

## Law No. 92–597 of July 1, 1992, on the Intellectual Property Code (Legislative Part)

(as last amended by Law No. 94–102 of February 5, 1994)\*

1. The provisions annexed to this Law shall constitute the Intellectual Property Code (Legislative Part).
2. The references contained in the provisions of a legislative nature referring to provisions repealed by Article 5 of this Law shall be replaced by references to the corresponding provisions of the Intellectual Property Code.
3. The provisions of the Intellectual Property Code (Legislative Part) that quote articles from other codes, by reproducing them, shall automatically be amended by the effect of subsequent amendments to those articles.
4. This Law shall apply to the overseas territories and to the territorial entity of Mayotte.
5. There shall be repealed:
  - Articles 418, 422, 422–1, 422–2, 423–1, 423–2, 423–5 and 425 to 429 of the Penal Code;
  - Articles 1 to 16 of the Law of July 14, 1909, on industrial designs;
  - the Law of February 3, 1919, extending the term of literary and artistic property rights by reason of the war;
  - Article 1 of the Law of April 4, 1931, making applicable to French nationals in France the provisions of the international conventions that may be more favorable than those of domestic law for protecting rights deriving from industrial property;
  - Law No. 51–444 of April 19, 1951, setting up a National Institute of Industrial Property;
  - Law No. 51–1119 of September 21, 1951, concerning the extension by reason of the war of the term of literary and artistic property rights and repealing the validated Law of July 22, 1941, on literary property;
  - Law No. 52–300 of March 12, 1952, repressing the infringement of creations of the seasonal industries of dress and articles of fashion;
  - Law No. 57–298 of March 11, 1957, on literary and artistic property;
  - Law No. 57–803 of July 19, 1957, instituting a limitation on seizures with respect to copyright;
  - Law No. 64–689 of July 8, 1964, on application of the principle of reciprocity in copyright protection;
  - Patent Law No. 68–1 of January 2, 1968;
  - Law No. 70–489 of June 11, 1970, on the protection of new plant varieties, with the exception of its Article 36;
  - Law No. 77–682 of June 30, 1977, on the application of the Patent Cooperation Treaty, done at Washington on June 19, 1970;
  - Law No. 77–683 of June 30, 1977, on the application of the Convention on the grant of European patents, done at Munich on October 5, 1973;
  - Law No. 77–684 of June 30, 1977, on the application of the Convention for the European Patent for the Common Market (Community Patent Convention) done at Luxembourg on December 15, 1975;

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\* *Official French title:* Loi No 92–597 du 1er juillet 1992 relative au code de la propriété intellectuelle (partie législative).

*Entry into force* (of the last amending Law): February 9, 1994.

*Source:* Journal officiel de la République française, February 8, 1994.

- Law No. 78–742 of July 13, 1978, amending and supplementing Law No. 68–1 of January 2, 1968, to valorize inventive activity and amend the arrangements for patents for invention;
- Law No. 84–500 of June 27, 1984, amending and supplementing certain provisions of Law No. 68–1 of January 2, 1968, on patents for invention, as amended;
- Articles 1 to 51, 53 and 55 to 66 of Law No. 85–660 of July 3, 1985, on authors’ rights and on the rights of performers, producers of phonograms and videograms and audiovisual communication enterprises;
- Article 95 of Law No. 86–1067 of September 30, 1986, on the freedom of communication;
- Law No. 87–890 of November 4, 1987, on the protection of topographies of semiconductor products and on the organization of the National Institute of Industrial Property;
- Law No. 90–510 of June 25, 1990, making the effective term of protection afforded by patents the same for medicines and for other products;
- Articles 1 to 19, 21 to 47 and 49 to 54 of Law No. 90–1052 of November 26, 1990, relating to industrial property;
- Law No. 91–7 of January 4, 1991, on trademarks and service marks.

**6.** There shall be inserted at the beginning of Article A of the Law of May 6, 1919, on the protection of appellations of origin, a paragraph worded as follows:

“The elements constituting an appellation of origin are defined in Article L. 721–1 of the Intellectual Property Code reproduced hereafter:”.



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(Legislative Part)

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\*\* Added by WIPO.

<sup>1</sup> The first part of the Intellectual Property Code (Literary and Artistic Property) is published in October 1994 issue of the review *Copyright (Copyright and Neighboring Rights Laws and Treaties, FRANCE – Text 3-01 (Editor’s note))*.



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Industrial Property**

**BOOK IV  
ADMINISTRATIVE AND PROFESSIONAL  
ORGANIZATION**

**TITLE I  
INSTITUTIONS**

**Chapter I  
National Institute of Industrial Property**

**L. 411-1.**

The National Institute of Industrial Property is a public establishment possessing legal personality and financial autonomy, under the authority of the Minister for Industry.

The tasks of that establishment shall be:

1. to centralize and disseminate all information required for the protection of innovations and for the registration of enterprises; to undertake activities to promote awareness and provide training in these fields;

2. to apply the laws and regulations with regard to industrial property, the Register of Commerce and Companies and the Directory of Trades; to that end, the Institute shall be responsible for receiving the filing of applications for industrial property titles or titles ancillary to industrial property and for monitoring their maintenance; it shall centralize the Register of Commerce and Companies, the Directory of Trades and the Official Bulletin of Civil and Commercial Announcements; it shall disseminate the technical, commercial and financial information contained in industrial property titles and centralized instruments of statutory publication;

3. to take all initiatives with a view to a standing adaptation of national and international law to the needs of innovators and enterprises; for that purpose, it shall propose to the Minister responsible for industrial property any reform it considers appropriate in such matters; it shall participate in elaborating international agreements and in representing France in the relevant international organizations.

**L. 411-2.**

The receipts of the Institute shall be constituted by any fees established in compliance with Article 5 of Ordinance 59-2 of January 2, 1959, promulgating organic law relating to the finance laws, levied in connection with industrial property and with the Register of Commerce and Trades and the filing of company statutes, together with ancillary receipts. These receipts shall be required to balance all the outlay of the establishment.

The audit of the execution of the Institute's budget shall be effected *a posteriori* in compliance with the conditions laid down by decree in Council of State.

**L. 411-3.**

The administrative and financial organization of the Institute shall be laid down by decree in Council of State.

**L. 411-4.**

The Director of the National Institute of Industrial Property shall take the decisions provided for by this Code when granting, rejecting or maintaining industrial property titles.

When exercising that responsibility, he shall not be subject to the supervisory authority. The Courts of Appeal designated by regulation shall be directly competent to hear appeals from his decisions. They shall take their decisions on such appeals after hearing the public prosecutor and the Director of the National Institute of Industrial Property. Both the applicant and the Director of the National Institute of Industrial Property may request that a decision on appeal be set aside.

**L. 411–5.**

The decisions to reject referred to in the first paragraph of Article L. 411–4 shall be accompanied by reasons.

The same shall apply to decisions accepting opposition filed under Article L. 712–4 or requests that revocation be lifted with regard to a trademark or service mark.

They shall be notified to the applicant in accordance with the conditions and time limits laid down by regulation.

**Chapter II**  
**Committee for the Protection**  
**of New Plant Varieties**

**L. 412–1.**

The Committee for the Protection of New Plant Varieties, under the authority of the Minister for Agriculture, shall be chaired by a magistrate and composed of persons, from both the public and the private sectors, qualified by reason of their theoretical or practical knowledge of genetics, botany and agronomy. The Committee shall issue the certificates referred to in Article L. 623–4.

TITLE II  
QUALIFICATION WITH RESPECT TO INDUSTRIAL PROPERTY

**Chapter I**  
**Entry in the List of Persons Qualified**  
**with Respect to Industrial Property**

**L. 421–1.**

The Director of the National Institute of Industrial Property shall draw up each year a list of the persons qualified with respect to industrial property.

The list shall be published.

The persons entered in the above-mentioned list may exercise their activity as employees of a enterprise or as a liberal profession, either individually or as a group, or as employees of a person exercising his activity as a liberal professional.

The persons included, at the date of November 26, 1990, in the list of persons qualified with respect to patents for invention shall be entered automatically in the list referred to in the first paragraph, subject to satisfying the conditions of good character laid down in Article L. 421–2.

**L. 421–2.**

No person may be entered in the list referred to in the foregoing Article unless he is of good character and unless he satisfies the prescribed conditions with respect to professional qualifications and practice.

The entry shall be accompanied by a notice of specialization as a function of the qualifications held and the professional experience acquired.

## Chapter II

### Conditions for Exercising the Profession of Industrial Property Attorney

#### L. 422-1.

The calling of an industrial property attorney shall be to offer his services to the public, in an habitual and remunerated manner, for advising, assisting or representing others with a view to obtaining, or maintaining, exploiting or defending industrial property rights, related rights and rights bearing on any connected matter.

The services referred to in the foregoing paragraph shall include legal consultation and the drafting of private deeds.

No person may use the title of industrial property attorney, a title that is equivalent or a title that is confusingly similar, unless he is entered in the list of industrial property attorneys drawn up by the Director of the National Institute of Industrial Property.

Infringements of the provisions of the foregoing paragraph shall be punishable by the penalties laid down by in the second paragraph of Article 259 of the Penal Code.

No person may be entered in the list of industrial property attorneys unless he is entered in the list provided for in Article L. 421-1 and he exercises the profession in compliance with Article L. 422-6.

Entry shall be accompanied by a notice of specialization as a function of the qualifications held and the professional experience acquired.

#### L. 422-2.

Persons entitled to the title of patent attorney on the date of entry into force of Law No. 90-1052 of November 26, 1990, relating to industrial property shall be automatically entered in the list provided for in Article L. 422-1.

#### L. 422-3.

Any company exercising the activities referred to in Article L. 422-1 on the date of entry into force of the above-mentioned Law No. 90-1052 of November 26, 1990, may request entry in the list of industrial property attorneys.

In such case, the condition laid down in item (b) of Article L. 422-7 shall not apply.

The application must be submitted, on pain of preclusion, two years at the latest after entry into force of the above-mentioned Law No. 90-1052 of November 26, 1990.

#### L. 422-4.

Persons wishing to be represented in proceedings before the National Institute of Industrial Property may only be represented, for acts where such is necessitated by the technical nature of the subject matter, by industrial property attorneys whose specialization, determined in accordance with the final paragraph of Article L. 422-1, corresponds to such act.

The provisions of the foregoing paragraph shall not preclude the faculty of using the services of a lawyer or of a legal counsel, of an enterprise or public establishment with which the applicant is contractually bound, or the services of a specialized professional organization.

#### L. 422-5.

Any person carrying out the activities referred to in the first paragraph of Article L. 422-1 on November 26, 1990, may, notwithstanding the provisions of Article L. 422-4, represent persons referred to in the first paragraph of that Article in those cases referred to in that paragraph on condition that they are entered in a special list drawn up by the Director of the National Institute of Industrial Property.

Entry shall be automatic, subject to the proviso laid down in the final paragraph of this Article, on condition that the person concerned has requested entry by means of a declaration made to the Director of the Institute.

The declaration must be made, on pain of preclusion, two years at the latest after the entry into force of the above-mentioned Law No. 90-1052 of November 26, 1990.

No person may be entered in the list provided for in the first paragraph if he is not of good character.

**L. 422-6.**

An industrial property attorney shall exercise his profession either individually or in a group or as the employee of another industrial property attorney.

**L. 422-7.**

Where the profession of industrial property attorney is exercised as a company it may take the form of a professional civil law company or a company constituted in some other way. In the latter case, it shall be required that:

(a) the chairman of the administrative board, the directors general, the members of the board, the sole director general and the manager or managers, as also the majority of members of the administrative board or the supervisory board, be qualified as industrial property attorneys;

(b) the industrial property attorneys hold more than one half of the capital and of the voting rights;

(c) the acceptance of any new partner be subject to prior approval, as appropriate, of the administrative board, the supervisory board or of the manager or managers.

The provisions of the first two paragraphs of Article 93, of Articles 107 and 142 of Law No. 66-537 of July 24, 1966, on commercial companies, shall apply neither to members of the administrative board nor to members of the supervisory board of companies of industrial property attorneys.

Where the profession of industrial property attorney is exercised by a company, the company is to be entered, in addition to entry of the attorneys as natural persons, in a special section of the list provided for in Article L. 422-1.

**L. 422-8.**

Every industrial property attorney must supply evidence that he has insurance covering his professional civil liability with regard to negligence or errors committed in the exercise of his functions and a guarantee specially devoted to the reimbursement of funds, effects or objects of value received.

**L. 422-9.**

There is hereby instituted a National Society of Industrial Property Attorneys (Compagnie nationale des Conseils en propriété industrielle), possessing legal personality, under the authority of the National Institute of Industrial Property, in order to represent industrial property attorneys before the public authorities, to defend their professional interests and to ensure respect for the code of conduct.

**L. 422-10.**

Any natural or legal person exercising the profession of industrial property attorney who is guilty either of an infringement of the rules under this Title or the texts adopted for its application, or of acts contrary to probity, honor or scruples, even if outside his professional sphere, may incur one of the following disciplinary measures: warning, reprimand, suspension or striking off.

The penalties shall be pronounced by the Disciplinary Board of the National Society of Industrial Property Attorneys chaired by a magistrate of the judiciary.

### Chapter III Miscellaneous Provisions

**L. 423-1.**

It shall be prohibited for any natural or legal person to canvass with a view to representing the persons concerned, to giving consultations or to drawing up industrial property law acts. This prohibition shall not extend, however, to offers of services made to professionals or enterprises through the post under conditions laid down by regulation.

Any infringement of the provisions of the foregoing paragraph shall be liable to the penalties laid down in Article 5 of Law No. 72-1137 of December 22, 1972, on the protection of consumers with respect to canvassing and door-to-door sales.

All advertising with regard to the activities referred to in that same paragraph shall be subject to compliance with the conditions laid down by regulation.

**L. 423-2.**

Decrees in Council of State shall lay down the conditions for implementing this Title.

They shall stipulate, in particular:

- (a) the conditions for implementing Chapter I;
- (b) the conditions for implementing Article L. 422-1;
- (c) the conditions for implementing Article L. 422-4;
- (d) the conditions for implementing Article L. 422-5;
- (e) the conditions under which the obligation referred to in item (b) of Article L. 422-7 may be waived to permit interprofessional grouping with other providers of services involved in the innovation process;
- (f) the code of conduct applicable to industrial property attorneys;
- (g) the organization and statutes of the National Society of Industrial Property Attorneys together with the rules for determining the amount of its membership fees.

## **BOOK V INDUSTRIAL DESIGNS**

### **TITLE I ACQUISITION OF RIGHTS**

#### **Chapter I Rights and Works Protected**

**L. 511-1.**

The creator of an industrial design or his successors in title shall have the exclusive right to exploit, sell or have sold such design under the conditions laid down in this Book, without prejudice to any rights they may hold under other statutory provisions, particularly under Books I and III.

**L. 511-2.**

The ownership of an industrial design shall belong to the person that has created the design or to his successors in title; however, unless proved otherwise, the first person to file a design shall be assumed to be its creator.

