ASPECTS OF INTELECTUAL PROPERTY DISPUTES:

SWEDEN

A. Protection of Artistic or Literary reputation:

At the front of the "B" Museum, located in the country "X", there is an enormous wall of a unique architectural structure, faced with basalt stone made by the Basalt Co. Ltd. incorporated in your country. The Basalt Co. photographed the basalt wall of the museum without the consent of the architect and made use of the photograph in order to market its products. The company also copied and constructed an identical basalt wall at the front of its offices in your country. The architect sued Basalt Co. in your country, claiming infringement of copyright, loss of reputation, unlawful enrichment, and petitioned for compensation for damage; compensation without proof of damage; compensation due to unlawful enrichment and punitive compensation. The architect also applied for an injunction; an order for submission of accounts in order to learn of the profit derived by the company from the publicity; and an Anton Piller order for the purpose of seizure and demolition.

1. On what terms will a work (of art, music, literature) from a foreign country enjoy copyright protection in your country?

As a rule, protection under the Swedish Copyright Act applies to works by Swedish persons and also to works that have first been published in Sweden.

Our membership of the European Union means that nationals of an EU country must always be treated in the same way as Swedish nationals in the application of copyright law.

Sweden is party to several international agreements in this area (i.e. the Berne Convention for the protection of Literary and Artistic Works). The practical effect of this is that Sweden is obliged to provide protection under the Swedish Copyright Act to works from other countries which are party to these international agreements. Provisions in this respect are contained in the International Copyright regulation.

2. What works of art are covered by copyright in your country? Did Basalt Co. Ltd constitute an infringement of copyright or moral rights or injured the architect's reputation by:

Swedish law protects works of literature, films, musical and stage works, photographs, art, architectural works etc.

(a) Photograph of an architectural work located in a public place?

Under Swedish law it is not an infringement of copyright to photograph an architectural work located in a public building.

(b) Copying a unique wall from a museum building? What are the tests?
Copying a wall can under Swedish law be an infringement of copyright if the work is a result of an intellectual creativity and is unique.

3. Are there other actionable claims which can be brought to protect the reputation of the architect or any artists and authors, other than claims based on infringement of copyright? Can he obtain compensation by virtue of the "unlawful enrichment" laws?

The architect could claim compensation for unfair competition.

4. If damages can be claimed for loss of, or injury to, reputation:

(a) What type(s) of damages can be awarded – eg. compensatory or punitive?

The person who has committed an infringement has to pay what amounts to reasonable compensation for the exploitation that has taken place. If the infringement has taken place through negligence or intentionally compensation must also be paid for other damage that may have occurred (e.g. loss of markets shares, personal suffering etc).

(b) How are the damages to be proved and measured?

The damages can be proved in any relevant way. It is for the court to decide after hearing all the evidence.

5. What permitted uses can be made of a protected work or reputation without constituting infringement of copyright? What is fair use?

Swedish law does not apply the principle of fair use. Instead the law contains a catalog of permitted uses.

B. The Court's use of experts or assessors:

1. Does your country have a specialist Court or Tribunal that hears intellectual property disputes?

The general courts deals with matters regarding intellectual property rights. The general court in Stockholm deals with some of the disputes i.e. regarding radio and television issues.

The District Court of Stockholm is the specialist Court for cases concerning infringement or revocation of a patent valid in Sweden. It is also the specialist Curt for cases concerning European Union trade mark protection and European Union design protection. The second instance for such cases is the Svea Court of Appeal, located in Stockholm.

The negotiations amongst the EU Member States for a European Unitary Patent Court are close to being concluded. When established the new Court will have jurisdiction over all patent cases concerning European patents in the geographical area covered by the participating States.
2. Does the Court/Tribunal which hears intellectual property disputes in your country use experts or assessors:
   (a) to assist in determining liability; and/or
   (b) to assist in quantifying damages or determining the appropriate form of remedy?

3. If not, does the Court/Tribunal have the power to refer the dispute or part of the dispute to an independent expert or assessor who has relevant specialist knowledge? If so, is this power often used and how effective is it?

   The Swedish courts can ask experts to give evidence in court but not refer the dispute to these experts.

4. Do specialists (that is, non-lawyers with specialist training in the field of intellectual property) sit on the Court/Tribunal? If so, what is the role of the specialist? Eg solely to assist the Court/Tribunal to understand the specialist subject matter of the intellectual property dispute or does the specialist have a decision-making role?

   No. Exception for cases regarding patent. In cases concerning the infringement or revocation of a patent the Court always use technical judges. They are experts in the technical field concerned but not lawyers. They are part of the panel on an equal footing with the other judges. They are appointed specifically for every case (picked by the Court from a pool of technical judges). The system of technical judges works well and appreciated by the Swedish users of the patent system.

5. Does the Court/Tribunal hear expert evidence on specialist subject matters in intellectual property disputes? How is the evidence given? Eg in writing, in person or by both means?

   The evidence is given in writing and by oral explanation in the court.

6. What other processes are used by the Court/Tribunal to assist in understanding specialist subject matter in an intellectual property dispute, and where experts have differences of opinion on a topic, to assist in deciding which opinion to accept?

   In general all kind of evidence is allowed and it is for the court to decide which evidence is relevant and to decide between different opinions.

7. What processes do you think would be useful for the Court/Tribunal to adopt or implement to assist in deciding intellectual property disputes where the making of the decision requires specialist knowledge on a non-legal topic?