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Sweden

Intellectual Property

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This country-specific Q&A provides an overview of intellectual property laws and regulations applicable in Sweden.

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Sweden: Intellectual Property

1. What different types of intellectual property rights exist to protect: (a) Inventions (e.g. patents, supplementary protection certificates, rights in trade secrets, confidential information and/or know-how); (b) Brands (e.g. trade marks, cause of action in passing off, rights to prevent unfair competition, association marks, certification marks, hallmarks, designations of origin, geographical indications, traditional speciality guarantees); (c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in trade secrets, confidential information and/or know-how).

(a) Inventions (e.g. patents, supplementary protection certificates, rights in trade secrets, confidential information and/or know-how);

In relation to inventions, patents are the main rights referred to in Sweden. Trade secrets, confidential information and know-how may be protected by law or specific contractual terms, however, are not as such considered intellectual property rights.

Patents. Patents are available for inventions that are new, inventive, and industrially applicable. A patent may be granted through the Swedish national system or the European Patent Convention (EPC) system. An international application (PCT application) can also lead to protection in Sweden. Regardless of which system is employed, the patent that is granted is national in scope. As of 1 June 2023, the Unitary Patent system is also in effect in Sweden. The Unitary Patent System is a supplement to the national patent systems and the EPC system. A European patent application that is received and granted by the European Patent Office will result either in a European patent in its current form, or in a patent with unitary effect, at the choice of the applicant. A patent with unitary effect means that the patent will provide identical protection and the same legal effect in all participating Member States.

Supplementary protection certificates. As it can take some years after the patent has been filed to obtain regulatory approval for a pharmaceutical or plant

protection product, supplementary protection certificates (SPCs) are available to extend the term of patent protection by up to five years in qualifying circumstances.

Trade secrets/Confidential Information/Know-how. The Swedish Trade Secrets Act implements the EU Trade Secrets Directive, which broadly harmonises the law in this area in the EU. The Trade Secrets Act provides protection for trade secrets, which are defined (broadly) as information which (a) is secret, in the sense that it is not generally known or accessible in the circles that normally deal with the kind of information in question, (b) has been subject to reasonable steps to keep it secret, and (c) whose disclosure is likely to cause damage to the holder in respect to competitors. The law is technology-neutral and applies to all forms of trade secrets including source codes and computer programs. Furthermore, the status of information and/or know-how as secret or confidential may be protected by an obligation of confidentiality arising under other laws or because of specific contractual terms (for example in employment contracts and non-disclosure agreements).

(b) Brands (e.g. trade marks, cause of action in passing off, rights to prevent unfair competition, association marks, certification marks, hallmarks, designations of origin, geographical indications, traditional speciality guarantees);

In relation to brand protection, trademarks and company names are the main rights referred to in Sweden. In addition, the Swedish Marketing Act prohibits unlawful marketing and misrepresentation.

Registered trademarks. To obtain protection in Sweden, a trademark application can be filed as a national trademark, an EU trademark or through an application under the international system through the World Intellectual Property Office (WIPO). The trademark must be able to distinguish the goods and/or services of one enterprise from those of another. It must also not be devoid of distinctive character or exclusively indicate the kind, quality, quantity or other characteristics of the goods or services. A mark which does not immediately appear to have distinctive character can acquire distinctiveness through use. Trademarks can include a variety of forms such as words, figures, letters, numbers, logos, personal names, slogans, holograms, shapes, ornaments, sounds etc. There can also be non-traditional

trademarks such as scents and colours.

Unregistered trademarks. Trademark protection can be obtained without registration if the trademark is considered established, meaning that the mark is well known for a significant part of the relevant public to designate the relevant goods or services.

Certification marks/Hallmarks. Marks such as certification, collective and hallmarks do not have the same function as ordinary trademarks but instead exist to provide an indication of standards or quality. Collective marks are trademarks that are owned by an association of business operators and can be used by the members of the association if they comply with the provisions for the collective mark. There are trademarks that have a guarantee or certification function that may be used on products or services that meet the criteria that the holder of the trademark sets. It is often an authority, or another actor, that owns the guarantee or certification mark and has the task of inspecting the products and services that use the mark.

