

PERU
Industrial Property Decree
Legislative Decree No. 1397, published on September 7, 2018

Legislative Decree approving Complementary Provisions to
Decision 486 of the Andean Community Commission
establishing the Common Regime on Industrial Property

Table of Contents

TITLE I SCOPES

Article 1 Scope of application
Article 2 Beneficiaries
Article 3 Constituent elements of industrial property
Article 4 Competent entities
Article 5 Delegation of powers

TITLE II GENERAL PROVISIONS ON REGISTRATION

Article 6 Exclusivity of industrial property rights
Article 7 Registration of acts
Article 8 Invalidity of registration
Article 8-A Invalidity of patent
Article 8-B Requirements of the Request for Invalidation
Article 8-C Observations on the Request of Nullity
Article 9 Caveat
Article 10 Publication of registrations and records

TITLE III GENERAL PROCEDURAL PROVISIONS

Article 12 Priority of rights
Article 13 Language
Article 14 Requirements for the application
Article 15 Powers
Article 16 Record of the file
Article 17 Proof
Article 18 Abandonment of applications
Article 19 Benefit of priority
Article 20 Assignment of rights
Article 21 Consent to the resolution

Article 22 Refund of fees
Article 23 Reckless opposition
Article 24 Terms of the procedures
Article 24-A Electronic Notification
Article 25 Suspension of procedures
Article 25-A Patentability
Article 25-B Non-inventions
Article 25-C Division of industrial design application

TITLE IV PROVISIONS REGARDING PATENT REGISTRATION

Article 26 Disclosure of information
Article 27 Amendments to the application
Article 28 Correction
Article 29 Claims
Article 29-A Notification of the patentability examination
Article 30 Repealed
Article 31 Oppositions
Article 31-A End of the opposition stage
Article 32 Adjustment for unreasonable delay
Article 33 Request for adjustment
Article 34 Adjustment period
Article 35 Delays attributable to the patent holder
Article 36 Inventions, industrial designs and integrated circuit
layout designs developed during an employment or
service relationship
Article 37 Inventions, industrial designs and layout designs for
integrated circuits made in education and research
centers
Article 38 Reinvestment for research
Article 39 Generation of information by third parties
Article 39-A Exceptions to the rights conferred
Article 40 Compulsory license

TITLE V PROTECTION CERTIFICATES

Article 41 Protection certificate
Article 42 Content of the application
Article 43 Annexes to the application
Article 44 Possession of the protection certificate

TITLE VI PROVISIONS REGARDING REGISTRATION OF MARKS

- Article 45 Determination of similarity
- Article 46 Descriptive signs
- Article 47 Figurative signs
- Article 48 Mixed signs
- Article 49 Conceptual similarity
- Article 50 Application for registration of a mark
- Article 51 Request form for application
- Article 52 Filing date of the application
- Article 52-A Examination of form
- Article 52-B Accuracy of the application
- Article 53 Repealed
- Article 54 Opposition
- Article 55 Correction of opposition requirements
- Article 56 Coexistence of signs
- Article 57 Conciliation hearing
- Article 58 Multiclass registrations
- Article 59 Division of the application
- Article 60 Assignment of registration applications
- Article 61 Application for renewal
- Article 61-A Submission of application for renewal of registration
- Article 61-B Correction of irregularities in the application for
renewal of registration
- Article 62 Transfer of registration
- Article 63 Trademark license
- Article 64 Application for registration of amendments
- Article 64-A Renunciation of registration
- Article 65 Change of Ownership
- Article 66 Correction of irregularities in the application for
modification of the registry
- Article 67 Responsibility in case of licenses
- Article 68 Lien on the trademark right
- Article 69 Modifications of the representative or legal address
of the holder of the registration
- Article 70 Division of registration
- Article 71 Cancellation of registration
- Article 72 Notification of cancellation
- Article 73 Request for nullity
- Article 73-A Action for recovery
- Article 74 Notification of nullity

TITLE VII PROVISIONS REGARDING THE REGISTRATION OF ADVERTISING SLOGANS

Article 75 Registration of commercial slogan

Article 76 Linking commercial slogans to a registered trademark

TITLE IX PROVISIONS REGARDING THE REGISTRATION OF COLLECTIVE MARKS

Article 77 Collective marks

Article 78 Exercising actions resulting from a collective mark

Article 79 Invalidation, cancellation and lapse of the collective mark

TITLE VIII PROVISIONS REGARDING THE REGISTRATION OF CERTIFICATION MARKS

Article 80 Certification mark

Article 81 Exercising actions resulting from a certification mark

Article 82 Invalidation, cancellation and lapse of a certification mark

TITLE IX PROVISIONS REGARDING THE TRADE NAME

Article 83 Trade name

Article 84 Evidence

Article 85 Repealed

Article 86 Exercising the right on the basis of a trade name

Article 87 Additional implementation

TITLE X PROVISIONS REGARDING THE APPELLATIONS OF ORIGIN

Article 88 Appellations of origin

Article 89 Estoppel

Article 90 Repealed

Article 91 Content of the application

Article 92 Different geographical areas

Article 93 Compliance of authorization

Article 94 Recognition abroad

TITLE XI PROVISIONS REGARDING THE ACTIONS FOR INFRINGEMENT OF RIGHTS

CHAPTER I The powers of the competent national Directorate

Article 95 Processing infringement actions

Article 96 Powers of the Intellectual Property Chamber

CHAPTER II Acts that constitute infringement

Article 97 Acts of infringement

Article 98 Unfair competition

CHAPTER III Proceedings for Infringement of Industrial Property Rights

Subchapter 1 Proceedings at the request of a party

Article 99 Proceedings at the request of a party

Article 100 Address

Article 101 Correcting omissions

Article 102 Response to the complaint.

Article 103 Evidence

Article 104 Burden of proof

Article 105 Assumption of expenses

Article 106 Rejection of evidence

Article 107 Ex officio evidentiary proceedings

Article 108 Reconciliation hearing

Article 109 Stage of resolution of the file

Article 110 Limitation of the action

Subchapter 2 Ex Officio Actions

Article 111 Ex officio actions

CHAPTER IV On Preliminary Measures

Article 112 Request and modification of precautionary measures

Article 113 Expiration of precautionary measures

Article 114 Exemption from liability

CHAPTER V Powers of investigation and of inspection visits

Article 115 Powers of investigation

Article 116 False information

Article 117 Request for information

Article 118 Inspection proceedings

Article 119 Intervention of the National Police

CHAPTER VI Sanctions, Final Measures and Coercive Fines

Subchapter 1 Sanctions

Article 120 Sanctions

Article 120-A Non-compliance with the rules applicable to genetic
resources and traditional knowledge

Article 121 Determination of the sanction

Subchapter 2 Final measures

Article 122 Final measures

Article 122-A Destination of physical samples provided

Subchapter 3 Coercive fines

Article 123 Fines

Article 124 False accusations

Subchapter 4 Reduction of the fine

Article 125 Reduction of the fine

CHAPTER VII Costs and Fees

Article 126 Costs and fees

Article 127 Grounds

CHAPTER VIII Term for the conclusion of the proceedings

Article 128 Term for the conclusion of the proceedings

CHAPTER IX Compensation for damages

Article 129 Compensation for damages

Article 130 Unconsidered profits

TITLE XII APPEAL ACTIONS

Article 131 Appeal for reconsideration

Article 132 Appeal

Article 133 Scope of the appeal in infringement proceedings

Article 134 Admissibility of the appeal

Article 135 Effect of the appeal

TITLE XIII PROCEEDINGS BEFORE THE TRIBUNAL

Article 136 Proceedings before the Tribunal

Article 136-A Submission of briefs to the Specialized Chamber on
Intellectual Property

Article 136-B Prohibition of reform for the worse

Article 136-C Inadmissibility of return of notifications

Article 136-D Application of procedural rules in the Directorates

Article 137 Evidence

Article 138 Decision of the Chamber

Article 139 Functions of the Technical Secretary.

Article 140 Challenge to the resolutions of the Specialized Chamber
on Intellectual Property

FINAL SUPPLEMENTARY PROVISIONS

FIRST. National industrial property legislation

SECOND. Use of other signs

THIRD. Technical Report

FOURTH. Civil actions

FIFTH. Supplementary application rules

SIXTH. Validity

SEVENTH. Signs

TRANSITIONAL SUPPLEMENTARY PROVISIONS

FIRST. Application

SUPPLEMENTARY REPEAL PROVISIONS

FIRST. Repealed rules

TITLE I SCOPES

Article 1 Scope of application

The purpose of this Legislative Decree is to regulate complementary aspects in Decision 486 that establishes the Common Regime on Industrial Property, in accordance with the Political Constitution of Peru and the international agreements and treaties signed on the matter.

Article 2 Beneficiaries

All natural and legal persons or other entities under public or private law, state or non-state, for-profit or non-profit, whether domiciled in the country or abroad, may access the benefits of this Legislative Decree.

This Legislative Decree applies to all sectors of economic activity.

