

Patent Litigation in France

Statistical study 2000-2009

Pierre Véron

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A V O C A T S
Paris ■ Lyon

This statistical study relates to patent litigation in France from 2000 to 2009; it follows a similar study that related to the 1990-1999 period.

In order to conduct this study, Véron & Associés, a law firm dealing exclusively with patent litigation, analysed the statistics held by the Ministry of Justice concerning the new cases and closed cases.

It also analysed each of the 2,751 decisions handed down by the Tribunal de Grande Instance of Paris, the Cour d'Appel of Paris and the Cour de Cassation in patent cases between 2000 and 2009.

The main teachings of the study are the following:

- *every year, approximately 350 new patent cases are initiated before the French courts in first instance and 110 new cases are brought before the appeal courts;*
- *this volume makes France the fourth country in the world for patent litigation, after the United-States, China and Germany (in front of Japan, Italy, Canada, the United Kingdom, the Netherlands and Australia);*
- *infringement cases constitute the main part of the litigation;*
- *2/3 of the claimants, and of the defendants, are French businesses;*
- *until 2009, more cases were filed based on French patents than on European patents;*
- *on the whole, the action for infringement succeeds in only 33% of cases, because the patent is held invalid in 27% of cases and is considered valid but not infringed in 40% of cases; European patents are more robust than French patents, as the success rate of the patentee is 36% (as compared to 30%), the invalidity rate is 21% (as compared to 31%) and the infringement rate is 43% (as compared to 39%);*
- *the judgments handed down in first instance are totally or partially affirmed in appeal in 85% of cases;*
- *the appeals lodged before the Cour de Cassation against decisions of the Cour d'Appel are dismissed or non-admitted in 77% of cases;*
- *the average of the damages awarded in the 214 cases in which the court held the patent infringed and issued a ruling on the damage amounts to €220,000 (the median being €40,000);*
- *the largest damages awarded were set at €4,317,000; interim damages amounting to €10,000,000 were awarded;*
- *the median sum awarded pursuant to Article 700 of the French Code of Civil Procedure for legal costs has increased over the ten-year period (€5,000 in 2000, €20,000 in 2009);*
- *concerning employees' inventions, most (63%) of the additional remunerations awarded (average per patent and per inventor) are below €10,000; 90% are below €30,000.*

Contents

- New cases (number of cases)
- Decided cases
(nature of the decisions and outcome of the cases)
- Amounts awarded
 - ▶ Patent infringement damages
 - ▶ Employees' inventions

This study is divided into three parts:

- *the analysis of the statistics on the new cases and closed cases held by the Ministry of Justice, which reveals the volume of the litigation, but which does not give any indication as regards the outcome of the case (settlement agreement, judgment and, in this case, consequences of the judgment);*
- *the teachings drawn from the individual analysis of the 2,751 decisions handed down by the Tribunal de Grande Instance of Paris, the Cour d'Appel of Paris and the Cour de Cassation in patent cases between 2000 and 2009; the research first related to the players involved and to the subject of each case (subject of the claim, nationality of the parties, nature of the patents invoked, French or European, technical areas); then related to the solution given to the case as regards infringement cases (patent held invalid, claim for infringement dismissed, claim for infringement accepted);*
- *the sums awarded in the two most frequent types of litigation: patent infringement damages and the additional remuneration of employees' inventions.*

Ministry of Justice statistics
TGI (first instance courts)
new cases average 2004-2009

<i>Tribunal de Grande Instance</i>	New cases	Closed cases	Average duration (in months)
Paris	190	162	14
Lyon	42	40	15
Rennes	9	8	13
Bordeaux	9	7	24
Lille	8	9	14
Strasbourg	8	8	16
Marseille	6	6	25
Toulouse	5	5	22
Nancy	3	3	13
Limoges	1	2	22
Others	56	56	5
France as a whole	336	307	13

This table summarises data from the French Ministry of Justice which, each year, centralises statistics on the activity of each French court.

Preliminary observations

- Period covered: the exploitable statistical period relates to the years 2004 to 2009. Due to two changes in the nomenclature of civil cases (2002 and 2009), it is impossible to obtain coherent continuous data over the entire 10-year period.*
- Litigation considered: claims for patent infringement and/or patent nullity, for a supplementary protection certificate, a plant variety protection certificate or for the topography of a semi-conductor product. [2000-2003 : unique category including "Claim for patent infringement and/or patent nullity and/or for unfair competition"].*
- The table shows the number of new cases, of closed cases and the average duration of proceedings:*
 - The cases considered by the Ministry of Justice refer to all cases, excluding preliminary proceedings;*
 - The relatively important number of cases brought before the courts referred to as "Others" (i.e. other than those having exclusive jurisdiction over patent cases) can be explained by an incorrect classification of the files, whereby litigations relating to unfair or illicit competition are supposedly referred to as "patent" cases, as was the case in the period prior to 2002, during which a unique category was used for "patent" and "unfair competition" cases;*
 - The ratione materiae jurisdiction of the TGIs is more and more limited:*
 - 10 TGIs have exclusive jurisdiction concerning pending cases on 31/12/2005.*
 - 7 TGIs have exclusive jurisdiction concerning the new cases as of 01/01/2006 (excluding Rennes, Nancy and Limoges);*
 - Exclusive jurisdiction of the Paris TGI and of the Cour d'Appel of Paris since 1st November 2009 (date of entry into force of D. 2009-1205 of 9 Oct. 2009) ;*

Comments on the 2004-2009 period

- Very large predominance of the Paris TGI, which handles more than half the cases (56%) or 68% of the cases if one considers only the courts having jurisdictions over patents cases; this predominance should become even more important when all the cases that were pending before 1st November 2009 are closed, but patent cases will still remain which are not subject to exclusive jurisdiction (e.g. claims for a patent licence agreement not involving any point of patent law);*
- The Paris TGI is followed, rather far behind, by the Lyon TGI, which represents 15% of this litigation (if one considers only the courts having jurisdiction in patent cases);*
- Less than 10 cases per year are brought before the 8 other TGIs having exclusive jurisdiction;*
- The notion of average duration has little meaning in practice insofar as the statistics make no distinction between the cases which are closed after a judgment has been rendered and those which were closed either through the withdrawal of the case from the case list, through the claim becoming null and void or through consolidation.*

Ministry of Justice statistics

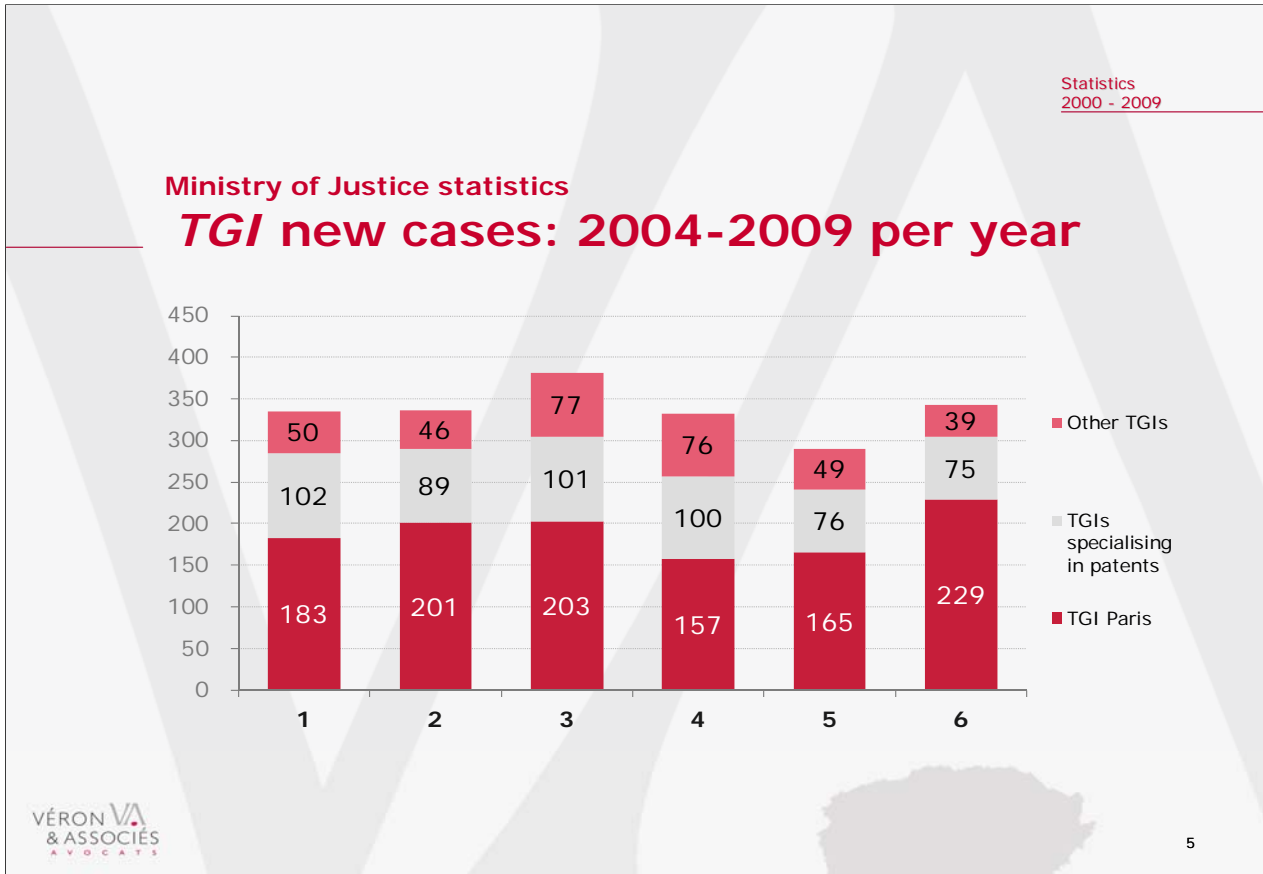
Cours d'Appel new cases average 2004-2009

<i>Cour d'appel</i>	New cases	Closed cases	Average duration (in months)
Paris	56	50	15
Rennes	14	14	13
Aix en Provence	8	9	17
Lyon	7	6	11
Douai	5	5	20
Bordeaux	5	4	13
Toulouse	5	4	16
Colmar	2	1	24
Limoges	1	1	20
Nancy	1	1	18
Others	6	6	18
France as a whole	108	101	15

This table summarises data from the Ministry of Justice relating to cases brought before the Cours d'Appel (courts of appeal), using the same classification, and must be examined in light of the same preliminary observations as those made concerning the Tribunaux de Grande Instance (first instance courts).

It shows the average number of new cases and closed cases per year, as well as the average duration of proceedings and leads to the following comments:

- *There are much fewer erroneous classifications in appeal than in first instance (5% of the cases categorised as "patents" are brought before courts of appeal having no jurisdiction over the specific field, as compared to 17% in first instance).*
- *More than half the cases are brought before the Cour d'Appel of Paris.*
- *The average duration of the proceedings, like in first instance, is not directly significant.*



*This chart shows a certain stability **in** the number of new cases since 2004: on average, 350 new cases (patent infringement or patent nullity, SPC, plant variety & topographies of semi-conductor products) are brought each year before the first instance courts, among which 280 on average are brought before the first instance courts having exclusive jurisdiction over patent cases.*

Conclusion on the number of new cases

350 cases per year

- 350 new patent cases per year in France
- including 190 cases before the Paris *TGI* (54% of national litigation over the 2004-2009 period)
- 110 cases per year in appeal (30% of the first instance cases)

**Patent litigation rate:
1 patent for every 1000 patents per year**

- 350 new patent cases per year
- 385,000 patents in force in France
- *i.e.* approximately 1 patent for every 1000 patents is brought before the courts

The French first instance courts add approximately 350 new patent cases to the case list every year.

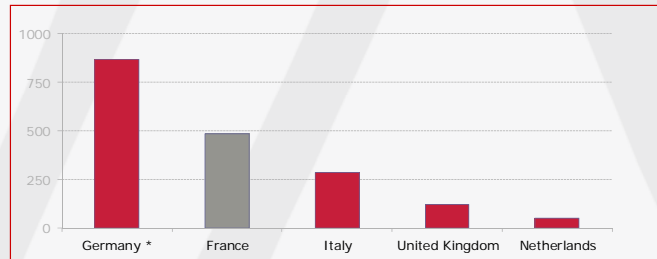
Over the 2004-2008 period, in France, there were 385,000 patents in force per year according to the INPI (French Industrial Property Institute) (source : Chiffres clés de l'Observatoire de la propriété intellectuelle, 2004-2008), i.e. a litigation rate of less than 1 patent for every 1 000 patents per year.