Company names. Company names can be protected through registration or through establishment. To be registered, a company name must have distinctiveness and not exclusively indicate the companies' scope of business. The company name cannot be confusingly similar to another company name or trademark.

(c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in trade secrets, confidential information and/or know-how).

Registered designs. Designs that are new and have individual character can be registered. A design registration may be used to protect the appearance of the whole product or part of it and may be a three-dimensional or two-dimensional design. It is not possible to register (a) features of a product that perform a technical function or that interconnect with another part to perform a function, or (b) designs that are contrary to public policy or (c) computer programs.

Unregistered designs. It is possible to receive a limited design protection in the EU just by publishing the design. The protection is valid for three years. It is possible to apply for registration within one year of the design being made public.

Copyrights. Copyright arises without any formal procedure when the work is created. In Sweden it is not possible to register copyrights. Copyright may subsist in original works in protected categories such as literary,

dramatic, musical, and artistic works, sound recordings, films, broadcasts, computer programs and neighbouring rights such as performing artists, databases etc. These categories are not exhaustive and various forms of intellectual performances can be protected.

Plant varieties. Plant variety rights are available, by registration, for new, distinct, uniform, and stable plant varieties. Protection is available for Sweden or the EU.

Semiconductor topography rights. Semiconductor topography rights can exist as a result of a creator's own intellectual creation and if the topography is not common in the semiconductor industry.

2. What is the duration of each of these intellectual property rights? What procedures exist to extend the life of registered rights in appropriate circumstances?

Patents. A Swedish patent can be valid for a maximum of 20 years. To maintain the patent, an annual fee must be paid. There is no fee the first two years after the date of application, the first annual fee is due when the patent enters its third year. This also applies if a patent application is still pending. After the first payment, the fee shall be paid annually.

Supplementary protection. If the patent relates to a pharmaceutical or plant protection product, supplementary protection certificates (SPCs) are available to extend the term of patent protection by up to five years in qualifying circumstances.

Trademarks. A Swedish trademark registration is valid for 10 years, after which the trademark needs to be renewed to remain valid.

Company Names. A company name registration is not limited in time and does not need to be renewed.

Design rights. A Swedish design registration is valid for five years from the application date. It is possible to extend the registration for a maximum of 25 years. For spare parts, the registration is valid for a maximum of 15 years. It is possible to receive a limited design protection in the EU just by publishing the design. Such protection is valid for three years from the publication.

Copyrights. Copyright applies for as long as the author is alive and for a further 70 years after the author's death. When the author dies, the copyright passes to the author's successors through inheritance or a will. As regards what are known as 'neighbouring rights', these

normally apply from the year in which the performance was executed for 50 years. If an audio recording is released or made public within the 50- year period, the rights will instead apply until 70 years after the first release or the first occasion on which the audio recording was made public. Database rights apply for 15 years.

Plant varieties. Protection of plant varieties are valid from the date of registration and for 25 years from the 1st of January the year after the decision gained legal force. In relation to potatoes, trees, and wine, the rights can be maintained for 30 years from the same date. To maintain the protection, an annual fee must be paid.

Semiconductor topography rights. Semiconductor topography rights last until the end of the 10th year after the year in which the semiconductor topography was first used commercially. If it has not been used commercially, the right expires 15 years after the end of the year in which the semiconductor topography was created.

3. Who is the first owner of each of these intellectual property rights and is this different for rights created in the course of employment or under a commission?

The person who develops an intellectual property right is the first owner, be it the person who creates copyright protected material, creates a design, or makes the invention that leads to a patent etc. The rights of the employer are regulated by law in relation to patentable inventions, copyrights to source code and semiconductor topography rights made by employees.

Regarding patentable inventions, if nothing else has been agreed in contract, the position is that the employer, depending on the extent to which the invention is linked to the employment, either acquires the complete right to the invention or obtains a license or an option right. The law makes an exception for inventions made by teachers (usually including university doctoral candidates) even if employed. The employee always has the right to financial compensation for the invention.

