

Decision made
in Germany



German
Patent Infringement Courts

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Sitz der Gesellschaft: Bremen (Hollerallee 73, 28209 Bremen)
Registergericht: Amtsgericht Bremen PR 393 HB

Registered Seat: Bremen (Hollerallee 73, 28209 Bremen)
Register Court: Local Court Bremen PR 393 HB

Overview

The German patent infringement courts enjoy a very good reputation worldwide. They are considered to be fast, competent and the entire patent litigation process to be cost-effective.

In Germany, jurisdiction for patent and utility model disputes is concentrated at a total of twelve district courts, where special patent litigation chambers have been established for this purpose. These chambers can be found at the district courts

Munich I, Nuremberg, Mannheim, Frankfurt, Saarbrücken, Erfurt, Leipzig, Magdeburg, Düsseldorf, Braunschweig, Berlin and Hamburg.

Not all of these venues are equally utilized. Also, the decision-making practice and the course of the proceedings are not the same everywhere.

As a consequence, the choice of the right venue is a pathmaking decision for every proceeding, which can be decisive for the success or failure of the case. It should always be made consciously and in view of the circumstances that are relevant to the dispute in the individual case.

We represent our clients before all German courts and, therefore, know their respective peculiarities, which can be associated with advantages or disadvantages.



7 facts you need to know

1 Patent holder is often free to choose the court of jurisdiction

In patent and utility model disputes, the (local) jurisdiction of the court is determined by the domicile of the defendant, his place of business and/or the place where the tort - the infringement - occurs. If, for example, a product is offered and distributed throughout Germany, the jurisdiction of each of the patent litigation chambers is given; in this case, the plaintiff can freely choose the venue.

2 Patent litigation chamber is staffed with lawyers, not technicians

The patent litigation chambers are composed of three non-technical judges: a presiding judge and two assessors, one of whom shall act as rapporteur. The presiding judge conducts the proceedings and is the primary decision-maker. The decision is prepared by the rapporteur, who usually also makes a concrete proposal for a decision to the chairman.

3 Technical expertise

The patent litigation chambers handle almost exclusively patent and utility model cases. Although the judges are not technicians but lawyers, they are therefore familiar with technical matters. However, due to the varying workload of the courts, they have different levels of experience in different technical fields. We always follow the current developments at the individual chambers and are therefore able to assess their respective decision practice.

4 The leaders, also internationally

Düsseldorf, Munich and Mannheim are by far the most frequented patent litigation courts in Germany. They handle almost 80% of all patent infringement proceedings. These venues also have more than one patent litigation chamber (Düsseldorf: 3, Munich: 2, Mannheim: 2). The German courts also continue to occupy a leading position in a European comparison. Around half of all European patent infringement proceedings are conducted before German courts.

5 Process differences

In specific aspects, the venues differ in their procedural processes. While at the Munich Regional Court, for example, two oral hearings are held, at other locations only one oral hearing is customary (e.g. at the Mannheim Regional Court). The respective duration of proceedings may also be subject to deviations (see below). However, before all chambers the written submissions are central and decisive for the success of the proceedings.

6 Separation principle “Bifurcation”

The patent litigation chambers have exclusive jurisdiction to decide on patent infringement. In contrast, the Federal Patent Court decides on the validity of a patent. The nullity proceeding before the Federal Patent Court is usually brought as a reaction to the patent infringement action by the defendant. The Federal Supreme Court is the final instance in both proceedings. In this way, a uniform jurisdiction shall be guaranteed.

7 Injunction Gap

Due to the longer duration of proceedings before the Federal Patent Court, a judgment on the patent infringement is usually available before the decision on the validity of the patent. The decision of the patent litigation chamber is provisionally enforceable against a security deposit. Therefore, an injunction can be enforced before a decision on the validity of the patent has been made. This time gap “Injunction Gap” can have a different extent, due to the different duration of the proceedings before the individual patent litigation chambers. It may also be used tactically.

Characteristics of German patent litigation

The infringement courts are bound by the act of granting the patent. They decide exclusively on the patent infringement, which is a significant difference to patent infringement proceedings in foreign legal systems, where the validity of the law is typically decided in the same proceedings. In Germany, it is up to the defendant to challenge the validity of the patent – as a response to the patent infringement action, so to speak – by means of a patent nullity action before the Federal Patent Court in accordance with § 81 PatG. The basis for a conviction for patent infringement is therefore a granted patent; a prior or simultaneous decision on the validity of the patent is not required. While the duration of proceedings before the patent litigation courts up to the decision of the first instance can take between 10 and 16 months, depending on the venue, a decision of the Federal Patent

Court is, on average, not expected before 26 months after filing the suit. Between an enforceable infringement judgement and a decision on the validity of a patent can therefore be more than 12 months. Only in exceptional cases, and only at the request of the defendant, can the patent infringement proceedings be suspended until the decision on the validity of the patent in accordance with § 148 ZPO, if the infringement court comes to the conclusion by way of a forecast decision that there is a high likelihood that the patent in suit will be revoked in the parallel nullity proceedings. However, the patent litigation chambers make only very restrictive use of this possibility; at most, only 10% of all proceedings are suspended. At the Düsseldorf location, the rate should be even lower.





The choice of the right venue

Due to the separation of the proceedings into infringement and invalidity, each court is a specialist in its field. The patent infringement courts can therefore gear their proceedings completely to the examination of a patent infringement in terms of content and procedure. In doing so, individual local practices have developed, which can be of great relevance for the success of the case.

