English translation by

VÉRON & ASSOCIÉS AVOCATS

T R I B U N A L
D E G R A N D E
I N S T A N C E
O F P A R I S

■

3rd Chamber
3rd Section

JUDGMENT
handed down on 25 June 2010

Docket No.:
01/00035

ORIGINAL COPY No.: 1

Summons dated:
11 December 2000

CLAIMANT

S.A. TECHNOGENIA
ZA des Marais
BP 51
74410 ST JORIOZ

represented by Mr Pierre VERON, attorney-at-law, member of the PARIS Bar, court box P24,

DEFENDANTS

S.A.R.L. MARTEC formerly named SONECO
36 rue de la Mairie
49600 LE PUISET DORE

S.A.R.L. ATELIERS JOSEPH MARY
28 rue de la Mairie
Le Puiset Doré
49600 BEAUPREAU

BERNARD MARY INDUSTRIES B.M.I. formerly named MARTEC
28 rue de la Mairie
49600 LE PUISET DORE

represented by Mr Grégoire TRIET, attorney-at-law, member of the PARIS Bar, court box T0003

ACTCIALE
15 avenue d'Aléry
74000 ANNECY

represented by Ms Christine MENAGE, attorney-at-law, member of the PARIS Bar, court box D.478

Mr Francis BARRAT
20, Grande Rue d'Aléry
Batiment D
74960 CRAN GEVRIER

represented by Ms Hélène NEGRO DUVAL, attorney-at-law, member of the PARIS Bar, court box R0297

COMPOSITION OF THE *TRIBUNAL*

Agnès THAUNAT, Vice-Presiding Judge, *who signed the decision*
Anne CHAPLY, Judge
Mélanie BESSAUD, Judge

assisted by Marie-Aline PIGNOLET, court's clerk, *who signed the decision*

DISCUSSION

At the hearing of 16 March 2010
Held in public court

JUDGMENT

Pronounced by filing the decision with the clerk's office
After hearing all the parties
In first instance

FACTS, PROCEEDINGS AND PARTIES' CLAIMS

TECHNOGENIA was founded in 1979 and specialises in the manufacture of welding products to hardface metallic parts exposed to abrasion.

TECHNOGENIA's main customers are the manufacturers of oil drilling materials which need welding rods to hardface the stabilizers of their drilling tools.

TECHNOGENIA developed a new technology for manufacturing welding rods and was granted a French patent, which had been applied for on 21 November 1985, was published on 22 May 1987 under No. 2 590 192 and was granted on 2 August 1991. It is also the holder of a European patent covering the same invention, which was filed on 20 November 1986 under No. 86 420 282.5, published on 22 July 1987 under No. 229 575 and granted on 23 January 1991.

These titles protect the composition of a coated welding rod with a metallic core and the method for manufacturing these rods. TECHNOGENIA uses them for manufacturing and marketing welding rods and ropes under the trade names "Technodur" and "Technosphère".

This invention allows the manufacture of a long-length welding product, called continuous rod or rope, for example several tens of meters long, which is sufficiently flexible to be packaged in spool, wound, unwound, handled and shipped without cracks in the product or in the coating.

On 28 December 1990, TECHNOGENIA sued ATELIERS JOSEPH MARY for the infringement of French patent application No. 85 17809 and of the French designation of European patent No. 229 575, which claims priority from the aforementioned French patent application, following the announcement by this company of the launch of the welding products named "MADUR", which TECHNOGENIA considers both as an infringement of its titles and as a slavish copy of the marketed "Technodur" product line.

On 12 November 1991, TECHNOGENIA sued MARTEC to compel it to join in the proceedings. This company had just been founded by ATELIERS JOSEPH MARY's directors to isolate the business of manufacture and marketing of welding rods and ropes.

TECHNOGENIA also reproached ATELIERS JOSEPH MARY and MARTEC for unfair competition acts since, according to it, Mr MARY could only develop the marketing of the "MADUR" product with the assistance of two TECHNOGENIA's former employees, Messrs MILET and BARRAT.

The summonses followed two *saisies-contrefaçon*, the first one against ATELIERS JOSEPH MARY on 14 December 1990 and the second one against MARTEC on 29 October 1991, during which samples of the "MADUR" products were seized and filed with the clerk's office of the *Tribunal de Grande Instance* of Angers.

These same summonses, duly served, were consolidated.

On 9 May 1994, TECHNOGENIA had a *saisie-contrefaçon* carried out against ACTCIALE and against Mr BARRAT, during which samples of the allegedly infringing products were seized and filed with the clerk's office of the *Tribunal de Grande Instance* of Annecy.

On the following 24 May, TECHNOGENIA sued Mr BARRAT, who had become a sales representative working in Annecy on behalf of MARTEC and ACTCIALE, the company founded by himself, before the *Tribunal de Grande Instance* of Lyon, for the infringement of the two patents for the offer for sale and sale of "Madur" welding rods or ropes, which were supplied to them by MARTEC.

In the 22 December 1994 judgment, the *Tribunal de Grande Instance* of Lyon declined jurisdiction over the infringement action initiated on 24 May 1994 by TECHNOGENIA in favour of this *Tribunal*. These proceedings are entered in the cause list under No. 01/36.

In parallel, in 1991, TECHNOGENIA filed a complaint for violation of trade secret against Messrs MARY, MILET and BARRAT, who, according to it, because of their employment in TECHNOGENIA, had been made aware of the latter's know-how in respect of welding rods and had used this knowledge to develop a similar method within ATELIERS JOSEPH MARY, then within MARTEC.

In the 21 February 1996, the Indictment Chamber of the *Cour d'Appel* of Chambéry considered that there was no reason to sue Messrs BARRAT, MILET and MARY.

As the European patent at issue was the subject of three oppositions lodged by ATELIERS JOSEPH MARY and by two companies governed by the laws of Germany, Durum and Woka, this *Tribunal* decided to stay the proceedings with respect to TECHNOGENIA's claims in the aforementioned proceedings, pending the EPO's decision.

As, in the 18 December 1997 decision, the EPO Board of Appeal decided to maintain European patent No. 229 575 in an amended form, TECHNOGENIA requested in 1998 and obtained the resumption of these proceedings.

As MARTEC, now called B.M.I., assigned the business of manufacture and marketing of the "MADUR" products, effective on 31 March 1999, to a company called SONECO, founded in 1996 and now called MARTEC, TECHNOGENIA sued this new company to compel it to join in the proceedings in order that the judgment may be enforceable against it.