**L. 511-3.**

The provisions in this Book shall apply to any new design, any new three-dimensional shape, any industrial article that differs from similar articles, either by a distinctive and recognizable configuration affording it novelty or by one or more external effects giving it an individual and new appearance.

However, where the same article may be both considered a new industrial design and a patentable invention and where the elements constituting the novelty of the design may not be separated from those of the invention, such article may only be protected under the provisions of Book VI.

**L. 511-4.**

This Book shall apply to designs whose authors or their successors in title are French or have their place of residence in France, or who have industrial or commercial establishments in France, or who by reason of their nationality, their place of residence or their industrial or commercial establishment, are

nationals of a State providing reciprocity, under its domestic laws or under diplomatic conventions, with regard to French designs.

**L. 511-5.**

This Book shall only apply to designs properly filed.

**L. 511-6.**

The publicity received by a design, prior to its filing, as a result of placing on sale or by any other means, shall not imply loss of the property right nor of the special protection afforded by this Book.

**L. 511-7.**

Regulatory measures specific to given industries may lay down the measures necessary to enable industrialists to have their priority use of a design ascertained, particularly by the keeping of private registers subject to validation by the National Institute of Industrial Property.

## **Chapter II Formalities for Filing**

**L. 512-1.**

Filing shall be made, on pain of nullity, with the National Institute of Industrial Property when the place of residence of the applicant is situated in Paris or outside France. It shall be made at the National Institute of Industrial Property or at the registry of the Commercial Court of the place of residence of the applicant, at his choice, where his place of residence is situated outside Paris.

If filing is made with the registry of the Commercial Court, the latter shall effect the registration and transmit the articles filed to the National Institute of Industrial Property.

**L. 512-2.**

The filing shall be made in the form and under the conditions laid down by this Book.

To be admissible, it must comprise an identification of the applicant and a reproduction of the design or designs concerned.

The filing shall be refused if examination shows:

- (1) that it is not presented under the prescribed conditions or in the prescribed form;
- (2) that its publication would be contrary to morality or public policy.

However, refusal may not be pronounced without the applicant having at first been invited, as appropriate, to regularize his filing or to submit his comments.

In the case of designs pertaining to industries that frequently change the form and presentation of their goods, filing may be effected in a simplified form according to conditions laid down by decree in Council of State.

The lapse of the rights deriving from such a filing shall be pronounced where the said filing has not, six months at the most prior to the planned date for the publication thereof, been brought into conformity with the general requirements laid down in the decree referred to in the foregoing paragraph.

**L. 512-3.**

Where the applicant or the owner of a filing has not complied with the prescribed time limits, any revocation of rights he may have incurred may be lifted if he can provide legitimate reasons.

**L. 512-4.**

Any act modifying or transferring the rights in a registered design may only be invoked against others if it has been entered in the public register known as the National Designs Register.

### **Chapter III Term of Protection**

#### **L. 513-1.**

The term of protection afforded by this Book shall be 25 years as from the date of filing. It may be extended for a further period of 25 years on a declaration by the owner.

### **Chapter IV Common Provisions**

#### **L. 514-1.**

Decrees in Council of State shall lay down, where necessary, the conditions for implementing this Book.

## **TITLE II DISPUTES**

### **Sole Chapter**

#### **L. 521-1.**

An injured party may, even before the filing is published, have any bailiff carry out a detailed description, with or without seizure, of the incriminated articles or instruments, under an order issued by the President of the First Instance Court within the jurisdiction of which the operations are to be carried out, on a simple request and production of the filing certificate.

The President may authorize the petitioner to obtain the assistance of a police officer or a judge of the District Court and to require from the petitioner security to be deposited before carrying out the operation: security shall be required in all cases where a foreigner requests seizure.

The holders of the articles described shall be given a copy both of the order and of the instrument recording deposit of the security, on pain of nullity and damages awarded against the bailiff in both cases.

If the petitioner fails to institute proceedings, whether civil or criminal, within a period of 15 days, the description or the seizure shall automatically become null and void, without prejudice to any damages.

#### **L. 521-2.**

Events prior to filing shall not be actionable under this Book.

Events following filing, but prior to publication, shall only be actionable under Article L. 521-4, even in civil proceedings, if the injured party is able to establish the defendant's bad faith.

No proceedings, whether criminal or civil, may be instituted under that Article before the filing has been published.

Where the events have occurred after publication of a filing, the persons having committed the acts may plead good faith on condition that they furnish proof thereof.

#### **L. 521-3.**

Confiscation to the benefit of the injured party of the articles infringing the rights afforded by this Book shall be ordered even in the event of a discharge.

In the event of a conviction, the Court may further order confiscation of the instruments having served specifically to manufacture the incriminated articles.

#### **L. 521-3-1.**

Officers of the judicial police may, as soon as offenses under the first paragraph of Article L. 521-4 have been reported, effect the seizure of goods unlawfully manufactured, imported, stocked, placed on sale, delivered or supplied, and of any material and equipment specially installed for the purposes of such unlawful acts.

**L. 521-4.**

Any knowingly committed infringement of the rights guaranteed by this Book shall be punishable with a two-year prison term and a fine of 1,000,000 francs.

In addition, the court may order the total or partial, permanent or temporary closure, for a period not exceeding five years, of the establishment that has served for the commission of the offense.

Temporary closure may not be a cause of either termination or suspension of employment contracts, or of any monetary consequence prejudicial to the employees concerned. Where permanent closure causes the dismissal of staff, it shall give rise, over and above the indemnity in lieu of notice and the termination indemnity, to damages as provided in Articles L. 122-14-4 and L. 122-14-5 of the Labor Code for the breach of employment contracts. Failure to pay those indemnities shall be punishable with a six-month prison term and a fine of 25,000 francs.

**L. 521-5.**

Legal entities may be declared criminally liable, in the manner specified in Article 121-2 of the Penal Code, for the offenses defined in Article L. 521-4 of this Code.

The penalties to which legal entities are liable are:

1. Fines in accordance with the procedure laid down in Article 131-38 of the Penal Code;
2. The penalties mentioned in Article 131-39 of the same Code.

The prohibition mentioned in Article 131-39 under 2 shall relate to the activity in the exercise of which or on the occasion of the exercise of which the offense was committed.

**L. 521-6.**

In the event of repetition of infringements of the rights guaranteed by this Book, or if the offender is or has been contractually bound to the aggrieved party, the penalties involved shall be doubled.

The guilty parties may in addition be deprived, for a period not exceeding five years, of the right to elect and be elected to commercial courts, chambers of commerce and industry and professional chambers and to joint conciliation boards.

**L. 521-7.**

The customs administration may, at the written request of the owner of a deposited design, withhold in the course of its inspections goods alleged by him to be infringing the said designs.

The Public Prosecutor, the plaintiff and the party either declaring or in possession of the goods shall be informed without delay by the customs service of the withholding measure taken by the latter.

The withholding measure shall be lifted as of right where the plaintiff fails, within 10 working days following notification of the withholding of the goods, to prove to the customs service:

- either that precautionary measures have been ordered by the President of the First-Instance Court (*tribunal de grande instance*);
- or that he has instituted proceedings before the civil court or the court of misdemeanors and has provided the required guarantees to cover his liability in the event of the infringement claim being eventually considered unfounded.

For the purpose of the institution of the legal proceedings referred to in the foregoing paragraph, the plaintiff may require the customs administration to communicate the names and addresses of the sender, the importer and the consignee of the goods withheld or of the holder thereof, and also the quantity thereof, notwithstanding the provisions of Article 59bis of the Customs Code concerning the professional secrecy to which all officials of the customs administration are bound.

**BOOK VI**  
**PROTECTION OF INVENTIONS**  
**AND TECHNICAL KNOWLEDGE**

**TITLE I**  
**PATENTS FOR INVENTION**

**Chapter I**  
**Field of Application**

*Section 1*  
*General Provisions*

**L. 611-1.**

An industrial property title may be granted by the Director of the National Institute of Industrial Property to any invention, conferring on the holder or his successors in title an exclusive right to work the invention.

The grant of a title shall be subject to statutory dissemination as provided in Article L. 612-2.

Notwithstanding the provisions of the Paris Convention for the Protection of Industrial Property, foreigners having their place of residence or business outside the territory on which this Title is applicable shall enjoy the benefits of this Title, provided that French nationals are granted reciprocal protection in the countries of which such foreigners are nationals.

**L. 611-2.**

Inventions shall be protected by the following industrial property titles:

1. Patents, granted for a term of 20 years as from the day the application is filed;
2. Utility certificates, granted for a term of six years as from the day the application is filed;
3. Supplementary protection certificates in respect of a patent in accordance with Article L. 611-3, taking effect at the end of the statutory term of the patent to which they relate for a period of not more than seven years as from the end of the patent and seventeen years as from issue of the marketing authorization referred to in that same Article.

The provisions of this Book concerning patents shall also apply to utility certificates, except those contained in Articles L. 612-14, L. 612-15 and the first paragraph of Article L. 612-17. They shall likewise apply to supplementary protection certificates, except those contained in Articles L. 611-12, L. 612-1 to L. 612-10, L. 612-12 to L. 612-15, L. 612-17, L. 612-20, L. 613-1 and L. 613-25.

**L. 611-3.**

Any owner of a patent having effect in France and of which the subject matter is a medicine, a process for obtaining a medicine, a product required for obtaining such medicine or a process for manufacturing such product may, where they are used for producing a pharmaceutical specialty covered by a marketing authorization under Articles L. 601 or L. 617-1 of the Public Health Code, and as from its issue, obtain, under the conditions laid down by this Book and detailed by a decree in Council of State, a supplementary protection certificate for those parts of the patent that correspond to the authorization.

**L. 611-4.**

Patent applications and patents filed prior to July 1, 1979, shall continue to be governed by the rules in force on the date of their filing.

However, the provisions of this Book shall apply to the exercise of rights deriving from such patents and patent applications and to the subsequent procedure in respect of patent applications for which a preliminary draft documentary report had not been drawn up prior to July 1, 1979.

**L. 611–5.**

Certificates of addition applied for prior to the entry into force of Law No. 90–1052 of November 26, 1990, relating to industrial property shall continue to be governed by the rules applicable at the date of the application.

However, the exercise of the rights deriving therefrom shall be governed by the provisions of this Book.

*Section 2*  
*Right to Title*

**L. 611–6.**

The right to the industrial property title referred to in Article L. 611–1 shall belong to the inventor or his successor in title.

If two or more persons have made an invention independently of each other, the right to the industrial property title shall belong to the person who can prove the earliest date of filing.

In actions before the Director of the National Institute of Industrial Property, the applicant shall be deemed to have a right to the industrial property title.

**L. 611–7.**

Where the inventor is a salaried person, the right to the industrial property title, failing any contractual clause more favorable to the salaried person, shall be defined in accordance with the following provisions:

1. Inventions made by a salaried person in the execution of a work contract comprising an inventive mission corresponding to his effective functions or of studies and research which have been explicitly entrusted to him, shall belong to the employer. The conditions under which the salaried person who is the author of such an invention shall enjoy additional remuneration shall be determined by the collective agreements, company agreements and individual employment contracts.

Where the employer is not subject to a sectorial collective agreement, any dispute relating to the additional remuneration shall be submitted to the joint conciliation board set up by Article L. 615–21 or by the First Instance Court.

2. All other inventions shall belong to the salaried person. However, where an invention made by a salaried person during the execution of his functions or in the field of activity of the company or by reason of knowledge or use of technologies or specific means of the company or of data acquired by the company, the employer shall be entitled, subject to the conditions and the time limits laid down by decree in Council of State, to have assigned to him the ownership or enjoyment of all or some of the rights in the patent protecting his employee's invention.

The salaried person shall be entitled to obtain a fair price which, failing agreement between the parties, shall be stipulated by the joint conciliation board set up by Article L. 615–21 or by the First Instance Court; these shall take into consideration all elements which may be supplied, in particular by the employer and by the employee, to compute the fair price as a function of both the initial contributions of either of them and the industrial and commercial utility of the invention.

3. The salaried author of an invention shall inform his employer thereof and the latter shall confirm receipt in accordance with the terms and time limits laid down by regulation.

The salaried person and the employer shall communicate to each other all relevant information concerning the invention. They shall refrain from making any disclosure which would compromise, in whole or in part, the exercise of the rights afforded under this Book.

Any agreement between the salaried person and his employer concerning an invention made by the salaried person shall be recorded in writing, on pain of nullity.

4. The implementing rules for this Article shall be laid down by decree in Council of State.

5. This Article shall also apply to the servants of the State, of local authorities and of any other public legal person under the terms to be laid down by decree in Council of State.

**L. 611–8.**

Where an application for the grant of an industrial property title has been made either for an invention unlawfully taken from an inventor or his successors in title, or in violation of a legal contractual obligation, the injured party may claim ownership of the application or of the title granted.

Actions claiming ownership shall be barred after three years from publication of the grant of the industrial property title.

However, if the bad faith of the owner of the title at the time the title was granted or acquired can be proved, the time limit shall be three years as from the expiry of the title.

**L. 611–9.**

The inventor, whether salaried or not, shall be named as such in the patent; he may also oppose such identification.

*Section 3*  
*Patentable Inventions*

**L. 611–10**

1. Inventions which are susceptible of industrial application, which are new and which involve an inventive step shall be patentable.

2. The following in particular shall not be regarded as inventions within the meaning of paragraph 1 of this Article:

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.

3. The provisions of paragraph 2 of this Article shall exclude patentability of the subject matter or activities referred to in that provision only to the extent to which a patent application or patent relates to such subject matter or activities as such.

**L. 611–11.**

An invention shall be considered to be new if it does not form part of the state of the art.

The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use or in any other way, before the date of filing of the patent application.

Additionally, the content of French patent applications and of European or international patent applications which designate France as filed, of which the dates of filing are prior to the date referred to in the second paragraph of this Article and which were published on or after that date, shall be considered as comprised in the state of the art.

The provisions of the foregoing paragraphs shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article L. 611–16, provided that its use for any method referred to in that Article is not comprised in the state of the art.

**L. 611–12.**

Where the first filing has been made in a State which is not a party to the Paris Union, it shall not be possible to grant a priority right in regard of such filing having effects equivalent to those afforded by the Paris Convention under the same conditions unless such State affords an equivalent priority right on the basis of the first filing of a French patent application, an international application or a European patent application in which France is designated.

**L. 611–13.**

For the application of Article L. 611–11, a disclosure of the invention shall not be taken into consideration in the following two cases:

- if it occurred within the six months preceding filing of the patent application;
- if the disclosure is the result of publication, after the date of that filing, of a prior patent application and if, in either case, it was due directly or indirectly to:
  - (a) an evident abuse in relation to the applicant or his legal predecessor;
  - (b) the fact that the applicant or his legal predecessor had displayed the invention at an official, or officially recognized, international exhibition falling within the terms of the revised Convention on International Exhibitions signed at Paris on November 22, 1928.

However, in the latter case, the displaying of the invention must have been declared at the time of filing and proof furnished within the time limits and under the conditions laid down by regulation.

**L. 611–14.**

An invention shall be considered to involve an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents referred to in the third paragraph of Article L. 611–11, such documents shall not be considered in deciding whether there has been an inventive step.

