

MEXICO
Industrial Property Regulations
Latest amendment published in the Official Federal Gazette
December 16, 2016

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TITLE I GENERAL PROVISIONS

CHAPTER I GENERAL PROVISIONS

ARTICLE 1

The purpose of this enactment is to regulate the Industrial Property Law, and the application and interpretation thereof, for administrative purposes, shall be the responsibility of the Mexican Institute of Industrial Property.

ARTICLE 2

For the purposes of this Regulation, in addition to the definitions provided in article 3 of the Act, Secretary shall be taken to mean the Secretary of the Economy.

ARTICLE 3

The Director General of the Institute shall issue, through a Resolution, the rules and specifications of the documents which contain the information pertaining to the descriptions, claims, drawings and summaries in order to be able to be admitted.

He may also put into place specific requirements and procedures to facilitate the operation of the Institute and ensure the legal safety of individuals, including the general rules for managing proceedings through electronic media.

ARTICLE 4

To calculate the timeframes determined in months or years referred to in article 184 of the Act, it shall be assumed that the timeframe ends on the same day of the relevant calendar month or year.

When the same day does not exist in the attendant calendar month, the timeframe shall end on the first business day of the next calendar month.

If a timeframe determined in months or years expires on a non-business day, this timeframe will expire on the first subsequent business day. The Institute shall announce in a Resolution published in the Official Journal those days that shall be regarded as non-business days.

CHAPTER II APPLICATIONS AND SUBMISSIONS

ARTICLE 5

Any requests or promotions must comply not only with that set out in

the Act and this Regulation, but also with the following requirements:

- I.** All copies thereof shall be duly signed;
- II.** Use the official forms published in the Official Journal and in the Gazette, with the number of copies and annexes determined on the form which must be duly submitted. For the purposes of submitting said forms, on electronic media, the provisions of the Resolution issued by the Managing Director of the Institute shall be complied with. In the event that a procedure vis-à-vis the Institute fails to have any official form published under the terms of the previous paragraph above, the requests or promotions must be submitted in free writing, in duplicate, complying, where applicable, with the provisions of article 5 TER of this Regulation;
- III.** Submit the annexes required for each request or promotion in accordance with the Act, the present Regulation and any other legal provisions applicable which must be legible and fixed in any way, on a material support known or to be known, which allows them to be understood or reproduced. Any annexes submitted electronically shall be subject to the provisions of the Resolution issued by the Managing Director of the Institute to this end;
- IV.** Provide an address for hearing and receiving notifications in national territory;
- V.** Indicate the procedure number of the relevant application, patent, registration, publication, declaration or authorization or, where applicable, the folio number as well as its date of receipt, except in the case of initial applications;
- VI.** Submit proof of payment of the corresponding charge;
- VII.** Submit, where applicable, a translation of any documents written in a language other than Spanish which are accompanied by the respective promotion or request;
- VIII.** Submit those documents which prove status as successors, as well as that of the personality of the proxies or legal representatives and
- IX.** Submit the legalization or apostille of any foreign documents, where applicable.

When the application or promotion fails to comply with the provisions of section I of the present article, it shall be rejected out of hand. In the event that the application or promotion fails to meet the stipulations of section VI of this article, the Institute shall request, on a one-time basis, the applicant to display the proof of payment of the relevant charges in terms of the respective Resolution, granting it a period of five business days, calculated as from the business day subsequent to that of notification of said omission. If it fails to

meet the request within the stated timeframe, the application or promotion shall be rejected out of hand.

When an application or promotion fails to meet any of sections II to V and VII to IX of this article, the Institute shall ask the applicant to - within two months calculated as from the business day subsequent to that of the notification - rectify its omission or provide corresponding clarifications. If it fails to meet the request within the stated timeframe, the application or promotion shall be rejected out of hand.

The stipulations of articles 36 and 59 TER, paragraphs two and three of this Regulation are excluded from the provisions of the previous paragraph above.

ARTICLE 5 BIS

The applications or promotions may be submitted, interchangeably, directly at the offices of the Institute or at the delegations or subdelegations of the Secretary. Likewise, they may be submitted to the Institute by registered post with acknowledgement of receipt; courier services, parcel delivery or other equivalent services or on electronic means of communication in accordance with the Resolution issued to this end by the Managing Director of the Institute.

Any applications or promotions sent by registered post with acknowledgement of receipt shall be deemed to have been submitted on the date stated on the post office dating stamp, having to attach the envelope to the procedure without destroying the part where this date appears.

Any applications or promotions sent by courier services, parcel delivery or other equivalent services shall be deemed to have been submitted on the date on which they are actually delivered to the Institute.

Any applications or promotions sent via the electronic service that the Institute has put into place for allowing submission outside the customer service window, shall be deemed to have been submitted on the day of their receipt, provided that they meet the requirements determined in the Resolution issued by the Managing Director to this end.

Unless some other provision in the Law or this Regulation indicates otherwise, the timeframes for the Institute to issue a response to the applications or promotions submitted shall start to be calculated as from the business day subsequent to that on which it receives them, irrespective of the media that has been used for said submission.

ARTICULO 5 TER

Applications or promotions must be submitted for each procedure that it is intended to file with the Institute and they must refer to one single patent, registration, publication, declaration or authorization or, if it is being processed, to the procedure number assigned to the application or promotion of said proceeding. The above excludes any registrations of licenses, transfers or levies on patents or registrations referred to in articles 62, 63, 137 and 143 of the Act, as well as the stipulations of the paragraph below.

