Patent claims construction: exemples of the French case law

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History of legal provisions

- French patent law of 1844:

  The protection is defined by the patent description.

  No claims.

- Modification by patent law of January 2nd, 1968: introduction of claims

  Article 28:

  "The extent of the protection afforded by the patent is determined by the claims. The description and drawings shall be used to interpret the claims".

- Further evolutions of patent law: Law of July 13th, 1978 Harmonisation with the Munich Convention:

  Article 28:

  "The extent of the protection afforded by a patent shall be determined by **the terms of** the claims. **Nevertheless**, the description and drawings shall be used to interpret the claims."

- The latest reform: August 4th, 2008: Art L.613-2 of the Code of the Intellectual Property:

  - "The extent of the protection afforded by the patent is determined by the claims. Nevertheless, the description and drawings shall be used to interpret the claims."

The role of the judge in civil proceedings

Article 12 of the Code of the Civil Proceedings:

> "The judge settles the dispute in accordance with the rules of law applicable thereto. He must give or restore their proper legal definitions to the disputed facts and deeds, notwithstanding the denominations given by the parties."

Conclusion:

- The judge has the power to seek for the objective nature of the rights and facts that are in dispute.

- And in practice, one can observe that the judge uses the freedom of qualification provided by the article 12th of the Code of the Civil Proceedings in determining the scope of patent claims.

The terms of the debate:

The conflict between:

- The strict interpretations of claims based on the security of the third parties.

- And the practical considerations based on to the difficulty of defining the patented invention in the claims during the writing of the patent application.

The French case law:

- In general the judge seeks for the very true nature of the invention and doesn’t stop himself on the letter of the claim.

French case law:
An example of the construction of the patent claims based on the history of the granting of the patent

Cour de Paris March 4th, 2009; Institut Pasteur c/ Chiron;

EP 0 178 978 "Cloned DNA sequences, hybridizable with genomic RNA of lymphadenopathy-associated virus (LAV)"

- Claim in dispute, n° 8

> *"A method for the in vitro detection of viral infection due to the LAV viruses which comprises contacting a biological sample originating from a person to be diagnosed for LAV infection and containing RNA in a form suitable for hybridization with the probe of claim 7 under hybridizing conditions and detecting the hybridized probe."*

Observation:

- the claim 8 refers itself to the claim 7 which covers a probe:

> "A probe for the in vitro detection of LAV which consists of a DNA according to any of claims 1 to 6."

- Question:

> - is claim 8 limited to a method using a probe of the claim 7
>
> - or it has a general scope, due to its pioneer character?

French case law:
An example of the construction of the patent claims based on the history of the granting of the patent

Position of the Court of Appeal:

- The claim 8 is limited to a method using a specific probe of the claim 7

- This construction is the consequence of the limitation by the patentee of the scope of the invention during the opposition proceedings which disclosed some prior art documents

Conclusion:

- The judge looks on the history of the patent and the modification of its scope in order to construe the patent claim

French case law:
An example of the non-literal construction of the patent claims

The District Court of Paris of October 24th, 2014 RG : 12/15179.

PELLENC c/ SOCMA; EP 2 030 514: **"Stalk separator with reciprocating oscillating movements"**

Claim n°1.

> *"Stalk separator for picking off small fruits gathered in bunches after the mechanical or manual harvesting thereof, in particular for picking off grapes from the stalks of grape vines, of the type comprising a conveyor belt (1) and a picking off device (2) arranged above said conveyor belt,*
>
> *characterized in that*
>
> *the picking off device is formed by at least two assemblies for the removal of the fruits (6A, 6B) of said harvested bunches, arranged opposite one another and separated by a vertical space (18), wherein said assemblies each comprise a plurality of superimposed separating arms or beaters (6) and drive units (3) for communicating a high frequency oscillatory movement to said assemblies of superimposed separating arms (6A, 6B)."*

- Allegedly infringing device comprising "**a conveyor belt and the device for picking off the grapes ranged above the conveyor belt**".

The debate:

The defendant:

- The conveyor belt doesn't fulfil the functions played in the patented invention by the same device.

The patentee:

- The claim 1 mentions only the position of the conveyor belt: it is disposed under the picking off the grapes device, without any limitation about its form and its function.

French case law:
An example of the non-literal construction of the patent claims

The judgement:

The Court considers that the conveyor belt of the claim 1 exercises two functions
among them the transport of the wine grapes.
And this function being non-reproduced in the defendant device, there is no patent infringement.