**L. 611–15.**

An invention shall be considered susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

**L. 611–16.**

Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body shall not be regarded as inventions susceptible of industrial application within the meaning of Article L. 611–10. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

**L. 611–17.**

The following shall not be patentable:

- (a) inventions the publication or exploitation of which would be contrary to public policy or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation;
- (b) new plant varieties belonging to a genus or species enjoying the protection instituted by the provisions of Chapter III of Title II of this Book relating to new plant varieties;
- (c) animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof.

## **Chapter II** **Filing and Processing of Applications**

### *Section 1* *Filing of Applications*

**L. 612–1.**

Applications for a patent shall be made in the form and in accordance with the requirements set out in this Chapter and specified in detail by regulation.

**L. 612–2.**

The date of filing of a patent application shall be the date on which the applicant has filed the documents containing:

- (a) a statement that a patent is sought;

(b) identification of the applicant;

(c) a description and one or more claims, even if the description and the claims do not comply with the other requirements of this Title.

**L. 612-3.**

Where two patent applications are successively filed by the same inventor or his successor in title within a period of 12 months at most, the applicant may request that the second application enjoy the filing date of the first application for those elements that are common to both applications.

The request shall not be admissible if enjoyment of a property right deriving from a prior foreign filing has already been requested for either of the two applications. It shall likewise not be admissible if the first application already enjoys, under the provisions of the first paragraph, several filing dates of which one is earlier by more than 12 months.

The grant of a patent enjoying a prior filing date under this Article shall lead to termination of the effects deriving from the first filing date for those same elements.

**L. 612-4.**

The patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

An application which does not comply with the provisions of the foregoing paragraph shall be divided into divisional applications within the prescribed time limit; the date of filing and, as the case may be, the priority date of divisional applications shall be the date or dates of the initial application.

**L. 612-5.**

The patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

If an invention concerns the use of a microorganism which is not available to the public, the description shall only be regarded as disclosing the invention in an adequate manner if a culture of the microorganism has been deposited with an authorized body. The conditions governing public access to such culture shall be laid down by regulation.

**L. 612-6.**

The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

**L. 612-7.**

1. An applicant for a patent wishing to take advantage of the priority of a previous application shall be required to file a declaration of priority and a copy of the previous application in accordance with the conditions and time limits laid down by regulation.

2. Multiple priorities may be claimed in respect of a patent application, notwithstanding the fact that they originated in different States. Where appropriate, multiple priorities may be claimed for one and the same claim. Where multiple priorities are claimed, the time limits which run from the date of priority shall be computed from the earliest date of priority.

3. If one or more priorities are claimed in respect of a patent application, the priority right shall cover only those elements of the application whose priority is claimed.

4. If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted provided that the documents of the previous application as a whole specifically disclose such elements.

5. With regard to the effects of the priority right, the priority date shall be deemed to be that of the filing of the patent application for the purposes of applying the second and third paragraphs of Article L. 611-11.

*Section 2*  
*Processing of Applications*

**L. 612–8.**

The Minister responsible for defense shall be empowered to take cognizance, on a confidential basis, of patent applications at the National Institute of Industrial Property.

**L. 612–9.**

Inventions which are the subject of patent applications may not be disclosed or freely worked until an authorization to that effect has been granted.

Until such time, patent applications shall not be made available to the public, no true copy of the patent application shall be issued, except where authorized, and the procedures under Articles L. 612–14, L. 612–15 and item 1 in Article L. 612–21 may not be instituted.

Subject to Article L. 612–10, the authorization referred to in the first paragraph of this Article may be granted at any time. Authorization shall be automatic on expiry of a period of five months from the filing date of the patent application.

The authorizations referred to in the first and second paragraphs of this Article shall be granted by the Minister responsible for industrial property after having obtained the opinion of the Minister responsible for defense.

**L. 612–10.**

Prior to expiry of the period referred to in the second paragraph of Article L. 612–9, the prohibitions laid down in the first paragraph of that Article may be extended, at the demand of the Minister responsible for defense, for a renewable period of one year. The extended prohibitions may be lifted at any time under the same procedure.

Where a prohibition has been extended under this Article, the owner of the patent application shall be entitled to compensation commensurate with the loss incurred. Failing amicable agreement, such compensation shall be laid down by the First Instance Court. Proceedings at all levels of jurisdiction shall take place in court chambers.

A petition for revision of the compensation provided for in the foregoing paragraph may be filed by the owner of the patent on expiry of one year after the date of the final judgment determining the amount of the compensation.

The owner of the patent shall furnish evidence showing that the loss suffered by him is in excess of the assessment of the court.

**L. 612–11.**

The Director of the National Institute of Industrial Property shall examine patent applications for their compliance with the laws and regulations referred to in Article L. 612–12.

**L. 612–12.**

A patent application shall be refused, in whole or in part, if:

1. it does not meet the requirements of Article L. 612–1;
2. it has not been divided in accordance with Article L. 612–4;
3. it concerns a divisional application whose subject matter extends beyond the contents of the description in the original application;
4. its subject matter is an invention which is manifestly non-patentable under Article L. 611–7;
5. its subject matter is manifestly not to be regarded as an invention within the meaning of the second paragraph of Article L. 611–10 or as an invention susceptible of industrial application within the meaning of Article L. 611–16;
6. its description or claims do not permit Article L. 612–14 to be applied;
7. it has not been amended following notice to do so although the search report manifestly indicated an absence of novelty;

8. the claims are not based on the description;

9. the applicant has not, where applicable, made comments or filed new claims in the course of the drawing up of the search report provided for in Article L. 612–14.

Where the reasons for refusal concern only a part of the patent application, the corresponding claims only shall be refused.

Where the application fails in part to comply with item (a) of Article L. 611–17 or with Article L. 612–1, the corresponding parts of the description and the drawings shall be deleted *ex officio*.

#### **L. 612–13.**

As from the day the application is filed and up to the day on which the documentary search prior to the report referred to in Article L. 612–14 has been commenced, the applicant may file new claims.

The possibility of filing new claims shall be open to the applicant for a utility certificate up to the day the title is granted.

As from the day the patent application is published under item 1 of Article L. 612–21 and within a period of time to be laid down by regulation, any third party may address to the National Institute of Industrial Property written comments on the patentability, within the meaning of Articles L. 611–11 and L. 611–14, of the invention which is the subject of the application. The National Institute of Industrial Property shall communicate such comments to the applicant who, within a period of time laid down by regulation, may submit comments in reply and file new claims.

#### **L. 612–14.**

Subject to the provisions of Article L. 612–15 and if it has been given a filing date, a patent application shall give rise to a search report with regard to the elements of prior art that may be taken into consideration for assessing the patentability of the invention within the meaning of Articles L. 611–11 and L. 611–14.

The report shall be drawn up in accordance with the conditions laid down by decree.

#### **L. 612–15.**

The applicant may request that the drawing-up of the search report be deferred during a period of 18 months; such period shall begin with the filing of the patent application or with the priority date, where a priority has been claimed. The applicant may withdraw his request at any time; he must do so before initiating infringement proceedings or before making the notification referred to in the first paragraph of Article L. 615–4. As from the publication referred to in item 1 of Article L. 612–21, any third party may request the drawing-up of a search report.

The applicant may at any time convert his patent application into an application for a utility certificate. On expiry of the time limit laid down in the foregoing paragraph and if a search report has not been requested, such conversion shall be decided *ex officio* in accordance with the conditions laid down by regulation.

#### **L. 612–16.**

Where an applicant has not complied with a time limit as regards the National Institute of Industrial Property, he may submit an appeal for reinstatement of his rights if he is able to give a legitimate reason and if the direct consequence of the hindrance has been refusal of his patent application or of a request or the loss of any other right or means of appeal.

The appeal must be submitted to the Director of the National Institute of Industrial Property within two months of the hindrance ceasing to exist. The act that has not been carried out must be accomplished within that period. The appeal shall only be admissible within a period of one year from expiry of the time limit not complied with.

This Article shall not apply to either the time limits laid down in Articles L. 612–15, L. 612–19 and L. 613–22 or the period of priority established by Article 4 of the Paris Convention for the Protection of Industrial Property.

#### **L. 612–17.**

Once the procedure laid down in Articles L. 612–14 and L. 612–15 has been completed, the patent shall be granted.

All titles granted shall comprise the description, drawings if any, claims and, in the case of a patent, the search report.

**L. 612–18.**

Where normal operation of communications is interrupted, a decree that shall take effect as of the date of the interruption may suspend the time limits with regard to the National Institute of Industrial Property for the whole duration of such interruption.

**L. 612–19.**

Annual fees shall be paid in respect of every patent application and every patent, with payment to be effected not later than the date laid down by decree in Council of State.

Where payment of an annual fee has not been made at the date referred to in the foregoing paragraph, such fee may be validly paid within an additional period of six months subject to payment of a surcharge within that same period.

**L. 612–20.**

Except where it is obvious that the invention is not patentable, the amount of fees to be paid to the National Institute of Industrial Property for patent applications and patents shall be reduced for natural persons having their place of residence in France whose resources are insufficient for them to be liable to income tax.

At their request, such persons may additionally enjoy the aid of an industrial property attorney having the corresponding specialization in proceedings before the National Institute of Industrial Property.

The cost of such aid shall be borne by the Institute.

*Section 3*  
*Statutory Dissemination of Inventions*

**L. 612–21.**

The National Institute of Industrial Property shall publish, under the conditions defined by decree in Council of State, by a notice in the Official Bulletin of Industrial Property, by making available to the public the full text or by dissemination through a databank or distribution on a data medium:

1. the file of each application for a patent or a utility certificate on expiry of 18 months from the date of filing or from the priority date, where priority has been claimed, or at the simple request of the applicant prior to expiry of that period;
2. each application for a supplementary protection certificate, attached to the patent application to which the certificate relates or, where the latter application has already been published, as of its filing, with an identification in such case of the patent to which the certificate relates;
3. any subsequent procedural act;
4. any grant of such title;
5. the acts referred to in Article L. 613–9;
6. the date of the authorization referred to in Article L. 611–3, with an identification of the corresponding patent.

**L. 612–22.**

The provisions of Article L. 612–21 shall be applicable to applications for European patents and to European patents.

**L. 612–23.**

The National Institute of Industrial Property shall issue, at the request of any person concerned or at the demand of any administrative authority, a documentary report citing the elements of prior art that may be taken into consideration when assessing the patentability of the invention under Articles L. 611–11 and L. 611–14.

## Chapter III Rights Deriving from Patents

### Section I Exclusive Right to Work

#### L. 613-1.

The exclusive right to work referred to in Article L. 611-1 shall take effect as of the filing of the application.

#### L. 613-2.

The extent of the protection afforded by a patent shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

Where the subject matter of the patent is a process, the protection afforded by the patent shall extend to the products directly obtained by such process.

#### L. 613-3.

The following shall be prohibited, save consent by the owner of the patent:

(a) making, offering, putting on the market or using a product which is the subject matter of the patent, or importing or stocking a product for such purposes;

(b) using a process which is the subject matter of the patent or, when the third party knows, or it is obvious in the circumstances, that the use of the process is prohibited without the consent of the owner of the patent, offering the process for use on French territory;

(c) offering, putting on the market or using the product obtained directly by a process which is the subject matter of the patent or importing or stocking for such purposes.

#### L. 613-4.

1. It shall also be prohibited, save consent by the owner of the patent, to supply or offer to supply, on French territory, to a person other than a person entitled to work the patented invention, the means of implementing, on that territory, the invention with respect to an essential element thereof where the third party knows, or it is obvious from the circumstances, that such means are suited and intended for putting the invention into effect.

2. Paragraph 1 shall not apply where the means of implementation are staple commercial articles, except where the third party induces the person supplied to commit acts prohibited by Article L. 613-3.

3. Persons carrying out the acts referred to in items (a), (b) and (c) of Article L. 613-5 shall not be deemed persons entitled to work the invention within the meaning of paragraph 1.

#### L. 613-5.

The rights afforded by the patent shall not extend to:

(a) acts done privately and for non-commercial purposes;

(b) acts done for experimental purposes relating to the subject matter of the patented invention;

(c) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

#### L. 613-6.

The rights afforded by a patent shall not extend to acts concerning a product covered by that patent which are done on French territory after such product has been put on the market in France by the owner of the patent or with his express consent.

#### L. 613-7.

Any person who, within the territory in which this Book applies, at the filing date or priority date of a patent was, in good faith, in possession of the invention which is the subject matter of the patent shall enjoy a personal right to work that invention despite the existence of the patent.

The right afforded by this Article may only be transferred together with the business to which it belongs.

*Section 2*  
*Assignment and Loss of Rights*

**L. 613–8.**

The rights deriving from a patent application or a patent shall be assignable in whole or in part.

They may be subject in whole or in part to the grant of an exclusive or non-exclusive license to work the invention.

The rights afforded by the patent application or the patent may be invoked against a licensee who exceeds any of the limits on his license stipulated in accordance with the foregoing paragraph.

Subject to the cases referred to in Article L. 611–8, assignment of the rights referred to in the first paragraph shall not affect the rights acquired by third parties prior to the date of assignment.

The acts referred to in the first two paragraphs which comprise assignment or license shall be executed in writing, on pain of nullity.

**L. 613–9.**

To have effect against others, all acts assigning or modifying rights deriving from a patent application or a patent must be entered in a register, known as the National Patent Register, kept by the National Institute of Industrial Property.

However, an act may have effect, prior to entry, against parties who have acquired rights after the date of such act, but who had knowledge of the act when acquiring the rights.

**L. 613–10.**

At the request of an owner who wishes to make a public offer of working of his invention and on condition that the patent is not the subject of an exclusive license entered in the National Patent Register, the system of licenses of right may be applied to any patent at the decision of the Director of the National Institute of Industrial Property if a documentary report has been drawn up not showing any anticipation manifestly affecting the patentability of the invention.

The request referred to in the foregoing paragraph shall contain a statement in which the owner of the patent authorizes any public or private legal person to work the patent against payment of appropriate compensation. A license of right may only be non-exclusive. Failing agreement between the owner of the patent and the licensee, the amount of compensation shall be determined by the First Instance Court. The licensee may surrender the license at any time.

The decision to apply the system of licenses of right to a patent shall also entail a reduction in the annual fee referred to in Article L. 612–19, except for the fees already due.

At the request of the owner of the patent, the Director of the National Institute of Industrial Property shall revoke his decision. Revocation shall entail the loss of the reduction referred to in the foregoing paragraph. It shall have no effect on licenses of right already obtained or requested in respect of the patent concerned.

**L. 613–11.**

On expiry of a period of three years from the grant of a patent or four years from the filing date of the application and subject to the conditions laid down in the following Articles, any public or private legal person may be granted a compulsory license under the patent provided that, at the time of the application for such license and failing legitimate reasons, neither the owner of the patent nor his successor in title:

(a) has begun to work or has made real and effective preparations for working the invention that is the subject matter of the patent on the territory of a Member State of the European Economic Community;

(b) has marketed the product that is the subject matter of the patent in a quantity sufficient to satisfy the needs of the French market.

