

ARGENTINA

Patent Regulation

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TITLE I GENERAL PROVISIONS

SECTION 1

All rights and obligations recognized by the application of the Law, shall be equally recognized to foreign natural or legal persons having their legal domicile or constituting special domicile in the Republic of Argentina, under the terms and within the scope provided for by Laws Nos. 17.011 and 24.425.

SECTION 2

The grant of patents of invention and certificates of utility models shall be carried out in accordance with the provisions and procedures established in this Regulation.

SECTION 3 Not regulated

TITLE II PATENTS

CHAPTER I PATENTABILITY

SECTION 4

To obtain a patent of invention, an application, as referred to in Section 12 of the Law and other provisions of this Regulation, shall be filed with the NATIONAL PATENT OFFICE or with the provincial delegations therefor authorized by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY.

SECTION 5

Should the inventor have disclosed his invention within the year previous to the date of filing of his application, he shall declare this in writing, and jointly with the patent application he shall file:

- a) a sample or copy of the means of communication by which the invention was disclosed, if it were a graphic or electronic means.
- b) a mention of the means and its geographical location, of the disclosure, and of the date on which it was disclosed, if it were an audiovisual means.
- c) a reliable record of the inventor's or the applicant's participation in the national or international exhibition where the invention was disclosed, its date and the scope of disclosure.

Applicant's declaration shall be considered as an affidavit, and in case of falsehood, he shall forfeit the right to obtain the letters patent or the certificate of utility model.

SECTION 6

Plants, animals, and essentially biological processes for their reproduction shall not be considered as patentable matter.

SECTION 7

The NATIONAL EXECUTIVE POWER shall be entitled to prohibit the manufacture and marketing of inventions, the commercial exploitation of which within its territory must be necessarily forbidden in order to protect public order or morality, the health or life of people or animals, to preserve plants or prevent serious damages to the environment.

CHAPTER II RIGHT TO THE PATENT

SECTION 8

Applicant may mention the name of the inventor or inventors in his application, and request its inclusion in the publication of the patent application, in the industrial property title to be granted and in the publication of the patent of invention or utility model.

The patentee who in any way becomes aware of the importation of goods infringing the rights granted to him by the Law shall be entitled to bring the administrative or judicial actions that may legally correspond.

SECTION 9

The inventor or inventors who may have assigned their rights, shall be entitled to appear at any moment during prosecution and request the inclusion of their names in the corresponding title after having proved their capacity as such. A notice on such petition shall be duly served upon the assignee, who shall answer it within 30 calendar days. In case of opposition, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall make a decision within 30 calendar days calculated as from the answer to the notice or from the submission of the evidence required for the clarification of the facts involved.

SECTION 10

It will be understood that the right to apply for a patent belongs to the employer, when the performance of inventive activities has been established as a total or partial purpose of the employee's duties. For the purposes of the second paragraph, subsection b), Section 10 of the Law, it shall only be understood that the development of the invention has been predominantly influenced by the knowledge acquired within the company or by the use of facilities provided by the latter, when the invention concerns the employer's activities or is related to the specific tasks being or having been performed by the inventor in the service of said employer.

Once an invention is made under the conditions established in the second paragraph, subsection b), Section 10 of the Law, if the employer fails to exercise his right to opt within the term established in the last paragraph of the same subsection, the right of ownership to the patent shall correspond to the inventor-employee.

Should the invention have been made by an employee under the conditions set forth in the second paragraph, subsection b), Section 10 of the Law and before the Letters Patent is granted, the inventor may file a founded written petition under sealed envelope with the NATIONAL PATENT OFFICE or with the provincial delegations authorized by the NATIONAL INSTITUTE

OF INDUSTRIAL PROPERTY, alleging his ownership rights thereto. In this event, the parties shall be notified by the Commissioner of Patents in order that they file their pertinent allegations in writing within an unextendible term of 15 days as from respective notifications. Within 30 days after the above mentioned petitions, or the submission of the evidence offered, as the case may be, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall issue a duly founded decision determining who is entitled to apply for the patent. Such decision shall be notified to both parties through a reliable means.

