
Decree No. 79–822 of September 19, 1979, on Applications for Patents and Utility Certificates and the Grant and Maintenance in Force of Such Titles

(as amended up to November 21, 1991)*

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Chapter I Patent Applications

1. Patent applications shall be filed either at the National Institute of Industrial Property (*Institut National de la Propriété Industrielle*) or at a *Préfecture* other than that of Paris.

They may also be sent to the National Institute of Industrial Property by registered letter with a request for advice of receipt, from a French or foreign post office.

* *French title*: Décret relatif aux demandes de brevets d'invention et de certificat d'utilité, à la délivrance et au maintien en vigueur de ces titres.

Entry into force (of last amending Decree): November 21, 1991 (in Paris), insofar as implementing measures are not required.

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Note: Decree No. 79–822 of September 19, 1979, was previously amended by Decrees Nos. 81–865 of September 11, 1981, 82–100 of November 23, 1982, and 84–918 of October 10, 1984. For the Patent Law, see *Industrial Property Laws and Treaties*, FRANCE — Text 2–001.

** Added by WIPO.

2. Filing may be effected by the applicant in person or by a representative having his residence, registered office or an establishment in France.

Natural persons or legal entities not having their residence or registered office in France shall appoint a representative who meets the conditions specified in the preceding paragraph within two months following the date of receipt of notice to do so.

Where there are two or more applicants, a common representative who meets the same conditions shall be appointed.

The representative appointed shall present a power of attorney. Unless otherwise provided, this power of attorney shall extend to all the acts and to the receipt of all the notifications provided for in this Decree, subject to the provisions of Sections 29 and 69.

The power of attorney shall not require authentication.

3. The patent application shall comprise a request for the grant of a patent, to which shall be appended:

- (a) a description of the invention, together with drawings where appropriate;
- (b) one or more claims;
- (c) an abstract of the technological content of the invention.

4. A receipt showing the date of submission of the file shall be issued to the applicant either by the National Institute of Industrial Property or by the *Préfecture*.

Where it is submitted at a *Préfecture*, the file shall be forwarded immediately to the National Institute of Industrial Property in Paris, together with a duplicate of the receipt.

Where it is sent by mail, the date of submission of the file shall be that appearing on the advice of receipt of the package.

5. Within 15 days following the submission or delivery of the file to the National Institute of Industrial Property in Paris, the Institute shall give the application a national registration number and notify it to the applicant without delay. The notifications provided for in this Decree shall be addressed to the applicant under that number.

6. The benefit of the filing date of the patent application shall be assured on the date of filing of at least one copy of the documents specified in Section 13 of amended Law No. 68–1 of January 2, 1968,¹ written in French, subject to the exception provided for in Section 14. The benefit of that filing date shall be assured even if the documents filed have formal defects.

Where one of the documents referred to in the preceding paragraph is lacking, the applicant shall be invited to complete the patent application within one month.

If the applicant complies with the invitation, the filing date shall be that on which the application was completed; that date shall be notified to the applicant. If he does not do so, the application shall be declared unacceptable; the documents submitted shall be returned to the applicant and any fees that may have been paid shall be refunded to him.

7. If the drawings are filed after the filing date referred to in the preceding Section, the applicant shall be informed that the drawings and the references to the drawings in the patent application will be removed unless, within one month, he submits a request for the grant of a patent bearing the date of filing of the drawings.

If the drawings have not been filed, the applicant shall be invited to rectify the defect within one month; he shall be informed that the patent application will bear the date of filing of the drawings, failing which the references to the drawings will be removed.

Any new filing date shall be notified to the applicant.

¹ See *Industrial Property Laws and Treaties*, FRANCE — Text 2–001 (hereinafter cited as “the Law”).

8. The request for grant shall be signed by the applicant or by his representative.

The following shall appear in the request:

- (a) the nature of the industrial property title applied for;
- (b) the title of the invention, clearly and concisely showing the technological designation of the invention and mentioning the existence of any claims in different categories: product, process, device or use; the title shall not contain any fanciful denomination;
- (c) the designation of the inventor; however, if the applicant is not the inventor or is not the only inventor, the designation shall be made in a separate document containing the name, given names and residence of the inventor, and the signature of the applicant or his representative;
- (d) the names and given names of the applicant, his nationality, his residence or his registered office;
- (e) the name and address of the representative if one is appointed.

The request shall be completed by any information concerning:

- (a) the delayed drawing up of the documentary report;
- (b) facilities requested for the payment of the fee for the drawing up of the report;
- (c) the reduction in the rate of fees granted to the applicant;
- (d) priorities claimed;
- (e) the presentation of the invention at an official or officially recognized exhibition.

Where the provisions contained in the second paragraph, under (c), are not complied with, the applicant shall be invited to put his application in order within 16 months from the filing date or, if priority has been claimed, from the priority date.

9. The description shall comprise:

- (a) the title of the invention as appearing in the request for the grant of the patent;
- (b) an indication of the field of technology to which the invention relates;
- (c) an account of the state of the art known to the applicant that might be considered useful for the comprehension of the invention and for the drawing up of the search report; the documents serving to reflect the state of the art shall as far as possible be cited;
- (d) an account of the invention as characterized by the claims, so conceived as to allow the technological problem and the proposed solution to it to be understood; where appropriate, the advantages of the invention in relation to the existing state of the art shall be shown;
- (e) a brief description of the drawings, if any;
- (f) a detailed account of at least one method of carrying out the invention; the account shall in principle be accompanied by examples and references to drawings, if any;
- (g) an account of the manner in which the invention is susceptible of industrial application if such application is not clearly apparent from the description or the nature of the invention.

The description shall be set out as specified in the preceding paragraph and in the order indicated, except where the nature of the invention admits of a different, more comprehensible and more concise presentation.

10. In the case provided for in the second paragraph of Section 14*bis* of the above-mentioned Law, the culture shall be deposited at the latest at the date of filing the patent application and the description shall specify:

- (a) the information available to the applicant on the characteristics of the microorganism;
- (b) the authorized body with which the culture was deposited and the number of the deposit.

The information required pursuant to letter (b) of the preceding paragraph may be provided within 16 months following the filing date of the patent application or the priority date if a priority right has been claimed, or of the date of the request provided for in Section 17 of the above-mentioned Law if it is filed before the expiration of that time limit. Their provision shall constitute irrevocable and unreserved consent on the part of the applicant to the placing of the culture at the disposal of the public pursuant to Section 31.

If the culture ceases to be accessible, either because it is no longer viable, or because the authorized body is no longer able to provide samples, no account shall be taken of this interruption, provided that:

(a) a new deposit of the microorganism is effected within three months following the date on which the patent owner or applicant was informed of the interruption either by the authorized body or by the National Institute of Industrial Property;

(b) a copy of the receipt of deposit, issued by the authorized body, together with an indication of the number of the patent application or patent, is communicated to the National Institute of Industrial Property within four months of the date of the new deposit.

Where the interruption is due to the non-viability of the culture, the new deposit shall be made with the authorized body with which the original deposit was made; in other cases, it may be made with another authorized body.

Any new deposit shall be accompanied by a written statement by which the depositor declares that the microorganism is the same as that originally deposited.

The bodies authorized to receive deposits of microorganisms shall be designated by order of the minister responsible for industrial property.

