

## Luxembourg

### Administrative procedure

#### Opposition

No formal pre- or post-grant opposition procedure is available.

Third parties may make observations on the patentability of the invention from the date on which the application is laid open to public inspection and up to the date on which the patent is granted (Art. 34-1 PA). The applicant may comment on them within four months, and these comments will be delivered to the party who made the observations (Art. 34-2 PA).

The observations have no legal impact; they are only a measure for public consultation on the findings.

#### Appeal

An appeal may be lodged with the Minister of Economic Affairs within three months of notification of the decision concerned (Art. 91 PA).

An appeal with the Minister cannot be used by third parties to challenge the validity of a granted patent.

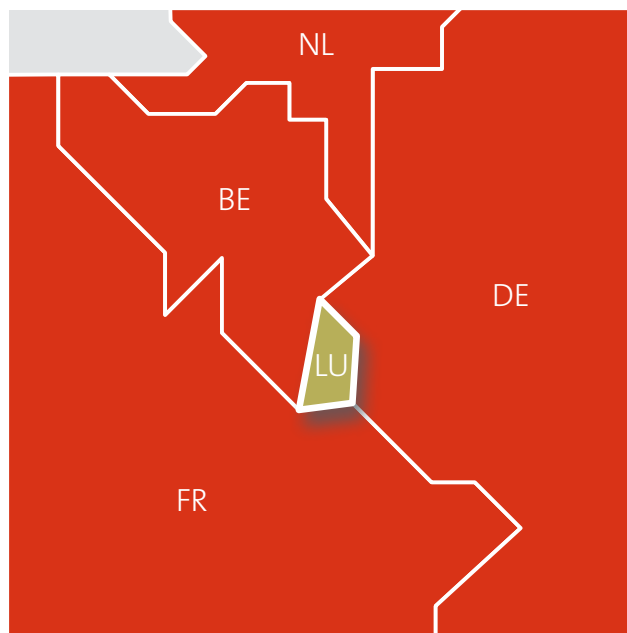
Further appeal may be filed at the Administrative Court within three months of notification of the decision.

### Civil procedure

#### Infringement

Infringement actions are subject to civil law and may be brought by the owner (Art. 76, 77-1 PA). However, the holder of an exclusive exploitation right may, except as otherwise stipulated in the licensing contract, institute infringement proceedings if, after notification, the owner of the patent does not institute such proceedings. The patentee is entitled to take part in the infringement proceedings instituted by the licensee (Art. 77-2 PA). No criminal action is possible.

Infringement proceedings are heard by the District Court, regardless of the value of the claim (Art. 80 PA).



Action is statute-barred after three years from the last infringing act.

#### Nullity/counterclaim for revocation

An action for nullification of the patent may be directed, after grant, to the court of the elected domicile of the patent owner (Art. 73, 74 PA). An action may be brought even if the patent has lapsed (Art. 74 No. 6 PA). Nullification has retroactive effect.

Anyone may bring an action. The public prosecutor may apply *ex officio* for nullification of a patent (Art. 74, No. 5 PA).

Partial nullification is possible (Art. 73-2 PA). There is no practice in relation to patent claim amendment, as there has been no patent nullification case in the past 25 years.

Nullity may be used as a defence or counterclaim in infringement proceedings (the claim must be recorded in a register) (Art. 80-3 PA). The court is not obliged to stay the infringement proceedings if the nullity issue is raised.

#### Remedies

Remedies include injunctions, compensation for damages, prohibition from continuing the infringement, confiscation, destruction, and publication of the court decision (Art. 79, 80, 81 PA).

## Other actions

There is no provision for such actions.

d'Arbitrage de la Chambre de Commerce du Grand-Duché de Luxembourg (<http://www.cc.lu/services/avis-legislation/centre-darbitrage/>).

## Appeal

Ordinary appeal may be filed with the Court of Appeal within 40 days after notification of the first-instance decision. Further appeal to the Court of Cassation may be filed within two months after notification of the decision.

## Enforcement

The authority responsible for enforcing an order both during the procedure and after termination or final decision of the court is the bailiff (*huissier de justice*).

## Parallel proceedings

It is not possible to provide information regarding national practice, because there have been no parallel proceedings under the current practice.

## Compulsory licence

May be granted by the court in cases of non-working, dependent patents and public interest (*ex officio* – order by the Grand Duke on advice of the State Council; in such cases the question of remuneration will be considered by a court – Art. 59-66 PA).

## Arbitration/mediation

Arbitration is possible at the request of both parties, who are free to choose the arbitrator. In Luxembourg, there is no mediation forum specifically for IP matters, but for civil and commercial matters in general there is the Centre

## Relevant national law

Patent Law 20 July 1992, as last amended on 22 May 2009 [cited as: PA]

## Competent authorities or courts

