INTELLECTUAL PROPERTY CODE

Legislative Part

PART I
Literary and Artistic Property

Articles L111-1 to L343-4

BOOK I
Copyright

Articles L111-1 to L133-4

TITLE I
Subject of Copyright

Articles L111-1 to L113-9

CHAPTER I
Nature of Copyright

Articles L111-1 to L111-5

Article L111-1

The author of a work of the mind shall enjoy in that work, by the mere fact of its creation, an exclusive incorporeal property right which shall be enforceable against all persons.

This right shall include attributes of an intellectual and moral nature as well as attributes of an economic nature, as determined by Books I and III of this Code.

The existence or conclusion of a contract for hire or of service by the author of a work of the mind shall in no way derogate from the enjoyment of the right afforded by the first paragraph above.

Article L111-2

A work shall be deemed to have been created, irrespective of any public disclosure, by the mere fact of realization of the author's concept, even if incomplete.

Article L111-3

The incorporeal property right set out in Article L111-1 shall be independent of any property right in the physical object.

Acquisition of such object shall not vest in the acquirer of the object any of the rights afforded by this Code, except in those cases referred to in the provisions of the second and third paragraphs of Article L123-4. These rights shall subsist in the person of the author or of his successors in title who, nevertheless, may not require the proprietor of the physical object to make such object available to them for the exercise of those rights. However, in the event of manifest abuse by the proprietor preventing exercise of the right of disclosure, the first instance court may take any appropriate measure, in accordance with the provisions of Article L121-3.

Article L111-4

Subject to the international conventions to which France is party, in the event that it is ascertained, after consultation with the Minister for Foreign Affairs, that a State does not afford to works disclosed for the first time in France, in any form whatsoever, protection that is adequate and effective, works disclosed for the first time on the territory of such State shall not enjoy the copyright protection afforded by French legislation.

However, neither the integrity nor the authorship of such works may be impaired.

In the cases referred to in the first paragraph above, the royalties shall be paid to general interest bodies designated by decree.

Article L111-5

Subject to the international conventions, foreigners shall enjoy in France the rights afforded to authors of software by this Code on condition that the law of the State of which they are nationals or on the territory of which they have their place of residence, their registered offices or an effective establishment affords its protection to software created by French nationals and by persons having in France their place of residence or an effective establishment.

CHAPTER II
Protected Work

Articles L112-1 to L112-4

Article L112-1

The provisions of this Code shall protect the rights of authors in all works of the mind, whatever their kind, form of expression, merit or purpose.

Article L112-2

(Act No. 94-361 of 10 May 1994 art. 2 Official Journal of 11 May 1994)

The following, in particular, shall be considered works of the mind within the meaning of this Code:

1°.books, pamphlets and other literary, artistic and scientific writings;

2°.lectures, addresses, sermons, pleadings and other works of such nature;

3°.dramatic or dramatico-musical works;

4°.choreographic works, circus acts and feats and dumb-show works, the acting form of which is set down in writing or in other manner;

5°.musical compositions with or without words;

6°.cinematographic works and other works consisting of sequences of moving images, with or without sound, together referred to as audiovisual works;

7°.works of drawing, painting, architecture, sculpture, engraving and lithography;

8°.graphical and typographical works;

9°.photographic works and works produced by techniques analogous to photography;

10°.works of applied art;

11°.illustrations, geographical maps;

12°.plans, sketches and three-dimensional works relative to geography, topography, architecture and science;

13°.software, including the preparatory design material;

14°.creations of the seasonal industries of dress and articles of fashion. Industries which, by reason of the demands of fashion, frequently renew the form of their products, particularly the making of dresses, furs, underwear, embroidery, fashion, shoes, gloves, leather goods, the manufacture of fabrics of striking novelty or of special use in high fashion dressmaking, the products of manufacturers of articles of fashion and of footwear and the manufacture of fabrics for upholstery shall be deemed to be seasonal industries.

Article L112-3

(Act No. 96-1106 of 18 December 1996 Art. 1 Official Journal of 19 December 1996)

(Act No. 98-536 of 1 July 1998 art. 1 Official Journal of 2 July 1998)

The authors of translations, adaptations, transformations or arrangements of works of the mind shall enjoy the protection afforded by this Code, without prejudice to the rights of the author of the original work. The same shall apply to the authors of anthologies or collections of miscellaneous works or data, such as databases, which, by reason of the selection or the arrangement of their contents, constitute intellectual creations.

Database means a collection of independent works, data or other materials, arranged in a systematic or methodical way, and capable of being individually assessed by electronic or any other means.

Article L112-4

The title of a work of the mind shall be protected in the same way as the work itself where it is original in character.

Such title may not be used, even if the work is no longer protected under Articles L123-1 to L123-3, to distinguish a work of the same kind if such use is liable to create confusion.

CHAPTER III

Owners of Copyright — Articles L113-1 to L113-9

Article L113-1

Authorship shall belong, unless proved otherwise, to the person or persons under whose name the work has been disclosed.

Article L113-2

“Work of collaboration” shall mean a work in the creation of which more than one natural person has participated.

“Composite work” shall mean a new work in which a preexisting work is incorporated without the collaboration of the author of the latter work.

“Collective work” shall mean a work created at the initiative of a natural or legal person who edits it, publishes it and discloses it under his direction and name and in which the personal contributions of the various authors who participated in its production are merged in the overall work for which they were conceived, without it being possible to attribute to each author a separate right in the work as created.

Article L113-3

A work of collaboration shall be the joint property of its authors.

The joint authors shall exercise their rights by common accord.

In the event of failure to agree, the civil courts shall decide.

Where the contribution of each of the joint authors is of a different kind, each may, unless otherwise agreed, separately exploit his own personal contribution without, however, prejudicing the exploitation of the common work.

Article L113-4

A composite work shall be the property of the author who has produced it, subject to the rights of the author of the preexisting work.

Article L113-5

A collective work shall be the property, unless proved otherwise, of the natural or legal person under whose name it

has been disclosed.

The author's rights shall vest in such person.

Article L113-6

The authors of pseudonymous and anonymous works shall enjoy in such works the rights afforded by Article L111-1.

They shall be represented in the exercise of those rights by the original editor or publisher, until such time as they reveal their true identity and prove their authorship.

The declaration referred to in the preceding paragraph may be made by will; however, any rights previously acquired by other persons shall be maintained.

The provisions in the second and third paragraphs above shall not apply if the pseudonym adopted by the author leaves no doubt as to his true identity.

Article L113-7

Authorship of an audiovisual work shall belong to the natural person or persons who have carried out the intellectual creation of the work.

Unless proved otherwise, the following are presumed to be the joint authors of an audiovisual work made in collaboration:

1°.the author of the script;

2°.the author of the adaptation;

3°.the author of the dialogue;

4°.the author of the musical compositions, with or without words, specially composed for the work;

5°.the director.

If an audiovisual work is adapted from a preexisting work or script which is still protected, the authors of the original work shall be assimilated to the authors of the new work.

Article L113-8

Authorship of a radio work shall belong to the natural person or persons who carried out the intellectual creation of the work.

The provisions of the final paragraph of Article L113-7 and those of Article L121-6 shall apply to radio works.

Article L113-9

(Act No. 94-361 of 10 May 1994 art. 2 Official Journal of 11 May 1994)

Unless otherwise provided by statutory provision or stipulation, the economic rights in the software and its documentation created by one or more employees in the execution of their duties or following the instructions given by their employer shall be the property of the employer and he exclusively shall be entitled to exercise them.

Any dispute concerning the application of this Article shall be submitted to the first instance court of the registered place of business of the employer.

The first paragraph of this Article shall also apply to servants of the State, of local authorities and of public establishments of an administrative nature.

TITLE II Authors' Rights	Articles L121-1 to L123-12
CHAPTER I Moral Right	Articles L121-1 to L121-9

Article L121-1

An author shall enjoy the right to respect for his name, his authorship and his work.

This right shall attach to his person.

It shall be perpetual, inalienable and imprescriptible. It may be transmitted mortis causa to the heirs of the author.

Exercise may be conferred on another person under the provisions of a will.

Article L121-2

The author alone shall have the right to divulge his work. He shall determine the method of disclosure and shall fix the conditions thereof, subject to Article L132-24.

After his death, the right to disclose his posthumous works shall be exercised during their lifetime by the executor or executors designated by the author. If there are none, or after their death, and unless the author has willed otherwise, this right shall be exercised in the following order: by the descendants, by the spouse against whom there exists no final judgment of separation and who has not remarried, by the heirs other than descendants, who inherit all or part of the estate and by the universal legatees or donees of the totality of the future assets.

This right may be exercised even after expiry of the exclusive right of exploitation set out in Article L123-1.

Article L121-3

In the event of manifest abuse in the exercise or non-exercise of the right of disclosure by the deceased author's representatives referred to in Article L121-2, the first instance court may order any appropriate measure. The same shall

apply in the event of a dispute between such representatives, if there is no known successor in title, no heir or no spouse entitled to inherit.

Such matters may be referred to the courts by the Minister responsible for culture.

Article L121-4

Notwithstanding assignment of his right of exploitation, the author shall enjoy a right to reconsider or of withdrawal, even after publication of his work, with respect to the assignee. However, he may only exercise that right on the condition that he indemnify the assignee beforehand for any prejudice the reconsideration or withdrawal may cause him. If the author decides to have his work published after having exercised his right to reconsider or of withdrawal, he shall be required to offer his rights of exploitation in the first instance to the assignee he originally chose and under the conditions originally determined.

Article L121-5

An audiovisual work shall be deemed completed when the final version has been established by common accord between the director or, possibly, the joint authors, on the one hand, and the producer, on the other.

Destruction of the master copy of such version shall be prohibited.

Any change made to that version by adding, deleting or modifying any element thereof shall require the agreement of the persons referred to in the first paragraph above.

Any transfer of an audiovisual work to another kind of medium with a view to a different mode of exploitation shall require prior consultation with the director.

The authors' own rights, as defined in Article L121-1, may be exercised by those authors only in respect of the completed audiovisual work.

Article L121-6

If one of the authors refuses to complete his contribution to an audiovisual work or is unable to complete such contribution due to circumstances beyond his control, he shall not be entitled to oppose use of that part of his contribution already in existence for the purpose of completing the work. He shall be deemed the author of such contribution and shall enjoy the rights deriving therefrom.

Article L121-7

(Act No. 94-361 of 10 May 1994 art. 2 Official Journal of 11 May 1994)

Except for any stipulation more favorable to the author, such author may not:

1°.oppose modification of the software by the assignee of the rights referred to in item 2 of Article L122-6 where such modification does not prejudice either his honor or his reputation;

2°.exercise his right to reconsider or of withdrawal.

Article L121-8

The author alone shall have the right to make a collection of his articles and speeches and to publish them or to authorize their publication in such form.

With regard to all works published in such way in a newspaper or periodical, the author shall maintain his right, unless otherwise stipulated, to have them reproduced or to exploit them in any form whatsoever, on condition that such reproduction or exploitation is not such as to compete with the newspaper or periodical concerned.

Article L121-9

Whatever the marriage arrangements and on pain of nullity of any clause to the contrary contained in a marriage contract, the right to disclose a work, to lay down the conditions for exploiting it and for defending its integrity shall remain vested in the spouse who is the author or in the spouse to whom such rights have been transmitted. This right may not be brought in dowry nor acquired as community property nor subsequently acquired as community property.

The monetary proceeds resulting from the exploitation of a work of the mind or from the total or partial assignment of the right of exploitation shall be subject to the general rules of law applicable to marriage arrangements only if acquired during the marriage; the same shall apply to savings made on such account.

The provisions laid down in the preceding paragraph shall not apply if the marriage was contracted prior to March 12, 1958.

The legislative provisions relating to the contributions of the spouses to the cost of the household shall apply to the monetary proceeds referred to in the second paragraph of this Article.

CHAPTER II
Patrimonial Rights

Articles L122-1 to L122-12

Article L122-1

The right of exploitation belonging to the author shall comprise the right of performance and the right of reproduction.

Article L122-2

Performance shall consist in the communication of the work to the public by any process whatsoever, particularly:

1°.public recitation, lyrical performance, dramatic performance, public presentation, public projection and transmission in a public place of a telediffused work;

2°.telediffusion.

Telediffusion shall mean distribution by any telecommunication process of sounds, images, documents, data and messages of any kind.

Transmission of a work towards a satellite shall be assimilated to a performance.

Article L122-2-1

(inserted by Act No. 97-283 of 27 Mars 1997 art. 1 Official Journal of 28 Mars 1997)

The right of performance of a work broadcast by satellite shall be governed by the provisions of this Code where the work is transmitted to the satellite from the national territory.

Article L122-2-2

(inserted by Act No. 97-283 of 27 Mars 1997 art. 1 Official Journal of 28 Mars 1997)

The right of performance of a work broadcast by satellite which is transmitted from the territory of a non-Member State of the European Community that does not afford a level of copyright protected equivalent to that guaranteed by this Code shall also be governed by the provisions of this Code:

1°.where the uplink to the satellite is provided by a station situated on the national territory, in which case the rights provided for in this Code shall be exercisable against the person operating the uplink station;

2°.where the uplink to the satellite is not provided by a station situated in a Member State of the European Community, and where the transmission takes place at the request, on behalf or under the control of an audiovisual communication enterprise having its principal establishment on the national territory, in which case the rights provided for in this Code shall be exercisable against the said audiovisual communication enterprise.

Article L122-3

Reproduction shall consist in the physical fixation of a work by any process permitting it to be communicated to the public in an indirect way.

It may be carried out, in particular, by printing, drawing, engraving, photography, casting and all processes of the graphical and plastic arts, mechanical, cinematographic or magnetic recording.

In the case of works of architecture, reproduction shall also consist in the repeated execution of a plan or of a standard project.

Article L122-4

Any complete or partial performance or reproduction made without the consent of the author or of his successors in title or assigns shall be unlawful. The same shall apply to translation, adaptation or transformation, arrangement or reproduction by any technique or process whatsoever.

Article L122-5

(Act No. 94-361 of 10 May 1994 art. 5 II Official Journal of 11 May 1994)
(Act No. 97-283 of 27 Mars 1997 art. 17 Official Journal of 28 Mars 1997)
(Act No. 98-536 of 1 July 1998 art. 2 and art. 3 Official Journal of 2 July 1998)
(Act No. 2000-642 of 11 July 2000 art. 47 Official Journal of 11 July 2000)

Once a work has been disclosed, the author may not prohibit:

1°. private and gratuitous performances carried out exclusively within the family circle;

2°. copies or reproductions reserved strictly for the private use of the copier and not intended for collective use, with the exception of copies of works of art to be used for purposes identical with those for which the original work was created and copies of software other than backup copies made in accordance with paragraph II of Article L. 122-6-1, as well as copies or reproductions of an electronic database;

3°. on condition that the name of the author and the source are clearly stated:

a) analyses and short quotations justified by the critical, polemic, educational, scientific or informatory nature of the work in which they are incorporated;

b) press reviews;

c) dissemination, even in their entirety, through the press or by broadcasting, as current news, of speeches intended for the public made in political, administrative, judicial or academic gatherings, as well as in public meetings of a political nature and at official ceremonies;

d) complete or partial reproductions of works of graphic or three-dimensional art intended to appear in the catalogue of a judicial sale held in France, in the form of the copies of the said catalogue made available to the public prior to the sale for the sole purpose of describing the works of art offered for sale.

A decree by the Conseil d'Etat shall determine the characteristics of the documents and the conditions governing their distribution.

4°. parody, pastiche and caricature, observing the rules of the genre.

5°. acts necessary to access the contents of an electronic database for the purposes of and within the limits of the use provided by contract.

Article L122-6

(Act No. 94-361 of 10 May 1994 art. 5I Official Journal of 11 May 1994)

Subject to the provisions of Article L122-6-1, the exploitation right belonging to the author of the software shall include the right to do or to authorize:

1°.the permanent or temporary reproduction of software by any means and in any form, in part or in whole. Insofar as loading, displaying, running, transmission or storage of the software necessitate such reproduction, such acts shall be possible only with the authorization of the author;

2°.the translation, adaptation, arrangement or any other alteration of software and the reproduction of the results thereof;

3°.the placing on the market for consideration or gratuitously, including rental, of the software or of copies thereof by any process. However, the first sale of a copy of software on the territory of a Member State of the European Community or of a State party to the agreement on the European Economic Area by the author or with his consent shall exhaust the right of placing on the market of that copy in all Member States, with the exception of the right to authorize further rental of a copy.

Article L122-6-1

(Act No. 94-361 of 10 May 1994 art. 5I Official Journal of 11 May 1994)

I.The acts referred to in items 1 and 2 of Article L122-6 shall not require authorization by the author where they are necessary for the use of the software by the person entitled to use it in accordance with its intended purpose, including for error correction.

However, an author may by contract reserve the right to correct errors and stipulate any special conditions to which shall be subject the acts referred to in items 1 and 2 of Article L122-6, necessary to enable the entitled person to use the software in accordance with its intended purpose.

II. A person having the right to use the software may make a backup copy where such is necessary to ensure use of the software.

III. A person having the right to use the software shall be entitled, without the authorization of the author, to observe, study or test the functioning of the software in order to determine the ideas and principles which underlie any element of the software if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the software which he is entitled to do.

IV. Reproduction of the code of the software or translation of the form of that code shall not require the authorization of the author where reproduction or translation within the meaning of item 1 or 2 of Article L. 122-6 is indispensable for obtaining the information necessary to achieve the interoperability of independently created software with other software, providing that the following conditions are met:

1°.these acts are performed by a person entitled to use a copy of the software or on his behalf by a person authorized to do so;

2°.the information necessary to achieve interoperability has not previously been readily available to the persons referred to in item 1, above;

3°.and these acts are confined to the parts of the original software which are necessary to achieve interoperability.

The information thus obtained may not:

1°.be used for goals other than to achieve the interoperability of the independently created software;

2°.be given to others, except where necessary for the interoperability of the independently created software;

3°.or be used for the development, production or marketing of software substantially similar in its expression, or for any other act which infringes copyright.

V. This Article may not be interpreted in such a way as to prejudice the normal exploitation of the software or to cause unreasonable prejudice to the author's legitimate interests.

Any stipulation contrary to the provisions of paragraphs II, III and IV of this Article shall be null and void.

Article L122-6-2

(Act No. 94-361 of 10 May 1994 art. 5I Official Journal of 11 May 1994)

Any publication or user's handbook concerning means of removing or circumventing any technical device protecting software shall state that the unlawful use of such means is liable to the penalties laid down for cases of infringement.

A Conseil d'Etat decree shall lay down the implementing rules for this Article.

Article L122-7

The right of performance and the right of reproduction may be transferred, for or without payment.

Transfer of the right of performance shall not imply transfer of the right of reproduction.

Transfer of the right of reproduction shall not imply transfer of the right of performance.

Where a contract contains the complete transfer of either of the rights referred to in this Article, its effect shall be limited to the exploitation modes specified in the contract.

Article L122-8

Authors of graphic and three-dimensional works shall have an inalienable right, regardless of any transfer of the original work, to participate in the proceeds of any sale of such work by public auction or through a dealer.

The royalty levied shall be a uniform 3% applicable only on a selling price above an amount to be laid down by regulation.

The royalty shall be levied on the selling price of each work and on the full price with no deduction from the basis. A Conseil d'Etat decree shall lay down the conditions under which authors may assert the rights afforded them by this Article with respect to the sales referred to in the first paragraph above.

Article L122-9

In the event of manifest abuse in the exercise or non-exercise of the rights of exploitation by the deceased author's representatives referred to in Article L121-2, the first instance court may order any appropriate measure. The same shall apply in the event of a dispute between such representatives, if there is no known successor in title, no heir or no spouse entitled to inherit.

Such matters may be referred to the courts, inter alia, by the Minister responsible for culture.

Article L122-10

(inserted by Act No. 95-4 of 3 January 1995 art. 1 Official Journal of 4 January 1995)

The publication of a work shall imply assignment of the right of reprographic reproduction to a society governed by Title II of Book III and approved to such end by the Minister responsible for culture. Only approved societies may conclude an agreement with users for the purpose of administering the right thus assigned, subject, for the stipulations authorizing copies for the purposes of sale, rental, publicity or promotion, to the agreement of the author or his successors in title. Failing such designation by the author or his successor in title on the date of publication of the work, one of the approved societies shall be deemed the assignee of the right.

Reprography shall mean reproduction in the form of a copy on paper or an assimilated medium by means of a photographic process or one having equivalent effect permitting direct reading.

The provisions of the first paragraph shall not affect the right of the author or his successors in title to make copies for the purposes of sale, rental, publicity or promotion.

Notwithstanding any stipulation to the contrary, the provisions of this Article shall apply to all protected works whatever the date of their publication.

Article L122-11

(inserted by Act No. 95-4 of 3 January 1995 art. 1 Official Journal of 4 January 1995)

The agreements referred to in Article L122-10 may provide for lump sum remuneration in the cases defined in items 1 to 3 of Article L131-4.

Article L122-12

(inserted by Act No. 95-4 of 3 January 1995 art. 1 Official Journal of 4 January 1995)

Approval of the societies referred to in the first paragraph of Article L122-10 shall be given on consideration of:

— the diversity of the partners;

— the professional qualifications of the officers;

— the human and material means they propose to use to administer the reprographicre production right;

— the equitable nature of the conditions foreseen for distributing the amounts collected.

A Conseil d'Etat decree shall lay down the conditions for granting and withdrawing such approval and also the choice of the assignee societies in application of the final sentence of the first paragraph of Article L122-10.

CHAPTER III
Term of Protection

Articles L123-1 to L123-12

Article L123-1

(Act No. 97-283 of 27 Mars 1997 art. 5 Official Journal of 28 Mars 1997 in force on 1 July 1995)

The author shall enjoy, during his lifetime, the exclusive right to exploit his work in any form whatsoever and to derive monetary profit therefrom.

On the death of the author, that right shall subsist for his successors in title during the current calendar year and the 70 years thereafter.

Article L123-2

(Act No. 97-283 of 27 Mars 1997 art. 6 Official Journal of 28 Mars 1997 in force on 1 July 1995)

In the case of works of collaboration, the calendar year taken into account shall be that of the death of the last surviving joint author.

In the case of audiovisual works, the calendar year taken into account shall be that of the death of the last survivor of the following joint authors: the author of the scenario, the author of the dialogue, the author of the musical compositions, with or without words, specially composed for the work and the main director.

Article L123-3

(Act No. 97-283 of 27 Mars 1997 art. 7 Official Journal of 28 Mars 1997 in force on 1 July 1995)

In the case of pseudonymous, anonymous or collective works, the term of the exclusive right shall be 70 years from January 1 of the calendar year following that in which the work was published. The publication date shall be determined by any form of proof recognized by the general rules of law, particularly by statutory deposit.

Where a pseudonymous, anonymous or collective work is published in installments, the term shall run as from January 1 of the calendar year following the date on which each installment was published.

Where the author or authors of anonymous or pseudonymous works reveal their identity, the term of the exclusive right shall be that provided for in Article L123-1 or Article L123-2.

The provisions of the first and second paragraphs shall apply only to pseudonymous, anonymous or collective works published during the 70 years following the year of their creation.

Nevertheless, where a pseudonymous, anonymous or collective work is disclosed on the expiry of the term mentioned in the foregoing paragraph, its owner by succession or on another ground who publishes it or causes it to be published shall enjoy exclusive rights for 25 years from January 1 of the calendar year following that of publication.

Article L123-4

(Act No. 97-283 of 27 Mars 1997 art. 1 Official Journal of 28 Mars 1997 in force on 1 July 1995)

In the case of posthumous works, the term of the exclusive right shall be that provided for in Article L123-1. In the case of posthumous works disclosed after the expiry of that term, the term of exclusive rights shall be 25 years from January 1 of the calendar year following that of publication.

The right of exploitation in posthumous works shall belong to the author's successors in title if the work is disclosed during the term referred to in Article L123-1.

If disclosure is made on expiry of that term, the right shall belong to the owners of the work, whether by succession or for other reason, who publish or have the work published.

Posthumous works shall be published separately, except where they constitute only a fragment of a work previously published. They may only be joined with previously published works of the same author if the author's successors in title still enjoy the exploitation rights therein.

Article L123-6

(Act No. 2001-1135 of 3 December 2001 art. 15 IV Official Journal of 4 December 2001 in force on 1 July 2002)

During the term laid down in Article L. 123-1, the surviving spouse, against whom there is no final decision of separation, shall enjoy the usufruct of any right of exploitation that the author has not assigned, irrespective of the type of marriage arrangements and of the rights of usufruct deriving from Articles 756 to 757-3 and 764 to 766 of the Civil Code with respect to other assets of the estate. However, if the author has left forced heirs, the usufruct shall be reduced to the benefit of the heirs, according to the proportions and distinctions laid down by Articles 913 and 914 of the Civil Code.

Such right shall lapse should the spouse contract a new marriage.

Article L123-7

(Act No. 97-283 of 27 Mars 1997 art. 9 Official Journal of 28 Mars 1997 in force on 1 July 1995)

After the death of the author, the resale royalty right referred to in Article L122-8 shall subsist to the benefit of the heirs and, with respect to usufruct laid down in Article L123-6, of the spouse, to the exclusion of all legatees and successors in title, for the current calendar year and 70 years thereafter.

Article L123-8

The rights afforded by the Act of July 14, 1866, on the Rights of Heirs and Successors in Title of Authors to the heirs and other successors in title of authors, composers or artists shall be extended for a period equal to that which elapsed between August 2, 1914, and the end of the year following the day of signature of the peace treaty for all works published prior to that latter date and which had not fallen into the public domain on February 3, 1919.

Article L123-9

The rights afforded by the above mentioned Act of July 14, 1866, and by Article L123-8 to the heirs and successors in title of the authors, composers and artists shall be extended for a period equal to that which elapsed between September 3, 1939, and January 1, 1948, for all works published before that date and which did not fall into the public domain on August 13, 1941.

Article L123-10

The rights referred to in the preceding Article shall be further extended for a term of 30 years if the author, the composer or the artist has died for France, as recorded in the death certificate.

Where the death certificate has neither to be drawn up nor registered in France, the Minister responsible for culture may extend by order to the heirs or other successors in title of the deceased person the benefit of the additional extension of 30 years; such order, issued after obtaining the opinion of the authorities referred to in Article 1 of Ordinance No. 45-2717 of November 2, 1945, may only be issued in those cases where the entry "died for France" would have appeared on the death certificate if such certificate had been drawn up in France.

Article L123-11

Where the rights extended under Article L123-10 have been assigned for consideration, the assignors or their successors in title may apply, within a period of three years as from September 25, 1951, to the assignee or his successors in title for a review of the conditions of the assignment as compensation for the advantages resulting from the extension.

Article L123-12

(inserted by Act No. 97-283 of 27 Mars 1997 art. 10 Official Journal of 28 Mars 1997 in force on 1 July 1995)

Where the country of origin of the work, within the meaning of the Paris Act of the Berne Convention, is a country outside the European Community and the author is not a national of a Member State of the Community, the term of protection shall be that granted in the country of origin of the work, but may not exceed that provided for in Article L123-1.

TITLE III
Exploitation of Rights — Articles L131-1 to L133-4

CHAPTER I
General Provisions — Articles L131-1 to L131-8

Article L131-1

Total transfer of future works shall be null and void.

Article L131-2

The performance, publishing and audiovisual production contracts defined in this Title shall be in writing. The same shall apply to free performance authorizations.

In all other cases, the provisions of Articles 1341 to 1348 of the Civil Code shall apply.

Article L131-3

Transfer of authors' rights shall be subject to each of the assigned rights being separately mentioned in the instrument of assignment and the field of exploitation of the assigned rights being defined as to its scope and purpose, as to place and as to duration.

Where special circumstances demand, the contract may be validly concluded by an exchange of telegrams, on condition that the field of exploitation of the assigned rights be defined in compliance with the first paragraph of this Article.

Assignment of audiovisual adaptation rights must be effected by written contract in an instrument separate from the contract relating to publication itself of the printed work.

The assignee shall undertake by such contract to endeavor to exploit the assigned right in accordance with trade practice and to pay to the author, in the event of adaptation, a remuneration that is proportional to the revenue obtained.

Article L131-4

(Act No. 94-361 of 10 May 1994 art. 6 Official Journal of 11 May 1994)

Assignment by the author of the rights in his work may be total or partial. Assignment shall comprise a proportional participation by the author in the revenue from sale or exploitation of the work.

However, the author's remuneration may be calculated as a lump sum in the following cases:

1°.the basis for calculating the proportional participation cannot be practically determined;

2°.the means of supervising the participation are lacking;

3°.the cost of the calculation and supervising operations would be out of proportion with the expected results;

4°.the nature or conditions of exploitation make application of the rule of proportional remuneration impossible, either because the author's contribution does not constitute one of the essential elements of the intellectual creation of the work or because the use of the work is only of an accessory nature in relation to the subject matter exploited;

5°.assignment of rights in software;

6°.in the other cases laid down in this Code.

Conversion, at the author's request, between the parties of the rights under existing contracts to lump sum annuities for periods to be determined between the parties shall also be lawful.

Article L131-5

If the exploitation right has been assigned and the author suffers a prejudice of more than seven-twelfths as a result of a burdensome contract or of insufficient advance estimate of the proceeds from the work, he may demand review of the price conditions under the contract.

Such demand may only be formulated where the work has been assigned against lump sum remuneration.

The burdensome contract shall be assessed taking into account the overall exploitation by the assignee of the works of the author who claims to have suffered a prejudice.

Article L131-6

Any assignment clause affording the right to exploit a work in a form that is unforeseeable and not foreseen on the date of the contract shall be explicit and shall stipulate participation correlated to the profits from exploitation.

Article L131-7

In the event of partial assignment, the assignee shall replace the author in the exercise of the assigned rights subject to the conditions and limitations and for the duration laid down in the contract, and with the obligation to render accounts.

Article L131-8

With regard to payment of the royalties and remuneration due to them for the last three years for the assignment, exploitation or use of their works, as defined in Article L112-2 of this Code, the authors, composers and artists shall enjoy the privilege set out in item 4 of Article 2101 and in Article 2104 of the Civil Code.

CHAPTER II
Special Provisions for Certain Contracts — Articles L132-1 to L132-34

SECTION I
Publishing Contracts — Articles L132-1 to L132-17

Article L132-1

A publishing contract is a contract by which the author of a work of the mind or his successors in title assign under specified conditions to a person referred to as the publisher the right to manufacture or have manufactured a number of

copies of the work, it being for the latter to ensure publication and dissemination thereof.

Article L132-2

A contract at the author's expense shall not constitute a publishing contract within the meaning of Article L132-1.

Under such contract, the author or his successors in title pay to the publisher an agreed remuneration against which the latter manufactures a number of copies of the work in the form and according to the modes of expression specified in the contract and ensures their publication and dissemination.

Such contract constitutes a contract for hire governed by convention, usage and the provisions of Articles 1787 et seq. of the Civil Code.

Article L132-3

A contract at joint expense shall not constitute a publishing contract within the meaning of Article L132-1.

Under such contract, the author or his successors in title commission a publisher to manufacture at his expense a number of copies of the work in the form and according to the modes of expression specified in the contract and to ensure their publication and dissemination in accordance with the agreement reciprocally contracted to share profits and losses of exploitation in the agreed proportion.

Such contract shall constitute a joint undertaking. It shall be governed, subject to the provisions of Articles 1871 et seq. of the Civil Code, by convention and usage.

Article L132-4

A clause by which the author undertakes to afford a right of preference to a publisher for the publication of his future works of clearly specified kinds shall be lawful.

Such right shall be limited, for each kind of work, to five new works as from the day of signature of the publishing contract concluded for the first work or to works produced by the author within a period of five years from that same date.

The publisher shall exercise the right afforded him by notifying the author in writing of his decision within three months of the date on which the author has delivered to him each final manuscript.

If the publisher enjoying the right of preference successively refuses two new works submitted by the author of the kind laid down in the contract, the author may immediately and automatically recover his liberty with respect to any future works he produces of that kind. However, if he has received advances from the first publisher against his future works, he must first refund such advances.

Article L132-5

The contract may lay down either remuneration proportional to the proceeds of exploitation or, in the cases referred to in Articles L. 131-4 and L132-6, a lump sum remuneration.

Article L132-6

In the case of trade editions, the author's remuneration for the first edition may also be in the form of a lump sum, subject to the formally expressed agreement of the author, in the following cases:

1°.scientific and technical works;

2°.anthologies and encyclopedias;

3°.prefaces, annotations, introductions, forewords;

4°.illustrations for a work;

5°.limited deluxe editions;

6°.prayer books;

7°.at the request of the translator, in the case of translations;

8°.inexpensive popular editions;

9°.inexpensive picture books for children.

Lump sum remuneration may also be paid for the assignment of rights by or to a person or enterprise established abroad.

In the case of works of the mind published in newspapers and periodicals of any kind and by press agencies, the remuneration of an author bound to the information enterprise by a contract for hire or of service may also be laid down as a lump sum.

Article L132-7

The personal consent of the author given in writing shall be obligatory.

Notwithstanding the provisions that govern contracts made by minors and adults under guardianship, consent shall be required even in the case of a legally incompetent author, unless he is physically unable to give his consent.

The provisions of the preceding paragraph shall not apply if the publishing contract is signed by the author's successors in title.

Article L132-8

The author shall guarantee the publisher the undisturbed and, unless otherwise agreed, exclusive exercise of the right assigned.

He shall be required to ensure respect for the right and to defend it against any possible violation.

Article L132-9

The author shall put the publisher in a position to manufacture and disseminate copies of the work.

He shall deliver to the publisher, within the period of time stipulated in the contract, the subject matter of publication

in a form permitting normal manufacture.

The subject matter of publication furnished by the author shall remain the property of the author unless otherwise agreed or technically impossible. The publisher shall remain responsible for the subject matter of publication for a period of one year after completion of manufacture.

Article L132-10

The publishing contract must state the minimum number of copies that constitute the first printing. However, this obligation shall not apply to contracts laid down at minimum royalties guaranteed by the publisher.

Article L132-11

The publisher shall be required to manufacture the work or have it manufactured under the conditions, in the form and according to the modes of expression laid down in the contract.

He may not make any modification to the work without the written authorization of the author.

Unless otherwise agreed, he shall place on each of the copies the name, pseudonym or symbol of the author.

Unless there is a special agreement, the publisher shall complete the publication within the term customary in the trade.

In the case of a contract of fixed duration, the rights of the assignee shall lapse automatically on expiry of that term without need of any formal notice.

However, for three years after expiry of that term, the publisher may continue to market at the normal price the copies remaining in stock, unless the author prefers to buy the copies at a price which, in the absence of an amicable agreement, shall be fixed according to expert opinion, whereby this faculty afforded the first publisher shall not prevent the author from proceeding with a new edition within a period of 30 months.

Article L132-12

The publisher shall be required to ensure continuous and sustained exploitation and commercial dissemination of the work in accordance with the practices of the trade.

Article L132-13

The publisher shall be required to render accounts.

In the absence of special conditions stipulated in the contract, the author may require the publisher to produce, at least once a year, a statement of the number of copies manufactured during the period in question and specifying the date and size of the printings and the number of copies in stock.

In the absence of contrary usage or agreement, the statement shall also contain the number of copies sold by the publisher, the number of copies that cannot be used or have been destroyed by accident or due to unavoidable circumstances and the amount of royalties due or paid to the author.

Article L132-14

The publisher shall be required to furnish the author with all evidence required to establish the accuracy of his accounts.

If the publisher fails to provide the necessary evidence, he shall be obliged to do so by the court.

Article L132-15

Judicial rehabilitation of the publisher shall not terminate the contract. Where activities are continued in application of Articles 31 et seq. of Act No. 85-98 of January 25, 1985, on the Judicial Rehabilitation and Liquidation of Enterprises, all of the publisher's obligations with regard to the author shall be respected.

Where the publishing enterprise is sold in application of Articles 81 et seq. of the above-mentioned Act No. 85-98 of January 25, 1985, the purchaser shall be held to the obligations of the seller.

Where the activities of the enterprise have ceased more than three months earlier or where judicial liquidation is pronounced, the author may request termination of the contract.

The liquidator may not sell at reduced price or sell out the manufactured copies in accordance with Articles 155 and 156 of Act No. 85-98 of January 25, 1985, referred to above, until at least 15 days after having notified the author of his intention by means of a registered letter with acknowledgment of receipt.

The author shall have a right of preemption on all or part of the copies. Failing agreement, the price shall be fixed by expert opinion.

Article L132-16

The publisher may not transmit the benefits of the publishing contract to a third party, for or without payment, or as a contribution to the assets of a partnership, independently of the business, without first having obtained the authorization of the author.

In the event of transfer of the business in such a way as to seriously compromise the material and moral interests of the author, the latter shall be entitled to obtain reparation even by means of termination of the contract.

Where the publishing business was run as a company or a coparcenary, the allocation of the business to one of the former partners or one of the coparceners, as a consequence of liquidation or division, shall in no case be considered a transfer.

Article L132-17

The publishing contract shall end, independently of the cases laid down in the general rules of law or in the preceding Articles, when the publisher carries out the complete destruction of the copies.

The contract shall terminate automatically if, upon formal notice by the author fixing a reasonable period of time, the

publisher has not effected publication of the work or, should the work be out of print, its republication.

The work shall be deemed out of print if two orders for delivery of copies addressed to the publisher have not been met within three months.

If, in the event of the author's death, the work is incomplete, the contract shall be rescinded as regards the unfinished part of the work, except as otherwise agreed between the publisher and the author's successors in title.

SECTION II

Performance Contracts — Articles L132-18 to L132-22

Article L132-18

A performance contract is a contract under which the author of a work of the mind or his successors in title authorize a natural or legal person to perform such a work under the conditions they stipulate. A general performance contract means a contract under which a professional body of authors grants to an entertainment promoter the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of such body under the conditions stipulated by the author or his successors in title.

In the case referred to in the preceding paragraph, the requirements of Article L131-1 may be waived.

Article L132-19

A performance contract shall be concluded for a limited duration or for a specific number of communications to the public.

Unless exclusive rights are expressly stipulated, it shall not afford the entertainment promoter an exploitation monopoly.

The validity of the exclusive rights afforded by a playwright may not exceed five years; the interruption of performances for two consecutive years shall automatically terminate the contract.

An entertainment promoter may not transfer the benefit of his contract without formal consent given in writing by the author or his representative.

Article L132-20

Unless otherwise agreed:

1°.authorization to telediffuse a work by electromagnetic waves shall not include cable distribution of such telediffusion, unless made simultaneously and integrally by the organization holding the authorization and without extension of the contractually stipulated geographical area;

2°.authorization to telediffuse the work shall not constitute an authorization to communicate the telediffusion of the work in a place to which the public has access;

3°.authorization to telediffuse the work by electromagnetic waves shall not include its transmission towards a satellite enabling the work to be received by the intermediary of other organizations unless the authors or their successors in title have contractually authorized the latter organizations to communicate the work to the public; in such case, the emitting organization shall be exempted from paying any remuneration.

Article L132-20-1

(inserted by Act No. 97-283 of 27 Mars 1997 art. 2 Official Journal of 28 Mars 1997)

I. As from the date of the entry into force of Act No. 97-283 of March 27, 1997, the right to authorize the simultaneous, complete and unchanged cable retransmission on the national territory of a work broadcast from a Member State of the European Community may be exercised only through a royalty collection and distribution society. If that society is governed by Title II of Book III, it shall be approved for the purpose by the Minister responsible for culture.

Where the owner of the rights has not already entrusted the management of those rights to such a society, he shall designate that to which he entrusts the exercise thereof. He shall notify the designation in writing to the society, which may not refuse it.

The contract authorizing the broadcasting of a work on the national territory shall mention the society responsible for exercising the right to authorize the simultaneous, complete and unchanged cable retransmission thereof in Member States of the European Community.

The approval provided for in the first paragraph shall be granted in consideration of:

1°.the professional qualifications of the directors of the societies, and the means that the societies are able to bring to bear for the exercise of the rights specified in the first paragraph and the exploitation of works in their repertoire;

2°.the size of their repertoire;

3°.their observance of the obligations imposed on them by the provisions of Title II of Book III.

A Conseil d'Etat decree shall lay down the conditions for the grant and revocation of approval. It shall also, in the case provided in the second paragraph, lay down the procedure for the designation of the society responsible for the management of the right of retransmission.

II. Notwithstanding paragraph I, the owner of the rights may license those rights to an audiovisual communication enterprise.

The provisions of paragraph I shall not apply to rights licensed to an audiovisual communication enterprise.

Article L132-20-2

(inserted by Act No. 97-283 of 27 Mars 1997 art. 2 Official Journal of 28 Mars 1997)

Mediators shall be appointed, without prejudice to the right of the parties to go to court, in order to promote the

settlement of disputes concerning the grant of authorization for the simultaneous, complete and unchanged cable retransmission of a work.

In the absence of an amicable settlement, the mediator may propose to the parties the solution that seems appropriate to him, which the said parties shall be deemed to have accepted if they have not expressed their opposition in writing within a period of three months.

A Conseil d'Etat decree shall specify the conditions for the application of this Article and lay down the procedure for the designation of mediators.

Article L132-21

An entertainment promoter shall be required to notify to the author or his representatives the exact program of public performances and to supply to them a documented statement of receipts. He shall pay into the hands of the author or his representatives at the agreed times the amount of the stipulated royalties.

However, when municipalities organize local and public celebrations and when societies for popular education, recognized by the administrative authorities, organize gatherings within the scope of their activities, they shall enjoy a reduction in those royalties.

Article L132-22

An entertainment promoter shall ensure that public performance takes place under technical conditions that guarantee respect for the author's intellectual and moral rights.

SECTION III

Audiovisual Production Contracts — Articles L132-23 to L132-30

Article L132-23

The natural or legal person who takes the initiative and responsibility for making the work shall be deemed the producer of an audiovisual work.

Article L132-24

Contracts binding the producer and the authors of an audiovisual work, other than the author of a musical composition with or without words, shall imply, unless otherwise stipulated and notwithstanding the rights afforded to the author by Articles L111-3, L121-4, L121-5, L122-1 to L122-7, L123-7, L131-2 to L131-7, L132-4 and L132-7, assignment to the producer of the exclusive exploitation rights in the audiovisual work.

Audiovisual production contracts shall not imply assignment to the producer of the graphic rights and theatrical rights in the work.

Contracts shall lay down the list of those elements that have served to make the work that are to be conserved as also the conditions of conservation.

Article L132-25

Remuneration shall be due to the authors for each exploitation mode.

Subject to Article L131-4, where the public pays a price to receive communication of a given, individually identifiable audiovisual work, remuneration shall be proportional to such price, subject to any decreasing tariffs afforded by the distributor to the operator; the remuneration shall be paid to the authors by the producer.

Article L132-26

The author shall guarantee to the producer the undisturbed exercise of the rights assigned.

Article L132-27

The producer shall be required to exploit the audiovisual work in conformity with the practice of the trade.

Article L132-28

The producer shall furnish at least once a year to the author and the joint authors a statement of revenue from exploitation of the work in respect of each exploitation mode.

At their request, he shall furnish to them all evidence necessary to establish the accuracy of the accounts, in particular copies of the contracts in which he assigns to third parties all or a part of the rights he enjoys.

Article L132-29

Unless agreed otherwise, each of the authors of an audiovisual work may freely dispose of the part of the work that constitutes his personal contribution, for the purpose of exploiting it in a different field, within the limits laid down in Article L113-3.

Article L132-30

Judicial rehabilitation of the producer shall not imply termination of the audiovisual production contract.

Where the making or exploitation of the work is continued under Articles 31 et seq. of Act No. 85-98 of January 25, 1985, on the Judicial Rehabilitation and Liquidation of Enterprises, the receiver shall be required to respect all of the producer's commitments, particularly as regards the joint authors.

In the event of sale of all or a part of the enterprise or of liquidation, the receiver, the debtor or the liquidator, as appropriate, shall be required to establish a separate lot for each audiovisual work that may be subject to assignment or to auction. He shall be required to inform, on pain of nullity, each of the authors and coproducers of the work by registered letter one month before any decision on assignment or any procedure for sale by auction of property held

indivisum. The acquirer shall similarly be held to the obligations of the seller.

The author and the joint authors shall have a right of preemption in respect of the work unless one of the coproducers states his intention to acquire. Failing agreement, the purchase price shall be fixed by expert opinion.

Where the activities of the enterprise have ceased for more than three months or where liquidation is ordered, the author and the joint authors may require termination of the audiovisual production contract.

SECTION IV

Commission Contracts for Advertising — Articles L132-31 to L132-33

Article L132-31

In the case of a commissioned work used for advertising, the contract between the producer and the author shall imply, unless otherwise stipulated, assignment to the producer of the exploitation rights in the work on condition that the contract specify the separate remuneration payable for each mode of exploitation of the work as a function, in particular, of the geographical area, the duration of exploitation, the size of the printing and the nature of the medium.

An agreement between the organizations representing the authors and the organizations representing the advertising producers shall lay down the basic elements used to form the remuneration that corresponds to the various uses of works.

The term of the agreement shall be of between one and five years.

Its provisions may be made compulsory for all the parties by way of decree.

Article L132-32

Failing agreement concluded either prior to April 4, 1986, or on the date of expiry of the preceding agreement, the bases for the remuneration referred to in the second paragraph of Article L132-31 shall be determined by a committee chaired by a magistrate of the judiciary designated by the First President of the Cour de Cassation, and composed, in addition, of one member of the Conseil d'Etat designated by the Vice President of the Conseil d'Etat, one qualified person designated by the Minister responsible for culture, on the one hand, and an equal number of members designated by the organizations representing the authors and of members designated by the organizations representing the advertising producers, on the other.

Article L132-33

The organizations entitled to designate members of the Committee and the number of persons each organization shall be entitled to designate shall be specified by an order of the Minister responsible for culture.

The Committee shall take its decisions on a majority of the members present. In the event of an equally divided vote, the Chairman shall have a casting vote.

The Committee’s decisions shall be enforceable if, within one month, its Chairman has not requested a second decision.

The decisions of the Committee shall be published in the Official Journal of the French Republic.

SECTION V

Pledging the Right to Exploit Software — Article L132-34

Article L132-34

(inserted by Act No. 94-361 of 10 May 1994 art. 7 Official Journal of 11 May 1994)

Notwithstanding the provisions of the Act of March 17, 1909, on the Sale and Mortgaging of Businesses, the right of exploitation of an author of software, as defined in Article L122-6, may be pledged subject to the following conditions:

The pledge shall be set out in writing on pain of nullity.

The pledge shall be entered, failing which it shall not be invokable, in a special register kept by the National Institute of Industrial Property. The entry shall state precisely the basis for the security and, particularly, the source codes and operating documents.

The ranking of entries shall be determined by the order in which they are requested.

The entries of pledges shall lapse, unless renewed beforehand, on expiry of a period of five years.

A Conseil d'Etat decree shall lay down the implementing conditions for this Article.

CHAPTER III

The payment for book lending in a library — Articles L133-1 to L133-4

Article L133-1

(Act n° 2003-517 of 18 June 2003, Art.1, Official journal of 19 June 2003, in force on 1 august 2003)

When a work is subject to a publishing contract for its publication and distribution in a book form, the author may not object to the lending of copies of this publication by a library open to the public.

The lending creates a right for payment in favour of the author in accordance with the conditions set in Article L133-4.

Article L133-2

(Act n° 2003-517 of June 2003, Art. 1, Official Journal of 19 June 2003, in force on 1 august 2003)

The payment stipulated in article L133-1 shall be collected by one or several collection and distribution companies

of royalties who are governed by Title II of Book III and licensed by the Minister responsible for culture.

The licenses stipulated in the first paragraph shall be delivered in consideration:

- of the diversity of partners
- of the professional qualification of the managers
- of the means that the company puts in place to insure the collection and distribution of the payment for lending in library;
- of the equitable representation of authors and publishers among the partners and within the management organs.

A decree in Conseil d'Etat shall determine the conditions for the delivery and withdrawal of licences.

Article L133-3

(Act n° 2003-517 of June 2003, Art. 1, Official Journal of June 2003, in force on 1 august 2003)

The payment stipulated in the second paragraph of Article L133-1 shall comprise two parts.

The first part, borne by the State, shall be determined on the basis of a fixed contribution paid by each subscribed user of libraries open to the public for lending with the exception of school libraries. A decree in Conseil d'Etat shall determine the amount of the contribution, which may be different for libraries of higher institutions, and the conditions to determine the number of subscribed users to be taken into account for the computation of this part.

The second part shall be fixed on the basis of public price before taxes of books bought by legal persons, mentioned in the third paragraph (2°) of Article 3 of Act n° 81-766 of 10 August 1981 on book price, for their libraries open to the public for lending. This part is paid by the suppliers who operate these sales. The rate of the payment is 6% of the market price of the sale.

Article L133-4

(Act n° 2003-517 of 18 June 2003, Art. 1, Official Journal f 19 June 2003, in force on 1 august 2003)

The payment for book lending in a library is divided according to the following criteria.

1° A first part shall be divided on equal shares between authors and publishers in proportion to the number of books bought each year by legal persons, mentioned in the third paragraph (2°) of article 3 of Act n° 81-766 of 10 August 1981 aforementioned, for their libraries, fixed on the basis of the information that these persons and their suppliers communicate to the company or companies mentioned in Article L133-2.

2° A second part, which may not exceed half of the total, shall be allocated to take in charge of a fraction of the contributions, owed for complementary pension, by the persons mentioned in the second paragraph of article L382-12 of the Social Security Code.

BOOK II
Neighbouring rights — **Articles L211-1 to L217-3**

SOLE TITLE — Articles L211-1 to L217-3

CHAPTER I
General Provisions — Articles L211-1 to L211-5

Article L211-1

Neighboring rights shall not prejudice authors' rights. Consequently, no provision in this Title shall be interpreted in such a way as to limit the exercise of copyright by its owners.

Article L211-2

In addition to any person having a justified interest, the Minister responsible for culture shall be entitled to take legal action, particularly where there is no known successor in title or where there is no heir or no spouse entitled to inherit.

Article L211-3

The beneficiaries of the rights afforded by this Title may not prohibit:

1°.private and gratuitous performances carried out exclusively within the family circle;

2°.reproductions strictly reserved for private use by the person who has made them and not intended for any collective use;

3°.subject to adequate elements of identification of the source:

— analyses and brief quotations justified by the critical, polemic, educational, scientific or informatory nature of the work in which they are incorporated;

— press reviews;

— dissemination, even in full, for the purposes of current affairs information, of speeches intended for the public in political, administrative, judicial or academic assemblies and in public meetings of a political nature and in official ceremonies;

4°.parody, pastiche and caricature, observing the rules of the genre.

Article L211-4

(Act No. 97-283 of 27 Mars 1997 art. 11 Official Journal of 28 Mars 1997 in force on 1 July 1995)

The term of the economic rights provided for in this Title shall be 50 years from January 1 of the calendar year following that of:

— the performance for performers;

— the first fixation of a sequence of sounds for phonogram producers, and of a sequence of images with or without sound for videogram producers;

— the first communication to the public of the programs referred to in Article L216-1 for audiovisual communication companies.

However, where a fixation of the performance, a phonogram or a videogram is included in a communication to the public during the term defined in the first three paragraphs, the economic rights of the performer or phonogram or videogram producer shall not expire until 50 years after January 1 of the calendar year following that of the said communication to the public.

Article L211-5

(inserted by Act No. 97-283 of 27 Mars 1997 art. 12 Official Journal of 28 Mars 1997 in force on 1 July 1995)

Subject to the provisions of international treaties to which France is party, the owners of neighboring rights who are not nationals of a Member State of the European Community shall be given the term of protection provided for in the country of which they are nationals, but that term may not exceed that provided for in Article L211-4.

CHAPTER II
Rights of Performers

Articles L212-1 to L212-10

Article L212-1

Save for ancillary performers, considered such by professional practice, performers shall be those persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works, variety, circus or puppet acts.

Article L212-2

A performer shall have the right to respect for his name, his capacity and his performance.

This inalienable and imprescriptible right shall attach to his person.

It may be transmitted to his heirs in order to protect his performance and his memory after his death.

Article L212-3

The performer’s written authorization shall be required for fixation of his performance, its reproduction and communication to the public as also for any separate use of the sounds or images of his performance where both the sounds and images have been fixed.

Such authorization and the remuneration resulting therefrom shall be governed by Articles L762-1 and L762-2 of the Labor Code, subject to Article L212-6 of this Code.

Article L212-4

The signature of a contract between the performer and a producer for the making of an audiovisual work shall imply the authorization to fix, reproduce and communicate to the public the performance of the performer.

Such contract shall lay down separate remuneration for each mode of exploitation of the work.

Article L212-5

Where neither a contract nor a collective agreement mention the remuneration for one or more modes of exploitation, the amount of such remuneration shall be determined by reference to the schedules established under specific agreements concluded, in each sector of activity, between the employees’ and employers’ organizations representing the profession.

Article L212-6

Article L762-2 of the Labor Code shall only apply to that part of the remuneration paid in accordance with the contract that exceeds the bases laid down in the collective agreement or specific agreement.

Article L212-7

Contracts concluded prior to January 1, 1986, between a performer and a producer of audiovisual works or their assignees shall be subject to the preceding provisions in respect of those modes of exploitation which they excluded. The corresponding remuneration shall not constitute a salary. This right of remuneration shall lapse at the death of the performer.

Article L212-8

The provisions of the agreements referred to in the preceding Articles may be made compulsory within each sector of activity for all the parties concerned by order of the responsible Minister.

Article L212-9

Failing agreement concluded in accordance with Articles L212-4 to L212-7, either prior to January 4, 1986, or at the date of expiry of the preceding agreement, the types and bases of remuneration for the performers shall be determined, for each sector of activity, by a committee chaired by a magistrate of the judiciary designated by the First President of the Cour de Cassation and composed, in addition, of one member of the Conseil d'Etat designated by the Vice President of the Conseil d'Etat, one qualified person designated by the Minister responsible for culture and an equal number of representatives of the employees’ organizations and representatives of the employers’ organizations.

The Committee shall take its decisions on a majority of the members present. In the event of equally divided voting, the Chairman shall have a casting vote. The Committee shall decide within three months of the expiry of the time limit laid down in the first paragraph of this Article.

Its decision shall have effect for a duration of three years, unless the parties concerned reach an agreement prior to that date.

Article L212-10

Performers may not prohibit the reproduction and public communication of their performance if it is accessory to an event that constitutes the main subject of a sequence within a work or an audiovisual document.

CHAPTER III

Rights of Phonogram Producers — Article L213-1

Article L213-1

The natural or legal person who takes the initiative and responsibility for the initial fixation of a sequence of sounds shall be deemed the phonogram producer.

The authorization of the phonogram producer shall be required prior to any reproduction, making available to the public by way of sale, exchange or rental, or communication to the public of his phonogram, other than those referred to in Article L214-1.

CHAPTER IV

Provisions Common to Performers and Phonogram Producers — Articles L214-1 to L214-5

Article L214-1

Where a phonogram has been published for commercial purposes, neither the performer nor the producer may oppose:

1°.its direct communication in a public place where it is not used in an entertainment;

2°.its broadcasting or the simultaneous and integral cable distribution of such broadcast.

Such uses of phonograms published for commercial purposes shall entitle the performers and producers to remuneration whatever the place of fixation of such phonograms.

Such remuneration shall be paid by the persons who use the phonograms published for commercial purposes under the conditions set out in items 1 and 2 of this Article.

It shall be based on the revenue from exploitation or, failing that, calculated as a lump sum in the cases laid down in Article L131-4.

It shall be shared half each between the performers and the phonogram producers.

Article L214-2

Subject to the international conventions, the right to remuneration afforded by Article L214-1 shall be shared between the performers and phonogram producers for phonograms fixed for the first time in France.

Article L214-3

The schedule of remuneration and the conditions of payment of the remuneration shall be laid down by specific agreements for each branch of activity between the organizations representing the performers, the phonogram producers and the persons using phonograms as laid down in items 1 and 2 of Article L214-1.

Such agreements shall set out the terms under which the persons using phonograms under such conditions shall satisfy their obligation to furnish to the royalty collection and distribution societies the precise program of the uses which they make and all the documentary elements that are indispensable for distributing the royalties.

The provisions of such agreements may be made compulsory for all the parties concerned by order of the Minister responsible for culture.

The term of such agreements shall be of between one and five years.

Article L214-4

(Order No. 2004-637 of 1 July 2004, Article 4 1, Official Journal of 2 July 2004)

Failing agreement prior to 30 June 1986, or if No. agreement has been reached on expiry of the preceding agreement, the schedule of remuneration and the conditions for paying the remuneration shall be decided by a Committee chaired by a State's representative and composed of an equal number of, on the one hand, members designated by the organizations representing the beneficiaries of the right to remuneration and, on the other hand, members designated by the organizations representing those persons who, in the branch of activity concerned, use the phonograms in accordance with the conditions laid down at (1°) and (2°) of Article L214-1.

The organizations entitled to designate members of the Committee and the number of persons each organization is entitled to designate shall be laid down by an order of the Minister responsible for culture.

The Committee shall take its decisions on a majority of the members present. In the event of equally divided voting, the Chairman shall have a casting vote.

The deliberations of the Committee shall be enforceable if, within a period of one month, its Chairman has not requested a second deliberation.

The decisions of the Committee shall be published in the Official Journal of the French Republic.

Article L214-5

The remuneration referred to in Article L214-1 shall be collected on behalf of the entitled persons and distributed among them by one or more bodies as referred to in Title II of Book III.

CHAPTER V

Rights of Videogram Producers — Article L215-1

Article L215-1

The natural or legal person who takes the initiative and the responsibility for the initial fixation of a sequence of images, whether accompanied by sounds or not, shall be deemed the videogram producer.

The authorization of the videogram producer shall be required prior to any reproduction, any making available to the public by means of sale, exchange or rental, or any communication to the public of his videogram.

The rights afforded to a videogram producer under the preceding paragraph, the authors' rights and the performers' rights of which he disposes in respect of the work fixed on the videogram may not be separately assigned.

CHAPTER VI

Rights of Audiovisual Communication Companies — Article L216-1

Article L216-1

The authorization of the audiovisual communication enterprise shall be required for any reproduction of its programs, any making them available to the public by sale, rental or exchange, any telediffusion and communication to the public in a place to which the latter has access in exchange for the payment of an entry fee.

Those bodies that exploit an audiovisual communication service within the meaning of Act No. 86-1067 of September 30, 1986, on the Freedom of Communication, whatever the arrangements applicable to that service, shall be designated audiovisual communication enterprises.

CHAPTER VI

Provisions Applicable to Satellite Broadcasting and Cable Retransmission — Articles L217-1 to L217-3

Article L217-1

(inserted by Act No. 97-283 of 27 Mars 1997 art. 3 Official Journal of 28 Mars 1997)

The rights neighboring on copyright that relate to the satellite broadcasting of a performer's performance, a phonogram, a videogram or the programs of an audiovisual communication enterprise shall be governed by the provisions of this Code in so far as the broadcasting takes place under the conditions specified in Articles L122-2-1 and L122-2-2.

In the cases provided for in Article L122-2-2, those rights may be exercised in relation to the persons referred to in subparagraphs (i) and (ii) of that Article.

Article L217-2

(inserted by Act No. 97-283 of 27 Mars 1997 art. 3 Official Journal of 28 Mars 1997)

I. Where it is provided for in this Code, the right to authorize the simultaneous, complete and unchanged cable retransmission, on the national territory, of a performer's performance, a phonogram or a videogram broadcast from a Member State of the European Community may only be exercised, as from the date of the entry into force of Act No. 97-283 of March 27, 1997, by a royalty collection and distribution. If the society in question is governed by Title II of Book III, it must be approved for the purpose by the Minister responsible for culture.

Where the owner of the rights has not entrusted their management to a royalty collection and distribution society, he shall designate that to which he entrusts the exercise thereof. He shall notify the designation in writing to the society, which may not refuse it.

The contract authorizing the broadcasting on the national territory of a performer's performance, a phonogram or a videogram shall mention the society, if any, responsible for exercising the right to authorize the simultaneous, complete and unchanged cable retransmission thereof in the Member States of the European Community.

The approval provided for in the first paragraph shall be granted in consideration of the criteria listed in Article L132-20-1.

A Conseil d'Etat decree shall lay down the conditions for the grant and revocation of approval. It shall also, in the case provided for in the second paragraph, lay down the procedure for the designation of the society responsible for the management of the right of retransmission.

II. Notwithstanding paragraph I, the owner of the rights may license those rights to an audiovisual communication enterprise.

The provisions of paragraph I shall not apply to rights licensed to an audiovisual communication enterprise.

