

Chile

Industrial Property Law

Law No. 19,039 on Industrial Property

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TITLE I Preliminary provisions

Paragraph 1 Scope of application

Article 1.

Regulations pertaining to the existence, scope and exercise of industrial property rights shall be governed by this Law. These rights shall cover trademarks, patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications and appellations of origin and any other titles of protection that may be established by law.

Similarly, this Law shall criminalize conduct deemed unfair in respect of the protection of undisclosed information.

Article 2.

Any person, whether natural person or legal entity, Chilean or foreign, may enjoy the industrial property rights guaranteed by the Political Constitution, having previously to obtain the relevant title of protection in accordance with the provisions of this Law. Natural persons or legal entities resident abroad shall, for the purposes of this Law, appoint an agent or representative in Chile.

Industrial property rights that have been registered in accordance with the law shall enter fully into force on the date of registration, without prejudice to any rights that may fall to the applicant or other rights established under this Law.

Article 3.

The processing of applications, the granting of titles and other services related to industrial property are the responsibility of the National Institute of Industrial Property, INAPI, hereinafter referred to as the Institute.

Applications may be submitted in person or through a representative. This Law shall guarantee that the protection afforded by the industrial property rights regulated therein shall duly safeguard and ensure respect for both the biological and genetic heritage and national traditional knowledge. The grant of industrial property rights involving protectable elements, which have been developed from the material obtained from said heritage or such knowledge, shall be subject to the condition that such material was acquired according to the legal system in force.

Paragraph 2 General procedures for opposition and registration

Article 4.

Where a registration application has been filed and accepted for processing, publication of an extract therefrom in the Official Gazette, in the manner and within the periods established in the Regulations, shall be mandatory. Errors of publication which, in the opinion of the National Director of the Institute are not substantive, may be rectified by means of a decision ordering such correction in the respective file. In the event of substantive errors, the National Director of the Institute shall order a new publication, which must be made within 10 days, beginning from the date of the decision ordering the new publication.

Article 5.

Any interested party may file an opposition with the Institute to the application for a trademark, patent, utility model, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications or appellations of origin. The opposition shall be filed within a period of 30 days beginning from the date of publication of the respective extract.

The period indicated in the previous subparagraph shall be 45 days in the case of applications for patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications and appellations of origin.

In any dispute settlement procedures where the National Institute of Industrial Property is acting as a court of first instance, parties shall appear represented by an authorized lawyer, according to the provisions of Law No. 18,120.

Article 6.

Following the periods specified in the preceding Article, the National Director shall commission an expert report on applications for patents, utility models, industrial drawings and designs, or layout designs (topographies) of integrated circuits, in order to verify that it meets the conditions laid down in Articles 32, 56, 62, and 75 of this Law, as appropriate.

Article 7.

Once the expert report has been commissioned, it must be issued within 60 days as from the date the expert accepts the mission. This period

may be extended by an additional 60 days where the National Director deems it necessary.

The report of the expert shall be notified to the parties, who shall have 60 days beginning from such notification, to make whatever comments they may consider appropriate. This period may be extended once only, during the proceedings, at the request of the party concerned, for up to 60 days. The parties' comments shall be forwarded to the expert, and he shall be given 60 days to respond thereto.

Article 8.

After the expert's report has been ordered, the applicant shall have 60 days to provide proof of payment of the corresponding fee. Should he fail to make payment within this period, the application shall be deemed to have been abandoned. In special cases, at the request of the expert, the National Director shall set a specific amount to cover the cost of carrying out the examination, which the applicant shall pay within 30 days. Said cost shall be borne by the applicant for the patent, utility model, industrial drawings or design, layout design or topography of an integrated circuit or by the person requesting that the titles be invalidated.

Article 9.

In procedures where an opposition has been filed, the applicant shall have 30 days to respond in the case of trademarks, and 45 days in the case of patents, utility models, industrial drawings or designs, layout designs or topographies of integrated circuits, and geographical indications and appellations of origin.

Article 10.

In the event of any disputes over relevant substantive matters, evidence shall be heard within a period of 45 days, except for trademarks, in which case the period shall be 30 days. This period for receiving evidence may be extended by up to 30 days, in special cases.

Article 10 bis.

Where evidence is received, the accompanying documents shall be submitted in Spanish or duly translated, should the Institute so require.

Once the parties have been summoned to hear the sentence, no briefs or evidence of any kind shall be accepted, except those referring to the assignment of applications, settlements, withdrawal or limitation of the petition.

Article 11.

The periods of days specified in this Law and the Regulations thereunder shall be irrevocable and shall refer to working days, with Saturday not being considered a working day for those purposes.

Article 12.

In these procedures, the parties may avail themselves of all the usual forms of evidence in such matters, and also those indicated in the Code of Civil Procedure, with the exception of testimony.

The provisions of the second paragraph of Section 64 of the said Code shall also be applicable in these procedures.

Article 13.

All notifications related to the procedure for granting an industrial property right, oppositions, nullity and, in general, any matter before the Institute, shall be made through the daily statement that the Institute must prepare and publish in the manner determined by the regulations. Any resolution that appears in the daily statement shall be deemed to have been notified, except for those for which the law orders a different form of notification.

The notification of opposition to the registration application shall be made through the electronic means defined by the applicant in the file.

In these cases, the notification shall be deemed to have been made with the sending of a complete copy of the opposition and its provision. When, in addition to the opposition, substantive observations have been made to the registration application, said resolution shall also be notified electronically, together with the notification of opposition. If it is not possible to make the notification electronically, the corresponding resolution shall be deemed to have been notified through the daily statement, in accordance with the provisions of the regulations.

The notification of the request for the expiration or nullity of a registration shall be carried out in accordance with the terms set forth in articles 40 and following of the Civil Procedure Code, for which foreign applicants must establish an address in Chile. The request for the expiration or nullity of a registration granted to a person without address or residence in Chile shall be notified to the attorney or representative referred to in the first paragraph of article 2.

The notifications made by the Industrial Property Court shall be made by means of the daily statement, which must be prepared by its Secretary.

The date and manner in which the notification was made must be recorded in the file.

Article 14.

Industrial property rights are transferable on death and may be the subject of any type of legal act, which must be evidenced, at least, by private deed and shall be recorded in summary in the margin of the relevant register.

The respective summary must show the date on which the act or contract took place, as well as other details specified by Regulations.

Likewise, acts or contracts which take place abroad may be noted in the margin of the respective registry.

For assignments of applications for the registration of industrial property rights which are pending, a private deed will be sufficient, which will be recorded in the respective file.

In all cases, registration of trademarks is indivisible and none of the elements or characteristics protected by the title may be either partly or separately transferred. However, a protected trademark in a register may be partly transferred, comprising one or more of the unrelated classes for which it is registered, the rest of the register remaining as property of the right holder.

In the case of geographical indications and designations of origin, they will be subject to the provisions of Article 92 of this law.

Article 15.

The powers of attorney relating to industrial property shall be granted by private deed. Notwithstanding the above, the applicants may grant

them by public or private deed signed before a notary or before the competent official of the civil registry, in those communes where there is no notary. Mandates coming from outside the country may be granted before the respective Chilean consul without any subsequent formality, or in the manner established in Article 345 of the Code of Civil Procedure.

The right to withdraw an application or renounce a registration must be expressly granted, otherwise it will be understood to be excluded from the representative's powers.

Without prejudice to the provisions of the first paragraph, for submission of an application it will be sufficient for the representative to indicate on the application the name of the applicant on behalf of whom he will act. In these cases, the Institute will grant a period of 30 days to national residents and 60 days to those who reside outside the country to provide the respective authorization. At the end of this term, the application will be considered to be abandoned.

Article 16.

In respect of the proceedings referred to in this paragraph, evidence shall be assessed in due conscience.

Article 17.

Cases concerning opposition, the invalidation of registrations or transfers and any complaint concerning the validity or effects thereof or concerning industrial property rights in general shall be brought before the National Director in accordance with the formalities laid down in this Law.

The ruling shall be accompanied by a statement of reasons and shall conform to the provisions of Article 170 of the Code of Civil Procedure, as appropriate.

Article 17 bis A.

Within 15 days beginning from the date of its notification, in both the first and second instances, the decisions handed down in proceedings involving an opposition that contains or is based on manifest errors of fact may be remedied ex officio or at the request of a party. In respect of decisions handed down in proceedings with no opposition, these may be corrected in the same way, up until the

expiration of the period set for appealing the decision that puts an end to the registration procedure.

Article 17 bis B.

An appeal may be made against decisions handed down in first instance by the National Director regardless of whether an opposition has been raised. Such appeal shall be lodged within a period of 15 days beginning from the time of notification thereof, and shall be heard by the Industrial Property Tribunal.

The appeal shall be granted on either side and shall have effect against decisions of a final or interlocutory nature.

An appeal in cassation on the merits may be lodged with the Supreme Court, against final rulings in second instance.

Appeals shall be made and processed according to the relevant provisions of the Organic Court Code and the Code of Civil Procedure. Nevertheless, the appellant shall not be required to appear before the Industrial Property Tribunal to pursue such an appeal.

Paragraph 3 Industrial Property Tribunal

Article 17 bis C.

The Industrial Property Tribunal, hereinafter referred to as "the Tribunal", shall be a special, independent jurisdictional body, subject to the administrative, corrective and financial supervision of the Supreme Court, having its seat in the city of Santiago.

The Court shall comprise six judges and four alternates. Each judge shall be appointed by the President of the Republic, by means of a supreme decree issued by the Ministry of Economy, Development and Reconstruction, from among a list proposed by the Supreme Court, prepared on the basis of a public call for the provision of antecedents. Such call must meet conditions of objectivity, openness, transparency and nondiscrimination, established pursuant to a ruling issued by the Supreme Court.

Members of the Tribunal must prove that they have held a law degree for at least five years. Specialized knowledge of industrial property shall further be required in the selection of four of the judges and two of the alternates.

Article 17 bis D.

The Tribunal shall generally hold sessions in two chambers and exceptionally in three. Each chamber shall have at least two judges. To decide on cases brought before it, each chamber shall hold hearings at least three days a week.

The quorum for holding hearings shall be three members.

Decisions shall be taken by simple majority. In case of a tie, the presiding judge shall have the casting vote. In respect of all other procedural matters, the provisions of the Code of Organization of the Judiciary shall be followed.

In complex cases, the Tribunal may also order an expert report and decide who shall bear the costs thereof, without prejudice to any final decision in respect of litigation costs. In cases heard by the Tribunal, other than those related to trademarks, and at the request of any of the parties, the Tribunal shall order the report of one or more experts. In such cases, these experts shall participate in the deliberations, with voting rights.

The President of the Tribunal, as well as the President of each chamber, shall be elected by the respective titular members.

Article 17 bis E.

The monthly remuneration of the members of the Tribunal shall amount to 50 monthly accounting units for judges and 20 monthly accounting units for alternates.

Each member of the Tribunal shall further receive the amount of 0.4 monthly accounting units for each case heard and decided. However, the total amount that each member may receive every month in this regard may not exceed 50 monthly accounting units.

Article 17 bis F.

Members of the Tribunal shall be subject to the grounds for challenge for cause or recusal laid down in Articles 195 and 196 of the Code of Organization of the Judiciary.

Such grounds for recusal shall also apply to each member of the Tribunal if in a case being heard by him, his spouse or any relative up to the third degree of consanguinity or second degree of affinity; or people

who are linked to him by the entailment of adoption have interests involved, or companies where these same people are their legal agents, attorneys, directors, managers or perform other high-level administrative tasks, or own directly, or through natural persons or legal entities, a percentage of the company which will enable them to participate in its administration, or elect or have elected one or more of its administrators.

The grounds invoked may be accepted by the affected member. If not, the case shall be heard by the Tribunal, with the exclusion of such member. A fine payable to the State shall be applied of up to 20 monthly tax units to the party that invoked the grounds for recusal or disqualification, if the motion was unanimously rejected. If, for any reason whatsoever, the Tribunal lacks a quorum to function in at least one chamber, judges of the Santiago Appeals Court may stand in accordance with the provisions of the Code of Organization of the Judiciary.

