

Faster and cheaper intellectual property litigation

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There are several changes underway that are likely to simplify court proceedings and should reduce costs for those involved in intellectual property disputes.

The first is a new fast track procedure available in the Auckland, Wellington and Christchurch High Courts, where most intellectual property proceedings are initially filed. It is designed for proceedings without multiple parties which don't need extensive interlocutory applications, are likely to be of short duration (five days or less) and have clearly defined issues. The procedure aims to have the trial within two to six months of transfer to the fast track list. The parties can agree to the procedure or a direction may be made by a Judge or Associate Judge. It is intended that a decision will be handed down promptly following trial.

The procedure is suitable for resolution of many intellectual property disputes, particularly copyright, trade mark and Fair Trading Act/passing off disputes. Simple patent infringement cases, where validity is not at issue or is confined to a few issues, may also be suitable.

In order to effectively use the procedure, it will be in the interests of the parties to ensure that their case is properly defined and the issues established before the

pleadings are filed.

The fast track procedure provides a good alternative to an application for an interim injunction, which has the disadvantage of requiring the plaintiff to provide an undertaking as to damages (that may be suffered by the defendant if an interim injunction is granted but the plaintiff loses at trial), and which does not finally resolve the dispute until trial, unless the case is settled in the meantime.

The second change is to court proceedings in the District Court. This court has jurisdiction over disputes up to \$200,000 and can try cases involving copyright, passing off, and breach of the Fair Trading Act. It does not have jurisdiction over patent or trade mark cases.

Many potential litigants do not bring court proceedings because of the cost. Once a proceeding is filed, the new procedures require swift exchange of initial simplified documents between the parties, which may resolve the issues, failing which the documents are filed in the court and an early settlement conference is required before a judge. The aim is to settle as many disputes as possible at this early conference.

This option is a good one for disputes which do not carry a high monetary value but are nonetheless important to the parties. It means an aggrieved party may be able to go ahead where otherwise the costs might outweigh the potential reward, and a defendant need not necessarily concede on the basis of cost alone.

Finally, there are moves afoot to reform the rules on discovery and briefs of evidence in the High Court. Both these components of court procedures increase costs to the parties. New Zealand still has "general discovery" which is broader than in many common law jurisdictions (other than the United States) where reforms have already been made. Proposals include limiting discovery to adverse documents only or to have the option of particular or general discovery depending upon the particular case.