

FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE
PARIS COURT OF APPEAL

Division 5 - 16

SUMMARY JUDGMENT'S APPEAL OF 3 MARCH 2020

(N° 13/2020, 12 pages)

General Directory Entry Number: **RG 19/12564** – N° Portalis 35L7-V-B7D-CAFQH

Decision referred to the Court: summary judgment of March 21th, 2019 – President of the Paris Commercial Court - RG No 2019012152

APPELLANT:

SA MANITOU B

Registered in the trade and companies registry of Nantes under the number: 857 802 508

Having its registered office at 30 rue de l'Aubinière - 44150 Ancenis

Represented by its legal representatives,

Represented by ..., member of the Paris bar: [...]

RESPONDENT:

J.C. BAMFORD EXCAVATORS LIMITED, a company incorporated under English law

Having its registered office at Lakeside Works, Rocester, Uttoxeter ST14 5JP -Staffordshire (UNITED-KINGDOM)

Registered in the trade and companies registry of Wales under the number 561597

Represented by its legal representatives,

Represented by..., member of the Paris Bar : [...]

COURT COMPOSITION

The case was heard on January 27th, 2020 in open court, before the Court composed of:

Mr François ANCEL, President

Ms Laure ALDEBERT, Judge

Ms Fabienne SCHALLER, Judge

who ruled on the case, a report was presented at the hearing by Mr François ANCEL in accordance with Article 785 of the Code of Civil Procedure.

Clerk at the hearing: Clémentine GLEMET

JUDGMENT

- Adversarial
- judgment made available at the Clerk's office of the Court, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the

Code of Civil Procedure.

- signed by François ANCEL, President and by Clémentine GLEMET, Clerk to whom the minute was delivered by the signatory judge.

I — FACTS

1. Manitou BF (hereinafter "Manitou") is as a French company created in 1957 specialized in the manufacture, sale of industrial machinery, public works and agricultural lifts.

2. J.C. Bamford Excavators Limited (hereinafter "JCB") is a company incorporated under English law, having a business of design and manufacture of excavators, tractors and loaders compact, used for public works or agriculture. It holds several patents and namely a patent for a control system for a load handling device (European patent n°1 532 065) and a patent concerning a method for controlling a working machine (European patent n°2 263 965).

3. Further to an infringement action brought by JCB on May 5th, 2017 against Manitou, the pre-trial judge of the Paris Court of First Instance issued on January 31st, 2019 an order prohibiting Manitou to manufacture and sell machines (those including the LLMC device in its "Configuration 1") likely to infringe the patent EP 965, after founding plausible the patent infringement.

4. On February 22nd, 2019, on the eve of the International exhibition of technologies and solutions for efficient and sustainable agriculture (SIMA) held in France, JCB published on LinkedIn and Twitter in English language a press release about the provisional prohibition ordered against Manitou.

5. Ruling on the action to set aside the order of the pre-trial judge and after having noted that it was not discussed that only proceedings of appeal-nullity would make it possible to set aside the inadmissibility of an immediate appeal against the decision which ordered the prohibition, the Paris court of appeal found Manitou's action inadmissible in a judgment dated December 13rd, 2019, considering that the assessment made by the pre-trial judge about the industrial property infringement likely to justify the provisional prohibition was not sufficient to characterize an abuse of power and to grant leave for immediate appeal.

II - PROCEEDINGS

6. On February 26th, 2019, considering that the JCB's press release was a disparagement act, Manitou seized the President of the Paris Commercial Court ruling in summary proceedings, asking for protective measures in order to put an end to this unfair competition.

7. By order dated March 21st, 2019, the President of the Paris Commercial Court held it has jurisdiction, found that the Parties's claims had no merit and dismissed them.

8. On June 21st, 2019, Manitou partiallay appealed the summary judgment of the President of the Paris Commercial Court in that it:

- Found that SA MANITOU BF's claims have no merit and dismissed them,
- Ordered Manitou to pay all costs, including those to be recovered by the courts administration service, namely EUR 44,07 including VAT of EUR 7.13 .

