

# Newsletter



INTELLECTUAL PROPERTY /  
DIGITAL, TECH AND DATA

**Newsletter #169**  
*January-February 2026*

**INTELLECTUAL  
PROPERTY**

**DIGITAL, TECH AND  
DATA**

## CONTENTS

	HEADLINE .....	3
	<i>AI hallucinations must be controlled by lawyers before submitting pleadings to a court.....</i>	3
	ARTICLES.....	4
	<i>Registering a trademark in the name of the company director: beware of the temptation to invoke it against the buyer in the event of a sale or insolvency proceedings .....</i>	4
	<i>Cybersecurity: a never-ending legislative and regulatory undertaking .....</i>	5
	<i>Defining the “person skilled in the art”: an essential exercise for resolving patent disputes</i>	6
	<i>The scourge of domain-name cybersquatting continues to spread, and fraud now affects all types of institutions .....</i>	7
	<i>The Comité des Champs-Élysées fails to obtain copyright protection for the avenue’s Christmas lights but succeeds on grounds of unfair competition .....</i>	8
	<i>An employee cannot rely on their data-access right to claim an entire copy of their email account and related files .....</i>	9
	<i>Identifying reliable prior disclosures: the challenge of proving the publication of earlier designs on the Internet.....</i>	10

 **HEADLINE**

**AI hallucinations must be controlled by lawyers before submitting pleadings to a court**

CoA California., 15 December 2025, No. D086055

CAA Bordeaux (interim measures), 26 February 2026, No. ° 25BX02906

TJ Périgueux., 18 December 2025, No. 25/00509

Despite the widely publicized examples of surprising—if not absurd—answers produced by several generative artificial intelligence platforms available to the general public, concrete instances of hallucinations that raise problems for professional expertise are multiplying, including in the legal field, which is nevertheless subject to strict requirements regarding source verification.

Worldwide, several hundred cases have already been identified in which courts were asked to rule on disputes involving erroneous citations of legal scholarship or prior judicial decisions, with a majority documented in the United States.

Several such cases brought before U.S. courts have sought the liability of a counsel—or, in some instances, of the party itself when choosing to draft its own submissions—on the grounds that such behavior may violate procedural rules. In this regard, a recent decision of the California Court of Appeal, issued on December 15, 2025, noted that the appellant, appearing pro se, “cited non-existent cases, reproduced passages purportedly taken from statutes and judicial decisions that do not contain them, and relied on decisions in support of legal propositions they do not establish.” The judges emphasized that while a party “may use artificial intelligence tools to draft its briefs,” it “must verify each citation to ensure that the decision exists and that the references are accurate.”

Finding that this conduct constituted a serious violation of California law, the court imposed a USD 15,000 fine.

French case law has so far adopted a more moderate stance, highlighting errors, approximations, and hallucinations in order to invite the parties to verify the sources cited in their submissions, without imposing specific sanctions at this stage—whether on lawyers or on the parties they represent. However, the increasing frequency of such situations may prompt courts to adopt a stricter approach.

For example, the Bordeaux Administrative Court of Appeal reproved the claimant’s counsel for citing several fictitious decisions generated by artificial intelligence: “It must be pointed out [to counsel] that it is necessary to verify the judicial decisions cited—none of which were produced—before seizing the court. Indeed, the decision ‘CE, 23 September 1987, *Ministre du travail v. Sté Ambulances 2000*’ [...] the decision ‘CE, 14 November 2018, No. 420055’ [...] the decision ‘TC, 17 June 2019, No. 4153’ [...] the decision ‘CE, 25 August 2025, *Commune de Massat*’ [...] and finally the decisions ‘CE, 7 February 2018, No. 409302’ and ‘CE, 11 January 2007, *Association SOS Racisme*’ do not exist. Counsel is therefore invited to verify in the future that references found by any means whatsoever are not an ‘hallucination’ or a ‘confabulation’.”

A similar approach was taken in a judgment of December 18, 2025, by the Judicial Court of Périgueux, which likewise noted: “As a preliminary matter, the court observes that the case law references cited by the claimant, but not included in the exhibits, do not appear to correspond to published decisions. For example, appeal No. 16-26694 corresponds to a judgment of the Court of Cassation dated May 24, 2018. The court will therefore invite the claimant and his counsel to verify in the future that the references they may have found through search engines or with the assistance of artificial intelligence are not ‘hallucinations’.”

