



2017 - Study Question

Quantification of monetary relief

In litigation concerning infringement of IP rights, monetary relief in the form of damages is commonly requested by the IP rights holder. It is generally accepted that this relief should at a minimum be adequate to compensate for the loss suffered by the rights holder and deter further infringement.

In practice, few cases proceed beyond a determination of liability and courts are asked to determine the quantum of damages relatively infrequently. However, if a case does proceed to that stage, it may in practice be difficult to obtain economic evidence regarding infringement, and to estimate the appropriate quantum of damages to be awarded within the factual matrix of the dispute before the court. For example, where permanent price erosion has occurred, or other irreparable harm has occurred, the relevant quantum of damages can be very difficult to determine. Predictable and logical rules for quantification are desirable as this allows the parties to have a reasonably clear idea of the likely quantum of damage, which may in turn encourage early settlement. Otherwise, the amount of any damages award may vary significantly from one country to another, irrespective of the size of the market.

Reports have been received from a number of National and Regional Groups on the issue of quantification, and the objective is to synthesise a number of common rules on the quantification of monetary relief that could be applied in a uniform way, promoting legal certainty.