ARGENTINA

Patent Law

Law No. 24.481 as amended by Law No. 25.859 enacted on 4-12-2003

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TITLE I GENERAL PROVISIONS

Art. 1.
Inventions of all kinds in all areas of production shall confer such rights and impose such obligations on the authors thereof as are specified in this Law.

Art. 2.
Ownership of an invention shall be attested by the grant of the following industrial property titles:
(a) patents;
(b) utility model certificates.

Art. 3.
The industrial property titles governed by this Law may be acquired by national or foreign natural persons or legal entities having their true or elected domicile in the country.

TITLE II PATENTS

Chapter I Patentability

Art. 4.
Inventions relating to products or processes shall be patentable provided that they are new, involve an inventive step and are susceptible of industrial application.
(a) For the purposes of this Law any human creation that permits material or energy to be transformed for exploitation by man shall be considered an invention.
(b) Any invention that is not included in the state of the art shall likewise be considered novel.
(c) The state of the art shall be understood to be the whole body of technical knowledge that has been made public prior to the filing date of the patent application, or the date of recognized priority if any, by oral or written description, by exploitation or by any other means of dissemination or communication of information, either within the country or abroad.
(d) There shall be an inventive step where the creative process or the results thereof cannot readily be deduced by a person of average skill in the technical field concerned.
(e) There shall be industrial applicability where the subject matter of the invention causes an industrial result or product to be obtained, industry being understood as including agriculture, forestry, livestock breeding, fisheries, mining, processing industries in the strict sense and services.

Art. 5.
Disclosure of an invention shall not affect the novelty thereof where, within a year prior to the filing date of the patent application, or the date of recognized priority where applicable, the inventor or his successors in title have made the invention known by any medium of communication or have displayed it at a national or international exhibition. The application shall in such a case be accompanied by documentary supporting evidence under such conditions as may be laid down in the regulations under this Law.

Art. 6.
The following shall not be considered inventions for the purposes of this Law:

(a) discoveries, scientific theories and mathematical methods;
(b) literary or artistic works or any other aesthetic creation; scientific works;
(c) schemes, rules or methods for performing intellectual activities, playing games or engaging in economic and business activities; computer programs;
(d) forms of data presentation;
(e) methods of surgical, therapeutic or diagnostic treatment applicable to the human body or to animals;
(f) the juxtaposition of known inventions or mixtures of known products, changes in the shape, dimensions or constituent materials thereof, except in the case of combination or merging in such a way that the elements are unable to function separately or where the characteristic qualities or functions thereof are so altered as to produce an industrial result that is not obvious to a person skilled in the field concerned;
(g) any kind of live material or substances already existing in nature.

Art. 7.
The following shall not be patentable:
(a) inventions the exploitation of which on the territory of the Argentine Republic is to be prevented in the interest of the public good or morality, the health or life of persons or animals, the conservation of plants or the avoidance of serious damage to the environment;
(b) all biological and genetic material existing in nature or derived therefrom in biological processes associated with animal, plant and human reproduction, including genetic processes applied to the said material that are capable of bringing about the normal, free duplication thereof in the same way as in nature.

Chapter II Right to the Patent

Art. 8.
The right to the patent shall belong to the inventor or his successors in title who will have the right to assign or transfer it by any legal method or enter into licensing contracts. The patent shall confer to its holder the following exclusive rights, without prejudice to the provisions of Articles 36 and 99 of the current law:
(a) where the subject matter of the patent is a product, the right to prevent third parties from engaging without his consent in acts of

manufacture, use, offer for sale, sale or importation of the product covered by the patent;
(b) When the subject matter of the patent is a process, the process patent holder will have the right to prevent third parties from engaging without his consent in acts of use the process and use, offer for sale, sele or importation of the product produced directly by means of the process.

Art. 9.
In the absence of proof to the contrary, the natural person or persons designated as such in the application for a patent or utility model certificate shall be presumed to be the inventor or inventors. The inventor or inventors shall have the right to be mentioned in the corresponding title.

Art. 10.
Inventions made in the course of employment relations:
(a) Those made by a worker during the currency of his contract or other employment or service relations with the employer where the object thereof is entirely or partly the performance of inventive activity shall belong to the said employers.
(b) The worker who has made an invention under the above circumstances shall be entitled to additional remuneration for the making of the invention if his personal contribution to it and its importance to the undertaking and the employer clearly goes beyond the express or implied terms of his contract or employment relations. Where the situation specified in subparagraph (a), above, does not obtain, if the worker has made an invention connected with his professional activity within the undertaking and the making of the invention has been predominantly influenced by skills acquired within the undertaking or by the use of means that it has provided, the employer shall be entitled to ownership or a reserved right of exploitation of the invention. The employer shall exercise that option within 90 days following the making of the invention.
(c) Where the employer assumes ownership or reserves the right of exploitation of an invention, the worker shall be entitled to equitable economic compensation determined in relation to the industrial and commercial significance of the invention, due account being taken of the value of the means or knowledge made available by the undertaking and the contributions made by the worker himself; in the event of the employer licensing the invention to third parties, the inventor may

claim payment from the owner of the patent of up to 50% of the royalties actually charged by the latter.
(d) An industrial invention shall still be considered made in the discharge of a work or service contract where the patent application is filed up to one year following the date on which the inventor left the employment within the area of activity of which the invention was made.
(e) Work-related inventions in the making of which the circumstances provided for in subparagraphs (a) and (b), above, do not obtain shall belong exclusively to the maker thereof.
(f) Any advance renunciation by the worker of the rights conferred by this Article shall be null and void.

