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1ST DATE OF PROCEEDING BEFORE THE PARIS COURT OF JUSTICE: 60 DAYS AFTER THE SERVICE OF SUMMONS, EVEN FOR FOREIGN DEFENDANTS

Intellectual Property, Media, and Art Law | 06/04/22 | Grégoire Desrousseaux François Pochart Océane Millon de La Verteville

PROPRIÉTÉ INTELLECTUELLE

*The Economic and Commercial Activity Department of the 1st instance court of Paris has modified its website [1]. It is now indicated that, for summonses on the merits before the 3ème chambre specialized in intellectual property, "it is possible to choose the "Standard case" item at the "Choose your deadline" stage, **even when the defendant resides abroad**". Thus, even for summonses involving a defendant residing abroad, it is possible to request a date for the orientation hearing[2] within a standard period of 60 days rather than 180. This is to be welcomed: claimants will no longer have to wait 6 months for the appointment of a case management hearing. The optional nature of the 180-day time limit is hardly surprising insofar as it does not correspond to any legal time limit. Moreover, this is consistent with the list of grounds for rejection published by the Paris Court of First Instance, which does not include any grounds related to the choice of the time limit [3]. Although it is only published on the page of the Economic and Commercial Activity Department, this clarification should concern all summonses subject to the obligation to take of the date of orientation hearing.*

After being postponed twice due to difficulties in its implementation[4], the writ of summons with a date before the judicial court of 1st instance ("TJ") has been in force since 1er July 2021[5]. Before serving the summons, the claimant must now "take a date", i.e. reserve the date for the orientation hearing ("OH"), which is the first procedural step after the service of the summons.

The "date taking" is done via the e-barreau website, in two steps:

- In a **first step**, it is proposed to choose between several time limits. These time limits vary from court to court.

For the TJ of Paris, 60 days are proposed for a "standard case" and 180 days when the defendant is resident abroad. By way of comparison, the Nanterre and Créteil TJ offer shorter time limits (see screenshots below).[6]

- In a **second step**, it is proposed to choose between several dates (three dates at the TJ of Paris, plus at the TJ of Nanterre, see screenshots below).

If "180 days" was selected in the first step, then the first date proposed in the second step will be at least 180 days away, regardless of the chamber, i.e. even in chambers where the actual timetable would allow a shorter OH date.

Surprised by the length of the time limits proposed by the TJ of Paris (60/180 days) and concerned about the impact that such time limits could have on the speed of justice and the attractiveness of the Paris legal system[7], we contacted a magistrate of the TJ of Paris and explained why these time limits did not seem to us to be justified from a legal point of view or appropriate from a procedural point of view.

After constructive discussions with this magistrate, the TJ of Paris clarified that *"it is possible to choose the "Standard case" item at the "Choose your deadline" stage, **even when the defendant resides abroad**".* This clarification is published today on the webpage of the Economic and Commercial Activity Department of the TJ of Paris as regards summonses on the merits before the 3rd Chamber specialized in IP[8]. However, it should concern all summonses on the merits subject to the obligation to take a date and could, as such, be added to the page dedicated to the taking of a date of the TJ of Paris[9] and in the Institutional Vademecum regularly updated by the Paris Bar Association and including all the information from the courts[10].

Thus, as the 180-day time limit is not mandatory, a company wishing to summon a company domiciled abroad can now request an OH date within the standard 60-day time limit, without fearing that its request will be rejected.

We can only welcome this clarification because, **prior to the OH, no case management judge ("CMJ") has yet been appointed**[11]. The parties cannot therefore appeal to him, in particular to raise procedural motions, which we know have increased considerably with the reform of civil procedure extending the jurisdiction of the CMJ to hear motion for dismissal of the case[12]. Even a joinder with existing proceedings is not possible.



Imposing a time limit of 180 days for all proceedings involving a defendant abroad would therefore have meant a considerable slowing down of the proceedings.

