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WARNING LETTERS AND DISPARAGEMENT: A RECENT SUPREME COURT RULING ON COPYRIGHT AND ITS POTENTIAL REPERCUSSIONS ON PATENT LAW

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On 15 October 2025, the Supreme Court handed down a landmark ruling (Cass. Com. No. 24-11.150) stating that "in the absence of a court decision finding that acts of copyright infringement have been committed, the mere fact of informing third parties of a possible infringement of these rights constitutes disparagement of the products alleged to be infringing".

The Supreme Court confirms a very strict approach to disparagement: the utmost caution must therefore be exercised when sending warning letters, even in patent matters, when the French recipient is not the manufacturer of the products.

The obligation to provide information in cases of French patent infringement may justify a letter to a third party, as do the obligations imposed in the Huawei/ZTE ruling for essential patents. These excuses do not rule out the risk of disparagement if the letter goes beyond what is strictly necessary.

On 15 October 2025, the Supreme Court handed down a ruling (Cass. Com. No. 24-11.150), published in the bulletin and letter of the Commercial Chamber, reiterating the need for caution when communicating alleged infringement to third parties.

The ruling was handed down in a copyright matter.

The company Koshi had been authorised to carry out an infringement seizure against the company Manufacture du marronnier and the manufacturing and distributing company VBV International. This seizure was carried out on 9 November 2022.

A few days later, on 15 November, Koshi took the initiative to issue formal notice to twelve resellers of these two companies, sending them a letter ordering them to immediately cease offering the disputed chimes for sale and promoting them on the internet, but also to provide contractual documents, declaring a "possible infringement of its own products and acts likely to constitute unfair and parasitic competition".

Manufacture du Marronnier and VBV International therefore brought summary proceedings against Koshi to obtain an urgent injunction to cease the disturbance caused by the sending of the letters and an interim award of damages to compensate for the damage caused by the disparagement of the products manufactured and marketed by them.

On 9 November 2023, the Montpellier Court of Appeal ruled that sending warning letters in this case did not constitute an act of disparagement or unfair competition. It dismissed the claims of Manufacture du Marronnier and VBV, finding that the letters sent to retailers were written in "*measured and threatening*" terms, limiting themselves to conveying factual information about the existence of copyright. The Court emphasised that the wording used – stating that the sale of the products was "*likely to constitute an act of copyright infringement*" or "*at the very least, likely to be qualified as an act of unfair and parasitic competition*" – informed them of its right to take legal action to protect its rights and seek compensation[1].

Manufacture du Marronnier and VBV International appealed against this ruling on the basis of the case law of the Supreme Court, according to which "the disclosure of information likely to discredit a product marketed by a person" constitutes an act of disparagement, "unless the information in question relates to a matter of general interest and is based on sufficient factual evidence, and provided that it is expressed with a certain degree of measure". They consider that this alleged infringement does not constitute a sufficient factual basis to justify formal notice to third parties, since a court decision has not yet been handed down.

The Supreme Court upheld the appellants' appeal and overturned the appeal judgment pursuant to Article 1240 of the Civil Code, considering that "in the absence of a court decision finding that acts of copyright infringement have been committed, the mere fact of informing third parties of a possible infringement of these rights constitutes disparagement of the products alleged to be infringing".

This ruling confirms that, in matters of copyright, formal notices sent to third parties before a court decision has found that acts of infringement have taken place, even if drafted with certain precautions, are likely to constitute an act of disparagement. Wordings such as "*is likely to constitute an act of infringement*" or "*at the very least, likely to be qualified as an act of unfair and parasitic competition*" used in this case are now likely to constitute acts of disparagement. Simply sending a formal notice to third parties before a decision on infringement has been made creates a risk of disparagement, regardless of its content.



The judgment was handed down in relation to copyright, meaning that no registered industrial property rights could be invoked to justify the exercise of a legitimate right to information vis-à-vis third parties. Furthermore, the content of the letter in question requested the disclosure of documents in particularly broad terms, giving it a tone that could be perceived as threatening. This wording thus went beyond the simple defence of copyright and gave it an unjustified character, such as to constitute an act of disparagement. The letters had been sent to 12 resellers, which also had an impact on the assessment of the disparaging nature of these letters.

