

A FEW ASPECTS OF THE PATENT LITIGATION PRACTICE IN HUNGARY

By Dr. József MARKÓ

Since Hungary became a member of the European Union, the competitors' activity has been getting stronger. Evidently, companies are ready to invest in Hungary or to file new patent applications or to transfer brand-new technologies only if they feel that their legal position can be guaranteed against infringers.

On the other hand, a patent can be strong enough only, if the patentee (or the licensee in his own name, if he is recorded in the Patent Register, and if the patentee fails to take the necessary action against the infringer in due time) is able to enforce the prohibitive effect of the patent against unauthorised third persons. It is well known that the patent litigation is a costly procedure all over the world, including Hungary.

I. CIVIL ENFORCEMENT

Patent infringement suits fall under the exclusive jurisdiction of the Metropolitan Court of Budapest, as competent first instance court, which acts in special IP Senates composed of three professional judges; at least two of them must have a technical degree.

Against the judgement of the first instance court an appeal can be lodged at the relatively new Metropolitan Appeal Court acting also in senates which are composed of three professional judges (lawyers without any technical background).

According to Art. 34 of the Hungarian Patent Act, patent infringement is established if the subject matter of the patent is used unlawfully. The patentee can request (in harmony with the TRIPS Agreement) a. o.:

- to declare officially the fact of the infringement,
- to stop the infringer in infringing the patent in suit,
- to oblige the infringer to deliver information relating to the manufacture, trade, business relations and other circumstances in connection with the infringing products and services,
- to oblige the infringer to publicly declare his regret for having committed infringement,
- to reimburse the enrichment obtained through the infringement, and

- infringement gives cause for compensation of damages according to the general rules of the Civil Code.

“Contributory infringement” may be established if any third person uses or sells or offers means for realizing the patented invention, if he knows or it is obvious that said means could be used for that purpose.

In the majority of infringement cases, the defendant’s first reaction is to question the validity of the patent in suit, and files a request for nullity or revocation proceeding at the Hungarian Patent Office, which proceedings are completely separated from the infringement suit in Hungary.

The patent infringement proceedings at the court are mostly suspended until a final decision regarding the validity of the patent is reached, unless the revocation proceedings are obviously unjustifiable.

In an exceptional case, a petition for revision of the decision of the second instance court may be filed at the Supreme Court of Hungary. It is to be noted that these supervisory proceedings of the Supreme Court do not constitute a second forum for appeals. This supervision can only be used in extraordinary cases, where it can be proven that an actual injury to law was committed by the second instance court when making the final decision.

As to my experiences in this respect, I filed petitions for supervisory proceedings at the Supreme Court in two cases in the last two years, but each of them was rejected without starting any supervisory proceedings at all.

As to the evidences, I already mentioned that the plaintiff could request the court to oblige the infringer to deliver information relating to the manufacture, trade, business relations and other circumstances in connection with the infringing apparatus, product or process.

But, in the everyday practice the main problem lies in that the defendant - most probably - does not comply with this obligation, and unfortunately there are not any quick and effective sanctions to enforce these evidences (except “fine” and “compulsory execution”). This information would be very important for valuation of the enrichment of the infringer and the compensation of the plaintiff.

According to the Hungarian Code of Civil Proceedings (Art. 156) a request for preliminary (interlocutory) injunction can also be filed at the Metropolitan Court (simultaneously with filing the infringement suit, or later during the proceedings, but not before starting the legal proceedings).

Such a request may be accepted if fair and equitable interests of the plaintiff make it necessary. It must be shown that without the injunction imminent and direct damages cannot be averted or the existing status of the litigants cannot be preserved. It must also be shown that the advantages of the preliminary injunction are likely to outweigh its disadvantages.

If the plaintiff supports his claim sufficiently, the defendant can be obliged by the court to present his documents, evidences and/or to enable inspection on site. The court can require the payment of a security deposit before ordering the preliminary injunction.

As far as I know, only a single positive court decision for preliminary injunction in connection with patents was taken in Hungary in the last decade.

II. CRIMINAL ENFORCEMENT:

According to Art. 329/D of the Hungarian Criminal Code a person who violates the IP rights of the proprietor by imitating or copying the protected subject, and thereby causing pecuniary detriment, commits an offence, punishable by imprisonment, work in community service, or fine. It qualifies acts as a „crime” where the violation of industrial property rights is committed in a business-like manner and causing a significant pecuniary detriment.

The punishment shall be an imprisonment from 2 years to 8 years, if the violation of rights results in particularly substantial financial injury.

The Police handle investigation of criminal IP cases.

SUMMING UP:

As you can see from my brief presentation, the Hungarian legislation provides for legal measures, which are analogous to or at least comparable with that of the TRIPS Agreement.

The law harmonisation process is going on, e. g. in view of the IP Directive 2004/48/EC, so I believe the Hungarian provisions provide for adequate and effective enforcement for patents, and thereby encourage the patenting and litigation activity of domestic and foreign companies in Hungary.

-
- *Presented by the Author at the UNION Congress in Spoleto, Italy (May 2005)*
 - *The Author is Hungarian & European Patent Attorney, Former Reporter General of the UNION (1997-2005, E-mail: j.marko@t-email.hu)*