The rules set out in Articles 319 to 331 of the Code of Organization of the Judiciary shall apply to the members of the Tribunal, with the exception of the provisions of Article 322. Members and alternates of the Tribunal shall serve three-year terms, and may be reappointed for new consecutive terms.

Article 17 bis G.

Members of the Industrial Property Tribunal shall leave office for the following reasons:

- (a) expiration of the legal term of appointment;
- (b) voluntary resignation;
- (c) reaching the age of 75;
- (d) dismissal from office for serious dereliction of duties;
- (e) sudden disability. This means anything that prevents the member from performing his duties for a total period of three consecutive months or six months in a year.

The measures described under (d) and (e) above shall be given effect by the Supreme Court, at the request of the President of the Tribunal or two of its members, without prejudice to the disciplinary prerogatives of the Supreme Court.

The decision ordering a member's removal shall indicate the factual grounds for dismissal and the supporting material.

Once the dismissal has been carried out, if the remaining term exceeds 180 days, a replacement shall be appointed according to the rules laid down in Article 17bis C of this Law. In the cases described in (b), (d) and (e) above, the replacement shall serve out the remainder of the respective term in the post.

Article 17 bis H.

The Tribunal shall have a guaranteed staff of one Attorney-Secretary, two Attorney-Court Reporters and four administrative employees, who shall belong to the Under-Secretariat of Economy, Development and Reconstruction and shall be permanently assigned to the Industrial Property Tribunal. They shall follow the rules applicable to the employees of that Under-Secretariat, except in matters where this is incompatible with the nature of their duties.

Any of the Court Reporters may replace the Secretary, who may also in turn replace them.

Article 17 bis I.

The Secretary, the Court Reporters and the administrative employees may, if necessary, be replaced or substituted by staff of the Under-Secretariat of Economy, Development and Reconstruction, provided that they comply with the requirements to perform the duties of the person they are replacing or substituting for, as the case may be. In addition, temporary staff may be hired should the Court so require, with prior authorization by the Budget Office.

The furniture, equipment, materials and any service or material necessary for the normal functioning of the Tribunal shall be the administrative and financial responsibility of the Under-Secretariat of Economy, Development and Reconstruction.

The Public Sector Budget Law shall earmark annually the necessary resources for the functioning of the Tribunal. To this end, the President of the Tribunal shall communicate the financial needs to the Minister of Economy, Development and Reconstruction, who shall include them along with those of the Ministry, according to the rules established for the public sector.

Article 17 bis J.

The Attorney-Secretary shall directly oversee the staff assigned to the Tribunal for administrative purposes, notwithstanding other

specific functions or duties assigned or delegated by the Tribunal.

Article 17 bis K.

Before taking up their duties, the members of the Tribunal, Secretary and Reporters shall take an oath or promise to uphold the Constitution and the laws of the Republic, before the President of the Tribunal, with the Secretary acting as certifying officer. The President of the Tribunal shall then take the same oath before the most senior Minister.

Paragraph 4 Payment of fees

Article 18.

The granting of patents for inventions, utility models, industrial drawings and designs, and layout-designs or topographies of integrated circuits shall be subject to the payment of a fee equivalent to two monthly tax units for every five years of granting of the right. When the application is filed, the equivalent of one monthly tax unit must be paid, without which it will not be processed. Once the application has been accepted, the payment of the fee for the first ten years shall be completed for invention patents, and for the first five years in the case of utility models, industrial drawings or designs and layouts or topographies of integrated circuits.

Without prejudice to the provisions of the preceding paragraph, and at the request of the applicant, the Institute may grant a filing date for an application even if the required payment has not been credited, but the application shall not be processed any further until such payment has been credited, which must be done within thirty days following the granting of the filing date, under penalty of considering the application as not having been filed.

Any application for a patent of invention that exceeds 80 pages shall pay, together with the filing fee, an additional fee equivalent to 1 monthly tax unit for each additional 20 pages or fraction thereof.

The payment of the fees corresponding to the second ten-year period for patents, the second five-year period for utility models and layout-designs or topographies of integrated circuits, and the second and third five-year periods for industrial drawings or designs, may be made in one of the following ways, at the option of the holder:

- (a) Annual and equal payments, equivalent to 0.4 monthly tax units, as from the expiration of the first ten-year or five-year period, as the case may be. These payments must be made within the year prior to the corresponding annuity or within a grace period of six months following the expiration of each year, with a surcharge of 20% for each month or fraction of a month, counted as from the first month of the grace period; or
- (b) A single payment before the expiration of the first ten-year or five-year period, as the case may be, which shall be equivalent to 4 tax units per month in the case of patents and industrial designs, and 2 tax units per month in the case of utility models and layout-designs or topographies of integrated circuits. The single payment must be made within the year prior to the completion of the first ten-year or five-year period, as the case may be, or within a grace period of six months following its expiration, with a surcharge of 20% for each month or fraction of a month, counted as from the first month of the grace period.

If payment is not made within the terms set forth in paragraphs a) or b) above, the rights referred to in this article shall lapse.

Article 18 bis A.

Applicants for the rights referred to in the previous Article who lack financial means may obtain registration without the need to pay fees of any kind. To enjoy such benefit, the applicant must attach to the corresponding application a sworn statement declaring a lack of financial means, together with the documents required by the Regulations under this Law.

Once the benefit is granted, the rights holder shall not be obliged to make the payments referred to in the first subparagraph of Article 18, and may defer any remaining payment for the successive years, as stipulated in the Regulations. An entry shall be made in the Register concerning the deferral and the obligation to pay the deferred amount.

This obligation shall apply to anyone who is the holder of the registration. Payment of the cost of the expert report referred to in Article 6 of this Law shall also be deferred, and the National Director shall appoint an expert from a roster which the Institute shall keep for this purpose, according to the rotation system established by the Regulations under this Law. The expert must accept

the obligation under penalty of being removed from the roster, and perform it with due diligence and promptness. Similarly, an entry shall be made in the Register indicating the name of the examiner who has prepared the report and the fees charged, which must be paid on the date established in the Regulations by the person who appears as the owner of the registration.

If the deferred expert fees are not paid on time, the Institute shall declare the patent as having lapsed.

Article 18 bis B.

The registration of trademarks, geographical indications and designations of origin shall be subject to the payment of a fee equivalent to three monthly tax units. When the application is submitted, the equivalent of one monthly tax unit must be paid, without which the application will not be processed.

Once the application is accepted, the fee will be completed. The renewal of trademark registrations shall be subject to the payment of a fee equivalent to 6 monthly tax units per class. Proof of said payment must be made together with the renewal application. Renewal applications submitted after the expiration of the registration to be renewed shall be subject to the payment of a surcharge corresponding to 20% for each month or fraction of a month after the expiration of the registration.

In the case of geographical indications or designations of origin, these shall not be subject to the renewal fee established for trademarks in the previous section.

Article 18 bis C.

The filing of appeals shall be subject to payment of a fee equivalent to two monthly tax units, and shall be accompanied by the respective proof of payment. If the appeal is accepted, the Industrial Property Tribunal shall order the reimbursement of the amount paid according to the procedure established in the Regulations.

Article 18 bis D.

The registration of transfers of ownership, licenses of use, liens and name changes and any other type of encumbrances that may affect a patent for an invention, utility model, industrial drawings and

designs, trademarks or layout or topography schemes of integrated circuits, shall be carried out upon payment of a fee equivalent to one monthly tax unit, the payment of which shall be credited at the time of submitting the respective application. The acts indicated shall not be enforceable against third parties until they are registered with the Institute.

Article 18 bis E.

The rights established in the previous articles shall be for the benefit of the tax.

In order to complete the payment of the fees corresponding to the acceptance of an industrial property registration, this must be accredited within sixty days from the date on which the resolution authorizing the registration in the respective registry becomes final, failing which the application will be considered abandoned and will be archived, without prejudice to the provisions of the second paragraph of article 45.

The resolution indicated in the previous paragraph must be notified electronically in the manner and under the conditions established by the regulations.

Article 18 bis F.

The amounts paid for fees will not be refunded.

Paragraph 5 Procedure for cancellation of a registration

Article 18 bis G.

Any interested party may request the cancellation of a registration of an industrial property right.

The cancellation claim shall contain at least the following information:

- (a) name, address and occupation of the claimant;
- (b) name, address and occupation of the plaintiff;
- (c) the number and date of the registration for which invalidation is sought, and individualization of the respective fee;
- (d) facts and legal reasons on which the claim is founded.

Article 18 bis H.

In the case of patents and utility models, cancellation may be requested for the whole of the registration or one or more of its claims.

Article 18 bis I.

Notice of the claim shall be served to the holder of the industrial property right or his representative. Said term shall be 60 days in the case of patents, utility models, industrial designs, layout designs or topographies of integrated circuits, geographical indications or appellations of origin. In the case of trademarks, said notice shall be 30 days.

Article 18 bis J.

Following the response to the cancellation claim for a patent, utility model, industrial design, layout design or topography of an integrated circuit, geographical indication or appellation of origin, or failing a response by the plaintiff, a report by one or more experts shall be ordered regarding the facts contained in the claim and the corresponding response. The expert shall be appointed in a hearing by mutual agreement of the parties or by the National Director if there were no agreement or the hearing is not held for any reason.

Nevertheless, a party that deems itself aggrieved by the report issued by the expert may ask for a second report, in which case the procedure shall be that established in this Article.

the National Director may, at any time, hear the expert or experts who issued the report at the time registration was requested, as background for better resolving the matter.

Article 18 bis K.

If an expert is appointed by the National Director, the parties may object, within five days following the decision appointing him, solely on one or more of the following grounds:

- (a) for having publicly expressed an opinion on the matter;
- (b) for relation of kinship, evident friendship or enmity with one of the parties;
- (c) for lack of aptitude or competence regarding the matter submitted for his consideration;
- (d) for having rendered professional services, dependently or independently, to any of the parties in the last five years or for

having had economic or business relations with any of them during the same period.

The other party shall be given 20 days to respond to a writ objecting to an expert, and with said response or in default thereof, the National Director shall decide the issue with no further formality.

The expert report shall be made known to the parties, who shall have 60 days to comment thereon.

In the event of any disputes over relevant substantive matters, the National Director shall set a period of 45 days for receiving evidence, which may be extended for a further 45 days in duly specified cases. On the basis of the views put forward by the parties and the expert report, the National Director shall take a decision on the cancellation requested.

Article 18 bis L.

In trademark disputes, once the term for responding to the claim has expired and if there are disputes over relevant substantive matters, the National Director shall set a period of 30 days for receiving evidence, which may be extended for a further 30 days in cases duly specified by him.

Article 18 bis M.

The rules contained in Articles 10bis, 12 and 16 of this Law shall apply to the procedure for cancellation.

Article 18 bis N.

A registration that has been cancelled shall be deemed null and void from its date of validity.

The decision declaring the cancellation of the registration, in full or in part, shall be recorded in the margin of the respective registration.

Article 18 bis O.

The procedure set out in this paragraph shall apply to other processes within the competence of the National Director, according to the provisions laid down in Article 17 of this Law.

TITLE II Trademarks

Article 19.

The term "trademark" includes any sign capable of distinguishing goods or services on the market. Such signs may consist of words, including the names of persons, letters, numbers, figurative elements such as images, graphics, symbols, combinations of colors, sounds, order or three-dimensional shapes, as well as any combination of such signs. Where the signs are not intrinsically distinctive, registration may be granted if they have acquired distinctiveness through use on the national market.

Promotional or advertising slogans may also be registered, provided that they are linked or attached to registered trademarks of the goods or services for which they are to be used.

The nature of the goods or services to which the trademark refers shall never be an obstacle for trademark registration.

Article 19 bis.

