

IP litigation in life sciences - France: costs, duration and enforceability

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Summary

1. Main features of patent litigation in France
2. Costs
3. Duration
4. Enforceability

1. Main features of patent litigation in France

Specialized courts for patent disputes

- *Tribunal de grande instance de Paris, 3rd chamber:*
 - ▶ exclusive jurisdiction to hear patent disputes on the merits in first instance;
 - ▶ 12 judges for IP litigation
- *Cour d'appel de Paris, 5th division:*
 - ▶ exclusive jurisdiction to hear patent disputes on the merits on appeal;
 - ▶ 6 judges for IP litigation;

Infringement and invalidity claims decided together

- A defendant to an infringement action can present a counterclaim for revocation
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- Infringement and validity are discussed in the same pleading, the same oral hearing and the same judgement
- The revocation of a patent has an *erga omnes* effect

Evidentiary process, basic principles

- The parties have the burden to prove the facts they allege
- *Saisie-contrefaçon* is a major tool to prove infringement:
 - ▶ used in 80% of infringement actions;
 - ▶ more than 600 *saisies* ordered each year.
- No discovery or disclosure
- No examination of parties and witnesses
- Limited role of experts

Nature of cases (1/2)

- Disputes in life sciences can relate to:
 - ▶ patent infringement;
 - ▶ patent revocation;
 - ▶ but also contracts, employees' inventions, claim of ownership...

Nature of cases (2/2)

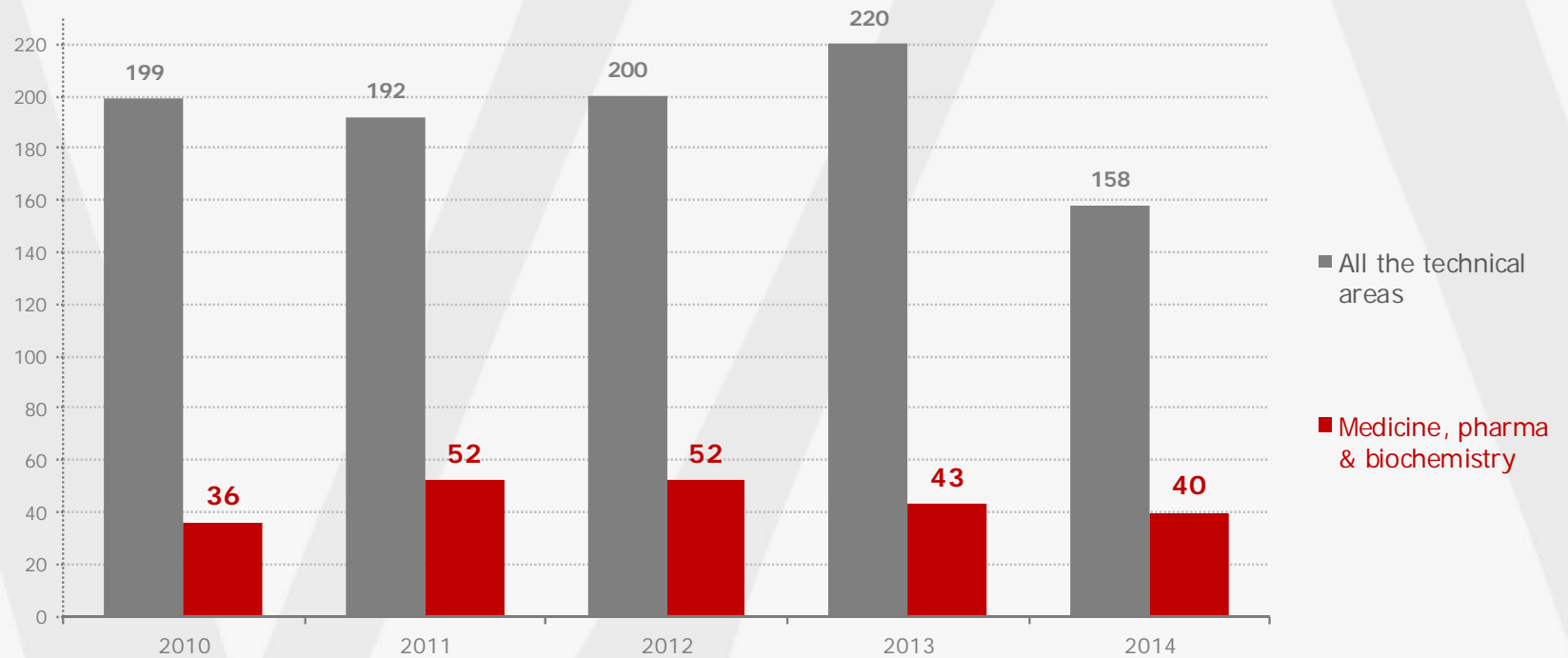
- Disputes in life sciences often involve international companies with various affiliates (R&D, distribution...)
- Parallel proceedings can take place in several countries (EU countries, US, Japan...)

