

FRANCE
Intellectual Property Code
Amendment on April 1, 2023

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PART II Industrial Property

BOOK IV Administrative and Professional Organization

TITLE I Institutions

CHAPTER I National Institute of Industrial Property

Article L411-1

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

The tasks of this institution shall be:

1. to centralize and disseminate all information required for the protection of innovations and for the registration of enterprises, as well as to undertake all activities necessary for awareness-raising and training in these fields;

2. to apply the laws and regulations in the matter of industrial property;

to this end, the Institute shall handle, in particular, the receipt of applications for industrial property rights or related to industrial property, the examination thereof and issuance or registration of such rights, and the supervision of their maintenance;

it shall deal with the applications for declaration of invalidity or revocation of trademarks referred to in items 1 and 2 of Article L716-5 paragraph I, and with the oppositions against patents;

it shall ensure the dissemination of technical, commercial and financial information included in industrial property rights;

it shall issue decisions on applications for the approval or amendment of specifications of geographical indications defined in Article L721-2;

2-1 To apply the provisions of the Commercial Code concerning the operation of the National Register of Companies provided for in Article L.123-36 of this code to the prerogatives associated therewith and to the free distribution of information to the public;

3. to take all initiatives with a view to the permanent adaptation of the national and international law to the needs of innovators and of enterprises;

to this end, it shall propose to the minister in charge of industrial property any reform it may deem appropriate in such

matters;

it shall participate in the drawing up of international agreements and in representing France in the relevant international organizations.

Article L411-2

The Institute's revenue is made up of all royalties collected on industrial property and in relation to the National Register of Companies, within the ceiling provided for under I of Article 46 of Law No.2011-1977 from December 28, 2011 Budget for 2012.

The portion of the royalties collected by the institute authorized to maintain European patents in force and then transferred to the organization established by Article 4 of the Convention on the Grant of European Patents, concluded in Munich on October 5, 1973, known as the "European Patent Convention", in application of article 39 of this agreement, as well as the sums collected by the institute on behalf of the recipient organizations and competent third-party authorities within the framework of its mission as a single body mentioned in Article L123-33 of the Commercial Code are not reflected in the income to which the ceiling mentioned in the first paragraph of this article applies.

The income of the institute also consists of miscellaneous income. Any audit on the execution of the Institute's budget shall be effected a posteriori in compliance with the conditions laid down by decree in the Council of State.

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 General of the National Institute of Industrial Property shall make the decisions set out by this Code in relation to the issuance, rejection or maintenance of industrial property rights, as well as in relation to the approval, rejection or amendment of the specifications of geographical indications defined in Article L721-2, or to the withdrawal of such approvals.

The Director General shall issue decisions on the applications for declaration of invalidity or for the revocation of trademarks, and on oppositions against patents referred to in item 2 of Article L411-1. The appeals against these decisions shall be suspensory.

When exercising these competences, the Director General shall not be subject to administrative control. Actions against the Director General's decisions shall be brought directly before the Courts of Appeal, appointed as the competent courts by the regulation in force.

The possibility of having the judgments of the Courts of Appeal quashed shall be available both to the parties, and to the Director General of the National Institute of Industrial Property.

The conditions for the implementation of this Article shall be laid down by decree of the Council of State.

Article L411-5

The rejection decisions referred to in the first paragraph of Article L411-4, the decisions ruling on oppositions filed against an application for trademark registration, as well as the decisions ruling on requests that revocation be lifted with regard to trademarks or designs and models shall be accompanied by reasons. The same shall apply to decisions on applications for declaration of invalidity or revocation of trademarks or on oppositions against patents.

These decisions shall be notified to the applicant and, as applicable, to other parties, in accordance with the conditions and time limits laid down by decree of the Council of State.

CHAPTER II Committee for the Protection of New Plant Varieties

Article L412-1

A public benefit corporation including in particular the State and the National Institute of Agricultural Research is responsible for all functions of national authority on plant variety rights. As such, the aforementioned corporation is responsible for:

1. Applying the laws and regulations on all matters concerning the protection of plant varieties and, in particular, to issue the certificate referred to in Article L623-4;
2. Supporting the State in drafting national regulations and international agreements on plant varieties.

The person in charge of the public benefit corporation for activities pertaining to the national authority on plant variety rights is appointed by the minister in charge of agriculture. He/She grants the decisions provided for in this Code on the issuance, rejection or maintenance of plant variety certificates. He/She exercises all functions independently of any hierarchical authority or trusteeship.

TITLE II Qualification with Respect to Industrial Property

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

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

Article L422-1

The calling of an industrial property attorney shall be to offer his services to the public, in a 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

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 L422-1, 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 Union 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

The patent attorney practices his/her profession either individually or in a partnership, or as an employee of a natural or legal person practicing the profession of a patent attorney.

Article L422-7

Professionals registered on the list provided for in Article L422-1 or those established in the territory of a Member State of the European Union or a State that is party to the Agreement on the European Economic Area and authorized to represent persons, before their State's Central Industrial Property Body, on matters pertaining to industrial property, may in order to exercise their profession, establish professional partnerships, private practice firms or any company established under another structure. The latter case requires that:

1. The chairperson of the board of directors, the CEOs, the executive board members, the sole CEO and manager(s), as well as the majority of members that make up the administrative board or the supervisory board, hold the positions of the persons referred to in the first paragraph;

3. The admission of any new partner is subject to prior approval, as appropriate, from the board of directors, the supervisory board or the manager(s).

The first two paragraphs of Articles L225-22, L225-44 and L225-85 of the Commercial Code do not apply to members of the board of directors nor to members of the supervisory board of companies of industrial property attorneys.

Should a company exercise the profession of a patent attorney, the said company must be registered under a special section in the list provided for in Article L422-1, in addition to being registered as industrial property attorneys.

Article L422-7-1

The patent attorney may practice his/her profession within the framework of a company with a multi-professional structure, as per Title IV bis of Law no. 90-1258 of December 31, 1990 pertaining to the activities of Incorporated Professional Practices subject to legislative or regulatory status or whose title is protected as well as to financial holdings companies of professional practices, whose purpose is the joint exercise of the patent attorney profession and one or more other professions provided for in that capacity.

The corporation includes, among its partners, a natural person who meets the conditions required to practice the profession.

At least one member exercising the profession of patent attorney and practicing within the firm, either as partner or employee, must be a

member of the board of directors or the supervisory board of the company.

The last paragraph of Article L422-7 applies.

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 Certificate specially devoted to the reimbursement of funds, effects or objects of value received.

Article L422-9

A national firm of patent attorneys is a body with a legal personality that is established in the National Institute of Industrial Property to represent industrial property attorneys in government, promote their services throughout the territory, defend their professional interests and ensure compliance with the rules of ethics.

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 L422-10-1

Continued training is mandatory for industrial property consultants listed in the third paragraph of Article L422-1.

The French National Society of Industrial Property Attorneys monitors compliance with this requirement.

A decree of the Council of State determines the nature and duration of activities that may be required under the obligation of continuing education, as well as its monitoring terms.

Article L422-11

In any matter and for all the services mentioned under Article L422-

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, with the exception of those marked "official", for the latter, notes of meetings and, more generally, all documents of the file shall be subject to professional secrecy.

Article L422-12

The profession of industrial property attorney is incompatible:

1. with any commercial activity, whether it is carried out by oneself or through someone else;
2. 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 General 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 profession provided for in Title IV bis of Law no.90-1258 of 31 December 1990 or the management of related professional interests or family interests;
3. 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

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

Article L423-1

The patent attorneys are authorized, under the conditions established by decree of the Council of State, to use advertising as well as customized approaches. The customized approach goes hand in hand with communicating general information on the law of industrial property.

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) Conditions to apply the last paragraph of Article L422-7 and Article L422-7-1, particularly the terms under which the disciplinary rules provided for in Article L422-10 are applied;
- g) The rules of professional conduct applicable to industrial property attorneys;
- h) 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

TITLE I Protection Conditions and Procedures

CHAPTER I Field of Application

SECTION I Subject of Protection

Article L511-1

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

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

Article L511-3

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

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

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

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 Union, 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

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

Article L511-8

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

Article L511-9

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

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

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 Union 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

SECTION I Application for Filing

Article L512-1

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

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

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

Article L512-4

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 L511-1 to L511-8;
- b) If its holder was not able to benefit from the protection under Article L511-9;
- 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

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

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 L513-3.

CHAPTER III Rights Conferred by the Filing

Article L513-1

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.

The maximum duration of twenty-five years provided for in the first paragraph is reduced to ten years for the documents mentioned under 4 of Article L513-6 where the latter 4 does not provide for an exception to the exercise of rights conferred by the registration of a design or model..

Article L513-2

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

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

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.

The licensee, or party to a license agreement not registered in the National or International Designs Register, is also entitled to take part in the infringement proceedings instituted by the owner of the design to obtain compensation for personal damages.

Article L513-4

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

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

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

1. Acts done privately and for non-commercial purposes;
2. Acts done for experimental purposes;
3. Acts of reproduction for the purposes of making citations or teaching, if these acts mention the registration and the name of the right holder, provided they are compatible with fair business practices and do not prejudice the normal exploitation of that design or model.
4. Acts intended to restore its original appearance to a motor vehicle or trailer, within the meaning of Article L110-1 of the highway code, and which:
 - a) Relate to glazing parts;
 - b) Or are made by the equipment manufacturer who produced the original part.

Article L513-7

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

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 Union or in the European Economic Area by the owner of the design or model or with his consent.

CHAPTER IV Miscellaneous Provisions

Article L514-1

Decrees from the Conseil d'Etat set, when it is necessary, the conditions of application of the present book.

Article L514-2

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.

CHAPTER V Community Designs

Article L515-1

Any infringement of the rights defined under Article 19 of Regulation (EC) no. 6/2002 of the Council of December 12, 2001 on Community designs constitutes counterfeiting, thus incurring the civil law liability of the offender.

Article L515-2

The enforcement order referred to in item 2 of Article 71 of the regulation mentioned in Article L515-1 shall be appended by the National Institute of Industrial Property.

TITLE II Litigation

CHAPTER I National design litigation

Article L521-1

Any infringement of the rights held by the owner of a design, defined under Articles L513-4 to L513-8, shall constitute counterfeiting incurring the civil law liability of the offender. Events occurring subsequent to the submission, but prior to the publication of the design's registration, shall not be deemed as infringing the rights attached thereto.

However, when a copy of the application for registration has been sent to a person, the liability of the said person may be sought for events occurring after the date of notification even if these events occurred prior to the date of publication of registration.

Article L521-2

The owner of the design can institute civil infringement proceedings.

However, the beneficiary of an exclusive exploitation right, except when otherwise stipulated in the licensing contract, may initiate civil infringement proceedings if, after formal notice, the owner of the design does not initiate such proceedings.

Any party to a licensing contract shall be entitled to take part in infringement proceedings instituted by another party in order to seek legal redress against the offending party.

Article L521-3

The civil proceedings for infringement shall lapse five years following the day on which the holder of a right was or should have been aware of the last fact entitling him to exercise it.

Article L521-3-1

Civil proceedings and all requests related to designs and models, including when these also relate to issues of unfair competition, shall be exclusively heard before the courts of law, as determined by regulation.

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

Article L521-3-2

The action for invalidity of a design or model is not subject to any limitation period.

Article L521-4

Infringement can be evidenced by any means.

For this purpose, any person entitled to sue for infringement has the right, under order issued on request by the competent court, to carry out a detailed survey, with or without the taking of samples, or the physical seizure of the infringing goods as well as all relevant documents, at any place and via all bailiffs and if applicable accompanied by experts appointed by the plaintiff. The order may authorize the physical seizure of any document relating to the alleged infringing goods in the absence of the latter.

For purposes of proof, the court may order the detailed survey or the physical seizure of the materials and documents used to produce or distribute the alleged infringing goods.

The court may execute the measures ordered by the plaintiff subject to Certificates that ensure the defendant's possible compensation if the suit for infringement is later deemed unfounded or the seizure is annulled.

Should the plaintiff fail to request a full hearing on the merits of the case, through civil or criminal proceedings, within a determined period of time, the entire seizure, including the description, is quashed at the request of the person whose property has been seized, without the latter having to justify its request and without prejudice to any damages and interest that may be claimed.

Article L521-4-1

The court may order, ex officio or at the request of any person entitled to sue for infringement, all legally admissible investigative measures, even if a counterfeit-seizure has not previously been ordered under the conditions laid down in Article L521-4.

Article L521-5

If requested, the court hearing the merits of the case or having been referred a civil proceeding, as provided for under this Title may order, if necessary under penalty, and in order to determine the origin and distribution networks of the counterfeit products which infringe the plaintiff's rights, the production of any documents or

information held by the defendant or by any person who has been found in possession of counterfeit goods or who provides services used for alleged counterfeit activities or who has been reported as involved in the production, manufacture or distribution of these products or the provision of these services.

The production of documents or information may be ordered if there is no legitimate impediment.

Article L521-6

Any person entitled to sue for infringement may appeal to the competent civil court to order, if necessary under penalty, and against the alleged perpetrator or intermediaries whose services the said perpetrator uses, all measures intended to prevent an imminent infringement to the rights awarded by the title or to prevent the prosecution of counterfeit acts. The competent civil court may also order any urgent measures upon request where circumstances require that such measures are not taken in an adversarial manner, in particular when any delay would be liable to cause irreparable damage to the plaintiff. For motions referred or on petition, the court may order the requested measures only if the evidence reasonably available to the plaintiff makes it likely that his/her rights are infringed or that such an infringement is imminent.

The court may prohibit the prosecution of counterfeiting acts, and render the said prosecution conditional upon the establishment of Certificates to ensure the possible compensation of the plaintiff, or order the seizure, or hand over, of the products suspected of infringing the rights awarded by the title to a third party in order to prevent their entry or circulation in commercial networks. If the plaintiff justifies circumstances likely to compromise the recovery of damages, the court may order the preventive seizure of the alleged infringer's movable and immovable property, including the blocking of bank accounts and other assets, in accordance with civil law. In order to determine the property liable to seizure, the court may order the disclosure of banking, financial, accounting or commercial documents or access to relevant information.

The court may also grant the plaintiff an allowance where proof of damages is not seriously questionable.

For motions referred or on petition, the court may render the ordered measures conditional upon the plaintiff's establishment of Certificates to ensure the possible compensation of the defendant if the infringing action is later ruled unfounded or the measures are

cancelled.

Where measures to put an end to an infringement of rights are ordered before the commencement of a hearing on the merits of a case, the plaintiff must, within a determined period of time and through regulation, either appeal by civil or criminal proceedings, or file a complaint to the public prosecutor. Failing this, at the defendant's request and without the latter having to justify his/her request, the ordered measures are annulled, without prejudice to the damages and interest that may be claimed.

Article L521-7

To set damages and interests, the court takes into consideration the following items separately:

1. The negative financial consequences incurred from the counterfeit action, including loss of profit and losses suffered by the injured party;
2. The non-material damage caused to the latter;
3. And the profits gained by the perpetrator, including the intellectual, material and promotional investments that the latter gained from the counterfeiting action.

Nevertheless, the court may, as an alternative and at the request of the injured party, award damages with a lump sum payment. This sum is greater than the amount of the license fees or duties applicable if the perpetrator had applied for permission to use the right that he/she had infringed. This sum is not exclusive of compensation for the non-material damage caused to the injured party.

Article L521-8

In the event of a civil liability for infringement and at the request of the injured party, the court may order that products recognized as counterfeit, as well as the materials and documents mainly used for their creation or manufacture be recalled from commercial channels, permanently removed from these channels, destroyed or confiscated to the benefit of the injured party. The court may also order any appropriate measure to make the ruling public, in particular to display or publish the said ruling, in full or in part, in newspapers or on designated online public communication networks, according to the specified terms and conditions.

The measures referred to in the first two paragraphs are ordered at the expense of the perpetrator.

Article L521-9

As soon as offenses under the first paragraph of Article L521-10 have been reported, law enforcement officers may proceed with the seizure of goods unlawfully manufactured, imported, stocked, traded, delivered or supplied, in addition to any materials and documents specially established for the purposes of such unlawful acts.

Article L521-10

Any knowingly committed infringement of the rights Certificated by this book shall be liable to a three-year imprisonment and a fine of € 300,000. Should the offense be committed by organized crime, or in an online public communication network or where the events relate to dangerous goods for human or animal health or safety, the penalties are increased to seven years imprisonment and a € 750,000 fine.

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

Temporary closure shall not lead to the termination or suspension of employment contracts, or any pecuniary damage to the employees concerned. Should permanent closure cause the dismissal of staff, the said closure shall give rise, over and above the compensation in lieu of notice and severance pay, to damages as provided in Articles L122-14-4 and L122-14-5 of the Labor Code in case of breach of employment contracts. Failure to pay these damages shall be punishable with a six-month prison term and a fine of € 3,750.

Article L521-11

Natural persons guilty of the offense provided for in the first paragraph of Article L521-10 may also be obligated, at their own expense, to withdraw from all commercial circuits all infringing goods and anything that served or intended to commit the offense. At the expense of the convicted person, the court may order the destruction or return of all items and goods removed from commercial channels or confiscated to the injured party, without prejudice to any damages.

It may also order, at the expense of the convicted person, the display or dissemination of the ruling adopting the conviction, under the conditions provided for in Article 131-35 of the Criminal Code.

Article L521-12

Legal persons held criminally liable, under the conditions provided for by Article 121-2 of the Criminal Code, for the offense defined in the first paragraph of Article L521-10 shall incur the penalties provided for in Article 131-38 of the Criminal Code, in addition to the fine as per the terms and conditions provided for in Article 131-39 of the same Code.

The prohibition referred to in 2. of Article 131-39 of the same code pertains to the activity in the pursuit of which or during the pursuit of which the offense was committed.

All legal persons held criminally liable may also be ordered, at their own expense, to withdraw all infringing items and anything that served or was intended to serve for committing the offense from commercial channels.

At the expense of the convicted person, the court may order the destruction or return of all items and goods removed from commercial channels or confiscated to the injured party, without prejudice to any damages.

Article L521-13

In the event of repetition of infringements of the rights Certificated 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 the commercial courts, chambers of commerce and industry and professional chambers and to joint conciliation boards.

CHAPTER I bis Detention

Article L521-14

In addition to the cases provided for by the Community regulations in force, the customs administration may, upon the written request of the owner of a filed design or the beneficiary of an exclusive exploitation right, backed up by documents evidencing his/her right, and as part of its checks, detain the goods which the latter claims to constitute a counterfeit.

The plaintiff and the right holder are immediately informed of this detention order. The customs administration also informs the public prosecutor of this order.

In the notification referred to in the first sentence of the second paragraph of this Article, the right holder or the beneficiary of the exclusive exploitation right shall be informed of the nature, actual or estimated quantity and images of goods, by way of derogation from Article 59a of the Customs Code. This information may also be communicated before the detention order's execution provided for in this Article.

Subject to the procedures provided for in Articles L521-17-1 and L521-17-2, the detention order is automatically lifted, should the plaintiff fail to justify to customs, within ten working days or three working days in the case of perishable goods from the notification date of the detention of goods, precautionary measures decided by the competent civil court, or civil or correctional proceedings brought before a court of law and established Certificates intended to possibly compensate the holder of the goods in the event the infringement is not subsequently recognized, or a complaint submitted to the public prosecutor.

The customs administration may extend the ten-day period provided for in this paragraph by a maximum of 10 working days upon a duly substantiated request by the plaintiff. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed.

Costs related to the detention order or the provisional measures adopted by the competent civil court shall be borne by the plaintiff, subject to the procedures provided for in Articles L521-18 and L521-19.

For the purpose of instituting the legal proceedings referred to in the fourth paragraph, the plaintiff may obtain from the customs authorities the name and address of the sender, importer, and

recipient or holder of the detained goods, as well as images of these goods in addition to information on their quantity, origin, source and destination, by way of derogation Article 59a of the Customs Code, pertaining to professional secrecy to which customs officials are bound.

The detention order referred to in the first paragraph does not pertain to:

- goods with Community status, legally manufactured or released for free circulation in a Member State of the European Union and intended, after having crossed the customs territory as defined in Article 1 of the Customs Code, to be placed on the market of another Member State in the European Union for legal trade therein;
- goods with Community status, legally manufactured or lawfully entered for free circulation in another Member State of the European Union, in which the said goods have been placed under the transit procedure and which are intended, after having crossed the customs territory as defined in Article 1 of the Customs Code, for export to a non-Member State of the European Union.

Article L521-15

In the absence of a written request from the owner of a filed design or the beneficiary of an exclusive exploitation right, and except in the cases provided for by the Community regulations in force, the customs administration may, as part of its checks, detain goods likely to infringe a filed patent or an exclusive exploitation right.

The owner of the filed design or the beneficiary of the exclusive exploitation right is immediately notified of the detention order. The public prosecutor is also informed of the said order.

Through the notification referred to in the first sentence of the second paragraph of this Article, the right holder or beneficiary of the exclusive exploitation right shall be informed of the nature, actual or estimated quantity and sent images of the said goods, by way of derogation from Article 59a of the Customs Code. This information may also be communicated before the detention order's execution, as provided for in this Article.

The detention order is automatically lifted if the customs administration has not received the request provided for in Article L521-14 of this Code from the owner of the filed patent or the beneficiary of the exclusive exploitation right within four working days of the date of notification of the detention of goods referred

to in the second paragraph of this Article. If the request has been received in accordance with the fourth paragraph of this Article, the period of ten working days referred to in the fourth paragraph of Article L521-14 shall begin to run from the date of customs approval.

This Article does not apply to perishable goods.

Article L521-16

I. When the detention of goods suspected of infringing a registered design, as per the Community regulations in force, is executed after a request for action by the owner of the filed patent or the beneficiary of the exclusive exploitation right has been accepted, customs officers may, by way of derogation from Article 59a of the Customs Code, inform the said owner or beneficiary of the exclusive exploitation right of the order's execution. They may also provide information on the quantity of goods and their nature.

Where the detention of goods suspected of infringing a design, as per the Community regulations in force, is executed after a request for action by the owner of the filed patent or the beneficiary of the exclusive exploitation right has been accepted, customs officers may also communicate to such owner or beneficiary the information provided for by this Community regulation, required to determine whether there has been a violation of rights.

II. The costs incurred from the detention order's execution, as per the Community regulations in force shall be borne by the owner of the filed patent or the beneficiary of the exclusive exploitation right.

