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IP Litigation System in Sweden, Norway, Denmark and Finland

- Report for Japan External Trade Organization -

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Report

1. SWEDEN (SE)

1.1 What is the forum for the conduct of patent litigation?

The Patent and Market Court (“PMC”) possesses exclusive jurisdiction over all patent related actions, including infringement and invalidity, in first instance. The PMC is a specialised division being part of Stockholm District Court.

1.2 What is the typical timeline and form of first instance patent litigation proceedings?

Infringement proceedings usually last between 10-14 months in first instance. If an invalidity action has been brought and is handled jointly with the infringement proceedings a decision in the first instance can usually be expected within approximately 1-1,5 years.

However, the length of the proceedings highly depends on the complexity of the matter and the opposing party’s procedural conduct. A complex validity defence may prolong the proceedings.

1.3 Do the courts/government bodies deal with infringement, invalidity and unenforceability simultaneously or must invalidity and/or unenforceability actions be brought in separate proceedings?

The PMC can decide on issues of infringement and invalidity simultaneously. Once the opposition period has expired, an invalidity action can only be initiated before the PMC. If an infringement action and an invalidity action are brought before the same court, the cases are normally joined and heard together in one trial, unless there are reasons to hear the actions separately and any of the parties reject such a handling of the cases. If one action is filed much later than the other this could be a reason to hear the two cases separately.

1.4 Which acts constitute direct patent infringement?

According to chapter 1, section 3, first paragraph of the Swedish Patents Act, any of the following constitutes an act of direct infringement:

- i. manufacturing, offering for sale, placing on the market, or using a product protected by the patent or by importing or possessing such product for any such purpose;
- ii. using a process which is protected by the patent or, where he or she knows, or in light of the circumstances it is clear, that the process may not be used without the consent of the owner of the patent, offering the process for use in Sweden;
- iii. offering, placing on the market, or using a product which has been manufactured by a process protected by the patent, or by importing or possessing the product for these purposes

The provision concerns direct patent infringement and is exhaustive.

1.5 Do the concepts of indirect patent infringement or contributory infringement exist? If so, what are the elements of such forms of infringement?

Yes. According to chapter 1, section 3, second paragraph of the Swedish Patents Act, indirect patent infringement applies under the following conditions:

- i. means for exploiting the invention in Sweden are offered or supplied to a third party who is not entitled to use the invention;
- ii. the means relate to an essential element of the invention; and
- iii. the party offering or supplying the means knows, or it is obvious from the circumstances, that the means are suited and intended to be used in conjunction with the invention.

1.6 What are the key defences to patent infringement?

Non infringement arguments and invalidity arguments as well as other exceptions to patent infringement (such as the Bolar exemption, exhaustion of rights etc.).

1.7 What are the key grounds of patent invalidity?

Lack of novelty or inventive step. But also insufficient disclosure of the invention, lack of support in the application as filed or expansion of the scope of the patent after grant are grounds for patent invalidity (cf. chapter 7, section 52, first paragraph, Swedish Patents Act).

1.8 Can a patentee seek to amend a patent that is in the midst of patent litigation?

A patent claim cannot be amended during infringement proceedings. However, according to chapter 7, section 52, second paragraph of the Swedish Patents Act, a patent can be limited as part of a defence during invalidity proceedings (“partial invalidation”). It is in such cases required that the patentee requests the amendment and that the general requirements for obtaining a patent are met.

1.9 How are technical matters considered in patent litigation proceedings?

Technical judges form part of the court in patent litigation proceedings. The technical judges assist the legally qualified judges when assessing complex, technical matters such as the interpretation and formulation of patent claims, the assessment of inventive step etc.

The PMC normally rules with a panel consisting of two legally qualified judges and two technical judges. The Patent and Market Court of Appeal (“PMCOA”) normally rules by a panel consisting of three legally qualified judges and two technical judges.

1.10 Is some form of discovery/disclosure and/or court-mandated evidence seizure/protection (e.g. saisie-contrefaçon) available, either before the commencement of or during patent litigation proceedings?

- Swedish patent legislation provides for certain means of obtaining information from a defendant. Such a remedy is for example an infringement investigation against a defendant (similar to a civil procedural “house warrant”, cf. chapter 9, sections 59 a-h of the Swedish Patents Act). An infringement investigation refers to a securing measure, meaning that the court can decide that an investigation can be made in order to search for objects or documents that can be assumed to be important for the inquiry of the infringement. Attempt and preparation to infringe can also motivate an infringement investigation.
- The Swedish Patents Act furthermore includes specific provisions regarding orders to provide information (cf. chapter 9, sections 57 c-f of the Swedish Patents Act). A court may, under penalty of a fine, order one or several parties to provide information to the applicant concerning the origin and distribution networks for the goods or services in respect of which the infringement has been committed. An order to provide information may be issued only if it can be assumed that the information would facilitate an inquiry about the infringement (section 57 c of the Swedish Patents Act).

- In addition to the provisions regarding infringement investigations, there are general provisions on production of documents in chapter 38 of the Swedish Code of Judicial Procedure. Accordingly, if someone is in possession of a written document that can be assumed to be of importance as evidence, he may be ordered to produce it. The court may issue an order for him to produce such documents subject to a fine. However, as a general rule, this does not apply if it would involve, e.g., the disclosure of a trade secret.

1.11 Is there a system of opposition proceedings? If so, how does this system interact with the patent litigation system?

Yes. The patentee can apply for a national patent before the Swedish Patent and Registration Office (“SPRO”). If the patent is granted by the SPRO, a third party may during a period of nine months following the grant file an opposition against the decision. The opposition case is tried by the SPRO where the patent can either be

- upheld (if the opposition is rejected),
- annulled or upheld in amended wording (if the opposition is successful).

The decision by the SPRO can be appealed to the PMC. It is possible to join an appeal case concerning a patent opposition proceeding with a separate action for patent infringement concerning the same patent, if such consolidation of the cases is considered appropriate with regard to the investigation in the matter and other circumstances (see chapter 3, section 6, the Patent and Market Courts Act and government bill 2015/16:57 p. 299).

1.12 What are the key procedural steps that must be satisfied before a patent action can be commenced? Are there any limitation periods for commencing an action?

Swedish law does not stipulate any prerequisite to initiate legal proceedings. However, it is normally advisable to send a cease and desist letter prior to filing a lawsuit (this is almost always done, except in more urgent matters). This is to avoid the initiation of unnecessary court proceedings with the associated risk of having to compensate the defendant for litigation costs in cases where the action is admitted. In addition, the ethical rules of the Swedish Bar Association require, as a main rule, Swedish attorneys to provide an opponent reasonable time to consider a claim before legal actions are taken.

