

**WEBINAR SERIES
LIFECYCLE OF A SMART IDEA**

IS THERE ENOUGH PROOF IN THE PATENT? EVIDENCE IN PATENT CASES

Moderator: **Selena Kim, Partner, Gowling WLG** – Toronto

Panellists:

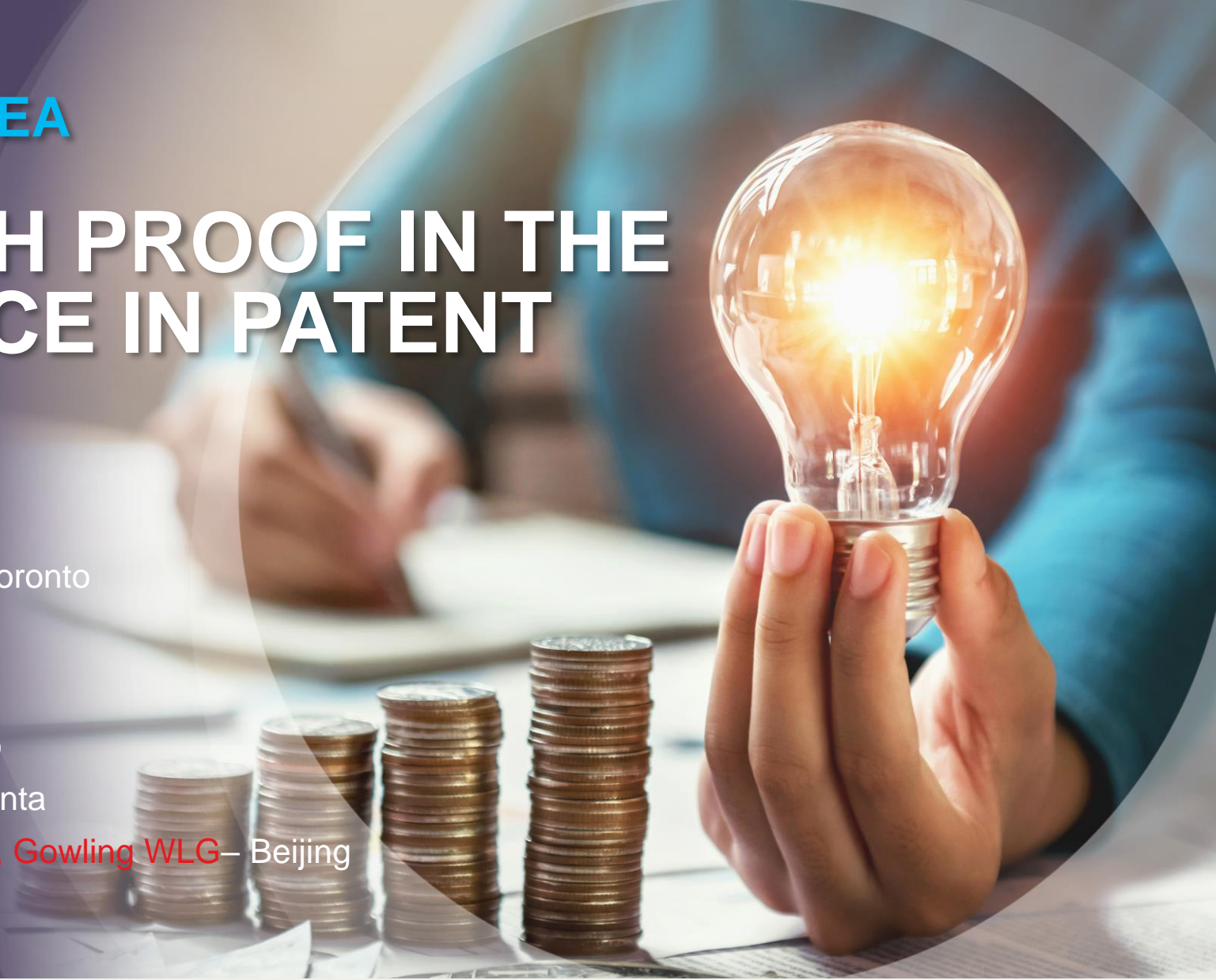
Céline Bey, Partner, Gowling WLG – Paris

