

Report on the Harmonization of the Enforcement of Intellectual Property Rights in the EU and Certain Non-EU Jurisdictions – Preliminary Injunctions

**Prepared by the Enforcement Committee
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INTRODUCTION

Survey:

Harmonization on the enforcement of intellectual property rights in EU and certain non EU countries – preliminary injunctions

The International Trademark Association (INTA) is currently assessing whether further harmonization on the enforcement of intellectual property rights is required in the EU and in certain non EU countries.

The difference in requirements and procedures concerning preliminary injunctions may be regarded as the main finding of the survey. The same is true not only for non EU countries listed below, but most surprisingly for EU countries even though the Directive 2004/48/EC on the Enforcement of Intellectual Property Rights (“IPRED”) provided a first step towards harmonization. Specific proceedings in countries of both groups seem to differ due to different requirements especially when it comes to obtaining a preliminary injunction as a method of quick and effective legal protection in cases where the infringement of such intellectual property rights is clear-cut. Therefore, INTA has set itself the goal of comparing these different requirements of obtaining a preliminary injunction both within the Member States of the European Union and certain non EU countries and potentially suggesting improvements.

In order to reach this goal, this subgroup has prepared a questionnaire that contains a considerable number of questions regarding preliminary injunctions proceedings and that was sent out to specialists within the area of intellectual property rights in each respective country. We received quite a number of replies and were able to assess the state of affairs regarding preliminary injunctions in IP matters in the following states of the European Union and Non EU countries.

EU countries:

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark

Estonia
Finland
France
Germany
Greece
Hungary
Spain

Ireland
Italy
Latvia
Lithuania
Luxembourg
Malta
Netherlands

Poland
Portugal
Romania
Slovakia
Slovenia
Sweden
United Kingdom

Non Eu countries:

[Argentina](#)
[Australia](#)
[Brazil](#)
[Canada](#)
[Chile](#)

[China](#)
[Hong Kong](#)
[India](#)
[Japan](#)
[Mexico](#)

[Nigeria](#)
[Norway](#)
[Russia](#)
[Singapore](#)
[South Africa](#)

[South Korea](#)
[Switzerland](#)
[Turkey](#)
[USA](#)

A. EXECUTIVE SUMMARY - EU COUNTRIES

	Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement ? If so, is there a realistic chance to obtain such a relief in practice?	Are PI's granted ex-parte?	What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?	Is there a requirement for "urgency", i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?	Does a security deposit have to be made?	Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?	Is it mandatory to file the main action once the PI was granted?	Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?	What are the average costs and how long do the proceedings take?
Austria	Yes	Yes	Answer below	Answer below	May be required	Yes	Yes	Yes	Answer below
Belgium	Yes	Yes	Answer below	Answer below	No conclusive answer	Yes	Yes	Yes	Answer below
Bulgaria	Yes	No	Answer below	Answer below	Yes	Yes	Yes	Yes	Answer below

Croatia	Yes	Yes	Answer below	Answer below	No conclusive answer	Yes	Yes	Yes	Answer below
Cyprus	Yes	Yes	Answer below	Answer below	Yes	Yes	Yes	Yes	Answer below
Czech Republic	Yes	Yes	Answer below	Answer below	Yes	Yes	No	Yes	Answer below
Denmark	Yes	Yes	Answer below	Answer below	May be required	Yes	Yes	Yes	Answer below
Estonia	Yes	Yes	Answer below	Answer below	Yes	Yes	Yes	Yes	Answer below
Finland	Yes	Yes	Answer below	Answer below	Yes	Yes	Yes	Yes	Answer below
France	Yes	Yes	Answer below	Answer below	May be required	Yes	Yes	Yes	Answer below
Germany	Yes	No	Answer below	Answer below	No	Yes	No	Yes	Answer below
Hungary	Yes	Yes	Answer below	Answer below	Yes	Yes	Yes	Yes	Answer below
Ireland	Yes	No	Answer below	Answer below	No	Yes	No	Yes	Answer below
Italy	Yes	Yes	Answer below	Answer below	May be required	Yes	Yes	Yes	Answer below
Latvia	Yes	Yes	Answer below	Answer below	Yes	Yes	Yes	Yes	Answer below
Lithuania	Yes	Yes	Answer below	Answer below	No	Yes	Yes	Yes	Answer below
Luxembourg	Yes	Yes	Answer below	Answer below	May be required	Yes	Yes	Yes	Answer below
Malta	Yes	Yes	Answer below	Answer below	May be required	Yes	Yes	No	Answer below
Netherlands	Yes	Yes	Answer below	Answer below	No	Yes	Yes	Yes	Answer below

Poland	Yes	Yes	Answer below	Answer below	May be required	Yes	No	Yes	Answer below
Portugal	Yes	No	Answer below	Answer below	May be required	Yes	No	Yes	Answer below
Romania	Yes	Yes	Answer below	Answer below	Yes	Yes	Yes	Yes	Answer below
Slovakia	Yes	Yes	Answer below	Answer below	May be required	Yes	Yes	Yes	Answer below
Slovenia	Yes	Yes	Answer below	Answer below	No	Yes	Yes	Yes	Answer below
Spain	Yes	Yes	Answer below	Answer below	Yes	Yes	No	Yes	Answer below
Sweden	Yes	Yes	Answer below	Answer below	No	Yes	Yes	Yes	Answer below
United Kingdom	Yes	Yes	Answer below	Answer below	May be required	Yes	Yes	Yes	Answer below

B. EXECUTIVE SUMMARY - NON-EU COUNTRIES

	Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?	Are PI's granted ex-parte?	What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?	Is there a requirement for "urgency", i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?	Does a security deposit have to be made?	Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?	Is it mandatory to file the main action once the PI was granted?	Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?	What are the average costs and how long do the proceedings take?
Argentina	Yes	Yes	Answer below	No	Yes	Yes	Yes	Yes	Depends
Australia	Yes	Yes	Answer below	No	No	Yes	Yes	Yes	Depends
Brazil	Yes	Yes	Answer below	No	Depends	Yes	Yes	Yes	Depends
Canada	Yes	Yes	Answer below	No	Depends	Yes	Yes	Yes	Depends
Chile	Yes	Yes	Answer below	No	Depends	Yes	Yes	No	Depends
China	Yes	No	Answer below	No	Yes	Yes	Yes	Yes	Depends
Hong Kong	Yes	Yes	Answer below	Yes	Yes	Yes	Yes	Yes	Depends

India	Yes	Yes	Answer below	No	No	Yes	Yes	Yes	Depends
Japan	Yes	Yes	Answer below	No	Yes	Yes	No	Yes	Depends
Mexico	Yes	No	Answer below	No	Yes	Yes	Yes	Yes	Depends
Nigeria	Yes	Yes	Answer below	Yes	No	Yes	Yes	Yes	Depends
Norway	Yes	Yes	Answer below	No	Yes	Yes	Yes	Yes	Depends
Russia	Yes	Yes	Answer below	No	Depends	Yes	Yes	Yes	Depends
Singapore	Yes	Yes	Answer below	Yes	Depends	Yes	Yes	Yes	Depends
South Africa	Yes	Yes	Answer below	No	Yes	Yes	Yes	Yes	Depends
South Korea	Yes	No	Answer below	No	Depends	Yes	No	Yes	Depends
Switzerland	Yes	Yes	Answer below	No	Depends	Yes	Yes	Yes	Depends
Turkey	Yes	Yes	Answer below	Yes	Depends	Yes	Yes	Yes	Depends
USA	Yes	Yes	Answer below	No	Depends	Yes	Yes	Yes	Depends

C. IN DETAIL – EU COUNTRIES (by topic)

Question 1: General remarks to preliminary injunctions in European countries

Question 1 was aimed at establishing whether the national laws provide for preliminary injunctions or similar relief in the context of trademark infringement and, in case they provide, identifying their general procedural features.

Question 1.a.

Do the laws of your country provide for preliminary injunction or similar provisional relief in the context of trademark infringement?

Country	Preliminary injunction or similar provisional relief in the context of trademark infringement
Austria	Yes
Belgium	Yes
Bulgaria	Yes
Croatia	Yes
Cyprus	Yes
Czech Republic	Yes
Denmark	Yes
Estonia	Yes
Finland	Yes
France	Yes
Germany	Yes
Hungary	Yes
Spain	Yes
Ireland	Yes
Italy	Yes
Latvia	Yes
Lithuania	Yes
Luxembourg	Yes
Malta	Yes
Netherlands	Yes
Poland	Yes
Portugal	Yes

Romania	Yes
Slovakia	Yes
Slovenia	Yes
Sweden	Yes
United Kingdom	Yes

All jurisdictions provide for preliminary injunctions in trademark matters.

Question 1.b.

Are the PIs in cases of IP rights infringement issued by a specialized court? If 'No': Are they issued by a specialized senate? If 'No': Are they issued by a specialized judge?

Country	PIs in cases of infringement of IP rights are issued by a specialized court	PIs in cases of infringement of IP rights are issued by a specialized senate	PIs in cases of infringement of IP rights are issued by a specialized judge
Austria	Yes	Yes, for patent infringement cases	Not applicable
Belgium	Yes	Not applicable	Not applicable
Bulgaria	No		
Croatia	No	No	No
Cyprus	No		
Czech Republic	Yes	Not applicable	Not applicable
Denmark	Yes	Not applicable	Not applicable
Finland	Yes	Not applicable	Not applicable
France	Yes	Not applicable	Not applicable
Germany	Yes	Yes	Yes
Hungary	Yes	Yes	-
Spain	Yes	Not applicable	Not applicable
Ireland	No	Yes	Not applicable
Italy	Yes	Not applicable	Not applicable
Latvia	No		
Lithuania	No		
Luxembourg	Yes		

Malta	Yes	Not applicable	Not applicable
Netherlands	No	No	Yes
Poland	No		
Portugal	Yes	Not applicable	Yes
Romania	Yes	Not applicable	Not applicable
Slovakia	Yes	Not applicable	Not applicable
Slovenia	Yes	Yes	Not applicable
Sweden	Yes	Not applicable	Not applicable
United Kingdom	Yes	Not applicable	Yes

Within this question we first wanted to know whether there was a specialized court for issuing preliminary injunctions in the member states. In fact, the answers to this question already differed. Whilst in some countries preliminary injunctions in cases of IP rights infringement are issued by a specialized court and – in some cases – even by a specialized senate or at least a specialized judge, in quite a number of countries such injunctions are simply issued by a general court.

Within this list the following distinctive feature regarding the court system and the issuance by a specialized senate and/or judge are notable:

Country	Distinctive feature
Austria	Specialized senate only in patent infringement proceedings.
Croatia	Commercial Courts are competent for dealing with IP matters; there are four Commercial Courts in Croatia: Zagreb, Split, Rijeka, Osijek.
Czech Republic	Industrial property matters fall within the subject matter and venue jurisdiction of the Prague Municipal Court; appellate court: Prague high Court
Denmark	The Maritime and Commercial High Court is normally the court which deals with such cases
Finland	Since 2013: “Market Court” is competent court for civil and administrative IP proceedings; decision may be appealed by filing an application for a leave to appeal to the Supreme court.
France	There are specialized courts for patents, EUTM and Community designs matters (Paris court). That court has jurisdiction both on the merits and for PI. As for other IP rights, only certain Courts of First Instance are geographically competent .
Germany	Commercial court is competent for issuance with the judges being specialized in commercial matters such as trademarks or unfair competition.

Hungary	The Metropolitan Tribunal has exclusive jurisdiction at the first instance, the Metropolitan Court of Appeal at the second instance.
Ireland	High Court has competence for monetary awards in general and as such for trademark infringement proceedings as well. IP cases (incl. trademark cases) can be transferred into the commercial list of the High Court and be actively case managed.
Italy	In Italy there are 22 specialized Courts with competence for all IP-related matters, established with Legislative Decree n. 168/2003, as amended by Decree 1/2012 and subsequent modifications. In case one or more defendants is not domiciled in Italy, provided that the regular criteria of territorial competence are abided by, the competent specialized Courts are those in Bari, Cagliari, Catania, Genova, Milano, Napoli, Roma, Torino, Venezia, Trento or Bolzano.
Malta	Issued by the First Hall of the Civil Court.
Netherlands	Issued by the “president” of the absolutely and relatively competent court. Infringements of EUTM’s are dealt with exclusively by the court of The Hague.
Spain	Commercial court is competent for issuance.
Portugal	-
Slovakia	-
Slovenia	Commercial Department of the Ljubljana Circuit Court is competent for procedures on the merits of IP infringement
Sweden	-
United Kingdom	Applications for preliminary injunctions are usually made to the High Court and heard by specialist judges dealing with IP cases.

Question 1. c.

Does your jurisdiction provide *ex parte* injunctions?

Country	Ex parte injunctions
Austria	Yes
Belgium	Yes
Bulgaria	Yes
Croatia	Yes

Cyprus	Yes
Czech Republic	Yes
Denmark	Yes
Estonia	Yes
Finland	Yes
France	Yes
Germany	Yes
Hungary	Yes
Spain	Yes
Ireland	Yes
Italy	Yes
Latvia	Yes
Lithuania	Yes
Luxembourg	Yes
Malta	Yes
The Netherlands	Yes
Poland	Yes
Portugal	Yes
Romania	Yes
Slovakia	Yes
Slovenia	Yes
Sweden	Yes
United Kingdom	Yes

All jurisdictions provide for *ex parte* injunctions. However, there are differences regarding to the respective circumstances in which such injunctions are being issued in trademark matters.

Question 1.d.

Does your jurisdiction provide a special injunction aimed at securing evidence in IP matters?

Country	Special injunction aimed at securing evidence in IP matters
Austria	Yes

Belgium	Yes
Bulgaria	Yes
Croatia	Yes
Cyprus	Yes
Czech Republic	Yes
Denmark	Yes
Estonia	No
Finland	Yes
France	Yes
Germany	Yes
Hungary	Yes
Spain	Yes
Ireland	Yes
Italy	Yes
Latvia	Yes
Lithuania	Yes
Luxembourg	Yes
Malta	Yes
Netherlands	Yes
Poland	Yes
Portugal	Yes
Romania	Yes
Slovakia	Yes
Slovenia	Yes
Sweden	Yes
United Kingdom	Yes

Considering the importance of securing evidence in IP matters by providing a special injunction directly aimed at this, it was positive to note that most of the European countries with the exception of Estonia provide for an injunction aimed at securing evidence in IP matters and that most of the time these injunctions do not differ from “regular” preliminary injunctions with regard to the requirements and deadlines.

The countries where there are differences are the following:

Country	Difference(s)
Belgium	Special procedure similar to “Anton Piller order” listing the requirements specifically with respect to the existence of the IP right and the probability of the infringement.
Czech Republic	No statutory deadlines for making a decision.
Denmark	Injunctions aimed at securing evidence are issued by a different court (the Bailiff Court) and different deadlines apply for filing the main case (the deadline is 4 weeks instead of 2 weeks).
France	There are specific rules and deadlines that apply to preliminary injunctions regarding IP rights (cf. the IP Code), i.e. the delay for filing an action on the merits is 20 business days, or 31 days – if these deadlines are not met, the measures ordered are cancelled. Furthermore, the claim must be plausible,
Germany	Alleged infringement must be clear and obvious.
Hungary	Provisions of the Enforcement Act apply.
Latvia	Application for securing evidence before filing an action shall be ruled upon by a court or a judge within ten days of its receipt. Key differences: (1) Short terms for courts to decide; (2) Ex-parte examination is possible; (3) A judge may make a decision without summoning potential participants.
Luxembourg	This type of injunction is limited to ex parte injunctions and only granted when the requirements of the Enforcement Act are fulfilled: (1) <i>prima facie</i> validity of the IP right, (2) circumstantial evidence of IP right violation or threat thereof, (3) and, additionally for seizures, a balance of interests and demonstration that IP infringement cannot be reasonably contested.
Malta	This type of injunction must be filed in the course of a pending lawsuit.
Portugal	-
Slovenia	To succeed in securing evidence, plaintiff muss show that: (1) He has a valid claim regarding one of the IP rights; (2) There is an infringement of his rights or at least an immediate threat to his IP rights; (3) There is the actual danger that evidence will be destroyed or cannot be obtained otherwise.

Question 1.e.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce? In your experience is seizure of such goods generally allowed for in practice? Are seizures regularly executed in practice?

Country	Seizure to prevent the entry into commerce of goods suspected of infringing a trademark	Seizure generally allowed	Seizure regularly executed in practice
Austria	Yes	Yes	No
Belgium	Yes		
Bulgaria	Yes		
Croatia	Yes		
Cyprus	Yes	Yes	No
Czech Republic	Yes		
Denmark	Yes		
Estonia	Yes		
Finland	Yes	Yes	No
France	Yes		
Germany	Yes		
Hungary	Yes		
Spain	Yes		
Ireland	Yes	Yes	No
Italy	Yes		
Latvia	Yes		
Lithuania	Yes		
Luxembourg	Yes		
Malta	Yes		
Netherlands	Yes		
Poland	Yes		
Portugal	Yes		
Romania	Yes		
Slovakia	Yes		
Slovenia	Yes		
Sweden	Yes		

United Kingdom	Yes		
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All of the countries considered in this survey provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce, even though there are differences in how these seizures are handled in practice and in whether such seizure of goods is generally being executed in practice on a regular basis. Especially France apparently has a long practice of infringement seizure (“saisie-contrefaçon”), therefore it is quite easy to obtain and to execute such seizure.

There are a few countries that – even though seizures of goods are generally allowed for in practice – do not execute such seizures on a regular basis: Austria, Cyprus, Finland and Ireland. In Austria such seizures are being executed mostly in criminal proceedings whilst such execution in civil proceedings is quite rare. In Finland there are no such restrictions to criminal proceedings, but as these seizures depend on the overall circumstances of the case, the threshold has been relatively high.

In Slovakia, the legislation regarding preliminary injunctions is quite general, therefore it is possible that a preliminary injunction with this content will be issued, though this is not directly foreseen by the laws and has not been experienced by the lawyer participating in this survey.

Question 1.f.

Do the laws of your country provide for a preliminary injunction or similar relief against an intermediary whose services are being used by a third party to infringe the applicant’s trademark? In your experience are such measures against an intermediary generally applied for in practice?