But above all, this clarification is logical since the 60/180 day time limits do not in fact correspond to any legal time limit. It should be remembered that the legal time limits for the summons in proceedings with mandatory representation are as follows:

- **The deadline for submitting a copy of the summons to the court registry for the purpose of bringing a case before the court: at least 15 days before the OH (Article 754 CPC).**

This period, which is calculated "backwards" from the date of the OH[13] , does not pose a problem, especially since, in practice, it is usually the applicant who takes this step.

- **The deadline for the defendant to appoint a lawyer: 15 days from the summons or the day of the hearing if the summons was delivered to the defendant within a period of 15 days or less before the date of the hearing (Article 763 CPC).**

At the time of the taking of the date, this time limit under Article 763 CPC cannot be calculated since the summons has not yet been delivered to the defendant.

This time limit is increased by the so-called "distance" time limits of Article 643 CPC, when the defendant resides in the French overseas territories (+1 month) or abroad (+2 months).

In addition, Article 687-2 CPC must be applied for the calculation of this time limit. This article specifies that the date of service of a document abroad on the person to whom this service is made is the date on which the document is validly served on him or her or the date on which the competent authority attempted to serve the document or, where this date is not known, the date on which that authority notified the requesting French authority that it was impossible to serve the document or, in the absence of a certificate from the competent foreign authorities, the date on which the document was sent to them[14] .

After the OH date has been set, (i) the plaintiff must serve the summons on the foreign defendant, (ii) service must have been effected or the foreign authority must have attempted to do so, or must have issued a notice of impossibility of service within the meaning of Article 687-2 CPC; and it is only from that day that (iii) the time limit of Articles 763 CPC and 643 CPC combined begins to run.

Therefore, in the event of difficulties with international service, the time limits of Articles 763 CPC and 643 CPC combined may lead to a date that is far away from the day on which the applicant takes a date of OH.

It is to take account of these potentially very long delays in service abroad that the TJ of Paris has provided for an OH time limit of 180 days in the e-barreau form. However, not all disputes involving a foreign defendant are affected by service difficulties, far from it. In particular, service in EU countries now seems to be relatively well established[15] . Moreover, in intellectual property disputes, very few proceedings involved defendants domiciled abroad only. Most of the time, the foreign entity is sued alongside its French distributing subsidiary. In this case, a single lawyer represents both companies of the same group and does not always wait until the end of the distance period, or even until his foreign client has been really served to declare himself to the Court as "appointed" by this client.

Thanks to the Economic and Commercial Activity Department's clarification, it is now clear that the 180-day time limit is merely an option available to the plaintiff. The latter may choose this option if it anticipates that the foreign defendant will be difficult to reach, for example if it is a question of summoning a domain name registrar domiciled in the Cayman Islands...!

We are pleased that the 180-day time limit will not be imposed on all proceedings involving a defendant residing abroad: the improvement of the speed of justice, which is one of the main objectives of the reform of civil procedure[16] , will only be strengthened, and with it the attractiveness of the Paris legal centre.

It is up to the parties to take advantage of the period chosen by the claimant (60 or 180 days) to consider whether to meet with a mediator, bearing in mind that such a meeting may now be subject to an injunction by the judge[17] . The parties may also use this period to consider whether they wish to enter into a participative case management agreement[18] and, if so, to prepare it, bearing in mind that this issue is supposed to be discussed on the day of the hearing with the judge[19] .



Example of taking a date of OH on 08/03/2022, for a defendant residing in France, before the TJ of Paris:

à la prise de date électronique

Nature de l'affaire éligible à la prise de date électronique: ECO/PI- Brevet

Délai Légal: Cas standard : 2 mois : 60

Dates d'audience: Jeudi 02/06/2022 à 10:05 : PRISE DE DATE
Mardi 21/06/2022 à 09:35 : PRISE DE DATE
Jeudi 07/07/2022 à 14:05 : PRISE DE DATE

Example of taking a date of OH on 08/03/2022, for a defendant residing abroad, before the TJ of Paris:

Nature de l'affaire éligible à la prise de date électronique

Nature de l'affaire éligible à la prise de date électronique: ECO/PI- Brevet

Délai Légal: Défendeur résidant à l'étranger J+6 mois : 180

Dates d'audience: Mardi 27/09/2022 à 09:40 : PRISE DE DATE
Jeudi 06/10/2022 à 10:10 : PRISE DE DATE
Mardi 08/11/2022 à 09:40 : PRISE DE DATE

Example of taking a date of OH on 14/03/2022, for a defendant residing in France, before the TJ of Nanterre:

Tribunal Judiciaire "NANTERRE"

Sélectionner le tribunal: NANTERRE

Accueil > Mise au rôle > Placement / Réservation de Date > Réservation de date > Sélection de l'audience

Réserver une date d'audience

Nature de l'affaire éligible à la prise de date électronique: CIV/Crédit - Bail

Délai Légal: Cas standard J + 15 : 15

Dates d'audience: Lundi 09/05/2022 à 09:30 : Salle 2.89
Lundi 13/06/2022 à 09:30 : Salle 2.89
Lundi 04/07/2022 à 09:30 : Salle 2.89
Lundi 05/09/2022 à 09:30 : Salle 2.89
Lundi 03/10/2022 à 09:30 : Salle 2.89

Réinitialiser Valider l'audience sélectionnée

Example of taking a date of OH on 14/03/2022, for a defendant residing in the French overseas Territories, before the TJ of Nanterre:



Tribunal Judiciaire
"NANTERRE"

Sélectionner le tribunal : NANTERRE

Accueil > Mise au rôle > Placement / Réservation de Date > Réservation de date > Sélection de l'audience

Réserver une date d'audience

Date

Nature de l'affaire éligible à la prise de date électronique : CIV/Arbitrage

Délai Légal : Défendeur domicilié en Outre-Mer : 30

Dates d'audience : Lundi 09/05/2022 à 13:30 : Salle 2.89
Lundi 16/05/2022 à 13:30 : Salle 2.89
Lundi 23/05/2022 à 13:30 : Salle 2.89
Lundi 30/05/2022 à 13:30 : Salle 2.89
Lundi 06/06/2022 à 13:30 : Salle 2.89

Réinitialiser Valider l'audience sélectionnée

Example of taking a date of OH on 14/03/2022, for a defendant residing abroad, before the TJ of Nanterre:

Tribunal Judiciaire
"NANTERRE"

Sélectionner le tribunal : NANTERRE

Accueil > Mise au rôle > Placement / Réservation de Date > Réservation de date > Sélection de l'audience

Réserver une date d'audience

Nature de l'affaire éligible à la prise de date électronique : CIV/Arbitrage

Délai Légal : Défendeur domicilié à l'étranger : 60

Dates d'audience : Lundi 16/05/2022 à 13:30 : Salle 2.89
Lundi 23/05/2022 à 13:30 : Salle 2.89
Lundi 30/05/2022 à 13:30 : Salle 2.89
Lundi 06/06/2022 à 13:30 : Salle 2.89
Lundi 13/06/2022 à 13:30 : Salle 2.89

Réinitialiser Valider l'audience sélectionnée

OH deadlines proposed by the Créteil TJ :

Bienvenue Maître DESROUSSEAUX Grégoire (CNBF : 065745)

Adresse électronique d'alerte : brouette@tribunal-de-paris.fr
Adresse électronique professionnelle : gdesrousseaux@tribunal-de-paris.fr
Téléphone mobile : +33 6 85 20 93 15

Tribunal Judiciaire
"CRETEIL"

Sélectionner le tribunal : CRETEIL

Accueil > Mise au rôle > Placement / Réservation de Date > Réservation de date > Sélection de l'audience

Consultation des dossiers Réserver une date d'audience

Mise au rôle

Inscription en référé

Placement / Réservation de date

Constitution en défense

Messagerie

Recherche "non constitué"

Sélection juridictions

Déconnexion

Nature de l'affaire éligible à la prise de date électronique : CIV/Cautonnement

Délai Légal : Veuillez choisir un délai

Réinitialiser

Délai de droit commun : 15

Défendeur résidant dans les DOM-TOM : J + 6 semaines : 42

Défendeur résidant à l'étranger : J + 10 semaines : 70

[1] <https://www.tribunal-de-paris.justice.fr/75/pole-activite-economique-et-commerciale#anchor-0>

