



M I C H A L S K I · H Ü T T E R M A N N  
& P A R T N E R

Considerations on  
IP Law Enforcement  
in Europe

Dr. Dirk Schulz

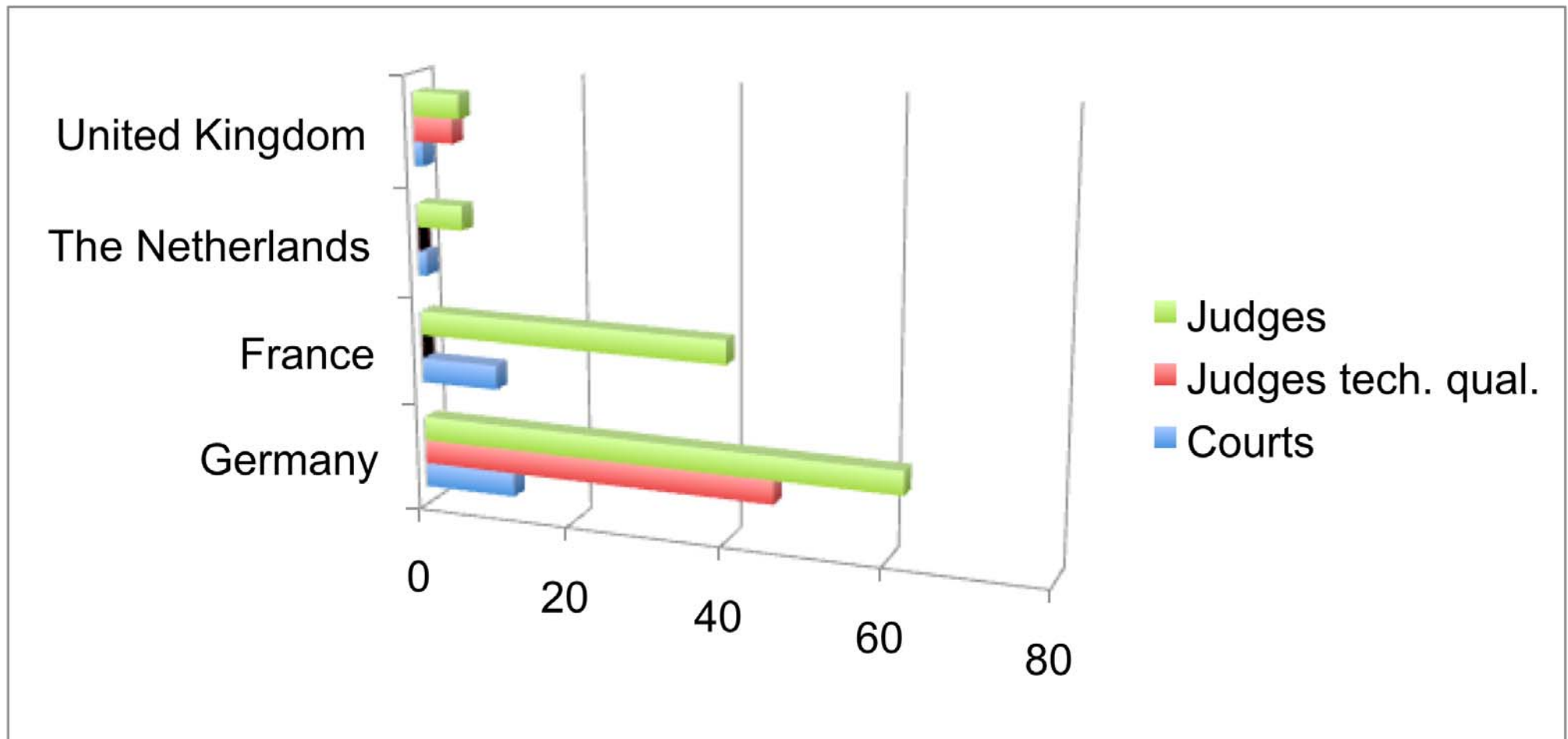


## European Patents

- Not a single patent for EPC or EC
- Common examination at EPO for all EPC countries
- Grant of a European patent after examination
- Granted patent has to be validated in individual EPC countries
- Validation might require translation and national representative
- **No European patent court**
- **Validated patent is subject to national jurisdiction**