Article L521-17

During the detention period referred to in Article L521-14 and in the second paragraph in I of Article L521-16, the owner of the filed patent or the beneficiary of the exclusive exploitation right, may upon his/her request or at the request of the customs administration, inspect the goods detained.

The customs administration may take samples when inspecting the detained goods. At the request of the owner of the filed patent or the beneficiary of the exclusive exploitation right, such samples may be returned to the latter solely for purposes of analysis and with a view to assist in civil or criminal proceedings.

Article L521-17-1

I. Where the detention of goods suspected of infringing a filed patent is executed once the request referred to in Article L521-14 has been accepted, the goods suspected of harming a design may be destroyed under the supervision of customs officers provided that the following conditions are fulfilled:

1. The plaintiff has confirmed in writing and via a detailed survey submitted to the customs authorities, the counterfeit nature of the goods within ten working days, or three working days for perishable goods, as of the date of notification of the detention of goods;
2. The plaintiff has confirmed to the custom authorities in writing, and within ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, that he/she consents to the destruction of the said goods as per his/her responsibility;
3. The holder of goods has confirmed, in writing, his/her consent for the custom authorities to destroy the said goods, within ten working days, or three working days for perishable goods, as of the date of notification of the detention of goods.

II. If the holder of goods does not, within the period referred to in paragraph 3 in I, confirm his/her consent to the destruction of goods, or does not inform the customs administration of his/her opposition to destruction, it shall be considered that the said holder has consented to this destruction.

III. Where the holder of goods has not confirmed in writing that he/she consents to their destruction and where it's not deemed that the said holder has consented to the destruction of goods within the prescribed time, the customs administration shall immediately inform the plaintiff, within ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, to take the measures referred to in the fourth paragraph of Article L521-14. The period of ten days may be extended by a maximum of ten working days upon the plaintiff's duly substantiated request. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed.

If the conditions provided for in I of this Article are not met and if the plaintiff has not justified to the customs authorities that he/she has taken the measures referred to in the fourth paragraph of

Article L521-14, the detention order is thereby automatically lifted.

IV. As part of the information sharing provided for in the third paragraph of Articles L521-14 and L521-15, the customs authorities shall inform the plaintiff of the procedure provided for in this Article. The information provided for in the sixth paragraph of Article L521-14 may also be communicated to the plaintiff for the purpose of executing this measure.

Article L521-17-2

I. Where the detention of goods suspected of infringing a filed patent is executed after the request referred to in Article L 521-14 has been accepted, all goods transported in small shipments may be destroyed under the supervision of customs officers when the plaintiff, in his/her application, requests to follow the procedure provided for in this Article.

II. The notification stated in the first sentence of the second paragraph of Article L521-14 is made within one working day from the starting date of the detention of goods. It states the intention of the customs administration to destroy, or not, the goods and indicates that:

1. The holder of goods has a period of ten working days from the date of notification of the detention of goods to inform the customs administration of its observations;
2. The goods concerned may be destroyed when, within a period of ten working days from the start date of their detention, the holder of goods has confirmed to the customs authorities that he/she consents to such destruction. Should the holder of goods remain silent by the end of this period, the holder is deemed to have consented to their destruction.

The customs administration shall provide the plaintiff, at the request of the latter, with information on the actual or estimated quantity of the goods destroyed and their nature.

III. Where the holder of goods has not confirmed in writing, consent to their destruction or where he/she is not deemed to have consented to their destruction, the customs administration shall immediately inform the plaintiff of the quantity and nature of the goods, including images.

IV. The detention order is automatically lifted should the plaintiff fail to justify to the customs administration that he/she has taken the measures referred to in the fourth paragraph of Article L521-14, within ten working days as of the provisions in III of this Article. In order to take such measures, the plaintiff may obtain from the customs authorities the name and address of the sender, importer, recipient and holder of detained goods, their quantity, origin, source and destination, notwithstanding Article 59a of the Customs Code.

V. The description of the small shipments referred to in I of this Article is specified by decree of the Minister responsible for customs.

VI. This Article is not applicable to perishable goods.

Article L521-17-3

Where the plaintiff uses the information sent by the custom authorities, by way of derogation from Article 59a of the Customs Code, and for purposes other than those provided for in this Chapter, the customs administration shall repeal, suspend or refuse to renew the said request.

Article L521-18

The customs officers apply the powers vested in them by the Customs Code in order to adopt the measures provided for in Articles L521-14 to L521-17-3.

Article L521-19

A decree in the Council of State establishes:

1. The conditions where the measures provided for in Articles L521-14 to L521-17-3 are applicable;
2. The conditions under which the destruction of goods suspected of infringing a design take place, as provided for by the regulations of the European Union, in addition to the conditions on sampling procedures prior to the said destruction.

CHAPTER II Community design litigation

Article L522-1

Chapters I and Ia of this title are applicable to the infringements of rights belonging to the owner of a community design.

Article L522-2

A decree of the Council of State determines the seat and jurisdiction of the courts of first instance and courts of appeal which are competent to hear the legal proceedings and requests provided for in Article 80 of Regulation (EC) No. 6/2002 of the Council, of December 12, 2001 on Community designs, including where such legal proceedings and requests relate both to a design and unfair competition.

BOOK VI Protection of Inventions and Technical Knowledge

TITLE I Invention Patents

CHAPTER I Field of Application

SECTION I General Provisions

Article L611-1

All inventions may be subject to an industrial property title issued by the National Institute of Industrial Property Director who awards its holder or successors an exclusive exploitation right.

The issuance of the title gives rise to the legal dissemination provided for 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 in 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.

Unless otherwise stipulated by an international agreement to which France is a party, the provisions of this Article shall apply to inventions made or used in outer space, including on celestial bodies or in or on space objects under national jurisdiction pursuant to Article VIII of the Treaty of January 27, 1967 on the principles governing the activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies.

Article L611-2

Inventions shall be protected by the following industrial property rights:

1. patents, granted for a term of 20 years from the day the application is filed;
2. utility certificates, granted for a term of ten years 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 from the end of the patent and 17 years 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 Article L612-14, the first paragraph of Articles L612-15 and L612-17, and Articles L613-23 to L613-23-6. They shall likewise apply to supplementary protection certificates, except those contained in Articles L611-12, L612-1 to L612-10, L612-12 to L612-15, L612-17, L612-20, L613-1, L613-23 to L613-23-6, 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 L611-5

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

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

Where the inventor is an employee and failing any contractual clause that is more favorable to the employee, the right to an industrial property title shall be defined in accordance with the following provisions:

1. Inventions made by an employee during the execution of a work contract which includes an assignment to create an invention and corresponds to his/her effective duties, i.e. studies and research, which have been explicitly entrusted to the employee, shall belong to the employer. The employer shall inform the employee of such an invention when the latter is subject to an application for an industrial property title and upon the issuance, if applicable, of this title. The conditions under which the employee and author of an invention that belongs to the employer, shall enjoy additional remuneration is determined by collective and company agreements as well as individual employment contracts.

Where the employer is not subject to a collective bargaining agreement, any dispute relating to additional remuneration shall be submitted to the conciliation commission set up by Article L615-21 or by the Court.

2. All other inventions shall belong to the employee. However, should an invention be made by an employee during the execution of his/her functions or as part of company activities or from company know-how or use of company specific technologies or specific means or acquired data, the employer shall be entitled, subject to the conditions and the time limits laid down by decree of the Council or State, to the ownership or enjoyment of all or some of the rights assigned to the patent that protects the invention of its employee. The employee is entitled to obtain a fair price which, failing agreement between the parties, shall be determined by the conciliation committee set up by Article L615-21 or by the Court. ; these shall take into consideration all items which may be supplied, in particular by the employer and 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 employee and author of an invention shall inform his/her employer thereof who shall in turn confirm receipt in accordance with the terms and time limits laid down by regulation.

The employee and the employer shall communicate to each other all relevant information concerning the invention in question. They

shall refrain from making any disclosure which would compromise, in whole or in part, the exercise of rights awarded under this book. Any agreement between the employee and his/her employer concerning an invention made by the employee shall be recorded in writing, under penalty of being declared void.

4. The conditions for the application of this Article are laid down by a Council of State decree.

5. This Article also applies to State officials, local authorities and any other legal persons established in the public interest, according to the terms laid down by a Council of State decree.

Article L611-7-1

Where the inventor is a natural person who does not fall under Article L611-7 and who is hired within the framework of an agreement by a legal entity governed by public or private law carrying out research, the right to the industrial property title relating to the invention created by this inventor is, except as otherwise provided by a stipulation more favorable to the latter, defined according to the provisions below:

1. In the execution of an agreement, all inventions created by this inventor including an inventive step which keeps with its mission, or the conduct of studies and research which are explicitly entrusted to said inventor, belong to the legal person carrying out the research and who hires said inventor. The legal person shall inform the natural person-author of such an invention where the latter is the subject of an application for an industrial property title and, where applicable, where said title is issued. Any dispute relating to the financial compensation from which the inventor must benefit is submitted to the conciliation commission established by article L615-21 or to the court of law;

2. All other inventions created belong to this inventor. However, for the duration the inventor is hired, the legal person carrying out the research has the right to be granted ownership or enjoyment of all or part of the patent rights protecting the invention created by the natural person:

a) Either under the performance of required duties;

b) Or under the area of activities assigned by the said legal person;

c) Or due to the knowledge or use of techniques or means specific to this legal person, or data provided by the latter;

The inventor must obtain a fair price which, in the absence of

agreement between the parties, is determined by the conciliation commission established under article L615-21 or by the court of law.

3. The inventor shall inform the legal person carrying out the research who has hired him. The latter acknowledges receipt according to the procedures and deadlines set by regulation; Both must provide each other with all useful information on the invention in question. 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 them relating to the invention created by the natural person must be set out in writing.

4. The terms of application of this article, in particular the conditions under which the natural person who is the author of an invention created according to the provisions mentioned in 1. benefits from financial compensation and under which the legal person carrying out research who hires him may be granted ownership or enjoyment of all or part of the rights attached to the patent protecting the invention according to the provisions mentioned in 2., are set by decree in the Council of State.

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

Article L611-10

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

2. The following in particular shall not be regarded as inventions within the meaning of 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 L611-16 to L611-19, 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 new if it does not form part of the state of the art.

A state of the art consists of anything made available to the public before the date on which the patent application is filed via a written or oral description, use or any other means.

Additionally, the content of French patent applications as well as European or International patent applications designating the country of France, filed as such, with a filing date prior to the date referred to in the second paragraph of this Article and which were published on or after the said date is also considered to be included in the state of the art.

The second and third paragraphs do not exclude the patentability of a substance or composition included in the state of the art to implement the methods referred to in Article L611-16, provided that its use for any of these methods is not included in the state of the art.

Similarly, the second and third paragraphs also do not exclude the patentability of a substance or composition referred to in the fourth paragraph for all specific uses in all methods referred to in Article L611-16, provided that such use is not included in the state

of the art.

Article L611-12

Where the first filing has been made in a State which is not a party to the Paris convention 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 patents. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

Article L611-17

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

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

I. The following shall be unpatentable:

- 1. animal varieties;
- 2. 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;

3. 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.

3-bis. Products exclusively obtained by the essentially biological processes defined in 3., including the constituent elements of these products and the genetic information they contain;

4. 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

SECTION I Filing of Applications

Article L612-1

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

Article L612-2

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

- a) A statement according to which a patent is sought;
- b) Information allowing to identify or contact the plaintiff;
- c) A description, even if it does not comply with the other requirements of this title, or reference to a previously filed application under the conditions established by the regulations.

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

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

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 Director of the National Institute 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 court. Proceedings at all levels of jurisdiction shall take place in the 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

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 non-patentable under Article L611-16 to L611-19;
5. its subject matter is manifestly not to be regarded as an invention within the meaning of Article L611-16 to L611-19;
6. its description or claims do not allow the application of the provisions of Article L612-14;
7. it is not patentable within the meaning of 1 of article L611-10;
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, L611-18, L611-19(I-4) or with Article L612-1, the corresponding sections of the description and the drawings shall be deleted ex officio.

Article L612-13

As from the day the application is filed and up to the day on which the documentary search prior to the report referred to in Article L612-14 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 the first paragraph 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 convert his patent application into an application for a utility certificate in accordance with the conditions laid down by regulation.

The applicant may convert his utility certificate application into a patent application, within a time limit in accordance with the conditions laid down by regulation.

Article L612-16

A plaintiff who has not complied with a time limit set by the National Institute of Industrial Property may lodge an appeal to reinstate his/her rights if he/she justifies a legitimate reason and if the non-compliance to the above time limit results directly in the rejection of the patent application or request, forfeiture of the patent application or the patent itself or the loss of any other right.

The appeal must be submitted to the Director of the National Institute of Industrial Property within two months of the time when the reason is ceased. The omitted act must be completed within this period. The appeal shall only be admissible within a period of one year from expiry of the time limit not complied with.

Where the appeal pertains to the failure to pay a maintenance fee,

the time limit not complied with implies a period of grace as per the second paragraph of Article L612-19 and reinstatement is granted by the Director of the National Institute of Industrial Property, provided that the maintenance fees in arrears on the date of reinstatement were paid within the prescribed time.

The provisions of this Article shall not apply to the time limits provided for in the second and third paragraphs, Article L612-16-1 and the deadlines for the presentation and correction of a priority declaration prescribed by law, or the priority period established by Article 4 of the Paris Convention for the Protection of Industrial Property, nor to the time limit provided for Article L613-23 for filing an opposition or to the time limits allowed within the investigation phase mentioned in the first paragraph of Article L613-23-2.

Article L612-16-1

A plaintiff who has not complied with the priority period established by Article 4 of the Paris Convention for the Protection of Industrial Property vis-a-vis the National Institute of Industrial Property may lodge an appeal with a view to reinstate his/her right upon the presentation of a legitimate reason.

A patent application filed more than one year after the previous application for which it claims priority must be filed within two months of the expiry of the priority period.

The appeal must also be submitted to the Director General of the INNP within two months of expiry of the priority period. However, the appeal is not admissible if brought forth upon completion of the technical documents intended for the patent application's publication.

Article L612-17

Once the procedure laid down in Articles L612-14 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

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**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

SECTION I Exclusive Right of Exploitation

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 L613-2-1

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 L611-18 and if it discloses any other particular application of this sequence.

Article L613-2-2

Subject to the provisions of Articles L613-2-1 and L611-18, the protection awarded 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 part of its content and performs its stated function. This protection does not apply in case of an incidental or accidental presence of patented genetic information on seeds, propagating material of plants, whole or parts of plants.

Article L613-2-3

The protection awarded by a patent on 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 awarded by a patent on a process that enables the production of biological material possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through the said process and to any other biological material, derived from the latter, by reproduction or propagation and possessing those same characteristics.

The protection afforded by a patent pertaining to a biological material possessing specific properties as a result of the invention does not extend to biological materials possessing those specified properties, obtained independently of the patented biological material and via the essentially biological process, nor the biological materials obtained from these by reproduction or propagation.

Article L613-2-4

The protection referred to under Articles L613-2-2 and L613-2-3 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 Union 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 L613-3

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, exporting, transshipment 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, exporting, transshipment 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 awarded by the patent shall not extend to:

- a) Activities carried out privately and for non-commercial purposes;
- b) Activities carried out for experimental purposes relating to the subject matter of the patented invention;
- c) Extemporaneous preparation of medical prescriptions in pharmacies, nor the acts on medicines thus prepared;
- d) Mandatory studies and trials to obtain a marketing authorization for a medicinal product, as well as the actions necessary for the acquisition and execution of the said authorization;
- da) Actions necessary to obtain a stamp authorizing advertising as referred to in Article L5122-9 of the Code of Public Health;
- e) Objects intended to be launched into outer space and introduced to the French territory.

Article L613-5-1

By way of derogation from the provisions of Articles L613-2-2 and L613-2-3, 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

By way of derogation from the provisions of Articles L613-2-2 and L613-2-3, 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

Rights conferred by the Articles L613-2-2 and L613-2-3 shall not extend to the deeds performed in order to create or discover and develop other plant varieties.

Article L613-6

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

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.

SECTION II Assignment and Loss of Right

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

All actions 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 in order to be enforceable against third parties.

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.

The licensee, or party to a license agreement not registered in the National or International Designs Register, is also entitled to take part in the infringement proceedings instituted by the patent owner in order to obtain compensation for personal damages.

Article L613-11

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

- a) Has begun to work or has made real and effective preparations for working the invention that is the subject matter of the patent on the territory of a Member State of the European Union 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

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 the court decision on a request by the owner or the licensee.

Article L613-13

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

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 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 L613-15-1

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 L613-12 with L613-14 shall apply.

Article L613-16

If the interests of public health demand it and in absence of an out of the 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 the 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 L613-17-1

The application and submission of a compulsory license, pursuant to Regulation (EC) no. 816/2006 of the European Parliament and of the Council of May 17, 2006 concerning the granting of compulsory licenses for patents relating to the manufacture of pharmaceutical products for export to countries with public health problems, is sent to the administrative authority. The license shall be issued in accordance with the conditions laid down in Article 10 of this Regulation. The decision to grant the license establishes the amount of license fees due.

The license shall take effect on the latest date on which the decision is notified to the plaintiff and the right holder.

Article L613-17-2

Any breach of the prohibition provided for in Article 13 of Regulation (EC) No. 816/2006 of the European Parliament and of the aforementioned Council of May 17, 2006 and Article 2 of Regulation (EC) No. 953/2003 of the Council of May 26, 2003 to prevent the diversion of certain essential medicinal products to countries of the European Union constitutes infringement punishable by the penalties provided for in Article L615-14 of this Code.

Article L613-18

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 court. Proceedings at all levels of jurisdiction shall take place in the court chambers.

Article L613-19-1

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 court.

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

The decision shall be published and notified to the patentee.

2. [Repealed]

Article L613-23

Under the conditions and within the time limits laid down by decree of the Council of State, any patent issued pursuant to Article L612-

17 may be subject to an opposition filed by any person, except the patent holder, with the Director General of the National Institute of Industrial Property.

Article L613-23-1

Such opposition may only rely on one or more of the following grounds:

1. the subject matter of the patent is not patentable within the terms of Articles L611-10, L611-11 and L611-13 to L611-19;
 2. the patent does not disclose the invention in a manner sufficiently clear and complete to be understandable to a person skilled in the art;
 3. 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.
- The opposition may refer to the issued patent in whole or in part.

Article L613-23-2

The Director General of the National Institute of Industrial Property shall rule on the opposition following an inter partes procedure including an investigation phase, under the conditions defined by decree of the Council of State.

The decision of the Director General of the Institute shall have the effects of a judgment within the meaning of item 6 of Article L111-3 of the Code of Civil Enforcement Procedures.

The opposition shall be deemed rejected if the Director General of the Institute fails to rule within the time limit established by decree of the Council of State, which runs from the end of the investigation phase referred to in the first paragraph.

Article L613-23-3

I.- During the opposition proceedings, the holder of the contested patent may amend the claims of this patent, provided that:

1. the amendments made respond to one of the opposition grounds referred to in Article L613-23-1, raised by the objector;
2. the amendments made do not extend the subject matter of the patent beyond the content of the patent application as filed, or if the patent was granted on a divisional application, do not extend its subject matter beyond the content of the earlier application as filed;
3. the amendments made do not extend the protection granted by the

patent;

4. the amended claims comply with Articles L611-10, L611-11, L611-13 to L611-19, L612-5 and L612-6 and they are drawn up in a form that complies with the form requirements laid down by decree of the Council of State.

II.- During the opposition proceedings, the holder of the contested patent may also amend the description and, as applicable, the drawings, provided that:

1. such amendments are aimed at answering the opposition ground referred to in item 2 of Article L613-23-1, claimed by the objector;
2. the amendments made do not extend the subject matter of the patent beyond the content of the patent application as filed, or if the patent was granted on a divisional application, do not extend its subject matter beyond the content of the earlier application as filed.

Article L613-23-4

If the Director General of the National Institute of Industrial Property upholds the opposition based on one of the grounds referred to in Article L613-23-1, claimed by the objector, the patent may be:

1. revoked in full or in part;
2. maintained in an amended form, taking into account the amendments made by the holder during the procedure pursuant to Article L613-23-3.

If the Director General of the Institute dismisses the opposition, the patent shall be maintained as issued.

Article L613-23-5

Each of the parties to the opposition proceedings shall bear the costs it has incurred, unless the Director General of the National Institute of Industrial Property decides on a different distribution of such costs, to the extent required by equity and within the limit established by order of the Minister responsible for industrial property.

Article L613-23-6

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

If a decision ruling on the opposition partially revokes a patent, it shall entitle the patent holder to request that the National

Institute of Industrial Property approve the amendment of the patent to comply with that decision. However, such requests shall only be admissible if the decision ruling on the opposition is not subject to appeal.

The Director General of the Institute shall have the power to reject such requests for patent amendment for lack of compliance with the partial revocation decision.

Article L613-24

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

The request for waiver or limitation shall be submitted to the National Institute of Industrial Property under the conditions established by the law.

The Director of the National Institute of Industrial Property shall examine the compliance of the request with the regulatory provisions mentioned in the preceding paragraph.

However, the request for limitation of a patent filed when an opposition had already been initiated shall not be received as long as the decision ruling on that opposition is subject to appeal, unless the limitation is requested following an application for declaration of invalidity of the patent filed as main application or as counterclaim in front of a competent court.

Likewise, if a patent limitation procedure is ongoing at the time when an opposition is filed against this patent, the National Institute of Industrial Property shall end the limitation procedure, unless the limitation is requested following an application for declaration of invalidity of the patent filed as main application or as counterclaim in front of a competent court.

The effects of the waiver or limitation shall be retroactive as of the filing date of the patent application.

This Article shall apply to the limitations made pursuant to Articles L613-25 and L614-12.

The conditions for the implementation of this Article shall be laid down by decree of the Council of State.

Article L613-25

The Court of Justice shall declare the patent as void:

a) If its subject matter is not patentable within the terms of Articles L611-10, L611-11 and L611-13 to L611-19;

- b) If it does not disclose the invention in a manner sufficiently clear, complete and understandable to 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;
- d) If, after limitation or opposition, the scope of the protection awarded by the patent has increased.

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

In the framework of bringing invalidity proceedings against a patent, its holder is entitled to limit the patent by amending the claims; the limited patent constitutes the subject of the invalidity proceedings involved.

