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Switzerland
Intellectual Property

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This country-specific Q&A provides an overview of intellectual property laws and regulations applicable in Switzerland.

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Switzerland: Intellectual Property

1. What different types of intellectual property rights exist to protect: (a) Inventions (e.g. patents, supplementary protection certificates, rights in trade secrets, confidential information and/or know-how); (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); (c) Other creations, technology and proprietary interests (e.g. copyright, design rights, semiconductor topography rights, plant varieties, database rights, rights in trade secrets, confidential information and/or know-how).

a) Patents Swiss law enables patent protection for inventions that are (i) new, (ii) inventive (or non-obvious) and (iii) susceptible of industrial application, nothing that Switzerland follows a so-called “first-to-file” rule whereby, for any given invention, the first applicant has prevailing rights irrespective of date of invention.

The maximum term of protection for patents is twenty years from the date of filing.

Supplementary protection certificates (SPCs)

In the case of medicinal products, SPCs (Supplementary Protection Certificates) can extend the overall term of protection by up to five years.

Trade and business secrets and know-how

Trade secrets may protect any information (i) that is not publicly known or easily accessible, (ii) has commercial value, (iii) whose owner has a legitimate interest in keeping it confidential, and (iv) intends to do so.

In contrast to other jurisdictions, Swiss law protects trade secrets under a fragmented legal framework, notably under the Criminal Code (CC), the Code of Obligations (CO), and the Federal Act on Unfair Competition (UCA). There is currently no overarching trade or business secret law. That being stated however, Swiss law offers a high level of legal protection to the holders of trade secrets.

b) Trade mark

Signs capable of distinguishing the goods or services of one person (natural or legal) from those of another can be registered as a trade mark.

The Swiss Federal Institute of Intellectual Property (IPI) will grant trade mark protection provided the sign for which the applicant seeks trade mark protection is not in the public domain, misleading, contrary to public policy or morality and, in the case of shapes, where said shape does not constitute the nature of the goods themselves or appear technically necessary. In addition, relative grounds of refusal exclude protection for trade marks that are identical or similar to prior trade marks (as the case may be, where a risk of confusion arises).

Trade marks protect a variety of signs and indications, ranging from pure words, to logos but also geographical indications, as well as guarantee and collective labels.

The term of protection is ten years, renewable indefinitely for further ten-year periods.

c) Copyright

Swiss copyright law offers a broad scope of protection. In particular, it protects literary and artistic works, as well as musical works, works of architecture, photographs and computer programmes. With limited exceptions, the work must have an individual character to be protected.

Protection arises automatically upon the creation of the work, without the need for formal registration or other administrative steps.

The term of protection is dependent on the nature of the work. The general term of protection is seventy years from the death of the author, though – notably – fifty years for computer programmes and photographs devoid of individual character.

d) Other rights

Designs:

Designs that are new and have an individual character can be protected subject to registration at the Institute of Intellectual Property. Designs that result exclusively from the technical function of the product at stake cannot be protected.

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Semiconductor topography rights:

Since 1993, three-dimensional semiconductor structures have been eligible for protection as topographies.

Databases and plant varieties:

Swiss law only provides limited protection for database owners. There is no specific database right as a separate form of intellectual property. Instead, protection can be pursued either through copyright – if the database is considered original – or via unfair competition legislation.

Protected Geographical Indications and Protected Designations of Origin:

Protected geographical indications (PGIs) allow to identify products based on their geographical origin, provided at least one manufacturing step occurred in the indicated area, thereby conferring to the end product a certain characteristic.

Protected designations of origin (PDOs) likewise associate certain qualities with the relevant geographic area. Compared to PGIs, PDOs require a stronger tie between the production in the place of origin and the resulting characteristics.

PDOs and PGIs thereby protect those products which have a particular link to their geographical origin and, thereby, protect the consumer through clear information. They also serve as distinctive elements on the market and are therefore closely related to trade marks. PDO and PGI products are registered in a national registry, held by the Federal Office for Agriculture and must comply with specific requirements (production methods, contents, etc.).

