Patent litigation in Paris
in the 2010s

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VÉRON & ASSOCIÉS AVOCATS
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Patent litigation Paris 2010

The casting

- *Avocats* and *conseils en propriété industrielle*
- No bifurcation
- *Tribunal de grande instance* of Paris has now jurisdiction for the whole of France

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Avocats and *conseils en propriété industrielle*

- Cooperation is the general rule
- Proposed merger (*conseils en propriété industrielle* becoming *avocats*) virtually withdrawn
- Joint ventures (enhanced cooperation) could be encouraged

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No bifurcation

- The civil court (*tribunal de grande instance)* deals with both infringement and validity
- Hence a number of differences:
  - More counterclaims for revocation (90% in France vs 25% in Germany)
  - Squeeze argument possible ("*if the patent were to be interpreted such that it would be held infringed, then it should be held invalid*")
- Invalidity action against FR designation possible even if EPO proceedings (opposition, appeal) still pending

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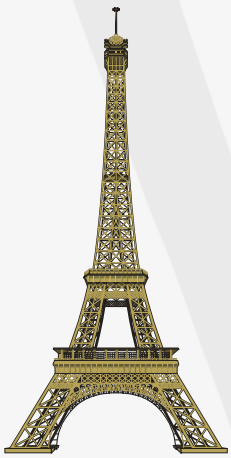
A single court for the whole of France



- Since 1 Nov 2009, the *Tribunal de grande instance* of Paris has exclusive jurisdiction for the whole of France
- 12 judges (4 sections of 3 judges) dealing with intellectual property
- 300-500 patent cases initiated per year

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The storyboard

- Preparing the case
- Written phase
- Oral phase

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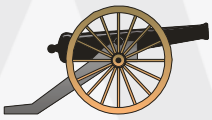

Preparing the case

- Warning letter only necessary for secondary infringers (dealers, users)
- *Saisie-contrefaçon* is standard practice

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Written phase

- Front loading requirement less rigorous than in Germany
- Summons first served to the defendant, then filed with the court
- Exchange of pleadings under the control of a judge supervising the case

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Preliminary injunction

- Difficult to obtain in France
- *Ex parte* injunction only in exceptional circumstances
- *Schutzschrifte* not available so far

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Oral hearing

- Usually within 18-24 months from summons
- 2-4 hours
- No experts, no witnesses

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The outcome

- Legal differences
- Damages
- Costs
- Appeal
- Cassation

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Legal differences

- Claimant
- Stay of proceedings
- Selection inventions
- Equivalence

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Damages

- Infringer's profit currently not an option for the plaintiff
- Lost profit easily available
- Publication of the judgment paid by defendant usually permitted by the court
- Statute of limitation: 3 years

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Costs

- No court costs (at all)
- Attorneys-at-law's costs nominal in 1st instance (comparable to Brago in appeal)
- No costs for patent attorneys
- Legal costs to the discretion of the court under article 700 Code of civil procedure (typical amount 15 000 €, maximum 300 000 €)

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Appeal

- Usually does not prevent immediate enforcement of the 1st instance judgment
- *De novo* review of the case (new evidence admissible)
- 18-24 months
- 1st instance judgment upholding rate: 80%

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Cassation

- Limited to points of law
- Special body of attorneys-at-law
- 24 months
- 80% of the recourses are rejected

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The End

Thank you

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