

**BRAZIL**  
**Industrial Property Law**

Law No. 9.279, of May 14, 1996 as amended by Law 10.196 of February 14,  
2001

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## **PRELIMINARY PROVISIONS**

### **Art. 1.**

This Law regulates rights and obligations regarding industrial property.

### **Art. 2.**

The protection of industrial property rights, considering the social interest and the technological and economic development of this country, is afforded by means of:

- I. the granting of invention and utility model patents;
- II. the granting of a registration of an industrial design;
- III. the granting of a registration of a trademark;
- IV. the repression of false geographical indication; and
- V. the repression of unfair competition.

### **Art. 3.**

The provisions of this Law also apply to:

- I. applications for patents or for registrations originating from abroad and filed in this country by a party that enjoys protection under a treaty or convention in force in Brazil; and
- II. nationals of or persons domiciled in a country that assures Brazilians or persons domiciled in Brazil reciprocity of equal or equivalent rights.

### **Art. 4.**

The provisions of treaties in force in Brazil are equally applicable to natural and legal persons who are nationals of or domiciled in this country.

### **Art. 5.**

For legal effects, industrial property rights are deemed to be movable property.

## **Title I Patents**

### **CHAPTER I OWNERSHIP**

#### **Art. 6.**

It shall be assured to the author of an invention or a utility model the right to obtain a patent that guarantees his property, under the conditions established in this Law.

(1) In the absence of proof to the contrary, the applicant is presumed to be legitimately entitled to obtain the patent.

(2) A patent may be applied for in the author's own name, by the heirs or successors of the author, by the assign or by whomever the law or the employment or services contract determines to be the owner.

(3) In the case of an invention or utility model created jointly by two or more persons, the patent may be applied for by all or any of them, by means of naming and identifying the others, to safeguard the respective rights.

(4) The inventor shall be named and identified, and may request that his name not be disclosed.

#### **Art. 7.**

If two or more authors have created the same invention or utility model, acting independently of each other, the right to obtain the patent shall be assured to the one who proves the oldest filing date, regardless of the dates of invention or creation.

Sole Paragraph. The withdrawal of an earlier filing before it has produced any effect shall confer priority on the immediately subsequent filing.

### **CHAPTER II PATENTABILITY**

#### **Section I Patentable Inventions and Utility Models**

#### **Art. 8.**

An invention is patentable if it satisfies the requirements of novelty, inventive step, and industrial application.

#### **Art. 9.**

An object of practical use, or part thereof, is patentable as utility model if it is susceptible of industrial application, has a new form or arrangement, and involves an inventive act, that results in functioning improvement in its use or manufacture.

**Art. 10.**

The following are not considered to be inventions or utility models:

- I. discoveries, scientific theories, and mathematical methods;
- II. purely abstract conceptions;
- III. commercial, accounting, financial, educational, advertising, raffling, and inspection schemes, plans, principles or methods;
- IV. literary, architectural, artistic and scientific works, or any aesthetic creation;
- V. computer programs per se;
- VI. presentation of information;
- VII. rules of games;
- VIII. surgical techniques and methods, as well as therapeutic or diagnostic methods, for application to human or animal body; and
- IX. all or part of natural living beings and biological materials found in nature, even if isolated therefrom, including the genome or germoplasm of any natural living being, and the natural biological processes.

**Art. 11.**

An invention and a utility model are considered to be new if they are not part of the state of the art.

(1) The state of the art consists of everything that became accessible to the public prior to the filing date of the patent application, by means of a written or oral description, by use or by any other means, in Brazil or abroad, except as provided in Articles 12, 16, and 17.

(2) For the purposes of determining novelty, the entire content of an application filed in Brazil, and not yet published, shall be considered to be state of the art from the date of filing or of claimed priority, provided that it comes to be published, even subsequently.

(3) The provisions of the preceding Paragraph shall apply to an international patent application filed according to a treaty or convention in force in Brazil, provided that there is national processing.

**Art. 12.**

The disclosure of an invention or utility model shall not be considered to be state of the art if it occurred during the 12 (twelve) months preceding the date of filing or of priority of the patent application, if made:

- I. by the inventor;
- II. by the Instituto Nacional da Propriedade Industrial--INPI (National Institute of Industrial Property), by means of official publication of the patent application filed without the consent of the inventor, based on information obtained from him or as a consequence of actions taken

by him; or

III. by third parties, based on information obtained directly or indirectly from the inventor or as a consequence of actions taken by him.

Sole Paragraph. The INPI may require from the inventor a statement related to the disclosure, accompanied or not by proofs, under the conditions established in regulations.

**Art. 13.**

An invention is endowed with inventive step provided that, to a technician versed in the subject, it is not derived in an evident or obvious way from the state of the art.

**Art. 14.**

A utility model is endowed with inventive act provided that, to a technician versed in the subject, it is not derived in a common or ordinary way from the state of the art.

**Art. 15.**

An invention and a utility model are considered susceptible of industrial application when they can be used or produced in any kind of industry.

**Section II Priority**

**Art. 16.**

A patent application filed in a country that maintains an agreement with Brazil, or in an international organization, and that produces the effect of a national filing, shall be assured the right of priority, within the time limits established in the agreement, and the filing shall not be invalidated or prejudiced by events occurring within such time limits.

(1) The claim of priority shall be made at the time of filing, and may be supplemented within 60 (sixty) days by other priorities prior to the filing date in Brazil.

(2) The claim of priority shall be proven by a proper document from the country of origin, containing the number, date, title, specifications and, if applicable, claims and drawings, accompanied by a free translation of the filing certificate or equivalent document, containing identifying information on the application, for which content the applicant is solely responsible.

(3) If not submitted at the time of filing, the proofs must be submitted within 180 (one hundred and eighty) days of the date of filing.

(4) For international applications filed under a treaty in force in Brazil,

the translation referred to in Paragraph 2 must be submitted within a period of 60 (sixty) days of the date of entry into national processing.

(5) If an application filed in Brazil is faithfully reproduced in the document from the country of origin, a statement by the applicant about that shall be sufficient to replace the free translation.

(6) When priority is obtained by assignment, the corresponding document must be submitted within 180 (one hundred and eighty) days of the filing date or, if applicable, within 60 (sixty) days of the date of entry into national processing, and consular legalization in the country of origin shall not be required.

(7) Failure to provide proof within the time limits provided for in this Article shall result in the loss of priority.

(8) In the case of an application filed along with a claim of priority, the request for early publication must be accompanied of the proof of priority.

#### **Art. 17.**

An application for an invention or utility model patent originally filed in Brazil, without claiming priority and not yet published, shall assure the right of priority for the subsequent application on the same subject matter filed in Brazil by the same applicant or by successors, within a period of 1 (one) year.

(1) The priority shall be admitted only for the subject matter disclosed in the earlier application, and does not extend to any new subject matter that is introduced.

(2) An earlier application that is still pending shall be considered as definitively dismissed.

(3) A patent application originating from the division of an earlier application may not serve as the basis for claiming priority.

### **Section III Non-Patentable Inventions and Utility Models**

#### **Art. 18.**

The following are not patentable:

I. anything contrary to morals, standards of respectability and public security, order and health;

II. substances, materials, mixtures, elements or products of any kind, as well as the modification of their physical chemical properties and the relevant processes for obtainment or modification, when resulting from the transformation of the atomic nucleus; and

III. all or part of living beings, except transgenic microorganisms that

satisfy the three requirements of patentability--novelty, inventive step and industrial application--provided for in Article 8 and which are not mere discoveries.

Sole Paragraph. For the purposes of this Law, transgenic microorganisms are organisms, except for all or part of plants or animals, that express, by means of direct human intervention in their genetic composition, a characteristic normally not attainable by the species under natural conditions.

### **CHAPTER III PATENT APPLICATIONS**

#### **Section I Filing of Application**

##### **Art. 19.**

A patent application, in accordance with the conditions established by the INPI, shall contain:

- I. the request;
- II. the specifications;
- III. the claims;
- IV. drawings, if applicable;
- V. the abstract; and
- VI. proof of payment of the filing fee.

##### **Art. 20.**

Once the application has been submitted, it shall undergo a formal preliminary examination and, if found to be properly documented, shall be docketed, the date of submission shall be considered as the date of filing.

##### **Art. 21.**

An application that does not formally satisfy the provisions of Article 19, but that contains data relating to the object, to the applicant and to the inventor, may be submitted, against dated receipt, to the INPI, which shall stipulate the requirements to be satisfied, within a period of 30 (thirty) days, under penalty of having the documentation returned or the application dismissed.

Sole Paragraph. Upon satisfaction of the requirements, the filing shall be considered as having occurred on the date of the receipt.

## **Section II Conditions of the Application**

### **Art. 22.**

An invention patent application must refer to a single invention or group of inventions interrelated in such a way as to comprise a single inventive concept.

### **Art. 23.**

A utility model patent application must refer to a single principal model, which may include a plurality of distinct additional elements or constructive or configurative variants, provided that the technical-functional and corporeal unity of the object is maintained.

### **Art. 24.**

The specifications shall clearly and sufficiently describe the object, so as to permit its reproduction by a technician versed in the subject, and shall indicate, when applicable, the best way of doing it.

Sole Paragraph. In the case of biological material that is essential to the practical execution of the object of the application, which cannot be described in accordance with this Article and which is not accessible to the public, the specifications shall be supplemented by the deposit of the material with an institution authorized by the INPI or indicated in an international agreement.

### **Art. 25.**

The claims shall be substantiated in the specifications, characterizing the particulars of the application, and clearly and precisely defining the subject matter that is the object of the protection.

### **Art. 26.**

A patent application may be divided into two or more applications, ex officio or at the request of the applicant, up to the end of the examination, provided that the divided application:

- I. makes specific reference to the original application; and
- II. does not exceed the subject matter disclosed in the original application.

Sole Paragraph. The request for division not in accordance with the provisions of this Article shall be dismissed.

### **Art. 27.**

The divided applications shall bear the filing date of the original

application and have the benefit of priority thereof, if applicable.

**Art. 28.**

Each divided application shall be subject to payment of the corresponding fees.

**Art. 29.**

A patent application that has been withdrawn or abandoned must be published.

(1) The request for withdrawal shall be submitted within 16 (sixteen) months of the date of filing or of the oldest priority.

(2) The withdrawal of an earlier filing that has not produced any effect shall confer priority on the immediately subsequent filing.

**Section III Processing and Examination of the Application**

**Art. 30.**

A patent application shall be kept secret for 18 (eighteen) months from the date of filing or of the oldest priority, if any, after which it shall be published, except as provided for in Article 75.

(1) The publication of the application may be anticipated at the request of the applicant.

(2) The publication shall contain data identifying the patent application, and a copy of the specifications, claims, abstract and drawings shall remain available to the public at the INPI.

