

**§ 32:16 Infringement—Procedures**

Infringement proceedings can be instituted before a court hearing a

case on the merits (article 78 of the Civil Code of Procedure) and before the preliminary relief judge (article 254 of the Civil Code of Procedure). In preliminary relief proceedings, a patent owner must demonstrate urgent interest, meaning that the factual situation between the parties requires immediate legal intervention by the grant of a provision matter.

The question of whether a plaintiff has a sufficiently urgent interest in the requested provision must be answered based on weighing all of the interests involved, assessed according to the time of the judgment, in practice, such an urgent interest is generally presumed to be present in intellectual property cases, seeing there is usually a continuous infringement or a continuous threat thereof. Nevertheless, the circumstances of the case can still indicate a lack of urgency. Failure by the plaintiff to enforce its right in a timely manner may result in his claim being deprived of urgent interest. This will be the case if this inaction has lasted for a long time and there are no (new) facts or circumstances that imply that the imposition of the requested provision is (still) justified.<sup>1</sup>

In preliminary relief proceedings, there will be a limited legal discussion, by default solely held in the writ of summons of the plaintiff and the arguments of the parties as orally communicated during a hearing. Substantive proceedings are more complex and take longer. In addition, the rules regarding evidence differ in preliminary proceedings compared to a substantive procedure. The plaintiff in preliminary relief proceedings need not prove that his claims are factually and legally correct, as he only must make his claims plausible.

Moreover, there is more room for providing evidence, for example by hearing of witnesses, in substantive proceedings. Furthermore, the preliminary relief judge merely hands out a preliminary ruling and cannot give a definitive ruling, such as a declaration of (non-)infringement or invalidity. The preliminary ruling should be followed by a claim in substantive proceedings within a reasonable term as set by the preliminary relief judge. If the plaintiff omits filing its claim in substantive proceedings within this reasonable term and the defendant files a statement of that fact to the court registry, the preliminary provision loses its force (article 1019i of the Civil Code of Procedure).<sup>2</sup> Finally, the judge in preliminary relief proceedings must align its judgement with the future judgement that is expected to be given by the court hearing the case on the merits.

Pursuant to article 80 of the Patent Act, Dutch proceedings regard-

---

**[Section 32:16]**

<sup>1</sup>Court of The Hague 9 February 2016, ECLI:NL:RBDHA:2016:1415, recital 5.3 (Pictoright/Blendle).

<sup>2</sup>If the preliminary relief judge has not set a term, the preliminary provision loses its force when, after at least 31 days, no substantive proceedings have been initiated and a statement has been filed by the defendant to the court registry.

ing almost all disputes about patent rights fall under the exclusive competence of the Court of The Hague at first instance. These include proceedings regarding the alleged infringement of patent rights and claims for declarations of non-infringement. Reference is made to article 80(2)(a) in conjunction with article 70 of the Patent Act.

Pursuant to the aforementioned articles, the preliminary relief judge of the Court of The Hague also has exclusive competence in preliminary relief proceedings and most other provisional matters regarding possible patent infringements. General rules of the Civil Code of Procedure determine that the appeal to verdicts of the Court of The Hague will be brought before the Court of Appeal of The Hague. A small number of cases regarding patent rights are not assigned to the exclusive competence of the Court of The Hague. For example, requests for provisional examination of witnesses can be submitted before any Dutch court.

In addition to regular substantive proceedings, also a special category of substantive proceedings before the Court of The Hague exists for patent and SPC disputes. These proceedings are characterized by shorter procedural terms. The special regime is adapted by the Court of The Hague since urgent patent cases and cases regarding SPCs are often, due to their complexity, less suitable for preliminary relief proceedings. A plaintiff that wishes to make use of the fastened regime must submit a request before the preliminary relief judge of the Court of The Hague. Together with this request, a draft writ of summons must be submitted. The conditions are further detailed in the special rules of procedure of the Court of The Hague.<sup>3</sup>

In infringement proceedings, the rules of civil procedure as stated in the Civil Code of Procedure apply. A plaintiff can bring an action by serving a writ of summons. Article 70(2) of the Patent Act prescribes a special additional condition for the admissibility of the claims of a plaintiff in patent infringement proceedings.

The patent owner must timely submit the results of the research of the Patent Office (or the European Patent Office if a European patent right) to the state of the art regarding the subject matter of its patent right. In substantive proceedings, the results must be submitted by writ of summons. In preliminary relief proceedings, the results must be submitted at the latest at the hearing. In proceedings pursuant to the “fastened regime in patent cases,” the results must be submitted on the first cause list.

In proceedings before a Dutch court, court fees must be paid to the court by both the plaintiff and the defendant.<sup>4</sup> The amount of court fees depends on the nature of the party (natural person or legal

---

<sup>3</sup>See <https://www.rechtspraak.nl/SiteCollectionDocuments/Reglement-versneld-regime-in-octroozaken-VRO-reglement.pdf>.

<sup>4</sup>In proceedings before the sub-district judge, the defendant is exempted from

## THE NETHERLANDS

person) and the value matter of the case. The list of court fees is on the website of the Dutch courts.<sup>5</sup> Furthermore, parties must pay the costs of their lawyers and other representatives. Pursuant to article 1019h of the Civil Code of Procedure, the court must order the losing party in infringement proceedings to pay the actual and reasonable procedural costs of the counterparty. Parties must submit a cost specification. Dutch courts work with fixed indicative rates for the estimation of the procedural costs a party has made.

The Court of The Hague, the Court of Appeal of The Hague, and the Supreme Court apply separate lists of indicative rates for cases regarding patents and SPCs. According to the latest versions of these lists (1 September 2020),<sup>6</sup> the indicative rates for proceedings at first instance vary in preliminary relief proceedings from a maximum of €10,000 for simple patent cases to a maximum of €120,000 for highly complex cases. In substantive infringement proceedings, the rates vary from a maximum of €30,000 to a maximum of €250,000. A court can deviate from the rates if the application thereof would not result in the compensation of a significant and appropriate part of the reasonable costs of a party.<sup>7</sup>

---

paying court fees.

<sup>5</sup>See <https://www.rechtspraak.nl/Naar-de-rechter/Kosten-rechtszaak/Griffierecht/paginas/griffierecht-civiel.aspx>.

<sup>6</sup>See <https://www.rechtspraak.nl/SiteCollectionDocuments/indicatietarieven-in-octroozaken-rb-den-haag-1-september-2020.pdf>; <https://www.rechtspraak.nl/SiteCollectionDocuments/indicatietarieven-in-octroozaken-gerechtshof-DH-september-2020.pdf>; <https://www.rechtspraak.nl/SiteCollectionDocuments/indicatietarieven-in-octroozaken-HRN-1-september-2020.pdf>.

<sup>7</sup>Supreme Court, 24 January 2020, ECLI:NL:HR:2020:112, NJ 2020/59 (Spirits/FK).