Laurent Massam, Partner, Gowling WLG – Toronto

William Needle, Mediator & Arbitrator, JAMS – Atlanta

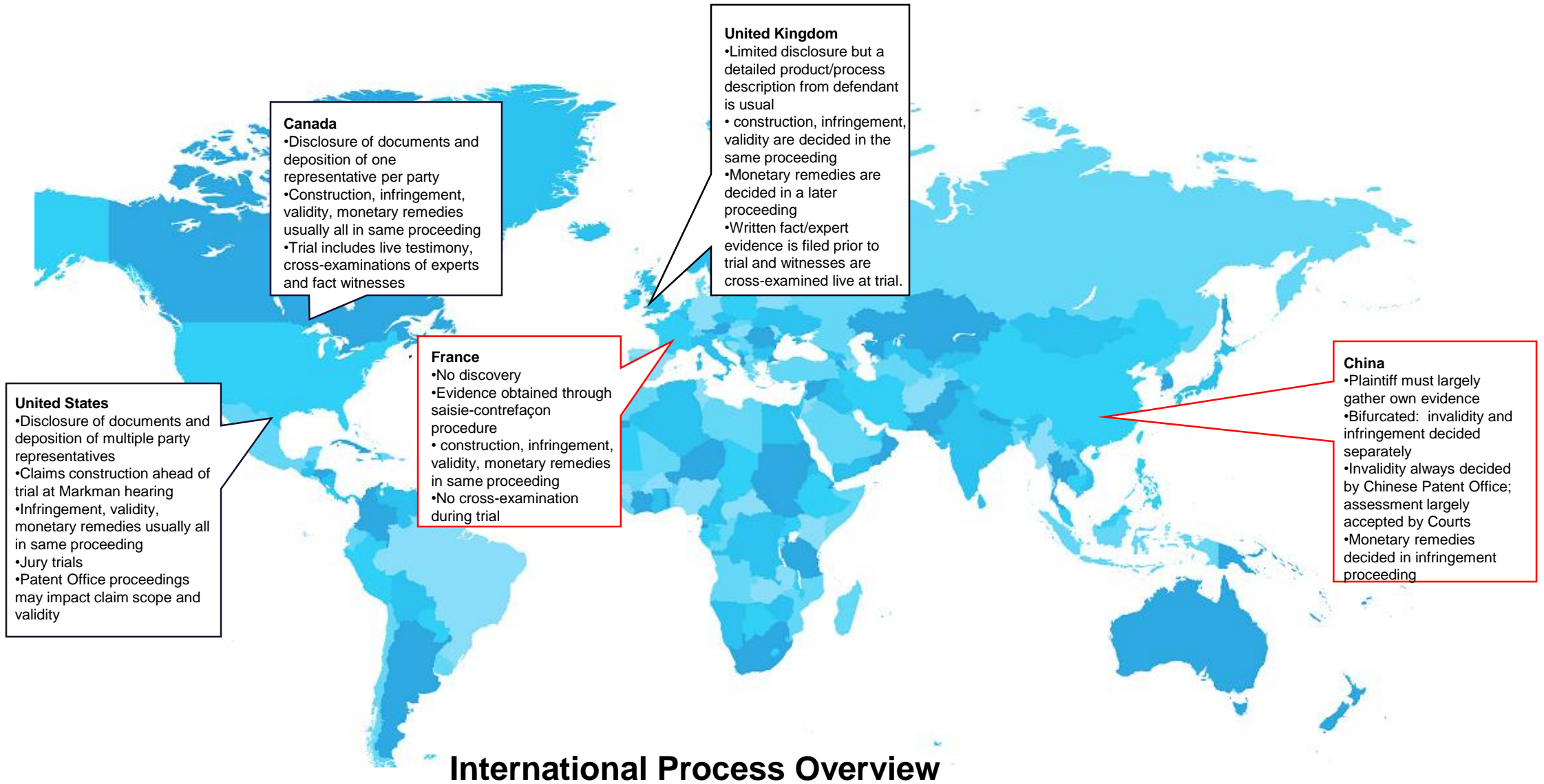
Elliot Papageorgiou, Head of IP Strategy in China, Gowling WLG – Beijing