Excluding any administrative declaration procedures, one single promotion may be used to request a change in the name or address of the applicant or holder; the accreditation of the new proxy or representative or any change in address for hearing and receiving notifications, for two or more applications being processed, or two or more patents, registrations, publications, declarations or authorizations, provided that there is the identity of the applicant or holder and, where applicable, of the proxy or representative in all the procedures and the latter can be found in the same processing file of the administrative unit of the Institute that deals with said applications, patents, registrations, publications, declarations or authorizations.

The relevant charges shall be paid in line with the number of applications, patents, registrations, publications, declarations or authorizations involved.

ARTICLE 6

The Institute shall provide the official forms to applicants and requesting parties free of charge, which may be reproduced by third parties provided that the copies correspond to the official format.

ARTICLE 7

The Institute shall, on receiving applications and submissions:

- I.** verify that the documents and other material listed therein are in fact present, and make the appropriate annotations;
- II.** The following shall be noted on each of the copies, using such means as are deemed appropriate:
 - (a) The date and time of receipt;
 - (b) The progressive receipt number applicable;
 - (c) In the case of applications, the procedure number assigned to them for their processing and

(d) The date and time of submission, when the application complies with the provisions of articles 38 Bis and 121 of the Act, and 38 of this Regulation and

III. return to the applicants or requesting parties a stamped copy of the applications or submissions together with such annexes as may be returnable, after the appropriate annotations have been made.

ARTICLE 8

In no event may processing or another procedure be resumed where it was terminated by the abandonment of the application.

ARTICLE 9

The application for registration of a transfer of the rights bestowed by a patent, registration, authorization or application being processed; change in name or business name; transformation of legal regime or merger must comply not only with the requirements set out in article 5 of this Regulation, but also with the following:

I. State the name or denomination or business name and nationality of the new holder, as well as of the previous holders of the right when the transfers or modifications have been carried out without the corresponding registration before the Institute;

II. Submit an original or certified copy of the agreements or documents that set out the transfers or modifications of rights, including those pertaining to any prior transfers or modifications which have not been registered with the Institute.

The copy submitted under the terms of the previous paragraph must contain the signatures of the parties on said agreements or documents;

III. Provide the address for hearing and receiving notifications of the new holder and

IV. Indicate, where applicable, the new proxy or legal representative in the procedure.

The application for registration referred to in this article may be submitted by any of the parties involved in the transfers or modifications.

To register a lien, the provisions of the present article shall be applied, where applicable.

ARTICLE 10

Any application for registration of a usage license for any industrial property right or franchise, besides complying with the requirements foreseen in article 5 of this Regulation, must state the name,

designation or business name of the licensor or franchisor and of the licensee or franchisee, as well as the nationality and address of the latter.

The application referred to in the previous paragraph must be accompanied by an original or certified copy of the agreement indicating the license, usage authorization or franchise. Said copy must contain the signatures of the parties in the aforementioned agreement and it may omit the contractual stipulations that refer to the royalties and other considerations that have to be paid by the licensee, authorized user or franchisee; those which refer to confidential information, pertaining to the forms or means of distribution and marketing of the goods and services, as well as the annexes of technical information that integrate it.

The application for registration referred to in this article may be submitted by any of the parties involved in the usage license or franchise.

ARTICLE 11

To register any transfers of ownership or licenses of rights pertaining to two or more applications being processed or two or more patents, registrations or publications, under the terms of articles 62, 63, 137 and 143 of the Act, the application or promotion, as well as complying with the requirements set out in articles 9 and 10 of this Regulation, must indicate the procedure numbers of the applications being processed or of the patents, registrations or publications involved. The Institute shall issue a document containing the decision pertaining to the registration requested, attaching a copy of said document to each procedure or application involved, with the proceedings referred to in this article.

The applicant may request the issuance of certified copies of the agreement displayed so that these can be glossed to any of the procedures or applications involved with the proceedings referred to in this article.

ARTICLE 12

When the applications or promotions pertaining to registration referred to in articles 9, 10 and 11 of this Regulation fail to meet the Requirements set out therein, the Institute shall ask the applicant, on one sole occasion, to - within two months after the business day subsequent to that of the notification - rectify its omission or provide such clarifications as are necessary.

If the party concerned fails to meet the request within the timeframe stated in the previous paragraph, the application or promotion shall be rejected out of hand.

CHAPTER III NOTIFICATIONS

ARTICLE 13

The Institute may notify, as the case may be in line with the Act, the present Regulation and other legal provisions applicable, any decisions, requests and other actions issued to the applicants, opponents or third parties concerned, by registered post with acknowledgement of receipt at the address they have provided; personally at said address or at the offices of the Institute; by publication in the Gazette; at platforms or by means of electronic communication.

The Institute may employ other means of notification such as courier services which shall be charged to the individual who requested them. Any personal notifications at the address of the applicants, opponents, third parties concerned or legal representatives shall only be ordered and carried out, besides that case foreseen in article 72 of the Act, in those cases in which the Institute sees fit.

Any personal notifications at the offices of the Institute may be carried out when the applicant, opponent, third party concerned, their proxies or those people authorized under the terms of section V, article 16 of this Regulation, personally occur to them.

Personal notifications and those carried out by certified post with acknowledgement of receipt shall take effect as from the day on which they are submitted to the parties concerned.

The timeframes shall start to be calculated as from the day subsequent to that on which the notification takes effect.

Electronic notifications may be made when the applicant, opponent, third party concerned or their proxies specifically consent to the adoption of said media. These notifications shall be carried out in accordance with the terms foreseen in the Resolution issued to this end by the Managing Director of the Institute.

ARTICLE 14

The Gazette is the dissemination body of the Institute in which the publications referred to in the Act and this Regulation shall be made. The Gazette shall be published at the Institute's website on business days. Where required, the Institute may order more than one publication

per day.

