





## Patents 2009

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### Patents 2009

Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
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2009

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ISSN 1742-9862

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Printed and distributed by  
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Tel: 0870 897 3239

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# Belgium

Kristof Roox and Christoph De Preter

Crowell & Moring

## Patent enforcement proceedings

### 1 Lawsuits and courts

What legal or administrative proceedings are available for enforcing patent rights against an infringer? Are there specialised courts in which a patent infringement lawsuit can or must be brought?

On 1 November 2007, the Act of 10 May 2007 regarding procedural law aspects related to the protection of intellectual property rights entered into force. This Act reforms the Belgian IP (and patent) litigation system. The reform seeks to centralise the Belgian courts' experience and know-how relating to IP and patent litigation and to ensure that patent litigation is brought before the Belgian commercial courts rather than before the civil courts (as was previously the case). There are now five commercial courts in Belgium (Antwerp, Brussels, Ghent, Liège and Mons) that have exclusive jurisdiction in patent litigation (including infringement and invalidity issues). Belgian judges typically have a purely legal, non-scientific background. In complex patent litigation, Belgian courts therefore tend to use a court-appointed expert to provide technical or scientific advice. The following legal proceedings are available:

### Proceedings on the merits

Two types of proceedings on the merits are at hand: 'classical' and 'accelerated' proceedings on the merits. Classical proceedings take longer but in these proceedings the patentee can apply both for injunctive relief for the future and for damages for past infringements. The Act of 10 May 2007 introduced a new procedure in patent litigation, the injunctive order proceedings as in summary proceedings or 'accelerated proceedings on the merits' before the president of the commercial court having jurisdiction. Although these proceedings are on the merits of the case, the procedure is the same as in summary proceedings, although with no need for the urgency requirement to be fulfilled. In accelerated proceedings the patentee can only apply for injunctive relief and publication measures.

### Summary proceedings

Patent disputes can also be resolved in preliminary injunction proceedings that are decided by the president of the commercial court having jurisdiction. Such proceedings will only be allowed when urgency is established, namely when it is apparent that initiating normal proceedings on the merits would not lead to a timely decision. The president will only prima facie assess the parties' rights and claims. As a result, invalidity arguments are often not taken into account given the presumption of validity of a European patent, sometimes even if opposition proceedings are pending before the European Patent Office or if there are foreign decisions revoking parallel national patents stemming from the same European patent application. The grant of a preliminary injunction therefore depends to a large extent on the prima facie assessment of non-infringement arguments. The president

of the commercial court can only order preliminary measures pending a decision on the merits. When considering such measures, the president must take into account the interests of the parties involved.

### Saisie-contrefaçon

The *saisie-contrefaçon* procedure is often used in patent litigation. This is an ex parte procedure specifically tailored to the infringement of intellectual property rights, which can be used for two purposes: for a descriptive seizure (securing evidence) and, as an accessory, for an effective seizure (freezing allegedly infringing goods).

First, a *saisie-contrefaçon* can be used to prove the existence, extent and origin of an infringement of intellectual property rights. This is known as a descriptive seizure. The president of the commercial court with jurisdiction can appoint an independent expert who is authorised to gather any information relating to the alleged infringement. The expert (and possibly a representative of the plaintiff, the plaintiff's lawyer and the plaintiff's patent attorney) are usually allowed to enter the alleged infringer's premises, or any other place where the alleged infringing products or activity can be found, in order to take all necessary actions required to draft a report describing the allegedly infringing activity. The expert's report will be filed with the court and sent to both the patent owner and the alleged infringer. A case on the merits must be initiated within 20 working days or 31 calendar days, whichever is the longest, subsequent to the submission of the expert's report, unless a different term is stipulated in the president's order. To obtain an order for a descriptive seizure it is sufficient that there is a prima facie valid and enforceable intellectual property right and that the allegation of infringement is plausible. In practice, these two conditions are usually met. As explained above, Belgian courts generally presume that European patents are prima facie valid. It will also be readily accepted that the infringement is plausible, as the goal of the descriptive seizure is to establish the infringement. Since a descriptive seizure only aims at providing evidence for the owner of the intellectual property right, this measure is almost always granted.