Article L217-3

(inserted by Act No. 97-283 of 27 Mars 1997 art. 3 Official Journal of 28 Mars 1997)

Mediators shall be appointed, without prejudice to the right of the parties to go to court, in order to promote the settlement of disputes concerning the grant of authorization, where required, for the simultaneous, complete and unchanged cable retransmission of subject matter protected by the rights laid down in this Title.

In the absence of an amicable settlement, the mediator may propose to the parties the solution which seems appropriate to him, which the parties shall be deemed to have accepted if they have not expressed their opposition in writing within a period of three months.

A Conseil d'Etat decree shall specify the conditions for the application of this Article and lay down the procedure for the designation of mediators.

BOOK III

General Provisions relative to copyrights, to neighbouring rights and to the rights of database producers — **Articles L311-1 to L343-4**

TITLE I

Remuneration for Private Copying — Articles L311-1 to L311-8

SOLE CHAPTER

Articles L311-1 to L311-8

Article L311-1

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)
(Act No. 2001-624 of 17 July 2001 art. 15 I Official Journal of 18 July 2001)

The authors and performers of works fixed on phonograms or videograms and the producers of such phonograms or videograms shall be entitled to remuneration for the reproduction of those works made in accordance with item 2 of Article L122-5 and item 2 of Article L211-3.

The authors and publishers of works fixed on any other medium are also entitled to remuneration for the reproduction of those works made in accordance with item 2 of Article L122-5 and item 2 of Article L211-3, on a digital recording medium.

Article L311-2

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)
(Act No. 2001-624 of 17 July 2001 art. 15 II Official Journal of 18 July 2001)

Subject to the international conventions, the right to remuneration referred to in Articles L214-1 and in the first paragraph of article L311-1, shall be shared between the authors, performers, phonogram or videogram producers in respect of phonograms and videograms fixed for the first time in France.

Article L311-3

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The remuneration for private copying shall be assessed, under the conditions defined below, as a lump sum as laid down in the second paragraph of Article L131-4.

Article L311-4

(Act No. 92-677 of 17 July 1992 art. 119 Official Journal of 19 July 1992 in force on 1 January 1993)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)
(Act No. 2001-624 of 17 July 2001 art. 15 III Official Journal of 18 July 2001)

The remuneration provided for in Article L.311-3 shall be paid by the manufacturer, the importer or the person making an intra-Community acquisition, within the meaning of paragraph 3 of point I of Article 256 bis of the Code général des impôts, of recording mediums that may be used for reproduction of works for private use, at the time these mediums enter into circulation in France.

The amount of the remuneration shall depend on the type of medium and the recording time it provides.

Article L311-5

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The types of medium, the rates of remuneration and the conditions of payment of such remuneration shall be determined by a Committee chaired by a representative of the State and composed, in addition, in half of persons designated by organizations representing the beneficiaries of the right of remuneration, in quarter of persons designated by the organizations representing the manufacturers or importers of the mediums referred to in the first paragraph of the preceding Article and in quarter of persons designated by the organizations representing the consumers.

The organizations entitled to designate members of the Committee and the number of persons that each organization shall be entitled to designate shall be determined by an order of the Minister responsible for culture.

The Committee shall take its decisions on a majority of the members present. In the event of equally divided voting, the Chairman shall have a casting vote.

The decisions of the Committee shall be enforceable if, within one month, its Chairman has not requested a second decision.

The decisions of the Committee shall be published in the Official Journal of the French Republic.

Article L311-6

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The remuneration referred to in Article L311-1 shall be collected on behalf of the entitled persons by one or more bodies as referred to in Title II of this Book.

It shall be distributed between the entitled persons by the bodies referred to in the preceding paragraph as a function of the private reproductions of which each work has been the subject.

Article L311-7

(Act No. 95-4 of 3 January 1995 art. 2 Official Journal of 4 January 1995)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)
(Act No. 2001-624 of 17 July 2001 art. 15 IV Official Journal of 18 July 2001)

The remuneration for private copying of phonograms shall belong in half to the authors within the meaning of this Code, in quarter to the performers and in quarter to the producers.

The remuneration for private copying of videograms shall belong in equal parts to the authors within the meaning of this Code, the performers and the producers.

The remuneration for private copying of the works referred to in Article L311-1 shall belong in equal parts to the authors and the publishers.

Article L311-8

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)
(Act No. 2001-624 of 17 July 2001 art. 15 V Official Journal of 18 July 2001)

The remuneration for private copying shall be refunded when the recording medium is acquired for their own use or production by:

1°.audiovisual communication enterprises;

2°.phonogram or videogram producers and persons who carry out the reproduction of phonograms or videograms on behalf of the producers;

2° bis. The publishers of works published on digital mediums;

3°.legal persons or bodies, of which the list shall be established by the Minister responsible for culture, that use recording mediums for the purpose of assisting persons with sight or hearing disability.

TITLE II

Royalty Collection and Distribution Societies — Articles L321-1 to L321-13

SOLE CHAPTER

Articles L321-1 to L321-13

Article L321-1

(Act No. 97-283 of 27 Mars 1997 art. 4 I Official Journal of 28 Mars 1997)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The societies for the collection and distribution of authors' royalties and the royalties of performers and phonogram and videogram producers shall be established in the form of civil law companies.

The members must be authors, performers, phonogram or videogram producers, publishers or their successors in title. Such duly established civil law societies shall be entitled to take legal action to defend the rights for which they are responsible under their statutes.

Actions seeking the payment of the royalties charged by such civil law companies shall be statute-barred after ten years from the date on which they were charged, that period being suspended until the date of their allocation.

Article L321-2

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Contracts concluded by the civil law societies of authors or of owners of neighboring rights, in implementation of their purpose, with the users of all or part of their repertoire shall constitute civil law instruments.

Article L321-3

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The draft statutes and general regulations of the royalty collection and distribution societies shall be addressed to the Minister responsible for culture.

Within one month of receipt, the Minister may apply to the first instance court in the event of substantial and earnest reasons opposing the incorporation of one of these societies.

The court shall assess the professional qualifications of the founders of such society, the human and material means that they intend to use to collect royalties and to exploit their repertoire.

Article L321-4

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The royalty collection and distribution societies shall be required to appoint at least one auditor and one alternate from the list referred to in Article 219 of Act No. 66-537 of July 24, 1966, on Commercial Companies, who shall carry out their duties in compliance with the provisions laid down in the above-mentioned Law, subject to the rules specific to them. Article 457 of the above-mentioned Act No. 66-537 of July 24, 1966, shall be of application.

Article 29 of Act No. 84-148 of March 1, 1984, on the Prevention and Amicable Settlement of Difficulties in Enterprises shall be of application.

Article L321-5

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)
(Act No. 2000-719 of 1 August 2000 art. 12 Official Journal of 2 August 2000)

The right to communication provided for in Article 1855 of the Civil Code shall apply to royalty collection and distribution societies, but without a member being able to obtain communication of the amount of royalties distributed on an individual basis to any other rightholder than himself. A decree by the Conseil d'Etat shall determine the conditions of exercise of this right.

Article L321-6

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Any group of members representing at least one-tenth of the membership may take legal action for the designation of one or more experts to be entrusted with submitting a report on one or more administrative operations.

The public prosecutor and the works council shall be entitled to act in the same way.

The report shall be addressed to the requester, to the public prosecutor, to the works council, to the auditors and to the administrative council. The report shall be annexed to the report drawn up by the auditors for the purposes of the first general meeting; it shall be given the same publicity.

Article L321-7

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The royalty collection and distribution societies shall hold available for potential users the complete repertoire of the French and foreign authors and composers they represent.

Article L321-8

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The statutes of the royalty collection and distribution societies shall lay down the conditions under which associations of general interest shall enjoy, in respect of events for which no entrance fee is charged, a reduction on the amount of authors' royalties and of the royalties of performers and phonogram producers which they are required to pay.

Article L321-9

(Act No. 97-283 of 27 Mars 1997 art. 4 II Official Journal of 28 Mars 1997)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)
(Act No. 2000-719 of 1 August 2000 art. 11 Official Journal of 2 August 2000)

These societies shall use, for action to assist creation and promote live entertainment and for training schemes for performers :

1°. 25% of amounts obtained from the remuneration for private copying;

2°. All of the amounts collected in application of Articles L. 122-10, L. 132-20-1, L. 214-1, L. 217-2 and L. 311-1 that have not been allocated either in application of the international conventions to which France is a party, or because their recipients could not be identified or found prior by or before the expiry of the period provided for in the last paragraph of Article L. 321-1.

They may use for the said action all or part of the amounts referred to under item 2 as from the end of the fifth year following the date of their intended allocation, without prejudice to claims for payment of non-statute-barred royalties. The distribution of the corresponding amounts, which shall not be to the benefit of just a single body, shall be subject to a vote at the general meeting of the society, deciding on a two-thirds majority. Failing such majority, a new general meeting, convened specifically for that purpose, shall take a decision on a simple majority.

The amount and use of these sums of money shall be the subject of a yearly report by the collecting societies to the Minister responsible for culture. The auditor shall verify the information contained in that report for honesty and consistency with the accounting documents of the society. He shall draw up a special report to that end.

Article L321-10

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The societies that collect and distribute the royalties of phonogram and videogram producers and performers shall have the faculty, within the limits of the instructions given to them by all or part of the members, or by foreign bodies having the same purpose, to collectively exercise the rights afforded by Articles L213-1 and L215-1 by concluding general contracts of joint interest with the users of phonograms or videograms for the purpose of improving the dissemination of the latter or of promoting technical or economic progress.

Article L321-11

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Notwithstanding the general provisions applicable to civil law companies, the request for dissolution of a royalty collection and distribution society may be submitted to the court by the Minister responsible for culture.

In the event of infringement of the law, the court may order a society to cease exercising its collection activities in one sector of activity or for one mode of exploitation.

Article L321-12

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The royalty collection and distribution society shall communicate its annual statement of accounts to the Minister responsible for culture and shall bring to his notice, two months at least before examination by the general meeting, any draft amendment to the statutes or rules for the collection and distribution of royalties.

It shall address to the Minister responsible for culture, at the latter's request, any document relating to the collection and distribution of royalties, or copy of agreements concluded with third parties.

The Minister responsible for culture or his representative may obtain, from documents or on the spot, the

information referred to in this Article.

Article L321-13
(inserted by Act No. 2000-719 of 1 August 2000 art. 12 Official Journal of 2 August 2000)

I. – A standing committee shall be created to oversee the royalty collection and distribution societies composed of five members appointed by decree for a term of five years.

- a conseiller maître to the Cour des Comptes, chairman, designated by the premier président of the Cour des Comptes;
- a conseiller d'Etat, designated by the vice-président of the Conseil d'Etat;
- a conseiller to the Cour de Cassation, designated by the premier président of the Cour de Cassation;
- a member of the Inspection générale des finances, designated by the Minister responsible for finance;
- a member of the Inspection générale de l'administration des affaires culturelles, designated by the Minister responsible for culture;

The committee may be assisted by rapporteurs designated from amongst the members of the Conseil d'Etat and the body of counsellors of administrative courts and administrative courts of appeal, the judges of the Cour de Cassation and of the courts and tribunals, the judges of the Cour des Comptes and of the Chambres régionales des comptes, the members of the Inspection générale des finances and the members of the body of administrateurs civils. It may also benefit from civil servants made available to it and seek the assistance of experts designated by its chairman.

II. – The committee audits the accounts and the management of the royalty collection and distribution societies as well as those of their subsidiaries and any organisations controlled by them.

To this end, the directors of these societies, subsidiaries and organisations are under the duty to lend it their assistance, communicate any documents to it and answer any request for information required for the performance of its mission. For operations involving information technology, the right of communication supposes access to software and data, as well as the right to request their transcription by any suitable processing method in the documents directly usable for auditing purposes.

The committee may request the auditor to provide it with information on the collecting societies audited by him. In this case the auditor will be released from his duty of professional secrecy as regards the committee members.

It may carry out its audit of the societies or organisations mentioned in the first sentence of this paragraph [item II] based on records or on the spot.

III. – The supervising committee of royalty collection and distribution societies shall present an annual report to Parliament, to Government and to the general assemblies of members of the royalty collection and distribution societies.

IV. – Failure by any director of a society or of an organisation subject to the control of the supervising committee of royalty collection and distribution societies to satisfy information requests made by the committee, the hindrance in any way of the committee in the performance of its mission or the intentional communication to it of inaccurate information shall be punishable by a prison term of one year and a fine of FRF 100,000.

V. – The committee shall be headquartered in the premises of the Cour des Comptes, which shall ensure its secretariat.

VI. - A Conseil d'Etat decree shall determine the organisation and the operation of the committee, as well the procedures applicable before it.

TITLE III Procedure and Sanctions	Articles L331-1 to L335-10
CHAPTER I General Provisions	Articles L331-1 to L331-4

Article L331-1
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

All disputes relative to the application of the provisions of Part One of this Code which are within the jurisdiction of the civil courts shall be submitted to the competent courts, without prejudice to the right of the injured party to institute criminal proceedings under the general rules of law.

Regularly constituted bodies for professional defense shall be entitled to institute legal proceedings to defend the interests entrusted to them under their statutes.

Article L331-2
(Act No. 94-361 of 10 May 1994 art. 10 I Official Journal of 11 May 1994)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Apart from the reports drawn up by police investigators, the proof of the existence of any infringement of the provisions of Books I, II and III of this Code and of Article 52 of Act 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 may be provided by the statement of a sworn agent designated, as appropriate, by the National Center for Cinematography, by the professional bodies of authors or by the societies referred to in Title II of this Book. Such agents shall be approved by the Minister responsible for culture subject to the conditions laid down by a Conseil d'Etat decree.

Article L331-3

(Act No. 94-361 of 10 May 1994 art. 10 II Official Journal of 11 May 1994)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The National Center for Cinematography may exercise the rights acknowledged for the civil party with respect to the offense of infringement, within the meaning of Article L335-3, of an audiovisual work where the public proceedings have been initiated by the public prosecutor or by the injured party.

Article L331-4

(inserted by Act No. 98-536 of 1 July 1998 art. 6 Official Journal of 2 July 1998)

The rights mentioned in part one of this Code shall not prevail over any acts necessary for the accomplishment of a jurisdictional or administrative procedure provided by law, or undertaken for public safety reasons.

CHAPTER II
Infringement Seizure — Articles L332-1 to L332-4

Article L332-1

(Act No. 98-536 of 1 July 1998, Article 4, Official Journal of 2 July 1998)
(Act No. 2004-575 of 21 June 2004, Article 81, Official Journal of 22 June 2004)

Police commissioners and, in those places where there are No. police commissioners, the courts shall be required, at the request of an author of a work protected under Book I or entitled beneficiaries or assigns, to seize copies constituting an unlawful reproduction of the work.

If such seizure delays or suspends public performances which are in progress or which have already been advertised, a special authorization must be obtained from the president of the Tribunal de grande instance (High Court), by an order issued upon petition. The president of the Tribunal de grande instance (High Court) may also order, in the same form:

1°.the suspension of any manufacturing in progress for the unlawful reproduction of a work;

2°.the seizure, whatever the day or time, of the copies constituting an unlawful reproduction of a work, whether already manufactured or in the process of manufacturing, of the receipts obtained and of copies unlawfully used;

3°.the seizure of receipts from any reproduction, performance or dissemination, by any means whatsoever, of a work of the mind, carried out in violation of the copyright (author's rights).

4°. the suspension, by any means, of the streaming of on-line public communication services affecting copyright, including by ordering to cease to store the streaming or, failing that, to cease allowing to have access to it. In this case, the time limit provided for under Article L332-2 shall be reduced to fifteen days.

The president of the Tribunal de grande instance (High Court) may, in the same manner, order the measures set out at (1°) to (4°) at the request of the holder of performing rights.

In the orders referred to above, the president of the Tribunal de grande instance (High Court) may order the distrainer to provide first adequate guaranty.

Article L332-2

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Within 30 days of the report of seizure referred to in the first paragraph of Article L332-1 or of the date of the order referred to in that same Article, the distrainee or the garnishee may request the president of the first instance court to order the lifting of the seizure or to limit its effect or again to authorize resumption of manufacture or of the public performances, under the authority of an administrator appointed as receiver, to hold the proceeds from such manufacture or performance on behalf of the person to whom the work belongs.

The president of the first instance court, acting in chambers, may order, if he allows the request of the distrainee or garnishee, the petitioner to deposit a sum as a guarantee for any damages to which the author might be entitled.

Article L332-3

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

If the distrainer fails to submit the matter to the competent court within 30 days of seizure, the lifting of the seizure may be ordered by the president of the first instance court, acting in chambers.

Article L332-4

(Act No. 98-536 of 1 July 1998 art. 4 and art. 7 Official Journal of 2 July 1998)

In respect of software and databases, infringement seizures shall be carried out under an order issued, upon application, by the président of the court of first instance. The président shall authorise, if required, an actual seizure.

The officiating bailiff or the police commissioner may be assisted by an expert designated by the petitioner.

Failing a writ of summons within 15 days of the seizure, the infringement seizure shall be invalid.

In addition, the police commissioners shall be required, at the request of any holder of rights over software or a database, to carry out a descriptive seizure of the infringing software or database, which may take the physical form of a copy.

CHAPTER III
Seizure Order — Articles L333-1 to L333-4

Article L333-1

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Where the proceeds of exploitation which are due to the author of a work of the mind have been the subject of a seizure order, the president of the first instance court may order payment to the author, as an allowance for maintenance, of a certain sum or of a specified proportion of the amounts seized.

Article L333-2

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Amounts due, on account of exploitation for gain or following assignment of literary or artistic property rights, to authors, composers or artists or to a surviving spouse against whom there exists no final decision of separation or under-age children in their capacity of successors in title, shall not be subject to seizure insofar as they constitute maintenance.

Article L333-3

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The proportion of such amounts not subject to seizure may not, in any event, be less than four-fifths in those cases where the annual amount is at most equal to the highest level of resources in accordance with Chapter V of Title IV of Book I of the Labor Code.

Article L333-4

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

The provisions under this Chapter shall not prevent seizure ordered under the provisions of the Civil Code relating to unpaid maintenance.

CHAPTER IV

Resale Royalty Right — Article L334-1

Article L334-1

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

In the event of infringement of Article L122-8, the acquirer and the law officials may be pronounced jointly liable for damages in favor of the beneficiaries of the resale royalty right.

CHAPTER V

Penal Provisions — Articles L335-1 to L335-10

Article L335-1

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

As soon as offenses under Article L335-4 of this Code have been established, the competent police officers may effect seizure of the unlawfully reproduced phonograms and videograms, of the copies and articles manufactured or imported unlawfully and of the equipment specially installed for the purpose of such acts.

Article L335-2

(Act No. 94-102 of 5 February 1994Article 1 Official, Journal of 8 February 1994)
(Act No. 98-536 of 1 July 1998, Article 4 Official Journal of 2 July 1998)
(Order No. 2004-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force1 January 2002)
(Act No. 2004-204 of 9 March 2004, Article 34 I, Official Journal of 10 March 2004)

Any edition of writings, musical compositions, drawings, paintings or other printed or engraved production made in whole or in part regardless of the laws and regulations governing the ownership of authors shall constitute an infringement. Any infringement shall constitute an offence.

Infringement in France of works published in France or abroad shall be liable to a three-year imprisonment and a fine of € 300.000.

The sale, exportation and importation of infringing works shall be subject to the same penalties.

Where offences provided for by this Article are committed by an organised criminal group, the penalties will be increased to five-year imprisonment and a fine of € 500.000.

Article L335-3

(Act No. 94-361 of 10 May 1994 art. 8 Official Journal of 11 May 1994)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Any reproduction, performance or dissemination of a work of the mind, by any means whatsoever, in violation of the author's rights as defined and regulated by law shall also constitute an infringement.

The violation of any of the rights of an author of software as defined in Article L122-6 shall also constitute an infringement.

Article L335-4

(Act No. 94-102 of 5 February 1994, Article 2, Official Journal of 8 February 1994)
(Act No. 98-536 of 1 July 1998, Article 2, Official Journal of 2 July 1998)
(Order No. 2004-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force1 January 2002
(Act No. 2003-571 of 18 June 2003, Article 1, Official Journal of 19 June 2003, in force 1 August 2003))
(Act No. 2004-204 of 9 March 2004, Article 34 II, Official Journal of 10 March 2004)

Any fixation, reproduction, communication or making available to the public, on payment or free of charge, or any telediffusion of a performance, a phonogram, a videogram or a program made without authorization of the performer, that of the phonogram or videogram producer or that of the audiovisual communication enterprise, where such authorization is required, shall be liable to a three-year imprisonment and a fine of € 300.000.

Any importation or exportation of phonograms or videograms made without the authorization of the producer or the performer, where such authorisation is required, shall be subject to the same penalties.

Failure to pay the remuneration due to the author, the performer or the phonogram or videogram producer as a private copying or a public communication or of the telediffusion of phonograms shall be subject to the fine laid down in the first paragraph above.

Failure to pay the previous deductions provided for in the third paragraph of Article L.133-3 shall be subject to the fine provided for in the first paragraph.

Where the offences provided for under this Article are committed by an organised criminal group, the penalties will be increased to five-year imprisonment and a fine of € 500.000.

Article L335-5

(Act No. 94-102 of 5 February 1994 Art. 3 Official Journal of 8 February 1994)
(Act No. 98-536 of 1 July 1998 art. 3 Official Journal of 2 July 1998)

In the event of conviction for one of the offenses defined in the preceding three Articles, 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 L122-14-4 and L122-14-5 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 FRF 25,000.

Article L335-6

(Act No.92-1336 of 16 December 1992Article 331 Official Journal of 23 December 1992 in force on 1 March 1994)
(Act No. 98-536 of 1 July 1998, Article 4 Official Journal of 2 July 1998
(Act No. 98-536 of 1 July 1998, Article 4, Official Journal of 2 July 1998)
(Act No. 2004-575 of 21 June 2004, Article 8 II, Official Journal of 22 June 2004)

In the cases referred to in the four preceding Articles, the court may order the confiscation of all or part of the receipts obtained by reason of the infringement and the confiscation of all phonograms, videograms, articles and copies that are infringing or have been unlawfully reproduced and of the equipment specifically installed for the purpose of committing the offence.

It may also order, at the cost of the convicted person, the posting of the judgment in compliance with the conditions and subject to the penalties laid down in Article 131-35 of the Penal Code, and its publication in full or as extracts in such newspapers as it may designate, without however the costs of such publication exceeding the maximum amount of the fine incurred.

Article L335-7

(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

In the cases referred to in the five preceding Articles, the equipment, the infringing articles and the receipts that have been confiscated shall be handed to the victim or his successors in title to compensate them for the prejudice they have suffered; the remaining indemnity, or the entire indemnity if there is no confiscation of equipment, infringing articles or of receipts, shall be settled through ordinary channels.

Article L335-8

(Act No.92-1336 of 16 December 1992 art. 203 Official Journal of 23 December 1992 in force on 1 March 1994)
(Act No.94-102 of 5 February 1994 Art. 4 Official Journal of 8 February 1994)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

Legal persons may be declared penally liable, in accordance with Article 121-2 of the Penal Code, for the infringements defined in Articles L335-2 to L335-4 of this Code.

Legal persons shall be liable to the following penalties:

1°.a fine determined in accordance with Article 131-38;

2°.the penalties referred to in Article 131-39.

The prohibition referred to in item 2 of Article 131-39 concerns the activity in the exercise of which or on the occasion of the exercise of which the infringement was committed.

Article L335-9

(Act No.94-102 of 5 February 1994 Art. 5 Official Journal of 8 February 1994)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

In the event of repetition of the offenses defined in Articles L335-2 to L335-4, or if the offender is or has been contractually bound to the aggrieved party, the penalties involved shall be doubled.

Article L335-10

(Act No.94-102 of 5 February 1994 Art. 5 Official Journal of 8 February 1994)
(Act No. 98-536 of 1 July 1998 art. 4 Official Journal of 2 July 1998)

(Act n° 2003-706 of 1 August 2003, Art. 84, Official Journal of 2 August 2003)

The customs administration may, at the written request of an owner of copyright or a neighbouring right, which request shall be accompanied by proof of his right as provided by Conseil d'Etat decree, withhold in the course of its inspections any goods alleged by him to be infringing that right.

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 that they have taken.

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 under Article L332-1 have been taken;

— or that he has instituted proceedings before the civil court or the court of misdemeanours and has provided the necessary 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 officials of the customs administration are bound.

The withholding mentioned in the first paragraph shall not concern the goods that have European status, which are legally produced or released for free circulation in the member state of the European Community and intended, having entered by a Customs territory as defined in the first article of Customs Code, to be released in the market of another member state of the European Community, to be legally commercialised.

TITLE IV
Rights of Database Producers — Articles L341-1 to L343-4

CHAPTER I
Field of application — Articles L341-1 to L341-2

Article L341-1
(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

The producer of a database, understood as the person who takes the initiative and the risk of the corresponding investments, benefits from protection of the contents of the database when its constitution, verification or presentation shows that there has been a substantial financial, technical or human investment.

This protection is independent and applies without prejudice to the protection of copyright or any other right over the database or one of its component elements.

Article L341-2
(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

Shall be eligible for the benefit of this Title:

1°. Producers of databases, nationals of a Member State of the European Community or of a State party to the Agreement on the European Economic Area, or who have their principal residence in such State;

2°. Companies and enterprises formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community or a State party to the Agreement on the European Economic Area; however, where such a company or enterprise has only its statutory head office in the territory of such State, its operations must be genuinely linked on an ongoing basis with either the economy of this Member State or State within the European Economic Area.

Producers of databases who do not satisfy the conditions indicated above shall be eligible for protection under this Title where a special agreement has between concluded between the State of which they are a national and the Council of the European Community.

CHAPTER II
Scope of protection — Articles L342-1 to L342-5

Article L342-1
(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

The producer of a database has the right to prohibit:

1°. The extraction, by the permanent or temporary transfer of all or a substantial part, qualitatively or quantitatively, of the contents of a database to another medium, by any means or in any form;

2°. The reuse, by making available to the public all or a substantial part, qualitatively or quantitatively, of the contents of a database, in any form whatsoever.

These rights can be transferred, assigned or licensed.

Public lending is not an act of extraction or reuse.

Article L342-2
(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

The producer may also prohibit the repeated and systematic extraction or reuse of insubstantial parts, qualitatively or quantitatively, of the contents of the database when such operations manifestly go beyond the conditions of normal use of the database.

Article L342-3

(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

When a database is made available to the public by the rightholder, he may not prohibit:

1°. The extraction or the reuse of an insubstantial part, evaluated qualitatively or quantitatively, of the contents of the database, by a person having lawful access;

2°. The extraction for private purposes of a qualitatively or quantitatively substantial part of the contents of a non-electronic database, subject to compliance with the copyrights or neighbouring rights over the works or materials incorporated into the database.

Any provision that is contrary to item 1° above shall be null and void.

Article L342-4

(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

The first sale in the territory of a Member State of the European Community or of a State party to the Agreement on the European Economic Area of a physical copy of the database by the rightholder or with his consent shall exhaust the right to control resale of that physical copy within all Member States;

However, online transmission of a database shall not exhaust the right of the producer to control resale of a physical copy or this database or a part thereof in any of the Member States.

Article L342-5

(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

The rights provided for in Article L. 342-1 shall become effective from the date of completion of the production of the database. They shall expire fifteen years from the 1st of January of the calendar year following that of completion.

When a database has been made available to the public before the expiry of the period set forth in the paragraph above, the rights shall expire fifteen years from the 1st of January of the calendar year following the date when the database was first made available to the public.

However, in case a protected database is the subject of a new substantial investment, its protection shall expire fifteen years from the 1st of January of the calendar year following that in which this new investment was made.

CHAPTER III

Sanctions — Articles L343-1 to L343-4

Article L343-1

(Act No. 98-536 of 1 July 1998, Article 5 Official Journal of 2 July 1998 in force on 1 January 1998)
(Order No. 2004-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force1 January 2002
(Act No. 2004-204 of 9 March 2004, Article 34 III, Official Journal of 10 March 2004)

The infringement of the rights of the producer of a database, as defined in Article L. 342-1, shall be punishable by a three-year imprisonment and a fine of € 300.000.

Where the offence is committed by an organised criminal group, the penalties will be increased to a five-year imprisonment and a fine of € 500.000.

Article L343-2

(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

Legal persons may be declared penally liable, in accordance with Article 121-2 of the Penal Code for the infringements defined in Article L. 343-1. Legal persons may incur the following penalties:

1°. A fine determined in accordance with Article 131-38 of the Penal Code;

2°. The penalties provided for in Article 131-39 of same; the prohibition provided for in item 2 of this Article concerns the activity in the exercise of which or on the occasion of the exercise of which the infringement was committed.

Article L343-3

(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

In the event of the repetition of the offences defined in Article L. 343-1, or if the offender is or has been contractually bound to the aggrieved party, the penalties involved shall be doubled.

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, chamber of commerce and industry and professional chambers and to joint labour dispute conciliation boards.

Article L343-4

(inserted by Act No. 98-536 of 1 July 1998 art. 5 Official Journal of 2 July 1998 in force on 1 January 1998)

Apart from the reports drawn up by police investigators, the proof of the existence of the infringements defined in this Chapter may be provided by the statement of a sworn agent designated by professional organisations of producers. These agents shall be approved by the Minister responsible for culture under the same conditions as those provided for agents under Article L. 331-2.

PART II

BOOK IV
Administrative and Professional Organization **Articles L411-1 to L423-2**

TITLE I
Institutions Articles L411-1 to L412-1

CHAPTER I
National Institute of Industrial Property Articles L411-1 to L411-5

Article L411-1

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.

Article L411-2

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 a Conseil d'Etat decree.

Article L411-3

The administrative and financial organization of the Institute shall be laid down by a Conseil d'Etat decree.

Article L411-4

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.

Article L411-5

The decisions to reject referred to in the first paragraph of Article L411-4 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 Article L412-1

Article L412-1

(Order No. 2004-637 of 1 July 2004, Article 4 2°, Official Journal of 2 July 2004)
(Act No. 2004-1343 of 9 October 2004, Article 78 XXXII, Official Journal of 10 December 2004)

The Committee for the Protection of New Plant Varieties, placed under the authority of the Minister of Agriculture, shall be chaired by a State's representative and composed of a number of persons, from both the public and the private sectors, qualified by reason of their theoretical or practical knowledge of genetics, botany and agronomy. This Committee shall issue the certificate referred to in Article L623-4.

N.B. Act 2004-1343 2004-10-09: Article 78 XXXII 1° has introduced an amendment on the form of Article L412-1.

TITLE II
Qualification with Respect to Industrial Property — Articles L421-1 to L423-2

CHAPTER I
Entry in the List of Persons Qualified with Respect to Industrial Property — Articles L421-1 to L421-2

Article L421-1

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 an 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 L421-2.

Article L421-2

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 — Articles L422-1 to L422-13

Article L422-1

(Act No. 92-1336 of 16 december 1992 art. 334 Official Journal of 23 december 1992 in force on 1 March 1994)

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 L421-1 and he exercises the profession in compliance with Article L422-6.

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

Article L422-2

Persons entitled to the title of patent attorney on the date of entry into force of Act No. 90-1052 of November 26, 1990, relating to industrial property shall be automatically entered in the list provided for in Article L422-1.

Article L422-3

Any company exercising the activities referred to in Article L422-1 on the date of entry into force of the above-mentioned Act 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 L422-7 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 Act No. 90-1052 of November 26, 1990.

Article L422-4

(Order No. 2001-670 of 25 July 2001 art. 4 I Official Journal of 28 July 2001)

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 specialisation, 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, of a company or public organisation with which the applicant is contractually bound, or the services of a specialised professional organisation, or those of a professional established within the territory of a Member State of the European Community or of a State party to the Agreement on the European Economic Area acting on an occasional basis and

authorised to represent persons before the central industrial property office in this State.

Article L422-5

Any person carrying out the activities referred to in the first paragraph of Article L422-1 on November 26, 1990, may, notwithstanding the provisions of Article L422-4, 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 Act 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.

Article L422-6

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

Article L422-7

(Order No. 2004-130 of 11Febraury 2004, Article 66, Official Journal of 12 February 2004

Where the profession of an industrial property attorney is carried out through a company, it may take the form of a private professional company or a company constituted in some other form. In the latter case, it shall be required that:

a) the chairman of the Board of Directors, the director generals, the members of the board, the sole director general and the manager or managers, as also the majority of members of the Board of Directors or the supervisory board, be qualified as industrial property attorney;

b) the industrial property attorney 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 Board of Directors, the supervisory board or of the manager or managers.

The provisions of the first two paragraphs of Article L.225-21, Articles L.225-44 and L.225-85 of the Commercial Code shall apply neither to members of the Board of Directors nor to members of the supervisory board of industrial property attorney companies.

Where the profession of industrial property attorney is carried out through a company, the latter must to be registered, in addition to the registration of the industrial property attorney as natural persons, in a special section of the list provided for in Article L422-1.

Article L422-8

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.

Article L422-9

There is hereby instituted a National Society of Industrial Property Attorneys, 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.

Article L422-10

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.

Article L422-11

(inserted by Act No. 2004-130 of 11 February 2004, Article 67, Official Journal of February 12 2004)

In any matter and for all the services mentioned under Article L. 422-1, the industrial property attorney shall observe professional secrecy. Consultations addressed or intended for customers, professional correspondences exchanged with customers, fellow-members or attorneys-at-law, notes of meetings and, more generally, all documents of the file shall be subject to professional secrecy.

Article L422-12

(inserted by Act No. 2004-130 of 11 February 2004, Article 67, Official Journal of 12 February 2004)

The profession of industrial property attorney is incompatible:

1º with any commercial activity, whether it is carried out by oneself or through someone else;

2º with one's capacity as partner in a general partnership, active partner in a limited partnership or in a limited partnership with a share capital, manager of a private limited company, chairman of the board, member of the directory, Director Generator or assistant Director General of a public limited company, as chairman or manager of a simplified joint stock company, as manager of a civil law partnership, unless the object of these companies/partnerships is to carry out the profession of an industrial property attorney or the management of related professional interests or family interests;

3º with the membership in a supervisory board or a Board of Directors of a commercial company, when the industrial property attorney has been professional for less than seven years or he has not obtained beforehand an exemption under the conditions provided for under a Conseil d'Etat decree.

Article L422-13

(inserted by Act No. 2004-130 of 11 February 2004, Article 67 Official Journal of 12 February 2004)

The profession of industrial property attorney shall be incompatible with any other profession, subject to special laws or regulations.

It shall however be compatible with teaching, as well as with functions of an arbitrator, a mediator, a conciliator or a legal expert.

CHAPTER III
Miscellaneous Provisions — Articles L423-1 to L423-2

Article L423-1

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 Act 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.

Article L423-2

Decrees in Conseil d'Etat 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 L422-1;

c)The conditions for implementing Article L422-4;

d)The conditions for implementing Article L422-5;

e)The conditions under which the obligation referred to in item (b) of Article L422-7 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
Designs and Models — **Articles L511-1 to L521-7**

TITLE I
Protection conditions and procedures — Articles L511-1 to L514-2

CHAPTER I
Field of Application — Articles L511-1 to L511-11

SECTION I
Subject of Protection — Articles L511-1 to L511-8

Article L511-1

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The appearance of the whole or a part of the product, resulting from the features of, and in particular its lines, contours, colours, shape, texture or materials, is eligible for protection as a design or model. These features can be those of the product itself or its ornamentation.

Is deemed to be a product any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.

Article L511-2

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

A design or model shall only be protected if it is new and has individual character.

Article L511-3

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

A design or model shall be considered to be new if, on the date of the filing of the application for registration or on the date of priority claimed, no identical design or model has been disclosed. Designs or models shall be deemed to be identical if their features differ only in immaterial details.

Article L511-4

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

A design or model has individual character if the overall visual impression it produces on the informed observer differs from that produced by any design or model disclosed before the date of the filing of the application for registration or before the date of priority claimed.

In assessing individual character, the degree of freedom of the creator in developing the design or the model shall be taken into consideration.

Article L511-5

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The design or model of a part of a complex product is only considered to be new and to present an individual character to the extent that:

a) The component part, once it has been incorporated in the complex product, remains visible during normal use of the latter by the end user, excluding maintenance, servicing or repair work;

b) Those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

Is considered to be a complex product a product composed of multiple components which can be replaced.

Article L511-6

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

A design or model shall be deemed to have been disclosed if it has been made available to the public through publication, use, or by any other means. No disclosure has taken place if the design or the model could not reasonably have become known, according to the normal course of business in the sector concerned, by professionals operating in the European Community, before the date of filing of an application for registration or before the date of priority claimed.

The design or model shall not, however, be deemed to have been disclosed to the public due to the sole fact that it has been disclosed to a third party under an explicit or implicit condition of confidentiality.

If this disclosure takes place within the twelve months preceding the date of the filing of the application or the date of priority claimed, it shall not be taken into consideration:

a) If the design or the model has been disclosed by the creator, his successor-in-title, or by any third person as a result of information provided or action taken by the creator or his successor-in-title;

b) Or if the design or model has been disclosed as a result of unfair behaviour against the creator or his successor-in-title.

The twelve-month period referred to in this Article shall not apply to disclosure having occurred before the 1st of October 2001.

Article L511-7

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

Designs or models that are contrary to public policy or accepted principles of morality are not protected.

Article L511-8

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

Shall not be eligible for protection:

1°. The appearance of a product whose features are solely dictated by the technical function of the product;

2°. The appearance of a product whose exact form and dimension must necessarily be reproduced in order to allow it to be mechanically associated to another product by being placed against it, connected to it or being placed inside or outside of it in a manner allowing both of these products to perform its function.

However, a design or a model serving the purpose of allowing multiple assemblies or connections of mutually interchangeable products within a system whose design is modular shall be eligible for protection.

SECTION II

Benefit of the protection — Articles L511-9 to L511-11

Article L511-9

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The protection of the design or model conferred by the provisions of this Book is acquired by registration. It is granted to the creator or to his successor-in-title.

The applicant for registration is, failing proof to the contrary, considered to the beneficiary of this protection.

Article L511-10

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

When a design or a model has been deposited, 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 design or model may claim ownership by bringing legal proceedings before a court.

Claims in ownership are barred three years from the publication of the registration of the design or model or, in case of bad faith, upon the date of publication of the registration or of the acquisition of the design or model, following the expiry of the protection period.

Article L511-11

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

Subject to the provisions of the international treaties to which France is a party, a foreigner who has neither his place of business nor residence on the territory of a Member State of the European Community or of a State party to the Agreement on the European Economic Area shall benefit from the provisions of this Book, provided his country of origin affords reciprocal protection to French designs or models.

CHAPTER II

Registering a design or model — Articles L512-1 to L512-6

SECTION I

Application for filing — Articles L512-1 to L512-3

Article L512-1

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The application for registration shall be filed, on pain of invalidity, with the National Institute of Industrial Property when the place of residence or the registered office of the applicant is situated in Paris or outside France.

Where the place of residence or the registered office of the applicant is situated outside Paris but in France, the applicant may, at his choice, file the application for registration with the National Institute of Industrial Property or with the registry of the Commercial Court or, in the absence of a Commercial Court, with the registry of the court ruling in commercial matters.

When the application for registration is filed with the registry of a court, the latter shall transmit it to the National Institute of Industrial Property.

Article L512-2

(Act No. 94-102 of 5 February 1994 Art. 21 Official Journal of 8 February 1994)

(Order No. 2001-670 of 25 July 2001 art. 4 I Official Journal of 28 July 2001)

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:

a) That it is not presented under the prescribed conditions or in the prescribed form;

b) 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 a Conseil d'Etat decree. 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.

Article L512-3

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

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.

SECTION II

Nullity of the filing — Articles L512-4 to L512-6

Article L512-4

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The registration of a design or model shall be declared invalid by decision of the courts:

a) If not in compliance with the provisions of Articles L. 511-1 to L. 511-8;

b) If its holder was not able to benefit from the protection under Article L. 511-9;

c) If the design or model infringes the rights attached to an earlier design or model which has been disclosed to the public after the date of presentation of the application for registration or, if priority is claimed, after the date of priority, and which has been protected since an earlier date by the registration of a Community design or model, a French or international design or model designating France, or by an application for registration of such designs or models;

d) If it infringes the copyright of a third party;

e) If this design or model uses an earlier protected distinctive sign, without the authorisation of its holder.

The grounds for invalidity set forth in items b, c, d and e may only be invoked by the person vested with the right being asserted.

The public prosecutor may file invalidity proceedings ex officio against a design or model, regardless of the causes of invalidity.

Article L512-5

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

If the grounds for invalidity only partially affect the design or the model, the registration may be maintained in a modified form if, in that form, the design or model meets the requirements for protection and if its identity is retained.

Article L512-6

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The court decision declaring the design or the model to be partially or wholly invalid shall have an absolute effect. It shall be recorded in the national register referred to in Article L. 513-3.

CHAPTER III

Rights conferred by the filing — Articles L513-1 to L513-8

Article L513-1

(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

Registration takes effect, as from the date of the filing of the application, for a period of five years, which may be extended by periods of five years within a maximum limit of twenty-five years.

Designs or models deposited before the 1st of October 2001 shall remain protected, without any extension being possible, for a period of twenty-five years from their date of deposit. Designs or models whose protection has been extended, prior to 1 October 2001, for a new period of twenty-five years, shall remain protected until the expiry of this period.

Article L513-2

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

Without prejudice to rights resulting from the application of other legislative provisions, including inter alia, from Books I and III of this Code, the registration of a design or model confers upon its holder a property right that may be assigned or licensed by him.

Article L513-3

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

No act amending or transmitting the rights attached to a deposited design or model has effect with regard to third parties unless entered in the National Register for Designs and Models.

Article L513-4

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The making, offering, putting on the market, importing, exporting, using or possession for these purposes, of a product comprising the design or model, shall be prohibited, unless with the consent of the owner of the design or model.

Article L513-5

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The protection conferred by the registration of a design or model shall be extended to any design or model which does not produce on the informed observer a different overall visual impression.

Article L513-6

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The rights conferred by the registration of a design or model shall not be exercised concerning:

a) Acts done privately and for non-commercial purposes;

b) Acts done for experimental purposes;

c) Acts of reproduction for the purposes of making citations or teaching, if these acts mention the registration and the name of the rightholder, provided they are compatible with fair business practices and do not prejudice the normal exploitation of that design or model.

Article L513-7

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The rights conferred by the registration of a design or model shall not be exercised:

a) Concerning the equipment on ships and aircraft registered in another country when these temporarily enter French territory;

b) When the importation into France of spare parts and accessories for the repair of these ships or aircraft or during the repair.

Article L513-8

(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)

The rights conferred by the registration of a design or model shall not extend to acts covering a product comprising

this design or model, when this product has been put on the market in the European Community or in the European Economic Area by the owner of the design or model or with his consent.

CHAPTER IV
Miscellaneous Provisions — Articles L514-1 to L514-2

Article L514-1
(Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)
Decrees from the Conseil d'Etat set , when it is necessary, the conditions of application of the present book.

Article L514-2
(inserted by Order No. 2001-670 of 25 July 2001 art. 1 Official Journal of 28 July 2001)
Regulatory provisions specific to certain industries may lay down the measures necessary to allow industrialists to have their preference use of a design or model ascertained, including inter alia by the holding of private registers subject to the approval by the National Institute of Industrial Property.

TITLE II
Disputes — Articles L521-1 to L521-7

SOLE CHAPTER
Articles L521-1 to L521-7

Article L521-1
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.

Article L521-2
Events prior to filing shall not be actionable under this Book.
Events following filing, but prior to publication, shall only be actionable under Article L521-4, 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.

Article L521-3
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.

Article L521-3-1
(inserted by Act No. 94-102 of 5 February 1994 Art. 6 Official Journal of 8 February 1994)
Officers of the judicial police may, as soon as offenses under the first paragraph of Article L521-4 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.

Article L521-4
(Act No. 94-102 of 5 February 1994 Article 7, Official Journal of 8 February 1994)
(Order No. 2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)
(Act No. 2004-204 of 9 March 2004, Article 34 IV, Official Journal of 10 March 2004)
Any knowingly committed infringement of the rights guaranteed by this Book shall be liable to a three-year imprisonment and a fine of € 300.000. Where the offence is committed by an organised criminal group, the penalties shall be increased to five-year imprisonment and a fine of € 500.000.
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 offence.

Temporary closure may not be a cause of either termination or suspension of employment contracts, or of any pecuniary detriment to the employees concerned. Where permanent closure causes the dismissal of staff, it will give rise, over and above the compensation in lieu of notice and the dismissal compensation, to damages as provided in Articles L122-14-4 and L122-14-5 of the Labour Code for the breach of employment contracts. Failure to pay those compensations shall be liable to a six-month imprisonment and a fine of € 3.500.

Article L521-5

(Act No. 94-102 of 5 February 1994 Art. 8, art 17 Official Journal of 8 February 1994)

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 L521-4 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.

Article L521-6

(Act No. 94-102 of 5 February 1994 Art. 8 Official Journal of 8 February 1994)

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.

Article L521-7

(Act No. 94-102 of 5 February 1994 Art. 8 Official Journal of 8 February 1994)

(Act n° 2003-706 of 1 August 2003, Art. 84, official Journal of 2 August 2003)

The customs administration may, at the written request of the owner of a deposited design, with-hold 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;

— or that he has instituted proceedings before the civil court or the court of misdemeanours 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.

The withholding mentioned in the first paragraph shall not concern the goods that have European status, which are legally produced or released for free circulation in the member state of the European Community and intended, having entered by a Customs territory as defined in the first article of Customs Code, to be released in the market of another member state of the European Community, to be legally commercialised.

BOOK VI

Protection of Inventions and Technical Knowledge	**Articles L611-1 to L623-35**
TITLE I Invention Patents	Articles L611-1 to L615-22
CHAPTER I Field of Application	Articles L611-1 to L611-19
SECTION I General Provisions	Articles L611-1 to L611-5

Article L611-1

(Act No. 96-1106 of 18 December 1996 Art. 2 Official Journal of 19 December 1996)

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 L612-21.

Subject to the provisions of international treaties to which France is party, 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.

Article L611-2

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 L611-3, 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 17 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 L612-14, L612-15 and the first paragraph of Article L612-17. They shall likewise apply to supplementary protection certificates, except those contained in Articles L. 611-12, L612-1 to L612-10, L612-12 to L612-15, L612-17, L612-20, L613-1 and L613-25.

Article L611-3

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 speciality covered by a marketing authorization under Articles L601 or L617-1 of the Public Health Code, and as from its issue, obtain, under the conditions laid down by this Book and detailed by a Conseil d'Etat decree, a supplementary protection certificate for those parts of the patent that correspond to the authorization.

Article L611-4

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.

Article L611-5

Certificates of addition applied for prior to the entry into force of Act 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 II

Right to Title — Articles L611-6 to L611-9

Article L611-6

The right to the industrial property title referred to in Article L611-1 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.

Article L611-7

(Act No. 94-102 of 5 February 1994 Art. 22 Official Journal of 8 February 1994)

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 L615-21 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 a Conseil d'Etat decree, 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 L615-21 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 a Conseil d'Etat decree.

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 a Conseil d'Etat decree.

Article L611-8

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.

Article L611-9

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

SECTION III

Patentable Inventions — Articles L611-10 to L611-19

Article L611-10

(Act No. 2004-1338 of 8 December 2004, Article 1, Official Journal of 9 December 2004)

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 the first paragraph 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 (2) of this Article shall exclude patentability of the items referred to in these provisions only to the extent to which the patent application or the patent relates to such subject matter or activities as such.

4. Save as provided in Articles L611-17, L.611-18 and L.611-19, inventions will be patentable under the conditions provided for at (1) above if they concern a product consisting of in whole or in part biological material or a process by means of which a biological material is produced, processed or used.

Any material containing genetic information and capable of reproducing itself or being reproduced in a biological system shall be regarded as a biological material.

Article L611-11

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 L611-16, provided that its use for any method referred to in that Article is not comprised in the state of the art.

Article L611-12

(Act No. 96-1106 of 18 December 1996 Art. 3 Official Journal of 19 December 1996)

Where the first filing has been made in a State which is not a party to the Paris Union or to the World Trade Organization, 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.

Article L611-13

For the application of Article L611-11, 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.

Article L611-14

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 L611-11, such documents shall not be considered in deciding whether there has been an inventive step.

Article L611-15

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

Article L611-16

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 L611-10. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

Article L611-17

(Act No. 94-361 of 10 May 1994, Article 7, Official Journal of 11 May 1994
(Act No. 2004-800 of 6 August 2004, Article 17 a I, Official Journal of 7 August 2004)

Inventions shall be considered unpatentable where their commercial exploitation would be inconsistent to public policy or morality; however, such inconsistency may not emanate from a prohibition by law or regulation.

Article L611-18

(inserted by Act No. 2004-800 of 6 August 2004, Article 17a II, Official Journal of 7 August 2004)

The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions.

Only an invention constituting a technical application of a function of an element of the human body may be protected by a patent. This protection shall cover the element of the human body only to the extent necessary to the realization and the exploitation of this particular use. Such use must be disclosed in the patent application in a concrete and precise manner.

The following, in particular, shall be considered unpatentable:

a) processes for cloning of human beings;

b) processes for modifying the germ line genetic identity of human beings;

c) uses of human embryos for industrial or commercial purposes;

d) total or partial sequences of a gene as such.

Article L611-19

(Act No. 2004-800 of 6 August 2004, Article 17 a II, Official Journal of 7 August 2004)
(Act No. 2004-1338 of 8 December 2004, Article 2, Official Journal of 9 December 2004)

I - The following shall be unpatentable:

1º animal varieties;

2º plant varieties as defined in Article 5 of Regulation (EC) No. 873/2004 introducing new rules governing intellectual property ownership of Community plant variety rights;

3º essentially biological processes for the production of plants and animals. A process that consists entirely of natural phenomena such as crossing or selection shall be regarded as biological process.

4º processes for modifying the genetic identity of animals which are likely to cause them suffering without substantial medical benefit to man or animal, and also animals resulting from such processes.

II - Notwithstanding the provisions of (I) above, inventions which concern plants or animals shall be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.

III - The provisions of I (3°) shall be without prejudice to the patentability of inventions which concern a technical process, in particular a microbiological one, or a product obtained by means of such a process; any process involving or resulting in or performed upon a microbiological material shall be regarded as microbiological process.

CHAPTER II

Filing and Processing of Applications — Articles L612-1 to L612-23

SECTION I

Article L612-1
(Act No. 94-102 of 5 February 1994 Art. 23 Official Journal of 8 February 1994)
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.

Article L612-2
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.

Article L612-3
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.

Article L612-4
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.

Article L612-5
(Act No. 2004-1338 of 8 December 2004, Article 3, Official Journal of 9 December 2004)
The patent application must disclose the invention in a manner sufficiently clear and complete for it to be performed by a person skilled in the art.
Where an invention involves a biological material which is not available to the public and which cannot be described in such a manner as to enable the invention to be performed by a person skilled in the art, the description shall be considered inadequate unless the biological material has been deposited with the recognized depository institution. The conditions for public access to this deposit shall be laid down by a Conseil d'Etat decree.

Article L612-6
The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.

Article L612-7
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 L611-11.

SECTION II
Processing of Applications Articles L612-8 to L612-20

Article L612-8
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.

Article L612-9

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 L612-14, L612-15 and item 1 of Article L612-21 may not be instituted.

Subject to Article L612-10, 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.

Article L612-10

Prior to expiry of the period referred to in the second paragraph of Article L612-9, 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.

Article L612-11

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 L612-12.

Article L612-12

(Act No. 94-102 of 5 February 1994Article 25 Official Journal of 8 February 1994)
(Act No. 2004-800 of 6 August 2004, Article 17 a IV, Official Journal of 7 August 2004)
(Act No. 2004-1338 of 8 December 2004, Article 3, Official Journal of 9 December 2004)

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

1°.it does not meet the requirements of Article L612-1;

2°.it has not been divided in accordance with Article L612-4;

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 L611-7; L611-18 and L611-19;

5°.its subject matter is manifestly not to be regarded as an invention within the meaning of the second paragraph of Article L611-10 or as an invention susceptible of industrial application within the meaning of Article L611-16;

6°.its description or claims do not allow the application of the provisions of Article L612-14;

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 L612-14.

If the grounds for the refusal affect the patent application only partially, the corresponding claims only shall be refused.

In the event of a partial non conformance of the application with the provisions of Articles L611-17 and L611-18 or with Article L612-1, the corresponding sections of the description and the drawings shall be deleted ex officio.

Article L612-13

(Act No. 94-102 of 5 February 1994 Art. 25 Official Journal of 8 February 1994)

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 L612-21 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 L611-11 and L611-14, 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.

Article L612-14

Subject to the provisions of Article L612-15 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 L611-11 and L611-14.

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

Article L612-15

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 L615-4. 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.

Article L612-16

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 L612-15, L612-19 and L613-22 or the period of priority established by Article 4 of the Paris Convention for the Protection of Industrial Property.

Article L612-17

Once the procedure laid down in Articles L612-14 and L612-15 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.

Article L612-18

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.

Article L612-19

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 a Conseil d'Etat decree.

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.

Article L612-20

(Act No. 2005-842 of 26 July 2005, Article 22 I, Official Journal of 27 July 2005)

The amount of the fees charged at the time of the application, the examination and the delivery of the patent as well as its renewal may be reduced where the applicant belongs to one of the following categories:

- natural persons;
- small or medium-sized businesses;
- non-profit institution of the teaching or research sector.

The right for reduction shall be acquired on simple declaration. All misrepresentation shall be recorded, at any time and at the end of an adversary proceeding, by a decision of the director of the National Institute of Industrial Property under the conditions provided for in Article L411-4. This decision shall be accompanied by an administrative fine whose amount may not exceed ten times the amount of the fees due and the proceeds shall be handed over to the National Institute of Industrial Property.

The conditions for the application of this Article shall be laid down by a Conseil d'Etat decree.

SECTION III

Statutory Dissemination of Inventions — Articles L612-21 to L612-23

Article L612-21

The National Institute of Industrial Property shall publish, under the conditions defined by Conseil d'Etat decree, by a notice in the Official Bulletin of Industrial Property, by making available to the public the full text or by dissemination through a data-bank 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 L613-9;

6°.the date of the authorization referred to in Article L611-3, with an identification of the corresponding patent.

Article L612-22

The provisions of Article L612-21 shall be applicable to applications for European patents and to European patents.

Article L612-23

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 L611-11 and L611-14.

CHAPTER III
Rights Deriving from Patents — Articles L613-1 to L613-32

SECTION I
Exclusive Right of exploitation — Articles L613-1 to L613-5-3

Article L613-1

The exclusive right of exploitation referred to in Article L611-1 shall take effect as of the filing of the application.

Article L613-2

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.

Article L613-3

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.

Article L613-4

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 L613-3.

3. Persons carrying out the acts referred to in items (a), (b) and (c) of Article L613-5 shall not be deemed persons entitled to work the invention within the meaning of paragraph 1.

Article L613-5

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.

Article L613-6

(Act No. 93-1420 of 31 December 1993, Article 5, Official Journal of 1 January 1994)

The rights conferred by a patent shall not extend to deeds concerning a product covered by that patent which are done on French territory after such product has been marketed in France or in the territory of a State party to the Agreement on the European Economic Area by the owner of the patent or with his express consent.

Article L613-7

(Act No. 96-1106 of 18 December 1996 Art. 4 Official Journal of 19 December 1996)

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, the enterprise or the part of the enterprise to which it belongs.

Article L613-2-1

(inserted by Act No. 2004-800 of 6 August 2004, Article 17 a III, Official Journal of 7 August 2004)

The scope of a claim concerning a gene sequence shall be confined to the part of such sequence that is directly

related to the specific function disclosed concretely in the description.

The rights created by the delivery of a patent including a gene sequence may not be called upon against a later claim on the same sequence if this claim satisfies the requirements of Article L. 611-18 and if it discloses any other particular application of this sequence.

Article L613-2-2

(inserted by Act No. 2004-1338 of 8 December 2004, Article 5, Official Journal of 9 December 2004)

Save as provided in Articles L. 613-2-1 and L. 611-18, the protection conferred by a patent on a product containing or consisting of genetic information shall extend to any material in which the product is incorporated and in which the genetic information is contained and performs its stated function.

Article L613-2-3

(inserted by Act No. 2004-1338 of 8 December 2004, Article 5, Official Journal of 9 December 2004)

The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication and possessing those same characteristics.

The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through that process and to any other biological material, derived from the latter, by reproduction or multiplication and possessing those same characteristics.

Article L613-2-4

(inserted by Act No. 2004-1338 of 8 December 2004, Article 5 Official Journal of 9 December 2004)

The protection referred to under Articles L. 613-2-2 and L. 613-2-3 shall not extend to the biological material obtained from the propagation or multiplication of biological material marketed in the territory of a Member State of the European Community or a State party to the Agreement on the European Economic Area by the holder of the patent, or with his consent, where the propagation or the multiplication necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

Article L613-5-1

(inserted by Act No. 2004-1338 of 8 December 2004, Article 6 Official Journal of 9 December 2004)

By way of derogation from the provisions of Articles L. 613-2-2 and L. 613-2-3, the sale or any other form of commercialisation of a plant propagating material to a farmer by the holder of the patent, or with his consent, for agricultural use shall imply authorisation for the farmer to use the product of his harvest for the propagation or multiplication by him on his own farm.

The conditions of this use shall be those provided for by Article 14 of Regulation (EC) No. 2100/94 of the Council of 27 July 1994 of 27 July 1994 on Community plant variety rights.

Article L613-5-2

(inserted by Act No. 2004-1338 of 8 December 2004, Article 6 Official Journal of 9 December 2004)

By way of derogation from the provisions of Articles L. 613-2-2 and L. 613-2-3, the sale or any other form of commercialisation of breeding stock or other animal reproduction material to a farmer by the holder of the patent, or with his consent, implies authorization to use, if necessary on payment of a fee, the protected livestock for an agricultural purpose. This authorization shall include making the animal or other animal reproduction available for the purposes of pursuing his agricultural activity but not for sale within the framework of a commercial reproduction activity.

Article L613-5-3

(inserted by Act No. 2004-1338 of 8 December 2004, Article 6 Official Journal of 9 December 2004)

Rights conferred by the Articles L. 613-2-2 and L. 613-2-3 shall not extend to the deeds performed in order to create or discover and develop other plant varieties.

SECTION II

Assignment and Loss of Right — Articles L613-8 to L613-15-1

Article L613-8

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 L611-8, 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.

Article L613-9

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.

Article L613-10

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 L612-19, 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.

Article L613-11

(Act No. 93-1420 of 31 December 1993 Art. 1,Art. 5 Official Journal of 1 January 1994)
(Act No. 96-1106 of 18 December 1996 Art. 5 Official Journal of 19 December

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 Community or another State party to the Agreement on the European Economic Area;

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, as mentioned under (a) above, or marketing, as mentioned under (b) above, in France has been discontinued for more than three years.

For the purposes of the application of this Article, the importation of patented goods manufactured in a State party to the Agreement Establishing the World Trade Organization shall be considered working of the patent.

Article L613-12

(Act No. 96-1106 of 18 December 1996 Art. 7 Official Journal of 19 December 1996)

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 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.

Article L613-13

(Act No. 96-1106 of 18 December 1996 Art. 6 Official Journal of 19 December 1996)

Compulsory and ex officio licenses shall be non-exclusive. The rights deriving from such licenses may only be transferred together with the business, the enterprise or part of the enterprise to which they belong.

Article L613-14

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.

Article L613-15

(Act No. 96-1106 of 18 December 1996Article 8 Official Journal of 19 December 1996)
(Act No. 2004-800 of 6 August 2004, Article 18, Official Journal of 7 August 2004)
(Act No. 2004-1338 of 8 December 2004, Article 9, Official Journal of 9 December 2004)

The holder of a patent infringing a prior patent may not exploit his patent without the consent of the holder of the prior patent; the latter may not exploit the subsequent patent without the consent of the holder of the subsequent patent.

Where a holder of a patent cannot exploit it without infringing a prior patent of which a third party is a holder, the Tribunal de grande instance (High Court) may grant him a license of the prior patent to the extent necessary for exploiting the patent of which he is a holder and inasmuch as that invention constitutes with regard to the prior patent a substantial technical progress and is of considerable economic interest.

The license granted to the holder of the subsequent patent may be transferred only together with the said patent.

On application brought before the Court, the holder of the prior patent shall be granted a cross-licence of the subsequent patent.

The provisions of Articles L613-12 to L613-14 shall apply.