Article 3 Constituent elements of industrial property

For the purposes of this Legislative Decree, the following constitute elements of industrial property:

- (a) Invention patents;
- (b) Protection certificates;
- (c) Utility model patents;
- (d) Industrial designs;
- (e) Business secrets;
- (f) Layout diagrams of integrated circuits;
- (g) Brands of products and services;
- (h) Collective brands;
- (i) Certification marks;
- (j) Trade names;
- (k) Commercial slogans;
- (l) The appellations of origin; and
- (m) Geographical indications;
- (n) Traditional specialties guaranteed." (*)

(*) In accordance with Article 3 of Legislative Decree No. 1397, published on September 7, 2018, it is specified that the guaranteed traditional specialties mentioned in literal n) of this article seek to protect traditional recipes, cooking methods , production or transformation that corresponds to the

traditional practice applicable to a product or food, contributing to giving added value to traditional products in their marketing, production or transformation; and, to inform consumers of their attributes. The aforementioned article will come into force with the publication of the Supreme Decree that regulates them.

Article 4 Competent entities

4.1 The Directorate of Inventions and New Technologies of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) shall have the competence to hear and settle in the first instance any case related to patents, protection certificates, utility models, industrial designs and layout-designs for integrated circuits, including litigation procedures in administrative proceedings in respect thereof. It shall also be responsible for the register of licenses for the use of technology, technical assistance, basic and detail engineering, management and franchise of foreign origin.

4.2 The Directorate of Distinctive Signs of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) shall have the competence to hear and settle in the first instance any case related to trademarks or service marks, trade names, advertising slogans, collective marks, certification marks, appellations of origin, Geographical indications and Traditional specialties guaranteed including administrative proceedings in respect thereof. It shall also be responsible for the register of contracts containing licenses on distinctive signs and the register of contracts on technology transfer. The Intellectual Property Chamber of the Tribunal of the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) shall hear and rule on appeals in the second and last instance of administrative proceedings.

4.3 The Directorate of Inventions and New Technologies, through its respective Commission, hears in the second and final instance the appeals filed against the resolutions that deny in the first instance applications for registration of industrial property

elements in which no opposition has been formulated.

4.4 The Distinctive Signs Directorate, through its respective Commission, hears in second and last instance the appeals filed against first instance resolutions issued in non-contentious procedures.

4.5 In the cases contemplated in points 4.3. and 4.4 the resolutions issued by the respective commissions exhaust the administrative route.

4.6 The Specialized Chamber on Intellectual Property of the Court of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI), except as indicated regarding the procedures contemplated in points 4.3. and 4.4, will hear and resolve the appeals in the second and final administrative instance.

Article 5 Delegation of powers

The competent Directorate may delegate to public or private entities the power to receive registration applications and other resources or documents linked to industrial property. In that case, the aforementioned documents will be considered presented at the time of their receipt by the delegated entity. The competent Directorate may order the delegation of additional powers.

TITLE II GENERAL PROVISIONS ON REGISTRATION

Article 6 Exclusivity of industrial property rights

Industrial property rights grant their holder exclusivity over the object of protection and their regular exercise cannot be sanctioned as a monopolistic practice or as an act restricting competition.

Article 7 Registration of acts

Transfers, licenses, amendments and other acts affecting industrial property rights may be recorded in the industrial property registers. Acts and contracts referred to in the preceding paragraph shall take effect in respect of third parties from the time of filing.

The acts and contracts referred to in the previous paragraph will take effect for third parties from the moment of their registration, except for licenses that affect registrations on distinctive signs.

Unless proof to the contrary is provided, it is presumed that any person shall have knowledge of the content of the registrations filed in the relevant registers; the registrations shall be deemed authentic where not amended or annulled.

The competent Directorate shall establish the way in which its respective registers are organized and shall stipulate the provisions for filing where necessary.

The certificate generated when industrial property rights are registered, as well as the entries that are recorded as a result of the acts indicated in the preceding paragraphs, may be issued by digital means and must in this case have a digital signature. Likewise, the competent Directorate may make the corresponding certificate or title available to the applicant by digital means.

Article 8 Invalidity of registration

The declaration of invalidity of a registration shall retroactively establish that neither the registration nor the application from which it arose take effect as provided under this Legislative Decree.

Without rendering invalid the liability for damages which arise if the holder of the registration has acted in bad faith, the retroactive effect of invalidity shall not affect:

- (a) decisions on infringement of industrial property rights which may have been handed down and exercised prior to the declaration of invalidity; and
- (b) the license agreements in existence prior to the declaration of invalidity provided that these agreements were concluded prior to this declaration.

Article 8-A Invalidity of patent

A patent may be revoked or annulled only on the basis of the reasons that would have justified the refusal of its granting. However, the Directorate of Inventions and New Technologies may invalidate a patent granted when fraud, false representation or inequitable conduct has occurred.

Article 8-B Requirements of the Request for Invalidation

The request must be made in writing to the Directorate of Inventions and New Technologies. The document must contain:

- a) The correct identification of the certificate or title subject to the invalidation and the name of the industrial property element subject to the invalidation.
- b) The identification of the address where the Holder will be notified;
- c) the name and address of the person who presents the nullity;
- d) power of attorney that accredits the representation that is invoked;
- e) the grounds on which the invalidation is based;
- f) the offer of the evidence that one wishes to assert; and
- g) The indication of the payment date and the number of the proof of payment of the corresponding fee.

In no case, the power of attorney must be required to the extent that it can be obtained directly by the Directorate of Inventions and New Technologies, in accordance with law.

Article 8-C Observations on the Request of Nullity

In the event that the requirements of article 8-B are not met, with the exception of literal b), the interested party is notified to correct the omissions incurred within two (02) business days, under penalty of considering the request of the nullity not submitted.

In the event that the requirement indicated in literal b) is not met, the owner is notified at the last procedural address recorded in the file that gave rise to the questioned industrial property element.

The request for annulment is not admissible if the matter was the subject of opposition on the same grounds between the same parties or the one that derives their right from them.

Article 9 Caveat

The competent Directorate shall, ex officio or at the request of a party, include in the relevant registers a caveat of requests for cancellation, invalidation and vindication actions that are filed.

The corresponding entry shall, likewise, be made once the decision, which has exhausted the administrative channels in the proceedings set forth in the previous paragraph, has been handed down.

Article 10 Publication of registrations and records

Registrations and records, whether or not they are being processed, including litigation, shall be open to the public, except in the following cases:

- (a) records of patents, utility models and industrial designs shall be governed by the provisions of Articles 40, 85 and 125 of Decision 486.
- (b) records concerning the infringement of industrial property rights, until the complaint has been served.

Any person, whether or not party to the proceedings, may request a simple or certified copy of all or part of a public record, as well as of registration entries, the certificates or titles issued after payment of the corresponding fee.

Article 11 Non-disclosure and confidentiality

Where the competent national Directorate receives or obtains information considered confidential, this authority shall at the request of the party concerned guarantee the non-disclosure and confidentiality thereof in accordance with the relevant regulations.

TITLE III GENERAL PROCEDURAL PROVISIONS

Article 12 Priority of rights

Priority in industrial property law shall be determined by the date and time the application for registration was filed. Priority afforded the first applicant shall presuppose his good faith and, consequently, such priority shall not be recognized when proven to the contrary.

Article 13 Language

Applications for registration shall be filed in Spanish. Documents written in another language must be submitted with a simple translation into Spanish. The submission of official translations will not be required, it being sufficient to submit the simple translation under the responsibility of the translator and the interested party.

Without prejudice to the provisions of the preceding paragraph, the competent Directorate may waive the submission of translations of documents when it deems it appropriate, or request the translation within a maximum non-extendable period of ten working days, unless this Legislative Decree establishes a different period.

The admission requirements shall be presented in Spanish, failing which the application shall not be processed.

Article 14 Requirements for the application

For the registration of any act of disposal or assignment of industrial property rights, and unless this Legislative Decree requires a greater formality, it is sufficient that it is recorded in a private instrument and the signatures have been certified by a Notary. If the document is issued abroad, it shall be authenticated by a Peruvian consular official.

With regard to a change of ownership, and where this results from a contract, it shall suffice for the applicant to attach to his application, where applicable, one of the following:

- (a) a copy of the contract, certified by a notary public or any other competent public authority, who certifies that the aforementioned document is in conformity with the original

contract;

- (b) an extract of the contract which shows the change in ownership, which must be certified by a notary public or any other competent public authority;
- (c) an uncertified certificate of transfer with the content established in the Regulations under the 1994 Trademark Law Treaty, and which is signed by both the holder and the acquirer; or
- (d) an uncertified transfer document with the content established in the Regulations under the 1994 Trademark Law Treaty, and which is signed by both the holder and the acquirer.

Where the change in ownership results from a merger, it shall suffice to attach a copy of the document proving the merger issued by the competent Directorate. The conformity of the aforementioned copy with the original must be certified by the authority that issued the document or a notary public or any other competent public authority.

Where a change in ownership is not the result of a contract or a merger, but rather the result, inter alia, of the application of a legal standard or a court decision, a copy of the document proving such change attached to the application shall suffice. Such copy must be certified by a notary public or any other competent public authority, to the effect that it is in conformity with the original document issued by the corresponding public authority.

Article 15 Powers

The powers required under this Legislative Decree may be set forth in a private deed. In the case of legal entities, the status or title with which the grantor signed must be recorded.

In the case of the waiver of the registration, the signature of the power shall be legalized by a Notary. If the document is issued abroad, it must be legalized by a Peruvian consular officer or have an apostille in accordance with the Hague Convention.

