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PUBLICATION OF DECREE N°2019-1316 "RELATING TO TRADEMARKS OR SERVICE MARKS": ITS IMPACT ON ALL APPEALS AGAINST THE DECISIONS OF THE DIRECTOR GENERAL OF THE FRENCH PTO

Patent Law | 19/12/19 | François Pochart Océane Millon de La Verteville

PROTECTION DES DONNÉES PERSONNELLES

On December 10, Decree No. 2019-1316 "on trademarks or service marks" was published. It provides amendments to the Intellectual Property Code ("IPC") [1].

Despite its title, this decree has an impact beyond trademark law alone.

Indeed, the "Paquet Marques" Ordinance had provided - in its last paragraph of Article 1st - that a decree in Conseil d'Etat [French Supreme Administrative Court] will specify the conditions for the application of Article L. 411-4 of the IPC, which sets out the fields of competence of the decisions of the Director General of the National Institute of Industrial Property ("French PTO") regarding industrial property titles, as well as the principle that appeals against these decisions shall be brought before courts of appeal (designated by regulation).

Decree No. 2019-1316 published on 10 December therefore clarifies conditions for the application of Article L. 411-4 of the IPC by making substantial amendments to the IPC's regulatory provisions relating to appeals against the decisions of the Director General of the French PTO (R. 411-19 to R. 411-43 of the IPC), such provisions applying to all these decisions, and therefore particularly the one regarding patents.

These amendments shall enter into force on 1st April 2020 [2] except for appeals against decisions issued before 1st April 2020, which shall remain governed by the former provisions of the IPC [3].

It should apply in particular to appeals against decisions which will be taken by the Director General of the French PTO in the context of the future opposition procedure against French patents [4] whose draft ordinance and decree have been submitted for public consultation until 13 December [5]. The dice are therefore partly played for the opposition procedure against French patents - at least as far as the appeal phase is concerned.

In essence, the improvements of this decree essentially consist in creating two different types of appeal, depending on the type decision which is appealed, and in harmonizing the appeal procedure against the decisions of the Director General of the French PTO with the ordinary appeal procedure provided by the Civil Procedural Code. It might be complex to handle with two different types of appeal, especially in the new opposition procedure as the draft decree submitted for consultation provides that opposition decisions should be subject to appeals for review ("recours en réformation") [6], whereas decisions rejecting an application to amend a set of claims following a partial revocation of a patent [7] will be subjected to appeal for annulment ("recours en annulation"). As for the evolution towards ordinary procedural law - which is only partial since some specificities remain given the fact that the Director General of the French PTO is not a party to the proceedings (and therefore, for example, any notice to him must be made by registered letter with advice of delivery...) - it should lead to an extension of the average duration of the appeal procedure against the decisions of the Director General of the French PTO, each parties having 3 months to conclude, or even more for parties remaining in the French overseas departments and territories (DOM-TOM) or abroad [8].

[1] Available on the website Légifrance : <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000039467798&categorieLien=id>

[2] Decree n°2019-1316, article 16, I, 1°

[3] Decree n°2019-1316, article 16, II

[4] See our previous Flash AD : <https://www.august-debouzy.com/fr/blog/1380-mise-en-place-dune-procedure-opposition-a-un-brevet-francais-preparez-vous-maintenant>

[5] See the draft "Consolidated provisions resulting from draft Ordinance and Decree No. 2019-XXX of XX/XX/XXXX on the creation of a right to oppose patents for inventions" available on the AFPPI website: <https://www.afppi.fr/commissions/loi-pacte/loi-pacte>

[6] The draft ordinance submitted for consultation provides that oppositions against patents will be mentioned in paragraph 2 of Art. L. 411-4 (which is referred to in Art. R. 411-19 paragraph 2 concerning appeals for review)

[7] See draft of Article R. 612-73-3 in the draft decree submitted for consultation

[8] In this case, the time limits are increased by one and two months respectively, cf. new art. R. 411-43 IPC

