

LEGISLATIVE PART

BOOK IV: ADMINISTRATIVE AND PROFESSIONAL ORGANIZATION

Title I: Institutions

Chapter I: National Institute of Industrial Property

Article L. 411-1

The National Institute of Industrial Property is a public institution with legal personality and financial autonomy, placed under the authority of the Minister in charge of industrial property.

The mission of this institution is:

1° To centralize and promote all information necessary for the protection of innovations and for the registration of companies, as well as to undertake all awareness-raising and training activities in these fields;

2° To apply the laws and regulations relating to industrial property and the Trade and Companies Register; to that end, the Institute shall, in particular, provide for the receipt of applications for industrial property titles or related to industrial property, for their examination and for their issue or registration and for the supervision of their maintenance; it shall hear applications for invalidity and revocation of the trademarks mentioned in Article L. 716-5, paragraph I, items 1 and 2, as well as oppositions filed against patents for invention; it shall centralize the Trade and Companies Register, in particular on the basis of electronic data transmitted by the court clerks of the Commercial Court, and the Official Bulletin of Civil and Commercial Announcements; it shall ensure the dissemination of technical, commercial and financial information contained in industrial property titles; it shall ensure the dissemination of and make freely available to the public, for the purposes of reuse, the technical, commercial and financial information contained in the Trade and Companies Register and in the centralized legal advertisement instruments, in accordance with the procedures laid down by decree; it shall rule on applications for approval or amendment of the specifications of the geographical indications defined in Article L. 721-2;

3° To take any initiative which purpose is the permanent adaptation of national and international law to the needs of innovators and companies; in this respect, it suggests to the Minister in charge of industrial property any reform that it deems useful in these matters; it participates in the drafting of international agreements and in the representation of France in the competent international organizations.

NOTE:

In accordance with the provisions of Article 5 of Ordinance No. 2020-116 of 12 February 2020, provides, with the exception of Article 4, that the provisions of this Ordinance shall enter into force on 1 April 2020. They shall be applicable to patents whose mention of grant has been published in the Official Bulletin of Industrial Property as from that date.

Article L. 411-4

The Director General of the National Institute of Industrial Property shall take the decisions provided for in this Code on the occasion of the grant, rejection or maintenance of industrial property titles, as

well as on the occasion of the approval, rejection or amendment of the specifications of the geographical indications defined in Article L. 721-2 or the withdrawal of such approval.

It shall rule on applications for invalidity or revocation of trademarks and on oppositions filed against patents for invention, as referred to in Article L. 411-1, item 2. Appeals against such decisions shall have suspensive effect.

In the scope of these powers, it is not subject to the supervisory authority. Appeals against its decisions are heard directly by the court of appeal designated by regulation.

Appeals before the French supreme court against the decisions of the courts of appeal ruling on such appeals shall be open to the parties and to the Director General of the National Institute of Industrial Property.

A decree of the Conseil d'Etat shall specify the conditions in which this article shall apply.

Article L. 411-5

Decisions rejecting the applications referred to in the first paragraph of Article L. 411-4, decisions ruling on an opposition filed against a trademark registration application and decisions ruling on an application for revocation to be waived of trademarks or designs, shall be reasoned.

The same shall apply to decisions ruling on an application for invalidity or revocation of a trademark or on an opposition to a patent for invention.

These decisions shall be notified to the applicant and, where appropriate, to the other parties, with respect to the provisions and within the time limits laid down by decree of the Conseil d'Etat.

BOOK VI: PROTECTION OF INVENTIONS AND TECHNICAL KNOWLEDGE

Title I: Patents for invention

Chapter I: Scope of application

Section 1: General

Article L. 611-2

The industrial property titles protecting inventions are:

- (1) Patents for invention granted for a term of twenty years as from the date of filing of the application;
- (2) utility certificates, granted for a term of ten years as from the date of filing of the application;
- (3) Supplementary protection certificates attached to a patent under the conditions laid down in Article L. 611-3, effective at the end of the legal term of the patent to which they are attached for a term not exceeding seven years as from the end of the legal term and 17 years as from the grant of the marketing authorization referred to in the same article.

The provisions of this Book concerning patents shall apply to utility certificates with the exception of those provided for in Article L. 612-14, the first paragraph of Articles L. 612-15 and L. 612-17 and

Articles L. 613-23 to L. 613-23-6. They shall also apply to supplementary protection certificates with the exception of those provided for in Articles L. 611-12, L. 612-1 to L. 612-10, L. 612-12 to L. 612-15, L. 612-17, L. 612-20, L. 613-1, L. 613-23 to L. 613-23-6, and L. 613-25.

Chapter II: Filing and Examination of Applications

Section 2: Examination of applications

Article L. 612-16

An applicant who has failed to comply with a time limit related to the National Institute of Industrial Property may file an appeal for re-establishment of his rights if he is able to give a legitimate reason and if the failure to comply with the time limit has for direct consequence the rejection of the patent application or of a request, the revocation of the patent application or of the patent or the loss of any other right.

The appeal shall be filed to the Director General of the National Institute of Industrial Property within two months following the end of the impediment. The act not performed shall be done within that time limit. The appeal shall be admissible only within a time limit of one year following the expiry of the time limit not complied with.

Where the appeal relates to a failure to pay a maintenance fee, the time limit not observed shall be understood as the grace period provided for in the second paragraph of Article L. 612-19 and re-establishment shall be granted by the Director General of the National Institute of Industrial Property only if the maintenance fees due on the day of re-establishment have been paid within the specified time limit laid down by regulation.