11. Each of the claims shall comprise:

(a) a preamble mentioning the designation of the subject matter of the invention and the technical characteristics which are necessary for the definition of the elements claimed but which, collectively, form part of the state of the art;

(b) a characterizing part setting out the technical characteristics which, in conjunction with the characteristics mentioned under (a), are those for which protection is sought.

A patent application may contain two or more independent claims in one and the same category (product, process, device or use) if the subject matter of the application cannot be properly covered by a single claim.

Any claim stating the essential characteristics of the invention may be followed by one or more claims relating to specific methods of carrying out the invention.

A claim relating to the technical characteristics of the invention may not be based on mere references to the description or drawings.

However, a different procedure may be observed if the nature of the invention so warrants.

12. The following in particular may be included in one and the same patent application within the meaning of Section 14 of the Law:

(a) an independent claim for a product, an independent claim for a process specially designed for the manufacture of that product and an independent claim for a use of the product;

(b) an independent claim for a process and an independent claim for a system or means specially designed for the implementation of that process;

(c) an independent claim for a product, an independent claim for a process specially designed for the manufacture of that product and an independent claim for a system or means specially designed for the implementation of the process.

13. The abstract shall be established exclusively for documentary purposes. It may not be taken into consideration for other purposes, notably for ascertaining the extent of protection sought or for the application of Section 8(3) of the Law.

The content of the abstract shall where necessary be put into final form by the National Institute of Industrial Property. It shall be published in the Official Bulletin of Industrial Property at the same time as the announcement referred to in Section 30 or, following that announcement, immediately after it has been put into its final form.

14. The description and claims contained in the following applications may be written in foreign languages:

- either those filed by foreign natural persons or legal entities provided that the country of which those persons are nationals grants equivalent treatment to French nationals;

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- or those filed by natural persons or legal entities to whom an application filed abroad or a right of priority under such an application has been assigned, on condition that the country in which the original application was filed grants equivalent treatment to French nationals.

If the applicant avails himself of this possibility, he shall provide a translation of the documents within three months following the filing date of the patent application.

The Minister for Foreign Affairs and the Minister responsible for industrial property shall draw up a list of countries regarded as granting equivalent treatment as well as the national language or that of the national languages in which nationals of those countries may effect filings.

15. Justification of the right of the exhibitor as defined in Section 9(1)2(b) of the Law shall be provided within four months following the filing date of the patent application in the form of an attestation issued during the exhibition by the authority responsible for ensuring the protection of industrial property at the exhibition, stating that the invention actually was exhibited there.

The attestation shall mention the opening date of the exhibition, and the date of the first disclosure of the invention if the two dates are not the same. It shall be accompanied by documents enabling the invention to be identified, which shall bear an authenticating mark affixed by the authority referred to above.

16. The Minister for Foreign Affairs and the Minister responsible for industrial property shall draw up a list of States not members of the Paris Union regarded as granting, on the basis of a French patent application or an international application or a European patent application designating France, a right of priority equivalent to the right of priority introduced by the Paris Convention for the Protection of Industrial Property.

17. The declaration of priority referred to in Section 15(1) of the Law shall contain the date of the earlier filing, the State in or for which it was made, and the number assigned to it.

The date and the State of the earlier filing shall be mentioned at the time of the filing of the patent application; the filing number shall be indicated before the end of the sixteenth month following the priority date.

The copy of the earlier application provided for in Section 15(1) of the Law shall be produced before the end of the sixteenth month following the priority date, together with authorization, where appropriate, to claim the priority, given in writing by the owner of the earlier application.

It shall be certified by the authority that received the earlier application and accompanied by an attestation from that authority certifying the filing date.

Where the provisions of the preceding paragraphs are not complied with, the claim of the right of priority shall be declared unacceptable.

If the date indicated for the earlier filing is more than a year prior to the filing date of the patent application, the applicant shall be informed that there is no right of priority unless, within one month, he indicates a rectified date which is within the priority period.

The information contained in the priority declaration shall be mentioned in the published patent application and included in the brochure.

Chapter II

Applications with National Defense Implications

18. Specially authorized delegates of the Minister responsible for national defense, whose names and capacities shall have been brought to the notice of the Minister responsible for industrial property by the said Minister responsible for national defense, shall inspect any patent applications that have been filed on the premises of the National Institute of Industrial Property.

The applications shall be presented to the delegates within 15 days from the date of their receipt by the National Institute of Industrial Property.

19. The request for authorization to disclose and freely work the invention that is the subject of a patent application before the end of the five-month period referred to in Section 25 of the Law shall be addressed to the National Institute of Industrial Property; it may be made as soon as the patent has been filed. Authorization shall be notified to the applicant by the Minister responsible for industrial property.

In the absence of such authorization, a request for special authorization for the performance of specific acts of working may at any time be addressed directly by the patent applicant to the Minister responsible for national defense, who, if he grants the authorization requested, shall lay down the conditions to which the acts of working will be subject.

If the special authorization concerns the assignment of the patent application or the grant of a license to work the patent, the Minister responsible for national defense shall send a copy of his decision to the Minister responsible for industrial property.

20. The demand sent to the Minister responsible for industrial property by the Minister responsible for national defense concerning extension of the prohibitions on disclosure and free working of an invention that is the subject of a patent application must reach the National Institute of Industrial Property not later than 15 days before the end of the five-month period mentioned in the preceding Section.

Any demand for the renewal of an extension must arrive under the same conditions not later than 15 days before the end of the current period.

Extension of prohibitions on disclosure and free working shall be pronounced by order of the Minister responsible for industrial property and notified to the applicant before the end of the current prohibition period.

The order may contain special provisions authorizing the filing abroad, under certain conditions, of applications for the protection of the invention. A request to this effect must have been addressed by the owner of the patent application to the Minister responsible for national defense, who shall notify his decision to the Minister responsible for industrial property.

Special authorizations for the performance of specific acts of working may be granted under the conditions laid down in the second and third paragraphs of Section 19.

The Minister responsible for national defense may at any time inform the Minister responsible for industrial property of the lifting of prohibitions extended under Section 26 of the Law. This measure shall be the subject of an order of the Minister responsible for industrial property, which shall be notified to the owner of the patent application.

21. The petition for compensation for the loss incurred by extension of the prohibition on disclosure and free working shall be sent by the owner of the patent application to the Minister responsible for national defense by registered letter with a request for advice of receipt. The request shall specify, stating figures, the different losses for which compensation is sought.

The District Court (*Tribunal de grande instance*) may not be approached for the fixing of compensation before the end of a period of four months from the date of receipt of the request, except where an express decision is taken in the course of that period.

22. The court petitioned under Sections 26 or 27 of the Law shall rule both on the main issue and on interim measures by means of decisions that contain no analysis of the invention such as might result in its disclosure.

Only the Public Prosecutor, the parties or their representatives may obtain copies of decisions rendered.

If the making of an expert report is ordered, it may not be made otherwise than by persons authorized by the Minister of Defense.

23. If the prohibitions on disclosure and free working expire more than a year after the filing date, the application may not be made public as provided in Section 30 until after expiry of a period of six months from the end of the application of the measures of prohibition, except where, during that period, the applicant has filed the request provided for in the same Section.

The applicant shall have a period of six months from the end of the measures of prohibition within which to request the drawing up of a documentary report or the transformation of his patent application into a utility certificate application.

24. The provisions of Section 21 shall apply to the petition for revision of compensation provided for in Section 27 of the Law.

