

**Tribunal judiciaire de Paris, 3rd Chamber, 2nd Section,
order of the judge in charge of case preparation
19 June 2020, Lufthansa v. Thales et al.**

Traditionally, before the Paris first instance court (*tribunal judiciaire*), the validity and infringement of a patent and, more rarely, the compensation for damages are addressed, pleaded and judged together. However, sometimes, the particular context of a dispute leads the judge in charge of case preparation to dissociate these issues, in order to rule on them one after the other.

The case pending before the Paris first instance court between Lufthansa Technik ("*Lufthansa*") and Thales Avionics, Astronics Advanced Electronic Systems and Panasonic Avionics ("*Thales Avionics et.al*") is a recent example of a sequenced procedure, i.e. a procedure arranged in several stages in the interest of the proper administration of justice.

On 29 December 2017, 9 April and 18 June 2018, Lufthansa summoned Thales Avionics et.al. for patent infringement based on the French part of its European patent No. 0. 881 145, against which a nullity counterclaim has been raised by the defendants.

In its third written submissions on the merits, Lufthansa started to rely on new "*confidential Exhibits resulting from Discovery*". These documents were obtained in the context of discovery proceedings initiated against each of the defendants in the United States. As decided by the US judge, said documents can be used in parallel European proceedings provided a "*confidentiality bubble*" is set up to ensure that each of the defendants is only given access to its own documents, so as to avoid inappropriate disclosure of confidential information to all co-defendants, which are competing companies.

Thalès asked the judge in charge of case preparation to set up the "*confidentiality bubble*" and to determine how the exhibits in question should be communicated by Lufthansa to the defendants. The other two defendants requested that the proceedings be sequenced for the sake of a proper administration of justice, in the hope it would lead the Paris first instance court to issue a first decision on the validity of the opposed patent, before addressing (if necessary) the organization of the communication of the confidential documents and the issue of infringement. Thalès joined this request.

Lufthansa opposed such a sequencing, arguing that it would be detrimental to the proper administration of justice as well as in contradiction with the usual practice of the Paris first instance court.

In her order of 19 June 2020, the judge first underlines that, pursuant to Article 480 of the French Code of Civil Procedure, the judgment on the merits may rule on all or part of the main claims. She then observes that the validity of the opposed patent can be examined notwithstanding the lack of communication of the confidential exhibits gathered during the Discovery, and that the parties have not managed to come to an agreement on the terms of the "*confidentiality bubble*" despite her invitation to do so.

Taking into account both the risks of a communication of confidential information and the time inherent to such communication in the context of an appropriate confidentiality regime, the judge orders the sequencing of the examination of the merits of the case in several stages, so that the validity of the patent in question be discussed and judged first.

In order for this sequencing to be effective, the judge sets short deadlines to finalize the well advanced discussions on the validity of the patent and a hearing for oral pleadings within four months of her order, with no possibility for the parties to request any extension; the imperative nature of the timeline set by the judge, recalled three times in her order, must be pointed out.

Astronics Advanced Electronic Systems and Panasonic Avionics had suggested another option to avoid the thorny organization of the "*confidentiality bubble*", namely to split the proceedings into three separate cases against the three defendants, so that the exhibits obtained from the Discovery concerning one defendant be communicated to this defendant only. Splitting the case into three could have definitively settled the question of the communication of documents obtained from the Discovery; but the multiplication of proceedings was regarded as prejudicial to the proper administration of justice.

While French case law over the last five years offers several examples of procedural sequencing, this approach remains exceptional and is used in specific cases where the judge in charge of case preparation considers that the defendant raises serious

Sabine Agé

+33 1 40 69 01 91
sabine.age@hoyngrokh.com

Caroline Levesque

+33 1 40 69 01 69
caroline.levesque@hoyngrokh.com

Anaïs Pallut

+33 1 40 69 01 76
anaïs.pallut@hoyngrokh.com



arguments that are likely to put an early end to the proceedings (*TGI Paris*, 3rd ch., 1st sect., Ord., 16 April 2015, *High Point / SFR et.al.*, docket No12/12354, 1st phase to rule on the crossed-licenses, their scope and effects between the parties, then on the validity of the opposed patent, before ruling on High Point's claims for disclosure of evidence and expertise; *TGI Paris*, 3rd ch. 1st sect., Ord., 17 November 2016, *Quadlogic Controls Corporation / Enedis*, docket No 16/03165, 1st phase on the validity of the opposed patent before ruling on Quadlogic Controls' claims for disclosure of evidence; *TGI Paris*, 3rd ch., 4th sect., Ord., 30 March 2017, *Fittingbox / Acep Trylive*, docket No 16/09680, 1st phase on the validity of the opposed patent before addressing the claims for lifting the confidentiality of some documents seized in order to prove the materiality of the infringement, as well as possibly the scope of the infringement and how the confidentiality would be lifted; *TJ Paris*, 3rd ch., 1st sect., Ord., 16 January 2020, *Intellectual Ventures II / Orange e.a.*, docket No 17/13838, 1st phase on the validity and the infringement of essential patents, before examining the "FRAND" defence and the claims for setting the terms of a license).

By contrast, French judges have recently shown that, when they consider that the defendant does not oppose serious arguments to challenge the admissibility, validity or even infringement of the opposed patent, they are inclined to order preliminary injunctions within a few months: 50% of PI requests filed over the last 2 years have indeed been granted.