The same shall apply where working or marketing in France has been discontinued for more than three years.

**L. 613–12.**

The application for a compulsory license shall be made to the First Instance Court; it must be accompanied by evidence establishing that the applicant has been unable to obtain a license from the owner of the patent and that he is in a position to work the invention in an effective and serious manner.

A compulsory license may only be non-exclusive; it shall be granted on fixed terms, particularly in respect of its duration, its field of application and the amount of the royalties to be paid in consideration thereof.

Those terms may be amended by court decision on a request by the owner or the licensee.

**L. 613–13.**

Any assignment of rights deriving from a compulsory license shall, on pain of nullity, be subject to the authorization of the court.

The rights deriving from an ex-officio license may be neither assigned nor transferred.

**L. 613–14.**

If the holder of a compulsory license fails to comply with the terms under which the license was granted, the owner of the patent and, as appropriate, the other licensees may obtain withdrawal of the license by the court.

**L. 613–15.**

The owner of a patent concerning an improvement on an invention already patented on behalf of another person may not work his invention without the consent of the owner of the earlier patent; the latter owner may not work the patented improvement without the consent of the owner of the patent of improvement.

After hearing the public prosecutor, and in the public interest, the First Instance Court may grant to the owner of the patent of improvement, at his request which shall not be made before expiry of the period specified in Article L. 613–11, a non-exclusive license to the extent necessary for working the invention that is the subject of the patent of improvement and to the extent that the invention that is the subject of the patent of improvement constitutes a substantial technical advance in relation to the earlier patent. On a request submitted to the court, the owner of the earlier patent shall be granted a license under the patent of improvement.

The provisions of Articles L. 613–12 to L. 613–14 shall apply.

**L. 613–16.**

Where the interests of public health demand, patents granted for medicines or for processes for obtaining medicines, for products necessary in obtaining such medicines or for processes for manufacturing such products may be subject to ex-officio licenses in accordance with Article L. 613–17 in the event of such medicines being made available to the public in insufficient quantity or quality or at abnormally high prices, by order of the Minister responsible for industrial property, at the request of the Minister responsible for health.

**L. 613–17.**

As from the date of publication of the order subjecting the patent to ex-officio licenses, any qualified person may apply to the Minister responsible for industrial property for the grant of a license to work the patent. The license shall be granted by order of that Minister under fixed conditions, particularly in respect of its duration and field of application, but excluding the amount of the royalties to be paid in consideration thereof.

The license shall take effect from the date of notification of the order to the parties.

In the absence of amicable agreement approved by the Minister responsible for industrial property and the Minister responsible for health, the amount of the royalties shall be laid down by the First Instance Court.

**L. 613–18.**

The Minister responsible for industrial property may give formal notice to the owners of patents other than those referred to in Article L. 613–16 to undertake the working of such patents so as to satisfy the requirements of the national economy.

If no action is taken within a period of one year to comply with such notice and if the failure to work the invention or the insufficiency in quality or quantity of the working seriously prejudice economic development and the public interest, the patents in respect of which formal notice has been given may be subjected to ex–officio licenses by decree in Council of State.

The Minister responsible for industrial property may extend the one–year period referred to above if the owner of the patent can produce legitimate reasons consistent with the demands of the national economy.

As from the date of publication of the decree subjecting the patent to ex–officio licenses, any qualified person may apply to the Minister responsible for industrial property for the grant of a license to work the patent.

The license may only be non–exclusive: it shall be granted by an order of the above–mentioned Minister on fixed conditions with regard to its duration and field of application, but excluding the amount of royalties to be paid in consideration thereof. The license shall take effect from the date of notification of the order to the parties.

Failing amicable agreement, the amount of the royalties shall be laid down by the First Instance Court.

**L. 613–19.**

The State may at any time obtain *ex officio* in order to meet its defense requirements a license to work an invention that is the subject of a patent application or a patent, whether the working is to be done by the State itself or on its behalf.

The ex–officio license shall be granted at the request of the Minister responsible for defense by order of the Minister responsible for industrial property. The order shall lay down the conditions of the license, but excluding those relating to the amount of royalties to be paid in consideration thereof.

The license shall take effect on the date of the request for an ex–officio license.

Failing amicable agreement, the amount of the royalties shall be laid down by the First Instance Court. Proceedings at all levels of jurisdiction shall take place in court chambers.

**L. 613–20.**

The State may, at any time, expropriate by decree in whole or in part for the requirements of national defense the inventions that are the subject of patent applications or patents.

Failing amicable agreement, compensation for expropriation shall be laid down by the First Instance Court.

The proceedings at all levels of jurisdiction shall take place in court chambers.

**L. 613–21.**

Seizure of a patent shall be effected by means of an extrajudicial instrument served on the owner of the patent, on the National Institute of Industrial Property and on any persons holding rights in the patent; as a result of seizure, no subsequent changes to the rights deriving from the patent may be invoked against the creditor effecting seizure.

On pain of nullity of the seizure, the creditor effecting the seizure shall be required, within the prescribed period of time, to petition the court for validation of the seizure and for the purpose of offering the patent for sale.

**L. 613–22.**

1. The owner of a patent application or of a patent shall lose his rights if he has not paid the annual fees laid down in Article L. 612–19 within the period of time prescribed in that Article.

The loss of rights shall take effect on the due date of the unpaid annual fee.

It shall be recorded by a decision of the Director of the National Institute of Industrial Property or, at the request of the patentee or of another person, in accordance with the conditions laid down by regulation.

The decision shall be published and notified to the patentee.

2. Within three months following notification of the decision, the patentee may lodge an appeal for reinstatement of his rights if he can provide legitimate reasons for failure to pay the annual fee.

Reinstatement shall be granted by the Director of the National Institute of Industrial Property on condition that the annual fee or fees be paid within the period of time prescribed by regulation.

**L. 613–23.**

The periods of time referred to in Article L. 613–22 may be suspended in the cases referred to in Article L. 612–18 and in accordance with the conditions laid down in that Article.

**L. 613–24.**

The owner of a patent may at any time relinquish either the entire patent or one or more claims under the patent.

Relinquishment shall be effected in writing with the National Institute of Industrial Property. It shall take effect on the day of its publication.

Where real property rights, under a pledge or license, have been entered in the National Patent Register, relinquishment shall only be admissible if the beneficiaries of such rights give their consent.

The second and third paragraphs of this Article shall not apply to relinquishments made under Article L. 612–15.

**L. 613–25.**

A patent shall be revoked by court decision:

(a) if its subject matter is not patentable within the terms of Articles L. 611–10, L. 611–11 and L. 611–13 to L. 611–17;

(b) if it does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;

(c) if its subject matter extends beyond the content of the patent application as filed, or if it was granted on a divisional application, beyond the content of the earlier application as filed.

If the grounds for revocation affect the patent in part only, revocation shall be pronounced in the form of a corresponding limitation of the claims.

**L. 613–26.**

The public prosecutor may act *ex officio* for the revocation of a patent.

**L. 613–27.**

A decision to revoke a patent shall have absolute effect, subject to opposition from third parties. For patents applied for prior to January 1, 1969, revocation shall apply to those parts of the patent determined by the terms of the decision.

Final decisions shall be notified to the Director of the National Institute of Industrial Property for entry in the National Patent Register.

Where a decision partially revokes a claim, the owner of the patent shall be referred to the National Institute of Industrial Property in order to submit a modified wording of the claim in accordance with the terms of the decision. The Director of the Institute shall be empowered to reject the modified claim for lack of conformity with the decision, subject to appeal to one of the appeal courts designated under Article L. 411–4 of the Code.

**L. 613–28.**

A supplementary protection certificate shall be revoked:

- if the patent to which it relates is revoked;
- if the patent to which it relates is revoked for all those parts that correspond to the marketing authorization;
- if the corresponding marketing authorization is revoked;

- if it has been issued contrary to the provisions of Article L. 611–3.

Where the patent to which it relates is revoked for a fraction only of the parts that correspond to the marketing authorization, the certificate shall be revoked for that part only that corresponds to such fraction.

### Section 3 Joint Ownership of Patents

#### L. 613–29.

Joint ownership of a patent application or of a patent shall be governed by the following provisions:

(a) Each joint owner may work the invention for his own benefit subject to equitably compensating the other joint owners who do not personally work the invention or who have not granted a license. Failing amicable agreement, such compensation shall be laid down by the First Instance Court.

(b) Each joint owner may take action for infringement for his own exclusive benefit. A joint owner who takes action for infringement shall notify the other joint owners of the action that has been brought; judgment shall be deferred until such notification has been proved.

(c) Each joint owner may grant to a third party a non-exclusive license for his own benefit subject to making equitable compensation to the other joint owners who do not personally work the invention or who have not granted a license. Failing amicable agreement, such compensation shall be laid down by the First Instance Court.

However, the draft licensing agreement must be notified to the other joint owners accompanied by an offer for transfer of the share at a specified price.

Within three months of such notification, any of the joint owners may oppose the granting of a license on condition that he acquires the share of the joint owner wishing to grant the license.

Failing agreement within the time limit laid down in the foregoing paragraph, the price shall be laid down by the First Instance Court. The parties shall have one month from notification of the decision or of a decision on an appeal to forego the sale or the purchase of the joint ownership share, without prejudice to any damages that may be due; costs shall be borne by the renouncing party.

(d) An exclusive license may only be granted with the agreement of all the joint owners or by the authorization of the court.

(e) Each joint owner may, at any moment, assign his share. The joint owners shall have a right of pre-emption for a period of three months from the notification of the intended assignment. Failing agreement on the price, such price shall be fixed by the First Instance Court. The parties shall have a period of one month as from notification of the judgment or, in the case of an appeal, of the decision, to forego the sale or the purchase of the joint initial share, without prejudice to any damages which may be due; the costs shall be borne by the renouncing party.

#### L. 613–30.

Articles 815 *et seq.*, 1873–1 *et seq.* and 883 *et seq.* of the Civil Code shall not apply to joint ownership of a patent application or of a patent.

#### L. 613–31.

The joint owner of a patent application or a patent may notify the other joint owners that he relinquishes his share in their favor. Once the relinquishment has been entered in the National Patent Register or, in the case of an unpublished patent application, as from its notification to the National Institute of Industrial Property, such joint owner shall be relieved of all obligations towards the other joint owners; the latter shall divide the relinquished share between them in proportion to their rights in the joint property, except where otherwise agreed.

#### L. 613–32.

In the absence of provisions to the contrary, Articles L. 613–29 to L. 613–31 shall apply.

The joint owners may derogate from this Article at any time by means of a joint ownership agreement.

## Chapter IV Application of International Conventions

### Section 1 European Patents

#### L. 614-1.

This Section concerns the application of the Convention done at Munich, on October 5, 1973, referred to hereinafter as “the Munich Convention.”

#### Paragraph 1 Filing of European Patent Applications

#### L. 614-2.

A European patent application may be filed with the National Institute of Industrial Property at its headquarters or, where necessary, at one of its regional centers, in accordance with the arrangements to be laid down by regulation.

An application must be filed with the National Institute of Industrial Property if the applicant has his place of residence or business in France and is not claiming the priority of an earlier filing in France.

#### L. 614-3.

The Minister responsible for defense shall be empowered to take cognizance at the National Institute of Industrial Property, on a confidential basis, of the European patent applications filed with that Institute.

#### L. 614-4.

Inventions which are the subject of European patent applications filed with the National Institute of Industrial Property may not be disclosed or freely worked until authorization has been given for such purpose.

During such period, applications may not be made public; no true copies of applications may be issued without authorization.

The authorizations referred to in the first and second paragraphs of this Article shall be given by the Minister responsible for industrial property after having obtained the opinion of the Minister responsible for defense.

The authorization referred to in the first paragraph may be given at any time. Subject to the first paragraph of Article L. 614-5, such authorization shall automatically be deemed to have been given on expiry of four months from the filing date of the application or, where priority has been claimed, upon expiry of 14 months from the priority date.

#### L. 614-5.

Prior to expiry of either one of the periods referred to in the last paragraph of Article L. 614-4, the prohibitions provided for by that Article may be extended, at the demand of the Minister responsible for defense, for a renewable period of one year. In such case, the application shall not be transmitted to the European Patent Office. The prohibitions thus extended may be lifted at any time.

Where prohibitions have been extended, the second and third paragraphs of Article L. 612-10 of this Code shall apply.

#### L. 614-6.

A European patent application may only be converted to a French patent application in the cases provided for by Article 135(1)(a) of the Munich Convention.

In such cases, the applicant shall be required to satisfy the conditions to be laid down by regulation, failing which the French patent application shall be refused.

Where a search report has been drawn up prior to conversion of the application, such report shall be deemed to constitute the search report referred to in Article L. 612-15.

Paragraph 2  
Effect in France of European Patents

**L. 614-7.**

Where the text in which the European Patent Office set up by the Munich Convention issues a European patent or maintains such patent in a modified form is not drawn up in French, the owner of the patent shall supply to the National Institute of Industrial Property a translation of that text in accordance with the conditions and time limits laid down by decree in Council of State. Failure to comply with this requirement shall render the patent void.

**L. 614-8.**

Within three months of publication of European patent applications for which the language of the proceedings is not French, the National Institute of Industrial Property shall translate and publish in French the abstracts required by Article 78(1)(e) of the Munich Convention.

**L. 614-9.**

The rights specified in Articles L. 613-3 to L. 613-7, L. 615-4 and L. 615-5 of this Code may be exercised as from the date on which a European patent application is published under Article 93 of the Munich Convention.

Where publication is made in a language other than French, the rights referred to in the above paragraph may only be exercised as from the date on which a French translation of the claims has been published by the National Institute of Industrial Property, at the request of the applicant, under the conditions laid down by decree in Council of State or has been notified to the alleged infringer.

**L. 614-10.**

Where a French translation has been made in accordance with Article L. 614-7 or with the second paragraph of Article L. 614-9, such translation shall be deemed authentic if the European patent application or the European patent affords, in translation, narrower protection than that afforded by such application or by such patent in the language in which the application was filed.

However, a corrected translation may be filed at any time by the owner of the application or of the patent. Such translation shall not have legal effect, however, until the requirements of Article L. 614-7 or of the second paragraph of Article L. 614-9 have been satisfied.

Any person who in good faith has begun using or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

Notwithstanding the above provisions, the language of the proceedings shall be authentic in revocation proceedings.

**L. 614-11.**

Entry in the Register of European Patents of acts transmitting or amending the rights deriving from a European patent application or a European patent shall give such acts effect with regard to third parties.

**L. 614-12.**

A European patent may be revoked with effect for France on any one of the grounds set out in Article 138(1) of the Munich Convention.

If the grounds for revocation affect the patent in part only, revocation shall be pronounced in the form of a limitation of the claims, the description or the drawings.

**L. 614-13.**

Where a French patent covers an invention for which a European patent has been granted to the same inventor or to his successor in title with the same filing date or the same priority, the French patent shall cease to have effect at either the date on which the period during which opposition may be filed against the

European patent expires without opposition having been filed or the date on which the opposition proceedings are closed and the European patent maintained.

However, where a French patent has been granted at a date later than either of the dates, as appropriate, laid down in the foregoing paragraph, such patent shall not take effect.