The provisions of this Article shall not apply either to the time limits laid down in the second and third paragraphs of Article L. 612-16-1 and to the time limits for filing and correcting a declaration of priority prescribed by regulation, or to the priority period set forth by Article 4 of the Paris Convention for the Protection of Industrial Property, or to the time limit laid down in Article L. 613-23 for filing an opposition or to the time limits for the investigation phase referred to in the first paragraph of Article L. 613-23-2.

Chapter III: Patent rights

Section 2: Transmission and loss of the rights

Article L. 613-23

Under the conditions and within the time limits laid down by decree of the Conseil d'Etat, any patent granted under Article L. 612-17 may be opposed by any person, with the exception of the patent owner, to the Director General of the National Institute of Industrial Property.

Article L. 613-23-1

Opposition may only be filed on one or more of the following grounds:

- 1° The subject matter of the patent is not patentable under the terms of Articles L. 611-10, L. 611-11 and L. 611-13 to L. 611-19;

- 2° The patent 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;
- 3° The subject matter of the patent extends beyond the content of the application as filed or, where the patent was granted on a divisional application, the subject matter extends beyond the content of the initial application as filed.

The opposition may relate to all or part of the granted patent.

Article L. 613-23-2

The Director General of the National Institute of Industrial Property shall rule on the opposition at the end of an adversarial procedure including an investigation phase, under the conditions laid down by decree of the Conseil d'Etat.

The decision of the Director General of the Institute shall have the effects of a judgment within the meaning of Article L. 111-3(6) of the Code of Civil Procedures for Enforcement.

The opposition shall be deemed to have been rejected if the Director General of the Institute has not ruled within the time limit, laid down by decree of the Conseil d'Etat, following the date of the end of the investigation phase referred to in the first paragraph.

Article L. 613-23-3

I.-During the opposition procedure, the owner of the contested patent may amend the claims of that patent provided that :

1° The amendments made are in response to one of the grounds of opposition mentioned in Article L. 613-23-1 and raised by the opponent;

2° The amendments made do not extend the subject matter of the patent beyond the content of the application as filed or, where the patent was granted on a divisional application, do not extend its subject matter beyond the content of the initial application as filed;

3° The amendments made do not extend the protection conferred by the patent;

4° The amended claims comply with the provisions of Articles L. 611-10, L. 611-11, L. 611-13 to L. 611-19, L. 612-5 and L. 612-6 and that their wording meets the formal requirements laid down by decree of the Conseil d'Etat.

II- During the opposition procedure, the owner of the contested patent may also amend the description and, where appropriate, the drawings, provided that:

1° These amendments are made in response to the ground of opposition mentioned in item 2 of Article L. 613-23-1 raised by the opponent;

2° The amendments made do not extend the subject matter of the patent beyond the content of the application as filed or, where the patent was granted on a divisional application, do not extend its subject matter beyond the content of the initial application as filed.

Article L. 613-23-4

Where the Director General of the National Institute of Industrial Property upholds the opposition on one of the grounds referred to in Article L. 613-23-1 and raised by the opponent, the patent may be:

1° revoked in whole or in part;

2° maintained in an amended form considering the amendments made by the patent owner in the course of the procedure pursuant to Article L. 613-23-3.

Where the Director General of the Institute rejects the opposition, the patent shall be maintained as granted.

Article L. 613-23-5

Each party to the opposition procedure shall bear the costs it has incurred, unless the Director General of the National Institute of Industrial Property for reasons of equity, orders a different apportionment of such costs, within the limits of a scale set by order of the Minister in charge of industrial property.

Article L. 613-23-6

The decision of revocation shall have absolute effect. The effects of decisions ruling on the opposition shall be retroactive to the filing date of the patent application.

Where a decision ruling on the opposition partially revokes the patent, it shall refer the owner to the National Institute of Industrial Property for him to request the amendment of the patent to comply with that decision. However, such a request shall be admissible only if the decision ruling on the opposition is no longer subject to appeal.

The Director General of the Institute shall have the power to reject the amendment request of the patent for failure to comply with the decision of partial revocation.

Article L. 613-24

The owner of the patent may at any time relinquish either the entire patent or one or more claims, or limit the scope of the patent by amending one or more claims.

The request for relinquishment or limitation shall be filed with the National Institute of Industrial Property under the conditions laid down by regulation.

The Director of the National Institute of Industrial Property shall examine the compliance of the request for relinquishment or limitation with the regulatory provisions referred to in the previous paragraph.

However, a request for limitation of a patent filed after an opposition has been previously filed shall be inadmissible for as long as the decision ruling on that opposition is subject to appeal, unless the limitation is requested following an invalidity action of the patent made as a principal demand or as a cross demand before a court.

Likewise, if a limitation procedure of a patent is pending on the date on which an opposition is filed against that patent, the National Institute of Industrial Property shall terminate the limitation procedure, unless the limitation is required as a result of an invalidity action of the patent made as a principal demand or as a cross demand before a court.

The effects of relinquishment or limitation shall be retroactive to the filing date of the patent application.

The provisions of this article shall apply to limitations made pursuant to Articles L. 613-25 and L. 614-12 .

A decree of the Conseil d'Etat shall specify the conditions of application of this article.

Article L. 613-25

The patent shall be declared invalid by a court decision:

- a) If its subject matter is not patentable under Articles L. 611-10, L. 611-11 and L. 611-13 to L. 611-19;
- b) If it does not disclose the invention in a manner sufficiently clear and complete for a person skilled in the art to carry it out;
- c) If its subject matter extends beyond the content of the application as filed or, where the patent was granted on a divisional application, if its subject matter extends beyond the content of the initial application as filed;
- d) If, after limitation or opposition, the scope of protection conferred by the patent has been extended.