In the event that the registration of a trademark is requested in favor of two or more owners, these, acting together, may request that a regulation for the use and control of the same be registered as well, which will be obligatory for the owners and unenforceable for third parties. In this case, the community members may renounce the right to request the partition of the community for a determined period or indefinitely.

The Institute may object to the registration of the regulation, in the event that it contains illegal provisions or that it misleads or confuses the consumer public.

The regulation for use and control must be submitted together with the trademark application and will be resolved jointly. The Institute may make observations, up to before issuing the final resolution, which must be corrected within a maximum period of sixty days.

The non-compliance by any of the community members of the norms provided for in the regulation for use and control, will give rise to any of the other community members to request forced compliance and/or compensation for damages in accordance with the norms of Title X of this law.

Article 19 bis A.

Cancellation or revocation for nonpayment of the renewal fees shall produce the same effects in respect of the promotional sentences that form part of the registration. Consequently, once a trademark has been cancelled or revoked, the Institute shall cancel as of right registrations of promotional sentences that depend on the cancelled or revoked trademark. A record shall be kept thereof by means of a subentry in the margin of the corresponding registration.

Article 19 bis B.

Promotional sentences may not be assigned or transferred, other than with the main registration to which they are attached.

Article 19 bis C.

Registrations of trademarks that contain signs, figures, letters, colors, prefixes, suffixes, roots or segments in common use or likely to be of a generic, indicative or descriptive nature, shall be deemed to confer protection on the trademark as a whole and shall be granted with the express indication that they are granted without protection for the said elements considered in isolation.

Article 19 bis D.

A trademark shall confer on its owner the exclusive and exclusive right to use it in the course of trade in the manner in which it has been granted and to distinguish the goods or services covered by the registration.

Consequently, the owner of a registered trademark may prevent any third party, without his consent, from using in the course of business identical or similar trademarks for goods or services that are identical or similar to those for which the registration has been granted, and provided that the use made by the third party is likely to mislead or confuse.

Where the use made by the third party refers to an identical trademark for identical goods or services, confusion shall be presumed.

Article 19 bis E.

The right conferred by the registration of a trademark does not entitle its holder to prohibit third parties from using it in respect of goods legitimately marketed in any country under that trademark by said

holder or with his express consent.

The rights conferred on the holders of registered trademarks shall in no way prevent the exercise of the right of any person to use, in the course of commercial operations, his name or pseudonym or the name of his predecessor in the commercial activity, except when that name is used in a manner that misleads or confuses the consumer public.

Likewise, the owners of registered trademarks that incorporate geographical terms or indications relating to the type, nature, variety, origin, nationality, provenance, destination, weight, value, quality, characteristics or other descriptive terms of products or services, may not prevent the use of said terms or indications when they are used precisely to identify or inform the geographical origin, type, nature, variety, origin, nationality, provenance, destination, weight, value, quality or other descriptive characteristic of a product or service, except when it misleads or confuses the consumer public.

Article 20.

The following may not be registered as trademarks:

(a) the coats of arms, flags or other emblems, names or symbols of any State, international organizations or public services of a State;

(b) technical or scientific names for the object for which they are intended, names of plant varieties, common international names recommended by the World Health Organization, and names indicating therapeutic properties;

(c) the name, pseudonym or likeness of any natural person, except with the consent of that person or of his heirs where he is deceased. The names of historical figures may, however, be registered if at least 50 years have elapsed since their death, and on condition that their honor is not thereby prejudiced;

Names of persons may in any event not be registered when this would constitute an infringement of subparagraphs (e), (f), (g) and (h) below;

(d) marks that reproduce or imitate official signs or hallmarks of control or warranty adopted by a State, without the authorization of the State; and those that reproduce or imitate medals, diplomas or distinctions awarded at national or foreign exhibitions, where the

registration thereof is applied for by a person other than the person who won them;

(e) expressions or signs used to indicate the type, nature, origin, nationality, source, destination, weight, value or quality of the goods or services; those that are generally used in commerce to designate a certain class of goods or services, and those that do not have a distinctive character or describe the products or services to which they are to be applied.;

(f) those that lend themselves to misleading or deceiving with respect to the origin, quality or type of goods or services, including those belonging to different classes whose coverage is related to or indicates a connection with the respective goods or services;

(g) trademarks that are identical or that are graphically or phonetically similar, so that they can be confused with other trademarks registered abroad to distinguish the same goods or services, provided that they are well-known and well-known in the relevant sector of the public that habitually consumes these goods or demands these services, in the country of origin of the registration.;

Where registration has been refused or cancelled on such grounds, the owner of the well-known trademark registered abroad shall request registration of the trademark within a period of 90 days; if he fails to do so, the trademark may be filed by any person, priority being given for the 90 days following the expiry of the right of the owner of the trademark registered abroad to that person whose application was rejected or whose registration was cancelled.

Similarly, trademarks registered in Chile that enjoy fame and reputation may prevent the registration of other identical or similar signs applied for to distinguish different and unrelated goods or services, provided, first, that such signs retain some kind of link with the goods or services that distinguish the well-known trademark and, second, that it is likely that such protection would harm the interests of the holder of the well-known registered trademark. In this case, the fame shall be determined in the relevant sector of the public that reputation consumes those goods or demands such services in Chile;

(h) those that are identical or that are graphically or phonetically similar in such a way that they can be confused with others already registered or validly requested previously for identical or similar goods or services, belonging to the same class or related classes.

These grounds shall also apply in respect of those unregistered marks that are really and effectively used prior to the application for registration on the national territory. If the registration is refused or cancelled on these grounds, the user of the trademark shall apply for its registration within 90 days. If he fails to do so, the trademark may be filed by anyone, priority being given for the 90 days following the expiry of the user's right to that person whose application was rejected or whose registration was cancelled.

Notwithstanding the provisions of the first paragraph under letter (h), the Institute may accept agreements for the coexistence of trademarks, provided that such agreements do not infringe rights acquired by third parties prior to that date or cause confusion among public consumers;

(i) the form or color of the goods or packaging, in addition to the color in itself;

(j) marks likely to mislead or create confusion among public consumers, in respect of the source or attributes of the good that a geographical indication or appellation of origin is intended to distinguish in Chile;

(k) marks contrary to public policy, morality and proper practice, including the principles of fair competition and trade ethics.

Article 20 bis.

Where a request for trademark registration has been previously filed abroad, the applicant shall enjoy priority for a period of six months beginning from the filing date in the country of origin, to file the application in Chile.

Priority may be accredited according to the means and modalities established in the regulations.

Article 21.

The registration of trademarks will be made at the Institute, and applications for registration will be filed in accordance with the provisions and in the manner established by the regulations.

Any application which lists various classes of goods and/or services, called hereinafter "initial application", may be divided, at the request of the applicant, into two or more applications, called hereinafter "divisional applications". For such purposes, the applicant must indicate on each application the distribution of the goods and/or services. The divisional applications will keep the submission date of the initial application and the benefit of the right of priority, if any. Divisional applications will result in the respective, corresponding payments, as if they were new applications.

A request to divide an application for registration of a commercial trademark may be made any time before the final decision of the Institute on the initial application for its registration, whether there is opposition to the application or not. Likewise, the application may be submitted during the appeal or complaint against the decision relating to registration of the trademark.

Registration of active commercial trademarks may always be divided. In those cases where the validity is being challenged before the Institute or during appeal in an invalidity procedure for a registered trademark, division may be requested in similar terms to those indicated in the preceding paragraphs.

During the processing of any official objections, proceedings of opposition, invalidity, or any other pending appeals, the division of the application or of the registration, will only proceed when, as a result of the division, the official objections, the opposition proceedings, the invalidity proceedings or the appeal concerned, the division of the application or registration is limited to one of the applications or one of the divided registrations.

Article 22.

After an application has been filed, the Registrar of trademarks shall ensure that the formalities required for a valid filing have been fulfilled. If the Registrar finds any error or omission in this formal examination, the applicant shall be advised to make the relevant

corrections or clarifications within a 30day period, failing which he shall forfeit his priority date. If the correction is not made within the period indicated, the application shall be deemed abandoned. An appeal against a decision not to process an application may be filed with the National Director, in accordance with general rules. If the correction is not made or the appeal is rejected, the application shall be deemed abandoned.

If the National Director accepts an application for processing, it may not be subsequently rejected ex officio on the same legal grounds and reasoning as those put forward by an official during the appeal process.

If other actions are required to overcome the objection raised against an application, the applicant shall be entitled to request that the procedure be suspended until such formalities have been completed. If the formalities serving as the basis for the petition have not been initiated within 60 days beginning from the date where this is legally possible, the application shall be deemed abandoned.

Once the period to file an opposition has expired, the Director of the Institute shall analyze the merits of the application and indicate whether there are grounds to reject the petition ex officio. These observations shall be notified to the applicant, who shall respond thereto in the same term set to respond to and challenge any oppositions that may have been filed.

Once the indicated period has expired and the other actions ordered in the proceedings have been completed, the Director of the Institute shall hand down his final decision accepting or rejecting the application.

In this case, the application may not be rejected on grounds different from the ones contained in the oppositions or in the observations of the Director of the Institute.

Article 23.

A trademark may only be applied for for specific and determined products or services, indicating the class or classes of the International Classification to which they belong.

Trademarks may be applied for to distinguish advertising phrases to be used in advertising for trademarks already registered.

When products and/or services belonging to several classes of the Nice International Classification have been included in a single application, said application will result in a single registration.

Article 23 bis A.

The term collective mark includes any sign or combination of signs capable of distinguishing in the market the products or services of the members of an association from the products or services of third parties.

Article 23 bis B.

The term certification mark is understood to mean any sign or combination of signs capable of distinguishing third-party products or services in the market, guaranteeing that they comply with common requirements and characteristics.

Those who manufacture or market products or services that are identical or similar to those to which the aforementioned mark is to be applied may not be holders of certification marks.

The holder of a certification mark must authorize its use by any person whose product or service meets the conditions established in the regulations for the use of the mark.

Article 23 bis C.

Applications for registration of collective marks or certification trademarks must be accompanied by regulations for use.

The regulations for use must comply with the following requirements:

- (a) Contain the identification data of the owner.
- (b) Identify the products or services that will be distinguished by the collective mark or the products and services that will be the object of certification.
- (c) Indicate the conditions and modalities for the use of the trademark.
- (d) Contain the reasons why the use of the collective mark may be prohibited to a member of the association or to the previously authorized person in the case of the certification trademark.

(e) Contain the other mentions established by the regulations of this law.

The Institute may object to the registration of the regulations for use or its modification as it deems pertinent, at the formal examination stage or at the substantive examination stage, if in its opinion legal or regulatory provisions are violated, or it contains provisions contrary to public order or that may mislead or confuse the consumer public.

Article 23 bis D.

For the purposes of payment of fees, the application or registration of a trademark for goods and services shall be considered as a separate application or registration for each class, regardless of the number of specific goods or services included in each class. Said principle shall be extensive to both new registrations and renewals of registrations.

Article 23 bis E.

Trademark registrations shall be valid for the entire territory of the Republic.

Article 24.

The registration of a trademark shall have a duration of ten years, counted from the date of its registration in the respective registry. The owner shall have the right to request its renewal for equal periods during the six months prior to the expiration of its validity and up to six months from its expiration, complying with the provisions of article 18 bis B on applicable fees.

Once the period indicated in the previous paragraph has expired without the renewal application being submitted, the registration shall expire.

Article 25.

Any registered trademark used in trade shall visibly display the words "Marca Registrada" or the abbreviation "M.R." or the letter "R" inside a circle. Failure to do so shall not affect the validity of the registered trademark, but a person who fails to comply with this requirement shall not be able to bring the criminal actions provided for in this Law.

Article 26.

The registration of trademarks shall be invalidated where one of the prohibitions referred to in Article 20 of this Law has been violated.

Article 27.

An action to invalidate the registration of a trademark shall be barred after five years, beginning from the date of registration.

The foregoing action for invalidation shall not be barred in respect of registrations obtained in bad faith.

