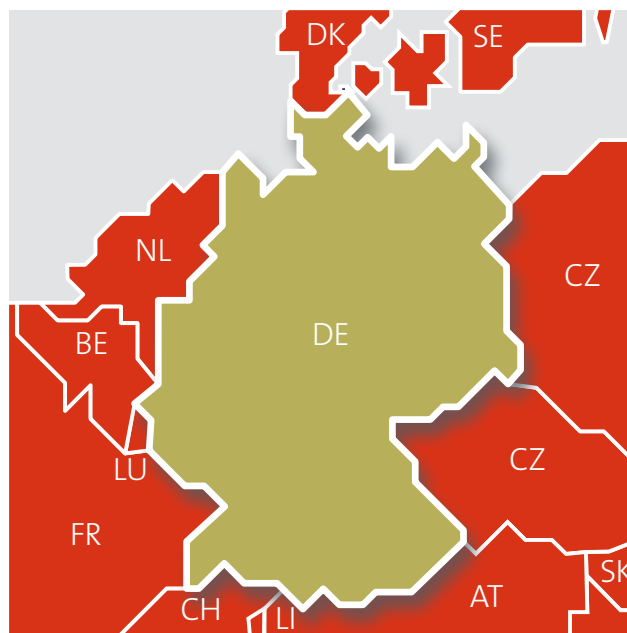
Any person may file notice of opposition within nine months of the date of publication of the grant (Section 59(1) 1 PatG) (no *restitutio in integrum* in case of failure to observe the nine-month time limit (Section 123(1) 2 No. 1 PatG)).

Opposition may be based only on the allegation that one of the grounds for revocation under Section 21 PatG exists (Section 59(1) PatG). Grounds of unlawful deprivation (Section 21(1) No. 3 PatG) may be invoked only by the injured party (Section 59(1) 1 PatG). The facts which justify the opposition must be stated in detail (Section 59(1) 2, 3 and 4 PatG).

If a patent infringement action has been filed, the defendant may intervene in pending opposition proceedings relating to the patent in suit. Upon expiry of the period for opposition the defendant must declare its intention to intervene within three months of the filing of the infringement action. The same applies to a third party who has started proceedings for a ruling for a declaration of non-infringement upon the patent proprietor's request to cease alleged infringement of the patent (Section 59(2) PatG).

Patent Divisions (three members: at least two technical members, one additional legal member in case of particular legal difficulty; Section 27(3) PatG) at the German Patent and Trade Mark Office (hereinafter the "Patent Office") have competence for opposition proceedings (Sections 27(1) No. 2, 61 PatG). Under certain conditions the Federal Patent Court (Appeal Chamber (Beschwerdesenat) – three technical members and one legal member, Section 67(1) No. 2 PatG) may decide on the opposition (Section 61(2) PatG).

If the opposition is withdrawn, the proceedings are continued (Section 61(1) 2 PatG).



DE

Appeal

An appeal may be filed against the decisions of the Examining Sections and Patent Divisions (Sections 73(1), 27 PatG). One of the requirements is that the appealed decision does not, or does not fully comply with the appellant's request. The appeal must be filed with the Patent Office within one month after service of a decision (Section 73(2) PatG). A statement of grounds for the appeal is not compulsory. If there are no other parties to the appeal proceedings and if the authority whose decision is contested finds the appeal justified, the authority will rectify its decision (Section 73(3) 1 and 2, (4) PatG). Otherwise it will transfer the appeal to the Federal Patent Court (FPC)¹ for decision without comment as to its merits within one month (Section 73(3) 3 PatG).

Further appeal against decisions of the Federal Patent Court (restricted to legal questions) may be made to the German Federal Court of Justice (hereinafter the "FCJ") within one month of the appeal decision if the Federal Patent Court decision specifically grants leave to appeal (mandatory leave – Section 100(1), (2) PatG) or if no grant of leave is required on account of certain procedural deficiencies (such as denial of the right to be heard) (Section 100(3) PatG).

¹ The Federal Patent Court is an autonomous and independent federal court. It is *inter alia* competent for appeals from decisions of the Patent Office's Examining Sections or Patent Divisions (Section 65(1) 2 PatG). The decisions of the Federal Patent Court on appeals are handed down by the Appeal Chamber (Sections 66(1) No.1, 67(1) PatG).

Revocation

Under German law, revocation proceedings are strictly separate from infringement proceedings (bifurcation system).

A German patent may be revoked or maintained during opposition proceedings by a Patent Division of the Patent Office (Section 61 PatG, see also “Opposition” above). The patent may be revoked or upheld with its originally granted claims or with amended claims (Section 61(1) PatG). Amendment of the claims, with the consent of the patent owner, in opposition proceedings is possible, but the amended claims may not be subject to grounds for revocation under Section 21 PatG.

A German patent or the German part of a European patent may also be revoked or limited by the Patent Division upon request of the patent owner without time limit (Section 64 PatG). Limitation of the claims is possible subject to certain requirements (Sections 44, 64(2) PatG).

Statistics on the outcome of opposition proceedings with the Patent Office are published annually in the *Blatt für Patent-, Muster- und Zeichenwesen*.

A German patent or the German part of a European patent may be declared invalid by the German Federal Patent Court in response to a nullity action (Section 81 PatG).

Anyone may bring a nullity action (grounds of unlawful deprivation may be invoked only by the injured party (Section 81(3) PatG)). An action against a German patent may be based on the allegation that one or more of the grounds for revocation listed in Section 21(1) PatG apply or that the scope of the patent has been broadened (Section 22 PatG). An action against the German part of a European patent may be based on one or more of the grounds for revocation listed in Article II Section 6 IntPatÜbkG, which are the same as those in Sections 21(1) and 22 PatG, apart from the ground of unlawful deprivation, which is almost the same.

There is no time limit for a nullity action; but a revocation action against a patent may not be filed as long as opposition proceedings may be initiated or are still pending (Section 81(2) PatG). However, after expiry of a patent a nullity action is admissible only if the claimant has a legal interest in a court declaration that the patent is nullified (with retroactive effect), which is generally recognised when the claimant is accused of having infringed the patent, e.g. by the patent proprietor in a pending infringement action.

The defendant has to object to the nullity action within one month after service of the action (Section 82(1) PatG). If no objection is filed in time, the Federal Patent Court may decide without a hearing, assuming that the facts put forward by the claimant are true (Section 82(2) PatG). The defendant may defend the patent as granted but also in his main request or one or more auxiliary requests in an amended set of claims.

At first instance, the proceedings are handled by a Revocation Chamber (*Nichtigkeitssenat*) – Sections 66(1) No. 2 PatG) of the Federal Patent Court, generally consisting of two legal and three technical members (Section 67(2) PatG).

After submission of the statement of defence the court refers in a written communication to issues that are likely to be of particular importance for deciding the case. It may set a time limit for the parties to comment, e.g. by revising their requests or supplementing their allegations. Failure to observe the time limit may make it inadmissible to defend the patent in an amended set of claims or to submit new documents or facts.

The hearing is held before the panel and under the control of the presiding judge. At the beginning the presiding judge or the reporting judge states the essential content of the file, followed by a hearing of the party’s pleadings and, possibly, a taking of evidence, e.g. the hearing of witnesses, rarely of experts since three out of the five judges on the panel are technically qualified in the patent’s field of technology. Most of the time, the final decision is given at the end of the hearing, while the reasons are given at a later point in time.

Decisions regarding the revocation of the patent have retroactive effect (*ex tunc*).

Appeal may be made to the FCJ within one month of delivery (i.e. service) of the full judgment (Section 110(3) PatG) for a review of legal and factual aspects (Section 111 PatG). Under the revised law enacted on 1 September 2009 and applicable to all nullity actions instituted from then on, the review is restricted to legal aspects. New facts can be introduced into the proceedings only if certain conditions are met [e.g. no negligently late presentation of the new facts] (Sections 111(1), 117 PatG). Cross-appeal is admissible. A panel of five legally qualified judges (Section 139 GVG) will decide on the appeal after a hearing (Section 118). The decision can be rejection of the appeal or full or partial reversal of the judgment or remittal of the case to the Federal Patent Court or a decision to take evidence and, after another hearing, rejection of the appeal or full or partial reversal of the judgment (Section 119 PatG).

Civil procedure

Infringement

Infringement claims of a German patent or the German part of a European Patent are subject to civil law (Sections 139-141 PatG). Criminal sanctions are available (criminal action on complaint of the aggrieved party, except in cases of public interest, where prosecution is *ex officio* (Section 142 PatG)).

The competent court for all claims based on infringement of a patent under German law is the District Court (LG, *Zivilkammern der Landgerichte* – Section 143(1) PatG) without regard to the value in dispute. Due to federal regulations, specific District Courts are wholly or partially competent for deciding all patent actions (*Patentstreitsachen*) in a particular federal state (*Bundesland* – Section 143(2) PatG)². Parties are required to bring forward all facts and available evidence or offer of evidence in written statements within time limits set by the court. Panels of three legally qualified judges (Section 75 GVG) decide on the infringement action after a hearing.

The standard limitation period for actions for patent infringement is three years (Section 141 PatG, Section 195 BGB), which commences at the end of the year in which the claim arises and the claimant obtains knowledge of the infringement and of the identity of the infringer or would have obtained such knowledge if he had not shown gross negligence (Section 141 PatG, Sections 195, 199(1) BGB). Irrespective of such knowledge, claims become statute-barred ten years after they arise or thirty years from the date of the infringement (Section 141 PatG, Sections 195, 199(3), (4) BGB).

Nullity/counterclaim for revocation

Under German patent law, only the Federal Patent Court may declare a German patent or the German part of a European patent invalid (the so-called bifurcation system; see “Revocation” above).

The invalidity of a patent may not be put forward as a defence or counterclaim defence in infringement proceedings, since civil courts are bound by the patent as an administrative act issued by the Patent Office which can only be revoked in opposition proceedings or declared invalid in nullity proceedings.

Infringement proceedings may, however, be stayed if opposition or nullity proceedings are pending and the District Court is of the view that there is a high likelihood that the patent claims relevant for the infringement will be revoked or held invalid (Section 148 ZPO).

Remedies

Remedies available for patent infringement in a trial on the merits are permanent injunctive relief (Section 139(1) PatG), claim for information and rendering account on profits due to the infringement (Section 140b PatG, Sections 242, 259 BGB), claim for recall, removal and destruction of the infringing product (Section 140a PatG), claim for damages (Section 139(2) PatG), and publication of the decision (Section 140e PatG).

A claim on the extent of award of damages (Section 139(2) PatG) can be put forward in separate proceedings after the court has found that the defendant is liable for damages on the merits due to patent infringement and the case is not settled out of court.

Claim for reasonable compensation of the applicant from the date of publication of the application is available for intentional or negligent use of the subject-matter of the application (subject to further requirements) (Section 33 PatG, Article II Section 1 IntPatÜbkG).

Other actions

Declaration of non-infringement is available in civil proceedings (Section 256 ZPO).

Preliminary injunctions or preliminary seizure may be ordered in preliminary proceedings (Section 140a PatG, Sections 935, 940 ZPO).

An order for inspection of the allegedly infringing product or process (Section 140c PatG) is also available before or during proceedings on the merits.

Border seizure measures may be available under the requirements of national law (Section 142a PatG) and/or European regulations.

² LG Mannheim (Baden-Wuerttemberg); LG Munich I and LG Nuremberg-Fürth (Bavaria); LG Berlin (Berlin, Brandenburg), LG Hamburg (Bremen, Hamburg, Mecklenburg-Western Pomerania, Schleswig-Holstein), LG Düsseldorf (North Rhine-Westphalia); LG Frankfurt (Main) (Hessen, Rhineland-Palatinate); LG Braunschweig (Lower Saxony); LG Leipzig (Saxony); LG Magdeburg (Saxony-Anhalt); LG Erfurt (Thuringia); LG Saarbrücken (Saarland).

Appeal

The Higher District Court (“*Oberlandesgericht*” – OLG) has jurisdiction on appeals from decisions of the District Court.

Legal review of a decision on appeals of the Higher District Court is available by the Federal Court of Justice (FCJ) (Section 542 ZPO), only if leave to seek review is granted by the Higher District Court or if on appeal the decision of the Higher District Court not to grant leave is set aside by the FCJ (Sections 543-545 ZPO). Grounds for granting leave are that the case gives rise to a legal issue of general importance or that the development of law or the safeguarding of unitary case law requires a decision from the FCJ. Violations of the right to be heard are also a ground for granting leave.

Parallel proceedings

See “Nullity/counterclaim for revocation” above.

Arbitration/mediation

Alternative dispute resolution including means of mediation may be available in civil proceedings such as patent infringement proceedings (see e.g. Sections 278, 278a ZPO). Arbitration (*Schiedsverfahren*) may be possible in civil proceedings. German law contains certain provisions for arbitration in Sections 1025 et seqq. ZPO.

Enforcement

Enforcement of the decisions of civil courts is subject to Sections 704 et seqq. ZPO, the provisions of German civil procedural law. A decision on the merits is enforceable when it is final.

A district court decision on the merits is provisionally enforceable when the decision has been serviced upon the defendant, a court certificate of enforceability (*Vollstreckungsklausel*) has been issued and security, as determined by the court, has been posted. The appeal court may upon request of the defendant, in exceptional cases suspend the enforceability of the decision if it has been appealed.

A court of appeal decision is also provisionally enforceable. For preliminary injunctions see also Sections 936, 929 ZPO.

The party that has enforced a provisionally enforceable decision is liable for damages if the decision is subsequently reversed (Section 717(2) ZPO). If the subsequently reversed

decision is a decision from a court of appeal, the liability of the party that enforced the decision is limited to the extent of unjustified enrichment (Section 717(3) ZPO).

Non-compliance with the orders in the court decision may, upon request of the other party, be subject to a penalty or imprisonment (non-compliance with an injunction, Section 890 ZPO) or a coercive measure (non-compliance with an order to give information and render account, Section 888 ZPO). Award of damages is enforced in the same way as a decision for payment in general.

Compulsory licence

A non-exclusive compulsory licence may be granted by the Federal Patent Court at the request of a party (subject to further conditions – Sections 24, 81 et seqq. PatG).

The decision may be appealed to the FCJ within one month (Section 110 PatG).

Relevant national law

Patent Act as promulgated by announcement of 16 December 1980 (Federal Gazette 1981 I p.1), last amended by Article 4 of the Law of 8 October 2017 (Federal Gazette I p. 3546) [cited as: PatG];

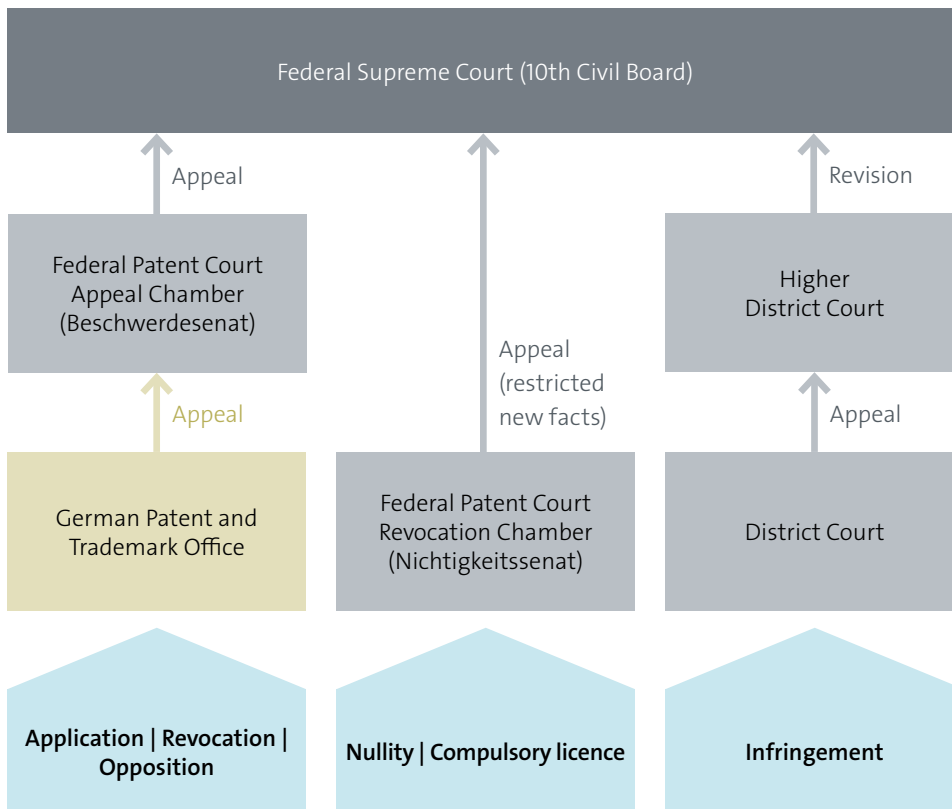
Act on International Patent Treaties of 21 June 1976 (Federal Gazette II p. 649), last amended by Article 3 of the Law of 17 July 2017 (Federal Gazette I p. 2541) [cited as: IntPatÜbkG];

German Civil Code as promulgated by announcement of 2 January 2002 (Federal Gazette I p. 42, 2909; 2003, p. 738), last amended by Article 7 of the Law of 31 January 2019 (Federal Gazette I p. 54) [cited as: BGB];

German Code of Civil Procedure as promulgated by announcement of 5 December 2005 (Federal Gazette I p. 3202; 2006 I p. 431; 2007 I p. 1781), last amended by Article 1 of the Law of 31 January 2019 (Federal Gazette I p. 54) [cited as: ZPO];

German Courts Constitution Act as promulgated by announcement of 9 May 1975 (Federal Gazette I p. 1077) last amended by Article 2 of the Law of 14 April 2019 (Federal Gazette I p. 466) [cited as: GVGG].

Competent authorities or courts



Denmark

Administrative procedure

The law of Denmark covers the autonomous outlying regions of Greenland and the Faroe Islands. However, the EPC has not been approved for those regions and does not in any way cover them.

Pre-grant observations and disputes

A third party may file pre-grant observations on an application, but will not be party to the proceedings before the Danish Patent and Trademark Office (hereinafter the “Patent Office”). The observations will be considered by the examiner, and the applicant is informed of them.

If a third person claims before the Patent Office to be entitled to the invention, the Patent Office may invite him to bring the case before the court within a specific period (Section 17 PA). If that happens, the grant proceedings can be suspended until a final decision in the legal proceedings has been given (pre-grant disputes – Section 17(2) PA).

Opposition

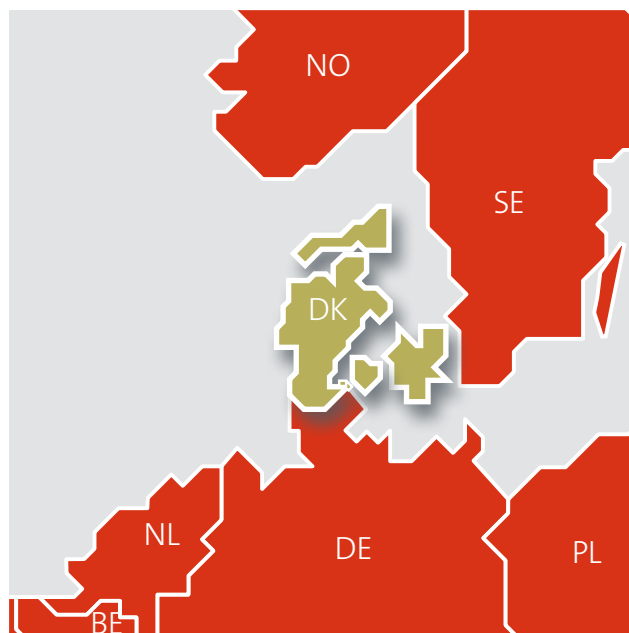
Post-grant opposition is available. It must be filed within nine months from publication of the grant (Section 21 PA). The opposition may be considered by the Patent Office even if the opposition is withdrawn or the patent has lapsed (Section 23(2) PA).

Re-examination

Any person may file a request with the Patent Office to have a granted patent reexamined.

A request may not be filed during the period allowed for opposition or as long as an opposition remains to be finally decided upon or a case before the courts concerning the patent is pending (Section 53b (2) PA).

If proceedings concerning a patent are instituted before the courts prior to a final decision of re-examination the Patent Office suspends re-examination until the case before the court has been finally decided upon, unless the request has been filed by the proprietor of the patent (Section 53b (3) PA).



DK

The proprietor of the patent may request that his patent be limited by amendment of the description, claims or drawings as long as there is no pending opposition or a pending case before the courts (Section 53e (1) PA).

Appeal

Final decisions of the Patent Office may be appealed to the Board of Appeal (Section 24 PA). Any party may bring an action within two months. New evidence not previously used may be submitted. The Board of Appeal is independent of the Patent Office.

An unfavourable decision of the Board of Appeal may be appealed to the Maritime and Commercial Court and further to the High Courts or if certain criteria are met to the Supreme Court.

Civil procedure

Infringement

Civil actions must be brought to the Maritime and Commercial Court. The panel of the Maritime and Commercial Court uses both legally and technically qualified judges.

Nullity/counterclaim for revocation

Any person may institute proceedings for full or partial invalidation of a patent at any time after grant (Section 52 PA). The action may be brought before the Maritime and Commercial Court.

Proceedings on the grounds that the patent has been granted to a person other than the one entitled to it may be instituted only by the person claiming entitlement. Such proceedings must be brought within one year after the entitled person obtained knowledge of the grant of the patent and of the other circumstances on which the proceedings are based. If the proprietor received the patent in good faith, action may not be brought later than three years after grant (Section 52(4) PA).

Invalidity of the patent may only be raised as a defence if a claim for revocation is made against the proprietor of the patent under special proceedings summoning the patentee before the court. The defendant may adduce the nullity of the patent only against the owner of the patent if a claim is raised and is properly communicated (Section 61 PA).

Remedies

Damages, compensation, confiscation of infringing products, additional decision on prevention of the abuse of products manufactured in accordance with the patent. The patent owner may also seek a preliminary injunction at the Maritime and Commercial Court (Section 58, 59 PA).

Other actions

Criminal actions should be brought by the injured party or at the request of the injured party by public authorities or by the public authorities. The corresponding remedies would be fines or imprisonment. (Section 57 PA).

Appeal

Appeals from the Maritime and Commercial Court may be made to the High Courts or to the Supreme Court. Appeal may be made to the Supreme Court if the case is of a principled nature and is of general importance to the

application of the law and to the development or significant social scope in general, or if there are other special grounds that the case is being considered by the Supreme Court as the second instance. The Supreme Court ensures that the conditions for appeal to the Supreme Court are met.

See also "Administrative procedure, Appeal" above.

Parallel proceedings

Invalidation proceedings concerning a patent in respect of which opposition is pending may be suspended by the Court until a final decision on the opposition has been taken by the Patent Office (Section 53a PA).

Proceedings for revocation instituted while an opposition is pending at the EPO may be suspended by the court until a final decision has been taken (Section 53a PA).

Arbitration/mediation

No information available.

Enforcement

Judgments and orders can be enforced by the bailiffs.

Compulsory licence

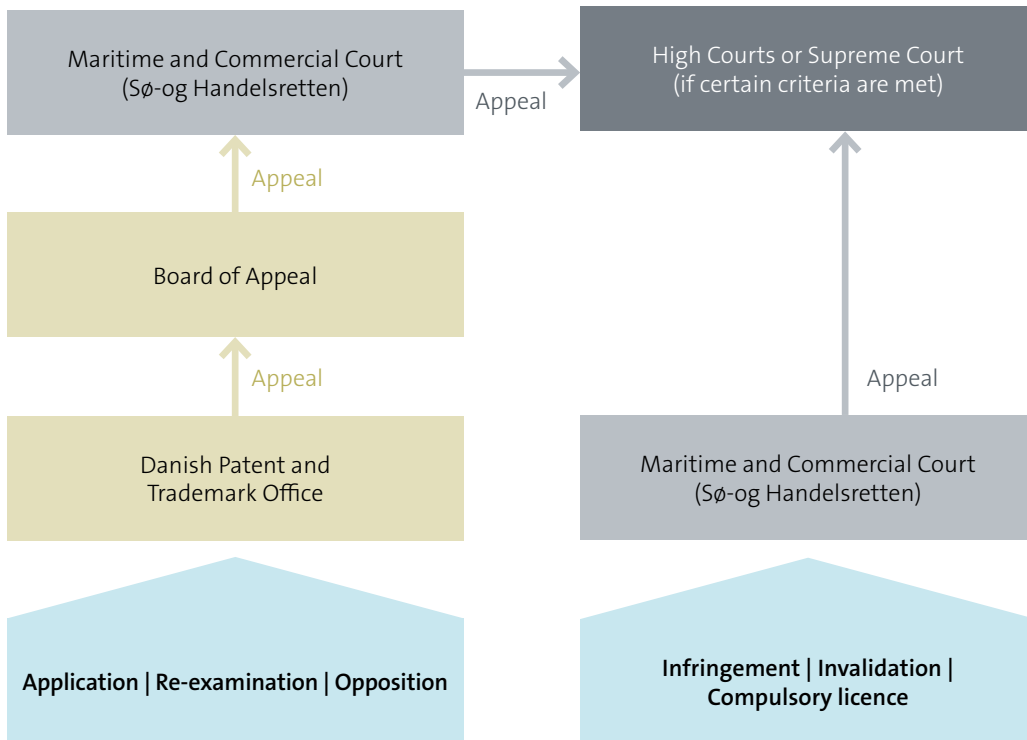
Compulsory licenses may be granted by the Maritime and Commercial Court, e.g. in cases of non-working, dependent patents or public interest (Sections 45-48 PA). The Court may, at the request of either party, modify the conditions of a compulsory licence or even revoke it.

Relevant national law

The Consolidated Patents Act (Consolidated Act No. 90 of 29 January 2019) [cited as: PA];

Order on Patents and Supplementary Protection Certificates (Order No. 25 of 18 January 2013 as amended by order no. 146 of 20 February 2014).

Competent authorities or courts



DK

Estonia

Administrative procedure

Opposition

No formal pre-grant opposition procedure is available. Post-grant opposition is available at the Board of Appeal.

Any person may file an application for revocation with the Board of Appeal and request the revocation of a patent in part or in full within nine months of the publication date of the notice of issue of the patent (Section 50 Patents Act (hereinafter PA)). The person who filed the revocation application or the patent proprietor may contest the decision of the Board of Appeal at the Harju County Court within two months (Section 50(6) PA). An unsuccessful party may file an action within two months after publication of the decision of the Board of Appeal (Section 64 (1) of Principles of Legal Regulation of Industrial Property Act (hereinafter Industrial Property Act))

Appeal

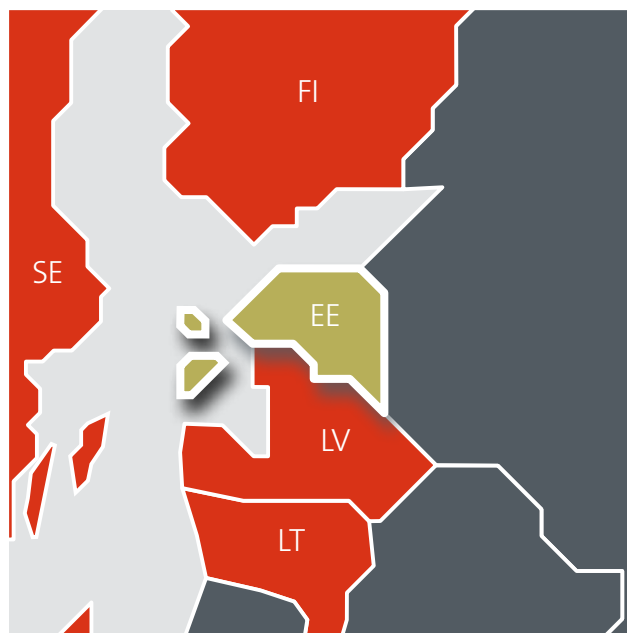
An applicant may file an appeal against a decision of the Estonian Patent Office (hereinafter the "Patent Office") with the Board of Appeal (Section 30 PA).

Any applicant may file an appeal within two months of the date on which the decision is made (Section 30(2) PA).

The Board of Appeal shall dismiss an appeal or request or grant an appeal or request in full or in part (Section 61(1) Industrial Property Act).

The Harju County Court (civil court) is responsible for all matters of patent law and for appeals against the decisions of the Board of Appeal (the Harju County Court is located in Tallinn, seat of the Patent Office.)

Proceedings concerning an appeal, petition or action filed with a court pursuant to the Patents Act before 1 April 2019 shall be conducted by a county court other than Harju County Court although the latter has exclusive jurisdiction over adjudication of the respective appeal, petition or action starting from said date (Section 61-1(2) PA).



EE

Civil procedure

Infringement

The Harju County Court has exclusive jurisdiction (according to the general rules of civil procedure) to adjudicate patent infringement disputes.

The patent owner may lodge an action (Section 53 PA).

Criminal sanctions are available, but separate criminal proceedings must be initiated (Sections 219, 226 Penal Code).

Expert opinions are possible, but are not binding on the court.

Nullity/counterclaim for revocation

Nullity of a patent may be used as a counterclaim (Section 54(6) PA). The court must suspend infringement proceedings until a final decision on revocation is reached. If the patent is revoked, the action for alleged infringement will be discontinued.

Revocation of a patent may be requested without limitation in time on the grounds that the invention protected by the patent does not comply with the provisions of Section 8 PA. Revocation of a patent in full can be requested on said grounds also after the expiry of the term of the patent (Section 50 (2-1) PA).

If the action is withdrawn, the court will end the proceedings. No *ex officio* actions are provided for by Estonian law.

Remedies

Compensation, termination of unlawful use (Section 53 PA).

Other actions

May be requested by any person at the Harju County Court. An action must be filed at the court against the patentee (Section 54(5) PA).

Any person who finds that the right to a patent belongs him or her may, after the publication of a patent application, file a request with the Board of Appeal for recognition of his or her rights against the applicant or proprietor of the patent. If the request is granted in the case of a patent application, the person has the right to continue applying for the patent in his or her name, revoke the patent application and file a new patent application with the same filing date concerning the same invention, or revoke the patent application. In the case of a patent, the person has the right to register the patent unamended or subject to amendments in the person's name, or revoke the patent (Section 49(1) PA).

The proprietor of a patent may restrict the scope of patent protection by amending patent claims and correcting any bibliographical data and obvious spelling or calculation errors in the patent specification during the entire term of validity of the patent (Section 39(1) PA). During proceedings related to the contestation of a patent before the Board of Appeal or at court, the proprietor of the patent cannot file a request to amend the patent with the Patent Office (Section 39(5) PA). There is little practice in relation to post-grant procedures for patents.

Appeals and actions related to the legal protection of inventions, validity of patents and unlawful use of inventions protected by patent, petitions for the securing of an action and petitions for provisional legal protection, as well as other appeals, petitions and actions specified in this Act shall be heard by Harju County Court (Section 55 (2) PA).

Appeal

An ordinary appeal may be filed at the Court of Appeal.

Parallel proceedings

If, simultaneously with national court proceedings on a matter relating to the validity of a European patent or to the protection of the rights of the proprietor of a patent, the European Patent Office has commenced opposition proceedings relating to the same patent, national court proceedings shall be suspended until publication of the notice concerning the revocation or amendment of the European patent in its Official Gazette (Section 14(1) Implementation of Convention on Grant of European Patents Act).

Arbitration/mediation

Conciliation proceedings are available under the Conciliation Act (Section 1(1)) but do not constitute a mandatory pre-trial procedure. The competent authority for dealing with conciliations is a conciliator.

A conciliator for the purposes of the Conciliation Act may be:

- a natural person to whom the parties have entrusted the task of carrying out the activity;
- a sworn advocate (with restrictions);
- a notary (with restrictions); and
- in cases provided for by law, a conciliation body of the government or local authority (e.g. the Estonian Association of Mediators) (Section 2 Conciliation Act).

Enforcement

A bailiff is responsible for enforcing an order both during the procedure and after termination or final decision of the court.

Compulsory licence

May be granted by the Harju County Court in cases of non-working, economic importance for Estonia, and public interest (Section 47 PA). Government use of a patent without the authorisation of its owner in situations of national emergency or other circumstances of extreme urgency is possible (Section 47 PA).

Relevant national law

Patent Act – passed on 16 March 1994 (RT I 1994, 25, 406);
date of revisions entry into force: 01.04.2019 [cited as: PA];

Penal Code – passed on 6 June 2001 (RT I 2001, 61, 364)
(Chapter 14 deals with offences against intellectual
property), date of revisions entry into force: 15.03.2019;

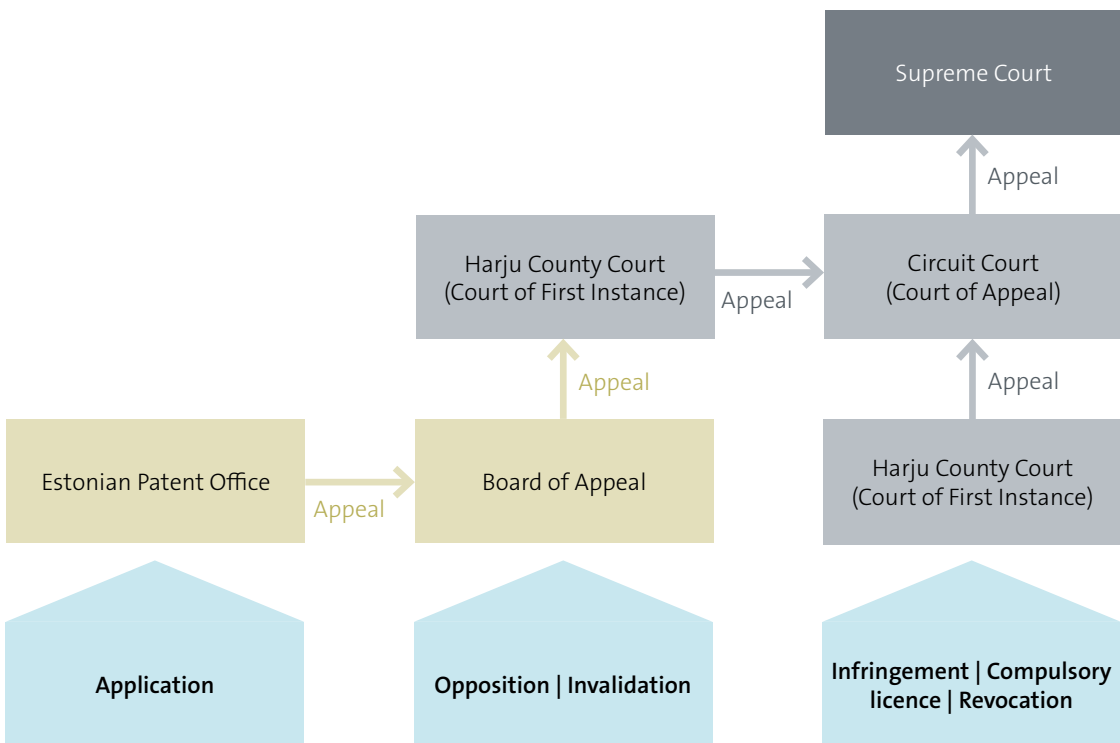
Principles of Legal Regulation of Industrial Property Act –
passed on 28 January 2003 (RT I 2003, 18, 98), date of
revisions entry into force: 01.04.2019 [cited as: Industrial
Property Act];

Conciliation Act – passed on 18 November 2009 (RT I 2009,
59, 385); date of revisions entry into force: 01.01.2010;

Code of Civil Procedure – passed 20 April 2005 (RT I 2005, 26,
197); date of revisions entry into force: 01.04.2019.

EE

Competent authorities or courts



Spain

Administrative procedure

Opposition

In Spain, a post-grant opposition procedure is available. Any person may file notice of opposition against patents up to six months after publication of the mention that a patent has been granted in the Official Gazette.

In such cases, opposition may not be founded on the grounds of lack of right to apply for the patent, which constitutes an issue that would have to be settled by the Spanish civil courts.

The Spanish Patent and Trademark Office (OEPM; hereinafter the “Patent Office”) informs patent proprietors of any oppositions it receives and sets a three-month time limit for them to reply or to make appropriate amendments to the patent.

The Patent Office forwards the observations and amendments filed by the proprietor to opponents, who in turn can file new observations within a period of two months.

If the patent proprietor files additional comments or makes amendments to the application, these are once again subject to re-examination by the Patent Office, which in addition informs the proprietor of the existence of any possible objection that might prevent the (amended) patent from being granted. A supplementary one-month period is then provided for the proprietor to make additional comments or amendments to the application.

Appeal

The Appeals Unit is a section within the Patent Office which deals with administrative appeals. Appeals may be filed against final decisions of the Patents department. An appeal must be filed within one month, and a fee must be paid. The appeals procedure is based on general administrative law with a few particularities specific to industrial property.

An administrative appeal against the grant of a patent may only be lodged by a person who has been a party to opposition proceedings. Third parties may not do so.



If the appeal is not settled within the three-month period from the date on which it was lodged, the request to overturn the decision may be presumed to have been dismissed. Therefore, the lack of an administrative decision within the legal term will not prevent the appellant from pursuing his legal claims.

The petitioner may appeal the decision of the Appeals Unit before the administrative chamber of a High Court of Justice within a period of two months from publication of the decision. The petitioner may choose between the High Court of Madrid or the High Court of the Autonomous Region where he lives. This may be followed by a final appeal to the Supreme Court.

The lodging of this appeal does not have suspensive effect for the Patent Office’s decision.

Revocation and limitation

A patent proprietor may request the revocation or limitation of his own patent at any time after grant is confirmed, i.e. the request cannot be filed:

- during the time limit to give notice to the opposition of a patent;
- while opposition proceedings in respect of the patent are pending; or
- while a previous limitation proceeding in respect of the patent is pending.

ES

The request is deemed to be filed only when the limitation or revocation fee is paid.

A request for revocation or limitation will not be admissible when there are legal interests, seizure orders or licences registered at the Patent Registry without consent of the title holders or when there are pending judicial proceedings regarding patent ownership without the claimant's consent.

Revocation actions may be brought by anyone except in cases of lack of right to the patent, where only the person who claims a better right to the invention would be entitled to act. A verdict declaring the revocation of a patent may not affect agreements already enforced.

The Spanish courts may declare partial revocation of the patent. In Spain, civil or administrative courts may declare the partial revocation of a patent; but in practice this happens only after administrative resolution.

Re-establishment of rights

A patent applicant or owner, or any other party to proceedings before the Patent Office, who, despite taking all due care required by the circumstances, has not been able to observe a time limit in relation to the Office will upon request have his rights re-established if the non-observance in question has the direct consequence of causing the loss of a right.

The request for re-establishment must be filed within two months from the date of removal of the cause of the failure to meet the applicable time limit, provided that the request is filed within twelve months from the date of expiry of the applicable time limit. In case of failure to pay an annual fee the request has to be filed within two months of removal of the obstacle, provided that the request is filed within 12 months from the date of expiry of the applicable time limit to pay with surcharge.

The omitted time limit must be fulfilled and the fee for the re-establishment of rights must be paid when re-establishment of rights is requested.

The request must state the reasons for failure to comply with the time limit in spite of due care, and must be accompanied by any declaration or other evidence in support of this statement.

Civil procedure

Infringement

As provided for in the Spanish Patent Act, only the commercial courts of Barcelona, Madrid, Valencia, Granada, Las Palmas, A Coruña and Bilbao have exclusive jurisdiction to hear patent cases of a civil nature.

The owner of a granted patent and exclusive licensee may lodge civil and criminal actions for infringement. Civil actions are aimed at preventing or redressing damages, whilst criminal actions seek punishment of the person held responsible for the crime.

Spanish public security forces may proceed against crimes against IP rights, acting on the basis of their own investigations. Such crimes may also be prosecuted as a result of the crime being reported by any third party to the public security forces, which then conduct the necessary investigations to seek evidence of the reported crime.

Nullity/counterclaim for revocation

It is frequent that infringement actions are in joint proceedings with revocation actions brought by the defendant as counterclaims. During both civil and criminal proceedings, the court may request expert evidence from public bodies and institutions, possibly with the collaboration of Patent Office experts.

Remedies

In civil proceedings, the patent holder may resort to the following remedies: injunction, compensation for damages, seizure and destruction of infringing goods or the filing of notices in public registries.

