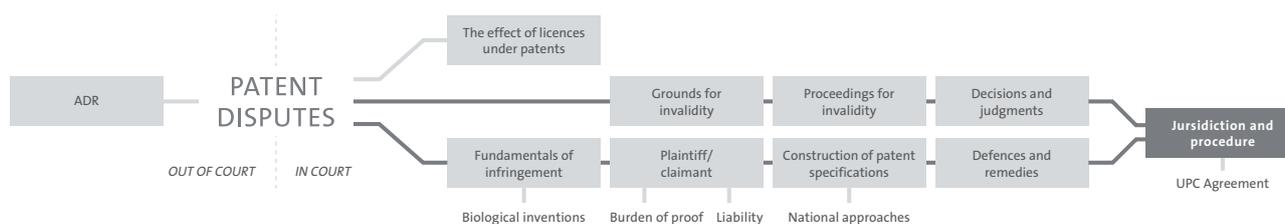


Jurisdiction and procedure

Essentials



Infringement proceedings. Jurisdiction: Regulation (EC) No. 1215/2012

Basics

Regulation (EC) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (commonly referred to as the “Brussels 1 bis” Regulation) entered into force on 10 January 2015, replacing Regulation No. 44/20011. The basic principle behind the regulation is that proceedings should be brought in the member state where the defendant is domiciled (Article 4-1).

However, in matters relating to tort (as is the case for patent infringement proceedings), Article 7-2 gives the claimant the option to sue either in the member state where the defendant is domiciled or in the member state where the harmful event occurred or may occur.

Place where the harmful event occurred or may occur

The Court of Justice of the European Union (CJEU) has consistently held that the place of the harmful event can mean both the place of the causal event and the place where the damage occurred, so that the claimant is entitled to sue in either place (where the two are not the same). With regard to patent infringement proceedings, the patent holder is entitled to sue either in the defendant’s country or in the country/countries where the infringement took place. If the court is seized on the latter account, it will have jurisdiction to rule solely in respect of the harm caused in the country of that court.

Basic principle

The defendant should be sued in the member state where he is domiciled.

Special jurisdiction for tort cases

The claimant may sue the defendant:
– in the member state where the defendant is domiciled; or
– in the member state where the harmful event occurred or may occur.

“Place where the harmful event occurred” may mean:

– the place of the causal event; or
– the place where the damage occurred

The patent holder may sue in the place where the defendant is domiciled or in the place where the infringement took place. In the latter case, the court seized will have jurisdiction over the harm caused in the country of that court only.

Counterclaim for revocation

Article 24-4 states that in proceedings concerning the registration or validity of registered intellectual property rights, the courts of the member state of registration have exclusive jurisdiction. In **GAT v Luk**, the Court ruled that this principle applies whether the invalidity issue is raised by way of an action or as a defence. This solution has been enacted in the Brussels 1bis Regulation.

Multiple defendants

In cases involving more than one defendant, the claimant may sue all the defendants before a court which has jurisdiction over at least one of them, provided that the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings (Article 8-1).

It has long been debated whether this provision can apply in situations where, under a common policy elaborated by one of them, a number of companies belonging to the same group each infringe on their respective territory and in a similar manner the corresponding national part of a European patent. The Dutch courts have considered that all those defendants may be sued before the same court, provided the latter has jurisdiction over the main defendant (“spider in the web”). However, in **Roche v Primus**, the CJEU ruled that Article 8-1 cannot apply in cases where the situations of law and fact in each dispute are not the same (the defendants are different, as are the acts of infringement, committed in different member states). On the contrary, Article 8-1 applies with regard to two or more defendants who are each separately accused of committing an infringement of the same national part of a European patent.

Concurrent actions

In cases of *lis pendens*, the court subsequently seized must decline jurisdiction in favour of the court first seized (Article 29). In cases of related actions, the court subsequently seized may stay its proceedings (Article 30). The Unified Patent Court (UPC) is a court of a member state for the purposes of the Regulation and the *lis pendens* rule expressly applies to it.

