

Bird & Bird

France

Patent Litigation Q&A

June 2025



France – Patent Litigation

Where can patent infringement actions be started? Is there a choice of venue?

Civil actions and claims relating to patents shall be brought exclusively before the Court of Paris (*“Tribunal judiciaire de Paris”* at first instance and *“Cour d’appel de Paris”* on appeal).

This is an exclusive jurisdiction of the Paris court, meaning there is no choice of venue. In the case of patents and supplementary protection certificates, the President of the Paris Judicial Court also has exclusive jurisdiction to carry out an infringement seizure anywhere on French territory.

Are the judges’ specialists? Do they have technical backgrounds?

At the Court of Paris, several judges (1st instance and appeal court) are dedicated to IP litigations but they have no technical background.

How long does it take from starting proceedings to trial?

The Judicial Court of Paris usually brings cases to trial within between 2 and 3 years of commencement of proceedings.

Can a party be compelled to disclose documents before or during the proceedings?

The forced production of evidence may be ordered on a general basis under the Code of civil proceedings. It follows directly from the general principle of the collaboration of the parties in the determination of the truth. However, the burden of proof is quite high to order force production of evidence.

In addition, France has implemented the so called “IPR Enforcement Directive” n°2004/48/EC including the right of information. The court may order, upon request from the claimant, that information on the origin and distribution networks of the goods or services which are alleged to infringe be provided by the defendant, and/or any other person found in possession of the alleged infringing goods, using the alleged infringing services or providing services used in alleged infringing activities.

The right of information is independent from the infringement seizure – it is usually ordered as an additional measure to a seizure proving an infringement if not all the relevant information has been gathered during the seizure and may be ordered during the proceedings (on the merits or in interim proceedings). However, this right of information does not serve to prove the materiality of the infringement. When deciding to order the communication of information, the judges will consider the seriousness of the request and whether it is proportionate and respects confidentiality.

How are arguments and evidence presented at the trial?

Arguments and evidence are presented by way of written submissions up to the oral hearing. At the oral hearing, the parties will present their claims and means of defence, including law, facts and arguments before the court. The claimant speaks first, then the defendant (either in one row, or on each topic one after the other). The judges may ask the parties questions on specific aspects of the claim.

How long does the trial generally last and how long is it before a judgment is made available? Are judgments publicly available?

The oral hearings generally last 1 to 3 hours. The president of the panel announces the date of the upcoming decision at the end of the oral hearing and judges deliberate separately after the oral hearing. The court does not render its decision at the end of the oral hearing.

The judgments are generally communicated to the lawyers of the parties 1 to 3 months from the oral hearing. The court does not publish them but they are made publicly available on private dedicated web platforms.

Can a defence of patent invalidity be raised? Are infringement and validity issues heard together?

The alleged infringer may file a counterclaim for invalidity of the patent (having *erga omnes* effects). Invalidity may also be raised as a purely defensive mean to an infringement action (invalidity defense having only *inter partes* effects).

There is no bifurcated system, which means that the infringement and invalidity claims are heard together unless there are exceptional circumstances requiring separate proceedings.

Are infringement proceedings stayed pending resolution of validity in the national patent office (or, if relevant, the EPO) or another court?

Two situations should be differentiated:

- A court seized of an action for infringement of a French patent covering the same invention as a European patent that was opted-out from the UPC and that was applied for by the same inventor, with the same priority date shall stay proceedings until the date on which the French patent ceases to have effect (at the end of the EPO opposition period or at the end of the EPO opposition if any), or until the date on which the European patent application is refused, withdrawn or deemed to be withdrawn, or the European patent revoked. This stay is mandatory by law.
- In other cases (typically a claim for infringement involving a French patent or a European patent under opposition) the proceedings are stayed at the court's discretion, depending on whether a stay is in the interests of a good administration of justice. Criteria such as the likelihood of success of the opposition, whether the opposition decision is expected shortly can influence the assessment of the good administration of justice.

Are preliminary injunctions available? If they are, can they be obtained *ex parte*? Is a bond necessary? Can a potential defendant file protective letters?

Preliminary injunctions (PIs) are available for patents.

