

# Kluwer Patent Blog

## Denmark – Are lengthy patent PI hearings a red herring?

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Denmark, as one of only a very few countries in the Western world, has no specialty patents court(s) for first instance PI proceedings.

Instead, an application for a PI is heard by the bailiff's department of the city courts (being the first instance courts) with an automatic right of appeal to the High Court.

In neither of these two instances, however, are patent PI cases heard by specialty courts nor, indeed, by judges with a specific background or training in patent law.

Over the past decade, it has become increasingly common for the parties to a patent PI hearing in the first instance to present a full body of evidence, i.e. equivalent to what one might normally expect to be submitted in a first instance case on the merits. This may well also be due to the an insecurity on the part of legal counsel as how best to communicate the respective positions of their clients. In any event, as the presiding judge is not especially qualified to hear these cases, this means – more often than not – that the PI court is unwilling (and in practice unable) to rule that certain evidence submitted by one party is superfluous and should be excluded.

Despite the fact that a lot of evidence is considered due to the lacking specialisation of the PI courts in patents cases, it has become customary that a defendant will only rarely succeed with an invalidity defence – as the presiding bailiff is normally not even willing to consider evidence concerning invalidity.

Consequently, more and more patent PI hearings last for more than a week and up to several weeks despite the fact that they are still meant to serve as interlocutory and summary proceedings.

Also, it is thoughtprovoking – as mentioned in a previous blog – that a disproportionate number of PIs are ultimately lifted having been granted initially by a first instance bailiff's court.

There is no reason to believe that this particular problem is one of great importance outside the field of patent PIs as the often complex and technical facts of a patent case are likely to be much harder to communicate to the lay court than the facts of other cases.

In practice, this has meant that patent PI cases may last for much longer than any other form of PI proceedings and that despite the great length of time spent, the parties are ultimately left with a decision that does not satisfy either side in terms of reasoning.

A change in this somewhat archaic system is rumoured to be underway and personally i would welcome such a change as soon as possible.

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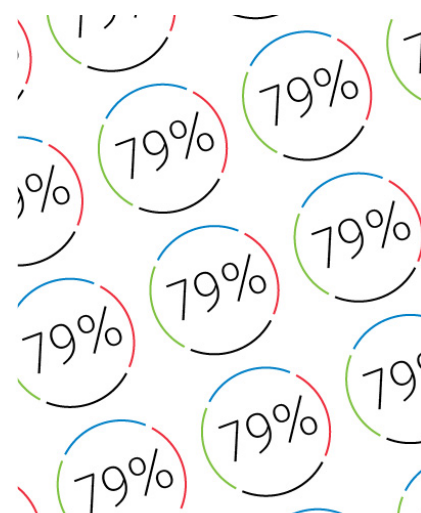
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