



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Switzerland: Intellectual Property

This country-specific Q&A provides an overview to intellectual property law in Switzerland.

It will cover intellectual property rights, licensing, enforcement, establishing infringement or liability, and challenges to intellectual property.

This Q&A is part of the global guide to Intellectual Property. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/intellectual-property/>

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The Legal 500



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The Legal 500

1. **What different types of intellectual property rights exist in this jurisdiction to protect?**

(a) Inventions (e.g. patents, supplementary protection certificates, rights in confidential information and/or know-how);

Patents and supplementary protection certificates (for active ingredients of patented and authorised pharmaceutical products or pesticides).

No exclusive intellectual property rights as such are conferred on trade secrets or other confidential information and know-how. In the event of an unauthorised disclosure or exploitation of such information, contractual provisions, unfair competition law and/or criminal law may provide protection.

(b) Brands (e.g. trade marks, cause of action in passing off, rights to prevent

unfair competition, association marks, certification marks, hallmarks, designations of origin, geographical indications, traditional speciality guarantees);

Trade marks (including guarantee marks and collective marks), PGI (Protected Geographical Indications), PAO (Protected Applications of Origin) and domain names (.ch and .swiss being the specific top level domains for Switzerland).

(c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in confidential information and/or know-how).

Copyright, design, topography rights and plant varieties.

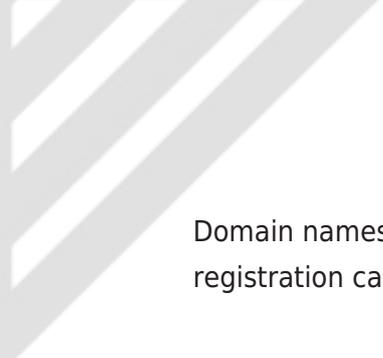
No exclusive intellectual property rights as such are conferred on trade secrets or other confidential information and know-how. In the event of an unauthorised disclosure or exploitation of such information, contractual provisions, unfair competition law and/or criminal law may provide protection.

2. What is the duration of each of these intellectual property rights? What procedures exist to extend the life of registered rights in appropriate circumstances?

For patents the duration is 20 years from the filing date of the application. The duration of the Supplementary Protection Certificates depends on the gap between patent expiration and the approval for the product release but will be granted for a maximum of 5 years.

For designs the initial registration period is five years from the filing date. And the duration may be extended for four periods of five years each (i.e. a maximum total of 25 years from the filing date). The procedure for extending the duration is simple and only requires the payment of the renewal fee.

For trademarks the initial registration period is 10 years from the filing date and the trademark can be renewed for further 10-year periods indefinitely. The procedure is simple and only requires the payment of the renewal fee.



Domain names are to be renewed annually by paying the registration fee and registration can be upheld for an unlimited period of time.

With copyright it depends on the type of work that is protected. In the case of computer programs, protection expires 50 years after the death of the author and in the case of all other works; protection expires 70 years after the death of the author. In the case of related rights (rights of artistic performers, phonographic rights, rights of broadcasters), the protection expires also after 50 years.

The protection for registered topography rights expires 10 years after the application date or 10 years after its first distribution, whichever comes first. The protection for unregistered topography rights expires two years after the first distribution of the semiconductor topography. In any event, protection ends 15 years after the development of the semiconductor topography.

Plant variety protection ends after the 25th full calendar year after protection has been granted. For vines and trees, however, the protection ends after completion of the 30th full calendar year.

3. Who is the first owner of each of these intellectual property rights and is this different for rights created in the course of employment or under a commission?

In general, the first owner is the person creating the intellectual property right. In the absence of a specific agreement, patentable inventions and designs created by the employee in performing his employment activity and contractual duties belong to the employer. For inventions and designs created under commission, a specific agreement is required. Copyright vests in the natural person creating the work and thus, for rights created in the course of employment or under a commission a specific assignment agreement is required. With respect to computer programs, however, the Swiss Copyright Act sets forth that computer programs created by the employee in performing his employment activity and contractual duties, the employer is exclusively entitled to exercise the copyright arising from that software program. This does not apply to software programs created under commission. In any event, a written agreement is always advisable. In the case of trademarks and domain names ownership is established by registration and an employer or commissioner can file the trade mark or domain



name devised by an employee or under commission in its own name. If there are elements in the trademark or the domain name that are subject to copyright, such copyright might belong to the employee or person working under commission as outlined above.