Country	Preliminary Injunction or similar relief against an intermediary whose services are being used by a third party to infringe the applicant’s trademark	Preliminary Injunction or similar relief against an intermediary whose services are being used by a third party to infringe the applicant’s trademark is generally applied in practice
Austria	Yes	No
Belgium	Yes	Yes
Bulgaria	Yes	Yes
Croatia	Yes	Yes
Cyprus	Yes	No
Czech Republic	Yes	No
Denmark	Yes	Yes

Estonia	Yes	No
Finland	Yes	No
France	Yes	Yes
Germany	Yes	Yes
Hungary	Yes	Yes
Spain	Yes	Yes
Ireland	Yes	No
Italy	Yes	Yes
Latvia	Yes	Yes
Lithuania	Yes	Yes
Luxembourg	Yes	No
Malta	Yes	No
The Netherlands	Yes	Yes
Poland	Yes	Yes
Portugal	Yes	No
Romania	Yes	No
Slovakia	Yes	No
Slovenia	Yes	No
Sweden	Yes	Yes
United Kingdom	Yes	No

All of the countries considered in this survey provide for a preliminary injunction or similar relief against an intermediary whose services are being used by a third party to infringe the applicant’s trademark. However, only in a few countries such measures are generally applied for in practice (such as Belgium, Bulgaria, Croatia, Denmark, France, Germany, Hungary, Italy, Spain, Latvia, Lithuania, Malta, Netherlands, Poland and Sweden). Regarding Germany, it must be noted that in most cases such measures are only applied for if the intermediary does not stop the infringement following a notice-and-take down procedure.

Question 1.g.

Do the laws of your country provide a preliminary injunction for blocking of accounts and other assets in certain circumstances of trademark infringement? In your experience, is such a blocking of bank accounts or other assets regularly ordered in practice?

Country	Preliminary Injunction for blocking of bank accounts and other assets in certain	Preliminary Injunction for blocking of bank accounts and other assets in certain circumstances of trademark
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	circumstances of trademark infringement	infringement regularly ordered in practice
Austria	No	No
Belgium	Yes	No
Bulgaria	Yes	No
Croatia	Yes	No
Cyprus	Yes	No
Czech Republic	No	No
Denmark	Yes	No
Estonia	Yes	No
Finland	Yes	No
France	Yes	No
Germany	Yes	Yes
Hungary	Yes	No
Spain	Yes	No
Ireland	Yes	No
Italy	Yes	No
Latvia	Yes	No
Lithuania	No	No
Luxembourg	Yes	No
Malta	Yes	No
The Netherlands	Yes	No
Poland	Yes	No
Portugal	Yes	No
Romania	Yes	No
Slovakia	No	No
Slovenia	Yes	No
Sweden	Yes	No
United Kingdom	Yes	Yes

Almost all countries that were considered provide a preliminary injunction for blocking of bank accounts and other assets in certain circumstances with the exceptions of Czech Republic, where it is uncertain whether the blocking of bank accounts would be covered by accepted measures to prevent a party from disposing with certain assets or rights, as well as Italy, Slovakia, Spain and Romania. Still, this measure is

generally not applied for in practice quite often and is – according to the survey – only for sure known to be happening in Germany and even there only in cases of clear infringement. Equally, in the United Kingdom such measures depend on the circumstances of each case and are up to discretionary relief.

In the Netherlands, the courts do not necessarily “block” bank accounts – in fact, the plaintiff may seek an ex ante permission to seize funds in a bank account and the courts will – if applied for – determine the amount that may be seized.

Question 1.h.

Do the laws of your country provide for provisional measures to obtain information from the defendant related to the asserted trademark infringement? In your experience is a request for such measures generally granted in practice?

Country	Provisional measures to obtain information from the defendant related to the asserted trademark infringement	Provisional measures to obtain information from the defendant related to the asserted trademark infringement are generally granted in practice
Austria	Yes	
Belgium	Yes	
Bulgaria	Yes	
Croatia	Yes	
Cyprus	Yes	
Czech Republic	No	
Denmark	Yes	
Estonia	Yes	
Finland	Yes	
France	Yes	
Germany	Yes	
Hungary	Yes	
Spain	No	
Ireland	Yes	
Italy	No	
Latvia	Yes	
Lithuania	Yes	
Luxembourg	Yes	
Malta	Yes	

The Netherlands	Yes	
Poland	Yes	
Portugal	Yes	
Romania	No	
Slovakia	No	
Slovenia	Yes	
Sweden	Yes	
United Kingdom	Yes	

The answers to the question whether the laws of the countries participating in this survey provided for provisional measures to obtain information from the defendant related to the asserted trademark infringement were predominantly positive. The only countries not providing for this special measure were Austria, Czech Republic (here this measure is only available in the proceedings on the merits, if not provided by the defendant to the injured party upon its request prior initiation of the court proceedings) and Lithuania.

In Slovakia, the legislation regarding preliminary injunctions is quite general, therefore it is possible that a preliminary injunction with this content will be issued, though this is not directly foreseen by the laws and has not been experienced by the lawyer participating in this survey.

Question 2: Measures to take before asking for a preliminary injunction

Is there a deadline to file a PI subsequently to the trademark owner learning about the infringement?

Considering that the ultimate goal is the harmonization on the enforcement of intellectual property rights within the European Union, it was interesting to note that there is no harmonization, regarding deadlines to file a preliminary injunction after the respective trademark owner has learned about the infringement that might have to be adhered to. The survey results show, that only 10 countries have a specific deadline which trademark owners have to meet when filing a PI request. However, there is consensus that trademark owners have to move quickly upon finding out about the infringement, as urgency is one of the requirements that have to be met in order for the Court to grant the PI. Furthermore, unjustified delays, may result in loss of rights for the trademark owner.

If 'Yes': Range of this deadline: less than ___ months (*please fill in*)

In most of the countries surveyed, where a deadline to file a PI exists, this is 2 months (Hungary, Spain) or less (Germany). In Malta, the deadline is not fixed but the trademark owner has to file the PI within a reasonable time, which could be 2 months. Latvia has the longest deadline, which is 3 months.

Is this deadline imposed by law?

Of the 28 countries surveyed only 3 (Austria, Hungary and Latvia) have a statutory deadline in order to file the PI.

Is this deadline accepted by jurisprudence, but not covered by law?

Out of the 28 countries surveyed, in 7, the deadline to file the PI has been formulated by jurisprudence with the rest not having a specific deadline. Concerning countries where the deadline has been formulated by courts, the results point to a general lack of harmonisation as in some countries the deadline is a matter of discretion, defined by the competent judge whereas in other jurisdictions the deadline has been specifically defined by the prevailing jurisprudence (Germany, Spain, Malta):

Country	Deadline	Deadline defined by law	Deadline defined by jurisprudence
Austria	Yes	Yes	-
Belgium	No, but case will look not convincing if wait is too long	-	-
Bulgaria	No, but five years after cease of infringement defendant may object to the main claim on formal grounds	-	-
Croatia	-	-	-
Cyprus	-	-	Yes
Czech Republic	No, but court must be satisfied that the injunction is required urgently or that there is a danger that the enforcement of the decision could be jeopardized	-	-
Denmark	No, but failure to act may result in loss of rights. Most often, a failure to act will affect the quantification of damages but it may also affect the issue of infringement itself (although a longer period of inactivity is required for this).	-	Yes
Estonia	-	-	-
Finland	-	-	-
France	No, but in the cases of <i>ex parte</i> requests or other urgent requests, the plaintiff has	-	Yes

	to prove that the request has been filed within a reasonable time limit (up to judge's discretion)		
Germany	Yes, depending on the court between one and two months from time of knowledge of infringement; in very rare cases this deadline might be longer (risky)	-	Yes
Greece	No, but PI request should be filed within reasonable time from the moment the right-holder first became aware of the infringement.	-	-
Hungary	Yes, two months	Yes	-
Spain	Yes, two months	-	Yes
Ireland	No but delay is basis for refusal of preliminary injunction	-	-
Italy	No, though the party requesting the measure has to prove the urgency of obtaining the measure due to the fact that commencing ordinary proceedings would generate serious and irreparable damage >>> if too much time has passed since the discovery of the infringement, the Court might reject the request for preliminary measures.	-	-
Latvia	Yes, three months from time of knowledge of infringement	Yes	-
Lithuania	-	-	-
Luxembourg	-	-	-
Malta	Yes, within a reasonable period, ex.: 2 months from when the infringement began	-	Yes

Netherlands	No, although delay might result in refusal of issuance of the preliminary injunction	-	-
Poland	-	-	-
Portugal	-	-	Yes
Romania	No, but filing within a short frame is recommended because of urgent nature of preliminary injunction	-	-
Slovakia	-	-	-
Slovenia	-	-	-
Sweden	-	-	-
United Kingdom	No, although delay is often cited as a key factor pointing away from the grant of a preliminary injunction	-	-

Question 3: Formalities to observe when asking for a preliminary injunction

When it comes to formalities that have to be observed when asking for a preliminary injunction, there is no harmonization within the European Union either. Whilst in some countries observation of such formalities is required, their scope is differing each country. Equally, even in countries where certain formalities have to be adhered to, practical application of these rules is missing as well:

Question 3.a.

Is the applicant required to pay a security deposit or to provide a surety bond?

Country	mandatory	May be required in certain circumstances
Austria		Yes
Belgium		
Bulgaria	Yes	
Croatia		
Czech Republic	Yes	
Cyprus	Yes	
Denmark		Yes
Estonia	Yes	
France		Yes

Finland	Yes	
Germany	No	
Greece		Yes
Hungary	Yes	
Ireland	No	
Italy		Yes
Latvia	Yes	
Lithuania	No	
Luxembourg		Yes
Malta		Yes
Netherlands	No	
Poland		Yes
Portugal		Yes
Romania	Yes	
Slovakia		Yes
Slovenia	No	
Spain	Yes	
Sweden	No	
UK		Yes

In quite a number of countries the applicant is required to pay a security deposit or provide a surety bond when he is asking for a preliminary injunction.

The countries that do not require such or similar measures are Germany, Lithuania, Netherlands, Slovenia and Sweden.

Austria, Denmark, France, Italy, Luxembourg, Malta, Portugal, Slovakia and the United Kingdom are in an ambiguous position as there is no general rule that a security deposit has to be paid, but in some cases such security deposits or a surety bonds are required or may be ordered by the court. In Ireland, a security deposit is generally not required, but instead there must be a cross undertaking as to damages provided by the applicant for the injunction which would be payable if it was later shown the injunction should not have been granted. In Poland it is up to the court's discretion whether the enforcement of an order granting security or injunction is conditioned on the obligee's provision of a deposit to secure the obligor's claims arising from the enforcement of the order granting security or injunction.

The countries requiring payment of a security deposit or provision of a surety bond are Bulgaria, Cyprus, Czech Republic, Estonia, Finland, Hungary, Spain, Latvia and Romania, but even here there are different conditions on when and/or how these securities have to be made: In Bulgaria, for example, this rule only applies here if the applicant cannot present convincing written evidence in support of his claim – though this also depends on the court’s discretion, whilst in Czech Republic payment of a security deposit of CZK 50,000 (ca. EUR 1,850) when the matter concerns relations between entrepreneurs arising from business activities and CZK 10,000 (ca. EUR 370) in other matters is required.

No conclusive replies regarding this question have been received from the Belgium and Croatia.

Question 3.b.

Do the laws of your country require the party applying for a preliminary injunction or similar provisional relief to establish that it will suffer irreparable harm if the relief is not granted? In your experience is proof of irreparable harm generally required in practice?

Country	proof of irreparable harm is mandatory	Proof of irreparable harm required in certain circumstances
Austria	No	
Belgium	No	
Bulgaria	Yes	
Croatia	No	
Czech Republic	No	
Cyprus	Yes	
Denmark	Yes	
Estonia	Yes	
France	No	Only required for ex parte injunctions
Finland	Yes	
Germany	Yes	
Greece	No	
Hungary	No	
Ireland	Yes	
Italy	Yes	
Latvia	No	
Lithuania	Yes	
Luxembourg	Yes	
Malta	Yes	

Netherlands	Yes Especially required for ex parte injunction	
Poland	Yes	
Portugal	No	
Romania	No	
Slovakia	Yes	
Slovenia	No	
Spain	Yes	
Sweden	Yes	
UK	Usually required but depends on the circumstances of the case.	

No matching rules exist regarding the question whether the applicant has to establish that he will suffer irreparable harm if the relief is not granted.

Just as the laws of Austria, Belgium, Croatia, Czech Republic, Hungary, Portugal, Romania and Slovenia do not require such proof, in Bulgaria, Cyprus, Denmark, Estonia, Finland, Germany, Spain, Ireland, Italy, Lithuania, Luxembourg, Malta (exception when injunction is filed for under general law), Netherlands, Poland, Slovakia and Sweden do – either by law or by application in practice by the courts. In the Netherlands, the courts especially require such proof in the event the plaintiff applies for issuance of an ex parte injunction, whilst in France such proof is only required for ex parte injunctions.

In the United Kingdom the party applying for a preliminary injunction usually has to establish that suffering such irreparable harm is likely, though this also depends on the circumstances of the case.

Question 3.c.

Do the laws of your country require the party applying for a preliminary injunction or similar provisional relief to establish that the harm to the applicant if such relief is not granted outweighs the harm to the defendant if such relief is granted? In your experience is the proof of the “balance of harms” generally required in practice?

Country	Yes / No	The Court has a discretion to require this in certain circumstances
Austria	No	
Belgium	No	
Bulgaria	Yes	
Croatia	No	
Czech Republic	No	
Cyprus	No, Need to show irreparable harm but not that the harm will outweigh the harm to the defendant	
Denmark	Yes	Discretion to dismiss the application if the harm to the Defendant is “obviously disproportionate” to the interests of the Applicant
Estonia	Yes	
France	No	
Finland	Yes	
Germany	Yes	
Greece	No, but it is provided for that the PI ordered should not violate third party rights	
Hungary	Yes	
Ireland	Yes	
Italy	Yes	
Latvia		
Lithuania	Yes	
Luxembourg		Requirement only exists in the cases of a seizure or attachment of goods.
Malta	Yes	
Netherlands	No	

Poland	No, Need to show irreparable harm but not that the harm will outweigh the harm to the defendant	
Portugal	No	
Romania	No	
Slovakia	No	
Slovenia	No	
Spain	Yes	
Sweden	Yes	
UK	Yes	

The same applies regarding the question whether the laws of each country require the party applying for a preliminary injunction or similar provisional relief to establish that the harm to the applicant if such relief is not granted outweighs the harm to the defendant if such relief is granted.

Whilst the laws of Austria, Belgium, Croatia, Czech Republic, France, the Netherlands, Portugal, Romania, Slovakia and Slovenia do not require such proof either, this so called “balance of harms” has to be adhered to in Bulgaria, Denmark, Estonia, Finland, Germany, Hungary, Spain, Ireland, Italy, Lithuania, Malta, Sweden and the United Kingdom – either by law or by application in practice by the courts. In Denmark, the Court has the discretion to dismiss the application if the harm to the Defendant is “obviously disproportionate” to the interests of the Applicant whilst in Luxembourg such requirements only exist in the cases of a seizure or attachment of goods.

It is interesting to note that whilst Cyprus and Poland require proof that the applicant will suffer irreparable harm if the relief is not granted, it is not required to show that the harm to applicant if the relief is not granted will actually outweigh the harm to the defendant if it is granted.

No conclusive replies regarding this question have been received from Latvia.

Question 4: Further proceedings at court

Standing out in a positive manner is that the further proceedings at court are mostly the same in the countries covered by this report.

Question 4.a.

Is an oral hearing required or do the laws of your country allow for a preliminary injunction or similar provisional relief without the defendant being heard?

In your experience is such relief generally granted in practice without the defendant being heard?

Country	Oral hearing mandatory	Oral hearing is the rule but there are exceptions	Basically no oral hearing required
Austria	Yes		
Belgium	Yes		
Cyprus	Yes		
Hungary	Yes		
Latvia	Yes		
Portugal	Yes		
Malta			Only required in cases that do not concern ex parte decisions.
Netherlands			Only required in inter partes proceedings; ex parte injunctions will be granted without oral hearing but judge may contact defendant's counsel for clarification.
France		Exceptions: Urgency or proof of irreparable harm.	
Croatia		Exceptions: Proof of non-effectiveness of provisional measure or of irreparable damage.	
Finland		Exceptions: Proof of non-effectiveness of provisional measure or of irreparable damage.	
Spain		Exceptions: Proof of non-effectiveness of	

		provisional measure or of irreparable damage.	
Denmark		Exception: Oral hearing would be detrimental to purpose of preliminary injunction.	
Italy		Exception: Proof that oral hearing may prejudice enforcement, but oral hearing is mandatory within 15 days after preliminary injunction.	
Greece		Exceptions: Extremely urgent cases and proof of irreparable harm.	
Sweden		Yes	
Estonia			Up to judge's discretion.
Malta			Up to judge's discretion.
Ireland			Yes
Romania			Yes
Lithuania			Yes
Poland			Yes
Slovakia			Yes
Bulgaria			Yes
Czech Republic			Yes

Germany	Oral hearing not mandatory, but defendant must have been “heard”. This is achieved by sending defendant a warning letter before applying for a PI.		No warning letter must be sent in product piracy cases.
UK			Yes

The countries that require an oral hearing without any exceptions include Austria, Belgium, Cyprus, Hungary, Latvia and Portugal, whilst in Malta an oral hearing is only necessary in all cases that do not concern ex parte decisions. In the Netherlands, such an oral hearing is required in case of an inter partes injunction as well; ex parte injunctions may be granted without an oral hearing, although courts may call or write to the defendant’s attorney to request clarification of certain questions. In France an oral hearing usually is not required, though in most cases, there is an oral hearing and the preliminary injunction is granted after inter partes proceedings. However, in ex-parte requests, when there is an urgency and proven irreparable harm, there is an exception and the court may grant a decision without hearing the defendant, although it should be noted that most cases are inter partes proceedings.

In Estonia and Malta it is up to the judge’s discretion whether an oral hearing is conducted; another possibility here is that the defendant is being heard in written proceedings. In Croatia, Finland and Spain, an oral hearing is the rule and foregoing such an oral hearing is the exception for cases in which the applicant shows probable cause that the provisional measure would not be effective or that irreparable damage would be likely to occur otherwise.

In Denmark, the general rule is that an oral hearing is mandatory but an order may be rendered ex parte if an oral hearing would be detrimental to the purpose of the preliminary injunction. In practice, relief is often granted in Denmark without the defendant being heard. Equally, in Italy no oral hearing is required if the plaintiff proves that that summoning and hearing the opposite party may prejudice the enforcement of the order; then the Court may issue the preliminary measures without the other party being served or heard. However, the judge has to schedule a hearing within 15 days to hear both parties and the plaintiff has to serve the petition and decree within 8 days (both time limits may be extended by the judge). At the fixed hearing the judge confirms, modifies or revokes the measure.