Art. 11.
The rights conferred by the patent shall be determined by the first of the approved claims, which shall define the invention and demarcate the scope of the said rights. The description and the drawings or plans, or where applicable the deposit of biological material, shall serve to interpret the claims.

Chapter III Grant of the Patent

Art. 12.
To obtain a patent, an application must be submitted to the NATIONAL PATENT ADMINISTRATION of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE, including the characteristics and other information indicated in this Law and its regulations.

Art. 13.
The patent may be applied for by the inventor or his successors in title either direct or through their representatives. Where a patent is applied for after having been applied for in other countries, it shall be accorded as its priority date the date on which the first patent application was filed, provided that no more than a year has elapsed following that original filing.

Art. 14.
The right of priority described in the previous article must be invoked at the time of submitting the patent application. At the in-depth examination stage, the NATIONAL PATENT ADMINISTRATION may request the priority document with its translation into Spanish if it is written

in another language.
In addition, the following requirements must be met for the right of priority to be recognized:
(1) The assignment document of the priority rights must be submitted, when applicable;
(2) The application submitted to the ARGENTINE REPUBLIC should not have a greater scope than that claimed in the foreign application; the priority, if applicable, should be only partial and refer to the foreign application; and
(3) There should be reciprocity in the country of the first application.

Art. 15.
Where two or more inventors have made the same invention independently of each other, the right to the patent shall belong to the one whose application bears the earliest filing date or recognized priority date, as the case may be. If the invention has been made jointly by two or more persons, the right to the patent shall belong jointly to all of them.

Art. 16.
The applicant may abandon his application at any time during its prosecution. Where the application belongs to more than one applicant, the abandonment must be done jointly, failing which the rights of the abandoning party shall accrue to the remaining applicants.

Art. 17.
The patent application may not relate to more than one invention or group of inventions so related as to constitute a single general inventive concept. Applications that do not meet this requirement shall be divided as provided by regulation.

Art. 18.
The filing date of the application shall be the date on which the applicant delivers to the National Patent Administration created by this Law:
(a) a declaration stating that a patent is applied for;
(b) the identity of the applicant;
(c) a description and one or more claims, even if they do not meet the requirements of form laid down in this Law.

Art. 19.

To obtain a patent, the following must be submitted:

(a) The name and description of the invention;

(b) Any plans or technical drawings that are required to understand the description;

(c) One or more claims; and

(d) A summarized description of the invention that will only be used for publication and as an item of technical information.

If the requirements mentioned above have not been met within THIRTY (30) consecutive days from the date of submitting the application, the application will be rejected without any further formality.

Art. 20.

The application shall describe the invention with sufficient clarity and completeness for an expert with average knowledge in the field concerned to be able to carry it out. It shall likewise include a clear and accurate account of the best known method of carrying out and implementing the invention, and of the materials and components used.

The methods and processes described must be directly applicable in production.

In the case of applications relating to microorganisms, the product obtainable by means of a claimed process shall be described as well as the process itself in the relevant application, and a strain of the microorganism shall be deposited with an institution authorized for the purpose, as provided by regulation.

The public shall have access to the microorganism culture at the depository institution, as from the day of publication of the patent application, on conditions laid down by regulation.

Art. 21.

Supporting drawings, plans and diagrams submitted shall be sufficiently clear for the description to be understood.

Art. 22.

The claims shall define the subject matter for which protection is sought, and shall be clear and concise. They may be one or more and shall be based on the description, but may not go beyond it.

The first claim shall refer to the main subject matter, and the remainder shall be subordinate to it.

Art. 23.

During its processing, a patent application for an invention can be converted into a utility model application and vice versa.

The applicant may make the conversion within THIRTY (30) consecutive days from the date of submission of the application or within THIRTY (30) calendar days from the date on which the NATIONAL PATENT ADMINISTRATION would have required it.

If the applicant does not convert the request within the stipulated period, it will be considered abandoned.

Art. 24.

The NATIONAL PATENT ADMINISTRATION will carry out a preliminary examination of the application and may require further information or clarification on points it considers necessary, or correction of any errors or omissions.

If the applicant does not comply with this requirement within a period of THIRTY (30) consecutive days, the application will be declared abandoned.

Art. 25.

The pending patent application and its annexes shall remain confidential until the time of their publication.

Art. 26.

