



ITALIAN CIVIL PROCEDURE REFORM - 2023

A short overview of the most
relevant news for IP litigation.

|
tornato prado
avvocati

foro buonaparte, 53 - 20121 milano
tel. +39 02 48193693 / 02 72002921 / 02 89010652
fax +39 02 4693418 / 02 89010610
www.tornatoprado.com - info@tornatoprado.com

Introduction: legislative decree no. 149/2022

- Legislative decree no. 149/2022 operates an ample reform of multiple aspects of Italian civil procedure, with the goal of significantly reducing the duration of court proceedings;
- Entry into force of the reform, originally set for June 2023, was last brought forward to March 1, 2023.

Table of contents

1. First
Instance
proceedings

2. Appeal
and proceedings
before the
Supreme Court

3. Arbitration

First instance proceedings

- i. Mediation;
- ii. Evidentiary briefs and case management;
- iii. First hearing;
- iv. Anticipated decision of the case;
- v. Final briefs and decision of the case;
- vi. The so-called simplified procedure of cognition.

i. Mediation

- Pre-trial mediation will be mandatory in a number of cases which may incidentally concern IP issues, such as joint venture, consortium, franchise, labor, network, supply, partnership, and subcontracting contracts;
- The judge may also, during the course of the proceedings, refer the parties to a mediator if he deems it useful.

ii. Introductory briefs, case management, evidentiary briefs

- The plaintiff must set the date for the first hearing in the writ of summons: between the serving of the summons and the first hearing there must be a period of at least 120 days if the summons is served in Italy, 150 days if it is served abroad;
- The defendant's writ of appearance must be filed at least 70 days before the date set for the first hearing;
- Counterclaims must be included in the writ of appearance.

- Once the writ of appearance has been filed, the judge must *ex officio* carry out preliminary checks on the regularity of the adversarial process and decide thereon;
- 40 days before the first hearing, the parties may file a brief in which they propose claims objections that are a consequence of the counterclaims or objections proposed by other parties, and specify or amend the claims, objections and conclusions already proposed;

- 20 days prior to the hearing, the parties may file a brief to reply to new or amended claims and objections by the other parties, propose the objections that are a consequence of the new claims in the first brief, as well as indicate the means of evidence and make documentary filings;
- 10 days prior to the hearing, the parties may file a brief containing counter evidence as well as their reply to any objections raised in the second brief.

iii. First hearing

- The parties or their legal representatives must personally appear during the first hearing;
- If one party does not appear, the judge may confer this conduct evidentiary relevance;
- During the hearing, the judge may ask clarifications from the parties and try to reconcile them;
- Subsequently, the judge will decide any evidentiary matters and set the subsequent hearings.

iv. Anticipated decision of the case.

- At the request of a party and in cases where the claims are manifestly founded or unfounded, the court may decide cases concerning "disposable rights" by an order granting or rejecting the application. Said order may be appealed before the panel. If the appeal is granted, the proceedings continue before a different judge.

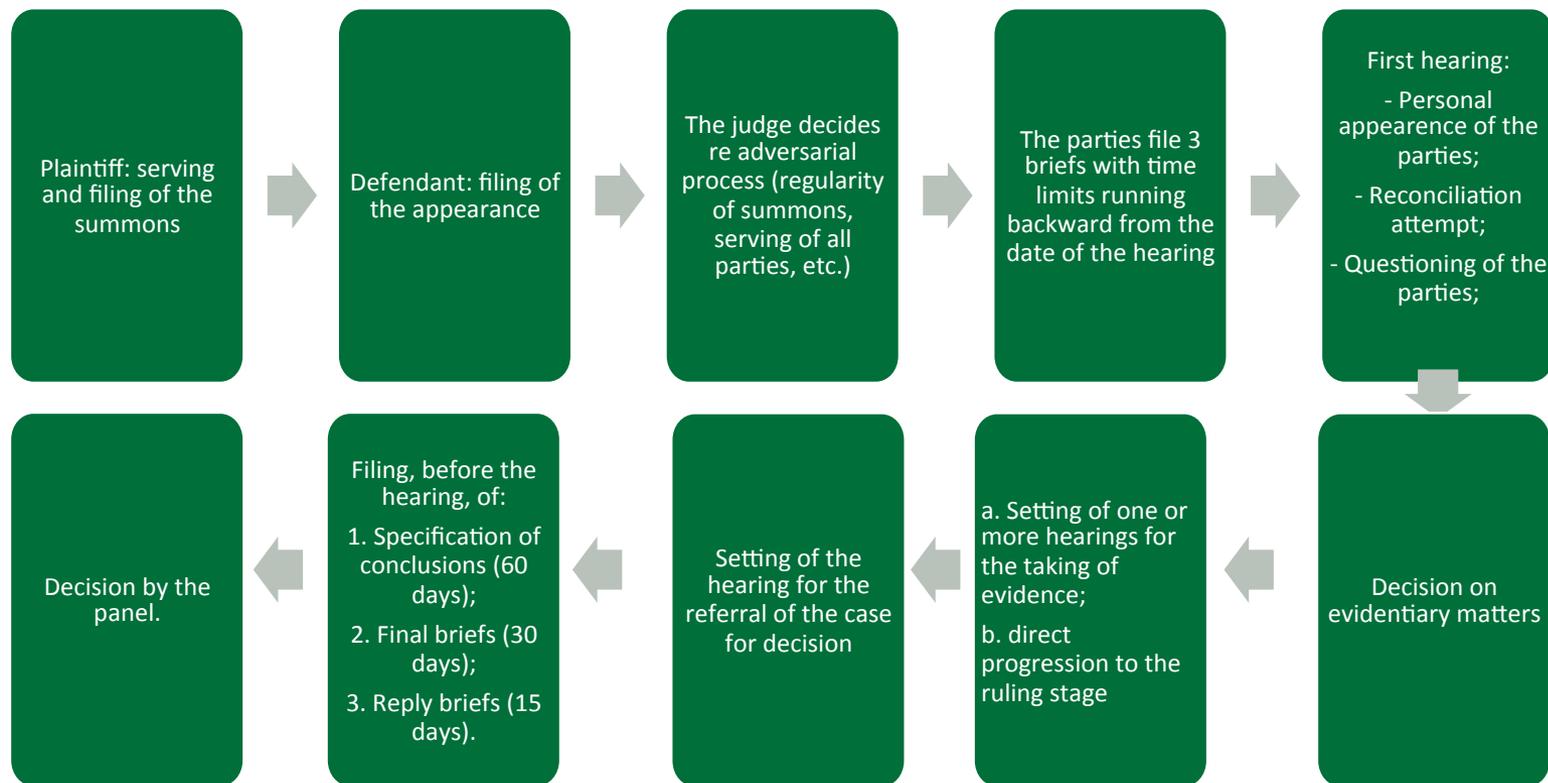
v. Final briefs and decision of the case.