Article 27 bis A.

A declaration of total or partial expiration of a trademark registration shall be made if any of the following circumstances occur:

(a) If, after five years from the date of registration, the trademark has not been used in a real and effective manner within the national territory, by the owner or by a third party with his consent, to distinguish one or more of the products and/or services for which it has been granted; or if said use has been suspended uninterruptedly for the same period.

(b) If its owner has caused or tolerated it to become the usual designation of a product or service for which it is registered, such that in the course of commercial operations and in general use by the public, the trademark has lost its force or capacity to distinguish the product or service to which it is applied. However, the owner of a trademark will not be deemed to have caused or tolerated such transformation if he has used in commerce the indications that indicate that it is a registered trademark, as referred to in article 25.

The declaration of expiry may not be formulated ex officio and may only be requested by someone who has a legitimate interest.

Article 27 bis B.

The burden of proof of the use of the trademark shall be on its owner. The effective use of the trademark shall be proven by any proof admitted by this law, which demonstrates that the trademark has been used in the national territory. Any proof of use of a trademark presented for the purposes of this law shall have the value of a sworn declaration, and the owner of the trademark shall be responsible for its veracity.

If the owner has not proven the use of the trademark in the terms

indicated, the declaration of expiration shall proceed, unless the owner demonstrates that there were valid reasons based on the existence of obstacles to its use.

Circumstances that arise independently of the will of the owner and that constitute an obstacle to the use of the trademark, such as import restrictions or other official requirements imposed on protected products or services, shall be recognized as valid reasons for non-use.

Article 27 bis C.

Any person who is sued for nullity or opposition based on a previously registered trademark may file a counterclaim for expiration, and must do so in the written response. The counterclaim shall be substantiated and decided jointly with the main claim.

Once the counterclaim has been filed, the plaintiff shall be notified, who must respond within thirty days from its notification, at the end of which the cause of evidence shall be received with respect to all the actions brought, which shall follow the same procedure.

Article 27 bis D.

Expiration shall take effect from the moment the total or partial cancellation of the corresponding registration ordered by a final judgment is carried out.

If the cause of expiration is established only for a part of the products or services for which the trademark is registered, its declaration shall only extend to the affected products and/or services. The trademark registration shall continue to exist with respect to the other products and/or services.

Article 28.

The following persons shall be sentenced to a fine of 25 to 1,000 monthly accounting units payable to the State:

- (a) anyone who with ill intent and for commercial purposes, uses a trademark identical or similar to another already registered for the same products or services or establishments, or in relation to products, services or establishments related to those covered by the registered trademark, notwithstanding the provisions of Article 19bis E;

- (b) anyone who, for commercial purposes, uses an unregistered, lapsed or invalidated mark in a manner indicating that it is a registered trademark or imitating a registered trademark;
- (c) anyone who, for commercial purposes, uses containers or packaging bearing a registered trademark, without the right to use that trademark, without having first previously erased it, except where the packaging so marked is intended to contain products of a type different from that protected by the trademark.

Any person committing a second or subsequent offense within five years of the application of a fine shall receive another fine of no less than double the preceding fine, up to a maximum amount of 2,000 monthly accounting units.

Article 28 bis.

The following shall be punished with a minimum to medium degree of imprisonment:

- (a) Anyone who falsifies a trademark already registered for the same products or services.
- (b) Anyone who manufactures, introduces into the country, has for sale or markets objects that bear counterfeits of trademarks already registered for the same products or services, for profit and for commercial distribution.

Anyone who has for sale or directly markets to the public products or services that bear counterfeits of trademarks already registered for the same products or services shall be punished with a minimum degree of imprisonment.

Article 29.

Persons found guilty under the preceding Article shall be obliged to pay the costs, damages and harm caused to the owner of the mark. The tools and equipment used directly for the counterfeiting or imitation and the objects bearing counterfeit marks shall be confiscated. Objects bearing a counterfeit mark shall be destroyed. As for the tools and equipment used, the competent court may order their destruction or their distribution for charity.

Article 30.

Where an unregistered trademark has been used by two or more persons at the same time, the one who registers it may not prosecute any persons

who continue to use it for at least 180 days from the date of registration.

Similarly, once a trademark has been invalidated, the holder of the registration that provided the basis for declaring the invalidation may not prosecute the holder of the invalidated trademark for at least 180 days after the respective decision has gone into effect.

TITLE III Inventions

Paragraph 1 Inventions in general

Article 31.

The word "invention" shall mean any solution to a technical problem arising in an industrial concern. An invention may be or relate to a product or process. The word "patent" shall mean the exclusive right granted by the State for the protection of an invention. The effects, obligations and limitations embodied in the patent shall be determined by this Law.

Article 31 bis.

For the purposes of civil proceedings for infringement of process patents, the judge shall have the authority to order the defendant to prove that the process to obtain a product is different from the patented process, subject to the condition that the product obtained by the patented process is new.

In such proceedings, unless proven otherwise, all identical products shall be deemed to have been obtained by the patented process.

For the purposes of this Article, the product shall be considered "new" if it at least complies with the requirement of novelty in Article 33, on the date the application for the process patent was filed in Chile or on the date of priority validated in Chile, according to Article 34. For such qualification, the judge shall request a report from the National Director, at the applicant's cost.

Notwithstanding, in respect of the submission of evidence to the contrary, the legitimate interests of defendants in protecting their industrial and trade secrets shall be taken into consideration.

Article 32.

Any invention, whether product or process, in any field of technology, shall be patentable where it is new, involves an inventive step and is industrially applicable.

Article 33.

An invention shall be considered new if it does not already form part of the state of the art. The state of the art shall be held to comprise everything disclosed or made available to the public anywhere in the

world by publication in tangible form, sale or marketing or use, or in any other manner, before the date of filing of the patent application in Chile or the priority claimed according to Article 34.

The subject matter of national applications for patents or utility models that have been filed with the Institute prior to the date of the application being examined and have been published on that date or subsequently shall also be regarded as forming part of the state of the art.

Article 34.

In case a patent has been previously applied for abroad, the interested party shall have priority for a period of one year, counted from the filing date in the country of origin, to file the application in Chile.

The applicant may request the restoration of the right of priority within two months from the date of expiration of the priority term.

The priority may be accredited according to the means and modalities established in the regulations.

Article 35.

An invention shall be regarded as involving an inventive step if it is neither obvious to a person skilled in the art nor is obvious from the state of the art.

Article 36.

An invention shall be considered industrially applicable if it can, in principle, be made or used in any kind of industry. For such purposes, the word "industry" shall be understood in its broadest sense, including activities such as manufacturing, mining, building, crafts, agriculture, forestry and fishing.

Article 37.

The following shall not be regarded as inventions and shall be excluded from the patent protection afforded by this Law:

- (a) discoveries, scientific theories and mathematical methods;
- (b) plant or animal varieties, except microorganisms that meet the general requirements for patentability. Plant varieties shall only enjoy protection in accordance with the provisions of Law 19,342, on Rights of Breeders of New Plant Varieties. Nor may essentially

biological processes for the production of plants and animals, except microbiological processes, be patented. For these purposes, the words "an essentially biological process" shall mean one that consists entirely of natural phenomena, such as crossing and selection;

- (c) economic, financial, commercial, business or easily verifiable systems, methods, principles or plans; and the rules for performing purely mental or intellectual activities or playing games;
- (d) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body, except products for use in any of these methods;
- (e) new uses of articles, objects or elements known and already used for specific purposes, and changes of shape, dimensions, proportions or materials. Notwithstanding the foregoing, the new use of known articles, objects or elements may constitute an invention that qualifies for protection, if said new use solves a technical problem that did not previously have an equivalent solution, complies with the requirements referred to in Article 32, and requires changes in dimensions, proportions or materials of the known article, object or known element for obtaining said solution to such a technical problem. The claimed new use shall have to be proven by means of experimental evidence in the patent application;
- (f) parts of living beings as they are found in nature, natural biological processes, biological material existing in nature or material that can be isolated, including genomes or germoplasm. Nevertheless, procedures that use one or more of the biological materials mentioned above and products directly obtained by such procedures shall be eligible for protection, provided that they comply with the requirements established in Article 32 of this Law, insofar as the biological material is adequately described and the industrial application thereof is explicitly outlined in the patent application.

Article 38.

Patents may not be granted for inventions whose commercial exploitation must necessarily be prevented to protect public order, State security, morality or proper practice, the health or life of persons or animals, or to preserve plants or the environment, provided that such exclusion is not solely for the purposes of a legal or administration provision that prohibits or regulates such exploitation.

Article 39.

Patents for inventions shall be granted for a nonrenewable period of 20 years, beginning from the date of filing of the application.

Article 40.

Without prejudice to the provisions of Article 42, any person who has an invention, but who is not yet able to comply with all the elements of a patent application for filing, in accordance with the provisions of Article 43, may file a provisional patent application, which the Institute will recognize for a period of twelve months, upon payment of the corresponding fee.

The provisional patent application confers on its holder a right of priority for the period indicated in the previous paragraph, counted from its filing. The provisional application may not claim the priority of a previous application.

The provisional patent application does not require the filing of claims or the declarations referred to in Article 44, without prejudice to what is established by the regulations.

In addition, the provisional patent application must be accompanied by a document in Spanish or English that describes the invention in a sufficiently clear and complete manner. If necessary, at least one drawing must also be included.

Before the expiration of the twelve-month period counted from the date of filing of the provisional application, the holder must apply for the definitive patent, attaching all the documents mentioned in articles 43, 43 bis and 44, duly drafted in Spanish.

If after the period indicated in the previous paragraph has elapsed, the holder of a provisional patent has not applied for the definitive patent, it shall be deemed not to have been filed.

The definitive application shall retain the priority of the provisional application, provided that its content does not imply an extension of the field of the invention of the latter or of the disclosure contained in the provisional application. If the definitive application extends said field, the modified contents shall have for all legal purposes the date of filing of the definitive application.

The term of validity of the definitive patent application filed in accordance with the preceding articles shall be counted from the date of filing of the provisional patent application.

Article 41. Repealed.

Article 42.

Disclosures made within 12 months prior to the filing of the application shall not be considered for purposes of determining the novelty of the invention or the inventive step, if the public disclosure:

- (a) was made, authorized by or comes from the applicant for the patent;
- (b) has been made or arises from abuse or unfair practices to which the applicant or the inventor has been subjected.

Article 43.

The patent application shall be accompanied by the following documents:

- an abstract of the invention;
- a description of the invention;
- a claims sheet;
- drawings of the invention where appropriate.

Article 43 bis.

The abstract shall be for exclusively technical purposes and may not be considered for any other purpose, not even for the determination of the scope of protection sought.

The claims shall define the subject matter for which protection is sought. They must be clear and concise and be based on the description.

The description shall be sufficiently clear and complete for an expert or a person skilled in the art to reproduce the invention without need of any other information.

Article 44.

Declarations relating to the novelty, ownership and usefulness of the invention shall be incumbent on the interested party, who shall make them subject to his own responsibility.

The grant of a patent shall not mean that the State guarantees the need for and accuracy of the information provided by the applicant in the application and the description.

Article 45.

Once the application has been filed with the Institute, a preliminary examination shall be conducted to verify that the documents listed in Article 43 have been attached. Should the preliminary examination reveal an error or omission, the applicant shall be asked to make the necessary corrections or clarifications or submit any other pertinent documents within 60 days, failing which he shall lose his priority date. If the errors or omissions are not corrected within the indicated term, the application shall be deemed not to have been filed.

Applications that do not comply with other filing requirements, within the periods indicated in this Law or the Regulations thereunder, shall be deemed to have been abandoned and shall be shelved. Without prejudice to the above, the applicant may request reinstatement of the application, provided that the filing requirements are corrected within 120 days from the date of abandonment, failing which he shall lose his right of priority.

If the period expires and errors or omissions have not been corrected, applications shall be deemed to have been abandoned for good. If it can be deduced from the examination of an application for an industrial property right that the right claimed belongs to another category, it shall be examined and treated as such, and the acquired priority date retained.

