

Preservation of Evidence and Protection of Secrets in Civil Cases Concerning Intellectual Property Rights

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Abstract

Preservation of evidence is of paramount importance in intellectual property cases. On the one hand, it can avoid loss of evidence or difficulty to use it. On the other hand, it enables rights holders, before the institution of an action, to ensure the existing states of affairs by observation and examination of objects, expert testimony and documentary proof, so that they can choose a better dispute resolving route. But in practice, most rights holders apply preservation of evidence for the former sake, and ignore the latter function. In order to get the whole picture of cases more efficiently, it is recommended to expand means of evidence, including observation and examination of objects, expert testimony and documentary proof, as well as witnesses testimony and party testimony. Moreover, the current Code of Civil Procedure does not provide court's order for the preservation of evidence enforcing power. This loophole becomes obvious if the opposing party refuses to submit documents or tolerate inquisition. It is now corrected by the Intellectual Property Cases Trial Law. If the court's order for the preservation of evidence is to be given enforcing power, it necessitates special provision to maintain fair competition and to avoid evidence preservation mechanism being abused. For example, whether an application for preservation of evidence is to be granted, should depend on results of weighing between the defendant's business secrets and the gravity of IP rights infringement. Absolute protection business secrets is only in rare cases to be granted, where its interests outweighs all the other rights and interests.

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