The National Patent Administration shall not proceed with the publication of the pending patent application within 18 months following the filing date thereof. At the request of the applicant, the application shall be published before the said period expires.

Art. 27.

Following payment of the fee established in the regulatory decree, the NATIONAL PATENT ADMINISTRATION will proceed to conduct an in-depth examination to verify compliance with the conditions stipulated in TITLE II, CHAPTER I of this law.

The NATIONAL PATENT ADMINISTRATION may require a copy of the in-depth examination carried out by foreign examining offices in the terms established by the regulatory decree and may also request reports from researchers working in universities or scientific-technological institutes in the country, who will be paid in each case, in accordance with the provisions of the regulatory decree.

If deemed necessary, the applicant for the invention patent may request

that the Administration carry out this examination on their premises. If the petitioner does not pay the corresponding fee for the in-depth examination within EIGHTEEN (18) months after submission of the patent application, the submission will be considered abandoned.

Art. 28.

Where the application calls for comment, the National Patent Administration shall convey the comments to the applicant so that, within a period of 60 days, the latter may provide such clarification as he considers appropriate or submit the information or documentation that has been requested of him. If the applicant does not accede to such requests within the period specified, his application shall be considered withdrawn.

All comments shall be made in a single document by the National Patent Administration except where prior clarifications or explanations are requested of the applicant.

Any person may make reasoned comments on the patent application and add documentary proof within a period of 60 days following the publication provided for in Article 26. The comments shall consist of allegations of non-fulfillment or insufficient fulfillment of the legal requirements for the grant of a patent.

Art. 29.

Where the comments made by the National Patent Administration are not acted upon by the applicant, the patent application shall be duly rejected, which fact shall be communicated to the applicant in writing, with a statement of the reasons and arguments underlying the decision.

Art. 30.

Where all the relevant requirements have been met, the National Patent Administration shall grant the title.

Art. 31.

The grant of the patent shall take place without prejudice to any third-party claim to a stronger right than the applicant, and without any State guarantee of the usefulness of the subject matter to which it relates.

Art. 32.

The granting of the Invention Patent will be published on the website of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE, in accordance with the

regulations established by the Application Authority.

Art. 33.
Changes in the text of the title of a patent shall be allowed only for the correction of errors of substance or form.

Art. 34.
Granted patents shall be a matter of public knowledge, and a copy of the documentation shall be issued to any person who so requests against payment of the prescribed fees.

Chapter IV Term and Effects of Patents

Art. 35.
The patent shall have a non-renewable term of 20 years, counted from the filing date of the application.

Art. 36.
The right conferred by a patent shall have no effect against:
(a) a third party who privately or in an academic environment and without gainful intent, conducts scientific or technological research activities for purely experimental, testing or teaching purposes, and to that end manufactures or uses a product or applies a process identical to the one patented;
(b) the routine dispensation of drugs by authorized professionals, individually on medical prescription, or acts relating to drugs so dispensed;
(c) any person who acquires, uses, imports or in any way deals in the product patented or obtained by the patented process once the said product has been lawfully placed on the market in any country; placing on the market shall be considered lawful when it conforms to Section 4 of Part III of the Agreement on Trade-Related Aspects of Intellectual Property Rights;
(d) the use of inventions patented in this country on board foreign land vehicles, seaborne vessels or aircraft that accidentally or temporarily travel within the jurisdiction of the Argentine Republic, if they are used exclusively for the needs thereof.

Chapter V Transfer and Contractual Licenses

Art. 37.
Patents and utility model certificates shall be transferable and may be licensed, either fully or in part, in the manner and subject to the formalities laid down by law. In order to be binding on third parties, any transfer shall be registered with the National Institute of Industrial Property.

Art. 38.
License agreements shall not contain restrictive trade clauses that would affect the production, marketing or technological development of the licensee, restrict competition or impose any other procedure such as exclusive transfer-back conditions, conditions preventing any challenge to validity, those that impose mandatory joint licenses or any other of the practices specified in Law No. 22.262 or such legislation as may amend or replace it.

Art. 39.
In the absence of any provision to the contrary, the grant of a license shall not exclude the possibility of the owner of the patent or utility model granting other licenses or engaging in simultaneous exploitation himself.

Art. 40.
The person who has been granted a contractual license shall have the right to bring such legal actions as are available to the owner of the inventions only where the said owner does not bring them himself.

Chapter VI Exceptions to the Rights Granted

Art. 41.
The National Institute of Industrial Property may, at the reasoned request of a competent authority, introduce limited exceptions to the rights conferred by a patent. Such exceptions shall not unjustifiably prejudice the exploitation of the patent or do unjustified harm to the legitimate interests of the owner thereof, due account being taken of the legitimate interests of third parties.

Chapter VII Other Uses Not Requiring Authorization by the Owner of the Patent

Art. 42.

