

Bird & Bird

Singapore

Patent Litigation Q&A

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Singapore – Patent Litigation

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

Patent infringement actions can only be started in the General Division of the High Court of Singapore. There is no choice of venue.

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

Intellectual Property cases in the General Division of the High Court will generally be heard by judges with a specialisation in IP disputes.

The judges generally do not have technical backgrounds.

How long does it take from starting proceedings to trial?

On average it takes around 2-3 years for a case to reach trial.

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

A party can be compelled to disclose documents before or during the proceedings.

Before proceedings, the court may order pre-action discovery against a party on the basis that the documents are necessary to allow the would-be claimant to identify the proper party to sue or to ascertain if he has a cause of action.

During proceedings, parties to the action are generally under an obligation to disclose all documents which are relevant and necessary for determination of the issues at trial.

How are arguments and evidence presented at the trial?

Factual witnesses are required to submit affidavits containing their evidence, while any expert witnesses are required to submit expert reports, prior to trial. Both factual and expert witnesses may also be required to appear at the trial to give evidence under cross examination.

Factual witnesses are typically examined in turn. If there is more than one expert witness for any issue, it is becoming more common all such expert witnesses to be examined together in a caucus.

Trial is typically mainly for the purpose of evidence taking and while an opportunity may be given to make oral submissions, this is usually kept to a minimum. At the end of trial, the parties will be given time to prepare their closing submissions taking into account the evidence led at trial. There may also be an opportunity to make reply submissions. The court will then make its decision.

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

The length of the trial will depend on the number of witnesses, and they may span multiple days or even weeks.

On average, a written judgment is typically made available within 6 months to a year, depending on the complexity of the matter and the judge's workload.

Written judgments are publicly available unless subject to a sealing order.

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

A defence of patent invalidity can be raised.

Patent infringement and validity issues are typically heard together in the same trial, and the judgment will deal with both issues.

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

Infringement proceedings will not be automatically stayed, but parties can apply to the Court for a stay of proceedings.

If the defendant had applied to the patent office for the patent to be revoked before the infringement action was started and then raises invalidity in defence and/or as a counterclaim, they can apply for the revocation proceedings before the IP Registry to be transferred to the Singapore High Court so that the issues are heard and determined in the same forum.

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 are granted if (i) there is a serious issue to be tried; that is the claim is not frivolous or vexatious, (ii) if the claimant subsequently succeeds in establishing a right to a permanent injunction, it would not be adequately compensated by an award of damages for the loss sustained in the meantime if a preliminary injunction is not awarded, and (iii) the “balance of convenience” favours an injunction. It can be obtained *ex parte* where there are sufficient reasons for this, such as in cases of urgency.

A bond is not usually required, although the claimant will be required to provide an undertaking as to any damages suffered by the defendant in the event that the preliminary injunction turns out to be wrongly granted.

There is no avenue for a defendant to file protective letters.

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

Final injunctions are not available as of right but are typically granted in patent infringement actions if there is any indication that infringement is likely to continue in the absence of an injunction.

A bond is not necessary.

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

Other available remedies include damages or an account of profits, at the patentee’s election, delivery up or destruction of the infringing goods, and/or a declaration that the patent is valid and has been infringed by the defendant.

Would the tribunal consider granting cross-border relief?

The courts can, but generally do not grant cross-border relief.

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

An appeal from a first instance judgment may be filed to the Court of Appeal.

Typically, the appeal is heard within 6 months to 1 year of the first instance decision. The Court of Appeal’s decision is final.

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

An appeal is by way of rehearing.

New evidence is generally not allowed to be adduced on appeal unless there are sufficient reasons why the evidence could not reasonably have been adduced in the earlier proceedings.

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 (both at first instance and on appeal) will be heavily dependent on the number of patents in-suit, whether there is a counterclaim for invalidation of the patents in-suit, the complexity of the matter and how contentious proceedings are.

As a rough ballpark, the estimated cost of a typical patent infringement up to trial would be upwards of €175,000 excluding costs of expert witnesses.

As of 1 April 2022, a claimant can elect for a simplified process to apply to its claim. The simplified process is expected to bring about cost savings for both parties to the suit owing to more active case management by the court and a cap on the length of trial (2 days). Further, the claimant must abandon any claim for monetary relief in excess of S\$500,000 (approximately € 345,000), and party-to-party costs are capped at S\$50,000 (approximately € 34,500) and S\$25,000 (approximately € 17,000) in relation to trial on liability and assessment as to the amount of monetary relief, respectively. Given the caps, this process is generally only suitable for less complex cases.

An appeal to the Court of Appeal against the first instance decision would cost upwards of €55,000 (these estimates exclude tax and disbursements).

The courts will typically order the losing party to pay the costs of the winner, although the amount recovered will usually only be a portion (around 1/2 to two-thirds) of the winner's costs.

Authors



Pin-Ping Oh

Partner

+6564289440
pin-ping.oh@twobirds.com



Christine Saw

Associate

+6564289413
christine.saw@twobirds.com

twobirds.com

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• Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London • Lyon • Madrid
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