The party who, during the same proceedings, makes several limitations to its patent, in a dilatory or abusive manner, may be sentenced to a civil fine of up to € 3,000 , without prejudice to damages and interest that may be claimed.

Article L613-26

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

Article L613-27

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

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

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

SECTION III Joint Ownership of Patents

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 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

SECTION I European Patents

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".

PARAGRAPH 1 European patent application

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 L612-14.

PARAGRAPH 2 European patents and their impact in France

Article L614-7

The text of the European patent application or the European patent drafted in the language of the proceedings before the European Patent Office established by the Munich Convention is the authentic text.

In the event of a dispute concerning a European patent whose text is not drawn up in French, the patent holder shall submit, at his/her own expense, and upon request of the alleged infringer or upon request of the competent court, a complete translation of the patent in French.

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

Except for invalidity proceedings and by derogation from the first paragraph of Article L614-7, where a translation into the French language has been filed under the conditions provided for in the second paragraph of the same Article L614-7 or in the second paragraph of Article L614-9, this translation is considered authentic if the European patent application or the European patent awards a less extensive protection to the translated text than that awarded by the said application or the said patent in the language in which the application was filed.

However, a corrected translation may be filed at any time by the application or patent holder. The corrected translation of the claims shall, however, take effect only when the conditions laid down in the second paragraph of Article L614-9 have been fulfilled. Anyone who has, in good faith, started to use an invention or made serious and effective preparations to do so, 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/her business or for the needs thereof without payment.

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

As regards France, the invalidity of a European patent is pronounced upon a court ruling and on any one of the grounds set out in Article 138(1) of the Munich Convention.

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

In the framework of bringing invalidity proceedings against a European patent, its holder is entitled to limit the patent by amending the claims in accordance with Article 105a of the Munich Convention; the patent thus limited constitutes the subject of the invalidity proceedings.

The party who, during the same proceedings, makes several limitations to its patent, in a dilatory or abusive manner, may be sentenced to a civil fine of up to € 3,000, without prejudice to damages and interest that may be claimed.

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

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

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

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".

PARAGRAPH 1 Filing International Applications

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

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.

PARAGRAPH 2 Impact of International Applications in France

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.

SECTION III Patent 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**

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 IV bis Detention order

Article L614-32

Except in the cases provided for by European Union regulations, the customs administration may, at the written request of the owner of a patent or a supplementary protection certificate attached to a patent or a person authorized to use the patented invention or object of the supplementary operating certificate, together with the justifications for its right, withhold in the course of its inspections goods alleged by him/her to be infringing the said designs.

The plaintiff and the right holder are immediately informed of this detention order. The customs administration also informs the public prosecutor of this order.

Upon the notification stated in the first sentence of the second paragraph of this Article, the nature and the actual or estimated quantity as well as images of the goods shall be communicated to the owner of the patent or the supplementary protection certificate attached to a patent or to the person entitled to use the patented invention or subject of the supplementary operating certificate, by derogation from Article 59a of the Customs Code. Such information may also be provided before the order set out in this Article is implemented.

Subject to the procedures provided for in Articles L614-36 and L614-37 of the present Code, the detention order is automatically lifted should the plaintiff fail, from the date of notification of the detention of goods, within ten working days, or three working days for perishable goods, to justify to the customs administration either provisional measures decided by the competent civil courts, civil or correctional proceedings brought before a court of law and the Certificates intended for the possible compensation of the holder of goods in the event the infringement is not later recognized, or a complaint submitted to the public prosecutor. The Customs Administration may extend the period of ten working days provided for in this paragraph by a maximum of an additional 10 working days upon the plaintiff's duly substantiated request. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed.

Costs related to the detention order or provisional measures ordered by the competent civil court are borne by the plaintiff.

For the purpose of instituting the legal proceedings referred to in

the fourth paragraph of this Article, the plaintiff may obtain, from custom authorities, the name and address of the sender, importer, recipient and the declarant or holder of the goods detained, as well as images of such goods in addition to information on their quantity, origin, source and destination, by way of derogation from Article 59a of the Customs Code.

The detention referred to in the first paragraph of this section does not include:

1. Goods of Community status, legally manufactured or released for free circulation in a Member State of the European Union and intended, after having crossed the customs territory defined in Article 1 of the Customs Code, to be traded in another Member State of the European Union in order to be legally sold therein;
2. Goods of Community status, legally manufactured or released for free circulation in another Member State of the European Union, in which they have been placed under the transit procedure, and which are intended, after having crossed through the defined customs territory as defined in the same Article 1, for export to a non-Member State of the European Union.

Article L614-33

In the absence of a written request from the owner of a patent or a supplementary protection certificate attached to a patent or from a person authorized to use the patented invention or the object of the supplementary operating certificate and, except in the cases provided for by the regulations of the European Union, the customs administration may, within the framework of its inspections, detain goods likely to infringe a patent or a supplementary operating certificate.

This detention is immediately notified to the owner of the patent or supplementary protection certificate attached to a patent or to the person entitled to use the patented invention or the subject of the supplementary operating certificate. The customs administration also informs the public prosecutor of this order.

Upon the notification stated in the first sentence of the second paragraph of this Article, the nature and the actual or estimated quantity as well as images of the goods shall be communicated to the owner of the patent or the supplementary protection certificate attached to a patent or to the person entitled to use the patented invention or subject of the supplementary operating certificate, by derogation from Article 59a of the Customs Code. Such information

may also be provided before the order set out in this Article is implemented.

The detention order is automatically lifted if the customs administration has not received the application provided for in Article L614-32 of this Code, filed from the owner of the patent or supplementary protection certificate attached to a patent or from the person authorized to use the patented invention or the subject of the supplementary certificate within four working days from the date of notification of the detention of goods referred to in the first sentence of the second paragraph of this Article.

If the request has been received in accordance with the fourth paragraph of this Article, the period of ten working days referred to in the fourth paragraph of Article L614-32 shall begin to run from the date of customs approval.

This Article does not apply to perishable goods.

Article L614-34

I. Where the detention of goods suspected of infringing a patent or supplementary operating certificate is executed before a request from the owner of a patent or supplementary protection certificate attached to a patent or from a person entitled to use the patented invention or subject of the supplementary operating certificate has been filed or accepted, the customs officers may, by derogation from Article 59a of the Customs Code, inform the said owner or beneficiary of the exclusive right to execute this measure, as per European Union Regulations. They may also provide information on the quantity of goods and their nature.

Where detention, provided for by the Regulations of the European Union and for goods suspected of counterfeiting a patent or a supplementary operating certificate, is executed after a request submitted by the owner of a patent or a supplementary protection certificate attached to a patent or a person entitled to use the patented invention or subject of the supplementary operating certificate has been accepted, the customs officers may also communicate to that owner or this authorized person the information required by this regulation, necessary to determine if there has been a violation of his/her right.

II. The costs incurred from the execution of the detention referred to in I shall be borne by the owner of the patent or supplementary protection certificate attached to a patent or by the person

authorized to use the patented invention or subject of the supplementary operating certificate.

Article L614-35

During the detention period referred to in Article L614-32 and in the second paragraph in I of Article L614-34, the owner of the patent or of the supplementary protection certificate attached to a patent or the authorized person to use the patented invention or subject of the supplementary operating certificate may, at his/her request or at the request of the customs administration, inspect the detained goods.

The customs administration may take samples when inspecting the detained goods.

Article L614-36

I. Where the detention of goods suspected of infringing a patent, a supplementary protection certificate or a utility certificate is executed after the request referred to in Article L614-32 has been accepted, goods suspected of infringing a patent, a supplementary protection certificate or a utility certificate may be destroyed under the inspection of customs officers provided that the following conditions are met:

1. The plaintiff has confirmed in writing and via a detailed survey submitted to the customs authorities, the counterfeit nature of the goods within ten working days, or three working days for perishable goods, as of the date of notification of the detention of goods;
2. The plaintiff has confirmed to the custom authorities in writing, and within ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, that he/she consents to the destruction of the said goods as per his/her responsibility;
3. The holder of goods has confirmed, in writing, his/her consent for the custom authorities to destroy the said goods, within ten working days, or three working days for perishable goods, as of the date of notification of the detention of goods.

II. If the holder of goods does not, within the period referred to in paragraph 3 in I, confirm his/her consent to the destruction of goods, or does not inform the customs administration of his/her opposition to destruction, it shall be considered that the said holder has consented to this destruction.

III. Where the holder of goods has not confirmed in writing that he/she consents to their destruction and he/she is not deemed to have consented to the destruction of the said goods within the prescribed time, the customs administration shall immediately inform the plaintiff who, within a period of ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, will implement the measures referred to in the fourth paragraph of Article L614-32. The period of ten days may be extended by a maximum of ten working days upon the plaintiff's duly substantiated request. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed. If the conditions provided for in I of this Article are not met and if the plaintiff has not justified to the customs authorities that he/she has taken the measures referred to in the fourth paragraph of Article L614-32, the detention order is thereby automatically lifted.

IV. As part of the information sharing provided for in the third paragraph of Articles L614-32 and L614-33, the customs authorities shall inform the plaintiff of the procedure provided for in this Article. The information provided for in the sixth paragraph of Article L614-32 may also be communicated to the plaintiff for the purpose of executing this measure.

Article L614-37

Where the plaintiff uses the information sent by the custom authorities, by way of derogation from Article 59a of the Customs Code, and for purposes other than those provided for in this Chapter, the customs administration shall repeal, suspend or refuse to renew the said request.

Article L614-38

The customs officers apply the powers vested in them by the Customs Code in order to adopt the measures provided for in Articles L614-32 to L614-35.

Article L614-39

A decree in the Council of State establishes:

1. The conditions where the measures provided for in Articles L614-32 to L614-37 are applicable;

2. The conditions under which the destruction of goods liable to infringe a patent, a supplementary protection certificate or a utility certificate provided for by the European regulations in force, as well as the sampling conditions prior to the said destruction, take place.

CHAPTER V Legal Proceedings

SECTION I Civil Proceedings

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 L613-11, L613-15, L613-17, L613-17-1 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

Any person entitled to sue for infringement may appeal to the competent civil court to order, if necessary under penalty, and against the alleged perpetrator or intermediaries whose services the said perpetrator uses, all measures intended to prevent an imminent infringement to the rights awarded by the title or to prevent the prosecution of counterfeit acts. The competent civil court may also

order any urgent measures upon request where circumstances require that such measures are not taken in an adversarial manner, in particular when any delay would be liable to cause irreparable damage to the plaintiff. For motions referred or on petition, the court may order the requested measures only if the evidence reasonably available to the plaintiff makes it likely that his/her rights are infringed or that such an infringement is imminent. The court may prohibit the prosecution of counterfeiting acts, and render the said prosecution conditional upon the establishment of Certificates to ensure the possible compensation of the plaintiff, or order the seizure, or hand over, of the products suspected of infringing the rights awarded by the title to a third party in order to prevent their entry or circulation in commercial networks. If the plaintiff justifies circumstances likely to compromise the recovery of damages, the court may order the preventive seizure of the alleged infringer's movable and immovable property, including the blocking of bank accounts and other assets, in accordance with civil law. In order to determine the property liable to seizure, the court may order the disclosure of banking, financial, accounting or commercial documents or access to relevant information. The court may also grant the plaintiff an allowance where proof of damages is not seriously questionable. For motions referred or on petition, the court may render the ordered measures conditional upon the plaintiff's establishment of Certificates to ensure the possible compensation of the defendant if the infringing action is later ruled unfounded or the measures are cancelled. Where measures to put an end to an infringement of rights are ordered before the commencement of a hearing on the merits of a case, the plaintiff must, within a determined period of time and through regulation, either appeal by civil or criminal proceedings, or file a complaint to the public prosecutor. Failing this, at the defendant's request and without the latter having to justify his/her request, the ordered measures are annulled, without prejudice to the damages and interest that may be claimed.

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

Infringement can be evidenced by any means.

For this purpose, any person entitled to sue for infringement has the right, under order issued on request by the competent court, to carry out a detailed survey, with or without the taking of samples, or the physical seizure of the infringing goods as well as all relevant documents, at any place and via all bailiffs and if applicable accompanied by experts appointed by the plaintiff. The order may authorize the actual seizure of any document relating to the alleged counterfeit items in the absence of the latter.

For purposes of proof, the court may order the detailed description or the actual seizure of the materials and documents used to manufacture or distribute the alleged infringing process.

The court may execute the measures ordered by the plaintiff subject to Certificates that ensure the defendant's possible compensation if the suit for infringement is later deemed unfounded or the seizure is annulled.

Should the plaintiff fail to request a full hearing on the merits of the case, through civil or criminal proceedings, within a determined period of time, the entire seizure, including the description, is quashed at the request of the person whose property has been seized, without the latter having to justify its request and without prejudice to any damages and interest that may be claimed.

Article L615-5-1

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 L615-5-1-1

The court may order, ex officio or at the request of any person entitled to sue for infringement, all legally admissible investigative measures, even if a counterfeit-seizure has not previously been ordered under the conditions laid down in Article L615-5.

Article L615-5-2

If so requested, the court hearing the grounds or referred to a civil proceeding provided for in this Title may order, if necessary under penalty, in order to determine the origin and distribution networks of the infringing products or process which infringes the rights of the plaintiff, the production of any documents or information held by the defendant or by any person who has been found in possession of counterfeit goods or who provides services used in alleged counterfeit activities or who has been reported as involved in the production, manufacture or distribution of these products or the provision of these services.

The production of documents or information may be ordered if there is no legitimate impediment.

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

To set damages and interests, the court takes into consideration the

following items separately:

1. The negative financial consequences incurred from the counterfeit action, including loss of profit and losses suffered by the injured party;
2. The non-material damage caused to the latter;
3. And the profits gained by the perpetrator, including the intellectual, material and promotional investments that the latter gained from the counterfeiting action.

Nevertheless, the court may, as an alternative and at the request of the injured party, award damages with a lump sum payment. This sum is greater than the amount of the license fees or duties applicable if the perpetrator had applied for permission to use the right that he/she had infringed. This sum is not exclusive of compensation for the non-material damage caused to the injured party.

Article L615-7-1

In the event of a civil liability for infringement and at the request of the injured party, the court may order that all products recognized as counterfeit, as well as the materials and documents which were mainly used for their creation or manufacture be recalled from all commercial channels, permanently removed from these channels, destroyed or confiscated to the benefit of the injured party.

The court may also order any appropriate measure to make the ruling public, in particular to display or publish the said ruling, in full or in part, in newspapers or on designated online public communication networks, according to the specified terms and conditions.

The measures referred to in the first two paragraphs are ordered at the expense of the perpetrator.

Article L615-8

The infringement proceedings referred to in this section shall lapse five years following the day on which the holder of a right was or should have been aware of the last fact entitling him to exercise it.

Article L615-8-1

The action seeking invalidation of a patent is not subject to any limitation period.

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 L615-3 and L615-7-1.

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 L612-9 and L612-10. Persons carrying out such working shall automatically incur the liability defined in this

Article.

SECTION II Criminal Proceedings

Article L615-12

Any person improperly claiming to be the owner of a patent or of a patent application shall be liable to a fine of € 7,500.

Article L615-13

Notwithstanding the heavier penalties provided for with regard to violation of State security, any person who knowingly violates any of the prohibitions laid down in Articles L612-9 and L612-10 shall be liable to a fine of € 4,500. Where the violation has prejudiced national defense, imprisonment of five years may also be ordered.

Article L615-14

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. Should the offense be committed by organized crime, or in an online public communication network or where the events relate to dangerous goods for human or animal health or safety, the penalties are increased to seven years imprisonment and a € 750,000 fine.

2. Paragraph obsolete.

Article L615-14-1

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 L615-14-2

Natural persons guilty of the offense provided for in Article L615-14 may also be obligated, at their own expense, to withdraw infringing items from all commercial circuits and anything that served or intended to commit the offense.

At the expense of the convicted person, the court may order the destruction or return of all items and goods removed from commercial

channels or confiscated to the injured party, without prejudice to any damages.

It may also order, at the expense of the convicted person, the display or dissemination of the ruling adopting the conviction, under the conditions provided for in Article 131-35 of the Criminal Code.

Article L615-14-3

Legal persons held criminally liable, under the conditions provided for by Article 121-2 of the Criminal Code, for the offense defined in Article L615-14 shall incur the penalties provided for in Article 131-38 of the same Criminal Code, in addition to the fines as per Article 131-39 of the same Code.

The prohibition referred to in 2. of Article 131-39 of the same code pertains to the activity in the pursuit of which or during the pursuit of which the offense was committed.

All legal persons held criminally liable may also be ordered, at their own expense, to withdraw all infringing items and anything that served or was intended to serve for committing the offense from commercial channels.

At the expense of the convicted person, the court may order the destruction or return of all items and goods removed from commercial channels or confiscated to the injured party, without prejudice to any damages.

Article L615-15

Notwithstanding the heavier penalties provided for with regard to violation of State security, any person who knowingly violates an obligation or prohibition laid down in Articles L614-18, L614-20 and the first paragraph of Article L614-21 shall be liable to a fine of € 6,000. Where the violation has prejudiced national defense, imprisonment of five years may also be ordered.

Article L615-16

Notwithstanding the heavier penalties provided for with regard to violation of State security, any person who knowingly violates an obligation or prohibition laid down in the second paragraph of Article L614-2, in Article L614-4 or in the first paragraph of Article L614-5 shall be liable to a fine of € 6,000. Where the violation has prejudiced national defense, imprisonment of between one and five years may also be ordered.

SECTION III Rules of jurisdiction and procedure

Article L615-17

Civil actions and applications relating to patents, including those in the cases provided for in Article L611-7 or when these also concern an associated matter of unfair competition, are brought exclusively before the high courts, and determined by regulation, with the exception of appeals lodged against the administrative acts of the Minister responsible for industrial property which fall within the administrative court.

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 in the first paragraph of this Article shall have sole jurisdiction to ascertain that a French patent should cease to have effect, in whole or in part, in accordance with Article L614-13 of this Code.

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 and L611-7-1 may be submitted to a joint conciliation board 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 and for natural persons covered by Article L611-7-1, 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

CHAPTER I Manufacturing Secrets

Article L621-1

The penalties for violation of manufacturing secrets are set forth in Article L1227-1 of the Labor Code reproduced hereafter:

"Article L1227-1. The fact of revealing or attempting to reveal a manufacturing secret by any director or salaried person shall be punishable by imprisonment of two years and a fine of € 30,000".

"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

SECTION I Filing

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

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 Union 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 Filing

Article L622-5

All third parties are prohibited from:

- reproducing protected design layout;
- commercially exploiting or holding, transshipping, using, exporting or importing for this purpose such a reproduction or of any semiconductor product incorporating it.

This prohibition shall not apply to the following:

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

The foregoing prohibition shall not be binding on the bona fide acquirer of a semiconductor product. However, the said acquirer shall be liable for fair compensation if he/she intends to engage in the commercial exploitation of the product so acquired.

Any violation of the prohibition provided for in the preceding paragraphs shall constitute an infringement for which the offender incurs civil liability.

Article L622-6

The prohibition set forth in the previous Article shall take effect on the deposit date or on the date of first commercial exploitation if that date is earlier. At the end of the tenth calendar year that follows, it is acquired by the registration holder.

However, any registration concerning a design layout which has not been the subject of any use within a period of fifteen years from the date on which it was established or encoded for the first time becomes ineffective.

Article L622-7

Articles L411-4, L411-5, L612-11, L613-8, L613-9, L613-19, L615-2, L615-3, L615-5, L615-5-1-1, L615-5-2, L615-7, L615-7-1, L615-8, L615-8-1, 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.

Article L622-8

Chapter IV bis of Title I of this book is applicable to this chapter.

CHAPTER III Rights to Plant Varieties

SECTION I Issuance of Plant Variety Certificates

Article L623-1

For the purposes of this Chapter, a "variety" is a plant grouping of a botanical taxon of the lowest known rank that can be:

1. Defined by the expression of the characteristics resulting from a certain genotype or combination of genotypes;
2. Different from any other plant grouping by the expression of at least one of the said characteristics;
3. Considered as an entity in view of its ability to be propagated unchanged.

Article L623-2

For the purposes of this Chapter, the term "plant variety rights" means the newly created variety that:

1. Is distinctly different from any other variety whose existence, on the date the application is filed, is common knowledge;
2. It is uniform, that is to say sufficiently identical in its relevant characteristics, subject to the foreseeable variation taking into account the particularities of its sexual reproduction or its vegetative propagation;
3. Stable, that is to say, identical to its initial definition following successive propagations or multiplications or, in the case of a particular cycle of propagation or multiplication, at the end of each cycle.

Article L623-3

All rights to plant varieties fulfilling the conditions stated in Article L623-2 are provided with a specific name together with a corresponding description and a sample kept in a collection.

Article L623-4

I.-Any plant variety may be the subject of a "plant variety certificate" which bestows on its holder an exclusive right to produce, reproduce and influence for the purposes of propagation, offer for sale, sell or promote in any other manner, export, import or hold for any of those purposes any propagating material of the protected variety.

II.-Where the products referred in 1. and 2. of II have been

obtained from the use of propagating material of the protected variety, excluding any use that is incidental, accidental or unauthorized, the exclusive right extends to the products in question, unless the breeder has reasonably exercised his/her right:

1. Harvested crops, including entire plants and parts of plants;
2. Products made directly from harvested crops of the protected variety.

III.-The exclusive right of the holder extends:

1. To varieties that are not clearly different from the protected variety within the meaning of Article L623-2;
2. Varieties whose production requires the repeated use of the protected variety;
3. Essentially derived varieties in respect of a protected initial variety within the meaning of the same Article L623-2, when this variety is not itself an essentially derived variety.

IV.-Forms an essentially derived variety from an "initial variety" which:

1. Mainly derives from the initial variety or from a variety that itself is primarily derived from the original variety;
2. Is distinctly different from the initial variety within the meaning of Article L623-2;
3. Aside from the differences resulting from the derivation, it is consistent with the initial variety in the expression of essential characteristics resulting from the genotype or combination of genotypes of the initial variety.

V.-Subject to the provisions of Article L623-24-1, the production, supply, sale, trade, import, export, transshipment, use and/or possession of the propagating material of the protected variety for such purposes are prohibited, failing the consent of the holder of the plant variety certificate.