## Patent Courts and Judges in the EC



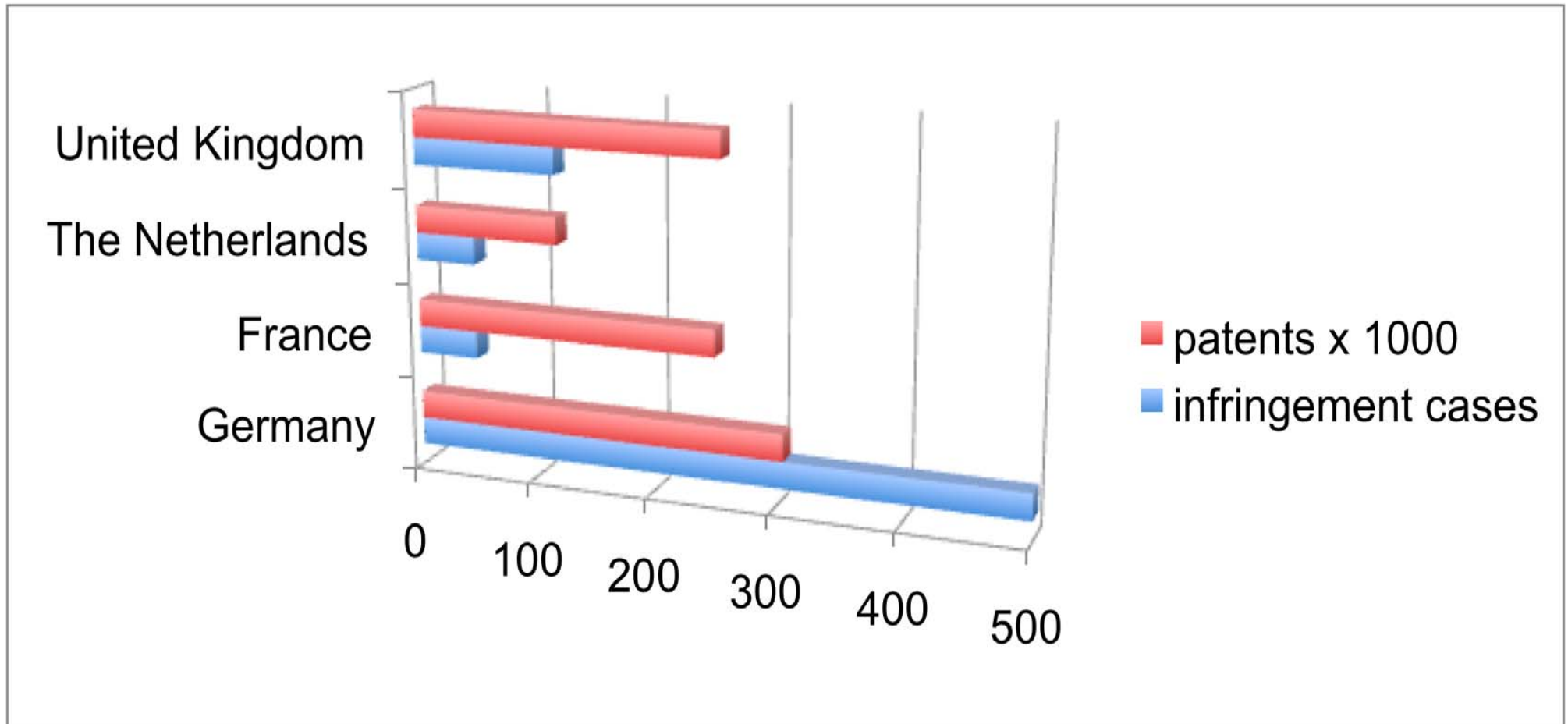
# Patent Jurisdiction in the EC

**Table 4: Characteristics of juridical systems in selected EPC contracting states**

	<b>Germany</b>	<b>France</b>	<b>The Netherlands</b>	<b>United Kingdom</b>
Judicial system	Dual system	Single system	Single system	Single system
<b>The Court of First Instance</b>				
Specialized court	Federal Patent Court for invalidity; 12 District Courts for infringement (specialized court in Dusseldorf )	10 Tribunal de Grande Instance; (specialized patent judges in Paris and Lyon)	District Court in The Hague has a specialized IP chamber	Patents Country Courts and the Patents Court of the High Court
No of judges legally qualified ...	62	40	6	6
...out of those technically qualified	46	0	0	5
Composition of the court (number of judges dealing with a case)	3 or 5	3	3	1

Source: Allgayer (2005), Council of the European Union Document No 11622/07 and EPO WPL/4/03,

