

Bird & Bird

Spain

Patent Litigation Q&A

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Spain – Patent Litigation

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

Patent infringement actions may be started in either the domicile of the defendant, or the place where the infringement occurs.

The following courts have jurisdiction:

- Barcelona Commercial Courts No. 1, 4 and 5.
- Madrid Commercial Courts No. 6, 7, 8, 9, 10, 11 and 13.
- Valencia Commercial Court No. 2 and 4.
- Bilbao Commercial Court No. 2.
- Granada Commercial Court No. 1 and 2.
- La Coruña Commercial Courts No. 1.
- Las Palmas Commercial Court No. 1.

If the defendant is not located in Spain or if the infringement takes place across the whole country, the claimant can choose any of these cities. If there are several courts in the same city, the specific court will be randomly assigned.

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

The judges have a specialisation in intellectual property as well as in other commercial matters.

The judges do not have technical backgrounds.

How long does it take from starting proceedings to trial?

On average it takes around 12 to 18 months for a case to reach trial.

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

There are pre-trial ex parte proceedings. The patentee can request the inspection of the premises of the potential infringer and an independent expert is appointed who will issue a report. If the expert considers that there is a patent infringement, the Report will be delivered to the patentee who has to file the infringement action in 30 working days.

A party can only be compelled to disclose specific documents that are clearly identified (for instance, agreements of the adverse party with third parties; documents of release of batches, etc.).

How are arguments and evidence presented at the trial?

The trial begins with the cross examination of experts or witnesses (if there are any). Then after the cross examinations the parties present their final pleadings.

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

A trial usually takes anywhere between one to three days. It can take three to four months for a judgment to be made available.

The judgments are not always made publicly available, but sometimes the judgments of the first instance are published in the repertoires or in CENDOJ (public data base of the General Council of Judges).

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

A defence of patent invalidity can be raised. Infringement and validity issues are 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 will not be stayed pending the resolution of any separate validity issues.

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*.

The claimant has to offer a bond, the value of which is decided by the court.

A potential defendant can file protective letters, the existence and (depending on the Court) content of which is communicated to the patentee.

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

Final injunctions are available as of right and this is the normal consequence of infringement.

The infringement decision can be enforced without a bond.

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

The available remedies include withdrawal, destruction of goods, communication to relevant authorities or bodies, and declaration of the obligation to compensate damages (deferred to enforcement).

Would the tribunal consider granting cross-border relief?

The courts would not consider granting cross-border relief.

However, this could change as a result of the recent decision by the CJEU in the BSH v. Electrolux case (C-339/22). The decision has not yet been analysed or applied by Spanish courts.

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 from the first instance judgment to the Court of Appeal.

There is typically 12 to 18 months between the first instance judgment and the appeal hearing.

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

An appeal is a review of the arguments and evidence, normally there is no hearing, unless new evidence is filed. No new evidence can be filed, unless it was unduly rejected in the 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 costs of an action depend greatly on the complexity of the case but normally it will be anywhere from €60,000 to €120,000 (in lawyers' fees) for invalidity as well as infringement, because the actions are heard together. Appeal is normally about half the amount incurred in the first instance.

Costs are imposed on the losing party. Normally, the courts will not grant the whole range of costs suffered by the winning party, unless a specific amount of damages is discussed in the first instance.

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

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