The power of attorney may be granted after the application for registration is filed, in which case the acts undertaken by the proxy shall be confirmed.

Article 16 Record of the file

The documents submitted within the procedure must contain the number of the respective file, under penalty of being considered not submitted, unless its content can unequivocally identify the file to which it corresponds.

Article 17 Proof

The competent Directorate may require that proof be presented where reasonable doubt exists concerning the truth of any information contained in a document.

Article 18 Abandonment of applications

Except in cases for which this Legislative Decree establishes a specific period, the application shall automatically be abandoned when the file remains paralyzed due to the interested party's responsibility for thirty (30) business days. Abandonment does not occur when the file is in a state of being resolved.

Article 19 Benefit of priority

In order to benefit from the right of priority, the application claiming priority shall be filed within the following non-extendable periods counted from the filing date of the application whose priority is claimed:

- (a) 12 months for patents and utility models; and
- (b) six months for registrations of industrial designs and marks.

Exceptionally, for patent or utility model applications, the competent Directorate may restore the right of priority within a period of two (2) months as from the date the priority period, when the applicant has not filed the application within the aforementioned twelve-month(12) priority period.

To this end, the restoration of the right must be requested by submitting a sworn statement with the reasons why the patent application was not submitted within the twelve-month period, accompanied by the evidence proving that this occurred despite the fact that the applicant acted with the due diligence required according to the circumstances.

Where the Directorate considers that the evidence presented is not sufficient to prove the provisions of the preceding

paragraph, it shall notify the applicant in order that he may submit new evidence within 30 working days, after which the Directorate shall decide whether or not the restoration of the right of priority is accepted.

Article 20 Assignment of rights

The assignment and, where appropriate, the license of rights arising from the registration application shall derive from any of the components constituting industrial property. For this purpose, the formalities established in Article 14 of this Legislative Decree must be complied with, as appropriate.

Article 21 Consent to the resolution

Once the resolution granting an industrial property right has been consented to, the competent Directorate will issue the corresponding certificate or title.

In the case of non-contentious procedures for Distinctive Signs, once the resolution granting a right has been issued, the competent Directorate will notify the holder of the corresponding certificate or title.

Article 22 Refund of fees

Except where expressly provided for in this Legislative Decree, the refund of fees paid by the interested party shall not be applicable.

Article 23 Reckless opposition

Reckless opposition brought against applications for any component of industrial property may be sanctioned with a fine of up to fifty (50) UIT.

Article 24 Terms of the procedures

The maximum term for the processing of the administrative procedures regulated in this Legislative Decree will be one hundred and eighty (180) business days, without prejudice to the provisions of special regulations or the terms that arise from the nature of the respective procedure.

Article 24-A Electronic Notification

In administrative proceedings before the Directorate of Inventions and New Technologies, and the Directorate of Distinctive Signs, as

well as before the Specialized Chamber for Intellectual Property of the Court of the National Institute for the Defense of Competition and the Protection of Intellectual Property, in addition to their procedural address in national territory, the parties may indicate an electronic mailbox assigned by the National Institute for the Defense of Competition and the Protection of Intellectual Property.

The competent Directorate must notify the administer in the electronic mailbox assigned by the entity, provided that the consent of the administer is obtained and the acknowledgement of receipt can be reliably verified, in which case it will prevail over any other form of notification, in accordance with the law.

The notification modality by mailbox is applied progressively, as permitted by the technological availability of the area and the resources of the institution.

Article 25 Suspension of procedures

The competent Directorate shall suspend the processing of the procedures before it only in the event that, prior to the start of the administrative procedure, a judicial process has been initiated those deals with the same subject matter, or when a contentious or non-contentious issue arises which, in the opinion of the respective competent Directorate, requires a prior pronouncement without which the matter before it cannot be resolved.

Article 25-A Patentability

Any invention, whether of a product or a process, in all fields of technology, shall be patentable, provided that it is new, has an inventive level and is susceptible to industrial application.

Article 25-B Non-inventions

The following are not considered inventions:

- (a) Discoveries, scientific theories and mathematical methods.
- (b) Any living being, existing in nature, in whole or in part.
- (c) Biological material, existing in nature, in whole or in part.
- (d) Natural biological processes.
- (e) Literary and artistic works or any work protected by copyright.

- (f) Plans, rules and methods for the exercise of intellectual activities, games or economic-commercial activities.
- (g) Computer programs or softwear, as such.
- (h) Forms of presenting information.

Article 25-C Division of industrial design application

The applicant may, at any time during the procedure, divide his industrial design application into two or more applications, but none of these may imply an extension of the protection corresponding to the disclosure contained in the initial application.

The competent national office may, at any time during the procedure, require the applicant to divide the application if it includes more than one design.

Each divisional application benefits from the filing date and, where applicable, the priority date of the initial application.

For the purposes of dividing an application, the applicant must submit the documents that are necessary to form the corresponding divisional applications.

TITLE IV PROVISIONS REGARDING PATENT REGISTRATION

Article 26 Disclosure of information

For purposes of the provisions of Article 28 of Decision 486, the disclosure of the invention shall be considered sufficiently clear and complete if a person skilled in the technical art does not need to conduct further testing to carry out the invention, on the date the application is filed.

Likewise, an invention shall be considered sufficiently disclosed where a description is so clear, detailed and complete as to reasonably indicate to a person skilled in the relevant technical art that the applicant was in possession of the invention at the time of filing the patent application, it being understood that possession shall imply that the applicant was able to carry out the invention.

Article 27 Amendments to the application

The patent applicant may request, against payment of the corresponding fee, that the application be amended at any time during processing. The amendment may not imply an extension of the protection that would correspond to the disclosure contained in the initial application.

The applicant may likewise request the correction of any material error.

Where the amendment relates to the specification of claims, the corresponding fee must be paid in advance for each claim additional to ten (10) claims.

Article 28 Correction

Without prejudice to the provisions of the preceding article, and if during the examination of form, the competent Directorate finds that there is or could be any omission in the description or claims, or that the drawings are incomplete, the Directorate may request the applicant to correct the said observation within two (2) months, failing which the said omissions shall be deemed not to have been resolved.

For such purpose, the omitted information must be contained in the priority duly claimed and the applicant must have complied by

presenting together with the request form an affidavit which states it reserves the possibility of amending the application for omissions contained in the claimed application.

Article 29 Claims

The claims made in a divided application shall not contain the same material as that for which protection is sought by means of the initial application filed.

At the time of filing the application, the claims that will be processed in the divided application and those that will remain in the application initially filed must be indicated.

Dividing will not be allowed if the divided application includes the same claims or scope that is intended to be protected in the claims of the application initially filed.

It shall not be possible to grant more than one patent for the same inventive material.

Article 29-A Notification of the patentability examination

The Directorate notifies the applicant of the second or subsequent patentability examinations when they contain new elements or different elements from those contained in the previous examination or previous patentability examinations, regardless of whether or not the conclusion raised is reiterated.

In the event that the conclusion of previous examinations is reproduced without including new elements, there is no obligation to notify.

Article 30 Repealed

Article 31 Oppositions

Oppositions shall contain or attach as appropriate:

- (a) identification of the opponent;
- (b) power of attorney granted to the person representing the opponent;
- (c) identification of the file;
- (d) factual and legal grounds of the opposition;
- (e) evidence that proves the alleged facts; and

(f) The indication of the day of payment and the number of the proof of payment of the fee.

In case of non-compliance with any of the above mentioned requirements, the competent Directorate requires the opponent to correct the omission, granting a term of two (02) working days as from the day following the notification of the requirement, under penalty of considering the opposition as not filed.

Article 31-A End of the opposition stage

Once the deadlines for the opponent to support his arguments and for the applicant to proceed with the response to the opposition have expired, the end of the opposition stage is declared, even if said actions have not been carried out by the parties.

Article 32 Adjustment for unreasonable delay

The competent Directorate, exclusively at the request of the party, shall adjust the term of validity of the patent where an unreasonable delay has occurred in the granting process, except when it is a patent that claims a pharmaceutical product. In cases where such applications also claim a patent for a pharmaceutical process, the adjustment provided for in this article shall not apply.

The adjustment shall occur once only where the competent Directorate, during the process of granting the patent, has incurred an unreasonable delay of more than:

- (a) five years from the date the application was filed to the date the patent was granted; or
- (b) three years from the request for a substantive examination to the date the patent was granted. Where this is the case, it shall be understood that the application was filed if the following conditions are met:
 - (i) the proof of payment of the fee for the substantive examination was submitted; and
 - (ii) for patent applications for which no oppositions have been filed, the term of six months lapsed from the publication of the application in the Official Gazette El Peruano; or, that in the case of applications in which one or more oppositions have been filed, the opposition stage has been declared concluded.

Article 33 Request for adjustment

The request for adjustment shall be made, on pain of lapsing, within thirty (30) working days from the date an administrative decision granting the patent is handed down.

For the calculation of the term, the delay incurred by the competent Directorate for acts attributable to the patent holder shall not be taken into account.

Likewise, the patent term shall not be adjusted where the delay on the part of the competent Directorate occurred as a result of a fortuitous event or force majeure.