Other actions

Other actions are declaration of non-infringement and right of prior use (Arts. 70-78 and 63 Spanish Patent Act).

Appeal

Appeals from the Commercial Court are made to the Court of Appeal (Audiencia Provincial).

Parallel proceedings

In Spain, administrative proceedings prevail over civil ones when they relate to administrative resolutions. Criminal proceedings prevail over all types of judicial proceedings.

EPO decisions are considered of great importance, but they have a non-binding effect and the courts may adjudicate without taking EPO proceedings into account. Where there are parallel EPO proceedings, it is at the court's discretion as to whether to stay national proceedings.

Arbitration/mediation

The Spanish Patent Act expressly mentions the possibility of arbitration or mediation for patent matters and gives powers to the Patent Office to create an arbitration and mediation service. However, it expressly provides that the following are excluded from arbitration or mediation: matters related to the grant, opposition or appeal procedures as far as those matters relate to patentability requirements, maintenance or validity.

Enforcement

Judicial authorities are responsible for ordering the implementation of the Court decision. The Ministry of

Justice must ensure such implementation. For that purpose there are bailiffs with special functions. The police are also involved in actions ensuring global respect for the judicial mandate of the Court in accordance with the rule of law.

Calculation of damages is postponed until the so-called "execution phase." This avoids the time and cost involved in the calculation of damages in the "declaratory phase" i.e. before infringement has been declared.

The term for filing a statement of defence has been extended to two months. Previously, it was 20 working days.

Compulsory licence

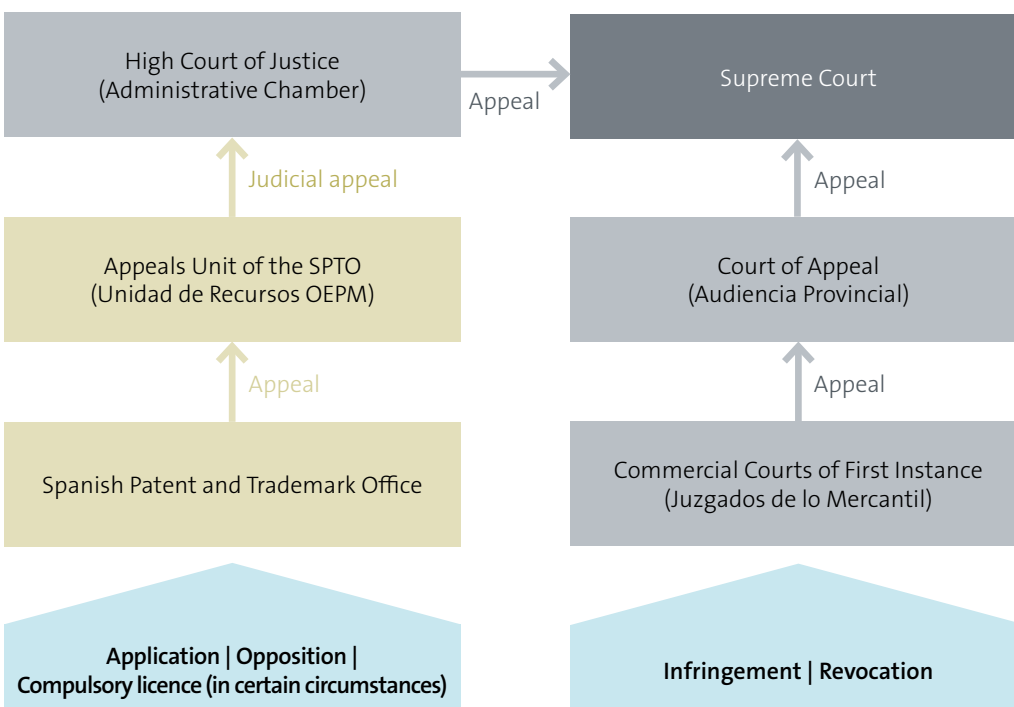
The Spanish Patent Act provides for compulsory licences. Depending on the justification on which to grant a compulsory licence, different authorities are competent: the SPTO, the National Commission on Markets and Competition (CNMC in Spanish), a judge/court or even the Spanish Government (see Arts. 92 to 96 Spanish Patent Act).

ES

Relevant national law

Spanish Patent Act – Ley 24/2015, de 24 de julio, de Patentes

Competent authorities or courts



Finland

Administrative procedure

Opposition

A post-grant opposition procedure is available in Finland. Within nine months from the date of the grant of the patent anyone may file a notice of opposition (Section 24 PA).

The Finnish Patent and Registration Office (hereinafter the "Patent Office") may take an opposition into account even if it is withdrawn or after the patent has lapsed. If the opposing party withdraws his opposition, he may not appeal against the Patent Office's final decision (Section 24(5) PA).

Anyone may file pre-grant observations which are of importance for the examination of the application. The Patent Office notifies parties of the possibility of filing an opposition if the patent is granted (Section 26a PD).

Appeal

Appeals against final decisions of the Patent Office may be filed with the Market Court within 60 days (Section 27 PA).

Appeals may be filed by the applicant, proprietor or opponents or by persons claiming to be the owner of the invention (Sections 26 and 54 PA).

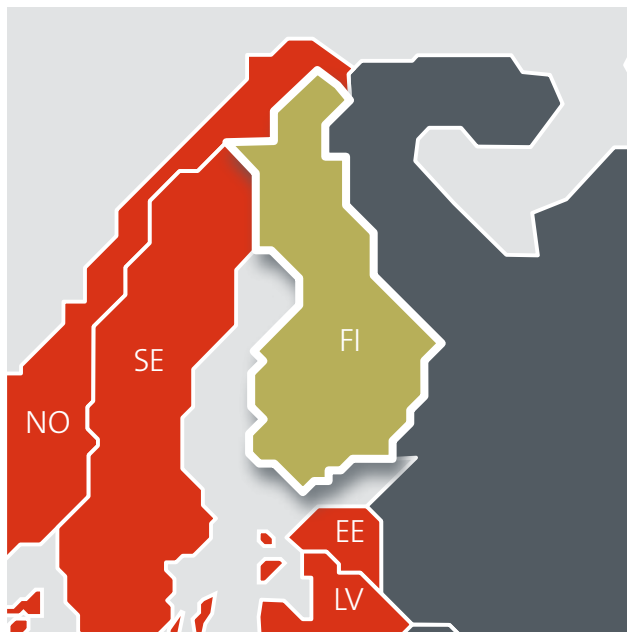
Further appeal may be made to the Supreme Administrative Court within 30 days after receipt of the decision of the Market Court. However, leave must first be granted by the Supreme Administrative Court.

Civil procedure

Infringement

The patent owner may bring a civil action to the Market Court. A licensee may sue the infringer in his own name, provided that he duly notifies the owner.

A dispute on infringement, entitlement, compulsory licensing, a declaratory judgment or compensation relating to a European patent may not be heard by the Market Court if the same dispute between the same parties is pending



before the court of another country that is party to the EPC. If the competence of the foreign court is contested, the Market Court postpones its hearing of the case until the question of competence has been finally decided upon by the foreign court.

In patent infringement matters the Market Court may ask the Patent Office for an opinion.

Nullity/counterclaim for revocation

Any person, who suffers prejudice on account of the patent, or a public authority appointed by the government for reasons of public interest, may institute proceedings for the invalidation of a patent. The action must be brought before the Market Court.

In patent invalidation matters the Market Court may ask the Patent Office for an opinion.

Nullity may be used as a defence, provided that a nullity action against the patent is pending or will be brought to the court within a period determined by the Market Court. Infringement and nullity actions are as a rule dealt with in the same proceedings. However, the Market Court may stay the infringement proceedings until the counterclaim for nullity has been decided if there are particular reasons for doing so. Patent claim limitation is allowable in nullity/counterclaim for revocation proceedings.

Remedies

Damages, compensation, injunction, destruction, seizure, alteration, surrender and fines (Chapter 9 PA).

Other actions

Other civil actions based on the PA (i.a. declaratory actions for ownership of the patent, declarations of non-infringement) may be brought to the Market Court.

Appeal

Decisions and judgments of the Market Court may be appealed against before the Supreme Court, provided that the Supreme Court grants leave to appeal.

Parallel proceedings

In a patent invalidation case the court may, at its discretion, postpone the taking of a decision on a principal claim referred to it if the action has been brought in a competent authority before expiry of the time limit for filing opposition after the grant of the patent or before a final decision has been issued on the opposition.

In practice the court takes its decision whether or not to stay the proceedings on a case-by-case basis after consultation of the parties.

Arbitration/mediation

Arbitration is in principle available in patent litigation proceedings, with the exception for revocation actions. The parties are in principle free to agree whether to use the Arbitration Institute of the Finland Chamber of Commerce or *ad hoc* arbitration.

Enforcement

The authority responsible for enforcing an order both during the proceedings and after termination or final decision of the court is the bailiff (Enforcement Code No. 705/2007).

Compulsory licence

Compulsory licences may be granted by the Market Court in cases of non-working, public interest, dependent patents and prior use (Sections 45–50 PA).

Relevant national law

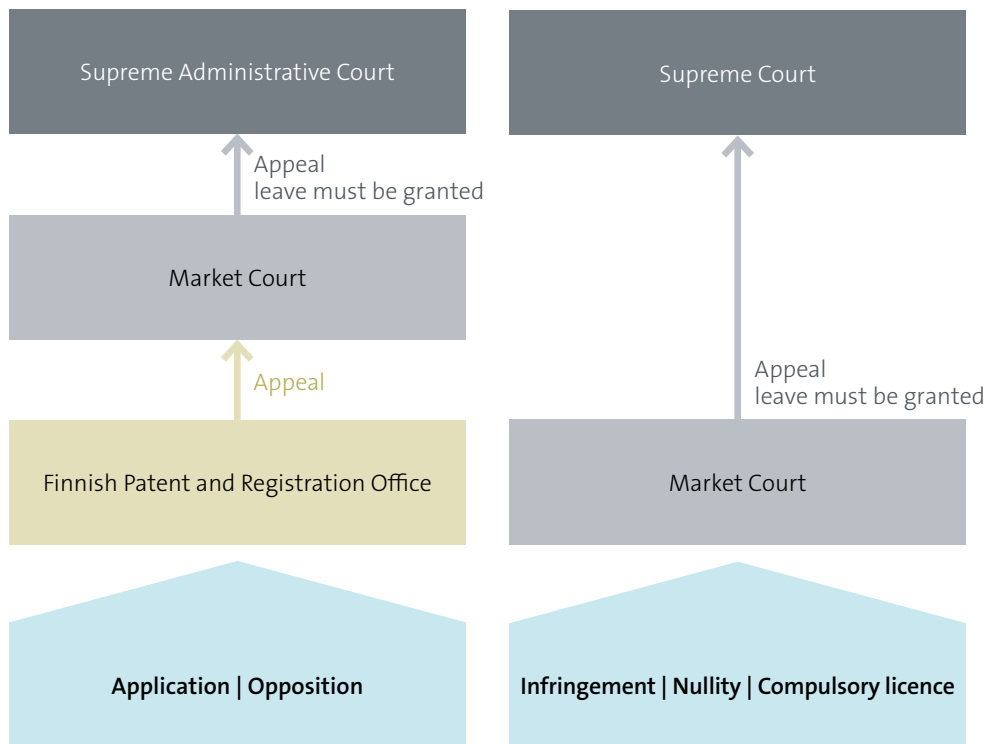
Patents Act – No. 550/1967, as amended by Acts No. 653/1967, No. 575/1971, No. 407/1980, No. 387/1985, No. 801/1991, No. 577/1992, No. 1034/1992, No. 1409/1992, No. 593/1994, No. 717/1995, No. 1695/1995, No. 243/1997, No. 650/2000, No. 990/2004, No. 896/2005, No. 295/2006, No. 684/2006, No. 392/2010, No. 954/2010, No. 478/2011, No. 743/2011, No. 863/2011, No. 1096/2011, No. 101/2013, No. 23/2016 and No. 717/2016 [cited as: PA];

Patents Decree – No. 669/1980, as amended by Decrees No. 505/1985, No. 583/1992, No. 71/1994, No. 595/1994, No. 104/1996, No. 246/1997, No. 674/2000, No. 1200/2004, No. 144/2006, No. 1118/2007, No. 603/2008, No. 1097/2011 and No. 580/2013 [cited as: PD];

Market Court Procedure Act No. 100/2013, as amended by Acts No. 594/2013, No. 23/2014, No. 554/2016, No. 678/2016, No. 1495/2016, No. 1095/2017, No. 1124/2017, No. 600/2018, No. 1122/2018, No. 417/2019 and No. 549/2019;

Enforcement Code No. 705/2007, as amended by Acts No. 987/2007, No. 365/2009, No. 521/2009, No. 932/2009, No. 1417/2009, No. 1614/2009, No. 1756/2009, No. 397/2010, No. 652/2010, No. 99/2011, No. 1161/2013, No. 741/2014, No. 1125/2014, No. 408/2015, No. 637/2015, No. 26/2016, No. 323/2016, No. 864/2017, No. 60/2018, No. 134/2018.

Competent authorities or courts



France

Administrative procedure

Opposition

At the time of writing, no pre- or post-grant opposition procedure exists. However, France is working on setting up a post-grant opposition procedure for implementation in 2020.

Currently third parties may, within three months from the date of publication of the application, submit written observations that may affect the patentability of the invention (R. 612-63 IPC). Such observations are communicated to the applicant, who may submit his counter-observations or a new wording of the claims (within three months) (R. 612-64 IPC).

Appeal

Action for annulment of any decisions regarding the grant, refusal or maintenance of patents should be filed with the Paris Court of Appeal (L. 411-4, R. 411-19 IPC).

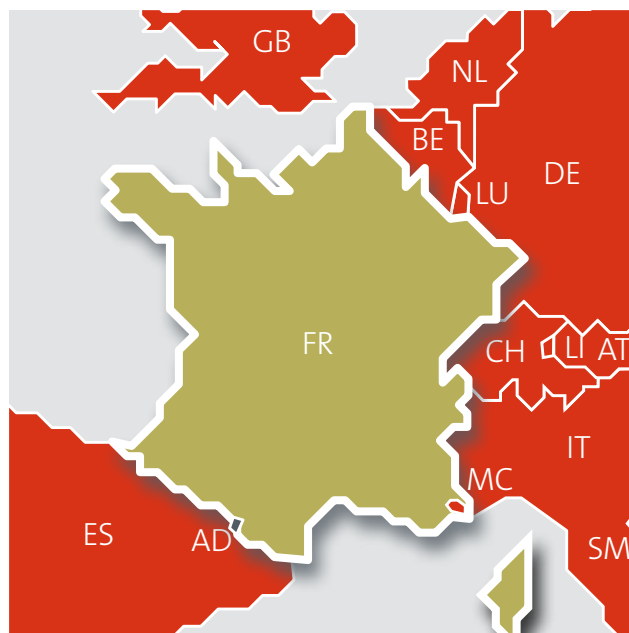
The action may be brought within one month by the applicant or patent proprietor or by a third party having an interest in the proceedings and residing in France, within two months if the party resides in overseas administrative departments of France, and within three months if the party resides in another country outside France (R. 411-20, R. 411-24 IPC). The action has no suspensive effect.

Further appeal may be made to the Supreme Court (L. 411-4(2) IPC).

Civil procedure

Infringement

Patent infringement in France gives rise to both civil (L. 615-1 IPC) and criminal liability (L. 615-14 IPC provides for a maximum of three years' imprisonment and a fine of EUR 300 000 or, if the offence is committed by an organised criminal group or if the products are considered dangerous for the health and security of humans or animals, a maximum of five years' imprisonment and a fine of



EUR 500 000). These penalties are doubled if the offence is repeated or if the offender was contractually bound to the aggrieved party (L. 615-14-1). Deprivation of the right to elect and be elected to commercial courts, chambers of commerce and industry and professional chambers and to joint conciliation boards is also possible.

An action may be brought by the owner of the patent or a licensee (if the patentee fails to do so – L. 615-2 IPC).

All patent litigation matters fall under the special jurisdiction of the first instance court in Paris (*Tribunal de grande instance de Paris*) and the Paris Court of Appeal (L. 615-17 IPC; Art. D 211-6 Code of Judicial Organisation). Infringement cases are tried by three judges, who do not have formal technical or scientific training. Judges at the *Tribunal de grande instance* deal exclusively with IP cases and the court has the power to appoint experts.

Infringement actions may also be brought in respect of acts committed before grant but after the application became open to public inspection. The Court will then postpone its decision until the patent has been granted (L. 615-4 IPC).

Infringement actions may not be brought more than five years after the day on which the owner of the patent was aware, or ought to have been aware, of the last fact enabling him to bring it (L.6158 IPC).

Nullity of a patent may be raised as a counterclaim or defence.

FR

Nullity/counterclaim for revocation

The validity of a patent can be disputed only by initiating a nullity action before a court of general jurisdiction (*Tribunal de grande instance de Paris*). An invalidity action can be brought only after the patent has been granted, this action is imprescriptible (L.61581 IPC) i.e. there is no time limit to introduce this action.

Any party which considers that a patent is invalid and should not have been granted may initiate an invalidity action; the public prosecutor may act *ex officio* (L. 613-26 IPC).

Revocation decisions have retroactive and absolute effect (L. 613-27 IPC). Revocation may also be partial (L. 613-25, L. 613-27 IPC – claims limitation).

Patent claim amendment is allowable in the following cases:

- The owner may file for a limitation of his patent, for example in the course of a revocation action. The request for limitation must be filed before the National Institute of Industrial Property (hereinafter the “Patent Office”). The Patent Office’s decision to accept or reject the limitation request is subject to appeal before the Paris Court of Appeal (L. 613-25 IPC).
- In the course of a revocation action, if the grounds for revocation affect the patent in part only, revocation is pronounced by the court in the form of a corresponding limitation of the claims (L. 613-25).

Where a decision partially revokes a claim, the owner of the patent is referred to the Patent Office in order to submit a modified wording of the claim in accordance with the terms of the decision. The Patent Office is empowered to reject the modified claim for lack of conformity with the decision, subject to appeal to the Paris court of appeal (L. 613-27).

An average of 30 limitations per year are filed under Art. L. 613-25. Limitations under L. 613-27 are infrequent (less than 1 per year).

Remedies

Civil and criminal penalties – damages, fines, interim injunction, confiscation, seizure, publication of the decision, recall of the infringing products from the channels of commerce or removal from the channels of commerce, destruction of the infringing products.

Other actions

Anyone who proves they are working on an invention that may infringe an existing one has the right to request a judgment that such use does not infringe a certain patent (L. 615-9 IPC). The court’s declaration does not exclude a later suit for infringement or nullity.

“*Saisie-contrefaçon*”: if a claimant does not already have evidence in its possession, the President of a court of first instance may be asked for an order of *saisie-contrefaçon*, a means of obtaining evidence that heavily favours the patentee, e.g. inspection of the defendant’s premises (L. 615-5 IPC). This *saisie-contrefaçon* can be cancelled if the claimant does not bring a civil or criminal infringement action within twenty working days or thirty-one calendar days, whichever is the longer (L.6155).

Appeal

The losing party has one month (two months for a foreign party) to file an appeal against the decision at first instance. In the Court of Appeal the parties will follow the same stages of procedure as at first instance (full rehearing).

Further appeal to the Supreme Court is available but restricted to points of law. If the Supreme Court disagrees with the Court of Appeal’s decision, that decision is quashed and the case remanded to the Court of Appeal for further consideration.

Parallel proceedings

The Court’s decision whether to stay national proceedings depends on the circumstances of the case.

If the court considers that the pending proceedings before the EPO have a good chance of affecting the national litigation, it may postpone them (e.g. if the patent revocation claims are the same before the EPO and the Court and have a good chance of succeeding).

On the other hand, if the opposition before the EPO is considered not to be serious, or if the stay would result in over long national proceedings, the Court may proceed to decide the case regardless of the outcome of the EPO proceedings.

Arbitration/mediation

Arbitration or mediation is not available in patent validity/ revocation litigation. Arbitration and mediation are available in litigation over patent ownership, use, agreements (e.g. licence) and infringement and, as an incidental issue only, patent validity.

The *Médiateur des entreprises*, the permanent court of arbitration (CAIP), the National commission for employees' inventions (CNIS) and the WIPO arbitration centre are competent to deal with arbitration and mediation.

Enforcement

A bailiff is responsible for enforcing an order both during the procedure and after termination or final decision of the court.

Compulsory licence

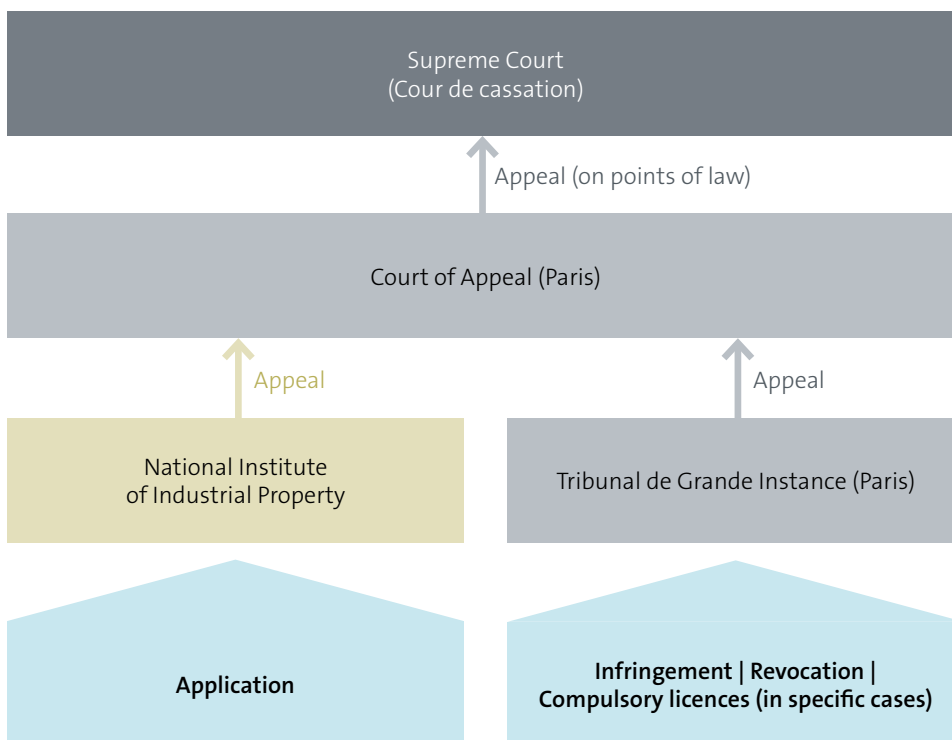
Compulsory licences may be granted by the Tribunal de grande instance, or in the case of public interest, by the Ministry in charge of industrial property.

Relevant national law

Intellectual Property Code – as amended by Act. No. 2003-706 [cited as: L-IPC];

Regulations concerning the Intellectual Property Code (R-IPC), Decree No. 95-385 of April 10, 1995 [cited as: R-IPC].

Competent authorities or courts



United Kingdom

Administrative procedure

Patents granted by the Intellectual Property Office (hereinafter the “IPO”) cover England, Wales, Scotland, Northern Ireland and the Isle of Man. The IPO also operates as a tribunal dealing with ownership issues (e.g. entitlement, inventorship, compensation of employees, joint applicant disputes), technical issues (e.g. revocation, declarations of non-infringement) and licences (e.g. applications to decide on the terms of licences which can be given under a patent and applications for a compulsory licence under a patent). The IPO also decides various opposition matters, e.g. opposition to post-grant corrections and amendments, and surrender.

Opposition

No pre-grant opposition procedure is available. A third party may only file pre-grant observations on the patentability of the application (Section 21 PA). The IPO will consider such observations, but the observing party does not become a party to the proceedings.

No post-grant opposition to the grant of a patent is available; however, third parties may seek revocation of a patent (see below) and may oppose certain post-grant actions.

Appeal

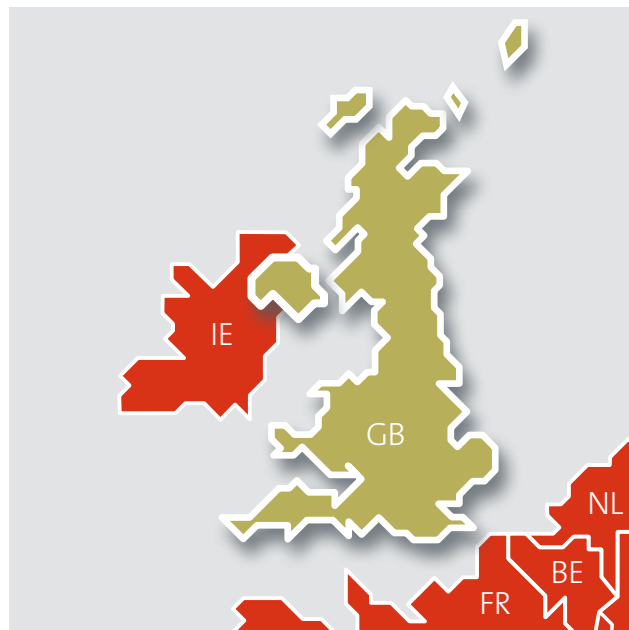
An appeal against decisions of the IPO must be filed with the Patents Court (Section 97(1) PA), unless the proceedings have been held in Scotland, in which case appeal lies with the Outer House of the Court of Session (Section 97(4) PA).

The period for filing an appeal is specified in the decision by the Hearing Officer responsible for that decision; this is usually set at 28 days from the date of the decision. Permission to appeal is not required.

Revocation

The validity of a patent may be challenged before the IPO (in its capacity as a tribunal).

Anyone may apply to revoke a patent (Section 72 PA).



The IPO may also revoke patents on its own initiative

- (i) where the invention formed part of the state of the art under Section 2(3) (Section 73(1) PA);
- (ii) where there is a GB patent and a European patent (UK), the patents being for the same invention with the same priority date and the applications having been filed by the same applicant or his successor in title (Section 73(2) PA); or
- (iii) where a non-binding opinion of the IPO indicates that the patent is not valid due to lack of novelty or inventive step (Section 73(1A)-(1C) PA).

In all cases, before any revocation occurs, the proprietor of the patent is given an opportunity to make observations and/or to amend the specification so as to exclude any matter which may give reasons for the revocation or so as to prevent there being two patents for the same invention.

Civil procedure

Infringement

Patent infringement is not a criminal offence. The patent owner or exclusive licensee may bring a civil action to the court of their choice (Sections 61(1), 66, 67 PA). The proceedings may be instituted against any person who is

alleged to have performed an act of direct or indirect infringement under Section 60(1), (2) PA.

The IPO can also hear infringement claims if the parties agree on that course of action (Section 61(3) PA), but in practice this has never happened.

If it appears to the IPO that the question of infringement referred to it would more properly be determined by the court, it may decline to deal with it, and the court then has jurisdiction to determine the question (Section 61(5) PA).

The United Kingdom comprises three separate jurisdictions:

- a) England and Wales – as shown in the diagram;
- b) Scotland – patent actions are brought before the Outer House of the Court of Session, with appeals being heard by the Inner House; and
- c) Northern Ireland – patent actions are brought before the Northern Ireland High Court, with appeals being heard by the Northern Ireland Court of Appeal.

All three jurisdictions have the Supreme Court as the final appeal court.

The Isle of Man is its own jurisdiction, and patent actions are brought before the High Court of Justice of the Isle of Man.

For England and Wales: in relation to patent disputes, there is no formal separation of jurisdiction between the Intellectual Property Enterprise Court and the Patents Court, and both form part of the Chancery Division of the High Court.

Normally, less complicated cases will be considered by the Intellectual Property Enterprise Court. There is no legal limitation on jurisdiction due to the complexity of the facts but it will only consider cases up to GBP 500 000 in damages (unless the parties agree otherwise). Costs are capped for each stage of a case, with a maximum total cap of GBP 50 000 for the case as a whole. The Intellectual Property Enterprise Court cannot consider appeals on decisions by the IPO.

The Patents Court has the jurisdiction to transfer to the Intellectual Property Enterprise Court any proceedings which it is satisfied should have been filed there. The Intellectual Property Enterprise Court may also transfer proceedings to the Patents Court. If a party wishes proceedings transferred from one court to another, it needs to make an application to the court that currently has jurisdiction over the proceedings.

Nullity/counterclaim for revocation

Invalidity of a patent may be used as a defence in an infringement action and the defendant may counterclaim for revocation of the patent. Both validity and infringement are handled within the same action, although case management decisions by the court may lead to one being decided before the other.

If validity is put in issue in infringement proceedings and it is found that the patent is only partially valid, the court or the IPO may grant relief only in respect of the part of the patent which is found to be valid and infringed, or reduce the damages accordingly (subject to further conditions – Section 63 PA).

Standalone actions for invalidity of a patent may be brought before the IPO, the Intellectual Property Enterprise Court or the Patents Court.

Anyone may apply to revoke a patent (Section 72 PA).

In any action involving invalidity, the proprietor of the patent is able to request amendment of the specification so as to exclude any matter which may give reasons for the revocation. If the action is before the court, the IPO must be notified, so that the amendment can be advertised for possible opposition (Section 75 PA).

Remedies

The court may order an injunction against future infringements, compensation by damages or an account of profits, delivery up or destruction of infringing materials. The court will not, in respect of the same infringement, both award damages to the proprietor of a patent and order that they be given an account of the profits (Section 61(2) PA).

The IPO has more limited remedies available than the courts – the proprietor of the patent may only make claims for damages and/or for a declaration that the patent is valid and has been infringed (Section 61(3) PA).

Other actions

A declaration that an act does not, or a proposed act would not, constitute an infringement of a patent may be made by the court or the IPO in proceedings between the person performing or proposing to perform the act and the proprietor of the patent, notwithstanding that no assertion to the contrary has been made by the proprietor (Section 71 PA).

A person who, in good faith and before the priority date of the invention, carries out an act which would constitute an infringement of a patent granted for that invention, or makes effective and serious preparations to do so, has the right to continue to do so even if such a patent has been granted. However, this does not extend to licensing another person to do that act, except in specific circumstances (Section 64 PA).

A claimant can choose to launch proceedings before either the IPO or the courts in a dispute concerning employee compensation (Section 40 PA).

Appeal

Appeals from decisions of the IPO go to the Patents Court (Section 97(1) PA). Permission to appeal is not required.

Appeals from decisions of the Intellectual Property Enterprise Court go to either the Chancery Division of the High Court (for interim orders) or the Civil Division of the Court of Appeal (for final orders). Permission is required, either from the deciding judge or the appeal court.

Appeals from decisions of the Patents Court go to the Court of Appeal (Civil Division). There is no automatic right of appeal; a party must ask the trial judge for permission. If permission is refused, an application for permission can be presented to the Court of Appeal, where a single Lord Justice will consider whether to grant permission to appeal.

Where the Patents Court decision is an appeal from a decision of the IPO, only certain decisions can be the subject of a further appeal to the Court of Appeal (Section 97(3) PA).

The appeal panel of three judges normally includes a judge specialised in patent cases. An appeal is not a rehearing; facts are taken to be as found by the judge at the first instance, and the appeal examines whether that judge correctly applied the law to those facts.

Further appeal can be filed with the Supreme Court. Permission to do so is given by either the Court of Appeal itself, or by the Supreme Court on application to it. The appeal can only be on an important question of law.

In certain circumstances, it is possible to appeal directly from the Patents Court to the Supreme Court.

Parallel proceedings

A decision on whether or not to stay national proceedings where EPO proceedings are underway is made on a case-by-case basis; the default option is to grant a stay, and it is for the party resisting to show why it should not be granted. A number of factors are considered, with the ultimate question being where the balance of justice lies.

Arbitration/mediation

Parties are strongly encouraged by the courts to resolve civil disputes before litigation, particularly through use of alternative dispute resolution (ADR), and this includes patent proceedings. Not doing so does not affect the merits of the case, but may have implications for costs following a court judgment.

There are no mandatory authorities for ADR, and parties are free to choose the type and provider of ADR they wish to use; the Patent Office offers mediation as a commercial service.

Enforcement

Enforcement of civil judgments is not automatic; the person awarded the judgment must apply to the court for the order to be enforced. There are various options available for enforcement, including execution against goods, imposing a charge against assets, and freezing bank accounts.

Because of the United Kingdom's multiple jurisdictions, the mechanism for enforcement of civil judgments depends on the jurisdiction the enforcement takes place in:

- In England and Wales, court bailiffs and Enforcement Officers are responsible for carrying out an enforcement order.
- In Scotland, Sheriff Officers and Messengers-at-Arms have responsibility.
- In Northern Ireland, this is the responsibility of the Enforcement of Judgments Office.
- In the Isle of Man, Coroners and Lockmen act to execute enforcement orders.

The nature of the enforcement proceedings will also depend on where the order has originated (whether the enforcement is across jurisdictions, for example); however, there is no difference between enforcement of an interim order and a final judgment.

The IPO has no powers to enforce its judgments; enforcement must be done by the courts.

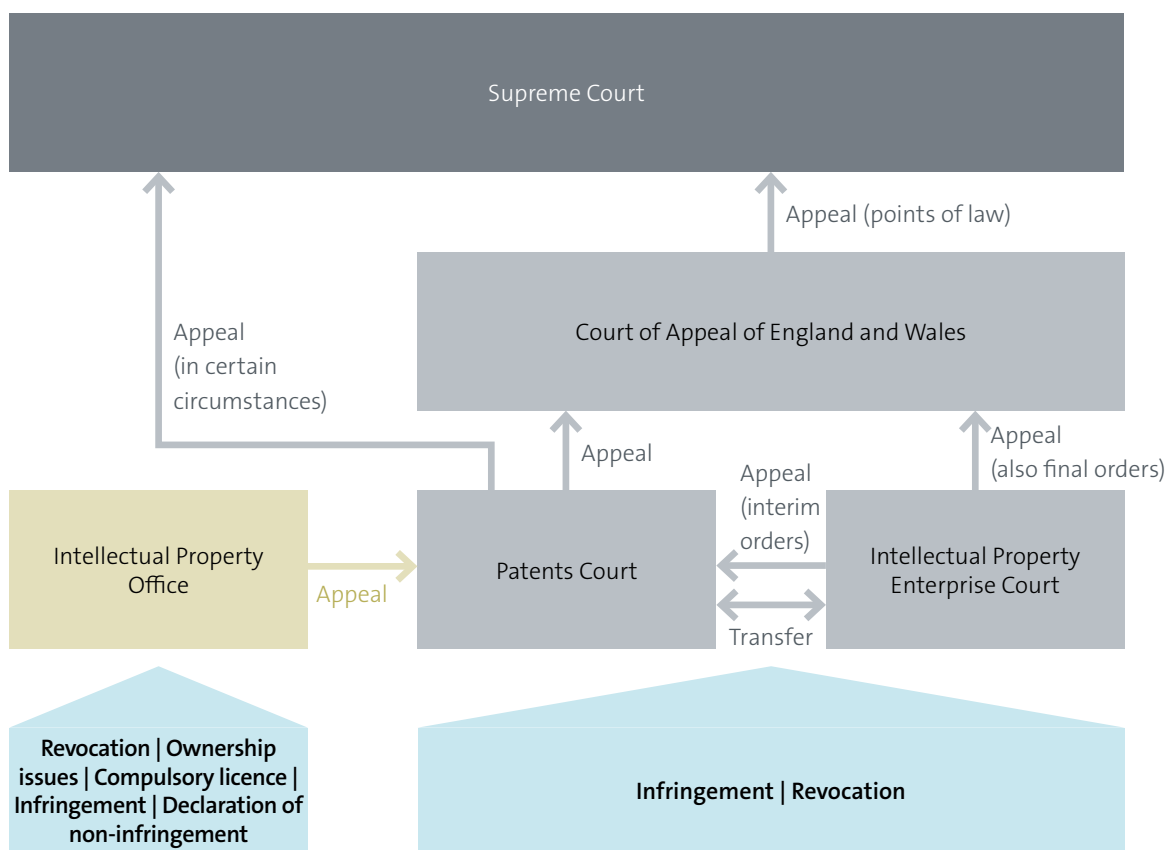
Relevant national law

Patent Act 1977 as amended (October 2014) [cited as: PA]

Compulsory licence

Compulsory licences may be granted by the IPO (Section 48 PA). An application may not be made before three years have elapsed from grant of the patent. Grant of a licence may be opposed by any person, not just the proprietor of the patent (Section 52 PA).

Competent authorities or courts (England and Wales)



Greece

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available.

Observations cannot be made by third parties. Third parties may only obtain copies of the application and search report (Art. 7(12), (13) PA).

Appeal

No formal appeal is available.

A decision of the Industrial Property Organisation refusing a patent application for lack of susceptibility of industrial application or for exclusion from patentability (Art. 8(2) PA) may be contested following a petition for revocation before the Council of State.

Civil procedure

Infringement

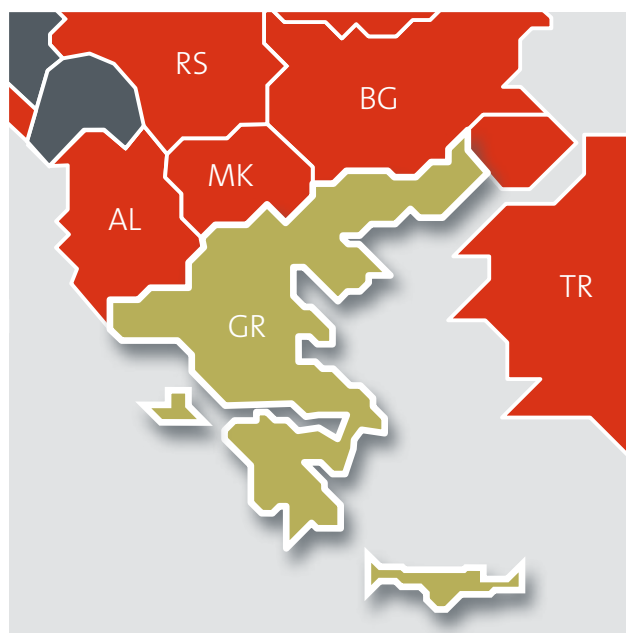
The Civil Court of First Instance is competent (the civil courts in Athens and Thessaloniki are the only courts in Greece competent in patent litigation matters (Law No. 2943/2001)). Additionally, both courts have judges specialising in IP law.

Infringement claims may be brought to the court before the patent is granted; however, in such a case the court may postpone the proceedings until the patent has been granted (Art. 17(3) PA).

The patentee or the exclusive licensee may lodge a civil action (Art. 17(1), (3) PA).

Criminal sanctions are not provided for.

Infringement is statute-barred after five years from the date on which the owner of the patent noted the infringement or the damage and the person who is obliged to give compensation, and at most twenty years after the infringement took place (Art. 17(4) PA).



Nullity/counterclaim for revocation

Nullification may be requested during the entire life of a granted patent. The patent will be invalidated by the court on grounds named in Art. 15 PA (lack of patentability, scope of the patent or insufficient disclosure).

A nullification action may be brought before the competent civil court by any person having a legitimate interest (Art. 15 Sec. 2 PA). While different panels of the civil court hear nullity and infringement claims, provisional measures may be requested during invalidity proceedings.

Patentees who are not residents of Greece may be sued or may lodge an action in the courts of the capital (Art. 15 Sec. 2 PA).

The nullification of a granted patent has retroactive effect and will also entail nullification of licences granted under that patent.

Partial nullification is available (Art. 15 Sec. 3 PA). Amendment of patent claims is not possible.

Invalidity may be raised as a defence following an objection. In the case of a pending invalidity action, the court trying the infringement case is not obliged to stay proceedings. Infringement cases are tried according to the provisional measures procedure, which is speedy, whereas an invalidity action takes some time before a decision is issued on the merits of the case.

Remedies

Injunction, damages, payment of the derived benefits, recall or removal from the channels of commerce, destruction of infringing products (Art. 17(1), 17B, 17D PA).

Other actions

Not available.

Appeal

Ordinary appeal to the Civil Court of Appeal of Athens or Thessaloniki. Under certain circumstances an annulment (“cassation”) complaint may be filed with the Supreme Court.

Parallel proceedings

A national court may stay proceedings in case of parallel EPO opposition proceedings until a final decision is issued. According to the case law¹, Article 249 of the Greek Code of Civil Procedure allows the court to stay proceedings *ex officio* or upon petition of an interested party if the contested matter under review is pending before an administrative authority such as the Boards of Appeal of the EPO.