4. Which of the intellectual property rights described in questions 1-3 are registered?

Patents, supplementary protection certificates, trademarks, designs, semiconductor topography rights, POA/PGI and domain names.

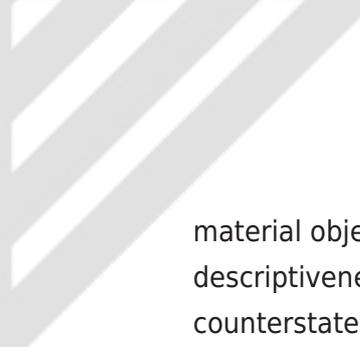
5. Who can apply for registration of these intellectual property rights and, briefly, what is the procedure for registration?

In principle any natural or legal person can apply for registration with the exceptions for POA/ PGI and .swiss-domains as set out below.

For obtaining a Swiss patent registration the applicant must file a request for a patent together with the required technical documents. The Intellectual Property Institute then formally examines the application and if all conditions are met, the application is published after 18 months. This is followed by the substantive examination during which the Institute's patent experts examine whether the legal requirements are met. Depending on the outcome of the examination, the patent is granted or rejected. If granted, the legal status of the patent (such as whether it is in force or has been cancelled) is entered in the patent register.

A supplementary protection certificate can only be filed for a patented and authorised pharmaceutical product or pesticide. The filing request must be submitted within 6 months either of obtaining the first market authorisation or of the confirmation of the patent grant.

As for trademarks, the applicant needs to provide the minimum information required, i.e. specify the trademark, name and address of the owner, list of goods and services, and pay the application fee. The Intellectual Property Institute will then examine the application and notify the applicant about formal deficiencies of the application or



material objections to the registration (such as non-compliant list of goods and services, descriptiveness or misleading nature of the chosen mark). The applicant can file a counterstatement on such issues before the Intellectual Property Institute proceeds with an official decision on the admissibility/inadmissibility of the registration.

For obtaining a POA or PGI the applicant must either file with the Federal Office for Agriculture (for POA and PGI for agricultural products) or the Intellectual Property Institute (for POA and PGI not related to agricultural products). An application for a POA or PGI can only be submitted by a representative group of producers concerned and must include a product specification that defines the product and its method of production. The Federal Office and the Institute will then examine the application and notify the applicants in case of any deficiencies in order for the applicants to either remedy the deficiencies or file a counterstatement.

For obtaining a plant variety registration, the applicant must file the specific plant variety registration form provided by the Federal Office of Agriculture (available in English via <https://www.blw.admin.ch/blw/en/home/nachhaltige-produktion/pflanzliche-produktion/saat-und-pflanzgut.html>). The Federal Office will then examine the application and notify the applicant in case of any deficiencies in order for the applicant to either remedy the deficiencies or file a counterstatement.

For obtaining a design registration the needs to provide the minimum information required, i.e. specify the design by means of pictures or photographs, give the name and address of the owner, a classification of the goods, and pay the application fee. Providing a design description is optional.

For obtaining a topography registration the applicant must submit a request with a detailed description of the topography to be protected and its scope of use. Also, the applicant must show that the topography in question falls within the scope of the Swiss Topography Act. The Swiss Topography Act only applies to i) topographies of Swiss manufacturers and manufacturers whose habitual residence or business domicile is in Switzerland; ii) topographies that were first distributed in Switzerland; or iii) topographies protected in Switzerland through international treaties.