ARTICLE 15

In addition to the actions, documents and signs that must be published in accordance with the Law, the Gazette shall publish rulings that affect or modify the industrial property rights protected by the same Law.

CHAPTER IV REPRESENTATION AND GENERAL REGISTER OF POWERS

ARTICLE 16

Accreditation of the status of agents and representatives shall be subject to the following:

I. the power of attorney referred to in items I and II of Article 181 of the Law, shall give the name, signature and address of two witnesses; the persons concerned may be either nationals or foreigners;

II. General power of attorney granted for acts of administration or for lawsuits and debt collection shall be recognized as conferring authority to act in administrative proceedings;

III. In that case foreseen in article 187 of the Act, personality may be proven by way of a copy of the record of registration of the power of attorney in question on the General Register of Powers of Attorney of the Institute, provided that said power of attorney contains powers to deal with lawsuits and collections;

IV. Special powers shall be recognized for the performance of the acts for which they have been granted;

V. Applicants or opponents acting on their own, or agents and legal representatives may, in their applications and promotions, may authorize other natural persons to hear and receive notifications and documents.

ARTICLE 17

The Institute shall be responsible for the General Register of Powers, in which the originals of powers or certified copies shall be registered and, where appropriate, legalized. Registration in the General Register of Powers shall be optional.

It shall be sufficient to include in each application or submission a plain copy of the certificate of registration in the General Register of Powers.

CHAPTER V FILES

ARTICLE 18

The procedures may be consulted and they shall remain at the files of the Institute for the term of validity of the industrial property rights referred to, except in those cases in which the Institute believes that they should remain longer.

For the purposes of article 186 of the Act, files pertaining to applications for patents which have not been published and utility models and industrial designs which have been abandoned or rejected are included and so they can only be consulted by the applicants or their legal representatives or proxies, as well as by those people authorized under the terms of article 16, section V of this Regulation.

ARTICLE 19

The holder or applicant or its proxy or legal representative may obtain, solely during such time as the procedures are valid, the original documents which accompanied their applications or promotions. In this case, the Institute shall issue, at the expense of the applicant and subject to their return, certified copies thereof to keep them in their respective procedures to replace those documents that are returned.

In the case of those objects submitted with the applications or promotions, the holder or applicant or their proxy or legal representative may request the return of said objects during the subsequent year, calculated as from the notification of the respective decision. If the return is not requested within the stated timeframe, the Institute shall ask the parties concerned by means of a notice published in the Gazette to pick up said objects during the month subsequent to publication of said notice. Once this timeframe has elapsed without their having been collected, the Institute shall proceed to its destruction, leaving a record of it in the corresponding file.

ARTICLE 20

Any person may request and obtain certified copies of documents held in the files which relate to granted or registered rights, subject to payment of the prescribed fees.

In the case of the files referred to in articles 186 of the Law and 18, second paragraph of this Regulation, only the persons indicated by said articles may request and obtain certified copies of the

documents existing therein.

ARTICLE 21

The Institute may use any material support or form, known or to be known, including digitization, recording on optical discs, on electronic or data storage media, which allow the storage, reproduction and maintenance of the documents contained in the procedures in order to facilitate their safekeeping, consultation and issuance of copies thereof.

TITLE II INVENTIONS, UTILITY MODELS AND INDUSTRIAL DESIGNS

CHAPTER I GENERAL PROVISIONS

ARTICLE 22

For the purposes of the provisions in Article 17 of the Law, pending applications for patents and for the registration of utility models that have been filed with the Institute prior to those under substantive examination shall be included in the state of the art.

The contents of an application for a patent or utility model registration that has been rejected, withdrawn or abandoned shall not form part of the state of the art except, in the case of patents, where publication of the application has already taken place.

ARTICLE 23

For the processing and maintenance of the registration of utility models and industrial designs, the provisions of this Title shall be applied as appropriate.

The provisions of Article 18 of the Law shall be applicable as appropriate to utility models and industrial designs.

The provisions of Article 22 of these Regulations shall be applicable as appropriate to the registration of utility models.

CHAPTER II PATENT APPLICATIONS

ARTICLE 24

The patent application shall, in addition to the information specified in Article 38 of the Law and Article 5 of these Regulations, state the date on which the invention was previously disclosed under Article 18 of the Law, identifying the communication medium by which it was made known, information about the exhibition at which it was shown or those relating to the first time that it was put into practice.

For the divisional applications referred to in Article 44 of the Law, the filing date and pending file number of the original application shall be specified.

ARTICLE 25

In patent applications, the invention name or title shall be short but sufficient in itself to denote the nature of the invention. Fanciful names or expressions, trade information or distinctive signs shall not be acceptable as names.

The application shall contain only the information specified on the relevant official form. Nevertheless, the application may be accompanied, on a separate sheet, by whatever clarifications may be considered necessary, the inspection and consideration of which shall remain at the discretion of the Institute.

ARTICLE 26

The Institute may require the applicant to present a specimen or model of the invention for which protection is sought, either in its normal dimensions or to scale, in so far as that is necessary to assist in the understanding of the invention.

ARTICLE 27

The description, claims and abstract

I. must not contain drawings;

II. may contain chemical formulae or mathematical equations; the description may in addition contain instructions for computer programs;

III. the description and the abstract may contain tables; the claims may only contain tables where the subject matter makes their use advisable;

IV. the tables and mathematical or chemical formulae may be arranged horizontally on the sheet if they cannot be readily presented vertically, but in that case they must be presented in such a manner that the upper parts of the tables or formulae appear on the left-hand side of the sheet.