Article L613-16

(Act No. 2004-800 of 6 August 2004, Article 18, Official Journal of 7 august 2004)
(Act No. 2004-1338 of 8 December 2004, Article 10, Official Journal of 9 December 2004)

If the interests of public health demand it and in absence of an out-of-court settlement with the holder of the patent, the Minister responsible for industrial property, at the request of the Minister responsible for health, may subject by way of an order to the ex officio licensing scheme under the conditions provided for in Article L613-17,.

a) a medical product, a medical device, a medical device for in vitro diagnosis, an additional therapeutic product;

b) their process for the breeding, a product necessary for their breeding or a process for manufacturing such product;

c) an ex vivo diagnostic method.

The patents of these products, processes or diagnostic methods may be subjected to ex officio licensing scheme in the interest of the public health only where these products, products resulting from these processes or these methods are made available to the public in insufficient quantity or quality or at abnormally high prices, or where the patent is exploited under conditions contrary to the interest of the public health or is judged as an anti-competitive practice by a final administrative or court decision.

Where the purpose of the licence is to remedy an anti-competitive practice or in urgent cases, the Minister responsible for patent rights shall not be held to seek an out-of-court settlement.

Article L613-17

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.

Article L613-18

(Act No. 96-1106 of 18 December 1996 Art. 7 Official Journal of 19 December 1996)

The Minister responsible for industrial property may give formal notice to the owners of patents other than those referred to in Article L613-16 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 Conseil d'Etat decree.

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.

Article L613-19

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.

Article L613-19-1

(Act No. 96-1106 of 18 December 1996 Art. 9 Official Journal of 19 December 1996)

Where the subject matter of the patent is an invention in the field of semiconductor technology, a compulsory or ex officio license may only be granted for public, non-commercial purposes or to remedy a practice declared anti-competitive as a result of judicial or administrative proceedings.

Article L613-20

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.

Article L613-21

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.

Article L613-22

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 L612-19 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.

Article L613-23

The periods of time referred to in Article L613-22 may be suspended in the cases referred to in Article L612-18 and in accordance with the conditions laid down in that Article.

Article L613-24

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 L612-15.

Article L613-25

A patent shall be revoked by court decision:

a)If its subject matter is not patentable within the terms of Articles L611-10, L611-11 and L611-13 to L611-17;

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.

Article L613-26

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

Article L613-27

(Act No. 94-102 of 5 February 1994 Art. 26 Official Journal of 8 February 1994)

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 L411-4 of the Code.

Article L613-28

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 L611-3.

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.

Article L613-15-1

(inserted by Act No. 2004-1338 of 8 December 2004, Article 7, Official Journal of 9 December 2004)

Where a breeder cannot acquire or exploit a plant variety right without infringing a prior right, he may request the licence of this patent inasmuch as the licence is necessary for the exploitation of the plant variety to be protected and in so far as the variety constitutes with regard to the invention asserted in this patent an important technical progress and

is of considerable economic interest.

Where such a licence is granted, on application brought before the Court, the holder of the patent will be entitled, under equitable conditions, to a cross-licence to use the protected variety.

The provisions of the Articles L. 613-12 with L. 613-14 shall apply.

SECTION III
Joint Ownership of Patents — Articles L613-29 to L613-32

Article L613-29

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.

Article L613-30

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.

Article L613-31

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.

Article L613-32

In the absence of provisions to the contrary, Articles L613-29 to L613-31 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 — Articles L614-1 to L614-31

SECTION I
European Patents — Articles L614-1 to L614-16

Article L614-1

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

Article L614-2

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.

Article L614-3

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.

Article L614-4

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 L614-5, 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.

Article L614-5

Prior to expiry of either one of the periods referred to in the last paragraph of Article L614-4, 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 L612-10 of this Code shall apply.

Article L614-6

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 L612-15.

Article L614-7

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 Conseil d'Etat decree. Failure to comply with this requirement shall render the patent void.

Article L614-8

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.

Article L614-9

The rights specified in Articles L613-3 to L613-7, L615-4 and L615-5 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 Conseil d'Etat decree or has been notified to the alleged infringer.

Article L614-10

Where a French translation has been made in accordance with Article L614-7 or with the second paragraph of Article L614-9, 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 L614-7 or of the second paragraph of Article L614-9 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.

Article L614-11

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.

Article L614-12

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.

Article L614-13

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.

Article L614-14

(Act No. 94-102 of 5 February 1994 Art. 28 Official Journal of 8 February 1994)

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 L613-9, 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.

Article L614-15

(Act No. 94-102 of 5 February 1994 Art. 29 Official Journal of 8 February 1994)

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 L614-13 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.

Article L614-16

A Conseil d'Etat decree shall lay down the conditions for applying this Section, particularly as regards the implementation of Article 137(2) of the Munich Convention.

SECTION II

International Applications — Articles L614-17 to L614-23

Article L614-17

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.”

Article L614-18

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.

Article L614-19

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.

Article L614-20

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 L614-21, 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.

Article L614-21

(Act No. 94-102 of 5 February 1994 Art. 30 Official Journal of 8 February 1994)

Prior to expiry of either of the two periods referred to in the final paragraph of Article L614-20, 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 L612-10 shall apply.

Article L614-22

Articles L614-19, L614-20 and L614-21 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.

Article L614-23

A Conseil d'Etat decree 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.

SECTION III

Community Patents — Articles L614-24 to L614-30

Article L614-24

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.

Article L614-25

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.

Article L614-26

Articles L614-7 to L614-14 (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.

Article L614-27

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.

Article L614-28

When applying Article L614-15 and Article L615-17 to the patent applications and patents referred to in Article L614-26, the reference made in those Articles to Article L614-13 shall be replaced by a reference to Article 80(1) of the Luxembourg Convention.

Article L614-29

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 L613-20, 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.

Article L614-30

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 L614-26 and L614-29 shall not apply.

However, Article L614-13 shall also not apply in such case.

SECTION IV
Final Provisions — Article L614-31

Article L614-31

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 — Articles L615-1 to L615-22

SECTION I
Civil Proceedings — Articles L615-1 to L615-10

Article L615-1

Any violation of the rights of the owner of a patent, as set forth in Articles L613-3 to L613-6, 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.

Article L615-2

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 L613-10, L613-11, L613-15, L613-17 and L613-19, 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.

Article L615-3

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 indemnification 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 indemnification of damages suffered by the defendant if the infringement proceedings are subsequently judged to be unfounded.

Article L615-4

Notwithstanding Article L613-1, acts committed prior to the date on which the patent application has been made public under Article L612-21 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.

Article L615-5

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 L615-2, by the holder of a license of right, a compulsory license or an ex officio license in accordance with Articles L613-10, L613-11, L613-15, L613-17 and L613-19.

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.

Article L615-5-1

(inserted by Act No. 96-1106 of 18 December 1996 Art. 10 Official Journal of 19 December 1996)

Where the subject matter of the patent is a process for the manufacture of a product, the Court may order the defendant to prove that the process used to manufacture an identical product is different from the patented process. Where the defendant fails to provide such proof, any identical product manufactured without the consent of the owner of the patent shall be presumed to have been manufactured by the patented process in the following two cases:

a)The product manufactured using the patented process is new;

b)There is a strong probability that the identical product has been manufactured using the patented process, but the owner of the patent has been unable, in spite of reasonable effort, to establish what process has in fact been used.

In the production of proof to the contrary, due regard shall be had to the legitimate interests of the defendant regarding the protection of his manufacturing and trade secrets.

Article L615-6

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 L612-14.

Article L615-7

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.

Article L615-8

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

Article L615-9

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.

Article L615-10

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 L615-5, 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 L615-4 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 L612-10. Persons carrying out such working shall automatically incur the liability defined in this Article.

SECTION II

Criminal Proceedings — Articles L615-12 to L615-16

Article L615-12

(Act No. 92-1336 of 16 december 1992 art. 322 Official Journal of 23 december 1992 in force on 1 March 1994)

Any person improperly claiming to be the owner of a patent or of a patent application shall be liable to a fine of FRF 50,000. 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.

Article L615-13

(Act No. 92-1336 of 16 december 1992 art. 322 Official Journal of 23 december 1992 in force on 1 March 1994)

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 L612-9 and L612-10 shall be liable to a fine of FRF 30,000. Where the violation has prejudiced national defense, imprisonment of five years may also be ordered.

Article L615-14

(Act No. 94-102 of 5 February 1994, Article 9, Official Journal of 8 February 1994)
(Order No. 2000-916 of 19 September 2000, Article 3, Official Journal of 10 March 2004)
(Act No. 2004-204 of 9 March 2004, Article 34 V, Official Journal of 10 March 2004)

1. Any person who has knowingly infringed the rights of the owner of a patent as defined in Articles L613-3 to L613-6 shall be liable to a three-year imprisonment and a fine of € 300.000. Where the offence was committed by an organised criminal group, the penalties will be increased to a five-year imprisonment and a fine of € 500.00.

2. Void paragraph.

Article L615-14-1

(inserted by Act No. 94-102 of 5 February 1994 Art. 10 Official Journal of 8 February 1994)

In the event of repetition of the offenses defined in Article L615-14, 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.

Article L615-15

(Act No. 92-1336 of 16 december 1992 art. 322 Official Journal of 23 december 1992 in force on 1 March 1994)

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 L614-18, L614-20 and the first paragraph of Article L614-21 shall be liable to a fine of FRF 40,000. Where the violation has prejudiced national defense, imprisonment of five years may also be ordered.

Article L615-16

(Act No. 92-1336 of 16 december 1992 art. 322 Official Journal of 23 december 1992 in force on 1 March 1994)

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 L614-4 or in the first paragraph of Article L614-5 shall be liable to a fine of FRF 40,000. Where the violation has prejudiced national defense, imprisonment of between one and five years may also be ordered.

SECTION III

Rules of Jurisdiction and Procedures — Articles L615-17 to L615-22

Article L615-17

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 L614-13.

Article L615-18

Proceedings to determine compensation instituted under Articles L612-10, L613-17, L613-19 and L613-20 shall be heard by the First Instance Court of Paris.

Article L615-19

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.

Article L615-20

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.

Article L615-21

At the request of one of the parties, any dispute concerning the application of Article L611-7 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 L611-7, shall be laid down by Conseil d'Etat decree after consultation with the professional and trade union organizations concerned.

Article L615-22

Decrees in Conseil d'Etat shall lay down the implementing rules for this Title.

TITLE II Protection of Technical Knowledge	Articles L621-1 to L623-35
CHAPTER I Manufacturing Secrets	Article L621-1

Article L621-1

(Act No. 92-1336 of 16 december 1992 art. 204 Official Journal of 23 december 1992 in force on 1 March 1994)

The penalties for violation of manufacturing secrets are set forth in Article L152-7 of the Labor Code reproduced hereafter:

“Article L152-7. 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 FRF 200,000.”

“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	Articles L622-1 to L622-7
SECTION I Deposit	Articles L622-1 to L622-4

Article L622-1

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.

Article L622-2

(Act No. 93-1420 of 31 December 1993 Art. 1, Art. 2 Official Journal of 1 January 1994)

(Act No. 96-1106 of 18 December 1996 Art. 11 Official Journal of 19 December 1996)

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

a)Creators who are nationals of a State party to the Agreement Establishing the World Trade Organization 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 Community or the European Economic Area.

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.

Article L622-3

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.

Article L622-4

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 Conseil d'Etat decree.

SECTION II
Rights Deriving from Deposit — Articles L622-5 to L622-7

Article L622-5

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.

Article L622-6

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.

Article L622-7

Articles L411-4, L411-5, L612-11, L613-8, L613-9, L. 613-19, L615-10 and L615-17 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 — Articles L623-1 to L623-35

SECTION I
Issue of new plant variety certificates — Articles L623-1 to L623-16

Article L623-1

For the purposes of this chapter, "new plant variety" shall mean any new plant variety, whether created or discovered which:

1°. 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°. Is homogenous in its characteristics; and

3°. Remains stable, that is to say identical with its original definition at the end of each cycle of multiplication.

Article L623-2

Any new plant variety belonging to a genera or species enjoying the system of protection instituted by the provisions of this Chapter shall not be patentable.

Article L623-3

Any new plant variety fulfilling the conditions stated in Article L623-1 above shall be defined by a denomination to which shall correspond a description and a sample kept in a collection.

Article L623-4

Any new plant variety may be the subject of a title called "new plant variety certificate", which shall confer on its owner an exclusive right to produce, introduce into 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.

Under the conditions provided for by Decrees in Conseil d'Etat, the provisions of the preceding paragraph shall be applied progressively to the various plant species according to the evolution of scientific knowledge and of the means of verification. These same Decrees shall determine the elements of the plant to which the breeder's right relates for each such species.

Article L623-5

A plant variety shall not be deemed new if, in France or elsewhere, 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 the priority provided for in Article L623-6.

The use of the 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 of 2 December, 1961, for the Protection of New Varieties of Plants, or its display in an official or officially recognized exhibition within the meaning of the Convention relating to International exhibitions signed at Paris on 22 November, 1928, and amended on 10 May, 1948, shall in no case, however, 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.

Article L623-6

Any person possessing the nationality of one of the States party to the Paris Convention of 2 December, 1961, or having his domicile or establishment 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 the said Convention or in a supplementary list drawn up under the provisions of the said Convention.

Such person may, when filing an application for a new plant variety certificate in France, 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 the States referred to above, provided that the application made in France is not made more than twelve months after the first application.

Such matters as the filing of another application, the publication of the subject matter of the application or the exploitation of the variety concerned, occurring within the period of priority, 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 provided for in the preceding paragraph.

In addition to the cases provided for in the first paragraph above, any foreigner may enjoy the protection instituted by this Chapter, provided that French nationals are accorded, in respect of the genera or species concerned, reciprocal protection in the State of which that foreigner is a national or in which he has his domicile or establishment.

Article L623-7

The certificate issued by the Committee for the Protection of New Plant Varieties mentioned in Article L412-1 shall have effect as from the date of the application. Where a decision to reject an application is taken, the reasons for so doing shall be stated.

Article L623-8

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

Article L623-9

The list of the plant species whose new varieties being the subject matter of applications for a certificate may not be disclosed or exploited freely without special authorization shall be fixed by decree.

Subject to Article L623-10, such authorization may be granted at any time. It shall be deemed to be vested ipso jure at the expiry of a period of five months from the filing date of the application for a certificate.

Article L623-10

Prior to the expiry of the period provided for in the last paragraph of Article L623-9, the prohibitions laid down in the first paragraph of that Article may be extended, at the demand of the Minister Responsible for Defence, for a period of one renewable year. The extended prohibitions may be lifted at any time, under the same condition.

The extension of the prohibitions under this Article shall give rise to a right to compensation commensurate with the

prejudice sustained, in favour of the owner of the application for a certificate. In the absence of an amicable settlement, such compensation shall be fixed by the courts.

Article L623-11

The certificate owner may request revision of the compensation provided for in Article L623-10, at the expiry of a period of one year from the date of the final judgement fixing the amount of the compensations.

The certificate owner shall submit evidence showing that the prejudice sustained by him is in excess of the assessment of the court.

Article L623-12

The certificate shall be issued only if a preliminary examination has shown that the variety being the subject matter of the application for protection is a new plant variety within the meaning of Article L623-1.

However, the Committee may deem the preliminary examination that has already been carried out in another country party to the Paris Convention of 2 December, 1961, to be sufficient.

This Committee may call upon foreign experts.

Article L623-13

(Act No. 2006-236 of 1 March 2006, Article 1, Official Journal of 2 March 2006)

The protection period shall be twenty years from the date of delivery.

For forest, fruit or ornamental trees, for the vine as well as for graiminaceae and perennial leguminous fodders, potatoes and endogamous lines used for the production of hybrid varieties, the protection period shall be thirty years.

II - The plant variety right certificate, delivered prior to the entry into force of this law and in force at this date, shall be prolonged within the limits fixed by Article L. 623-13 of the Code of the Intellectual Property.

III - The provisions of this article apply ipso jure as of the publication of this law.

Article L623-14

Any act concerning a new plant variety certificate and relating to the issue of the certificate, to the transfer of ownership, to the grant of a right of exploitation or to a pledge, shall have effect vis-à-vis third parties only if it has been duly published in accordance with the conditions laid down by a Conseil d'Etat decree.

Article L623-15

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

The breeder shall be under the obligation 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 vis-à-vis third parties as from the date of its publication.

Use of the denomination entered in the certificate shall be mandatory, as from the date of publication of the certificate, for any commercial transaction commercial, 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 2 December, 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 the renunciation of the effects of the application in the States party to the Convention is produced prior to the issue of the said certificate.

The provisions of the preceding 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.

Article L623-16

Fees for services rendered shall be payable in respect of preliminary examination, issue of the certificate and all entries in or deletions from registers.

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

The tariff of such fees shall be fixed by decree.

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

SECTION II

Rights and obligations attaching to new plant variety certificates — Articles L623-17 to L623-22-2

Article L623-17

A variety essential to human or animal life may be subjected to the system of ex officio licenses by decree of the Conseil d'Etat or, where public health is affected, by joint order of the Minister of Agriculture and the Minister Responsible for Public Health.

Article L623-18

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

Such license shall be non-exclusive. It shall be granted by order of the Minister of Agriculture under specified terms, particularly in respect of its duration and scope, but to the exclusion of the royalties arising from it.

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

In the absence of an amicable settlement, the amount of royalties shall be fixed by the court determined in accordance with Article L623-31.

Article L623-19

Where the holder of an ex officio license fails to comply with the prescribed conditions, the Minister of Agriculture may, upon the advice of the Committee for the Protection of New Plant Varieties, declare the license forfeited.

Article L623-20

The State may, at any time, obtain ex officio for the purposes of national defence, a license to exploit a plant variety being the subject matter of an application for a certificate or of a new plant variety certificate, whether such exploitation is to be made by the State itself or on its behalf.

The ex officio license shall be granted, at the request of the Minister responsible for Defence, by order of the Minister of Agriculture. The said order shall fix the terms of the license, to the exclusion of those relating to royalties arising from its use. The license shall take effect on the date of the request for the ex officio license.

In the absence of an amicable settlement, the amount of royalties shall be fixed by the court determined in accordance with Article L623-31.

Article L623-21

The rights deriving from an ex officio license may not be assigned or transferred.

Article L623-22

For the purposes of national defence, the State may, at any time, expropriate by decree all or part of a new plant variety being the subject matter of an application for a certificate or of a certificate.

In the absence of an amicable settlement, the amount of compensation for expropriation shall be fixed by the tribunal de grande instance.

Article L623-23

The rights of the owner of a new plant variety certificate shall be forfeited where:

1°. He is unable to furnish the administration at any time with 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 inspections carried out 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 provided for in the second paragraph of Article L623-16.

Such forfeiture shall be declared by the Committee for the Protection of New Plant Varieties. Where it is declared in accordance with subarticle (3) above, the owner of the certificate may, within the 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. Such appeal shall not, however, prejudice any rights acquired by third parties. The final decision declaring forfeiture of rights shall be published.

Article L623-24

The provisions of Articles L613-8 and L613-29 to L613-32 shall apply to applications for new plant variety certificates and to new plant variety certificates.

The same shall apply to Articles L613-9, L613-21 and L613-24, the Committee for the Protection of New Plant Varieties being substituted for the National Institute of Industrial Property.

Article L623-22-1

(inserted by Act No. 2004-1338 of 8 December 2004, Article 8 Official Journal of 9 December 2004)

Where the holder of the patent of a biotechnological invention cannot exploit it without infringing a prior plant variety right, he may apply for the grant of licence for exploitation of the variety protected by the plant production right, inasmuch as this invention constitutes with regard to the plant variety an important technical progress and is of considerable economic interest. The applicant must show that he could not obtain from the holder of the plant production right a licence for exploitation and that he is in a position to exploit the variety in an effective and serious way.

Article L623-22-2

(inserted by Act No. 2004-1338 of 8 December 2004, Article 8 Official Journal of 9 December 2004)

The request for licence provided for in Article L. 623-22-1 shall be brought before the Tribunal de grande instance (High Court).

The licence shall be nonexclusive. The court shall determine, in particular, its duration, its field of application and the amount of the royalties to which it gives rise to. These conditions may be modified by a court decision, at the request of the holder of the right or the licence.

The rights attached to this licence may be transmitted only together with the business or the part of the business or goodwill to which they are attached.

Where such a licence is granted on application brought before the Court, the holder of the plant production right shall be granted a cross-licence to use the protected invention under equitable conditions.

If the holder of a licence does not satisfy the conditions to which this licence was granted, the holder of the plant variety certificate and, if necessary, the other licensees may obtain by court decision the withdrawal of such licence.

Article L623-25

Any violation of the rights of the owner of a new plant variety certificate as defined in Article L623-4 above shall constitute an infringement for which the offender shall be liable.

Subject to the provisions of Article L623-4, the use of the 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 the new plant variety certificate.

The holder of an ex officio license under Articles L623-17 and L623-20 and, unless otherwise stipulated, the beneficiary of an exclusive right of exploitation, may institute proceedings under the first paragraph above where the certificate holder fails, after a summons, to do so.

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

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

Article L623-26

Acts committed prior to the publication of the issue of the certificate shall not be considered as having violated the rights under the certificate. Acts committed after a true copy of the application for a certificate has been served on the party presumed liable may, however, be the subject of a report and prosecution.

Article L623-27

The owner of an application for a new plant variety certificate or of a certificate shall be entitled, with the court's authorization, to cause a detailed description to be made, 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 set forth in the third paragraph of Article L623-25.

Where the claimant fails to petition the court within the prescribed period, the description or the seizure shall be null and void, ipso jure, without prejudice to any damages which may be claimed.

Article L623-28

The civil court may order, at the request of the injured party and on its behalf, the confiscation 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.

Article L623-29

The civil and criminal actions provided for in this Chapter shall be statute-barred at the end of a period of three years counted from the acts concerned.

The institution of civil actions shall suspend the statute of limitations for criminal actions.

Article L623-30

Where a variety being the subject matter of an application for a certificate or of a new plant variety certificate is exploited for the purposes of national defence by the State or by its contractors, subcontractors and subsidiary suppliers, without a license for exploitation having been granted, the court hearing the case shall have no authority to order either the discontinuance or the interruption of exploitation, or the confiscation provided for in Article L623-28.

If an official appraisal or a description, with or without effective seizure, is ordered by the presiding judge of the court hearing the case, the appointed law official shall refrain from proceeding with the seizure, the description and any investigation into the business if the contract for research or reproduction or propagation has a defence security classification.

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

The presiding judge of the court hearing the case may, if so requested by the entitled person, order an official appraisal, which shall be carried out only by persons approved by the Minister Responsible for Defence and in the presence of his representatives.

The provisions of Article L623-26 shall not apply to applications for a new plant variety certificate the subject matter of which is being exploited under the conditions set forth in the present Article so long as such applications are subject to the prohibitions provided for in Articles L623-9 and L623-10.

The person engaged in such exploitation shall incur, ipso jure, the liability referred to in this Article.

Article L623-31

Any litigation arising from this Chapter shall fall within the jurisdiction of the tribunal de grande instance and of the corresponding courts of appeal, with the exception of appeals lodged against decrees and ministerial orders and decisions which shall fall within the jurisdiction of the administrative courts.

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

A decree shall designate the tribunal de grande instance competent to hear civil actions. The number of such courts shall not be less than ten. The same decree shall also define the area of jurisdiction within which the said courts shall

perform the functions thus assigned to them.

Article L623-32
(Act No. 92-1336 of 16 December 1992, Article 322, Official Journal of 23 December 1992 in force on 1 March, 1994)
(Order No. 2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)
(Act No. 2004-204 of 9 March 2004, Article 34 VI, Official Journal of 10 March 2004)

Any intentional violation of the rights of the holder of a plant variety certificate, as defined in Article L623-4, shall constitute an offence punishable by a fine of € 10.000. Where the accused has been convicted during the five preceding years for the same offence or where the offence is committed by an organized criminal group, a six-month imprisonment may, in addition, be pronounced.

Article L623-33

Public proceedings for the imposition of the sentences provided for in the previous Article shall be instituted by the public prosecutor only upon formal complaint by the injured party.

The Tribunal correctionnel hearing the case shall make no decision until the civil court, by a decision amounting to res judicata, shall have found the offence committed. Pleas of nullity of the new plant variety certificate or of matters relating to ownership of the certificate may only be entered by the respondent before the civil court.

Article L623-34
(Act No. 92-1336 of 16 December, 1992, Art. 326, Official Journal of 23 December, 1992 in force on 1 March, 1994)

Any person improperly claiming ownership of a certificate or of an application for a new plant variety certificate shall be liable to a fine as prescribed under subarticle (5) of Article 131-13 of the French Penal Code concerning Class 5 violations. In the event of recidivism, the fine shall be that prescribed under subarticle (5) of Article 131-13 of the French Penal Code concerning Class 5 violations committed in recidivism. Recidivism shall have occurred, within the meaning of this Article, when the Accused has been convicted of the same offence during the five preceding years.

Article L623-35
(Act No. 92-1336 of 16 December, 1992, Art. 322, Official Journal of 23 December, 1992 in force on 1 March, 1994)

Without prejudice, should circumstances dictate, to the heavier penalties provided for violations of State security, any person who has knowingly committed a breach of the prohibitions laid down in Articles L623-9 and L623-10 shall be liable to a fine of FRF 30,000. Where such violation has effectively prejudiced national defence, a sentence of imprisonment of from one to five years may also be passed.

BOOK VII

Trademarks, Service Marks and Other Distinctive Signs	**Articles L711-1 to L721-1**
TITLE I Trademarks and Service Marks	Articles L711-1 to L717-7
CHAPTER I Constituent Elements of Marks	Articles L711-1 to L711-4

Article L711-1

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, selvedges, 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.

Article L711-2

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).

Article L711-3

(Act No. 96-1106 of 18 December 1996 Art. 12 Official Journal of 19 December 1996)

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

a) Signs excluded by Article 6ter of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised or by paragraph 2 of Article 23 of Annex 1C to the Agreement Establishing the World Trade Organization;

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.

Article L711-4

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 6bis 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 — Articles L712-1 to L712-14

Article L712-1

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.

Article L712-2

(Order No. 2001-670 of 25 July 2001 art. 4 II Official Journal of 28 July 2001)

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

Article L712-3

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.

Article L712-4

During the period of time referred to in Article L712-3, 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 L712-3.

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.

Article L712-5

Decisions on opposition shall be taken following a procedure in which all parties shall be heard, laid down by Conseil d'Etat decree.

Article L712-6

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.

Article L712-7

An application for registration shall be rejected:

a) If it does not meet the requirements of Article L712-2;

b) If the sign may not constitute a mark in accordance with Articles L711-1 and L711-2 or be adopted as a mark in

accordance with Article L711-3;

c) If opposition to the application and Article L712-4 is upheld.

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

Article L712-8

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.

Article L712-9

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 Conseil d'Etat decree.

It shall be subject neither to verification of compliance with Articles L711-1 to L711-3 nor to the opposition procedure laid down in Article L712-4.

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.

Article L712-10

An applicant who has not complied with the time limits referred to in Articles L712-2 and L712-9, 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 Conseil d'Etat decree, be reinstated in the rights he has lost.

Article L712-11

(Act No. 96-1106 of 18 December 1996 Art. 13 Official Journal of 19 December 1996)

Subject to the provisions of the international treaties to which France is party, a foreigner who has neither place of business nor residence on the national territory shall enjoy the provisions of this Book, subject to the two conditions that he proves the regular filing of a trademark application or grant of a trademark registration in the country of his residence or place of business and that the country in question affords reciprocal protection to French marks.

Article L712-12

(Act No. 96-1106 of 18 December 1996 Art. 14 Official Journal of 19 December 1996)

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.

Subject to the provisions of the international treaties to which France is party, the priority right shall be subject to recognition by such country of the same right for applications for French marks.

Article L712-13

The trade unions may register their marks and certification marks in accordance with Articles L413-1 and L413-2 of the Labor Code, reproduced hereafter:

“Article L413-1. 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.”

“Article L413-2. The use of trade union marks or certification marks under the foregoing Article may not have the effect of prejudicing the provisions of Article L412-2.”

“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.”

Article L712-14

The decisions referred to in this Chapter shall be taken by the Director of the National Institute of Industrial Property in accordance with Articles L411-4 and L411-5.

CHAPTER III
Rights Conferred by Registration

Articles L713-1 to L713-6

Article L713-1

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

Article L713-2

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.

Article L713-3

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.

Article L713-4

(Act No. 93-1420 of 31 December 1993 Art. 2 Official Journal of 1 January 1994)

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 or the European Economic Area 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.

Article L713-5

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 6bis of the Paris Convention for the Protection of Industrial Property referred to above.

Article L713-6

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

Articles L714-1 to L714-7

Article L714-1

(Order No. 2001-670 of 25 July 2001 art. 2 Official Journal of 28 July 2001)

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

The rights under a mark may be wholly or partially licensed on an exclusive or non-exclusive basis or pledged.

A non-exclusive license grant may result from an unwritten agreement concerning its 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 with regard to its duration, the form in which the mark may be used pursuant to the registration, the nature of the products or services for which the license was granted, the territory in which the mark may be displayed or the quality of the products manufactured or the services provided by the licensee.

Transfer of ownership or pledging shall be recorded in writing, under pain of invalidity.

Article L714-2

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.

Article L714-3

The registration of a mark that does not comply with Articles L711-1 to L711-4 shall be declared null and void by court decision.

The public prosecutor may institute invalidity proceedings ex officio under Articles L711-1, L711-2 and L711-3.

Invalidity proceedings under Article L711-4 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.

Article L714-4

Invalidity proceedings against the owner of a well-known mark within the meaning of Article 6bis 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.

Article L714-5

(Act No. 94-102 of 5 February 1994 Art. 32 Official Journal of 8 February 1994)

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.

Article L714-6

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.

Article L714-7

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 — Articles L715-1 to L715-3

Article L715-1

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.

Article L715-2

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 L715-3:

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 Conseil d'Etat decree;

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 L712-10.

Article L715-3

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 — Articles L716-1 to L716-16

Article L716-1

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 L713-2, L713-3 and L. 713-4 shall constitute an infringement of the rights in a mark.

Article L716-2

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.

Article L716-3

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.

Article L716-4

Article L716-3 shall not prevent recourse to arbitration as provided for in articles 2059 and 2060 of the Civil Code.

Article L716-5

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.

Article L716-6

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.

Article L716-7

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.

Article L716-8

(Act No. 94-102 of 5 February 1994 Art. 11 Official Journal of 8 February 1994)
(Act n° 2003-706 of 1 August 2003, Art. 84, official Journal of 2 August 2003)

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, with-hold 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 recognised.

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.

The withholding mentioned in the first paragraph shall not concern the goods that have European status, which are legally produced or released for free circulation in the member state of the European Community and intended, having entered by a Customs territory as defined in the first article of Customs Code, to be released in the market of another

member state of the European Community, to be legally commercialised.

Article L716-8-1

(inserted by Act No. 94-102 of 5 February 1994 Art. 12 Official Journal of 8 February 1994)

Officers of the judicial police may, as soon as offenses under Articles L716-9 and L716-10 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.

Article L716-9

(Act No. 94-102 of 5 February 1994Article 13 Official Journal of 8 February 1994)
(Order No. 2000-916 of 19 September 2000, Article 3, Official Journal of 22 September 2000, in force on 1 January 2002)
(Act No. 2004-204 of 9 March 2004, Article 34 VII, Official Journal of 10 March 2004)

Any person, who, for the purpose of selling, supplying, offering for sale or lending goods under an infringing mark,

a) imports, under any customs regime, exports, re-exports or tranships goods presented under an infringing mark.

b) reproduces industrially goods presented under an infringing mark,

c) gives instructions or orders to commit the acts provided for at (a) and (b) shall be liable to a four-year imprisonment and a fine of € 400.000.

Where the offences provided for under this article have been committed by an organised criminal group, the penalties will be increased to a five-year imprisonment and a fine of € 500.000.

Article L716-10

(Act No.98-1194 of 23 December 1998, Article 29 III, Official Journal of 27 December 1998)
(Act No. 2004-204 of 9 March 2004, Article 34 VIII, Official Journal of 10 March 2004)

A person who:

a) holds without legitimate reason, imports under all customs procedures or exports goods presented under a infringing mark;

b) offers for sale or sells goods presented under an infringing mark;

c) reproduces, imitates, uses, affixes, removes, modifies a mark, a collective mark or a collective mark of certification in violation of the rights conferred by its registration and of prohibitions which rise from this;

d) delivers knowingly a product or provides a service other than that which is required of him under a registered mark shall be liable to a three-year imprisonment and a fine of € 300.000.

The infringement, under the conditions provided for at (d), shall not be considered constituted if a pharmacist exercises the faculty of substitution provided for under Article L. 5125-23 of the Public Health Code.

Where the offences provided for at (a) to (b) have been committed by an organised criminal group, the penalties shall be increased to a five-year of imprisonment and a fine of € 500 000.

Article L716-11

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.

Article L716-11-1

(Act No. 94-102 of 5 February 1994 Art. 14 Official Journal of 8 February 1994)

In addition to the sanctions provided for in Articles L716-9 and L716-10, 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 L122-14-4 and L122-14-5 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 FRF 25,000.

Article L716-11-2

(inserted by Act No. 94-102 of 5 February 1994 Art. 14, Art 17 Official Journal of 8 February 1994 in force on 1 March 1994)

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 L716-9 to L716-11 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.

Article L716-12
(Act No. 94-102 of 5 February 1994 Art. 15 Official Journal of 8 February 1994)
In the event of repetition of the offenses defined in Articles L716-9 to L716-11, 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.

Article L716-13
(Act No. 92-1336 of 16 december 1992 art. 331 Official Journal of 23 december 1992 in force on 1 March 1994)
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.

Article L716-14
In the event of conviction for infringement of Articles L716-9 and L716-10, 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.

Article L716-15
Decrees in Conseil d'Etat shall lay down, where necessary, the conditions for implementing this Book.

Article L716-16
The provisions of Article L712-4 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 Act No. 64-1360 of December 31, 1964, on Trademarks and Service Marks.

CHAPTER VII
The Community mark — Articles L717-1 to L717-7

Article L717-1
(inserted by Order No. 2001-670 of 25 July 2001 art. 3 Official Journal of 28 July 2001)
The violation of the prohibitions set forth in Articles 9, 10, 11 and 13 of Council Regulation (EC) 40/94 of 20 December 1993 on the Community trade mark shall constitute infringement resulting in the civil liability of the offender.

Article L717-2
(inserted by Order No. 2001-670 of 25 July 2001 art. 3 Official Journal of 28 July 2001)
The provisions of Articles L. 716-8 to L. 716-14 are applicable to infringements to the rights of the owner of a Community trade mark.

Article L717-3
(inserted by Order No. 2001-670 of 25 July 2001 art. 3 Official Journal of 28 July 2001)
Any proceedings for infringement, based on an earlier Community mark, against a later national registered mark the use of which has been tolerated for five years shall not be admissible unless the national registration was applied for in bad faith.
Non-admissibility shall be limited to those goods and services for which use has been tolerated.

Article L717-4
(inserted by Order No. 2001-670 of 25 July 2001 art. 3 Official Journal of 28 July 2001)
A Conseil d’Etat decree shall determine the courts of first instance and appeal courts having ratione loci and ratione materiae jurisdiction, who shall have sole competence to hear the actions and claims pursuant to Article 92 of the Community Regulation referred to in Article L. 717-1, including where such actions cover both a issue relating to trade marks and a related issue relating to designs and models or unfair competition.

Article L717-5
(inserted by Order No. 2001-670 of 25 July 2001 art. 3 Official Journal of 28 July 2001)
An application for a Community mark or a Community mark can only be converted into an application for a national mark in the cases set forth in Article 108 of the Community Regulation referred to in Article L. 717-1.
In these cases, the application for a national mark must, subject to refusal, satisfy the provisions of Articles L. 711-2, L. 711-3, L. 712-2 and L. 712-4. The requirements of application of this paragraph shall be set by a Conseil d'Etat decree.
The provisions of the foregoing paragraph shall not apply when the oldness of a mark previously registered in France is claimed to the benefit of a Community mark.

Article L717-6

(inserted by Order No. 2001-670 of 25 July 2001 art. 3 Official Journal of 28 July 2001)

When a mark that has been previously registered in France has not been renewed or has been abandoned, the fact that the oldness of this mark is claimed in the name of a Community mark does not prevent a declaration of invalidity of this mark or the revocation of the rights of its holder.

Such revocation may not, however, be declared in application of this Article unless it was incurred on the date of the surrender or on the date of expiration of the registration.

Article L717-7

(inserted by Order No. 2001-670 of 25 July 2001 art. 3 Official Journal of 28 July 2001)

The order for enforcement referred to in Article 82 of the Community Regulation referred to in Article L. 717-1 shall be appended to the decision by the National Institute of Industrial Property.

TITLE II

Appellations of Origin — Article L721-1

SOLE CHAPTER

Article L721-1

Article L721-1

(Act No. 93-949 of 26 July 1993 art. 5 I Official Journal of 27 July 1993)

The rules relating to the determination of appelations of origin are laid down by Article L115-1 of the Consumer Code reproduced hereafter: “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 III

Application to the Overseas Territories and the Territorial Entity of Mayotte — Articles L811-1 to L811-4

BOOK VIII

Application in French Polynesia, in the Wallis and Futuna islands, in the French territories of the Southern Hemisphere and the Antarctic, New Caledonia and in Mayotte — **Articles L811-1 to L811-4**

SOLE TITLE

Articles L811-1 to L811-4

SOLE CHAPTER

Articles L811-1 to L811-4

Article L811-1

(Act No. 94-102 of 5 February 1994 Art. 20 Official Journal of 8 February 1994)
(Order No. 96-267 of 28 March 1996 art. 5 Official Journal of 31 March 1996 in force on 1 May 1996)
(Act No. 2001-670 of 25 July 2001 art. 6 I, II, III Official Journal of 28 July 2001)
(Order n° 2001-670 of 25 July 2001, Art. 6 I, II, III, Official Journal of 28 July 2001)
(Act n° 2003-517 of June 2003, Art. 1, Official Journal of June 2003, in force on 1 august 2003)

Subject to the fourth paragraph of Article L335-4 and Articles L133-1 to L133-4 and subject to the adaptations laid down in the following articles, the provisions of this Code shall apply in Mayotte.

Subject to the same conditions, they shall apply in French Polynesia, in the Wallis and Futuna islands, in the French territories of the Southern Hemisphere and the Antarctic, New Caledonia and in Mayotte, with the exception of the fourth paragraph of Article L335-4 and articles L133-1 to L133-4, L421-1 to L422-10 and L423-2.

Article L811-2

(Order No. 2001-670 of 25 July 2001 art. 6 I, II, III, IV and V Official Journal of 28 July 2001)

For the implementation of this Code and of the provisions it applies to French Polynesia, the Wallis and Futuna islands, the French Austral and Antarctic Territories, New Caledonia and 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 Mayotte, by "collectivité territoriale";
- "Cour d'appel" by "tribunal supérieur d'appel de Mamoudzou" and "commissaire de police" by "officier de police judiciaire" in the case 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 French Polynesia, the Wallis and Futuna islands, the French Austral and Antarctic Territories and in New Caledonia shall be replaced by references to provisions having the

same subject matter and that result from the provisions locally applicable.

N.B. - Act 2001-616 of 11 July 2001 art. 75: In all legislative and regulatory texts in force in Mayotte, reference to the "collectivité territoriale de Mayotte" shall be replaced by a reference to "Mayotte", and reference to the "collectivité territoriale" shall be replaced by a reference to the "collectivité départementale".

Article L811-3

(Order No. 96-267 of 28 March 1996 art. 5 Official Journal of 31 March 1996 in force on 1 May 1996)
(Order No. 2001-670 of 25 July 2001 art. 6 I and IV Official Journal of 28 July 2001)

For its application in French Polynesia, the Wallis and Futuna islands, the French Austral and Antarctic Territories, New Caledonia and Mayotte, Article L. 621-1 of this Code shall read as follows:

"Art. L. 621-1:

"The disclosure or attempted disclosure of a manufacturing secret by any director or salaried person of the enterprise in which he is employed shall be punishable by a prison term of two years and a fine of FRF 200,000.

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

N.B. - Act 2001-616 of 11 July 2001 art. 75: In all legislative and regulatory texts in force in Mayotte, reference to the "collectivité territoriale de Mayotte" shall be replaced by a reference to "Mayotte", and reference to the "collectivité territoriale" shall be replaced by a reference to the "collectivité départementale".

Article L811-4

(inserted by Order No. 2001-670 of 25 July 2001 art. 7 Official Journal of 28 July 2001)

I. – For their application in French Polynesia, the Wallis and Futuna islands, the French Austral and Antarctic Territories, New Caledonia and Mayotte, Articles L. 717-1, L. 717-4 and Article L. 717-7 of this Code shall read as follows:

"Art. L. 717-1.:

I. – Shall constitute infringement resulting in the civil liability of the infringer, in the absence of consent by the holder of the Community mark, the use in the course of trade by a third person, of:

a) Any sign that is identical with the Community mark in relation to goods or services which are identical with those for which the Community mark is registered;

b) Any sign in respect of which, because of its identity with or similarity to the Community mark and the identity or similarity of the goods or services covered by the Community mark and the sign, there exists a likelihood of confusion on the part of the public, the latter including the likelihood of association between the sign and the mark;

c) Any sign which is identical with or similar to the Community mark in relation to goods or services which are not similar to those for which the Community mark is registered, where the latter enjoys a certain renown in the European Community and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the renown of the Community mark.

II. – May, inter alia, constitute infringement:

a) Affixing a sign, as this term is defined in paragraph I, to the goods or to the packaging thereof;

b) Offering the goods, putting them on the market or stocking them for these purposes under that sign, or offering or supplying services under that sign;

c) Importing or exporting the goods under that sign;

d) Using this sign on business papers and in advertising.

III. – Shall also constitute infringement:

a) The reproduction of a Community mark in a dictionary, encyclopaedia or similar reference work, when it gives the impression that it constitutes the generic name of the goods or services for which the Community mark is registered, unless the publisher of the work ensures, at the request of the holder of this mark, that the reproduction of the mark in the next edition of the publication at the latest is accompanied by an indication that it is a registered mark;

b) The registration and use of a Community mark by the agent or representative of a person who is the holder of that mark, without the latter's authorisation, unless the agent or representative justifies his action.

IV. – The Community mark may only be invoked against third parties from the date of publication of the registration of the mark. Compensation may, however, be claimed in respect of matters arising after the date of publication of a Community mark application, which matters would, after publication of the registration of the mark, be prohibited by virtue of that publication. The court referred to may not decide upon the merits of the case until the registration has been published.

V. – The rights conferred by the Community mark do not allow its holder to prohibit its use for goods put on the market under this mark by the holder or with his consent, within the European Community, the European Economic Area, French Polynesia, the Wallis and Futuna islands, the French Austral and Antarctic Territories, New Caledonia or Mayotte. This is not the case where there exist legitimate reasons for the holder to oppose further commercialisation of the goods, especially when the condition of the goods is changed or impaired after they have been put on the market."

"Art. L. 717-4.:

A Conseil d'Etat decree shall determine the courts of first instance and appeal courts having ratione loci and ratione materiae jurisdiction, who shall have sole competence to hear:

a) Actions in infringement involving a Community mark;

b) Actions in compensation brought pursuant to the conditions laid down in IV of Article L.717-1;

c) For counterclaims in revocation or for a declaration of invalidity of a Community mark, provided they are based on the grounds for revocation or invalidity applicable to the Community mark.

These courts shall be competent to hear these actions and claims, including where they cover both an issue relating to marks and a related issue relating to designs and models or unfair competition."

"Art. L. 717-7.:

Any final decision of the Office for Harmonization in the Internal Market fixing the amount of costs shall be enforceable when the order for its enforcement is appended to the decision by the National Institute of Industrial Property, after verification of the authenticity of the title.

The interested party may proceed to enforcement in accordance with the rules of civil procedure applicable in the place of enforcement."

II. – For the application of Article L. 717-5 in the same territories, the first paragraph of this Article is replaced by the following provisions:

"Art. L. 717-5.:

I. – An application for a Community mark or a Community mark can only be converted into an application for a national mark:

a) To the extent that the Community mark application is refused, withdrawn, or deemed to be withdrawn;

b) To the extent that the Community mark ceases to have effect.

II. - Conversion shall not take place:

a) Where the rightholder of the Community mark has been deprived of his rights on the ground of non-use, unless the Community mark has been used in France in conditions constituting genuine use within the meaning of Article L. 714-5;

b) When it has been established, in application of a decision by the Office for Harmonization in the Internal Market or by a national court, that the application or the Community mark is affected in France by a grounds for refusal of registration, invalidity or revocation.

III. - The national mark application resulting from the conversion of a Community mark application or a Community mark shall benefit from the deposit date or the date of priority of that application or mark and, where appropriate, the oldness of a national mark previously registered and validly claimed."

N.B. - Act 2001-616 of 11 July 2001 art. 75: In all legislative and regulatory texts in force in Mayotte, reference to the "collectivité territoriale de Mayotte" shall be replaced by a reference to "Mayotte", and reference to the "collectivité territoriale" shall be replaced by a reference to the "collectivité départementale".

Regulary Part

PART I
Literary and artistic property

Articles R111-1 to R335-2

BOOK I
Copyright

Articles R111-1 to R133-2

TITLE I
Subject of Copyright

Articles R111-1 to R111-2

CHAPTER I
Nature of Copyright

Articles R111-1 to R111-2

Article R111-1

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The royalties referred to in Article L. 111-4 (third paragraph) of the Intellectual Property Code shall be paid to that one of the following bodies that is competent by reason of its statutory vocation, the nature of the work and the envisaged exploitation mode:

Centre national des lettres;

Société des gens de lettres;

Société des auteurs et compositeurs dramatiques;

Société des auteurs, compositeurs et éditeurs de musique;

Société pour l'administration du droit de reproduction mécanique des auteurs, compositeurs et éditeurs;

Société des auteurs des arts visuels.

If the competent body should not accept to collect the royalties concerned or in the absence of a competent body, the royalties shall be paid to the Deposit and Consignment Office.

Article R111-2

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The amount of the monies to be paid by the user of a work shall be determined in accordance with usual practice in

each of the categories of creation involved.

The payment of the monies and their use for purposes of general or professional interest shall be subject to controls by the Minister responsible for culture.

TITLE II
Authors' Rights — Articles R122-1 to R122-12

CHAPTER II
Patrimonial Rights — Articles R122-1 to R122-12

Article R122-1

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The threshold for the levying of the resale right referred to in Article L. 122-8 shall be set at a selling price of 100.

Article R122-2

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

An artist who wishes to enjoy resale right either for the whole of his work or for one or more works, when they are included in a public sale, shall be required to have published in the Official Journal a statement of which the terms shall be laid down by ministerial order.

The artist concerned shall simultaneously address to the Minister responsible for culture a duplicate of his statement.

The statement may be made by the heirs or successors in title of the artist. The statement may mention the marks or particulars of any kind that may facilitate authentification of the artist's works.

Where the object results from the collaboration of more than one artist wishing to enjoy resale right, the statement may be made collectively by those artists or individually by each of them.

Such statement shall include the fact that there is agreement between the collaborators on the distribution of the royalty provided for by this Code and in what proportion they have agreed to proceed therewith.

Article R122-3

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2001-650 of 19 July 2001 art. 68 Official Journal of 21 July 2001 in force on 1 October 2001)

In the absence of the statement referred to in the preceding Article, the concerned party may enjoy the resale right when a given work is included in a public sale by requesting the public or ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, at the latest within 24 hours after the sale, to effect the levy referred to in Article L. 122-8.

Where the object has resulted from the collaboration of more than one artist and in the absence of a statement as provided for in the preceding Article, a person or persons who wish to enjoy the resale right may assert that right in accordance with the preceding paragraph.

The notification addressed to the public or ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions shall state whether there is agreement between the collaborators on distribution of the royalty and in what proportion they have agreed to proceed therewith.

Article R122-4

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The statements under Articles R. 122-2 and R. 122-3 may include the designation of a representative such as a company or association instructed to represent the interests of the artists, his heirs and cessionaries for the application of the provisions of Article L. 122-8.

Such representative shall take all necessary steps to safeguard the rights of the artist, his heirs and cessionaries.

Article R122-5

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2001-650 of 19 July 2001 art. 68 Official Journal of 21 July 2001 in force on 1 October 2001)

As from the inclusion in the Official Journal of the statement under Article R122-2 or of receipt of the statement under Article R122-3, the public or ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, carrying out the public sale of the work of art that is the subject of such statement shall be required, at his personal liability, to levy on the selling price obtained the amount resulting from application of the tariff determined by Article L122-8 and Article R122-1.

Article R122-6

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2001-650 of 19 July 2001 art. 68 Official Journal of 21 July 2001 in force on 1 October 2001)

Three clear days after a sale that has given rise to a levy, the monies shall be kept by the public or ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, at the disposal of the concerned party. The monies shall be remitted either against proof by the concerned party of his identity or of his capacity to act or by a declaration of the representative and at his liability.

Where the object has resulted from the collaboration of more than one artist, in the absence of an agreement under

Articles R. 122-2 and R. 122-3, the amount resulting from application of the tariff determined by Articles R. 122-8 and R. 122-1 shall be held for the benefit of the entitled persons until the issue of distribution has been amicably settled or a decision has been taken under the general rules of law. If, on expiry of the three-month period laid down by Article R. 122-7, the conditions for distribution have not been fixed and notified by the parties concerned to the public of ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, who has made the levy, the amount resulting from that levy shall be paid to the Deposit and Consignment Office for subsequent remittance to the entitled party.

Article R122-7

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 2001-650 of 19 July 2001 art. 68 Official Journal of 21 July 2001 in force on 1 October 2001)

If the monies have not been handed out after the sale, the public or ministerial officer shall hold the amount during a period of three months.

Before expiry of the first month, the public or ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, shall inform by registered letter the artist, his heirs and cessionaries or his representative that he has made a levy for his benefit in application of Article L122-8 and that the amount resulting is being kept at his disposal.

If no reply is received to this notification prior to expiry of the third month, the public or ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, shall be released, after that time limit, from all liability on payment of the levied amount to the vendor.

The amount of the notification cost, which may not exceed one franc, shall be deducted from the amount of the monies paid to the artist or to the vendor.

Article R122-8

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 2001-650 of 19 July 2001 art. 68 Official Journal of 21 July 2001 in force on 1 October 2001)

The public or ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, who has paid into the hands of the vendor the amount levied and not claimed shall be required, on a simple request by the concerned parties, to communicate the amount of such money and the name, capacity and address of the vendor concerned, against whom those parties shall retain any statutory remedies.

Article R122-9

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 2001-650 of 19 July 2001 art. 68 Official Journal of 21 July 2001 in force on 1 October 2001)

If the public or ministerial officer, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, who has made the levy prescribed by Article L122-8 receives an opposition or a regular defense against payment before any payment is made to the concerned party of the resulting amount, that amount shall be paid, on expiry of the three-month period under Article R122-7, to the Deposit and Consignment Office for remittance to the entitled party.

Article R122-10

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 2001-650 of 19 July 2001 art. 68 Official Journal of 21 July 2001 in force on 1 October 2001)

The public or ministerial officers, or the person authorised on a permanent or casual basis to conduct voluntary sales of moveables at public auctions, shall keep a special register for the application of Article L122-8. The register, of which the pages shall be numbered and which shall be initialled on the first and last pages, shall include in the order of each public sale a summary description of the work of art, the selling price, the name of the artist for whom the resale royalty has been levied, the name and address of the vendor. The register may be replaced by a receipt register of which one of the slips shall constitute the notification referred to in Article R122-7 and of which the stub shall meet the requirements of this Article.

Article R122-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Artists of foreign nationality, their heirs and cessionaries shall enjoy resale right in the same circumstances and under the same conditions as French artists if their national legislation affords enjoyment of this right to French artists, but only during that time for which the artists are allowed to exercise the right in the country concerned.

However, artists of foreign nationality who, during their artistic career, have participated in French art life and who have had their place of residence in France for at least five years, even if not consecutive, may enjoy, without the requirement of reciprocity, the rights laid down in Article R. 122-2.

The successors in title of such artists shall enjoy the same faculty. The artists concerned or their successors in title shall submit a request to the Minister responsible for culture who shall take a decision after having heard the opinion of a commission of which the composition and conditions of operation shall be laid down by an order issued by the Minister.

Article R122-12

(inserted by Decree No. 97-1316 of 23 december 1997 art. 1 Official Journal of 31 December 1997)

For the purposes of the application of the provisions if item (d) of subparagraph 3 of Article L. 122-5, the catalogue of a sale of works of graphic or three-dimensional art means copies of a list, whether illustrated or not, distributed prior to a sale at public auction, which, in order to inform potential purchasers, describes the works that will be disposed of in the

course of the sale, and also the rules for the conduct of the said sale, which copies are made available free of charge or at cost price to all persons requesting them of the public or ministerial officer conducting the sale.

TITLE III
Exploitation of Rights — Articles R132-1 to R133-2

CHAPTER II
Special Provisions for Certain Contracts — Articles R132-1 to R132-17

SECTION IV
Commission Contracts for Advertising — Articles R132-1 to R132-7

Article R132-1
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Committee referred to in Article L. 132-32 shall meet either in plenary composition or in compositions specialized in one or more advertising modes. Each such composition shall be chaired by the Chairman of the Committee and shall comprise an equal number of representatives of the advertising writers and of representatives of the advertising producers.

Article R132-2
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Committee shall comprise 12 representatives of the organizations representing the advertising writers and 12 representatives of the organizations representing the advertising producers, designated in accordance with the first paragraph of Article L. 132-33.
One alternate shall be designated, in the same manner, for each full representative of the organizations representing the advertising writers and the advertising producers. The alternate members of the Committee shall not attend its sessions and shall not participate in its discussions save for the absence of the full representative for whom they are the alternate.

Article R132-3
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Chairman and members of the Committee shall be designated for three years. Vacancies occurring during their term of office shall be filled by designation for the remainder of the current term.

Article R132-4
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Chairman shall convene and set the agenda for the Committee and its specialized compositions.
Convocations shall be ex officio where requested, with a specific agenda, either by the Minister responsible for culture or by one third of the members of the Committee.

Article R132-5
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The deliberations of the Committee and its specialized compositions shall be valid only if three quarters of the members or their regular alternates are present. Where this quorum is not achieved, the Committee shall be reconvened within eight days; it may then deliberate whatever the number of members present.

Article R132-6
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The members of the Committee shall be under an obligation of discretion with regard to the elements, documents and information of which they obtain knowledge.

Article R132-7
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The secretariat of the Committee shall be provided by the services of the Minister responsible for culture.
The sessions of the Committee shall not be public. However, the Committee may hear any person as it deems useful.
The Committee shall establish its rules of procedure.
The decisions of the Committee shall be published in the Official Journal of the French Republic at the initiative of the Minister responsible for culture.

SECTION V
Pledging the Software Exploitation Right — Articles R132-8 to R132-17

Article R132-8
(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

Pledges in respect of the software exploitation right shall be entered in the Special National Register of Software kept by the National Institute of Industrial Property.

The entry shall contain for each computer program:

1°. The identity of the holder of the right referred to in Article L. 122-6 and of the pledgee, together with any changes concerning the their surnames, forenames, business names, legal form, domicile or headquarters;

2°. A statement of the elements enabling the computer program to be identified, such as name, make, designation of the source code, operating documents and updates, together with any other characteristics of the program and, where appropriate, the reference of any deposit;

3°. The deed establishing the pledge on all or a part of the software exploitation right;

4°. The acts modifying ownership or enjoyment of the exploitation right;

5°. The acts modifying the rights of the pledger;

6°. Court actions and final court decisions where they concern the rights that are the subject matter of the pledge;

7°. Corrections of material errors affecting the entries.

Article R132-9

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

The request for entry shall be submitted by one of the parties to the pledge or by a representative having powers of attorney. Unless otherwise provided, such powers shall extend to the requests for entry referred to in Articles R. 132-10 to R. 132-13 and R. 132-15, to the receipt of the notifications referred to in Article R. 132-14 and to the request for cancellation referred to in Article R. 132-16.

Article R132-10

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

The request for entry of a pledge shall be effected by filing a memorandum whose form shall be determined by decision of the Director General of the National Institute of Industrial Property.

The memorandum shall contain the following particulars:

1°. The surnames, forenames, domicile or business names, legal form and headquarters of the creditor and the debtor;

2°. The designation of the software by means of its name, mark, with a precise statement of all the elements that identify and characterize it, such as the designation of the source code, the operating documents and the updates together with, where appropriate, any references to a deposit of the software;

3°. The nature and date of the deed of pledge;

4°. The amount of the debt covered by the deed, its exigibility, the conditions relating to interest and the accessory costs.

This memorandum shall be accompanied by:

— one original of the deed of pledge;

— one reproduction of the above-mentioned deed if the requester wishes the original or the authentic copy to be returned to him;

— proof of payment of the prescribed fee;

— where appropriate, the powers of the representative.

Article R132-11

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

Any acts modifying or canceling the published rights of the debtor and of the creditor, such as, in particular, transfer, assignment of an exploitation right, transfer of the pledge or renunciation thereof, together with court actions and final court decisions relating to the rights, shall be entered at the request of one of the parties to the act.

The request shall contain:

1°. A memorandum requesting entry whose form shall be determined by decision of the Director General of the National Institute of Industrial Property;

2°. One of the originals of the private deed or, as appropriate, an authentic copy of the deed or of the act instituting proceedings;

3°. A copy of the above-mentioned deed where the requester wishes the original or the authentic copy to be returned to him;

4°. Proof of payment of the prescribed fee;

5°. Where appropriate, the powers of the representative.

Article R132-12

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

Any change in the surnames, forenames or domicile of the natural persons or any change in the business names, legal form or headquarters of the legal persons shall be entered at the request of any person concerned.

The request shall contain:

1°. A memorandum requesting entry whose form shall be determined by a decision of the Director General of the National Institute of Industrial Property;

2°. Any document required to ascertain the changes or modifications in the civil status or domicile of natural persons or the name, legal status and headquarters of legal persons;

3°. Proof of payment of the prescribed fee;

4°. Where appropriate, the powers of the representative.

Article R132-13

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

Requests for correction of material errors in acts already published in the Register may be submitted by any party to the acts concerned in accordance with the procedure under Article R. 132-12. They shall be accompanied by all the necessary documents.

Article R132-14

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

If a request for entry is not in conformity, a reasoned notification shall be made to the requester. He shall be given a period of two months to regularize his request or to submit observations. Failing regularization or the submission of observations enabling the objection to be lifted, the request shall be rejected by a decision of the Director General of the National Institute of industrial Property.

The notification may be accompanied by a proposal for regularization. In such case, the proposal shall be deemed accepted if the requester does not contest it within the two-month period afforded to him.(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

Article R132-15

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

An entry shall cease to have effect if it is not renewed under the procedure set out in Article R. 132-10 prior to expiry of a period of five years computed from the date of entry of the pledge.

Article R132-16

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

Cancellation of an entry may be requested by the creditor or the debtor by furnishing proof of the extinction of the pledged debt or by producing the act giving release from the entry.

Cancellation may also be effected as a result of a final court decision.

Article R132-17

(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

All entries made in the Special National Register of Software shall be notified in the Official Bulletin of Industrial Property.

Any person concerned may obtain from the Institute:

a)A reproduction of the entries in the Register;

b)A certificate attesting to the fact that there is no entry.

CHAPTER III

Rémunération au titre du prêt en bibliothèque — Articles R133-1 to R133-2

Article R133-1

(inserted by Decree No. 2004-920 of 31 August 2004, Article 1, Official Journal of 2 September 2004)

Libraries open to the public for lending that are referred to in Articles L133-3 and L133-4 shall be:

1º libraries of local authorities designated under Articles L. 310-1 to L. 310-6 and L. 320-1 to L. 320-4 of the Heritage Code;

2º libraries of public institutions of scientific, cultural and professional nature and public institutions of higher education under the Minster responsible for higher education;

3º libraries of the works councils;

4º any other library or organization that makes available to the public, of which more than half of the books acquired in the year are intended for an organized lending activity for the benefit of registered individual or collective users.

Article R133-2

(inserted by Decree No. 2004-921 of 31 August 2004, Article 1 Official, Journal of 2 September 2004)

The amount on the first part of the remuneration referred to in the second paragraph of Article L. 133-3 shall be calculated on the basis of a fixed contribution per user registered in libraries open to the public for lending, as referred to in Article R. 133-1.

This contribution shall be €1 per user registered in libraries of public institutions of scientific, cultural and professional nature and other public institutions of higher education under the Minister responsible for higher education and shall be paid by the latter. It shall be €1, 5 per user registered in other libraries open to the public for lending and shall be paid the Ministry responsible for culture.

