



||| NOERR

# Enforcement of trademark rights in interim injunction proceedings from a German perspective

Dr Fabian Kunkel

4 March 2025

# Overview

I. Pre-court correspondence

II. Requirements for an interim injunction

III. Competent court

IV. Course of proceedings

V. The closing procedure

# I. Pre-court correspondence

- **Warning letter**
  - **Content:**
    - Description of the facts and brief legal assessment
    - Request to submit a cease-and-desist undertaking (potentially attach draft undertaking)
    - Cost note
  - **Background:**
    - Cost risk in the event of immediate acknowledgement
    - Right of the opposing party to be heard
- **Protective writ**
  - Preventive defence writ against an expected application for an interim injunction
  - Main goal: dismissal (show lack of urgency and/or material claim(s))
  - Minimum goal: avoid decision without oral hearing
  - Centralised electronic filing – one writ for all courts

# II. Requirements for an interim injunction

1) Claim for injunction

Material claim



2) Ground for injunction

Urgency

Interim injunction

Court to determine at its own discretion which orders are necessary to achieve the purpose

# 1. Claim for injunction

Injunctive relief

Information

Seizure/destruction

Inspection

Damages

Cancellation of a trademark



## 2. Ground for injunction – urgency requirement

- **Urgency deadline:** Period between the plaintiff's knowledge of the infringement and the filing of the injunction application with the court
- Rebuttable presumption of urgency in Section 140(3) German Trademark Act
- **Loss of urgency** if the plaintiff **waits too long** after becoming aware of the circumstances giving rise to the claim before asserting his claim in court
- Time limits are case law:

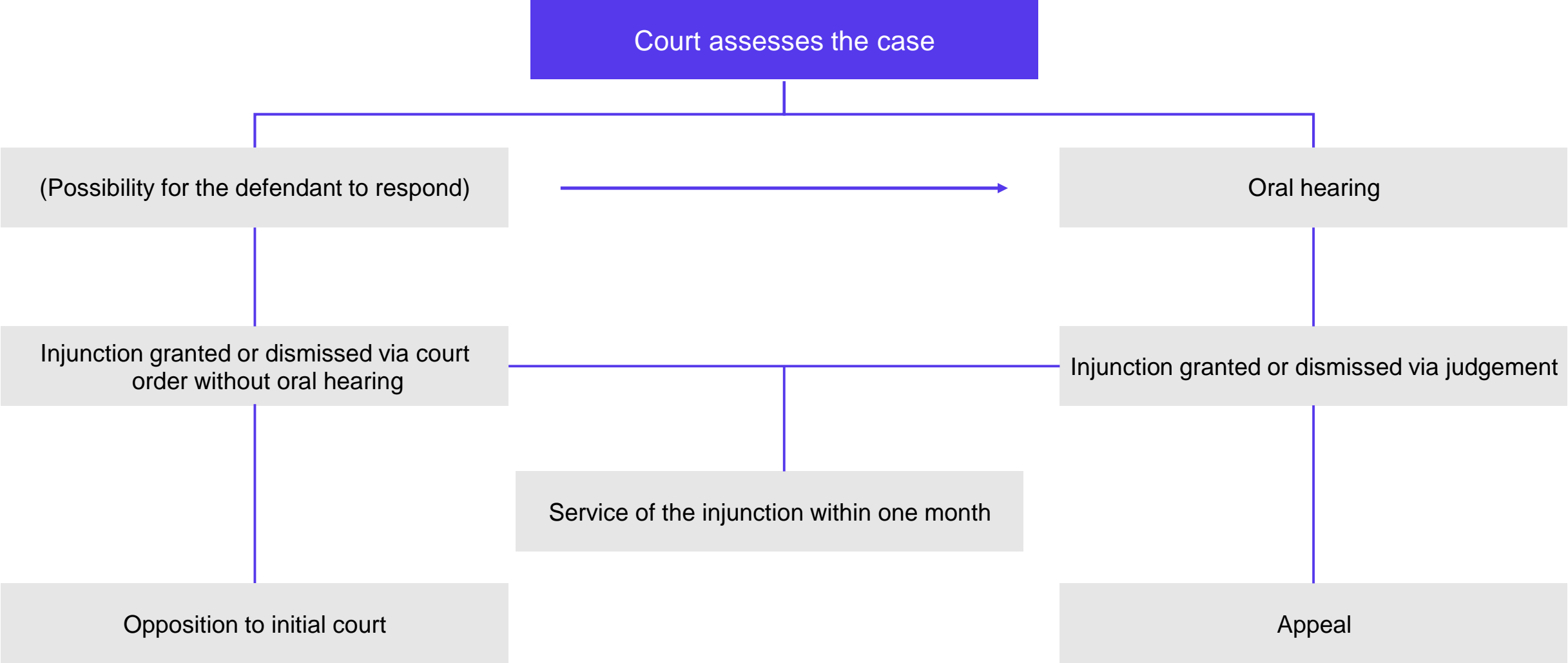
Time limit	Court
1 month	Munich, Nuremberg, Cologne, Hamm, Dresden, Karlsruhe, Stuttgart
6 weeks	Frankfurt, Hamburg
8 weeks/2 months	Berlin, Düsseldorf, Koblenz

# III. Competent court

- First instance: District Court (“Landgericht”)
- Second instance: Higher District Court (“Oberlandesgericht”)
- Often “**flying jurisdiction**” in trademark cases
- Special case: interim injunction based on EU trademarks:

<b>Plaintiff or defendant is based in Germany</b>	<b>Infringing act in Germany, but plaintiff and defendant are based outside Germany</b>
Interim injunction with effect for the entire European Union	Interim injunction with effect only for Germany

# IV. Course of the proceedings





## IV. Course of the proceedings

### – Evidence

- No absolute certainty required to render decision
- Lower degree of evidence required („prima facie evidence“)
- Admissible evidence: documents, affidavits and present witnesses

### – Costs

- Cost reimbursement is limited to statutory lawyer fees
- Court fees are imposed on the losing party ex officio
- Costs of the warning letter are reimbursable but separate enforcement required

# V. The closing procedure („Abschlussverfahren“)

## Interim injunction is a provisional decision:

- ▶ Request defendant to accept the interim injunction as binding decision and to waive the right to appeal („closing statement“)
- ▶ Otherwise main proceedings necessary

**Thank you very much!**

**||| NOERR**

fabian.kunkel@noerr.com  
noerr.com  
© Noerr PartGmbH

