

ECUADOR
ORGANIC CODE OF
THE SOCIAL ECONOMY OF KNOWLEDGE, CREATIVITY AND INNOVATION

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**PRELIMINARY TITLE COMMON PROVISIONS TO THE SOCIAL ECONOMY OF
KNOWLEDGE, CREATIVITY AND INNOVATION**

Article 1 - 4: [Omitted]

**BOOK I NATIONAL SYSTEM OF SCIENCE, TECHNOLOGY, INNOVATION AND
ANCESTRAL KNOWLEDGE**

Article 5 - 40: [Omitted]

BOOK II RESPONSIBLE INVESTIGATION AND SOCIAL INNOVATION

Article 41 - 84: [Omitted]

BOOK III MANAGEMENT OF KNOWLEDGE

TITLE I PRINCIPLES AND GENERAL PROVISIONS

CHAPTER I GENERAL PRINCIPLES

Article 85.- Intellectual rights. -

Intellectual rights are protected in all their forms, which shall be acquired according to the Constitution, the international treaties to which Ecuador is a party, and the present Code. The intellectual rights mainly comprise the intellectual property and the traditional knowledge.

Its regulation constitutes a tool for the proper management of knowledge, with the purpose of promoting the scientific, technological, artistic, and cultural development, as well as to stimulate innovation.

Its acquisition and exercise as well as its consideration with other rights, shall guarantee the full enjoyment of the fundamental rights and shall contribute to the proper dissemination of the knowledge in benefit of the owners and the society.

This Code shall guarantee protection against unfair competition to the other existing forms.

Article 86.- Exception to public domain. -

The intellectual property rights constitute an exception to the public domain to stimulate the technological, scientific, and artistic development; and shall satisfy the social function and responsibility according to the provisions of the Constitution and the Law. The intellectual property may be public, private, communitarian, statewide, associative, cooperative, and mixed.

Article 87.- Acquisition and exercise of intellectual property rights. -

Acquisition is defined as the existence or concession of rights, and exercise is defined as the scope, maintenance and observation of the same. Where appropriate, the acquisition shall also comprise the assignment made by any other act and title.

The acquisition and exercise of intellectual property rights shall be in harmony with the enjoyment and effective exercise of the right to health and nutrition, education, information, access to culture and to participate in the scientific progress, as well as, to develop economic activities, freedom to work, access to quality goods and services and the right to the other forms of property, according to the provisions of the Constitution.

Both the acquisition and the exercise shall be subject to the promotion of social innovation and to the transfer and dissemination of knowledge, for mutual benefit of producers and users, so that favor the social and economic welfare as well as the harmony of rights and obligations.

Article 88.- Purposes of the intellectual property. -

The intellectual property rights constitute a tool for the development of creative activity and social innovation, they contribute to the technology transfer, access to knowledge and culture, innovation and reduction of cognitive dependence.

Article 89.- Type of intellectual property. -

The intellectual property rights shall mainly comprise copyright and related rights, industrial property and plant varieties.

Article 90.- Type of property. -

For the purposes of the present Code and according to the intellectual property rights, the following type of property is established:

1. Property that guarantees basic rights;
 2. Property related to strategic sectors;
 3. Property related to biodiversity and traditional knowledge;
- and,
4. Other property.

Article 91.- Property that guarantees basic rights. -

The property that guarantees basic rights and which is protected through intellectual property rights is of public interest and shall enjoy of a type of protection that allows to satisfy basic needs of the society and, without prejudice of the limitations and exceptions to the rights, other uses will be allowed without the authorization of the owner according to the provisions of this Code and the international treaties to which Ecuador is a party. The provisions of the preceding paragraph shall be applicable to the rights regarding undisclosed information and test data in connection with pharmaceutical and agricultural chemical products.

Article 92.- Property related to strategic sectors. -

The forms of intellectual property related to the strategic sectors are of vital importance for the socioeconomic and technological development of the country.

Said forms shall enjoy of a type of protection that allows the State to access to the protected matter, for reasons of public interest, social or national interest in accordance with the requirements and conditions provided in the Agreement on the Aspects of the Intellectual Property related with Commerce.

Considering the circumstances of each case and subject to agreement between the parties, the State may have access to the undisclosed information related to the strategic sectors, as long as all guarantees are previously granted to keep the information confidential. The protected matter referred to in previous paragraphs can only be accessed in case of intellectual property rights or undisclosed information of contractors' ownership, beneficiaries of the concession or service providers. Owners shall receive compensation, either as a royalty or as one of the benefits for the concession or contracting of the provision of services in these sectors.

The State may have access to any non-protected information derived from the contracts to which it is a party, in which case the obligation to share said information must be stipulated.

Article 93.- Knowledge generated from biodiversity. -

The State shall participate in the ownership of the intellectual

property forms and other rights regarding procedures and products derived or synthetized obtained from biodiversity, according with the provision of the Constitution. Likewise, it shall participate in the benefits resulting from the economic exploitation of these procedures and products, without prejudice of its protection through intellectual property rights.

Article 94.- Access, use and exploitation of the traditional knowledge. -

Regarding traditional knowledge, associated or not to biodiversity, the provision of the preceding article shall be applied for benefit of the legal owners, who would at least participate equally to the contribution of their traditional knowledge according to the international treaties to which Ecuador is a party and the national legislation on the matter.

Article 95.- Limitations and exceptions. -

The rights and benefits resulting from the limitations and exceptions set out in the present Book are inalienable. Any stipulation on the contrary shall be null.

Article 96.- Other limitations to the intellectual property rights. -

The acquisition and exercise of the intellectual property rights are limited by the provisions of this Code and the provisions of the Constitution of the Republic applicable to access to biological, genetic resources and traditional knowledge, consumer and environment protection, restrictive commercial practices of free competition and unfair competition, where applicable.

CHAPTER II GENERAL PROVISIONS

Article 97.- National treaty. -

The rights and obligations conferred by this Law are equally applied to nationals and foreigners, domiciled or not in Ecuador. For the purposes of this Code, stateless people shall be considered as nationals of the country where they have established their domicile.

Article 98.- Owners without domicile in the country. -

Applicants or owners of the registration of an industrial property

right or a plant variety certificate that do not have domicile in Ecuador, shall have a representative domiciled in the country with sufficient power registered before the competent national authority on intellectual rights, mainly to answer petitions, actions and complaints. Any modification to the mentioned powers shall be registered before said authority within the term set out in the regulation.

The same obligation, for purpose of compliance, non-domiciled owners of copyrights and related rights shall agree with the provisions of this article.

Article 99.- Mandatory registration. -

Any assignment, use authorization or license against any intellectual property right or pending application, must be registered before the competent national authority on intellectual rights.

The assignments, use authorizations or licenses of intellectual property shall become effective upon their registration before the competent national authority on intellectual rights.

In order to give effect to the tax deductions derived from royalties of intellectual property rights, the document supporting the materiality of the transaction shall be required; nevertheless, said document must be previously registered before the competent national authority on intellectual rights.

TITLE II COPYRIGHT AND RELATED RIGHTS

Omitted

TITLE III INDUSTRIAL PROPERTY

CHAPTER I PRIORITY CLAIM

Article 263.- Priority right. -

The first application for granting of invention patent, or utility model, or industrial design or trademark registration lawfully filed before a national, regional or international authority with which Ecuador would be bound by any treaty establishing a priority right similar to the one stipulated in the present Chapter, shall grant the applicant or his beneficiary a priority right to file in Ecuador a patent or a registration regarding the same subject matter. The scope and effects of the priority right shall be those provided in the Paris Convention for the protection of Industrial Property.

The priority right can be based on a prior application filed before the competent national authority on intellectual rights, provided that this application has not claimed a previous priority right. In that case, the filing of the subsequent application claiming the priority right shall imply the abandonment of the prior application with regarding to the subject matter common to both applications.

It is recognized that any application validly accepted for processing gives rise to a priority right.

To benefit from the priority right, the application claiming same shall be filed within the following non-extendable terms counted from the filing date of the application whose priority is claimed.

1. Twelve months for applications for granting of invention patents and utility models; and,
2. Six months for applications for registration of industrial designs and trademarks.

Article 264.- Requirements to claim the priority right. -

For the purposes of the provisions of the previous article, a declaration with relevant documentation shall be filed, in which the priority of the prior application is claimed stating its filing date, the office through which it was filed and its number. The declaration and relevant documentation shall be filed,

together or separately with the application or, at the latest, within the following non-extendable terms counted from the filing date of the application whose priority is claimed:

1. In the case of applications for granting of patent of invention or utility models: sixteen months; and,
2. In the case of applications for registration of industrial designs or trademarks: nine months.

Likewise, it shall be filed a copy of the application whose priority is claimed certified by the issuing authority and a certificate of the filing date of said application issued by the same authority.

For the purpose of the priority right, no other formalities additional to those provided in this article shall be required.

Article 265.- Loss of priority. -

Failure to comply with the terms or filing of documents stated in the previous articles will result in the loss of the priority claimed.

CHAPTER II INVENTION PATENTS

Article 266.- Invention patents. -

The patent system constitutes a tool to promote the industrial and technological development and the achievement of good living.

Section I Protection requirements

Article 267.- Protectable subject matter. -

A patent shall be granted for all inventions, whether of product or procedure, in all areas of technology provided that it is new, has inventive step and is subject to industrial application. Traditional knowledge shall not be considered protectable subject matter.

Article 268.- It shall not be considered inventions. -

It shall not be considered inventions:

1. Scientific discoveries, principles and theories and mathematical methods;

2. The whole or part of living beings as found in nature, natural biological processes, biological material existing in nature, or which may be isolated, including genes, proteins, genome or germplasm of any living being;
3. A new form of a substance, including salts, esters, ethers, complexes, combinations and other derivatives;
4. Polymorphs, metabolites, pure forms, particle size and isomers;
5. Uses and any new property or new use of a known substance or utilization of a known procedure or machine or apparatus;
6. Genetic resources containing the biological diversity and the agro-biodiversity, as such;
7. Literary and artistic works or any other work protected by copyright;
8. Plans, rules and methods for the exercise of intellectual activities, games or economic-commercial activities;
9. Computer programs or software, as such; and,
10. Forms of presenting information.

Article 269.- Novelty. -

An invention shall be considered new when it is not included in the state of the Art.

The state of the art comprises all that has been accessible to the public at any time or place, through a written or oral description, utilization, commercialization or any other means before the filing date of the patent application or, where applicable, the recognized priority.

Only for the purpose of determining novelty, it shall also be considered within the state of the art, the content of a pending patent application before the competent national authority on intellectual rights, whose filing or priority date is earlier to the filing or priority date of the patent application under examination, provided that said content is included in the prior-dated application when it is published or when the term provided in article 289 has elapsed.

Article 270.- Non-disclosure of patentability. -

For the purposes of determining patentability, it shall not be considered the disclosure occurred within the year preceding the application filing date or within the year preceding the priority

date, if it has been claimed, provided that said disclosure has come from:

1. The inventor or his beneficiary;
2. A competent national office that in violation of the governing rules, publishes the content of the patent application filed by the inventor or his beneficiary;
3. A third party, including public officers or state entities, that may have obtained the information directly or indirectly from the inventor or his successor;
4. An authority order;
5. An evident abuse against the inventor or his beneficiary; and,
6. The fact that the applicant or his beneficiary would have disclosed the invention in officially recognized exhibitions or fairs or, when for academic or research purposes, they would have needed to make it public to continue with the development. In this case, the interested party shall submit, at the time of filing the application, a statement in which it is mentioned that the invention has been in fact disclosed and file the corresponding certificate.

Article 271.- Inventive step. -

An invention shall be considered to have inventive step if for a person skilled in the corresponding technical field, said invention is not obvious or evidently derived from the state of art and also constitutes a significant technical support.

A person skilled in the corresponding technical field shall be an expert or a group of experts with qualification derived from studies and experience in the technical field of the invention.

Article 272.- Industrial application. -

An invention shall be considered to be subject to industrial application when its subject matter may be reproduced or used in any productive activity, including services.

Article 273.- Non-patentable inventions. -

The following shall not be patentable:

1. The inventions whose commercial exploitation must be necessarily prevented to protect the public order or morality, including to protect the health and life of people or animals or to preserve plants or to avoid severe damages to the environment

or ecosystem. In this sense, the commercial exploitation of an invention shall not be considered contrary to public order or morality, for the sole existence of a legal or administrative provision that prohibits or rule said exploitation;

2. The diagnostic, therapeutic and surgical methods for treatment of people or animals;

3. Plants and animals, as well as the essentially-biological procedures for obtention of plants or animals other than non-biological or microbiological procedures;

4. The product of polymorphs, metabolites, pure forms, particle size and isomers that has not be researched in Ecuador; and,

5. The product of the genetic resources containing biological diversity and agro-biodiversity that has not been researched in Ecuador.

For the purposes of the provision of number 1, it shall not be patentable, among others:

a. Procedures for cloning of human beings;

b. The human body and its genetic identity;

c. The use of human embryos for industrial or commercial purposes; and,

d. The procedures for the modification of the genetic identity of animals, when it causes them suffering without any substantial medical benefit for the human being or animals.

Article 274.- Products or procedures not subject to a second patent. -

The products and procedures already patented, included in the state of the art, according to article 269, shall not be subject to a new patent, merely for claiming a distinct use to the originally contained in the initial patent.

Section II Owners

Article 275.- Patent Owner. -

The power to acquire the right through a patent, belongs to the inventor. This power is transferable by inter vivos act and is transmissible by death.

Patent owners may be natural or legal persons.

If several persons have made together an invention, the right corresponds in common to all of them and their beneficiaries. It shall not be considered an inventor or co-inventor who has not contributed with inventive activity, such as for example, who has been limited to give assistance in the execution of the invention.

If several persons made the same invention, independently one from another, the patent shall be granted to whom presents the first application or claim priority of an earlier date, or to his beneficiaries.

Article 276.- Distribution of ownership, benefits of invention and royalties performed in educational and research centers. -

In the case of inventions performed during researches or academic activities in establishments of superior education or public institutes of research, the ownership and the distribution of benefits derived from the patent exploitation shall be settled among these and the involved inventors, such as: teachers, researchers or students. Nonetheless, the latest ones, shall not have a percentage inferior to forty per cent of the value over the ownership of the patent, therefore the inventors shall receive the royalties derived from its exploitation. The owners, upon agreement, may license or assign their rights.

Patents may be licensed or assigned to a third party provided that the co-owners are in agreement, if no agreement is reached, the competent national authority on intellectual rights may grant ex officio or at the request of a party a compulsory license as provided in this Code.

The patent may be applied jointly or on behalf of all, by any of its co-owners, however the expenses in connection with the protection and compliance, as well as the acts and contracts

subsequent to the patent application or granting, shall be covered by the establishment of superior education or the public institutes of research.

Article 277.- Ownership developed in compliance of a contract. -

For those cases not included in the previous article, the power to acquire the right through a patent on an invention developed in compliance of a contract belongs to the principal or the employer, unless otherwise stipulated. However, the inventors shall not have a percentage inferior to twenty-five per cent of the value with respect to patent ownership, therefore the inventors shall receive the royalties derived from its exploitation. Upon agreement, the owners may license or assign their rights.

When a labor contract does not require the employee the exercise of an own inventive activity, but conduct the invention using the employer's resources or confidential information, the ownership shall correspond to the employee, but the employer shall be entitled to enjoy a non-exclusive, non-transferable and free license of the patent.

When a labor contract does not require the employee the exercise of an own inventive activity, and the invention is conducted without using the employer's resources or confidential information, the ownership shall correspond to the employee.

When an employee or commissioner has not directly participated in the inventive process, the ownership shall correspond only to the persons involved in said process.

Article 278.- Inventor's paternity right. -

The inventor shall be entitled to be mentioned as such in the patent or he may also oppose to this mention.

Section III Patent application

Article 279.- Patent application. -

The application to obtain a patent of invention shall be filed before the competent national authority on intellectual rights in accordance with the content, requirements and other rules provided in the regulation.

Article 280.- Patent specification. -

The specification shall be sufficiently clear and complete so that a skilled person in the corresponding technical field may execute it without requiring any undue experimentation. The specification shall mention the title of invention and shall include the following information:

1. The technological sector to which it refers or to which the invention is applicable;
2. The prior technology known by the applicant that would be useful for the comprehension and examination of the invention, and the references to prior documents and publications related to said technology;
3. A description of the invention in terms that allow comprehension of the technical problem and the solution provided by the application, stating the differences and eventual advantages with respect to the previous technology;
- 4 A brief description of the figures, if any;
5. A description of the best way known by applicant to execute or put into practice the invention, using examples and references to the figures, if relevant;
6. An indication of the manner in which the invention satisfies the condition of being subject to industrial application, if that is not evident from the specification or the nature of invention; and,
7. An indication that the applicant was in possession of the invention at the filing date of the application.

Article 281.- Deposit of biological material. -

When an invention refers to a biological material, that cannot be duly detailed in the specification, such material shall be deposited in a depository institution authorized by the competent national authority on intellectual rights, in accordance with the corresponding regulation.

The deposit shall be made no later than the application filing date or, where applicable, in the filing date of the application whose priority is claimed.

Deposits made before a recognized international authority according to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977) or before another recognized institution by the competent national authority on intellectual rights for these purposes, shall be valid. In these cases, the specification shall include the name and address of the depository institution, the deposit date and the deposit number assigned by such institution.

The deposit of the biological material shall only be valid for the purposes of granting of a patent if it is made under conditions that allow any interested person to obtain samples of such material no later than the expiration date of the term provided in article 289 of this Code.