For the first year of application of the law, this contribution shall be respectively € 0, 5 per user registered in libraries of higher education institutions and € 0, 75 per user registered in other libraries open to the public for lending.

The number of registered users shall be specified annually by a decree under the following conditions:

1º the number of users registered in public libraries shall be evaluated annually based on the statistics provided by municipalities and the Départements pursuant to Articles R. 1422-5 and R. 1422-14 of the General Code of Local Authorities;

2º the number of the users registered in libraries of public institutions of scientific, cultural and professional nature and other public institutions of higher education under the Minister responsible for higher education shall be assessed annually based on the annual statistics drawn up by the Minister responsible for higher education;

3º For the purpose of considering users registered in other public libraries open to the public for lending, the number of the users registered in public libraries shall be raised by a percentage rate. This rate shall be fixed at 4 % and revised every three years based on estimates on the development of the activity of these libraries.

BOOK II
Neighbouring Rights **Articles R212-1 to R214-7**

SOLE TITLE

Articles R212-1 to R214-7

CHAPTER II
Rights of Performers Articles R212-1 to R212-7

Article R212-1
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Committee referred to in Article L. 212-9 shall meet either in plenary composition or in compositions specialized in one or more sectors of activity. Each such composition shall be chaired by the Chairman of the Committee and shall comprise an equal number of representatives of the employees and representatives of the employers.

Article R212-2
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Committee shall comprise 12 representatives of the employees' organizations and 12 representatives of the employers' organizations. The organizations called upon to designate representatives and the number of representatives of each such organization shall be laid down by an order issued by the Minister responsible for culture.

One alternate shall be designated, in the same manner, for each of the full representatives of the employees' and employers' organizations. The alternate members of the Committee shall not attend its sessions and shall not participate in its discussions save for the absence of the full representative for whom they are the alternate.

Article R212-3
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Chairman and members of the Committee shall be designated for three years. Vacancies occurring during their term of office shall be filled by designation for the remainder of the current term.

Article R212-4
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Chairman shall convene and set the agenda for the Committee and its specialized compositions.

Convocations shall be ex officio where requested, with a specific agenda, either by the Minister responsible for culture or by one third of the members of the Committee.

Article R212-5
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The deliberations of the Committee and its specialized compositions shall be valid only if three quarters of the members or their regular alternates are present. Where this quorum is not achieved, the Committee shall be reconvened within eight days; it may then deliberate whatever the number of members present.

Article R212-6
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The members of the Committee shall be under an obligation of discretion with regard to the elements, documents and information of which they obtain knowledge.

Article R212-7
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The secretariat of the Committee shall be provided by the services of the Minister responsible for culture.

The sessions of the Committee shall not be public. However, the Committee may hear any person as it deems useful.

The Committee shall establish its rules of procedure.

The decisions on the Committee shall be published in the Official Journal of the French Republic on the initiative of the Minister responsible for culture.

CHAPTER IV
Provisions Common to Performers and Phonogram Producers Articles R214-1 to R214-7

Article R214-1
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Committee referred to in Article L. 214-4 shall meet in either plenary composition or in compositions specialized

in one or more sectors of activity. Each such composition shall be chaired by the Chairman of the Committee and shall comprise an equal number of representatives of the beneficiaries of the right to remuneration and the representatives of the users of phonograms.

Article R214-2
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2005-578 of 23 May 2005, Article 1, Official Journal of 28 May 2005)
One alternate shall be appointed under the conditions provided for in the second paragraph of Article L.214-4 for each of the entitled representatives of the employees' and employers' organizations. The alternate members of the Committee shall not attend its sessions and shall not take part in its deliberations save where the full representative for whom they are the alternate are absent.

Article R214-3
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Chairman and members of the Committee shall be designated for three years. Any vacancies occurring during their term of office shall be filled by designation for the remainder of the current term.

Article R214-4
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Chairman shall convene and set the agenda for the Committee and its specialized compositions.
Convocations shall be ex officio where requested, with a specific agenda, either by the Minister responsible for culture or by one third of the members of the Committee.

Article R214-5
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The deliberations of the Committee and its specialized compositions shall be valid only if three quarters of the members or their regular alternates are present. Where the quorum is not achieved, the Committee shall be reconvened within eight days; it may then deliberate whatever the number of members present.

Article R214-6
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The members of the Committee shall be under an obligation of discretion with regard to the elements, documents and information of which they obtain knowledge.

Article R214-7
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The secretariat of the Committee shall be provided by the services of the Minister responsible for culture.
The sessions of the Committee shall not be public. However, the Committee may hear any person as it deems useful.
The Committee shall establish its rules of procedure.
The decisions of the Committee shall be published in the Official Journal of the French Republic on the initiative of the Minister responsible for culture.

BOOK III
General Provisions — **Articles R311-1 to R335-2**

TITLE I
Remuneration for Private Copying — Articles R311-1 to R311-7

SOLE CHAPTER — Articles R311-1 to R311-7

Article R311-1
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Committee referred to in Article L. 311-5 shall meet in either plenary composition or in either of two compositions specialized, in the first case, in phonograms, and in the second case, in videograms. Each of these compositions shall be chaired by the Chairman of the Committee and shall comprise, for one half, the representatives of the beneficiaries of the right to remuneration, for one quarter, the representatives of the manufacturers or importers or of persons who effect intracommunity acquisition of mediums and, for one quarter, of representative of the consumers.

Article R311-2
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The representative of the State, Chairman of the Committee, shall be appointed by order of the Minister responsible for culture.
The Committee shall further comprise 24 members representing the categories referred to in the first paragraph of Article L. 311-5 and designated as provided in the second paragraph of the aforementioned Article.

One alternate shall be designated, in the same manner, for each of the full members. The alternate members shall not attend the sessions and shall not participate in the deliberations save in the absence of the full representative for whom they are the alternate.

Article R311-3

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Chairman and the members of the Committee shall be designated for three years. Any vacancies occurring during the term of office shall be filled by designation for the remainder of the current term.

Article R311-4

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Chairman shall convene and set the agenda for the Committee and its specialized compositions.

Convocation shall be ex officio where requested, with a specific agenda, by either the Minister responsible for culture or by one third of the members of the Committee.

Article R311-5

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The deliberations of the Committee and its specialized compositions shall be valid only if three quarters of the members or their regular alternates are present.

If the quorum is not achieved, the Committee shall be reconvened within eight days; it may then deliberate whatever the number of members present.

Article R311-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The members of the Committee shall be under an obligation of discretion with regard to the elements, documents and information of which they obtain knowledge.

Article R311-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The secretariat of the Committee shall be provided by the services of the Minister responsible for culture.

The sessions of the Committee shall not be public. However, the Committee may hear any person as it deems useful.

The Committee shall establish its rules of procedure.

The decisions of the Committee shall be published in the Official Journal of the French Republic at the initiative of the Minister responsible for culture.

TITLE II
Royalty Collection and Distribution Societies — Articles R321-1 to R326-7

CHAPTER I
General Provisions — Articles R321-1 to R321-10

Article R321-1

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)

The file addressed to the Minister responsible for culture pursuant to Article L. 321-3 shall include the draft statutes and general regulations and all documents proving the professional qualifications of the founders, the human, material or financial means that the society intends to use for the effective collection of royalties and for the exploitation of their repertoire.

The file shall be communicated by registered mail with notification of receipt.

Article R321-2

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)
(Decree No. 2001-334 of 17 April 2001 art. 1 I Official Journal of 18 April 2001)

Members may at all times request communication from the society of:

1°. The list of the society's representatives;

2°. A table tracing back over a period of five years the annual amounts collected and distributed as well as withholdings on the basis of management costs and other withholdings;

3°. A document describing the distribution rules applicable;

4°. The aggregate royalties owed to them over the course of the last twelve months, as a result of contracts concluded with users, and the manner in which this aggregate amount was calculated.

Article R321-3

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)
(Decree No. 2001-334 of 17 April 2001 art. 2 Official Journal of 18 April 2001)

The members of the royalty collection and distribution societies may be convened by registered mail or by a notice published in at least two nationally distributed newspapers that are empowered to publish statutory notifications in the department in which the society has its registered offices and which are laid down in their statutes. Members shall be informed by any suitable means should there be any modification to the list of newspapers prior to the updating of statutes. Members are informed, by any suitable means, of any changes to the list of these newspapers made prior to the updating of the statutes.

In addition to the particulars referred to in the first paragraph of Article 40 of Decree No. 78-704 of July 3, 1978, the notification shall state the date and venue for the meeting; such notification shall be published 15 days at least before the date of the general meeting.

Where the statutes require certain general meetings to be held subject to specific conditions as to quorum or majority, those conditions shall be mentioned in the notification that convenes the meetings.

Article R321-4

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)

The date of the general meeting at which account is given, in accordance with Article 1856 of the Civil Code, on the management of the society shall be laid down in the statutes.

If the general meeting cannot be held as laid down in the statutes, the members must be informed thereof at least 15 days beforehand, either by registered letter with notification of receipt or by a notification of postponement published in the manner laid down in Article R. 321-3. The letter or the notification shall give the reasons for the postponement and the date at which the general meeting will be held.

Article R321-5

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)

Any member may request to be convened individually to general meetings or to certain of them by registered post with notification of receipt.

Where a meeting is convened by notification in the press, the cost of the registered post shall be borne by the party concerned.

Article R321-6

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)
(Decree No. 2001-334 of 17 April 2001 art. 1 II Official Journal of 18 April 2001)

Before the general meeting to approve the accounts, all members are entitled to examine the books and documents referred to in Article 48 of Decree No. 78-704 of 3 July 1978 on the application of Act No. 78-9 of 4 January 1978 amending Title IX of Book III of the Civil Code, relating to the current financial year. This right must be exercised in the two months prior to the General Meeting, unless a longer period has been stipulated in the company's statutes.

At least fifteen days before the date specified for this meeting, members shall send the company a written request mentioning the documents to which they wish to have access. Within ten days of receipt of the request, the company shall suggest a date for exercising the right of access, which shall occur in the conditions specified in the statutes. The third paragraph of Article 48 of the aforementioned Decree of 3 July 1978 shall be applicable.

The right of access shall be exercised at the headquarters of the company or on the premises of the administrative organisation and shall be subject to the provisions of the final paragraph of Article R321-6-1, which does not give entitlement to a copy of the documents.

Article R321-6-1

(inserted by Decree No. 2001-334 of 17 April 2001 art. 1 III Official Journal of 18 April 2001)

Moreover, members may, during the period specified in the first paragraph of Article R321-6, ask the company to provide them with:

1°. The annual accounts to be submitted to the general meeting, together with the accounts for the previous year, accompanied by the documents referred to in Article R321-8;

2°. The reports of the directors and of the auditors, to be submitted to the meeting;

3°. Where applicable, the text and presentation of the reasons for the proposed resolutions, together with information on the applicants applying for a term of office in the company;

4°. The overall amount, certified correct by the auditors, of the remuneration received by the highest paid individuals, of whom there will be ten or five in number, depending on whether the company has a workforce of under or over two hundred employees;

5°. A list of investments appearing in the accounts at the closure of the financial year, together with the average rate of return on short and medium-term investments over the financial year;

6°. A table mentioning the company in which the company has a holding and the profit and loss account and the balance sheet for each of these companies;

7°. A list of the main user categories, their number and the amount of benefit paid over the year.

8°. A table showing the comparison between the annual accounts as they are generally presented and the tables specified in Article R321-8.

The documents referred to in points 1 to 8 shall be made available over the same period to members at the company headquarters or on the premises of the administration, where the former may examine them or obtain a copy.

Article R321-6-2

(inserted by Decree No. 2001-334 of 17 April 2001 art. 1 III Official Journal of 18 April 2001)

Members' right to information pursuant to Article R. 321-6 shall be ensured subject to compliance with the limits laid down by Article L. 321-5 and the rules laid down by the memorandum of association as regards confidentiality, inter alia as regards business secrets, vis-à-vis third parties. Also, a member may not access personal data concerning staff members of the company.

If required, the personal data excluded from the right of access, shall be concealed.

Documents having a preparatory nature to decision by the society's bodies or relating to a pending lawsuit may not be accessible.

The company may decide not to follow up on repeated or abusive requests.

Article R321-6-3

(inserted by Decree No. 2001-334 of 17 April 2001 art. 1 III Official Journal of 18 April 2001 in force on 1 July 2001)

A member who has received a refusal of communication may refer the matter to a special commission comprising at least five members, elected by the general meeting from those who have no corporate representation status.

The opinions of this commission must be justified. The applicant and the company management bodies will be notified of them.

The commission shall provide the general meeting with an annual report on its activities. This report will be sent to the Minister for Culture and to the Chairman of the Commission, under the terms of Article L321-13.

Article R321-6-4

(inserted by Decree No. 2001-334 of 17 April 2001 art. 1 III Official Journal of 18 April 2001)

For a de iure or de facto manager to refuse to communicate all or part of the documents referred to in Articles R321-2, R321-6 and R321-6-1 shall be sanctioned by the fine provided for 3rd class offences.

Article R321-7

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)

Users may obtain knowledge of the repertoire referred to in Article L. 321-7 at the headquarters of the society or, where appropriate, at one of its regional agencies. At their request, they may be given a copy of the repertoire without any further claim on them other than an amount representing the cost of the copy.

Article R321-8

(Decree No. 98-1040 of 18 November 1998 art. 1 Official Journal of 19 November 1998)
(Decree No. 2001-334 of 17 April 2001 art. 1 IV Official Journal of 18 April 2001)
(Decree No. 2001-809 of 6 September 2001 art. 1 Official Journal of 8 September 2001)

Communication of the annual accounts of the royalty collection and distribution companies, provided for under Article R321-6-1 for all members and in application of the first paragraph of Article L321-12, to the Minister for Culture must include:

A. – As regards the financial management of the company:

1. In compliance with the common accounting rules on the reporting of revenue and expenses, a management account in compliance with Annex 1 (NB).

The companies concerned will also be entitled to:

a) Show corporate operations to the profit of the partners, on the one hand, and cultural operations on the other, either in the management account or in a separate account.

b) Show the royalties received in revenue, the amounts to be allocated and the amounts effectively paid in expenses for the financial year in the management account.

2. As management indicators:

a) in compliance with Annex 2, a table showing the allocation of the amounts received per type of remuneration;

b) in compliance with Annex 3, a table showing, per type of remuneration:

- a list of the amounts effectively paid during the financial year for individual allocation;
- the share amounts realised during the financial year actions for collective allocation;

c) in compliance with Annex 4, a table summarising the amounts remaining for individual allocation, per type of remuneration;

d) in compliance with Annex 5, a table showing the list of amounts individually allocated and not yet paid, per year of allocation and per type of remuneration;

e) a table showing the ratio of deductions on royalties to collections for the financial year;

f) a table showing the amount and allocation of financial revenue;

B. – As regards implementation of activities, financing whereof is provided for under Article L321-9:

1. A breakdown of the amounts paid, per activity category, as specified in the first paragraph of Article L321-9, combined with special information on:

- the cost of management of these activities.
- the organisations that have benefited from assistance over three consecutive years.

2. A description of the allocation procedures;

3. A commentary on the policies of the company as regards the former.

4. A list of the conventions referred to in Article R321-10.

C. Annual information on any action taken to defend the social categories affected by their corporate purpose.

N.B. annexes not reproduced, please refer to the Official Journal of 19 November 1998.

Article R321-9

(Decree No. 98-1040 of 18 November 1998 art. 1 Official Journal of 19 November 1998)
(Decree No. 2001-809 of 6 September 2001 art. 2 Official Journal of 8 September 2001)

I. – The assistance for creation referred to in Article L321-9 refers to assistance provided:

a) for the creation of a work, its performance, the first fixing of a work or interpretation on a phonogram or videogram;

b) for defence, promotion and information campaigns to support creators and their works;

II. – Assistance in the distribution of a live show as referred to in Article L321-9 shall mean assistance provided for:

a) Events presenting a live show as a main or back-up act;

b) Campaigns that will ensure the distribution of the works and artistic services of a live show.

III. – Assistance with the training of artists, as referred to in Article L321-9, refers to assistance provided for the training of authors and artists-performers.

Article R321-10

(inserted by Decree No. 2001-809 of 6 September 2001 art. 3 Official Journal of 8 September 2001)

Any assistance granted by a royalty collection and distribution society pursuant to article L321-9 is the subject of an agreement between the company and the beneficiary. This agreement provides for the conditions of use of the aid granted, together with the conditions in which the beneficiary shall inform the company of the elements which can be used to give proof that said assistance is used in accordance with its destination.

CHAPTER II

Approved Societies for the Administration of Reprographic Reproduction Rights Articles R322-1 to R322-4

Article R322-1

(inserted by Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)

A society governed by Title II of Book III may be approved under Article L. 122-10 if it satisfies the following conditions:

1°. Provide evidence of the diversity of the partners with respect to the categories and number of entitled persons, of its economic importance expressed in revenue or turnover and the diversity of editorial types of works. Such diversity should be expressed in the composition of its deliberative and executive organs;

2°. Provide proof, by any documentary means, of the qualification of its executives and representatives:

a)Their capacity as authors;

b)Or the type and level of their diplomas;

c)Or their professional experience in the field of publication or of the management of professional bodies;

3°. Provide all information concerning its administrative organization and the conditions of its installation and equipment. This information should concern the collection of data on reprographic practice, the collection of remuneration, the processing of the date required for distribution of the remuneration collected, the finance plan and the budget forecast for the three financial years following the request for approval;

4°. Provide in its statutes, its general regulations and in the model instruments binding each of the members, rules that guarantee the equitable nature of the conditions laid down for distribution of the remuneration to the authors and publishers.

Article R322-2

(inserted by Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)

The request for approval, accompanied by a file drawn up in accordance with Article R. 322-1, shall be transmitted by registered letter to the Minister responsible for culture who shall issue a receipt. If the file is not complete, the Minister responsible for culture shall request by registered letter a supplementary file to be submitted in the same form within a period of one month as from the receipt of the letter.

Approval shall be given by order of the Minister responsible for culture, published in the Official Journal of the French Republic.

Approval shall be given for five years. It may be renewed subject to the same conditions as the initial approval.

Approval may be withdrawn if a society fails to satisfy one of the conditions laid down in Article R. 322-1 following service of notice or notification of the defects. The holder of approval shall have a one-month period to submit his observations. Withdrawal shall be pronounced by order of the Minister responsible for culture, published in the Official Journal of the French Republic.

Article R322-3

(inserted by Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)

Any change in the memorandum of association or in the general rules, any termination of the functions of a member of the executive and deliberative bodies of an approved company shall be communicated to the Minister responsible for culture within a period of fifteen days as from the corresponding decision. Failure to make a declaration may lead to the withdrawal of approval.

Article R322-4

(inserted by Decree No. 95-406 of 14 April 1995 art. 1, art. 2 Official Journal of 19 April 1995)

If, on the date of publication of a work, the author or his successor in title has not designated an approved royalty collection and distribution society, the society that has the largest number of administered works, determined in accordance with relevant professional usage, shall be deemed to represent the reprographic reproduction right.

The Minister responsible for culture shall designate each year one or more societies that fulfill the conditions set out in the preceding paragraph.

CHAPTER III

Approved Societies for the administration of the right to authorise retransmission by cable, simultaneous, in full and without change, on the national territory from a member State of the European Com — Articles R323-1 to R323-5

Article R323-1

(inserted by Decree No. 98-1041 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

A company governed by Title II of Book III may be approved under I of Article L132-2 and Article L217-2 if it satisfies the following conditions:

1°. Provide proof of the effective administration of the right to authorise retransmission by cable, with respect to the number of entitled persons, of its economic importance expressed in revenue or turnover;

2°. Provide proof, by any documentary means, of the qualification of its executives and representatives:

a) the type and level of their degrees;

b) or their experience in the management of professional bodies;

3°. Provide all information concerning:

a) The administrative structure and the conditions of installation and equipment.

b) Payments received or awaited on the occasion of the retransmission by cable, simultaneous, in full and without change, within national territory, from a member State of the European Community and the data required for their distribution;

4°. Communicate :

a) Copy of agreements made with third parties concerning the retransmission by cable, simultaneous, in full and without change, within national territory, from a member State of the European Community;

b) Failing which, a copy of the agreements made with foreign professional organisations in charge of royalty collection and distribution.

Article R323-2

(inserted by Decree No. 98-1041 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The request for approval, accompanied by a file drawn up in accordance with Article R. 323-1, shall be transmitted by registered letter to the Minister responsible for culture who shall issue a receipt. If the file is not complete, the Minister responsible for culture shall request by registered letter a supplementary file to be submitted in the same form within a period of one month as from the receipt of the letter.

Approval shall be given by order of the Minister responsible for culture, published in the Official Journal of the French Republic.

Approval shall be given for five years. It may be renewed subject to the same conditions as the initial approval.

If a society should fail to satisfy one of the conditions laid down in Article R. 323-1, notification is sent by registered letter with acknowledgement of receipt. The holder of the approval shall have a one-month period to submit his observations. Failing regularisation of the situation, the approval may be withdrawn by order of the Minister responsible for culture, published in the Official Journal of the French Republic.

Article R323-3

(inserted by Decree no. 98-1041 of 18 November 1998 art. 1, Journal Officiel of 19 November 1998)

Any change in the memorandum of association or in the general rules, any termination of the functions of a member of the executive and deliberative bodies of an approved company shall be communicated to the Minister responsible for culture within a period of fifteen days as from the corresponding decision. Failure to make a declaration may lead to the withdrawal of approval.

Article R323-4

(inserted by Decree No. 98-1041 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The list of companies that benefit from the approval is published each year by the Minister responsible for culture.

Article R323-5

(inserted by Decree No.98-1041 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The designation provided for in the second paragraph of I of article L.132-20-1 and of the second paragraph of I of the article L.217-2 made by registered post with acknowledgement of receipt addressed to a royalty collection and distribution company.

Withdrawal can be effected in terms of the conditions provided for by the articles of the company.

CHAPTER IV

The mediators commissioned with carrying out the resolution of disputes related to concession of authorisation of retransmission by cable, simultaneous, complete and without alteration, in the territo

Articles R324-1 to R324-12

Article R324-1

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

For the application of articles L.132-20-2 and L.217-3, a list of 20 mediators is established by the Minister responsible for Culture on the proposal of royalty collection and distribution companies approved and included in the list mentioned in article R.323-4, representatives of professional broadcasting organizations and representatives of organizations of beneficiaries with the right to permit the retransmission by cable.

The Minister responsible for Culture decrees the list of professional organizations mentioned in the preceding paragraph.

The list of mediators is published in the official Journal of the Republic of France.

Article R324-2

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998).

The mediators must fulfil the following criteria :

1. Enjoy full civil and political capacity ;

2. Not have carried out acts contrary to honour, integrity and good morals attracting punitive disciplinary or administrative measures ;

3. Possess the qualifications necessary for the resolution of the disputes brought before him ;

4. Be able to present the guarantees of impartiality necessary in the exercise of mediation and notably, not be a member, director, agent of employee of a company or organisation mentioned in article 324.1.

Article R324-3

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The mediators are appointed for a renewable 3-year term.

Article R324-4

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

A mediator may request his removal from the list provided for in article R.324.1 by registered letter with acknowledgement of receipt addressed to the Minister responsible for Culture.

His replacement is provided for in the conditions fixed in article R324-1.

Article R324-5

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The mediator may be called upon, at the joint request of the parties by registered letter with acknowledgement of receipt outlining the points around which their dispute has arisen.

Article R324-6

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The mediator may also be called upon by one of the parties. He makes this request by registered letter with acknowledgement of receipt within a period of eight days, the other parties have a period of one month within which to make known their position by registered letter with acknowledgement of receipt and, in the event of disagreement over the choice of mediator, propose another mediator.

When the choice of mediator is settled by all the parties the mediator informs the parties by registered mail with acknowledgement of receipt.

Article R324-7

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The duration of the mediation shall not exceed three months running from the date of receipt of the joint request or the date of the last acknowledgement of receipt in the case provided for in terms of the last paragraph of the preceding article.

The mediation may be renewed once for the same duration at the request of the mediator with the agreement of the parties.

Article R324-8

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The mediator will inform the parties of the total amount of his fees. The charge of such fees shall be shared equally by the parties.

Article R324-9

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

The mediator invites the parties to hear the proceedings from the beginning of the mediation.

He requests that the parties furnish him with all accurate facts he deems necessary and can interview all persons he deems usefully contribute to the proceedings. The parties may be assisted by a lawyer or by anyone of their choice who has been approved by the mediator. Only those invited by the mediator to participate shall be admitted.

The mediator shall retain no fact, grievance, element of information or proof without notifying the parties concerned in conditions allowing the latter to question their legitimacy.

Article R324-10

(inserted by Decree No. 98-1042 of 18 November 1998 art. I official Journal of 19 November 1998)

The mediator is duty-bound to keep confidential the business brought to his attention.

Investigations carried out by the mediator and his findings cannot be produced or called for within the framework of another procedure of mediation, arbitration or judicial proceedings without the consent of the parties.

Article R324-11

(inserted by Decree No. 98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

At the time the mediator establishes an agreement between the parties, he shall draft minutes outlining the measures to be taken and setting a timeframe for their execution. He addresses copies of these minutes to the parties by registered letter with acknowledgement of receipt within 10 days.

Article R324-12

(inserted by Decree No.98-1042 of 18 November 1998 art. 1 Official Journal of 19 November 1998)

If, at the end of the time limit provided for in article R.324-7, no agreement has been reached between the parties, the mediator may, by registered letter with acknowledgement of receipt, put forward recommendations to the parties, proposing a solution which he judges appropriate and just to all parties to the dispute.

Failure to have expressed their opposition in writing to the mediator within 3 months from the date of receipt of his proposal will result in the parties being deemed to have accepted such proposal.

CHAPTER V

Standing committee on the control of royalty collection and distribution companies — Articles R325-1 to 325-4

Article R325-1

(inserted by Decree No. 2001-334 of 17 April 2001 art. 3 Official Journal of 18 April 2001)

The Standing Commission on the control of royalty collection and distribution companies instituted by article L.321-13 is called at the summoning of its chairman.

It can validly deliberate in the presence of a quorum of three of its members. These deliberations will be adopted by the majority of members present, the chairman having the casting vote in the event of a deadlock. The reporter who was appointed in terms of the last paragraph of I of article L.321-13 attends to the deliberations.

The Commission can hear the directors of royalty collection and distribution companies, their affiliates and organizations controlled by such companies and those persons who, in the opinion of the chairman, is considered useful.

The Commission undertakes to take all measures to protect the secrecy of these inspections.

Article R325-2

(inserted by Decree No. 2001-334 of 17 April 2001 art.3 Official Journal of 18 April 2001)

The Commission fixes its annual work programme as recommended by the chairman.

The decision to an inspection is notified by registered letter to the company or organization who has raised the objection.

The request for documents and information is addressed, to the company or the organization supervised, by a letter setting a time frame within which to respond to it. This period may not be for a period of less than thirty days.

Inspection is subject to prior written notification.

Article R325-3

(inserted by Decree No. 2001-334 of 17 April 2001 art.3 Official Journal of 18 April 2001)

The provisional report of inspection, established by the reporter and adopted by the Commission, is communicated by the Chairman to the inspected company or organisation, which has thirty days in order to put forward its observations or asks that its representatives be heard by the Commission.

The final verification report is adopted by the Commission after examination of the observations of the company or organization under investigation and, if needs be, after examination of the representatives. The observations of the company organization are annexed to the report. This report is addressed to the company or organization. It is also sent to the Minister responsible for Culture.

Article 325-4

(inserted by Decree No. 2001-334 of 17 April 2001 art.3 Official Journal of 18 April 2001)

The annual report provided for in III of article L.321-13 is established on the basis of verification of facts by the Commission at the instance of its investigations.

The observations of the Commission putting in issue a company or organization communicated with earlier. The company or organization has a period of thirty days within which to put forward its observations or ask that its representatives be heard by the Commission. The observations of the company or organization are annexed to the report.

CHAPTER VI

Sociétés agréées pour la gestion collective de la rémunération au titre du prêt en bibliothèque — Articles R326-1 to R326-7

Article R326-1

(inserted by Decree No. 2004-920 of 31 August 2004, Article 2, Official Journal of 2 September 2004)

A company governed by the provisions of Articles L321-1 to L321-13 shall be approved under Article L133-2 if it:

1º brings the proof, by the composition of its decision-making bodies and managers, of the diversity of its partners according to the categories and the number of entitled beneficiaries, the economic importance expressed in income or sales turnover and of the diversity of editorial genres;

2º brings the proof of the equitable representation of authors and editors among its partners and within its decision-making bodies;

3º shows by any means the professional qualification of its managers and managing agents because:

a) of their authorship;

b) or of the nature and level of their qualifications;

c) or of their experience as editor or the management of professional organizations;

4º gives necessary information on:

a) the administrative organization and installation and equipment conditions of the company;

b) the means employed for gathering statistical data on purchase of works by the libraries;

c) the means employed for the collection of remunerations and data processing necessary for the distribution of such remunerations;

d) regarding the financing and estimated budget for the three financial years according to the application for authorisation;

5º states the steps which it has taken or which it intends to take to guarantee the compliance with the rules of distribution of remunerations among authors and editors, as well as the equitable character of the distribution within each category.

Article R326-2

(inserted by Decree No. 2004-920 of 31 August 2004, Article 2, Official Journal of 2 September 2004)

The application for authorisation, accompanied by a file drawn up in accordance with Article R. 326-1, shall be transmitted by a registered letter with advice of delivery to the Minister responsible for culture, which must delivers a receipt. Where the file is not complete, the Minister responsible for culture will ask by a registered letter with advice of delivery for a complementary file, which must be delivered in the same form within one month as from the reception of this letter.

Article R326-3

(inserted by Decree No. 2004-920 of 31 August 2004, Article 2, Official Journal of 2 September 2004)

The authorisation shall be granted by the order of the Minister responsible for culture, which shall be published with the Official Journal of the French Republic.

Article R326-4

(inserted by Decree No. 2004-920 of 31 August 2004, Article 2, Official Journal of 2 September 2004)

The authorisation shall be granted for five years. It shall be renewable under the same conditions as the initial authorisation.

Article R326-5

(inserted by Decree No. 2004-920 of 31 August 2004, Article 2, Official Journal of 2 September 2004)

Any change in the general regulation and any suspension of function of a member of the decision-making bodies and managers of an authorised company shall be disclosed to the Minister responsible for culture within fifteen days as from the corresponding event. Failure to disclose may lead to the withdrawal of authorisation.

Article R326-6

(inserted by Decree No. 2004-920 of 31 August 2004, Article 2, Official Journal of 2 September 2004)

If an authorised company ceases to fulfil one of the conditions set out under Article R. 326-1, the Minister responsible for culture will summon it in writing to observe the conditions of the authorisation. The beneficiary of the authorisation shall present his observations within one month and, if necessary, the steps for compliance that he intends to take.

The withdrawal of authorisation shall be pronounced by order of the Minister responsible for culture, which shall be published with the Official Journal of the French Republic.

Article R326-7

(inserted by Decree No. 2004-920 of 31 August 2004, Article 2, Official Journal of 2 September 2004)

If, at the date of the publication of a work, the author and the editor have not appointed an authorised company for collecting and distributing the fees, the management of their right to remuneration for lending in library shall be entrusted to the company that has the greatest number of managed works. This number shall be determined in accordance with the uses of the concerned professions.

The Minister responsible for culture shall indicate annually the company fulfilling the condition set out in the preceding paragraph.

TITLE III

Procedure and Sanctions — Articles R331-1 to R335-2

CHAPTER I
General Provisions — Article R331-1

Article R331-1
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The agents designated by the National Center for Cinematography, by the professional bodies of authors and by the societies referred to in Title II of this Book shall be required, after having been approved by the Minister responsible for culture, to take an oath before the judge of the first instance court of their place of residence. The formulation of the oath shall be as follows: “I swear to carry out my duties correctly and faithfully and to neither reveal nor use anything of which I may obtain knowledge during the exercise of my duties.”

CHAPTER V
Penal Provisions — Articles R335-1 to R335-2

Article R335-1
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2005-1298 of 20 October 2005, Article 1, Official Journal of 21 October 2005)

I. The application for withholding of goods by the customs administration referred to in Article L. 335-10 shall include:

1°. the surname and forenames or the company name of the applicant, his place of residence or of business;
2°. where appropriate, the name and address of a representative and proof of his powers;
3°. the capacity of the applicant with respect to the rights that he wishes to assert, attested to by any means;
4°. any information that will allow the infringing work or service to be identified;
5°. a description of the allegedly infringing goods for which withholding is requested.
6°. All documents and information that help certify that the allegedly infringing goods have not been lawfully manufactured, put in free circulation and commercialised in another Member State of the European Community.

II. The application referred to under (I) may be filed with the relevant administrative authority prior to the entry of the allegedly infringing goods in the French territory. In such case, it shall be valid for one year and may be renewed.

The conditions for filing the application shall be detailed in an order by the Minister responsible for customs.

Article R335-1-1
(inserted by Decree No. 2005-1298 of 20 October 2005, Article 2, Official Journal of October 21 2005)

The relevant administrative authority referred to under (I) and (II) of Article R. 335-1 shall be the Minister responsible for customs.

Article R335-2
(inserted by Decree No. 96-103 of 2 February 1996 art. 2 Official Journal of 9 February 1996)

Any publication or user’s handbook concerning means of removing or circumventing any technical device protecting software, which does not bear a notice in clear characters that the unlawful use of such means is liable to the penalties laid down for cases of infringement shall incur the penalties laid down for offenses of the third class.

PART II
Industrial property — **Articles R411-1 to R811-3**

BOOK IV
Administrative and Professional Organization — **Articles R411-1 to R423-2**

TITLE I
Institutions — Articles R411-1 to R413-5

CHAPTER I
National Institute of Industrial Property — Articles R411-1 to R411-26

SECTION I
Organization of the National Institute of Industrial Property — Articles R411-1 to R411-16

Article R411-1
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 2, Official Journal of 3 March 2004)

The National Institute of Industrial Property shall have the following duties, in particular:

1°. examining patent applications and the grant of patents and the issue of any relevant documents;

2°. registering and publishing trademarks and service marks;

3°. issuing certificates of identity and the provision of information concerning anticipations with respect to trademarks and service marks;

4°. organizing deposits, storage and making available to the public of culture deposits of biological materials used by an invention for which patent has been granted;

5°. centralizing and storing of deposits of industrial designs and their publication, as well as registering and storing of deposits of dual envelopes intended to facilitate the proof of the creation of designs; (1)

6°. keeping of registers of patents, of trademarks and of designs, entering of all deeds modifying the ownership of patents, trademarks or service marks and designs;

7°. implementing the provisions contained in the laws and regulations concerning temporary protection of industrial property at exhibitions, concerning industrial awards and concerning marks of origin;

8°. implementing international agreements with respect to industrial property, particularly administrative relations with the International Bureau for the Protection of Industrial Property and the European Patent Organisation;

9°. keeping the National Register of Commerce and Companies and the Central Directory of Trades;

10°. storing of filings of memorandums of association and modifying instruments of companies filed with the registrars of the commercial courts and the civil courts that act in their stead;

11°. centralizing the information referred to in the registers of commerce and trades and the official bulletins of those registers;

12°. centralizing, storing and making available to the public of all technical and legal documentation concerning industrial property;

13°. administring the Official Bulletin of Industrial Property.

In order to exploit its documentary holdings, the Institute may set up databases, where appropriate, in conjunction with other files or registers. It may, for that purpose, set up subsidiary firms or enter into financial participation.

N.B. (1) Decree 2004-199 2004-02-25, Article 88 I: The provisions of Article 2 (I) of this decree will enter in force on 1 January 2005.

Article R411-2

(inserted by Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 3, Official Journal of 3 March 2004)

The Director General of the National Institute of Industrial Property shall represent the Institute in all civil acts.

The staff of the Institute shall be under his orders.

He shall take all steps necessary for the operation of the Institute.

He shall prepare and implement the budget. He shall establish the receipt titles. He shall commit, liquidate and order expenditure within the limit of the budget appropriations.

He may delegate his power of signature, in particular for award of contracts, to one or more officers of the Institute that he shall designate.

Article R411-3

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 97-845 of 10 September 1997Article 1 Official, Journal of 17 September 1997)
(Decree No. 2004-199 of 27 February 2004, Article 4 I, Official Journal of 3 March 2004)
(Decree No. 2005-436 of 5 May 2005, Article 19, Official Journal of 10 May 2005)

The Board of Directors shall comprise 12 members:

1°. A member of the Conseil d'Etat or of the Court of Audit, as Chairman, appointed for three years renewable once by order of the Minister responsible for industrial property;

2°. The Director of Civil Affairs and of the Seal with the Ministry of Justice or his permanent representative;

3°. The Director of the Budget with the Ministry of the Economy and Finance or his permanent representative;

4°. Two representatives of the Minister responsible for industrial property, one of whom is the Director of General Administration or his representative;

5°. The Director General of the National Research Development Agency;

6°. The Chairman of the National Society of Industrial Property Attorneys and a representative of professionals of industrial property in firms appointed by an order of the Minister responsible for industrial property for a period of three years renewable once;

7°. Two representatives of the industrial circles concerned by industrial protection, appointed by the Minster responsible for industrial property three years renewable once;

8°. Two representatives of the serving staff of the establishment, elected in accordance with the conditions set out by order of the Minister responsible for industrial property.

The functions of member of the Board of Directors shall not be remunerated. They shall give entitlement to travel and subsistence allowances as provided for in Decree No. 90-437 of 28 May 1990.

The Director General, the State Controller and the accounting agent shall attend sessions of the Board of Directors in a consultative capacity.

The Chairman may call upon any person whose presence he deems useful to attend sessions in a consultative capacity.

The Secretariat of the Board of Directors shall be performed by an officer of the Institute appointed for that purpose by the Director General.

Article R411-4

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 4 II, Official Journal of 3 March 2004)

The Board of Directors shall lay down the general policy of the establishment within the framework of the orientations set out by the supervisory Ministers. It shall have, in particular, the following duties:

1º. It shall approve the budget and its modifications, the financial account of the closed financial year and the allocation of the result and give its opinion on the annual work report;

2º. It shall determine the orientations of the price policy, the general conditions for grant of contracts entered into by the establishment, the general conditions of employment and remuneration of the personnel, the rules of procedure of the establishment;

3º. It shall decide on creation or dissolution of subsidiary companies, acquisitions or transfers of participations, purchase, sale or lease of buildings;

4º. It shall authorize loans and accept gifts and legacy;

5º. It shall decide to bring law suits and conclude out-of-court settlements. It may delegate these powers to the Director General of the establishment.

Article R411-5

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 4 III, Official Journal of 3 March 2004)

The Board of Directors shall meet at least twice a year. It shall be convened by its Chairman on an agenda set out by him.

Its deliberations shall be valid only if at least seven of its members attend the session.

If the quorum is not achieved, a new notice of meeting shall be addressed to the members. The Council shall deliberate validly in such case whatever the number of members present.

In the event of equally divided voting, the Chairman shall have a casting vote.

Article R411-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The numbers of contractual staff belonging to the Institute shall be laid down each year within the limits of the budget appropriations for that establishment.

The status of the staff shall be laid down by decree.

Article R411-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The accounting agent shall be appointed, and if necessary, replaced or revoked, by order of the Minister concerned and of the Minister responsible for finance. His remuneration shall be laid down in the same manner.

He shall be placed under the authority of the Director General. However, he shall be personally and monetarily responsible for the acts of his administration and shall receive from the Minister responsible for finance directives concerning execution of the financial part of his service.

He shall be required, prior to his installation, to take oath before the Court of Audit and to evidence the provision of security of which the amount shall be laid down by order of the Minister responsible for finance and economic affairs. His administration shall be subject to verification by the General Inspectorate of Finances and by the General Collector of Finance of Paris and to checking by the Court of Audit.

He may, at his own responsibility, delegate his signature to one or more agents of the establishment whom he shall appoint as his signing clerks by means of a regular letter of authority.

Article R411-8

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 97-845 of 10 September 1997Article 2, Official Journal of 17 September 1997)
(Decree No. 2005-436 of 5 May 2005, Article 19, Official Journal of 10 May 2005)

The supervision by the National Institute of Industrial Property, particularly the a posteriori supervision of the budget implementation, shall be carried out by a State Controller, in accordance with the conditions laid down in Decree No. 55-733 of 26 May 1955 as amended codifying and adapting the texts on economic and financial control of the State.

The special conditions for exercising this supervision shall be laid down by a joint order of the Ministers responsible for industrial property, for the economy and for the budget.

Article R411-9

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 97-845 of 10 September 1997Article 1, art 3 Official Journal of 17 September 1997)
(Decree No. 2004-199 of 27 February 2004, Article 5, Official Journal of 3 March 2004)
(Decree No. 2005-436 of 5 May 2005, Article 19, Official Journal of 10 May 2005)

The Director General of the Institute shall transmit for approval to the Ministers responsible for intellectual property and for the budget, accompanied by the opinion, if any, of the member of the State Controller, the decisions taken by the Board of Directors in the exercise of the following attributions: approval of the budget and its modifications, of the financial account of the closed financial year and the allocation of the result, determination of the orientations of the price policy, the general conditions for use and remuneration of the personnel, decisions of creation or dissolution of subsidiary companies, acquisitions or transfers of participations, purchase, sale or lease of buildings, authorization of

loans and acceptance of gifts and legacy.

The decisions on the draft budget of the Institute and the modifications of the budget in the course of financial year shall be transmitted by the general letter of the Minister for the budget within the prescribed time limits provided for the general budget of civil services.

The transmitted decisions shall be enforceable ipso jure one month at the latest after their reception by the Ministers responsible for intellectual property and for the budget if none has opposed to it within this time limit.

The Minister responsible for the budget may delegate his power of signature to the State Controller with respect to the approval decisions referred to in this Article.

Article R411-10

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The resources of the National Institute of Industrial Property shall be constituted by:

1°. The proceeds of all authorized levies with regard to industrial property, the registers of commerce and trades and the filing of company statutes;

2°. All revenue that may be levied by the Institute as remuneration for services rendered;

3°. The proceeds from the sale of publications;

4°. Revenue from assets and the proceeds of their sale;

5°. The proceeds of any refunds made by international industrial property organisms in which France participates;

6°. Funds deriving from authorized loans;

7°. Any other resources deriving in particular from donations, legacies, gifts and assistance funds.

Article R411-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The costs of the National Institute of Industrial Property shall comprise:

1°. The expenditure for running and equipping the Institute;

2°. The expenditure related to participation by France in the international industrial property organisms.

Article R411-12

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The contracts for work and supplies issued by the Institute shall be governed by the legislative and regulatory provisions applicable to State contracts.

Article R411-13

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Director General of the National Institute of Industrial Property shall keep accounts of the issue of vouchers for receipts, commitment, liquidation and payment orders for the expenditure.

Article R411-14

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The accounting agent shall be exclusively responsible for the recovery of outstanding debts and for payments.

He shall be responsible for the revenue vouchers communicated to him by the Director General. He shall be required, under his personal responsibility, to make all efforts to ensure the receipt of all resources of the establishment, to effect the necessary enforcement measures against outstanding debtors, to notify the Director General of the expiry of leases, to ensure that time limits are not exceeded, to ensure the maintenance of rights, privileges and mortgages and to apply for entry in the mortgage register of the appropriate titles.

He shall effect the amicable collection of debts outstanding. Where this is not possible, he shall inform the Director General who shall render enforceable the revenue vouchers in accordance with Article 2 of the Decree of 30 October 1935 to improve and facilitate the operation of the legal service and of the judicial agency of the Treasury.

He may only waive legal action on a written order from the Director General.

He shall be responsible for paying the expenditure that is regularly ordered by the Director General.

Article R411-15

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 97-845 of 10 September 1997Article 1, art 4 Official Journal of 17 September 1997)
(Decree No. 2005-436 of 5 May 2005, Article 19, Official Journal of 10 May 2005)

The administrative account of the authorizing officer and the management account of the accounting officer shall be submitted each year to the Board of Directors.

The administrative account, accompanied by the opinion of the Board of Directors and of the State Controller, shall be submitted for approval to the Minister responsible for the budget and to the Minister concerned within three months of the end of the financial year.

The Minister responsible for the budget may delegate his power of signature to the State Controller for the approval of the administrative account.

Article R411-16

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The rules with regard to accounting, to the form of budgets and accounts, to the books and to the entries made by the authorizing officer and the accountant shall be laid down in one or more orders signed by the Minister responsible for finance, the Minister responsible for the budget and the Minister concerned.

Article R411-17

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 96-103 of 2 February 1996Article 3 Official Journal of 9 February 1996)
(Decree No. 2004-199 of 27 February 2004, Article 6, Official Journal of 3 March 2004)

The National Institute of Industrial Property shall charge fees, whose amount and conditions of implementation shall be set out by a common order of the Minister responsible for intellectual property and the Minister responsible for the budget in relation to following procedures and formalities:

1°. For patents, utility certificates and supplementary protection certificates:

Application;
Search report;
Claim in excess of the 11th;
Declaration of priority right;
Petition to enjoy the application date of an earlier application;
New claims requiring an additional search report;
Petition for correction of errors;
Petition for continuation of the procedure;
Issue and printing of the specification;
Maintenance in force;
Surcharge for late payment of the application fee or the search report fee;
Surcharge for late request for a search report;
Surcharge for late payment of the annual fee;
Redress petition for reinstatement;
Supplementary protection certificate;

2°. For European patents:

Publication of the translation or revised translation of a European patent or of the claims in an application for a European patent;

Making and transmitting copies of the European patent application to the recipient States.

3°. For international applications (Patent Cooperation Treaty (PCT)):

Transmission of an international application;
Confirmation of the designation of States;
Surcharge for late payment;
Preparation of additional copies;

4°. For trademarks and service marks:

Application;
Class of goods or services;
Claim to a priority right;
Regularization;
Opposition;
Correction of clerical errors;
Renewal;
Surcharge for late payment of the renewal fee;
Waiver;
Application for entry in the International Trademark Register;
Notice of expiry;

5°. For industrial designs:

Deposit;
Extension;
Surcharge for late extension;
Surcharge for late payment of extension fee;
Waiver of postponed publication;
Waiver of the effects of deposit;
Regularization, correction, notice of expiry;
Registration and keeping of a special envelope;

6°. For performing rights of industrial property:

Topographies of semi-conductor products: application and keeping; registration of deeds amending or transmitting rights;

Industrial awards: registration of results, of an award or transcription of a transfer statement or transmission statement.

7°. With respect to National Registers of Patents, Trademarks, Industrial Designs and special register national des software:

Application for entry.

Renewal of registration of pledge of the right of exploitation of software;

8°. With respect to the National Register of Commerce and Companies:

Declaration;

Declaration;

Filing of an instrument;

In the event of inadmissibility, the following fees shall be refunded:

- For patents, utility certificates and supplementary protection certificate: filing.
- For trademarks or service marks: application, class of goods or services, renewal.
- For industrial designs: deposit, extension.

Fees for research report of patents shall also be refunded in the event of the suspension of the grant procedure or prolongation of prohibition on disclosure and free exploitation that occur before the start of the procedure for drafting the search report.

Article R411-18

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The ancillary revenue that the National Institute of Industrial Property may levy when communicating documents or instruments in its keeping, for the exploitation of its documentary holdings and from the sale of its publications shall be established by deliberation of the Administrative Council that will lay down the conditions for collection and the amount.

SECTION III

Appeals Lodged Before the Appeal Court Against Decisions by the Director general of the National Institute of Industrial Property with respect to the Grant, Refusal or Maintenance of Industrial Proper

Articles R411-19 to R411-26

Article R411-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Appeal Court with territorial competence to hear appeals lodged against decisions by the Director General of the National Institute of Industrial Property with regard to the grant, refusal or maintenance of industrial property titles shall be the court of the place of residence of the person who lodges the appeal, taking into account the groupings effected in Table IV bis annexed to the Code of Judicial Organization reproduced hereafter:

Seat and Jurisdiction of the Courts of Appeal Competent to Hear Directly Appeals Lodged Against Decisions by the Director of the National Institute of Industrial Property with Regard to the Grant, Refusal or Maintenance of Industrial Property Titles

SEAT JURISDICTION extending to the territorial limits of the courts of appeal and the higher courts of appeal of :

Aix-en-Provence : Aix-en-Provence, Bastia, Nîmes.

Bordeaux : Agen, Bordeaux, Poitiers.

Colmar : Colmar, Metz.

Douai : Amiens, Douai.

Limoges : Bourges, Limoges, Riom.

Lyon : Chambéry, Lyon, Grenoble.

Nancy : Besançon, Dijon, Blois, Nancy.

Paris : Orléans, Paris, Reims, Rouen, Versailles, Basse-Terre, Fort-de-France, Saint-Denis-de-la-Réunion, Nouméa, Papeete, Mamoudzou and Saint-Pierre-et-Miquelon.

Rennes : Angers, Caen, Rennes.

Toulouse : Pau, Montpellier, Toulouse.

If such person resides abroad, the Court of Appeal of Paris shall be competent. Domicile shall be elected within the jurisdiction of that court.

Article R411-20

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The time limit for lodging an appeal to the court of appeal against decisions of the Director General of the National Institute of Industrial Property shall be one month.

Where appropriate, this time limit shall be extended in accordance with Article 643 of the new Code of Civil Procedure.

Article R411-21

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Appeals shall be lodged by means of a written declaration addressed or handed in duplicate to the registry of the court. Subject to ex officio inadmissibility, the declaration shall comprise the following particulars:

1.a)If the petitioner is a natural person: his surname, forenames, profession, domicile, nationality, place and date of birth;

b)If the petitioner is a legal person: its form, its name, its registered offices and the organ that legally represents it;

2.The date and subject of the contested decision;

3.The name and address of the owner of the title or the holder of the application if the petitioner has neither capacity.

A copy of the contested decision shall be attached to the declaration.

If the declaration does not contain an explanatory statement of the grounds put forward, the appellant shall be

required, subject to inadmissibility, to file such statement with the registry within one month following the declaration.

Article R411-22
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The registry of the court of appeal shall transmit to the Director General of the National Institute of Industrial Property, by registered mail with notification of receipt, a copy of the appeal declaration together with, where appropriate, a copy of any subsequent statement of grounds.
On receipt of the copy of the declaration, the Director General of the National Institute of Industrial Property shall transmit to the registry the file of the contested decision.

Article R411-23
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The court of appeal shall take its decision after the Director General of the National Institute of Industrial Property has been enabled to submit written or oral observations.
The written observations shall be transmitted by the Director General of the National Institute of Industrial Property in duplicate to the registry of the court, that shall transmit one copy to the petitioner.

Article R411-24
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 7, Official Journal of 3 March 2004)
Where the appeal is lodged by a person other than the owner of the title or the holder of the application, the latter will be summoned by the chief registrar of the court of appeal by registered letter with advice of delivery.
Where the appeal against a decision of the Director General of the National Institute of Industrial Property ruling upon an opposition is lodged by the holder of the application for registration of a mark with respect to which the opposition is made, the holder of the prior mark will be summoned in the same manner.

Article R411-25
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The appellant may be assisted before the court of appeal by a lawyer or represented by a solicitor.

Article R411-26
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The decision of the court of appeal shall be notified by the registry to the petitioner, to the Director General of the National Institute of Industrial Property and, where appropriate, to any other person implicated.

CHAPTER II
Committee for the Protection of New Plant Varieties — Articles R412-1 to R412-21

SECTION I
Organization and functions of the Committee for the Protection of New Plant Varieties — Articles R412-1 to R412-14

Article R412-1
(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)
The Committee for the Protection of New Plant Varieties established by Article L.412-1 shall ensure the following duties:
To issue new plant variety certificates corresponding to the applications which satisfy the requirements laid down in Articles L.623-1 to L.623-16, and all official documents concerning such applications and certificates.
To declare the forfeiture of breeders' rights in the circumstances set out in Article L.623-23.

Article R412-2
(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)
The Committee for the Protection of New Plant Varieties may propose to the Minister of Agriculture the provisions of a regulatory nature necessary for the application of Articles L.412-1 and L.623-1 to L.623-35 and, in general, submit any suggest suggestions to him relative to the implementation of new plant variety protection.

Article R412-3
(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)
The Committee for the Protection of New Plant Varieties shall have its headquarters in Paris. In addition to its Chairman, it shall include ten members appointed by order of the Minister of Agriculture, one of whom shall be put forward by the Minister responsible for the Overseas Departments and Territories, in accordance with the conditions set out in Article L.412-1.

Article R412-4
(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)
The magistrate entrusted with the chairmanship of the Committee shall be chosen from the magistrates of the Court of Appeal of Paris or the Tribunal de grande instance of Paris belonging to at least the first grade of the judiciary.
He shall be appointed by joint order of the Garde des sceaux, Minister of Justice and the Minister of Agriculture.

It shall be the duty of the Chairman, outside the Committee's meetings which he shall assume the chairmanship, to ensure the smooth working of the Secretariat General provided for in Article R. 412-10 and to undertake, assisted by the latter, the preparation and execution of the Committee's decisions.

Article R412-5

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The Chairman and the members of the Committee shall be appointed for four years. Their term of office may be renewed. Half the members of the Committee shall be renewed every two years. Where, through death or other cause, a member has ceased to exercise his functions, he shall be replaced within a period of two months. The newly-appointed member shall remain in office until the end of the term of office of the member he is replacing.

Article R412-6

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The members of the Committee who are not civil servants shall be subject to the provisions of Decree No. 90-437 of 28 May, 1990, setting out the terms for the reimbursement of travel expenses of State agents and other persons who take part in councils, committees, commissions and other bodies which provide assistance to the State.

Article R412-7

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The Chairman and the members of the Committee shall be under an obligation of secrecy in relation to anything that comes to their knowledge in the exercise of their functions. Moreover, a member of the Committee may not take part in the deliberations relating to a plant variety where he has a direct interest in the acceptance or refusal of an application for a certificate.

Article R412-8

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The Committee shall meet on convocation by the Chairman whenever necessary. It may only deliberate if the number of members present is more than half the number of members in office. Where the votes are equal, the Chairman shall have a casting vote.

Article R412-9

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

To facilitate the preparation and examination of cases brought before it, the Committee may:

- appoint a standing bureau from among its members;
- set up specialised expert commissions;
- call upon any expert or other person whose advice appears necessary.

Article R412-10

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The Committee for the Protection of New Plant Varieties shall have a Secretariat General. The Secretary General shall be appointed by order of the Minister of Agriculture on the Committee's proposal and after consultation with the Director General of the National Institute of Agronomic Research.

The Secretary General shall call upon the assistance of agents recruited by the Director General of the National Institute of Agronomic Research under the same conditions as those governing its own agents. Their remuneration shall be drawn from the special section referred to in Article L.623-16.

Management of the staff shall be assumed by the Secretary General, by delegation of power from the Director General of the National Institute of Agronomic Research.

The Secretary General shall, in particular, have the following duties, in accordance with the Committees directives and under the authority of the Chairman, and within the terms of Articles L.412-1 and L.623-1 to L.623-35 and its implementing legislation:

- to receive, register and examine applications for new plant variety certificates and oppositions to the issue of such certificates;
- to maintain the various registers relating to the protection of new plant varieties, to ensure that all acts affecting the ownership of certificates are recorded and to publish the various notices provided for;
- to keep in contact with all the competent bodies and, in particular, insofar as concerns questions of denomination, with the National Institute of Industrial Property and the Office of the International Union Protection of New Plant Varieties together with the experts to whom the technical examination of plant varieties is conferred;
- to provide the secretariat for Committee meetings;
- to draw up the new plant variety certificates and to issue all copies of official documents;
- to inspect or arrange for the inspection of the conservation of all varieties for which certificates have been issued;
- to plan the budget relating to the special section of the budget of the National Institute of Agronomic Research referred to in Article L.623-16.

The Secretary General shall draw up the implementing legislation of the aforementioned provisions which shall be submitted by the Committee to the Minister of Agriculture. He shall prepare and take part in the negotiation of international agreements proposed by the Committee to the Minister of Agriculture and to the Minister of Foreign Affairs to be passed with a view to facilitating or improving the protection of new plant varieties.

Article R412-11

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The Committee for the Protection of New Plant Varieties and its Secretariat General shall be considered, in accordance with the provisions of Article 30-1 (B) of the Convention of Paris for the Protection of New Varieties of Plant of 2 December, 1961, as the authority entrusted with the protection of new plant varieties in France. For this purpose, the Secretariat General of the Committee shall keep in contact with the International Union for the Protection of New Varieties of Plants and shall participate in its work.

Article R412-12

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The special section of the budget of the National Institute of Agronomic Research, created by Article L.623-16, shall be decided upon by the administrative board of this Institute following consultation with the Committee for the Protection of New Plant Varieties. The income and expenses of this special section shall be administered by the Secretary General of the Committee for the Protection of New Plant Varieties, by delegation of power from the Director of the National Institute of Agronomic Research and under the same conditions as those applying to the income and expenses of the Institute.

Article R412-13

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The resources of the special section shall, in particular, consist of the income from all fees that are chargeable in relation to the protection of new plant varieties, in accordance with Article L.623-16.

Article R412-14

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The liabilities of the special section shall consist of:

- operational and equipment expenses of the Committee and its Secretariat General, including staff salaries and travel expenses;
- the costs of technical examinations and, where required, of making reference collections;
- the financial contribution of France to international organisations concerned with the protection of new plant varieties ;
- any other expenses resulting from the application of Articles L.412-1 and L.623-1 to L.623-35.

SECTION II

Appeals against decisions of the Committee for the Protection of New Plant Varieties — Articles R412-15 to R412-21

Article R412-15

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The time limit for lodging an appeal before the Court of Appeal of Paris against decisions of the Committee for the Protection of New Plant Varieties shall be one month. Where the petitioner resides outside Metropolitan France, this period shall be extended by one month if he resides in Europe and by two months if he resides in any other part of the world.

Article R412-16

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The time limit for lodging an appeal provided for in the preceding Article shall run from the date of receipt by the petitioner of notification of the Committee's decision.

Article R412-17

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Appeals shall be lodged by means of a written request addressed to the senior presiding judge of the Court of Appeal of Paris by the applicant in person or by counsel practising at the Court of Appeal or by a attorney-at-law duly registered at a Bar.

Where the petitioner is unable to appear in person, he may be represented or assisted as provided for in the first paragraph of this Article.

Article R412-18

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where the appeal is lodged by any person other than the owner of the application for a new plant variety certificate, the latter shall be implicated by the Senior Registrar of the Court of Appeal by registered letter with acknowledgement of receipt.

Article R412-19

(inserted by Decree No. 95-385 of 10 April 1995, Official Journal of 13 April 1995)

The Court of Appeal shall render its decision after the Public Prosecutor has been heard.

Article R412-20

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any appeal lodged against decisions of the Committee for the Protection of New Plant Varieties shall be declared within fifteen days by the Registrar of the Court of Appeal to the Committee by registered letter with acknowledgement of

receipt.

The decision rendered by the Court of Appeal on the contested file shall be notified by the Registrar to the petitioner and to the Committee for the Protection of New Plant Varieties by the same means.

Article R412-21

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Court Registrar shall send a copy of the decision to the Committee for the Protection of New Plant Varieties.

This decision shall ex officio be recorded in the National Register of New Plant Variety Certificates.

The decision of the Court of Appeal shall be executed within two months of its notification.

CHAPTER III

Industrial Property Council — Articles R413-1 to R413-5

Article R413-1

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 8 I, Official Journal of 3 March 2004)

There shall be established an Industrial Property Council under the supervision of the Minister responsible for industrial property. The Council shall have an advisory role. It shall give its opinion on matters submitted to it by the Minister. It shall meet at least twice a year.

Article R413-2

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 8 II, Official Journal of 3 March 2004)

The Industrial Property Council shall be composed of as follows:

1°. The permanent representative of the Minister responsible for intellectual property;

The permanent representative of the Minster of Foreign Affairs appointed by him;

The permanent representative of the Minister of Justice appointed by him;

The permanent representative of the Minister responsible for research;

The Director General of the National Institute of Industrial Property;

2°. Two university professors;

Four persons representing the interests of trade and industry;

Two persons representing research and technology circles;

Three persons representing professionals of industrial property one of whom the President of the National Society of Industrial Property Attorneys and an attorney-at-law;

Two persons representing independent inventors;

Three persons qualified in intellectual property;

The members of the Council appointed under (2°) shall be appointed for three years by an order of the Minister responsible for industrial property, excepting the President of the National Society of Industrial Property Attorneys.

Article R413-3

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 8 III, Official Journal of 3 March 2004)

The Minister responsible for industrial property shall chair the Industrial Property Council and appoint from amongst the members of the Council a Deputy Chairman.