Refusal of the admission of the infringement based on:

- the correspondence between the patentee and the examination division of the EPO
- and the description of the patent in suit

Conclusion:

The judge looks on:

- the history of the patent and the definition of the patented invention given by the patentee to the Examination Division
- the description of the patent

in order to construe the scope of the protection of the patent claim.

French case law:
The literal construction of patent claims related to a range of values.

Court of Appeal of Paris; October 27th, 1988 Ch.Viguerie et autres c/ Lafarge Réfractaires

French patent n° 69 34405; Claim 1 :

" Refractory compositions with hydraulic catch intended for the preparation of refractory concretes presenting the characteristics equivalents to those of the cooked worked refractory products of the same content alumina, characterized in that they contain:

- from 5 to 8 parts, in weight, of at least one aluminous hydraulic cement,

- from 2.5 to 4 parts, in weight, of at least one pulverulent heat-resisting material at very specific large surface and high water absorptivity,

- from 0.01 to 0.30 part, in weight, of at least one fluxing agent and/or deflocculant,

- from 86 to 92 parts in weight of at least one refractory aggregate"

The litigation:

An infringement action against a composition having the same compounds,
but one of them in different proportions

The debate:

- Is the patent limited to the combination of four compounds?
- Or it is limited to their combination in the specific ranges of values?

Court of Appeal of Paris:

- The invention is limited to the strict values of the ranges of the compounds being the part of the combination.
- And the scope of the claims doesn't extend beyond these values.

French case law:
Non literal construction of patent claims related to a range of values

The judgement of the District Court of Paris of February 26th, 2016, n° 14/07779; **LUCAS AUTOMOTIVE GMBH C/ CHASSIS BRAKES**

European patent n° EP 0 996 560: “Hydraulic vehicle break with blocking means.”
- Claim 1:

> *“ A hydraulic vehicle brake (10) comprising a housing (12) and a brake piston (18) arranged therein, which acts upon a friction member and which, by means of hydraulic pressure that can be supplied into a hydraulic chamber (16) cooperating with the brake piston (18), can be moved into an actuating position in which it presses the friction member against a rotor of the vehicle brake, and having a spindle/nut arrangement (24) driven by an electric motor (42), which arrangement (24) is arranged coaxially with the centre axis (A) of the brake piston (18) for mechanically blocking the brake piston (18) in the actuating position, the nut (30) of said arrangement (24) is secured against rotation and, by rotation of the spindle (26), can either be moved into contact with the brake piston (18) or moved away from the brake piston (18) translatorily depending on the sense of rotation along axis (A),* ***with a reduction gear (44) with a reduction in the order of 200:1*** *being connected between the electric motor (42) and the spindle (26),* ***characterised in that***
> ***-*** *the electric motor (42) is arranged laterally adjacent the vehicle brake housing (12) in such a manner, that the output shaft (46) of the electric motor (42) extends at a lateral distance parallel to the axis (A) and exits from the electric motor (42) at the side facing away from the brake piston (18);*
> ***-*** *the electric motor (42) and the reduction gear (44) are designed as a subassembly (40) adapted to be handled separately, and*
> ***-*** *the subassembly (40) is adapted to be mounted at the housing (12) in any angular position with respect to a surface (B) of same.”*

- The device being the object of the infringement action
presented all the structural features of the claimed invention,
but had the reduction value of **126,74 : 1.**

French case law:
Non literal construction of patent claims related to a range of values

The Court after having viewed the article 69 of the Munich Convention considers that:

> *"The indication according to which the reduction value is "**in the order of 200 : 1**" should not conduct to have a strict interval of ranges in which should imperatively place itself the value for the brake device to fall within the scope of the protection of the patent.*
>
> *On the contrary, the descriptive part of the patent shows, as by the way it is explicitly indicated, that it is an order of magnitude which results from one example of the realisation of reduction of the gear with 2 levels, without being limited to the sole model of manufacturing of such a gear.*
>
> *The defendant's gear consists in 3 levels of reduction and presents the degree of the reduction of **126,74 : 1** according to the calculation on which the parties agree.*
>
> *It appears that this range stays, having seen the allegedly infringing device and the context of the invention, "**in the order of the value 200:1**".*

Consequently the Court considers the defendant device as infringing the claim 1.

Conclusion

The French Court doesn’t stop himself
on the strictly literal meaning of the claims
but seeks the nature of the invention,
through all the elements that are available
including:

- the description,
- the drawings
- the examination file
- and the arguments presented by the patentee during the opposition proceedings.