Unless otherwise agreed, the copyright to a computer program created by an employee as part of his or her employment duties or following instructions by the employer is transferred to the employer. The same applies for semiconductor topography if the topography has been created by an employee as a part of his/her employment. There is no corresponding legislation in relation to other intellectual property rights or consultants, volunteers etc, although certain principles regarding the rights of the employer have been developed

in Swedish case law.

4. Which of the intellectual property rights described above are registered rights?

Patents, trademarks, designs, plant varieties, and company names are registered rights.

5. Who can apply for registration of these intellectual property rights and, briefly, what is the procedure for registration?

Patents. The inventor or any other rightful owner of the invention (being an individual or a legal entity) can apply for registration of a Swedish patent. The application is filed with the Swedish Intellectual Property Office including a description of the invention, patent claims, an abstract and drawings, if any.

Trademarks. An individual or a legal entity can apply for a Swedish trademark. The application is filed with the Swedish Intellectual Property Office and shall include a list of the goods and services the mark is applied for. If the requirements for registration are not met, the applicant will receive an order with the opportunity to respond.

Designs. The designer or any other rightful owner of the design (being an individual or a legal entity) can apply for registration of a design in Sweden. The application is filed with the Swedish Intellectual Property Office and shall include pictures clearly displaying the design. The Swedish Intellectual Property Office conducts no examination or assessment of whether the design is new and distinctive. It is the responsibility of the applicant to find out if the appearance of the design differs from previously known or registered designs.

Plant varieties. The plant breeder or its representative can apply for registration of plant varieties rights in Sweden. The application is filed with the Swedish Board of Agriculture.

Company names. The registration of a company name can be made by the company and the application is filed with the Swedish Companies Registration Office.

6. How long does the registration procedure usually take?

The average duration of the grant procedures for the following Swedish registrations are:

- National patent: approximately 2-3 years – the Swedish Intellectual Property Office usually provides its first assessment of the patentability of the invention within 6-8 months.
- Trademarks: approximately 3-4 months, provided the application is complete with all required documents.
- Designs: approximately 8-10 weeks, provided the application is complete with all required documents.
- Plant varieties: approximately 3 months, provided the application is complete with all required documents.
- Company names: approximately 1-2 weeks, provided the application is complete with all required documents.

The timing for the registration procedures will depend on whether, and to what extent, there are deficiencies in the application to be rectified by the applicant.

7. Do third parties have the right to take part in or comment on the registration process?

For patents, trademarks, and company names, third parties can submit comments during the registration process and the protest may then be part of the registration procedure. For plant varieties, it is possible for third parties to comment or object to the application within a period of two months from the publication date of the application. For design rights, it is usually not possible for third parties to take part in the registration process.

Following the registration, third parties can file oppositions within the following timelines:

- Patents: within 9 months after the patent is
- Trademarks: within 3 months from the date the registration is made
- Designs: within 2 months from the

8. What (if any) steps can the applicant take if registration is refused?

If an application for registration of a patent, trademark, design, plant varieties right or company name is refused, it is possible for the applicant to appeal the decision. The appeal shall be addressed to the Patent and Market Court and sent to the decision-making authority.

9. What are the current application and renewal fees for each of these intellectual property rights?

Patents

Application fee: SEK 3,000, with an additional SEK 2,500 SEK when the patent is granted. Additional fees may apply. Annual fee is set out for each year.

Trademarks

Application fee: SEK 3,500 (digital application SEK 2,400) for one class, plus SEK 1,000 per additional class. Renewal fee: SEK 3,500 (digital renewal 2,400) for one class, plus SEK 1,000 per additional class.

Designs

Application fee: SEK 2,500 (digital application SEK 2,000). Renewal fee: SEK 3,000 (digital renewal SEK 2,500).

Plant varieties right

Application fee: SEK 3,000. Annual fee: SEK 2,000.

Company names

Application fee: SEK 1,100-1,600 (digital fee SEK 900-1,400) depending on the form of company.

10. What are the consequences of a failure to pay any renewal fees and what (if any) steps can be taken to remedy a failure to pay renewal fees?