## » ARTICLES

### **Registering a trademark in the name of the company director: beware of the temptation to invoke it against the buyer in the event of a sale or insolvency proceedings**

*TJ Paris., 6 February 2026, No. 24/01488*

A ruling handed down on 6 February 2026 by the Paris Court of first instance, in a dispute between the former director of a company sold to a third party and the assignee, addressed a very common practical question in day-to-day business: may a director (or shareholder) file in their own name a trademark intended to be used by the company?

As a general rule, nothing in the French Intellectual Property Code prohibits this, and the trademark owner may enter into a license agreement with the company or even transfer the mark at a later stage. A decision of the Paris Court of Appeal dated 19 April 2023 had even acknowledged, with a degree of pragmatism, that this scheme is common in certain economic sectors: *"It is common practice in the business world for the founder, manager or majority shareholder of a small family business to file the trademark in their personal name."*

Indeed, in order to secure an early filing date for a sign, the founder or shareholders may be led to file a trademark at the preliminary stage of defining the entrepreneurial project. This precaution may even be advisable when the entrepreneur or shareholders intend to seek financing and must disclose information about the maturity of the project.

In this case, the individual who had originally created the company Venus & Gaia on 17 January 2019 subsequently filed the trademark of the same name on 23 March 2019.

The company was sold to a third party in July 2023 for a total price of €122,000, but the transfer agreement did not include the trademark among the assets assigned. A dispute arose between the parties when the purchaser failed to pay the full agreed price. The seller brought an action for specific performance and then for trademark infringement. The purchaser, in turn, counterclaimed for abuse of process.

The court upheld the counterclaim, noting that the company name pre-dated the existence of the identical trademark. The judges found that the claimant:

*"by selling her company without transferring the homonymous trademark she owned, and then relying on that trademark to bring an infringement action against the company sold in order to prevent it from using its corporate name — even though the parties' submissions show that this name and its associated reputation constituted the company's main asset, and the purchaser had clearly indicated, without contradiction in the transfer deed, that the company should be able to continue its operations without hindrance — revealed that the trademark filing had not been made with the legitimate intention of securing the sign 'Venus & Gaia' in the interest of the company, but with the aim of retaining the discretionary ability to deprive the company of a sign essential to its business."*

Thus, this behaviour — retaining ownership of the trademark with the intention of obstructing the company's activity or using it as leverage in response to partial payment of the purchase price — amounted to a "malicious misuse of trademark law." The judges also noted that such a situation could, in principle, justify a claim for ownership of the trademark on the grounds of fraudulent filing, although no such claim had been brought by the purchaser.

## **Cybersecurity: a never-ending legislative and regulatory undertaking**

*French bill submitted to the Parliament on the resilience of critical infrastructure and the strengthening of cybersecurity*

*EU Commission Press release: Commission strengthens EU cybersecurity resilience and capabilities*

While Member States were required to transpose the NIS2 Directive no later than 17 October 2024, the draft law on the resilience of critical infrastructure and the strengthening of cybersecurity — originally tabled before the Senate on 15 October 2024 and subsequently examined by the National Assembly — remains stalled. Although a revised version was published on 10 September 2025 by a special committee, the parliamentary process has been delayed due to political debates surrounding the appropriateness of an amendment (current Article 16 bis) aimed at prohibiting the introduction of “backdoors” by the State into electronic messaging platforms, which could be exploited by malicious actors.

These French delays now coincide with a new initiative to “simplify” the European cybersecurity legislative framework, announced by the European Commission on 20 January 2026.

In an initial communication, the Commission published, under reference “COM(2026) 11 final (2026/0011 COD),” a proposal for a regulation revising Regulation No. 2019/881 of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on ICT cybersecurity certification (the 2019 Cybersecurity Act). That regulation established, among other things, the principles, structure and missions of ENISA, as well as the framework for cybersecurity certification schemes.

These certification schemes — referenced in several instruments, including the NIS2 Directive and the DORA Regulation — are intended, in principle, to serve as practical compliance guidance for regulated entities. However, the adoption of these complex rules remains at a very early stage.

