

Decree No. 79–797 of September 4, 1979, on Employees' Inventions

(as amended on July 22, 1984)*

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Chapter I: Duties of the Employee and of the Employer

PART 1: DUTIES OF THE EMPLOYEE

1. An employee who makes an invention shall immediately declare it to his employer.

Where there is more than one inventor, a joint declaration may be made by all inventors or by some of them only.

2. The declaration shall contain sufficient information, in the possession of the employee, to enable the employer to evaluate the classification of the invention in one of the categories provided for in paragraphs (1) and (2) of Section 1*ter* of the amended Law of January 2, 1968.¹

This information shall concern:

- (a) the subject matter of the invention and the envisaged applications;
- (b) the circumstances in which it was made, for example: instructions or directives received, experiments or work of the undertaking used, assistance obtained;
- (c) the classification of the invention as it appears to the employee.

3. Where the classification means that the employer enjoys the right of assignment, the declaration shall be accompanied by a description of the invention.

The description shall set out:

- (a) the problem facing the employee, taking into account, where appropriate, the existing state of the art;
- (b) the solution found by the employee;
- (c) at least one example of application of the invention, accompanied, where appropriate, by drawings.

* *French title:* Decret relatif aux inventions de salariés.

Entry into force (of last amending Decree): July 24, 1984 (in Paris), insofar as implementing measures are not required.
Source: *Journal officiel de la République française*, September 16, 1979, p. 2309, and July 22, 1984, p. 2403.

**Added by WIPO (*Editor's note*).

¹See *Industrial Property Laws and Treaties*, FRANCE – Text 2–001.

4. Where the employer's right of assignment is subsequently acknowledged, contrary to the classification of the invention which resulted from the employee's declaration, the employee shall, where necessary, immediately supplement his declaration with the information required by the preceding Section.

PART 2: DUTIES OF THE EMPLOYER

5. Where the employee's declaration does not comply with Section 2(a) and (b) or, where appropriate, Section 3, the employer shall communicate to the person concerned the exact points in respect of which the declaration needs to be supplemented.

The communication shall be made within two months of the date of receipt of the declaration. Failing such communication, the declaration shall be deemed to comply.

6. Within a period of two months, the employer shall give his agreement to the classification of the invention resulting from the employee's declaration or, where the classification is not stated, shall notify the employee, in a reasoned communication, of the classification he has chosen.

The two-month period shall start on the day the employer receives the employee's declaration containing the information required by Section 2 or, where a request for supplementary information, recognized as justified, has been made, on the day on which the declaration has been supplemented.

Where the employer does not respond within the prescribed period of time, he shall be deemed to have accepted the classification resulting from the employee's declaration.

7. The period of time available to the employer to claim the right of assignment shall be four months, except where otherwise agreed by the parties at a date which may not be later than that of the declaration of the invention.

This period of time shall start on the day the employer receives the declaration of the invention containing the information required by Sections 2(a), 2(b) and 3 of this Decree or, where a request for supplementary information that is recognized as justified has been made, on the day on which the declaration has been supplemented.

The claim for the right of assignment shall be made by sending to the employee a communication setting out the nature and scope of the rights which the employer intends to claim.

8. The periods of time set out in Sections 5, 6 and 7 shall be suspended by the institution of legal proceedings in respect of the regularity of the declaration or of the justification for the classification of the invention claimed by the employee, or by recourse, for the same purposes, to the Conciliation Board referred to in Section 68bis of the aforementioned Law.

The periods of time shall continue as from the day a final decision is taken.

PART 3: MUTUAL DUTIES OF THE EMPLOYEE AND EMPLOYER

9. Any declaration or communication issued by the employee or the employer shall be effected by registered letter with notification of delivery or by any other means which enables a proof to be furnished that it has been received by the other party.

The declaration provided for in Section 1 may arise from the transmission by the National Institute of Industrial Property to the employer, in accordance with the procedures fixed by order of the Minister responsible for industrial property, of the copy of a communication sent by the employee to the Institute to be kept thereby.

This procedure shall be optional for the inventions referred to in the first paragraph of Section 1ter of the aforementioned Law.

10. The employee and the employer shall refrain from any disclosure of the invention for as long as a difference of opinion remains as to its classification or for as long as no decision has been taken on the classification.

Should one of the parties file a patent application in order to preserve his rights, he shall forward without delay to the other party a copy of the documents filed.

That party shall make full use of the possibilities offered by the applicable legislation and regulations with a view to deferring publication of the application.

Chapter II: Joint Conciliation Board

PART 1: ORGANIZATION OF THE BOARD

11. The Chairman of the Joint Conciliation Board referred to in Section 68*bis* of the aforementioned Law shall be appointed for a renewable term of three years by decision of the Keeper of the Seals, Minister of Justice, and of the Minister responsible for industrial property. An honorary magistrate may be appointed.

One or more deputies may be appointed in the same way. They shall replace the Chairman in case of absence or incapacity.

12. The Chairman shall be assisted by two assessors whom he shall designate for each case from a list of persons competent in the fields within the purview of the Board.

The list shall be drawn up and periodically updated by the Director of the National Institute of Industrial Property on a proposal from the professional and trade union organizations that are representative at national level.

One of the assessors shall be chosen among the persons proposed by the employees' organizations and the other from among those proposed by the employers' organizations.

Where the invention concerns national defense or results from a study or fabrication contract subject to defense security classification, the assessors shall be subject to prior clearance by the Minister responsible for defense. The same shall apply to experts called in or technicians consulted.