In case of disagreement between the employer and his employee on the amount of supplementary remuneration or monetary compensation as provided by the first paragraph of subsection b) and in subsection c) of Section 10 of the Law, respectively, either of them may at any time request the intervention of the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY for the settlement of their dispute, by filing duly founded allegations. Notice of such a petition shall be served upon the other party for 10 days from such notification. Within 20 days after the answer to the notification or the submission of the evidence offered, as applicable, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall issue a duly founded resolution establishing the supplementary remuneration or monetary compensation which, at its discretion, is equitable. Such a resolution shall be duly notified to both parties through a reliable means.

The decisions of the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY as referred to in the two preceding paragraphs, may be appealed to a Federal Court of Justice in Civil and Commercial Matters with territorial jurisdiction over the domicile of the work place, within 20 business days as from such notice. The appeals shall have no staying effect.

SECTION 11 Not regulated

CHAPTER III GRANT OF PATENT

SECTION 12

In order to obtain a patent, applicant shall, within the terms in each case specified in the Law or in the instant Regulation, submit the following information and documentation:

a) A patent application including the following data:

- 1) a statement by which a patent of invention is formally requested;
- 2) full name of the applicant or applicants;
- 3) identity document number and nationality of the applicant or applicants,

- or registration data if it were a legal person;
- 4) domicile of choice of the applicant or applicants;
 - 5) legal address of the applicant or applicants;
 - 6) full name of the inventor or inventors, if applicable;
 - 7) domicile of choice of the inventor or inventors, if applicable;
 - 8) title of the invention;
 - 9) number of patent (or patent application) to which the application being filed is additional (if applicable);
 - 10) number of the patent application of which the application being filed is divisional (if applicable);
 - 11) number of application for a certificate of utility model the conversion of which into a patent application is being requested (if applicable) or vice-versa;
 - 12) when the application is filed under Law 17.011 (PARIS CONVENTION), data on the priority or priorities being claimed in the patent application (country, number and date of filing of the foreign patent application or applications);
 - 13) full name and address of the institution where the microorganism has been deposited, date on which it was deposited, and registration number assigned to the microorganism by the depositary institution, when the patent application refers to a microorganism;
 - 14) full name of the person or of the industrial property agent authorized to prosecute the patent application;
 - 15) number of identity document of the authorized person, or registration number of the authorized industrial property agent, or of the attorney empowered by the applicant;
 - 16) signature of the person filing the application.

b) A technical description of the invention, headed by the patent title, coincident with the application title, and containing:

- 1) a description of the technical field to which the invention pertains;
- 2) a description of the state of the art in said field, as known by the inventor, preferably mentioning the documents where it is disclosed;
- 3) a detailed and full description of the invention, emphasizing its advantages over the known state of the art, understandable by a person skilled in the art;
- 4) a brief description of the figures included in the drawings, if any.

c) One or more claims.

d) The technical drawings necessary to understand the invention referred to in the technical description.

- e) An abstract of the description of the invention.
- f) Reproductions of drawings at reduced scale to serve for the publication of the application.
- g) Certificate of deposit of the microorganism issued by the depositary institution, when applicable.
- h) Receipt of payment of the application filing fees.
- i) Certified copies of the priority or priorities claimed in the application.

SECTION 13

The priority date referred to in Section 13 of the Law shall be determined as established by Law No. 17.011.

SECTION 14 Not regulated

SECTION 15

When a patent application is jointly filed by two or more persons, it will be presumed that they are entitled to the right in equal parts, except when in the application it is stated otherwise.

SECTION 16 Not regulated

SECTION 17

When the patent application comprises more than one invention, it shall be divided before grant. For such purpose, the NATIONAL PATENT OFFICE shall notify applicant that he must request such division within 30 days after notification, otherwise the application shall be held abandoned.

