

## Outline talk Robert van Peurseem – VP District Court The Hague – on evidence, experts

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- New Dutch proceedings after implementation Enforcement Directive: evidence seizure/description/taking of samples
- Different practices across Europe despite harmonisation – a Dutch example:
- 2-staged evidence collection proceedings: preservation and putting into custody *ex parte* and leave to obtain access to evidence thus preserved ("exhibition"), D will be heard
  
- Experts: 2 main forms
- 1) Party-expert witnesses (frequently if not always)
- 2) Court-appointed experts (not often) – surprising? →
- 6 explanations why Dutch Patent Courts don't use Court-appointed experts that often:
  - Specialised patent Court judges in The Hague and specialised professional patent bar
  - Usually narrow technical problem at stake – judges are taught by parties, providing often technical primers
  - Judicial attitude = trying to fully understand technology at hand
  - Consulting prosecution history file (Dutch estoppel doctrine HR *Dijkstra/Saier*) – technical discussions in the file
  - Parallel litigation in Europe (everything in English is accepted without translation by the Courts – easy to "import" materials from abroad)
  - Party-experts present at the hearing and questioned if need be
  
- Damages in a nutshell (should we come to that timewise)
- 2-step infringement proceedings:
  - Damage award/surrender of profits in separate damage calculation procedure – settled as a rule
  - Option to choose between either
    - Lost profits (causality) – no fixed rules, nett profits only – or
    - Account of profits
  - Calculation:
    - Reasonable royalties/license analogy with penalty % mark-up
    - Any other means determined by the Court (full discretionary power, also *ex aequo et bono*)