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

During an invalidity action, the owner of the patent is entitled to limit the patent by amending the claims; the patent as limited shall be the subject of the invalidity action brought.

A party who, in the course of the same procedures, makes several limitations on his patent, in a dilatory or abusive manner, may be sentenced to a civil fine of up to 3,000 euros, without prejudice to any damages that may be claimed.

Article L. 613-27

The decision to invalidate a patent shall have absolute effect subject to third party opposition. In respect of patents filed before 1 January 1969, cancellation shall apply to the parts of the patent defined by the operative part of the decision.

Decisions that have become res judicata shall be notified to the Director of the National Institute of Industrial Property for registration in the National Register of Patents.

Where the decision partially revokes a claim, it shall refer the owner of the patent to the National Institute of Industrial Property for the purpose of filing an amended wording of the claim in accordance with the operative part of the judgment. The Director of the Institute shall have the power to reject the amended claim for failure to comply with the judgment, subject to appeal to one of the Courts of Appeal designated in accordance with Article L. 411-4 of the Code.

Provisions of the French Intellectual Property Code on the INPI opposition procedure
Version in force on April 1, 2020
Taken from the site <https://www.legifrance.gouv.fr>
Free translation

REGULATORY PART

BOOK IV: ADMINISTRATIVE AND PROFESSIONAL ORGANIZATION

Title I: Institutions

Chapter I: The National Institute of Industrial Property

Section 1: Organization of the National Institute of Industrial Property

Article R. 411-1

The functions of the National Institute of Industrial Property shall include the following:

- 1° The examination of patent applications, the grant of patents and all documents relating thereto, as well as the examination of oppositions;
- 2° The registration and publication of goods and services trademarks and the examination of applications for invalidity and revocation of trademarks mentioned in Article L. 411-1, item 2;
- 3° The grant of certificates of identity and information concerning prior rights regarding goods and services trademarks;
- 4° The organization of the deposit, storage and availability to the public of the cultures of microorganisms used in an invention for which a patent is applied for;
- 5° The centralization and storage of designs deposits and their publication, as well as the registration and storage of the deposit of double envelopes intended to facilitate proof of the creation of designs;
- 6° The keeping of patents, trademarks and designs registers, the entry of all acts affecting the ownership of patents, goods and services trademarks and designs;
- 7° The enforcement of the provisions contained in the laws and regulations on the temporary protection of industrial property at exhibitions, on industrial awards and on trademarks of origin;
- 8° The enforcement of international agreements and the implementation of cooperation actions in the field of industrial property, and in particular administrative relations with the World Intellectual Property Organization, the European Patent Organization, the European Union Intellectual Property Office and the national or regional industrial property offices of the European Union;
- 9° The keeping of the Trade and Companies Register;
- 10° The storage of the deposit of constitutive and amending deeds of companies in the clerk's office of the commercial courts and civil courts;
- 11° The gathering of information appearing in the Trade and Business Registers and the Official Bulletin of the said registers;
- 12° The gathering, storage and availability to the public of all technical and legal documentation concerning industrial property;

13° The management of the Industrial Property Official Bulletin;

14° The examination of applications for approval and requests to amend the specifications of the geographical indications defined in Article L. 721-2, the approval and withdrawal of approval of these specifications.

For the exploitation of its documentary folder, the Institute may set up databases, if necessary, with other files or registers. To this end, it may set up subsidiary companies or take financial holdings.

Section 2: Fees collected by the National Institute of Industrial Property

Article R. 411-17

The National Institute of Industrial Property shall collect fees, the amount and conditions of enforcement of which shall be laid down by joint order of the Minister in charge of industrial property and the Minister in charge of the budget, on the occasion of the following procedures and formalities:

1° For patents for invention, utility certificates and supplementary protection certificates:

-deposit;

-research report or complementary research report;

-additional claim from the eleventh;

-request for rectification of errors;

-request to continue procedures;

-limitation request;

-issuance and printing of the specification;

-opposition;

-maintaining in force;

- re-establishment request;

2° For European patents:

-publication of a translation or revised translation of the claims of a patent application or of the claims of a European patent;

-preparation and transmission of copies of the European patent application to the addressee States;

3° For international applications (Patent Cooperation Treaty, PCT):

-transmission of an international application;

-additional charge for late payment;

-preparation of additional copies;

4° For goods and services trademarks:

-deposit;

-class of good or service;

-regularization or rectification of material error;

-opposition;

-renewal;

-application for registration in the International Register of Trademarks;

-request for revocation to be waived;

-application for invalidity or revocation;

-additional right invoked in the context of an opposition or an application for a request of invalidity, beyond the first right invoked;

-divisional application or registration;

5° For designs:

-deposit;

-extension;

-regularization, rectification, request for revocation to be waived;

-recording and storage of special envelopes;

6° Fees common to patents for invention, utility certificates, supplementary protection certificates, software, trademarks, designs - Awards and prizes:

-supplement for late application, late payment or late fulfilment of a formality;

-relinquishment;

-application for registration in the national register;

-recording of a prize list, an award or transcript of a declaration of assignment or transmission;

7° For rights related to industrial property:

-topographies of semiconductor products: deposit and storage; registration of an act modifying or transferring the rights;

8° Regarding the Trade and Companies Register:

-declaration;

-Filing of a deed.

The Institute shall collect the fees, the amount and enforcement rules of which shall be laid down by joint order of the Minister in charge of industrial property, the Minister in charge of handicrafts and the Minister in charge of the budget, on the occasion of the following procedures and formalities:

-application for approval of the specifications for geographical indications defined in Article L. 721-2;

-application to amend the approved specifications.