Chapter III

Division of the Application

25. If the patent application does not comply with the provisions of Section 14 of the Law, the applicant shall be invited to divide his application within two months according to indications that shall be given him. This period may be renewed once.

26. Up to the date of grant of the patent the applicant may, on his own initiative, effect the filing of divisional applications resulting from his initial patent application.

27. In the case of division of a patent application according to Sections 25 and 26, each divisional application shall conform to the provisions of Section 3.

The description, claims and drawings of each divisional application shall be confined to its subject matter alone. Apart from the text, the names and the figures taken from the description, the drawings and the claims, respectively, of the initial application, they shall contain only such linking and explanatory sentences as are necessary for clarity of exposition.

The file of one divisional application shall be constituted by the file of the initial application after the provisions of the preceding paragraph have been applied.

Notwithstanding the provisions of Section 8, the period during which the designation of the inventor for each divisional application may be made shall not be less than two months from the notification provided for in the third paragraph of this Section. The date of expiry of this period shall be mentioned in the notification.

Chapter IV

Rectification, Withdrawal and Publication of the Application

28. Up to the date of grant of the patent, the applicant may, by means of a request accompanied by the reasons therefor, seek the rectification of errors of expression or transcription and of errors discovered in the documents filed.

If the request relates to the description, the claims or the drawings, rectification is authorized only if the error is obvious, and clearly no other text or outline could have been intended by the applicant.

The request shall be filed in writing and shall contain the text of proposed alterations; it shall not be acceptable unless it is accompanied by proof of payment of the required fee.

29. The patent application may be withdrawn by means of a written declaration at any time prior to the date of grant of the patent.

This declaration may not relate to more than one application. It shall be made by the applicant or by a representative. In the latter case a special power of attorney for withdrawal shall be enclosed with the declaration.

If the patent application has been filed in the name of two or more persons, its withdrawal cannot be effected unless requested collectively by all of those persons.

If real rights, liens or licenses have been entered in the National Patent Register, the declaration of withdrawal shall be acceptable only if it is accompanied by the written consent of the holders of the rights concerned.

If the application is withdrawn after publication in the Official Bulletin of Industrial Property of the announcement provided for in Section 30, the withdrawal shall be entered *ex officio* in the National Patent Register.

In all cases of withdrawal of the application, a copy of the application shall be retained by the National Institute of Industrial Property.

30. On expiry of the period of 18 months provided for in Section 17 of the Law, or at any time prior to such expiry at the written request of the applicant, it shall be announced in the Official Bulletin of Industrial Property that the patent application will be made public unless it is refused or withdrawn before completion, to be determined by a decision of the Director of the National Institute of Industrial Property, of the technical preparations for such publication. The announcement shall contain such particulars as are necessary for the identification of the patent application.

As from the day of the announcement provided for in the preceding paragraph, any person may inspect the documents in the patent application file without charge at the National Institute of Industrial Property and may obtain reproductions thereof at his expense.

The following shall be excluded from communication to the public, however:

- drafts of decisions and reports, and documents not communicated to the applicant which have served for the preparation of those decisions and reports;
- documents concerning the designation of the inventor if he has waived his right to designation as such as provided in Section 61;
- any other document made unavailable for consultation by a decision of the Director of the National Institute of Industrial Property because it is of no interest for the information of third parties.

31. Where an invention relates to a microorganism, any person may, either as from the day of publication as provided for in the preceding Section or before that date if a copy of the patent application has been conveyed to him, ask to have access to the culture deposited in accordance with Section 10.

The request shall be filed in writing with the National Institute of Industrial Property. It shall contain, in particular, the name and address of the petitioner and an undertaking on his part:

- (a) not to communicate the culture or any culture derived from it to any person, unless the patent application has been refused or withdrawn or the patent has ceased to have effect;
- (b) to use the culture or any culture derived from it only for experimental purposes, except where the patent application has been refused or withdrawn, or where the fact of the grant has been published as provided in Section 57; however, the latter undertaking shall not prevent the use of the culture by virtue of a compulsory license or *ex officio* license.

For the purposes of the preceding subsection, a derived culture is any culture still presenting the characteristics of the deposited culture that are essential for its carrying out. The undertakings provided for in this subsection shall not prevent the deposit of a derived culture for the purpose of patent procedure.

The applicant for the patent may indicate, by a written declaration made before the completion of the technical preparation for the publication provided in Section 30 that, until the publication of the grant of the patent, the withdrawal or refusal of the application, the deposited culture shall only be accessible to an expert designated by the applicant.

The following may be designated as experts by the applicant:

- (a) any physical person, provided that the petitioner furnish evidence, at the time of presentation of the request, to the effect that the patent applicant has agreed to that designation; or
- (b) any physical person entered on a list established by the Director of the National Institute of Industrial Property.

The deposited culture shall be accessible to experts under the conditions provided for in the second subsection and the expert shall make the undertakings provided therein; those undertakings shall also apply with respect to the petitioner.

Where appropriate, the National Institute of Industrial Property shall mention on the request that a patent application relating to the microorganism has been filed and that the applicant or expert designated by him has the right to obtain a sample of the culture. A copy of the request, thus completed, shall be communicated to the body with which the culture was deposited and to the patent applicant or owner.

32. Subject to the prohibitions resulting from the application of Sections 19 and 20, the applicant may at any time obtain, at his expense, an official copy of the documents constituting his patent application.

Chapter V

Refusal of the Application

33. If the patent application is not completed within the time limits specified in Sections 8, third paragraph, 27, fourth paragraph, and 14, or if the fees provided for in Sections 94, 95 and 98, sixth paragraph, have not been paid within the prescribed time limit, the applicant shall be notified accordingly. The notification shall specify the period allowed him for contestation of the defect or failure to pay.

If the applicant has not made any comments within the period allowed, or if those comments have not been accepted, the patent application shall be refused.

34. If, in cases other than those provided for in Sections 6 and 33, the patent application has formal defects according to the provisions of this Decree or those of the Order issued for its implementation, or if the fees prescribed for the application have not been paid, the applicant shall be notified accordingly.

The notification shall specify the period allowed the applicant for rectification of his filing or payment of the fee due.

If the filing is not rectified or if the fees are not paid within the period allowed, the patent application shall be refused.

35. If the subject matter of a divisional application filed under Section 25 or 26 extends beyond the content of the description in the initial application, the applicant shall be invited to modify the divisional application according to instructions which shall be given him and within the period allowed him.

36. Within the two-month period provided for in Sections 25 and 35, the applicant may present comments in writing in which he shall refute the instructions given by the National Institute of Industrial Property regarding the division of his initial patent application or the modification of the divisional application.

If the applicant has not made comments and if the patent application has not been divided or the divisional application modified according to the instructions given, the application shall be refused.

If the comments presented by the applicant are not accepted, he shall be notified accordingly. If the initial application is not divided or the divisional application modified within the new period allowed him, the application shall be refused.

37. If the patent application is liable to be refused for one of the reasons set forth in Section 16 of the Law, under 4, 5, 6 and *6ter*, the applicant shall be notified accordingly, with a statement of reasons. The notification shall specify the period allowed the applicant for the presentation of comments.

If the applicant does not present any comments within the period allowed, or if those comments are not accepted, the patent application shall be refused.

38. Where the description or drawings do not comply fully with Sections 7(a) or 12 of the Law, the applicant shall be notified accordingly.