Article 46.

Applicants for patents already applied for in other countries shall submit the result of any search and examination already undertaken by the office in the other country, where this has been disclosed, whether or not the earlier application resulted in the grant of a patent.

Article 47.

All the supporting material relating to a patent application shall be kept at the disposal of the public in the Institute following the publication referred to in Article 4.

Article 48.

Once the patent grant has been approved and payment of the corresponding fees made, the patent shall be granted to the interested party and a certificate issued according protection as from the date on which

the application was filed.

Article 49.

The owner of a patent for an invention shall have the exclusive right to manufacture, sell or market in any form the product or other subject matter of the invention and generally to exploit it commercially in any other way.

In the case of process patents, protection shall extend to the products directly obtained by such process.

The scope of the protection granted by the patent or patent application shall be determined by the subject matter of the claims. Descriptions and drawings shall be used to interpret the claims.

The patent rights shall extend throughout the Republic until the day on which the patent expires.

The patent for an invention shall not confer the right to prevent third parties from marketing the product protected by the patent, which they may have legitimately acquired after said product has been legally introduced onto the market of any country, by the owner of the right or by a third party, with the owner's consent.

The patent for invention does not confer the right to prevent third parties from importing, exporting, manufacturing, producing or using the material protected by a patent for the sole purpose of obtaining registration or sanitary authorization for a pharmaceutical, agricultural-chemicals or other product. The above does not authorize such products to be marketed without authorization from the patent holder.

The right conferred by the patent shall not extend to:

- (a) Acts carried out privately and without commercial motives.
- (b) Acts carried out for exclusively experimental reasons related to the object of the patented invention.
- (c) The preparation of medicines under medical prescription for individual cases.
- (d) The use on board ships of other countries of means that constitute the object of the patent in the ship's hull, in the machines, rigging, apparatus and other accessories, when said ships temporarily or accidentally enter Chilean waters, with the

reservation that said means are used exclusively for the needs of the ship.

- (e) The use of means that constitute the object of the patent in the construction or operation of air or land locomotion devices from other countries or accessories of said devices, when they temporarily or accidentally enter Chilean territory.

Article 50.

A patent of invention shall be declared null and void for any of the following reasons:

- (a) Deleted.
- (b) When the grant has been based on erroneous or manifestly deficient expert reports.
- (c) When the registration has been granted in contravention of the rules on patentability and its requirements, in accordance with the provisions of this law.

The action for nullity of a patent of invention shall be barred within a period of five years from the registration thereof.

Article 50 bis.

In cases where the person who obtained the patent does not have the right, the legitimate owner shall have the right to request the transfer of the registration and the corresponding compensation for damages. This action may be exercised throughout the validity of the registration. The civil judge shall hear the case, according to the general rules of competence and in accordance with the summary procedure established in the Code of Civil Procedure.

Article 51.

Non-voluntary licenses may be granted in the following cases:

- (1) where the holder of a patent has engaged in conduct or practices declared contrary to free competition, directly related to the use or exploitation of the patent in question, according to a final decision by the Free Competition Defence Tribunal;
- (2) where the granting of such licenses may be justified for reasons of public health, national security, noncommercial public use or on other extremely urgent grounds declared by the competent authority;

(3) where the purpose of the non-voluntary license is the exploitation of a subsequent patent that could not be worked without infringing a previous patent. The granting of non-voluntary licenses for dependent patents shall be subject to the following rules:

- (a) the invention claimed in the subsequent patent must involve a technical advance of considerable economic significance in relation to the invention claimed in the first patent;
- (b) the non-voluntary license to work the earlier patent may only be transferred with the later patent;
- (c) the holder of the earlier patent could, in the same circumstances, obtain a non-voluntary license on reasonable terms to work the invention claimed in the later patent.

In the case of semiconductor technology, the license shall only be granted for noncommercial public purposes or to remedy a practice that has been declared anticompetitive.

Article 51 bis A.

Any person applying for a non-voluntary license must prove that he has made efforts to obtain a contractual license from the patent holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period. This requirement shall not be necessary in relation to the grounds set out in Article 51.2 of this Law. Nor shall this requirement apply where the purpose of the non-voluntary license is to stop practices deemed anticompetitive.

Article 51 bis B.

An application for the granting of a non-voluntary license shall be considered a claim and must therefore comply with all of the requirements set out in Article 254 of the Code of Civil Procedure. This action shall be heard by the following authorities:

- (1) In the case of Article 51, No. 1, the Court for the Defense of Free Competition, in accordance with the procedure provided for in Law No. 19,911;
- (2) In the case of Article 51, No. 2, the Director of the National Institute of Industrial Property, in accordance with the procedure for patent annulment established in this Law. In addition, by a reasoned resolution, resolving a special incident, he may provisionally accept the claim. This resolution will remain in force as long as the facts that justified it continue or until the final

judgment;

(3) In the case of Article 51, No. 3), the civil judge, according to the rules of competence of the Code of Civil Procedure and in accordance with the summary procedure.

Article 51 bis C.

The competent authority shall decide on an application for a non-voluntary license according to its specific merits.

If said decision is positive, Free Competition Defense Tribunal, the National Director or the civil judge, depending on whether the case involves subparagraphs (a), (b) or (c) of Article 51, shall determine the term and scope of the license, limiting it to the purposes for which it was granted. They shall further decide the amount of remuneration to be periodically paid by the licensee to the patent owner. The license granted through this procedure shall be nonexclusive and may not be assigned, except with that part of the company holding the patent.

Article 51 bis D.

A non-voluntary license may be completely or partially revoked, provided that the legitimate interests of the licensee are protected, where the circumstances giving rise to the non-voluntary license have ceased to obtain and are not likely to recur. Following a well-founded request and after appropriate consultation with the competent authority, Free Competition Defense Tribunal, the National Director or the civil judge, as appropriate, may examine whether such circumstances still obtain.

In cases where the circumstances giving rise to the grant of the non-voluntary license are likely to recur, the motion to revoke a non-voluntary license shall not be granted. Likewise, at the request of an interested party, Free Competition Defense Tribunal, the National Director or the civil judge, as appropriate, may amend the terms of a non-voluntary license where new facts or circumstances so warrant, especially where the patent owner has granted contractual licenses on more favorable terms than the ones agreed upon for the beneficiary of the non-voluntary license.

In proceedings involving a request for a non-voluntary license, in the cases covered by subparagraphs (a) and (c) of Article 51, the

Institute must be heard before a decision is issued.

Article 52.

The following persons shall be subject to a fine of 25 to 1,000 monthly accounting units payable to the State:

- (a) any person who with ill intent manufactures, uses, offers or introduces to the market, imports or is in possession of a patented invention, for commercial purposes, notwithstanding the provisions of the fifth subparagraph of Article 49;
- (b) any person who, for commercial purposes, uses an object which is not patented or whose patent has lapsed or has been invalidated, using on such object indications corresponding to a patent or simulating such indications;
- (c) any person who with ill intent uses a patented procedure for commercial purposes;
- (d) any person who with ill intent imitates or uses an invention, the patent application for which is pending, unless the patent is finally not granted.

Persons found guilty under this Article shall be sentenced to pay the costs, damages and prejudice caused to the owner of the patent.

The tools and equipment used directly in committing any of the offenses mentioned in this Article shall be confiscated. Unlawfully produced objects shall be destroyed. As for the tools and equipment used, the competent court may order their destruction or their distribution for charity.

Any person committing a second or subsequent offense within five years from the date of a fine shall be sentenced to another fine of at least double the initial fine, up to a maximum amount of 2,000 monthly accounting units.

Article 53.

Any patented subject matter shall display visibly the number of the patent either on the product itself or on the packaging, and the words "Patente de Invención" [invention patent] or the abbreviation "PI", followed by the registration number.

The only exceptions to the above obligation shall be processes whose nature is such that the requirement cannot be met.

Failure to meet the requirement shall not affect the validity of the patent, but a person who does not comply with this provision may not bring the criminal actions referred to in this Law.

Where applications are pending, this shall be indicated where the products concerned by the application are being manufactured or marketed for commercial purposes.

Paragraph 2. Supplementary Protection

Article 53 bis 1.

Within sixty days of the granting of a patent, the owner shall have the right to request a supplementary term of protection, provided that there has been an unjustified administrative delay in the granting of the patent and the period of granting it has been longer than five years, counted from the date of filing of the application or three years counted from the request for examination, whichever is later.

It shall be understood that the request for examination occurs with the acceptance of the position mentioned in the first paragraph of article 7.

The supplementary protection shall extend only for the period proven as an unjustified administrative delay and a supplementary term of protection longer than five years may not be granted.

Article 53 bis 2.

Within six months after the grant of a sanitary registration for a pharmaceutical product protected by a patent, its holder shall be entitled to request a period of supplementary protection for that part of the patent containing the pharmaceutical product, provided that there has been an unjustified delay in the grant of said registration. Supplementary protection may be requested by those holders whose sanitary authorization or registration has been granted after a year from the date of filing of the application. Supplementary protection shall only cover the period proved to be an unjustified delay by the administrative organ responsible for deciding said registration.

Article 53 bis 3.

The following do not constitute unjustified delays: those affecting patent applications or sanitary registration applications attributable to:

- (a) The opposition or any appeal or action by court order;
- (b) The wait for reports or proceedings from national and international bodies or agencies required for the patent registration process, and
- (c) Actions or omissions by the applicant.

Article 53 bis 4.

The request for additional protection shall be filed with the Industrial Property Tribunal, which shall decide on the existence of unjustified delays and their extension in a single instance, according to the procedure established for the remedy of appeal. Such decision shall have as its sole effect the extension of the period of protection and shall not give rise to responsibility of any kind.

Before the hearings, the court shall order that a formal request be sent to the corresponding organ, so that it issues an opinion within 60 days.

Article 53 bis 5.

The period of supplementary protection shall give rise to a note in the margin of the corresponding registration, following payment of a fee of one monthly accounting unit for each year or fraction of a year of supplementary protection. Payment may only be made within thirty days following the resolution requiring it, without which the protection established in this paragraph will not be available.

TITLE IV Utility models

Article 54.

The following shall be considered utility models: instruments, apparatuses, tools, devices and objects or parts thereof in a form for which a claim may be made in respect of both their external appearance and their operation, on condition that said form lends them utility, in the sense that the function for which they are intended thereby gains a benefit, advantage or technical effect that it did not previously have.

Article 55.

The provisions of Title III concerning patents for invention shall be applicable as appropriate to utility model patents, notwithstanding the special provisions contained in this Title.

Article 56.

A utility model shall be patentable when it is new and industrially applicable.

A patent shall not be granted when the utility model presents only minor or secondary differences that do not make for any discernible usefulness compared with previous inventions or utility models.

An application for a utility model patent may only relate to an individual object, without prejudice to the fact that various elements or aspects of that object may be claimed in the same application.

Article 57.

Utility model patents shall be granted for a nonrenewable period of 10 years beginning from the application date.

Article 58.

The following documents must be attached to the application for a utility model:

- an abstract of the utility model;
- a description of the utility model;
- a claims sheet;
- drawings of the utility model.

Once the application has been filed with the Institute, a preliminary

examination shall be conducted to verify that the documents listed above have been attached.

Article 59.

A utility model shall visibly display the notice "Modelo de Utilidad" [utility model] or the abbreviation "MU" and the number of the title. This information may be placed on the packaging, provided it is presented to consumers sealed, so that it is necessary to destroy the packaging to gain access to the product. Failure to do so shall not affect the validity of the utility model but shall deprive the owner of the right to bring the criminal actions provided for in this Law.

Article 60.

Utility model patents may be invalidated on the same grounds as those specified in Article 50.

Article 61.

