

Patent Litigation in France Statistical study 1990-1999

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Patent Litigation in France
Statistical study 1990-1999

Ministry of Justice Statistics First Instance Courts (averages 1990-1999)

Tribunal de Grande Instance	New cases	Closed cases	Average duration (in months)
Paris	172	155	17.3
Lyon	33	31	24.1
Rennes	20	16	14.6
Lille	15	13	20.6
Marseille	10	8	18.5
Bordeaux	9	6	15.3
Strasbourg	9	7	15.0
Toulouse	9	7	29.8
Nancy	7	7	18.0
Limoges	3	3	35.3
Others	64	62	17.1
France in whole	351	315	20.6

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This table summarises data from the French Ministry of Justice which, every year, centralises statistics on the activity of each French court.

The title of the category shown is "claims brought for patent infringement and/or for unfair competition."

It shows the number of new cases, closed cases and also the average duration of proceedings and calls for the following comments:

very large predominance of the Paris Tribunal de Grande Instance which deals with the half of the cases

the Paris court is followed -well after- by the Lyon Tribunal de Grande Instance and then the Rennes and Lille Tribunal de Grande Instance

the other 6 courts handle less than 15 cases per year

this raises the question of whether the number of courts having jurisdiction should be restricted

it is perhaps surprising to note the number of cases brought before the "other courts" which do not have jurisdiction over such cases: it is probably not a sign that practitioners have poor knowledge of the rules relating to jurisdiction. It is rather a sign that files are categorized erroneously?

The notion of average duration bears little meaning in practice insofar as the statistics make no distinction between cases which are closed following the handing down of a judgment and those which are closed through withdrawal of the case from the case list.

Patent Litigation in France
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Ministry of Justice Statistics Courts of Appeal (averages 1990-1997)

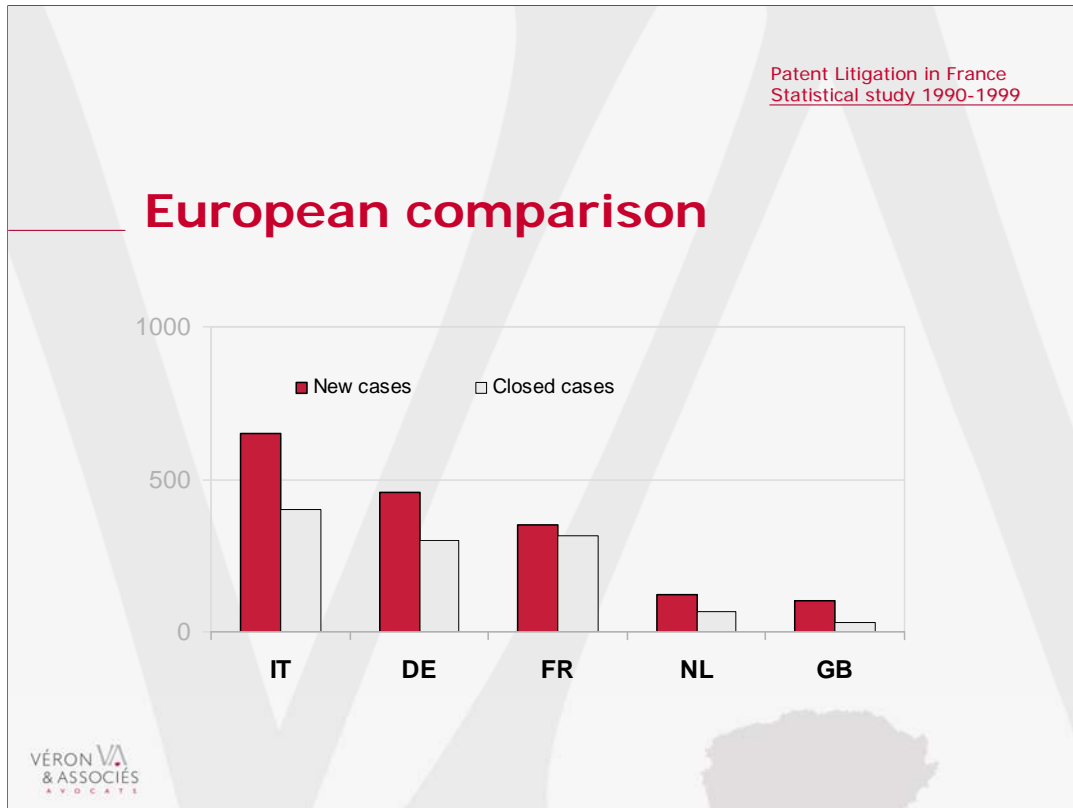
Court of Appeal	New cases	Closed cases	Average duration (in months)
Paris	38	36	21.9
Lyon	13	12	23.4
Aix-en-Provence	12	10	24.4
Rennes	10	8	17.0
Douai	7	3	14.1
Bordeaux	6	5	27.2
Colmar	4	5	25.4
Nancy	4	3	26.6
Toulouse	3	6	32.5
Limoges	3	3	29.4
Others	30	26	17.0
France in whole	132	117	22.1

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This table also summarises data from the French Ministry of Justice relating to the cases brought before the Courts of Appeal.

It shows the average number of new cases and closed cases per year as well as the average duration of proceedings and calls for the following comments:

- the predominance of the Paris Court of Appeal is not so marked than in first instance: it deals only with around 30 % of the cases in France against 50 % of the new cases in first instance for the Paris *Tribunal de Grande Instance*;
- it is perhaps surprising to note the great number of cases brought before the Courts which do not have jurisdiction over such cases normally; undoubtedly it is a sign that files are categorized erroneously rather than a mark of obstinacy from the plaintiffs;
- the average duration of proceedings, like in first instance, does not seem significant.



The data presented here are taken from a study performed by Edward Nodder, a British solicitor of Bristows in the framework of E.P.L.A. (European Patent Lawyers Association), on the feasibility of a single European court system for patent cases.

The "new cases" represent the average number per year of cases brought before a first instance court. Likewise, the "closed cases" gather the decisions handed down by the first instance courts alone in average during one year.

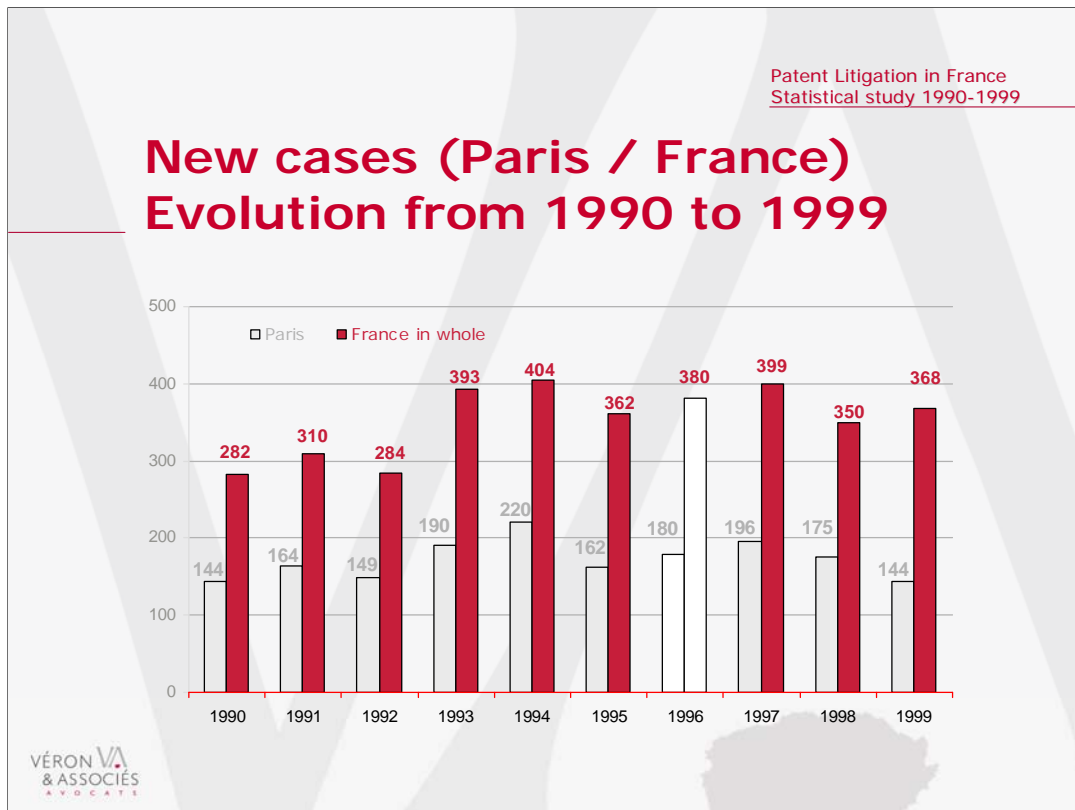
Italy is the country which has the greatest number of new cases (650) and of closed cases (400).

