Paris judicial court

Protocol for the evolution of procedural practice

before the 3rd chamber of the Paris judicial court ("EPP Protocol")

Between:

The Paris judicial court, represented by Mr. Stéphane Noël, President

The Director of the judicial Registry services, Ms. Colette Renty

on the one hand

And:

The Paris Bar Association, represented by Ms. Julie Couturier, *Bâtonnière*

on the other hand

In the presence of:

The public Prosecutor of the Paris judicial court, Ms. Laure Beccuau

And with:

The professional associations dedicated to intellectual property:

AAPI Association des Avocats de Propriété Industrielle

- AFPIDA -
Association Française pour la Protection Internationale du Droit d'Auteur

AFPPI

AIPPI FRANCE
Association internationale pour la protection de la propriété intellectuelle

apeb
Association des Praticiens Européens des Brevets

APRAM

LES
LICENSING EXECUTIVES SOCIETY
FRANCE

Introduction

As part of an innovative and unprecedented approach based on a collective intelligence facilitation process, the judges of the 3rd civil chamber of the Paris judicial court and lawyers[1] exercising intellectual property law have drawn up this protocol together, in response to a shared desire for harmonization, simplification and transparency of procedural practice.

This protocol sets out the guidelines and guiding principles applicable to the management of cases brought before the 3rd chamber (from the filing of applications for *saisie-contrefaçon* to the oral hearing), foremost among which is the principle of fairness, an essential principle of the legal profession, binding on the parties, and which judges must uphold (Civ. 1st[2], June 7, 2005, docket no. 05-60.044, Bull. 2005, I, no. 241, referring to Article 10, paragraph 1, of the French civil code).[3]

The protocol provides useful information for practitioners and makes recommendations for the efficient management of such cases.

Five themes are addressed:

- applications for *saisie-contrefaçon*;
- judicial or conventional case management, sequencing of proceedings, mediation and conciliation;
- debates;
- fast-track proceedings;
- access to the case law of the 3rd chamber (judgments and orders) on the *Légifrance* website.

This protocol, supported by associations dedicated to intellectual property in the common desire to contribute to increasing the attractiveness of the French legal system in this field, is intended to be widely diffused. Thus, the present English translation is being made available.

As a dynamic project, it will be regularly assessed and updated.

The judges and lawyers who took part in this pioneering and constructive work are delighted that it has resulted in a practical document designed to facilitate the management of litigation before the 3rd chamber, in the interests of litigants.

---

[1] The meaning of "*lawyer*" stems from Article 1(a) of Directive 98/5/EC of 16 February 1998

[2] Civ. 1st, Civ. 2nd, Civ. 3rd and Com. refer to four of the chambers of the French Supreme Court, i.e. *"Cour de cassation"*

[3] According to Article 10 of the French civil code:

"Everyone is obliged to assist justice in order to establish the truth.

Any person who, without legitimate reason, fails to comply with this obligation when legally required to do so, may be compelled to do so, if necessary under penalty of a fine or civil penalty, without prejudice to damages."

Contents

1 | APPLICATIONS FOR SAISIE-CONTREFACON

GUIDING PRINCIPLES

The *saisie-contrefaçon,* and the provisional escrow of seized items, are governed by the following provisions:

- **patents**: Articles L. 615-5, R. 615-2 and D. 631-2 of the French intellectual property code (hereinafter the "CPI"); D. 211-6 of the French code of judicial organization (hereinafter the "COJ");
- **trademarks**: Articles L. 716-4-7, L. 722-4 and R. 716-16 CPI; R. 211-7 and D. 211-6-1COJ;
- **designs**: Articles L. 521-4 and R. 521-2 CPI; R. 211-7 and D. 211-6-1 COJ;
- **copyright, neighboring rights and software**: Articles L. 332-1, L. 332-4 and R. 332-1 CPI; D. 211-6-1 COJ;
- **databases**: Articles L. 343-1 and R. 343-2 CPI;
- **plant variety certificates**: Articles L. 623-27-1 and R. 623-51 CPI;
- **protection of trade secrets**: Articles L. 153-1 and R. 153-1 *et seq*. of the French commercial code.

The provisions of the CPI implement into French law the provisions of Directive 2004/48/EC of the European Parliament and of the Council of April 29, 2004 on the enforcement of intellectual property rights (hereinafter "Directive 2004/48/EC"), Article 3 "*General Obligation*" of which states that:

> *"1. Member States **shall provide** for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be **fair and equitable** and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.*
>
> *2. Those measures, procedures and remedies **shall** also be effective, **proportionate** and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse."*

Article 7 of Directive 2004/48/EC on "*measures for preserving evidence*" states that prompt and effective provisional measures to preserve relevant evidence must be available to the party "*who has presented reasonably available evidence to support his/her claims.*"

In "*the case of an infringement committed on a commercial scale,*" Article 6 of Directive 2004/48/EC on "*evidence*" provides that the applicant may be authorized to seek all elements concerning "*the origin, consistency and extent of the infringement,*" i.e. commercial, advertising, promotional, accounting and financial elements.

This provision is explicitly implemented into French law, as far as *saisie-contrefaçon* is concerned, through various provisions in the regulatory part of the CPI (Articles R. 521-2, R. 615-2, R. 623-51 and R. 716-16 CPI).

Recital 14 of Directive 2004/48/EC defines infringement committed on a commercial scale as "*acts [...] carried out for direct or indirect economic or commercial advantage; this would normally exclude acts carried out by end consumers acting in good faith.*"

Current case law defines the applicant's obligation in this respect. If the application for *saisie-contrefaçon* is dismissed, the applicant may lodge an appeal in accordance with Article 496, paragraph 1 of the code of civil procedure (hereinafter the "CPC").

In addition, the order authorizing a *saisie-contrefaçon* may be subject to a preliminary proceedings to obtain the withdrawal of the order authorizing a *saisie-contrefaçon* under the conditions set out in Articles 496, paragraph 2 and 497 CPC, except in the case of copyright, where preliminary proceedings to lift the effects of the *saisie-contrefaçon* is available (Article L. 332-2 CPI).

Furthermore, pursuant to Article R. 153-1 of the French commercial code, the seized party shall bring preliminary proceedings under the terms of Article 497 CPC, before the judge who had authorized the *saisie-contrefaçon* in the first place, to oppose the automatic lifting of the provisional escrow on expiry of a one-month period following the *saisie-contrefaçon*.

Lastly, it should be noted that current case law pays close attention to the "fairness" shown by the applicant of the *saisie-contrefaçon*, as any lack of fairness may expose the applicant to the risk of the order being revoked, or even of the operations carried out in application of the order being annulled during the proceedings on the merits (Com., March 17, 2015, docket no. 13-15.862; Civ. 1st, May 6, 2010, appeal no. 08-15.897, Bull. 2010, I, no. 104).

PRACTICAL RECOMMENDATIONS

1. The judge having jurisdiction is the judge delegated by the president of the judicial court. In Paris, the president's delegates are the judges of the 3rd civil chamber, on a rotating basis (see the regularly updated rotation order, accessible in particular via the institutional vade-mecum of the Paris Bar Association), except during light duty periods, when the judge on duty should be contacted for the service of ordinary law requests. Given the highly specific nature of *the saisie-contrefaçon*, it is advisable to avoid light duty periods wherever possible.

2. If the dispute is already the subject of proceedings on the merits docketed before the court, the president of the section to which the case has been assigned has sole jurisdiction to authorize or dismiss the *saisie-contrefaçon* (Article 845, paragraph 3 CPC).

