

**FRENCH REPUBLIC**

IN THE NAME OF THE FRENCH PEOPLE

**COUR D'APPEL OF PARIS**

**Section 5 – Chamber 1**

**DECISION DATED 14 APRIL 2010**

(No. , 04 pages)

Docket number: **09/12459**

Judgment referred to the *Cour d'Appel*: Judgment dated 05 March 2009 – *Institut National de la Propriété Industrielle* of PARIS – Docket No. 1278687EPO

**APPELLANT**

**UNILEVER NV**

**a company governed by laws of the Netherlands**

represented by its managing director  
whose registered office is located at Weena 455 – 3013 AL  
Rotterdam (Netherlands)

represented by the *SCP Fisselier - Chiloux – Boulay – avoués* before the *Cour d'Appel*,  
assisted by Mr Bertrand Warusfel, attorney-at-law, member of the Paris Bar, court house box K028  
pleading on behalf of SELARL FWPA

**IN THE PRESENCE OF**

**The Director of the *INPI***

domiciled at 26 bis rue de Saint Petersburg  
75008 Paris

represented by Mr Laurent Mulatier, *chargé de mission*

**COMPOSITION OF THE COUR D'APPEL**

The case was discussed on 16 February 2010, in open court, before the *Cour d'Appel*  
composed of:

Mr Didier Pimouille, Presiding Judge  
Ms Brigitte Chokron, Judge  
Ms Anne-Marie Gaber, Judge

who deliberated.

**COURT CLERK:** during the discussion: Ms Anne Boissard

**MINISTÈRE PUBLIC**<sup>1</sup>: to whom the case was previously submitted and represented during the discussion by Ms Gizardin, *substitut du Procureur Général*<sup>2</sup>, which made its opinion known.

**DECISION:**

- after hearing all the parties
- made available at the Court clerk's office, the parties having been previously notified in accordance with the conditions provided for in the second subparagraph of Article 450 of the French Civil Procedure Code;
- signed by Mr Didier Pimouille, Presiding Judge, and by Ms Aurélie Geslin, Court clerk, to whom the minutes of this decision were handed by the signatory Judge.

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**THE COUR D'APPEL,**

Having regard to the appeal lodged on 9 June 2009 by Unilever NV, a company governed by laws of the Netherlands, against the Director General of the *INPI*, following his registered letter with acknowledgement of receipt dated 5 March 2009 received by the addressee on 9 March 2009, by way of which the Director General of the *INPI* rejected the text of a translation of European patent No. 12778687 as maintained after amendments made following an opposition procedure before the European Patent Office;

Having regard to the pleading containing the arguments of the appeal filed with the Court clerk's office by the appellant on 9 July 2009;

Having regard to the written observations made by the Director General of the *INPI*, received by the Court clerk's office on 24 November 2009;

Having regard to the written pleading of the *Ministère Public*, filed with the Court clerk's office and notified on 8 January 2010,

The *Ministère Public's* oral observations having been heard,

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**WHEREUPON,**

Considering that Unilever NV is the holder of a European patent filed on 19 March 2001 in English, published under No. 1278687 and in respect of which the mention of grant prior to the opposition was published in the European Patent Bulletin of 25 May 2005; that a first translation into French was filed with the *INPI* on 30 June 2005; that, following an opposition, the text of the patent was amended and published, after the opposition, in the European bulletin of 6 August 2008;

That, in order to meet the provisions of the former Article L 614-7 of the French Intellectual Property Code, Unilever NV sent to the Director General of the *INPI*, on 5 September 2008, the translation of the patent as amended following the opposition;

That the latter, in the appealed decision, refused to consider this translation on the ground that "since 1 May 2008, France has dispensed with the translation requirements provided for in Article 65, paragraph 1, of the European Patent Convention";

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<sup>1</sup> The *Ministère Public* is composed of public servants representing the State and public interest in the judicial process. It has an advisory role and is independent from the parties. The *Ministère Public* is under the control of the Minister of Justice.