As for .swiss-domains, their registration is reserved exclusively for companies with

sufficient link to Switzerland, i.e. a public body or organization under Swiss public law, a legal entity registered in the Swiss Commercial Register having its seat in Switzerland and an effective site of administration in Switzerland, or an association or foundation not registered in the Swiss Commercial Register having its seat and an effective site of administration in Switzerland.

6. How long does the registration procedure usually take?

In the case of patents, once the application is filed the Institute of Intellectual Property checks whether the formal requirements are met and whether the application fee has been paid. If this is the case, the applicant receives a filing confirmation and the patent application is published (at www.swissreg.ch) 18 months after filing. Approximately between three to four five years after the filing of the application, the Institute examines whether the patent can be granted. In this context the Institute examines whether the invention is capable of industrial application but neither the novelty nor inventive steps requirements are examined. Accelerated examination can be requested. If the statutory requirements are met, the patent is issued, registered and published (at www.swissreg.ch).

As for designs, because the intellectual property institute only reviews the formal requirements but does not conduct a material review of the design, a design registration can be finalized in a matter of days.

A trademark application is examined generally within either 3-6 months after payment of the application fees or within 10 working days, in the event that the electronic application is clearly compliant with the registration requirements and the list of goods and services only covers those contained in the Intellectual Property Institute's electronic database of accepted goods and services. Also, expedited proceedings with a maximum processing time of one month for the first examination (registration or provisional refusal) and of two months for each further step in the application process are available against payment of an additional fee of CHF400.

The registration procedure for POA and PGI are more complex because the procedure involves an investigation into the representativeness of the group applying for the registration and the product specification that was filed. The duration thus strongly varies from case to case. An inquiry with both the Intellectual Property Office as well as

the Federal Office of Agriculture showed the minimum duration is about 2 years.

The registration of a .ch-domain name can be done immediately by purchasing the domain online via a registrar. The registration of a .swiss-domain name usually takes a couple of weeks as it involves an examination of the specific registration requirements (sufficient link to Switzerland).

7. Do third parties have the right to take part in or comment on the registration process?

No, third parties have no right to take part in or comment on the registration process. Once a registration has been granted, third parties can then assert their rights (see below section E).

8. What (if any) steps can the applicant take if registration is refused?

If a registration is refused, the applicant can appeal the decision to the Federal Administrative Court. The decision of the Federal Administrative Court can be appealed to the Federal Supreme Court. This does not apply to domain names as their registration is a mere private contractual matter with the domain registrar.

9. What are the current application and renewal fees for each of these intellectual property rights?

For patents there is a tiered fee which consist of an application fee of CHF 200, a fee for the (optional) prior art search of CHF 500 and the examination fee of CHF 500. Starting from the 4th year of the registration a yearly renewal/maintenance fee is due which is CHF 100 for the 4th year and increases annually by CHF 50 in the following years of the patent registration (i.e. CHF 150 for the 5th year, CHF 200 for the 6th year and so on). The filing fee for Supplementary Registration Certificates is CHF 2'500 and there is an annual maintenance fee starting at CHF 950 for the first year and increasing annually by CHF 50 for the following years of protection.

The filing fee for a trademark for the initial ten year term is CHF 550 which includes

protection for goods and services in up to 3 classes. There is a class surcharge of CHF 100 for each additional class. The expedited trademark examination fee is CHF 400. The renewal fee is CHF 700 (irrespective of number of classes).

The filing of a POA or PGI does not incur any fees and for POA and PGI in other fields the filing fee is CHF 4'000.

The deposit fee for 1 design is CHF 200 and each additional design in the same application incurs a further CHF 100. If there are 6 or more designs in the same application the total fee is CHF 700. The renewal fees are the same as the deposit fees.

For domains the fees depend on the chosen registrar.

10. What are the consequences of a failure to pay any renewal fees and what (if any) steps can be taken to remedy a failure to pay renewal fees?

Within 6 months of the renewal/maintenance fee deadline the failure to pay the fees can be remedied by paying the renewal/maintenance fees plus a penalty. The penalty fee is CHF 50 for patents, designs and trademarks alike. This does not apply to domains where the terms and conditions of the registrar set forth the consequences for failing to pay the annual fees.