Article 282.- Patent and disclosure of origin. -

According to the provisions of international treaties to which Ecuador is a party, this Code and its corresponding regulation, in case the subject matter of a patent application involves the use of genetic resources and related traditional knowledge, the applicant shall inform:

1. The country where such resources or the related traditional knowledge were obtained; and,
2. The source, including the details with respect to the entity, where applicable, from which such resources or related traditional knowledge were obtained.

Applicant shall likewise submit copy of a certificate of compliance with the legislation on genetic resources access or the related traditional knowledge, internationally recognized. If an internationally recognized certificate of compliance is not applicable in the supplier country, the applicant shall provide pertinent information regarding conformity with prior substantiated consent and access and fair and equitable profit sharing, as required by the national legislation of the country providing the genetic resources and/or the related traditional knowledge, which is the country of origin of such resources or a

country that has acquired the genetic resources or the related traditional knowledge according to the Convention on Biological Diversity and other international treaties to which Ecuador is a party.

Article 283.- Claims. -

The claims shall define the subject matter to be protected by the patent. They shall be clear and concise and shall be completely supported by the specification.

The claims may be independent or dependent. They shall be independent when they define the subject matter to be protected without reference to another previous claim. They shall be dependent when they define the subject matter to be protected making reference to a previous claim. A claim referring to two or more previous claims shall be considered a multiple dependent claim.

In the case of claims about a group of chemical-pharmaceutical products, the application shall provide sufficient information on trials and experiments carried out to enable the reproduction of each form of embodiment of the invention, unless the specification proves that the same disclosed result would be reached if any element of the claimed group is substituted.

Article 284.- Abstract. -

The abstract shall consist of a summary of the technical disclosure contained in the patent application. If the invention would consist of pharmaceutical product, it shall specify its international generic name, if known at the date of application.

The abstract shall be used for technical information only and shall have no effect for interpreting the scope of protection granted by the patent.

Article 285.- Unity of invention. -

The patent application shall only comprise an invention or group of inventions related to each other, in such a way that it constitutes a single inventive concept.

Article 286.- Penalties for deliberate misrepresentation or omission. -

The misrepresentation, deliberate omission, deliberate obscurity, or deliberate complication of the information in the application or in the specification of the invention that unreasonable prevent or hinder the competent national authority on intellectual rights to carry out the examination of the patent application, mislead it in the examination of the patent application or does not allow it to put it into practice or carry out its reproduction, shall cause the rejection thereof or absolute nullity of the granted patent, without prejudice to claim for damages of any affected third party.

Article 287.- Amendments to the application. -

Ex officio or at the request of a party, the application can be amended at any time of the procedure before the competent national authority on intellectual rights issues an administrative resolution of first instance. The amendment shall not imply a modification of the invention subject matter or a broadening of the protection corresponding to the disclosure contained in the initial application.

Likewise, the correction of any material error can be requested.

Additionally, the applicant may divide or merge a patent application or convert it into a utility model, if applicable.

Article 288.- Referral. -

The pertinent regulation shall establish the requirements, terms and procedures, among others, for examination of the application, its publication, filing of opposition and the granting or rejection of the application.

Article 289.- Public character of the file. -

After eighteen months counted from the application filing date or, where applicable, from the priority date that has been claimed, the file shall become public and may be consulted by third parties and the competent national authority on intellectual rights shall order the publication of the application in the official dissemination medium. The publication shall include the first claim and, if applicable, an extract of the required information.

Notwithstanding the provisions of the preceding paragraph, the applicant may request that the application be published at any time provided that the examination of form has been completed. In such case, the national competent authority on intellectual rights shall order its publication.

Article 290.- Confidentiality of the file. -

If the publication has not been made or the term established in the previous article has not elapsed, the file shall be confidential and may only be consulted by third parties upon applicant's consent. This provision shall also be applicable in case of abandonment of the application before its publication.

Notwithstanding the previous paragraph, any person who proves that the applicant for a patent has sought to assert against him the rights derived from the application, may consult the file prior to publication, even without applicant's consent.

Section V Rights and limitations

Article 291.- Term of a patent registration. -

The patent shall have a term of twenty years counted from the application filing date. The filing date shall be:

1. For national applications, the application filing date certified by the competent national authority on intellectual rights.
2. For international applications, the international filing date;
or
3. For applications claiming priority under any treaty, the filing date of the application whose priority is claimed.

There shall be no additional or complementary protection, of any kind, under any type of title or modality that extends the term established in this article.

Article 292.- Scope of protection. -

The scope of protection granted by the patent shall be determined by the content of the claims. The specification, designs or drawings, biological material and any other element deposited

before the competent national authority on intellectual rights shall be used for interpretation of the claims.

Article 293.- Rights of a patent owner. -

The patent grants its owner the right to prevent third parties from performing any of the following acts without his consent:

1. When the patent claims a product:
 - a. Manufacture the product;
 - b. Offer for sale, sell or use the product; or import it for any of those purposes; and,
2. When the patent claims a procedure:
 - a. Use the procedure; or,
 - b. Perform any of the acts mentioned in number 1 with regards to a product obtained directly through the procedure.

Article 294.- Limitations to the right of a patent owner. -

A patent owner may not exercise the right set forth in the previous article in any of the following cases:

1. Acts performed in a private context and on a non-commercial scale;
2. Acts performed for experimental purposes on the subject matter of the patented invention;
3. Acts performed for teaching or scientific or academic research purposes;
4. Acts referred to in article fifth of the Paris Convention for Industrial Property;
5. When the patent protects biological material, that can be reproduced, using same as the initial basis to obtain a viable new material, unless that said obtention requires repeated use of the patented subject matter; and,
6. Acts related with testing, use, manufacture or sale of a patented invention with the only purpose of creating and filing information required for the manufacturing approval, use or sale of any product, including pharmaceutical and agricultural chemical products, in Ecuador or in another country, as well as for the production of products for sale after the patent expiration date.

Article 295.- Exhaustion of the right. -

The patent shall not confer the right to prevent a third party to carry out commerce activities with respect to a product protected

by the patent, after such product has been introduced in the market of any country with the consent of the owner, a licensee, a person economically related to the owner or licensee or any other authorized person.

For the purposes of the above paragraph, two persons shall be considered economically related when one can directly or indirectly exercise a decisive influence on the other regarding the patent exploitation, or when a third party can exercise such an influence on both.

When the patent protects biological material capable of reproduction, the patent shall not extend to biological material obtained by reproduction, multiplication or propagation of the material introduced in the market pursuant to the first paragraph, provided that the reproduction, multiplication or propagation was necessary to use the material for the purposes for which it was introduced in the market and that the material derived from such usage is not used for multiplication or propagation purposes.

Article 296.- Prior user. -

Without prejudice of the provisions on the nullity of the patent stipulated in the present Chapter, the rights conferred by the patent shall not have effect against a third person who in good faith and before the priority date or the filing date on which the patent was granted, was already using and exploiting the invention, or had made effective and serious preparations for such use.

In such case, that person shall have the right to start or continue the use or exploitation of the invention, but this right shall only be assigned and transferred together with the establishment or the company in which the use or exploitation is carried out.

Article 297.- Assignment. -

A granted patent or a pending application shall be assigned by inter vivos act or by succession.

Any assignment of a granted patent or a pending application shall be registered before the competent national authority on

intellectual rights. Such legal transactions shall be perfected and become effective from its registration before the competent national authority on intellectual rights.

The assignment shall be in written form for registration purposes.

Any interested person shall apply for registration of an assignment.

Article 298.- License granting. -

A granted patent or a pending application shall be subject to license to one or more third parties for the exploitation of the corresponding invention.

Any license for exploitation of a granted patent or a pending application shall be registered before the competent national authority on intellectual rights and shall become effective from its registration before the competent national authority on intellectual rights.

Any interested person shall apply for registration of a license.

In case that there is any change regarding the name or address of the patent owner during the term of validity of the license, the registration owner shall apply for its registration before the competent national authority on intellectual rights.

Otherwise, any notification made pursuant to the information contained in the registration shall be considered valid.

The sublicenses shall require express authorization from the owner of rights.

Article 299.- Recordal of assignment or license agreements. -

The competent national authority on intellectual rights shall not register the contracts whereby it is assigned or granted license for the exploitation of patents which do not meet the provisions of the Common Regime on the Treatment of Foreign Capital and on Trademarks, Patents, Licenses and Royalties, or that do not meet the communitarian or national provisions about restrictive commercial practices of fair competition or about unfair

competition. Otherwise, where applicable, the Organic Law for the Regulation and Control of Market Power and penalties therein stipulated shall be applied.

Section VI Post-registration actions

Article 300.- Amendments to the registration. -

The owner of a granted patent shall register before the competent national authority on intellectual rights any change in the name, address, domicile or other data from owner, his agent or representative. Otherwise, any notification made pursuant to the information contained in the registration shall be considered valid.

Article 301.- Amendments to the claims. -

A patent owner can request the competent national authority on intellectual rights to amend the patent to limit the scope of one or more claims. Likewise, he can request the correction of any material error in the patent.

Section VII Withdrawal

Article 302.- Withdrawal. -

A patent owner may withdraw one or more claims of the patent or the patent in its entirety by means of a statement addressed to the competent national authority on intellectual rights. The withdrawal shall become effective from the date of receipt of the corresponding statement.

Section VIII Nullity of the patent

Article 303.- Absolute nullity of the patent. -

The competent national authority on intellectual rights, ex officio or at the request of any person with legitimate interest and, at any time, shall declare the absolute nullity of the patent in the following cases:

1. If the subject matter of the patent does not constitute an invention;
2. If the patent has been granted for a non-patentable invention;
3. If the invention does not comply with the patentability requirements;
4. If the patent does not sufficiently disclose the invention;
5. If the claims contained in the patent are not duly supported by the specification;
6. If the granted patent contains a broader disclosure than the initial application and that implies a broadening of the protection;
7. Where applicable, if a copy of the access contract has not been filed, when the products or procedures whose patent is sought have been produced or developed with genetic resources or derived products to which Ecuador is the country of origin;
8. Where applicable, if the copy of the document evidencing the licensing or authorization of use of traditional knowledge of the indigenous, Afro-American or local communities of Ecuador has not been filed, when the products or procedures whose protection is requested, have been produced or developed on the basis of such knowledge to which Ecuador or any of the member countries of the Andean Community is the country of origin;
9. If the patent has been granted in violation of article 282;
10. If the patent has been granted in violation of article 286;
11. If the causes of absolute nullity established by law for administrative acts were set up;
12. If the patent has been granted under any other violation of law that has substantially led to its granting.

When the above-mentioned cases only affect one of the claims or parts of a claim, the nullity shall only be declared with respect to such claims or such parts of a claim, as appropriate.

The patent, the claim or such part of a claim declared null shall

be deemed null and void from the filing date of the patent application.

Article 304.- Relative nullity. -

The administrative acts affected by defects that do not cause absolute nullity, pursuant to the previous article, shall be affected by relative nullity. In these cases, the competent national authority on intellectual rights may declare such nullity within the subsequent five years counted from the patent granting date.

Article 305.- Nullity action for lack of right. -

The competent national authority on intellectual rights may declare the nullity of a patent when it has been granted to whom was not entitled to obtain it. The nullity action shall only be brought by the person to whom the right to obtain the patent belongs. This action shall expire in five years counted from the patent granting date or in two years counted from the date in which the person to whom the right belongs became aware of the exploitation of the invention in the country, whichever term expires first.

Article 306.- Notification and submission of arguments and evidence. -

In case of nullity, the parties shall be notified so that they may submit their arguments and evidence as they deem appropriate.

If necessary for deciding on the nullity of a patent, the patent owner may be requested to submit one or more of the documents referred to in Article 300 regarding the patent that is the subject matter of the proceedings.

Article 307.- Terms for the submission of arguments and evidence. -

The arguments and evidence referred to in the previous article shall be submitted within two months following the notification. Before expiration of the term, either party may request an extension of two additional months.

Once the terms referred to in this article have expired, the competent national authority on intellectual rights shall decide

on the nullity of the patent, which shall be notified to the parties by means of a resolution.

Article 308.- Damages. -

The above mentioned actions shall not affect those that would apply for damages.

Article 309.- Expiration of the patent and grace period. -

In order to keep a patent or, where applicable a patent application in force, the corresponding annual fees established by the competent national authority on intellectual rights must be paid. Annuities may be paid in advance.

The expiration date of each annuity shall be the last day of the month of the filing date, according to article 291. Two or more annual fees may be paid in advance.

An annual fee may be paid within the grace period of six months counted from the starting date of the corresponding annual period, together with payment of the corresponding surcharge. During the grace period, the patent or patent application shall remain fully valid.

Failure to pay an annual fee in accordance with this article shall automatically cause the expiration of the patent or patent application.

Section X Compulsory license regime

Article 310.- Granting of compulsory license for lack of use. -

After the term of three years counted from the granting of the patent or four years counted from the application thereof, whichever is greater, the competent national authority on intellectual rights, at the request of any interested party, shall grant a compulsory license mainly for industrial production of the product that is the subject of the patent or the integral use of the patented procedure, only if at the time of the request the patent had not been subject to exploitation or if it had been suspended for more than one year.

Lack of use shall mean the non-exploitation of the subject matter of the patent in the Ecuadorian territory for lack of manufacturing or incomplete manufacture of the product, or even, the lack of integral use of the patented procedure together with the distribution and commercialization of the results reached, sufficient to satisfy the market demand.

The compulsory license shall not be granted if the patent owner justifies his inaction by restrictions imposed by law or regulation, or for reasons of force majeure or fortuitous events.

Article 311.- Notification and scope of compulsory license. -

The granting of compulsory licenses referred to in the previous article, shall proceed prior notification to the patent owner so that he may, within the following sixty days, submit his arguments if he deems it convenient.

The competent national authority on intellectual rights shall establish the license scope or extent, particularly specifying the granting term, the subject matter of the license, the amount and conditions of the economic compensation. This compensation shall be appropriate, under the circumstances pertaining to each case, especially considering the economic value of the authorization.

Article 312.- Amendments to conditions of compulsory licenses. -

At the request of the patent owner or licensee, the conditions of the compulsory licenses may be amended by the competent national authority on intellectual rights when justified by new facts, particularly when the patent owner grants another license in more favorable conditions than those established in the compulsory license.

Article 313.- Licensee obligations. -

The licensee shall be obliged to exploit the invention, within the term of three years counted from the license granting date, except in cases of inactivity for reasons of force majeure or fortuitous events, duly justified, during which the granting term in favor of the licensee shall be suspended.

Otherwise, at the request of patent owner, the competent national authority on intellectual rights shall revoke the compulsory

license.

Article 314.- Declaration and scope of the compulsory license granted for public interest reasons. -

Prior declaration by executive decree or ministerial resolution of the existence of reasons of public interest, emergency or national security, and only as long as these reasons remain, the State shall at any time and without prior negotiation with the patent owner, order the non-commercial public use of a patented invention by a governmental entity or a contractor, or submit the patent to compulsory license. The competent national authority on intellectual rights shall grant licenses as requested, without prejudice of the patent owner rights to be compensated pursuant to the provisions of this Section. The patent owner shall be notified when it is reasonably possible.

The decision of granting the compulsory license shall establish the scope or extent thereof, particularly specifying the granting term, the subject matter of the license, the amount and payment conditions of royalties, without prejudice of the provisions of article 319 of this Chapter.

The granting of a compulsory license for public interest reasons does not hinder the right of the patent owner to continue exploiting it.

Article 315.- Compulsory license for anticompetitive practices. -

Ex officio or at the request of a party, the competent national authority on intellectual rights shall grant compulsory licenses when there are practices that have been declared as contrary to the corresponding regulations by the competent national authority on competition defense, particularly when they constitute an abuse of the dominant position in the market by the patent owner.

In these cases, to determine the amount of the remuneration for benefit of the patent owner, the need to correct anticompetitive practices shall be considered.

Article 316.- Compulsory license for dependency. -

The competent national authority on intellectual rights shall grant license, at any time, if this is filed by the owner of a

second patent, whose exploitation necessarily requires the use of a first patent. Without prejudice of the provision of article 319, said license shall be subject to:

1. The claimed invention in the second patent shall comprise an important technical advantage of a significant economic importance with regarding to the claimed invention in the first patent;
2. The owner of the first patent shall be entitled to a cross license on reasonable conditions to exploit the claimed invention in the second patent; and,
3. License of first patent shall not be assigned without assignment of the second patent.

Article 317.- Compulsory license for the owner of a plant variety.

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When the breeder of a plant variety would not exploit a breeder's certificate without infringing the resulting right of an invention patent, may request a compulsory license on such patent insofar as necessary to exploit the variety that is the subject of such certificate.

In this case, the patent owner shall be entitled to a mutual compulsory license to use the protected variety insofar as necessary to exploit the patented invention.

The compulsory license to be granted shall only be assigned with the certificate or the patent whose exploitation requires the license.

Article 318.- Compulsory license for lack of agreement. -

Granting of compulsory license for lack of agreement.- For the case provided in article 276, the competent national authority on intellectual rights, at the request of a legitimate interested party, shall grant a compulsory license mainly for the industrial production of the product that is the subject of the patent or the integral use of the patented procedure, if at the time of the petition the patent co-owners have not agreed the terms and conditions of the voluntary license.

The request of a compulsory license for lack of agreement shall not be filed before six months have elapsed from the granting of the patent or a year from its application.