Germany has in average 455 new cases and 300 closed cases per year.

As for **France**, it is behind Germany as to the new cases (around 350) but above of it as to the closed cases (around 315).

In **The Netherlands**, the Court of The Hague, the only court having jurisdiction in relation to patents, is seized in average of 120 cases per year (including a great number of *kort geding*) and closes around 65 cases. Most of these cases are patent infringement claims and involve foreign parties and European patents. A large number of proceedings for interim injunctions are to be noted like in Germany.

In **The United-Kingdom**, the number of initiated actions is by comparison lower (100) and the one of closed cases is even much lower. A high rate of settlement is to be noted (around 2/3 of the cases).



This chart illustrates the increase in the number of new cases from 1990 to 1999, despite a slight decrease in 1992, 1995 and 1999.

The total number of cases, around 350 per year, should be viewed against the background of the 345 600 patents in force in France according to the I.N.P.I. (French Industrial Property Institute).

We can therefore consider the litigation rate to be in the order of 1 case for every 1000 patents per year.

N.B.:

- The figures of 1996 have been obtained by interpolation.
- The figures of 1998 have been adjusted in order to take into account the creation of the 3rd Section of the 3rd Chamber of the Paris *Tribunal de Grande Instance*.

Decisions in JURINPI

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Total	Average
Paris T.G.I.	101	96	89	92	111	99	118	119	120	133	1078	108
Paris C.A.	59	68	52	55	49	43	51	53	45	43	518	52
Cour de Cassation	12	22	17	23	30	23	12	11	13	13	176	18
Total	172	186	158	170	190	165	181	183	178	189	1772	177

The Ministry of Justice statistics do not show the nature of the cases nor their outcome.

For this reason, we were obliged to study statistics from another source.

The JURINPI database, produced by the French Industrial Property Institute, is available on the QUESTEL server.

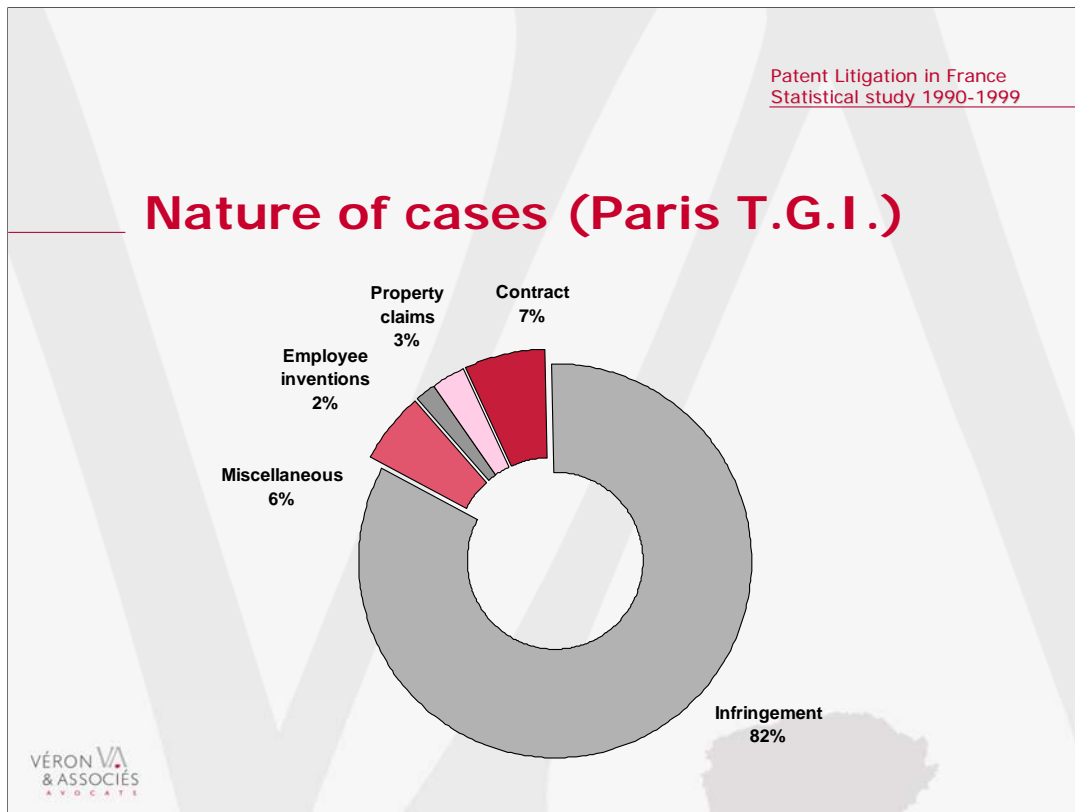
It includes, in principle, **all** the judgments issued in relation to patents by the Paris *Tribunal de Grande Instance*, the Paris Court of Appeal and the *Cour de Cassation* (even orders recording the withdrawal of the plaintiff at the level of the Paris *Tribunal de Grande Instance*, but not the administrative decisions recording the withdrawal of the case from the case list by simple annotation appearing on the file).

The number of closed cases in first instance is increasing, from around 100 in 1990 to more than 130 in 1999.

The number of decisions of courts outside Paris included in the JURINPI database was too low to provide a true statistical view.

Finally, it should be noted that unfortunately *référé** decisions (including those in relation to interim injunctions for infringement) are not systematically included in the JURINPI database.

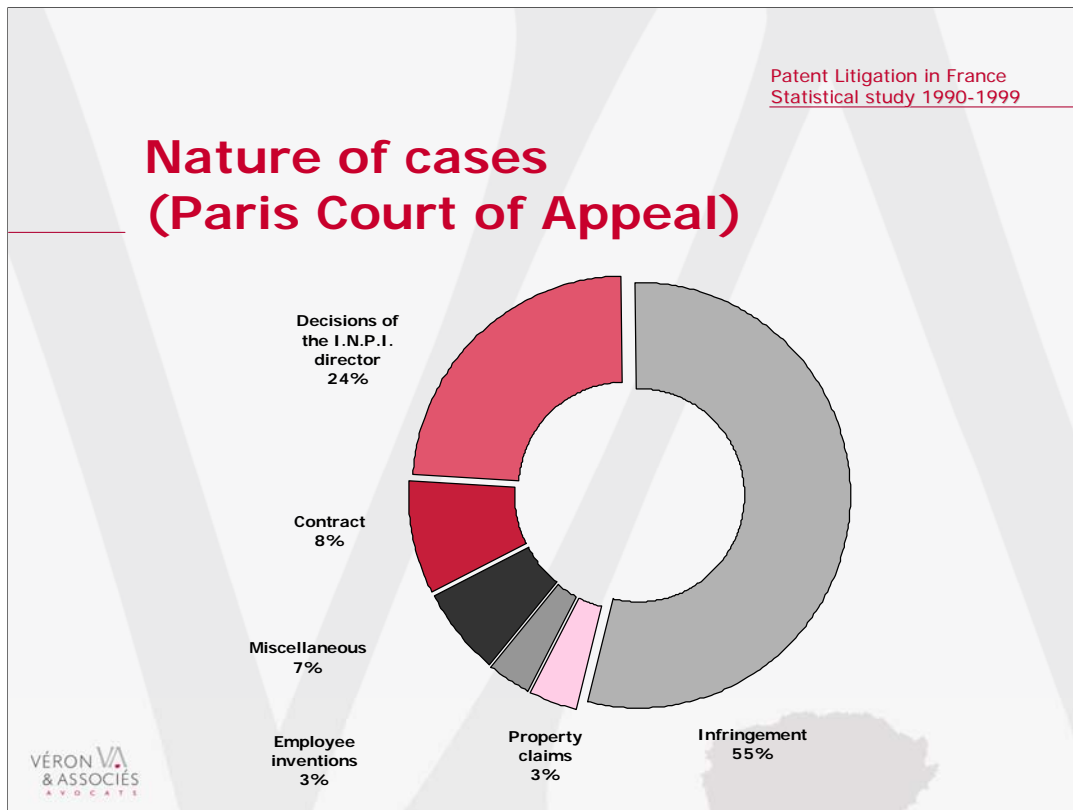
* *référé* are quite similar to Dutch *kort geding*, accelerated proceedings for interim measures without binding decision on the merits of the case.