11. What are the requirements to assign ownership of each of the intellectual property rights described in questions 1-3?

The intellectual property rights can be assigned except for certain personal rights (morals rights) such as the right to be named as the inventor (patents) or the right to recognition of authorship, and the integrity of the work (copyright).

The assignment of ownership of trademarks, patents and designs requires a written contract in the case of an assignment of trademarks, patents and designs. No such requirement exists for copyrights although for purposes of proof of title a written assignment agreement is highly recommended. POA and PGI cannot be assigned as such as they are tied to a specific product and not to a specific owner.

The assignment of domains is subject to the terms and conditions of the registrar.

12. Is there a requirement to register an assignment of any of these intellectual property rights and, if so, what is the consequence of failing to register?

With the exception of guarantee marks and certification marks, there is no requirement to register for the assignment to be valid. If an assignment is not registered, however, the assignment is not enforceable against a third party having acquired rights to the intellectual property in good faith.

13. What are the requirements to licence a third party to use each of the intellectual property rights described in questions 1-3?

There are no specific requirements. Even though no formalities are required, a written agreement is recommended.

14. Is there a requirement to register a licence of any of these intellectual property rights and, if so, what is the consequence of failing to register?

There is no requirement to register a licence except for guarantee marks and collective marks. In the other cases, if a licence is not registered, it is not enforceable in the event a third party has acquired rights to the intellectual property right.

15. Are exclusive and non-exclusive licensees given different rights in respect of the enforcement of the licensed IP, and if so, how do those rights differ?

Yes, there is a difference. Exclusive licensees of a patent, trademark, design or copyright are entitled by law to initiate proceedings against third parties infringing the intellectual property right. They are entitled to do so without the consent of the owner or licensor and irrespective of the registration of the licence in the register. The licensor or owner, however, can contractually prohibit the licensee from initiating proceedings without specific consent. Non-exclusive licensees, on the other hand, cannot initiate such

proceedings without the consent of the licensor or owner.

16. **Are there criminal sanctions for infringement of any intellectual property rights, and if so, what are they and how are they invoked?**

The infringement of patents, designs, trademarks, topography rights and plant variety rights is subject to criminal sanctions. Any person wilfully committing such act is, upon complaint by the injured party, liable to a custodial sentence not exceeding one year or to a monetary penalty. If the offender acts for commercial gain, he shall be prosecuted ex officio and the penalty is a custodial sentence not exceeding five years or a monetary penalty.

Complaints in criminal proceedings have to be brought before the competent cantonal criminal prosecution authorities. A complaint can be filed either orally or in writing.

17. **What other enforcement options are available in your jurisdiction for each of the intellectual property rights described in questions 1-3? For example, civil court proceedings, intellectual property office proceedings, administrative proceedings, alternative dispute resolution.**

The registration of a patent, trademark or POA/PGI can be opposed by means of administrative proceedings before the competent authority which for patents, trademarks and non-agricultural POA/PGI is the Intellectual Property Institute. With respect to patents, opposition may only be filed on the grounds that the subject-matter of the patent is not patentable because it falls under a non-patentable category of invention listed in the Patent Act. Oppositions against trademarks can only be based on relative grounds, i.e. violation of a prior trademark right and not absolute grounds, i.e. descriptiveness, deception of consumers, and the like. Oppositions against the registration of a POA/PGI in the field of agriculture, opposition proceedings are handled by the Federal Office of Agriculture. Furthermore, infringement actions, cancellation actions or nullity actions can be initiated for all intellectual property rights before a competent civil court. Each of the 26 cantons designates one court in its jurisdiction competent for handling intellectual property matters with the exception of patent

matters which are handled by the Federal Patent Court which became active on January 1st 2012 replacing the 26 cantonal jurisdictions.

Alternative dispute resolution is only an option if the parties have agreed to settle the matter by means of arbitration proceedings. This is the case with respect to domain names as registrars and domain name holders must follow the Uniform Domain-Name Dispute-Resolution Policy (UDRP) set forth by ICANN.

