

SPECIAL PROCEDURAL MEASURES IN INTELLECTUAL PROPERTY CASES: CORE PRINCIPLES AND ISSUES

Dr. Wojciech Włodarczyk

War Studies University, Poland
e-mail: w.wlodarczyk@akademia.mil.pl; <https://orcid.org/0000-0003-1553-3750>

Abstract. This article examines the legal nature, structure, and function of special procedural measures in intellectual property cases under the Polish Code of Civil Procedure. These measures – preservation of evidence, disclosure or production of evidence, and requests for information – constitute an autonomous procedural framework shaped by the holistic character of IP law and by the principle of relative autonomy. The study clarifies the statutory concept of an ‘IP case’ and its significance for determining the scope of these measures. It argues that they are forms of judicial protection, not subjective rights, and that their application depends on procedural and substantive grounds provided for the Code while remaining constrained by proportionality and the need to balance fundamental rights. The analysis highlights interpretative challenges and stresses the importance of systemic and purposive reasoning, especially in the context of EU law.

Keywords: procedural protection of intellectual property rights; preservation of evidence; search and seizure of evidence; disclosure or production of evidence; request for the provision of information; Directive 2004/48/EC.

INTRODUCTION¹

The Polish Code of Civil Procedure² regulates three special measures applicable in intellectual property (IP) cases: the preservation of evidence (Article 479⁹⁷ CCP),³ the disclosure or production of evidence (Article 479¹⁰⁶

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² Act of 17 November 1964, the Code of Civil Procedure (Journal of Laws of 2024, item 1568 as amended) [hereinafter: CCP].

³ The term ‘preservation of evidence’ has been used as a translation of the Polish term *zabezpieczenie środka dowodowego* found in the CCP. However, this term does not accurately reflect the substance of the provisions to which it refers, namely Articles 479⁹⁶-479¹⁰⁵ CCP. These provisions establish procedural measures that are more appropriately described as ‘search and seizure of evidence’ rather than ‘preservation of evidence’ [Rejda 2024, 788].

CCP) and the request for the provision of information (Article 479¹¹³ CCP). These are often referred to as ‘auxiliary measures’ because they support and facilitate *the enforcement* of intellectual property rights (IPR). This essay refers to them as ‘special measures’ in order to emphasise their uniqueness within the Polish procedural law system [Rejdak 2026, 8] and the context of their introduction into the CCP in 2020, i.e. alongside the establishment of court units specialising in IP cases.⁴ Despite the passage of time, neither the legal nature nor the scope of application of these measures has been adequately clarified and established [Tomaszek 2024, 660; Kurosz 2024a, 110-11; Pinkalski 2025, 106; Antoniuk 2026, 29; Rejdak 2026, 4]. This essay does not aim to fill this gap comprehensively. Its purpose is to highlight key elements of the *ratio legis* of the provisions governing IP proceedings, of which the special measures form an integral part. These elements include: the holistic approach to IP law, the principle of relative autonomy concerning the rules governing proceedings in IP cases, and the specialisation of judges, measures and procedures, applicable in such cases. The author also argues that the nature and scope of these measures depend on the interaction between these systemic features, the statutory concept of an ‘IP case’, and the function that the measures are intended to perform.

1. A HOLISTIC APPROACH TO IP LAW

In accordance with a long-standing tradition, IP law can be defined as the totality of means of protecting intangible assets as set out in the provisions of private law [Włodarczyk 2020, 32]. Historically, this protection has been conceptualised as a system of rights *in rem* (proprietary rights), granting the right holder direct control *erga omnes* over such an asset [Kopff 1976, 28; Niewęglowski 2025, 20]. This classical, property-based understanding of IP law reflects its fundamental subject matter. It derives its designation from this subject matter, which partly corresponds to the classical concept of ownership in private law in relation to tangible objects (things). On the other hand, the designation of property as ‘intellectual’ makes it clear that this term does not refer to ownership of things, but to ‘ownership’ in a different sense. Proprietary rights in intangible assets are the *arché* of IP law. However, it cannot be overlooked that they are merely the ‘core’ [Grzegorzczak 2007, 38] of this field of law, and not its entirety. From this perspective, holistic definitions of IP law are more useful, for which traditional approaches serve merely as a starting point.⁵

⁴ Act of 13 February 2020 Amending the Code of Civil Procedure and Certain Other Acts (Journal of Laws of 2020, item 288 as amended).

⁵ Similarly: Poźniak-Niedzielska 2025b, 218-32.