<sup>2</sup> The *procureur général* or his *substitut* (deputy) is a public servant acting for the *Ministère Public*.

That the appellant considers on the contrary that the translation requirement still applies in case of the publication of a modified version of a European patent granted before 1 May 2008 and that it might run a serious risk of being deprived of its intellectual property title due to the refusal of the Director General of the INPI to accept the new translation, pursuant to Article L 614-7 of the French Intellectual Property Code in its version prior to the entry into force of the 29 October 2007 act;

Considering that, in its observations, the Director General of the *INPI* maintains his position and dismisses the appeal;

That the *Ministère Public* also dismisses the appeal;

Considering that Article 65, paragraph 1, of the Munich Convention dated 5 October 1973 on the granting of European patents provides that “*any Contracting State may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language*”;

That French law used this possibility in Article L 614-7 of the French Intellectual Property Code, which, in its wording prior to the 29 October 2007 act, provided that “*when the text, in which the European Patent Office created by the Munich Convention grants a European patent or maintains such patent in an amended form, is not drawn up in French, the proprietor of the patent shall supply to the INPI a translation of this text [...] if this requirement is not met, the patent is without effect.*”

However, considering that the text, reproduced above, of Article 65, paragraph 1, of the Munich Convention, although giving the States the possibility to impose on the applicant or the patent holder to supply a translation, comprises, implicitly but necessarily, the right to dispense with this requirement; that the London Agreement which provides, in Article 1: “*Any State party to this Agreement having an official language in common with one of the official languages of the European Patent Office shall dispense with the translation requirements provided for in Article 65, paragraph 1, of the European Patent Convention*”, which has been in force in France since 1 May 2008, certainly made it compulsory to dispense with the translation requirement pursuant to Article 9 of this agreement but, as regards the European patents in respect of which the mention of grant was published in the European Patent Bulletin after this same date, did not result in preventing from an optional dispensation whose effects extend to the European patents in respect of which the mention of grant was published in the European Patent Bulletin before this same date of entry into force of the agreement;

That, in addition, this hypothesis was provided for in Article 1, paragraph 4, of the London Agreement, which provides: “*Nothing in this Agreement shall be construed as restricting the right of the States parties to this Agreement to dispense with any translation requirement*”;

Considering, in the light of all the provisions recalled above, that Article L 614-7, paragraph 1, of the French Intellectual Property Code, which, in its drafting resulting from the No. 2007-1544 act of 29 October 2007 entered into force on 1 May 2008, provides: “*The text of a European patent application or a European patent written in the language of the proceedings before the European Patent Office set up by the Munich Convention shall be the authentic text*” should be interpreted as the dispensation with all immediately applicable translation requirement, including to the European patents in respect of which the mention of grant was published in the European Patent Bulletin at a date prior to that of the entry into force of the new act;

Considering that the new provisions, which show a return to the original principle, within the spirit of the European Patent Convention, of the validity and protection of the patent in the language of filing independently of all translation, do not pertain to the substance of the right of protection by a patent but are of a procedural nature and, as such, immediately applicable since they relate to completing a formality, in this case the filing of a translation, so that, as rightly held by the Director General of the *INPI* and by the *Ministère Public*, the translation requirement for certain categories of patents would now be deprived of all legal basis;

Considering that it can still be noted that the application of the new provisions does not challenge the right of third parties, provided for in Article L 614-10 of the French Intellectual Property Code and maintained in the drafting of this text resulting from the No. 2007-1544 act dated 29 October 2007, to put forward, in case of a dispute, the translation into French of the European patent if it confers less rights to the patent holder than the text in its language of filing;

Considering that it results from the above that the appeal should be dismissed;

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**ON THESE GROUNDS:**

Dismisses the appeal,

Holds that the Court clerk will notify the parties and the Director General of the *Institut National de la Propriété industrielle* of the decision.

**THE COURT CLERK,**

**THE PRESIDING JUDGE,**