Article R413-4

(inserted by Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 8 IV, Official Journal of 3 March 2004)

The Council may establish from within its membership temporary committees in order to examine specific matters. It may also, where it deems useful, involve the representatives of ministries on subject matters falling within the scope of their powers and request the cooperation of qualified persons in its work.

Article R413-5

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The secretariat of the Council shall be provided by the National Institute of Industrial Property.

TITLE II

Qualification with Respect to Industrial Property — Articles R421-1 to R423-2

CHAPTER I

Entry in the List of Persons Qualified with Respect to Industrial Property — Articles R421-1 to R421-12

Article R421-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The entry of a natural person in the list of persons qualified in industrial property referred to in Article L. 421-1 shall

be subject to compliance with all of the following conditions:

1°. Possession of a legal, scientific or technical national second cycle diploma issued by a scientific, cultural and professional public establishment within the meaning of Act No. 84-52 of 26 January 1984 empowered to issue such diploma or of a qualification recognized as equivalent in accordance with the conditions laid down by joint order of the Keeper of the Seals, Minister for Justice, the Minister responsible for industrial property and the Minister responsible for higher education;

2°. Possession of a diploma issued by the Center for International Industrial Property Studies (CEIPI) of the University of Strasbourg or of a qualification recognized as equivalent in accordance with the conditions laid down by joint order of the Keeper of the Seals, Minister for Justice, the Minister responsible for industrial property and the Minister responsible for higher education;

3°. At least three years of professional experience;

4°. To have passed an examination of competence of which the conditions and program shall be laid down, for each specialization, by joint order of the Keeper of the Seals, Minister for Justice, the Minister responsible for industrial property and the Minister responsible for higher education. The examinations shall be adapted for the professional representatives before the European Patent Office.

Article R421-2

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

No person may be entered in the list if:

1°. He has committed acts that have led to a criminal conviction for acts contrary to honor, honesty or morality;

2°. For acts of the same nature, he has received a disciplinary or administrative sanction involving dismissal, striking off, removal, withdrawal of approval or authorization;

3°. He is declared personally insolvent or is subject to other sanction pursuant to the legislation on judicial settlement, liquidation of assets, personal insolvency and bankruptcy or under the legislation on the rehabilitation and judicial liquidation of enterprises.

Article R421-3

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

As set out in Article R. 79 of the Code of Criminal Procedure:

(...) the number 2 bulletin of the police record has been issued;

(...) 24°. To the Director General of the National Institute of Industrial Property for entry in the list of persons qualified in industrial property and in the list referred to in Article L. 422-5.

Article R421-4

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 97-863 of 17 September 1997 art. 1 I Official Journal of 24 September 1997)

The reference to the specialization that accompanies the entry of persons qualified in industrial property may be either that of patents or that of trademarks, industrial designs, based on professional experience, supplemented as appropriate by that of engineer or of lawyer, based on diplomas.

Where appropriate, more than one mention may be entered.

An order of the Minister responsible for industrial property may provide for further specialization mentions if new professional qualifications in industrial property should arise.

Article R421-5

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 97-863 of 17 September 1997 art. 1 II Official Journal of 24 September 1997)

The professional experience referred to in Article R. 421-1 (third indent) shall be constituted by the exercise as the main occupation of study, advice, assistance or representation activities with respect to industrial property, related rights and rights concerning any related matter.

The professional experience shall have been acquired in France in the subject matter that corresponds to the specialization mention sought and under the responsibility of a person qualified in industrial property who is entered with the same mention.

If the experience has not been acquired under the responsibility of such a person, the board referred to in Article R. 421-6 may, on examination of the file, admit a candidate to the examination if his experience has been recognized as equivalent in its content, its scope and its compliance with the usual standards in the specialization concerned.

Article R421-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The board responsible for supervising the examinations referred to in Article R. 421-1 (fourth indent) shall comprise one magistrate of the judiciary, as chairman, one university professor teaching private law, one lawyer and four persons qualified in industrial property. Each member unable to attend shall be replaced by an alternate.

The conditions for designating the members of the board and their alternates shall be laid down by joint order of the Keeper of the Seals, Minister for Justice, of the Minister responsible for industrial property and the Minister responsible for higher education.

Article R421-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The conditions referred to in Article R. 421-1 with regard to diplomas, training and professional examinations, shall

not apply to persons who have successfully completed a cycle of studies of a minimum duration of three years or of an equivalent duration of part-time attendance at a university or an establishment of higher education or in another establishment with the same level of training and, where appropriate, the professional training required in addition to such cycle of studies and who holds:

1°. Either a diploma, certificate or other title permitting the exercise of the profession in a Member State of the European Union issued:

a)By the competent authority of that State and certifying to training acquired predominantly within the Union;

b)Or by an authority of a third country provided that an attestation is furnished from the competent authority of the Member State that has recognized the diploma, certificate or other title certifying to the fact that its holder has professional experience of at least three years in that State;

2°.Or full-time exercise of the profession during at least two years during the preceding ten years in a Member State that does not regulate access to or exercise of that profession provided that such exercise be attested to by the competent authority of that State.

Article R421-8

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The treatment referred to in Article R. 421-7 shall be subject to successfully passing an examination of competence before the board referred to in Article R. 421-6 of which the program and conditions shall be laid down by joint order of the Keeper of the Seals, Minister for Justice, and of the Minister responsible for industrial property:

1°. Either where the training of the candidate covers matter that is substantially different from that contained in the programs for the diplomas and the professional examination referred to in Article R. 421-1;

2°. Or where one or more of the professional activities of which exercise is subject to holding such diploma or such examination are not regulated in the Member State of origin or last residence or are regulated in a different manner and such difference is characterized by specific training required in the first Member State covering matter that is substantially different from that covered by the diploma presented by the applicant.

The list of candidates accepted for the examination shall be drawn up by the Director General of the National Institute of Industrial Property.

Article R421-9

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The application for entry shall be submitted to the Director General of the National Institute of Industrial Property. It shall be accompanied by proof that the conditions laid down in Article R. 421-1 or in Articles R. 421-7 and R.421-8 have been satisfied.

A receipt for the application shall be issued.

Article R421-10

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 97-863 of 17 September 1997 art. 1 III Official Journal of 24 September 1997)

The decision of the Director General of the Institute with regard to the application for entry, failing which, after decision of the jury in accordance with Article R 421-5, shall be notified to the concerned party. Refusal shall be reasoned.

Article R421-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any person entered in the list may at any time request to be removed from the list.

Any person subject to any of the measures referred to in Article R. 421-2 shall be removed from the list by the Director General of the Institute. Removal shall be reasoned and the decision taken after the party concerned has been enabled to submit his observations.

Article R421-12

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Entries and removals shall be published in the Official Bulletin of Industrial Property.

The updated list of qualified persons shall be published at the beginning of each calendar year in the Bulletin.

CHAPTER II

Conditions for Exercising the Profession of Industrial Property Attorney — Articles R422-1 to R422-66

SECTION I

Entry in the List of Industrial Property Attorneys — Articles R422-1 to R422-7

Article R422-1

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 97-863 of 17 September 1997 art. 2 I Official Journal of 24 September 1997)

Any person qualified in industrial property and entered in the list referred to in Article R. 421-1 may apply to be entered, with the same notice of specialization, in the list of industrial property attorneys referred to in the third paragraph of Article L. 422-1.

The notice “patents” permits action in the procedures referred to in Article R. 612-2. The notice “trademarks, industrial designs” permits action in the procedures referred to in Articles R. 712-2 and R. 712-13.

However, persons entered with the notice “lawyer” under the procedure set out in I of Article 36 of the Decree of 1 April 1992 on qualification and professional organization with respect to industrial property may carry out the acts defined in Articles R. 712-2 and R. 712-13.

Article R422-2

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 2 II Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002 art. 2 Official Journal of 20 February 2002)

Entry in the list referred to in Article R. 422-1 shall be subject to the following conditions:

1°. To offer to the public the services referred to in Article L. 422-1 or undertake to do so within three months, either individually or in a group or as the employee of another industrial property attorney or of a company of industrial property attorneys;

2°. To have French nationality or be a national of another Member State of the European Union, or of another State party to the agreement on the European Economic Area;

3°. To have a place of residence or a professional establishment in France;

4°. Provide evidence of the insurance and the guarantee referred to in

Article L. 422-8 or undertake to provide such evidence within a period of three months; this evidence shall be produced each year after entry.

Article R422-3

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The application for entry shall be submitted to the Director General of the Institute. The evidence that the conditions referred to in Article R. 422-2 have been satisfied shall be attached to the application.

Article R422-4

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 2 III Official Journal of 24 September 1997)

The Director General of the Institute shall make the entry, after having heard the opinion of the National Society of Industrial Property Attorneys. Such opinion shall be deemed to have been given if the Society does not formulate an opinion within one month as from having been approached.

Refusal to enter shall be taken on a reasoned decision to be notified to the party concerned.

The entry of natural persons shall be made in the name of the industrial property attorney followed by the title of the practice within which he performs his duties or, in the case of a company, by its registered name or title.

If the industrial property attorney does not furnish the evidence that he satisfies the conditions laid down in Article R. 422-2, particularly those required by item 4 of that Article, he shall be invited by the Director General of the Institute to regularize his situation within the time limit set forth in that invitation.

If, on expiry of the time limit referred to in the preceding paragraph, the person concerned has not regularized his situation, the Director General of the Institute shall pronounce his suspension, which shall cease to have effect once the situation has been regularized. Suspension shall be published in accordance with Article R. 422-66.

A suspension shall also be ordered, in accordance with the conditions laid down in the preceding paragraphs, with respect to any company that no longer satisfies the conditions laid down in Article L. 422-7.

The Director General of the Institute shall remove from the list referred to in Article R. 422-1 any industrial property attorney whose suspension has continued for more than six months.

Article R422-5

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any person entered in the list of industrial property attorneys may request to be removed from the list. He shall be required to do so if he no longer satisfies the conditions set out in Article R. 422-2. The request shall be submitted to the Director General of the Institute who shall effect the removal after having obtained the opinion of the National Society of Industrial Property Attorneys.

Removal shall be suspended if the case is submitted to the disciplinary board referred to in Article L. 422-10.

Article R422-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where the profession is exercised as a company, entry of the company in the special section referred to in Article L. 422-7 shall be applied for collectively by all the partners. It shall be accompanied by proof of the filing of the application for entry in the Register of Commerce and Companies.

The Director General of the Institute shall effect the entry as set out in Article R. 422-4 and shall notify his decision to the registrar responsible for keeping the Register of Commerce and Companies at the court with which the corresponding application for entry was filed.

Any decision to remove a company shall be notified, within one month of its date, to the registrar responsible for keeping the register in which the company has been entered.

Article R422-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The registered capital of an industrial property attorneys company as referred to in Article L. 422-7(b) may be held,

in accordance with Article L. 423-2(e), by an industrial property attorney for only 25 per cent if the purpose of the company is to associate one or more industrial property attorneys with other providers of services carrying out as their main activity one of the following:

1°. Construction of prototypes;
2°. Licensing intermediary services;
3°. Creation of trademarks;
4°. Funding of innovation.

SECTION Ibis

Free provision of service by representatives in industrial property established within the territory of a member State of the European Community or a State party of the agreement on the European Econo — Articles R422-7-1 to R422-7-2

Article R422-7-1

(inserted by Decree No. 2002-215 of 18 February 2002 art. 3 Official Journal of 20 February 2002)

When a professional person residing in a Member State of the European Community or in a State that has signed up to the agreement on the European Economic Area is authorised to represent persons owning industrial property before the central service of industrial property in that State, they may use their professional title in France, expressed in one or other of the languages of that State, to represent persons before the National Institute of Industrial Property, once their title has been certified by the competent authority of the State in which they are established.

When the exercise of the profession in the State where the party concerned is established does not depend on the possession of a regulated title, the professional person must provide the National Institute of Industrial Property with proof, in the form of a certificate from the competent authority of the State, that they have habitually practised in such a capacity for at least two years in the course of the last ten years.

Article R422-7-2

(inserted by Decree No. 2002-215 of 18 February 2002 art. 3 Official Journal of 20 February 2002)

The professionals mentioned in Article R. 422-7-1 shall undertake, in the exercise of their activity in France, to respect the rules set forth in Articles L. 422-8 et R. 422-52 to R. 422-54. They shall be subject to the provisions of Articles R. 422-56 to R. 422-66 and the sanctions set forth in Article L. 422-10 shall be applicable to them.

Nevertheless, the disciplinary measure of temporary or definitive prohibition shall be replaced by a sanction with the effect of temporarily or definitively prohibiting them from exercising professional activities in France. The Disciplinary Board can ask the competent authority of the State of origin of the communication professional information on the parties concerned.

It shall inform the latter authority of all decisions made. These communications shall not compromise the confidential nature of the information provided.

SECTION II

The National Society of Industrial Property Attorneys — Articles R422-8 to R422-11

Article R422-8

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The natural persons entered in the list of industrial property attorneys shall constitute the National Society of Industrial Property Attorneys referred to in Article L. 422-9.

Article R422-9

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Society shall establish its rules of procedure. They shall enter into force following approval by a joint order of the Garde des sceaux, Minister for Justice, and the Minister responsible for industrial property.

Article R422-10

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 2 IV Official Journal of 24 September 1997)

The General Assembly of the Society shall elect for two years from amongst its members, by a secret ballot, an office comprised of nine persons, including a President, three Vice Presidents, a Secretary, a Treasurer and three members. The ballot shall be by voting for a single person for the functions of President, Secretary and Treasurer. The Vice Presidents and the other members, respectively, shall be elected by voting for more than one member. The conditions for the ballot shall be laid down in the Rules of Procedure.

With the exception of the establishment of the Rules of Procedure, of the vote for the annual budget of the Society and of other attributions reserved, where appropriate, for the General Assembly by the Rules of Procedure, the Office shall carry out the administration of the Society. It shall ensure application of resolutions adopted in the General Assembly. It may have at its disposal a permanent secretariat and may set up standing or temporary committees for which it shall define the tasks.

Article R422-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In addition to any gifts or legacies made to it and participation in various of its costs, the resources of the Society

shall derive from the annual membership fees.

The basic rate for the annual membership fee shall be the same for all members. This shall be supplemented on a basis which takes into account the turnover achieved, where appropriate, by companies.

The method for calculating and the conditions for collecting the membership fees shall be laid down in the Rules of Procedure of the Society. The rate shall be laid down each year by the General Assembly.

SECTION III
Exercise in the Form of a Company — Articles R422-12 to R422-51-14

Subsection 1
Professional civil law company — Articles R422-12 to R422-40

Article R422-12
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Two or more industrial property attorneys entered in the national list of industrial property attorneys referred to in Article L. 422-1 may together constitute a professional civil law company for the exercise in common of the profession of industrial property attorney.

However, the company may be constituted, exclusively or not, by natural persons not entered in the national list of industrial property attorneys but who meet the conditions required to be entered in that list, on condition that each such person applies for his entry at the same time, at the latest, as that of the company.

Article R422-13
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The company shall be constituted subject to the suspensive condition of its entry in the national list of industrial property attorneys. In accordance with the third paragraph of Article 1 of Act No. 66-879 of 29 November 1966, it shall enjoy legal personality as from such entry.(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Article R422-14
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The application for registration of the company in the Register of Commerce and Companies shall be drawn up in accordance with the conditions set out in Article 15 of Decree No. 84-406 of 30 May 1984 relating to the Register of Commerce and Companies.

Notwithstanding Articles 22, 24 and 26 of Decree No. 78-704 of 3 July 1978, the company shall be exempted from publishing the notice referred to in those Articles in a journal of statutory announcements.

The notices published in the Official Bulletin of Civil and Commercial Announcements shall contain the particulars referred to in Article 73 of the Decree of 30 May 1984, except for those relating to the surname and forenames of the partners liable indefinitely and jointly for the company debts.

Article R422-15
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the statutes are established by means of simple contract, a sufficient amount of originals shall be drawn up to communicate one copy to each partner and to satisfy the provisions of Article 7 of Decree No. 78-704 of 3 July 1978 and those of this subsection.

Article R422-16
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Notwithstanding the provisions that are to be included in the statutes according to Articles 10 and 11 of Act No. 66-879 of 29 November 1966, those which they may contain under Articles 8, 14, 15, 19, 20 and 24 of that same Law, concerning, respectively, the distribution of shares, the administrators, the company name, the distribution of profits, the company debts, the assignment of shares in the company and the dissolution of the company, and of Articles R. 422-6 and R. 422-7, the statutes shall be required to state:

1°. The surnames, forenames and places of residence of the partners, their marital status and, where appropriate, the existence of any clauses, acts invokable against third parties or decisions restricting the free disposal of their assets;

2°. The title of each of the partners;

3°. The duration for which the company is formed;

4°. The address of the registered offices;

5°. The nature and separate evaluation of each of the contributions made by the partners;

6°. The amount of the company capital, the nominal amount, the number and distribution of company shares represented by that capital;

7°. Confirmation of the full or part liberation, as appropriate, of the contributions that are comprised in the company capital;

8°. The majority required in order to transfer or assign shares to third parties;

9°. The amount of the partnership shares allocated to each subscriber to the company;

10°. The special provisions referred to in Articles R. 422-20 and R. 422-21.

Article R422-17

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The following may constitute contributions to a professional civil law company, in ownership or in possession:

1°. All intangible rights, whether movable or real, particularly, where appropriate, the right for a partner to present the company as successor to his customers;

2°. All documents and archives and, in general, all movable objects for professional use;

3°. The buildings or premises used for exercise of the profession;

4°. All amounts in cash.

The contributions in diligence to the company made by the partners which, by reason of Article 10 of the Act of 29 November 1966, do not contribute to building the capital may give rise to an allocation of partnership shares.

Article R422-18

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The shares in the company may not be given in security.

Their face value may not be less than FRF 1,000.

The partnership shares allocated to the subscribers shall not be assignable. They shall be cancelled when their holder loses his capacity as partner for any reason whatsoever.

Article R422-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The shares of the company that correspond to the contributions in cash shall be paid up, on subscription, to at least one half of their face value.

The paying up of the remainder should be effected, in one or more payments, either on the dates specified in the statutes or by a decision of the assembly of partners, and at the latest within two years as from entry of the company in the national list of industrial property attorneys.

Within eight days of receipt, the funds from cash subscriptions shall be deposited for the account of the company with the Deposit and Consignment Office, with a notary or in a bank.

Withdrawal of such funds shall be carried out by an authorized representative of the company on simple proof of entry of the company in the national list.

Article R422-20

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The statutes shall lay down the management and determine the powers of the managers in accordance with the conditions of Article 11 of the Act of 29 November 1966.

Article R422-21

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Decisions that go beyond the powers of the managers shall be taken by the partners meeting in assembly.

The assembly shall be convened at least once a year. It shall also be convened at the request of at least one half of the partners, whereby the request shall state the agenda.

The conditions for convening the assembly shall be laid down in the statutes.

Article R422-22

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The statutes may afford a reduced number of votes to partners who exercise their profession on a part-time basis only.

They may also allocate a reduced number of votes to partners for as long as the company shares they hold have not been fully paid up.

Each partner may be represented by another partner holding written powers. A partner may not hold more than two powers.

Article R422-23

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Subject to the provisions of Article 19 of the Act of 29 November 1966 and those of this subsection that impose special conditions with respect to majority, decisions shall be taken on a majority of the votes held by the partners that are present or represented.

However, the statutes may require a larger majority or even unanimity of the partners for all decisions or for those decisions only that they enumerate.

Article R422-24

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Amendment to the statutes and, in particular, prolongation of the company shall be decided on a majority of three quarters of the votes of all partners.

However, an increase in the competence of the partners shall require a unanimous decision.

Article R422-25

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The deliberations of the partners shall be subject to the provisions of Articles 40 to 47 of Decree No. 78-704 of 3 July 1978.

The assembly may deliberate validly only if at least three quarters of the partners are present or represented. If the

quorum is not achieved, the partners shall be reconvened and the assembly shall deliberate validly if two partners at least are present or represented.

The register referred to in Article 45 of Decree No. 78-704 of 3 July 1978 shall be numbered and initialed by the registrar responsible for keeping the Register of Commerce and Companies in which the company is registered.

Article R422-26

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

At the end of each financial period, the manager or managers shall prepare, under the conditions laid down by Article 1856 of the Civil Code, a written general report comprising the annual accounts of the company and a report on the outturn.

Within two months following the end of the financial period, the documents referred to in the preceding paragraph shall be submitted for approval to the assembly of partners.

To that end, those documents shall be communicated to each partner, together with the wording of the proposed resolutions, at the same time as the convening of the assembly and at least 15 days before its meeting.

Article R422-27

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Each partner may, at any time, take cognizance, under the conditions laid down in Article 48 of Decree No. 78-704 of 3 July 1978, of the annual accounts of the company and of the report on the outturn, together with all the registers and accounting documents in the possession of the company.

Article R422-28

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Articles 49, 50 and 52 of Decree No. 78-704 of 3 July 1978 shall apply to assignments and transfers of shares in the company and to their publication.

Article R422-29

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the case referred to in the third paragraph of Article 19 of the Act of 29 November, 1966, the price of the shares in the company shall be determined, failing agreement between the parties, in accordance with the provisions of Articles 1843-4 of the Civil Code and 17 of Decree No. 78-704 of 3 July 1978.

Where the assigning partner refuses to sign the instrument assigning his shares at the price thus fixed, his refusal shall be overridden two months after he has been summoned to do so by the company without result, either by registered letter with notification of receipt or by process served by bailiff; the assignment price of the shares shall be consigned at the responsibility of the assignee.

If assignment concerns the totality of the company shares belonging to a partner, that partner shall lose his capacity as partner on expiry of the time limit laid down in the preceding paragraph.

Subject to the rules for the protection and representation of incapacitated persons, the provisions of Article 19 of the Act of 29 November 1966 shall apply to the assignment of the company shares of a partner subject to statutory prohibition or to tutelage of adults; the six-month period referred to in the third paragraph of that Article shall be extended to one year in such case.

Article R422-30

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the event of the death of a partner, the time limit for assignment referred to in the second paragraph of Article 24 of the Act of 29 November 1966 shall be laid down as one year as from the date of death.

It may be renewed by agreement between the successors in title of the deceased partner and the company reached in accordance with the provisions on the assignment of company shares in the first paragraph of Article 19 of the Act of 29 November 1966.

If consent to the preferential allocation referred to in the second paragraph of Article 24 of the Act of 29 November 1966 is refused and if the successors in title of the deceased partner have not assigned the company shares of their originator on expiry of the time limit allocated to them, the company shall have one year in which to acquire or have acquired the company shares of the deceased partner.

Article R422-31

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the instrument assigning the company shares is drawn up in the form of a private deed, the necessary number of originals shall be produced in order to hand a copy to each party and to comply with the provisions of Article R. 422-28.

In addition, one of the originals of the private deed or a copy of the instrument of assignment of the shares, if it is in the form of an authenticated deed, and possibly any instrument amending the statutes of the company, shall be communicated to the Director General of the National Institute of Industrial Property who, if necessary, shall make the relevant amendment to the entry of the company in the national list of industrial property attorneys.

Article R422-32

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If a partner wishes to withdraw from the company, he shall notify his decision to the company by registered mail with notification of receipt.

The company shall have six months as from notification in order to notify to the partner, in the same form, draft

assignment of his shares to a partner or to a third party entered in the list of industrial property attorneys or who satisfies the conditions for entry in that list or a draft redemption of those shares of the company. Such notification shall imply a commitment by the assignee or by the company that acquires the title.

In the event of failure to agree on the assignment price, Article R. 422-29 shall apply.

Article R422-33

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If a partner has been struck off, pursuant to Section 5 of this Chapter, for a period of six months or more, he may be excluded from the company by a decision taken on a majority of the other partners.

The excluded partner shall have a period of six months, as from notification made to him of the decision by registered mail with notification of receipt, in order to assign his shares under the conditions laid down in Articles 19 and 21 of the Act of 29 November 1966 and in Articles R. 422-28 and R. 422-29.

If, on expiry of that period, no assignment has been made, action shall be taken in accordance with the provisions of the third paragraph of Article 19 of the Act of 29 November 1966 and of Article R. 422-29.

Article R422-34

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The shares of the partner definitively removed from the national list of industrial property attorneys shall be assigned under the conditions set out in Article R. 422-33.

Article R422-35

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The number of partners may be increased during the lifetime of the company with or without an increase in the assets of the company.

Article R422-36

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any partner who receives for consideration or gratuitously a right of representation of a customer transmitted by a third party shall be obliged to contribute enjoyment thereof to the company and it shall be for the company to create and issue to him the new company shares that correspond to this additional contribution.

Article R422-37

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the reserves constituted by means of non-distributed profits or the plus value on assets due to the diligence of the partners so permit, the capital of the company shall be periodically increased. The shares in the company created for that purpose shall be distributed between all partners, including those who have contributed only their diligence.

However, the statutes may provide for cases and conditions under which a partner may be excluded from the allocation of shares in the company that had been newly created to represent an increase in the capital.

Article R422-38

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any decision to prolong the company shall be immediately brought to the notice of the Director General of the National Institute of Industrial Property, accompanied by a copy of the full minutes of the meeting, or of the instrument showing prolongation, constituted by one of the originals if the instrument is a private deed or by a copy if it has been drawn up in authenticated form.

Article R422-39

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the event of amendment of the statutes, a copy of the full minutes of the meeting or of the amending instrument constituted by one of the originals if the instrument is in the form of a private deed or by a copy if it has been drawn up in authenticated form, shall be communicated within two months to the Director General of the National Institute of Industrial Property and to the President of the Society of Industrial Property Attorneys.

If the new provisions of the statutes do not comply with the legislative or regulatory provisions and if regularization is not carried out within the time limit stipulated by the Director General of the National Institute of Industrial Property, the latter, after having invited the company to submit its oral or written observations, shall remove it from the national list of industrial property attorneys under the conditions set out in Articles R. 422-61 to R. 422-63.

The modification shall be published as provided for in Articles 22 et seq. of Decree No. 84-406 of 30 May 1984.

Article R422-40

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Premature dissolution of a company shall require the decision of at least three quarters of the partners.

The provisions of Articles 8 to 16 of Decree No. 78-704 of 3 July 1978 shall apply.

A copy of the instrument appointing the liquidator shall be communicated by the latter to the Director General of the National Institute of Industrial Property and to the President of the Society of Industrial Property Attorneys. The liquidator shall inform them of the closing of the liquidation.

Subsection 2

Professional partnerships — Articles R422-41 to R422-49

Article R422-41

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of this subsection shall govern partnerships constituted pursuant to Title I of Act No. 90-1258 of 31 December 1990 with the aim of exercising in common the profession of industrial property attorney. Such partnerships shall bear the designation of professional partnerships of industrial property attorneys.

Article R422-42

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Instruments and documents intended for third parties, in particular letters, invoices, announcements and miscellaneous publications originating from a professional partnership of industrial property attorneys shall show the name of the partnership immediately preceded or followed, as appropriate:

— by either the notice “limited liability professional partnership of industrial property attorneys” or the notice “SELARL of Industrial Property Attorneys”;

— or the notice “professional partnership in the form of a stock company of industrial property attorneys” or the notice “SELAFA of Industrial Property Attorneys”;

— or the notice “professional partnership limited by shares of industrial property attorneys” or the notice “SELCA of Industrial Property Attorneys”,

together with the statement of the capital stock, of the address of the registered offices, a notice of its entry in the list of industrial property attorneys and its registration number in the Register of Commerce and Companies.

Article R422-43

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

One and the same natural or legal person exercising the profession of industrial property attorney may not, pursuant to the third paragraph of Article 5 of Act No. 90-1258 of 31 December 1990, hold a participation in more than two professional partnerships of industrial property attorneys.

Article R422-44

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The holding of shares in a professional partnership of industrial property attorneys shall be prohibited for any person who has been removed from the list of industrial property attorneys or the list of patent agents referred to in Article 3 of Decree No. 76-671 of 13 July 1976 as amended, relating to professional qualifications with regard to patents for invention and establishing the organization and disciplinary arrangements for the profession of patent agent.

Article R422-45

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A partner may exercise the profession of industrial property attorney only within a single professional partnership and may not exercise the profession individually or within another company of any form whatsoever.

Article R422-46

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The professional partnerships of industrial property attorneys shall be subject to the provisions on obligations, guarantee and discipline applicable to the profession of industrial property attorney.

However, partnerships may not be subject to disciplinary procedures independently of those initiated against attorneys who are partners within such partnerships exercising that profession.

Article R422-47

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A partner in a professional partnership set up for the exercise of the profession of industrial property attorney may be excluded from that partnership in the event of definitive disciplinary sanction with the effect of temporarily prohibiting him from exercising the profession for a period of more than six months.

Such exclusion shall be decided by a unanimous decision of the other partners.

Article R422-48

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any partner who has been excluded shall have a period of six months as from notification made to him of the decision by the partnership to assign his partnership shares or stock, by means of a registered letter with notice of receipt.

During that period, the excluded partner shall forego the remuneration deriving from exercise of his professional activity and his right to attend and vote in meetings of the partnership. He shall maintain his right to receive the dividends distributed with regard to his partnership shares or stock. The partnership shares or stock of the partner who has been excluded shall be purchased either by an acquirer who has been approved by the partnership or by the partnership which shall then reduce its capital. Failing amicable agreement, the buying back price of the partnership shares shall be determined under the conditions laid down in Article 1843-4 of the Civil Code.

Article R422-49

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A partner prohibited from exercising on a temporary basis shall keep, for the duration of his sanction, his capacity of partner with all the rights and obligations deriving therefrom, with the exclusion of his right to remuneration paid by the partnership in relation to the exercise of his professional activities.

In the event of a prohibition to exercise the profession imposed on all the partners in a professional company, the professional acts and the management of the company shall be undertaken by one or more industrial property attorneys designated by the National Society of Industrial Property Attorneys.

Subsection 3
Trading partnership — Articles R422-50 to R422-51

Article R422-50
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The constitution of a trading partnership of industrial property attorneys referred to in Title II of Act No. 90-1258 of 31 December 1990 shall give rise to the publication of a notice in a journal authorized to publish statutory announcements at the place of its registered offices, if such exists, or at the place of exercise of each of the partners. The notice shall contain the identity of the partners, the designation, the purpose, the address of the registered offices, if such exist, and that of the places of exercise.

Article R422-51
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Membership of a trading partnership, with the designation of the partnership, shall be notified in the professional acts and in the correspondence of each partner.

Subsection 4
Financial holding company of independent profession of industrial property attorneys — Articles R422-51-1 to R422-51-14

Article R422-51-1
(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

Industrial property attorneys may, under the conditions provided for in Article 31-1 of Act No. 90-1258 of 31 December 1990, form a financial holding company of independent profession of industrial property attorneys.

The following may be partners, excluding any other person:

1º for a period of ten years, natural persons who, having ceased any occupation, have worked as industrial property attorney;

2º entitled beneficiaries of natural persons referred to in the first and third paragraphs above, for a period of five years after the death of the latter;

3º persons running an independent profession with a statutory or regulatory status or whose title is protected, stepping in for obtaining, protecting, exploiting or defending patent rights.

Article R422-51-2
(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

The company shall be formed under the condition precedent of its registration on the list of industrial property attorneys provided for in Article L. 422-1.

Article R422-51-3
(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

The application for registration of a financial holding company of independent profession of industrial property attorneys shall be sent on behalf of all the associates, who shall appoint a common representative, to the Director General of the National Institute of Industrial Property, by a registered letter with advice of delivery, or delivered personally against receipt.

This application shall be accompanied, under the penalty of inadmissibility, by the following documents:

1º a copy of the memorandum and articles of association;

2º a certificate of the clerk office responsible for keeping Register of Commerce and Companies where the company has its registered office recording the filing with the clerk's office for applications, annexed deeds and documents necessary for the registration of the financial holding company;

3º the list of partners with, according to the case, reference to their profession or their capacity with respect to what is provided for in Article R. 422-51-1, followed, for each one, by reference to the share of the capital held by him in the company whose registration is required.

The application shall be, if necessary, accompanied by information memo indicating the company or companies of independent profession of industrial property attorneys whose shares or capital-stock will be held by the financial holding company and specifying the distribution of the capital which will result from these participations for each one of them.

Article R422-51-4
(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

The Director General of the National Institute of Industrial Property shall rule on applications for registration after the opinion of the National Society of Industrial Property Attorneys.

The opinion will be deemed delivered if the Society has not forwarded it within one month as from the time the reference for opinion.

The registration of the company may not be refused unless the situation disclosed pursuant to the Article R. 422-51-3 does not comply with the governing law and regulation.

The refusal of registration must be explained and notified to the common representative.

Article R422-51-5

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

Financial holding companies of independent profession of industrial property attorneys resulting from merger or a demerger shall be subject to the provisions of Articles R. 422-51-2 to R. 422-51-4.

Article R422-51-6

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

At the initiative of the Director of the National Institute of Industrial Property, a certified copy of the decision of registration of the company shall be sent to the clerk's office of the court where the application for registration with the register of trade and companies has been filed. Upon the receipt of this certified copy, the clerk shall carry out the registration and inform the Director General of the National Institute of Industrial Property.

The company shall be exempted from carrying out publication formalities provided for in Article 281 of Decree No. 67-236 of 23 March 1967 modified on commercial companies.

Article R422-51-7

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

The financial holding company of independent profession of industrial property attorneys shall notify the Director General of the National Institute of Industrial Property of any change in the situation disclosed pursuant to Article R. 422-51-3 together with the supporting documents, within thirty days from the date on which this change occurred.

Article R422-51-8

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

If this change makes the disclosed situation of the company inconsistent with the governing law and regulation, the company will be summoned by the Director General of the Institute to regularize its situation within the time indicated in the summons.

If, with the expiry of this time, the company does not regularize its situation, the Director General of the Institute will pronounce its striking off (from the list of the industrial property attorneys) by a reasoned decision which shall be notified to the company.

The appeal against a decision of striking off shall stay the latter.

Article R422-51-9

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

At the initiative of the Director General National Institute of Industrial Property, a certified copy of the final decision pronouncing the striking off of the company from the list of the industrial property attorneys shall be notified to the clerk responsible for the keeping of the registers of trade and companies with which the company is registered.

Article R422-51-10

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

The striking off of the financial holding company of independent profession of industrial property attorneys from the list of industrial property attorneys shall result in its winding-up.

Article R422-51-11

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

The winding-up of the company, where it does not result from the striking off of the industrial property attorneys from such list, shall be notified to the Director General of the National Institute of Industrial Property at the initiative of the liquidator.

Article R422-51-12

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

The liquidator may be selected among the partners.

Several liquidators may be appointed.

The liquidator may be replaced in case of impediment, or for any other serious reason, by the president of the Tribunal de Grande Instance (High Court) of the place of the registered office of the company, ruling in summary procedure at the request of the liquidator, of partners or of their entitled beneficiaries or of the Director General of the National Institute of Industrial Property.

Article R422-51-13

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

In the case provided for in Article R. 422-51-10, the liquidator shall carry out the transfer of shares or capital-stock that the strike-off company holds in the companies of independent profession under the conditions provided for in Article R. 422-48.

Article R422-51-14

(inserted by Decree No. 2004-199 of 25 February 2004, Article 9, Official Journal of 3 March 2004)

The liquidator shall inform the Director General of the National Institute of Industrial Property and the clerk responsible for keeping registers of trade and companies in which the company is registered of the closing of the liquidation operations.

SECTION IV

Professional Obligations — Articles R422-52 to R422-54

Article R422-52

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

An industrial property attorney shall exercise his profession with dignity, honor, independence and probity and shall comply with the laws and regulations governing his society.

Article R422-53

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 2 V Official Journal of 24 September 1997)

An industrial property attorney shall refrain from any canvassing or advertising not authorized by Article R. 423-2.

He shall draw up an indicative schedule of fees, as distinct from the refunding of costs and fees to be paid. The detailed schedule of such charges shall be communicated to any person so requesting.

Article R422-54

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 25 February 2004, Article 10, Official Journal of 3 March 2004)

An industrial property attorney:

1°. shall refrain from advising, assisting or representing customers that have opposing interests within the same case. He shall refrain also from accepting a new case if the secrecy of the information entrusted to him by an earlier customer is susceptible to be infringed.

2°. shall observe professional secrecy: such secrecy shall extend, in particular, to consultations given to his customer, to professional correspondence and to all documents drawn up in that connection;

3°. shall pursue the case for which he is responsible up to its completion, unless his customer releases him from it;

4°. shall report on the execution of his power of attorney, particularly with respect to the handling of funds. To that end, he shall submit to his customer an account that clearly shows his fees, on the one hand, and the costs and charges, on the other. This account shall show the amounts that have been previously received as advances or payment;

5°. shall return to the customer who has released him or to the latter's new representative all documents of an official nature in his possession and all the documents and information required to execute or complete the task entrusted to him; the documents should be handed out within a period of time that will avoid any lapse of right or prescription.

SECTION V

Disciplinary Measures — Articles R422-56 to R422-66

Article R422-56

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002 art. 4 I Official Journal of 20 February 2002)

The disciplinary board, referred to in Article L. 422-10,
to hear breaches of the obligations of industrial property attorneys,
shall comprise seven members:

1°. A magistrate of the judiciary, as Chairman, appointed on a proposal by the first President of the Court of Appeal of Paris;

2°. A member of the Conseil d'Etat appointed on a proposal by the Vice President of the Conseil d'Etat;

3°. The President of the National Society of Industrial Property Attorneys or his alternate designated by him for the duration of his term of office from among the vice presidents of the Society;

4°. Two industrial property attorneys, chosen from a list of eight proposed candidates, not members of its Office, by the National Society of Industrial Property Attorneys;

5°. Two qualified persons.

The members designated in accordance with items 1, 2, 4 and 5 shall have alternates appointed under the same conditions.

The disciplinary board also hears breaches of the obligations of other persons allowed to exercise activities within the scope of industrial property attorney.

Article R422-57

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)

The members of the disciplinary board, with the exception of the President of the National Society of Industrial Property Attorneys and his alternate, shall be appointed, as shall their alternates, for a period of three years by joint order of the Garde des sceaux, Minister for Justice, and the Minister responsible for industrial property.

Article R422-58

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)

Matters may be referred to the disciplinary board by the Keeper of the Seals, Minister for Justice, by the Minister responsible for industrial property, by the Director General of the National Institute of Industrial Property or by means of a complaint.

The referral of the complaint shall be lodged with the chairman of the board by registered letter with notification of receipt at the headquarters of the National Institute of Industrial Property.

Article R422-59
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)

The Secretary of the National Society of Industrial Property Attorneys shall act as recorder of the disciplinary board. If he should be unavailable, and particularly if it would appear that the six-month time limit referred to in Article R. 422-60 may not be complied with, the Office of the Society shall designate one of the officers as alternate.

The secretariat of the Board shall be provided by the National Institute of Industrial Property.

Article R422-60
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002 art. 4 II Official Journal of 20 February 2002)

The recorder may, ex officio or at the request of the chairman of the board, require the industrial property attorney concerned, the complainant or any other person able to throw light on the discussions, the explanations and the justifications required for the information of the Board.

The report shall set out the alleged acts, the proceedings accomplished and the reasoned conclusions of the recorder with regard to the existence of a disciplinary fault.

It shall be filed at the seat of the board within six months of referral to the latter, failing which the chairman of the board may designate a further recorder from among the members of the Society who are not members of the board.

Article R422-61
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)

If the recorder considers that the complaint or the referral is not admissible, is irrelevant or obviously unfounded, he shall propose to the board that it terminate the matter.

The decision to terminate shall be taken and notified in the manner and under the conditions laid down in Article R. 422-64. It may be referred to the Conseil d'Etat in a cassation procedure.

Article R422-62
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002 art. 4 III Official Journal of 20 February 2002)

Except where Article R. 422-61 is applied, the person subject to a disciplinary procedure shall be summoned to appear before the disciplinary board by its chairman at least fifteen days before the hearing, by registered letter with notification of receipt.

If the person prosecuted is a legal person, the summons shall be addressed under the same conditions to his legal representative.

The summons shall comprise, under the pain of invalidity, an exact statement of the facts for which the prosecution has been instituted and the reference of the legislative or regulatory provisions on the basis of which the facts are prosecuted and sanctioned. It shall be communicated to the authority that has made the referral to the board or to the author of the complaint, by registered letter with notification of receipt. A time limit of 15 days as from notification shall be imposed both on the complainant and on the industrial property attorney for submitting any written observations.

The person prosecuted, the authority that has made the referral to the board or to the author of the complaint may consult the prosecution file with the secretary to the board, particularly the report referred to in Article R. 422-60. To that end, the person prosecuted may be assisted by the person of their choice.

The file shall also be available to the members of the board.

Article R422-63
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002 art. 4 IV Official Journal of 20 February 2002)

Unless one of its members and his alternate are affected by one of the reasons for refusal referred to in Article L. 731-1 of the Code of the Judicial organization, the disciplinary board may only meet and deliberate validly if all its members or their alternates are present.

The board shall hear the recorder who shall read out his report.

The Board may hear any witnesses and have any investigation made where it is deemed useful.

Except where the board pronounces pursuant to Article R. 422-61, the author of the complaint may attend the hearing and may be heard. With the same reservation, the person prosecuted shall speak last, together with the author of the complaint and may be assisted by the person of his choice.

The sittings of a board shall be public. However, the chairman may, ex officio or at the request of one of the parties, deny the public access to the room during the whole or part of a sitting in the interests of public order or where respect for personal privacy or for business secrecy so justifies.

Article R422-64

(Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002 art. 4 V Official Journal of 20 February 2002)

The consultation of the judges shall take place without the parties. The recorder shall not participate in the consultation, nor shall the secretary to the board.

The disciplinary decision, which shall be reasoned, shall be taken on a majority. Temporary removal for more than one year or final removal may only be pronounced by a decision taken on a majority of at least five members.

The decision shall be notified by the secretary to the party concerned, to the complainant, to the Director General of the Institute, to the Keeper of the Seals, Minister for Justice, and to the Minister responsible for industrial property by registered letter with notification of receipt within a period of 15 days as from its pronouncement.

The decision shall become executable as from its notification to the attorney who is the subject of the decision.

The decision may be referred to the Conseil d'Etat in a cassation procedure.

Article R422-65

(inserted by Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)

Any company of which a member has been removed for disciplinary reasons shall be removed from the special section referred to in Article L. 422-7 by decision of the Director General of the Institute if the person concerned has not ceased to exercise his activities in that company within three months.

In addition to the notifications referred to in Article R. 422-64, the removal decision shall be notified to the registrar referred to in Article R. 422-6.

Article R422-66

(inserted by Decree No. 97-863 of 17 September 1997 art. 3 Official Journal of 24 September 1997)

Temporary or final removal from the list shall be published in the Official Bulletin of Industrial Property on the initiative of the Director General of the Institute.

CHAPTER III
Miscellaneous Provisions — Articles R423-1 to R423-2

Article R423-1

(Decree No. 97-863 of 17 September 1997 art. 4 Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002 art. 5 Official Journal of 20 February 2002)

The conditions for entry in the list referred to in Article L. 422-5 shall be assessed as of the date of entry into force of that Article. In the case of legal persons, the condition shall be assessed with regard to the authors of the application. Maintenance of the entry shall be subject to compliance with the conditions on account of which the Director General of the Institute has taken his decision.

The persons entered in the list referred to in Article L. 422-5 shall be obliged, when carrying out their professional activity, to comply with the regulations referred to in Articles L. 422-8 and R. 422-52 to R. 422-54. In the event of failure to respect their obligations, they shall be subject to the provisions of Articles R. 422-56 to R. 422-66 and the sanctions provided for by Article L. 422-10 shall apply to them.

Article R423-2

(inserted by Decree No. 97-863 of 17 September 1997 art. 4 Official Journal of 24 September 1997)

The prohibition on canvassing referred to in Article L. 423-1 shall not apply to offers of services made by postal means and addressed to professionals or undertakings. However, such offers shall be restricted to communication of general information on the firm, its organization, its staff, its services and on industrial property law.

Such information may be supplemented by indications relating to the price of services. The follow-up to such services, of such nature as to entail additional costs, shall be set out where applicable. A distinction shall be made between fees and the costs and official fees.

Advertising by means of making available brochures or pamphlets or by the insertion of announcements in specialized press or in directories shall be authorized under the same conditions.

The publication of books or articles of a legal or technical nature or the distribution of information to customers shall not be deemed to constitute advertising.

An order of the Minister responsible for industrial property, issued after having heard the National Society of Industrial Property Attorneys, may lay down standardized presentation and formulation of the information referred to in this Article. The opinion of the Society shall be deemed to have been obtained if no reply is received within one month of referral.

BOOK V
Designs and models — **Articles R511-1 to R521-1-1**

TITLE I

Acquisition of Rights — Articles R511-1 to R514-6

CHAPTER I
Rights and Works Protected — Articles R511-1 to R511-6

SOLE SECTION
Specific Regulatory Measures for Certain Industries — Articles R511-1 to R511-6

Article R511-1
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any creator of an industrial design belonging to one of the industries referred to in Article R. 511-2 or to similar industries requiring to obtain confirmation of the date of the creation of industrial designs may have recourse, to that end, to the means of proof laid down in Articles R. 511-3 to R. 551-6.

Article R511-2
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Article R. 511-1 shall apply to the industries of engraving, embossing, jewelry, goldsmithing, bronze making and associated industries, embroidery, lace-making, silk-making, ribbon-making, fabrics and textile materials, font-making, bottle-making, furniture-making, ceramics, cut glass and glassware, upholstering, furnishing fabrics, tapestries and carpets, billiard table manufacture and related industries, wallpapers, furs and skins, costume jewelry of all types and the related industries, lithographic printing, leatherwares, corsetry, travelling goods of all kinds, saddlery and all related industries.

Article R511-3
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The designs or the graphic reproduction of three-dimensional designs shall be effected on a sheet of paper of which one side only is used; the parts that remain unused shall be filled in with hatching up to the actual limit of the design and spaced at a maximum of 20mm from each other; the size of the paper to be used shall be 21 x 29.7 or 42 x 29.7.

On the reproduction shall be mentioned all indications capable of defining the date and conditions of the creation of each design that is shown (date of creation or purchase, name of creator and, if possible, of the first person for whom it was intended).

Article R511-4
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The designs shall be press copied with their date in a copy book or reproduced by transfer to a special register made up of sheets of manilla paper sufficiently thin to prevent any scratching or overwriting; the registers shall be initialled and stamped, prior to use, by the National Institute of Industrial Property under the circumstances laid down by ministerial order.

The documents thus copied or reproduced shall occupy one side only of a sheet in one of the registers or, if the dimensions so require, the two facing sides of two separate sheets.

Article R511-5
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Either of these two registers, regularly held in chronological order, without blank nor gap, may, in the event of a dispute, be produced in order to establish the date of creation of which priority is disputed.

Article R511-6
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In order to supplement the evidence drawn from the keeping of the registers mentioned above, the parties concerned shall be authorized to draw up in two identical copies the designs for which they wish to confirm the priority date of creation and to address those two copies to the National Institute of Industrial Property which, after entering and perforating the date of receipt, shall return one of the copies to the sender and place the other copy in its archives.

A ministerial order shall lay down the conditions for sending, safeguarding and returning designs.

CHAPTER II
Formalities for Filing — Articles R512-1 to R512-9-1

Article R512-1
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 Official Journal of 20 February 2002)

Filings of industrial designs may be effected personally by the applicant or by a representative having his place of residence, place of business or establishment in a member State of the European Community or a State party to the agreement on the European Economic Area. Receipt of the filing shall be confirmed.

It may be effected by sending to the National Institute of Industrial Property a registered postal consignment with

notification of receipt or a message by any means of remote transmission defined by decision of the Director General. In such case, the date of filing shall be that of receipt at the Institute.

Article R512-2

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 art. 6 Official Journal of 20 February 2002)

Persons not having their place of residence or head office in a State party to the agreement on the European Economic Area shall be required, within a period of time afforded to them by the Institute, to appoint a representative who complies with the conditions set out in Article R. 512-1.

Where there is more than one applicant, a joint representative complying with those same conditions shall be appointed.

Except where he has the capacity of industrial property attorney, the representative shall attach his powers which shall extend, subject to the provisions on Article R. 513-2 and unless otherwise agreed, to all acts and to the receipt of all notifications referred to in Chapters II, III and IV of this Title. Powers shall not require legalization.

Article R512-3

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 25 February 2004, Article 11, Official Journal of 3 March 2004)

Where the same filing concerns several industrial designs, the products in which these industrial designs are intended to be incorporated or to which they are intended to be applied must belong to the same class, within the meaning of the classifications created by the LocarNo. Agreement of 8 October 1968. However, this condition shall not apply where the filing concerns decorations.

The filing shall contain:

1°. an application for registration drawn up in accordance with the order referred to in Article R. 514-5, setting out, in particular:

a) the identification of the applicant;

b) the number of designs involved;

c) the total number of the graphic or photographic reproductions included in the filing; one filing may not concern more than 100 reproductions;

d) the number of reproductions related to each specific design;

e) the usual designation of the product in which the design will be incorporated or to which it will be applied;

f) where applicable, a statement with respect to the postponement of the publication of the filing, the claim to a priority right deriving from a preceding filing abroad or the warranty certificate issued in accordance with the Act of 13 April 1908;

2°. a graphic or photographic reproduction of the designs presented under the conditions set out under (1°). Each reproduction must relate to only one object and represent only this one, other than any other object, accessory, person or animal. Explanatory texts, legends, or any other indication which is not the integral part of the design are not allowed on or beside the reproductions. The reproductions may be accompanied by a short description, drawn up exclusively for documentary purposes. Where appropriate, the final content shall be edited by the National Institute of Industrial Property;

3°.proof of payment of the prescribed fees;

4°.if a representative is appointed, his powers, unless he has the capacity of industrial property attorney.

The applicant may, until the publication provided for in Article R. 512-10, obtain at his expense a true copy of the documents contained in his filing.

Article R512-4

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 13, Official Journal of 3 March 2004)

The filing in the simplified form referred to in Article L. 512-2, fifth paragraph, shall contain the documents and statements referred to in Article R. 512-3. However, until the time of waiving of the postponement referred to in Article R. 512-11, the graphic or photographic reproductions of the designs shall not be subject to the presentation requirements referred to in Article R. 512-3 (2°) and the filing shall be subject to proof of payment of a fee independent of the number of reproductions.

The advantage of the simplified filing may be requested only at the time of filing.

Article R512-5

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 14, Official Journal of 3 March 2004)

Claim to a priority right deriving from a preceding filing abroad when making a filing in France shall be subject to the obligation to forward to the National Institute of Industrial Property, within three months of the filing in France, an official copy of the prior filing and, where appropriate, proof of the right to claim priority.

If this obligation is not complied with, the priority shall be deemed not to have been claimed.

The same will apply where it results from the disclosed documents that the prior filing has taken place six months earlier before the filing in France or that the attachments of the filing in France do not correspond to those of the prior filing.

Article R512-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

On receipt of the filing, the following shall be noted on the statement: the date, the place and the serial number of the filing or the national number referred to in the following Article. A receipt for filing shall be given to the applicant.

Where filing is made at the registry of the commercial court or of the court of first instance acting in its stead, the filing documents and the amount of the fees shall be transmitted without delay to the National Institute of Industrial Property by the registrar.

Article R512-7

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 15, Official Journal of 3 March 2004)

On receipt at the Institute, the filing shall be given a national number. Where it has not been possible to mention it on the filing receipt, the number will be notified to the applicant.

A letter or a subsequent filing of documents which does not refer to the national filing number, which is not signed by the applicant or his representative or which, as the case may be, is not accompanied by the proof of payment of the prescribed fee shall not be admitted.

Article R512-8

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 16, Official Journal of 3 March 2004)

Any filing that does not contain at least one copy of the application for registration, containing the particulars referred to in Article R. 512-3 (1°) (a) and at least one copy of the graphic or photographic reproduction of the design or designs referred to in Article R. 512-3 (2) and that is not accompanied by proof of payment of the filing fee shall not be admitted. The reproduction mentioned above must be of a sufficient quality to allow a satisfactory publication in the Official Bulletin of the Industrial Property.

Article R512-9

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 17, Official Journal of 3 March 2004)

If the filing fails to comply with the requirements of Article R. 512-3 or, in the case of a simplified filing, with the requirements of Article R. 512-4, or where publication of a filing would be such as to offend morality or public policy, a reasoned notification shall be made to the applicant.

He shall be given a period of time to regularize the filing or to contest the objections of the Institute. Each divisional application must satisfy the conditions fixed at the 1º, 2º, 3º and 4º of the article R. 512-3. Divisional applications shall take advantage of the filing date and, if necessary, the priority date of the initial application. Failing regularization, observations or division of the filing enabling the objection to be withdrawn, the filing shall be refused.

The notification may be accompanied by a proposal for regularization. Such proposal shall be deemed accepted if the applicant has not contested it within the period of time afforded to him.

No. regularization carried out in accordance with the provisions of this Article may result in the extension of the scope of the filing.

Article R512-10

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 19, Official Journal of 3 March 2004)

All filings that fulfil the requirements shall be published in the Official Bulletin of Industrial Property, unless the applicant has requested at the time of filing the postponement of such publication for three years. Postponement of publication shall concern the filing as a whole. Publication shall take place only at the end of a three years period.

Postponement shall be automatic if the filing is made in the simplified form in accordance with Article R. 512-4.

The applicant may at any time waive the postponement. Except where the filing has been made under the simplified form, waiving of the postponement of publication shall concern the filing as a whole.

As from the day of the publication provided for in the first paragraph, any interested person may request to consult the documents of the filing of design and obtain at his expense copy of the documents thereof. The Institute may subject the exercise of this right to the proof of sufficient interest.

However, documents not disclosed to the applicant as well as those that contain personal data or those that relate to business secrets shall be excluded from disclosure to the public.

Article R512-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where the filing has been made under a simplified form, the applicant shall be required, at the latest six months before the expiry of the three-year period referred to in Article R. 512-10, to waive in writing the postponement of the publication and submit to the National Institute of Industrial Property:

1.The graphic reproductions or photographs of the design or designs to be published in accordance with the presentation requirements referred to in item 2 of Article R. 512-3;

2.Proof of payment of the prescribed fees.

Failing that, the full or part lapse of the rights deriving from the filing shall be ascertained by the Director General of the National Institute of Industrial Property.

In the event of the graphic reproductions or photographs failing to conform with the requirements of Article R. 512-3 or where the reproduction supplied on waiving of postponement does not correspond identically with one of the

representations attached to the simplified filing, the procedure under Article R. 512-9 shall be applied.

Article R512-12
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 20, Official Journal of 3 March 2004)

The application for lifting the revocation provided for in Article L. 512-3 must be submitted within two months as from the disappearance of the obstacle; and the non-accomplished deed must be accomplished within the same time limit. The application shall No. longer be admissible after a predetermined six month period starting from the expiry of the non observed period.

The application shall be submitted to the Director General of the Institute by the holder of the filing, who must be the registered holder with the National Register of Designs if the filing is published or by his representative.

The application shall be admissible only after payment of the prescribed fee.

The application shall be made in writing. It shall state the facts and grounds on which it relies.

The reasoned decision shall be notified to the applicant.

Article R512-13
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The National Designs Register shall be kept by the National Institute of Industrial Property.

There shall be entered therein for each filing:

1°. Identification of the holder and the filing references together with subsequent acts affecting its existence or scope;

2°. Acts modifying the ownership of a design or enjoyment of the rights deriving from it; in the event of a claim to ownership, the corresponding transfer;

3°. Changes of name, of legal form or of address or corrections of clerical errors in the entries.

No entry shall be made in the Register until the filing has been made public as set out in Article R. 512-10.

Article R512-14
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 21, Official Journal of 3 March 2004)

The particulars referred to in Article R. 512-13 (1°) shall be registered at the initiative of the National Institute of Industrial Property or, in the case of a court decision, at the request of the court clerk or of one of the parties.

Only final court decisions may be entered into the National Register of designs.

Article R512-15
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 22, Official Journal of 3 March 2004)

Deeds modifying the ownership of the filing of a design or the possession of the rights deriving therefrom, such as assignment, concession of a commercial right, creation or assignment of a pledge or waiver thereof, restraint, approval and release from restraint, shall be registered at the request of one of the parties or the holder of the filing if he is not party to the deed.

The application shall contain:

1°. an application form for registration;

2°. a copy or abstract of the deed ascertaining the change in ownership or possession;

3°. the proof of payment of the prescribed fee;

4°. where appropriate, the powers of the representative, unless the latter has the capacity of industrial property attorney.

Article R512-16
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 23, Official Journal of 3 March 2004)

By way of exception to Article R. 512-15 (2°), the following may be submitted with the application:

1°. in the event of a change mortis causa: any deed establishing the transfer, at the request of the heirs or legatees;

2°. in the event of transfer by reason of merger, demerger or acquisition: a copy of an abstract of Register of Commerce and Companies;

3°. subject to proof of a material obstacle to produce a copy: any document proving the change in ownership or possession.

Article R512-17
(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 24, Official Journal of 3 March 2004)

Changes in name, legal form, address and corrections to clerical errors shall be registered at the request of the holder of the filing, who must be the registered holder with the National Register of Designs. However, where such changes and corrections concern a deed already registered, the application may be submitted by any party to the deed.

The application shall contain:

1°. an application form for registration;

2° where appropriate, the powers of the representative, unless the latter has the capacity of an industrial property attorney.

3°. if it concerns correction of a clerical error, proof of payment of the prescribed fee.

The Institute may ask for evidence of the change that has occurred or of the existence of the clerical error to be corrected;

Article R512-18

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 25, Official Journal of 3 March 2004)

In the event of non conformance of the application for registration, a reasoned notification will be made to the applicant.

A time limit shall be given to him to regularize his application or to present observations. In absence of regularization or observations making it possible to withdraw the objection, the application will be rejected by the decision of the Director General of the National Institute of the Industrial Property.

The notification may be accompanied by a proposal for regularization. This proposal will be deemed accepted if the applicant does not dispute it within the time given to him.

Article R512-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any entry made in the National Designs Register shall be notified in the Official Bulletin of Industrial Property.

Any person concerned may obtain from the Institute:

1°. A certificate of identity containing the particulars relating to the filing, the national number and, where appropriate, any relevant renunciations or extensions;

2°. A reproduction of the entries made in the National Designs Register;

3°. A certificate attesting that there is no entry in the register.

Article R512-3-1

(inserted by Decree No. 2004-199 of 27 February 2004, Article 12 Official Journal of 3 March 2004)

Until the beginning of the technical preparations relating to the publication, the applicant may be authorized, on a petition sent to the Director of the National Institute of Industrial Property, to rectify clerical errors observed in the filed documents. The Institute may require evidence of the existence of the clerical error to be corrected and, where appropriate, of the meaning of the correction requested.

Article R512-9-1

(inserted by Decree No. 2004-199 of 27 February 2004, Article 18 Official Journal of 3 March 2004)

The application form for registration may be requested until the beginning of the technical preparations required for the publication provided for in the first paragraph of Article R. 512-10.

The request for application form shall be carried out by a written declaration sent or delivered directly to the Institute, formulated by the holder or his representative, who, save where he is an industrial property attorney, must have a special power of attorney. Where there are several applicants, the request for application form may be carried out only if it is demanded by all of them.

The request for application form may refer to only one filing. The request for application form may be limited to some of the designs referred to in the application.

The declaration shall indicate whether the exploitation rights or a pledge have been granted or not. In the affirmative, it must be accompanied by the written assent of the beneficiary of this right or the secured creditor.

CHAPTER III
Term of Protection

Articles R513-1 to R513-3

Article R513-1

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002Article 7 Official Journal of 20 February 2002)
(Decree No. 2004-199 of 27 February 2004, Article 26, Official Journal of 3 March 2004)

The extension of the filing of a design or model provided for in Article L. 513-1 may result from a declaration of its holder drawn up under the conditions set out by the order referred to in Article R. 514-5. It may be stated therein that the extension shall apply only to certain designs.

The first extension may however be requested at the time of the filing.

The extension shall take effect on the day following the date on which the registration expires.

Subject to inadmissibility, the declaration shall:

1º be submitted during a six month time limit that expires on the last day of the month during which each period of protection comes to an end and be accompanied by proof of payment of the prescribed fee. However, the declaration may still be submitted or the fee may be paid during an additional six-month period as of the following day of the last day of the month during which the protection expires with payment of a supplementary fee;

2º state the designation of the registration to be extended and emanate from the registered holder, at the day of the declaration, with the National Register of Designs or of his representative.

If the declaration does not satisfy these conditions, the procedure provided for in Article R. 512-9 shall be applied.

