

NCC and Intellectual Property

Who are we?

The Netherlands Commercial Court (which consists of 3 chambers: the NCC District Court, the NCC Court in Summary Proceedings and the NCC Court of Appeal) is a part of the Dutch Judiciary, which is ranked among the most efficient, reliable and transparent worldwide. The NCC is based in Amsterdam – a prime location for business and a gateway to Europe, with a long history of justice and global business. The NCC uses Dutch procedure, which is highly regarded for its pragmatic approach and efficient operations. Proceedings are in English. Judgments are in English.

Intellectual property cases in English

Many IP disputes are international by nature. English is the language most commonly used in the business community, and in the IP community in particular. That's why it makes sense to litigate those disputes in English – which is precisely what NCC enables you to do. In the NCC, the entire proceedings and the judgments are in English.

This creates opportunities for clients to enjoy substantial savings. It's no longer necessary to spend valuable time and money translating documents from English (client review stage) to Dutch (for submission to the court). And clients and non-Dutch counsel can attend the hearing, understand what is said and done and fully and actively participate without the need for interpreters. Finally, enforcement of the judgment is expected to be easier where the judgment is in English. A translation may not be required, as such judgment will generally enable the competent enforcement authority to proceed (see article 42 of the Recast Brussels I Regulation).

Focus on global best practices

The NCC Rules of Procedure (see www.ncc.gov.nl) reflect global best practices, which will be familiar to international businesses and counsel:

- from the outset the case is dealt with by a dedicated judge and clerk
- a case management hearing may be scheduled as early as the submission of the initiating document
- foreign lawyers can draft documents and speak at any hearing
- parties may agree to have the court apply international rules of evidence, within certain limits
- option to have court reporters prepare verbatim reports of the hearing.



Digital proceedings

The NCC is the only Dutch civil court using an electronic communication system (eNCC). It's a web portal with secure access through the NCC site (www.ncc.gov.nl), allowing Dutch counsel to initiate an action, check the status and scheduled next steps, and submit and download documents electronically. This gives the NCC the tools to communicate effectively and provide swift and firm guidance throughout the process.

As a rule, case management hearings are held by videoconference. Hearings on the merits are generally in the courtroom, but videoconference technology may be used to allow the parties and their foreign counsel to join.

Specialized judges

IP cases are dealt with by lawyers specialized in this area of law. This requires judges dealing with these cases to be on the same level of expertise. The NCC and NCCA have judges who are specialists in this field:

- Judge Diekman (Rotterdam District Court)
- Judge Van Heemstra (Gelderland District Court)
- Judge Loos (The Hague District Court)
- Judge Hofmeijer-Rutten (Rotterdam District Court and Amsterdam Court of Appeal)
- Judge Tjong Tjin Tai (sitting by designation) (Professor of Private Law at Tilburg University, specialized in IP and IT law)
- Judge Bernt Hugenholtz (sitting by designation) (Professor of IP Law at the University of Amsterdam)

Jurisdiction

The NCC is a chamber of the Amsterdam District Court. Therefore, for the NCC to deal with an IP case it is required that the Amsterdam District Court have jurisdiction. The ordinary private international law rules apply. The jurisdiction of the Amsterdam District Court may be based on the defendant's domicile or the place where the infringement occurred or may occur, or on other grounds. Choice-of-court agreements are generally acceptable, except where the proceedings pertain to the registration or validity of the IP right, under the ordinary rules.

Under Dutch law some specific areas of IP law are within the exclusive jurisdiction of the The Hague District Court, such as patents, plant variety rights and EU trademark and design rights. This precludes these cases from being dealt with by the NCC. However, this exclusion is basically limited to cases concerning the validity or infringement of these rights, and does not extend to more remote claims, such as claims based on non-performance of obligations arising out of agreements licensing the use of these rights. Furthermore, it may be acceptable to bring summary proceedings regarding EU trademark and design rights before the NCC under recent case law providing a degree of flexibility on jurisdiction in summary proceedings (European Court of Justice, 21 November 2019, C-678/18).

This means that the NCC may have jurisdiction over cases concerning:

- copyright
- neighboring rights
- Benelux trademarks
- Benelux design rights
- EU trademark and design rights, where the proceedings are summary proceedings
- database rights
- trade names
- trade secrets and
- all other IP rights, where the case does not pertain to the validity or infringement of these rights.

See the Hague District Court website (in Dutch) for more information.

NCC agreement

If the Amsterdam District Court has jurisdiction, there's only one final step. It's that the parties need to agree to take the case to the NCC and to make English the language of the proceedings. This is the "NCC agreement". The NCC agreement can be recorded in a clause to that effect, either before or after the dispute arises. A model clause is available at ncc.gov.nl.

Need to know more on NCC?

If you have any questions, please contact us at NCC@rechtspraak.nl. Or visit our website www.ncc.gov.nl.