

tion, but, rather can finish the statement after the Saisie and send it to the plaintiff within a reasonable time.<sup>224</sup>

### C. After the Saisie: Suit and Possibility for Appeal

Following the Saisie the plaintiff *must* sue and the defendant *may* appeal the Saisie. Art. L 615-5, ¶ 5 CPI mandates that the rightholder file suit for the infringement which he alleged in applying for the Saisie. More precisely, the rightholder has twenty business days or thirty calendar days after the execution of the Saisie, whichever one is longer, to file the complaint.<sup>225</sup> If the plaintiff fails to do this, the Saisie is void and the plaintiff can no longer use the evidence it produced.<sup>226</sup> The relatively quick filing requirement preserves the Saisie's purpose as a means of gathering proof of infringement and not as a measure to intimidate competitors or promote commercial espionage.<sup>227</sup> Although the tribunal where the infringement action is ultimately filed will often be the court having previously ordered the Saisie, this is not always the case.<sup>228</sup>

Appellate review of a Saisie occurs after its performance.<sup>229</sup> Then, several avenues for challenging a Saisie exist. Those potential appeals either attack the legitimacy of the grant of the order or its performance.<sup>230</sup> An appeal based on a grant's legitimacy challenges the decision of the judge having authorized the Saisie. The seized party must, thus, prove that the legal conditions required for issuing a Saisie were not met.<sup>231</sup> If the judge is convinced, he may rescind or limit the order and thereby invalidate the evidence seized under it.<sup>232</sup> The alleged infringer may also ask for an expedited order preventing the seizing party from proceeding with further Saisies. This, however, happens only in extreme cases, where the seizing party has gathered sufficient proof by way of conducting multiple Saisies and essentially abuses his right.<sup>233</sup> The seized party may also appeal the *performance* of the Saisie and ask for its nullity.<sup>234</sup> Those appeals are made to the court adjudicating the infringement action, rather than to the judge having issued the Saisie, based on several grounds generally relating to the seizing party having overstepped the authorizations of the Saisie order.<sup>235</sup>

<sup>224</sup> *Id.*

<sup>225</sup> Art. R 615-1 CPI.

<sup>226</sup> Véron I, at 139.

<sup>227</sup> BIZOLLON ET AL., *supra* note 157, at 62.

<sup>228</sup> *Id.* at 65. The saisie-ordering and adjudicating courts are often the same, because infringement suits are litigated at the place of infringement (or harm). There, too, the evidence and, thus, the saisie tends to be. *Id.*

<sup>229</sup> That is, as opposed to rules in the Intellectual Property Code. See BIZOLLON ET AL., *supra* note 157, at 71.

<sup>230</sup> Véron I, *supra* note 157, at 139.

<sup>231</sup> *Id.*

<sup>232</sup> Art. 496, ¶2, NCPC (translation by the author). Art 497, NCPC expressly allows the judge to modify or retract his order even if the court in the main (infringement) suit has been seized of the matter.

<sup>233</sup> See BIZOLLON ET AL., *supra* note 157, at 73 (elucidating such an "extreme" case where the seizing party had conducted several saisies and the bailiff's reports were already full of incriminating evidence).

<sup>234</sup> Véron I, *supra* note 157, at 139.

<sup>235</sup> *Id.*

