Legal 500
Country Comparative Guides 2026

Switzerland
Patent Litigation

Contributor

MLL Legal

Simon Holzer

Partner | simon.holzer@mll-legal.com

Ulrike Ciesla

European Patent Attorney/UPC Representative/Partner | ulrike.ciesla@mll-legal.com

Louisa Galbraith

Partner | louisa.galbraith@mll-legal.com

Andrea Heiniger

Senior Associate | andrea.heiniger@mll-legal.com

This country-specific Q&A provides an overview of patent litigation laws and regulations applicable in Switzerland.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

Switzerland: Patent Litigation

1. What is the forum for the conduct of patent litigation?

In Switzerland, a specialized court – the Swiss Federal Patent Court – is responsible for most patent litigation. The Federal Patent Court has exclusive jurisdiction in litigation concerning patent infringement and the validity of patents. In cases for example regarding the rights to a patent or concerning ownership of a patent or in licensing cases where the scope of the patent and its validity are not at stake, the jurisdiction of the Federal Patent Court is not exclusive, meaning that the cantonal courts in Switzerland are in principle also competent to deal with such proceedings. Nevertheless, due to the advantages of the specialization of the Federal Patent Court as well as the possibility to conduct proceedings before the Federal Patent Court in English (if all involved parties agree), it is rather unusual for any proceedings concerning patents to be brought before the cantonal courts. The Federal Patent Court has two permanent judges and several part-time judges who have either a legal background or a scientific background and who are appointed on a case-by-case basis. As a general rule, the Federal Patent Court hears the cases by a panel of three judges, of whom at least one member must have a technical background and one member must have a legal background. In exceptional cases where it is in the interest of the further development of the law and on the order of the President of the court, the panel may be composed of five judges. Due to the involvement of at least one judge with a technical qualification, the hearing of technical experts is rather unusual before the Federal Patent Court.

2. What is the typical timeline and form of first instance patent litigation proceedings?

Patent infringement proceedings may be carried out either in the form of inter partes or ex parte preliminary injunction proceedings or ordinary proceedings on the merits. Nullity proceedings must take the form of ordinary proceedings on the merits. The proceedings before the Federal Patent Court are not bifurcated. Therefore, in infringement proceedings, patent validity is typically examined in detail – provided that the alleged infringer raised the objection of invalidity as a manner of defence or initiated a counterclaim. In nullity proceedings, the question of infringement is only dealt with if the patent proprietor raised an infringement counterclaim. Issues of claim construction are considered by the Federal Patent Court as an integral part of both infringement proceedings, including preliminary injunction proceedings, and nullity proceedings. Apart from claims for permanent injunction, claims for account rendering and damages as well as claims for recalls and destruction of infringing products can be brought forward in ordinary proceedings on the merits. This is not possible in preliminary injunction proceedings, since account rendering, damages, product recalls and/or the destruction of products cannot be ordered on a preliminary basis by the court according to Swiss practice. Inter partes preliminary injunction proceedings usually take between 5-9 months, depending on the complexity of the case. Although it does take comparatively long to obtain a preliminary injunction in Switzerland, it must be kept in mind that the Federal Patent Court examines the questions of both validity and infringement in inter partes preliminary injunction proceedings in almost as much detail as in ordinary proceedings on the merits. Ex parte proceedings take considerably less time (only a couple of days) but such ex parte injunctions are available only in specific circumstances according to Swiss case law (in particular if the validity of the patent concerned has been confirmed in the EPO or by highly regarded foreign courts and the infringement seems straightforward). Ordinary proceedings on the merits concerning infringement or the nullity of a patent generally take about 16-20 months. In response to recent developments and the growing number of cross-border disputes, the Swiss Federal Patent Court has accelerated proceedings as of 2026 where an action for a declaration of nullity is brought against a patent forming the basis of an infringement action. No instructional hearing will be held. Instead, following the first exchange of briefs, the parties will receive a detailed procedural notice inviting them to further substantiate their cases. Unless the other party consents, extensions of time will be granted only in exceptional circumstances. The aim is to conclude first-instance proceedings in less than one year. Appeal proceedings in Switzerland have traditionally been relatively swift, generally taking only around six months. Accordingly, under the accelerated regime, nullity proceedings may in future be concluded at two instances within approximately 18 months.

 © 2026 Legalease Ltd

3. Can interim and final decisions in patent cases be appealed?

Decisions of the Federal Patent Court may be appealed with the Federal Supreme Court, which is the highest instance in Switzerland. In preliminary injunction cases, the appellant must demonstrate that it suffers irreparable harm of a legal nature due to the PI decision. In ordinary proceedings on the merits an appeal is always possible against a judgment of the Federal Patent Court. No formal permission to appeal is necessary. The Federal Supreme Court generally reviews questions of law. Factual issues are only dealt with if the facts were decided obviously wrong, i.e. arbitrarily. New factual allegations can no longer be presented before the Supreme Court. Appeal proceedings before the Federal Supreme Court usually take around 6-8 months in patent cases. In general, an appeal before the Federal Supreme Court does not have suspensive effect. Only if the appellant requests so and the court grants suspensive relief, the enforcement of rulings issued by the Federal Patent Court is suspended.

