

## OTHERS

### The “Soleau” envelope system in France

#### 1. What is the “Soleau” envelope ?

It consists in an envelope having two compartments. “Soleau” is the name of the inventor of such an envelope.

#### 2. Filing and keeping of the envelope

“Soleau” envelopes are purchased from the French Patent Office (INPI=Institut National de la Propriété Industrielle) at a cost of currently 10€ each.

A copy of a same document is sealed in each compartment of the envelope and the envelope is filed with the INPI with the indication of the name and address of the applicant or representative (if any).

Both compartments are dry-stamped (laser stamp) by the INPI. One compartment is returned to the applicant. The other one is kept by the INPI for a time period of 5 years which can be renewed once only upon payment of an official fee (currently 10€).

The applicant should keep the returned and stamped compartment sealed.

The envelope should not have a thickness larger than 5mm or contain hard material for allowing dry stamping (perforation).

#### 3. Function of the envelope

The envelope is used as a means for keeping evidence that its content was known or had been created by the applicant at the date of stamping, without any disclosure of that content.

When provision of such evidence is needed, the compartment kept by the INPI is sent back to the applicant upon request and at his own costs.

If the time period of 5 years or 10 years (if renewed) has then lapsed, the compartment originally returned to the applicant may be used provided it has been kept unopened.

#### 4. Reasons for using the envelope

##### 4.1 Copyright protection

“Soleau” envelopes are mainly used by authors or creators to keep evidence of a date of creation. Indeed, copyright protection in France is acquired as from the date of creation without any filing being required.

It should be noted that copyright protection is also available in France for designs, including industrial designs but only with respect to any non-technical aspect.

Thus, in case of copyright infringement, the envelope can be used to prove that its content has been created by the applicant at a given date without the content or the date being questionable, thus showing the object and date of copyright protection.

##### 4.2 Inventions

“Soleau” envelopes enable inventors or companies to provide evidence that they had invented or knew what is described in the content of envelopes, at a particular date. This can be useful in the following circumstances :

- a) To assist in claiming rights in case of misappropriation of the invention by a third party,
- b) To benefit from the so-called prior possession rights under Article L.613-7 of the French Intellectual Property Code (IPC). Indeed, Article L. 613-7 IPC states:

“ Any person who, within the territory in which this Book applies, at the filing date or priority date of a patent was, in good faith, in possession of the invention which is the subject matter of the patent shall enjoy a personal right to work that invention despite the existence of the patent.

The right afforded by this Article may only be transferred together with business, the enterprise or the part of the enterprise to which it belongs.”

By contrast with many other countries, mere possession or knowledge of an invention is sufficient in France to be able to work that invention despite a patent covering the same invention has been later filed by a third party. There are similar provisions in Belgium, but in other countries in Europe, prior user’s rights only are granted, which means that the inventions should have been not only known, but also used or that actual and serious preparations for its use should have started.

#### 5. Limits of the use of “Soleau” envelopes for inventions

- a) “Soleau” envelopes do not grant legal protection. This is something frequently

misunderstood by inventors or by small companies in France. A “Soleau” envelope may assist in claiming prior possession rights which do not grant legal protection but can only make it possible to escape from patent rights owned by a third party;

b) The scope of “Soleau” envelopes is strictly interpreted. Since prior possession constitutes an exception to patent rights, the scope of prior possession is strictly limited to what is actually contained in the envelope. This is also something which is sometimes misunderstood by applicants who would only include in a “Soleau” envelope a general and not detailed description of the invention. French Courts have ruled that one cannot benefit from prior possession for features which were not actually described in the document contained in the envelope, regardless of the fact that such features might have been obvious from the content of the envelope.

c) The effect of “Soleau” envelopes is limited to the French territory. This means that products which may be put lawfully onto the market in France under the exception of prior possession rights vis-à-vis a French patent will constitute infringements in countries where they may be exported and where patents parallel to the French patent are in force and cover the products or their method of manufacture.

In practice, limitation c) is the most significant one for companies whose market is not limited to France. The “Soleau” envelope system is nevertheless used by some of our French clients, having international activity, but mainly as an interim measure, until a patent application is filed, in particular when development of the invention includes cooperation with third parties, to be then in a better position to claim back ownership of a patent application filed by a third party in case of misappropriation.

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