When evaluating the application filed, the competent Directorate shall:

- (a) determine whether a deadline is exceeded in the application process in accordance with the provisions under Article 32 of this Legislative Decree.
- (b) establish what the unreasonable delay is.
- (c) If the periods described in Article 32(a) and (b) of this Legislative Decree occur in the same patent application, it shall be understood that the deadline extended which shall be taken into account to determine the unreasonable delay in accordance with the provisions in the preceding paragraph shall start from the occurrence of the longest excess period.

The competent Directorate shall issue a decision with a statement of reasons which establishes whether there was an unreasonable delay and, if applicable, shall grant the adjustment for the patent's validity period. An appeal may be filed against this decision.

Article 34 Adjustment period

The adjustment period granted in accordance with the preceding articles shall be subject to the following rules:

- (a) The adjustment period granted shall invariably start from the calendar day following the last day of the patent term.
- (b) For the calculation of the adjustment, the competent Directorate shall consider one day of adjustment for every two days of delay.
- (c) The adjustment period of the patent shall grant the holder the same rights and obligations as those held during the patent term and shall also be subject to the exceptions and

limitations of the patent.

Article 35 Delays attributable to the patent holder

Delays attributable to the patent holder shall be:

- (a) periods that correspond to the extensions requested by the patent holder;
- (b) the period from the time the file is abandoned and until the processing of the said file is reinitiated as a result of the decision in an appeal, provided that the causes for the abandonment are not attributable to the competent Directorate; and
- (c) any other period which is attributable to the actions of the applicant for consideration by the competent Directorate.

Article 36 Inventions, industrial designs and integrated circuit layout designs developed during an employment or service relationship

Unless otherwise agreed, inventions, industrial designs and integrated circuit layout designs developed during an employment or service relationship shall be governed by the following rules:

- (a) Inventions made by the employee in the course of a contract or employment or service agreement, the total or partial purpose of which is to carry out inventive activities, shall belong to;
- (b) If the employee makes an invention in relation to his professional activity and by using means or information provided by the employer, the employer shall have the right to assume ownership of the invention or to reserve the right of use thereof within a period of 90 days from the time at which the employer became aware of the existence of the invention. Where the employer assumes ownership of an invention or reserves the right of use thereof, the employee shall be entitled to adequate compensation in accordance with the industrial and economic importance of the invention, due account being taken of the means or information provided by the firm and the contributions by the employee that enabled him to carry out the invention. The amount of compensation shall be fixed by the judge specialized in civil matters in accordance with the rules of expedited summary proceedings, where there is no agreement between the parties;

(c) Inventions made while an employment agreement is in force or a service contract is being carried out, the making of which is not covered by the circumstances provided for in subparagraphs (a) and (b), shall belong exclusively to the inventor thereof.

Article 37 Inventions, industrial designs and layout designs for integrated circuits made in education and research centers

The rules established in the previous Article shall be applicable to universities, institutes and other education and research centers in respect of inventions, industrial designs and layout designs of integrated circuits made by its professors or researchers, unless otherwise provisions to the contrary are contained in the Statute or the Rules of Procedure of the said entities.

When a firm contracts a university, institute or other education or research center to carry out research involving inventive activities, industrial designs or layout designs for integrated circuits, the rules established in this Article shall be applicable to the firm in respect of inventions, industrial designs and layout designs for integrated circuits made by the professors or researchers of the contracted institution. In this case, the appropriate compensation referred to under Article 36(a) and (b) of this Legislative Decree shall be paid directly by the firm to the professor or researcher who made the invention, industrial design and integrated circuit layout scheme, if applicable, independently of the compensation agreed with the contracted institution.

Article 38 Reinvestment for research

Entities that receive state funding for their research, industrial designs and integrated circuit layout designs shall reinvest part of the royalties that they receive for the commercialization of such inventions, industrial designs and integrated circuit layout designs, with a view to generating a continuous research funds and stimulating researchers, making them share in the profits of the innovations.

Article 39 Generation of information by third parties

Without prejudice to the exclusive rights of the patent holder, a third party may use the subject matter protected by the

aforementioned patent only for the purpose of generating the information necessary to support the application for approval to market a pharmaceutical or agricultural chemical product in Peru.

Any product produced in accordance with the preceding paragraph may be manufactured, used, sold, offered for sale, or imported into national territory for the generation of information, only for the purpose of complying with the approval requirements to market the product once the patent's validity period expires. Likewise, the product may be exported only for the purposes of complying with the marketing approval requirements in Peru.

Article 39-A Exceptions to the rights conferred

When the limited exceptions provided for in Article 53 of Decision 486 of the Andean Community Commission unjustifiably undermine the normal exploitation of the patent or cause unjustified harm to the legitimate interests of the patent holder, taking into account the legitimate interests of third parties, the patent holder may exercise the rights established in Article 52 of said Decision.

Article 40 Compulsory license

Upon declaration, by supreme decree, of the existence of reasons of public interest, emergency or national security; that is, national emergency or other circumstances of extreme urgency or in cases of non-commercial public use; and only while these reasons remain, the patent may at any time be subject to a compulsory license. In such a case, the licenses requested shall be granted. The holder of the patent which is the subject of the license shall be notified as soon as reasonably practicable.

The competent national Directorate shall establish the scope or extension of the compulsory license, specifying in particular the period of time for which it is granted, the subject of the license, the amount and the conditions of economic compensation.

The granting of a compulsory license shall not undermine the right of the patent holder to continue exploiting the patent and the decision on such a license shall be subject to judicial review.

TITLE V PROTECTION CERTIFICATES

Article 41 Protection certificate

Any inventor domiciled in the country who is working on an invention project and who needs to experiment or build a mechanism that requires making his idea public, may request a protection certificate which the competent Directorate shall grant him for the period of one (1) year.

Article 42 Content of the application

The application shall be filed with the competent Directorate and shall contain:

- (a) identification of the applicant and the inventor;
- (b) the title or name of the invention project in Spanish;
- (c) a clear and complete description in Spanish of the invention project in such a way that a person skilled in the art can carry out the invention;
- (d) proof of payment of the prescribed filing fee.

The absence of any of the requirements listed in the preceding paragraph shall result in the application not being considered accepted for processing by the competent Directorate and not being assigned a filing date.

Article 43 Annexes to the application

In annex to the application at the time of filing shall be:

- (a) the powers, where necessary; and
- (b) the technical plans and drawings, where necessary for a better description of the invention project.

Article 44 Possession of the protection certificate

The possession of this certificate shall give its holder the right of priority over any other person who over the course of the protection year tries to apply for rights over the same subject matter.

TITLE VI PROVISIONS REGARDING REGISTRATION OF MARKS

Article 45 Determination of similarity

For the purposes of establishing whether two signs are similar and capable of leading to confusion and error for the consumer, the competent Directorate shall take into account mainly the following criteria:

- (a) the successive assessment of the signs considering their overall appearance and with more emphasis on the similarities than the differences;
- (b) the level of perception of the average consumer;
- (c) the nature of the goods or services and the form of marketing or presentation, respectively;
- (d) the arbitrary or fantasy nature of the sign, its use, advertisement and reputation on the market; and
- (e) whether the sign is part of a family of marks.

Article 46 Descriptive signs

With regard to descriptive signs, in addition to the criteria stipulated in Article 45 of this Legislative Decree, the following shall be taken into account:

- (a) graphic and phonetic similarity;
- (b) conceptual similarity; and
- (c) if the sign includes generic and/or descriptive words, an analysis will be carried out on the most distinctive word or words.

Article 47 Figurative signs

With regard to figurative signs, in addition to the criteria stipulated in Article 45 of this Legislative Decree, the following shall be taken into account:

- (a) If the figures are similar, whether they create an identical or similar visual impression.
- (b) If the figures are different, whether they evoke the same concept.

Article 48 Mixed signs

With regard to mixed signs, made up of a description and a figurative element, in addition to the criteria stipulated in Articles 45, 46 and 47 of this Legislative Decree, the following shall be taken into account:

- (a) the description that accompanies the figurative element;
- (b) the conceptual similarity; and
- (c) the major or minor relevance of the descriptive aspect compared to the graphic element with the aim of identifying the characteristic nature of the sign.

Article 49 Conceptual similarity

With regard to a word sign and a figurative sign, the conceptual similarity shall be taken into consideration. With regard to a word sign and a mixed sign, the criteria stipulated in Articles 45 and 47 of this Legislative Decree shall be taken into account. With regard to a figurative sign and a mixed sign, the criteria stipulated in Articles 47 and 48 of this Legislative Decree shall be taken into account.

In all three cases, the criteria stipulated in Article 45 of this Legislative Decree shall also apply.

Article 50 Application for registration of a mark

The application for registration of a mark shall be filed with the competent Directorate. It may include goods and services in one or several classes of the classification and shall include the following elements:

- (a) request form;
- (b) the reproduction of the mark where it involves a descriptive mark with spelling, form or color, or a figurative mark, mixed with or without color, or a graphic representation of the mark where it involves a three-dimensional mark or a visually imperceptible mark;
- (c) the powers, where necessary;
- (d) the proof of payment of the prescribed fees;
- (e) the authorizations required in order to avoid that the sign filed results in being denied registration; and
- (f) where necessary, the registration certificate in the country of origin issued by the granting authority, where the applicant wishes to invoke the right provided for under Article 6 quinquies of the Paris Convention.