Where a prospective user has attempted to secure the grant of a license from the owner of a patent on reasonable commercial terms and conditions under Article 43, and the attempts have had no effect after 150 days have elapsed following the date on which the license in question was requested, the National Institute of Industrial Property may allow other uses of the said patent without authorization by the owner thereof. Without prejudice to the foregoing, notice shall be given to the authorities created by Law No. 22.262, or such law as may amend or replace it, on the protection of free competition, for whatever purposes may be appropriate.

Art. 43.

If, after three years have elapsed since the grant of the patent, or four since the filing of the application, the invention has not been exploited, except in cases of force majeure, or if no genuine and effective preparations have been made for such exploitation, or where such exploitation has been interrupted for more than a year, any person may apply for authorization to use the invention without seeking the permission of the owner thereof.

Objective difficulties of legal and technical character, such as delays in obtaining registration with the authorities to secure marketing authorization that are beyond the control of the owner of the patent and make the working of the invention impossible shall be considered cases of force majeure in addition to those legally recognized as such. Lack of financial resources or the lack of economic viability shall not in themselves constitute justification.

The National Institute of Industrial Property shall inform the owner of the patent of the non-fulfillment of the provisions of the first paragraph above before allowing use of the patent without his authorization.

The implementing authority, after having heard the parties and established their inability to agree, shall set reasonable remuneration to be charged by the owner of the patent, which remuneration shall be determined by the particular circumstances of each case, due account being taken of the economic value of the authorization and also of the average rate of royalties payable in the sector concerned under contractual licenses between independent

parties. Decisions on the licensing of such uses shall be taken within 90 working days from the filing of the application, and appeals from them shall lie to the civil and commercial Federal courts. The substantiation of the appeal shall have no staying effect.

Art. 44.

The right of exploitation conferred by a patent shall be granted without permission from the owner thereof where the competent authority has established that the said owner has engaged in anti-competitive practices. In such cases, without prejudice to the remedies available to the owner of the patent, the said right shall be granted without the need for application of the procedure laid down in Article 42.

For the purposes of this Law, the following practices among others shall be considered anti-competitive:

(a) the setting of prices for the patented products that are excessive in relation to the market average or discriminatory, particularly where alternative proposals exist for supplying the market at prices significantly lower than those charged by the patent owner for the same product;

(b) refusal to supply the local market on reasonable commercial terms;

(c) the slowing down of marketing or production activities;

(d) any other act capable of being included among the practices considered punishable by Law No. 22.262 or such law as may replace it or be substituted for it.

Art. 45.

The National Executive may, for reasons of health emergency or national security, order the exploitation of certain patents through the grant of the exploitation rights under a patent; the scope and duration thereof shall be limited to the purposes of the grant.

Art. 46.

The right of use without authorization from the owner of the patent shall be granted to permit the working of a patent -the second patent- that cannot be worked without infringing another patent -the first patent- provided that the following conditions are met:

(a) the invention claimed in the second patent must represent significant technical progress, of considerable economic importance, compared with that claimed in the first patent;

(b) the owner of the first patent must be entitled to cross-licensing

on reasonable terms for the exploitation of the invention claimed in the second patent;
(c) the authorized use of the first patent may not be assigned without assignment also of the second patent.

Art. 47.
When other uses without authorization from the owner of the patent are allowed, the following provisions shall be observed:
(a) the authorization of the uses shall be given by the National Institute of Industrial Property;
(b) the authorization of the uses shall be considered in the light of the particular circumstances of each case;
(c) for the uses contemplated in Article 43 or 46 or in both Articles, before grant the prospective user must have attempted to obtain a license from the owner of the rights on commercial terms and conditions conforming to Article 43, such attempts having had no effect within the period provided for in Article 42; in the case of non-commercial public use, where the Government or the contracting party, without having conducted a patent search, knows or has good reason to know that a valid patent is being or will be used by or on behalf of the Government, the owner of the said patent shall be informed accordingly without delay;
(d) the authorization shall extend to patents for the components and manufacturing processes that permit the working of the patent;
(e) the uses shall be non-exclusive in character;
(f) they may not be assigned, except with that part of the business or intangible assets concerned by them;
(g) they shall be authorized to supply mainly the domestic market, except as provided in Articles 47 and 48;
(h) the owner of the rights shall collect reasonable remuneration according to the particular circumstances of each case, due account being taken of the economic value of the authorization, according to the procedure laid down in Article 43; when the amount of remuneration for uses authorized to remedy anti-competitive practices is determined, due account shall be taken of the need to correct those practices, and revocation of the authorization may be refused if it is considered probable that, under the circumstances that gave rise to the license, the practices will continue;
(i) with regard to the uses provided for in Article 45, and any other use not provided for, the scope and duration thereof shall be limited to the purposes for which they have been authorized, and the

authorization may be withdrawn if the circumstances that gave rise to it no longer obtain and are unlikely to recur, the National Institute of Industrial Property being empowered to ascertain, in response to a reasoned request, whether the circumstances continue to obtain. Where such permitted uses remain without effect, due account shall be taken of the legitimate interests of the persons who have received such authorization. In the case of semiconductor technology, it may only be subjected to non-commercial public use or used to rectify a practice declared anti-competitive in a judicial or administrative proceeding.

