



CHINA

Trial preparation, Hearing, Deliberation and Drafting of the judgement in patent infringement disputes – German approach
专利侵权纠纷的审前准备、听审、审议及裁决起草——德国方式

Dr. Klaus Grabinski | Germany | 23 May 2022
Klaus Grabinski博士 | 德国 | 2022年5月23日

www.ipkey.eu



Funded by the European Union
受欧盟资助



I. Trial Preparation 审前准备



1) Party representatives 双方代表

- **Parties have to be represented by a lawyer (litigator).**
- **当事人必须由律师（民事诉讼律师）代理**
 - Usually, the lawyer is specialized and experienced in litigating IP or patent disputes.
 - 通常而言，代理律师具有知识产权或专利纠纷领域专业经验
- **The lawyer is almost always assisted by a patent attorney.**
- **代理律师一般均有专利代理人协助**
 - Patent attorneys have a university degree in natural sciences or engineering and an additional education in IP law.
 - 专利代理人具有理工科学士学位，并且在知识产权法方面具有专业背景



2) Front-loading written procedure 前置书面程序

- Patent infringement and revocation proceedings are front-loading
专利侵权和撤销程序具有前置性
- Front loading means that ... 前置性意味着.....

all facts and evidence relied on

by the claimant to allege an infringement or

by the defendant to deny an infringement

have to be submitted to the court upfront in writing.

原告指控侵权、被告否认侵权所依赖的全部事实和证据，必须预先书面提交法院。



- **This is done by an exchange of written statements 程序上，双方进行书面陈述交换**
- **Parties submit the written statements before the oral hearing 双方在听审前提交书面陈述。**
 - Claimant's lawyer submits a statement of claim 原告律师提交起诉状
 - Defendant's lawyer a statement of defence, 被告律师提交答辩状
 - Claimant's lawyer a reply and 原告律师提交答复
 - Defendant's lawyer a rejoinder. 被告律师提交二次答辩
- **The Presiding judge sets time limits for both parties to submit their statements 由主审法官设定双方提交陈述的时限**



a) Statement of claim 起诉状

As said, parties are required **to submit all facts and evidence relied on upfront in their written submissions.** 如前所述，双方需**预先书面提交各自依赖的所有事实和证据**

That means Claimant in his **statement of claim** has to give... 原告在**起诉状**中必须.....

- details on **entitlement** as patent proprietor, exclusive licensee or other. 提供其作为专利权人、独占被许可人或其他权利人所享有的**法定权利**的详情
- **an explanation of the patented invention and an interpretation of the patent claim**, as far as relevant for the alleged infringement 提供对**侵权指控**所涉**专利发明**以及**权利要求的解释**



- **an indication of the facts relied on 指明所依赖的事实**
 - Example: Facts about the defendant offering the allegedly infringing product for sale.
 - 例如：有关被告出售被控侵权商品的事实
- **reasons why the facts relied on constitute an infringement of the patent claim 说明为何所依赖的事实构成对专利权利要求的侵犯**
 - Example: Reasons why all features of the patent claim are realized in the allegedly infringing product offered for sale by the defendant.
 - 例如：说明为何权利要求的所有特征均为被告销售的被控侵权商品所实现
- **evidence relied on and 提供所依赖的证据**
 - Example: A screenshot from the defendant's website where the allegedly infringing product is described and offered for sale.
 - 例如：被告说明并销售被控侵权商品的网站页面截图
- **an indication of the order sought from the court 指明诉讼请求**
 - Examples: Injunction, damages, destruction, recall, information, etc.
 - 例如：禁止令、损害赔偿、销毁、召回、公告等

b) Statement of defence 答辩状

Defendant in his statement of defence has to give ... 被告在答辩状中必须.....

- an **explanation of the patented invention** and an **interpretation of the patent claim**, as far as relevant for the alleged infringement 提供对侵权指控所涉专利发明和权利要求的解释
- **reasons why the facts relied on by the claimant do not constitute an infringement of the patent claim** 说明为何原告所依赖的事实不构成对专利权利要求的侵犯
 - Example: Reasons why one or more features of the patent claim are not realized in the allegedly infringing product offered for sale by the defendant.
 - 例如：说明为何权利要求的一项或多项特征并未在被告销售的被控侵权商品中实现
- an **indication of the facts relied on as a defence** 指明答辩所依赖的事实
 - Example: Facts about the defendant's prior use of the patented invention.
 - 例如：有关被告在先使用系争专利发明的事实