4. Which acts constitute direct patent infringement?

A patent confers on its proprietor the right to prohibit others from commercially using the invention in Switzerland. Such commercial use and therefore representing a direct patent infringement include in particular: manufacturing, storage, offering, including advertising patent protected products in Switzerland and/or to Swiss customers, placing on the market, importing, exporting and carrying in transit, and possession for any of these purposes of patent protected goods. In addition, offering and running patent protected processes in Switzerland are also acts that constitute direct patent infringement.

5. Do the concepts of indirect patent infringement or contributory infringement exist? If so, what are the elements of such forms of infringement?

The concept of contributory infringement exists in Switzerland. According to this concept, a person who instigates, participates in, favours or facilitates the infringement of a Swiss patent commits a contributory patent infringement. However, Swiss law requires that at least one direct patent infringing act must have taken place on the territory of Switzerland in order for a contributory patent infringement to be affirmed. Therefore, a contributory infringement can only exist in Switzerland if a direct patent infringing act took place in Switzerland. Any participation in a direct patent infringement in Switzerland is considered a contributory infringement, even if such participation took place abroad. If, however, the direct main patent infringing act took place abroad, participating activities are not considered a contributory patent infringement, even if they took place in Switzerland. Not any form of supporting activities can establish a participant's liability for contributory patent infringement. There must be an adequate causal link between the participating activity and the direct patent infringement. A contributory infringement is only confirmed if the participating act appears, in the light of the experience of life and the normal course of events, to be likely to favour the main patent infringing act. According to Swiss practice, this is the case for example when unpatented products which are generally available on the market are offered for a patent protected purpose; if the unpatented products offered can only be used for a patent protected purpose or if the person offering those products knows or must know that they are used for a patent protected purpose by a third-party.

6. How is the scope of protection of patent claims construed?

According to Swiss law and practice, the technical instructions described in the patent claims must be interpreted from the viewpoint of the skilled person at the time of the filing / priority date. The starting point for claim construction is always the claim language. Then, the description and the drawings are to be used for the interpretation of the patent claims. Furthermore, the common general knowledge must be taken into account when interpreting the claims of a patent. There is no file wrapper estoppel in Switzerland. In fact, the Federal Supreme Court specifically held that the history of the patent or the examination proceedings is not decisive for the interpretation of the patent claims and the determination of the scope of protection. Accordingly, waivers and limitations made by the applicant in the examination proceedings are to be taken into account only to the extent that they are reflected in the patent claims and, if applicable, in the description. The doctrine of equivalent patent infringement also exists in Switzerland. The Federal Patent Court applies a similar test as introduced by the German Federal Court (“Bundesgerichtshof”, BGH), i.e. the so-called “Schneidmesser”-test. However, the relevant questions are not formulated completely identically by the Swiss courts, as is shown below. According to Swiss practice, the first two questions must be answered in the

 © 2026 Legalease Ltd

affirmative and the last in the negative for a patent infringement to exist. 1. Equal effect: Does the modified feature, in combination with the other technical features of the patent claim, objectively perform the same function as the claimed feature? 2. Availability: Is the equal effect obvious to the person skilled in the art when viewed objectively, considering the teaching of the patent, if the features are interchanged? According to Swiss case law, the second question shall not examine whether the features of the attacked embodiment are inventive in the light of the prior art. Rather, it has to be assessed whether, in the case of the replaced features, the equal effect is obvious to the person skilled in the art when examined in light of the teaching of the patent. 3. Equivalence: Does an objective reading of the patent specification lead the skilled person to the conclusion that the patent owner has formulated the claim – for whatever reasons – so narrowly that it does not claim protection for an accessible embodiment having the same effect? This question has the purpose of ensuring legal certainty for third parties. According to the Federal Patent Court, third parties must be able to recognise without unreasonable effort when studying the patent as a whole what is allowed and what is not. If questions one and two can be answered in the affirmative and question three in the negative, there is an equivalent patent infringement according to Swiss understanding.

7. What are the key defences to patent infringement?

Since in Swiss litigation proceedings the subjects of infringement as well as validity are both dealt with in detail, the key defences particularly include attacks on the validity of the patent besides non-infringement arguments. The invalidity of a patent can either be brought forward in the form of a mere objection as a defence argument in infringement proceedings. If the court comes to the result that the concerned patent is invalid, it rejects the infringement action. However, the patent remains valid in Switzerland, i.e. it is neither officially revoked nor deleted from the register (although it might not be enforceable any longer, at least not on the basis the Federal Patent Court found it invalid). Another possibility to assert invalidity of a patent as a measure of defence during infringement proceedings is to file a counterclaim. Such a counterclaim has the same effect as a standalone nullity action. If the invalidity of the patent is confirmed by the court, not only the infringement claim is dismissed, but the patent is also declared invalid and formally revoked.

