

Recent case law and legal developments in France (patent case law)

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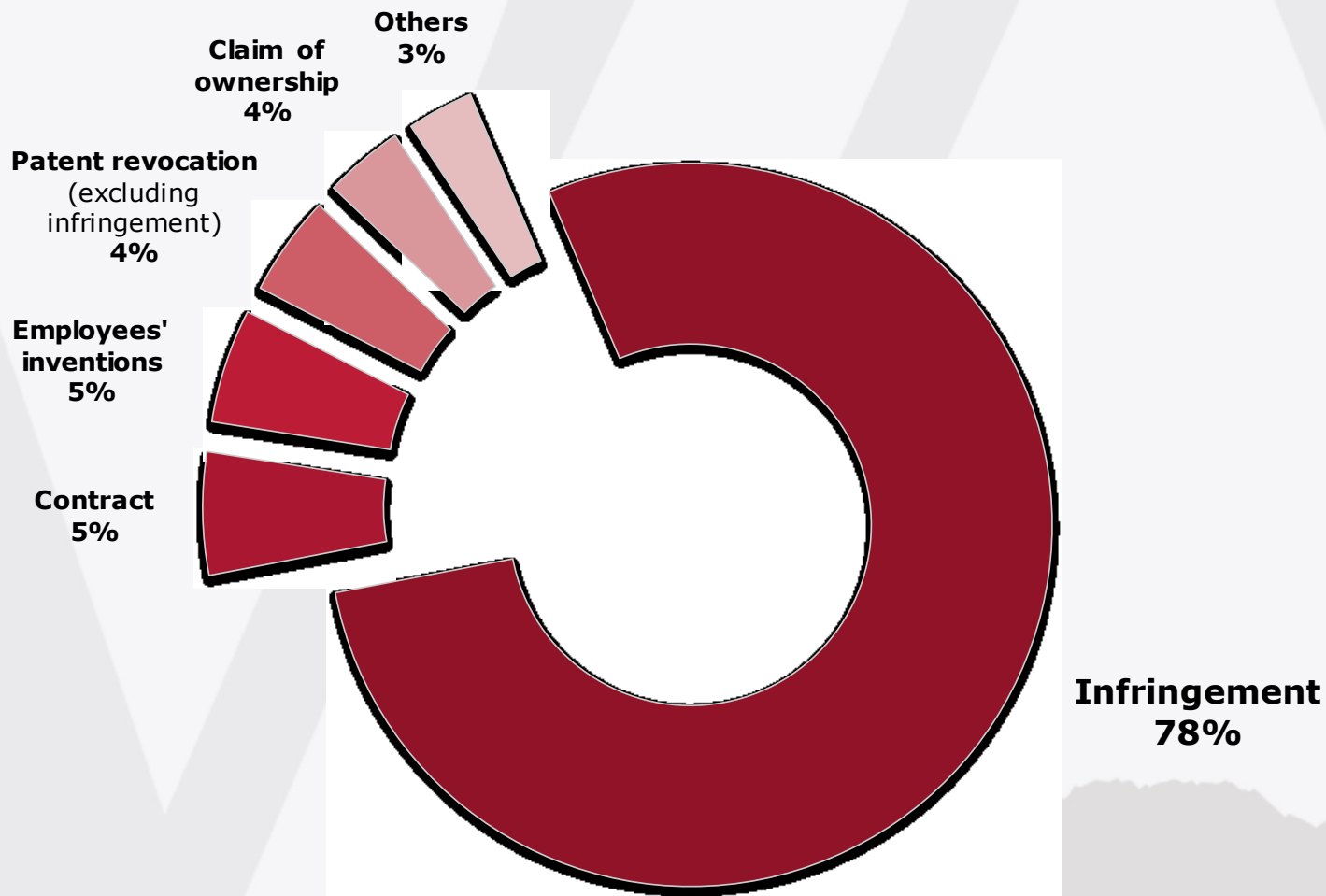
1. Statistics on Patent litigation in France

2000-2016: 4889 decisions rendered

- ❑ *tribunal de grande instance de Paris*: 3228 (190 / year)
- ❑ *cour d'appel de Paris*: 1307 (77 / year)
- ❑ *Cour de cassation* :354 (21 / year)

