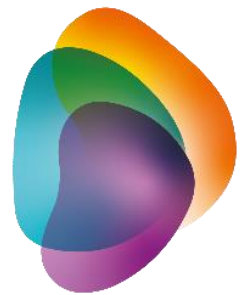




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# Introduction into IP-litigation in the Netherlands

# Legal system in the Netherlands and IP-law



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# Legal system in the Netherlands: general outline

## Dutch law

The Dutch legal system is a **civil law system, largely codified through written statutes**. Dutch law operates within the framework of the Dutch Constitution and European legislation outlining fundamental rights and governmental powers. Primary laws are the Dutch Civil Code (*Burgerlijk Wetboek*) and the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*).

## Case law

Judicial decisions in the Netherlands hold persuasive authority, but are not strictly binding as in common law jurisdictions. In practice, **case law is equally important as legislation**. Principally, lower courts follow higher court rulings, particularly those of the Dutch Supreme Court (*Hoge Raad*), to maintain consistency in case law.

## EU legislation

The Netherlands fully participates in the European Union, so EU legislation (mainly Regulations and Directives) directly affects Dutch law, especially in areas like **intellectual property law**, unfair competition and consumer protection. Dutch courts may refer cases to the European Court of Justice (ECJ, *Hof van Justitie*) when questions of EU law interpretation arise. Next to that, case law of the European Human Rights Court are also relevant.

## Other sources of law

Several other sources of law are recognized in the Netherlands. Examples are **self-regulation** (in advertisement matters, *Nederlandse Reclame Code*), Dispute Resolution Regulations for domain name matters (*.nl geschillenregeling voor domeinnamen*), etc.

# IP-law in the Netherlands

## IP-law

Important Intellectual Property laws applicable in the Netherlands are the following:

- [Benelux Convention on Intellectual Property](#) (*Benelux-Verdrag inzake Intellectuele Eigendom*): **regulates trademark and design registration and enforcement** within Belgium, the Netherlands and Luxembourg. This is regional convention, **unique** in allowing single market trademark and design protection across these three countries.
- [Tradename Act](#) (*Handelsnaamwet*): protects the **names of businesses** active in and/or directed at the Netherlands
- [Patent Act](#) (*Rijksoctrooiwet*): grants **patent** protection
- [Copyright Act](#) (*Auteurswet*): grants protection of original **works** against copying and distribution of copies.

## EU law

EU law has its effect on intellectual property law, competition and consumer protection. Under **EU law** in the field of intellectual property, competitions and consumer protection the following regulations and directives are important:

- [EU Trade mark Regulation](#)
- [EU Design Regulation](#)
- [Unitary Patent Regulation](#)
- [EU Copyright Directive](#)
- [Unfair Trade Practices Directive](#)
- [Directive on misleading and comparative advertising](#)

The Netherlands is also party to treaties such as the TRIPs Agreement (*Trade Related Aspects of Intellectual Property*).

# IP-Litigation in the Netherlands



# Pre-trial phase (IP-cases)

## Pre-trial phase

In the Netherlands, IP-litigation cases in principle start with a so-called 'cease and desist letter', except for extremely urgent cases.

### Cease and desist letter

In the cease and desist letter, the IP rights holder outlines the claims and their legal basis, supported by a summary of relevant facts. The letter contains demands to **cease the infringement and desist therefrom**, and usually contains ancillary demands such as providing information, compensation for damages including payment of legal costs. In addition, the IP rights holder usually requires the recipient to undersign a so-called cease and desist declaration (*onthoudingsverklaring*), which usually includes a **penalty clause** for any future violations of the outlined obligations. According to Dutch case law, as a general rule, if the infringing party does not sign a cease and desist declaration, the IP rights holder has the legal right and legitimate interest to initiate summary proceedings and/or start proceedings on the merits.

### Legal costs

As a result of a party's failure to cooperate or participate in pre-trial correspondence, such as undersigning a cease and desist declaration, **legal costs** may also be awarded in legal proceedings (see also below under '*Procedural costs and legal fees*').

# Legal Proceedings

## Legal proceedings

The IP rights holder may initiate legal proceedings, by way of serving a **writ of summons** (*dagvaarding*), where it presents its case and demands as the claimant (in proceedings). Such a writ is usually accompanied by exhibits (*producties*), inter alia showing proof of the invoked intellectual property right(s) and the infringement.

The defendant must respond within a specified period, depending on the type of proceedings. Both parties may also exchange further written statements, which may include counterclaims (e.g., challenging the validity of the IP-right in question).

A **formal hearing** is held, usually - in first instance proceedings - before a single judge or panel of 3 judges, where both parties may (further) present their arguments. This stage includes oral submissions and (if necessary) witness and/or expert questioning. Both parties may in principle use pleading notes.

## Judgment

Courts will issue a **judgment which is enforceable**, and which – next to a prohibition and judicially imposed penalties – may include remedies like providing information, damages, or orders for the destruction of infringing goods and a decision on legal costs.