[2] Which is the 1st procedural step after the service of summons

[3] list of rejection messages at the time of dating and placement, version as of 13 July 2021, available at <https://www.tribunal-de-paris.justice.fr/sites/default/files/2021-07/2021%2007%2013%20messages%20de%20rejet%20prise%20de%20date%20.pdf>



- [4] A first time by Decree No. 2020-950, 30 Jul 2020, art. 3, and a second time by Decree No. 2020-1641, 22 Dec 2020, art. 1, 1°.
- [5] Decree No. 2019-1333, 11 Dec. 2019, art. 55, III.
- [6] For the Nanterre Court of First Instance: a "standard" time limit of 15 days, a time limit of 30 days in the case of a defendant residing in the French overseas territories, and a time limit of 60 days in the case of a defendant residing abroad; for the Créteil Court of First Instance: a standard time limit of 15 days, a time limit of 42 days in the case of a defendant residing in the French overseas territories, and a time limit of 70 days in the case of a defendant residing abroad
- [7] especially in areas such as patent litigation, where some of our European neighbours boast of a legal system that would allow substantive decisions on infringement to be reached within a year (see in particular <https://www.iam-media.com/why-dutch-courts-are-becoming-central-element-in-cross-border-patent-disputes>)
- [8] <https://www.tribunal-de-paris.justice.fr/75/pole-activite-economique-et-commerciale#anchor-0>
- [9] <https://www.tribunal-de-paris.justice.fr/75/prise-de-date>
- [10] https://fr.zone-secure.net/109394/1249331/#page=1&utm_medium=email&utm_campaign=Vademecum_29032022
- [11] Article 777 CPC provides that it is on the day of the hearing that the President appoints the EEJ
- [12] "fin de non-recevoir" in french
- [13] Since its amendment by Decree 2021-1322, Article 754 CPC no longer provides that this placement must take place 2 months after the communication of the OH date.
- [14] This article 687-2 CPC results from decree no. 2019-402 of 3 May 2019. We recall that before this decree, the Court of Cassation had already considered in the PIP case that *"with regard to the addressee, the date of service of a document, according to the terms of Regulation No. 1393/2007, is the date on which the document was served in accordance with the legislation of the Member State addressed"* (Cass. 1re civ., 10 Oct. 2018, No. 17-14.401, publ. in Bull. See also Communication from the Court of Cassation: BICC 2007, No. 672, No. 3-3-1-3 and 3-2-2-3. This solution is similar to Regulation (EC) No 1393/2007 of 13 November 2007, Article 9(1) of which sets out the principle that *"[...] the date of service of a document [...] is the date on which the document was served in accordance with the law of the Member State addressed"*. It will be recalled that the date of service of a document on the person effecting service is the date of dispatch (Article 647-1 CPC).
- [15] under Regulation (EC) 1393/2007 of 13 November 2007
- [16] See in particular: F. Agostini and N. Molfessis (2018), Chantiers de la Justice. Amélioration et simplification de la procédure civile available at http://www.justice.gouv.fr/publication/chantiers_justice/Chantiers_justice_Livret_03.pdf ; Projet de loi de programmation 2018-2022 et de réforme pour la justice, n°463, filed on 20 April 2018, available at <http://www.senat.fr/leg/pjl17-463.html> ; Compte-rendu de la Commission des Lois du Sénat du 25 Sept. 2018, available at <https://www.senat.fr/compte-rendu-commissions/20180924/lois.html#toc3>
- [17] New Article 127-1 CPC
- [18] This is a new procedural vehicle available in France by which the parties may indeed organize the case calendar as they see fit.
- [19] Article 776 of the CPC provides that, on the day of the OH, the president of the chamber shall ask the lawyers "whether they intend to conclude a participatory procedure agreement for the purposes of preparation of the case".
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