After Mr DALSACE was appointed as a court expert in the 14 April 1999 orders issued in preliminary proceedings, he filed a report on 28 July 2000, under which he concluded that the seized "Madur" samples implemented the features of the French patent's and European patent's claims in the light of the analyses performed by the *Laboratoire National d'Essais* and reported in a report dated 7 March 2000.

On 22 April 1999, TECHNOGENIA had a new *saisie-contrefaçon* carried out against ATELIERS JOSEPH MARY and MARTEC, now called B.M.I.

Following the dispute of the validity of this *saisie-contrefaçon*, the judge in charge of the case preparation, in the 4 September 2000 order, dismissed this claim for nullity and appointed again Mr DALSACE, who filed a new report on 21 November 2002, in which he concludes that the TECHNOGENIA patents' teachings are implemented in the products seized in 1999.

In the 2 and 4 September 2000 summonses, TECHNOGENIA requested an interim injunction against BMI, ACTCIALE and Mr BARRAT from continuing the infringement acts pursuant to Article L. 615-3 of the French Intellectual Property Code.

In the 15 September 2000 order, the Presiding Judge of the 3rd Chamber (1st Section) acceded to this claim; this decision was affirmed in the *Cour d'Appel*'s 4 July 2001 decision.

Following a plea of forgery dated 18 January 2001, lodged by ATELIERS JOSEPH MARY and B.M.I., this *Tribunal* issued a judgment on 28 September 2001, which dismissed this claim.

On 16 March 2001, ATELIERS JOSEPH MARY referred a procedural issue to the judge in charge of the case preparation to have the judge enjoin TECHNOGENIA from continuing the disparagement acts allegedly committed against it. In the 29 May 2001 order, ATELIERS JOSEPH MARY's claims were dismissed.

Following parties' first pleadings on the merits on the expert's report, the *Tribunal de Grande Instance* of Paris, in a previous judgment dated 28 May 2002:

- held inadmissible Mr BARRAT and ACTCIALE's pleading dated 19 October 2001 pursuant to Articles 814 and 815 of the New French Code of Civil Procedure, failing to have specified their domicile or registered office;
- found that the 18 December 1997 decision of the EPO Technical Board of Appeal relating to European patent No. 229 575 had no *res judicata* and, before ruling on the case, ordered the resumption of the discussion and enjoined TECHNOGENIA to produce the manufacturing data sheets of the 1984, 1986 and 1987 "TECHNODUR" rods and invited the parties to make their observations on the maintenance or not of the priority date of French patent No. 85 17809 in relation to European patent No. 229 575 and the maintenance and validity of European patent No. 229 575 with respect to the priority date of European patent No. 229 575 and to the European Patent Office's Opposition Division's decision, which revoked the European patent initially identical to the French patent.

In the 29 June 2004 judgment, the *Tribunal de Grande Instance* of Paris held, in particular, that ATELIER JOSEPH MARY, by manufacturing and marketing MADUR welding ropes referenced 8012, 8005 and 8008 from July 1990 to 27 March 1991, which ropes implement claims 1, 2, 3, 4, 5, 6 and 8 of the aforementioned European patent and claims 5, 6, 7, 9, 10 and 11 of the French patent without TECHNOGENIA's authorisation, committed infringement acts to the detriment of the latter;

held that MARTEC, now called BMI, by manufacturing and marketing, from March 1991 to March 1999:

- MADUR welding ropes referenced 8012, 8005 and 8008, which ropes implement claims 1, 2, 3, 4, 5, 6 and 8 of the aforementioned European patent and claims 5, 6, 7, 9, 10 and 11 of the French patent, for this last-mentioned patent until 18 December 1997;

- MADUR welding ropes referenced 8120, which ropes implement claims 1, 2, 3, 4, 6, 7, 9 of the aforementioned European patent and claims 5, 6, 7, 9, 10 and 11 of the French patent, in this last case until 18 December 1997, without TECHNOGENIA's authorisation, committed infringement acts to the detriment of the latter;

held that SONECO, now called MARTEC, by manufacturing and marketing:

- MADUR welding ropes referenced 8012, 8005 and 8008, which ropes implement claims 1, 2, 3, 4, 5, 6 and 8 of the aforementioned European patent and claims 5, 6, 7, 9, 10 and 11 of the French patent, for this last-mentioned patent until 18 December 1997;

- MADUR welding ropes referenced 8120, which ropes implement claims 1, 2, 3, 4, 6, 7 and 9 of the aforementioned European patent and claims 5, 6, 7, 9, 10 and 11 of the French patent, in this last case until 18 December 1997, without TECHNOGENIA's authorisation, committed infringement acts to the detriment of the latter;

held that ACTCIALE and Mr BARRAT, by marketing in 1994 MADUR welding ropes referenced 8120, which ropes implement claims 1, 2, 3, 4, 6, 7 and 9 of the aforementioned European patent, without TECHNOGENIA's authorisation, committed infringement acts to the detriment of the latter;

(…)

ordered ATELIER JOSEPH MARY to pay to TECHNOGENIA the sum of €300,000 as interim damages on account of the final compensation for its damage;

ordered B.M.I. to pay to TECHNOGENIA the sum of €1.2 million as interim damages on account of the final compensation for its damage;

ordered MARTEC to pay to TECHNOGENIA the sum of €500,000 as interim damages on account of the final compensation for its damage;

and ordered expert investigations entrusted to Mr DALSACE in order to collect information to assess TECHNOGENIA's final damage;

authorised TECHNOGENIA to have the ordering part of this judgment published in three newspapers or magazines of its choice and at the expense of ATELIERS JOSEPH MARY, B.M.I., MARTEC, ACTCIALE and Mr BARRAT, jointly and severally, up to €5,000 per insertion;

ordered the confiscation and the delivery to TECHNOGENIA of the infringing welding ropes still in its possession, for their destruction under the supervision of a bailiff, at the expense of the aforementioned parties.