8. What are the key grounds of patent invalidity?

Any party with a legal interest may bring a nullity action before the Federal Patent Court against a Swiss national patent or against a Swiss part of a European patent validated in Switzerland. A nullity action may be filed on the basis of: lack of novelty; lack of inventive step; unpatentable subject matter because the claimed subject-matter is excluded from patentability (human body and its elements; naturally occurring sequence or partial sequence of a gene; inventions whose exploitation is contrary to human dignity or that disregard the integrity of living organisms or that are in any other way contrary to public policy or morality); the invention not being described in the patent specification in a manner sufficiently clear and precise to enable it to be carried out by a person skilled in the art; the patent contains subject matter exceeding the content of the patent application as originally filed; and lack of entitlement to the patent (this action may be brought only by an entitled person).

9. How is prior art considered in the context of an invalidity action?

The prior art comprises everything made available to the public by means of a written or oral description, by use or in any other way prior to the filing date or, if applicable, the priority date of the patent. Swiss patent law is based on the first-to-file system. Therefore, the prior art also includes post-published national Swiss patent applications and international or European patent applications designating Switzerland. However, this prior art is only relevant to novelty but not inventive step. To assess inventive step, the Swiss Federal Patent Court normally applies the problem-solution-approach developed by the European Patent Office, which is not binding though. The prior art at the relevant time is to be considered in its entirety, so to speak as a “mosaic”. The combination of individual elements from the prior art, however, finds its limits where it would lead to an artificial ex post consideration in knowledge of the patented solution (hindsight bias). Therefore, incentives motivating the skilled person to combine two documents with each other are usually required.

10. Can a patentee seek to amend a patent that is in the midst of patent litigation?

Yes – but only within the limits of the Swiss Code on Civil Proceedings. A patent can be amended in nullity proceedings and in infringement proceedings, where the defendant has raised an objection against the validity or filed an invalidity counterclaim. The patent can be

 © 2026 Legalease Ltd

amended either during the nullity or infringement proceedings before the Federal Patent Court or by filing a request with the Swiss Federal Institute of Intellectual Property (IPI) to amend the registered patent. The patent proprietor may amend the patent by: revoking a patent claim; and/or limiting an independent claim by combining one or more patent claims, which are dependent on it; and/or limiting an independent claim in some other way, i.e. by introducing a feature from the description. In the latter case, the limited claim must refer to the same invention and define an embodiment that is included in both the original application and the specification of the granted patent. However, the patent proprietor is not allowed to proceed litigation based on an amended version of the patent at any stage of the proceedings. In fact, this was a very controversial topic in Switzerland, and at least for amendments in infringement proceedings, the Federal Supreme Court provided some clarity in its decision 4A_583/2019 of August 19, 2020 ("Einschlagbarer Hüftgelenkprothesengrundkörper"). In ordinary litigation proceedings, the file is formally closed after the parties' second exchange of written briefs. In preliminary injunction proceedings, even only one exchange of written briefs may take place. After formal closure of the file, in infringement proceedings, an amendment to the patent will not be taken into account anymore due to late filing, unless the amendment was caused by a new fact or new circumstances that the patent proprietor could not foresee when filing its second brief. The Federal Supreme Court clarified that this also applies to amendments to a patent in infringement proceedings even if those amendments have been initiated by the patent proprietor through the Swiss Federal Institute of Intellectual Property (IPI). If the patent proprietor wants to proceed against the alleged infringer based on an amended version of the patent that can no longer be introduced in pending infringement proceedings, the patent proprietor must commence new infringement proceedings. There is currently no case law that conclusively answers the question of whether the patent proprietor may amend the patent claims during PI proceedings. This has become a matter of uncertainty because the Federal Patent Court changed its practice in 2024 and now only allows patent proprietors to file PI applications based on a single set of claims, i.e., the filing of auxiliary requests with limited claims is no longer permitted (procedural order S2024_008 of October 29, 2024 "Lisdexamfetamine").

11. Is some form of patent term extension available?

Supplementary Protection Certificates (SPCs) are available under Swiss law. Those SPCs extend the protection of the basic patent for the active pharmaceutical ingredient(s) named in the SPC for a maximum term of 5 years. The Swiss case law for obtaining and for the scope of protection of a Swiss SPC takes into account the numerous decisions concerning SPCs of the European Court of Justice. However, there are still differences. In Switzerland, for example, the CJEU's Santen ruling (C 673/18), which found the Neurim ruling not to be authoritative anymore, has not yet been introduced and it is unclear whether the CJEU's Santen ruling would be taken into account by Swiss courts. Furthermore, the EU SPC manufacturing waiver has not been implemented. In Switzerland, there is the possibility of extending existing SPCs for a maximum term of 6 months if the conditions for a paediatric extension are met. For this purpose, the results of a Swiss, European or US paediatric investigation plan must be published within certain time limits in connection with the approval of a pharmaceutical product. Unlike the EU, Switzerland does not have SPCs with a negative term just to avoid blocking the possibility of a paediatric extension of an SPC. However, it is possible in Switzerland to obtain a so called paediatric SPC to extend a patent for a maximum of 6 months if the relevant conditions are met.