Article 51 Request form for application

The request form for application for registration of the mark shall be contained in a form and shall include the following:

- (a) requirement for registration of the mark;

- (b) the name and address of the applicant;
- (c) the nationality or domicile of the applicant. Where the applicant is a legal person, the place of incorporation shall be signaled;
- (d) where applicable, the name and address of the legal representative of the applicant;
- (e) the signature of the applicant or his legal representative;
- (f) the indication of the mark which is to be registered, where the mark is purely descriptive, without any claims on spelling, shape or color; and
- (g) the express indication of the goods and/or services for which the registration of the mark is filed, which shall be designated by their names, grouped according to the classes in the Nice Agreement concerning the International Classification of Goods and Services, each group shall be preceded by the number of the class of that Classification to which that group of goods or services belongs and shall be presented in order of the classes of the said Classification.

Article 52 Filing date of the application

The filing date of the trademark registration application is considered to be the date of its receipt by the competent Documentation Processing Unit, provided that at the time of receipt it contained at least the following:

- (a) the indication that registration of a mark is requested;
- (b) the identification data of the applicant or of the person who submits the application, or that allows the competent Directorate to communicate with that person;
- (c) the mark for which registration is requested, or a reproduction of the mark in the case of word trademarks with special graphics, shape or color, or figurative trademarks, mixed with or without color; or a graphic representation of the trademark in the case of a three-dimensional mark or a mark not perceptible by the sense of sight;
- (d) the express designation of the goods and/or services for which the registration of the trademark is requested; and,
- (e) The proof of the payment date and the number of the payment certificate of the corresponding fee.

If the trademark registration application does not contain the requirements listed in this article, the Document Processing Unit

will require the applicant to complete them within sixty (60) business days following the date of notification.

If such requirements are corrected within the established period, the competent Directorate will consider the date of submission to be the date on which the required requirements were corrected.

If upon expiration of the established period, the applicant does not complete the requested requirements, the application will be considered as not submitted.

Article 52-A Examination of form

Within fifteen (15) business days from the filing date of the application, the competent Directorate examines whether the application complies with the requirements set forth in articles 138 and 139 of Decision 486.

If such examination shows that the application does not contain the requirements indicated in the preceding paragraph, the competent Directorate requires the applicant to complete said requirements within sixty (60) business days following the date of notification.

Article 52-B Accuracy of the application

If there is any inaccuracy in the data included in the registration application, even after the applicant has complied with the requirements indicated in article 52-A, the competent Directorate will notify the applicant to make the pertinent corrections or clarifications within the period of ten (10) business days following the date of notification, extendable, for one time only, for ten (10) more business days.

Article 53 Repealed

Article 54 Opposition

The opposition shall meet the following requirements:

- (a) the correct identification of the file;
- (b) the name and domicile of the person filing the opposition;
- (c) power of attorney proving the representation which is requested;
- (d) the grounds on which the opposition is based;
- (e) the offer of the evidence that one wishes to assert;

- (f) the indication of the payment date and the number of the payment receipt for the corresponding fee;
- (g) where the opposition is based on graphic or mixed signs, an exact clear reproduction thereof shall be attached as registered or filed.
- (h) In the case of Andean oppositions, the presentation of a copy of the certificate of the current registered trademark or of the application for registration in process in the Member Country of the Andean Community that constitutes its basis.

In no case should the power of attorney be required to the extent that it can be obtained directly by the Directorate of Distinctive Signs, in accordance with the law.

Article 55 Correction of opposition requirements

The opposing party shall have a non-extended period of sixty (60) business days to submit the power of attorney if opposition was brought without this document. The period shall start from the day following the receipt of notification that serves notice of the opposition. Once this period has expired, the opposition shall be considered as not having been submitted. Failure to submit the initial power of attorney shall not bring the proceedings to a halt. In case of noncompliance with the provisions of paragraphs d) and f) of the preceding article, the competent Directorate shall request that the opposing party correct its omission, giving it a period of two (2) business days that begins to be computed from the day after notification of the requirement, under penalty of considering the opposition as not presented. In no case should the power of attorney be required to the extent that it can be obtained directly by the Directorate of Distinctive Signs, in accordance with the law.

55.2 In the event of non-compliance with the provisions of section h) of article 54, the competent Directorate requires the opponent to correct his omission, granting him a period of two (02) business days that begins to be computed from the day after the requirement is notified, under penalty of not considering said argument as grounds for the opposition and, if applicable, considering the Andean opposition as not presented.

55.3 Vexatious oppositions shall be sanctioned with a fine of up to fifty (50) UIT.

Article 56 Coexistence of signs

The parties in a case may agree on the coexistence of identical or similar signs provided that, in the opinion of the competent Directorate, the coexistence does not affect the general interests of consumers. Coexistence agreements will also be taken into account when analyzing the applications for registration in which no oppositions have been filed.

Article 57 Conciliation hearing

At any stage of the proceedings, the competent Directorate may summon the parties to a conciliation hearing. The hearing shall be heard by the person appointed by the competent Directorate. If both parties reach an agreement with regard to the disputed subject matter and this agreement does not affect the rights of third parties, a deed shall be drawn up stating the relevant agreement and shall have executive force.

Article 58 Multiclass registrations

Where a single application contains goods and/or services which belong to more than one class in the Nice Agreement concerning the International Classification of Goods and Services, this application shall give rise to a single registration.

The holder of a registered sign which distinguishes specific goods or services may obtain a new registration for the same sign, provided that this sign identifies goods or services that are not covered by the original registration. The new application for registration shall be processed separately following the procedures which are stipulated in this Legislative Decree for the processing of registrations.

Article 59 Division of the application

Where the application for a mark includes various goods and/or services, the applicant may divide this application into two or more divisional applications, distributing the goods or services listed in the initial application.

Divisional applications shall keep the filing date of the application and the benefit of priority where these exist. The division of the application may be requested at any time in the process.

To this end, the applicant shall present a request for division indicating the goods and services, grouped by class, which are broken down from the initial application and which make up the corresponding divisional application. The request for division shall be accompanied by the documents signed up to that date and the proof of payment of the corresponding fees. Upon receipt of the request for division, the competent national Directorate shall examine whether this request meets the requirements established in the preceding paragraph. If defects or irregularities are noted, the applicant shall be notified in order that he corrects these within a period of ten (10) days.

Where the defects are not corrected, the division shall be considered as not having been filed and the initial file shall continue to be processed.

Where the application for division is accepted, the competent national Directorate shall create a new file for each divisional application filed, and a complete copy of the initial file shall be included in each divisional application.

The competent national Directorate shall assign a new number to each divisional application.

Article 60 Assignment of registration applications

60.1 For the assignment of registration applications in process, the provisions of article 14 apply, as appropriate.

60.2 The assignee must appear in person at the procedure, designating a representative, if applicable, and an address where notifications arising from the procedure must be served from now on.

60.3 When the assignment concerns an application for registration of a trade name, the applicant must additionally prove the transfer of the company or establishment with which the trade name being assigned was being used, if applicable.

Article 61 Application for renewal

Applications for renewal of registrations submitted outside the time limits indicated in article 153 of Decision 486 will not be

admitted for processing.

Article 61-A Submission of application for renewal of registration

The application for renewal of registration, by the holder or whoever has a legitimate interest, must be submitted to the competent Directorate, complying with the requirements established in articles 50 and 51, as applicable.

Article 61-B Correction of irregularities in the application for renewal of registration

If the examination shows that the application for renewal of registration does not comply with the formal requirements established in this Legislative Decree, the competent Directorate notifies the applicant so that, within a period of thirty (30) business days following notification, the irregularities are corrected. If upon expiration of the specified period, the irregularities have not been corrected, the application is considered abandoned, ending the procedure.

In the case of payment of the fee, a period of two (02) business days is granted. If upon expiration of the specified period, the respective payment has not been accredited, the application is considered not submitted.

Article 62 Transfer of registration

The registration of a trademark may be transferred, among others, by an act between living persons or by succession, with or without the company to which it belongs.

Any transfer of the registration of a mark may be registered before the competent Directorate. Failure to register shall render the transfer invalid in respect of third parties.

For the purposes of the registration, the transfer shall be made in writing.

Any interested party may file for the registration of a transfer. However, the competent Directorate may refuse this registration, where the transfer could lead to the risk of confusion.

No opposition shall be filed against requests to register trademark transfer contracts, without prejudice to the legal actions which may follow.

Article 63 Trademark license

63.1 The holder of a registered mark or a mark in the process of registration may issue a license to one or more third parties to exploit the relevant mark. The license for use may be registered before the competent Directorate.

63.2 Any interested party may request the registration of a license.

63.3 For the purposes of registration, the license shall be made in writing and the relevant paragraphs of article 14, referring to the formalities established for modifications resulting from a contract, shall apply to it.

63.4 No opposition may not be filed against applications for the registration of trademark license contracts, without prejudice to the appropriate legal actions.

Article 64 Application for registration of amendments

The request for recording amendments and other acts which affect registration shall be submitted to the competent Directorate in compliance with the requirements established in Articles 50 and 51 of this Legislative Decree and with the conditions established in Article 14 of this Legislative Decree, where appropriate.

No opposition may be filed against applications for recording amendments and other acts which affect the registration, without prejudice to the appropriate legal actions.

Article 64-A Renunciation of registration

64-A.1 The request for total or partial withdrawing of registration must be in writing and duly signed.