Intriguingly, in Ireland injunctions in general will be issued ex parte only in extreme circumstances which – according to the survey – do not exist regarding trademark matters. Equally, in Romania preliminary injunctions may only be granted without the defendant being summoned and heard in cases of particular urgency. In Sweden, there is a presumption for an oral hearing, but it is not mandatory.

Countries where an oral hearing is not required at all include Lithuania, Poland and Slovakia as well as Bulgaria – instead, in Bulgaria the defendant is entitled to appeal the ruling for granting the preliminary injunction. Equally, in Czech Republic a preliminary injunction is granted without an oral hearing as well. In Germany, an oral hearing usually is not required either. However, the defendant’s arguments must have been heard. This is achieved by sending the defendant a warning letter and providing him the opportunity to react. The defendant’s reaction to the warning letter must be submitted with the motion of the claimant for an ex-parte preliminary injunction. Only in cases of irreparable harm, such as in cases of product piracy in which goods must be seized without prior warning, the defendant must not be heard. In the United Kingdom applications for a preliminary injunction can be “ex parte” or “inter partes” – in an “ex parte” application, only the party seeking the injunction has the opportunity to put its case to the Court, though this also depends on the urgency and the seriousness of the infringement.

No conclusive replies regarding this question have been received from Luxemburg.

Question 4.b.

Do the laws of your country require the party applying for a preliminary injunction to provide reasonably available evidence in order to satisfy the court with a sufficient degree of certainty that the applicant holds the trademark rights and the trademark is being infringed or such infringement is imminent?

- In your experience is such evidence generally required in practice?

In every single country assessed in this survey the party applying for a preliminary injunction is required to provide reasonably available evidence in order to satisfy the court with a sufficient degree of certainty that the applicant holds the trademark right and the trademark is being infringed or that such infringement is imminent.

Question 4.c.

**Do the local courts check the validity of the IP right behind the PI request?
(i.e. validity of a trademark registration, analysis of the distinctive character of a trademark etc.)**

- If ‘No’: Do they issue the PI based on the party’s claims?

Country	Yes / No	Special remarks
Austria	Yes	
Greece	Yes	
Cyprus	Yes	
Czech Republic	Yes	

Belgium	Yes	Check is quite superficial.
Denmark	Yes	Check is quite superficial.
Hungary	Yes	
Malta	Yes	
Portugal	Yes	
Romania	Yes	
Slovenia	Yes	
Slovakia	Yes	
Bulgaria	Yes	Analysis of distinctive character is not conducted.
Finland	No	Contra legem.
France	No	Exception: Patent matters.
Croatia	No	Evidence for validity required.
Germany	No	Evidence for validity required.
Luxemburg	No	Evidence for validity required.
UK	No	Evidence for validity required.
Italy	No	Evidence for validity required.
Estonia	No	
Spain	No	
Ireland	No	
Latvia	No	
Netherlands	No	
Poland	No	
Sweden	No	
Lithuania		

Quite surprisingly, not all the courts in the European countries check the validity of the IP right behind the request for a preliminary injunction but instead issue the PI based on the party's claims solely.

The courts of the following countries check the validity of the IP right that allegedly has been infringed: Austria, Belgium (though the check is quite superficial), Cyprus, Czech Republic (scope and content of the court's activities depend on statutory deadline for issuance of a decision), Denmark (although again the check is quite superficial), Hungary, Malta, Portugal, Romania, Slovenia and Slovakia.

On the other hand, the courts in Bulgaria only examine whether the applicant has a valid trademark registration applicable for the territory of Bulgaria; analysis of its distinctive character is not conducted in the proceedings. In

Finland, a check of the validity of the IP rights in question should be made by the courts, though in summary proceedings the courts decide based on written evidence alone as the validity of the IP rights may be examined in detail in separate invalidity proceedings. The French courts do not analyze the validity of the IP rights in preliminary injunction proceedings with the exception of patent matters where requests for the grant of preliminary injunctions are generally refused if the patent has not been validated in an earlier procedure.

In Croatia, Germany, Italy, Luxembourg and the United Kingdom, the courts do not check the validity of the IP right themselves; here a preliminary injunction is issued only based on the party's claims, though these claims have to be supported by evidence (applies to the validity of IP rights as well).

The courts of Estonia, Spain, Ireland, Latvia, Netherlands Poland and Sweden do not check the validity of the allegedly violated IP rights at all – in Ireland that is the case because there is a prima facie assumption that the trademark is valid, in the Netherlands because this defense has to be brought up by the defendant

No conclusive replies regarding this question have been received from Lithuania.

Question 4.d.

Is the applicant required to pay a security deposit or to provide a surety bond (cf. No. 3. a.) as condition for the PI to be granted?

If 'Yes': Does the court have any discretionary powers regarding the amount of the security deposit to be paid or the amount that has to be provided within the bond (i.e. can the courts increase the original sum / amount in cases where the amount foreseen by law would not be sufficient to cover eventual damages the PI may cause?)

In the following countries no securities are required: Sweden, Malta, Netherlands, UK, Luxemburg, Estonia

In all the countries that require the applicant to pay a security deposit or to provide a surety bond (cf. question 3.a.), the courts have discretionary powers regarding the amount of the security deposit to be paid or the amount that has to be provided within the bond. In most countries, they have the power to increase the original sum in cases where the amount that is foreseen by law would not be sufficient to cover eventual damages a preliminary injunction might cause.

Special requirements for securities in some countries can be summarized as follows:

Country	Requirements
Denmark	Court has discretion to decide type and amount of security which cannot be altered in the proceedings.

Bulgaria	Court has discretion to determine the exact amount. Security deposits are usually determined in the amount of 10 – 20% of the value of the claim.
Estonia	Court has discretion to determine an amount. Security deposits have to be determined in the amount of at least 5 % of the value of the claim, but not less than EUR 32 and not more than EUR 32,000.

In Denmark the court has discretion to decide the type and amount of the security but cannot alter the amount once it has been fixed (although the Applicant is liable to pay damages if the PI turns out to be unjustified).

In Bulgaria, for example, the court has discretion to determine the exact amount of the security deposit which is to be paid by the applicant. The law requires that the amount of the security deposit is determined by the amount of the direct and proximate damages that the defendant will suffer if the PI is unfounded. The courts usually determine security deposit in the amount of 10-20% of the value of the applicant's claim.

In Estonia, § 383 of the Civil Court Procedure Act states that: “(1) The court may make the securing of an action or continuation of securing an action dependant on the provision of security in order to compensate for possible damage caused to the opposing party; and (2) The court secures an action involving a monetary claim only in case a security is provided in the amount of at least 5 percent of the amount of claim, but not less than 32 euros and not more than 32,000 Euros”.

In Ireland, the plaintiff must show that it will suffer irreparable damage i.e. that damages are not an adequate remedy.

In Luxembourg, the court may oblige the plaintiff to lodge an appropriate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant (cf. Art. 24 (1) and Art. 29 (2) of the Enforcement Act).

In Sweden, security deposit is not required, but the court may also dismiss the request if the sum is too low, whilst the in Malta as well as the Netherlands and the United Kingdom the plaintiff is not generally required to pay a security deposit or to provide a surety bond, the courts have the final say in whether such security has to be deposited or a surety bond has to be provided.

Question 4.e.

Are there any maximum time limits regulated by law within which the courts must reach a decision regarding the application for a PI?

Finally, the answers in this survey differed regarding the question whether there is a maximum time limit regulated by law within which the courts must reach a decision regarding the application for a preliminary injunction. The results were as follows:

Country	Existence of maximum time limit regulated by law	Length
Austria	No	-
Belgium	No	-
Bulgaria	Yes	By law: 1 day; Reality: 1 week
Croatia	No	-
Cyprus	Yes	-
Czech Republic	Yes	Depending on statutory deadline
Denmark		-
Estonia	Yes	Ex parte: 1 business day Inter partes: no regulation
Finland	No	-
France	No	-
Germany	No	-
Hungary	Yes	15 days from the receipt (or from the completing) of the application
Spain	Yes	By law: 5 days after hearing Reality: "way longer"
Ireland	No	-
Italy	No	-
Latvia	No	-
Lithuania	Yes	3 business days
Luxembourg	No	-
Malta	No	-
Netherlands	No	-
Poland	No	-
Portugal	No	-
Romania	No	Once the hearings are closed, the court must reach a decision within 24 hours and ground it within 48 hours

Slovakia	Yes	30 days
Slovenia	No	-
Sweden	No	-
United Kingdom	No	-
Greece	Yes	48 hours from hearing/deadline for parties to submit briefs

Question 5: Opposing party's rights

Question 5.a.

Is the defendant given the possibility to oppose the PI before it is issued?

Country	Answer	Special remarks
Austria	Depends	Defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.
Belgium	No	
Bulgaria	No	
Cyprus	Yes	
Czech Republic	No	
Denmark	Depends	Defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.
Germany	Yes	Yes, but not mandatory or usual.
Estonia	Depends	Defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.

Spain	Depends	Defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.
Finland	Yes	
France	Depends	Defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.
Croatia	Yes	
Hungary	Yes	
Ireland	Yes	
Latvia	Yes	
Lithuania	No	
Luxembourg	No	Insofar as IP issues are concerned.
Malta	Yes	
Netherlands	Depends	Defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.
Poland	No	
Portugal	Yes	
Romania	No	
Sweden	Yes	Defendant shall be given the opportunity to oppose but any delay caused by such opposition may result in damage for the rightholder.
Slovenia	Depends	Defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.
Slovakia	No	

UK	Depends	Defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.
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The possibility for the defendant to oppose a preliminary injunction before it is issued only exists in a few countries, namely Croatia, Cyprus, Finland, Germany, Hungary, Ireland, Latvia, Malta and Portugal. In Sweden, the defendant shall be given the opportunity to oppose but any delay caused by such opposition may result in damage for the rights holder.

Countries in which such an opposition before issuance of the preliminary injunction is not possible include: Belgium, Bulgaria, Czech Republic, Lithuania, Luxembourg (insofar as IP issues are concerned), Poland, Romania and Slovakia.

Austria, Denmark, Estonia, France, Italy, Netherlands, Spain, Slovenia and the United Kingdom are in ambiguous positions as the defendant on the one hand might have the opportunity to oppose the motion for a preliminary injunction, but on the other hand issuance ex parte is possible as well.

Question 5.b.

Is the defendant being notified prior to the decision? / Will the defendant be notified prior to the decision?

Country	Answer	Special remarks
Austria	Yes	Exception: ex parte injunctions
Belgium	No	
Bulgaria	No	
Cyprus	Yes	
Czech Republic	No	
Denmark	Yes	Under normal circumstances
Germany	No	
Estonia	No	
Spain	Yes	Exception: ex parte injunctions
Finland	Yes	Exception: ex parte injunctions

France	Yes	Exception: ex parte injunctions
Croatia	Yes	Exception: ex parte injunctions
Hungary	Yes	
Ireland	Yes	
Italy	Depends	Defendant usually is being notified prior to the court's decision unless the plaintiff requested that the measures applied for are being issued without the defendant being heard.
Latvia	Yes	Exception: ex parte injunctions
Lithuania	Depends	Whether the defendant will be notified is up to the court's discretion
Luxembourg	No	
Malta	Yes	
Netherlands	Yes	Exception: ex parte injunctions
Poland	No	
Portugal	Yes	
Romania	Yes	
Sweden	Yes	
Slovenia	Yes	Exception: ex parte injunctions
Slovakia	No	
UK	Yes	Exception: ex parte injunctions

The defendant is being notified prior to the decision in the following countries: Austria (exception: ex parte injunctions), Croatia (exception: ex parte injunctions), Cyprus, Denmark (under normal circumstances), Finland (exception: ex parte injunctions), France (exception: ex parte injunctions), Hungary, Spain (exception: ex parte injunctions), Ireland, Latvia (exception: ex parte injunctions), Malta, Netherlands (exception: ex parte injunctions), Portugal, Romania, Slovenia (exception: ex parte injunctions), Sweden and the United Kingdom (exception: ex parte injunctions).

No notification will be issued in Belgium, Bulgaria, Czech Republic, Estonia, Germany, Luxembourg, Poland and Slovakia.

In Lithuania, whether the defendant will be notified is up to the court's discretion, whilst in Italy the defendant usually is being notified prior to the court's decision unless the plaintiff requested that the measures applied for are being issued without the defendant being heard.

Question 5.c.

Will the invalidity of the IP right be accepted as a ground of defense?

Country	Yes / No	Special remarks
Austria	Yes	
Belgium	Yes	
Bulgaria	Yes	
Cyprus	Yes	
Czech Republic	Yes	
Denmark	Yes	It is accepted as a ground of defense in principle, but the Applicant is only required to make plausible the existence of the IP right in order to obtain a preliminary injunction.
Germany	No	Validity of an IP right is subject to separate invalidity proceedings
Estonia	No	As a primarily rule no, as it is presupposed that the IP right in question is valid with the only exception that its invalidity is obvious.
Spain	Yes	
Finland	Yes	This is decided based on documentary evidence alone in these summary proceedings.
France	Yes	
Croatia	Yes	
Hungary	Yes	It is required that the declaration of invalidity is final; the validity itself is examined in detail in separate invalidity proceedings, which – even though both proceedings are separate – are being handled by the Market Court in the same proceedings (main rule).
Ireland	No	Validity of an IP right is subject to main action proceedings.
Italy	Yes	
Latvia	Yes	
Lithuania	Yes	
Luxembourg	Yes	

Malta	Yes	
Netherlands	No	No conclusive replies have been received from Netherlands.
Poland	Yes	Must be raised in the complaint against the interim injunction decision– the court itself will not take the invalidity into consideration ex officio; the obliged party has to file the respective motion for revocation with the Polish Patent Office.
Portugal	Yes	
Romania	No	
Sweden	No	As a primarily rule no, as it is presupposed that the IP right in question is valid with the only exception that its invalidity is obvious.
Slovenia	Yes	
Slovakia	Yes	
UK	Yes	

Interestingly, the invalidity of the IP right is not accepted as a ground of defense in every country assessed in this survey.

For example, in Estonia, it is presupposed that the IP right in question is valid with the only exception that its invalidity is obvious. The same applies in Sweden. The invalidity of the IP right will be accepted as a ground of defense only in obvious situations, for example if the mark has not been renewed. In Germany, the validity of an IP right is subject to separate invalidity proceedings; if a trademark exists and is registered, the courts take its validity – at least within proceedings regarding preliminary injunctions – for granted. In Ireland it is basically the same, as a counterclaim for invalidity may only be brought as part of the main action proceedings. Equally, Romania does not allow for this defense to be raised in proceedings regarding preliminary injunctions.

In the other countries the invalidity of the IP right is accepted as a ground of defense, though in Finland, for example, this is decided based on documentary evidence alone in these summary proceedings whilst in Hungary is required that it the declaration of invalidity is final; the validity itself is examined in detail in separate invalidity proceedings, which – even though both proceedings are separate – are being handled by the Market Court in the same proceedings (main rule). In Poland this ground of defense is accepted in general as well, but it has to be raised in the complaint against the interim injunction decision – the court itself will not take the invalidity into consideration ex officio; the obliged party has to file the respective motion for revocation with the Polish Patent Office. In Denmark, the invalidity of the IP right is accepted as a ground of defense in principle but the Applicant is only required to make plausible the existence of the IP right in order to obtain a preliminary injunction.

No conclusive replies regarding this question have been received from the Netherlands.

Question 5.d.

Can the defendant request the court to cancel an invalid IP right as a counterclaim?

Country	Answer	Interim proceedings	Only in main proceedings	Special remarks
Austria	Yes	No	Yes	
Belgium	Yes	No	Yes	
Bulgaria	No	No	No	Competent court ruling upon the validity is the Patent Office.
Cyprus	Yes	Yes	No	
Czech Republic	Depends	No	No	Defense is allowed in the appellate proceedings or within the proceedings on merits – if the court finds here that the IP right is invalid, this would be a reason for annulling the decision about the preliminary injunction.
Denmark	Yes	No	Yes	
Germany	No	No	Yes	
Estonia	Yes	No	Yes	Counterclaim is filed in the main proceedings but these main proceedings are actually required, i.e. a preliminary injunction is not possible without these main proceedings.
Spain	Yes	No	Yes	
Finland	Yes	No	No	Validity defense can be asserted by bringing a counteraction before the Market Court, which examines the validity of the IP in the same proceedings (main rule).
France	No	No	No	
Croatia	No	No	No	Competent court ruling upon the validity is the Patent Office.
Hungary	No	No	No	
Ireland	Yes	No	Yes	

Italy	Yes	Yes	No	
Latvia	Yes	Yes	No	
Lithuania	No	No	No	
Luxembourg	Yes	No	Yes	
Malta	Yes	No	Yes	Also possible to file it completely separate from the proceedings
Netherlands	Yes	No	Yes	
Poland	No	No	No	
Portugal	Yes	No	Yes	
Romania	Yes	No	Yes	
Sweden	No	No	No	
Slovenia	Yes	No	Yes	Also possible to file it completely separate from the proceedings
Slovakia	Yes	Yes	No	
UK	Yes	No	Yes	

Even though proceedings about preliminary injunctions usually are only interim measures, in quite a few countries it is possible for the defendant to request the court to cancel an invalid IP right as a ground of defense within these interim measures, whilst other countries only allow for this within the main proceedings. Lastly, some countries do not allow for this defense to be raised within these IP infringement proceedings at all.

Countries that allow for this defense to be raised within the interim proceedings are Cyprus, Italy, Latvia and Slovakia. In Czech Republic, this defense is allowed in the appellate proceedings or within the proceedings on merits – if the court finds here that the IP right is invalid, this would be a reason for annulling the decision about the preliminary injunction.

In Austria, Belgium, Denmark, Spain, Ireland, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovenia and the United Kingdom this defense can only be raised in the main proceedings, though in Malta and Slovenia it is also possible to file it completely separate from the proceedings. In Finland the validity defense can be asserted by bringing a counteraction before the Market Court, which examines the validity of the IP in the same proceedings (main rule). Another special situation exists in Estonia as this counterclaim is filed in the main proceedings but these main proceedings are actually required, i.e. a preliminary injunction is not possible without these main proceedings.

In Bulgaria, the competent court for ruling upon the validity of IP rights usually is the Patent Office, which is different from the court that is entitled to grant preliminary injunctions – therefore, the defense cannot be raised within IP infringement proceedings. In Croatia the situation is the same.

In France, Germany, Hungary, Lithuania, Poland and Sweden the defendant cannot request the court to cancel an invalid IP right as a counterclaim.

Question 6: Applicant’s rights after a preliminary injunction has been issued

Question 6.a.

Is it mandatory to file the main action once the PI was granted?

