

VIETNAM

Preliminary injunctions in IP cases

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In commercial lawsuits in general, and IP lawsuits in particular, the ability of rights holders to access one or more forms of injunctive relief is of utmost importance. The availability and effectiveness of preliminary injunctions can show to some extent the maturity and effectiveness of the enforcement system. For such reasons, a correct understanding of the applicability of preliminary injunctions in Vietnam is of practical use.

More options

First of all, it is necessary to clarify that at present in Vietnam the most popular forms of IP rights enforcement are administrative and border control measures rather than civil measures. However, preliminary injunctions, which are specified in the Law on Intellectual Property (IP Law) and the Civil Procedure Code, are only applied in the process of a civil lawsuit in the courts.

The grounds for the application of preliminary injunctions in IP lawsuits are stipulated in Articles 206 to 210 of the IP Law. When the IP Law was promulgated in 2005, it was considered a step forward as it was the first time the law contained any provisions on IP enforcement. The grounds for the application of preliminary injunctions in general are specified in Articles 99 to 126, Chapter VIII of the 2004 Civil Procedure Code (as amended in 2011).

The earliest that a preliminary injunction can be requested is at the time of lodging a civil complaint (this can perhaps be understood as right at the time of filing). The preliminary injunction will only be considered if the rights holder can provide evidence demonstrating one of the following: (1) there is a threat of irreparable damage; (2) there is a threat of dispersal or destruction of suspected

infringing goods and related evidence if they are not protected in time. The preliminary injunction by its nature may be applied *ex parte* before the court hears the opinions of the party subject to the preliminary injunction. However, in practice, in considering the request for a preliminary injunction, the judge may invite the parties for a meeting to debate the application of this measure.

The specific preliminary injunctions that can be applied are seizure; sealing/freezing; prohibition of changing status; prohibition of moving; prohibition of transferring ownership and other measures which are not specified in the IP Law but in the Civil Procedure Code. In a 2009 case, the People's Court of Thanh Hoa Province in a lawsuit on patent and industrial design between the plaintiff, Cong ty TNHH Thanh Dong, and the defendant, Ninh Ngoc Thanh, applied the preliminary injunction of a "ban on manufacturing and doing business" in infringing goods, which is not intrinsically specified in the IP Law but had a basis in the Civil Procedure Code (Decision 28/2009/QD-BPKCTT, April 14 2009).

When requesting the application of preliminary injunctions, the applicant may be required to carry out security measures by paying an amount equal to 20% of the value of goods subject to the preliminary injunction, or at least đ20 million (\$950) if the value of the goods cannot be easily determined. It is further explained that, depending on the assessment of the judge in charge of the lawsuit, the specific amount may be higher, but may not be less than đ20 million. However, it should be noted that not every request for a preliminary injunction will necessitate security measures such as payment. For some preliminary injunctions, the law stipulates that security measures are not required. Therefore, results may not always be as expected, or consistent.

Invisible obstacles

Although the legal regulations are rather clear, reality presents a contrasting picture. There are no official annual statistics on how many orders of preliminary injunctions have been issued by the courts but it is likely that the number is very low,

or almost zero, simply because the annual number of IP cases resolved in court is very low, and among the cases settled in court, the number of cases requesting preliminary injunctions is also very low and the number of orders of preliminary injunctions which are approved is even lower.

Operating practice also shows the number of orders of preliminary injunctions is very low because of the psychological barriers coming from the judges' excessive caution as well as pressures from many sides in the process of considering whether or not to apply the preliminary injunction.