Claims for damages are subject to a five-year limitation period. If an action for compensation is not brought within this time period, the right to compensation is lost (see chapter 9, section 58, third paragraph of the Swedish Patents Act). The limitation period runs from the time when the damage occurred. If the patentee has suffered

several damages, there will be an individual limitation period for each damage (see Supreme Court case NJA 2011 p. 270).

There is no limitation period for seeking an injunction.

1.13 What options are open to a patent holder when seeking to enforce its rights in your jurisdiction? (especially the Border measures)

When a patent holder seeks to enforce its rights in Sweden the available options are civil proceedings (see question 12 and 16), criminal proceedings (which is rarely used, see question 16 below) and border measures.

Border measures are available under the Customs Enforcement Regulation (608/2013). National rules concerning customs actions are set out in the Swedish Customs Act (2016:253) and the Swedish Customs Ordinance (2016:287). A right holder may apply to the customs authorities to enable them to make customs seizures in respect of a specific patent (see article 6 of the Customs Enforcement Regulation [608/2013] and sections 44-49 of the Swedish Customs Act).

1.14 Which parties have standing to bring a patent infringement action? Under which circumstances will a patent licensee have standing to bring an action?

A patentee or licensee (regardless of whether the license is exclusive or non-exclusive) has the right to initiate legal proceedings on infringement and thereby obtain, inter alia, a permanent and preliminary injunction as well as reasonable compensation and damages for patent infringement. The licensee will however need to prove the existence of a licence (if disputed).

A licensee wishing to bring an infringement action shall submit a notification to the patentee. The licensee is not required to be previously registered in the Swedish Patent Register to be eligible to bring action based on a patent (see chapter 9, section 64 of the Swedish Patents Act).

The patentee is not required to submit any notification before initiating infringement proceedings (see question 12 above).

1.15 Are interim injunctions available in patent litigation proceedings?

Yes, preliminary injunctions (“PI”) are available in Sweden. A request for a PI can be submitted either prior to, or during, infringement proceedings on the merits. A PI decision applies under penalty of a fine payable to the Swedish Crown (not the plaintiff).

The size of the fine is decided based on the circumstances of the individual case. PI decisions are normally delivered without any preceding oral hearing and are, thus, based on written submissions and evidence (including possible expert declarations and affidavits).

1.16 What final remedies, both monetary and non-monetary, are available for patent infringement? Of these, which are most commonly sought, and which are typically ordered?

- **Injunctive relief:** If it is successfully proven that infringement has been committed, the plaintiff may be granted upon request a permanent injunction under penalty of a fine that prohibits the defendant from committing an act constituting infringement.
- **Reasonable compensation for the use of the invention:** Should the court find that infringement has been committed the defendant can be held liable to pay reasonable compensation for the use of the invention, which corresponds to an estimated reasonable license fee, even if the infringement has been committed without intent or negligence.
- **Damages for any additional loss:** If the infringement has been committed with intent or through negligence the defendant can also be held liable to pay compensation for any further damage caused by the infringement. This can include, inter alia, compensation for lost profit and decreased goodwill. Consideration shall also be taken to profit that has been made by the defendant as a result of the infringement and the patentee's interest in that infringements are not committed. It is, however, not possible to claim punitive or treble damages. Any compensation accounting for lost profit or profits made by the defendant has to be proved as caused by the infringement.
- **Declaratory judgment:** As an alternative to initiating infringement proceedings a patentee or licensee may seek a declaratory judgment to establish that the patent prevents a third party's infringing activities, provided that there is an uncertainty in this respect and that this is prejudicial to the patentee's carrying of its business or planning to do so. It is also possible to bring a declaratory action to pay for damages.
- **Seizure and destruction of infringing products:** The court may – to the extent it is found reasonable – order for destruction and removal measures, i.e. that infringing goods shall be recalled from the market, destroyed, altered or confiscated for the remainder of the patent term or that some other measure shall be taken with regard to the infringing goods.

- **Publication of the judgment:** The court may also order a defendant to bear the cost of publication of the judgment on infringement and arrange for suitable measures in order to spread information of a delivered judgment on patent infringement.
- **Criminal sanctions:** A defendant may be subject to criminal sanctions for intentional or gross negligent acts of infringement. Criminal sanctions are however rarely pursued.

The most commonly sought remedies for patent infringement are permanent injunctions, often combined with monetary claims such as an order for the defendant to pay reasonable compensation for the use of the invention (cf. bullet-points 1 and 2 above).

1.17 On what basis are damages for patent infringement calculated? Is it possible to obtain additional or exemplary damages?

Damages are awarded on a compensatory basis. The Swedish Patents Act lists a number of factors that are particularly relevant for the calculation of damages for patent infringement (see chapter 9, section 58 of the Swedish Patents Act), such as:

- Lost profits;
- Profits realized by the party committing the infringement;
- Damage to the reputation of the invention;
- Non-pecuniary loss; and
- The interest of the patent holder in preventing infringement from taking place.

The principle however is that the patent holder must only be compensated for its actual financial loss. Therefore, additional damages or exemplary (punitive) damages are not available under Swedish law.

1.18 What avenues of appeal are available for a defeated party and on what basis?

A judgment or decision rendered by the PMC may be appealed to the PMCOA. Leave to appeal is required but is commonly granted in patent cases.

The PMCOA's judgment or decision may be appealed to the Supreme Court, but only if the appellate court permits an appeal (such a permission to appeal is rarely given). The Supreme Court must also grant leave to appeal. It is extremely unusual for the Supreme

Court to grant leave to appeal in patent matters and it is usually reserved for questions unrelated to substantive patent law being of precedential interest.

1.19 What is the number of infringement lawsuits each year and the ratio of the win cases, lose cases and settlement cases by right holder?

- Based on statistics from first instance cases before the PMC, it is estimated that approximately 20 patent cases are initiated in the PMC on a yearly basis. Of these cases, roughly half to 2/3 of these cases are patent infringement cases (naturally, these numbers may differ somewhat from one year to another).
- Of the patent infringement cases before the PMC that are not settled or withdrawn by the rights holder, approximately half of these cases are won by the rights holder (likewise, the infringement action is refused in approximately half of these cases).
- Of the patent cases that are initiated before the PMC, approximately half of the cases are in turn withdrawn by the parties (it is assumed that the withdrawn cases are a result of a settlement between the parties).

