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Chapter 22: Enforcement in France

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1621 Because the decisions handed down by the Unified Patent Court will be enforced in France almost like a French decision, this chapter first explains how the French judicial decisions in patent matters can be enforced¹, and then how the UPC decisions will be enforced.

I. Enforcing a French judicial decision in France

1622 As patent matters generally involve large or mid-size companies, a vast majority of the defendants based in France do comply with the decisions of the French courts without the need of coercion. In some cases, however, compelling compliance is needed.

1623 This section presents the legal framework and the players of such enforcement, then the enforcement measures provided by French law, and finally the provisional measures (before any decision is given on the merits of the case), which may be useful in some cases.

1. The legal framework and the players of the enforcement

1624 The winning party which has to compel the losing party to abide by a court decision must follow the provisions of two French codes: the Civil Procedure Code (“code de procédure civile”, CPC) and the Civil Enforcement Procedure Code (“code des procédures civiles d’exécution”, CEPC).

1625 There is nothing in French law like the common law concept of contempt of court: not abiding by a court order does not expose to any criminal sanction or to any financial sanction to be paid to the court or to the State.

1626 The task of enforcing decisions under these codes is reserved to judicial officers (“commissaires de justice”)², who are private practitioners appointed by the government,

1 Articles of the Unified Patent Court Agreement of 19 February 2013 will be referred to as “Article [...] UPCA”. Rules of the 18th draft of the Rules of Procedure of the UPC will be referred to as “Rule [...]”. Articles of the French Civil Procedure Code will be referred to as “Article [...] FR CPC”. Articles of the French Intellectual Property Code will be referred to as “Article [...] FR IPC”.

entrusted with part of the public authority and holding a monopoly on forced execution and protective measures.

They act under the supervision of a specific judge known as the “enforcement judge” 1627 (“Juge de l’exécution”, often shortened to “JEX”), who is a judge of the French ordinary court of first instance, that is, the tribunal judiciaire.

Disputes in respect of enforcement — like requests for a payment extension (“délai de paiement”) or debt staggering (“échelonnement de la dette”)³ —, are brought exclusively before the enforcement judge. 1628

This judge also rules on matters of abuse of enforcement process, which constitutes a tort liability under Article 1240 of the French Civil Code and Article L. 121–2 CEPC. Such abuse is characterised by a lack of proportionality between the debt owed and the enforcement measure sought. 1629

The territorial competence for both the judicial officers⁴ and the enforcement judge will depend on the nature of the enforcement sought: the location of the assets to be seized, the place of performance of the obligation underlying the claim, the place of residence of the defendant. 1630

2. Enforcement measures

The recourse to compelling enforcement measures requires an official copy of the decision of the French court issued by the court clerk with a specific enforcement order (“copie exécutoire” or “grosse”) to be served (“signifiée”) on the unsuccessful party⁵. 1631

The enforcement generally begins with a formal order to pay (“commandement de payer”) or to abide otherwise by the court’s decision. 1632

When the court has ordered the defendant to do something (like recalling infringing products from the sales channel), or to refrain from doing something (like an injunction not to infringe a patent), the judicial officer is usually only permitted to draw up a formal record that the defendant does not do what he has been ordered to do or, conversely, that he is doing what he has been ordered not to do. On the basis of this formal record, the court may order the defendant to pay a recurring penalty (“astreinte”) to the plaintiff (e.g. €10,000 per machine sold or per day of operation of an infringing process). The amount of this penalty can be increased if the defendant does not comply. 1633

To enforce decisions ordering a payment, judicial officers have specific powers: 1634

2 As a result of a government order dated 2 June 2016, the professions of bailiff (“*buisier de justice*”) and public auctioneer (“*commissaire-priseur*”) were merged as of 1 July 2022 in a new profession named “*commissaire de justice*” (better translated as “*judicial officer*”).

3 Article 1244–1 of the French Civil Code.

4 Judicial officers are competent within the jurisdiction of the *cour d’appel* where they are established.

5 Article 503 CPC.

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- 1635 investigation: in order to locate the debtor and his assets, they are entitled to obtain information that is not accessible to the public⁶, including a direct access to information held by government, tax, financial and social agencies (available in the “Ficoba” database listing all French bank accounts);
- 1636 action: judicial officers have the power to require the assistance of police officers and may be assisted by removal men and locksmiths if need be.
- 1637 The enforcement measures carried out by judicial officers for enforcing a judgment in patent matters can be of two kinds:
- 1638 attachment on a bank account (“saisie-attribution”) whereby the creditor can obtain the monies available on the debtor’s bank account; measures which result eventually in the sale of the debtor’s assets: in a preliminary phase, these are used to make the debtor’s tangible or intangible assets inalienable; in the final phase the assets are sold to payback the creditor. Such measures are obtained through seizures and sale (“saisie-vente” for movable property, “saisie immobilière” for immovable property). The sale can be forced through public auction.
- 1639 Although the judicial officers’ fees for recovering amounts of money are in principle borne by the creditor, they are by exception charged to the debtors who are found liable for intellectual property right infringement⁷.
- 1640 The enforcement of decisions that are only provisionally enforceable (like an interim injunction) always takes place under the responsibility of the creditor who must restore the debtor’s rights in case of damage if the decision is later set aside or modified ; cross undertaking is provided by statutory provisions⁸.