"Patent maintained in force" during the year N refers to:

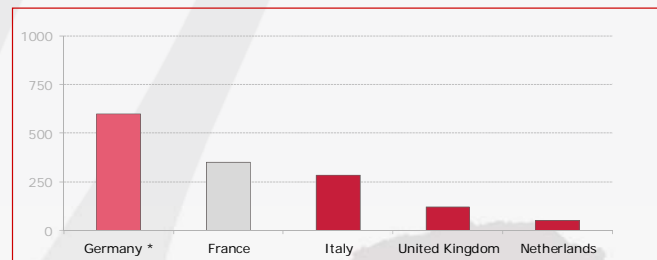
- *French patents granted by the INPI for which an annual fee was paid during the year N;*
- *European patents granted and validated on the French territory regardless of whether or not an annual fee was paid to the INPI during the year N (these patents including European patents granted via Euro-direct and Euro-PCT applications).*

European comparison: data from the Harhoff report

Harhoff report, raw data



Harhoff report, rectified FR



* Germany:
 1 case per ground (infringement / nullity) and 1 case per patent

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These figures are taken from the Harhoff report (February 2009) in the interest of a unified legal system for patents within the European Union (costs, advantages...) and from English statistics.

It is an annual estimation of the number of new cases in the 27 Member States of the European Union. Only the first 5 countries whose figures are sufficiently significant are presented.

This chart therefore illustrates the average number of new cases in Germany, France, Italy, United-Kingdom and the Netherlands.

In the other Member States (like Sweden, Austria, Belgium, Poland, Portugal or Finland), less than 45 new cases are referred to the courts every year.

In a number of Member States, like France, the courts issue a ruling on patent validity and on the infringement within the framework of the same proceedings.

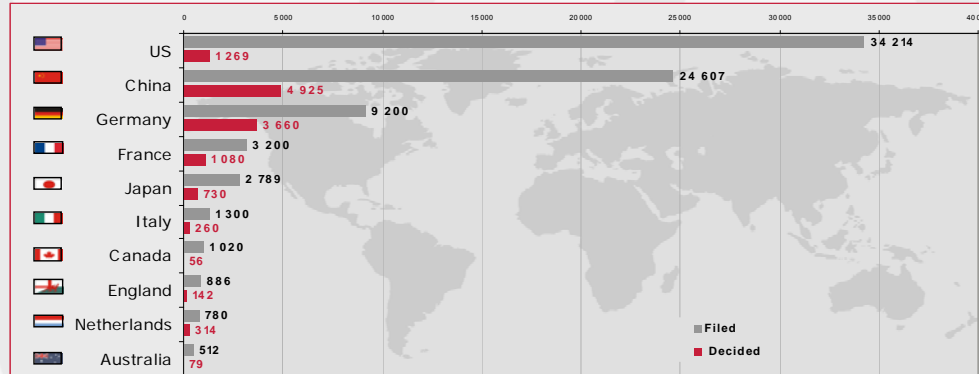
Other countries – 9 countries out of 27 – assess the validity and the infringement in distinct proceedings, principally Germany (Austria, Portugal, Poland...).

This duality of procedures only partly justifies Germany's largely dominant position as regards the number of new cases; on an annual average of 870 new cases, 220 cases relate to validity and 650 to infringement; reconsidered according to a non-dualistic type of system, like France, the number of cases in Germany can be estimated at approximately 600 (considering that, in Germany, 90% of nullity cases are subject to infringement proceedings and that, in France, a case relates to 1.12 patents on average whereas in Germany, a case always relates to one patent only).

(1) Harhoff report: http://ec.europa.eu/internal_market/indprop/docs/patent/studies/litigation_system_en.pdf

France, 4th country in the world with the greatest number of patent litigation filings

First instance patent infringement cases filed and decided worldwide



The 10 countries with the greatest number of patent litigation filings
 (1997-2009)

This map represents data compiled by a global informal network of firms specialising in patent litigation.

It classifies the first 10 countries (according to the number of new patent cases accumulated over the 1997-2009 period) with the number of cases closed by judgment and the percentage they represent:

Country	New cases	Decided cases	%
USA	34,214	1,269	3,71%
China	24,607	4,925	20.1%
Germany	9,200	3,660	40%
France	3,200	1,080	33.75%
Japon	2,789	730	26.17%
Italy	1,300	260	20%
Canada	1,020	56	5%
England and Wales	886	142	16%
Netherlands	780	314	40.26%
Australia	516	79	15%

The percentage of decided cases is very low in the United States (4%) and in Canada (5%); the highest rates are in Germany and The Netherlands (both 40%) and France (34%); this probably suggests a lower settlement rate in these countries as compared with common law countries.

China: Includes design patents, utility models and invention patents; it appears difficult to differentiate judicial litigation from administrative litigation

Germany: Estimate of invention patent infringement litigation filings.

Total for 2009 estimated at 1400, including utility model and inventorship/ownership

Decisions rendered: collection and analysis methodology

- *TGI* and *Cour d'Appel*: systematic collection, at the central registry, of the decisions handed down by the specialised chambers (Françoise Escoffier)
(orders for preliminary proceedings, registered along with ordinary preliminary proceedings, are, in practice, difficult to access)
- *Cour de Cassation*: support fund
(transmits the decisions affirming the appeal decision, the decisions quashing the appeal decision and the decisions of inadmissibility; the decisions of non admission, and those ordering the revocation of rights or a withdrawal are not transmitted)
- Individual analysis of the decisions Chantal Nouvellet)
- Data processing (Céline Ruste)

The statistics of the Ministry of Justice do not list the nature of the cases or the outcome of the decisions.

Therefore, a statistical study aiming at the analysis thereof required setting up another data source.

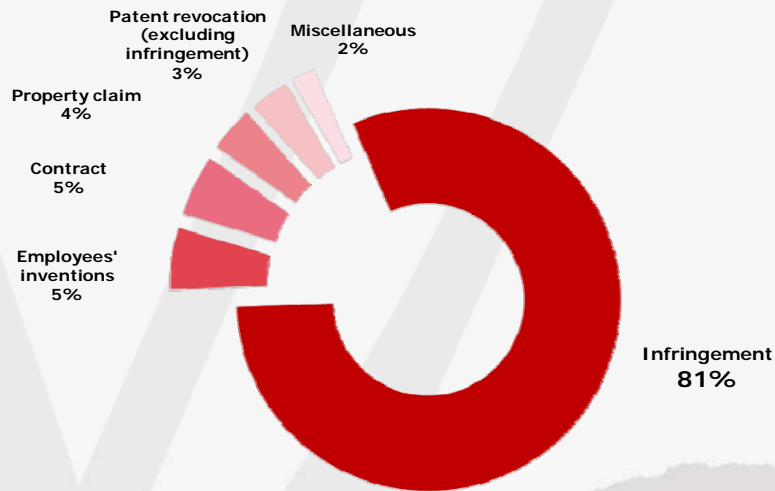
Every year, Véron & Associés collects the decisions relating to patent litigation cases taking place in Paris from the clerks' offices of both the Tribunal de Grande Instance of Paris and the Cour d'Appel of Paris and from the Study and Documentation department of the Cour de Cassation.

Our collection is meant to be as exhaustive as possible; it is confirmed and completed by the published decisions and those accessible on other databases (Lexbase, Darts-ip, etc.).

2000-2009: analysis of 2751 decisions

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total	Average
<i>TGI Paris</i>	165	165	185	174	152	195	223	197	150	214	1820	182
<i>CA Paris</i>	63	68	66	67	75	84	84	76	63	83	729	73
<i>Cour de Cassation</i>	15	14	24	21	23	17	12	28	25	23	202	20
Total	243	247	275	262	250	296	319	301	238	320	2751	275

Paris TGI Nature of cases

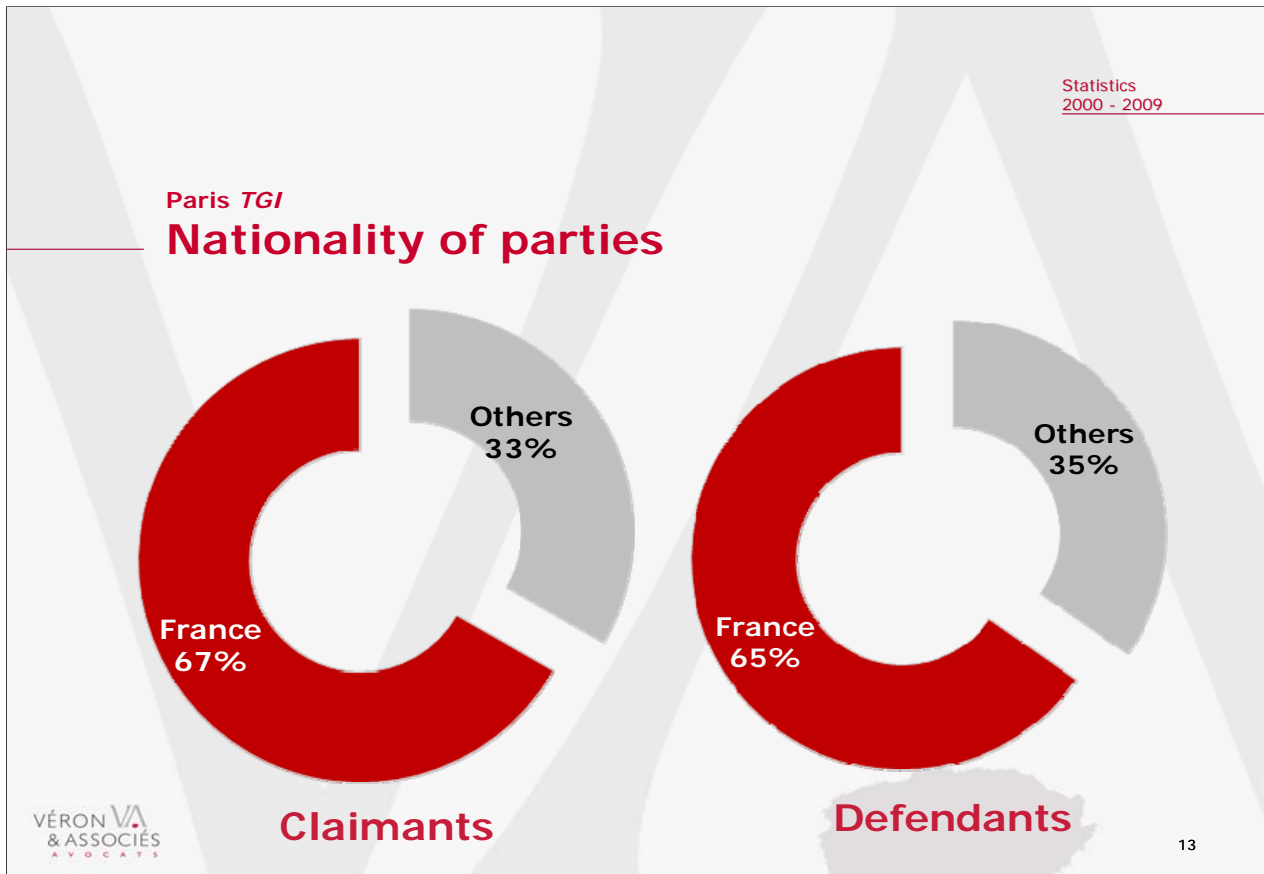


This chart shows the nature of the cases brought before the Tribunal de Grande Instance of Paris, all types of decisions taken into account, over the 2000-2009 period.

Infringement litigation represents the large majority of first instance cases (81%).

Employees' inventions litigation falls very far behind, representing a little more than 5% of the litigation with 9 decisions per year on average (as compared to 2% of the decisions handed down over the 1990-1999 period).

Decisions handed down in contractual disputes also total 5% of the decisions handed down in first instance, followed by property claims (4%) and by main actions for patent nullity lodged independently of all infringement action (3%).