3. The application is signed by the applicant's lawyer, who is authorized to represent him or her before the Paris judicial court; it is accompanied by a list of the supporting exhibits submitted to the judge.

Two copies must be filed with the clerk's office of the 3rd chamber during office hours (9:30 am - 12:30 pm and 1:30 pm - 5:00 pm), except during light duty periods.

It is to be accompanied by a letter that:

- shall include the contact details (telephone number(s) and e-mail address(es)) of the applicant's lawyer(s);
- shall draw attention to any urgency of the request and specify the reasons for this urgency;
- where applicable, shall report any previous requests and orders concerning the same alleged infringement or having the same subject-matter.

As long as the 3rd chamber does not have a structural e-mail address, it is suggested that, if necessary, the lawyer hand over a USB key containing the application, the draft order in Word or PDF format (usable) and, if applicable, the exhibits.

This file will facilitate the final drafting of the order by the judge, particularly in the case of major amendments being made to the draft prepared by the applicant's lawyer, and will thus prevent the order from being affected by handwritten erasures and annotations, which often cause difficulties.

4. The applicant shall establish his/her entitlement to apply for the *saisie-contrefaçon*, identifying his/her rights and the alleged infringement justifying the measure.

5. Theoretically, the order is issued on the same day or, at the latest, on the next working day, unless there are particular difficulties, without any hearing before the judge in charge of the application for *saisie-contrefaçon*. The judge shall reach out to the applicant's lawyer by telephone in the event of any difficulty, and in any event if he or she intends to dismiss the application or substantially amend the draft order submitted to him or her.

If the lawyer is unavailable when contacted, a telephone appointment is scheduled with short notice.

6. The *saisie-contrefaçon* may be authorized at any location where evidence of the alleged infringement is likely to be found (factory, offices, trade show, third-party premises, etc.), but an order (and therefore an application) may target only one location for *saisie-contrefaçon*. By way of derogation, if the *saisie-contrefaçon* is authorized at an address (the head office or place of business of a company, premises belonging to an individual, etc.), the order may authorize the bailiff to continue his/her operations in a premises located in the immediate vicinity of this address and in a place belonging to the person seized. However, current case law does not authorize a seizure *"at any place within his/her jurisdiction.*"

7. In most cases, the bailiff is not designated by the order but is chosen by the applicant.

REMINDER: the CPI provides that the order may authorize the bailiff to be assisted by "experts" (Articles L. 332-1, L. 332-4, L. 521-4, L. 615-5, L. 623-27-1, L. 716-4-7 and L. 722-4 CPI) who, according to current case law, may be a trademark/patent attorney, an expert in a specific field, an IT expert, etc., also

chosen by the applicant. The number and profile of experts will be determined according to what is useful and necessary to evidence the alleged infringement.

8. The main purpose of a *saisie-contrefaçon* is to establish evidence of the alleged infringement.

The *saisie-contrefaçon* thus enables the descriptive seizure (with photographic and/or film recording) and, where appropriate, the actual seizure (against an offer to pay the price, save in exceptional circumstances) of two copies of the product (more copies may be seized if this appears useful, for example because analyses are required or for any other reason).

9. The judge in charge of the application for *saisie-contrefaçon* shall ensure that measures are proportionate, and shall only authorize those that are strictly necessary and in line with the facts submitted to him or her. In the event of a search on the alleged infringer's computers, key words shall in principle be provided, and these shall not be too general or likely to lead to the seizure of results unrelated to the alleged infringement (see, by analogy, Civ. 2nd, June 10, 2021, docket no. 20-11.987, issued in application of Article 145 CPC).

Theoretically, the measures authorized shall be precise and justified, so the adverb "namely" should not be used, except to introduce examples of a specific general category.

10. The seized party may request the provisional escrow of items covered by a trade secret in accordance with the provisions of Articles R. 332-1, R. 343-2, R. 521-2, R. 615-2, R. 623-51, R. 716-16 and R. 722-2 CPI, which refer to the provisions of Articles L. 153-1 *et seq.* of the French commercial code.

The judge may provide this protection *ex officio*. In view of current case law, only provisional escrow may be ordered by the judge (Com., February 1st, 2023, docket no. 21-22.225)**.**

In the event that the judge orders such a protective measure, it is common practice for the judge to use a formula such as *"documents claimed by the seized party to contain information of a nature to constitute trade secrets will be placed under provisional escrow in accordance with Article L. 153-1 of the French commercial code."*

11. The order shall specify the time allowed to carry out the operations of *saisie-contrefaçon*; this shall be a maximum of two months, unless special circumstances are set out in the application.

2 JUDICIAL OR CONVENTIONAL CASE MANAGEMENT, SEQUENCING OF PROCEEDINGS, MEDIATION AND CONCILIATION

GUIDING PRINCIPLES

Case management before the judicial court is governed by Articles 776 *et seq*. CPC.

In 2012, the Paris Bar Association and, at the time, the Paris first instance court signed a civil procedure protocol. This protocol, which is still in force, aims at "*defining rules of good practice and develop electronic communication to ensure the smooth running of proceedings before the court, while complying with the principle of contradiction and the right to a judgment within a reasonable time.*" Among other things, it contains guiding principles applicable to case management, to which the present protocol refers, in particular with regard to the role of the case management judge:

> *"If the parties are free to initiate and run the proceedings, the judge's role is to ensure that they run smoothly and within a reasonable time. Article 3 of the code of civil procedure provides that 'the judge shall ensure that the proceedings run smoothly.' The creation of the case management judge before the first instance court* [now the judicial court] *is the application of this general principle defined in Article 3."*

By an e-mail dated June 9, 2022, Ms. Sabotier, referring judge of the 3rd chamber, announced the way in which the judges of the 3rd chamber deal with pleas of inadmissibility that do not terminate the proceedings. The principles formulated in this official communication are included in the protocol herein (see page 13).

The agreement between the parties for the purpose of case management (hereinafter "*CPPME*") is governed by Articles 2062 *et seq.* of the French civil code and 1542 *et seq.* CPC: the case management runs in accordance with a conventional procedure ("conventional case management").

For a more detailed presentation of the *CPPME* and its advantages, please refer to:

- the *CPPME* presentation brochure (annexed to the protocol herein);
- the page dedicated to the *CPPME* of the Paris Bar Association; and
- the *CNB* vade-mecum containing template agreements and other related documents.

Judicial mediation is governed by Articles 127, 127-1 and 131-1 *et seq.* CPC. Conventional mediation is governed by Articles 1530 *et seq.* CPC.

Conciliation is governed by Articles 127 to 130 CPC.

PRACTICAL RECOMMENDATIONS

In-person orientation hearing

12. The first hearing, known as the "first conference," which takes place before the start of the "case management," is not digitalized and therefore takes place face-to-face[4]. Court management will be asked to modify the invitation to the first conference to include this point. The case management judge is only appointed at the first conference.

The presence of lawyers is encouraged by judges in order to:

- contemplate a *CPPME*, or
- evoke mediation, or
- gain visibility on the progress of the procedure (schedule, pleas identified at this stage), or
- hand over their pleading bundles if the defendant is in default and has been duly summoned (Article 778, paragraph 4 CPC).