The compulsory license shall not be granted if the applicant does not justify having applied for granting of a voluntary license, which has not been granted for lack of agreement of co-owners; and, has made reasonable efforts to obtain the granting of the license voluntarily.

Article 319.- Conditions for the granting of compulsory licenses.

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The granting of compulsory licenses and the non-commercial public use regulated under this Section shall be subject to the following:

1. When a compulsory license is requested under articles 310, 316 and 317 the potential licensee shall demonstrate that has attempted to obtain authorization from the right holder in reasonable commercial terms and conditions and that these attempts have not been replied or have been negative, within a term of no less than four months counted from the formal petition that included such terms and conditions sufficiently to allow the patent owner to have a judgment. In cases of national emergency or in other circumstances of extreme urgency, or in cases of non-commercial public use, the owner of an intellectual property right shall be notified when reasonably possible;

2. The compulsory license shall not be exclusive and no sub-licenses shall be granted. It shall only be assigned with the part of the company or its intangible assets that allows its industrial exploitation, the assignment shall be in writing and recorded before the competent authority on intellectual rights;

3. The compulsory license shall be granted mainly to supply the local market, except when it involves the exportation of pharmaceutical products according to the decision of the World Trade Organization dated August 30, 2003 or the substitute rule, except when it involves practices that have been declared as contrary to the corresponding regulation by the competent authority on competition defense.

4. The licensee shall recognize an appropriate remuneration according to each case for the benefit of the patent owner, considering the economic value of the license or non-commercial public use without prejudice of the provision of article 315. In the absence of agreement between the parties, after the term of

thirty days from notification of the decision of the competent authority on intellectual rights to the patent owner regarding granting of the license or non-commercial public use, the remuneration shall be determined by such authority;

5. The compulsory license may be revoked, subject to the appropriate protection of persons that have been authorized to use the patent, at the reasoned request of the patent owner, if the circumstance that gave rise to it have gone and are unlikely to occur again. The competent authorities shall have the power to determine, upon justified petition, if such circumstances still exist;

6. The scope and term of the compulsory license shall be limited according to the purposes for which they are granted; and,

7. For invention patents that protect semiconductor technology, the compulsory license shall only be authorized for a non-commercial public use or to remedy or correct a practice declared as contrary to the corresponding regulation by the competent authority on competition defense.

Article 320.- Objection to the compulsory license. -

The objection to the compulsory license or the non-commercial public use granted according to this Section shall not prevent the exploitation or influence the running terms and deadlines. Its interposition shall not prevent the patent owner from receiving, meanwhile, the economic compensation established by the competent national authority on intellectual rights, in the unclaimed Article.

CHAPTER III UTILITY MODELS

Article 321.- Protectable subject matter under utility model. -

A patent of utility model shall be granted to all new form, configuration or element disposition of any device, tool, instrument, mechanism or other object or any of its parts, that allow a better or different operation, use or manufacture of the object incorporating it or that provide any utility, advantage or technical effect that it did not have before.

Article 322.- Non-protectable subject matter under utility model.

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The procedures may not be patented as utility models, nor the subject matter excluded from protection as invention patents.

Sculptures, architectural works, paintings, engravings, prints or any other object of purely aesthetic character shall also not be considered utility models.

Article 323.- Change of modality of the patent application. -

The applicant of a utility model patent may request that his application becomes an application for invention patent or a registration of industrial design, as long as the subject matter of the original application allows it.

Article 324.- Applicable provisions to the utility model patents.

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The provisions on invention patents, where applicable, shall apply for utility model patents, except the provision regarding terms and deadlines of proceedings, which shall be reduced to their half in accordance with the corresponding regulation. Notwithstanding the above, the term established in article 289 shall be of twelve months.

Article 325.- Protection term of utility models. -

The protection term of the utility model shall be of ten years counted from the filing date of the patent application, according to article 291.

CHAPTER IV LAYOUT-DESIGNS OF INTEGRATED CIRCUITS

Section I Protection requirements

Article 326.- Originality of a layout-design. -

A layout-design shall be protected when it is original. A layout-design shall be considered original when it results from the intellectual effort of its creator and it is not common among the creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

A layout-design consisting of a combination of elements or interconnections that are common shall only be protected if the combination, as a whole, meets the conditions mentioned in the previous paragraph.

Section II Owners

Article 327.- Ownership. -

The power to acquire a right through the registration of a layout-design of an integrated circuit corresponds to its designer. This faculty may be assigned by inter vivos act or by succession.

In case that the layout-design has been designed together by two or more persons, the right to registration shall correspond to them in common.

Article 328.- Distribution of ownership and benefits of the layout-designs of integrated circuits developed in educational and research centers. -

Article 276 of this Code shall be applied when the layout-design has been designed during research or activities mentioned in such article.

Article 329.- Ownership of the layout-design of integrated circuits developed in compliance of a contract. -

Article 277 of this Code shall be applied when the layout-design has been designed in compliance of a work contract or under a labor relationship.

Section III Application

Article 330.- Filing term. -

In case that the layout-design has been commercially exploited anywhere in the world, the registration application shall be filed within a term of two years counted from the date of first commercial exploitation of the layout-design. If the application was filed after the term expiration, the registration shall be denied.

Section IV Application process

Article 331.- Registration process. -

The application to acquire the right on a layout-design of integrated circuit shall be filed before the competent national authority on intellectual rights according to the content, requirements and other rules provided in the regulation.

Likewise, the corresponding regulation shall establish the requirements, terms and procedures for, among others, application examination, its publication, filing of oppositions and the granting or rejection of the application.

Section V Rights and limitations

Article 332.- Term of protection of the layout-design. -

The term of protection of a registered layout-design is of ten years counted from the oldest of the following dates:

1. The date in which the first commercial exploitation anywhere in the world was made.
2. The date in which the registration application was filed

The protection of a registered layout-design shall expire in any case at the expiration of the term of fifteen years counted from the last day of the year in which the layout-design was created.

Article 333.- Independence of protection. -

The protection of a registered layout-design shall be applied

regardless of whether the integrated circuit incorporating the registered layout-design is incorporated in a device and regardless of whether the layout-design has been incorporated in an integrated circuit.

Article 334.- Rights of the owner of a registration. -

The acquisition of a layout-design of integrated circuit grants its owner the right to prevent third parties without his knowledge to make any of the following acts with commercial purposes:

1. Reproduce, by incorporation in an integrated circuit or through any other way, the protected layout-design, as a whole or a part thereof that complies with the originality condition pursuant to article 326.
2. Incorporate, sell or distribute in any way the protected layout-design, or an integrated circuit that incorporates such layout-design; or,
3. Import, sell or distribute in any way a device in which the protected integrated circuit is incorporated, only to the extent that it continues comprising a layout-design unlawfully reproduced.

Article 335.- Scope of protection. -

The exercise granted by the acquisition only refers to the layout-design itself and does not comprise any idea, algorithm, concept, process, system, technique or information codified or incorporated in the layout-design.

Article 336.- Limitations to owner right. -

The acquisition of a layout-design shall not grant the right to prevent the following acts:

1. Acts performed in a private context and with non-commercial purposes;
2. Acts performed for evaluation, analysis or experimental purposes;
3. Acts exclusively performed for teaching or scientific or academic research purposes; and,
4. Acts referred to in fifth article of the Paris Convention for Industrial Property Protection.

Article 337.- Exhaustion of the right. -

The acquisition of a layout-design shall not confer the right to prevent a third party to carry out commerce activities with respect to protected layout-designs, integrated circuits incorporating them or devices that comprise such integrated circuits after they have been introduced in the market of any country.

Article 338.- Second layout-design created through evaluation. -

The owner of registration of a first layout-design shall not prevent a third party to perform acts of industrial or commercial exploitation related to a second layout-design created by a third party through evaluation or analysis of the first protected layout-design, provided that the second layout-design so created complies with the originality condition pursuant to article 326. Nor shall it prevent those acts with respect to the integrated circuits incorporating the second layout-design so created, or the devices incorporating such integrated circuits.

Article 339.- Independent Creation. -

The owner of registration of a layout-design shall not prevent a third party to perform the acts mentioned in article 334 with respect to other original layout-design created independently by a third party, even if identical.

Article 340.- Non-infringement of rights. -

It shall not be considered an infringement to the rights on a registered layout-design, the performance of any of the acts referred to in article 334 with respect to an integrated circuit incorporating a layout-design unlawfully reproduced, or a device containing such integrated circuit, when the person performing or ordering such acts proves that, by acquiring the integrated circuit or the device incorporating such integrated circuit was not aware that such layout-design was unlawfully reproduced. From the moment that such person receives sufficient notice of the unlawfulness of the layout-design, he may continue to perform such acts with respect to the products still in stock or previously ordered, but, at the request of the owner of the registration, he must pay him a compensation equivalent to a reasonable royalty based on which would be payable for a contractual license.

Article 341.- Enforcement and procedure regarding applications for registration and registrations of layout-designs of integrated circuits. -

The provisions of articles 297 to 299 of this Code shall apply to the applications for registration of layout-designs of integrated circuits and registrations of layout-designs of integrated circuits.

Section VI Nullity of registration

Article 342.- Absolute nullity. -

The competent national authority on intellectual rights ex officio or at the request of a party with legitimate interest and, at any time, shall declare the absolute nullity of a layout-design registration, in the following cases:

1. The subject matter of the registration does not constitute a layout-design;
2. The registration does not comply with the requirements of protection provided in article 326;
3. The registration has been granted for a layout-design filed after expiration of the term established in article 330; and,
4. If the causes of absolute nullity established in the national legislation for administrative acts were set up.

When the above-mentioned cases only affect a part of the registered layout-design, the nullity shall only be declared with respect to such part, the registration remaining in force for the other parts, provided that they comply as a whole with the requirement of originality provided in article 326.

Article 343.- Procedure to declare the nullity of the layout-design registration. -

Articles 304 to 307 of this Code shall apply to the nullity of a layout-design registration.

Section VII License Regime

Article 344.- Compulsory licenses. -

For lack of exploitation or for public interest reasons, particularly, national emergency, public health or national security, or to remedy any anticompetition practice, the competent national authority on intellectual rights may, at any time, at the request of an interested party or a competent national authority, order:

1. That a registered layout-design is used or exploited industrially or commercial by a governmental entity or by one or more persons of public or private law designated for this purpose; or,
2. That such layout-design remains open for granting of one or more compulsory licenses, in which case the competent national authority on intellectual rights shall grant such license to whom requests it, subject to the established conditions.

Where appropriate, the established conditions for the compulsory licenses with respect to invention patents shall be applicable to the granting of a compulsory license with respect to a layout-design.

CHAPTER V INDUSTRIAL DESIGNS

SECTION I PROTECTION REQUIREMENTS

Article 345.- Protectable matter. -

The particular appearance of a product shall be considered an industrial design, which results from any series of lines or combination of colors, or in any two-dimensional or three-dimensional external form, line, contour, configuration, texture or material, without changing the destination or purpose of said product.

Article 346.- Protection requirements. -

An industrial design is acquired provided that it is new.

An industrial design shall not be considered new if, before the date of the application or the date of priority validly claimed, would have been made accessible to the public at any place or time, through its description, use, trading or by any other means.

An industrial design shall not be considered new for the mere fact that it presents secondary differences with respect to previous embodiments or because it refers to another class of products other than said embodiments.

Article 347.- Non-protectable subject matter. -

The following shall not be registrable:

1. Industrial designs whose commercial exploitation must necessarily be prevented in order to protect to morality or public order. For these purposes, it shall not be considered contrary to morality or public order the commercial exploitation of an industrial design, by the mere existence of a legal or administrative provision that prohibits or regulates such exploitation;
2. Industrial designs whose appearance was essentially dictated by considerations of technical order or for the performance of a technical function, which does not incorporate any arbitrary contribution of the designer;
3. Industrial designs consisting solely of a form whose exact reproduction was necessary to enable that the product incorporating the design is mechanically assembled or connected to

another product of which it is part. This prohibition shall not apply in the case of products in which the design lies in a form intended to allow assembling or multiple connection of the products or their connection within a modular system; and,

4. Industrial designs that contain signs, symbols, figures, characters, among others, that constitute the expression of the culture or traditional knowledge of the indigenous, Afro-American or local communities.

Section II Owners

Article 348.- Ownership. -

The right to acquire an industrial design belongs to the designer. This right may be assigned by inter vivos act or by succession.

The registration owners may be natural or legal persons.

If several persons have made together an industrial design, the right to registration corresponds in common to all of them.

If several persons have made the same industrial design, independently of each other, the acquisition shall be granted to the person or his beneficiary who first file the corresponding application or that invokes the oldest priority date.

Article 349.- Owners of rights of industrial designs created in the institutions of higher education and educational centers -

Article 276 of this Code shall be applied when the design has been carried out in the course of the investigations or activities mentioned in said article.

Article 350.- Industrial design made in compliance with a contract. -

Article 277 of this Code shall be applied when the design has been carried out in compliance with a work contract or under a labor relationship.

Section III Registration application

Article 351.- Registration procedure. -

The application to obtain an industrial design shall be filed before the competent national authority on intellectual rights according to the content, requirements and other rules provided by the regulation. Likewise, it shall be established in the regulation of this Code the requirements, deadlines and procedures, for, among others, the examination of the application, its publication, the filing of oppositions and the granting or rejection of the application in the regulations of this Code.

Section IV Rights and Limitations

Article 352.- Term of the industrial design registration. -

The registration of an industrial design shall have a term of ten years, counted from the filing date of the application. The filing date shall be:

1. In the case of national applications, the filing date of the application certified by the competent national authority on intellectual rights; or,
2. In the case of applications that claim priority under any treaty, the filing date of the application whose priority is claimed.

Article 353.- Right of the owner of an industrial design. -

The acquisition of an industrial design shall confer on its owner the right to prevent to third parties, who shall not have their consent to manufacture, sell or import with commercial purposes products that incorporate or reproduce the industrial design.

Registration shall also confer the right to act against third parties who manufacture, sell or import with commercial purposes a product whose design only presents secondary differences to the protected design or whose appearance is similar.

Article 354.- Scope of exercise. -

The exercise conferred by the registration of an industrial design

shall not extend to design elements or features essentially dictated by consideration of a technical nature or for the performance of a technical function, that does not mean any arbitrary contribution from the designer.

The exercise conferred by the registration of an industrial design shall not include those elements or characteristics whose exact reproduction is necessary to allow the product incorporating the design is mechanically assembled or connected to another product of which it is part. This limitation shall not apply in the case of products in which the design lies in a form intended to allow assembling or multiple connection of the products or their connection within a modular system.

Article 355.- Exhaustion of the right. -

The acquisition of an industrial design shall not confer the right to prevent a third party to conduct acts of commerce with respect to a product that incorporates or reproduces that design, after that product had been introduced into the commerce of any country with the consent of the owner, a licensee, a person economically related to the owner or licensee, or any other authorized person.

For the purposes of the preceding paragraph, it shall be understood that two persons are financially linked when one can directly or indirectly execute on the other a decisive influence with respect to the exploitation of the industrial design, or when a third party may exercise such an influence on both persons.

Section V Nullity of the registration

Article 356.- Absolute nullity. -

The competent national authority on intellectual rights, ex officio or at the request of a party that proves legitimate interest, and in any moment, shall declare the absolute nullity of an industrial design registration, in the following cases:

1. The object of the registration does not constitute an industrial design;
2. The industrial design does not meet the protection requirements;

3. The registration would have been granted for a matter excluded from protection as industrial design; and,
4. The causes of absolute nullity established by national legislation for administrative acts were set up.

Article 357.- Applicable procedure to nullity. -

Regarding the nullity of a registration of industrial design, articles 304 to 307 of this Code shall be applicable.

Section VI REFERRAL

Article 358.- Applicable provisions to industrial designs. -

The provisions of articles 270, 287, 294 numerals 1,2, 3 and 4, 297, 298, 299 and 300 of this Code shall be applicable to industrial designs.

CHAPTER VI TRADEMARKS

Section I Protection requirements

Article 359.- Trademark registration. -

Trademark shall be understood as any sign that is suitable for distinguish goods or services in the market. Signs may be registered as trademarks that are susceptible of graphic representation.

The nature of the product or service to which a trademark is to be applied, in no case, shall be obstacle for its registration. The following signs or means may constitute trademarks, among others:

1. The words or combination of words;
2. Images, figures, symbols, graphics, logos, monograms, portraits, labels, emblems and badges;
3. The sounds, smells and tastes;
4. Letters and numbers;
5. A color delimited by a shape or a combination of colors;
6. The shape of the goods, their containers or packaging;
7. Reliefs and textures perceptible by the sense of touch;
8. Animations, gestures and movement sequences;
9. Holograms; and,
10. Any combination of the signs or means indicated in the previous sections.

The trademarks that identify to public sector institutions must reflect the cognitive and cultural identity of the country or locality as appropriate, in accordance with provisions of the corresponding regulation. The decision to change these trademarks must be made through a reasoned decision of the highest authority, in the case of decentralized autonomous governments, it shall be necessary to have the approval of the corresponding Council.

The cognitive and cultural identity of the country or locality should consider, among other aspects, the colors of the flags, badges, national or local emblems as appropriate.