In the event of inadmissibility, the following fees shall be refunded:

-for patents for invention, utility certificates and supplementary protection certificates: filing;

-for goods and services trademarks: filing, class of goods or services, renewal;

-for designs: filing, extension;

-for the geographical indications defined in Article L. 721-2: application for approval, application for amendment of the approved specifications.

The following are also reimbursed:

-the fee for the search report of a patent for invention when the procedure for granting the patent is terminated or in the event of extension of the prohibitions on disclosure and free exploitation, if the procedure for drawing up the search report has not been initiated;

-the fee for requesting limitation of a patent where the limitation procedure is terminated under the conditions laid down in Article R. 613-45-3.

Section 3: Appeals to the Court of Appeal against decisions of the Director General of the National Institute of Industrial Property

Article R. 411-19

Appeals brought against the decisions mentioned in the first paragraph of Article L. 411-4 are appeal in annulment.

Appeals brought against the decisions mentioned in the second paragraph of the same Article L. 411-4 shall be an appeal in reformation. They shall refer the entire dispute to the court. The court shall rule in fact and in law.

Article R. 411-19-1

The Court of Appeal having territorial jurisdiction to hear directly appeals lodged against the decisions of the Director General of the National Institute of Industrial Property referred to in Article R. 411-19 shall be that of the place of residence of the person lodging the appeal.

Article D. 411-19-2

The location and jurisdiction of the courts of appeal having jurisdiction to hear the actions mentioned in Article R. 411-19 shall be determined in accordance with Table XVI attached to Article D. 311-8 of the Judicial Organization Code.

Where the person lodging the appeal resides abroad, the Paris Court of Appeal has jurisdiction. An address for service must be given within the jurisdiction of that court.

However, the Paris Court of Appeal shall have sole jurisdiction to hear directly appeals lodged against decisions of the Director of the National Institute of Industrial Property concerning the grant, rejection, opposition or maintenance of patents for invention, utility certificates, supplementary protection certificates and topographies of semiconductor products.

Article R. 411-20

Subject to the special provisions contained in this section, the appeals mentioned in Article R. 411-19 shall be lodged, heard and judged in accordance with the provisions of the Code of Civil Procedure.

Article R. 411-21

The appeals referred to in Article R. 411-19 shall be lodged within the time limit of one month of notification of the decisions in question.

Article R. 411-22

The parties are required to appoint a lawyer.

The appointment of the lawyer results in an address for service.

Article R. 411-23

The National Institute of Industrial Property shall not be a party to the proceedings.

The Court of Appeal shall decide after hearing the Director General of the National Institute of Industrial Property or the latter summoned and giving him an opportunity to file written or oral observations.

The Public Prosecutor's Office may have access to cases in which it considers it should take part.

Article R. 411-24

Under penalty of ex officio inadmissibility, submissions shall be filed to the court electronically.

Where this cannot be made, for reasons exterior to the person performing them, such documents shall be filed on paper to the clerk's office or shall be sent to it by registered letter with acknowledgement of receipt. The notice of appeal shall then be delivered or sent to the clerk's office in as many copies as

there are parties to whom it is addressed, plus three. Delivery shall be evidenced by the mention of its date and the endorsement of the court clerk on each copy, one of which shall be immediately returned.

Where the notice of appeal is sent by post, the clerk's office shall register it on the date appearing on the stamp of the postal office of issue and shall send the sender a receipt by any means.

Notices, warnings or summons shall be delivered to the lawyers of the parties by electronic means, unless this is impossible for reasons exterior to the sender. The procedures for electronic communications are set by the order of the Minister in charge of the justice mentioned in Article 930-1 of the Code of Civil Procedure.

Article R. 411-25

Appeals shall be brought before the Court of Appeal by a notice containing, in addition to the references prescribed by Article 54 of the Code of Civil Procedure, and under penalty of nullity:

1° The unique identification number of the applicant company or any document equivalent to the extract of registration in the Trade and Companies Register for operators located outside France;

2° The purpose of the appeal;

3° The name and address of the owner of the title if the applicant does not have such status;

4° The appointment of the lawyer of the applicant.

Except in the case of an implied rejection decision, a copy of the contested decision shall be attached to that notice, under penalty of nullity.

The notice shall be dated and signed by the appointed lawyer. It shall be filed to the clerk's office and shall be deemed to be an application for enrolment.

Article R. 411-26

Without delay, the court clerk shall send to all parties to whom the decision of the Director General of the National Institute of Industrial Property has been notified, by simple letter, a copy of the notice of appeal, mentioning the obligation to appoint a lawyer.

If the letter of notification is returned to the clerk's office or if the defendant has not appointed a lawyer within one month from the date of dispatch of the letter of notification, the court clerk shall inform the lawyer of the applicant in order for the latter to proceed with a service by bailiff of the notice of appeal.

Under penalty of the ex officio lapsing of the notice of appeal, the service by bailiff must be effected within one month of the notice sent by the clerk's office; however, if in the meantime, the defendant has appointed a lawyer before the service by bailiff of the notice of appeal has been effected, service shall be made by notification to his lawyer.

Under penalty of nullity, the notice of service shall indicate to the defendant that, failing to appoint a lawyer within a time limit of fifteen days from the date of service, he may face to have a judgment handed down against him solely on the basis of the information supplied by his opponent and that, failing to file his submissions within the time limit mentioned in Article R. 411-30, he is subject to have his writings declared inadmissible, ex officio.

Article R. 411-27

As soon as it is appointed, the lawyer of the defendant shall inform the lawyer of the applicant and, by registered letter with acknowledgement of receipt, the Director General of the National Institute of Industrial Property. A copy of the notice of appointment shall be filed to the clerk's office.