12. How are technical matters considered in patent litigation proceedings?

The Federal Patent Court has about 30 judges with a technical education and an admission as patent attorney. These technical judges are called in by the President of the Federal Patent Court on a case-by-case basis. Normally, a technical Judge Rapporteur is appointed for each case. This technical Judge Rapporteur examines the technical matters of a case and gives an oral preliminary opinion in a confidential instructional hearing after the first exchange of briefs. After the exchange of briefs, the same judge will address the technical matters again in a written preliminary opinion. Both parties are then invited to comment on that technical opinion before the main hearing takes place. Parties in Swiss patent litigation usually submit their technical arguments prepared by an attorney-at-law in close collaboration with a patent attorney in written form. It is also possible to submit a written statement by an expert. In contrast to other jurisdictions, party appointed experts are generally not heard by the Swiss Federal Patent Court. It is also possible for the parties to request a court appointed expert to clarify a particular technical question. In practice, however, there is no publicly available case where the Swiss Federal Patent Court actually summoned a technically qualified independent court expert.

 © 2026 Legalease Ltd

13. Is some form of discovery/disclosure and/or court-mandated evidence seizure/protection (e.g. saisie-contrefaçon) available, either before the commencement of or during patent litigation proceedings?

There is the possibility of preliminary taking of evidence proceedings and of obtaining a so-called “detailed description" as a preliminary measure according to Swiss law. The objective of the “detailed description” is to give the patent proprietor a possibility to obtain information on the object of infringement in order to be able to estimate its chances of success in possible infringement proceedings. The “detailed description" can be obtained in ex parte or inter partes preliminary proceedings. In order to be granted a “detailed description” the patent proprietor must make credible to the court that his patent is valid and that there is a certain chance that his patent is also infringed (in particular if the missing evidence corresponds to the expectation of the patent proprietor). A further condition is that the patent proprietor cannot possibly obtain the requested information in any other way. A detailed description is therefore only available, if this is the only way for the patent proprietor to know whether its patent is infringed. A detailed description is usually conducted as follows: Members of the court along with the legal representatives (including patent attorneys) of the patent proprietor enter the premises of the alleged infringer or of a third party (if the information cannot be obtained from the infringer directly) and inspect the patent infringing object or process. The patent proprietor itself may not be present at the inspection and its attorneys and patent attorneys are obliged to keep any information obtained at the inspection strictly confidential. Only once the court has sent its description to the patent proprietor, its representatives may disclose their observations at the description but limited to the observations also described by the Federal Patent Court in the description sent to the patent proprietor. Before the description is sent to the patent proprietor, it is sent to the alleged infringer, who can comment on it. In particular, the alleged infringer can assert that parts of the description concern confidential trade secrets. The court will then finally decide whether and to what extent the description is disclosed to the patent proprietor.

14. Are there procedures available which would assist a patentee to determine infringement of a process patent?

The possibility to request a “detailed description" may be helpful when it comes to the alleged infringement of process patents (see above question 13). If a patented invention concerns a process for the manufacture of a novel product, every product with the same characteristics shall be presumed to have been made by the patented process until proof to the contrary has been provided. This means a reversal of the burden of proof for the question of patent infringement in the case the product resulting from the patented process is a new product. If the patented invention claims a process for the manufacture of an already known product, no reversal of the burden of proof but a facilitation of proof applies. If the patent proprietor can make a patent infringement credible, there is a presumption that the patented process was used. “Making credible” means that the alleged facts are more probable than not and that the judge considers the circumstances presented to be predominantly true, although not all doubts have been removed.

15. Are there established mechanisms to protect confidential information required to be disclosed/exchanged in the course of patent litigation (e.g. confidentiality clubs)?

In general, proceedings before the Federal Patent Court are confidential with an exception of the main hearing, which is open to the public, and the decision, which is published on the website of the Federal Patent Court. However, the submissions of the parties including exhibits do not become publicly available, except for possible references thereon in the final decision by the court. According to the Swiss Code on Civil Proceedings, the court shall take appropriate measures to ensure that taking evidence does not infringe the legitimate interests of any parties or third party, such as trade secrets. The responsible court has a wide range of possible measures available to choose from. In principle, any measure considered suitable to safeguard the interests of the disclosing party could be ordered by the court. However, the court must also take into account the interest of the counterparty to have access to the relevant evidence. Possible measures available to a court are for example confidentiality clubs (see question 13 above).

16. Is there a system of post-grant opposition proceedings? If so, how does this system interact with the patent litigation system?

Under the Swiss Patent Act currently in force (as of 2026), the grounds for post-grant opposition against national Swiss patents are very limited. Any person may file an opposition with the Swiss Federal Institute of Intellectual Property (IPI) within nine months of the publication of the patent's entry in the patent register. However, the

 © 2026 Legalease Ltd

opposition may only argue that the subject matter is excluded from patentability under Articles 1a, 1b and 2 of the Patent Act. In practice this covers the human body and its elements as such, naturally occurring gene sequences as such, and inventions whose exploitation would violate human dignity, disregard the dignity of living creatures or otherwise be contrary to public policy or morality.

This system will change shortly. The partially revised Patent Act and the totally revised Patents Ordinance will come into force on 1 January 2027, as the Federal Council decided on 20 May 2026. The revision abolishes the opposition procedure before the IPI, which was introduced in 2008 but has never been used. In its place, appeal options are expanded:

- Third parties will be able to appeal against the grant of a Swiss patent within four months of its publication.
- Certain organisations will have a right of appeal to pursue non-commercial interests.
- Appeals may also argue lack of novelty or inventive step.
- Appeals against IPI decisions in patent matters will go to the Federal Patent Court instead of the Federal Administrative Court (Art. 59c para. 1 of the revised Patent Act).