Article 360.- Absolute prohibitions on trademark registration. -

It may not be registered as trademarks the signs that:

1. May not constitute a trademark in accordance with the first paragraph of the previous article;
2. Lack distinctiveness;
3. Exclusively consist of the usual forms of the goods or their packaging, or in forms or characteristics imposed by the nature or function of said related product or service;
4. Exclusively consist of forms or other elements that give a functional or technical advantage to the product or service to which they apply;
5. Exclusively consist of a sign or indication that can be used in commerce to describe the quality, quantity, destination, value, geographical origin, time of production or other data, characteristics or information of the goods or services for which the sign or indication is to be used, including laudatory expressions referring to those goods or services;
6. Exclusively consist of a sign or indication that is the generic or technical name of the related product or service;
7. Exclusively consist or have become a common or usual designation of the related product or service in the regular language or in the usage of the country;
8. Consist of an isolated considered color, without being delimited by a specific form;
9. May mislead the commercial media or the public, particularly about the geographic origin, nature, method of manufacture, characteristics, qualities or suitability for the use of the related goods or services;
10. Reproduce, imitate or contain a protected designation of origin for the same goods or for different goods, when their use could cause a risk of confusion or association with the denomination; or implies an unfair use of their notoriety;
11. Contain a protected appellation of origin for wines and spirits;
12. Reproduce or imitate, without permission from the competent authorities, either as trademarks or as elements of the referred trademarks, the name, the coats of arms, flags and emblems of the States and any imitation from the heraldic point of view, as well as coats of arms, flags and other emblems, acronyms or denominations of any international organization. However, these

signs may be recorded when they do not lead to confusion about the existence of a link between the applicant and the state or organization;

13. Reproduce or imitate, without permission from the competent authorities, either as trademarks or as elements of the referred trademarks, signs, seals or official hallmarks of control or guarantee adopted by the States when their use could cause a risk of confusion or association;

14. Reproduce or imitate the name of the State, local governments or their official symbols as well as the names, acronyms and official symbols of the institutions, organizations and public entities, or the signs that constitute a country brand, unless their registration is requested by the competent authority;

15. Reproduce or imitate signs in accordance with technical standards, unless their registration is requested by the competent national entity in standards and qualities of the country;

16. Reproduce coins or bills of legal course in the territory of the country, or of any country, securities and other business documents, seals, stamps, prints or tax stamps in general;

17. Reproduce, imitate or contain the denomination of a plant variety protected in the country or abroad, if the sign is intended to goods or services related to that variety or its use is subject to cause confusion or association with the variety;

18. Are contrary to the law, morality, public order or good manners; or,

19. Contain the denomination of a traditional guaranteed protected specialty.

The signs mentioned in numerals 2, 5, 7 and 8 that are not intrinsically capable of distinguish the relevant goods or services may be registered as a trademark when have acquired distinctive aptitude as a result of their continuous use in the country to identify the goods or services of the applicant or its founder in accordance with the provisions of the corresponding regulation.

Likewise, the usual three-dimensional shapes of product packaging, which would have acquired distinctive aptitude as a result of its constant use in the country to identify said goods, in accordance with the provisions of the corresponding regulation, may be registered as a trademark, as long as they do not constitute forms

imposed by the nature of the product; are necessary to obtain a technical result; or, the shape provides substantial value to the product.

Article 361.- Relative Prohibitions. -

It may neither be registered as trademarks, the signs that affect the rights of third parties, such as those signs that:

1. Are identical or similar to a trademark previously applied for registration or registered, for the same goods or services, or for goods or services with respect to which the use of the trademark could cause a risk of confusion or association;
2. Are identical or similar to a protected commercial name or if applicable, a label or sign, provided that given the circumstances, its use could cause a risk of confusion or association;
3. Are identical or similar to a commercial slogan applied or registered, provided that given the circumstances, its use could arise a risk of confusion or association;
4. Are identical or resemble a distinctive sign of a third party, provided that given the circumstances its use could arise a risk of confusion or association, when the applicant is or would have been a representative, a distributor or a person expressly authorized by the owner of the protected sign in the country or abroad;
5. Constitute a total or partial reproduction, imitation, translation, transliteration or transcription, of a well-known distinctive sign, whatever are the goods or services to which the sign is applied, when its use could cause a risk confusion or association with that third party or its goods or services; an unfair use of the prestige of the sign; or the dilution of its distinctive force or of its commercial or advertising value;
6. Consist of a sign that affects the identity or prestige of legal persons with or without profit purposes, or natural persons, especially in the case of the name, surname, signature, title, hypocoristic, pseudonym, image, portrait or caricature of a person other than the applicant or identified by the relevant section of the public as a person other than the applicant, unless the consent of that person or his heirs is proven;
7. Consist of a sign that infringes the right of industrial property or copyright of a third party, unless there is the consent of the latter;

8. Consist of the name of the indigenous people, nationalities and communities, Afro-American or local, or the denominations, words, letters, characters or signs used to distinguish their goods, services or the form they are processed, or that constitute the expression of their culture or practice or the name of their traditional knowledge, except that the application be submitted by the community itself or with its express consent; and,

9. Consist of, include or reproduce medals, prizes, diplomas or other awards, except by those who grant them.

Article 362.- Bad faith petition. -

When the competent national authority on intellectual rights has reasonable indications that allow him to infer that a registration has been applied in bad faith or to perpetrate, facilitate or consolidate an act of unfair competition, may deny such registration.

Article 363.- Registration procedure. -

The application for registration of a trademark shall be filed before the competent national authority on intellectual rights according to the content, requirements and other rules provided by the corresponding regulation. Likewise, the regulation shall establish the requirements, deadlines and procedures, for, among others, the examination of the application, its publication, the filing of oppositions and the granting or rejection of the application.

Section II Rights and limitations

Article 364.- Right to the exclusive use of a trademark. -

The right to the exclusive use of a trademark shall be acquired by its registration before the competent national authority on intellectual rights.

The trademark must be used as registered. Only variations in elements shall be accepted that do not alter the distinctive character of the registered sign.

Article 365.- Term of the registration of a trademark. -

The acquisition of a trademark shall have a term of ten years counted from the date of its granting and may be renewed for

successive periods of ten years.

Article 366.- Renewal of trademark registration. -

The owner of the registration, or whoever has legitimate interest, must request the renewal of the registration before the competent national authority on intellectual rights within the six months prior to the expiration of the registration. However, both the owner of the registration and who has a legitimate interest shall have a grace period of six months counted from the expiration date of the registration to request its renewal. During the mentioned period, the trademark registration shall maintain its full validity.

For renewal, evidence of use of the trademark shall not be required. It shall be enough to file the corresponding application and the renewal shall be granted without further processing, in the same terms of the original registration. However, the owner may reduce or limit the goods or services stated in the original registration.

Article 367.- Rights conferred by trademark registration. -

Acquisition of the trademark grants its owner the right to prevent third parties conduct without their consent any of the following acts:

1. Apply or place the mark or an identical or similar distinctive sign on goods to which the trademark has been registered; on goods linked to the services for which it has been registered; or on the containers, wrappings, package or box of such goods;
2. Delete or modify the trademark for commercial purposes, after it has been applied or placed on the goods for which the trademark has been registered; on the goods linked to the services for which it has been registered; or on the containers, wrappings, package or box of such goods;
3. Manufacture labels, containers, wrappings, packaging or other materials that reproduce or contain the trademark, as well as commercialize or hold such materials;
4. Use in commerce a sign identical or similar to the trademark with respect to any goods or services, when such use could cause confusion or a risk of association with the registration owner. In the case of the use of an identical sign for identical goods or

services, it shall be presumed that there is a risk of confusion;
5. Use in commerce an identical or similar sign to a well-known trademark regarding any goods or services, when this could cause the owner of the registration an unfair economic or commercial damage by reason of a dilution of the distinctive force or of the commercial or advertising value of the trademark, or by reason of an unfair use of the prestige of the trademark or of its owner;
and,

6. Publicly use a sign identical or similar to a well-known trademark, even for non-commercial purposes, when this could cause a dilution of the distinctive force or of the commercial or advertising value of the trademark, or an unfair use of its prestige.

Article 368.- Use of a sign in commerce by a third party. -

For the purposes of the provisions in numerals 4, 5 and 6 of the previous articles, it shall constitute use of a sign in commerce by a third party, among others, the following acts:

1. To introduce in commerce, sell, offer for sale or distribute goods or services with that sign;
2. To import, export, store or transport goods with that sign; or,
3. To use the sign in advertising, publications, commercial documents or written or oral communications, independently of the means of communication used and without prejudice of the regulations on advertising that were applicable.

Article 369.- Use of the trademark by third parties for informative purposes. -

Provided that is made in good faith and does not constitute use as a trademark, third parties may, without consent of the owner of the registered trademark, use in commerce its own name, address or pseudonym; a geographic name; or any other true indication regarding the species, quality, quantity, destination, value, place of origin or time of production of its goods or the provision of its services or other characteristics thereof; provided that such use is limited to identification or information purposes and is not capable of inducing public to error about the origin of the goods or services.

Article 370.- Use of trademark for advertisement. -

The registration of the trademark shall not confer on its owner the right to prohibit a third party from using the mark to advertise, including in comparative publicity, offer for sale or indicate the existence or availability of goods or services legitimately marked; or to indicate the compatibility or suitability of spare parts or accessories to be used with the goods of the registered trademark; as long as in both cases such use is in good faith, the purpose of information to the public is limited to sale and is not subject to mislead or confusion about the business origin of the corresponding goods.

Article 371.- Exhaustion of the right. -

The registration of a trademark shall not confer the right to prevent a third party from conducting acts of commerce with respect to a product protected by such registration, after that product has been introduced into the commerce of any country.

Article 372.- Prohibition of marketing of goods and services identified with the foreign trademark. -

When in a member country of the Paris Convention, TRIPS or with which Ecuador has any kind of agreement on industrial property, it is registered a trademark identical or similar to one registered in the country but in the name of a different owner, to distinguish the same goods or services, the marketing in the country of the goods or services identified with the foreign mark is prohibited, unless the owners of the trademarks sign agreements that allow said commercialization.

In case such agreements are reached, the parties must assume the necessary obligations to avoid public confusion as to the origin of the goods or services involved, including matters related to the identification of the origin of the goods or services concerned with prominent and proportional characters to them for proper information to the consumer public. These agreements must respect the public interest and the rules on restrictive commercial practices of free competition and unfair competition. Besides, they shall be registered before the competent national authority on intellectual rights.

In any case, the importation of a product or service that is in

the situation described in the first paragraph of this article, shall not be prohibited when the trademark is not being used in the country, according to the provisions of article 380, unless the owner of said trademark demonstrate before the competent national authority on intellectual rights, that the non-use of the trademark is due to justified reasons.

Article 373.- Obligation to indicate the place of manufacture of the product or service. -

When the trademark consists of a geographical name, the product may not be traded or provided the service without indicating in a visible and clearly legible form, the place of manufacture of the goods or the origin of services.

Article 374.- Assignment of trademark registration. -

A trademark registration or an application in registration procedure is transferable by inter vivos act and transmissible by cause of death, with or without the company to which it belongs.

It must be registered before the competent national authority on intellectual rights and shall become effective from their registration before the competent national authority on intellectual rights.

For registration purposes, the assignment must be recorded by written.

Any interested person may apply the registration of an assignment. Nevertheless, the competent national authority may reject such registration if the assignment would entail risk of confusion or association.

Article 375.- License for the exploitation of the trademark. -

A trademark registration or an application in registration procedure may be licensed to one or more third parties for the exploitation of the corresponding trademark.

It must be registered before the competent national authority on intellectual rights and shall become effective from its registration before the competent national authority on intellectual rights.

Any interested person may file the registration of a license.

Article 376.- Registration of assignment or license contracts. -

The competent national authority on intellectual rights shall not register the contracts through which it is transferred or granted a license for the exploitation of trademarks that do not comply with the provisions of the Common Regime for the Treatment of Foreign Capital and on Trademarks, Patents, Licenses and Royalties, or that do not comply with community or national provisions on restrictive commercial practices of free competition and unfair competition. Otherwise, as appropriate, the provisions of the Organic Law of Regulation and Control of Market Power and the sanctions therein provided shall be applied. The sub-licenses shall require the express authorization of the owner of the rights.

Article 377.- Modifications to the registration. -

The owner of a registered trademark must request before the competent national authority on intellectual rights the registration of any change in the name, address or other data of the owner, his representative or attorney in fact. Otherwise, any notification made in accordance with the information that appears in the registry shall be deemed valid.

Section III Cancellation of the registration

Article 378.- Cancellation of registration of a trademark for lack of use. -

The registration of a trademark shall be cancelled at the request of any interested party when, without justified reason, the trademark would not have been used by its owner, its licensee or by another authorized person, during the three consecutive years preceding the date on which cancellation action is initiated. The cancellation of a registration for lack of use of the trademark may also be requested as a defense in an opposition procedure filed on the basis of unused trademark.

Notwithstanding the provisions of the preceding paragraph, the cancellation action may not be initiated before three years have elapsed from the date of notification of the resolution that exhausts the registration procedure of the corresponding trademark in the administrative channel.

Article 379.- Cases of force majeure or fortuitous event. -

The registration may not be cancelled when the owner demonstrates that the lack of use was due to force majeure, fortuitous event or official limitation imposed on goods and services protected by the trademark.

Article 380.- Characteristics of the use of the trademark. -

It shall be understood that a trademark is in use when the goods or services that it distinguishes have been placed on the market or are available on the market under that trademark, in the quantity and in the manner normally appropriate, considering the nature of the goods or services and the modalities under which its commercialization is conducted in the market.

Subject to the provisions of the preceding paragraph, it shall also be considered that a trademark is in use, in the following cases:

- a) When genuine goods have been introduced and distributed on the market with the registered trademark, by persons other than the owner of the registration; and,
- b) When it exclusively distinguishes goods that are exported from the country, as established in the previous paragraph.

Article 381.- Use of the trademark that differs from the manner it was registered. -

The use of a trademark in such a way that it differs from the way in which it was registered only in terms of elements that do not alter its distinctive character, shall not motivate the cancellation of the registration for lack of use, nor shall it diminish the protection that corresponds to the trademark.

Article 382.- Evidences to identify the use of the trademark. -

The burden of proof of use of the trademark shall correspond to the owner of the registration.

The use of the trademark may be demonstrated, among others, by means of commercial invoices, accounting documents or audit certifications that demonstrate the regularity and quantity of the commercialization of the goods or services identified with the trademark.

Article 383.- Reduction or limitation of the list of goods or services included in the registration of the trademark. -

When the lack of use of a trademark only affects one or some of the goods or services for which the trademark was registered, it shall be ordered a reduction or limitation of the list of goods or services included in the registration of the trademark, eliminating those that have not been used with the trademark, for which the identity or similarity of the goods or services shall be considered.

Article 384.- Preferential right to file a trademark application.

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The person who obtains a favorable resolution shall have preferential right to registration. Such right may be invoked from the filing of the cancellation request, and until within the three months following the date on which the cancellation resolution becomes final on the administrative channel.

Article 385.- Cancellation for generic condition. -

The registration of a trademark shall be cancelled or it shall be ordered the limitation of its scope, ex officio or at the request of an interested person, when its owner would have caused or tolerated that it becomes a common or generic sign to identify or designate one or more of the goods or services for which it was registered.

It shall be understood that a trademark has become a common or generic sign when in the commercial means and for the public said trademark has lost its distinctive character as indication of business origin of the product or service to which it applies. For this purpose, the following facts must concur in relation to that trademark:

1. The need of competitors to use the sign in order to develop their activities since there is no other adequate name or sign to designate or identify in the commerce to the corresponding product or service;
2. The generalized use of the trademark by the public and in commercial media as a common or generic sign of the corresponding product or service; and,
3. Lack of knowledge or low recognition by the public that the

trademark means a specific business origin.

Article 386.- Cancellation action procedure. -

Upon receipt of a cancellation petition, the owner of the registered trademark shall be notified so that within the term of sixty days from the date of notification, if he deems it convenient, he submits his arguments or files evidence.

Once the term referred in this article has expired, a decision shall be made on the cancellation or not of the registration of the trademark by means of a resolution duly reasoned.

Section IV Withdrawal of registration

Article 387.- Withdrawal of trademark registration. -

The owner of a trademark registration may withdraw at any time, fully or in part, to his rights on the registration. If the withdrawal is total, the registration shall be cancelled. When the withdrawal is partial, the registration shall be limited to the goods or services not related to the withdrawal.

The withdrawal shall not be accepted if there are seizure or registered rights on the trademarks in favor of third parties, unless there is express consent of the owners of said rights. The withdrawal shall only become effective from its registration before the competent national authority on intellectual rights.

Article 388.- Nullity of the acquisition of a trademark. -

The competent national authority on intellectual rights, ex officio or at the request of a party that proves legitimate interest, and at any time, shall declare the absolute nullity of the acquisition of a trademark in the following cases:

1. When the acquisition has been granted based on false data or documents that are essential for its granting;
2. When the acquisition has been granted in violation of the provisions of the first paragraph of article 359 or article 360 of this Code;
3. When the causes for absolute nullity provided in the rules for administrative acts are set up; or

4. When the acquisition has been granted based on any other violation to the law that substantially had led to its granting.

Article 389.- Grounds for nullity of the acquisition of the trademark. -

The competent national authority on intellectual rights, ex officio or at the request of an interested person, shall declare the relative nullity of a trademark registration in the following cases:

1. When the acquisition has been granted in violation of article 361;
2. When the acquisition has been made in bad faith; or,
3. When the acquisition has been made to perpetrate, facilitate or consolidate an act of unfair competition.

This action shall prescribe in five years from the date of granting the registration.