Arbitration/mediation

Both mediation and arbitration are available for patent matters upon agreement of the parties. An independent accredited mediator is the competent authority for recourse to mediation. As of September 16, 2019 mediation is mandatory for patent disputes (Art. 182(1)(f), 206 Law no. 4512/2016).

In the case of arbitration, an arbitrator will decide the case, according to the relevant agreement of the parties.

Enforcement

A bailiff is responsible for enforcing an order both during the procedure and after termination or final decision of the court.

Compulsory licence

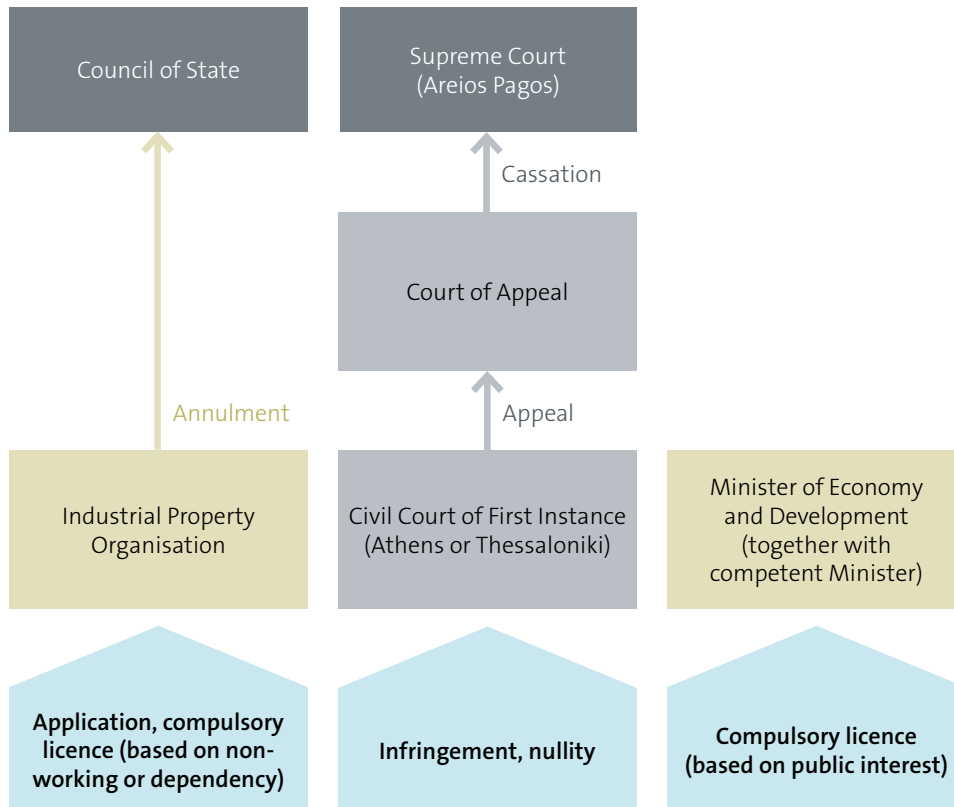
The competent authority for the grant of a compulsory licence is (a) the Hellenic Industrial Property Organisation (OBI) or (b) the Minister of Economy and Development together with any competent Minister (Art. 13(5) and 14 PA). A compulsory licence may be granted in cases of non-working or dependent patents upon petition of the interested party before the Hellenic Industrial Property Organisation (OBI) or in the case of public interest such as national defence or public health by a decision of the Minister of Economy and Development and any competent Minister, upon prior opinion of the Hellenic Industrial Property Organisation (OBI).

Relevant national law

Law 1733/1987 on Technology transfer, inventions and technological information, as amended [cited as: PA]

¹ Decision 5249/2005 of the Court of First Instance in Athens.

Competent authorities or courts



GR

Croatia

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available for patents. However in the case of consensual patents (patents which are granted without substantive examination – Arts. 41, 42 PA), any person may, within six months, file notice of opposition to the grant of a consensual patent (Art. 43 PA). The applicant for a consensual patent may, within six months from receipt of notification of the opposition, file a request for the grant of a patent on the basis of the substantive examination procedure. If the applicant for a consensual patent does not file a request, the State Intellectual Property Office (hereinafter the “Patent Office”) shall reject the patent application (Art. 44, 45 PA).

Appeal

An administrative dispute may be instituted before the Administrative Court in Zagreb against the decision issued by the Patent Office within 30 days from the date of communication of the decision.

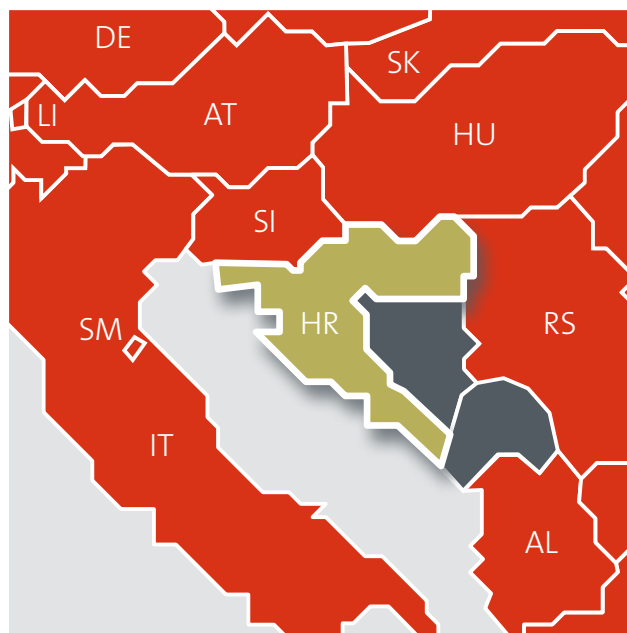
On appeal, the High Administrative Court of the Republic of Croatia (court of second instance) will examine the legality of the Administrative Court’s first-instance judgment.

Revocation

A patent may be revoked prior to expiry of the term of a patent for deficiencies in the deposited viable biological material (Art. 85-86 PA).

A patent may be declared null and void if it is established that the conditions for granting a patent stipulated by the law are not met. The proposal for nullification shall be submitted to the Patent Office by any natural or legal person or a State Attorney at any time throughout the life of the patent (Art. 79-83 PA).

The proceedings may proceed even if the proposal for nullification is withdrawn by the person who filed it (Art. 82 PA).



In the procedure concerning the proposal for the declaration of nullity of a patent (Art. 79-83 PA), the claims may be amended, provided that the subject-matter of the protection does not extend beyond the content of the patent as granted. Patent claim amendment after grant must always involve a restriction of the originally requested scope of protection and must always have support in the original specification. Patent claim amendments in such cases have *ex tunc, erga omnes* effect.

Civil procedure

Infringement

The patent owner or an exclusive licensee is entitled to bring a civil action before the competent civil court (commercial courts in Zagreb, Rijeka, Osijek and Split) against any person who infringes the patent by performing any of the infringing activities outlined in the PA (Art. 95 PA).

The burden of proof rests with the defendant if the subject-matter of the infringement is a patent-protected process (Art. 95.h PA).

Nullity may be used as a defence.

An action for damages for infringement of a patent may be initiated within three years from the day of learning of the

infringement and the infringer, but not after expiry of five years from the day on which the infringement was committed (Art. 95.e PA). An action for infringement of a patent may be initiated within five years from the day on which the infringement was committed.

Nullity/counterclaim for revocation

Within infringement proceedings, a counterclaim for revocation of a patent cannot be brought before the court deciding on the infringement.

If a defendant decides to use a counterclaim for revocation as a classical means of defence, it must submit the proposal for nullification to the Patent Office. The Patent Office will subject this request to expeditious proceedings.

The judge may stay proceedings pending final decision on nullity, but he is not obliged to do so (Art. 95.m PA). The judge has no competence to decide on revocation of a patent within this procedure.

Remedies

Provisional measures (Art. 95.j PA), prohibition of certain acts (Art. 95.c and 95.f PA), damages (Art. 95.e and 95.f PA), seizure (Art. 95.j and 95.k PA) and destruction (Art. 95.d PA).

Other actions

A patent has no effect against a person who had, prior to the filing date of the application or prior to the date of granted priority, in good faith and as part of his economic activities, exploited or manufactured the product which is the subject-matter of the invention or had made real and serious preparations for such exploitation of the invention in the Republic of Croatia (Art. 64 PA).

Appeal

An ordinary appeal may be brought to the High Commercial Court of the Republic of Croatia.

Parallel proceedings

Although Croatian courts retain exclusive jurisdiction over validity and infringement after a European patent has been

granted, in practice the outcome of the proceedings will be taken into consideration. Firstly, because these are decisions of the expert legal instances (the EPO's Boards of Appeal and Enlarged Board of Appeal), and secondly, because EPO case law on the interpretation of the EPC is considered relevant for the interpretation of the EPC by national courts.

Arbitration/mediation

According to the Arbitration Act, all claims that the parties may freely dispose of can be submitted to arbitration. The Permanent Arbitration Court at the Croatian Chamber of Economy provides arbitration services for domestic and foreign entrepreneurs.

The Mediation Act regulates mediation in civil, commercial and other disputes relating to rights which the parties may freely dispose of. Mediation may be conducted in all regular and specialised first and second instance courts (municipal, county, commercial and the High Commercial Court) in all stages of the proceedings.

Enforcement

Involuntary collection of claims (enforcement proceedings) are conducted by courts on the basis of enforcement title documents (enforceable court decisions and settlements, decisions of an arbitration court, decisions issued in an administrative proceeding if it involves fulfilment of a pecuniary obligation etc.).

Compulsory licence

Compulsory licences may be granted by the Commercial Court in Zagreb in cases of insufficient exploitation of a patent, national emergencies, the need for protection from unfair market competition, exploitation of another patent or protected plant variety, cross-licensing, and for the manufacture of pharmaceutical products intended for export to countries having public health problems (Art. 67.a-69.a PA).

Relevant national law

Patent Act - as amended (OG No. 173/2003 of 31 October 2003, OG No. 87/2005 of 18 July 2005, OG No. 76/2007 of 23 July 2007, OG No. 30/2009 of 9 March 2009, OG No. 128/2010 of 17 November 2010, OG No. 49/2011 of

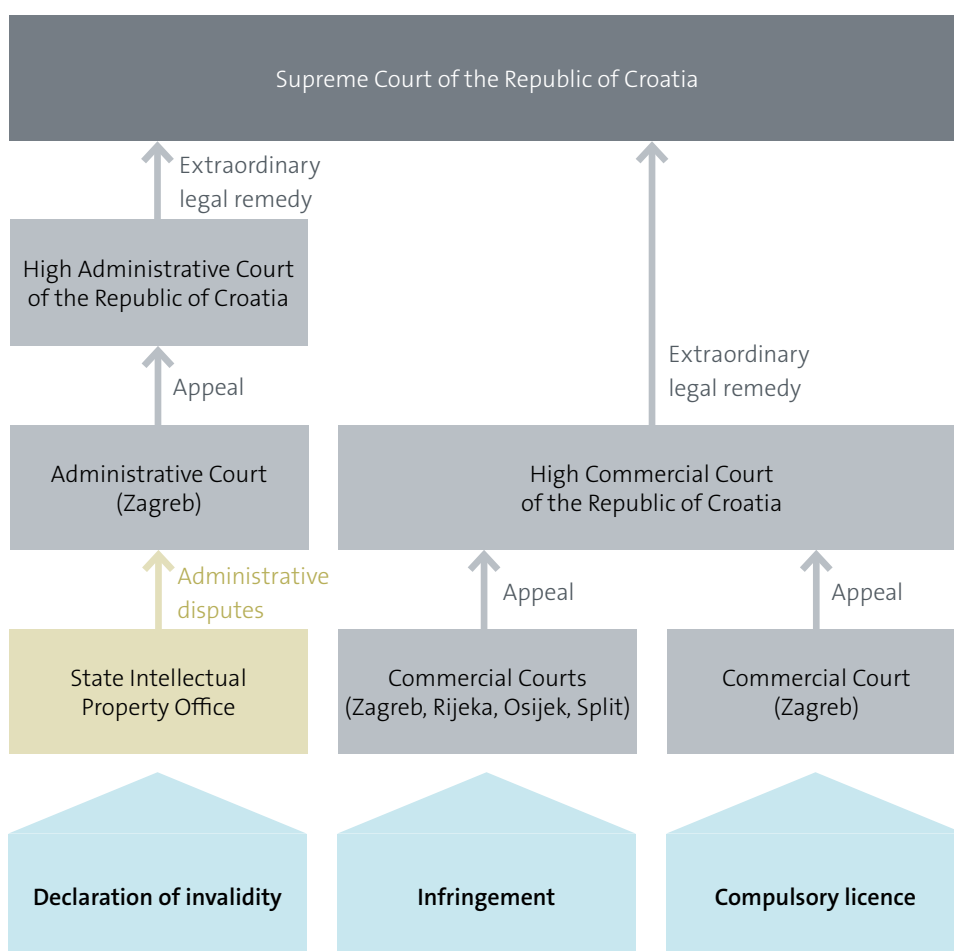
29 April 2011, OG No. 76/2013 of 21 June 2013, OG No. 46/2018 of 18 May 2018) [cited as: PA];

Administrative Disputes Act as amended (OG No. 20/2010 of 12 February 2010, OG No. 143/2012 of 20 December 2012, OG No. 152/2014 of 22 December 2014, OG No. 94/2016 of October 19, 2016, OG No. 29/2017 of March 31, 2017);

Arbitration Act (OG No. 88/2001 of 11 October 2001);

Mediation Act (OG No. 18/2011 of 9 February 2011).

Competent authorities or courts



HR

Hungary

Administrative procedure

Opposition

There is no pre- or post-grant opposition procedure in Hungary. During the patent grant procedure any person may file observations with the Hungarian Intellectual Property Office (HIPO; hereinafter the “Patent Office”) on the patentability of the application. Such observations will be considered by the examiner. The person making observations is not a party to the proceedings and has no right to request a review of the Patent Office’s decision; however, he is notified of the outcome of the observations (Art. 71 PA).

Appeal

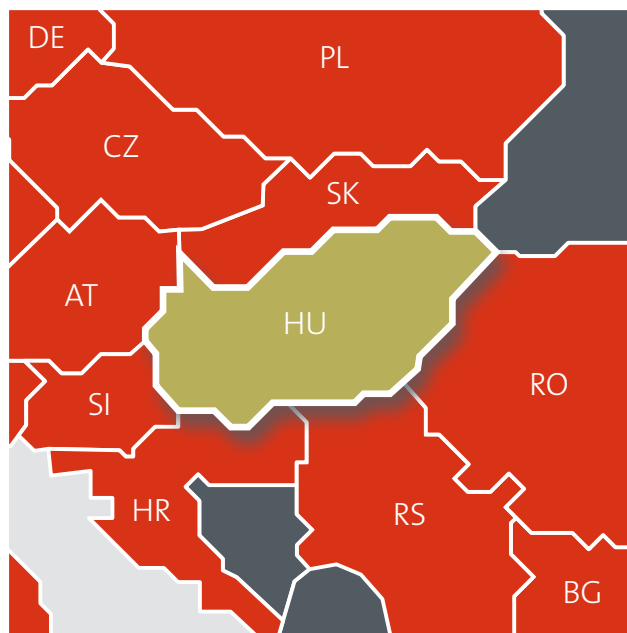
Only the Budapest-Capital Regional Court is competent to hear requests for the review of Patent Office decisions in accordance with the rules of non-contentious civil procedure (Art. 88, 86, 85 PA). The Patent Office is not a party to the court proceedings; however, it may submit its opinion in writing if the request asserts a fundamental legal issue. The request has to be made within 30 days of the date of communication of the decision of the Patent Office, which forwards it to the Budapest-Capital Regional Court within 15 days (Art. 85(6), (9) PA).

A request may be made by any party to the procedures before the Patent Office; by any person excluded from, or limited in the inspection of files; or by any person whose legal status as a party to the proceedings has been denied (Art. 85(4) PA). The public prosecutor may request the review of decisions of grant or revocation. Any other party to proceedings before the Patent Office may submit an independent request for review of the decision or a provision of the decision relating to him (Art. 85(5) PA).

Any person having a legal interest may intervene in the proceedings, until the court’s decision becomes final (Art. 93(1) PA).

Legal representation is mandatory in the court proceedings. (Art. 84/A PA)

The Budapest-Capital Regional Court sits in a chamber consisting of three professional judges, one legal and two



technical, the latter having a technical university degree or equivalent (Art. 87 PA).

If the court amends the Patent Office decisions, the judgment replaces the Patent Office’s decision (Art. 100(1) PA).

The court repeals a decision and orders the Patent Office to start new proceedings if:

- a) the decision was taken with the participation of a person who could be objected to on the grounds of incompatibility/exclusion;
- b) substantive rules of procedure which cannot be remedied by the court were infringed during the proceedings before the Patent Office (Art. 100(2) PA).

If a party requests a court decision on a matter which was not the subject of the proceedings before the Patent Office, the court will refer the request to the Patent Office. If the request is referred the court will, if necessary, repeal the Patent Office’s decision (Art. 100(3) PA).

The review of a decision taken in *ex parte* proceedings before the Patent Office will be handled in *ex parte* proceedings before the court; in the case of *inter partes* proceedings before the Patent Office, the same parties take part in the court proceedings, as plaintiff and defendant.

HU

Revocation

Any person (except the patentee) may make a request for revocation to the Patent Office (Art. 80 and 42 PA).

If a patent has been granted to a person not entitled to it, only a person who is thus entitled may make a request (Art. 80(2) PA).

A decision is taken by a panel of three Patent Office employees (two technically qualified employees from the Patent Department, one lawyer – Art. 46(2) PA). The patent can be revoked (*ex tunc*) or limited, or the request can be refused. If the request is withdrawn, the proceedings can be continued *ex officio* (Art. 81(3) PA). If the request for revocation is rejected by a final decision, no new procedure on the same grounds may be instituted by any person (Art. 42 PA).

In revocation proceedings and in actions for a decision on non-infringement, the Patent Office examines the facts within the framework of the request, on the basis of the allegations or statements of the parties and of data substantiated by them (Art. 47(2) PA). In both procedures, the parties may request accelerated proceedings if patent infringement proceedings are initiated or a request for provisional measures is filed and the fact is proven (Art. 81/A, 83(4) PA).

There are no other post-grant procedures. The applicant is entitled to amend the description, claims and drawings as laid down in the PA only until the day on which the decision on the grant of the patent is delivered.

Civil procedure

Infringement

An infringement action must be brought before the Budapest-Capital Regional Court (Art. 104 PA). Claims are subject to private law. Criminal sanctions are available in separate proceedings. The action may also be filed before the grant of a patent; however, the proceedings will be stayed until the final decision on grant is reached (Art. 36 PA).

Nullity/counterclaim for revocation

The court usually suspends its proceedings if the validity of the patent is questioned (revocation proceedings pending at the Patent Office); however, there is no legal obligation to do so.

Remedies

Denunciatory measures, injunction, surrender of enrichment, seizure, destruction, damages (Art. 35, 35/A PA), provisional and precautionary measures (Art. 104 PA).

Other actions

Any person who believes that infringement proceedings may be initiated against him may apply for a decision ruling that the product or process exploited or to be exploited by him does not infringe a particular patent. The decision is taken by the Patent Office. The request may be filed only prior to any infringement proceedings being instituted.

Infringement proceedings may not be instituted in respect of a product where the declaration has been issued (Art. 37 PA).

For further information on the procedural rules of non-infringement proceedings, see also corresponding text under “Revocation” above. The rules therein apply *mutatis mutandis*.

Appeal

Decisions of the Budapest-Capital Regional Court may be appealed to the Budapest-Capital Regional Court of Appeal. Further appeal to the Curia of Hungary is possible only on important points of law; this is not an ordinary remedy available against all decisions. IP matters are decided by the civil division.

Parallel proceedings

If an opposition has been filed against a European patent, or if limitation or revocation of the same European patent has been requested in accordance with the EPC, the procedure before the Patent Office for revocation of the European patent is suspended in justified cases until the final termination of the opposition, limitation or revocation procedure before the EPO. The suspended revocation procedure will be continued at the request of any party after termination of the limitation procedure or if termination of the opposition or revocation procedure before the EPO does not result in revocation of the European patent (Art. 84/M (2)-(3) PA).

See also “Revocation” above.

Arbitration/mediation

Mediation is available in patent litigation proceedings. The Minister of Justice maintains a register of mediators.

Enforcement

The bailiff is responsible for enforcing an order for provisional measures and also for enforcing the final decision in patent infringement matters. Enforcement is based on a judicial enforcement order issued by the competent court.

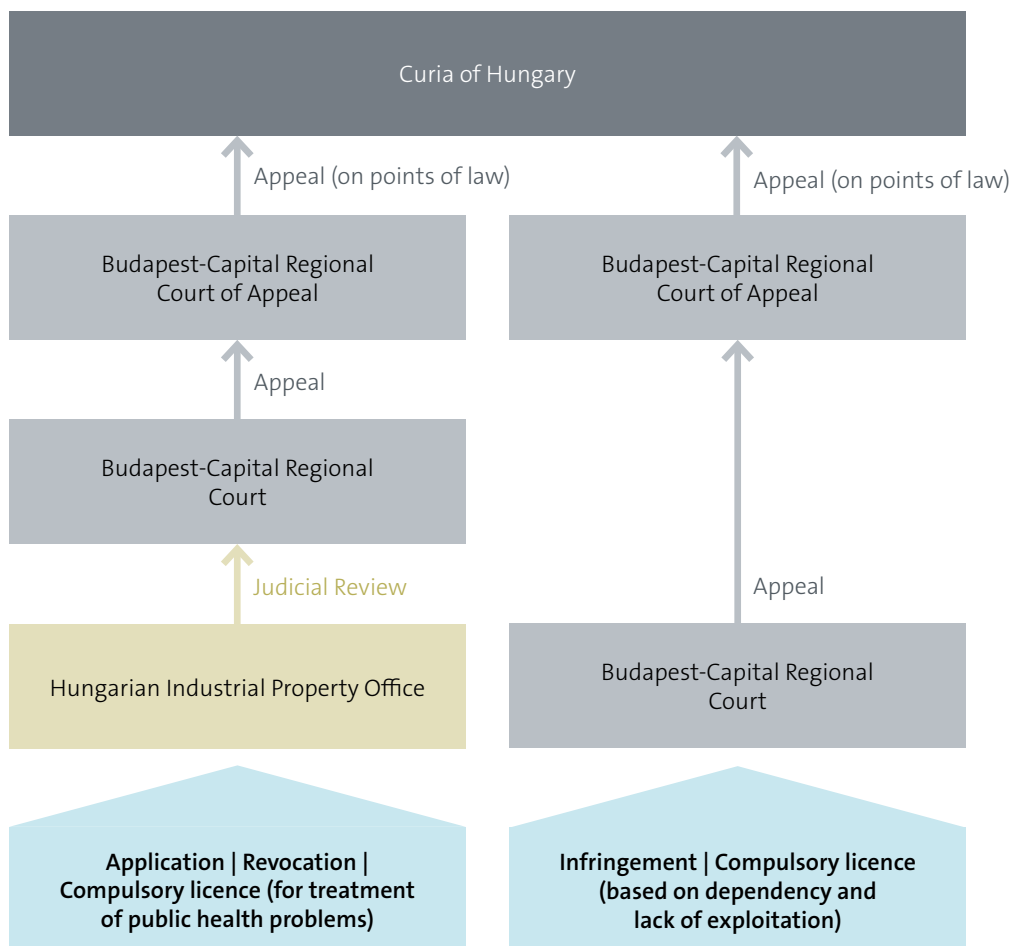
Compulsory licence

A compulsory licence may be granted by the Budapest-Capital Regional Court in cases of lack of exploitation or a dependent patent (Art. 31-33 PA). Additionally, the Patent Office grants compulsory licences under the Doha system (Art. 33/A PA).

Relevant national law

ACT XXXIII of 1995 on the Protection of Inventions by Patents – consolidated text of 12 May 2019 [cited as: PA]

Competent authorities or courts



HU

HU

Ireland

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available. A third party may only oppose the restoration of a patent or amendments to a granted patent (Sections 36(5), 38(5) PA).

Appeal

All decisions or orders of the Controller¹ can be appealed to the High Court (Section 96 PA).

The notice of appeal to the High Court must be given within three months of the date of the order or decision that is to be appealed (Section 96(6) PA).

The Court of Appeal, established on 28th October 2014, occupies an appellate jurisdictional tier between the High Court and the Supreme Court. The Court has jurisdiction to hear appeals in civil proceedings from the High Court which prior to the Thirty-third Amendment of the Constitution would have been heard by the Supreme Court. Exceptions are those cases in which the Supreme Court has permitted an appeal to it on being satisfied that the appeal meets the threshold set out in Article 34.5.4° of the Constitution (a 'Leap Frog' appeal).

Further appeal to the Supreme Court may only be based on a question of law (Section 96(7) PA).

Civil procedure

Infringement

Civil actions should be brought before the High Court (Section 47(1) PA).



The patent owner or the co-owner may bring the action (Sections 47(1), 48 PA). An exclusive licensee has the right to institute proceedings in respect of any infringement of the patent committed after the date of the licence (Section 51(1) PA).

Invalidity may be used as a defence (Section 61(1)(a) PA).

In an action or proceedings for infringement or revocation of a patent, the High Court or the Supreme Court may, if it thinks fit, and must, if requested by all parties to the proceedings, call in the aid of an assessor specially qualified in the opinion of the Court, and try the case wholly or partially with his assistance (Section 95 PA).

The Court may not, in respect of the same infringement, both award damages to the proprietor of a patent and order that he be given an account of the profits (Section 47(2) PA).

Infringement proceedings in respect of a short-term patent may be brought before the Circuit Court (irrespective of the amount of the claim). The proceedings may not be instituted until the patent proprietor has made a request for a search report from the Controller and has received a copy of it (Section 66 PA).

¹ "The Controller" is the Controller of Patents, Designs and Trade Marks. The Controller executes his statutory functions as set out under the Patents Act, 1992 (as amended), the Trade Marks Act, 1996 (as amended), the Industrial Designs Act, 2001, the Copyright and Related Rights Act, 2000, the various Statutory Rules and Regulations made under these Acts; and the European Communities (Supplementary Protection Certificate) Regulations. Decisions under these Acts, Rules and Regulations rest with the Controller in his statutory capacity, subject to certain rights of appeal to the High Court.

The Copyright and Other Intellectual Property Law Provisions Act 2019, which was signed into law and is expected to commence at the end of 2019, will extend the jurisdiction of the Circuit Court and the District Court to hear intellectual property claims, permitting right holders to bring lower value intellectual property infringement claims for relief in civil proceedings within the limits of these courts. The Circuit Court has jurisdiction in actions in contract and tort where the claim does not exceed EUR 75 000. The monetary limit of jurisdiction of the District Court is EUR 15 000.

NOTE 1: In the case of patents most proceedings are of high value and have to be taken before the High Court. This situation will continue because for patents, an 'intellectual property claim' "means any proceedings instituted, application or reference made, or appeal lodged, under the Patents Act 1992 other than an application under section 47, 49, 50, 51, 52, 53, 54, 57, 74, 86, 91(2), 95, 96, 108(4), 123 or 124 of that Act."

Nullity/counterclaim for revocation

Any person may apply to the High Court or the Controller for the revocation of a patent (Sections 57(1), 59(1) PA) (subject to further exceptions – Section 57(2) PA).

An application may be filed even if the patent has lapsed (Section 57(3) PA).

If proceedings with respect to the patent are pending in the Court, no application for revocation may be made to the Controller without the leave of the Court (Section 57(5) PA).

If an application is made to the Controller and the Controller has not disposed of an application, the applicant may not apply to the Court for revocation unless either the proprietor of the patent agrees that the applicant may do so or the Controller certifies in writing that in his opinion the matter would more properly be determined by the Court (Section 57(6) PA).

Partial revocation is available (Section 59(3) PA).

If it appears to the Controller that an invention for which a patent has been granted was described in an earlier patent, he may on his own initiative by order revoke the patent. The owner should be given an opportunity to make observations and to amend the patent specification (Section 60(1) PA).

Section 38(1) PA provides for post-grant amendment of the patent claims by the proprietor unless proceedings on patent validity are already in train before either the Controller or the Court.

Section 38(1) PA amendments do occur on a regular basis, e.g. 6 cases per year.

Amendments under Section 38(2) PA arising directly from validity proceedings before either the Controller or the Court also occur, but on a very infrequent basis, e.g. one case every few years.

Remedies

Injunction, an order requiring the defendant to deliver up or destroy any product covered by the patent, damages, account of profits, declaration that the patent is valid and has been infringed by the defendant (Section 47(1)(a)-(e) PA).

Other actions

A declaration that the use by any person of any process, or the making or use or sale by any person of any product, does not and would not constitute an act of infringement of a patent may be made by the Court in proceedings between the person and the proprietor of the patent or the holder of an exclusive licence under the patent, notwithstanding the fact that no assertion to the contrary has been made by the proprietor or licensee (Section 54 PA).

The validity of a patent in whole or in part may not be called into question in proceedings for a declaration made by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent must not be deemed to imply that the patent is valid.

Appeal

From the decisions of the High Court at first instance, appeal may be lodged directly with the Supreme Court (restricted to points of law) – Section 96(7) PA.

Parallel proceedings

There are no formal provisions as such, but we believe there have been a few instances where cases before an Irish court have been put on hold pending the outcome of proceedings before the EPO.

Arbitration/mediation

There is no provision in Irish law affording the Controller the power to offer any form of arbitration or mediation.

Enforcement

There are no provisions in the Patents Act covering these issues – they are all dealt with by the rules of the Court. Patent-specific infringement actions are provided for in Section 47 PA, as mentioned previously.

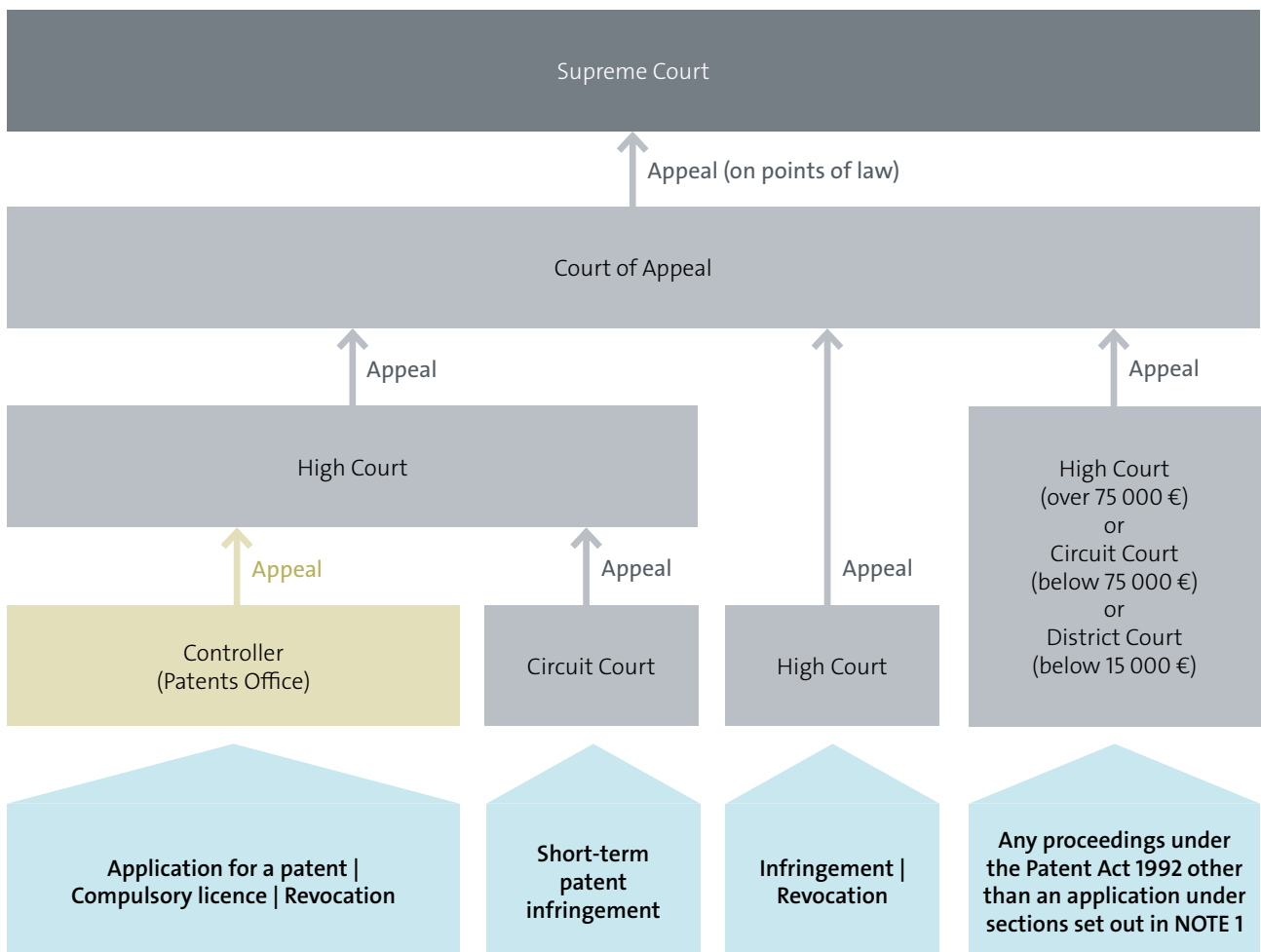
Compulsory licence

May be granted by the Irish Patents Office in cases of non-working, dependent patents and public interest (Section 70-75 PA).

Relevant national law

Patents Act 1992, No. 1 of February 27 1992 [cited as: PA]

Competent authorities or courts



Iceland

Administrative procedure

Opposition

Post-grant opposition is available.

Anyone may file notice of opposition against the grant of a patent within nine months after publication of the grant. An opposition must be made in writing and must be reasoned (Section 21(1) PA). Opposition must be accompanied by the prescribed fee and should opposition be received from more than one party the cases may be combined (Section 21(2) PA). It may be filed only on certain grounds (Section 21(3) PA) and the fact of filing shall be published (Section 21(4) PA). If the patent was granted in English, the Icelandic Intellectual Property Office (hereinafter the "ISIPO") may require an Icelandic translation thereof (Section 21(5) PA).

The patent owner will be notified of the filed opposition and will be given an opportunity to file his arguments (Section 23(1) PA).

The ISIPO may accept to process the opposition although a patent has lapsed or will cease to have effect due to its termination, the opposition has been withdrawn, or the opponent is deceased or has lost the right to proceed with such a case (Section 23(2) PA).

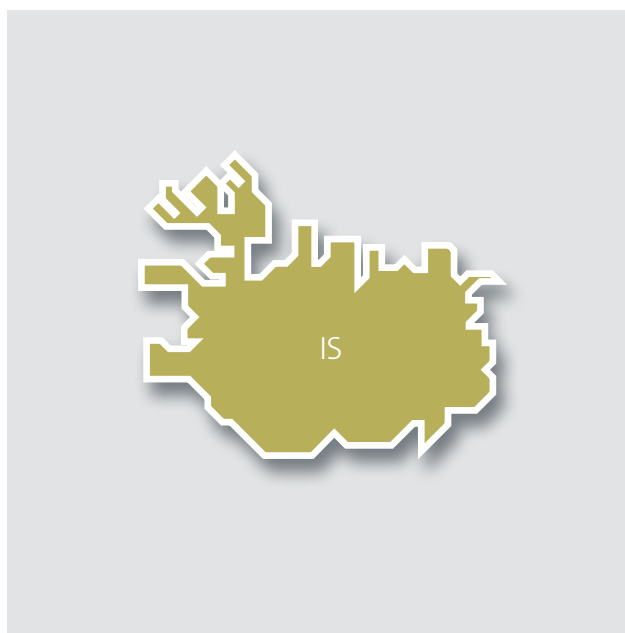
Pre-grant observations on an application may also be filed (Section 29 PR).

An applicant will be informed and the ISIPO will take the observations into consideration, however, the party submitting the observations will not become party to the proceedings.

If the observation concerns a third-party claim of entitlement, the person concerned will be invited to bring the matter before Court within a set time limit (Section 17 PA). If such a matter is proceeded with, the ISIPO proceedings will be postponed until a court decision has been given (Section 17(2) PA).

Appeal

An appeal against a final decision of the ISIPO concerning an application or a granted patent may be lodged with the Board of Appeal (Section 24 PA).



There are restrictions as to the persons who can legitimately file an appeal:

- a) The applicant may file an appeal against a final decision concerning a patent application.
- b) The patent owner may file an appeal against a decision reached in opposition proceedings which declares the patent invalid or maintains its validity in amended form.
- c) The opponent may file an appeal against a decision reached in opposition proceedings according to which the patent continues to be valid unamended or may continue to be valid with amendments. If the opponent withdraws his appeal, the case may nonetheless be examined if special circumstances support this course of action.

An appeal may also be lodged against decisions other than those mentioned in Section 24 (Section 67 PA).

The persons who may legitimately file an appeal under Section 67 PA are: an applicant, a patent holder, a person requesting invalidation or other parties with legitimate interests.

An appeal to the Board of Appeal, based on either Section 24 or 67 PA, must be lodged within two months from notification of the decision concerned (Sections 25(1) and 67(1) PA). Proceedings concerning the ISIPO decisions which may be appealed to the Board of Appeal may not be brought

before the courts until the decision of the Board of Appeal has been given (Section 25(3) PA).

A further appeal may be brought to the Reykjavik City Court against decisions of the Board of Appeal refusing a patent application or declaring a patent to be invalid, within two months from the date on which the party concerned was notified of the decision (Sections 25(3) and 64 PA).

An ordinary appeal from the decision of the Reykjavik City Court may be brought to the Appeal Court, which acts as the court of second instance according to Act on Civil Procedure (ACP) and Law on Criminal Procedure (LCP) rules. Decision of the Appeal Court can be referred to the Supreme Court if the Supreme Court so permits.

Civil procedure

Infringement

Infringement actions are to be brought before the Reykjavik City Court¹. There is no chamber specialising in IP rights.

Proceedings must be brought by the injured party (Section 57(3) PA).

On complaint of an aggrieved party, criminal proceedings may be instituted against intentional infringement according to the LCP rules of procedure.

In each case, the Chairman of the Reykjavik City Court can decide if a claim should be decided by a single judge or by a panel of three judges (two of whom can be technically qualified) (Section 2 ACP; Section 3 LCP). Court-appointed experts are further allowed upon request of either party, subject to ACP or LCP rules. The expert's opinion has a persuasive effect on the court's decision, but is not formally binding.

Infringement actions may also be brought in respect of commercial exploitation of the invention made without the consent of the applicant before the grant of the patent but after the application has been made available to the public (subject to further restrictions) (Section 60 PA).

Nullity/counterclaim for revocation

In infringement proceedings, invalidity may be raised as a defence, provided that revocation of the patent has been or is requested (Section 61 PA).

If the patent owner institutes proceedings for infringement of a patent and the defendant wishes to claim revocation of the patent, the defendant must inform the ISIPO and registered licensees that he intends to claim revocation. In this case revocation must be claimed within a prescribed period (Section 63(3) and (4) PA).

Revocation proceedings may be instituted by any person, subject to one exception (Section 52(3) and (4) PA). The ISIPO should be informed (Section 63(1) PA).

Proceedings on the grounds that the patent has been granted to a person other than the one entitled to it may only be instituted by the person claiming entitlement, within one year after the entitled person obtained knowledge of the grant of the patent and of the other circumstances on which the proceedings are based (Section 52(4) PA). Furthermore, if a patent has been granted to a person other than the one entitled to it, the court transfers the patent to the entitled person if he so claims (Section 53 PA).

A patent may be revoked in whole or in part by decision of the Reykjavik City Court (Section 52 PA). If a patent is revoked in its entirety or in part by the court, the effect shall be based on the date of filing (Section 52(5) PA). In cancellation cases, the patent owner is obliged to inform the judge of requests that have been submitted for patent limitation (Section 40.b(4) PA).

