

LITIGATION IN THE PATENTS COURT

The Patents Court is a High Court within the Chancery Division of the court system of England and Wales. It deals with disputes which either exceed a value of £500,000, or which may have a value of less than £500,000 but are too complex to be heard by the Intellectual Property & Enterprise Court (**IPEC**).



TIMETABLE FOR A TYPICAL PATENTS COURT CASE

PROCEDURAL STAGE	TIME LINE
<p>Issuing Proceedings</p> <p>Consists of: The court issues the Claim Form at the Claimant's request; and The Claimant serves the Claim Form on the Defendant (either with or without its statement of case, known as Particulars of Claim) within 4 months of the date of issue of the Claim Form.</p>	Day 0
<p>Exchange of statements of case</p> <p>If the Claimant did not provide the Particulars of Claim with the Claim Form, they must provide the Defendant with the Particulars within 14 days of having served the Claim Form.</p> <p>Within 14 days of service of the Particulars of Claim on the Defendant (though extensions can be agreed) the Defendant then provides either:</p> <p>(a) Defence; or (b) Defence and Counterclaim.</p> <p>The Claimant then responds with either:</p> <p>(a) Reply to Defence; or (b) Reply to Defence and Defence to Counterclaim.</p> <p>Finally, in the case of (b) (where Defendant provided a Defence and Counterclaim and Claimant responded with Reply to Defence and Defence to Counterclaim) the Defendant will then provide their Reply to Defence to Counterclaim.</p>	4-8 weeks

<p>Case Management Conference (CMC)</p> <p>The parties will be required to attend a CMC. The CMC is designed to provide the parties with a timetable and limited guidance for the proceedings. The Judge will usually set certain directions regarding the Disclosure of documents and experiments and will set a date for the full hearing.</p> <p>In the Patents Court, the level of management of the case by the court via the CMC is limited when compared with the IPEC.</p> <p>The parties will submit costs budgets, to show each other and the court the expected expenditure on the litigation. These budgets place limits on the recoverable costs.</p>	8-14 weeks
<p>Disclosure and Inspection of documents and experiments</p> <p>Each party carries out an internal document search and review and prepares a Document Disclosure List which sets out the existence of various documents relevant to the dispute. Each party then provides this list to the other. This is known as Disclosure.</p> <p>The other party then requests copies of the various documents disclosed on the list, and carries out a review of these documents.</p> <p>Certain documents may be exempt from disclosure, because they are protected by either:</p> <p>(a) Legal Advice Privilege – this applies to communications between a party and their legal advisers where they were for the sole of dominant purpose of legal advice;</p> <p>(b) Litigation Privilege – this applies to documents created when litigation is contemplated or in progress.</p> <p>If neither of these exemptions apply, then non-privileged documents must be supplied to the other party for their review. This process is known as Inspection.</p> <p>Both parties may then spend time performing or inspecting experiments based on documents disclosed and inspected.</p>	14-24 weeks
<p>Witness Evidence</p> <p>The preparation of witness statements involves interviewing witnesses and drafting their corresponding statements for signature by the witness.</p>	24-40 weeks (6-10 months)
<p>Expert Evidence</p> <p>The preparation of expert evidence includes: instructing experts, reviewing and preparing expert reports.</p>	24-40 weeks (6-10 months)
<p>Trial</p> <p>There are strict practices and procedures surrounding the trial. Specialist barristers will usually represent the Claimants and Defendants in court.</p> <p>The Claimant's barrister will:</p> <p>(a) deliver the Claimant's opening speech;</p> <p>(b) present the Claimant's evidence;</p> <p>(c) carry out the examination in chief of the Claimant's witnesses;</p> <p>(d) carry out the cross-examination of the Defendant's witnesses; and</p> <p>(e) the re-examination of the Claimant's witnesses following the Defendant barrister's cross examination.</p> <p>The Defendant's barrister will:</p> <p>(a) carry out the cross examination of the Claimant's witnesses;</p> <p>(b) carry out the examination in chief of the Defendant's witnesses; and</p> <p>(c) re-examine the Defendant's witnesses following the Claimant barrister's cross examination.</p> <p>The barristers for both the Claimant and Defendant will then deliver their closing speeches on their respective clients' behalf, summarising their side's case, in the light of the events of the trial.</p>	40-60 weeks (10-15 months)

<p>Judgment on liability</p> <p>The Judge does not give their judgment immediately following the closing speeches. Instead they will usually prepare a written judgment which demonstrates the consideration given to the parties' arguments presented at the hearing. This written judgment is handed down to the parties 2 or more months after the hearing.</p>	44-58 weeks (11-17 months)
<p>Judgment on on damages and costs</p> <p>In patent litigation, it is common for the trial to be split. This means that the initial hearing is carried out in order to determine liability, and the second hearing decides the quantum of damages or account of profits and costs award to the successful party. The second hearing is often unnecessary however, as it is usual for parties to settle following the decision on liability.</p>	44-58 weeks (11-17 months)
<p>Appeal (if permitted)</p> <p>In the event that the unsuccessful party disagrees with the Judge's decision, they must apply for permission to appeal. An appeal will only go ahead if it is granted by the court of first instance (in this case the Patents Court) or by the Court of Appeal.</p>	Approximately 6-8 months from first instance judgement
<p>Costs</p> <p>Total Costs (Claimants + Defendants) for a patent litigation case in the Patents Court can range between £250,000 to £6m. This wide range is a result of the ability of the Patents Court to deal with relatively straight forward cases at one extreme and with highly complex, evidence-heavy cases at the other.</p>	

PROS & CONS OF CHOOSING THE PATENTS COURT FOR YOUR CASE

Pros

Broad scope –The Patents Court is the most appropriate venue for complex cases or those with a value in excess of £500,000.

It is particularly well -suited to cases which rely on expert evidence.

UK-based renowned Judges – The UK is home to a number of internationally renowned IP judges. This concentration of IP-specific experience in one jurisdiction makes the UK an attractive venue for conducting IP litigation.

Cons

Duration –The amount of evidence considered in a typical case heard by the Patents Court can result in relatively high costs. In addition to these identifiable expenses the time spent by the Claimant and Defendant away from their usual business can also be costly in terms of lost man-hours.

Expense and risk – The absence of any cap on costs or damages awards means it is difficult for parties to carry out an accurate financial risk assessment ahead of becoming involved in litigation. However, this is addressed to an extent by the requirement for each side to submit detailed cost budgets early in the litigation so that each side understands its likely exposure to an adverse award of costs if the decision in the case goes against them.

CONTACT US

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