Jamie Rowlands, Partner, Gowling WLG – London

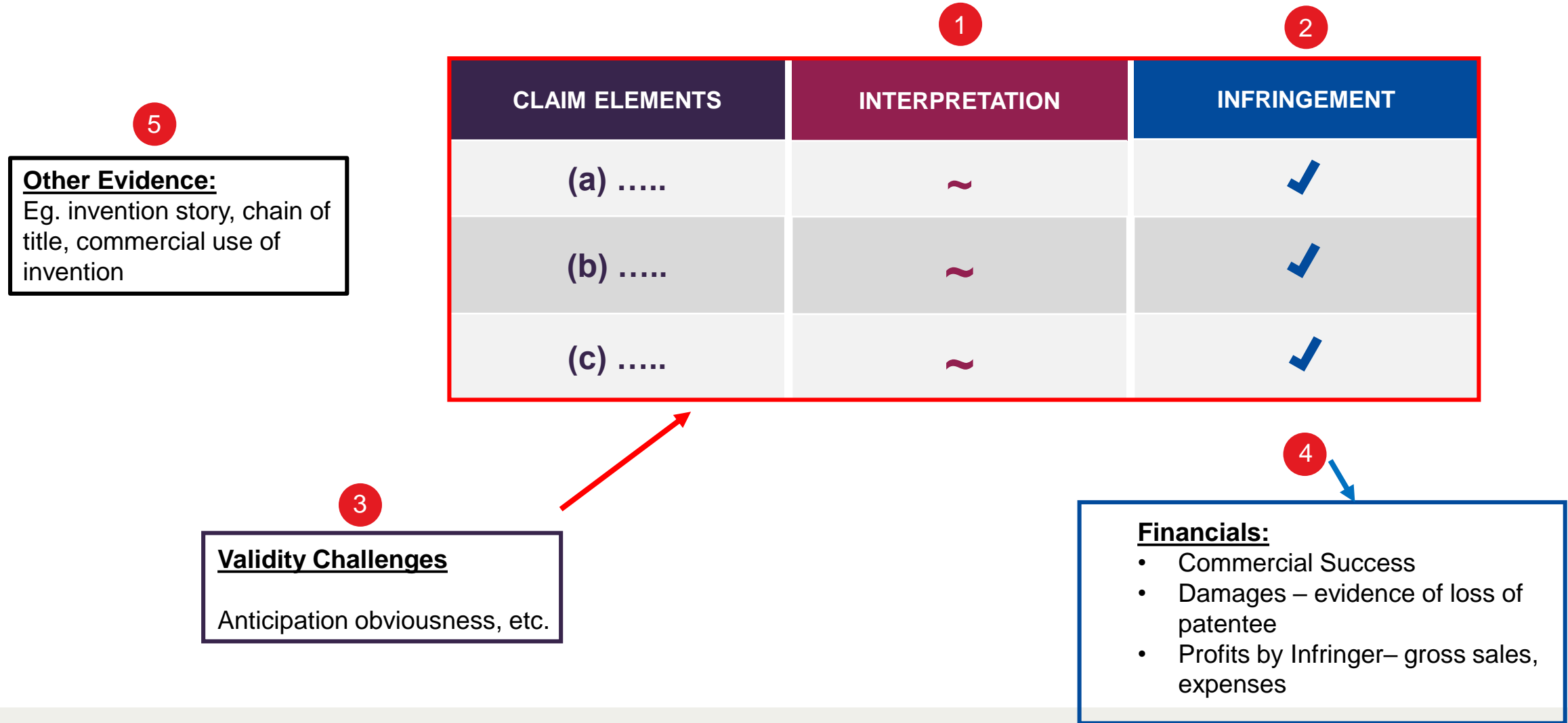


SEPTEMBER 29, 2021

Gowling WLG's Global IP Group



EVIDENCE IN A TYPICAL PATENT DISPUTE



COMPARISON OF BURDENS OF PROOF

All Jurisdictions:
Issued Patents Presumed Valid

Plaintiff's Burden: Infringement

- Canada - balance of probabilities
- US – preponderance
- UK – balance of probabilities
- France * - above 50% certainty
- China * - 50% or higher certainty

Defendant's Burden: Validity

- Canada – balance of probabilities
- US – clear and convincing
- UK - balance of probabilities
- France – above 50% certainty
- China –higher than 50% level

*China / France: Novel product protected by patented process: burden shift to Defendant to prove NON-infringement

INFRINGEMENT SCENARIO

Patents for Recycled Packaging

- Novel Recycled Plastic
- Method for Producing Novel Recycled Plastic
- Granted in all major countries