The notification shall specify the deletions envisaged and the period allowed the applicant for the presentation of comments.

If the applicant does not present any comments within the period allowed, or if those comments are not accepted, the deletions shall be made *ex officio*.

39. If the patent application is liable to be refused for one of the reasons set forth in Section 16 of the Law, under *6bis* and 8, the applicant shall be notified accordingly with a statement of reasons.

The notification shall contain formal notice either to modify the patent application or to file new claims or to present comments in support of maintenance of the claims, at the case may be. The notification shall specify the period allowed the applicant for the purpose.

If the applicant does not comply with this official notice within the period allowed, the patent application shall be refused.

Chapter VI Documentary Report

40. The procedure for the drawing up of the documentary report may not be delayed according to Section 20 of the Law unless the request for such delaying is filed at the same time as the application.

Renunciation of this request shall be constituted by payment of the fee provided for in Section 95.

41. The request made by any third party for the initiation of the documentary report procedure shall be in writing. It shall not be acceptable unless it is accompanied by proof of payment of the fee provided for in Section 95.

As soon as the request is received, the applicant shall be notified accordingly. If, within three months following receipt of the notification, the applicant has withdrawn the patent application or caused it to be transformed into a utility certificate pursuant to Section 42, the procedure for the drawing up of the documentary report shall not be initiated, and the fee provided for in Section 95 shall be refunded to the person who filed the request mentioned in the first paragraph.

At the end of the period fixed in the preceding paragraph, the procedure for the drawing up of the documentary report shall be initiated. As soon as the search report is drawn up, it shall be notified to the third party who filed the request at the same time as to the applicant.

42. The request for transformation of the patent application into a utility certificate application shall be filed in writing. Up to the date of grant of the patent, the request may be filed at any time during the period laid down in Section 20 of the Law, even if the applicant has not sought to avail himself of the provisions of that Section or if a third party has requested the application of Section 41.

43. *Ex officio* transformation pursuant to Section 20, second paragraph, of the Law shall be notified to the applicant, who shall have a period of two months from the date of receipt of the notification within which to present comments or request a documentary report, paying the fees provided for in Section 95, increased by a surcharge for late payment.

If no comments are presented during this period, the *ex officio* transformation shall stand.

If the comments presented are not accepted, or if the documentary report has not been validly requested, the *ex officio* transformation shall be confirmed and a new notification, with a statement of reasons, shall be sent to the applicant.

44. The search report shall cite the documents that may be taken into consideration for the assessment of the novelty of the invention in respect of which a patent has been applied for and inventive step.

Each citation shall be made in relation to the claims that it concerns. If necessary, the relevant portions of the document cited shall be identified, for instance by the indication of the page, the column and the lines or figures.

The search report shall distinguish between the documents cited that were published before the priority date, those that were published between the priority date and the filing date, those published on the filing date and those published thereafter.

Any document referring to oral disclosure, to a use or to any other disclosure that occurred prior to the filing date of the patent application shall be cited in the search report with an indication of the date of publication of the document, and that of the unwritten disclosure.

45. The applicant shall have a period of three months from the date of receipt of the search report within which to file new claims or present comments in writing. This period may be renewed once.

Where new claims are filed, the changes in relation to the initial claims shall be pointed out. If the subject matter of a new claim is not covered by the initial claims, the applicant shall be notified of the fact that he has to pay the fee provided for in Section 98.3, for the establishment of a complementary search report. If the person concerned does not comply with this invitation within two months, the filing of the new claim shall be declared unacceptable.

The purpose of the comments shall be the following:

- where the claims are maintained, they shall serve to dispute the validity of the anticipations cited in the search report;
- where new claims are filed, they shall serve to draw attention to the technical characteristics of those claims which escape the applicability of the anticipations cited.

46. The fact of the search report being made available to the public shall be announced in the Official Bulletin of Industrial Property.

47. The period during which third parties may make comments shall expire three months after the publication provided for in Section 46.

The comments of third parties shall be presented in accordance with the conditions laid down in Section 44.

On pain of unacceptability, comments shall be accompanied by the documents cited or a reproduction thereof and by all the necessary information or evidence. This provision shall not apply to patents; however, at the express request of the National Institute of Industrial Property, foreign patents shall be provided within two months following the date of receipt of the request.

48. The applicant shall have a period of three months from the date of receipt of notification of the comments of third parties within which to file, in writing, his rebuttal or a new wording for the claims. This period may be renewed once at the request of the applicant.

49. The search report may be completed at any time before the drawing up of the documentary report. In that case, Sections 44 to 48 shall be applied again.

50. Where a patent application is withdrawn or transformed into a utility certificate application, the documentary report procedure shall be terminated after notification of the search report.

51. The documentary report shall be drawn up on expiry of the periods laid down in Sections 45, 47 or 48, the period that expired last being taken into consideration.

A comparison between the anticipations found and the claims concerned shall appear in the report.

52. Notwithstanding the recording in the National Patent Register of real rights, liens or licenses in respect of a patent application, the applicant may modify the claims in the application without the consent of the holders of the rights concerned.

53. If the applicant considers that one or more of the elements of the state of the art cited should not have been included in the assessment, pursuant to Sections 8 and 10 of the Law, of the patentability of the invention which is the subject of the application, because their disclosure is due to an evident abuse in relation to himself as provided in Section 9(1)2(a) of the same Law, he may mention the fact in his comments and give the reasons in succinct form. Such mention shall not alter the content of the search report or the documentary report.

Any final judicial decision ruling on the application of the provisions of Section 9(1)2(a) of the Law shall be entered in the National Patent Register at the request of the patent applicant or owner.

This entry shall cause a corresponding alteration to be made in the search report or documentary report.

If the entry is made after publication of the patent, the copies of the patent in the possession of the National Institute of Industrial Property for consultation by the public and for sale shall be marked with the necessary information in order that the alterations to the documentary report may be known.

Chapter VII

Grant and Publication of the Patent

54. On conclusion of the processing of a patent application, the applicant shall be invited to pay, within the period allowed him by the National Institute of Industrial Property, the grant fee and the fee for the printing of the patent brochure as provided in Section 98.6.

55. The patent shall be granted in the name of the applicant by a decision of the Director of the National Institute of Industrial Property. The decision shall be notified to the applicant.

In the event of assignment of the application, the patent shall be granted in the name of the assignee at the latter's request, the request being accompanied by evidence of the assignor's agreement. At the request of both parties, the name of the assignor shall also be mentioned on the patent.

The documentary report, the full text of which shall be inserted in the patent as provided in Section 51, shall include where appropriate a mention of the fact that the original claims have been modified or that comments have been made by the applicant or by third parties in the course of the procedure for the drawing up of the documentary report.

The patent shall contain information on the dates of filing and publication of the application, the date of the decision on grant and the date of publication of the grant of the patent in the Official Bulletin of Industrial Property, as well as the particulars of any priorities claimed, the fact that the patent is the result of a division, or that at the time of filing the description or claims were drafted in a foreign language as provided in Section 14.

56. In the event of loss of the rights under the patent application for failure to pay the fees provided for in Section 41 of the Law, the patent grant procedure shall be stopped.

57. The grant of the patent shall be announced in the Official Bulletin of Industrial Property within a month of the date on which the grant was notified to the applicant.