The president of the commercial court can also order an effective seizure and can thereby prevent or impede the further sale of allegedly infringing goods. However, an effective seizure can only be ordered where it is ancillary to a descriptive seizure. An effective seizure is a more draconian measure and, as a consequence, is more difficult to obtain than a descriptive seizure. Prior to granting an order for an effective seizure, the president must establish whether the patentee has a prima facie valid and enforceable patent; the existence of the infringement cannot be reasonably contested (for example, on the basis of a foreign judgment or an expert report); and the interests of the patentee prevail over those of the alleged infringer or the general interest. The president can decide to hear the alleged patent infringer prior to granting an effective seizure.

## 2 Trial format and timing

What is the format of a patent infringement trial? To what extent are documents, affidavits and live testimony relied on? Is cross-examination of witnesses permitted? Are experts used? Are disputed issues decided by a judge or a jury? How long does a trial typically last?

Classical proceedings on the merits before the commercial courts will be handled by three judges, one of them (the president) being a lawyer and the other two laymen. Accelerated proceedings on the merits will be handled by the president. After a writ of summons is issued by a bailiff and the introductory (case management) hearing takes place, the parties must first submit written briefs and disclose the evidence used in support of their arguments. Subsequently, the parties will bring their arguments during an oral hearing. The defendant will have the last say with regard to the submission of the briefs as during the oral hearing.

Evidence can be provided by any means. There is no pre-trial discovery with the exception of the above-described *ex parte saisie-contre-façon*. As a rule, Belgian procedural law requires a claimant to provide evidence in support of its requests and allegations (*actori incumbit probatio*; article 870 Belgian Judicial Code). It should be noted that, as in most other jurisdictions, there is a reversal of the burden of proof in the case of alleged infringement of process patents for new products. Belgian courts mainly rely on written evidence. Parties may produce every piece of evidence that is legitimately obtained and communicated to the other parties. Affidavits, testimonies or witness reports are often drawn from foreign parallel proceedings. Cross-examination of witnesses and experts is possible at an oral hearing, but needs to be specifically ordered by the court. This is very rare. In addition, oral cross-examinations are conducted and directed by the president of the court. Courts often appoint an expert to assist on technical issues. The parties to the proceedings will first be given the opportunity to discuss the need for a court-appointed expert and the scope of his assignment.

A classical infringement trial on the merits may easily take 12 to 15 months per instance. Accelerated proceedings on the merits may take anywhere from four to eight months. Summary proceedings may take anywhere from six to eight weeks to four to eight months. Everything will depend on the court's agenda, the speed of the production of evidence, the exchange of written pleadings by the parties, and the appointment of an expert.

## 3 Proof requirements

What are the respective burdens of proof for establishing infringement, invalidity and unenforceability of a patent?

Each party must produce evidence of its allegations. This means that in principle, the patent holder must prove infringement and the party requesting that the patent be invalidated must prove the invalidity. However, all parties must cooperate to fact finding, and the Commercial Court may order a party to produce evidence when there are clear and convincing indications that such party has such evidence. When a product obtained via a patented process is new, the burden of proof may be reversed when the alleged infringer's product is identical. Belgian law does not know the principle of pre-trial disclosure, and parties can in principle withhold evidence that they do not wish to produce, unless they are ordered to do so by the court.

## 4 Standing to sue

Who may sue for patent infringement? Under what conditions can an accused infringer bring a lawsuit to obtain a judicial ruling or declaration on the accusation?

In principle, only the patentee may sue. However, the Belgian Patent Act of 28 March 1984 provides that an exclusive licensee may initiate

infringement proceedings if the patentee or licensor has failed to do so after having been given notice to that regard by the former, unless the licence agreement provides differently. A non-exclusive licensee may only join proceedings initiated by its licensor.

Anyone with a legitimate interest and standing may initiate invalidity proceedings and request a declaration of non-infringement. However, such requests can best be made via classical proceedings on the merits. Under prevailing case law, declaratory actions are not available in accelerated proceedings on the merits.

## 5 Inducement and contributory infringement

To what extent can someone be liable for inducing or contributing to patent infringement?

Indirect infringement is sanctioned by the Belgian Patent Act. Any third party offering or supplying means relating to an essential element of the invention on the Belgian territory to anyone who is not authorised to apply the invention will be committing an indirect infringement if this third party knew or if it was clear from the circumstances that these means are suitable and intended for such application.

If the means are staple articles, there will only be an indirect infringement if the person whom is supplied with these means is incited to commit an infringement.

Third parties offering services that can be used by an infringer, but which services do not constitute direct or indirect infringement themselves (eg, an internet service provider hosting an infringing e-payment application) can be enjoined to cease the offer of such services to the infringer, but cannot be held liable for having offered such services.

