

Bird & Bird

Hungary

Patent Litigation Q&A

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Hungary – Patent Litigation

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

On first instance, the Metropolitan Court of Budapest has exclusive jurisdiction for patent infringement actions. There is no choice of venue.

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

In the main infringement proceedings, the Metropolitan Court of Budapest sits in a panel consisting of three professional judges, two of whom have a technical university degree or equivalent qualification.

How long does it take from starting proceedings to trial?

The duration of patent infringement proceedings is typically 2-3 years at the first instance. The time will vary depending on the complexity of the case and the strategy of the parties.

The defendant in a patent infringement action may file a counterclaim for revocation before the court hearing the infringement case. In this case, the court shall hear the patent infringement case as a matter of priority.

If the defendant in the patent infringement action certifies that it has brought an action for revocation for the same patent before the Hungarian Intellectual Property Office (“HIPO”) prior to commencement of the main infringement proceedings, the proceedings for patent infringement *shall* be stayed until a final and binding decision has been issued in the separate revocation proceedings. However, if a bifurcated revocation action has been filed at the HIPO after the commencement of the main infringement proceedings, the court has the discretion to stay the latter proceedings until a final decision on the validity of the patent has been rendered in the bifurcated revocation proceedings.

If an infringement action is brought against a European patent validated in Hungary and an opposition against the European patent is pending before the EPO, the main infringement proceedings shall be stayed only *in especially justified cases*.

If the main infringement proceedings are stayed then this might delay the final judgment by an additional 2-3 years.

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

Where, in the course of patent infringement proceedings, one of the parties has already produced reasonably available evidence, the court *may*, at the request of the party producing the evidence, require the other party to present the documents and other exhibits in his possession.

The Civil Procedure Code contains provisions on *evidentiary predicament*. The three alternative conditions for relying on this are as follows: [The plaintiff renders it probable that] (i) the defendant controls all data which is considered indispensable for its motion for the presentment of evidence and proves that it has taken appropriate measures to obtain such data, (ii) evidencing of factual claims is beyond the plaintiff's means, while the opposing party can be expected to refute the facts alleged, or (iii) the reasons for the plaintiff's failure to produce evidence are attributable to the defendant. In each case, the defendant can put forward contrary arguments in which case the evidentiary predicament would not be successful. The practical implication of an evidentiary predicament situation is that the court may recognise factual claims asserted by the plaintiff as true if it has no doubt as to their authenticity.

Preliminary taking of evidence *shall* also be admissible before instituting proceedings for patent infringement if the patentee has demonstrated the fact or danger of patent infringement probable to a reasonable extent.

How are arguments and evidence presented at the trial?

In the main infringement proceedings, arguments and evidence must be presented in writing. Usually, both parties have the opportunity to submit two pieces of written submissions (complaint, defence, rejoinder,

adjudication). After the exchange of written submissions, the court holds a preparatory oral hearing in which the scope of the proceedings is discussed. Once the scope has been defined, the court may close the preparatory phase and proceed to the phase on the merits at the same hearing. The second phase is intended for the evaluation of evidence and handing down a decision. A hearing usually lasts 2-4 hours. If there is a need for further hearings, then the next hearing is usually scheduled within 3-4 months. It is also possible to request the court to obtain expert opinion from a judiciary expert or to admit submission of an opinion from a private expert. If the expert opinion is unclear or contradictory, then the court may summon the expert and ask questions. The parties can also suggest questions to be asked, but there is no cross examination.

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

The oral hearing typically lasts a few hours. If the main phase is closed, then the decision is announced at the (final) hearing. The written judgment shall be issued in writing within 30 days of the announcement of the decision and is delivered to the parties within 3 days. The court has the discretion to postpone the announcement of the judgment for 30 days, but this is rarely used in patent infringement proceedings.

As a general rule, court hearings are open to the public, so judgments are also announced publicly. Written judgments are published after anonymisation.

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

For decades, Hungary had a rigid bifurcated system, where validity issues could only be discussed in separate revocation proceedings, the first instance of which was the HIPO. In main infringement proceedings, both the Metropolitan Court at first instance and the Metropolitan Appeal Court at second instance, refused to consider invalidity arguments. The peculiarity of the Hungarian hard bifurcation system was, and to a certain extent still is, that the courts and judges reviewing the HIPO's decision on validity are the same who deal with infringement proceedings based on the same patent.

As of 2022, a defendant may elect to submit a counterclaim for invalidity in the main infringement proceedings. In this case, the proceedings will be expedited, and the court will appoint an expert to provide an assessment on validity. While the Patent Act is silent on this, the bylaws of the HIPO provide that the HIPO is entitled to provide such an assessment.