Infringement litigation represents the large majority of first instance cases (**82 %**).

Contractual disputes fall very far behind at 7 %.

Property claims account for 3 % and employee inventions only 2 %, i.e. around 2 cases per year.



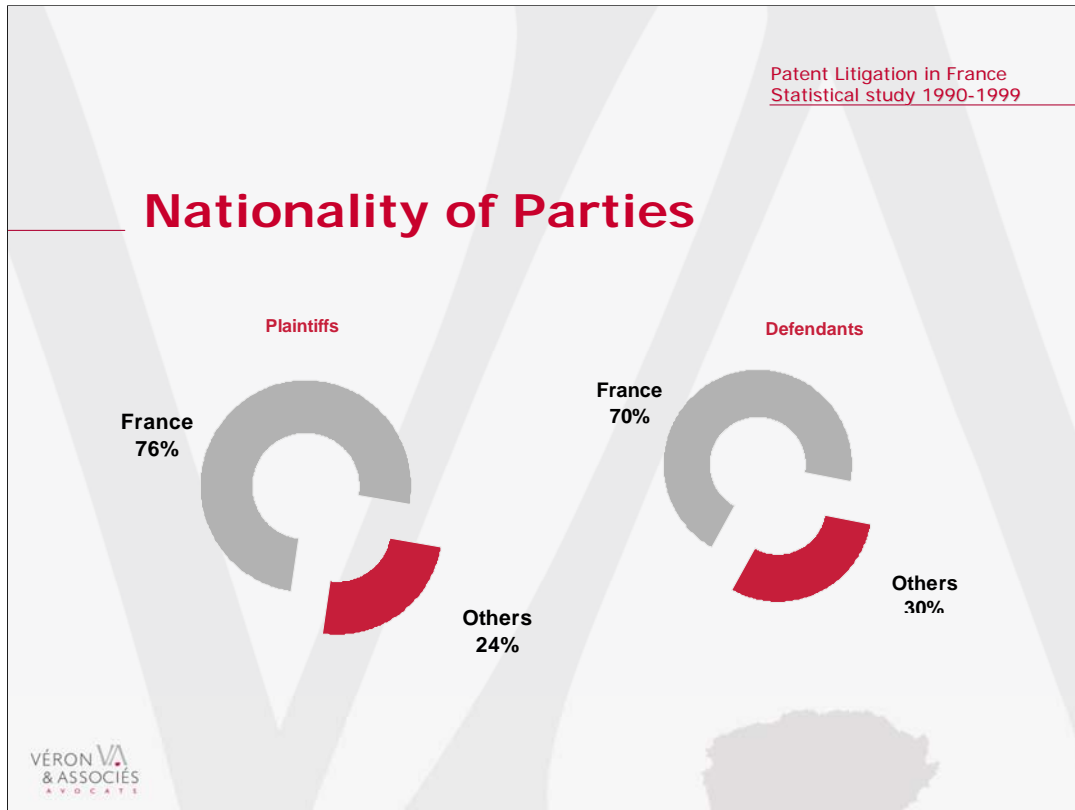
The Paris Court of Appeal rules on a very specific type of litigation: appeals brought against decisions of the Director of the French Industrial Property Institute.

This specific litigation accounts for around ten cases per year.

Infringement cases account for a slightly smaller proportion of cases (55 %) than at first instance level (82 %).

In correlation, the other types of cases are more frequent.

Perhaps this is a sign that the case-law relating to the validity and the infringement is better established (better known by practitioners) which would explain the lower level of appeals.



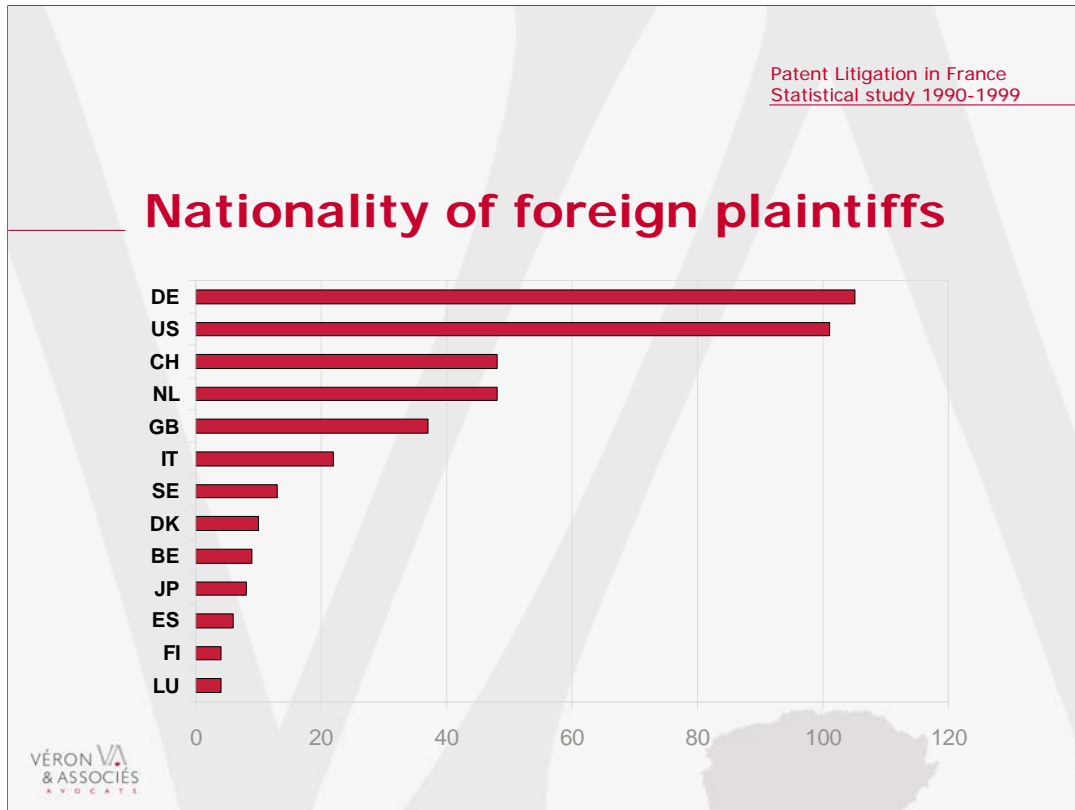
French parties account for about the same proportion, between 70 % and 80 %, whether as plaintiffs or defendants.

French plaintiffs account for 76 % of plaintiffs in infringement cases.