Plant varieties:

Swiss law also protects new plant varieties for twenty-five years (with certain taxa having a thirty-five-year term of protection). Contrary to other intellectual property rights, it is the Federal Office for Agriculture that is competent to receive applications and grant the protection title.

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?

Patents: Maximum term of 20 years from the filing date of the application if the annual renewal fees are paid.

Supplementary protection certificates (SPCs): Maximum term of 5 years, starting upon patent expiry.

Trade marks: ten years, with unlimited further ten-year renewals (subject to timely payment of fees).

Copyright: Copyright protection expires 70 years after the death of the author, though term of protection is 50 years for computer programmes and photographs devoid of individual character.

Designs : Maximum term of 25 years from the filing date of the application subject to timely payment of the renewal fees (every 5 years).

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?

Patents:

In principle, the inventor is entitled to (original) patent ownership.

Employee inventions obtained during employment activities and in furtherance of employment duties belong ab initio to the employer. Moreover, the employment contract may reserve to the employer ownership rights over employee inventions obtained during employment activities but not in furtherance of the employee's contractual obligations.

Trade mark

Trade marks belong to the original applicant (subject to assignment).

Copyright

All rights belong to the author of the work. If several people create a work together, they share ownership as co-authors.

This also holds true in employment relationships, with the exception of computer programmes. In this latter case, the employer has an exclusive right over said programmes, provided the employee developed it during employment activities and in furtherance of employment duties.

Designs

Design rights belong to the designer. In an employment relationship, the same mechanisms as set out above for

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patents apply (the employer has broad rights over employee designs).

4. Which of the intellectual property rights described in section A are registered rights?

In Switzerland, registered intellectual property rights include patents (including Supplementary Protection Certificates, SPCs), trade marks (including Protected Geographical Indications, PGIs, and Protected Designations of Origin, PDOs), designs, semiconductor topographies, and plant varieties.

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

Patents and SPCs

The right to apply for a patent lies with the inventor, their successor in title, or any third party that has acquired ownership of the invention. Applications may be filed directly with the IPI, or via the European Patent Office or the international PCT system.

Under the law currently in force, the IPI does not examine novelty or inventive step, although applicants may request a patent search. This system will change on 1 January 2027, when the revised Swiss patent law enters into force. From that date, the IPI will conduct a mandatory prior-art search for every patent application. Applicants will also have the option to request a full substantive examination, including novelty and inventive step; otherwise, the IPI will continue to conduct only a partial substantive examination.

Applications are published after eighteen months, and the patent is then granted or refused. Supplementary protection certificates can only be requested by the patent holder and must be filed with the IPI within six months of the first Swiss marketing authorisation or, if the patent is granted later, within six months of the grant.

Trade marks, PDOs and PGIs

Any natural or legal person may apply for a trade mark, with no prior use requirement, while PDOs and PGIs can only be applied for by representative producer groups. For trade marks, the IPI examines whether absolute grounds for refusal exist, and if the requirements are met, the sign is entered in the register. Registration triggers a three-month opposition period. PDOs and PGIs for agricultural products are registered with the Federal Office for Agriculture, while those for non-agricultural products are registered with the IPI.

Designs

The owner of a design, whether a natural or legal person, may apply for registration with the IPI. The application is subject only to a formal review; if requirements are fulfilled, the design is registered and published, with protection running for an initial five-year term from the filing date.

Semiconductor topographies

The right to apply belongs to the creator or the rights holder. The procedure consists of filing an application form with representations of the topography. The IPI checks only formal requirements before registration.

Plant varieties

Applications must be filed by the breeder or their successor in title with the Office for Plant Variety Protection, part of the Federal Office for Agriculture. The office examines distinctness, uniformity, stability and novelty based on documentation and tests, and if the conditions are met, issues a plant variety protection certificate.