## Infringement Cases vs. EP Patents in Force





# Litigation Activity in the EC

**Table 5: Litigation activity in 2004**

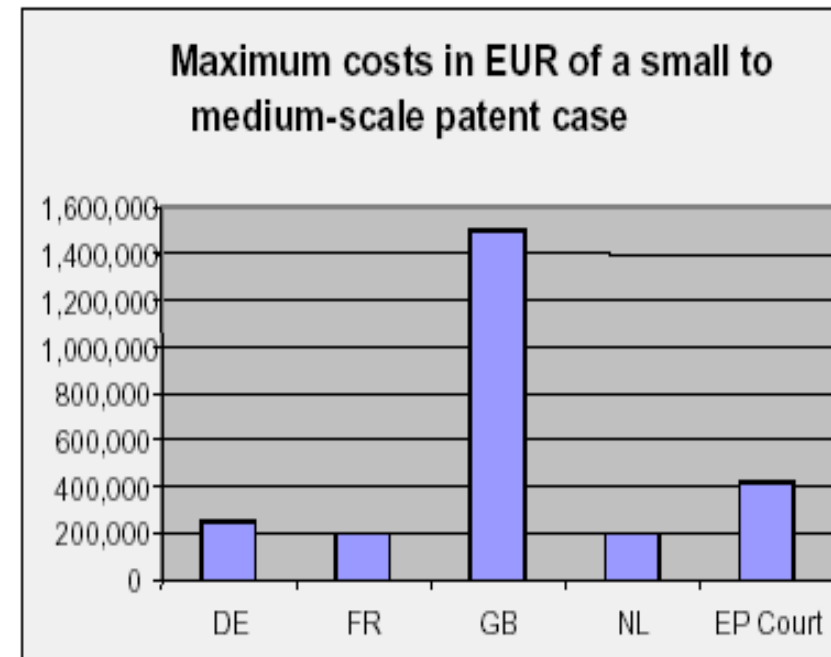
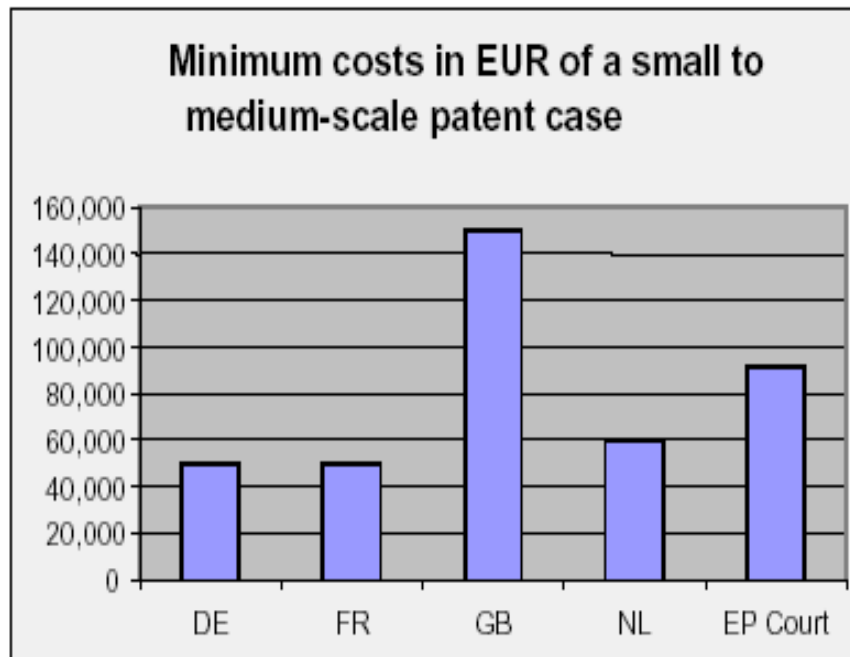
	<b>Germany</b>	<b>France</b>	<b>The Netherlands</b>	<b>United Kingdom</b>
Number of EP in force	307 488	252 289	121 333	257 600
Number of litigations that started in 2004	500 (infringement) 500 (nullity)	50	50	120
Appeals form the first instance judgments	350 (infringement) 250 (nullity)	20	25	3

Source: Adopted from CJA Consultants Ltd (2006)