Article L623-4-1

I.-The right of the holder does not extend to:

1. Activities undertaken privately and for non-commercial purposes;
2. Activities undertaken on an experimental basis;
3. Activities undertaken for the purpose of breeding other varieties or activities referred to in I of Article L623-4 relating to this new variety, unless III and IV of this same Article are applicable.

II.-The right of the holder does not extend to activities concerning his/her variety or a variety essentially derived from the said variety, or a variety which is not distinctly different from the

latter when the material of this variety or material derived from the latter has been sold or promoted in any form whatsoever by the holder or with his/her consent.

However, the holder's right remains when such activities:

1. Involve a new propagation of the variety in question;
2. Involve an export to a country which does not apply any intellectual property protection to varieties belonging to the same plant species of variety material allowing to propagate it, unless the exported material, as such, is intended for human or animal consumption.

Article L623-5

I. Where reproductive and vegetative propagating material or a harvested crop has been sold or passed on to third persons in any form by the breeder or with his/her consent for the purpose of exploiting the variety, for more than twelve months on French territory or on the territory of the European Economic Area, the said variety is not deemed as new. Where the said sale by the breeder or with his/her consent or disposal to others has taken place in another territory, for the purpose of exploiting the variety, for more than four years before the date on which the application is filed to obtain the plant variety certificate, or in the case of trees and vines for more than six years before the said date, the variety is not deemed as new.

II. For regulatory purposes and as per the meaning under I, disposal to others does not include the disposal of plant variety material to an official or officially authorized body, in addition to the disposal to others for purposes of experimentation or presentations during an officially recognized exhibition, subject, in the latter two cases, to the breeder having expressly stipulated the prohibition of commercially exploiting the variety whose material has been delivered.

Article L623-6

Any person who is a national of a Signatory State to the International Convention for the Protection of New Varieties of Plants and any person who is a citizen of a Member State of the European Union or who has their domicile or registered place of business in one of these States may apply for a plant variety certificate.

The person applying for a plant variety certificate may, on the application's deposit date in France, claim the priority of a first application filed for the same variety in one of the said States, whether filed personally or by his/her creator, provided that the submission in France is not later than twelve months from the date of the first application.

Within the meaning of Article L623-5, the novelty of a variety whose application claims priority as defined in the second paragraph of this Article is set on the deposit date of the priority application. Apart from the cases provided for in the first paragraph, any foreigner may benefit from the protection instituted by this Chapter provided that the French benefit from the reciprocity of protection from the State of which he/she is a national or in which he/she has his/her domicile or place of business.

Article L623-7

The certificate issued by the body referred to in Article L412-1 shall take effect on 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 defense shall be empowered to take cognizance of the certificate applications from the body stated in Article L412-1, on a confidential basis.

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 deposit 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 which is the subject matter of the requested protection is a new plant variety within the meaning of Article L623-2.

However, the body referred to in Article L412-1 may consider the preliminary examination carried out in another Signatory State to the International Convention for the Protection of New Varieties of Plants as sufficient. The same body may take into account the examination carried out by the breeder or its successor.

This Committee may call upon foreign experts.

Article L623-13

I. 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 graminaceae 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 L623-13 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 name given to the said variety may not be the subject of a trademark for goods or services 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 for goods or services to the name 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 Plant Variety Certificates

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 Certificates 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 High Court.

Article L623-22-1

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

The request for licence provided for in Article L623-22-1 shall be brought before the 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 the 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 the court decision the withdrawal of such licence.

Article L623-22-3

Any person of public or private right can obtain a compulsory license under the conditions envisaged in this Article and Article L623-22-4.

The application for a compulsory license is submitted before the District Court where the right holder is located. The said application must be accompanied by documents justifying that:

1. The plaintiff was not able to obtain a license within one year from the date of his/her request to the certificate holder;
2. That he/she is in a position to exploit the variety in a serious and effective way;
3. That the license is of public interest with regard, in particular, to the serious shortfall of supply to the agricultural market that concerns the said variety.

Under the conditions set out in the second to fifth paragraphs of this Article, the holder of the certificate issued for an essentially derived variety from an existing protected variety may submit an application for a compulsory license, where the authorizations necessary for the exploitation of its own variety were not granted from the holder of the initial variety certificate. The holder of the certificate protecting the initial variety may obtain, under the same conditions, a certificate license protecting the essentially derived variety. The compulsory license is non-exclusive. The court shall determine, in particular, its duration, field of application and the amount of royalties to which it gives

rise to.

These conditions may be modified by the court at the request of the holder or licensee.

If the holder of a license does not satisfy the conditions under which this license was granted, the owner of the plant variety certificate and, if necessary, the other licensees may be ordered to withdraw from such license by the court decision.

Article L623-22-4

The rights attached to a compulsory license may not be assigned or transferred, except with the company or part of the company to which these are attached.

This assignment or transfer is only subject to the authorization of the court.

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 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 organization mentioned in Article L412-1. 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 L623-23-1

The plant variety certificate is declared void, by the court decision, if evidenced that:

1. The said certificate has been awarded to a person who was not

entitled to it, unless transferred to the person who is entitled thereto;

2. The date on which the said certificate was issued the variety did not satisfy the conditions referred to in Article L623-2.

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.

SECTION II bis Farm Seeds

Article L623-24-1

Notwithstanding Article L623-4, for the species listed in Regulation (EC) No. 2100/94 of the Council of July 27, 1994 establishing a Community plant variety rights system as well as for other species which may be listed by decree, farmers shall have the right to use on their own holdings without the authorization of the breeder, for the purposes of propagation, the harvested products which they obtained by cultivating a protected variety. This use does not constitute infringement.

Article L623-24-2

Except for small farmers within the meaning of Regulation (EC) No. 2100/94 of the Council of July 27, 1994, the farmer owes compensation to the holders of plant variety certificates whose varieties the said farmer uses.

Article L623-24-3

Where there is no contract between the holder of the plant variety certificate and the farmer concerned or between one or more holders of plant variety certificates and a group of farmers concerned, or inter-professional agreements concluded as per the conditions laid down in Chapter II of Title III of Book VI of the French Rural Code and Sea Fisheries Code, the conditions to request the waiver defined in Article L623-24-1 of this Code, including the terms and conditions on establishing the amount of compensation referred to in Article L623-24-2, the amount of which is considerably lower than

the amount collected for the licensed production of the propagating material of the same variety, shall be established by decree of the Council of State.

Article L623-24-4

When farmers use service providers to sort their seeds, these sorting operations must be carried out under conditions that Certificate the traceability of products from all varieties covered by a plant variety certificate.

In case of non-compliance with these conditions, the seeds are deemed tradeable goods and regarded as constituting a counterfeit within the meaning of Article L623-25.

Article L623-24-5

Farmers that do not comply to the conditions under which the derogation defined in Article L623-24-1 applies, will lose the benefit of the provisions set out in this section.

SECTION III Legal Proceedings

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

Any person entitled to sue for infringement may appeal to the competent civil court to order, if necessary under penalty, and against the alleged perpetrator or intermediaries whose services the said perpetrator uses, all measures intended to prevent an imminent infringement to the rights awarded by the title or to prevent the prosecution of counterfeit acts. The competent civil court may also order any urgent measures upon request where circumstances require that such measures are not taken in an adversarial manner, in particular when any delay would be liable to cause irreparable damage to the plaintiff. For motions referred or on petition, the court may order the requested measures only if the evidence reasonably available to the plaintiff makes it likely that his/her rights are infringed or that such an infringement is imminent.

The court may prohibit the prosecution of counterfeiting acts, and render the said prosecution conditional upon the establishment of Certificates to ensure the possible compensation of the plaintiff, or order the seizure, or hand over, of the products suspected of infringing the rights awarded by the title to a third party in order to prevent their entry or circulation in commercial networks. If the plaintiff justifies circumstances likely to compromise the recovery of damages, the court may order the preventive seizure of the alleged infringer's movable and immovable property, including the blocking of bank accounts and other assets, in accordance with civil law. In order to determine the property liable to seizure, the court may order the disclosure of banking, financial, accounting or commercial documents or access to relevant information.

The court may also grant the plaintiff an allowance where proof of damages is not seriously questionable.

For motions referred or on petition, the court may render the ordered measures conditional upon the plaintiff's establishment of Certificates to ensure the possible compensation of the defendant if the infringing action is later ruled unfounded or the measures are cancelled.

Where measures to put an end to an infringement of rights are ordered before the commencement of a hearing on the merits of a

case, the plaintiff must, within a determined period of time and through regulation, either appeal by civil or criminal proceedings, or file a complaint to the public prosecutor. Failing this, at the defendant's request and without the latter having to justify his/her request, the ordered measures are annulled, without prejudice to the damages and interest that may be claimed.

Article L623-27-1

Infringement can be evidenced by any means.

For this purpose, any person entitled to sue for infringement has the right, under order issued on request by the competent court, to carry out a detailed survey, with or without the taking of samples, or the physical seizure of the infringing goods as well as all relevant documents, at any place and via all bailiffs and if applicable accompanied by experts appointed by the plaintiff. The order may authorize the physical seizure of any document relating to the alleged infringing goods in the absence of the latter.

For purposes of proof, the court may order the detailed survey or the physical seizure of the materials and documents used to produce or distribute the alleged infringing goods.

The court may execute the measures ordered by the plaintiff subject to Certificates that ensure the defendant's possible compensation if the suit for infringement is later deemed unfounded or the seizure is annulled.

Should the plaintiff fail to request a full hearing on the merits of the case, through civil or criminal proceedings, within a determined period of time, the entire seizure, including the description, is quashed at the request of the person whose property has been seized, without the latter having to justify its request and without prejudice to any damages and interest that may be claimed.

Article L623-27-1-1

The court may order, ex officio or at the request of any person entitled to sue for infringement, all legally admissible investigative measures, even if a counterfeit-seizure has not previously been ordered under the conditions laid down in Article L623-27-1.

Article L623-27-2

If requested, the court hearing the merits of the case or having been referred a civil proceeding, as provided for under this Title

may order, if necessary under penalty, and in order to determine the origin and distribution networks of the counterfeit products which infringe the plaintiff's rights, the production of any documents or information held by the defendant or by any person who has been found in possession of counterfeit goods or who provides services used for alleged counterfeit activities or who has been reported as involved in the production, manufacture or distribution of these products or the provision of these services.

The production of documents or information may be ordered if there is no legitimate impediment.

Article L623-28

To set damages and interests, the court takes into consideration the following items separately:

1. The negative financial consequences incurred from the counterfeit action, including loss of profit and losses suffered by the injured party;
2. The non-material damage caused to the latter;
3. And the profits gained by the perpetrator, including the intellectual, material and promotional investments that the latter gained from the counterfeiting action.

Nevertheless, the court may, as an alternative and at the request of the injured party, award damages with a lump sum payment. This sum is greater than the amount of the license fees or duties applicable if the perpetrator had applied for permission to use the right that he/she had infringed. This sum is not exclusive of compensation for the non-material damage caused to the injured party.

Article L623-28-1

In the event of a civil liability for infringement and at the request of the injured party, the court may order that all products recognized as counterfeit, as well as the materials and documents which were mainly used for their creation or manufacture be recalled from all commercial channels, permanently removed from these channels, destroyed or confiscated to the benefit of the injured party.

The court may also order any appropriate measure to make the ruling public, in particular to display or publish the said ruling, in full or in part, in newspapers or on designated online public communication networks, according to the specified terms and conditions.

The measures referred to in the first two paragraphs are ordered at the expense of the perpetrator.

Article L623-29

The civil proceedings referred to in this Chapter, except for the proceedings referred to in Article L623-23-1, shall lapse five years following the day on which the holder of a right was or should have been aware of the last fact entitling him to exercise it.

Article L623-29-1

The action seeking invalidation of a plant variety certificate is not subject to any limitation period.

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 court 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 High Court 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

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 L623-32-1

Natural persons guilty of the offense provided for in Article L623-32 may also be obligated, at their own expense, to withdraw infringing items from all commercial circuits and anything that served or intended to commit the offense.

At the expense of the convicted person, the court may order the destruction or return of all items and goods removed from commercial channels or confiscated to the injured party, without prejudice to any damages.

It may also order, at the expense of the convicted person, the display or dissemination of the ruling adopting the conviction, under the conditions provided for in Article 131-35 of the Criminal Code.

Article L623-32-2

Legal persons held criminally liable, under the conditions provided for by Article 121-2 of the Criminal Code, for the offense defined in Article L623-32 shall incur the penalties provided for in Article

131-38 of the same Criminal Code, in addition to the fines as per Article 131-39 of the same Code.

The prohibition referred to in 2. of Article 131-39 of the same code pertains to the activity in the pursuit of which or during the pursuit of which the offense was committed.

All legal persons held criminally liable may also be ordered, at their own expense, to withdraw all infringing items and anything that served or was intended to serve for committing the offense from commercial channels.

At the expense of the convicted person, the court may order the destruction or return of all items and goods removed from commercial channels or confiscated to the injured party, without prejudice to any damages.

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 Court 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 L623-35

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 € 4,500. Where such violation has effectively prejudiced national defence, a sentence of imprisonment of from one to five years may also be passed.

SECTION IV Detention order

Article L623-36

In addition to the cases provided for by the regulations of the European Union, the customs administration may, at the written request of the holder of a plant variety certificate, accompanied by documents justifying his/her right, detain as part of the said holder's inspections the goods claimed as counterfeit.

The plaintiff and the right holder are immediately informed of this detention order. The customs administration also informs the public prosecutor of this order.

In the notification referred to in the first sentence of the second paragraph of this Article, the holder of the plant variety certificate shall be informed of the nature, actual or estimated quantity and sent images of goods, by way of derogation from the Article 59a of the Customs Code. Such information may also be provided before the order set out in this Article is implemented. Subject to the procedures provided for in Articles L623-40 and L623-41 of the present Code, the detention order is automatically lifted should the plaintiff fail, from the date of notification of the detention of goods, within ten working days, or three working days for perishable goods, to justify to the customs administration either provisional measures decided by the competent civil courts, civil or correctional proceedings brought before a court of law and the Certificates intended for the possible compensation of the holder of goods in the event the infringement is not later recognized, or a complaint submitted to the public prosecutor. The Customs Administration may extend the period of ten working days provided for in this paragraph by a maximum of an additional 10 working days upon the plaintiff's duly substantiated request. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed.

Costs related to the detention order or provisional measures ordered by the competent civil court are borne by the plaintiff.

For the purpose of instituting the legal proceedings referred to in the fourth paragraph of this Article, the plaintiff may obtain, from custom authorities, the name and address of the sender, importer, recipient and the declarant or holder of the goods detained, as well as images of such goods in addition to information on their quantity, origin, source and destination, by way of derogation from Article 59a of the Customs Code.

the detention order referred to in the first paragraph of this section does not include:

1. Goods of Community status, legally manufactured or released for free circulation in a Member State of the European Union and intended, after having crossed the customs territory defined in Article 1 of the Customs Code, to be traded in another Member State of the European Union in order to be legally sold therein;
2. Goods of Community status, legally manufactured or released for

free circulation in another Member State of the European Union, in which they have been placed under the transit procedure, and which are intended, after having crossed through the defined customs territory as defined in the same Article 1, for export to a non-Member State of the European Union.

Article L623-37

In the absence of a written request from the holder of the plant variety certificate and except in cases provided for by the rules of the European Union, the customs administration may, within its inspections, detain goods which may infringe on a plant variety certificate.

This detention order is immediately notified to the holder of the plant variety certificate. The customs administration also informs the public prosecutor of this order.

In the notification referred to in the first sentence of the second paragraph of this Article, the holder of the plant variety certificate shall be informed of the nature, actual or estimated quantity and sent images of goods, by way of derogation from the Article 59a of the Customs Code. Such information may also be provided before the order set out in this Article is implemented. The detention order is automatically lifted if the customs administration has not received the application provided for in Article L623-36 of this Code from the holder of the plant variety certificate, and filed within a period of four working days from the date of notification of the detention of goods referred to in the first sentence of the second paragraph of this Article.

If the request has been received in accordance with the fourth paragraph of this Article, the period of ten working days referred to in the fourth paragraph of Article L623-36 shall begin to run from the date of customs approval.

This Article does not apply to perishable goods.

Article L623-38

I. Where the detention provided for by the European Union Regulations on goods suspected of infringing a plant variety certificate is executed before an application by the holder of the plant variety certificate has been filed or accepted, customs officers may, by way of derogation from Article 59a of the Customs Code, inform the said holder of the execution of this order. They may also provide information on the quantity of goods and their

nature.

Where the detention order provided for by the European Union Regulations on goods suspected of infringing a plant variety certificate is executed after the application from the holder of the plant variety certificate has been accepted, customs officers may also disclose to the said holder the information provided for by this regulation necessary to determine whether there has been a violation of his/her right.

II. The costs incurred by the execution of the detention order referred to in I are borne by the holder of the plant variety certificate.

Article L623-39

During the detention period referred to in Article L623-36 and the second paragraph of I of Article L623-38, the holder of the plant variety certificate may, upon his/her request or that of the customs administration, inspect the detained goods.

The customs administration may take samples when inspecting the detained goods.

Article L623-40

I. Where the detention of goods suspected of infringing a plant variety certificate is executed after the application referred to in Article L623-36 has been accepted, the goods suspected of infringing a plant variety certificate may be destroyed under the supervision of customs officers provided that the following conditions are fulfilled:

1. The plaintiff has confirmed in writing and has presented a detailed survey to the custom authorities within a period of ten working days, or three working days for perishable goods, from the date of notification of the detention order, the counterfeit nature of the goods;
2. The plaintiff has confirmed to the custom authorities in writing, and within ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, that he/she consents to the destruction of the said goods as per his/her responsibility;
3. The holder of goods has confirmed, in writing, his/her consent for the custom authorities to destroy the said goods, within ten working days, or three working days for perishable goods, as of the

date of notification of the detention of goods.

II. Where the holder has neither, within the period specified in 3. of I, confirmed that he/she consents to the destruction of the said goods, nor informed the customs administration that he/she does not agree to their destruction, the said holder is deemed to have consented to the said destruction of goods.

III. Where the holder of goods has not confirmed in writing that he/she consents to their destruction and where it's not deemed that the said holder has consented to the destruction of goods within the prescribed time, the customs administration shall immediately inform the plaintiff, within ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, to take the measures referred to in the fourth paragraph of Article L623-36. The period of ten days may be extended by a maximum of ten working days upon the plaintiff's duly substantiated request. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed. If the conditions provided for in I of this Article are not met and if the plaintiff has not justified to the customs authorities that he/she has taken the measures referred to in the fourth paragraph of Article L623-36, the detention order is thereby automatically lifted.

IV. As part of the information sharing provided for in the third paragraph of Articles L623-36 and L623-37, the customs authorities shall inform the plaintiff of the procedure provided for in this Article. The information provided for in the sixth paragraph of Article L623-36 may also be communicated to the plaintiff for the purpose of executing this measure.

Article L623-41

Where the plaintiff uses the information sent by the custom authorities, by way of derogation from Article 59a of the Customs Code, and for purposes other than those provided for in this Chapter, the customs administration shall repeal, suspend or refuse to renew the said request.

Article L623-42

The customs officers apply the powers vested in them by the Customs Code in order to adopt the measures provided for in Articles L623-36

to L623-39.

Article L623-43

A decree in the Council of State establishes:

1. The conditions where the measures provided for in Articles L623-36 to L623-41 are applicable;
2. The conditions under which the destruction of goods liable to infringe a plant variety certificate, as provided for by the European regulations in force in addition to the conditions under which samples are taken prior to the execution of the said destruction.

Article L623-44

This section is not applicable to farm seeds falling within Section 2a of this Chapter.

BOOK VII Trademarks, Service Marks and Other Distinctive Signs

TITLE I Trademarks and Service Marks

CHAPTER I Constituent Elements of Marks

Article L711-1

A trademark for goods or services is a sign which serves to distinguish the goods or services of a natural or legal person from those of other natural or legal persons.

This sign must allow representation in the National Register of Trademarks so as to enable any person to determine precisely and clearly the subject matter of the protection granted to its proprietor.

Article L711-2

The following may not be validly registered and, if registered, are likely to be declared invalid:

1. a sign that cannot represent a trademark within the meaning of Article L711-1;
2. a trademark devoid of distinctive nature;
3. a trademark consisting exclusively of elements or indications that may serve to designate, in trade, a feature of the goods or service, particularly the type, quality, quantity, purpose, value, geographical origin, time of production of the goods or provision of the service;
4. a trademark consisting exclusively of elements or indications that have become customary in everyday language or in the bona fide and established practices of the trade;
5. a sign consisting exclusively of the shape or another feature of the goods imposed by the very nature of the goods, which is required to obtain a technical result or which gives the goods substantial value;
6. a trademark excluded from registration pursuant to Article 6ter of the Paris Convention for the Protection of Industrial Property, in the absence of an authorization by the competent authorities;
7. a trademark that contravenes public order or the use of which is prohibited by law;
8. a trademark that could mislead the public, particularly as regards the nature, quality or geographical origin of the goods or services;

9. a trademark excluded from registration pursuant to national legislation, European Union law or the international agreements to which France or EU are parties, which stipulate the protection of designations of origin and geographical indications, traditional expressions for wines and traditional specialities Certificated;
 10. a trademark consisting of the name of an earlier plant variety denomination, registered in accordance with Book VI of this Code, European Union law or the international agreements to which France or EU are parties, which stipulate the protection of plant variety rights or reproducing it in its essential elements and having as scope plant varieties belonging to the same species or to a closely related species;
 11. a trademark applied for in bad faith by the applicant.
- In the cases referred to in items 2, 3 and 4, the distinctive nature of a trademark may be acquired following the use of the trademark.