Art. 48.
In all cases decisions relating to uses not authorized by the owner of the patent shall be subject to judicial review, as shall matters pertaining to the appropriate remuneration, if any is payable.

Art. 49.
Appeals lodged against administrative acts connected with the authorization of the uses provided for in this Chapter shall have no staying effect.

Art. 50.
Any person who applies for one of the uses provided for in this Chapter shall possess the economic ability to carry out efficient exploitation of the patented invention and shall have at his disposal an establishment authorized for the purpose by the competent authority.

Chapter VIII Patents of Addition or Improvement Patents

Art. 51.
Anyone who improves a patented invention will have the right to request a patent of addition.

Art. 52.
Patents of addition shall be granted for such time as remains of the validity of the patent on which they depend. If there are two or more such patents, the one that expires last shall be taken into account.

TITLE III UTILITY MODELS

Art. 53.

Any new arrangement or form obtained or incorporated in known tools, working instruments, utensils, devices or other objects that are used for practical work, insofar as they make for better performance of the operations for which they are intended, shall confer on the owner thereof exclusive rights of exploitation, which shall be attested by titles known as utility model certificates.

The rights shall be granted only in the new form or arrangement as defined: a utility model certificate may not be granted within the area of protection of a patent in force.

Art. 54.

The utility model certificate shall have a non-renewable term of 10 years, counted from the filing date of the application, and shall be subject to the payment of the fees laid down in the implementing decree.

Art. 55.

It is an essential requirement for the issuance of these certificates that the inventions proposed under this title are new and of an industrial nature.

Art. 56.

The application for a utility model certificate shall be accompanied by:

(a) the title, which shall designate the invention in question;

(b) a description relating to a single main instance of the new configuration or arrangement of the object in practical use or of the functional improvement, with an explanation of the causal relationship between the new configuration or arrangement and the functional improvement, in such a way that the invention in question may be reproduced by a person of average skill in the field, and an explanation of the drawing or drawings;

(c) the claim or claims of the invention concerned;

(d) the necessary drawing or drawings.

Art. 57.

When the application for a utility model has been submitted and the examination fee has been paid, the NATIONAL PATENT ADMINISTRATION shall examine whether the requirements of Art. 53 and Art. 55 have

been met. If the examination is successful, the application will be published.
Any person may make substantiated observations on the utility model application and add documentary evidence within THIRTY (30) consecutive days of publication. The observations must consist of the lack or insufficiency of the legal requirements in order to be granted. After this deadline, the NATIONAL PATENT ADMINISTRATION will proceed to resolve the application and issue the utility model certificate, if applicable.
If, the applicant does not pay the fee for the in-depth examination within THREE (3) months from submission of the utility model application, the application will be considered abandoned.

Art. 58.
Those provisions on patents shall be applicable to utility models that are not incompatible with them.

TITLE IV INVALIDITY AND LAPSE OF PATENTS AND UTILITY MODELS

Art. 59.
Patents and utility model certificates shall be wholly or partly null and void when they have been granted in violation of the provisions of this Law.

Art. 60.
If the causes of invalidity relate to only part of the patent or utility model certificate, partial invalidity shall be declared by the cancellation of the affected claim or claims. It shall not be possible to declare one claim partly invalid.
Where invalidity is partial, the patent or utility model certificate shall remain in force with respect to the claims that have not been invalidated insofar as they can themselves constitute the subject matter of an independent utility model certificate or patent.

Art. 61.
The declaration of invalidity of a patent shall not in itself cause the invalidation of additions to it, provided that the conversion of the said additions into independent patents is applied for within the 90 days following notification of the declaration of invalidity.

Art. 62.
Patents and utility model certificates shall lapse under the following circumstances:
(a) on expiration of their term;
(b) on renunciation by their owner; where the patent belongs to two or more persons, renunciation shall be done jointly; renunciation may not affect third-party rights;
(c) on failure to pay the annual maintenance fees to which they are subject; on attainment of the relevant due dates, the owner shall have a period of grace of 180 days within which to pay the current fee, at the end of which period lapse shall occur, except where the non-payment is due to force majeure;
(d) where a license for use has been granted to a third party and the invention has not been exploited within two years for reasons attributable to the owner of the patent.
The administrative decision that declares a patent lapsed shall be subject to judicial appeal. The appeal shall have no staying effect.

Art. 63.
No judicial declaration shall be necessary for invalidity or lapse to have the effect of making the invention public property; both invalidity and lapse shall take effect as of right.

Art. 64.
Action for invalidation or lapse may be brought by any person who has a legitimate interest therein.

Art. 65.
Actions seeking invalidity and lapse may be opposed by means of defense procedures or claims of exceptions.

Art. 66.
Where a court ruling has ordered the invalidity or lapse of a patent or utility model certificate and the ruling has become res judicata, the appropriate notification shall be conveyed to the National Institute of Industrial Property.

