
Decree No. 92-100 of January 30, 1992, on Trademarks and Service Marks*

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Chapter I Filing and Publication of Applications for Registration of Marks

Art.1. Applications for registration of marks shall be filed with either the National Institute of Industrial Property or the registry of the commercial court, or of the first instance court acting as such, within the jurisdiction of which the applicant has his establishment or domicile. A confirmation of receipt shall be issued.

Filing may be effected by registered post to the National Institute of Industrial Property with advice of delivery or by a message through any form of remote transmission determined by decision of the Director General of the Institute. In such case, the filing date shall be that of receipt at the Institute.

Art.2. Filing may be effected personally by the applicant or by a representative having his domicile, headquarters or an establishment in France.

Persons having neither domicile nor headquarters in France must appoint, within a period of time determined by the Institute, a representative meeting the conditions laid down in the preceding paragraph.

Where there is more than one applicant, a common representative meeting the same conditions must be appointed.

The representative must present a power of attorney. Unless otherwise stipulated, that power shall cover all acts and the receipt of all notifications under this Decree, save for the cases referred to in Sections 19 and 21.

Art.3. The filing shall comprise:

(1) The application for registration of the mark drawn up in accordance with the conditions laid down by the order referred to in Section 46 of this Decree, specifying in particular:

(a) the identification of the applicant;

(b) a sample of the mark, consisting of a graphical representation thereof; the sample may be supplemented by a short description; a description shall be compulsory in those cases defined in the above-mentioned order;

* *French title:* Décret relatif aux marques de fabrique, de commerce ou de service (No 92-100 du 30 janvier 1992).
Source: *Journal officiel de la République française*, January 31, 1992, pp. 1542 *et seq.*

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- (c) a list of the goods and services to which it applies, together with a list of the corresponding classes;
 - (d) where appropriate, a statement that claim is laid to a priority right deriving from a previous filing or that a guarantee certificate has been issued under the Law of April 13, 1908.
- (2) The following related documents:
- (a) proof of payment of the required fees;
 - (b) the power of attorney of the representative if appointed;
 - (c) proof of use where the distinctive nature of the sign that is filed as a mark has been acquired by use;
 - (d) in the case of a collective certification mark, the regulations setting out the conditions to which use of the mark is subject and proof of the relevant approval;
 - (e) if the applicant is a foreigner who has neither domicile nor establishment on the national territory, and subject to the international conventions, proof that he has made a regular filing of the mark in the country of his domicile or establishment and that such country affords reciprocal protection to French marks.

Each filing may only concern one mark.

Art.4. A claim, made when filing an application in France, to a priority right deriving from an earlier foreign filing shall imply the obligation to communicate to the National Institute of Industrial Property, within three months of the filing in France, an official copy of the earlier filing and, where necessary, proof of the right to claim the priority thereof.

If this obligation is not complied with, the priority shall be deemed not to have been claimed.

Art.5. On receipt of the filing, there shall be entered on the application for registration: the date, place serial number of the filing or the national number as provided in the following Section. A receipt of filing shall be issued to the applicant

Where filing is effected with the registry of the commercial court or first instance court acting as such, the filing documents and the amount of the fees shall be transmitted without delay to the National Institute of Industrial Property by the registrar.

Art.6. On receipt at the National Institute of Industrial Property, the filing shall be allocated a national number. Where it has not been possible to note such number on the receipt of filing, it shall be notified to the applicant.

Any correspondence or any subsequent filing of documents shall be declared inadmissible if reference is not made to the national number of the application for registration or if, where appropriate, not accompanied by proof of payment of the required fee.

Art.7. A filing shall be declared inadmissible if it does not comprise at least one copy of the application for registration, even if irregular as to form, containing the particulars referred to in Section 3(1)(a), (b) and (c) and not accompanied by proof of payment of the filing fee.

Art.8. Any filing acknowledged to be admissible shall be published in the Official Bulletin of Industrial Property unless it appears that its presentation does not meet the necessary technical requirements for reproduction or if publication would be contrary to public policy or morality.

Publication in the Official Bulletin shall be effected within six weeks following receipt of the filing at the National Institute of Industrial Property. The faculty for any interested person to submit observations within a period of two months and that of the persons referred to in Section 8 of the above-mentioned Law of January 4, 1991, to enter opposition to registration within that same time limit, shall be referred to in that publication.