ARTICLE 28

The description shall be drafted according to the following rules:

I. it shall give the invention name or title as it appears in the application;

II. it shall specify the field of technology to which the invention relates;

III. it shall mention the prior art known to the applicant in the state of the art to which the invention belongs, and shall preferably specify the documents that reflect said state of the art;

IV. it shall specify the invention, as claimed, in clear and accurate terms that allow the technical problem to be understood, even where it is not expressly mentioned as such, and shall give the solution to the problem, explaining the advantages of the invention, if any, over the prior art.

The description must be concise, but as complete as possible, and it must avoid digressions of any kind; the description shall point to the respects in which the invention being disclosed differs from similar inventions that are already known;

V. where deposit of biological material is required under the provisions of the second paragraph of Article 47.I of the Law, it shall mention that said deposit has been made and shall state the name and address of the depositary institution, the date on which the deposit was made and the number allocated to it by said institution, describing also, to the extent possible, the nature and characteristics of the deposited material in so far as they are relevant to the disclosure of the invention;

VI. it shall contain a list of the various figures constituting the drawings, referring to them and to the various parts that constitute them;

VII. it shall mention the best known method, or the applicant's best intended means, of carrying out the claimed invention; where this is sufficient, the mention shall take the form of practical examples or specific applications of the invention that are not of a nature that is alien to the invention described, and with references to the drawings, if any;

VIII. it shall expressly state, when this is not apparent from the description or from the nature of the invention, the manner in which it may be produced or used, or both.

The description shall be presented in the form and order specified in this Article, except where, due to the nature of the invention, a different form or order makes for better understanding and more practical presentation.

Each of the chapters of the description referred to in items II to VII above shall be preceded by a heading.

ARTICLE 29

The claims shall be made according to the following rules:

I. the number of claims must correspond to the nature of the invention claimed;

II. where two or more claims are made, they shall be numbered in sequence with Arabic numerals;

III. they must not contain references to the description or drawings, except where absolutely necessary;

IV. they must be drafted according to the technical characteristics of the invention;

V. where the application includes drawings, the technical characteristics mentioned in the claims may be followed by reference marks denoting the parts of the drawings corresponding to those characteristics, if the understanding of the claims is thereby facilitated; the reference marks shall be placed between parentheses;

VI. the first claim, which shall be independent, must refer to the essential characteristic of a product or process for which protection is principally claimed; where the application comprises more than one category of those referred to in Article 45 of the Law, at least one independent claim must be included for each of those categories. The dependent claims must include all the characteristics of the claims on which they depend, and specify the additional characteristics that are consistent with the related independent or dependent claims. The claims dependent on two or more claims may not serve as the basis for any other dependent in turn on two or more claims.

VII. Any dependent claim shall include the limitations contained in the claim or claims on which it depends.

ARTICLE 30

The drawings shall be subject to the following rules:

I. If the patent application is not accompanied by drawings and the latter are required to understand the invention, the Institute shall request the applicant to provide them within two months, calculated as from the business day subsequent to that of the notification. If this is not complied with, the application shall be deemed to have been withdrawn;

II. If, in the application, the description or the claims the drawings are mentioned and the latter have not been provided with the application and they are necessary to understand the invention, the Institute shall request the applicant to provide them within two months, calculated as from the business day subsequent to that of the notification.

If the applicant fails to comply with the request, any reference to the drawings shall be deemed not to have been made;

III. where drawings are submitted after the filing date of the application in response to a requirement to do so, the Institute shall recognize as the filing date, the date on which the amended drawings were submitted, and shall not recognize the filing date that the applicant had already been previously assigned if the amended drawings add new material in regard to the original drawings;

IV. graphs, schemes of the stages in the process and diagrams shall

be regarded as drawings;

V. the drawings shall be presented in such a way that the invention is perfectly understood; they shall always contain the characteristics or parts of the invention that are claimed;

VI. photographs may be submitted in place of drawings only where the latter would not be sufficient or suitable for illustrating the characteristics of the invention.

ARTICLE 31

When they accompany the application, the drawings may be submitted provisionally without compliance with the requirements set forth in the guide issued by the Institute under Article 3 of these Regulations, but the applicant must, without prompting from the Institute, submit the final drawings that duly meet the prescribed requirements within two months following the date on which the patent application is filed. If the final drawings are not presented within the period specified, the application shall be considered abandoned.

The final drawings presented within the allowed period must not add new material in regard to the drawings presented provisionally; if they do, the Institute shall recognize the date on which the latter drawings were presented as the filing date of the application.

ARTICLE 32

For the purposes of Article 47.II of the Law, it shall be assumed that drawings are always necessary for the understanding of utility models and industrial designs submitted for registration.

ARTICLE 33

The abstract shall be drafted according to the following rules:

I. it must comprise:

(a) an abstract of the disclosure contained in the description, claims and drawings; that abstract shall identify the sector of technology to which the invention belongs and must be drafted so as to permit understanding of the technical problem, the essence of the solution to that problem offered by the invention and the main use or uses of the invention;

(b) where applicable, the chemical formula which, among all those appearing in the description and claims, best characterizes the invention;

II. it must be as concise as the disclosure permits, but its length must be preferably no less than 100 or no more than 200 words;

III. it shall not contain statements regarding the supposed merits or value of the claimed invention, or about its proposed application;

IV. every main technical feature mentioned in the abstract and illustrated by a drawing may be accompanied by a bracketed reference mark; the abstract must refer to the drawing that best illustrates the invention.