IP law, viewed holistically (i.e. as a whole), consists of legal norms that form a complex field of law. The term ‘complex’ means that it is a field that is both uniform and heterogeneous. This is because it consists of norms that are essentially complementary to one another (uniformity), yet which are of different kinds (heterogeneity). The distinction in the nature of these norms consists in the distinction between private-law norms governing proprietary rights in intangible assets and public-law norms that co-regulate such rights [Włodarczyk 2025, 113]. The latter type of norms is of such crucial importance that, for this reason alone, they fully deserve to be included as an element of holistic definitions of IP law. A further argument is the ongoing development of legislation in the field of public law, resulting in provisions specifically dedicated to IPR. In Polish law, a good example of this is the provisions on separate proceedings in IP cases (Articles 479⁽⁸⁹⁾-479¹²⁹ CCP), including the regulation of special measures.

The holistic approach to IP law acknowledges that the term ‘intellectual property rights’ is commonly used to denote proprietary rights in intangible assets. However, this does not mean that the term has only this scope. It simply means that this scope encompasses proprietary rights, since – as indicated above – in private law this is the fundamental subject matter regulated by IP law. The property-based approach to IPR is not the only one. In practice, a legislative (statutory) approach also exists. According to this approach, IPR are understood to include all private-law rights governed by statutes recognised as part of IP law. This approach takes into account not only the structure of rights but also the links between rights that have determined their joint regulation in a single legal act, e.g. in the Act of 30 June 2000 on Industrial Property Law⁶ or in the Act of 4 February 1994, on Copyright and Related Rights.⁷ The difference between these two concepts of IPR is well illustrated by the example of authors’ moral rights. According to the property-based concept, these are not IPR, yet under the legislative approach they do have such status. The second of these approaches, whilst granting this status, does not refer to the structure of moral rights, but to their private nature and the fact that they are governed by IP law.

Both approaches to the concept of IPR – the proprietary and the legislative – are useful in private law in various contexts. Nor is there any justification for the view that only one of them matters in public law. In particular, in the context of those provisions which – as is apparent from their wording, context and purpose – relate to a broad range of IPR, the proprietary approach cannot be regarded as adequate. At its current stage of development, IP law constitutes a field of law that is heterogeneous not only

⁶ Journal of Laws of 2023, item 1170 [hereinafter: *the Industrial Property Law*].

⁷ Journal of Laws of 2025, item 24 [hereinafter: *the Copyright Act*].

in terms of the types of norms but also in terms of IPR. It cannot be reduced solely to proprietary rights – even if these constitute the central case in private law among IPR. A holistic approach to IP law supports an even more far-reaching interpretative position: not only does it consider the legislative conception of IPR in private law to be fully justified, but it also does not assume *a priori* that the concept and scope of IPR in private law and public law must coincide entirely. The different objectives and methods of regulation in these two areas of law may provide a basis for differentiation in this regard.

From a holistic perspective, IP law encompasses a broad spectrum of legal measures of both a public-law and a private-law nature. An attempt at a more comprehensive classification of these measures goes beyond the scope of this essay. However, some fundamental clarifications are useful. It is worth distinguishing, on the one hand, measures for the protection of intangible assets under private law (A), and on the other hand, measures for the protection of rights relating to such assets under both private and public law (B). The first group of measures (A) comprises the means granted to individuals or legal person under private law to protect their interests in relation to intangible assets: proprietary rights (A1) or other rights (A2), e.g. arising from contracts. The second group of measures (B) comprises claims for the protection of rights relating to intangible assets provided for by private law (B1) and measures for the protection of such rights in public law (B2), e.g. measures concerning such rights in civil procedural law (B2-CPL). This latter group (B2-CPL) includes, among others, special measures in IP cases provided for in the CCP. This fundamental classification also demonstrates the extent to which the term ‘protection’ is ambiguous and context-dependent. When it refers to measures in civil procedural law (B2-CPL), it concerns measures in the form of protection granted to a party by a court judgment (e.g. an award of a claim). However, when the term ‘protection’ refers to measures in private law, it may concern means such as the aforementioned rights (A) or claims (B1), e.g. claims arising from the infringement of a proprietary right in an intangible asset. Within a holistic approach to IP law, it is evident that the meaning of the term ‘protection’ cannot *a priori* be reduced to any of the specified scopes of these terms⁸.

⁸ For example, A. Niewęglowski *a priori* limits the concept of ‘protection’ to claims (B1) provided for in private law for the protection of proprietary rights in intangible assets (A1) and, consequently, interprets more narrowly the concept of ‘cases concerning the protection of rights’ in Article 479⁸⁹ CCP [Niewęglowski 2022, 15].