The reform seeks to address four issues identified by the Commission:

- the gap between existing legislation and the operational needs of regulated operators;
- the slow establishment of the European Cybersecurity Certification Framework (ECCF), which has so far failed to produce harmonized schemes essential for operators’ compliance;
- the multiplicity and complexity of cybersecurity-related policies, which undermine the coherence and clarity of the cybersecurity architecture;
- the growing risks affecting ICT supply chains.

The proposal therefore aims to expand ENISA’s mandate, enabling it to provide greater support to Member States in preparing for, detecting and responding to incidents, and above all in developing and accelerating the practical implementation of the European cybersecurity certification framework.

A second communication announced the publication of a document under reference “COM(2026) 13 final (2026/0012 COD),” consisting of a draft Directive specifically intended to simplify the NIS2 Directive (though not, at this stage, the entirety of other cybersecurity texts such as the DORA Regulation) and to align it with the revision of the 2019 Cybersecurity Act. The objective is to facilitate compliance for entities, notably through the introduction of lighter rules for small and mid-caps (up to 750 employees and €150 million in turnover). This new initiative disrupts national legislative efforts and companies’ compliance timelines. It is nevertheless likely to prompt France to postpone its transposition work accordingly.

## Defining the “person skilled in the art”: an essential exercise for resolving patent disputes

*French Cour de cassation, Commercial Chamber., 3 December 2025, No. 24-12.462*

A trend toward greater methodological rigour appears to be taking shape both in the case law of the French Cour de cassation and in that of the Unified Patent Court when assessing patent validity criteria, particularly novelty and inventive step. Whereas earlier case law sometimes overlooked the need to precisely define the “person skilled in the art,” their skills and their common general knowledge, the Cour de cassation and the newly established court competent for unitary European patents now encourage parties and lower courts to begin by clearly identifying this notional person before analyzing the technology and the prior art.

A recent decision of the Commercial Chamber illustrates this shift: the court quashed a Court of Appeal ruling on several grounds, including its failure to determine the relevant skilled engineer for the field at issue. In its decision of 3 December 2025, the Cour de cassation was asked to rule on infringement claims relating to a patent protecting a video game controller. In defense, the alleged infringer argued that the patent was invalid on several grounds, including added subject-matter resulting from a limitation introduced during prosecution. This argument had convinced the lower court, which declared the patent invalid.

The patent owner challenged this interpretation before the Cour de cassation, arguing that the appellate judges had, first, failed to identify the relevant person skilled in the art and, second, relied on an incorrect French translation of the patent specification to infer a necessary link between two features that did not appear in the original version. The Court of Appeal had isolated an “*inadmissible intermediate generalization*” by analyzing the description and Figure 8 of the original application and inferring “a necessary link between acceleration sensor 68 and processor 66,” concluding that “the acceleration sensor feature is directly linked to the presence of processor 66.”

The Cour de cassation upheld the appeal. First, it recalled that: “a modification is considered to introduce subject-matter extending beyond the content of the application as filed if the overall modification — whether by addition, alteration or deletion of a feature — results in information being presented to the person skilled in the art that does not directly and unambiguously derive from what the application previously disclosed, even taking into account what is implicit for that person skilled in the art.”

It follows that, by failing to define the skilled person, the appellate judges could not validly infer that the two features were necessarily associated from the perspective of the person skilled in the art. More importantly, the ruling was also overturned for distortion of the evidence submitted by the parties. The patent owner demonstrated that the appellate court’s interpretation relied on an incorrect French translation of the European patent. In fact, paragraph [0098] of the A1 application — which became paragraph [0100] in the claimant’s translation — states that “acceleration sensor 68 may be used in combination with processor 66 (or any other processor) to determine the inclination, altitude or position of housing 12.”

In other words, according to the accurate translation, the description did not state that the two features were inevitably linked, but merely that they could be associated. The Court of Appeal on remand will therefore have to re-examine the patent’s content through the lens of the properly defined person skilled in the art in order to determine definitively whether the granted patent suffered from an intermediate generalization defect.