Exclusive jurisdiction for validity issues

The courts of the member state of registration have exclusive validity to rule on these actions, whether brought as a main claim or as a defence.

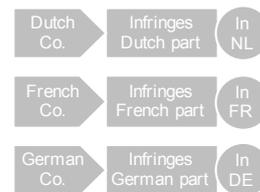
CJEU, 13 July 2003, C-4/03 – *GAT v Luk*

Special jurisdiction for multiple defendants

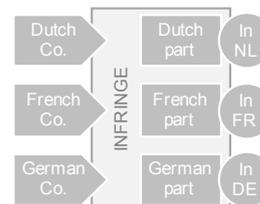
The claimant may sue all defendants before a court that only has jurisdiction over one or a few of the defendants, provided each action is sufficiently related to the others.

“Spider in the web” doctrine

The *Roche v Primus* facts:



The *Solvay* facts:



CJEU, 13 July 2006, C-539/03 – *Roche v Primus*

CJEU, 12 July 2012, C-616/10 – *Solvay*

Procedure in the UK

Patents Courts in the UK

In the United Kingdom, almost all actions for patent infringement and declarations of non-infringement, and most applications for patent revocation, are brought before either the Patents Court or the Intellectual Property Enterprise Court (IPEC), both of which sit principally in London, although they can sit elsewhere too. Both courts are staffed with specialised judges. In Scotland, patent proceedings are brought in the Court of Session (Edinburgh), and in Northern Ireland the High Court of Northern Ireland (Belfast). While broadly following the procedural steps of the Patents Court, IPEC provides a simpler, abbreviated procedure.

Initiating an infringement action

Actions in the Patents Court are initiated by the issuing and serving of a claim form. The claim form is essentially a formality. It lists the claimants and the defendants, and identifies the patent(s) sued on and the relief sought by the claimant (an injunction, damages, costs, etc.).

If the defendant intends to defend the action or dispute jurisdiction, he will file an acknowledgement of service with the court. This must be done within 14 days of being served in the case of an English defendant, or later if the defendant is outside the jurisdiction.

Stages in the action

A patent infringement action in the Patents Court typically takes about 12 months from service of the claim form to trial, with judgment delivered around one to two months later. It may be possible to obtain an order for expedition, in which case trial may be reached in six months or less. The figure on the right shows the procedure broken down into four major stages of about three months each, although in practice each of these stages tends to overlap.

In the first stage, the parties exchange statements of case (or pleadings) defining their allegations against one another and stating which allegations are admitted and which are required to be proved. At the end of this stage, the issues between the parties will have been defined and a case management conference with the judge sets a timetable for the rest of the action and resolves any procedural disputes. The second stage (disclosure) involves collecting and disclosing to the opposite party relevant documents, but may also involve experiments by one or both of the parties. The third stage involves the parties preparing and exchanging their written evidence for trial. This evidence will consist of expert reports, witness statements of fact and selected documentary evidence from either side's disclosure documents or other sources. The fourth and final stage consists of final preparation and the trial itself.

Infringement action overview



Pleadings

Particulars of claim and infringement

With the claim form the claimant serves two documents called the particulars of claim and the particulars of infringement. The particulars of claim document contains an assertion that the patent is subsisting and that the claimant is the registered proprietor or exclusive licensee, an assertion that the defendant is infringing the patent, and a brief statement of the relief sought by the claimant (an injunction, damages, costs, etc.).

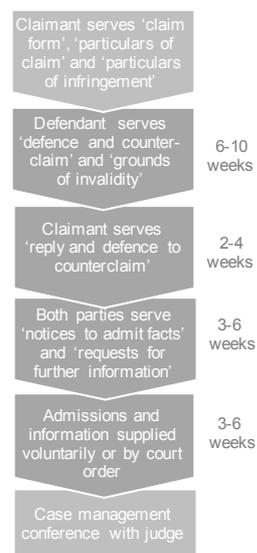
The particulars of infringement document states which of the claims of the patent sued on are alleged to be infringed by the defendant and gives details of at least one instance of each type of infringement complained of. The particulars of infringement do not contain any justification of the allegation of infringement. This will be a matter for evidence later on.