Article R. 411-28

The court clerk shall send to the Director General of the National Institute of Industrial Property, by simple letter, a copy of the notice of appeal.

As soon as he is informed of the appeal, the Director General of the National Institute of Industrial Property shall transmit to the clerk's office the case file containing the written observations and documents transmitted by the parties and all the documents of the file in connection with the dispute.

Article R. 411-29

Under penalty of the ex officio lapsing of the notice of appeal, the applicant shall have a time limit of three months from the date of that notice of appeal to file his submissions to the clerk's office.

Under the same penalty and within the same time limit, he shall send his submissions by registered letter with acknowledgement of receipt to the Director General of the National Institute of Industrial Property and shall justify it to the clerk's office.

Article R. 411-30

The defendant shall have a time limit of three months from the notification of the plaintiff's submissions referred to in Article R. 411-29 to file his submissions to the clerk's office and, where appropriate, to lodge a cross-appeal, under penalty of inadmissibility.

Under the same penalty and within the same time limit, he shall send his submissions by registered letter with acknowledgement of receipt to the Director General of the National Institute of Industrial Property and shall justify it to the clerk's office.

Article R. 411-31

The cross-appeal shall be lodged in accordance with the provisions of Article R. 411-25.

Article R. 411-32

The defendant to a cross-appeal shall have three months from the notification thereof to file his submissions to the clerk's office, under penalty of ex officio inadmissibility.

For the filing of his submissions to the clerk's office, the forced intervener shall have a time limit of three months from the date on which he was notified of the application for intervention, under penalty of ex officio inadmissibility. A voluntary intervener shall have the same time-limit, subject to the same penalty, from the date of his voluntary intervention.

Under the same penalty and within the same time limit, the defendant to a cross-appeal, the forced intervener and the voluntary intervener shall file their submissions, by registered letter with

acknowledgement of receipt, to the Director General of the National Institute of Industrial Property and shall justify it to the clerk's office.

Article R. 411-33

The submissions shall be notified and the documents communicated simultaneously by the lawyer of each party to the lawyer of the other party; in the event of a plurality of plaintiffs or defendants, they shall be communicated to all the appointed lawyers. They shall be sent to the Director General of the National Institute of Industrial Property by registered letter with acknowledgement of receipt.

A copy of the submissions shall be filed to the clerk's office together with the justification of their notification.

The documents communicated and filed in support of inadmissible submissions are themselves inadmissible.

Article R. 411-34

Under penalties provided for in Articles R. 411-29, R. 411-30 and R. 411-32, the submissions shall be notified to the lawyers of the parties and sent to the Director General of the National Institute of Industrial Property within the same time limit as that of their filing to the clerk's office. Under the same penalties, they shall be served by bailiff at the latest within one month of the expiry of the time-limits laid down in those articles to the parties who have not appointed a lawyer; however, if, in the meantime, those parties have appointed a lawyer before the service by bailiff of the submissions, service shall be made by notification to their lawyer.

The notification of the submissions made to a party within the time limit provided for in Articles R. 411-29, R. 411-30 and R. 411-32 and in the first paragraph shall constitute the starting point of the time limit within which that party may file its submissions to the clerk's office.

Article R. 411-35

The Director General of the National Institute of Industrial Property shall notify the parties to the proceedings of his written observations by registered letter with acknowledgement of receipt. He shall file a copy thereof to the clerk's office.

Article R. 411-36

In the event of force majeure, the President of the Chamber may waive the application of the penalties provided for in Articles R. 411-29, R. 411-30 and R. 411-32.

Article R. 411-37

Under penalty of ex officio inadmissibility, the parties must file, with the submissions referred to in Articles R. 411-29, R. 411-30 and R. 411-32, all their means on the merits. Inadmissibility may also be raised by the party against whom subsequent means are made.

However, where the court of appeal is hearing an appeal lodged under the second paragraph of Article R. 411-19, shall remain admissible the means intended to answer to the arguments and documents of the other party or means related to issues arising, after the first submissions, from the intervention of a third party or from the occurrence or disclosure of a fact.

Article R. 411-38

In order to justify before the Court of Appeal hearing an appeal under the second paragraph of Article R. 411-19 the means that they had filed to the Director General of the National Institute of Industrial Property, the parties may put forward new arguments, produce new documents or propose new evidence.

Under penalty of ex officio inadmissibility, the parties may not file new means to the court unless with respect to issues arising from the intervention of a third party or from the occurrence or disclosure of a fact.

The means are not considered as new when they tend to the same purposes as those filed to the Director General of the National Institute of Industrial Property, even if their legal basis is different.

Article R. 411-39

The submissions shall contain, in the heading, the references provided for in the second paragraph of Article 960 of the Code of Civil Procedure. They must expressly state the means of the parties and the legal and factual arguments on which each of those means are based, indicating for each means the documents relied on and their numbering. A list of the documents shall be attached.

The submissions shall consist distinctively of a statement of the facts and of the procedure, a discussion of the means and arguments and an operative part summarizing the means. Where, in the context of an appeal lodged pursuant to the second paragraph of Article R. 411-19, during the discussion, new legal arguments are put forward in support of the means, they shall be presented in a formally distinct manner.

The Court shall rule only on the means set out in the operative part and shall examine the arguments in support of those means only if they are raised in the discussion.

The parties must set out in their final writings the means and arguments previously filed or relied on in their previous submissions. Failing this, they shall be deemed to have abandoned them and the court shall rule only on the last submissions filed.