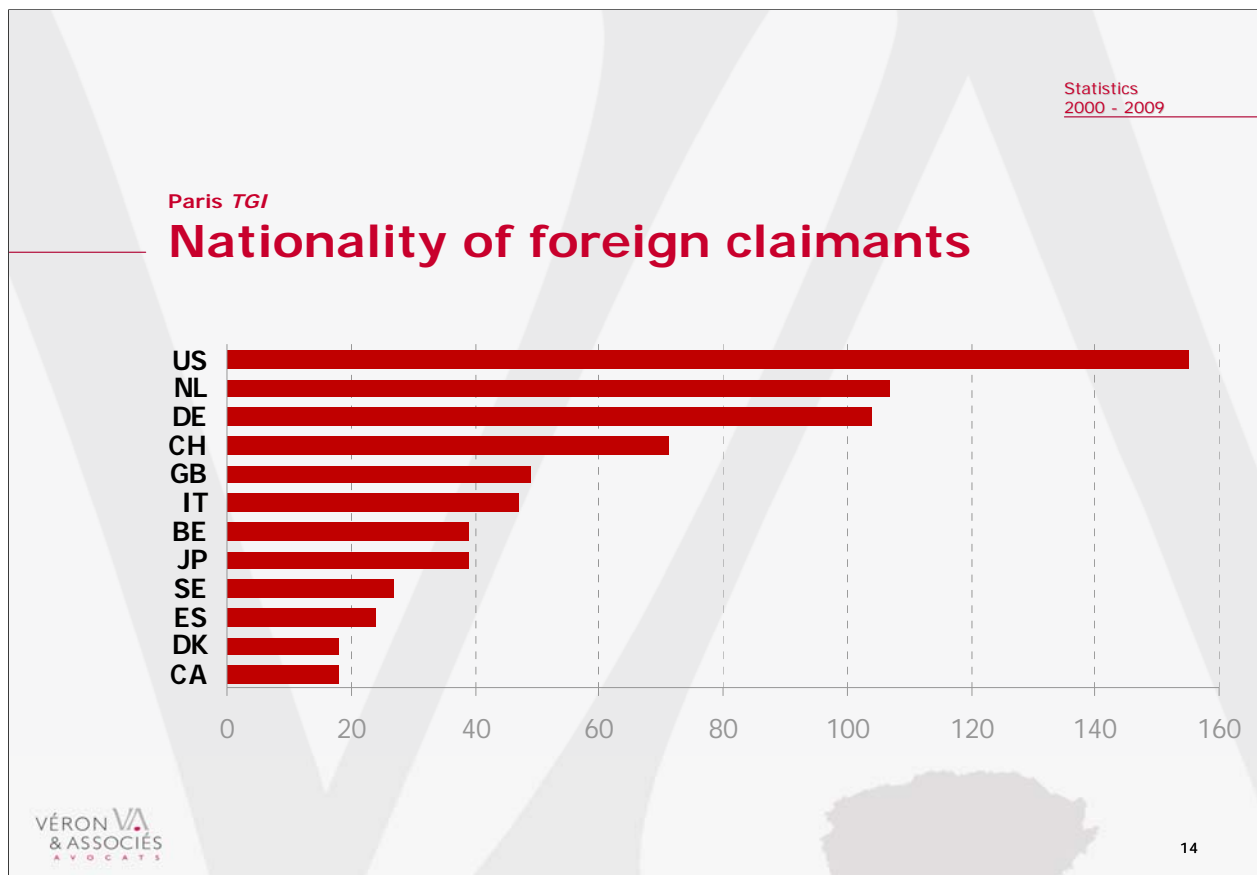


The study of the nationality of the parties was carried out per decision, considering that, in cases where several claimants were involved in the proceedings where one was of foreign nationality, this was considered the nationality of the claimants (the same reasoning applies to the defendants); therefore, the part "France" corresponds to decisions in which all the parties (claimants or defendants) have French nationality.

The French parties represent approximately the same proportion, between 65 and 67%, whether as claimants or as defendants.

This proportion is contrary to that which emerges from the figures published by the Observatoire de la Propriété Industrielle concerning the nationality of the applicants for French patents, whether they concern national, European or euro-PCT applications (source: Chiffres clés 2009 Brevets de l'OPI, August 2010): indeed, only 15% of French patents filings are of native origin.

Parties not coming from France have increased over this 10-year period, representing 33% of the claimants, as compared to 24% for the 1990-1999 period.

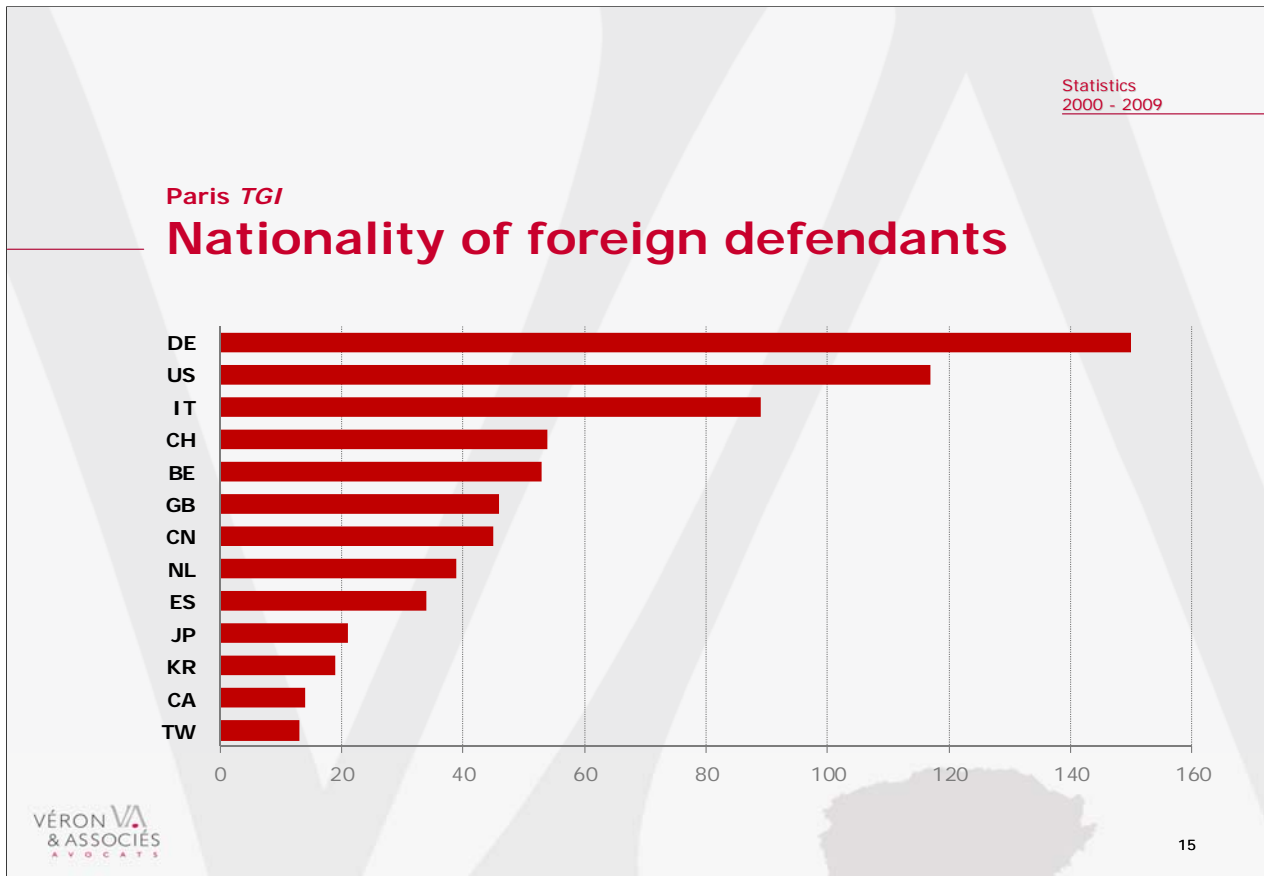


France's main trading partners figure firmly in the lead in the table of claimants.

However, a new ranking can be noted in relation to that observed during the 1990-1999 period since the United States have taken the lead, supplanting Germany which has been relegated to the third place, causing Switzerland to leave the podium and fall to 4th place.

Dutch claimants arrive in force since they more than doubled and today represent the second foreign claimants nation in patent litigation.

Japan also increasingly defends its patents on French territory.



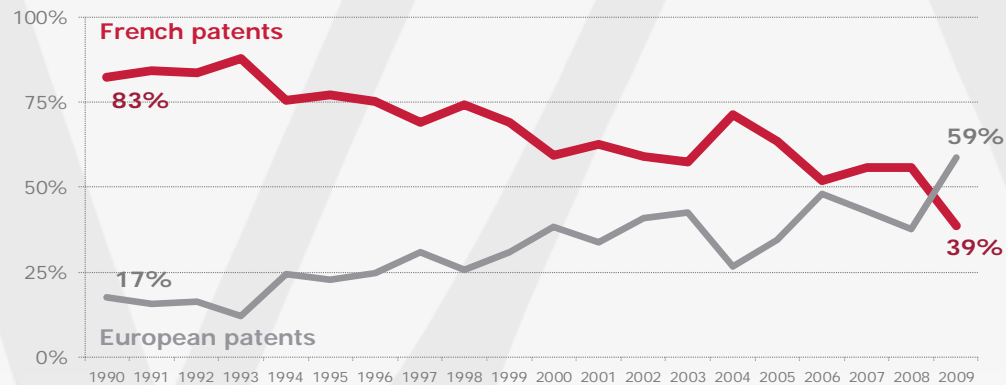
Over the 2000-2010 period, many more proceedings were brought against the Germans and the Americans before the Tribunal de Grande Instance of Paris, relegating the Italians to third place.

It will not be surprising to note that, over this ten-year period, Asian countries like China, Japan, Korea, Taiwan reached the top 15 of the league table.

Paris TGI

Nature (FR/EP) of patents invoked

European patents became the majority in 2009



Over the 1990-1999 period, the number of European patents invoked in support of an action for infringement before the Tribunal de Grande Instance of Paris regularly increased, to the detriment of French patents: European patents represented only 17% of the patents invoked in 1990 as compared with 38% in 2000.

Although the 2000-2009 period marks a more fluctuating FR / EU patent distribution depending on the year, on the whole, French patents make up the majority in litigation (they represent, on average, 58% of patent infringement actions as compared with 40% for European patents), whereas they are a minority among the totality of the patents in force in France from 2003 to 2008 (70% of the patents in force in France are European patents).

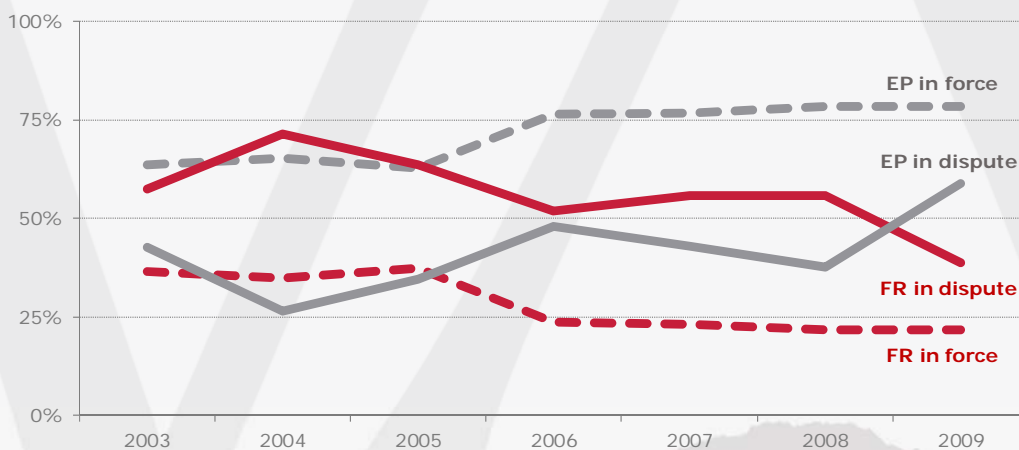
The year 2009 shows a trend reversal, as European patents represent 59% of infringement litigation.