Defence, counterclaim and grounds for invalidity

The defence is a relatively short document. It is normally served six weeks after service of the particulars of claim. It is usual for the defendant to admit the specific acts alleged to infringe (such as examples of sales), but to deny that they constitute infringement, without giving details of how he intends to argue his case. The defence will normally include a plea that the patent is invalid. If there are any other special defences, such as a licence, prior use rights or breach of competition law, then these have to be pleaded in the defence with details of the facts on which they are based.

The grounds for invalidity document is a document which is served with the defence and to counterclaim if the patent is alleged to be invalid. In it the defendant must specify the grounds on which validity of the patent is challenged (for example, lack of novelty and lack of inventive step). Any prior art documents relied on must be listed individually, and examples of prior use have to be identified. If it is alleged that the description in the patent is insufficient to perform the invention, then details must be given. It is unusual in UK litigation for there to be more than three prior art citations, so there is pressure on the parties attacking a patent to focus on their best case.

Pleadings



Reply and defence to counterclaim

The reply and defence to counterclaim document is the last of the pleadings. It contains a formal denial of the counterclaim for revocation. If the claimant wants to rely on commercial success to counter a plea of lack of inventive step, it must provide details in the reply.

The case management conference

The case management conference is a formal hearing presided over by a patents judge (not necessarily the judge who will later hear the trial) to sort out directions for the future conduct of the action. It is normally held after service of the reply and defence counterclaim and deals with the following matters:

- timing of disclosure of documents
- time for notices of experiments
- time for notices to admit and admissions
- numbers of experts
- time for service of expert reports and witness statements
- directions for trial (duration, date, etc.)

It is normal practice to fix the date of the trial as soon as directions are given.

Evidence and trial

Witness statements and expert reports

In UK patent actions, the most important evidence is given by the parties' experts, initially in the form of written expert reports. The parties may be limited to one expert witness each, or may be allowed more than one if the issues are too wide-ranging to be covered by one expert only.

The expert reports address in great detail all the issues on which expert evidence is required.

Although experts are selected, instructed and retained by each party separately, their overriding duty is to assist the court with evidence which is accurate, objective and fair. Expert evidence is devalued or discounted altogether if the expert is perceived to be acting as the "hired gun" of the party instructing him. The expert must state in his report that he understands and has complied with his duties.

The trial

A patent action will be heard by one of the nominated patents judges. A typical trial will last about a week.

Each party will provide the judge with what is called a “skeleton argument” of their case. Despite the name, these are detailed written summaries. It is at this stage that the parties address claim construction for the first time.

The trial normally starts with a short opening speech by the claimant’s barrister, followed by the claimant’s witnesses of fact and expert witnesses. Each witness confirms the accuracy of their witness statement or expert report (with any necessary corrections or updating) and is then open to cross-examination by the defendant’s barrister and, if necessary, to re-examination by the claimant. The defendant may then call its witnesses, dealing with both the defence and the counterclaim, and the claimant’s barrister may cross-examine them in the same way.

After the evidence is complete, closing speeches are made. It is common for closing speeches to be supplemented by final written submissions called “closing skeletons”, in which the parties’ first cases are put. The judgment will usually be given one to two months later.

Appeals

Leave to appeal to the Court of Appeal is required. This may be given by the High Court or, if refused, by the Court of Appeal. Appeals must be filed within 14 days of the decision. Fresh evidence will be permitted in exceptional circumstances only.

Procedure in Germany

Bifurcation with regard to patent disputes

In the German bifurcated system, infringement proceedings and invalidity proceedings are separate from each other and are heard by different courts.

The decision by the patent office (the EPO or the *Deutsches Patent- und Markenamt* (German Patent Office)) to grant the patent is binding for the infringement court. As a consequence, the infringement court is entitled neither to revoke the patent in suit nor to dismiss the infringement complaint based on the invalidity of the patent in suit.