For example, who's goal it is - under a quite clear factual situation on the merits - to obtain a first instance - provisionally enforceable! - judgment as fast as possible, will choose a court with a preferably short duration of proceedings (e.g. Mannheim). Such a judgment can be a

very sharp sword. It is often the trigger for a worldwide settlement between the parties to a dispute. If, on the other hand, the factual and legal situation is complex and requires various explanations, it may be advisable to choose a venue that offers more room for oral arguments (e.g. Munich with its two oral hearings). However, not only the procedural sequences are different, also the decision-making practice of the Boards is not always uniform. For example, it can be noted that the Düsseldorf chambers generally interpret the patent claims in a very broad functional sense, and, thus, in many cases affirm an infringement. The following table shows some further specifics of the Düsseldorf, Mannheim and Munich courts:

	Düsseldorf	Mannheim	Munich
Duration of proceedings (first instance)	Slow 14-16 months	Fast 10-12 months	Usually fast 12-14 months
Duration of the proceedings (second instance)	Fast (usually under 12 months)	Slow (usually over 16 months)	Fast (usually under 14 months)
Suspension	Very restrictive	Restrictive	Restrictive
Early first hearing	Early first hearing (held prior to the written response to the complaint) The early first hearing serves solely to structure the procedure and clarify procedural issues	No	Always (held after the written response to the complaint) At the early first meeting, the following is discussed: claim construction/interpretation and infringement
Translations	Always required	Only in individual cases	Only in individual cases
Ascent procedure	Generous	Infringer's profits restrictive	Infringer's profits restrictive
Fines	High	Low for first offence	Medium

A cost overview

The lean procedures ultimately lead to very moderate costs by international standards. For a first instance patent infringement proceeding in Germany, a patent owner must reckon with costs of approx. 100,000.00 € on average; this includes court fees, the costs for the own attorneys (which are usually based on an hourly rate) as well as any expenses (e.g. expert opinions, translations of non-German documents). If the validity of the patent in suit is challenged

before the Federal Patent Court, the same effort can be expected (at least) for the validity proceedings. However, the respective winning party can reimburse a considerable part of the expenses from the other party.

By way of comparison, a similar procedure in the United Kingdom or the USA would not cost less than €1 million.



The amount of the court fees as well as the reimbursable lawyer's fees are determined by law in Germany and are calculated on the basis of the value in dispute of the proceedings. The value in dispute will be provisionally estimated by the plaintiff when the action is filed and ultimately determined by the court. It is essentially based on the economic significance of the patent, its remaining lifecycle and the scope of the acts of infringement challenged in the action. In most cases, the value in dispute range from EUR 0.5 to 1.5 million. The value in dispute in the corresponding patent nullity action is generally

based on the sum of the values in dispute of all patent infringement proceedings for the respective patent with a surcharge of 25 %.

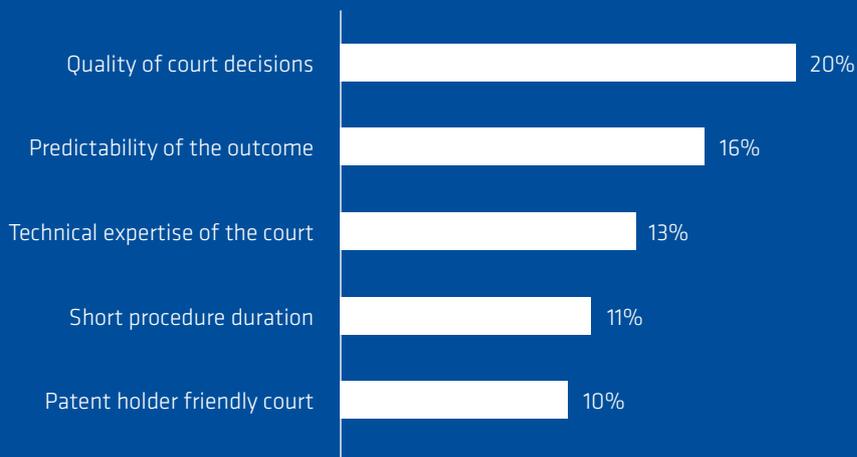
The following table outlines the statutory court fees as well as the reimbursable attorney fees of a first instance patent infringement proceeding for typical values in dispute. Not included in this comparison are the costs for any own attorneys and patent attorneys (which are typically calculated on the basis of hourly rates) and any expenses (such as costs for necessary translations, travels, experts, etc.).

Value in dispute	Court fees	Reimbursable legal fees (1 attorney at law, 1 patent attorney)	Total (approximate cost risk)
€ 0,5 million	€ 10,608	€ 16,105	€ 26,713
€ 1,0 million	€ 16,008	€ 33,210	€ 49,218
€ 1,5 million	€ 21,408	€ 31,105	€ 52,513

Choice of Court

According to a recent evaluation by the Max Planck Institute for Innovation and Competition*, the primary aspects in the choice of venue for a patent infringement action are the quality of the judicial decisions of the respective court, the predictability of the decision and the technical expertise of the panel:

Decisive aspects when choosing the place of jurisdiction for a patent infringement action*



Further location factors

- Experience with relevant legal focal points of the court
- Conduct of hearings
- Probability of suspension at first instance
- Transparency of the process
- Second instance
- Costs
- Other

**Which factors are the most important for your case?
Let's talk about them.**



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