

Bird & Bird

Czech Republic

Patent Litigation Q&A

June 2024



Czech Republic – Patent Litigation

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

Patent infringement actions must be started at the Municipal Court in Prague. There is no choice of venue.

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

Judges in patent infringement cases are specialised in intellectual property law in general (excluding copyright). Normally, they do not have technical background.

How long does it take from starting proceedings to trial?

Patent infringement cases take approximately 12 – 24 months in the first instance. There may be more oral hearings during that time. The first hearing usually takes place after several months up to one year from the start of the proceedings. The duration varies depending on the workload of the judges, complexity of the case and activity of the parties. Involvement of expert witnesses may generally delay the proceedings.

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

Czech law does not recognise disclosure/ discovery procedure as it is known in common law jurisdictions. According to Czech law, the court may however order any person to provide a document necessary for the proceedings. In addition, the patent owner may request information about distribution networks and amount and price of the infringing goods or services. It is also possible (but not common) to request seizure of evidence samples before the proceedings on the merits are started.

How are arguments and evidence presented at the trial?

Arguments and evidence are normally presented together with written submissions of the parties before the first oral hearing. At the hearing, the parties discuss the case and previously submitted evidence. It is also possible to hear witnesses and/or experts.

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

An oral hearing typically lasts a few hours. Although the court should aim to decide after the first hearing, in complex cases, there are often more oral hearings several weeks or months apart. The decision is announced after the final hearing. The written judgement should be delivered to the parties within 30 days after announcement of the decision, the deadline can be however extended up to 90 days.

Court decisions are always announced publicly but not all decisions in patent infringement cases are available online. A court decision can be requested based on the Freedom of Information Act (No. 106/1999 Coll., as amended).

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

It is possible to challenge validity of a patent, however, due to the bifurcated system in the Czech Republic, the invalidity matters are heard by the Industrial Property Office (or, if relevant, the EPO), not the infringement court.

Are infringement proceedings stayed pending resolution of validity in the national patent office (or, if relevant, the EPO) or another court?

The court may (but does not have to) stay and often does stay the infringement proceedings while the invalidity proceedings are pending. The court may also wait for resolution of the invalidity proceedings without formally staying the proceedings.

Are preliminary injunctions available? If they are, can they be obtained *ex parte*? Is a bond necessary? Can a potential defendant file protective letters?

Yes, preliminary injunctions in patent infringement cases are available and are regularly granted. The proceedings are always *ex parte*.

The claimant must pay a bond in the amount of CZK 50,000 (approximately € 2,000) but the amount can be increased by the court.

Protective letters are not officially recognised by Czech law and there is no register of protective letters. Potential defendants however sometimes file protective letters anyway as the possibility to defend is otherwise limited due to the *ex parte* nature of the proceedings.

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

Yes, final injunctions are available once a decision finding an infringement becomes final. A bond is not necessary. A bond is not necessary.

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

Available remedies can include recall from the market and/or the destruction of the infringing products, penalty for any breach of judgment or delay in compliance, publication of the decision in newspapers and/or on the infringer's website, compensation for damages, and destruction of the infringing products.

Would the tribunal consider granting cross-border relief?

We are not aware of any decision of the Czech courts granting cross-border relief in patent infringement cases so far.

Is there a right of appeal from a first instance judgment? How long between judgment at first instance and hearing the appeal?

Yes, it is possible to appeal a first instance judgment to the High Court in Prague. The appellate proceedings usually take between 12 – 18 months.

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

An appeal is by way of a review. With certain exceptions, new evidence cannot be adduced on appeal.

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 court fee for a patent infringement action is CZK 2,000 (approximately €80) for each non-monetary claim and for monetary claims, it is generally 5 % of the claimed amount. The same court fees apply for an appeal. Attorneys' fees will depend on the complexity of the case.

The winner can recover the costs from the losing party. However, the amount of attorneys' fees that can be recovered is limited by law depending on the value of the claim and number of procedural steps taken in the proceedings. If only non-monetary claims are asserted, the amount recovered will be generally low.

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

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