A granted patent can only be attacked by initiating opposition proceedings before the respective patent office or, after the expiry of the opposition period, by filing an invalidity action with the *Bundespatentgericht* (German Federal Patent Court) (BPatG).

However, if, upon request of the infringement defendant, the infringement court comes to the conclusion that there is a high likelihood that the patent in suit will be revoked in pending invalidity proceedings, it may stay the infringement proceedings until a final decision on the (in) validity is taken. Such stays are rare, but they do occur in some cases.

Invalidity proceedings

Anyone may initiate invalidity proceedings against a German patent or the German part of a European patent by filing a complaint with the BPatG in Munich, which currently has seven senates dealing with invalidity proceedings. Each case is heard by a panel consisting of three technically trained judges and two legally trained judges.

Invalidity proceedings before the BPatG typically take about 18 months to two years. After the initial complaint has been served on the defendant, i.e. once the registered owner of the patent and defendant has stated that he wishes to defend the patent and has provided reasons for his objection, further briefs are exchanged in which the parties submit facts and legal arguments. Court experts are only commissioned in exceptional cases, because three of the five judges hearing the case are technically trained. About three to six months before the oral hearing, the Court issues a so-called “qualified notice”, which includes a preliminary assessment of the case. Subsequently, the parties may each file another brief focussing on the issues discussed in the notice.

Typically, only one oral hearing is held. Oral hearings generally last between half a day and a full day, and the decision is usually announced

Bifurcation

In Germany, patent infringement proceedings and validity proceedings are separate from each other. The infringement court is bound by the patent office’s decision to grant the patent.

Stay of the proceedings

If the infringement court finds that there is a high likelihood that the patent in suit will be revoked in parallel invalidity proceedings, the infringement proceedings may be stayed until a final decision is taken in the invalidity proceedings.

Bundespatentgericht (German Federal Patent Court – BPatG)

Invalidity cases before the Federal Patent Court are heard and decided by a panel consisting of three technically trained judges and two legally trained judges.

Qualified notice

The BPatG issues a so-called “qualified notice” about three to six months before the hearing, in which it gives a preliminary assessment of the case.

directly afterwards. The written grounds for the decision are issued about two to three months after the hearing.

The losing party may file an appeal against the decision with the *Bundesgerichtshof* (German Federal Supreme Court) (BGH). Appeals are heard by a panel of five legally trained judges. The BGH must base its decision on the facts established by the BPatG, so it mostly deals with legal questions. Invalidation appeal proceedings typically take about two years.

Invalidation appeal proceedings

Invalidation appeal proceedings are heard by the *Bundesgerichtshof* (German Federal Supreme Court, (BGH)). They focus on legal issues and typically take about two years.

Infringement proceedings

Competent courts and duration of the proceedings

Patent infringement proceedings are initiated by filing a complaint with one of the 12 regional courts which are competent to hear patent infringement cases. The complaint must be filed with either the court in the jurisdiction of which the defendant has its residence or its place of business or with the court in the jurisdiction of which the allegedly infringing act was committed. Each of these 12 regional courts has at least one chamber specialising in patent infringement proceedings. Cases are heard by a panel of three legally trained judges.

Competent courts

Patent infringement proceedings are initiated by filing a complaint with one of the twelve regional courts which have at least one chamber specialising in patent litigation.

A patent infringement lawsuit in the first instance typically takes between 6 and 15 months, from the service of the complaint on the defendant until the oral hearing, depending on the court. The judgment is then issued about one to three months after the last oral hearing. The focus of the infringement proceedings is on the exchange of briefs with factual and legal arguments rather than on the oral hearing (“front-loaded proceedings”). Typically, the parties exchange two rounds of briefs. Depending on the venue, an early first oral hearing may be held in addition, in which a timetable is set for the rest of the proceedings or certain substantive questions are discussed.

Front-loaded proceedings

Typically, two rounds of briefs with factual and legal arguments are exchanged between the parties preparing the main oral hearing.

