



IP Litigation and Enforcement Guide: Sweden



IP Litigation & Enforcement in Sweden

This is a brief guide addressing common questions and concerns of the IP litigation and enforcement landscape in Sweden.

Is your jurisdiction a common law or civil law jurisdiction?

Sweden is a law jurisdiction.

What methods are there for enforcing IP rights in your jurisdiction?

IP Right	Civil	Administrative	Criminal	Customs
Trademark	Yes	-	Yes	Yes
Unfair competition/ passing off	Yes	-	-	-
Copyright	Yes	-	Yes	Yes
Registered designs/design patents	Yes	-	Yes	Yes
Patent	Yes	-	Yes	Yes

What courts have jurisdiction to handle civil IP cases?

Sweden has a specialised IP Court, the Patent and Market Court, which deals with trade mark and patent infringement cases and appeals from the Patent and Registration Office. Other IP matters are dealt with in the general courts.

Is there any bifurcation of proceedings? For example, for determining validity or damages?

In Sweden, infringement and invalidity of a patent are officially handled in separate cases and consequently brought in separate proceedings, but it is the same court that will deal with both infringement and invalidity. Validity and infringement can be decided in the same proceedings, but it can also, at the request of any of the parties, be decided separately (section 61, The Swedish Patent Act). Such separate decisions are however not independent of each other, and it is still the same judges that will deal with both issues, taking into account facts from both proceedings.

What are procedures for civil enforcement?

Civil enforcement of IP rights is usually initiated through cease-and-desist letters. If the alleged infringer does not respond, a party can initiate civil action in the courts by filing a complaint, which must state the claims, legal grounds, and evidence. The Patent and Market Court will hear cases at first instance. This court is highly knowledgeable and specialises in IP and marketing law. The defendant will usually have three weeks to respond from the date of service of the complaint. Afterwards, often between 2-6 months after the case has been submitted to court, a preparatory hearing will be held. Thereafter both parties are given time to make clarifications regarding any questions that might have been raised at the hearing and complete and present the final evidence before the main hearing. The judgment will be announced around 3-4 weeks after the main hearing.

Is a power of attorney needed for civil action to be brought? If so what are the procedures and time lines?

Power of attorney is required when the counsel is representing the plaintiff/defendant for the first time in the proceedings. It is not a formal requirement for the commencement of civil action in itself. The power of attorney must be presented in writing, either electronically or in original. As of January 1st 2021, public defenders in criminal cases do not need a power of attorney should the court not consider it necessary.

What is the average time to trial in a civil case?

The average time to trial in a civil case will take around 12 to 18 months, depending on the amount of evidence and correspondence with the court regarding the case. Regarding patent cases, however, the time lines are usually considerably longer in every part of the proceedings.

What is the language of the proceedings? Is there a choice of language?

Swedish is the official language of the proceedings. There is no choice of language. According to Swedish law, the main rule is that documents submitted to court must be written in Swedish but courts may allow documentary evidence in English. If a party, however, fail to comply with an order to translate a document, the court can disregard the document.

Is it possible to apply for summary judgment?

There are no procedural rules allowing for a summary judgement. It is possible for judgement to be rendered by the court without a full trial of the merits and evidence when a case one of the parties fully concedes the case; for default judgements; or, a judgement in accordance with a settlement agreement between the parties.

On what basis are interim injunctions granted?

Preliminary injunctions can be granted when there is probable cause for infringement and the continuation of the alleged infringement can reasonably be expected to diminish the value of the IP. A preliminary injunction may be issued only if the plaintiff deposits a security with the court for the damage that may be caused to the defendant.

On what basis are permanent injunctions granted?

Upon request of the plaintiff, a permanent injunction may be granted if infringement has been established. The injunction will reflect the infringing act and refer to the items allegedly infringing the right.

What appeal procedures are available from a first instance judgment?

The Patent and Market Court of Appeal (PMCA) which also specialises in IP and marketing law hears appeals from the Patent and Market Court. A decision of the PMCA is final. Under special circumstances, PMCA may refer a matter to the Supreme Court. The Supreme Court will then, on its own, decide whether or not to grant leave to appeal.

What is the Swedish courts connection to the European Court of Justice?

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The Court of Justice of the European Union (CJEU), located in Luxembourg, ensures that EU laws are enforced correctly and applied in the same way in the member states. The final instances in the national court system are obligated to request a preliminary ruling when the interpretation of the regulations or case law is not entirely clear. It is a core function of the CJEU, to issue preliminary rulings in national cases where the national courts need guidance when the EU law is not entirely clear. It is not possible to appeal the decision of the Swedish court, to the CJEU.

The EU Intellectual Property Office (EUIPO) administers the EU Trade Mark and Design rights, applicable throughout the EU. These rights complement national intellectual property (IP) rights and are linked to international IP systems. Since 2012, EUIPO is responsible for the EU Observatory on Infringements of IP Rights and the Orphan Works Database.

If, in a case concerning trademark infringement on an EU trademark, a counter suit is filed, concerning the validity of the EU trademark, the national court, is authorised to try this. Otherwise, EU trademark validity issues are mainly handled by the EUIPO as a first instance, and the CJEU as the final one.

What are the procedures for criminal enforcement?

IP infringement is criminal if the act was committed wilfully or with gross negligence and can lead to a fine or imprisonment for up to two years. Commencement of a criminal action depends on the type of IP right. For copyright infringement, action can be initiated at the request of the rights-holder or by the authorities, as long as such action is in the public interest. Meanwhile for patent and trade mark infringement, action against an alleged infringer requires a rights-holder to file a report and state an offence, and prosecution is justified in the public interest.

What are the procedures for criminal appeals?

The procedures are quite similar to the civil appeals, but a criminal case can be appealed to the Supreme Court. The main difference is the rules regarding leave to appeal. In civil cases a leave to appeal is always required. In a criminal case however leave to appeal is only required for the Court of Appeal to review a district court judgement if the defendant as a single sanction has been fined or if the defendant is acquitted of a crime that has less than a six month sentence. For the Supreme Court the main rule is that leave to appeal is only granted if the Supreme Court's judgement or decision can provide a precedent.

What are the procedures for administrative enforcement?

There is no administrative enforcement in Sweden.

What are the measures for Customs border protection?

The Swedish Customs authority, Tullverket, has the power to detain goods that are suspected of infringing IP rights. A rights-holder can file an application calling on Swedish Customs to seize suspected infringing goods entering the borders of Sweden. This application is valid for one year. Swedish Customs will seize the suspected goods and detain them and inform the rights-holder and the importer. The rights-holder must initiate civil or criminal action within 10 working days of notification of the seizure in order to stop the release of the goods. If the importer agrees to destroy the suspected goods within the same timeframe, Swedish Customs will destroy the goods.

What IP treaties is your jurisdiction a member of?

- Madrid Agreement
- WTO – TRIPS Agreement
- WIPO – Performances and Phonograms Treaty
- WIPO – Copyright Treaty
- WIPO – Trademark Law Treaty
- WIPO – Patent Law Treaty
- Nice Agreement
- Strasbourg Agreement
- Locarno Agreement
- Vienna Agreement
- Berne Convention
- Paris Convention
- Rome Convention
- Patent Cooperation Treaty
- Beijing Treaty
- Budapest Treaty
- Singapore Treaty
- Phonograms Convention
- UPOV Convention

Further reading

- [Software patents in Europe remain a delicate issue](#)
- [Why is intellectual property management so often not intellectual?](#)
- [Webinars from Rouse Sweden](#)
- [How do we prevent someone from stealing our business idea?](#)

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