ARTICLE 34

The certificate of deposit of biological material referred to in the second paragraph of Article 47.I of the Law shall be submitted within six months following the date on which the applicant files the corresponding patent application, and said applicant shall be entitled to acknowledgment by the Institute that the date and hour the application was delivered be considered the date and hour of filing, provided that the certificate of deposit shows that the deposit occurred prior to the date and hour of application delivery, otherwise the date on which the certificate was presented to the Institute shall be acknowledged as the filing date of the application.

Should the applicant fails to present the certificate at the specified time, the application shall be considered abandoned.

ARTICLE 35

For the purposes of the second paragraph of Article 47.I of the Law, the Institute shall accord recognition to institutions that have the character of international depositary authorities for biological material, and also to national institutions, in accordance with internationally recognized criteria and rules.

The Institute shall publish a list of the institutions recognized under this Article in the Official Journal.

ARTICLE 36

For the priority referred to in Article 40 of the Law to be recognized, the applicant shall meet the following requirements:

I. he shall state in the application, where it is known or available, the number of the application filed in the country of origin whose filing date is claimed as the priority date;

II. he shall submit proof of payment of the prescribed fee;

III. he shall submit, within three months following the filing of the application, a certified copy of the application filed in the country of origin, and where appropriate a translation thereof; where this requirement is not met, priority shall be regarded as not having been

claimed.

ARTICLE 37

For the purposes of the second paragraph of Article 47.I of the Law, a certificate of deposit of biological material shall be required in the following cases:

- I. where a microorganism is claimed in itself;
- II. where the biological material referred to in the application is not publicly available;
- III. where the description that has been given of the biological material is insufficient for a person skilled in the art to reproduce it.

ARTICLE 38

The Institute shall recognize as the date and time of submission of a patent application that on which it is submitted to it by the applicant, provided that this complies with the requirements set out in articles 47, sections I to III, 179 and 180 of the Act, as well as the stipulations of article 5, sections III and VII of this Regulation. In the event that the application fails to comply with any of the requirements indicated in the previous paragraph above, the Institute shall only recognize as the date and time of submission of the patent application the date and time of receipt of the promotion whereby the applicant complies with or rectifies the requirements set out in said paragraph.

ARTICLE 39

Publication in the Gazette of pending patent applications shall contain the bibliographic data included in the application filed, the abstract of the invention and, where appropriate, the drawing that best illustrates the invention or the chemical formula that best characterizes it. Where the Institute consider that no drawing is of any use for the understanding of the abstract, there shall not be any drawing upon publication.

There shall be no publication of applications that have not passed the formal examination, those that have been abandoned or rejected or those in respect of which amendments have been filed after completing the formal examination.

ARTICLE 40

Early publication of a patent application shall be effected in the

issue of the Gazette that corresponds to the period in which the request is made, provided that the application has passed the formal examination, or in the issue of the Gazette that corresponds to the period during which the application passed the formal examination.

ARTICLE 41

Where the applicant converts an application for registration of a utility model or industrial design into a patent application or vice versa as provided in Article 49 of the Law, the converted application shall retain the filing date of the original application.

Where an application is converted, the Institute shall inform the applicant of the new file number assigned to it.

ARTICLE 42

The purpose of the substantive examination, in addition to that mentioned in Article 53 of the Law, shall be to determine whether the invention meets the requirements and conditions laid down in Articles 4 and 43 of the Law.

When conducting the substantive examination of the application, the Institute shall consider only that which is contained in the description, the claims, and the drawings if any.

If the Institute, on carrying out the substantive examination, establishes that, if it were to grant the patent, there might be an adverse effect on third-party rights under a pending patent application with an earlier filing date and hour, it shall notify accordingly the applicant whose application it is examining in order that the latter may make such statement as may serve his interests in accordance with the provisions of Article 55 of the Law.

ARTICLE 43

For the purposes of the provisions of Articles 54 and 55 of the Law, offices that have the character of administrations in charge of carrying out the international preliminary examination, in accordance with the Patent Cooperation Treaty shall be considered foreign examining offices.

The report accepted or required by the Institute on a substantive examination conducted by a foreign examining office may be either that which the latter carries out on an international application filed under the Patent Cooperation Treaty or the report that it issues on applications filed under their legislation.

ARTICLE 44

The report on the substantive examination conducted by a foreign examining office shall be regarded by the Institute as a technical reference document for the purpose of determining whether the invention for which a patent is sought is new, involves an inventive step and is industrially applicable.

The applicant may, instead of the aforementioned documents, submit a copy of the corresponding patent that has been granted by the foreign industrial property office in question, together with a Spanish translation thereof.

ARTICLE 45

If it emerges from the substantive examination that the invention is not new or does not involve an inventive step, the Institute shall inform the person concerned in writing of the examination finding, mentioning the similarities to the prior art cited and references encountered, so that, within a period of two months, he may make such observations as may serve his interests and where appropriate show the differences between his invention on the one hand and the cited prior art and references on the other, or alternatively give reasons for which he insists on the patentability of the invention, or, if he so chooses, amend the claims filed.

Where the applicant does not act on the above invitation within the period allowed, his application shall be considered abandoned.

ARTICLE 46

The date on which the Institute shall grant the patent and issue the corresponding title shall be that on which payment is made of the respective charge, provided that the Institute learns thereof within the timeframes stated in articles 57 and 58 of the Act.

When it learns of payment for issuance of the patent title or registration, the applicant shall submit a copy of the drawings, chemical formulas or sequences of nucleotides or amino acids which, in the opinion of the Institute, are representative of the invention. The technical specifications that said copy must contain shall be determined by the Managing Director of the Institute through the Resolution referred to in article 3 of this Regulation.