If the annual fee for a patent is not paid, the patent will lapse. A failure to pay may in some cases be rectified within two months, or at the latest within one year. If the renewal fee for trademarks or design rights is not paid, the registration will lapse with a grace period of six months to remedy. Similarly, if the annual fee for a plant varieties right is not paid, the registration will lapse with a grace period of six months to remedy.

11. What are the requirements to assign ownership of each of the intellectual property rights described above?

The assignment of the ownership of intellectual property rights is effected by contract. There are no formal requirements, but for reasons of evidence and legal certainty, it is advisable to conclude the contract in writing. Company names can only be transferred together with the business. The economic rights pertaining to copyright can be assigned and the moral rights can be waived although not assigned.

12. Is there a requirement to register an

assignment of any of these intellectual property rights and, if so, what is the consequence of failing to register?

There is no requirement to register the assignment of an intellectual property right, but it is recommended. Ensuring the correct owner is registered inter alia provides notice to third parties and enables the authorities to send the notification of annual fee to the right person.

13. What are the requirements to licence a third party to use each of the intellectual property rights described above?

The license of intellectual property rights is effected by contract. There are no formal requirements, but for reasons of evidence and legal certainty it is advisable to conclude the contract in writing.

14. Is there a requirement to register a licence of any of these intellectual property rights and, if so, what is the consequence of failing to register?

There is no requirement to register the licence of an intellectual property right.

15. Are exclusive and non-exclusive licensees given different rights in respect of the enforcement of the licensed IP, and if so, how do those rights differ?

The right in respect of the enforcement of licensed intellectual property is dependent on the licensing agreement for both exclusive and non-exclusive licensees. The law does not distinguish between exclusive and non-exclusive licensees except that a holder of an exclusive trademark license may bring an action for trademark infringement even without the consent of the proprietor of the trademark if the proprietor does not bring such an action within a reasonable time and presuming nothing else has been agreed between the parties.

16. Are there criminal sanctions for infringement of any intellectual property rights, and if so, what are they and how are they invoked?

All Swedish intellectual property rights legislation

provides for criminal sanctions for infringement. Criminal liability covers infringement arising from either intention or gross negligence. The sentences are, depending on the severity, fines, or imprisonment. The public prosecutor may file criminal charges for offences referred to by law only where prosecution is justified in the public interest.

In addition, trade secrets are not considered to be intellectual property rights per se under Swedish law, although they have a close connection to such rights. Nevertheless, the Trade Secrets Act provides for criminal sanctions for corporate espionage or unlawful dealing in a trade secret. The sentences for such crimes are, depending on the severity, fines, or imprisonment.

17. What other enforcement options are available for each of the intellectual property rights described above? For example, civil court proceedings, intellectual property office proceedings, administrative proceedings, alternative dispute resolution.

Civil court proceedings are available for infringement of intellectual property rights. It is further possible to commence opposition proceedings and administrative invalidity proceedings against registered intellectual property rights. Alternative dispute resolution is only available with the consent of both parties.

18. What is the length and cost of such procedures?

Civil court proceedings for infringement of intellectual property rights take approximately twelve months from filing of the application for summons until a decision from the Patent and Market Court. However, cases concerning patent rights may take approximately 1.5 years in the first instance. Decisions may be appealed to the Patent and Market Court of Appeal, in which, if leave to appeal is granted, the process may take another year.

The filing fee for civil procedures varies depending on the value, either SEK 900 or SEK 2,800. The cost of legal fees varies depending on the case.

19. Where court action is available, please provide details of which court(s) have jurisdiction, how to start proceedings, the basics of the procedure, the time to trial, the format of the trial, the time to judgment and award of relief

and whether any appeal is available.

The Patent and Market Court and the Patent and Market Court of Appeal adjudicate all court cases and matters related to intellectual property law, competition law and marketing law.