(3) In the case referred to in the Sole Paragraph of Article 24, the biological material shall become available to the public upon the publication referred to in this Article.

**Art. 31.**

After publication of the application and up to the end of the examination, interested parties may submit documents and data to assist the examination. Sole Paragraph. The examination shall not begin before 60 (sixty) days from the publication of the application.

**Art. 32.**

In order to better clarify or define a patent application, the applicant may make changes until the time of the request for examination, provided these are limited to the subject matter initially disclosed in the application.

**Art. 33.**

The examination of a patent application must be requested by the applicant or by some other interested party, within a period of 36 (thirty six) months of the date of filing, under penalty of having the application dismissed.

Sole Paragraph. A patent application may be reinstated, if the applicant so requests, within 60 (sixty) days of the date it was dismissed, upon payment of a specific fee, under penalty of having the application definitively dismissed.

**Art. 34.**

After the examination has been requested, the following must be submitted, within a period of 60 (sixty) days, whenever requested, under penalty of having the application dismissed:

- I. objections, search for prior art and results of examination for granting of a corresponding application in other countries, when priority is claimed;
- II. documents necessary to regularize the processing and examination of the application; and
- III. free translation of the proper document referred to in Paragraph 2 of Article 16, if it was replaced by the statement referred to in Paragraph 5 of the same Article.

**Art. 35.**

At the time of the technical examination, a report of search and an opinion shall be prepared with respect to:

- I. patentability of the application;
- II. appropriateness of the application given the nature claimed;
- III. reformulation or division of the application; or
- IV. technical requirements.

**Art. 36.**

When the opinion ascertains the non-patentability of the application or the incompatibility of the application to the nature claimed, or makes some demand, the applicant shall be notified to submit comments within a period of 90 (ninety) days.

(1) If there is no response to the demand, the application shall be definitively dismissed.

(2) If there is response to the demand, even if it has not been satisfied, or its formulation is contested, and whether or not comments on patentability or compatibility have been submitted, the examination shall be continued.

**Art. 37.**

Once the examination has been concluded, a decision shall be handed down, either approving or rejecting the patent application.

**CHAPTER IV GRANTING AND TERM OF THE PATENT**

**Section I Granting of the Patent**

**Art. 38.**

A patent shall be granted after the application is approved, and proof of payment of the corresponding fee has been furnished, by means of issuing the relevant patent certificate.

(1) The payment of the fee and its relevant proof of payment must be done within a period of 60 (sixty) days of approval.

(2) The fee provided for in this Article may also be paid and proven within 30 (thirty) days of the time limit referred to in the preceding Paragraph, independently of any notification, upon payment of a specific fee, under penalty of having the application definitively dismissed.

(3) A patent shall be deemed to have been granted on the date of publication of the relevant act.

**Art. 39.**

The patent certificate shall contain its number, title and nature, the name of the inventor, with due regard for the provisions of Paragraph 4 of Article 6, the identification and domicile of the titleholder, the term, the specifications, the claims, and the drawings, as well as the data regarding priority.

**Section II Term of the Patent**

**Art. 40.**

An invention patent shall remain in force for a period of 20 (twenty) years, and a utility model patent for a period of 15 (fifteen) years from the date of filing.

Sole Paragraph. The term shall not be less than 10 (ten) years for an invention patent and 7 (seven) years for a utility model patent, beginning on the date of granting, unless the INPI has been prevented from examining the merits of the application by a proven pending judicial dispute or for reasons of force majeure.

## CHAPTER V PROTECTION CONFERRED BY THE PATENT

### Section I Rights

#### Art. 41.

The scope of the protection conferred by the patent shall be determined by the content of the claims, and interpreted on the basis of the specifications and drawings.

#### Art. 42.

A patent confers on its titleholder the right to prevent a third party from, without his consent, producing, using, offering for sale, selling or importing for these purposes:

I. a product that is the object of the patent;

II. a process or a product directly obtained by a patented process.

(1) The patentholder is further assured the right to prevent third parties from contributing to the perpetration by others of the acts referred to in this Article.

(2) A process patent right, referred to in Item II, shall be deemed to have occurred when the possessor or owner does not prove, by a specific judicial ruling, that his product was obtained by a manufacturing process different than the one protected by the patent.

#### Art. 43.

The provisions of the previous Article do not apply:

I. to acts carried out by unauthorized third parties, privately and without commercial purposes, provided these acts do not prejudice the economic interests of the patentholder;

II. to acts carried out by unauthorized third parties for experimental purposes, in connection with scientific or technological studies or researches;

III. to the preparation of a medicine in accordance with a medical prescription for individual cases, carried out by a qualified professional, as well as to the medicine so prepared;

IV. to a product manufactured in accordance with a process or product patent that has been introduced onto the domestic market directly by the patentholder or with his consent;

V. to third parties who, in the case of patents related to living material, use the patented product, without economic intent, as an initial source of variation or propagation to obtain other products;

VI. to third parties who, in case of patents related to living material,

use, place in circulation, or market a patented product that has been legally introduced into commerce by the patentholder or the holder of a license, provided that the patented product is not used for commercial multiplication or propagation of the living material in question; and VII. to acts performed by non-authorized third parties, regarding patented inventions, which aim exclusively the production of information, data and test results directed to procure commerce registration, in Brazil or any other country, to allow the exploitation and commercialization of the patented product, after the termination of the terms provided in article 10.

**Art. 44.**

The patentholder is assured the right to obtain indemnification for improper exploitation of the object of his patent, including that which occurs between the date of publication of the application and the date of granting of the patent.

(1) If the transgressor obtained, by any means, knowledge of the content of the filed application prior to the publication, the period of improper exploitation, for purposes of indemnification, shall be calculated beginning with the date of the start of the exploitation.

(2) When the object of the patent application refers to biological material, deposited as provided in the Sole Paragraph of Article 24, the right to indemnification shall be recognized only when the biological material has become available to the public.

(3) The right to obtain indemnification for improper exploitation, including that related to the period prior to the granting of the patent, is restricted to the content of its object, as provided for in Article 41.

**Section II Prior User**

**Art. 45.**

A person who in good faith, prior to the filing or priority date of a patent application, was exploiting the object thereof in this country, shall be assured the right to continue the exploitation, without onus, in the same manner and under the same conditions as before.

(1) The right conferred under this Article may only be assigned together with the business or company, or part thereof that is directly related to the exploitation of the object of the patent, by transfer or leasing.

(2) The right referred to in this Article shall not be assured to a person who gained knowledge of the object of the patent through disclosure, in

accordance with Article 12, provided that the application has been filed within 1 (one) year of the disclosure.

## **CHAPTER VI NULLITY OF A PATENT**

### **Section I General Provisions**

#### **Art. 46.**

A patent granted contrary to the provisions of this Law is null.

#### **Art. 47.**

Nullity may not apply to all the claims, and the condition of partial nullity is the fact that the subsisting claims in themselves constitute patentable subject matter.

#### **Art. 48.**

Nullity of a patent shall produce effects from the filing date of the application.

#### **Art. 49.**

In the case of non-compliance with the provisions of Article 6, the inventor may, alternatively, demand, in judicial proceedings, adjudication of the patent.

### **Section II Administrative Nullity Proceedings**

#### **Art. 50.**

Nullity of a patent shall be administratively declared when:

- I. any of the legal requirements were not satisfied;
- II. the specifications and claims did not comply with the provisions of Articles 24 and 25, respectively;
- III. the object of the patent extends beyond the contents of the application filed originally; or
- IV. any of the essential formalities that are indispensable to granting has been omitted during the processing thereof.

#### **Art. 51.**

Nullity proceedings may be instituted either ex officio or at the request of any person having a legitimate interest, within a period of 6 (six) months of the granting of the patent.

Sole Paragraph. Nullity proceedings shall continue even if the patent

has been extinguished.

**Art. 52.**

The titleholder shall be notified to submit comments within a period of 60 (sixty) days.

**Art. 53.**

After the time limit established in the preceding Article has elapsed, whether or not comments were submitted, the INPI shall issue an opinion and notify the titleholder and the applicant to submit their comments within the common period of 60 (sixty) days.

**Art. 54.**

After the time limit established in the preceding Article has elapsed, even if no comments have been submitted, the case shall be decided by the President of the INPI, whereupon the administrative jurisdiction shall be ended.

**Art. 55.**

The provisions of this Section apply, where applicable, to certificates of addition.

**Section III Judicial Nullity Proceedings**

**Art. 56.**

Judicial nullity proceedings may be proposed, at any time during the term of the patent, either by the INPI or by any person having a legitimate interest.

- (1) Nullity of a patent may be argued at any time as a matter of defense.
- (2) The judge may, as a preventive or incidental measure, order the suspension of the effects of the patent, provided that the proper procedural requirements have been satisfied.

**Art. 57.**

Patent judicial nullity proceedings shall be filed within the Federal Court forum, and the INPI, when not the plaintiff, shall participate in them.

- (1) The time limit for a response by the defendant who is the patentholder shall be 60 (sixty) days.
- (2) Once the decision on the judicial nullity proceedings has become final, the INPI shall publish the entry thereof, so that third parties be informed.

## **CHAPTER VII ASSIGNMENT AND ENTRIES**

### **Art. 58.**

A patent application or a patent, the contents of both being indivisible, may be assigned in whole or in part.

### **Art. 59.**

The INPI shall make the following entries:

- I. assignment, stating full identification of the assignee;
- II. any limitation or onus that applies to the application or the patent;  
and
- III. changes in the name, headquarter, or address of the applicant or the titleholder.

### **Art. 60.**

Entries shall become effective with regard to third parties beginning on the date of their publication.

## **CHAPTER VIII LICENSES**

### **Section I Voluntary Licenses**

#### **Art. 61.**

The patentholder or the applicant may enter into a licensing contract for exploitation.

Sole Paragraph. The licensee may be invested by the titleholder with full powers to take action to defend the patent.

#### **Art. 62.**

The license contract must be recorded with the INPI so that it becomes effective regarding third parties.

(1) The recording shall become effective with regard to third parties beginning on the date of its publication.

(2) For the purposes of validating proof of use, the license contract shall not need to be recorded with the INPI.

#### **Art. 63.**

An improvement introduced in a licensed patent shall belong to the party that makes the improvement, and the other party is entitled to a preferential right to the licensing thereof.

## **Section II Offer of License**

### **Art. 64.**

The patentholder may ask the INPI to offer it with a view to its exploitation.

- (1) The INPI shall arrange for publication of the offer.
- (2) No voluntary license contract of an exclusive nature shall be recorded with the INPI unless the titleholder has desisted from the offer.
- (3) A patent that is under voluntary license on an exclusive basis may not be the object of an offer.
- (4) The titleholder may, at any time prior to the express acceptance of his terms by the interested party, withdraw the offer, and the provisions of Article 66 shall not apply.