TGI Paris, 2000-2016

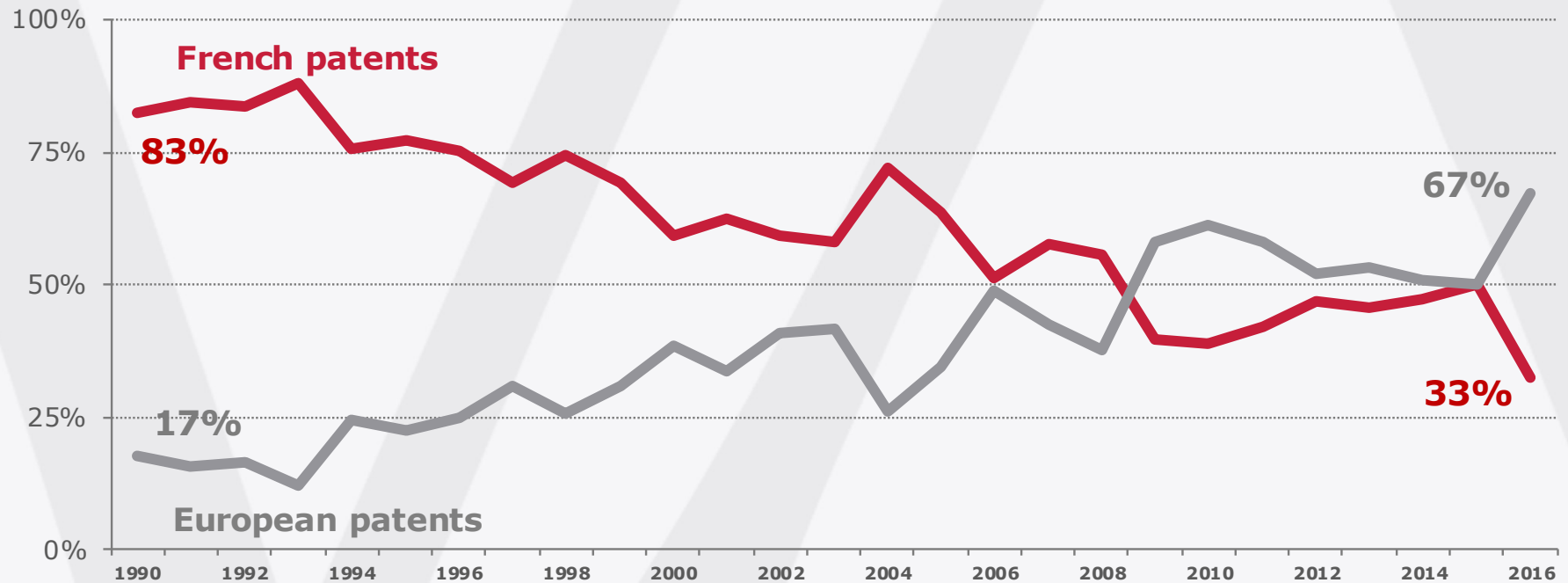
Nature of cases



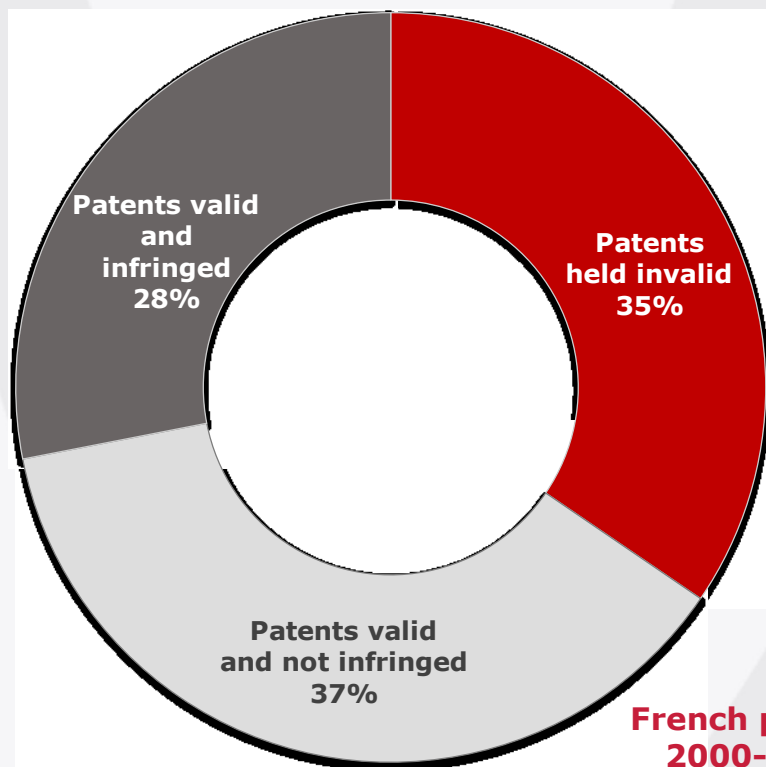
TGI Paris, 1990-2016

Nature (FR/EP) of patents invoked

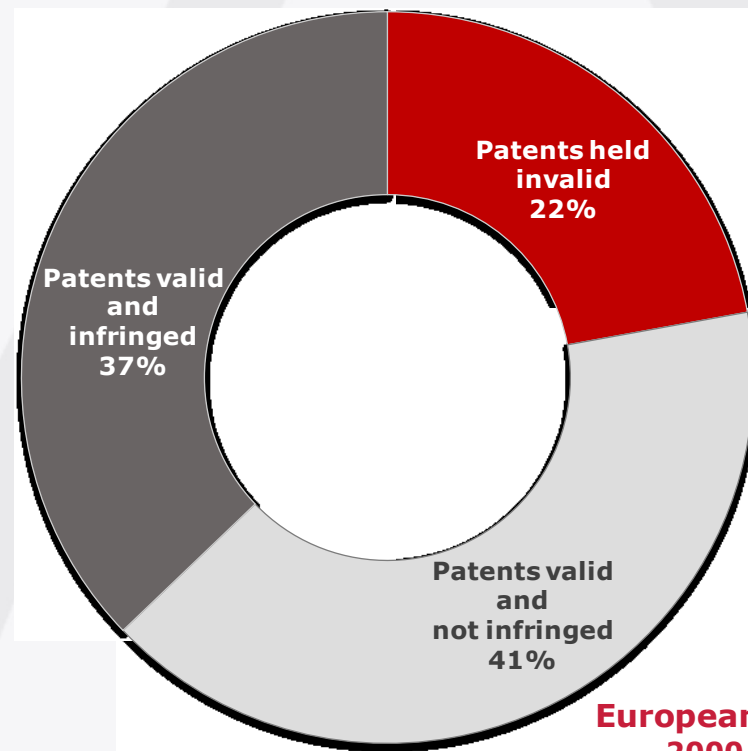
European patents became the majority in 2009



TGI Paris, 2000-2016 Validity and infringement FR/EP



**French patents
2000-2016**
(588 patents)



**European patents
2000-2016**
(533 patents)

TGI Paris, 2000-2016**The greatest damages awarded**

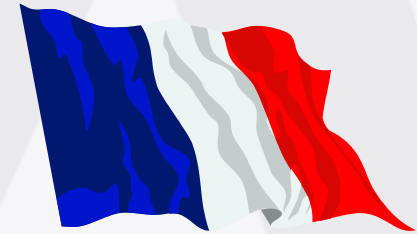
Date	Parties	Total damages
14/01/2009	Agilent Technology Deutschland GmbH, Hewlett-Packard GmbH / Waters Corporation, Waters SAS	€4,317,180
09/10/2009	Legrand, Legrand SNC / Alternative Elec	€3,301,000
25/06/2010	Technogenia / Martec anciennement Soneco, Ateliers Joseph Mary, B.M.I, Actiale, Francis Barrat	€2,735,013
29/09/2016	Extrusion de Basse Normandie-Exbanor / Pellenc	€2,114,192
14/09/2007	Philips Electronics / Manufacturing Advanced Media Europe	€2,000,000
10/12/2004	ATA, Claude Ricard / Mannesmann VDO, VDO France, JPM Taxis	€1,677,329
10/06/2016	Time Sport International / Decathlon, Knauer	€1,464,036
14/05/2003	Dentsply Research & Development Corporation / Electro Medical Systems	€1,256,178