If ‘Yes’: Are there any applicable (statutory) deadlines to do so?

If ‘Yes’: What is the deadline? less than ___ months (*please fill in*)

If ‘No’: Do the courts in your jurisdiction nevertheless require the applicant to file the main action within a certain time-span (“Black Letter Law”)?

Country	Mandatory to file main action after PI granted?	Statutory Deadline to file this?	If no statutory deadline, do courts require applicant to file main action within certain time-span?
Austria	Yes	No	Yes
Belgium	Yes	No	Yes: if deadline not set, 30 days
Bulgaria	Yes	No	Yes: ≤30 days
Croatia	Yes	No	Yes
Cyprus	Yes	14 days from Defendant’s appearance	N/A

Czech Republic	No *	N/A	N/A
Denmark	Yes †	2 weeks	N/A
Estonia	Yes	?	?
Finland	Yes	1 month	N/A
France	Yes	20 working days up to 31 calendar days	N/A
Germany	No	N/A	N/A
Hungary	Yes	15 days	N/A
Ireland	Yes	?	?
Italy	Yes	No	Yes: ≤60 days
Latvia	Yes	30 days	N/A
Lithuania	Yes	14 days	N/A
Luxembourg	Yes	No	Yes – if none set, 1 month
Malta	Yes	No	Yes: 31 days
Netherlands	Yes	31 days up to 6 months	N/A
Poland	Yes	No	Yes
Portugal	Yes	30 days	N/A
Romania	Yes	No	Yes: ≤30 days
Spain	Yes	20 days	N/A
Slovakia	Yes	No	Yes
Slovenia	Yes	30 days	N/A
Sweden	Yes	1 month	N/A
United Kingdom	Yes	No	Yes: set by court, typically ≤30 days

* Although, if main action not filed within a set time limit, the PI will cease to be effective

† Defendant can waive requirement for applicant to file the main action.

After a preliminary injunction has been issued, the only countries that do not require the applicant to file a main action are Czech Republic and Germany, though in this regard some things have to be noted: In Czech Republic filing the main action is not mandatory, but the preliminary injunction will cease to be in effect, among other things, if the applicant does not institute the legal litigation on the merits within the set time

limit; furthermore, the preliminary injunction issued does not indicate what the final decision on the merits will be. In Germany, filing a main action is not mandatory, but the preliminary injunction will cease to be in effect if the defendant does not accept the ruling of the preliminary injunction as a final and binding decision by waiving all his remedies.

All other countries assessed in this survey do require the applicant to file a main action after issuance of a preliminary injunction as it is considered to be an interim measure. However, in Denmark the defendant can waive this requirement. In Estonia, the main action usually even has to be filed together with the request for a preliminary injunction whilst in Ireland the main action even has to be filed before the party applies for a preliminary injunction. The (statutory) deadlines to file this main – if required – are:

Country	Deadline
Austria	determined by court
Belgium	determined by the judge or 30 days (TRIPS)
Bulgaria	determined by court, but not longer than 30 days
Croatia	determined by court
Cyprus	14 days from appearance of the defendant
Denmark	2 weeks (4 weeks where the injunction relates to securing evidence)
Finland	1 month after preliminary injunction has been granted
France	20 business days or 31 calendar days if this delay is longer
Hungary	15 days after preliminary injunction has been granted
Spain	20 days after preliminary injunction has been granted
Italy	determined by court, cannot exceed 60 days
Latvia	30 days after preliminary injunction has been granted
Lithuania	14 days after preliminary injunction has been granted
Luxembourg	either determined by court or one month starting from the moment the decision has been served or, for injunctions relating to evidence, from the moment the expert's evidence report has been sent (Art. 26 and 29 (1) of the Enforcement Act)
Malta	31 days from the final court decree issued under specific law, 12 days from the final court decree issued under general law
Netherlands	determined by the law and the courts: if a term is requested by the plaintiff, the term is 31 days of which 20 are working days; if a term is not requested by the plaintiff, the deadline may be a maximum of 6 months
Poland	determined by court

Portugal	30 days after preliminary injunction has been granted
Romania	determined by court, but not longer than 30 days
Slovakia	determined by court
Slovenia	30 days after preliminary injunction has been granted
Sweden	1 month
United Kingdom	determined by court

Question 6.b.

Is the defendant allowed to oppose the injunction?

Is an oral hearing necessary?

Country	Defendant allowed to oppose PI?	Oral hearing required?
Austria	Yes	No
Belgium	Yes	Yes
Bulgaria	Yes	No
Croatia	Yes	No
Cyprus	Yes	Yes
Czech Republic	Yes	No
Denmark	Yes	Normally
Estonia	Yes	No
Finland	Yes	No
France	Yes	Yes
Germany	Yes	No
Hungary	Yes	No
Ireland	Yes	Yes
Italy	Yes	No
Latvia	Yes	No
Lithuania	Yes	No
Luxembourg	Yes	Yes
Malta	Yes	No

Netherlands	Yes	No*
Poland	Yes	Yes
Portugal	Yes	Yes
Romania	Yes	Yes
Spain	Yes	No
Slovakia	Yes	No
Slovenia	Yes	No
Sweden	Yes	No
United Kingdom	Yes	Yes

* Defendant is allowed to oppose the PI if injunction was granted *ex parte*.

There was general consent that the defendant is allowed to oppose the injunction that has been issued, though an oral hearing is only required in Belgium, Cyprus, France, Ireland, Luxembourg, Poland, Portugal, Romania and the United Kingdom. In Denmark an oral hearing is normally required. In the Netherlands, the defendant is allowed to oppose the injunction if it has been an *ex parte* injunction.

Question 6.c.

Do the laws of your country require that, in situations where the preliminary injunction or similar provisional measures have been executed without the defendant being heard, the defendant will be informed of such measures without delay after execution?

Country	Must Defendant be informed of the PI without delay?
Austria	Yes
Belgium	Yes
Bulgaria	Yes
Croatia	Yes
Cyprus	Yes
Czech Republic	Yes
Denmark	Yes (unless detrimental to the PI)
Estonia	No
Finland	Yes
France	Yes
Germany	Yes
Hungary	Yes
Ireland	Yes
Italy	Yes

Latvia	Yes
Lithuania	Yes
Luxembourg	Yes
Malta	Yes
Netherlands	Yes
Poland	
Portugal	Yes
Romania	
Spain	Yes
Slovakia	No
Slovenia	No
Sweden	Yes
United Kingdom	Yes

In situations in which a preliminary injunction or similar provisional measures have been executed without the defendant being heard, the defendant will be informed of such measures without delay after execution only in the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark (unless detrimental to the purpose of the preliminary injunction), Czech Republic, Finland, France, Hungary, Spain, Ireland, Latvia, Lithuania, Luxembourg, Malta, Portugal, Sweden and the United Kingdom. In Italy, the judge has to schedule a hearing within 15 days to hear both parties; furthermore, the plaintiff has to serve the petition and decree within 8 days (both time limits may be extended by the judge). In the Netherlands, the defendant has to be informed of such measures as well, although the time frame within the plaintiff has to serve the injunction is being determined by the court.

In Slovakia and Slovenia such information is not required. Equally, in Estonia such information is not required either; here the plaintiff is even allowed to request that the court postpones the delivery of the ruling to the defendant until this ruling itself is executed. In Germany it is actually up to the plaintiff to have the ruling delivered to the defendant; if such delivery does not happen, the defendant neither knows about the ruling nor is it enforceable towards him.

No conclusive replies regarding this question have been received from Poland and Romania.

Question 6.d.

Do the laws of your country allow for a defendant who has been informed of the execution of provisional measures after the fact to request a hearing to modify or revoke those measures?

Country	Can Defendant request a hearing to modify or revoke the PI?
Austria	No
Belgium	Yes
Bulgaria	No
Croatia	No
Cyprus	Yes
Czech Republic	Yes
Denmark	Yes (though rarely granted)
Estonia	Yes
Finland	Yes
France	Yes
Germany	Yes
Hungary	No
Ireland	Yes
Italy	Yes
Latvia	Yes
Lithuania	Yes
Luxembourg	Only by appealing or if new circumstances arise
Malta	Yes
Netherlands	Yes
Poland	
Portugal	Yes
Romania	
Spain	Yes
Slovakia	No
Slovenia	Yes
Sweden	Yes
United Kingdom	Yes

The laws of the following countries allow for a defendant who has been informed of the execution of provisional measures after the fact to request a hearing to modify or revoke those measures: Belgium, Cyprus, Czech Republic, Denmark (although such hearings are generally not granted in practice), Estonia, Finland, France, Germany, Spain, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Slovenia, Sweden and the United Kingdom, though in Czech Republic and Estonia such measures are only available in the appellate proceedings whilst in Spain no oral hearing will be conducted. Equally, in Luxembourg such measures are only available in case of new circumstances or by filing an appeal. In the Netherlands, the defendant may issue a writ to oppose the injunction; afterwards an oral hearing is usually granted.

On the other hand, the following countries that not allow such measures are Austria, Bulgaria, Croatia, Hungary and Slovakia. In Bulgaria, for example, the defendant is entitled to file a private appeal against the ruling for imposition of a preliminary injunction which is ruled upon ex parte without conducting an open hearing. No conclusive replies regarding this question have been received from Poland and Romania.

Question 6.e.

Do the laws of your country provide for the defendant to pay a recurring penalty when a preliminary injunction is violated?

Country	Must Defendant pay a recurring penalty for violating PI?
Austria	Yes
Belgium	
Bulgaria	Yes
Croatia	Yes
Cyprus	Yes
Czech Republic	Yes
Denmark	No, although Claimant can ask court to set a fine for violation
Estonia	Yes
Finland	Yes
France	Yes
Germany	Yes
Hungary	No
Ireland	No
Italy	Yes
Latvia	Yes
Lithuania	Yes
Luxembourg	Yes
Malta	No

Netherlands	Yes
Poland	
Portugal	Yes
Romania	No
Spain	No
Slovakia	No
Slovenia	Yes
Sweden	Yes
United Kingdom	No

The laws of the following countries provide for the defendant to pay a recurring penalty when a preliminary injunction is violated: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Netherlands (provided the plaintiff asked for such penalty), Portugal, Slovenia and Sweden, though in Estonia it seems that such a penalty is generally not granted in practice.

In Spain it is possible to inform the Court about the violation and to ask for a penalty, but in practice the Court will not establish any penalty fee to be paid by the defendant. Equally, in the United Kingdom the defendant is not required to pay a recurring penalty in case a preliminary injunction is violated.

No provision requiring the defendant to pay a recurring penalty when a preliminary injunction is violated exists in Ireland, Hungary, Malta, Romania and Slovakia. In Denmark, no fixed fee is payable however the Applicant normally asks the Court to set a fine for infringement of the preliminary injunction. Civil liability may also apply as a consequence of the infringement of the preliminary injunction.

No conclusive replies regarding this question have been received from Belgium and Poland.

Question 7: After PI has been Issued – Defendant’s Rights

Question 7.a.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Almost all jurisdictions provide for damages for the defendant in case a preliminary injunction is lifted later on as a result of an appeal or if the main action is refused. In Malta, such damages usually are not provided, though this may be asked for in good time by the counterparty.

Country	Yes / No	Special remarks
All countries except Malta	Yes	
Malta	No	Damages are usually not provided, but defendant may ask for it “in good time”

Question 7.b.

Does your jurisdiction provide for damages in case it turns out that a PI was unjustified from the beginning?

Equally, except Malta all jurisdictions provide for damages in case it turns out that a preliminary injunction was unjustified from the beginning; in Malta this again this may be asked for in good time by the counterparty.

Country	Yes / No	Special remarks
All countries except Malta	Yes	
Malta	No	Damages are usually not provided, but defendant may ask for it “in good time”

Question 7.c.

If your jurisdiction provides for damages, is the defendant required to prove that the applicant acted negligently when applying for the PI?

Even though all jurisdictions provide for damages in the above mentioned cases, there is no consent as to whether the defendant is required to prove that the applicant acted negligently when he applied for the preliminary injunction.

For example, no such proof (>>> strict liability) is required in Austria, Bulgaria, Croatia, Finland, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden and the United Kingdom whilst it is required in Belgium, Cyprus, Czech Republic, Estonia, Italy, Latvia and Romania.

In Spain the law does not establish any clear proceeding regarding IP rights, but it is possible to claim damages in a separate civil proceeding where it is then possible to state that the applicant acted negligently. In Malta, it depends on the circumstances of the case whether such negligence has to be proven.

In Denmark there are different bases of liability following a lifted preliminary injunction. Negligence is required for some of the bases of liability.

Country	strict liability	Remarks
Austria	No	
Greece	No	
Cyprus	Yes	
Czech Republic	Yes	
Belgium	Yes	
Denmark	Depends	There are different bases of liability following a lifted preliminary injunction. Negligence is required for some of the bases of liability.
Hungary	No	
Malta	Depends	X (it depends on the circumstances of the case whether such negligence has to be proven)
Portugal	No	
Romania	Yes	
Slovenia	No	
Slovakia	No	
Bulgaria	No	
Finland	No	
France	No	
Croatia	No	
Germany	No	
Luxemburg	No	
UK	No	
Italy	Yes	
Estonia	Yes	
Spain	Depends	X (the law does not establish any clear proceeding regarding IP rights, but it is possible to claim damages in a separate civil proceeding where it is then possible to state that the applicant acted negligently.)

Ireland	No	
Latvia	Yes	
Netherlands	No	
Poland	No	
Sweden	No	
Lithuania	No	

Question 7.d.

If your jurisdiction provides for damages in case of an unjustified PI, what kinds of damages are covered?

- Pure financial loss and loss of profits

There was consent that both pure financial loss as well as loss of profit are always covered by these damages, with the exception that in Sweden damages cover only financial loss, and loss of profit is not included. Although in Denmark recovery of damages for pure financial loss depended on the basis of liability. In the Netherlands, pure financial loss and loss of profit are only covered if proof is being given that these are direct or indirect damages of the preliminary injunction.

No conclusive answer has been given regarding Hungary regarding coverage of pure financial loss.

- Punitive damages

Punitive damages are only being awarded in Czech Republic, Ireland, Romania and the United Kingdom.

No conclusive answer has been given regarding Hungary.

Country	Financial loss	Loss of profits	Punitive damages	Special remarks
Austria	Yes	Yes	No	
Greece	Yes	Yes	No	
Cyprus	Yes	Yes	No	
Czech Republic	Yes	Yes	Yes	
Belgium	Yes	Yes	No	

Denmark	Yes	Yes	No	Recovery of damages for pure financial loss depends on the basis of liability.
Hungary	No	Yes	No	No conclusive answer has been given regarding coverage of pure financial loss and punitive damages.
Malta	Yes	Yes	No	
Portugal	Yes	Yes	No	
Romania	Yes	Yes	Yes	
Slovenia	Yes	Yes	No	
Slovakia	Yes	Yes	No	
Bulgaria	Yes	Yes	No	
Finland	Yes	Yes	No	
France	Yes	Yes	No	
Croatia	Yes	Yes	No	
Germany	Yes	Yes	No	
Luxemburg	Yes	Yes	No	
UK	Yes	Yes	Yes	
Italy	Yes	Yes	No	
Estonia	Yes	Yes	No	
Spain	Yes	Yes	No	
Ireland	Yes	Yes	Yes	
Latvia	Yes	Yes	No	
Netherlands	Yes	Yes	No	Pure financial loss and loss of profit are only covered if proof is being given that these are direct or indirect damages of the preliminary injunction
Poland	Yes	Yes	No	
Sweden	Yes	No	No	in Sweden damages cover only financial loss, and loss of profit in not included.

Lithuania	No	No	No	
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Lawyer’s costs

- If ‘Yes’: Only pursuant to statutory regulations (i.e. the Tariff of Charges of the Bar Association)?

- If ‘Yes’: Also pursuant to hourly rates?

Despite in Bulgaria and Luxembourg, lawyer’s costs are covered as well, though the replies differed in regards to whether these costs were only covered pursuant to statutory regulations or also pursuant to hourly rates. Mostly, the answer was that these costs were only covered pursuant to statutory regulations, with only the following exceptions:

- In Belgium, for example, coverage is pursuant to the Tariff of Charges of the Bar Association, though there seems to be case law where this has been ruled on differently (cf. C-57/15 (Court of Justice)).
- In Denmark, the Court makes an assessment having regard to the extent of the case, the extent of the evidence, the time needed to prepare etc. The winning side rarely recovers its full costs.
- In Estonia, these costs fall under general damage laws – the losing party in court proceedings has to reimburse the other party the legal fees, the amount is decided by judge based on “reasonable time, staffing and hourly rate”.
- In Finland, the losing party can be (and generally is) ordered to compensate all reasonable legal costs incurred by the winning party as a result of necessary actions taken in relation to the proceedings, incl pursuant to hourly rates, if reasonable.
- In France, such costs are covered pursuant to hourly rates.
- In Italy, only reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party.
- In the Netherlands, lawyers’ costs in IP matters are covered on the basis of article 1019h Rv and the courts have a guideline they observe to make sure that the costs claimed are reasonable.
- In Sweden, lawyers’ costs are based on hourly rates.

In Bulgaria there is not much case law which awards lawyers costs as damages from the unjustified preliminary injunctions. The courts including the Supreme Court of Cassation usually reject such claims with the argument that lawyers costs can be claimed and awarded only in the respective main proceedings for which they were made. There is however one decision of District Court Pernik which deems that lawyers’ costs incurred with connection with the imposition of the preliminary injunction are subject to indemnification. It should be noted that the costs incurred were connected with the removal of the preliminary injunction itself and

not with legal representation in the related court proceedings. The court said that the costs incurred for legal representation in court are not the direct result from the preliminary injunction and therefore cannot be indemnified.

In Luxembourg, lawyers' costs sometimes are awarded based on general rules of civil liability or on section 240 of the New Code of Civil Procedure, though there is no general rule that lawyers' costs are covered in such IP proceedings relating to preliminary injunctions.

Country	Yes pursuant to statutory regulations	Yes pursuant to hourly rates	Remarks
Austria	Yes	No	
Greece	Yes	No	
Cyprus	Yes	No	
Czech Republic	Yes	No	
Belgium	No	Yes	Coverage is pursuant to the Tariff of Charges of the Bar Association, though there seems to be case law where this has been ruled on differently.
Denmark	No	Yes	The Court makes an assessment having regard to the extent of the case, the extent of the evidence, the time needed to prepare etc. The winning side rarely recovers its full costs.
Hungary	Yes	No	
Malta	Yes	No	
Portugal	Yes	No	
Romania	Yes	No	
Slovenia	Yes	No	
Slovakia	Yes	No	
Bulgaria	Yes	No	(Remark: Basically no, there is only one decision of the District Court Pernik granting reimbursement of lawyer's costs, but that was a specific case).