2. RELATIVE AUTONOMY OF THE PROVISIONS GOVERNING PROCEEDINGS IN IP CASES

The special measures discussed in this essay form part of the provisions governing proceedings in IP cases. All the provisions in the CCP relating to these proceedings (Articles 479⁸⁹-479¹²⁹ CCP) fall within the category of provisions on separate proceedings within the meaning of Article 13(1) CCP. They constitute Section IVg ('Proceedings in Intellectual Property Cases') of Part One ('Adjudicatory Proceedings') under Title VII ('Separate Proceedings') of Book One (Litigation). This Section reflects the need to adapt proceedings to the specific characteristics of IP cases [Jakubecki 2022, 14] which necessitate specialised procedural solutions. When interpreting the provisions on special measures – in addition to their wording and purpose – this legislative context must always be taken into account. It is a fundamental element of the national regulatory framework. It should also be borne in mind that special measures in IP cases reflect the increasingly deep process of harmonisation of IP law with EU law (so-called 'unionisation'), in particular involving the fulfilment of the implementation obligations in the Polish legal order provided for in Articles 6-9 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of IPR.⁹ This is the EU normative context, which must also consistently be taken into account in the course of interpretation. Moreover, there is the international (non-EU) normative context. In practice, however, this context is usually already taken into account within the EU normative context.¹⁰

The introduction of provisions into the CCP establishing separate proceedings for IP cases resulted from consultations initiated in 2016 by the then-government in response to demands from various sectors for the creation of specialised judicial structures for IP disputes in Poland.¹¹ During these consultations, two positions clashed. Supporters of the first position believed that these demands should be implemented by transferring a defined list of IP cases to the exclusive jurisdiction of the Regional Court in Warsaw (as the court of first instance).¹² They therefore expected the adjudication of such

⁹ OJ L 157, 30.4.2004, p. 45; Corrigendum: OJ L 195, 2.6.2004, p. 16 [hereinafter: the Directive]. Similarly: e.g. Targosz 2020, 179; Jakubecki 2020, 478-80; Rejdak 2026, 1].

¹⁰ Similarly: e.g. Rejdak 2026, 2.

¹¹ These consultations formed part of the work on a government strategy, which was ultimately set out in a document entitled 'Strategy for Responsible Development until 2020 (with a perspective to 2030)' – see: Resolution No 8 of the Council of Ministers of 14 February 2017 (Polish Monitor 2017, item 260), which emphasised the need for an active state policy in the field of investment in innovation – including, inter alia, the specialisation of the judiciary in IP cases.

¹² The first position was supported at the time, for example, by the President of the Polish Patent Office.

cases to be fully concentrated and specialised solely at the organisational level. Supporters of the second position believed that a certain level of pluralism should be maintained among the divisions specialising in IP cases within the regional courts, and that the judges of these divisions should be 'equipped' with measures and procedures specifically dedicated to these cases.¹³ In their view, the concentration of case law should be limited, and its specialisation requires not only organisation but also separate proceedings for IP cases in the CCP.¹⁴ Ultimately the second approach prevailed, and the regulation in the CCP on separate proceedings for IP cases constitutes its implementation. The genesis of the provisions is merely auxiliary to their interpretation. However, it confirms that the ambitions which led to their adoption were aimed at establishing autonomous civil procedure rules for IP cases in the broadest sense. This regulation is intended to serve as a foundation and impetus for the development of specialised concepts and institutions within the procedural framework of IP law, to ensure a high level of protection for high-quality IP in the context of the challenges posed by new technologies and the need for social progress, which is conditioned by cultural innovation in the broadest sense. The final wording of the provisions indicates that these ambitions were not abandoned throughout the legislative process.

A correct interpretation of the provisions on proceedings in IP cases must take into account their dual autonomy. Firstly, in relation to the regulation of IPR in national private law. Secondly, in relation to the regulation of measures for such rights as set out in EU law, in particular in the Directive [Rejda 2024, 787-88]. Of course, this is not absolute autonomy. It is relative autonomy, meaning the absence of complete determination of the content of provisions on separate proceedings in IP cases by the aforementioned private law and EU law.

¹³ The second position was represented, *inter alia*, by the author of this essay. I expressed it during consultations in 2016 at a meeting with the then Deputy Minister of Justice (MS), Ł. Piebiak, which I attended at his invitation. He expressed agreement with this position, but made its implementation contingent upon the results of all consultations and a decision by a panel of judges concerning the appointment of a team to develop a concept for the establishment of IP courts, the establishment of which he had announced within the MS. This team was established by an order of the MS dated 5 January 2017 (Official Journal of the MS of 9 January 2017, item 1). In the course of the team's work, the aforementioned Deputy MS consistently supported the second position. The team finally undertook to implement this position after the author of this essay and T. Mielke – acting as external experts to the team (see § 3 of that order) – submitted a written opinion dated 30 April 2017, prepared at the request of the MS, entitled 'Assumptions and concept for the establishment, organisation and functioning of IP courts' and after the acquisition of a written opinion by M. du Vall, drawn up in 2007 at the request of the Minister of Economy, entitled 'Analysis of economic aspects and legal, organisational and social conditions regarding solutions for the establishment of industrial property courts'.

