

Bird & Bird

Finland

Patent Litigation Q&A

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Finland – Patent Litigation

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

Patent infringement actions should be brought before the Market Court which has exclusive jurisdiction in such cases, except for certain situations that fall under the jurisdiction of the Unified Patent Court.

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

Generally, in patent infringement proceedings before the Market Court, the court is composed of three judges with legal background and one Market Court Engineer who has a postgraduate degree in technical sciences and expertise in patent matters.

If the matter does not require technical expertise, the court also has quorum consisting of three legally trained judges. Market Court judges are subject to additional qualification requirements, meaning that they need to have knowledge of the matters falling within the Market Court's jurisdiction. Also, a maximum of two expert members may be involved if the nature of the case so requires.

Some exceptions to the composition of the court apply based on the nature and complexity of the case.

How long does it take from starting proceedings to trial?

The Market Court is bound by obligation to process cases within a reasonable time and without undue delay. Apart from some exceptional situations, the cases are dealt in the order they are brought to the Market Court.

In 2022, the average length of proceedings in the Market Court in IPR matters was around 8 months. However, it is not unusual for a complex patent matter to last over a year.

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

Yes. The court may compel any party, including persons not directly involved in the trial, to produce such documents that may have evidentiary relevance. The party making a document production request shall describe and specify the documents to be produced in a detailed manner, and overly broad or unspecified requests (so-called fishing expeditions) are likely to be rejected. Generally, trade secrets do not need to be disclosed unless important reasons so require.

How are arguments and evidence presented at the trial?

All arguments and evidence are presented orally during the trial phase. This means that the parties should give their opening and closing remarks orally and present the main points of their written evidence orally as well. Necessary technical or similar details may be quoted orally from the written materials, but otherwise the parties should refrain from reading lengthy quotations from written materials.

Usually, a trial at the Market Court consists of each party's opening remarks, presentation and commentary of written evidence, hearing of witnesses and possible party-appointed experts, and finally of the parties' closing arguments. After the closing arguments, each party is expected to comment upon the other party's claim for legal costs at the trial.

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

This depends heavily on the number of witnesses and experts to be heard, as well as on the amount of written evidence. If there are only a few persons to be heard at the trial and a limited amount of written evidence, the trial may only last a day. In more complex cases, it may last a few days, but trials lasting more than a few days are exceptional.

In principle, judgments of the Market Court should be issued within 30 days from the end of the main hearing. In practice, however, it usually takes a few months before the judgments are made.

The Market Court publishes summaries of judgments and decisions at their website, paying attention to privacy of the parties by e.g. redacting their names. Furthermore, anyone can access the judgments in their entirety by contacting the court. However, certain parts of the judgment may be deemed confidential, in which case they won't be made available to the public.

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

A defence of patent invalidity may be raised and would typically be heard at the same time as the original claim.

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

Typically, the infringement proceedings are not stayed pending the outcome of any invalidity proceedings (national or EPO). However, the Market Court may, for a special reason, stay the proceedings of an infringement claim until the counterclaim on validity or EPO proceedings have been finally decided. Such exceptional/special situation might be at hand if, for example, the invalidity claim is likely to be successful or if the infringement suit would require exceptional amount of testimonial evidence.

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

Yes, preliminary injunctions (PI) are available at the Market Court.

The Market Court may grant a PI upon the claimant's application. Such an application shall be processed urgently by the Market Court. Normally, the opposing party must be provided with an opportunity to be heard, but the Market Court may also order the PI *ex parte*, if the purpose of the PI would be compromised by allowing the opposing party a chance to be heard.

If the Market Court does grant the PI, the applicant must within one month file a main action on infringement (unless it has been filed already with the PI application), and also deposit a bond (normally a bank guarantee) as a security against the possible damages caused by the PI which may later be found groundless.

Protective letters are not officially recognised in the Finnish legislation (apart from the UPC protective letters).

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

Final injunction is one of the remedies available for the patentee. The Market Court may grant a final injunction and in practice, this is the main remedy in case the Market Court finds that a patent has been infringed. In such case, no bond is needed.

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

Other remedies include (i) reasonable compensation for the unauthorised use of the patented invention (hypothetical license fees), (ii) compensation for damages proven to be suffered by the patentee (such as lost sales), (iii) compensation for reasonable legal fees and costs (Finland follows the loser pay principle when it comes to compensation of legal costs). In addition, the patentee may claim (iv) destruction, alteration or seizure of the infringing goods, but these are seldom claimed.

Would the tribunal consider granting cross-border relief?

We are not aware of any cases where cross-border relief would've been granted by the Market Court.

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

Yes, but only to the Supreme Court and provided that the Supreme Court grants a leave to appeal. As leaves to appeal are granted in less than 10 % of all applications, it means that the judgment of the Market Court will most likely be final.

The average total length of the proceedings in the Supreme Court is 16-18 months, of which the processing of application for a leave to appeal takes approximately 4-6 months. If the Supreme Court rejects the leave to appeal, the judgement of the Market Court becomes automatically final.

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

The appeal is mainly by way of a review. The facts of the case and evidence presented are considered to the extent determined in the leave to appeal. The Supreme Court may grant the leave only partially. In general, new evidence cannot be produced during the appeal stage.

When deemed necessary, the Supreme Court may hold oral hearing where the parties, witnesses and experts are heard and other evidence is accepted. Otherwise, the case is decided based on written material.

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?

Costs are highly dependent on the nature and complexity of the case.

Typically, a simple infringement action (excluding preliminary injunction proceedings) would cost around €30,000-50,000 and the same applies to stand-alone invalidity actions. Complex matters in turn would typically cost at least €100,000.

Winner's costs are, as the main rule, recoverable from the losing party.

The appealing process would typically cost approximately the same amount or a bit less than the proceedings in the first instance.

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

Authors



Henri Kaikkonen

Partner

+358962266214

Henri.Kaikkonen@twobirds.com

twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai
• Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London
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