Art.9. Observations submitted under Section 7 of the above-mentioned Law of January 4, 1991, shall be communicated without delay to the applicant by the Institute or filed without action if submitted after expiry of the prescribed time limit or if their subject is manifestly alien to the provisions of the Law. The person making the observations shall be informed thereof.

Chapter II

Examination of Applications for Registration of Marks

Art.10. On filing, the Institute shall check:

- (a) that the application for registration and the documents annexed thereto satisfy the statutory requirements and the applicable regulations;
- (b) that the sign filed may constitute a mark under Sections 1 and 2 of the above-mentioned Law of January 4, 1991, or be adopted as a mark under Section 3 of that same Law.

Art.11.–

(1) Where the application does not comply with the provisions of Section 10, a reasoned notification shall be communicated to the applicant.

The applicant shall be given a time limit for regularizing his filing or for contesting the objections made by the Institute. Where regularization is not effected or no observations are made enabling the objection to be lifted, the application shall be rejected.

Notification may be accompanied by a proposal for regularization. Such proposal shall be deemed accepted if the applicant does not contest it within the time limit given to him.

(2) In the case referred to in Section 10(b), notification of irregularity may not be issued more than four months after the date of receipt of the application at the Institute.

(3) No regularization carried out in accordance with this Section may have the effect of extending the scope of the filing.

Art.12. Opposition to registration filed by the owner of an earlier mark or the person enjoying an exclusive right of exploitation in accordance with Section 8 of the above-mentioned Law of January 4, 1991, may be presented by the person concerned acting himself or through a representative with capacity, subject to the exceptions laid down in Sections 36 and 43 of the above-mentioned Law of November 26, 1990, to act as an industrial property attorney.

Art.13. Opposition shall be submitted in writing in accordance with the order referred to in Section 46 of this Decree.

It shall set out:

- (a) the identity of the person filing the opposition together with particulars required to establish the existence, nature, origin and scope of his rights;
- (b) the references of the application for registration against which opposition has been filed together with a statement of the goods or services concerned by the opposition;
- (c) a statement of the grounds on which opposition is based;
- (d) proof of payment of the required fee;
- (e) where appropriate, the powers of the representative, which may be communicated to the Institute within a period of one month at most.

Art.14. Any opposition filed outside the time limits or presented by a person not entitled or which does not comply with the conditions laid down in Sections 12 and 13 of this Decree and in the order referred to in Section 46 hereof, shall be deemed inadmissible.

Art.15. Subject to the case of suspension referred to in Section 8, fourth paragraph, of the above-mentioned Law of January 4, 1991, or of closure of proceedings under Section 17 of this Decree, opposition shall be examined in accordance with the following procedure:

- (1) Opposition shall be notified without delay to the owner of the application for registration.
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A time limit shall be given to that person to submit his observations in reply and, where appropriate, appoint a representative satisfying the conditions laid down in Section 12 of this Decree. The time limit given shall not be less than two months.

(2) Failing observations in reply or, where appropriate, proper appointment of a representative within the period of time given, a decision shall be taken on the opposition.

Otherwise, a proposal for decision shall be drawn up on the basis of the opposition and the observations in reply. That proposal shall be notified to the parties to whom a period of time shall be given for possible contestation of its validity.

(3) If not contested, such proposal shall constitute the decision.

Otherwise, a decision shall be taken on the opposition on the basis of the latest observations and, if one of the parties should so request, after the parties have been permitted to submit oral observations.

The Institute must respect the principle of hearing both sides. Any observation submitted to it by one of the parties shall be notified to the other party.

Art.16. The owner of an application for registration may, in his initial observations in reply, invite the person filing the opposition to produce documents capable of establishing that his rights have not lapsed for failure to use.

The Institute shall then give the person filing the opposition a time limit for submitting the documents.

Art.17. The opposition procedure shall be closed:

(1) when the person filing the opposition has lost his entitlement to act or has not provided within the time limit given any document capable of establishing that his rights have not lapsed;

(2) where opposition has become inapplicable following agreement between the parties or withdrawal or rejection of the application for registration against which opposition had been filed;

(3) where the earlier mark has ceased to have effect.

Chapter III

Registration of Marks and Maintenance of Rights Therein

Art.18. Up to the start of the technical preparation for the registration, referred to in Section 40, below, the applicant may be authorized, on a reasoned request, to correct any material errors discovered in the documents filed.