The following persons shall be liable to a fine of 25 to 1,000 monthly accounting units payable to the State:

- (a) any person who with ill intent manufactures, markets, imports or uses, for commercial purposes, a registered utility model, notwithstanding the exception established the fifth subparagraph of Article 49, which shall also apply to this category of rights;
- (b) any person who, for commercial purposes, uses the indications corresponding to a utility model whose registration has lapsed or has been invalidated, and any person who, for commercial purposes, simulates an indication where there is no registration.

Persons found guilty in accordance with this Article shall be sentenced to pay the costs, damages and prejudice caused to the owner of the utility model.

The tools and equipment used directly in committing any of the offenses mentioned in this Article shall be confiscated. Unlawfully produced objects shall be destroyed. As for the tools and equipment used, the competent court may order their destruction or their distribution for charity.

A second or subsequent offense within five years of the application of a fine shall be punishable by another fine at least double the initial one, up to a maximum of 2,000 monthly accounting units.

TITLE V REGISTRATION OF INDUSTRIAL DRAWINGS AND DESIGNS

Paragraph 1 On the registration of industrial drawings and designs

Article 62.

The term "industrial design" shall include any three-dimensional form, colored or not, and any industrial or craft product that serves as a pattern for the manufacture of others like it and is distinguished from similar products either by its form, geometrical shape or decoration or a combination of these, insofar as those characteristics give it a special appearance perceptible to the eye in such a way that a new character results.

The term "industrial drawing" shall include all arrangements, collections or combinations of figures, lines or colors developed on a plan or diagram for incorporation in an industrial product for the purpose of decoration and to give said product a new appearance. Industrial designs shall be considered new when they differ significantly from known industrial designs, or from combinations of characteristics of known industrial designs.

Containers may also be protected as Industrial designs and drawings, provided that they meet the condition of novelty mentioned above. Printed fabrics, cloths or any laminated materials may also be protected as industrial designs, provided that they meet the condition of novelty mentioned above.

Article 62 bis.

The protection granted to industrial designs and drawings established by this Law shall apply regardless of the protection granted by Law No. 17,336.

Article 62 ter.

Industrial designs and drawings whose appearance is entirely due to technical or functional considerations, without addition of an arbitrary contribution by the designer, may not be registered as industrial designs and drawings.

Moreover, articles of clothing of any kind or those consisting of a form whose exact reproduction is necessary to allow the product incorporating the design to be assembled mechanically or connected

to another product forming part of the whole may not be registered as industrial designs. This prohibition shall not apply to products whose design is of a form intended to allow for the assembly or the multiple connections of the products, or the product's connection within a modular system.

Article 63.

The provisions of Title III concerning patents shall be applicable as appropriate to industrial designs and drawings, without prejudice to the special provisions under this Title. The right of priority shall be regulated by Article 20bis of this Law.

Industrial designs and drawings may be invalidated on the same grounds as those specified in Article 50 of this Law.

Article 64.

The following documents must be submitted with the application for an industrial drawing or design:

- Application.
- Descriptive report.
- Drawing.
- Prototype or model, where applicable.

Once the application is submitted to the Institute, a preliminary examination will be carried out, in which it will be verified that the documents previously indicated have been submitted.

Article 65.

The registration of an industrial drawing or design will be granted for a non-renewable period of up to fifteen years, counted from the date of its application.

Article 66.

An industrial design and drawings shall visibly display the notice "Dibujo Industrial[Industrial Drawing]" or "Diseño Industrial[Industrial Design]" or the abbreviation "DI" and the number of the title. This information may be placed on the packaging, provided it is presented to consumers sealed, so that it is necessary to destroy the packaging to gain access to the product.

Failure to do so shall not affect the validity of the industrial drawing or design but shall deprive its owner of the right to bring the criminal actions provided for in the following Article.

Article 67.

The following persons shall be liable to a fine of 25 to 1,000 monthly accounting units, payable to the State:

- (a) Those who maliciously manufacture, market, import or use, for commercial purposes, a registered industrial design or drawing. The above shall be understood without prejudice to the provisions of the fifth paragraph of article 49, which shall also apply to this category of rights.
- (b) Those who, for commercial purposes, use the indications corresponding to a registered industrial design or drawing, or simulate them when such registration does not exist or is expired or annulled.

Persons found guilty in accordance with this Article shall be sentenced to pay the costs, damages and prejudice caused to the owner of the industrial drawing or design.

The tools and equipment used directly in committing any of the offenses mentioned in this Article and the objects produced illegally shall be confiscated. Unlawfully produced objects shall be destroyed. As for the tools and equipment used, the competent court may order their destruction or their distribution for charity.

A second or subsequent offense within the five years following the application of a fine shall be punishable by another fine of at least double the initial fine, up to a maximum amount of 2,000 monthly accounting units.

Paragraph 2 Certificate of Deposit of Industrial Drawings and Designs**Article 67 bis A.**

At the time of submitting an application for an industrial drawing or design, it shall be understood that the applicant chooses to follow the general registration procedure, in accordance with Titles I, III and V of this Law. Otherwise, the applicant must indicate his intention to process the application in accordance with the abbreviated procedure for obtaining a certificate of deposit, established in this title.

The abbreviated procedure for obtaining a certificate of deposit shall not consider the performance of a substantive examination intended to verify compliance with the requirements established in article 62

by the application for an industrial drawing or design. The holder of a certificate of deposit of an industrial drawing or design obtained in accordance with the abbreviated procedure established in this title may not exercise the actions contemplated in paragraph 1 above, until he has performed and passed the substantive examination contemplated in the general registration procedure.

Article 67 bis B.

Once the application has been submitted in accordance with the abbreviated procedure for obtaining a certificate of deposit, the Institute will conduct a preliminary examination, intended to verify full compliance with the formal requirements for submission established in this law and its regulations.

If any error or omission is detected in the preliminary examination, the applicant will be warned to make corrections, clarifications or attach the relevant documents within thirty days, without losing his priority date. If the errors or omissions are not corrected within the specified period, the application will be deemed not submitted.

If the applicant partially or erroneously complies with the order, the Institute will reiterate the remaining observations once only, under penalty of considering the application as not submitted if they are not fully corrected within thirty days.

Article 67 bis C.

Once compliance with the formal submission requirements has been verified or any errors or omissions have been corrected within the established period, the Institute will issue the certificate of deposit of the industrial design or drawing that is the subject of the application, indicating that this certificate was issued in accordance with the abbreviated procedure for obtaining a certificate of deposit and that, therefore, it has not passed a substantive examination that enables its holder to exercise the actions contemplated in paragraph 1 of this title.

Article 67 bis D.

The certificate of deposit of the industrial design obtained in accordance with this title shall have a maximum duration of fifteen years, counted from the presentation of the respective application. Said certificate confers on its holder a certain date for the purposes

of verifying, in a possible substantive examination, the compliance of the application for the industrial design with the requirements established in article 62.

Article 67 bis E.

Once the certificate of deposit of the industrial design or drawing has been issued, an extract of the corresponding application shall be published in the Official Journal, in the form and within the time limits determined by the regulation.

Article 67 bis F.

From the publication indicated in the previous article, both the holder and any interested party may request, at their own expense, the substantive examination of the industrial design, with the objective of verifying whether it complies with the requirements demanded in article 62. Said examination shall be carried out in accordance with the general procedure established in this law.

Anyone requesting the substantive examination must prove payment of the expert fee in accordance with the provisions of article 8. Otherwise, the application for examination will be deemed not to have been submitted.

Article 67 bis G.

If the substantive examination established in the previous article is not approved, the Institute will proceed ex officio to cancel the certificate of deposit.

If the examination is favorable, this fact will be published in the Official Journal, in the manner and within the time limits determined by the regulations, continuing the processing of the application for the industrial design or drawing that is the subject of the corresponding certificate of deposit, in accordance with the general rules on opposition.

Once the period established in article 5 has expired without an opposition having been filed, or once the opposition procedure is in the process of being resolved, the Institute will issue the resolution accepting or rejecting the application for the industrial design or drawing, in accordance with the rules applicable to the general registration procedure.

If the application for an industrial drawing or design subject to the certificate of deposit is accepted for registration, it will be considered, for all purposes, as an application for the industrial drawing or design submitted in accordance with the general registration procedure and the provisions of article 18 will apply for the payment of the corresponding fees.

Article 67 bis H.

The application for obtaining a certificate of deposit of an industrial drawing or design in accordance with the abbreviated procedure established in this title will be subject to the payment of a fee equivalent to 1 monthly tax unit, without which the processing will not be carried out. The payment of this fee will be for the benefit of the tax authorities and will not be refunded under any circumstances.

TITLE VI SERVICE INVENTIONS

Article 68.

For employment or service contracts, the subject of which is the performance of an inventive or creative activity, the power to apply for the title and any industrial property rights, shall belong exclusively to the employer or to the party requesting the service except where expressly provided to the contrary.

Article 69.

The right to apply for the title and any industrial property rights deriving from inventions by a worker who, according to his employment contract, is under no obligation to do inventive or creative work, shall belong exclusively to him.

If, however, to carry out the invention he has clearly availed himself of knowledge acquired within and used means provided by the undertaking, the aforesaid powers and rights shall belong to the employer, in which case the employer shall grant the worker additional remuneration to be agreed upon by the parties.

The above shall apply to a person who makes an invention that goes beyond the framework of the tasks assigned to him.

Article 70.

The right to apply for the corresponding title and any industrial property rights deriving from the inventive or creative activity of persons hired to engage in dependent or independent work by universities or research institutions as referred to in Decree-Law No. 1,263 of 1975 shall belong to the latter entities or to those whom it may specify, without prejudice to the regulation by its statutes of the manner in which the inventor or creator shall share in the benefits achieved through his work.

Article 71.

The rights established in favor of the worker in the preceding articles shall be non-renounceable prior to the grant of a patent, utility model or layout design or topography of integrated circuits, as the case may be. Any provision to the contrary shall be deemed not to have been written.

Article 72.

Any disputes related to the enforcement of these provisions shall be heard by the Industrial Property Tribunal referred to in Title I, Paragraph 3 of this Law.

TITLE VII Layout designs (topographies) of integrated circuits

Article 73.

An integrated circuit is a product in its final or intermediate form, intended to perform an electronic function, in which at least one of the elements must be active, and some or all of the interconnections form an integral part of the body or surface of a part thereof.

Article 74.

Three-dimensional arrangements of integrated circuits, expressed in any form and designed for manufacture, shall be considered layout designs or topographies of integrated circuits.

Article 75.

Layout designs (topographies) of integrated circuits shall be protected by this Law, provided that they are original. Layout designs (topographies) that are the result of the intellectual effort of the creator and are not common knowledge among the creators and manufacturers of layout designs or topographies of integrated circuits, at the time of their creation, shall be considered original.

A layout design (topography) of integrated circuits that consists of a combination of common elements or interconnections shall only be protected if the combination as a whole meets the conditions indicated in the previous paragraphs.

Article 76.

The owner of a layout design (topography) of integrated circuits shall have the exclusive right to produce, sell or market in any way the protected object and the right granted to him.

Consequently, the owner of a layout design (topography) of integrated circuits can prevent any third party, acting without his consent, from:

(a) reproducing the protected layout design (topography) of integrated circuits in full or in part for incorporation in an integrated circuit or into any other form, with the exception of reproducing any part of it that does not comply with the originality requirement set out in Article 75 of this Law;

(b) selling or distributing in any way, for commercial purposes, the protected layout design (topography) of integrated circuits, or a

product that incorporates an integrated circuit that contains an illegally reproduced layout design (topography) of integrated circuits.

Article 77.

The exclusive right of exploitation envisaged in the preceding Article shall not apply to:

(a) the reproductions of layout designs (topographies) of integrated circuits in which a layout design (topography) of integrated circuits created by third parties for private purposes or with the sole objective of evaluation, analysis, and research or teaching has been incorporated;

(b) commercial exploitation, as defined in said Article, of a layout design (topography) of integrated circuits, that otherwise meets the requirements of Article 75 of this Law, which has been created as a result of analysis and evaluation of a separate protected layout design (topography) of integrated circuits;

(c) commercial exploitation, as defined by said Article, of an integrated circuit that incorporates an illegally reproduced layout design (topography) of integrated circuits or in relation to any object that incorporates such an integrated circuit, where the third party who orders or performs such acts did not know or have reasonable grounds to know, upon acquiring the integrated circuit or the object, that he was incorporating an illegally reproduced layout design (topography) of integrated circuits.

