

FRANCE



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ed statute-barred period.

Ownership claim and statute-barred period

The French Cour de Cassation (highest court) ruled on January 7 2014 in a case related to an ownership claim and statute-barred period.

The litigation, filed on November 17 2004 concerns the ownership of a French patent whose mention of grant was published on June 2 2000 and a European patent filed under priority of the French patent whose mention of grant was published on July 3 2002.

On September 11 2012, the Colmar Appeal Court, citing article L 611-8 of the French IP Law (CPI), considered that the ownership claim of the French patent was barred since the action was started more than three years after the publication of the grant of the French patent. Considering that the French patent and the European patent cannot be transferred separately because they protect the same invention (Article L614-14 CPI), the Colmar Appeal Court also rejected the ownership claim of the European patent.

The Cour de Cassation set aside this decision, basing its argument especially on Article L 614-13 CPI, which states that where a French patent covers an invention for which a European patent has been granted to the same inventor (or to his successor in title) with the same priority date, the French patent shall cease to have effect at the date the European patent is irrevocably granted. In this case, the French patent ceased to have effect on April 4 2003 (end of the nine months opened opposition period). Therefore, on November 17 2004, the European patent replaced the French patent and the above-mentioned article L611-8 applied to the European patent defines that the three years state-barred period expired on July 3 2005. The litigation was therefore receivable as filed within the state-barred term.

This confirms that the replacement of a national patent by the European patent filed for the same invention, which is codified in IP laws of some of the EPC contracting states to avoid double patenting, must be taken into account with attention as it may change the proceedings, especially the associat-