

## Sweden

### Administrative procedure

#### Opposition

Post-grant opposition is available. Anyone, except for the patent holder, may file notice of opposition within nine months from the date on which the patent was granted (Section 24(1) PA).

The patent proprietor is given the opportunity to file a response within four months from the date on which the Swedish Patent and Registration Office (hereinafter the "Patent Office") sent notice of the opposition (Section 24(2) PA, Section 55 Patent Regulation).

If the opposition is withdrawn by the opponent, the process may still be continued if there are particular reasons (Section 24(3) PA).

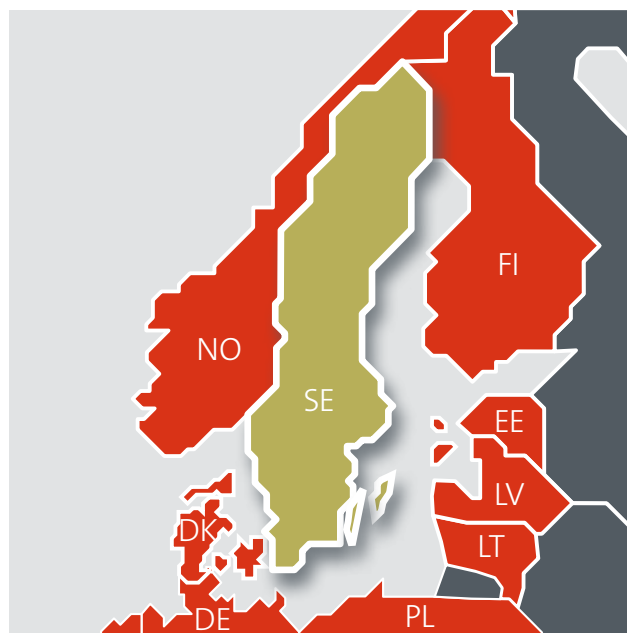
In the event that opposition is not filed with the Patent Office within nine months after grant, the patent may only be wholly or partly nullified by the court.

#### Appeal

A final Patent Office decision on a patent application may be appealed by the applicant if the decision is not in his favour. A final decision on an opposition to a patent is appealable by the proprietor of the patent and by the opponent if the decision is not in favour of the appealing party. If the opponent withdraws his appeal, the proceedings will not be continued.

The appeal should be filed with the Patent Office within two months from the date of the decision; however, it will be considered by the Patent and Market Court which has exclusive jurisdiction for all patent cases (Section 65(1) PA).

Further review: by the Patent and Market Court of Appeal (Chapter 1, Section 3, PMCA). The appeal must be received by the Patent and Market Court of Appeal within three weeks from the decision of the Patent and Market Court. Leave is required. The main rule stipulates that the verdict of the Patent and Market Court of Appeal is not open to appeal, but where this is found essential, permission to appeal to the Supreme Court may be given, although leave to appeal must also be granted by the Supreme Court.



#### Revocation

A court action may be brought by anyone who suffers damage or by a public authority designated by the government (Section 52 PA).

A patent may not be declared invalid on the grounds that the person who has obtained it was entitled to only a part of it.

Partial nullification and limitation is available.

Patent amendment is allowable as far as it reduces the actual scope of the patent.

Overall, the rules and practice fully correspond to the EPC/EPO situation. Compared to the entire number of patents granted, this has not been a frequent action to date.

If the action is withdrawn, the proceedings will not be continued.

### Civil procedure

#### Infringement

The Patent and Market Court has exclusive jurisdiction for patent litigation. The court organisation is the same as for the administrative procedure, although the procedure

follows the general Swedish Code on Judicial Procedure instead of the otherwise applicable administrative procedural rules. The arrangements will have no substantive effect on the procedure in litigation cases. However, in some circumstances it is possible for the court to merge administrative and litigation cases if this is deemed appropriate (Chapter 3, Section 6, PMCA).

The patent owner may bring an action for infringement.

Patent infringement cases are as a rule heard by four judges (two legally trained and two technically qualified), and decisions are taken by majority vote (Chapter 4, Section 1, PMCA).

At the preparatory stage, the courts are required to investigate the possibility of settling the case.

Criminal actions are brought only at the complaint of the aggrieved party.

### Nullity/counterclaim for revocation

Nullity may be used as a defence or counterclaim; in that case, however, it may only be considered after an invalidity claim has been raised. The Court orders the party asserting invalidity to lodge an action within a certain period of time. If a patent infringement action and a patent invalidity action are brought in the same court proceedings and if it is suitable to decide independently on whether there is patent infringement, a separate judgment may be rendered on this issue at the request of one of the parties. If a separate judgment is rendered, the Court may decide that invalidity proceedings are to be stayed until the judgment has taken legal effect (Section 61(2)(3) PA).

### Remedies

Preliminary relief, compensation, destruction of infringing articles (Sections 57-62 PA).

### Other actions

Any person who carries on or intends to carry on an activity may bring an action to the Patent and Market Court against the proprietor of the patent for a declaratory judgment in order to establish whether a specific patent constitutes an obstacle to that activity (Section 63 PA).

### Appeal

Appeal is addressed to the Patent and Market Court of Appeal, which must receive it within three weeks from the decision of the Patent and Market Court. Leave is required. The main rule stipulates that the verdict of the Patent and Market Court of Appeal is not open to appeal, but where this is found essential, permission to appeal may be given, although leave to appeal must be given by the Supreme Court as well.

### Parallel proceedings

According to the Swedish Code of Judicial Procedure there is an explicit decree giving the court extensive powers to stay any national proceedings for special reasons, including awaiting the outcome of EPO proceedings.

### Arbitration/mediation

Arbitration is a common way to handle patent litigation. The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) – which is not a public authority – provides dispute resolution services in this field.

### Enforcement

The Swedish Enforcement Authority (*Kronofogdemyndigheten*) is responsible for enforcing orders during the proceedings as well as after a final decision of the court.

### Compulsory licence

A request for a compulsory licence may be made to the Patent and Market Court. A compulsory licence may be granted in cases of dependent patents, public interest and, exceptionally, in cases of prior use in good faith (Sections 45-50 PA).

### Relevant national law

The Swedish Patent Act – Act No. 837 of 1967 as amended by Acts Nos. 149 of 1978, 433 of 1983, 937 of 1984, 233, 1156 of 1986, 1330 of 1987, 296 of 1991, 1688 of 1992, 1406 of 1993, 234, 1511 of 1994, 1158 of 2000, 159, 161 of 2004, 289, 692 of

2005, 254, 625, 682 of 2006, 242, 516, 518 of 2007, 111 of 2009, 1395 of 2010, 580 of 2011, 84 of 2013, 289, 434 of 2014, 317 of 2015 and 192 of 2016, [cited as: PA];

The Swedish Patent and Market Courts Act – Act No. 188 of 2016 [cited as: PMCA];

The Swedish Patent and Registration Office (PRV) regulations (PRVFS 1997:1,P:32) [cited as: Patent Regulation].

## Competent authorities or courts