▪ **the evidence relied on with regard to the facts 相关事实所依赖的证据**

- Example: Documents or photos that prove the prior use.
- 例如：证明在先使用的文件或照片

▪ **an indication of the order sought 指明答辩请求**

- Dismissal of the action for infringement.
- 驳回侵权诉讼



c) Reply 答复

In his reply to the statement of defence the claimant may submit 原告在答复被告的答辩状时可以提出

- additional facts, evidence and reasoning why the attacked embodiment constitutes an infringement of the patent 系争客体构成专利侵权的其他事实、证据和推理

d) Rejoinder 二次答辩

In his rejoinder to the reply of the claimant the defendant may submit 被告在二次答辩中可以提出

- additional facts, evidence and reasoning why the attacked embodiment does not constitute an infringement of the patent 系争客体不构成专利侵权的其他事实、证据和推理



3) Preparation of the judges 法官的准备工作

- **Patent infringement cases are heard and decided by a panel of 3 judges** (meaning the Presiding judge and two associate judges). **专利侵权案由三位法官组成的合议庭听审和裁决** (一位主审法官、两位助理法官)
- The judges are legally qualified and (at least 2 of them) are experienced in hearing patent cases. **法官均具有审理专利案的法律资质, 同时 (至少两位法官) 具有相关经验**
- For each case **one of the judges is designated as reporting judge** according to an action-distribution-scheme. **根据案件分配制度, 每例案件均指定三位法官中的一位为报告法官**
- **The reporting judge reads all written statements of the parties and writes an internal** (meaning for the other 2 judges' eyes only) **opinion on the case** **报告法官负责阅卷 (当事人书面陈述), 撰写内部意见** (仅供另外两位法官参阅)
- The 2 other judges also read the written statements and the internal written opinion of the reporting judge. **另外两位法官参阅当事人的书面陈述和报告法官的内部书面意见**
- Usually one day before the hearing, all **3 judges deliberate the case**. **三位法官一般在听审前一天对案件进行评议**



II. Court hearing 听审



Conduct of the oral hearing 听审程序

- **The court hearing is public and held before all three judges of the panel 由三位法官组成的合议庭公开听审**
- **At the beginning the Presiding judge gives an introduction to the case based on the deliberations the panel had the day before 首先，由主审法官根据前一天合议庭的评议作案情简介**
 - This introduction usually addresses all issues relevant to decide the case from the judges' point of view. 案情简介通常会涉及法官认为与案件裁决相关的所有问题
- **This is followed by the party representatives making their oral pleadings 接着，由当事人代表作口头诉答**
 - In their pleadings the representatives will address the issues raised in the introduction of the Presiding judge 当事人代表对主审法官在案情简介中提出的问题进行回应
- **Judges may ask questions to the party representatives during or after their pleadings 法官可以在诉答时或诉答后向当事人代表提问**



III. Deliberation and Drafting of the judgment

审议和裁决起草



Deliberation and Drafting of the judgment 审议和裁决起草

- Judges will deliberate the case after the hearing 法官在听审后审议案件
- The deliberation results in a decision 审议后作出裁决
- In a patent infringement case **the panel may decide 在专利侵权案件中，合议庭可以**
 - **to render a final judgment** (about 80 % of all cases) 宣告**最终裁决** (约80%案件)
 - **to take evidence** (about 5 – 10 % of all cases) **采纳证据** (5–10%案件)
 - in case facts relevant for deciding the case are contested between the parties by taking expert evidence, hearing witnesses or taking, etc.
 - 双方对案件裁决相关事实有争议的，可以采纳专家证据、听取证人证词等
 - **to stay proceedings** with regard to opposition or revocation proceedings with regard to the patent-in-suit pending before the European or German Patent Office or the Federal Patent Court (about 10 – 15 % of all cases). 如果欧洲专利局、德国专利局或德国联邦专利法院尚有对涉案专利的待决异议程序或撤销程序，**搁置诉讼程序** (约10–15%案件)



- **The decision is drafted by the Reporting judge according to the results of the deliberation and signed by all three judges of the panel 主审法官根据审议结果起草裁决，三位法官共同签字**
- **Usually, a judgment is rendered and served upon the parties 3 to 4 weeks after the hearing 一般在听审结束后3至4周向双方宣告、递送裁决书**
- **The judgment contains 裁决书包含**
 - a decision on the matter and on costs 就诉讼事项和费用作出的决定
 - a summary of the relevant facts and parties allegations 相关事实和双方主张的摘要
 - an indication of the parties' requests 双方的请求
 - grounds for the decision 裁决的依据
- **The duration of a proceeding in first instance in a patent infringement of average complexity takes about one year. 复杂度适中的专利侵权案件一审结案需要一年左右时间**



THANK YOU
感谢聆听