The inadmissibility may not be pronounced without the applicant being given a notice to submit his observations.

Article R513-2

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 27, Official Journal of 3 March 2004)

The holder of a registration of a published design may waive the design, in whole or in part, at any time.

Subject to inadmissibility, the declaration of waiver shall:

1° emanate from the holder of the registration entered, at the time of declaration, into the National Register of Designs or from his representative;

2° be accompanied by the evidence of payment of the prescribed fee.

The provisions of Article R512-9-1 shall apply to the waiver.

Article R513-3

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 28, Official Journal of 3 March 2004)

The inadmissible, rejected, fallen, not extended filings as well as those whose protection has expired, may be returned to their owner, at his request and expense.

If they were not claimed, they may be destroyed by the National Institute of Industrial Property at the end of a one year period with respect to the inadmissible, rejected or fallen filings or at the end of a ten year period with respect to not extended filings or those filings whose protection has expired.

CHAPTER IV
Common Provisions — Articles R514-1 to R514-6

SECTION I
Procedure — Articles R514-1 to R514-5

Article R514-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The time limits afforded by the National Institute of Industrial Property in accordance with this Title shall be neither less than one month nor more than four months.

Article R514-2

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 29, Official Journal of 3 March 2004)

Where a time limit is expressed in days, the date of the deed, the event, the decision or the notification that initiates the time limit shall not count.

Where a time limit is expressed in months or in years, it will expire on the day of the last month or of the last year that bears the same number as the day of the deed, the event, the decision or the notification that generates the time limit. Failing a day of the same number, the time limit shall expire on the last day of the month.

Where a time limit is expressed in months and in days, the months will be counted first and then the days.

All time limits shall expire on the last day at midnight.

A time limit that would normally expire on a Saturday, a Sunday or a holiday or non-working day shall be extended to the first working day thereafter.

The time limit which would normally expire on a day where one of the regional offices of the National Institute of Industrial Property is not open will be extended until the first day where all the regional offices of the Institute will be open.

The list of the days mentioned in the preceding paragraph shall be drawn up annually by the Director General of the National Institute of Industrial Property. It shall be published in the Official Bulletin of the Industrial Property.

Article R514-3

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 30, Official Journal of 3 March 2004)

Any notification shall be deemed regular if made:

1°. either to the last holder of the filing declared to the Institute or, after the publication provided for in Article R. 512-10, to the last holder registered with the National Register of Designs;

2°. or to the representative of the above mentioned holder.

If the holder does not have his residence in a Member State of the European Community or a State party to the Agreement on the European Economic Area, the notification will be deemed regular if made to the last representative he has appointed before the Institute.

Article R514-4

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 31, Official Journal of 3 March 2004)

The notifications referred to in Chapters II, III and IV of this Title shall be made by a registered letter with advice of delivery.

The registered mailing may be replaced by delivery by hand of the letter to the addressee, against receipt, at the premises of the National Institute of Industrial Property or by an electronic message under the conditions fixed by the Director General of the Institute in order to guarantee, in particular, the safety of mailing.

If the address of the addressee is unknown, the notification shall be made by publication of a notice in the Official Bulletin of Industrial Property.

Article R514-5

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 32, Official Journal of 3 March 2004)

The conditions for submitting the filing and the content of the file shall be determined by order of the Minister responsible for industrial property, in particular, as regards:

1°. the application for registration and the material specifications to be met by the graphic or photographic reproduction referred to in Article R. 512-3;

2°. the declaration of extension referred to in Article R. 513-1;

3°. the application for registration with the National Designs Register referred to in Articles R. 512-15 and R. 512-17;

4°. the conditions for simplified filings referred to in Article L. 512-2.

SECTION II
Transitional Provisions — Article R514-6

Article R514-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Articles R. 512-1 to R. 514-5 shall apply to filings taking effect on 15 September 1992 subject to the following provisions:

1°. Filings made prior to 15 September 1992 shall remain subject, in relation to the conditions for the physical presentation, to the previously applicable provisions;

2°. Requests for maintenance, requests for publication or extension, requests for restoral or communication submitted prior to 15 September 1992 shall be dealt with in accordance with the provisions previously in force;

3°. Filings made for five years and kept secret shall be maintained secret if the owner does not request extension of their effects up to 25 years. The request shall be submitted, prior to expiry of five years, in accordance with Article R. 513-1;

4°. Filings made for 25 years and kept secret shall be maintained in secret unless the owner renounces secrecy in accordance with Article R. 512-10 or does not request extension of their effects for a second 25-year period in accordance with Article R. 513-1;

5°. Only entries made at the initiative of the Director General of the Institute and relating to acts that have occurred after 15 September 1992 shall be entered in the Register.

TITLE II
Disputes — Articles R521-1 to R521-1-1

SOLE CHAPTER
Withholding at Customs — Articles R521-1 to R521-1-1

Article R521-1

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2005-1298 of 20 October 2005, Article 1, Official Journal of 21 October 2005)

I - The request for withholding of goods by the customs administration referred to in Article L. 521-7 shall indicate:

1°. the surname and forenames or company name of the applicant, his place of residence or of business;

2°. where appropriate, the name and address of his representative and proof of his powers of attorney;

3°. the capacity of the applicant in relation to the rights he invokes;

4°. the purpose and national number of the design concerned, accompanied by a certificate of identity issued by the National Institute of Industrial Property;

5°. the description of the allegedly infringing goods whose withholding is requested;

6º all documents and information that enable to attest that the allegedly infringing goods have neither lawfully manufactured, nor put in free circulation, nor marketed in another Member State of the European Community.

II - The request referred to under (I) may be submitted to the relevant public authority prior to entry of the allegedly infringing goods into French territory. In such case, it shall be valid for one year and may be renewed.

The conditions for submitting the request shall be set out by order of the Minister responsible for customs.

Article R521-1-1

(inserted by Decree No. 2005-1298 of 20 October 2005, Article 2, Official Journal of October 21 2005)

The relevant public authority mentioned under Article R. 521-1 (I) and (II) is the Minister responsible for customs.

BOOK VI
Protection of Inventions and Technical Knowledge — **Articles R611-1 to R631-2**

TITLE I

Invention Patents Articles R611-1 to R618-5

CHAPTER I
Field of Application Articles R611-1 to R611-14-1

SECTION II
Right to Title Articles R611-1 to R611-14-1

Article R611-1
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

An employee who is the author of an invention shall immediately declare the fact to his employer.

In the event of more than one inventor, a joint declaration may be made by all the inventors or by some of them only.

Article R611-2
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The declaration shall contain such information, in the possession of the employee, that is adequate to enable the employer to assess the classification of the invention in one of the categories referred to in paragraphs 1. and 2. of Article L. 611-7.

Such information shall concern:

1°. The subject matter of the invention together with the envisaged applications;

2°. The circumstances in which it was made, for example: instructions or directives received, experience or work of the enterprise used, any collaboration received;

3°. The classification of the invention in the view of the employee.

Article R611-3
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where classification implies the existence for the employer of a right of attribution, the declaration shall be accompanied by a description of the invention.

Such description shall set out:

1°. The problem that faced the employee, taking into possible account the prior state of the art;

2°. The solution he provided;

3°. At least one example of an embodiment, possibly accompanied by drawings.

Article R611-4
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If, contrary to the classification of the invention on the basis of the employee's declaration, the employer's right of attribution is subsequently recognized, the employee, where appropriate, shall immediately supplement his declaration with the information referred to in Article R. 611-3.

Article R611-5
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the employee's declaration does not comply with the provisions of Article R. 611-2 (1° and 2°) or, where appropriate, of Article R. 611-3, the employer shall communicate to the person concerned the exact points on which the declaration should be supplemented.

Such communication shall be made within two months as from the date of receipt of the declaration. Failing that, the declaration shall be deemed in conformity.

Article R611-6
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Within a period of two months, the employer shall give his consent to the classification of the invention on the basis of the employee's declaration or, failing an indication of the classification, shall inform the employee, by reasoned communication, of the classification he has chosen.

The two-month period shall begin on the date of receipt by the employer of the employee's declaration containing the information referred to in Article R. 611-2 or, in the event of a justified request for additional information recognized as such, from the date on which the declaration has been supplemented.

An employer who does not act within the prescribed time limit shall be deemed to have accepted the classification based on the employee's declaration.

Article R611-7
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The time limit afforded the employer to claim the right of attribution shall be four months, unless otherwise agreed by the parties which may not be subsequent to the declaration of the invention.

The time limit shall begin on the date of receipt by the employer of the declaration of the invention containing the particulars referred to in Articles R. 611-2 (1 and 2) and R. 611-3 or, in the event of a request for supplementary

information recognized to be justified, from the date on which the declaration was supplemented.

The claim to the right of attribution shall be made by sending to the employee a communication setting out the nature and scope of the rights which the employer wishes to claim.

Article R611-8

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The time limits referred to in Articles R. 611-5 to R. 611-7 shall be suspended in the event of institution of legal action with regard to the regularity of the declaration or the justification for the classification of the invention invoked by the employee or by referral, for the same purposes, to the Joint Conciliation Board referred to in Article L. 615-21.

The time limit shall begin on the day on which a final decision has been taken.

Article R611-9

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any declaration or communication made by the employee or by the employer shall be made by registered mail with notification of receipt or by any other means providing evidence that it has been received by the other party.

The declaration referred to in Article R. 611-1 may result from transmission by the National Institute of Industrial Property to the employer, under the conditions laid down by decree of the Minister responsible for industrial property, of the second copy of a letter addressed by the employee to the Institute for safekeeping.

This procedure shall be optional for the inventions referred to in the first paragraph of Article L. 611-7.

Article R611-10

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The employee and the employer shall refrain from any disclosure of the invention for as long as lack of agreement subsists as to its classification or for as long as no decision has been taken on it.

If one of the parties, in order to maintain his rights, files an application for a patent, the party shall notify without delay a copy of the filing documents to the other party.

It shall exhaust the possibilities provided by the applicable legislation and regulations in order to defer publication of the application.

Article R611-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Officials and public servants of the State, of local authorities, of public establishments and of any public law legal person shall be subject to the provisions of Article L. 611-7 in accordance with the conditions laid down in this Subsection, unless more favorable contractual provisions govern the industrial property rights in inventions they make. These provisions shall not constitute an obstacle to the maintenance or to the application, with respect to such officials and public servants, of more favorable regulatory measures.

Article R611-12

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

(Decree No. 96-857 of 2 October 1996 art. 1, annexe Official Journal du 3 October 1996)

1 Inventions made by an official or public servant in the execution either of tasks comprising an inventive mission corresponding to his attributions, or of studies or research explicitly entrusted to him shall belong to the public person on behalf of whom he carries out those tasks, studies or research. However, if the public person decides not to develop the invention, the official or public servant who has made the invention may enjoy the economic rights deriving from the invention in accordance with the conditions laid down in an agreement concluded with the public person.

2 All other inventions shall belong to the official or public servant.

However, the public employer shall have the right, under the conditions and time limits laid down in this Subsection, to have attributed to him all or a part of the rights deriving from the patent protecting the invention where the invention has been made by an official or a public servant:

Either in the course of carrying out his duties;

Or in the field of activity of the public body concerned;

Or through knowledge or use of techniques, specific means of such body or of data obtained by that body.

Article R611-13

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where the same public servant carries out his activities on behalf of more than one public person, those public persons shall act concertedly in accordance with the conditions to be determined by order or by an agreement brought to the knowledge of the servants concerned for the exercise of rights and the execution of obligations laid down by this Subsection.

Article R611-14

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

An official or public servant who makes an invention shall immediately declare the invention to the authority empowered by the public person to which it belongs.

The provisions of Articles R. 611-1 to R. 611-10 relating to the obligations of employee and employer shall apply to officials and public servants and to the public persons concerned.

Article R611-15

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The National Institute of Industrial Property shall not verify the correctness of designation of inventor referred to in Article R. 612-10.

Article R611-16

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The designated inventor shall be mentioned as such in publications of the patent application and of the patent specification. If that cannot be done, he shall be mentioned in the copies of the publications of the patent application or the patent specification not yet distributed. The mention shall be made at the request of the applicant or holder of the patent.

The provisions of the preceding paragraph shall apply where a third party submits to the National Institute of Industrial Property a final decision recognizing his right to be designated. In the case referred to in the second sentence of that paragraph, the third party may also ask to be mentioned in the copies of publications of the patent application or the patent specification not yet distributed.

The provisions of the first paragraph shall not apply where the inventor designated by the applicant or the patent owner renounces his designation in a written communication to the National Institute of Industrial Property.

Article R611-17

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The designation of inventor may be corrected only by a request accompanied by the consent of the person wrongly designated and, if the request is not submitted by the applicant or the owner of the patent, the consent of either one of those persons. The provisions of Article R. 612-10 shall apply.

If a mistaken designation of inventor has been entered in the National Patent Register or published in the Official Bulletin of Industrial Property, the entry or publication shall be corrected. The mention of the mistaken designation of inventor shall be corrected in the copies of the publications of the patent application or the patent specification not yet distributed.

The provisions of the preceding paragraph shall apply in the event of the designation of inventor being annulled by a court.

Article R611-18

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Proceedings to claim ownership of a patent application or a patent shall be entered in the National Patent Register at the request of the person who has instituted the proceedings.

If a court decision is given in favor of the person who has instituted the proceedings, the copies of the patent application or of the patent in the possession of the National Institute of Industrial Property for the purposes of public inspection or for sale shall have a note affixed thereon showing the change in ownership of the patent.

Article R611-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The patent granting procedure shall be suspended at the written request of any person providing evidence that he has instituted proceedings before the first instance court to claim ownership of the patent application.

Suspension of the procedure shall take effect on the day on which evidence is produced and shall apply in particular to the time limit referred to in the first paragraph of Article L. 612-15; however, it shall not prevent application of Article R. 612-39.

The patent granting procedure shall be resumed once the court decision has become final; it may also be resumed at any time with the written consent of the person who has instituted the proceedings to claim ownership of the patent application; such consent shall be irrevocable.

The suspension and resumption of the procedure shall be entered in the National Patent Register.

Article R611-20

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

As from the date on which a person provides evidence that he has instituted proceedings, the owner of the application or the patent may not withdraw his application or renounce his patent in whole or for one or more of the claims contained therein except with the written consent of the person who has instituted the proceedings to claim ownership.

Article R611-14-1

(Decree No. 96-857 of 2 October 1996Article 2, annexe Official Journal du 3 October 1996)
(Decree No. 97-843 of 10 September 1997Article 1 Official, Journal of 17 September 1997)
(Decree No. 2001-140 of 13 February 2001Article 1 and Article 2, Official Journal of 15 February 2001)
(Decree No. 2005-1217 of 26 September 2005, Article 1, Article 2, Official Journal of 29 September 2005)

I. For civil servants or public officials of the State and of its public institutions belonging to the categories provided for in the annexe of this Article and who are inventors referred to in Article R. 611-12 (1), the additional remuneration provided for in Article L. 611-7 shall consist of a bonus for the products derived from the invention by the public legal entity that is the beneficiary of the invention and a bonus for the patent.

II. The bonus shall be calculated, for each invention, on the basis of the pre-tax revenue from royalties received each year for the invention by the public legal entity after deduction of all direct costs borne by this entity and including the coefficient representing the contribution of the employee concerned to the invention. The bonus for patent shall not be included in the direct costs.

The additional remuneration paid to each official who is inventor shall be 50% of the basis specified above, the ceiling being the gross annual salary with pension deductions corresponding to the second group grade outside level D and, beyond this amount, 25% of that basis.

The additional remuneration due as a bonus shall be paid annually and advance payments may be made throughout the year.

III. The bonus for patent shall be fixed in advance. Its amount shall be determined by a common decree of the Ministers responsible for the budget, public service and research. There shall be allocated to each official a coefficient representing his contribution to the invention.

This bonus shall be paid in two instalments. The right to the payment of the first instalment, which represents 20 % of the amount of the bonus, shall be granted at the end of a one year period beginning with the first filing of the patent application. The right to the payment of the second instalment shall be granted at the time of the signing of a concession of user licence or of a contract of transfer of the aforesaid patent.

IV. Where several officials are inventors of the same object, the importance of the respective contribution of each of them to the invention, represented by a coefficient, shall be definitively determined before the first annual payment referred to under (I) or, where applicable, before the payment of advances, in accordance with the conditions set out by the Minister having authority over the service or by the chief authorizing officer of the public service. Where only one official is the inventor, the coefficient representing his contribution is 1.

If the invention is a result of collaboration between officials belonging to several different public legal entities, the conditions of distribution and payment of the bonus shall be decided jointly by the public legal entities concerned.

V. Where the invention has been made by an official in the framework of his main activity, the remuneration due as a bonus shall be paid to the person concerned in addition to the remuneration for his activity without limitation other than that set out in this Article.

Where applicable, the bonus shall continue to be paid to the official during the period of working of the invention despite the fact that he leaves his functions for any reason whatsoever or he claims his retirement benefits. In the event of death of the official, the bonus shall be paid up to the end of the year during which he dies.

Annex: Civil Servants and officials who are inventors.

National Education, Higher Education and Research.

Body of civil servants:

- researchers, engineers, assistant engineers and research technicians governed by Decree No. 83-1260 of 30 December 1983 as amended.
- researcher-professors governed by Decree No. 84-431 of 6 June 1984 as amended and researcher-professors belonging to specific bodies of which the list is given in the annex to this Decree.
- engineers, assistant engineers and research and training technicians governed by Decree No. 85-1534 of 31 December 1985 as amended.
- Chief engineers in nuclear physics, engineers in nuclear physics, chief technicians in nuclear physics, technicians in nuclear physics, workshop technicians in nuclear physics, research technicians in nuclear physics, nuclear physics preparers and nuclear physics prototypists, governed by Decree No. 85-1462 of 30 December 1985 as amended.
- Research representatives of the National Scientific Research Centre, governed by Decree No. 95-1461 of 30 December 1985;

Non-confirmed officials:

- researchers governed by Decree No. 80-31 of 17 January 1980 as amended.
- engineers and specialists governed by Decree No. 59-1405 of 9 December 1959 as amended.
- scientific and contractual staff governed by Decree No. 80-479 of 27 June 1980.
- professors and associated lecturers pursuant to Article 54, paragraph 2, of Act No. 84-52 of 26 January 1984 and Act No. 85-1223 of 22 November 1985.
- research allocatees governed by Decree No. 85-402 of 3 April 1985 as amended by Decree No. 92-339 of 30 March 1992.
- training college instructors and allocatee-instructors governed by Decree No. 89-794 of 30 October 1989 as amended.
- pharmacy instructors governed by Decree No. 92-1229 of 19 November 1992 as amended.
- temporary teaching and research staff governed by Decree No. 88-654 of 7 May 1988 as amended.
- researchers associated to the National Scientific Research Centre governed by Decree No. 69-894 of 26 September 1969 as amended.
- contractual officials outside classification, exceptional and first grade contractual officials, governed by the internal regulations of 30 March 1988 containing the provisions applicable to the contractual employees of the National Centre for Agricultural Machinery, Rural Engineering and Water and Forests.

-engineers and specialists at the National Centre for Health and Medical Research, governed by Decree No. 64-420 of 12 May 1964 as amended.

-expert engineers of the National Institute for Computers and Automation governed by Decree No. 86-83 of 17 January 1986 as amended.

-employees recruited by public institutions of a scientific and technological nature in application of the provisions of Article 23 of Act No. 82-610 of 15 July 1982, as amended, on policy and research on technological programming in France.

-other officials recruited by scientific and technological public institutions and higher education institutions in compliance with Articles 4 and 6 of Act No. 84-16 of 11 January 1984 amended containing statutory provisions relating

to the public service of the State in order to carry out research tasks within the framework of the preparation of doctoral thesis within the meaning of Article L. 612-7 of the Education Code or after obtaining such a doctorate degree.

-officials recruited for services of industrial and commercial activities of public institutions of higher education in compliance with Article L. 123-5 of the Education Code in order to carry out research tasks within the framework of the preparation of a doctoral thesis within the meaning of Article L. 612-7 of the Education Code or after obtaining such a doctorate degree.

Higher education, research and social affairs:

- teaching and hospital staff of teaching hospitals governed by Decree No. 84-135 of 24 February 1984 as amended.

- teaching and hospital staff of dental care, teaching and research centres of teaching hospitals governed by Decree No. 90-92 of 24 January 1990 as amended.

- first and second grade professors in dental and odontological surgery of the dental consultation and treatment services governed by Decree No.65-803 of 22 September 1965 as amended.

Ministry of Agriculture, Fishery and Food:

Body of civil servants:

- rural, water and forestry engineers governed by Decree No. 65-426 of 4 June 1965 as amended.

- agronomical engineers governed by Decree No. 65-427 of 4 June 1965 as amended.

- water and forestry engineers governed by Decree No. 70-128 of 14 February 1970 as amended.

- rural engineers governed by Decree No. 65-688 of 10 August 1965 as amended.

- agricultural engineers governed by Decree No. 65-690 of 10 August 1965 as amended.

- veterinary inspectors governed by Decree No. 62-1439 of 26 November 1962 as amended.

- scientific staff of the National Veterinary and Foodstuffs Study Center governed by Decree No. 64-642 of 29 June 1964 as amended.

- researcher-professors of the higher public education institutions responsible to the Minister responsible for agriculture governed by Decree No. 92-171 of 21 February 1992.

- engineers, assistant engineers and technicians governed by Decree No. 95-370 of 6 April 1995.

- technicians of the services of the Minister responsible for agriculture governed by Decree No. 96-501 of 7 June 1996.

Non-confirmed officials:

- associate or invited staff in higher education and research institutions responsible to the Minister responsible for agriculture governed by Decree No. 95-621 of 6 May 1995.

- contractual teaching and research assistants of the public higher education institutions responsible to the Minister responsible for agriculture governed by Decree No. 91-374 of 16 April 1991.

- other officials recruited by scientific and technological public institutions and higher education institutions in compliance with Articles 4 and 6 of Act No. 84-16 of 11 January 1984 amended containing statutory provisions relating to the public service of the State in order to carry out research tasks within the framework of the preparation of doctoral thesis within the meaning of Article L. 612-7 of the Education Code or after obtaining such a doctorate degree.

Industry:

Body of civil servants:

- body of mining engineers governed by Decree No. 88-507 of 29 April 1988, as amended.

- industry and mining engineers governed by Decree No. 88-507 of 29 April 1988 as amended.

- professors, lecturers and assistants of the higher public education institutions of mining and higher public education institutions of industrial techniques governed by Decree No. 69-444 of 14 May 1969 as amended.

- laboratory technicians assigned to higher public education institutions of mining and higher public education institutions of industrial techniques and mining and governed by Decree No. 96-273 of 26 March 1996 as amended.

-interministerial body of telecommunications engineers governed by Decree No. 67-715 of 16 August 1967.

- civil Servants delegated to employment in the group of telecommunications public higher education institutions pursuant to Article 36 (1) of Decree No. 96-1177 of 27 December 1996.

Non-confirmed officials:

-research personnel in the Higher Public Education Institutions of Mining of Paris and Saint-Etienne governed by Decree No. 71-999 of 7 December 1971.

- teaching personnel, researchers and affiliated engineers governed by Decree No. 70-663 of 10 July 1970 as amended.

-contractual officials "exceptional category" representatives, "normal category" contractual employee representatives, non-confirmed contractual employees and 1st category contractual employees governed by Decree No. 75-62 of 28 January 1975 as amended.

- public law contractual employees of the group of telecommunications institutions recruited pursuant to Article 36 (2) of Decree No. 96-1177 of 27 December 1996 and governed by Decree No. 86-83 of 17 January 1986 as amended.

- other officials recruited by scientific and technological public institutions and higher education institutions in compliance with Articles 4 and 6 of Act No. 84-16 of 11 January 1984 amended containing statutory provisions relating to the public service of the State in order to carry out research tasks within the framework of the preparation of doctoral thesis within the meaning of Article L. 612-7 of the Education Code or after obtaining such a doctorate degree.

Ministry of Equipment, Transport and Housing:

Body of civil servants:

- road works engineers governed by Decree No. 59-358 of 20 February 1959 as amended;

- research workers and research directors governed by Decree No. 94-943 of 28 October 1994;
- state public works engineers governed by Decree No. 71-345 of 5 May 1971 as amended;
- surveyors governed by Decree No. 65-793 of 16 September 1965 as amended by Decree No. 90-160 of 16 February 1990;
- state surveyors and cartographers governed by Decree No. 73-264 of 6 March 1973 as amended;
- civil aviation engineers governed by Decree No. 71-234 of 30 March 1971 as amended;
- civil aviation study and exploitation engineers governed by Decree No.71-907 of 8 November 1971 as amended;
- air traffic controllers governed by Decree No. 90-998 of 8 November 1990 as amended;
- air safety systems electronics engineers governed by Decree No. 91-56 of 16 January 1991 as amended by Decree No. 94-278 of 11 April 1994;
- meteorological engineers governed by Decree No. 63-1376 of 24 December 1963 as amended;
- meteorological work engineers governed by Decree No. 65-184 of 5 March 1965 as amended.

Non-confirmed officials:

- non-confirmed staff of category A level governed by the following provisions:
- decision of 18 March 1992 of the Minister of State, Minister for the Public Service and Modernization of the Administration, Minister for Equipment, Housing, Transport and Space and the Deputy Minister for the Budget;
- regulation of 14 May 1973 governing non-established staff of the Central Laboratory of Public Works and the technical study centers for equipment;
- internal Regulations of 30 October 1969 as amended relating to non-established staff employed by the technical study services for roads and motorways;
- Order of 10 July 1968 relating to the conditions for recruiting and paying technical and administrative contractual staff of the Ministry of Equipment and Housing carrying out high-level studies in the economic and international affairs service and in the roads and motorways technical studies service, as amended by Order of 27 March 1973 on the same subject;
- Decree No. 46-1507 of 18 June 1946 laying down the status of auxiliary staff recruited by contract by the Ministry for Public Works and Transport for the bridges and road service, as amended by Decrees No. 68-313 of 1 April 1968 and No. 75-1355 of 18 December 1975 on the same subject;
- Decree No. 48-1018 of 16 June 1948 as amended laying down the status of contractual servants of the Ministry of Public Works of Transport, Transport and Tourism;
-internal regulations of 4 June 1970 relating to non-confirmed staff employed by the Regional Directorate for Equipment of the Ile de France.
- other officials recruited by scientific and technological public institutions and higher education institutions in compliance with Articles 4 and 6 of Act No. 84-16 of 11 January 1984 amended containing statutory provisions relating to the public service of the State in order to carry out research tasks within the framework of the preparation of doctoral thesis within the meaning of Article L. 612-7 of the Education Code or after obtaining such a doctorate degree.

Defence:

Bodies of civil and military civil servants:

- armament engineers governed by Decree No. 82-1067 of 15 December 1982 as amended;
- military fuel engineers governed by Decree No. 76-802 of 19 August 1976 as amended;
- army professionals governed by Decree No. 2004-534 of 14 June 2004;
- military study and technical engineers governed by Decree No. 79-1135 of 27 December 1979 as amended;
- military study and manufacturing engineers of the Ministry for Defence governed by Decree No. 89-750 of 18 October 1989 as amended;
- high-level study and manufacturing technicians of the Ministry of Defence governed by Decree No. 89-749 of 18 October 1989, as amended;
- technicians of the Ministry of Defence governed by Decree No. 98-203 of 20 March 1998, as amended.

Non-confirmed officials:

- non-confirmed officials of special category, outside category and of category A, governed by Decree No. 49-1378 of 3 October 1949, as amended;
- instructors with main duty at the National Engineering School of Aeronautics governed by Decree No. 67-962 of 23 October 1967;
- scientific staff of laboratories and research centres of the Polytechnic School governed by Decree No. 73-311 of 14 March 1973 as amended;
- engineers and specialists in the laboratories and research centres of the Polytechnic School governed by Decree No. 73-312 of 14 March 1973 as amended;
- non-confirmed engineers officials governed by Decree No. 88-541 of 4 May 1988 relating to certain officials who entered into industrial or commercial contracts with the Ministry for Defence;
- teaching personnel of the Polytechnic School governed by Decree No. 2000-497 of 5 June 2000;
- scientific, technical and administrative contractual personnel of research of the Polytechnic School governed by Decree No. 2003-1006 of 21 October 2003;
- other officials recruited by scientific and technological public institutions and higher education institutions in compliance with Articles 4 and 6 of Act No. 84-16 of 11 January 1984 amended containing statutory provisions relating to the public service of the State in order to carry out research tasks within the framework of the preparation of doctoral thesis within the meaning of Article L. 612-7 of the Education Code or after obtaining such a doctorate degree.

CHAPTER II

Filing and Processing of Applications — Articles R612-1 to R612-76

SECTION I

Filing of Applications — Articles R612-1 to R612-73

Article R612-1

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 33, Official Journal of 3 March 2004)

A patent application shall be filed either with the National Institute of Industrial Property or with a prefecture other than that of Paris.

The filing may result from a mailing to the National Institute of Industrial Property by registered letter with advice of delivery or by a message using any type of remote transmission according to the conditions defined by Director General of the Institute to guarantee, in particular, the safety of mailing. In such cases, the date of submission of the documents shall be the date of receipt at the National Institute of Industrial Property.

The Director General of the National Institute of Industrial Property may require a filing by an electronic means where this simplifies the examination and publication of the patent application.

Article R612-2

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997Article 5 Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002Article 8 Official Journal of 20 February 2002)
(Decree No. 2004-199 of 27 February 2004, Article 34, Official Journal of 3 March 2004)

The filing may be made by the applicant in person or by a representative having his place of residence, his place of business or an establishment in a Member State of the European Community or in a State party to the Agreement on the European Economic Area. Subject to the exceptions referred to in Articles L. 422-4 and L. 422-5, the representative appointed for the filing and accomplishment of any subsequent deed relating to the patent granting procedure, with the exception of the simple payment of fees, shall be required to have the capacity of an industrial property attorney.

Natural or legal persons not having their place of residence or their place of business in a Member State of the European Community or in a State party to the Agreement on European Economic Area shall be required to appoint a representative who meets the conditions set out in the preceding paragraph within two months as from the date of receipt of the notification addressed to them for that purpose. In the event of more than one applicant, a common representative shall be appointed. If the latter is not one of the applicants, he must meet the conditions provided in the first paragraph.

Except where he has the capacity of industrial property attorney, the representative must attach a power of attorney that will enable him, subject to the provisions of Articles R. 612-38 and R. 613-45 and, unless agreed to the contrary, to carry out all deeds and to receive all the notifications referred to in Articles R. 611-15 to R. 611-20, R. 612-1 to R. 613-3, R. 613-45 to R. 613-65, R. 616-1 to R. 616-3 and R. 618-1 to R. 618-4. The power of attorney shall not require legalization.

Article R612-3

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The patent application shall comprise a request for grant of a patent of which the form shall be laid down by decision of the Director General of the National Institute of Industrial Property and to which shall be attached:

1°. A description of the invention, accompanied where appropriate by drawings;

2°. One or more claims;

3°. An abstract of the technical content of the invention;

4°. Where appropriate, a copy of any earlier filings of which elements are reproduced as set out in Article L. 612-3; the elements that are reproduced shall be highlighted therein.

Article R612-4

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The patent application shall not contain:

1°. Elements or drawings of which the publication or implementation would be contrary to public policy or morality;

2°. Statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person. Mere comparisons with the prior art shall not be considered disparaging in themselves;

3.Elements obviously irrelevant to the description of the invention.

Article R612-5

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The patent application shall be followed, within one month of the filing of the documents, by payment:

1°. Of the filing fee;

2°. Of the search report fee, unless the drafting of the report has been deferred.

Article R612-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A receipt stating the date of submission of the documents shall be issued to the applicant either by the National Institute of Industrial Property or by the prefecture.

When they are filed with a prefecture, the documents shall be immediately transmitted to the National Institute of Industrial Property in Paris, accompanied by a duplicate of the receipt.

Article R612-7

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 35, Official Journal of 3 March 2004)

Within 15 days of the delivery or arrival of the documents at the National Institute of Industrial Property in Paris, the Institute shall give to the patent application a national registration number and shall immediately notify the number to the applicant. Any correspondence or subsequent filing of documents that does not refer to that number or that is not signed by the applicant or his representative shall not be admitted.

Article R612-8

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Enjoyment of the filing date of the patent application shall be acquired on the date of filing of at least one copy of the documents listed in Article L. 612-2, drawn up in French, save for the exception under Article R. 612-21. Enjoyment of the filing date shall be acquired even if those documents are irregular in form.

If one of the elements referred to in the preceding paragraph is missing, the applicant shall be invited to supplement the patent application within one month.

If the applicant complies with the invitation, the filing date shall be that on which the application was supplemented; that date shall be notified to the applicant. If such is not the case, the application shall be declared inadmissible; the elements filed shall be returned to the applicant and any fees that have been paid shall be refunded to him.

Article R612-9

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the drawings are filed after the filing date referred to in the preceding Article, the applicant shall be informed that the drawings and the references made to the drawings in the patent application shall be deleted unless he submits, within one month, a request for the obtaining of a patent having as its date the day on which the drawings are filed.

If the drawings have not been submitted, the applicant shall be invited to remedy the omission within one month; he shall be informed that the patent application shall take the date of the day on which the drawings are filed and failing that the references made to the drawings shall be deleted.

Where appropriate, the new filing date shall be notified to the applicant.

Article R612-10

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request for grant shall be signed by the applicant or his representative. It shall contain:

1°. The nature of the industrial property title sought;

2°. The title of the invention, which shall clearly and concisely state the technical designation of the invention and shall exclude all fancy names;

3°. The designation of the inventor; however, if the applicant is not the inventor or not the sole inventor, the designation shall be made in a separate document containing the surname, forenames and place of residence of the inventor together with the signature of the applicant or of his representative;

4°. The surname and forenames of the applicant, his nationality, his place of residence or of business;

5°. The name and address of the representative, if a representative has been appointed.

Article R612-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request for grant shall be supplemented, where appropriate, by particulars relating to:

1°. The deferred drafting of the search report;

2°. Facilities requested for payment of the fee for drafting that report;

3°. A reduction in the rate of fees afforded the applicant or requested by him;

4°. Earlier filings of which elements may have been reproduced;

5°. Claimed priorities;

6°. Showing of the invention in an official or officially-recognized exhibition.

In the event of non-compliance with the provisions of Article R. 612-10(3), the applicant shall be invited to regularize his application within a period of 16 months as from the filing date or from the earliest date enjoyed by the application or, if priority has been claimed, from the priority date.

Any declaration of priority and any request to enjoy the filing date of an earlier application shall be subject to payment of a fee.

Article R612-12

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The description shall contain:

1°. A statement of the technical field to which the invention relates;

2°. A statement of the background art known to the applicant and which can be regarded as useful for

understanding the invention and drawing up the search report; the documents reflecting the prior art shall be cited wherever possible;

3°. Disclosure of the invention, as claimed, in such terms that the technical problem and the solution proposed can be understood; where appropriate, any advantageous effects of the invention with reference to the prior art shall be stated;

4°. A brief description of the drawings, if any;

5°. A detailed description of at least one way of carrying out the invention; the description should normally be accompanied by examples and references to the drawings, if any;

6°. A statement of the way in which the invention is capable of exploitation in industry if such exploitation is not obvious from the description or the nature of the invention.

Article R612-13

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The description shall be presented in the manner and order referred to in Article R. 612-12, unless the nature of the invention means that a different manner or a different order would afford a better understanding and a more economic presentation.

In addition, the following may be annexed at the end of the description:

1°. Short extracts from computer programs presented in the form of lists written in current programming languages, where necessary for the understanding of the invention;

2°. Lists of nucleotide and/or amino acid sequences;

3°. Chemical or mathematical formulae.

Schematic representations of stages in a process, diagrams and short extracts from computer programs submitted in the form of organigrams required for the understanding of the invention shall be considered to be drawings.

Article R612-14

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the case referred to in the second paragraph of Article L. 612-5, the culture shall be deposited at the latest on the filing date of the patent application and the description shall detail:

1°. The information available to the applicant regarding the characteristics of the microorganism;

2°. The authorized body with which the culture has been deposited, together with the deposit number.

The information referred to in item 2 in the preceding paragraph may be supplied within a period of 16 months as from the filing date or of the earliest date enjoyed by the patent application or, if priority is claimed, from the priority date, or on the occasion of the request referred to in Article L. 612-21 if such request is submitted prior to expiry of that time limit. The communication of this information shall imply on the part of the applicant his irrevocable and unreserved consent to the deposited culture being made available to the public in accordance with Articles R. 612-42 and R. 612-43.

Article R612-15

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 36, Official Journal of 3 March 2004)

If the culture ceases to be available either because it is No. longer viable or because the authorized body is No. longer able to supply samples, such interruption shall not be taken into account provided that:

1°. a new deposit of the biological material is made within three months as from the date on which the interruption was notified to the applicant or to the holder of the patent either by the authorized body or by the National Institute of Industrial Property;

2°. a copy of the deposit receipt issued by the authorized body, accompanied by the number of the patent application or by the patent, is given to the National Institute of Industrial Property within four months of the new deposit date.

Where interruption results from non-viability of the culture, the new deposit shall be made with the authorized body that had received the initial deposit; in other cases, it may be made with any authorized body.

The new deposit shall be accompanied by a written declaration by which the depositor certifies that the biological material is the same as that of the initial deposit.

The bodies authorized to receive deposits of biological material shall be designated by the Director General of the National Institute of Industrial Property.

Article R612-16

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The claims shall define the matter for which protection is sought in terms of the technical features of the invention. The claim may not, except where absolutely necessary, rely in respect of the technical features of the invention on simple references to the description or drawings.

Article R612-17

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

All claims shall comprise:

1°. A preamble giving the designation of the subject matter of the invention and those technical features which are necessary for the definition of the claimed elements but which, in culmination, are part of the prior art;

2°. A characterizing portion, preceded by an expression of the type “characterized by” stating the technical features which, in combination with the features stated in item 1, it is designed to protect.

However, a different manner may be adopted if justified by the nature of the invention.

Article R612-18

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Subject to the first paragraph of Article L. 612-4, a patent application may contain two or more independent claims in the same category (product, process, apparatus or use) where it is not appropriate, having regard to the subject matter of the application, to cover this subject matter by a single claim.

Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.

Article R612-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Pursuant to Article L. 612-4, one and the same patent application may include, in particular, either:

1.An independent claim for a product, an independent claim for a process designed specifically for the manufacture of that product, and an independent claim for a use of such product;

2.An independent claim for a process, and an independent claim for a device or means specifically designed for the implementation of the process;

3.An independent claim for a product, an independent claim for a process designed specifically for the manufacture of that product and an independent claim for a device or means specially designed for the implementation of the process.

Article R612-20

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The abstract shall be drawn up exclusively for use as technical information. It may not be taken into account for any other purpose, in particular not for the purpose of interpreting the scope of the protection sought or for the purpose of applying the third paragraph of Article L. 611-11.

The final content of the abstract shall be drafted, where necessary, by the National Institute of Industrial Property. It shall be published in the Official Bulletin of Industrial Property at the same time as the notice referred to in Article R. 612-39 or, subsequent to that notice, immediately after it has been finalized.

Article R612-21

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The descriptions and claims contained in applications as filed may be drafted in a foreign language:

Either by foreign natural or legal persons, provided that the country of which those persons are nationals affords equivalent treatment to French nationals;

Or by natural or legal persons to whom has been assigned an application filed abroad or a priority right in such application, provided that the country in which the initial application was filed affords equivalent treatment to French nationals.

If use is made of this faculty, a translation of the documents shall be furnished by the applicant within three months as from the filing date of the patent application.

The list of countries considered to afford equivalent treatment and the national language or one of the national languages in which nationals of such countries may file shall be determined by the Minister for Foreign Affairs and the Minister responsible for industrial property.

Article R612-22

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Proof of the exhibitor's right defined in Article L. 611-13, first paragraph, second indent, (b), shall be furnished within four months as from the filing date of the patent application in the form of an attestation issued during the exhibition by the authority responsible for ensuring protection of industrial property at that exhibition and confirming that the invention has in fact been displayed at that exhibition.

The attestation shall state the opening date of the exhibition and, where appropriate, that of first disclosure of the invention if the two dates should not be the same. It shall be accompanied by documents that enable the invention to be identified and bearing authentication by the above mentioned authority.

Article R612-23

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The list of non-Member States of the Paris Union considered to afford, on the basis of a French patent application or of an international application or of a European patent designating France, a right of priority equivalent to the right of priority established by the Paris Convention for the Protection of Industrial Property shall be determined by the Minister for Foreign Affairs and the Minister responsible for industrial property.

Article R612-24

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The declaration of priority referred to in paragraph 1 of Article L. 612-7 shall bear the date of the previous application, the State in which or for which it has been filed and the number that has been allocated to it.

The date and State of the earlier filing shall be stated on filing of the patent application, and the filing number prior to expiry of the sixteenth month following the priority date.

The copy of the previous application referred to in paragraph 1 of Article L. 612-7 shall be produced prior to expiry

of the sixteenth month following the priority date, accompanied, where appropriate, by the authorization to claim priority given in writing by the owner of the previous application.

It shall be certified by the authority that had received the previous application and shall be accompanied by an attestation from such authority stating the filing date.

In the event of failure to comply with the provisions of the preceding paragraphs, the claim to a priority right shall be declared inadmissible.

If the date of the previous filing that is stated is earlier by more than one year than the filing date of the patent application, the applicant shall be notified that no priority right exists unless he can give within one month a corrected date that falls within the priority period.

The particulars contained in the declaration of priority shall be mentioned in the published patent application and entered on the patent specification.

Article R612-25

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A request to enjoy the filing date of one or more previous applications shall not be admissible if:

1°. It is not made at the time of filing the patent application;

2°. The filing date of the previous application or applications of which the benefit is requested is earlier by more than 12 months;

3°. The filing of the application or applications for which benefit of the filing date has been requested has been made in a manner that does not permit its publication.

Article R612-26

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The delegates of the Minister responsible for national defense, specially empowered to such end and whose names and capacities have been brought to the knowledge of the Minister responsible for industrial property by the Minister responsible for national defense shall take cognizance at the premises of the National Institute of Industrial Property of the patent applications that have been filed.

These shall be presented to them within 15 days as from their date of receipt at the National Institute of Industrial Property.

Article R612-27

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request for authorization to disclose and freely exploit the invention that is the subject matter of a patent application prior to the expiry of the five-month period referred to in Article L. 612-9 shall be submitted to the National Institute of Industrial Property; it may be submitted together with the filing of the patent application. The authorization shall be notified to the applicant by the Minister responsible for industrial property.

In the absence of such authorization and at any time, a request for special authorization to carry out specific acts of exploitation may be addressed directly by the patent applicant to the Minister responsible for national defense. If he gives the requested authorization, the latter shall set out any conditions to which such acts of exploitation are subject.

If the special authorization concerns the assignment of the patent application for the granting of a license to work, the Minister responsible for national defense shall communicate a copy of his decision to the Minister responsible for industrial property.

Article R612-28

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The requisition addressed to the Minister responsible for industrial property by the Minister responsible for national defense for the purpose of extending the prohibitions on disclosure and free exploitation of an invention that is the subject matter of a patent application shall reach the National Institute of Industrial Property at the latest 15 days before expiry of the five-month period referred to in Article R. 612-27.

Any requisition for the purpose of renewing an extension shall arrive under the same conditions at the latest 15 days before the expiry of the current one-year period.

The extension of the prohibitions on disclosure and free exploitation shall be pronounced by order of the Minister responsible for industrial property and be notified to the applicant prior to termination of the current period of prohibition.

The order may contain special provisions authorizing, subject to certain conditions, the filing abroad of applications for protection of the invention. A request to that end shall have been addressed by the owner of the patent application to the Minister responsible for national defense, who shall communicate his decision to the Minister responsible for industrial property.

Special authorizations to carry out specific acts of exploitation may be granted under the conditions set out in the second and third paragraphs of Article R. 612-27.

The Minister responsible for national defense may inform at any time the Minister responsible for industrial property of the lifting of prohibitions extended in accordance with Article L. 612-10. Such measure shall be the subject of an order by the Minister responsible for industrial property notified to the holder of the patent application.

Article R612-29

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request for compensation to repair the prejudice suffered by the extension of the prohibitions on disclosure and free working shall be addressed by the owner of the patent application to the Minister responsible for national defense

by registered mail with notification of receipt. The request shall detail, giving figures, the various causes of prejudice invoked.

The first instance court may only be called upon to determine the amount of the compensation on expiry of a period of four months as from the date of receipt of the request, except where an urgent decision has been taken during that period of time.

Article R612-30

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The court applied to under Article L. 612-10 shall pronounce both on the merits and on interlocutory measures by decisions that contain no analysis of the invention such as to entail disclosure.

Only the public prosecutor, the parties or their representatives may receive copies of the decisions taken.

If an expert opinion is ordered, it may only be carried out by persons authorized thereto by the Minister for Defense.

Article R612-31

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the prohibitions on disclosure and free working terminate more than one year after the filing date, the application may not be made public under the conditions set out in Article R. 612-39 until six months have expired after the end of application of the prohibitory measures, except if the applicant has submitted within that period the request referred to in Article R. 612-39.

The applicant shall have six months as from the end of the prohibitory measures to request the drawing up of the search report or the conversion of the patent application to an application for a utility certificate.

Article R612-32

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Article R. 612-29 shall apply to the request for review of the compensation referred to in Article L. 612-10.

Article R612-33

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the patent application does not satisfy the provisions of Article L. 612-4, a time limit shall be given the applicant in order to divide his application or to restrict the claims.

Article R612-34

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Up to payment of the fee for granting and for printing of the patent specification, the applicant may, on his own initiative, file divisional applications for his initial patent application.

Article R612-35

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 38, Official Journal of 3 March 2004)

Where a patent application is divided in accordance with Articles R. 612-33 and R. 612-34, each divisional application shall comply with the provisions of Articles R. 612-3 to R. 612-5. The provisions of the third paragraph of Article R. 612-1 shall also apply.

The applicant may:

- either repeat in each divisional application the contents of the initial application, restricting the claims to the subject matter alone of the divisional application;

- or restrict the description, the claims and the design of each divisional application to its subject matter exclusively; in such case, they shall contain, in addition to the passages, the claims and the forms extracted respectively from the description, the claims and the design in the initial application, only those connecting and explanatory sentences necessary for the clarity of the explanation.

The file of one of the divisional applications shall consist of the file of the initial application after having applied the provisions of the preceding paragraph.

Notwithstanding the provisions of Articles R. 612-10 and R. 612-11, the time limit within which the designation of inventor may be effected for each divisional application may not be less than two months after the invitation referred to in Article R. 612-11. The expiry date of that time limit shall be mentioned in the notification.

Article R612-36

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 39, Official Journal of 3 March 2004)

Up to the time of payment of the fee for grant and printing of the patent specification, the applicant may submit a reasoned request for correcting errors of expression or transcription and clerical errors discovered in the filed documents. The Institute may require evidence of the existence of the clerical error to be corrected and, where appropriate, the meaning of the correction requested.

If the request concerns the description, the claims or the design, correction shall only be authorized if it is obvious that No. other passage or line could manifestly have been intended by the applicant.

The request shall be submitted in writing and shall contain the passage of the proposed modifications; it shall be admissible only if accompanied by proof of payment of the required fee.

Article R612-37

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Subject to Article L. 612-13, if the examination referred to in Article L. 612-11 has determined irregularities, the description, the claims or drawings may be amended, but only to the extent required to remedy the irregularities that have been determined.

Article R612-38

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The patent application may be withdrawn at any time by means of a written declaration up to payment of the fee for granting and printing of the patent specification.

The declaration may refer to one application only. It shall be submitted by the applicant or by a representative, who, unless he has the capacity of industrial property attorney, shall be required to attach to the declaration special powers for withdrawal.

If the patent application has been filed on behalf of more than one person, it may be withdrawn only if requested by all such persons.

If property, pledge or licensing rights have been entered in the National Patent Register, the withdrawal declaration shall be admissible only if accompanied by the written consent of the holders of such rights.

If the application is withdrawn after publication in the Official Bulletin of Industrial Property of the notice referred to in Article R. 612-39, the withdrawal shall be entered ex officio in the National Patent Register.

In all cases where an application is withdrawn, a copy of the application shall be kept by the National Institute of Industrial Property.

Article R612-39

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 40, Official Journal of 3 March 2004)

On expiry of the eighteen-month period referred to in Article L. 612-21, or at any time prior to expiry of that time limit on a written request by the applicant, a notice shall be published in the Official Bulletin of Industrial Property to the effect that the patent application has been made public.

As from the day of publication referred to in the preceding paragraph, any person may consult at the National Institute of Industrial Property the documents of the file of the patent application and obtain copies thereof at his own cost. The Institute may subject the exercise of this right to evidence of sufficient interest.

Any application for which the advantage of the filing date of one or more earlier applications has been requested in accordance with Article L. 612-3 shall be made public eighteen months after the earliest filing date that it enjoys.

However, an application that has been refused or withdrawn before the beginning of technical preparations for publication shall not be made public unless it is an application that has been divided.

An application whose filing date has been claimed in a subsequent application shall be made public even if it has been withdrawn or refused prior to the beginning of the technical preparation unless the claim has been waived within that same period.

Article R612-40

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The duration of the technical preparation referred to in Article R. 612-39 shall be laid down by decision of the Director General of the National Institute of Industrial Property. The decision shall be published in the Official Bulletin of Industrial Property.

Article R612-41

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 41, Official Journal of 3 March 2004)

The following shall not be disclosed to the public:

Draft decisions and opinions as well as documents not disclosed to the applicant and which have served to prepare such decisions and opinions.

Documents relating to the designation of the inventor if he has waived to his right to be designated as inventor under the conditions provided for under Article R. 611-16.

Documents that contain personal data or business secrets.

Any other document excluded from consultation by decision of the Director General of the National Institute of Industrial Property on the ground that it is of No. interest for informing third parties.

Article R612-42

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where the invention relates to a microorganism, any person may either as from the publication date referred to in Article R. 612-39 or prior to that date if a copy of the patent application has been notified to him, request access to the culture deposited in accordance with Articles R. 612-14 and R. 612-15.

The request shall be submitted in writing to the National Institute of Industrial Property. It shall contain, in particular, the name and address of the person making the request and his undertaking:

1.Not to communicate to any person the culture or a culture derived from it unless the patent application has been refused or withdrawn or the patent has ceased to have effect;

2.To use the culture or a culture derived from it for experimental purposes only, unless the patent application has been refused or withdrawn or the notice of grant referred to in Article R. 612-74 has not been published; however, this

undertaking shall not prevent use of the culture under a compulsory license or an ex officio license.

Article R612-43
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

For the purposes of Article R. 612-42 (1 and 2), derived culture shall mean any culture still possessing the characteristics of the deposited culture that are essential for the implementation of the invention. The undertakings referred to in Article R. 612-42 (1 and 2) shall not prevent the deposit of a derived culture for the purposes of patent proceedings.

The patent applicant may state in a written declaration made before completion of the technical preparation for publication referred to in Article R. 612-39 that, up to publication of the grant of the patent, of the withdrawal or refusal of the application, only an expert designated by the requester may have access to the deposited culture. The person making the request may designate as expert:

1.Either any natural person, on condition that he furnishes proof, when filing his request, that the patent applicant has given his consent to that designation;

2.Or any natural person included in a list drawn up by the Director General of the National Institute of Industrial Property.

The expert shall have access to the deposited culture in accordance with the conditions under Article R. 612-42 and shall be required to enter the undertakings set out therein; they shall also apply to the person making the request.

Where appropriate, the National Institute of Industrial Property shall note on the request that a patent application relating to the microorganism has been filed and that the person making the request or the expert he has designated is entitled to receive a sample of the culture. A copy of the request thus supplemented shall be communicated to the body with which the culture has been deposited and to the applicant or the patent owner.

Article R612-44
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Subject to the impediments resulting from application of the provisions of Articles R. 612-27 and R. 612-28, the applicant may at any time obtain at his own cost an official copy of the documents in his patent application.

Article R612-45
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A patent application shall be refused if:

1°. It has not been supplemented within the time limits laid down in Articles R. 612-11 (second paragraph), R. 612-21 and R. 612-35 (fourth paragraph);

2°. The fees for filing and for the search report referred to in Article R. 612-5 have not been paid within the prescribed time limit.

The refusal decision shall be notified to the applicant who shall have a period of two months as from the date of receipt of notification in order to submit his observations or to pay the due fees referred to in item 2 of this Article by paying the corresponding fee increased by the prescribed surcharge. The refusal decision shall become final if, within the prescribed time limit, the applicant has neither contested the irregularity or the failure to pay nor has paid the fee increased by a surcharge.

Article R612-46
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If, apart from the cases referred to in Articles R. 612-8 and R. 612-45, the patent application is not regular in its form with regard to the provisions of this Title or of the order taken to implement them or has not led to payment of the prescribed fees, notification thereof shall be made to the applicant.

The notification shall state the time limit afforded him in order to regularize his filing or to pay the due fees. It may be accompanied by a proposed regularization. Such proposal shall be deemed to have been accepted if the applicant does not contest it within the time limit afforded to him.

If the filing is not regularized or the fees are not paid within the time limit afforded, the patent application shall be refused.

Article R612-47
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the subject matter of the divisional application filed under Article R. 612-33 or Article R. 612-34 extends beyond the contents of the description in the initial application, the applicant shall be invited to modify the divisional application in accordance with the instructions given to him and within the time limit afforded to him.

Within that time limit, the applicant may submit observations in writing in which he may refute the instructions given by the National Institute of Industrial Property for amending his divisional application.

If the applicant has not submitted observations or if the divisional application has not been amended in the manner proposed, the application shall be refused.

If the observations submitted by the applicant are not accepted, he shall be notified thereof. In the event of the modification of the divisional application not being made within the new time limit afforded to him, the application shall be refused.

Article R612-48
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where the applicant has been invited, pursuant to Article R. 612-33, to divide his application, he may, within the

time limit laid down by that Article, submit written observations in which he refutes the objection made by the National Institute of Industrial Property.

If the applicant has not submitted observations or if he has not limited his claims or if the patent application has not been divided, the application shall be refused.

If the observations submitted by the applicant are not accepted or if the new claims do not enable the provisions of Article L. 612-4 to be satisfied, he shall be notified thereof. If the division or the limitation of the claims of the initial application are not made within the new time limit afforded him, the application shall be refused.

Article R612-49

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the patent application is likely to be refused for one of the reasons referred to in Article L. 612-12 (items 4, 5, 6 and 8), a reasoned notification thereof shall be made to the applicant. The notification shall set out the time limit afforded him in order to submit his observations or new claims.

The patent application shall be refused:

— if the applicant has not submitted observations or new claims within the time limit afforded him;

— if the observations submitted are not accepted or if the new claims do not enable the irregularity to be remedied.

Article R612-50

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the event of the description or the drawings failing to comply in part with the provisions of Articles L. 611-17 (a) or L. 612-1, a notification thereof shall be made to the applicant.

The notification shall set out the envisaged deletions together with the time limit afforded to the applicant in order to submit his observations.

If the applicant has not submitted observations within the time limit afforded him or if the observations are not accepted, the deletions shall be made ex officio.

Article R612-51

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the patent application is liable to be refused for one of the reasons set out in Article L. 612-12 (7 and 9), a reasoned notification shall be made to the applicant.

The notification shall contain a formal notice, as appropriate, to amend the patent application or to file new claims or to submit observations to support claims maintained. The notification shall set out the time limit afforded to that end.

If the applicant does not comply with the formal notice within the prescribed time limit, the patent application shall be refused.

Article R612-52

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If a patent application is refused or is liable to be refused due to failure to comply with a time limit afforded by the National Institute of Industrial Property, the refusal shall not be pronounced or shall not have effect if the applicant submits a request to continue the procedure. The request shall be submitted in writing within a period of two months as from notification of the refusal decision. The act that has not been carried out shall be carried out within that time limit. A request shall be admissible only if accompanied by payment of the required fee.

Article R612-53

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The procedure for drawing up the search report may be deferred under Article L. 612-15 only if the relevant request is submitted at the time the application is filed. Payment of the search report fee shall imply renunciation of that request.

Where a patent application enjoys several dates under the provisions of Article L. 612-3, the 18-month time limit during which the drawing-up of the search report may be deferred shall begin as from the earliest date.

Article R612-54

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request submitted by any third party for the purpose of instituting the procedure for drawing up the search report shall be formulated in writing. It shall be admissible only if accompanied by proof of payment of the prescribed fee.

Once the request had been received, a notification thereof shall be made to the applicant. If, within three months of the date of receipt of the notification, the applicant has withdrawn the patent application or has converted it to an application for a utility certificate in accordance with Article R. 612-55, the procedure for drawing up the search report shall not be initiated and the prescribed fee shall be refunded to the person who has submitted the request referred to in the first subparagraph.

On expiry of the time limit laid down in the preceding paragraph, the procedure for drawing up the search report shall be initiated. Once the preliminary search report referred to in Article R. 612-57 has been drawn up, it shall be notified to the third party who has submitted the request at the same time as to the applicant.

Article R612-55

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request for conversion of a patent application to a utility certificate application shall be filed in writing any time during the period laid down in Article L. 612-15, even if the applicant has not made a request to avail himself of the

provisions of that Article or if a third party has requested application of Article R. 612-54.

Article R612-56
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The ex officio conversion under the second paragraph of Article L. 612-15 shall be notified to the applicant, who shall have two months as from the date of receipt of the notification to submit observations or to request the drawing-up of the search report by paying the prescribed fee increased by a surcharge for late request.

Failing any observations during that period, the ex officio conversion shall be maintained.

If the observations submitted are not accepted or if the search report has not been validly requested, the ex officio conversion shall be confirmed and a new reasoned notification shall be addressed to the applicant.

Article R612-57
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A preliminary search report shall be drawn up on the basis of the final claims as filed, taking into account the description and, where appropriate, the drawings. It shall cite the documents that may be taken into consideration to assess the novelty of the invention that constitutes the subject matter of the patent application and the inventive step.

Each citation shall be made in relation to the claims that it relates to. If necessary, the pertinent sections of the cited document shall be identified by giving, in particular, the page, column and lines or the figures.

The preliminary search report shall distinguish between the cited documents that were published before the priority date, between the priority date and the filing date, on the filing date and subsequent thereto.

Any document referring to an oral disclosure, to a use or to any other disclosure that has taken place before the filing date of the patent application shall be cited in the preliminary search report, stating the publication date of the document and that of the non-written disclosure.

Article R612-58
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The preliminary search report shall be immediately notified to the applicant who, if prior art is cited, shall be required, subject to refusal of the patent application, to file new claims or to submit observations to support the maintained claims.

Article R612-59
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The applicant shall have a period of three months, renewable once, as from notification of the preliminary search report in order to file new claims or to submit observations for the purposes of debating the invokability of the cited prior art.

Article R612-60
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If new claims are filed, the changes made to the claims shall be identified.

On request, the applicant may, in such case, be authorized to delete from the description and from the drawings those elements that no longer concord with the new claims. Such request shall be admissible up to the date of payment of the fee for granting and printing of the specification.

Article R612-61
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the subject matter of the new claims is not covered by the claims on the basis of which the search has been carried out, the applicant shall be notified to pay the prescribed fee for drawing up a supplementary preliminary search report. If the party concerned does not comply with the invitation within the time limit afforded him, the filing of new claims shall be declared inadmissible and the patent shall be granted with the claims on the basis of which the search was carried out.

Article R612-62
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The preliminary search report shall be made public at the same time as the patent application or, where it has not yet been drawn up, once it has been notified to the applicant. Its availability to the public shall be notified in the Official Bulletin of Industrial Property.(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Article R612-63
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The period during which third parties may submit observations shall expire three months after the publication referred to in Article R. 612-62.

Subject to inadmissibility, third party observations shall be submitted, in duplicate, in accordance with Article R. 612-57 and shall be accompanied by the documents cited or a copy thereof and by all the required information or evidence. This latter requirement shall not apply to patents for invention; however, at the explicit request of the National Institute of Industrial Property, foreign patents shall be furnished within a two-month period as from the date of receipt of the request.

Article R612-64
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The applicant shall have a period of three months as from the date of receipt of the notification of the third party observations in order to file, in writing, his counter observations or a new wording of the claims. This period may be renewed once at the request of the applicant.

Article R612-65

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The preliminary search report may be supplemented at any time prior to the drawing-up of the search report.

In such case, Articles R. 612-57 to R. 612-64 shall be applied once more.

Article R612-66

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 42, Official Journal of 3 March 2004)

In the event of the withdrawal of the patent application or its conversion into application for a utility certificate, the procedure for drawing up a search report shall be terminated.

