

DEFENDING AGAINST PRELIMINARY INJUNCTIONS: GERMAN ZPO VS. UPC RoP

TACTICAL REFERENCE GUIDE & COMPARISON MATRIX

A comprehensive line-by-line comparison of provisional legal protection under German national law (Civil Code of Procedure – ZPO) and the Unified Patent Court (Rules of Procedure – UPC RoP).

Tactical Parameter	German National Law (Civil Code of Procedure – ZPO)	Unified Patent Court (Rules of Procedure – UPC RoP)
Primary Statutory Basis	Sections 935–945 ZPO (General civil rules of provisional legal protection).	Article 62 UPCA and Rules 205–213 RoP (Specific harmonized patent litigation code).
Urgency Requirement (Verfügungsgrund)	Requires a 'reason justifying urgency' (Sections 920, 936 ZPO). Evaluated strictly; any unreasonable delay in filing after discovery of infringement destroys urgency.	Requires a demonstrably urgent need. Rule 211.4 RoP explicitly dictates that the Court shall take into account any unreasonable delay by the applicant.
Requisite Patent Validity	Patent validity must be nearly indisputable; typically requires surviving a first-instance opposition or nullity proceeding in practice.	Rule 211.2 RoP requires 'reasonable evidence' to satisfy the Court with a 'sufficient degree of certainty' that the patent is valid and infringed.
Central Defensive Shield	Preemptive deposit of a Protective Letter (Schutzschrift) in the central German electronic registry (ZSR) (Section 945a ZPO).	Preemptive deposit of a Protective Letter in the centralized database with the UPC Registry (Rule 207 RoP).
Duration of Protective Letter	6-month limit under Section 945a (2) ZPO. Automatically deleted after 6 months from entry; must be actively re-submitted for continuous protection.	6-month limit under Rule 207.9 RoP. Automatically deleted after 6 months; can be actively extended every 6 months by paying a renewal fee.
Ex-Parte Orders (No Oral Hearing)	Possible in cases of extreme urgency (Section 937 Abs. 2 ZPO). Regional court judges lack internal technical qualifications, increasing risks.	Possible under Article 62(5) UPCA and Rule 212 RoP. Decisions are overseen by a specialized panel of legal and technical judges.
Prior Security / Bond (Sicherheitsleistung)	Conditional upon security deposit to protect the defendant (Section 921 ZPO). In trade-fair PI cases, security is almost always required.	Rule 211.5 RoP mandates that if measures are ordered ex-parte, the Court shall order the applicant to provide adequate security, unless special circumstances apply.
Filing of Main Suit (Merits)	No automatic deadline. The defendant must actively apply to the court to force the plaintiff to file the main suit (Section 926 ZPO).	Rule 213.1 RoP enforces a revocation of the PI upon request of the defendant if the applicant fails to file the main suit within 31 calendar days or 20 working days (whichever is longer).

TACTICAL COMPARISON MATRIX (CONTINUED)

Tactical Parameter	German National Law (Civil Code of Procedure – ZPO)	Unified Patent Court (Rules of Procedure – UPC RoP)
Defendant's Post-Decision Challenge	The defendant can file a formal protest (Widerspruch) under Sections 936, 924 ZPO at any time, forcing a full oral hearing before the same instance.	The defendant can request a procedural review of an ex-parte order within 30 days after execution of the measures (Rule 212.3 RoP i.V.m. Rule 197.3 RoP) or file an appeal (Rule 220.1(c) RoP) within 15 days.
Damages Liability for Wrongful PI	Strict liability under Section 945 ZPO. If the PI is found unjustified from the beginning, the applicant must compensate all damages regardless of fault.	Strict liability under Rule 213.2 RoP. If the PI is revoked, lapses, or no infringement is found, the Court may order the applicant to compensate any injury.

STRATEGIC ADVISORY HIGHLIGHTS FOR IN-HOUSE COUNSEL

- 1. Parallel Filing Strategy:** Since both registries operate independently, you must file protective letters in both the UPC Registry (Rule 207 RoP) and Germany's national Schutzschriftenregister (ZSR under § 945a ZPO) to achieve complete market protection and block secret, ex-parte injunctions.
- 2. The Synchronized 6-Month Expiry Rule:** Do not rely on the misconception that German protective letters are permanent. Both German law (§ 945a(2) ZPO) and UPC law (Rule 207.9 RoP) dictate that protective letters are automatically deleted after 6 months. You must establish a synchronized docketing system to renew or re-submit both filings before key exhibitions.
- 3. Strict Liability Leverage:** Highlight the financial deterrence of strict liability under both § 945 ZPO and Rule 213.2 RoP in pre-litigation correspondence. Competitors face enormous liability for lost sales if their ex-parte injunction is subsequently revoked or their patent is declared invalid.