27/09/2013	Bobst / Heidelberg Postpress Deutschland	€1,212,094
29/10/2008	L'Air Liquide/ Yara France	€1,195,050
16/09/2009	Hager Security anciennement Atral / Cedom, Leroy Merlin France	€1,184,806
09/11/2004	Schneider Electric Industries / Wenzhou Fly-Dragon Electric	€1,000,000
16/11/2012	Santos / Robot-Coupe	€1,000,000
12/09/2007	SEB / De Longhi	€989,858
14/01/2016	Muller / Texas de France, Carrera	€707,863
08/03/2006	Citec Environnement / K.A. France, Ssi Schaeffer	€693,653
26/03/2010	Brandt Industries / Whirlpool France	€651,446
17/11/2016	Shark / Tech Design Team, CP Racing Team	€600,000
28/01/2009	Treves / Visteon Systèmes Intérieurs	€530,000
10/07/2002	Sedac-Mecobel / J.P. Gruhier SA, Styling	€517,036
06/12/2013	Anthogyr / Apol	€500,000

(costs under Art. 700 CPC not taken into account – advance payments excluded – settlement agreement excluded)

2. Case law

- 2.1. *Saisie-contrefaçon*
- 2.2. Time limitation
- 2.3. Damages: infringer's profits

2.1. The French *saisie-contrefaçon*



A *Saisie-contrefaçon* is a probative measure allowing a patentee to have a bailiff conduct investigations in a third party premises.