(…)

In the 10 January 2007 decision, the *Cour d'Appel* of Paris, in particular:

(…) affirmed the 29 June 2004 judgment except in that it dismissed the action for infringement relating to the "MADUR" welding ropes referenced 8112 of 1991, 8112 of 1999 and 8510 of 1999 and in that it dismissed TECHNOGENIA's claim for unfair competition;

reversing it on these issues and ruling on them again;

held that the welding ropes referenced 8112 of 1991 and 1999 and referenced 8510 of 1999 infringed claims 5 and 6 of the French patent until 18 December 1997 and claim 1 of the European patent;

held that ATELIERS JOSEPH MARY, B.M.I. and MARTEC committed acts of unfair competition to the detriment of TECHNOGENIA;

adding thereto,

held that the welding ropes referenced 8020, 8105 and 8108 infringed claims 1, 2, 3, 4, 5, 6 and 8 of the European patent and claims 5, 6, 7, 9, 10 and 11 of the French patent until 18 December 1997;

held that the machine installed in MARTEC's premises, which is described in the *saisie-contrefaçon* report of 29 October 1991, infringes claims 12 and 13 of French patent No. 85 17809;

held that the expert investigations shall be extended to the "MADUR" welding ropes referenced 8112 of 1991 and 8510 of 1999 and to the welding ropes referenced 8020, 8105 and 8108;

held that the publication measure will mention this decision;

dismissed the further claims, (…)".

In the 9 July 2008 order, the judge in charge of the case preparation held that the expert will calculate the damage suffered by TECHNOGENIA for the manufacture and marketing of the infringing ropes for the period prior to 2001.

The expert accomplished his mission and closed his report on 31 December 2008.

The expert limited his mission to the period passed between August 1990 and 28 November 2000, date on which the 15 November 2000 order for interim injunction was notified, following the period defined in the 9 July 2008 order of the judge in charge of the case preparation.

To assess TECHNOGENIA's damage, he took into account the welding ropes bearing the following references: 8005, 8008, 8012, 8020, 8105, 8108, 8112, 8120, 8510.

The expert notes that the parties agree with each other that, over the 1990-2000 period, the total quantity of sold infringing ropes amounts to 157,050 kg, including 4,651 kg referenced 8510, and that the infringing turnover corresponding to the total infringing sales is of €5,298,307.

The distribution of the infringing sales is the following:

ATELIERS JOSEPH MARY from 1st January 1990 to 31 March 1991: 1,731 kg
MARTEC, now called BMI, from 1st April 1991 to 15 March 1999: 122,707 kg
SONECO, now called MARTEC, from 16 March 1999 to 31 December 2000: 32,612 kg.

In the 3 February 2010 order, the judge in charge of the case preparation, to whom a claim for the award of additional interim damages was referred, held that the conditions for the award of additional interim damages by the judge in charge of the case preparation were not met and held that there is no reason to apply Article 700 of the French Civil Procedure Code.

In the last pleading notified on 2 March 2010, **TECHNOGENIA** mainly requested that the *Tribunal*:

Mainly,

hold that the compensation owed to Technogenia for the 1990-2000 period amounts to €19,633,772, at the December 2008 value, by the application of the legal interest, from which the €2,000,000 interim damages paid in enforcement of the 29 June 2004 judgment should be deducted, and, consequently, order jointly and severally Ateliers Joseph Mary, BMI, Martec, Actciale and Mr Francis Barrat to pay to it the sum of €19,633,772 - €2,221,688 (interim damages after the application of the legal interest) = €17,412,084;

In the alternative,

hold that the compensation owed to Technogenia can be calculated according to the different alternative hypotheses described in the chart produced as exhibit No. M. 186, from which the €2,000,000 interim damages paid in enforcement of the 29 June 2004 judgment (*i.e.,* €2,221,688 after the application of the legal interest) should be deducted, and, consequently, order jointly and severally Ateliers Joseph Mary, BMI, Martec, Actciale and Mr Francis Barrat to pay to it the net sum corresponding to the decided hypothesis coming from the chart in exhibit M. 186, whose main hypotheses are reproduced below:

1st hypothesis:
historical net values (1999-2000)
total gross damage (sales made by Technogenia but for the infringement: 100%): €12,940,902
interim damages to be deducted: €2,000,000
total net damage: €10,940,902

2nd hypothesis
net values 1990-2000 converted to the December 2008 value
total gross damage converted to the December 2008 value (retail price index) (sales made by Technogenia but for the infringement: 100%): €15,295,609[TN]
converted interim damages: €2,1297,609[TN]
total net damage converted to the December 2008 value: €13,190,547

3rd hypothesis
Net values 1990-2000 with legal interest
total gross damage (with the application of the legal interest rate until 31/12/2008) (sales made by Technogenia but for the infringement: 100%): €19,633,772
converted interim damages: €2,221,688
total net damage (with the application of the legal interest until 31 December 2008): €17,412,084.

In all the cases:

hold that the compensation owed to Technogenia for the 2001-2006 period amounts at least to €8,868,944 and order jointly and severally Ateliers Joseph Mary, B.M.I., Martec, ACTCIALE and Mr Francis Barrat to pay the said sum;

[TN] The right figure is €15,297,609.
[TN] The right figure is €2,107,061.

in the alternative and in case the *Tribunal* considers not having to accede automatically to the claim relating to the 2001-2006 period, order Ateliers Jospeh Mary, B.M.I. and Martec to produce the following documents, under a penalty of €1,500 per overdue day, as of 15 days after the notification of the judgment to be handed down:

- the manufacturing data sheets, per batch, of all the Madur ropes manufactured during the 2001-2006 period;

- a copy of the data files of the computer-assisted production systems over the 2001-2006 period;

in the alternative, in case the *Tribunal* pronounces a joint and several order against Mr Francis Barrat, limited only to the infringing sales in which he took part, hold that Mr Barrat's joint and several obligation is limited to:

- with 100% of the sales made by Technogenia but for the infringement (1993-2006): €653,314
  - for the 1993-2000 period (€432,024)
  - for the 2001-2006 period (€221,291)

- in the alternative, with 94% of the sales made by Technogenia but for the infringement: €614,115
  - for the 1993-2000 period (€406,102)
  - for the 2001-2006 period: (€208,013)

- in the very alternative, with 83% of the sales made by Technogenia but for the infringement: €542,251
  - for the 1993-2000 period: (€358,580)
  - for the 2001-2006 period: (€183,671)

and order Mr Francis Barrat to pay these sums jointly and severally with Ateliers Joseph Mary, S.ML[TN], Martec and ACTCIALE;

hold that the orders above, pronounced in the December 2008 value, will be increased by the legal interest on the date of the judgment to be handed down, with capitalisation of the interests on 31 December 2009 and, if the judgment was not issued before this date, on 31 December 2010, then on 31 December of each following year until the issue of the judgment;

order the provisional enforcement of the judgment because of the length of the proceedings initiated in 1990;

dismiss all the claims lodged by Ateliers Joseph Mary, S.M.L[TN], Martec and ACTCIALE and Mr Barrat and, in particular, the claim for a stay of the proceedings lodged by Ateliers Joseph Mary, B.M.I. and Martec;

order jointly and severally Ateliers Joseph Mary, S.M.L[TN], Martec, ACTCIALE and Mr Barrat to pay €1,000,000 to Technogenia pursuant to Article 700 of the French Civil Procedure Code and all the costs of the instance, which will include, in particular, the fees of the court expert, Mr Dalsace, and which will be collected in accordance with Article 699 of the French Civil Procedure Code.