### **Art. 65.**

In the absence of an agreement between the titleholder and the licensee, the parties may ask the INPI to arbitrate the remuneration.

- (1) For the purposes of this Article, the INPI shall observe the provisions of Paragraph 4 of the Article 73.
- (2) The remuneration may be revised after 1 (one) year has elapsed since it was established.

### **Art. 66.**

The patent subject to offer shall have the annual fee reduced to one-half during the period between the offer and the granting, by whatever means, of the first license.

### **Art. 67.**

The patentholder may request cancellation of a license if the licensee does not begin effective exploitation within 1 (one) year of the date of granting, if exploitation is interrupted for a period of more than 1 (one) year, or if the conditions for exploitation have not been satisfied.

## **Section III Compulsory License**

### **Art. 68.**

The titleholder shall be subject to having the patent licensed on a compulsory basis if he exercises his rights derived therefrom in an abusive manner, or by means thereof engages in abuse of economic power, proven pursuant to law in an administrative or judicial decision.

- (1) The following also shall occasion a compulsory license:

I. non-exploitation of the object of the patent within the Brazilian

territory for failure to manufacture or incomplete manufacture of the product, or also failure to make full use of the patented process, except cases where this is not economically feasible, when importation shall be permitted; or

II. commercialization that does not satisfy the needs of the market.

(2) A license may be requested only by a person having a legitimate interest and having technical and economic capacity to effectively exploit the object of the patent, that shall be destined predominantly for the domestic market, in which case the exception contained in Item I of the previous Paragraph shall be extinguished.

(3) In the case that a compulsory license is granted on the grounds of abuse of economic power, the licensee who proposes local manufacture shall be assured a period, limited to the provisions of Article 74, to import the object of the license, provided that it was introduced onto the market directly by the titleholder or with his consent.

(4) In the case of importation to exploit a patent and in the case of importation as provided for in the preceding Paragraph, third parties shall also be allowed to import a product manufactured according to a process or product patent, provided that it has been introduced onto the market by the titleholder or with his consent.

(5) The compulsory license that is the subject of Paragraph 1 shall only be required when 3 (three) years have elapsed since the patent was granted.

**Art. 69.**

A compulsory license shall not be granted if, on the date of the application, the titleholder:

I. justifies the non-use based on legitimate reasons;

II. proves that serious and effective preparations for exploitation have been made; or

III. justifies the failure to manufacture or to market on grounds of an obstacle of legal nature.

**Art. 70.**

The compulsory license shall also be granted when all the following circumstances apply:

I. there is a situation of dependency of one patent with regard to another;

II. the object of the dependent patent constitutes a substantial technical progress with regard to the earlier patent; and

III. the titleholder fails to reach agreement with the patentholder of the dependent patent on the exploitation of the earlier patent.

(1) For the purposes of this Article, a dependent patent is considered

to be a patent whose exploitation necessarily depends on the use of the object of an earlier patent.

(2) For purposes of this Article, a process patent may be considered dependent on the relevant product patent, and likewise, a product patent may be dependent on a process patent.

(3) The holder of the patent licensed pursuant to the provisions of this Article shall have the right to a crossed compulsory license on the dependent patent.

**Art. 71.**

In cases of national emergency or of public interest, as declared in an act of the Federal Executive Power, and provided the patentholder or his licensee does not fulfill such need, a temporary and non-exclusive compulsory license for exploiting the patent may be granted, ex officio, without prejudice to the rights of the relevant titleholder.

Sole Paragraph. The act of granting the license shall establish its term and the possibility of extension.

**Art. 72.**

Compulsory licenses shall always be granted on a non-exclusive basis, and sublicensing shall not be permitted.

**Art. 73.**

The application for a compulsory license shall be formulated upon indication of the conditions offered to the patentholder.

(1) After an application for a license has been submitted, the titleholder shall be notified to submit comments within a period of 60 (sixty) days, at the end of which, if the titleholder has not submitted comments, the proposal shall be deemed to have been accepted under the conditions offered.

(2) An applicant for a license who alleges abuse of patent rights or abuse of economic power must attach documentation that proves it.

(3) In the case that the compulsory license is applied for on grounds of failure to exploit, the patentholder shall prove the exploitation.

(4) If the application is contested, the INPI may conduct the necessary inquiries, including the establishment of a committee, which may include specialists who are not on the staff of that autarky, to arbitrate the remuneration to be paid to the titleholder.

(5) The agencies and entities of direct or indirect, federal, state, and municipal public administration shall furnish the INPI with information as requested for purposes of assisting in the arbitration of the remuneration.

(6) In the arbitration of the remuneration, the circumstances of each case shall be considered, and it shall consider, necessarily, the economic value of the license granted.

(7) After evidence has been gathered in the case, the INPI shall decide about the granting and the conditions of the compulsory license within a period of 60 (sixty) days.

(8) The appeal from the decision that granted a compulsory license shall not have suspensive effect.

**Art. 74.**

Unless in case of legitimate reasons, the licensee must begin the exploitation of the object of the patent within a period of 1 (one) year from the granting of the license, and an interruption for a same period of time shall be allowed.

(1) The titleholder may require the cancellation of the license when the provision of this Article is not observed.

(2) The licensee shall be invested with full powers to take action to defend the patent.

(3) After a compulsory license has been granted, the assignment of such license shall only be allowed together with the assignment, transfer or leasing of the part of the enterprise that exploits it.

**CHAPTER IX PATENT OF INTEREST TO NATIONAL DEFENSE**

**Art. 75.**

A patent application originating in Brazil and whose object is of national defense interest shall be processed as confidential and shall not be subject to the publications established in this Law.

(1) The INPI shall forward the application immediately to the competent agency of the Executive Power, which shall make a statement on its confidentiality within a period of 60 (sixty) days. If this period elapses without any statement of the competent agency, the application shall be normally processed.

(2) The filing in another country of a patent whose object has been deemed of national defense interest is prohibited, as is any disclosure thereof, unless express authorization from the competent agency.

(3) The exploitation and the assignment of the application or patent that is of national defense interest are conditioned upon prior authorization from the competent agency, and indemnification is assured whenever the rights of the applicant or titleholder are restricted.

## **CHAPTER X CERTIFICATE OF ADDITION OF INVENTION**

### **Art. 76.**

The applicant or the titleholder of an invention patent may require, upon payment of a specific fee, a certificate of addition in order to protect an improvement or development that has been introduced into the object of the invention, even if devoid of inventive step, provided the subject matter is included in the same inventive concept.

(1) When the principal application has already been published, the application for a certificate of addition shall be published immediately.

(2) The examination of an application for a certificate of addition shall comply with the provisions of Articles 30 through 37, except as provided in the preceding Paragraph.

(3) The application for a certificate of addition shall be denied if its object does not exhibit the same inventive concept.

(4) The applicant may, within the period provided for an appeal and by paying the applicable fees, require the conversion of the application for a certificate of addition into a patent application, thereby benefiting from the filing date of the application for a certificate.

### **Art. 77.**

The certificate of addition is an accessory of the patent, bears the final date of the term thereof, and accompanies it for all legal effects. Sole Paragraph. In nullity proceedings, the titleholder may require that the subject matter of the certificate of addition be analyzed in order to determine the possibility of its subsistence, without prejudice of the term of the patent.

## **CHAPTER XI EXTINGUISHMENT OF A PATENT**

### **Art. 78.**

A patent is extinguished:

I. on expiration of the term;

II. on renunciation by its titleholder, without prejudice to the rights of other parties;

III. on forfeiture;

IV. on failure to pay the annual fee, within the time limits stipulated in Paragraph 2 of Article 84, and in Article 87; and

V. on non-compliance with the provisions of Article 217.

Sole Paragraph. Once the patent has been extinguished, its object falls into the public domain.

**Art. 79.**

The renunciation shall only be accepted if it does not prejudice the rights of third parties.

**Art. 80.**

The patent shall be forfeited, ex officio or at the request by any party having a legitimate interest, if, after 2 (two) years have elapsed since the granting of the first compulsory license, that time period has not been sufficient to prevent or remedy the abuse or disuse, unless there are justifiable reasons.

(1) The patent shall be forfeited when, on the date of the request for forfeiture or ex officio institution of the relevant proceedings, exploitation has not yet begun.

(2) In forfeiture proceedings instituted upon request, the INPI may proceed if the applicant waives it.

**Art. 81.**

The titleholder shall be notified upon publication to submit comments, within a period of 60 (sixty) days, and the burden of proof as regards exploitation shall lie with him.

**Art. 82.**

The decision shall be issued within 60 (sixty) days from the end of the period mentioned in the preceding Article.

**Art. 83.**

The decision on forfeiture shall produce effects from the date of the request or of the publication of the ex officio institution of proceedings.

**CHAPTER XII ANNUAL FEE**

**Art. 84.**

The applicant and the patentholder are subject to payment of annual fee since the beginning of the third year after the filing date.

(1) Anticipated payment of the annual fee shall be regulated by the INPI.

(2) Payment shall be made within the first 3 (three) months of each annual period, but it may also be made within the following 6 (six) months, independently from any notification, upon payment of an additional fee.

**Art. 85.**

The provisions of the previous Article apply to international applications

filed under a treaty in force in Brazil, and the payment of the annual fees that fell due prior to the date of entry into the national processing shall be made within a period of 3 (three) months of that date.

**Art. 86.**

The failure to pay the annual fee, in accordance with provisions of Articles 84 and 85, shall result in the dismissal of the application or extinguishment of the patent.

**CHAPTER XIII RESTORATION**

**Art. 87.**

The patent application or the patent may be restored, if the applicant or titleholder so requests, within 3 (three) months from the notification of the dismissal of the application or the extinguishment of the patent, upon payment of a specific fee.

**CHAPTER XIV INVENTIONS AND UTILITY MODELS CREATED BY EMPLOYEES OR SERVICE PROVIDERS**

**Art. 88.**

The invention and the utility model belong exclusively to the employer when they result from an employment contract being performed in Brazil and that has research or the inventive step as its object, or if such results from the nature of the services for which the employee was hired.

(1) Except as otherwise stipulated by contract, the remuneration for the work to which this Article refers is limited to the agreed salary.

(2) In the absence of proof to the contrary, the invention or utility model on which a patent is applied for by the employee, up to 1 (one) year of the extinguishment of the employment relationship, is considered to have been developed during the term of the contract.

**Art. 89.**

The employer, the patentholder, may grant the employee, the author of the invention or improvement, a share in the economic gains resulting from the exploitation of the patent, by negotiating with the interested party or in accordance with the rules of the company.

Sole Paragraph. The share referred to in this Article does not incorporate, in any way, into the salary of the employee.

**Art. 90.**

The invention or the utility model developed by an employee shall belong exclusively to him, provided that it is unrelated to the employment contract and does not result from the use of resources, means, data, materials, facilities or equipment of the employer.