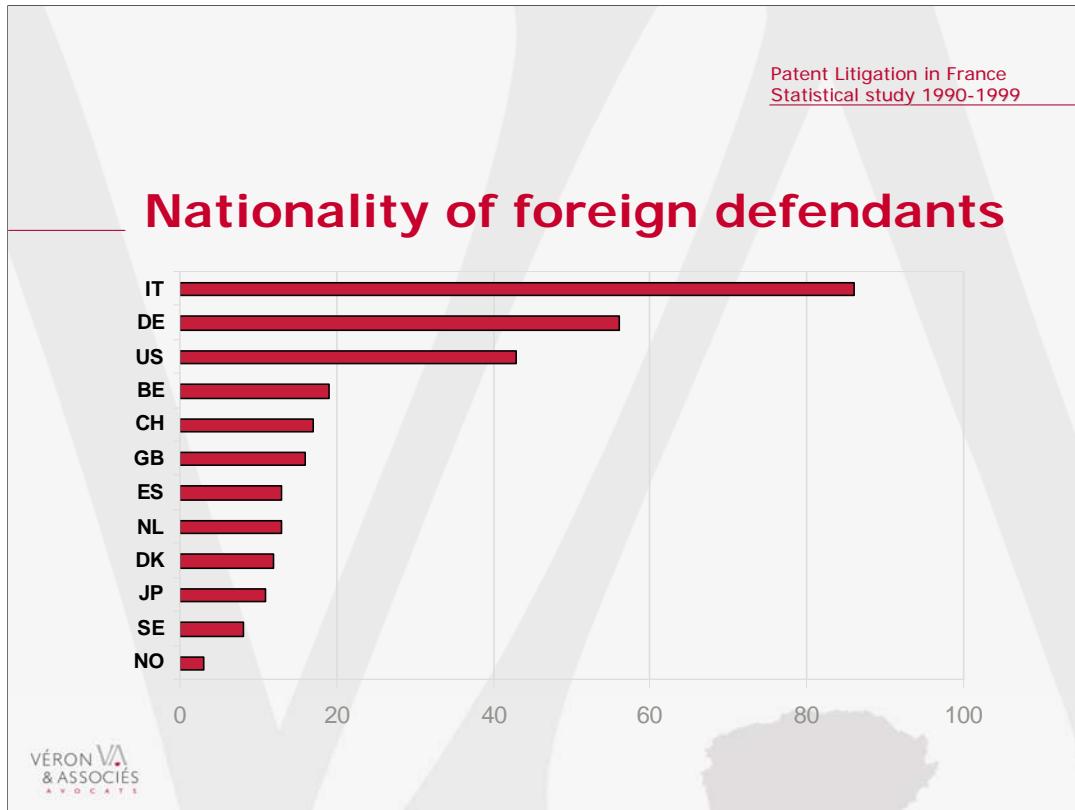
This proportion is almost reversed in relation to the rate of domestic patents filed which currently stands at around 20 %.

In other words, the French patentees, which own almost 20 % of French patents, initiate 76 % of the infringement cases.

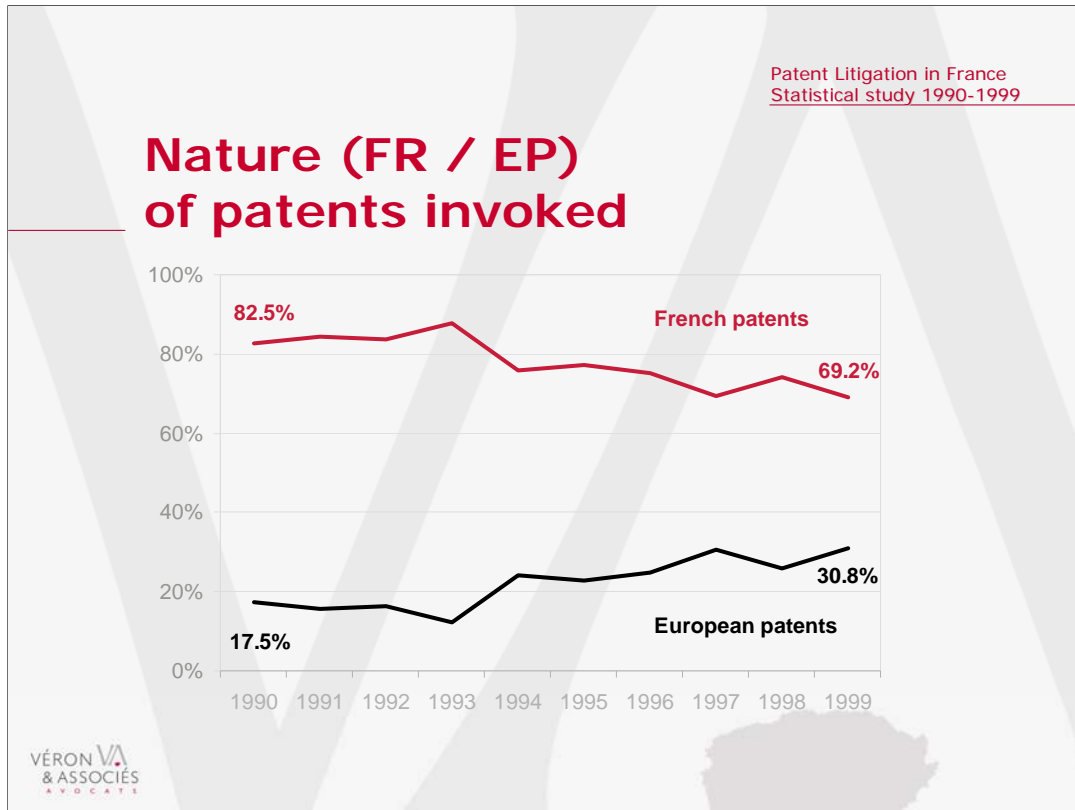
Not surprisingly, the French defendants represent the very large majority (70%) in number of the defendants.



France's main trading partners naturally figure at the top of the league table of plaintiffs.

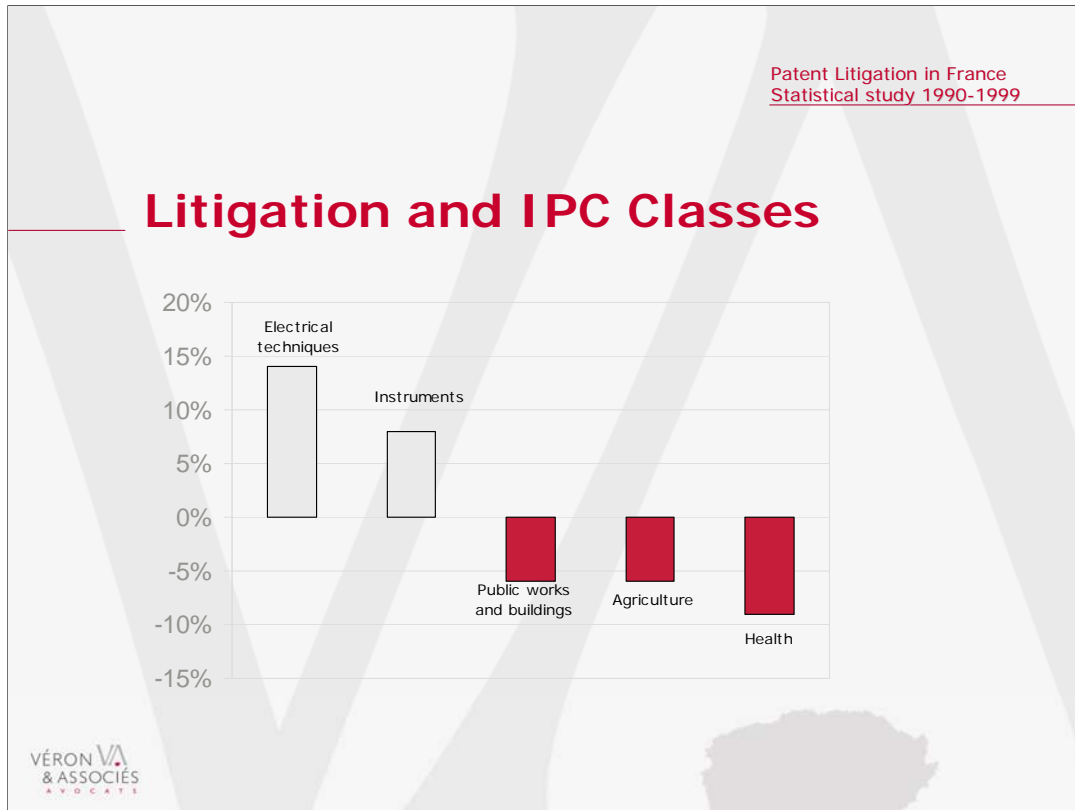


Here again, France's main trading partners head the league table. However, here, Italy ranks first, far ahead of Germany. The United States fall far behind, followed by Spain, Belgium and Switzerland.



