OVAT

INDUSTRIAL PROPERTY

A USEFUL REMINDER TO INVENTORS: THE FRENCH MINISTRY OF NATIONAL DEFENSE HAS A RIGHT OF REVIEW OVER YOUR PATENT APPLICATIONS

REMINDER ON THE PROTECTION OF INVENTIONS

The protection of an invention is mainly obtained throught the granting of a **patent** which can be extended in almost all the countries of the world.

Therefore, the inventor or the person (legal or natural) having acquired the invention rights (contractually designated or due to an employment relationship) can decide to protect his/her/its invention:

- in France (at the INPI);
- in the country of his/her/its choice (at the competent patent office);
- in a region gathering several countries: in Europe (at the EPO) or in countries gathered in French-speaking sub-Saharan Africa (at the AIPO);
- through an International Patent Application via the PCT treaty system which brings together, to date, 156 countries (at the WIPO).

EXAMINATION OF PATENT APPLICATIONS: RIGHT OF REVIEW OF THE MINISTRY OF NATIONAL DEFENSE

But, for national security purposes, the Minister of National Defense, via the Intellectual Property Office of the General Delegation for Armaments ("DGA“ in French) has the right to **review all applications for the protection of inventions made by natural or legal persons having their domicile or registered office in France**, in order to authorize or not the exploitation of such inventions and thus avoid the possible leakage of so-called sensitive technologies, regardless of the country where the protection is sought.

Article L612-8 of the French Intellectual Property Code

A DOUBLE OBLIGATION FOR APPLICANTS HAVING THEIR DOMICILE OR REGISTERED OFFICE IN FRANCE

Consequently, the applicants have:

1

An obligation of first filing with the INPI

The applicant whose domicile or registered office is located in France cannot proceed outside of France with the first filing of a patent application. **There is no exception to this provision**.

The first filing must be submitted to the INPI, and for patents for which protection is sought outside France, the INPI must act as a **receiving office** and only **transmit patent applications** to foreign offices once the **DGA has delivered its authorization for disclosure and exploitation**

EXAMINATION OF PATENT APPLICATIONS: RIGHT OF REVIEW OF THE MINISTRY OF NATIONAL DEFENSE

The **INPI** is thus required to submit **all patent or utility certificate applications** to the Ministry of Defense within 15 days of their receipt.

Consequently, inventions for which patent applications have been filed **cannot be disclosed and freely exploited** until an authorization to do so has been granted by the Ministry of Defense.

Article L612-9 of the French Intellectual Property Code

EXAMINATION OF PATENT APPLICATIONS: RIGHT OF REVIEW OF THE MINISTRY OF NATIONAL DEFENSE

The Ministry of Defense then has a period of 5 months to examine the invention and give an authorization for disclosure and exploitation or, on the contrary, a decision to keep it secret.

Article L612-9 the French Intellectual Property Code

The authorization for disclosure and exploitation is:

- **automatically acquired** at the end of the **5-month period** starting from the day the application for a patent is filed.
- in practice, granted by the Department of Defense in writing within approximately **4 to 6 weeks*** from the date of filing the application.

** deadlines indicated on the INPI website*

A DOUBLE OBLIGATION FOR APPLICANTS HAVING THEIR DOMICILE OR REGISTERED OFFICE IN FRANCE

2 An obligation to declare to the DGA any " sensitive " patent application

The purpose of such an obligation is to facilitate the identification of inventions prohibited from disclosure by the DGA, and to reduce the risk of disclosures threatening the interests of the nation.

A FRENCH « *FOREIGN FILING LICENCE* »

This authorization mechanism is, in a way, the **French application of the "foreign filing license"** principle implemented in certain countries such as the United States, Germany and Great Britain, in order to protect their national security.

The granting of a foreign filing license by these governments certifies that the technology described in the patent application is not sensitive and can therefore be exported.

In France, the "*Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité et de défense*" (Guidelines for the use of intellectual property in security and defence) published by the DGA lists, in a non-exhaustive way, technologies and inventions likely to be of interest to national defense, so that the Ministry could prohibit their export.

Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense:
https://www.inpi.fr/sites/default/files/guide_pi_dn_v9.pdf

SANCTIONS

Article L. 615-13 of the Intellectual Property Code

”*Notwithstanding the heavier penalties provided for with regard to violation of State security* [see below provisions of Criminal Code], *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*.”

4,500 euros **5 years imprisonment**

Article 411-6 of the Criminal Code

”*Supplying or making accessible to a foreign power, to a foreign undertaking or organization or to an undertaking or organization under foreign control, or to their agents, information, processes, articles, documents, computerized data or files, the use, disclosure or collection of which are liable to prejudice the fundamental interests of the nation is punished by* ***fifteen years' criminal detention*** *and a fine of* ***€225,000***”

225,000 euros **15 years imprisonment**

The non-respect of this procedure (which is quite frequent in practice), can be **an impediment to the assignment of patents** to companies from countries with a similar rule, which consider that only the **DGA's approval** guarantees them an unrestricted use of the purchased patents.

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