In addition, the IPI will carry out a search on the state of the art for every application. Applicants will also be able to request a full substantive examination, including novelty and inventive step.

Even so, most patents in force in Switzerland are European patents. Any person can oppose these at the European Patent Office (EPO) within nine months of the mention of grant. A pending EPO opposition does not automatically stay Swiss nullity proceedings, and in practice such proceedings are usually not stayed. Even while the EPO opposition period is still running, or an opposition has already been filed, the patent can be challenged by a revocation action before the Federal Patent Court.

Under Article 128 of the Patent Act, a Swiss judge has the discretion of suspending civil proceedings, in particular the judgment, in three situations:

1. the EPO has not yet taken a final decision on a limitation or revocation of the European patent;
2. the validity of the European patent is in dispute and a party proves that an EPO opposition is still possible or has not yet been finally decided; or
3. the EPO has not yet taken a final decision on a petition for review under Article 112a EPC.

In practice, however, suspension is rather rare and is usually limited to cases where a final EPO decision can be expected shortly.

17. To what extent are decisions from other fora/jurisdictions relevant or influential, and if so, are there any particularly influential fora/jurisdictions?

In questions of validity, the Swiss Federal Patent Court and the Swiss Federal Supreme Court generally follow the practice of the European Patent Office. Judgments from other (national) European courts are also taken into account, in particular when a question has never been decided in Switzerland and also when parallel parts of European patents are involved. Judgments from Germany seem to have the most weight if the German courts do not deviate from the practice of the EPO, which is sometimes the case for questions of inventive step or when examining Art. 123(2) EPC. The Swiss Federal Patent Court also seems to pay special attention to judgements of the highly reputed Dutch patent courts. It can be expected that judgments handed down by the UPC will also receive particular attention at the Federal Patent Court. To date, however, the Federal Patent Court has not had to decide a case in which the UPC had already issued a decision.

18. How does a court determine whether it has jurisdiction to hear a patent action? And in what circumstances will a court anti-suit to preserve its jurisdiction.

The Swiss Federal Patent Court decides on its jurisdiction based on the Lugano Convention and the Federal Act on Private International Law. This basically means that the court may also rule on the infringement of foreign patents. The validity of foreign patents must, however, be decided by the courts of that jurisdiction. As discussed above, contributory infringement activities abroad might also be the subject of Swiss jurisdiction. Anti-suit injunctions have never been discussed in Swiss case law.

19. What are the options for alternative dispute resolution (ADR) in patent cases? Are they commonly used? Are there any mandatory ADR

 © 2026 Legalease Ltd

provisions in patent cases?

At an early stage of ordinary litigation proceedings, i.e. before the second exchange of written briefs, the Federal Patent Court summons the parties for an instructional hearing. This instructional hearing has the purpose to invite the parties to settlement talks, guided by the court or without the court. In the past, the parties have indeed made use of this possibility and a considerable percentage of cases mutually settle before the Swiss Federal Patent Court. There is also the possibility for the parties to solve patent disputes in arbitration proceedings. Switzerland is very generous when it comes to the arbitrability of patent matters. Finally, the Swiss Code of Civil Procedure also provides that the parties may choose mediation in parallel to pending court proceedings or suspend court proceedings in favor of mediation. However, this seems never to have happened in patent cases, at least as far as is publicly known.

20. What are the key procedural steps that must be satisfied before a patent action can be commenced? Are there any limitation periods for commencing an action?

As patent litigation proceedings are front-loaded and deadlines are usually rather short in Switzerland, careful and thorough preparation of a patent action is key for successfully conducting such proceedings. It is recommended that possible counterarguments raised by the counterparty are already anticipated before commencing the action in order to be prepared for the next submission. Besides the recommended careful preparation, there are no mandatory procedural steps to be taken in order to commence an action in Switzerland. In particular, it is not mandatory under Swiss law that a warning letter must be sent to the counterparty before commencing proceedings. However, such warning letter could be helpful: It is possible to conduct patent litigation proceedings before the Swiss Federal Patent Court in English, if both parties agree. A warning letter may thus be used to ask the alleged infringer whether it would agree with the use of English in possible patent litigation proceedings. For inter partes preliminary injunction proceedings the so-called criterion of relative urgency applies in Switzerland. This means that the initiation of proceedings is possible as long as the patent proprietor could not have received a decision in ordinary proceedings between the detection of the infringement and the initiation of preliminary injunction proceedings. According to the standing practice of the Federal Patent Court, preliminary injunction proceedings can be initiated up to 14 month after the infringement was initially discovered by the patent proprietor. In addition, the assertion of a right can be forfeited, if the owner of the right waits too long after discovering the violation of its right and the infringer therefore comes to the conclusion that the rights owner accepts the violation. There are no statutory guidelines in Swiss law as to when forfeiture can be assumed. However, according to the Swiss case law, forfeiture may be assumed if the patent proprietor waits longer than 4-8 years despite being aware of the infringing activities.

21. Which parties have standing to bring a patent infringement action? Under which circumstances will a patent licensee have standing to bring an action?

