

Do you consider that alternative dispute resolution mechanisms in cases of intellectual property rights' infringements are sufficiently accessible to parties affected by an infringement?	YES
Please explain:	Alternative dispute resolution mechanisms are adequately present. The real problem is to bring two parties together in negotiations which have conflicting interests and little interest in settling disputes.
Did you take part in litigation of cases concerning the infringements of IPRs during the period under examination?	YES
In how many cases per year do you take part on average?	2
How many of these cases were subject to an appeal?	2
In which capacity?	PLAINTIFF DEFENDANT OTHER
Please explain:	As a patent attorney, I represent my clients both as plaintiff and as defendant.
In which countries? Please indicate relevant Member States:	DE - Deutschland DK - Danmark FI - Suomi/Finland SE - Sverige
Did you already launch proceedings concerning infringements of your IPRs that occurred in another Member State?	YES
Did you already launch proceedings concerning infringements of your IPRs that occurred in several Member States?	YES
Were you able to consolidate all these claims in one jurisdiction or were you obliged to launch the proceedings in the jurisdiction of several Member States? Please explain:	No consolidation possible
Have claims against the validity of infringed/allegedly infringed intellectual property rights been made in the context of the litigation you were a party to?	YES
Please explain what was the impact of these claims on the procedure concerning the infringement:	In about half of the cases the validity of the patent rights were not upheld in court, either in first instance or on appeal. However, in many of these cases, primary (often fast track) injunctions had been forced on the defendants several years earlier leading to severe consequences for the defendants businesses.
In approximately what percentage of cases were these intellectual property rights found to be invalid as a result of these claims?	50

For you, is it more important to stop infringements that are committed for profit than infringements committed not for profit?	IT IS NOT MORE IMPORTANT
What is your general intention in instituting civil law court proceedings concerning infringements of intellectual property rights?	TO STOP THE INFRINGING ACTIVITY TO TAKE MEASURES TO PREVENT FURTHER INFRINGEMENTS TO BE COMPENSATED FOR THE INFRINGEMENT TO DISSUADE INFRINGING BEHAVIOUR IN THE FUTURE OTHER
Please explain:	To stake out market shares in gray zone regions where conflicting patent rights exist and negotiation settlements cannot easily be reached. Often competing companies have competing patent rights, with e.g. a company having a patent which can block for another company. Instituting civil law proceedings often forces unwilling partners to the negotiating table or (often a desired goal in big money versus small money cases) out of business.
What was the amount of a court fees that you had to pay for instituting first instance proceedings on the merits of the case concerning an infringement of your IP right?	Inconsequential compared to attorney and patent attorney fees.
Did you have to pay any other court fees in relation to the first instance proceedings on the merits of the case concerning an infringement of your IP right?	NO
What was the amount of external experts' costs you had to pay in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right?	In Denmark the use of external experts is frowned upon by the courts. Instead a system of court appointed experts is used. The courts will generally not accept as valid testimonies of a party's own experts and will generally not permit their use in court with the exception of infringement cases heard before the bailiffs court. Accordingly the cost for external experts is comparatively low in Denmark. Nevertheless, a going rate for an expert is of the order of 800 to 1200 DKK per hour.
What was the amount of in-house costs you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right?	N/A
What was the amount of legal representation costs you had to pay in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right?	In Denmark the attorney and patent attorney fees range from 2,000 DKK per hour to 5,000 DKK per hour for an attorney or patent attorney competent to help a party in an infringement proceeding. An average case will cost a client from 200,000 DKK to 500,000 a year to be party to, but if we're talking pharmaceutical trial cases, the sky is the limit.
Please indicate, if appropriate, other costs that you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right:	N/A

What was the total amount of costs you had to bear in relation to the first instance proceedings on the merits of the case concerning infringement of an IP right?	In Denmark the attorney and patent attorney fees range from 2,000 DKK per hour to 5,000 DKK per hour for an attorney or patent attorney competent to help a party in an infringement proceeding. An average case will cost a client from 200,000 DKK to 500,000 a year to be party to, but if we're talking pharmaceutical trial cases, the sky is the limit.
Please explain how do these costs change for the preliminary proceedings:	They do not change substantially between the various judicial steps
Please explain how do these costs change for the appeal proceedings:	They do not change substantially between the various judicial steps