6. How long does the registration procedure usually take?

The duration of the registration process in Switzerland varies according to the type of intellectual property right.

Obtaining a *patent* is comparatively lengthy. Under the current system, the process from filing to grant usually takes around 2 to 3 years, while European patents are granted only after 3 to 6 years. From 1 January 2027, a prior-art search will be conducted for every Swiss patent application. Applicants may also request a full substantive examination. The revised procedure also provides options to accelerate the patent grant process. As the new system has not yet come into force, reliable average processing times under the revised procedure are not yet available.

For *trade marks*, applications are generally examined within 2 to 3 months, provided no issues arise. Straightforward applications may even be examined within 6 working days. An expedited examination is also available for a fee, guaranteeing examination and registration, or the issuance of an objection, within one month.

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The registration of *PDOs* and *PGIs* is more complex, involving the examination of formal and legal compliance with product specifications, publication, and the possibility of opposition. In practice, these procedures often take around 1 to 2 years to complete.

For *designs* and *semiconductor topographies*, the examination is purely formal. If the application documents are correct and the fees are paid, the IPI usually completes registration within a few days or weeks.

Plant variety rights require distinctness, uniformity, stability, and novelty testing. Because of the biological tests involved, the procedure is time-consuming, typically taking 1 to 6 years, depending on the variety to be assessed, before protection is granted.

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

The role of third parties during registration depends on the type of right.

For *patents*, under the law currently in force, third parties may file an opposition against a Swiss national patent within nine months of publication of its grant, on limited grounds. This opposition procedure will be abolished under the revised patent law entering into force on 1 January 2027 and replaced by an appeal procedure. European patents may be opposed before the European Patent Office within nine months of grant. For *SPCs*, no opposition is possible; they may only be challenged in court.

For *trade marks*, third parties may file an opposition within three months after publication of the registration, based on earlier rights.

For *PDOs* and *PGIs*, applications are published and any person with a legitimate interest may oppose within the statutory period.

For *designs* and *semiconductor topographies*, no opposition or comment procedure exists. Third parties may only bring invalidity actions after registration.

For *plant varieties*, third parties may lodge objections with the Office for Plant Variety Protection within three months of publication.

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

If registration is refused by the examining authority in a final decision, the applicant has a right of appeal. Decisions of the IPI or the Federal Office for Agriculture may be challenged before the Federal Administrative Court within 30 days of notification. A further appeal may be made to the Federal Supreme Court. From 1 January 2027, appeals against IPI decisions in patent matters will instead be heard by the Federal Patent Court. This system applies across (national) patents, trade marks, designs, semiconductor topographies, plant varieties and geographical indications, with only minor procedural differences depending on the authority and right involved.

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

The application and renewal fees vary depending on the type of intellectual property right.

For *patents*, under the law currently in force, the application fee is CHF 200, with an additional CHF 50 payable for each claim beyond the tenth. The examination fee is CHF 500, and accelerated examination may be requested for an additional CHF 200. Annual renewal fees apply from the fourth year onwards, increasing progressively from CHF 100 in year 4 up to CHF 960 in year 20. From 1 January 2027, the application fee will remain CHF 200 but will cover up to 15 claims. A mandatory prior-art search will be subject to a fee of CHF 500. The fee for the partial substantive examination will be CHF 400, while an optional full examination for novelty and inventive step will cost an additional CHF 300. Renewal fees will become payable from the third year onwards.

For *trade marks*, the filing fee is CHF 450, with a class surcharge of CHF 100 per class from the fourth class onwards. If filed electronically via the IPI's e-trade mark platform, a CHF 100 discount applies. Renewal of a trade mark for a further ten-year period costs CHF 550.

For *designs*, the basic application fee is CHF 200 for an initial five-year term. Where several designs are included in one application, an additional CHF 100 is charged per design, up to a maximum total of CHF 700. The basic fee includes the publication of one illustration; each additional illustration costs CHF 20. Renewal fees for subsequent five-year periods correspond to the initial filing fees.