Finland	No	Yes	The losing party can be (and generally is) ordered to compensate all reasonable legal costs incurred by the winning party as a result of necessary actions taken in relation to the proceedings, incl pursuant to hourly rates, if reasonable.
France	No	Yes	
Croatia	Yes	No	
Germany	Yes	No	
Luxemburg	Yes	No	(Remark: Basically no, as there is no general rule that lawyers' costs are to be reimbursed, but lawyers' costs are sometimes awarded based on general rules of civil liability or on section 240 of the New Code of Civil Procedure).
UK	Yes		
Italy	No	Yes	Only reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party.
Estonia	No	Yes	These costs fall under general damage laws – the losing party in court proceedings has to reimburse the other party the legal fees, the amount is decided by judge based on “reasonable time, staffing and hourly rate.
Spain	Yes		
Ireland	Yes		
Latvia	Yes		
Netherlands	No	Yes	Lawyers' costs in IP matters are covered on the basis of article 1019h Rv and the courts have a guideline they observe to make sure that the costs claimed are reasonable.
Poland	Yes	No	
Sweden	No	Yes	
Lithuania	No	No	

Question 7.e.

Are the answers to questions 7. a. – 7. d. foreseen in the law of your country

Except Slovenia and Denmark (where they are only foreseen to a certain extent), the damages covered by question 7.d. are foreseen in the laws of Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Romania, Slovakia, Sweden and the United Kingdom.

No conclusive replies regarding this question have been received from Austria, Belgium, Cyprus, Ireland, Netherlands, Poland and Portugal.

Country	Yes / No	Remarks
Austria		No conclusive replies have been received.
Greece	Yes	
Cyprus		No conclusive replies have been received.
Czech Republic	Yes	
Belgium		No conclusive replies have been received.
Denmark	No	Only to a certain extent.
Hungary	Yes	
Malta		
Portugal		No conclusive replies have been received.
Romania	Yes	
Slovenia	No	Only to a certain extent.
Slovakia	Yes	
Bulgaria	Yes	
Finland	Yes	
France	Yes	
Croatia	Yes	
Germany	Yes	
Luxemburg	Yes	
UK	Yes	
Italy	Yes	
Estonia	Yes	
Spain		
Ireland		No conclusive replies have been received.

Latvia	Yes	
Netherlands		No conclusive replies have been received.
Poland		No conclusive replies have been received.
Sweden	Yes	
Lithuania	Yes	

Question 7.f.

Is there any case law in your jurisdiction regarding questions 7. a. – 7. d.?

Except Finland, Hungary, Ireland, Slovakia and Slovenia there seems to be case law regarding questions 7.a. to 7.d in the context of trademarks, though the following peculiarities have to be noted:

- In Austria, it seems to be quite rare that there are damages requested in these situations, which is the reason that these only rarely are granted.
- In Bulgaria, the case law is not connected with preliminary injunctions imposed for trademark infringements, but relates to the general regime for obtaining interim measures under Bulgarian law.
- In Cyprus damages are rarely granted.
- In Estonia even though there is case law on legal fees in general, only a few cases exist regarding the damages resulting from unjustified preliminary injunctions.
- In Finland there is very limited case law.
- In Portugal, it seems to be quite rare that there are damages requested in these situations, which is the reason that these only rarely are granted.

Country	Yes /No	Remarks
Austria	Yes	It seems to be quite rare that there are damages requested in these situations, which is the reason that these only rarely are granted.
Greece	Yes	
Cyprus	Yes	Damages are rarely granted.
Czech Republic	Yes	
Belgium	Yes	

Denmark	No	
Hungary	No	
Malta	Yes	
Portugal	Yes	It seems to be quite rare that there are damages requested in these situations, which is the reason that these only rarely are granted.
Romania	Yes	
Slovenia	No	
Slovakia	No	
Bulgaria	Yes	The case law is not connected with preliminary injunctions imposed for trademark infringements, but relates to the general regime for obtaining interim measures under Bulgarian law.
Finland	Yes	There is only very limited case law.
France	Yes	
Croatia	Yes	
Germany	Yes	
Luxemburg	Yes	
UK	Yes	
Italy	Yes	
Estonia	Yes	Even though there is case law on legal fees in general, only a few cases exist regarding the damages resulting from unjustified preliminary injunctions.
Spain	Yes	
Ireland	No	
Latvia	Yes	
Netherlands	Yes	
Poland	Yes	
Sweden	Yes	
Lithuania	Yes	

Conclusion

Overall, even though the enforcement of intellectual property rights with regard to preliminary injunctions is quite similar in a good number of European Countries, further harmonization is still required, especially regarding deadlines that have to be adhered to as well as formalities that have to be adhered to when applying for issuance of a preliminary injunction.

C. IN DETAIL – NON-EU COUNTRIES (by country)

ARGENTINA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, preliminary injunctions are available for trademark infringement. There is a realistic chance to obtain them as long as three requirements are met:

- 1) Prove the existence of a danger in the delay
- 2) Prove a prima facie case
- 3) Pay a security deposit

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

Preliminary injunction proceedings are granted ex-parte. However, the defendant is able to appeal the preliminary injunction within five working days of the PI's execution. If the defendant appeals the PI, the Appeals Chamber will review it.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

It is hard to specify the level of evidence required by the Courts in order to establish an IP right infringement. However, the Courts have been flexible with respect to the evaluation of the evidence.

There is no need to prove that the infringement is already taking place. Indeed, it is not necessary to file proof of the infringement, it will be enough if the petitioner can prove that he is entitled to enforce his alleged rights and that there are good reasons to believe that these rights are indeed being infringed by the defendant.

Furthermore, if the infringement has not taken place yet but the petitioner is aware of preparatory acts of the infringement, proof of said preparatory acts should be enough to obtain the PI.

Is there a requirement for "urgency", i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

Even though there is no deadline to file a PI, it is necessary to prove the existence of danger in the delay. This means that the petitioner has to prove that the long delays that usually occur in civil proceedings before a final decision is issued, may result in the final judgment lacking effect or in an irreparable damage.

Does a security deposit have to be made?

Yes, a security deposit will be requested by the Judge. However, in some cases petitioners have offered to make a sworn declaration through which the petitioner gives guarantee that he/she would be able to pay for the damages that the PI could cause if found wrongly granted. If the Judge accepts it, the security deposit will no longer be needed.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

If the trademark owner is aware of the existence of counterfeit goods, he/she can file a PI and request to the Courts the seizure of said goods.

This measure can be extended to Customs. In that case, after being notified about the Judge's decision, Customs will seize any goods identified with the infringed trademark that try to enter into the country.

Is it mandatory to file the main action once the PI was granted?

Yes. The petitioner needs to file the main action within 10 working days of the execution of the PI, otherwise the PI already granted will not be in force anymore.

Since in Argentina a mediation hearing needs to take place before initiating a legal action, the citation to the mediation will suspend the deadline until the mediation proceeding is over.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Even though our trademark law does not provide for damages, our Civil and Commercial Procedures Code does. According to said Code, the defendant is able to initiate a legal action requesting damages after the PI is lifted or after the main action is refused. Damages will be granted as long as the defendant proves the actual harm.

What are the average costs and how long do the proceedings take?

The cost may vary significantly. A PI proceeding can cost in the range of USD 5000 to file and execute it. If the counterparty appeals the Judge's decision, there will be extra costs of around USD 3000.

In regard to the security deposit, the amount will be established by the Judge taking into consideration the complexity of the matter, if the petitioner requested for seizure of products, what kind of products will be seized, if the PI could cause damages to the defendant, among others factors. Currently, the security deposit could be between USD5000 and USD7000.

With respect to the time that the proceedings take, we should say that filing a PI, waiting for the Judge's decision and executing it, could take between 30 and 45 days.

If the PI is appealed, the petitioner will have the opportunity to file a writ explaining to the Appeals Chamber why the PI should be confirmed. This decision could take around 1 or 2 additional months.

Finally, a verdict in the main action could take between 3 and 4 years depending on the complexity of the matter and the amount of proof offered by the parties.

AUSTRALIA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Australian courts can and do grant PIs in the context of trade mark infringement. The granting of a PI in a trade mark infringement matter would not be unusual.

Are PIs granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

The PI can be granted both *ex-parte* or *inter parte*. In the absence of evidence of significant urgency and/or consumer protection needs the norm would be *inter parte*.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

To secure an interlocutory injunction in Australia, the claimant must satisfy the court, to a balance of probability level, that:

- there is a serious question to be tried;
- the balance of convenience favors the granting of the order;
- damages would not be an adequate remedy.

For *ex-parte* injunctions there is a greater burden of full and frank disclosure, and evidence of the need for urgency.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

There is no set deadline to file a PI and delay in seeking a PI is not of itself a reason for denying to grant a PI. The question will be whether the delay makes it unjust to grant the PI.

Does a security deposit have to be made?

No, but undertakings as to damages are usually (if not always) required of the claimant in return for the granting of the PI. Whether the claimant will be in a position to make good on that undertaking will be relevant to whether the PI is granted.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes

Is it mandatory to file the main action once the PI was granted?

Yes, failure to commence a main action so may expose a claimant to a damages and costs award (per the undertaking) or potentially contempt of court issue depending on the wording of the PI order.

What are the average costs and how long do the proceedings take?

The cost of and time involved in a PI matter vary significantly.

BRAZIL

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, the Brazilian Law n. 9.279/1996 (Industrial Property Act) has a specific provision on the matter (on article 209 §§ 1 and 2), and there are also general provisions on Brazilian Law n. 13.105/2015 (Civil Procedure Act).

The granting of PI is not unusual, as it is indeed granted if the requirements are met.

For easy reference:

(Industrial Property Act)

Article 209 - The aggrieved party is reserved the right to receive losses and damages in compensation for losses caused by acts of violation of industrial property rights and acts of unfair competition that are not provided for in this law but which tend to prejudice another's reputation or business or to cause confusion between commercial or industrial establishments or providers of services, or between products and services placed on the market.

*§1 - The judge may, in the formal record of the same action, **so as to avoid irreparable damages or damages that would be difficult to recover**, grant an injunctive order to suspend the violation or act that has such in view, before serving the defendant with the summons, subject to, if he judges necessary, monetary caution or a fiduciary guarantee.*

§2 - In the case of blatant reproduction or imitation of a registered mark, the judge may determine the seizure of all the merchandise, products, objects, packages, labels and others that carry the falsified or imitated mark.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

The preliminary injunction may be granted without the other party being heard, upon judge's description. If the judge understands that the requirements are met, he or she can grant the PI ex-parte. If the judge is not sure, he or she can first summon the defendant to oppose, and then decide to grant or not the PI.

For your reference, the related provisions are article 9 of Brazilian Law n. 13.105/2015 (Civil Procedure Act), as well on §1 of article 209 of Brazilian Law n. 9.279/1996 (Industrial Property Act).

(Civil Procedure Act)

Art. 9. A decision cannot be rendered against a party who has not been previously heard.

Sole paragraph. The head provision is not applicable to:

I – urgent interlocutory relief;

II – cases of relief granted for prima facie rights as set forth in art. 311, items II and III;

(...)

(Industrial Property Act)

Art. 209 (...) §1 - The judge may, in the formal record of the same action, so as to avoid irreparable damages or damages that would be difficult to recover, grant an injunctive order to suspend the violation or act that has such in view, **before serving the defendant with the summons**, subject to, if he judges necessary, through monetary caution or a fiduciary guarantee.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

The level of evidence is measured through the requirements of *fumus boni iuris* (likelihood or certainty and liquidity of the claimed right) and *periculum in mora* (danger of harm or risk to the useful outcome of the process).

On practical terms, *fumus boni iuris* can be evidenced by demonstrating a reproduction or blatant imitation of a duly registered trademark and *periculum in mora* can be evidenced by showing i) damages already incurred, ii) that the infringing trademark is already in commerce, or iii) it is about to enter in the market.

For your reference:

(Civil Procedure Act)

Art. 300. Interlocutory relief **shall be granted when there are elements that prove the probability of the alleged claim (the “smoke of good law” or fumus boni iuris) and the risk of loss or injury to the useful outcome of the lawsuit (the “risk/danger in delay” or periculum in mora).**

(Industrial Property Act)

Art. 209 (...) §1 - The judge may, in the formal record of the same action, **so as to avoid irreparable damages or damages that would be difficult to recover, grant an injunctive order to suspend the violation** or act that has such in view, before serving the defendant with the summons, subject to, if he judges necessary, through monetary caution or a fiduciary guarantee.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

There is not a fixed deadline, but the delay is evaluated on a case-by-case basis. The longer it takes, the *periculum in mora* becomes riskier to demonstrate.

Therefore, a PI shall be requested as soon as possible.

Does a security deposit have to be made?

It is not mandatory, but it is possible on judge’s discretion.

For your reference:

(Civil Procedure Act)

Art. 300. (...) §1 In order to grant interlocutory relief, **a judge may demand, as the case may be, suitable security interest or personal guarantees in order to compensate for losses that the other party may incur**, with the possibility of waiving security interests if the economically disadvantaged party cannot provide them.

(Industrial Property Act)

Art 209. (...) §1 The judge may, in the formal record of the same action, so as to avoid irreparable damages or damages that would be difficult to recover, grant an injunctive order to suspend the violation or act that has such in view, before serving the defendant with the summons, **subject to, if he judges necessary, monetary caution or a fiduciary guarantee**.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes, judges may determine the seizure of the goods in stores, warehouses, etc, when granting a PI. Additionally, customs may seize i) at their wish (*ex-officio*) and then contact owner, ii) at request of interest parties or iii) by court decision.

For your reference:

(Industrial Property Act).

Art. 198. The customs authorities, *ex officio* or at the request of an interested party, may seize, at the time of checking, any products carrying falsified, altered or imitated marks or a false indication of source.

Art. 209 (...) §2 In the case of flagrant reproduction or imitation of a registered mark, **the judge may determine the seizure of all the merchandise, products, objects, packages, labels and others that carry the falsified or imitated mark**.

Is it mandatory to file the main action once the PI was granted?

Yes, but, it is also possible to file the PI along with the main action.

For your reference, the relevant deadlines are established on Brazilian Procedural Act

(Civil Procedure Act)

Art. 294. (...) Sole paragraph. A provisional remedy, based on urgency, of a preventive nature or as a preliminary satisfaction of judgment, may be granted prior to the filing of the claim or incidentally.

Art. 303 In cases where there is urgency at the time of filing the action, the complaint can consist solely of a request for interlocutory relief and of the disclosure of the final remedy sought, with an explanation of the dispute, of the right sought to be enforced and the risk of loss or injury to the useful outcome of the lawsuit.

§1 Once the interlocutory relief referred to in the head provision of his article has been granted:

I – the plaintiff must amend the complaint, complementing it with arguments, filing new documents and confirming the request for final remedy, within fifteen (15) days or longer by determination of the judge; (...)

§6 Should the court judge that there is no evidence that would justify granting interlocutory relief, it shall determine that the complaint be amended within five (5) days, under penalty of being denied and the action dismissed without prejudice.

Art. 308. Having enforced the provisional remedy, the main claim shall have to be formulated by the plaintiff within thirty (30) days, in which case it shall be filed in the same action in which the request for provisional remedy was filed, not depending on the advance payment of new procedural costs.

§ 1 The main claim may be filed jointly with the request for a provisional remedy.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes, it is possible to provide for damages if the PI caused any losses to the defendant prior of being lifted.

For your reference:

(Civil Procedure Act)

Art. 302. Independently of any redress for a procedural injury, the party is liable for any losses that the enforcement of interlocutory relief may cause the opposing party:

I – if the judgment is unfavorable to the former;

II – when relief obtained in advance on a preliminary basis does not offer the necessary means to serve summons upon the defendant within five (5) days;

III – when the remedy ceases to be effective in any legal hypothesis;

IV – when the judge accepts the allegation of the preemption or prescription of the plaintiff's claim.

Sole paragraph. Damages shall be liquidated in the action in which the remedy was granted, whenever possible.

What are the average costs and how long do the proceedings take?

When the PI is incidentally claimed, there is no additional costs. When it is filed autonomously, the costs vary a lot and it is not possible to establish an average cost.

The granting of a PI can take from some days to several months after filing, depending on the court and if the judge decides to hear the opposed party before granting a decision.

Once the judge decides to grant or not a PI, it is possible to appeal against the decision – *such decisions, though, are not easily reverted.*

For your reference:

(Civil Procedure Act)

Art. 295. Provisional remedies requested incidentally do not depend on the payment of court costs.

CANADA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, pre-trial injunctions (i.e. interim and interlocutory injunctions) are available in Canada in the context of trademark infringement.

Such relief has been fairly difficult to obtain in Canada, particularly in the Federal Court of Canada.

However, pre-trial injunctive relief is available particularly when the evidence establishes that irreparable harm will, in fact, be suffered by the moving party even if it prevails at trial.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

Pre-trial injunctions are rarely granted ex-parte in Canadian trademark infringement cases.

However, in exceptional cases, a Court may grant an ex parte motion for a pre-trial injunction. This is typically where the Court is satisfied that no notice is possible and that the case is extremely urgent, or that giving notice would defeat the purpose of the injunction.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

The moving party must satisfy the following three-part test:

- a) Is there a serious question to be tried?
- b) If the injunction is not granted, will the moving party suffer irreparable harm which cannot be adequately compensated by damages? and
- c) Which party will suffer the greater harm (i.e. the balance of convenience) if the injunction is granted or refused pending a decision on the merits?

Is there a requirement for "urgency", i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

The moving party must move promptly. If there is delay, the Court may infer that the moving party will not suffer irreparable harm from the Defendant's conduct.

Does a security deposit have to be made?

While a security deposit is not typically required, there can be exceptions.

Typically, in order to obtain a pre-trial injunction, the moving party must give an undertaking to pay to the Defendant any damages that the Defendant may suffer by reason of the injunction, should the moving party ultimately fail at trial.

In cases where there is doubt as to the moving party's ability to provide adequate compensation, the Court may order that there be a security deposit or other form of security.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes, this remedy is available.

Is it mandatory to file the main action once the PI was granted?

While it is not common to seek a pre-trial injunction before filing the main action, this is possible in cases of urgency.

However, in such situations, the moving party must undertake to commence the main action, typically within a period of time fixed by the Court.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes, consistent with the undertaking as to damages given by the moving party when seeking a pre-trial injunction, damages may be awarded to the Defendant in such circumstances.

What are the average costs and how long do the proceedings take?