In most cases before the PMC, an action for infringement is furthermore met with a subsequent action for invalidity from the defendant which is handled jointly with the infringement proceedings.

1.20 The fee for court? (If possible, please indicate approximate representation cost)

No court fees apply. The application fee for filing a lawsuit is currently SEK 2,800.

The legal representation cost in a case concerning patent infringement is highly individual and depends on a number of factors such as the complexity of the matter, the invention itself – i.e. whether the invention concerns a highly specialized area such as pharmaceuticals/medical technique etc. – the opposing party's procedural conduct and whether an action for infringement is met with a subsequent action for invalidity from the defendant. A complex validity defence may furthermore prolong the proceedings.

Consequently, in previous first instance infringement cases before the PMC between 2016 and 2019, the total litigation costs in a patent infringement case (not only representation cost) has varied between approximately 1 million to 10 million SEK, where the total litigation costs in the majority of the infringement cases have ranged between approximately 1 to 6 million SEK. Additional costs of approximately 60% of the first instance costs can be expected if the first instance judgment is followed by appeal proceedings.

2. NORWAY (NO)

2.1 What is the forum for the conduct of patent litigation?

Oslo District Court is the mandatory first instance venue for patent litigation in Norway, with the exception of separate preliminary injunction proceedings, where the legal venue shall be the district court that is covering the geographical district where the defendant has their ordinary venue in Norway. However, if the defendant has no ordinary venue in Norway, i.e. a foreign company without any branches, agencies or similar place of business in Norway, a petition for a preliminary injunction against the defendant shall be submitted to the Oslo District Court. Further, a foreign patent holder will normally have the possibility to choose Oslo District Court as venue in separate preliminary injunction proceedings.

In ordinary proceedings the District Court is constituted with one legal judge and, normally, additionally two technical expert judges. Each party may request expert judges, and there is no permanent group or list of expert judges from which the experts are appointed, but the Court normally asks the parties to come up with a list of their proposals. The Court may decide to call expert judges independent of any such request from the parties.

The appointment process of expert judges is sometimes complicated and time consuming.

In preliminary injunction proceedings the District Court is always constituted with only one legal judge, but the Court may appoint expert witnesses.

2.2 What is the typical timeline and form of first instance patent litigation proceedings?

Depending on the scope and complexity of the case, it typically takes between one year and one and a half year to obtain a first instance decision on infringement and/or validity, counted from the day the writ of summons was filed.

The form of the proceedings in the first instance can be summarized as follows:

1. The plaintiff submits a writ of summons to the District Court
2. The defendant submits a reply to the writ of summons within a deadline set by the Court, which is normally at least three weeks.
3. The Court summons the parties to a planning meeting, whereof, inter alia, decisions on the following main topics are normally made:

- 1) Whether judicial mediation should be attempted during the preparatory stage
- 2) Whether the Court shall be set with expert judges and, if so, a deadline is set for the parties to submit a list of their proposals for such expert judges
- 3) Point of time for the completion of the preparatory stage, which is the final deadline for submitting new claims and evidence, including appointment of new witnesses. The completion of the preparatory stage will normally be at least two weeks prior to the start of the main hearing.
- 4) Deadline for submission of written closing statements, normally at least two weeks prior to the start of the main hearing
- 5) Scheduling of the main court hearing
4. The parties may submit their evidence and appoint their witnesses in pleadings to the Court up until the date of the completion of the preparatory stage. Close up until or at the date of the completion of the preparatory stage of the proceedings, both parties shall submit a written closing statement summarizing the main points of their claims and arguments.
5. The main court hearing

The proceedings during the main hearing is oral and the presentation of evidence shall be immediate before the Court. This means that the parties present their whole case, evidence, and arguments orally before the Court and that all witnesses shall be examined orally during the main hearing. In patent cases the oral hearing will usually be held over at 5-15 days depending on the complexity of the case.
6. After the main court hearing, the case is closed for judgement and the Court shall, unless the complexity of the case demands more time, pronounce their ruling within four weeks after the main hearing. In patent cases, the Court may use a couple of weeks more than the limit of four weeks due to the complexity of the case.

2.3 Do the courts/government bodies deal with infringement, invalidity, and unenforceability simultaneously or must invalidity and/or unenforceability actions be brought in separate proceedings?

Under Norwegian Law a defendant that wishes to invoke invalidity as defence against an infringement claim will have to file a counterclaim for invalidation before the same Court that handles the infringement case.

Infringement and validity will then be handled in the same case and the Court will assess invalidity before it assesses infringement (infringement will only be assessed if the Court concludes that the patent is valid). All issues of claim construction are considered

together with validity and/or infringement and the assessment of validity and infringement shall be based on the same construction of the claims.

2.4 Which acts constitute direct patent infringement?

Pursuant to section 3 of the Patents Act the following acts constitute direct patent infringement:

- a) manufacturing, offering, bringing into trade or using a product which is protected by a patent, or importing or being in possession of the product with such intent;
- b) using, or offering the supply of services that will entail the use of, a process protected by a patent, or, whilst knowing or it is otherwise obvious, that the use of the process is prohibited without the consent of the patent holder, offering the process itself to others for their use of the process in Norway;
- c) offering, bringing into trade or using a product which is produced by utilization of a patented process, or importing or possessing such products with such intent.

2.5 Do the concepts of indirect patent infringement or contributory infringement exist? If so, what are the elements of such forms of infringement?

Yes, the concepts of indirect patent infringement and contributory infringement exist under Norwegian Patent Law.

Indirect patent infringement:

Indirect patent infringement is governed under Section 3, second paragraph, of the Patents Act. The provision forbids a person to "offer or supply" means for exercising the invention protected by a patent provided that the person or entity supplying or offering the means knows, or it is obvious from the circumstances, that the means are suitable and intended for exercising the invention. "Means" are typically materials or parts which give the recipient the possibility of producing a patented product or exercising a patented method. The means must regard something "essential in the invention". If the "means" are staple commodities, the provision only applies where the person offering or supplying the means attempt to induce the recipient to commit acts of direct patent infringement.

Contributory infringement:

As for contributory infringement, such as acts of aiding and abetting to another's patent infringement, the patent proprietor may claim remuneration or compensation for damages from the contributor if the contributor has acted

intentionally or through negligence. The patent proprietor may also obtain an injunction against the contributor, prohibiting the contributor from repeating the action(s) constituting the contributory infringement.