The number and rate of European patents invoked is increasing steadily every year:

- 1990: 17.5 % (22 European patents against 104 French patents),
- 1999: 30.8 % (53 European patents against 119 French patents).

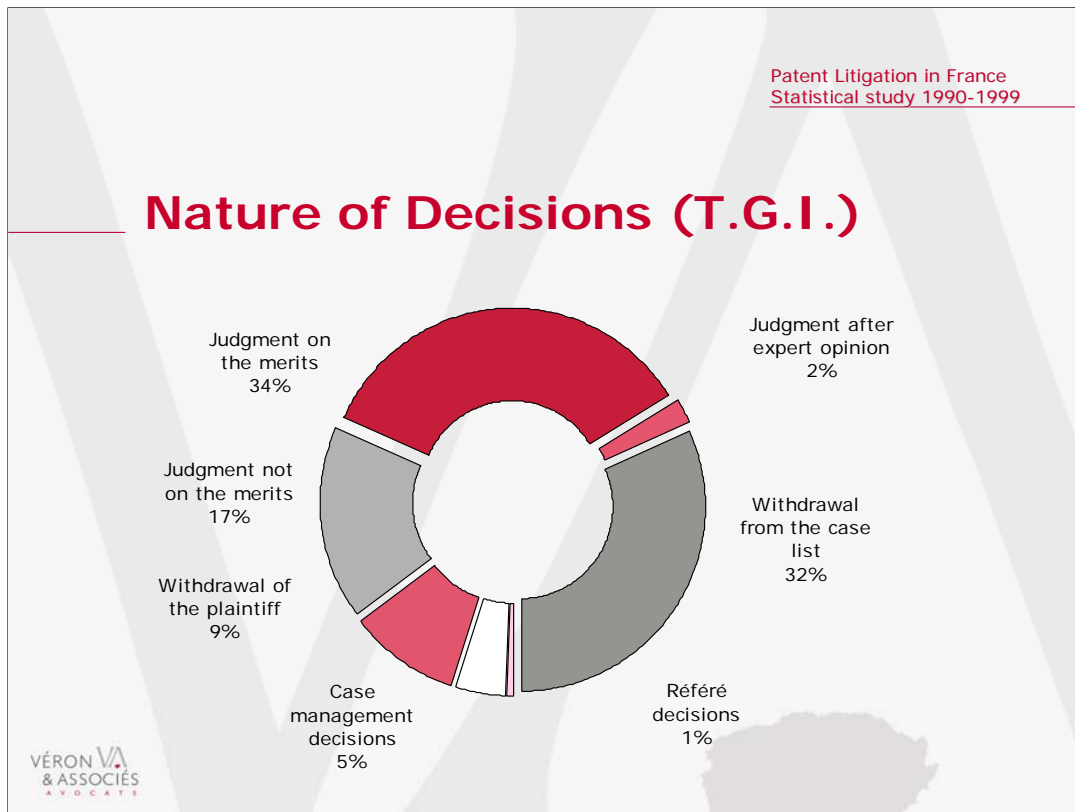


This chart shows the IPC classes which are proportionally over- or under-represented in litigation in relation to the number of patents filed.

The business sectors in which the number of patent suits is proportional (within 5%) to the number of patent applications are not illustrated.

The classes giving rise to most litigation are electrical techniques and instruments.

The classes giving rise to the least litigation are health, agriculture and public works.

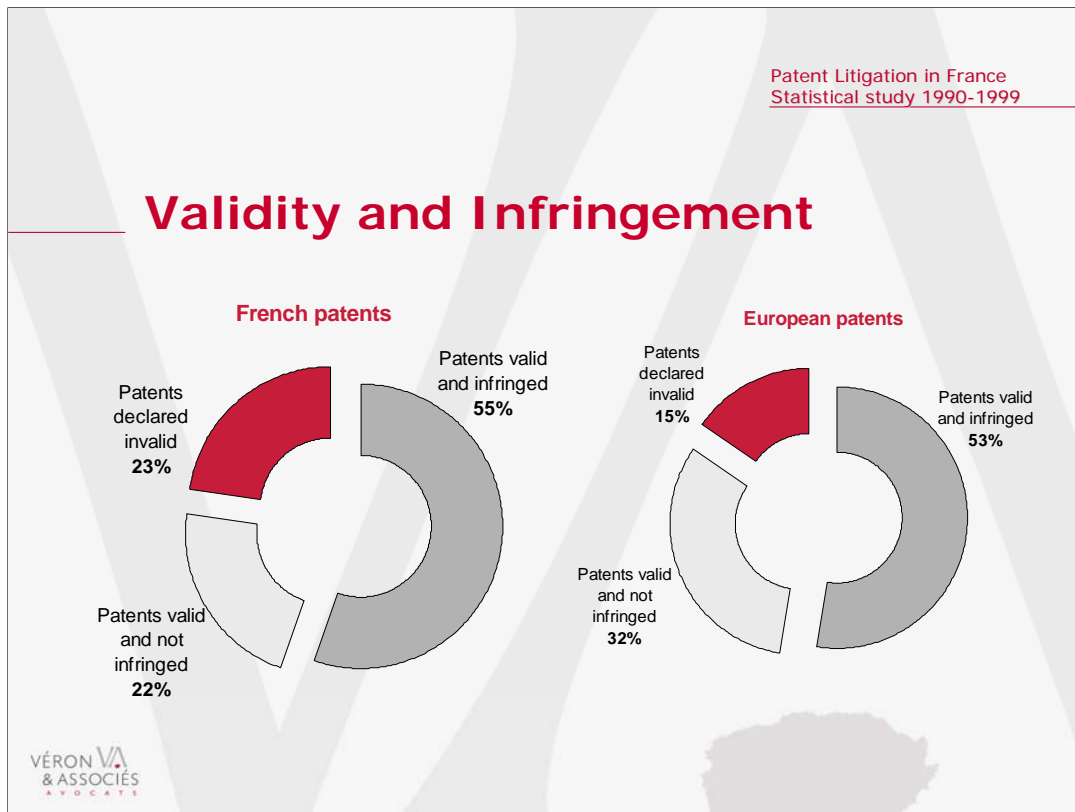


This chart combines the figures from the JURINPI database, which only records judgments, with the administrative measures of withdrawal from the case list, which account for around 50 cases per year.

If we add withdrawals of the plaintiffs recorded through order or judgment to these administrative measures of withdrawal of the case from the case list, we see that more than 40 % of cases are closed without a judgment, generally as a result of settlements (but also, sometimes, for lack of litigants, following "bankruptcy").

There is also quite a high rate (17 %) of judgments which do not consider the merits of the case (for example following the cancellation of a *saisie-contrefaçon*).

Judgments following expert opinions are rare (2 %) and concern mainly assessment of damages.