Depending upon the urgency as well as the circumstances and importance of the case, pre-trial injunction proceedings can typically take a few days to a few months. Costs can typically range from \$25,000 USD to \$150,000 USD.

CHILE

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Chilean legislation contemplates PIs on articles 273 and 290 of the Chilean Procedure Civil Code (hereinafter "CPCC") and in articles 112 and 113 of Chilean Industrial Property Act (hereinafter "CIPA").

In specific regarding trademarks infringement, the CIPA establishes (i) The cessation of the infringement acts, (ii) Seizure of the infringer products, (iii) Prohibition of advertisement in any manner of the infringer product, (iv) the naming of one or more judicial intervenors and (v) the retention of any type of earnings obtained through the sales of the infringer products.

Then, in general – but also can be requested in a trademark infringement action - the CPCC establishes PIs, for two different purposes: (i) to prepare a civil procedure or (ii) to secure the action intended in the trial or the action that will be intended in trial.

In this sense, regarding the first type of PI said below, the future claimant may request the court, through a judicial writ, the following measures: (i) Sworn statement, (ii) Exhibition of documents (including books of account), (iii) Exhibition of the object of the future lawsuit, and (iv) Recognition of signature.

Then, regarding the second type of PI said below, the future claimant could request the Court the (i) seizure of the object of the trial; (ii) the designation of a judicial intervenor; (iii) the retention of determinate goods; and (iv) the prohibition of celebrate contract or agreement regarding determinate goods.

Finally, civil courts are rather reluctant to grant such measures (especially the *ex parte* PI), even though there have been a cases in which these are conceded.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

PI measures could be requested through both an *ex parte* or *inter parte* procedure, depending on the urgency and necessity of such measures.

Chilean Courts could grant a PI *ex parte* if the urgency and necessity of the PI is manifest. This means that considering the arguments of the plaintiff, as well with the evidence that could be provided by him, it is necessary to ensure the proceeding to grant the PI *ex parte*. Consequently, in these cases, the defendant will not have the possibility to opposing to the PI before it is rendered

Please note that the plaintiff has the legal duty to file the civil action within 10 days (extendable to 30 days) since the PI has been granted, under the sanction that the PI will be overruled.

Once the civil action has been notified to the defendant, in conjunction with the PI, the defendant could request the overruling of the PI.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

The level of evidence is “probability”, but not “certainty” of the infringement.

In this regard, what is necessary to be probed to obtain the grant of PIs depends of the following:

- If the PI is requested *inter parte*, we should demonstrate (i) serious presumptions of violation of rights (article 298 of CPCC); and (ii) Evidence that demonstrates actual danger of violation of rights (article 279 CPCC).
- If the PI is requested *ex parte*, additionally we must demonstrate the urgency and necessity of such measures.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

After a PI is granted, the claimant must file the infringement action within 10 working days since the PI has been granted. This legal term could be extended in 30 days for demonstrate necessity.

Regarding the defendant, there is not a special deadline related to the PI established in Chilean law.

Does a security deposit have to be made?

If the PI are the kind of one that are requested to secure the action intended in the trial or the infringement action, it is compulsory file a security deposit in order to answer for possible damages caused by the granting of these PI measures (article 279 CPCC).

The total amount of this security deposit will be defined by the civil Court, by his own criteria.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Although the CIPA requires the infringement in order to grant a PI – in other words, is necessary that the good suspected of infringing a trademark is into commerce –, Chilean legislation contemplates other kind of measures that could prevent the entrance of goods suspected of infringement, this is, *border measures*. This implies a prevention of the entry of those goods into commerce.

Regarding to trademarks, there are two options in relation to the *border measures*: (i) requested by the interest party – the trademark owner – to a civil court. In this case, the Civil Court will order to the Customs Office to apply the border measure; and (ii) if the infringement to a trademark is evident, the Customs Office ex officio will inform to the trademark owner this issue and will apply ex officio the border measure.

Is it mandatory to file the main action once the PI was granted?

Is mandatory to file the main action if the PI is one of that (i) are requested to secure the action intended in the trial or (ii) in case of *border measures*.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Although there is not a specific regulation of this matters, if a PI is requested and granted, the defendant must make a security deposit in order to obtain the grant of the PI. This security deposit has the objective of secure the possible damages or fines derivate of the PI's grant.

What are the average costs and how long do the proceedings take?

Regarding to costs, there is not a specific regulation in the Chilean Law. However, there is some cost related to the procedure of granting of a PI, like (i) notifications costs; (ii) hearings before the civil Court; (iii) etc.

In this regard, there is an approximate cost of USD \$ 2.500 (without security deposit).

Regarding to the time of this proceedings, we must to distinguish between an ex parte PI or inter parte PI: (i) in an ex parte PI, since the filing of the PI to the grant of it by Court, it could take from 2 weeks to 2 months; and (ii) in an inter parte PI, this could take a from 1 month to 4 months.

CHINA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes. The laws of China provide for preliminary injunctions in the context of trademark infringement. Both the IP specialized court and local courts having the jurisdictions over IP matters can issue PI. In practice, chances to obtain such a relief are not optimistic.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

China does not provide *ex-parte* PI. The defendant can apply for a review of the PI within 5 days upon the reception of the PI.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

The claimant has to provide a lot of information to convince the court that the trademark is sufficiently close to be an infringement to justify the injunction. And the claimant has to prove its irreparable loss if the injunction would not be granted.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

Yes. There is a requirement for “urgency”. Must be within 3 years since first learning of the infringement.

Does a security deposit have to be made?

Yes. If the applicant fails to provide security deposit deemed necessary by the court, the PI will be lifted.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes

Is it mandatory to file the main action once the PI was granted?

Yes. Main action must be filed within 15 days for PI on IP matters.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes. But in practice only direct loss could be covered.

What are the average costs and how long do the proceedings take?

Cost could be around USD20,000; and no time limit for the proceedings.

HONG KONG

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, Hong Kong court can grant interlocutory injunctions for preservation, inspection and delivery up of infringing articles as well as documentation relating to the infringing acts, etc. The grant of such PI is not rare in practice.

Are PI’s granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

The PI can be granted both *ex-parte* or *inter partes*.

For ex-parte injunction, it is made without notice or only very last minute notice to the defendant

For inter partes injunction, it is made by first giving notice to the defendant. So the defendant can only oppose the inter partes injunction before it is rendered.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

To apply for interlocutory injunctions in Hong Kong, the claimant must satisfy:

- Whether there is a serious question to be trialed.
- Whether the balance of convenience is in favor of granting the order.

Related considerations are whether the injunction would maintain the *status quo*, the relative strength of the case, and whether there are any special factors.

The claimant has to convince the court that the trademark is, on the balance of probabilities, sufficiently close to be an infringement to justify the injunction.

Meanwhile, for *ex-parte* injunctions, there is a greater burden of full and frank disclosure, including of matters which are adverse to the claimant and could affect the court's decision.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

Generally a requirement for 3 months to file a PI subsequently to the trademark owner learning about the infringement. On exceptional cases, 6 months are acceptable. Otherwise, the claimant would hardly prove its irreparable loss.

Does a security deposit have to be made?

Yes. but it is upon the court’s discretion.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes

Is it mandatory to file the main action once the PI was granted?

Yes.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

HK court exercise balancing the risk of injustice (often referred to as the 'balance of convenience') means that it will also consider the adequacy of damages for the defendant if an injunction is granted and it is subsequently found that the defendant's activity did not infringe. This will involve a consideration of the plaintiff's ability to pay any damages that it might be ordered to pay under its cross-undertaking in damages. A cross-undertaking is intended to compensate the defendant if it is subsequently found that the injunction was wrongly granted and is almost always required from a plaintiff when an injunction is awarded. A non-Hong Kong resident plaintiff, will usually be required to provide some form of security (for example, a bank guarantee) to cover the possibility of a payment under its cross-undertaking.

What are the average costs and how long do the proceedings take?

Average costs

Law firms in Hong Kong generally charge their professional fees on a time spent basis. As a trade mark infringement action will be a contentious matter, it is difficult to estimate the ultimate cost of proceedings which depend very much on the circumstances and complexity of the case. As a guide, a case proceeding in the High Court to trial could cost between HKD2 million and HKD5 million.

Generally, the successful party can recover their legal costs and disbursements from the other party, which after taxation (assessment) by the court, is usually about 50% to 60% of the legal costs and all disbursements actually incurred by the successful party in the proceedings, depending on the nature of the case and the conduct of the parties proceeding with the case.

Length of proceedings:

Initial grant can take from half a day to three days. If the claimant has obtained an *ex parte* injunction from the court, it lasts until the return date, normally seven days or less from the date of the order. If the interlocutory injunction granted is not challenged by the defendant, it remains until the trial of the case (or earlier order where the case is otherwise settled or grounds for removing the injunction arise).

If the defendant opposes the injunction at the return date, it can be anything from six to 12 weeks later before the entitlement to an injunction is determined.

INDIA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes. The Trade Marks Act, 1999 (the Act) envisages interlocutory orders in suits for infringement or for passing off. These may include injunction, preserving of infringing goods, discovery of documents etc.

The Code of Civil Procedure, 1908 also envisages grant of temporary injunction.

The chances of obtaining such relief (of interim injunction) are good if right holder/s is/are able to satisfy the prerequisites for grant of such an Order.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

Preliminary Injunction may be granted *ex-parte*. The Court may choose to hear the Defendant before granting any such Order in some cases.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

The right holder should be able to establish that it has a *prima facie* case in its favour, balance of convenience and that irreparable harm/injury will be caused if interim relief is not granted. The right holder should adduce adequate evidence to establish its proprietary/statutory rights, instances of misuse/misrepresentation/actual confusion etc.

The standard of proof is not as stringent as that in trial.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

There is no deadline prescribed for the trade mark owner to initiate such an action. However, lapse of time may bring about a change in the state of proceedings in such a manner that to grant injunction in favour of Plaintiff would be difficult/harsh.

Practically speaking, for grant of Preliminary Injunction an Application for ad interim injunction should be filed with all expedition.

Does a security deposit have to be made?

Not mandatory. The Court may order the Plaintiff to give security for the payment of costs incurred and likely to be incurred by any Defendant. Nevertheless, practically speaking, Plaintiff is seldom asked to deposit security in cases of infringement/passing off.

Having said that, where Interim/Preliminary injunction is not granted, the Court may order the Defendant to submit statement of account etc.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes.

In practice, the Plaintiff files an Application under the Code of Civil Procedure, 1908 requesting appointment of Local Commissioner/s to inspect/investigate the premises of the Defendant/s where offending/infringing products are suspected to be stored/stocked and take the same into custody.

The Trade Marks Act envisage penal provisions whereby falsifying and falsely applying trade mark can be penalized under the said Act. The Act also entitles the Police to search and seize without warrant the goods and produce the same before a Judicial Magistrate.

The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 ('the Rules') have been in place since May 2007. These Rules provide for filing of a general or specific customs watch notice (by or on behalf of an intellectual property Right Holder) requesting for suspension of clearance of (imported) goods suspected to be infringing intellectual property right, including trademarks. After registration of the notice, the import of allegedly infringing goods into India shall be deemed prohibited.

Is it mandatory to file the main action once the PI was granted?

An Application seeking Preliminary Injunction is filed simultaneously and/or during the pendency of Suit.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes. The Defendant may ask for damages or compensation upon setting aside of Interim/Preliminary Injunction or may pray for cost of proceedings in the suit etc.

What are the average costs and how long do the proceedings take?

Generally, the Application for interim injunction is taken up on the first date of hearing of the Suit (main action) and depending upon the *prima facie* case established by the plaintiff/ balance of convenience and the likelihood of irreparable harm and injury, *ex-parte* injunction is granted OR notice is issued to the other side in case Court wishes to hear the other side. In practice, it usually takes 3-5 hearings for conclusion of the arguments of both the parties on the Application for interim injunction.

As per Order 39 Rule 3A of the Code of Civil Procedure, 1908, the Court endeavours to finally dispose of the Application within 30 days from the date on which *ex-parte* injunction was granted.

The costs vis-à-vis disposal of Application for ad interim injunction depend upon various factors such as seniority (standing) of counsel engaged for addressing arguments, Court/s before which action is initiated (District Courts/High Courts), complexity of the issue involved, jurisdiction (Delhi/Bombay/Chennai) etc. and are difficult to predict.

JAPAN

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, a request for preliminary injunction against the usage of a trademark is permitted under the Civil Provisional Remedies Act (“CPRA”) in Japan and is applicable in cases involving trademark infringement. There is a realistic chance to obtain such relief and there are a number of cases in which creditors have obtained preliminary injunctions especially in the case where the Court can easily decide the case.

Are PI’s granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

Yes, in principle, it is necessary under the CPRA to give the debtor a chance to oppose the preliminary injunction before it is rendered.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

While normal lawsuits require proof of high probability, *prima facie* evidence is required in procedures for civil provisional remedies under the CPRA.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

While under the CPRA a request for a preliminary injunction requires “necessity to preserve the right”, i.e. it being necessary in order to avoid any substantial detriment or imminent danger that would occur to the creditor, the CPRA does not stipulate the requirement of a deadline for filing a request for preliminary injunction. However, since a claim against a trademark infringement will lapse by prescription if not exercised within three (3) years from the time when the trademark owner learns about the infringement, a request for preliminary injunction must also be filed within such period.

Does a security deposit have to be made?

Yes, if the court finds that there are sufficient legal grounds for a preliminary injunction, it will require the creditor to deposit a certain amount of security for the preliminary injunction.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes, in trademark infringement cases, creditors may request a provisional disposition to have a court execution officer store the infringing goods, together with a request for preliminary injunction against the usage of a trademark.

Is it mandatory to file the main action once the PI was granted?

If the creditor does not bring a main action after the preliminary injunction is granted, the debtor may then request the court to order the creditor to bring a main action within a reasonable period and, if the creditor does not bring a main action within this period, the debtor may request the court to revoke the preliminary injunction.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes. In the case where the main action is refused, a creditor who has obtained and enforced the decision of preliminary injunction intentionally or negligently will be responsible for the damage incurred by the debtor in connection with the preliminary injunction. Generally, if the main action is refused and this decision becomes final, unless there are special circumstances it will be assumed that the creditor who has obtained and enforced the decision of preliminary injunction has done so intentionally or negligently.

What are the average costs and how long do the proceedings take?

The average trial period is approximately five (5) months, and if the case is controversial this is extended to eight (8) months. The fee to be paid to the court for each request is JPY 2,000. Although the attorneys' fees will depend on the case and the law firm, we consider they will be approximately JPY 1,000,000 to 5,000,000.

MEXICO

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, the Mexican Law provides preliminary injunctions. The requirements to get an injunction before the Mexican Trademark Office (IMPI) is very suitable if the plaintiff meets the following requirements:

To have a TM registration in Mexico

To have a minimum evidence of a possible TM infringement

To post a bond (when it comes for seizing goods, cease and desist orders and any other mandatory injunctions)

To provide the necessary information from the infringer and an exact location of the possible TM infringement

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

No, the defendant has no possibility to oppose the PI before it is rendered. PI's are handled under confidential prosecution standards to avoid the destruction, alteration or loss of the evidence.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

The level is minimum.

According to law, it is necessary to prove to be the right-holder of the TM registration and any of the following assumptions:

- a) The existence of a violation of his right;
- b) That the violation of their right is imminent;
- c) The existence of the possibility of suffering irreparable damage, and
- d) The existence of a well-founded fear that the evidence could be destroyed, hidden, lost or altered.

Is there a requirement for "urgency", i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

The deadline is one year, counting from the date that the owner learnt about the infringement.

Does a security deposit have to be made?

Yes, the bond is mandatory but the quantity will be studied by the authority on a case by case basis.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes, there are border measures and raids. Our firm is one of the leading IP firms in Mexico running anti-counterfeiting programs, developing Internet monitoring programs and conducting market surveys for major companies, as well as coordinating education and training programs for customs authorities.

Is it mandatory to file the main action once the PI was granted?

Yes, once the PI is granted, the plaintiff has 20 labor days to file a TM Infringement action. If it is not filed the bond will be lost.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes, the infringer can post a counter bond once the PI is granted, (around 40% over the bond posted).

Yes, our jurisdiction provides damages but it depends on a Civil Trial that can be started once there's a final TM infringement resolution.

What are the average costs and how long do the proceedings take?

On average, a trademark infringement with preliminary injunction is around \$35,000 USD, plus expenses (the bond is not included). It can last around 2 years or more (with the infringement action).

NIGERIA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement; if so, is there a realistic chance to obtain such a relief in practice?

Preliminary injunctions are governed by Common Law, Federal High Court (Civil Procedure) Rules and Case Laws. Interlocutory applications may be made at any stage of an action. Interlocutory injunctions are granted in order to maintain the status quo pending the determination of the substantive suit on its merits. The order is given to give a plaintiff a temporary protection against injury by the continual violation of his trademarks rights. Preliminary

Injunctions obtainable in the Nigerians Courts are: Interim Injunction, Interlocutory Injunction, Anton Pillar Injunction and Mareva Injunction.

Yes, there is a realistic chance of obtaining such a relief in practice as applications for interlocutory injunctions are frequently made to the court. It is rapid and relatively cheap to obtain interlocutory injunctions in practice upon settlement of the guiding principles.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

PI are granted both ex-parte and on notice. However, in serious situations where notice to the defendant will destroy the infringing goods or where the infringing goods will be taken out of jurisdiction or where time is of the essence a, plaintiff can bring an ex parte application to the court. The Defendant cannot oppose an ex-parte application.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

The principles guiding the grant of an injunction has laid down by Lord Diplock in *American Cyanamid Company v Ethicon Ltd* [1975] AC 396 . have been followed by the Nigerian courts. Emphasis are laid on the balance of convenience between the two parties rather than the strength of the plaintiff's case The principles are that:

- a. the plaintiff must show an arguable case, that there is a serious issue to be tried
- b. damages will not be an adequate remedy (instances in cases of damage to reputation and goodwill)
- c. The balance of convenience lies in favour of granting the injunction

An additional requirement by the Nigerian Courts is the undertaking by the applicant to pay damages if the action is found to be frivolous.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

Yes. It is required that a plaintiff must seek reliefs IMMEDIATELY upon learning of the alleged infringement as a delay without a valid explanation may prevent a plaintiff from getting an order.

Does a security deposit have to be made?

Security Deposits are not a requirement for the grant, however, the defendant must undertake in his application for the Preliminary Injunction to pay cost (compensation to the Defendant) if his application is found by the court to be unmeritorious.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes. The Nigerian Customs Service has the authority to impound goods upon suspicion on reasonable ground that the goods are counterfeit

Is it mandatory to file the main action once the PI was granted?