For *PDOs* and *PGIs* relating to non-agricultural products, the application fee is CHF 4,000. (For agricultural products handled by the Federal Office for Agriculture, no

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fixed filing fee is published.)

For *semiconductor topographies*, the filing fee is CHF 450.

For *plant varieties*, the filing fee is CHF 300 if the proposed denomination is included in the application, or CHF 400 if it is submitted separately.

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?

The consequence of not paying renewal fees is generally the lapse of the intellectual property right.

However, depending on the type of right concerned, Swiss law provides for grace periods or other remedies allowing late payment, generally subject to the payment of a surcharge or additional fee. For example, trade marks may still be renewed within six months after expiry of the regular renewal period upon payment of an additional fee. Similar mechanisms are available for patents and designs. If the applicable grace period or other available remedy is not used in time, the right lapses. In certain circumstances, further processing or reinstatement may nevertheless be available, subject to specific statutory requirements and time limits.

11. What are the requirements to assign ownership of each of the intellectual property rights described in section A?

The written form is required for the assignment of patents, trade marks and designs. On the other hand, there is no written form requirement for the assignment of copyrights, trade secrets, non-patented inventions and domain names. For evidentiary reasons, however, the written form is a recommended and standard best practice.

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?

Except for the assignment of a guarantee or collective mark, recording the assignment of a patent or trade mark in the relevant register is not mandatory for it to be effective. However, registration is strongly recommended, as unregistered assignments cannot be enforced against good faith third parties.

13. What are the requirements to licence a third party to use each of the intellectual property rights described in section A?

Swiss law grants contracting parties broad contractual freedom. This applies both to the formal elements – written form requirements being the exception -, as well as to the contents, with only limited mandatory elements. Accordingly, license agreements are not subject to formal requirements and are valid when concluded orally or even tacitly, though a written or text form is always preferable. Licenses relating to patents, trade marks, designs, and plant varieties can be registered, making them enforceable against third parties.

As an aside, Swiss law contains several instances of compulsory licensing for patents and copyrights.

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?

Except for the licenses on collective marks, registering licences in the national register is not mandatory for them to be effective. It is occasionally done, however, so as to avoid transfer of title over the intellectual property right without a corresponding transfer of the license, being specified that such license registration also plays a publicity role.

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?

A person holding an exclusive license may bring a separate action independently of whether the license is registered, provided the license agreement does not explicitly exclude this right. Any licensee, including non-exclusive ones, may join an infringement action to claim for their own damages.

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

The violation of an intellectual property right may constitute a criminal offense, provided that it is intentional.

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The sanction may be a custodial sentence not exceeding one year or a monetary penalty.

The offense is prosecuted on complaint by the injured party, unless the offender acted “for commercial gain", in which case ex officio prosecution takes place. If a criminal complaint is required, it shall be filed within three months (six months in the case of a patent infringement) as from the day that the injured party discovers the identity of the suspect.

17. What other enforcement options are available for each of the intellectual property rights described in section A? For example, civil court proceedings, intellectual property office proceedings, administrative proceedings, alternative dispute resolution.

Intellectual property rights can be enforced in civil court proceedings.

In addition to the right to claim for damages or for delivery of illegitimate profits, any person who can demonstrate a legal interest may bring an action for a declaratory judgment (including the assignment of the registered intellectual property right) or may request the court to prohibit an imminent infringement or to remedy an existing infringement.

Where necessary, it is possible to request interim measures, in particular to order measures to secure evidence, establish the origin of goods, preserve the existing state of affairs or provisionally enforce claims for injunctive relief and remedy.

The parties may also agree to replace the jurisdiction of the civil authorities with that of an arbitral tribunal.

Registered intellectual property rights may also be enforced through administrative procedures. For example, a request for the cancellation of a trade mark on grounds of non-use can be filed directly before the Swiss trade mark office. The latter is also competent to deal with oppositions to the registration of a trade mark based on a prior confusingly similar trade mark.

