

*INTERNATIONAL BRIEFINGS, MANAGING INTELLECTUAL PROPERTY, OCTOBER 2010*

According to the current wording of the Mexican IP Law, injunctions can be imposed during the course of an infringement action related to trademarks, patents or slogans, and the plaintiff has to post a bond of an amount fixed by the Patent of Trade Mark Office (IMPI) in order to secure possible damages arising from those injunctions, if the infringement is eventually denied. Likewise, the injunctions can be immediately lifted if the alleged infringer obtains and files a counter bond in favor of the plaintiff.

In June of 2010, amendments to article 199 Bis I of the IP Law were made stating, that in order to determine the amount of the bond, IMPI will take into consideration the evidence items provided by the plaintiff, and also that the counter bond will have to be 40% higher than the initial bond.

Likewise, the amendments establish that these amounts can be increased when justified by additional evidence, provided by either party, or obtained in a visit of inspection.

The purpose of this amendment, which will come into force on September 20 2010, is to correctly fix the amount of the bonds and avoid the discretion of IMPI, as long as the plaintiff provides enough evidence. Adequate fixing of the bond can of course difficult, as documents demonstrating the approximate amount of sales of an infringing product are not easy to obtain. However, market studies, acquisitions in public bids or contracts can be used.

If this evidence is not available to the plaintiff, IMPI will set an initial amount discretionally, and this can increased in view of evidence obtained during the course of the proceeding. This change will of course require plaintiffs to make a more detailed initial preparation of infringement actions, in order to secure the proper enforcement of their rights.