TITLE V ADMINISTRATIVE PROCEDURES

Chapter I Procedures

Art. 67.

Processing applications for invention patents or utility models is subject to effective payment of the submission fee. Otherwise, the NATIONAL PATENT ADMINISTRATION will declare the process null and void.

Art. 68.

The representation claimed in applications for invention patents and/or utility models shall have the character of a sworn statement. If considered appropriate, the NATIONAL PATENT ADMINISTRATION may require documentation proving the status claimed.

If the representative claims the status of business manager, the management must be confirmed within a period of FORTY (40) business days from its submission, or else it will be declared null and void.

Art. 69.

In every application the applicant shall elect legal domicile within the national territory and notify the National Patent Administration of any amendment thereto. Where no notice is given of a change of domicile, notifications shall be deemed validly sent to the domicile on record.

Art. 70.

Until the time of the publication referred to in Article 26, pending files may be consulted only by the applicant, his representative or persons authorized by them.

The staff of the National Patent Administration engaged in the processing of applications shall be obliged to keep the contents of files in confidence.

The foregoing shall not apply to any information that is of official character or any that may be required by the judicial authorities.

Art. 71.

The employees of the National Institute of Industrial Property may not, either directly or indirectly, process rights on behalf of third parties until two years have elapsed since the date on which their employment relations with the said Institute ceased on pain of disqualification and a fine.

Chapter II Appeal for Review

Art. 72.

An administrative appeal may be filed against any decision that rejects a patent or utility model application. It must be filed with the President of the NATIONAL INDUSTRIAL PROPERTY INSTITUTE within the mandatory period of THIRTY (30) business days from the date of notice of the respective decision. The appeal must be accompanied by documentation confirming the merits of the claim.

Art. 73.

After having analyzed the arguments put forward in the appeal and the documents submitted, the National Institute of Industrial Property shall issue whatever decision is appropriate.

Art. 74.

Where the decision handed down by the National Institute of Industrial Property denies the validity of the appeal, the appellant shall be given notice thereof in writing. Where the decision is favorable, the procedure provided for in Article 32 of this Law shall be observed.

TITLE VI VIOLATION OF THE RIGHTS CONFERRED BY PATENTS AND UTILITY MODEL CERTIFICATES

Art. 75.
Unlawful appropriation of the rights of the inventor shall be treated as an offense of counterfeiting and punished by imprisonment for a term of six months to three years and a fine.

Art. 76.
The penalty provided for in the foregoing Article shall likewise be imposed on any person who knowingly, without prejudice to the rights conferred on third parties by this Law:
(a) produces or causes to be produced one or more objects in violation of the rights of the owner of the patent or utility model certificate;
(b) imports, sells, places on sale or markets or displays, or introduces into the territory of the Argentine Republic, one or more objects in violation of the rights of the owner of the patent or utility model certificate.

Art. 77.
The same penalty, increased by one-third, shall be imposed on:
(a) any person who has been a partner, agent, advisor, employee or worker of the inventor or his successors in title and who unlawfully appropriates or discloses the invention while it is still unprotected;
(b) any person who, by corrupting the partner, agent, advisor, employee or worker of the inventor or his successors in title, brings about the disclosure of the invention;
(c) any person who violates the obligation of secrecy imposed by this Law.

Art. 78.
A fine shall be imposed on any person not being the owner of a patent or utility model certificate or not yet enjoying the rights conferred by them, makes use on his goods or in his advertising, of names liable to mislead the public as to the existence thereof.

Art. 79.
In the event of repetition of the offenses punished by this Law, the penalty shall be doubled.

Art. 80.
The provisions of the Criminal Code shall apply to participation and complicity in criminal acts.

Art. 81.
In addition to criminal actions, the owner of the patent and his licensee or the owner of the utility model certificate may bring civil actions seeking the prohibition of continued unlawful exploitation and compensation for any prejudice sustained.

Art. 82.
The actions provided for under this Title shall be statute-barred in accordance with the provisions of the Basic Codes.

Art. 83.
I. On submission of the patent or utility model certificate, the injured party may seek the following precautionary measures, subject to such security as the court may consider necessary:
(a) sequestration of one or more specimens of the offending articles, or a description of the offending process;
(b) an inventory or a restraining order concerning the offending articles and the machinery specially designed for the manufacture of the products or the carrying out of the offending process.

II. The judges may order precautionary measures in relation to a granted patent in accordance with Articles 30, 31 and 32 of the law, in order to:
(1) Avoid infringement of the patent and, in particular, to avoid the goods entering commercial channels, including imported goods, immediately after customs clearance;
(2) Preserve relevant evidence in regard to the alleged infringement, as long as in any of these cases the following conditions are met:
(a) There is a reasonable probability of the patent being found valid if challenged by the defendant;
(b) it is expressly shown that any delay in granting such measures will cause irreparable harm to the patent holder;
(c) The harm that may be caused to the patent holder is greater than the harm that the alleged offender would suffer if the measures were to be granted erroneously; and
(d) There is a reasonable probability that the patent is being infringed. If the previous conditions are met, in exceptional cases,

such as when there is demonstrable risk of evidence being destroyed, the judges may grant these measures unheard alters parte. In all cases, prior to the measure being granted, the judge will require that an expert appointed ex officio reports on points a) and d) within a maximum time of fifteen (15) days. In the event that any of the measures provided in this Article are granted, the judges will order the applicant to submit a bond or equivalent guarantee that is sufficient to protect the defendant and to prevent abuses'.