The regional court may commission a technical expert to issue a written opinion on complex technical questions. However, in practice this is done only in exceptional cases. If a technical expert is commissioned, the parties are given the opportunity to comment on his/her written opinion and the expert is heard in an oral hearing. This will delay the proceedings by at least a year.

Course of the main oral hearing

Due to the extensive written preparations, usually only a short oral hearing (1.5 to 4 hours) takes place. It starts with some introductory remarks by the presiding judge, indicating the preliminary opinion of the court and addressing specific questions to the parties. Following this introduction, the parties are invited to plead their case by responding

Short oral hearing

Usually, only a short oral hearing takes place, in which the parties present their main arguments and answer specific questions put to them by the court.

to the court's questions and summarising their main arguments. Any technical experts are questioned by the court and the parties with regard to the statements in their written opinions.

Appeal proceedings

The losing party may file an appeal against the regional court's judgment with the competent higher regional court without requiring leave to appeal. A panel of three legally trained judges will hear and decide the case. The higher regional court must base its decision on the facts established by the regional court (limited factual review). Apart from that, the course of the appeal proceedings is similar to that of the first instance proceedings. Appeal proceedings typically take about 12 months to two years.

Appeal proceedings

Appeal proceedings in infringement lawsuits are heard by the competent higher regional court. Appeal proceedings typically take about 12 months to two years.

Appeal on points of law

Under certain strict conditions, the party losing the appeal may file a further appeal on points of law with the BGH. An appeal on points of law may only be lodged if leave is granted by the higher regional court in its judgment or by the BGH upon a complaint against the denial of leave. In practice, leave is rarely granted by either court. The proceedings before the patent senate of the BGH, where a panel of five legally trained judges hears and decides the case, which typically takes about two to three years.

Appeal on points of law

Under strict conditions, the party losing the appeal may file a further appeal on points of law with the BGH.

Obligation to present facts and burden of proof

In infringement proceedings, the principle of production of evidence applies: the parties must present the facts of the case and, if necessary, provide corresponding evidence. More specifically, if the underlying facts are disputed in sufficient detail by the other party, each party is obliged to provide evidence that the requirements of the rule on which it relies are fulfilled. In contrast to the BPatG, the infringement court is not allowed to conduct any investigations on its own, and must base its decision on the facts and evidence presented by the parties.

Principle of production of evidence

The court must base its decision on the facts and evidence presented by the parties.

There is no general disclosure of documents or pre-trial discovery. The court may order one of the parties or a third party to submit records or documents which are in its possession and to which one of the parties has made reference. As a further possibility, if there is sufficient probability of infringement, the court may order the defendant to submit documents or to allow the inspection of a process or of an object in its possession.

Procedure in France

The French patent courts

In France, the Paris *Tribunal de Grande Instance* (Paris District Court) (TGI Paris) has exclusive jurisdiction over almost all civil actions involving patents, including any related unfair competition issues. Purely contractual cases do not fall under that exclusive jurisdiction principle, even if they involve patents. On appeal, cases are brought before the *Cour d'appel de Paris* (Paris Court of Appeal) (CA Paris).

In both these courts, cases are heard by a chamber specialising in intellectual property litigation. Each panel of judges comprises three legally trained judges who are familiar with patent issues. They may request the assistance of technical experts or consultants, although this is rarely the case, except for evaluating damage suffered.

Patent infringement being both a civil and criminal offence, patents may also be enforced in criminal courts, but this is also rare and only done for very straightforward cases.

Invalidation actions

Invalidation actions may be introduced directly as a main claim. However, they are more frequently introduced by means of a counterclaim as a defence in an infringement action. When that happens, invalidity and infringement are examined in the same proceedings, with the court dealing with the invalidity claim first. The infringement issue is only examined if the invalidity claim is rejected.

