

The Federal Patent Court

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Until 2011 patent disputes in Switzerland were heard by the cantonal courts, which rarely dealt with them and often lacked judges with technical expertise. The Federal Patent Court, created by the Patent Court Act of 2009, took up its work on 1 January 2012 with its seat in St. Gallen.¹ At first instance it has exclusive jurisdiction over civil actions on the validity and infringement of patents. Related claims may be joined. Its bench combines judges trained in law with judges trained in natural sciences or engineering, many of whom serve part-time while working as patent attorneys or in-house counsel.

The court has given Switzerland a specialised forum that compares well with the patent chambers of Düsseldorf, Munich and The Hague. Proceedings can be conducted in English if the parties agree, although the judgment is drafted in an official language, which makes the court accessible to international pharmaceutical litigants.² Appeals lie to the Federal Supreme Court in Lausanne, whose case law on inventive step and claim construction follows the problem-and-solution approach of the European Patent Office in most respects. The relatively short duration of proceedings and the availability of preliminary injunctions have made the court a relevant venue for disputes between originators and generic or biosimilar manufacturers.³

1 Notes

1. Bundesgesetz über das Bundespatentgericht (Patentgerichtsgesetz, PatGG) of 20 March 2009, SR 173.41; the court began operating on 1 January 2012 in St. Gallen. To be verified. ↩
2. Art. 36 para. 3 PatGG on the use of English in proceedings before the Federal Patent Court with the consent of the court and the parties. To be verified. ↩

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3. On the practice of the Federal Patent Court regarding preliminary injunctions in pharmaceutical matters, see its published decisions and annual reports. To be verified. ↩

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