The announcement shall contain a reference to the issue of the Official Bulletin of Industrial Property in which the patent application was made public, and shall mention any modifications that may have been made to the original claims.

After the announcement of grant, a certified copy of the patent shall be sent to the applicant.

58. The texts of patents shall be published *in extenso* and kept at the National Institute of Industrial Property.

Patent application files shall be kept by the National Institute of Industrial Property until the expiry of a period of ten years following the lapse of the rights attaching to the patents.

The originals of patent descriptions and drawings not printed prior to application of the Law of April 7, 1902, shall remain on file at the National Institute of Industrial Property.

59. The patent collections and the Official Bulletin of Industrial Property shall be deposited at the National Institute of Industrial Property for consultation by the public without charge.

They shall also be deposited for the same purpose in cities of which a list shall be issued by order of the Minister responsible for industrial property and the Minister responsible for cultural affairs, either in the departmental archives or at the Chamber of Commerce and Industry, or at a public library or any establishment designated by the *Préfet*.

Chapter VIII

Designation of the Inventor and Claim of Ownership

60. The National Institute of Industrial Property shall not verify the accuracy of the designation of the inventor under Section 8.

61. The designated inventor shall be mentioned as such in publications of the patent application and in the patent brochures. If this cannot be done, he shall be mentioned in the copies of publications of the patent application or patent brochures that have not yet been distributed; this mention shall be made at the request of the patent applicant or owner.

The provisions of the preceding paragraph shall be applicable when a third party presents to the National Institute of Industrial Property a decision having the force of *res judicata* and recognizing his right to be designated. In the case provided for in the second sentence of that paragraph, the third party may also ask to be mentioned in copies of publications of the patent application or a patent brochure that has not been distributed.

The provisions of the first paragraph shall not be applicable where the inventor designated by the patent applicant or owner waives such designation in a written communication sent to the National Institute of Industrial Property.

62. The designation of the inventor may not be rectified otherwise than on request, which request shall be accompanied by evidence of the consent of the person wrongly designated and, if the request is not submitted by the patent applicant or owner, evidence of the consent of one or other of those persons. The provisions of Section 8, first and second paragraphs, shall apply.

If a wrong designation of the inventor has been entered in the National Patent Register or published in the Official Bulletin of Industrial Property, that entry or publication shall be rectified. The mention of the wrongly designated inventor shall be rectified in the copies of the publications of the patent application or in the patent brochures that have not yet been distributed.

The provisions of the preceding paragraph shall be applicable in the case of judicial annulment of the designation of the inventor.

63. Actions claiming ownership of a patent application or patent shall be entered in the National Patent Register at the request of the person who brought the action.

Any final judicial decision ruling on an action claiming ownership of a patent application or patent shall be entered without charge in the National Patent Register on instructions from the chief clerk of the court or at the request of one of the parties to the proceedings.

If the judicial decision is rendered in favor of the person who brought the action, the copies of the patent application or patent in the possession of the National Institute of Industrial Property for the purposes of public consultation and sale shall be marked with an indication of the change in ownership of the patent.

64. The patent grant procedure shall be suspended at the written request of any person who provides evidence of having brought an action claiming ownership of the patent application before the District Court.

The suspension of the procedure shall come into effect on the day on which the evidence is provided, and shall apply in particular to the period laid down in the first paragraph of Section 20 of the Law; it shall not prevent application of Section 30, however.

The patent grant procedure shall resume as soon as the Court's decision has acquired the force of *res judicata*; it may also resume at any time with the written consent of the person who brought the action claiming ownership of the patent application; such consent shall be irrevocable.

The suspension and resumption of the procedure shall be recorded in the National Patent Register.

65. As from the day on which a person has provided evidence of having brought an action, the owner of the patent application or patent may not withdraw his application or renounce his patent, either entirely or in respect of one or more of the claims embodied in it, except with the written consent of the person who brought the action claiming ownership.

Chapter IX Licenses of Right

66. The request for inclusion of a patent in the system of licenses of right as provided in Section 31*bis* of the Law shall be filed in writing either by the owner or one of the joint owners of the patent, who shall provide evidence that he is authorized to grant non-exclusive licenses.

The request shall be declared unacceptable:

- (a) in the case of failure to comply with the preceding paragraph;
- (b) if the right of ownership or joint ownership of the applicant has not been entered in the National Patent Register;
- (c) if it is apparent from the National Patent Register that an exclusive license has been granted.

The decision of the Director of the National Institute of Industrial Property shall be notified to the applicant.

If the applicant's request is allowed, the decision shall be entered in the National Patent Register and published in the Official Bulletin of Industrial Property. It shall be given any further publicity that may be decided upon by the Director of the National Institute of Industrial Property.

67. Any person who wishes to obtain a license of right shall inform the owner of the patent accordingly by registered letter. The letter shall specify the use that will be made of the invention. A copy of the letter, together with an indication of the date on which it was sent to the owner of the patent, shall be sent to the National Institute of Industrial Property.

The benefit of the license shall be assured in respect of the use indicated one week following the sending of the letter to the owner of the patent.

Failing agreement between the parties, the price of the license shall be fixed according to the procedure laid down in Sections 1 to 5 of Decree No. 69-975 of October 18, 1969.² It shall be revised according to the same procedure if this is justified by new circumstances. However, no request for revision may be filed less than one year after the last price has been fixed.

68. The request for revocation of the decision to apply the system of licenses of right to a patent shall be filed in writing.

As soon as revocation has been pronounced, it shall be notified to the applicant, entered in the National Patent Register and published in the Official Bulletin of Industrial Property.

Chapter X Renunciation, Loss of Rights and Nullity

69. Renunciation of a patent or of one or more of the claims embodied in it shall be made by means of a written declaration.

This declaration may relate to one patent only. It shall be made by the owner of the patent or by a representative. In the latter case, a special power of attorney for renunciation shall be enclosed with the declaration.

If the patent belongs to more than one person, renunciation may only be effected if it is requested collectively by all those persons.

If real rights, liens or licenses have been entered in the National Patent Register, the declaration of renunciation shall be acceptable only if accompanied by the consent of the owners of the rights concerned.

The renunciation shall be entered in the National Patent Register. It shall be effective as of the date of such entry.

² See *Industrial Property*, 1970, p. 122.

A notice of entry shall be sent to the person who initiated the renunciation.

70. The period of six months provided for in Section 41, second paragraph, of the Law, during which payments made after the due date of annual fees are validated subject to payment of a surcharge for late payment, shall be counted from the day on which the annual fee specified in Section 94, fourth paragraph, falls due.

Payments made after the due date that concern a patent application resulting either from the division of a patent application or from the transformation of an application for a certificate of addition shall be considered valid on condition that they are made not later than on the last day of the fourth month following the date of filing of the divisional application or of the request for transformation of the certificate of addition.

The calculation of the periods laid down in the preceding paragraphs shall be made as provided in Section 122. Moreover, if the due date of the annual fees or the last day of the period concerned is a Saturday, Sunday, public holiday or official non-working day or a day on which the offices of the National Institute of Industrial Property authorized to receive payments are not open, payments may be validly made on the first open day thereafter.

The provisions of this Section shall apply to patent applications filed prior to the date of entry into force of this Decree and to patents granted before that date when the annual fees fall due after that date.

71. Where payment of an annual fee is not effected on the normal due date, a notice shall be sent to the owner of the patent application or patent, which shall inform him that he risks loss of rights if payment of the fee and the surcharge for late payment is not effected before expiry of the six-month period laid down in the first paragraph of Section 70.