And more precisely in that it dismissed SA MANITOU BF's following claims:

- Find that the press release of February 22, 2019 of J.C. BAMFORD EXCAVATORS LIMITED amounts unfair competition by denigration against MANITOU BF

- Order the following:

* Prohibit the online publishing of JCB's press release already published February 22, 2019 on its website, LinkedIn page, Twitter account, and on any other of its communication media,

*Order the publication by JCB of the operative part of the order to be issued, on JCB's website and its LinkedIn page and on any other of its communication media,

- Order these provisional measures to be executed within 24 hours of the date on which they are issued, subject to a provisional penalty payment of EUR 10,000 euros per offence and per day, with the penalty payment running for 6 months.

- Order JCB to pay Manitou an advance of EUR 200,000 in compensation of the damage caused by the disparagement

- Order JCB to pay Manitou EUR 10,000 pursuant to Article 700 of the Code of Civil Procedure, in addition to the bailiff's fees.

- Order JCB to pay all costs of the proceedings.

9. On October 30, 2019, JCB lodged a cross-appeal.

III — CLAIMS OF THE PARTIES

10. According to its latest submissions sent electronically on January 22nd, 2020, Manitou requests the Court to:

- **FIND AND RULE** Manitou's appeal admissible and that it has merit;

- **UPHOLD** the Order of the President of the Paris Commercial Court dated March 21, 2019 in that it ruled it has jurisdiction to hear Manitou's claims;

- **FIND AND RULE** JCB's cross-appeal inadmissible or at least that it has no merit, as well as its submissions;

- **UPHOLD** the Order of the President of the Paris Commercial Court dated March 21, 2019 in that it found that JCB's counterclaim had no merit and dismissed it;

- **OVERTURN** the Order of the President of the Paris Commercial Court dated March 21, 2019 in that it found Manitou BF's claims have no merit and dismissed them.

And ruling again on this point:

- **FIND AND RULE** that JCB committed acts of unfair competition by disparaging Manitou BF, constitutive of a manifestly unlawful disturbance ;

Accordingly:

- **PROHIBIT** JCB from publishing and posting online the press release published on February 22, 2019 on its LinkedIn page, Twitter account, and on any other communication media;

- **ORDER** JCB to publish the operative part of the appeal judgment to be handed down on its website, its LinkedIn page, and on any other of its communication media, during three months after a period of 24 hours from the date of the court judgment;

- **FIND AND RULE** that these measures must be carried out within 24 from the date of the

judgment, subject to a penalty payment of EUR 10,000 per infringement and per day, during six months ;

- **ORDER** JCB to pay Manitou an advance of EUR 200,000 in compensation of the damage suffered as a result of the disparagement;

- **ORDER** JCB to pay Manitou tEUR 15,000 pursuant to Article 700 of the Code of civil Procedure, in addition to the bailiff's fees.

- **ORDER** JCB to pay the entire costs of appeal, including the legal fees of Me Michel ABELLO.

11. According to its latest submissions sent electronically on January, 20th, 2020, JCB requests the Court, in particular under articles 46, 873, 700 of Code of Civil Procedure and 1240 of the Civil Code, to:

- **FIND AND RULE** MANITOU BF SA 's appeal inadmissible or at least that it has no merit;

- **FIND AND RULE** JCB's appeal admissible and that it has merit;

In limine litis and primarily,

OVERTURN the Order of the President of the Paris Commercial Court of March 21st, 2019 in that it ruled it had jurisdiction to hear Manitou BF's claims and as a consequence, refer Manitou to the English courts.

Alternatively,

- **UPHOLD** the Order of the President of the Paris Commercial Court of March 21, 2019 in that it found Manitou's claims have no merit;

OVERTURN the Order of the President of the Paris Commercial Court of March 21, 2019 in that it found that JCB's claims had no merit.

Accordingly:

- **FIND AND RULE** that the response to JCB's press release of February 22nd, 2019 by Manitou amounts to unfair competition, constitutive of a manifestly unlawful disturbance;

- **ORDER** the following provisional measures:

- Prohibit the publication and online posting of the response to the JCB press release from Manitou and published on February, 22nd 2019 on its website www.Manitou.com and on all communication media, in France and abroad,

-Order the publication by Manitou BF at the top of the Manitou's website www.Manitou.com of the following amendment:

"JCB communicated on February 22nd, 2019 on the provisional prohibition ordered by the Paris Court of First Instance ordering Manitou to cease manufacturing, offering for sale, renting, owning and using machines having the functionality covered by patent EP 2 263 965, of which JCB is the patent holder.

