

UK intellectual property litigation – fact sheet

UK IP litigation

Courts

- High Court for large claims and IPEC (Intellectual Property Enterprise Court) for smaller claims (<£500K with a costs cap of £50K).
- Common Law rules including for evidence/procedure.
- Trials heard by specialist judges. Main judges have more than 25 years' experience as litigators in IP.

Procedure

- Possibility of interim injunctions and negative declarations.
- Cases can involve multiple rights (e.g. both trade mark and copyright). Commercial contracts relating to IP often heard by IP specialists.
- Infringement and validity of IP usually heard together.
- Cases often include some documentary disclosure in High. Oral depositions very rare.
- Additional procedures for obtaining information from the opposing party by way of targeted written requests for information, which the court can order the party to answer and verify.
- Regular pre-trial motions on procedure and possibilities for summary judgment. Procedure involves document discovery, witness and expert evidence, and provision for cross-examination at trial. Case management conference sets timetable (two-six months after commencement of proceedings and sometimes sets costs budget).

Trial

- Trial usually within 12 months but can be much quicker if urgent. Total length usually five-ten days for major cases. Allocated either a fixed date for start or (narrow) window.
- Usually evidence is followed by closing briefs and fuller oral argument.
- No examination in chief (direct) and some time limits on cross-examination.
- Loser pays a percentage of winner's costs (roughly reflecting extent of success).

Remedies and post-trial issues

- Injunctions are the usual remedy where infringement established.
- Assessment of (a) damages or (b) account of infringers' profits is done at a separate remedies hearing with separate evidence/disclosure.
- Copyright and design rights have provision for "additional damages" for flagrant infringement (somewhat akin to wilful infringement).
- Appeals to Court of Appeal usually with panel including specialist judges. Review not *de novo* re-hearing. Case must have real prospect of success for permission to appeal to be granted. Further appeals to the Supreme Court are infrequent.

Key UK courts and tribunals

High Court (London)

High Court in London hears major IP cases over all field of IP. Cases are assigned a trial judge depending on their complexity rating. UK judges have long experience over ranges of technology and creativity industries and have in recent years heard numerous cases in electronics, biotechnology, medical devices, engineering as well as key cases in copyright and trade marks. Regularly hears the most advanced IP cases and often will be the “lead” decision in Europe. Directions and timings tend to be highly bespoke for the particular case. Main judges: **Arnold J; Birss J; Henry Carr J; Nugee J; Mann J; Roth J.**

IPEC (London)

For smaller claims (up to £500k damages) there is the Intellectual Property Enterprise Court (Main judge: **HHJ Hacon** and deputies). Statements of case have to be fuller at the outset. Procedures are more standardised but will be adjusted to minimise cost. Document discovery and/or cross-examination will be limited and often dispensed with. Costs claimed by the winner are capped at £50k. Court is focussed on SMEs but cases there have included the delivery system for the world’s best-selling drug, *Humira*. There is also a “**small claims**” **division of IPEC** for trade mark, copyright or unregistered design claims and provides for up to £10k damages.

Timing of IP cases

Target for trial date is c. **12 months from start of proceedings**. Judgment usually follows a few weeks later in writing. Usually speed of case is dictated by the parties, within limits. Trial dates once fixed are “sticky”: adjournments, especially close to trial, are rare.

Expedition

IP cases are regularly expedited both in the High Court and in IPEC, for example in order to fit in with prospective launch dates. Sometimes full trial will be expedited in lieu of granting an interim injunction. In some cases this can result in very rapid determination. It is believed the record is around two-three weeks from start to judgment in a trade mark case relating to sanitary products, *Kimberly-Clark v Fort Sterling*.

Example

Trade mark and passing off claim against Nike for use of the brand “LNDR” for clothing. Claim commenced in IPEC in February 2018. Trial and full judgment July 2018 ([Frank Industries v Nike \[2018\] EWHC 1893 \(Ch\)](#))