**Art. 91.**

The property of an invention or utility model shall be common, in equal parts, when it results from the personal contribution of the employee and resources, data, means, materials, facilities or equipment of the employer, in the absence of express contract provision to the contrary.

(1) When there is more than one employee, the portion that corresponds to them shall be divided equally among all of them, except as agreed to the contrary.

(2) The employer is guaranteed the exclusive right of license for exploitation, and the employee is assured the fair remuneration.

(3) In the absence of an agreement, the exploitation of the object of the patent must be started by the employer within a period of 1 (one) year of the date of granting, under penalty of the property of the patent being transferred as an exclusive right to the employee, except where there are legitimate reasons for the failure to exploit.

(4) In the event of an assignment, any of the co-titleholders, under the same conditions, may exercise the right of preference.

**Art. 92.**

The provisions of the preceding Articles apply, where applicable, to relationships between an autonomous worker or a trainee and the contracting company, and between contracting and contracted companies.

**Art. 93.**

The provisions of this Chapter apply, where applicable, to the direct, indirect and foundational, federal, state or municipal entities of the Public Administration.

Sole Paragraph. In the event that is the subject of Article 88, the inventor shall be assured, in the manner and under the conditions set forth in the statutes or internal regulations of the entity to which this Article refers, an award of part of the value of the benefits gained from the application of patent, as an incentive.

## **Title II Industrial Designs**

### **CHAPTER I OWNERSHIP**

#### **Art. 94.**

The author shall be assured the right to obtain registration of an industrial design that confers property on him, under conditions established in this Law.

Sole Paragraph. The provisions of Articles 6 and 7 apply to the registration of industrial designs, where applicable.

### **CHAPTER II REGISTRABILITY**

#### **Section I Registrable Industrial Designs**

#### **Art. 95.**

An industrial design is considered to be an ornamental plastic form of an object or an ornamental arrangement of lines and colors which may be applied to a product, providing a new and original visual result in its external configuration and that may serve as a model for industrial manufacture.

#### **Art. 96.**

The industrial design is considered as new when it is not comprised in the state of the art.

(1) The state of the art consists of everything made available to the public prior to the filing date of the application, in Brazil or abroad, by use or by any other means, without prejudice to the provisions of Paragraph 3 of this Article and of Article 99.

(2) For the sole purpose of determining novelty, the entire content of an application for a patent or for registration filed in Brazil, and not yet published, shall be considered to be included in the state of the art as from the date of filing, or of claimed priority, provided it comes to be published, even if subsequently.

(3) The industrial design shall not be considered to be included in the state of the art if disclosure occurred during the 180 (one hundred and eighty) days preceding the filing date of the application or of the claimed priority, if made in the situations outlined in Items I to III of Article 12.

**Art. 97.**

The industrial design is considered to be original when it results in a distinctive visual configuration, in relation to other prior objects. Sole Paragraph. The original visual result may be derived from the combination of known elements.

**Art. 98.**

No purely artistic work is considered to be an industrial design.

**Section II Priority**

**Art. 99.**

The provisions of Article 16, except for the time limit defined in Paragraph 3 of that Article, which shall be of 90 (ninety) days, apply to the application for registration, where applicable.

**Section III Non-Registrable Industrial Designs**

**Art. 100.**

It is not registrable as an industrial design:

I. anything contrary to morals and standards of respectability or that offends the honor or image of persons, or attempts freedom of conscience, belief, religious cult or ideas and feelings worthy of respect and veneration;

II. the common or ordinary necessary shape of the object or, yet, that shape which is essentially determined by technical or functional considerations.

**CHAPTER III APPLICATIONS FOR REGISTRATION**

**Section I Filing of Applications**

**Art. 101.**

An application for registration, under the conditions stipulated by the INPI, shall contain:

I. the request;

II. the specifications, if applicable;

III. the claims, if applicable;

IV. drawings or photographs;

V. field of application of the object; and

VI. proof of payment of the filing fee.

Sole Paragraph. The documents that comprise the application for registration shall be submitted in Portuguese language.

**Art. 102.**

Once the application have been submitted, it shall be subjected to a preliminary formal examination and, if found to be properly documented, shall be docketed, the date of submission being considered as the filing date.

**Art. 103.**

The application that does not formally meet the provisions of Article 101, but contains sufficient data related to the applicant, to the industrial design and to the author, may be submitted, against dated receipt, to the INPI, that shall establish the requirements to be satisfied, within 5 (five) days, under penalty of being considered non-existent.

Sole Paragraph. Once the requirements have been satisfied, the filing shall be considered as made on the date the application was submitted.

**Section II Conditions of Applications**

**Art. 104.**

The application for industrial design registration shall refer to a single object, of which a plurality of variations shall be permitted, provided that they are intended for the same purpose and all retain the same preponderant distinctive characteristic, each application limited to a maximum of 20 (twenty) variations.

Sole Paragraph. The design shall clearly and sufficiently represent the object and its variations, if any, in such a manner as to permit its reproduction by a technician versed in the subject.

**Art. 105.**

If secrecy is requested pursuant to Paragraph 1 of Article 106, the application may be withdrawn within 90 (ninety) days from the date of the filing.

Sole Paragraph. The withdrawal of an earlier filing without the production of any effects shall confer priority on the immediately subsequent filing.

**Section III Processing and Examination of the Applications**

**Art. 106.**

Once the application for an industrial design registration has been filed

and the provisions of Articles 100, 101 and 104 have been observed, it shall automatically be published and the registration shall be granted simultaneously, being issued the relevant certificate.

(1) At the request of the applicant, made at the time of the filing, an application may be kept secret for a period of 180 (one hundred and eighty) days from the filing date, after which it shall be processed.

(2) If the applicant benefits from the provisions of Article 99, the submission of the priority document for processing the application is to be waited.

(3) If the provisions of Articles 101 and 104 are not satisfied, a demand shall be drawn up and the applicant shall reply it within 60 (sixty) days, under penalty of having the application definitively dismissed.

(4) If the provisions of Article 100 are not satisfied, the application for registration shall be denied.

#### **CHAPTER IV GRANT AND TERM OF THE REGISTRATION**

##### **Art. 107.**

The certificate shall contain the number and the title, name of the author with due regard for provisions of Paragraph 4 of Article 6, the name, the nationality and the domicile of the titleholder, the term, the drawings, the data related to foreign priority, and, if any, the specifications and claims.

##### **Art. 108.**

The registration shall remain in force for a period of 10 (ten) years from the date of filing, being extendable for 3 (three) successive periods of 5 (five) years each.

(1) The request for extension shall be made during the last year of the term of the registration, accompanied by proof of payment of the relevant fee.

(2) If the request for extension has not been formulated until the final term of registration, the titleholder may do so within the following 180 (one hundred and eighty) days, against payment of an additional fee.

#### **CHAPTER V PROTECTION CONFERRED BY THE REGISTRATION**

##### **Art. 109.**

The property of an industrial design is acquired by a validly granted registration.

Sole Paragraph. The provisions of Article 42 and Items I, II and IV of

Article 43 apply to an industrial design registration, where applicable.

**Art. 110.**

A person who, in good faith, prior to the filing date or priority date of an application for registration was exploiting the object thereof in this country, shall be assured the right to continue the exploitation, without onus, in the same manner and under the same conditions as before.

(1) The right conferred under this Article may only be assigned together with the business or company, or part of thereof, that is directly related to the exploitation of the object of the registration, by transfer or leasing.

(2) The right that is subject of this Article shall not be assured to a person who gained knowledge of the object of the registration through disclosure under Paragraph 3 of Article 96, provided that the application was filed within a period of 6 (six) months from disclosure.

**CHAPTER VI EXAMINATION OF THE MERITS**

**Art. 111.**

The titleholder of an industrial design may request the examination of the object of registration, at any time during the term of the registration, in relation to novelty and originality aspects.

Sole Paragraph. The INPI shall issue an opinion on the merits which, if it concludes that at least one of the requirements defined in Articles 95 to 98 is absent, shall serve as grounds for ex officio institution of procedure for nullity of the registration.

**CHAPTER VII NULLITY OF REGISTRATION**

**Section I General Provisions**

**Art. 112.**

A registration granted contrary to the provisions of this Law is null.

(1) Nullity of the registration shall produce effects from the filing date of the application.

(2) In the event of non-compliance with the provisions of Article 94, the author may, alternatively, demand adjudication of the registration.

## **Section II Administrative Nullity Proceedings**

### **Art. 113.**

Nullity of a registration shall be administratively declared if it has been granted in violation to the provisions of Articles 94 to 98.

(1) Nullity proceedings may be instituted ex officio or at the request of any person having a legitimate interest, within a period of 5 (five) years from the date of granting of the registration, without prejudice of the case referred to in the Sole Paragraph of Article 111.

(2) The request or the ex officio institution of proceedings shall suspend the effects of the granting of the registration if submitted or published within 60 (sixty) days from the grant.

### **Art. 114.**

The titleholder shall be notified to submit his comments within a period of 60 (sixty) days from the date of publication.

### **Art. 115.**

After the time limit established in the preceding Article has elapsed, whether or not comments were submitted, the INPI shall issue an opinion and notify the titleholder and the applicant to submit their comments within the common period of 60 (sixty) days.

### **Art. 116.**

After the time limit established in the preceding Article has elapsed, even if no comments have been submitted, the case shall be decided by the President of the INPI, whereupon the administrative jurisdiction shall be ended.

### **Art. 117.**

Nullity proceedings shall continue even if the registration has been extinguished.

## **Section III Judicial Nullity Proceedings**

### **Art. 118.**

The provisions of Articles 56 and 57 shall apply to judicial nullity proceedings of an industrial design registration, where applicable.

## **CHAPTER VIII EXTINGUISHMENT OF THE REGISTRATION**

### **Art. 119.**

A registration shall be extinguished:

- I. on expiration of the term;
- II. on renunciation by its titleholder, without prejudice to the rights of third parties;
- III. on failure to pay the fee stipulated in Articles 108 and 120, or
- IV. on non-compliance with the provisions of Article 217.

## **CHAPTER IX FIVE-YEAR FEE**

### **Art. 120.**

The titleholder of a registration is subject to payment of a five-year fee since the second five-year period from the filing date.

(1) Payment of the second five-year period shall be made during the 5th (fifth) year of the term of the registration.

(2) Payment for all other five-year periods shall be made at the time of the request for extension referred to in Article 108.

(3) Payment of five-year fees may also be made within 6 (six) months following the period established in the preceding Paragraph, upon payment of an additional fee.

## **CHAPTER X FINAL PROVISIONS**

### **Art. 121.**

Provisions of Articles 58 to 63 apply, where applicable, to the subject matter covered by this Title, and the rights of the employee or of the service provider are governed by the provisions of Articles 88 to 93.

