

# IIPP LITIGATION QUESTION TEMPLATE

## BEFORE BRINGING A CLAIM

### SELECTING A COURT

- IPEC has cost cap of £50,000 and damages cap of £500,000
- High Court may be more suitable for high-value claims
- IPEC is generally quicker to have a trial
- Witnesses, discovery, experts, cross-examination are much more limited at IPEC
- IPEC is generally cheaper, but more front-loaded
- Patent attorney can represent at IPEC

### PRE-ACTION

#### Considerations

- Who is the client / owns the IP right?
- What is the client's objective? damages / injunction
- Client budget
- Jurisdiction of infringing acts
- Evidence before making intention known

#### Pre-Action Protocols

- Letter of claim to settle outside of courts
- Enclose all relevant docs

### ALTERNATIVE DISPUTE RESOLUTIONS

#### Binding ADR

- Mediation (trained mediator / UK IPO)
- Arbitration (like court, but can't revoke rights)
- Binding expert determination (appointed by parties)

#### Non-binding ADR

- Conciliation (third party / trade body)
- Early neutral evaluation (by the court)
- IPO opinion (opt. binding)

## HIGH COURT PROCEDURE

#### Starting claim

- Serve claim form N1
- Particulars of claim within 14 days of claim serving form

#### Defence / Counterclaim

- 14 days to file Acknowledgement of service
- Additional 14 days to file defence
- Optionally file a counterclaim with defence

#### Reply / Defence to Counterclaim

- Claimant may defend themselves
- 28 days to respond

#### Allocation to track

- Small claims = up to £10,000
- Fast-track = £10,001 - £25,000
- Multi-track = over £25,000 → usually the case for IP cases

#### Case Management Conference

- Sets timetable for trial
- Establish requirements for disclosure, witnesses and experts

### Trial

- Trial bundle must be filed 7 - 3 days before trial
  - Must include everything
- Preliminary issues first, may be able to resolve quickly
- Claimant, then defendant make opening speeches
- Examination and cross-examination of witnesses / experts
- Closing speeches – defendant then claimant

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## IPEC PROCEDURE

### IPEC Tracks

- Small claims track is generally for copyright and trade marks issues
- Multi-track is generally for patents and designs, and higher value issues

### Starting claim

#### Defence / Counterclaim

- If defendant has filed Acknowledgement of Service within 14 days:
  - 42 days to respond, if letter before claim sent
  - 70 days to respond, if no letter before claim sent

#### Reply / Defence to Counterclaim

- 28 days to respond

#### Reply to Defence to Counterclaim

- By defendant
- 14 days to respond

### Case Management Conference

### Disclosure and Inspection

### Hearing

- Often by telephone or videoconference