UPC
by Casalonga

The procedure for preserving evidence before the UPC [Rules 192 et seq.]

Application for preserving evidence lodged by a patent proprietor

Ex parte
In addition to the general contents of the Application
(see frame « Application » below),
the applicant must indicate:
- the reasons for not hearing the defendant
- any material fact which might influence the Court
in accepting such ex parte request

OR

Inter partes

Formal examination of the Application by the Court
(Protective letter, Opt-out)

Complete examination of the Application by the Court

Hearing of the applicant without the defendant

Notification by the Court to the applicant of its intention to inform the defendant of the Application

Withdrawal of the Application by the applicant

Order of the Court

Defendant can request the review of the order
within 30 days after execution of the measures [R. 197-3]

Formal examination of the Application by the Court
(Protective letter, Opt-out)

Complete examination of the Application by the Court

Information of the defendant

Defendant's objection

Hearing of the parties

Order of the Court

Appeal by *"any party adversely affected"*
within 15 days after the notification of the order [R. 196-7; R. 220-1]

Application

What?
- Particulars in accordance with Rule 13-1 (a) to (i)
- A clear indication of the measures requested including
the exact location of the evidence to be preserved [R. 196-1]
- The reasons of the proposed measures
- The facts and evidence supporting the Application
- For Application lodged before any action on the merits,
a concise description of the action to be started before the Court

Where?
- Before the division where the applicant has started the proceedings
on the merits or where it intends to start such proceedings
[R. 192-1]

How?
- Through the online IT system of the Court

Order of the Court

What?
- Detailed description, with or without samples
- Physical seizure of allegedly infringing goods
- Physical seizure of the materials
and implements used in the production
and/or distribution of these goods
and any related document
- Preservation and disclosure of digital media and data [R. 196-1]

Who can proceed with the operations?
- A professional person or expert,
who guarantees expertise, independence and impartiality
(no employee or director of the applicant) [R. 196-4]

Limits
- Protection of confidentiality [R. 190-1]
- Adequate security for legal costs, expenses
and compensation of the defendant [R. 196-6]
- Revocation of the measures to preserve evidence
if the applicant does not bring an action on the merits
within 31 days or 20 working days, whichever is the longer,
starting from the date of the measures [Art. 60 UPC Agreement]

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