SECTION 18 Not regulated

SECTION 19

As from the date of filing of the patent application and for 90 days afterwards, applicant may add supplements, corrections, and amendments, provided that they do not imply an extension of the object thereof. After said term, only the elimination of deficiencies found by the examiner shall be authorized. The new embodiments that might be added shall be complementary for a better understanding of the invention. No right can derive from supplements, corrections or amendments which imply an extension of the original application.

SECTION 20

When the object of a patent application is a microorganism or when carrying it out requires an unknown or publicly unavailable microorganism, applicant shall deposit the strain at an institution authorized therefor and recognized by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY. This obligation shall be deemed as satisfied when the microorganism has been deposited as from the date of filing of the application or before such date.

The NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall recognize as entitled to receive deposits of microorganisms, pursuant to Section 20 of the Law, those institutions recognized by the WORLD INTELLECTUAL PROPERTY ORGANIZATION or those complying with the following requirements:

- a) are of a permanent character;
- b) are not under the control of depositors;
- c) avail themselves of suitable personnel and facilities to verify the pertinence of deposits and guarantee their storage and conservation without risk of contamination;
- d) provide the necessary safety measures to minimize the risk of loss of the deposited material.

At any moment, as from the date of publication of the patent application, the public shall be able to obtain samples of the microorganism from the depositary institution under the ordinary conditions established for such operation.

SECTION 21 Not regulated

SECTION 22

The claim or claims shall contain:

- a) a preamble or introduction beginning with the same title as that given to the invention, afterwards describing all the aspects of the invention which are known from the nearest state of the art.
- b) a characterizing part citing the elements which establish the novelty of the invention and which are necessary and essential to carry it out, serving to define what is desired to be protected.
- c) if further clarification and comprehension of the invention is required, the main claim, which is the only independent one, may be followed by one or several claims referring back to the claim on which they depend and specifying the additional features they intend to protect. The same

procedure must be followed when the main claim is followed by one or several claims relating to particular features or embodiments of the invention.

SECTION 23 Not regulated

SECTION 24

Once all the documentation specified in Section 19 of the Law is received, the Commissioner of Patents shall order that a preliminary formal examination be carried out within a term of 20 days.

The application shall be rejected forthwith if applicant, within the term of 180 days after being notified, does not overcome the deficiencies pointed out by the NATIONAL PATENT OFFICE in its preliminary examination. Should the deficiency refer exclusively to the foreign priority, prosecution of the application shall continue, but it will be considered as if the priority had never been claimed. The certificates of applications that are resolved, shall be issued making it clear that they are granted without prejudice to the priority right granted by Law No. 17.011, unless the interested party requests the stay of prosecution until the priority term contemplated shall have elapsed. The request for the stay of prosecution shall be made upon filing of application.

SECTION 25 Not regulated

SECTION 26

The publication of the patent application under prosecution shall contain:

- a) application number;
- b) date of filing of the application;
- c) number/s of the priority or priorities;
- d) date/s of the priority or priorities;
- e) country or countries of the priority or priorities;
- f) full name and domicile of applicant or applicants;
- g) full name and domicile of the inventor or inventors (if applicable);
- h) registration number of the authorized industrial property agent (if applicable);
- i) title of the invention;
- j) abstract of the invention;
- k) the most representative drawing of the invention, if any.

SECTION 27

I. No substantive examination shall be carried out if the preliminary examination has not been made and approved.

II. Once the filing formalities have been fulfilled, applicant may request for the substantive examination. The Commissioner of Patents shall, within the subsequent 15 days, assign the application to an examiner. The substantive examination shall be carried out within 180 days after the payment of the fee, and shall include the following steps:

a) Background search. To the extent the examiner deems it reasonable and feasible, he shall endeavour to identify the documents necessary to determine whether the invention is new and whether it implies inventive activity. His search shall embrace all technical sectors that may deal with elements related to the invention, and he shall consult the following documentation:

- 1) documents of national patents (granted patents and utility models and applications for patents and utility models under prosecution);
- 2) applications for patents already published, and patents from other countries;
- 3) technical literature different from that mentioned in the two preceding paragraphs, that might be pertinent in the search.

b) Examination. The examiner shall carry out his search up to the extent he considers necessary, taking into account the results of the preliminary examination and of the background search, to determine if the application fully complies with the requirements of the Law and of this Regulation.