Type of proceedings

- Preliminary injunction proceedings:
 - ▶ to prevent imminent launch of a generic or biosimilar or stop its marketing;
 - ▶ often requested in pharmaceutical cases where a few days of infringement can have major consequences.
- Proceedings on the merits :
 - ▶ to obtain a decision about infringement and / or validity;
 - ▶ most often infringement action followed by a counterclaim for revocation (no « *clear the way* » doctrine in France).

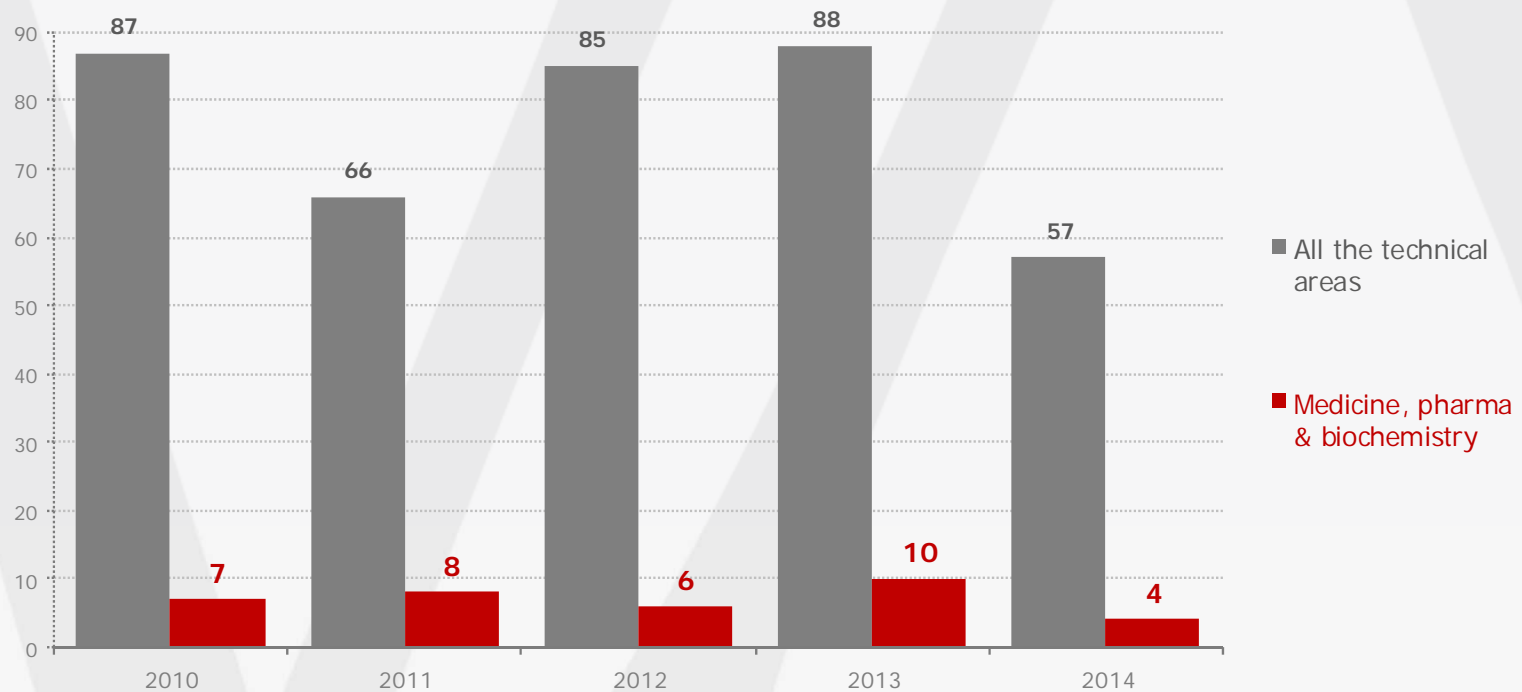
French proceedings in figures

TGI Paris, 2010-2014 Number of decisions

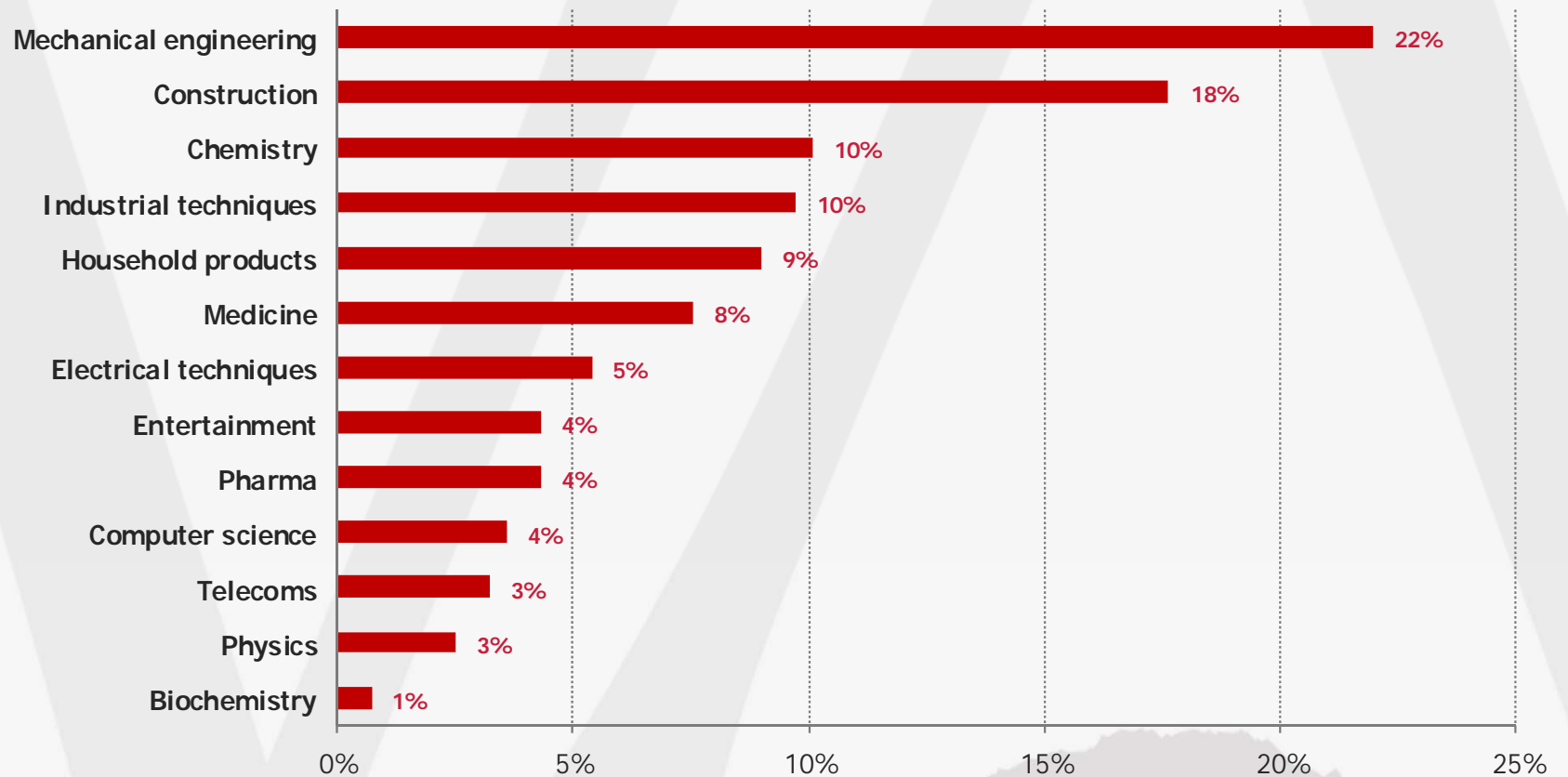