A preliminary Injunction cannot be instituted without the substantive action, all Preliminary Injunctions should accompany the Writ of Summons. The writ of summons is the foundation upon which the PI rests.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

An application for preliminary Injunction must state an undertaking to pay damages if the application turns out to be frivolous. The court will award damages if the application is upturned on appeal or the main action is dismissed.

What are the average costs and How long do the proceedings take?

Costs are granted at the discretion of the court, cost must be sought before the court can exercise the discretion. The court may grant the sum sought in the application or a sum lesser but will never award a sum exceeding what the applicant or defendant seeks. Interim Injunctions are granted for a period of 7 -14 days upon filing the application whereas, Interlocutory injunctions are granted pending the determination of the suit. The substantive action is determined within a period of 2 years.

NORWAY

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, to both questions.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

As a principal rule, the court shall rule on the PI by way of interlocutory order after the parties have been summoned to an oral hearing. Before making an interlocutory order, the court shall, insofar as possible, give the parties the opportunity to make statements.

If a delay poses a risk, an interlocutory order for PI can be made without an oral hearing. The decision is based on the information given in the petition, thus representing a clear breach of the contradictory principle. The provision must be seen in connection with the access to the subsequent oral hearing. If a PI is granted without an oral hearing, the court shall inform the parties of their right to demand a subsequent oral hearing.

A PI cannot be granted if the loss or inconvenience to the defendant is clearly disproportionate to the interests of the claimant in the PI being granted.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

In order to petition for a PI, you must substantiate the existence of a claim. You must also have a ground for interlocutory relief. The "level of evidence" is that the claimant must have *rendered probable* the existence of a claim.

Is there a requirement for "urgency", i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

No clear deadline, but if the trademark owner does not act quickly, the court may find that there is no ground for a PI.

Does a security deposit have to be made?

The court may decide that a PI shall only become effective and be executed if the claimant provides security as may be determined by the court for any compensation to the defendant for which the claimant may be found liable. If the claimant has been ordered to provide security for a PI, the PI shall not enter into force and cannot be executed until the court has given notice to the defendant that security has been provided, unless the court has decided otherwise.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes.

Is it mandatory to file the main action once the PI was granted?

Yes

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes.

What are the average costs and how long do the proceedings take?

The costs obviously depend on the complexity of the matter, but in general from NOK 100 000 – 250 000 (approx. EUR 10 300 – 25 700).

The proceedings shall be quick, but this depends on the complexity of the matter. A PI without an oral hearing will take only a few days. With an oral hearing, the proceedings will take a couple of weeks/a month.

Please note that the Norwegian Dispute Act has a special provision (Section 34-7) on PIs to protect intellectual property rights:

“As a PI against the recipient or the recipient's representative, the court may decide that the customs authorities shall withhold goods that are under their control, when the import or export of the goods would constitute an infringement of an intellectual property right as referred to in Section 28 A-1 (3), first sentence of the Dispute Act. The court may decide this even if the recipient or the recipient's representative is unknown. In that case, the PI shall be ordered without a summons to an oral hearing, and no time-limit shall be fixed for the claimant to bring an action on the claim. The recipient or the recipient's representative shall have the status of defendant from the date and time the customs authorities withhold goods in accordance with the measure.

This section applies correspondingly in the event of the import or export of goods that violate Section 30 of the Marketing Control Act, and the import and export of goods that violate Sections 25 and 26 of the Marketing Control Act, when the violation consists of imitating the products, trademarks, advertising materials or other products of another party.”

RUSSIA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice.

Please be informed that Russian law provides for two types of security measures: preliminary and interim. The motion for preliminary injunctions can be filed before filing the lawsuit. In this case the judge must consider the motion and if the security measures are granted, gives to a plaintiff a term not exceeding 15 days for filing the lawsuit. The motion for interim injunctions can be filed along with the lawsuit or at any stage of the court proceedings before the judgement is issued. Unfortunately, based on current practice preliminary injunctions are granted very rarely.

Kindly note that the preliminary injunctions are often used in domain names disputes. Procedurally, the plaintiff is entitled, before filing a lawsuit or simultaneously with filing the lawsuit, to file a preliminary injunction motion with the court to block the potential transfer or cancellation of the domain name. The plaintiff shall condition the grant of the preliminary injunction by arguing that non-grant of the same may harden or make it impossible to enforce the court decision. Prevention of substantial damages will also be regarded as a valid condition to obtain a preliminary injunction. Permanent injunctive relief will be awarded by the court if the plaintiff is able to evidence and prove IP infringement or unfair competition. Pre-litigation procedure taken before the respective domain registrar and aimed at freezing or locking the conflicting domain name is effective for 14 days and will also be feasible, provided that a warranty for indemnification is given by the rights holder in the corresponding motion.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

Yes. Preliminary injunctions may be granted *ex parte* at any stage of the court proceedings if failure to take such a measure could cause complications to or prevent enforcement of the court decision, or cause substantial harm to the applicant.

The defendant may secure the reimbursement of the respondent's possible losses (counter securing) by way of entering into a deposit account of the court monetary assets in the amount suggested by the court or by way of providing a bank guarantee, pledge or other financial guarantee in the same amount. Counter securing may be likewise provided by the defendant, instead of taking measures aimed at securing a claim for recovering a sum of money by way of entering into the deposit account of an arbitration court monetary assets in the amount of claims of the claimant.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

A preliminary injunction should be granted only when the requesting party is highly likely to be successful in a trial on the merits and there is a substantial likelihood of irreparable harm unless the injunction is granted. If a party has shown only a limited probability of success, but has risen substantial and difficult questions worthy of additional inquiry, a court will grant a preliminary injunction only if the harm to party outweighs the injury to others if the injunction is denied.

Security measures shall be allowed at any stage of arbitration proceedings if the following conditions are observed:

- if failure to take these measures may impede or make the enforcement of a judicial act impossible, and likewise if the enforcement of a judicial act is expected to take place outside of the Russian Federation;
- the security measures are required for the purpose of preventing the infliction of extensive damages to the applicant.

Is there a requirement for "urgency", i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

The general term of the limitation of actions shall be laid down as three years. Please be informed that limitation period exists and is applicable to this kind of disputes. Therefore, for example, compensation can be claimed only within 3 years from the date of recognition of the violation. However, in case of a continuing violation, the fact that it has become known for a long time does not deprive the right to claim for termination of actions. Therefore, even if the trademark is forged for many years and you learned about it more than 3 years ago, nevertheless, such a claim can be filed if the violation still continues.

Does a security deposit have to be made?

An arbitration court, when allowing the securing of a claim, may upon the application of the defendant to demand of the person making securing the claim, may propose to him on its own initiative, secure the reimbursement of the respondent's possible losses (counter securing) by way of entering into a deposit account of the court monetary assets in the amount suggested by the court or by way of providing a bank guarantee, pledge or other financial guarantee in the same amount. The amount of counter securing may be established within the limits of the property claims of the claimant indicated in his application, as well as of the amount of interest on these claims. The amount of counter claim may not be less than half the amount of property claims.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Theoretically, yes, the laws of the Russian Federation provide seizure of goods that are under the customs control and if the criminal case is opened. In other cases, such measure is not provided.

Is it mandatory to file the main action once the PI was granted?

The motion for preliminary injunctions can be filed before filing the lawsuit. In this case the judge must consider the motion and if the security measures are granted, gives to a plaintiff a term not exceeding 15 days for filing the lawsuit.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes. Please be informed that it is possible to claim for compensation of court expenses as well as damages that are caused by securing a claim (Art. 98 of the Arbitration Procedural Code of the Russian Federation).

What are the average costs and how long do the proceedings take?

After we file a statement of claim with the Court, a preliminary hearing will be appointed followed by substantive court sessions. Usually, the decision is made after 3-4 oral hearings (3-4 months). Please be informed that our fee for drafting, filing and further dealing with trademark infringement action in the Russian court is charged on an hourly basis of EUR 200, plus payment of the official fee (for a claim of a non-monetary nature – approx. EUR 100,- for a claim of a monetary nature – the fee amount will depend on the amount of the claim). Based on our experience in this type of cases, the total cost for dealing with the case in the court of the first instance is within EUR 5000-7000.

SINGAPORE

Do the laws of your country provide for preliminary injunctions (PI) or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Preliminary (Interim/interlocutory) injunctions are available under the laws of Singapore. Singapore court may grant a PI where the matter is of great urgency, for preservation, inspection and delivery up of infringing articles as well as documents relating to the infringing act(s), and where the applicant must restrain the respondent (defendant) even before the dispute is formally resolved by the Court or the applicant will suffer irreparable losses.

Yes, there is a realistic chance to obtain such a relief in practice if the applicant is able to satisfy all the criteria to be awarded a PI.

The principles governing whether a PI should be granted were laid down in the case of *American Cyanamid Company v Ethicon Ltd* [1975] AC 396. In determining whether an PI ought to be granted, the applicant, on whom the burden of proof lies, must first persuade the Court that there is a serious question to be tried (that is, that the claim is not frivolous and vexatious, such that there is a real prospect of it succeeding at trial) and that the balance of convenience lies in favour of granting the PI.

Typically, the applicant must prove that his losses would not be adequately compensated by monetary damages if the injunction is not granted but this must be weighed against the inconvenience caused to the respondent. The court may grant the relief subject to an undertaking by the applicant that he would compensate the respondent if the matter was held at trial that the applicant is not entitled to restrain the respondent from doing what he was threatening to do.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

The PI can be granted both *ex-parte* or *inter partes*.

Giving notice to the respondent (defendant) is generally necessary in an PI application. However, in some cases, it may not be appropriate to do so (for example, where time is of the essence, or where alerting the respondent would defeat the purpose of the application). If so, an application may be made *ex-parte*, without giving notice.

Therefore, a respondent can only oppose an *inter partes* injunction before it is rendered.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

To succeed in an application for an interlocutory injunction in Singapore, the applicant must satisfy the Court on a balance of probabilities:

- Whether there is a serious question to be tried;
- Adequacy of damages [is the damage (actual or potential) to the applicant alleged to have been caused by the infringing act(s) quantifiable such that the applicant may be adequately compensated in monetary terms should it succeed in its application for a permanent injunction at trial?];

Where the Court is unable to form an assessment of the adequacy of damages (either way), it turns to a general examination of the balance of convenience, that is, whether the balance of convenience is in favour of granting an order for the PI;

In considering “balance of convenience”, the Court has a wide discretion to consider any factor which may have a bearing on the issue of whether the injunction ought to be granted: Singapore Civil Procedure 2015 at paragraph 29/1/15. Related considerations are whether the injunction would maintain the *status quo* (defined as the state of affairs immediately before the issue of the writ: see *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130), the relative strength of the case and whether there are any special factors to be considered. The fundamental principle is that the Court should take whichever course appears to carry the lower risk of injustice if it should turn out to be wrong at trial in the sense of granting relief to a party who fails to establish its rights at the trial, or of failing to grant relief to a party who succeeds at trial (*Challenger Technologies Limited v Courts (Singapore) Pte Ltd* [2015] SGHC 218).

The applicant of an *ex-parte* injunction must give full and frank disclosure of all material facts to aid the Court in deciding whether to grant the injunction, failing which the injunction may be set aside subsequently, including of matters which are adverse to the applicant and could affect the Court's decision.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

Yes, there is a requirement for “urgency” (though there is no set “deadline” in the sense of a prescribed period of time) in filing a PI subsequent to a trade mark owner discovering the infringement and the alleged infringer.

As a PI is an equitable remedy, equitable defences, such as delay and “laches”, are relevant. If there is a delay by the applicant (claimant) in taking action against the alleged infringement, and the delay has resulted in prejudice to the respondent, there will be a basis for denying interim relief. If the applicant has sat on his rights, this may lead to an inference that the matter is less than urgent, or that it is not necessary to make an interim injunction. If there is considerable unexplained delay, a Court may deny injunctive relief, particularly, interim relief, on the basis of acquiescence, estoppel or balance of convenience.

Does a security deposit have to be made?

No. The applicant is usually not required to provide any bond/guarantee, but will be required to provide an undertaking to abide by any possible order for damages if the defendant/respondent sustains any damage by reason of the injunction.

The Court may impose various conditions when issuing a PI to minimise any risk of injustice arising from the oppressive nature of such injunctions.

Whether the applicant will be in a position to make good on that undertaking will be relevant to whether a PI is granted.

A security deposit in terms of security for costs may be required in the case of a foreign applicant who has no assets in the jurisdiction.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes.

Is it mandatory to file the main action once the PI was granted?

Yes, a plaintiff is, in fact, in principle required to file a Writ of Summons for the main action before filing an application for a preliminary injunction.

While the application for preliminary injunction may be made before the issue of the writ where the case is one of urgency, the writ must be issued within two days of the granting of the injunction, or such other period as the Court may order, failing which the Court may discharge the injunction on the defendant’s application.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes, the defendant/respondent can claim damages under the above mentioned circumstances if the defendant/respondent is able to prove positively the damage suffered as a consequence of the unjustified preliminary injunction.

What are the average costs and how long do the proceedings take?

The costs will depend on the complexity of the matter.

The proceedings may take 1 or 2 days. However, if it is contested, it may take longer.

SOUTH AFRICA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, the common law of South Africa provides for an “interim interdict” (preliminary injunction), namely a court order preserving or restoring the status *quo* pending the final determination of the rights of the parties. Such an order may restrain the respondent from using an offending trade mark pending the determination of an infringement action. For trade mark infringement, an interim interdict is sought by way of application proceedings instituted to the High Court. This relief is sought pending the outcome of a main action or application instituted or to be instituted.

There is, in practice, a realistic chance to obtain an interim interdict provided that the requisites for the grant thereof are established and where there has been no undue delay in launching the application for the grant thereof.

Are PI’s granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

Interim interdicts are, in general, only granted in situations where the defendant has been given an opportunity to oppose. However, there are instances where an interim interdict can be sought *ex parte*, such as an Anton Piller order, discussed further below. In addition, when dealing with counterfeit goods, section 11 of the Counterfeit Goods Act 37 of 1997 provides for an intellectual property rights holder to make application to obtain *ex parte* relief including search of premises, seizure of goods and restraining the respondent from carrying out or continuing with the act of dealing in counterfeit goods.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

The evidence put forward by the applicant must be made on affidavit and establish, on a balance of probabilities, the requisites for the right to claim an interim interdict under the common law, namely:

- A *prima facie* right;
- A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;
- That the balance of convenience favours the granting of an interim interdict;
- That the application has no other satisfactory remedy.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

While there is not necessarily a requirement for “urgency” *per se*, there must not have been any “undue delay” on the part of the applicant when instituting the application for interim relief. A court always has a wide discretion to refuse an interim interdict even if the requisites have been established. One of the important factors taken into account is whether there has been any undue delay in launching the interim proceedings. If this is the case, then the court may exercise its discretion against the granting of interim relief.

Does a security deposit have to be made?

Generally, yes. As part of its discretion to grant an interim interdict, the court may attach such terms to the granting or refusal thereof as are legally justifiable. These conditions must be reasonable, and would typically include the provision of security or an undertaking to pay damages in the event of the ultimate decision being adverse to the applicant. To avoid any unnecessary debate on this issue, a party seeking interim relief will frequently tender an undertaking and consent to be responsible for all damages caused by the interim order should its action ultimately fail. It is also important to note that, where a *peregrines* (foreign entity) institutes an application against an *incola* (local entity) the respondent may request security from the *peregrines* for its legal costs, which can take the form of a bank guarantee or bond of security.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes, the common law provides for the granting of an Anton Piller order (which derives its name from the English case *Anton Piller GK v Manufacturing Processes Ltd* [1976] 1 ALL ER 779 (CA)), which authorises the search and seizure of documents and related material or things relevant to proceedings which the application intends to pursue. The justification advanced for the grant of such an order *ex parte* is where there is an apprehension that the respondent, if given notice of the proceedings, may remove or destroy the evidence before it can be inspected and/or attached. The Anton Piller order will only be granted under exceptional circumstances given the inherent danger of abuse and prejudice to the respondent.

The requirements for seeking relief by way of an Anton Piller order are:

- That the applicant has a clear case against the respondent;
- That the remedy is the only reasonable and practicable means of protecting the applicant’s rights;
- The evidence furnished by the matter sought to be attached, must be material;
- There must be good grounds for apprehending that the respondent has in its possession specific (and specified) documents or things which constitute vital evidence in substantiation of the applicant’s cause of action;
- That there is a real and well-founded apprehension that this evidence may be hidden or destroyed or in some manner spirited away by the time the case comes to trial or to the stage of discovery;
- The prejudice to the respondent must not outweigh the benefit to the applicant;
- The order should not go further than is strictly necessary for the preservation of the evidence.

Is it mandatory to file the main action once the PI was granted?

Yes.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes, the applicant will be responsible for all damages caused to the respondent by the interim order should the main action ultimately fail.

What are the average costs and how long do the proceedings take?

The average costs are very difficult to determine as the application for an interim interdict must be brought on notice of motion supported by affidavit and all relevant evidence. There will also need to be oral argument in the High Court (or in judge's chambers in certain situations) before an order is granted. The costs are determined large in part by the amount of evidenced required to establish the requisites for the grant of an interim interdict, and whether or not the application is opposed. That said, for an unopposed or *ex parte* application, the costs will likely be in the region of USD10,000; and for an opposed application for the grant of an interim interdict, based on intellectual property rights, the costs are likely to be in the region of USD32,000.

For unopposed and *ex parte* proceedings, these would generally take 3-5 days from when the application is filed until an order is granted. For opposed proceedings, these would generally take 10-15 days if urgency can be established. If no urgency is established, then opposed proceedings seeking an urgent interim interdict could take 3-6 months.

SOUTH KOREA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, preliminary injunctions are available in the context of trademark infringement. If the infringement of a trademark right is clear and the urgency/seriousness requiring a timely preventative measure is acknowledged, then a request for a preliminary injunction will be granted. That being said, while there exist many case precedents where courts have granted preliminary injunctive relief, courts will review petitions for preliminary injunctive relief under strict scrutiny. As such, it is not generally advisable to file a petition for a preliminary injunction unless the basis for the petition is clear.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

In preliminary injunction cases in the context of trademark infringement, the defendant is given the possibility to oppose the preliminary injunction before a decision is rendered.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

It is necessary to prove that the infringement is currently taking place and that trademark rights owner is suffering serious damages as a result. It is insufficient to show that there is just a “possibility” of infringement. Also, it is unnecessary to prove the exact amount of damages the trademark rights owner has suffered, but the trademark rights owner must demonstrate that its damages are significant.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

There is no defined deadline to file a preliminary injunction action subsequent to the trademark owner learning about the infringement and the defendant. However, if the victim were to become aware of the infringement and the infringer but not file a petition for a preliminary injunction within a few months (e.g., around 4~5 months), then there is a risk that the urgency of the request may not be acknowledged.