The subsequent lapse or annulment of the European patent shall have no effect on the provisions of this Article.

**L. 614–14.**

Where a French patent application or a French patent and a European patent application or a European patent have the same filing or priority date, cover the same invention and belong to the same inventor or to his successor in title, those parts which are common may not be transferred, pledged, mortgaged or their exploitation rights assigned independently of each other on pain of nullity.

Notwithstanding Article L. 613–9, entry in the National Patent Register of a transfer or an amendment of rights deriving from a French patent application or French patent may only be invoked against others if the same transfer or same amendment of the rights deriving from the European patent application or the European patent have been entered in the register of European patents.

The French patent application or the French patent and the priority right for the filing of a European patent application may not be transferred independently of each other.

**L. 614–15.**

The Court hearing proceedings for infringement of a French patent which covers the same invention as a European patent applied for by the same inventor or granted to him or to his successor in title with the same priority shall stay proceedings until the date on which the French patent ceases to have effect in accordance with Article L. 614–13 or until the date on which the European patent application is refused, withdrawn or considered to have been withdrawn, or the European patent is revoked.

Where the infringement proceedings are based solely on the French patent, the plaintiff may pursue the proceedings, on resumption thereof, by replacing the French patent by the European patent for the acts subsequent to the date on which the French patent ceases to have effect and for those parts which are common.

Where infringement proceedings are based on both the French patent and the European patent, neither the penal sanctions nor the civil damages may be cumulative.

Where proceedings are based on one only of the two patents, no new action in respect of the same acts may be instituted on the basis of the other patent by the same plaintiff against the same defendant.

**L. 614–16.**

A decree in Council of State shall lay down the conditions for applying this Section, particularly as regards the implementation of Article 137(2) of the Munich Convention.

*Section 2*  
*International Applications*

**L. 614–17.**

This Section concerns the application of the Patent Cooperation Treaty done at Washington on June 19, 1970, and hereinafter referred to as “the Washington Treaty.”

*Paragraph 1*  
*Filing of International Applications*

**L. 614–18.**

International applications for the protection of an invention submitted by natural or legal persons having their place of residence or business in France must be filed with the National Institute of Industrial Property where no claim is made to priority under an earlier filing in France. In such cases, the National Institute of Industrial Property shall act as receiving Office within the meaning of Articles 2(xv) and 10 of the Washington Treaty.

**L. 614–19.**

The Minister responsible for defense shall be empowered to take cognizance at the National Institute of Industrial Property, on a confidential basis, of the international applications for the protection of inventions filed with that Institute.

**L. 614–20.**

Inventions which are the subject of international applications filed with the National Institute of Industrial Property may not be disclosed or freely worked until authorization has been given for such purpose.

During such period, applications may not be made public; no true copies of applications may be issued without authorization.

The authorizations referred to in the first and second paragraphs of this Article shall be given by the Minister responsible for industrial property after having obtained the opinion of the Minister for Defense.

The authorization referred to in the first paragraph may be given at any time. Subject to the first paragraph of Article L. 614–21, such authorization shall automatically be deemed to have been given on expiry of five months from the filing date of the application or, where priority has been claimed, on expiry of 13 months from the priority date.

**L. 614–21.**

Prior to expiry of either of the two periods referred to in the final paragraph of Article L. 614–20, the prohibitions provided for in that Article may be extended, at the demand of the Minister for Defense, for a renewable period of one year. In such case, the application shall not be transmitted to the International Bureau set up by the Washington Treaty. The prohibitions thus extended may be lifted at any time.

Where prohibitions have been extended, the second, third and fourth paragraphs of Article L. 612–10 shall apply.

**L. 614–22.**

Articles L. 614–19, L. 614–20 and L. 614–21 shall not apply if the applicant does not have his place of residence or business in France and the National Institute of Industrial Property therefore acts as receiving Office in place of the national Office of another State party to the Washington Treaty or if it has been designated as receiving Office by the Assembly of the Union set up by that Treaty.

**L. 614–23.**

A decree in Council of State shall lay down the conditions for applying this Section, particularly as regards receipt of the international application, the language in which the application shall be filed, determination of a fee for services rendered, known as the transmittal fee, to be levied in favor of the National Institute of Industrial Property, and the representation of applicants having their place of residence or business abroad.

Paragraph 2

Effect in France of International Applications

**L. 614–24.**

Where an international application for the protection of an invention filed under the Washington Treaty contains the designation or election of France, it shall be deemed to be an application for a European patent governed by the provisions of the Munich Convention.

Section 3

Community Patents

**L. 614–25.**

This Section concerns the application of the Convention for the European Patent for the Common Market (Community Patent Convention) done at Luxembourg on December 15, 1975, hereinafter referred to as “the Luxembourg Convention.” It shall enter into force on the same date as the Luxembourg Convention.

**L. 614–26.**

Articles L. 614–7 to L. 614–14 (first and second paragraphs) shall not apply where the European patent application designates a State of the European Economic Community and where the patent granted is a Community patent.

**L. 614–27.**

Within three months of publication of Community patent applications for which the language of proceedings is not French, the National Institute of Industrial Property shall translate and publish in French the abstracts required by Article 78(1)(e) of the Munich Convention.

**L. 614–28.**

When applying Article L. 614–15 and Article L. 615–17 to the patent applications and patents referred to in Article L. 614–26, the reference made in those Articles to Article L. 614–13 shall be replaced by a reference to Article 80(1) of the Luxembourg Convention.

**L. 614–29.**

The transfer, pledging, mortgaging or assignment of exploitation rights in a European patent application designating a State of the European Economic Community or in a Community patent resulting from such application shall automatically imply, with regard to the common parts, the same transfer, pledge, mortgage or assignment of exploitation rights in the French patent application or the French patent having the same filing date or the same priority date and which covers the same invention belonging to the same inventor or his successor in title.

In the same circumstances, a French patent application or French patent may not be subject, on pain of nullity, to a transfer, pledge, mortgage or assignment of exploitation rights independently of the European patent application that designates a State of the European Economic Community or of the Community patent resulting from such application.

Notwithstanding Article L. 613–20, such entry in the National Patent Register of such transfer or amendment of rights deriving from a French patent or a French patent application shall only have effect with regard to third parties if the same transfer or same amendment of the rights deriving from the European patent application designating a State of the European Economic Community or a Community patent resulting from such application has been entered, as appropriate, in the Register of European Patents or in the Register of Community Patents.

**L. 614–30.**

Where the request for grant of a patent contains a statement under Article 86(1) of the Luxembourg Convention to the effect that the applicant does not wish to obtain a Community patent, Articles L. 614–26 and L. 614–29 shall not apply.

However, Article L. 614–13 shall also not apply in such case.

*Section 4  
Final Provisions*

**L. 614–31.**

French citizens may claim application to their benefit in France of the provisions of the International Convention for the Protection of Industrial Property signed at Paris on March 20, 1883, together with the agreements, additional acts and final protocols that have amended or will amend that Convention, in all those cases where those provisions are more favorable than French law for protecting the rights deriving from industrial property.

No provision in this Title may be interpreted as depriving French citizens of a right afforded them by the foregoing paragraph.

## Chapter V Legal Proceedings

### Section 1 Civil Proceedings

#### L. 615-1.

Any violation of the rights of the owner of a patent, as set forth in Articles L. 613-3 to L. 613-6, shall constitute an infringement.

An infringement shall imply the civil liability of the infringer.

However, the offering for sale, putting on the market, use, holding with a view to use or putting on the market of an infringing product, where such acts are committed by a person other than the manufacturer of the infringing product, shall only imply the liability of the person committing them if such acts have been committed in full knowledge of the facts.

#### L. 615-2.

Infringement proceedings shall be instituted by the owner of the patent.

However, the beneficiary of an exclusive right of working may, except as otherwise stipulated in the licensing contract, institute infringement proceedings if, after notice, the owner of the patent does not institute such proceedings.

The patentee shall be entitled to take part in the infringement proceedings instituted by the licensee under the foregoing paragraph.

The holder of a license of right, a compulsory license or an ex-officio license as referred to in Articles L. 613-10, L. 613-11, L. 613-15, L. 613-17 and L. 613-19, may institute infringement proceedings if, after a formal notice, the owner of the patent does not institute such proceedings.

Any licensee shall be entitled to take part in the infringement proceedings instituted by the patentee in order to obtain compensation for an injury he has personally sustained.

#### L. 615-3.

Where proceedings are brought before the Court for infringement of a patent, the President of the Court, acting and ruling in summary proceedings, may provisionally enjoin, under penalty of a daily fine, the carrying out of the allegedly infringing acts or make the continued carrying out of such acts subject to the furnishing of a guarantee to cover indemnization of the patentee.

The request for an injunction or for furnishing of a guarantee shall only be granted if the substantive proceedings appear well founded and are instituted within a short time of the day on which the patentee became aware of the facts on which the proceedings are based.

The judge may condition the injunction on the furnishing by the plaintiff of a guarantee to cover possible indemnization of damages suffered by the defendant if the infringement proceedings are subsequently judged to be unfounded.

#### L. 615-4.

Notwithstanding Article L. 613-1, acts committed prior to the date on which the patent application has been made public under Article L. 612-21 or prior to the date of notification to any third party of a true copy of such application shall not be considered to prejudice the rights deriving from the patent.

However, from the date referred to in the foregoing paragraph to that of publication of the grant of the patent:

1. the patent shall only be invocable if the claims have not been extended after the first of those dates;
2. where the patent concerns the use of a microorganism, it shall not be invocable until the day on which the microorganism has been made available to the public.

The Court hearing infringement proceedings based on a patent application shall reserve judgment until the patent has been granted.

**L. 615-5.**

The owner of a patent application or the owner of a utility certificate application or the owner of a patent or of a utility certificate shall have the possibility of furnishing proof by any means whatsoever of the infringement of which he claims to be a victim.

He shall further be entitled, on an order given by the President of the First Instance Court of the place of the presumed infringement, to direct any bailiffs, accompanied by experts of his own choice, to proceed with a detailed description, with or without effective seizure, of the allegedly infringing articles or processes. Such order shall be provisionally enforced. It may be subjected to a security on the part of the plaintiff. In that same order, the President of the Court may authorize the bailiff to carry out any enquiry required to ascertain the origin, nature and scope of the infringement.

The same right shall be enjoyed by the licensee of an exclusive right of working under the conditions laid down in the second paragraph of Article L. 615-2 and in the fourth paragraph of Article L. 615-2, by the holder of a license of right, a compulsory license or an ex-officio license in accordance with Articles L. 613-10, L. 613-11, L. 613-15, L. 613-17 and L. 613-19.

If the petitioner fails to institute proceedings before a Court within a term of 15 days, the seizure shall automatically be void, without prejudice to any damages.

**L. 615-6.**

In the case of infringement proceedings instituted on the basis of an application for a utility certificate, the plaintiff shall be required to produce a search report drawn up under the same conditions as the report provided for in Article L. 612-14.

**L. 615-7.**

At the request of the injured party, and where such measure is necessary to prevent continuing infringement, the Court may order confiscation, in favor of the petitioner, of the articles recognized as constituting an infringement, which are the property of the infringer, on the date of entry into force of the prohibition and, where appropriate, of the devices or means specifically intended for committing the infringement.

The value of the articles confiscated shall be taken into account when computing the compensation to be awarded to the beneficiary of the decision.

**L. 615-8.**

Proceedings for infringement under this Chapter shall be barred after three years counted from the acts concerned.

**L. 615-9.**

Any person who proves working on the territory of a Member State of the European Economic Community, or real and effective preparations to that effect, may invite the owner of a patent to take position on the invocability of his title against such working, the description of which shall be communicated to him.

If such person disputes the reply that is given to him or if the owner of the patent has not taken position within a period of three months, he may bring the owner of the patent before the Court for a decision on whether the patent constitutes an obstacle to the working in question, without prejudice to any proceedings for the nullity of the patent or subsequent infringement proceedings if the working is not carried out in accordance with the conditions specified in the description referred to in the above paragraph.

**L. 615-10.**

Where an invention which is the subject of a patent application or of a patent is worked, in order to meet the requirements of national defense, by the State or its suppliers, subcontractors and subsidiary suppliers, without a license having been afforded to them, the civil proceedings shall be brought before the First Instance Court sitting in chambers. The Court may order neither the discontinuance nor the interruption of the working nor the confiscation provided for in Article L. 615-7.

Where the President of the Court orders an expert opinion or a description with or without effective seizure, as provided for in Article L. 615-5, the appointed law officer shall refrain from proceeding with

seizure, description and any investigation into the archives and documents of the business if the contract for research or manufacture comprises a defense security classification.

The same shall apply to research or manufacture carried out in military establishments.

The President of the First Instance Court may, if so requested by the entitled person, require an expert opinion which may only be carried out by persons authorized by the Minister responsible for defense and in the presence of his representatives.

Article L. 615-4 shall not apply to patent applications whose subject matter is worked under the conditions set out in this Article as long as such applications are subject to the prohibitions provided for in Articles L. 612-9 and L. 612-10. Persons carrying out such working shall automatically incur the liability defined in this Article.

**L. 615-11.** [Repealed]

*Section 2*  
*Criminal Proceedings*

**L. 615-12.**

Any person improperly claiming to be the owner of a patent or of a patent application shall be liable to a fine of between 20,000 francs and 50,000 francs. In the event of a repeated offense, the fine may be doubled. An offense shall be deemed to be repeated within the meaning of this Article if the offender has been convicted for the same offense within the preceding five years.

**L. 615-13.**

Notwithstanding the heavier penalties provided for with regard to violation of State security, any person who knowingly violates any of the prohibitions laid down in Articles L. 612-9 and L. 612-10 shall be liable to a fine of between 3,000 francs and 30,000 francs. Where the violation has prejudiced national defense, imprisonment of between one and five years may also be ordered.

**L. 615-14.**

1. Any person who has knowingly infringed the rights of the owner of a patent, as defined in Articles L. 613-3 to L. 613-6, shall be liable to a two-year prison term and a fine of 1,000,000 francs.
2. The provisions of paragraph 1 above shall enter into force on January 1, 1993.

**L. 615-14-1.**

In the event of repetition of the offenses defined in Article L. 615-14, or if the offender is or has been contractually bound to the aggrieved party, the penalties involved shall be doubled.

The guilty parties may in addition be deprived, for a period not exceeding five years, of the right to elect and be elected to commercial courts, chambers of commerce and industry and professional chambers and to joint conciliation boards.

**L. 615-15.**

Notwithstanding the heavier penalties provided for with regard to violation of State security, any person who knowingly violates an obligation or prohibition laid down in Articles L. 614-18, L. 614-20 and the first paragraph of Article L. 614-21 shall be liable to a fine of between 3,000 francs and 40,000 francs. Where the violation has prejudiced national defense, imprisonment of between one and five years may also be ordered.

**L. 615-16.**

Notwithstanding the heavier penalties provided for with regard to violation of State security, any person who knowingly violates an obligation or prohibition laid down in the second paragraph of Article L. 614-2, in Article L. 614-4 or in the first paragraph of Article L. 614-5 shall be liable to a fine of between 3,000 francs and 40,000 francs. Where the violation has prejudiced national defense, imprisonment of between one and five years may also be ordered.