Absence of notice shall not entail the liability of the National Institute of Industrial Property and shall not be a cause for restoration of the rights of the owner of the patent.

72. The request provided for in Section 48(1) of the Law for the recording of loss of the rights under a patent application or patent shall be filed in writing.

The request shall be ruled upon by a decision with a statement of reasons. The decision shall be notified to the party who filed the request.

73. The following shall be entered in the National Patent Register:

- decisions recording loss of rights as provided in Section 48(1) of the Law;
- information concerning the filing of appeals, reinstatement actions and actions for review;
- decisions rendered.

The decision restoring the rights of the patentee shall be without effect if the fees payable are not paid within three months of the recording of the decision in the National Patent Register. The date of payment shall be entered in the Register.

The provisions of this Section shall apply to patent applications filed, and to patents granted, prior to the date of entry into force of this Decree.

74. The text of a claim modified after partial revocation as provided in Section 50*bis* of the Law shall be filed in writing. It shall be accompanied, on pain of unacceptability, by proof of payment of the fee provided for in Section 103.

If the modified claim is not in conformity with the decision, the owner of the patent shall be notified accordingly. The notification shall specify the changes to be made to the claim and the time allowed the person concerned to make them.

The modified claim shall be rejected if the owner of the patent fails to comply with the notification within the prescribed time limit, or does not file comments disputing its validity.

If the comments filed are not accepted, the owner of the patent shall be notified accordingly. If the person concerned does not comply with the notification provided for in the second paragraph within a further period allowed him, the modified claim shall be rejected.

Chapter XI National Patent Register

75. For each patent application or patent the National Patent Register shall contain the name and address of the applicant, the information necessary for the identification of the patent application, the filing, publication, grant or refusal dates and the entries provided for in this Decree.

The name and address of the applicant and the information necessary for the identification of the patent application shall be entered in the National Patent Register *ex officio* after the patent application has been made public as provided in Section 30; no entry may be made in the Register before such publication.

76. Requests for entries in the National Patent Register concerning transfer of ownership, assignment or the grant of a right of exploitation, the constitution or assignment of a lien, or any other acts transferring or modifying the rights under a patent application or patent shall be accompanied either by one of the originals of the instrument if it is performed by private agreement, or by a copy if it is authentic, or by a document evidencing the transfer in the case of transfer on death or by unilateral action; proof of payment of the prescribed fees shall also be provided.

The original of the instrument of private agreement may be returned to the applicant if a reproduction of the instrument is established and authenticated at his expense by the National Institute of Industrial Property.

Registration may relate only to an extract from the instrument, in which case, failing the signature of the parties on the extract, the applicant shall send it to the Institute, which shall return it to him, at his request, after verification of its conformity; no copy of the instrument shall be retained by the National Institute of Industrial Property.

Requests for entries as provided in the preceding paragraphs may only be filed by one or both of the parties to the act, their successors in title, their heirs or legatees or their representatives.

Requests for entries concerning an exclusive license under a patent to which the system of licenses of right has been applied as provided in Section 66 shall be unacceptable.

Where a request for an entry relates to a patent application that has not been made public pursuant to Section 30, the entry shall be stayed until that formality has been complied with.

77. Unless it is rectified in the manner and within the time limit specified pursuant to Section 34, any request for an entry that does not comply with the requirements of Section 76 shall be rejected by a decision of the National Institute of Industrial Property, with a statement of the grounds, and notified to the requesting party, to whom the documents filed shall be returned.

78. Any distraint involving a patent shall be notified to the National Institute of Industrial Property by the distrainor. The report of the public adjudication of the patent made following the judgment ruling on the distraint shall also be notified by the most diligent party. Such notifications shall be entered in the National Patent Register.

79. Judicial decisions having the force of *res judicata* which revoke a patent as provided in Section 50*bis* of the Law shall be entered without charge in the National Patent Register at the request of the clerk of the court or one of the parties to the action.

80. Changes of name, denomination or address and corrections made to material errors affecting entries may be mentioned in the National Patent Register. Only changes of address shall be entered without supporting documents having to be filed.

81. Entries in the National Patent Register concerning liens on patents shall be deleted on the filing either of a final judicial decision or of a written declaration by which the creditor, or an assignee having proved his rights, consents to such deletion.

82. Every entry in the National Patent Register shall be mentioned in the Official Bulletin of Industrial Property.

83. Any party who so requests shall be issued reproductions of entries in the National Patent Register or certificates stating that there is no entry.

Chapter XII Certificates of Addition

84. The provisions of this Decree concerning patents shall apply to applications for certificates of addition and certificates of addition attached to patent applications or patents, with the exception of Sections 43, 56, 70, first paragraph, 71, 73, and 94, second, third and fourth paragraphs.

No application for a certificate of addition may be attached to more than one patent application or patent, or to one or more applications for certificates of addition or certificates of addition.

85. A certificate of addition shall be declared unacceptable when the applicant is not entered in the National Patent Register as being the owner or one of the joint owners of the patent application or patent to which the application for a certificate of addition is attached unless, within two months following the date of receipt of a notification addressed to him, he has had the document attesting his status as owner or joint owner of the patent application or patent entered in the Register; however, the applicant for a certificate of addition may prove his status as owner or joint owner of the patent application by any other means.

An application for a certificate of addition shall also be declared unacceptable when it is attached either to a withdrawn or refused patent application or to a lapsed patent application or patent.

86. If an application for a certificate of addition is not attached to at least one claim of the main patent application or main patent, the applicant shall be invited to request its transformation into a patent application within the period allowed him.

The application for a certificate shall be refused if, within the period allowed, the applicant has not requested transformation into a patent application or has not made written comments disputing the absence of attachment.

If the comments submitted by the applicant are not accepted, he shall be notified accordingly. Where transformation has not been requested within the further period allowed him, the application for a certificate of addition shall be refused.

87. If the drawing up of the documentary report has not been requested at the end of the period of 18 months as specified in Section 20 of the Law, the applicant shall be informed that the application for a certificate of addition may no longer be transformed into a patent application and will expire six months at the latest after its filing date unless, within a period of two months, he complies with the omitted formality and pays the fee specified in Section 95, increased by a surcharge for late payment.

The fact that its duration is limited shall, where appropriate, be indicated on the title issued.

88. Any request for the transformation of an application for a certificate of addition into a patent application shall be acceptable only if it is filed in writing before the date of issue of the certificate of addition and if it is accompanied by proof of payment of the prescribed fee.

Any application for a certificate of addition attached to a patent application or patent may be transformed under the conditions specified in the preceding paragraph into a utility certificate application.

89. The procedure for the issue of the certificate of addition shall be terminated if, after its filing, the application for the certificate of addition is found to be attached either to a withdrawn or rejected patent application or to a lapsed patent application or patent.

However, the applicant shall in that case have the possibility of requesting the transformation of his application into a utility certificate application within three months following the date of receipt of the notification sent to him to that effect.

Chapter XIII

Utility Certificates

90. The provisions of this Decree shall apply to utility certificate applications and utility certificates, with the exception of Sections 40 to 53 and Section 55, third paragraph.

The provisions of Chapter XII shall apply to applications for certificates of addition and certificates of addition attached to utility certificate applications or utility certificates, with the exception of Section 87.