ARTICLE 47

Publication of the patent shall include, where appropriate and in addition to the information specified in Article 60 of the Law, the

most representative drawing, the main chemical formula of the patented invention or the nucleotide or amino acid sequence specified by the Institute.

Where the applicant has amended the claims, the Institute shall call upon him to file the abstract with the corresponding corrections.

ARTICLE 47 BIS

In case of patents granted for allopathic drugs, the Institute will publish on the Gazette and make available to the public a list of products that should be subject to industrial protection according to the active substance or ingredient, which shall specify the validity of the corresponding patent.

Such list will show the equivalencies between the active substance's or ingredient's generic denomination and pharmaceutical identity and the corresponding nomenclature or identification form on the patent, which should be provided according to the internationally accepted name.

The list referred to in this Article shall not contain patents protecting drug production or drug formulating processes.

Should there be controversy regarding ownership of the patent or the active substance or ingredient, upon agreement interested parties can subject the matter to arbitration under the provisions of civil laws.

ARTICLE 48

To authorize the changes to the text or drawings of the title of a patent referred to in article 61 of the Act, the Institute may ask the applicant to submit, within two months after the business day subsequent to that of the notification, those modifications pertaining to the description, claims, drawings or summary. In the event that the applicant fails to comply with said request within said timeframe, the Institute shall dismiss the promotion in question.

ARTICLE 49

In addition to the owner of the patent, any of the licensees may seek reinstatement of the patent under Article 81 of the Law, unless otherwise stipulated in the license concerned.

CHAPTER III COMPULSORY LICENSES AND LICENSES IN THE PUBLIC INTEREST

ARTICLE 50

When a mandatory license is requested, once the applicant has proven

before the Institute that it has the technical and economic capacity referred to in article 71 of the Act, the Institute shall notify the patent holder so that, within two months after the business day subsequent to that of the notification, it may assert its rights.

If the patent holder opposes the granting of the mandatory license, the Institute shall notify this opposition to the applicant so within fifteen business days after the business day subsequent to that of the notification, it can assert its rights. Once the timeframe has expired for examination and response to the documents submitted, the Institute shall decide as it sees fit, considering the statements of the applicant for the mandatory license, of the patent holder and the evidence provided.

ARTICLE 51

The statement of the Institute referred to in the first paragraph of article 77 of the Act shall be subject to the stipulations of the present article.

Within the two months subsequent to the publication date in the Official Journal of the statement referred to in the previous paragraph, any patent holders stated as liable to be subject to public utility licenses may make before the Institute the statements that agree to their rights with respect to such statement. Once said statements have been made, the Institute shall make a final decision, confirming or revoking the statement as the case may be and ordering its publication in the Official Journal.

The Institute shall publish in the Official Journal a decision stating the cessation of the causes of the emergency or national security which have led to the statement referred to in the first paragraph of this article.

ARTICLE 52

Use of a patented invention by the holder of a public interest license shall not be considered done by the owner of the corresponding patent. Where a license in the public interest is granted, the Institute shall impose a period on the licensee for the start of the exploitation of the patented invention, and shall declare failure to exploit the invention to be a cause of revocation of the license. That period may not exceed one year following the date of grant of the license.

Where the Institute, either at the request of the owner of the patent or ex officio, rules that the compulsory license or license in the public interest should be revoked, it shall call upon the licensee and

where appropriate the owner of the patent to make such observations as may serve their interests and submit any elements of proof that they may consider appropriate.

TITLE III TRADEMARKS, ADVERTISING SLOGANS AND COMMERCIAL NAMES

ARTICLE 53

For the purposes of the provisions of Article 89.II of the Law, the wrappers, packaging, containers, shape or presentation of goods shall be considered three-dimensional shapes.

ARTICLE 54

For the purposes of the provisions of Article 92. II of the Law, it shall be presumed, among other things, that imported goods are legitimate where they meet the following requirements:

- I.** the introduction of the goods to the market of the country from which importation takes place must be done by the person who in that country is the owner or licensee of the registered trademark;
- II.** the owners of the trademark registered in Mexico and in the foreign country must, on the date on which the importation of the goods takes place, be the same person or members of the same joint economic interest group, or their licensees or sub licensees.

ARTICLE 55

For the purposes of the provisions of subparagraph II of the foregoing Article, two or more persons shall be regarded as forming part of the same joint economic interest group where, among other situations, they are interrelated by direct or indirect control, exercised by one of them over the other or others within their decision-making or administrative bodies or in the making of their decisions.

For the purposes of the provisions of the foregoing paragraph, control shall be understood to mean the power to take general business decisions or administrative decisions in the day-to-day operation of the legal entities concerned. This definition shall include indirect control exercised by an intermediary or a succession of intermediaries. It shall be presumed that control in terms of the first paragraph above exists in the following cases among others:

- I.** where a person holds or owns corporate stocks or shares, with full voting rights, representing more than 50 per cent of the corporate capital of another person;
- II.** where a person holds or owns corporate stocks or shares, with full voting rights, representing less than 50 per cent of the corporate capital of another person if there is not another stockholder or partner of the latter who himself holds or owns corporate stocks or shares, with full voting rights, representing a proportion of the

corporate capital equal to or greater than that represented by the corporate stocks or shares that the first person holds or owns;

III. where a person has the right to direct or manage another by virtue of a contract;

IV. where a person has the power or right to designate the majority of the members of the board of directors or equivalent body of another;

V. where a person has the power or right to designate the director, manager or chief executive of another.

ARTICLE 56

In the application for registration of the trademark, as well as the information detailed in Article 113 of the Law, the following information must be provided:

I. When it is known, the class number for the products or services for which registration is requested, in accordance with the classification established in this Regulation;

II. The wording and figures which appear on the specimen of the trademark and whose use is not reserved;

III. A specimen of the trademark incorporated into the application, where appropriate, and

IV Location of the establishments or negotiations related with the trademark whenever the date of first use has been indicated.