Section 3  
Rules of Jurisdiction and Procedure

**L. 615–17.**

All litigation arising under this Title shall fall within the jurisdiction of the First Instance Courts and of the relevant Courts of Appeal, with the exception of appeals from decrees, orders and other administrative decisions taken by the Minister responsible for industrial property, which shall fall within the jurisdiction of the Administrative Courts.

The First Instance Courts designated to hear proceedings in respect of patents shall be determined by regulation.

The above provisions shall not prevent recourse to arbitration in accordance with Articles 2059 and 2060 of the Civil Code.

The First Instance Courts referred to above, as also the relevant Courts of Appeal, shall have sole jurisdiction for ascertaining that a French patent ceases to have effect, in whole or in part, in accordance with Article L. 614–13.

**L. 615–18.**

Proceedings to determine compensation instituted under Articles L. 612–10, L. 613–17, L. 613–19 and L. 613–20 shall be heard by the First Instance Court of Paris.

**L. 615–19.**

Proceedings for infringement of patents shall be heard exclusively by the First Instance Court.

All proceedings involving the infringement of a patent and a related act of unfair competition shall be heard exclusively by the First Instance Court.

**L. 615–20.**

The Court hearing an action or an exception under the provisions of this Title may, either *ex officio* or at the request of one of the parties, appoint a consultant at its own discretion to follow the proceedings as from joinder and to be present at the hearing. The consultant may be authorized to put questions to the parties or their representatives in court chambers.

**L. 615–21.**

At the request of one of the parties, any dispute concerning the application of Article L. 611–7 may be submitted to a joint conciliation board (employers, employees) presided over by a magistrate of the judiciary whose vote shall be decisive in the event of parity.

Within six months of submission of the case, the board set up within the National Institute of Industrial Property shall formulate a conciliation proposal; such proposal shall be deemed to constitute an agreement between the parties if, within one month of its notification, neither of the parties has submitted the case to the appropriate First Instance Court sitting in chambers. Such agreement may be made enforceable by an order of the President of the First Instance Court on a simple petition by the most assiduous party.

The parties may appear in person before the board and may be assisted or represented by a person of their choice.

The board may make use of experts which it shall designate for each proceeding.

The implementing rules for this Article, containing special provisions for the employees referred to in the last paragraph of Article L. 611–7, shall be laid down by decree in Council of State after consultation with the professional and trade union organizations concerned.

**L. 615–22.**

Decrees in Council of State shall lay down the implementing rules for this Title.

TITLE II  
PROTECTION OF TECHNICAL KNOWLEDGE

**Chapter I**  
**Manufacturing Secrets**

**L. 621–1.**

The penalties for violation of manufacturing secrets are set forth in Article 152–7 of the Labor Code reproduced hereafter:

“**L. 152–7.** The fact of revealing or attempting to reveal a manufacturing secret by any director or salaried person of the enterprise in which he is employed shall be punishable by imprisonment of two years and a fine of 200,000 francs.

The Court may also order as an additional penalty for a period of not more than five years the prohibition of civic, civil and family rights provided for by Article 131–26 of the Penal Code.”

**Chapter II**  
**Semiconductor Products**

*Section 1*  
*Deposit*

**L. 622–1.**

The final or intermediate topography of a semiconductor product that is the result of its creator’s own intellectual effort may, unless it is commonplace, be the subject of a deposit that confers the protection provided for in this Chapter.

Such deposit may not, however, occur either more than two years after the topography has first been exploited commercially anywhere, or more than 15 years after it was first fixed or encoded where it has never been exploited.

Any deposit that does not meet the conditions specified in this Article shall be null and void.

**L. 622–2.**

The following shall be eligible for the benefits of this Chapter:

(a) creators who are nationals of a Member State of the European Economic Community or who have either their habitual residence or a real and effective industrial or commercial establishment in such country, and their successors in title;

(b) persons meeting the aforesaid conditions of nationality, residence or establishment, who in a Member State engage in the first commercial exploitation anywhere in the world of a topography not protected by this Chapter, for which exploitation they have received exclusive authorization from the entitled person for the whole of the European Economic Community.

Persons other than those referred to in the foregoing paragraph shall be eligible for the benefits of this Chapter subject to evidence of reciprocity with the countries of which they are nationals or in which they are established.

**L. 622–3.**

The right to effect the deposit shall belong to the creator or to his successor in title.

Where a deposit has been effected in violation of the rights of the creator or of his successor in title, the injured party may claim ownership thereof. Actions claiming ownership shall be barred after three years following publication of the deposit.

**L. 622-4.**

The Director of the National Institute of Industrial Property shall register the deposit after examining its compliance with the formal requirements. Publication shall be made in accordance with the conditions laid down by decree in Council of State.

*Section 2*  
*Rights Deriving from Deposit*

**L. 622-5.**

The following shall be prohibited for any third party:

- reproduction of the protected topography;
- commercial exploitation or importation to that end of such a reproduction or of any semiconductor product incorporating it.

The prohibition shall not apply to the following:

- reproduction for evaluation, analysis or teaching purposes;
- creation, on the basis of such analysis or evaluation, of a different topography eligible for protection under this Chapter.

The foregoing prohibition shall not be binding on the *bona fide* acquirer of a semiconductor product. However, such acquirer shall be liable for appropriate indemnification if he intends to engage in commercial exploitation of the product so acquired.

**L. 622-6.**

The prohibition set forth in the foregoing Article shall take effect on the day of deposit or at the date of first commercial exploitation if that date is earlier. It shall vest in the owner of the registration until the end of the tenth following calendar year.

However, any registration relating to a topography that has not been commercially exploited within a period of 15 years from the date on which it was fixed or encoded for the first time shall cease to have effect.

**L. 622-7.**

Articles L. 411-4, L. 411-5, L. 612-11, L. 613-8, L. 613-9, L. 613-19, L. 615-10 and L. 615-17 shall apply to the conditions and form in which:

- the decisions referred to in this Chapter are taken by the Director of the National Institute of Industrial Property;
- the rights deriving from registration of a topography may be transferred, given as security or attached;
- in which litigation arising out of this Chapter may be settled.

**Chapter III**  
**New Plant Varieties**

*Section 1*  
*Issue of New Plant Variety Certificates*

**L. 623-1.**

For the purposes of this Chapter, “new plant variety” shall mean any new plant variety created or discovered:

1. which is different from similar already known varieties by one characteristic that is important, precise and subject to little fluctuation or by several characteristics the combination of which is such as to give it the status of a new variety;
2. which is homogeneous in all its characteristics;
3. which remains stable, that is to say identical with its original definition at the end of each cycle of multiplication.

**L. 623–2.**

New plant varieties belonging to a genus or species enjoying the protection established by the provisions of this Chapter shall not be patentable.

**L. 623–3.**

Any new plant variety fulfilling the conditions under Article L. 623–1 shall be defined by a denomination to which shall correspond a description and a sample kept in a collection.

**L. 623–4.**

Any new plant variety may be the subject of a title known as a “new plant variety certificate,” which shall afford to its owner an exclusive right to produce, introduce onto the territory to which this Chapter applies, sell or offer for sale all or part of the plant or any element for the reproduction or vegetative propagation of the variety or of varieties derived from it by hybridization where their reproduction requires the repeated use of the original variety.

Decrees in Council of State shall progressively apply the provisions of the foregoing paragraph to the various plant species according to the evolution of scientific knowledge and means of verification. Those decrees shall determine the elements of the plant to which the breeder’s right relates for each plant species.

**L. 623–5.**

A plant variety shall not be deemed new if, in France or abroad, and prior to the date of filing of the application, it has received sufficient publicity to enable exploitation or has been described in an application for a certificate or in an unpublished French certificate, or in an application filed abroad and enjoying priority under Article L. 623–6.

However, the use of a variety by its breeder in tests or experiments or its entry in a catalogue or an official register of a State party to the Paris Convention for the Protection of New Varieties of Plants, of December 2, 1961, or its display at an official or officially recognized exhibition within the meaning of the Convention Relating to International Exhibitions, signed at Paris on November 22, 1928, and amended on May 10, 1948, shall in no case constitute an act of disclosure causing prejudice to the novelty of the variety.

Nor shall disclosure constituting an evident abuse in relation to the breeder cause prejudice to the novelty of the variety.

**L. 623–6.**

Any person possessing the nationality of one of the States party to the Paris Convention of December 2, 1961, or having his place of residence or business in one of those States may apply for a new plant variety certificate in respect of varieties belonging to the genera or species mentioned in the list annexed to that Convention or in a supplementary list drawn up under the provisions thereof.

Such person may, when filing in France an application for a new plant variety certificate, claim the priority of the first application previously filed in respect of the same variety by himself or by his predecessor in title in one of those States, provided that the application is filed in France not more than 12 months after the first application.

Events that occur during the priority period, such as a further filing, publication of the subject matter of the application or exploitation of the variety concerned, shall not constitute grounds for contesting the validity of a new plant variety certificate for which an application has been filed in accordance with the conditions laid down in the foregoing paragraph.

In addition to the cases referred to in the first paragraph, any foreigner may enjoy the protection instituted by this Chapter, provided that French nationals enjoy reciprocity of protection for the genera and species concerned in the State of which he is a national or in which he has his place of residence or business.

**L. 623–7.**

The certificate issued by the Committee for the Protection of New Plant Varieties referred to in Article L. 412–1 shall take effect on the date of the application. Any decision to refuse an application must be justified.

**L. 623–8.**

The Minister responsible for defense shall be empowered to take cognizance, on a confidential basis, of the applications for certificates filed with the Committee for the Protection of New Plant Varieties.

**L. 623–9.**

The list of plant species of which the new varieties that are the subject matter of applications for certificates may not be disclosed or exploited freely without special authorization shall be laid down by regulation.

Subject to Article L. 623–10, such authorization may be granted at any time. It shall be deemed to have been given automatically on expiry of a period of five months from the filing date of the application for a certificate.

**L. 623–10.**

Prior to expiry of the period laid down in the final paragraph of Article L. 623–9, the prohibitions set forth in the first paragraph of that Article may be extended, at the demand of the Minister responsible for defense, for a renewable period of one year. The extended prohibitions may be lifted at any time subject to the same condition.

Extension of the prohibitions ordered under this Article shall give an entitlement to compensation on behalf of the owner of the application for a certificate, commensurate with the prejudice sustained. Failing amicable agreement, the compensation shall be laid down by judicial authority.

**L. 623–11.**

The owner of the certificate may request review of the compensation under Article L. 623–10 on expiry of a period of one year following the date of the final judgment fixing the amount of the compensation.

The owner of the certificate must produce evidence that the prejudice he has sustained is in excess of the assessment of the Court.

**L. 623–12.**

The certificate shall be issued only if a prior examination has shown that the variety that is the subject matter of the application for protection constitutes a new plant variety in accordance with Article L. 623–1.

However, the Committee may hold a prior examination carried out in another country party to the Paris Convention of December 2, 1961, to be sufficient.

The Committee may call upon foreign experts.

**L. 623–13.**

The term of the certificate shall be 20 years from issue. It shall be fixed at 25 years if the constitution of the elements for production of the species demands a long period of time.

**L. 623–14.**

The acts granting a certificate, transferring ownership, granting a right of exploitation or of pledge with respect to a new plant variety certificate may only be invoked against third parties if they have been duly published in accordance with the conditions laid down by decree in Council of State.

**L. 623–15.**

The certificate shall designate the new plant variety by a denomination enabling it to be identified without confusion or ambiguity in any State party to the Paris Convention of December 2, 1961.

The breeder shall be required to keep at all times a vegetative collection of the protected new plant variety.

A description of the new variety shall be appended to the new plant variety certificate.

The certificate shall have effect against others as from the date of its publication.

The denomination entered on the certificate shall become compulsory on publication of the certificate for any commercial transaction, even after expiry of the duration of the certificate.

The denomination given to the variety may not be the subject of a trademark filing in a State party to the Paris Convention of December 2, 1961. Such a filing may be made, however, as a precautionary measure, without preventing the issue of the new plant variety certificate, provided that evidence of renunciation of the effects of the application in the States party to the Convention is produced prior to the issue of the certificate.

The provisions of the foregoing paragraph shall not prevent the addition, in respect of one and the same new plant variety, of a trademark to the denomination of the variety concerned.

**L. 623–16.**

Fees for services rendered shall be charged in respect of preliminary examination, issue of the certificate and all acts of entry or deletion.

A fee shall be paid annually throughout the period of validity of the certificate.

The scale of fees shall be laid down by regulation.

The income from such fees shall be credited to a special section of the budget of the National Institute of Agronomic Research.

*Section 2*  
*Rights and Obligations Deriving*  
*from New Plant Variety Certificates*

**L. 623–17.**

A variety essential to human or animal life may be subjected to the system of ex-officio licenses by a decree in Council of State or, where public health is concerned, by joint order of the Minister for Agriculture and the Minister responsible for health.

**L. 623–18.**

As from the date of publication of the order subjecting new plant variety certificates to the system of ex-officio licenses, any person having the necessary technical and professional references may apply to the Minister for Agriculture for the grant of a license to exploit the variety.

Such license may only be non-exclusive. It shall be given by an order of the Minister for Agriculture under specified terms, particularly in respect of its duration and scope, but to the exclusion of the royalties to which it gives rise.

The license shall take effect on the date of notification of the order to the parties.

Failing amicable agreement, the amount of the royalties shall be laid down by judicial authority in accordance with Article L. 623–31.

**L. 623–19.**

If the holder of an ex-officio license fails to comply with the required conditions, the Minister for Agriculture may, after having obtained the opinion of the Committee for the Protection of New Plant Varieties, declare the forfeiture of the license.

**L. 623–20.**

The State may at any time obtain ex-officio for the purposes of defense a license to exploit a plant variety that is the subject matter of an application for a certificate or of a new plant variety certificate, whether exploitation is to be carried out by the State itself or on its behalf.

An *ex officio* license shall be granted, at the request of the Minister responsible for defense, by an order of the Minister for Agriculture. The order shall lay down the terms of the license, but shall exclude those relating to the royalties arising from its use. The license shall take effect on the date of the application for an ex-officio license.

Failing amicable agreement, the amount of the royalties shall be laid down by judicial authority and determined in accordance with Article L. 623–31.

**L. 623–21.**

The rights deriving from an ex-officio license may be neither assigned nor transferred.

**L. 623–22.**

The State may at any time for the purposes of national defense expropriate by decree all or a part of the new plant varieties that are the subject matter of applications for certificates or of certificates.

Failing amicable agreement, the compensation for expropriation shall be laid down by the First Instance Court.

**L. 623–23.**

The owner of a new plant variety certificate shall forfeit his rights if:

1. he is unable to furnish at any time to the administration the elements of reproduction or vegetative propagation such as seeds, cuttings, grafts, rhizomes and tubers, enabling the protected variety to be reproduced with its morphological and physiological characteristics as defined in the new plant variety certificate;

2. he refuses to submit to inspection for the purpose of checking the measures he has taken for the maintenance of the variety;

3. he fails to pay within the prescribed period the annual fee referred to in the second paragraph of Article L. 623–16.