13. **The president sets the date for the oral hearing if the parties have agreed to a *CPPME*.**

A *CPPME* may be concluded at any stage of the proceedings (Article 1546-1 CPC), including after the case management judge has ruled on a plea. The date of the oral hearing is also set upon presentation of a draft *CPPME*.

Case management

14. Case management is a dematerialized process. Correspondences between judges and lawyers therefore take place by electronic messages via the *RPVA*[5].

Lawyers are therefore encouraged to communicate with the judges, particularly in the event of non-compliance with a deadline or issue as soon as this occurs, for instance:

- the party that has not submitted its briefs is invited to explain the reasons for its delay;
- failing this, the adverse party is invited to inform the case management judge of the absence of notification of the expected briefs;
- the parties (if they can) are invited to inform the case management judge of any pending discussions.

[4] As indicated on the invitation to the first conference, the courtroom number is displayed on signs located on the first floor and levels 2, 4 and 6 of the court.

[5] Online case management system enabling lawyers and the court to have correspondences.

The communication can also stem from the case management judge questioning the parties on the progress of the case.

With regard to non-compliance with the schedule, judges encourage lawyers to notify them so that they can assess the appropriateness of ordering measures to move the case forward, such as an injunction to file briefs or partial closing of the written phase. Judges point out that dilatory behavior on the part of a party may have consequences for the amount awarded under Article 700 CPC, subject to the parties being able to justify this, in addition to the possibility of being ordered to pay a civil fine.

15. Judges also point out that:

- sending messages by *RPVA* after 5:00 p.m., or on the day of the digital case management conference or the judicial appointment itself, is a source of delay in the processing of cases; consequently, they invite lawyers to send their messages before 3:00 p.m. the day before the case management conference, including messages informing of a forthcoming filing (in the evening or the next morning) of expected briefs, for instance, so that these communications can be transmitted to the case management judge;
- compliance with these recommendations facilitates case processing during the case management;
- this enables the dispatch of notifications with respect to the case management conference.

Judicial appointments

16. Parties may, solely or jointly, request a judicial appointment to discuss the case with the case management judge.

This appointment is requested, in an adversarial manner, by means of a *RPVA* message setting out the reasons why it appears necessary.

To ensure that the judicial appointment is held on the digital case management conference date, one recommends requesting it as early as possible (i.e., eight days before the case management conference, as indicated in the court notifications) and at least 48 hours in advance.

17. There are no pre-determined criteria or special circumstances for granting a judicial appointment, as the need for an appointment is assessed on a case-by-case basis by the case management judge.

18. The case management judge may also take the initiative of scheduling a judicial appointment, in which case he or she notifies the parties at least 48 hours in advance.

19. The case management judge sets the date and time of the judicial appointment and informs the parties by *RPVA* message (which also specifies the type of meeting: face-to-face, videoconference or telephone).

20. The case management judge does not hear any lawyer without a judicial appointment being requested and granted under the above-mentioned conditions.

Handling pleas of inadmissibility which do not terminate proceedings

21. Pursuant to Articles 789 and 791 CPC, pleas of inadmissibility are, in any event, submitted to the case management judge by plea motions specially addressed to him or her, which are distinct from the briefs on the merits.

22. For efficiency and time-saving purposes in the handling of pleas of inadmissibility for which it is obvious that they will not put an end to the proceedings, the judges of the 3rd chamber refer them, as common practice, to the court ruling on the merits, together with the rest of the dispute (practice formalized by communication of June 9, 2022, mentioned on page 10), including when they are raised at the same time as procedural pleas.

23. In order to solve the pleas of inadmissibility, which do not put an end to the proceedings more quickly, one recommends requesting a judicial appointment without waiting for the pleas of inadmissibility to be set.

Late filing of briefs close to the closing of the written phase

24. According to the *Cour de cassation* (by combined application of Articles 135 and 802 CPC), as long as the closing of the written phase has not been pronounced, the court cannot "set aside" briefs or exhibits as "late," for instance, those filed on the day of the closing order, unless one finds that they were not communicated "in good time" (Civ. 2nd, February 25, 2010, docket no. 09-13.400).

For instance, it has been ruled that communication has not taken place in good time when the briefs and supporting exhibits required a response from the adversary (Civ. 2nd, May 14, 2009, docket no. 08-17.038) or included new arguments (Civ. 2nd, July 13, 2006, docket no. 05-13196; Civ. 2nd, November 23, 2006, docket no. 05-15811).

In practice, since it is the court that rejects late briefs or exhibits, the recommended solution is to postpone the closing of the written phase by a short period of time (15 days), so as not to leave this issue unresolved until the oral hearing.

As mentioned in point 14, pages 11-12, a party's dilatory behavior may have an impact on the amount awarded under Article 700 CPC, provided that the party suffering the dilatory behavior can justify it.

The closing of the written phase

25. The closing is issued by order at the end of a dematerialized case management conference (unless a reasoned request is made and a judicial appointment is granted, as described above). The closing is only pronounced if it has been announced in advance, except in the case of a lack of compliance of an injunction to file briefs, which in principle leads to closing (total or partial).

26. It is advisable to inform the case management judge by *RPVA* message prior to closing, of any special wishes or requirements for the oral hearing (e.g. lawyers' availabilities, length of oral hearing, presence of interpreters, room capacity for a given number of people, projection of documents/visuals, etc.). Please refer to point 53, pages 21-22.

THE SEQUENCING OF PROCEEDINGS

27. There are several types of sequencing of proceedings, and the need to sequence the proceedings is assessed on a case-by-case basis.

28. Before the 3rd chamber, the most common sequencing is that which consists, when the plaintiff requests provisional damages and a right to information (if these claims are well-founded and granted), in inviting the parties to determine the final amount of damages on an amicable basis, using the information communicated under the right to information and, absent an amicable agreement, in referring the matter back to the court (by briefs if the court has referred the case to the case management stage, or by writ of summons if it has not) for a final decision on the economic harm suffered and the damages awarded.

In other cases, the case was sequenced, for example to rule first on:

- the validity of a patent when the dispute concerns a so-called essential patent, before ruling on compensation;
- the question of the place where the allegedly infringing acts were committed, before examining and ruling on the validity of the title, when there is a discussion on the territoriality of the allegedly infringing acts;
- the validity of methods of proof, before examining the merits of claims.

Essentially, apart from the aforementioned "traditional" sequencing of proceedings on the final assessment of damages, for a sequencing of proceedings to be justified, it is important to convince the case management judge that the sequencing of proceedings is likely to put an end to the dispute.

29. One can request a sequencing of proceedings through a plea motion or at a judicial appointment.

MEDIATION AND CONCILIATION

30. The judges of the 3rd chamber strongly support the development of amicable methods of dispute resolution, in particular mediation, which can be suitable and useful for a significant number of cases, in accordance with the jurisdictional policy of the Paris judicial court.

The 3rd chamber includes two mediation advisers. The role of the mediation adviser is to gather observations from mediators, associations of mediators and lawyers, in order to enhance the effectiveness of judicial mediation measures and injunctions to meet with a mediator. He or she may be informed of proposals for evolutions of practice and of any difficulties encountered in this respect, in

any form, including by e-mail. He or she informs judges of the availability of mediators and makes suggestions to harmonize the chamber's mediation practice.

31. When the case management judge considers that a case may be suitable for mediation, he or she may, at any stage of a case, invite the parties to indicate whether they agree to enter into mediation.

In general, the judge sets a deadline for response. The parties' lawyers are asked to respond as soon as possible.