By the mere fact of submitting the registration application, it shall be assumed that the applicant reserves the exclusive use of the trademark as set out in the copy referred to in section III of the previous paragraph, with the exception of any non-reservable logos and figures.

The nominative trademarks or commercial signage may only be made up of letters or words from the modern international Latin alphabet, Western Arabic numerals, as well as those signs which aid their correct reading. It shall be assumed that the applicant reserves the usage of any type of font size or type.

ARTICLE 57

The designation of the goods or services for which registration of the trademark contained in the application is sought shall be subject to the following rules:

I. only goods or services belonging to one and the same class must be specified;

II. the goods or services must be identified by the names or designations that they are given in the alphabetical list of the

classification and the rules for the application of the same, which are published in the Gazette.

ARTICLE 58

The rules referred to in Article 116 of the Law shall be settled by written agreement between the applicants.

The rules must likewise include stipulations on the limitation of goods or services, licensing regime, cancellation as referred to in Article 154 of the Law and common representation.

ARTICLE 59

The classification of goods and services referred to in Article 93 of the Law shall be the valid International Classification of Goods and Services for the Registration of Trademarks, established in accordance to the Nice Agreement. The Institute shall publish the alphabetical list of goods and services in the Gazette, with a mention of the class in which each product or service is placed. The goods and services included in the alphabetical list of the classification shall be considered as types. It shall be understood that the enumeration of goods and services in a given class is not exhaustive.

The Institute shall lay down criteria for the interpretation and application of the classification.

ARTICLE 59 BIS

The publication in the Gazette of the registration application of a trademark referred to in article 119 of the Act shall contain the procedure number which has been assigned to said application, its filing date, the distinctive sign applied for and class.

ARTICLE 59 TER

Any notices of opposition filed outside the timeframe foreseen in article 120 of the Act shall be rejected out of hand.

If the opposition submitted or the promotions deriving from the latter fail to meet the requirements foreseen in the Act and this Regulation, the Institute shall ask, on one sole occasion, the opponent to - within five days calculated as from the business day subsequent to that of the notification - rectify its omission or provide such clarifications as are necessary.

In the event that the opponent fails to meet the request within the timeframe stated in the previous paragraph, the opposition shall be rejected out of hand.

ARTICLE 59 QUARTER

The publication of the list of applications for which opposition has been submitted, foreseen in the fourth paragraph of article 120 of the Act, shall contain the procedure number assigned to the registration application which has been opposed, the folio number of the notice of opposition, its filing date and the name of the opponent.

Any oppositions submitted without complying with the requirements set out in the Act and this Regulation shall be published once the respective requirements have been rectified, in accordance with the previous article above.

ARTICLE 59 QUINQUIES

In the event that the applications or oppositions referred to in articles 119 and 120 of the Act have been submitted through the delegations or subdelegations of the Secretary, the timeframes foreseen in said articles shall start as from the business day subsequent to the one on which they are received at the offices of the Institute.

ARTICLE 60

For the priority referred to in Article 117 of the Law to be recognized, the applicant for registration of a trademark shall meet the following requirements:

I. he shall mention in the application, when he knows it, the number of the application for registration of the trademark, filed in the country of origin, the filing date of which is claimed as the priority date, and

II. he shall submit proof of payment of the prescribed fee

ARTICLE 61

If the applicant, after filing the registration application, modifies the distinctive sign; it increases the number of products or services for which the registration has been requested; it substitutes or changes the product or service indicated in the application, the latter shall be regarded as a new one and shall be subject to a new proceeding, having to find out the relevant charge and meet the legal and regulatory requirements applicable. In this case, the filing date of the modified application will be deemed to be that of the filing of the promotion because of which the applicant has modified the initial application.

For the purposes of section III of the second paragraph of article 123 of the Act, the publication term of the application shall start as soon as the Institute has recognized the filing date of the new application.

ARTICLE 62

For the purposes of the Law, it shall be understood that a trademark is in use, among other cases, when the goods or services that it distinguishes have been placed on the market or are available on the market under that trademark within the country and in the quantities and form that correspond to custom and practice in trade. It shall also be understood that the trademark is in use when applied to goods intended for export.

ARTICLE 63

The Institute may require ratification of the request for cancellation of the registration of a trademark where:

- I. the registered trademark concerned is jointly owned;
- II. collective trademarks are involved.

ARTICLE 64

The goods sold or the establishment where services are rendered to which a registered trademark applies, under either a license or a franchise, shall specify the following information in addition to that provided for in Article 139 of the Law:

- I. name and address of the owner of the registered trademark;
- II. name and address of the licensee or franchisee of the trademark;
- III. the fact that the registered trademark is being used under license.

ARTICLE 65

For the purposes of Article 142 of the Law, the owner of the franchise shall provide interested parties, after entering into the appropriate agreement, with at least the following technical, economic and financial information:

- I. name, designation or business, address and nationality of the franchisor;
- II. description of the franchise;
- III. age of the original franchising company and, where appropriate, main franchisor in the franchise transaction;
- IV. intellectual property rights involved in the franchise;
- V. amounts and purposes of the payments to be made by the franchisee

to the franchisor;

VI. types of technical assistance and services that the franchisor must afford the franchisee;

VII. definition of the territorial area of operation of the business that uses the franchise;

VIII. right of the franchisee to grant or not to grant sub-franchises to third parties, and where appropriate the requirements to be met in order to do so;

IX. obligations of the franchisee regarding confidential information supplied to him by the franchisor;

X. in general, the obligations and rights of the franchisee that derive from the conclusion of the franchise contract.

ARTICLE 66

For the purposes of Article 102 of the Law, the classification provided for in Article 59 of these Regulations shall be applied as appropriate.