Forfeiture shall be declared by the Committee for the Protection of New Plant Varieties. Where it is declared under item 3, above, the owner of the certificate may, within six months following the expiry of the prescribed period, lodge an appeal for reinstatement of his rights if he can give legitimate reasons for his failure to pay the fee. However, such appeal shall not prejudice any rights acquired by others. The final decision declaring forfeiture shall be published.

**L. 623–24.**

Articles L. 613–8 and L. 613–29 to L. 613–32 shall apply to applications for new plant variety certificates and to new plant variety certificates.

Articles L. 613–9, L. 613–21 and L. 613–24 shall likewise apply, whereby the Committee for the Protection of New Plant Varieties shall replace the National Institute of Industrial Property.

*Section 3*  
*Legal Proceedings*

**L. 623–25.**

Any violation of the rights of an owner of a new plant variety certificate as defined in Article L. 623–4 shall constitute an infringement incurring the civil liability of the person committing the act.

Subject to Article L. 623–4, use of a protected variety as a source of initial variation with a view to obtaining a new variety shall not constitute violation of the rights of the owner of a new plant variety certificate.

The holder of an ex-officio license, as referred to in Articles L. 623–17 and L. 623–20, and, unless otherwise provided, the beneficiary of an exclusive right of exploitation, may institute the liability proceedings referred to in the first paragraph above if, after formal notification, the owner of the certificate fails to do so.

The owner of the certificate shall be entitled to take part in proceedings brought by his licensee in accordance with the foregoing paragraph.

Any holder of a license shall be entitled to take part in proceedings instituted by the owner of the certificate to obtain compensation for the damages that he personally has sustained.

**L. 623–26.**

Acts committed prior to publication of the issue of the certificate shall not be held to violate the rights deriving from the certificate. However, acts committed after a true copy of the application for a certificate has been notified to a person presumed liable may be ascertained and prosecuted.

**L. 623–27.**

The owner of an application for a new plant variety certificate or of a certificate shall be entitled, with a court authorization, to proceed with a detailed description, with or without effective seizure, of any plants or parts of plants or of any elements of reproduction or vegetative propagation alleged to have been obtained in violation of his rights. This right shall also be available to the assignee of an exclusive right of exploitation or the holder of an ex-officio license, subject to the condition laid down in the third paragraph of Article L. 623–25.

Where the claimant fails to petition the court within the period of time laid down by regulation, the description or seizure shall be automatically null and void, without prejudice to any damages which may be claimed.

**L. 623–28.**

At the request of the injured party, the Court may order confiscation on behalf of the injured party of any plants or parts of plants or of any elements of reproduction or vegetative propagation obtained in violation of the rights of the owner of a new plant variety certificate and, where appropriate, of the instruments specifically intended for use in the reproductive cycle.

**L. 623–29.**

Civil and criminal actions under this Chapter shall be statute barred after three years counted from the acts concerned.

The institution of civil action shall suspend the limitation of a criminal action.

**L. 623–30.**

Where a variety that is the subject matter of an application for a certificate or of a new plant variety certificate is exploited for the needs of defense by the State or its contractors, subcontractors and subsidiary suppliers, without a license having been granted to them, the Court hearing the case may not order either discontinuance or interruption of exploitation nor confiscation as provided for in Article L. 623–28.

If an expert opinion or a description, with or without effective seizure, is ordered by the President of the Court hearing the case, the appointed law officer shall refrain from proceeding with seizure, description and any investigation in the enterprise if the contract for research or reproduction or propagation comprises a defense security classification.

The same shall apply where research, reproduction or propagation are carried out in a military establishment.

The President of the Court hearing the case may, if so requested by the entitled person, order an expert opinion which may be carried out only by persons approved by the Minister responsible for defense and in the presence of his representatives.

Article L. 623–26 shall not apply to applications for a new plant variety certificate exploited under the conditions set forth in this Article so long as such applications are subject to the prohibitions referred to in Articles L. 623–9 and L. 623–10.

Such exploitation shall automatically incur liability under this Article for the persons concerned.

**L. 623–31.**

All litigation arising from this Chapter shall be heard by the First Instance Courts and the corresponding Courts of Appeal, with the exception of appeals from decrees and orders and ministerial decisions within the jurisdiction of the Administrative Courts.

The Court of Appeal of Paris shall hear directly appeals from decisions of the Committee for the Protection of New Plant Varieties taken in application of this Chapter.

The competent First Instance Courts, which shall not be less than 10 in number, and the area of jurisdiction allocated to them shall be laid down by regulation.

**L. 623–32.**

Any intentional violation of the rights of the owner of a new plant variety certificate, as defined in Article L. 623–4, shall constitute an offense punishable by a fine of between 2,000 francs and 15,000 francs.

In the event of a repeated offense, imprisonment of between two and six months may also be ordered. An offense shall be deemed to be repeated, within the meaning of this Article, if the offender has been convicted for the same offense within the preceding five years.

**L. 623–33.**

Public proceedings for application of the penalties provided for in the foregoing Article may only be instituted by the public prosecutor on a complaint by the injured party.

The Criminal Court hearing the case may not take a decision until the Civil Court has confirmed the existence of the offense in a final decision. Nullity of the new plant variety certificate or matters of the ownership of that certificate may only be pleaded by the defendant before the Civil Court.

**L. 623–34.**

Any person improperly claiming to be the owner of a certificate or an application for a new plant variety certificate shall be liable to a fine of between 2,000 francs and 5,000 francs. In the event of a repeated offense, the fine may be doubled. An offense shall be deemed to be repeated within the meaning of this Article if the offender has been convicted for the same offense within the preceding five years.

**L. 623–35.**

Notwithstanding, the heavier penalties provided for with regard to violation of State security, any person who knowingly violates any of the prohibitions under Articles L. 623–9 and L. 623–10 shall be liable to a fine of between 3,000 francs and 30,000 francs. Where the violation has prejudiced national defense, imprisonment of between one and five years may also be ordered.

## **BOOK VII TRADEMARKS, SERVICE MARKS AND OTHER DISTINCTIVE SIGNS**

### **TITLE I TRADEMARKS AND SERVICE MARKS**

#### **Chapter I Constituent Elements of Marks**

**L. 711–1.**

A trademark or service mark is a sign capable of graphic representation which serves to distinguish the goods or services of a natural or legal person.

The following, in particular, may constitute such a sign:

- (a) denominations in all forms, such as: words, combinations of words, surnames and geographical names, pseudonyms, letters, numerals, abbreviations;
- (b) audible signs such as: sounds, musical phrases;
- (c) figurative signs such as: devices, labels, seals, selvages, reliefs, holograms, logos, synthesized images; shapes, particularly those of a product or its packaging, or those that identify a service; arrangements, combinations or shades of color.

**L. 711–2.**

The distinctive nature of a sign that is capable of constituting a mark shall be assessed in relation to the designated goods or services.

The following shall not be of a distinctive nature:

- (a) signs or names which in everyday or technical language simply constitute the necessary, generic or usual designation of the goods or services;

(b) signs or names which may serve to designate a feature of the product or service, particularly the type, quality, quantity, purpose, value, geographical origin, time of production of the goods or furnishing of the service;

(c) signs exclusively constituted by the shape imposed by the nature or function of the product or which give the product its substantial value.

Distinctive nature may be acquired by use, except in the case referred to in item (c).

#### **L. 711–3.**

The following may not be adopted as a mark or an element of a mark:

(a) signs excluded by

Article 6*ter* of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised;

(b) signs contrary to public policy or morality or whose use is prohibited by law;

(c) signs liable to mislead the public, particularly as regards the nature, quality or geographical origin of the goods or services.

#### **L. 711–4.**

Signs may not be adopted as marks where they infringe earlier rights, particularly:

(a) an earlier mark that has been registered or that is well known within the meaning of Article 6*bis* of the Paris Convention for the Protection of Industrial Property;

(b) the name or style of a company, where there is a risk of confusion in the public mind;

(c) a trade name or signboard known throughout the national territory, where there exists a risk of confusion in the public mind;

(d) a protected appellation of origin;

(e) authors' rights;

(f) rights deriving from a protected industrial design;

(g) the personality rights of another person, particularly his surname, pseudonym or likeness;

(h) the name, image or repute of a local authority.

## **Chapter II Acquisition of Rights in Marks**

#### **L. 712–1.**

Ownership of a mark shall be acquired by registration. A mark may be acquired under joint ownership.

The effects of registration shall begin on the filing date of the application for a term of 10 years that may be renewed any number of times.

#### **L. 712–2.**

Applications for registration shall be set out and published in the form and in accordance with the conditions laid down by this Title and detailed by decree in Council of State. They shall comprise, in particular, a sample of the mark and a list of the goods and services to which it applies.

Applicants having their place of residence abroad must elect an address for service in France.

#### **L. 712–3.**

During a period of two months following publication of the application for registration, any concerned person may submit observations to the Director of the National Institute of Industrial Property.

#### **L. 712–4.**

During the period of time referred to in Article L. 712–3, opposition to an application for registration may be entered with the Director of the National Institute of Industrial Property by the owner of a mark that has been registered or applied for at an earlier date or which enjoys an earlier priority date or by the owner of an earlier well-known mark.

The beneficiary of an exclusive right of exploitation shall also enjoy that same right, unless otherwise stipulated in the contract.

Opposition shall be deemed to have been rejected if no decision is taken within a period of six months following expiry of the time limit laid down in Article L. 712-3.

However, that time limit may be suspended:

- (a) where opposition is based on an application for registration of a mark;
- (b) where proceedings for invalidity, revocation or claim to ownership have been instituted;
- (c) at the joint request of the parties, whereby suspension may not exceed six months.

**L. 712-5.**

Decisions on opposition shall be taken following a procedure in which all parties shall be heard, laid down by decree in Council of State.

**L. 712-6.**

Where registration has been applied for, either fraudulently with respect to the rights of another person or in violation of a statutory or contractual obligation, any person who believes he has a right in the mark may claim ownership by legal proceedings.

Except where the applicant has acted in bad faith, action claiming ownership shall be barred three years after publication of the application for registration.

**L. 712-7.**

An application for registration shall be rejected:

- (a) if it does not meet the requirements of Article L. 712-2;
- (b) if the sign may not constitute a mark in accordance with Articles L. 711-1 and L. 711-2 or be adopted as a mark in accordance with Article L. 711-3;
- (c) if opposition to the application and Article L. 712-4 is upheld.

Where the grounds for rejection concern only a part of the application, it shall be rejected in part only.

**L. 712-8.**

An applicant may request that a mark be registered despite opposition thereto if he proves that the registration is indispensable to protect the mark abroad.

If opposition is subsequently upheld, the registration decision shall be revoked in whole or in part.

**L. 712-9.**

The registration of a mark may be renewed where there is neither modification of the sign nor extension of the list of goods or services. Renewal shall be effected and published under the conditions and within the time limits laid down by decree in Council of State.

It shall be subject neither to verification of compliance with Articles L. 711-1 to L. 711-3 nor to the opposition procedure laid down in Article L. 712-4.

The new 10-year term shall run from the expiry of the preceding term.

Any modification of the sign or extension to the list of designated goods or services shall require a new application.

**L. 712-10.**

An applicant who has not complied with the time limits referred to in Articles L. 712-2 and L. 712-9, but is able to prove that failure to comply was due neither to his own will nor to fault or negligence on his part, may, subject to the conditions laid down by decree in Council of State, be reinstated in the rights he has lost.

**L. 712-11.**

Notwithstanding application of the provisions of the Paris Convention for the Protection of Industrial Property, a foreigner who has neither place of business nor residence on the national territory shall enjoy the

provisions of this Book. However, subject to the international conventions, such benefits shall be conditional on proof that a regular application has been filed for the mark or its registration obtained in the country of his place of residence or business and that such country affords reciprocal protection to French marks.

**L. 712–12.**

The priority right under Article 4 of the Paris Convention for the Protection of Industrial Property shall be extended to any mark for which a prior application has been filed in a foreign country.

Where the applicant cannot claim the benefit of that Convention, the priority right shall be subject to recognition by such country of the same right for applications for French marks.

**L. 712–13.**

The trade unions may register their marks and certification marks in accordance with Articles L. 413–1 and L. 413–2 of the Labor Code, reproduced hereafter.

“**L. 413–1.** The trade unions may register their marks or certification marks by completing the formalities laid down by Chapter II of Book VII of the Intellectual Property Code. After registration, they may claim the exclusive ownership of those marks as laid down in that Code.

The marks or certification marks may be affixed to any product or article of trade to certify its origin and conditions of manufacture. They may be used by all individuals or enterprises selling such products.

**L. 413–2.** The use of trade union marks or certification marks under the foregoing Article may not have the effect of prejudicing the provisions of Article L. 412–2.

Any agreement or provision aiming to oblige an employer to employ exclusively or maintain in his service exclusively the members of the trade union that is the owner of the mark or certification mark shall be null and void.”

**L. 712–14.**

The decisions referred to in this Chapter shall be taken by the Director of the National Institute of Industrial Property in accordance with Articles L. 411–4 and L. 411–5.

### **Chapter III Rights Conferred by Registration**

**L. 713–1.**

Registration of a mark shall confer on its owner a right of property in that mark for the goods and services he has designated.

**L. 713–2.**

The following shall be prohibited, unless authorized by the owner:

(a) the reproduction, use or affixing of a mark, even with the addition of words such as: “formula, manner, system, imitation, type, method,” or the use of a reproduced mark for goods or services that are identical to those designated in the registration;

(b) the suppression or modification of a duly affixed mark.

**L. 713–3.**

The following shall be prohibited, unless authorized by the owner, if there is a likelihood of confusion in the mind of the public:

(a) the reproduction, use or affixing of a mark or use of a reproduced mark for goods or services that are similar to those designated in the registration;

(b) the imitation of a mark and the use of an imitated mark for goods or services that are identical or similar to those designated in the registration.

**L. 713-4.**

The right conferred by a mark shall not entitle an owner to prohibit its use in relation to goods which have been put on the market in the European Economic Community under that mark by the proprietor or with his consent.

However, the owner shall continue to have the faculty of opposing any further act of marketing if he can show legitimate reasons, especially where the condition of the goods has been subsequently changed or impaired.

**L. 713-5.**

Any person who uses a mark enjoying repute for goods or services that are not similar to those designated in the registration shall be liable under civil law if such use is likely to cause a prejudice to the owner of the mark or if such use constitutes unjustified exploitation of the mark.

The foregoing paragraph shall apply to the use of a mark that is well known within the meaning of Article 6*bis* of the Paris Convention for the Protection of Industrial Property referred to above.

**L. 713-6.**

Registration of a mark shall not prevent use of the same sign or a similar sign as:

(a) a company name, trade name or signboard, where such use is either earlier than the registration or made by another person using his own surname in good faith;

(b) the necessary reference to state the intended purpose of the product or service, in particular as an accessory or spare part, provided no confusion exists as to their origin.

However, where such use infringes his rights, the owner of the registration may require that it be limited or prohibited.