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

The duration of civil proceedings is difficult to estimate in abstracto, as it notably depends on the complexity of the case and the procedural behaviour of the parties. The same goes for criminal proceedings. Experience shows that civil proceedings, from the filing of the claim to the first instance judgment, rarely take less than 18 months. However, interim measures may be obtained within weeks and ex parte interim measures within days.

The costs of civil or criminal proceedings also depend on the complexity of the case and the value in dispute.

By way of illustration and generally speaking, it should be noted that a civil dispute involving a value in dispute of less than CHF 100,000 will incur legal costs of less than CHF 10,000, whereas they will exceed CHF 20,000 if the value in dispute exceeds CHF 1,000,000.

The party bringing a civil action must advance at least half of the costs of the proceedings.

The party whose claims are dismissed must, in addition to contributing to the opposing party's defence costs, bear the costs of the proceedings. Similarly, the party that has been convicted or that has wrongfully filed a criminal complaint may be required to bear all or part of the costs of the criminal proceedings.

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.

Each of the 26 cantons has designated the court that has jurisdiction as the sole cantonal instance for civil disputes related to intellectual property rights. For all disputes concerning patents (validity of the patent and infringement), jurisdiction lies with the Federal Patent Court.

In general, the civil procedure is initiated by a request for conciliation before the competent authority. If conciliation fails, authorization to proceed will be granted and a formal claim must be submitted by the claimant within three months.

The procedure will normally involve two exchanges of written submissions (i.e. four written submissions if there are two parties), an organisational hearing, a fact-finding phase, and a pleading phase.

In civil proceedings, the facts are presented by the parties, with the claimant bearing the burden of proof. This differs from criminal proceedings, in which the facts are investigated ex officio by the criminal authorities, who must prove (with the assistance of the complainant) that

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an offense has been committed.

Judgements of the civil court of first instance with jurisdiction over intellectual property matters may be appealed to the Federal Supreme Court.

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

Swiss law allows the Federal Office for Customs and Border Security (FOCBS) to intercept and hold suspected infringing goods for three business days, as well as to notify the intellectual property rights holder. In this situation and during this period of time, the intellectual property rights holder may request the FOCBS in writing to refuse the release of the goods, as well as their destruction, which require the consent of the declarant, holder or owner of the goods (except for small consignment, cf. infra). The rights holder may request two ten-day extensions of the retention period in order to enable the introduction of provisional measures aimed at confiscating the counterfeit goods.

In order to facilitate the aforementioned mechanism, Swiss law allows the holder of intellectual property rights to apply for assistance to the FOCBS by preventively requesting the retention of certain goods and asking to be notified in the event of the interception of counterfeit goods. This application is valid for two years and is renewable.

Since July 1, 2025, Swiss law has introduced a new simplified procedure for the destruction of counterfeit goods shipped in small consignments, similar to the procedure in place in the European Union. Under this procedure, counterfeit goods may be destroyed without further proceedings if the owner does not object to the destruction.

21. 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.

In general, the civil proceedings may be initiated by a request for conciliation before the competent authority.

However, conciliation proceedings are not held notably if the claim follows interim measures ordered by the court, requesting the claimant to file its claim within a specific timeframe.

In addition, if the value in dispute is CHF 100,000 or more, the parties may mutually agree to waive any attempt at conciliation.

The claimant may also unilaterally waive conciliation if the defendant's registered office or domicile is abroad or if the defendant's residence is unknown.

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

In general, the civil proceedings are initiated by a request for conciliation before the competent authority. However, the parties involved in intellectual property disputes can decide to settle at any stage of the proceedings.

In criminal proceedings, where the offense is being prosecuted on the basis of a complaint filed by the injured party, it is possible to terminate the criminal proceedings (i.e. before a judgment has been rendered) by means of a settlement involving the withdrawal of the complaint by the injured party.

23. What is required to establish infringement of each of the intellectual property rights described in section A? What evidence is necessary in this context?