Art. 84.
The measures provided for in the foregoing Article shall be implemented by a Government law officer, assisted at the request of the plaintiff by one or more experts.
The record shall be signed by the plaintiff or the person authorized by him, by the experts, by the current director or agents of the establishment and by the Government law officer.

Art. 85.
Any person who has infringing goods in his possession shall give a full account of the name of the person who sold them to him or procured them for him, the quantity and value thereof and the time at which retail sales began, on pain of being considered the accomplice of the infringer.
The Government law officer shall set down in the record the explanations given either spontaneously or at his request by the person concerned.

Art. 86.
The measures specified in Article 83 shall have no further effect after 15 days have elapsed if the applicant has not brought the appropriate court action, without prejudice to the evidentiary value of the official record.

Art. 87.
In the cases where the precautionary measures have not been granted in accordance with Article 83 of this law, the plaintiff may demand a guarantee from the defendant not to interrupt with his use of the invention, if he wishes to continue using it.

Art. 88.
For the purposes of civil proceedings, when the subject matter of the

patent is a process for producing a product, the judges will order the defendant to prove that the process that he uses to produce the product is different from the patented process. However, the judges will be empowered to order the plaintiff to prove that the process used by the defendant to produce the product infringes the process patent if the product produced as a result of the patented process is not new. Unless proved otherwise, it will be assumed that the product produced by the patented process is not new if the defendant or an expert appointed by the judge at the defendant's request can demonstrate the existence in the market, at the time of the alleged infringement, of an identical product to the product obtained as a result of the process patent, but not in infringement, coming from a source which is distinct to either the patent holder or the defendant. In the presentation of evidence under this Article, the legitimate interests of the defendants will be taken into account relating to the protection of industrial and commercial secrets.

Art. 89.
Civil cases conducted according to ordinary judicial procedure shall be within the jurisdiction of the Federal judges in civil and commercial matters, and criminal actions conducted according to petty-criminal procedures shall be within the jurisdiction of the Federal judges in criminal and petty-criminal matters.

TITLE VII ORGANIZATION OF THE NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY

Art. 90.

The National Institute of Industrial Property is hereby created as a self-governing body with legal personality and its own assets which shall operate within the scope of the Ministry of Economy and Public Works. It shall be the application authority of this Law, of Law No. 22.362, of Law No. 22.426 and of Decree-Law No. 6.673 of August 9, 1963.

The assets of the Institute shall consist of:

(a) annual fees and charges arising from the laws that it applies and also the fees payable for any additional services that it provides;

(b) contributions, subsidies, bequests and donations;

(c) property belonging to the Temporary Center for the Creation of the National Institute of Industrial Property;

(d) the sum that the Congress of the Nation sets aside for it in the annual budget.

Art. 91.

The NATIONAL INDUSTRIAL PROPERTY INSTITUTE shall be led and administered by a President appointed by the NATIONAL EXECUTIVE AUTHORITY who, in the event of temporary or permanent absence or incapacity, shall be replaced in his functions by a Vice President also appointed by the NATIONAL EXECUTIVE AUTHORITY. The Vice President shall exercise the powers delegated to him by the President.

The President and the Vice President shall devote themselves exclusively to their functions and abide by the legal provisions relating to incompatibilities among public officials and will only be removed from their positions through a justified decision of the NATIONAL EXECUTIVE AUTHORITY.

The President and the Vice President shall hold office for FOUR (4) years and may be re-elected indefinitely.

An Audit Office will operate within the NATIONAL INDUSTRIAL PROPERTY INSTITUTE and will be responsible for supervising and monitoring the acts of the constituent bodies of the Institute.

The Audit Committee will be managed by an internal auditor and an alternate auditor appointed by the NATIONAL EXECUTIVE AUTHORITY through the nomination of the NATIONAL AUDITOR’S OFFICE.

Art. 92.