In theory, PIs can be obtained *ex parte* but such *ex parte* proceedings are exceptional. In practice, PIs are almost always *inter partes* proceedings, where the defendant can file written submissions/exhibits and to be represented by their lawyers at a quite comprehensive oral hearing.

Overall, PIs are granted in cases where there is a likelihood of success of the infringement action whilst considering the validity of the patent (if raised as a defence by the alleged infringer). The PI gives rise to a personal assessment by the court of the actual need for a PI. The court would consider whether a PI would be proportionate (weighing up pros/cons of an injunction regarding both the claimant's and the defendant's interests). In contrast to some other countries, the delay in requesting the PI after knowledge of the infringement acts and urgency are not specific requirements for granting a PI.

A bond is not necessary, but it may be ordered by the court. Protective letters are not provided for by French law.

Are final injunctions available as of right? Is a bond necessary?

The court will nearly always grant final injunctions if the claimant is successful in its infringement allegations, but this is a matter up to the court's discretion and exceptions exist. The Court may order only a part of the requested injunctions if it sees fit.

The court will normally not order any bond.

What other remedies are usually ordered if a patentee is successful?

The remedies available include financial damages, the delivery up or destruction of infringing goods, recall from commercial channels, appropriate measures for the publication of the judgment, and/or an award of costs.

Would the tribunal consider granting cross-border relief?

In accordance with EU Regulation n°1215/2012 and ECJ case law, French courts may in some instances have jurisdiction to order cross-border relief.

With respect to infringement actions, the French supreme court ("*Cour de Cassation*") ruled (on June 29, 2022 - *Hutchinson (FR) vs Global Wheel*) that the French courts may have jurisdiction over acts of infringement committed outside the French territory where the infringement action involves a number of defendants, one of them being domiciled in France and the same product infringes at least the same national part of a European patent (Art. 8(1) EU regulation n°1215/2012 and following the ECJ decision C-616/10 - *Solvay vs Honeywell*) or, independently, in case the claimant is of French nationality where no other rule on territorial jurisdiction applies (Art. 14 French Civil code).

Is there a right of appeal from a first instance judgment? How long between judgment at first instance and hearing the appeal?

It is possible to appeal against a negative decision of first instance. The case is examined and retried by the court of appeal.

Assuming that the appeal would be filed in a timely manner, the time between the 1st instance judgment up to the end of the appeal proceedings is typically around 2 years depending on the complexity of the case.

Is an appeal by way of a review or a rehearing? Can new evidence be adduced on appeal?

An appeal is by way of a rehearing of the facts and law of the case. The case is re-examined *de novo* by the appeal court.

The parties may bring new arguments and file new evidence. However, the appeal rehearing is limited to the claims submitted in the first instance unless specific circumstances exist where a new claim may be allowed in appeal proceedings.

What is the cost of a typical infringement action to first instance judgment? If the issues of invalidity and infringement are bifurcated, what is the cost of the invalidity action? Can the winner's costs be recovered from the losing party? How much is the cost of an appeal?

Court fees are nearly inexistent in France. However, patent litigations involve attorneys' fees, patent attorneys' fees, bailiff's disbursements. The winning party may recover at least a part of its defence costs from the losing party. The awarding of such costs are at the court's discretion. In practical terms, the parties usually disclose the total amount of their costs going into the trial. There are no separate proceedings regarding the recovery of costs, the judgment will include an order on the costs (if requested).

The costs may vary depending on the level of technical difficulty, the interests at stake and the patent(s) involved. There is no bifurcated system. The costs for a first instance decision are generally between €100,000 and €200,000 in total. The costs could be up to €500,000 for more complex matters and are only higher in exceptional cases. The costs largely depend on the complexity of the case and possible judicial and/or private expert's reports, bailiff's reports, etc. The costs include the defence to a revocation action of the infringed patent.

The costs for appeal proceedings are usually around two-thirds of the first instance proceedings.

Note: The information in this document relates to litigation through the national jurisdiction and not the UPC.

Authors



Laurent Labatte

Counsel

+33142686397
Laurent.Labatte@twobirds.com

twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai
• Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London • Lyon • Madrid
• Milan • Munich • Paris • Prague • Rome • San Francisco • Shanghai • Shenzhen • Singapore • Stockholm
• Sydney • Tokyo • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.

Matters\87665921.2