III. Should the examiner consider it necessary, he shall require:

a) That applicant submit, within a term of 90 calendar days as from the notice of such requirement, a copy of the substantive examination carried out on the same invention by foreign patent offices, if available, pursuant to Section 28 of the Law.

b) Specific reports related to the subject matter of the invention, from researchers working at Universities or scientific or technological research Institutes.

When the collaboration indicated in subsection b) is requested, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall recognize and pay the professional fees corresponding to the category of Senior Researcher of the NATIONAL COUNCIL OF SCIENTIFIC AND TECHNICAL RESEARCH (CONICET) or

of an equivalent institution, on the basis of an estimation of time assignment previously approved by the Commissioner of Patents.

IV. If applicant considers it pertinent, he may request the NATIONAL PATENT OFFICE to authorize that the partial substantive examination be carried out at his own facilities with the purpose of verifying data in laboratories or production equipment. The Commissioner of Patents may accept or refuse the offer on the basis of what, at his discretion, may be necessary or advisable.

SECTION 28

Among his observations, the examiner shall include those submitted by third parties, based on the data appearing in the publication made pursuant to Section 28 of the Law on the grounds of lack of novelty, lack of industrial application, lack of inventive activity, or illegality of the subject matter of the application, unless they are manifestly unfounded and are so declared.

Within 60 calendar days after receiving the above mentioned notice, the applicant shall:

- a) Amend the application so as to adapt it to the legal and regulatory requirements, or
- b) Express his opinion on the observations, rebut them or submit the clarifications he considers pertinent or appropriate.
- c) Should the applicant fail to meet the requirements within the stipulated term, his application shall be considered withdrawn.

SECTION 29

When the objections raised are not satisfactorily overcome by the applicant, the examiner, after issuing a well-founded report, which shall be duly notified to applicant, may recommend the NATIONAL PATENT OFFICE to reject the application under the terms of Section 29 of the Law.

SECTION 30

If as a result of the substantive examination, the examiner determines that the invention complies with all legal and regulatory requirements authorizing the grant of a patent and, if applicable, that the objections raised have been satisfactorily overcome, within 10 days he shall submit a report containing his recommendation to the Commissioner of Patents, who shall take a decision within the subsequent 30 days.

Once the resolution by which the patent is granted or rejected is issued, due notice shall be served upon the applicant through a reliable means. In case of rejection, a term of 30 days shall start to run for filing a recourse or appeal under Section 72 of the Law.

The patents granted by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall be registered with the Registry of Granted Patents in correlative order, recording the number, title, patentee's full name, date and number of application, date of grant, and date of expiration. Such registration can be made by magnetic media, adopting all resources necessary to assure their conservation and unalterability.

SECTION 31 Not regulated

SECTION 32

The notice on the grant of the patent shall also be included in the book to be published by the INSTITUTE.

SECTIONS 33-34 Not regulated

CHAPTER IV DURATION AND EFFECTS OF THE PATENT

SECTION 35 Not regulated

SECTION 36

For the purposes established in subsection c) of Section 36 of the Law, the owner of a patent granted in the REPUBLIC OF ARGENTINA shall have the right to prevent third parties from carrying out without his consent acts of manufacture, use, offer for sale, or importation within the territory, of the product which is the subject matter of the patent, unless such product has been lawfully placed on the market of any country. It shall be understood that an imported product has been lawfully placed on the market when the licensee authorized to market it within the country shows that it has been placed on the market by the patentee in the country where it was acquired, or by a third party authorized to market it. The marketing of the imported product shall be subject to the provisions of Section 98 of the Law and of this Regulation.

CHAPTER V ASSIGNMENT OF RIGHTS AND CONTRACTUAL LICENSES

SECTION 37

Should an application for patent of invention be assigned, an application

bearing the names and domiciles of assignor and assignee shall be filed together with a certification of both parties' signatures. The assignee shall constitute a legal address in the FEDERAL CAPITAL.

The NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall create 2 registries, one for patents of invention, and another for certificates of utility models, where the assignments pursuant to Section 37 of the Law shall be registered.

The assignment of rights shall be effective against third parties as from the date thereof when the filing is made 10 business days after execution of the assignment. Otherwise, such assignment shall be effective against third parties only after the date of registration.

The patentee, as from the date the patent is granted, shall be entitled to file a written request with the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY for the inclusion of the patent in the Registry of Patents Available for Voluntary Licensing to be provided therefor by the INSTITUTE.

Such Registry may be consulted by any interested party who, if he so desires, shall negotiate with the patentee the conditions of the license to use the patent.

The NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall publish in the Bulletin of Patents of Invention and Certificates of Utility Models and make known by the means it considers advisable, the patents registered in the above mentioned Registry, mentioning the number, title, date of grant, and date of incorporation into such Registry.

SECTIONS 38-40 Not regulate

CHAPTER VI EXCEPTIONS TO THE RIGHTS GRANTED

SECTION 41

The MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES jointly with the MINISTRY OF HEALTH AND SOCIAL WELFARE or the MINISTRY OF DEFENSE, to the extent of the latter's competence, will be the competent authority to request the grant of limited exceptions of the rights granted by patents, under the terms and with the limitations established by Section 41 of the Law.

CHAPTER VII OTHER USES WITHOUT AUTHORIZATION BY THE PATENTEE

SECTION 42

Once the term established in Section 43 of the Law has elapsed, should the invention have not been exploited, except in cases of force majeure, or effective and serious preparations for the exploitation of the invention

being the subject matter of the patent have not been made, or when the exploitation of the patent has been interrupted for more than one year, then any person may request the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY for the grant of a compulsory license to manufacture and sell the patented product or for the use of the patented process. For such purpose, he shall show that he has attempted to obtain the grant of a voluntary license from the patentee, under reasonable commercial terms and conditions, and that such attempts have been unsuccessful after a term of 150 days, and that he is in technical and commercial conditions to supply the domestic market under reasonable commercial conditions.

The petition for license shall be handled by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY; it shall contain the grounds on which it is based and all pertinent evidence shall be offered therein. Notice of such petition shall be duly served on the patentee at his legal address as appearing in the corresponding file, for a term of 10 business days in order for him to reply and offer evidence. The NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY may reject the evidence submitted which it does not consider as pertinent, and any further evidence shall have to be produced within a term of 40 days. Once this term has elapsed, or after all evidence has been produced, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall take a duly founded decision granting or rejecting the application for compulsory license.

The decision made by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY granting or rejecting the compulsory license may be appealed to a Federal Court of Justice on Civil and Commercial Matters within 10 days after notice, without prejudice to the recourses established by Section 72 of the Law and in the National Law on Administrative Procedures and the Regulation thereof. The filing of a judicial recourse shall have no staying effects.

SECTION 43

The distribution and marketing to a sufficient degree so as to satisfy the needs of the domestic market under reasonable commercial conditions shall be considered as exploitation of a product.

The NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY, after hearing both parties, and if an agreement is not reached between them, shall determine a reasonable compensation to be received by the patentee, to be established according to the circumstances in each case, and taking into account the economic value of the authorization being granted, and the average royalties being paid within such commercial field of activities when similar license agreements between independent parties are executed.

The decisions made by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY within

the framework of this section, may be appealed pursuant to Section 42, last paragraph of this Regulation.

SECTION 44

The authority empowered by Law No. 22.262, or that replacing or substituting it, whether pursuant to law or at the request of either party, shall determine the existence of a supposed case of unfair competition, when so irregularly carried out as to constitute an abuse of a dominant position in the market, under the terms established by Section 44 of the Law and in other provisions in force of the Law for the Defense of Fair Competition, after having summoned the patentee in order that he may set out the reasons ensuing from his right, for a term of 20 days. Once the explanations and, if applicable, the evidence offered, have been produced, the above-mentioned authority shall determine whether the grant of compulsory licenses is pertinent, and shall give its opinion regarding the conditions in which they should be offered.