18. What is the length and cost of such procedures?

The lengths and costs vary depending on the particulars of the case. No general statement is possible. The costs for administrative proceedings are usually lower than for civil court proceedings. For opposition proceedings against patent and trademark registrations the opposition fee is CHF 800 for non-agricultural POA/PGI it is CHF 2'000. The fee for an opposition against the registration of a POA/PGI in the field of agriculture is CHF In addition to these fees, attorneys fees accrue but again they depend on the complexity of the case. In civil court proceedings the fees are subject to the court tariffs of the canton in question and depend on the actual amount in dispute. The duration of civil proceedings can vary from one year to several years and the longer a case takes, the more costs are incurred.

UDRP proceedings in domain name disputes usually only take a couple of months and the fees depend on both the number of domains involved in the dispute and the number of panellists chosen. For a dispute involving one domain handled by a single panellist the fees are USD 1'500, if handled by a panel of three, USD 4'000.

19. Where court action is available, please provide details of which court(s) have jurisdiction, how to start proceedings, the basics of the procedure, the time to trial, the format of the trial, the time to judgment and award of relief and whether any appeal is available.

In intellectual property matters each of the 26 cantons designates a court to handle intellectual property matters with the exception of patent matters which are handled by the Federal Patent Court. The cantons usually designate either the cantonal court of

appeal or the commercial court (if existing in their jurisdiction) as the competent court for intellectual property matters.

Proceedings are initiated by filing a (written) claim with the competent court. The court will then issue an order setting a deadline for the advance payment of the court fees. The claim submitted by the claimant will be forwarded to the respondent for response. Usually there are two rounds of exchange of writs, in complex matters even three and based on the evidence filed the court will decide on how to proceed with any evidentiary hearings or in-court settlement hearings. The time to judgement will strongly depend on the parties requesting extensions of deadlines, the complexity of the case and the evidence submitted. The minimum is one year but the time to judgement can easily take several years. Awards of relief or remedies include Injunctions (preliminary or final), a declaratory judgment as to the validity of the intellectual property or infringement/non-infringement, assignment, order to disclose the origin and quantity of the objects in the defendant's possession and to disclose the addressees and the extent of any transfer to commercial recipients, rendering of accounts, damages, redress or surrender of profits, publication of the judgement and/or the destruction of infringing goods and their removal from the market. Decisions by the cantonal courts or the Federal Patent Court can be appealed to the Federal Supreme Court.

20. How does the court acquire any necessary information (fact or technical) and in what circumstances does it do so?

a) Is there a technical judge, a judge with technical experience, a court appointed expert, an expert agreed by the parties, and/or parties' expert witness evidence?

b) What mechanisms are available for compelling the obtaining and protecting of evidence? Is disclosure or discovery available?

It is up to the claimant and defendant to file any factual and technical information and evidence they wish to be included in the court's evaluation of the case. The parties may either request the court to summon an expert for an expert's statement or (written) expertise or the court may decide to appoint an expert if the court's evaluation of the information and evidence provided by the parties require it. In proceedings before the Federal Patent Court there is at least one judge with a technical background. Most cases before the Federal Patent Court can therefore be handled without having to appoint

additional technical experts. For cases that are unusually complex or related to a very specific field of technology, the court may summon an additional expert.

With respect to obtaining and securing evidence, it is important to know that under Swiss law there is no pre-trial discovery and evidence may be taken by a judge pre-trial in limited situations only, for example, if evidence is likely to be destroyed. In an ongoing court case, a party may request the court to order the other party or any third parties in possession of evidence to submit it to the court. In order to prevent "fishing expeditions", the requested evidence must be described in sufficient detail and it must be shown that the evidence is material for the outcome of the dispute. Also, the party subject to the burden of proof must show that the requested evidence is not already in its possession and that there is no reasonable other way for it to obtain that evidence.

21. How is information and evidence submitted to the court scrutinised? For example, is cross-examination available and if so, how frequently is it employed in practice?