TGI Paris, 2010-2014

Judgments on the merits

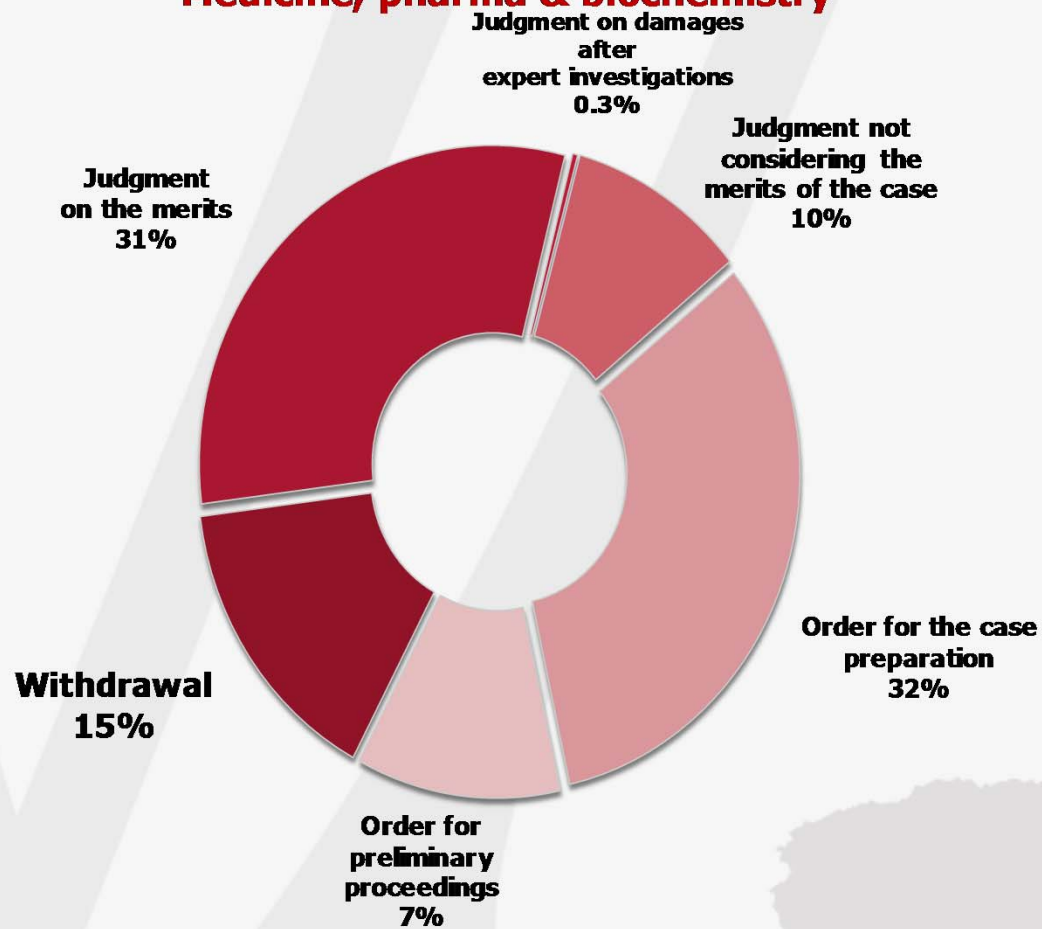


TGI Paris, 2010-2014 Technical areas

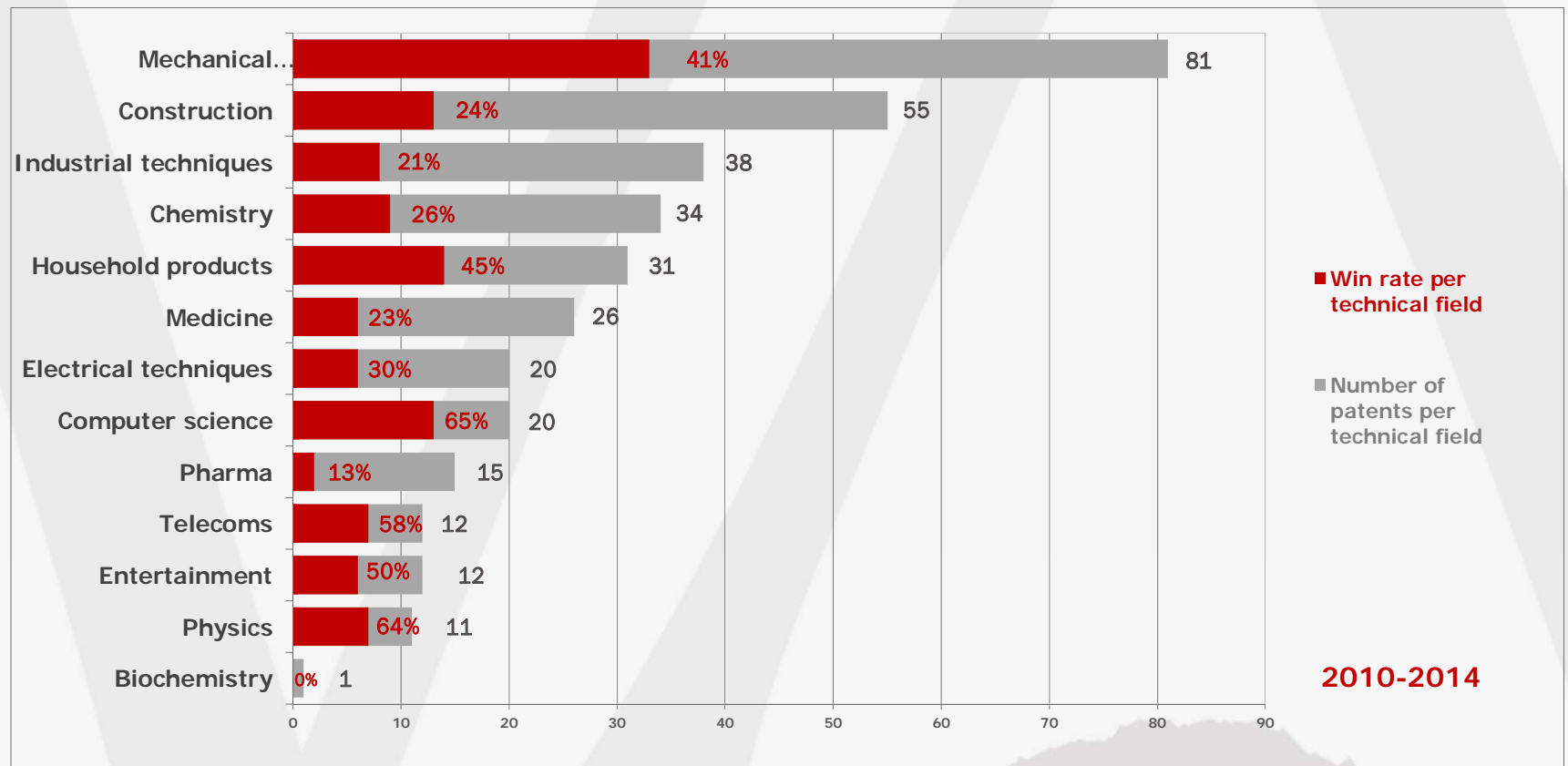


TGI Paris, 2010-2014
Nature of decisions

Medicine, pharma & biochemistry

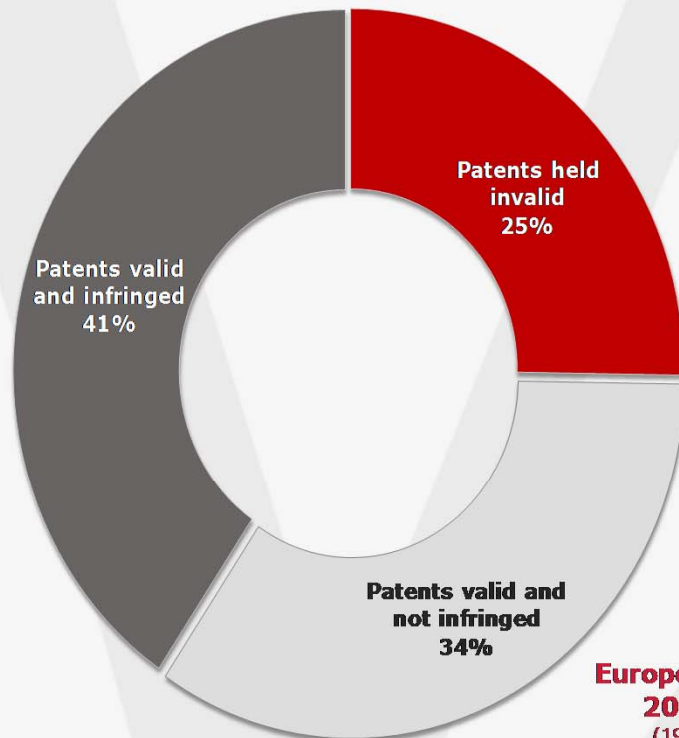


TGI Paris, 2010-2014 Win rate per technical field



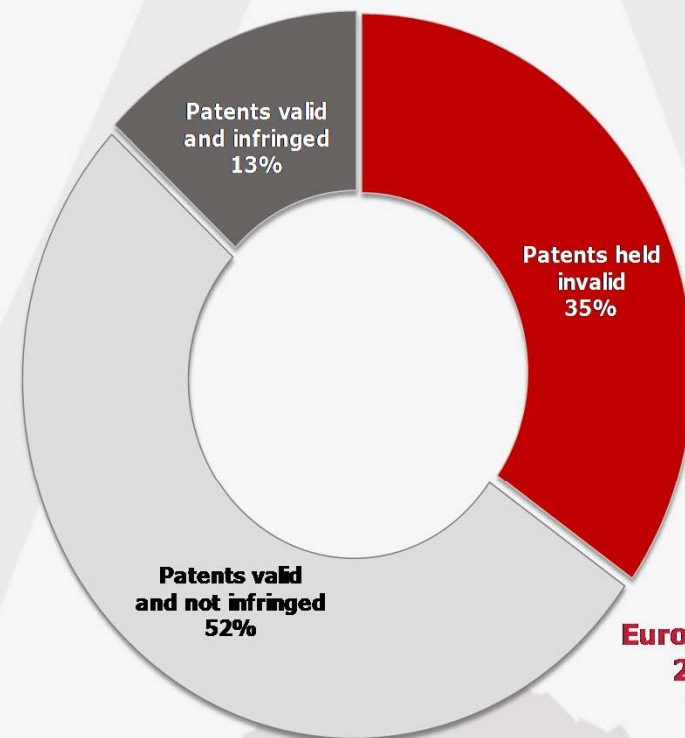
TGI Paris, 2010-2014 Validity and infringement EP

All the technical areas



European patents
2010-2014
(190 patents)

Medicine, pharma & biochemistry



European patents
2010-2014
(23 patents)

Outcome

- Win rate lower than in other technical field
