Patents in Europe 2008

Czech Republic

Čermák Hořejš Matějka a spol

In association with

Europäisches Patentamt
European Patent Office
Office européen des brevets

A supplement to ***Intellectual Asset Management*** *magazine*
www.iam-magazine.com

This text first appeared in the IAM magazine supplement 'Patents in Europe 2008' April 2008

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1. What options are open to a European patent holder, whose rights cover your jurisdiction, when seeking to enforce its rights in your jurisdiction?

Under Article 35c of Act 527/1990 Coll on Inventions and Rationalisation Proposals (the Patent Act), a European patent designating the Czech Republic has the same effects as a patent granted by the Czech Patent Office in accordance with the Patent Act. The owner of a European patent therefore has the exclusive right to use the invention, to authorise others to use the invention and to assign the patent to others. The patent owner further has the right to apply to the court for an order prohibiting the infringement or impending infringement of its rights, and requiring that the consequences of the infringement be remedied. The patent holder may also claim appropriate satisfaction, including pecuniary satisfaction; the right to claim the surrender of unjustified enrichment and to claim damages shall not be affected. It is also possible to apply to the court for a preliminary injunction ordering the immediate cessation of the infringement, which is a swift and effective measure.

2. Does your jurisdiction have specialist patent courts? If not, what level of expertise can a patent owner expect from the courts?

There are no specialist patent courts in the Czech Republic. However, according to Article 6 of Act 221/2006 Coll on Enforcement of IP Rights, the City Court in Prague shall decide all IP infringement cases, including cases involving patent infringement. As the new provision on the jurisdiction of the City Court in Prague became effective only in January 2008, the City Court judges do not yet have high levels of expertise.

3. Is it possible to cross-examine witnesses at trial? How far are proceedings based on written evidence? Are there restrictions on the use of evidence from experts?

Litigation is based on written evidence supported by witness statements. Witnesses may be cross-examined at trial. There are no restrictions on the use of evidence from experts. IP infringement proceedings are so-called concentrated proceedings, which means that all evidence must be submitted or at least proposed at the first hearing. The judge must consider all evidence (including witness statements) proposed by each party in the litigation and give reasons for its rejection where necessary.

4. Are infringement and invalidity dealt with simultaneously? What level of proof is necessary to demonstrate one or the other?

Courts deal with any infringement of patent rights and its consequences. On the other hand, only the Patent Office decides on revocation (invalidity) of a patent. In case of the infringement of patent rights, the defendant will usually file a request for revocation of the patent and the court may suspend the infringement proceedings until the Patent Office has decided on the revocation request. To succeed in infringement proceedings, the patent owner should submit at least one piece of direct evidence which proves that the defendant's activity is infringing its patent (eg, an expert opinion comparing the defendant's product with the patented product). In invalidation proceedings before the Patent Office the plaintiff must prove that:

- The invention did not meet the conditions of patentability (novelty, inventive step, industrial application);
- The invention is not disclosed in the patent sufficiently clearly and completely to be worked by a person skilled in the art; or
- The subject matter of the patent extends beyond the content of the invention application as filed, or the subject matter of

the patent granted on the divisional application extends beyond the content of the invention application as filed, or the extent of the protection arising from the patent has been extended.

The evidence in invalidity proceedings therefore comprises excerpts from a number of registered patents, books, dictionaries and prior art in general.

5. To what extent is pre-trial discovery permitted? If it is permitted, how is discovery conducted?

There is no pre-trial discovery under Czech law. Evidence and documents are discovered before the judge during the hearing.

6. To what extent does any doctrine of equivalents apply in an infringement action?

The Czech courts will hesitate to apply a doctrine of equivalents in an infringement action based on patent rights. Rather, the doctrine of equivalents is applied in infringement actions based on the unfair competition provisions of the Commercial Code. Claims based on patent rights are thus often combined with claims based on the unfair competition provisions.

7. Are there certain types of patent right that may be granted by the EPO – biotech or computer software-related, for example – that are more difficult to enforce than others?

Software-related, biotech and pharmaceutical patents are usually more difficult to enforce than technical patents, because it is more difficult to prove infringement by comparing the solution used by the defendant and the solution protected by the patent. This also applies to patented methods of manufacturing.

8. To what extent are courts willing to consider, or bound by, the opinions and decisions of other courts that have dealt with similar cases?

Under Czech law, the courts are bound primarily by the wording of the law. As a result of the Czech Republic's accession to the European Union, EU law is now also part of Czech law and must be applied by the Czech courts. In general, decisions or opinions of other courts are not binding on the Czech courts, except preliminary rulings of the European Court of Justice (ECJ) in relevant cases and rulings of the Constitutional Court. However, decisions and opinions of other courts – especially the higher courts (ie, the High Courts and the Supreme Court) – in similar cases are often taken into account where the court must decide on the same or a similar matter. This practice helps the courts to establish a consistent interpretation and application of the law.