Art.19. The application for registration may be withdrawn up to the start of the technical preparation for registration. Withdrawal may be limited to a part only of the filing. It shall be effected by means of a written declaration addressed or handed to the Institute.

A declaration of withdrawal may concern one mark only. It shall be formulated by the applicant or his representative possessing special powers.

It shall state whether or not he has assigned exploitation rights or pledges. If such is the case, the declaration must be accompanied by the written consent of the beneficiary of such right or of the pledgee.

If the application for registration has been formulated by more than one person, withdrawal can only be effected if requested by all such persons.

Withdrawal shall not prevent publication as provided for in the first paragraph of Section 8 of this Decree.

Art.20. The mark shall be registered, unless the application has been rejected or withdrawn. The certificate shall be sent to the applicant.

The registration shall be published in the Official Bulletin of Industrial Property.

Art.21. The owner of the registered mark may renounce its effects at any time. The Institute shall give confirmation thereof. The provisions of Section 19 of this Decree shall apply to renunciation.
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Art.22. Registration may be renewed for a further period of 10 years on a declaration by the owner of the mark drawn up in accordance with the order referred to in Section 46 of this Decree. It may be specified that renewal concerns only certain goods or services designated in the instrument of registration.

To be admissible, the declaration must:

- (a) be submitted by the person concerned or his representative possessing a power of attorney, during the final six months of validity of the registration;
- (b) contain the identification of the owner of the mark and of the renewed mark;
- (c) be accompanied by proof of payment of the required fee.

Where the declaration does not comply, the procedure laid down in Section 11(1) shall be applied.

Art.23. Any new filing concerning a change to the sign or an extension of the list of goods and services of a registered mark may be accompanied by a declaration of premature renewal of that mark. The new period of protection shall run as from the declaration of renewal.

Subsequent renewals of the renewed mark and of the new filing shall be effected by means of a single declaration.

Chapter IV

National Register of Marks

Art.24. The National Register of Marks shall be kept by the National Institute of Industrial Property.

It shall contain, with respect to each mark:

- (a) the identification of the applicant and the references of the filing, together with any subsequent acts affecting its existence or scope;
- (b) the acts modifying ownership of the mark or enjoyment of the rights therein; in the event of a claim to ownership, the corresponding writ;
- (c) any changes of name, legal form or address together with any corrections to material errors in the entries.

No entry shall be made in the Register until the filing has been published as provided for in Section 8 of this Decree.

Art.25. The particulars referred to in item (a) of the second paragraph of Section 24 shall be entered at the initiative of the Institute or, in the event of a judgment of cancellation or lapse, at the demand of the registrar or one of the parties.

Art.26. The acts modifying the ownership of a mark or enjoyment of the rights therein, such as assignment, granting of a right of exploitation, forming or assigning a pledge or renunciation of such pledge, seizure, confirmation and lifting of seizure, shall be entered at the request of a party to that act.

The request shall comprise:

- (a) a note of the request for entry;
- (b) one of the originals of the private deed confirming modification of ownership or enjoyment or a copy of the deed if it is authentic;
- (c) a reproduction of the above-mentioned instrument where the requester wishes to have the original or the copy returned to him or an extract if he wishes to limit the entry to such extract;
- (d) proof of payment of the required fee;
- (e) where appropriate, the representative's powers of attorney.

Art.27. Notwithstanding item (b) of the second paragraph of the preceding Section, there may be submitted with the request:

- (a) in the event of transfer by death: any instrument establishing the transfer, at the request of the heirs or legatees;

(b) in the event of transfer following merger, scission or absorption, a copy certified by the registrar or the Director General of the Institute, of the corresponding instruments filed at annex in the Register of Commerce and Companies;

(c) proof of the physical impossibility of submitting the original or a copy: any document establishing the change in ownership or enjoyment.

Art.28. Changes of name and address and corrections to material errors shall be entered at the request of the owner of the application for registration or of the owner of the mark. However, where such changes and corrections concern a previously-entered instrument, the application may be submitted by any party to the act.

The request shall comprise:

- (a) a note of request for entry;
- (b) proof of the change that has occurred or of the actual existence of the material error to be corrected;
- (c) proof of payment of the required fee;
- (d) where appropriate, the powers of the representative.