In this event, once the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY receives the above-mentioned files, it shall publish a notice in the Official Gazette, in the Bulletin of Patents, and in a newspaper distributed throughout the country, informing that it will examine the offers made by third parties interested in obtaining a compulsory license, and establishing a term of 30 days for such purpose. Once the application or applications are filed, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall make a decision granting or rejecting the compulsory license. This decision may be appealed pursuant to last paragraph of Section 42.

The decisions by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY on the pertinence of the grant and those concerning the grant itself or, as applicable, the rejection of compulsory licenses, shall be adopted within a term not exceeding 30 days.

SECTION 45

The NATIONAL EXECUTIVE POWER shall grant the compulsory licenses motivated by what is provided for in Section 45 of the Law, through the intervention of the MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY, and, when applicable, the MINISTRY OF HEALTH AND SOCIAL WELFARE and the MINISTRY OF DEFENSE, within the framework of the competences assigned to them by the Law of Ministries.

SECTION 46

The decisions by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY, made within the powers granted to it by Section 46 of the Law, may be appealed pursuant

to the last paragraph of Section 42 of this Regulation.

SECTION 47

The grant of compulsory licenses shall be considered according to the circumstances of each case, provided any of the grounds established by the Law have occurred. They shall be extended to the patents related to components and manufacturing processes which enable their exploitation when any of the grounds therefor established by the Law are present, and they shall be granted under the conditions established by Section 47 of the Law.

SECTIONS 48-49 Not regulated

SECTION 50

The NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall establish the procedure and the way of ascertaining the economic and technical capacity, pursuant to the rules in force issued by the competent authorities, to carry out an efficient exploitation of the patented invention, understood in terms of supply of the domestic market under reasonable commercial conditions.

CHAPTER VIII PATENTS OF ADDITION OR IMPROVEMENT

SECTION 51

The application for a compulsory license of a patent of addition shall be granted by the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY, through a founded decision, after the technical or economic importance of the improvement of the discovery or invention has been ascertained. The decisions made within the framework of this section may be appealed pursuant to the last paragraph of Section 42 of this Regulation.

SECTION 52 Not regulated

TITLE III ON UTILITY MODELS

SECTIONS 53-54 Not regulated

SECTION 55

It shall be understood that the novelty of the invention has not been lost when the applicant himself has made known or disclosed abroad the invention which is the subject matter of the utility model, within 6 months prior to the filing of the application in the REPUBLIC OF ARGENTINA.

SECTIONS 56-57 Not regulated

SECTION 58

The pertinent provisions of this Regulation concerning patents of invention shall be applied to the procedure regarding certificates of utility models.

TITLE IV LAPSING OF PATENTS AND UTILITY MODELS

SECTIONS 59-61 Not regulated

SECTION 62

The final decisions taken under the provisions of Title IV of the Law may be appealed pursuant to the last paragraph of Section 42 of this Regulation.

SECTIONS 63-66 Not regulated

TITLE V ADMINISTRATIVE PROCEDURES

CHAPTER I PROCEDURES

SECTIONS 67-69 Not regulated

SECTION 70

The administrative-technical information contained in the files of a patent application is secret, and the officers of the NATIONAL PATENT OFFICE and the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall not permit that such information be disclosed or used in any manner by unrelated third parties, or made publicly known. They shall also ensure that such information is not made available to those spheres of activity in which it is generally used.

Any person violating such secrecy shall be liable to the pertinent legal actions, in addition to their dismissal and payment of a fine if they are employees of the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY or of the Administration or Agency which, due to technical reasons, have necessity of participating, without prejudice to the provisions set forth in Sections 157, 172, and 173 of the Criminal Code of the Nation. The administrative inquest or judicial proceeding may be brought officially or at the request of interested party.