Proceedings in civil court cases are commenced by filing an application for summons to the Patent and Market Court. The court will thereafter commence proceedings and after some initial written submissions from the parties, the court typically summon the parties to a preparatory hearing where the timeline for the case is agreed and the question of a possible settlement is discussed. The parties thereafter submit evidence before the main hearing, which in general, depending on the circumstances, takes place around twelve months after the application for summons has been filed. It should be noted that a main hearing is not mandatory; the court may assess the case on the merits and deliver a judgment without a hearing, if it is deemed unnecessary and no party demands it.

The main hearing includes opening statements, witness and expert examinations, and closing arguments. The delivery of the judgment is in general made within four weeks after the main hearing, although the time may be longer for more complex cases.

Decisions by the Patent and Market Court may be appealed to the Patent and Market Court of Appeal if leave to appeal has been granted. The main rule for civil actions is that judgments and decisions of the Patent and Market Court of Appeal may not be appealed. However, the Patent and Market Court of Appeal may under certain, exceptional, circumstances allow a decision to be appealed to the Supreme Court. In such cases, the Supreme Court must also grant leave to appeal.

20. What customs procedures are available to stop the import and/or export of infringing goods?

A party with registered intellectual property rights can submit an "application for action" to the Swedish Customs who may stop suspected infringing goods that are being imported, exported, or passing through Sweden. The Swedish Customs may also on its own initiative take measures against suspected infringing goods.

21. Are any non-court enforcement options or dispute resolution mechanisms mandatory in

respect of intellectual property disputes in any circumstances? If so, please provide details.

There are no non-court enforcement options or dispute resolution mechanism that are mandatory, unless the parties have agreed on the use of such mechanisms under, e.g., a licensing agreement.

22. What options are available to settle intellectual property disputes in your jurisdiction?

If a court case has been initiated, the parties can choose to reach a settlement with or without the assistance of the court. Should the parties wish for the details of the settlement to be confidential they may choose to withdraw the case from court and enter into a confidential settlement agreement. Alternatively, the settlement could be confirmed by a judgment from the court, making the judgment official to the public.

Since the process can be costly, an alternative to resolve a dispute in court is to, e.g., reach an agreement with the infringer or alternatively agree to an amount of damages before legal action is taken.

23. What is required to establish infringement of each of the intellectual property rights described above? What evidence is necessary in this context?

To establish infringement of any intellectual property right, the applicant has the burden of proof and must establish its rights and prove that an infringement has occurred. To establish an infringement of trade secrets (which are not regarded as intellectual property as such), the claimant must show that the acquisition, usage, or disclosure of a trade secret was unlawful.

Under Swedish law, a strict principle of free assessment of evidence is applied, which means that any evidence may be submitted. Typically, photographs, market surveys and expert reports are commonly submitted as evidence. The necessity, naturally, depends on the case.

24. How does the court acquire any necessary information (fact or technical) and in what circumstances does it do so? In particular a) Is there a technical judge, a judge with technical experience, a court appointed expert, an expert

agreed by the parties, and/or parties' expert witness evidence? b) What mechanisms are available for compelling the obtaining and protecting of evidence? Is disclosure or discovery available?

a) Is there a technical judge, a judge with technical experience, a court appointed expert, an expert agreed by the parties, and/or parties' expert witness evidence?

The Patent and Market Court and the Patent and Market Court of Appeal are in themselves special courts, where the legally trained judges focus entirely on intellectual property law, competition law and marketing law. In patent cases in particular, unless considered particularly uncomplicated, the composition of the court includes both legally trained judges and technical judges. The parties may also submit their own expert statements and call the experts as witnesses.

b) What mechanisms are available for compelling the obtaining and protecting of evidence? Is disclosure or discovery available?

A party to the dispute may request for production of documents, hence, obtaining relevant information and/or evidence from the opposing party or a third party. If such a request is granted by the court, the information or evidence must be provided or disclosed in the proceedings. Similar to this, the court may also grant a request for an injunction to produce information, meaning that the respondent must provide the applicant with information regarding, e.g., the origins and distribution channels of the product. Requests for information covered by legal privilege or information that would involve the disclosure of trade secrets are mostly rejected. Moreover, infringement investigation is possible, meaning that the court, upon request from the applicant, orders an investigation be conducted at the respondent's premises, with the purpose of finding objects or documentation that can be assumed to have importance.