Please indicate which of the various costs associated with the proceedings on the merits of the case at first instance were ordered by the court to be reimbursed to the winning party by the losing party following the final decision:	
Copyright:	
Rights related to copyright:	
Sui generis right of a database maker:	
Rights of the creator of the topographies of a semiconductor product:	
Trademark rights:	
Design rights:	
Patent rights:	COURT FEES FOR INSTITUTING PROCEEDINGS OTHER COURT FEES EXTERNAL EXPERT(S) COSTS ATTORNEY'S CHARGE
Geographical indications:	
Utility model rights:	
Plant variety rights	
Trade names:	
Do you consider that the general rule, according to which legal costs and other expenses incurred by the successful party shall be borne by the unsuccessful party, is effectively applied by the courts?	NO
Please explain:	In Denmark the courts apply (as a rule of thumb) that the legal costs and further expenses that can be reimbursed are only reimbursed to a level considered reasonable compared to the complexity of the case. Additional costs are at the parties own expense. Patent Attorney fees e.g. can never be reimbursed (High Court Ruling) but to my knowledge noone has yet been succesful in patent infringement cases without the help of one, so we send our bills to the clients anyway.

Please indicate the average time (months and days) between the lodging of a request before a court and the granting of a preliminary injunction (e.g. cease and desist orders against the infringer) in civil law cases concerning infringement of an IP right in your Member State/ in the Member States in which you have been a party to court proceedings: 5 months

Please indicate the average length (months and days) of court proceedings on the merits of the case (from lodging the claim to obtaining the final decision of the court at first instance) in civil law cases concerning infringement(s) of an IP right(s) in your Member State/ in the Member States in which you have been a party to court proceedings: 4 years

Please indicate the average length (months and days) of the appeal court proceedings (from lodging the appeal to obtaining the final decision of the court at appeal) in civil law cases concerning infringement(s) of an IP right(s) in your Member State/ in the Member States in which you have been a party to court proceedings: 6 years

Do you think it would be useful to establish, at EU level, model rules for fast track proceedings for civil law cases concerning infringements of IPRs? NO

Please explain, what would be in your opinion the drawbacks of this system?

Most of the cases that see court are cases where the IP-rights that the Plaintiffs have, are doubtful or can reasonably be doubted. Otherwise we, as legal advisors, would not advise our clients to seek a judicial solution and risk the very high costs of participating in trial proceedings. A fast track procedure will severely skewer the balance towards the Plaintiffs for several reasons: Firstly, the Plaintiff always decides when the proceedings start, hence the Plaintiff has all the time the Plaintiff needs to prepare for the proceedings. For the Defendant in a fast track procedure this means, that either will his defence suffer severely for lack of time or he must put his advisors to work overtime, incurring unreasonable extra cost for the Defendant. Given that to my experience only 50% of the cases are based on a valid patent-right, the desired goal of better right holder protection does not justify the means. Secondly, it is very rare (outside pharmaceuticals) that a patent right holder suffers massive losses from competition before the injunction is imposed, since few patent right holders are alone with a dominant product on the market. Hence the need for speed is actually less than perceived by the Plaintiff himself. In pharmaceuticals it can be, and very often also is the case that massive market losses can occur, but pharmaceutical companies are highly skilled IP-players and do not suffer the drawbacks of the average Defendants or Plaintiffs. Generic pharmaceutical companies always have very carefully prepared for market launch and know

Do you think it would be useful to establish, at EU level, specific (in addition to Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure) model rules for small claims proceedings for civil law cases concerning infringements of IPRs?

YES

Please explain, specifying in particular what types of infringements of IPRs could be covered by such small claims proceedings:

Given that we will shortly have a unified European patent, we need a unified system for patent infringement which offers a just balance between Plaintiffs and Defendants and at a reasonable cost to both parties. The real problem is not the need, but how to avoid transporting one country's judicial system into the European legal system such that harmonized small claims proceedings can be perceived by all parties as yielding a just result. Accordingly, small claims proceedings should only be allowable where there is a strong and secured IP-right, not merely a perceived infringement. A strong right could e.g. be a patent which has been prosecuted already before several courts and have been upheld in all instances.

Do you think it would be useful to establish rules for fast track proceedings for litigation of infringements of community trademarks and community designs?

