

Bird & Bird

# Sweden

Patent Litigation Q&A

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# Sweden – Patent Litigation

## Where can patent infringement actions be started? Is there a choice of venue?

Patent infringement actions must be started at the Patent and Market Court (PMC) in Stockholm. There is no choice of venue.

## Are the judges' specialists? Do they have technical backgrounds?

Yes, there are specialist judges at the Patent and Market Court. The panel typically comprises two judges and two technical members (Ch. 4, § 1 of Act (2016:188) on the Patent and Market Court). If needed, the panel can include an additional judge or an additional technical member. If no technical expertise is required, the panel may comprise only of judges.

## How long does it take from starting proceedings to trial?

There is usually a preparatory hearing within 3-5 months of the summons. The trial may take place within 18 months of the summons, but it sometimes takes substantially longer.

## Can a party be compelled to disclose documents before or during the proceedings?

Yes, both before and during the proceedings. If the patent holder shows it can reasonably be expected there is an infringement, the court can issue a decision ("infringement investigation\*") to seize documentation from the infringer (Swedish Patent Act Ch. 9, Section 59a-h). It is also possible for a party to have the Court order information, under the Code of Judicial Procedure Ch. 38, section 4.

## How are arguments and evidence presented at the trial?

A large part of the presentation of arguments and evidence will be in writing. The Court is normally provided with a set of physical files containing evidence, prepared by both parties' counsel. All arguments and evidence will however be presented at the oral hearing too.

## How long does the trial generally last and how long is it before a judgment is made available? Are judgments publicly available?

The trial normally takes 3-5 days, and the case can roughly be tried within 18 months of proceedings starting but it can take substantially longer.

The judgment is available immediately upon issue, but it must be ordered from the Court.

Certain parts of the case file may be confidential, but the judgments are publicly available.

## Can a defence of patent invalidity be raised? Are infringement and validity issues heard together?

A defence of patent invalidity may be raised and infringement and validity issues are typically heard together.

## Are infringement proceedings stayed pending resolution of validity in the national patent office (or, if relevant, the EPO) or another court?

Infringement proceedings are not stayed as a general rule in this circumstance. A registered patent is considered valid until invalidated. The Court may decide to try the validity issue first, if that matter has been initiated in connection with the infringement matter, i.e. before the same Court. In that case, the Court will take a preliminary decision on the infringement matter and rule on invalidity.

A judgment to invalidate a patent will therefor contain a preliminary opinion on infringement, if these two issues are heard together.

Are preliminary injunctions available? If they are, can they be obtained *ex parte*? Is a bond necessary? Can a potential defendant file protective letters?

Preliminary injunctions are available and can be obtained *ex parte* in certain circumstances. A bond is necessary for a preliminary injunction application.

Defendants are not able to file protective letters in this context.

Are final injunctions available as of right? Is a bond necessary?

Final injunctions are available as a right and can be ordered and enforced without a bond

What other remedies are usually ordered if a patentee is successful?

Available remedies include damages, the destruction of infringing goods, recall from commercial channels and the publication of notices.

Would the tribunal consider granting cross-border relief?

The tribunal will not consider granting cross-border relief. The right to a patent registered in Sweden covers amongst other things the manufacture, use, offer for sale, and import into Sweden. The territorial scope covered is Sweden.

Is there a right of appeal from a first instance judgment? How long between judgment at first instance and hearing the appeal?

There is a right to appeal a judgment on first instance, this is typically granted by the Patent and Market Court of Appeal.

The appeal must be filed within three weeks of the judgment at first instance. The appeal hearing will normally take place within 3-4 months of filing the appeal.

Is an appeal by way of a review or a rehearing? Can new evidence be adduced on appeal?

An appeal is heard by way of a review, with new evidence only permitted to be adduced in exceptional circumstances.

What is the cost of a typical infringement action to first instance judgment? If the issues of invalidity and infringement are bifurcated, what is the cost of the invalidity action? Can the winner's costs be recovered from the losing party? How much is the cost of an appeal?

A typical infringement action tends to cost between €150,000-300,000. This figure remains largely unchanged when the issues of invalidity and infringement are bifurcated.

The winner's costs can be recoverable from the losing party after an appropriate reduction has been made by the Court.

The costs of an appeal can vary greatly depending on the facts of the appeal. There is no set fee for appeals.

*Note: The information in this document relates to litigation through the national jurisdiction and not the UPC.*

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