A patent owner may request limitation of the scope of protection of his patent either as a counterclaim in court proceedings or before the ISIPO. Limitation allows the patent claims and, if necessary, also the description and/or drawings to be modified (Section 40.a(1) PA).

It is not possible to file a limitation request if a patent is the subject of enforcement actions, a mortgage or a court case or if the time limit for opposition has not expired (Section 40.a(2) PA).

Limitation of a patent in proceedings before the ISIPO takes effect from the date of application and enters into force when notice of the amendment is published (Section 40.b(3) PA).

¹ Section 64 PA determines the competence of the Court.

Remedies

Injunction, compensation, damages, alteration and destruction of infringing products (Sections 57-59 PA).

Other actions

Not available.

Appeal

An ordinary appeal may be filed with the Appeal Court, which acts as the court of second instance according to ACP and LCP rules. A decision of the Appeal Court may be referred to the Supreme Court if the Supreme Court so permits.

Parallel proceedings

A decision to stay national proceedings when there are parallel proceedings before the EPO or possibly the Court of Justice of the European Union (CJEU) is taken on a case-by-case basis.

The ISIPO stays proceedings on a regular basis in case of EPO oppositions and/or appeals or proceedings before the CJEU which may possibly have an impact on national procedures.

Limited case law is available from national courts in relation to patents. Supreme Court case No. 506/2016 concerned the granting of a Supplementary Protection Certificate (SPC) with negative effect. The decision was based on a judgment from the EFTA Court in case No. E-05/17, which was in line with the judgment of the CJEU in case No. C-125/10.

A patent holder may, according to Section 40.a PA (cf. item (b) above), request limitation of the scope of protection of a validated European patent. If he has, however, previously submitted a comparable request to the EPO, the ISIPO will postpone the processing of the request until the EPO's decision is available (Section 60 PR).

Arbitration/mediation

Not available.

Enforcement

During enforcement procedures, sheriffs and their legally trained assistants render assistance in collecting evidence following a court order (Section 2 ACE²).

If a sheriff lacks the competence to take action, the Minister of Justice appoints another competent person (Section 2(3) ACE).

The petitioner sends a district court order permitting collection of evidence to the sheriff in the area of office where the evidence is to be collected (Section 10 ACE).

The sheriff collects evidence by means of a search at the respondent's premises (Section 12 ACE).

A petitioner's request for collection of evidence must be sent to the district court of the respondent's home venue (Section 5 ACE).

As soon as possible after receiving the case for a decision, the district court judge issues a court order specifying whether evidence is to be collected (Section 9 ACE).

The petitioner must, within four weeks from when evidence becomes available to him, initiate legal action against the respondent on the basis of the evidence. If no legal action has been initiated when the period expires, the petitioner must return the evidence collected (Section 21 ACE).

Damages or other remedies are decided by the courts in accordance with ACP procedures.

After a final decision of the court, the parties in question are responsible for enforcing any awards for compensation or damages. Requests for seizure or injunction are handled by sheriffs and their legally trained assistants in accordance with the ASI rules of procedure. Enforcement of orders for destruction of infringing products is ordered by the courts, e.g. to the Directorate of Customs.

Compulsory licence

Requests for the grant of compulsory licences may be made to the Reykjavik City Court in cases of non-working or dependent patents, prior commercial exploitation and public interest (Sections 45-48 PA). The Court decides on the grant and scope of the licence, the compensation for the owner of the patent and any further issues (Section 50 PA).

Relevant national law

Patents Act No. 17/1991, with amendments according to Acts No. 92/1991, No. 67/1993, No. 36/1996, No. 91/1996, No. 132/1997, No. 82/1998, No. 28/2002, No. 72/2003, No. 22/2004, No. 53/2004, No. 54/2004, No.12/2005, No. 127/2005, No. 108/2006, No. 167/2007, No. 98/2009, No. 25/2011, No. 126/2011, 40/2018 and 32/2019 [cited as: PA];

Regulation on Patents No. 477/2012 [cited as: PR];

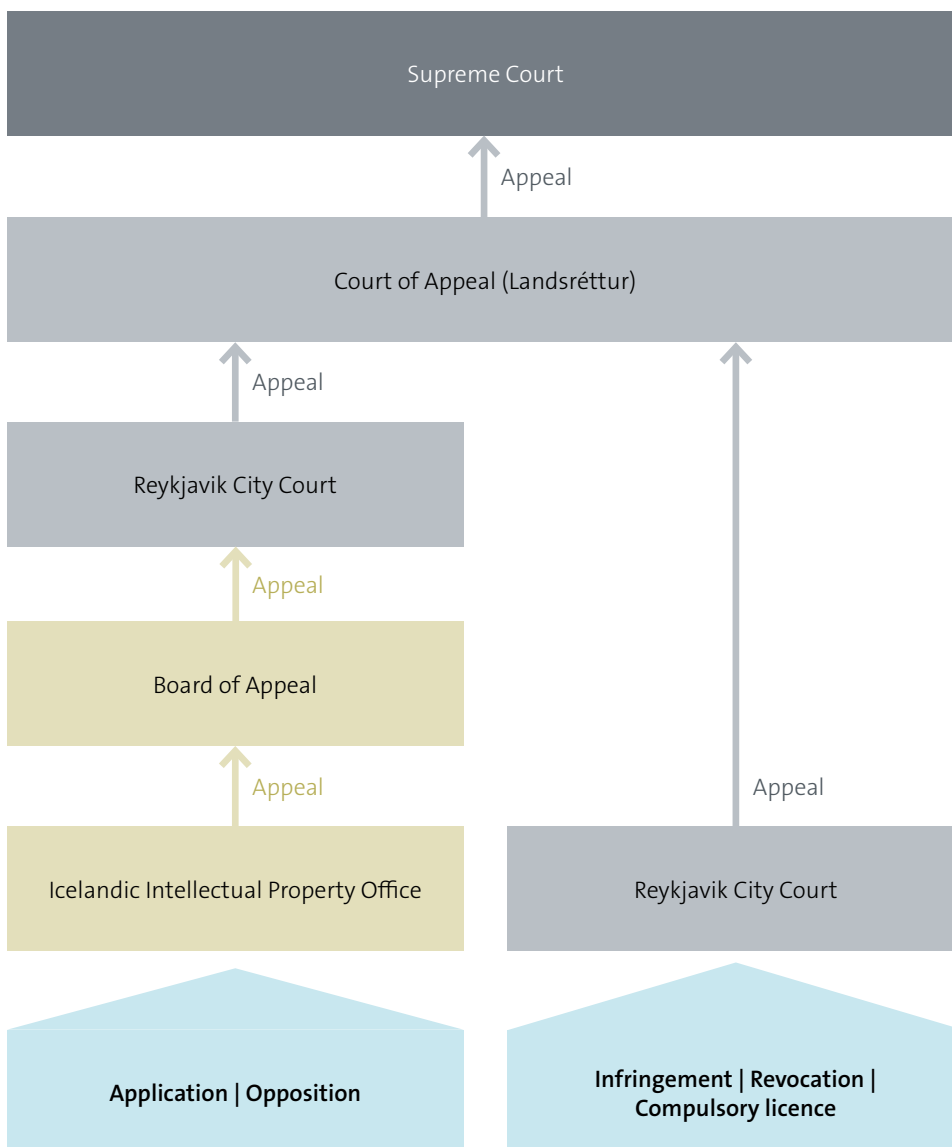
Act on Civil Procedure No. 91/1991 [cited as: ACP];

Law on Criminal Procedure No. 88/2008 [cited as: LCP];

Act on Collection of Evidence Relating to Alleged Violations of Intellectual Property Rights No. 53/2006 [cited as: ACE];

Act No. 31/1990 on seizure, injunction etc. [cited as: ASI].

Competent authorities or courts



Italy

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available. Third parties may only submit petitions during the examination process, pointing out the existence of prior patents; however, the observations will not have any further legal impact.

Appeal

An appeal against the refusal of the application must be filed within 60 days after notification by the Italian Patent and Trademark Office (hereinafter the “Patent Office”). The Board of Appeal will hear the interested parties or their agents and a Patent Office representative. The Board of Appeal is considered a judicial instance, as declared by the Constitutional Court. Any appeal from a decision of the Board of Appeal will therefore not go to an administrative court but to the Supreme Court.

Civil procedure

Legislative Decree 1/2012, converted into Law 27/2012, has established 21 Courts for enterprises (district courts and appellate courts), with a Court of Appeal in each region, apart from Aosta. Each of these has jurisdiction for cases in corporate, competition and intellectual property law and public procurement. In Rome and Milan the Court for enterprises is composed of two sections, one dealing with company and public procurement law cases, the other with IP, competition and public procurement law as well. Only professional and experienced judges are appointed to the specialised sections. Where a foreign party is involved in the proceedings (as claimant or defendant), according to the Decree n° 145 of 23 December 2013, only 11 courts will be competent to decide.

Infringement

Civil and criminal actions are available. A civil action may be brought by a patentee, a patent applicant or the licensee (in



the latter case, depending on the terms of the licensing contract) (Art. 120 IPA, modified by D. lgs. 131/2010).

An action will be heard by the courts for enterprises. During the investigative phase, and even in urgent cases, an expert appointed by the Court can be required to give an expert opinion on the existence of the infringement or the validity of the patent during the court proceedings. The judge is not bound by the evidence of the technical expert. The judge will evaluate it and may challenge it. However, if the judge does not agree with the expert, he has a duty to justify why he has rejected the expert’s evidence.

The expert can also be appointed to calculate damages caused by the infringement.

A panel consisting of three judges will take the decision.

The criterion for jurisdiction is based on the Brussels Regulation: the *forum commissi delicti* (the place where the infringing activity is carried out) or where damages have been incurred (Supreme Court decision 95/1996: where the initial damage occurred). If a nullity action is pending before a different court, staying of the proceedings is not compulsory. Invalidation will be decided in the same section of the proceedings, and the burden of proof is on the defendant.

Infringement may also be punished with a fine or imprisonment in criminal proceedings.

Nullity/counterclaim for revocation

A nullity action may be brought by any interested party or a public prosecutor (Art. 76 et. seq. IPA).

Nullity actions are judged by the same courts as infringement actions.

If the action is withdrawn, the proceedings may be continued.

Partial nullification is available; nullification has retroactive effect (*ex tunc*) (Art. 77 IPA).

The burden of proof lies with the person contesting the patent.

Post-grant patent claim amendment (limitation) is allowable even during nullity actions at every stage and level of the judicial proceedings (Art. 79 IPA).

Depending on the expert's opinion and the party's motion, the judge may also order the conversion of a null patent into another valid title (e.g. utility model), provided that the scope of protection is not extended (Art. 76 IPA).

Remedies

Urgent measures: description and/or seizure of products; prohibition of manufacture, trade and use of products; recall of products from trade; civil penalties for non-compliance with or delay in execution of court orders; order to provide information, including third parties acting on a commercial scale, on the origin and distribution networks of the goods or on the provision of services (discovery implementing the Enforcement Directive). Publication of the provisional order may also be granted and not only in newspapers but also on the homepage of the defendant's web site.

Final measures: definitive prohibition of manufacture, trade and/or use of the products; recall of products from trade; seizure of infringing products. With regard to machinery and products: removal or destruction; assignment in property to the right holder; seizure until the expiration date of the IP right; award of product to the right holder on payment of a price; publication of the decision, or destruction of infringing articles; civil penalties for non-compliance with or delay in execution of court orders. Publication of the decision, compensation for damages (calculated according to three alternative criteria: costs and loss of profits incurred by the IPR owner, disgorgement of the profits earned by the infringer, amount of negotiated or reasonable licence fees).

Other actions

Declaratory judgment on non-infringement is available, also as an urgent measure (Art. 76 et seq. IPA).

Appeal

Questions of both law and fact can be appealed to the territorially competent Court of Appeal (see "Civil procedure" above).

A collegiate body of three judges will review the decisions rendered by the Court of First Instance.

Further appeal: the Supreme Court (*Corte di Cassazione*) may review the decisions rendered by the lower courts exclusively on matters of law.

Access to the Supreme Court is also allowed with a view to enforcing "defects of reasoning", except in cases of "double conformity" (when an appeal decision is based on the same established facts as the first-instance decision). No specialist section has been established in the Supreme Court.

Parallel proceedings

When there are parallel proceedings (e.g. in case of EPO oppositions and/or appeals) between national courts and the EPO, the court may stay national proceedings or proceed to decide the case regardless of the outcome of the EPO proceedings (Art. 56 and 120 IPA): staying the national proceedings is not mandatory, because EPO divisions and the Boards of Appeal do not represent a "jurisdiction" and there is no relationship of a preliminary nature with them.

Arbitration/mediation

Arbitration may be resorted to. A judicial statement during the trial procedure is provided for, but it is not compulsory and is seldom successful.

As the decisions concerning liability and the calculation of damages may be separate, the parties often settle once liability has been decided on and before damages are calculated.

No specific arbitration or mediation authority is competent to deal with IPR disputes.

However, a patent can never be revoked by way of a settlement or a private resolution: only the judge is authorised to declare the invalidity of the patent with *erga omnes* effect.

Enforcement

Bailiffs at local courts of appeal are responsible for enforcing an order during the procedure (e.g. preliminary injunctions, orders for preserving evidence, freezing orders) and after termination or final decision of the court (e.g. orders for award of damages).

Compulsory licence

Compulsory licences may be granted by the Patent Office in cases of non-working and dependent patents. Inability to obtain a contractual licence must be proven. The owner and those who have the right to the patent may start opposition proceedings. If reconciliation between the parties on granting of a compulsory licence is unsuccessful, the Ministry of Economic Development will take a decision (Art. 70-73 IPA).

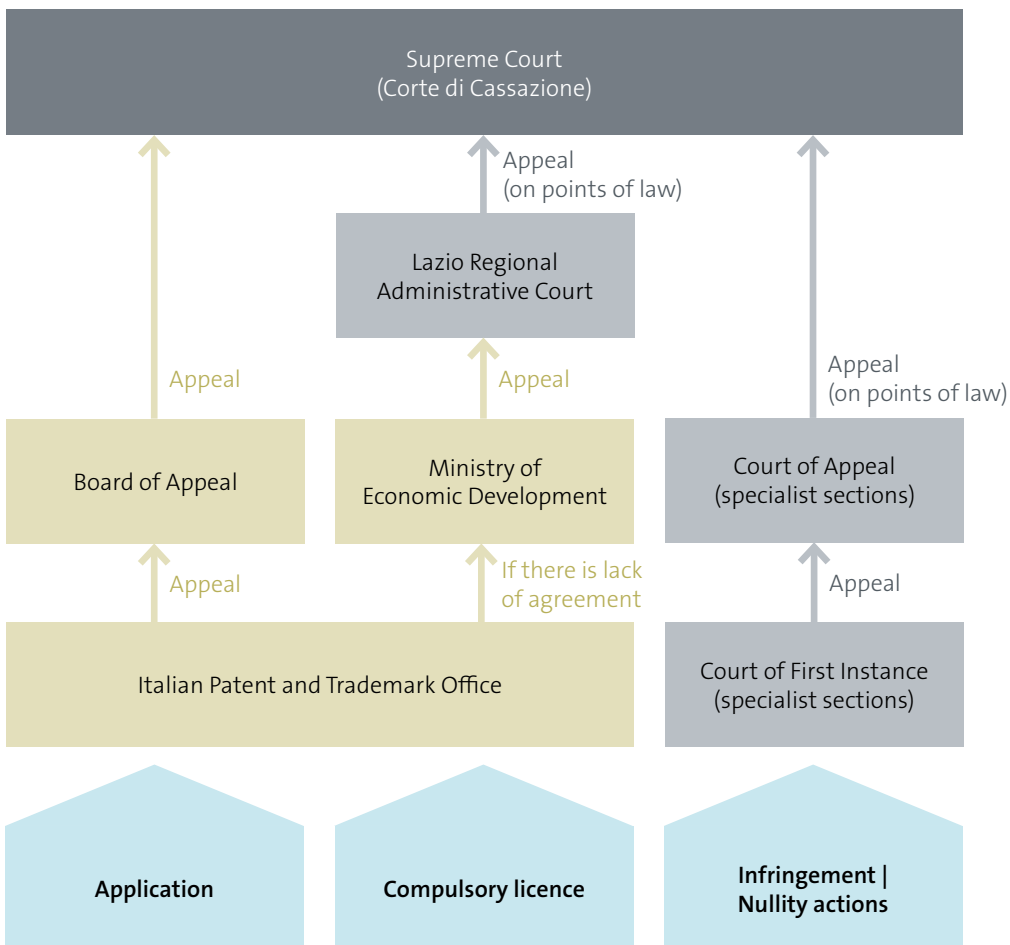
Relevant national law

Industrial Property Code - Codice della proprietà industriale, 2005 [cited as: IPA]; D. lgs. 10 February 2005, No. 30;

Legislative Decree of 27 June 2003, No. 168 – Institution of Specialized Courts for Industrial and Intellectual Property located at the Courts of Appeal and Tribunals according to Art. 16 of the Law of 12 December 2002, No. 273, as modified by Decree No. 1/2012, converted (with amendments) in Law No. 27/2012 (D.L. 24 January 2012, No. 1, supplemented by D.L. 24 March 2012, No. 29, and converted, with amendments, into Law 24 March 2012, No. 27, in force from 25 March 2012;

Legislative Decree of 19 February 2019, No. 18 – Implementation of enhanced cooperation in the area of the creation of unitary patent protection and implementation of the Agreement on the Unified Patent Court.

Competent authorities or courts

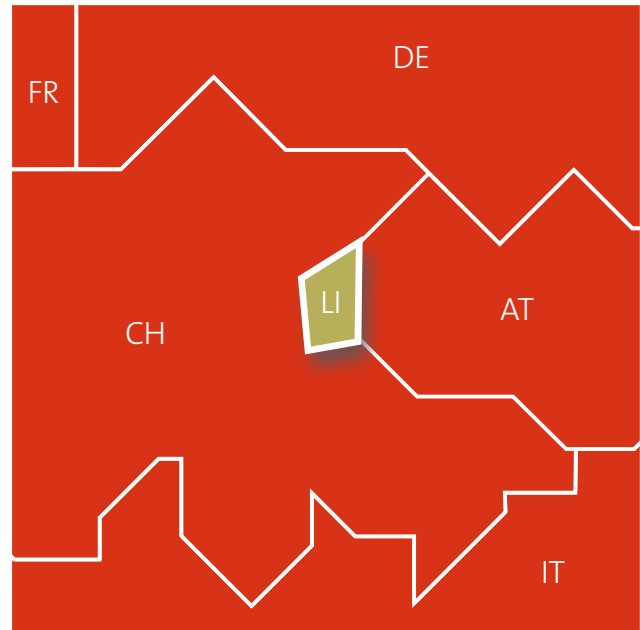


Liechtenstein

Switzerland and Liechtenstein have the same patent regulations based on a Patent Treaty (Treaty between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection of 22 December 1978). A Swiss patent is valid in Liechtenstein, and a Liechtenstein patent is equally valid in Switzerland. The two countries form a unified territory of patent protection.

The Swiss Federal Institute of Intellectual Property is the competent authority for granting patents in Liechtenstein.

For further information see the Switzerland country profile.



Lithuania

Administrative procedure

Opposition

No pre- or post-grant opposition procedure is available.

After publication of a patent application any person may inspect it (Art. 27 PL).

Appeal

The Appeals Division of the State Patent Bureau of the Republic of Lithuania (hereinafter the "Patent Office") is responsible for settling all pre-grant disputes between the applicant and the examiner with respect to the filing date, the priority date, the examination findings and refusal to grant a patent (Art. 51 PL). The appeal has to be filed within three months from the date of dispatch of the decision of the examiner.

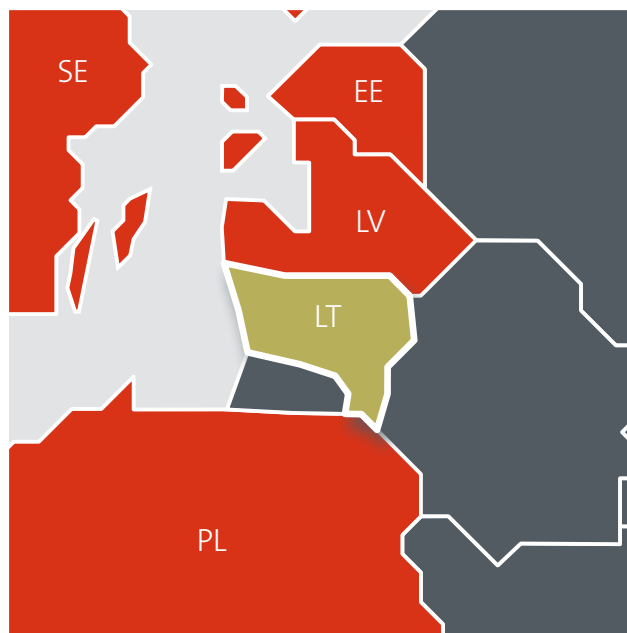
The applicant may appeal to the Vilnius County Court against the decision of the Appeals Division within three months.

The decision of the Vilnius County Court can be appealed to the Court of Appeal. Annulment ("cassation") is possible and will be dealt with in the Supreme Court of Lithuania, but the Supreme Court does not rule on points of fact, only on the application of the law.

Civil procedure

The Vilnius County Court is solely responsible for disputes regarding:

- a) decisions of the Patent Office's Appeals Division;
- b) assignment of a patent application or patent ownership to a different person;
- c) full or partial invalidity of a granted patent;
- d) infringement of a patent application for which temporary protection is granted;
- e) infringement of a granted patent;



- f) declaration of non-infringement of a patent;
- g) granting, revocation and change of conditions for compulsory licences (as described in Articles 48 and 49 PL);
- h) revocation of a patent (Art. 51 PL).

Infringement

Infringement proceedings must commence in the Vilnius County Court.

The action may be brought by the applicant, the proprietor or successor in title, or by an exclusive licensee.

Temporary legal protection will be provided for a published patent application from the date of its publication until the date of patent grant (Art. 26 PL). The applicant temporarily acquires the rights of the owner of the patent; he can apply for the application of remedies, and can request the termination of infringing acts as well as compensation for the material damage incurred, etc. (Art. 52 PL).

Experts may be involved in the proceedings; however, their opinion is not binding on the court.

Nullity/counterclaim for revocation

On the basis of the action, any person concerned may institute proceedings to invalidate a patent (Art. 63 PL).

Partial invalidation is available. Invalidation has retroactive effect (Art. 63 PL).

If the action is withdrawn, the proceedings will not be continued.

A patent owner who wishes to narrow the legal protection of a granted patent has the right after paying a fee to request the Patent Office to make patent amendments (Art. 61 PL). In addition, requests for limitation exist in practice, but do not frequently occur.

Invalidity may also be used as a defence, which the court will then decide on.

Remedies

Temporary or permanent injunction, damages, expenses (Art. 52 PL).

Other actions

Any person concerned may institute court proceedings against the owner and request the court to declare that the performance of a specific act does not constitute infringement of the patent (Art. 59 PL). If the person concerned proves that the acts performed by him do not constitute infringement of the patent, the court issues a decision of non-infringement.

Appeal

Decisions of the Vilnius County Court may be appealed to the Court of Appeal within thirty days after the decision date. Annulment ("cassation") is possible and will be dealt with in the Supreme Court of Lithuania (on questions of the application of the law).

Parallel proceedings

Lithuanian national legislation does not directly regulate such cases, but under Article 1623 of the Code of Civil Procedure the court may suspend national proceedings if the EPO proceedings would be important for correct examination of the national case; this practice of suspending cases has been applied in courts.

Arbitration/mediation

Disputes over patent registration may not be referred to commercial arbitration (Art. 12(2) Law on Commercial Arbitration of the Republic of Lithuania). Other patent disputes may be referred to commercial arbitration, but if one party to the dispute is a state or municipal institution or organisation other than the Bank of the Republic of Lithuania, the prior consent of the founder of the institution or organisation to refer the dispute to commercial arbitration must be obtained (Art. 12(3) Law on Commercial Arbitration of the Republic of Lithuania).

Enforcement

During and after the proceedings a bailiff is responsible for enforcing an order.

Compulsory licence

May be granted by the Vilnius County Court. Applicants must demonstrate that:

- a) they have applied unsuccessfully to the owner of the patent for a biological invention or the holder of a plant variety right to obtain a contractual licence;
- b) the plant variety or the biological invention constitutes significant technical progress of considerable economic interest compared with the invention claimed in the patent or the protected plant variety (Art. 48 PL).

Compulsory licences concerning pharmaceutical products may be granted by the State Medicines Control Agency under the Ministry of Health of the Republic of Lithuania.

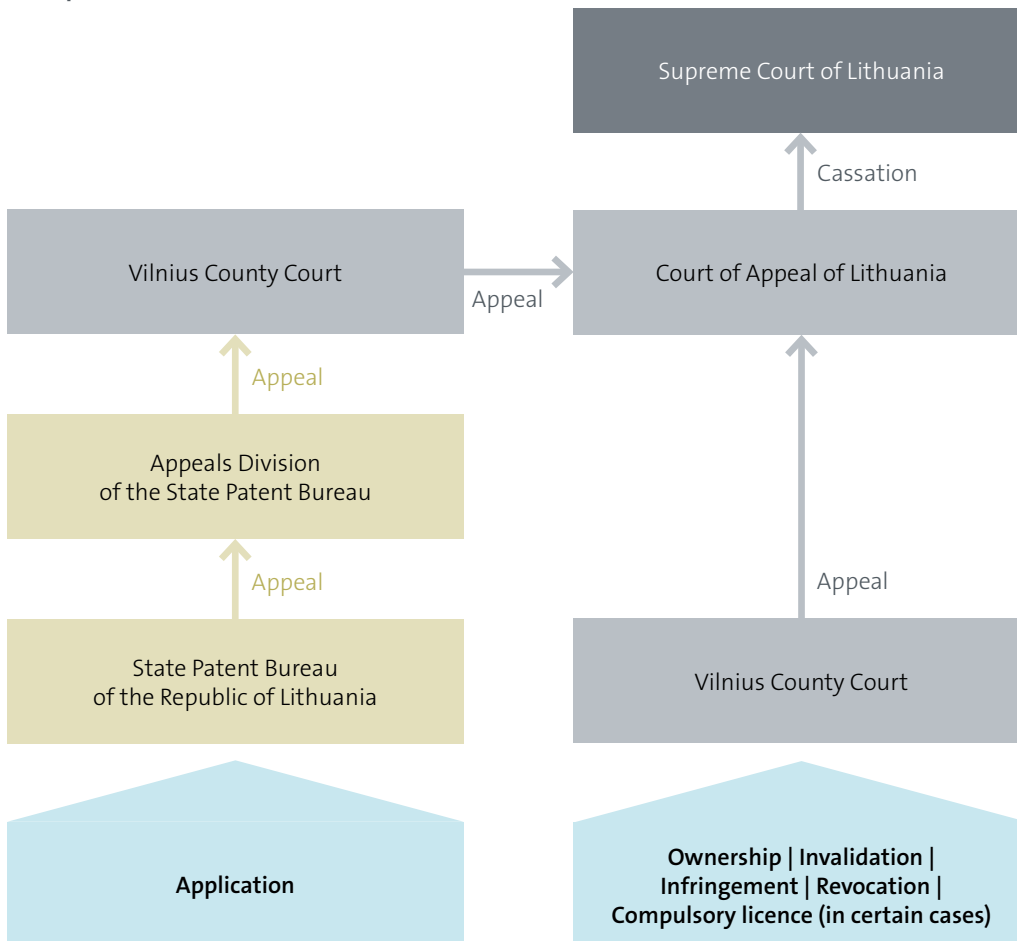
An invention may be exploited with the authorisation of the Government (Art. 50 PL); the Government may adopt a resolution to permit a person to market, without the consent of the owner of a patent, a patented invention within the territory of the Republic of Lithuania if:

- a) an invention protected by a patent is related to public needs, national security, public health protection or the development of economically important sectors;
- b) the court determines that a method for exploiting an invention employed by the proprietor or licensee is anti-competitive.

Relevant national law

Patent Law of the Republic of Lithuania of 18 January 1994, No. I-372; new edition of the Patent Law of the Republic of Lithuania in force since 3 February 2012 [cited as: PL]

Competent authorities or courts



LT

Luxembourg

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available.

Third parties may make observations on the patentability of the invention from the date on which the application is laid open to public inspection and up to the date on which the patent is granted (Art. 34-1 PA). The applicant may comment on them within four months, and these comments will be delivered to the party who made the observations (Art. 34-2 PA).

The observations have no legal impact; they are only a measure for public consultation on the findings.

Appeal

An appeal may be lodged with the Minister of Economic Affairs within three months of notification of the decision concerned (Art. 91 PA).

An appeal with the Minister cannot be used by third parties to challenge the validity of a granted patent.

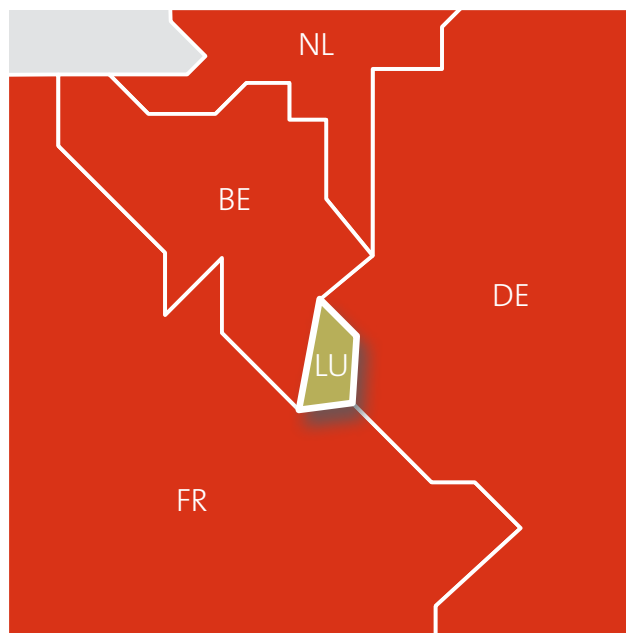
Further appeal may be filed at the Administrative Court within three months of notification of the decision.

Civil procedure

Infringement

Infringement actions are subject to civil law and may be brought by the owner (Art. 76, 77-1 PA). However, the holder of an exclusive exploitation right may, except as otherwise stipulated in the licensing contract, institute infringement proceedings if, after notification, the owner of the patent does not institute such proceedings. The patentee is entitled to take part in the infringement proceedings instituted by the licensee (Art. 77-2 PA). No criminal action is possible.

Infringement proceedings are heard by the District Court, regardless of the value of the claim (Art. 80 PA).



Action is statute-barred after three years from the last infringing act.

Nullity/counterclaim for revocation

An action for nullification of the patent may be directed, after grant, to the court of the elected domicile of the patent owner (Art. 73, 74 PA). An action may be brought even if the patent has lapsed (Art. 74 No. 6 PA). Nullification has retroactive effect.

Anyone may bring an action. The public prosecutor may apply *ex officio* for nullification of a patent (Art. 74, No. 5 PA).

Partial nullification is possible (Art. 73-2 PA). There is no practice in relation to patent claim amendment, as there has been no patent nullification case in the past 25 years.

Nullity may be used as a defence or counterclaim in infringement proceedings (the claim must be recorded in a register) (Art. 80-3 PA). The court is not obliged to stay the infringement proceedings if the nullity issue is raised.

Remedies

Remedies include injunctions, compensation for damages, prohibition from continuing the infringement, confiscation, destruction, and publication of the court decision (Art. 79, 80, 81 PA).

Other actions

There is no provision for such actions.

d'Arbitrage de la Chambre de Commerce du Grand-Duché de Luxembourg (<http://www.cc.lu/services/avis-legislation/centre-darbitrage/>).

Appeal

Ordinary appeal may be filed with the Court of Appeal within 40 days after notification of the first-instance decision. Further appeal to the Court of Cassation may be filed within two months after notification of the decision.

Enforcement

The authority responsible for enforcing an order both during the procedure and after termination or final decision of the court is the bailiff (*huissier de justice*).

Parallel proceedings

It is not possible to provide information regarding national practice, because there have been no parallel proceedings under the current practice.

Compulsory licence

May be granted by the court in cases of non-working, dependent patents and public interest (*ex officio* – order by the Grand Duke on advice of the State Council; in such cases the question of remuneration will be considered by a court – Art. 59-66 PA).

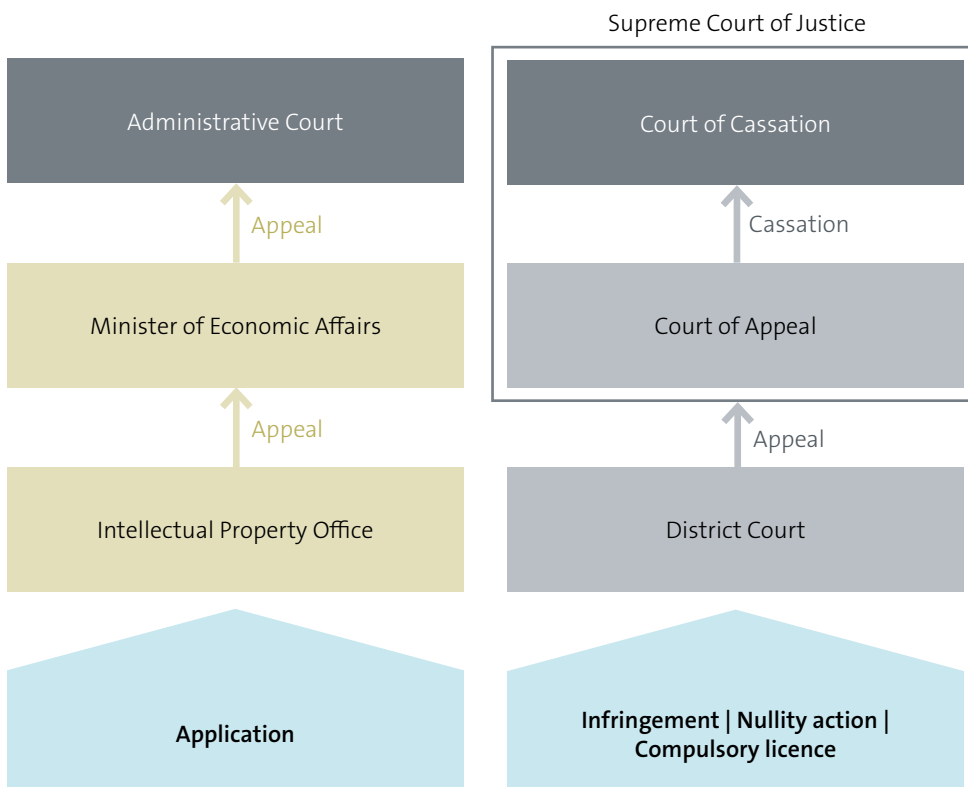
Arbitration/mediation

Arbitration is possible at the request of both parties, who are free to choose the arbitrator. In Luxembourg, there is no mediation forum specifically for IP matters, but for civil and commercial matters in general there is the Centre

Relevant national law

Patent Law 20 July 1992, as last amended on 22 May 2009 [cited as: PA]

Competent authorities or courts



Latvia

Administrative procedure

Opposition

Not available.

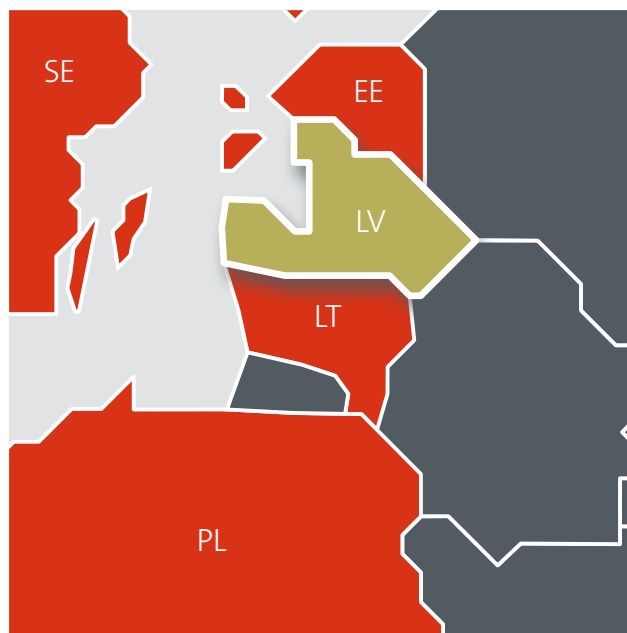
Appeal

If an applicant or another addressee (e.g. the owner of the patent, the former owner of the patent, the successor in title, the licensee) of a decision of the Patent Office of the Republic of Latvia (hereinafter the "Patent Office"), disagrees with the decision taken in registration or post-registration proceedings by the Patent Office, he is entitled, within three months from the date of notification of the decision and after payment of the appeal fee, to file a substantiated written appeal with the Patent Office.

The filing of an appeal suspends execution of the Patent Office's decision. The Patent Office shall, without delay, hand over the submitted notice of appeal to the Industrial Property Board of Appeal, which examines the appeal (Section 39 PL, and Section 58 Law on Industrial Property Institutions and Procedures). According to Section 98, "Applying to the Court in Relation to a Decision of the Board of Appeal", a party in a matter who disagrees with the decision of the Board of Appeal by which a dispute in a matter of appeal or opposition has been resolved, may, within three months after the day of the notification of the decision apply to the City of Rīga Vidzeme Urban District Court in accordance with the procedures laid down in the Civil Procedure Law with a statement of claim, depending on the nature of the matter and the decision:

1) the submitter of a notice of appeal, if the notice of appeal has been fully or partially refused – with a claim regarding the protection of his or her affected legal interests and request to impose an obligation on the Patent Office to establish legal relations according to the application for the registration of an object of industrial property (to carry out registration of an object of industrial property);

2) the Patent Office, if a notice of appeal has been fully or partially satisfied – with a claim to recognise an application for the registration of an object of industrial property as non-conforming to the provisions of an industrial property law or regulation, and the decision of the Patent Office – as legally effective.



The decision of the City of Rīga Vidzeme Urban District Court may be appealed to the Riga Regional Court, which will act as the final instance in the administrative procedure.

Civil procedure

Infringement

The patent owner or licensee may initiate proceedings to the City of Rīga Vidzeme Urban District Court concerning the infringement of exclusive rights of the owner. The licensee may initiate court proceedings for claims regarding illegal use of a patent, with the consent of the owner. Consent of the patent owner is not necessary if he does not bring the claim to court, even if the exclusive licensee has invited him to do so in writing (Section 62(2) PL). The dispute will be reviewed by the court in accordance with the Civil Procedure Law.

Responsibility for patent infringement arises only from the date when the patent is granted and only for acts performed after that date.

A person against whom a claim is brought to the court in relation to illegal use of a patent may not object to the claim purely on the basis that the patent is not being exploited or its use has to be discontinued for other reasons. The defendant may bring a counterclaim to court for invalidation of the patent in conformity with the PL. In such cases, an infringement of the patent may be determined insofar as the patent is validated (Section 63(3) PL).

In infringement cases, the patent owner or licensee has the burden of proof to prove patent infringement. An exception to this is where patents are granted for a process of making a new product: any identical product is considered as manufactured according to the patented process, unless otherwise proven (Section 63(1) and (2) PL).

An action for infringement is no longer possible after three years from the date when the aggrieved party discovers or should have discovered the fact of the infringement (Section 67(1) PL).

Patent invalidation/counterclaim for revocation

A patent invalidation claim may be brought to the City of Riga Vidzeme Urban District Court, based on the grounds provided in Sections 56, 57 and 65 PL. The action may be brought by any person, subject to the conditions stated in Section 56, Clauses 1, 2 and 3, PL (Section 57(2) PL).

However, if the patent was granted to a person who had no right to receive it, invalidation may be requested by a person who has the right to the invention according to Section 12 PL.

Partial invalidation is available (Sections 57(3) and 58(1) PL).

Patent invalidation has retroactive effect: the invention is deemed to lose legal protection provided for in the PL as from the filing date of the patent application to the extent that the patent has been declared invalid (Section 59(1) PL).

If the claim is withdrawn, the proceedings will be continued.

Court cases in Latvia relating to granted patents are rare. The court has taken different decisions – revocation of the patent, amendment of claims or maintenance of the patent in granted form.

