

Belgium

Administrative procedure

Opposition

No formal pre- or post-grant opposition procedure is available. The findings of the search report and the written opinion delivered by the European Patent Office have no formal influence on the grant procedure (Art. XI.24, Sect. 4, CEL). It is up to the applicant to decide, at his own risk, on the basis of the search report and the written opinion, if he still wants his patent granted.

Appeal

No possibility of appeal.

Civil procedure

Infringement

A civil action can be brought by the owner or usufructuary of a patent (by the compulsory licensee if the owner does not bring an action) (Art. XI.60, Sect. 2, CEL).

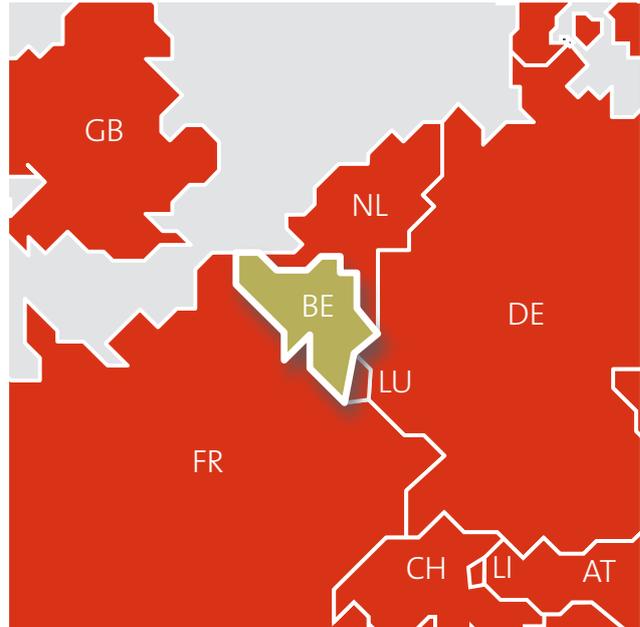
At first instance the Brussels Enterprise Court (*Tribunal de l'entreprise/Ondernemingsrechtbank*) has exclusive jurisdiction in patent matters. It is established at the seat of the Brussels Court of Appeal (Art. XI.337 CEL and Art. 633quinquies JC).

If only an injunction is requested, the plaintiff has the choice to introduce the case at first instance

- (i) before the President of the *Tribunal de l'entreprise/Ondernemingsrechtbank* (dealt with "as in summary proceedings") or
- (ii) before a chamber of that court, where the tribunal is composed of one legally qualified judge and two "*juges consulaires*".

If damages are requested (either separately from the injunction or not), the plaintiff must introduce the case at first instance before a chamber of the court.

Infringement proceedings must be initiated within five years of the infringement was committed (Art. XI. 61 CEL).



Criminal sanctions are also available (Art. XV.103 CEL). Criminal sanctions may include custodial sentences (from 1 to 5 years) and/or monetary fines up to EUR 800 000 (Art. XV.70 CEL).

Nullity/counterclaim for revocation

Patents may be annulled or revoked by the Brussels Enterprise Court. Annulment or revocation is retroactive (Art. XI.58, Sect. 1, CEL). Partial annulment or revocation is also possible (Art. XI.56, Sect. 2, CEL).

Annulment or revocation decisions may be appealed before a Court of Appeal. An appeal against the annulment or revocation of a patent does not have suspensive effect.

An appeal of the Court of Appeal's decision may be lodged before the "Court of Cassation" based only on "points of law". An appeal before the Court of Cassation against revocation of the patent has suspensive effect (Art. XI.59, Sect. 2, CEL).

The post-grant scope of a patent may be amended in two ways:

- a) the applicant can waive the scope of application of the patent in full or in part through a declaration directed to the Minister responsible for intellectual property (Art. XI.55 CEL). This "renunciation" procedure has no retroactive effect.

- b) the applicant can revoke the scope of application of the patent in full or in part through a declaration directed to the Minister responsible for intellectual property (Art. XI.56 CEL). Revocation has retroactive effect (Art. XI.58, Sect. 1, CEL).

There are no statistics available on the frequency of use of these options.

Invalidity may be used as a defence or counterclaim. Nevertheless it is possible for an action for infringement and a related action on validity to be separately introduced before two courts. In such a case, one of the parties may ask the second judge to join the cases in the hands of the first judge (with a so-called “exception of incompetence”). In this case the first judge will rule on both cases.

When actions for infringement and for validity are pending before the same judge, the judge may take the initiative to join the cases (Art. 856 JC).

Remedies

Injunction, compensation, damages, publication of decisions and assignment of benefits (Arts. XI.334 and XI.335 CEL).

Other actions

Where an application has been filed for an invention taken from an inventor unlawfully or in violation of a legal or contractual obligation, the injured party may claim before the court the transfer of the application or the granted patent (Art. XI.10, Sect. 1, CEL).

Appeal

The parties in a trial may appeal the decision of the court of first instance. The appeal must be initiated within one month from service of the judgment (Art. 1051 JC). The Court of Appeal will conduct a full rehearing of the matter (limited to the points which have been appealed by the opposing parties). The defendant on appeal has the right to file a so-called “incidental appeal” with respect to those elements which have not been appealed by the claimant (Art. 1054 JC).

In appeal proceedings the court is composed of one or three legally qualified judges.

Parallel proceedings

The Belgian court may decide to stay the proceedings (at the discretion of the judge) in order to await the outcome of the opposition/appeal proceedings before the EPO.

Arbitration/mediation

Arbitration or mediation is available, except in litigation concerning compulsory licences and forfeitures.

There is no specific authority designated to deal with arbitration or mediation in patent disputes.

Enforcement

During and after the judicial procedure, the bailiff is the competent authority for enforcing court orders (Art. 519 JC).

Compulsory licence

Compulsory licences may be granted in cases of non-working and dependent patents (Art. XI.37 CEL). The request must be filed with the Minister responsible for intellectual property, who will decide on it in cooperation with the Compulsory Licence Commission (Art. XI.41 CEL). The parties should in principle decide on their own on the conditions of the licence. If no agreement is reached, the court will decide (Art. XI.42 CEL).

A compulsory licence may also be granted in case of public health interests (Art. XI.38 CEL). The request has to be filed with the Minister responsible for intellectual property, who will decide on it after consulting a bioethics committee and hearing the title holder. The Minister also makes a proposal concerning the conditions of the licence. The decision is taken by royal decree after consultation of the Council of Ministers on the basis of the proposal of the competent Minister.

Relevant national law

Code of Economic Law (28 February 2013) [cited as: CEL];

Judicial Code (10 October 1967) [cited as: JC].

Competent authorities or courts