The test for infringement varies depending on the intellectual property rights being enforced:

To establish patent infringement, the patent claim must first be construed and then compared with the attacked product. Infringement exists where all essential features of the patent claim are fulfilled ("literal infringement"). If not all features are present, infringement may still be found under the doctrine of equivalents. This requires that the variant fulfils the same function as the claimed feature, this is obvious to the skilled person if the features are interchanged, and an objective reading of the patent does not indicate that the patentee deliberately chose a narrow claim wording to exclude the variant. Furthermore, the attacked product must be used commercially in Switzerland.

To establish trade mark infringement, three conditions must be met: First, the disputed sign must be used as a distinctive sign (for example, as a trade mark, company name, or domain name). Second, the disputed sign must be identical or similar to the trade mark and used in relation to goods or services identical or similar to those for which the trade mark is registered, such that a

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likelihood of confusion results. Third, the disputed sign must be used in the course of trade in Switzerland. An exception applies to the third requirement: The import, export, or transit of counterfeit goods constitutes trade mark infringement even if undertaken for private purposes.

Famous trade marks enjoy broader protection. While it is still required that the disputed sign is used as a distinctive sign and in the course of trade, a likelihood of confusion is not necessary. Instead, a famous trade mark is also infringed if the use of the disputed sign threatens the distinctiveness of the trade mark or exploits or damages its reputation.

To establish copyright infringement, it must be shown that a copyright protected work exists and that the defendant used the work without authorization and thereby interfered with one of the author's exclusive rights, such as reproduction, distribution, performance, broadcasting, making available, or adaptation.

To establish design infringement, the disputed design must have the same essential features and thus produce the same overall impression as the registered design. In addition, the challenged design must be used for commercial purposes in Switzerland.

The necessary evidence naturally depends on the intellectual property right concerned and the type of infringement invoked. In general, all forms of evidence are admissible, including registration extracts, product samples, marketing materials, website screenshots, sales documentation, or witnesses.

24. How does the court acquire any necessary information (fact or technical) and in what circumstances does it do so? In particular 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 generally up to the parties to provide the court with the information necessary to assess infringement. They do so, for example, by submitting physical records (such as infringing products, screenshots, or marketing materials), offering witness testimony, permitting inspection of goods or premises, submitting private expert opinions, or requesting a court-appointed expert.

In general, courts handling IP infringement cases do not include dedicated technical judges. However, several cantons (Argovia, Bern, St. Gallen, and Zurich) have established commercial courts. These commercial courts have so-called commercial judges, who are part-time judges with particular expertise in certain fields (for example, IT or pharmaceuticals).

As a notable exception, the Swiss Federal Patent Court, which has exclusive jurisdiction over patent invalidity and infringement disputes, typically issues its decisions as a three-member panel, of whom at least one has technical training and one legal training. A technically qualified judge usually acts as judge-rapporteur, providing an opinion on technical questions of validity and infringement.

There is no pre-trial discovery in Swiss civil litigation. Nevertheless, under the Swiss Civil Procedure Code, courts may take evidence at any time before a case becomes pending if the requesting party has a protected interest, for instance to assess the chances of success of litigation. In suspected patent infringement cases, parties may request a so-called “detailed description” as a preliminary measure (also *ex parte*) to obtain information that would otherwise be unavailable.

Courts are required to take appropriate measures to ensure that taking evidence does not infringe the legitimate interests of any party or third party, notably business secrets. Available measures include limiting access to confidential material or establishing confidentiality clubs.

25. 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 general, parties must list all evidence supporting their factual allegations in their written submissions. The opposing party may dispute these allegations; undisputed facts are generally deemed admitted. For disputed factual allegations that are relevant to the outcome of the case, the court will take evidence and form its opinion based on its free assessment of the evidence, taking into account the credibility and probative value of each item of evidence.