## Cost Comparison – First Level of Jurisdiction

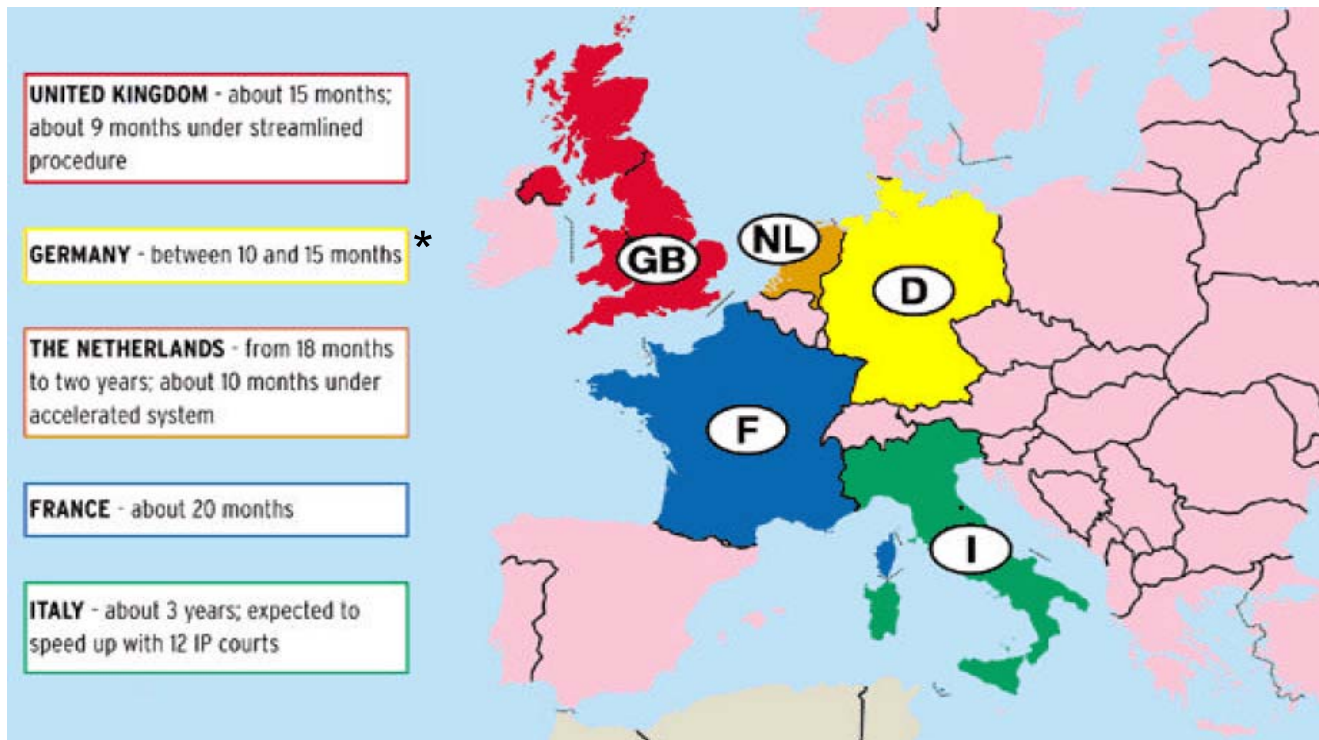
Proceedings before first instance courts:



Source: Assessment of the impact of the European patent litigation agreement (EPLA) on litigation of European patents, EPO 2006