This interim order from the Paris Court of First Instance shall be executed until it has been ruled on the merits and cannot be appealed before the decision on the merits has been issued, contrary to what we wrote in our response to JCB press release on 22 February

2019".

- **FIND AND RULE** that these provisional measures shall be implemented within a period of 24 hours from the date of the judgment and subject to a provisional penalty payment of EUR 10,000 per offence and per day, the penalty payment running over 6 months;
- **ORDER** Manitou to pay JCB an advance of EUR 200,000 euros in compensation of the damage suffered as a result of the disparagement ;
- **ORDER** Manitou to pay JCB EUR 30,000 pursuant to Article 700 of the Code of Civil Procedure, in addition to bailiff's fees.
- **ORDER** Manitou to pay all costs, including the legal fees of Me Teytaud according to article 699 of the Code of civil procedure.

IV — PLEAS OF THE PARTIES

12. Manitou is seeking the upholding of the Order of March 21, 2019 in that the President of the Paris Commercial Court ruled it has territorial jurisdiction to hear its claim. Manitou submits that, pursuant to article 5(3) council regulation n° 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and to article 46 of the Code of Civil Procedure, in matters relating to tort or delict, the claimant may bring proceedings before the court of the place where the harmful event occurred or the court within which jurisdiction the damage was suffered and that, for damage caused through internet, falling within the scope of the general tort liability (excluding infringement), the accessibility of the website in France is a sufficient criterion conferring territorial jurisdiction to the Paris commercial Court when, in accordance with the criterion laid down by the CJEU judgment of 21 December 2016, the alleged infringement is protected in the state of the court seized, and when the alleged facts cause or are likely to cause the alleged harm within the jurisdiction of the court seized.

13. It stresses that these conditions are met in the present case since it claims that JCB committed an act of unfair competition of disparagement in broadcasting its press release on websites accessible in France such as jcb.com and LinkedIn, damaging its reputation, image and products, involving its civil liability on the basis of article 1240 of the French civil code.

14. It adds that even if the focalisation test were to be applied, the conditions would be met as there is ample evidence that the public and the French market were covered by JCB's press release, such as the fact that it refers to a French leader in the field of telescopic handlers; it aims at informing readers about the content of the decision issued by the Paris Court of First Instance on January 31st, 2019 which is only applicable in France; and it was broadcast at the same time as the SIMA that was held in the Paris region between 24 and 28 February 2019.

15. On the merits, Manitou argues that JCB's press release, that is not on a topic of general interest, is disparaging because it is about a non-final decision, it doesn't mention the remedies available for appeal, its content is partial and biased since it omits to specify that the claims relating to another patent (EP 065) have been dismissed by the pre-trial judge, and it is misleading as to the nature of the decision issued and has been widely relayed by third parties.

16. Thus, Manitou considers it is entitled to obtain, on the basis of articles 872 and 873 of the Code of Civil Procedure, measures to stop the manifestly unlawful disturbance that has not ceased and an advance payment in compensation of the damage suffered, arguing that acts of disparagement constitutive of unfair competition give necessarily rise to commercial disturbance causing a harm, even if only moral, and that, given the small size of the market, the JCB's press release damages its reputation and diminishes its ability to compete and its attractiveness and that the risk of many customers turning away from its products in order to avoid any procedural risk is not insignificant

and that its harm is amplified in the context of the holding of the SIMA.

17. Finally, Manitou concludes that the counterclaim shall be dismissed, invoking that its press release is not disparaging and was solely intended for giving the true author of the judicial decision and specifying that it had appealed it.

18. In response, JCB submits that the President of Paris Commercial Court does not have jurisdiction to give a summary judgment in the present case since the focalisation test, which is the only one applicable, is not met and that the accessibility the website in France is not a sufficient criterion. JCB contends that the facts taken into consideration by the President of Commercial Court, such as the nature of the court that issued the commented decision and the fact that the International exhibition of technologies and solutions for efficient and sustainable agriculture was held in France, are nugatory, and that the judge should only have investigated whether the website on which JCB's press release was published was aimed at the French public or not, which is not the case with regard to the exclusive use of the English language, the ".com" extension and the fact that the press release is issued by the English company JCB, domiciled in England, and not JCB France.