A patent proprietor, whose rights are infringed or threatened to be infringed, can initiate patent infringement actions. A patent licensee can only bring an infringement action independently, if the license is exclusive and the initiation of infringement proceedings by the licensee is not expressly excluded in the license agreement. The exclusive licensee is entitled to bring injunction claims as well as claims for its own damages. Any licensee, irrespective of exclusive or non-exclusive, has the right to join a pending infringement action in order to assert its own damages.

22. Who has standing to bring an invalidity action against a patent? Is any particular connection to the patentee or patent required?

In Switzerland, any person with a proven interest may bring a nullity action. The only exception is a nullity action based on the allegation that the patent proprietor has no right to the grant of the patent. This specific nullity ground can only be brought forward by the person actually entitled to the patent. The requirements concerning the interest to be demonstrated by the claimant are rather low. It is generally sufficient that the concerned patent could affect the commercial activity of the claimant in any way in the future. This is the case for example if the patent proprietor and the claimant are competitors and the scope of protection of the patent extends to the field of activity of the claimant. Up to now, there have been no known cases in Switzerland in which the Federal Patent Court has rejected a nullity claim because of a lacking interest of the claimant.

23. Are interim injunctions available in patent

 © 2026 Legalease Ltd

litigation proceedings?

Ex parte and inter partes preliminary injunctions are both available in Swiss patent litigation proceedings. While inter partes preliminary injunctions are granted by the Swiss Federal Patent Court on a regular base; ex parte preliminary injunctions are only granted in exceptional cases. Ex parte preliminary injunctions are usually only granted if the concerned patent or SPC was already found to be valid in bipartite proceedings in foreign patent proceedings in countries that share a similar patent law with Switzerland and if the assessment of the infringement of the case is rather simple. Also, the grant of an ex parte PI requires that the patent proprietor can show "special urgency", which is usually only assumed if the patent proprietor acts within a few days after learning about the infringement and the case is so urgent that it would not be appropriate to summons the parties for an oral hearing. Ex parte preliminary injunction proceedings usually only take a few days from filing to a decision. Following the decision in the ex parte proceedings, the PI proceedings will continue as inter partes proceedings, giving both parties the opportunity to comment. In order to obtain an inter partes preliminary injunction in Switzerland, the patent proprietor must show that it: 1. will likely prevail on the merits (i.e. that the patent is likely infringed and valid (if validity is disputed by the opponent); 2. will suffer irreparable harm if the preliminary injunction is not granted; and that it 3. could not have obtained an injunction through immediately initiated ordinary proceedings on the merits sooner than it could have obtained the injunction in preliminary injunction proceedings ("relative urgency" criterion). As already mentioned above, this criterion is considered fulfilled if the patent proprietor acts within 14 months after first learning about the infringement in Switzerland. When determining whether a preliminary injunction should be granted, Swiss courts also examine the proportionality of the requested injunction. Unlike in other countries however, third party interests (for example public health considerations) are not taken into account in Switzerland. Inter partes preliminary injunction proceedings usually take around 5-9 months until a decision is reached. It must however be kept in mind that the topics of infringement and validity of the patent are dealt with in inter partes preliminary injunction proceedings in almost as much detail as in ordinary proceedings. If a party is therefore successful in preliminary injunction proceedings, it is likely, that it will also succeed in subsequent ordinary proceedings. Upon request of the counterparty and if this party makes credible that the grant of a preliminary injunction would cause it harm, Swiss courts can make the grant of preliminary measures dependent on the provision of a security by the requesting party. In preliminary injunction proceedings, the court has the possibility to order ex officio the payment of a security. In preliminary injunction proceedings, the court has the possibility to order ex officio the payment of a security. We have noticed that the court has been making more and more use of this recently.

24. What final remedies, both monetary and non-monetary, are available for patent infringement? Of these, which are most commonly sought and which are typically ordered?

The most commonly sought and ordered final remedies in Switzerland are the following: Permanent injunction: Permanent injunctions are granted and sought on a regular basis in patent infringement proceedings in Switzerland. So far, spring board injunctions have not been common in Switzerland. However, Swiss law does not exclude such remedy. Order to provide information and render accounts: Swiss Patent Law provides for a claim for information and the rendering of accounts. Since the patent proprietor does not have the necessary information to prove the amount of damages, the infringer is ordered to provide the necessary information, usually the amount of patent infringing goods sold and the revenue and/or profits generated, to the patent proprietor. The claim for information is usually asserted in a so-called action by stages, where in a first stage of the proceedings the patent infringement and the request for information is dealt with and in a second step, the patent proprietor asserts the amount of damages based on the information received by the infringer in the first stage. Financial damages: Financial damages are also usually sought in Swiss patent litigation proceedings. As mentioned above, the damages claim together with the claim for information is usually brought forward in an action by stages, where in a first step the information for the calculation of damages is requested and in a second step, the concrete damages are asserted. Other statutory final remedies in Switzerland are as follows: Destruction of infringing goods; recall of patent infringing goods; publication of the decision. In addition, the patent proprietor can claim any measure that is appropriate and useful to remove the patent infringing activities or the unlawful situation.