This ruling appears to follow the logic of the principle of presumption of innocence, in order to avoid any damage to reputation that is not justified by a court decision. It becomes impossible for the copyright holder to assert their monopoly vis-à-vis the customers of the potential infringer.

Can this ruling be transposed to patent litigation?

The impact of this ruling on patent matters must nevertheless be assessed with caution, since it is possible for a patent holder to invoke the need to inform the infringer's customers so that they may be held liable.

Under French law, Article L. 615-1(3) of the Intellectual Property Code ("CPI") expressly provides that for certain acts, when committed by a person other than the manufacturer (which case law has assimilated to the importer), there must have been prior notice in order for the perpetrator to be held liable.

There is therefore a legal requirement for such prior notice. This argument was accepted by the Supreme Court.

The utmost caution is required when drafting the warning letter: in the same ruling, the Supreme Court acknowledged that a prior notice is necessary. The patent holder invoked a legitimate interest, stating "that the holder of a patent may legitimately inform third parties of their rights and put them on notice", in accordance with Article L615-1 of the CPI.

Nevertheless, the Supreme Court found that the letter constituted disparagement, since it was not limited to simply informing the sellers of the risk of patent infringement if they continued to market their products within the meaning of Article L. 615-1, paragraph 3, of the CPI. The Court noted that the signatories "state in this letter what they consider to be their rights without mentioning the objections raised by [the manufacturer of the products]" and that "the sending of this letter cannot be justified by the existence of attached documents, as the patent holders cannot leave it to the recipients to verify the validity of the claims themselves, assuming they have the technical means to do so". It concluded that this letter, "unjustifiably questioning the fairness of the [manufacturers] in the manufacture and marketing of their televisions and digital decoders," should be classified as an act of disparagement, constituting unfair competition and a manifestly unlawful disturbance.

Finally, the Court emphasised that the disputed letter, "*focused exclusively on the issue of the licensing programme implemented by the patentees and was written in threatening terms, without any explanation of the elements allegedly constituting the alleged infringement*", was not limited to a simple notice within the meaning of Article L. 615-1, paragraph 3, of the CPI.

This decision highlights several drafting precautions to be observed when drafting a warning letter:

- use measured terms, avoiding any threatening or disparaging wording;
- identify precisely the industrial property rights invoked, mentioning their numbers and attaching, where applicable, a clear description of their claims;
- inform the recipient fairly, presenting the essential elements of the dispute and any challenges, without shifting the burden of verifying the validity of the claims onto the recipient.

The Court thus reiterates that the legitimate information of third parties provided for in Article L. 615-1 of the CPI must be exercised with rigour, fairness and proportionality in order to avoid any drift towards wrongful disparagement. The idea affirmed is to limit oneself to simply "put the recipients on notice", without going beyond the strict information necessary for the defence of the right invoked.

The argument was also accepted by the Marseille Commercial Court in 2016[2], in a case relating to essential patents.

Wiko claimed defamation after Sisvel sent letters to distributors informing them that LTE products sold under various brands, including Wiko, could be covered by its patents. The court considered that these letters constituted legitimate information and were in line with the CJEU's Huawei/ZTE case law (CJEU, 16 July 2015), which requires the holder of essential patents to draw the attention of third parties implementing the standard by providing them with a list of the patents concerned and their implementation in the standard concerned, so that compliance with the standard entails the implementation of the patents, and to offer them a licence on FRAND terms.

Sisvel's letters, written in measured terms, did not demand the cessation of sales but offered a licence and attached a draft contract. They were therefore deemed not to be at fault, as they were limited to providing information, in accordance with the obligations arising from the "FRAND dance".



More recently, the President of the Lyon Economic Activities Court^[3], ruling in summary proceedings, sanctioned Qiagen for publishing an international press release announcing that it had filed a patent infringement action against Biomérieux before the Unified Patent Court ("UPC"), even before the application initiating proceedings had been notified to the latter.

The President ruled that this press release, which was distributed to the scientific community and the general public, contained information likely to directly discredit Biomérieux. By presenting this company as guilty of patent infringement, without providing any information on the context or nature of the alleged facts, and without any adversarial proceedings or court decision, the companies of the Qiagen group created a situation constituting a manifestly unlawful disturbance.

