

GLOBAL PERSPECTIVES – PRELIMINARY INJUNCTIONS IN LIFE SCIENCES

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QUESTION 1:

**HOW OFTEN ARE PIS
SOUGHT IN YOUR
JURISDICTION?**

PREVALENCE OF PRELIMINARY INJUNCTIONS

Canada	France	China	UK
<ul style="list-style-type: none">• Rare• Only 25% of motions since 1995 seeking an interlocutory injunction successful• Frequency has increased in last 5 years but typically outside patents	<ul style="list-style-type: none">• Rarely granted 10 years ago• Recent case law shows that judges are more inclined to grant PIs:<ul style="list-style-type: none">• Marketing• Recall• Provisional damages	<ul style="list-style-type: none">• Chinese courts are very cautious in issuing PIs• New guidance was issued by the Supreme Court on 1 Jan 2019	<ul style="list-style-type: none">• Rare before 2000• Is there an arguable case?• Merits not relevant• Main factor is one of economics• Applications for PIs more frequent in pharma/biotech



QUESTION 2:

**WHAT IS THE
PROCEDURE FOR
GETTING A PI?**

THE PROCEDURE FOR GETTING A PI

Canada	France	China	UK
<ul style="list-style-type: none">• After an action is commenced – move promptly• Notice almost always provided• Each party provides evidence• Cross-examinations may take place	<ul style="list-style-type: none">• Prevent continuing or imminent infringement• Can started before an infringement action• Heard by PI judge if before, or trial judge if after an action filed• Oral hearing, written evidence considered	<ul style="list-style-type: none">• No one-size-fits-all solution• Can be an ex parte hearing if urgent• Urgent = a time-sensitive threat which requires the court to issue PI within 48 hours	<ul style="list-style-type: none">• There must be a threat to infringe and full infringement action "on foot"• Can file infringement action and application for PI at the same time• PI (if granted) will (usually) be granted at the hearing



QUESTION 3:

**WHAT IS THE TEST FOR
DECIDING WHETHER A PI
IS GRANTED?**

THE TEST FOR A PRELIMINARY INJUNCTION

Canada	France	China	UK
<ul style="list-style-type: none"> • <u>RJR-MacDonald</u> (adopting test from UK case American Cyanamid) <ol style="list-style-type: none"> 1. A prima facie case 2. Irreparable harm 3. Balance of Convenience 	<ul style="list-style-type: none"> • Preliminary assessment of : <ol style="list-style-type: none"> 1. patent validity 2. patent infringement • Measures must remain proportionate 	<p>Four factors:</p> <ol style="list-style-type: none"> 1. Strength of IP rights and likelihood of infringement 2. Irreparable harm 3. Balance of Convenience 4. Impact on public interest 	<ul style="list-style-type: none"> • <u>American Cyanamid</u> <ol style="list-style-type: none"> 1. An arguable case 2. Irreparable loss 3. Balance of Convenience <ul style="list-style-type: none"> • Cross Undertaking required

QUESTIONS?