Remedies

If unlawful use of a patent has occurred due to the fault of a person, a patent owner or licensee may request compensation for losses suffered and moral damage caused as a result of the infringement.

Upon requesting compensation for loss, the patent owner or licensee may request one of the following types of compensation:

- 1) compensation for damage suffered;

- 2) licence fee – the amount which the owner of the patent may receive in respect of granting the right to use the patent to a licensee;
- 3) income gained, as a result of the infringement.

The amount of compensation for moral damage shall be determined by the court at its own discretion (Section 64, “Procedures for Determining the Compensation for Losses and Compensation for Moral Damage”, PL).

Other actions

The City of Riga Vidzeme Urban District Court as the court of first instance shall also examine the following cases related to the legal protection of inventions according to the civil procedures:

- 1) the re-establishment of the right to a patent;
- 2) the right of prior use;
- 3) the determination of the fact of the non-existence of an infringement of the patent (declaration of non-infringement);
- 4) the grant of a licence, the provisions of a licence contract or the performance thereof; and
- 5) the right to a compensation due to the impossibility to utilise the invention openly.

Jurisdiction of other disputes shall be determined in accordance with the Civil Procedure Law (Section 65, “Jurisdiction of Courts”, PL).

Appeal

Parties may submit a notice of appeal regarding a judgment (supplementary judgment) at first instance to the Riga Regional Court according to the CPL (Sections 413 and 414 CPL). Second instance decisions may be appealed to the Supreme Court on points of law.

Parallel proceedings

The Patent Office stays proceedings until proceedings at the EPO relating to the relevant patent have been finalised. There is no available information on any national court case where parallel proceedings at the EPO are involved.

Arbitration/mediation

Arbitration/mediation in patent litigation is not provided for.

Enforcement

The enforcement of orders is handled by bailiffs (Section 548 CPL).

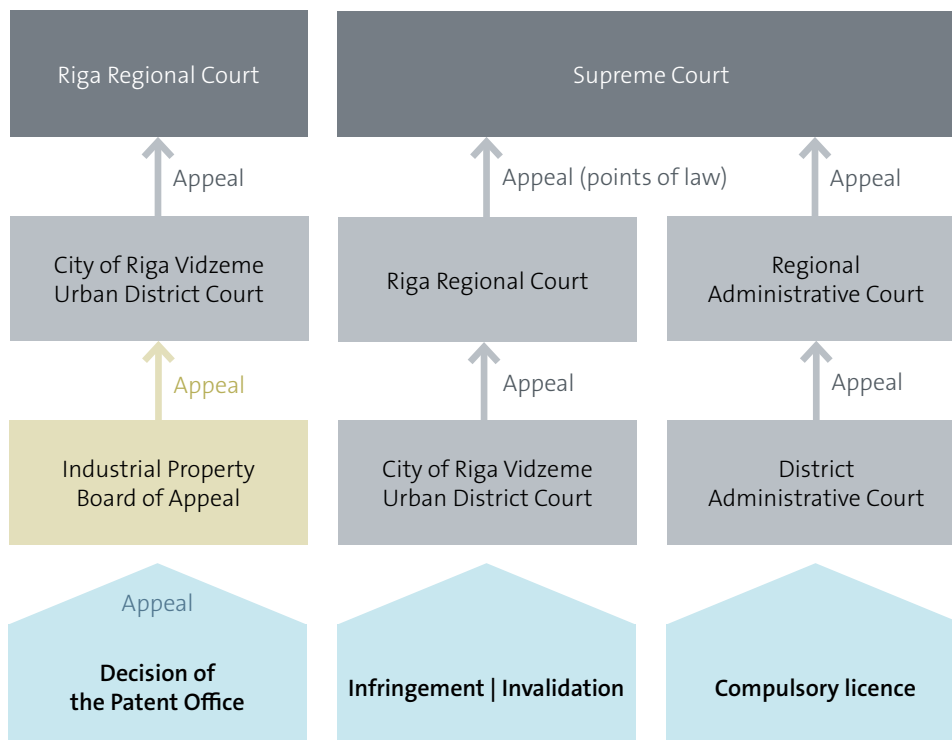
Compulsory licence

A compulsory licence may be granted by the Administrative Court in cases of non-working and vital importance for ensuring the interests of Latvian citizens. A compulsory licence is granted for utilisation in the internal market of Latvia. The owner of a compulsory licence must pay compensation to the owner of the patent, in an amount to be determined by the court in the light of the economic value of the licence, the extent of utilisation of an invention and other circumstances (Section 54 PL).

Relevant national law

- Patent Law of 15 February 2007, in force since 1 March 2007, with the latest amendments in force since 1 January 2016 [cited as: PL];
- Law on Industrial Property Institutions and Procedures of 18 June 2015, in force since 1 January 2016;
- Civil Procedure Law of 14 October 1998, in force since 1 March 1999, with the latest amendments in force since 1 May 2019 [cited as: CPL].

Competent authorities or courts



Monaco

Administrative procedure

Opposition

No formal opposition procedure is available.

Appeal

There is no possibility of appeal against the decision on the application, as no publication to third parties is available.

Third parties will only learn of the patent at the end of the filing stage, at which time it will be announced in a decree by the State Ministry (Art. 11, Law 606). However, this announcement may be subject to an action at the Supreme Court (Art. 89-92 of the Constitution) for abuse of power based on failure to respect the terms of Art. 6 of Law 606. To date there has been no such action.

Civil procedure

Infringement

Civil and criminal proceedings are provided for.

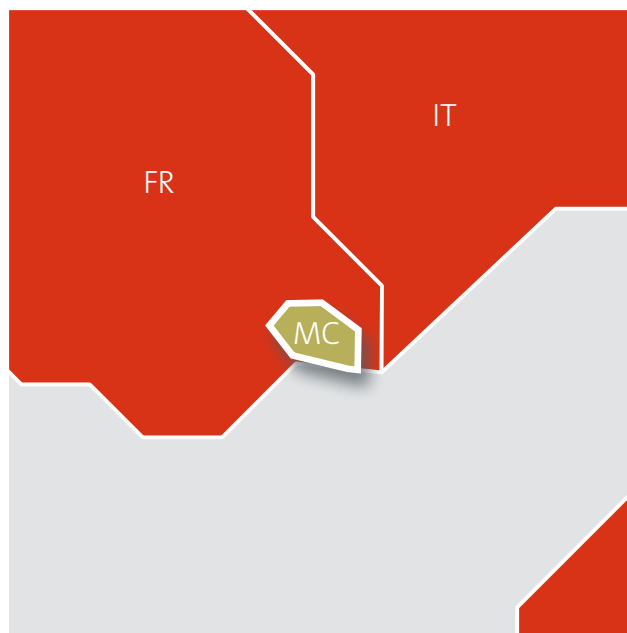
Criminal sanctions (Law 606, 20 June 1955) include fines and imprisonment in case of recidivism. These actions can be brought before a first-instance criminal court, but only by the infringed party.

The owner of the patent may request a detailed description by a bailiff of infringing goods with or without seizure of same. In such cases the requester must institute civil or criminal proceedings within one week.

Invalidity may be used as a defence both in the first-instance civil court (Art. 382, CPC) and in the first-instance criminal court (Art. 48, Law 606).

Nullity/counterclaim for revocation

Any interested party may request nullification before the court.



Nullity actions do not have to be lodged as separate proceedings. Although a nullity action may be lodged on its own, it can also be introduced during the first-instance infringement proceedings. Before criminal proceedings a nullity action can be raised only in defence of criminal infringement proceedings.

Representation is mandatory in civil proceedings (Art. 179 CPC) and discretionary in criminal proceedings.

If the action is withdrawn in civil proceedings, the proceedings will, if the parties agree, also be withdrawn (Art. 412 CPC).

A judgment of nullity has retroactive effect (Art. 24, Law 606).

Appeals may be lodged at the Court of Appeal.

Remedies

Seizure, damages, confiscation of infringing articles, fine, imprisonment.

Other actions

There is no provision for this.

Appeal

Appeals are heard at the Court of Appeal of Monaco for both civil and criminal proceedings.

A further appeal may be lodged before the Court of Revision following the general principles of law and procedure.

Parallel proceedings

There are no opposition proceedings for national patents, so infringement proceedings are not affected. However, in the case of a European patent designating Monaco, a stay could be declared at the discretion of the judge. To date there have been no cases of parallel proceedings in national courts and the EPO.

Arbitration/mediation

The legislation does not cover arbitration or mediation.

Enforcement

The bailiff is the authority responsible for enforcing an order [Art. 50 Law 606].

Compulsory licence

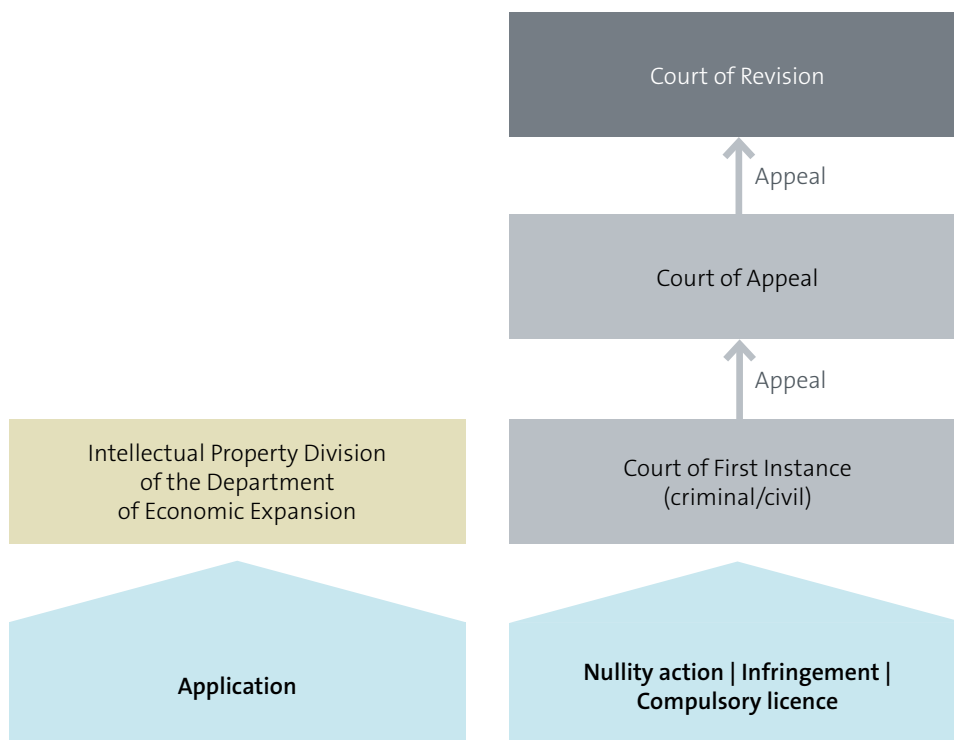
May be granted by the court.

Relevant national law

Law 606 of 20 June 1955 on patents of invention [cited as: Law 606];

Code de procédure civil [cited as: CPC].

Competent authorities or courts



Republic of North Macedonia

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available. Patents are granted without examination for patentability.

Appeal

Decisions of the State Office of Industrial Property (hereinafter the "Patent Office") are final (Art. 19(1) PA). Administrative disputes may be brought before the Administrative Court within 30 days from the date of the decision. Decisions of the Administrative Court may be appealed before the High Administrative Court.

Revocation

According to Art. 275 PA, the Patent Office will declare a decision to grant a patent null and void if it establishes that the conditions stipulated by Articles 25(3), 27 and 30 PA for granting a patent are not satisfied. The procedure may be initiated at any time throughout the life of a patent by the party concerned or *ex officio*.

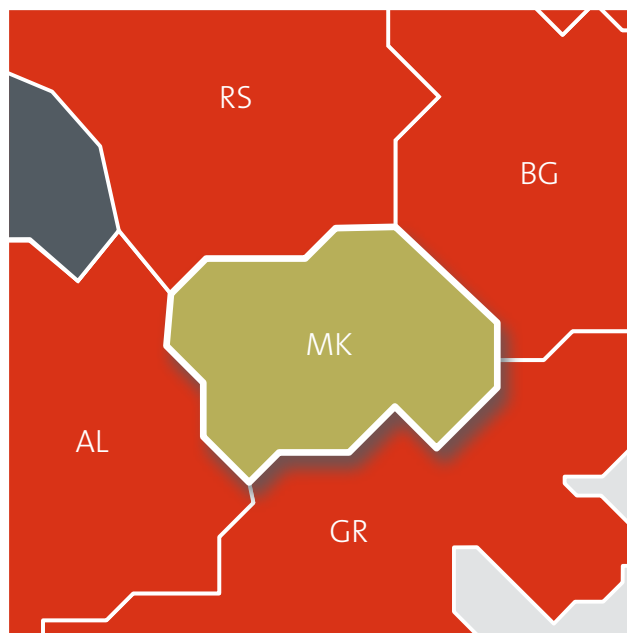
According to Art. 50 PA, a patent application which has been accorded a date of filing may not be amended by extending the subject-matter for which protection is requested.

However if, as a result of an opposition, the scope of the protection in a European patent is changed (limited), then, after notification from the patent holder, the patent will be maintained with the changed scope.

The administrative procedure for nullity is as follows:

Article 276 PA

- (1) The decision for recognising the right may be announced permanently void during the time of protection *ex officio* or if proposed by the party concerned.
- (2) By way of derogation from paragraph (1) of this Article, the proposal for announcing void decision for recognising the right of trademark may not be



submitted by a holder of the earlier registered trademark, if during five subsequent years prior to submitting the proposal he was aware of the utilisation of the later trademark.

- (3) The proposal for announcing a decision as void shall be submitted to the Patent Office in writing.
- (4) The submitter shall be bound to submit all the evidence required to the proposal of paragraph (2) of this Article.
- (5) The Patent Office shall be bound within 15 days upon receipt of the proposal to submit the proposal to the holder of the right and invite him to provide an opinion within 60 days from the date of receiving the notice at the latest.

Article 277 PA

The decision announcing as void the decision for recognising the industrial property right shall be registered in the appropriate Register and published in the official newsletter of the Patent Office.

Article 278 PA

The Patent Office may continue the procedure *ex officio* if the submitter of the proposal during the procedure renounces his proposal to announce void the decision for recognising the right.

Civil procedure

Specialised departments of 13 Courts of First Instance with enhanced competence have jurisdiction over cases related to intellectual property law.

Infringement

The patent owner may bring a civil action before the competent civil court (Art. 291(1) PA). Proceedings may be instituted against any person who is alleged to have performed an act of infringement under Art. 298(1) PA.

The inventor may ask to be named in the application and other documents by filing a lawsuit to the competent court (Art. 306 PA). This is a separate procedure.

Nullity/counterclaim for revocation

In civil proceedings, where there is a counterclaim for revocation or nullity, the civil court will stay the proceedings (subject to a deadline) pending evidence from the substantive examination of one of the PCT authorities or an authority for substantive examination under a bilateral agreement (e.g. Hungary or Romania).

Remedies

Determination and cessation of the violation, compensation by damages, confiscation and destruction of infringing materials, alternative measures (the competent court may order payment of cash compensation to the damaged party as an alternative measure if the person was acting unintentionally and without negligence, and if implementation of the relevant measures would have caused him disproportionate damage and if the damaged party is satisfied with the cash compensation), civil punishment (if rights acquired on the basis of the Patent Law are violated, intentionally or with ultimate negligence, the holder of the right may ask for payment of the regular compensation increased to 200%, regardless of whether, due to the violation, he has suffered property loss in that amount), publication of the verdict (Arts. 298 to 301, 303 and 304 PA).

Other actions

No information available.

Appeal

The Courts of Appeal are competent to decide on appeals against decisions of the Courts of First Instance.

The Supreme Court is competent to decide at third and final instance on appeals against decisions of the Courts of Appeal.

Parallel proceedings

In case of an appeal during the examination proceedings before the EPO, if the EP application has already entered the national phase, the Patent Office will not take any decision until the entire grant procedure before the EPO has been completed.

In case of an opposition after the final decision, the patent holder has to notify the Patent Office of the outcome of the opposition procedure, after which the Patent Office will proceed in accordance with the final outcome (revocation or limitation).

Where the EPO procedure has started before the proceedings in the national courts, the courts will stay proceedings pending final decision of the EPO regarding the patent.

Arbitration/mediation

Mediation is available in patent litigation proceedings. Mediators may be used during the proceedings. The Ministry of Justice is responsible for training and issuing licences to mediators.

In disputes with a foreign element, a mediator may be a foreign citizen if he is authorised to conduct mediation in his home state.

Enforcement

Responsibility for enforcing an order during the procedure lies with the court of the proceedings.

After the final decision of the court, only in case of forced execution, responsibility lies with private bailiffs. There are also procedures for administrative execution, for which the administrative bodies are responsible.

Compulsory licence

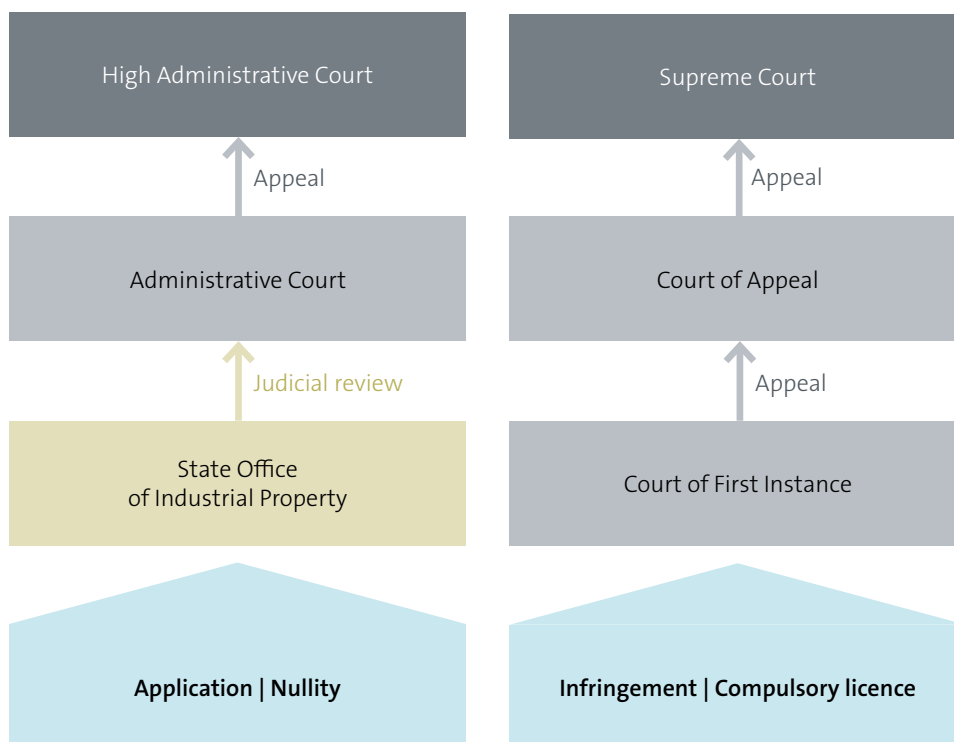
May be granted by the competent court in cases of insufficient exploitation, national emergencies, public interest in the area of public health (in the pharmaceutical industry), food, protection and promotion of the environment or if it is of particular interest to a certain industrial field or if it is necessary for implementing the judicial and administrative procedure related to protection of competition (Art. 97, 101(1) PA).

Relevant national law

Law on Industrial Property No. 21/09 of 2009 [cited as: PA];

Patent Regulations No. 92/09 of 2009.

Competent authorities or courts



Malta

Administrative procedure

Opposition

No pre- or post-grant opposition procedure is available.
A pre-grant opposition procedure is planned.

Appeal

Decisions refusing the grant of a patent are appealable.
Any appeal has suspensive effect (Art. 58 PA).

The notice of appeal is to be filed with the Office of the Comptroller of Industrial Property (hereafter the “Patent Office”) within two months from notification of the decision concerned. Grounds/reasons for the appeal must be indicated.

Within three months the Patent Office may consider the appeal to be admissible and well-founded and rectify its previous decision. The applicant should be informed of the rectified decision within a further three-month period; otherwise the applicant may lodge an appeal with the Court of Appeal within two months from expiry of the two-month period from notification of the decision to be appealed against, or within two months from notification from the Patent Office that he has not rectified his decision, whichever period expires earlier.

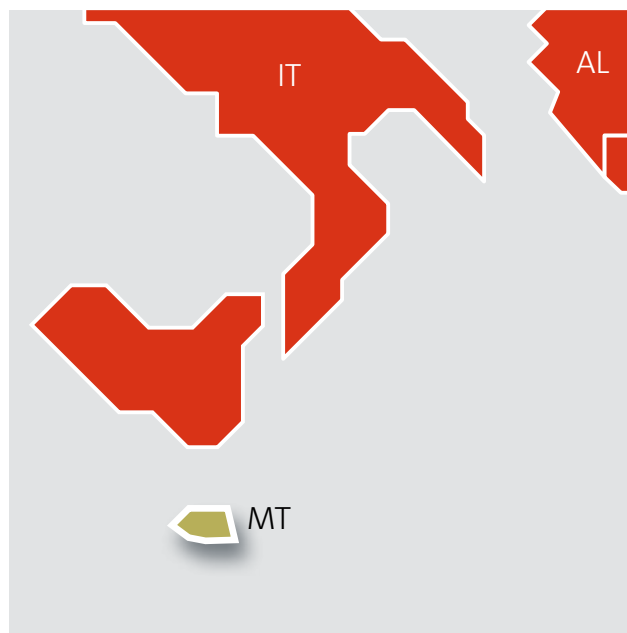
If the Patent Office rectifies his decision in full, no further appeal is available. In the case of partial rectification, the part that is not rectified is still appealable.

Civil procedure

Infringement

Infringement actions are to be brought before the Patents Tribunal (Art. 48 PA).

The Court may stay proceedings for infringement in respect of a patent application until a final decision has been made by the Patent Office to grant or refuse a patent on that application.



Infringement actions become statute-barred after five years from the date on which the aggrieved party became aware of the infringement.

Patent infringement is also a criminal offence; proceedings may be initiated on complaint (Art. 50 PA).

Nullity/counterclaim for revocation

In December 2015 the PA was amended in order to allow revocation before the Patent Office or before the Patents Tribunal depending on the grounds cited for revocation. In this context reference is made to Arts. 44A, 44B, 44C and 44D PA.

Actions for revocation may be taken during the lifetime of a patent and after the patent has lapsed.

Revocation has retroactive effect (subject to some exceptions – final and enforced decisions prior to revocation; contract concluded prior to the revocation decision, in so far as it has been performed before that decision).

Partial revocation is available.

A defendant in infringement proceedings may in the same proceedings request nullification of the patent concerned on any of the grounds for nullification. In such a case the Patent Office will be made a party to the proceedings (Art. 48(4) PA).

It is possible for the patent proprietor to limit the patent claims as per Art. 41(1) PA by submitting a request for the Patent Office to make changes in the patent in order to limit the extent of the protection it confers. No such change in the patent may go beyond what has been disclosed in the application as filed. The Court may also issue a court judgment in a case involving a patent which requires the limitation of the patent claims. Requests for the limitation of a patent claim whether filed directly before the Patent Office or via a Court judgment are not frequent.

Remedies

Injunctions, damages, confiscation of the machinery and other means used to infringe the patent, as well as of the infringing articles and the apparatus destined for their manufacture, and their delivery up to the owner of the patent.

A claim for damages arising from patent infringement will continue to be determined by the First Hall, Civil Court (Art. 8A PA), the Court responsible for patent actions before the patent law was reformed.

Other actions

Any interested party may institute proceedings before the Patents Tribunal against the owner of a patent for a declaration that the performance of a specific act does not constitute infringement of the patent. Licensees have to be informed of the proceedings by the patentee and have the right to join them (Art. 49 PA).

Appeal

An ordinary appeal may be brought to the Court of Appeal.

Parallel proceedings

In this regard it is stated that the Patents Tribunal will stay any proceedings for infringement in respect of:

- (a) a patent application filed with the Patent Office until after a final decision has been made by the Patent Office to grant or refuse a patent on the application;
- (b) a patent application filed at the EPO until after a final decision has been made by the EPO to grant or refuse a patent on the application.

Arbitration/mediation

Arbitration in Malta is regulated by the Arbitration Act (Cap 387 of the Laws of Malta). The Malta Arbitration Centre has been set up with the function of providing for the conduct of domestic and international arbitration in Malta and providing the necessary facilities for arbitration to be conducted within Malta.

Enforcement

Either the Court or the Patents Tribunal, as appropriate, is responsible for enforcement.

Compulsory licence

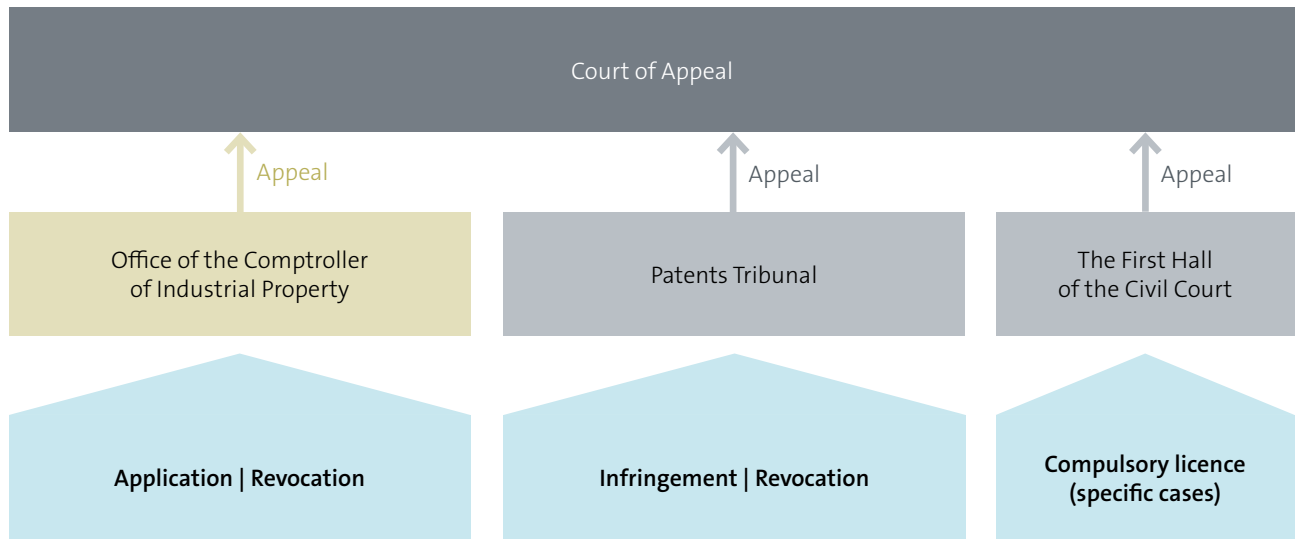
A compulsory licence may be requested at the Civil Court, First Hall, by any person who proves his ability to work the patented invention in Malta if the patented invention is non-working or is insufficiently worked in Malta (Art. 39 PA). The Court will direct the Patent Office to grant a compulsory licence.

Furthermore, the Minister responsible for IP may authorise the licence in cases of national security or public safety (Art. 40 PA).

Relevant national law

Patents and Designs Act, making provision for the registration and regulation of patents and designs. 1 June 2002, ACT XVII of 2000, as amended by Acts IX of 2003 and XVIII of 2005; Legal Notices 181 and 186 of 2006, and 426 of 2007; and Act XXX of 2014 [cited as: PA]

Competent authorities or courts



The Netherlands

Administrative procedure

Opposition

No formal opposition procedure is available.

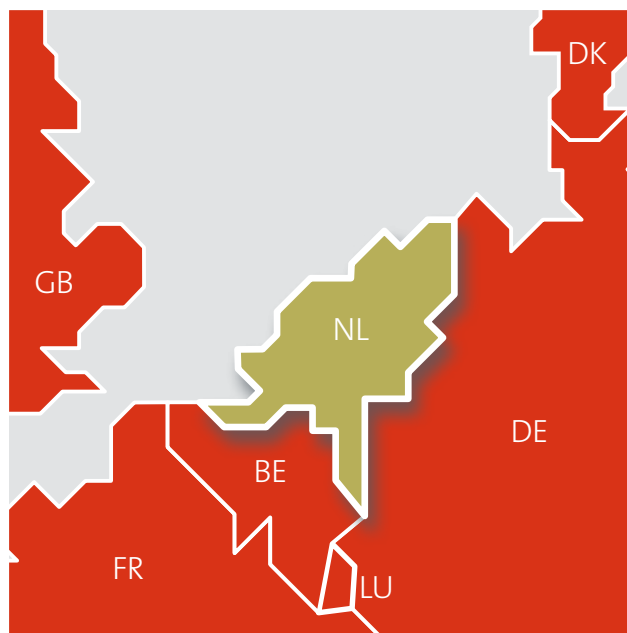
Advice procedure

The Dutch patent system is a registration-only system. The claims of a patent application are not examined by the Netherlands Patent Office (hereinafter the “Patent Office”) and a patent based on the patent application is granted eighteen months after the date of filing or after the first date of priority, whichever date comes first. However, a search into the state of the art is obligatory and is provided with a written opinion by the Patent Office. Due to the lack of substantive examination, such a system however, creates legal uncertainty among third parties about the validity of the patent claims. Therefore, for national patents, an “advice procedure” (Art. 84-86 PA) is available.

Any person (not including the patentee) may file a written statement to the Patent Office providing reasons why the claims of a national patent are invalid. The patentee may file a response to the petitioner’s objections within a time limit set by the Patent Office. The case will be orally presented before a committee of the Patent Office (one lawyer, two technicians and a secretary). After the hearing, the written advisory report is issued within two months. The advisory report consists of a reasoned evaluation of the objections stated in the request. Where the invalidity case is continued in court, the judges will generally follow the advice of the Patent Office, although such advice is not legally binding.

Re-establishment of rights

A lapsed patent may be re-established when a term was missed in spite of all due care taken (Art. 23 PA) The (written) request should be submitted within a period of two months after express knowledge of the lapse and ultimately within one year after the missed term. A legal advisor of the Patent Office will examine the request and determine if all due care was taken. If the request is granted, the legal consequences of the failure to observe the time limit will be deemed not to have ensued. If the request is denied, the decision on restoration may be appealed (*bezwaar*) within six weeks after receipt of the decision. The appeal (*bezwaar*) will be



reviewed by a legal appeal committee consisting of three legal advisors of the Patent Office. The final decision of the Patent Office, may be appealed by filing a further appeal (*beroep*) within six weeks at the District Court of The Hague (Administrative Chamber). The decision of the District Court may be further appealed at the Council of State (*Raad van State*). The Council has a special department for administrative procedures and is the highest court for administrative disputes.

Supplementary Protection Certificates

The Patent Office takes the decision in first instance and in appeal (*bezwaar*) regarding requests for supplementary protection certificates (SPCs) based on Regulations (EC) No. 469/2009 and Regulation (EC) No. 1610/96. These decisions may be further appealed at the District Court of The Hague and at final instance at the Council of State (*Raad van State*).

Civil procedure

Patent cases at first instance are heard by a specific specialised chamber of the District Court of The Hague (*Rechtbank Den Haag*) which has exclusive jurisdiction over cases involving (amongst others) infringement and validity of Dutch and European patents designated for the Netherlands (Art. 80 PA). The (legally qualified) judges of first instance are specialised in IP matters (some also have a science degree).

On appeal, cases are heard by The Hague Court of Appeal (*Gerechtshof Den Haag*), which will fully review the case. Decisions from the Court of Appeal may be further appealed at the Supreme Court (*Hoge Raad*). The grounds for such an appeal can only be based on points of law.

Proceedings at first instance are commenced by service of a writ of summons on the defendant, followed by a statement of defence submitted by the defendant. The Code of Civil Procedure has two main procedures for contentious disputes: proceedings on the merits (which are largely conducted in writing) and preliminary relief proceedings (*Kort Geding*).

With regard to the proceedings on the merits, there are two streams of patent proceedings: ordinary and accelerated (VRO). Ordinary and accelerated proceedings are, in general, decided by a panel of three judges. The claimant may decide which type of proceeding he wants to initiate. The advantage of accelerated proceedings is that, at the commencement of the proceedings, the court provides a compulsory schedule for proceedings, with the result that the procedure is quicker than ordinary proceedings.

Preliminary relief proceedings are decided by a single judge. The claimant is required to establish that it has an urgent interest in obtaining the preliminary measures which is claimed. The required urgent interest is generally assumed to be present in cases of imminent or ongoing patent infringement. If the injunction is granted the judge determines a reasonable period within the claimant should commence proceedings on the merits. If the claimant fails to do so, the preliminary measure may be revoked.

Infringement

The statutory provisions on infringement can be found in Art. 53 PA (direct infringement) and Art. 73 PA (indirect infringement). Infringement proceedings may be brought only after grant of the patent by the patentee. A claim is subject to private law (certain special provisions for patent disputes are found in Art. 1019-1019i of the Code of Civil Procedure – implemented on the basis of the Enforcement Directive 2004/48/EC).

Infringement claims for damages and surrender of profits may be initiated by the patentee (on behalf of himself and licensees or pledgees) or by licensees or pledgees only provided they have been authorised by the proprietor (Art. 70(6) PA). Only the patentee may sue for the suspension of infringing acts (Art. 70(1) PA).

As a general rule there is no bifurcation; infringement and validity arguments are heard together. If at first instance infringement is claimed, patent invalidity may be claimed by the defendant either as a defence (as an estoppel – the infringement claim will be dismissed if the court considers the patent to be invalid) or as a patent invalidity counterclaim for nullity to the infringement filing.

Where it appears to the court that a decision on infringement may be affected by invalidity proceedings which have been or may be instituted, the court may stay the infringement proceedings, with or without setting a time limit. It may also do so where a decision on infringement may be affected by proceedings instituted on different grounds, as well as when opposition is pending before the EPO (Art. 83 PA). The judge may declare the patent wholly or partially invalid outside of the infringement proceedings.

A search report on prior art relating to the subject-matter of the patent, as published by the Patent Office or the EPO, is obligatory when pursuing infringement proceedings (Art. 70(2) PA). Furthermore, the Patent Office is obliged to provide the court with all information and technical advice that it may require for a decision in legal proceedings (Art. 87 PA).

Nullity/counterclaim for revocation

A nullity request has to be made to the District Court (Civil Chamber) of The Hague (Art. 80, 75 PA). In the case of national patents an advisory report from the Patent Office on the validity of national patents is required (Art. 76, 84-86 PA). Any party can institute nullity proceedings at any time against a patent that is in force (Art. 75 – subject to exceptions).

Nullification has retroactive effect, but this will not influence decisions given in infringement proceedings relating to the nullified patent, where such decisions have become final and have been executed prior to nullification. Partial nullification is available (Art. 75(5), (6) PA). The writ initiating nullification proceedings must be recorded in the Patent Register within eight days (Art. 75(4) PA). During the proceedings it is possible to amend claims in accordance with Article 138(3) EPC, provided that such an amendment is not in violation of due process. It frequently happens that auxiliary requests are brought into the proceedings by the patent proprietor. Furthermore, partial surrender in relation to Art. 63 PA is not possible without the consent of the plaintiff if the plaintiff has registered his writ initiating nullification in the National Patent Register according to Art. 75(4) PA.

See also “Infringement” above.

Remedies

According to Articles 70, 71 PA and Articles 1019-1019i of the Code of Civil Procedure (implemented on the basis of the Enforcement Directive 2004/48/EC) the following forms of relief are available to the patentee in an enforcement action:

- a) Injunctions;
- b) Recall orders;
- c) Patentee can claim the ownership of infringing products;
- d) Order for surrendering and or destruction of infringing goods;
- e) Orders for providing information concerning suppliers and/or customers;
- f) Orders to pay damages or to surrender the profits made through the infringement;
- g) Orders for accounting for profits made through the infringement;
- h) An order forcing the infringing party to publish the court's decision; and
- i) Order to pay (all) legal costs of the litigation,

Appeal

Civil appeal is possible at The Hague Court of Appeal (Civil Chamber) within three months from the taking of the decision. Further appeal only on points of law is possible at the Supreme Court, based in The Hague.

Parallel proceedings

The Court may suspend the proceedings with or without time limits in the event of opposition proceedings at the EPO (Art. 83(4) PA).

There are few cases where suspension is applied while awaiting the outcome of opposition proceedings.

See also "Infringement" above.

Arbitration/mediation

There is no provision for arbitration or mediation in patent litigation proceedings.

Enforcement

During and after proceedings a bailiff is responsible for enforcing an order.

Compulsory licence

A compulsory licence may be granted in the following circumstances:

- a) if it is in the general interest (Art. 57(1) PA);
- b) if a patent is not genuinely used (Art. 57(2) PA);
- c) if a patent is dependent on an older patent (Art. 57(4) PA);
- d) if the patent relates to plant variety rights (Art. 57(5) and (6) PA);
- e) if the patent relates to semiconductor technology (Art. 57a PA);
- f) if it is necessary for the defence of the Kingdom of the Netherlands (Art. 59);
- g) if it is based on Article 20 or 21 of the Euratom Treaty (Art. 60 PA).

Compulsory licences may be granted in civil or administrative procedure depending on the situation in which a licence is unsuccessfully requested.

Administrative procedure

The procedure for obtaining a compulsory licence in the general interest is governed by administrative law. The Minister of Economic Affairs and Climate (hereinafter: Minister) will first investigate whether the patentee is willing to grant a licence voluntarily under reasonable conditions. If the patentee is not willing to voluntarily grant a licence the Minister will inform the patentee of the intention to grant a compulsory licence and providing him an opportunity to respond. Consequently the Minister will issue a decision in which it is explained whether the compulsory licence is granted or not.

An administrative appeal may be made against this decision. First there is an objection (*bezwaar*) to the Minister, then an administrative appeal (*beroep*) against the Minister's decision to the District Court of The Hague (Administrative Chamber). Further appeal (*hoger beroep*) may be made to the Council of State (*Raad van State*).

requesting the grant of a compulsory licence (Art. 58(1) PA). If the parties cannot agree on the amount of compensation for the compulsory licence, the interested party may request the judge to determine the amount (Art. 58(6) PA). The decision may be appealed before The Hague Court of Appeal (Civil Chamber) and subsequently before the Supreme Court (Civil Chamber). The final decision by which a compulsory licence is granted shall be registered at the Patent Office.

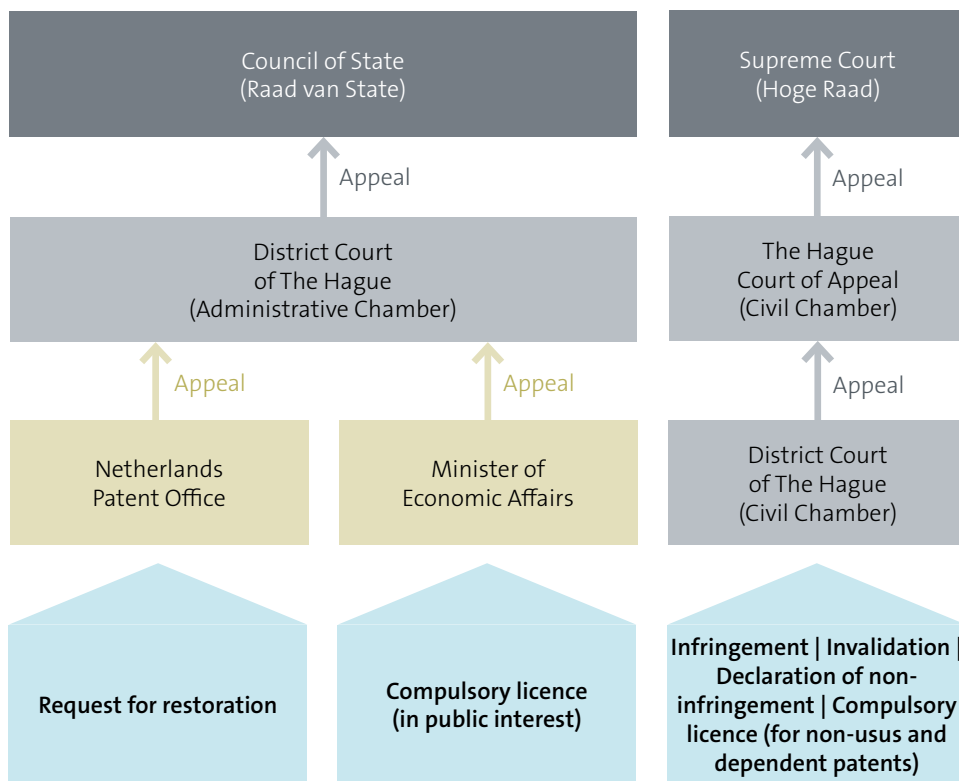
Compulsory licence

If the patentee is not willing to voluntarily grant a licence for non-genuine use, in case of dependency or in relation to plant variety rights, the interested party may start a civil procedure at the District Court of the Hague (Civil Chamber)

Relevant national law

Patents Act 1995 (Rijsoctrooiwet 1995) [cited as: PA]

Competent authorities or courts



Norway

Administrative procedure

Patents granted by the Norwegian Industrial Property Office (hereinafter the “NIPO”) cover Norway, Svalbard and Jan Mayen.