¹⁴ The author of this essay, together with T. Mielke, presented a detailed justification for this position in a written opinion dated 30 April 2017, referred to in the preceding footnote.

The principle of relative autonomy must be applied to the interpretation of the definition and scope of IPR addressed in the proceedings. In particular, it should be noted that at no stage of the legislative process was there any intention to restrict the scope of these provisions to IPR within the meaning of Article 1 of the Directive. Instead, consideration was given to the possibility of extending the scope of application of the Directive in accordance with its Recital 13. Nor was there any intention to restrict the scope of special measures in IP cases to the minimum standards set out in Articles 6-8 of the Directive. Furthermore, it should also be noted that IPR are referred to in the CCP as the subject-matter of IP cases, which are heard by civil courts. This is the fundamental perspective from which the concept and scope of IPR should be interpreted. The statutory definition of IP cases in Article 479⁸⁹ CCP – although composed of several clauses – is not detailed, but merely framework-like in nature due to the general terms used therein. It is found in Chapter 1 of the regulation on proceedings in IP cases, entitled “General Provisions.” These provisions are, as it were, set apart from the provisions in the other chapters, including those governing the special measures in question, and therefore apply to them. Moreover, Article 479⁸⁹ CCP contains references to the entire section (“this section”) on separate proceedings in IP cases.

Furthermore, the principle of relative autonomy should also be applied to the interpretation of the scope of IP cases. The structure of Article 479⁸⁹ CCP is complex – it divides IP cases into two groups, each of which is covered by a separate paragraph. Within these paragraphs, three types of cases are listed. In Article 479⁸⁹(1) CCP, these are cases concerning: the protection of authors’ rights and related rights, the protection of industrial property rights, and the protection of other rights in intangible assets. In Article 479⁸⁹(2) CCP, the list of cases includes: cases concerning the prevention and combating of unfair competition; cases concerning the protection of moral rights to the extent that they relate to the use of moral rights for the purpose of individualisation, advertising or promotion of an entrepreneur, goods or services; and cases concerning the protection of moral rights in connection with scientific or inventive activity. It should be noted that five out of the six types of cases are defined as ‘cases concerning protection’. The term ‘protection’ refers to judicial protection, which may award a claim, determine the legal or factual status of a right, or constitutively shape the parties’ legal relations [Trammer 1950, 16], as well as other forms of judicial protection (e.g., Article 730 CCP). Cases concerning judicial protection also include those designated as ‘cases concerning the prevention and combating of unfair competition’. By formulating their scope in this way, the provision deliberately refers to the wording of Article 1 of the Act of 16 April 1993 on

Combating Unfair Competition.¹⁵ In this way, it defines cases concerning judicial protection of the interests of entrepreneurs recognised in accordance with Article 18 of the Unfair Competition Act. Any attempts to interpret the term ‘protection’ in Article 479⁸⁹ CCP as claims or other rights provided for in private law for the protection of subjective rights ignore the autonomous nature of this concept in relation to private law. This nature is manifested in assigning it the meaning of ‘judicial protection,’ which is natural (most appropriate) under the CCP, the fundamental *raison d’être* of which is precisely the need to ensure judicial protection.

3. IPR AS THE SUBJECT MATTER OF IP CASES

The concept and scope of IPR are insufficiently defined in IP law – neither at the level of national law, nor at the level of EU law [Kurosz 2024b, 24-27], nor in traditional international law. Therefore, in Article 479⁸⁹ CCP there is an extensive definition of the rights constituting the subject matter of such cases. The division of Article 479⁸⁹ CCP into two paragraphs does not introduce a division of IP cases into: IP cases *sensu stricto* and IP cases *sensu largo*.¹⁶ Proponents of this distinction appear to regard the ‘essence’ of the cases as the criterion. In their view, IP cases in the strict sense are those which, by their very nature, are of such a character because they concern IPR recognised as such in private law. However, the concept (‘essence’) and scope of IPR, as already noted above, are not sufficiently defined in private law. It is not possible to convincingly distinguish cases in the strict sense on this basis. In essence, all that is known is that the concept concerns rights granted by private law which relate to intangible assets. However, the precise nature of these intangible assets remains by no means established. Rather than addressing the ‘essence’ of such rights or assets, the law and legal practitioners, when formulating their definitions, tend to rely on lists which are not exhaustive, reflect convention, or are formulated *ad hoc* for the purposes of specific provisions or collections of provisions.