32. The case management judge can order the parties to meet a mediator for an information meeting on mediation, in application of the law of February 8, 1995, and Article 127-1 CPC.

The injunction is addressed to the parties, who may be assisted by their lawyer before the mediator without being substituted by him/her. In the event of an agreement between the lawyers putting an end to the dispute, the injunction does not need to be enforced.

33. At any time, mediation may be proposed by one or both parties.

34. Parties may suggest one or more names of mediators or mediation organizations. Absent any proposal, or in the event of disagreement between the parties on the name of the mediator or mediation organization, the case management judge chooses a name and sets the provisional fees to be paid.

35. As far as possible, mediation should not jeopardize the date already set for an oral hearing, unless the parties agree otherwise.

36. Parties may opt for conventional mediation rather than judicial mediation.

37. The case management judge can appoint a judicial conciliator, particularly in cases where one of the parties is unable to finance mediation.

3 DEBATES

GUIDING PRINCIPLES

Articles 54 to 56, 430 *et seq.*, 750 to 754, 760 to 768, 802 to 806 CPC govern the writ of summons, its docketing, the formal notice of appearance on behalf of the defendant, the briefs and the way of communicating them, as well as the pleadings during the oral hearing before the court.

In particular, Article 768 CPC provides:

> ***"The briefs shall expressly state the parties' claims and the legal and factual grounds on which each of these claims is based, indicating for each claim the supporting exhibits and their numbering. An official list of exhibits supporting these claims is appended to the briefs.***
>
> ***The briefs shall include a separate statement of the facts and proceedings, a discussion of the claims and legal grounds, and an operative part summarizing the claims. Any grounds which have not been formulated in the preceding briefs shall be formally presented separately. The court shall rule only upon the claims set out in the operative part and shall scrutinize the grounds in support of these claims only if they are raised in the discussion.***

In their final briefs, the parties must reiterate the claims and grounds presented or invoked in their previous briefs. If they fail to do so, they are deemed to have abandoned them and the court shall rule only on the last briefs filed.

The 2012 civil procedure protocol contains a number of guiding principles, to which the present protocol refers to, in particular:

- **adversarial principle:**

  "The adversarial principle expressed in Articles 14 to 17 of the code of civil procedure, according to which no party may be judged without having been heard or called, governs the conduct of the proceedings, both between the parties and between the judge and the parties.

- **principle of concentration of arguments and claims:**

  "The principle of concentration of arguments and claims will lead the plaintiff's lawyer to invoke, as soon as the summons is issued, all the facts, grounds and evidence on which his/her claims are based."

  "The investigation of the case must be conducted with a view to promoting the principle of concentration, i.e.:
  - *from the first briefs, invoke all the facts, all the main and subsidiary grounds and all the evidence on which the claims are based;*
  - *communicate all exhibits known and available on the date of the first briefs, in accordance with the provisions of Article 132 of the French code of civil procedure;*

- *involve all those concerned in the dispute, to avoid forced interventions or late guarantees that unnecessarily slow down the examination of the case;*
- *limit the number of briefs, in relations between two parties, to one writ of summons, one defense, one reply and one rejoinder followed by closing, except in special circumstances which must be justified. In this respect, it should be remembered that the principle of concentration postulates that the parties should only file a limited number of briefs, set during the case management;*
- *the final briefs must be concise and clearly state the claims and the factual and legal grounds supporting them.*

- **compliance with schedule:**

  "Lawyers must abide by the deadlines and imperatively file their briefs on the dates indicated in the procedural notifications, which do not necessarily correspond to hearing dates. They must respond to the notifications even though they have not taken the necessary steps."

- **communication of briefs:**

  "To ensure the smooth operation of electronic communication, it is important to observe certain rules of good practice:
  - *successive briefs are numbered and dated on the date the briefs are drafted;*
  - *the briefs show their successive modifications by a line in the margin and the indication of the supporting exhibits cited;*
  - *the number of the exhibit, as it appears on the official list of exhibits produced to the adverse party, shall be included in the briefs each time it is referred to;*
  - *the communication message clearly indicates that it concerns briefs and the attached files specify the docket number, the date and the name(s) of the party [...]."*

- **communication of exhibits:**

  "The communication of exhibits shall be accompanied by an official list of exhibits. The exhibits are numbered, under a numbering format which is kept throughout the proceedings and continued in the event of a new communication [...].

  Quotations from case law, articles or scholars' commentaries are followed by details of their publication. When the case law is unpublished, the full copy of the decision must be included among the exhibits to be communicated.

  Foreign-language exhibits submitted are translated into French."

Generally speaking, the debates are subject to the principle of fairness, requiring each party to contribute to ascertaining the truth and to present its case in good time, as set out in the *Court of Cassation* ruling cited in the introduction.

PRACTICAL RECOMMENDATIONS

Writ of summons on the merits and date setting

38. Since July 1st, 2021, pursuant to Article 751 CPC, the plaintiff shall set the date to the summons on the merits. This date must be indicated on the writ of summons.

Date setting and docketing of writ of summons on the merits is done through the *RPVA* (except when third parties are forced to join a pending proceedings and in case of warranty claims, for which the date and time of the next case management conference in the main case must be mentioned on the writ of summons,[6] and docketing is done by the "*Bureau d'ordre civil*" - BOC).

All of the details about date setting are explained on a dedicated web page of the Paris judicial court and in the various practical guides it contains.

39. When the defendant is established abroad, the plaintiff does not have to set a date in six months; even in this case, it is possible to select the "standard case" item in the "choose your deadline" step, corresponding to a deadline of around two months.

40. In practice, it is the presidents of section who provide the presidency of the court with dates (more than a year in advance), which are then made available on the *RPVA*.

41. Between service of the writ of summons and the first conference, the president can only check that the writ of summons is in order (particularly when the defendant resides abroad), that the formal notice of appearance on behalf of the defendant abides by Articles 471 and 688 CPC[7] and, if necessary, have the clerk's office send the defendant, for whom no formal notice of appearance was filed, the letter provided for in Article 471, paragraph 3.

Aware of this delay, which they suffer as much as the parties, the judges of the 3rd chamber have tried, for 2024, to communicate four additional slots to the presidency, hoping that this will enable the plaintiff to select more regular dates. If this new practice proves satisfactory, it will be retained.

---

[6] The chamber and the words "case management conference" shall also be indicated. If necessary, one can ask the clerk's office for the next case management conference date. If this date is too close, one can anticipate it and asks the clerk's office for the next one, by RPVA message.

[7] Application of articles 471 and 688 CPC.

If a formal notice of appearance on behalf of the defendant is filed:

- the parties can use this time to agree on a *CPPME* and consult the court before the first conference to find out which oral hearing dates are available, so that the *CPPME* can be ratified at the first conference;
- and if the plaintiff proves, at the first conference, to have communicated the exhibits in advance, the judge shall postpone the case for the defendant's briefs. It is therefore advisable to send the official list of exhibits communicated to the adverse party to the court (by *RPVA* message).

If no formal notice of appearance has been filed on behalf of the defendant at the first conference, even though the time limit for appearing has expired, the judge declares the closure of the written phase at the first conference.

42. Pursuant to Article 56 CPC, the writ of summons shall contain the subject of the claim, with a statement of the legal and factual grounds.

