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Counting patent cases at the Patents High Court (PHC) and Intellectual Property Enterprise Court in 2014



Research commissioned by the Intellectual Property Office (IPO) and carried out by: **Powell Gilbert LLP**

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Executive Summary

In this Report, we provide data on the number of patent cases litigated at the Patents High Court (PHC) and the Intellectual Property Enterprise Court (IPEC) in 2014. We also outline the data collection methodology and identify how the methodology has ensured the data collected is consistent with previous years.

We also summarise the key statistics relevant to the Unified Patent Court (UPC), such as the number of European Patents (EPs) litigated at the PHC and IPEC. The UPC is a new European patent court for 25 participating member states, including the UK, and is due to open in 2017.

The Court will have jurisdiction over European Patents, unless they are opted out of the jurisdiction of the Court. Information about the number of patent cases litigated in national courts is needed for preparations for the implementation of the UPC Agreement, including the level of financial contributions for contracting member states and the composition of judge panels.

Key outcomes for the 2014 data collection:

1. There were 72 EP and UK patent cases commenced in the Chancery Division, Patents High Court (PHC), and Intellectual Property Enterprise Court (IPEC).
2. Of the 72 cases, there were 106 patents in dispute, 87 of which were European Patents (EP). This represents an average of 1.47 EP or UK patents in dispute for each action commenced.
3. When taking the approach of other jurisdictions in counting cases, for example Germany, the case count reaches 103 EP actions. This is where each claim and counterclaim for infringement or revocation of the 87 EPs is treated as an individual action.



1. Data Collection Methodology

Data collection was divided into four stages.

Stage 1 – Collection of PHC data from the hard copy files

Completing data collection for patent cases issued before the PHC in 2014 in a data collection handbook. Court staff had separated the PHC cases from the remainder of the Chancery Division files to assist with the review.

Stage 2 – Collection of PHC and IPEC data for actions commenced after September 2014 using CE-File

From October 2014, cases issued with the PHC and IPEC were entered onto the court's new case management system, CE-File. Data Collection was completed for the applicable months (October 2014 – December 2014) by reviewing all actions filed with the PHC and IPEC.

Stage 3 – Collection of IPEC data from the hard copy files

Completing data collection for all active and settled actions commenced with the IPEC in 2014.

Stage 4 – Reviewing all Chancery Division cases in the Rolls Building file store

Completing data collection for any remaining patent cases. Additional cases were reviewed which were not initially made available under Stage 1, or that had been incorrectly allocated Chancery Division (HC) claim numbers, rather than PHC (HP) claim numbers.



2. Limitations to Data Collection

There were issues that limited our ability to collect comprehensive data for the relevant patent actions. These are discussed below. It should be noted that as proceedings progress, the issues had a greater impact on the completeness of the data. Since infringement or revocation is pleaded early on in the proceedings (in the claim forms and counterclaims), they have less of an impact on the claim and counterclaim data, which have been obtained with a high degree of accuracy.

Withdrawn and discontinued cases

There were a number of cases that did not progress to trial. It is not always evident from the court files what stage of proceedings the matter reached before being withdrawn or discontinued. In some instances, only a claim form had been filed, suggesting that the claim was never served on the defendant, or the defendant failed to respond to the complaint. This introduced difficulty in obtaining counterclaim data, or whether we can say for certain a defence and / or counterclaim had ever been filed in that action.

Duration of patent cases

Data collection started in the fourth quarter of 2015, this is not long after the 2014 commencement date of the relevant cases. Patent cases usually last at first instance between 12 to 18 months on average, or longer when an action has been stayed. For this reason, several cases have yet to reach an outcome, and some of the files and their contents may have been in use by the court given the case is still active.

Duplicate files and joined cases

There have been instances where more than one file has been opened for a matter. This may be a hard copy file which was later entered onto CE-File, or duplicate paper files. CE-File also used a different claim numbering system for cases, increasing the complexity in mapping cases which were duplicates or otherwise similar in nature.

Where duplicate cases were found, and the files were indeed exact copies, the data was amalgamated into a single entry. Where there was an apparent difference in the matter, for example a different defendant being served, then these matters were treated as individual cases. Additional notes have been added to highlight any correlations between similar cases.

It was agreed that for the purpose of this Project and the UPC Taskforce, collection would primarily be concerned with the number of patent cases issued before the PHC and IPEC. It is common practice in patent cases that claims are joined to assist with the efficient disposal of disputes. There were instances where several cases had been joined, resulting in a single judgment for multiple claims. The outcomes for the joined cases were duplicated across all relevant cases.

Comprehensiveness of court files

It was noted that the PHC hard copy paper files, and more generally the Chancery Division hard copy files often appeared to be incomplete or missing documents. This may be a result of parties not filing the relevant documents with the court. Data was collected on the basis of availability, and assumptions were never made in order to complete any information. Therefore, if the data was available, it was collected, otherwise the missing fields were left incomplete. The IPEC hard copy paper files were well maintained, although the settlement ratio appeared higher than PHC cases and accordingly, many cases never progressed to trial. Cases entered onto CE-File contained a more comprehensive set of records.