Article 390.- Impediment to declare nullity of the trademark registration. -

It may not be declared the nullity of the registration of a trademark for causes that ceased to be applicable at the time of deciding on nullity.

Article 391.- Partial nullity. -

When a cause of nullity only affects one or some of the goods or services for which the trademark was registered, nullity shall be declared solely for those goods or services, and shall be removed from the trademark registration.

Article 392.- Nullity action procedure. -

In cases of nullity, the parties shall be notified to submit the arguments and file the evidence that they deem convenient. The arguments and evidence referred to in the preceding paragraph shall be presented within two months after notification. Before the expiration of the term, either party may request an extension for two additional months.

Once the terms referred in this article have expired, the competent national authority on intellectual rights shall decide

on the nullity of the trademark, which shall be notified to the parties by means of a resolution.

Article 393.- Independence of the actions for damages. -

The precedent actions shall not affect those that may correspond to damages.

Section VI Expiration of the registration

Article 394.- Expiration of the trademark registration. -

The trademark registration shall expire in full right if the owner or whoever has a legitimate interest does not request the renewal within the legal term, including the grace period in accordance with the provisions of article 366.

CHAPTER VII SLOGANS

Article 395.- Definition. -

A slogan is the word, phrase or legend used as a complement to a trademark.

Article 396.- Acquisition of slogans. -

The slogans that do not contain reference to similar goods or trademarks or expressions that may damage said goods or trademarks, may be acquired.

Article 397.- Content of the application for registration of slogans. -

Notwithstanding other requirements determined in the regulations, the application for registration of a slogan must specify the trademark registration or the pending trademark application to which the slogan complements.

Article 398.- Assignment or license. -

The assignment or license of a slogan registration or pending slogan application must be made together with the trademark registration or pending trademark application to which the slogan complements.

Article 399.- Validity of the registration. -

The validity of the acquisition of a slogan shall be subject to the validity of the trademark registration to which the slogan complements.

Article 400.- Evidence for use of slogan. -

The provisions of Chapter VI of this Title shall be applicable to slogans, where appropriate.

Regarding evidence of use of a slogan, said use must be demonstrated together with the use of the trademark to which the slogan complements. Evidence of use of a slogan may include, in addition to those mentioned in article 382, any other that demonstrate its use in advertising or in the market.

CHAPTER VIII Collective trademarks

Article 401.- Definition. -

It shall be considered as collective trademark any sign that is suitable for distinguishing the origin or any other common characteristic of goods or services belonging to two or more different persons or companies and that use it under the control of an owner.

Article 402.- Owners of collective trademarks. -

Associations of producers, manufacturers, traders, service providers, organizations or groups of people, cooperative unions and other organizations that constitute the popular and solidarity economy, legally established, may acquire collective trademarks to distinguish the goods or services of its members in the market.

Article 403.- Requirements and procedure for the acquisition of a collective trademark. -

The application for the acquisition of a collective trademark shall be filed before the competent national authority on intellectual rights according to the content, requirements and other rules established by the corresponding regulation.

Likewise, the regulation shall establish the requirements, deadlines and procedures, among others, the examination of the application, its publication, the filing of oppositions and the granting or rejection of the application.

Article 404.- Assignment or license of a collective trademark. -

The registration or pending application for a collective trademark may be subject to assignment or license in accordance with the provisions of the internal rules of the association, organization, group, cooperative or organization.

In any case, its use shall be reserved to the members of the association, organization, group, cooperative or organization. Sub-licenses may not be granted.

It must be registered before the competent national authority on intellectual rights any assignment, authorization of use or license of a registration or pending application for a collective

trademark and shall become effective from its registration before the competent national authority on intellectual rights.

Article 405.- Application. -

The provisions of Chapter VI of this Title shall be applicable to collective trademarks, as appropriate.

CHAPTER IX CERTIFICATION TRADEMARKS

Article 406.- Definition. -

It shall be understood as certification trademark a sign intended to be applied to goods or services whose quality, origin or other characteristic have been certified by the trademark owner.

Article 407.- Owners. -

The owner of a certification trademark may be a company or institution, under private or public law, or a state, regional or international organization.

Article 408.- Rules of use of the trademark. -

Together with the application for registration of a certification trademark the rules of use of the trademark must be filed. Without prejudice of others requirements established in the corresponding regulation, said rules shall indicate the goods or services that may be subject to certification by the owner, shall define the characteristics guaranteed by the presence of the trademark, and shall describe the manner to exercise control of such characteristics before and after authorizing the use of the trademark.

The rules of use shall be registered together with the trademark, as well as all its modifications. Said registration shall be made before the competent national authority on intellectual rights. Lack of registration shall cause that the modification do not have effect against third parties.

Article 409.- Certification trademark authorization. -

Notwithstanding the community provisions or national regulations on restrictive commercial practices of free competition, the owner of a certification trademark may authorize its use to any person whose product or service meets the conditions established in the rules of use of the trademark.

The certification trademark may not be used in connection with goods or services produced, provided or marketed by the trademark owner himself.

Article 410.- Application. -

The provisions of Chapter VI of this Title shall be applicable to certification trademarks, as appropriate.

Section I Country brand

Article 411.- Definition. -

The country brand shall be understood as the sign intended to distinguish, promote and position cultural, socio-economic, and political identity, biodiversity, image, reputation and other values of the country.

Article 412.- Country brand declaration. -

The country brand declaration shall be made through executive decree and shall remain in force over time, until it is changed.

Prior the issuance of executive decree, a favorable report from the competent national authority on intellectual rights, who must verify that the rights of third parties are not affected, shall be required.

Article 413.- Use of the country brand. -

The sign referred in this Chapter shall be owned by the State, the processes of licensing, authorization of use, declaration, request, diffusion, training, use and compliance, shall be exercised through the competent entity provided in the country brand declaration decree.

Article 414.- Applicable regulations. -

The provisions of Chapter VI of this Title, as established in the corresponding regulations shall be applicable to the country brand, as appropriate.

Notwithstanding the provisions of the preceding paragraph, the national competent authority on intellectual rights shall register the signs referred on this Chapter in an independent registration. Without authorization from the competent authority in article 413, any person may use such signs.

CHAPTER X COMMERCIAL NAMES

Article 415.- Definition. -

A commercial name shall be understood as any sign that is suitable for identifying a person or commercial establishment in the exercise of its economic activity and distinguish it from others that develop identical or similar activities.

A person or commercial establishment may have more than one commercial name. Among others, a company name, business name or other designation registered in a registry of persons or business companies, may constitute a commercial name.

Commercial names are independent from the denominations or company names of legal persons, both being able to coexist.

Article 416.- Declarative registration of the commercial name. -

The exclusive right on a commercial name shall be acquired by its first use in commerce, public, continuous, in good faith and provided that it does not violate priority rights duly constituted in the country and shall finish upon termination of the use of the commercial name or the activities of the person or commercial establishment using it.

The owner of the commercial name may register it before the national competent authority on intellectual rights, the registration shall be declarative. The right to the exclusive use of a commercial name shall only be acquired under the terms provided in the previous paragraph.

In any case when the exclusive right on a commercial name is claimed or alleged, its public, continuous and good faith use must be proved, at least within six months prior to said allegation or claim. Evidence of use shall correspond to the commercial name owner. For the purposes provided in this paragraph, if the owner is not part in the corresponding procedure, it shall be notified ex officio.

Article 417.- Withdrawal of registration. -

The owner of a commercial name registration may withdraw his rights on the registration. The withdrawal to registration of a

commercial name shall become effective from its application before the competent national authority.

Article 418.- Non-protectable or registrable signs of the commercial name. -

It shall not be protected or registered as commercial name a sign included in any of the following cases:

1. May not constitute a commercial name in accordance with the first paragraph of article 415;
2. When it is identical or similar to a distinctive sign of a third party, provided that given the circumstances, its use may cause a risk of confusion or association;
3. When it consists of a sign that infringes an industrial property right or the copyright of a third party, except with the consent of such third party;
4. When its use is subject to cause confusion or deceit in the commercial media or in the public regarding the identity, nature, activities, business or any another aspect of the person using it;
5. When its use is subject to cause confusion or deceit in the commercial media or in the public regarding the business origin, origin or other characteristics of the goods or services that the person produces or trades; and,
6. When it consists, totally or partially, of a sign contrary to law, morality, public order or good manners.

Article 419.- Referral. -

The corresponding regulation shall establish the requirements, deadlines and procedures, among others, for examination of the application, its publication, filing of oppositions, and the granting or rejection of the application. The process of registering a commercial name shall be the one established for the registration of trademarks.

Article 420.- Validity of the commercial name registration. -

The registration of a commercial name shall have a term of ten years counted from the date of its granting and may be renewed, after proof of use, for successive periods of ten years.

Article 421.- Rights of the owner. -

The owner of a commercial name may prevent any third party to use

in commerce an identical or similar distinctive sign, when it could cause a risk of confusion or association with said commercial name or its activities.

In the case of notorious commercial names, the owner may prevent any third party to use in commerce an identical or similar distinctive sign when it could cause an unfair economic or commercial damage, by reason of a dilution of the distinctive force or of the commercial or advertising value of the name, or by reason of the unfair use of the prestige of the name or of the owner.

Article 422.- Assignment of commercial name. -

The assignment of a commercial name can only be carried out together with that of the company in which the activity identified by the commercial name is developed.

Article 423.- Application. -

The provisions of Chapter VI of this Title shall be applicable to commercial names, as appropriate.

CHAPTER XI LABELS OR ENSIGNS

Article 424.- Definition. -

Labels or ensigns shall be considered as any sign that is suitable for distinguish a commercial establishment.

Article 425.- Protection and registration of labels or ensigns. -

The protection and registration of labels or ensigns shall be governed by the provisions related to commercial names.

Section I Distinctive appearances

Article 426.- Definition. -

Distinctive appearance shall be considered as any set of colors, characteristic and particular forms, presentations, structures and designs of a commercial establishment or a product on the market, provided that they are suitable for distinguish it in the presentation of services or sale of goods.

Article 427.- Acquisition and exercise of distinctive appearances.

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Distinctive appearances shall be acquired and shall exercise rights in the same manner as trademarks, provided they have acquired a distinctive aptitude in the Ecuadorian market, in accordance with the corresponding regulation, or are inherently distinctive.

CHAPTER XII Denominations of origin

Section I Protection requirements

Article 428.- Definition. -

A appellation of origin shall be understood as a geographical indication constituted by the denomination of a country, a region or a specific place, or constituted by a denomination which not being of a country, a region or a specific place refers to a specific geographical zone, used to designate a native product thereof, when certain quality, reputation or other characteristic of the product is exclusively or essentially attributable to the geographical environment in which it is produced, extracted or manufactured, including natural and human factors.

In the case of homonymous denominations of origin, protection shall be granted to each one. The Regulation shall establish the conditions to differentiate from each other the homonymous indications or denominations, considering the need to ensure that the involved products receive equal treatment and that consumers are not misled.

Article 429.- Non-protectable signs. -

It may not be declared as denominations of origin, those that:

1. Do not meet the definition of the previous article;
2. Are contrary to the law, morality, public order or good manners;
3. May mislead the public about the geographical origin, nature, way of manufacture, or the quality, reputation or other characteristics of the corresponding products;
4. Are common or generic indications to distinguish the related product, when they are considered as such by experts in the field or by the public in general in the Ecuadorian territory;
5. Have been applied or registered in good faith as trademarks before the appellation of origin was protected in the country of origin; and,
6. In relation to winegrowing products, they would have been the common denomination of a grape variety existing in the Ecuadorian territory as of January 1, 1995.

Section II Declaration of protection

Article 430.- Declaration. -

A appellation of origin shall be protected from the declaration issued to that effect by the competent national authority on intellectual rights.

Article 431.- Legitimate interest. -

The declaration of protection of an appellation of origin shall be made ex officio or at the request of those who demonstrate a legitimate interest, understood as natural or legal persons who are directly engaged in the production, extraction or manufacture of the product or products that are intended to designate with the appellation of origin, as well as the associations of such people. The public authorities of the central or decentralized autonomous administration shall also be considered interested parties, in the case of denominations of origin from their corresponding districts.

Article 432.- Referral. -

The corresponding regulation shall establish the requirements of the application. Upon admission, the procedure provided for the registration of trademarks shall be applied, as appropriate.

Article 433.- Validity of the declaration of protection of an appellation of origin. -

The validity of the declaration of protection of an appellation of origin shall be determined by the subsistence of the conditions that motivated it, in the opinion of the competent national authority on intellectual rights. The term of its validity may be terminated if such conditions had not been maintained. Without prejudice to the resources available against said resolution, the interested parties may request again the declaration of protection when they consider that the conditions for their protection have been restored.

Article 434.- Amendment of the protection declaration. -

The protection declaration may be modified at any time in accordance with the provision of this Code and the corresponding regulation. The amendment shall be subject to the procedure for declaration of protection, as appropriate.

Section III Authorization of use

Article 435.- Authorization. -

People who directly dedicate to the extraction, production or processing of products designated by a protected appellation of origin and perform said activity within the geographical area determined in the corresponding declaration of protection, may request the competent national authority on intellectual rights, authorization to use said appellation of origin. The authorization of use may also be granted by public or private entities that represent the beneficiaries of denominations of origin, in accordance with the provisions of the regulation issued for this purpose.

When the competent national authority on intellectual rights considers it appropriate for the examination of the application, may request information or documents from the persons, associations or authorities, as appropriate.

Article 436.- Referral. -

The corresponding regulation shall establish the requirements of the application. Upon admission, the procedure therein provided shall be applied.

Article 437.- Validity of the authorization of use. -

The authorization of use of a protected appellation of origin shall have a term of ten years and may be renewed indefinitely for the same periods.

The provisions of Chapter VI of this Title related to the renewal and expiration of the registration of trademarks shall be applicable to the renewal of the authorization of use, as appropriate.

Article 438.- Cancellation of the authorization of use.-

The competent national authority on intellectual rights, ex officio or at the request of a party, shall cancel the authorization of use when the appellation of origin is used in commerce in a way that does not correspond with the corresponding declaration of protection.

The provisions of Chapter VI of this Title regarding the cancellation of the registration of trademarks shall be applicable to the cancellation of the authorization of use, as appropriate.

Article 439.- Nullity of the authorization of use. -

The competent national authority on intellectual rights shall declare, ex officio or at the request of a party, the nullity of the authorization of use of an appellation of origin if it has been granted in violation of the rules of this Chapter.

The provisions of Chapter VI of this Title regarding the nullity of trademark registrations shall be applicable to the nullity of the authorization of use, as appropriate.

Section IV Rights and limitations

Article 440.- Reserve of use. -

The use of a protected appellation of origin with respect to the products it designates is exclusively reserved for the producers, manufacturers and artisans who have their production, extraction or elaboration facilities in the geographical zone that is designated with said denomination.

Only producers, manufacturers or artisans authorized to use a protected appellation of origin may use it together with the expression "DENOMINATION OF ORIGIN".

The provisions of articles 367 to 372 shall be applicable to protected denominations of origin, as appropriate.

Article 441.- Operating authorization. -

The competent national office may authorize the operation as a group of beneficiaries or as regulatory office to those organizations, regardless their legal or associative form, as long as they are legally recognized, who request it and meet the requirements established in the corresponding regulation.

The public or private entities that represent the beneficiaries of the denominations of origin, or those designated for this purpose, shall order the mechanisms that allow an effective control of the

use of protected denominations of origin.

Article 442.- Prohibition of use. -

The use of a protected appellation of origin is prohibited to persons other than those mentioned in the first paragraph of article 440 when such use may cause a risk of confusion regarding the origin of the products.

Article 443.- Denomination of origin of wines and spirituous beverages. -

It is prohibited the use of a protected appellation of origin that identifies wines or spirituous beverages for products of that kind that are not native of the place designated by the appellation of origin, even when the true origin of the product is indicated or the appellation of origin is used translated or accompanied by expressions such as "genre", "class", "type", "style", "imitation" or other similar.

Article 444.- Limitations to rights. -

The protection established in this Section shall not be extended to the continued and similar use of a certain appellation of origin of another country that identifies wines or spirituous beverages in relation to products or services, when said appellation of origin has been used in the country continuously for those same products or services or other related products for at least ten years before April 15, 1994, or in good faith, before that date.

Section V Recognition of protection

Article 445.- Denominations of origin from another countries. -

In the case of protected denominations of origin in countries other than those indicated in the previous article, the competent national authority on intellectual rights may recognize the protection of said denominations, provided this is set forth in any international agreement in force for Ecuador.

For the purposes of the preceding paragraph, denominations of origin that are not protected or ceased to be protected in their country of origin, or become obsolete in that country, shall not

be protected.

Article 446.- Subsistence of Protection. -

Denominations of origin protected in accordance with the provisions of this Chapter shall not be considered common or generic to distinguish the product they designate, while such protection subsists in Ecuador or in the country of origin.

CHAPTER XIII GUARANTEED TRADITIONAL SPECIALTIES

Article 447.- Definition. -

Guaranteed Traditional Specialty "Especialidad Tradicional Garantizada (ETG)" shall be understood as the identification of the type of agricultural or food product that has specific characteristics because it has been produced from traditional raw materials or ingredients, or, has a traditional or artisan composition, manufacture or production or transformation that corresponds to the cultural identity traditional practice applicable to that product or food.

Protection as a guaranteed traditional specialty grants the right to incorporate in the labeling or in any other type of advertising promoting the product the indication "Especialidad Tradicional Garantizada" or its acronym "ETG".