In the pleading notified on 15 February 2010, **ATELIERS JOSEPH MARY, B.M.I., SARL MARTEC**, considering the complaint filed on 25 June 2009 by Ateliers Joseph Mary, B.M.I. and Martec, mainly requested that the *Tribunal*:

[TN] The company name should be "B.M.I.".

Mainly, stay the proceedings pending the outcome in the criminal proceedings with respect to the facts denounced in the 25 June 2009 complaint;

In the alternative, considering the *Tribunal*'s judgment dated 29 June 2004, the *Cour d'Appel*'s decision dated 10 January 2007, President Belfort's order dated 9 July 2008 and Mr Dalsace's expert report filed on 31 December 2008:

Mainly,

hold that the global amount of Technogenia's damage because of the manufacture and marketing of the infringing ropes between 1990 and 31 December 2000 could not be higher than €966,926 before conversion to the present value and than €1,399,505 after conversion;

In the alternative, hold that the global amount of Technogenia's damage for the years from 1990 to 2000 because of the manufacture and marketing of the infringing ropes could not be higher than €1,084,672 (by taking into account the damage with respect to the hardfacing on the basis of Technogenia's lost margin) or than €1,146,306 (by taking into account the damage with respect to the hardfacing on the basis of LTS's lost margin) or, in the very alternative, than €1,147,715 (by taking into account the damage with respect to the hardfacing on the basis of a compensatory royalty), these amounts being respectively of €1,587,076, €1,672,492 and €1,674,449 in converted values;

For the remainder,

dismiss Technogenia's all claims;

order Technogenia to pay €50,000 to Ateliers Joseph Mary, Martec and BMI pursuant to Article 700 of the French Civil Procedure Code;

order Technogenia to pay the court costs, which will be directly collected by Mr Grégoire Triet, attorney-at-law, member of the Paris Bar, in accordance with the provisions of Article 699 of the French Civil Procedure Code.

In the last pleading notified on 9 March 2010, Mr Francis BARRAT mainly requested that the *Tribunal*:

dismiss TECHNOGENIA's claims directed against him;

in any case, order ATELIER JOSEPH MARY, B.M.I. and MARTEC to hold him harmless from all the orders pronounced against him;

order TECHNOGENIA to pay him €5,000 pursuant to Article 700 of the French Civil Procedure Code;

order it to pay all the court costs, which will be directly collected by Ms Hélène NEGRO-DUVAL, attorney-at-law, member of the Paris Bar, in accordance with the provisions of Article 699 of the French Civil Procedure Code.

No pleading was filed on behalf of ACTCIALE.

GROUNDS FOR THE DECISION

On the claim for a stay of the proceedings

On 25 June 2009, ATELIERS JOSEPHY MARY, MARTEC and BERNARD MARY INDUSTRIE filed a complaint before the Public Prosecutor of Paris against TECHNOGENIA for forgery and use of forgery. They reproach it for having produced, during the expert proceedings entrusted to Mr DALSACE, an advertising document of Saint Gobain relating to the "TUF COTE" products, which would be a forgery, and for having used it as an argument in a note of the firm Poncet entitled "*analysis of the possible theoretical substitution phenomenon of the patented ropes by the technically competing products described in the Advention study*". Consequently, they request a stay of the proceedings pending "*the outcome in the criminal proceedings with respect to the facts denounced in the complaint*".

TECHNOGENIA opposes this stay of the proceedings.

Article 4 of the French Criminal Procedure Code in its wording issued from the 5 March 2007 Act sets forth that: "*the civil action for compensation for the damage caused by the infraction provided for in Article 2 can be exercised before the civil court, separately from the public prosecution. However, the judgment in this action will be stayed until a final decision is made in the public prosecution where such a prosecution has been initiated.*
The initiation of the public prosecution does not require the stay of the judgment in the other actions exercised before the civil court, of whichever nature they are, even if the decision to be made in the criminal action may directly or indirectly affect the outcome of the civil action".

Since the pending instance does not relate to the compensation for the damage caused by the infraction referred to in the complaint filed, but to the compensation for the damage resulting from the infringement of the patents held by TECHNOGENIA, the stay of the proceedings does not come within the aforementioned Article 4, paragraph 2.

As the exhibit in dispute was produced among a large number of exhibits, on an issue relatively accessory to the main problem, it is not established that it may affect the outcome of this dispute. Under these conditions, there is no reason to stay the proceedings pending the outcome of the criminal complaint.

On the calculation of TECHNOGENIA's damage

According to TECHNOGENIA, the damage it has suffered comprises six heads:

- the lost margin on the sales of rods and ropes;

- the lost margin on the sales of tools and accessories;

- the lost margin on the hardfacing work or, in the alternative, the lost compensatory royalty on this work;

- the erosion in the price of TECHNOGENIA's TECHNODUR and TECHNOSPHERE ropes attributable to the infringement;

- the springboard effect resulting from the infringement;

- the damage to TECHNOGENIA's image.

The lost margin on the sales of rods and ropes

It results from the reading of Mr DALSACE's report that, over the 1990-2000 period, the total quantity of sold infringing ropes amounts to 157,050 kg, including 4,651 kg of ropes referenced 8510 (3% of the total infringing sales) and 152,399 kg for the other references.

The ropes referenced 8005, 8008, 8012, 8020, 8105, 8112 and 8120 are ropes comprising crushed or grounded tungsten carbide particles, *i.e.*, non spheroidal particles: these ropes are similar to TECHNOGENIA's TECHNODUR ropes.

The ropes referenced 8510, marketed between 1996 and 2000, comprise spheroidal tungsten carbide particles. They are similar to TECHNOGENIA's TECHNOSPHERE ropes.

TECHNOGENIA uses, as basis for the calculation, the weighted contribution margin of the TECHNODUR and TECHNOSPHERE ropes. The defendants dispute this position by pointing out that these products are not sold at the same price.

