

Bird & Bird

IP Litigation in Europe

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Patents in Europe

National Patents



- Applied for nationally and granted nationally
- Enforced nationally



European Patents



- Applied for centrally at EPO but granted nationally
- Enforced nationally

Substantive law is the same (EPC 1973) but some differences (e.g. prosecution history estoppel) and big differences in litigation process

Currently still **no Unitary Patent** (or Unified Patents Court, **UPC**) – contrast with EUTMs and designs

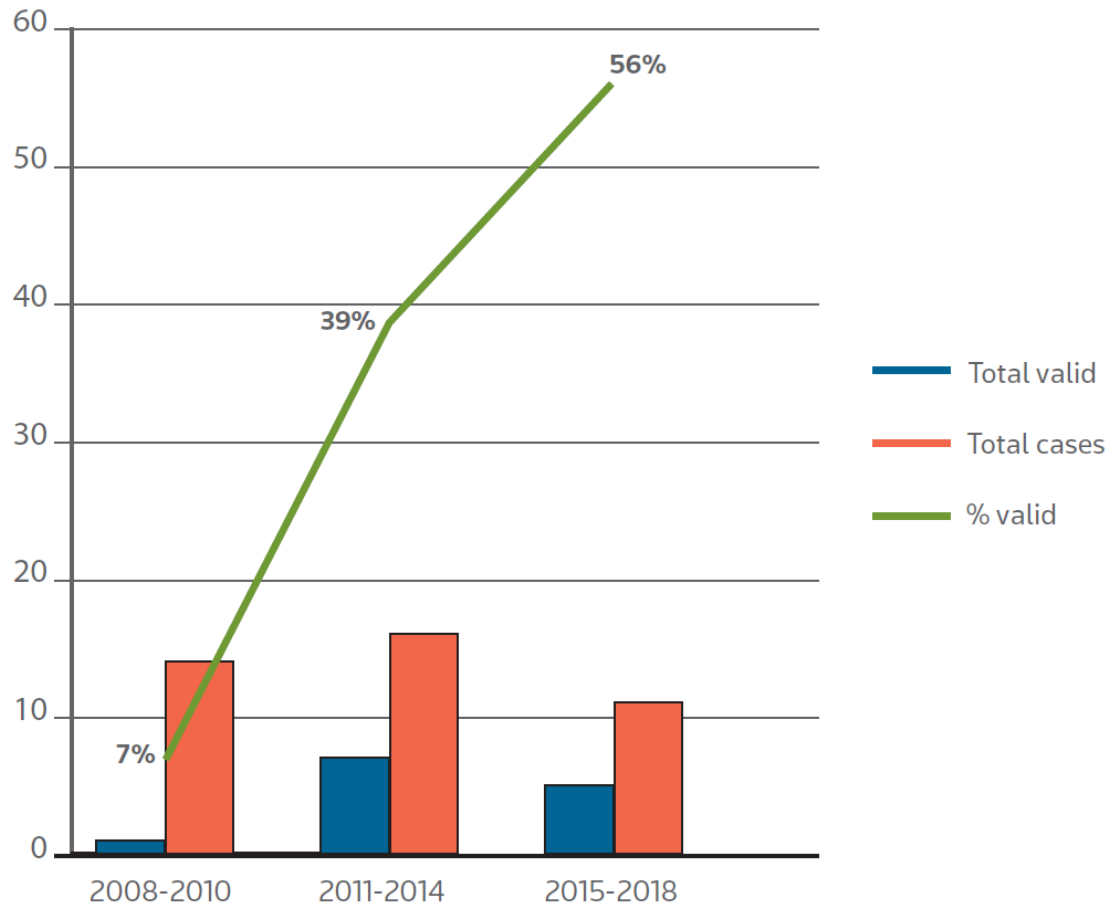
		
Specialist Judges	Yes	Yes
Jury Trial	No	No
Court system	Multiple courts	High Court and IPEC
Validity and infringement tried together?	No And cannot even start nullity action if EPO opposition pending	Yes
Infringement and damages tried together?	No	No

		
Stay infringement case pending EPO opposition	Not unless high probability invalid	Yes in theory but often not
Preliminary injunction	Pro-patentee	Quite rare
Process	Long pleadings No standard disclosure Expert evidence if complex No cross-examination	Short pleadings Disclosure Expert evidence always Cross-examination
Time to Trial	9-12 months (inf) 2 years (validity)	10-16 months
Length of Trial	Less than 1 day	5-10 days

		
Time to judgment	3-6 weeks months	1-2 months
Injunction availability if infringement found	Virtually always awarded	Discretionary
Injunction in force pending appeal	Very often in force	Discretionary, highly specific/tailored
Costs	Substantial, but not typically as high as UK Parties bear own costs	Depends on forum but can be significant Loser pays most/all of winner's costs
Appeal	Always permitted All legal aspects re-heard 10-14 months	Must get permission Only errors of principle Not a re-hearing 12-24 months

UK Statistics

High tech patent trials: validity findings 2008 to 2018



2018 Stats for High tech patents

1st Instance:
80% valid
78% infringed

Appeal:
Only 2 out of 12
appeals allowed

Thank you & Bird & Bird

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