Article 448.- Characteristics of a guaranteed traditional specialty. -

The characteristics of a guaranteed traditional specialty constitute the element or set of elements by which the agricultural or food product is identified, clearly distinguished from other similar, belonging to the same type and category. These differential characteristics are due to the use of traditional raw materials, composition, processing or production processes, not linked to a defined geographical zone.

It may not be registered as a guaranteed traditional specialty an agricultural or food product whose specific characteristics are limited solely to its provenance or geographical origin.

Article 449.- Non-protectable signs. -

It may not be declared as a traditional specialty guaranteed those that:

1. Do not meet the definition of article 447 of this legal body; and,
2. In relation to agricultural products, have been previously registered as a plant variety.

Article 450.- Application for registration. -

The application for a traditional specialty guaranteed shall be

made at the request of a group of producers or manufacturers, being understood as the groups that are directly dedicated to the composition, production or manufacture of the product that is intended to be protected as a guaranteed traditional specialty.

A group may only submit an application for registration for agricultural or food products that it produces or obtains.

Article 451.- Specifications for the application of guaranteed traditional specialty. -

Any agricultural or food product that seeks registration as guaranteed traditional specialty (ETG), must adhere to the specifications of the applicant group of producers or manufacturers. This must be filed together with the other requirements that the Regulation establishes for this purpose.

Article 452.- Content of the Specifications. -

The specifications of the guaranteed traditional specialty shall contain at least the following elements:

1. The name of the guaranteed traditional specialty.

To be registered, the name must:

- a. Be specific for itself;
- b. Express the specific characteristics of the agricultural or food product;
- c. Be traditional and conform to national provisions or established by use.

It may not be registered the name that:

- a. Refers only to requirements of a general nature used for a set of agricultural or food products;
- b. Is misleading, or refers to an obvious product feature that does not correspond to the specifications.

2. Description of the agricultural or food product that includes its main physical, chemical, microbiological or organoleptic characteristics.

3. Description of the composition, manufacture or production method to be followed by the producers, inclusively.

4. Description of the nature and characteristics of the raw material or ingredients used.

5. Description of the method of manufacture of the agricultural or food product.

6. Description of the main elements that define the specific characteristics of the product and, where appropriate, the reference used.
7. Description of the main elements that demonstrate the traditional nature of the product.
8. Description of the minimum requirements and the control and regulation procedures of the specific characteristics that the product must contain.

Article 453.- Procedure. -

The procedure for processing the application shall be the same stipulated for geographical indications, with the exceptions established by the corresponding regulation.

Article 454.- Claim for the inappropriate use of the Guaranteed Traditional Specialty. -

Any interested person may file an alert claim before the corresponding group of producers and manufacturers of the (GTS), who, if applicable, must take the necessary measures to guarantee the identity of the Guaranteed Traditional Specialty or to deceive consumer.

CHAPTER XIV INDICATIONS OF ORIGIN

Article 455.- Definition. -

It shall be understood as indication of origin a name, expression, image or sign that designates or evokes a specific country, region, district or place.

Article 456.- Restrictions of use. -

An indication of origin may not be used in the commerce in relation to a product or service, when it is false or misleading regarding its origin or when its use could mislead the public regarding the origin, provenance, quality or any other characteristic of the product or service.

For the purposes of the provisions of the preceding paragraph, it shall also constitute use of an indication of origin in the commerce which is made in advertising and in any commercial documentation related to the sale, exhibition or offer of products or services.

Article 457.- Disclosure of origin. -

Any person may indicate his/her name or address on the commercialized products, even when such products come from a different country, region, district or place, provided that said name or address is presented together with the precise indication, in duly emphasized characters, of the country, region, district or place of manufacture or production of the products or other sufficient information to avoid any mistake about their true origin.

Article 458.- Procedure. -

The procedure for processing the application shall be the same stipulated for geographical indications, with the exceptions established by the corresponding regulation.

CHAPTER XV WELL-KNOWN DISTINCTIVE SIGNS

Section I Protection requirements

Article 459.- Definition. -

A well-known distinctive sign shall be understood as a sign that is recognized as such in the country or in any country member of the Paris Convention, TRIPS, or with which Ecuador maintains industrial property treaties by the relevant sector, despite the way or the means through which it became well-known.

Article 460.- Factors. -

In order to determine if a distinctive sign is well-known, it shall be taken into consideration, among others, the following factors:

1. The extent to which it is known within the members of the relevant sector in the country;
2. The length, extent, and geographical extension of its use in and out the country;
3. The length, extent, and geographical extension of its promotion, in or out the country, including the advertising and presentation at fairs, exhibitions, or other events of the goods or services, the establishment, or the activity to which it is applied;
4. The value of all investments performed to promote the distinctive sign, or to promote the goods or services, or the establishment or activity to which it is applied;
5. The figures for sales and income of the owner, with respect to the sign whose notoriety is alleged in the country;
6. The level of distinctiveness, inherent or acquired of the sign;
7. The book value of the sign as a corporate asset;
8. The number of orders from persons interested in obtaining a franchise or a license to the sign in the country;
9. The existence of significant manufacturing, purchasing, or storage activities by the owner of the sign in the country;
10. The aspects of international trade; and,
11. The existence and age of any registration or application for registration of the distinctive sign in the country.

Article 461.- Special factors. -

The well-known declaration of a sign shall not be denied by the

sole fact that:

1. It is not registered or in registration process in the country or abroad;
2. It has not been used nor is being used to distinguish goods or services or to identify activities or businesses in the country; and,
3. It is not well-known abroad.

Article 462.- Pertinent sectors. -

In order to declare the notoriety of a distinctive sign, the following shall be considered pertinent sectors of reference, among others:

1. Real or potential consumers of the kind of goods and services to which the sign shall be applied; or,
2. The business circles operating in lines of business connected with the kind of goods, services, establishment, or activity to which the sign applies.

For the purposes of recognizing the notoriety of a sign, it shall be enough that it is known within any of the sectors referred in the previous literals.

Article 463.- Declaration Procedure. -

The owner of the distinctive sign shall ask from the competent national authority on intellectual rights, the recognition of notoriety of the distinctive sign.

All pertinent evidence deemed convenient to demonstrate the notoriety of the distinctive sign must be attached to the application, in accordance with the factors set forth in the preceding article, together with the payment receipt of the corresponding fee.

The petition and the evidence filed by applicant shall be assessed by the competent national authority on intellectual rights in order to issue the corresponding resolution or statement.

The application for declaration of notoriety may also be performed within any administrative procedure being conducted before the competent national authority on intellectual rights, provided that

to that effect the express allegation is made, the factors detailed in this code are considered, the corresponding payment of official fee is attached, and the corresponding procedure for the declaration set forth in this article is observed in all relevant aspects.

In the event that the ordinary administrative recourses, the notoriety may be recognized provided that it has been alleged in the challenged resolution.

Section II Rights and limitations

Article 464.- Scope of protection. -

A well-known distinctive sign shall be protected against non-authorized use and registration in accordance with this Chapter, notwithstanding the other provisions of this Title that may be applicable and the rules for protection against unfair competition.

Said protection shall not be granted with respect to distinctive signs which were used or registered, or whose registration application was filed before the well-known distinctive sign has reached said status in the country, except for those cases where the distinctive sign was used or registered, or whose registration application was filed in bad faith.

Article 465.- Rights of the owner of the distinctive sign. -

The owner of a well-known distinctive sign shall have the right to prevent any third party, without his consent, from using the sign, in whole or in an essential part, or a reproduction, imitation, translation, transliteration, or transcription of the sign, likely to create confusion, with respect to identical or similar goods, services, establishments, or activities to those to which it is applied.

The owner shall also have the right to prevent any third party, without his consent, the use of the sign, in whole or in an essential part, or a reproduction, imitation, translation, transliteration, or transcription even with respect to products, services, establishments, or activities different from those to

which the well-known distinctive sign is applied, if such use may cause any of the following effects:

1. Likelihood of risk of confusion or association with the owner of the sign, or with goods, services, establishments or activities belonging to that owner;
2. Unfair economic or commercial injury to the owner of the sign by virtue of the dilution of the distinctive force of the sign or the commercial or advertising value; or,
3. Unfair exploitation of the prestige and reputation of the sign.

The use may be verified through any media, including electronic media.

Article 466.- Application. -

Provisions of articles 367 to 371 of this Title shall be applicable to well-known distinctive signs.

Article 467.- Good faith. -

When deciding on an action related to the unauthorized use of a well-known distinctive sign, it shall be taken into consideration the good or bad faith of the parties in the adoption and use of this sign.

Article 468.- Prescription of the action for the unauthorized use of the distinctive sign. -

The action against the unauthorized use of a well-known distinctive sign shall lapse after five years counted from the date on which the owner was aware of such use, except where said use was started in bad faith, in which case the action shall not lapse.

Article 469.- Cancellation or modification of a domain name. -

Where a well-known distinctive sign has been unlawfully registered in the country as part of a domain name or of an electronic mail address by an unauthorized third party, upon request of the owner of the sign, the competent national authority on intellectual rights shall order, either to the organism before which the name or address was registered, or to whom performed said registration, the cancellation or modification of the registration of the domain name or the electronic email address, or its assignment in favor

of the owner of the sign, provided the use of the name or address is likely to have any of the effects mentioned in article 465.

Article 470.- Cancellation of registration of a trademark due to notoriety. -

Without prejudice of the provisions on nullity or the other provisions for cancellation of a trademark registration, the competent national authority on intellectual rights shall cancel the registration of a trademark upon petition of the legitimate owner of that trademark where it is identical or similar to one that was well-known, in accordance with the legislation in force at the time the registration was applied for.

TITLE IV PLANT VARIETIES

Omitted

TITLE V OTHER TYPES OF INTELLECTUAL PROPERTY

Omitted

TITLE VI TRADITIONAL KNOWLEDGE

Article 511.- Traditional Knowledge. -

Means all collective knowledge, such as practices, methods, experiences, abilities, signs, and symbols proper to people, nationalities, and communities which are part of their cultural heritage and which have been developed, updated, and transmitted from generation to generation. Traditional knowledge includes, among others, ancestral and local knowledge, the intangible component associated with genetic resources, and traditional cultural expressions.

This traditional knowledge may refer to ecological, climatic, agricultural, medicinal, artistic, craft, fishing, hunting, aspects, among others, which have been developed from the close relationship between human beings of the territory and nature.

Recognition and protection of collective rights on the intangible component and the traditional cultural expressions shall be complementary to the rules on access to genetic resources, cultural patrimony, and other related rules. The spirit of the exercise of these rights is to preserve and perpetuate traditional knowledge of communities, people, nationalities, and townships, seeking its expansion and protecting them from the unlawful commercial appropriation.

Article 512.- Recognition of traditional knowledge. -

According to the provisions of the Constitution of the Republic and of the International Treaties to which Ecuador is a party, the collective rights of legitimate owners of their traditional knowledge are recognized. These rights are imprescriptible, inalienable, and unattachable, and are part of the cultural identity of their legitimate owners.

The protection of this knowledge shall be performed in accordance with their own customs, institutions, and cultural practices, the Constitution and the International Treaties that govern the matter, contributing to strengthening of their local traditional structures. Under this kind of protection, the legitimate owners have, among others, right to maintain, promote, manage, enrich, protect, control, innovate, and develop their traditional

knowledge according to their uses, practices, customs, institutions, and traditions, as well as to prevent or stop improper access, use, and exploitation of this knowledge.

The recognition of the rights on traditional knowledge includes the expression of their culture and practice, as well as the ability to name the traditional knowledge and this denomination is maintained on derived products that may generate from it, in order to enable traceability to its origin.

This ability of naming their knowledge also implies the ability to oppose the registration of denominations belonging to people and nationalities by third parties, who in such a case should have the prior, free, and informed consent of the legitimate owners, within which a fair and equitable distribution of the monetary and non-monetary benefits shall be established.

The collective rights on traditional knowledge are subject to relevant enforcement measures before the competent national authority on intellectual rights, in accordance with the provisions of this Code, its regulation, and other applicable laws.

Likewise, these rights are recognized for persons belonging to the communities, people, and nationalities, on equal and fair terms and without gender discrimination.

Article 513.- Legitimate owners of traditional knowledge. -

To the effects of this Code, communities, people, indigenous nationalities, the Afro-Ecuadorian people, the montubio people, and townships legally recognized who inhabit within the national territory shall be understood as legitimate owners.

Article 514.- Legal persons cannot be owners of traditional knowledge. -

In no case a legal person may be subject to the rights on traditional knowledge. This implies that a legal person shall never have the capacity of legal owner of a traditional knowledge.

In those cases where the access to a genetic resource is authorized or where the consent to access a traditional knowledge

is granted in favor of a legal person, this fact does not grant possession right on the traditional knowledge or on the genetic resource but only the authorization to use it in accordance with the terms established in the authorization or in the contract, as appropriate.

Article 515.- Regarding State subrogation. -

The State is not the holder of rights on traditional knowledge, however for the cases on which the legitimate owners do not exercise their rights by own free will, the State through the Secretariat of Higher Education, Science, Technology, and Innovation, exceptionally, shall subrogate their right to grant consent and to agree on the distribution of benefits, in order to protect, manage, and preserve the traditional knowledge.

The benefits received in these cases shall be assigned to strengthen the traditional knowledge.

Article 516.- Collective traditional knowledge. -

It is recognized protection for the traditional knowledge shared among townships, communities, people, and nationalities based in the same geographic area, to all its legitimate owners, who should strive for joint management of said knowledge.

In these cases, anyone trying to have access to the knowledge should request the consent of the community(ies) identified as legitimate owners. The applicant shall make his best efforts in the research and identification of the legitimate owners.

Once the consent has been granted and the access contract has been registered, the emergence of new unknown owners at the time of access, shall not affect the subscribed contract.

Each legitimate owner can freely exercise its collective rights without prejudice to the exercise of these rights by the other legitimate owners. This implies that in the cases where there are various groups which are legitimate owners of the same knowledge, the consent granted, and the benefits received by one of them do not prevent other legitimate owner groups from granting their consent in favor of a third party. This also does not generate the right in favor of the legitimate owner group, which was not

initially consulted, to claim benefits from the one who obtained the consent and initially accessed said knowledge.

Legitimate owners who have not been consulted, have the right to grant consent and to subscribe access contracts with new researchers. No legitimate owner may exercise exclusive rights on traditional knowledge shared among various human groups.

Article 517.- Collective knowledge of an individual. -

In those cases where a traditional knowledge, because of the extinction of the human group that guarded it, becomes a responsibility of one single individual, this one shall be considered its legitimate owner and as such shall be able to exercise all the corresponding rights; provided that he can demonstrate that the knowledge was collectively developed.

Article 518.- Inhabitants in different zones than their original territories. -

People or groups belonging to communities, people, or nationalities who are outside of their territory of origin or habitual residence, shall maintain their collective rights, provided that the legitimate owners do not suffer any damage.

Article 519.- Transboundary legitimate owners. -

The fact that the traditional knowledge is transboundary shall not affect the exercise of the collective rights recognized in this Code.

Article 520.- Self-determination rights. -

It is recognized the power and the exercise with respect to decision making on traditional knowledge to the legitimate owners in accordance with their self-determination and their own ways of coexistence, social organization, institutions, generation and exercise of authority.

Article 521.- Protectable matter. -

The following traditional knowledge, among others, is recognized as collective patrimony of the indigenous people and nationalities, montubio people, Afro-Ecuadorian, peasant communities, and communities:

- a) Therapeutic methods for the prevention, treatment, and healing of diseases in the ancient form;
- b) Knowledge on combinations of natural biological extracts for the preparation of traditional medicine;
- c) Knowledge on natural biological compounds for the preparation of food products, dietetic products, colorants, cosmetic products, and derivatives or the like;
- d) Knowledge on natural products and compositions containing the same for agricultural products, as well as hunting, fishing, and other survival activities;
- e) Knowledge on mechanisms and practices of sowing, harvesting, maintenance and harvesting of seeds, among other agricultural practices;
- f) Tangible forms of traditional cultural expressions, such as: clothing, art works, drawings, designs, painting, sculpting, pottery, joinery, cabinetry, jewelry, basketry, weaving and tapestries, handicrafts, traditional architectural works, musical instruments, and farm tools, hunting, and artisanal fishing; and,
- g) Intangible forms of traditional cultural experiences, such as: myths or legends, symbols, dances, traditional games, songs and traditional phonographic interpretations, indigenous names, and ritual ceremonies, regardless of whether or not they are recorded in a support of any kind.

In general, all traditional knowledge, which adjust to the definition of the present code, and which therefore express the genuineness of practices belonging to the communities, people, and nationalities, which constitute both, in written and oral form, their historical, cosmological, and cultural tradition, are herein protected.

Article 522.- Form of protection. -

It is guaranteed the effective and positive protection of the traditional knowledge against the improper access, use, or exploitation by third parties without authorization, expressed in

the mechanisms for prevention, monitoring, and sanction which are generated in the regulation that shall be issued for that purpose.

The recognition of the collective rights of the legitimate owners on their traditional knowledge is not subject to any formality or registration in order to guarantee their protection, validity, and enforcement since it relies on the legitimacy of the communitarian scope.

Strengthening mechanisms of local abilities on the collective rights of traditional knowledge shall be promoted for its revitalization, promotion and protection.