19. JCB concludes that there was no manifestly unlawful disturbance on the ground of Article 873 of the Code of Civil Procedure, the violation having to "jump out" and to justify to put an end to the disruptive act "without any possible doubt ", stressing that there is no fault, causation or harm in this case. It challenges Manitou's analysis that only a final court decision could be the subject of a press-release, which is contrary to the principle of publicity of court decisions and does not comply with case law which does not make such a distinction.

20. It contends that the press release issued in the United Kingdom and in the English language does not constitute any abuse because it is neutral and loyal as long as it mentions from the first line, the nature of the prohibition, the subject matter and specifies the purpose of the prohibition, namely, the reference to the patent number concerned by the prohibition and a detailed explanation of the functionality covered by this patent so that professionals can understand its scope.

21. JCB considers that there is no demonstration of a harm or a causal link with the alleged fault, as Manitou has issued a press release the same day about the consequences of the order. It adds that it cannot be responsible for articles published by other websites that are third parties, over which it has no control.

22. Finally, JCB requests the overturn of the summary judgment of March 21st, 2019 in that it found that its counterclaim for disparagement has no merit, whereas JCB alleges that it was disparaged by the disclosure of the press release by Manitou. It specifies that Manitou's response published on its French website in French language, is widely relayed by professionals and that this response is unfair and untrue, because it denies the pre-trial judge, mentions that the order has been appealed and falsely asserts that it has ceased the marketing of allegedly counterfeit machines.

23. The Court refers, for a fuller statement of the facts and claims of the parties, to the decision undertaken and to the above-mentioned submissions, by application of the provisions of Article 455 of the Code of Civil Procedure.

IV - REASONS FOR THE DECISION

On the jurisdiction of the President of the Paris Commercial Court

24. The present dispute between two companies having their registered office in two Member States of the European Union, one in France and the other at Lakeside Works in the United Kingdom. The jurisdiction must be determined in accordance with the Regulation (EU) n° 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter referred to as

Regulation Brussels I (recast)).

25. In accordance with Article 7(2) of that Regulation, which replaced Article 5(3) of the Council Regulation (EC) No 44/2001 of 22 December 2000 " *A person domiciled in a Member State may be sued in another Member State (...) 2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur*".

26. This special rule of jurisdiction is based on the existence of a close connection between the dispute and the courts other than those of the domicile of the defendant, this connection justifying the jurisdiction of these courts for a proper administration of justice and efficiency of proceedings.

27. Thus, in a judgment of 7 March 1995 (C-68/93 Shevill and Others v. Presse Alliance) regarding the interpretation of Article 5(3) of the Convention of 27 September 1968 in relation to the determination of the courts having jurisdiction to hear an action for damages resulting from the publication of a defamatory press article (article published in the French press in France soir) broadcast in several Contracting States, the Court of Justice (ECJ) ruled that "*on a proper construction of the expression 'place where the harmful event occurred' in Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, "the victim of a libel by a newspaper article distributed in several Contracting States may bring an action for damages against the publisher either before the courts of the Contracting State of the place where the publisher of the defamatory publication is established, which have jurisdiction to award damages for all the harm caused by the defamation, or before the courts of each Contracting State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seised*".

28. Furthermore, in a case involving an action to establish liability for infringement of the prohibition on resale outside a selective distribution network (C-618/15 21 December 2016), the CJEU ruled that Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 must be interpreted, for the purpose of conferring the jurisdiction given by that provision to hear an action to establish liability for infringement of the prohibition on resale outside a selective distribution network resulting from offers, on websites operated in various Member States, of products covered by that network, as meaning that the place where the damage occurred is to be regarded as the territory of the Member State which protects the prohibition on resale by means of the action at issue, a territory on which the appellant alleges to have suffered a reduction in its sales.

29. In the present case, it appears from the report drawn up in Paris on 22 February 2019 that the bailiff found out that at the URL <https://www.jcb.com>, being JCB's website, the disputed press release from JCB entitled "JCB Wins court injunction to stop patent infringement" was published in English language, this press release being also accessible via <https://www.linkedin.com>, as well as at this company's Twitter account.