It generally includes a description of the alleged infringing goods and the seizure of objects relating to this infringement (seizure of the products, of documents relating to the infringement ..).

It is governed by Article L. 615.5 of the French Intellectual Property Code

Recent case law on *saisie-contrefaçon*

- *Cour d'appel* of Paris, 16 May 2017 (Ch. 5, s.1), *Commerce spectacle industrie, SCV Hi Tech vs. Koninklijke Philips*
- *Cour d'appel* of Paris, 26 May 2017, (Ch. 5, s.2) *Telekom Slovenije D. D. vs. Orange*

Cour d'appel of Paris, 16 May 2017

- « *If an application for a saisie-contrefaçon shall be justified regarding article 494 of the French Civil Proceedings Code, the **claimant does not have to establish, by means of evidence, the reality of the alleged infringement** »*
- « *saisie-contrefaçon, as defined by article L. 615-5 of the French Intellectual Property Code, has **only a probative function** in order to establish the reality of an act, but not for all its potential infringing nature »*
- « *The claimant only needs to prove the existence of the right invoked and to justify its claim by giving information in particular on elements and clues which suggest infringement »*

Cour d'appel of Paris, 26 May 2017

- Later on, the Court considered that :
- « *It is thus wrongly that the Presiding Judge has, in order to dismiss the claim (...) reprimanded the fact that when the application was filed, no evidence easily attained were provided* »

2.2. Time limitation: mind the slot

- Application to patent revocation actions of the new time limitation of 5 years adopted in civil law in June 2008 (Article 2224 of the French civil code)
- Debate about the event triggering the 5-year time period: what is the « *day on which the right owner becomes aware or should have become aware of the right* »

Starting point of the five-year period

■ Evolving case law:

▶ TGI Paris, 3rd ch., 1st s., 25 April 2013,
Evinerude v. Giraudeau and Air Lichens:

▶ publication of the patent application

▶ TGI Paris, 3rd ch., 1st s., 6 November 2014,
Raccords Plastiques Nicoll v. MEP:

▶ assessment in concreto

▶ here, date of the warning letter

TGI of Paris, 16 March 2017

Actelion Pharmaceuticals vs. Icos corp.

- « *A claim for revocation of a patent is a personal action* »
- « *Therefore a 5 years time limitation shall be applied in accordance with article 2224 of the French Civil Code* »

TGI of Paris, 16 March 2017

- *« The starting point of the time limitation shall be set on the day, defined in concreto, where the companies (...) knew or were supposed to know, considering the progress of their researches and the seriousness of their project already examined, the fact that the patent was able to thwart it »*

2.3. Damages (grant of the infringer's profit)

- Art. L. 615-7 French IPC: *"To set the damages, the court distinctly takes into account: the negative economic consequences of the infringement, including the loss of earnings and any loss suffered by the injured party, the moral prejudice caused to the latter and **the profits made by the infringer**, including the savings in intellectual, material and promotional investments that it achieved from the infringement."*

Grant of the infringer's profit

- Do these provisions mean that the claimant can be granted the infringers profit?
 - **Yes:**
 - TYC Europe v. Valeo*, CA Paris, 23 January 2013
 - Hydr Am v. Gimaex et Al.*, TGI Paris, 24 January 2013
 - **No:** *Saint Dizier Environnement v. Matériel Santé Environnement*, TGI Paris, 11 October 2013

Paris court of appeal, 9 December 2016 (Muller / Carrera)

The court considers that, according to French law dated 29 October 2007, enforcing European Directive 2004/48,

- the judge is invited to take into consideration the infringers profits;
- this does not mean that the law has created a special rule authorising the confiscation of the infringer's profits as such

Paris court of appeal, 9 December 2016 (cont'd)

- The judge can only take the infringer's profit into consideration **in addition to the loss suffered** by the patentee in order to have all the elements in hand to completely compensate the damage suffered.
- There can be no allocation of infringer's profit in the absence of any loss suffered by the patentee.

Thank you

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