25. On what basis are damages for patent infringement calculated? Is it possible to obtain additional or exemplary damages?

There are three ways of calculating damages accepted

 © 2026 Legalease Ltd

under Swiss law: Lost profits: The amount of damages corresponds to the profits lost by the patent proprietor due to the infringement of its patent. This is calculated by taking the difference between the current value of the patent proprietor's assets and the (hypothetical) value that the assets would have had without the damaging event. In the concrete case of a patent infringement, the revenue/profits generated by the patent proprietor during the patent infringement would be compared to the revenue/profits hypothetically generated without the patent infringement. Since only the lost profits causally effected by the patent infringement can be claimed as damages, the patent proprietor must show that he would have generated the sales of the infringer if the infringing acts had not occurred. Therefore, lost profits are usually rather difficult to prove and can only be claimed if the patent proprietor has its own substitute product on the Swiss market. Furthermore, in order to claim lost profits, the patent infringer must be at fault. This means that he/she must know about the infringed patent or at least should have known when applying due care. According to Swiss practice, knowledge of the patent is generally presumed. Infringer's profits: It is also possible to claim the infringer's profits. The starting point for the calculation of the infringer's profits is the gross turnover, i.e. all income derived from the sale of patent infringing goods. All costs directly related to the production and distribution of the infringing goods can be deducted from the gross profit. As a general rule, variable costs are deductible while fixed costs, such as rental costs, cannot be deducted. When calculating infringer's profits, it must be kept in mind that only profits can be claimed that were generated with the sale of the infringing product. If the infringing product is only a component of the sold product, only a corresponding part of the profits can be claimed. In order to claim infringer's profits, the patent infringer must have acted in bad faith. This means that the infringer knows that he/she infringes patent rights or that he/she at least should have known. Reasonable royalty: The third possibility to calculate damages is the reasonable royalty rate that would have been agreed upon between the parties. For this type of damages, no fault or bad faith is required on the side of the infringer. However, reasonable royalty rates are usually rather low. The patent proprietor can freely choose amongst the three described options to calculate and claim damages. Due to the difficulties in proving lost profits and the usually low reasonable royalty rates, the patent proprietor often claims infringer's profits.

26. How readily are final injunctions granted in patent litigation proceedings?

The grant of final injunctions is usual in Swiss patent litigation proceedings. Such injunctions are generally granted, if a valid patent is infringed. Although under Swiss law, any court order must be proportionate, limitations to injunctions or monetary compensation instead of an injunction are unusual in Switzerland. The only areas, where financial compensation, i.e. the payment of a royalty, is discussed in lieu of an injunction under Swiss law, are SEP/FRAND cases, cases where a patent infringing device is only a very small and subordinate part of an entire device and cases of compulsory licenses. The Federal Patent Court ruled in a rather recent decision concerning an interim injunction that third party and public interests, in particular public health interests, cannot be taken into account when granting an (interim) injunction. Public health interests are assumed to be sufficiently considered by the system of compulsory licenses.

Furthermore, the Federal Patent Court recently dealt with the question of the proportionality of a claim for injunctive relief in a case in which an originator sought injunctive relief against a generic drug manufacturer in ordinary proceedings. In doing so, the originator relied on a patent for which the twenty-year term of protection was due to expire only a few days after the judgment was issued. In particular circumstances, so-called “springboard injunctions” have been issued in Switzerland, but this depends on the circumstances of each individual case. In the case at hand, the Federal Patent Court pointed out that after a patent has expired, in principle there is no longer an “unlawful act” within the meaning of Art. 72(1) Patent Act and a claim for injunctive relief or recall is therefore not covered by its wording and is also not appropriate. Art. 46 of the TRIPS Agreement also provides that proportionality and the interests of third parties must be taken into account. In the case at hand, after the patent expires, there is an after-effect of the earlier infringing acts, but this leads to a right to damages for the patentee as a consequence of the infringing acts committed by the infringer during the term of the patent. The generic drug manufacturer was able to build up stocks and also establish distribution channels for the infringing products during the term of the patent, thus gaining an advantage that continues to have an effect after the patent expires. However, this results in a right to claim damages; injunctive relief and recall were deemed inappropriate in this particular case.

27. Are there provisions for obtaining declaratory relief, and if so, what are the legal and procedural requirements for obtaining such relief?

 © 2026 Legalease Ltd

Swiss law provides the possibility to obtain a declaratory judgment. For example, an alleged infringer can bring an action for a negative declaratory judgment that a specific means or act does not constitute an infringement of a particular patent. Prerequisite for a declaratory action is a legitimate interest in obtaining such declaratory judgment. The requirements for such interest are low and in international cases the interest in a mere forum running may be sufficient for filing a negative declaratory action for the declaration of non-infringement in Switzerland. "Arrow" declarations have never been discussed in the Swiss Federal Patent Court.

28. What are the costs typically incurred by each party to patent litigation proceedings at first instance? What are the typical costs of an appeal at each appellate level?