Statistics
 2000 - 2009

Paris TGI

FR/EP: patents invoked / patents in force

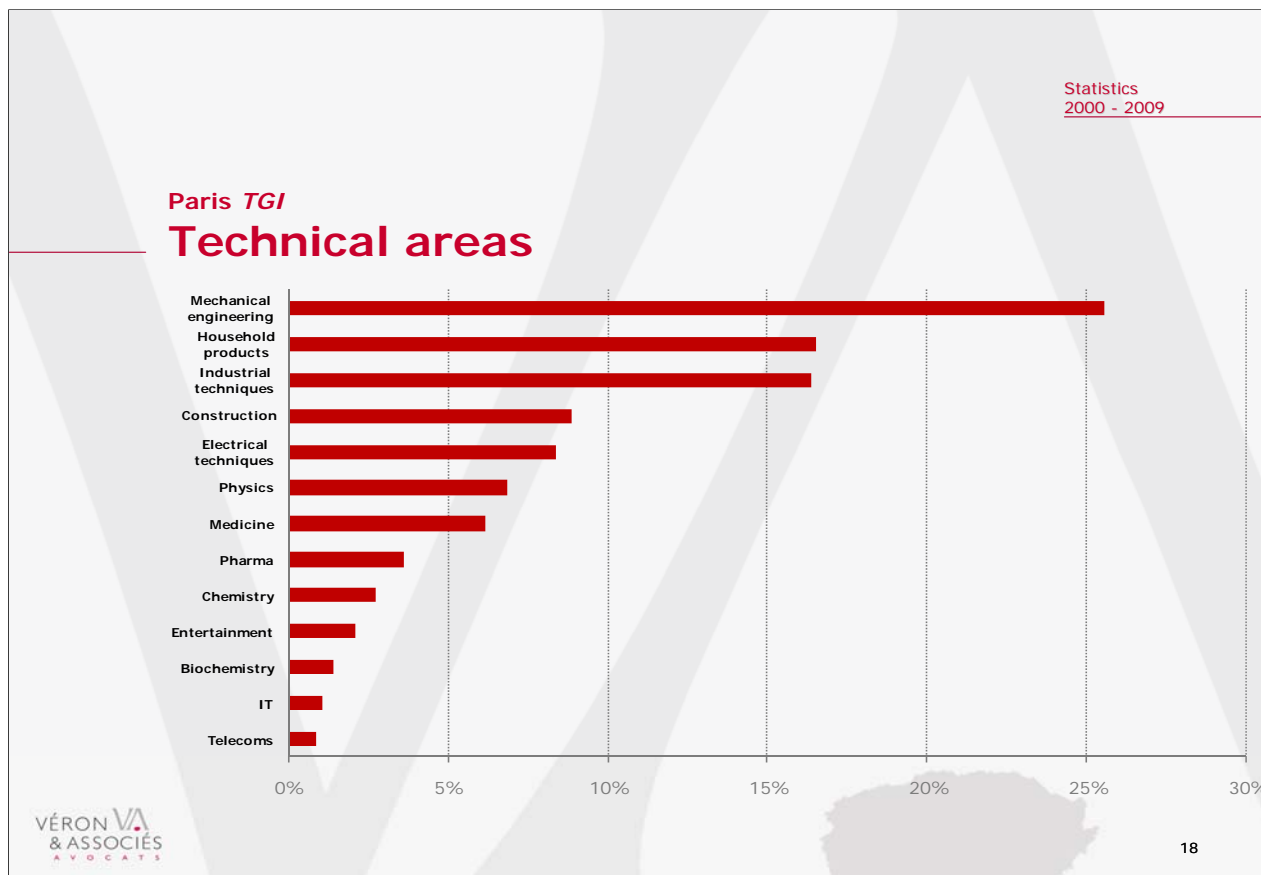
French patents represented less than 25% of the patents in force, but more than 50% of the patents invoked



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This chart represents the evolution of the proportion of French and European patents invoked before the Paris TGI (which handles the majority of national patent litigation), presented in the previous chart, in relation to the proportion of French and European patents in force on French territory: up until the end of this 10-year period, a majority of French patents were invoked in support of proceedings before the Tribunal de Grande Instance of Paris while the large majority of patents in force on national territory are European patents.



This chart illustrates the distribution of patent infringement cases before the Tribunal de Grande Instance of Paris according to their technical area, all decisions being taken into account.

The area giving rise to the most litigation is by far that of mechanical engineering (26%).

Industrial techniques (16%) and household products (16%) are tied in second position.

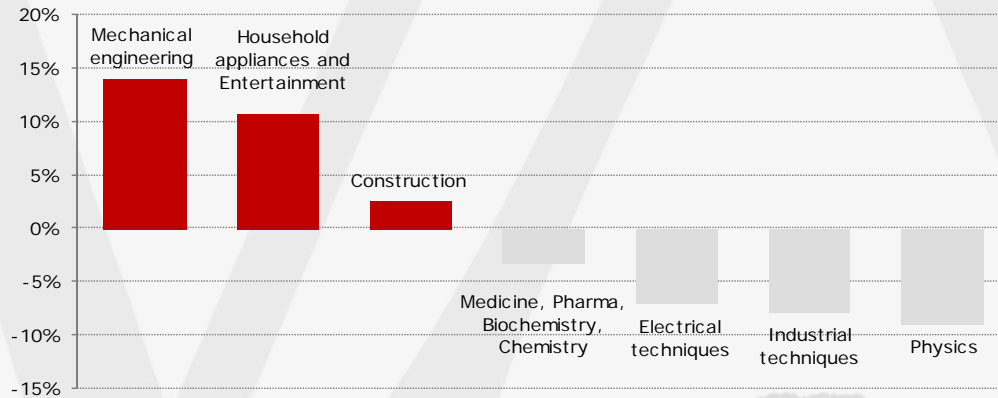
Health industries constitute an appreciable part of the litigation: medical and veterinary sciences (6%), pharmaceutical industry (4%), biochemistry (1%).

The areas giving rise to the least litigation are the sports, games and entertainment industries (2%), the telecommunications industry (1%) and the data processing and IT industry (1%).

Paris TGI

Over- or under-representation of technical areas in litigation

Difference between the share of the technical fields in the number of patents filed and their share in litigation.

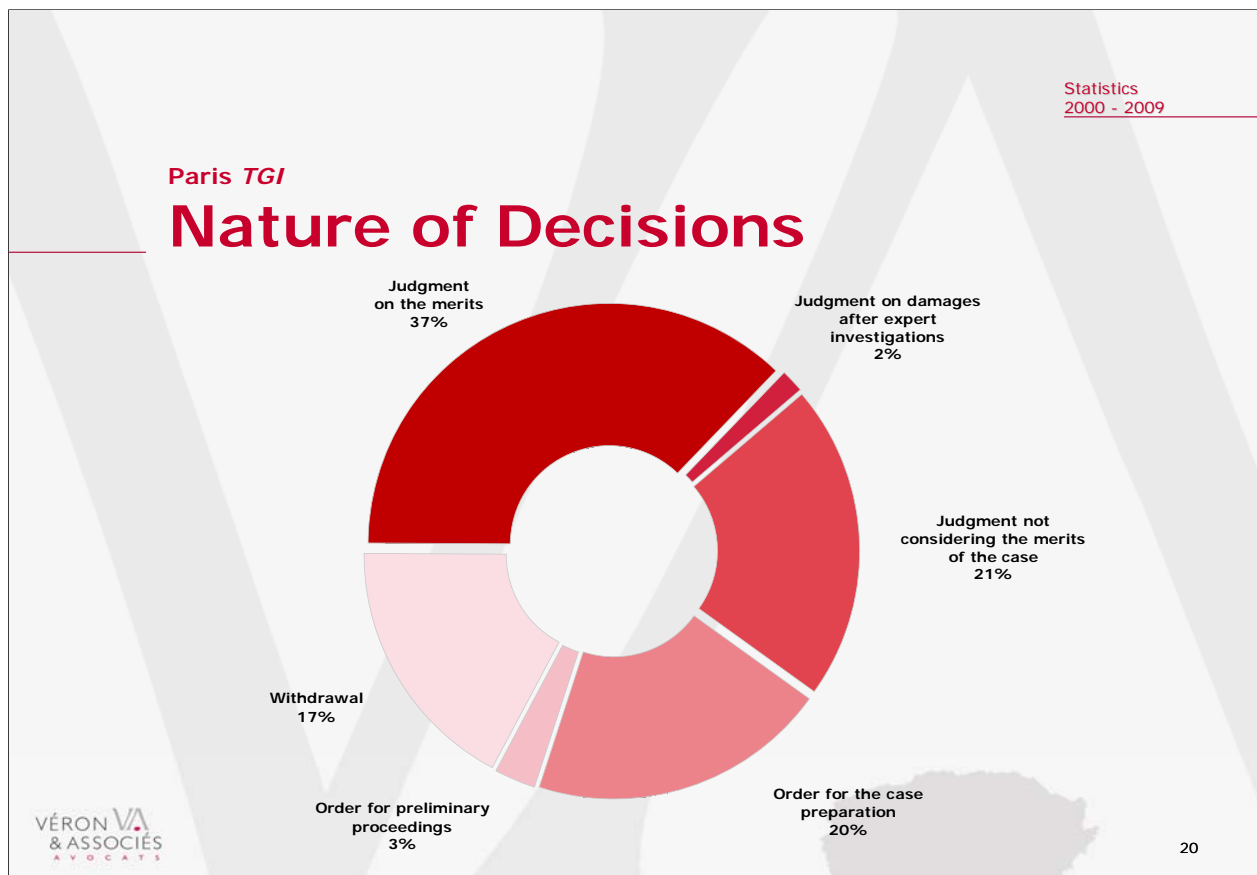


This chart highlights the proportional representation of the main technical areas in litigation in relation to the patents filed in these areas.

Patents relating to the mechanical engineering industry and to household products and the entertainment industries are over-represented in litigation (the percentage of infringement proceedings involving patents in this area is more important than the percentage of patents in force falling under this area).

Conversely, patents in the areas of electrical techniques, industrial techniques and physics do not give rise to much litigation in relation to the significance of the number of patents filed in these areas.

The areas whose representation in national filings is close to their representation in litigation (within 5%) (source: Répartition des dépôts par unités techniques, INPI/OPI, May 2007) are the sectors of construction, chemistry, medicine, the pharmaceutical industry and biochemistry.



This chart represents the nature of the decisions handed down by the Tribunal de Grande Instance of Paris over the 2000-2009 period.

Judgments ruling on the merits of the case represent 37% of the decisions handed down by the Tribunal de Grande Instance of Paris, followed by judgments that do not consider the merits of the case (21%) such as, for instance, decisions ordering the cancellation of a saisie-contrefaçon.

The orders for case preparation occupy a non-negligible part with 20% of the decisions rendered, which shows an increase in the powers of the Judge in charge of case preparation.

17% of the decisions are withdrawals that can probably be explained by settlement agreements ending a dispute.

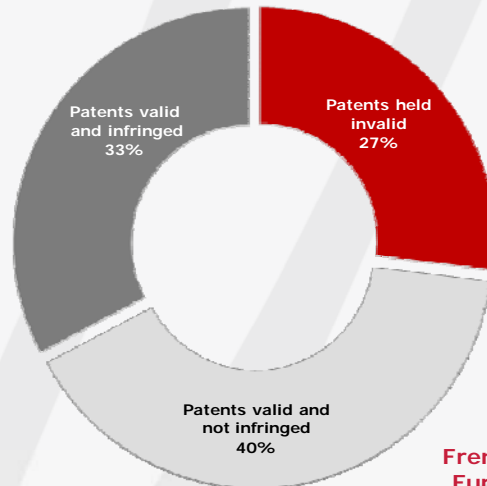
2000-2009 : 1423 decisions on the merits in patent cases

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total	Moyenne
TGI Paris	77	89	69	74	61	63	89	81	67	98	768	77
CA Paris	43	33	44	35	52	58	59	42	44	43	453	45
Cour de cassation	15	14	24	21	23	17	12	28	25	23	202	20
Total	135	136	137	130	136	138	160	151	136	164	1423	142

This table lists only the decisions handed down on the merits each year by the Tribunal de Grande Instance of Paris, the Cour d'Appel of Paris and the Cour de Cassation since 2000.

Paris TGI 2000-2009

Validity and infringement



**French patents and
European patents**
(654 patents)

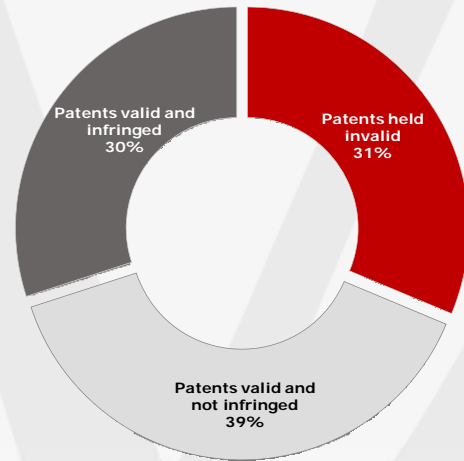
This chart illustrates the outcome of the decisions handed down by the Tribunal de Grande Instance of Paris in the 585 infringement cases for which a judgment on the merits was rendered between 2000 and 2009 and which related to 654 patents (some cases involving several patents and some patents being involved in several cases), i.e. an average rate of 1,1 patent per case.

The patents are held invalid in 27% of cases. The Tribunal de Grande Instance considers the patents valid but dismisses the claim for infringement in 40% of cases.

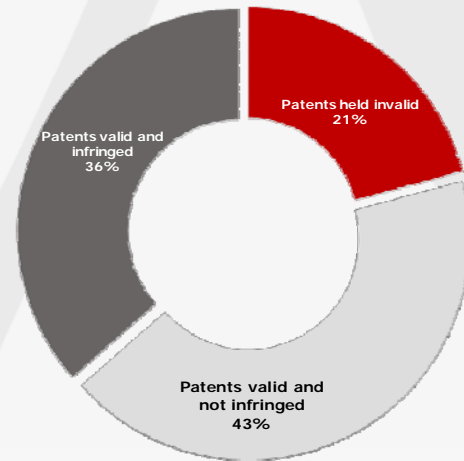
On average, over the 2000-2009 period, the claim for infringement is accepted in 33% of cases.