2.6 What are the key defences to patent infringement?

The key defence is to file a counter claim of invalidity. If someone is sued for infringement, the normal reaction, which is adopted in almost every infringement case, is to file a counter claim for invalidation of the patent. Further, in several cases, there will be grounds for arguing that there is no infringement based on that the alleged infringing product or process falls outside the scope of the invoked claim(s) in the patent.

In this respect, one will argue for a specific interpretation of the patent claims that inevitably results in that there is no infringement.

In some cases, the alleged infringer also argues that there is no infringement on the basis of the following rules:

- 1) Research exemption: Experiments and research on the invention itself is exempted from the patentee's sole right. This exemption does not only regard "pure" research but also commercial research and development.
- 2) License: The defendant accused of infringement can prove that it has been granted a valid license for carrying out the applicable actions. The defence can be based on both an express or implied license entered into between the patentee and the defendant.
- 3) Exhaustion: The exhaustion rule implies that the patentee's sole right is exhausted for products the patentee or someone acting on his/her behalf (under the consent of the patentee) has put on the market within the European Economic Area (EEA).

2.7 What are the key grounds of patent invalidity?

Lack of inventive step is the most common applied ground of invalidation of patents in Norway. From the recent years there are, however, also examples of invalidation based on insufficient disclosure and added matter.

2.8 Can a patentee seek to amend a patent that is in the midst of patent litigation?

Yes. The patentee can seek to amend the patent either by filing auxiliary claims in the litigation or by filing a request for administrative limitation to the Norwegian Industrial Property Office (NIPO).

The patent can be amended at any stage of the litigation, i.e. also in an appeal case.

2.9 How are technical matters considered in patent litigation proceedings?

Evidence is subject to free assessment by the court.

Normally, each party in patent proceedings appoints one or several expert witnesses to give expert testimonies on the technical matters of the case. An expert witness may attend the hearing throughout and may be allowed to ask questions to the parties, witnesses, and other experts. Usually, the expert witnesses provide a written report on the technical issues of the case which are submitted as evidence. The expert witness will, however, have to present the main content of such a report orally during the oral hearing and is also subject to cross examination from the other party. Such written reports are therefore mainly functioning as a supplement to their oral expert testimonies. Although expert witnesses are instructed by a party, the expert witness is under a duty to present his/her sincere assessment and viewpoints to the Court.

The Court may also, when found necessary to establish a sound factual basis for the ruling in the case, appoint expert witnesses on their own.

2.10 Is some form of discovery/disclosure and/or court-mandated evidence seizure/protection (e.g. saisie-contrefaçon) available, either before the commencement of or during patent litigation proceedings?

Before the commencement of patent litigation proceedings:

Pursuant to Norwegian Civil Procedural Law, evidence may to a certain extent be obtained and secured outside a lawsuit by judicial examination of parties and witnesses and by providing access to and inspecting documents, including electronically stored material, and real evidence.

During the patent litigation proceedings:

Norwegian law does not recognize the concept of discovery, but all parties are obliged to make available as evidence objects, including documents, that are in their possession or of which they can obtain possession, and which are of relevance for the disputed matter. The Norwegian Civil Procedural Act also contains provisions

that correspond to Article 8 of Directive 2004/48/EC on the enforcement of intellectual property rights. Thus, when there are reasonable grounds to believe that an infringement of a patent has been committed, the court may at the request of the patentee rule that the infringer shall disclose information on the origin and distribution networks of the goods, including information with respect to the name and address of manufacturers, distributors, suppliers and others who have had the goods in its possession, name and address of wholesalers and retailers, and information on production quantities and prices. Such information may also be required inter alia from those having contributed to the infringement or have been in possession of the infringing goods.

2.11 Is there a system of opposition proceedings? If so, how does this system interact with the patent litigation system?

There is a system of post-grant opposition proceedings in Norway, where oppositions to the NIPO may be filed within nine months after the grant of the patent. Further, there is also a procedure for administrative review which can be used after the expiry of the opposition period, where anyone can file a request to the NIPO that a patent shall be declared invalid through an administrative review. Requests for administrative review can be filed until the patent expires and also after expiry if the party requesting an administrative review has a legal interest in having the issue reviewed after the expiry, e.g. if the party has been accused of infringement while the patent was in force.

A request for an administrative review cannot be filed if and as long as legal proceedings regarding the patent are pending before the Courts. If legal proceedings regarding the patent are brought before the courts before a final decision has been made on a request for an administrative review, the NIPO shall suspend its handling of the administrative review until the legal proceedings have been finally decided. Further, a party that has requested administrative review cannot institute legal proceedings regarding the patent while administrative review proceedings are pending before the NIPO.

Invalidation actions before the Courts can be filed once a patent is granted. It is possible to file both an opposition and initiate an invalidation action before the Courts simultaneously. It will then be for the NIPO and the Court to decide whether the handling of the opposition or the Court case should be stayed to await the decision from the other body. Normally the Court will not stay a Court case awaiting the outcome of an opposition.

2.12 What are the key procedural steps that must be satisfied before a patent action can be commenced? Are there any limitation periods for commencing an action?

In accordance with the Norwegian Civil Procedural Act, the plaintiff must notify the defendant of his intention to start litigation setting out his or hers claims and the legal basis for these claims before a lawsuit is initiated. Failure to notify may have an impact on the court's decision regarding legal costs but cannot lead to dismissal of a case.

There are no limitation periods on a patent infringement claim in itself and a claim for invalidation may be filed any time during the period the patent is in force. There is, however, a limitation period on claims for damages or compensation arising from patent infringement, which are subject to a limitation period of three years calculated from the date on which the plaintiff obtained, or reasonably ought to have obtained, necessary knowledge of the damage and the responsible party. This limitation period will nevertheless expire at the latest twenty years after the fault was committed or other basis for liability ceased.

2.13 What options are open to a patent holder when seeking to enforce its rights in your jurisdiction? (especially the Border measures)

Available measures may depend on the specific patent and its underlying invention.

For patents related to pharmaceuticals, there are several monitoring-related measures that could be done to keep control over generic activities. Available databases could be tracked regularly to obtain information on applications for marketing authorization from generic companies.

Under Norwegian Law, border measures are available for infringements of all kinds of intellectual property rights. However, in practice, border measures are used to prevent counterfeiting and piracy, i.e. infringements of trademarks, copyrights and designs. Border measures are very rarely used to enforce patents, as the customs authorities in most instances do not have the necessary qualifications/experience to handle such cases.

2.14 Which parties have standing to bring a patent infringement action? Under which circumstances will a patent licensee have standing to bring an action?