## **The scourge of domain-name cybersquatting continues to spread, and fraud now affects all types of institutions**

[WIPO \(UDRP\), 21 January 2026, No. D2025-5015](#)

[WIPO \(UDRP\), 26 December 2025, No. D2025-4435](#)

[WIPO \(UDRP\), 24 November 2025, No. D2025-4072](#)

The phenomenon known and documented since the early 2000s as “cybersquatting” consists of an illegitimate third party registering a domain name made up of terms used by an intellectual property rights holder — most commonly a trademark — without any genuine intention of using it for legitimate market purposes, but rather to hinder the rightful owner in bad faith or to monetize the resale of the domain name.

Far from fading over time, this harmful practice has evolved alongside new forms of fraud, including scams carried out by impostors who, by using the signs, trademarks and graphic identity of well-known companies or public institutions, exploit users’ trust to collect sensitive data such as bank card details or health insurance numbers, and divert funds or benefits.

Cybersquatting today appears to be facilitated by the domain-name system itself: unlike intellectual property rights registered with central state authorities, domain names are administered by private companies located worldwide, whose role is not to verify the legality of registration requests. Many of these companies specify in their terms and conditions that a request to block or transfer a domain name will only be granted upon presentation of a court order or an arbitral decision issued under procedures offered by WIPO (UDRP for most domain names) or by AFNIC in France (SYRELI for the domain names it manages).

Recently, AFNIC itself — the French domain-name authority — became the target of an illicit domain-name registration by a third party, forcing it to initiate a UDRP procedure to obtain the transfer. In its decision of 24 November 2025, the appointed panel found that the registration of the domain name <afnic.report> was indeed malicious. The registrant had, on the one hand, deliberately provided AFNIC’s contact details in the registration request and, on the other hand, *“used the disputed domain name to send fraudulent emails to a registrar, presenting himself as the ‘AFNIC legal department’ and reproducing a fake SYRELI decision [...] even going so far as to reproduce a forged official stamp, in order to obtain the transfer of a domain name belonging to a third party.”*

Other similar cybersquatting practices have targeted, for example, TF1, which obtained the transfer of the domain name <tf1-news.info>, a site that mimicked TF1’s visual identity and graphic charter to offer fictitious financial services and collect data. WhatsApp likewise secured the transfer of the domain name <gbwhatsapp.pro>, which had been registered to host a site reproducing its trademarks and logos and offering a downloadable application called “GBWhatsapp Pro.”

These arbitral procedures are notably efficient and swift (the UDRP procedure initiated by AFNIC enabled the institution to obtain the transfer of the disputed domain name within a month and a half). However, they remain costly for legitimate rights holders, who must bear the USD 1,500 fee per UDRP complaint, while fraudsters can easily register new domain names anonymously with various registrars.

An adequate response to the phenomenon of cybersquatting — a key step in many fraud and phishing attempts — can only be achieved through a modernization of the legislative framework.

## **The Comité des Champs-Élysées fails to obtain copyright protection for the avenue's Christmas lights but succeeds on grounds of unfair competition**

*Paris Court of appeal, 6 February 2026, No. 24/12625*

The Comité des Champs-Élysées, an association responsible for promoting and enhancing the image of the Parisian avenue and its businesses, organizes annual Christmas lighting displays. It accused a well-known chocolate manufacturer of reusing images reproducing its "Scintillance" lighting campaign (held in 2014 and 2017) in audiovisual advertisements.

In particular, the Comité argued that the defendant had incorporated all the protectable elements of its lighting design into its commercial: the arrangement of light effects enveloping each tree individually from bottom to top, the positioning of the light garlands, the custom layout of LEDs forming bevel-shaped light curtains, and so on.



*Image of the lighting installation over which copyright was claimed*

At first instance, the Comité succeeded in convincing the court that this overall scenic composition was protectable under copyright, but it failed to establish infringement. The court noted that the fleeting appearance of a few images did not reproduce the work as a whole, nor its "fairy-like sparkle and festive enthusiasm."

On appeal, the Comité limited its claims to parasitism (unfair competition).