The concept of an IP case in Article 479⁸⁹ CCP is uniform as a concept within the scope of civil proceedings. Its definition through the distinction between two categories of cases does not support a contrary interpretation. The provision of Article 479⁸⁹(1) CCP serves as the basic definition of these cases, whilst Article 479⁸⁹(2) CCP merely defines them in a supplementary manner. The primary purpose of this supplement is to extend the scope of the basic IP cases to other IP cases. It constitutes the basis for classifying a case as an IP case only where that case is not covered by the scope

¹⁵ Journal of Laws of 2025, item 45 [hereinafter: *the Unfair Competition Act*].

¹⁶ K. Kurosz rightly distances himself from this position, see Kurosz 2021, 66.

of cases defined in Article 479⁸⁹(1) CCP. In practice, the court's assessment of whether a case falls within the scope of IP cases should be carried out according to a two-stage test: first, it must be examined whether the case has such a nature under Article 479⁸⁹(1) CCP, and only if the result of that assessment is negative should it be examined whether the case falls within that category pursuant to Article 479⁸⁹(2) CCP.

The basic scope of IP cases, in accordance with Article 479⁸⁹(1) CCP, covers three types of rights: 'authors' rights and related rights', 'industrial property rights' and 'other rights in intangible assets'. The general nature of these categories is noteworthy. Moreover, these are collective terms. They must, in fact, apply to a wide variety of legal positions differing in form. In private law, subjective rights relating to intangible assets are not usually codified as simple forms of rights. They take the form of dynamic structures composed of numerous legal positions, which are structured and arranged through logical and temporal sequencing. Proprietary rights in intangible assets, which are regarded as classic in private law, always constitute direct control over an intangible asset, the manifestation of which (within its so-called internal aspect) consists of various rights to the exclusive use of that asset and powers (e.g. *ius disponendi*). However, it is not only such prerogatives that constitute this right. Within the structure of such rights, defensive (prohibitory) rights, and even rights *erga omnes* to positive performance, are also normatively distinguished. These constitute the so-called external aspect of proprietary rights. Furthermore, when the proprietary right is infringed, the right holder becomes entitled to claims (*inter partes*) which, after all, arise within the framework of this right (claims arising from infringement of the right). All these prerogatives (rights, powers and claims) constitute components of the structure of proprietary rights in intangible assets. The catalogue of IP cases in Article 479⁸⁹(1) of the CCP refers to such components of these rights, and not solely to them in their entirety.

Article 479⁸⁹(1) of the CCP does not concern solely proprietary rights in intangible assets. This provision therefore concerns the rights of creators (e.g. authors, inventors) which private law grants them by virtue of their connection to the intangible asset. These may be the moral rights of such creators. The view that the term 'authors' rights' can only encompass proprietary rights in the national legal context is untenable. The Copyright Act is structured according to a dualistic model [Markiewicz 2026, 204], in which proprietary and moral rights are clearly distinguished. Therefore, when the provisions refer generally to 'authors' rights', this concerns both regimes of rights. It is noteworthy that the provision in question employs terms of a fundamental nature for two key and comprehensive legal acts of national IP law: the Copyright Act and the Industrial Property Law. The term: 'authors' rights and related rights' and the term: 'industrial

property rights' constitute, from this perspective, references to these legal acts, serving as legislative points of orientation. This does not mean that they exhaustively determine the scope of these terms.¹⁷ However, an interpretation of these terms that ignores their scope under these Acts cannot be considered correct.

The contrary view is not justified by the fact that this provision includes, at the end, a third group of rights defined as 'other rights in intangible assets'. Admittedly, there is a certain tradition of using the preposition 'in' to emphasise that the right takes the form of direct control *erga omnes* over such an asset, i.e. it is a proprietary right. However, the adjective 'other' used to designate the third group of cases cannot be understood as determining that Article 479⁸⁹ (1) CCP in its entirety applies only to proprietary rights in intangible assets. In the list of three groups of cases set out in Article 479⁸⁹(1) CCP, the reference to cases concerning the protection of 'other rights in intangible assets' is intended to extend the scope of cases to include 'other' cases than those covered by the previously mentioned cases, i.e. cases concerning the protection of 'authors' rights and related rights' and cases concerning the protection of 'industrial property rights'. It should also be noted that the distinction of IP cases in Article 479⁸⁹ CCP serves to concentrate and specialise the adjudication of such cases in specialised courts. From this perspective, it would be incomprehensible to exclude from their scope cases concerning the judicial protection of creators' rights relating to intangible assets other than proprietary rights.