Article 523.- Voluntary deposit of traditional knowledge. -

The legitimate owners may perform a deposit of their traditional knowledge before the competent national authority on intellectual rights. This deposit may be confidential and restricted to the public upon petition of the legitimate owners. The object of this deposit shall be to avoid unlawful appropriations of said cognitive heritage, as well as it shall be a verification means for the recognition of the collective rights on traditional knowledge which may be violated in any application of intellectual property rights.

The deposit of the traditional knowledge does not grant to the depository any authorization of granting of use and access for third parties without the express authorization of the legitimate owners and holders of said traditional knowledge and upon prior compliance with the corresponding rules.

Prior to the granting of intellectual property rights, the competent national authority must verify the information referred to in the preceding paragraph in order to avoid the improper appropriation of the traditional knowledge.

Without prejudice of the provisions of this article, traditional knowledge that has been previously made public, may be compiled.

The information of the deposit, as well as the information mentioned in the preceding paragraph, shall be part of the National System of Information of Science, Technology, Innovation

and Traditional Knowledge.

Article 524.- Custody of the traditional knowledge in the communitarian scope. -

The State shall recognize and shall grant the technical and economic resources, upon petition of the legitimate owners, for the development of communitarian registries of traditional knowledge to be managed and protected by the communities themselves, under the responsibility of their competent authorities.

Article 525.- Improper access, use, and exploitation. -

The exercise of the collective rights on the traditional knowledge is exclusive to its legitimate owners and, through the compliance measures provided in this Code and other applicable rules, may prevent the improper access, use and exploitation by unauthorized third parties.

Article 526.- Traditional knowledge and its dissemination: definition and processing:

The traditional knowledge is disseminated when said knowledge and its information has gone out of the cultural scope of the communities, people, and nationalities, and are deposited in high circulation publications or in *ex situ* collections in ethnobotanical centers, or has been disseminated orally and informally to the public to the extent it has become to the state of art, obtained with or without the free, previous, and informed consent of the townships, communities, people, and nationalities.

Notwithstanding the above provision, the State recognizes the right of the legitimate owners on such traditional knowledge, which includes the right to a fair and equitable participation of the benefits through the terms mutually agreed with the corresponding custodians and their users, without prejudice to the fact that the same are protected by the classic intellectual property regimes. The State shall provide the most appropriate mechanisms to enforce the compliance with this provision, protecting the right of the communities, people, and nationalities.

Article 527.- Support from the State to the initiatives of the legitimate owners. -

With respect to the right of self-determination and culturally adequate development of the legitimate owners, the State shall promote and support the strengthening of their abilities and initiatives for the generation and maintenance of their traditional knowledge and, where appropriate, research and scientific and technological development obtained from such knowledge, by recognizing their intellectual rights. For this purpose, it shall allocate the necessary technical and financial resources.

Article 528.- Use of traditional knowledge by their legitimate owners. -

The State recognizes the right of communities, people, and nationalities to the use, enjoyment, and disposition of their traditional knowledge in conformity with their rules of cultural coexistence.

The State shall generate incentives so that the communities, people, and nationalities strengthen their own research, development, and innovation initiatives, respecting their right to self-determination.

Article 529.- Applications for access, use and exploitation of traditional knowledge. -

Applications for access, use and exploitation of traditional knowledge shall have the free, prior and informed consent of the legitimate owners within which a fair and equitable sharing of the monetary and non-monetary benefits shall be established.

This is without prejudice to the rights that correspond to the State in the case of genetic resources, according to the provisions of the Constitution and the Law.

Article 530.- Free, prior, and informed consent. -

The legitimate owners in accordance with their customary laws and legitimate and legally constituted representative institutions, through participatory mechanisms, have the exclusive power to authorize a third party, in a free, express, and informed manner, the access, use, and exploitation of their traditional knowledge,

through a free, prior, and informed consent.

Prior to the obtaining of the consent, the interested party must provide enough information with respect to the purposes, risks, implications, eventual uses, and future uses of said knowledge, anticipating conditions that allow a fair and equitable distribution of the benefits derived from said knowledge.

The Secretariat of Higher Education, Science, Technology, and Innovation may provide advice, upon request of the interested party, in the negotiation between the communities and the interested parties.

The interested party shall commit to respect the collective rights and, if applicable, to maintain confidentiality with respect to the information, materials, experiences, methods, instruments, and other tangible and intangible elements related to the traditional knowledge. Likewise, the dialogue of knowledge and the implementation of culturally appropriate methods will be respected as essential elements of this consent.

For cases in which the request for free, prior, and informed consent concerns an intangible component associated with genetic resources, the interested users shall submit a plan detailing the access, use, and exploitation of such components to the Secretariat of Higher Education, Science, Technology, and Innovation, as the governing entity for the access, in matters of traditional knowledge, in accordance with the provisions of the corresponding regulation.

The free, prior, and informed consent and the fair and equitable distribution of the monetary and non-monetary benefits shall be determined by the regulation issued for that purpose, which must consider, among others, the authorities, institutions, and traditional manners to make decisions of the communities, people, and nationalities, as well as to guarantee an intergenerational and gender perspective in the participation of decisions.

Article 531.- Granting or denial. -

The granting or denial of the legitimate owner to authorize the access, use, and exploitation of the traditional knowledge, must

be registered before the competent national authority on intellectual rights, so that said entity may exercise the corresponding control with respect to the decision of the legitimate owner.

Upon petition of the interested party, the Secretariat of Higher Education, Science, Technology, and Innovation, may attend the negotiations conducted for the granting of a prior consent and shall advise the legitimate owners during said negotiations.

Article 532.- Contract. -

Once the interested party obtains the prior, free, and informed consent, a written contract must be signed in Spanish and, if applicable, simultaneously in the mother tongue of the legitimate owners.

In the event that the mother tongue cannot be registered in written form, the contract must be granted in Spanish as language of cultural interaction.

Such contract shall provide the terms and conditions regarding the use, access, and exploitation of the traditional knowledge, among which the following are mandatory, the corresponding motivation with respect to the scope and potential international effects that are expected to be obtained; the fair and equitable distribution of monetary and non-monetary benefits, including the plan for supportability and sustainability of the traditional knowledge; and the possible future authorizations or assignments.

Article 533.- Registration of contracts. -

The contracts mentioned in the prior article shall be registered before the competent national authority on intellectual rights, who shall approve them upon favorable opinion of the Secretariat of Higher Education, Science, Technology, and Innovation, and of the corresponding entities with respect to the scope of their competences and shall become effective upon its registration before the competent national authority on intellectual rights.

Before the registration, the competent national authority on intellectual rights, shall ensure and verify that there is the prior, free, and informed consent, and a fair and equitable

benefit for the legitimate owners of the traditional knowledge, as well as shall control the compliance of the national and international regulations.

In the event that the competent national authority on intellectual rights, considers that the contract does not contain the provisions of the preceding paragraphs or may cause a damage to the legitimate owners, shall submit to them the observations and suggestions so that they may be accepted totally or partially, and the contract be modified or ratified.

Article 534.- Dispute resolution. -

In the event of discrepancies or conflicts with respect to the agreements derived from a contract of access, use, or exploitation of traditional knowledge, they shall be necessarily solved in Ecuadorian jurisdiction and through the most favorable mechanisms for the legitimate owners.

Article 535.- Sanctions. -

Improper access, use, and exploitation, total or partial, of the traditional knowledge shall lead to the application of sanctions and measures, for the cease of the infringing actions to avoid that they are committed and to restore their possible effects.

The competent national authority on intellectual rights, ex officio or upon request of a party, may take the measures that may deem necessary in order to avoid or to cease the infringing acts over the collective rights of traditional knowledge.

The free, prior, and informed consent and the fair and equitable distribution of monetary and non-monetary benefits shall be determined by the regulation issued for that purpose, which must consider, among others, the authorities, institutions, and traditional manners of making decisions of the communities, people, and nationalities, as well as to guarantee an intergenerational and gender perspective in the participation of decisions.

Article 536.- Advisory Council. -

For all matters related to the present title, the Advisory Council on Traditional Knowledge is created, as a participation space for

the people and nationalities, which shall be formed by one representative of the indigenous nationalities, one representative of the Afro-Ecuadorian people, one representative of the "montubio" people, and one representative of the higher education institutions. As for its operation, it shall be governed by the provisions of the corresponding regulation.

Its function shall be to provide advice to the parties involved in this chapter.

Article 537.- Management of traditional knowledge. -

The Secretariat of Higher Education, Science, Technology, and Innovation, shall allocate the funds necessary for the management and protection of traditional knowledge.

The management of traditional knowledge comprises research, technological and scientific development, revitalization, promotion, and protection mechanisms, as well as the prevention of the loss and improper use of said knowledge.

For that purpose, the competent authority shall issue a protocol for the access, use, and exploitation of traditional knowledge, which shall be compulsory for the institutions and the parties of the system.

TITLE VII COMPLIANCE

CHAPTER I GENERAL PRINCIPLES

Article 538.- Conflict of competence. -

In legal or administrative proceedings in which persons, objects, and controversial rights of intellectual property keep identity with each other, the judge or the administrative authority who first has jurisdiction shall continue to handle the case and the authority who subsequently takes awareness of the case, shall suspend its processing until the original case is resolved, regardless of the authority and channel in which they were initiated.

For those proceedings in which persons, objects, and controversial rights of intellectual property keep identity with each other and are being processed among authorities belonging to the same organism, either administrative or legal, the hierarchically superior authority shall be the one that must handle the case and the subordinate authority must submit the files for the accumulation of proceedings.

The authorities shall be responsible for hearing the disputes presented at their offices, and it shall be the responsibility of the parties to inform the corresponding authority of the existence of the pending conflict of competence in accordance with this article.

Article 539.- Compliance in general. -

Judicial and administrative measures are established to ensure the protection of intellectual rights, as well as to guarantee the trade, competition, and legitimate use of products or materials protected by intellectual property rights.

Article 540.- Positive compliance. -

The violation to intellectual rights established in this Code, shall lead to the exercise to judicial and administrative actions.

In exceptional circumstances, without prejudice of the prosecution or the outcome of the main action, in accordance with the principle of proportionality, and upon request of the interested

party, the release or suspension of precautionary measures may be ordered.

Article 541.- Negative compliance. -

The competent judge and the competent national authority on intellectual rights, upon request of a party, shall exercise the inspection, monitoring and sanction function in order to avoid and repress the abusive exercise of the intellectual property rights, as well as to guarantee the legality of actions with respect to the intellectual property rights of third parties and the complete and effective exercise of limitations and exceptions to these rights.

Without prejudice of what is expressed in the prior paragraph, the competent judge and the competent national authority on intellectual rights, ex officio or upon request of a party, and in exercise of negative compliance, may guarantee the effective protection of fundamental rights and the diffusion of the knowledge.

In exceptional circumstances, without prejudice of the prosecution or the outcome of the main action, in accordance with the principle of proportionality, and upon request of the interested party, the release or suspension of precautionary measures may be ordered.

Article 542.- Co-owners actions. -

In cases of co-ownership of a right, any of the co-owners may initiate the actions discussed in the present Title, without being necessary the consent of the other co-owners, unless otherwise provided by law or agreement.

Article 543.- Counterclaim. -

In administrative proceedings and legal processes, for compliance of Intellectual Property matters, the related counterclaim is admissible, and it shall be solved through resolution or judgment, where applicable. The counterclaim shall be filed at the time of expressing the corresponding answer.

Where applicable, within the counterclaim the defendant may request, among others, the nullity of the right which was the

basis for the filing of the action, as well as the cancellation, claim, caducity, and other figures applicable to the different modalities of intellectual property governed by this Code.

The counterpart in judicial level shall follow the corresponding procedure as established in the general rule of processes.

The prosecution of the present action, at administrative level, shall be established in Title VII, Chapter III, Section II of the present regulatory body.

Article 544.- Copyright presumption. -

Unless proven otherwise, in order for the author of a protected work is admitted as such, it shall be sufficient that his name or pseudonym, or any other denomination that leaves no doubt on his identity, appears in the work in the usual manner.

Article 545.- Protection of trade secrets. -

In every procedure or process involving trade secrets, the corresponding authority must take all necessary measures to protect such secrets. Only the competent authority and the appointed experts shall have access to the information, codes, or other elements, and solely when necessary for the performance of the related proceeding.

All those who in accordance with the previous clause have access to such trade secrets are obliged to keep absolute confidentiality and shall be subject to the actions prescribed by this Code and other legislation, for the protection of trade secrets.

In any case, the competent authority may refrain from ordering any of the parties of the process to reveal trade secrets, where in the opinion of said authority, the disclosure would be irrelevant for the purposes of the process.

Article 546.- Reversal of the burden of the proof in procedure patents. -

In cases where an infringement of a patent whose object is a procedure for obtaining a product is alleged, the defendant concerned shall be responsible of proving that the procedure used to obtain the product is different from the procedure protected by

the patent whose infringement is alleged. For that purpose, it shall be presumed, unless proof on the contrary, that any identical product produced without the consent of the owner of the patent, has been obtained through the patented procedure, if:

1. The product obtained with the patented procedure is new; or,
2. There is substantial likelihood that the identical product has been manufactured through the procedure and the owner of the patent of said product cannot establish through reasonable efforts which was the effectively used procedure.

When filing evidence on the contrary, the legitimate interests of the defendant or respondent with regards to its trade secrets shall be considered.

CHAPTER II JUDICIAL PROCESSES ON INTELLECTUAL PROPERTY

Section I General Principles at Judicial Level

Article 547.- Judicial actions. -

The exercise of the compliance at judicial level provided in the prior chapter shall be processed in summary proceedings in accordance with the provisions of the General Organic Code of Processes.

Article 548.- Verification of information. -

The competent judicial authority shall request from the competent national authority on intellectual rights, the information regarding the national existence, validity, or recognition of the intellectual property rights of the plaintiff or the defendant, to form their criteria when issuing preventing measurements or a final decision.

Article 549.- Competence in intellectual property matters. -

The cognizance of processes discussed in this Chapter (judicial processes on intellectual property) corresponds to the competent judicial authority in accordance with the provisions of the General Organic Code of Processes. The judges of the place of jurisdiction wherein the infringement was committed or where the effects of such infringement may be noted, shall also be competent

to hear these proceedings.

The administrative acts of the Competent National Authority on intellectual rights, are subject to challenge before the contentious-administrative jurisdiction and for that purpose it shall not be necessary to exhaust the administrative channels. The remaining actions shall be handled before the civil or criminal jurisdiction in accordance with the competence regulated in the legal system.

Section II Positive Compliance

Article 550.- Action for Infringement. -

The holder of an intellectual property right recognized in the country or any other entitled person, may bring legal actions against any person who infringes such rights. Furthermore, he/she may take action against persons who perform acts that demonstrate the imminence of an infringement.

Article 551.- Petition of provisional measures. -

It shall be possible to request preparatory proceedings and precautionary measures in accordance with the General Rule of Process.

Section III Negative Compliance

Article 552.- Illegal use. -

Any person may initiate before a competent judge an action to know about the legality of his prior, current or future actions. This action shall be filed with respect to the intellectual property rights of a third party, except with respect to distinctive signs.

For the purposes of the previous clause, this action may be initiated without prejudice that the plaintiff has received or not a warning by the owner of the right or of a third party, with respect to an alleged violation of an intellectual property right.

The judge must notify the owner or attorney-in-fact of the intellectual property rights recognized in the country, in

accordance with the information registered before the competent national authority on intellectual rights.

Article 553.- Abuse of rights. -

The competent judge shall exercise, upon petition of a party, inspection, monitoring and sanction function in order to prevent and repress the abusive exercise of the intellectual property rights, if the action does not pursue the safeguarding of the general interest or the welfare of consumers.

It shall be possible to order the suspension, within the scope of the corresponding competence, of the precautionary measures, as well as of any other action that has been taken by third parties upon petition of the owner or of the interested party.

CHAPTER III ADMINISTRATIVE PROCEDURES ON INTELLECTUAL PROPERTY

Section I General Principles at Administrative Level

Article 554.- Administrative actions. -

In accordance with the provisions of the present Title, the holder of a protected right or any other entitled person, may bring administrative actions against any person who infringes the corresponding rights. Furthermore, he/she may bring an action against persons who perform acts that demonstrate the imminence of an infringement.

The criminal actions that may be brought shall be exercised in accordance with the applicable legislation.

Article 555.- Preparatory proceedings. -

Before initiating an enforcement proceeding before the national competent authority on intellectual rights, any person may request before such authority the adoption of any of the preparatory proceedings foreseen in the general rule of process.

Article 556.- Experts in administrative processes. -

In the administrative processes the experts shall be appointed among those registered in the list provided by the Judiciary Council, only if there are no accredited experts before the Council of the Judiciary, the national competent authority on intellectual rights may designate a professional who has sufficient expertise in the respective the matter, in accordance with the provisions of the regulation issued for that purpose.

Article 557.- Competence on intellectual property. -

The cognizance of processes discussed in this Chapter corresponds to the national competent authority on intellectual rights.

Article 558.- Procedure on intellectual property. -

The procedure provided in this Chapter, the corresponding regulation, and subsidiarily the general rules on administrative procedures are applicable.

Section II Positive Compliance

Subsection I Administrative Injunction

Article 559.- Administrative injunction. -

The national competent authority on intellectual rights shall exercise, ex officio or at the request of a party, inspection, monitoring and sanctioning functions to prevent and repress infringements to intellectual property rights.

Article 560.-

Measures ordered by the authority on intellectual property. -

The national competent authority on intellectual rights may order the adoption of one or more of the following measures:

1. Inspection;
2. Request for information including the ability to order the submission of documents or objects under the control or possession of the alleged offender;
3. Sanctioning of the infringement of the intellectual property rights; and,
4. The other precautionary measures provided in the general rule of processes.

