

Patent infringements

Germany: The ideal location for lawsuits

- quick, competent, cost-efficient -



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The number of patent registrations is climbing to ever greater heights, both in the US and Europe, but also in Asia. Companies are doing more to protect their products and technologies. The right strategically placed patents and property rights underpin market positions and keep rivals at bay or even raise the barriers to market entry. In an age of global markets and fast information and communication systems, what matters is defending your corner of the market right from the outset.

Courts

This trend has been accompanied by a rise in the number of patent actions. Some 6,500 lawsuits were filed in the US in 2013.¹ In Europe, the number of lawsuits is approx. 2,000 p.a. The lion's share of the litigation goes to Germany, with about 1,200 – 1,300 lawsuits. The leading courts are Düsseldorf, Mannheim, Munich and Hamburg, in that order. Düsseldorf covers nearly 40% of patent and utility-model infringement cases in Germany, ahead of Mannheim with about 20%.² Still, the fact remains that the number of cases filed at the most important courts is currently on the decline.

In geographic terms, the growth in litigation has created an important economic sector for law offices, patent lawyers and related service providers in Germany. The key focus here is on German courts, which have come to play a crucial role, despite the fact that some processes are different in German courts, eg the way that each patent constitutes a separate case, whereas in other countries a bundle of patents is frequently tried as one case. Another advantage is that in two-tier proceedings the voidness of property rights can be heard while a patent infringement is being tried simultaneously.

Approx. 2,000
patent-infringement
proceedings
annually in Europe

Two-thirds of which are
brought before German
courts. Why is that?

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Patent-infringement proceedings with utility-model violation proceedings				
	2010	2011	2012	2013
Courts				
Düsseldorf regional court	638	475	n/a	462
Mannheim regional court	226	265	234	***
München regional court	158	153	180	162
Hamburg regional court	n/a	180**	n/a	n/a
Nürnberg regional court	n/a	60**	21*	16*
Berlin regional court	n/a	0	0	19
Frankfurt regional court	n/a	50	50	30

*Nuremberg regional court: only patent-infringement proceedings without utility-model violation proceedings.

**Estimate²

***not yet available

Still, ask the courts about concrete figures for the cases heard, and you may be in for a big surprise (see Table). Some of the leading courts do have very informative and detailed statistics, but others publish no figures. This, they say, is because patent-infringement cases are not separately recorded. It appears that courts do not all, or always, have the same types of case, as an outsider might assume. Some, a closer look reveals, hear more injunctions than patent-infringement cases proper. At the same time, some of these courts are to become part of the trial divisions for the Unitary Patent Court.

This is quite a contrast to the US, where extremely detailed case information is available, including data on the various courts, all the way to the judges, their decisions and the average level of damages they impose.

Competent courts
are the key

Four locations have a piece
of the pie: Düsseldorf,
Mannheim, Munich and
Hamburg.

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Reasons

The reasons for the high number of cases in Germany are certainly to be found in the competent and experienced courts and judges at the above locations. There is no jury in courts of first instance, but there are eminently expert judges. It doesn't always make sense to American clients – much to the frustration of the courts – when lawyers bow to American habits and shine by producing sheer endless pleadings, rather than seeking to convince with facts.

Another reason is the fast processing of lawsuits with the relatively short proceedings averaging 12 months.³ This, in conjunction with low legal costs, is why a growing number of foreign plaintiffs are opting for hearings before a German court – even though the legal costs in particular cases can also reach English proportions if the amounts of damages are correspondingly high and several patents are concerned simultaneously.

By comparison, the average length of proceedings in the US is about 2 ½ years. The legal costs in the US and the UK are many times higher. The UK has already responded to this by establishing abridged proceedings with shorter durations and limited legal costs wherever the facts of the case are straightforward.¹

In an international comparison, Germany leads in popularity when it comes to patent-violation proceedings, ahead of the UK and the Netherlands. The US lags behind on spot 11.³

Germany's courts tend to be in competition with one another here, with the consequence that the proceedings do not follow an absolutely identical pattern. Would it not be better for all those involved and, hence, for Germany as a location, to aim at adopting

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But for how long will this
suffice? Germany's
neighbors are upping
their game.

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a truly uniform approach, though with different local competencies, eg in new technologies or mechanics?

Clients

As markets become increasingly globalized, companies are seeking to protect and safeguard their products and technologies from the outset. This can lead to conflicts in many countries involving different opponents or – as in the case of the high-end communications market – involving the self same parties in different jurisdictions worldwide. In the case of new products and technologies in particular, the risk of conflict is much higher. Companies are all the more ready to file a lawsuit today, as such emphasis is placed on economic success. It is against this backdrop that amounts of damages have been rising as a whole in recent years.

The number of actions in the US increased after 1991 from approx. 1,000 patent lawsuits annually to some 6,500 filed in 2013². This shows that sustainable economic success is no longer based merely on marketing and distribution, but now includes the tool of legal enforcement.

Recent years have shown, however, that clients are not willing to pay just any price for this, especially as regards the costs of the proceedings, legal costs and lawyers' exorbitant fees.

More and more clients are now setting budgets to limit total costs. The "black hole" of legal-cost risks is being closed.

Global players, eg in the pharmaceuticals industry, are monitoring their legal service providers very closely. Databases have been set up to record the costs, successes and the team that was used. Companies are willing to accept the higher hourly rates of a partner

Companies are ensuring their economic success

A new tool has been added to the mix alongside distribution and marketing: the legal enforcement of interests.

But not at any price.

Budgets are being set with increasing frequency.

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if the partner himself plays an active role, his quality and experience virtually guaranteeing success. Firms and their consultants are adopting a strategic approach today: the venues and representatives chosen depend on product and technology, complexity, license issues, offending party or patent holder, etc. The legal department assumes the coordination provided it has the requisite competence, or commissions an international law office.

Law offices

Law offices have been responding to the internationalization and globalization and have set up corresponding coordination points for cross-border litigation. Initial findings show that sales are evolving fairly briskly in this domain. These tasks confront trial lawyers with slightly different challenges. They do not enter the ring personally, but should – and must – steer and monitor their colleagues on the spot while guaranteeing a smooth and efficient exchange of information about what is going on locally. What is crucial here is knowledge of different legal systems. A real managerial feat for legal eagles.

Upshot

For foreign plaintiffs in patent matters, Germany is the top venue for litigation. For clients from the US, the UK still seems to be the first port of call, also in the case of international cross-border proceedings. However, the location is too expensive, especially considering the hourly rates of English law offices. British courts have been attempting to limit costs by introducing pared-down proceedings. In Germany, the parties find competent courts, short proceedings, manageable legal costs, native speakers among

Cross-border litigation

Law offices are dealing with a new field – one which places new demands on their lawyers.

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lawyers of an excellent legal quality and at relatively modest hourly rates. In short: ideal conditions for infringement litigation.

Closer coordination between court locations could give an extra boost to their competitive edge overall. And discussions between those involved, also on the part of lawyers, could make a contribution toward better communications and, hence, standardization.

The possibility of opting for European patent proceedings (UPC) in future may bring an additional advantage for clients if this perceptibly lowers the costs of cross-border litigation. But this remains to be seen.

1 PWC USA, 2014 Patent Litigation Study

2 Thomas Kühnen, Rolf Claessen, *Die Durchsetzung von Patenten in der EU – Standortbestimmung vor Einführung des europäischen Patentgerichts* (The enforcement of patents in the EU – Standpoint prior to the introduction of the European patent court), GRUR 2013, p. 592

3 TaylorWessing, Global IP Index 2013

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location

It is up to the courts to
make sure it stays this
way.