## **Title III Marks**

### **CHAPTER I REGISTRABILITY**

#### **Section I Signs Registrable as Marks**

##### **Art. 122.**

Any distinctive visually perceivable signs that are not included in legal prohibitions shall be eligible for registration as a mark.

##### **Art. 123.**

For the purposes of this Law, the following definitions apply:

I. product or service mark: one which is used to distinguish a product or service from another that is identical, similar, or alike, but of different origin;

II. certification mark: one that is used to attest to the conformity of a product or service with certain technical standards or specifications, particularly regarding its quality, nature, material used and methodology employed; and

III. collective mark: one that is used to identify products or services provided by members of a certain entity.

#### **Section II Signs Not Registrable as Marks**

##### **Art. 124.**

The following are not registrable as marks:

I. official, public, national, foreign or international escutcheons, coats of arms, medals, flags, emblems, badges and monuments, as well as the relevant designations, figures, or imitations;

II. letters, numerals and dates, standing alone, except when endowed with sufficiently distinctive form;

III. expressions, figures, drawings or any other signs that are contrary to morals and standards of respectability or that offend the honor or image of persons or attempt freedom of conscience, belief, religious cult or ideas and feelings worthy of respect and veneration;

IV. designations or initials of public entities or agencies, when registration is not required by the public entity or agency itself;

V. reproductions or imitations of a characteristic or differentiating element of a title of an establishment or a name of a company belonging to third parties, likely to cause confusion or association with such distinctive signs;

VI. signs of generic, necessary, common, ordinary or simply descriptive character, when related to the product or service to be distinguished, or those commonly employed to designate a characteristic of the product or service regarding its nature, nationality, weight, value, quality and time of production or rendering of the service, except when endowed with a sufficiently distinctive form;

VII. signs or expressions employed only as a means of advertising;

VIII. colors and their names, unless arranged or combined in a peculiar and distinctive manner;

IX. geographical indications, imitations thereof likely to cause confusion, or signs that may falsely induce a geographical indication;

X. signs that induce to a false indication regarding the origin, source, nature, quality or usefulness of the product or service to which the mark is applied;

XI. reproductions or imitations of an official seal normally used to guarantee a standard of any kind or nature;

XII. reproductions or imitations of a sign that has been registered as a collective or certification mark by a third party, with due regard to the provisions of Article 154;

XIII. names, awards, or symbol of a sporting, artistic, cultural, social, political, economic or technical event that is official or officially sanctioned, as well as an imitation likely to create confusion, unless authorized by the competent authority or entity that is promoting the event;

XIV. reproductions or imitations of titles, policies, coins, and paper currency of the Union, the States, the Federal District, the Territories, the Municipalities, or of a country;

XV. personal names or signatures thereof, family names and patronymics, or the image of third parties, except with the consent of the titleholder, his heirs or successors;

XVI. well-known pseudonyms or nicknames, individual or collective artistic names, except with the consent of the titleholder, his heirs or successors;

XVII. literary, artistic or scientific work, as well as the titles protected by copyright and likely to cause confusion or association, except with the consent of the author or titleholder;

XVIII. technical terms used in industry, science and art, that are related to the product or service to be distinguished;

XIX. reproductions or imitations, in whole or in part, even with an addition, of a mark registered by another party, to distinguish or certify an identical, similar, or alike product or service, likely to cause confusion or association with the other party's mark;

XX. duality of marks of a single titleholder for the same product or service, except when, in the case of marks of the same nature, they are endowed with a sufficiently distinctive form;

XXI. the necessary, common, or ordinary form of the product or packing, or also that one which cannot be dissociated from a technical effect;

XXII. an object that is protected by a third party industrial design registration; and

XXIII. signs that imitate or reproduce, wholly or in part, a mark of which the applicant could not be unaware because of his activity, and whose titleholder is headquartered or domiciled in national territory or in a country with which Brazil has an agreement or that assures reciprocity of treatment, if the mark is intended to distinguish an identical, similar or alike product or service likely to cause confusion or association with that other party's mark.

### **Section III Famous Marks**

#### **Art. 125.**

A mark that is registered in Brazil and considered to be famous shall be assured special protection in all branches of activity.

### **Section IV Well-Known Marks**

#### **Art. 126.**

The well-known mark within its branch of activity pursuant to Article 6bis(I) of the Paris Convention for Protection of Industrial Property enjoys special protection, regardless of whether it has already been filed or registered in Brazil.

(1) The protection that is the subject of this Article also applies to service marks.

(2) The INPI may ex officio deny a request for registration of a mark that wholly or partially reproduces or imitates a well-known mark.

## **CHAPTER II PRIORITY**

#### **Art. 127.**

The application for registration of a mark that has been filed in a country that maintains an agreement with Brazil or in an international organization, when such produces the effect of a national filing, shall be assured the right to priority, within the time limits established in the agreement, and the filing is neither invalidated nor prejudiced by events occurring

within those time limits.

(1) The claim of priority shall be made at the time of filing and may be supplemented within 60 (sixty) days with other priorities prior to the date of filing in Brazil.

(2) The claim of priority shall be proved by a proper document from the country of origin containing the number, the date, and the copy of the application or registration, accompanied by a free translation, for whose content the applicant shall be solely responsible.

(3) If not done at the time of the filing, the substantiation must occur within 4 (four) months of the filing, under penalty of forfeiture of the priority.

(4) In cases of priority obtained by transfer, the pertinent document must be submitted with the priority document itself.

### **CHAPTER III APPLICANTS FOR REGISTRATION**

#### **Art. 128.**

Natural or legal persons under public or private law may apply for the registration of a mark.

(1) Persons under private law may only apply for registration of a mark that relates to the activity in which they actually and lawfully engage, either directly or through companies they directly or indirectly control, declaring that condition on the application itself, under the penalties of law.

(2) Registration of a collective mark may be applied for by a legal person that represents the collectivity, which may engage in an activity other than that pursued by its members.

(3) Registration of a certification mark may only be applied for by a person who has no direct commercial or industrial interest in the product or service being certified.

(4) The claim of priority does not exempt the petition from the application of the provisions set forth in this Title.

### **CHAPTER IV RIGHTS OVER A MARK**

#### **Section I Acquisition**

#### **Art. 129.**

The property of a mark is acquired by means of registration, when validly granted pursuant to the provisions of this Law, and its exclusive use throughout the national territory is assured to the titleholder, with

due regard, as to collective and certification marks, to the provision in Articles 147 and 148.

(1) Every person who, in good faith on the priority or filing date, has been using an identical or similar mark in this country for at least 6 (six) months to distinguish or certify an identical, similar or alike product or service shall have the right of preference for the registration.

(2) The right of preference may only be assigned together with the business of the company, or part thereof, that has a direct relation with the use of the mark, by transfer or leasing.

## **Section II Protection Conferred by the Registration**

### **Art. 130.**

The titleholder of a mark or the applicant is further assured the right to:

- I. assign his registration or application for registration;
- II. license its use;
- III. safeguard its material integrity or reputation.

### **Art. 131.**

The protection that is the subject of this Law embraces the use of the mark on papers, printed matter, advertising, and documents related to the activities of the titleholder.

### **Art. 132.**

The titleholder of a mark may not:

- I. prevent merchants or distributors from using their own distinctive signs along with the mark of the product, in its promotion and commercialization;
- II. prevent manufacturers of accessories from using the mark to indicate the purpose of the product, provided that fair competition practices are followed;
- III. prevent the free circulation of the product placed on the domestic market by himself or by another with his consent, except as provided in Paragraphs 3 and 4 of Article 68; and
- IV. prevent the mention of the mark in a speech, scientific or literary work, or in any other publication, provided it is done without commercial connotation and without detriment to its distinctive character.

## **CHAPTER V TERM, ASSIGNMENT AND ENTRIES**

### **Section I Term**

#### **Art. 133.**

The registration of a mark shall remain in force for a period of 10 (ten) years from the date of granting of the registration, and the period may be extended for equal and successive periods.

(1) The application for extension shall be made during the last year of the term of the registration, accompanied by proof of payment of the relevant fee.

(2) If the request for extension is not made before the term of the registration, the titleholder may do so during the following 6 (six) months, by payment of an additional fee.

(3) Extension will not be granted if the provision in Article 128 is not observed.

### **Section II Assignment**

#### **Art. 134.**

The registration application and the registration may be assigned, provided the assignee satisfies the legal requirements for applying to register it.

#### **Art. 135.**

The assignment must comprehend all the registrations or applications, in the name of the assignor, for the same or similar marks, related to an identical, similar, or alike product or service; under penalty of having the registrations cancelled or the unassigned applications dismissed.

### **Section III Entries**

#### **Art. 136.**

The INPI shall make the following entries:

- I. of the assignment, containing the full identification of the assignee;
- II. of any limitation or onus that applies to the application or registration; and
- III. of changes in the name, headquarter or address of the applicant or titleholder.

**Art. 137.**

Entries shall become effective with regard to third parties beginning on the date of their publication.

**Art. 138.**

Any of the decisions may be appealed when:

- I. it denies entry of an assignment;
- II. it cancels the registration or dismisses the application, under the terms of Article 135.

**Section IV License of Use**

**Art. 139.**

The titleholder of a registration or the applicant for registration may enter into a license contract for use of the mark without prejudice to his rights to exercise effective control over the specifications, nature and quality of the relevant products or services.

Sole Paragraph. The licensee may be invested by the titleholder with full powers to take action to defend the mark, without prejudice to his own rights.

**Art. 140.**

The license contract must be recorded with the INPI in order to become effective with regard to third parties.

(1) The recording shall become effective with regard to third parties from the date of its publication.

(2) For purposes of validating proof of use, it shall not be necessary that the license contract be recorded with the INPI.

**Art. 141.**

A decision that denies the recording of a licensing contract may be appealed.

**CHAPTER VI LOSS OF RIGHTS**

**Art. 142.**

The registration of the mark shall be extinguished:

- I. on expiration of the term;
- II. on renunciation, which may be full or partial regarding the products or services indicated by the mark;
- III. on forfeiture; or
- IV. on non-compliance with the provisions of Article 217.

**Art. 143.**

A registration shall be forfeited upon request by a person having a legitimate interest if, after 5 (five) years have elapsed since granting, on the date of the request:

I. the use of the mark has not been initiated in Brazil; or  
II. the use of the mark has been interrupted for more than 5 (five) consecutive years, or if, in the same period of time, the mark has been used with a modification that entails alteration of its original distinctive character as appears on the registration certificate.

(1) Forfeiture will not occur if the titleholder justifies the failure to use the mark for legitimate reasons.

(2) The titleholder shall be notified to submit comments within a period of 60 (sixty) days, and the burden of proof, as regards use of the mark or justification of failure to use it for legitimate reasons, shall rest with him.