Nor are there any grounds for generally excluding from the scope of 'authors' rights and related rights' or of 'industrial property rights', as referred to in Article 479⁸⁹ (1) of the CCP, rights arising from 'manifestations of consent' (e.g. licence agreements). The opposite view could only arise from a reduction of the concepts of 'authors' rights and related rights' or of 'industrial property rights' to those of a proprietary nature, or a reduction of the concept of 'protection' to claims arising from such proprietary rights. Such reductions, however, as has already been pointed out, are entirely arbitrary from the perspective of the wording of this provision, its context and its purpose.

The list of three categories of IP cases in Article 479⁸⁹(2) CCP supplements the scope of cases to include rights not covered by Article 479⁸⁹(1) CCP. These constitute IP cases in a functional sense, reflecting the practical need to apply IP-related reasoning to their judicial assessment. The basis for classifying them as such cases is that the 'way of thinking' applicable to IP is relevant for the judicial protection of the rights that form their subject matter, even where these are legal concepts which, in private law, neither

¹⁷ They do not, however, cover all rights falling within the fields of law referred to as 'Copyright Law' and 'Industrial Property Law'.

have the structure (construction) of IPR nor form part of such a structure. The practical significance of the enumeration of IP cases in Article 479⁸⁹(2) CCP is relatively minor, taking into account the broad definition of an IP case in Article 479⁸⁹(1) of CCP. Nevertheless, its role is not insignificant. It is solely due to Article 479⁸⁹(2)(1) CCP that cases concerning judicial protection of claims arising from acts of unfair competition, which do not constitute a means of protecting rights in intangible assets as provided for in the Unfair Competition Act,¹⁸ fall within this category. The provisions of Article 479⁸⁹(2)(2-3) CCP allow for the classification, in certain cases, of moral rights as IP cases; however, these are not the rights of creators granted by virtue of their connection to an intangible asset. The provision of Article 479⁸⁹(2)(2) CCP concerns cases where a moral right functions as an intangible asset, whilst Article 479⁸⁹(2)(3) of the CCP refers to cases of moral rights related to scientific or inventive activity.¹⁹ The definitions of cases in Article 479⁸⁹(2)(2-3) of the CCP are sufficiently general to provide the courts with the necessary scope of discretion and to enable their application to various situations.

4. NATURE OF SPECIAL MEASURES IN IP CASES

The purpose of special measures in IP cases is to improve access to evidence or information necessary to demonstrate the merits of the claim asserted in the statement of claim ('procedural claim'), thereby facilitating the effective substantiation of such claims. These may be current claims (*in actu*) or potential claims (*in potentia*). The latter occurs when the procedural measures under Article 479⁹⁷ CCP (preservation of evidence) and Article 479¹¹³ CCP (request for the provision of information) are sought prior to the commencement of proceedings in an IP case. The term 'claim' referred to in Article 479⁹⁸(1), 479¹⁰⁶ and 479¹¹³(1) CCP does not, *per se*, exclude any IPR, and must therefore be interpreted in a broadly inclusive

¹⁸ Such cases concerning the prevention and combating of unfair competition are classified in the CCP as IP cases, *inter alia*, on the basis that the interests for the protection of which entrepreneurs are entitled to claims under *the Unfair Competition Act* are, in the practice of economic trade, essentially linked to the enterprise – Article 551 of the Act of 23 April 1964 – Civil Code (Journal of Laws of 2025, item 1071, as amended [hereinafter: *the Civil Code*] – which constitutes, *sui generis*, an intangible asset. Similarly: e.g. Zoll 1935, 10; Poźniak-Niedzielska 2025a, 133, Widło 2002, 82. Rights in intangible assets protected under *the Unfair Competition Act* fall within the scope of Article 479⁸⁹(1) of the Civil Code.

¹⁹ The term 'inventive activity' should not be confused with the term 'inventive creation' referred to in Article 23 of *the Civil Code*. The former term is broader in scope. It refers to activities in the field of so-called 'inventive projects', which include design, invention, rationalisation, and other innovative utility solutions (similarly: e.g. Article 3(1)(3) of *the Industrial Property Law*).

manner. It therefore covers, *prima facie*, any hypothetical interest protected by private law,²⁰ provided that it can be classified as an IPR falling within the scope of such rights as defined by the concept of IP cases. There are no grounds for limiting the application of special measures in IP cases to the rights referred to in Article 479⁸⁹(1) CCP. These measures also apply to the rights referred to in Article 479⁸⁹(2) CCP.²¹ However, the *prima facie* scope of application of special measures cannot be regarded as definitive, as it remains subject to further limitations in accordance with the Directive. Certain limits in this regard are set out in recital 13 of the Directive. Polish law has made use of the possibility of extending this scope for internal purposes in Article 479⁸⁹(2) CCP, but not beyond what is permitted by that recital. Although the wording of this provision does not itself specify the limits of the permitted extension, it must be borne in mind that this recital may in future serve as a basis for case law to define them.