Article R612-67

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The search report shall be drawn up on the basis of the preliminary search report, taking into account, where appropriate, the latest filed claims, any observations by the applicant filed to support maintained claims and any observations of third parties.

It shall be drawn up on expiry of the time limits laid down in Articles R. 612-59, R. 612-61, R. 612-63 or R. 612-64, whereby the time limit that expires the latest shall be taken into consideration.

Article R612-68

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Notwithstanding the entry in the National Patent Register of property rights, pledges or licenses in a patent application, the applicant may amend the claims under that application without the consent of the holders of such rights.

Article R612-69

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the applicant considers that one or more elements of the cited prior art have not been taken into consideration to assess, within the meaning of Articles L. 611-11 and L. 611-14, the patentability of the invention that is the subject matter of the application since their disclosure results from an evident abuse in relation to him within the meaning of Article L. 611-13, first paragraph (second indent, (a)), he may state the fact in his observations and give succinct reasons. Such statement may not modify the content of the preliminary search report or of the search report.

Any final court decision on the application of the provisions of Article L. 611-13, first paragraph (second indent, (a)) shall be entered in the National Patent Register at the request of the applicant or of the patent owner.

Such entry shall imply the relevant amendment of the preliminary search report or of the search report.

If the entry is made after publication of the patent, the copies of the patent held by the National Institute of Industrial Property for public inspection and for sale shall have the necessary notices affixed thereto to indicate the amendment to the search report.

Article R612-70

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

On completion of processing of the patent application, the applicant shall be invited to pay, within the time limit afforded him by the National Institute of Industrial Property, the fee for granting and printing of the specification.

Article R612-71

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 43, Official Journal of 3 March 2004)

The patents shall be granted in the name of the applicant by decision of the Director General of the National Institute of Industrial Property. This decision shall be notified to the applicant.

If the application has been assigned, the patents shall be granted in the name of the last assignee registered with the National Patent Register until payment of the fee for grant and printing of the specification. However, the name of the applicant shall be mentioned.

The search report inserted in the patent shall contain, where appropriate, a mention notifying that the claims on the basis of which the search has been carried out have been amended or that observations have been submitted by the applicant or by third parties during the procedure for drawing up the search report.

The patent shall contain, in particular, particulars with regard to the filing date of the application, the date of publication of the application, the date of decision to grant and that of publication of the grant of the patent in the Official Bulletin of Industrial Property, as well as, where appropriate, references to claimed priorities, the fact that it results from a division, or that at the time of filing the description or the claims were drafted in a foreign language under the conditions set out in Article R. 612-21.

Article R612-72

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the event of lapse of the rights deriving from a patent application due to failure to pay the fees referred to in Article L. 612-19, the patent granting procedure shall be terminated.

Article R612-73

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The wording of a claim amended following part revocation, pursuant to Article L. 613-27, shall be submitted in writing.

If the amended claim does not comply with the enacting terms of the judgment, the patent owner shall be notified thereof. The notification shall set out the changes to be made to the claim, together with the time limit afforded to the party concerned to carry out those changes.

The amended claim shall be refused if the patent owner does not comply with the notification within the prescribed time limit or does not submit observations to contest its grounds.

If the observations submitted are not accepted, the patent owner shall be notified thereof. If the party concerned does not comply with the notification referred to in the second paragraph within a renewed time limit afforded to him, the amended claim shall be refused.

SECTION II
Processing of Applications

SECTION III
Statutory Dissemination of Inventions — Articles R612-74 to R612-76

Article R612-74

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 44, Official Journal of 3 March 2004)

A reference to the grant of the patent shall be published in the Official Bulletin of Industrial Property within one month as from the date of notification of grant made to the applicant.

This reference shall mention the issue number of the Official Bulletin of Industrial Property in which the patent application was published as well as the existence of any amendments to the claims.

Article R612-75

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The wording of patents shall be published in full and kept at the National Institute of Industrial Property.

The files of patent applications shall be kept by the National Institute of Industrial Property up to the expiry of a ten-year period following the lapse of the rights deriving from the patents.

The originals of descriptions and patent drawings not printed prior to 11 April 1902 shall remain in deposit with the National Institute of Industrial Property.

Article R612-76

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The patent collections and the Official Bulletin of Industrial Property shall be deposited for public consultation free of charge at the National Institute of Industrial Property.

They shall also be deposited for the same purposes in the towns of which a list shall be drawn up by order of the Minister responsible for industrial property and the Minister responsible for cultural affairs, either in the departmental archives or with the Chamber of Commerce and Industry or again in a public library or any other establishment designated by the Prefect.

CHAPTER III
Rights Deriving from Patents — Articles R613-1 to R613-65

SECTION I
Exploitation Rights — Articles R613-1 to R613-44

Article R613-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A request for application to a patent of the system of licenses of right under Article L. 613-10 shall be submitted in writing either by the patent owner or by one of the joint owners who shall provide evidence that he is empowered to grant non-exclusive licenses.

A request shall be declared inadmissible if:

1°. The provisions of the preceding paragraph are not complied with;

2°. The property right or joint property right of the requester has not been entered in the National Patent Register;

3°. The National Patent Register shows that an exclusive license has been granted.

The decision of the Director General of the National Institute of Industrial Property shall be notified to the requester.

If the request is accepted, the decision shall be entered in the National Patent Register and published in the Official Bulletin of Industrial Property. It shall be given any additional publicity as decided by the Director General of the National Institute of Industrial Property.

Article R613-2

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any person who wishes to obtain a license of right shall inform the patent owner thereof by registered letter. The letter shall set out the use that is to be made of the invention. A copy of the letter, accompanied by particulars of the date it was sent to the patent owner, shall be addressed to the National Institute of Industrial Property.

Enjoyment of the license shall be granted, for the use stated, one week after the letter has been sent to the patent owner.

Failing agreement between the parties, the price of the license shall be set under the procedure laid down in Articles R. 613-4 to R. 613-8. It shall be reviewed in the same manner if justified by new events. However, no request for review may be submitted less than one year after the most recent price fixing.

Article R613-3

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A request for revocation of the decision to apply to a patent the system of license of right shall be submitted in writing.

Once revocation has been pronounced it shall be notified to the requester, entered in the National Patent Register and published in the Official Bulletin of Industrial Property.

Article R613-4

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Requests for a compulsory license under Articles L. 613-11 to L. 613-15 shall be submitted to the courts designated in accordance with the provisions of Article R. 615-17. They shall be filed, examined and judged under the common rules of law, subject to the provisions of Articles R. 613-5 to R. 613-44.

Article R613-5

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Subject to inadmissibility, the summons and the conclusions shall be communicated within 15 days of the serving or notification by registered mail with notification of receipt to the National Institute of Industrial Property by the party who has summonsed or notified.

Article R613-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Minister responsible for industrial property may submit to the court his observations on a request for a license by means of a memorandum addressed to the Secretariat Registry.

The Director General of the National Institute of Industrial Property or one of his officials, delegated by the Minister responsible for industrial property, shall be heard, if he so wishes, by the court.

Article R613-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Articles R. 613-4 to R. 613-6 shall apply to proceedings before the appeal court.

Article R613-8

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

All decisions taken by courts, appeal courts and the Cour de Cassation with respect to compulsory licenses shall be immediately notified by the Secretary-Registrar to the Director General of the National Institute of Industrial Property. Final decisions shall be entered ex officio in the National Patent Register.

Article R613-9

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Requests for the assignment of a compulsory license, its withdrawal or review of the conditions under which it has been granted shall be subject to the provisions of Articles R. 613-4 to R. 613-8.

Article R613-10

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The orders of the Minister responsible for industrial property referred to in Articles L. 613-16 and L. 613-17 shall be taken on the reasoned opinion of a Committee comprised of:

1°. A State Counsellor, Chairman;

2°. The Director General of Public Health or his representative;

3°. The Director of the National Institute of Health and Medical Research or his representative;

4°. The Director General of the National Institute of Industrial Property of Industrial Property or his representative;

5°. The Director of Chemical Industries or his representative;

6°. The Head of the Central Service for Pharmacy and Medicines or his representative;

7°. Two doctors of the Paris hospitals or their alternates designated for three years by the Minister responsible for public health;

8°. Two professors of the faculties of pharmacy of their alternates designated for three years by the Minister responsible for public health;

9°. Two members designated by the Minister responsible for industrial property.

The secretariat of the Committee shall be provided by the National Institute of Industrial Property.

The Committee may only meet validly, at a first convocation, if at least seven of its members are present. If the quorum is not achieved, it may validly meet, on a new convocation, whatever the number of members present.

The Chairman shall have a casting vote in the event of equal voting.

Article R613-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The reports to the Committee shall be entrusted either to its members or to members of the Conseil d'Etat, of the Court Audit, of the General Inspectorate of Finances and the Inspectorate of Pharmacy, appointed by order of the Minister responsible for industrial property.

The Chairman shall designate for each case one, or where necessary, more than one recorder.

The recorders shall receive an allowance of the amount that shall be laid down by joint order of the Minister responsible for industrial property and the Minister for Economy and Finance.

Article R613-12

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Committee may designate experts whose remuneration, provided under the same conditions as for experts to the courts, shall be covered by a fee order of the Chairman of the Committee.

Article R613-13

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the cases referred to in Article L. 613-16, the Minister responsible for industrial property shall have resort to the Committee by means of a reasoned decision taken at the request of the Minister responsible for public health.

That decision shall be notified, within 48 hours, together with its grounds, to the patent owner and, where appropriate, to the holders of licenses under the patent entered in the National Patents Register or to their representatives in France.

Its enacting terms shall be published without delay in the Official Bulletin of Industrial Property.

Article R613-14

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The patent owner and the holders of licenses may, within 15 days following receipt of the notification referred to in the preceding Article or, if the notification has not reached them, following the publication referred to in the same Article, submit their observations to the Committee.

Article R613-15

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The proposals of the recorder and the file set up by him shall be communicated to the patent owners and, where appropriate, to the holders of licenses.

The Chairman shall lay down the conditions, date and form of the communication together with the period of time within which the parties concerned shall be permitted to submit their observations.

Article R613-16

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Committee shall pronounce within a period of two months as from the day on which the decision by which the matter was submitted to it has reached its Secretariat.

Article R613-17

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The order referred to in Article L. 613-16 shall be taken immediately after the opinion of the Committee. It shall be notified to the patent owner, to the holders of licenses and to the Director General of the National Institute of Industrial Property. It shall be entered ex officio in the National Patent Register.

Article R613-18

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request for a license to work under Article L. 613-17 shall be addressed to the Minister responsible for industrial property.

It shall state:

1°. The surname, forenames, profession, address and nationality of the requester and, where appropriate, the name of the person appointed to represent or assist the requester;

2°. The patent under which a license is requested;

3°. Proof of the requester’s qualification, particularly from the legal, technical, industrial and financial points of view.

Within 48 hours of its receipt by the Minister, the request shall be notified to the patent owner and, where appropriate, to the holders of licenses entered in the National Patent Register.

Article R613-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Within a maximum period of two months as from receipt of the request, the Committee referred to in Article R. 613-10 shall give its opinion on the conditions for granting a license to work, particularly as to its duration and its scope.

This opinion shall be notified to the person requesting a license and to the patent owner and, where appropriate, the holders of licenses entered in the National Patent Register. The Chairman of the Committee shall lay down a time limit to be afforded to the person requesting the license, to the patent owner and to the holders of licenses for communicating their observations on the conditions for granting the license envisaged by the Committee.

Those observations shall be submitted to the Committee.

Article R613-20

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Minister responsible for industrial property shall take his decision on the basis of the final opinion given by the Committee, after examining the observations of the parties concerned.

Article R613-21

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The order to grant a license to work referred to in Article L. 613-17 shall be notified to the patent owner, to the holders of licenses and to the person enjoying the requested license.

It shall be entered ex officio in the National Patent Register.

Article R613-22

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The person requesting the license, the patent owner and the holders of license or their representatives may be heard by the Committee responsible for giving the opinions referred to it Articles R. 613-10 and R. 613-19, either at their request or on ex officio convocation by the Committee.

The convocation shall be addressed to them at least 8 days in advance.

Article R613-23

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the event of failure to comply with the time limits laid down in Articles R. 613-14, R. 613-15 and R. 613-19 (second paragraph), the Committee shall proceed regardlessly without reminder or formal notice.

Article R613-24

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In proceedings laying down the royalties referred to in Article L. 613-17 (third paragraph), the summons shall be at a fixed date.

Article R613-25

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Amendments to clauses in the license to work requested either by the patent owner or by the holder of such license shall be decided and published under the procedure prescribed for the granting of such license. If they concern the amount of the royalties, they shall be decided under the procedure prescribed for the initial fixing of that amount.

The procedure for granting the license shall also apply to the withdrawal of the license requested by the patent owner for failure to execute the obligations imposed on the holder of the license.

Article R613-26

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The formal notice referred to in Article L. 613-18 (first paragraph) shall be the subject of a reasoned decision by the Minister responsible for industrial property, taken after consultation with the Minister for Economy and Finance and the Minister responsible for scientific research and nuclear and space matters. The decision shall set out the needs of the national economy that have not been satisfied.

The decision shall be notified, together with the grounds, to the patent owner and, where appropriate, to the holders of licenses entered in the National Patent Register or their representatives in France.

Article R613-27

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The one-year period referred to in the second paragraph of Article L. 613-18 shall begin on the day of receipt of the notification referred to in Article R. 613-26. The legitimate reasons referred to in the third paragraph of Article L. 613-18 shall be produced within that period.

The additional period of time that the Minister responsible for industrial property may afford to the person concerned under the same third paragraph shall begin on the day on which the aforementioned one-year period expires.

The decision to afford a supplementary period shall be taken and notified in accordance with the procedure and in the manner laid down for the decision to give formal notice under Article R. 613-26.

Article R613-28

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Conseil d'Etat decree subjecting the patent to which the formal notice refers to the ex officio license arrangements shall be taken on the basis of a joint report by the Minister responsible for industrial property, the Minister for Economy and Finance, the Minister responsible for scientific research and nuclear and space matters and, where appropriate, the Minister directly concerned in view of the subject matter of the patent.

It shall lay down the conditions to be satisfied by persons requesting an ex officio license, taking into account any proposals for working made by the patent owner.

It shall be notified to the patent owner and to the holders of licenses. It shall be entered ex officio in the National Patent Register and published in the Official Journal.

Article R613-29

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request for a license to work under Article L. 613-18 (fourth paragraph) shall be addressed to the Minister responsible for industrial property.

It shall state:

1.The surname, forename and occupation of the requester and, where appropriate, the name of the person responsible for representing or assisting the requester;

2.The patent for which a license is requested;

3.Proof of the requester's qualification, from the technical, industrial and financial points of view, to work the patent concerned with respect to the conditions set out in the second paragraph of Article R. 613-28.

Article R613-30

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A copy of the request for a license shall be notified by the Minister responsible for industrial property to the patent owner and, where appropriate, to any holders of licenses in that patent. The latter shall have a period of two months as from receipt of the notification in order to submit their observations to the above mentioned Minister.

Article R613-31

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The order referred to in Article L. 613-18 (fifth paragraph) shall be notified to the patent owner, to the holders of licenses and to the person receiving the requested license. It shall be entered ex officio in the National Patent Register.

Article R613-32

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Proceedings for laying down the royalties referred to in Article L. 613-18 shall be heard by the First Instance Court of Paris. In such proceedings, the summons shall be at a fixed date.

Article R613-33

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Amendments to the licensing clauses requested either by the patent owner or by the holder of the license shall be decided and published under the procedure laid down for the granting of such license. If they concern the amount of the royalties, they shall be decided under the procedure laid down for the initial determination of such amount.

The procedure for granting the license to work shall also apply to the withdrawal of the license requested by the patent owner for failure to satisfy the obligations imposed on the holder of the license.

Article R613-34

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The application addressed by the Minister responsible for national defense to the Minister responsible for industrial property with a view to obtaining under Article L. 613-19 an ex officio license for the requirements of national defense shall contain all necessary details of the conditions necessary to meet those requirements and concerning, in particular:

1°. The full or partial nature of the license with regard to the applications of the invention that is the subject matter of the patent application or of the patent;

2°. The duration of the license;

3°. The respective rights and obligations of the State and of the owner of the patent application or the patent as concerns improvements or modifications made by any party to the invention.

Article R613-35

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The order of the Minister responsible for industrial property that grants a license shall lay down the conditions, taking into account the elements of the request as set out above. It shall be immediately notified by the Minister responsible for industrial property to the Minister responsible for national defense and to the owner of the patent application or of the patent. It shall be entered ex officio in the National Patent Register. In the case of a patent application, the entry shall be made only after that application has been made public.

Article R613-36

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Following the notifications referred to in the foregoing Article, the owner of the patent application or of the patent shall communicate to the Minister responsible for national defense, by registered mail with notification of receipt, his claims as to remuneration for the license granted to the State.

The first instance court may not be applied to for fixing the amount of the remuneration, under Article L. 613-19 (fourth paragraph), before four months have elapsed as from the date of receipt of the registered letter referred to above.

Article R613-37

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the ex officio license concerns the working of an invention covered by a patent application whose disclosure and free working are prohibited under Articles L. 612-9 or Article L. 612-10 (first and second paragraphs), the jurisdiction petitioned for the fixing of the remuneration for the ex officio license shall take its decisions, both on substance and provisional, by decision that shall not contain any analysis of the invention of a nature liable to lead to its disclosure.

Such decisions shall be taken in court chambers. The public prosecutor, the parties or their representatives alone may obtain a copy thereof.

Where the ex officio license concerns the working of an invention covered by a patent or by a patent application other than that referred to in the first paragraph of this Article, and if the applications of such invention that have already been implemented or envisaged are of a secret nature, the decisions of the petitioned jurisdiction shall not contain any reference liable to disclose such applications and shall be subject to the provisions of the second paragraph above.

If an expert opinion is ordered in the cases referred to in the first and third paragraphs of this Article, it may only be carried out by persons approved by the Minister responsible for national defense and, if necessary, in the presence of his representatives.

Article R613-38

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Article R. 613-37 shall apply, independently of any action to affix the remuneration for ex officio license, with respect to any proceedings concerning a dispute deriving from the execution of the order affording such license.

Article R613-39

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The decree ordering, subject to the conditions under Article L. 613-20, the expropriation of an invention that is the subject matter of a patent application or of a patent shall be notified by the Minister responsible for industrial property to the owner of the patent application or the patent.

Article R613-40

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Following the notification referred to in the preceding Article, the fixing of the expropriation compensation shall be carried out in the same manner as for the remuneration for the ex officio license under Articles R. 613-36 and R. 613-37.

Article R613-41

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If civil proceedings as referred to in Article L. 615-10 are instituted on the basis of a patent application subject to the prohibitions referred to in Articles L. 612-9 or L. 612-10 (first and second paragraphs) or if it refers to research or manufacture as referred to in the second and third paragraphs of that Article L. 615-10, the resultant court decisions shall be subject to the provisions of Article R. 613-37.

Article R613-42

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where an appeal is lodged against an order issued in application of Article L. 612-10 (first and second paragraph) or against an order or a decree under Article L. 613-19 or Article L. 613-20 in cases where such order or decree relates to an invention whose disclosure and free working are prohibited, the administrative court shall take a decision, both of substance and provisional, that shall not contain any analysis of the invention liable to lead to disclosure.

The hearings shall take place and the decisions shall be given in a non-public session. The decision that is taken may be communicated to the parties or their representatives alone.

If an expert opinion is ordered, it may only be carried out by persons approved by the Minister responsible for national defense and, where necessary, in the presence of his representatives.

Article R613-43

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The notifications and communications to the owner of the patent or patent application referred to in the provisions of Articles R. 613-10 to R. 613-42 shall be made validly to the address stated in the patent application or to the last address that the patent owner notifies to the administration, or to that of his representative in France. Such representative shall be the representative designated by the patent applicant at the time of filing the application, unless the designation of another representative has been notified to the administration.

All the notifications and communications addressed to the owner of the patent or the patent application, to his successors in title or to persons requesting or holding ex officio licenses under the provisions of Articles R. 613-10 to R. 613-42 shall necessarily be made by registered mail with notification of receipt.

Article R613-44

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Articles R. 613-4 to R. 613-43 and R. 613-51 shall apply to certificates of addition.

SECTION II

Transfer and Loss of Rights — Articles R613-45 to R613-51

Article R613-45

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Renunciation of a patent or of one or more of its claims shall be made by written declaration.

Such declaration may concern one patent only. It shall be submitted by the owner of the patent or by a representative who, unless he has the capacity of industrial property attorney, shall attach to the declaration a special power of renunciation.

If the patent belongs to more than one person, renunciation may be effected only if requested by all such persons.

If property, pledge or licensing rights have been entered in the National Patent Register, the declaration of renunciation shall be admissible only if accompanied by the consent of the holders of such rights.

Renunciation shall be entered in the National Patent Register. It shall take effect on the date of such entry.

A notice of entry shall be addressed to the person making the renunciation.

Article R613-46

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The annual fee for maintaining patent applications and patents, referred to in Article L. 612-19, shall be due for each year of the term of the patent. The filing fee shall cover the first annual fee. The payment of annual fees shall become due on the last day of the month of the anniversary date of filing of the application. It shall not be accepted if made more than one year before the annual fee becomes due.

Article R613-47

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 45, Official Journal of 3 March 2004)

I. The six-month period provided for by the second paragraph of Article L. 612-19, during which payments made after the due date shall be validated on payment of a fee for late payment, shall begin on the next day on which the annual fee becomes due.

Payments shall be deemed valid when made after the due date:

- where they concern a patent application resulting from the division of a patent application on condition that it takes place at the latest on the last day of the fourth month following the date of receipt of the documents of the divisional application;

- where it supplements an insufficient payment made prior to the due date, on condition that it takes place within the above mentioned six-month period.

II. The payment shall be made at the rate in force on the day of payment unless a reminder has already been sent stating a former rate. However, in cases of reinstatement, the payment of due fees that have not been paid on the date of entry of the decision in the National Patent Register shall be made at the rate in force on that date.

Article R613-48

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where the payment of an annual fee is not made by the normal due date, a reminder shall be addressed to the owner of the patent application or the patent advising him that he is liable to lose his rights if the payment, accompanied by payment of the fee for late payment, is not made before the expiry of the six-month period referred to in the first paragraph of Article R. 613-47.

The lack of a reminder shall not imply the liability of the National Institute of Industrial Property and shall not constitute grounds for restoring the rights of the patent owner.

Article R613-49

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request referred to in Article L. 613-22-1, to record the loss of rights in a patent application or a patent, shall be submitted in writing.

A reasoned decision shall be taken on the request. The decision shall be notified to the requester.

Article R613-50

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 46, Official Journal of 3 March 2004)

The following shall be entered into the National Patent Register:

The reference to the decision recording the loss of right referred to in Article L. 613-22.

Redress actions for reinstatement, for setting aside the decisions of the Director General of the National Institute of Industrial Property, appeals in cassation as well as the decisions delivered.

The decision that reinstates the rights of the patentee will not have any effect if the fees due are not paid within a period of three months as from entry of the decision in the National Patent Register. The date of payment shall be entered into the Register.

Article R613-51

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 47, Official Journal of 3 March 2004)

The time limit provided for by paragraph 2 of Article L. 613-21 shall be 15 days as from the date of service of the seizure referred to in the first paragraph of that Article.

SECTION IV

Appeal for Reinstatement

Article R613-52

Article R613-52

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 48, Official Journal of 3 March 2004)

Redress petitions for reinstatement under Articles L. 612-16 and L. 613-22 shall be submitted to the Director General of the National Institute of Industrial Property by the holder who must be the holder registered with the National Register of Patents if the filing has been published or by his representative.

The redress petition will be admitted only after payment of the prescribed fee.

The redress petition shall be made in writing. It shall state the facts and the grounds relied upon.

The reasoned decision shall be notified to the petitioner.

SECTION V

National Patent Register — Articles R613-53 to R613-59

Article R613-53

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The National Patent Register shall be kept by the National Institute of Industrial Property.

For each patent application or patent there shall be found therein:

1°. The identification of the applicant, the references of the patent application or patent, and any subsequent acts affecting its existence or scope;

2°. Any acts modifying the ownership of the patent application or patent or the enjoyment of the rights deriving therefrom; in the event of a claim to ownership: the corresponding summons together with the suspension and resumption of the grant procedure;

3°. Changes of name, legal form or address and any corrections of clerical errors affecting entries.

No entry shall be made in the Register until the patent application has been made public as set out in Article R. 612-39.

Article R613-54

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 49, Official Journal of 3 March 2004)

The particulars referred under Article R. 613-53 (1°) shall be registered either at the initiative of the National Institute of Industrial Property or at the demand of the court clerk or on motion of one of the parties where it concerns a court decision.

Article R613-55

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 50, Official Journal of 3 March 2004)

The deeds that modify ownership of a patent application or a patent or the possession of the rights deriving therefrom, such as transfer, assignment of an exploitation right, the constitution or transfer of a pledge or waiver thereof, restraint, validation and release from restraint, shall be registered at the request of one of the parties to the deed or the holder of the filing on the day of such request if he is not party to the deed.

The request shall contain:

1°. an application form for registration;

2°. a copy or an abstract of the deed recoding the change in ownership or possession;

3°. proof of payment of the prescribed fee;

4°. where appropriate, the power of attorney of the representative, unless the representative has the capacity of industrial property attorney.

Article R613-56

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 51, Official Journal of 3 March 2004)

By way of exception to Article R. 613-55 (2°), the following may be submitted with the application:

1°. in the event of transfer mortis causa, any instrument establishing the transfer, at the request of the heirs or legatees;

2°. in the event of transfer due to merger, demerger or acquisition: a copy of an abstract of the Register of Commerce and Companies;

3°. subject to proof of the material impossibility of producing a copy: any document proving the change in ownership or possession.

Article R613-57

(Decree No. 95-385 of 10 April 1995, Appendix, Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 52, Official Journal of 3 March 2004)

Changes of name, legal form, address and corrections of clerical errors shall be registered at the request of the holder of the patent application or the patent who must be the registered holder with the National Register of Patents. However, where such changes and corrections concern a deed that has already been registered, the request may be submitted by any party to the deed.

The request shall contain:

1°. an application form for registration;

2°. where appropriate, the power of attorney of the representative, unless he has the capacity of an industrial property attorney;

3°. where it concerns the correction of a clerical error, the proof of payment of the prescribed fee.

The Institute may require evidence of the existence of the change whose registration is requested or the clerical error to be corrected.

Article R613-58

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the event of non-compliance of the request for entry, a reasoned notification shall be made to the requester. He shall be given a time limit for regularizing his request or for submitting observations. Failing regularization or observations enabling the objection to be lifted, the request shall be refused by decision of the Director General of the National Institute of Industrial Property.

The notification may be accompanied by a proposal for regularization. In such case, the proposal shall be deemed accepted if the requester does not dispute it within the time limit afforded him.

Article R613-59

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

All entries made in the National Patent Register shall be mentioned in the Official Bulletin of Industrial Property.

Any interested person may obtain from the Institute:

1°. A reproduction of the entries made in the National Patent Register;

2°. A certificate attesting that there exists no entry.

SECTION VI

Establishment of the Documentary Report — Articles R613-60 to R613-62

Article R613-60

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The documentary report referred to in Article L. 612-23 shall be established on the basis of the search report at the written request of the patent owner or any other interested person or of any administrative authority.

Documents not cited in the search report which the requester wishes to have taken into consideration may be annexed to the request. If they are drawn up in a foreign language, a translation may be required by the National Institute of Industrial Property.

The request shall be inadmissible if it is not accompanied by proof of payment of the prescribed fee.

Article R613-61

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The documentary report shall be established according to the following procedure:

I. When requested by the patent owner:

1°. A draft shall be produced and notified to the patent owner. A time limit shall be afforded him to discuss the justification if necessary.

2°. The report shall be established on the basis of the draft and of any observations that have been made. It shall be notified to the patent owner.

II. When not requested by the patent owner:

1°. The request for the report shall be notified without delay to the patent owner. A time limit shall be afforded him to submit observations and, where appropriate, to appoint a representative satisfying the conditions laid down in Article R. 612-2.

2°. A draft shall be established on the basis of the observations received in reply. That draft shall be notified to the patent owner and to the requester. A time limit shall be afforded them to discuss the justification where necessary.

3°. The report shall be established on the basis of the draft report and of any observations that have been made. It shall be notified to the patent owner and to the requester.

The Institute shall ensure that both sides are heard. Any observation made by the patent owner or by the requester shall be notified without delay to the other party.

Article R613-62

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The documentary report shall be included in the patent file. Its issue shall be mentioned in the Official Bulletin of Industrial Property.

SECTION VII

Reduction of Fees and Free Assistance — Articles R613-63 to R613-65

Article R613-63

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The request for reduction of fees referred to in Article L. 612-20 shall be submitted in writing to the Director General of the National Institute of Industrial Property. It shall be accompanied by an attestation of non-liability to income tax or an equivalent proof.

A reasoned decision shall be taken. The decision shall be notified to the requester.

If the request is accepted, enjoyment of a reduction shall be afforded the requester on condition that he produce each year an attestation of non-liability to income tax or an equivalent proof.

Article R613-64

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where free assistance by an industrial property attorney is awarded, a copy of the decision shall be transmitted to the President of the National Society of Industrial Property Attorneys for the purposes of designating such attorney.

The President shall inform the attorney and, where appropriate, his employer, the inventor and the Director General of the National Institute of Industrial Property of the designation.

The designated attorney may not refuse or be refused except for serious and legitimate reasons to be assessed by the President of the National Society of Industrial Property Attorneys.

Article R613-65

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The designated industrial property attorney shall be allocated a fixed compensation for procedural acts for which assistance has been awarded.

This compensation shall be paid directly to the person concerned, or to his employer if he is an employee, by the National Institute of Industrial Property.

The amount shall be laid down in accordance with a schedule established by decision of the Director General of the National Institute of Industrial Property, following an opinion of the Administrative Council of that Institute.

The industrial property attorney may not require any further remuneration from the inventor.

CHAPTER IV
Application of International Conventions — Articles R614-1 to R614-35

SECTION I
European Patents — Articles R614-1 to R614-20

Article R614-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The regional centers of the National Institute of Industrial Property with which applications for European patents may be filed shall be designated by an order of the Minister responsible for industrial property.

Article R614-2

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where a filing is made in a regional center, the documents of the application, accompanied by a duplicate of the receipt referred to in Rule 24(2) of the Implementing Regulations to the European Patent Convention shall be transmitted to the Headquarters of the National Institute of Industrial Property.

Article R614-3

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 53, Official Journal of 3 March 2004)

The filing of the European patent application may be done by post or any mode of remote transmission under the conditions provided for in the second and third paragraphs of Article R. 612-1.

Article R614-4

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

With the exception of Article R. 612-31, the provisions of Articles R. 612-26 to R. 612-32 shall apply to European patent applications filed with the National Institute of Industrial Property, taking into account the provisions of Articles L. 614-4 and L. 614-5.

Article R614-5

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The conversion of a European patent application to a French patent application shall be effected on receipt by the National Institute of Industrial Property of the request. A national registration number shall be allocated.

Subject to the provisions of Articles L. 614-4 and L. 614-5, a notice of the conversion shall be published in the Official Bulletin of Industrial Property within one month as from receipt of the request. The notice shall contain the particulars required to identify the patent application.

Within two months as from the date of publication referred to in the preceding paragraph or, in the case of patent applications that may not be made public, as from the date of receipt of the request for conversion, the applicant shall furnish proof of payment of the fees referred to in Article R. 614-17 and, where appropriate, a translation into French of the original wording of the European patent application together with, where appropriate, the wording as amended during the procedure before the European Patent Office.

The patent granting procedure shall be prosecuted on the basis of the original wording of the patent application or its translation or, where appropriate, the wording amended during the procedure before the European Patent Office or its translation.

If the applicant does not have his place of residence or business in France he shall be required, within the same time limit, to appoint a representative in France and to communicate the name and address of such representative to the National Institute of Industrial Property.

Article R614-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If any of the conditions required under the third paragraph of Article R. 614-5 are not satisfied within the time limit referred to in that paragraph, the patent application shall be refused by a reasoned decision of the Director General of the National Institute of Industrial Property and shall be notified to the applicant. Any fees paid shall be refunded.

Article R614-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Articles R. 614-5 and Article R. 614-6 shall apply to applications for utility certificates.

Article R614-8

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The translation into French of the text of the European patent referred to in Article L. 614-7 shall be submitted within three months as from the date of publication in the European Patent Bulletin of the mention of the grant of the patent referred to in Article 97(4) of the European Patent Convention and, where appropriate, of the mention of the opposition decision referred to in its Article 103. The translation shall be accompanied by evidence of the required fee.

Article R614-9

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Mention of the submitting of the translation of the text of the European patent shall be published in the Official Bulletin of Industrial Property within one month from the date on which it was supplied. This mention shall contain the particulars required to identify the patent.

As from the day of publication of the mention referred to in the preceding paragraph, any person may inspect free of charge at the National Institute of Industrial Property the text of the translation and obtain a reproduction of it at his own cost.

Article R614-10

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Mention of the failure to submit a translation of the European patent or failure to pay the required fee within the time limit referred to in Article R. 614-8 shall be published in the Official Bulletin of Industrial Property. This mention shall contain the particulars required to identify the patent. Any fee paid shall be refunded.

Article R614-11

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The translation of the claims of the European patent application referred to in Article L. 614-9 shall be provided by the applicant. Its text shall be submitted to the National Institute of Industrial Property by the applicant, accompanied by a request for publication and proof of payment of the required fee. The provisions of Article R. 614-9 shall apply.

The request for publication shall be declared inadmissible if it is not accompanied by proof of payment of the fee.

Article R614-12

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Article R. 614-11 shall apply to the production of the revised translation of the text of the European patent or of the claims in the European patent application referred to in the second paragraph of Article L. 614-10.

Article R614-13

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The following shall be entered ex officio in the National Patent Register:

1°. The final decision referred to in Article R. 614-6;

2°. Failure to submit the translation and failure to pay the required fee referred to in Article R. 614-10;

3°. Submission of the translation and of the revised translation of the text of the European patent referred to in Articles R. 614-8 and R. 614-12;

4°. Submission of the translation and of the revised translation of the claims in the European patent application referred to in Articles R. 614-11 and R. 614-12.

Article R614-14

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Final court decisions pursuant to Articles L. 614-12 and L. 615-17 shall be entered in the National Patent Register, without cost, at the request of the court registrar or of one of the parties to the proceedings.

Article R614-15

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The annual fees referred to in Article L. 612-19 for a patent application deriving from the conversion of a European patent application effected in accordance with Articles R. 614-5 to R. 614-7 shall be due only for the years that follow the year during which the European patent application is deemed to have been converted. The annual fee to be paid shall be calculated as from the filing date of the European patent application.

Article R614-16

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The annual fees referred to in Article L. 612-19 that are due for the European patent application shall be paid as prescribed by Article 141 of the European Patent Convention; these fees shall be calculated as from the filing date of the European Patent application.

Where payment of an annual fee has not been made on expiry of the time limit referred to in Article 141(2) of the European Patent Convention, that fee may be validly paid within an additional six-month period on payment of a late fee within the same time limit.

Article R614-17

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The filing fee and, where appropriate, the fee for establishing the search report, referred to in Article R. 612-5, shall constitute the required fees referred to in the third paragraph of Article R. 614-5.

In the case referred to in the third paragraph of Article L. 614-6, the fee referred to in Article R. 612-5, item 2, shall not be required.

Article R614-18

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The publication of each translation and revised translation referred to in Articles R. 614-8, R. 614-11 and R. 614-12 shall be subject to the payment of a fee that shall become due on submission of the translation.

Article R614-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Fees shall be levied for the making and transmission of copies of the European patent application as referred to in Article 136(2) of the European Patent Convention.

Article R614-20

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Articles R. 411-19 to R. 411-26 and R. 618-1 to R. 618-3 shall apply to decisions, notifications and time limits referred to in Articles R. 614-1 to R. 614-19.

SECTION II

International Applications — Articles R614-21 to R614-35

Article R614-21

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

An international application may be filed with the National Institute of Industrial Property at either its headquarters or at one of its regional centers designated by order of the Minister responsible for industrial property. Subject to the obligation referred to in Article L. 614-18, they may also be filed with the European Patent Office acting as a receiving Office.

Article R614-22

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 54, Official Journal of 3 March 2004)

The filing of an international application may be done by post or any mode of remote transmission under the conditions provided for in the second and third paragraphs of Article R. 612-1.

The filing can be done by the applicant personally or by a representative; the provisions of the first and the second paragraphs of the Article R. 612-2 shall apply.

Article R614-23

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 55, Official Journal of 3 March 2004)

The international application shall be made in French.

If it is not filed in electronic form, the application as well as each document referred to in the slip provided for under rule 3, paragraph 3, letter (a) of (ii) of the Regulation under the Patent Cooperation Treaty, shall be filed in three copies. However, the application referred to under rule 3 mentioned above, paragraph 1, and the documents showing the taxes due shall be filed in only one copy.

If the provisions of the preceding paragraph are not fulfilled, the missing copies shall be prepared by the National Institute of Industrial Property.

Article R614-24

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A receipt, stating at least the number allocated to the international application, the nature and number of application documents, together with their date of receipt, shall be issued to the applicant.

Where filing is made in a regional center, the application documents, accompanied by a duplicate of the receipt, shall be transmitted without delay to the headquarters of the National Institute of Industrial Property.

Article R614-25

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

With the exception of Article R. 612-31, the provisions under Articles R. 612-26 to R. 612-32 shall apply, taking into account the provisions of Articles L. 614-20 to L. 614-22, to international applications filed with the National Institute of Industrial Property.

Article R614-26

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The filing of an international application shall give rise to payment of the transmittal fee referred to in Rule 14 of the Regulations under the Patent Cooperation Treaty. That fee shall be paid prior to expiry of a one-month period as from the date of receipt of the international application.

Article R614-27

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The basic fee of the international fee and the search fee referred to in Rules 15 and 16 of the Regulations under the Patent Cooperation Treaty shall be paid before one month has elapsed after the date of receipt of the international application.

The international fee and the search fee shall be paid in French francs.

Article R614-28

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The designation fees forming part of the international fee shall be paid:

1°. Where the international application does not contain a priority claim under Article 8 of the Patent Cooperation Treaty, within one year as from the date of receipt of the international application;

2°. Where the international application contains such claim to priority, within one year as from the priority date or one month as from the date of receipt of the international application if such month expires after the end of the year following the priority date.

Article R614-29

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where payment of the transmittal fee, the search fee and the international fee is not made within the time limits laid down in Articles R. 614-26 to R. 614-28, the applicant shall be invited to pay within one month the amount of those fees increased by the late payment fee referred to in Rule 16bis.1(a) and (b) of the Regulations under the Patent Cooperation Treaty.

The late payment fee shall be paid in French francs.

Article R614-30

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The designations made under Rule 4.9(b) of the Regulations under the Patent Cooperation Treaty shall be confirmed prior to the expiry of 15 months as from the priority date by means of a written declaration. The declaration shall be accompanied by payment of the designation fee and the confirmation fee referred to in Rule 15.5(a) of those Regulations.

The confirmation fee shall be paid in French francs.

Article R614-31

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the international application and the other documents referred to in Article R. 614-23 are filed in a number of copies that is less than that laid down in the aforementioned Articles, a fee shall be levied to cover the making of the required number of copies. It shall have been paid prior to expiry of one month as from the date of notification made to that end.

Article R614-32

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The transmittal fee referred to in Article R. 614-26 shall be refunded to the applicant if the international application is not transmitted to the International Bureau within the time limit laid down by Rule 22.3 of the Regulations under the Patent Cooperation Treaty.

Article R614-33

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The payment of the fees referred to in Articles R. 614-26 to R. 614-32 shall constitute discharge if made at the rate in force on the day of payment.

Article R614-34

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Articles R. 411-19 to R. 411-26 and R. 618-3 shall apply to the disputes referred to in Article L. 411-4.

Article R614-35

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The conditions for implementing Articles R. 614-21 to R. 614-24 shall be laid down, as and when necessary, by an order of the Minister responsible for industrial property.

CHAPTER V
Legal Proceedings

Articles R615-1 to R615-31

SECTION I

Furnishing of Proof — Articles R615-1 to R615-5

Article R615-1

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 56, Official Journal of 3 March 2004)

The detailed description, with or without real seizure, of the allegedly counterfeited products or processes, provided for in Article L. 615-5 shall be ordered by the president of one of the Tribunaux de Grande Instance (High Courts) enumerated under Article R. 631-1, in whose district the operations must be carried out.

The order shall be delivered on a simple petition and on presentation either of the patent, of the supplementary protection certificate, of the utility certificate or of the certificate of addition, or, in the case provided for under the first paragraph of Article L. 615-4, of a certified copy of the application for a supplementary protection certificate, a certificate of addition or a utility certificate. In this last case, the applicant must show in addition that the conditions provided for in Article L. 615-4 are fulfilled.

If the petition is filed by the assignee of an exclusive right of exploitation or by the holder of a licence granted under the terms of Articles L. 613-10, L. 613-11 or L. 613-15, the applicant must show that the condition prescribed by the second paragraph of Article L. 615-2 is met.

Article R615-2

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Where effective seizure is ordered, the court may require the requester to provide a guarantee that shall be deposited before the seizure is carried out.

Under the pain of invalidity and damages awarded against the bailiff, the latter, before carrying out the seizure, shall give a copy of the order and, where appropriate, of the act attesting to deposit of the guarantee, to the holders of seized or described articles. A copy of the record of seizure shall be left with the same holders.

Article R615-3

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The time limit referred to in Article L. 615-5, fourth paragraph, and afforded to the requester for instituting proceedings shall be 15 days as from the day on which the seizure or the description is carried out.

Article R615-4

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 57, Official Journal of 3 March 2004)

The president of the court may order, on the ground of the official report of seizure, any measure likely to supplement the proof of the alleged counterfeit deeds. Upon the petition of the seized party acting forthwith and showing a legitimate interest may also take any measure to preserve the confidentiality of certain items.

Article R615-5

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 58, Official Journal of 3 March 2004)

Where, in a civil litigation as regards patents, a technical expertise appears necessary, the president of the court hearing the case may consult, on the choice of the expert, one of the organizations appointed by a joint decree of the Keeper of the Seals and concerned Ministers.

If this consultation took place, reference shall be made to it in the order or the judgement.

SECTION II

Joint Conciliation Board — Articles R615-6 to R615-31

Article R615-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Chairman of the Joint Conciliation Board referred to in Article L. 615-21 shall be appointed for a renewable period of three years by an order of the Keeper of the Seals, Minister for Justice, and of the Minister responsible for industrial property. An honorary magistrate may be appointed.

One or more alternates may be appointed in the same manner. They shall replace the Chairman in the event of absence or impediment.

Article R615-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Chairman shall be assisted by two assessors, that he shall designate for each case from a list of persons competent in the matters to be heard by the Board.

The list shall be drawn up and periodically updated by the Director General of the National Institute of Industrial Property on the proposal of the nationally representative professional and union organizations.

One of the assessors shall be chosen from among the persons proposed by the employees' organizations and the other from amongst the persons proposed by the employers' organizations.

If an invention concerns national defense or results from a study or manufacturing contract comprising a defense secrecy classification, the assessors shall possess a secrecy clearance issued by the Minister responsible for defense.

The same shall apply to the experts appointed or technicians that are consulted.

Article R615-8
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The secretariat of the Board shall be provided by the National Institute of Industrial Property.

Article R615-9
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Board shall meet at the National Institute of Industrial Property or, on a decision of the Chairman, in one of its provincial centers where circumstances require.

Article R615-10
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The members of the Board shall be allocated a lump sum compensation for the cases that they hear.
The compensation shall comprise the reimbursement of miscellaneous costs for secretarial work, correspondence or travel outside their place of residence, required for the accomplishment of their task.
The rate and conditions for affording the lump sum compensation shall be laid down by a joint order of the Ministers responsible for finance and for industrial property.

Article R615-11
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
Expenditure incurred during travel that the members of the Board may be required to effect outside their place of residence in order to accomplish their tasks shall be refunded to them in accordance with the conditions applicable to group I officials.

Article R615-12
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The Board shall be petitioned by means of a request filed with the secretariat either by the requester or by a representative holding powers. The request may also be addressed by registered mail with notification of receipt.

Article R615-13
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
The request shall be signed by the requester or his representative.
It shall state:
1°. The surname, forenames, profession and address of the requester and of the other parties;
2°. The subject of the dispute;
3°. The requester's grounds and conclusions;
4°. All elements in his possession that may be of use in resolving the dispute.
There shall be annexed thereto a copy of the declaration and communications made pursuant to Articles R. 611-1 to R. 611-10 together with various documents which the requester wishes to submit.

Article R615-14
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
If the request does not comply with the provisions of the preceding Article, the secretariat shall invite the requester to complete it within one month.
There shall be faculty, prior to expiry of that time limit, to submit the compliance of the request to the judgment of the Chairman. If the Chairman confirms the invitation made by the secretariat, he shall afford the concerned party a new time limit for complying therewith.
The time limits set out in the preceding paragraphs shall be extended, on a decision by the Chairman, if the requester is able to give good reason.
The date of submission to the Board shall be that on which the request has been completed in accordance with the provisions of this Article.

Article R615-15
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
Submission of the case to the Board shall be notified to the other party by the secretariat.
Such party shall be invited at the same time to communicate, within a time limit afforded by the Chairman, his written observations on the justification of the request.
The Minister for Defense shall be entitled to have cognizance at the secretariat of the Board of all oppositions submitted to the Board.

Article R615-16
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
Within the time limit set by the Chairman, the National Institute of Industrial Property shall communicate to the Board all the elements in its possession that may be disclosed without prejudice to third party rights or to the interests of national defense.
A copy of such communication shall be immediately addressed to the parties by the secretariat.

Article R615-17
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Once the assessors have been designated, the secretariat shall notify the composition of the Board to the parties and shall convene them for a preliminary meeting.

Each party may request the changing of assessors for a serious and legitimate reason to be evaluated by the Chairman.

Such request shall be submitted within 15 days of the notification or on the opening of the preliminary meeting if the latter takes place before expiry of that time limit.

Article R615-18

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Proceedings before the Board shall be in the presence of the parties.

Article R615-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

On the appointed day, the Board shall hear the parties, shall endeavor to harmonize their points of view and reach a conciliation.

If one of the parties does not appear, the Board shall note its absence and shall hear the other party.

A record shall be drawn up.

In the event of full or part conciliation, the record shall mention the contents of the agreement. Failing full conciliation, the contested points shall be recorded.

Article R615-20

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If one of the parties does not appear or failing full conciliation, the Board shall formulate the conciliation proposal referred to in Article L. 615-21.

Article R615-21

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The Chairman may take any examining measure. He may ascertain at any time the conciliation of the parties or bring about to that end a new meeting.

Article R615-22

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Save authorization by the Chairman, only the members of the Board and of the National Institute of Industrial Property, together with the parties and persons assisting or representing them, shall be present at conciliation meetings.

Article R615-23

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

In the event of a request from the party who has not petitioned the Board or of the joining of more than one request relating to the same invention, the six-month period during which the conciliation proposal is formulated shall begin on the date on which the latest submission was made to the Board.

Article R615-24

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

If the invention concerns national defense, the conciliation proposal shall not contain any analysis of the invention liable to lead to its disclosure.

Article R615-25

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The conciliation proposal shall be signed by the Chairman and by the secretary.

The latter shall notify it to the parties.

Article R615-26

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Proceedings before the Board shall suspend all terms of prescription.

Article R615-27

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

On evidence of proceedings before the Board, the first instance court shall suspend its decision until the six-month period referred to in Article L. 615-21 has elapsed unless the Board has already formulated its conciliation proposal.

Article R615-28

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Failing agreement between the parties, the Board's proposal alone shall be submitted to the court.

Article R615-29

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

An agreement between the parties resulting from the conciliation proposal in the case referred to in Article L. 615-21 shall be rendered enforceable by a decision of the president of the first instance court within the competence of which the conciliation proposal has been formulated.

Article R615-30

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 96-857 of 2 October 1996 art. 3 Official Journal of 3 October 1996)

Subject to the measures referred to in Article R. 615-31, the provisions of Articles R. 615-6 to R. 615-29 relating to the Joint Conciliation Board shall apply to disputes deriving from the application, under the conditions set out in Articles R. 611-11 to R. 611-14-1 of Article L. 611-7.

Article R615-31

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

With regard to disputes concerning the officials or servants referred to in Articles R. 611-11, a special list shall be drawn up from which shall be chosen for each case the two assessors of the Chairman of the Joint Conciliation Board.

Subject to the provisions of the final paragraph of this Article, that list shall contain the persons entered on a proposal, on the one hand, of the Ministers and, on the other, of the organizations representing the staff.

The list of such organizations shall be lay down by order of the Prime Minister on a proposal by the various Ministers.

One of the assessors shall be chosen from persons proposed by the above mentioned organizations, the other among the persons proposed by the Ministers.

Where the invention has been made by a servant subject to the general status of military persons, the assessor representing the servant shall be designated by the Chairman of the Conciliation Board from a list of five members of the military corps of general inspection of the armies drawn up by the Head of the General Inspectorate of the Armies and periodically updated.

CHAPTER VI
Utility Certificates — Articles R616-1 to R616-3

Article R616-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

As from the day of publication, referred to in Article R. 612-39, of the utility certificate application referred to in Article L. 611-2, and up to the date of issue of the certificate, any person may submit to the National Institute of Industrial Property observations on the patentability of the invention in the manner set out with regard to patent applications in Article R. 612-63, second paragraph.

The content of such observations shall be notified without delay to the applicant who shall have a period of three months to reply thereto.

Article R616-2

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The search report that is required in any proceedings for infringement instituted with respect to a utility certificate application or a utility certificate shall be drawn up at the written request of the applicant.

The request shall be admissible only if accompanied by proof of payment of the prescribed fee.

Article R616-3

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Chapters I, II, III, V, VI and VIII of this Title shall apply to utility certificate applications and to utility certificates, with the exception of Articles R. 612-53 to R. 612-69, of the third paragraph of Article R. 612-71, of Articles R. 613-1 to R. 613-3 and R. 613-60 to R. 613-62.

CHAPTER VII
Supplementary Protection Certificates — Articles R617-1 to R617-2

Article R617-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The filing fee for a supplementary protection certificate shall not cover the first annual fee. The payment of annual fees shall become due on the last day of the month of the anniversary date of the filing of the application for the basic patent. Overall payment of all annual fees may be accepted if made within the year preceding the entry into effect of the certificate.

Article R617-2

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Articles R. 611-18 to R. 611-20, R. 612-1, R. 612-2, R. 612-5(1), R. 612-6, R. 612-7, R. 612-36, R. 612-38, R. 612-52, R. 612-71 (first and second paragraphs), R. 612-72, R. 613-1 to R. 613-3, R. 613-45 to R. 613-59 and R. 618-1 to R. 618-3 shall apply to applications for supplementary protection certificates and to supplementary protection certificates.

CHAPTER VIII
Common Provisions — Articles R618-1 to R618-5

Article R618-1
(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 59, Official Journal of 3 March 2004)

Any notification shall be deemed regular if it is made:

Either to the last owner of the patent application declared to the National Institute of Industrial Property or, after the publication provided for under Article R. 612-39, to the last owner of the patent application or of the patent registered with the National Register of Patents;

Or to the representative.

If the holder is not domiciled in a Member State of the European Community or in a State party to the Agreement on the European Economic Area, the notification will be deemed regular if it is made to the last representative that he has appointed before the National Institute of Industrial Property.

Article R618-2
(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 60, Official Journal of 3 March 2004)

The notifications provided for in Article L. 613-22 and Articles R. 612-8, R. 612-9, R. 612-11, R. 612-46 to R. 612-49, R. 612-56, R. 612-73, R. 613-52 and R. 613-58 shall be made by registered letter with advice of delivery.

The registered mail may be replaced by delivery by hand of addressee against receipt, in the premises of the National Institute of Industrial Property, or by a message in electronic form in the manner laid down by the Director General of the National Institute of Industrial Property to guarantee, in particular, the safety of mailing.

If the address of the recipient is unknown, the notification will be made by publication of a notice in the Official Bulletin of Industrial Property.

Article R618-3
(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 61, Official Journal of 3 March 2004)

Where a time limit is expressed in days, the day of the deed, of the event, of the decision or of the notification which makes it run will not count.

Where a time limit is expressed in months or years, it will expire on the day of the last month or of the last year which carries the same date of the month as the date of the deed, of the event, of the decision or of the notification which makes the time limit run. In the absence of identical date of the month, the time limit shall expire on the last day of the month.

Where a time limit is expressed in months and days, the months will first be deducted, then the days.

Any time limit shall expire the last day at mid night.

The time limit which would expire normally on Saturday, on Sunday or on a public holiday or on a non-working day shall be extended until the first next working day.

The time limit which would expire normally on a day where one of the regional delegations of the National Institute of Industrial Property is not open shall be extended until the first day when all the regional delegations of the institute will be open.

The list of the days mentioned in the preceding paragraph shall be drawn up annually by a decision of the Director General of the National Institute of Industrial Property. It shall be published in the Official Bulletin of Industrial Property.

Article R618-4
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The time limits afforded by the National Institute of Industrial Property under this Title shall be neither less than two months nor more than four months.

Article R618-5
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The implementing provisions for Articles R. 612-1 to R. 612-25 and R. 613-53 to R. 613-59 shall be laid down by an order of the Minister responsible for industrial property.

TITLE II
Protection of Technical Knowledge Articles R622-1 to R624-7

CHAPTER II
Semiconductor Products Articles R622-1 to R622-8

Article R622-1
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The deposit of topographies of semiconductor products referred to in Articles L. 622-1 to L. 622-7 shall be made

with the National Institute of Industrial Property.

Article R622-2
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A deposit may concern one topography only.

It shall contain:

1°. A declaration of deposit containing information adequate to identify the depositor, the topography and the date and place of first exploitation or, failing that, the date on which it was fixed or encoded for the first time;

2°. A graphical representation of the topography, inserted in an envelope, in which those parts that the depositor does not wish to have communicated to third parties have been masked; the representation may be accompanied by a data medium and specimens of a product incorporating the topography;

3°. Proof of payment of the fee.

The form of the deposit declaration and the physical specifications to be met by the representation of the topography and the envelope in which it is inserted shall be laid down by decision of the Director General of the National Institute of Industrial Property.

Article R622-3
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The date of deposit to be accorded to the depositor shall be the date on which the elements referred to in the preceding Article have been submitted. He shall also enjoy that date if the elements are irregular as to form, on condition that their regularization does not imply any change in the representation of the deposited topography.

In the event of non-compliance of the deposit or of physical irregularity, notification shall be made to the depositor to regularize the deposit within a time limit afforded him by the Director General of the National Institute of Industrial Property and which may not be less than two months or more than four months. Failing regularization, the deposit shall be refused.

Once the deposit has been recognized as in compliance it shall be registered. The registration shall be notified to the depositor and mentioned in the Official Bulletin of Industrial Property.

Article R622-4
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any person may inspect the deposit files at the headquarters of the National Institute of Industrial Property. No copy of a file may be made without the authorization of the holder.

Article R622-5
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The deposit may not be invoked against third parties if the wording of the declaration supplemented by the representation accessible to the public does not enable the protected topography to be identified.

Article R622-6
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Articles R. 411-19 to R. 411-26, R. 612-1 (second paragraph), R. 612-2, R. 612-38, R. 613-45, R. 613-53 to R. 613-59 and R. 618-1 to R. 618-3 shall apply to the conditions for accepting deposits, for transmitting or modifying the rights deriving therefrom, for issuing the notifications of the National Institute of Industrial Property and for settling disputes.

For the application of Articles R. 613-53 to R. 613-59, the national register referred to in those Articles shall comprise a section known as the National Register of Deposits of Topographies of Semiconductor Products. The first entry referred to in Article R. 613-53 shall concern the contents of the deposited declaration, supplemented by the dates and references of the deposit and its registration.

Article R622-7
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

During the two months preceding expiry of the term of protection, the holder of the deposit may request a return of the elements or their conservation for an additional, renewable period of ten years.

The request for conservation shall be admitted only if accompanied by payment of the prescribed fee.

Failing a request for return or conservation, the elements of the deposit may be destroyed.

Article R622-8
(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The determination of reciprocity required for the application of Article L. 622-2 shall be given by a joint order of the Minister responsible for foreign affairs and the Minister responsible for industrial property.

CHAPTER III
New Plant Varieties — Articles R623-1 to R623-58

SECTION I
The issue and renewal of new plant variety certificates — Articles R623-1 to R623-54

Article R623-1

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April 1995)

The application for a new plant variety certificate shall be filed with the Secretariat General of the Committee for the Protection of New Plant Varieties. The filing of the application may also be made by registered mail with a request for notification of receipt.

Article R623-2

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The filing may be made by the applicant or by an agent having his domicile, registered office or establishment in France.

Article R623-3

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Natural or legal persons not having their domicile, registered office or establishment in France and who apply for new plant variety certificates in accordance with Article L. 623-6 shall, within two months of the receipt of the notification addressed to them to that effect, appoint an agent having his domicile, registered office or establishment in France.

Unless otherwise provided, the power of attorney of the agent appointed in accordance with the conditions shown in Article R. 623-2 and in the preceding paragraph shall cover all acts and the receipt of all the notifications provided for in this Section, with the exception of the withdrawal of the application or the surrender of the certificate.

Such power of attorney shall not require authentication.

Article R623-4

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The application for a new plant variety certificate shall include, in particular:

- a description of the manner in which the variety was bred or discovered;
- a full description of the variety, specifying the characteristics which, in the applicant's opinion, enable it to be distinguished from the varieties already known. For varieties whose commercial production requires the repeated use of another variety, the characteristics of that other variety shall also be described;
- the denomination proposed by the breeder;
- the names, where appropriate, of the States in which applications for protection have been filed, and an authorization for the Committee to exchange with the competent authorities of any State, whether or not a member of the International Union for the Protection of New Varieties of Plants, all items of information on the results of past or current examinations of the variety concerned;

The application may be accompanied by drawings or photographs and by any information which may assist the Committee for the Protection of New Plant Varieties concerning, in particular, official or private trial cultures carried out in France or abroad.

Article R623-5

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The applicant shall submit the following with the application for a new plant variety certificate:

1°. A declaration stating:

- that the variety for which protection is sought is, to his knowledge, a new plant variety within the meaning of Article L. 623-1;
- that it has not been offered for sale or marketed in France with the agreement of the breeder or his successor or successors in title;
- that it has not been offered for sale or marketed in France with the agreement of the breeder on the territory of any other State for longer than six years in the case of grape vine, forest trees, fruit trees and ornamental trees, including in each case their rootstocks, or for longer than four years in the case of other genera or species;

2°. Where appropriate, if the application relates to a variety whose commercial production requires the repeated use of a protected variety, the written authorization of the owner of the new plant variety certificate to use that protected variety;

3°. An undertaking to provides at the request of the Committee and within the period laid down, subject to rejection of the application, such reproductive or propagating material of the variety as may allow that variety to be examined, including, where applicable, the various hereditary components necessary for the reproduction of the variety;

4°. Where relevant, the power of attorney of the agent;

5°. Proof of payment of the fees due at the time of filing the application.

Article R623-6

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Subject to the provisions laid down in Article R. 623-7 below, to be registrable, the denomination must enable the variety to be identified and distinguished from any other variety, and shall not give rise to any risk of confusion with another variety of the same or a closely related botanical species, in France or in States party to the Paris Convention of 2 December, 1961, for the Protection of New Varieties of Plants. The denomination shall not be liable to mislead or cause confusion as to the origin, source, characteristics or value of the variety, or to the identity of the breeder. It shall not be contrary to public policy or morality.

Where the denomination has been filed as a trademark, within the meaning of the law on Trademarks and Service Marks arising from the provisions of Book VII of this Code, by the breeder or his successor or successors in title in

France or in a State party to the Convention mentioned above, in respect of identical or similar goods, or where the denomination is likely to cause confusion with another mark used by him, the breeder shall make a written undertaking, on behalf of himself and, where appropriate, of all his successors in title, to finally renounce, with effect from the day of issue of the new plant variety certificate, all rights to use the said mark in France and in the States of the Union in which his variety may be protected by legislation enacted in accordance with the Convention mentioned above.

Trademarks filed in application of Book VII of this Code, shall be understood as including the trademarks internationally registered and extended to France under the Madrid Agreement of 14 April, 1891, concerning the International Registration of Trademarks, which enjoy protection within the territories to which the law relative to the protection of plant varieties applies.

Renunciation under this Article shall not affect the validity of the trademark filing itself.