**Art. 144.**

The use of the mark must comprehend products or services listed on the certificate, under penalty of having the registration partially forfeited as regards products or services not similar or alike to those for which the mark is proven to have been used.

**Art. 145.**

Requests for forfeiture shall not be considered if the use of the mark was proven or failure to use it was justified in a prior proceeding requested less than 5 (five) years previously.

**Art. 146.**

A decision that declares or denies forfeiture may be appealed.

**CHAPTER VII COLLECTIVE AND CERTIFICATION MARKS**

**Art. 147.**

The application for registration of a collective mark shall contain regulations on utilization, that provide conditions and prohibitions on the use of the mark.

Sole Paragraph. The regulations on utilization, when not accompanying the application, must be docketed within 60 (sixty) days from the filing date, under the penalty of having the application definitively dismissed.

**Art. 148.**

The application of a registration of a certification mark shall contain:  
I. the characteristics of the product or service that is the object of certification; and

II. the control measures that will be adopted by the titleholder.

Sole Paragraph. If the documentation referred to in Items I and II of this Article is not submitted with the application, it must be docketed within a period of 60 (sixty) days, under the penalty of having the application definitively dismissed.

**Art. 149.**

The INPI must be notified of any change in the regulations on utilization, by means of docketed petition containing all the modified conditions, under penalty of not being considered.

**Art. 150.**

The use of the mark does not require a license, for which its authorization in the regulations on utilization is sufficient.

**Art. 151.**

In addition to the causes of extinguishment set forth in Article 142, the registration of a collective or certification mark is extinguished when:

I. the entity ceases to exist; or

II. the mark is used under conditions other than those stipulated in the regulations on utilization.

**Art. 152.**

Renunciation of the registration of a collective mark shall only be permitted when applied for in accordance with the social contract or statutes of the entity itself, or in accordance with the regulations for utilization.

**Art. 153.**

The forfeiture of the registration shall be declared if the collective mark is not used by more than one authorized person, with due regard for provisions of Articles 143 to 146.

**Art. 154.**

The collective and the certification marks that were once in use and whose registrations have been extinguished may not be registered in the name

of a third party until 5 (five) years have elapsed since the extinguishment of the registration.

#### **CHAPTER VIII FILING**

##### **Art. 155.**

The application must refer to a single distinctive sign and shall, subject to the conditions stipulated by the INPI, contain the following:

- I. the application;
- II. labels, if applicable; and
- III. proof of payment of the filing fee.

Sole Paragraph. The application and any documents accompanying it shall be submitted in the Portuguese language, and if any document is in foreign language, its free translation must be submitted at the time of filing or within the following sixty (60) days, under penalty of not having the document considered.

##### **Art. 156.**

When the application has been submitted, it shall be subject to a preliminary formal examination, and if found to be properly documented, it shall be docketed, and the filing date of the application shall be considered as the date of submission.

##### **Art. 157.**

Applications that do not formally comply with the provisions of Article 155, but which contains sufficient data related to the applicant, the mark sign and its class, may be delivered, against dated receipt, to the INPI, which shall stipulate the requirements to be satisfied by the applicant within 5 (five) days, under penalty of being deemed non-existent. Sole Paragraph. Once the conditions have been satisfied, the filing shall be considered to have been made at the date the application was submitted.

#### **CHAPTER IX EXAMINATION**

##### **Art. 158.**

After being docketed, the application shall be published so that opposition may be presented within a period of 60 (sixty) days.

(1) The applicant shall be notified of the opposition and may submit comments within a period of 60 (sixty) days.

(2) The opposition, the administrative nullity proceedings, or the judicial nullity proceedings shall not be considered if, based on Item XXIII of

Article 124, or on Article 126, the filing of the application for registration of the mark pursuant to this Law is not proven within a period of 60 (sixty) days from the interposition.

**Art. 159.**

After the period for opposition has elapsed or, if an opposition was presented, at the end of the period allowed for comments, the examination shall be done, and in its course demands may be formulated, and their responses must be submitted within a period of 60 (sixty) days.

(1) If an applicant does not respond to the demand, the application shall be definitively dismissed.

(2) If there is response to the demand, even if it has not been satisfied, or its formulation is contested, the examination shall be continued.

**Art. 160.**

When the examination has been concluded, a decision shall be handed down, either approving or rejecting the application for registration.

**CHAPTER X ISSUE OF REGISTRATION CERTIFICATE**

**Art. 161.**

The registration certificate shall be issued after the application has been approved and proof of payment of the appropriate fees has been furnished.

**Art. 162.**

Payment of the fees, and its proof, related to the issue of the registration certificate and to the first decade of its term, shall be done within a period of 60 (sixty) days of approval.

Sole Paragraph. The fee may also be paid and proven within 30 (thirty) days of the time limit stipulated in this Article, independently of any notification, upon payment of a specific fee, under penalty of having the application definitively dismissed.

**Art. 163.**

The registration certificate shall be deemed to have been granted on the date of publication of the relevant act.

**Art. 164.**

The certificate shall contain the mark, the number and date of registration, name, nationality and domicile of the titleholder, the products or services,

the registration characteristics and the foreign priority.

## **CHAPTER XI NULLITY OF REGISTRATIONS**

### **Section I General Provisions**

#### **Art. 165.**

A registration that is not granted in accordance with the provisions of this Law is null.

Sole Paragraph. Nullity of the registration may be total or partial, and a condition for partial nullity shall be the fact that the subsisting part may be considered registrable.

#### **Art. 166.**

The titleholder of a mark registered in a country that is a signatory of the Convention of the Union of Paris for the Protection of Industrial Property, may, alternatively, claim by means of judicial proceedings, the adjudication of the registration as set forth in Article 6septies(1) of that Convention.

#### **Art. 167.**

The declaration of nullity shall produce effects beginning on the filing date.

### **Section II Administrative Nullity Proceedings**

#### **Art. 168.**

Nullity of the registration shall be administratively declared when it has been granted in violation of the provisions of this Law.

#### **Art. 169.**

Nullity proceedings may be instituted either ex officio or at the request of any person having a legitimate interest, within a period of 180 (one hundred and eighty) days of the date of the issue of the registration certificate.

#### **Art. 170.**

The titleholder shall be formally notified to submit his comments within a period of 60 (sixty) days.

**Art. 171.**

After the time limit established in the preceding Article has elapsed, even if no comments have been submitted, the case shall be decided by the President of the INPI, whereupon the administrative jurisdiction shall be ended.

**Art. 172.**

Nullity proceedings shall continue even if the registration has been extinguished.

**Section III Judicial Nullity Proceedings**

**Art. 173.**

Judicial nullity proceedings may be proposed either by the INPI or by any person having a legitimate interest.

Sole Paragraph. The judge may, in the course of the judicial nullity proceedings, provisionally order suspension of the effects of registration and of the use of the mark, provided the proper procedural requirements have been satisfied.

**Art. 174.**

Judicial proceedings to declare the nullity of a registration shall prescribe within 5 (five) years of the date of registration.

**Art. 175.**

Judicial nullity proceedings of the registration shall be filed within the Federal Court system, and the INPI, when not the plaintiff, shall participate in them.

(1) The defendant titleholder shall have a period of sixty (60) days to reply.

(2) Once the decision on the judicial nullity proceedings has become final, the INPI shall publish the entry thereof, so that third parties may be informed.

## **Title IV Geographical Indications**

### **Art. 176.**

A geographical indication shall be an indication of source or a denomination of origin.

### **Art. 177.**

Indication of source shall mean the geographical name of a country, city, region or locality in its territory, which has become known as a center of extraction, production or manufacture of a given product or of provision of a given service.

### **Art. 178.**

Denomination of origin shall be the geographical name of a country, city, region or locality in its territory, that designates a product or service whose qualities or characteristics are due exclusively or essentially to the geographical environment, including natural and human factors.

### **Art. 179.**

The protection shall be extended to the graphical or figurative representation of a geographical indication, as well as the geographical representation of a country, city, region or locality in its territory whose name is a geographical indication.

### **Art. 180.**

Once a geographical name has fallen into the common use as designating a product or service, it shall not be considered to be a geographical indication.

### **Art. 181.**

A geographical name that does not constitute an indication of source or denomination of origin may serve as a characteristic element of a product or service mark, provided that it does not suggest a false source.

### **Art. 182.**

The use of the geographical indication is restricted to those producers and service providers who are established in that locality, and it is also demanded, concerning denominations of origin, that the quality requirements be satisfied.

Sole Paragraph. The INPI shall establish the conditions for registration of geographical indications.

## **Title V Crimes Against Industrial Property**

### **CHAPTER I CRIMES AGAINST PATENTS**

#### **Art. 183.**

A crime against an invention or utility model patent is perpetrated by anyone who:

I. manufactures a product that is the object of an invention or utility model patent, without authorization from the titleholder; or

II. uses a means or process that is the object of an invention patent, without authorization from the titleholder.

Penalty--imprisonment, from 3 (three) months to 1 (one) year, or a fine.

#### **Art. 184.**

A crime against an invention or utility model patent is perpetrated by anyone who:

I. exports, sells, displays or offers for sale, has in stock, conceals or receives, with a view to use for economic purposes, a product manufactured in violation of an invention or utility model patent, or obtained by a patented means or process; or

II. imports a product that is the object of an invention or utility model patent, or obtained by a means or process patented in this country, for the purposes set forth in the preceding Item, and that has not been placed on the foreign market directly by the patentholder or with his consent.

Penalty--imprisonment, from 1 (one) to 3 (three) months, or a fine.

#### **Art. 185.**

Supplying a component of a patented product, or material or equipment to execute a patented process, provided that the final application of the component, material or equipment leads necessarily to the exploitation of the object of the patent.

Penalty--imprisonment, from 1 (one) to 3 (three) months, or a fine.

#### **Art. 186.**

The crimes in this Chapter are determined to have been committed even when the violation does not affect all the claims of the patent or is restricted to the utilization of means equivalent to the object of the patent.

## CHAPTER II CRIMES AGAINST INDUSTRIAL DESIGNS

### Art. 187.

Manufacturing, without authorization from the titleholder, a product that incorporates a registered industrial design, or a substantial imitation that may induce to error or confusion.

Penalty--imprisonment, from 3 (three) months to 1 (one) year, or a fine.

### Art. 188.

A crime against industrial design registration is perpetrated by anyone who:

I. exports, sells, displays or offers for sale, has in stock, conceals or receives, with a view to use for economic purposes, an object that illegally incorporates a registered industrial design, or a substantial imitation that may induce to error or confusion; or

II. imports a product that incorporates an industrial design registered in this country, or a substantial imitation that may induce to error or confusion, for the purposes set forth in the preceding Item, and that has not been placed on the foreign market directly by the titleholder or with his consent.

Penalty--imprisonment, from 1 (one) to 3 (three) months, or a fine.