The subsequent withdrawal of the press release was not sufficient to eliminate its effects, given its wide visibility on scientific websites and the Internet. The court prohibited Qiagen from republishing the press release or any article relating to this action until a final decision had been handed down, subject to a penalty of €50,000 per infringement, and ordered the full publication of the order on the Qiagen group's website. Biomérieux was authorised to publish the same order on its own website.

When a publication presents a competitor as an alleged infringer, without explaining the procedural context or the precise nature of the allegations, outside of any adversarial proceedings and before any decision has been made, it constitutes disparagement, even if infringement proceedings have indeed been initiated.

Particular attention should also be paid, as always, to the number of recipients: in the case at hand, the letter was sent to twelve resellers. The number of recipients may be an indication that the letter constitutes disparagement.

What are the implications for the liability of the patent holder who issues a formal notice prior to bringing an action before the UPC?

The UPC does not apply the requirements of Article 615-1(3) of the CPI. Thus, no prior formal notice is required for an act to engage the liability of a simple reseller. The patent holder may therefore bring the matter before the UPC without first sending a warning letter to the alleged infringer. Putting the retailer on notice is therefore not a pretext for writing to a reseller that the products supplied to them by a third party may be infringing.

However, Article 68(1) of the Agreement on a Unified Patent Court ("UPCA") provides for a specific damages regime : *The Court shall, at the request of the injured party, order the infringer who has engaged in patent infringement knowingly, or with reasonable grounds to know, to pay the injured party damages corresponding to the actual loss suffered by that party as a result of the infringement.*

This article thus introduces a distinction between infringement without prior knowledge and infringement committed "knowingly" or which should have been known, a distinction that is decisive for the assessment of the damage.

Prior notice thus enables the claimant to demonstrate the defendant's awareness of the infringement and allows the court to order full compensation for the damage actually suffered. Conversely, in the absence of prior notice, compensation could be limited to the more restrictive framework of paragraph 4 (recovery of profits or payment of damages). In short, the prospect of a subsequent claim for damages could be a pretext – under French law on disparagement – to justify sending warning letters.

In any case, as indicated above, the utmost caution is required when drafting such letters.

The question of jurisdiction to rule on disparagement remains.

In any event, French courts will remain competent to rule on claims of disparagement, even in disputes where the UPC has exclusive jurisdiction to rule on infringement. As illustrated by the case ruled on by the President of the Lyon Economic Activities Court, if the letter is written in vague, inaccurate, exaggerated or threatening terms, it may render the owner liable for disparagement.

Even in the case of a letter written in measured terms, once the formal notice is no longer considered a prerequisite for infringement proceedings before the UPC, the Supreme Court could, in line with the reasoning of the judgment of 15 October 2025, hold that it is up to the owner to establish that this letter was necessary, for example in the case of essential patents, or to enable the alleged infringer to be reclassified as having acted knowingly.

In other words, the absence of a requirement for formal notice before the UPC reinforces the obligation of caution, since a letter, press release or message addressed to business partners can now, according to the Supreme Court, form the basis of an action for disparagement. The risk is all the greater when the letter is not followed by an infringement action...

The issue of disparagement could also be raised before the UPC. Indeed, even though the UPC does not have explicit jurisdiction to rule on issues of unfair competition and disparagement, it is reasonable to assume that a defendant could raise an incidental claim on these grounds in their defence, provided that it is closely related to the main action for



infringement. The manufacturer, as the defendant in the infringement action before the UPC, could argue that letters sent by the patentee to its customers or distributors in France constitute disparagement. The UPC could easily rule that it also has jurisdiction to remedy such a fault, if necessary by applying the provisions of French national law.

Thus, in matters of intellectual property rights infringement (including patents), caution is advised as long as no court decision has yet found infringement: sending a formal notice or sharing information to a third party other than the manufacturer before a judge has found infringement may entail a risk of disparagement.

[1] We were unable to obtain the appeal judgment, but these elements are transcribed in the judgment of the Court of Cassation.

[2] TAE Marseille, ch. 06, 20 September 2016, RG 2016F01637

[3] President of the Lyon Administrative Court, 11 April 2025, RG 2025R507