## 6 Infringement by foreign activities

To what extent can activities that take place outside of the jurisdiction support a charge of patent infringement?

In principle, a charge of patent infringement supposes an infringement in Belgium on a Belgian patent. However, if the alleged infringer has its domicile in Belgium, a Belgian court will also have jurisdiction over acts committed in other EU countries (article 2 Regulation 44/2001). As a patent is a national right, the infringement has then to be decided under the law of the country where the infringement took place.

Belgian courts have experience in issuing and recognising cross-border injunctions. In summary proceedings there is no rule requiring that the effects of an injunction must be limited to the Belgian territory. Where either the claimant or the defendant is a European company, Belgian courts will base their jurisdiction on article 31 of Regulation 44/2001. Pursuant to ECJ case law (*Van Uden*, C-391/95) there must be a real connecting link between the subject matter of the measures sought and the territorial jurisdiction of the court at hand for it to have jurisdiction. The Brussels Court of Appeal ruled in a decision dated 20 February 2001 (*I.R.D.I.* 2002, 284) that it had no jurisdiction to grant a cross-border injunction that would have an effect in other jurisdictions than Belgium. The court considered that the claimant had effectively requested separate measures in every relevant jurisdiction (each based on a different national patent issued as part of a European patent), rather than a single measure that would have an effect in many jurisdictions. In the court's view those separate measures were not connected and would have to be separately enforced in each individual jurisdiction. The measures therefore had no real connecting link with the Belgian territory. In subsequent decisions by lower courts however, cross-border injunctions on the basis of Regulation 44/2001 have sometimes been granted and sometimes denied. Belgian case law is therefore not yet settled on this matter.

As a result, the possibility of a cross-border injunction cannot be excluded as such, certainly not at first instance.

Belgian legal scholars and courts are virtually unanimous that a court handling a case in accelerated proceedings on the merits cannot order a cross-border injunction.

To obtain a cross-border decision in classical proceedings on the merits, jurisdiction must be established on the basis of article 2 in conjunction with article 6, or article 5.3 of Regulation 44/2001. However, most Belgian courts are of the view that there is no risk of inconsistent decisions where patent infringement proceedings are initiated in several jurisdictions. This view is supported by the ECJ *Roche Primus* case (C-596/03). It is therefore unlikely that a cross-border judgement will be rendered on the basis of article 2 in conjunction with 6 Regulation 44/2001. Furthermore, Belgian courts are of the opinion that a cross-border order cannot be granted on the basis of article 5.3 Regulation 44/2001. Moreover, Belgian courts tend to take the view that issues of validity and infringement are closely linked. This is supported by the ECJ *Gat/Luk* case (C-4/03). Once the validity of the 'foreign parts' of the European patent is questioned, Belgian courts probably will not assert cross-border jurisdiction.

Owners of foreign patents who believe that evidence of foreign patent infringement may be found in Belgium can apply for a *saisie-contrefaçon* on the basis of that foreign patent, even if no parallel Belgian patent exists.

#### 7 Infringement by equivalents

To what extent are 'equivalents' of the claimed subject matter liable for infringement?

Equivalents are liable for patent infringement when they produce a similar technical effect in a similar way (same function) and a similar result that is not necessarily identical (leading to the same result) as the patented invention.

#### 8 Discovery of evidence

What mechanisms are available for obtaining evidence from an opponent, from third parties or from outside the country for proving infringement, damages or invalidity?

The patent holder may initiate ex parte *saisie-contrefaçon* proceedings to have the infringement described by a bailiff and an expert. This mechanism is open to holders of a Belgian or of a foreign patent (see question 1).

#### 9 Litigation timetable

What is the typical timetable for a patent infringement lawsuit in the trial and appellate courts?

A classical infringement trial on the merits may take 12 to 15 months per instance. Accelerated proceedings on the merits may take four to eight months. Summary proceedings may take anywhere from six to eight weeks to four to eight months. All will depend on the court's agenda, the speed of the production of evidence, the exchange of written pleadings by the parties, and the appointment of an expert.

#### 10 Litigation costs

What is the typical range of costs of a patent infringement lawsuit before trial, during trial and for an appeal?

Everything depends on the technicality and the technical field concerned by the patent. Pre-trial costs and attorney and expert fees may go up to €15,000 for a *saisie-contrefaçon*. Trial costs and attorney and expert fees easily exceed €30,000 in first instance and €30,000 in appeal. In uncomplicated cases, this can be less, in complex patent

litigation, this can be more.

