



# International Discovery

## Going Dutch?

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# Litigation in The Netherlands

- No plaintiff lawyers □ □ defence lawyers
- No “no cure - no pay”
- No “class-actions”
- No discovery
- No jury
- No trial
- No cross examination
- No punitive damages

# Court system



- 16 mio inhabitants
- 16.000 lawyers
- 11 district courts
- 5 courts of appeal
- 1 supreme court

# Burden of proof upon plaintiff

- Before litigation
  - Preliminary witness hearing
  - Preliminary expert report
  - Attachment documents



# Preliminary witness hearing

- Request to district court
- By plaintiff and/or defendant
- Possible to object
- If granted
- Witnesses under oath
- Questioned by the judge
- Lawyers “further questions”
- Written summary statements dictated by the judge
- Language: Dutch



# Preliminary expert report

- Request to district court
- By plaintiff and/or defendant
- Possible to object
- If granted
- Appointment by the court
- Questions by the court
- Advance payment by - one of – the parties
- Independent expert
- Lawyers questions
- Draft report

# Attachement documents/goods

- Request to district court
- By plaintiff
- Unexpected
- Obligation to identify documents/goods
- Attachment by bailiff
- Copy if possible
- Original goods in custody
- Possible to object



# Litigation disctrict court

- Statement of claim
- Served by bailiff to defendant
- Writ inscribed court calender
- Written statement of defence
  - [Intermediary decision/Court hearing]
- Statement of reply
- Statement of rejection
  - [Pleadings]
  - (intermediary) decision
  - [Partie(s) further proof/expert report]



# Dutch court competence

- Dutch inhabitants
- Dutch companies
- Dutch companies abroad entities
- Dutch real estate
- Non compliance contract obligation in the Netherlands according to Dutch law contract
- Tort committed Dutch territory
- Patent infringement Dutch territory

# Dutch inhabitants/companies/documents

No subject to discovery in Dutch territory

Subject to US discovery in US

Dutch inhabitants willing to coöperate but in  
The Netherlands

Language: Dutch



# Witness hearing in cross border litigation

- Dutch courts competent
- US style court hearing possible
- Dutch lawyer(s) involved
- **Cross examination by Dutch/US lawyers**
- US court reporters allowed
- Language: Dutch



# “Informal witness hearings”

- Agreed by parties involved
  - US-style witness hearing
- US-lawyers cross examination
  - US-court reporters
- Language: to be agreed