Witnesses and parties are typically questioned by the court, or by the party requesting their examination, but only with respect to the specific factual allegations for which their testimony was requested. Parties may ask additional questions either directly or via the court. Swiss

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proceedings do not provide for formal cross-examination.

In practice, witness testimony is relatively rare in intellectual property infringement cases. Courts rely primarily on documentary evidence and expert reports, which are often decisive in establishing both factual and technical matters.

26. What defences to infringement are available?

The most common defence, available for all types of registered intellectual property rights, is that the allegedly infringed right is invalid. Invalidity may be raised as an objection; if the court finds the right invalid, the infringement claim is dismissed but the right remains on the register. Alternatively, in main proceedings, invalidity may be asserted via a counterclaim; if successful, the infringement claim is dismissed and the right is formally revoked.

Infringement claims, in particular claims for injunctive relief, may also be barred by forfeiture if the rights holder delays enforcement. Forfeiture requires that the right owner knew or should have known of the infringement, and tolerated it for an extended period of time (typically four to eight years, though there is no statutory deadline), that the infringer acted in good faith, and that the infringer built a market position worthy of protection. Swiss courts apply this defence restrictively.

Another commonly available defence is exhaustion of rights, which limits the rights of the rights holder once goods have been placed on the market with their consent. Switzerland applies international exhaustion in trade mark and copyright law, and regional (EEA) exhaustion in patent law, except for products whose prices are fixed by the state, in particular patented pharmaceuticals, for which national exhaustion applies. For design rights, the applicable exhaustion regime has not yet been clarified by the courts.

Other defences depend on the type of intellectual property right at issue. For example, in trade mark law, an infringer's use of the disputed sign before the trade mark's priority date may justify continued use to the same extent. In patent law, available defences include experimental use, a Bolar-type exemption, prior user rights, or a right to a license under FRAND terms. In copyright law, defences include statutory exceptions such as private use or parody.

27. Who can challenge each of the intellectual property rights described in section A?

In general, anyone with a legitimate interest may challenge the validity of a registered intellectual property right before the civil courts. The legitimate interest requirement is interpreted broadly; even a potential competitor preparing market entry may have standing. Certain invalidity grounds, however, may only be invoked by specific parties. For example, only the owner of an earlier trade mark may challenge a later mark based on relative grounds for refusal, and only the entitled party may contest a patent on the grounds that the patentee lacks entitlement (*see* Question 29).

Swiss law also provides for various administrative proceedings before the IPI to challenge certain intellectual property rights. Such administrative proceedings are typically faster and less costly than civil actions but are available only for specific invalidity grounds. Standing depends on the ground invoked: for example, only the owner of an earlier trade mark may oppose a later trade mark on relative grounds, while any person may request cancellation of a trade mark for non-use without showing a legitimate interest. Likewise, under the current law, any person may oppose the grant of a Swiss national patent (although in practice no such oppositions have been filed to date due to the very limited grounds available). This opposition will be replaced by an appeal possibility after 1 January 2027, though practice will still need to establish who has standing to appeal and on what grounds.

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)?

In general, intellectual property rights may be challenged in civil court proceedings at any time after registration. Administrative proceedings, by contrast, are subject to specific deadlines depending on the type of right and invalidity ground at issue. Trade marks may be opposed on relative grounds within three months of registration (or, in the case of a Swiss designation of an international trade mark registration, within three months of the first day of the month following publication in the WIPO Gazette). Non-use cancellation proceedings may be initiated at any time after expiry of the five-year non-use grace period. Swiss national patents may be opposed within nine months of registration, whereas the deadline for appeals, which will become available after 1 January 2027 (*see* Question 27), is four months.

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Swiss law does not provide for third-party observations concerning the validity of pending applications, and the IPI will disregard such third-party observations. For patents, from 1 January 2027, any third party may request that the IPI also examine a patent application for novelty and inventive step.

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?

Administrative proceedings, such as opposition and cancellation proceedings (*see* Questions 27 and 28), are conducted before the IPI, located in Bern.