The documents produced by the claimant allow the expert to calculate the damage linked to the sale of ropes other than the 8510 reference and that relating to the 8510 reference.

Under these conditions, as the documents produced indicate a difference in price between these two products and as the 8510 ropes were marketed between 1996 and 2000, *i.e.*, during a more limited period of time, there is no reason to use, as basis for the calculation, a weighted contribution margin for both types of rope, but to distinguish them.

The parties agree to decide that the margin to be taken into account is the contribution margin, but the parties disagree on the amount of this margin. This is composed of the costs of the raw materials having been used to manufacture the ropes, the variable production costs (direct labour, electricity, depreciation of the machines), and the variable distribution costs (sales representatives' salaries, travelling expenses, promotion expenses…).

The costs of the raw materials having been used to manufacture these ropes

The cost of the raw materials was justified by TECHNOGENIA and decided by the court expert. The defendants dispute these figures without, nevertheless, proving their statements. Consequently, the figures decided by the court expert, on page 197 of his report, who distinguishes the cost of these raw materials between 1991 and 2000 for the TECHNODUR and TECHNOSPHERE ropes will be used.

The variable production costs

The claimant suggests that TECHNOGENIA's variable costs be calculated in the following way: the variable overhead costs (electricity, maintenance, depreciation of the machines), in the absence of analytical accountancy, were allocated, for 8.5%, to the activity of the ropes' manufacture. This rate corresponds to the effective occupation rate of the rope unit in the Saint Jorioz factory. The depreciation expense relating to the machines are calculated on the real basis of TECHNOGENIA's capital assets on 31 December 2006.

The defendants dispute this cost allocation base on the particular ground that it clearly differs from the portion that the rope turnover represents in Technogenia's turnover, which amounts to approximately 60-70% over the 1990-2000 period; it is a cost allocation base generally used in this type of fiscal period.

The court expert notes that the defendants' suggestion of taking into account the "rope turnover/total turnover" ratio seems more rational than the ratio between the surface of the premises allocated to the rope manufacture and the surface of all TECHNOGENIA's premises.

To justify his position, TECHNOGENIA's expert argued that he had not to prove that the 8.5% cost allocation base is well founded insofar as the cost allocation base chosen by a company to allocate its indirect production costs is discretionary.

Consequently, nothing stands against the choice of the "rope turnover/total turnover" ratio since TECHNOGENIA's expert acknowledged that, as the indirect production costs can sometimes be allocated in proportion to the turnover generated by the corresponding products, this calculation, decided by the court expert, seems more rational than the ratio between the surface of the premises and the activity of rope manufacture.

Regarding the depreciation expense, there is reason to follow the court expert's position, who, in agreement with the defendants, argues that, as far as they are concerned, there is reason to allocate to the rope activity the portion that this activity represents in TECHNOGENIA's global activity, *i.e.*, to apply a "rope turnover/total turnover" ratio. It appears that the sum decided by TECHNOGENIA's expert was decided, according to his own statements, by simplicity, but its calculation mode is not defined.

Regarding the variable commercial expenses, TECHNOGENIA states that they are composed of: sales representatives' travelling expenses, commercial information expenses, the COFACE insurance's cost and the transportation insurance's cost, the forwarding agent's commission and compensation, trade shows, etc. In the absence of analytical accountancy or of specific allocation of the commercial expenses, it suggests, as method, the analysis of the commercial investment in ropes, which varied within a range from 50% to 25% of the total for the 1990-2000 period and the application of the percentage of the commercial investment suggested by the manager

to assess the commercial budget allocated to ropes, which it related to the total manufacture of ropes in kilogrammes.

The defendants argue that the claimant should have confined itself to the assessment it had submitted in 2001.

One should observe that the defendants' expert Accuracy does not criticize the calculation mode suggested by the claimant on this issue; accordingly, it should be considered as relevant. On this basis, the court expert Mr DALSACE assesses the margin lost on the sales of ropes similar to Technodur at €3,002,279 and the margin lost on the sales of ropes referenced 8510 similar to Technosphère at €132,702, *i.e.*, a total of €3,134,981.

According to the following itemising chart:

	Quantities except 8150	Quantities 8510	Contribution margin TD	Contribution margin TS	Total lost margin
01/08/90 to 31/03/91	1731	-	21.7	20.8	37,643
to 30/09/91	4185	-	21.3	21.4	89,210
to 30/09/92	7435	-	19.5	27.4	145,147
to 30/09/93	8085	-	24.8	38.4	200,428
to 30/09/94	13196	-	24.2	31.8	318,931
to 30/09/95	14982	-	21.5	29.4	322,447
to 30/09/96	18711	601	18.3	30.7	360,103
to 30/09/97	19969	264	17.5	30.8	358,259
to 30/09/98	25295	1156	18.7	27.2	505,008
to 15/03/99	8375	453	18.7	27.2	169,253
to 30/09/99	8431	870	16	26.8	158,144
to 30/09/00	17262	976	19.6	29.9	367,555
to 31/12/00	4742	331	19.6	29.9	102,853

	152,399 kg	4,651 kg	19.7	28.5	3,134,981

Caption: TD (Technodur)
TS (Techosphère).

These sums that are not seriously criticized by the parties should be decided.

On the sales that Technogenia would have made but for the infringement

TECHNOGENIA argues that it could have made all the sales of infringing products and, accordingly, 100% of the infringing sales should be taken into account or, in the alternative, 94% or, in the very alternative, 83%.

The defendants argue that Technogenia would only have made 40% of the infringing sales.

The court expert Mr DALSACE first notes that it emerges from the exhibits produced by TECHNOGENIA that this company had the industrial capacity to make all the infringing sales, the maximal capacity of theoretical production being of 119,000 kg in 2000 and there was a remaining capacity of 32,697 kg.

The court expert rightly suggests that the customers common to both parties are taken as a basis for calculation, considering the difficulty to determine which products could replace the patented ropes absent the Madur ropes or considering the assessment of TECHNOGENIA's market shares compared to the other market's players over the 1990-2000 period.

The firm ACCURACY, the defendants' expert, admitted that the maximal rate of customers common to both parties was of 58% whereas TECHNOGENIA argued that this rate was of 75%. Mr DALSACE, the court expert, suggests a rate of 66%. Considering the difficulty to accurately determine the rate of customers common to both parties despite the length of the expert proceedings, the 66% rate suggested by the court expert, which is grounded, should be decided.

