

OPPOSITION BEFORE THE INPI: PUBLICATION OF THE FIRST OPPOSITION DECISION

Patent Law | 03/06/22 | François Pochart Lionel Martin

In our article of 2 March 2022, we reported our impressions on the first oral proceedings before the INPI [1] and pointed out that they are very similar to the ones before the EPO, while highlighting some specificities.

On 23 May 2022, the INPI issued the decision relating to the first oral proceedings of 25 January 2022[2] within the 4 month period provided for in Article R. 613-44-8 CPI[3]. Like the oral proceedings, this first decision is very similar to those usually issued by the EPO in its plan. However, this first decision - like the minutes of the oral proceedings - is extremely detailed. It is actually a perfect reflection of the systematic approach adopted in oral proceedings: the analysis ground by ground, claim by claim and document by document is particularly rich and detailed. However, unlike the EPO, the Opposition Board does not simply quote the article numbers but refers to the full text of the relevant provisions. Another sign of the INPI's great precision is that the section devoted to the examination of novelty is introduced by a reminder of the law and the novelty test applied by the Paris Court of Appeal[4]. It is nonetheless surprising that no reference was made to the well-established case law of the French Supreme Court[5] on the novelty test.

The attention to detail in the drafting of this first decision perfectly reflects, on the one hand, the fact that the INPI has carefully observed the practice of the EPO in order to forge its own, and on the other hand, the INPI's desire to show it is building up a great expertise in the field.

Finally, one can underline the fact that such complete decisions can be a major asset for the Court of Appeal - in the event the decision would be appealed - thus allowing it to know exactly the arguments of the parties and the position of the INPI in every detail. Indeed, this decision can still be appealed before the Paris Court of Appeal within the time limits set out in Article R.411-21 CPI[6].

To learn more about the opposition procedure, we refer you to our various newflashes[7].

[1] Patent opposition before the INPI: veni, vidi, now being able to tell how it could be: <https://www.august-debouzy.com/en/blog/1796-patent-opposition-before-the-inpi-veni-vidi-now-being-able-to-tell-how-it-could-be>

[2] Decision OPP20-0004 / FR3080795 / GF of 23 May 2022

[3] Article R613-44-8 CPI: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000041703956

[4] Paris Court of Appeal, Pôle 5, Chamber 1, 19 December 2017, RG n° 16/00871

[5] See Cour de Cassation, Chambre commerciale, 12 March 1996, 94-15.283 accessible: https://www.legifrance.gouv.fr/juri/id/JURITEXT000007296906?dateDecision=12%2F03%2F1996&isAdvancedResult=&jurisdictionJudiciaire=Cour+de+cassation&page=5&pageSize=10&query=*%&searchField=ALL&searchProximity=&searchType=ALL&sortValue=DATE_DESC&tab_selection=juri&typePagination=DEFAULT

[6] Article R411-21 CPI: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000039490599

[7] The Opposition before the French Patent Office: <https://www.august-debouzy.com/en/blog/1491-the-opposition-before-the-french-patent-office-starting-shot>