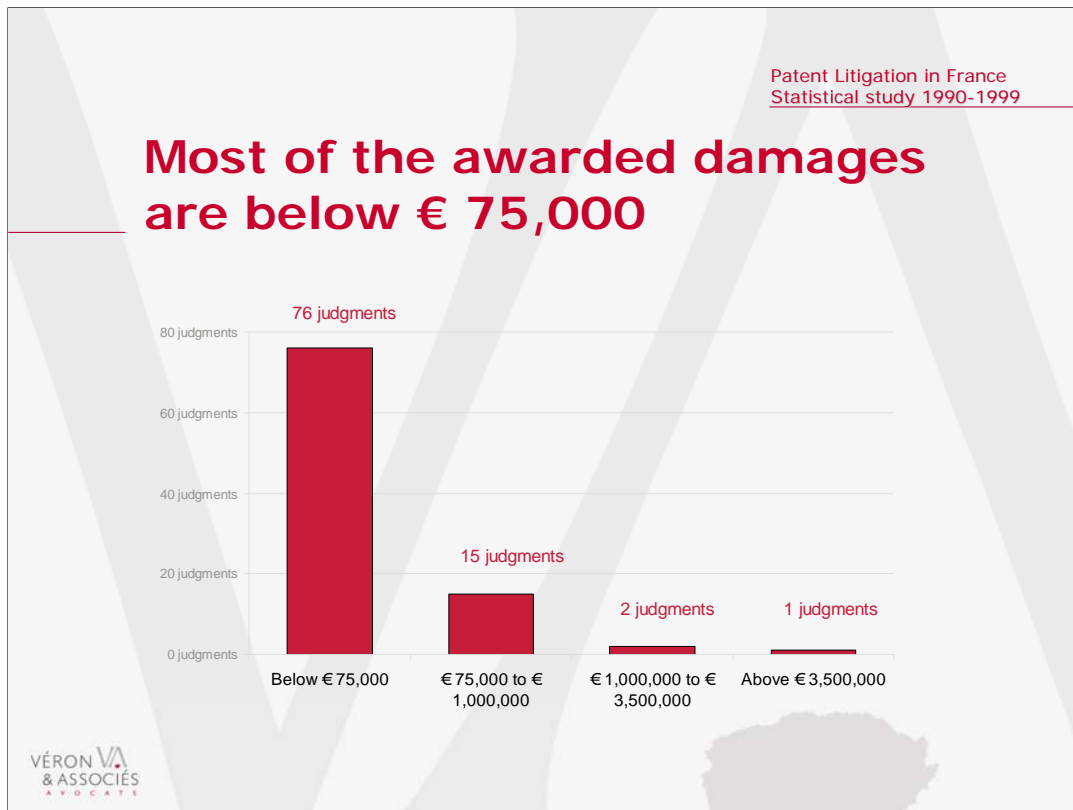
This chart shows the outcome of the decisions of the Paris *Tribunal de Grande Instance* for the **419** infringement cases judged on the merits at first instance level between 1990 and 1999 and which concerned **431** patents (some cases involve more than one patent and some patents being involved in several cases).

The French patents are declared invalid in 23 % of cases, whereas the French parts of European patents are revoked in 15 % of cases.

The European patent thus seems to have slightly higher guarantees as regards validity than the French patent.

The patent is declared or held as valid, but not infringed, in around 20 to 30% of cases depending on whether the action is based on a French patent or a European patent.

Infringement claim is therefore accepted in around 55 % of cases.



The Paris *Tribunal de Grande Instance* has handed down 94 decisions on damages.

This account does not include those decisions which awarded only provisional damages.

However, it includes both:

- decisions which fixed the final amount of damages without any expert opinion, when the court believed to have enough elements to enable it to do so,
- decisions which fixed the amount of damages after an expert opinion.

Accordingly, when we compare these 94 decisions to the number of decisions ruling upon infringement (419), we see that only 25 % of cases result in the final assessment of damages.

The bulk of cases are undoubtedly terminated through out of Court settlements or given up (for example bankruptcy of the parties).

The amounts awarded are self explanatory: less than 10 decisions out of 94 awarded more than € 1,000,000.

The median line (as many decisions above as below) is situated at € 20,000.

The average reaches € 150,000 only as a result of the most severe judgments.

Damages: hit parade

CIBA GEIGY, RHONE POULENC AGROCHIMIE v. INTERPHYTO	40 333 800 F	6 148 848 €
PRODEL v. RENAULT AUTOMATION	33 000 000 F	5 030 818 €
VAN DER LELY v. MACCHINE AGRICOLE REMAC	15 600 000 F	2 378 205 €
ISOVER SAINT-GOBAIN v. FIBRAVER, TICTOR	11 000 000 F	1 676 939 €
VAN DER LELY v. QUIVOGNE	9 500 000 F	1 448 266 €
DOUBLET v. ALTRAD DEVELOPPEMENT, SELECT ETEM	8 606 000 F	1 311 976 €
THOMANN v. THOMANN	7 720 818 F	1 177 031 €
NOEL MARQUET v. DELAMARE	6 800 000 F	1 036 653 €
SAMEX v. PLYMOUTH	6 500 000 F	990 919 €
GACHOT v. MECAFRANCE	4 741 806 F	722 884 €
HK INDUSTRIES v. FICHET BAUCHE	4 716 000 F	718 950 €
STEP v. COSTER	4 436 760 F	676 380 €
COLOPLAST v. HOLLISTER	3 837 176 F	584 974 €
HERRIAU v. FRANQUET, MATROT, MOREAU	3 680 990 F	561 163 €
VISKASE v. VISCOFAN	3 608 000 F	550 036 €
Average	10 938 757 F	1 667 603 €

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This table shows the 15 highest damages awarded by the French courts from 1990 to 1999.

Damages US courts : hit-parade

POLAROID v. EASTMAN KODAK	\$873 000 000	973 395 000 €
DIGITAL v. INTEL	\$700 000 000	780 500 000 €
CORDIS - JOHNSON & JOHNSON v. BOSTON SCI'C	\$324 000 000	361 260 000 €
CORDIS - JOHNSON & JOHNSON v. MEDTRONIC	\$270 000 000	301 050 000 €
HAWORTH v. STEELCASE	\$211 000 000	235 265 000 €
EXXON CHEMICAL v. MOBIL CHEMICAL	\$170 000 000	189 550 000 €
VISKASE v. AMERICAN NATIONAL CAN	\$165 000 000	183 975 000 €
GUIDANT v. ST JUDE MEDICAL	\$140 000 000	156 100 000 €
EXXON CHEMICAL v. LUBRIZOL	\$129 000 000	143 835 000 €
PROCTER & GAMBLE	\$125 000 000	139 375 000 €
X-IT/PRODUCTS v. WALTER KIDDE	\$116 000 000	129 340 000 €
3M v. JOHNSON & JOHNSON	\$107 000 000	119 305 000 €
VISKASE v. AMERICAN NATIONAL CAN	\$102 000 000	113 730 000 €
FONAR v. GENERAL ELECTRIC	\$98 000 000	109 270 000 €
SOUTHERN CLAY PRODUCTS v. SUED-CHEMIE	\$78 000 000	86 970 000 €
Average	\$240 533 333	268 194 667 €

It is enlightening to compare the 15 highest awards of damages in France for the period 1990-1999 with those awarded in the United States^[1] during the same period.

Even if we take into account the size of the market which counts around 6 times as many consumers, the damages awarded in the United States are still considerably higher.