As there were 34% of customers that both parties have not in common, TECHNOGENIA had a fifty-fifty chance to obtain these new customers, *i.e.*, 17%. Consequently, Mr DALSACE, the court expert, finally rightly suggests taking into account 83% of the infringing sales.

As a result, the lost profits for the TECHNODUR product are of €3,002,272 × 83% = €2,491,885.76 and the lost profits for the TECHNOSPHERE product are of €132,702 × 83% = €110,142.66. That is a total of €2,602,028.42.

On the compensatory royalty

TECHNOGENIA requests the payment of a compensatory royalty with respect to the portion of the sales of infringing ropes that it would not have made but for the infringement.

The defendants argue that TECHNOGENIA would have generated no margin on the 17% of the quantities sold by the defendants, which would have been captured by the other market's players; in fact, these other players would have enjoyed possible additional profits. Technogenia would have enjoyed no royalty as the other companies on the market were not, over the infringement period, bound with TECHNOGENIA by a licence contract providing for the payment of a royalty.

In fact, TECHNOGENIA, for the sales that it would not have made but for the infringement, suffered lost royalties, which it was entitled to hope in return for the authorisation of using this technology. Nothing establishes that the other market's players would have taken advantage of these sales. These lost profits correspond to a compensatory royalty that should be calculated on a basis constituted by the turnover made by the infringer and corresponding to the remaining portion.

TECHNOGENIA argues that the royalty rate that should be decided is of 13% whereas the B.M.I. group's companies argue that this rate could not exceed 1.45%.

The court expert rightly decides that in the metallurgical industry, the royalty rate is of 5%. Considering the compensatory nature of this rate, with respect to a compensatory royalty, *i.e.,* not freely granted and, furthermore, to a competitor, it should be set at a 7.5% rate.

This compensatory royalty amounts to the total of €66,671.79, itemised in the following way:

periods	Total turnover of the BMI group's companies for all the ropes	The 17% turnover subject to royalty	Royalty rate	Compensatory royalty
01/08/90 to 31/03/91	57,123	9,710.91	7.5	728.31
to 30/09/91	138,105	23,477.85	7.5	1,760.83
to 30/09/92	245,355	41,710.35	7.5	3,128.27
to 30/09/93	266,805	45,356.85	7.5	3,401.76
to 30/09/94	435,468	74,029.56	7.5	5,552.21
to 30/09/95	494,406	84,049.02	7.5	6,303.67
to 30/09/96	643,306	109,362.02	7.5	8,202.15
to 30/09/97	670,329	113,955.93	7.5	8,546.69

to 30/09/99	844,443	150,355	7.5	11,276.62
to 15/03/99	295,854	50,295.18	7.5	3,772.13
to 30/09/99	315,633	53,657.61	7.5	4,024.32
to 30/09/00	611,614	103,974.38	7.5	7,798.07
to 31/12/00	170,719	29,022.23	7.5	2,176.66
	5,229,160	888,957.2	7.5	66,671.79

On the sale of accessory products

According to the claimant, the sale of ropes entails induced sales of accessory products, *i.e.*, sales allowing the customers to perform themselves the hardfacing operations. It is, in particular, the sale of torches, nozzles and guns for applying the rope during the welding operations, as well as the sale of powders and electrodes.

Mr DALSACE, the court expert, points out that TECHNOGENIA had initially not taken into account the powders and accessories as being products directly complementary to the infringed products, taking only into account "*oxyacetylene torches, given that they are intended to the application of the ropes and, accordingly, would not have been sold if the ropes had not been manufactured thanks to the infringement*".

The defendants rightly argue that, on a technical point of view, the torches, nozzles and guns are not specifically intended to the infringing ropes since they are used by any operator who wishes to perform welding with an oxyacetylene torch and can be used with other types of materials than the infringing ropes. Likewise, the powders are not specifically intended to the infringing ropes since they can be used alone. As to the electrodes, they can also be used distinctly. Furthermore, the analysis of TECHNOGENIA's sales journals establishes that numerous customers common to both parties and purchasing hardfacing ropes purchase no powder and no electrode.

Consequently, the claimant did not prove that a sufficient link exists between the sale of the infringing ropes and the sale of torches, nozzles, guns, powders and electrodes and that it is an indivisible entire market value.

On the hardfacing operations

TECHNOGENIA argues that it has suffered damage due to the margin lost on the hardfacing services because it should have performed all the services performed with the infringing ropes instead of the Bernard Mary group or, in the alternative, due to the compensatory royalty lost on these services.

Under Article L. 613-3 of the French Intellectual Property Code, "*The following shall be prohibited, save consent by the owner of the patent: a) Making, offering, putting on the market or using a product which is the subject matter of the patent*". The contract hardfacing business exercised by Ateliers Joseph Mary generated a turnover distinct from that resulting from the mere sale of ropes. TECHNOGENIA argues that, but for the infringement, ATELIER JOSEPH MARY would not have been in a position to guarantee a hardfacing quality comparable to that obtained with the patented ropes so that customers would have turned towards TECHNOGENIA.

TECHNOGENIA acknowledges that during the 1990-2000 period, TECHNOGENIA subcontracted a part of its services to its subsidiary LYON TECHNIQUE SOUDURE. This company is not party to the proceedings.

Mr DALSACE, the court expert, rightly notes that the information transmitted by TECHNOGENIA is not sufficient to state with certainty that the hardfacing operations were performed by this company during this period and, if it were the case, the distribution of this work between TECHNOGENIA and its subsidiary does not clearly appear. Furthermore, the calculation made by TECHNOGENIA of its damage on the basis of LYON TECHNIQUE SOUDURE's margin, this company not being party to the proceedings. Accordingly, there is no reason to decide damage calculated on the margin lost on the hardfacing services.

In the alternative, TECHNOGENIA requests that the *Tribunal* assess its damage on the basis of a compensatory royalty it sets at 13% applied to the infringing quantities unlawfully used by ATELIER JOSEPH MARY for its hardfacing work. It is established that the infringing ropes were sold to ATELIER JOSEPH MARY by MARTEC, which belongs to the same group.

TECHNOGENIA cannot demand the accumulation of damage with respect to the hardfacing services and the damage with respect to the lost sales of ropes including the sales internal to the BMI group, as it would be otherwise granted compensation for damage that it has not suffered. Since the damage with respect to the lost sales of ropes includes the quantities sold by MARTEC to ATELIER JOSEPH MARY, one should consider that ATELIER JOSEPH MARY would hold patented ropes and, accordingly, would be in a position to perform the hardfacing services without having to pay compensatory royalties to TECHNOGENIA.