Article R. 411-40

The First President shall designate the Chamber to which the case is assigned.

The clerk's office shall inform the appointed lawyers and the Director General of the National Institute of Industrial Property thereof.

Article R. 411-41

Subject to the provisions of Articles R. 411-29, R. 411-30 and R. 411-32, the President of the Chamber to whom the case is assigned shall set the time limits within which the parties to the proceedings shall communicate their submissions to each other, send them to the Director General of the National Institute of Industrial Property and file a copy thereof at the clerk's office of the court.

The President of the Chamber shall set the date of the hearings.

The clerk's office shall inform the appointed lawyers of the parties of these time limits and of the date of the hearings.

It shall inform the Director General of the National Institute of Industrial Property of the date of the hearings.

Article R. 411-42

The decisions of the Court of Appeal shall be notified by registered letter with acknowledgement of receipt by the clerk's office to the parties to the proceedings and to the Director General of the National Institute of Industrial Property.

Article R. 411-43

The time limits provided for in Articles R. 411-21, R. 411-26 and R. 411-29 are increased by:

1° One month, when the action is brought:

- a) Either before a court having its jurisdiction in metropolitan France, for parties residing in Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon, French Polynesia, the Wallis and Futuna Islands, New Caledonia or the French Southern and Antarctic Territories; or
- b) Or before a court having its jurisdiction in Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, Saint Barthélemy, Saint Martin, Saint Pierre and Miquelon or the Wallis and Futuna Islands, for parties not residing in that collectivity;

2° Two months if the applicant resides abroad.

The time limits provided to the defendants and the forced interveners by articles R. 411-30 and R. 411-32 are increased under the same conditions and according to the same modalities.

Title II: Industrial Property Qualification

Chapter II: Conditions for the Practice of the Profession of Industrial Property Attorney

Section 1: Entry on the List of Industrial Property Attorneys

Article R. 422-1

Any person qualified in industrial property who is registered on the list provided for in Article R. 421-1 may request to be registered, with the same mention of specialization, on the list of industrial property attorneys provided for in the third paragraph of Article L. 422-1.

The mention Patents for invention allows intervention in the procedures provided for in Articles R. 612-2 and R. 613-44. The mention Trademarks, designs and models shall permit intervention in the procedures provided for in Articles R. 712-2, R. 712-13 and R. 716-2.

However, persons registered with the mention Jurist under the procedure provided for in Section I of Article 36 of the Decree of April 1, 1992, on qualification and professional organization in industrial property matters may perform the acts defined in Articles R. 712-2, R. 712-13 and R. 716-2.

BOOK VI: PROTECTION OF INVENTIONS AND TECHNICAL KNOWLEDGE

Title I: Patents for invention

Chapter II: Filing and Examination of Applications

Section 1: Filing of Applications

Article R. 612-2

The filing may be made by the applicant personally or by a legal representative having his address for service, registered office or place of business in a Member State of the European Union 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 legal representative appointed for the filing and for the performance of any subsequent act relating to the procedure for the grant of the patent, with the exception of the mere payment of fees, shall have the capacity of industrial property attorney.

Natural or legal persons not having their address for service or registered office in a Member State of the European Union or in a State party to the Agreement on the European Economic Area must appoint a legal representative satisfying the conditions laid down in the previous paragraph within two months of the date of receipt of the notification sent to them to this effect. Where there are several applicants, a common legal representative must be appointed. Where the latter is not one of the applicants, it shall comply with the conditions laid down in the first paragraph.

Except where he has the capacity of industrial property attorney or lawyer, the legal representative shall attach a power of attorney which applies, subject to the provisions of Articles R. 612-38, R. 613-44, R. 613-44-1 and R. 613-45 and, unless otherwise provided, to all the acts and to the receipt of all the notifications provided for in Articles R. 611-15 to R. 611-20, R. 612-1 to R. 613-3, R. 613-44 to R. 613-65, R. 616-1 to R. 616-3 and R. 618-1 to R. 618-4. The power of attorney is exempt from legalization.

Section 2: Processing of applications

Subsection 6: Grant and Publication of the Patent

Article R. 612-73

The request for amendment of the patent after partial revocation or cancellation referred to in Articles L. 613-23-6 and L. 613-27 respectively shall be made in writing.

Where the amendment of the patent is in accordance with the decision on partial revocation or cancellation, the National Institute of Industrial Property shall publish a new patent specification.

Where the amendment is not in accordance with the decision on partial revocation or the operative part of the judgment on partial revocation, a notification thereof shall be made to the owner of the patent. Such notification shall specify the changes to be made to the request for amendment of the patent and the time limit allowed to the owner for making them.

The request for amendment shall be rejected in the following two cases:

- 1° if the owner of the patent fails to comply with the above-mentioned notification within the time limit or fails to file observations to contest its merits within the same time limit;
- 2° if the observations filed are not considered as convincing and the owner does not comply with the notification referred to in the third paragraph within the new time limit set by the Institute.

Article R. 612-73-1

A decision shall be taken on the request for amendment of the patent within a time limit of 12 months following its filing. This time limit shall be suspended, where appropriate, by the notification provided for in the third paragraph of Article R. 612-73, until the request for amendment is regularized.

Article R. 612-73-2

In the absence of an express decision within the time limit mentioned in Article R. 612-73-1, the request for amendment shall be deemed to be rejected.

Article R. 612-73-3

The decision of the Director General of the National Institute of Industrial Property rejecting the request for amendment of the patent referred to in Article R. 612-73 may be the subject of the appeal in annulment referred to in the first paragraph of Article R. 411-19.

