

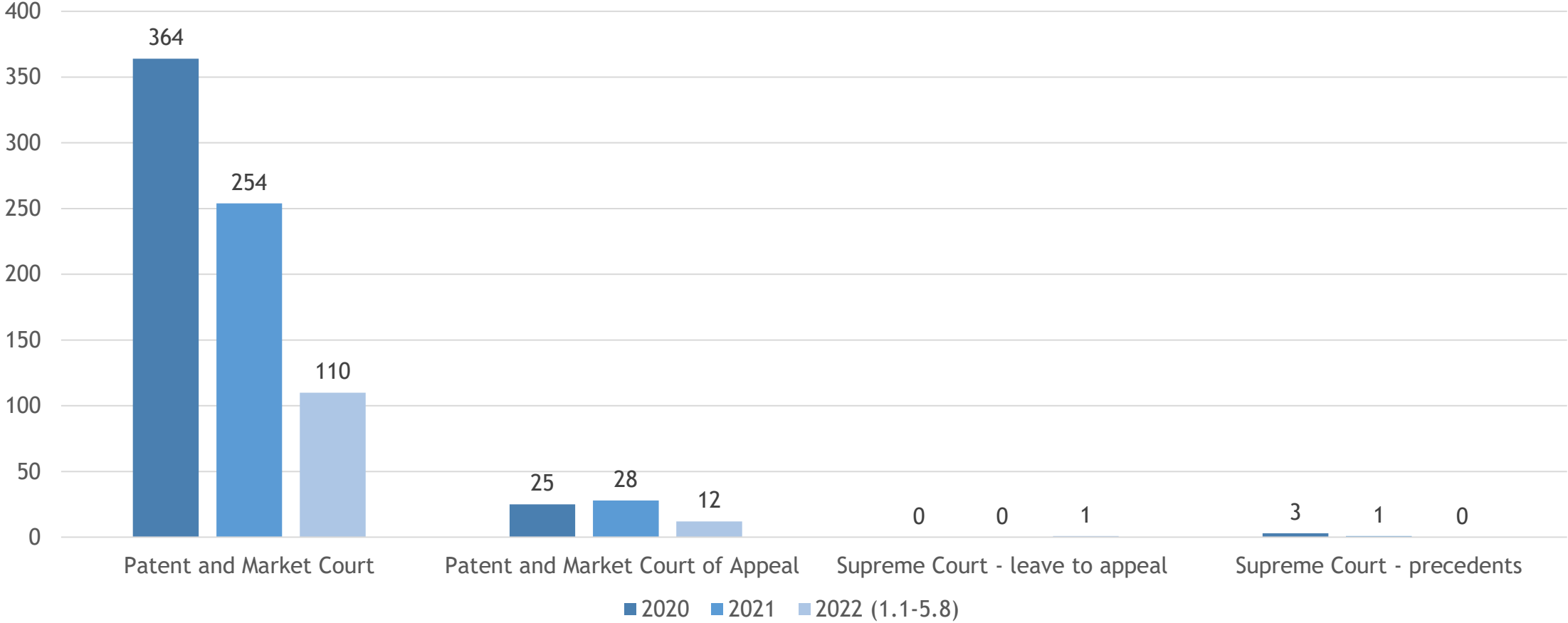
The development in the field of intellectual property and advertisement law in Sweden 2020-2022

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The number of judgments and decisions 2020-2022



Patents - procedural law

Developments in Swedish case law

Interim injunction *ex parte*

Patent and Market Court of Appeal PMÖ 9563-22

- “No injunction may be issued before the defendant has been given an opportunity to respond, *unless a delay would entail a risk of loss.*” (Sw. Patent Act)
- Qualified sabotage risk; the degree of urgency of fundamental importance.
- Circumstances indicating that opposite party may quickly take advantage of an actual opportunity to obstruct the right of the applicant.
- The principle of proportionality.

Design - procedural law

Developments in Swedish case law

Registered vs. Unregistered Community Designs

Patent and Market Court of Appeal PMÖ 2043-22

- A plaintiff had in its reply to the defense argued that the defendant also had infringed the plaintiff's **Unregistered** Community Design and not only the **Registered** Community Design, as argued in the application for a summons.
- “*The action instituted may not be amended.*” (Swedish Code of Judicial Procedure)
- The cause of action re. the Unregistered Community Design was **dismissed**.
- PMÖD granted the plaintiff the right to appeal to the Supreme Court.