25. How is information and evidence submitted to the court scrutinised? For example, is cross-examination available and if so, how frequently is it employed in practice?

Swedish courts apply the principles of immediacy and orality. Consequently, only the invoked evidence which is also expressly presented during the hearing should be assessed and considered. The parties may, however, present their documentary evidence by reference, if considered appropriate by the court. Cross-examination

is a fundamental right of the parties and is frequently exercised when a hearing is held in the case.

26. What defences to infringement are available?

The respondent may argue that it holds a right based on prior use. Other defences available include the filing of a claim regarding the invalidity of the registered right, for example regarding patents and trademarks. The respondent may also request a negative declaratory relief, i.e., to request that the court declares that no infringement has occurred.

27. Who can challenge each of the intellectual property rights described above?

Any party who claims to be the holder of a prior intellectual property right by registration or use (when applicable), may challenge. Furthermore, a party who has the right pursuant to a license may challenge.

28. When may a challenge to these intellectual property rights be made (e.g. during any registration process or at any time during the subsistence of the right)?

In relation to objections during the registration process or oppositions thereafter, we refer to our answer to question number 7 above. In addition, intellectual property rights may be challenged during the subsistence of the right.

29. Briefly, what is the forum and the procedure for challenging each of these intellectual property rights and what are the grounds for a finding of invalidity of each of these intellectual property rights?

Challenges are primarily brought before the registration authority and/or the court. Grounds for finding the invalidity of a patent are, inter alia, (a) that the patent has been granted despite the basic conditions not being met, (b) that the invention lacks novelty, inventive step, or industrial applicability, (c) that the patent may have been granted to someone who was not entitled to it, or (d) that the invention has not been described clearly enough for an expert to be able to practise using it.

Grounds for finding invalidity of registered trademarks are, inter alia, (a) that the trademark may be confused with an earlier right, (b) that it is devoid of any distinctive character, or (c) that the person who applied for

registration of the trademark has done so in bad faith.

Grounds for finding invalidity of a registered design are, inter alia, (a) that the requirement of being new or distinctive is not met, and (b) that the holder does not have the right to the registered design.

Grounds for finding invalidity of a registered company name are, inter alia, that (a) the company name lacks distinctiveness, (b) that there is a likelihood of confusion with an already existing company name, and (c) that the company name is misleading. Grounds for finding invalidity of a plant variety are, inter alia, that it does not meet the requirements of novelty, distinction, uniformity, and stability.

30. Are there any other methods to remove or limit the effect of any of the intellectual property rights described above, for example, declaratory relief or licences of right?

It is possible to seek, e.g., declaratory reliefs and licenses of right. Furthermore, the constitutional rights of freedom of speech and the principle of public access to information may limit the effect of intellectual property rights.

31. What remedies (both interim and final) are available for infringement of each of the intellectual property rights described above?

The available remedies if there is an infringement of an intellectual property right include damages, prohibition, information injunctions, and security measures such as

seizure, forfeiture of the infringing property, etc. The exact available remedies follow from the relevant intellectual property. Issuing interim and final prohibitions (under penalty of fine) has been considered one of the most important remedies against infringement.

Under the Trade Secrets Act, it is also, inter alia, possible to claim damages as well as interim and final injunctions (under penalty of fine) and security measures to stop an infringement.

32. What are the costs of enforcement proceedings and is any kind of costs recovery available for successful parties? Is there a procedural mechanism enabling or requiring security for costs?

Under Swedish law, the general rule is that the costs follow the event, i.e. the successful party shall be reimbursed by the losing party for its legal fees and costs upon evidence. However, the court may reduce the legal fees to an amount deemed reasonable, considering e.g., the complexity, length, and value of the dispute. Hence, a party risks not being fully reimbursed despite receiving a favourable judgment.

A respondent has the possibility to claim security for legal costs against a foreign claimant. However, this measure is not applicable against a claimant with connection to the EEA or if any international convention states otherwise.

As for court fees, etc., we refer to our answer to question 18 above.

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