Article L711-3

I.- A trademark may not be validly registered and, if registered, is likely to be declared invalid, if it infringes earlier rights having effect in France, in particular:

1. an earlier trademark:
 - a) if it is identical with the earlier trademark and the goods or services it designates are identical with those for which the earlier trademark is protected;
 - b) if it is identical with or similar to the earlier trademark and the goods or services it designates are identical with or similar to those for which the earlier trademark is protected, if there is, on the part of the public, a risk of confusion including the risk of association with the earlier trademark;
2. an earlier registered trademark or an application for a trademark, subject to its subsequent registration, that has a reputation in France or, in case of a European Union trademark, a reputation in EU, if the later trademark is identical with or similar to the earlier trademark, irrespective of whether the goods or services it designates are or are not identical or similar to those for which the earlier trademark is registered or applied for, and if the use of the later trademark without due cause would take unfair advantage of, or be detrimental to the repute of the earlier trademark;
3. a name or style of a company, where there is a risk of confusion on the part of the public;

4. a trade name, a signboard or a domain name of more than mere local significance, where there exists a risk of confusion on the part of the public;
5. a registered geographical indication referred to in Article L722-1 or an application for geographical indication, subject to the approval of its specifications and its subsequent registration;
6. copyrights;
7. rights deriving from a protected design or model;
8. a personality right of another person, particularly his/her surname, pseudonym or likeness;
9. the name, image or repute of a territorial community or a public inter-municipal cooperation institution;
10. the name of a public entity, where there is a risk of confusion on the part of the public.

II.- An earlier trademark within the meaning of item 1 of paragraph I shall mean:

1. a French registered trademark, a European Union trademark, or an internationally registered trademark having effect in France;
2. an application for registration of a trademark referred to in item 1, subject to its subsequent registration;
3. a well-known trademark, within the meaning of Article 6 bis of the Paris Convention for the Protection of Industrial Property.

Registered trademark anticipation shall be determined in respect of the date of the application for registration, considering, as applicable, the right of priority invoked or the seniority validly claimed by a European Union trademark within the meaning of Article L717-6.

III.- A trademark may not be validly registered and, if registered, is likely to be declared invalid, if its registration was requested by the agent or the representative of the proprietor of a trademark that is protected in a state that is party to the Paris Convention for the Protection of Industrial Property, in their own name and without the authorization of the proprietor, unless the agent or the representative justify their action.

CHAPTER II Acquisition of Rights in Marks

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

An application for registration shall be presented and published in the form and in accordance with the conditions laid down by this Title and detailed by decree of the Council of State. In order to benefit from a date of filing, it shall comprise, in particular, the representation of the trademark, a list of the goods and services for which registration is requested and the identification of the applicant, and shall be accompanied by the proof of payment of the filing fee.

Article L712-2-1

Any local authority or any public inter-municipality cooperation establishments may request from the National Institute of Industrial Property to be alerted in the event an application is filed to register a trademark containing its specific name, under terms set by decree.

The regional councils, the local authorities of Corsica and the general councils may request from the National Institute of Industrial Property to be alerted in the event an application is filed to register a trademark containing the name of a region lying in their geographical territory, under terms set by decree.

Article L712-3

Within two months following the publication of the application for registration, any person may submit written observations to the Director General of the National Institute of Industrial Property, explaining on which grounds the application for registration should be rejected, pursuant to items 2 and 3 of Article L712-7.

Within two months following the publication of the regulations governing the use of the trademark, any person may also submit written observations to the Director General of the National Institute of Industrial Property, explaining on which grounds the

application for registration should be rejected, pursuant to Articles L715-4 and L715-9.

Article L712-4

Within two months from the publication of the application for registration, an opposition may be filed with the Director General of the National Institute of Industrial Property against an application for registration in case of infringement of one of the following earlier rights having effect in France:

1. an earlier trademark pursuant to item 1 of Article L711-3 paragraph I;
2. an earlier reputed trademark pursuant to item 2 of Article L711-3 paragraph I;
3. a name or style of a company, where there is a risk of confusion on the part of the public;
4. a trade name, a signboard or a domain name of more than mere local significance, where there exists a risk of confusion on the part of the public;
5. a registered geographical indication mentioned in Article L722-1 or an application for geographical indication, subject to the approval of its specifications and its subsequent registration;
6. the name, image or repute of a territorial community or a public inter-municipal cooperation institution;
7. the name of a public entity, where there is a risk of confusion on the part of the public.

An opposition may also be filed in case of infringement of a trademark that is protected in a state that is party to the Paris Convention for the Protection of Industrial Property, under the conditions laid down in paragraph III of Article L711-3.

Article L712-4-1

An opposition may be filed, relying on one or more of the rights referred to in Article L712-4, provided that these rights belong to the same proprietor, by the following persons:

1. the proprietor of an earlier trademark referred to in items 1 and 2 of Article L712-4;
2. the beneficiary of an exclusive exploitation right over an earlier registered trademark referred to in items 1 and 2 of Article L712-4, unless otherwise provided for in the contract;
3. any legal person acting on the grounds of its name or style referred to in item 3 of Article L712-4;

4. the holder of a domain name referred to in item 4 of Article L712-4;
5. any person acting pursuant to item 4 of Article L712-4 based on the trade name under which it carries out its activity or on the signboard designating the place where this activity is carried out;
6. any person who, acting pursuant to item 5 of Article L712-4, is authorized to exercise the rights deriving from the geographical indication concerned and, in particular, to ensure their management or defense;
7. a territorial community or a public inter-municipal cooperation institution pursuant to item 5 of Article L712-4, as far as the geographical indication includes its name, or pursuant to item 6 of the same Article;
8. any legal person under public law acting pursuant to item 7 of Article L712-4 based on the name under which this person or its services carry out their activity;
9. the proprietor of the trademark filed without his authorization in the name of his agent or his representative, pursuant to paragraph III of Article L711-3.

Article L712-5

The Director General of the National Institute of Industrial Property shall rule on the opposition following an inter parties procedure including an investigation phase, under the conditions defined by decree of the Council of State.

The opposition shall be deemed rejected if the Director General of the Institute fails to rule within the time limit established by the same decree, which runs from the end date of this investigation phase.

Article L712-5-1

The opposition based on an earlier trademark that has been registered for more than five years shall be rejected if the objector, upon request of the owner of the application for registration, is unable to prove:

1. that, for the goods or services underlying the opposition, there was genuine use of the earlier trademark during a period of five years prior to the filing date or the priority date of the contested application for registration, under the conditions of Article L714-5 or, in case of a European Union trademark, of Article 18 of Regulation (EU) 2017/1001 of 14 June 2017;

2. that there were justified grounds for its non-use.
For the purposes of the examination of the opposition, the earlier trademark shall only be deemed registered for those goods or services for which a genuine use was proved, or for which justified grounds for non-use were established.

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 L712-6-1

If a trademark that is protected in a state party to the Paris Convention for the Protection of Industrial Property was registered in France in the name of the agent or the representative of the proprietor of this trademark without the authorization of the proprietor, the latter may:

1. object to the use of the trademark by his agent or representative;
2. request the assignment of the trademark for his benefit.

The preceding provisions shall not apply if the agent or representative justifies his action.

Except where the agent or the representative has acted in bad faith, the action of the proprietor shall be barred five years after publication of the application for registration.

Article L712-7

The Director General of the National Institute of Industrial Property shall reject the application for registration:

1. if it does not meet the requirements of Article L712-2;
2. if the trademark does not meet the requirements of items 1 and 5 to 10 of Article L711-2;
3. if the trademark is devoid of distinctive nature pursuant to items 2, 3 and 4 of Article L711-2, unless the applicant proves that the trademark has acquired a distinctive nature following its use prior to the filing date;
4. if the opposition against it is upheld pursuant to Article L712-

4.

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 trademark may be renewed where there is neither modification of the sign nor extension of the list of goods or services. The National Institute of Industrial Property shall inform the holder of the trademark that the registration has expired, without the institute being held responsible for the absence of this information.

It shall be subject neither to verification of compliance with Articles L711-2 nor that of articles L715-4 and L715-9, 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

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

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 trademark in accordance with Articles L2134-1 and L2134-2 of the Labor Code.

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

Article L713-1

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

This right shall be exercised notwithstanding the rights acquired by third parties before the filing date or at the priority date of that trademark.

Article L713-2

Unless authorized by the proprietor of the trademark, it is prohibited to use in the course of trade for goods or services:

1. a sign that is identical with the trademark and is used for goods or services identical with those for which the trademark is registered;
2. a sign that is identical with or similar to the trademark and is used for goods or services identical with or similar to those for which the trademark is registered, if there is, in the mind of the public, a risk of confusion including the risk of association of the sign with the trademark.

Article L713-3

Unless authorized by the proprietor of the trademark, it is prohibited to use in the course of trade, for goods or services, a sign that is identical with or similar to a reputed trademark and is used for goods or services identical with or similar or not similar to those for which the trademark is registered if such use of the sign, without due cause, takes unfair advantage of or harms the distinctive nature or the reputation of the trademark.

Article L713-3-1

The following actions or uses, in particular, are prohibited pursuant to Articles L713-2 and L713-3:

1. to apply the sign on products or their packaging;
2. to offer, market or own for these purposes goods under the sign or to offer or provide services under the sign;
3. to import or export goods under the sign;
4. to use the sign as trade name or corporate name or as a part of a trade name or a corporate name;
5. to use the sign in business documents and advertising;

6. to use the sign in comparative advertising, in breach of Articles L122-1 to L122-7 of the Consumer Code;

7. to suppress or modify a duly affixed trademark.

These actions and uses are prohibited even if they are accompanied by words such as: "formula, style, system, imitation, genre, method."

Article L713-3-2

Subject to the provisions of Article L716-4-4, it is also forbidden to introduce into the national territory, in the course of trade, goods that have not been put into free circulation where such goods, including their packaging, originate from third countries and bear, without the authorization of the proprietor, a sign that is identical with a trademark registered for these goods or a sign that cannot be distinguished from such trademark in its essential features.

Article L713-3-3

If confronted with a risk of infringement of his rights, pursuant to Articles L713-2 to L713-3-1, by the use in the course of trade, for goods or services, of packaging, labels, markings, security or authentication devices, or any other support on which the trademark is affixed, the proprietor of a trademark may prohibit:

1. the affixing of a sign that is identical with or similar to the trademark on the supports mentioned in the first paragraph;
2. the offering, marketing or ownership for these purposes, the import or export of such supports.

Article L713-3-4

Where the reproduction of a trademark in a dictionary, an encyclopedia or a similar reference work, in printed or electronic form, gives the impression that it represents the generic term designating the goods or the services for which it is registered and the proprietor of the trademark so requests, the publisher shall indicate without delay and at the latest in the following edition, if the work is printed, that the trademark concerned is a registered trademark.

Article L713-4

The right conferred by a mark shall not entitle an owner to prohibit its use in relation to goods which have been put on the market in

the European Union 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

It shall not constitute an infringement, but an action entailing the civil liability of the author, to use, in the course of trade, for goods or services, in the absence of the authorization of the proprietor of a trademark that is well known within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property:

1. a sign that is identical with the trademark and is used for goods or services identical with those for which the trademark is well known;
2. a sign that is identical with or similar to the trademark and is used for goods or services identical with or similar to those for which the trademark is well known, if there is, in the mind of the public, a risk of confusion including the risk of association of the sign with the trademark;
3. a sign that is identical with or similar to the trademark and is used for goods or services identical with or similar or not similar to those for which the trademark is well known, if such use of the sign, due cause, takes unfair advantage of or harms the distinctive nature or the notoriety of the trademark.

Article L713-6

I. A trademark shall not entitle its proprietor to prohibit the use by a third party, in the course of trade, in accordance with fair trading practices, of:

1. his surname or address, if the third party is a natural person;
2. signs or indications that are devoid of distinctive nature or relate to the type, quality, quantity, purpose, value, geographical origin, time of production of the product or furnishing of the service or to other features thereof;
3. the trademark, to designate or mention goods or services as being those of the proprietor of the trademark, in particular where this use is necessary to indicate the purpose of a product or a service as an accessory or spare part.

II. A trademark shall not entitle its proprietor to prohibit the use by a third party, in the course of trade, of a trade name, a signboard or a domain name of local significance where such use is prior to the date of the application for registration of the trademark and is exercised within the limits of the territory in which they are recognized.

CHAPTER IV Transfer and Loss of Rights in Trademarks

Article L714-1

The rights under a trademark may be transferred in whole or in part, independently of the person that exploits them or has them exploited. Assignment of these rights, even in part, may not have a territorial limitation.

The complete transfer of business, including pursuant to a contractual obligation, shall entail the transfer of the rights attached to the trademark, unless otherwise agreed or where this is clear from the circumstances of the case.

The rights attached to a trademark may be the subject of rights *in rem*. In particular, they may be pledged.

The rights attached to a trademark may be the subject, wholly or partially for the territory and the protected goods or services, of an exclusive or non-exclusive operating license.

The rights conferred by a trademark 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 trademark may be used pursuant to the registration, the nature of the goods or services for which the license was granted, the territory in which the trademark may be displayed or the quality of the products manufactured or the services provided by the licensee.

The rights under a trademark may be the subject of enforcement measures.

The assignment and the establishment of rights *in rem*, such as a pledge, on the rights attached to the trademark shall be recorded in writing, under pain of invalidity.

The provisions of this Article shall also apply to applications for the registration of trademarks.

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 trademark shall be declared null and void by the court decision or by decision of the Director General of the National Institute of Industrial Property, pursuant to Article L411-4, if the trademark does not comply with the conditions stipulated

by Articles L711-2, L711-3, L715-4 and L715-9.

Article L714-4

The rights of the proprietor of a trademark shall be revoked by the court decision or by decision of the Director General of the National Institute of Industrial Property pursuant to Articles L714-5, L714-6, L715-5 and L715-10.

Article L714-5

A proprietor of a trademark who has not put his trademark to genuine use in connection with the goods or services for which the trademark was registered during an uninterrupted period of five years, without good reason, shall be liable to revocation of his rights. The start date of this period is set at the earliest on the date of registration of the trademark, as specified by decree of the Council of State.

The following shall be assimilated to the use referred to in the first paragraph:

1. use made with the consent of the proprietor of the trademark;
2. use made by a person authorized to use the collective mark or the Certificate mark;
3. use of the trademark by the proprietor or with his consent, in a modified form that does not alter the distinctive nature, irrespective whether the trademark is registered or not in the name of the proprietor in the form used;
4. the application of the trademark on products or on their packaging, by the proprietor or with his consent, exclusively for export purposes.

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 of, or amendment to, the rights attached to a trademark must be registered in the National Register of Trademarks in order to be effective against third parties.

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.

The licensee, or party to a license agreement not registered in the National or International Trademarks Register, is also entitled to take part in the infringement proceedings instituted by the owner of the trademark to obtain compensation for personal damages.

Article L714-8

Owners of trademarks reproducing or imitating the emblem of the Third Additional Protocol to the Geneva Conventions of August 12, 1949 concerning the adoption of the additional distinctive emblem or the name of that emblem may continue to use their rights provided that they were acquired before December 8, 2005 and that their use could not appear, in times of armed conflict, as awarding the protection of the Geneva Conventions and, where appropriate, the 1977 Additional Protocols.

CHAPTER V Certificate Marks and Collective Marks

SECTION I Certificate Marks

Article L715-1

A Certificate mark is a mark described as such when the mark is applied for and meant to distinguish the goods or the services for which the material, the manner of manufacturing or presentation, the quality, the accuracy or other features are Certificated.

The provisions of this Book shall apply to Certificate marks subject to the special provisions of this Section.

Article L715-2

The registration of a Certificate mark may be applied for by any natural or legal person, including any legal person under public law, provided that such person does not carry out an activity related to the supply of goods or the provision of services of the same type as the ones that are Certificated.

The filing of an application for registration of a Certificate mark shall be accompanied by regulations governing use of the mark. Any subsequent amendment of the regulations governing use of the mark shall be communicated to the National Institute of Industrial Property.

The conditions for the implementation of this Article shall be laid down by decree of the Council of State.

Article L715-3

A Certificate mark may only be assigned or transferred to persons that meet the requirements of the first paragraph of Article L715-2.

Article L715-4

In addition to the grounds for rejection or invalidity provided for in Article L712-7 and Article L714-3, respectively, the registration of a Certificate mark shall be refused or, if the mark has been registered, is likely to be declared null and void if it does not comply with the provisions of Articles L715-1 to L715-3 or if the regulations governing its use contravene public order.

The registration of a Certificate mark shall also be refused or, if the mark has been registered, is likely to be declared invalid if there is a risk that it would mislead the public as to its nature or significance, in particular where it is likely not to appear as a

Certificate mark.

Article L715-5

In addition to the grounds for revocation referred to in Articles L714-5 and L714-6, the rights of the proprietor of the Certificate mark shall be revoked for the following reasons:

1. the proprietor no longer meets the requirements of Article L715-2;
2. the proprietor does not take reasonable measures to prevent a use of the mark that would be incompatible with the regulations governing the use of the mark;
3. due to being used by the authorized persons, the mark has become likely to mislead the public within the meaning of the second paragraph of Article L715-4;
4. an amendment to the regulations governing its use has rendered the mark non-compliant with the conditions of Articles L715-1 and L715-2 or contrary to public order.

SECTION II Collective Marks

Article L715-6

A collective mark is a mark described as such when the mark is applied for and meant to distinguish the goods or the services of the persons authorized to use it pursuant to the regulations governing its use.

The provisions of this Book shall apply to collective marks subject to the special provisions of this Section.

Article L715-7

The registration of a collective mark may be applied for by any association or any group with legal personality representing manufacturers, producers, service providers or traders, as well as by any legal person under public law.

The filing of an application for registration of a collective mark shall be accompanied by regulations governing use of the mark. Any subsequent amendment of the regulations governing use of the mark shall be communicated to the National Institute of Industrial Property.

The conditions for the implementation of this Article shall be laid down by decree of the Council of State.

Article L715-8

A collective mark may only be assigned or transferred to legal persons that meet the requirements of the first paragraph of Article L715-7.

Article L715-9

In addition to the grounds for rejection or invalidity provided for in Article L712-7 and Article L714-3, respectively, the registration of a collective mark shall be refused or, if the mark has been registered, is likely to be declared invalid if it does not comply with the provisions of Articles L715-6 to L715-8 or if the regulations governing its use contravene public order.

The collective mark shall also be rejected or, if the mark has been registered, is likely to be declared invalid if there is a risk that it would mislead the public as to its nature or significance, in particular where it is likely not to appear as a collective mark.

Article L715-10

In addition to the grounds for revocation referred to in Articles L714-5 and L714-6, the rights of the proprietor of the collective mark shall be revoked for the following reasons:

1. the proprietor does not take reasonable measures to prevent a use of the mark that would be incompatible with the regulations governing the use of the mark;
2. due to being used by the authorized persons, the mark has become likely to mislead the public within the meaning of the second paragraph of Article L715-9;
3. an amendment to the regulations governing its use has rendered the mark non-compliant with the conditions of Articles L715-6 and L715-7 or contrary to public order.

CHAPTER VI Disputes

SECTION I Disputes regarding the Invalidity and Revocation of a Trademark

SUBSECTION I Common Provisions on the Administrative Invalidity and Revocation Proceedings

Article L716-1

The applications for declaration of invalidity or revocation of trademarks filed with the National Institute of Industrial Property shall have the form and comply with the conditions defined by decree of the Council of State.

The Director General of the National Institute of Industrial Property shall rule on applications for declaration of invalidity or revocation of trademarks following an inter partes procedure including an investigation phase, under the conditions defined by decree of the Council of State.

The decision of the Director General of the Institute shall have the effects of a judgment within the meaning of item 6 of Article L111-3 of the Code of Civil Enforcement Procedures.

The applications for declaration of invalidity or revocation of trademarks shall be deemed rejected if the Director General of the Institute fails to rule within the time limit established by the Council of State decree, which runs from the end date of this investigation phase.

Article L716-1-1

Upon request of the prevailing party, the Director General of the National Institute of Industrial Property shall charge the losing party for all or part of the costs incurred by the other party, up to a threshold set by order of the Minister responsible for industrial property.

SUBSECTION II Invalidity of a Trademark

Article L716-2

I.- Applications for declaration of invalidity of trademarks grounded on Articles L711-2, L715-4 and L715-9 shall be filed by any natural or legal person with the National Institute of Industrial Property. Such applications may be filed by any interested person

with the courts of law determined by regulation.

II.- Applications for declaration of invalidity of trademarks grounded on Article L711-3 shall be filed with the National Institute of Industrial Property and the courts of law determined by regulation only by the holders of earlier rights, in particular:

1. the holder of an earlier trademark referred to in items 1 and 2 of paragraph I of Article L711-3;
2. the beneficiary of an exclusive exploitation right on an earlier registered trademark mentioned in items 1 and 2 of paragraph I of Article L711-3, unless otherwise stipulated in the contract;
3. any legal person acting on the grounds of its name or style referred to in item 3 of paragraph I of Article L711-3;
4. the holder of a domain name referred to in item 4 of paragraph I of Article L711-3;
5. any person acting on the grounds of item 4 of paragraph I of Article L711-3 based on the trade name under which he carries out his activity or on the signboard designating the place where this activity is carried out;
6. any person who, acting on the grounds of item 5 of paragraph I of Article L711-3, is authorized to exercise the rights deriving from a geographical indication referred to in Article L722-1, and, in particular, to ensure their management or defense;
7. a territorial community or a public inter-municipal cooperation institution acting on the grounds of the right referred to in item 9 of paragraph I of Article L711-3 or on the grounds of an infringement of a geographical indication referred to in Article L722-1, as far as this indication includes its name;
8. any legal person under public law acting on the grounds of item 10 of paragraph I of Article L711-3 based on the name under which this person or its services carry out their activity;
9. the proprietor of a trademark that is protected in a state party to the Paris Convention for the Protection of Industrial Property, acting on the grounds of paragraph III of Article L711-3.

Article L716-2-1

The application for declaration of invalidity may refer to all or a part of the goods or services for which the contested trademark is registered.

An application for declaration of invalidity may be grounded on one or more reasons. Subject to their belonging to the same holder, such applications may be grounded on several earlier rights.

Article L716-2-2

The decision declaring the invalidity shall have absolute effect. Where the grounds for invalidity concern only a part of the registration of a trademark, it shall be declared invalid in part only.

Article L716-2-3

The following are not admissible:

1. an application for declaration of invalidity filed by the proprietor of an earlier trademark that has been registered for more than five years at the date of the application for invalidity, who, upon request of the proprietor of the later trademark, fails to prove:

a) that, for the goods or services for which the trademark is registered and which are invoked in support of the application, there was genuine use of the earlier trademark during the five years prior to the filing date of the application for declaration of invalidity, under the conditions of Article L714-5 or, in case of a European Union trademark, of Article 18 of Regulation (EU) 2017/1001 of 14 June 2017;

b) or that there were justified grounds for its non-use;

2. an application for declaration of invalidity filed by the proprietor of an earlier trademark that has been registered for more than five years at the filing date or the priority date of the later trademark, who, upon request of the proprietor of the later trademark, fails to prove:

a) that, for the goods or services for which the trademark is registered and which are invoked in support of the application, there was genuine use of the earlier trademark during the five years prior to the filing date or the priority date of the later trademark, under the conditions of Article L714-5 or, in case of a European Union trademark, of Article 18 of Regulation (EU) 2017/1001 of 14 June 2017;

b) or that there were justified grounds for its non-use.