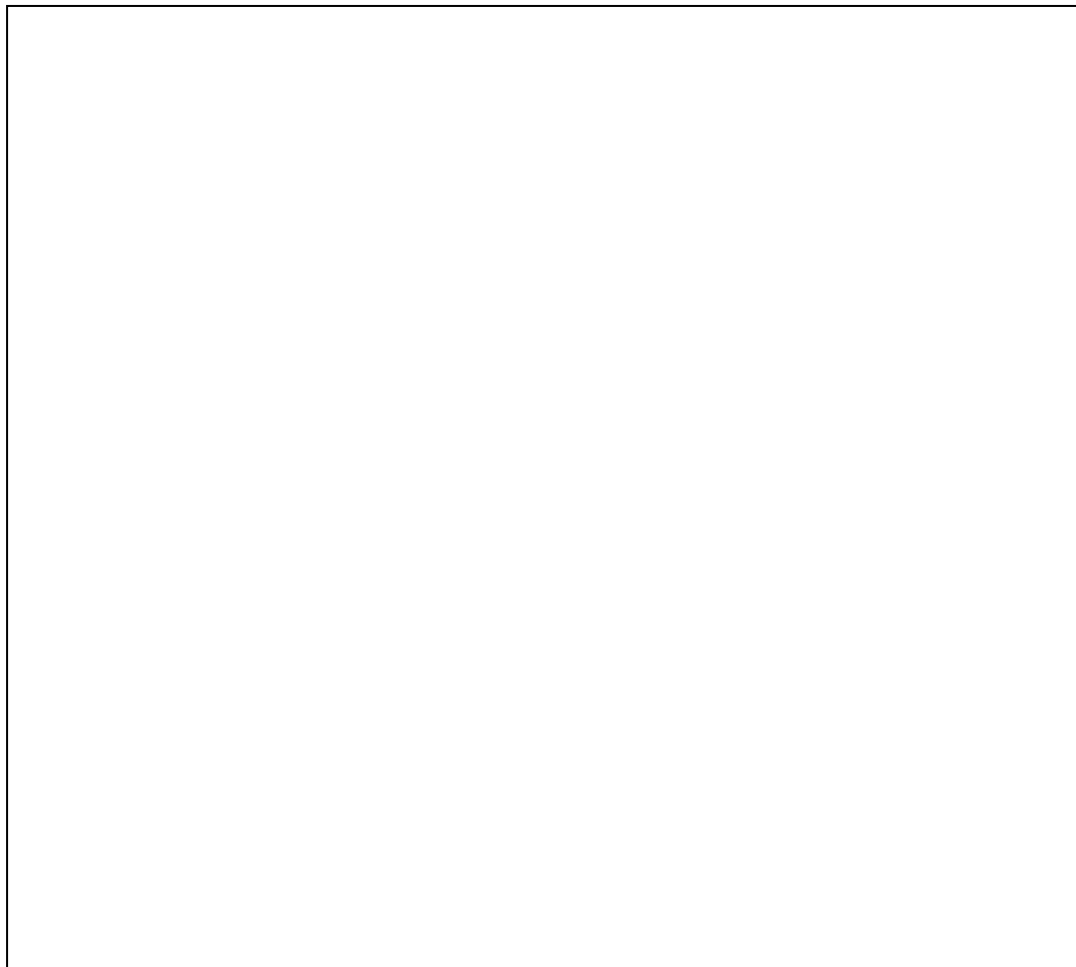
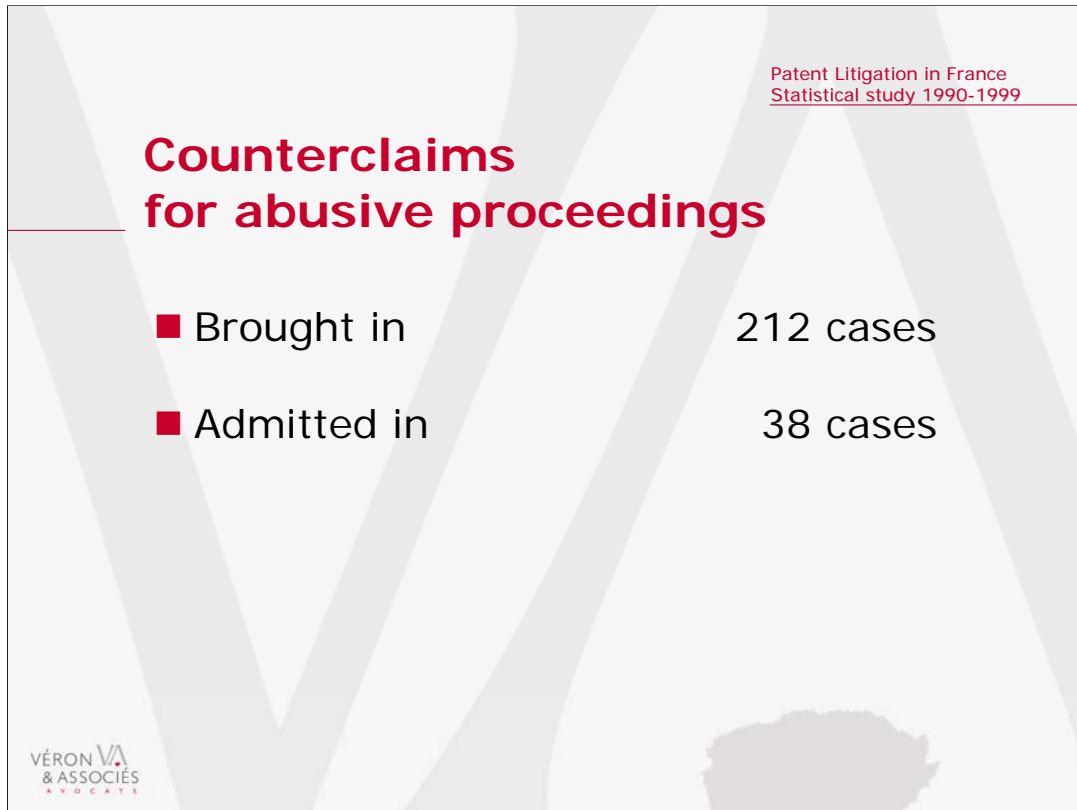
Indeed, even the average for judicial awards, i.e. \$240,000,000 or €270,000,000, can not be compared with the highest amount ever awarded in France.

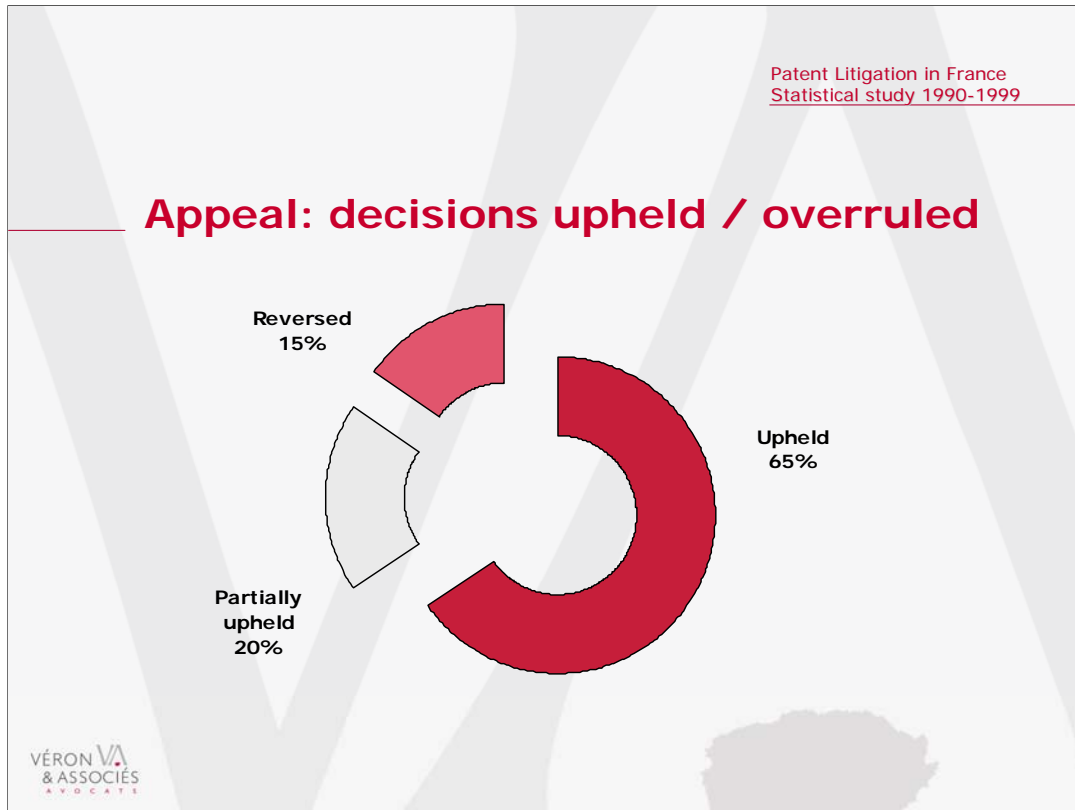
This cannot be entirely explained by the possibility for American Courts to award increased damages (which may be up to *treble damages*).

