

Details of new evidentiary tools

	Preservation of evidence	Disclosure / production of evidence	Request for information
What	Means of proof	Means of proof, including documents to disclose and prove any facts, such as: <ul style="list-style-type: none"> • bank documents • financial documents • business documents 	Information about the origin of and distribution networks for goods and services, including: <ul style="list-style-type: none"> • Names / registered office locations of manufacturers, distributors, suppliers, previous holders, wholesalers & retailers • Quantities of and prices for goods and services • Other necessary information to prove the amount claimed (especially warranted circumstances)
Obligated Party	<ul style="list-style-type: none"> • Whoever has the evidence • Whoever may help to preserve it • Defendant 	Defendant	<ul style="list-style-type: none"> • Whoever has the requested information or access to it (including defendant) • Whoever infringed plaintiff's/ applicant's rights • Whoever possesses or supplies/provides infringing goods or services, where the scale of these operations indicates that the person carries on actual business. • Whoever was identified as manufacturer/party involved in marketing infringing goods, recipient of relevant services or their provider.

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When	Prior to and during proceedings (until closed in first instance)	During proceedings	Prior to and during proceedings (until closed in first instance)
Standards	<p>Make a <i>prima facie</i> case showing:</p> <ul style="list-style-type: none"> • That there is a claim • That there is a legal interest: <ul style="list-style-type: none"> • if the evidence not preserved, it will be impossible or substantially difficult to invoke or prove relevant facts • the evidence may be destroyed • delay in obtaining the evidence may prevent or substantially impair attainment of the purpose of the evidentiary process • there is a need to confirm existing facts 	<p>Make a <i>prima facie</i> case showing:</p> <ul style="list-style-type: none"> • That there is a claim • That there are circumstances which make the application reasonable, including that the defendant is in possession of the evidence concerned 	<p>Show:</p> <ul style="list-style-type: none"> • reliably that there are circumstances indicative of infringement • that the respondent may have the requested information • that the information is necessary to determine the source or extent of infringement
Scope	Scope / deadlines / operational rules to be laid down by the court		
	Trade secrets to be taken into account		
	<p>Specific manner of preservation to be appropriate in light of the facts, e.g.:</p> <ul style="list-style-type: none"> • Taking possession of goods, materials or tools used for production or distribution, or of documents • Enforcement officer to prepare a description of the goods, with samples to be taken if necessary • Expert may be involved 		
			Refusal available on the same grounds as for witnesses, except on the ground that disclosure may expose respondent or those close to him to serious and immediate economic loss.

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Procedure	<ul style="list-style-type: none"> To be heard promptly (a week at most) in camera, usually ex parte Respondent/defendant not to learn until enforcement actually starts 	<ul style="list-style-type: none"> Defendant has right to respond If defendant does not comply with order or destroys the evidence, the court may: <ul style="list-style-type: none"> acknowledge that any facts which were to be proved are established, unless defendant makes proof to the contrary; make an order for costs against defendant, irrespective of the ultimate outcome of the case 	<ul style="list-style-type: none"> Respondent has right to respond If requested by claimant, court will order hearing in camera for the purpose of having a verbal explanation of the disclosed information Costs and expenses of disclosure are reimbursable on request
	Interim appeal to second instance court – to be heard promptly (a month at most)	Interim appeal to second instance court	
When order enforceable	When made		
Impact on main litigation	<ul style="list-style-type: none"> A fixed time to file a claim (between 2 weeks and 1 month from when order final), failing which preservation measures expire Preservation measures may be made enforceable on condition a deposit is made to secure claims that may follow from the enforcement 		<ul style="list-style-type: none"> If the disclosure order is made pre-trial, the case should be initiated within one month from when the order has been complied with Right to recover losses incurred in complying with the order (expires within one year from when it arises) <ul style="list-style-type: none"> if claimant fails to file the originating process on time or the process is withdrawn, returned or rejected, or the claim or application is dismissed, or the case is discontinued; if these are used for any purposes other than pursuing the claim