Under these conditions, there is reason to dismiss this head of damage.

On the damage resulting from the price erosion

TECHNOGENIA argues that it was obliged to reduce its prices to remain competing in the face of the MADUR and TECHNOSPHERE infringing ropes.

Mr DALSACE's expert investigations show that there actually was a reduction in the cost of TECHNOGENIA's products linked to the putting on the market of infringing products.

It is established that other infringers existed on the market at that time.

TECHNOGENIA argues that all the co-authors of a fault are held jointly and severally liable *vis-à-vis* the victim.

One should observe that, in case of a plurality of infringers, the total compensation granted cannot exceed the total damage suffered by the victim of the infringement acts.

In the present case, TECHNOGENIA sued DURUM, WOKA, CHPOLANSKY and CASTOLIN for infringement. It states having entered into a licence agreement with CASTOLIN since that time. It does not specify the outcome of the proceedings initiated against DURUM, WOKA and CHOPOLANSKY.

Under these conditions, to avoid an accumulation of compensation, the liability of the BMI group's companies should be limited to 18%, which corresponds to its market share, especially since the expert noted that the erosion in the price of the TECHNODUR ropes began in 1988 whereas the BMI group had not manufactured infringing ropes yet.

Regarding the TECHNODUR product's price, TECHNOGENIA takes into account the year 1990, whereas the defendant takes into account the year 1992. The court expert Mr DALSACE points out that taking into account the year 1990 is artificial since only 1,731 kg were sold by ATELIERS JOSEPH MARY whereas 31,868 kg were sold by TECHNOGENIA; he rightly suggests the year 1991 (price of €41.77). In this case, the damage resulting from the reduction in the price of TECHNOGENIA's products is of €357,372.

Regarding the TECHNOSPHERE product, only the MADUR 8510 reference should be taken into account, which appeared on the market in 1996 with a reference price of €54.14. In this case, the damage resulting from the price reduction is of €10.479.

The BMI group's market share being of 18%, the companies of this group should be ordered to pay to TECHNOGENIA €357,372 + €10,479 × 18% = €66,213.18.

On the springboard effect

TECHNOGENIA argues that the BERNARD MARY group's companies unlawfully acquired a competing advantage by entering the market before the expiry of TECHNOGENIA's patents.

In the present case, French patent No. 85 17809 expired in November 2005 and European patent No. 0 229 575, claiming priority from the French patent, in November 2006.

In 2000, the time at which the infringement ended, the patents were still in force. Consequently, it is not established that the BMI group's companies could keep the market shares they had obtained by offering for sale the infringing ropes and so enjoyed a springboard effect before the patents fall in the public domain.

Therefore, TECHNOGENIA's claims lodged in this respect should be dismissed.

On the damage to the business's value

The claimant argues that this head of damage is constituted by the damage to TECHNOGENIA's image, which would have been translated by a loss of value with respect to the "TECHNOGENIA" trademark and to Technogenia's business. This loss of value is assessed on the basis of the turnover that was not made, by applying the reference prices of the TECHNODUR and TECHNOSPHERE ropes to the infringing quantities.

The defendants request the dismissal of these claims.

One should observe that the claimant does not prove that its trademark or business have lost value due to the infringement acts.

Furthermore, regarding the damage to the claimant's image, the defendants note, which is not contradicted by the claimant, that the claimant obtained already from the *Tribunal* in the 29 June 2004 judgment and from the *Cour d'Appel* in the 10 January 2007 decision the publication of the judicial decisions that are likely to compensate for the damage suffered in this respect.

Therefore, the damage to TECHNOGENIA's image was sufficiently compensated for by these judicial publication measures without it being necessary to distinctively assess this head of damage.

On the conversion to the present value of the compensation granted to the claimant

The claimant requests not only the compensation for the monetary erosion to preserve the purchasing power on the sums at issue, but also the compensation for the financial damage caused by the absence of these sums in its treasury, on the basis of the legal interest rate, increased by a capitalisation. The B.M.I. group's companies do not dispute the application of the legal interest rate with respect to the conversion of the compensation to the present value, but dispute its capitalisation.

It is established that damage should be assessed on the date of the judgment and the necessary compensation for damage should be calculated on the value of the damage on the date of the judgment that establishes the compensatory claim.

Consequently, the compensation granted to a victim of a faulty and harmful fact should be converted to the value on the date of the judgment that sets the compensation, taking into account the monetary erosion over the considered period in order that the granted sum corresponds to the adequate compensation on the date on which it is ordered.

Under these conditions, the sums assessed above with respect to the different heads of damage will be consequently converted to the present value by a year-per-year calculation of the legal interest rate.

On the contrary, the *Tribunal* will not accede to the claim for the capitalisation of the interests with respect to the compensation for an additional financial damage since TECHNOGENIA does not justify this head of damage.

On the 2001-2006 period

TECHNOGENIA argues that the B.M.I. group did not stop the infringement on 31 December 2000 as alleged, but pursued it until the expiry of the European patent in 2006.

It is established that an order from the President of the *Tribunal de Grande Instance* of Paris provisionally enjoined the BERNARD MARY group from manufacturing and selling references 8005, 8008, 8012 and 8120.

The BERNARD MARY group's companies, by the production of invoices regarding the marketing of ropes from 2000 to 2006, prove having no longer marketed ropes under the references at issue in the judgment and the *Cour d'Appel*'s decision. They also produce manufacturing data sheets seized on their premises during two *saisies-contrefaçon* dated 10 May 2005, which were held null by the *Cour d'Appel* of Paris in the 7 December 2005 decision.

TECHNOGENIA argues that they are not manufacturing data sheets, but "manufacturing formulas". The defendants rightly note that they are in a form similar to that produced before the *Cour d'Appel* of Paris by TECHNOGENIA to establish the infringement.

Furthermore, the defendants had three bailiff's reports drafted on 17 and 18 January and on 8 March 2005, from which it results that the ropes referred to in the produced invoices are manufactured according to the produced manufacturing data sheets.

Under these conditions, TECHNOGENIA does not prove that the infringement would have been pursued from 2001 to 2006. There is no reason to accede to its claim for additional compensation or for the production of exhibits for this period.

On the damage suffered by TECHNOGENIA from Mr Francis BARRAT's infringement acts

TECHNOGENIA requests that the *Tribunal* order Mr BARRAT jointly and severally with the other defendants, due to the infringement acts, to pay for the whole damage it has suffered and, in the alternative, order him jointly and severally to pay €432,024, at the December 2008 value, for the 1993-2000 period, and €221,291 for the 2001-2006 period.