- French courts review thoroughly the validity of the patent:
 - ▶ second therapeutic indications
 - ▶ sufficiency of disclosure

Main pharma cases 2010-2014

2014	Sanofi Aventis Deutschland v. Eli Lilly	Insulin glargine (Lantus)
2014	Mylan, Ethypharm v. Astra Zeneca	Esomeprazole (Inexium)
2014	Virbac v. Merial	Combination of fipronil and methoprene (Frontline Combo)
2013	Sanofi v. Mylan	Combination of irbesartan and HCTZ (CoAprovel)
2012	Laboratoires Fournier v. Ethypharm	Fenofibrate (Lipanthyl)
2012	Ratiopharm, Merckle, Teva v. Sanofi-Aventis	Clopidogrel (Plavix)
2012	Teva v. Eli Lilly, Daiichi Sankyo, Pierre Fabre	Raloxifene (Optruma, Evista)
2012	Biogaran v. Medidom, Negma	Diacerein (Art 50)
2011	Novartis v. Actavis, EG Labo, Zentiva	Valsartan and combination of valsartan and HCTZ (Tareg, Cotareg)
2010	Ratiopharm v. Alza corporation	Fentanyl (Durogesic)
2010	Ratiopharm v. Sepracor	Levocetirizine
2010	Teva, Actavis v. Merck Sharp & Dohme	Finasteride (Propecia)
2010	Mundipharma v. Sandoz	Tramadol (Topalgic, Contramal)
2010	Hexal, Sandoz v. Boehringer Ingelheim,	Repaglinide (Prandin)
2010	Eli Lilly v. Sandoz	Gemcitabine (Gemzar)
2010	El DuPont de Nemours, Merck / Mylan	Losartan and combination of losartan and HCTZ (Cozaar, Hyzaar)