Paris TGI 2000-2009

Validity and infringement FR/EP



French patents
(380 patents)



European patents
(274 patents)

Judges of the Tribunal de Grande Instance of Paris hold French patents invalid in 31% of cases, while the French designations of European patents are held invalid in only 21% of cases.

European patents thus seem to have higher guarantees of validity than French patents.

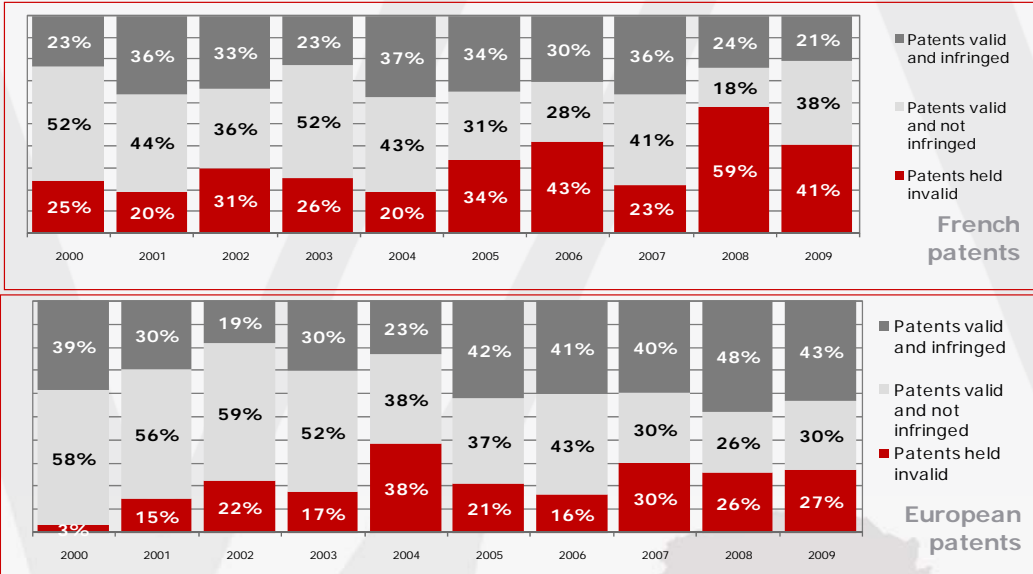
In 39 to 43% of cases, the patent is considered valid (or its validity is not disputed) but the claim for infringement is dismissed, depending on whether the action is based on a French patent or on a European patent.

On average, over the 2000-2009 period, the chances of success of a claim for infringement are significantly higher if the patent is European (36% as compared with 30% for French patents).

Statistics
 2000 - 2009

Paris TGI 2000-2009

Validity and infringement FR/EP



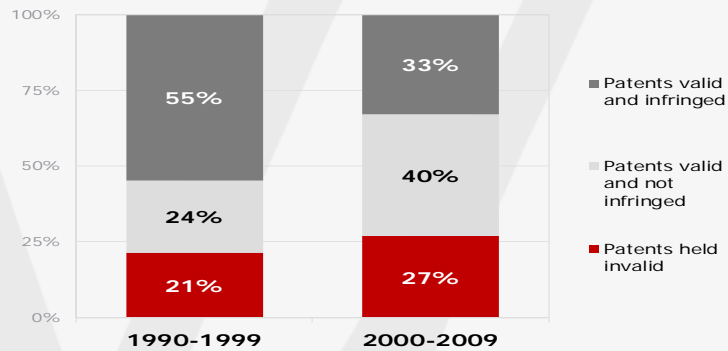
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These charts show, on a yearly basis, the outcome of infringement proceedings for French patents and for European patents in which a decision was handed down by the Tribunal de Grande Instance of Paris.

This data is analysed in further details in the following charts.

Paris TGI 1990-1999 vs 2000-2009

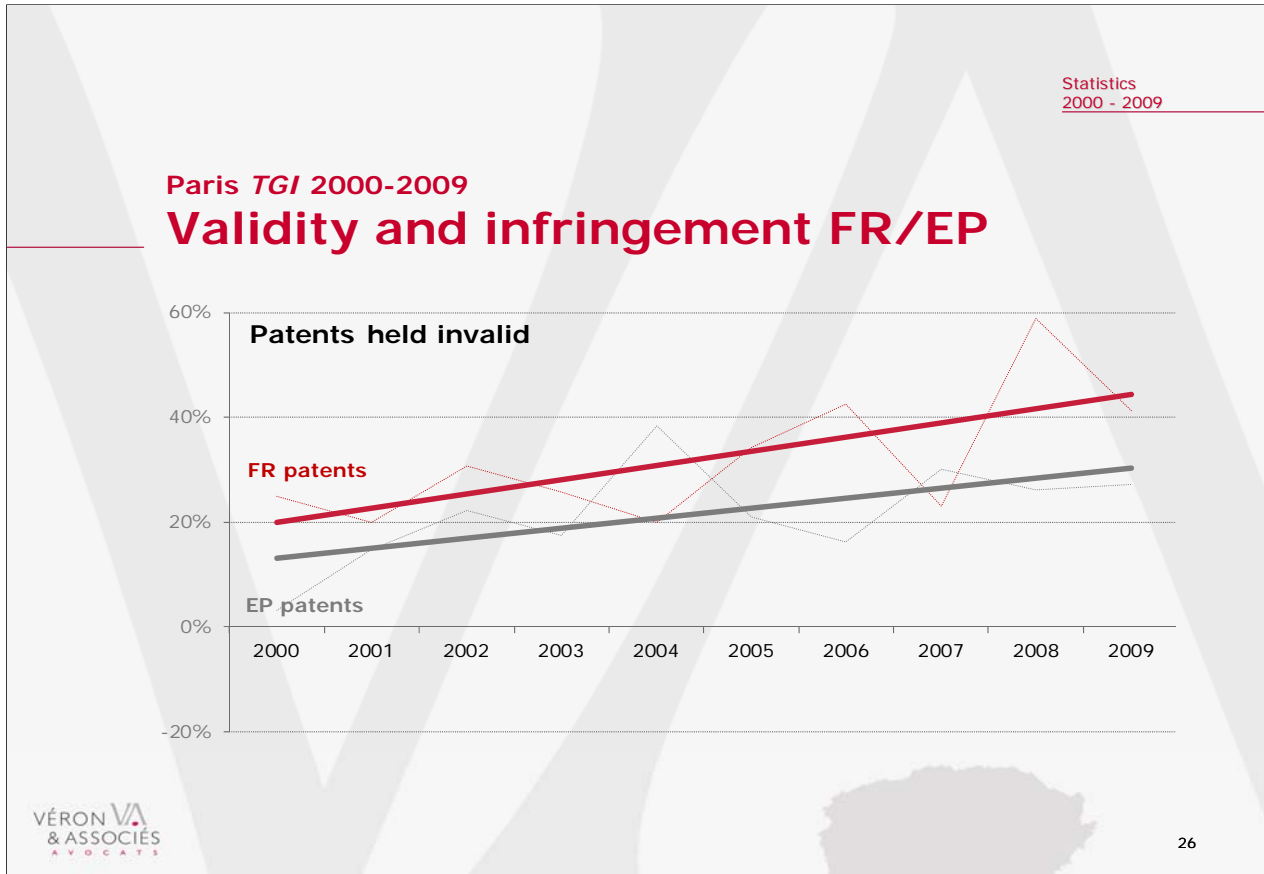
Validity and infringement



This chart compares the outcome of the decisions handed down by the Tribunal de Grande Instance of Paris over the 1990-1999 period and over the 2000-2009 period.

The total amount of French and European patents held invalid has significantly increased in comparison with the 1990-1999 period.

There were more claims for infringement held admissible during the 1990-1999 period (55% of cases) than during the 2000-2009 period (33% of cases).



This chart shows a very clear upward trend in patent invalidity: French judges have raised the bar since 2000.

As was already observed, the invalidity rate is more important for French patents than for European patents.

However, both cases show that the trend moves toward more severity: at the end of the period, the invalidity rate is in the order of 40% for French patents and 30% for European patents.



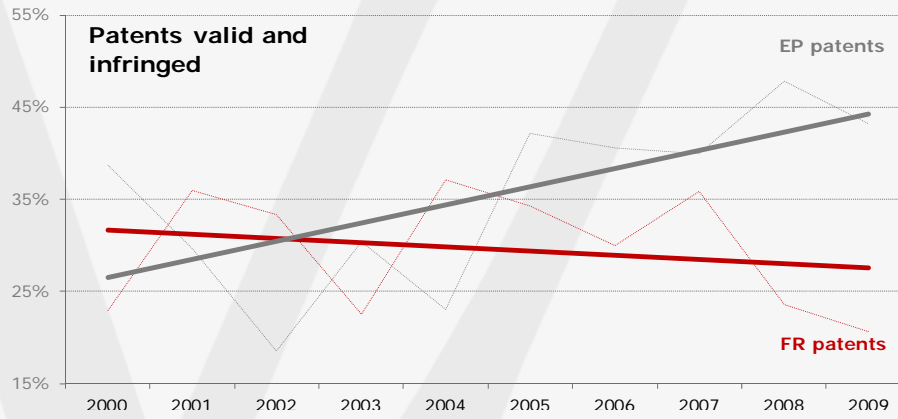
This chart shows a decrease in cases in which the judges dismiss the claim for infringement, while considering that the patent is valid (or finding that its validity is not disputed).

At the end of the period, they are in the order of 30% for both French patents and European patents.

Statistics
2000 - 2009

Paris TGI 2000-2009

Validity and infringement FR/EP



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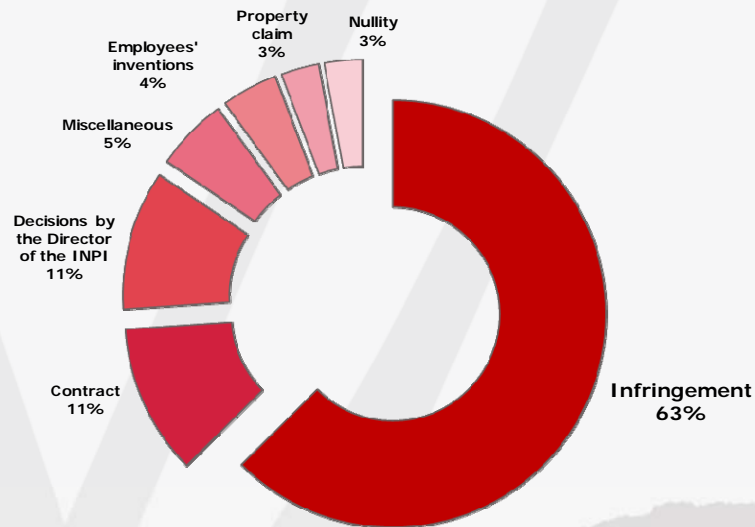
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To conclude, the trend is changing favourably for the holders of European patents, with chances of success increasing from 25% in 2000 to 45% in 2009.

The situation is not as favourable for the holders of French patents, with a declining trend in the latter's chances of success over this 10-year period.

Cour d'Appel of Paris 2000-2009

Nature of cases



Before the Cour d'Appel of Paris, infringement cases represent a lower proportion (63%) than that observed in first instance (81%).

Judgments relating to contracts are the most frequently appealed: 11% of the decisions handed down by the Cour d'Appel of Paris relate to contracts, while this type of litigation covers only 5% of first instance decisions.

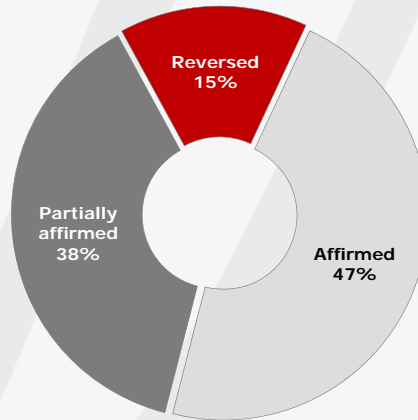
The other litigations represent a slightly stronger or equivalent proportion in comparison with that observed before the Tribunal de Grande Instance of Paris.

The Cour d'Appel of Paris handles a specific type of litigation: appeals lodged against the Director of the INPI.

This specific litigation accounts for approximately 7 cases per year (as compared with 10 cases over the previous ten-year period).