YES

Please explain:	Yes, but in most cases the defendants will be private persons having bought counterfeits and hence will not have the financial resources to defend himself against a corporation.
Do you think it would be useful to establish rules for small claims proceedings for litigation of infringements of community trademarks and community designs?	YES
Please explain:	Yes, but in most cases the defendants will be private persons having bought counterfeits and hence will not have the financial resources to defend himself against a corporation.
What safeguards of defendant's rights should be put in place in case of the EU-level fast track/small claims proceedings concerning infringements of IPRs?	The only possible safeguard the defendant can be given in fast track/ small claims proceedings is a right to full (not just reasonable) compensation for costs incurred and mandatory damages for tort payable by the Plaintiff if the lawsuit is not held justified in court. There is such a strong advantage to striking first in fast track proceedings given to the Plaintiff that the barrier for striking first must be raised accordingly or the consequence will be a rapid increase in legal miscarriage simply because the economically strong will bully the weak into submission even when it is not justified (not to mention the fact that our courts will be clogged up by these trivial small claims cases).

Right of information

Mechanisms to inform about the alleged infringement and to impede access to goods and services allegedly infringing IPRs

Do you consider the possibility to use notification mechanisms to be a useful tool to inform the intermediary about the fact that his services are being (allegedly) used to infringe an intellectual property right and thus bring a stop to the infringing/allegedly infringing activity?	YES
Please explain:	Many times, in my experience, this will do the trick since patent infringers often are simply not aware of their infringement themselves having independently developed the patented product.
Do you consider the possibility to use notification mechanisms to be a useful tool also where the infringements/alleged infringements occurred in, or the intermediaries are incorporated in, a Member State other than the one in which you operate?	N/A
Do you consider the possibility to use notification mechanisms to be a useful tool to inform the infringer/alleged infringer about the infringing/allegedly infringing character of his activity?	YES

Please explain:	
In cases of commercial scale infringements of intellectual property rights, do you consider that there should be particular consequences (i.e. including e.g. suspension of the infringer's/alleged infringer's account) resulting from a notification mechanism?	NO
Please explain:	This violates all legal principles of not being a priori convicted and that legal actions against person or persons may only be taken based on a valid judicare process.
In cases of notorious infringers of intellectual property rights, do you consider that there should be particular consequences (i.e. including e.g. suspension of the infringer's/alleged infringer's account) resulting from a notification mechanism?	NO
Please explain:	This violates all legal principles of not being a priori convicted and that legal actions against person or persons may only be taken based on a valid judicare process. Having previously infringed is not a valid legal basis for further convictions. Convictions must be based on actions taken, not actions perceived to could potentially happen if given the opportunity at some indeterminate point in the future.

Requirements for granting injunctions

Have preliminary injunctions been sought in the context of the litigation you were party to?	YES
In approximately what percentage of cases were these injunctions granted by the competent judicial authorities?	100
Have permanent injunctions been sought in the context of the litigation you were party to?	YES
In approximately what percentage of cases were these injunctions granted by the competent judicial authorities?	50
Is the urgency of the case taken into account by the competent judicial authorities when granting a provisional injunction?	YES
Is the potential harm of the measure for either of the parties taken into account by the competent judicial authorities when granting a provisional injunction?	YES
Is the impact of the measure on the market, competition and consumers taken into account by the competent judicial authorities when granting a provisional injunction?	YES
Are claims against the validity of IPRs taken into account by the competent judicial authorities when granting a provisional injunction?	YES

What other circumstances are taken into account by the competent judicial authorities when granting a provisional injunction?	To my experience, Danish bailiffs courts are generally very competent and do a good job of weighing the factors of the parties arguments including the additional evidence presented by the two parties such as (for patents) experience from other countries where the patent has been tried before court and the level to which the patent in question has been prosecuted before the pertinent patent authorities (e.g. it there an opposition pending before the EPO, etc.)
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Injunctions imposed on intermediaries

Have you obtained a preliminary injunction imposed on an intermediary who was not a party to the proceedings?	N/A
Have you obtained a permanent injunction imposed on an intermediary who was not a party to the proceedings?	N/A
Have you obtained a permanent injunction imposed on an intermediary providing services necessary for the financing of the infringing activity (e.g. a payment service provider)?	N/A
Have you obtained a permanent injunction imposed on an intermediary providing services necessary to access the infringing services/goods?	N/A
Have you obtained a preliminary injunction imposed on an intermediary providing services necessary to access the infringing services/goods when the intermediary or the person infringing/allegedly infringing your IPRs were incorporated in a Member State other than the one in which you operate?	N/A
Have you obtained a permanent injunction imposed on an intermediary providing services necessary to access the infringing services/goods when the intermediary or the person infringing/allegedly infringing your IPRs were incorporated in a Member State other than the one in which you operate?	N/A