In the case of a positive outcome, these costs as well as the expert and attorney fees can be (partially) recovered from the other party (see question 22).

#### 11 Court appeals

What avenues of appeal are available following an adverse decision in a patent infringement lawsuit?

Patent litigation in Belgium is exclusively dealt with by the commercial courts located at the seat of the five Belgian courts of appeal (Brussels, Antwerp, Gent, Liège and Bergen). Appeals are dealt with by said five courts of appeals. The appeal procedure must in principle be initiated within the month following service of the certified copy of the first instance decision by a bailiff (the deadline may be extended for foreign parties who have no domicile in Belgium). The court of appeals will examine all relevant elements of fact and law that are mentioned in the appeal. A further appeal against decisions of the Court of Appeal is possible to the Supreme Court. The grounds for such appeal can however only be based on points of law.

#### 12 Competition considerations

To what extent can enforcement of a patent expose the patent owner to liability for a competition violation, unfair competition, or a business-related tort?

First of all, a patentee losing infringement proceedings may have to pay part of the legal expenses of the adverse party (see question 22). Second, and in certain clearly delimited circumstances, patent enforcement may constitute an abuse of dominance in the event there is clearly question of predatory litigation and the litigation is part of a strategy devised to eliminate a competitor. On this matter, case law is very scarce. Third, a patentee exercising its patent rights in a way that the advantage to the patentee is markedly disproportionate to the disadvantage brought upon the alleged infringer may constitute an 'abuse of rights'. Also on this matter, case law is very scarce and no such abuse of patent rights has been found yet in Belgium. Fourth, a patentee can be held liable for unlawfully obtaining ex parte measures in the framework of a *saisie-contrefaçon* by knowingly omitting material information that, if known to the judge, might have led to another decision.

#### 13 Alternative dispute resolution

To what extent are alternative dispute resolution techniques available to resolve patent disputes?

Patent disputes may be handled by ADR. The Belgian Mediation and Arbitration Centre has built a relatively strong reputation over the years.

#### Scope and ownership of patents

##### 14 Types of protectable inventions

Can a patent be obtained to cover any type of invention, including software, business methods and medical procedures?

The Belgian Patent Act contains the same exclusions as the European Patent Convention. The Patent Act therefore excludes the following:

- discoveries, scientific theories and mathematical methods;
- aesthetic creations;
- plans, principles and methods used for intellectual work, games or economics;
- computer programs that do not result in a technical effect;
- presentation of data;

- methods of surgical or therapeutic treatment of the human or animal body and diagnostic methods applied to the human and animal body;
- inventions that are in conflict with public policy and ethics; and
- plant and animal varieties and biological processes of obtaining plants and animals.

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#### 15 Patent ownership

Who owns the patent on an invention made by a company employee, an independent contractor, or multiple inventors? How is patent ownership officially recorded and transferred?

An invention made by a company employee in the performance of an employment contract is owned by the company. The employee will be entitled to have his or her name mentioned. An employee will be considered the patent owner of an invention created outside the performance of an employment contract. It is recommended that employers enter into specific agreements with employees to cover inventions falling outside of the performance of the employment contract but carried out with company means. Independent contractors are the patent owners of their inventions, except if agreed otherwise. Multiple inventors co-own a patent, unless agreed otherwise. Patent ownership is recorded in the Patent Registry of the Belgian Intellectual Property Office of the Economic Affairs Department. Any transfer of patent ownership must be notified to the Office in order to be enforceable erga omnes.

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#### Defences

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#### 16 Patent invalidity

How and on what grounds can a patent be invalidated?

Any person having legitimate interest may initiate an invalidation procedure. Invalidation proceedings must be initiated before the commercial courts of Antwerp, Brussels, Ghent, Liège or Mons. A patent will be invalidated if it lacks novelty, an inventive step, cannot be industrially applied or if the type of invention is excluded.

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#### 17 Absolute novelty requirement

Is there an 'absolute novelty' requirement for patentability, and if so, are there any exceptions?

There is indeed an absolute novelty requirement: a patent cannot be granted for an invention that is already state of the art, such as a patent that has been made public before the date of filing. There are three exceptions: first, when an invention is disclosed no earlier than six months preceding the filing of the patent application without permission of the applicant, with the disclosure being an abuse of which the applicant was a victim; second, if the applicant has displayed the invention at an international exhibition falling within the terms of the Convention on international exhibitions signed in Paris on 22 November 1928; and third, when it has been disclosed to someone bound by a confidentiality agreement.