Infringement proceedings may be initiated by the holder(s) of the patent. Further, a licensee that has been granted an exclusive license may also initiate infringement proceedings and claim injunctions and compensation or damages. A licensee that holds a non-exclusive license may not claim injunctions, but may file a claim for compensation or damages.

2.15 Are interim injunctions available in patent litigation proceedings?

Yes, interim/preliminary injunctions are available. Preliminary injunction proceedings in patent cases will, as a general rule be conducted as inter partes proceedings – either as separate proceedings or as a part of ordinary proceedings on the merits. The petitioner can request that a preliminary injunction shall be granted on an ex-parte basis (without the defendant being heard), but this is seldom granted in patent cases.

In order to obtain an injunction, the petitioner must substantiate his claim (that the patent is infringed) and the urgency of the matter. In patent cases, the fact that there is an ongoing infringement of the patent normally makes the matter sufficiently urgent and therefore provides sufficient basis for obtaining a preliminary injunction. The alleged infringer may invoke that the patent is invalid as defense in preliminary injunction proceedings. The Court must then assess the validity of the patent and shall reject the petition if it considers it likely that the patent is invalid.

The Court shall reject a petition for a preliminary injunction if the loss or inconvenience to the defendant is clearly disproportionate to the interests of the claimant in the interim measure being granted, but in patent cases a request for preliminary injunctions is very rarely rejected on this basis.

Sometimes the Court sets as a condition for granting a preliminary injunction that financial security is provided from the petitioner. If a preliminary injunction is reversed through appeal or in subsequent ordinary proceedings, the petitioner has a strict liability for damages caused to the other party as a consequence of the injunction.

2.16 What final remedies, both monetary and non-monetary, are available for patent infringement? Of these, which are most commonly sought, and which are typically ordered?

The most commonly sought non-monetary remedy is an injunction prohibiting the continuation of the infringement and/or preventing any imminent infringement. Further, the court may, on the patentee's request, and as to prevent further infringements, decide on remedies such as amendment, seizure, destruction of the infringing goods, etc. The court may also order that information about the judgement shall be communicated in a suitable manner for the infringer's account.

The Court have the possibility to, under very strict conditions, to decide to allow the infringer to continue the infringing actions under the condition that the infringer pays a reasonable license fee (royalty) to the patent holder, instead of issuing a final injunction. This option has, however, never been used. It was introduced in 2013.

As for the monetary remedies, in cases of intentional or negligent infringement, the patent holder is entitled to a compensation determined according to the most favourable of the following grounds:

1. Compensation corresponding to a reasonable license fee for the exploitation, as well as damages for any loss resulting from the infringement that would not have arisen in connection with licensing.
2. damages for any (economical) loss resulting from the infringement; or
3. compensation corresponding to the economic gain obtained by the infringer through the infringement. Further, if the infringement has been committed intentionally or through gross negligence, the patent holder is entitled to claim compensation on the basis of a fourth option:
4. Compensation corresponding to the double of a reasonable license fee for the exploitation.

For infringements that have taken place in good faith, the infringer shall, insofar as this is not seen as unreasonable, pay compensation corresponding to a reasonable licence fee for the exploitation or corresponding to the gain procured as a result of the infringement.

2.17 On what basis are damages for patent infringement calculated? Is it possible to obtain additional or exemplary damages?

See the answer to question 16 above.

2.18 What avenues of appeal are available for a defeated party and on what basis?

The defeated party can appeal a decision of the District Court to the Court of Appeal. The appeal term is one month from the service of the appealed decision. Normally, no leave is required, but the Court of Appeal may refuse leave to appeal if it finds it clear that the appeal will not succeed. In patent cases leave is rarely refused. The appeal procedure is similar to the procedure before the District Court, cf. question 2 above.

An appeal of judgment or decision from the District Court to the Court of Appeal can be made on the grounds of error (i) in the assessments of the facts of the case, and/or (ii) in the application of law and/or (iii) in the procedure/case handling upon which the ruling is based.

A decision by the Court of Appeal may be appealed to the Supreme Court. The term of appeal is one month. Leave is required. A condition for granted leave to an appeal to the

Supreme Court is that the appeal concerns issues that are of significance beyond the scope of the current case or if it is for other reasons considered important that the case is decided by the Supreme Court.

An appeal to the Supreme Court can be made on the same grounds as before the Court of Appeal. However, in practice, leave to appeal is more commonly granted if the appeal is made on the grounds that there is an error in the application of law, and not in the factual aspects of the case.

2.19 What is the number of infringement lawsuits each year and the ratio of the win cases, lose cases and settlement cases by right holder?

The number of infringement proceedings varies a lot from year to year and there is no official statistics with information regarding the number of lawsuits and the outcome of such lawsuits.

However, research was carried out on the number of judgements in infringement cases so far in 2022.

Judgements from Oslo District Court and Borgarting Court of Appeal in 2022 (up until 18 October 2022) in cases of patent infringement:

- Cases won by the right holder: 3 (one is final)
- Cases lost by the right holder: 3 (all are final)
- Cases settled in Court: 1

Lastly, please note that there is no public information on the number of cases settled outside of Court.

2.20 The fee for court? (If possible, please indicate approximate representation cost)

The representation costs (attorney fees) for each party will normally be in the ranges set out below:

- Preliminary injunction:
 - District Court: Normally in the range EUR 100,000 – 200,000, depending to a large extent on the complexity of the patent and the number of invalidity arguments to be discussed.
 - Court of Appeal: The costs will normally be lower before the Court of Appeal than before the first instance.

- Supreme Court: Normally significantly lower than before the lower Courts.

- Normal proceedings (infringement):
 - Normally in the range EUR 200,000 – 400,000, depending to a large extent on the complexity of the patent to be discussed.
 - Court of Appeal: The costs will normally be in the same range before the Court of Appeal as before the first instance.
 - Supreme Court: Normally significantly lower than before the lower Courts.

- Normal proceedings (invalidity):
 - District Court: Normally in the range EUR 200,000 – 400,000, depending to a large extent on the complexity and the number of invalidity arguments to be discussed.
 - Court of Appeal: The costs will normally be in the same range before the Court of Appeal as before the first instance.
 - Supreme Court: Normally significantly lower than before the lower Courts.

- Normal proceedings (infringement and invalidity):
 - District Court: Normally in the range EUR 400,000 – 1,000,000, depending to a large extent on the complexity of the patent and the number of invalidity arguments to be discussed.
 - Court of Appeal: The costs will normally be in the same range before the Court of Appeal as before the first instance.
 - Supreme Court: Normally significantly lower than before the lower Courts.

