



UK IP Litigation

Samuel Giles

Forums for IP Litigation in the UK

The UK is actually comprised of three jurisdictions:

- England and Wales
- Scotland
- Northern Ireland

The Courts of England and Wales are the only UK Courts that have specialist IP Judges.

Moreover, England and Wales together make up 90% of UK GDP. Therefore, the vast majority of IP cases are filed in the Courts of England and Wales. We will not discuss the other Courts any further.

In addition to the Courts some contentious matters also take place before the UK patent office (UKIPO).

Types of Court

There are four main streams an IP litigation claim can proceed in:

High Court

**High Court Short Trial
Scheme Pilot**

**Intellectual Property
Enterprise Court (IPEC)**

UKIPO

Below we go through each of these in turn.

High Court

The Patents Court is part of the Chancery Division of the High Court and is based in London. Cases normally are heard in London unless the parties agree otherwise. Some hearings (such as CMC's) typically take place remotely.

Key features of the High Court:

- The High Court can hear all different IP disputes, of any complexity.
- Trials can be any length (within reason and to be determined by the Court prior to trial).
- Disclosure is often very comprehensive and can involve parties actively looking for documents

and sending a significant amount of information to the other side.

- Expert evidence is wide ranging and is not limited to very specific issues. It is normal for both parties to provide the Court with an expert. In some (particularly complex) trials each party may have multiple experts.
- There is no limit on damages/account of profits.
- There is no limit on recoverable costs.
- Injunctive relief may be granted.
- High Court cases are typically expensive (normally over £1million in costs for each party), are complicated, and take some time.

Short Trial Scheme (STS) Pilot

This only applies to claims involving a patent – and not claims that solely relate to other IP rights. This trial was started in 2024 and will run for three years. It may be extended after that – and may also cover all IP rights in the future.

Key features of STS:

- The purpose of the STS is to cap recoverable costs to £500000. This limits a parties exposure to costs – and so may reduce the total risk to a party bringing or defending a claim.
- The other purpose is to expedite cases with a trial to be scheduled within 1 year of first filing (similar to the UPC). A judgement should be available within 6 weeks of the trial.

- The claimant must ask for the case to be assigned to the STS at the time of filing the claim. If the defendant disagrees they can apply to transfer the case out.
- The STS places limits on the length of pleadings, disclosure, and witness evidence.
- There is a four day maximum trial length – again limiting cost.
- There is no limit on damages/account of profits
- Injunctive relief may be granted.

This is a good scheme for valuable patent cases where the claimant wants to limit their exposure (should they lose), wishes to expedite trial, and the claim has a high monetary value and so unlimited damages are required.

Intellectual Property Enterprise Court (IPEC)

Please see our separate IPEC brochure for more information.

Key features of IPEC:

- Expert evidence is limited in scope – this significantly reduces cost.
- Disclosure is significantly limited in scope – this reduces costs markedly.
- A trial is normally limited to two days. Again, this keeps costs down.
- Recoverable costs are capped at £60000.
- Damage/Account of Profits are capped at £500000.
- Injunctive relief is available and has the same force as the other Courts.

This is a very good Court for claimants who want to limit their exposure should they lose, as well as limiting their own costs in bringing an action (likely 5 times less than a High Court case, and 2-3 times less than a STS case). However, the cap on damages means not all cases are appropriate for IPEC. Moreover, more complex matters cannot be litigated through this more streamlined system as they need more disclosure/expert evidence than IPEC would allow.

UKIPO

The UKIPO is a really good forum for invalidity cases.

Key features at the UKIPO:

- If you are seeking to invalidate a patent, design or trade mark the UKIPO is a cost effective forum for doing so.
- Additionally, if there is an entitlement dispute as to who should own a patent or who invented a patent then the UKIPO is a very effective forum.
- For some rights – such as determining the value of a licence of right in the last 5 years of a UK unregistered design right case – the UKIPO is the forum stipulated by the Act.
- For patent/design infringement the UKIPO is rarely used because injunctive relief is not available.

- The amount of damages awarded would normally be less than the Court.
- Whilst some costs are recoverable these are in line with guidance produced by the UKIPO and are exceptionally low.
- The amount of disclosure and expert evidence is highly limited.
- Hearings are typically short – normally one day or less, although two days can be scheduled for more complex cases (normally entitlement).

This is normally used for very cost effective invalidity actions, as well as entitlement actions. The UKIPO is a very cost effective forum. It is not appropriate for most infringement proceedings.

Choosing a Forum

Please contact us and we can guide you through the process of choosing a forum. It is often the case that two are appropriate.

For example, a claim with a value of just over £500000 may be heard in either IPEC or STS. The correct choice depends on the commercial goals and the tactics you want to employ. For some cases having higher recoverable costs may disincentivise the other side from defending the case and may lead

to a favourable early settlement. For other cases having a lower recoverable cap may have the same effect as it would cost more to defend the action than to settle. It depends on the financial position of the parties, and the strength of the case, and the value of the case (as well as the amount of time each party can give to proceedings). Moreover, where there is a UPC case IPEC may be particularly well suited for a parallel UK action as the pleadings are more similar to those of the UPC as they are more front loaded.



MEISSNER BOLTE IS REPRESENTED AT SEVERAL LOCATIONS IN GERMANY WITH A LOCATION IN GREAT BRITAIN

AUGSBURG

Bahnhofstraße 18 ½
86150 Augsburg
T +49 821 99 17 80
F +49 821 99 21 64
E mail@augsburg.mb.de

HANOVER

Plathnerstraße 3A
30175 Hanover
T +49 511 2613478 0
F +49 511 2613478 10
E hannover@meissnerbolte.de

SCHORNDORF

Ochsenberg 16
73614 Schorndorf
T +49 7181 92 07 70
F +49 7181 92 07 76
E mail@schorndorf.mb.de

BREMEN

Hollerallee 73
28209 Bremen
T +49 421 34 87 40
F +49 421 34 22 96
E mail@meissnerbolte.de

LUDWIGSHAFEN

Im Zollhof 1
67061 Ludwigshafen a. Rhein
T +49 621 591390
F +49 621 628441
E mail@mb.de

In Kooperation mit
Meissner Bolte (UK) Ltd.

HEBDEN BRIDGE

4a Top Land Country Business Park
Cragg Vale, Hebden Bridge
HX7 5RW, United Kingdom
T +44 1422 84 45 98
F +44 1422 84 52 89
E mail@meissnerbolte.co.uk

DÜSSELDORF

Kaiserswerther Straße 183
40474 Düsseldorf
T +49 211 8198480
F +49 211 81984870
E mail@duesseldorf.mb.de

MUNICH

Widenmayerstraße 47
80538 Munich
T +49 89 21 21 86 0
F +49 89 21 21 86 70
E mail@mb.de

GERA

Berliner Straße 1
07545 Gera
T +49 365 77 30 96 00
F +49 365 77 30 96 01
E mail@gera.mb.de

NUREMBERG

Bankgasse 3
90402 Nuremberg
T +49 911 2 14 72 50
F +49 911 24 36 86
E mail@nuernberg.mb.de

HAMBURG

Alter Wall 32
20457 Hamburg
T +49 40 8 90 63 60 0
F +49 40 8 90 63 60 10
E mail@meissnerbolte.de

OSNABRÜCK

Rolandsmauer 15
49074 Osnabrück
T +49 54 13 50 61 0
F +49 54 13 50 61 10
E mail@meissnerbolte.de