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#### 18 Obviousness or inventiveness test

What is the legal standard for determining whether a patent is 'obvious' or 'inventive' in view of the prior art?

An invention is inventive if it does not obviously follow from the state of the art to a person 'skilled in the art'. Belgian courts mostly apply the problem-solution approach which was adopted by the European Patent Office to determine the inventive step of an invention.

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#### 19 Patent unenforceability

Are there any grounds on which an otherwise valid patent can be deemed unenforceable owing to misconduct by the inventors or the patent owner, or for some other reason?

A patent cannot be deemed unenforceable due to misconduct by the inventors. The non-payment of patent taxes may however lead to the unenforceability.

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#### Remedies

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#### 20 Monetary remedies for infringement

What monetary remedies are available against a patent infringer?

When do damages start to accrue? Do damage awards tend to be only nominal, provide fair compensation or be punitive in nature?

Belgian courts typically make a distinction between direct damage (ie, the loss of profit caused by the sale of a competing infringing product) and indirect damage (loss of reputation, loss of exclusivity, etc) caused to the rightholder and its licensees. The patent owner may also apply to forfeit infringing goods and, in the event of bad faith infringement, an account of profits. Damages accrue as from the infringement and notice upon the infringer is not required. The courts enjoy a large margin of appreciation in allowing damages. As a principle, the patent owner must be re-established in the situation in which he or she would have been, had there not been any infringement (*restitutio ad integram*). In practice, one can observe that in certain cases a detailed calculation is made of the damage, in other cases the court will base itself on the findings of the parties' experts or the court-appointed expert, and in other cases the court will decide in equity on a fair compensation (*ex aequo et bono*). Damages cannot be punitive in nature. Interest can be charged as of the date on which the damage occurred, but *ex aequo et bono* amounts do not bear any interest.

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#### 21 Injunctions against infringement

To what extent is it possible to obtain a temporary injunction or a final injunction against future infringement? Is an injunction effective against the infringer's suppliers or customers?

A patent owner may obtain a preliminary injunction, either through a *saisie-contrefaçon* or through summary proceedings before the president of the competent commercial court. A final injunction can only be ordered by the judge dealing with the merits (see question 1). Penalty payments are generally ordered to discourage non-compliance with the injunction. An injunction cannot be effective against suppliers and customers unless they are a party to the procedure and bound by an injunction.

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#### 22 Attorneys' fees

Under what conditions can a successful litigant recover costs and attorneys' fees?

Costs are in principle recoverable. A distinction should be made between legal costs on the one hand, and lawyers' fees on the other. As a rule, the unsuccessful party will be ordered to bear all legal costs, namely costs related to the service of documents, the registration on the court docket, and the fees of court-appointed experts, witness hearings (if any) and other expenses. As from 1 January 2008, lawyers' fees are recoverable on a fixed rate basis. In proceedings where no damages are claimed, such as *saisie-contrefaçon* proceedings, summary proceedings or accelerated proceedings on the merits, the prevailing party is entitled to a standard amount of €1,200, which can be lowered to €75 or increased to €10,000 at the court's discretion, depending inter alia on the complexity of the case. In proceed-

### Update and trends

In the litigation field, we have observed increased SPC litigation regarding pharmaceuticals and increased litigation opposing generic and originator companies.

Competition law arguments are raised more and more frequently as a defence in patent litigation.

Recent amendments in Belgium's patent law have provoked a shift in the Belgian courts' jurisdiction, the commercial courts now having jurisdiction instead of the courts of first instance. It remains

to be seen whether this shift will affect the length of proceedings and established principles in case law. Belgian courts seem prepared to declare European patents invalid, even without the technical advice of a court-appointed expert.

Recent amendments in Belgium's procedural law seem to have encouraged judges to be more careful in granting *ex parte saisie-contrefaçon* orders, or in any event to require more systematically that the patent owner pays a guarantee prior to such *saisie-contrefaçon*.

ings where damages are claimed, the prevailing party will be entitled to a lump sum calculated on the basis of the damages claimed in the writ of summons. The larger the claim is, the larger the amount to which the prevailing party is entitled. For claims above €1 million, the fees will vary between €15,000 and €30,000. If there are multiple successful parties, the court may double the lump sum amount. In other words, the most that can be obtained by the successful parties in relation to lawyers' fees in the framework of proceedings on the merits is €60,000. All the amounts referred to above apply separately to each instance and to each separate proceeding.