Cour d'Appel of Paris 2000-2009

Judgments affirmed / reversed



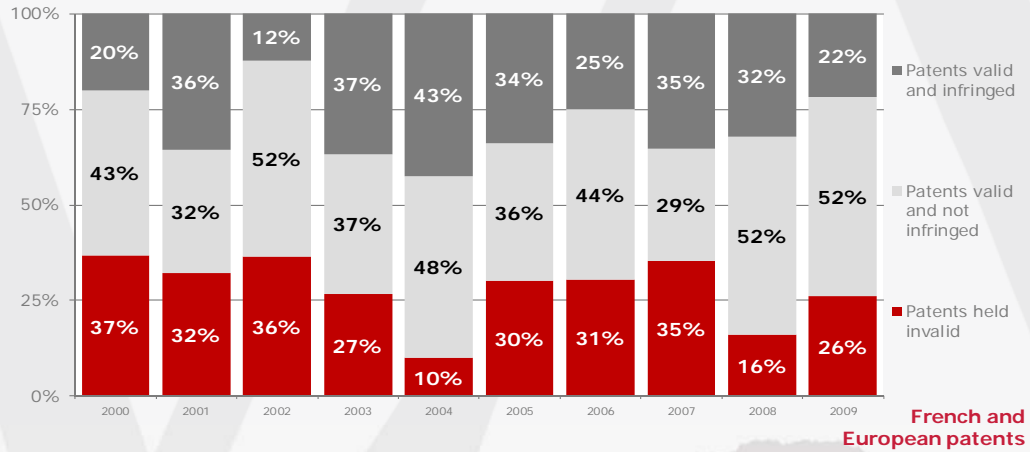
In patent litigation, all decisions taken into account, 85% of decisions handed down by the Tribunal de Grande Instance of Paris are (totally or partially) affirmed by the Cour d'Appel of Paris, a rate identical to that noted over the 1990-1999 period.

This rate remains higher than the national average of judgments affirmed in appeal proceedings, all cases taken into account, which was 80% over the 2002-2006 period (source : Annuaire statistique de la Justice civile 2008).

Statistics
 2000 - 2009

Cour d'Appel of Paris 2000-2009

Validity and infringement



French and European patents

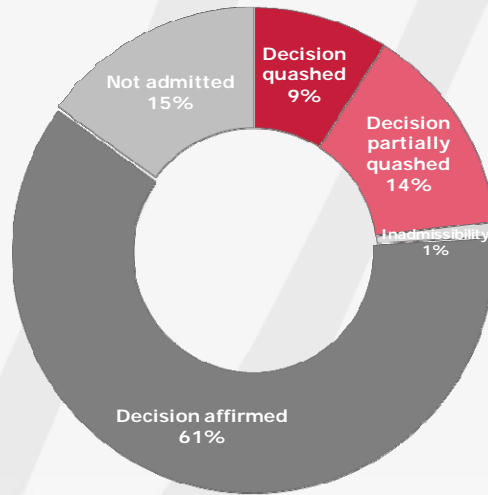
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This chart shows the outcome of French and European patents invoked in support of an action for infringement and presented before the Cour d'Appel of Paris since 2000 within the framework of the appeal lodged against first instance decisions.

Cour de Cassation 2000-2009

Decision affirmed / decision quashed



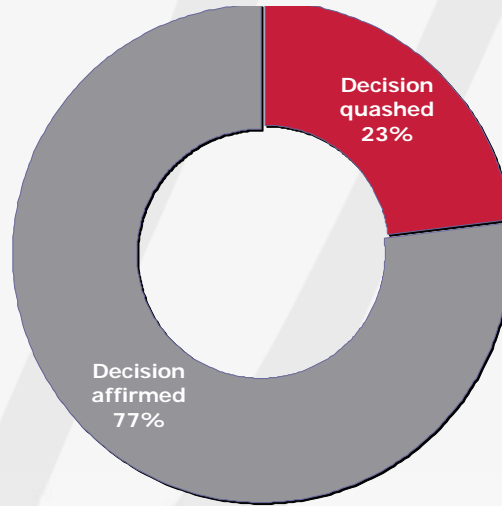
This chart gives a detailed overview of the outcome of cases brought before the Cour de Cassation.

It identifies the cases of dismissal of the appeal (affirming the decision of the Cour d'Appel), those of non admission (by a stereotyped decision), inadmissibility cases and, finally, cases of total or partial quashing of the decision of the Cour d'Appel.

Non admission cases have been assessed, on the basis of unofficial information, at 15% (a rate which is lower than the general rate of the commercial chamber of the Cour de Cassation, which is in the order of 30%).

Cour de Cassation 2000-2009

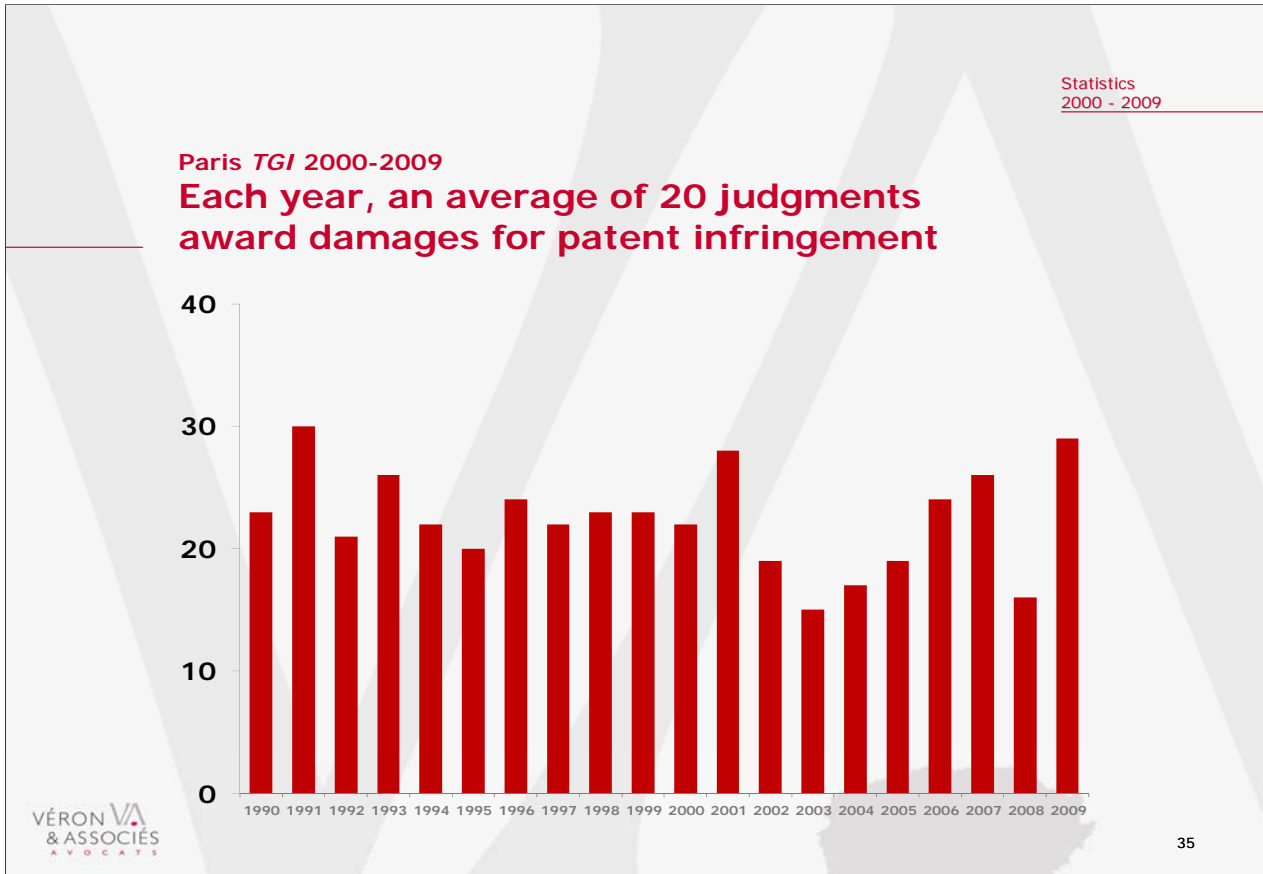
Decision affirmed / decision quashed



This chart gives an overall picture by placing non admission and inadmissibility decisions in the same category as dismissals and by placing partially quashed decisions in the same category as totally quashed decisions.

Patent infringement damages

Tribunal de Grande Instance of Paris, 2000-2009

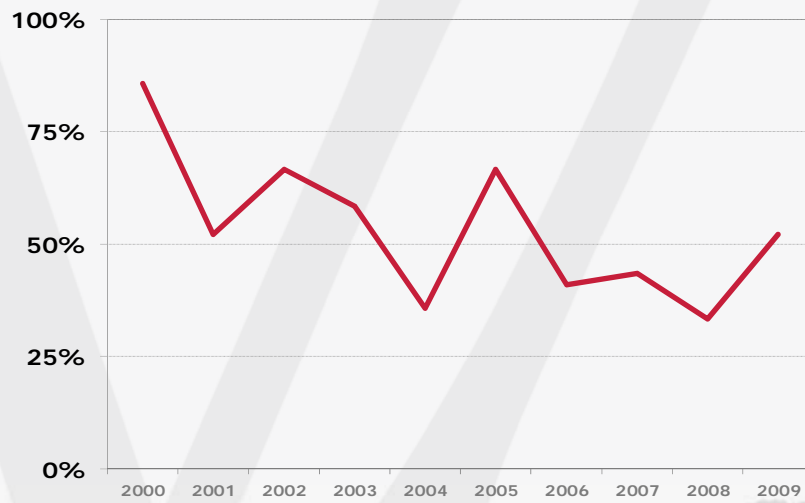


On average, over the 1990-2009 period, the Tribunal de Grande Instance of Paris issued approximately twenty decisions on the damage caused by patent infringement

Statistics
2000 - 2009

Paris TGI 2000-2009

The *Tribunal* appoints ever less frequently a court expert for the assessment of damages



Percentage of judgments ordering expert investigations
(the other judgments award a fixed sum without ordering expert investigations)

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In more than 80% of cases, the case ends during the expert investigations for the assessment of damages



This bar chart makes an annual comparison between:*

- *the number of judgments ordering expert investigations and allocating an advance payment*
- *and the number of judgments ruling after expert investigations.*

Therefore, in more than 80% of cases in which the Tribunal ordered expert investigations, the case ends before the Tribunal has handed down a final ruling on the prejudice.

The most frequent reason is that, in light of the expert's work, the parties reach an amicable agreement either during the expert investigations or on the basis of the expert's report.

** There is an interval of time corresponding to the duration of the expert investigations, between the judgment ordering the expert investigations and the judgment ruling after the expert investigations in the same case: we may estimate this interval of time to be between one and two years, the average duration of expert investigations. In other words, it would be more accurate to individually count the cases in which the Tribunal ordered expert investigations and where such cases were not subject to a judgment on the merits, but this is a complex task. The adopted method, while it overlooks the one or two year interval, provides a realistic approximation.*

Paris TGI 2000-2009

Average amount of damages: €220,000

Total amount of damages awarded from 2000 to 2009	€47,621,411
Number of judgments	214
Average amount	€222,530

The Tribunal de Grande Instance of Paris handed down 214 decisions setting the amount of the damages.

The above analysis only takes into account the decisions in which the patentee won the infringement proceedings.

This analysis includes:

- *the damages awarded as an advance payment, with expert investigations ordered to determine the final amount*
- *the damages awarded as a fixed sum, without expert investigations*
- *the final amount of the damages awarded, in light of an expert report.*

The sums allocated pursuant to Article 700 of the French Code of Civil Procedure are not considered in this calculation.

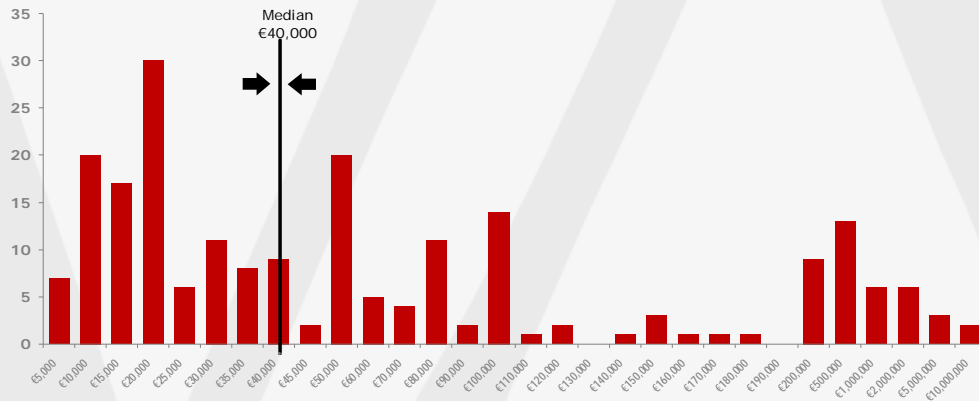
The average amount of the damages thus awarded in 214 judgments is close to €220,000.

The average for the 2000-2009 period does not reflect the real amounts awarded by the Tribunal, as it is increased by the decisions awarding exceptional amounts.