## CHAPTER III CRIMES AGAINST MARKS

### Art. 189.

A crime against mark registration is perpetrated by anyone who:

I. reproduces a registered mark, in whole or in part, without the authorization from the titleholder, or imitates it in a way that may induce to confusion; or

II. alters the registered mark of another person already affixed on a product placed on the market.

Penalty--imprisonment, from 3 (three) months to 1 (one) year, or a fine.

### Art. 190.

A crime against mark registration is perpetrated by anyone who imports, exports, sells, offers or displays for sale, conceals or has in stock:

I. a product bearing a mark illegally reproduced or imitated, in whole or in part, of another person; or

II. a product of his own industry or commerce, contained in a vessel, container or package that contains the legitimate mark of another person.

Penalty--imprisonment, from 1 (one) to 3 (three) months, or a fine.

**CHAPTER IV CRIMES COMMITTED BY MEANS OF MARK, TITLES OF ESTABLISHMENTS AND ADVERTISING SIGNS**

**Art. 191.**

Reproducing or imitating, in whole or in part and in a way that may induce to error or confusion, coats of arms, escutcheons, or national, foreign or international official badges, without the necessary authorization, in a mark, title of establishment, trade name, insignia or advertising sign, or using such reproductions or imitations for economic purposes. Penalty--imprisonment, from 1 (one) to 3 (three) months, or a fine. Sole Paragraph. Anyone who sells or displays or offers for sale products bearing such marks shall incur the same penalty.

**CHAPTER V CRIMES AGAINST GEOGRAPHICAL INDICATIONS AND OTHER INDICATIONS**

**Art. 192.**

Manufacturing, importing, exporting, selling, displaying or offering for sale, or having in stock a product that bears a false geographical indication. Penalty--imprisonment, from 1 (one) to 3 (three) months, or a fine.

**Art. 193.**

Using, on a product, container, wrapping, ribbon, label, invoice, circular, poster, or any other means of divulgation or advertising, modifiers such as "type", "species", "genus", "system", "similar", "substitute", "identical", or equivalent terms, that do not safeguard the true source of the product. Penalty--imprisonment, from 1 (one) to 3 (three) months, or a fine.

**Art. 194.**

Using a mark, trade name, title of establishment, insignia, advertising phrase or sign, or any other form that indicates other than the real source, or selling or displaying for sale a product bearing such marks. Penalty--imprisonment, from 1 (one) to 3 (three) months, or a fine.

**CHAPTER VI CRIMES OF UNFAIR COMPETITION**

**Art. 195.**

A crime of unfair competition is perpetrated by anyone who:  
I. publishes, by any means, false statements, to the detriment of a competitor, for the purpose of obtaining some advantage;

- II. provides or divulges false information about the competitor in order to obtain an advantage;
- III. employs fraudulent means to divert the customers of another person to his or another party's advantage;
- IV. uses another person's advertising phrase or sign, or imitates it, in order to create confusion among the products or establishments;
- V. uses, improperly, another person's trade name, title of establishment, or insignia, or sells, displays, offers for sale, or has in stock a product bearing these references;
- VI. substitutes his own name or firm name on another person's product in place of that person's name or firm name, without his consent;
- VII. attributes to himself, for advertising purposes, a reward or distinction that he has not received;
- VIII. sells, displays or offers for sale, in another person's container or wrapper, an adulterated or counterfeited product, or uses that container or wrapper to negotiate a product of the same type, although not adulterated or counterfeited, provided the act does not constitute a more serious crime;
- IX. gives or promises money or some other benefit to an employee of a competitor so that said employee, by neglecting his job duties, provides him an advantage;
- X. receives money or some other benefit, or accepts a promise of payment or reward, to provide an advantage to the employer's competitor, by neglecting his duties as an employee;
- XI. divulges, exploits, or utilizes, without authorization, confidential knowledge, information or data that could be used in industry, commerce or rendering of services, other than that which is of public knowledge or that would be evident to a technician versed in the subject, to which he gained access by means of a contractual or employment relationship, even after the termination of the contract;
- XII. divulges, exploits or utilizes, without authorization, the kind of knowledge or information to which the previous Item refers, when obtained by illicit means or when access was gained through fraud;
- XIII. sells, displays or offers for sale a product declaring that it is object of a patent that has been filed or granted, or of an industrial design that has been registered, when it has not, or mentioning it in an advertisement or a commercial paper as being filed or patented, or registered, when it has not; or
- XIV. divulges, exploits, or utilizes, without authorization, results of tests or other undisclosed data whose preparation involves considerable effort and that were submitted to government agencies as a condition for

obtaining approval to commercialize products.

Penalty--imprisonment, for 3 (three) months to 1 (one) year, or a fine.

(1) The hypotheses to which Items XI and XII of this Article refer include the employer, partner or officer of the company, who commits the offenses characterized in those provisions.

(2) The provision in Item XIV does not apply to the disclosure by a government agency empowered to authorize the commercialization of a product, when necessary to protect the public.

## **CHAPTER VII GENERAL PROVISIONS**

### **Art. 196.**

The penalties of imprisonment for the crimes set forth in Chapters I, II and III of this Title shall be increased by one-third to one-half if:

I. the offending party is, or was, the representative, mandatory, agent, partner or employee of the patentholder or titleholder of the registration or of his licensee; or

II. the mark that has been altered, reproduced or imitated is famous, well known, or is a certification or collective mark.

### **Art. 197.**

The fines stipulated in this Title shall be set at a minimum of 10 (ten) and a maximum of 360 (three hundred and sixty) daily-fines, pursuant to the provisions of the Criminal Code.

Sole Paragraph. The fines may be increased or reduced, by as much as 10 (ten) times, in view of the personal situation of the agent and the magnitude of the advantage obtained, regardless of the rule established in the preceding Article.

### **Art. 198.**

Products bearing counterfeited, altered or imitated marks, or that show a false indication of source may be seized by customs authorities, ex officio or at the request of the interested party, during verification procedures.

### **Art. 199.**

In the crimes set forth in this Title, legal action shall be taken only on the basis of a complaint, except for the crime in Article 191 in which the criminal action shall be public.

**Art. 200.**

Criminal action and the preliminary proceedings of search and seizure, in crimes against industrial property, shall be governed by the Criminal Procedure Code, with the modifications set forth in the Articles of this Chapter.

**Art. 201.**

In search and seizure proceedings, in a crime against patent whose object is the invention of a process, the officer of the court shall be accompanied by an expert who shall make a preliminary verification of the existence of the illicit, and the judge may order the seizure of the products obtained by the counterfeiter by employing the patented process.

**Art. 202.**

In addition to the preliminary proceedings of search and seizure, the interested party may request:

I. seizure of the counterfeited, altered or imitated mark at the place where it is prepared or wherever it is found, before it is used for criminal purposes; or

II. destruction of the counterfeited mark on the packages or products that contains it, before they are distributed, even if this implies the destruction of the packaging or of the products themselves.

**Art. 203.**

When dealing with industrial or commercial establishments lawfully organized and that are operating publicly, the preliminary proceedings shall be limited to the inspection and seizure of the products, when so ordered by the judge, and their activity lawfully engaged in cannot be stopped.

**Art. 204.**

Once the search and seizure proceedings have taken place, any party who has requested such proceedings in bad faith, in a spirit of rivalry, on a mere whim, or as a flagrant mistake shall be liable for damages.

**Art. 205.**

An allegation of nullity of the patent or of the registration on which the proceedings are based may constitute a material for defense in criminal proceedings. The acquittal of the defendant shall not, however, cause the nullity of the patent or registration, which may only be sought through the competent action.

**Art. 206.**

In the event that information disclosed in court, in defense of the interests of either of the parties, is characterized as confidential, whether industrial or trade secret, the judge shall order that the proceedings be held in camera, and the other party shall be prohibited from using such information for other purposes.

**Art. 207.**

Independently of the criminal action, the aggrieved party may bring any civil suits he considers as appropriate pursuant to the Civil Procedure Code.

**Art. 208.**

The indemnification shall be determined by the benefits the aggrieved party would have made if the violation had not occurred.

**Art. 209.**

There shall be reserved for the aggrieved party the right to recover damages as compensation for losses caused by acts that violate industrial property rights and acts of unfair competition not set forth in this Law, but that tend to prejudice another person's reputation or business, create confusion among commercial or industrial establishments or service providers, or among the products and services placed on the market.

(1) The judge may, during the course of the proceedings itself and in order to avoid damage that is irreparable or difficult to repair, provisionally order the suspension of the violation, or of the act that gives rise to it, prior to summons for the defendant, and in case he considers it necessary, order the posting of a cash bond or a fiduciary guarantee.

(2) In cases of reproduction or flagrant imitation of a registered mark, the judge may order the seizure of all merchandise, products, objects, packages, labels and anything else that contains the counterfeited or imitated mark.

**Art. 210.**

Losses of profits shall be determined using the most favorable criterion to the aggrieved party, among the following:

- I. the benefits that the aggrieved party would have made if the violation had not occurred;
- II. the benefits made by the perpetrator of the violation of the right;
- or
- III. the remuneration that the perpetrator of the violation would have

paid to the titleholder of the violated right throughout the granting of a license that would have allowed him to lawfully exploit the property.

## **Title VI Transfer of Technology and Franchising**

### **Art. 211.**

The INPI shall register the contracts involving transfer of technology, franchising and similar contracts in order that they may become effective with regard to third parties.

Sole Paragraph. The decision related to the applications for registration of contracts referred to in this Article shall be issued within a period of 30 (thirty) days of the date of the application for registration.

## **Title VII General Provisions**

### **CHAPTER I APPEALS**

#### **Art. 212.**

Unless expressly established otherwise, the decisions provided for in this Law are subject to appeal, which shall be presented within a period of 60 (sixty) days.

(1) Appeals shall be received in full suspensive and devolutionary effects, and, where applicable, all the provisions pertinent to the examination at the first instance level shall apply.

(2) There shall be no appeal of the decision ordering definitive dismissal of a patent or of a registration application, and of the decision approving the application for a patent, a certificate of addition, or a registration of a mark.

(3) The appeals shall be decided by the President of the INPI, whereupon the administrative jurisdiction shall be ended.

#### **Art. 213.**

Interested parties shall be notified so that, within a period of 60 (sixty) days, they present arguments against the appeal.

#### **Art. 214.**

For purposes of supplementing the arguments offered by way of appeal, the INPI may formulate demands, which must be satisfied within a period of 60 (sixty) days.

Sole Paragraph. After the time limit stipulated in the caput has elapsed, the appeal shall be decided.

#### **Art. 215.**

The decision on an appeal is final and unappealable within the administrative sphere.

### **CHAPTER II ACTS BY THE PARTIES**

#### **Art. 216.**

The acts set forth in this Law shall be taken by the parties or by their duly qualified attorneys in fact.