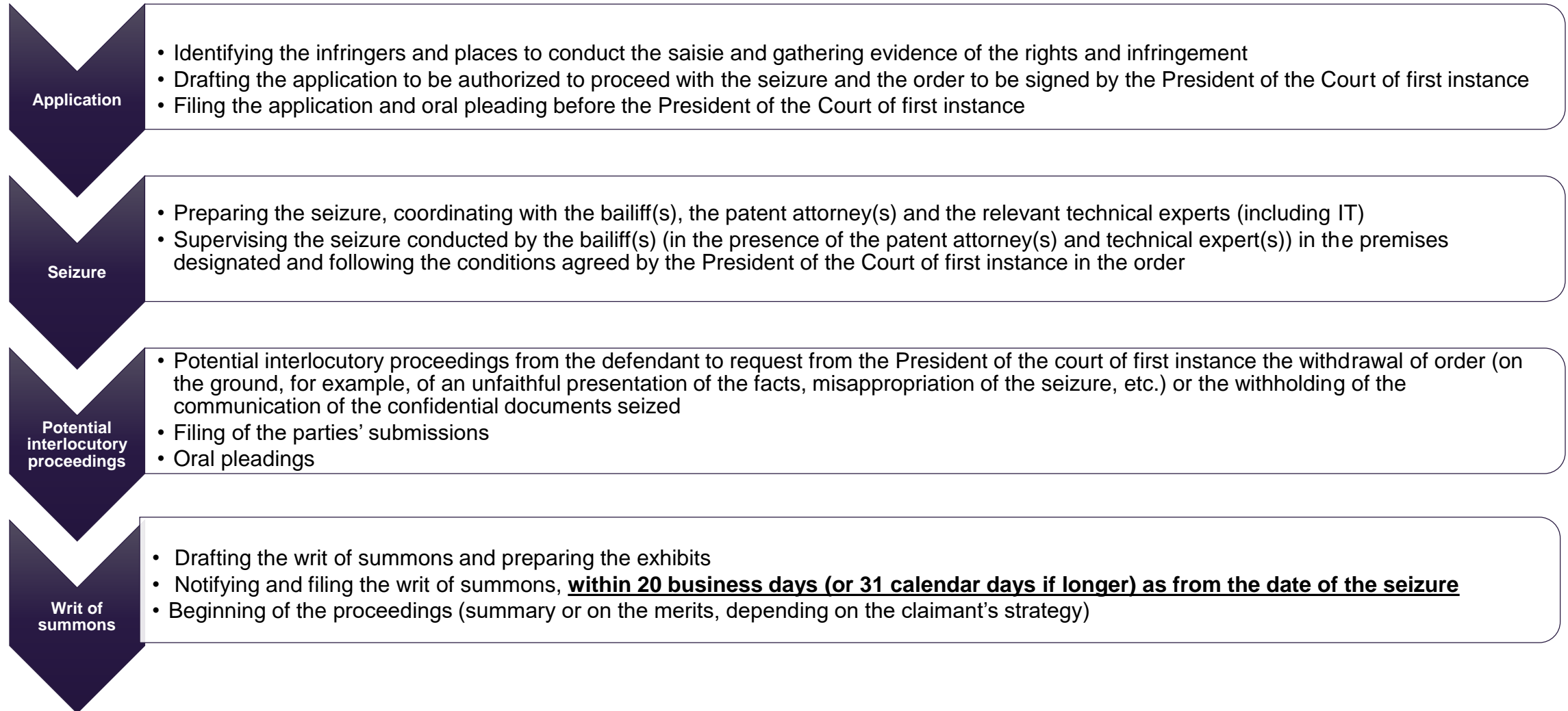


Same Defendant making and selling plastic in each of:
United States, Canada, UK, France, China

Plaintiff's analysis of Defendant's product provides
grounds to suspect infringement of both product and
process claims



FRANCE – Saisie-Contrefaçon - SEIZURE TIMELINE AND STEPS



US AND CANADIAN DISCOVERIES

Discovery Step	US	Canada
<u>Documentary Discovery</u>	all parties to produce documents in response to formal requests	all parties to produce relevant documents
<u>Oral Discoveries</u>		
<i>Corporate Representative</i>	<i>At least one per party</i>	<i>Only one per party</i>
<i>Other corporate witnesses (30(b)(6))</i>	<i>No limit</i>	<i>None; corporate representative is asked all questions; undertakes to find out answers</i>
<i>Inventor(s)</i>	<i>Typically deposed</i>	<i>Typically deposed</i>
<u>Inspection of Defendant Premises</u>	May be ordered by Court	May be ordered by Court

To facilitate sharing of evidence:

- Joint Protective Orders
- Provisions for addressing Canadian implied undertaking rule
- Agreements on use of deposition transcripts
- Agree to destroy materials at case conclusion

THANK YOU FOR ATTENDING!

PLEASE COMPLETE OUR SURVEY TO LET US KNOW HOW WE DID!

ON-DEMAND WEBINAR | THE USE OF EXPERT EVIDENCE IN A GLOBAL IP DISPUTE:

[HTTPS://GOWLINGWL.G.COM/EN/INSIGHTS-RESOURCES/ON-DEMAND-WEBINARS/2021/THE-USE-OF-EXPERT-EVIDENCE-IN-A-GLOBAL-IP-DISPUTE/](https://gowlings.com/en/insights-resources/on-demand-webinars/2021/the-use-of-expert-evidence-in-a-global-ip-dispute/)

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