Does a security deposit have to be made?

A security deposit does not always have to be made, and it is up to the court’s discretion.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes. Korea Customs will detain goods suspected of infringing trademark rights from being imported. In addition, according to the Act on Investigation of Unfair Trade Practices and Industry Damages Relief, the importing, supplying and/or selling goods in Korea which infringe intellectual property rights, or manufacturing such goods in Korea for the purpose of exporting them, will be considered unfair trade practices, and the Korea Trade Commission is the authority which investigates such acts.

Is it mandatory to file the main action once the PI was granted?

No, it is not mandatory to file the main action once the preliminary injunction was granted. Since trademark infringing acts often cease once an order is issued in response to a petition for preliminary injunctive relief, there are actually more cases where a main action is not filed. If damages is to be recovered, then a main action will of course be required (unless a settlement is made with the infringer). Under Korean law, if a main action is not filed within 3 years from the enforcement of the preliminary injunction, then the defendant can petition for the cancellation of the preliminary injunction.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

If an order for a preliminary injunction is issued but the trademark right owner’s assertion is later deemed as having no sufficient basis by a court in the main action, then the defendant may file a damages claim against the trademark rights owner based on an unjustified preliminary injunction. In such case, the trademark rights owner’s intent or negligence is presumed according to Korean court precedent.

What are the average costs and how long do the proceedings take?

Generally, it takes around 3~6 months for a decision to be rendered by a court of the first instance in a preliminary injunction proceeding. In terms of the costs, we assume that you are referring to the related attorneys' fees. If our understanding is correct, then it is difficult to provide you with the average costs, since the costs will vary on a case by case basis and also depend on each different law firm.

SWITZERLAND

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, according to Article 261 Par. 1 of the Civil Procedure Code (CPC), "*The court shall order the interim measures required provided the applicant shows credibly that: a. a right to which he or she is entitled has been violated or a violation is anticipated; and b. the violation threatens to cause not easily reparable harm to the applicant*".

Article 59 of the Trademark Protection Act (TPA) adds that "*Any person requesting preliminary measures may, in particular, request that the court orders measures to: a. secure evidence; b. establish the origin of items unlawfully bearing a trade mark or indication of source; c. preserve the existing state of affairs; d. provisionally enforce claims for injunctive relief and remedy*".

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

In cases of special urgency, and in particular where there is a risk that the enforcement of the measure will be frustrated, the court may order the interim measure immediately and without hearing the opposing party (Art. 265 Par. 1 CPC). In other cases, an application must be made to initiate proceedings and, if the request does not seem obviously inadmissible or unfounded, the court shall give the opposing party the opportunity to comment orally or in writing (Art. 252 Par. 1 and 253 CPC).

However, any person who has reason to believe that an ex-parte interim measure will be applied for without prior hearing may set out his or her position in advance by filing a protective letter. The opposing party shall be served with the protective letter only if he or she initiates the relevant proceedings. The protective letter becomes ineffective six months after it is filed (Art. 270 Par. 1.3 CPC).

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

In order to obtain an injunction, the applicant must provide prima facie evidence that (a) the right to which he or she refers exists, (b) there is a likelihood of an infringement of that right and (c) there is a threat of damage that is difficult to repair. Likelihood lies between evidence-based certainty and a mere allegation. Likelihood is a probability and making it plausible does not mean convincing the judge of the accuracy of the allegations but giving him the impression, by objective evidence, of a certain probability, even if the opposite hypothesis could not be ruled out. The applicant therefore does not have to provide strict proof and the judge must limit himself to a summary examination.

As far as *ex-parte* injunctions are concerned, there must be a particular urgency or a risk of obstruction of the execution of injunctions, which the applicant must also make plausible. The danger is imminent or there is an "extreme urgency", in particular when the preliminary injunctions, in order to be effective, must be carried out within a very short period of time which no longer allows the summons to be issued

or when the defendant, if heard beforehand, risks obstructing the execution of the order, in particular by eliminating the goods or evidence concerned, thus making the effect of the injunction illusory.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

No legal deadline: the applicant must make the relative urgency plausible – preliminary injunctions must be granted within less than the duration of ordinary proceedings, i.e. approximately 18 months. However, in some cantons (although civil procedure has been unified since 2011, cantonal peculiarities remain quite strong), the applicant shall have to wait many months before the court makes its decision.

Does a security deposit have to be made?

According to Art. 264 Par. 1.3 CPC, the court *may* make the interim measure conditional on the payment of security by the applicant if it is anticipated that the measures may cause loss or damage to the opposing party. The applicant is liable for any loss or damage caused by unjustified interim measures. If the applicant proves, however, that he or she applied for the measures in good faith, the court may reduce the damages or entirely release the applicant from liability. The security must be released once it is established that no action for damages will be filed; in case of uncertainty, the court shall set a deadline for filing the action.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes. According to Art. 72 TPA, if the Customs Administration, as a result of an application for assistance made by a trademark owner, has reasonable grounds to suspect that certain goods intended to be transported into or out of the customs territory of Switzerland unlawfully bear a trade mark or indication of source, then it shall notify accordingly the applicant and the declarant, holder or owner of the goods. It shall withhold the goods for a maximum of ten working days from the time of notification pursuant to paragraph 1, so that the applicant may obtain preliminary measures. Where justified by circumstances, it may withhold the goods for a maximum of ten additional working days.

Is it mandatory to file the main action once the PI was granted?

Yes. Article 263 CPC provides that if the principal action is not yet pending, the court shall set a deadline within which the applicant must file his or her action, subject to the ordered measure becoming automatically ineffective in the event of default.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Not specifically for preliminary injunctions. The first way to avoid a possible damage is the deposit of securities (cf. above). If, despite this (lack of securities, securities lifted or insufficient securities), the defendant succeeds on the merits or on appeal on preliminary injunctions, he will rely on the general rules on tort liability to obtain damages, knowing that Swiss law requires a precise quantification.

According to Art. 41 Par. 1 of the Code of Obligations (CO), any person who unlawfully causes loss or damage to another, whether wilfully or negligently, is obliged to provide compensation.

What are the average costs and how long do the proceedings take?

The costs obviously depend on the complexity of the matter and of the place of jurisdiction. Indeed, it is necessary to pay a judicial (ou court?) fee to file a petition for preliminary injunction (as well as a claim on the merits); moreover, the judicial organization remains the responsibility of the cantons and not of the Swiss Confederation, so that judicial costs depend on the cantons and vary significantly.

These costs depend on the amount in dispute, which must be quantified even in the absence of financial submissions. For example, a dispute in Geneva with an amount in dispute of CHF 50,000,- will oblige the applicant to pay approximately CHF 5,000,- in court fees; if the petition is accepted, the defendant will be ordered to repay him (partially or totally) this amount.

The legal fees are approximately estimated between CHF 10,000,- to 15,000,- for a petition and CHF 2,000,- to 4,000,- for a hearing, it being specified here too that, if the petition is accepted, the defendant will be ordered to pay (partially or totally) to the applicant a contribution to his legal fees, which unfortunately often does not cover all the said fees.

As far as the duration of the proceedings is concerned, it again depends on the cantons, as there is regrettably a certain disparity in the speed of procedures depending on the canton. In the case of *ex parte* application, the court must normally give its decision within two or three days of the filing of the application; however, in the case of an *in parte* application, the judge will have the choice between allowing the defendant to reply in writing or to summon the parties to a hearing. In both cases, it often takes several weeks or more when the defendant is domiciled or has his registered office abroad, because the application must be served through diplomatic channels.

It is therefore not unusual for an application to contain both *ex parte* and *in parte* submissions, thus saving some time; however, this is only justified if the strict conditions for granting an *ex parte* injunction are met.

TURKEY

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

Yes, preliminary injunctions are applicable in Turkey. Preliminary injunction claims could be included in a civil court action filed with the trademark infringement claims (inter-partes) or could be submitted separately (ex-parte).

The chance of success in the PI claims directly depends on the scope of the defendant's infringing acts, the level of the similarity between the trademark subject to the conflicting use and the plaintiff's trademarks, scope/content of the evidences submitted by the plaintiff...etc. For instance, if the plaintiff had the defendant's infringing uses (online or physical) attested through filing a civil determination action for perpetuation of the evidences before directing its PI claims to the Court and the level of the similarity between the trademark subject to the PI claims and the plaintiff's trademark is indeed high, the chance of success for acceptance of such PI claims would be high.

Are PI's granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

Yes, the PI claims could be submitted and granted ex-parte as well as inter-parties. Plus, the claimant may ask the Court to evaluate and conclude its PI claims without making any notification to the defendant both in ex-parte and inter-partes PI claims in trademark infringement actions.

The IP Courts decide on whether to notify the PI request to the defendant depending on the scope and comprehensiveness of the evidences submitted by the claimant. In case the claimant submits comprehensive evidences sufficiently convincing the Judge the rightfulness of his claims, its PI claims are more likely to be accepted without being notified to the defendant. Otherwise, the IP Courts may notify the PI claims to the defendant to obtain its responses and the counter evidences and may even conduct an official expert examination on the claims of parties, before conclusion of the PI claims.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

For the grant of the PI by the court, the claimant is required to prove i) the existence of infringing use of or serious and effective preparations to use the trademark in Turkey and ii) that further unrecoverable damages would result from any delay in preventing the infringer from the related use (urgency).

There is no certain type of evidences to establish an IP right infringement in the Turkish Trademark Law. Each IP Court has its own approach on the level of evidences required for acceptance of PI claims and/or main infringement claims.

In trademark infringement actions, the IP Courts pay attention on the conflicting use and its similarity to the claimant's trademarks on which the related PI request/main infringement claims were based. Thus, submission of a solid evidence showing the defendant's conflicting use plays crucial role in the chance of success of such PI request and it is very advisable to have allegedly infringing online and/or physical use attested by the Courts by filing a separate civil determination action for perpetuation of evidences, before directing any PI requests and/or main infringement claims. In the related civil determination action, the Court appoints an expert for determination of the online and/or physical use and completion of the same takes around 1 to 3 weeks.

If the related use is attested before filing the main infringement claims and/or PI request and the level of the similarity between the trademark subject to the conflicting use and the claimant's trademark is indeed high, the chance of success for acceptance of the PI claims at the beginning of the trial becomes indeed high. Otherwise, the Courts may get involved in further examinations (obtaining the defendant's counter arguments/claims, appointing an expert panel for examination of the claims/evidences of parties, appointing a hearing to evaluate the PI claims), before conclusion the PI request.

Is there a requirement for "urgency", i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

As declared above, the claimant is required to that further unrecoverable damages would result from any delay in preventing the infringer from the related use (urgency) for acceptance of its PI claims. Thus, it is important for the claimant to show the Court that he immediately took action against the related infringing acts and in order to leave this impression, the PI request shall be submitted as soon as the claimant became aware of the related infringing use. It is also worthy of note that the Courts may deem that the claimant shall be aware of such

actions, in case the parties are involved in the same sector or they are located at the same/close areas ... etc. and the infringing acts have been maintaining for a long time.

Does a security deposit have to be made?

The Courts usually order the plaintiffs to pay a guarantee amount in exchange of execution of their PI order in order to reimburse the defendants potential damages to occur in the event that the plaintiffs' infringement claims are found unfair in the end of the trial. There is no specific tariff determining the related guarantee amount and the Courts determine such amounts by considering the quantity and the quality of the garments/materials to be seized.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes. the plaintiff may ask the Court to issue a raid order for seizure of the infringing materials, products (being in the market and/or being kept at warehouses to be put into market), signboards, invoices ...etc. Plus, the defendant's importation/exportation subject to the infringing products can be prevented through the related IP order, as well.

Is it mandatory to file the main action once the PI was granted?

In case the PI claims are filed before the civil trademark infringement action (ex-parte) and is granted in favour of the claimant, the claimant would be obliged to file the main civil infringement action within 10 days as of the grant date of the preliminary injunction. Failure in filing of the main infringement action within the given time, the PI order is automatically revoked.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

If the PI decision is lifted later on or the main infringement action is refused in the end, the defendant may request compensation of his damages occurred due to the conducted PI order and the compensation can be sought for material, moral and reputational damages. Material damages can be claimed for both lost profits and the non-realised income resulting from the conducted PI order and the Courts calculate such amounts through examination of the commercial books of the defendant.

What are the average costs and how long do the proceedings take?

The ex-parte and/or inter-partes PI claims may be evaluated and concluded without ordering any expert examination on the related case or obtaining the counter statements/evidences of the defendant and in such a case, conclusion of the related claims takes 1 to 3 weeks as from filing. Otherwise, if the Court sends the file to an expert panel to be examined, conclusion of such claims takes around 1 to 3 months. The First Instance Court's decision regarding the injunction claims (both in in-parte and ex-parte) can be appealed by either party following issuance of the same and in such a case, the file is sent to the higher level to be examined by the Regional Courts which usually completes its examination within 5 to 12 months. During the appeal phase regarding the inter-partes PI claims, the trial before the First Instance maintains in respect of the main trademark infringement claims.

Examination and conclusion of the main trademark infringement claims usually takes around 9 to 18 months at the first instance level. If the decision of the first instance court is appealed by any party, then the file is sent to the Regional Courts of Justice to be re-examined and the appeal phase takes an additional 12 to 24 months. In case the decision of the Regional Courts of Justice is appealed by any party before the Courts of Appeals, then the file is sent to the Courts of Appeals to be re-examined and such appeal phase takes an additional 12 to 18 months.

We can say that the whole trademark infringement trial takes at least 18 months, if no appeal is filed against the decision of the first instance. Unfortunately, it could take up to 3-4 years, if each level of trial is exercised.

The average costs to a first instance decision in the main trademark infringement cases with PI claims are usually in the range of EUR 8,000 to EUR 15,000, excluding VAT 18% and official (around Euro 600 to 1.100) and unofficial expenses (around Euro 600 to 1.100) of the first instance trial. The average cost of a trademark infringement action before the Regional Courts of Justice would be between Euro 2.000 to 8.000 depending on the time to be spent excluding 18% V.A.T. and official (around Euro 100 to 1.100) or unofficial expenses (around Euro 100 to 1.100) of the trial. The reason of the difference between lower and upper caps is the possibility for the Regional Court to re-hear the whole trial from the beginning without relying on any examination made by the First Instance Court.

The cost of the trademark infringement action at the second appeal phase before the Courts of Appeals would be around Euro 2.000 and 4.000 depending on the time that we will spend at the appeal trial) excluding 18% V.A.T. and official (around Euro 100 and 150) or unofficial (around Euro 100) expenses of the trial.

***The potential guarantee amount to be ordered by the Court or the official expenses to occur for storage of the seized materials are not included in the above amounts due to uncertainty of them.

The average costs to a first instance decision in ex- parte PI claims: are usually in the range of EUR 2,000 to EUR 4,000, excluding VAT 18% and official (around Euro 200 to 600) and unofficial expenses (around Euro 100 to 400) of the first instance trial. The average cost of the appeal against the decision issued on the ex-parte PI claims before the Regional Courts of Justice would be between Euro 1.000 to 2.000 depending on the time to be spent excluding 18% V.A.T. and official (around Euro 100 to 700) or unofficial expenses (around Euro 100 to 500) of the trial. The reason of the difference between lower and upper caps is the possibility for the Regional Court to re-hear the whole trial from the beginning without relying on any examination made by the First Instance Court.

***The potential guarantee amount to be ordered by the Court or the official expenses to occur for storage of the seized materials are not included in the above amounts due to uncertainty of them.

USA

Do the laws of your country provide for preliminary injunctions or similar provisional reliefs in the context of trademark infringement? If so, is there a realistic chance to obtain such a relief in practice?

U.S. law provides for preliminary injunctions (PIs), as well as provisional relief through temporary restraining orders (TROs), in trademark infringement cases. Preliminary injunctive relief is frequently granted in trademark infringement matters.

Are PIs granted ex-parte, i.e. is the defendant given the possibility to oppose the PI before it is rendered?

A TRO, which require showing immediate loss or injury, can be granted *ex parte* and lasts for up to 14 days as the Court permits. A TRO can be extended for an additional 14 days upon expiration. TROs can be converted into PIs provided the defendant is given notice, and in instances where notice cannot be given before the expiration of a TRO, the Court can further extend the TRO to allow time to provide notice to the defendant.

What is the level of evidence required to establish an IP right infringement before a PI injunction is granted?

To obtain preliminary injunctive relief, a plaintiff must show that it is likely to succeed on the merits of the IP infringement claim, that no adequate remedy at law exists, and that plaintiff will suffer irreparable harm in absence of the injunction. For an *ex parte* TRO, a plaintiff must further show that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party can be heard in opposition.

Is there a requirement for “urgency”, i.e. a deadline to file a PI subsequently to the trademark owner learning about the infringement and the defendant?

Ex parte TROs have an urgency requirement and require the plaintiff to show that an immediate loss or injury will result if the request for injunctive relief is not heard immediately, *i.e.*, without notice to the adverse party. While there is no explicit requirement of urgency for a PI or TRO with notice to the adverse party, extended lag times between discovering infringement and filing for preliminary injunctive relief can make it more difficult for a plaintiff to argue that injury was imminent and irreparable.

Does a security deposit have to be made?

In order to secure a TRO or PI, a plaintiff is usually required to post a bond in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

Do the laws of your country provide for seizure of goods suspected of infringing a trademark to prevent the entry of those goods into commerce?

Yes, U.S. law provides for seizure of counterfeit goods. In addition to seizures resulting from private actions, U.S. customs frequently seizes counterfeit items sought to be imported.

Is it mandatory to file the main action once the PI was granted?

Both a TRO and a PI require that the main action already be filed.

Does your jurisdiction provide for damages in case a PI is lifted later on as a result of an appeal or if the main action is refused?

Yes, and the bond posted for a TRO or PI acts as security against defendant's losses in the event that the Court finds the TRO or PI was improperly granted.

What are the average costs and how long do the proceedings take?

The average cost to obtain a TRO or PI depends on a combination of attorney's fees, the court's required bond amount, and money spent on investigations and evidence gathering. While TROs are short lived, the immediate harm requirement and *ex parte* nature allow them to be granted quickly – often within a week or two of filing. A PI requires notice to the defendant, who is given time to respond and may involve an evidentiary hearing before the PI is entered.

DISCLAIMER

The present survey report is based on inputs received and verified by members during the period 2016-2019 and consists of their opinions at the time of analysis.