In Swiss civil court actions it is upon the parties to submit and substantiate any evidence they wish to bring forth. The judges will freely evaluate the information and evidence submitted. The parties can name witnesses and submit expert statements which the court evaluates. The court can order an evidentiary hearing where the judge(s) will question the parties and witnesses named by the parties. There is no cross-examination available under Swiss law but in these hearings, the parties or their legal representatives will be able to submit questions to the judge which he or she will then relay to the person questioned.

22. What customs procedures are available to stop the import and/or export of infringing goods?

On the one hand, the Federal Customs Administration is authorised to notify the right holder in the event that during customs procedures the customs authorities suspect an imminent importation, transit or exportation of goods which would infringe the respective right holder's intellectual property rights in Switzerland. As a proactive measure, the right holder can make an application for assistance at the Federal Customs Administration and thereby apply for clearance of the goods to be refused if customs authorities suspect goods to infringe intellectual property rights in Switzerland. In the

event that the customs authority withholds goods based on this type of application, the right holder must then submit an application within 10 days to the competent judge for preliminary measures to be taken.

23. **Are any non-court enforcement options or dispute resolution mechanisms mandatory in respect of intellectual property disputes in any circumstances? If so, please provide details.**

Not unless the dispute is based on a contractual issues and the contract in question foresees non-court enforcement options or dispute resolution mechanisms.

24. **What options are available to settle intellectual property disputes in your jurisdiction?**

Both in-court settlements as well as out-of-court settlements are an option.

25. **What is required to establish infringement of each of the intellectual property rights described in questions 1-3? What evidence is necessary in this context?**

For establishing of a patent infringement the claimant has to establish a construction of the patent claim and then compare the established claim with the product allegedly infringing the patent. The scope of protection of a design includes covers both identical shapes as well as shapes that copy the essential features and thus produce the same overall impression as the registered design. To establish a design infringement the rights holder must show that the allegedly infringing shape is identical or creates the same overall impression as the infringed design. Trademark owners must establish the use of an identical or confusingly similar mark for identical or similar goods/services and owners of PGI/POA must show that the PGI/POA is used without meeting the requirements set out in the product specification. Topography right owners have the exclusive right to reproduce the topography and to establish infringement they must show that there is an unauthorized reproduction of the topography by the infringer. Plant variety right holders must show that unauthorized production or reproduction of the propagating material of the variety protected or conditioning for the purpose of propagation is taking place or that unauthorized materials of the protected variety are sold and marketed. Copyright owners also have the exclusive right to use and reproduce

their work and to establish infringement they must show that the infringer has used or reproduced the work without authorization.

As regards necessary evidence, the claimant will have to substantiate its infringement claim with the appropriate evidence which can be documents such as correspondence between the parties, drawings of the invention or design and of the defendant's product/process, documents on prior art, sales and marketing materials, product specimens with proof of purchase, witness evidence, private expert evidence (which, however is considered to be mere party allegations) and requests for court-appointed experts. Because copyrights are not registered copyright claims should include evidence as to the date of creation of the work and the subsequent use of the work.

26. What defences to infringement are available?

Defences available include non-infringement, nullity of the intellectual property right, right to be granted a licence where compulsory licenses exist, prior use, exhaustion of the intellectual property right, special privileges (such as farmer's privilege, research privilege or teaching privilege), private use, and forfeiture of rights.

27. Who can challenge each of the intellectual property rights described in questions 1-3?

Anybody with a legal interest can challenge the intellectual property rights described in section A.

28. When may a challenge to these intellectual property rights be made (e.g. during any registration process or at any time during the subsistence of the right)?

Challenges are not made during the registration process. There is a deadline for challenging intellectual property rights in administrative opposition proceedings. Opposition against a patent must be filed within nine months from the date when the patent was granted. The opposition deadline for trademarks and POA/PGI is three months from the publication date of the registration. Cancellation and nullity actions before the civil court can be brought forth any time during the subsistence of the right but as time progresses the risk of a successful defence of forfeiture increases.