64-A.2 If the examination shows that said request does not comply with the formal requirements established in article 64 of this Legislative Decree, as appropriate, the competent Directorate shall notify the applicant, if applicable, so that, within a period of thirty (30) business days following notification, he may correct the irregularities. If upon expiration of the specified period, the irregularities have not been corrected, the request shall be considered abandoned, ending the procedure.

64-A.3 In the case of payment of the fee, a period of two (02) business days shall be granted. If upon expiration of the specified period, the respective payment has not been accredited, the request shall be deemed not to have been submitted.

Article 65 Change of Ownership

In cases where the change of ownership does not involve all the goods and/or services listed in the registration of the holder, a separate registration shall be created in respect of the goods and/or services for which there has been a change in ownership.

Article 66 Correction of irregularities in the application for modification of the registry

66.1 If the examination shows that the application for the registration of acts that modify the registry does not comply with the formal requirements established in this Legislative Decree, the competent Directorate will notify the applicant, so that, within a period of sixty (60) business days following notification, he/she may correct the irregularities. If upon expiration of the specified period, the irregularities have not been corrected, the application is considered abandoned, ending the procedure.

66.2 In the case of payment of the fee, a period of two (02) business days is granted. If upon expiration of the specified period, the irregularity has not been corrected, the application is considered as not submitted, and it will be archived.

Article 67 Responsibility in case of licenses

In the case of trademark licenses, the licensee shall be responsible for the quality and suitability of the licensed goods or services towards the consumers as though the licensee were the producer or provider thereof.

Article 68 Lien on the trademark right

The right in the trademark may be used as a guarantee or be the subject of other rights. Similarly, the trademark may be the subject of a garnishment independently from the firm or business that uses the mark and be the subject of measures that result from the enforcement proceedings. In order that the rights and measures set out above take effect in respect of third parties, they shall be recorded in the relevant register.

Article 69 Modifications of the representative or legal address of the holder of the registration

If there is any change regarding the representative or legal address of the holder of a distinctive sign during the period of validity of the registration or license, if applicable, the holder of the registration must inform the competent Directorate in the file in which the last registration was made, whether it is a registration file, renewal or modifying act that entails the change of ownership of the distinctive sign.

Article 70 Division of registration

Where a registration of a trademark includes several goods and/or services, the holder may at any time divide the said registration into two or more divisional registrations, distributing the goods or services listed in the initial registration, for which it shall be necessary to meet the requirements established in Articles 50 and 51 of this Legislative Decree, where appropriate. The competent Directorate shall establish the payment of a fee for each division made.

For the division of the registration, the procedure established for the division of applications for registration shall be followed, as appropriate.

Article 71 Cancellation of registration

71.1 The request for cancellation of the trademark registration shall be submitted to the competent Directorate and shall comply, where appropriate, with the procedures provided in Article 54 of this Legislative Decree. Likewise, the provisions of Articles 55 and 57 of this Legislative Decree may be applied.

71.2 In the event that the request for cancellation has been submitted without attaching the corresponding power document, the claimant has a non-extendable period of sixty (60) business days to submit it. Once said requirement has been corrected, the request for cancellation is forwarded to the defendant; otherwise, and once said period has expired, the request for cancellation is deemed not to have been submitted. In no case shall the power of attorney be required to the extent that it can be obtained directly by the Directorate of Distinctive Signs, in accordance with the law.

71.3 The request for cancellation of a trademark, as a means of defense, must be invoked at the time when the applicant for the sign to be registered responds to the opposition initiated against him, in the same file in which it is processed. For this purpose, the request for cancellation as a means of defense must contain the indication of the payment date and the number of the payment receipt for the corresponding fee.

Article 72 Notification of cancellation

The competent Directorate notifies the request for cancellation to the holder of the registration at the address that the holder has indicated in the application for registration, renewal or modification of the trademark that is the subject of said application, in accordance with the provisions of article 69. In cases where the holder of the registration cannot be notified in accordance with the criteria established above, the last address specified by the holder of the registration in a nullity or cancellation procedure processed before this competent Directorate is notified.

In cases where the holder of the registration cannot be notified in accordance with the provisions of the preceding paragraph, the notification by edict shall be issued in accordance with the provisions of the Code of Civil Procedure. The cost of notification shall be payable by the party requesting the cancellation.

Article 73 Request for nullity

The request for nullity of the trademark registration shall be submitted to the competent Directorate and shall comply, as applicable, with the conditions provided for in Article 54.

The provisions contained in articles 55, 57 and 71.2 may be applied.

The request for nullity is not admissible if the matter was the subject of an opposition on the same grounds between the same parties or the party that derives its right from them.

Article 73-A Action for recovery

The action for recovery in the terms of article 237 of Decision

486, Common Provisions on Industrial Property, is presented before the respective Commission of the competent Directorate and must comply, as appropriate, with the formalities provided for in articles 8-B and 54. Likewise, the provisions contained in articles 8-C, 73 and 74 may be applied.

Article 74 Notification of nullity

After the request for nullity is received, the competent Directorate shall notify the holder of the trademark, subject to these ends to the provisions of Article 72 of this Legislative Decree, so that within a period of two (2) months the holder shall substantiate the grounds and present the proof which is deemed relevant. Prior to the said period lapsing, the party concerned may request an extension of two (2) additional months. Once the periods referred to in this article have lapsed, the competent Directorate shall decide on the annulment of the registration, and shall notify the parties by means of a decision.

TITLE VII PROVISIONS REGARDING THE REGISTRATION OF ADVERTISING SLOGANS

Article 75 Registration of commercial slogan

75.1 The application for registration of a commercial slogan must specify the registration certificate number of the registered product and/or service trademark or, if applicable, the file number of the registration application with which it will be used. If this requirement is not met, the competent Office requires the applicant to correct this observation within two (02) business days following the date of notification. If, upon expiration of the established period, the applicant does not complete the indicated requirement, the application is considered not submitted.

75.2 The registration of a commercial slogan is granted for a renewable period of ten years, counted from its granting.

75.3 The cancellation, nullity, waiver or expiration of the registration of the trademark to which the commercial slogan is linked, also determines the cancellation, nullity, waiver or expiration of the commercial slogan, even when the period indicated in the previous paragraph has not expired.

75.4 If a modification of the registration of a trademark to which a commercial slogan is linked is requested, the modification of the latter must also be requested.

If the previous paragraph is not followed, the request for modification of the trademark registration will not be admitted for processing.

Article 76 Linking commercial slogans to a registered trademark

While the registration of the advertising slogan is in force, the holder may request before the competent Directorate that the commercial slogan be linked to another registered trademark under his name and in the same class, such effects to the procedure established in articles 64 and 66, as applicable.

TITLE IX PROVISIONS REGARDING THE REGISTRATION OF COLLECTIVE MARKS

Article 77 Collective marks

Without prejudice to the provisions of Article 180 of Decision 486, a collective mark may comprise any element which identifies the goods to which it is applied as originating from a specific geographical location where a given quality, reputation or other characteristic of the goods are fundamentally attributable to its geographical origin.

Article 78 Exercising actions resulting from a collective mark

Actions resulting from the registration of a collective mark may be brought by its holder, except where provisions to the contrary are established in the rules for use. The holder of a collective mark may demand, in the interests of persons entitled to use the mark, compensation for damages which may have been suffered because of unauthorized use of the mark.

Article 79 Invalidation, cancellation and lapse of the collective mark

The invalidation, cancellation or lapse of a collective mark shall be governed by the rules applicable to the trademarks of goods and services.

TITLE VIII PROVISIONS REGARDING THE REGISTRATION OF CERTIFICATION MARKS

Article 80 Certification mark

Without prejudice to the provisions of Article 185 of Decision 486, a certification mark may comprise any element which identifies the goods to which it is applied as originating from a specific geographical location where a given quality, reputation or other characteristic of the goods are fundamentally attributable to its geographical origin.

Article 81 Exercising actions resulting from a certification mark

Actions resulting from the registration of a certification mark may be brought by its holder, except where provisions to the contrary are established in the rules for use. The holder of a certification mark may demand, in the interests of the persons entitled to use the mark, the compensation for damages which may have been suffered because of the unauthorized use of the mark.

Article 82 Invalidation, cancellation and lapse of a certification mark

Invalidation, cancellation and lapse of a certification mark shall be governed by the rules applicable to the marks of goods and services.

TITLE IX PROVISIONS REGARDING THE TRADE NAME

Article 83 Trade name

In the application for registration of a trade name, the date on which the trade name was used for the first time shall be stated and demonstrated, and the economic activity shall be specified. The competent Directorate, on granting the registration, shall decide in favor of the applicant with the date of first use of the trade name.

Article 84 Evidence

The accreditation of the use of the requested trade name is carried out through the presentation of evidence that demonstrates the use of the same in relation to each and every one of the economic activities for which said trade name is intended to be registered, according to what is stated in its registration application. Said evidence must have been issued on a date prior to the presentation of the registration application, in accordance with articles 191 and 193 of Decision 486, Common Provisions on Industrial Property.

The evidence to be presented may consist of payment vouchers, advertising and any other document that causes the Authority to be convinced of the effective and real use of the trade name in the market. In these, the requested sign must be appreciated as it has been stated in the application.

The date of first use of the trade name whose registration is requested is considered to be the date stated in the oldest evidence, taking into account what is established in the previous paragraph.