13. The Secretariat of the Board shall be provided by the National Institute of Industrial Property.

14. The Board shall meet at the National Institute of Industrial Property or, on a decision by its Chairman, in one of the Institute's provincial centers, where circumstances so require.

15. The members of the Board shall receive a lump-sum allowance in respect of the cases submitted to them.

The allowance shall comprise the reimbursement of the various costs of secretarial services, correspondence or travel within their place of residence necessary to fulfill their tasks.

The rate and conditions for allocating the lump-sum allowance shall be laid down by a joint decision of the Ministers responsible for finance and for industrial property.

16. Expenditure resulting from travel which members of the Board may be required to make outside their place of residence in order to fulfill their tasks shall be refunded in accordance with the rules applicable to Group I civil servants.

PART 2: SUBMISSION TO THE BOARD AND SEQUENCE OF THE PROCEDURE

17. Submission to the Board shall be instituted by a petition filed with the Secretariat either by the petitioner or by his representative in possession of the necessary powers. The petition may also be forwarded by a registered letter with a request for notification of receipt.

18. The petition shall be signed by the petitioner or his representative.

It shall contain:

- (a) the name, given names, occupation and address of the petitioner and of the other parties;
- (b) the subject of the dispute at issue;
- (c) the means and conclusions of the petitioner;
- (d) all information in his possession of possible use in resolving the dispute at issue.

A copy of the declaration and of the communications made under Chapter I of this Decree and of any documents which the petitioner wishes to produce shall be annexed thereto.

19. If the petition does not comply with the provisions of the preceding Section, the Secretariat shall invite the petitioner to supplement it within one month.

The petitioner shall be entitled, prior to the expiry of the time limit, to submit the question of conformity of the petition to the judgment of the Chairman. If the Chairman confirms the invitation by the Secretariat, he shall grant the person concerned a further period of time to comply therewith.

The periods of time laid down in the preceding paragraphs shall be extended at the decision of the Chairman if the petitioner is able to present a legitimate reason.

The date of the submission to the Board shall be that on which the petition has been supplemented in accordance with the requirements of this Section.

20. The submission to the Board shall be notified to the other party by the Secretariat.

The other party shall also be invited, at the same time, to present, within the time limit fixed by the Chairman, its written comments on the merits of the petition.

The Minister of Defense shall be entitled to have access at the Secretariat of the Board to all objections submitted to the Board.

21. Within the time limit fixed by the Chairman, the National Institute of Industrial Property shall communicate to the Board those elements in its possession which may be disclosed without damage to third-party rights or to national defense interests.

A copy of the communication shall be forwarded immediately to the parties by the Secretariat.

22. As soon as the assessors have been designated, the Secretariat shall notify the composition of the Board to the parties and shall convene them for a preliminary meeting.

Each party may request the replacement of the assessors for a reason which the Chairman deems to be serious and legitimate.

The request shall be submitted within 15 days of the notification or at the opening of the preliminary meeting where the latter takes place before the expiry of the time limit.

23. The procedure before the Board shall take place in the presence of the parties.

24. On the set day, the Board shall hear parties and shall endeavor to bring closer their points of view and to achieve conciliation.

If one of the parties does not appear, the Board shall take note and shall hear the other party.

Minutes of the proceedings shall be kept.

Where full or partial conciliation is achieved, the minutes shall record the contents of the agreement. Failing full conciliation, the contested points shall be recorded.

25. Where one of the parties does not appear or full conciliation is not achieved, the Board shall draw up a conciliation proposal under Section 68*bis* of the aforementioned Law.

26. The Chairman may undertake any examining measure.

He may note at any time the conciliation of the parties or hold, for that purpose, a new meeting.

27. Except where authorization is given by the Chairman, only the members of the Board and of the National Institute of Industrial Property, and the parties and the persons aiding or representing them, shall be present at the conciliation meetings.

28. In the case of a petition from the party which has not made the submission to the Board or in the case of a number of petitions in respect of the same invention, the six-month period in which the conciliation proposal is to be drawn up shall start on the date on which the last submission was made to the Board.

29. In cases where the invention affects national defense, the conciliation proposal shall contain no analysis of the invention such as to constitute disclosure.

30. The conciliation proposal shall be signed by the Chairman and the Secretary.
The latter shall notify it to the parties.

PART 3: EFFECTS OF A SUBMISSION TO THE BOARD

31. A submission to the Board shall suspend any period of limitation.

32. On the basis of a submission to the Board, the District Court (*Tribunal de grande instance*) shall stay its proceedings until expiry of the six-month period stipulated in Section 68*bis* of the aforementioned Law unless the Board has already formulated its conciliation proposal.

33. Failing agreement between the parties, only the proposal of the Board shall be communicated to the Court.

34. An agreement between the parties resulting from the conciliation proposal in the case referred to in Section 68*bis* of the aforementioned Law shall become final by the decision of the presiding judge of the District Court in whose jurisdiction the conciliation proposal has been formulated.

35. This Decree shall apply in the territorial entity of Mayotte and in the Overseas Territories.

36. The Keeper of the Seals, Minister for Justice, the Minister for the Interior, the Minister for Defense, the Minister for Labor and Participation, the Minister for the Budget, the Minister for Industry and the State Secretary to the Minister for the Interior (Overseas Departments and Territories) shall be severally responsible for the implementation of this Decree, which shall be published in the Official Journal of the French Republic.