2. Costs

Costs of French proceedings

- The budget for patent litigation varies from case to case, depending on:
 - ▶ the technical difficulty;
 - ▶ the interests at stake;
 - ▶ the pugnacity of the parties;
 - ▶ the number of patents involved;
 - ▶ the expertise of the attorneys-at-law and patent attorneys involved...
- No typical budget, only some indicative ranges

Costs of French proceedings

- Costs in first-instance proceedings on the merits:
 - ▶ generally between € 200,000 to € 350,000 for matters of average difficulty;
 - ▶ more than € 500,000 in very complex cases.
- On appeal, around 75% of the first instance costs
- In case of preliminary injunction proceedings, costs of proceedings on the merits slightly reduced

Costs of French proceedings

- Nature of costs:
 - ▶ fees of the attorney-at-law;
 - ▶ fees of the patent attorneys;
 - ▶ costs of the translation of pleadings and exhibits.
- Limited costs for expert reports (no experts examination)
- No discovery or disclosure costs
- Court costs are nominal

Costs of French proceedings

- In principle, attorneys' fees and disbursements partly reimbursed by the losing party to the winning party
- Level of recovery of the fees up to the discretion of the judges
- May represent 1/3 to 2/3 of the actual costs

3. Duration

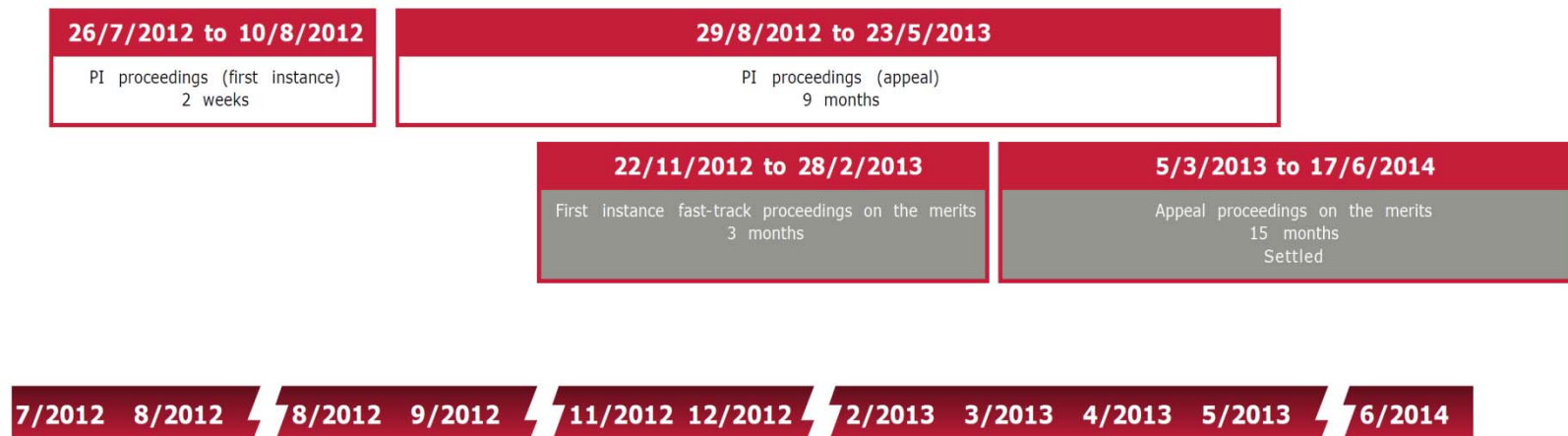
Duration

- Preliminary injunction proceedings:
 - ▶ in first instance: 3 to 4 months, only a few days in case of urgency;
 - ▶ on appeal: on average six months;
- Proceedings on the merits:
 - ▶ in first instance: 18 months on average;
 - ▶ on appeal: on average 24 months;
- Fast-track proceedings on the merits:
 - ▶ in first instance: 6 to 8 months on average;
 - ▶ on appeal: on average 24 months, as regular proceedings on the merits.

Example: *CoAprovel* case

Sanofi / Mylan

Timeline of the French proceedings



4. Enforceability

Sanctions

- Revocation: *erga omnes* effect
- Preliminary injunctions
- Final injunctions (under penalty)
- Damages
- Other sanctions