A distinction must be drawn between the scope of IPR and the scope of cases to which the special measures in question apply. The disclosure or production of evidence and the request for the provision of information relate only to ‘infringement cases’, that is, to cases in which the alleged infringement of IPR forms part of the factual basis of the action. The effective action for measures under Article 479¹⁰⁶ and 479¹¹³(1) CCP therefore depends on two procedural conditions: firstly, it must be established that the case in the context of which the request was made is an IP case within the meaning of Article 479⁸⁹ CCP; secondly, it must be established that it is a case concerning an infringement of IPR. Whether the first of these conditions is met is to be determined by the interest protected by private law for which judicial protection (awarding a claim, determination of the legal status of a right, or constitutively shaping the parties’ legal relations) is sought. The second condition, however, will be met where the factual grounds for such an action before court refer to an infringement of IPR. However, the concept of ‘infringement cases’ must take into account the meaning of the term ‘infringement’ in Articles 6(2) and 8(1) of the Directive, as well as the fact that the scope of these provisions has been extended for domestic purposes, in accordance with recital 13 of the Directive.

The special measure under Article 479⁹⁷ CCP, i.e. the preservation of evidence in IP cases, is not limited to infringement cases, and thus applies irrespective of whether an infringement forms part of the factual grounds of the dispute. Neither the wording, nor the context, nor the purpose of the provisions in question justifies the view that all the special measures are ‘twin

²⁰ Hypothetical in the sense that it is the court that will only rule on its merits in a judgment concluding the proceedings in the context of which the special measure in IP cases is to be applied.

²¹ Similarly: Kurosz 2025, 17.

institutions' [Antoniuk 2026, 32]. Each of these measures has been regulated separately and is independent of the others. This remains true, despite the fact that 'they complement one another and serve similar purposes' [Kurosz 2025, 16]. The fact that these measures overlap to some extent is not a sign of a lack of 'axiological coherence' [Targosz 2020, 191], but rather an expression, among other things, of the conviction that at the current stage of case-law development regarding Articles 6–8 of the Directive, there are no grounds for a complete functional distinction between these measures. The view that the scope of application of the special measures provided for in these provisions cannot be differentiated at all [Kurosz 2024a, 119] is unconvincing. To the extent that this scope is extended, in line with recital 13 of the Directive, such differentiation does not undermine the harmonisation objective.

The existence of asymmetry in access to information and the need to redress the information imbalance regarding infringements of IPR does not constitute a ground for granting the special measures in IP cases. This is, in fact, not their intended purpose,²² but rather one of the key elements of the factual context that underpinned the legislative decision to introduce them into the EU legal framework, and, by extension, that of Poland. The fact that such asymmetry often occurs is part of the *ratio legis* of the provisions on these measures, but does not exhaust it. The fundamental element of the *ratio legis* is to guarantee a high level of protection for IPR, given the importance of IP for social development, including culture, technology and the economy. The special measures in IP cases accord a procedural advantage to holders of IPR over holders of other rights provided for in private law. It is not merely a matter of levelling the playing field for the weaker party in civil proceedings.

The special measures in IP cases are not, however, any kind of entitlement (subjective rights) – neither of a public law nature nor of a private law nature. None of these measures takes the form of a subjective right,²³ but constitutes a form of judicial protection granted exclusively by court order. Depending on the party's request, the grant of such protection consists of: preservation of evidence, disclosure or production of evidence, and request for the provision of information. The possibility of requesting any of these forms of judicial protection constitutes a procedural power (a special type of capacity). The CCP provides for this in implementation – in the context of civil IP cases – of the right to an effective legal remedy before a court at the level required by Article 47 of the Charter of Fundamental Rights of the European Union²⁴ in conjunction with Article 17 of the Charter. Recital 10 of the Directive indicates that the level of effectiveness must be high

²² Contrary to: Kurosz 2024a, 115.

²³ Contrary to: Rejdak 2026, 7.

²⁴ OJ C 202, 7.6.2016, p. 389 [hereinafter: the Charter].

in this case. A request for a specific measure in IP cases is not made in the exercise of IPR provided for in private law, but in the exercise of the aforementioned procedural power, which is of a public law nature. It falls within the sphere of public law as part of a holistic approach to IP law.