Copyright

Developments in Swedish case law

The "Iron Pipe Case" - Copyright vs. fundamental rights

The Supreme Court NJA 2020 p. 293

- A politician and former member of the Parliament held neighbouring rights to a film of a street fight that took place in 2010. The politician had filmed the fight with his cell phone.
- A television company made parts of the film available to the public in 2012, without the politician's consent.
- The politician claimed that the court should declare that the television company was obliged to pay compensation due to infringement.

The "Iron Pipe Case" - Copyright vs. fundamental rights

The Supreme Court NJA 2020 p. 293

- Exemptions in the Sw. Copyright Act for news reporting were not applicable:
 - The film had **not been made public** (“offentliggjord”). A work is deemed to have been made public when it has lawfully been made available to the public.
 - The film was **not a current event**.
- Not possible to interpret the exemptions contrary to their wording, regardless of art. 5.3 c Infosoc.

The "Iron Pipe Case" - Copyright vs. fundamental rights

The Supreme Court NJA 2020 p. 293

- The right to freedom of expression and right to information (art. 10 ECHR, art. 11 EU Charter) may in exceptional cases limit **criminal liability** for copyright infringement.
- However, these provisions do not have direct effect between the parties in private law cases and could not limit the author's right to **compensation** for copyright infringement.

“En Svensk Tiger” Case - Parodies

The Patent and Market Court of Appeal B 121315-20

- “*En Svensk Tiger*” (*A Swedish Tiger/ A Swede keeps silent*) is a slogan and a picture that was part of a propaganda campaign in Sweden in the beginning of the 1940s. The purpose was to prevent espionage by encouraging secrecy.
- An author published reworked versions of “*En Svensk Tiger*” depicting Nazi references.
- Criminal action by the public prosecutor.

“En Svensk Tiger” Case - Parodies

The Patent and Market Court of Appeal B 121315-20

- The author argued that reworked versions were used as a symbol for the “culture of silence” in Sweden and not copyright infringements.
 - New and independent works
 - Parodies
- The Swedish Copyright Act does **not stipulate an exemption for parodies** (cf. art. 5.3 k Infosoc).
- The principle of legality.
- PMÖD instead examined whether the reworked versions were **new and independent works** in accordance with previous Swedish case law.

“En Svensk Tiger” Case - Parodies

The Patent and Market Court of Appeal B 121315-20

- PMÖD found that the **originality requirement** was met.
 - Reflected the personality of its creator by expressing free and creative choices.
 - Motifs expressed a completely different meaning than the original work.
- PMÖD hence found that the reworked versions were **new and independent works** that did not infringe the copyright to the original work.
- An **inquiry chair** has been appointed to review *inter alia* the parody exemption. (Dir. 2022:125)

Dynamic blocking injunctions

The Patent and Market Court of Appeal PMT 13399-19, PMÖD 2020:1

- An ISP was considered to contribute to copyright infringement by providing internet access to its subscribers enabling them to access *i.a.* TPB.
- The ISP was prohibited to continue to contribute to copyright infringement and ordered to block its subscribers' access to the services via certain domain names by means of technical blocking measures.
- Additional domain names that have the main purpose of providing access to the services should also be blocked, if the ISP is notified of the domain name by one of the plaintiffs. Blocking measures should be taken within three weeks from notification.

Other guiding judgements from the Patent and Market Court of Appeal and the Supreme Court 2020-2022

2020

- The Supreme Court Ö 5697-19 – Patent and Market Court’s hearing of a contractual dispute in connection with a patent dispute between the same parties
- The Supreme Court Ö 6070-20 - The Patent and Market Courts capacity to try a prosecutor’s notification of seizure regarding criminal copyright infringement

2021

- PMT 873-19 – Patent litigation costs after revocation of patent
- PMÖÄ 4775-21 – Likelihood of confusion between trademarks when the older trademark is registered and has the character of a slogan
- The Supreme Court T 2517-21 – Marketing of alcohol (“*bildregeln*”)

2022

- PMT 8284-20 – Parallel traders prohibited from selling repacked pharmaceuticals
- PMÖA 6119-20 – Gambling advertisement
- PMÖ 5182-22 – Admissibility of infringement action before granting of patent
- PMT 13193-20 (cf. PMT 9082-18) – Environmental claims and the transaction test in the Marketing Practices Act

Thank you!

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