

Technical judges: The Swiss model

In the context of the ongoing discussion on how to improve patent litigation in Poland — and in particular with reference to the proposal to introduce the institution of a technical lay judge, which we [addressed recently](#) — we would like to present **a model that could serve as an inspiration for domestic regulation.**

In this article, we outline solutions adopted in the Swiss system which, given the number of patent cases heard by that court¹ and the available pool of suitably qualified specialists, may be compared with the conditions in Poland. We explain **how Switzerland has addressed certain challenges related to introducing a technical element into patent proceedings, in particular the risk of conflicts of interest.** We then indicate why adopting similar regulations in Poland could be beneficial and could substantially increase the efficiency of patent litigation.

¹ The most up-to-date report on the functioning of the court can be found [here](#).

Swiss Federal Patent Court: basic information

The Swiss Federal Patent Court was established under [the Federal Act of 20 March 2009 on the Federal Patent Court](#) and has been operational since 1 January 2012. Its seat is in St. Gallen.

The Court adjudicates patent disputes as a court of first instance, thereby replacing the cantonal courts previously having jurisdiction in such matters.

Article 26 of the Federal Act on the Federal Patent Court defines its jurisdiction as follows:

- a) it has exclusive jurisdiction over disputes concerning the validity and infringement of patents and actions seeking the grant of licences relating to patents (including jurisdiction over provisional measures prior to the initiation of proceedings in such matters);
- b) it also has jurisdiction over other civil matters factually connected with patents, in particular disputes concerning entitlement to a patent or the transfer of a patent (this jurisdiction is non-exclusive, as such matters may also be heard by cantonal courts).

The structure and the composition of the court

The Federal Patent Court consists of **2 full-time judges and 42 part-time judges, of whom 30 possess technical qualifications and 12 legal qualifications — all judges are required to demonstrate proven knowledge of patent law** (Article 8 of the Act). They are elected by the Federal Assembly (Article 9(1)).

It is noteworthy that [the list of judges](#) available on the Court's website specifies the areas of expertise of technical judges — ranging from physics and biochemistry to mechanical engineering. The Court also transparently discloses the law firm or company in which they practise privately or are employed. **The requirements imposed on technical judges (technical education combined with knowledge of patent law) mean that the vast majority are recruited from among patent attorneys.**

Cases are heard in panels of 3, 5, or 7 judges. Each panel must include both technically qualified judges and legally qualified judges. Panels are constituted on the basis of the judges' expertise,

and each judge has an equal voting right. A technical judge prepares a technical opinion prior to the main hearing.

Preliminary matters are decided by the President of the Court sitting as a single judge, unless factual or legal considerations require the participation of additional judges, in which case two further judges are appointed. Where understanding technical issues is particularly important, the Act requires preliminary matters to be decided by a three-judge panel.

The Court's body is the Administrative Committee, composed of the two full-time judges, one of whom acts as President. A part-time judge serves as Vice-President and completes the composition of the Committee.

Conflict of interest

One of the concerns raised in the Polish debate on introducing technical judges is the issue of conflicts of interest. It is argued that where technical judges are simultaneously patent attorneys, there is a risk that they may not remain impartial in their adjudicatory role. **The Swiss model demonstrates that this risk can be mitigated through appropriate systemic safeguards.**

Key principles of the Swiss model are reflected in [the Court Regulations](#), [the Code of Conduct](#), and the [Guidelines on Independence](#). The Code of Conduct emphasises that judges of the Federal Patent Court must refrain from any behaviour that could cast doubt on their independence and impartiality (Article 2). It requires judges, prior to accepting a case, to carefully examine possible grounds for recusal, recognising that even the appearance of bias may damage the Court's reputation (Article 3).

The Guidelines underline that judges must be independent of the parties; **the fact that part-time judges act as representatives before the Court in other proceedings does not automatically compromise their independence** (Article 2).

The Guidelines distinguish between general grounds for recusal set out in statutory provisions and specific grounds for recusal. As regards the general grounds, particular importance is attached to Article 47 of the Swiss Civil Procedure Code, which provides for mandatory recusal where a judge has a personal interest in the matter, previously participated in the case in another capacity, or maintains family or close personal relationships with a party or its representative. Pursuant to Article 10 of the Court Regulations, a judge must recuse themselves immediately upon identifying such grounds.

In addition, the Federal Act on the Federal Patent Court provides that full-time judges may not act as representatives of third parties before the Court (Article 10(4)), while **part-time judges must recuse themselves if a member of their firm or their employer represents one of the parties** (Article 28). Importantly, the parties may expressly consent to the participation of a judge despite the existence of formal grounds for recusal.

A catalogue of specific grounds for recusal is set out in Article 4 of the Guidelines. A judge must withdraw, inter alia, where they are a member of a governing body or an employee of a party (or were within the previous year), have advised a party or its opponent (again within a one-year period), or have publicly commented on the case. The assessment extends beyond the individual judge to their firm or organisation.

As mentioned above, the publicly available list of judges indicates the firms employing the technical judges. The Court additionally notes that, by consulting official registers, any interested party may determine whether a judge, their employer, or a member of their firm is connected with potential parties to the dispute or with related entities in a manner that could undermine impartiality. The Court refers, inter alia, to registers such as the Swiss register of trade marks, patents, supplementary protection certificates, designs and topographies, the European Patent Register and the European patent application register maintained by the EPO, and the Patent Cooperation Treaty (PCT) application register.

Remuneration of technical judges

In Switzerland, technical judges are not employed on a full-time basis and do not receive a fixed salary. Their remuneration is governed by [the Ordinance of the Federal Assembly of 20 March 2009 on daily allowances and remuneration of part-time judges of the Federal Patent Court](#), which refers to the Ordinance of the Federal Assembly of 23 March 2007 on daily allowances and travel allowances of federal judges. **Part-time judges are remunerated for their participation in specific cases.** Their remuneration takes the form of a lump-sum allowance and constitutes a per-diem or honorarium for the performance of judicial duties.

Assessment of the Swiss model

The introduction of these solutions ensuring the participation of a technical element in Swiss patent proceedings has significantly improved their efficiency. The involvement of judges possessing

technical expertise in specific fields enables adjudicating panels to handle technically complex cases more quickly. This model also generates cost efficiencies, as it reduces the need to obtain opinions from external court-appointed experts. The Court's financial self-sufficiency — and even its contribution to the public budget — is supported by the lump-sum remuneration system for part-time judges combined with a court fee structure aligned with that system.

It should be noted that one of the reasons the Swiss model could be suitable for Poland is the comparable caseload of the Swiss Court and Polish patent courts. For example, the Federal Patent Court handled 29 proceedings in 2022 and 28 in 2023 (see [here](#)). The institution of a patent lay judge could therefore address similar needs by providing adjudicating panels with access to specialised technical expertise.