For this reason, the median is presented on the next page.

Paris TGI 2000-2009

Median amount of damages: €40,000



The median amount of damages corresponds to the middle amount awarded (as many values above as below the line).

When the values are very disparate (in one case, the Tribunal awards €10,000,000 to the patentee, while dozens of judgments award less than €50,000), the median amount gives a more accurate picture of reality.

Paris TGI 2000-2009

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
14/09/2007	Philips Electronics / Manufacturing Advanced Media Europe	€2,000,000
14/05/2003	Dentsply Research & Development Corporation, / Electro Medical Systems	€1,256,178
29/10/2008	L'Air Liquide/ Yara France	€1,195,050
16/09/2009	Hager Security formerly Atral / Cedom, Leroy Merlin France	€1,184,806
09/11/2004	Schneider Electric Industries / Wenzhou Fly-Dragon Electric	€1,000,000
12/09/2007	SEB / De Longhi	€989,858
08/03/2006	Citec Environnement / K.A. France, Ssi Schaeffer	€693,653
28/01/2009	Treves / Visteon Systèmes Intérieurs	€530,000
10/07/2002	Sedac-Mecobel / J.P. Gruhier SA, Styling	€517,036
04/12/2001	Fernand Scherrer, Normalu / New Mat	€352,380
23/02/2007	PTC / Anlagentechnik-Baumaschinen-Industriebedarf Maschinenfabrik und Vertriebsgesellschaft, Hks Dreh Antriebe	€306,347

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

This table lists the greatest damages awarded by the Tribunal de Grande Instance of Paris since 2000, excluding the advance payments and the sums awarded pursuant to Article 700 of the French Code of Civil Procedure.

It does not take into account the damages paid in infringement cases whose final amounts were assessed within the framework of settlement agreements.

Over the last ten-year period, the amount of damages exceeded one million Euros in only two cases, including Ciba Geigy Rhône Poulenc Agrochimie v. Interphyto, Laureau and Chavanne de Dalmassy which, with €6,148,848, remains the case with the largest damages ever awarded.

US hit parade : greatest awards since 1995

Date	Claimant	Defendant	Amount of Verdict (\$)	Amount of Verdict (€)
June-09	Centocor Inc.	Abbott Laboratories	\$1,848,000,000	€1,328,712,000
March-07	Alcatel-Lucent	Microsoft Corp.	\$1,538,000,000	€1,105,822,000
August-03	Eolas Technologies	Microsoft Corp.	\$521,000,000	€374,599,000
February-08	Saffran	Boston Sci.	\$431,867,351	€310,512,625
April-09	Uniloc USA Inc.	Microsoft Corp. et al	\$388,000,000	€278,972,000
April-08	Alcatel-Lucent	Microsoft Corp.	\$368,043,056	€264,622,957
April-06	Rambus	Hynix	\$306,900,000	€220,661,100
May-09	i4i LP	Microsoft Corp	\$277,000,000	€199,163,000
May-08	Medtronic	Boston Scientific	\$250,000,000	€179,750,000
September-07	De Puy	Medtronic Sofamor	€226,300,000	€162,709,700

Damages awards in the United-States remain considerably higher than damages awarded in France, since they frequently exceed \$100,000,000 (€72,000,000 approximately), which represents 12 times the highest amount of damages ever awarded by the Tribunal de Grande Instance of Paris.*

Since 2005, 15 damages awards in the United-States have exceeded \$120,000,000. The record amount for damages was granted in 2009: \$1,848,000,000 (€1,330,000,000 approximately) in Centocor v. Abbott Laboratories.

This disproportion is first and foremost explained by the difference in scale; the US market represents more than 300,000,000 consumers, while the French market only counts 60,000,000 consumers; therefore, the scale factor of the "total infringing sales" is generally 5 to 1.

Moreover, litigation before the US courts in fact relates, to a large extent, to the world production of the products concerned (when the products are manufactured in the US, the manufacture of such products constitutes an infringement of the US patent wherever in the world such products are later distributed).

The different rules of law, which allow the court to award punitive damages, are not frequently applied and cannot explain the disproportion between the figures in France and those in the US.

** Source: PWC 2010 Patent litigation study The continued evolution of patent damages law – Patent litigation trends 1995-2009 and the impact of recent court decisions on damages*

Conversion rate at 08/11/2010: USD 1,00 = EUR 0,7190

Paris TGI 2000-2009

The largest **advance payments** awarded

Date	Parties	Advance payment
09/02/2007	Ethypharm / Laboratoires Fournier	€10,000,000
17/03/2009	Micsystemes / Ouizille, Bourbouloux, Financiere Libertel 16, Acentic	€2,600,000
29/06/2004	Technogenia / Martec, Ateliers Joseph Mary, Bmi (Martec), Actciale, Francis Barrat	€2,000,000
07/04/2009	Instrumentation Laboratory / Diagnostica Stago	€2,000,000
25/03/2009	Novartis AG / Johnson & Johnson Vision Care, Johnson & Johnson Medical, Ethicon	€1,000,000
06/06/2007	Rotanotice / M.Y. Healthcare France	€500,000
09/10/2001	Citec Environnement / K.A France, Ssi Schaeffer, Ssi Schaeffer	€304,899
09/10/2001	Sara Lee De N.V., Sara Lee De France / La Johnson Francaise	€250,000
28/03/2000	Glaxo Operation UK Ltd / Laboratoire Flavelab	€228,674
19/10/2004	SEB / De Longhi	€220,000
11/03/2005	Valois / Rexam Dispensing System anciennement Sofab	€200,000
01/12/2005	Gilles Giora Concept Acoustique, Soproci / Socarel, Bec Freres	€200,000
26/09/2007	Mutzel / Institut Pasteur, Philippe Marliere, Didier Fondeur, Evologic	€200,000
27/05/2009	Bobst / Heidelberg Postpress Deutschland	€200,000
03/10/2007	Treves / Visteon Systèmes Intérieurs	€200,000
05/10/2005	Zodiac Pool Care Europe / Arch Water Products Tematech, Aquaproducts	€200,000

This table lists the top largest advance payments awarded by the Tribunal de Grande Instance of Paris since 2000.

Since the early 2000s, 16 decisions have awarded an advance payment exceeding €200,000, as compared to 3 decisions over the previous 10-year period.

This trend has accelerated in 2009.

Paris TGI 2000-2009

Costs* awarded to the patentee

The average amount (2000-2009) awarded pursuant to Article 700 of the French Code of Civil Procedure (legal cost) in case of patent infringement is

€15,500

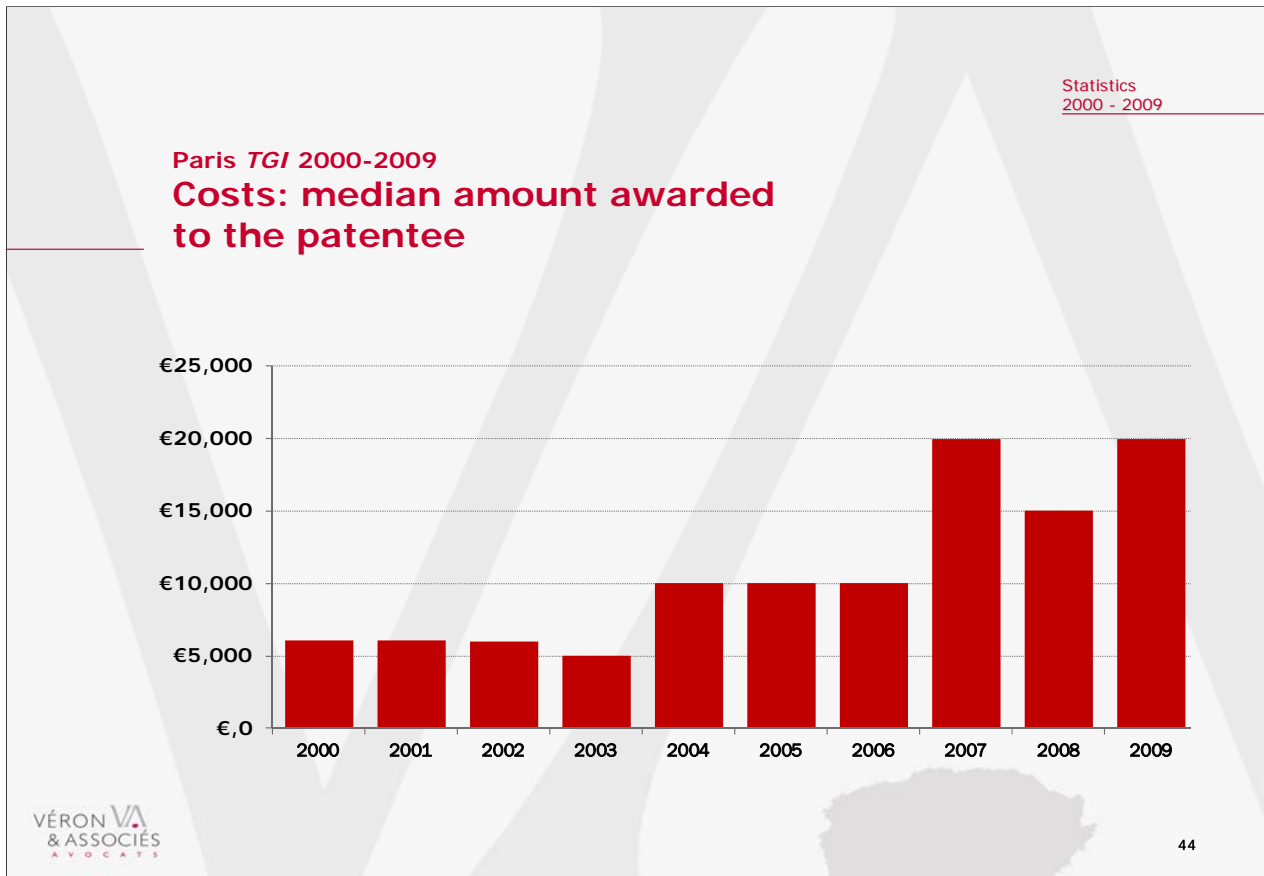
The median amount is

€8,000

Over the 2000-2009 period, the average amount awarded to the patentee pursuant to Article 700 of the French Civil Procedure Code has significantly increased.

When compared to that of the previous ten-year period, this average amount has been almost multiplied by 5: it increased from €3,269 (1990-1999) to almost €15,500 (2000-2009).

The median amount also displays this increase: it has been multiplied by 3.5 (increasing from €2,287 over 1990-1999 to €8,000 over 2000-2009).



The upward trend of the median amount awarded pursuant to Article 700 by the Tribunal de Grande Instance of Paris started in 2000 and has been confirmed over the ten-year period.

The median reaches almost €10,000 since 2004.

This trend has accelerated since 2007: the median amount reached €20,000 in 2007 and 2009.

Paris TGI 2000-2009

Costs: the largest amounts awarded to the patentee

Date	Parties	Article 700
07/04/2009	Instrumentation Laboratory SPA / Diagnostica Stago	€315,000
29/06/2004	Technogenia / Martec, Ateliers Joseph Mary, BMI	€150,000
16/09/2009	Hager Security anciennement Atral / Cedom, Leroy Merlin France	€140,000
29/10/2008	L'Air Liquide/ Yara France	€120,000
19/03/2008	Hesco Bastion / Link Middle East, Sogea Reunion	€100,000
12/03/2008	Polymer Group / Scamark, Coopérative approvisionnement Ile de France, Kapa Reynolds, US Nonwovens	€75,000
08/03/2006	Citec Environnement / K.A. France, Ssi Schaeffer	€75,000
27/05/2009	Bobst / Heidelberg Postpress Deutschland Gmbh	€50,000
29/04/2009	Adee Electronic / Micro Technologies Innovations	€50,000
21/01/2009	Honda Giken Kogyo Kabushiki Kaisha / Top Accessoires, Alpa Accessoires-Loisir-Plein Air, Acimex	€50,000
09/02/2007	Ethypharm / Laboratoires Fournier	€50,000
09/11/2004	Breda, Cuypers, Lieberherr Associates / International Dental Research, Ateliers Laumonier, International Dental Research	€44,000
01/10/2004	Seiko Epson Corporation / Armor	€40,000