Pre-trial means of gathering evidence of infringement:

the saisie-contrefaçon or saisie

Pre-trial discovery does not exist in France. Each party must provide evidence for the facts necessary for the success of their claims. However, *saisie-contrefaçon* is a very efficient pre-trial way to gather evidence of an infringement. A patent holder who has reason to believe that his patent is being infringed is entitled by right to be granted an *ex parte* order appointing a bailiff, assisted by experts chosen by the patent holder (generally the latter's patent agent), with the mission to go anywhere where evidence of the existence and extent of the infringement may be collected, and to describe (in writing and/or with pictures) and/or seize that evidence (infringing products or processes, relevant documentation and/or material used for the manufacturing or the distribution of the infringing products or processes).

The request is brought before the President of the TGI Paris, which has jurisdiction for the place where the *saisie* will take place. As a matter of principle, the judge cannot refuse to grant the *saisie*. He can only order the

French patent courts

In France, the Paris *Tribunal de Grande Instance* (Paris District court (TGI Paris) has exclusive jurisdiction over patent cases with control by the *Cour d'appel de Paris* (Paris Court of Appeal) (CA Paris). Cases are heard by a panel of three legally trained judges specialising in intellectual property.

No bifurcation

Patent infringement proceedings and validity proceedings are not heard separately from each other.

Saisie-contrefaçon

Saisie-contrefaçon is a procedure by which a bailiff appointed by a court order granted on request of the patent holder is authorised to conduct investigations on the alleged infringer's premises in order to gather evidence of the infringement.

Proceedings to obtain a *saisie-contrefaçon* are conducted *ex parte*.

patent holder to post a bond in order to compensate the party affected by the seizure should the infringement action eventually be rejected or the seizure cancelled. This is rarely done in practice.

The adverse party is not informed of the *saisie* beforehand and cannot deny the bailiff entry into his premises. If needed, the bailiff may come accompanied by police officers, locksmiths or any such assistance, in order to overcome the seized party's potential resistance. However, after the *saisie* has taken place, the seized party may ask the judge who has granted it to order some measures to protect confidential data.

Seizure of the whole stock is rarely ordered. Most of the time, the scope of the bailiff's mission is to describe his operations and the products he finds on the premises, attach copies of all relevant documents (sale accounts, lists of suppliers or clients of the allegedly infringing products, and so on) and buy a few products (one of which is handed over to the patent holder, who can examine it at leisure).

The bailiff writes a report that is handed over to the claimant, who can use it in court to prove the infringement. If the report shows that the bailiff was unable to collect certain pieces of information, the President may order some additional measures.

The patent holder must initiate infringement proceedings on the merits within 31 days of the *saisie*, failing which the *saisie* becomes automatically null and void.

Other types of evidence

Parties should supply their evidence without being asked. They are not required to supply evidence which is detrimental to their case. However, if a party withholds a document that is relevant to the outcome of the case, the other party may ask the judge to order the production of that document. Third parties may also be ordered to produce any relevant documents.

The evidence that is produced usually consists of documents and, where necessary, affidavits. Witnesses and private experts are rarely heard, as French courts have little faith in allegations originating from one party with no objective elements to corroborate them. This is also why depositions and affidavits are not used as much as in some other countries.

Starting the infringement action

Access to the court does not involve any court fees. Patent infringement actions are started by the issuing and serving of a claim form, in which the claimant defines his allegations against the defendant. Once the claim

The seized party cannot prevent the *saisie-contrefaçon* but they can later petition the judge to take measures to protect confidential data.

The bailiff is generally assisted by the patent holder's patent agent. He writes a descriptive report in which he describes the results of his investigations, in words and pictures, and annexes all relevant documents found on the premises. He can seize either a few products or, in exceptional circumstances, the whole stock.

His report can be used in court by the claimant to prove infringement.

The patent holder must lodge an infringement action within 31 days. Otherwise, the *saisie* becomes null and void.

Other types of evidence

In France, affidavits, witness examination and private experts are not standard means of proof.

form has been registered with the court, a judge of the chamber that will hear the case is appointed to manage its conduct.