## **Chapter IV Transfer and Loss of Rights in Marks**

**L. 714-1.**

The rights under a mark may be transferred in whole or in part, independently of the enterprise that exploits them or has them exploited. Assignment, even where in part, may not comprise territorial limitation.

The rights under a mark may be subject, in whole or in part, to the granting of an exclusive or non-exclusive license or to pledging.

Non-exclusive grant may result from regulations for use. The rights conferred by an application for registration of a mark or by a mark may be invoked against a licensee who fails to respect a limitation of his license.

Transfer of ownership or pledging shall be recorded in writing, on pain of nullity.

**L. 714-2.**

The applicant for registration or the owner of a registered mark may renounce the effects of such application or such registration for all or part of the goods or services to which the mark applies.

**L. 714-3.**

The registration of a mark that does not comply with Articles L. 711-1 to L. 711-4 shall be declared null and void by court decision. The public prosecutor may institute invalidity proceedings *ex officio* under Articles L. 711-1, L. 711-2 and L. 711-3.

Invalidity proceedings under Article L. 711-4 may be instituted only by the owner of the prior right. However, such proceedings shall not be admissible if the mark has been registered in good faith and if he has acquiesced to its use during a period of five years.

An invalidity decision shall be absolute.

**L. 714-4.**

Invalidation proceedings against the owner of a well-known mark within the meaning of Article 6*bis* of the Paris Convention for the Protection of Industrial Property shall be barred after five years as from the date of registration, unless registration had been applied for in bad faith.

**L. 714-5.**

An owner who has not put his mark to genuine use in connection with the goods or services referred to in the registration during an uninterrupted period of five years, without good reason, shall be liable to revocation of his rights.

The following shall be assimilated to such use:

(a) use made with the consent of the owner of the mark or, in the case of collective marks, in compliance with the regulations;

(b) use of the mark in a modified form which does not alter its distinctive nature;

(c) affixing of the mark on goods or their packaging exclusively for export.

Revocation may be requested in legal proceedings by any concerned person. If the request concerns only a part of the goods or services referred to in the registration, revocation shall extend to the goods and services concerned only.

Genuine use of the mark begun or resumed after the five-year period referred to in the first paragraph of this Article shall not constitute an obstacle thereto if it has been undertaken during the three months prior to the request for revocation and after the owner has gained knowledge of the possibility of such a request.

The burden of proving exploitation shall rest with the owner of the mark for which revocation is requested. Proof may be furnished by all means.

Revocation shall take effect as of the date of expiry of the five-year period laid down in the first paragraph of this Article. It shall have absolute effect.

**L. 714-6.**

The owner of a mark shall be liable to revocation of his rights if, in consequence of his own acts, the mark has become:

(a) the common name in trade for a product or service;

(b) liable to mislead, particularly as regards the nature, quality or geographical origin of the product or service.

**L. 714-7.**

Any transfer or modification of rights under a registered mark shall only have effect against others if entered in the National Register of Marks.

## Chapter V Collective Marks

**L. 715-1.**

A mark shall be known as a collective mark if it may be used by any person who complies with regulations for use issued by the owner of the registration.

A collective certification mark shall be affixed to goods or services that display, in particular, with regard to their nature, properties or qualities, the characteristics detailed in the respective regulations.

**L. 715-2.**

The provisions of this Book shall apply to collective marks subject to, as regards collective certification marks, the special provisions below and those of Article L. 715-3:

1. a collective certification mark may be registered only by a legal person who is neither the manufacturer nor the importer nor the seller of the goods or services;

2. the registration of a collective certification mark must comprise regulations setting out the conditions to which use of the mark is subject;

3. use of a collective certification mark shall be open to all persons, other than the owner, who supply goods or services satisfying the conditions laid down by the regulations;

4. a collective certification mark may not be subject to assignment, pledge or any measure of enforcement; however, in the event of dissolution of the legal person who is the owner, it may be transferred to another legal person subject to the conditions laid down by decree in Council of State;

5. an application for registration shall be rejected if it does not satisfy the requirements laid down by the law applicable to certification;

6. where a certification mark has been used and has ceased to be protected by law, it may be neither registered nor used for any purpose whatsoever during a period of 10 years, subject to Article L. 712–10.

#### **L. 715–3.**

Invalidity of the registration of a collective certification mark may be ordered on a petition by the public prosecutor or at the request of any concerned person if the mark does not meet any one of the requirements of this Chapter.

The invalidity decision shall have absolute effect.

## **Chapter VI Disputes**

#### **L. 716–1.**

Infringement of the rights of the owner of a mark shall constitute an offense incurring the civil law liability of the offender. Violation of the prohibitions laid down in Articles L. 713–2, L. 713–3 and L. 713–4 shall constitute an infringement of the rights in a mark.

#### **L. 716–2.**

Acts preceding publication of the application for registration of a mark may not be held to infringe rights deriving from that mark.

However, acts subsequent to notification to the alleged infringer of a copy of the application for registration may be ascertained and prosecuted. The Court before which proceedings are instituted shall stay its decision until the registration has been published.

#### **L. 716–3.**

Civil proceedings relating to marks shall be heard by the First Instance Courts as also any proceedings involving both a matter of marks and a related matter of industrial designs or unfair competition.

#### **L. 716–4.**

Article L. 716–3 shall not prevent recourse to arbitration as provided for in Articles 2059 and 2060 of the Civil Code.

#### **L. 716–5.**

Civil infringement proceedings shall be instituted by the owner of the mark. However, the beneficiary of an exclusive right of exploitation may institute infringement proceedings, unless otherwise laid down in the contract, if after formal notice the owner does not exercise such right.

Any party to a licensing contract shall be entitled to participate in the infringement proceedings instituted by another party in order to obtain remedy for the prejudice he has himself sustained.

Infringement proceedings shall be barred after three years.

Any proceedings for infringement by a later registered mark of which use has been tolerated for five years shall not be admissible unless the registration was applied for in bad faith. However, non-admissibility shall be limited to those goods and services for which use has been tolerated.

**L. 716-6.**

The President of the Court before which proceedings have been instituted, sitting in chambers, may provisionally prohibit a continuation of the allegedly infringing acts, subject to a daily fine, or may subject such continuation to the furnishing of securities for the purpose of ensuring compensation to the owner of the mark or to the beneficiary of an exclusive right of exploitation.

Action for prohibition or furnishing of securities shall be admissible only if the case appears well-founded and proceedings were instituted within a short time after the day on which the owner of the mark or the beneficiary of an exclusive right of exploitation obtained knowledge of the facts on which they are based. The judge may subject prohibition to the furnishing by the plaintiff of securities to provide compensation for any prejudice suffered by the defendant if the infringement proceedings are subsequently held to be unfounded.

**L. 716-7.**

The owner of an application for registration, the owner of a registered mark or the beneficiary of an exclusive right of exploitation shall be entitled, by virtue of an order issued by the President of the First Instance Court, given on request, to direct any bailiff, assisted by experts of his choice, to proceed in any place with the detailed description, with or without taking samples, or the effective seizure of the goods or services he claims are marked, offered for sale, delivered or furnished to his prejudice in infringement of his rights.

Effective seizure may be subjected by the President of the Court to the furnishing of securities by the plaintiff to provide compensation for any prejudice suffered by the defendant if the infringement proceedings are subsequently held to be unfounded.

If the plaintiff fails to institute legal proceedings, either by civil action or criminal action, within a period of 15 days, seizure shall be automatically null and void, without prejudice to any damages that may be claimed.

**L. 716-8.**

The customs administration may, at the written request of the owner of a registered mark or of the beneficiary of an exclusive right of exploitation, withhold during customs inspection any goods claimed by the owner or beneficiary to be designated by a mark that infringes the mark for which he has obtained registration or with regard to which he enjoys an exclusive right of use.

The public prosecutor, the plaintiff and the party declaring or in possession of the goods shall be informed without delay by the customs service of the withholding measure taken by the latter.

Withholding shall be lifted automatically if the plaintiff fails, within 10 working days from the notification of the withholding of the goods, to furnish evidence to the customs authorities:

- either of the withholding measures decided by the President of the First Instance Court;
- or of having instituted legal proceedings by civil action or criminal action and having furnished the required securities to cover possible liability in the event of infringement not being subsequently recognized.

For the purpose of the institution of the legal proceedings referred to in the foregoing paragraph, the plaintiff may require the customs administration to communicate the names and addresses of the sender, the importer and the consignee of the goods withheld or of the holder thereof, and also the quantity thereof, notwithstanding the provisions of Article 59*bis* of the Customs Code concerning the professional secrecy to which all officials of the customs administration are bound.

**L. 716-8-1.**

Officers of the judicial police may, as soon as offenses under Articles L. 716-9 and L. 716-10 have been reported, effect the seizure of goods unlawfully manufactured, imported, stocked, placed on sale, delivered or supplied, and of any material and equipment specially installed for the purposes of such unlawful acts.

**L. 716–9.**

Any person shall be punished with a two–year prison term and a fine of 1,000,000 francs who has:

(a) reproduced, imitated, used, affixed, removed or altered a mark, a collective mark or a collective certification mark in violation of the rights conferred by the registration thereof and the prohibitions deriving therefrom;

(b) imported, under any customs regime, or exported goods presented under an infringing mark.

**L. 716–10.**

Any person who:

(a) without lawful reason, holds goods he knows to bear an infringing mark or has knowingly sold, offered for sale, furnished or offered to furnish goods or services under such mark;

(b) has knowingly delivered a product or furnished a service other than that requested of him under a registered mark, shall be liable to the penalties laid down in the foregoing Article.

**L. 716–11.**

Any person who:

(a) has knowingly made any use whatsoever of a registered collective certification mark in a manner other than that laid down in the regulations accompanying the registration;

(b) has knowingly sold or offered for sale a product bearing a collective certification mark employed in an irregular manner;

(c) within a period of 10 years as from the date on which protection of a collective certification mark that has been used has terminated, has knowingly used a mark that constitutes a reproduction or imitation of such mark or sold or offered for sale, furnished or offered to furnish goods or services under such mark,

shall be liable to the same penalties.

This Article shall apply to trade union marks under Chapter III of Title I of Book IV of the Labor Code.

**L. 716–11–1.**

In addition to the sanctions provided for in Articles L. 716–9 and L. 716–10, the court may order the total or partial, permanent or temporary closure, for a period not exceeding five years, of the establishment that has served for the commission of the offense.

Temporary closure may not be a cause of either the termination or the suspension of employment contracts or of any monetary consequence prejudicial to the employees concerned. Where permanent closure causes the dismissal of staff, it shall give rise, over and above the indemnity in lieu of notice and the termination indemnity, to damages as provided in Articles L. 121–14–4 and L. 122–14–5 of the Labor Code for the breach of employment contracts. Failure to pay those indemnities shall be punishable with a six–month prison term and a fine of 25,000 francs.

**L. 716–11–2.**

Legal entities may be declared criminally liable, in the manner specified in Article 121–2 of the Penal Code, for the offenses defined in Articles L. 716–9 to L. 716–11 of this Code.

The penalties to which legal entities are liable are:

1. Fines in accordance with the procedure laid down in Article 131–38 of the Penal Code.
2. The penalties mentioned in Article 131–39 of the same Code.

The prohibition mentioned in Article 131–39 under 2 shall relate to the activity in the exercise of which or on the occasion of the exercise of which the offense was committed.

**L. 716–12.**

In the event of repetition of the offenses defined in Articles L. 716–9 to L. 716–11, or if the offender is or has been contractually bound to the aggrieved party, the penalties involved shall be doubled.

The guilty parties may in addition be deprived, for a period not exceeding five years, of the right to elect and be elected to commercial courts, chambers of commerce and industry and professional chambers and to joint conciliation boards.

**L. 716–13.**

The Court may in all cases order, at the cost of the convicted offender, the posting of the decision containing the conviction in accordance with the conditions and subject to the penalties provided for in Article 51 of the Penal Code, as also its publication, in whole or in part, in such newspapers as it may designate, whereby the cost of such publication may not exceed a maximum amount of the fine incurred.

**L. 716–14.**

In the event of conviction for infringement of Articles L. 716–9 and L. 716–10, the Court may order confiscation of the goods and of the tools that have served to commit the offense.

The Court may order that the confiscated goods be delivered up to the owner of the mark that has been infringed, without prejudice to any damages.

The Court may also order their destruction.

**L. 716–15.**

Decrees in Council of State shall lay down, where necessary, the conditions for implementing this Book.

**L. 716–16.**

The provisions of Article L. 712–4 shall be applied progressively by reference to the International Classification of Goods and Services for the Purposes of the Registration of Marks.

Applications filed prior to December 28, 1991, shall be examined and registered under the procedure instituted by Law No. 64–1360 of December 31, 1964, on Trademarks and Service Marks.

TITLE II  
APPELLATIONS OF ORIGIN

**Sole Chapter**

**L. 721–1.**

An appellation of origin shall consist of the geographical name of a country, region or locality that serves to designate a product originating therein, the quality or characteristics of which are due to the geographical environment, including both natural and human factors.

**Part Three**  
**Application to the Overseas Territories**  
**and the Territorial Entity of Mayotte<sup>2</sup>**

**BOOK VIII**  
**APPLICATION TO THE OVERSEAS TERRITORIES**  
**AND THE TERRITORIAL ENTITY OF MAYOTTE**

SOLE TITLE

**Sole Chapter**

**L. 811-1.**

The provisions of this Code shall apply to the territorial entity of Mayotte with the exception of Articles L. 335-8 and L. 621-1. They shall apply to the overseas territories with the exception of Articles L. 335-8, L. 421-1 to L. 422-10, L. 423-2 and L. 621-1.

**L. 811-2.**

For the implementation of this Code and of the provisions it applies to the overseas territories and the territorial entity of Mayotte, the words listed below shall be replaced respectively by the following words:

- “tribunal de grande instance” and “juges d’instances” by “tribunal de première instance”;
- “région” by “territoire” and, in the case of the territorial entity of Mayotte, by “collectivité territoriale”;
- “cour d’appel” by “tribunal supérieur d’appel de Mamoudzou” and “commissaire de police” by “officier de police judiciaire” with respect to the territorial entity of Mayotte;
- “tribunal de commerce” by “tribunal de première instance statuant en matière commerciale”;
- “conseil de prud’hommes” by “tribunal du travail.”

Likewise, references to statutory provisions not applicable in the overseas territories shall be replaced by references to provisions having the same object and that result from the territorial regulations applicable to such territories.

This Law shall be executed as a law of the State.

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<sup>2</sup> “Articles L. 335-2, L. 335-4, L. 335-5, L. 521-4, L. 615-14 and L. 716-9, in the version resulting from Law No. 92-597 of July 1, 1992, on the Intellectual Property Code, shall apply to the overseas territories and the territorial entity of Mayotte for a transitional period starting on the date of entry into force of this Law and until the date specified in the second paragraph of Article 373 of Law No. 92-1336 of December 16, 1992, on the entry into force of the new Penal Code and on the amendment of certain provisions of criminal and criminal procedure law made necessary by the said entry into force.” (Article 19, Law No. 94-102 of February 5, 1994.)