- Once the judge deems the case ready for the decision, he sets the hearing «for referral of the case for decision»;
- 60 days before said hearing, the parties must specify their conclusions;
- 30 days before the hearing, the parties must file their final briefs;
- 15 days before the hearing, the parties must file their reply briefs;

- If one or both parties, when specifying their conclusions, requests that the case be orally discussed before the panel, the President of the court sets the hearing for oral discussion;
- 30 days before said hearing, the parties may file their final briefs;
- At the hearing, the judge rapporteur summarizes the claims, after which the discussion takes place;
- The decision is then issued by the panel at a later date and in written form.

- The investigating judge/judge rapporteur may also decide *ex officio* to set the hearing for oral discussion before the panel and assign the parties deadlines of 30 days before the hearing for the specification of the respective conclusions and of 15 days before the hearing for final briefs;
- The case is then discussed before the panel, which then issues the decision immediately in the minutes of the hearing or at a later moment.

Basic structure of first instance proceedings



vi. The so-called simplified procedure of cognition.

- The reform extends the applicability of the so-called simplified procedure of cognition («PSC») to all proceedings, including IP proceedings;
- The PSC – which is chosen by the plaintiff – functions as an alternative to the ordinary first instance procedure and is characterized by a marked deformatization;
- It is admissible when an uncomplicated investigative phase is envisaged or the facts of the case are agreed upon by the parties;

Appeal and proceedings before the Supreme Court

- i. Proceedings before the Court of Appeal;
- ii. Proceedings before the Supreme Court;

i. Proceedings before the Court of Appeal.

- While before the whole proceeding was directed by the full panel, the reform structures the appeal proceedings similarly to the first instance: the investigative judge/judge rapporteur presides over the introduction of the case and the evidentiary phase, while the panel decides the case;
- If the appeal is evidently unfounded or inadmissible, or if the judge deems the case to be particularly urgent or not complex, the appeal can be decided following oral discussion and with a simplified judgement.

- If the appeal is evidently unfounded or inadmissible, or if the judge deems the case to be particularly urgent or not complex, the appeal can be decided following oral discussion and with a simplified judgement;
- The decision of the appeal is structured as in the first instance.

ii. Proceedings before the Supreme Court.

- Judges in the first and second instance may now, in certain cases, order a preliminary referral to the Supreme Court regarding issues of law;
- The proceeding before the Court will involve a public hearing only when the case concerns a question of particular importance. In all other cases, the Court will decide without hearing the parties in oral form;

- An expedited procedure is introduced for inadmissible, inadmissible or manifestly unfounded petitions. In such cases, the judge shall make a proposal for decision and, unless expressly requested by the party concerned, the petition shall be deemed waived after 40 days.

Arbitration

- Strengthening of the impartiality of the arbitrator, who must declare in written form that there are no reasons for recusal. Furthermore, the grounds for recusal are expanded;
- If so convened by the parties, the arbitrators can now grant preliminary injunctions and other preliminary measures.

For the sake of brevity, the above covers only the most impactful new provisions. Should you prefer a more comprehensive overview of italian civil procedure, on specific aspects or branches of IP litigation, or any clarifications thereon, the Firm remains at your disposal.