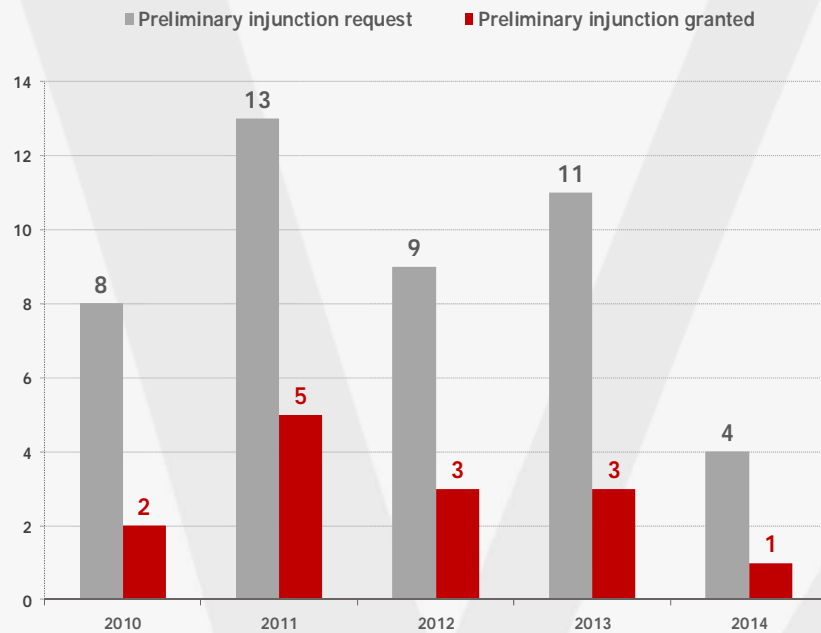
Revocation: *erga omnes* effect

- Contrary to arbitration where revocation of patent has a limited effect between the parties, revocation of a patent in court proceedings has an *erga omnes* effect

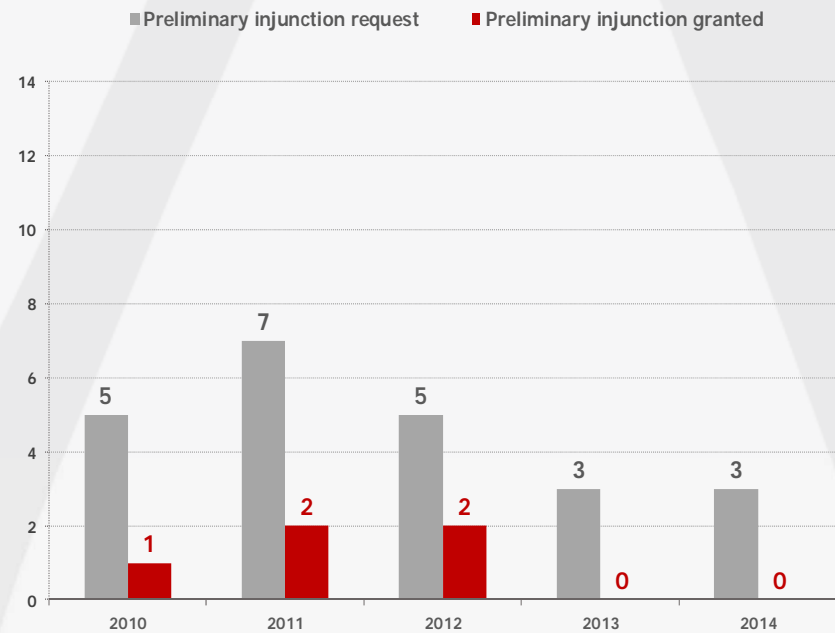
TGI Paris, 2010-2014, Medicine, pharma & biochemistry

Preliminary injunction requests

All the technical areas



Medicine, pharma & biochemistry



Final injunctions

- When a patent is held valid and infringed, a final injunction is automatically granted
- Penalty often ordered to ensure compliance (amount to be paid *per* day of non-compliance)
- No case where a public health issue would have prevented an injunction

Enforcement

- Provisional enforcement pending appeal is almost always ordered (at the risk of the party enforcing the decision)
- Enforcement possible as of the service of the decision

TGI Paris, 2000-2014

The greatest damages awarded

**Medicine,
pharma &
biochemistry**

Date	Parties	Total damages
14/05/2003	Dentsply Research & Development Corporation / Electro Medical Systems	€1,256,178
06/12/2013	Anthogyr / Apol	€500,000
23/05/2013	The General Hospital Corporation, Zeltiq Aesthetics / P. Mace, Clinipro	€100,000
14/10/2010	Millet Innovation / Asepta	€70,000
29/11/2011	Rupert Mutzel / L'Institut Pasteur, Eco-Solution	€55,000
23/05/2013	Chokron / Hexa-Diffusion, Delgrande	€21,870

**All the
technical
areas**

Date	Parties	Total damages
14/01/2009	Agilent Technology Deutschland GmbH, Hewlett-Packard GmbH / Waters Corporation, Waters SAS	€4,317,180
09/10/2009	Legrand, Legrand SNC / Alternative Elec	€3,301,000
25/06/2010	Technogenia / Martec anciennement Soneco, Ateliers Joseph Mary, B.M.I, Actiale, Francis Barrat	€2,735,013
14/09/2007	Philips Electronics / Manufacturing Advanced Media Europe	€2,000,000
14/05/2003	Dentsply Research & Development Corporation / Electro Medical Systems	€1,256,178
27/09/2013	Bobst / Heidelberg Postpress Deutschland	€1,212,094

TGI Paris, 2000-2014, Medicine, pharma & biochemistry The largest **advance payments** awarded