Opposition

No pre-grant opposition procedure is available. A third party may file pre-grant observations on the patentability of the application. NIPO will consider such observations, but the observing party does not become a party to the proceedings. (Section 35 PR).

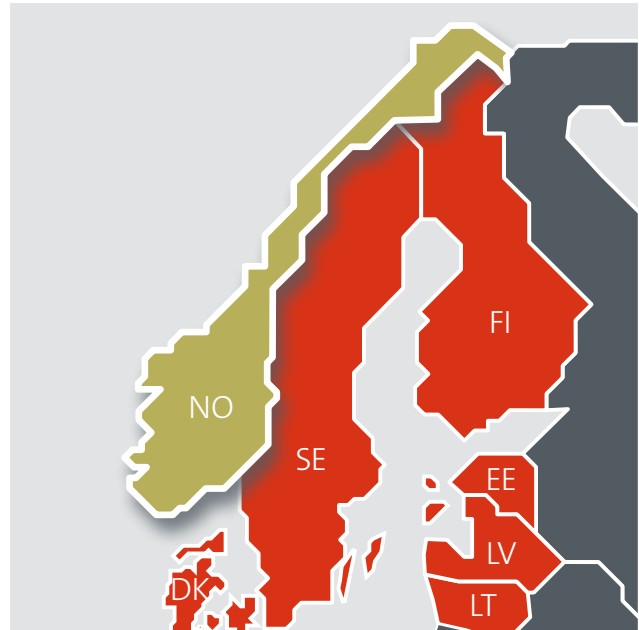
Post-grant opposition: Any person (including the holder) may file an opposition to a granted patent. A notice of opposition shall be filed in writing, state the grounds for opposition and reach NIPO within nine months from the date of grant of the patent. Under special circumstances, NIPO may grant a short additional time limit for the filing of arguments (Section 24 PA). There is no opposition fee.

Opposition founded on the claim that the patent has been granted to someone other than the person entitled to it may only be filed by the person claiming entitlement.

The patent holder will be notified of the opposition and may file his observations within the set period (normally three months).

Even if the opposition is withdrawn, processing of the opposition may be continued, provided that there are special reasons for doing so.

If the opposition is based on a possible breach of Section 1b PA (public order), the time limit for filing opposition is three years (Section 24(2) PA). Opposition filed after expiry of the nine-month general opposition period is subject to an opposition fee (of NOK 5 500).



NO

Administrative review

Anyone may file a request with NIPO that a patent shall be declared invalid in full or in part by a decision made by NIPO. (Section 52 b PA). There is no time limit for submitting a request for administrative review. A request for administrative review may be filed only after the time limit for opposition has passed (nine months after the date on which the patent was granted) and any opposition cases have been finally settled. On receiving the request, the NIPO will issue an invoice which must be paid for the case to be processed. The fee is NOK 8 800.

Appeal

An appeal against decisions of the NIPO shall be filed with the Norwegian Board of Appeal for Industrial Property Rights (hereinafter KFIR). Appeals to KFIR can be filed by the person or persons a decision at the NIPO has wholly or partially gone against. An appeal can be filed through a third party (professional representative or legal representative) (Section 26 PA).

The time limit for submitting an appeal to KFIR is counted from the day when the decision was sent from the NIPO, and is generally two months. The time limit for filing is in principle absolute, and the appeal must be received at the NIPO not later than the time limit for appeals. A late-filed appeal will not be considered. (Section 27 PA) The appeal fee (NOK 5 700) shall be paid on demand.

Appeals against decisions made by the KFIR can only be brought before the courts by an applicant, a holder of a patent or an opponent against whom a decision has been made.

A third party must file a claim for invalidity in a civil procedure.

Civil procedure

The following actions shall be brought before the Oslo District Court (Section 63 PA):

- a) right to an invention for which a patent application has been filed;
- b) a review of a decision in which the KFIR has refused an application for a patent, has revoked a patent or confirmed a first-instance decision to revoke a patent;
- c) request for patent limitation;
- d) invalidation or transfer of a patent;
- e) compulsory licences;
- f) request for amendment of administrative review;
- g) civil action on infringement of a patent right.

Infringement

The patent owner or the licensee may bring a civil action to the Oslo District Court.

A decision of non-infringement may not be based on the invalidity of a patent or the conditions for transfer being fulfilled without a prior judgment stating the invalidity or transfer of the patent. A dismissal may, however, be based on the patent having been revoked or transferred (Section 61 PA).

If a nullity action is pending, the proceedings in the

infringement case are stayed. There is also the possibility of joining the cases, based on the merits of the cases.

Nullity/counterclaim for revocation

The nullity action shall be brought to the Oslo District Court on the grounds listed in Section 52 PA.

Anyone may bring an action. Legal proceedings on the grounds that the patent has been granted to someone other than the party entitled to it may only be brought by the party claiming entitlement (such proceedings must be brought within one year from the date on which the entitled party obtained knowledge of the grant of the patent and of the other facts on which the proceedings are based).

Validity actions may be brought during the entire lifetime of the patent (subject to exceptions).

Patent claims can be amended either in limitation proceedings before NIPO (Sections 39a to 39e PA) or in administrative re-evaluation proceedings (Sections 52a to 52e PA) and also before the court (Section 52, first paragraph, last sentence, PA).

Remedies

Destruction, confiscation or alteration of products, damages, compensation, fine, and imprisonment (Sections 57-62 PA).

Other actions

Any claimant able to show a genuine need to have a claim for declaration of non-infringement determined against the defendant may bring the claim before the Oslo District Court.

Anyone who, at the time when the patent application was filed, was exploiting the invention commercially in Norway may, notwithstanding the patent, continue the exploitation, whilst retaining its general character, provided that the exploitation does not constitute an evident abuse in relation to the applicant or his predecessor in title. Such right of exploitation may also, on similar conditions, be enjoyed by anyone who had made substantial preparations for commercial exploitation of the invention in Norway (Section 4 PA).

This right may only be transferred to others in conjunction with the enterprise in which it arose or in which exploitation was intended.

Appeal

An appeal from a judgment of the Oslo District Court shall be filed within one month with the Borgarting High Court. As a rule, an appeal against a judgment in an asset claim shall not be referred for hearing without leave of the Court of Appeal if the value of the subject matter of the appeal is less than NOK 125 000. (Section 29-13 Dispute Act)

Further appeal to the Supreme Court shall be filed within one month. Leave may only be granted if the case gives rise to particularly important issues of principle upon which it is important to promptly ascertain the view of the Supreme Court (Section 30-2 (1) Dispute Act).

Parallel proceedings

The court may, on application from a party, stay the proceedings in a case if the outcome of the case is wholly or in part dependent on a legal issue that will be decided with final and enforceable effect in another case. Further, the court may stay the proceedings for other compelling reasons. The court shall take into account the need for swift, proper and cost-effective proceedings (The Dispute Act Section 16-18).

Arbitration/mediation

Mediation is used during proceedings before the Norwegian Board of Appeal for Industrial Property Rights and before the courts in order to arrive at a mutually agreed solution. Arbitration may be used by parties in *inter partes* cases when agreed upon between the parties.

Enforcement

The enforcement officer (bailiff) (*Namsmannen*) is responsible for enforcing orders both during the proceedings and after final decisions of the courts.

Compulsory licence

May be granted by the Competition Authority and the Oslo District Court in cases of non-working, dependent patents and public interest (Sections 45-50a PA). In addition, compulsory licences may be granted in accordance with the decision of the WTO Council in respect of certain pharmaceuticals, as implemented in the Patent Regulations, Sections 97, 98 and 99.

Relevant national law

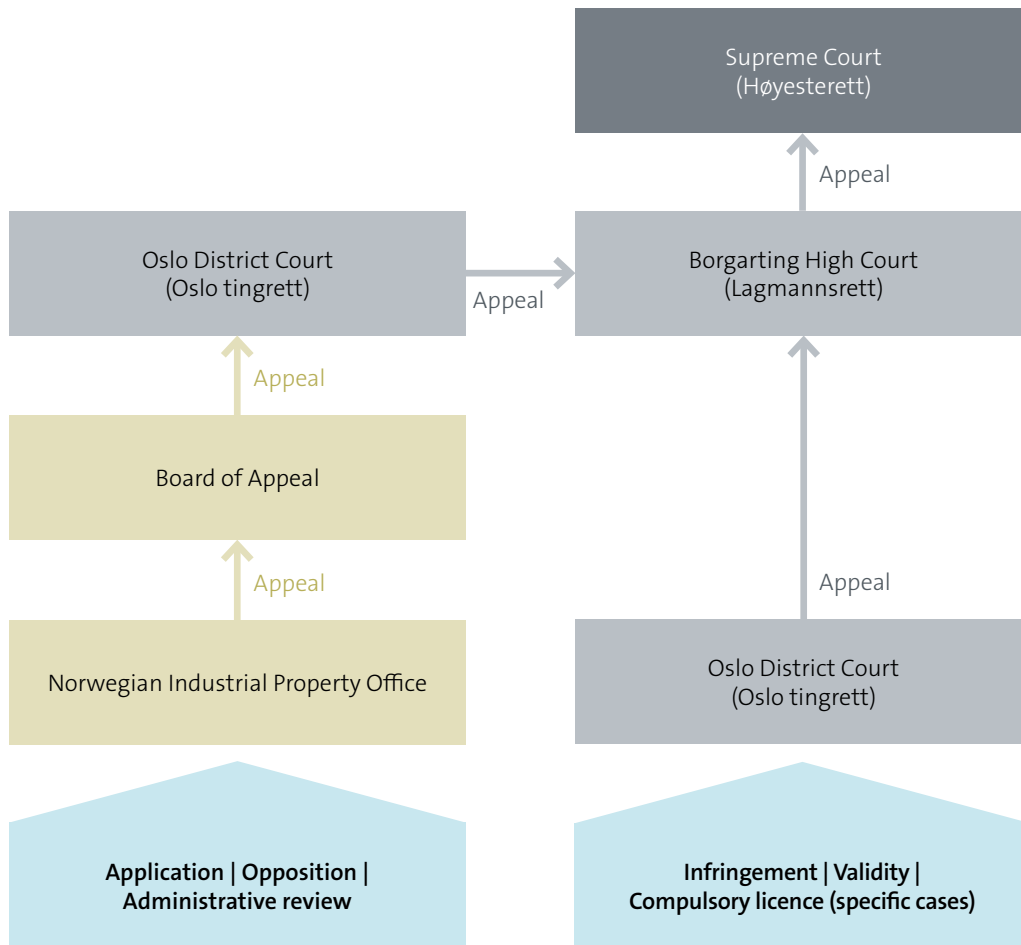
Norwegian Patents Act - Act No. 9 of 15 December 1967, as last amended by Act 2019-06-21-49, in force on 01.07.2019 [cited as: PA];

Norwegian Patent Regulations, as last amended by FOR-2019-06-21-800 and in force on 01.07.2019;

Act relating to mediation and procedure in civil disputes (The Dispute Act) Section 16-18.

Competent authorities or courts

NO



Poland

Administrative procedure

The applicant may apply for re-examination of any matter decided by the Polish Patent Office (hereinafter “PPO”) in accordance with Article 244 of the Industrial Property Law (hereinafter “IPL”). A case will be re-examined by an expert appointed by the President of the PPO.

The time limit for submitting a request for re-examination of the case for which a decision has been made or an order issued is two months or one month, respectively, from the day on which the party is served with a decision or an order.

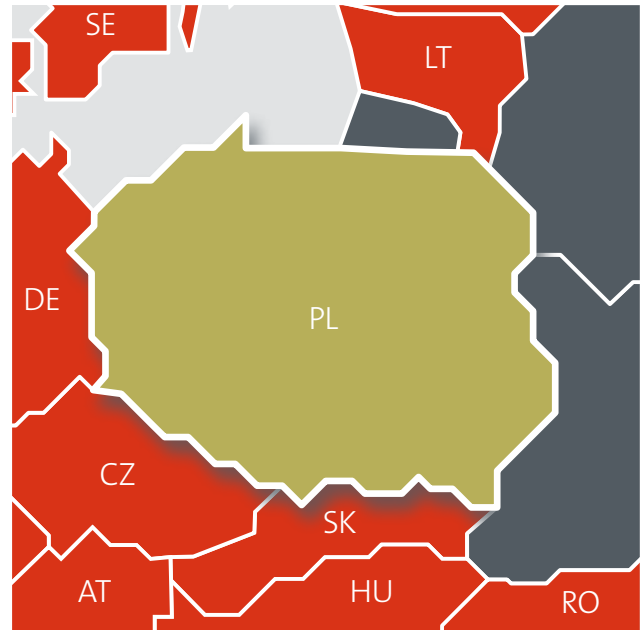
Following the re-examination of the matter, the PPO takes a decision whereby it:

- a) sustains the appealed decision, or
- b) reverses the appealed decision in whole or in part and in that scope decides on the merits; or
- c) reverses the appealed decision in whole or in part and in that scope discontinues the proceedings; or
- d) discontinues the proceedings in part and sustains the remaining scope of the appealed decision, or it reverses the appealed decision and decides on the merits; or
- e) discontinues the appeal proceedings.

Opposition

Post-grant opposition is available. It may be filed within six months from the date of publication of the mention of the grant in the *Biuletyn Urzędu Patentowego*, the official bulletin of the PPO. Any interested party may file a reasoned opposition to a final decision of the PPO on the grant of a patent, a right of protection for a utility model or a right in registration (Art. 246 IPL).

The right holder is informed by the PPO that an opposition has been filed and that he may submit his observations within a fixed time limit (Art. 247 IPL). The right holder may, upon inspection, agree with the claims raised and accept the opposition as justified. The proceedings will then be closed and the decision to grant a patent or other relevant right as provided by the IPL will be revoked. If the right holder considers the opposition to be without grounds, the opposition procedure will be settled in litigation proceedings



before the PPO (Art. 247(2) IPL). A complaint against the decision may be filed with the Administrative Court in Warsaw within 30 days.

Appeal

Pursuant to the IPL, judicial review proceedings may be instituted as follows:

- a) For decisions made and orders issued by the PPO on issues explicitly set out in Arts. 255 and 257 IPL, a party may file a complaint through the PPO with the Administrative Court in Warsaw (contentious administrative appeal).
- b) All other decisions made and orders issued by the PPO are subject to complaint to administrative courts (Art. 248 IPL, non-contentious administrative appeal). There is no need for re-examination proceedings before the PPO, however such a possibility exists.

The President of the PPO appoints an expert to examine whether or not the complaint lodged is justified. Following the examination of the complaint, the PPO either admits the complaint in whole or refers the reply to the complaint together with the case file to the Administrative Court (Art. 249 IPL).

The complaint must be made within 30 days from the service of the decision.

Rulings of the Administrative Court may be subject to annulment proceedings (“cassation appeal”) before the Supreme Administrative Court.

Revocation

A patent may be declared invalid in whole or in part at the request of any person having a legitimate interest and who is able to prove that:

- a) the statutory requirements for the grant of a patent have not been satisfied; or
- b) the invention has not been disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art; or
- c) the patent has been granted for an invention not covered by the contents of the application or of the original application.

There is no restriction on the time limits for any requests (Art. 89 IPL).

Additionally, the General Prosecutor or the President of the PPO may, acting in the public interest, request that a patent be revoked or intervene in a pending revocation action (Art. 89(2) IPL).

The decision will be taken in the litigation proceedings before the PPO. Partial revocation is available.

The IPL does not provide for the possibility of modifying the scope of the granted patent through modification of the patent claims. It does not provide for a procedure analogous to Art. 105a EPC. It is possible for the patent to be revoked in part (Art. 89 of the IPL) or for the patent holder to surrender the patent with the consent of the parties having rights in the patent (Art. 90(1)(2) of the IPL).

The surrender in part is possible only in cases in which the protected solution is divisible.

Civil procedure

Infringement

A civil action must be brought by the patentee, or exclusive licensee entered in the register, to the Regional Court (*sąd okręgowy*). Jurisdiction is mainly determined by the defendant’s place of residence or its registered office (Art. 27

and 30 CPC).

The procedure is governed by provisions of the CPC on litigation.

Claims for patent infringement become statute-barred after three years from the date of infringement, with the limitation period running separately for each individual infringement from the date where the right holder has learned about the infringement of his patent and the infringing person. However, in any case, the claim will become barred by prescription five years after the date on which the infringement has occurred (Art. 289(1) IPL).

In the first instance court the case is heard by one judge (legally qualified, no technical background required).

Nullity/counterclaim for revocation

Nullity may be used as a defence in infringement proceedings, but invalidation of the patent is subject to separate litigation proceedings before the PPO.

Remedies

The court may impose recalling goods from the channels of commerce, destruction of goods, preservation of evidence or claims, publication of judicial decisions, desistance from infringement, handing over unjustly obtained benefits, pecuniary compensation.

Other actions

It is possible to request the court to establish *inter alia* the authorship of the inventive project, to establish the right to the patent, to establish the right to use the invention or to transfer the patent obtained by an unauthorised party.

Appeal

An action should be filed with the Court of Appeal (court of second instance) (Article 367 CPC). The Court of Appeal will hear a case only within the limits of the appeal. However the court may decide on the invalidity of proceedings, if any, on its own initiative (Article 378 CPC).

New evidence may be adduced if it was not possible before the first instance court or the need to adduce the same arose at a later date.

The appeal is heard by a panel of three judges (all legally qualified).

Further appeal filed with the Supreme Court is restricted to breaches of substantive law or violation of procedural regulations (Art. 398 et seq. CPC).

Parallel proceedings

The court may stay proceedings *ex officio* if the resolution of the case depends on the outcome of other civil proceedings pending or on a prior decision to be issued by a public administration body. It is at the discretion of the court to decide whether in a given case the proceedings should be stayed (Art. 177 CPC).

Arbitration/mediation

There are several forms of alternative dispute resolution for proceedings in Poland.

Mediation

Mediation or settlement agreement is possible in proceedings before the courts on matters of industrial property. Mediation is voluntary. It is conducted on the basis of an agreement to mediate or a court order referring the parties to mediation (Art. 1831 CPC).

The minutes of mediation proceedings will be drawn up. If the parties enter into a settlement agreement before the mediator, such agreement must be included in or attached to the minutes. By signing the settlement agreement, the parties agree to request the court to approve it (Art. 18312 CPC).

If the parties enter into a settlement agreement before the mediator, the court will take, at the party's request, prompt action to approve such agreement. The court will refuse to make the settlement agreement enforceable or to approve all or part of the settlement agreement made before the mediator if the agreement is contrary to the law or principles of social co-existence, or if it seeks to circumvent the law, or if it is incomprehensible or contradictory (Art. 18314 CPC).

Once approved by the court, a settlement agreement made before the mediator has the legal effect of a settlement agreement made before the court. A settlement agreement made before the mediator, to which a writ of execution has been issued, is an enforcement title (Art. 18315 CPC).

A natural person having full capacity to make acts in law and

enjoying full public rights may serve as a mediator. A judge may not serve as a mediator.

As part of their statutory duties, non-governmental organisations and higher education institutions keep lists of mediators and establish mediation centres.

Details of the lists of mediators and mediation centres are made available to the President of the Regional Court (*sqd okręgowy*) (Art. 1832 CPC).

Conciliation

Conciliation proceedings, which may result in a settlement agreement, are conducted by a court.

A motion for a summons to a conciliation session may be filed with a district court (*sqd rejonowy*) of general jurisdiction over the opposing party. The motion should briefly describe the case. As in mediation proceedings, minutes are taken and, if the parties enter into a settlement agreement, the content of such agreement will be noted in the minutes or in a separate document forming part thereof. The parties sign the agreement (Art. 184 et seq. CPC).

Arbitration

The Arbitration Tribunal is governed by Arts. 1154 to 1217 CPC.

Disputes involving industrial property cases may be resolved before an arbitral tribunal (Art. 1157 CPC). In order to submit a dispute to arbitration, the parties must enter into an agreement specifying the matter at issue or the legal relationship from which a dispute has arisen or may arise (arbitration agreement) (Art. 1161 CPC).

An arbitration agreement must be made in writing (Art. 1162 CPC). If an action is lodged with the court in a matter which is the subject of an arbitration agreement, the court will reject a statement of claim if the defendant invokes an arbitration agreement before defending on the merits of the case (Article 1165 CPC).

The arbitral tribunal resolves a dispute in accordance with the law applicable to a given relationship or, if expressly authorised to do so by the parties, in accordance with general rules of law or equity. In all cases, however, the arbitral tribunal will take into consideration the terms of the contract and trade customs applicable to the legal relationship concerned (Art. 1194 CPC).

If the parties settle a dispute during arbitration, the arbitral tribunal terminates proceedings. The terms of the settlement agreement is noted in the record or separate document forming part of the record. If so requested by the parties, the arbitral tribunal may record the settlement

agreement in the form of a consent award. Such award produces the same effects as any other award (Art. 1196 CPC).

An arbitral award issued in the Republic of Poland may only be set aside by the court in proceedings initiated by the filing of an application to set aside the award (Arts. 1205 to 1211 CPC).

An award or settlement agreement made before an arbitral tribunal have legal effect equal to a court judgement or a settlement agreement made before the court, after it is recognised or declared enforceable by the court (Arts. 1212 to 1217 CPC).

A natural person with full capacity to perform acts in law, irrespective of his or her nationality, may serve as an arbitrator. A state judge may not serve as an arbitrator. However this does not apply to retired judges (Art. 1170 CPC).

officers operating thereat, except for matters reserved for courts. This applies both to the enforcement of final judgments in legal proceedings and for instance to decisions on securing the claim (Article 758 et seq. CPC).

Compulsory licence

A compulsory licence may be granted by the PPO only under certain circumstances, in cases of national emergency and abuse of patent rights or dependent patents (Article 82 IPL).

Relevant national law

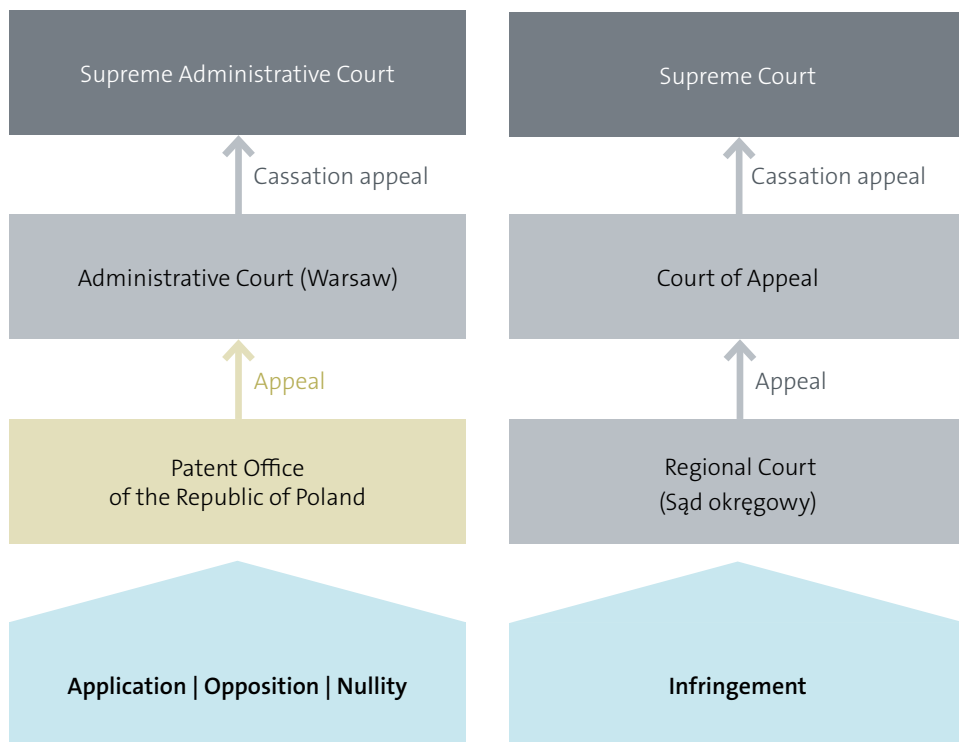
Act of 30 June 2000 – Industrial Property Law (Journal of Laws of 2017, item 776, as amended) [cited as: IPL];

Civil Procedure Code [cited as: CPC].

Enforcement

Enforcement proceedings fall within the competence of district courts (*sądy rejonowe*) and court enforcement

Competent authorities or courts



Portugal

Administrative procedure

Opposition

In Portugal, there is a pre-grant opposition system. Opposition may be filed within two months of the date of publication of the patent application in the Industrial Property Bulletin. The applicant will be notified by letter that opposition has been filed, and from that moment will have two months to reply. Only then will the Portuguese Institute of Industrial Property (hereinafter the “Patent Office”) take a decision on the opposition.

Appeal

After publication of the final decision, any interested party may appeal to the Intellectual Property Court in Lisbon (with jurisdiction for all territory and in operation since 30 March 2012) within two months from publication. The judge may uphold or revoke the initial decision.

The administrative decision may also be appealed to the Arbitration Court (ARBITRARE) as an alternative to judicial appeal.

Further ordinary appeal to the Court of Appeal in Lisbon is possible within 30 days from the date of the decision.

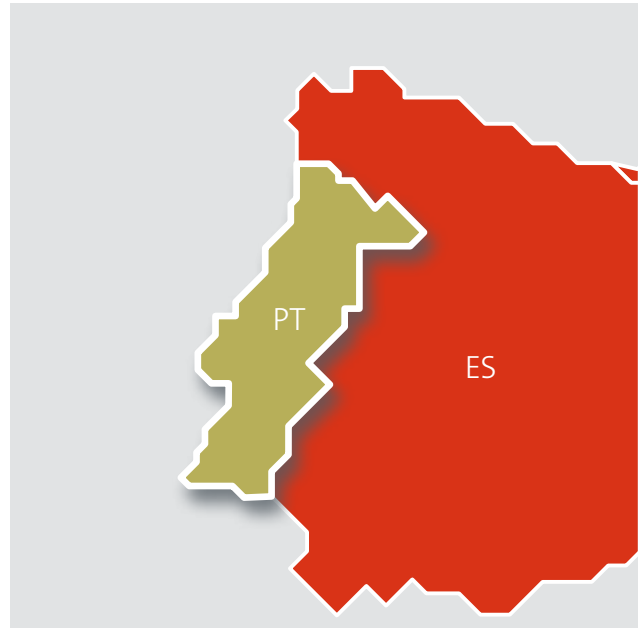
Revocation

Invalidation proceedings may be initiated by any interested party or by the Public Prosecutor Services during the entire lifetime of a patent. The decision of the Court has retroactive effect (*ex tunc*).

Partial nullification is possible.

Patent claim amendment is allowable under Art. 12(8) of the IPC:

“After a decision has been issued, during the time limit for appeals or, if an appeal has been lodged, until the ruling has been confirmed, applicants may transfer the rights pertaining to an application, limit its object or add documents or statements to the case file”;



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or under Art. 102(8) IPC:

“A patentee may ask the Patent Office, on payment of a fee, to limit the scope of protection of the invention by altering the claims”; and under Art. 115(2) IPC: “In court proceedings, a patentee may limit the scope of protection of an invention by altering the claims.”

In practice, requests for limitation do not frequently occur.

Civil procedure

Infringement

Criminal infringement proceedings may be conducted in any criminal court of first instance (criminal action according to jurisdiction of the court where the infringement takes place). Civil infringement proceedings can be conducted in the Intellectual Property Court (with jurisdiction for all territory and in operation since 30 March 2012).

An action may be brought by the patent holder, his licensee or any person who considers himself adversely affected.

Expert opinions are allowable. The Intellectual Property Court of Lisbon may ask the Patent Office to indicate an expert or ask other institutions (e.g. universities). The court usually follows the opinion of the expert, but the opinion of an expert or any other expertise is not legally binding on the court.

In cases of criminal infringement any criminal court of first instance is competent and may make the same request the Patent Office.

No judicial decision based on provisional protection may be issued before a final decision to grant or refuse the patent, which is taken by the Patent Office.

Nullity/counterclaim for revocation

Invalidity of a patent may be used as a defence. The court will wait for the final decision on nullity if a previous action has to deal with a request for nullity or, at the request of one of the parties, the case may be sent to the court where the first action was lodged (jurisdiction for cases lodged since 30 March 2012 lies exclusively with the Intellectual Property Court). If there is no previous action the court will simultaneously decide on validity, infringement and also the award of damages if requested for any of the parties.

At first instance, exclusive jurisdiction rests with the Intellectual Property Court in Lisbon.

Remedies

Damages, seizure of infringing articles, fine and imprisonment (for criminal infringement).

Other actions

Interested parties may request a declaration of non-infringement, and the same procedure applies as under "Nullity/counterclaim for revocation".

Appeal

Appeals may be lodged to the Lisbon Court of Appeal within 30 days, or 45 days if the facts declared proven are also disputed, in both cases from the date of the decision.

Further appeal on points of law may be made to the Supreme Court, within 30 days from the date of the decision. Appeal to the Supreme Court depends on the value of the lawsuit and is admissible in some cases. However, because damages are also dealt with together with validity and infringement, the cases generally go to the Supreme Court.

If the first-instance decision is upheld without a dissenting vote in the Lisbon Appeal Court and with full acceptance of all the arguments of the Intellectual Property Court, there

will be no appeal to the Supreme Court. However, appeal to the Supreme Court is always possible in order to clarify important points of law or contradictions in case law. In these cases, an appeal to the Supreme Court is mandatory for the Public Prosecutor Services even if the parties do not appeal.

The Arbitration Court (ARBITRARE) is also available as an alternative to judicial courts, with appeal to the Lisbon Court of Appeal when parties agree to that in the arbitration agreement.

Parallel proceedings

The court stays national proceedings if the Patent Office considers that parallel proceedings are a prejudicial cause likely to affect the decision.

Arbitration/mediation

Arbitration is available in patent litigation proceedings.

ARBITRARE, the Arbitration Centre for Industrial Property, Domain names, Trade names and Corporate names, and *ad hoc* courts are the competent authorities.

Decree-Law No. 110/2018, 10 December (entry into force on 9 January 2019) amended Law No. 62/2011 dealing with disputes involving patent-based medication and generics. The amendments stipulate that such disputes may be subject to voluntary arbitration.

Enforcement

In principle, the abovementioned will be enforced by an agent external to the IP Court, the "*agente de execução*", who is chosen by the plaintiff or nominated by the relevant corporation, the "*Ordem dos Solicitadores e Agentes de Execução*" (upon request of the Court).

A bailiff intervenes in exceptional cases, such as when the interested party is the State or when there is no available agent (cf. Art. 722 of the Portuguese Civil Procedure Code).

Compulsory licence

Compulsory licences may be granted by the Patent Office in cases of non-working patents. In cases of public interest a compulsory licence will be granted by the Government.

Relevant national law

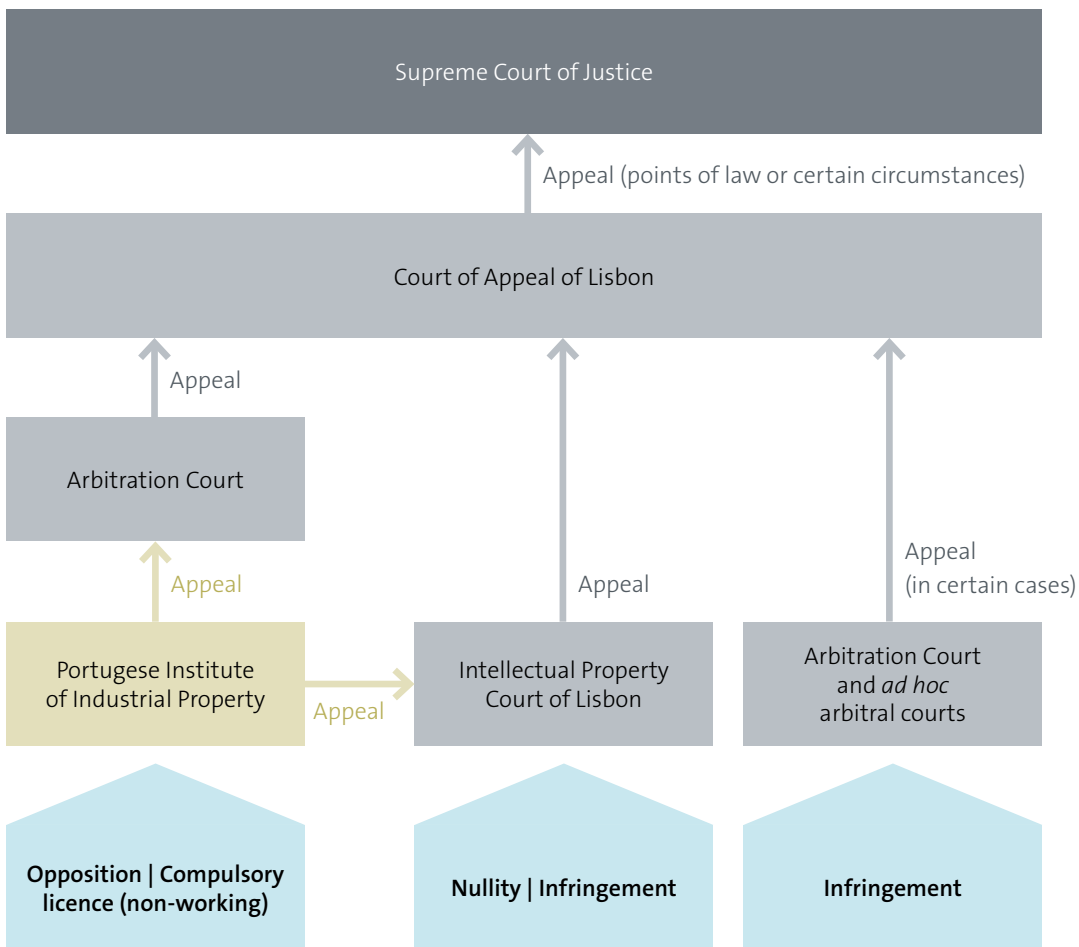
Industrial Property Code 2018, Decree-law no 110/2018, 10 December [cited as: IPC];

Voluntary Arbitration Law, Law no 63/2011, 14 de December;

Arbitration Law, Law no 62/2011, 12 December;

Arbitrare Regulations can be found (in Portuguese) under www.arbitrare.pt

Competent authorities or courts



Romania

Administrative procedure

Opposition

There is no opposition system in Romania.

Appeal

An appeal procedure for the patent applicant is available before publication of the grant or rejection of the patent application. Third parties may not participate in these proceedings, but may request revocation of a patent (see “Revocation” below).

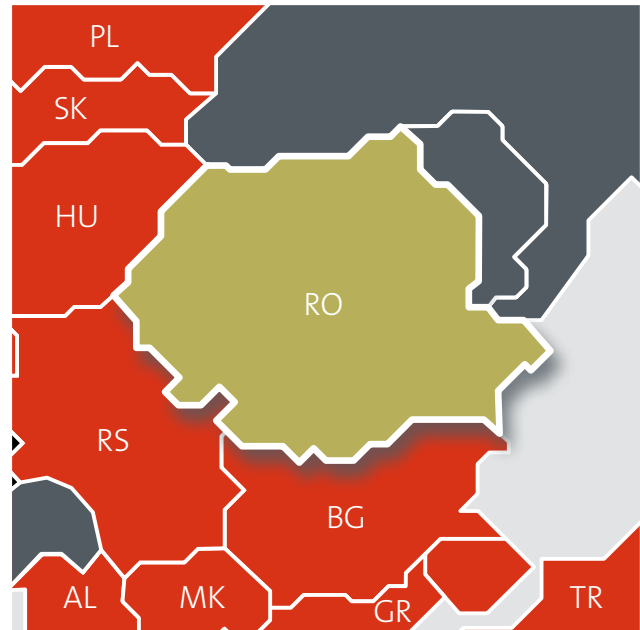
An appeal may be initiated by the patent applicant after a decision taken by the Examination Division during substantive or preliminary examination. Such decision may be rejecting or granting the protection. The appeal must be formulated within three months of communication of the Examination Division’s decision.

- (i) An appeal against a decision taken during substantive examination, filed in writing and with due justification, accompanied by proof of payment, must be settled (released pending) by a Board of Appeal within the Appeal Department of the State Office for Inventions and Trademarks (hereafter the “Patent Office”) within three months of its registration (Art. 50 PA).
- (ii) An appeal against a decision taken during preliminary examination, made in writing and with due justification, accompanied by proof of payment of the legal fees, must be settled (released pending) by a Board of Appeal within the Legal Department of the Patent Office within three months of its registration (Art. 50 PA).

The decision of the Patent Office’s Board of Appeal may be appealed against before the Bucharest Tribunal within 30 days from communication (Art. 54 PA).

An appeal against the Bucharest Tribunal’s decision may be lodged within 30 days from communication, with the Bucharest Court of Appeal (Art. 54 PA and Art. 468 Code of Civil Procedure).

The Bucharest Tribunal has specialised IP judges (judges at



the Bucharest Tribunal are trained in the area of IP, but there is no specialised IP section).

Revocation

Any interested third person may apply to the Patent Office in writing, on valid grounds, for revocation of a patent. An action may be brought within six months from publication of the mention of grant of the patent (Art. 49 PA).

Where the grounds for revocation relate to only a part of the patent, the patent may be revoked in part. The revocation request must be settled by the Board of Appeal within three months of its registration.

Patent claim amendment is possible if the disclosure does not extend beyond the content of the application at the date of filing. Such situations do not frequently occur.

The Patent Office may revoke its decisions *ex officio*, for failure to comply with the conditions laid down by the Patent Law, until notification (Art. 28 PA).

Civil procedure

Infringement

Infringement actions may be brought by the patent owner and will be considered by the ordinary courts of first instance (Art. 60 PA) where the defendant is domiciled. If the defendant's domicile is Bucharest, the Bucharest Tribunal is the competent court.

Litigation concerning inventorship, patent ownership or other rights arising from the patent is subject to the jurisdiction of the ordinary courts of first instance.

If the patent owner, his successors in title or any other person asserting the industrial property right with the owner's consent provides credible evidence that his patent-protected industrial right is subject to a current or imminent illegal act that is likely to cause him irreparable prejudice, an order for provisional measures may be requested, such as:

- a) prohibition or provisional cessation of the infringement
- b) appropriate measures for preserving evidence

Infringement is also considered a criminal offence and is punishable by a fine or imprisonment. The proceedings are initiated *ex officio* (Art. 56 PA).

Expert opinions are permissible and may be binding on the court as regards the technical aspects of the patent (if experts are appointed by the court).

Nullity/counterclaim for revocation

An invalidation request can be made during the entire lifetime of a patent. Invalidation of a patent granted by the Patent Office may be requested at the Bucharest Tribunal after the time limit for a revocation request has elapsed (Art.51 PA). Partial annulment is available.

If the nullity action is withdrawn by the claimant, the proceedings will not be continued.

In infringement proceedings the defendant has the right to bring a counterclaim in the court in which the original infringement claim is pending, requesting the invalidation of the patent. The counterclaim may be submitted within the time limits set by common law rules on civil procedure (usually, with 25 days from the date of the receipt of the original request) and it is judged together with the original request.

Remedies

Damages under civil law, seizure, destruction, criminal sanctions (imprisonment, fine).

Other actions

None available.

Appeal

The Bucharest Tribunal decision may be appealed within 30 days to the Bucharest Court of Appeal (Art. 52 PA). Decisions of Bucharest Court of Appeal may be appealed before the High Court of Cassation and Justice within 30 days from communication.