For the purposes of the examination of the application for declaration of invalidity, the earlier trademark shall only be deemed registered for the goods or services for which a genuine use was proved or justified grounds for non-use were established.

Article L716-2-4

The following are not admissible:

1. an application for declaration of invalidity grounded on an earlier trademark if the proprietor of the earlier registered trademark does not prove, upon request of the proprietor of the later trademark, that, at the filing date or the priority date of this later trademark, the earlier trademark, which is likely to be declared invalid on the grounds of items 2, 3 and 4 of Article L711-2, had acquired a distinctive nature;
2. an application for declaration of invalidity grounded on letter b of item 1 of paragraph I of Article L711-3 if the proprietor of the earlier registered trademark does not prove, upon request of the proprietor of the later trademark, that, at the filing date or the priority date of this later trademark, the earlier trademark invoked had acquired a sufficiently distinctive nature likely to justify the existence of a risk of confusion on the part of the public;
3. an application for declaration of invalidity grounded on item 2 of paragraph I of Article L711-3 if the proprietor of the earlier registered trademark does not prove, upon request of the proprietor of the later trademark, that, at the filing date or the priority date of this later trademark, the earlier trademark invoked has acquired renown within the meaning of this provision.

Article L716-2-5

An application for declaration of invalidity filed on the grounds of items 2, 3 and 4 of Article L711-2 shall be rejected if the proprietor of the contested trademark is able to prove that this trademark had acquired, by its use, a distinctive nature prior to the date of the application for declaration of invalidity.

Article L716-2-6

Subject to Articles L716-2-7 and L716-2-8, the action seeking invalidation or the application for declaration of invalidity of a trademark is not subject to any limitation period.

Article L716-2-7

Actions seeking invalidation or applications for declaration of invalidity filed by the proprietor of a trademark that is well known within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property shall be barred five years after the registration date, unless the registration was applied for in

bad faith.

Article L716-2-8

The holder of an earlier right who has tolerated for five consecutive years the use of a later registered trademark being aware of this use shall no longer be entitled to request the declaration of invalidity of the later trademark on the grounds of Article L711-3 for the goods or the services for which the use of the trademark was tolerated, unless the registration of this trademark was applied for in bad faith.

SUBSECTION III Revocation of a Trademark

Article L716-3-1

The burden of proof of the use rests with the proprietor of the trademark the revocation of which is sought. This may be proved by any means.

SECTION II Disputes regarding Infringements

Article L716-4

Infringement of the rights of the proprietor of a trademark shall constitute an offense incurring the civil law liability of the offender. Failure to comply with the prohibitions laid down in Articles L713-2 to L713-3-3 and in the second paragraph of Article L713-4 shall constitute an infringement of the rights attached to the trademark.

Article L716-4-1

Acts preceding publication of the application for registration of a trademark may not be held to infringe rights attached to that trademark.

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 L716-4-2

Civil infringement proceedings shall be instituted by the proprietor of the trademark or by the licensee, with the consent of the proprietor, unless otherwise stipulated in the contract. However,

the beneficiary of an exclusive right of exploitation may institute infringement proceedings if, after formal notice, the proprietor does not exercise such right within a reasonable time.

The person authorized to use a Certificate mark or a collective mark may only institute infringement proceedings with the consent of the proprietor, unless otherwise laid down in the regulations governing the use.

The proprietor of a Certificate mark or a collective mark may request, in the name of the persons authorized to use the mark, compensation for the harm incurred by these persons due to the unauthorized use of the mark.

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 this party has sustained.

Any person authorized to use a Certificate mark or a collective mark shall be entitled to participate in the infringement proceedings instituted by the proprietor in order to obtain remedy for the prejudice this person has sustained.

Infringement proceedings shall lapse five years following the day on which the holder of a right was or should have been aware of the last fact entitling him to exercise it.

Article L716-4-3

Any infringement proceedings shall not be admissible if, upon the defendant's request, the trademark proprietor is unable to prove:

- 1° that, for the goods or services for which the trademark is registered and which are invoked in support of the application, there was genuine use of the trademark during the five years prior to the filing date of the infringement proceedings, under the conditions of Article L714-5;

2. that there were justified grounds for its non-use.

Article L716-4-4

Any action filed in accordance with Regulation (EU) 608/2013 of 12 June 2013 by the proprietor of the trademark on the grounds of Article L713-3-2 shall not be admissible if, during the proceedings aimed at determining if there was infringement of the registered trademark, the declarant or the holder of the goods proves that the proprietor of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

Article L716-4-5

Any infringement proceedings instituted by the proprietor of an earlier trademark against a later trademark shall not be admissible:

1. where the proprietor of the earlier trademark has tolerated for five consecutive years the use of the later trademark, being aware of such use, and for the products or the services for which the use was tolerated, unless the registration of this trademark was applied for in bad faith;
2. where, upon request of the proprietor of the later trademark, the plaintiff in the infringement proceedings based on an earlier trademark fails to submit the evidence required, as applicable, under Article L716-2-3 or Article L716-2-4.

Article L716-4-6

Any person entitled to sue for infringement may appeal to the competent civil court to order, if necessary under penalty, and against the alleged perpetrator or intermediaries whose services the said perpetrator uses, all measures intended to prevent an imminent infringement to the rights awarded by the title or to prevent the prosecution of counterfeit acts. The competent civil court may also order any urgent measures upon request where circumstances require that such measures are not taken in an adversarial manner, in particular when any delay would be liable to cause irreparable damage to the plaintiff. For motions referred or on petition, the court may order the requested measures only if the evidence reasonably available to the plaintiff makes it likely that his rights are infringed or that such an infringement is imminent. The court may prohibit the prosecution of counterfeiting acts, and render said prosecution conditional upon the provision of Certificates to ensure the possible compensation of the plaintiff, or order the seizure or handover to a third party of the products suspected of infringing the rights awarded by the title in order to prevent their entry or circulation in commercial networks. If the plaintiff justifies circumstances likely to compromise the recovery of damages, the court may order the preventive seizure of the alleged infringer's movable and immovable property, including the blocking of bank accounts and other assets, in accordance with the civil law. In order to determine the property liable to seizure, the court may order the disclosure of banking, financial, accounting or commercial documents or access to relevant information.

The court may also grant the plaintiff an allowance where proof of damages is not seriously questionable.

For motions referred or on petition, the court may render the ordered measures conditional upon the plaintiff's provision of Certificates to ensure the possible compensation of the defendant if the infringing action is later ruled unfounded or the measures are canceled.

Where measures to put an end to an infringement of rights are ordered before the commencement of a hearing on the merits of a case, the plaintiff must, within a period of time determined by regulation, either appeal by means of civil or criminal proceedings, or file a complaint to the public prosecutor. Failing this, at the defendant's request and without the latter having to justify his request, the ordered measures are annulled, without prejudice to the damages and interest that may be claimed.

Article L716-4-7

Infringement can be evidenced by any means.

For this purpose, any individual who is entitled by law to sue for infringement has the right undertake at any place and via all bailiffs, and if applicable assisted by experts appointed by the plaintiff, under an order granted upon request by the competent civil court, either a detailed survey, with or without sampling, or the actual seizure of the alleged counterfeit goods or services, as well as any document relating thereto. The order may authorize the actual seizure of any document relating to the alleged counterfeit goods and services in the absence of the latter.

For purposes of proof, the court may order the detailed survey or the actual seizure of the materials and documents used to manufacture or distribute the alleged counterfeit goods or provide the alleged counterfeit services.

The court may execute the measures ordered by the plaintiff subject to Certificates that ensure the defendant's possible compensation if the suit for infringement is later deemed unfounded or the seizure is annulled.

Should the plaintiff fail to request a full hearing on the merits of the case, through civil or criminal proceedings, within a determined period of time, the entire seizure, including the description, is quashed at the request of the person whose property has been seized, without the latter having to justify its request and without prejudice to any damages and interest that may be claimed.

Article L716-4-8

The court may order, ex officio or at the request of any person entitled to sue for infringement, all legally admissible investigative measures, even if a seizure due to infringement was not previously ordered under the conditions laid down in Article L716-4-7.

Article L716-4-9

If requested, the court hearing the merits of the case or having been referred a civil proceeding, as provided for under this Title, may order, if necessary under penalty, and in order to determine the origin and distribution networks of the counterfeit products which infringe the plaintiff's rights, the production of any documents or information held by the defendant or by any person who has been found in possession of counterfeit goods or who provides services used for alleged counterfeit activities or who has been reported as involved in the production, manufacture or distribution of these products or the provision of these services.

The production of documents or information may be ordered if there is no legitimate impediment.

Article L716-4-10

To set damages and interests, the court takes into consideration the following items separately:

1. the negative financial consequences of the infringement, including loss of profit and losses suffered by the injured party;
2. the non-material damage caused to the latter;
3. and the profits gained by the perpetrator, including the intellectual, material and promotional investments that the latter gained from the infringement.

Nevertheless, the court may, as an alternative and at the request of the injured party, award damages and interests in the form of a lump sum. This amount is greater than the amount of the license fees or duties applicable if the perpetrator had requested the authorization to use the right that he had infringed. This amount is not exclusive of compensation for the non-material damage caused to the injured party.

Article L716-4-11

In the event of a civil liability for infringement and at the

request of the injured party, the court may order that all products recognized as counterfeit, as well as the materials and documents which were mainly used for their creation or manufacture be recalled from all commercial channels, permanently removed from these channels, destroyed or confiscated to the benefit of the injured party.

The court may also order any appropriate measure to make the ruling public, in particular to display or publish the said ruling, in full or in part, in newspapers or on designated online public communication networks, according to the terms and conditions specified by the court.

The measures referred to in the first two paragraphs are ordered at the expense of the perpetrator.

SECTION III Rules of Jurisdiction

Article L716-5

I.- The following may only be filed with the National Institute for Industrial Property:

1. applications for declaration of invalidity exclusively based on one or more of the reasons listed in Article L711-2, items 1 - 5, 9 and 10 of paragraph I of Article L711-3, paragraph III of the same Article, as well as in Articles L715-4 and L715-9;
2. applications for revocation based on Articles L714-5, L714-6, L715-5 and L715-10.

II.- The other civil actions and applications relating to trademarks, other than those referred to in paragraph I, including when these also concern an associated matter of unfair competition, shall be brought exclusively before the high courts, as determined by regulation.

The courts mentioned in the preceding paragraph shall also have exclusive jurisdiction in the following cases:

1. where the applications referred to in items 1 and 2 of paragraph I are filed as main application or as counterclaim by the parties as accessories to any other application for which the court has jurisdiction, and in particular in the case of an action filed on the grounds of Articles L716-4, L716-4-6, L716-4-7 and L716-4-9 or in the case of an action for unfair competition;
2. where the applications referred to in items 1 and 2 of paragraph I are filed when either measures for purposes of proof, or provisional or protective measures ordered with the aim of putting

an end to an infringement of a right conferred by a trademark are in progress before the filing of an action on the merits.

III.- The conditions for implementing this Article shall be laid down by decree of the Council of State.

Article L716-6

The provisions of Article L716-5 shall not prevent recourse to arbitration in accordance with Articles 2059 and 2060 of the Civil Code.

CHAPTER VI bis Customs detention and criminal actions

SECTION I Customs detention

Article L716-8

In addition to the cases provided for by the Community regulations in force, the customs administration may as part of its inspections, and upon the written request of the owner of a filed trademark or the beneficiary of an exclusive exploitation right, backed up by documents evidencing its right, detain the goods which the latter claims as counterfeit.

The plaintiff and the right holder are immediately informed of this detention order. The customs administration also informs the public prosecutor of this order.

In the notification referred to in the first sentence of the second paragraph of this Article, the right holder or the beneficiary of the exclusive exploitation right shall be informed of the nature, actual or estimated quantity and images of goods, by way of derogation from Article 59a of the Customs Code. This information may also be communicated before the detention order's execution provided for in this Article.

Subject to the procedures provided for in Articles L716-8-4 and L716-8-5, the detention order is automatically lifted, should the plaintiff fail to justify to customs, within ten working days or three working days in the case of perishable goods from the notification date of the detention of goods, precautionary measures decided by the competent civil court, or civil or correctional proceedings brought before a court of law and established Certificates intended to possibly compensate the holder of the goods in the event the infringement is not subsequently recognized, or a complaint submitted to the public prosecutor.

The customs administration may extend the ten-day period provided for in this paragraph by a maximum of 10 working days upon a duly substantiated request by the plaintiff. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed.

Costs related to the detention order or the provisional measures adopted by the competent civil court shall be borne by the plaintiff, subject to the procedures provided for in Articles L716-8-4 and L716-8-5.

For the purpose of instituting the legal proceedings referred to in

the fourth paragraph, the plaintiff may obtain from the customs authorities the name and address of the sender, importer, and recipient or holder of the detained goods, as well as images of these goods in addition to information on their quantity, origin, source and destination, by way of derogation Article 59a of the Customs Code, pertaining to professional secrecy to which customs officials are bound.

The detention order referred to in the first paragraph does not pertain to:

- goods with Community status, legally manufactured or released for free circulation in a Member State of the European Union and intended, after having crossed the customs territory as defined in Article 1 of the Customs Code, to be placed on the market of another Member State in the European Union for legal trade therein;
- goods with EU status, legally manufactured or lawfully entered for free circulation in another Member State of the European Union, in which the said goods have been placed under the transit procedure and which are intended, after having crossed the customs territory as defined in Article 1 of the Customs Code, for export to a non-Member State of the European Union.

Article L716-8-1

In the absence of a written request from the owner of a registered trademark or the beneficiary of an exclusive exploitation right and except in the cases provided for by the EU regulations in force, the customs administration may, within the framework of its inspections, detain goods that could affect a registered trademark or an exclusive exploitation right.

This detention order is immediately notified to the owner of the filed trademark or the beneficiary of the exclusive exploitation right. The public prosecutor is also informed of the said order. Through the notification referred to in the first sentence of the second paragraph of this Article, the right holder or beneficiary of the exclusive exploitation right shall be informed of the nature, actual or estimated quantity and sent images of the said goods, by way of derogation from Article 59a of the Customs Code. This information may also be communicated before the detention order's execution, as provided for in this Article.

The detention order is lifted automatically if the customs administration has not received from the owner of the registered trademark or from the beneficiary of the exclusive exploitation

right the request provided for in Article L716-8 of this Code, filed within four working days of the date of notification of the detention of goods referred to in the first sentence of the second paragraph of this article.

If the request has been received in accordance with the fourth paragraph of this Article, the period of ten working days referred to in the fourth paragraph of Article L716-8 shall begin to run from the date of customs approval.

This Article does not apply to perishable goods.

Article L716-8-2

I.-Where goods suspected of infringing a registered trademark, as provided for by the EU regulations in force, are detained before the request for action from the owner of the registered trademark or the beneficiary of an exclusive exploitation right has been filed or accepted, customs officers may, by way of derogation from Article 59a of the Customs Code, inform the said owner or the beneficiary of the exclusive exploitation right of the execution of this measure. They may also provide information on the quantity of goods and their nature.

Where a detention order on suspected counterfeit goods infringing on a trademark, as provided for by the EU regulations in force, is executed after a request for action by the owner of the registered trademark or the beneficiary of an exclusive exploitation right has been accepted, customs officers may also provide the said owner or beneficiary the information provided for by this EU regulation necessary to determine whether there has been a violation of his/her right.

II.-The costs incurred from the detention's execution, as per EU regulations in force shall be borne by the owner of the filed trademark or the beneficiary of its exclusive exploitation right.

Article L716-8-3

During the detention period referred to in Article L716-8 and in the second paragraph in I of Article L716-8-2, the owner of the registered trademark or the beneficiary of the exclusive exploitation right, may upon his/her request or the request of the customs administration, inspect the goods detained.

The customs administration may take samples when inspecting the detained goods. At the request of the owner of the registered trademark or the beneficiary of its exclusive exploitation right,

such samples may be returned to the latter solely for purposes of analysis and to assist in future civil or criminal proceedings.

Article L716-8-4

I. Where the detention of goods suspected of infringing a registered trademark is executed after the request referred to in Article L716-8 has been accepted, the goods suspected of infringing a registered trademark may be destroyed under the supervision of customs officers provided that the following conditions are fulfilled:

1. The plaintiff has confirmed in writing and via a detailed survey submitted to the customs authorities, the counterfeit nature of the goods within ten working days, or three working days for perishable goods, as of the date of notification of the detention of goods;
2. The plaintiff has confirmed to the custom authorities in writing, and within ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, that he/she consents to the destruction of the said goods as per his/her responsibility;
3. The holder of goods has confirmed, in writing, his/her consent for the custom authorities to destroy the said goods, within ten working days, or three working days for perishable goods, as of the date of notification of the detention of goods.

II. If the holder of goods does not, within the period referred to in 3. of I, does not confirm his/her consent to the destruction of goods, or fails to inform the customs administration of his/her opposition to destruction, it shall be deemed that the holder has consented to the said destruction.

III. When the holder of the goods has not confirmed in writing that he/she consents to their destruction and where it is not deemed that he/she has consented to the destruction of the goods within the prescribed time limit, the customs administration shall immediately inform the plaintiff who, within a period of ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, shall take the measures referred to in the fourth paragraph of Article L716-8. The period of ten days may be extended by a maximum of ten working days upon the plaintiff's duly substantiated request. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed.

If the conditions provided for in I of this Article are not met and if the plaintiff has not justified to the customs authorities that he/she has taken the measures referred to in the fourth paragraph of Article L716-8, the detention order is thereby automatically lifted.

IV. As part of the information sharing strategy provided for in the third paragraph of Articles L716-8 and L716-8-1, the custom authorities shall inform the plaintiff of the procedure provided for in this Article. The information provided for in the sixth paragraph of Article L716-8 may also be communicated to the plaintiff for the purpose of executing this measure.

Article L716-8-5

I. Where the detention on goods suspected of infringing a registered trademark is executed after the request referred to in Article L716-8 has been accepted, the goods suspected of infringing a registered trademark may be destroyed under the supervision of customs officers when the plaintiff has, in his/her request, sought the proceedings provided for in this Article.

II. The notification stated in the first sentence of the second paragraph of Article L716-8 is made within one working day from the start date of the detention order. It states the intention of the customs administration to destroy, or not, the goods and indicates that:

1. The holder of goods has a period of ten working days from the date of notification of the detention of goods to inform the customs administration of its observations;
2. The goods concerned may be destroyed when, within a period of ten working days from the start date of their detention, the holder of goods has confirmed to the customs authorities that he/she consents to such destruction. Should the holder of goods remain silent by the end of this period, the holder is deemed to have consented to their destruction.

The custom authorities shall provide the plaintiff, upon the request of the latter, with information on the actual or estimated quantity and nature of the goods destroyed.

III. When the declarant or the holder of the goods has not confirmed in writing that he/she consents to their destruction or when he/she is not deemed to have consented to their destruction, the customs

administration shall immediately inform the plaintiff and disclose the quantity, nature and images of the goods to the said plaintiff. IV. The detention order is automatically lifted should the plaintiff fail to justify to the customs administration that he/she has taken the measures referred to in the fourth paragraph of Article L716-8, within ten working days as of the provisions in III of this Article. In order to take such measures, the plaintiff may obtain from the customs authorities the name and address of the sender, importer, recipient and holder of detained goods, their quantity, origin, source and destination, notwithstanding Article 59a of the Customs Code.

V. The description of the small shipments referred to in I of this Article is specified by decree of the Minister responsible for customs.

VI. This Article does not apply to perishable goods.

Article L716-8-6

Where the plaintiff uses the information sent by the custom authorities, by way of derogation from Article 59a of the Customs Code, and for purposes other than those provided for in this Chapter, the customs administration shall repeal, suspend or refuse to renew the said request.

Article L716-8-7

The customs officers apply the powers vested in them by the Customs Code in order to adopt the measures provided for in Articles L716-8 to L716-8-3.

Article L716-8-8

A decree in the Council of State establishes:

1. The conditions where the measures provided for in Articles L716-8 to L716-8-6 are applicable;
2. The conditions under which the destruction of suspected counterfeit goods infringing on a trademark, pursuant to the European regulations in force and prior to the said destruction date, the conditions under which sampling takes place.

SECTION II Penal Action

Article L716-8-9

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

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 transships 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 € 750,000.

Article L716-10

Anyone is punishable with three years of imprisonment and a fine of € 300,000 should they:

- a) Hold without legitimate reason, import or export goods presented under a counterfeit trademark;
- b) Offer for sale or sell goods presented under a counterfeit trademark;
- c) Reproduce, imitate, use, affix, delete, modify a trademark, collective trademark or collective certification trademark in violation of the rights awarded by its registration and prohibitions deriving from the latter. The offense, provided for under the conditions set out in c, is not considered where prescription support software allows, if the prescriber so decides to prescribe it as an international non-proprietary name, according to the rules of good conduct provided for Article L161-38 of the Social Security Code;
- d) Knowingly deliver a product or provide a service other than that required of him/her under a registered trademark.

The offense, under the conditions provided in d), is not considered

for a pharmacist practicing with the substitution clause provided for in Article L5125-23 of the Code of Public Health. Should the offense be committed by organized crime, or on an online public communication network or where the events relate to dangerous goods for human or animal health or safety, the penalties are set at seven years imprisonment and a € 750,000 fine.

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;

This Article shall apply to the EU trade marks under Chapter IV of Title III of Book I of the second part of the labor code.

Article L716-11-1

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 L1235-2 to L1235-5 and L1235-11 to L1235-13 of the Labor Code for the breach of employment contracts. Failure to pay those indemnities shall be punishable with a six-month prison term and a fine of € 25,000.

Article L716-11-2

Legal entities may be declared criminally liable, in the manner specified in Article 121-2 of the Penal Code, for the offenses defined in Articles 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

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

Natural persons guilty of the offense provided for in Articles L716-9 and L716-10 may also be obligated, at their own expense, to withdraw infringing items from all commercial circuits and anything that served or intended to commit the offense.