It was also difficult to assess exactly what stage proceedings reached if the case never proceeded to trial, and inferences were never drawn on withdrawal, settlement, or disposal of the case by any other means.



3. Validation

Validation played an important role in the Project and was divided into three stages:

Stage 1 – Confirming listings information against the Patents Court Diary

The Patents Court Diary assisted in the validation of dates and durations of case management hearings and trials. It also acted as a source to check discrepancies in claim numbers and parties, as well as the settlement of disputes. The Diary appeared to lack comprehensiveness, and is only intermittently updated. Consequently, it was not used as a primary data source, but as a point of reference to confirm or query any of the data collected.

Stage 2 – Obtaining judgments from Westlaw

Westlaw was used to confirm whether a judgment had been handed down in an action as it was uncommon for the judgment to be recorded on the court file. Westlaw provided confirmation of the claim numbers, the parties and the joining of actions.

Stage 3 – Validating data at court

On completion of Stages 1 and 2, the Project Manager highlighted any actions where a discrepancy remained and carried out a secondary check of the court file, whether in hard copy or electronically stored on CE-File.

Overall, and in consideration of the above limitations, we believe that data collection for 2014 was as comprehensive as possible. Further details on how data was collected is provided in Annex A.

4. Case Data at the PHC and IPEC

Statistics on infringement and revocation claims

Below are counts across the PHC and IPEC covering both EP and UK patents. The table has been divided into two sections; 1) Total number of patent actions, and 2) Total number of patents in dispute. The statistics indicate there were on average 1.47 patents in dispute in each patent case during 2014.

Table 1 – Total numbers of patent actions and patents in dispute across both the PHC and IPEC (2014)

Classification	Count
Total number of patent actions	72
Involving at least 1 EP	57
Involving at least 1 UK patent	15
Total number of patents in dispute	106
Total number of EPs	87
Total number of UK patents	19

Below are counts across PHC and IPEC in relation to EPs only, on a per patent basis. These statistics are significant when comparing case counts to other jurisdictions such as Germany. In certain jurisdictions, a claim under each patent is treated as a separate case. Further, claims and counterclaims are also counted as separate actions. As explained above, it is common for UK patent cases to have more than one patent in dispute (on average 1.47), and a counterclaim for infringement or revocation.

Table 2 – Claim counts in relation to EPs across both the PHC and IPEC (2014)

Classification	Count
Total number of EP revocation claims	41
Total number of EP infringement claims	36
Total number of EP revocation counterclaims	17
Total number of EP infringement counterclaims	9
Total	103

Note: As discussed above, there are instances where data is unavailable, particularly in relation to counterclaims. Therefore the total number of infringement and revocation counterclaims may be slightly higher than the figures indicated above.

Comparison of 2014 data with preceding years

Below are tables summarising the 2014 data collection compared with the previous seven years. The existing data has been collated from the publication; Helmers, et al. (2015).

To ensure consistency with the data published in Helmers, et al. (2015), the following data is aggregated on a per case basis rather than on a per patent basis as above.

Table 3 – IPEC: Case count

Year	Case Count	Cases with EP
2007	6	2
2008	4	3
2009	8	4
2010	8	5
2011	27	13
2012	26	11
2013	17	9
2014	19	11

Table 4 – PHC: Case count

Year	Case Count	Cases with EP
2007	33	27
2008	71	65
2009	49	38
2010	50	42
2011	92	77
2012	89	75
2013	61	48
2014	53	46

PHC and IPEC Case-level comparison

Table 5 – IPEC: Revocation and Infringement Claims

Year	Revocation		Infringement	
	EP	GB	EP	GB
2007	0	0	2	3
2008	0	0	2	0
2009	0	0	4	3
2010	0	2	5	1
2011	0	4	12	7
2012	3	1	7	12
2013	1	0	6	8
2014	4	4	5	5

Table 6 – IPEC: Revocation and Infringement Counterclaims

Year	Revocation		Infringement	
	EP	GB	EP	GB
2007	0	0	0	0
2008	2	0	0	0
2009	2	2	0	0
2010	3	2	0	0
2011	9	4	1	1
2012	5	7	3	3
2013	2	4	0	0
2014	2	4	0	0

Table 7 – PHC: Revocation and Infringement Claims

Year	Revocation		Infringement	
	EP	GB	EP	GB
2007	16	3	7	4
2008	19	2	43	5
2009	18	0	18	8
2010	23	2	18	6
2011	31	1	39	10
2012	39	2	30	9
2013	19	1	22	7
2014	24	1	19	5

Table 8 – PHC: Revocation and Infringement Counterclaims

Year	Revocation		Infringement	
	EP	GB	EP	GB
2007	4	2	6	1
2008	30	2	6	0
2009	13	6	5	0
2010	12	5	9	2
2011	24	7	12	2
2012	10	5	15	1
2013	11	6	6	0
2014	9	4	5	1

ANNEX A

Data Collection

Data collection was split into eight sections, each containing a number of sub-categories. Each of the sub-categories requiring data collection are discussed in greater detail below.