Parallel proceedings

Where there are parallel proceedings (e.g. in case of EPO oppositions and/or appeals) between national courts and the EPO, the court will generally stay national proceedings until EPO proceedings are finalised.

Arbitration/mediation

Mediation is available as a procedure for settling disputes concerning patents and is performed by authorised mediators.

The legal framework for the conduct of such proceedings is provided by Law No. 192/2006 on mediation and the mediator profession, as amended and supplemented.

Enforcement

All decisions of the courts in infringement cases, e.g. permanent injunctions, are enforceable by law at the date when they become final. In cases where the final court decision is not executed voluntarily, court judgments are executed by a judicial enforcement officer whose office is located in the jurisdiction of the appeal court where the person who failed to comply with court decision has his/her residence/registered office or where the property is located. If that person's residence/registered office is located abroad, any judicial enforcement officer is competent. The judicial enforcement officer may act only at the request of the interested party, which is the person entitled to obtain the enforcement of the court decision.

During court proceedings, the courts have the competence to order provisional measures, such as prohibition or provisional cessation of the infringement or appropriate measures for preserving evidence, under the terms of the Code of Civil Procedure. All provisional measures ordered by the courts by means of a Presidential Ordinance are enforceable by law at the date when they become final. In cases where the Presidential Ordinance is not executed voluntarily, it may be executed by a judicial enforcement officer, at the request of the interested party.

Failure to comply with a court judgment (court order) which is final and enforceable is also punishable as a criminal offence. The Public Ministry (through prosecutors) is the authority responsible for enforcing an order in such cases of criminal offence, on the basis of a criminal complaint submitted by the interested party.

Compulsory licence

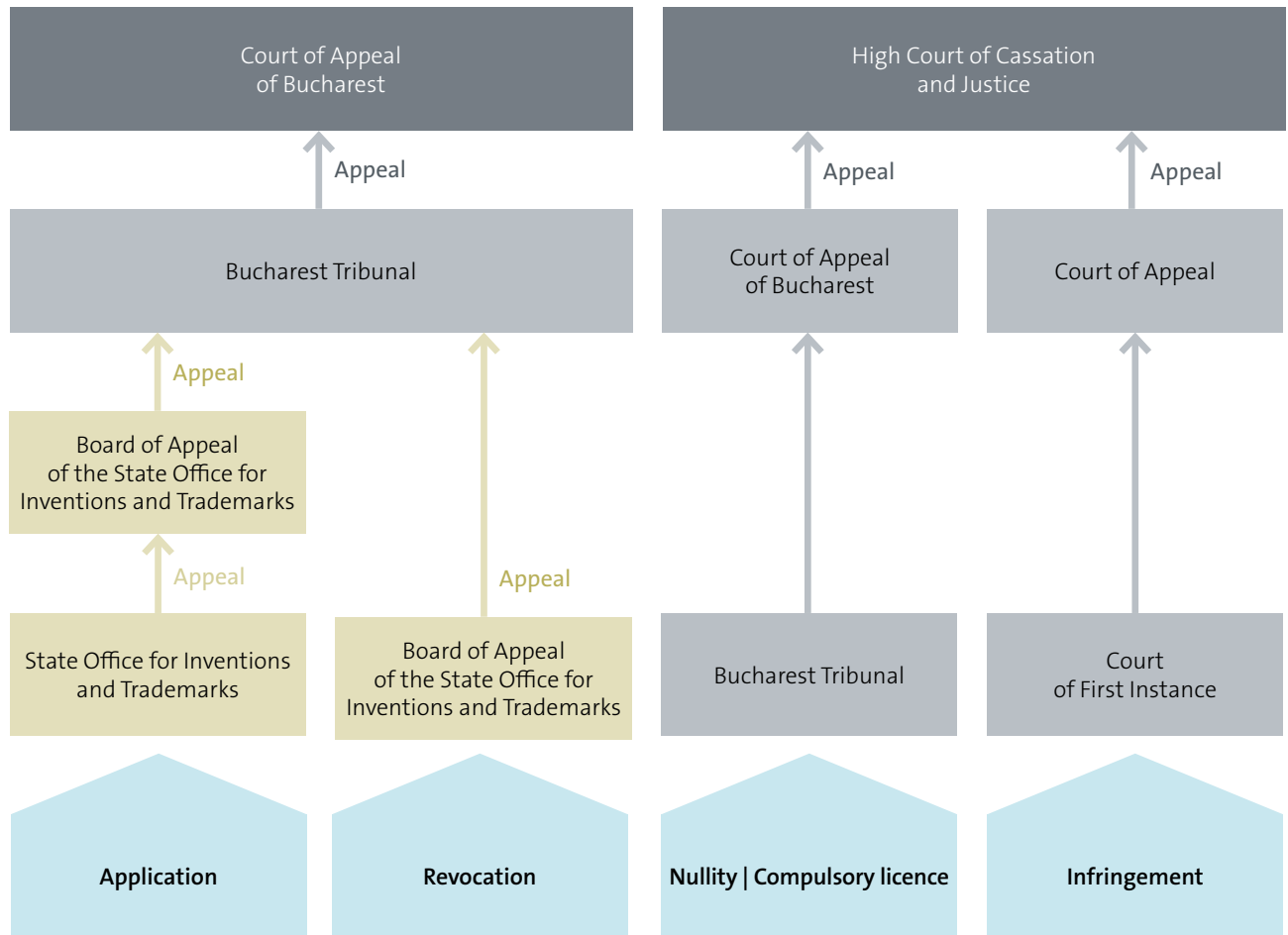
According to Art. 43 PA, at the request of any interested person, the Bucharest Tribunal may grant a compulsory licence in the following situations:

- a) where the invention has not been exploited or has been insufficiently exploited in the territory of Romania, and the patent owner cannot justify his inaction, and where no agreement has been reached with him regarding the conditions and commercial methods for applying the invention;
- b) in cases of national emergency;
- c) in other cases of extreme emergency; and
- d) in cases of public use for non-commercial purposes.

Relevant national law

Patent Law No. 64/1991 - as last amended by Law No. 28/2007, republished in 2014 [cited as: PA]

Competent authorities or courts



Serbia

Administrative procedure

Opposition

Not available.

Appeal

Decisions of the Intellectual Property Office of the Republic of Serbia (hereinafter the “Patent Office”) may be appealed with the Government (Administrative Commission) within 15 days from receipt of the decision, unless the Patent Law provides otherwise (Art. 67 PL).

Administrative dispute proceedings may be instituted against a Government (Administrative Commission) decision on an appeal within 30 days from receipt of the decision (Art. 67 PL).

Extraordinary remedies are allowed against decisions of the Administrative Courts. The Supreme Court of Cassation decides on extraordinary legal remedies (Art. 144 PL).

Revocation

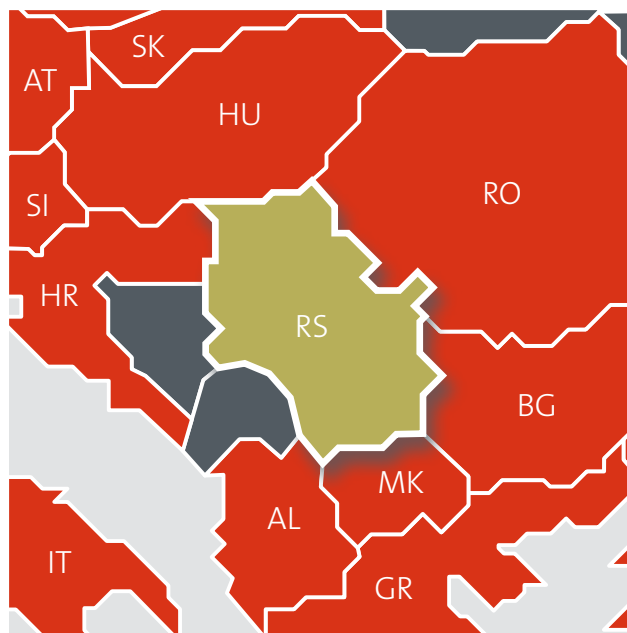
The validity of a patent may be challenged before the Patent Office.

At any time, any third party is entitled to submit a request for revocation.

On valid grounds for revocation, the Patent Office will revoke a decision on the grant of a patent, in whole or in part. (Art. 128 PL).

The Patent Office will publish particulars of the revoked patent in the Official Gazette within three months from the date on which the decision becomes final (Art. 131 PL).

The Patent Office may take the decision to revoke the patent in part, whereby the patent is maintained in force with amended patent claims. This situation does not often occur.



RS

Civil procedure

Infringement

The applicant, owner of a patent or holder of an exclusive licence is entitled to institute civil proceedings against any person infringing his right (Art. 132 PL).

The applicant or the holder of an exclusive licence shall be entitled to infringement action upon the publication of the patent application (Art. 132 PL).

The competent court in civil cases between natural persons is the Higher Court at first instance; the competent court between legal persons is the Commercial Court.

In IPR cases, review is always allowed (as an extraordinary remedy); the Supreme Court of Cassation decides on reviews.

Nullity/counterclaim for revocation

See “Revocation” above.

Remedies

Finding of infringement, damages under civil law, publication of the court decision at the expense of the defendant, seizure, destruction, supply of information on third parties involved in the infringement, criminal sanctions.

Other actions

Prior user

A patent has no effect against a person acting in good faith who has, before the date of priority, already started exploiting a protected invention in production in the territory of the Republic of Serbia, or has made all necessary preparations to initiate such use (Art. 23 PL).

Action for establishment of the right to protection

In a civil action, the inventor, his successor in title or employer is entitled to require the court to establish his right to the protection of a given invention or to establish that he is the right holder, instead of or together with the person who has already filed an application for that invention. This action may be brought before the right has been granted, or prior to expiry of the right if the decision to grant a patent has already been taken by the competent authority (Art. 140 PL).

Action for the protection of employers' or employees' rights

An employer and/or an employee entitled to the protection or commercial use of an invention made in the course of his employment may institute court proceedings for the establishment and protection of his rights. Legal proceedings for the establishment of employees'/employers' rights may be instituted within two years from the date of publication of the patent application, but not after expiry of two years from the date of termination of the employment during which the invention was made (Art. 141 PL).

Action for recognition of the status of inventor

If the patent/petty patent application or any other document provided by the law has designated any other person as an inventor, the inventor is entitled to institute civil proceedings requesting the court to establish his status as inventor or to order the entry of his name in the patent documents and registers kept by the Patent Office. There is no time limit for the institution of proceedings (Art. 142 PL).

Appeal

Decisions may be appealed to a Court of Appeal and the Commercial Appellate Court.

Parallel proceedings

If a request for revocation of a European patent is filed with the Patent Office after initiation of the EPO opposition procedure referred to in Article 99 EPC or of the limitation or revocation procedure referred to in Article 105a EPC, the Patent Office will stay its revocation proceedings until the proceedings before the EPO have terminated (Art. 157 PL).

The civil court shall stay infringement proceedings until the competent authority renders a final decision on the revocation procedure.

Arbitration/mediation

Mediation is available in patent litigation proceedings (Art. 3 ML) on the basis of a written agreement on mediation between the parties (Art. 19 ML).

The mediator must meet the requirements prescribed in the Law on Mediation (Art. 33 ML).

Enforcement

The competent court is responsible for enforcing orders during the proceedings, such as provisional measures (Art. 134 PL) or preservation of evidence (Art. 136 PL).

After the final court decision, the competent court or bailiff may be responsible for the enforcement of compensation for damages.

Compulsory licence

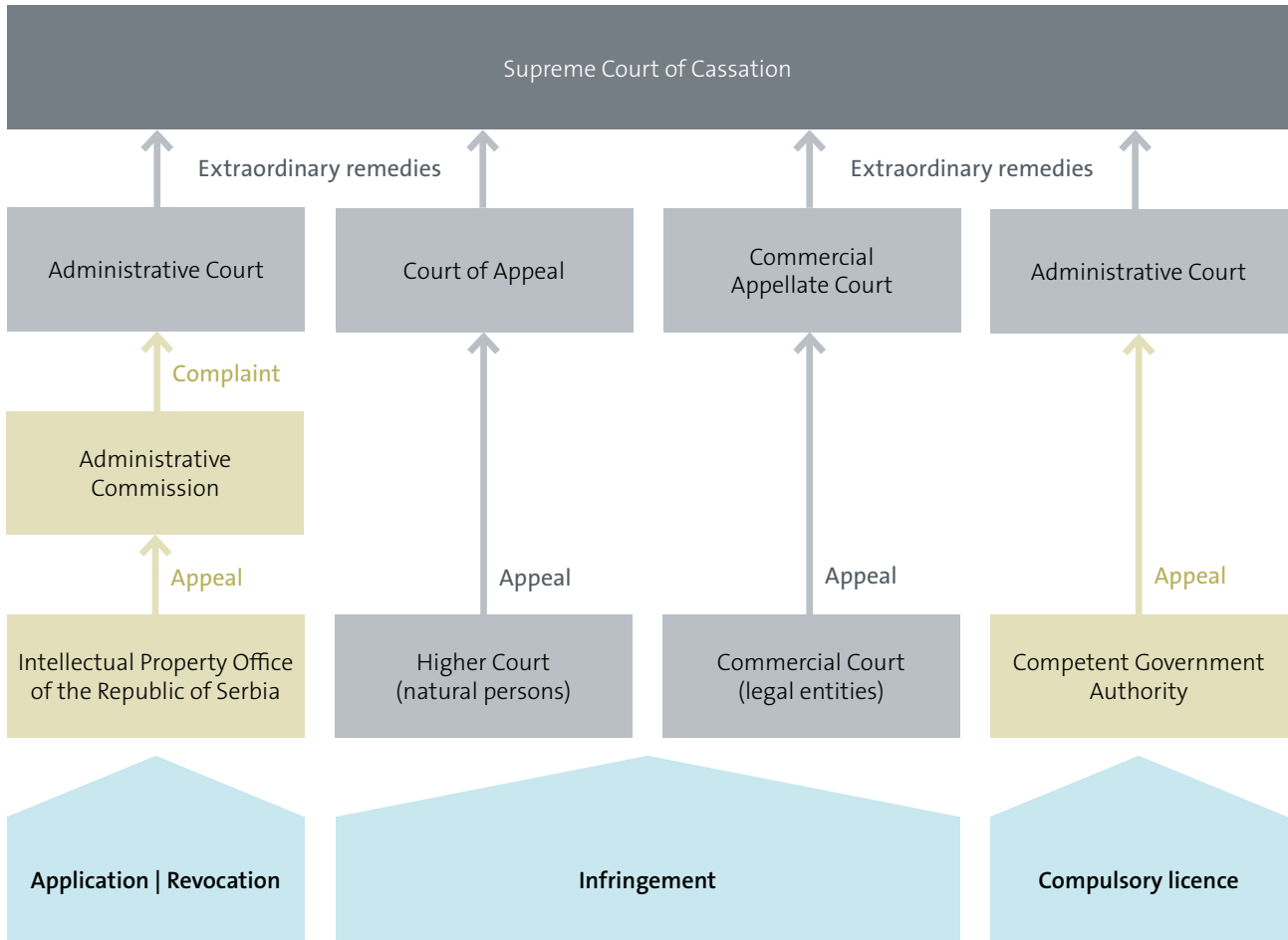
At the request of an interested party, a non-exclusive compulsory licence may be granted by the authority competent in the field in which the invention is designed to be employed (subject to further conditions, Art. 26 PL).

Relevant national law

Law on Patents (OG RS No. 99/11, 113/17 – other law and 95/18) [cited as PL];

Law on mediation in resolving disputes (OG RS No. 55/14) [cited as ML].

Competent authorities or courts



Sweden

Administrative procedure

Opposition

Post-grant opposition is available. Anyone, except for the patent holder, may file notice of opposition within nine months from the date on which the patent was granted (Section 24(1) PA).

The patent proprietor is given the opportunity to file a response within four months from the date on which the Swedish Patent and Registration Office (hereinafter the "Patent Office") sent notice of the opposition (Section 24(2) PA, Section 55 Patent Regulation).

If the opposition is withdrawn by the opponent, the process may still be continued if there are particular reasons (Section 24(3) PA).

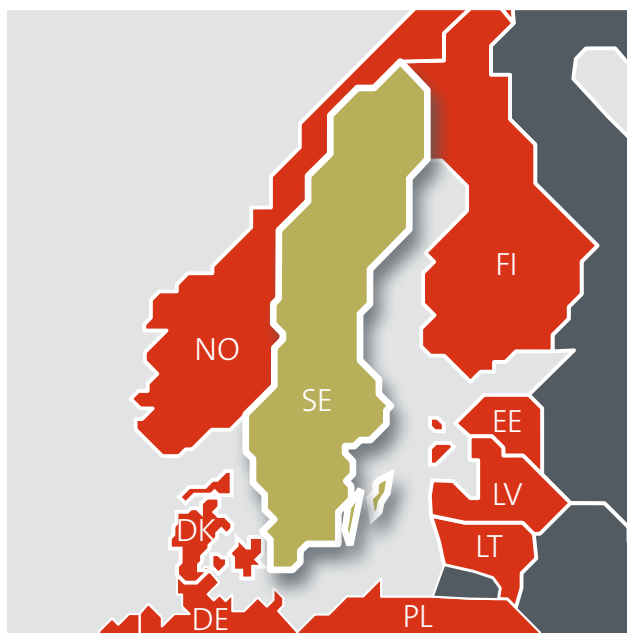
In the event that opposition is not filed with the Patent Office within nine months after grant, the patent may only be wholly or partly nullified by the court.

Appeal

A final Patent Office decision on a patent application may be appealed by the applicant if the decision is not in his favour. A final decision on an opposition to a patent is appealable by the proprietor of the patent and by the opponent if the decision is not in favour of the appealing party. If the opponent withdraws his appeal, the proceedings will not be continued.

The appeal should be filed with the Patent Office within two months from the date of the decision; however, it will be considered by the Patent and Market Court which has exclusive jurisdiction for all patent cases (Section 65(1) PA).

Further review: by the Patent and Market Court of Appeal (Chapter 1, Section 3, PMCA). The appeal must be received by the Patent and Market Court of Appeal within three weeks from the decision of the Patent and Market Court. Leave is required. The main rule stipulates that the verdict of the Patent and Market Court of Appeal is not open to appeal, but where this is found essential, permission to appeal to the Supreme Court may be given, although leave to appeal must also be granted by the Supreme Court.



Revocation

A court action may be brought by anyone who suffers damage or by a public authority designated by the government (Section 52 PA).

A patent may not be declared invalid on the grounds that the person who has obtained it was entitled to only a part of it.

Partial nullification and limitation is available.

Patent amendment is allowable as far as it reduces the actual scope of the patent.

Overall, the rules and practice fully correspond to the EPC/EPO situation. Compared to the entire number of patents granted, this has not been a frequent action to date.

If the action is withdrawn, the proceedings will not be continued.

Civil procedure

Infringement

The Patent and Market Court has exclusive jurisdiction for patent litigation. The court organisation is the same as for the administrative procedure, although the procedure

follows the general Swedish Code on Judicial Procedure instead of the otherwise applicable administrative procedural rules. The arrangements will have no substantive effect on the procedure in litigation cases. However, in some circumstances it is possible for the court to merge administrative and litigation cases if this is deemed appropriate (Chapter 3, Section 6, PMCA).

The patent owner may bring an action for infringement.

Patent infringement cases are as a rule heard by four judges (two legally trained and two technically qualified), and decisions are taken by majority vote (Chapter 4, Section 1, PMCA).

At the preparatory stage, the courts are required to investigate the possibility of settling the case.

Criminal actions are brought only at the complaint of the aggrieved party.

Nullity/counterclaim for revocation

Nullity may be used as a defence or counterclaim; in that case, however, it may only be considered after an invalidity claim has been raised. The Court orders the party asserting invalidity to lodge an action within a certain period of time. If a patent infringement action and a patent invalidity action are brought in the same court proceedings and if it is suitable to decide independently on whether there is patent infringement, a separate judgment may be rendered on this issue at the request of one of the parties. If a separate judgment is rendered, the Court may decide that invalidity proceedings are to be stayed until the judgment has taken legal effect (Section 61(2)(3) PA).

Remedies

Preliminary relief, compensation, destruction of infringing articles (Sections 57-62 PA).

Other actions

Any person who carries on or intends to carry on an activity may bring an action to the Patent and Market Court against the proprietor of the patent for a declaratory judgment in order to establish whether a specific patent constitutes an obstacle to that activity (Section 63 PA).

Appeal

Appeal is addressed to the Patent and Market Court of Appeal, which must receive it within three weeks from the decision of the Patent and Market Court. Leave is required. The main rule stipulates that the verdict of the Patent and Market Court of Appeal is not open to appeal, but where this is found essential, permission to appeal may be given, although leave to appeal must be given by the Supreme Court as well.

Parallel proceedings

According to the Swedish Code of Judicial Procedure there is an explicit decree giving the court extensive powers to stay any national proceedings for special reasons, including awaiting the outcome of EPO proceedings.

Arbitration/mediation

Arbitration is a common way to handle patent litigation. The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) – which is not a public authority – provides dispute resolution services in this field.

Enforcement

The Swedish Enforcement Authority (*Kronofogdemyndigheten*) is responsible for enforcing orders during the proceedings as well as after a final decision of the court.

Compulsory licence

A request for a compulsory licence may be made to the Patent and Market Court. A compulsory licence may be granted in cases of dependent patents, public interest and, exceptionally, in cases of prior use in good faith (Sections 45-50 PA).

Relevant national law

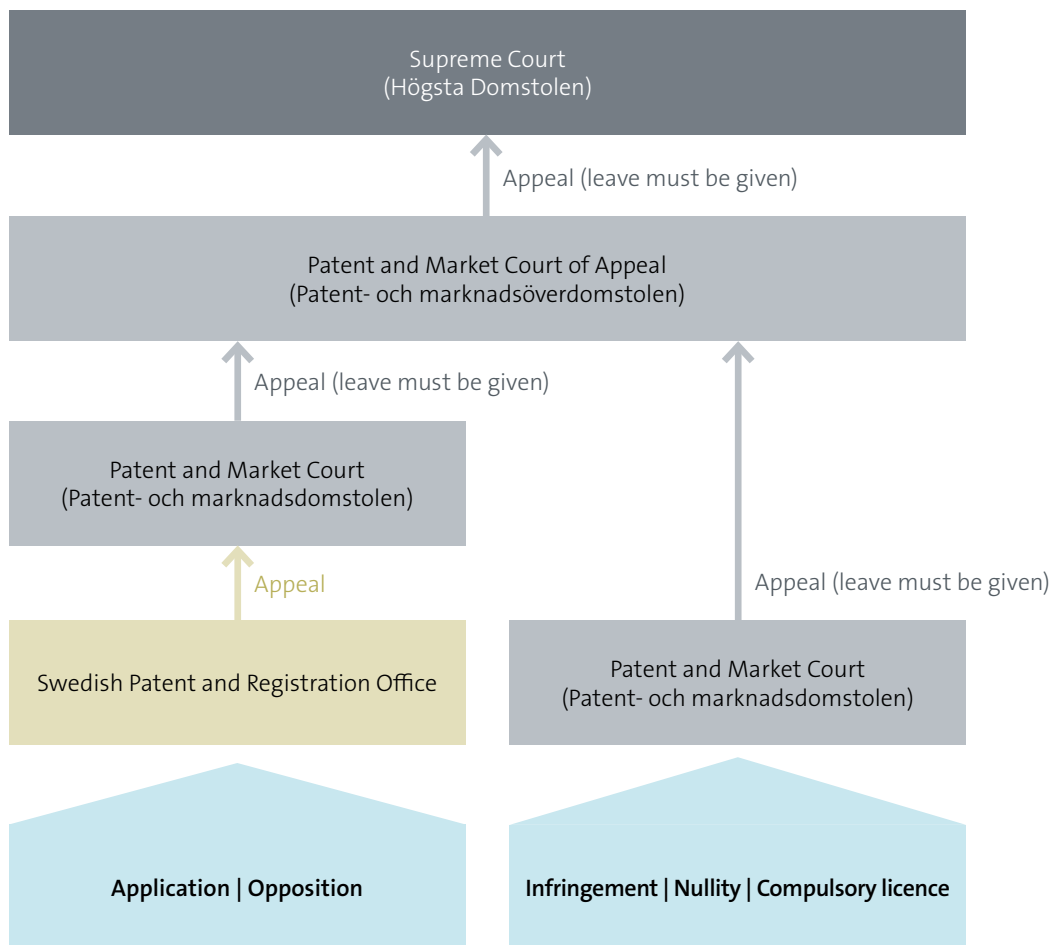
The Swedish Patent Act – Act No. 837 of 1967 as amended by Acts Nos. 149 of 1978, 433 of 1983, 937 of 1984, 233, 1156 of 1986, 1330 of 1987, 296 of 1991, 1688 of 1992, 1406 of 1993, 234, 1511 of 1994, 1158 of 2000, 159, 161 of 2004, 289, 692 of

2005, 254, 625, 682 of 2006, 242, 516, 518 of 2007, 111 of 2009, 1395 of 2010, 580 of 2011, 84 of 2013, 289, 434 of 2014, 317 of 2015 and 192 of 2016, [cited as: PA];

The Swedish Patent and Market Courts Act – Act No. 188 of 2016 [cited as: PMCA];

The Swedish Patent and Registration Office (PRV) regulations (PRVFS 1997:1,P:32) [cited as: Patent Regulation].

Competent authorities or courts



Slovenia

Administrative procedure

Opposition

No pre- or post-grant opposition procedure is available.

Appeal

There is no appeal against the decision of the Slovenian Intellectual Property Office (SIPO; hereinafter the “Patent Office”). Nevertheless, if a patent application is refused, an action for judicial review may be lodged with the Administrative Court of the Republic of Slovenia in Ljubljana within 30 days from the date on which the applicant or his representative received the decision of refusal (Art. 71 IPA).

The Patent Office has competence for administrative procedures related to matters regulated by the IPA. A lawsuit (on points of law and fact) against the Patent Office’s decision is allowed and must be filed with the Administrative Court in Ljubljana. In certain cases, an appeal may be filed (e.g. against decisions on procedural matters). Decisions on the merits are final; however, extraordinary legal remedies against such decisions may be filed with the Supreme Court.

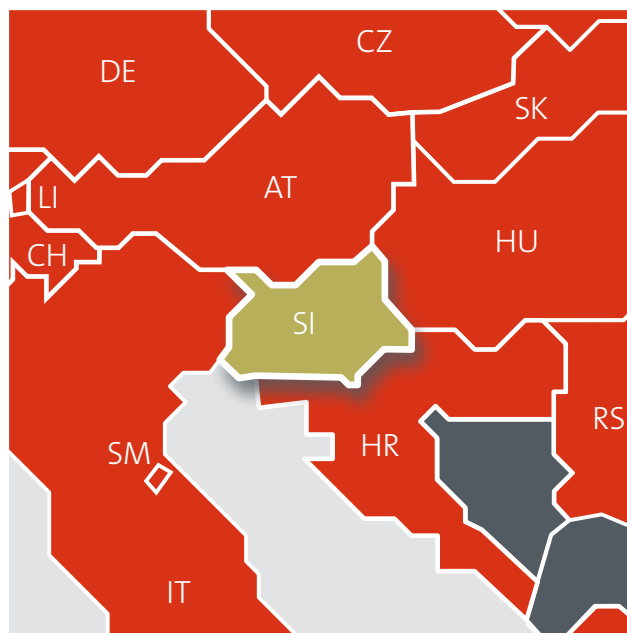
Civil procedure

Infringement

Entitlement to sue for infringement rests with the patent holder or exclusive licensee or with professional associations established for the protection of industrial property rights (Art. 120a IPA).

A civil action may be filed with the District Court in Ljubljana (ordinary court – responsible for all IP cases in Slovenia), which has exclusive jurisdiction over all patent infringement cases in Slovenia (Art. 121 IPA). Patent infringement is also a criminal offence (in which case one of the county courts is competent).

The District Court of Ljubljana has exclusive jurisdiction over disputes related to intellectual property rights in civil law



matters. An appeal may be lodged against a decision of the District Court with the High Court of Ljubljana; the decision of the High Court may be challenged to the Supreme Court only through extraordinary legal remedies (e.g. revision).

Where the infringement action relates to infringement of a national patent which has not been examined for substantive patentability requirements, the court will suspend proceedings until the Patent Office issues a declaratory decision on whether the written evidence filed by the patent holder meets the patentability requirements (Art. 122(2) IPA).

An infringement lawsuit becomes statute-barred in accordance with the general rules of the Civil Code.

Nullity/counterclaim for revocation

Any interested party may, at any time during the entire lifetime of the patent or after the patent has expired, bring an action for invalidation to the District Court in Ljubljana (Art. 111, 112 IPA). The court immediately notifies the Patent Office of the receipt of an action and of the final decision (Art. 72 IPA). The court submits its judgment together with confirmation of the judicial enforceability of the judgment to the Patent Office for execution.

Nullification has retroactive effect. Partial nullification is available.

There are not many court cases regarding the validity of a patent. Patent claim amendment is allowable, but only if such an amendment would narrow the already granted patent claims.

Nullity of a patent may be used as a defence or counterclaim.

Remedies

When filing an action, the plaintiff may claim prohibition of infringement, recall of infringing goods from the channels of commerce, restoration of the previous situation, irrevocable removal of infringing goods from the channels of commerce, destruction of infringing goods, destruction of means of infringement that are owned by the infringer and intended or used exclusively or principally for infringement, publication of judgment, surrender of infringing goods against reimbursement of production costs, damages according to general tort law (all the claims may be decided in a separate or the same civil procedure) (Art. 121, 121a IPA).

Interim decisions and other measures are regulated in Articles 123 to 124(b) IPA.

Other actions

Not available.

Appeal

Ordinary appeal may be filed within 15 days at the Ljubljana High Court. A further extraordinary appeal to the Supreme Court is available (restricted to points of law).

Parallel proceedings

In case of action under Article 121 IPA relating to infringement of a patent or published European patent application, the court stays the proceedings until the Patent Office issues a declaratory decision (under paragraph (a) or (b) of Article 93 IPA) until the date of entry of the European patent in the patent register at the Patent Office (Art. 122(2) IPA).

Arbitration/mediation

The IPA does not contain any provision regarding arbitration or mediation. However, the Act on Alternative Dispute Resolution in Judicial Matters (hereinafter AADRJM), which is a special law regulating settlements of legal disputes in alternative dispute resolution proceedings, applies to disputes arising from commercial, labour, family and other civil law relations. The AADRJM may therefore also be used in patent disputes.

There are several providers of mediation and/or arbitration. Some of them are grouped in the association of mediation organisations known as MEDIOS (<http://www.medios.si/>). The courts also offer their own mediation (so-called “court-adjointed mediation”) based on the provisions of the AADRJM.

Enforcement

Where the court decision is based on the IPA (i.e. patent grant, patent validity), other than lawsuits for infringement, the court sends its final and enforceable decision to the Patent Office for execution (Art. 72 IPA).

Where the court decision is related to infringement lawsuits and other non-IPA-based claims (e.g. law of contracts), the executors are responsible for enforcing an order; in some cases these executors must be bailiffs.

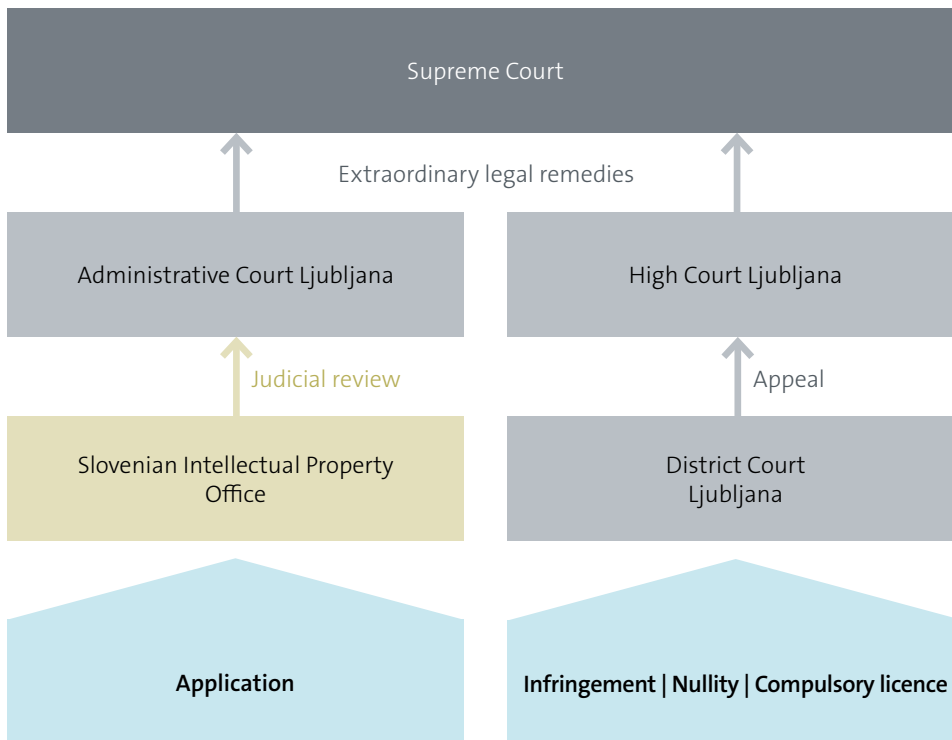
Compulsory licence

A compulsory licence may be granted by the court in cases of public interest, or if the court determines that the owner or licensee is abusing the right to a patent (Art. 125 IPA).

Relevant national law

Industrial Property Act of 23 May 2001 as last amended on 27 November 2013 as in force from 21 December 2013 [cited as: IPA]

Competent authorities or courts



Slovakia

Administrative procedure

Opposition

No pre- or post-grant opposition procedure is available.

After publication of the application any person may file observations on its patentability. These observations will be taken into consideration during substantive examination. The persons filing them do not become parties to the application proceedings (Art. 42 PA).

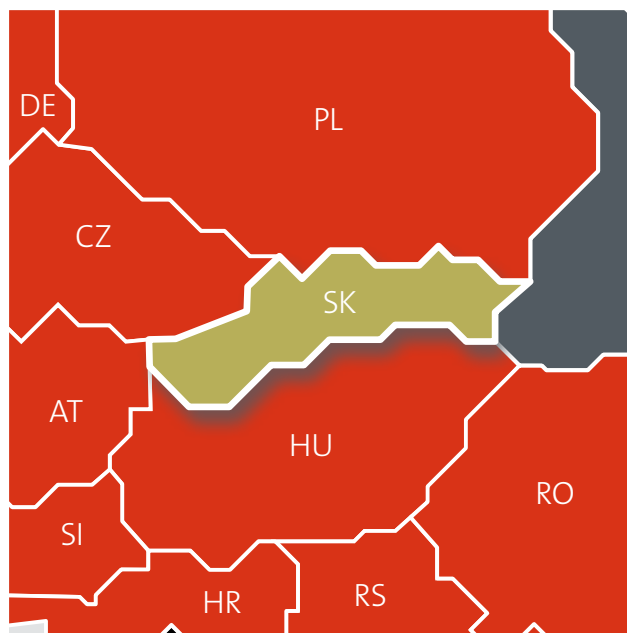
Third parties may, within 36 months from the filing date, request substantive examination of a patent application (Art. 43 PA).

Appeal

An appeal against the Industrial Property Office of the Slovak Republic (hereafter the "Patent Office") decision may be lodged with the Patent Office within 30 days from delivery of the decision (Art. 55 PA). Only a party to the proceedings or a person who may be directly affected is entitled to appeal. Once lodged, an appeal has suspensive effect. The President of the Patent Office decides on appeals on the basis of the proposals of the Appeal Commission's experts.

Extraordinary remedies:

- (a) Renewal of the proceedings: will be ordered by the Patent Office upon request, but only in certain cases (new facts, irregular practices of the administrative authority, untrue evidence). The request must be submitted within three months after the day the party became aware of the reasons for recovery (renewal of the proceedings), but not later than three years after the final decision.
- (b) Review of the final decision outside of the appeal procedure: if the final decision is contrary to the binding legal rules, the Patent Office may amend it (*ex officio* or upon request) or declare it null and void. This new decision is subject to further appeal.
- (c) Proceedings at the request of a prosecutor: if the



decision is unlawful, a request must be submitted within three years from the date of validity of the decision.

Judicial review: the final administrative decision may be contested by an action brought before the Regional Court in Banská Bystrica. The action can be filed for an alleged illegality of the contested decision within two months of its notification (Art. 181 Administrative Procedure Code). A cassation complaint against the ruling of the Regional Court in Banská Bystrica may be lodged with the Supreme Court within one month from delivery of the contested decision (Art. 443 Administrative Procedure Code).

Revocation

The Patent Office's Disputes Proceedings Department is competent for taking decisions at first instance. Revocation proceedings may be initiated at the request of a third party or *ex officio* (Art. 46 PA).

The request can be made during the entire lifetime of a patent (even after the patent has lapsed if the person requesting revocation proves a legal interest).

Partial revocation is available (amendment of patent claims, description and drawings).

The patent owner is entitled to request revocation, which

will be handled by the Patent Office without examining the grounds for revocation (Art. 46(5) PA). Revocation has retroactive effect.

Where a revocation request has been made by a third party, the Patent Office delivers the revocation request to the patent owner and invites him to respond within a set time period (Art. 47 PA).

If, at the time of revocation proceedings for a European patent before the Patent Office, opposition proceedings against the same European patent have started or have been pending before the EPO, the Patent Office will suspend revocation proceedings. After termination of proceedings before the EPO in which the European patent was not revoked, the Patent Office will, at the request of any party, continue its own European patent revocation proceedings. If a request for further proceedings on patent revocation is not submitted within six months from the date of validity of an EPO decision, the Patent Office will suspend patent revocation proceedings (Art. 65(6) PA).

Civil procedure

Infringement

The first instance court (District Court of Banská Bystrica) has exclusive competence to hear and adjudicate infringement cases (Art. 33 PA, Art. 25 of the Civil Disputes Procedure Code).

The person whose rights have been infringed or jeopardised is entitled to bring an action (Art. 32 PA).

Representation by an attorney-at-law before the court (at all instances) is compulsory (Art. 90 Civil Disputes Procedure Code).

Nullity/counterclaim for revocation

If a counterclaim for revocation is filed during infringement proceedings, the court may suspend the infringement proceedings until the Patent Office decides on the revocation request. The court has no competence either for revocation actions or for counterclaims for revocation.

Remedies

Preliminary injunction, permanent injunction, removal of infringement consequences, prevention of further infringement, destruction of infringing products, information on the origin of the product, compensation for damages (actual damage and loss of profits), immaterial injury, unjust enrichment, compensation for the costs of the proceedings (Arts. 32, 32a, 33, 34 PA, Arts. 442a, 458a of the Civil Code, Art. 255 et seq. of the Civil Disputes Procedure Code).

Other actions

Declaration of non-infringement, prior user, ownership or inventorship can be invoked by positive or negative action of determination in accordance with Art. 137(c) of the Civil Disputes Procedure Code.

Appeal

An appeal against a ruling of the first-instance court (the District Court of Banská Bystrica) may be lodged with the Regional Court in Banská Bystrica within 15 days from delivery of the contested decision (Art. 362 of the Civil Disputes Procedure Code). Only an unsuccessful party to the proceedings is entitled to appeal. Once lodged, an appeal has suspensive effect. Against the final decision of the Court of Appeal (Regional Court in Banská Bystrica) may be lodged a review (an extraordinary remedy) with the Supreme Court within two months from delivery of the decision of the Court of Appeal (Art. 427 of the Civil Disputes Procedure Code).

Parallel proceedings

Although there is no available information, the court will likely suspend proceedings pending decision at the EPO, as in the case of national revocation actions.

Arbitration/mediation

No arbitration is admissible unless a bilateral arbitration clause has been concluded between the parties before or during the court proceedings (Act No. 244/2002 Coll. on arbitration proceedings, as amended).

The parties are free to use the services of a professional mediator (Act No. 420/2004 Coll. on mediation, as amended). The Patent Office does not provide such services.

Enforcement

The court ruling, decision or order, regardless of whether it was issued during the proceedings or after the final decision, may be enforced at the request of the beneficiary by the court bailiff (Act No. 233/1995 Coll. on court bailiffs and enforcement, as amended). The court bailiffs are not employees of the courts in Slovakia, but they need a judicial warrant to start enforcement in each individual case.