SECTION 71 Not regulated

CHAPTER II PETITIONS FOR RECONSIDERATION

SECTION 72

The filing of a petition for reconsideration as established by Section 72 of the Law, shall not authorize the filing of the other administrative or judicial recourses that might be pertinent by application of the provisions of the Law or of Law No. 19.549 and its Regulatory Decree 1759/72 (1991 Unified Text).

SECTIONS 73-74 Not regulated

**TITLE VI VIOLATION OF THE RIGHTS GRANTED BY THE PATENT AND THE UTILITY
MODEL CERTIFICATE**

SECTIONS 75-82 Not regulated

SECTION 83

The precautionary measures and the requirements for their application, as established by Section 83 of the Law, shall not exclude the adoption of other precautionary measures under the terms established in the substantive or procedural legislation applicable in each case.

SECTIONS 84-89 Not regulated

TITLE VII ON THE ORGANIZATION OF THE NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY

SECTION 90

The NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall be in charge of performing the activities incumbent on the State regarding Industrial Property matters.

SECTION 91

The structure of the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall be constituted by the following bodies:

1. Board of Directors
2. Internal Surveillance Committee (Auditor)
3. Honorary Advisory Committee
4. National Patent Office
5. Offices

The Board of Directors is the highest governing body, and it has the duties of management and control of the INSTITUTE's activities.

The Board of Directors shall consist of one President, one Vice-President, and one alternate member.

The President of the Board of Directors shall represent the INSTITUTE. In case of absence, he shall be replaced by the Vice-President.

The Surveillance Committee shall have the duties established by Title VI of Law No. 24.156 and its regulatory provisions.

SECTION 92

The duties of the Institute, in addition to those established by the Law, will be as follows:

- a) to carry out administrative duties related to the recognition and maintenance of the legal registers of the various aspects of industrial property, embracing the handling and resolution of applications and the conservation and publicity of documentation;
- b) to divulge, on a periodical basis, technological information which has been the subject of registration, without detriment of other kinds of publications it considers pertinent. For this purpose, it shall keep its own data bank connected to international data banks on the subject and to foreign industrial property offices;
- c) to propose the accession of the REPUBLIC OF ARGENTINA to those

international conventions not yet subscribed, and in general, to favour the development of international relationships in the field of industrial property;

d) to promote initiatives and carry out activities leading to a better knowledge and protection of industrial property both at national and international levels;

e) to keep direct relationships with national and international agencies and entities dealing with this subject;

f) to issue opinions on questions referred to industrial property as required by the authorities of the EXECUTIVE, LEGISLATIVE, and JUDICIAL POWERS OF THE NATION;

g) to fulfill any other duty that the legislation in force assigns thereto, or that in the future, may be assigned thereto on subjects within its competence.

SECTION 93

The duties of the Board of Directors, in addition to those established by the Law, will be:

a) to propose the policy to be followed by the Institute, and to establish the guidelines for its fulfillment;

b) to propose the estimated budget, and to carry out the annual settlement thereof;

c) to approve the Annual Report on the INSTITUTE's activities;

d) to submit to the NATIONAL EXECUTIVE POWER by means of the MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES, the proposals of accession of the REPUBLIC OF ARGENTINA to International Conventions related to industrial property;

e) to deliberate and, if applicable, to adopt decisions regarding subjects submitted for its consideration;

f) to create the NATIONAL AWARD TO INVENTION;

g) to call a meeting of the Advisory Committee at least once a month;

h) to issue all necessary resolutions relevant to its condition of supreme body of the INSTITUTE, especially those related to the performance of the duties established by Section 93 of the Law.

SECTION 94

The duties of the NATIONAL PATENT OFFICE will be:

a) to prosecute, examine and resolve applications for patents and utility models;

- b) to handle nullity and lapsing procedures, and to control the working of granted patents;
- c) to issue certificates and authorized copies of the documents contained in the files within its competence;
- d) to take due note of the assignment of granted patents, which shall be submitted by way of a public instrument, as well as of pending applications, for which a certification of assignor's and assignee's signatures shall be required;
- e) to give notice of decisions taken and of matters under prosecution pursuant to Law No. 19.549 and its Regulatory Decree No. 1759/72 (1991 Unified Text);
- f) to issue reports and to prepare statistics on the functioning, activities and performance of the office;
- g) to act jointly with the Department of Technological Information and with the Legal Counsel of the INSTITUTE to appropriately apply international conventions in the area.