Mr BARRAT, pointing out that he has not been ordered until now to pay interim damages failing evidence against him, disputes TECHNOGENIA's claims and, in any case, requests that the BERNARD MARY group's companies hold him harmless.

The *Tribunal* points out that the only element in the file regarding Mr BARRAT's participation in the infringement consists in the bailiff's *saisie-contrefaçon* report drafted on 9 May 1994 at his domicile. He stated to the bailiff "*offering to his customers, on behalf of ACTCIALE, welding rods or ropes since February 1993, first on behalf of the companies "SNMI", "MARY" and "MARTEC" until November 1993, then on behalf of the company "DURUM", governed by the laws of Germany, and the company "SNMI"*. Mr BARRAT states that for this activity, except for exceptional situations, he drafted no invoice, received no order, even performed no delivery. In Mr BARRAT's garage, the bailiff found a cardboard packaging marked "MADUR 8120".

The 29 June 2004 judgment of this *Tribunal*, by pointing out that no element in the file informs on the period during which ACTCIALE and Mr BARRAT would have marketed the infringing ropes, did not order these parties to pay interim damages and "*held that ACTCIALE and Mr BARRAT, by marketing in 1994 the MADUR 8120 welding ropes, which implement claims 1, 2, 3, 4, 5, 6, 7 and 9 of the aforementioned European patent without TECHNOGENIA's authorisation, committed infringement acts to its detriment*". On this issue, the *Cour d'Appel* affirmed the judgment of the *Tribunal de Grande Instance* of Paris.

It results from the *saisie-contrefaçon* report that Mr BARRAT marketed the MADUR 8120 products developed by the B.M.I. group's companies.

Under these conditions, he cannot be ordered jointly and severally to compensate for the whole damage suffered by TECHNOGENIA for the whole infringement committed by the manufacturer, but only at the level of his personal participation in the infringement. The *Tribunal* has the evidence required for assessing his participation in the damage suffered at the €5,000 lump sum, which he will be ordered to pay jointly and severally with the manufacturer because of the holding for sale of a cardboard box of the "MADUR 8120" product. His claim for guarantee against ATELIERS JOSEPH MARY, MARTEC and BERNARD MARY should be acceded to.

On the claims directed against ACTCIALE

TECHNOGENIA requests that the *Tribunal* order jointly and severally ACTCIALE to pay all the ordered sums, but puts forward no argument on the role played by Actciale.

The only elements in the file relating to ACTCIALE's participation in the damage suffered by TECHNOGENIA results from the *saisie-contrefaçon* report drafted on 9 May 1994 at Mr BARRAT's domicile.

It results therefrom that Actciale, through Mr BARRAT, marketed the MADUR 8120 products developed by the B.M.I. group's companies.

Under these conditions, it cannot be ordered jointly and severally to compensate for the whole damage suffered by TECHNOGENIA for the whole infringement committed by the manufacturer, but only at the level of its participation in the infringement. The *Tribunal* has the evidence required for assessing his participation in the damage suffered at €5,000, which it will be ordered to pay jointly and severally with the manufacturer.

On the further claims

There is reason to order jointly and severally ATELIERS JOSEPH MARY S.A.S, B.M.I. S.A.S. and SARL MARTEC, ACTCIALE and Mr BARRAT, the unsuccessful parties, to pay the costs, which will be collected in accordance with the provisions of Article 699 of the French Civil Procedure Code.

Moreover, they should be ordered to pay to TECHNOGENIA, which had to incur unrecoverable expenses to assert its rights, compensation pursuant to Article 700 of the French Civil Procedure Code, which is fairly set at €150,000, being specified that Mr BARRAT will only be ordered to pay up to €5,000 out of this sum.

The case's circumstances justify the pronouncement of the provisional enforcement of the judgment, which, moreover, is compatible with the dispute's nature.

ON THESE GROUNDS

The *Tribunal*, ruling publicly, by a judgment issued in first instance, after hearing all the parties and put at disposal in the clerk's office;

Holds that there is no reason to stay the proceedings;

Orders jointly and severally ATELIERS JOSEPH MARY S.A.S., BERNARD MARY INDUSTRIES (B.M.I.) S.A.S. and SARL MARTEC to pay €2,735,013.39 to TECHNOGENIA;

Holds that this sum will be increased by the legal interest rate with respect to the damage's conversion to the present value and the calculation is made as of 1990 for each year until that date for the sum of €2,602,028.42 with respect to the margin lost on the sales of ropes, as itemized in the chart above in the grounds of this judgment, and for the sum of €66,771.79 with respect to the additional compensatory royalty, as itemised in the chart above in the grounds of this judgment, and as of 2000 until that date for the sum of €66,213.18 with respect to the damage resulting from the price reduction;

Holds that the sum of €2,000,000 with respect to the interim damages (converted to €2,221,688 in application of the legal interest rate) already paid should be deducted from these sums;

Orders Mr Francis BARRAT and ACTCIALE, jointly and severally with ATELIERS JOSEPH MARY S.A.S., BERNARD MARY INDUSTRIES (B.M.I.) S.A.S. and SARL MARTEC to pay compensation to TECHNOGENIA up to €5,000;

Dismisses the parties' further claims;

Orders jointly and severally ATELIERS JOSEPH MARY S.A.S., BERNARD MARY INDUSTRIES (B.M.I.) S.A.S., SARL MARTEC, ACTCIALE and Mr Francis BARRAT to pay €150,000 to TECHNOGENIA pursuant to Article 700 of the French Civil Procedure Code, being specified that Mr Francis BARRAT will only be ordered to pay up to €5,000;

Orders jointly and severally ATELIERS JOSEPH MARY S.A.S., BERNARD MARY INDUSTRIES (B.M.I.) S.A.S., SARL MARTEC, ACTCIALE and Mr Francis BARRAT to pay all the costs, including Mr DALSACE's court expert investigations, which will be collected in accordance with Article 699 of the French Civil Procedure Code;

Orders jointly and severally ATELIERS JOSEPH MARY S.A.S., BERNARD MARY INDUSTRIES (B.M.I.) S.A.S. and SARL MARTEC to hold Mr Francis BARRAT harmless from the orders pronounced against him;

Orders the provisional enforcement.

Judged in Paris on 25 June 2010

The Clerk	The Presiding Judge
Marie-Aline PIGNOLET	Agnès THAUNAT