Relevant national law

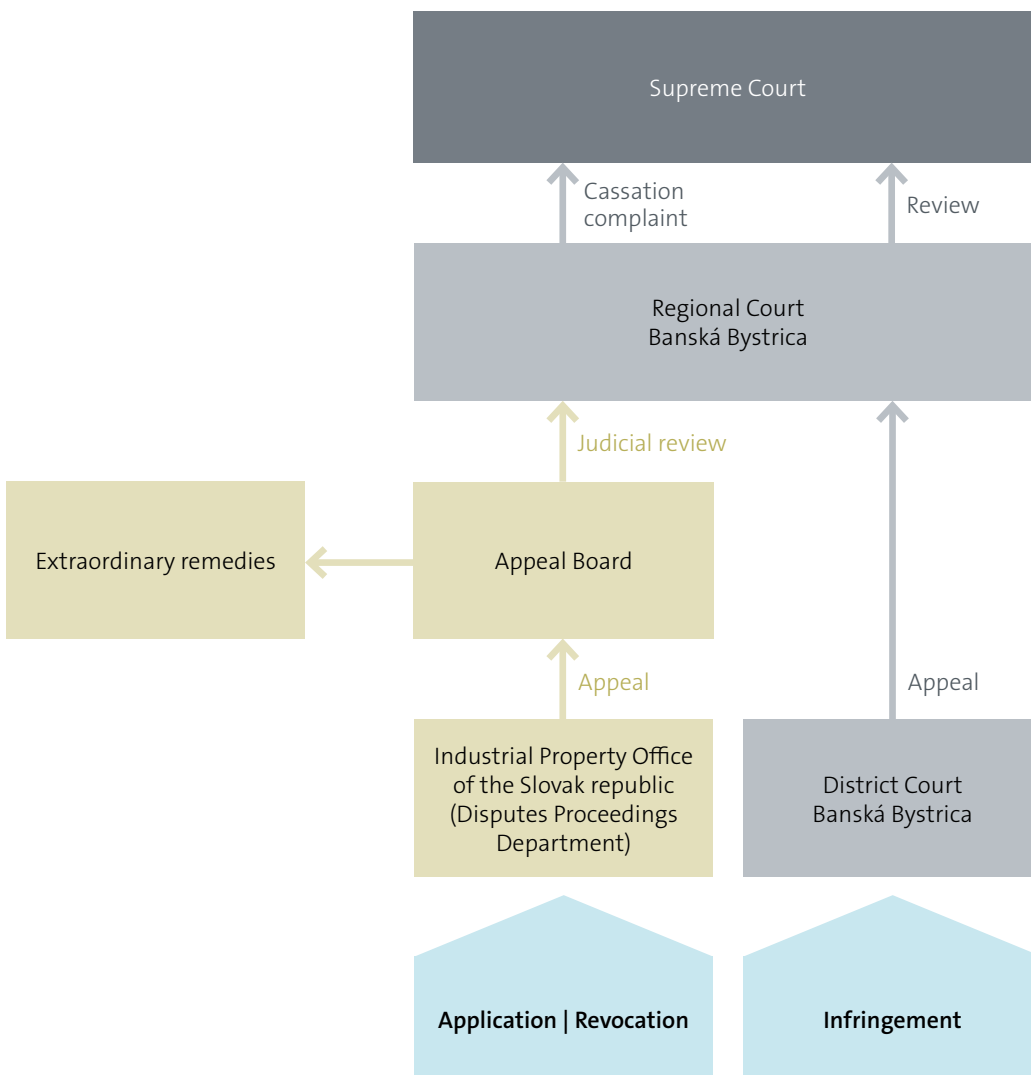
Act No. 435/2001 Coll. on Patents, Supplementary Protection Certificates and amended Acts as Amended [cited as: PA];

Act No. 162/2015 Coll. Administrative Procedure Code entered into force on 1 July 2016.

Compulsory licence

The competent court may grant a non-exclusive licence in cases of non-working and public interest (Art. 27, 28 PA).

Competent authorities or courts



San Marino

Administrative procedure

Opposition

No formal opposition procedure is available. Third parties may only submit observations on the patentability of the invention. Third parties do not become parties to the proceedings before the State Office for Patents and Trademarks of the Republic of San Marino (hereafter the "Patent Office").

Appeal

Appeal from refusal of the application must be filed within 60 days after notification by the Patent Office.

The appeal must be addressed to the Administrative Judge of First Instance. The Judge of Administrative Appeal is competent to deal with appeals against decisions of the Administrative Judge of First Instance.

The San Marino legal system provides that, in order to be final, an administrative judgment must meet the so-called "*doppia conforme*" requirement (two concordant decisions). According to this principle, if the first-instance judgment differs from the appeal judgment, a third-instance judgment must be pronounced by the Judge of Third Instance for Administrative Matters.

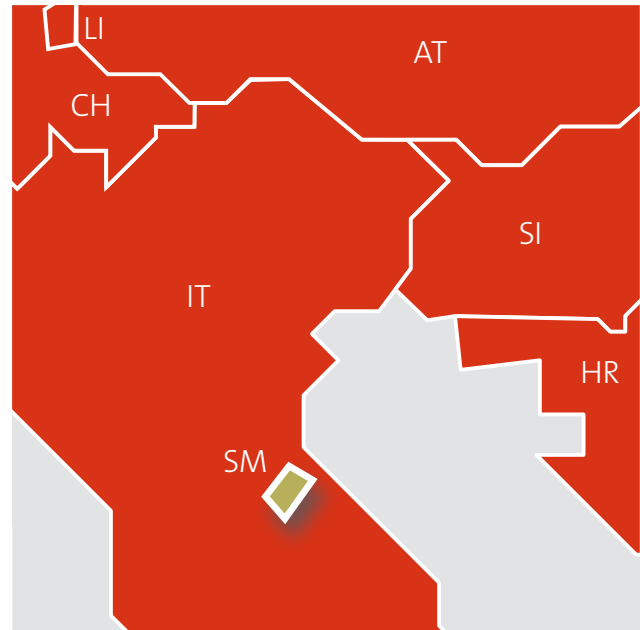
Civil procedure

Infringement

The owner of the patent may request a detailed description by a bailiff of infringing goods with or without seizure. In such cases the requester must institute civil proceedings within 30 days.

Actions will be heard by the *Commissario della Legge* (Law Commissioner).

During the investigative phase an expert appointed by the Law Commissioner may be required to give an expert opinion on the existence of the infringement or the validity of the patent.



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Nullity/counterclaim for revocation

Any interested party may request nullity before the Law Commissioner. A judgment of nullity has retroactive effect. The Law Commissioner's decision may be appealed to the Judge of Civil Appeal.

Patent claim amendment is allowable but is not common.

Remedies

Injunction, seizure of infringing products, publication of the decision, destruction of infringing articles, compensation, damages.

Other actions

Not available.

Appeal

The Law Commissioner's decision may be appealed to the Judge of Civil Appeal.

The San Marino legal system provides that, in order to be final, civil judgments must meet the "*doppia conforme*" requirement. According to this principle, if the first-instance judgment differs from the appeal judgment, a third-instance

judgment must be pronounced by the Judge of Third Instance in Civil Matters.

Parallel proceedings

There is no specific provision or case law covering parallel proceedings.

Arbitration/mediation

Arbitration is not available in patent litigation proceedings.

Enforcement

The bailiff is the authority responsible for enforcing an order.

Compulsory licence

A compulsory licence may be granted by the Patent Office in cases of unexploited patents within a period of four years from the date of filing. Those who wish to obtain a compulsory licence must address a reasoned request to the Patent Office. The owner of the patent may start opposition proceedings against the grant of a compulsory licence. The decision on the opposition may be referred to arbitration.

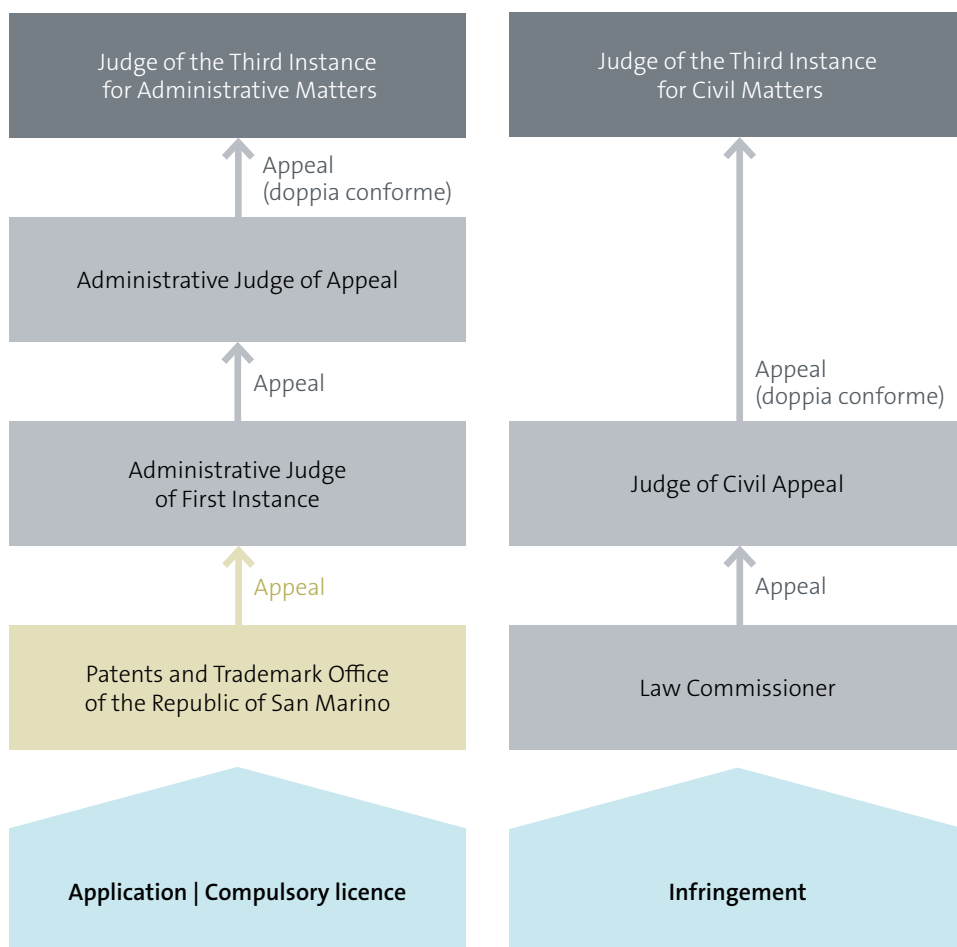
Relevant national law

Law No. 79 of 25 May 2005 – Industrial Property Consolidation Act;

Law No. 114 of 20 July 2005 – Amendments to Law No. 79 of 25 May 2005 – Industrial Property Consolidation Act;

Regulation No. 5 of 2 July 2007 – Regulation for the Practice of the Profession of Industrial Property Attorney.

Competent authorities or courts



Turkey

Administrative procedure

Opposition

On 10 January 2017, the new Turkish Industrial Property Law (Law No. 6769 of December 22, 2016, on Industrial Property, hereinafter Law No.6769) entered into force, replacing Decree-Law No 551 of 1995 and introducing a number of new features, one of which is the post-grant opposition system. The name of the “Turkish Patent Institute” has been changed to “Turkish Patent and Trademark Office” (hereinafter “Patent Office”).

Law No. 6769 introduced a system of both pre-grant observations and post-grant oppositions.

Pre-grant observations

Following publication of the patent application under Art. 97, any person may present observations concerning the patentability of the invention. The person filing them may not be a party to the proceedings before the Patent Office.

Post-grant oppositions

Art. 99 Law No. 6769 on post-grant opposition corresponds to Art. 99 EPC. Post-grant opposition conforms to the procedure provided by the EPC. According to Art. 99 Law No. 6769, opposition to any patent granted by the Patent Office may be filed by third parties. Opposition must be filed within six months of the publication of the mention that the patent has been granted, time period for opposition is shorter than the one in Art. 99 EPC, which is nine months. The proprietor of the patent has the opportunity to amend his patent during the opposition procedure (Art. 99(6) Law No. 6769).

There are three possible outcomes at the end of the opposition proceedings (Art. 99(5) and (6) Law No. 6769):

- a) the opposition is rejected and the patent is maintained as granted,
- b) the patent is maintained in an amended form, in which case a new patent specification is published,
- c) the patent is revoked.

Turkish courts wait for the outcome of opposition proceedings at the Patent Office before making a decision relating to the validity of affected patent claims (Art. 138(2)



Law No. 6769). However, this provision is only applicable for national patent applications, as European patents being validated in Turkey will not be subject to post-grant opposition proceedings.

The procedures of “further processing” and “reestablishment of rights” are now introduced into the new law to offer remedy for patent applicants or patent holders in case of loss of rights.

Further processing (Art. 107(1) Law No. 6769):

If a patent application is to be refused or is refused or deemed to be withdrawn following failure to reply within a time limit, the application may proceed if the applicant makes a request for further processing of the application. If the applicant does not comply with the time limit regarding the processes of patent application, he may request, with a paid fee, the processes to be continued within two months as of the date of notification of outcome of non-compliance with time period. Otherwise, the request shall be refused. If the request is approved, the legal consequences of non-compliance within a specific time period shall be considered as not having occurred.

Re-establishment of rights (Art. 107(2) Law No. 6769)

An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the Patent Office shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the refusal of the patent application or of a request, or the deeming of the application

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to have been withdrawn, or the revocation of the patent according to Art. 99, or the loss of any other right or means of redress. Any request for re-establishment of rights shall be filed within two months of the removal of the cause of non-compliance with the period, but at the latest within one year of expiry of the unobserved time limit. This request shall be made with a fee paid within two months as of time of elimination of the conditions causing non-compliance with the time period, on condition that the time period with which it was failed to comply is not exceeded more than one year. Otherwise, the request shall be refused. In case the request is approved, the legal consequences of non-compliance within a specific time period will be considered as not having occurred.

Restoration of a previous stage of the proceedings (Art. 108 Law No. 6769)

Except from the grounds for nullity specified in Arts. 138 and 144; in case of an incorrect continuation of processes of the application or the certificate, even though the patent or the utility model application or certificate does not meet the conditions; and in case of this situation being detected upon an objection or as a matter of course; the incorrect transaction and the following transactions shall be cancelled and the process shall restart from the phase at which the mistake was made.

Appeal

With respect to decisions taken by the Patent Office in registration procedures, an applicant or third party may appeal to the Re-examination and Evaluation Board. The Board shall consist of the Head of the Review and Evaluation Department and at least two expert members who are not charged with the decision.

Board decisions are final decisions of the Patent Office and cannot be appealed against these decisions again before the Patent Office. However, persons who are parties to the Board's decision may request the correction of material errors in the decision by stating their reasons in writing. If the Board detects material errors without any request, it shall correct the material errors *ex officio*.

An appeal may be filed against the final decisions of the Board within two months after the notification of the decision to the Ankara Specialised IPR Civil Court. The court examines the decisions of the Re-examination and Evaluation Board on points of both law and fact.

Civil procedure

There are 21 specialised IPR courts in Ankara, İstanbul and İzmir (five civil and seven criminal IPR courts in İstanbul, five civil and one criminal in Ankara, one civil and two criminal in İzmir). They are the first-instance courts dealing with all intellectual and industrial property cases. General civil courts of first instance and general criminal courts at first instance are competent to deal with IPR cases where specialised IPR courts do not exist. If there are one or two general civil or criminal courts, the first is competent to deal with IPR cases. If there are three or more general civil or criminal courts, the third is competent to deal with IPR cases. Although Law No. 6769 contains criminal sanctions in case of trademark infringement, it does not provide criminal penalties for patent infringement.

The Regional Courts of Appeal examine the decisions taken by the courts of first instance on points of law and points of fact. Regional Courts of Appeal have civil chambers and criminal chambers. The relevant civil chamber examines appealed decisions in IPR civil cases.

The Supreme Court is the final instance for reviewing decisions and judgments rendered by civil and criminal courts and which are not referred by law to other judicial authorities. The 11th Civil Chamber of the Supreme Court reviews the decisions in IPR civil cases.

Infringement

Actions can be brought to specialised IPR Civil Courts in Ankara, İstanbul and İzmir and to the general civil courts of first instance (numbered first or third) where specialised IPR civil courts do not exist, depending on the domicile of the claimant or on the place where effects of infringement have occurred.

Proceedings may be instituted by the patent owner or an exclusive licensee, unless otherwise provided in the contract; in any case the patent owner must be informed (Arts. 149 and 158 Law No. 6769)

Nullity/counterclaim for revocation

In any infringement proceedings, the court may not take into consideration any defence regarding invalidity unless the defendant brings a counteraction based on invalidity. According to Turkish law, counteraction however means an separate case rather than an ordinary defence.

Patents can be invalidated only by decision of a court (Art. 138 Law No. 6769), competent specialised IPR courts or the general civil courts.

Interested parties, public prosecutors, relevant public institutions and organisations may seek the invalidity of patent. If the patent owner does not have right to demand patent according to the Art. 109, invalidity of the patent may only be requested by right holder of invention or successors of holder of the invention (Art. 138(6) Law No. 6769).

Invalidity proceedings may be instituted against those who are registered in the register as the patent owner for the duration of patent protection or within five years following termination of the right. Notification shall be made to those who are deemed as right holders in the register to ensure that they may participate in the actions (Art. 138(5) Law No. 6769).

The court's decision has retroactive effect. If it decides that a patent is invalid, the decision takes effect retroactively and protection shall be deemed as null and void (Art. 139(1) Law No. 6769).

Partial nullification is allowed (Art. 138(4) Law No. 6769). If causes of invalidity are related to only a part of a patent, the claim or claims relating to only that part shall be cancelled and the partial invalidity of the patent shall be decided. Partial invalidity for a claim shall not be decided. If the claim or claims that are not revoked meet the patentability requirements in accordance with Arts. 82 and 83, the patent shall remain valid for this part. If the independent claim is revoked, each dependent claim that is subject to an independent claim does not separately have patentability conditions in accordance with Arts. 82 and 83, claims that are subject to the independent claim in question shall also be revoked by the court.

Remedies

A patent owner whose patent is infringed may request the following from the court to:

- (a) determine the existence of infringement;
- (b) prevent an imminent infringement;
- (c) stop the infringing actions;
- (d) remedy infringement and compensate material and moral damages;

- (e) seize the products causing infringement or requiring penalty payments, as well as seizing instruments, such as devices and machines exclusively used in their production, without preventing the production of products other than infringing products;
- (f) be granted appropriation on products, devices and machines seized in accordance with subparagraph [(e)];
- (g) take measures to prevent the continuation of infringement, in particular at the expense of the infringer to change the shapes of products and instruments such as devices and machines seized according to subparagraph [(e)], to erase the trade marks on them or to destroy them if it is inevitable for preventing the infringement of industrial property rights;
- (h) if there is any justified reason or interest, announcement of the final judgment at the expense of the defendant in full or in part in daily newspapers or other means or notification to relevant parties;

Defendants found liable for infringement shall be obliged to compensate the damages to the patent owner.

Damage suffered by the patent owner includes actual loss and loss of revenue (Arts. 149 to 151 Law No. 6769).

Other actions

Declarations of non-infringement may be issued by the court (Art. 154 Law No. 6769). Anyone who has an interest may request the right owner to provide an opinion on whether or not commercial or industrial activities being carried out or to be carried out or serious and actual attempts carried out for these purposes in Turkey would cause an infringement of his industrial property right. In the event that no opinion is given within one month after notification of this demand or if the opinion given is not accepted by the interested party, the interested party may institute a legal proceeding against the right owner for a declaration on non-infringement. The submission of an opinion shall not be a prerequisite for legal proceedings to be instituted. Proceedings may not be filed by a person against whom an infringement proceeding has already been instituted.

Appeal

An appeal may be submitted to the Regional Courts of Appeal. These courts will have the authority to examine files coming from the first instance courts in terms of form and substance. Regional Courts of Appeal may either uphold or quash the decision of the first instance courts. In the latter situation, it may either send the case file to the relevant court of first instance for a rehearing or retry the case itself.

The Supreme Court is the final instance for reviewing decisions and judgments rendered by civil and criminal courts and which are not referred by law to other judicial authorities.

Parallel proceedings

There is no provision in the law regarding parallel proceedings between national court and the EPO. Considering the facts of each case, it is at the court's discretion to decide whether proceedings will be stayed or not.

Arbitration/mediation

The amendments to Law no. 7155 "Law on Commencement of the Proceedings Relating to Pecuniary Claims Originating from Subscription Contract" which entered into force on 19 December 2018, introduced a mandatory mediation process before litigation for commercial disputes starting from 1 January 2019. Within the framework of this law, mediation is mandatory for patent-related disputes that deal with the following:

- a) payments and damages compensation;
- b) licence agreements; and
- c) transfer of IP rights.

Arbitration is not mandatory for patent-related disputes. However, disputes regarding employee inventions, amount of compensation, mode of payment and any other dispute that falls under the scope of the Regulation on Employee Inventions, Inventions Realised within Higher Education Institutions and Inventions Arisen from Projects Supported by Public Authorities, must be solved via arbitration.

Enforcement

Following the court's decision, the bailiff is responsible for enforcing orders during the proceedings (e.g. preliminary injunctions, orders for preserving evidence, freezing orders, etc.).

Compulsory licence

The competent courts (specialised IPR civil courts or the general civil courts of first instance) may grant compulsory licences in cases of non-working, dependent patents, public interest, exportation of pharmaceutical products for export to countries with public health problems, compulsory licences for plant breeder and anti-competitive practices (Art. 129 Law No. 6769)

Relevant national law

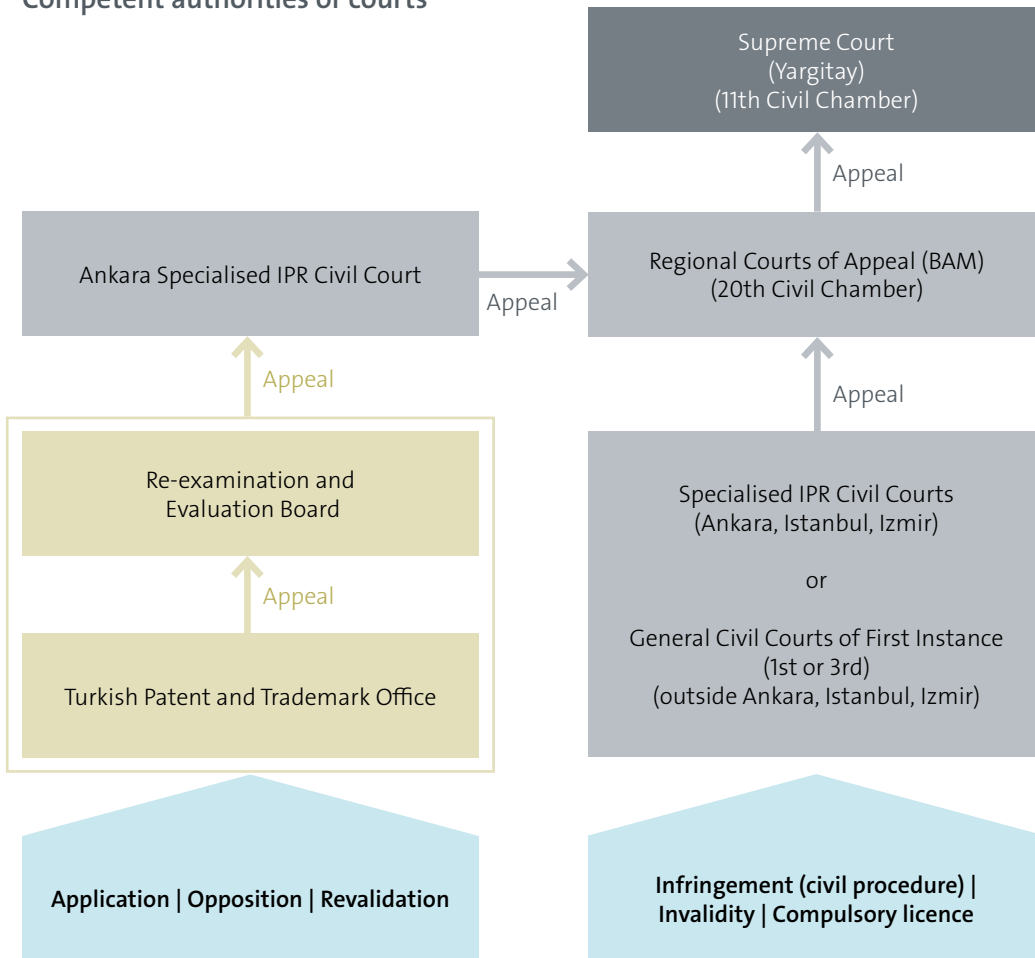
Law No. 6769 of December 22, 2016, on Industrial Property [cited as: Law No. 6769];

Regulation on the Implementation of Industrial Property Law No. 6769 (published in the Official Gazette No. 30047 on April 24, 2017);

Regulation Regarding the Implementation of the Convention on the Grant of European Patents (EPC) in Turkey (published in the Official Gazette No. 24282 on January 09, 2001);

Regulation on Employee Inventions, Inventions Realized within Higher Education Institutions and Inventions Arisen from Projects Supported by Public Authorities (published in the Official Gazette No. 30195 on September 29, 2017).

Competent authorities or courts



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The Unified Patent Court

The Unified Patent Court (UPC) will be a specialised patent court common to the European Union's Member States. It will be established to settle disputes relating to European patents and Unitary Patents (European patents with unitary effect).

The UPC is based on an international agreement – the “Agreement on a Unified Patent Court” of 19 February 2013 (UPC Agreement) – which was signed by 25 Member States of the European Union. It will enter into force once ratified by at least 13 Member States, including the three States in which the highest number of European patents had effect in 2012.

By mid-2019, sixteen Member States had ratified the UPC Agreement (Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Sweden, and the United Kingdom), and it is expected for a few more to ratify in a near future. A pending complaint before the German Constitutional Court has delayed the UPC Agreement's ratification by Germany and hence the system's entry into operation..

Institutional provisions

The UPC will comprise a Court of First Instance, a Court of Appeal and a Registry. The decentralised Court of First Instance will comprise a central division – with its seat in Paris, a section in London and another in Munich – as well as a number of local and regional divisions set up selected Member States. The common Court of Appeal will have its seat in Luxembourg.

A training centre for judges will be located in Budapest. The first training sessions for candidate judges has already taken place. A patent arbitration and mediation centre will be shared between Lisbon and Ljubljana.

Competence *ratione materiae*

The UPC will have exclusive competence to hear (a) infringement actions, (b) actions for declarations of non-infringement, (c) actions for provisional and protective measures and injunctions, (d) revocation actions, (e) actions for damages or compensation derived from the provisional

protection conferred by a published European patent application, (f) actions relating to rights based on prior use of an invention and (g) actions for compensation for licences of right. It will also deal with counterclaims for revocation and other defences (e.g. counterclaims relating to licences, Bolar exemption). Finally, it will hear actions (*ex parte*) against decisions which the EPO takes when carrying out tasks related to Unitary Patent protection.

The UPC will also deal with the infringement and validity of supplementary protection certificates issued for products protected by European patents or Unitary Patents.

The national courts of Member States will remain competent for actions which do not come within the exclusive competence of the UPC, e.g. cases relating to compulsory licensing.

Competence *ratione loci*

As regards the competence of particular divisions of the Court of First Instance, infringement actions and actions for provisional and protective measures and injunctions will in general be brought before either:

- a) the local division hosted by the Member State where the actual or threatened infringement has occurred or may occur, or the regional division in which the Member State participates, or
- b) the local division hosted by the Member State where the defendant is domiciled, or the regional division in which the Member State participates.

The central division of the Court of First Instance will hear:

- a) actions for declarations of non-infringement;
- b) revocation actions;
- c) actions (*ex parte*) against decisions of the EPO;
- d) actions which would have been brought before a local or regional division, should a Member State neither have a local division set up nor participate in a regional division.

The central division may also hear infringement actions in the following cases:

- a) when a defendant is domiciled outside the Contracting Member States,
- b) when a revocation action is already pending at the central division and
- c) when an infringement action is pending before a regional division and the infringement has occurred in the territories of three or more regional divisions, the defendant may obtain that the action be referred to the central division.

Parties may also agree to bring actions before the division of their choice (except *ex parte* actions, which will always be heard by the central division).

Allocation of cases to the central division's seat and sections

The central division's seat in Paris will deal with cases relating to patents in Classification Sections B (performing operations; transporting), D (textiles; paper), E (fixed constructions), G (physics) and H (electricity).

The section in London will deal with patents in Classification Sections A (human necessities) and C (chemistry, including pharmaceuticals), while the section in Munich will deal with patents in Classification Section F (mechanical engineering).

Discretion of local and regional divisions to deal with counterclaims for revocation

When the defendant raises a counterclaim for revocation in the course of infringement proceedings, four options are available to a panel of a local or regional division. It may:

- a) deal with the whole case (infringement action and counterclaim for revocation) once a technically qualified judge has been allocated to it,
- b) refer the counterclaim to the central division and deal with the infringement action,
- c) refer the counterclaim to the central division and stay the infringement action, or
- d) refer the whole case to the central division.

Amendment and revocation

Whenever the validity of a patent is challenged in

proceedings before the UPC – be it in a revocation action or by a counterclaim for revocation – the patent proprietor may lodge an application to amend the patent.

The UPC may revoke a European patent or a Unitary Patent, either in full or in part, only on the grounds listed in Articles 138(1) and 139(2) EPC. If the grounds for revocation affect the patent only in part, the patent will be limited by a corresponding amendment of the claims and revoked in part. Decisions will have retroactive effect.

Parallel proceedings at the UPC and at the EPO

A party may bring a revocation action to the UPC

- a) without having to start opposition proceedings at the EPO beforehand; or
- b) even though he has already started opposition proceedings at the EPO.

Where parallel proceedings are pending, the UPC will have discretionary power to either stay its proceedings or proceed with the case. The UPC may in particular stay proceedings when a rapid decision may be expected from the EPO. It may also request that opposition proceedings before the EPO be accelerated in accordance with EPO procedures. In any event, where an action has been brought before the UPC, a party will have to inform the UPC of any opposition, limitation or revocation proceedings pending at the EPO.

Role of the CJEU

The UPC will apply EU law in its entirety and respect its primacy. As any national court, whenever a question of interpretation of EU law arises, the UPC will send a request for a preliminary ruling to the Court of Justice of the European Union (CJEU). EU law which could be of particular relevance in patent litigation includes (a) Directive 98/44/EC on the legal protection of biotechnological inventions, (b) Directive 2004/48/EC on the enforcement of IP rights, (c) Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) and (d) Regulations 1257/2012 and 1260/2012 on Unitary Patent protection.

Composition of panels

At first instance, a panel of a local and regional division will in general be composed of three legally qualified judges. A fourth technically qualified judge will often be allocated

to the panel (on request by a party or when a counterclaim for revocation is to be dealt with).

All panels of the UPC will have a multinational composition. At first instance,

- a) on the panel of a local division hearing more than 50 cases per year, two judges have to come from the State hosting the division and one from another State;
- b) on the panel of a local division hearing fewer than 50 cases per year, one judge has to come from the State hosting the division and two from other States;
- c) on the panel of a regional division, two judges have to come from States hosting the division and one from another State.

A central division panel will in general comprise two legally qualified judges (who are nationals of different Member States) and one technically qualified judge. Only when it hears actions (*ex parte*) against decisions of the EPO will the panel sit in a composition of three legally qualified judges of different nationalities.

Parties may agree to have their case heard by a single legally qualified judge.

A Court of Appeal panel will sit in a multinational composition of five judges (three legally and two technically qualified). Only in *ex parte* cases will the panel sit in a composition of three legally qualified judges.

Parties to proceedings and representation

Actions may be brought by the patent proprietor and by the holder of an exclusive licence. In addition, any other natural or legal person, or anybody concerned by a patent and entitled to bring actions in accordance with its national law, may bring actions before the UPC.

Parties must be represented either by lawyers (attorneys-at-law) or by European Patent Attorneys entitled to act as professional representatives before the EPO, with appropriate qualifications in patent litigation. Representatives may be assisted by patent attorneys who may address the UPC.

Powers of the UPC and award of damages

Inspired by Directive 2004/48 on the enforcement of IPR, the

UPC Agreement provides the UPC with wide powers to issue orders and impose measures, procedures and remedies. The UPC may for example:

- a) order provisional measures to preserve evidence;
- b) order the inspection of premises;
- c) order a party to produce evidence (even *inaudita altera parte*);
- d) appoint court experts;
- e) order a party not to remove from its jurisdiction any assets, or not to deal with any assets (freezing orders);
- f) grant provisional and protective measures against an alleged infringer, including seizure and delivery up of products suspected of infringing a patent.

Where the UPC finds that a patent has been infringed, it may:

- a) grant permanent injunctions aimed at prohibiting continuation of the infringement;
- b) order corrective measures such as recalling the infringing products from the channels of commerce or order their destruction;
- c) order the infringer to communicate information such as origin and distribution channels of the infringing products, quantities produced and identity of any third person involved in the production or distribution of the infringing products.

The UPC may also award the injured party damages appropriate to the harm actually suffered as a result of the infringement. However, damages must not be punitive.

Appeal and rehearing

An appeal against a decision of the Court of First Instance may be brought before the UPC's Court of Appeal by any party which has been unsuccessful, in whole or in part, in its submissions. The appeal may be based on points of law and matters of fact.

Very exceptionally – in the event of a fundamental procedural defect or on discovery of a decisive and unknown fact (based on an act which has subsequently been held to constitute a criminal offence) – the Court of Appeal may set

aside a final decision of the UPC and re-open the proceedings for a new trial and decision.

Opt-out scheme

The UPC Agreement provides applicants and patent proprietors with a possibility to opt out from the exclusive jurisdiction of the UPC. The opt-out scheme is available for:

- a) any European patent granted before the end of a seven-year transitional period (which will start on the date of entry into force of the UPC Agreement) and
- b) any European patent application filed before the end of the seven-year transitional period.

The opt-out scheme only concerns European patent applications and European patents. For Unitary Patents there is no possibility to opt out from the exclusive jurisdiction of the UPC.

An opt-out must be notified to the UPC's Registry by the applicant or the patent proprietor no later than one month before the end of the seven-year transitional period. The Registrar will be responsible for keeping and publishing a list of opt-out notifications, so that third parties can ascertain in advance that a particular application or patent will not fall under the jurisdiction of the UPC.

Where an opt-out has not been notified for a European patent application or European patent and proceedings in respect of that patent are brought before the UPC, an opt-out for that patent can no longer be notified. This applies whether proceedings have been brought by the applicant, the patent proprietor or a third party.

Where a patent proprietor has notified an opt-out for a particular European patent, litigation relating to that patent must be brought before the national courts or other competent authorities of the Member States.

Applicants and patent proprietors may withdraw their opt-out at any moment.

Choice of forum during transitional period

As regards European patents, a seven-year transitional period is provided in which plaintiffs – whether patent proprietors, licence holders or third parties – may freely decide to initiate infringement actions and revocation

actions either before the UPC or before the national courts or other competent authorities of one or more Member States.

Once a plaintiff has chosen a particular forum (having jurisdiction under either national law or the UPC Agreement), that forum will have exclusive jurisdiction to deal with the action. Where proceedings are pending before a national court at the end of the seven-year transitional period, the action will be dealt with by the national court concerned.

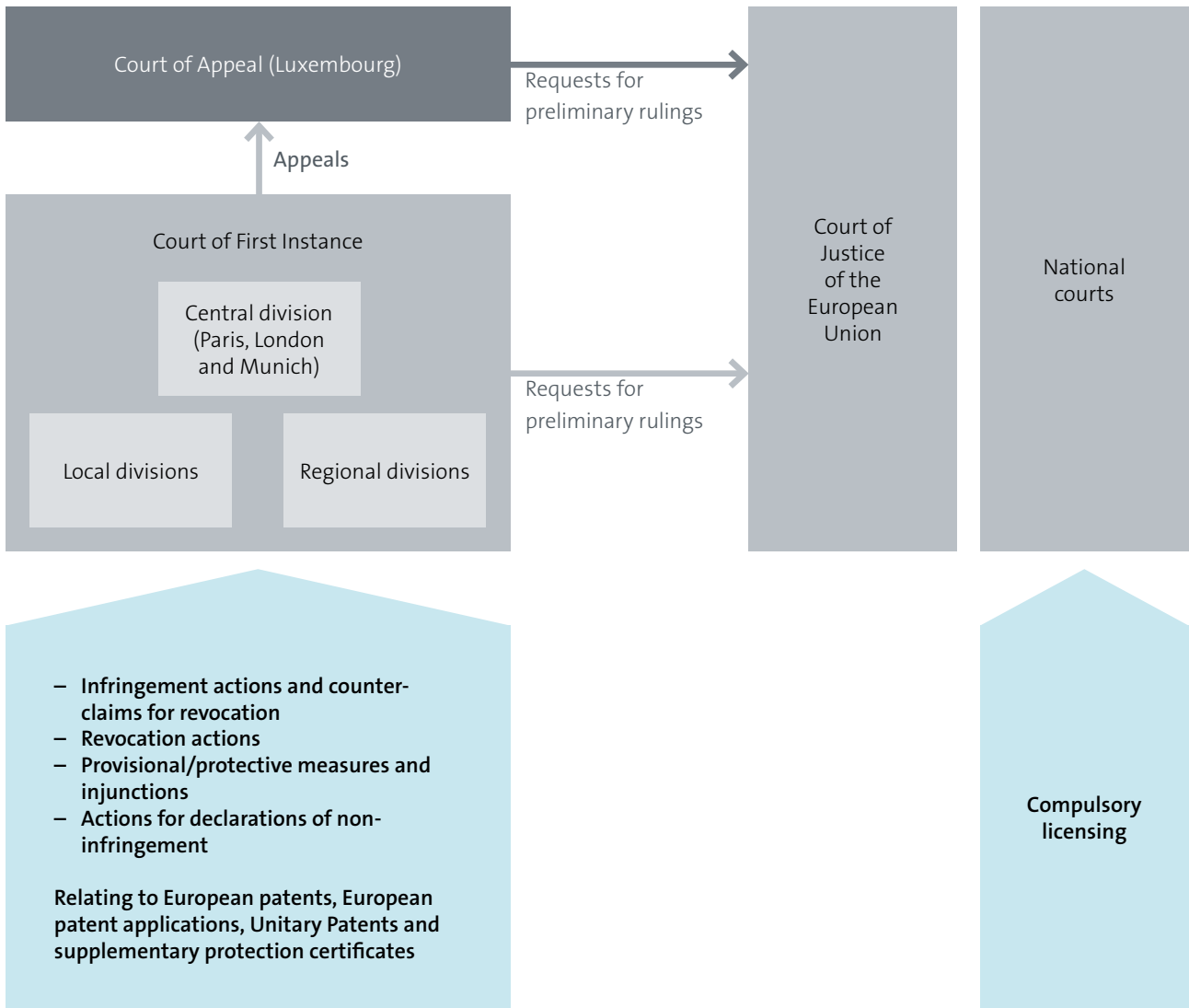
Period of limitation

Actions relating to all forms of financial compensation may not be brought more than five years after the date on which the applicant became aware, or had reasonable grounds to become aware, of the last fact justifying the action.

Preparations for the start of UPC operations

Shortly after signing the UPC Agreement on 19 February 2013, the Signatory States established a Preparatory Committee tasked with preparations for the start of UPC operations. The many tasks to be carried out have been distributed among five Working Groups which are in charge of matters relating to (a) the UPC's IT systems, including an electronic case management system, (b) the UPC's facilities, including offices, court rooms and stationery, (c) human resources and the training of judges and other staff, (d) finances and (e) the legal framework, including the UPC's Rules of Procedure and fee scheme, Rules governing the UPC's Registry, Rules on Mediation and Arbitration, Rules on a European patent litigation certificate, and a Code of conduct for representatives.

In 2017 the work of the Preparatory Committee was formally concluded. The technical implementation of the decisions of the Preparatory Committee is now being carried out by an Interim Team set up by the Chair of the Preparatory Committee. This includes *inter alia* the setting up of the case management system of the Court.



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