

# Technical judges: International practice and a proposal for a Polish regulation

In recent years, discussions have been ongoing in Poland on improving court proceedings in intellectual property cases. On 29 January 2026, a conference organized by the Polish Chamber of Patent Attorneys was held in Warsaw, during which a proposal was discussed **to introduce into adjudicating panels individuals with education in science, who could support courts in resolving cases requiring technical expertise.**

We present to you a series of posts in which considerations concerning the institution of the patent lay judge will be discussed. We pay particular attention to the doubts raised and indicate how

specific regulatory challenges have been addressed in other jurisdictions where such a “technical factor” already operates. We begin by outlining international practice in this area and then present the main assumptions of the proposal put forward by the Polish Chamber of Patent Attorneys.

## Solutions known from other jurisdictions

**At the outset, it should be emphasized that the proposed introduction of a technical factor into court proceedings in patent cases is by no means a revolutionary solution.** Technical judges are present in various jurisdictions and benefit the functioning of national patent courts by contributing expertise in complex technical matters that is not available to legally trained judges.

**First, technical judges operate within the [Unified Patent Court](#).** They may be individuals with higher education and documented specialist knowledge in a specific field of technology. They are required to have experience in proceedings concerning patent validity as well as knowledge of civil law and court procedure. **All of them work on a part-time basis;** they may not act as presiding judge or rapporteur in a panel. They are not experts but co-judges — they enjoy an equal vote in deliberations and judgments. At first instance, panels generally consist of two legally trained judges and one technical judge, while at second instance, in most cases, panels comprise three legally trained judges and two technical judges.

**Technical judges are also full members of adjudicating panels in the [Swiss Federal Patent Court](#).** This specialized court consists of two permanent judges, one with a legal background and one with a technical background, as well as 42 non-permanent judges (29 technical and 12 legal). A technical judge is often appointed as rapporteur. He or she prepares a preliminary technical opinion before the main hearing and participates in settlement discussions.

**Technical judges also perform adjudicatory functions in the German Federal Patent Court ([Bundespatentgericht](#)).** Actions for patent invalidation are heard by panels composed of three technical judges (with expertise in a specific field of technology) and two legally trained judges (including the presiding judge). Technical judges have voting rights equal to those of legally trained judges. Their contribution makes the German patent court largely self-sufficient and reduces the need to rely on external experts.

Interesting solutions have also been adopted in the [Swedish Patent and Market Court \(Patent- och marknadsdomstolen\)](#), which is composed of both legally trained judges and patent judges, and additionally allows for the participation of technical experts. These latter two groups are collective-

ly referred to as **technical members**. If persons other than legally trained judges should participate in a given case, the president of the court appoints technical members based on their expertise. In patent cases at first instance, panels generally consist of four members: two legally trained judges and two technical members. It is envisaged that if one or more technical members participated at first instance, at least the same number of technical members should sit on the appellate panel. Patent judges are permanent judges appointed in the same manner as other judges in Sweden (corresponding to German technical judges). Technical experts are appointed for a fixed term and are not professional judges, but they do participate in adjudication (corresponding to technical judges in the UPC).

Naturally, examples can also be drawn from outside Europe. In **Japan**, legally trained judges adjudicate cases and are supported at both the Intellectual Property High Court and district court level by technical experts. Each panel is assigned so-called technical examiners who assist judges in technical analysis. In the patent court of **South Korea**, technical officers also operate, participating in hearings and preparing technical opinions. In **China**, in certain cases before IP courts, mixed panels combining judges and technical experts are formed.

**An alternative form of involving a technical factor is, of course, the model of the court-appointed expert.** For example, in Italy, patent proceedings include a debate on technical issues, during which the parties' submissions are filed by patent attorneys and the court appoints a technical expert for the specific case. The expert is himself an experienced patent attorney who prepares a preliminary report for the parties' representatives and then — based on their comments — prepares a final report and submits it to the judge. Similarly, in France, the technical factor is introduced through experts listed on an official court register, who receive questions from the court (*mission d'expertise*), conduct technical evidentiary proceedings, and submit a written report to the court. However, they do not participate in issuing the decision. **This very limited form of participation of the technical factor in proceedings resembles the expert evidence currently used in Polish practice.**

**When comparing the various models, it must be stated that the inclusion of a technical factor — through broader involvement of experts in the adjudicatory process — undoubtedly contributes to a higher substantive quality of decisions and more efficient proceedings.** The mixed (legal-technical) model, as seen in Germany, Switzerland, or the UPC, offers significant advantages: faster proceedings in technologically complex cases, reduced dependence on experts, greater consistency of case law, and, of course, a high level of understanding of technical aspects. The purely legal model (with court-appointed experts), although organizationally simpler and less costly, does not achieve a comparable level of efficiency. Expert opinions vary in quality, and the court may lack adequate tools to verify complex technical issues. The overview presented also highlights intermediate models. In the technically supported model, legally trained judges benefit from the assistance of technical officers or permanent scientific advisers who do not have voting rights.

## The Polish Chamber of Patent Attorneys' proposal

**The Polish Chamber of Patent Attorneys' proposal consists in introducing patent lay judges into the Polish legal system — individuals possessing technical knowledge.** The proposed solution is characterized by legislative economy, as it relies on the already existing institution of the lay judge, introducing only a new type thereof.

The scope of the required statutory amendment would not be significant. In the Act of 17 November 1964 — the Code of Civil Procedure, Article 47 § 2 point 3 would be added, providing that: *at first instance the court, composed of one judge as presiding judge and two lay judges, hears cases concerning the protection of industrial property rights relating to inventions and utility models.* Article 47 § 4 would be given the following wording: *the president of the court may, at the request of the presiding judge, order that the case be heard by a panel of three judges or by a presiding judge and two lay judges, if this is deemed appropriate due to the particular complexity, precedential nature, or other special character of the case.* In turn, Article 479<sup>90</sup> would provide that appeals in cases concerning the protection of industrial property rights relating to inventions and utility models are heard by a panel of three judges.

The determination of who may serve as a patent lay judge could be made by amending Article 158 of the Act of 27 July 2001 — the Law on the System of Common Courts (hereinafter: LSCC), by adding § 4 with the following wording:

*For adjudicating cases concerning the protection of industrial property rights relating to inventions and utility models, a lay judge should be selected who has higher education in technical, exact, natural, or medical sciences and demonstrates documented, in-depth knowledge of patent matters relating to inventions, protective rights for utility models, and supplementary protection certificates for medicinal products and plant protection products.*

Lay judges would be elected — like other lay judges to regional and district courts — by municipal councils by secret ballot. Given that they would adjudicate in the Intellectual Property Division of the Warsaw Regional Court, this would be the municipal council of the seat of that court (proposed Article 160 § 3 LSCC). Candidates — in accordance with the proposed Article 162 § 1 — could be nominated by employers' organizations, organizations of technical creators, faculties of technical, exact, natural, and medical sciences at higher education institutions, as well as the professional self-government of patent attorneys. Opinions on candidates would be submitted to the municipal council by the council of the Warsaw Regional Court (§ 1b).

The advantages of such a solution are easy to envisage: **the participation of a technical factor would contribute to increased efficiency and speed of patent proceedings, as evidenced by experience from other jurisdictions.** It would also significantly enhance the professional quality of reasoning in judgments with respect to technical knowledge.

However, the preparation of appropriate regulation requires careful consideration of certain detailed issues, such as the elimination of conflicts of interest or fair remuneration of patent lay judges. In subsequent texts in this series, we will examine possible ways of addressing these challenges raised in the ongoing debate.