### 23 Wilful infringement

Are additional remedies available against a deliberate or wilful infringer? If so, what is the test or standard to determine whether the infringement is deliberate?

In the case of a deliberate or wilful infringement, the court may order the confiscation and destruction of the infringing goods. The court may also order an account of profits. A person is considered a wilful infringer when he or she knew of the patent, its extent and its validity.

As a result of the Act of 15 May 2007, patent infringements are now punishable criminally. The criminal offence of patent infringement comprises both an infringing act (material aspect) and wilfulness (moral aspect). The infringing act requirement is fulfilled where there is a finding of infringement on the claims of a patent. The wilfulness requirement will be fulfilled where there is a finding of fraudulent or malicious intent.

### 24 Time limits for lawsuits

What is the time limit for seeking a remedy for patent infringement?

There is no time limit for initiating proceedings in the sense that a patent owner is not estopped from taking action simply because there was no initial reaction. However, under the Belgian statute of limitations no damages can be claimed for infringements that took place more than five years before the initiation of the procedure.

It should be noted that summary proceedings can only be initiated in the event of urgency. If the patent owner waits too long to take action after having knowledge of the patent infringement, this procedural avenue will be closed.

### 25 Patent marking

Must a patent holder mark its patented products? If so, how must the marking be made? What are the consequences of failure to mark?

No marking is required. However, marking could play a role to establish wilful infringement.

## Licensing

### 26 Voluntary licensing

Are there any restrictions on the contractual terms by which a patent owner may license a patent?

Licence agreements must comply with European and national competition law and the Commission Regulation (EC) No. 772/2004 of 27 April 2004 on the application of article 81(3) of the Treaty to categories of technology transfer agreements, including patent licensing agreements. As a rule, article 81(1) of the Treaty shall not apply to patent licensing agreements entered into between two undertakings permitting the production of contract products, and to the extent that such agreements contain restrictions of competition falling within the scope of article 81(1). The exemption shall apply for as long as the patent in the licensed technology has not expired or been declared invalid.

### 27 Compulsory licences

Are any mechanisms available to obtain a compulsory licence to a patent? How are the terms of such a licence determined?

Although the concept is provided for in the Belgian Patent Act, compulsory licences are of little practical importance in Belgium. However, the concept has recently been broadened to the biotechnical area for reasons of public health.

## Patent office proceedings

### 28 Patenting timetable and costs

How long does it typically take, and how much does it typically cost, to obtain a patent?

A Belgian patent is not subject to any examination, contrary to a European patent. A patent may even be obtained after a few weeks. Costs are limited to the payment of an application fee and taxes and, the case being, payment of a non-binding examination report.

### 29 Prior art disclosure obligations

Must an inventor disclose prior art to the patent office examiner?

No such disclosure is required since there is no examination. Moreover, Belgian patent law does not recognise a 'duty of candour'.

### 30 Pursuit of additional claims

May a patent applicant file one or more later applications to pursue additional claims to an invention disclosed in its earlier filed application? If so, what are the applicable requirements or limitations?

Yes, if the later divisional applications stay within the scope of the application filed earlier.

**31 Patent office appeals**

Is it possible to appeal an adverse decision by the patent office in a court of law?

In theory, the Council of State has jurisdiction to overrule the administrative decisions of the Intellectual Property Office. However, as there is no examination, there are no refusals that have to be appealed. Invalidity proceedings are dealt with by the competent commercial courts.

**32 Oppositions or protests to patents**

Does the patent office provide any mechanism for opposing the grant of a patent?

No opposition mechanism is provided for Belgian patents. Invalidity claims must be initiated in court.

**33 Priority of invention**

Does the patent office provide any mechanism for resolving priority disputes between different applicants for the same invention? What factors determine who has priority?

Since there is no patent office in the sense of an examining body, no such mechanism is provided. Priority issues are dealt with ex post in court.

**34 Modification of patents**

Does the patent office provide procedures for modifying, re-examining and revoking a patent? May a court amend the patent claims during a lawsuit?

No, the Belgian Intellectual Property Office cannot modify, re-examine or revoke a patent. A court may partially invalidate a patent and redraft the claims. Subsequently, the Belgian Intellectual Property Office will record the judgment.

**35 Patent duration**

How is the duration of patent protection determined?

The patent lasts for 20 years following the application date.

For medicinal products, a supplementary protection certificate may grant additional protection for a maximum of five years.

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