

FRANCE

Patently Parisian

Last November, the Paris High Court became the only first instance tribunal in France allowed to hear new patent infringement and validity issues. **Didier Intès and Sophie Losfeld** report



Traditionally in France, jurisdiction on patent litigation is given to a limited number of first instance courts, derogating from general provisions of the law in three ways.

Firstly, only civil courts are designated, excluding commercial courts. Next, only High Courts (*Tribunal de Grande Instance*), being civil law courts usually dealing with cases involving claims of more than €10,000, are concerned. And thirdly, the number of High Courts is limited.

In 1968, 10 High Courts were designated – Marseilles, Bordeaux, Strasbourg, Lille, Lyons, Paris, Toulouse, Limoges, Nancy and Rennes – but three (Limoges, Nancy and Rennes) were dropped at the end of 2005. Therefore, since 2006, there had been seven High Courts with seven corresponding Courts of Appeal (respectively, Aix-en-Provence, Bordeaux, Colmar, Douai, Lyons, Paris and Toulouse) dealing with patent issues.

Forum shopping

In practice, plaintiffs were not free to choose among these High Courts; the location of the infringement or the domicile

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of the defendant had to be taken into account. Therefore, forum shopping was limited, if not absolutely avoided, considering that a bailiff's report stating the presence of an allegedly infringing good within the territorial scope of the Paris court was sufficient for jurisdiction.

In recent years, 350 patent cases were brought to court in France every year, with the court in the capital handling 80 per cent of them. Therefore, the Paris High Court chamber specialising in intellectual property (IP) law has been divided into four sections and its IP Court of Appeal chamber comprises two sections. As a result, generally, proceedings before the Paris High Court last two to three years.

Sections and chambers are not sub-specialised – they handle all matters ranging from patent claims to trademark or any other IP cases.

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Pursuant to article L.615-17 of the French IP code, these

courts knew of all litigation arising under the title relating to patent law. Accordingly, it was not challenged that these High Courts knew of infringement as well as validity claims. It is worth pointing out that, in France, patent validity and infringement issues are considered by the same court and at the same time.

Relevant High Court

However, it was less obvious whether they were entitled exclusively to hear disputes about construction and/or execution of a patent licence or assignment. Could a matter qualify as a patent issue because it related to a patent or as a contract issue, irrespective of its object? Some courts ruled that in matters where the 'title' included not only patent validity and infringement issues, but also provisions about contracts, only the relevant High Court could handle the case.

But, dissenting case law considered that article L.615-17, being a derogating provision, had to be strictly interpreted as referring only to patent validity and infringement issues. The Supreme Court finally held in 2004 that in assessing whether

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The new law also amended the TUF provision regarding 'acting in concert' for the purposes of triggering the mandatory bid provision (article 106 TUF, providing that any person coming to hold more than 30 per cent of the voting shares – more precisely, shares voting in resolutions regarding the election of the board – of a listed company must launch an offer on 100 per cent of the company's voting shares).

The TUF (also in its old text) provides that for the purposes of verifying whether the 30 per cent threshold is met, the shares held by persons acting in concert are cumulated and all of them are jointly obliged to launch the mandatory offer.

With the new law, the concept of acting in concert has been expanded to include all persons who co-operate on the basis of an agreement, whether explicit or tacit, oral or in writing,

even if null or void, aimed at maintaining or strengthening the control on the company or at impeding a takeover bid. Furthermore, the *Commissione Nazionale per le Società e la Borsa* may determine in which cases the action in concert is presumed, unless the persons involved prove the contrary.

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a High Court has jurisdiction or not, 'one should consider whether the determination of each party's contractual obligations, and their related violation, if any, depends on the validity and opposability of rights upon the patent, the patent validity and the public or confidential nature of information disclosed to third parties, these issues involving specific provisions of patent law'.

The court also deals with related unfair competition claims as far as such matters are linked with the main claim of patent infringement. Finally, the jurisdiction restraint equally applies to criminal prosecution.

Since 1 November 2009, a decree has modified the list of the first instance courts having an exclusive jurisdiction over IP cases. While nine High Courts – Bordeaux, Lille, Lyons, Marseille, Nanterre, Nancy, Paris, Rennes and Fort-de-France – have exclusive jurisdiction over copyright, designs and models, trademarks, and indications of origin issues – the Paris High Court has solely been awarded all patent law litigations.

Considerable advantages

Actions initiated on and after 1 November must be filed before the Paris High Court. Actions filed earlier before other High Courts remain treated by these courts. With respect of appeal courts, no modification has been implemented, implying that the six non-Parisian Courts of Appeal remain competent to hear appeals of judgments handed down by the six non-Parisian High Courts. Thus, it may take up to two or three years before the concentration of the patent litigation becomes effective before the Paris High Court, and even more (potentially five years) before the Paris Court of Appeal.

It is likely that there will be two considerable advantages in having one single court dealing with patent cases. Firstly, the specialisation of the judges will

be enhanced from a quantity, as well as a quality perspective. The Paris court already knows of most of the cases, but the recent modification may increase not only the level of knowledge in patent law of the judges by increasing the number of issues to be solved, but also their numbers.

Secondly, the concentration of litigation before one single law enforcement body is likely to enhance the development of an homogeneous case law by avoiding dissenting judgments about, for example, the legitimacy of a claim for interlocutory relief grounded on a patent when the defendant challenges its validity or based on a patent application.

Decisions handed down by the Paris High Court may dissent on specific issues because they are issued by different subdivisions, and judges, of this Court. As a consequence, Paris High Court case law is not automatically homogeneous. For instance, there are currently two trends of decisions before the Paris High Court relating to right of information claims. While one section rejects claims filed before any judgment on the merits on the infringing nature of the litigious goods, three other sections make it possible to claim for communication of information relating to the distribution network, each of them having their reasoning.

It is not known whether additional sections will be created, involving not only additional judges and clerks, but also offices and pleading room. It is to be hoped that such a development does occur, as French IP specialists agree that the initial aim of specialisation and harmonisation should not be diluted and tarnished by administrative restraints such as an increased duration of the proceedings.

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BELGIUM

Taking a chance

New Belgian gambling legislation in the wake of the European case *Liga Portuguesa* has pitted Brussels MPs against community judges, writes **Pieter Paepe**



During the night of 3-4 December 2009 the Belgian Parliament adopted a federal law that modifies the current 1999 legislation on games of chance.

In principle, the new law will come into force on 1 January 2011, with its aims of regulating games of chance in a consistent manner by broadening the scope of the current gambling legislation. Currently, games concerning sporting activities and betting on sporting activities are explicitly excluded from the scope of the law of 7 May 1999. Some betting is regulated in other legislation and other betting is not regulated at all.

Furthermore, betting and games offered by the national lottery are excluded from the scope of the current legislation. Therefore, the new gambling law aims to install an overall comprehensive legal framework for games of chance and betting, although a separate law on the national lottery will continue to exist.

Explicit regulation

The new gambling legislation provides for an explicit regulation for on-line games of chance, maintaining the principle that a game of chance can only be legally offered after obtaining a licence from the Gambling Commission, a federal administrative authority. Licence A pertains to operating a casino, licence B for automatic gaming halls, licence C for pubs, licence F1 for the organisation of wagers and licence F2 for the acceptance of wagers.

In addition, the legislation introduces a parallelism between the off-line and on-line environments – only when