Conduct of the proceedings

The case management judge sets the timetable for the procedure. He sets the date for the defendant to serve his defence submissions and, if need be, any further submissions. He also sets the date of closure of the debates and the date of the oral hearing. He has jurisdiction to hear incidental procedural matters.

Parties annex their lists of evidence to their submissions brief and generally serve their evidence shortly after their submissions.

Between the closure date and the date of the oral hearing, the parties provide the court with pleadings files containing all their allegations and evidence.

The oral hearing lasts from two hours to half a day. Depending on the judges' preferences, the pleadings may involve having the parties plead the whole case, summarise their main arguments and/or answer the court's questions.

Duration of proceedings

From the date of the claim form to the date of the oral hearing, proceedings before the TGI Paris typically last from 15 months to two years, depending on the complexity of the facts, with the judgment being delivered around 4-6 weeks later. If the matter is urgent, it is possible to expedite proceedings by using an accelerated procedure, which will take from four to six months. However, the claimant has to serve all his evidence at the beginning of the procedure and the defendant may delay the serving of his defence submissions up to the oral hearing.

Appeals

Any party may appeal the first instance judgment. Appeals should be lodged within one month after the first instance judgment has been served on the appealing party (three months if the appealing party resides abroad).

The appealing party must submit his appeal submissions within three months of the lodging of the appeal. The respondent must answer within the following two months (two extra months are granted to foreign parties). These deadlines must be respected under penalty of the inadmissibility of the appeal or the submissions. Parties may supply any supplementary evidence they wish. It must be served simultaneously with the written submissions.

Proceedings are supervised by the case management judge, who sets the timetable for the parties' submissions, the closure of the debates and the oral hearing.

Oral hearings are short (from two hours to half a day).

Proceedings typically last from 15 months to two years. Expedited proceedings are available.

Appeals

Parties are free to appeal. They can provide supplementary evidence. Appeal proceedings typically last from 18 to 24 months. Appeal judgments may be reviewed by the *Cour de cassation*, but only on points of law.

As in first instance proceedings, a case management judge is appointed to supervise the proceedings. Appeal proceedings typically last from 18 to 24 months.

Judgments of the *CA Paris* may be reviewed by the *Cour de cassation* (French Supreme Court), but only on points of law. An appeal to the *Cour de cassation* does not suspend the enforcement of the appeal judgment.

Procedure before the Unified Patent Court

General principles

The general principles to be followed in formulating the procedural rules for the Unified Patent Court (UPC) were agreed at the Venice meeting of the European Patent Judges in November 2006. They include the following:

- (i) Procedural steps should be confined to those strictly necessary to reach a fair decision.
- (ii) The rules should be in accordance with the principles of the European Convention on Human Rights.
- (iii) The rules should deal with litigation in ways which are proportionate to its importance and flexibility.
- (iv) The parties should put forward their best case as soon as possible.
- (v) Where possible, a first instance decision on the merits will be reached within one year of the commencement of proceedings.

These principles have been adopted in a procedure which combines aspects of existing common law with civil law litigation practices. The procedure for an infringement action, including a counterclaim for revocation, is divided into three basic stages:

- (i) Issue identification (pleadings)
This stage lasts seven months (subject to extensions) and allows each party to serve two pleadings each, setting out their case in detail.
- (ii) Substantiation (interim conference)
This is under the control of the judge rapporteur. The parties present their requests for expert evidence, experiments, cross-examination, etc., in fact all orders necessary to prepare fully for the oral hearing. All such requests require justification.
- (iii) Oral hearing
This stage includes oral argument, but may also include a separate hearing of oral evidence with cross-examination under the control of the presiding judge.

Patent infringement actions

The first step is the serving of a claim form by the claimant to the defendant.

The procedure is common to all local and regional divisions of the UPC.

Appeals

Appeals against final decisions may be brought within two months to the Court of Appeal in Luxembourg. Leave of appeal is not required. Reviews of a procedural order require the leave of the court of first instance or the Court of Appeal. Fresh evidence will be permitted in exceptional circumstances only.