

Act on Collection of Evidence Relating to Alleged Violations of Intellectual Property Rights

2006, No. 53, 13 June

Chapter I. General Provisions.

Article 1. As provided for in this Act, evidence can be collected relating to alleged infringement of the legal protection afforded the following intellectual property rights:

- a. Protection of copyright and related rights as provided for in Articles 3; 4; 11, the third paragraph; 45; 46, and 48-52 of the Copyright Act;
- b. design protection;
- c. trademark protection;
- d. collective mark protection;
- e. protection of patents;
- f. protection according to the Act on Legal Protection of Micro-Circuit Topographies in Semiconductor Devices, and
- g. protection of plant varieties.

Article 2. Sheriffs and their assistants trained in law shall render assistance in collecting evidence on the basis of this Act following a court order, cf. Article 9, the first paragraph.

The provisions governing the competency of judges to hear and adjudicate civil cases shall also apply, as applicable, to the competency of sheriffs and their assistants trained in law for taking measures in accordance with this Act.

If a sheriff lacks competency to take measures in accordance with this Act, the Minister of Justice shall appoint another competent person to perform the task in his stead. His remuneration shall be paid by the State Treasury as decided by the Minister.

Article 3. If a person claiming to enjoy any intellectual property rights enumerated in Article 1, or a person entitled by law to make use of such rights, establishes a likelihood that they have been violated, evidence may, upon the request of the entitled person as a petitioner in an enforcement action, be collected in accordance with this act from the alleged violator as a respondent in an enforcement action.

Evidence shall not be collected on the basis of this Act:

- a. On account of violations considered of minor nature, if the request relates to an individual person and the violation was not related to a business operation, or

- b. in cases of great discrepancy between the interest of the respondent in not having evidence collected, and the interest of the petitioner in having evidence collected.

Article 4. Evidence can be collected in any place in the respondent's control by an examination of any documents and equipment which offers a possibility of assessing whether and to what extent a violation has taken place of the intellectual property rights enumerated in Article 1. Such an examination may include merchandise, machinery and production equipment, accounting documents, order slips, promotion material, electronic data, and computer software.

An examination of documents, data and equipment shall not have the aim of ascertaining whether the respondent's production equipment or machinery infringe any patents.

Proof is not to be adduced by means of evidence containing information on which a witness would be barred from testifying in a civil legal action.

Chapter II. Procedure in Court.

Article 5. A petitioner's request for collection of evidence shall be sent to the district court of the respondent's home venue.

The request shall be made in writing. It shall state as clearly as possible:

- a. The petitioner's full name, National Registry number, and legal domicile;
- b. the respondent's full name, National Registry number, legal domicile, and information relating to his business operation, as applicable;
- c. what intellectual property rights have allegedly been violated, and the manner of the alleged violation;
- d. the petitioner's requests as to what evidence should be collected;
- e. where the evidence is to be sought and why the petitioner considers the evidence to be found there, and
- f. any other information necessary for the proceedings.

The request shall be accompanied by any documents the petitioner deems to support it.

The request, and its attachments, shall be sent the district court in duplicate.

Article 6. Having received the petition, the district court judge shall decide on the place and time of a court session, and shall notify the parties of this on a suitable notice in a manner offering proof. The notification to the respondent shall state the consequences of a failure to appear, and the case documents shall be attached.

If there is a danger that evidence will be secreted, destroyed or altered, or that a delay due to notification may be detrimental to a party's rights, notification as provided for in the first paragraph may be dispensed with upon a request of the petitioner.

Article 7. If the petitioner fails to make an appearance at the time his petition is brought up in court, or later, his petition shall be regarded as cancelled. The district court judge may award the respondent compensation from the petitioner for his inconvenience, if the respondent has made an appearance and made a request to this effect.

If the respondent does not make an appearance in court, or has not been called upon to appear, cf. Article 6, the second paragraph, a decision shall be rendered in the case. The judge shall however first seek clarification of any matter that may be of significance for an assessment

of whether to grant the petition, which he deems unclear or inadequately explained. In this purpose, and in order to make further submissions possible, the judge may grant the petitioner a brief period.