Other invalidity actions must be brought before the civil courts at the defendant's seat or domicile. If the defendant is abroad, the courts at the Swiss place of business of the representative recorded in the register or, absent one, at the seat of the Swiss register authority have jurisdiction. The invalidity action will be handled by a higher cantonal court (or a commercial court, where one exists; *see* Question 24). Patent invalidity actions are exclusively handled by the Swiss Federal Patent Court, located in St. Gallen.

Grounds for invalidity depend on the type of intellectual property right at issue. A patent may be invalidated, among other grounds, on the basis of lack of novelty, lack of inventive step, unpatentable subject matter, lack of enablement, inclusion of subject matter exceeding the content of the application as originally filed, or lack of entitlement to the patent (the latter ground may be invoked only by the person entitled to the patent). Grounds for invalidating a trade mark comprise, in particular, absolute grounds, such as non-distinctiveness, misleading character, or contravention of public policy, morality, or applicable law, and relative grounds (which can only be invoked by the owner of an earlier right). Designs can be invalidated, in particular, if they lack novelty or individual character, their features are dictated solely by the technical function, or if they are contrary to public policy, morality, or applicable law.

30. Are there any other methods to remove or limit the effect of any of the intellectual property rights described in section A, for example, declaratory relief or licences of right?

Any person with a legitimate interest may bring an action for a declaration of non-infringement before the civil courts. The threshold for the required legitimate interest is higher than for invalidity actions. In practice, a competitor who has received a cease-and-desist letter from the rights holder will generally have a sufficient interest to seek declaratory relief.

Third parties are, in certain circumstances, entitled to be granted a compulsory license to a patent. Such a license is available, for example, where a patent has not been sufficiently exploited in Switzerland and the patentee cannot justify the lack of exploitation, or in the case of dependent inventions. A right to a compulsory license may also arise under competition law, notably in the context of FRAND obligations. Swiss copyright law also provides for compulsory licenses in specific situations.

31. What remedies (both interim and final) are available for infringement of each of the intellectual property rights described in section A?

Under Swiss law, primary remedies available in the field of intellectual property are:

- declaratory judgement related to the intellectual property rights (including the assignment of the registered intellectual property right);
- preliminary and defensive injunctions, including action for performance, such as:
    - the prohibition of an imminent infringement and/or the remediation of an existing infringement, including the recall and withdrawal of goods from the market and the seizure and destruction of goods and means of productions.
    - the order to reveal the source and volume of the infringing products, as well as the source and to name the recipients and disclose the extent of any distribution to commercial and industrial customers.
- monetary compensation, i.e. compensation of the damages suffered or delivery of profits obtained unlawfully;
- Under some specific circumstance, the publication of the judgment at the expense of the other party.

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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 enforcement proceedings in Switzerland vary significantly depending on the court and the complexity of the case. Civil intellectual property disputes may be heard either before the Federal Patent Court (for patent matters) or before one of the 26 cantonal courts, each of which applies its own cost tariff.

At the outset, courts typically require the claimant to advance an amount covering up to half of the anticipated court fees. In addition, the defendant may request the court to order the claimant to provide security for potential party costs (e.g. if the claimant is domiciled abroad, is insolvent, or has outstanding cost debts from previous proceedings). If the required security is not provided, the claim will not proceed.

The allocation of costs is generally decided in the court's final judgment. In interim decisions, the court may reserve the question of costs until the main decision or allocate those already incurred. Parties may submit a statement of costs, but the court determines both court fees and reimbursable party costs according to the applicable tariffs.

As a general rule, the unsuccessful party bears the court costs and must reimburse the other side for a share of their legal expenses. If a claim is dismissed, not admitted, or withdrawn, the claimant is treated as unsuccessful; if the claim succeeds, the defendant pays. Where each party prevails only in part, the costs are split in proportion to the outcome. Courts have discretion to deviate from these principles. If the case ends in a settlement recorded by the court, the allocation of costs follows the terms agreed in that settlement.

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