Practitioners have observed, especially in the field of literary and artistic property, a tendency for defendants to raise the nullity of a summons on the grounds that it does not identify the works invoked, or that original character is not justified. The judges of the 3rd chamber point out that:

- the plaintiff must identify the elements over which copyright is claimed, failing which the summons is liable to be annulled (Civ. 1st, April 5, 2012, docket no. 11-10.463, Bull. 2012, I, no. 83);
- **however, this claim of nullity may be covered by subsequent briefs to the court (Article 115 CPC).**

Significance of principle of concentration of arguments and claims

43. Practitioners and judges alike would like to see the principle of concentration of arguments and claims, as set out in the 2012 protocol, more fully complied with and applied.

To this end, one recommends:

- beyond two briefs per party, reasoning any additional briefs and only responding to any new arguments or documents submitted by the adverse party, rather than adding elements that could have been raised in the writ of summons (for the plaintiff) or first brief (for the defendant);
- granting shorter response times for the filing of additional briefs (beyond the two briefs per party);
- for the party who considers itself prejudiced by non-compliance with the principle of concentration of arguments and claims, drawing the attention of the case management judge to this point and that of the court to the need to take this non-compliance into account when setting the amount of irrecoverable fees under Article 700 CPC.

In this respect, judges will be particularly vigilant with regard to late additions of new grounds or exhibits. Consequences will be assessed on a case-by-case basis.

Presentation and content of writ of summons and briefs

44. Pursuant to the above-mentioned Article 768 CPC, it is necessary to:

- materialize the amendments made from first briefs to the next briefs, with lines in the margin, enabling both the case management judge and the other party to see the extent of the amendments;
- present scripts as clearly and legibly as possible. With this in mind, the following standards are recommended:
  - structuring briefs according to an outline (particularly in the case of numerous claims and/or legal grounds), bearing in mind the following requirement (Article 768 CPC):
    - **1 – Statement of facts (and not factual grounds),**
    - **2 – Discussion of each claim, setting out the factual and legal grounds in support of each,**
    - **3 – Operative part;**
  - the presence of a table of contents;
  - a summary at the end of each sub-section.

45. The following are also good practice for drafting briefs:

- the reproduction of extracts from exhibits in briefs, provided that these quotations are relevant and that the exhibits referred to are clearly identified;
- the use of footnotes, subject to their relevance to the particular case.

46. The operative part shall make a clear distinction between main and subsidiary claims, and shall not, in principle, include any grounds (e.g. "*recognise and rule that work X is original*").

47. In the specific case in which a confidentiality club has been set-up,[8] which requires each party to file two versions of its briefs (one confidential version for the judge and members of the confidentiality club, another redacted version), it is important to:

- use adequate mentions to distinguish between confidential and non-confidential versions;
- clearly identify confidential information in the confidential version (e.g. by highlighting it in grey or writing it in a different color font from the rest of the text);
- regularly alert judges regarding the existence of a confidentiality club, and therefore to the need for the parties to file two versions of their briefs, and for the court to issue a decision with publicity arrangements tailored to this purpose.

[8] The need for a confidentiality regime is assessed on a case-by-case basis. This is particularly true in the case of patents, software and in certain cases, where a party's profits have to be communicated in confidence. The setting of a confidentiality club is either ordered by the case management judge after an incident, or agreed between the parties and homologated by the case management judge.

Exhibits and translations of exhibits

48. Pursuant to Article 768 CPC, it is necessary to indicate the relevant exhibits for each claim.

49. Exhibits may be communicated with redactions. If there is a problem with redactions, this is a matter of substance (i.e. the probative value of the redacted exhibit, which is assessed on a case-by-case basis).

50. Exhibits may be submitted highlighted. The judges remind practitioners that the exhibits submitted to the court must correspond to those submitted to the adverse party, and that no exhibits may be submitted after the closing of the written phase. An exhibit submitted to the adverse party without highlighting must be submitted to the court without highlighting, unless the lawyers agree to submit a highlighted version of the exhibits to each other between the closing of the written phase and the oral hearing (the same applies to visual aids used at an oral hearing).

51. If it is not possible to disclose an exhibit as such because it is bulky or costly, one shall nevertheless indicate on the official list of exhibits produced to the adverse party that the exhibit is available for consultation at a specific location and, if applicable, for a specific period of time.

52. With regard to French translations of submitted exhibits, the judges of the 3rd chamber apply the case law of the *Cour de cassation*, according to which Article 111 of the royal ordinance of August 25, 1539, known as the Villers-Cotterêts ordinance, only concerns procedural documents.

In the exercise of their sovereign power, judges assess the probative value of evidence submitted to them, particularly when it is written in a foreign language (Com., November 27, 2012, docket no. 11-17.185, Bull. 2012, IV, no. 213; Civ. 1st, September 22, 2016, docket no. 15-21.176, Bull. 2016, I, no. 175).

Judges are therefore under no obligation to disregard a document (or part of a document) in a foreign language, and may instead decide to retain it, provided they indicate its meaning in French (Civ. 2nd, January 11, 1989, docket no. 87-13.860, Bull. 1989, II, n° 11; Civ. 1st, January 23, 2008, docket no. 06-21.011).

In practice, the judges of the 3rd chamber rely on translations provided by the parties, including partial translations. Any issue arising from the partial nature of the translation provided are dealt with on a case-by-case basis. A party who has received a partial translation and considers that it is not representative of the content of the document as a whole is encouraged to provide additional translations to give the judges a better understanding of the document's content.

Scheduling the oral hearing

53. One recommends to advise by *RPVA* message:

- the case management judge, in advance of the case management conference dedicated to the closing of the written phase, of the desired length of the oral hearing and of any other element useful to the organization of the oral hearing of which the parties are already aware (for example, the presence of interpreters). In this respect, it should be noted that the court has translation

booths, which can only be installed in the courtrooms on the 2nd floor and the cost of installation is borne by the parties. The court also has free translation "kits" for interpreters;

- the court, in advance of the oral hearing, particularly for the most complex cases, of any agreement reached between the parties on the points they wish to argue and on the logistical aspects of the debates (e.g. the projection of documents,[9] the time agreed for each point by party, etc.).

54. In accordance with the 2012 protocol, the parties must submit their pleading bundles two weeks before the oral hearing. Document-sharing platforms can be used or are currently being tested:

- France transfer;
- *CNB*'s "e-partage sécurisé" service (accessible via *RPVA*).

Lawyers can ask judges prior to the oral hearing, whether they would like to receive along with the paper printout of the final brief:

- a paper version of all or a selection of the exhibits,
- whether the pleading bundles should be presented in the form of a binder or notebook (bound).

55. Pursuant to Article 799, paragraphs 3 and 4 CPC, the case management judge may ask the parties to agree to the proceedings taking place without an oral hearing. If the parties agree, the case management judge sets the date for filing the pleading bundles at the clerk's office.

In cases where the lawyers' written briefs suffice, and where the oral hearing will simply be a repetition of written explanations, the judges invite them to consider filing their pleading bundles.

Oral hearing

56. Parties can find out whether the oral hearing will be held as a single/double judge *rapporteur(s)*, by consulting the half-yearly rotation order, which will be published on the 3rd chamber's website.

The rolling order is also published on the Paris Bar Association website (vade-mecum institutionnel).

57. For each hearing, pursuant to Article 04 CPC, a report is prepared by the case management judge (or, exceptionally, by the president of the chamber or another judge designated by him/her) for presentation at the start of the hearing.