Additional costs:

- The losing party of the proceedings shall, as a general rule, cover the necessary legal costs of the other party, which will be in the ranges set out above.

- In addition to representation costs, the plaintiff shall pay an administrative fee to the Court. This fee varies depending on the duration of the hearing but is insignificant compared to the representation costs. The appellant shall also pay an

administrative fee. The plaintiff/appellant is entitled to reimbursement of the administrative fee from the other party if the plaintiff/appellant prevails.

- The parties shall, at the outset, share the costs of the Court occurred in relation to the appointment and use of expert judges. However, the Court will normally rule that the losing party in the proceedings shall cover these costs alone. Such costs may be significant and is often in the range of EUR 50,000 – 100,000.

3. DENMARK (DK)

3.1 What is the forum for the conduct of patent litigation?

All patent litigation at first instance in Denmark takes place at the Maritime and Commercial High Court.

3.2 What is the typical timeline and form of first instance patent litigation proceedings?

a) Main action proceedings

First instance patent litigation usually takes at least 1-2 years depending on the complexity of the case and whether expert appraisal is conducted. If expert appraisal is requested this is conducted by court-appointed experts on the basis of questions drafted by the parties. Expert appraisal is usually very time consuming and might prolong the proceedings. The oral hearing will usually last 4-6 days in patent proceedings. The judgment is usually handed down 6 weeks after the oral hearing, but sometimes it takes longer, e.g. due to a public holiday. At the end of the oral hearing, the court will announce an expected date for the issuing of the judgment.

b) Preliminary injunction (PI) proceedings

It usually takes 4-8 months to obtain a PI decision from the date of filing of the request for the PI. There are no particular procedural steps stipulated in the law, but the parties usually agree on certain deadlines for the submission of pleadings.

3.3 Do the courts/government bodies deal with infringement, invalidity and unenforceability simultaneously or must invalidity and/or unenforceability actions be brought in separate proceedings?

Yes, the courts deal with all issues related to infringement, invalidity and unenforceability simultaneously, i.e. there is no bifurcation in Denmark.

Proceedings before the Danish Patent and Trademark Office will only deal with invalidity and possible issues relating to registration of the patent rights, e.g. ownership of the patents.

3.4 Which acts constitute direct patent infringement?

The following acts will constitute a direct patent infringement:

- 1) Manufacturing, offering, placing on the market, or using a product which is the subject of a patent, or importing or possessing the product for such purpose, or
- 2) Using a method which is the subject of a patent, or offering it for use in this country, if the person who offers the method knows or the circumstances make it clear that the method may not be used without the consent of the patent holder, or
- 3) Offering, placing on the market, or using a product which has been manufactured by a process which is the subject of a patent, or importing or possessing the product for such purpose

3.5 Do the concepts of indirect patent infringement or contributory infringement exist? If so, what are the elements of such forms of infringement?

Yes, both the concept of indirect patent infringement and the concept of contributory infringement exist.

The concept of indirect infringement entails that others may not use the invention by delivering or offering someone, who may not legally use the invention, means to use the invention in this country, if the means concern an essential element in the invention and the supplier or offeror knows, or the circumstances make it clear, that the means are suited and meant for such use.

Pursuant to general Danish law, a broad concept of contributory liability exists. However, this is only rarely applied in patent litigation.

3.6 What are the key defences to patent infringement?

The key defences to a claim for patent infringement are to claim either non-infringement or invalidity of the patent.

3.7 What are the key grounds of patent invalidity?

The following are the only grounds of patent invalidity pursuant to Danish law:

- 1) Lack of novelty;
- 2) Lack of inventive step;
- 3) Added matter (including intermediate generalisation); and
- 4) Insufficient disclosure.

3.8 Can a patentee seek to amend a patent that is in the midst of patent litigation?

In general, it is not possible to amend a granted patent in the midst of patent litigation. It is only possible to consolidate the main claim with a dependant sub-claim during patent litigation but not to redraft the claims with wording from the description.

The limitation in relation to redrafting claims with wording from the description has only been dealt with in detail in one case. However, legal literature is uncertain of the implications and correctness of the decision.

3.9 How are technical matters considered in patent litigation proceedings?

a) Main action proceedings

Technical matters regarding infringement and validity are obtained through expert appraisal with court-appointed experts. The expert appraisal will include preparation of specific questions to be answered by the experts and it is possible to ask supplementary questions based on the first report prepared by the experts. The court-appointed experts will also give oral testimony in court.

b) PI proceedings

The technical evidence in PI proceedings consists of expert declarations prepared by the parties' own experts. The experts will also give oral testimony in court.

3.10 Is some form of discovery/disclosure and/or court-mandated evidence seizure/protection (e.g. saisie-contrefaçon) available, either before the commencement of or during patent litigation proceedings?

Generally, the answer is no. Neither discovery nor disclosure are available under Danish law.

In theory, it is possible to request a seizure of evidence based on a claim for patent infringement. However, in practice the Danish courts do not accept a request for seizure of evidence in patent matters because this type of litigation is considered to be complex.

In main action proceedings, the Danish courts can order the infringing party to provide information relating to the infringing goods or services. However, this presupposes that it has already been proven that the patent has been infringed, i.e. that the plaintiff has won the main action patent litigation proceedings. It is therefore in practice not possible to use this type of request to obtain evidence of an infringement.

3.11 Is there a system of opposition proceedings? If so, how does this system interact with the patent litigation system?

Anyone can challenge the validity of a patent either before the EPO (for European patents) or before the Danish Patent and Trademark Office (for DK patents).

a) Main action proceedings

Danish case law indicates that Danish patent proceedings will generally be stayed pending the outcome of the opposition proceedings before the EPO and the Danish Patent and Trademark Office, if the outcome of the opposition proceedings is presumed - regardless of the outcome of the case - to affect the outcome of the proceedings.

b) PI proceedings

Contrary to main action proceedings, PI proceedings will not be stayed pending the outcome of the opposition proceedings before the EPO and the Danish Patent and Trademark Office.

c) Re-examination of the patent

Besides the system of opposition proceedings, anyone can request the Danish Patent and Trade-mark Office to re-examine both DK patents and European patents with effect in Denmark.

3.12 What are the key procedural steps that must be satisfied before a patent action can be commenced? Are there any limitation periods for commencing an action?

There are as such no procedural steps that must be satisfied before a patent action can be commenced.

It is not mandatory to send warning letters before starting a patent action, but it is normally recommended.

