

Now easier to defend your intellectual property rights

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On 1 September this year, the courts hearing IP, market and competition cases will be reformed. Two new courts; the Patent and Market Court and the Patent and Market Court of Appeal will be come into being whilst the Court of Patent Appeals and the Market Court are to be disbanded. Alongside the new courts, new procedural rules will be introduced to simplify and shorten the time it takes for courts to handle cases. This will entail, in part, a shift in the way intellectual property rights are defended. Below is a short summary.

Today's Swedish court system for dealing with disputes concerning IP, marketing and competition law is fragmented. Certain types of case can be handled by the general courts of law, others only by the Stockholm District Court and the Svea Court of Appeal. Some may only be heard by the Court of Patent Appeals or by the Market Court. Cases concerning related matters, for example trademark infringement and misleading marketing, must be heard in different courts. This has given rise to higher costs for rights holders wishing to defend or enforce their IP rights. At the same time, few judges have been able to become experts in the matters that, in the majority of courts, arise far too infrequently.

Court handling times for these types of cases have generally been long. This is due, in part, to the lack of experience and routine on the part of many judges, as is mentioned above. It is also due to the fact that the procedural rules have made it difficult for courts to limit their handling of matters unless the parties in dispute are minded to do so. As a result, costs have been higher than strictly necessary and rights holders have refrained

from litigating disputes because it would not appear worthwhile to do so when the matter will not be settled within a reasonable time. It is thought that these shortcomings will be remedied by the introduction of the new courts accompanied by certain changes to the procedural rules.

All cases under one court

The Patent and Market Court will, in the future, be the only court to which the great majority of IP and market disputes will be referred. It will constitute the exclusive forum for, amongst other things, infringement and invalidity disputes concerning all intellectual property rights and for all injunction applications concerning marketing. The court will be part of the District Court of Stockholm, which is the court with the greatest experience of the different types of case. Experienced judges will be brought in from the District Court of Stockholm, the Court of Patent Appeals and the Market Court at the same time as some new recruitment will take place. The changes will lead to increased specialisation and an increased focus for those judges hearing IP and marketing cases.

Faster case management

One new aspect of the change to the rules is that it will make it possible to employ a so-called "guillotine order". This means that the judge in a case can determine when the parties have sufficiently presented their case and can prohibit them from continuing to adduce new evidence or making new submissions. This contributes to more effective litigation.

However, even greater cost and time savings may result from a couple of other regulatory changes that provide new and expanded opportunities to hear several different matters in the same case. Thus far, it has been impossible to hear claims founded on different rights, for example a prohibitory injunction on the grounds of both copyright infringement or trademark infringement and misleading marketing, in the same case even if these were caused by the same action in an advertisement.

By bringing all cases under the same court, it will be permissible in future to handle different rights in the same trial. The same applies to related issues. Therefore, after 1 September, it will not be necessary for a rights holder to go to two or more courts. This possibility is expected to be exploited to a great extent for certain types of copyright and patent matter that often arise together with violations of the Business Secrets Act.

Possibility of appeal

The majority of cases before the Patent and Market Court may be appealed to the Patent and Market Court of Appeal, which will be part of the Svea Court of Appeal. There is also a division here that gathers IP cases and the judges have substantial experience. It has thus far not been possible to appeal market cases from the Market Court, so by way of the new court organisation a two-instance procedure will be introduced for these cases as well.

However, it will not generally be possible to appeal rulings of the Patent and Market Court of Appeal to the Supreme Court, something that is currently possible with rulings of the Svea Court of Appeal. A new rule intended to restrict the time it takes for a dispute finally to be settled is to be introduced. The rule will entail that the Patent and Market Court may determine if a ruling is appealable or not, and that leave may only be granted if the matter in dispute is significant to other cases in the future and thereby provide value as a precedent. The majority of rulings are unlikely to be granted leave to appeal to the Supreme Court.

Conclusion

Reform of the court system and the newly introduced rules concerning the guillotine order and the joining of cases will give rights holders a new way and better opportunities to protect and enforce their intellectual property rights. Delphi's IP lawyers are greatly experienced in all the matters that will fall under the auspices of the Patent and Market Court, and welcome the changes, which afford us good opportunities to assist our clients.