30. Furthermore, this press release also refers to legal proceedings brought by JCB in France against Manitou, having its registered office in France, for infringement of one of its European patent, seeking the prohibition for Manitou to market in France certain machines having the device alleged as counterfeit.

31. All of these elements attest not only the accessibility in France of the website on which the disputed press release was published, that Manitou claims to be disparaging and being the ground of its action before the French court, but also a particularly close connection with the latter jurisdiction.

32. In this respect, the mere fact that the press release is written in English on the website of JCB, a company incorporated under English law, is not such as to deprive the French court of its

jurisdiction, whereas the press release was intended to address all purchasers in the sector, including those operating on the French market, being observed that this press release has been published a few days before the International exhibition of technologies and solutions for efficient and sustainable agriculture (SIMA) which took place in Villepinte between 24 and 28 February 2019, bringing together the main players in the sector, including the parties to these proceedings, presenting themselves as world leaders in the sector.

33. Consequently, the action seeking compensation for the damage suffered by a French company as a result of the publication of a press release likely to damage its image and products which it markets in France and which is therefore likely to affect that market, could be brought before the Paris commercial court, taken as the court of the place where the alleged damage has been materialized, so that the order shall be upheld on this count.

On Manitou's claims for disparagement

34. It should be noted that while Manitou generally refers to Articles 872 and 873 of the Code of Civil Procedure with regard to the measures that the judge is likely to take, it bases its claims by alleging to be victim of a manifestly unlawful disturbance which it seeks to put an end to.

35. Pursuant to Article 873 of the Code of Civil Procedure, the President may order in summary proceedings, even in a case of a serious dispute, provisional measures or measures of remediation required to stop a manifestly unlawful disturbance.

36. It is accepted that any disturbance resulting from a material or legal fact that, directly or indirectly, constitutes a clear violation of the rule of law may constitute a manifestly unlawful disturbance. This may be the case for disparagement by the disclosure of information that is likely to bring a competitor into disrepute.

37. In the present case, the manifestly unlawful disturbance would result from the publication by JCB on its website of a press release constituting, according to Manitou, an act of disparagement and thereby characterizing a fault likely to engage the civil liability of its author.

38. The press release written in English states that:

“JCB Wins Court Injunction to stop patent infringement

JCB has been granted a preliminary injunction by a French court against Manitou which orders the company to stop producing telehandlers featuring a patented JCB productivity device.

The ruling by the Judge at Court of the First Instance in Paris means that the company, based near Nantes, cannot manufacture, sell or lease telescopic handlers equipped with the patented feature.

JCB CEO Graeme Macdonald said: “We invest many millions of pounds in developing and patenting innovative and sophisticated engineering solutions which benefit our customers all over the world. We will not tolerate any copying or infringement of our intellectual property rights wherever in the world they occur.”

During operation of Loadall telescopic handlers fitted with JCB’s patented Longitudinal Load Moment Control (LLMC) system, sensors monitor the weight being retained on the rear axle. If the sensors detect the rear axle weight is reducing past a pre-set threshold, then the system gradually locks out the hydraulics to prevent further weight being transferred from the rear axle to the front, therefore avoiding the machine tipping forward.

To allow operators to drive continuously without any loss of productivity, JCB has a patented feature on its LLMC system that automatically disengages the device while the machine is moving (EP 2 263 965). This feature prevents JCB's telehandlers unnecessarily locking out the hydraulics and giving false indications of instability when the machine is simply re-handling or travelling over rough ground. It is the use of this feature the French court has ordered Manitou to cease by March 13th. The court also ordered Manitou to pay costs in the case."

39. Despite the deliberately simplified title of this press release, this one and its content inform in terms that are not excessive Internet users of the existence of a court ruling made in JCB's favor few days earlier and having ruled against Manitou a prohibition order, the provisional nature of which is expressly mentioned in the second line of the press release, prohibiting it from producing telescopic handlers including a patented device, it being noted that this press release states in its latest paragraph the number of the patent concerned (EP 2 263 965).

40. In this regard and contrary to what Manitou argues, this judgement being public could be published even if this prohibition measure and the decision ordering it were "provisional" and even if the information in dispute does not relate to a matter of general interest, the disputed press release is not involving in this case any freedom of speech, but simply the right of making a decision public, however provisional, made in its favour.