58. Judges remind that pleadings during oral hearing are not intended to be a complete rendition of briefs. With this in mind, one recommends:

- focusing on key points and synthesizing the briefs;
- providing the court with a copy of the essential exhibits on which the lawyers rely upon during their pleadings (provided they also give a copy to the adverse party).

---

[9] The judges point out that proceedings before the 3rd chamber are written, so that the court can under no circumstances take into account an argument or document presented at the oral hearing and absent from the briefs.

59. The courtrooms are equipped with projection equipment, enabling:

- viewing of exhibits (including videos), both on an individual screen for each judge and on a large screen located behind the judges for other people in the room;
- listening to sound exhibits (e.g. a musical work).

To use this equipment, it is advisable to notify either the case management judge before the closing of the written phase, or the court after such closing, and to inform the clerk's office and the adverse party. It is also advisable to arrive early to set-up the equipment. Set-up time is not deducted from allocated pleading time.

4 FAST-TRACK PROCEEDINGS

GUIDING PRINCIPLES

With the exception of preliminary proceedings in copyright matters (including software) and preliminary proceedings with respect to well-known trademarks under Article 6bis of the Paris Convention, which are governed by ordinary law, i.e. Articles 834 and 835 CPC, preliminary proceedings for infringement of intellectual property rights are governed by specific provisions of CPI, in particular Articles:

- L. 343-2 CPI (databases);
- L. 521-6 CPI (designs);
- L. 615-3 CPI (patents);
- L. 716-4-6 CPI (trademarks);
- L. 722-3 CPI (geographical indications).

In principle, these preliminary proceedings for infringement are not subject to a requirement of urgency, except in the case of expedited preliminary proceedings[10], provided for under Article 485 CPC.

In addition to the above-mentioned preliminary proceedings, there are also:

- preliminary proceedings to obtain the withdrawal of an order on *ex parte* request (e.g. further to a *saisie-contrefaçon*)[11] in application of Article 497 CPC or preliminary proceedings to lift the effects of the *saisie-contrefaçon* in copyright matters under Article L. 332-2 CPI or based on a database producer's right under Article L. 343-1 CPI;
- preliminary proceedings in trade secrets matters, pursuant to Article R. 153-1 of the French commercial code;
- preliminary proceedings to prevent illegal downloading and communication of copyright protected works or works protected by related rights (Articles L. 336-1 and L. 336-2 CPI).

Preliminary proceedings are brought before the president of the court, ruling as the preliminary proceedings judge, in the absence of any pending proceedings on the merits in which a case management judge has been appointed.

The powers of the case management judge are defined in Article 789 CPC. As soon as the case management judge is appointed, he/she alone has jurisdiction to order provisional measures.

---

[10] Expedited preliminary proceedings are referred to as "*référé à heure indiquée*", it is the former "*référé heure à heure*".

[11] Referres to as "*référés-rétractation*"

In addition, fast-track proceedings on the merits[12] are governed by Articles 840 to 844 CPC.

PRACTICAL RECOMMENDATIONS

Proceedings for obtaining provisional measures in intellectual property matters

60. Prior to the appointment of the case management judge, provisional measures are requested to the preliminary proceedings judge, within the framework of a preliminary proceeding specific to intellectual property matters, known as "*référé-contrefaçon*". However, as soon as the case management judge is appointed, he/she alone has jurisdiction to rule on a request for provisional measures.

NOTE: when the writ of summons for preliminary proceedings is issued prior the case management judge is appointed, but the preliminary proceedings hearing is held after his/her appointment, the preliminary proceedings judge retains jurisdiction. In fact, the case management judge only takes jurisdiction when the claim is lodged after his/her designation, in accordance with Article 789 CPC. As a reminder, the case management judge is only appointed after the first conference.

Preliminary proceedings

Date setting

61. Unlike ordinary preliminary proceedings, preliminary proceedings in intellectual property matters, including the expedited preliminary proceedings, operate "by appointment." The plaintiff must set a date, in consideration of what the lawyers do not line up before the court room for their case to be called by the preliminary proceedings judge.

The plaintiff's lawyer shall go to the reception desk of the *Pôle de l'urgence civile* (*PUC*), on the 6th floor of the judicial court, and not to the clerk's office of the 3rd chamber, except for preliminary proceedings to obtain the withdrawal of an order on *ex parte* request or preliminary proceedings to lift the effects of the *saisie-contrefaçon* in copyright matters, for which the date is set at the clerk's office of the 3rd chamber (more information here).

To ensure that matters are processed quickly and efficiently, one recommends to specify to the *PUC*:

- that it is a case of preliminary proceedings for infringement of intellectual property rights,
- in the case of requests for fast-track proceedings on the merits, the urgent nature of the case.

The judges of the 3rd chamber invite lawyers to inform them of any malfunction linked to this date-setting system, in order to identify and implement solutions to remedy the situation.

[12] *Procédure à jour fixe*

Recommended setting of a schedule

62. The notification setting the hearing date or the order authorizing a summons for expedited preliminary proceedings also specifies the duration of the oral hearing, and may provide, upon request, a simple procedural schedule (setting the relay date for the defendant's briefs prior to the oral hearing) or a more detailed schedule (setting the relay dates for the defendant's briefs, a reply and a rejoinder). Where appropriate, the defendant is notified of the schedule in the writ of summons served upon the defendant.

REMINDERS:

63. Extended periods resulting from defendant being abroad do not apply in preliminary proceedings, so the defendant's establishment abroad is not taken into account when setting the hearing date.

64. Postponement of the case to a later oral hearing is assessed on a case-by-case basis. In particular, it is not automatic when the formal notice of appearance on behalf of the defendant is filed close to the hearing, or even on the same day.

65. It is advisable for the plaintiff to serve the supporting exhibits along with the writ of summons, for preliminary proceedings, especially if the plaintiff has requested that a schedule be set.

As for proceedings on the merits (see point 14, pages 11-12 and point 43, page 19), non-compliance with the schedule set for preliminary proceedings can be taken into account in determining the amount awarded under Article 700 CPC, provided that the parties give reasons for their claim in this respect.

Docketing of the writ of summons preliminary proceedings

66. Pursuant to Article 754 CPC, the plaintiff must, under penalty of automatic nullity, docket the copy of the writ of summons by *RPVA* at least fifteen days before the oral hearing date if the oral hearing is set for fifteen days or more, and within two months of the setting date communicated electronically.

Oral proceedings

67. Preliminary proceedings **are oral**. Communication of briefs may be made via the *RPVA*, but this is not compulsory. In any event, the notified briefs shall be filed and signed at the oral hearing, so that they can be certified by the court clerk, together with an original copy of the served writ of summons.

Pursuant to Articles 446-1 and 836-1 CPC, the parties may agree to the proceedings taking place without an oral hearing, so that the judge shall rule only on their claims and grounds communicated in writing.

Gateway to fast-track proceedings on the merits

68. Article 837 CPC provides for a "*passerelle*" between preliminary proceedings and fast-track proceedings on the merits. To be ordered, this "*passerelle*" (i) shall be requested by one of the parties (ii) who shall justify the urgency of ruling on the merits of the case (this criterion, as a reminder, is not a condition for ordinary preliminary proceedings in intellectual property matters).