## Average Time to first Instance Decision

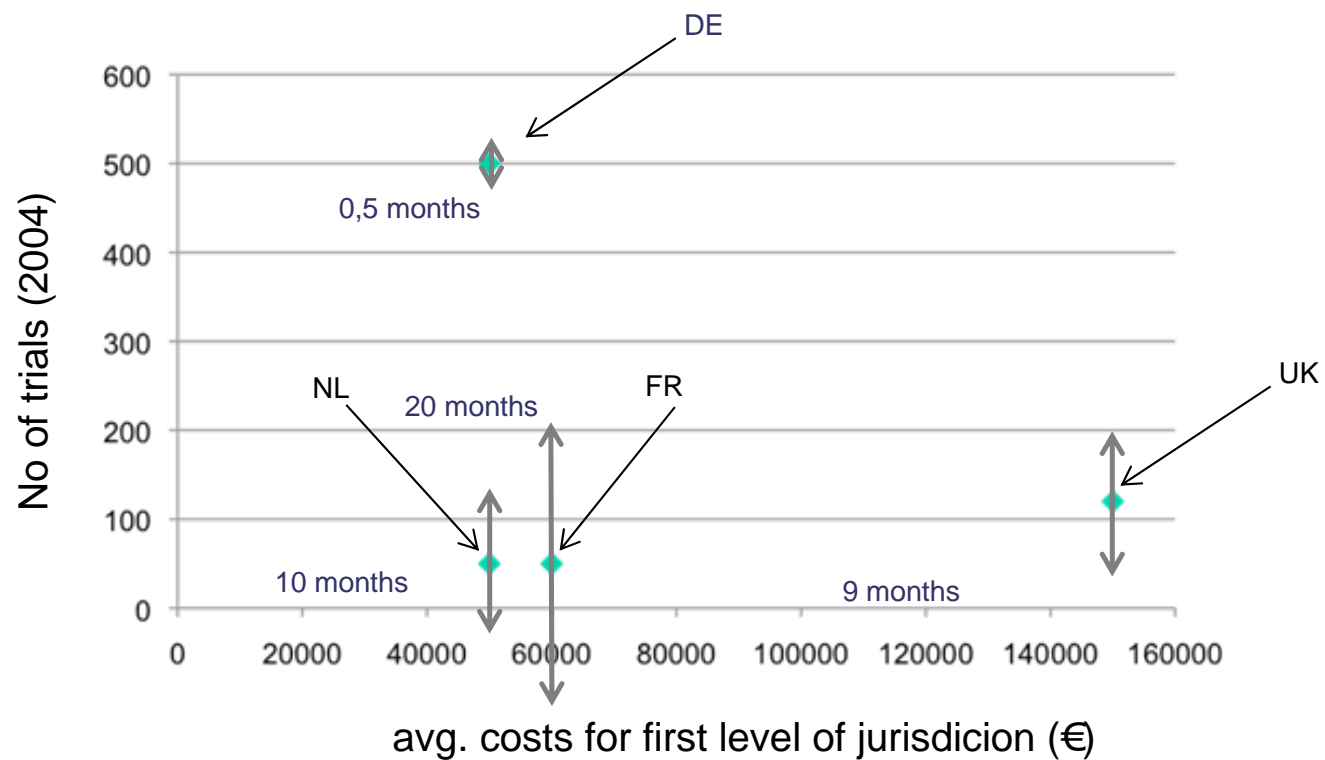


\* Preliminary injunctions usually come with 2 days – 2 weeks (prima facie evidence)

Source: Managing Intellectual Property, 2004



# No of Trials vs. Costs vs. Time for Accelerated Proceedings



Source: Assessment of the impact of the European patent litigation agreement (EPLA) on litigation of European patents, EPO 2006; Managing Intellectual Property, 2004



## Patent Litigation in Germany

- Civil law legal system based on Roman law
- Law system is not “in search of the truth“
- Law system aims for “peace and quiet“
- Burden of proof for plaintiff – no discovery
- Deposition („fishing for proof“) is illegal
- Refund of costs based on „amount in dispute“
- Legal basis for refund of costs: “Attorney Compensation Law“ (RVG)
- Infringement and nullity are handled in two separate proceedings
- Infringement: District Court (attorney-at-law and patent attorney)
- Nullity: German Federal Patent Court (patent attorney)



## Sueing in Germany

- 70% of all European patent infringement cases are negotiated in Germany
- Invalidity claims are not allowed in patent infringement proceedings, i.e. defendant has to file a separate nullity suit at the Federal Patent Court
- Claims related to inequitable conduct are not allowed in patent infringement proceedings
- German judges apply a broad doctrine of equivalence



## Sueing in Dusseldorf

- 80% of all German patent infringement cases are negotiated at Dusseldorf court source: Wirtschaftswoche Nr. 29/2004
- Dusseldorf judges are more inclined to grant preliminary injunctions than other courts (Dusseldorf is Germany's No. 1 trade fair spot)
- Dusseldorf judges are more inclined to grant cross border verdicts than other courts
- Only 7 % of 1st level decisions of Dusseldorf court are revoked in the 2nd level or jurisdiction source: Judge Kühnen, head of patent litigation chamber of the Düsseldorf appellate court



## Resumé: Court ranking

	time to 1 <sup>st</sup> verdict	costs	cross border verdicts	quality	proportion of all European infringement suits
DE	very fast	low	yes	good	> 70 %
NL	fast	moderate	yes	good	< 25 %
FR	average	high	n/a	incalculabe	
GB	fast	very high (> U.S. !)	limited	good	
BE	slow	high	n/a	incalculabe	< 5 %
ES	slow	high	n/a	poor	
IT	slow	high	n/a	poor	



**Thank you very much for your kind attention.**



Michalski · Hüttermann & Partner  
Neuer Zollhof 2  
D-40221 Düsseldorf  
Phone +49 211 159 249 0  
Fax +49 211 159 249 20  
Mail [mail@mhpatent.de](mailto:mail@mhpatent.de)  
Internet [www.mhpatent.de](http://www.mhpatent.de)