41. The failure to indicate in the press release that the decision was made by a "pre-trial judge", while it states that the decision has been made not by a court but by a "judge of the Paris Court of First Instance" is not misleading as to the nature of the decision, such a degree of precision being only of interest to an informed reader particularly familiar with French civil procedure, which was not the reader targeted by the press release.

42. Likewise, the failure to incorporate the full operative part of this decision, which also rejected other claims of JCB, including one regarding another patent, was focused on patent EP 2 263 965 for the protection of which the prohibition was indeed ordered, is not likely to mislead the reader.

43. The lack of clarity on the available recourse against this decision, which was moreover questionable as it was an order from the pre-trial judge, cannot further contribute to characterize disparagement, being in addition expressly recalled that the measure pronounced is "provisional".

44. Finally, JCB shall not be held responsible for the transfer of information delivered in this way or in a more or less different form, even truncated, on other sites and/or media of which it is not the author, and which are from third parties.

45. In the light of the foregoing, the manifestly unlawful disturbance that this press release may have caused is not characterized, notwithstanding the date on which this press release was issued, a few days before a trade show bringing together professionals from the sector, which reflects a deliberately aggressive commercial strategy from JCB.

46. Consequently, the order of the Commercial Court shall be upheld.

On JCB's counterclaim for disparagement;

47. On 22 February 2019, in response to the press release issued by JCB on its website, Manitou published on its website in French language the following press release:

"Reply to today's JCB press release.

Following J.C. Bamford Excavators Limited (JCB) press release published today, Manitou BF

wishes to make the following corrections and clarifications.

Firstly, the judge dismissed JCB's application for interim injunctive relief on the first patent.

The decision of the court relating to the second patent, to which jcb's press release refers has no impact on the business of manitou bf, its dealers or equipment users .

Indeed, this preliminary decision applies to control systems (LLMC) incorporated in certain models produced and sold before august 2017. These models were discontinued in August 2017 and are no longer produced by Manitou BF, a fact that was acknowledged by the decision, which does not constitute a definitive first instance judgment and is wholly preliminary in nature. it therefore does not in any way prejudice the final outcome of the proceedings on the merits.

Since JCB's press release risked misleading the public, Manitou BF felt a duty to set the record straight.

Manitou BF has appealed the preliminary injunction order to which JCB's press release refers."

48. JCB bears the burden of proving the manifestly unlawful disturbance that it claims suffering as a result from this press release.

49. In this regard, it is common ground that this press release is also based on the court decision of 31 January 2019, that it intends to supplement and clarify the press release issued by JCB.

50. It does not result from this press release issued in response, the terms of which are no more excessive, sufficient evidence to characterize a manifestly unlawful disturbance against JCB , considering that it aims at recalling that the court decision had a broader purpose than that reported by JCB, and that part of the other claims from JCB regarding another patent of this company had been dismissed, that this decision was not made by the court of first instance, that it does not prejudge the decision to be made on the merits and that it has appealed it.

51. Similarly, if the assertion that "*the decision referred to in JCB's press release does not affect the business of Manitou BF, its dealers' and the users of its machines*" is arguable, it does not in any event constitute an act of disparagement of JCB, nor does it constitute an assertion that JCB's press release was "likely to induce the public in error".

52. In the light of these elements, the existence of a manifestly unlawful disturbance suffered by JCB is not characterized so that this claim shall be rejected and that the order of the Paris Commercial Court shall be uphold on this point as well.

Costs and expenses

53. Costs and procedural indemnity have been settled exactly by the Paris Commercial Court.

54. At this court level, Manitou, the losing party, shall be ordered to pay the costs in accordance with Article 699 Code of Civil Procedure.

55. However, since each of the parties has partially lost, there claims based on article 700 of the Code of Civil Procedure shall be dismissed, including the claim for the reimbursement of the bailiff's fees.

ON THESE GROUNDS, THE COURT HEREBY

1- Upholds the Order issued by the President of the Paris Commercial Court on March 21, 2019;

Adding to it:

2- Dismisses Manitou BF and JCB's claims under Article 700 of the Code of Civil Procedure;

3- ORDERS Manitou BF to pay the costs of the appeal, which shall be recovered pursuant to Article 700 of the Code of Civil Procedure.

The Clerk

Clémentine GLEMET

The President
François ANCEL