At the expense of the convicted person, the court may order the destruction or return of all items and goods removed from commercial channels or confiscated to the injured party, without prejudice to any damages.

It may also order, at the expense of the convicted person, the display or dissemination of the ruling adopting the conviction, under the conditions provided for in Article 131-35 of the Criminal Code.

CHAPTER VII The European Union Trade Mark

Article L717-1

The failure to comply with the prohibitions set forth in Articles 9, 10, 13 and 15 of Regulation (EU) 2017/1001 of 14 June 2017 on the European Union trademark shall constitute infringement resulting in the civil liability of the offender.

Article L717-2

The provisions of Articles 716-4-10, L716-4-11 and L716-8 to L716-13 are applicable to infringements to the rights of the proprietor of a European Union trademark.

Article L717-4

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 the actions and claims pursuant to Article 124 of the EU Regulation 2017/1001 of 14 June 2017, including where such actions cover both an issue relating to trademarks and a related issue relating to designs and models or unfair competition.

Article L717-5

An application for a European Union trademark, or a European Union trademark can only be converted into an application for a national trademark in the cases set forth in Article 139 of Regulation (EU) 2017/1001 of 14 June 2017.

In these cases, the application for a national trademark must, under penalty of refusal, satisfy the provisions of Articles L711-2, L712-2 and L712-4, as well as, as applicable, those of Articles L715-1 to L715-4 or those of Articles L715-6 to L715-9. The conditions for implementing this paragraph shall be laid down by decree of the Council of State.

The provisions of the foregoing paragraph shall not apply when the seniority of a trademark previously registered in France is claimed to the benefit of a European Union trademark.

Article L717-6

A European Union trademark that validly claims the seniority of a trademark registered in France or of an international registration designating France in accordance with Articles 39 and 40 of

Regulation (EU) 2017/1001 of 14 June 2017 represents seniority binding on third parties, within the meaning of paragraph I of Article L711-3.

When a trademark that has been previously registered in France has not been renewed or has been surrendered, the fact that the seniority of this trademark is claimed in the name of a European Union trademark does not prevent a declaration of invalidity of this trademark or the revocation of the rights of its proprietor.

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

The order for enforcement referred to in Article 110 of Regulation (EU) 2017/1001 of 14 June 2017 shall be appended by the National Institute of Industrial Property to any final decision of the European Union Intellectual Property Office, which shall fix the amount of costs.

TITLE II Appellations of Origin

CHAPTER I Generals

SECTION I Appellations of origin

Article L721-1

The rules relating to the determination of appellations 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."

SECTION II Geographical indications protecting industrial and crafts products

Article L721-2

A geographical indication is the denomination of a geographical area or a specific place used to designate a product, other than agricultural, forestry, food or sea, which originates therefrom and which possesses a certain quality, reputation or other characteristics that can be essentially attributed to this geographical origin. The manufacturing or processing conditions of this product, such as cutting, extraction or manufacturing, comply with the specifications approved by a decision pursuant to Article L411-4.

Article L721-3

A defense and management body representing the operators concerned shall submit all requests to approve or amend specifications to the National Institute of Industrial Property, as defined in Article L721-4.

The approval decision is taken after:

1. The specifications content and the representativeness of operators within the defense and management body are verified;
2. The execution of a public inquiry, the terms of which are established by regulation;
3. Consultation from:
 - a) Local authorities;

b) Relevant trade associations;

c) The Director of the National Institute of Origin and Quality, should the name of the geographical indication defined in Article L721-2 give rise to a risk of confusion with a protected geographical indication or a protected designation of origin defined by the French Rural Code and Sea Fisheries Code, which exists or is under investigation by the National Institute of Origin and Quality;

d) Approved consumers' associations having obtained the specific recognition provided for in Book IV of the Consumer Code.

Two months from their referral, a lack of reply implies that the opinions are deemed favorable.

When examining the request to approve or amend the specifications, the National Institute of Industrial Property shall ensure that the manufacturing or processing operations described in the specifications, as well as the scope of the area or place, Certificates the product's quality, reputation or other characteristics that can be essentially assigned to the geographical area or specific location associated with the geographical indication.

The approval decision is equal to the body's recognition which ensures the safety and management of the product benefiting from a geographical indication. This decision, accompanied by the corresponding specifications, is published in the Official Bulletin of Industrial Property. Changes, if any, to the specifications are also published in the Official Bulletin of Industrial Property. Information on the Official Bulletin of Industrial Property publication is available as a notice in the Official Journal. The fee paid to the National Institute of Industrial Property to approve the said specifications shall be borne by the body defined in Article L721-4.

Article L721-4

A private body endowed with moral personality shall ensure the safety and management of a product with a geographical indication. The same body can safeguard and manage several products.

For each product where a geographical indication is envisaged, the body's composition and rules of operation must ensure the representativity of the operators concerned.

The defense and management assignments provided by the body referred to in the first paragraph are exercised independently of its other functions when these do not concern safeguarding the collective

rights of operators.

Article L721-5

Any operator who makes the requests is an ex-officio member of the defense and management body, provided that he/she complies with the approved specifications.

An operator may only claim a geographical indication if he/she is a member of the defense and management body of that geographical indication and is registered on the list of operators included in the specifications or on the list of operators updated and published in the Official Bulletin of Industrial Property in accordance with 5. of Article L721-6.

For the purposes of this section, an operator means any natural or legal person who intervenes in production or processing activities in accordance with the specifications of the geographical indication.

Article L721-6

The defense and management body contributes to the overall conservation and development of the territories, local traditions and know-how as well as the products derived therefrom. For each product with a geographical indication which it defends and manages, the body:

1. Draws up the draft specifications, submits them for approval to the National Institute of Industrial Property and assists operators to apply the said specifications;
2. Submits to the National Institute of Industrial Property any draft amendment brought to the specifications;
3. Ensures that all checks on operators carried out by the bodies referred to in Article L721-9 comply with the conditions set by the specifications. It informs the National Institute of Industrial Property of all outcomes resulting from these checks and the corrective measures applied;
4. Ensures that operators are represented in its rules on composition and operation;
5. Updates the list of operators and sends these updates to the National Institute of Industrial Property, which publishes them in the Official Bulletin of Industrial Property;
6. Excludes, after formal notice, any operator who does not comply with the specifications and has not taken the corrective measures referred to in 3., and excludes any operator where the certifying

body referred to in Article L721-9 had not granted, or suspended or withdrawn the certification;

7. Participates in the safeguarding, protection and promotion of geographical indication initiatives, products and know-how, as well as the statistical coverage of the sector.

Article L721-7

The specifications of a precise geographical indication specify:

1. Its name;
2. The product concerned;
3. The definition of the geographical area or defined associated place;
4. The quality, reputation, traditional know-how or other characteristics of the product concerned that can be essentially attributed to a particular geographical area or defined place, and the elements linking the product to the geographical area or the defined associated place;
5. The description of the design, production and processing procedure including all manufacturing or processing operations which must take place in the geographical area or the place defined and those which Certificates the characteristics referred to in 4. ;
6. The identity of the defense and management body, its constitution, the list of initial operators it represents and the financial terms and conditions of their participation;
7. The terms and frequency of the checks, the type of body referred to in Article L721-9 in charge of their execution, as well as the financing terms of these checks. The terms and conditions include, in particular, the control points of the product and the specific labeling features;
8. The declarative or record-keeping obligations to which operators must comply in order to verify compliance with the specifications;
9. The terms on formal notices and exclusion of operators in case of non-compliance with the specifications;
10. The financing plan of the defense and management body;
11. The specific labeling features;
12. Where applicable, the social and environmental commitments made by the operators represented within the defense and management body.

Article L721-8

I. Without prejudice to Articles L115-16 of the Consumer Code and L722-1 of this Code, registered names shall be protected against:

1. Any direct or indirect commercial use of a registered name in respect of products not covered by the registration, where such products are comparable to those registered under such name or where such use makes it possible to benefit from the reputation of the protected name;
2. Any identity theft, imitation or reference, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by expressions such as "kind", "type", "method", "manner", "imitation" or similar expression;
3. Any other false or misleading information as to the source, origin, nature or essential qualities of the product which appears on the wrapping or packaging, on advertising or documents pertaining to the product concerned, as well as packing the product in a container liable to convey a false impression as to its origin;
4. Any other practice likely to mislead the consumer as to the true origin of the product. Where a geographical indication includes the name of a product considered generic, the use of that generic name is not considered to be contrary to 1. or 2. of I.

II. The geographical indication, whose specifications have been approved under the conditions provided for in this section, can never be considered as a generic name and may never fall within the public domain.

Article L721-9

Operators' compliance with specifications is monitored by conformity assessment bodies, which may be inspection bodies or certification bodies, accredited by the national authority referred to in Article 137 of Law no. 2008-776 of August 4, 2008 to modernize the economy, or by a national accreditation body of another Member State of the European Union, a member of the European Cooperation for Accreditation and having signed the multilateral mutual recognition covering the scope of this control. The inspection bodies carry out the control operations and send their report to the defense and management body, which decides on measures to sanction any failings. The certification bodies decide whether to grant, maintain or extend the certification, as well as measures sanctioning failures. The defense and management body may require an operator to resort, at its expense, to an accredited inspection body in accordance with the first paragraph of this Article to carry out an additional check to verify that the operator has applied the corrective measures

referred to in 3. of Article L721-6 of this Code. The National Institute of Industrial Property verifies that all checks on operators, as per the specifications, are performed by a conformity assessment body and that the corrective measures, formal notices and exclusions of operators, as per the specifications are implemented. After formal notice of the defense and management body, the Institute may withdraw the approval of the specifications if these checks are not carried out or if the corrective measures have not been implemented within the required time limits. The decision to withdraw the approval is published in the Official Bulletin of Industrial Property. Information on the Official Bulletin of Industrial Property publication is available as a notice in the Official Journal.

Article L721-10

The conditions on the application of this Article shall be established by a Council of State decree.

CHAPTER II Disputes

SECTION I Civil Proceedings

Article L722-1

Any infringement of a geographical indication in violation of the protection afforded to it by European Union law or national legislation constitutes infringement, which incurs the liability of its perpetrator.

For the purposes of this Chapter, "geographical indication" means:

- a) The designations of origin defined in Article L115-1 of the Consumer Code;
- b) The geographical indications defined in Article L721-2;
- c) Designations of origin and geographical indications protected under European Union law;

The production, offer, sale, trade, import, export, transshipment, use or possession, for such purposes, of goods, the presentation of which infringes or is likely to infringe a geographical indication are prohibited.

Article L722-2

Civil proceedings for infringement are exercised by any person authorized to use the geographical indication concerned or anybody to which legislation has assigned it the responsibility of safeguarding the geographical indications.

Any person referred to in the first paragraph is entitled to take part in the proceedings instituted by another party for infringement.

Article L722-3

Any person entitled to sue for infringement may appeal to the competent civil court to order, if necessary under penalty, against the alleged perpetrator or intermediaries whose services the said perpetrator uses, any measure intended to prevent an imminent infringement to the rights awarded by the title or to prevent the prosecution of counterfeit acts. The competent civil court may also order any urgent measures upon request where circumstances require that such measures are not taken in an adversarial manner, in particular when any delay would be liable to cause irreparable damage to the plaintiff. For motions referred or on petition, the court may order the requested measures only if the evidence

reasonably available to the plaintiff renders probable that a geographical indication is affected or that such an infringement is imminent.

The court may prohibit the prosecution of counterfeit actions, make the said prosecution conditional upon the establishment of Certificates to ensure the possible compensation of the plaintiff or order the seizure, or hand over, of the products suspected of infringing the rights awarded by the title to a third party to prevent their entry or circulation in commercial networks. If the plaintiff justifies circumstances likely to compromise the recovery of damages, the court may order the preventive seizure of the alleged infringer's movable and immovable property, including the blocking of bank accounts and other assets, in accordance with civil law. In order to determine the property liable to seizure, the court may order the disclosure of banking, financial, accounting or commercial documents or access to relevant information.

The court may also grant the plaintiff an allowance where proof of damages is not seriously questionable.

For motions referred or on petition, the court may render the ordered measures conditional upon the plaintiff's establishment of Certificates to ensure the possible compensation of the defendant if the infringing action is later ruled unfounded or the measures are cancelled.

Where measures taken to put an end to an infringement are ordered before the commencement of a hearing on the merits, the plaintiff must, within a determined time limit set by regulation, either lodge civil or criminal proceedings, or submit a complaint to the public prosecutor. Failing this, at the defendant's request and without the latter having to justify his/her request, the ordered measures are annulled, without prejudice to the damages and interest that may be claimed.

Article L722-4

Infringement can be evidenced by any means.

For this purpose, any person entitled to sue for infringement has the right to undertake at any place and via all bailiffs, and if applicable, assisted by experts appointed by the plaintiff, under an order issued on petition by the competent court, either to a detailed survey, with or without taking samples, or to the actual seizure of the alleged counterfeit items as well as any document relating thereto. The order may authorize the physical seizure of

any document relating to the alleged infringing goods in the absence of the latter.

For purposes of proof, the court may order the detailed survey or the physical seizure of the materials and documents used to produce or distribute the alleged infringing goods.

The court may execute the measures ordered by the plaintiff subject to Certificates that ensure the defendant's possible compensation if the suit for infringement is later deemed unfounded or the seizure annulled.

Should the plaintiff fail to request a full hearing on the merits of the case, through civil or criminal proceedings, within a determined period of time, the entire seizure, including the description, is quashed at the request of the person whose property has been seized, without the latter having to justify its request and without prejudice to any damages and interest that may be claimed.

Article L722-4-1

The court may order, ex officio or at the request of any person entitled to sue for infringement, all legally admissible investigative measures, even if a counterfeit-seizure has not previously been ordered under the conditions laid down in Article L722-4.

Article L722-5

If requested, the court hearing the merits or being referred the civil proceedings provided for in this Chapter may, if necessary under penalty, order the defendant to produce any documents or information or any person who has been found in possession of counterfeit products or who provides services used in alleged counterfeit activities or who has been reported to be involved in the production, manufacture or distribution of such products or the provision of these services.

The production of documents or information may be ordered if there is no legitimate impediment.

Article L722-6

To set damages and interests, the court takes into consideration the following items separately:

1. The negative financial consequences incurred from the counterfeit action, including loss of profit and losses suffered by the injured party;

2. The non-material damage caused to the latter;
3. And the profits gained by the perpetrator, including the intellectual, material and promotional investments that the latter gained from the counterfeiting action.

Nevertheless, the court may, as an alternative and at the request of the injured party, award damages with a lump sum payment. This sum is not exclusive of compensation for the non-material damage caused to the injured party.

Article L722-7

In the event of a civil liability for infringement and at the request of the injured party, the court may order that the products recognized as counterfeit and the materials and documents which were mainly used for their creation or manufacture shall be recalled from the commercial channels, permanently removed from these circuits, destroyed or confiscated to the benefit of the injured party.

The court may also order any appropriate measure to make the ruling public, in particular to display or publish the said ruling, in full or in part, in newspapers or on designated online public communication networks, according to the specified terms and conditions.

The measures referred to in the first two paragraphs are ordered at the expense of the perpetrator of the counterfeit.

Article L722-8

Civil proceedings and all requests relevant to geographical indications, including when these relate to issues of unfair competition, shall be exclusively heard before the courts of law, as determined by regulation.

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

SECTION II Detention order

Article L722-9

In addition to the cases provided for by the regulations of the European Union, the customs administration may, at the written request of a person authorized to use a geographical indication or any defense body of geographical indications, accompanied by documents proving his/her right, withhold in the course of its inspections all goods that the latter claims as counterfeit.

The plaintiff and the right holder are immediately informed of this detention order. The customs administration also informs the public prosecutor of this order.

In the notification referred to in the first sentence of the second paragraph of this Article, the nature, actual or estimated quantity and images of goods shall be communicated to the person authorized to use the geographical indication or the defense body responsible for geographical indications, by way of derogation from Article 59a of the Customs Code. Such information may also be provided before the order set out in this Article is implemented.

Subject to the procedures provided for in Articles L722-13 and L722-14 of the present Code, the detention order is automatically lifted should the plaintiff fail, from the date of notification of the detention of goods, within ten working days, or three working days for perishable goods, to justify to the customs administration either provisional measures decided by the competent civil courts, civil or correctional proceedings brought before a court of law and the Certificates intended for the possible compensation of the holder of goods in the event the infringement is not later recognized, or a complaint submitted to the public prosecutor. The Customs Administration may extend the period of ten working days provided for in this paragraph by a maximum of an additional 10 working days upon the plaintiff's duly substantiated request. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed.

Costs related to the detention order or provisional measures ordered by the competent civil court are borne by the plaintiff.

For the purpose of instituting the legal proceedings referred to in the fourth paragraph of this Article, the plaintiff may obtain, from custom authorities, the name and address of the sender, importer, recipient and the declarant or holder of the goods detained, as well as images of such goods in addition to information on their quantity, origin, source and destination, by way of derogation from Article 59a of the Customs Code.

The detention referred to in the first paragraph of this section does not include:

1. Goods of EU status, legally manufactured or released for free circulation in a Member State of the European Union and intended, after having crossed the customs territory defined in Article 1 of the Customs Code, to be traded in another Member State of the European Union in order to be legally sold therein;

2. Goods of EU status, legally manufactured or released for free circulation in another Member State of the European Union, in which they have been placed under the transit procedure, and which are intended, after having crossed through the defined customs territory as defined in the same Article 1, for export to a non-Member State of the European Union.

Article L722-10

In the absence of a written request from the person authorized to use a geographical indication or from the defense body responsible for geographical indications and in other cases provided for by European Union regulations, the customs administration may, as part of its inspections, withhold goods that could infringe a geographical indication.

This detention is immediately notified to the person authorized to use the geographical indication or the defense body responsible for geographical indications. The customs administration also informs the public prosecutor of this order.

In the notification referred to in the first sentence of the second paragraph of this Article, the nature, actual or estimated quantity and images of goods shall be sent to the person authorized to use a geographical indication or the defense body responsible for the geographical indication, by way of derogation from Article 59a of the Customs Code. Such information may also be provided before the order set out in this Article is implemented.

The detention order is automatically lifted should the customs administration fail to receive from the person authorized to use the geographical indication or from the defense body responsible for geographical indications, the request provided for in Article L722-9 of this Code, filed within four working days from the date of notification of the detention of goods referred to in the first sentence of the second paragraph of this Article.

If the request has been received in accordance with the fourth paragraph of this Article, the period of ten working days referred to in the fourth paragraph of Article L722-9 shall begin to run from the date of customs approval.

This Article does not apply to perishable goods.

Article L722-11

I. Where the detention provided for by European Union Regulations on goods suspected of infringing a geographical indication is executed

before a request by the authorized person to use the geographical indication or the defense body responsible for the geographical indications has been filed or accepted, the customs officers may, by way of derogation from Article 59a of the Customs Code, inform that person or body of the execution of this order. They may also provide information on the quantity of goods and their nature.

Where the detention order provided for in the European Union Regulations on goods suspected of infringing a geographical indication is executed after a request by the authorized person, or its defense body, to use a geographical indication has been accepted, customs officers may also send to that person or body the elements, provided for by this regulation, necessary to determine whether there has been a violation of rights.

II. The costs incurred from the execution of the detention order referred to in I are borne by the person authorized to use a geographical indication or the defense body of the geographical indications.

Article L722-12

During the detention period referred to in Article L722-9 and the second paragraph in I of Article L722-11, the person authorized to use a geographical indication or the defense body responsible for the geographical indications may at their request or at the request of the customs administration, inspect the goods detained.

The customs administration may take samples when inspecting the detained goods. At the request of the person authorized to use the geographical indication or the defense body responsible for the geographical indications, these samples may be given to them for the sole purpose of analysis and in order to assist the civil or criminal proceedings.

Article L722-13

I. Where the detention of goods suspected of infringing a geographical indication is executed after the request referred to in Article L722-9 has been accepted, the goods suspected of infringing a geographical indication may be destroyed under the supervision of customs officers provided that the following conditions are fulfilled:

1. The plaintiff has confirmed in writing and via a detailed survey submitted to the customs authorities, the counterfeit nature of the

goods within ten working days, or three working days for perishable goods, as of the date of notification of the detention of goods;

2. The plaintiff has confirmed to the custom authorities in writing, and within ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, that he/she consents to the destruction of the said goods as per his/her responsibility;

3. The holder of goods has confirmed, in writing, his/her consent for the custom authorities to destroy the said goods, within ten working days, or three working days for perishable goods, as of the date of notification of the detention of goods.

II. If the holder of goods does not, within the period referred to in paragraph 3 in I, confirm his/her consent to the destruction of goods, or does not inform the customs administration of his/her opposition to destruction, it shall be considered that the said holder has consented to this destruction.

III. Where the holder of goods has not confirmed in writing that he/she consents to their destruction and where it is not deemed that the said holder has consented to the destruction of goods within the prescribed time, the customs administration shall immediately inform the plaintiff, within ten working days, or three working days for perishable goods, from the date of notification of the detention of goods, to take the measures referred to in the fourth paragraph of Article L722-9. The period of ten days may be extended by a maximum of ten working days upon the plaintiff's duly substantiated request. In case of an extension to the deadline, the public prosecutor and the holder of goods are thereby informed.

If the conditions provided for in I of this Article are not met and if the plaintiff has not justified to the customs administration that he/she has taken the measures referred to in the fourth paragraph of Article L722-9, the detention order is thereby automatically lifted.

IV. As part of the information sharing provided for in the third paragraph of Articles L722-9 and L722-10, the customs authorities shall inform the plaintiff of the procedure provided for in this Article. The information provided for in the sixth paragraph of Article L722-9 may also be communicated to the plaintiff for the purpose of executing this measure.

Article L722-14

I. Where the detention of goods suspected of infringing a geographical indication is executed after the request referred to in Article L722-9 has been accepted, goods carried in small shipments suspected of infringing geographical indications may be destroyed under the supervision of customs officers when the plaintiff has, in his/her request, sought to use the procedure provided for in this Article.

II. The notification stated in the first sentence of the second paragraph of Article L722-9 is made within one working day from the starting date of the detention of goods. It states the intention of the customs administration to destroy, or not, the goods and indicates that:

1. The holder of goods has a period of ten working days from the date of notification of the detention of goods to inform the customs administration of its observations;
2. The goods concerned may be destroyed when, within a period of ten working days from the start date of their detention, the holder of goods has confirmed to the customs authorities that he/she consents to such destruction. Should the holder of goods remain silent by the end of this period, the holder is deemed to have consented to their destruction.