Art.29. Where a request for entry is not in conformity, the procedure laid down in Section 11 (1) of this Decree shall be applied.

The same procedure shall apply to the proofs required by Sections 27(c) and 28, second paragraph, item (b).

Art.30. Any entry made in the National Register of Marks shall be published in the Official Bulletin of Industrial Property.

Any concerned person may obtain from the Institute:

- (a) a certificate of identity comprising the design of the mark, the particulars relating to filing and registration, and where appropriate, any limitations to the list of goods or services resulting from withdrawal, renunciation or a court decision;
- (b) a reproduction of the entries in the National Register of Marks;
- (c) a certificate to the effect that there is no entry.

Chapter V

International Marks

Art.31. Sections 3(2)(d), 9 to 17, 24, 26 to 30 of this Decree shall apply to international registrations of marks extended to France under the above-mentioned Madrid Agreement, within the limits and subject to the provisions laid down in this Chapter.

Art.32. Where an international registration concerns a collective certification mark, the regulations for use referred to in Section 3(2)(d), accompanied as appropriate by a translation into French, must be furnished within a period of six months as from entry of the mark in the International Register.

If that requirement is not complied with, the international registration shall be deemed not to concern in France a collective certification mark.

Art.33. The Institute shall hold available for the public the bulletin *Les Marques internationales* published by the World Intellectual Property Organization.

The period of two months within which observations by third parties must be submitted under Section 7 of the above-mentioned Law of January 4, 1991, shall begin as from the first day of the month following receipt of the bulletin *Les Marques internationales* at the Institute.

Art.34. The examination under Section 10 of this Decree shall be limited to checking the capability of the sign to constitute a mark or to be adopted as a mark.

The four-month period during which notifications of irregularity must be issued, in accordance with Section 11(2) of this Decree, shall run as from notification to the Institute of extension to France of an international registration.

Irregularities shall be notified to the owner of the international registration through the International Bureau of the World Intellectual Property Organization.

Art.35. The time limit for entering an opposition, in accordance with Section 8 of the aforementioned Law of January 4, 1991, shall run as from the first day of the month following receipt of the bulletin *Les Marques internationales* at the National Institute of Industrial Property.

Opposition shall be notified to the owner of the international registration through the International Bureau of the World Intellectual Property Organization.

Art.36. All decisions of rejection shall be given in the form of a refusal of protection in France of the International Registration.

It shall be notified to the owner of the international registration through the International Bureau of the World Intellectual Property Organization.

Art.37. Acts relating to international registrations having effect in France may be entered in the National Register of Marks in those cases where they cannot be entered in the International Register.

Art.38. All applications for international registration or for an entry subsequent to such registration that are subject, under the Madrid Agreement of April 14, 1891, mentioned above, to approval by the National Institute of Industrial Property for transmission to the International Bureau, must be presented in accordance with the requirements laid down in the order referred to in Section 46 of this Decree.

The provisions of Section 11 of this Decree shall apply to any application not meeting the conditions set out in the preceding paragraph. The date of filing with the Institute shall be that on which the application, where appropriate, has been regularized.

Chapter VI

General and Transitional Provisions

Art.39. Save as otherwise provided in Section 15(1), the periods of time given by the National Institute of Industrial Property shall be no less than one month and no more than four months.

Art.40. The duration of the technical preparation referred to in Sections 18 and 19 of this Decree shall be laid down by decision of the Director General of the Institute.

Art.41. Where a time limit is expressed in days, the day of the act, of the event, of the decision or notification that initiates the time limit shall not count.

Where a time limit is expressed in months or years, such time limit shall expire on the day of the last month of the last year which bears the same number as the day of the act, event, decision or notification that initiates the time limit. Where there is no day with an identical number, the time limit shall expire on the last day of the month.

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

All time limits shall expire on the last day and at 24.00 hours.

A time limit which would normally expire on a Saturday, a Sunday or a public holiday, or a day that is not worked, shall be extended to the first working day that follows.

Art.42. Notifications shall be deemed regular if made:

- (a) either to the last owner of the application for registration of a mark notified to the Institute or the last owner entered in the National Register of Marks;
- (b) or to the representative of the above-mentioned owner.

If the owner is domiciled abroad, notification shall be deemed to be regular if made to the last representative he has appointed before the Institute.

