

WHEN SILENCE EQUALS REFUSAL



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In May 2015 Decree No. 2015-511 was adopted on the basis of article 21, section II of Law No. 2000 covering the rights of citizens in their exchanges with the administration (public services), following the approval of Decree No. 2014-1280 in October 2014. This latter decree had specified cases in which the silence of the administration amounted to a refusal, depending on the subject of the application for a trademark or a patent and the time period in which the refusal was granted.

Now, the only requests to which silence of the administration during a certain time period equals refusal are the following:

- i. Accreditation of industrial and artisanal geographical indications; and
- ii. Supplementary protection certificates (SPCs, governed by Regulation [EC] No. 1610/96 of the European Parliament and of the Council of July 23, 1996 concerning the creation of a SPC for plant protection products and regulation [EC] No. 469/2009 of the European Parliament and of the Council of May 6, 2009 concerning the SPC for medicinal products).

The time period after which the (rejection) decision is deemed to have taken place for (i) is two months, with the possibility of an additional one-month extension; and for (ii) one year.

A decision on the grant of a French patent cannot now, under any circumstances, be the object of an implicit refusal. The same holds true, *mutatis mutandis*, for opposition decisions against a trademark filing.

Other exceptions to the principle of 'silence amounts to approval' still exist.

Registration and extension (renewal) of a design

- The National Institute of Industrial Property (INPI) has six months to rule on a registration request (acceptance or refusal). After the six-month period has elapsed, the silence of the administration amounts to an implicit refusal decision. However, this time period may be interrupted in cases of issuance of an official notification or, in cases of deferred publication, until the deferral is waived.
- The INPI has six months to rule on the declaration of a renewal of a design, after which the silence of the administration equals an implicit refusal. This time period may be interrupted by an objection, with the interruption lasting until the objection is withdrawn.

Request for renunciation, for limitation or for forfeiture of a patent

- The INPI rules on a request for renunciation or limitation of a patent within 12 months of the request being filed. After 12 months, the

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silence of the administration amounts to an implicit refusal of the request. This period is interrupted in cases of an objection until the objection is lifted.

- The INPI rules within six months on a request—from the patentee or a third party—for forfeiture of a patent, after which the silence of the administration amounts to an implicit refusal of the forfeiture of the patent.

Registration and renewal of a trademark

- The INPI has six months to rule on an application for registration of a trademark (acceptance or rejection), after which silence amounts to refusal. This time period is interrupted until the ruling on an opposition request, or until the regularisation of the application.
- In addition, the INPI has six months to rule on the declaration of renewal. This time period is interrupted until the regularisation of the request, after which silence amounts to refusal.

The six-month time period will expire on November 9, 2015 for requests that are currently in progress.

It must be noted, however, that decree No. 2015-511 states that it will apply to past requests that have not been subject to explicit decisions. So, it is appropriate to review all requests that have not been the subject of a decision by the administration before the publication of this decree, including those before even the first decree. From November 10, 2015, these requests will be considered rejected and the owners of the rights will have one month to appeal.

Regarding trademarks, one issue remains open. Where the regularisation proposed by the administration is not accepted or where observations to appeal against a notification issued by the INPI are filed, should we consider that the six-month period is suspended or should we consider that, if the office does not indicate its position in the six months following the filing, the observations issued, as well as the request, are rejected? This is not yet settled. ■

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