1. CLAIM NUMBER

a. Claim number

Data Collection was organised by the CE-File claim numbers in ascending order, although some cases were still using the existing claim numbering style. Chancery Division claims are listed as HC, Patents Court claims are listed as HP, and IPEC claims are listed as IP.

There were 2 types of claim numbers in use during 2014 for PHC cases:

- HP-2014-NNNNNN (The CE-File numbering system)
- HP14XNNNNN (The former numbering system)

X referring to a letter assigned to each PHC judge. For the purpose of Handbook organisation, this letter has been placed at the end of the claim number, however the correct format is as shown above)

b. Additional information on claim / claim number

Used to note any existing claim numbers and whether the case had been joined with any other actions, regardless of the year in which they were commenced.

2. PROCEEDINGS

a. Date of issue of the claim form

Date of issue of the claim according to the court seal on the front of the claim form.

b. Case management

Whether a case management conference (CMC) was heard, or listed to be heard, according to the court records, Patents Court Diary and judgments handed down in the action.

c. Claimant's application for injunction

Whether the claimant applied for an injunction on a claim for infringement.

d. Defendant's application for injunction

Whether the defendant applied for an injunction on a counterclaim for infringement.

e. Other application

Details of application notices available within the court file.

f. Judgment

Whether judgment was handed down in the case. In some instances, interim judgments were noted if they had an impact on the overall outcome of the dispute.

g. Date of judgment

Date of handing down of judgment.

h. Final order

Whether a final order was available on the court file. In some instances, it was difficult to assess whether an order was dealing with the overall conclusion of the proceedings.

i. Date of final order

Date of sealing of the final order.

j. Number of hearing days

Number of hearing days according to the judgment. Where details of the estimated number of hearing days was available from the Patents Court Diary, this was noted down as an estimate.

3. PARTIES

a. Claimant(s) name

All claimants were listed from the claim form, separated by semi-colons. Where additional claimants were included later in the proceedings, for example in the defence, they were included and their inclusion explained.

b. Defendant(s) name

As above.

4. PATENT DETAILS

a. Number of EP patents

A numerical entry identifying the number of EPs subject to the claim.

b. Number of GB patents

As above.

c. Number of SPCs

As above.

d. Patent / SPC number(s)

A list of all relevant patent and SPC numbers, separated by semi-colons.

5. CLAIM

a. Revocation

A numerical entry identifying the number of revocation claims in a case on a per patent basis (e.g. a case claiming revocation of three patents is a case consisting of three revocation claims). By listing the number of revocation actions per patent as opposed to per case, the data can be used to obtain the number revocation actions per case if required.

b. Infringement

As above.

c. Declaration of validity

As above.

d. Declaration of invalidity

As above.

e. Declaration of non-infringement

As above.

f. Ownership dispute



Whether there was an ownership dispute in claim, regardless of the number of patents in dispute.

g. Inventor compensation

Whether there was a claim for inventor compensation, regardless of the number of patents in dispute.

6. COUNTERCLAIM

As above.

- a. Revocation
- b. Infringement
- c. Declaration of validity
- d. Declaration of invalidity
- e. Declaration of non-infringement
- f. Ownership dispute
- g. Inventor compensation

7. OUTCOME

a. Invalid

A numerical field identifying the number of invalidity decisions per patent in a case. Each patent within a case was treated individually for the purpose of the Outcome.

b. Valid

As above.

c. Partially valid

Where one or more claims of a patent were held invalid, the patent was deemed valid in part and entered as a partially valid Outcome.

d. Infringement

A numerical field identifying the number of infringement decisions per patent in a case. Each patent within a case was treated individually for the purpose of the Outcome.

e. Declaration of non-infringement

As above.

f. Withdrawal of the action

Where the claim commenced to trial, there was no withdrawal of the action. However, where there was firm indication that an action has been withdrawn, this has been noted. Withdrawal of actions are commonly a result of settlement, but not always.

g. Settlement

Where there was firm indication of settlement, this has been noted. Commonly, when an actions settles, the parties will apply for withdrawal or discontinuance of the case.

h. Appeal complete / pending

The court file sometimes indicated whether permission for appeal was requested by a party. Westlaw also provides a graphical history of actions and information on whether an appeal is outstanding between the parties. The field has been completed where there is firm evidence an appeal has been requested, is in progress, or had been concluded.



8. ADDITIONAL INFORMATION

a. Additional notes

Self-explanatory.

b. Citation

The citation for the judgment in the case, hyper-linked to the available judgment on Westlaw.

c. STATUS

Confirmation that validation as described above has been completed, or where the file was missing from court on the secondary validation check.

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