An application for a certificate of addition attached to a utility certificate application may not be transformed into a patent application.

91. From the date of publication of the utility certificate application as provided in Section 30 to the date of grant of the utility certificate, any person may submit comments to the National Institute of Industrial Property on the patentability of the invention, as provided for patent applications in Sections 44, first to fourth paragraphs, and 47, third paragraph.

The essence of the comments shall be notified without delay to the applicant, who shall have a period of three months within which to reply to them.

92. The filing of new claims shall not be acceptable unless it is accompanied by proof of payment of the fee provided for in Section 98, second paragraph.

93. The search report that shall be produced in all infringement actions instituted on the basis of a utility certificate application or a utility certificate shall be drawn up at the written request of the applicant.

The request shall not be acceptable unless it is accompanied by proof of payment of the fee provided for in Section 102.

Chapter XIIIbis

Supplementary Protection Certificates

93–1. The owners of patents valid on June 27, 1990, or of patents granted after that date, of patent applications under examination on June 27, 1990, or patent applications filed after that date may claim the issue of a supplementary protection certificate.

93–2. The request for a supplementary protection certificate shall comprise:

- (a) identification of the requester;
- (b) the references of the marketing authorization and of the patent or patent application concerned;
- (c) the name of the pharmaceutical speciality set out as required by Sections R. 5143(a) or R. 5146–49(a) of the Public Health Code, its pharmaceutical form, the qualitative and quantitative composition of its active principles, identification of the other ingredients and its therapeutic uses;
- (d) a statement that the patent or the patent application concerns, as appropriate, the medicine, a process for obtaining that medicine, a product needed to obtain the medicine or a process for manufacturing such product;
- (e) identification of the corresponding parts of the patent or the patent application followed by the wording of the relevant claims.

The form of the application shall be laid down by decision of the Director General of the National Institute of Industrial Property.

93–3. The request shall be accompanied by:

- (a) a certified copy of the marketing authorization;
- (b) the receipt for payment of the appropriate fee for filing the request for a supplementary protection certificate.

93-4. The request shall be deemed inadmissible if:

- (a) the patent or the patent application have ceased to have effect prior to the date of filing the request for the supplementary certificate;
- (b) the requester is not the owner, as entered in the National Patent Register, of the patent or the patent application;
- (c) any of the particulars required by the first paragraph of Section 93-2 is lacking;
- (d) a supplementary certificate affording the same protection has already been issued for the same patent or the same patent application;
- (e) it is not accompanied by one of the documents referred to in Section 93-3.

93-5. In the event of an irregularity in the request referred to in Section 93-2, notification shall be made to the requester to regularize the request within the time limit afforded to him. Such time limit shall be neither less than two months nor more than four months.

If not regularized, the request shall be rejected.

93-6. The certified copy of the marketing authorization referred to in Section 93-3 shall be returned to the requester.

93-7. Issue of the supplementary certificate shall be suspended if the corresponding patent itself has not yet been granted or, in the case of a European patent, has not yet taken effect on French territory.

In such case, the supplementary certificate shall be issued after the grant of the patent or after the patent has taken effect. The requester shall be invited beforehand to regularize his request in accordance with Section 93-5 if the patent claims have been amended during the procedure.

93-8. All requests and all supplementary protection certificates issued shall be published in the Official Bulletin of Industrial Property. The references of the marketing authorization and of the patent concerned shall be given.

93-9. Sections 1, 2, 4, 5, 28, 29, 55 (first and second paragraphs), 56, 57, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75 to 83, 108 to 115, 120 to 122 and 124 of this Decree shall apply to requests for supplementary protection certificates and to supplementary protection certificates.

Chapter XIV

Fees and Charges

94. A fee shall be charged for the filing of a patent application, to be paid within a month of the date of filing of the documents specified in Section 3.

This fee shall constitute the first annual fee.

The annual fee for the maintenance in force of patent applications or patents shall be payable for each year of the life of the patents.

Payment of the fee shall be due on the last day of the month in which the anniversary date of the filing of the patent application falls; it shall not be accepted if it is made more than a year before it is due.

95. A fee shall be charged for the drawing up of the documentary report, to be paid within a month of the date of filing of the documents specified in Section 3, except where the applicant has filed a request under Section 40.

If the procedure for the drawing up of the documentary report has not been initiated when the patent application is withdrawn under Section 39 or when the patent grant procedure is stopped pursuant to Section 56, or if the patent application has been the subject of extension of the prohibition on disclosure and free working under Section 20, the fee provided for in the preceding Sections shall be refunded.

96. A surcharge shall be payable for the drawing up of the documentary report when it has been requested, in the cases provided for in Sections 43 and 87, after expiry of the period of 18 months mentioned in Section 20, second paragraph, of the Law.

97. A fee shall be charged for declarations of priority.

98. A fee shall be charged for the following in respect of every patent application:

1. rectification of a material error authorized under the conditions specified in Section 28;
2. filing of new claims under Section 92;
3. filing of new claims under Section 45, if a complementary search report is necessary;
4. requests for renewal of the period provided for in Sections 25, 45 and 48; these requests shall not be acceptable unless they are accompanied by proof of payment of the fee;
5. request for continuation of the procedure as provided in Section 124;
6. issue and printing of the patent brochure.

99. In the case of division of a patent application, the fees paid for the initial application under Sections 94 to 98 shall remain applicable to the divisional application referred to in Section 27, third paragraph.

100. A fee shall be charged for the request for transformation of an application for a certificate of addition into a patent application.

101. A fee shall be charged for the following:

1. entries in or deletions from the National Patent Register pursuant to Sections 53, second paragraph, 63, first paragraph, 76, 78 and 81;
2. entries in the National Patent Register pursuant to Section 80;
3. the issue of the reproductions of entries in the National Patent Register or of the certificates mentioned in Section 83.

102. A fee shall be charged for the drawing up of the search report under Sections 93 and 117 and of the novelty report under Section 116.

103. A fee shall be charged for the filing, pursuant to Section 74, of the text of a claim modified after partial revocation.

104. Fees shall be charged for:

1. the issue of an official copy of a patent application;
2. the issue of an official copy of a patent;
3. the issue of reproductions of documents relating to a right of priority;
4. the issue of a duplicate of a document or attestation concerning a patent or a certificate of addition;
5. the authentication of a copy of the patent;
6. the issue of a report on the state of annual fee payments;
7. a statement of information available.

105. Joint orders of the Minister of Industry, the Minister responsible for the budget and the Minister responsible for economic affairs shall specify the charging procedure and the amount of the fees for the services listed in this Chapter.

They may provide that the amount of fees shall vary according to the number of documents filed with the National Institute of Industrial Property or processed or issued by it.

They may also provide that payment facilities shall be granted to natural persons who file patent documents in their own name.

106. The orders provided for in the preceding Section shall also specify the conditions under which the various publications of the National Institute of Industrial Property are sold.

107. The request for a reduction in fees under Section 70^{ter} of the Law shall be filed in writing with the Director of the National Institute of Industrial Property. It shall be accompanied by a certificate of exemption from tax issued under Section 1662 of the General Tax Code.

The request shall be ruled upon by a decision accompanied by a statement of the grounds therefor. The decision shall be notified to the requesting party.

If the request is accepted, the requesting party shall have a right to the reduction, subject to annual filing of a certificate of exemption from tax.