Date	Parties	Advance payments
09/02/2007	Ethypharm / Laboratoires Fournier	€10,000,000
07/04/2009	Instrumentation Laboratory / Diagnostica Stago	€2,000,000
25/03/2009	Novartis AG / Johnson & Johnson Vision Care, Johnson & Johnson Medical, Ethicon	€1,000,000
21/12/2012	Alkermes Pharma Ireland / Ethypharm	€300,000
28/03/2000	Glaxo Operation UK Ltd / Laboratoire Flavelab	€228,674
06/07/2012	Mc Neil / Pierre Fabre, Diététique et Pharmacie	€200,000
16/12/2011	Boehringer Ingelheim Vetmedica, Idexx / Laboratoire Service International, Laboratotios Hipra	€80,000

TGI Paris, 2010-2014

Average amount of damages

All technical areas

Total amount of damages
awarded from 2010 to 2014:

€21,612,719

Number of judgments :
94

Average amount:
€230,000

Medicine, pharma & biochemistry

Total amount of damages
awarded from 2010 to 2014:

€1,326,870

Number of judgments:
8

Average amount :
€166,000

TGI Paris, 2010-2014, Medicine, pharma & biochemistry

Other ancillary sanctions (averages)

- | | |
|----------------------------|---------------------|
| ■ Injunction under penalty | €480 per infraction |
| ■ Publication | 3 journals |
| ■ Provisional enforcement | 100% of the cases |
| ■ Confiscation | 14% of the cases |

TGI Paris, 2010-2014, All technical areas

Costs (amount awarded as partial reimbursement of attorneys' fees): the largest amounts awarded to the patentee

Date	Parties	Article 700
25/06/2010	Technogenia / Martec, Ateliers Joseph Mary, BMI, Actciale, Francis Barrat	€150,000
14/01/2011	Electrolux / BSH Bosch und Siemens Hausgerate	€150,000
29/06/2012	ECA / BAE Systems	€140,000
22/11/2013	Manitou / Haulotte	€100,000
03/10/2013	Origin Technologies Limited / Performance Products Limited, 2K Distribution	€100,000
22/11/2012	France Telecom, TDF, Philips, Audio MPEG / TCT Mobile Europe, Orange Vallee	€100,000
08/02/2013	Philips / ID Com	€80,000
15/04/2010	Dietrich Engineering Consultants / Technilab	€70,000
09/12/2011	Saint Gobain Isover / Knauf Insulation	€70,000
16/12/2011	Boehringer Ingelheim Vetmedica, Idexx / LSI, Laboratorios Hipra	€60,000
03/04/2014	SEE / RABAUD	€50,000
07/09/2012	Time Sport International / Decathlon, D-H-G Knauer	€50,000
03/10/2012	Sanofi / Teva Santé	€50,000
15/04/2010	Seiko Epson Corporation, Epson France / Pearl Diffusion	€50,000
14/11/2013	Time Sport / JCR	€50,000
14/01/2011	Vorwerk & Co Interholding / Electrodomesticos Taurus, Lacor, Taurus France	€50,000
07/07/2011	Européenne de Brevets Automobiles / Nissan West Europe	€50,000
27/09/2012	Diffusion Equipements Loisirs / ECA, Astral Piscine, Fluidra Comercial	€50,000
17/09/2010	Compagnie Plastic Omnium / Sora Composites, Sotira 49, Cadence Innovation	€50,000

TGI Paris, 2010-2014, All technical areas

Costs (amount awarded as partial reimbursement of attorneys' fees): the largest amounts awarded to the defendant

Date	Parties	Art. 700 defendants
15/11/2011	J.C. Bamford, JCB / CNH France, Manitou	€270,000
28/02/2013	CSP Technologies, Capitol / Airsec	€150,000
14/03/2013	Rhodia Opérations, Symrise / SAF ISIS	€150,000
28/05/2010	Institut Pasteur / Siemens Healthcare Diagnostics	€150,000
29/04/2011	KCI Licensing, Laboratoire KCI / Smith et Nephew	€150,000
15/03/2012	Valeo Wischersysteme / ADM 21	€150,000
04/11/2011	Zodiac Automotive Division / Citroën, TRW France	€130,000
11/10/2012	Eurocopter / Bell Helicopter Textron	€130,000
02/07/2010	Mundipharma Laboratories, Grunenthal / Sandoz, Famar L'Aigle	€115,000
28/02/2013	Sanofi, Sanofi Pharma BMS, Sanofi Aventis / Mylan	€100,000
15/06/2010	Security Office Of Documents, Paul Lahmi contre Banque Centrale Européenne	€100,000
16/04/2010	Novamont / Biotec, Plastiques et Tissages de Luneray, Sphere	€100,000
10/05/2012	SMAC / Derbigum, Société Française d'étanchéité de Protection d'Isolation, Derbigum Energies	€100,000
13/02/2014	Virbac contre Merial	€100,000
08/12/2011	Samsung Electronics / Apple	€100,000
12/01/2010	Aventis Pharmaceuticals / Teva Santé, Sepracort	€100,000

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Thank you

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