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

Under the old regime, main infringement proceedings were always stayed if a revocation action was brought at the HIPO. Under the new semi-bifurcated system, which is applicable since 2022, this has become a choice of the defendant. If a preliminary injunction is granted, the defendant has the option of submitting a counterclaim for invalidity in the main infringement proceedings. If the defendant could avoid a preliminary injunction, then it makes sense to file a separate revocation action at the HIPO, as in this case the court has a discretion to stay the main infringement proceedings. If a defendant has commenced such a revocation action prior to the commencement of a main action, then the main action must be suspended until a final and binding decision is taken in the revocation proceedings.

If the action is brought for infringement of a European patent validated in Hungary and an opposition against the European patent is pending before the EPO, the main infringement proceedings *may* be suspended at the discretion of the court in especially justified cases.

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 (“**PI**”) in patent infringement cases are available even prior to commencement of main infringement proceedings.

Preliminary injunctions can be ordered *ex parte*, but only in cases of extreme necessity (for example, urgency). To date, the Metropolitan Court has been reluctant to grant *ex parte* PIs in patent matters. The request for a PI is usually served on the defendant, who has 8 days to respond.

The Metropolitan Court rarely holds a hearing in PI proceedings. The PI decision is usually served on the parties within 2-3 weeks from the filing of the request for a PI. The first instance decision to grant a PI is enforceable regardless of an appeal. The appellate court's review procedure is similar, there are usually no hearings, and the written decision is made within 3-6 weeks.

The grant of the PI is usually subject to the provision of a security. The amount of the security is set on the basis of information provided by the defendant on the potential disadvantages caused by a PI.

Protective letters do not exist under Hungarian law.

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

Final injunctions are available once the judgment has become final, i.e., if no appeal has been filed against the first instance judgment, or after the second instance judgment has been rendered. A bond is not necessary.

After the enforceable decision, there is a possibility to submit an extraordinary appeal to the Curia (former Supreme Court), but the filing of such a request alone does not affect the enforceability of the decision.

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

The following remedies may be requested: delivery up or destruction of infringing goods, recall from commercial channels, publication of the judgment, information on the identity of persons involved in infringement, recovery of unjust enrichment. Compensation of damages (in addition to unjust enrichment) can also be requested but this is subject to the general provisions of the Civil Code. The losing party also has to pay the legal costs to the winning party, but courts have a discretion to reduce the legal fees.

Would the tribunal consider granting cross-border relief?

We are not aware of any decision by the Hungarian courts granting cross-border relief in patent infringement cases.

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

A first instance judgment may be appealed to the Court of Appeal of Budapest. An appeal hearing will usually be scheduled within 6-12 months of lodging the appeal. The appeal deadline runs from the date of service of the first instance judgment. The decision on the appeal can be expected within 12 to 24 months.

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

An appeal is heard by a review, i.e., the appellate court does not re-conduct the evidentiary proceedings, but rather verifies whether the court of first instance correctly determined the facts of the case and applied the legal provisions to those facts. The appellate court might confirm the first instance judgment, make a new judgment, or set aside the first instance judgment and instruct the lower court to reconduct the first instance proceedings. As a general rule, no new evidence can be adduced on appeal.

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?

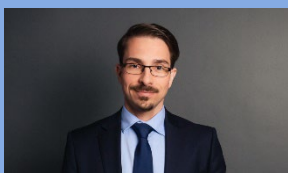
Costs are highly dependent on the complexity of the case.

At first instance, a complex infringement action (excluding preliminary injunction proceedings) could cost around €70,000-140,000. The cost of a separate invalidity action may be estimated to be in a similar range, again depending on the complexity of the case and the activity of the parties to the proceedings.

If there is no claim for unjust enrichment and/or compensation of damages, the court fee for a main infringement action is approximately €100. If there are monetary claims, then the fee is 6% of the claimed amount but there is a cap at approximately €4,000. In appeal proceedings, the fixed amount of the court fee is approximately €130 or if there are monetary claims 8% of the claimed amount with a cap at approximately €6,600.

The prevailing party can recover the costs from the losing party. The courts may reduce the amount of legal fees awarded to the prevailing party.

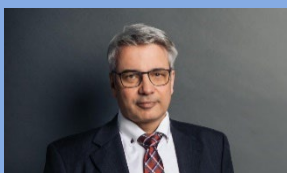
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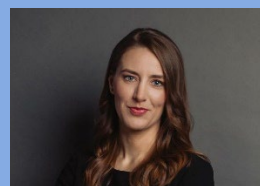
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