First, the claimant demonstrated recurring investments in organizing the festivities (contributions from association members, partnerships and sponsorships, royalties collected from prestigious companies). As a result, the court found that there was indeed "*an individualized economic value attached to the avenue's illuminations, for which the Comité is responsible, and which enjoy significant notoriety.*"

Second, the judges acknowledged that the disputed images were not identical reproductions of the avenue, since "*the image generated in the contested video, produced through matte-painting techniques, is computer-generated and does not appear to come from real footage.*" However, the contested image "*nevertheless shows light effects in the trees very similar to those of the Champs-Élysées illuminations, with ascending and vertical garlands.*" In this respect, the "high realism" of the animated sequence — through lighting effects and the depiction of passers-by near kiosks — was deemed likely to evoke, in the viewer's mind, the annual lighting campaign. The defendant had therefore improperly taken advantage of the Comité's efforts for its own advertising campaign.

## **An employee cannot rely on their data-access right to claim an entire copy of their email account and related files**

*Paris Court of appeal, 18 December 2025, No. 25/04270*

*French Cour de cassation, Labor Chamber., 18 June 2025, No. 23-19.022*

*CJEU, 4 May 2023, No. C-487/21*

Employee–employer disputes arising from dismissals increasingly involve requests based on the employee’s right of access to personal data processed by the employer, as provided for in Article 15 of the GDPR. The purpose of such a request is, in principle, to enable the data subject to verify the lawfulness of the processing in light of the principles set out in the Regulation (for example, data minimization or documentation of processing purposes), as recalled in Recital 63 of the GDPR.

In an employment relationship, data directly or indirectly relating to an employee may concern several thousand documents, foremost among them the emails exchanged via the employee’s professional mailbox. This significant volume of data can pose a genuine technical and logistical challenge for the employer and the IT staff tasked with extracting, sorting and communicating the relevant documents — especially since many of these files may contain personal data of third parties (other employees, business partners, clients, etc.).

On 18 June 2025, the French Cour de cassation ruled in favour of the employee, holding that “*emails sent or received by the employee using their professional email account constitute personal data within the meaning of Article 4 of the GDPR,*” such that the employee “*has the right to access these emails, and the employer must provide both the metadata (timestamps, recipients, etc.) and their content, unless disclosure would adversely affect the rights and freedoms of others.*”

The Court of Justice of the European Union had, for its part, adopted a pragmatic approach in a judgment of 4 May 2023 regarding the form of communication. It held that the employer is not required to provide full copies of all documents, but rather all relevant information they contain with respect to the processing of personal data. Thus, the employer may validly provide extracts, provided they include the elements necessary for the exercise of the right of access.

In a dispute involving an employee hired under an open-ended contract with an annual working-days package of 215 days, who had been summoned to a pre-dismissal meeting, the employee filed a discovery request through interim proceedings before the labor court (conseil de prud’hommes) under Article 145 of the French Code of Civil Procedure. He argued that his request to obtain “*by post, the communication of his personal data, including his professional email inbox and the folders stored on his computer’s hard drive and on the remote desktop, respectively entitled ‘private and personal’ and ‘private and personal space’*” had not been satisfied.

The Paris Court of Appeal rejected the request, holding that “*the purpose of the [right of access] is not to obtain a copy of the professional electronic correspondence sent or received by the employee in the course of their activity — correspondence of which the employee, by definition, had full knowledge — and which contains, unless proven otherwise, only their identification (here, Mr. [K]’s email address and name) as personal data. [...] The purpose of the right of access under Article 15 GDPR is to enable the data subject to verify the accuracy of the data and, where necessary, to have them rectified or erased.*”

This rigorous position appears justified in the present case, as the employer demonstrated that it had provided copies of numerous documents containing the employee’s personal data: “*degree certificate, job offer, CV, renewal of the trial period, occupational health certificate, health insurance registration, pre-employment declaration, employment contract, collective bargaining agreement enrolment form, IBAN, health insurance certificate, annual performance review and managerial working-time review.*” It follows implicitly that the employer had already responded at least partially to the access request.