The claimant must have legal standing in order to start the patent action, see also answer under question 14.

There are no specific rules that require the patentee to start proceedings within a specific deadline. However, case law shows that the court can deny a PI if the patentee has not asserted its rights with sufficient urgency. Even though case law does not impose strict deadlines for initiating PI proceedings in patent cases, it is normally advised to file a request for a PI not later than 3 months after becoming aware of the infringement/threatened infringement.

3.13 What options are open to a patent holder when seeking to enforce its rights in your jurisdiction? (especially the Border measures)

Danish Customs Authorities can act on patent infringement if the patent holder applies for custom surveillance. However, since patent rights tend not to be obvious for customs employees, patent rights must often be explained more carefully. Thus, if the patent holder decides to apply for customs surveillance, the description of the patent rights must be carefully explained along with information on, inter alia, distinctive features of authentic goods, place of production, involved companies and traders.

Please note that it is important that the patent holder sustain interest and take action if notified of an infringing product within a reasonable period of time as the Customs Authorities otherwise may lose interest in detaining infringing goods.

When seeking to enforce the patent, the patent holder must generally file an enforcement action (normally a PI request) with the court.

3.14 Which parties have standing to bring a patent infringement action? Under which circumstances will a patent licensee have standing to bring an action?

The patent holder has legal standing to bring a patent infringement action.

A licensee (simple and exclusive) also has standing to bring a patent infringement action. The license should include the right to enforce the patent. There are no formal requirements for the license, e.g. that it must be in writing, and there is no requirement of registration of the license. However, it may be necessary to document the license to the court, e.g. by submitting a confirmatory declaration of the license.

3.15 Are interim injunctions available in patent litigation proceedings?

Yes, interim injunctions (PI proceedings) are available in Denmark. PI proceedings are not part of main action proceedings, but are conducted as separate proceedings, either before or parallel with the main action proceedings.

PI proceedings are always held as inter partes proceedings in pharma patent cases. In theory, it is possible to request ex parte proceedings, but in practice this is not accepted by the courts.

3.16 What final remedies, both monetary and non-monetary, are available for patent infringement? Of these, which are most commonly sought, and which are typically ordered?

The Danish courts can grant injunctions both in main action proceedings and PI proceedings.

a) Main action proceedings

Monetary remedies for patent infringement consist of a fair remuneration for the use and compensation for the additional damages caused by the infringement.

Non-monetary remedies for patent infringement consist of withdrawal from the market, destruction, handover, or modification of the infringing product. Additionally, the court can impose the losing party to publish the judgment, either in full or in excerpts. The most commonly sought remedies are damages, withdrawal from the market and sometimes publication of the judgment.

b) PI proceedings

In PI proceedings the court can issue an injunction and order the losing party to withdraw the product from the market. However, the losing party cannot be obliged to destruct or handover its products.

3.17 On what basis are damages for patent infringement calculated? Is it possible to obtain additional or exemplary damages?

The damages are typically calculated based on net sales minus costs (contribution margin). This is typically demonstrated via an independent auditor's declaration.

It is possible to obtain additional damage, see also answer under question 16. It is not possible to obtain exemplary damages.

3.18 What avenues of appeal are available for a defeated party and on what basis?

The decisions of the Maritime and Commercial High Court can be appealed to the High Court (the Appeal Court), or, if the case involves questions of general public importance, directly to the Supreme Court. In relation to a second instance decision from the Eastern High Court, it is possible to apply for leave to appeal to the Supreme Court, if the case involves questions of general public importance. An application for leave to appeal must be filed with the Appeals Permission Board. The appeal case is a full appeal of the case with an assessment of both points of fact and law.

3.19 What is the number of infringement lawsuits each year and the ratio of the win cases, lose cases and settlement cases by right holder?

The majority of patent lawsuits consist of PI proceedings, and it is estimated that there are approx. 20-30 cases every year.

PIs are often granted in Denmark as Denmark is generally a patent friendly jurisdiction, amongst other things because there is a strong presumption of validity. For a defendant to be successful in PI proceedings based solely on invalidity arguments, the defendant must have a very strong case as the burden of proof is very high (establishing invalidity); it would normally require that the defendant can submit prior art that is novelty destroying and has not previously been considered by the EPO.

Most parties choose to settle the case after the PI proceedings, consequently the PI is seldomly tried in a main action proceeding.

3.20 The fee for court? (If possible, please indicate approximate representation cost)

a) Main action proceedings

The court fee for filing a main action case is EUR 100 for cases with a value under EUR 13,400 and EUR 200 for cases with a value exceeding EUR 13,400 in the first instance. Three months before oral hearing is scheduled to take place, the claimant must pay an additional court fee which is determined by the economic value of the case and is in the range of EUR 400 to EUR 21,475. The maximum fee of EUR 21,475 will apply in most patent cases as this fee must be paid for all cases with an economic value that exceeds EUR 800,000.

It is difficult to give a general cost estimate for lawyers' fees, but normally it will be in the range EUR 200,000 - 300,000 (excl. VAT) for each instance. However, if the matter is technically complicated, involves issues of both infringement and validity,

and the expert appraisal will be extensive (and therefore time consuming), the costs may be higher.

b) PI proceedings

The fee for requesting a PI is EUR 100.

As for main action proceedings, the costs for lawyer's fees will normally be in the range EUR 200,000 - 300,000 (excl. VAT) for each instance, however if the matter is technically complicated and involves both infringement and validity, then the costs may be higher.

In both main action and PI proceedings, the losing party is required to pay legal costs to the winning party. The court will award costs on the basis of what is considered reasonable but will take into account the value and the complexity of the case as well as the actual costs incurred by the parties. In addition to the (reasonable) fee to attorneys, the winning party can also recover certain other costs necessary for conducting the case, e.g. costs for assistance from expert witnesses, patent attorneys or court-appointed experts etc. The legal costs awarded by the courts usually only cover 60-65% of the actual legal costs incurred by the winning party. The costs for expert witnesses are covered to 100%.

4. FINLAND (FI)

4.1 What is the forum for the conduct of patent litigation?

As from 2013 the Market Court (Helsinki) is the first instance court for patent litigation.

4.2 What is the typical timeline and form of first instance patent litigation proceedings?

The typical timeline would be an exchange of two written submissions whereafter there would be a preparatory oral hearing and thereafter the main oral hearing. The judgment of the Market Court is usually announced within 2-4 months from the main oral hearing.