Article 8. A respondent who makes appearance in court shall be entitled to submit a brief during the court session decided on by the judge as provided for in Article 6, the first paragraph.

If the petition is challenged, the case, as presented by the parties when filed with the attached documentation, shall be subject to oral argumentation. Witnesses or parties shall not be heard, and the case shall not be adjourned in order to make further submission of documents possible; however, a brief period may be granted for preparing oral argumentation.

Article 9. As soon as possible after receiving the case for a decision the district court judge shall issue a court order specifying whether evidence shall be collected on account of an alleged violation of intellectual property rights. The order shall circumscribe what evidence is to be collected and where it shall be searched for with the respondent.

The judge shall of his own accord ensure whether the legal requirements for collection of evidence on the basis of this Act are fulfilled, even if the petition has not been challenged.

Chapter II. Procedure with the Sheriff.

Article 10. The petitioner shall send a district court's order permitting collection of evidence on account of an alleged violation of intellectual property rights to the sheriff in the area of office where the evidence is to be collected.

If evidence is to be collected in many areas of office, the court order may be sent simultaneously to the sheriffs of the relevant areas.

Article 11. Before commencing collection of evidence, the sheriff may set the condition that the petitioner provide specific security to cover the cost of the proceedings and compensation to which the respondent may become entitled as a result of loss on account of the petition and the ensuing proceedings.

The total amount of security shall be determined to cover separately the sheriff's costs of the proceedings and the possible loss which the petition and the ensuing proceedings may cause the respondent.

With a view to the evolution of the matter, the sheriff may change his decision on security while the proceedings are taking place at his office.

If the petitioner does not provide security within a suitable period set by the sheriff, the matter shall be cancelled.

A petitioner who is unable to accept the sheriff's decision may refer his decision on the security to be provided to the district court. The procedure shall be governed by the provisions of Chapter 14 of the Enforcement Act, as applicable.

Article 12. The sheriff shall collect evidence by a search with the respondent. To the extent necessary for securing proof of an alleged violation, the sheriff may seize objects and documents, and take photographs and copies of documents and data, including data in electronic form. An

object seized from the respondent in the course of measures taken in accordance with this Act shall be kept by the sheriff at the petitioner's expense.

In the course of a search care shall be taken not to proceed in a manner harsher than necessary with a view to the alleged violations of which proof is to be secured.

In performing a search or any circumscribed aspects thereof, the sheriff may obtain the assistance of persons possessing the appropriate expertise. As may be needed, the sheriff shall commit compilation of a report on the examination to the persons whose assistance he has obtained. The sheriff shall decide on the remuneration of the persons rendering such assistance.

The sheriff may use force to the extent necessary in order to conduct a search with the respondent. Police shall render the sheriff assistance in this respect as needed.

Article 13. While evidence is being collected, the respondent's presence shall only be allowed to the extent necessary for providing information. The sheriff shall decide on the respondent's presence, and may decide to have examinations conducted in his absence.

Article 14. The sheriff shall, on a suitable notice and in a manner offering proof, notify the respondent where and when collection of evidence will be commenced, unless a court order has been issued without the respondent having been notified, cf. Article 6, the second paragraph.

If the respondent, or his agent or representative, is not available, the sheriff may, in the case of individual persons, appoint his spouse or any other resident of his home 18 years of age or older to take care of his interests. If the petition relates to a legal person the sheriff shall appoint an officer or employee of the respondent to take care of his interests. If no one is available this shall not prevent evidence from being collected; however, in such a case search may be deferred if this is deemed to facilitate the proceedings. If no one is present on behalf of the respondent, the sheriff shall request a witness to be present during the proceedings.

Article 15. If a court order has been issued permitting collection of evidence without the respondent having been notified, cf. Article 6, the second paragraph, the sheriff shall turn to the respondent without notice.