Notwithstanding the above, once the third party knows or has reason to believe that the layout design (topography) of integrated circuits was illegally reproduced, said third party shall be able to perform any action regarding current inventory or products ordered before that time. In such cases, the owner of the protected rights shall only be able to demand payment of a sum equal to a reasonable royalty for a freely negotiated license of the layout design (topography) of integrated circuits.

The court that is competent to hear cases involving infringements of layout designs (topographies) of integrated circuits shall also decide any disputes that arise regarding the determination of the royalty referred to in the previous paragraph according to the rules

established for incidents in the Code of Civil Procedure, without testimonial evidence and by means of a decision made in due conscience;

(d) an identical and original layout design (topography) of integrated circuits independently created by a third party.

Article 78.

Layout designs (topographies) of integrated circuits shall be protected for a nonrenewable period of 10 years beginning from the date the registration application was filed or its first commercial exploitation in any part of the world.

Article 79.

The register of layout designs (topographies) of integrated circuits shall be kept by National Institute of Industrial Property.

Article 80.

The following documents must be attached to an application for a layout design (topography) of integrated circuits:

- application;
- description;
- prototype or model, where appropriate;
- additional documents, as the case may be.

Once the application has been filed with the Institute, a preliminary examination shall be conducted to verify that the above documents have been attached.

Article 81.

The registration application may be filed before the commercial exploitation of the layout design (topography) of integrated circuits has begun or within two years of the date of said exploitation. In the latter case, the applicant must include with the application an affidavit identifying the date of the first commercial exploitation. The processing of the application, as well as its publication and the issuing of the relevant decision, shall be regulated by the provisions established in the Regulations Under this Law.

Article 82.

Cancellation of a layout design (topography) of integrated circuits shall occur for any of the following reasons:

- (a) where the person obtaining the layout design (topography) of integrated circuits is neither the lawful creator nor the assignee;
- (b) where the grant has been based on examiner's reports which are erroneous or clearly deficient;
- (c) where the registration has been granted in violation of the protection requirements established in Article 75;
- (d) where the commercial exploitation of the layout design (topography) of integrated circuits commenced more than two years prior to the filing of the application.

Article 83.

The provisions of Titles III and VI, relating to invention patents and service inventions respectively, shall apply to layout designs or topographies of integrated circuits where appropriate, notwithstanding the special provisions contained in the present Title.

Article 84.

Layout designs (topographies) of integrated circuits shall display visibly an encircled capital letter "T". This information may be placed on the container, provided that the container is sealed, in such a manner that it is necessary to destroy the container to utilize the product. Failure to meet this requirement shall not affect the validity of the layout design (topography) of integrated circuits, but the owner of said design (topography) may not bring the criminal actions referred to in this Law.

Article 85.

The following persons shall be liable to a fine of 25 to 1,000 monthly accounting units payable to the State:

- (a) anyone who with ill intent manufactures, markets, imports or uses, for commercial purposes, a registered layout design (topography) of integrated circuits, without prejudice to the exception set out in the fifth subparagraph of Article 49, which shall also apply to layout designs;
- (b) anyone who, for commercial purposes, makes unauthorized use of information corresponding to a registered layout design (topography) of integrated circuits whose registration has expired or been cancelled, and anyone who, for the same purposes, simulates such information where there is no registration or the registration has lapsed or been cancelled. Those convicted in accordance with this Article shall be obliged to pay the costs and damages suffered

by the owner of the layout design (topography) of integrated circuits.

The tools and equipment used directly in committing any of the offenses mentioned in this Article shall be confiscated. Unlawfully produced objects shall be confiscated or destroyed. As for the tools and equipment used, the court may order their destruction or distribution for charity.

A second or subsequent offense within five years of the application of a fine shall be punishable by at least double the initial fine, up to a maximum amount of 2,000 monthly accounting units.

**TITLE VIII On trade secrets and information submitted to the authority
for obtaining sanitary registrations or authorizations**

Paragraph 1 TRADE SECRETS

Article 86.

A trade secret shall be understood as any undisclosed information that a person has under his or her control and that can be used in any productive, industrial or commercial activity, provided that said information meets the following cumulative requirements:

- (a) It is secret in the sense of not being, as a whole or in the precise configuration and assembly of its components, generally known or easily accessible to persons who are in the circles in which this type of information is normally used.
- (b) It has a commercial value because it is secret.
- (c) It has been the object of reasonable measures taken by its legitimate owner to keep it secret.

Article 87.

The illegal acquisition of a trade secret, its disclosure or exploitation without authorization from its legitimate owner, and the disclosure or exploitation of trade secrets to which one has had legitimate access but with a duty of confidentiality, shall constitute a violation of a trade secret, provided that the violation of the secret has been carried out with the intention of obtaining profit, for oneself or for a third party, or of harming its legitimate owner.

Article 88.

Without prejudice to the corresponding criminal liability, the rules in Title X relating to the observance of industrial property rights shall apply to the violation of a trade secret.

**Paragraph 2 Information disclosed to the authority to obtain sanitary
registrations or authorizations**

Article 89.

Where the Instituto de Salud Pública (ISP - Public Health Agency) or Servicio Agrícola y Ganadero (SAG - Agricultural and Livestock Protection Agency) requires the submission of proof or other undisclosed information concerning the safety and effectiveness of pharmaceutical products or agricultural chemicals that utilize a new

chemical entity that has not been previously approved by the competent authority, such information shall be considered confidential pursuant to the regulations in force.

The nature of non-disclosure shall be deemed satisfied if the data have been subject to reasonable measures to keep it undisclosed and they are not generally known to or easily accessed by persons within the circles in which the type of information in question is normally used.

The competent authority may not disclose or utilize such data to grant a sanitary registration or authorization to someone who does not have the permission of the holder thereof, for a period of five years for pharmaceutical products and 10 years for agricultural chemicals, beginning from the first sanitary registration or authorization granted by ISP or SAG, as the case may be.

In order to enjoy protection under this Article, the nature of nondisclosure of such data shall be expressly stipulated in the sanitary registration or authorization application.

Article 90.

An active ingredient that has not been included previously in sanitary registrations or authorizations granted by ISP or SAG, as the case may be, or that has not been marketed in the national territory prior to the sanitary registration or authorization application, shall be considered a new chemical entity.

For the purposes of this paragraph, a substance having one or more pharmacological effects or agricultural chemicals use, whatever its form, expression or arrangement, including its salts and complexes, shall be considered an active ingredient. In no case shall the following be considered a new chemical substance:

- (a) therapeutic uses or indications other than those authorized in other prior sanitary registrations or authorizations of the same chemical substance;
- (b) changes in the method of administration or forms of dosage from those authorized in other prior sanitary registrations or authorizations of the same chemical substance;
- (c) changes in authorized or registered pharmaceutical forms, formulations or combinations of chemical substances;

(d) salts, complexes, crystalline forms or such chemical structures based on a chemical substance that has a prior sanitary registration or authorization.

Article 91.

Protection under this paragraph shall not apply where:

- (a) the holder of the information providing proof indicated in Article 89 has engaged in conduct or practices declared anticompetitive, directly related to the use or exploitation of such information, according to a final or binding decision by the Free Competition Defence Tribunal;
- (b) on justified grounds of public sanitary, national security, noncommercial public use, national emergency or other extremely urgent circumstances declared so by the competent authority, the protection set out in Article 89 may be terminated;
- (c) the pharmaceutical products or agricultural chemicals are the subject of a compulsory license pursuant to the stipulations in this Law;
- (d) the pharmaceutical products or agricultural chemicals have not been marketed within the national territory by the end of a 12month period beginning from the date of the sanitary registration or authorization granted in
- (e) the application for registration or sanitary authorization of the pharmaceutical products or agricultural chemicals that are filed in Chile 12 months after the first registration or sanitary authorization has been obtained abroad.

TITLE IX Geographical indications and appellations of origin

Article 92.

This Law recognizes and protects geographical indications and appellations of origin in accordance with the following provisions:

- (a) an indication identifying a product as originating from a country, region or locality in the national territory where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin, shall be considered a geographical indication;
- (b) a designation identifying a product as originating from the country, regional or locality in the national territory where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin, and also taking into consideration other natural or human factors that have an impact on the characteristics of the product, shall be considered an appellation of origin.

Article 93.

Geographical indications and appellations of origin shall be governed by this Law and by the rules for specific use that have been approved. The foregoing shall be understood to be without prejudice to the provisions regulating appellations of origin for Pisco, Pajarete and Vino Asoleado and those referring to zoning of winegrowing, where the specific rules contained in Law No. 18,455 shall prevail in respect thereof.

Geographical indications and appellations of origin cannot be subject to appropriation or lien limiting or preventing the use thereof by applicants who meet the requirements established in this Law and in the regulations for use of the indication or appellation.

Article 94.

The recognition of a geographical indication or appellation of origin shall be made by the Institute via its inclusion in a Register of Geographical Indications and Appellations of Origin kept for that purpose.

Any natural person or legal entity may request the registration of a geographical indication or appellation of origin, provided that he/it represents a significant group of producers, manufacturers or

artisans, regardless of the legal form, whose lands, or establishments of extraction, production, processing and preparation are within the delimited zone established by the geographical indication or appellation of origin requested and who/which meet the other requirements laid down in this Law. National, regional, provincial or local authorities may also request the recognition of a geographical indication or appellation of origin where the geographical indications or appellations of origin are located inside the territories within their corresponding jurisdiction.

Article 95.

The following signs or expressions may not be recognized as geographical indications or appellations of origin:

(a) those that do not conform to the definitions contained in Article 92 of this Law;

(b) those that are contrary to morality or ordre public;

(c) those that may mislead or create confusion among consumers public in respect of the source of the geographical indication or appellation of origin or of the attributes of the products that they seek to protect;

(d) those that are common or generic indications to protect the product in question, being understood as those considered as such by those with knowledge of the matter or the general public, unless they have been recognized as geographical indications or appellations of origin under international treaties

(e) That they are graphically, phonetically or conceptually similar to, so much so that they can be confused with, other distinctive signs previously requested or registered, in good faith, for identical or related products or services.

(f) That they are graphically, phonetically or conceptually similar to, so much so that they can create confusion with, a distinctive sign that has not been registered, but that is being actually and effectively used prior to the application for recognition, by a third party who would have a better right to obtain the registration, provided that the indication or name has been requested for products identical to or related to the products or services for which the distinctive sign has been used by said third party.

(g) That they constitute the total or partial reproduction, imitation, translation or transcription of a trademark, designation of origin or geographical indication well-known in Chile, in the relevant sector of the public, whether or not it is registered, and whatever the products for which the sign is requested, when its use, in relation to the required products, is likely to cause confusion or induce error or deception regarding the origin of the product, or there is a risk of associating the geographical indication or the requested designation of origin with the owner of the trademark, designation of origin or well-known geographical indication or constitutes an unfair exploitation of the reputation of these, including the dilution of their distinctive force, provided that such registration or its subsequent use is likely to harm the interests of the owner of the trademark, designation of origin or well-known geographical indication.

Article 96.

Foreign geographical indications and appellations of origin may be registered in Chile in accordance with the rules contained in this Law. They may not be protected, or their protection shall lapse, where they have such protection, when they are no longer protected or have fallen into disuse in their country of origin.

In particular, foreign geographical indications and appellations of origin identifying wines and spirits in relation to products and services, and that have been used continuously, in good faith, by nationals or residents in the national territory, to identify those same products or services or the related ones in Chile prior to April 15, 1994, or for at least 10 years prior to that date, shall not benefit from the protection established in this Law unless stipulated to the contrary in an international treaty ratified by Chile.