29. **Briefly, what is the forum and the procedure for challenging each of these intellectual property rights and what are the grounds for a finding of invalidity of each of these intellectual property rights?**

The forum for challenging patents, trademarks, plant variety rights and non-agricultural POA/PGI in administrative proceedings is the Intellectual Property Institute in Berne. The forum for challenging agricultural POA/PGI in administrative proceedings is the Federal Office of Agriculture in Berne. The forum for civil-law disputes concerning patents is at the Federal Patent Court in St. Gallen. In all other civil-law disputes the question of which cantonal court has jurisdiction depends on whether the case at hand is a Swiss domestic dispute or an international dispute. Further it depends on the action concerned (preliminary injunction, infringement action, declaratory action, etc.). In Swiss domestic infringement cases, the claimant potentially can file claims in the following venues: at its own domicile or registered office, at the domicile or registered office of the defendant and at the forum where the infringing act occurred or had its effect. In an international dispute resulting in an infringement action, the claimant can file its claim either at the domicile or registered office of the defendant, the place where the act occurred or the place where it had its effect.

The forum for UDRP disputes is at WIPO in Geneva.

30. **Are there any other methods to remove or limit the effect of any of the intellectual property rights described in questions 1-3, for example, declaratory relief or licences of right?**

Declaratory reliefs i.e. a judgment of a court which determines the rights of parties without ordering anything be done or awarding damages are available under Swiss law.

31. **What remedies (both interim and final) are available for infringement of each of the intellectual property rights described in questions 1-3?**

Remedies available include injunctions (interim or final), a declaratory judgment, assignment of intellectual property right, an order to disclose the origin and quantity of

the infringing objects in the defendant's possession and to disclose the addressees and the extent of any transfer to commercial recipients, rendering of accounts (for the assessment of damages), damages, redress or surrender of profits, publication of the judgment and destruction of infringing goods and their removal from the market.

As regards patents, an action for assignment must be filed within two years from the official date of the publication of the patent specification. An action against a defendant acting in bad faith, however, has no filing deadline.

32. What are the costs of enforcement proceedings and is any kind of costs recovery available for successful parties? Is there a procedural mechanism enabling or requiring security for costs?

The costs of the enforcement proceedings strongly depend on the complexity of the case and the forum as the 26 cantonal courts each have their own court tariff system. No general statement is possible.

With respect to the allocation of costs, the court, as a general rule, decides on the procedural costs in the final decision. Where an interim decision is made, the procedural costs incurred up to that point may be allocated but it may also be deferred until the final decision on the merits. The parties may submit a statement of costs but the court costs are determined and allocated ex officio and party costs are awarded according to the tariffs. As a general rule, the costs are charged to the unsuccessful party. If an action is not admitted by the court or if it is withdrawn, the claimant is deemed to be the unsuccessful party. In case of acceptance of the claim the defendant is deemed to be the unsuccessful party. If each party is partially successful, the costs are allocated in accordance with the outcome of the case. If three or more persons are participating in the proceedings as principal parties or accessory parties, the court shall determine each party's share of the costs and it may hold the parties jointly and severally liable. The court may diverge from this general principle of allocation and allocate the costs at its own discretion in specific cases. For example if a party was caused to litigate in good faith or if there are other extraordinary circumstances that would result in an allocation according to the outcome of the case being inequitable. If a case is settled in court, the costs are charged to the parties according to the terms of the settlement. The most common allocation in the event of an in-court settlement is that each party pays their own costs.



At the request of the defendant, the claimant must provide security for party costs if the claimant has no residence or registered office in Switzerland; appears to be insolvent, has been declared bankrupt, is involved in ongoing composition proceedings or if certificates of unpaid debts have been issued; the claimant owes costs from prior proceedings; or if for other reasons there seems to be a considerable risk that the compensation will not be paid. Security may be provided in cash or in the form of a guarantee from a bank with a branch in Switzerland or from an insurance company authorised to operate in Switzerland.