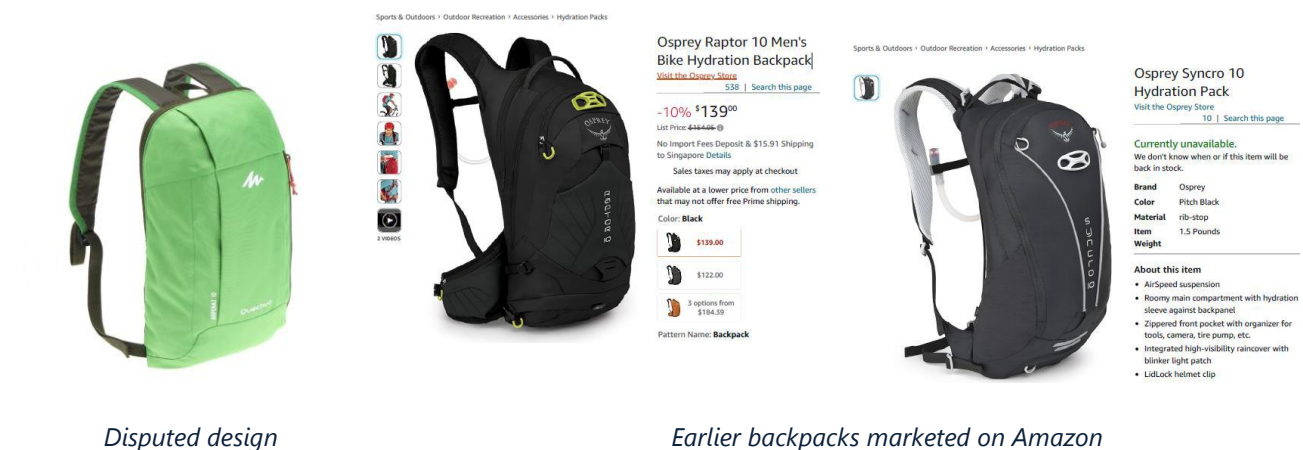
## Identifying reliable prior disclosures: the challenge of proving the publication of earlier designs on the Internet

*EUIPO, 5 February 2026, No. I 125 597*

Although the notion of "prior art" is common to all areas of intellectual property, it is particularly complex to assess in copyright and design law, given the difficulty of systematically proving with certainty that a work, object or publication was made available to the public on a specific date. While a registered industrial property right has a certain and verifiable date of disclosure, the same cannot be said of a creation that, although completed, may only have been shown to a limited number of individuals or published on a website with an uncertain history.

In design law, prior disclosure has an additional specificity: *"a design shall not be deemed to have been disclosed if it could not reasonably have become known, in the normal course of business, to the circles specialized in the sector concerned operating within the European Union before the date of filing of the application for registration or the date of priority claimed"* (Article L. 511-6 of the French Intellectual Property Code).

A decision issued by an EUIPO Cancellation Division on 5 February 2026 addressed the issue of establishing certain disclosure of backpack designs offered on the Amazon platform, which had been cited as prior art in support of an application for invalidity of a Decathlon design. The key issue was therefore to demonstrate that the product listings containing these visuals pre-dated the filing of the contested design.



Regarding online publications, the Cancellation Division held that *"evidence originating from the internet must contain all the information necessary to establish that the design invoked has been disclosed to the public. In particular, it must indicate the date of publication (or any other date on which the design became accessible to the public), a clear illustration of the earlier design invoked, and the source from which the evidence originates. All this information must appear in the same piece of evidence, without the need to carry out additional online searches."*

Thus, an object of prior art is deemed disclosed online if the webpage contains all information relating to the visual of the object, the date it was made available, and the precise source of the website, without requiring further verification.

In this case, the Cancellation Division found that these criteria were satisfied for the Amazon product listings. However, when assessing the overall impression, the examiner concluded that the contested design presented sufficient differences, from the perspective of the informed user, compared with the various prior designs cited. The Decathlon design was therefore upheld as valid.

# FIDAL

AVOCATS

Fidal is the largest independent business law firm in France.

As strategic partners to companies, institutions, and organizations, we are committed to making law a driver of performance and growth—both in France and internationally. Our professionals are not only experts in their fields but also take a cross-disciplinary approach. They speak the same language as our clients and understand their challenges. We actively promote the sharing of knowledge and experience. This is how we provide our clients—regardless of their size, industry, geographic location, or the issues they bring to us—with dedicated, insightful, and well-informed advice. Practical guidance that safeguards their interests and actively supports their strategic and commercial development.

More on [fidal.com](https://www.fidal.com)

Follow us on social networks   

[contact@fidal.com](mailto:contact@fidal.com)