II. Provisional measures

- 1641 Before the creditor obtains a final judgment allowing for enforcement, provisional measures can also be sought in order to secure his rights. These can be obtained on the condition that the claim appears to be founded and admissible, and that there is a risk of frustration of recovery. They require prior judicial authorisation from the enforcement judge.
- 1642 When a provisional attachment (“saisie-conservatoire”) is granted, it makes the debtor’s assets inalienable. When the creditor eventually obtains an enforceable title, provisional attachment is converted into the appropriate enforcement measure.

⁶ The only freely accessible information essentially concerns the debtor assets: land register (“*cadastre*” and “*publicité foncière*”) for real property, vehicle registration services notably for ships and aircrafts, *Institut National de la Propriété Industrielle* register for intellectual property titles...

⁷ Article R. 444–55 2° of the French *code de commerce*.

⁸ Article L. 111–10 CEPC.

III. Enforcing a UPC decision in France

The Agreement on a Unified Patent Court (“UPCA”) of 19 February 2013 contains several provisions relevant to the enforcement of UPC decisions, in particular Article 82 (3) which states that “Without prejudice to this Agreement and the Statute, enforcement procedures shall be governed by the law of the Contracting Member State where the enforcement takes place. Any decision of the Court shall be enforced under the same conditions as a decision given in the Contracting Member State where the enforcement takes place”.

Therefore, pursuant to the Agreement, every time the enforcement of a UPC decision⁹ is sought in France, French enforcement law applies: UPC decisions are enforceable in France under the exact same conditions and through the same measures as those applying to decisions of French courts.

Regulation (EU) N° 1215/2012 of the European Parliament and of the Council of 12 December 2012 “on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)” (known as the “Brussels I (recast) Regulation”)¹⁰ was amended by Regulation (EU) N° 542/2014 of the European Parliament and of the Council of 15 May 2014 “amending Regulation (EU) N° 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice” to take into account the provisions of the Agreement.

As a result, Article 71(a) of the thus modified Brussels I (recast) now considers for its purposes the Unified Patent Court as a “court of a Member State”, integrating it fully into the European decision recognition system.

And Article 71(d) in fine provides that “However, where recognition and enforcement of a judgment given by a common court [as is now the UPC] is sought in a Member State party to the instrument establishing the common court, any rules of that instrument on recognition and enforcement shall apply instead of the rules of this Regulation”.

The rules thus referred to are in particular Article 82 UPCA, Rule 118 and Rule 354.

Rule 118.8 provides that “The orders of the Court referred to in paragraphs 1 and 2(a) shall be enforceable on the defendant only after the claimant has notified the Court which part of the orders he intends to enforce, a certified translation of the orders in accordance with Rule 7.2, where applicable, into the official language of a Contracting Member State in which the enforcement shall take place has been provided by the claimant and the said notice and, where applicable, a certified translation of the orders have been served on the defendant by the Registry”.

9 Or a settlement reached through the use of the UPC patent mediation and arbitration centre, see Article 35.

10 Regulation (EU) N° 1215/2012 amends and repeals Regulation (EC) N° 44/2001 of 22 December 2000 (then referred to as the “Brussels I Regulation”).

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- 1650 Rule 354.1 makes decisions and orders of the UPC directly enforceable – without the need for an *exequatur* – from their date of service.
- 1651 Consequently, to enforce on the French territory a UPC decision that has not been handed down in French¹¹, the claimant will have to provide a certified French translation.
- 1652 Subject to this, final or provisionally enforceable UPC decisions¹² will be enforced like any French judgment, as explained above.
- 1653 To sum up, three differences are to be noted:
- 1654 while recurring penalty (“*astreinte*”) in case the defendant does not abide by a court’s order to do or not to do something is paid to the defendant under French law, it is paid to the UPC under Article 82(4) UPCA; while the French court is normally not informed of the steps taken by the claimant for the enforcement of its judgment, a UPC decision is “enforceable on the defendant only after the claimant has notified the Court which part of the orders he intends to enforce”;
- 1655 while the question of translation does not arise for the enforcement of a French judgment in France, a UPC decision given in a language other than French needs to be translated before being enforced in France.

11 This will be the case every time the language of proceedings is not French, see Article 77 (2).

12 See in particular Article 74 on the suspensive effect of appeals.