Pleas before the case management judge

69. When a plea is referred to the case management judge requesting provisional measures, the processing time is conditioned by the urgency of ruling on the requested measure. It is therefore important to alert the case management judge by *RPVA* message, bearing in mind that:

- if the measure is requested in an *ex parte* manner (on request), the requesting party can send the message by *RPVA*, removing the other party from the recipients copied; it is then advisable to specify such deletion to the judge, who may not see that he or she is the only recipient;
- the request for provisional measures made to the case management judge by request, constituting an exception to the adversarial principle, can only be made in special instances (for example, in the context of a trade show, or in the event of repetition of acts). Judges draw the parties' attention to the strong likelihood of a subsequent preliminary proceedings to obtain the withdrawal of the order.

Fast-track proceedings on the merits

70. Fast-track proceedings on the merits are only assigned to full sections of the 3rd chamber, to prevent any referral requests linked to collegiality.

71. Authorization to serve a writ of summons for fast-track proceedings on the merits is subject to the criterion of urgency. The following factors are taken into account (it should be noted that they also apply to expedited preliminary proceedings and that these examples are not exhaustive):

- the fact that the impugned product is not yet on the market or not yet disclosed in France;
- whether the harm will be difficult to repair (damage to reputation, for example).

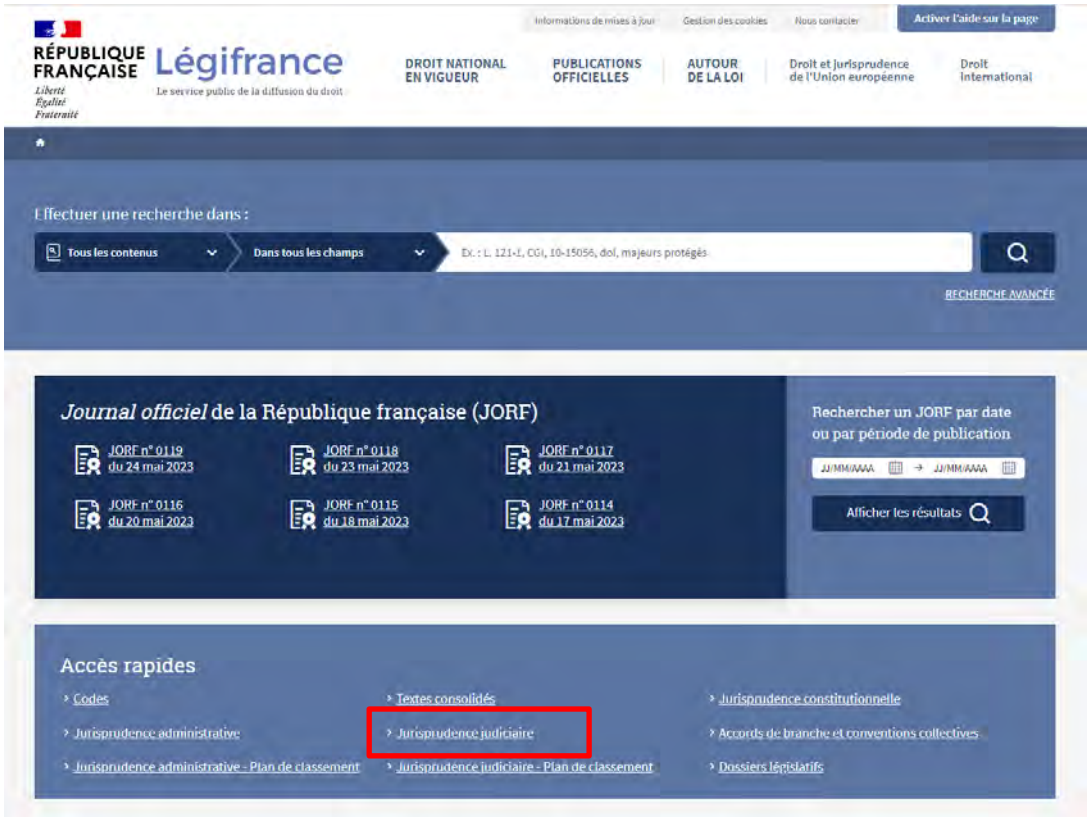
72. On a practical level, the authorization to serve a writ of summons for fast-track proceedings on the merits should be accompanied by a procedural schedule, to avoid the case being referred to case management, in the event of late reply briefs, which could prevent the defendant from organizing his/her defense effectively.

5 | ACCESS TO THE CASE LAW OF THE 3RD CHAMBER

73. The judges of the 3rd chamber have obtained from the *Cour de cassation* the right to publish (in advance of the phase on Open Data of judicial decisions of the firstinstance courts) on the *Légifrance* website, a public service providing access to the law, 30 decisions per month (out of a total of around 100 decisions) and are organizing the online publication of the most relevant decisions.

To this end, they select those of their decisions that they feel are likely to improve the understanding and predictability of their case law.

This selection is available in the "*Jurisprudence judiciaire*" tab, sub-category "*Juridictions du 1er degré*":



Paris, in four copies,

On July 3, 2023

Mr. Stéphane Noël

P/O

Maître Julie Couturier

Ms. Colette Renty

Ms. Laure Beccuau

6 USEFUL LINKS

- To consult the half-yearly turnover order: vade-mecum institutionnel of the Paris Bar Association
- Information to set date:
    - Background: dedicated web page of the Paris judicial court
    - In preliminary proceedings: dedicated website of the Paris judicial court
- The civil procedure protocol of July 11, 2012
- The website of the 3rd chamber of the Paris judicial court
- Information about *CPPME* :
    - Paris Bar Association dedicated page
    - *CNB* vade-mecum containing template agreements and other related documents
- For secure electronic communication of documents:
    - France transfer
    - *CNB* "e-Partage sécurisé" service (accessible via *RPVA*)
- To consult a selection of case law from the 3rd chamber: *Légifrance*

7 APPENDICES

- *CPPME* presentation brochure (in French only)
- Translation of Nathalie Sabotier's communication of June 9, 2022 on the handling of pleas of inadmissibility which do not terminate proceedings

8 POSTFACE

Judges of the 3rd chamber of the Paris judicial court and practitioners of nine professional organizations (AAPI, AFPIDA, AFPPI, AIPPI, APEB, APRAM, COMPI, LES France and the Paris Bar), who together built the Protocol on the Evolution of Procedural Practice, known as the "EPP Protocol", signed on July 3, 2023, are delighted and proud of the work accomplished in six months.

This EPP Protocol has been designed as a practical guide to facilitate everyone's work and optimize the processing of procedures in the interests of litigants; it will be updated regularly.

It marks the first collaboration between such a large number of professional associations dedicated to intellectual property and representing its various branches (patents, trademarks, designs, copyright, software).

There are many keys to this success.

Above all, it is based on a shared desire on the part of judges and lawyers to have transparent, clear and harmonized procedural practice, in the interests of litigants and the attractiveness of intellectual property litigation in France.

It also depends on the quality of the dialogue between judges and lawyers, based on mutual respect and mutual listening.

It also required a great deal of teamwork and pragmatism to come up with concrete solutions, under constant legal provisions and means.

The factors for this success were already in place when Isabelle Romet, a former lawyer turned mediator and facilitator, proposed to the co-presidents of AIPPI's Procedures Commission, *Maîtres* Denis Monégier du Sorbier and Marianne Schaffner, to lead a collective intelligence facilitation process on the subject of *saisie-contrefaçon*.

This experimental meeting proved to be the first step in an original and innovative methodology, based on a problem-solution approach well known to patent law practitioners, and on collective intelligence.

The trio contacted Nathalie Sabotier, in her capacity as referent for the 3rd chamber, to propose a perspective based on constructive dialogue between judges and intellectual property practitioners, with a view to identifying areas for improving practice, drawing up recommendations and making them accessible to all.