If the respondent or a representative are not available, the sheriff may postpone the search, provided this does not endanger the petitioner's interests. If this cannot be done the sheriff may appoint the persons referred to in Article 14, the second paragraph, to take care of the respondent's interests, or conduct a search without the presence of others. If no one is present on behalf of the respondent the sheriff shall request a witness to be present during the proceedings.

If requested by the respondent or the person appointed to take care of his interests, the sheriff shall defer the proceedings for a short time in order to make it possible to obtain the presence of a lawyer. This shall however not be done if it endangers the petitioner's interests.

Article 16. The petitioner shall pay the sheriff all costs incurred in the course of collecting evidence in accordance with this Act. If security has been provided for costs payment may be obtained thereby, except if the petitioner elects to settle the costs in another manner approved by the sheriff. Following settlement, security for costs or the remainder thereof shall be returned to the petitioner.

Evidence shall only be delivered to the petitioner if the costs of its collection have been paid.

Article 17. Security by reason of the respondent's possible claim for compensation shall be returned upon fulfilment of one of the following conditions:

- a. The respondent does not bring legal action as provided for in Article 22;
- b. the petitioner is, by judgment, found free of the respondent's claim for compensation, or
- c. the parties agree on returning the security.

Article 18. Sheriffs shall keep a book for recording collection of evidence on account of alleged violations of intellectual property rights. Its form shall be as provided for in rules to be issued by the Minister of Justice.

The record shall specify where and when evidence was collected, the persons present, the documents submitted, and the proceedings in other respects. A record shall also be made of what evidence has been collected, and how.

At the end of the proceedings the sheriff shall read his entry to those present, or describe its main points if they consider this sufficient. They shall be afforded an opportunity to sign the entry with the sheriff.

If evidence has been collected without any person having been present on the respondent's behalf, the sheriff shall as soon as possible send him a transcript from the record of the proceedings.

Chapter IV. Appeal and Reopening of Proceedings.

Article 19. The order of a district court judge permitting collection of evidence in accordance with this Act is subject to summary appeal to the Supreme Court. Periods for appeal, the appeal itself, and its handling by the district court and the Supreme Court shall be governed by the rules applying to summary appeal in civil cases in general.

Appeal against the order of a district court judge shall not suspend the taking of measures in accordance with this Act. The sheriff shall however not deliver to the petitioner any evidence collected until period of appeal has passed, or until the matter has been resolved by the superior court. If the district court judge's order is reversed, in part or totally, by the Supreme Court, the sheriff shall return the evidence to the respondent in conformity with that conclusion.

Article 20. If a court order has been issued permitting collection of evidence without the respondent having been notified, cf. Article 6, the second paragraph, the respondent may request a reopening of the case within two weeks from the date when he or his agent became aware of the order.

The provisions of Chapter II shall govern the procedure after reopening; however, if the respondent fails to make an appearance after the case has been reopened, the order already issued shall remain unaltered.

If reopening has not been requested the sheriff shall not deliver the petitioner any evidence collected until the period specified in the first paragraph has passed, and not until a court order has been issued anew, if such a request has been made.

If reopening may be requested as provided for in the first paragraph, appeal to the Supreme Court can not be lodged. The order issued by a district court judge upon reopening shall be subject to summary appeal as provided for in Article 19.

Chapter V. Periods for Initiating Legal Action, Compensation, etc.

Article 21. The petitioner shall, within four weeks from when evidence becomes available to him, initiate legal action against the respondent on the basis of the evidence. If no legal action has been initiated when the period expires, the petitioner shall return the evidence collected.

If legal action is initiated after the period provided for in the first paragraph has expired, judgment shall not be based on the evidence collected. This shall however not apply if the respondent submits the evidence.

Article 22. If a violation of the intellectual property rights referred to in Article 1 has not been established, the respondent shall be entitled to compensation from the petitioner for the financial and non-financial loss he has sustained.

Litigation as referred to in the first paragraph shall be commenced before six months have passed from when the period provided for in Article 21, the first paragraph, for commencing litigation by the petitioner, expired, or from when such litigation was brought to a conclusion without his claims having been granted.

Article 23. This Act shall enter into force 1 July 2006.