# Summary proceedings

- Proceedings with a (relatively) short timeline
- Available when there is an **urgent interest** (*spoedeisend belang*), usually assumed in IP infringement cases
- Judge issues a provisional ruling (*voorlopige voorziening*) that is in principle valid until there is a final decision in proceedings on the merits (see below)
- Summary judgements are **in principle in effect immediately** (*uitvoerbaar bij voorraad*), notwithstanding appeal that may be lodged
- A judge cannot order so-called final measures, such as compensation of full damages or the complete invalidation of a registered intellectual property right
- Timeframe: depending on the type of case, between several days and 2 months time
- In extremely urgent matters, a preliminary injunction can be arranged **within a very short timeframe**





# Proceedings on the merits

- More formal process, aiming to resolve proceedings **fully and definitively**, addressing all aspects of the case (including damages claims and invalidity of registered intellectual property rights)
- Proceedings on the merits start with a writ, which after serving must be introduced on a court calendar (*rol*), setting **court calendar dates and planning**
- Parties typically exchange extensive written submissions, evidence materials, and proceedings often include one or more oral hearing(s)
- Judgements are **final and offer a definitive resolution**, subject to appeal proceedings
- Proceedings on the merits may be combined with and/or preceded by other types of proceedings, for instance preliminary injunctions within proceedings on the merits, the seizure of evidence (*bewijsbeslag*, see below) and motions to dismiss claims (*incidenten*)
- Timeframe: depending on the type of case, between several months and a year (although judgement dates are set by courts)

# Specific IP- Procedures

## Seizure of evidence

- Procedure allowing IP-rights holder to secure evidence that might otherwise be lost or destroyed
- Requesting party must **obtain a court order**, demonstrating a legitimate interest and providing justification for the seizure
- Can be requested without notifying or hearing the opposing party (*ex parte*)
- Upon court approval, a bailiff is authorized to carry out the seizure, which can involve copying documents, digital files, or other relevant materials, kept by a sequestrator
- To gain **access to seized evidence**, separate proceedings must follow (either summary proceedings or proceedings on the merits)

## Ex parte procedure

- Request for an IP-injunction, without prior notice to the infringing party
- Possible in **cases of extreme urgency**, requiring immediate action (e.g. specific product launch dates, fairs, specific online campaigns)
- Court decision is solely based on the information provided by the requesting party, and therefore has a provisional nature so separate proceedings must in principle follow
- Once informed of the court order, the opposing party has the right to initiating a procedure to be heard and challenge the order



# Which court?

IP cases can in principle be brought for **any court** (*rechtbank*) in the Netherlands, except for instance for proceedings on the merits concerning EU Trademark, EU Designs and patent cases, for which the specialized IP-court in The Hague has exclusive competence (in proceedings on the merits).

After a procedure at the first instance court, either party can **appeal** at of the courts of appeal (*hof*), with a final option of proceedings before the Dutch Supreme Court (*Hoge Raad*) on points of law or lack of reasoning.

Procedures on **invalidity and opposition proceedings** in trademark cases may also be decided by the Benelux Bureau of Intellectual Property, next to the possibility of filing for such proceedings before the EUIPO.

The Benelux Court of Appeal (*Benelux Gerechtshof*) is competent on deciding on appeals in certain trade mark proceedings.

Dutch courts may also refer cases to the European Court of Justice (ECJ, *Hof van Justitie*).



# Procedural costs and legal fees

## Procedural costs regime

As a matter of legal principle, the winning party in legal proceedings may request the losing party to be ordered to pay the procedural costs, also known as the *proceskosten-veroordeling*. The procedural costs regime is relevant for each court case.

## Types of fees (general rules)

- Court fees: each party pays a fixed court fee, which varies based on factors like the type of case, court level, and whether the party is an individual or a business. **Fees must be paid upfront.**
- As a general rule, reimbursement of the legal costs of the winning party is typically limited to set rates rather than full compensation.

## Procedural costs and legal fees (in IP-litigation)

- In IP-procedures specifically, Dutch law allows for a **comprehensive compensation of costs in favor of the winning party**. Under the applicable procedural law, in line with the EU Directives on IP Enforcement, the losing party must pay '*reasonable and proportionate legal costs*' which can (partially) include lawyer fees, expert fees, and other related expenses.
- The judiciary has published a **list of indication rates** that gives substance to the concepts of proportionate and reasonable, and guidance on parties of the bandwidth that may be applied by the courts.

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# Your key contacts on IP-law



**Joost Becker**

Partner

IP & Innovation

[becker@dirkzwager.nl](mailto:becker@dirkzwager.nl)

+ 31 (0)6 220 461 57



**Christel Jeunink**

Associate Partner

IP & Innovation

[jeunink@dirkzwager.nl](mailto:jeunink@dirkzwager.nl)

+ 31 (0)26 353 83 67



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☎ +31 88 242 41 00

✉ [info@dirkzwager.nl](mailto:info@dirkzwager.nl)

🌐 [dirkzwager.nl](http://dirkzwager.nl)

🏠 Postbus 111, 6800 AC Arnhem, Netherlands  
Velperweg 1, 6824 BZ Arnhem, Netherlands



Introdans  
photo: Hans  
Gerritsen