Third party facilitation of infringements of IPRs

Corrective measures

Have corrective measures been ordered in cases in which you have been a party?	NO
Should the competent judicial authorities privilege one specific type of corrective measure?	NO
Should the competent judicial authorities be able to order that the goods that were found to infringe an intellectual property right should be disposed of outside the channels of commerce?	NO

Should the consent of the right holder constitute a <i>conditio sine qua non</i> for disposing of the goods that were found to infringe an intellectual property right outside the channels of commerce?	YES
Please explain how in your opinion the infringing goods could be disposed of outside the channels of commerce:	I disagree with the premise of the question. The right holder has a right, <i>sine qua non</i> , to decide what happens to any goods infringing his rights and should not be forced to accept any diminishment of his rights as a result of a judicial process without just compensation for his further losses.
Would you be in favour of introducing sanctions for a party who, notwithstanding that the infringing goods were subject to corrective measures ordered by the competent judicial authorities, allowed these goods to subsequently return to the channels of commerce?	YES
Please explain:	This is a clearcut example of a further infringing action and should not be suffered by the right holder without just compensation for his losses.

Damages	
On what basis do the competent judicial authorities establish the amount of damages awarded to the right holder in its final decision in a civil claim concerning an infringement of an IPR?	Danish law was not modified as a result of Directive 2004/48/EC. It grants the right holder full compensation for any actual losses incurred, but it remains the duty of the right holder to document his actual losses "to the hilt". The implementation of the directive in Danish law however, did improve the right holders possibilities to document his actual losses. Nevertheless, it is considered by most legal advisors (my self inclusive) that Danish legal praxis seriously disadvantages the party that has a right to damages over the party incurring the damages due to the burden of proof being restrictively high and the valuation by the courts of the actual economic loss being prohibitively low. E.g. it is not considered as a given, that the profit earned by the infringer equals the profit that the right holder could have earned in the same market.
Is the unjust enrichment of the infringer taken into account by the competent judicial authorities in the course of establishing the amount of damages to be awarded to the right holder in its final decision in a civil claim concerning infringement of an IPR?	NO
Is due diligence of the right holder taken into account by the competent judicial authorities in the course of establishing the amount of damages to be awarded to the right holder in its final decision in a civil claim concerning infringement of an IPR?	NO
Is it possible for the competent judicial authorities in civil law cases concerning an infringement of IPRs to award damages on the joint basis of provisions on compensation for lost profits and those on unjust enrichment?	NO

Please explain:	Danish law and legal tradition does not award damages, only full compensation for actual losses incurred. It is held that damages is not a civil law question but a penalty which must be imposed by the State on its Subject and not by one Subject on another Subject.
Is it possible for the competent judicial authorities in civil law cases concerning an infringement of IPRs to award damages on the basis of the alleged infringement of a broader portfolio of intellectual property rights, despite the fact that normally only a very limited number of these rights are asserted during one particular court proceeding?	NO
Please explain:	Under Danish law an alleged infringement cannot serve as a basis for claiming damages, only such infringements as have been proven before court can be used for claiming full compensation for actual losses incurred.
Would you agree that the level of damages awarded to the right holder in civil law cases concerning an infringement of IPRs should at least equal the profits made by the infringer?	YES
Please explain:	It would simplify many things when proving what is full compensation for actual losses incurred that a priori it could be considered that any gain by the infringer equal a loss by the right holder.
Do you consider the award of damages in cases of intellectual property rights' infringements is sufficient to compensate for the actual prejudice suffered by the parties affected by an infringement?	NO
Please explain:	Danish legal praxis so thoroughly disadvantages the victorious party to infringement proceedings in terms of economic compensation that everything usually is won or lost during preliminary injunction proceedings. Everything occurring thereafter is just expenses.

Use of IPR enforcement measures for frivolous and/or anti-competitive purposes

In approximately what percentage of cases would you consider that a party used IPR enforcement measures frivolously and/or for anti-competitive purposes?	50
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