Article 561.- Bail or other sufficient guarantee -

The plaintiff may be required, having considered the circumstances, to provide a bail or other guarantee sufficient to protect the defendant and prevent abuses. The corresponding regulation shall determine the conditions to be met by the bail or guarantee, the amount of which shall be proportional to the possible economic, commercial and social impact caused by the measure, in accordance with the corresponding regulation.

The petitions for precautionary measures shall be of confidential nature and shall be admitted within forty-eight hours of receipt.

Article 562.- Inspections. -

The inspections shall be performed to prove the alleged infringement of the intellectual property rights.

At the time of the proceeding, the alleged offender shall be notified of the administrative act ordering the proceeding and, if

applicable, the request of the affected party, as a requirement for its validity and execution.

The competent national authority on intellectual rights must request to the judge the authorization and intervention so that he or the officers of the competent national authority on intellectual rights, perform trespassing that may include breaking of security.

The authorization mentioned in the preceding paragraph must be granted by the competent judge of the jurisdiction where the actions referred to in the preceding clause shall be performed, even if it is not of the domicile of the person investigated or denounced, within 24 hours.

Article 563.- Granting of precautionary measures at the beginning of the process. -

Measures shall be ordered when the action is brought, provided that the person requesting it demonstrates that he/she has legal legitimacy to act, the existence of the right infringed, and submits evidence that reasonably allows a presumption of the commission of the accused infringement or its imminence.

Article 564.- Experts for the performance of inspections. -

For the performance of inspections, it can be ordered the presence of experts and, in such a case, their expert opinion shall be part of the corresponding minutes if it can be issued during the inspection itself or in the written report to be presented in the term granted for that purpose.

The expert report may be used for the performance of precautionary measures.

The administrative authority, ex officio or upon petition of a party, may order that the expert attends a hearing to orally present his report on the technical issues previously requested by the same authority or any of the parties.

Article 565.- Provision of precautionary measures. -

Depending on the nature of the infringement, one or more of the following precautionary measures may be ordered and practiced:

1. The immediate termination of the acts which constitute the alleged infringement;
2. The removal from the commercial channels of the products derived from the alleged infringement, including, the containers, packaging, labels, printed or advertising material, or other materials, as well as the main supplies and means used to commit the alleged infringement;
3. The suspension of the public communication of protected contents through digital means, ordered to the offender or intermediary;
4. The suspension of the services of the web portal due to an alleged infringement of intellectual property rights, ordered to the offender or intermediary;
5. The suspension of the importation or exportation of the products, materials, and means referred to in prior numeral, which shall be immediately notified to the customs authority;
6. The temporal closure of the facilities of the alleged offender when necessary to prevent continuation or repetition of the alleged infringement; and,
7. If any of the measures described in the prior numerals is not sufficient, it shall be possible to request any other reasonable measure directed to cease the commission of the infringement, considering the legitimate interests of the owner of the intellectual property right and those of the alleged offender. This measure shall be applicable if it does not affect interests of third parties.

When the precautionary measures ordered involve the seizure of products, the national competent authority on intellectual rights shall be authorized to request the collaboration of one of the depositaries of the judicial function, of those included in the list to be provided by the Council of the Judiciary.

The judicial depositary shall transfer the goods to the place to be determined, and the seized goods shall remain under his responsibility. In addition, he shall be entitled to charge the plaintiff for the expenses incurred for the transportation, conservation, custody, exhibition and administration of the goods under his responsibility.

In the event that the plaintiff prevails during the administrative

process, the plaintiff shall be entitled to claim the reimbursement of the costs of the judicial depositary, as part of the compensation amount for damages that may be claimed through the corresponding channels.

Article 566.- Application of precautionary measures. -

Precautionary measures shall be applied to the products derived from the alleged infringement and the materials or means that were mainly used to perpetrate it.

In the case of an alleged infringement of copyright or related rights, the precautionary measures shall not be applied with respect to the copy acquired in good faith and for the exclusive personal use.

The administrative authority may perform any action necessary for the application of the precautionary measures, which shall be of a provisional nature, and shall be subject to modification, revocation or confirmation as established in article 568.

Article 567.- Petition of information. -

Where there is a presumption of infringement of intellectual rights or the imminence of such infringement, the national competent authority on intellectual rights may require the provision of any information that may allow to establish the existence or not of such infringement or its imminence.

The information must be provided within the term of fifteen days from the notification date. The lack of answer to said petition of information shall be considered as an indication against the alleged offender.

Article 568.- Right to defense and evidence term. -

The alleged offender shall be able to present his defense arguments, the exculpatory evidence and, where necessary, to request the calling for a hearing, within the term of fifteen days counted from the date of notification of the administrative act ordering the inspection or petition of information.

The administrative authority shall analyze the relevance or not of performing the hearing in consideration of the conviction elements

in his possession within the proceedings to issue the resolution, in accordance with the provisions of the corresponding regulation.

Article 569.- Reasoned resolution. -

Upon conclusion of the evidence term or once the hearing mentioned in the prior article, as appropriate, the national competent authority on intellectual rights shall issue his reasoned resolution.

If it is determined that there was infringement to the intellectual rights, the offender shall be sanctioned with the closing of his facilities for three to seven days or with a fine of between one point five basic unified salaries up to one hundred forty-two basic unified salaries, depending on the nature of the infringement and the criteria established in the corresponding regulation. The same resolution may provide for the adoption of any of the measures foreseen in this Section or confirm those ordered on a provisional basis.

The same resolution shall establish the destination of the goods or products that have been withdrawn from the commercial channels in accordance with the corresponding regulation. The national competent authority on intellectual rights shall apply the sanctions established in this Title when it knows and resolves on unfair competition matters.

Article 570.- Indemnification for damages for revocation of precautionary measures. -

In the event that precautionary measures are revoked or remain without effect for any cause attributable to the applicant, or in those cases where subsequently it is determined that there was no infringement or imminence of infringement of an intellectual property right, the party against which the administrative process was filed shall be able to sue the other party for the payment of an indemnification for damages, as well as the procedural costs.

Precautionary measures issued by the administrative authority shall not expire for lack of filing of a process at the judicial level.

Article 571.- Compensation for infringement of intellectual property rights. -

In the event of use of intellectual property rights, without authorization of the owner, by the State or by a third party authorized by the State, the competent judicial authority or the national competent authority on intellectual rights, may restrict the actions or appeals against such use, to the payment of a compensation, the amount of which shall be fixed by the authority which adopted the measure.

Natural or legal persons under private law may only benefit from this exception when the use has been made based on a relationship of any kind with the State or any of its institutions.

Article 572.- Obstruction in the performance of acts. -

The national competent authority on intellectual rights shall apply the same sanction, as the one established in article 569, to those who unjustifiably obstruct or impede the fulfillment of the acts, measures, or inspections ordered by such authority, or who do not send the required information within the term granted.

Article 573.-

The host of a public spectacle where public communication of works or performances protected by copyright shall be performed, must obtain the authorization or license from the right owners or their representatives.

In accordance with the corresponding regulations, for the granting of said authorization or license the parties must perform an exchange of information, especially with respect to the possible works to be shared, in order to determine the administration and validity of the rights.

It shall not be necessary to obtain authorization for events when:

1. The public communication of works is not significant with respect to the number of attendees, ticket value, organization costs, value fixed with the performers or players or any information from which the size of the event can be clearly determined;
2. The owner is the host of the event and only works whose rights belong to him are performed; and,

3. Where the owner is not a member of any copyright management society.

The competent national authority on intellectual rights shall be able to perform the preparatory actions established in the General Organic Code of Processes, where applicable, to verify:

1. The transparency and truthfulness of the information submitted by the host, the rights owner or representative; and
2. The existence of the authorization by the rights owner or representative.

Article 574.- Assistance from the public force. -

The National Police is obliged to provide to the officers of the competent national authority on intellectual rights the requested assistance for the performance of their duties.

Subsection II Border measures

Article 575.- Petition of border measures. -

The owner of a trademark registration or copyright who has enough evidence to presume that it shall be carried out the importation or exportation of goods which would infringe his right on his trademark or copyright, may request the national competent authority on intellectual rights to suspend such customs operation.

Once the request for border measures is filed, the competent customs authority must suspend the import or export operation of the related goods, until the national competent authority on intellectual rights resolves the request.

Likewise, when the national competent authority on intellectual rights becomes aware of an import or export of goods that infringe the right on the trademark or copyright, it shall be able to order the suspension of the customs operation, ex officio.

Article 576.- Procedure. -

The border measures shall be filed before the competent national authority on intellectual rights in accordance with the contents, requisites, terms, procedure, and other rules as provided in the

corresponding regulation.

Article 577.- Information on importation or exportation. -

The person requesting border measures must provide to the competent national authority on intellectual rights the necessary information and a detailed and precise description of the goods object of the alleged infringement so that they may be recognized.

For the purposes of the prior paragraph, the competent customs authority in charge of controlling the entrance or departure of goods into or out of the country shall provide the service of information related to the operations of importation or exportation of goods.

Article 578.- Bail. -

To order precautionary measures, the competent national authority on intellectual rights may request the presentation of bail or guarantee which allows to protect the importer or exporter and to prevent possible abuse of rights.

The amount fixed must be in proportion to the possible economic, commercial, and social impact generated with this measure.

Article 579.- Inspection of goods. -

For the purposes of supporting his claims, the holder of an intellectual property right may request directly to the competent national customs authority, the permission to inspect the goods that shall be imported or exported, without prejudice of taking all necessary measures to protect confidential information.

Article 580.- Border measures against goods that violate copyright or with counterfeit trademark. -

When border measures are imposed upon request of a party with respect to the importation or exportation of fake goods that infringes copyright or goods bearing counterfeit trademark, such border measures shall be carried out only upon presentation of sufficient evidence, as well as a detailed description of the alleged infringement. The national competent authority on intellectual rights, to order precautionary measures, may require the presentation of a bail or guarantee which allow to protect the importer or exporter and prevent possible abuse of rights. No border measures may be carried out with respect to imports or

exports that do not have commercial scale and those that are insignificant, such as: those having a non-commercial nature or those which are part of the personal luggage of travelers or those that are shipped in small consignments.

Article 581.- Penalty. -

When the competent national authority on intellectual rights determines through reasoned resolution that there was a violation of the intellectual property rights, it shall sanction the offender with a fine of between one point five basic unified salaries up to one hundred forty-two basic unified salaries, depending on the nature of the infringement and the criteria established in the corresponding regulation. The same resolution may provide for the adoption of any of the measures foreseen in this Section or confirm those ordered on a provisional basis.

Article 582.- Expiration of border measures. -

After ten working days counted from the date of notification of the suspension of the customs operation without the plaintiff having initiated the main action or without the competent national authority having prolonged the suspension, the measure shall be suspended and the detained goods shall be released.

This requirement shall be deemed as fulfilled by the initiation of an administrative injunction action, a civil action or, if appropriate, a criminal process, at the choice of the plaintiff.

Article 583.- Exclusions. -

Small quantities of goods which are not of a commercial nature and which form part of the personal luggage of travelers or are sent in small consignments, shall be excluded from the application of the provisions of this chapter.

Subsection III Improper use of the Intellectual Property Rights on Internet

Article 584.- Action. -

The owner of a trademark or other intellectual property right may initiate an administrative tutelage action if a third party, without the owner's consent, attempts in bad faith to take

advantage of the intellectual property right and registers, commercializes, or uses a domain name which, at the time of registration of the domain name: a) has been identical or similar to a trademark or other intellectual property right, recognized in the country; or b) may be able of causing dilution with a well-known trademark in the country.

The natural person whose name or pseudonym identified by the relevant sector of the public as a person other than the owner of the domain name may also be entitled to bring this action, unless the consent of that person or of his heirs is accredited.

Article 585.- Factors to consider the bad faith intention. -

In order to determine whether a person has a bad faith intention as described in the prior article, the competent national authority on intellectual rights shall consider, among others, the following factors:

1. The intention of the person who registered the domain name of diverting consumers away from the trademark owner to a site accessible under the domain name, which could damage the goodwill of the trademark, either for commercial purposes or with the intention of tarnishing or disparaging the trademark; or, in order to take advantage of other intellectual property right recognized in the country, or the image of a third party;
2. The offer of the person who registered the domain to lease, transfer, sell, or assign the domain name to the owner of the brand or to the natural person whose name or pseudonym is identified by the relevant sector of the public, in exchange for a benefit economic or material trade, without having used, or having intended to use, the domain name to offer their products or services in good faith, or that their conduct indicates said intention; and,
3. The provision of false or misleading material and contact information when applying for the registration of the domain name, or that his conduct indicates such an intention.

Article 586.- Factors to consider the legitimate use of the domain name. -

In order to determine whether a person has legitimately used the

domain name, the competent national authority on intellectual rights shall consider, among others, the following factors:

1. Whether the person who registered the domain name has a trademark right or other intellectual property right included in the domain name;
2. Whether the domain name consists of the commercial name, business name, name or pseudonym of the domain name registrant; and,
3. The prior use by the registrant of the domain name in connection with a bona fide offer of goods or services offered or for identification or information purposes and is not likely to mislead the public as to their source.

Article 587.- Penalty. -

When the competent national authority on intellectual rights considers that the registration, commercialization, or use of a domain name under this subsection was made in bad faith to take advantage of the trademark of an intellectual property right of a third party, shall order the owner of a registration of domain name and/or the supplier where the domain name is hosted or registered and/or any other authority for domain names, the cancellation or transfer to the holder of the intellectual property right, of the related domain name.

Article 588.- Competence. -

The national competent authority on intellectual rights shall conduct this type of administrative injunction action, if the person who registered the domain name, the provider of the hosting service, the domain name registry, or any other authority or entity that has registered the related domain name, is domiciled in the country.

Section III Negative Enforcement Single Subsection Lawful Use and Abuse of Right

Article 589 - Lawful use. -

Any person may initiate an action before the national competent authority on intellectual rights, to know about the lawfulness of his previous, present or future acts. This action shall be filed

with respect to the intellectual property rights of a third party, except with respect to distinctive signs.

For the purposes of the preceding clause, this action may be brought without prejudice on whether or not the plaintiff has received a warning from the holder of the right or from a third party, with respect to an alleged infringement of an intellectual property right.

Article 590.- Abuse of rights. -

The competent national authority on intellectual rights, shall exercise, upon petition of a party, inspection, monitoring and sanction function in order to prevent and repress the abusive exercise of the intellectual property rights, provided the action does not pursue the safeguarding of the general interest or the welfare of consumers.

It shall be possible to order the suspension, within the scope of the corresponding competence, of the precautionary measures, as well as of any other action that has been taken by third parties upon petition of the owner or of the interested party.

Article 591.- Notification. -

The national competent authority on intellectual rights shall notify the holder or proxy of the intellectual property rights recognized in the country in accordance with the information registered before the national competent authority on intellectual rights and in accordance with the provisions of this Code; and, if applicable, to the licensees or other interested persons.

Article 592.- Answer. -

The respondent, within the term of fifteen working days counted from the date of notification, shall answer the action. In the answer, the defendant may counterclaim the plaintiff for the infringement of his intellectual property rights; if the plaintiff is counterclaimed, the procedure for the present action shall be the one established in article 543 of the present normative body that regulates the counterclaim.

Article 593.- Evidence term and hearing. -

After the response, the national competent authority on

intellectual rights shall order the opening of the evidence term for fifteen days.

During such term, any of the parties may request the calling for a hearing, in which they may present their arguments. The hearing shall be held after the expiration of the evidence term.

Article 594.- Reasoned resolution. -

At the expiration of the evidence term or once the hearing mentioned in the prior article is performed, as appropriate, the competent national authority on intellectual rights shall issue the reasoned resolution.

Article 595.- Indemnification for damages. -

In this type of proceedings, it will not be admissible for the owner of the intellectual property rights to claim indemnification for damages, as well as the procedural costs against the plaintiff.

TITLE VIII VINDICTIVE ACTION

SINGLE CHAPTER VINDICTIVE ACTION AT JUDICIAL LEVEL

Article 596.- Vindictive action at judicial level. -

Where a trademark, patent, breeder's certificate, industrial design registration or a layout-design of integrated circuit, has been requested or obtained by a person who was not entitled to obtain it, or to the detriment of another person who was also entitled to obtain it, the affected person may initiate before the competent judicial authority, the claim action requesting to be recognized as applicant or owner; or, as co-applicant or co-owner of the right.

This action may be brought without prejudice to the other actions provided for in this Code.

The claim action shall be processed in ordinary proceedings, in accordance with the general rules of processes.

TITLE IX APPEALS

Article 597.- Appeals. -

The resolutions or administrative acts issued by the competent authority on intellectual rights may be subject to challenge in accordance with the administrative and judicial appeals provided for in the legal system. The appeals shall be granted in the suspensive and devolutive effects at the administrative level.

For the cases of administrative acts issued with respect to the decision on compulsory licenses and negative compliance actions, the appeals at the administrative level shall not have suspensive effect.

In the administrative level, appeals shall be processed before a specialized collegiate body that shall be part of the competent national authority on intellectual rights, the powers and organization of this organism shall be performed in accordance with the corresponding regulation.

BOOK IV FINANCING AND INCENTIVES TO THE PARTIES OF THE NATIONAL SCIENCE, TECHNOLOGY, INNOVATION AND ANCESTRAL KNOWLEDGE SYSTEM

Omitted