Chapter III: Patent rights

Section 1: Exploitation rights

Subsection 6: Miscellaneous provisions

Article R. 613-43-1

The provisions laid down in Articles R. 613-4 to R. 613-43 and R. 613-51 shall apply to certificates of addition.

Section 2: Transmission and loss of rights

Subsection 1: Opposition

Article R. 613-44

The opposition referred to in Article L. 613-23 must be filed within nine months following the publication in the Industrial Property Official Bulletin of the mention of the grant of the contested patent.

The opposition may be filed by a natural or a legal person acting personally or through a legal representative fulfilling the conditions set forth in Article R. 612-2.

Natural or legal persons not having their address for service or registered office in a Member State of the European Union or in a State party to the Agreement on the European Economic Area must appoint a legal representative.

Where the opposition is filed jointly by several persons, a common representative meeting the same requirements shall be appointed.

Where, in the course of the opposition procedure, the owner of the patent files observations or proposals for amendment of the patent, the conditions of representation referred to in Article R. 612-2 shall apply.

Article R. 613-44-1

The notice of opposition shall be filed in writing under the terms and conditions specified by decision of the Director General of the National Institute of Industrial Property.

It shall include:

- 1° The identity of the opponent;
- 2° The references of the patent against which the opposition is filed;
- 3° A statement specifying the scope of the opposition, the grounds on which it is based and the facts relied on and the documents produced in support of those grounds;
- 4° Proof of payment of the fees;
- 5° Where appropriate, the appointment of the legal representative and, unless he is an industrial property attorney or a lawyer, his power of attorney.

The documents and information referred to in items 1 to 5 shall be supplied within the time limit referred to in Article R. 613-44. The basis and scope of the opposition may not be extended after the expiry of the time limit for filing an opposition.

The opposition shall be registered with the National Patent Register.

Article R. 613-44-2

Any opposition filed by the owner of the contested patent shall be inadmissible.

Any opposition which does not comply with the provisions of Articles R. 613-44 or R. 613-44-1 shall also be inadmissible.

Where an opposition is based on several grounds, it shall be admissible only if the statement attached to it satisfies, for at least one of those grounds, the provisions of Article R. 613-44-1, item 3. It shall be deemed unfounded on grounds that do not comply with this condition.

In the event of ex officio inadmissibility, the Director General of the National Institute of Industrial Property shall notify the irregularities to the opponent. A time limit shall then be set for the latter to contest such inadmissibility or, in the case of the power of attorney for the legal representative provided for item 5 of Article R. 613-44-1, to regularize his notice. Failing observations or regularization, the opposition shall be inadmissible.

The decision of inadmissibility shall be registered with the National Patent Register.

Article R. 613-44-3

Where two or more notices for opposition are filed for the same granted patent, the Director General of the National Institute of Industrial Property shall order that they be joined, subject to their admissibility. The parties shall be notified.

Article R. 613-44-4

The National Institute of Industrial Property complies with and enforces the adversarial principle. It may not base its decision on arguments, explanations and documents produced by the parties without those having been given the opportunity to discuss them in an adversarial manner. Any observation or document filed by one of the parties shall be notified without delay to the others.

The parties shall expressly state their requests and the legal and factual arguments on which each of their means is based. All communications between the Institute and the parties shall take place in accordance with procedures laid down by decision of the Director General of the National Institute of Industrial Property.

Article R. 613-44-5

An agent of the National Institute of Industrial Property who has examined a patent application shall not take part to the investigation of the opposition filed against that patent. Such agent may, however, be heard in the opposition procedure.

Article R. 613-44-6

Subject to the penalty of ex officio inadmissibility by the National Institute of Industrial Property and the cases of suspension or termination of the procedure referred to in Articles R. 613-44-10 and R. 613-44-12 respectively, the investigation of the opposition shall proceed in the following four phases:

1° A phase of information and gathering of the opinion of the owner.

The Director General of the Institute shall notify without delay the opposition to the owner. A time limit shall be set for the latter to file observations in reply to the Institute or to propose the amendment of the patent and, where appropriate, to appoint a legal representative pursuant to the fifth paragraph of Article R. 613-44;

2° A phase of preparation of the investigation opinion by the Institute.

Within three months at the latest following the expiry of the time limit referred to in item 1, the Director General of the Institute shall notify an investigation opinion drawn up based on the information supplied by the parties. A time limit shall be appointed for the parties to file their observations or, in the case of the owner of the patent, to propose amendments to the contested patent. With such notification, where appropriate, the observations or proposals for amendment of the patent filed by the owner of the patent pursuant to item 1 shall be attached;

3° A written phase.

On expiry of the time limit referred to in item 2, where at least one of the parties has filed observations or where the owner of the patent has filed proposals for amendment the patent in response to the investigation opinion, a notification thereof shall be made to the parties. A time limit shall be laid down for the parties to file their observations in response or, in the case of the owner, to propose further amendments to the patent. If at least one of the parties responds, notification shall be given to them on expiry of that time limit;

4° An oral phase.

Within the framework of the filing of his written observations, each party may request to present oral observations. The Director General of the Institute may also, without prior request, ask the parties to

present oral observations if he deems it necessary for the purposes of the investigation. The parties shall then be brought together at the end of the written phase of the investigation in order to present their oral observations, in accordance with the procedures laid down by decision of the Director General of the Institute.

Article R. 613-44-7

The Director General of the National Institute of Industrial Property shall rule on the opposition in the light of all the written and oral observations filed or presented by the parties and of the latest proposals for amendment to the patent filed by the owner of the patent. The Director General of the Institute may base his decision on facts or documents produced after the expiry of the time limits referred to in Articles R. 613-44, R. 613-44-1 and R. 613-44-6, provided that the parties have been able to debate them adversely.