(1) The original, transcript, or certified photocopy of the instrument of power of attorney must be in the Portuguese language, but it shall not require consular authentication and notarization of signature.

(2) The power of attorney must be presented within 60 (sixty) days from the date of the first act by the party in the proceedings, independent from notification or demand, under penalty of dismissal, the dismissal of a patent application, an application for registration of an industrial design and an application for registration of a mark being definitive.

**Art. 217.**

The person domiciled abroad must appoint and retain an attorney in fact who is duly qualified and domiciled in this country, and with powers to represent that person in administrative and judicial proceedings, including receipt of summons.

**Art. 218.**

A petition shall not be considered when:

- I. it is presented outside the legal period; or
- II. it is not accompanied by proof that the appropriate fee has been paid for the amount required on the date it was filed.

**Art. 219.**

Neither a petition, opposition or appeal shall be considered, if:

- I. it is presented outside the period stipulated in this Law;
- II. it does not contain legal grounds; or
- III. it is not accompanied by proof of payment of the corresponding fee.

**Art. 220.**

The INPI shall, whenever possible, make use of the acts by the parties, by formulating the appropriate demands.

**CHAPTER III TIME PERIODS**

**Art. 221.**

The time periods established in this Law are continuous and the right to conduct the action is automatically extinguished after it has elapsed, unless the party proves that it has not acted owing to just cause.

(1) Just cause is considered to be an unforeseen event, beyond the control of a party that prevents it from taking the action.

(2) Once just cause has been recognized, the party shall take the action within the time limit granted to it by the INPI.

**Art. 222.**

The calculation of the time periods excludes the first day but includes

the day of the expiration.

**Art. 223.**

The time periods begin to run only on the first working day after notification which shall be done by means of publication in the INPI official gazette.

**Art. 224.**

When no specific stipulation is made in this Law, the time period for taking an action shall be 60 (sixty) days.

**CHAPTER IV STATUTE OF LIMITATIONS**

**Art. 225.**

The statute of limitations on an action to remedy damages caused to an industrial property right is 5 (five) years.

**CHAPTER V ACTS BY THE INPI**

**Art. 226.**

The acts by the INPI in administrative proceedings regarding industrial property become effective only upon publication in the appropriate official gazette, with the following exceptions:

- I. those that do not expressly depend on a notification or publication requirement under the provisions of this Law;
- II. administrative decisions, when notification is made by mail or information given to the interested party in the proceedings; and
- III. internal opinions and instructions of which parties do not need to be informed.

**CHAPTER VI CLASSIFICATIONS**

**Art. 227.**

Classifications with regard to the subjects of Titles I, II and III of this Law shall be established by the INPI whenever they have not been established in an international treaty or agreement in force in Brazil.

**CHAPTER VII FEES**

**Art. 228.**

Fees shall be charged for the services set forth in this Law, and the amounts of such fees and the form of collection shall be established by

an act of the head of the public federal administration agency to which the INPI is attached.

## **Title VIII Transitory and Final Provisions**

### **Art. 229.**

The provisions of this Law shall be applied to all pending applications, except with respect to the patentability of applications filed until December 31, 1994, whose object of protection comprises substances, materials or products obtained by chemical means or processes and alimentary and chemical-pharmaceutical substances, materials, mixtures or products and medicaments of any type, as well as the relevant processes for obtainment or modification, and whose applicants have not used the right provided in Articles 230 and 231 of this Law, which shall be considered rejected for all purposes, the Brazilian Patent and Trademark Office being bound to publish the referred rejections.

Sole Paragraph. The criteria for patentability set in this Law shall be applied to applications connected with pharmaceutical and chemical products intended for agriculture, which were filed between January 1, 1995 and May 14, 1997, on the effective filing date of the application in Brazil or of the priority, wherever applicable, the protection being assured from the date when patent is granted, throughout the remaining term counted from the filing date in Brazil, limited to the term provided in the caput of Article 40.

### **Art. 229A.**

The patent applications of processes filed between January 1, 1995 and May 14, 1997, to which no protection was provided by Article 9, Subparagraph "c" of Law No. 5.772 of December 21, 1971, shall be considered rejected and the Brazilian Patent and Trademark Office shall provide the publication of the referred rejections.

### **Art. 229B.**

The patent applications of products filed between January 1, 1995 and May 14, 1997, to which no protection was provided in Article 9, Subparagraphs "b" and "c" of Law No. 5.772 of December 21, 1971, and whose applicants failed to avail themselves of the right provided in Articles 230 and 231, shall be decided until December 31, 2004, pursuant to this Law.

### **Art. 229C.**

The granting of patents on pharmaceutical products or processes shall depend on the prior consent of the National Sanitary Supervision Agency (ANVISA).

### **Art. 230.**

An application for a patent, related to substances, materials or products

obtained by chemical means or processes, and alimentary or chemical-pharmaceutical substances, materials, mixtures or products, and medications of any kind, as well as the relevant processes for obtaining or modifying them, may be filed by a party who enjoys protection guaranteed by a treaty or convention in force in Brazil, in which case it is assured the date of the first patent application filed abroad, provided that its object has not been introduced on any market by direct initiative of the titleholder or by a third party with his consent, and that no serious and effective preparations to exploit the object of the application or of the patent have been made, in this country, by third parties.

(1) The filing must occur within a period of 1 (one) year from the date of publication of this Law, and must indicate the date of the first filing abroad.

(2) A patent application filed on the basis of this Article shall automatically be published, and any interested party may submit comments, within a period of 90 (ninety) days, as to whether it satisfies the provisions in the caput of this Article.

(3) When Articles 10 and 18 of this Law have been observed, and once the provisions established in this Article have been satisfied and the granting of the patent in the country where the first application was filed has been proven, the patent shall be granted in Brazil, just as it was granted in its country of origin.

(4) The patent granted on the basis of this Article is assured the period of protection remaining in the country where the first application was filed, calculated from the date of filing in Brazil and limited to the period established in Article 40, not applying the provisions of its Sole Paragraph.

(5) An applicant who has filed a patent application that is still pending, related to substances, materials or products obtained by chemical means or processes, and alimentary or chemical-pharmaceutical substances, materials, mixtures, or products, and medications of any kind, as well as the relevant processes for obtaining or modifying them, may submit a new application within the time limit and under the conditions established in this Article, attaching proof of having abandoned the pending application.

(6) The provisions of this Law apply, where applicable, to the application filed and the patent granted on the basis of this Article.

**Art. 231.**

An application for a patent related to the subject matter dealt with in the preceding Article may be filed by a national or a person domiciled

in this country, in which case it is assured the date of disclosure of the invention, provided that its object has not been introduced on any market by direct initiative of the titleholder or by a third party with his consent, and that no serious and effective preparations to exploit the object of the patent have been made, in this country, by third parties.

(1) The filing must occur within a period of 1 (one) year from the date of publication of this Law.

(2) The patent application filed on the basis of this Article shall be processed pursuant to this Law.

(3) The patent granted on the basis of this Article is assured the remainder of the 20 (twenty) year protection period calculated from the disclosure date of the invention, beginning on the filing date in Brazil.

(4) An applicant who has filed a patent application that is still pending, related to the subject matters dealt with in the preceding Article, may submit a new application, within the time limit and under the conditions established in this Article, attaching proof of having abandoned the pending application.

#### **Art. 232.**

The production or use, under the provisions of the previous legislation, of substances, materials or products obtained by chemical means or processes, and alimentary or chemical-pharmaceutical substances, materials, mixtures, or products, and medications of any kind, as well as the relevant processes for obtaining or modifying them, even if protected by a product or process patent in another country, under a treaty or convention in force in Brazil, may continue under the same conditions as prevailed prior to the approval of this Law.

(1) No retroactive or future charge of any amount for any reason shall be permitted with respect to products produced or processes employed in Brazil pursuant to this Article.

(2) Likewise, no charge shall be permitted under the terms of the preceding Paragraph in the event that, during the period prior to the entry into force of this Law, significant investments have been made toward the exploitation of product or process referred to in this Article, even if protected by a product or process patent in another country.

#### **Art. 233.**

Applications for registration of advertising phrases and signs and for declarations of notoriety shall be definitively dismissed, and the registrations and declaration shall remain in force for the remainder of the term, but cannot be extended.

**Art. 234.**

The applicant is assured the guarantee of priority set forth in Article 7 of Law No. 5.772 of December 21, 1971, until the end of the time period in effect.

**Art. 235.**

The time period in effect granted under Law No. 5.772 of December 21, 1971, is assured.

**Art. 236.**

The application for an industrial model or design patent, filed while Law No. 5.772 of December 21, 1971, was in force, shall automatically be designated as application for registration of industrial design, and the publication already done shall be considered for all legal effects. Sole Paragraph. For the adapted applications, the payments shall be taken into consideration for purposes of calculating the five-year fee owed.

**Art. 237.**

The provisions of Article 111 shall not apply to the industrial model or design patent applications that were object of an examination in accordance with Law No. 5.772 of December 21, 1971.

**Art. 238.**

Appeals filed while Law No. 5.772 of December 21, 1971, was in force shall be decided as set forth in that Law.

**Art. 239.**

The Executive Power is empowered to promote the necessary changes in the INPI to ensure financial and administrative autonomy to that Autarky, which may:

I. contract technical and administrative personnel by means of public competition;

II. establish a salary scale for its employees, subject to approval by the Ministry to which the INPI is attached;

III. make decisions on the basic structure and internal regulations, which shall be approved by the Ministry to which the INPI is attached.

Sole Paragraph. Expenditures resulting from application of this Article shall be charged against the INPI's own funds.

**Art. 240.**

Article 2 of Law No. 5.648 of December 11, 1970, shall henceforth read

as follows:

"2. The principal purpose of the INPI is to enforce, at the national level, rules regulating industrial property, taking into account its social, economic, legal and technical role, and to offer comments regarding the advisability of signing, ratifying and terminating conventions, treaties, accords, and agreements on industrial property."

**Art. 241.**

The Judicial Power is hereby authorized to create special courts to settle issues involving intellectual property.

**Art. 242.**

The Executive Power shall submit to the National Congress a bill of law intended to accomplish, whenever necessary, the harmonization of this Law with the industrial property policy adopted by the other countries that are members of MERCOSUL.

**Art. 243.**

This Law enters into force on the date of its publication as regards the subject matters regulated in Articles 230, 231, 232, and 239, and 1 (one) year after publication as regards the other Articles.

**Art. 244.**

The Law No. 5.772 of December 21, 1971, Law No. 6.348 of July 7, 1976, Articles 187 to 196 of Decree-Law No. 2.848 of December 7, 1940, Articles 169 to 189 of Decree-Law No. 7.903 of August 27, 1945, and any other provisions contrary to this Law are to be repealed.