

ExCo Hyderabad 2011
Adopted Resolution
October 18, 2011

Resolution

Question Q219

Injunctions in cases of infringement of IPRs

AIPPI

Noting that:

- 1) AIPPI has not previously studied, as a dedicated question, the specific circumstances in which an injunction is or should be available for infringement of patents, trademarks, copyrights and designs (referred to collectively as “Intellectual Property Rights” and defined in this Resolution as “IPRs”).
- 2) AIPPI has studied issues related in part to injunctions (Q215, Q214, Q204/204P, Q134, Q86 and Q80) and resolved:
 - a) that injunctive relief should be provided for in different situations of infringement of IPRs;
 - b) when a defendant has been wrongly submitted to provisional measures, such as an interlocutory injunction, the defendant should be entitled to full compensation for the damage suffered as a result of the provisional measures.
- 3) This Resolution addresses issues relating to preliminary and permanent injunctions (but not ex parte injunctions) in cases of infringement of IPRs.
- 4) This Resolution does not address other forms of relief available in cases of infringement of IPRs, for example, monetary damages and criminal sanctions (where available).

Considering that:

- 1) There is a broad agreement that the power of a court to grant an injunction which prohibits an infringer from continuing or committing infringing acts is fundamental to the protection of IPRs as exclusive rights.
- 2) Almost all National Groups reported that both preliminary and permanent injunctions are available in their countries in cases of infringement of IPRs.

Resolves that:

- 1) The criteria to be considered for grant of preliminary injunction should include the following.
 - a) A claim of infringement with a reasonable prospect of success on the merits.
 - b) Evidence that the claimed infringing conduct is imminent, ongoing or has already occurred.
 - c) A reasonable prospect of establishing or defending the validity of the IPR in suit on the merits.
 - d) Whether the balance of convenience and/or the concept of proportionality, which can include the risk of irreparable harm, favours the granting of the injunction.
 - e) Due diligence on the part of the claimant in pursuing preliminary injunction.
- 2) The criteria in point 1) above are not exhaustive.
- 3) The courts should be empowered to impose, as a condition of granting a preliminary injunction, that the claimant provide a bond, security or undertaking to compensate a defendant who has suffered loss by a grant of preliminary injunction which is not upheld on the merits.
- 4) As a general rule, an IPR holder should be entitled to a permanent injunction in cases where infringement of a valid IPR is found on the merits. However, in making its decision on whether to grant the injunction, the court may consider exceptional circumstances which would make the granting of the injunction inappropriate, such as issues of public health or safety or issues arising under the doctrine of abuse of rights or in cases of conflict with other laws.
- 5) The criteria for the grant of an injunction should apply equally to infringement of all IPRs.
- 6) Injunctions should only be granted against persons or parties identified, whether by name or otherwise, in an infringement proceeding.
- 7) The scope of an injunction should be clear, defined and effective to prevent infringement.