Art.43. The notifications under this Decree shall be made by registered letter with advice of delivery. Registered mail may be replaced by handing the letter to the recipient, against receipt, at the premises of the Institute.

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

Art.44. The notification of lapse under Section 13 of the above-mentioned Law of January 4, 1991, shall apply to the time limits laid down by this Decree, with the exception of those referred to in Sections 15, 32, 35 and 38.

The request for a notice of lapse shall be presented to the Director General of the Institute.

A request shall be declared inadmissible if:

- (a) it is not preceded by completion of the omitted formality;
- (b) it is presented more than two months after the end of the inability;
- (c) it concerns a time limit that has expired more than six months previously;
- (d) it is not accompanied by proof of payment of the required fee.

Art.45. The table annexed to the above-mentioned Decree of May 15, 1981, relating to the fees and charges levied by the National Institute of Industrial Property shall be amended as follows:

“4. Trademarks or service marks:

- filing;
- class of goods or services;
- claim of priority right;
- regularization;
- opposition;
- correction of material error;
- renunciation;
- request for entry in the International Register of Marks;
- notice of lapse.”

Art.46. The conditions for presenting the application and the content of the file shall be specified by order of the Minister responsible for industrial property, particularly as regards:

- (a) the application for registration under Section 3 of this Decree;
- (b) the opposition under Section 13 of this Decree;
- (c) the declaration of withdrawal under Section 19 or of renunciation under Section 21 of this Decree;
- (d) the declaration of renewal under Sections 22 and 23 of this Decree;
- (e) the request for entry in the National Register of Marks under Sections 26 and 28 of this Decree;
- (f) applications for international registration of the mark and subsequent entry in the International Register subject to approval by the Institute.

Art.47. Entitlement to the provisions of Section 22 of the above-mentioned Law of January 4, 1991, shall be subject to the filing of a written request setting out, in particular:

- (a) the identity and capacity of the applicant and, where appropriate, appointment of his representative;

- (b) designation and registration number of the mark involved;
- (c) the goods whose retention is requested.

For application of the second subparagraph of subsection 2 of that Section, the applicant must present to the customs administration a document proving that he has obtained a guarantee sufficient to cover his possible liability, particularly in the form of a bank or other guarantee, an insurance contract or a deposit.

The request shall have effect during a period of one year. It may be renewed.

Articles contained in travelers' luggage and intended for their personal use and consignments without a commercial nature shall be excluded from the scope of this Section.

The conditions for presenting the application and content of the file shall be specified by order of the Minister responsible for the economy, finance and budget.

Art.48. Applications for registration of a mark filed prior to December 28, 1991, shall be examined, registered and published under the procedure applicable as of the date of their filing.

Art.49. The note "collective mark" entered in the registration of a mark filed prior to December 28, 1991, shall, unless it concerns a collective certification mark, be cancelled at the request of its owner.

Such cancellation shall be entered in the National Register of Marks.

Art.50. The provisions of Sections 12 to 17 of this Decree shall be applied progressively by the International Classification of Goods and Services for the Purposes of the Registration of Marks established under the Nice Agreement of June 15, 1957, referred to above.

During a period of five years beginning on December 28, 1991, only those applications for registration may be subject to opposition that concern goods or services falling under at least one of the classes designated by order of the Minister responsible for industrial property in accordance with the table annexed to this Decree.

51. This Decree shall be applicable as from December 28, 1991.
It shall be applicable in the territorial entity of Mayotte.

52. The Minister of State, Minister for Economic Affairs, Finance and the Budget, the Keeper of the Seals, Minister for Justice, the Minister for Overseas Departments and Territories, the Delegate Minister for the Budget and the Delegate Minister for Industry and Foreign Trade shall be responsible, each where he is concerned, with the implementation of this Decree, which shall be published in the Official Journal of the French Republic.

ANNEX

Table on the Progressive Application of the Opposition Procedure

Demands for Registration for Goods and Services Concerning at Least One of the Classes Mentioned Below	Deadline for Entry into Force of the Procedure
2, 20, 27	December 28, 1991
6, 8, 13, 15, 17, 19, 21	July 1, 1993
4, 7, 11, 12, 14, 18, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34	July 1, 1995
1, 3, 5, 9, 10, 16, 35, 36, 37, 38, 39, 40, 41, 42	December 28, 1996