The decision ruling on the opposition shall be notified to the parties. It shall be registered with the National Patent Register.

Article R. 613-44-8

The time limit mentioned in the last paragraph of Article L. 613-23-2 is four months.

The date of the end of the investigation phase referred to in the same paragraph shall be notified without delay to the parties by the Director General of the National Institute of Industrial Property. That date shall come into effect if no party has filed observations by the expiry of the time limit referred to in items 2 or 3 of Article R. 613-44-6 and, at the latest, on the day on which the oral observations are presented.

Article R. 613-44-9

The National Institute of Industrial Property shall publish a new patent specification where the decision ruling on the opposition which is no longer subject to appeal maintains the patent in an amended form.

Article R. 613-44-10

The investigation phase or the time limit laid down in the first paragraph of Article R. 613-44-8 shall be suspended:

- 1° At the written request of any person establishing that an entitlement action of the patent has been brought or that, on the date on which the notice of opposition is filed in accordance with Article R. 613-44-1, an invalidity action of the patent has been filed;
- 2° At the initiative of the National Institute of Industrial Property, pending information or elements likely to have an impact on the outcome of the opposition or the situation of the parties.

The investigation phase may also be suspended at the common request of all parties for a time limit of four months, renewable twice.

The Parties shall be notified of the suspension decision.

Article R. 613-44-11

Where the opposition procedure is suspended pursuant to the provisions of Article R. 613-44-10, item 1, they shall be resumed at the request of one of the parties transmitting to the National Institute of Industrial Property the decision ruling on the entitlement or invalidity action or nullity which has become res judicata.

Where the opposition procedure is suspended pursuant to the provisions of the fourth paragraph of Article R. 613-44-10, the procedure shall resume at the request of one of the parties or, where appropriate, on expiry of the time limit laid down in that paragraph.

When the opposition procedure is resumed, if the scope of the patent has been amended, the opponent shall be invited to file a new statement pursuant to Article R. 613-44-1, item 3, within a time limit set by the Institute.

The parties shall be notified without delay by the Institute of the resumption of the procedure, with an indication of the date of resumption.

Article R. 613-44-12

The opposition procedure is terminated:

- 1° Where all the opponents have withdrawn their opposition;
- 2° If the patent is ruled to be invalid by a court decision that has become res judicata;
- 3° If the owner of the patent relinquishes the claims covered by the opposition;
- 4° Where the effects of the patent against which opposition has been filed have ceased, unless the opponent is able to give a legitimate reason in obtaining an opposition decision.

The decision of termination shall be notified without delay to the parties by the National Institute of Industrial Property.

The termination of the opposition procedure shall be registered with the National Patent Register.

Subsection 2: Relinquishment or limitation

Article R. 613-45

The request for relinquishment or limitation shall be made by a written declaration. Subject to its admissibility, it may be made by the owner of the patent at any time, even where the effects of the patent have ceased.

The request must, in order to be admissible:

- 1° Originate from the owner of the patent registered with the National Patent Register on the date of the request, or from his legal representative, who, unless he is an industrial property attorney or a lawyer, shall attach to the request a special power of attorney for relinquishment or limitation.

If the patent belongs to more than one person, relinquishment or limitation may be made only if it is requested by all of them;

- 2° Contain proof of payment of the fees due;
- 3° Aim at only one patent;
- 4° Contain, if rights in rem, pledges or licenses have been registered with the National Patent Register, the consent of the owners of such rights;
- 5° Contain, where the limitation is requested, the full text of the amended claims and, where applicable, the description and drawings as amended.
- 6° be filed, where applicable and where the limitation is requested, after the publication of the new patent specification attesting conformity with the decision of partial revocation or cancellation under Article R. 612-73.

Where the limitation is requested, if the amended claims do not constitute a limitation in relation to the earlier claims of the patent or if they do not comply with the provisions of Article L. 612-6, reasoned notification shall be made to the applicant. He shall be allowed a time limit for regularizing his request or for filing observations. Failing regularization or observations resulting in the objection to be withdrawn, the request shall be rejected by decision of the Director General of the National Institute of Industrial Property.

Relinquishments and limitations shall be registered with the National Patent Register. Notice of entry shall be sent to the applicant for relinquishment or limitation.

Article R. 613-45-1

A ruling shall be given on the request for relinquishment or limitation provided for in Article R. 613-45 within a time limit of twelve months. This time limit shall be suspended, where applicable, by the notification provided for in the ninth paragraph of the same Article until the objection is withdrawn.

Article R*613-45-2

In the absence of an express decision within the time limit referred to in Article R. 613-45-1, the request shall be deemed to be rejected.

Article R. 613-45-3

Where a limitation procedure is terminated pursuant to the fifth paragraph of Article L. 613-24, the Institute shall refund the fees for the limitation request.

The decision to terminate the limitation procedure shall be notified to the owner of the patent.

Chapter VIII: Common provisions

Single Section: Procedure

Article R. 618-2

The notifications provided for in Article L. 613-22 and in Articles R. 612-3-2, 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 acknowledgement of receipt.

Provisions of the French Intellectual Property Code on the INPI opposition procedure

Version in force on April 1, 2020

Taken from the site <https://www.legifrance.gouv.fr>

Free translation

Registered letter may be replaced by the delivery of the letter to the recipient against a receipt, at the premises of the National Institute of Industrial Property, or by an electronic message in accordance with the procedures laid down by the Director General of the Institute to ensure, in particular, the security of the dispatch.

If the address of the recipient is unknown, notification shall be made by publication of a notice in the Industrial Property Official Bulletin.