

## Typical Claims of IP Law

### **I. Claim to Cease and Desist**

Sec. 97 (1) UrhG, 14 (5) MarkenG, 139 (1) PatG, 8 (1) UrhG

If the right has already been infringed, the right holder has a claim to cease and desist.

If the risk of infringement exists for the first time, the right holder has a preventive claim to cease and desist.

### **II. Claim for Damages**

Art. 13 Enforcement Directive 2004/48/EC; Sec. 97 (2) UrhG, 14 (6) MarkenG, 139 (2) PatG, 9 (1) UrhG

If the infringement was conducted intentionally or negligently, the injured party is entitled to damages.

Especially in Copyright Law there is also the right to claim damages for any damage which is non-pecuniary in nature, Sec. 97 (2) (4) UrhG.

There are three ways of calculating damages:

#### **1. Actual Damages**

The injured party may claim any actual damage suffered as a result of the infringement (i.e. negative economic consequences, including lost profits).

## **2. Surrender of Profits**

The injured party may claim any profits obtained by the infringer as a result of the infringement.

## **3. Equitable Renumeration**

The injured party may also claim damages as a lump sum on the basis of a hypothetical license to the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.

### **III. Right to Information**

#### **1. Regarding Acts of Infringer**

General obligation according to Sec. 242 BGB

#### **2. Regarding Acts of Third Parties**

Art. 8 Enforcement Directive 2004/48/EC; Sec. 101 UrhG, 19 MarkenG, 140b PatG

Infringer has to give information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

### **IV. Right to Elimination**

The right of the injured party to claim elimination of any remaining form of infringement.

#### **1. Copyright Law**

- a) Destruction and recall rights, Sec. 98 UrhG
- b) Publication of judgements, Sec. 103 UrhG

## **2. Trademark Law**

- a) Cancellation, Sec. 51 MarkenG
- b) Destruction and recall rights, Sec. 18 MarkenG
- c) Publication of judgements, Sec. 19c MarkenG

## **3. Patent Law**

- a) Destruction and recall rights, Sec. 140a PatG
- b) Publication of judgements, Sec. 140e UrhG

## **4. Unfair Competition Law**

- a) Right to elimination, Sec. 8 (1) UrhG
- b) Publication of judgements, Sec. 12 (2)

Submission and inspection of bank and business documents, Art. 9 (2) Enforcement Directive 2004/48/ec; Sec. 101b UrhG, 19a MarkenG, 140d PatG