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The French *saisie-contrefaçon* in european litigation issues

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What is a *saisie*?

- A *saisie* is not a seizure
- A *saisie* is not an injunction
- A *saisie* is
a way of gathering evidence of infringement

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The legal basis

- Article L. 615-5 Intellectual Property Code

“The owner of a patent... shall... be entitled, on an order given by the President of the First Instance Court of the place of the presumed infringement, to direct any bailiffs, accompanied by experts of his own choice, to proceed with a detailed description, with or without effective seizure, of the allegedly infringing articles or processes.”

- Articles R. 615-1 to -4 Intellectual Property Code

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The grant of the order: an *ex-parte* procedure

- Authorisation by the President of the local Court of first instance
- Petition filed by the counsel for the plaintiff
- Defendant not informed of the petition
- Defendant informed just at the beginning of the performance of the *saisie*



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The grant of the order: a right for the owner

- If presented a valid title, the Judge must grant the order
- However, the Judge may:
 - ◆ restrict the terms of the petition
 - ◆ subject his authorization to a security on the part of the petitioner

The performance: who may take part to the *saisie*?

- A bailiff (« *huissier* ») who performs the *saisie*
- An expert who helps the bailiff to describe the infringing device:
 - ◆ independent from the parties
 - ◆ generally a patent attorney
- A police officer (or squad if appropriate)
- Any other person whose technical skills may be useful (e.g. accountant)



The performance: what may be performed?

- Search and description of the infringement
- Purchase of samples
- Copy of technical, commercial and accounting documents
- Taking photographs, video recordings, drawings



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The performance: confidentiality matters

If an objection about the confidentiality of some documents is raised, the Court usually appoints an expert to sort out:

- ◆ which documents, even confidential, are useful to prove the infringement
- ◆ which documents are not related to the infringement.

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The aftermath: the plaintiff must serve summons

- The plaintiff must start the proceedings against the infringer within 15 days
- Otherwise: the *saisie* is void




The aftermath: possible challenges by the defendant

The defendant may

- either challenge the grant of the order
- or challenge the performance of the *saisie*

**The aftermath:
how much?**



	S	XL
■ Attorney at law	2,000	10,000
■ Local counsel	500	1,500
■ Bailiff	1,000	5,000
■ Patent attorney	1,500	10,000
■ Photograph	-	1,500
	5,000 €	30,000 €

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**International context:
is it possible to use *saisie*
for obtaining evidence in France
of the infringement of a foreign patent?**

- Limited case law
- Seems possible: the Brussels Convention and the European Regulation No. 44/2001 may allow to request a *saisie*

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International context: Article 24 Brussels Convention (Article 31 Regulation 44/2001) allows general *ex parte* orders

- No case law
- Article 24 Brussels Convention (Article 31 Regulation 44/2001) allows to order provisional, including protective, measures
- French law allows to order urgent measures *ex parte* when needed

International context: using documents seized in France in foreign proceedings

- If the seized documents are not confidential, they may be used freely for proceedings in other countries.
- If they are confidential, they should be handled with care.

Conclusion

Saisie is a means of gathering evidence:

- ◆ powerful
- ◆ quick
- ◆ cheap
- ◆ helpful in an international context

Thanks for your attention