It must be emphasised that the procedure for the granting of any of the special measures in an IP case does not concern any claim by the applicant/plaintiff against the respondent/defendant for the provision of evidence or information. The court does not assess the merits of any such claim. Therefore, the court's granting of the special measures does not depend on whether private law provides for any claims *inter partes*, e.g. a claim by the right holder for the provision of information by the infringer of IPR (so-called 'information claims'). The court grants the special measures if the procedural conditions and substantive grounds provided for in the CCP are fulfilled.

The subject matter of the proceedings for the granting of a special measure in an IP case is the interest in obtaining it, which is defined by the substantive grounds provided for in the CCP. This interest constitutes the cause of action for a motion for a special measure in an IP case. It is rightly pointed out that the regulation of these measures is not limited to procedural provisions in the narrow sense, i.e. those governing the procedures for seeking specific forms of judicial protection [Rejda 2026, 3], but also encompasses provisions governing the substantive grounds upon which the decision to grant judicial protection in the form of a specific special measure depends, and it is for this jurisdictional role alone that such grounds are established. The latter norms are substantive in nature.²⁵ They are linked to procedural norms in the narrow sense by their public-law character and by the fact that they do not find direct application outside the aforementioned procedures.²⁶ For this reason, the substantive grounds provided for in the CCP are procedural norms, but in the broad sense.

The addressee of a motion for the granting of any of the special measures is the court.²⁷ The court decides on the merits of such a motion by way of an order within the scope of its judicial power, and more specifically that part of it through which it exercises jurisdiction (*jurisdictio*). The order has a substantive character, as it determines the existence of the substantive grounds set out in CCP and – in the event that judicial protection is granted as a result of those grounds being satisfied – the injunction contained therein constitutes the source of the obligation of the obligated party/defendant. In this sense, such an order is constitutive.

It should be emphasised that the special measures are not discretionary in nature. The possibility of obtaining them at the request of a party

²⁵ Similarly: Rejda 2026, 8.

²⁶ Similarly: Trammer 1949, 20.

²⁷ Similarly: Rejda 2019, 209.

is not subject to the judge's discretion. Nevertheless, the court must take into account that an element of the *ratio legis* of these measures is to ensure an appropriate balance between the various fundamental rights protected by the EU legal order and ensure that the interpretation of the provisions governing these measures does not conflict with those fundamental rights or with other general principles of EU law, such as the principle of proportionality.²⁸ Given the prominence given in the case-law concerning the Directive to the principle of proportionality in the context of the application of the procedural measures in question, the Polish regulation in the CCP highlights it in Article 479⁹⁵ CCP. This also emphasises that proportionality is no longer guaranteed merely by the fulfilment of the procedural and substantive conditions for granting a special measure, but requires separate consideration in the circumstances of the specific case. The fact that the provision in question highlights the principle of proportionality does not relieve the judge of the duty to ensure, when applying special measures, compliance with other general principles of EU law.

CONCLUSIONS

Clarifying the legal nature of special measures in IP cases, which formed the subject of the above analysis, and determining the scope of their application presents difficulties for a number of reasons. I believe that one of the most significant reasons for this is the insufficient consideration given to the relative autonomy of the rules governing proceedings in IP cases. Rather than attempting to construct autonomous concepts, such as IPR, for the purposes of such proceedings, legal doctrine and case law often seek to reduce them to concepts applicable in private law. In doing so, they fail to recognise that these concepts are useful only in the context in which they are formulated.

The second problem is the overemphasis placed on the role of linguistic interpretation when applying procedural rules in IP cases. Suggestions that systemic and purposive interpretation apply in this context only in certain cases [Antoniuk 2026, 32] are not supported by the methodology of contemporary legal interpretation. Just as in the case of EU law, a correct interpretation is ensured only by taking into account both the wording of the provision and its context and purpose [Włodarczyk 2020, 46-49]; the same applies to provisions that implement EU law. Regardless of this, it should be noted that in practice it is not possible to carry out a linguistic interpretation without the systemic context of the law, as legal texts are always drafted

²⁸ See, for example, paragraph 68 of the judgment of the Court of Justice (EU) of 29 January 2008, Case C-275/06 (Promusicae).

within such a context, which is reflected, for example, in the terminology used in the provision. The preference for linguistic interpretation over systemic and functional interpretation is an approach that is increasingly incompatible with the multi-centred structure of the modern legal order.

It is too early to draw conclusions *de lege ferenda*. There has not yet been a significant development in case law and legal doctrine that would allow for their responsible formulation. One must also be aware that, in EU law too, with regard to the special measures in IP cases provided for in the Directive, no such progress has been made in recent years that would facilitate legislative decisions concerning the regulations in the CCP.

I fully share the positive assessments of the introduction of the provisions discussed in this essay, even if some of the issues covered by them are controversial [see also: Pinkalski 2025, 106].

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