If the aforementioned evidence is not presented, the Directorate of Distinctive Signs requires the applicant to provide a period of ten (10) business days to correct said omission.

Exceptionally, this period may be extended at the request of a party, made before its expiration, for a period of ten (10) additional business days, counted from the next business day after the date of notification.

For the purposes of publication, only those economic activities whose use has been duly accredited are considered.

Article 85 Repealed

Article 86 Exercising the right on the basis of a trade name

In cases where there is intention to enforce a right on the basis of a used or registered trade name, the holder of the trade name shall demonstrate his use or knowledge thereof in Peru by the relevant public consumers so as to distinguish economic activities equivalent or similar to those that are distinguished by the sign thus constituting grounds for bringing legal action.

Article 87 Additional implementation

Provisions in relation to the Title of Trademarks of this Legislative Decree and Decision 486 shall be applicable to this Title, where relevant.

TITLE X PROVISIONS REGRADING THE APPELLATIONS OF ORIGIN

Article 88 Appellations of origin

The State of Peru shall be the holder of Peruvian appellations of origin and shall grant authorization for the use thereof.

Article 89 Estoppel

In addition to the provisions of Article 202 of Decision 486, appellations of origin may not be declared where:

- (a) this is likely to cause confusion with a mark filed for registration in good faith or already registered in good faith;
- (b) this constitutes a complete or partial reproduction, imitation, translation, transliteration or transcription of a well-known mark whose holder is a third party regardless of the goods or services to which the sign is applied, where its use would be likely to cause a risk of confusion or association with that third party or with his goods or services; the unfair use of the prestige of the mark; or the dilution of its distinctive power or its commercial or advertising value.

Article 90 Repealed

Article 91 Content of the application

The application to obtain authorization for use shall contain and have in annex the following:

- (a) name and domicile of the applicant;
- (b) the powers of attorney where necessary;
- (c) the documents proving the existence and representation of the legal person applying;
- (d) the appellation of origin which is to be used;
- (e) certification of the place or places of exploitation, production or manufacture of the product. This will be accredited with the minutes of the inspection visit carried out by an authorized body, according to the Regulations of the respective Application of Origin;
- (f) certification of the characteristics of the product which is sought to be distinguished with the appellation of origin, including its components, production or manufacturing methods and factors related to the protected geographical area, which shall

be accredited with the minutes of the inspection visit carried out and the certification issued by an authorized body, according to the Regulations of the respective Application of Origin and the certification issued by an authorized body;

(g) certification of compliance with the Peruvian Technical Standard,

where relevant; and

(h) proof of payment of the corresponding fees.

Article 92 Different geographical areas

In cases where the production and manufacture of the product to be distinguished by an appellation of origin do not occur in the same geographical area, the applicant shall seek to demonstrate that both areas, both that of production of the raw material and that of the manufacture of the product, are authorized areas and are included in the declaration of protection of the appellation of origin.

Article 93 Compliance of authorization

If the application for authorization of use does not comply with the requisite conditions in this Legislative Decree, the competent Directorate shall notify the applicant in order that he ensures these conditions are complied with, granting for this purpose a non-renewable period of fifteen (15) days.

Article 94 Recognition abroad

The State shall, by means of conclusion bilateral or multilateral agreements, promote recognition abroad of Peruvian appellations of origin.

TITLE XI PROVISIONS REGARDING THE ACTIONS FOR INFRINGEMENT OF RIGHTS

CHAPTER I The powers of the competent national Directorate

Article 95 Processing infringement actions

To process infringement actions, the competent Directorates shall have the following powers to:

- (a) carry out preliminary investigations;
- (b) initiate infringement proceedings ex officio or at the request of a party;
- (c) carry out inspection visits and process other evidence;
- (d) order precautionary measures within or separate to the proceedings with the aim of guaranteeing the effectiveness of the decisions;
- (e) summon the parties to a conciliation hearing;
- (f) order sanctions to protect industrial property rights; and
- (g) other powers assigned to them by the current regulatory provisions.

Article 96 Powers of the Intellectual Property Chamber

To hear infringement actions, the Intellectual Property Chamber of the INDECOPI Tribunal shall have the powers to:

- (a) review in second and final administrative instance the actionable acts issued by the competent Directorates;
- (b) act on evidence ex officio to clarify the alleged facts and, if applicable, sanction the infringing conduct;
- (c) issue precautionary measures with the same powers as those granted to the Directorates where relevant;
- (d) summon an oral hearing; and
- (e) others assigned to it by the current legal provisions.

CHAPTER II Acts that constitute infringement

Article 97 Acts of infringement

Acts that contravene the industrial property rights recognized in current legislation and that are carried out or may be carried out within the national territory constitute infringement.

The administrative responsibility derived from acts of infringement of industrial property rights is objective.

Article 98 Unfair competition

Complaints regarding acts of unfair competition in forms of confusion and exploitation of the reputation of others which are related to some component of registered industrial property, or to well-known distinctive signs or trade names, whether or not registered, shall be exclusively within the remit of the competent national Directorate on industrial property, as appropriate, provided that the said complaints are lodged by the holder of the respective right.

Complaints regarding acts of unfair competition in forms of confusion and exploitation of the reputation of others, which include elements of industrial property and elements which, without constituting industrial property rights, are related to the use of an element of industrial property, shall also be the jurisdiction of the industrial property bodies.

In the cases contemplated in this article, administrative liability is objective.

CHAPTER III Proceedings for Infringement of Industrial Property Rights

Subchapter 1 Proceedings at the request of a party

Article 99 Proceedings at the request of a party

99.1 In the event where the proceedings are initiated at the request of a party, the complaint shall include the following:

- (a) Full name and surname, company name or corporate name, national identity document, foreign resident card or equivalent document of the complainant, procedural address, and, if applicable, the identification data of the person representing the complainant. In the event where an address is not indicated or where this is inaccurate, non-existent or an address to which the notification cannot be sent, the provisions of Article 100 of this Legislative Decree shall be applied.
- (b) Taxpayer identification number, if applicable.
- (c) The specific request and the factual grounds and, where possible, legal grounds which support the complaint.

- (d) Signature or fingerprint, where the party does not know how to sign or is impeded from doing so.
- (e) The powers may be recorded in a public or private deed and shall comply with the following conditions:
 - e.1 In the case of natural persons, the signature shall be authenticated by a notary.
 - e.2 In the case of legal persons, the document shall contain on whose behalf the principal is acting and his signature shall be authenticated by a notary.
 - e.3 In cases where powers are granted by non-resident persons, these shall in addition be authenticated by a Peruvian consular official.
 - e.4 Upon presentation of the power of attorney by the person acting as representative, the existence of and representation by the latter shall be certified.In no case, the power of attorney must be required to the extent that it can be obtained directly by the competent Directorates, in accordance with the law.
- (f) The means of proof intended to prove the commission of the infringement.
- (g) Identification of the alleged offender and of the place where notice shall be served to the alleged offender. In the event that the identity of the alleged offender is not known, the relevant inspection visit shall be requested in the place or places where it is presumed that the acts of infringement are committed, in compliance with the requirements established to this end, which does not exempt the complainant from the responsibility of identifying the alleged offender in the case where his identity was not obtained during the inspection visit. If the place where the alleged offender shall be notified is not known, the provisions established in Article 100 of this Legislative Decree shall be applied.
- (h) Identification of the certificate of registration which protects the right of the plaintiff. In the case where actions are based on a trade name, whether registered or not, the documents that prove the current, real and effective use of the same must be presented prior to the time of filing the complaint. In the case where actions are based on well-known distinctive signs, such status must be accredited.
- (i) Payment of the fees for lodging a complaint, for each defendant, in accordance with the provisions established in

the Single Text on Administrative Procedure (TUPA).

- (j) Copy of the document and its attachments, depending on the number of notifications to be made. In the case where the proof presented constitutes physical samples, additional specimens, or failing which, a representation thereof shall be included.

Article 100 Address

The address for the purposes of the proceedings shall be considered to be that indicated by the party itself, which shall be considered valid until a change is expressly communicated.

If the parties indicate an inaccurate or non-existent address or an address to which the notification cannot be sent, the valid address shall be considered to be the last address where the party received notification during the proceedings.

Without prejudice to the provisions of the preceding paragraphs and in the corresponding norms regarding the notification rules, the following rules shall also be taken into account in the proceedings to which this Title refers:

- (a) Notification of the alleged offender:

- a.1 Notification of the complaint to the alleged offender shall be sent to the address indicated to this end by the complainant. If this address is inaccurate, non-existent or is an address to which the notification cannot be sent, the complainant shall be required to provide within two

- a.2. If the alleged offender cannot be notified, the address where the offender is located and where at least the first notification has been made is considered a valid address for notification purposes, unless a different address is provided.

- a.3. In the case where it was not possible to notify the alleged offender in accordance with the criteria established above, the complainant shall request that the authority order the notification via publication, at his/her expense, in compliance for such purposes with the requirements established in the relevant norms.

The publication must be made in the official newspaper El Peruano and in one of the national newspapers with the largest circulation,

only once. The publications must preferably be made simultaneously in each newspaper or, if this is not possible, with a maximum of three (03) calendar days between each publication. The administrator must comply with making both publications within ten (10) business days counted from the day after the notification in which the publication orders are attached, publications made after that time are not valid, in which case he may request copies of said orders, which must be published in compliance with the indicated deadlines.