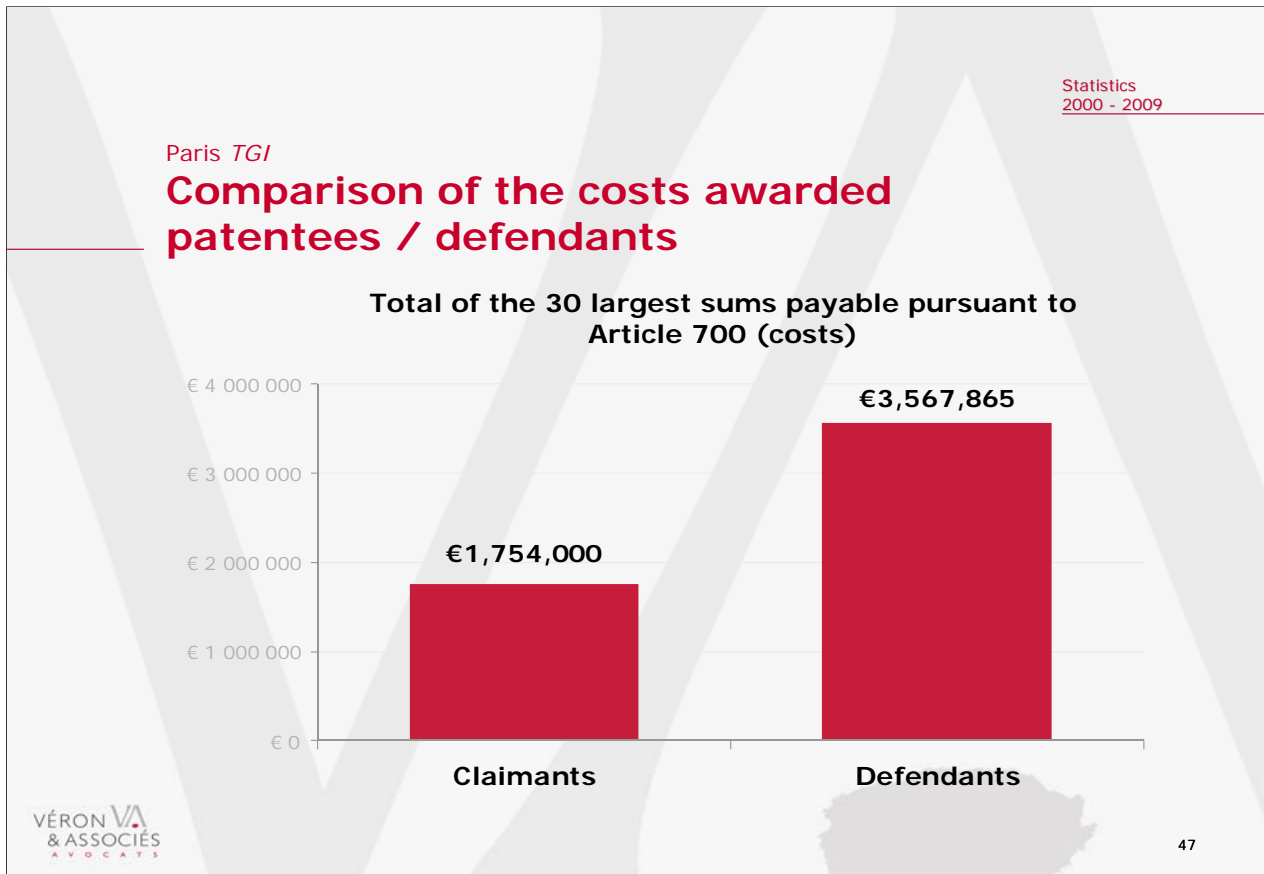
The list of the largest amounts awarded to the patentee since 2000, pursuant to Article 700, shows that the judges have revised their assessment upwards: among 11 decisions awarding more than €50,000 pursuant to Article 700, 8 were handed down in 2008 and 2009.

Paris TGI 2000-2009

Costs: the largest amounts awarded to the defendant

Date	Parties	Art. 700 defendants
06/10/2009	Compagnie Industrielle des Lasers Cilas / Malvern Instruments	€300,000
01/07/2009	Otis Elevator / Schindler (RG 06/18186)	€300,000
13/01/2009	Newdeal / Wright Medical	€295,840
14/01/2009	Abbott Ireland, Abbott France / Evysio Medical Devices Ulc	€260,000
26/01/2005	Luk Lamellen und Kupplungsbau GmbH contre Valeo	€200,000
01/07/2009	Otis Elevator / Schindler (RG 07/07376)	€200,000
16/10/2009	Lely Enterprise AG / Delaval International AB, Delaval	€175,000
03/03/2009	Trikon Technologies / Alcatel Vaccum Technology France	€162,900
09/03/2007	Mitsubishi Electric Corporation, Melco Mobile Communications Europe / CP8 Technologies	€150,000
19/05/2009	Paul Boye Technologies / Sioen Industries	€150,000
10/11/2009	KCI Licensing / Smith et Nephew	€100,000
12/02/2008	Arrow Generiques, Eurogenerics, Ratiopharm / MSD Somerset, Merck & Co	€100,000
30/01/2008	ABB France the successor to Soule Protection Surtensions / Indelec, Citel	€100,000
21/06/2006	Eschenbach Optik, Marchon Eyewear / Optigen	€100,000

The list of the largest sums awarded to the defendants since 2000, pursuant to Article 700, shows that the amounts awarded have increased even more significantly and that the judges have been more generous with them: €100,000 and more was granted in 14 cases over the 2000-2009 period, of which 8 were in the year 2009 alone.



Over the 2000-2009 period, the 30 largest sums awarded to the patentees, claimants in the proceedings, pursuant to Article 700 of the French Code of Civil Procedure, amount to a total of €1,754,000.

However significant the increase in the sums awarded pursuant to this article may be as compared to the previous ten-year period, a parallel must be drawn with the sums awarded to the defendants pursuant to the same article.

Over the 2000-2009 period, the total of the 30 largest sums awarded to the defendants pursuant to Article 700 of the French Code of Civil Procedure amounts to €3,567,865.

Judges seem more in favour of the defendants when having to assess the compensation that the patentee must pay to them pursuant to Article 700.

Other ancillary sanctions (averages)

■ Injunction under penalty	€2,500 per infraction
■ Publication	3 journals
■ Total cost	€10,500
■ Provisional enforcement	85% of the cases
■ Confiscation	16% of the cases

Over the 2000-2009 period, among 214 decisions awarding damages for the prejudice caused by the infringement, almost 80% (171) of the decisions handed down by the Tribunal de Grande Instance of Paris ordered an injunction under penalty: this injunction varies between €152,449 and €1.52 per infraction.

The median amount of the ordered injunctions under penalty – €457 per infraction – is more significant than the average amount which is almost €2,500 per infraction.

In 7 decisions, the judges awarded a penalty per late day, sometimes (in 3 decisions) in addition to the penalty awarded per infraction.

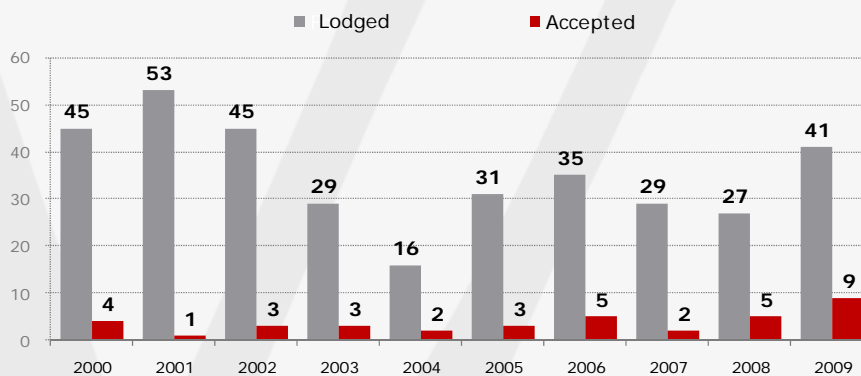
Among the ancillary sanctions accompanying the awarding of damages, the publication of the orders of the judgment in journals is ordered in 66% of the decisions (in 142 decisions): the ordered publication concerns three journals on average and does not exceed an average total cost of €10,500 (this total cost was of FRF40,000 on average, i.e. a little more than €6,000, over the 1990-1999 period).

Judges sometimes also order the publication on the website of the party held liable for infringement.

Among 214 decisions awarding damages, almost 85% ordered a provisional enforcement and 16% ordered a confiscation measure.

Paris TGI

Counterclaims for abuse of procedure



Among the 585 decisions on the merits handed down in patent infringement cases over the 2000-2009 period, a total of 351 counterclaims for abuse of procedure were lodged before the Tribunal de Grande Instance of Paris of which 37 were accepted.

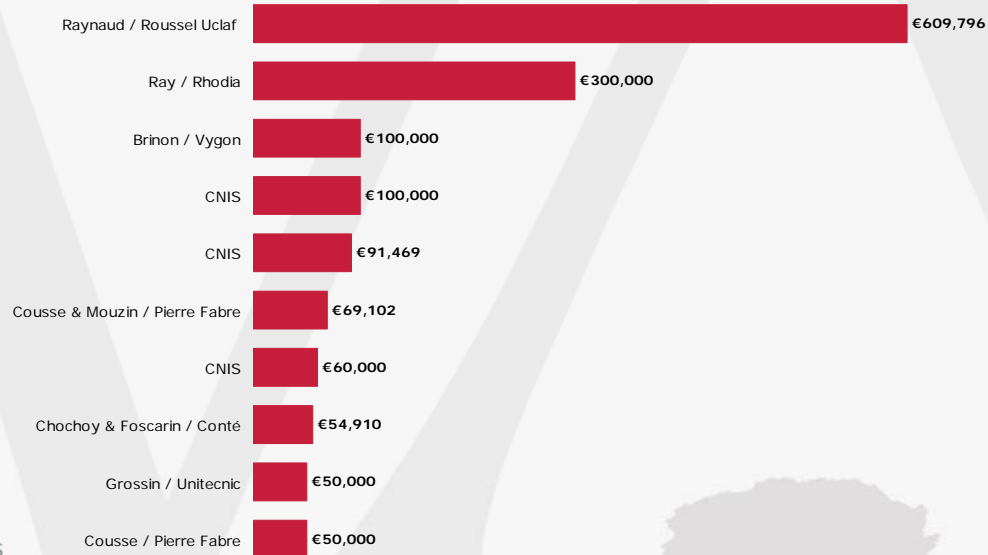
In other words,

- *60% of judgments on the merits in patent infringement cases are subject to a counterclaim for abuse of procedure*
- *and the Tribunal accedes to only 11% of these counterclaims.*

Employees' Inventions

*Tribunal de Grande Instance
and Cour d'Appel of Paris, 1987-2009*

Greatest additional remunerations awarded by the CNIS and the French courts (per patent and per inventor), 1987-2009



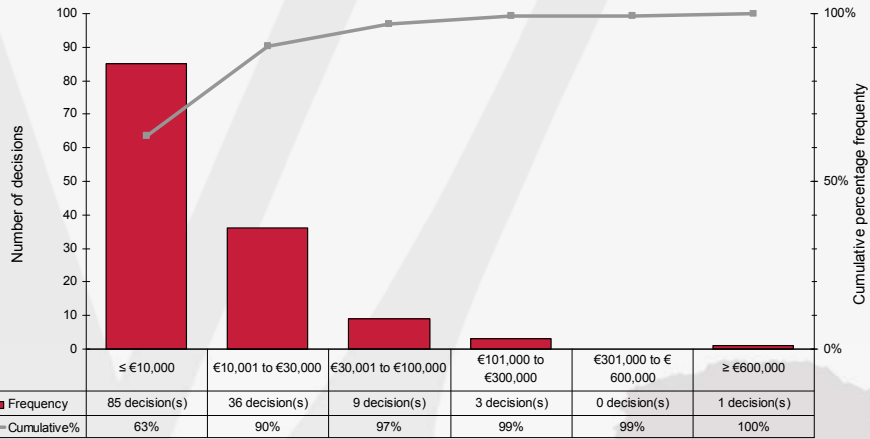
Over the 1987-2009 period, 108 decisions (Tribunal de Grande Instance of Paris and Cour d'Appel of Paris) considered the amount of the additional remunerations granted to the employees-inventors.

The 10 largest additional remunerations awarded by the CNIS (National Committee of Employee Invention) and the French courts vary between €610,000 and €50,000, per patent and per inventor.

Since 1997, the record per patent and per inventor has been held by the Raynaud v. Roussel Uclaf case, in which the Cour d'Appel of Paris awarded an additional remuneration of €610,000.

Additional Remuneration

Most (63%) of the additional remunerations awarded (average per patent, per inventor) are below €10,000
 90% are below €30,000



Most (63%) of the additional remunerations awarded (average per patent and per inventor) are below €10,000.

90% are below €30,000.

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Pierre Véron



1, rue Volney
75002 Paris
Tel. +33 (0)1 47 03 62 62
Fax +33 (0)1 47 03 62 69

53, avenue Maréchal Foch
69006 Lyon
Tel. +33 (0)4 72 69 39 39
Fax +33 (0)4 72 69 39 49

pierre.veron@veron.com
www.veron.com

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