SECTION 95 Not regulated

TITLE VIII FINAL AND TEMPORARY PROVISIONS

SECTION 96

The amount established for fines, fees, and annuities may be modified by resolution of the MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES.

SECTION 97

The term established in Section 35 of Law No. 24.481 shall be applicable only to those applications filed after the date on which the above Law comes into force.

SECTION 98

The authorization to make and market pharmaceutical products must be applied for to the MINISTRY OF HEALTH AND SOCIAL WELFARE, while that relating to agrochemicals must be applied for to the ARGENTINE INSTITUTE OF PLANT HEALTH AND QUALITY operating under the jurisdiction of the SECRETARIAT OF AGRICULTURE, FISHERY AND FOOD of the MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES.

SECTION 99 Not regulated

SECTION 100

No applications for patents on pharmaceutical products will be accepted when the first applications thereof in the country or abroad have been filed before January 1st, 1995, except in those cases where after this date applicants claim a priority date, as established by the Paris Convention. The first applications serving as the basis for the commencement of the prosecution in the Republic of Argentina shall in no case be dated before January 1st, 1994. The same criteria shall be followed in the cases of amendment or conversion of process patent applications into pharmaceutical product patent applications.

SECTION 101

I. As regards inventions of pharmaceutical products, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall implement the following procedure for the filing of patent applications:

- a) As from January 1st, 1995, patent applications will be received.
- b) As from January 1st, 1995, such applications shall be treated as the rest of those applications in other fields of technology insofar as patentability, priority and claims are concerned.

c) Once the transitional period established in Section 100 of the Law has elapsed, the patent shall be granted, if applicable, for a term of 20 years calculated from the date of filing of the application.

II. As from the date of expiry of the transitional period, whoever petitions for the limitation of the resources available to the owner of rights over protected subject matter, should have commenced the acts of exploitation, or should have made a significant investment with a view to commencing such acts before January 1st, 1995. Upon verification of such fact, the owner of the patent shall be entitled to receive the compensation established by Section 101, third paragraph of the Law. The authorization cannot be granted if the owner of the patent guarantees the full supply to the domestic market at the same actual prices. The provisions of this paragraph shall apply except when their amendment is necessary to fulfil decisions of the World Trade Organization which are binding upon the Republic of Argentina.

III. The application for an exclusive marketing right during the transitional period shall be filed with the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY, accompanied by the necessary elements to certify that:

- a) the product is the subject of a patent application filed with the agency;
- b) after January 1st, 1995, a patent application has been filed with the purpose of protecting the same product in another country member of the TRIP'S-GATT, verifying the coincidence between both applications;
- c) after January 1st, 1995, a patent for such product has been granted in that other country member of the TRIP'S-GATT;
- d) after January 1st, 1995, the approval for the marketing of the product in that other country member of the TRIP'S-GATT has been obtained.

Once the compliance with the above requirements has been verified, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall issue a resolution on the pertinence of the grant of exclusive marketing rights in the Republic of Argentina for a term of 5 years calculated as from the approval for marketing within the REPUBLIC OF ARGENTINA with the proviso that the permit shall expire before such term if prior to such expiration, the patent application filed with the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY is granted or rejected, or if the marketing authorization is revoked. The grant of exclusive marketing rights shall be subordinated to the authorization by the competent agencies, pursuant to Section 98 of this

Regulation.

SECTION 102

Patent applications filed abroad before the enactment of the Law, may be filed with the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY on a special form to be made up for such purpose and to be considered as an affidavit, under the terms of Section 102 of the Law and pursuant to Section 100 of this Regulation.

SECTIONS 103-104 Not regulated