Special thanks are due to Ms Sabotier for not only agreeing to this approach, relaying it to all the judges of the 3rd chamber, but also proposing to include professional intellectual property organizations in the process.

The same deepest gratitude is expressed to the judges of the 3rd chamber, and to all the professional organizations contacted, who all agreed to take an active part in this unprecedented constructive inter-professional dialogue.

It was how the process was launched in December 2022.

The signing of the EPP Protocol within just a few months would not have been possible without the commitment, hard work, perseverance and creativity of all those involved.

There are countless ways to say thank you.

Over one hundred practitioners from the nine intellectual property organizations have contributed to the work.

Four so-called "plenary" meetings were held, each time involving judges of the 3rd chamber and 30 lawyers from the various branches of intellectual property law, to work on four themes that had been identified (corresponding to sections 1 to 4 of the EPP Protocol).

The nine organizations involved in this process supported it until the end.

The success of this project is also due to the special and ongoing involvement of *Maîtres* Anaïs Pallut and Mathilde Grammont, who drafted the preparatory works and the EPP Protocol.

Let's make this EPP Protocol our own and bring it to life!

Thank you all for your work, which reflects the quality of judges-lawyers relationship in the interests of litigants.

PROCÉDURE PARTICIPATIVE DE MISE EN ÉTAT

FOCUS

LA **PROCÉDURE PARTICIPATIVE** DE MISE EN ÉTAT, C'EST ...

... un contrat écrit conclu pour une durée déterminée (article 2062 du CC)

... un mode conventionnel de règlement des conflits

... un monopole de la profession d'avocat

La convention de procédure participative de mise en état (CPPME) permet aux parties d'organiser la mise en état de l'affaire et, dans le même temps, de rechercher un accord sur le fond de leur litige, lorsqu'elles ont la libre disposition des droits en cause.

DANS **QUELS CAS** ? Y RECOURT-ON

Devant toutes les juridictions de l'ordre judiciaire, quelle que soit la procédure suivie et à tout moment de l'instance.

QUELLES **OPTIONS** POUR LES PARTIES ?

En procédure écrite ordinaire, le juge doit demander aux parties si elles ont conclu une CPPME lors de l'audience d'orientation (article 776 du CPC). Il confère avec les avocats de la procédure participative.

Si les parties justifient avoir conclu une CPPME, les avocats peuvent demander :

- La fixation de la date d'audience de clôture de l'instruction et de la date d'audience de plaidoiries (article 1546-1 du CPC).
- Le retrait du rôle (article 1546-1 du CPC).

LE MAGISTRAT **RÉSERVE** DES CRÉNEAUX POUR LES RÉTABLISSEMENTS

CONSEIL NATIONAL DES BARREAUX
LES AVOCATS

MINISTÈRE DE LA JUSTICE
Liberté
Égalité
Fraternité

PROCÉDURE PARTICIPATIVE DE MISE EN ÉTAT

FOCUS

QUELS SONT LES **AVANTAGES** DE LA PPME ?

POUR LE JUGE :

- Le dossier sort de la mise en état.

POUR LES AVOCATS :

- Les avocats maîtrisent le calendrier, ils peuvent désigner d'un commun accord les techniciens, ils bénéficient de rapports de techniciens qui ont la même valeur que les rapports d'expertise judiciaire, ils peuvent accéder au juge pendant toute la mise en état si toutes les parties en sont d'accord.

QUELLES SONT LES **CONSÉQUENCES PROCÉDURALES** DE LA PPME ?

- Les parties sont libres de renoncer ou non aux fins de non-recevoir et aux exceptions de procédure en début de PPME (article 1546-1 du CPC);
- L'instance est interrompue, y compris en cas de retrait du rôle (article 1546-1 du CPC). Devant la cour d'appel, interruption des délais impartis pour conclure et former appel, si incidents mentionnés aux articles 905-2 et 908 à 910 du CPC. Ceci jusqu'à l'information donnée au juge de l'extinction de la procédure participative (article 1546-2 du CPC).

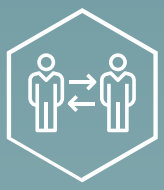
QUELLES SONT LES **ISSUES POSSIBLES** DE LA PPME ?

ACCORD TOTAL SUR LA MISE EN ÉTAT ET LE FOND

Demande d'homologation par le juge (article 1564-2 CPC).

ACCORD TOTAL SUR LA MISE EN ÉTAT ET PARTIEL SUR LE FOND

Demande de rétablissement de l'affaire au rôle + acte contresigné par avocats synthétisant les accords et les prétentions respectives des parties encore en litige (articles 1555-1 et 1564-3 du CPC). L'affaire sera fixée à bref délai.



ACCORD TOTAL SUR LA MISE EN ÉTAT ET ABSENCE D'ACCORD SUR LE FOND

Demande de rétablissement de l'affaire au rôle + acte contresigné par avocats récapitulatif (article1564-4 du CPC). L'affaire sera fixée à bref délai.

ÉCHEC DE LA MISE EN ÉTAT CONVENTIONNELLE

Demande de rétablissement pour mise en état, conformément aux règles de procédure applicable devant le juge de la mise en état (article 1564-5 du CPC).

CONSEIL NATIONAL DES BARREAUX
LES AVOCATS

MINISTÈRE DE LA JUSTICE
Liberté
Égalité
Fraternité

From:	Nathalie.Sabotier@justice.fr
To:	david.por@allenovery.com; Sophie Micallef; Corinne VEDEL; sylvie.benoliel@benoliel-avocats.com; f.fajgenbaum@nfalaw.com; mh.fabiani@lpavocats.com; Bouvet, Thomas; phoffman@cabinet-hoffman.com; florence.andreani@andreani-pi-avocats.com
Subject:	handling pleas of inadmissibility
Date:	09 June 2022 15:14:56

Dear Presidents,
Dear Sirs and Madams,

Some of you may already be aware of this, but I wanted to officially inform you and the members of your respective organizations of the fact that the judges of the 3rd civil chamber have begun to refer to the court ruling on the merits the examination of certain pleas of inadmissibility requiring a decision on the merits (Article 789, 6°, in fine, of the code of civil procedure) when it is clear that this plea will not put an end to the dispute (because, for example, only the inadmissibility of part of the dispute is invoked), and to do so together with the rest of the dispute, so as not to delay its examination excessively.

Indeed, after two years of application of the reform, we note that the examination of too many cases has been considerably delayed, particularly in the case of appeals (the court itself being placed in difficulties by this and other reforms), and in a totally pointless manner since the plea of inadmissiblity only concerned part of the dispute. This situation has been confirmed by a recent report from the General Inspection of the Judiciary.

We have also begun to reflect on the notion of "plea of inadmissibility" as we are accustomed to practicing it in intellectual property law, a practice that is perhaps a little too extensive. For example, the 3rd section recently ruled that a plea of inadmissibility based on the lack of genuine use of a European Union trademark should be regarded as a defense on the merits, as should a plea based on the lack of ownership of a work of the mind. These decisions (20/12226 and 20/11677) are (or will shortly be) available on Legifrance for everyone's information.

I am, of course, available for any questions you may have, and would like to take this opportunity to thank you for your joint action regarding the chamber's staffing levels.

Yours sincerely,

Nathalie Sabotier
3rd chamber referent
President 3rd chamber / 3rd section