Article R623-7

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Where a variety has already been the subject of an application for protection in another State of the International Union for the Protection of New Varieties of Plants and is a denomination has been accepted by that State, it shall be mandatory to use that denomination in France for designating the variety in question, unless it has been the subject of observations found to be justified under the conditions provided for in Articles R. 623-17 to R. 63-26 or the Committee for the Protection of New Plant Varieties has found it to be unsuitable in the territories to which this law applies or the denomination does not meet the requirements of the first paragraph of Article R.623-6.

Article R623-8

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The application for a new plant variety certificate may include, under the conditions provided for in Article L.623-6, a priority claim based on a prior filing in one of the States of the International Union for the Protection of New Varieties of Plants. Such claim shall be submitted in writing at the same time as the documents referred to in Article R. 623-5. It shall specify the date and references of the prior filing, the denomination under which the variety was registered or, failing this, the provisional breeder's reference, the country in which the filing was made and the name of the owner of the rights deriving from the filing. It shall be accompanied by proof of payment of the prescribed fee.

Article R623-9

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Enjoyment of the right of priority shall be granted only if:

1°. Within three months from the date of filing the application, the applicant provides the Secretariat General of the Committee with copies of the documents constituting the prior filing in any other country of the Union, certified to be true copies by the office having received such filing and accompanied by a translation;

2°. Within four years from the same date, the applicant furnishes the complementary documentation and, where applicable, the reproductive or vegetative propagating material necessary for the preliminary examination.

Article R623-10

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The documents to be submitted in accordance with Articles R. 623-4 to R. 623-6 above and Articles R. 623-15, R. 623-17 and R. 623-36 below shall be drawn up in French.

The Committee may require any other document communicated to it to be drawn up in French or accompanied by a translation.

Article R623-11

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The filing date of an application for a certificate shall be secured if at least the documents specified in Article R. 623-5 are produced at the time of such filing, even if they contain formal defects.

If the filing does not include the aforementioned documents, the application shall be declared inadmissible and returned to the applicant; any fees paid shall be refunded.

If the filing contains formal defects, they shall be remedied within two months of the notification to the applicant, failing which the application shall be rejected and returned to the applicant.

Article R623-12

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Notwithstanding the provisions of Article R.623-4 above, a provisional reference may be given in place of a denomination to designate the variety being the subject matter of the application at the time of the filing of the application. In such case, the denomination must be proposed, subject to inadmissibility of the application, within two months of the notification addressed by the Committee to the owner of the application.

Article R623-13

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

A copy of the application for a new plant variety certificate, bearing a stamp giving the day and time of filing and a registration number, shall be handed to the applicant at the time of filing.

Where the filing is made by mail, the applicant's copy of the application may be sent to him by the same means. The date and time of filing shall in that case be the date and time of receipt by the Secretariat General of the Committee for the Protection of New Plant Varieties, of the envelope containing the application; if payment of the fees due at the time

of filing is not made until later, the date of filing of the application by mail shall be the date of such payment and the time of filing shall be the closing time, on that day, of the offices of the Secretariat General of the Committee. The application shall be declared inadmissible if payment is not made within two months of the receipt of the application by the Secretariat General of the Committee for the Protection of New Plant Varieties.

Article R623-14

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The application shall be entered in the Register of Applications for New Plant Variety Certificates provided for in Article R. 623-38 below, in the order of its filing and under the number communicated to the applicant.

This number shall appear on all notifications provided for under this Section until such time as the new plant variety certificate is issued.

Article R623-15

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Until the new plant variety certificate is issued, the applicant may request correction of substantive errors discovered in the documents submitted.

Such request shall be presented in writing and shall contain the text of the amendments proposed by the applicant. It shall be entered in the Register of Applications for New Plant Variety Certificates and shall not be admissible unless it is accompanied by proof of payment of the prescribed fee.

Article R623-16

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Subject to the provisions of Article R. 623-44, any application for a new plant variety certificate filed in due form shall be announced in an official bulletin to be published by the Committee for the Protection of New Plant Varieties.

The purpose of this publication shall be, in particular, to bring the application for a new plant variety certificate to the notice of any person having an interest therein.

The publication shall specify the date of filing, the name and address of the applicant, and that of the breeder when he is not the applicant, the denomination proposed or, failing this, the breeder's reference, the genus or species to which the variety belongs and a summary of the latter's characteristics.

As from the day of publication in accordance with the preceding paragraphs, any person may take cognizance of the application as entered in the Register of Applications for New Plant Variety Certificates.

Article R623-17

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Within two months of the date of the publication on accordance with the preceding Article, any person having an interest therein may submit observations to the Committee for the Protection of New Plant Varieties.

Article R623-18

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Disputes relating to the validity of the breeder's right to the variety for which a new plant variety certificate is sought shall be brought directly before the tribunaux de grande instance or, in overseas territories, before the courts of the first instance.

Such disputes shall be entered in the Register.

Article R623-19

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Where the variety denomination proposed by the breeder or his successor in title did not appear in the initial application, or where the breeder proposes a new denomination at the request of the Committee, such denomination shall be published in the Official Bulletin of the Committee for the Protection of New Plant Varieties.

Article R623-20

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Observations submitted shall be notified by the Committee for the Protection of New Plant Varieties to the owner of the application. The Committee shall fix the time by which the applicant must reply.

Article R623-21

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Where a filing has been duly made in accordance with the above requirements, the Committee shall examine the application for a new plant variety certificate, and any observations relating thereto.

The Committee shall fix its own examination procedure.

Pursuant to the provisions of Article L. 623-12, the Committee may decide not to make a preliminary examination of the variety if French or foreign documents in its possession show that such an examination has already been made and the information contained in those documents appears sufficient for it to be able to take a decision.

Where the Committee decides to order an examination of the variety, it shall lay down its duration and its details. Examination shall relate to novelty, homogeneity and stability, excluding any evaluation of the variety's value for cultivation; it shall be made only upon proof of payment of the fee due.

Article R623-22

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Where a proposed denomination is found by the Committee to be at variance with Articles R. 623-6 and R. 623-7 and with the orders issued for the implementation of this Section, or is the subject of observations found to be relevant by the Committee, the breeder shall be invited to submit another denomination within two months of the notification to this effect. The new denomination shall undergo the same process of examination and publication. If the breeder does not propose a new denomination within the prescribed period, the application for a certificate shall be declared inadmissible. Fees already paid shall not be refunded.

Article R623-23

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The examination shall be suspended at the written request of any person who provides proof that he has brought before the tribunal de grande instance or, in overseas territories, before the court of first instance, an action claiming title to the application for a new plant variety certificate. Trials decided upon by the Committee may, however, be carried out.

The examination shall be resumed as soon as the court has rendered a final decision. It may also be resumed at any time, with the written consent of the person who has brought the action. Such consent shall be irrevocable. During this period, the owner of the application may not withdraw it without the consent of the person who has brought the action. Furthermore, the latter shall be called upon to take part in the examination procedure on the same footing as the owner of the application.

Article R623-24

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

When the various examination measures decided by the Committee have been carried out, a summary report on the results of the examination shall be communicated to the owner of the application; the latter shall have two months in which to submit his observations. He may, during this period, inspect the whole examination file at the Secretariat General of the Committee.

Any person who has submitted observations under the conditions prescribed by this Section and by such orders of the Minister of Agriculture as may be issued for its implementation shall be informed of the conclusions of the report on his observations. He may submit further observations during the same period as stated above.

Article R623-25

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

On expiry of the period laid down in the preceding Article, the Committee shall take a decision on the application. It may decide either to issue the new plant variety certificate, or to reject the application, or to have an additional examination carried out under conditions and within periods which it shall itself fix.

The Committee shall give reasons for its decision. The decision shall be notified to the applicant and, where appropriate, to any persons who have submitted observations.

Article R623-26

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The new plant variety certificate shall be issued by the Committee for the Protection of New Plant Varieties. It shall be made out in the name of the owner of the application for a new plant variety certificate. If the owner of the application is not the breeder, the latter's name shall be mentioned on the new plant variety certificate.

The certificates shall in particular specify, in addition to the denomination of the variety and its botanical description, the date of filing the application, the date of issue of the certificate, the various publicity measures and details concerning the priorities where there are claimed thereto.

Where, pursuant to the provisions of Articles R. 623-4, R. 623-7 and R. 623-22 above, the variety is designated by one or more other denominations in the various States of the International Union for the Protection of New Varieties of Plants, those other denominations shall be mentioned, for information purposes, on the new plant variety certificate.

Article R623-27

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The certificate shall be entered in the National Register of New Plant Variety Certificates in accordance with Article R. 623-40 below.

Article R623-28

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The issue of the new plant variety certificate shall be published in the Official Bulletin of the Committee for the Protection of New Plant Varieties within three months from the date of notification of issue to the owner of the new plant variety certificate.

Article R623-29

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

As from the day of publication in the Official Bulletin, any person may take cognizance of the new plant variety certificate as entered in the Register of New Plant Variety Certificates, at the headquarters of the Committee. Such person may obtain, at his expense, extracts from the Register. He may also take cognizance of the documents in the file relating to the application and the examination procedure, or obtain copies thereof at his expense, and generally receive all information on the variety concerned, subject to any special measures which may be decided by the Committee for the Protection of New Plant Varieties to protect the rights of the breeder in varieties whose commercial production requires the repeated use of one or more other varieties.

Article R623-30

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The Committee for the Protection of New Plant Varieties shall not be obliged to retain applications for new plant variety certificates beyond a period of ten years after the expiration of the rights deriving from the corresponding certificates.

Article R623-31

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The annual fee referred to in Article L. 623-16 (2nd paragraph) shall fall due for the first time on the date of issue of the new plant variety certificate. It shall be paid within two months of the notification to the owner of the new plant variety certificate from the Committee for the Protection of New Plant Varieties.

In subsequent years, the fee shall fall due on the last day of the same month as that in which the new plant variety certificate was issued.

As from the second year, if payment of the annual fee is not made on the due date as defined above, it may still be validly made within a further period of six months, subject to payment of a surcharge.

Article R623-32

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

If the payment of an annual fee is not made on the normal due date, a reminder shall be sent to the owner of the new plant variety certificate, informing him that he will risk the forfeiture of his rights if such payment, together with the surcharge for late payment, is not made before expiration of the period provided for in the third paragraph of Article R. 623-31 above. Failure to send a reminder or any error which such reminder might contain shall not give ground for reinstatement of the rights of the owner of the new plant certificate.

Article R623-33

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

If the payment of an annual fee, together with the surcharge for late payment, where appropriate, is not made within the periods specified above, the Committee for the Protection of New Plant Varieties shall declare the breeder's rights to be forfeited.

Such forfeiture shall be entered in the National Register of New Plant Variety Certificates and published in the Official Bulletin of the Committee for the Protection of New Plant Varieties. The grounds for the decision shall be stated and the forfeiture shall be notified to the person who is the owner of the new plant variety certificate at the time of the entry in the National Register of New Plant Certificates. The person concerned shall be informed that he has six months from the expiration of the last period in which to appeal to the Committee for reinstatement of his rights under the conditions provided for in Article L. 623-23.

To be valid, the appeal must be accompanied by proof of payment of the annual fee and of a fee for the entry of the appeal in the National Register of New Plant Variety Certificates.

Article R623-34

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The Committee for the Protection of New Plant Varieties shall take a decision within two months. Where the appeal is dismissed, the amount of the last annual fee shall be refunded.

The Committee's decision shall be notified to the owner of the new plant variety certificate; it shall be entered in the National Register of New Plant Variety Certificates and published in the Official Bulletin of the Committee for the Protection of New Plant Varieties.

Article R623-35

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

If the owner of the new plant variety certificate has lodged an appeal before the Court of Appeal of Paris against the decision taken by the Committee under Article L. 623-23, this fact shall be entered ex officio in the National Register of Plant Variety Certificates and the effects of forfeiture shall be suspended until the decision of the Court has become final.

The decision of the Court of Appeal of Paris shall be entered in the National Register of New Plant Variety Certificates. It shall be accompanied, where applicable, by mention of the fact that the owner of the New Plant Certificate has lodged an appeal with the Cour de Cassation. In the latter case, the decision of the Cour de Cassation shall be entered in the Register under the same conditions.

Article R623-36

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

A new plant variety certificate may be surrendered in writing. Such surrender shall be made to the Committee by the certificate owner or by an agent invested with special powers. If the certificate belongs to several persons, it may only be surrendered at the request of all the joint owners.

Where real property rights, deriving from a pledge or license, have been entered in the National Register of New Plant Variety Certificates, the surrender shall be admissible only if it is accompanied by the consent of the owners of such rights.

The surrender shall be recorded after payment of a fee for cancellation from the National Register of New Plant Variety Certificates. It shall be effective as from the date of such recording.

Article R623-37

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The breeder who is liable to forfeiture of his rights under (1) and (2) of the first paragraph of Article L. 623-23 shall be formally requested to put an end to the situation in a notification addressed to him by the Committee for the Protection of New Plant Varieties. If, on expiration of a period of two months from receipt of the notification, the formal request has not been complied with, the Committee shall declare the breeder's rights to be forfeited

The decision of the Committee shall be notified to the owner of the new plant variety certificate. It shall be entered in the National Register of New Plant Variety Certificates and published in the Official Bulletin of the Committee for the Protection of New Plant Varieties.

Article R623-38

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The Committee for the Protection of New Plant Varieties shall keep a Register of Applications for New Plant Variety Certificates and a National Register of New Plant Variety Certificates.

Article R623-39

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Applications for new plant variety certificates shall be entered in chronological order in the Register of Applications as soon as such applications have been filed.

The entry relating to each application shall, in particular, comprise:

- the provisional registration number;
- the date filed;
- the genus or species to which the variety belongs;
- the name and address of the breeder and, where applicable, of his agent or successor in title where the breeder is not the applicant;
- the denomination proposed or, failing this, the breeder's reference, and, where applicable, the denomination used to designate the variety in other States of the Union;
- the claim to priority, where made;

mention of the observations referred to in Articles R. 623-17 to R. 623-26 above;

- the date of issue of the new plant variety certificate, with the number of the entry in the National Register of New Plant Variety Certificates or mention of a final decision of rejection.

The description of the variety made by the applicant and that of the breeding process shall appear in an annex to the Register, subject to the provisions of Article R. 623-44 below.

Article R623-40

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

New plant variety certificates shall be entered in the National Register of New Plant Variety Certificates in the order of their issue.

The entry shall comprise:

- the serial number under which the certificate was issued;
- the genus or species to which the variety belongs;
- the denomination and where applicable, any other denomination already used to designate the variety in other States of the Union:
- a botanical description;
- the name and address of the owner of the new plant variety certificate and the name and address of the breeder if he is not the owner of the new plant variety certificate;
- where relevant, the claim to priority;
- the dates on which protection begins and expires and, where applicable, premature surrender or the decision declaring forfeiture of the owner's rights;

The entry shall be supplemented, where applicable, by mention of any judicial decisions as to ownership of the rights.

The entry shall be further supplemented by mention of any instruments concerning the transfer of ownership of the breeder's rights, the assignment or the grant of a right of exploitation, any ex officio license and any other instrument for the transfer or modification of the rights deriving from a new plant variety certificate. These additional entries shall be made subject to payment of fees.

Article R623-41

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The supplementary entries relating to judicial decisions shall be made at the request of the Registrar of the court which rendered the decision, and other entries at the request of any interested party, on presentation of one of the originals of the instrument if it is a private agreement, or of a copy if it is authentic, or of a document evidencing the transfer in the case of transfer on death.

Article R623-42

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Any person shall be issued, on request and against payment of the prescribed fee, with copies of supplementary entries in the National Register of New Plant Variety Certificates, or with certificates stating that no entries exist.

Article R623-43

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Specially authorized agents of the Minister responsible for National Defence, whose names and capacities shall have been brought to the knowledge of the Minister of Agriculture by the Minister responsible for National Defence, shall take cognizance of the applications filed for new plant variety certificates at the headquarters of the Committee for the Protection of New Plant Varieties.

The applications shall be presented to the agents within fifteen days from the date of their receipt by the Committee for the Protection of New Plant Varieties.

When so requested by the agents of the Minister responsible for National Defence, the Committee for the Protection of New Plant Varieties shall, if it has not already done so, invite the breeder or his successor in title to provide in as short a time as is compatible with the mode of reproduction or vegetative propagation of the variety, the material referred to in Article R. 623-5 (3) above and communicate it on receipt to the agents of the Minister responsible for National Defence.

Article R623-44

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

With respect to applications for new plant variety certificates relating to varieties belonging to the species included in the list fixed by order issued under Article L. 623-9, the procedures provided for under Articles R. 623-16 to R. 623-30 may not, except where special authorization under Article L. 623-9 has been given, be initiated during the period in which the prohibitions specified in the aforementioned Article are in force. Neither may they be initiated during the period for which the prohibitions have been extended under Article L. 623-10.

During the period of those prohibitions, the annexing to the Register of Applications for New Plant Variety Certificates, provided for by Article R. 623-39 above, of the description of the variety made by the applicant and of the breeding process shall also be suspended.

Article R623-45

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The request for authorization to disclose and freely use a new plant variety belonging to one of the species referred to in the preceding Article before the end of the period laid down in Article L. 623-9, shall be submitted to the Committee for the Protection of New Plant Varieties; it may be submitted as soon as the application for a certificate has been filed. Authorization shall be notified to the applicant by the Minister of Agriculture after consulting with the Minister responsible for National Defence.

In the absence of such authorization, a request for special authorization to perform specific acts of exploitation may, at any time, be submitted directly by the owner of the application for a certificate to the Minister responsible for National Defence. If he grants the authorization requested, the latter shall specify the conditions to which such acts shall be subject.

Where the special authorization concerns the assignment of the application for a certificate or the granting of an exploitation license, the Minister responsible for National Defence shall send a copy of his decision to the Minister of Agriculture.

Article R623-46

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The demand sent to the Minister of Agriculture by the Minister responsible for National Defence for the extension of the prohibitions on disclosure and free use of a new plant variety which is the subject matter of an application for a certificate, must reach the Committee for the Protection of New Plant Varieties not later than fifteen days before the end of the five-month period provided for in Article L. 623-9.

Any demand for the renewal of an extension must arrive under the same conditions not later than fifteen days before the end of the current period of one year.

The extension of the prohibitions on disclosure and free use shall be declared by order of the Minister of Agriculture and notified to the applicant before the end of the current period of prohibition.

Special authorizations to carry out specific acts of exploitation may be granted under the conditions laid down in the second and third paragraphs of Article R. 623-45.

The Minister responsible for National Defence may at any time inform the Minister of Agriculture of the lifting of prohibitions extended under Article L. 623-10. This measure shall be the subject of an order of the Minister of Agriculture, which shall be notified to the owner of the application for a certificate.

Article R623-47

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The provisions of Articles R. 612-29, R. 612-30, R. 612-32 and R. 613-42 shall apply to requests submitted and proceedings instituted under Articles L. 623-10 and L. 623-11.

Article R623-48

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The notifications provided for in this section and in Article L. 623-18 shall be made by registered letter with a request for notice of receipt.

Article R623-49

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Any notification shall be deemed to be in order if it is served on the last owner of the application for a new plant

variety certificate, or of the new plant variety certificate, as appearing in the Register of Applications for New Plant Variety Certificates or in the National Register of New Plant Variety Certificates.

If the owner is domiciled abroad, notification shall be made to the last agent at the last address for service communicated to the Committee for the Protection of New Plant Varieties.

Article R623-50

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

All periods prescribed by this section shall be in whole days. Neither the day of the act or decision which causes the period to run nor the last day shall be counted.

Any period which normally would expire on a Saturday, Sunday or public holiday shall be extended to the next working day.

Article R623-51

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The detailed description, with or without effective seizure, of the plants, parts of plants, or any elements of reproduction or vegetative propagation of the variety alleged to constitute infringement, as provided for in Article L. 623-27, shall be ordered by the president of the district court or, in overseas territories, of the court of the first instance within whose jurisdiction the operations are to be carried out.

The order shall be issued on request and on presentation of either the new plant variety certificate or, in the case provided for in Article L. 623-26, of a certified copy of the application for a new plant variety certificate.

If the request is made by the holder of an exclusive right of exploitation or of an ex officio license under Articles L. 623-17 and L. 623-20, the applicant must provide proof of inaction on the part of the owner of the new plant variety certificate after a summons to take action.

Article R623-52

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Where effective seizure of goods is ordered, the judge may require security to be deposited by the claimant before the seizure is effected. Under the pain of invalidity and of damages against the bailiff, the latter must, before effecting seizure, serve a copy of the order and, where applicable, of the document certifying the deposit of security on the persons having plants, parts of plants or elements of reproduction or vegetative propagation of the respective variety in their possession. A copy of the report on the seizure shall also be given to such persons.

Article R623-53

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

The period referred to in the second paragraph of Article L. 623-27 for petitioning the court shall be fifteen days from the date of seizure or description.

Article R623-54

(inserted by Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)

Orders issued by the Minister of Agriculture after consulting the Committee for the Protection of New Plant Varieties shall determine as and when necessary the conditions for the application of this Section.

SECTION II

Scope of application of new plant variety certificates, duration and scope of the Breeder's Right — Articles R623-55 to R623-58

Article R623-55

(Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)
(Decree No. 95-1407 of 28 December 1995, Art. 1, Official Journal of 4 January, 1996)

1. New plant variety certificates may be issued, under the conditions provided for by Articles L. 623-1 to L. 623-35 and Articles R. 623-1 to R. 623-54, for any variety belonging to a species of the plant kingdom.

Any foreigner who is a national of a State party to the International Convention for the Protection of New Varieties of Plants of 2 December, 1961, amended by the supplementary Act of 10 November, 1972, or who has his domicile, registered office or establishment in one of those States may obtain a new plant certificate for varieties belonging to the genera or species subject to the same protection by that State and mentioned in the list appended to that Convention or in a supplementary list drawn up for the implementation of the provisions of that Convention.

Any foreigner who is a national of a State party to the International Convention for the Protection of New Varieties of Plants as defined in the revised text of 23 October, 1978, or who has his domicile, registered office or establishment in one of those States may obtain a new plant certificate under the same conditions as French nationals.

2. Foreigners who are not nationals of one of the States referred to under (1) above or who do not have their domicile, registered office or establishment therein may obtain new plant variety certificates provided that French nationals are accorded reciprocal protection by the State of which the foreigner is a national or in which he has his domicile, registered office or establishment.

Orders of the Minister of Foreign Affairs and of the Minister of Agriculture issued on the proposal of the Committee for the Protection of New Plant Varieties, shall fix the list of States whose legislation satisfies the condition of reciprocity. Such orders may include a restrictive list of the plant species for which the condition of reciprocity is satisfied.

Article R623-56

(Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)
(Decree No. 95-1407 of 28 December, 1995, Art. 1, Official Journal of 4 January, 1996)

The term of protection shall be twenty years.

For forest, fruit or ornamental trees, for vine and also for perennial forage gramina and legumes, potatoes and inbred lines used for the production of hybrid varieties, the term of protection shall be fixed at twenty-five years.

Article R623-57

(Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)
(Decree No. 95-1407 of 28 December, 1995, Art. 1, Official Journal of 4 January, 1996)

The breeder's right shall relate to all the elements of reproduction or vegetative propagation of the variety considered as well as to the whole plant or part of the plant of that variety.

Article R623-58

(Decree No. 95-385 of 10 April, 1995, Official Journal of 13 April, 1995)
(Decree No. 95-1407 of 28 December, 1995, Art. 1, Official Journal of 4 January, 1996)

Any person who desires at the time of any act of assignment, concession or commercialization of the varieties referred to in the foregoing Articles, to avail himself of the possibility offered under Article L. 623-15 of adding a trademark to the variety denomination, whether he is the owner of the mark or other lawful user thereof, shall take the necessary precautions, especially in correspondence, in advertisements, in the preparation of trade catalogues, and on packaging or labels, to ensure that this denomination is sufficiently visible in its context so as to prevent any likelihood of confusion in the mind of the purchaser as to the variety's identity.

CHAPTER IV
International Transfer of Technology

Articles R624-1 to R624-7

Article R624-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any contract or rider to a contract for the purpose of the acquisition by a natural or legal person having his place of residence or of business in France from a natural or physical person having his place of residence or business abroad of industrial property rights and of any intellectual element comprised in a scientific or technical act of any nature, particularly know-how or engineering, shall be subject to declaration with the National Institute of Industrial Property.

Any contract or rider to a contract having for its purpose the transfer by a natural or legal person having his place of residence or business in France to a natural or legal person having his place of residence or business abroad of industrial property rights and of all intellectual elements comprised in scientific or technical assistance of any nature, particularly know-how and engineering, shall be subject to declaration with the National Institute of Industrial Property.

Article R624-2

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

It shall be obligatory for the declaration referred to in Article R. 624-1 to be made by the contractor whose place of residence or of business is located in France one month at the latest after conclusion of the contract.

Article R624-3

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

For each of the contracts referred to in Article R. 624-1 and for each of those concluded before 1 June 1970 and having the subject matter referred to in Article R. 624-1, the contractor whose place of residence or of business is located in France shall obligatorily draw up at the beginning of each year:

— a statement of the amounts of the financial transfers sent abroad or received from abroad during the preceding year in implementation of the contract;

— and a statement of the amounts of the contributions or exchanges relating to rights or know-how effected as compensation and comprising no financial transfer by banking (or postal) means abroad or from abroad, the amounts being, where appropriate, assessed by the declarer.

Article R624-4

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The annual statements referred to in Article R. 624-3 shall be addressed by the contractor whose place of residence or business is located in France to the National Institute of Industrial Property before 31 March of each year.

Article R624-5

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The information and documents furnished to the administration pursuant to this Chapter shall be confidential with regard to third parties.

Article R624-6

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

For the application of this Chapter, the natural or legal persons whose place of residence or of business is located in the French overseas territories or in the Principality of Monaco shall be assimilated to natural or legal persons whose place of residence or business is located in France.

Article R624-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

A joint order of the Minister for Economy and Finance and the Minister responsible for industrial property shall lay down the implementing instructions under this Chapter.

TITLE III
Courts Competent to Hear Proceedings Relating to Inventions and Technical Knowledge — Articles R631-1 to R631-2

SOLE CHAPTER — Articles R631-1 to R631-2

Article R631-1

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2005-1756 of 30 December 2005, Article 19, Official Journal of 31 December 2005, in force on January 1 2006)

As it is provided for in Article R. 312-2 of the Court Organization Code, the seat and the district of Tribunaux de Grande Instance (High Courts) designated to hear cases in relation to new plant varieties pursuant to Article L. 623-31 of the Intellectual Property Code shall be fixed in accordance with table IV annexed to the Court Organization Code, reproduced hereafter:

Seat and district of courts that have jurisdiction to hear cases in relation to new plant varieties;

Tribunaux de Grande Instance (High Courts) whose jurisdiction of ratione loci extending to the départementes included in the districts of Courts of appeal of:

Marseilles:
Aix: Aix-en-Provence, Bastia, Nimes.
Bordeaux:
Bordeaux: Agen, Bordeaux, Poitiers.
Strasbourg:
Colmar: Colmar, Metz.
Lille:
Douai: Amiens, Douai.
Limoges:
Limoges: Bourges, Limoges, Riom.
Lyon:
Lyon: Chambéry, Lyon, Grenoble.
Nancy:
Nancy: Besançon, Dijon, Nancy.
Paris:
Paris: Orleans, Paris, Rheims, Rouen, Versailles, Low-Ground, Extremely-of-France, Saint-Denis-de-la-Réunion, PAPEETE, Mamoudzou and Saint-Pierre-and-Miquelon.
Rennes:
Rennes: Angers, Caen, Rennes.
Toulouse:
Toulouse: Pau, Montpellier, Toulouse.

Article R631-2

(inserted by Decree No. 2005-1756 of 30 December 2005, Article 19, Official Journal of 31 December 2005, in force on January 1 2006)

As it is provided for in Article R. 312-2-1 of the Court Organization Code, the seat and the district Tribunaux de Grande Instance (High Courts) designate to hear cases in relation to patents, utility certificate, supplementary protection certificate and certificate of topographies of semiconductor products pursuant to Articles L. 611-2, L. 615-17 and L. 622-7 of the Intellectual Property Code shall be fixed in accordance with table IV sexties annexed to the Court Organization Code.

BOOK VII
Trademarks, Service Marks and Other Distinctive Signs — **Articles R712-1 to R718-4**

SOLE TITLE
Trademarks and Service Marks — Articles R712-1 to R718-4

CHAPTER II
Acquisition of Rights in Marks — Articles R712-1 to R712-28

Article R712-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Applications for registrations of marks shall be filed either with the National Institute of Industrial Property or with the registrar of the commercial courts or of the first instance courts acting in their stead within the jurisdiction of which the applicant has his establishment or place of residence. Receipt of the application shall be confirmed.

Filing may be effected by registered mail with notification of receipt addressed to the National Institute of Industrial Property or by a message by any means of tele-transmission stipulated by a decision of the Director General. In such case, the filing date shall be that of receipt at the Institute. This Article shall apply to the renewal declarations referred to in Article R. 712-24.

Article R712-2

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997, Article 6, Official Journal of 24 September 1997)
(Decree No. 2002-215 of 18 February 2002, Article 8, Official Journal of 20 February 2002)
(Decree No. 2004-199 of 27 February 2004, Article 62, Official Journal of 3 March 2004)

The filing may be done personally by the applicant or by his representative who has his residence, his head office or his premises in a Member State of the European Community or in a State party to the Agreement on the European Economic Area.

Subject to the exceptions provided for in Articles L. 422-4 and L. 422-5, the representative appointed to file the application for registration of a trade mark and any subsequent deed relating to the procedure of registration, except for the simple payment of fees and renewal declarations must be an industrial property attorney.

Persons not having their residence or their seat in a Member State of the European Community or in a State party to the Agreement on the European Economic Area must, within the time limit which is assigned to them by the National institute of Industrial Property, appoint a representative who fulfils the requirements provided for in the preceding paragraph.

Where there are several applicants, a common representative must be appointed. If this one is not one of the applicants, he must fulfil the requirements provide for in the second paragraph.

Except where he is an industrial property attorney, the representative must attach a power of attorney which extends, subject to the provisions of Articles R. 712-21 and R. 714-1 and except contrary stipulation, to all deeds excepting all the notifications referred to under this Title. The power of attorney shall be dispensed of authentication requirements.

Article R712-3

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 63, Official Journal of 3 March 2004)

The filing shall contain:

1. the application for registration of the trade mark drawn up in the manner provided for by the order referred to under Article R. 712-26 and specifying in particular:

a) the identity of the applicant:

b) the model of the mark, consisting of a graphical representation of the latter; the model may be supplemented by a short description; the latter is compulsory in the cases provided for in the order referred to above;

c) the enumeration of the goods or services to which it applies, as well as the enumeration of the corresponding classes;

d) as the case may be, a reference with respect to the claim to a priority right attached to a former filing abroad or a delivery of a guarantee certificate pursuant to Act of 13 April 1908.

2. the following annexed documents:

a) proof of payment of the prescribed fees;

b) if a representative is appointed, the power of attorney of the latter;

c) if the distinctive character of the sign filed as a trade mark was obtained by use, the proof of this use;

d) if a collective mark of certification is concerned, the regulation defining the conditions to which the use of the mark is subject;

e) if the applicant is a foreigner who neither domiciled nor established in France, and subject to International Conventions, the document showing that he has properly filed the trade mark in the country of his residence or his establishment and that this country grants a reciprocal protection to French marks.

The same filing may relate to only one mark.

Article R712-4

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The claim to a priority right, when making a deposit in France, deriving from a preceding deposit abroad shall imply the obligation to submit to the National Institute of Industrial Property within three months of the deposit in France an official copy of the prior deposit and, if appropriate, proof of the right to claim the priority.

Where this obligation is not complied with, the priority shall be deemed not to have been claimed.

Article R712-5

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

On receipt of the filing, the following shall be entered on the application for registration: the date, the place and the serial number of the filing or the national number referred to in Article R. 712-6.

A receipt for filing shall be handed to the applicant.

Where the filing is made with the registrar of the commercial court or of the first instance court acting in its stead, the filing documents and the amount of the fees shall be transmitted without delay to the National Institute of Industrial Property by the registrar.

Article R712-6

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 64, Official Journal of 3 March 2004)

As of its reception by the National Institute of Industrial Property, the filing shall be given a national file number. Where it could not be mentioned on the receipt of the deposit, this number will be notified to the applicant.

A letter or a subsequent filing of documents which does not refer to the national filing number of the application for registration, which is not signed by the applicant or his representative or which, as the case may be, is not accompanied by the proof of payment of the prescribed fee shall not be admitted.

Article R712-7

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any filing which does not comprise at least one copy of the application for registration, even where irregular in form, containing the particulars referred to in Article R. 712-3(1)(a), (b) and (c) and not accompanied by proof of payment of the filing fee shall be declared inadmissible.

Article R712-8

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Filings recognized as admissible shall be published in the Official Bulletin of Industrial Property unless it emerges that their presentation does not satisfy the technical requirements necessary for reproduction or that their publication would be such as to be prejudicial to public policy or morality.

Publication in the Official Bulletin shall be effected within six weeks following receipt of the filing at the National Institute of Industrial Property. Publication shall contain a notice of the faculty available to any concerned person to formulate observations within a period of two months and to the persons referred to in Article L. 712-4 to enter opposition to registration within that same period.

Article R712-9

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Observations formulated under Article L. 712-3 shall be communicated without delay to the applicant by the Institute or shall be dismissed without effect if it is ascertained that they have been submitted after the expiry of the prescribed period of time or that their subject matter is obviously foreign to the legislative provisions in force. The author of the observations shall be informed thereof.

Article R712-10

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Each filing shall be checked by the Institute:

1°. To ascertain that the application for registration and the documents annexed thereto comply with the requirements of the legislation and the regulations in force.

2°. That the filed sign is capable of constituting a mark pursuant to Articles L. 711-1 and L. 711-2 or may be adopted as a mark under Article L. 711-3.

Article R712-11

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 65, Official Journal of 3 March 2004)

1°. In the event of non conformance of the application to the provisions of Article R. 712-10, a reasoned notification will be sent to the applicant.

A time limit shall be given to him in order to regularize the filing or dispute the objections of the National Institute of Industrial Property. In the absence of regularization or observation leading to the removal of the objection, the application will be rejected.

The notification may be accompanied by a proposal for regularization. This proposal will be deemed accepted if the applicant does not dispute it within the time limit given to him.

2°. In the case provided for in Article R. 712-10 (2°), the notification of irregularity may not be issued more than four months after the date of reception of the application by the National Institute of Industrial Property. In the absence of observations or if the observations do not make it possible to remove the objection, a draft decision will be drawn up. It shall be notified to the applicant to whom a time limit is given to dispute eventually its merits. The draft decision, if it is not disputed, shall worth a decision.

3°. No. regularization carried out in accordance with the provisions of this Article may cause to extend the scope of the filing.

Article R712-12

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 66, Official Journal of 3 March 2004)

The reinstatement provided for in Article L. 712-10 shall be applicable to the time limits provided for under this Title, except for those mentioned in Articles R. 712-16, R. 712-24 (1), R. 717-2, R. 717-5 and R. 717-8.

The application must be brought within a two-month period as from the disappearance of the obstacle and the non-accomplished deed must be accomplished within the same time limit. It shall not be admitted after a six-month period determined in advance to be counted starting from the expiry of the not observed period.

The application shall be filed with the Director General of the National Institute of Industrial Property by the holder of the filing who must be the holder registered with the National Register of Marks if the application for registration is published or his representative.

It shall be admitted only after payment of the prescribed fee.

The application shall be made in writing. It shall state the facts and grounds relied upon.

The reasoned decision shall be notified to the applicant.

Article R712-13

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 97-863 of 17 September 1997 art. 7 Official Journal of 24 September 1997)

Opposition to the registration entered by the owner of an earlier mark or the beneficiary of an exclusive right of exploitation in accordance with Article L. 712-4 may be submitted by the person concerned acting in person or through a person who satisfies the conditions laid down in Article R. 712-2.

Article R712-14

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Opposition shall be submitted in writing in the manner stipulated by the order referred to in Article R. 712-26.

The opposition shall specify:

1°. The identity of the opponent, together with the particulars suitable to establish the existence, nature, origin and scope of his rights;

2°. The references of the application for registration against which the opposition is entered together with a statement of the goods or services concerned by the opposition;

3°. The statement of the grounds on which the opposition rests;

4°. Proof of payment of the prescribed fee;

5°. Where appropriate, except where he has the capacity of industrial property attorney, the powers of the representative, that may be addressed to the Institute within a maximum period of one month.

Article R712-15

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any opposition entered outside the time limits, submitted by a person not entitled thereto, or not in compliance with the conditions set out in Articles R. 712-13 and R. 712-14 and the order referred to in Article R. 712-26 shall be declared inadmissible.

Article R712-16

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Subject to the cases of suspension referred to in the fourth paragraph of Article L. 712-4 or closure of the procedure under Article R. 712-18, the opposition shall be examined in accordance with the following procedure:

1°. The opposition shall be notified without delay to the holder of the application for registration. The latter shall be afforded a period of time to submit counter observations and, where appropriate, appoint a representative who satisfies the conditions laid down in Article R. 712-13. The period of time afforded may not be less than two months;

2°. Failing counter observations or, where appropriate, the regular appointment of a representative within the prescribed time limit, a decision shall be taken on the opposition.

If such is not the case, a draft decision shall be drawn up on the basis of the opposition and the counter observations. The draft shall be notified to the parties and they shall be given a period of time in which to contest if necessary the well-foundedness of the proposal;

3°. If not contested, such draft shall constitute a decision.

If such is not the case, a decision shall be taken on the opposition based on the most recent observations and, if one of the parties so requests, after the parties have been permitted to submit oral observations.

The Institute shall comply with the principle of hearing the parties. Any observation submitted to it by one of the parties shall be notified to the other party.

Article R712-17

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 67, Official Journal of 3 March 2004)

The holder of the application for registration may, in his first briefs of reply, invite the opponent to produce supporting documents suitable to establish that the loss of his rights for lack of use is not incurred.

These supporting documents must establish the use of the former mark, during the five years preceding the request for evidence of use, for at least one of the goods or services on which the objection is founded or show a proper reason for non-use.

The National Institute of Industrial Property shall then give time to the opponent to produce these supporting documents.

Article R712-18

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 68, Official Journal of 3 March 2004)

The proceedings of objection will be closed:

1. where the opponent withdrew his objection, lost his right to sue or did not provide within the time limit any supporting document to establish that the loss of his rights is not incurred;

2. where the objection became No. longer justified following either an agreement between the parties or the withdrawal or the rejection of the application for registration against which the objection was brought;

3. where the effects of the former mark ceased.

Article R712-19

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The provisions of Articles R. 712-13 to R. 712-18 shall be applied progressively with regard to the International Classification of goods and services for the purposes of the registration of marks established by the Nice Agreement of 15 June 1957.

During a period of five years beginning on 28 December 1991 opposition may be entered only against those applications for registration that concern goods or services belonging to at least one of the classes designated by order of the Minister responsible for industrial property in accordance with the following table.

Table for the Progressive Application of the Opposition Procedure

APPLICATIONS FINAL DATE FOR REGISTRATION for the Concerning Goods or Services Implementation Belonging to at Least of the Procedure one of the Following Classes

2, 20, 27: December 28, 1991

6, 8, 13, 15, 17, 19, 21: July 1, 1993

4, 7, 11, 12, 14, 18, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34: July 1, 1993

1, 3, 5, 9, 10, 16, 35, 36, 37, 38, 39, 40, 41, 42: December 28, 1996

Article R712-20

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 70, Official Journal of 3 March 2004)

Until the beginning of the technical preparations with respect to the registration, the applicant may be allowed, on written petition filed with the Director of the National Institute of Industrial Property, to rectify the clerical errors noted in the documents filed.

The National Institute of Industrial Property may require evidence of the existence of the clerical error to be corrected and the meaning of the correction requested.

Article R712-21

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The application for registration may be withdrawn up to the time the technical preparation for registration has begun. Withdrawal may be limited to a part of the application. It shall be effected by means of a written declaration addressed or handed to the Institute.

A declaration of withdrawal may concern one mark only. It shall be formulated by the applicant or by his representative who, unless he has the capacity of industrial property attorney, shall be required to attach special powers.

It shall state whether or not exploitation rights have been granted or pledges have been entered into. If such is the case, it shall be accompanied by the written consent of the beneficiary of such right or of the pledgee.

If the application for registration has been formulated by more than one person, it may be withdrawn only if requested by all such persons.

Withdrawal shall not prevent the publication referred to in the first paragraph of Article R. 712-8.

Article R712-22

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The duration of the technical preparation referred to in Articles R. 712-20 and R. 712-21 shall be laid down by a decision of the Director General of the Institute.

Article R712-23

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 72, Official Journal of 3 March 2004)

The mark shall be registered, unless the application was not rejected or was withdrawn. A certificate shall be sent to the applicant.

The registration shall be published in the Official Bulletin of Industrial Property.

The date on which a mark is deemed registered, in particular for the application of Articles L. 712-4 and L. 714-5, shall be:

1. for French marks, that of the Official Bulletin of Industrial Property in which the registration is published;

2. for international marks not having been subject to a notification of irregularity based on the Article R. 712-11 (2) or to notification of objection, notification of expiry of the time limit provided for in Article R. 717-4 or, if it is posterior, notification of the expiry of the time limit to file the objection;

3. for international marks having been subject to a notification of irregularity based on Article R. 712-11 (2) or notification of objection, that, if necessary, notification of registration, in the international register of marks, of the total or partial lifting of the refusal.

Article R712-24

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 73, Official Journal of 3 March 2004)

The registration may be renewed for additional period of ten-year by the declaration of the owner of the mark, drawn up according to the conditions provided for in the order referred to in Article R. 712-26. It may be specified that the renewal shall apply only for certain goods or services stated in the registration document.

The renewal shall take effect on the day following the expiry date of the registration.

The declaration, under the penalty of inadmissibility, must:

1. be filed within a six-month period that expires on the last day of the month during which ends the protection period and be accompanied by a proof of payment of the prescribed fee.

However, the declaration may still be filed or the fees may be paid within an additional six-month to be counted as of the day after the last day of the month of expiry of the protection with a supplementary fee.

2. contain the designation of the mark to be renewed and emanate from the registered holder, at the day of the declaration, with the National Register of Marks or from his representative.

If the declaration does not satisfy these requirements, the procedure provided for under Article R. 712-11 (1) will apply.

The inadmissibility may not be decided without giving the applicant the opportunity to put forward his observations.

Article R712-25

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Any new filing concerning the modification of a sign or an extension to the list of goods and services of a registered mark may be accompanied by an anticipated declaration of renewal for that mark. The new period of protection shall begin as from the declaration of renewal.

Subsequent renewals of the renewed mark and of the new filing shall be made by means of a single declaration.

Article R712-26

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The conditions for setting out the application and the contents of the file shall be specified by an order of the Minister responsible for industrial property, in particular with regard to:

1°. The application for registration referred to in Article R. 712-3;

2°. The opposition referred to in Article R. 712-14;

3°. The withdrawal declaration referred to in Article R. 712-21 or the renunciation declaration referred to in Article R. 714-1;

4°. The renewal declaration referred to in Articles R. 712-24 and R. 712-25;

5°. The request for entry in the National Trademark Register referred to in Articles R. 714-4 and R. 714-6;

6°. The applications for international trademark registration and subsequent entry in the international register submitted for the approval of the Institute.

Article R712-27

(inserted by Decree No. 2004-199 of 25 February 2004, Article 74, Official Journal of 3 March 2004)

Until the beginning of the technical preparations for registration or at the time of a redress procedure against the decision of registration of the mark, the applicant or his representative may proceed to the filing of divisional applications of his initial application for registration.

The division may relate only to the list of the goods and services.

The divisional applications shall take advantage of the date of filing and, if necessary, of the date of priority of the initial application.

Article R712-28

(inserted by Decree No. 2004-199 of 25 February 2004, Article 74, Official Journal of 3 March 2004)

In the event of division of the application for registration in compliance with Article R. 712-27, each divisional application must be in conformity with the provisions of Article R. 712-3.

CHAPTER IV

Transfer and Loss of Rights in Marks — Articles R714-1 to R714-9

Article R714-1

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 25 February 2004, Article 75, Official Journal of 3 March 2004)

The holder of a registered mark may at any time surrender it, with respect to all or some of the goods or services.

To be admissible, the notice of surrender must:

1°. emanate from the holder of the registered mark, at the day of the declaration, with the National Register of Marks, or of his representative;

2°. be accompanied by the proof of the payment of the prescribed fee.

The provisions of Article R. 712-21 shall be applicable to the waiver.

Article R714-2

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The National Register of Marks shall be kept by the National Institute of Industrial Property.

For each mark shall be shown therein:

1°. The identity of the applicant and the references of the filing, together with any subsequent acts affecting the existence or scope of the mark;

2°. Any acts modifying the ownership of the mark or enjoyment of the rights deriving therefrom; in the event of a claim to ownership, the corresponding assignation;

3°. Any changes of name, legal form or address together with any corrections of clerical errors relating to entries.

No entry shall be made in the Register until the filing has been published in accordance with Article R. 712-8.

Article R714-3

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 76, Official Journal of 3 March 2004)

The particulars referred to in Article R. 714-2 (1°) shall be registered at the initiative of the National Institute of Industrial Property or, if it concerns a court order, at the request of court clerk or one of the parties.

Only final court decisions may be entered into the National Register of Marks.

Article R714-4

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 77, Official Journal of 3 March 2004)

The deeds modifying the ownership of a mark or the possession of the rights driving therefrom, such as assignment, concession of a commercial right, creation or assignment of a pledge or waiver of this right, restraint, approval and release from restraint, shall be registered at the request of one of the parties to the deed or the holder of the filing on the day of the application for registration if he is not party to the deed.

However, a deed may be registered only if the person mentioned in the deed as holder of the application for registration or the mark before the notification resulting from the deed has been entered as such into the National Register of Marks.

The application shall contain:

1. an application form for registration;
2. a copy or an abstract of the deed stating the change in ownership or possession;
3. a proof of payment of the prescribed fee;
4. where appropriate, the power of attorney of the representative, unless the latter is an industrial property attorney.

Article R714-5

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 78, Official Journal of 3 March 2004)

By way of exception to Article R. 714-4 (2), the following may be produced together with the application:

1°. in the event of a change mortis causa: a copy of any deed proving the transfer, at the request of the heirs or legatees;

2°. in the event of transfer as a result of a merger, demerger or acquisition: a copy of an abstract of the Register of commerce and companies showing the modification;

3°. on proof of a material obstacle to produce a copy: any document proving change in ownership or possession.

Article R714-6

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 79, Official Journal of 3 March 2004)

Changes of name, legal form, address and corrections of clerical errors shall be registered at the request of the holder of the application for registration or the mark, who must be the registered holder with the National Register of Marks. However, when these changes and corrections relate to a deed previously registered, the request may be filed by any party to the deed.

The application shall contain:

1º an application form for registration;

2º if necessary, the power of attorney of the representative, unless he is an industrial property attorney;

3º if it concerns a correction of a clerical error, the proof of payment of the prescribed fees;

The National Institute of Industrial Property may require evidence of the existence of the change whose registration is requested or that of the clerical error to be corrected.

Article R714-7

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 80, Official Journal of 3 March 2004)

In the event of non conformance of an application for registration, a reasoned notification shall be made to the applicant.

A time limit shall be given to him to regularize his application or to file his observations. In the absence of regularization or observations making it possible to remove the objection, the application will be rejected by the decision of the Director General of the National Institute of Industrial Property.

The notification may be accompanied by a proposal for regularization. This proposal will be deemed accepted if the applicant does not dispute it within the time limit given to him.

Article R714-8

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 81, Official Journal of 3 March 2004)

A reference of all registrations with the National Register of Marks shall be entered into the Official Bulletin of Industrial Property.

All interested persons may obtain from the National Institute of Industrial Property:

1. an identity certificate containing the model of the mark, the details with respect to the filing and registration, and, where appropriate, the restrictions with respect to the list of the goods or services resulting from a withdrawal, waiver or court decision;

2. a reproduction of the registrations entered into the National Register of Marks;

3. a certificate of non- registration.

As from the day of the publication provided for in the first paragraph, all interested persons may ask to consult the file of the application for registration of a mark and to obtain at his expense a reproduction of the documents. The National Institute of Industrial Property may subordinate the exercise of this right to the proof of a sufficient interest.

However, documents that are not disclosed to the applicant as well as those which contain personal data or which relate to business secrets shall be excluded from disclosure to the public.

Article R714-9

(inserted by Decree No. 2004-199 of 27 February 2004, Article 82, Official Journal of 3 March 2004)

The inadmissible, rejected or non renewed filings may be restored to the owner, at his request and at his expense.

If they are not claimed, they may be destroyed by the National Institute of Industrial Property, at the end of a one-year period with respect to inadmissible and rejected filings, or at the end of a ten-year period with respect to not renewed filings.

CHAPTER V
Collective Marks — Article R715-1

Article R715-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

The mention “collective mark” entered in the registration of a mark filed before 28 December 1991 shall be cancelled at the request of its owner unless it is a collective certification mark.

Cancellation shall be entered in the National Register of Marks.

CHAPTER VI
Disputes — Articles R716-1 to R716-1-1

Article R716-1

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2005-1298 of 20 October 2005, Article 1, Official Journal of 21 October 2005)

I - The request for withholding of goods by the customs administration provided for in Article L. 716-8 shall contain:

1. the name and first names or the corporate name of the applicant, his residence or his seat;

2. where appropriate, the name and the address of the representative and proof of his power of attorney;

3. the status of the applicant with respect to the rights which he invokes;

4. the designation and the number of registration of the mark concerned;

5. the description of the goods asserted to be counterfeit against which the request for is directed;

6. all the documents and information that help attest that the goods asserted to be counterfeit have been not neither legally manufactured, nor put in free circulation, nor marketed in another Member State of the European Community.

II - The request referred to under (I) may be filed with the relevant public authority prior to the entry of the goods asserted to be counterfeit into French territory. In this case, it shall be valid for one year and may be renewed.

The terms and conditions for filing the request shall be specified by an order of the Minister responsible for customs.

Article R716-1-1

(Decree No. 2005-1298 of 20 October 2005, Article 2, Official Journal of 21 October 2005)

The relevant public authority referred to in Article R. 716-1 (I) and (II) shall be the Minister responsible for customs.

CHAPTER VII
International and Community Marks — Articles R717-1 to R717-10

SECTION I
International Marks — Articles R717-1 to R717-8

Article R717-1

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 Article 9 I, II Official Journal of 20 February 2002)
(Decree No. 2004-199 of 27 February 2004, Article 83, Official Journal of 3 March 2004)

Articles R. 712-3 (2) (d), R. 712-9 to R. 712-11, R. 712-13 to R. 712-18, R. 714-2 and R. 714-4 to R. 714-8 shall be applicable to international registration of marks extended to France in compliance with the Madrid Agreement of 14 April

1891 and the Madrid Protocol of 27 June 1989, within the ambit of and subject to the provisions provided for in this Chapter.

Article R717-2
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 art. 9 I and II Official Journal of 20 February 2002)

If the international registration relates to a collective certification mark, the regulations for use referred to in Article R. 712-3(2(d)), accompanied where appropriate by a translation into French, shall be furnished within a period of six months as from entry of the mark in the International Register.

Where this requirement is not complied with, the international registration shall be deemed not to relate in France to a collective certification mark.

Article R717-3
(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 Article 9 I, II, Official Journal of 20 February 2002)
(Decree No. 2004-199 of 27 February 2004, Article 84, Official Journal of 3 March 2004)

The National Institute of Industrial Property shall make available to the public the bulletin "La Gazette" published by the World Intellectual Property Organization.

The two-month period within which the observations of third parties must be filed pursuant to Article L. 712-3 shall run as from the first day of the month following the reception of the bulletin "Les Marques internationales" at the National Institute of Industrial Property.

Article R717-4
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 art. 9 I and II Official Journal of 20 February 2002)

The examination referred to in Article R. 712-10 shall be restricted to verifying the suitability of the sign to constitute a mark or to be adopted as a mark.

The four-month period within which notifications of irregularity are to be issued in accordance with Article R. 712-11(2) shall begin with the notification to the National Institute of Industrial Property of the extension to France of the international registration.

Irregularities shall be notified to the holder of the international registration through the International Bureau of the World Intellectual Property Organization.

Article R717-5
(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 Article 9 I, II, Official Journal of 20 February 2002)
(Decree No. 2004-199 of 27 February 2004, Article 84, Official Journal of 3 March 2004)

The time limit to file opposition, in accordance with the Article L. 712-4, shall run as from the first day of the month following the reception of the bulletin "La Gazette" at the National Institute of Industrial Property.

The opposition shall be notified to the holder of the international registration through the International Office of the World Intellectual Property Organization.

The holder of the international registration shall be deemed to have received the notification of the opposition within fifteen days as from the date of emission of the notification by the National Institute of Industrial Property.

Article R717-6
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 art. 9 I and II Official Journal of 20 February 2002)

Any decision to refuse shall be given in the form of a refusal of protection in France for the international registration.

It shall be notified to the holder of the international registration by the International Bureau of the World Intellectual Property Organization.

Article R717-7
(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 art. 9 I and II Official Journal of 20 February 2002)

Acts relating to international registrations that have effect in France may be entered in the National Register of Marks once they may not be entered in the International Register.

Article R717-8
(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002, Article 9 I, II, Official Journal of 20 February 2002)
(Decree No. 2004-199 of 27 February 2004, Article 83, Official Journal of 3 March 2004)

All applications for international registration or posterior registration to this registration which is subjected, under the terms of the Madrid Agreement of 14 April 1891 and the Madrid Protocol of 27 June 1989, to the approval of the National Institute of Industrial Property for transmission to the international office, must be filed under the conditions provided for in the order referred to in Article R. 712-26.

The provisions of Article R. 712-11 shall be applicable to all applications that don't meet the conditions provided for in the preceding paragraph. The application date to the National Institute of Industrial Property shall be that on which the application has, as the case may be, been regularized.

SECTION II

Community Marks — Articles R717-9 to R717-10

Article R717-9

(inserted by Decree No. 2002-215 of 18 February 2002 art. 9 I and III Official Journal of 20 February 2002)

The Community mark or application for a Community mark shall be converted into an application for a French mark as soon as the National Institute for Industrial property has received the application for conversion addressed to the Office of Harmonisation in the Internal Market. A national number will be allocated.

1° The applicant will be given a deadline for providing:

a) the application for registration as provided for in Article R. 712-3 (1);

b) proof of payment of royalties under Article R. 712-3 (2, a);

c) translation into French, where applicable, of the application for conversion and the attached documents.

If the applicant is not domiciled, or does not have its registered office, in and EU Member State or in a State that has signed the European Economic Area agreement, they must, by the same deadline, appoint a representative who satisfies the conditions of Article R. 712-2 and supply the name and address of the latter to the National Institute for Industrial Property;

2. The request resulting from the application for conversion shall be rejected if the documents referred to in point 1 have not been produced by the stipulated deadline;

3. When the request resulting from the application for transformation has been recognised as admissible, it will be published in the Official Journal of Industrial Property within the six weeks following acceptance by the National Institute for Industrial Property of the documents referred to in point 1. Subject to the provisions of paragraph 3 of Article L. 717-5, reference is made to the right of any person concerned to express their comments within a period of two months and to the right of any persons referred to in Article L. 712-4 to oppose the registration within the same period of time.

Article R717-10

(inserted by Decree No. 2002-215 of 18 February 2002 art. 9 I and III Official Journal of 20 February 2002)

The request for a national mark resulting from the application for conversion shall be examined and registered or rejected under the terms of Articles R. 712-9 to R. 712-23.

CHAPTER VIII

Common Provisions — Articles R718-1 to R718-4

SOLE SECTION

Articles R718-1 to R718-4

Article R718-1

(inserted by Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)

Subject to the provisions of Article R. 712-16(1), the time limits afforded by the National Institute of Industrial Property shall be no less than one month and no more than four months.

Article R718-2

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 85, Official Journal of 3 March 2004)

Where a time limit is expressed in days, the day of the deed, of the event, of the decision or of the notification that makes it run will not count.

Where a time limit is expressed in months or years, this time limit will expire on the day of the last month or of the last year which carries the same date of the month as the date of the deed, of the event, of the decision or of the notification that makes the time limit run. In absence of identical date of the month, the time limit shall expire on the last day of the month.

Where a time limit is expressed in months and days, the months will first be deducted, then the days.

Any time limit shall expire the last day at mid night.

The time limit which would expire normally on Saturday, on Sunday or on a public holiday or on a non-working day shall be extended until the first next working day.

The time limit which would expire normally on a day where one of the regional delegations of the National Institute of Industrial Property is not open shall be extended until the first day when all the regional delegations of the Institute will be open.

The list of the days mentioned in the preceding paragraph shall be drawn up each year by a decision of the Director General of the National Institute of Industrial Property. It shall be published in the Official Bulletin of Industrial Property.

Article R718-3

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)

(Decree No. 2004-199 of 27 February 2004, Article 86, Official Journal of 3 March 2004)

Any notification shall be considered duly made if made:

1). either to the last holder of the application for registration of the mark filed with the National Institute of Industrial

Property or to the last owner entered into the National Register of Marks;

2°. or to the representative of the holder or the above-mentioned owner.

If the holder is not domiciled in a Member State of the European Community or in a State party to the Agreement on the European Economic Area, the notification will be considered duly made if made to the last representative that he has appointed before the National Institute of Industrial Property.

Article R718-4

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2004-199 of 27 February 2004, Article 87, Official Journal of 3 March 2004)

The notifications provided for in this Title shall be made by a registered letter with advice of delivery.

The registered mail may be replaced by delivery by hand of the letter to its addressee against receipt, in the premises of the National Institute of Industrial Property, or by an electronic message in the manner laid down by the Director General of the National Institute of Industrial Property to guarantee, in particular, the safety of mailing.

If the address of the addressee is unknown, the notification will be made by publication of a notice in the Official Bulletin of Industrial Property.

BOOK VIII

Application in French Polynesia, in the Wallis and Futuna islands, in the French territories of the Southern Hemisphere and the Antarctic, New Caledonia and in Mayotte **Articles R811-1 to R811-3**

SOLE TITLE

Articles R811-1 to R811-3

Article R811-1

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002, Article 10 I, II, Official Journal of 20 February 2002)
(Decree No. 2004-920 of 31 August 2004, Article 3 I, Official Journal of 2 September 2004)
(Decree No. 2004-921 of 31 August 2004, Article 2 I, Official Journal of 2 September 2004)

The provisions of this code shall apply in the overseas territories except:

1. Articles R. 421-1 to R. 421-12, R. 422-1 to R. 422-66, R. 423-1 and R. 423-2, R. 615-1 to R. 615-5;

2. Articles R. 512-2, R. 512-3, R. 512-13, R. 512-15, R. 513-1, R. 513-2, R. 612-2, R. 612-38, R. 613-46, R. 613-56, R. 613-58, R. 712-2, R. 712-13, R. 712-14, R. 712-21, R. 712-24, R. 714-4, R. 714-6 only as they concern the industrial property attorneys;

3. Articles R. 133-1 and R. 326-1 to R. 326-7;

4. Article R. 133-2.

Article R811-2

(Decree No. 95-385 of 10 April 1995 appendix Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002, Article 10 I, III, Official Journal of 20 February 2002)
(Decree No. 2004-920 of 31 August 2004, Article 3 II, Official Journal of 2 September 2004)
(Decree No. 2004-921 of 31 August 2004, Article 2 II, Official Journal of 2 September 2004)

The provisions of this Code shall apply in Mayotte.

However, Articles R. 133-1 and R. 326-1 to R. 326-7 shall not apply.

However, Article R. 133-2 shall not apply.

Article R811-3

(Decree No. 95-385 of 10 April 1995 Official Journal of 13 April 1995)
(Decree No. 2002-215 of 18 February 2002 art. 10 I and III Official Journal of 20 February 2002)

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” by “tribunal de première instance”;

—“juge d’instance” by “juge du tribunal de première instance”;

—“région” by “territoire” and, in the case of the territorial entity of Mayotte, by “collectivit territoriale”;

—“cour d’appel” by “tribunal supérieur d’appel” and “commissaire de police” by “officer de police judiciaire” with respect to the territorial entity of Mayotte;

—“Tribunal de commerce” by “tribunal de première instance statuant en matière commerciale” with respect to the territorial entity of Mayotte and “tribunal mixte de commerce” with respect to the territories of New Caledonia, French Polynesia and Wallis and Futuna;

—“conseil de prud’hommes” by “tribunal du travail”.

SOLE CHAPTER