

## TIME FRAME FOR AND COSTS OF PATENT LITIGATION IN GERMANY

| INFRINGEMENT PROCEDURE   | INVALIDITY PROCEDURE   |
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| <p><b>1<sup>st</sup> Instance:</b> District Court (Landgericht)<br/>Schedule according to<br/>Düsseldorf practice</p>  | <p><b>1<sup>st</sup> Instance:</b> Federal Patent Court (Bundespatentgericht = BPatG)</p>  |
| <p>1.1. Service of writ of summons to German defendant:<br/>app. one week after filing ;<br/>up to three months to foreign defendant<br/>(all time periods mentioned are calculated on the date <b>of service</b>)</p>   | <p>1.1. Service of writ of summons:<br/>app. 2 weeks</p>   |
| <p>1.2. app. 5 – 6 months defendant's response</p>   | <p>1.2. 4 – 5 months substantiated response</p>  |
| <p>1.3. app. 10 – 11 months rebuttal brief of plaintiff<br/>→ neither discovery nor pre-trial procedure<br/>→ plaintiffs with no domicile in the European Union or other contracting state of the convention concerning the European economic area will have to post a bond as security for costs of defendant before the oral hearing upon request of the defendant</p> | <p>1.3. 10 – 12 months rebuttal brief of plaintiff<br/><br/>→ plaintiffs with no domicile in the European Union or other contracting state of the convention concerning the European economic area will have to post a bond as security for costs of defendant before the oral hearing upon request of the defendant</p> |
| <p>1.4. app. 12 – 14 months oral hearing</p>   | <p>1.4. 15 – 18 months oral hearing concluded by<br/>1.4.1. final decision (most common) or<br/>1.4.2. decision to enter into evidence procedures (extremely rare)</p>   |
| <p>1.5. 13 – 15 months decision</p>  |  |
| <p>1.5.1. final decision or</p>  |  |

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| 1.5.2. decision to hear witnesses and/or appoint a court expert witness  |  |
| <b>2<sup>nd</sup> Instance:</b> Court of Appeals (Oberlandesgericht)   | <b>2<sup>nd</sup> Instance:</b> Federal Supreme Court (BGH)  |
| 2.1. One month after service of complete final decision of the District Court<br>→ appeal (all following time periods are calculated from the date of appeal)                      | 2.1. One month after service of complete final decision of Federal Patent Court<br>→ appeal (all following time periods are calculated from the date of filing appeal) |
| 2.2. 1 – 3 months substantiation of appeal   | 2.2. 1 – 5 months substantiation   |
| 2.3. 6 – 9 months response to appeal   | 2.3. 6 – 11 months response to appeal  |
| 2.4. 10 – 12 months rebuttal brief of appellant  | 2.4. 12 – 14 months appointment of expert witness by BGH   |
| 2.5. app. 15 – 18 months oral hearing  | 2.5. 18 – 26 months written opinion of expert witness  |
| 2.6. 16 – 18 months decision of a Court of Appeal  | 2.6. 20 – 36 months exchange of briefs commenting upon opinion of expert witness   |
| 2.6.1. final decision (most common) or   | 2.7. 30 – 36 months oral hearing, concluded by final decision  |
| 2.6.2. decision to hear witnesses or appoint a court expert witness (in rare cases)  |  |
| <b>3<sup>rd</sup> Instance:</b> Federal Supreme Court (BGH)<br>- no trial of facts –<br>- if certiorari are granted only -   | <b>3. Costs and attorneys fees</b><br>(Value in Dispute between EUR 250.000,00 and 10 Million)   |
| 3.1. one month after service of complete decision of Court of Appeals<br>→ further appeal (Revision)<br><br>(all following time periods are calculated from the date of filing the | 3.1. 1 <sup>st</sup> Instance (BPatG)<br><br>3.1.1. Costs of own patent attorney and litigator plus court fees (as of January 1, 2002):<br>EUR 14.000,00 up to EUR     |

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| 3.2. Revision)<br>3 – 6 months substantiation of appeal  | 153.000,00<br>3.1.2. Reimbursement for winning party<br>EUR 6.500,00 up to<br>EUR 68.000,00                  |
| 3.3. 7 – 10 months response  | 3.1.3. Total risk of costs including court costs (as of 01.01.2002)<br>EUR 23.000,00 up to<br>EUR 245.800,00 |
| 3.4. 8 –12 months decision of BGH to grant certiorari  | 3.2. 2 <sup>nd</sup> Instance (BGH)  |
| 3.5. within to 24 months oral hearing before the BGH if certiorari are granted   | 3.2.1. Costs of own patent attorney and litigator<br>EUR 16.000,00 up to<br>EUR 133.000,00                   |
| 3.6. 24 to 36 months decision of BGH   | 3.2.2. Reimbursement for winning party<br>EUR 11.000,00 up to<br>EUR 88.500,00                               |
|  | 3.2.3. Total risk of costs including court costs<br>EUR 30.000,00 up to<br>EUR 323.000,00                    |
| <b>4. Suspension of infringement procedure</b>   |  |
| The District Court may suspend the infringement action if an opposition or an invalidity action is pending. It will do so only if opposition or invalidity action are closer to the patent claims than the prior art considered during the prosecution and is a serious threat to the validity of the patent. Suspension may be either on the appellate level if the patentee already can enforce a judgement of the District Court. |  |
| <b>5. Costs and Attorneys Fees</b><br>(Value in dispute between EUR 250.000,00 and 10 Million)   |  |

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| 5.1. District Court level   |
| 5.1.1. Costs of own litigator and patent attorney plus court fees EUR 14.000,00 up to 153.000,00          |
| 5.1.2. Reimbursement for winning party: EUR 6.500,00 up to EUR 68.000,00                                  |
| 5.1.3. Complete risk including attorneys fees of the other party between EUR 21.000,00 and EUR 221.000,00 |
| 5.2. Court of Appeals level   |
| 5.2.1. Costs for won litigator and patent attorney between 12.000,00 EUR and 133.000,00 EUR               |
| 5.2.2. Reimbursement for winning party between 8.500,00 EUR and 88.500,00 EUR                             |
| 5.2.3. Total cost risk including court costs between 26.000,00 EUR and 280.000,00 EUR                     |
| 5.3. Federal Supreme Court level  |
| 5.3.1. Fees for own litigator and patent attorney between 40.000,00 EUR and 110.000,00 EUR                |
| 5.3.2. Reimbursement for winning party 11.500,00 EUR up to 88.000,00 EUR                                  |
| 5.3.3. Total risk of costs including court costs 34.000,00 EUR up to 280.000,00 EUR                       |