ARTICLE 67

The provisions of these Regulations on trademarks shall be applicable as appropriate to advertising slogans and commercial names where not otherwise provided for.

ARTICLE 68

For the purposes of Article 169 of the Law, the person concerned must file an application with the Institute specifying and where appropriate submitting the following:

I. the name, nationality and address of the applicant;

II. the location of the industrial establishment in which the product protected by the appellation of origin is produced;

III. a certificate from the competent local authority attesting that the industrial establishment is located within the territory specified in the declaration;

IV. a certificate from the Secretariat attesting that the person concerned meets the official quality standard, where such a standard exists. The certificates referred to in items III and IV above should be issued within the six months prior to the date on which the request for authorization is filed.

V. the original or a certified copy of the power of attorney, where the application is filed by an agent.

TITLE IV PROCEDURE

CHAPTER I ADMINISTRATIVE PROCEDURES, INSPECTION, SURVEILLANCE AND SANCTIONS

ARTICLE 69

In the request for an administrative action, in the case of an administrative infringement, it should be mentioned, in addition to the information referred to in Article 189 of the Law, the location of the business or business dealings or of the establishments in which the goods are manufactured, distributed, marketed or stored, or services are offered or provided, with which the infringement is allegedly committed.

reported rendered, as the case may be. allegedly being committed

ARTICLE 70

Any submission related to any of the proceedings referred to in Article 187 of the Law shall be accompanied by a copy which shall be sent to the other party.

CHAPTER II INSPECTION AND MONITORING

ARTICLE 71

Inspection tours shall be governed by the following rules in addition to the provisions of Title VII, Chapter I of the Law:

I. the inspector shall identify himself by showing valid credentials, with a photograph, issued by the competent authority that attest his entitlement to carry out the duties in question;

II. the inspector must have an inspection warrant with a handwritten signature issued by the competent authority, which shall specify the address or addresses of the establishments in which the inspection is to be conducted, the purpose of the inspection, the scope that it has to cover and the legal provisions on which it is based;

III. the owner of an industrial property right protected by the Law who applies to the Institute for an investigation of acts in violation of said Law or of his rights may attend the corresponding inspection tour either in person or through an agent, and may make observations which shall be entered in the record;

IV. the person on whom the inspection tour is imposed shall have the right to make such observations as he considers appropriate, and also to submit evidence in the course of the tour, or make use of the same

right within the following ten working days.

ARTICLE 72

The seizure of goods shall be governed by the following rules in addition to the provisions of the Law:

I. for the purposes of the provisions of Article 211 of the Law, the person on whom the inspection order is served shall be considered the head of the establishment if the owner or his representative is not present;

II. the depositary shall be under an obligation, with respect to the goods seized, to keep them at the address at which the service took place, or where appropriate a place designated for this purpose; they shall not be at his disposal, and he shall keep them at the disposal of the Institute;

III. property seized that must be kept at the Institute shall be stored in a room specially provided for this purpose by, and under the responsibility of, the Institute itself or the competent delegation of the Secretariat;

IV. the inspector may make whatever arrangements are necessary for the issue of the order and for the carrying out of the seizure; he may also seek the assistance of the forces of law and order or the intervention of the Federal Public Prosecutor where he considers such a measure appropriate.

ARTICLE 73

The seizure of property shall be lifted where:

I. the Institute ruling that declares that no administrative infringement of the Law has been committed becomes final;

II. the corresponding administrative penalty imposed by the Institute is declared null and void or is invalidated by virtue of a court order;

III. the property is placed at the disposal of the Federal Public Prosecutor;

IV. a court order so decrees.

ARTICLE 74 REPEALED

CHAPTER III PENALTIES

ARTICLE 75

The amount of the fines referred to in Article 214, Section I of the Law shall be calculated in accordance with the general daily minimum

wage in force in the Federal District on the date on which the infringement in question was committed. In the event of continuous infringements, the date on which the Institute learned of the infringement shall apply.

ARTICLE 76

The temporary or permanent closure, total or partial, shall be imposed by means of a decision and as regards its implementation the commissioned staff shall duly take a detailed record of the proceeding, adopting, where applicable, the formalities set out in Articles 208, 209, and 212 of the Law.

ARTICLE 77

The implementation of the temporary closure shall be subject to the following rules:

I. In the event that there are perishable goods or products at the establishment, they shall be removed under the responsibility of the owner or party responsible for the establishment;

II. If the goods or products referred to in section I above are the object of an administrative infringement subject to sanction, the owner of the establishment or of the goods or products in question may only remove them if they first provide sufficient guarantee, in the opinion of the Institute, to ensure the redressing of any damages caused to the holder of the industrial property right affected by the administrative infringement or to third parties, in which case any infringing distinctive signs shall be removed;

III. The closure seals shall be endowed with progressive numbering and shall be listed in the respective record; and

IV. Upon termination of the temporary closure, the Institute shall order the withdrawal of the seals by means of a proceeding with regard to which a written record shall be drawn up.

ARTICLE 78

The additional fine referred to in Article 214, Section II of the Law shall be imposed when the administrative infringement persists after notification of the decision subjecting said infringement to sanction, and the timeframe granted by the Institute to the infringing party for demonstrating their cessation of committing the infringement subject to sanction has expired.

ARTICLE 79

The Institute shall commission its staff to carry out procedures to inspect or verify the facts, subject to payment of applicable fees.