Totally the proceedings take about 12 – 18 months. If invalidity proceedings are initiated as a defence, the proceedings are likely to be prolonged by 6-9 months.

4.3 Do the courts/government bodies deal with infringement, invalidity and unenforceability simultaneously or must invalidity and/or unenforceability actions be brought in separate proceedings?

They are separate proceedings, but the main rule is that the Market Court handles infringement, invalidity, and unenforceability jointly.

4.4 Which acts constitute direct patent infringement?

The Finnish patents act provides that the exclusive right conferred by a patent shall imply that no one may exploit an invention, without the proprietor's consent, by:

- 1) making, offering, putting on the market or using a product protected by the patent, or importing or possessing such product for these purposes;
- 2) using a process protected by the patent, or offering such process for use in this country if he knows or if it is evident from the circumstances that the use of the process is prohibited without the consent of the proprietor of the patent;
- 3) offering, putting on the market or using a product obtained by a process protected by the patent or importing or possessing such product for these purposes

4.5 Do the concepts of indirect patent infringement or contributory infringement exist? If so, what are the elements of such forms of infringement?

Yes, A patent shall also confer on its proprietor the exclusive right to prevent any person not having his consent from supplying or offering to supply any person not entitled to exploit the invention with the means of working the invention in Finland in relation to an essential element of the invention where such other person knows, or where it is evident from the circumstances, that the means are suitable and intended for working the invention. This provision does not apply where the means are staple commercial products, except where such other person attempts to induce the receiver to commit patent infringement.

4.6 What are the key defences to patent infringement?

The most common defences are the non-infringement and the invalidity defence.

4.7 What are the key grounds of patent invalidity?

The key grounds are:

- 1) if the patent relates to an invention that does not satisfy the requirements of novelty, inventive step or is not susceptible of industrial application;
- 2) if the patent relates to an invention the description of which is not sufficiently clear to enable a person skilled in the art to carry out the invention;
- 3) if the patent contains subject matter not included in the application as filed; or
- 4) if the scope of protection was extended after the patent authority has notified the applicant that the application can be accepted.

4.8 Can a patentee seek to amend a patent that is in the midst of patent litigation?

Yes, the patentee can during an invalidation litigation seek to amend (restrict) the patent.

4.9 How are technical matters considered in patent litigation proceedings?

The Market Court consists of both legally trained and technically trained judges. In addition, the Court may appoint an expert in the relevant technical field to assist the court. The parties also provide the court with expert opinions and party-appointed expert witnesses are also frequently heard and cross-examined during the main oral hearing.

4.10 Is some form of discovery/disclosure and/or court-mandated evidence seizure/protection (e.g. saisie-contrefaçon) available, either before the commencement of or during patent litigation proceedings?

It is possible to seize evidence before the commencement of the main patent action. Such seizure generally requires that there is a risk that the counterparty would destroy the evidence and such evidence is not automatically disclosed to the applicant, but is kept in custody by the bailiff's office.

During the patent litigation it is possible to apply for disclosure of documents that are relevant as evidence in the matter at hand. The documents to be disclosed shall be identified by the applicant and there is a possibility for the defendant to claim that trade secrets should not be disclosed. It is ultimately up to the Court to determine if disclosure is granted or not.

4.11 Is there a system of opposition proceedings? If so, how does this system interact with the patent litigation system?

There is a system of administrative opposition proceedings both nationally and with regard to EP patents before the EPO. The Court decides on a case by case basis if a patent litigation shall be stayed or not due to pending opposition proceedings.

4.12 What are the key procedural steps that must be satisfied before a patent action can be commenced? Are there any limitation periods for commencing an action?

There should exist an imminent risk for infringement before e.g. preliminary injunction proceedings can be initiated. There is no strict time limit for initiating preliminary injunction proceedings, but the applicant should react without delay and preferably before the infringing products are being sold on the Finnish market. For invalidity actions the threshold is low, the claimant only needs to prove that the patent in question may obstruct its business. Compensation for patent infringement may only refer to damages during the last five years prior to institution of proceedings. The right to compensation for damages suffered prior to that period shall lapse.

4.13 What options are open to a patent holder when seeking to enforce its rights in your jurisdiction? (especially the Border measures)

Preliminary injunction proceedings and main infringement proceedings are the most common actions. It is also possible to make a customs notification for border measures to be conducted by the Finnish customs authority. Border measures are common and in line with EU regulation on customs enforcement of IP rights.

4.14 Which parties have standing to bring a patent infringement action? Under which circumstances will a patent licensee have standing to bring an action?

The registered holder of the patent has standing to bring a patent infringement action. A patent licensee has standing to bring an action provided that the license entails such right.

4.15 Are interim injunctions available in patent litigation proceedings?

Yes, interim injunctions are available. Interim injunction proceedings are summary proceedings and as a rule purely based upon written briefs by the parties and documentary evidence. The Market Court generally handles ex parte PI applications within a week and inter partes PI proceedings in 1-3 months.

4.16 What final remedies, both monetary and non-monetary, are available for patent infringement? Of these, which are most commonly sought, and which are typically ordered?

The most common final remedy is an injunction and damages for the infringement.

4.17 On what basis are damages for patent infringement calculated? Is it possible to obtain additional or exemplary damages?

The party claiming damages has the burden of proof with regard to the amount of the damages. Normally, that would be lost profits due to the infringement or reasonable compensation based upon a license analogy. No punitive or exemplary damages are awarded.

4.18 What avenues of appeal are available for a defeated party and on what basis?

Appeals to the judgments of the Market Court are made to the Supreme Court and are subject to leave. Leave to appeal is rarely granted as leave to appeal only is granted if the Supreme Court finds that there is a question of legal precedence involved or for other extraordinary reasons. Thus, the Market Court judgments often remain final.

4.19 What is the number of infringement lawsuits each year and the ratio of the win cases, lose cases and settlement cases by right holder?

It is estimated that about 10-15 patent litigation cases on the merits are filed every year. Of these approximately 50-60% go through to a decision on the merits. Based upon available statistics from the Market Court there are yearly only 1-3 judgments in patent infringement litigations and in about 20% of the cases the patent holder had won. As there are so few cases and many cases are settled before a judgment is obtained, in particular when preliminary injunctions have been granted, the win rate statistics is not reliable. The preliminary injunction grant rate has been about 50%.

4.20 The fee for court? (If possible, please indicate approximate representation cost)

The Market Court fee is EUR 2.120 per case and the representation cost varies a lot depending upon the case – usually between EUR 400.000-700.000 for an infringement action.

=== END OF REPORT ===

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