The overall costs incurred in patent litigation proceedings are composed of Court fees: The court fees are calculated according to the applicable regulation on legal costs and are dependent on the value in dispute of the concerned proceedings. The value in dispute is usually agreed upon by the parties of the proceedings. If the parties do not agree, the court will normally set the amount in dispute based on the higher value in dispute suggested by the parties if this amount does not seem to be suggested by the one party without any justification. For a value in dispute of CHF 500'000 the court costs usually are approximately CHF 30'000 before the Federal Patent Court (first instance) and between about CHF 5'000 and CHF 15'000 before the Federal Supreme Court (second instance). For a value in dispute of CHF 1 Million the court costs are usually around CHF 60'000 before the Federal Patent Court and between CHF 10'000 and CHF 20'000 before the Federal Supreme Court. Party compensation: The losing party in patent litigation proceedings must compensate the prevailing party for its attorney's fees and patent attorneys' fees. The amount of the compensation is calculated based on a tariff of the Federal Patent Court. Before the Federal Patent Court (first instance) a value in dispute of CHF 500'000 results in a party compensation of approximately CHF 30'000 to CHF 50'000 for the representation by an attorney-at-law and a patent attorney each. For a value in dispute of CHF 1 million usually a compensation in the amount of CHF 40'000 to CHF 70'000 is ordered for the representation by an attorney-at-law and a patent attorney each. In appeal proceedings, the party compensation for a value in dispute of CHF 500'000 a party compensation between CHF 7'000 and CHF 15'000 is ordered. For a value in dispute of CHF 1 million the party compensation is usually around CHF 8'000 and CHF 22'000. Attorneys' fees: Together with court fees and party compensation, a party's own attorneys' fees and patent attorneys' fees are also a part of the overall costs of patent proceedings in Switzerland. Those costs are highly dependent on the complexity of the case, the underlying technology, the strategy in the proceedings as well as the hourly rates of the respective attorney/patent attorney etc. The actual costs are often higher than the compensation of the prevailing party.

29. Can the successful party to a patent litigation action recover its costs?

Yes (see question 28). The court fees must be advanced by the party initiating the proceedings. The party that underlies in the proceedings must bear the court costs. If the losing party has initiated the proceedings, the advance on court costs will be kept by the court. If the losing party is the counterparty, the advance on court costs will be kept by the court and the losing party must pay the court costs back to the successful party. It must be kept in mind that the amount of the compensation to be paid by the losing party is based on a tariff of the Federal Patent Court and that not any amount can be recovered. Therefore, the party compensation due according to the law does often not cover the attorneys' fees and patent attorneys' costs actually incurred. If both parties lose with respect to a certain subject-matter, the court will split the costs according to the percentage of the defeat. There is only an exception to the described general rule of apportionment of costs, if one party clearly incurs unnecessary costs by many unnecessary submissions to the court for example. At the request of the defendant, the plaintiff must provide security for party compensation in the following cases: if he or she has no residence or registered office in Switzerland and there is no bilateral treaty with the country of residence that would exempt the concerned party from advancing such security; if he or she appears to be insolvent, notably if he or she has been declared bankrupt or is involved in ongoing composition proceedings or if certificates of unpaid debts have been issued; if he or she owes costs from prior proceedings; or if for other reasons there seems to be a considerable risk that the compensation will not be paid.

30. What are the biggest patent litigation growth areas in your jurisdiction in terms of industry sector?

The total number of cases before the Federal Patent Court appears to be declining, which could be attributable to the commencement of the UPC. According to the

 © 2026 Legalease Ltd

Swiss Federal Patent Court's annual report for 2024, the number of cases filed with the court decreased from 31 to 20 compared to the previous year. Notably, the number of ordinary proceedings dropped significantly, from 20 to 11, whereas the number of summary proceedings fell only slightly. It remains to be seen whether this downward trend will continue or whether the numbers will rise again in the coming months. Given the relatively small total number of cases , statistical statements and trends should be treated with caution. However, the life science and pharmaceutical sector still accounts for the largest share of the total number of cases with about 40% in recent years. We would expect this to remain so in the coming years.

31. What do you predict will be the most contentious patent litigation issues in your jurisdiction over the next twelve months?

We see more and more cases where the issue of granting a compulsory license is at stake. So far, there is no case law on this in Switzerland and it will be very exciting to see how the Swiss Federal Patent Court will position itself in the tension between the rights of patentees, public interests and proportionality.

As far as the technical field is concerned, we are seeing an increasing number of litigation in the biosimilars sector and fewer in the traditional generics sector, which certainly reflects the general trend in the market.

32. What are the biggest challenges and opportunities confronting the international patent system?

The Unified Patent Court system is certainly the most challenging matter also from a Swiss perspective.

Furthermore, the patent system is increasingly seen as the scapegoat for various problems that are only indirectly related to the patent system (e.g. the discussion concerning the TRIPS patent waiver). We do not consider the discussion related to the TRIPS patent waiver to be very helpful. It would be more important in our view to discuss how to strengthen technology transfer models in less developed jurisdictions

Contributors

Simon Holzer
Partner
simon.holzer@mll-legal.com



Ulrike Ciesla
European Patent Attorney/UPC Representative/Partner
ulrike.ciesla@mll-legal.com



Louisa Galbraith
Partner
louisa.galbraith@mll-legal.com



Andrea Heiniger
Senior Associate
andrea.heiniger@mll-legal.com



 © 2026 Legalease Ltd