The customs administration shall provide the plaintiff, at the request of the latter, with information on the actual or estimated quantity of the goods destroyed and their nature.

III. Where the holder of goods has not confirmed in writing, consent to their destruction or where he/she is not deemed to have consented to their destruction, the customs administration shall immediately inform the plaintiff of the quantity and nature of the goods, including images.

IV. The detention order is automatically lifted should the plaintiff fail to justify to the customs administration that he/she has taken the measures referred to in the fourth paragraph of Article L722-9, within ten working days as of the provisions in III of this Article. In order to take such measures, the plaintiff may obtain from the customs authorities the name and address of the sender, importer, recipient and holder of detained goods, their quantity, origin,

source and destination, notwithstanding Article 59a of the Customs Code.

V. The description of the small shipments referred to in I of this Article is specified by decree of the Minister responsible for customs.

VI. This Article is not applicable to perishable goods.

Article L722-15

Where the plaintiff uses the information provided by the custom authorities, by way of derogation from Article 59a of the Customs Code, and for purposes other than those provided for in this Chapter, the customs administration shall repeal, suspend or refuse to renew the said request.

Article L722-16

The customs officers apply the powers vested in them by the Customs Code in order to adopt the measures provided for in Articles L722-9 to L722-12.

Article L722-17

A decree in the Council of State establishes:

1. The conditions where the measures provided for in Articles L722-9 to L722-15 are applicable;
2. The conditions under which the destruction of goods liable to affect a geographical indication takes place, as per the European regulations in force, including the sampling conditions prior to the said destruction.

TITRE III Indications pertaining to the public sector

CHAPTER I

Article L731-1

This chapter is applicable to advertising, whatever its medium, and commercial practices on breakdown, repair and maintenance services in the building and household equipment sector. The relevant services are listed by decree of the Minister for Consumer Affairs.

Article L731-2

All uses of drawings, contact details, references or other distinctive signs pertaining to a public sector, in advertisements and documents referred to in this chapter are subject to the prior authorization of the relevant department.

The authorization provided for in the first paragraph:

1. Cannot be issued without the prior presentation of a copy of the publication medium;
2. Can not be valid for a period longer than one year, possibly renewable under the same types;
3. Serves the general interest of the public.

The department issuing the authorization may withdraw it at any time if one of the above conditions is no longer met. The withdrawal decision shall take effect ten days after its notification.

Article L731-3

Any breach of Article L731-2 is punishable by an administrative fine, the amount of which may not exceed 100,000. The administrative authority responsible for competition and consumption announces the fine under the conditions provided for in Chapter II of Title II of Book V of the Consumer Code.

Article L731-4

The agents referred to in Articles L511-3 and L511-21 of the Consumer Code investigate and record all breach of duties set out in this chapter, under the conditions provided for in Article L511-6 of the same code.

PART III Provisions on overseas territories

BOOK VIII Application in the Wallis and Futuna Islands, the French Southern and Antarctic Lands, in New Caledonia, in Mayotte, in Saint-Barthélemy and in Saint-Pierre-et-Miquelon

TITLE I

CHAPTER I

Article L811-1

The provisions of this Code are applicable in New Caledonia with the exception of the fourth paragraph of Article L335-4 and Articles L133-1 to L133-4, L421-1 to L423-2.

Articles L133-1 to L133-4, L421-1 to L423-2 and the fourth paragraph of Article L335-4 do not apply to the French Southern and Antarctic Lands.

Article L336-2 is applicable in the version resulting from Ordinance no. 2019-738 of 17 July 2019.

Article L811-1-1

Subject to the adaptations provided for in this Chapter, the following provisions of this Code are applicable in the Wallis and Futuna Islands:

1. the Books I to III except for the fourth paragraph of Article L335-4 and Articles L133-1 and L133-4, in their wording resulting from Law No. 2021-1382 of 25 October 2021 on the regulation and protection of access to cultural works in the digital age; Article L113-9-1 is applicable in its wording resulting from Ordinance No. 2021-1658 of 15 December 2021.

Articles L132-15, L132-17-1-1, L132-17-3, L132-17-4-1, L132-17-8 and L132-17-9 are applicable in their wording resulting from Law No. 2021-1901 of 30 December 2021 aimed at consolidating book economy and to strengthen equity and trust between its actors;

Articles L122-5, L122-5-3, L122-5-4, L122-5-5, L122-6-1, L134-3, L134-4, L134-5, L134-6, L134-7, L137-2-1, L138-1, L138-2, L138-3, L138-4, L138-5 and L139-1 are applicable in their wording resulting from Ordinance No. 2021-1518 of 24 November 2021.

Articles L211-3 and L211-8 are applicable in their wording resulting from Ordinance No. 2021-1518 of 24 November 2021.

Articles L324-8-1, L324-8-2, L324-8-3, L324-8-4, L324-8-5, L324-8-6,

L331-8 and L331-31 are applicable in their wording resulting from Ordinance No. 2021-1518 of 24 November 2021.

Articles L342-3 and L342-6 are applicable in their wording resulting from Ordinance No. 2021-1518 of 24 November 2021.

2. the provisions of Book IV mentioned in the left column of the table below, in their version indicated in the right column of the same table:

APPLICABLE PROVISIONS	IN THEIR DRAFTING RESULTING FROM
Article L411-1	Ordonnance No 2020-116 of 12 February 2020
Articles L411-2 and L411-3	Low No. 92-597 of 1st July 1992
Articles L411-4 and L.411-5	Ordonnance No 2020-116 of 12 February 2020
Article L.412-1	Low No. 2011-1843 of 8 December 2011

3. the provisions of Book V;

Articles L515-2, L521-3 and L521-3-2 are applicable in the version resulting from Law no. 2019-486 of 22 May 2019 on the growth and transformation of enterprises.

4. the provisions of Book VI, under the following conditions:

a) the provisions of Title I mentioned in the left column of the table below, in their wording indicated in the right column of the same table:

APPLICABLE PROVISIONS	IN THEIR DRAFTING RESULTING FROM
Article L611-1	Low No.2008-518 of 3 June 2008
Article L611-2	Ordonnance No 2020-116 of 12 February 2020
Articles L611-3 to L611-6	Low No.92-597 of 1st July 1992
Article L611-7	Ordonnance No 2019-964 of 18 September 2019
Article L611-7-1	Ordonnance No 2021-1658 of 15 December 2021
Article L611-8	Low No.2014-315 of 11 March 2014
Article L611-9	Low No.92-597 of 1st July 1992
Articles L611-10 and L611-11	Low No.2008-776 of 4 August 2008
Article L611-12	Low No.96-1106 of 18 December 1996
Articles L611-13 to L611-15	Low No.92-597 of 1st July 1992
Article L611-16	Low No.2008-776 of 4 August 2008

Articles L611-17 and L611-18	Low No.2004-800 of 6 August 2004
Article L611-19	Low No.2016-1087 of 8 August 2016
Article L612-1	Low No.94-102 of 5 February 1994
Article L612-2	Ordonnance No 2008-1301 of 11 December 2008
Articles L612-3 and L612-4	Low No.92-597 of 1st July 1992
Article L612-5	Low No.2004-1338 of 8 December 2004
Article L612-6	Low No.92-597 of 1st July 1992
Article L612-7	Ordonnance No 2008-1301 of 11 December 2008
Articles L612-8 and L612-9	Low No.92-597 of 1st July 1992
Article L612-10	Ordonnance No 2019-964 of 18 September 2019
Article L612-11	Low No.92-597 of 1st July 1992
Article L612-12	Low No.2019-486 of 22 May 2019
Article L612-13	Low No.94-102 of 5 February 1994
Articles L612-14 and L612-15	Low No.2019-486 of 22 May 2019
Article L612-16	Ordonnance No 2020-116 of 12 February 2020
Articles L612-16-1 and L612-17	Ordonnance No 2008-1301 of 11 December 2008
Article L612-18	Low No.92-597 of 1st July 1992
Article L612-19	Ordonnance No 2008-1301 of 11 December 2008
Article L612-20	Low No.2005-842 of 26 July 2005
Articles L612-21 to L612-23	Low No.92-597 of 1st July 1992
Article L613-1	Low No.92-597 of 1st July 1992
Article L613-2	Low No.2008-776 of 4 August 2008
Article L613-2-1	Low No.2004-800 of 6 August 2004
Article L613-2-2	Low No.2014-770 of 13 October 2014
Article L613-2-3	Low No.2016-1087 of 8 August 2016
Article L613-2-4	Low No.2004-1338 of 8 December 2004
Article L613-3	Low No.2014-315 of 11 March 2014
Article L613-4	Low No.92-597 of 1st July 1992
Article L613-5	Low No.2011-2012 of 29 December 2011
Articles L613-5-1 to L613-5-3	Low No.2004-1338 of 8 December 2004
Article L613-6	Low No.93-1420 of 31 December 1993
Article L613-7	Low No.96-1106 of 18 December 1996
Article L613-8	Low No.92-597 of 1st July 1992

Article L613-9	Low No.2008-776 of 4 August 2008
Articles L613-11 and L613-13	Low No.96-1106 of 18 December 1996
Article L613-14	Low No.92-597 of 1st July 1992
Article L613-15	Ordonnance No 2019-964 of 18 September 2019
Article L613-16	Low No.2004-1338 of 8 December 2004
Article L613-17	Ordonnance No 2019-964 of 18 September 2019
Articles L613-17-1 and L613-17-2	Low No.2007-1544 of 29 October 2007
Articles L613-18 and L613-19	Ordonnance No 2019-964 of 18 September 2019
Article L613-19-1	Low No.96-1106 of 18 December 1996
Article L613-20	Ordonnance No 2019-964 of 18 September 2019
Article L613-21	Low No.92-597 of 1st July 1992
Article L613-22	Ordonnance No 2008-1301 of 11 December 2008
Articles L613-23 to L613-25	Ordonnance No 2020-116 of 12 February 2020
Article L613-26	Low No.92-597 of 1st July 1992
Article L613-27	Low No.94-102 of 5 February 1994
Article L613-28	Low No.92-597 of 1st July 1992
Article L613-29	Ordonnance No 2019-964 of 18 September 2019
Articles L613-30 to L613-32	Low No.92-597 of 1st July 1992
Articles L614-1 to L614-6	Low No.92-597 of 1st July 1992
Article L614-7	Low No.2007-1544 of 29 October 2007
Articles L614-8 and L614-9	Low No.92-597 of 1st July 1992
Article L614-10	Low No.2007-1544 of 29 October 2007
Articles L614-11 and L614-13	Low No.92-597 of 1st July 1992
Articles L614-14 and L614-15	Low No.94-102 of 5 February 1994
Articles L614-16 to L614-20	Low No.92-597 of 1st July 1992
Article L614-21	Low No.94-102 of 5 February 1994
Articles L614-22 to L614-31	Low No.92-597 of 1st July 1992
Articles L614-32 to L614-39	Low No.2014-315 of 11 March 2014
Articles L615-1 and L615-2	Low No.2007-1544 of 29 October 2007
Article L615-3	Low No.2014-315 of 11 March 2014
Article L615-4	Low No.92-597 of 1st July 1992
Article L615-5	Low No.2014-315 of 11 March 2014

Article L615-5-1	Low No.2018-670 of 30 July 2018
Articles L615-5-1-1 and L615-5-2	Low No.2014-315 of 11 March 2014
Article L615-6	Low No.92-597 of 1st July 1992
Article L615-7	Low No.2014-315 of 11 March 2014
Article L615-7-1	Low No.2007-1544 of 29 October 2007
Articles L615-8 and L615-8-1	Low No.2019-486 of 22 May 2019
Article L615-10	Ordonnance No 2019-964 of 18 September 2019
Article L615-12	Low No.2009-526 of 12 May 2009
Article L615-13	Ordonnance No 2000-916 of 19 September 2000
Article L615-14	Low No.2016-731 of 3 June 2016
Article L615-14-1	Low No.2010-853 of 23 July 2010
Article L615-14-2	Low No.2007-1544 of 29 October 2007
Article L615-14-3	Low No.2009-526 of 12 May 2009
Articles L615-15 and L615-16	Ordonnance No 2000-916 of 19 September 2000
Article L615-17	Ordonnance No 2019-964 of 18 September 2019
Article L615-20	Low No.2014-315 of 11 March 2014
Article L615-21	Ordonnance No 2021-1658 of 15 December 2021
Article L615-22	Low No.92-597 of 1st July 1992

b) Title II;

Articles L622-7, L623-29 and L623-29-1 are applicable in the version resulting from Law no. 2019-486 of 22 May 2019 on the growth and transformation of enterprises.

Article L623-15 is applicable in the version resulting from Ordinance no. 2019-1169 of 13 November 2019 on trademarks for goods and services.

5. the provisions of Book VII, under the following conditions:

a) the provisions of Title I mentioned in the left column of the table below, in their wording indicated in the right column of the same table:

APPLICABLE PROVISIONS	IN THEIR DRAFTING RESULTING FROM
Articles L711-1	Ordonnance No 2019-1169 of 13 November 2019

to L711-3	
Article L712-1	Low No.92-597 of 1st July 1992
Article L712-2	Ordonnance No 2019-1169 of 13 November 2019
Article L712-2-1	Low No.2014-344 of 17 March 2014
Articles L712-3 to L712-5-1	Ordonnance No 2019-1169 of 13 November 2019
Article L712-6	Low No.2014-315 of 11 March 2014
Articles L712-6-1 and L712-7	Ordonnance No 2019-1169 of 13 November 2019
Article L712-8	Low No.92-597 of 1st July 1992
Article L712-9	Low No.2020-1508 of 3 December 2020 laying down various provisions adapting to European Union law in economic and financial matters
Article L712-10	Ordonnance No 2008-1301 of 11 December 2008
Articles L712-11 and L712-12	Low No.96-1106 of 18 December 1996
Articles L712-13 and L712-14	Ordonnance No 2019-1169 of 13 November 2019
Articles L713-1 to L713-3-1	Ordonnance No 2019-1169 of 13 November 2019
Articles L713-3-3 to L713-6	Ordonnance No 2019-1169 of 13 November 2019
Articles L714-1 to L714-7	Ordonnance No 2019-1169 of 13 November 2019
Article L714-8	Ordonnance No 2008-1301 of 11 December 2008
Articles L715-1 to L715-10	Ordonnance No 2019-1169 of 13 November 2019
Articles L716-1 to L716-4-3	Ordonnance No 2019-1169 of 13 November 2019
Articles L716-4-5 to L716-6	Ordonnance No 2019-1169 of 13 November 2019
Articles L716-8 to L716-8-3	Ordonnance No 2019-1169 of 13 November 2019
Articles L716-8-4 to L716-8-9	Low No.2014-315 of 11 March 2014
Articles L716-9 to L716-11-1	Ordonnance No 2019-1169 of 13 November 2019
Article L716-11-2	Low No.2009-526 of 12 May 2009
Article L716-12	Low No.94-102 of 5 February 1994

Article L716-13	Low No.2007-1544 of 29 October 2007
Articles L717-1 to L717-7	Ordonnance No 2019-1169 of 13 November 2019

The rules applicable in mainland France pursuant to Regulation (EU) 2017/1001 of 14 June 2017 are applicable in the Wallis and Futuna Islands, except for paragraph 4 of Article 9 and Article 15 of this Regulation.

For their application in the Wallis and Futuna Islands, Articles L713-4 and L717-1 are worded as follows:

Article L713-4.

The right conferred by a trademark shall not entitle its proprietor to prohibit its use in relation to goods which have been put on the market in the European Union, the European Economic Area or the Wallis Islands under that trademark by the proprietor or with his consent.

However, the proprietor of the trademark 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 L717-1.

I. The failure to comply with the prohibitions set forth in Article 9, except for its fourth paragraph, and Articles 10 and 13 of the Regulation mentioned in paragraph I shall constitute infringement resulting in the civil liability of the offender.

II. A European Union trademark shall not entitle its proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area or in the Wallis and Futuna Islands under that trademark by the proprietor or with his consent, unless there exist legitimate reasons for the proprietor to oppose further commercialization of the goods, especially when the condition of the goods is changed or impaired after they have been put on the market.

III. The failure to comply with the prohibitions set forth in paragraphs I and II shall constitute infringement resulting in the civil liability of the offender.

b) the provisions of Title II.

Article L811-2

For this Code to apply to the French Southern and Antarctic Territories and for the provisions it renders applicable to French Polynesia, the Wallis and Futuna Islands and New Caledonia, the items listed below are respectively replaced by the following expressions:

- "tribunal judiciaire " by "tribunal de première instance ";
- "Region" by "territory;"
- "tribunal de commerce " by "tribunal de première instance statuant en matière commerciale ";
- "conseil de prud'hommes " by "tribunal du travail ".

Similarly, references to legislative provisions which are not applicable to the Wallis and Futuna Islands, the French Southern and Antarctic Lands and New Caledonia are replaced by references to provisions having the same purpose, and resulting from locally applicable texts.

Article L811-2-1

For their application in Mayotte, the Wallis and Futuna Islands, the French Southern and Antarctic Lands and New Caledonia, Articles L122-3-1 and L211-6 are worded as follows:

Art. L122-3-1. - Where the first sale of one or more copies of a work has been authorized by the author or his/her successors in the territory of a Member State of the European Union or of a Signatory State to the Agreement on the European Economic Area or the territory of Mayotte, the Wallis and Futuna Islands, the French Southern and Antarctic Lands and New Caledonia, the sale of such copies of this work may no longer be prohibited in the European Union or in those overseas collectivities or in New Caledonia.

Art. L211-6. Where the first sale of one or more copies of the protected work by a related right has been authorized by the right holder or his/her successors in the territory of a Member State of the European Union or in the territory Mayotte, the Wallis and Futuna Islands, the French Southern and Antarctic Lands and New Caledonia, the sale of such copies of this work may no longer be prohibited in the European Union or in those overseas collectivities or in New Caledonia.

Article L811-2-2

For the application of this Code in Mayotte, the following words

listed below shall be replaced by the following words:

- a) "région " and "département " by "Mayotte";
- b) "cour d'appel " by "chambre d'appel de Mamoudzou ", and "commissaire de police " by "officier de police judiciaire ";

Article L811-3

For its application in the Wallis and Futuna Islands, the French Southern and Antarctic Lands, in New Caledonia and Mayotte, Article L621-1 of this code is worded as follows:

Art. L621-1:

"The disclosure or attempted disclosure of a manufacturing secret by any director or employee of the company in which he/she is employed shall be punishable by a prison term of two years and a fine of € 30,000."

"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."

Article L811-3-1

For its application in Saint-Barthélemy, in Saint-Pierre-et-Miquelon and in the French Austral and Antarctic Territories, Article L713-4 shall read as follows:

Article L713-4. - The right conferred by a trademark shall not entitle its proprietor to prohibit its use in relation to goods which have been put on the market in the European Union, in the European Economic Area, in Saint-Barthélemy, in Saint-Pierre-et-Miquelon or in the French Austral and Antarctic Territories under that trademark by the proprietor or with his consent.

However, the proprietor of the trademark 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 L811-4

I. For their application in New Caledonia, Articles L717-1, L717-4 and Article L717-7 of this Code shall read as follows:

"Art. L717-1.:

I. Shall constitute infringement resulting in the civil liability of the infringer, in the absence of consent by the holder of the European Union trademark, the use in the course of trade by a third

person, of:

- a) Any sign that is identical with the European Union trademark in relation to goods or services which are identical with those for which the European Union trademark is registered;
- b) Any sign in respect of which, because of its identity with or similarity to the European Union trademark and the identity or similarity of the goods or services covered by the European Union trademark 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 European Union trademark in relation to goods or services which are not similar to those for which the European Union trademark is registered, where the latter enjoys a certain renown in the European Union 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 European Union trademark.

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 European Union trademark in a dictionary, encyclopedia or similar reference work, when it gives the impression that it constitutes the generic name of the goods or services for which the European Union trademark 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 European Union trademark 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 European Union trademark 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 European Union trademark 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 European Union trademark 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 Union, the European Economic Area, French Polynesia or New Caledonia. 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. L717-4.:

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 European Union trademark;
- b) Actions in compensation brought pursuant to the conditions laid down in IV of Article L717-1;
- c) For counterclaims in revocation or for a declaration of invalidity of a European Union trademark, provided they are based on the grounds for revocation or invalidity applicable to the European Union trademark.

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. L717-7.:

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 L717-5 in the same territories, the first paragraph of this Article is replaced by the following provisions:

“Art. L717-5.:

I. An application for a European Union trademark or a European Union trademark can only be converted into an application for a national mark:

- a) To the extent that the European Union trademark application is refused, withdrawn, or deemed to be withdrawn;
- b) To the extent that the European Union trademark ceases to have effect.

II. Conversion shall not take place:

- a) Where the rightholder of the European Union trademark has been deprived of his rights on the ground of non-use, unless the European Union trademark has been used in France in conditions constituting genuine use within the meaning of Article L714-5;
- 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 European Union trademark 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”.

Article L811-5

The rules applicable in mainland France pursuant to Regulation (EU) 2017/1001 of 14 June 2017 are applicable in Saint-Barthélemy, in Saint-Pierre-et-Miquelon and in the French Austral and Antarctic

Territories, except for paragraph 4 of Article 9 and Article 15 of this Regulation.

Article L811-6

For its application in Saint-Barthélemy, in Saint-Pierre-et-Miquelon and in the French Austral and Antarctic Territories, Article L717-1 shall read as follows:

Article L717-1.

I. The failure to comply with the prohibitions set forth in Article 9, except for its fourth paragraph, and Articles 10 and 13 of the Regulation mentioned in Article L811-5 shall constitute infringement resulting in the civil liability of the offender.

II. A European Union trademark shall not entitle its proprietor to prohibit its use in relation to goods which have been put on the market in the European Economic Area, in Saint-Barthélemy, in Saint-Pierre-et-Miquelon or in the French Austral and Antarctic Territories under that trademark by the proprietor or with his consent, unless there exist legitimate reasons for the proprietor to oppose further commercialization of the goods, especially when the condition of the goods is changed or impaired after they have been put on the market.

III. The failure to comply with the prohibitions set forth in paragraphs I and II shall constitute infringement resulting in the civil liability of the offender.