

Bird & Bird

Slovakia

Patent Litigation Q&A

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Slovakia – Patent Litigation

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

Patent infringement actions are handled by the District Court in Banská Bystrica. There is no choice of venue.

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

Given the special competence of the District Court in Banská Bystrica with respect to patent claims, there is a small group of judges who deal with patent matters although they are not fully specialized. The judges do not generally have technical backgrounds.

How long does it take from starting proceedings to trial?

It may take from a few months to a year from the submission of the claim to the first hearing. However, it is rather uncommon in Slovakia that the court will decide on the merits already at the first hearing. Based on our experience, it usually takes from one to two years for the first instance court to deliver its decision. In appellate proceedings, the overall duration of the proceedings usually reaches three or more years. Slovak law does not prescribe any time limits for the final decision.

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

In general, the court may compel any person (including a party to the proceedings) to present evidence that is in the disposal of such person, if the court finds it necessary to establish the state of facts. However, such evidence must be specified beforehand, meaning that the requesting party must have knowledge of the evidence and that it is at the disposal of a particular person. Also, there are limited means of enforcement if the evidence is not submitted. In any case, Slovak law does not recognize disclosure/discovery as in common law jurisdictions.

How are arguments and evidence presented at the trial?

All relevant arguments and evidence should be presented to the court as soon as possible (typically in the first written submission). New evidence may be proposed during the oral hearing, up to when the court closes the so-called “evidencing phase” of the proceedings. It is common to refer to written submission and filed evidence. Oral argument is fairly limited and the courts are not in the habit of going into much detail during the hearing.

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

According to Slovak law, the court decision on the merits should be rendered ideally at or after the very first oral hearing. The oral hearing generally lasts from 30 minutes to a few hours. It is however quite common that the court postpones the oral hearing (e. g. when a party to a dispute is exceptionally awarded extra time to submit further evidence).

It would take approximately 30- 60 days from the last oral hearing before the decision is made available in writing. The decisions are publicly available [here](#).

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

A defence of patent invalidity may be raised only at the Industrial Property Office of the Slovak Republic (“IPO”). In such case, infringement and validity issues would be heard and decided on separately. In theory, Slovak law enables the court to make its own assessment concerning the validity of the patent which might be different from the assessment of the IPO. Pending invalidity proceedings typically have no effect on the infringement dispute. On the other hand, if there is already a decision issued by the IPO declaring invalidity of a patent, the court must take this fact into account.

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

Infringement proceedings may be stayed until the IPO (or EPO) issues its decision on the validity of the patent and a party may actively file a motion for the court to do so. It is common practice in Slovakia for a court to not stay the proceedings and prefer to assess the issue of validity on its own. However, if the court does so and the IPO later issues a decision with a contradictory assessment of patent validity, that would allow an action for retrial.

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, Slovak law allows for preliminary injunctions. Possible claims of preliminary injunctions include a ban on sale, import, offer, storage of goods by virtue of which a patent is being infringed, and a ban on transfer of registration of goods, e.g. of a pharmaceutical product.

Preliminary injunctions may be obtained *ex parte* and a bond is not generally a legal precondition. The court or the opposing party may, however, request that the claimant provides an adequate bond in money.

Protective letters are generally not explicitly recognised by Slovak law. Nonetheless, should a party consider that there is a threat of a preliminary injunction motion, the party can still file a protective letter to the court. The court is, however, not obliged to deal with it.

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

Final injunctions are available and would be included in the statement of claim. During the proceedings, in general, the claimant must provide sufficient evidence that justifies the final injunction. A bond is not necessary.

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

Besides final injunctions, a patentee may be also awarded damages and reimbursement of its costs of the proceedings. Concerning the damages, both actual damages suffered, and loss of profits can be compensated. The claimant should calculate and substantiate the claimed amount of damages. Reimbursement of costs of proceedings depends on the ratio of success of the parties to the dispute; the amount is limited by law.

Would the tribunal consider granting cross-border relief?

The court may, in theory, grant cross-border relief. Nevertheless, we are not aware of any decision of Slovak courts granting cross-border relief in patent infringement cases so far.

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 of appeal against a first instance decision. The appeal must be filed within 15 days from the delivery of the decision. Slovak law does not regulate the time period within which the appellate court shall pass the final decision. Please note that appellate oral hearings are rather exceptional and occur when it is necessary to repeat or supplement the evidence or where important public interest so requires.

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

The court deals with the appeal through revision of both the facts and the law of the decision, and may either confirm, change, or revoke the decision. New evidence may be adduced on appeal only exceptionally, mainly where, through no fault of their own, the appellant was unable to adduce it in the proceedings before the court of first instance.

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?

The court fee of a typical patent infringement action (where the value of dispute cannot be calculated in money) is up to €140 for each claimant. The court fee for the appeal is up to €75 for appeal lodged by electronic means.

Where the value of the dispute can be calculated in money, the court fee for of an infringement action is calculated as 6 % of the total value of the dispute. The minimum court fee is €25, and the maximum is €50,000 in commercial disputes. The same applies for an appeal. The court fees are generally reduced when the filings are made via electronic means.

The administrative fee for a patent invalidity action at the IPO (including European patents) is €200. Lawyers' fees would depend on the complexity of the case.

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

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