Chapter XV

Appeal for Reinstatement and Appeal from Decisions of the Director of the National Institute of Industrial Property

108. The appeal for reinstatement provided for in Section 67 of the Law shall be filed in writing with the Director of the National Institute of Industrial Property who shall rule upon it by a decision accompanied by a statement of the grounds therefor.

The decision shall be notified to the petitioner and to the Public Prosecutor at the Appeal Court of Paris.

109. The time limit for appeal before the Appeal Court of Paris from decisions of the Director of the National Institute of Industrial Property shall be one month.

Where the petitioner resides outside the mainland of France, this period shall be extended by:

1. one month if he resides in Europe;
2. two months if he resides in another part of the world.

110. The period for appeal provided for in the preceding Section shall be counted from the date of receipt by the petitioner of notice of the decision of the Director of the National Institute of Industrial Property.

111. The appeal shall be filed by means of a petition addressed to the first President of the Appeal Court of Paris by the petitioner or by a solicitor at the Appeal Court or by an attorney.

112. Where the appeal is filed by a person other than the owner of the patent application or patent, the latter shall be summoned to the proceedings by the chief clerk of the Appeal Court by registered letter with a request for advice of receipt.

113. The Appeal Court shall rule on the case after the Public Prosecutor has been heard.

114. Appeals from decisions of the Director of the National Institute of Industrial Property shall be reported within eight days by the clerk of the Appeal Court of Paris to the National Institute of Industrial Property by registered letter with a request for advice of receipt.

The decision handed down by the Appeal Court on the appeal shall be notified to the petitioner and to the National Institute of Industrial Property by the clerk in the same form.

115. The clerk of the court shall send a copy of the decision handed down to the National Institute of Industrial Property; this decision shall be entered *ex officio* in the National Patent Register.

The decision of the Appeal Court shall be enforced within two months of its notification.

115-1. Appeals from decisions of the Appeal Court may be brought both by the National Institute of Industrial Property and by the plaintiff. The time limit for appeal shall be two months from the notification provided for in the second paragraph of Section 114.

Chapter XVI

Transitional Provisions

116. The novelty report required under the fourth paragraph of Section 71 of the Law for patents applied for prior to January 1, 1969, shall be drawn up at the written request of the applicant, which request shall be filed with the National Institute of Industrial Property. The request shall not be acceptable unless it is accompanied by proof of payment of the fee provided for in Section 102.

In his request, the applicant shall specify the parts of the invention covered by the patent or certificate of addition that are alleged by him to be infringed and to which the search should relate.

The novelty report shall consist of a list of elements of the state of the art that are liable to affect the novelty of the invention, referring only to the parts indicated in the request.

The report shall include references whereby each document cited may be identified and an indication of the part of the invention concerned by that document.

The novelty report shall be issued to the applicant and shall not be subject to the procedure provided for in Sections 45 to 53.

117. Where the patent has been filed between January 1, 1969, and June 30, 1979, the search report provided for in the third paragraph of Section 73 of the Law shall be drawn up at the written request of the applicant, which request shall be filed with the National Institute of Industrial Property. The request shall not be acceptable unless it is accompanied by proof of payment of the fee provided for in Section 102.

The search report shall be drawn up as provided in Section 44.

118. The documentary report which may be obtained during the period of two years provided for in Section 45, third paragraph, of Law No. 78-742 of July 13, 1978,³ shall be drawn up at the written request of the owner of the patent, which request shall be filed with the National Institute of Industrial Property. The request shall not be acceptable unless it is accompanied by proof of payment of the fee provided for in Section 95.

The documentary report shall be drawn up as provided in Chapter VI.

Notice of the drawing up of a documentary report on a granted patent shall be published in the Official Bulletin of Industrial Property. As from the date of such publication, any person may inspect without charge, at the National Institute of Industrial Property, the documents relating to the drawing up of the documentary report, or obtain reproductions thereof at his expense.

Notwithstanding the filing of a new wording for the claims in the course of the procedure for the drawing up of the documentary report, the patent as granted shall not be altered.

119. The period during which the drawing up of the documentary report may be delayed shall be extended to two years for applications filed between July 1, 1979, and June 30, 1983.

Chapter XVII

Miscellaneous Provisions

120. Any notification shall be considered in order if it is served:

- either on the last owner of the patent application declared to the National Institute of Industrial Property or, after the announcement provided for in Section 30, the last owner of the patent application or patent recorded in the National Patent Register;
- or on the representative.

If the owner is domiciled abroad, the notification shall be considered in order if it is served on the last representative appointed by the owner for dealings with the National Institute of Industrial Property.

³ See *Industrial Property Laws and Treaties*, FRANCE – Text 2-001.

Any person who effects the payment of fees for a patent application or patent filed before July 1, 1979, without being the owner thereof shall, except where the latter declares the contrary, be regarded as acting as representative and being empowered to receive notifications under Sections 48 of the Law and 71 of this Decree.

121. The notifications provided for in Section 48 of the Law and in Sections 6, 7, 8, 34 to 37, 43, 74, 77, 86, 87 and 108 of this Decree shall be made by registered letter with a request for advice of receipt.

The registered letter may be replaced by the delivery of the letter to the addressee, against receipt, on the premises of the National Institute of Industrial Property.

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

122. Where a period is expressed in days, the date of the act, event, decision or notification that starts it shall not be counted.

Where a period is expressed in months or years, it shall expire on the day of the last month or of the last year that bears the same number as the day of the act, event, decision or notification that started it. If there is no day bearing the same number, the period shall expire on the last day of the month.

Where a period is expressed in months and days, the months shall be counted first, then the days.

All periods shall expire at midnight on the last day.

A period which would normally expire on a Saturday, Sunday or public holiday or official non-working day shall be extended to the first working day thereafter.

123. The periods allowed by the National Institute of Industrial Property under Sections 35, 37, 38, 54 and 86 shall be neither shorter than two months nor longer than four months.

124. If a patent application is refused or liable to be refused for failure to meet a time limit set by the National Institute of Industrial Property, the refusal shall not be pronounced or shall not produce its effects if the applicant files a request for continuation of the proceedings.

The request shall be filed in writing within two months following notification of the decision of refusal. The omitted act shall be accomplished during that period. The request shall not be acceptable unless it is accompanied by payment of the fee provided for in Section 98.5.

125. The procedure for the application of Chapters I and XI of this Decree shall be laid down by order of the Minister responsible for industrial property.

126. Decree No. 78–1010 of October 10, 1978, is amended as follows:

...⁴

127. Decree No. 78–1011 of October 10, 1978, is amended as follows:

...⁵

128. Decree No. 68–1100 of December 5, 1968, is repealed.

129. This Decree shall apply to Mayotte, the Overseas Territories of New Caledonia, French Polynesia, Wallis and Futuna and the French Southern and Antarctic Territories.

130. The Keeper of the Seals, Minister of Justice, the Minister of the Interior, the Minister for Foreign Affairs, the Minister of Defense, the Minister for Economic Affairs, the Minister for Budgetary Affairs, the Minister for Industry and the Minister of Culture and Communication shall be responsible, each as far as he

⁴ See *Industrial Property Laws and Treaties*, FRANCE – Text 2–004.

⁵ See *Industrial Property Laws and Treaties*, FRANCE – Text 2–005.

or she is concerned, for the application of this Decree, which shall be published in the Official Journal of the French Republic.