THE NATIONAL INDUSTRIAL PROPERTY INSTITUTE shall have the following functions:

(a) To ensure compliance with the rules of this law, Law Nos. 22362 and 22426, and Decree-Law N 6673/63;

(b) To employ the technical and administrative personnel needed to carry out their functions;

(c) To enter into agreements with private and public organizations to implement the tasks within their scope;

(d) To establish, amend, and eliminate the required fees for procedures, including those for the purpose of maintaining the owner's rights and administering the money received from charges for their services. (Subparagraph substituted by Art. 95 of Decree No. 27/2018 B.O. 01/11/2018. Validity: from the day following its publication in the OFFICIAL BULLETIN OF THE ARGENTINE REPUBLIC)

(e) To prepare an Annual Report and a Balance Sheet;

(f) To establish a salary scale for personnel performing tasks in the Institute;

(g) To publish the Trademark and Patents bulletins and the Books of Trademarks, Patents, Utility Models, and Industrial Models and Designs;

(h) To create a Database;

(i) To promote their activities;

(j) To publicize their activities; and

(k) To regulate procedures related to invention patents and utility models in ways that facilitate a smooth procedure, modifying requirements that are obsolete due to the implementation of new technologies, as well as simplifying the registration process for applicants and society as a whole. (Subparagraph incorporated by Art. 96 of Decree No. 27/2018 B.O. 01/11/2018. Validity: from the day following its publication in the OFFICIAL BULLETIN OF THE ARGENTINE REPUBLIC)

Art. 93.

The following shall be the functions of the Board of the National Institute of Industrial Property:

(a) to propose to the National Executive, through the Ministry of Economy and Public Works, such amendments to regulations and national policy as it considers appropriate in relation to the laws on the protection of industrial property rights;

(b) to issue guidelines for the operation of the National Institute

of Industrial Property;
(c) to exercise budgetary control over the funds collected by the Institute;
(d) to hold contests, competitions or exhibitions and to award prizes and fellowships to foster inventive activity;
(e) to designate the Directors of Trademarks, Industrial Designs and Technology Transfer and the Commissioner and Under-Commissioner of Patents;
(f) to designate the registrars of trademarks, designs and technology transfer;
(g) to organize the creation of an Advisory Council;
(h) to issue internal regulations;
(i) to hear appeals filed with the Institute;
(j) to grant the licenses for use provided for in Title II, Chapter VII of this Law;
(k) to perform any other duty that may arise from this Law.

Art. 94.
The National Patent Administration is hereby created as a department of the National Institute of Industrial Property. The Administration shall be led by a Commissioner and an Under-Commissioner of Patents, both designated by the Board of the Institute.

Art. 95.
The National Executive shall exercise control over the operation of the National Institute of Industrial Property.

TITLE VIII FINAL AND TRANSITIONAL PROVISIONS

Art. 96.
The implementing decree shall set both the amount of fines and annual fees and charges and specify the method of adjusting them.

Art. 97.
Patents granted under the Law hereby repealed shall retain the validity accorded them until they expire, but they shall remain subject to the provisions of this Law and the regulations under it.

Art. 98.
This Law shall not afford exemption from compliance with the requirements laid down in Law No. 16.463 for the authorization of the manufacture and marketing of pharmaceutical products in the country.

Art. 99.
The provisions of Article 26 of this Law on publication of applications shall not apply to patent applications that are pending on the date of its entry into force, and the patent need only be published as provided in Article 32.

Art. 100.
Inventions relating to pharmaceutical products shall not be patentable until five years have elapsed following the publication of this Law in the Official Gazette. Until that date, none of the Articles contained in this Law that provide for the patentability of inventions of pharmaceutical products shall have effect, neither shall any other provisions that are inseparably related to such patentability.

Art. 101.
Without prejudice to the provisions of the foregoing Article, patent applications may be filed for pharmaceutical products in the form and under the conditions laid down in this Law, provided that the patents shall be granted as from five years following publication of this Law in the Official Gazette.
The term of the patents mentioned above shall be that arising from the application of Article 35.
The owner of the patent shall have exclusive rights in his invention as from five years following the publication of this Law in the Official Gazette, except where the third party or parties making use

of his invention without his authorization guarantee that the domestic market will be fully supplied at the same actual prices.
In such case the owner of the patent shall have the right only to collect fair and reasonable remuneration from the said third parties who are making the use from the time of the patent grant until the expiration thereof. If there is no agreement between the parties, the National Institute of Industrial Property shall set the remuneration in accordance with Article 46. The provisions of this paragraph shall apply unless the amendment thereof is required to implement decisions of the World Trade Organization adopted by virtue of the TRIPS Agreement, compliance with which decisions shall be mandatory for the Argentine Republic.

Art. 102.
Patent applications filed abroad prior to the enactment of this Law whose subject matter was not patentable under Law No. 111 but is patentable under this Law may be filed provided that the following conditions are met:
(a) the first application must have been filed within the year preceding the enactment of this Law;
(b) the applicant must prove, in the manner and under the conditions provided for in the implementing decree, that he has filed the patent application in a foreign country;
(c) neither exploitation nor importation of the invention must have started on a commercial scale;
(d) the validity of patents granted under this Article shall end on the same date as it does in the country in which the first application was filed, provided that the term of 20 years provided for in this Law is not thereby exceeded.

Art. 103.
Article 5 of Law No. 22.262 is hereby repealed.

Art. 104.
The National Executive shall issue the regulations under this Law.

Art. 105.
The foregoing shall be communicated to the National Executive.