

French practice from the first steps of the proceedings until drafting of the judgment

Marie Courboulay

THE COURT

3rd Chamber of the Court of First Instance of Paris is specialized in IP cases that means patent cases but also copyright, design, trademarks cases and the unfair competition cases linked to these matters.

3rd Chamber has a national exclusive jurisdiction on patent cases and on EUIPO trademarks and designs.

We are 12 legally qualified judges so 4 panels with a clerk by panel.

Each panel has in stock an average of 350 to 400 cases.

The Chamber receive 200 to 250 new patent cases a year that means 50 to 60 patent cases by panel the Chamber delivers between 80 to 100 patent decisions on the merits a year.

The cases may be settled before the trial : sometimes at the very beginning of the proceedings, often just before the trial and few times between the trial and the judgment.

We are dealing with the saisie-contrefaçon : every day there is a standing judge on duty for hearing the request of saisie-contrefaçon.

We are also dealing with the preliminary injunction and with the requests about the selection of the confidential information collected during the saisie-contrefaçon and the recourses again the order of saisie-contrefaçon.

Preliminary injunctions are taking for the judge as long time as a judgment ; the hearing and the drafting are as long as for a judgment on the merits because we have to decide on the evidence of the infringement, and if requested, on the evidence of nullity of the patent.

THE ASSISTANCE

The Court provides us a computer, printer and copier and we type our judgments ourselves. The judgments are filed in the case management system by the clerk and send directly to the lawyers 'mail address when signed by the presiding judge.

THE ORGANIZATION OF THE COURT

There is an electronic case management system in the Court of Paris.

The lawyers file directly to the Court their statement of claim and a clerk service verifies if there are the legal mentions on this file : the name of the claimant, the name of the defendant, their addresses, the name of the lawyer of the claimant.

Then this service gives a number to this case and send it to the specialized chamber of the court, not directly to the judge but to the clerk.

You can't choose nor the Chamber nor the judge.

If there is a mistake in the choice of the Chamber, the judges send the case to the right chamber. The situation is the same if there is a part of the case already pending before another panel of the Chamber.]

Then the clerk opens a folder and transfer it to the presiding judge of the panel.

The presiding judge reads the assignment, verifies how the defendant has been reached by the bailiff, where the defendant is located in order to respect the European, international or national regulations, and then sends the case before a « juge de la mise en état » (judge rapporteur) for a hearing.

The presiding judge knows that a case has been filed before his/her panel 3 or 4 days after the filing in the CMS, sometimes a week.

THE JUDGE RAPPORTEUR (JUGE DE LA MISE EN ÉTAT)

The judge rapporteur has a big involvement in the proceedings because he has to control the exchange of claim and counterclaim between the parties, to give a calendar in order to avoid that the cases stay too long before the Court, to give the date of the oral hearing and sometimes to decide on the issues of jurisdiction of the Court, of the nullity of the assignment, on the request of disclosure of documents, on a stay request, on the demand based on the Right of information.....

At the end of the instruction of the case, there is a last hearing before the judge rapporteur where the lawyers have to be there, except if everything is going on correctly, in order to verify that the claims and counterclaims have been delivered at the right time, that all the means have been exposed in the claims and defense, and all the documents exchanged between the parties.

Then he/she closes the proceedings and it's difficult to obtain a revocation of this order of closure of the proceedings.

Usually, the judge rapporteur is the judge in charge of the report before the Court during the oral hearing and also the one who will draft the judgment.

The 2 other judges read the rapport of the judge rapporteur before the trial, hear the parties during the trial.

Time spend for the preparation depends if you are or not the judge rapporteur.

During the instruction of the case, the judge rapporteur reads the claims and counterclaims filed by the parties,

Preparing the report takes from 2 hours to half a day (reading the patent and some anterior art and drafting the report).

THE TRIAL AND THE DRAFTING OF THE JUDGMENT

An oral hearing is half a day in France ; if you have 2 patents in a case (we don't split the case by patent) the oral hearing will take place in the morning for the first patent and in the afternoon for the

second one.

The length of the oral hearing is not depending of the amount of the case but of the complexity of the case (sometimes legal complexity, sometimes technical complexity as telecom case).

The principle is that the parties have to be represented by the lawyers before the Court ; but we accept that the patent attorneys give technical explanation when necessary.

It's very rare that the party is allowed to give explanation to the Court.

It's also very rare that not specialist attorneys at law are pleading before our Court.

In France the oral hearing is important to explain the technical field, the prior art and the patent; then to explain the infringement but it's just a focus on essential issues because the proceedings is written.

The judges may have an outcome before the oral hearing especially the judge rapporteur who is the judge who has prepared the case.

Sometimes after the oral hearing, the outcome may change if you have misunderstanding a prior art or a characteristic of the patent.

The panel has to discuss of the case on the different points of law. We are never satisfied by the oral hearing because we have to match what has been said to the Court and what is contained in the documents, we have sometimes to read them again having in mind what has been said during the oral hearing.

We never decide on what the French call « une impression d'audience » ; we know that this kind of impression or feeling is very far from a rigorous work on means and documents.

We have a deliberation just after the hearing ; the judge rapporteur knows the documents and we can have a very efficient discussion just after the hearing ; but if necessary we may have a deliberation few days after.

The deliberation lasts 2 or 3 hours to a day.

We can have a second deliberation if the judge drafting the judgment thinks it's necessary to look again to the documents, to discuss on a point that sometimes has not been seen by the parties and to send the case back to the juge de la mise en état.

Very rare to send the case back to the instruction.

Rare also to discuss the entire case a second time but not so rare to discuss again a very particular point : the proportionality of the measures, the amount of the damages.

Drafting the judgment may be long that means for a French judge 2 or 3 days for a standard patent judgment.

(we are drafting 2 judgments a week, plus the orders of the judge rapporteur and for some of us the preliminary injunctions (5 preliminary orders a month).

A judgment in patent case may have 10 to 65 pages. For a standard case 20 to 30 pages.

The judge in charge of drafting has no assistance ; he is working alone. Every judge of the panel is reading the draft and amending when necessary.

We have an electronic access to all the judgments of the 3rd Chamber.

We are working with the database darts-ip.

But we are not allowed to refer to our own knowledge ; we have to deal with the documents (even the case law) provided by the parties (except for the ECJ decisions and Cour de Cassation decisions)

AFTER THE JUDGMENT

confidential information

possible to request for preserving confidential information to the Court when drafting the judgment. But it's an agreement between the panel and the lawyers because there is no rule about this possibility in our code de procedure.

possible to organize the oral hearing to preserve confidential information at least between the claimant and the defendant. (articles of code de procedure ruled this possibility).

Typo corrections

Possibility for the judge to correct editorial errors or for the parties to request for this kind of corrections.

The corrections may not change the decision of course

Settlement of the case after the judgment

If the case is settled after the judgment, the Court is informed only if a party decides to do it.

Judgments in appeal

We are always informed that our judgment has been appealed and also of the decision of the Court of Appeal.