

## IP ENFORCE

### **Reacting To An IP Infringement**

- Monitoring
- Investigation and evidence collection
- Evaluation of the case
- Evaluations of possible means and reaction plan

#### **Monitoring**

Monitoring can be made “spot” or continuously, by the IPR owner or by experts, formally or informally. Discovering the infringement as soon as possible is essential. The sooner is discovered the infringement less expensive and more effective is the reaction.

#### **Investigation and evidence collection**

Before reacting it is important to know infringer and infringement. If formally acquired knowledge can be used as evidence during enforcement. Investigation and evidence collection can be made by the IPRights owner or by experts.

#### **Evaluation of the Case**

It must be evaluated the legal and technical merits in the light of the evidence collected. This evaluation is made by experts, internal to the company or external. This is essential to plan the reaction.

#### **Evaluations of possible means and reaction plan**

Consider the means, targets, timing, cost, etc

The three options opened to IP Owners

- A. Cease and Desist letter + negotiation
- B. Administrative Enforcement
- C. Civil Judicial Action

#### **Cease and Desist Letter**

One of the tactical step an IP owner can take in the event of IP infringement is to issue cease and desist letters to the infringers and issue a public warning to the market at large. The Cease and Desist letter can serve as a negotiation chips for ensuing settlement arrangements.

**Administrative Actions**

In cases where the infringers do not have the financial means to pay damages, the most effective reaction will be to institute administrative action to put an immediate stop to the infringing actions.

The pros and cons of administrative actions are summarised as follows:-

<b>PRO's:</b>	<b>CON's</b>
<ol style="list-style-type: none"> <li>1. <b>Quicker</b></li> <li>2. <b>Cheaper</b></li> <li>3. <b>Less evidences</b></li> <li>4. <b>Useful for collecting evidences</b></li> </ol>	<ol style="list-style-type: none"> <li>1. <b>No Damage compensation</b></li> <li>2. <b>“Localised”</b></li> </ol>

**Civil Judicial Action**

If the defendant is a serious offender and on-going business concern, the IP Owner may want to institute civil judicial actions to claim for damages. The remedies claimable under a civil judicial action include:

- A. Injunctive Reliefs
- B. Damages
- C. Costs

Damages are quantifiable by of actual loss of sale by the plaintiff or account of profit by the infringers.

In a case involving Creative Technology and Apple, Inc, Creative successfully used its patent on “Automatic hierarchical categorization of music by metadata” to claim \$100M from Apple. The one-time licensing payment of \$100 million will contribute approximately \$.85 of earnings per share to Creative's revenues for the quarter, ending September 30, 2006. After the settlement was announced during after-hours trading, Creative share price surged nearly 37 percent. As a result, Creative also become a "Made For iPod" program partner.

In another case involving Amazon.com and Barnesandnoble.com, Online retail giant Amazon.com has filed suit against Barnesandnoble.com, alleging that the rival book and music e-tailer illegally copied Amazon's patented 1-Click technology. The company began offering the 1-Click feature in September 1997. The case was settled for unspecified amount of damages.