

Key differences between US and European patent litigation

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Statistics or general tendancies

1. Before litigation

No requirement for opinions of counsel

2. Pre-trial and discovery

- Discovery only in the UK, at a limited scale

However, countries, such as France, cooperate with US Courts for discovery operations conducted for the needs of a US litigation.

Attorney-client privilege

- RPR v. BMS judgement... is
- The difficulty is definitively solved for French patent attorneys, with the provisions enacted on February 11, 2004.

5. Infringement analysis

- Similar types of infringement acts through European countries,
- Similar steps in the reasoning for determining infringement

Equivalence in Europe

- The Broadest application in France
- The narrowest in Germany

Defending against infringement

- Defenses absent in Europe
 - Inequitable conduct
 - Laches
 - Estoppel as such
- Very limited impact of incorrect inventorship

Remedies

- No triple damages
- In some countries, there is an option for the infringer's profit.

Preliminary injunctions

- Tests varying on a country per country basis
- But very similar results in practice.

Bolar versus experimental use exception