[1] In the decision *Litton v. Honeywell*, the judge had even awarded \$1,200,000,000 to the winner. However this decision was reversed in appeal.

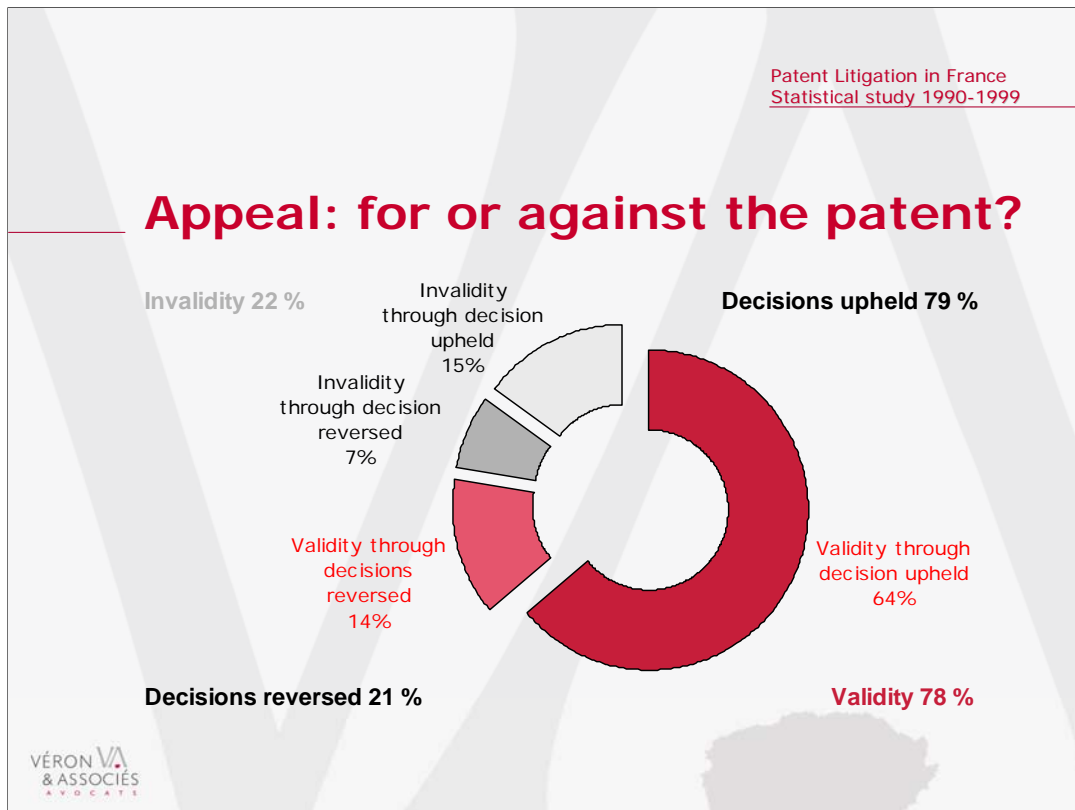
Ancillary sanctions (averages)

■ Publication	3 journals
■ Total cost of publications	€ 6,000
■ Costs	€ 4,000
(maximum € 45,000)	





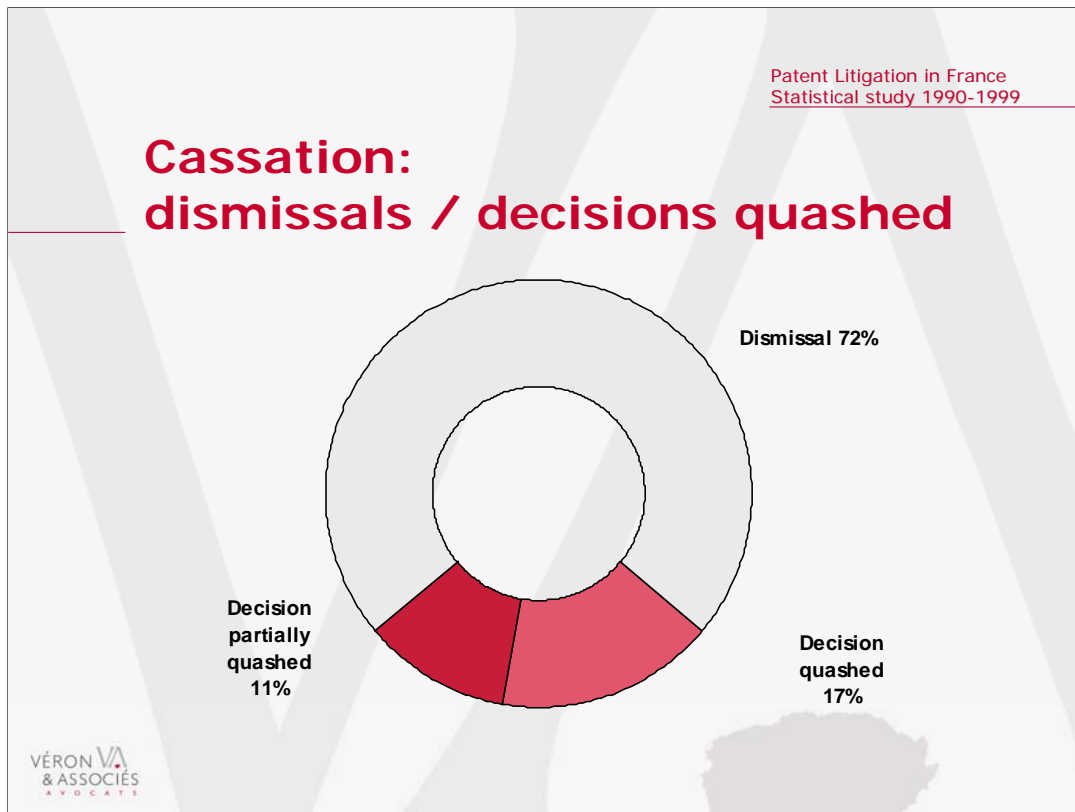
The number of judgments upheld (either totally or partially) of 85 % is higher than the national average of decisions upheld for all cases, which amounted to 76 % in 1995.



In addition to the number of decisions reversed, it was interesting to examine the outcome of decisions taken by the Court of Appeal:

Accordingly, we distinguished the following cases:

- cases where the Court reversed a first instance judgment which found in favour of the patentee
- cases where the Court upheld a first instance judgment which found against the patentee
- cases where the Court upheld a first instance judgment which found in favour of the patentee
- cases where the Court reversed a first instance judgment which found against the patentee.



In the field of patents, the number of decisions quashed (28 %) is less than the number of decisions quashed by the Commercial Chamber of the Cour de Cassation for all fields, i.e. around 35 % over the given period.

Conclusions and Questions

- A uniform statistical view
(quantitative and qualitative stability)
- Should the number of courts having
jurisdiction be reduced?
- Should interim injunctions be
encouraged?

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