9. To what extent are courts willing to consider the reasoning given by foreign courts that have handed down decisions in similar cases?

The Czech courts are generally reluctant to consider decisions or reasoning given by foreign courts, except certain rulings of the ECJ (see question 8 above). However, if the foreign legislation is identical or similar to the Czech law and the reasoning of the foreign court is persuasive, the decision may influence the approach of a Czech court.

10. What options are open to a defendant seeking to delay a case? How can a plaintiff counter delaying tactics?

In patent infringement actions, the defendant may file a revocation request with the Patent Office, which may delay the proceedings. If the court decides to suspend the case until the Patent Office has decided on the revocation request, the plaintiff is left in a difficult position. The defendant may also request the court to ask the ECJ for a preliminary ruling in cases where a provision of EU law is applicable, although here the plaintiff is allowed to object to the request. Protracted litigation is a major problem in the Czech courts. A preliminary injunction may thus be a good solution for the plaintiff until a final decision is issued.

11. How available are preliminary injunctions and how do you get them?

Preliminary injunctions are fast and effective protective measures. The court must decide whether to issue the preliminary injunction within seven days of the date of filing. According to the amended Article 75b of the Civil Procedure Code, the plaintiff must deposit a security in the amount of CZK50,000 – or in commercial matters (including patent infringement and unfair competition actions), CZK100,000 – at the latest on the date of filing the request for a preliminary injunction with the court. This security will be used to compensate the defendant for damage or other harm that may be caused by the preliminary injunction should the final decision go against the plaintiff.

12. How long does it take to get a decision at first instance? Is it possible to expedite this process?

It takes approximately one to one and a half years to get a decision at first instance. There is no way of expediting the process.

13. What avenues for appeal are open to the defeated party in a first instance case? What criteria are there for granting an appeal? How long does the appeal process take?

The defeated party in patent infringement proceedings may appeal to the High Court within 15 days of receipt of the first instance decision. There are two High Courts in the Czech Republic: the High Court in Prague and the High Court in Olomouc.

The defeated party may appeal the decision in its entirety or only a part thereof. It is not possible to appeal the reasoning for the decision: the appeal must be based on certain grounds stated in Article 205(2) of the Civil Procedure Code, such as the following:

- The conditions of the proceedings were not met;
- The court of first instance was not materially competent;
- The decision court was issued by an excluded judge (assessor) or the court of first instance was incorrectly composed;
- The court of first instance did not take account of facts asserted by the appellant or of evidence identified by it, or the requirements of the Civil Procedure Code in this regard were otherwise not met; or
- The procedure was in some other way defective and this may have led to an incorrect decision on the merits.

The appellate proceedings are regulated by Articles 201 to 226 of the Civil Procedure Code.

The appeal process takes one and a half to two years.

14. To take a case through to a first instance decision, what level of cost should a party to litigation expect to incur?

The costs of first instance proceedings depend on the complexity of the matter. It usually takes at least 20 hours of lawyers' work to take a case through to a first instance decision. The level of costs increases where an expert opinion is drafted and submitted to the court. Court fees may be considerably high, especially where extensive damages are requested.

15. Who can represent parties in court?

According to Article 24 of the Civil Procedure Code, any party may choose a representative to represent it in the proceedings. Generally, no compulsory representation is required before the courts of first and second instance. Parties may be represented by themselves, by any individual, by an attorney at law, by a notary public and – except in an extraordinary appeal – also by a patent attorney. Nevertheless, representation by an IP litigation specialist is recommended.

16. What remedies are available for infringement and how are these typically applied? Are punitive damages available and in what circumstances?

For remedies in case of patent infringement, see question 1 above. The remedy of "appropriate satisfaction" is intended to indemnify the aggrieved party for any harm which cannot be calculated as damages.

17. Are there any realistic alternatives to litigation in cases relating to patent disputes?

At the moment there is no alternative to litigation in patent infringement cases. If the parties do not conclude an out-of-court settlement or a settlement before the court, only litigation may secure the enforcement of rights.

18. Has your jurisdiction signed up to the London Protocol on Translations? If not, how likely is it that it will do so?

The Czech Republic has not yet signed up to the London Protocol and is unlikely to do so in the near future. There are concerns that accession to the London Agreement could make things more difficult for Czech patent owners, and small enterprises in particular, as it could be very hard for them to compare their own patents or solutions with those of foreign subjects without exact Czech translations.

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