Article 96 bis A.

If by application of the rules contained in this Law or in international treaties ratified by Chile, the Institute arrives at the belief that coexistence between trademarks and geographical indications or appellations of origin, or of said indications and appellations between themselves, is possible, the final decision shall determine the conditions in which the geographical indications and appellations of origin or trademarks shall be used, in order to prevent misleading or creating confusion among consumers. Where one or more of the products in question are agricultural and forestry products or agro-industrial

products, in order to reach such belief, the Institute will have to request a report from the Ministry of Agriculture.

In any case, the conditions of use shall form part of the relevant registration.

Failure to comply with the conditions of use shall deprive the holder of the right to bring the actions established in this Law.

Article 97.

An application for recognition of a geographical indication or appellation of origin shall state the following:

- (a) the name, address, tax identification number, if applicable, and activity of the applicant related to the requested indication or appellation;
- (b) the geographical indication or appellation of origin;
- (c) the geographical area of production, extraction, processing or preparation of the product that will be distinguished by the requested indication or appellation, delimiting it to the geographical character and political-administrative division of the country;
- (d) a detailed description of the product or products that will be distinguished by the requested indication or appellation as well as the essential characteristics or qualities thereof;
- (e) a technical study prepared by a competent professional that provides information in the sense that the characteristics or qualities attributed to the product are fundamentally or exclusively attributable to its geographical origin;
- (f) a draft of the specific regulations of use and control of the requested indication or appellation.
- (g) Other mentions established in the regulations.

Article 98.

Regarding compliance with all or some of the requirements established in the previous article, the Institute may request a report from other ministries or public services, which must issue it within forty-five days from the notification of the request.

Article 99.

The decision granting the registration of a geographical indication or appellation of origin shall state:

- (a) the recognition of the geographical indication or appellation of origin;
- (b) the delimited geographical zone of production, extraction, processing or preparation in which the producers, manufacturers or artisans thereof have the right to use the indication or appellation;
- (c) the products to which the geographical indication or appellation of origin shall apply and the essential qualities or characteristics that they must have;
- (d) the qualification, according to the merits of the information furnished, as a geographical indication or appellation of origin.

Such decision shall also approve and order the registration of the specific regulations for use and control of the recognized geographical indication or appellation of origin.

Article 100.

The registration of a geographical indication or designation of origin shall be of indefinite duration, as long as the conditions that gave rise to its recognition are maintained. Any person may file an action for cancellation, based on the fact that the product is no longer produced in the protected area or that the conditions that justified its recognition are no longer met, without limitation of time.

The registration may be modified at any time when any of the circumstances established in article 97 change. The modification must be subject to the registration procedure, as appropriate.

Article 101.

Any interested party may petition for the invalidation of the registration of a geographical indication or appellation of origin if any of the prohibitions set out in this Law have been infringed.

Article 102.

To the extent applicable, the rules in Titles I and II and the trademarks regulations shall apply to the examination, publication, registration and invalidation procedures for geographical indications and appellations of origin discussed in this Title.

Article 103.

All producers, manufacturers or artisans who conduct their activity

within the delimited geographical zone, including those who are not among those who requested the initial recognition, shall be entitled to use the geographical indication or appellation of origin in relation to the products indicated in the registration, provided that they comply with the provisions regulating the use thereof. Only they may use the expression "Indicación Geográfica" (geographical indication) or "Denominación de Origen" (appellation of origin) or the initials "I.G." or "D.O." respectively, in the identification of the product.

These indications may be placed on the container provided that the container is sealed, in such a manner that it is necessary to destroy the container to use the product.

Article 104.

Civil actions relating to the right to use a registered geographical indication or appellation of origin and those seeking to prevent the illegal use thereof shall be brought before the ordinary courts, pursuant to the rules established in Title X, on Enforcement.

The civil actions established in the previous paragraph regarding registered geographical indications or appellations of origin that identify wines and spirits may be taken where a geographical indication or appellation of origin is used without the right to do so or is translated or where it is accompanied by words such as "class", "type", "style", "imitation", or other similar expressions, even when the true origin of the good is indicated.

Article 105.

The following persons shall be liable to a fine of 25 to 1,000 monthly accounting units payable to the State:

(a) any person who with ill intent designates a product of the same type as those protected by a registered geographical indication or appellation of origin without the right to do so;

(b) any person who uses, for commercial purposes, the indications corresponding to a geographical indication or appellation of origin that is not registered, has lapsed or has been invalidated or that simulates them;

(c) any person who makes use, for commercial purposes, of containers or packages that bear a registered geographical indication or

appellation of origin without the right to use it and without having it previously erased, unless the marked package is intended to contain different goods unrelated to those protected by the geographical indication or appellation of origin.

Persons found guilty pursuant to this Article shall be liable to pay the costs, damages and prejudice caused to the lawful users of the geographical indication or appellation of origin.

The tools and equipment used directly in committing any of the offenses mentioned in this Article shall be confiscated. Objects bearing counterfeit geographical indications or appellations of origin shall be confiscated and destroyed. As for the tools and equipment used, the competent court may order their destruction or distribution for charity.

A second or subsequent offense within five years from the date of a fine shall be punishable by at least double the previous fine, up to a maximum of 2,000 monthly accounting units.

TITLE X ENFORCEMENT OF INDUSTRIAL PROPERTY RIGHTS

Paragraph 1 Civil actions

Article 106.

Rights holders whose industrial property rights have been Law 19,996 infringed may bring a civil action seeking the following:

- (a) the cessation of the acts infringing the protected right;
- (b) compensation for damages;
- (c) adoption of the measures necessary to avoid the continuation of the offense;
- (d) the publication of the decision, at the expense of the party found guilty, by means of inserts in a newspaper to be chosen by the plaintiff. This measure shall apply where the decision expressly so determines.

Article 107.

The civil actions laid down in Article 106 shall give rise to a summary judgment and anyone who has an interest in filing a civil action may do so, without prejudice to any criminal action that may be brought.

Article 108.

Damages may be determined, of the plaintiff's choosing, according to the general rules or according to one of the following rules:

- (a) the profits that the rights holder would have ceased to earn as a consequence of the infringement;
- (b) the profits that the infringer would have earned as a consequence of the infringement;
- (c) the price that the infringer would have paid to the rights holder for the granting of a license, taking into account the commercial value of the infringed right and contractual licenses that have already been granted.

In the event of trademark counterfeiting, once the respective infringement has been judicially proven, it may be requested that the compensation for the damages caused be replaced by a single compensatory sum determined by the court in relation to the seriousness of the infringement, which may not exceed 2,000 monthly tax units per infringement. This right of option must be exercised in the claim for compensation for damages.

Article 109.

Without prejudice to the other actions established in this Title, persons who have marketed goods that infringe an industrial property right shall not be liable for damages unless those same persons have manufactured or produced them or have marketed them in the knowledge that they were committing an infringement of an industrial property right.

Article 110.

The judge hearing the case shall be empowered to order the infringer in the decision to provide any information in his possession on the persons who have participated in the production or preparation of the goods or procedures involved in the infringement and regarding the distribution channels of said goods.

Article 111.

The judge shall assess the evidence in these cases in due conscience.

Paragraph 2 Precautionary measures

Article 112.

Precautionary measures shall apply in all matters relating to infringements of industrial property rights. Without prejudice to other precautionary measures, the court may order the following:

- (a) the immediate cessation of the acts constituting the alleged infringement;
- (b) seizure of the products involved in the alleged infringement and the materials and means used mainly to commit the infringement. Seizure of containers, packaging, labels, printed matter or advertising containing the sign involved in the alleged infringement may also be ordered in the case of distinctive signs;
- (c) the appointment of one or more receivers;
- (d) an ban on advertising or promoting the products involved in the alleged infringement in any way; and
- (e) the withholding in a credit institution or by a third party of the property, monies or valuables arising from the sale or marketing of such products in any way.

Paragraph 3 Preliminary remedies

Article 113.

The provisional remedies indicated in paragraph 2 of Title X of this Law and the remedies contained in Titles IV and V of the Second Book of the Code of Civil Procedure may be requested as preliminary remedies.

**TITLE XI On the processing of international applications for patents
for inventions or utility models.**

Article 114.

An international application corresponds to a patent application for an invention or utility model is filed in accordance with the Patent Cooperation Treaty.

Article 115.

The National Institute of Industrial Property will be the Receiving Office for filing of international applications, in accordance with the Patent Cooperation Treaty, relating to national applications or applications from residents in Chile.

International applications must be filed in Chile in Spanish and the fees indicated in the Patent Cooperation Treaty must be paid.

Likewise, the Institute will act as Designated and/or Elected Office when Chile has been designated or elected as State, for the purpose of obtaining a patent registration for an invention or a utility model, in national phase, of the Patent Cooperation Treaty.

Article 116.

When the international application has a filing date later than the date of expiry of the term of priority, in accordance with the Patent Cooperation Treaty, the applicant may request before the Institute as Receiving Office, that the right of priority be restored, within the term of two months after the expiry date of the term of priority. In the same case, the applicant may request before the Institute as Designated and/or Elected Office that his right of priority be restored at the moment of entry into the national phase, if the application for restoration of his right of priority has been duly requested before the corresponding Receiving Office and the latter has not made a decision or has not accepted it.

In both cases, the request must be made with the filing of the application, accrediting payment of the respective fees; stating the reasons for not complying with the term of priority, and submitting the corresponding proof.

Article 117.

Patent applications for inventions or utility models must submit in Chile, in national phase, in accordance with the Patent Cooperation Treaty, within thirty months from the date of priority. If the international application does not claim any priority, it may be filed with the Institute before the expiry of the term of thirty months from the date of international filing.

If the term of thirty months established in the previous paragraph has expired, the applicant may request restoration of these rights before the Institute.

The request must be made with the filing of the application, accrediting payment of the respective fees; stating the reasons for not complying with the term of priority, and submitting the corresponding proof.

Article 118.

To start the processing of an international application, in national phase, without prejudice to the other requirements of this law, the applicant must:

- (a) Submit a translation in Spanish of the international application, if the application is not submitted in Spanish, and of all the amendments made during the international phase, together with forms provided, and
- (b) Pay the fee established in Article 18 of this law for the filing of the application and other fees which are set by the Institute, in accordance with the provisions of the Patent Cooperation Treaty.

In applications for which the Institute has issued an international search report and written opinion acting as the International Searching Authority or issued an international preliminary examination report as the International Preliminary Examining Authority, the applicant may submit, together with the submission of the application in the national phase, a written document in which he responds to the observations made in these reports and written opinion, which must be considered for the purposes of its examination.

In the event that the applicant responds to the reports and written opinion of the International Searching Authority or the International Preliminary Examining Authority, in accordance with the provisions of the previous paragraph, he will only have to prove payment of 50

percent of the expert fee, in accordance with the provisions of article 8.

Article 119.

The provisions of Article 4 will be applicable to patent applications for inventions or utility models filed in Chile, in national phase, in accordance with the Patent Cooperation Treaty, any interested party being able to file opposition to such applications within the term provided in the second paragraph of Article 5.

Article 120.

Patent applications for inventions or utility models submitted in Chile, in national phase, in accordance with the Patent Cooperation Treaty, will be governed in relation to their substantive aspects, by the provisions of the present law and its regulation.

Article 121.

The concessionary period for patents for inventions and utility models filed in Chile, in national phase, in accordance with the Patent Cooperation Treaty, will be calculated from the date of submission of the corresponding international application.

TITLE XII Final Article

Article 122.

Abrogation of Decree Law No 958, of 1931, on Industrial Property; Articles 16 and 17 of Law No 18591; Article 38 of Law No 18681, and Law No 18935.

TITLE XIII TRANSITIONAL PROVISION

Article 1.

Notwithstanding the provisions of article 37 of this law, a patent for invention may only be requested for medicines of all kinds, for medicinal pharmaceutical preparations and their preparations and chemical reactions, provided that a patent application has been filed in the country of origin after the entry into force of this law.