The interested party must prove having made the aforementioned publications within the period of thirty (30) business days, counted from the day after the publication orders are notified. The issuance of copies of the publication orders does not give rise to a new calculation of the period of thirty (30) business days.

Once the period has elapsed without having complied with proving the publications in accordance with the provisions of the previous paragraph, the procedure is declared abandoned in those cases in which the resolution that ends the instance has not been issued.

The provisions indicated above will also apply in cases of requests for payment of costs and expenses.

(b) Notification of the complainant:

b.1. In this case where it is not possible to notify the complainant in accordance with the criteria established above, the complaint shall be abandoned and the record filed after thirty (30) working days from the complaint being lodged or the impossibility of notification of the corresponding administrative act, as the case may be, the complaint is abandoned and the file is archived.

b.2. If the administrative act, the notification of which was not possible, is the act which terminates the proceedings, the act which exhausts administrative remedies or is any act issued after the first aforementioned act and before the second aforementioned act, it is notified via publication, with the respective cost to be transferred to the complainant at the time when it is presented in the procedure or in any other procedure instituted before the competent industrial property body.

b.3. If the administrative act, the notification of which was not possible, is one which rule on a document submitted by one of the parties after the issuance of the decision which terminated the proceedings or exhausted the administrative remedies, such document shall be considered as not having been submitted.

(c) For notification to temporary warehouses authorized by SUNAT. When it is necessary to inform temporary warehouses authorized by SUNAT of one or more precautionary measures issued in files related to goods that are stored in said warehouses, these are validly notified by email. For this purpose, the competent body requires in writing that the temporary warehouse indicate the email address to which it must be notified, within the term of five (05) business days, under penalty of imposing the sanctions established in article 116, for obstructing the exercise of the functions of the competent national Directorate.

Article 101 Correcting omissions

In the event that the requirements indicated in Article 99.1 of this Legislative Decree are not met, with the exception of literal f), the interested party is notified to correct the omissions incurred within two (02) business days, under penalty of considering the complaint as not having been filed. Once the requirements are complied with, the complaint shall be accepted for processing and notice thereof shall be served to the alleged offender.

Article 102 Response to the complaint

102.2 The response to the complaint shall be submitted within a non-extendable period of five (05) business days, counted from the day after its notification, without prejudice to the alleged offender being able to expand his arguments and present or provide evidence up to the moment in accordance with the provisions of article 109.

102.2 The response to the complaint shall comply with the same requirements as those provided for in Article 99 of this Legislative Decree as applicable. If these requirements are not met, the defendant shall be notified that he has two (2) working days to correct the omissions which may have occurred, failing

which the challenge shall be considered as not having been presented.

102.3 If the accused does not respond to the complaint or does not correct the omissions incurred in his response within the time limits established for each case, he is declared in default.

Article 103 Evidence

The parties may only submit the following types of evidence:

- (a) documents, including all types of writings, printed matter, photocopies, plans, pictures, drawings, radiographs, cinematographic tapes and other audio and video reproductions, telematics in general and other objects and goods that collect, contain or represent any fact, human activity or its result;
- (b) inspection; and
- (c) expert reports.

Exceptionally, evidence other than that mentioned in the preceding paragraphs may be submitted. This evidence shall be accepted only if, in the opinion of the competent Directorate, it is relevant to the settlement of the case.

Article 104 Burden of proof

The burden of proof shall fall on the party stating the facts which substantiate his claim, or the party contesting these facts and asserting new facts.

In cases in which it is claimed that there is an infringement of a patent whose subject matter is a process for obtaining a product, it shall fall on the alleged offender to prove that the process that he used to obtain the product is different from the process protected by the patent which is allegedly infringed. To this end it shall be presumed, except where proven to the contrary, that any identical product produced without the consent of the patent holder has been obtained by means of the patented process, where:

- (a) the product obtained with the patented process is new; or
- (b) it is likely that the identical product has been manufactured using the process, and the holder of the patent of this process is unable to determine through reasonable efforts the process actually used.

Article 105 Assumption of expenses

The expenses incurred by the expert reports carried out, the use of evidence, inspections and others arising from the processing of the procedure shall be borne by the party requesting them.

Article 106 Rejection of evidence

The competent Directorate, by means of a reasoned resolution, may reject the evidence provided or offered by the parties when it is manifestly irrelevant or unnecessary.

Article 107 Ex officio evidentiary proceedings

The competent Directorate is empowered to carry out ex officio the evidentiary actions that are necessary for the examination of the facts, collecting the documents, information or objects that are relevant to determine, where appropriate, the existence or not of the administrative infraction that is charged.

Article 108 Reconciliation hearing

At any stage during the procedure, and even before the complaint is admitted for processing, the parties may be summoned to a reconciliation hearing. The hearing will take place before the national competent Directorate or the person appointed to this end. If both parties reach an agreement with respect to the complaint, a deed in which the relevant agreement is stated shall be drawn up and shall have executive force.

Article 109 Stage of resolution of the file

When the file is in the stage of being resolved, the competent Directorate must record this in the file.

At this stage, the parties may not present additional evidence or request its intervention, unless required to do so by the competent Directorate.

Article 110 Limitation of the action

The action for infringement shall be limited to two years from the date the holder became aware of the infringement or in any case five years from when the infringement was committed for the last time.

Subchapter 2 Ex Officio Actions

Article 111 Ex officio actions

Actions for infringement may be initiated ex officio subject to the procedure established in Subchapter 1 of this Chapter where relevant.

CHAPTER IV On Preliminary Measures

Article 112 Request and modification of precautionary measures

Requests for precautionary measures are submitted by the holder of the respective right and must comply with the same requirements provided for in article 99 of this Legislative Decree as applicable. If such requirements are not met, the applicant is notified to correct the omissions incurred within two (02) business days, under penalty of the request being deemed not submitted.

Precautionary measures may be modified or lifted during the course of the procedure, ex officio or at the request of a party.

Article 113 Expiration of precautionary measures

Precautionary measures expire with the decision that definitively resolves the procedure, unless the complaint has been declared unfounded in the first instance, in which case they expire with the issuance of said pronouncement.

Article 114 Exemption from liability

Precautionary measures are issued at the expense, cost and under the responsibility of the person requesting them.

The competent authority is exempt from any liability that may be attributed to it by the decision it adopts, either ex officio or at the request of a party, with respect to precautionary measures, in the case of actions carried out or planned in good faith.

CHAPTER V Powers of investigation and of inspection visits

Article 115 Powers of investigation

Without this list being exhaustive, the competent national Directorate shall have the following powers of investigation:

(a) To demand that natural or legal persons, as well as public or private entities, whether State or non-State, profit-making or non-profit making, present all documents of any kind, including account books and the company's books, proof of payment, trade correspondence and electronic registers including, when this is the case, the programs necessary to read such registers; to request information related to the organization, business, shareholders and ownership structure of the firms.

(b) To summon and interview, through officials who are appointed to this end, persons under investigation or their representatives, employees, officials, auditors and third parties, using the technical means which are considered necessary to create a complete and reliable register of their declarations, to this end the competent national Directorate may use audiotape or videotape recordings.

(c) To carry out inspections, with or without prior notification, on the premises of the natural or legal persons, as well as of public or private entities, whether State or non-State, profit-making or non-profit making. In these inspections, the books, registers, documentation and assets may be examined, the development of productive processes established and statements taken from the persons who are part thereof, and who shall, furthermore, provide information which is required during the diligence. During the inspection, a copy of the physical or electronic archives may be made, as well as of any document that is considered relevant, or photographs or films made where considered necessary. To carry out the inspection, support from the police may be requested. Where forced entry is necessary, a warrant shall be required, which shall be resolved in a maximum period of twenty-four (24) hours.

(d) To demand that natural or legal persons, as well as public or private entities, whether State or non-State, profit-making or

non-profit making, adopt any measure that allows the preservation, permanence and integrity of documents, processes and assets that are the object of investigation and the collaboration that is necessary for the exercise of their functions.

(e) To require, by means of a precautionary measure or resolution that puts an end to the proceedings, natural or legal persons, as well as public or private entities, whether State or non-State, profit-making or non-profit making, to adopt measures that prevent the continuation or perpetration of acts carried out by third parties that involve the unauthorized use of elements protected by industrial property.

The competent national Directorate may assign its powers of investigation in cases where it considers this appropriate.

The judicial authorities may order the offender to report on the identity of third parties who have participated in the production and distribution of infringing goods or services and on their distribution circuits. Likewise, the judicial authorities will have the power to order the offender to provide said information to the owner of the right.

Article 116 False information

Any person who knowingly provides the competent national Directorate with false information or hides, destroys or alters information or any book, register or document which has been requested or is relevant for the purposes of the decision to be adopted, or who without justification fails to comply with the requirements regarding information demanded of him, or refuses to appear or prevents or hinders the exercise of the duties of the competent national Directorate, shall be sanctioned for such acts with a fine of no more than fifty (50) UIT, without prejudice to criminal liability where relevant. The fine shall subsequently be doubled in the event of a repeat offense.

Article 117 Request for information

The competent national Directorate may request information from any public entity and check the data received against those which have been obtained by other means. Where confidential information

is received, the competent national Directorate shall take the relevant security measures to keep the information confidential in accordance with the relevant rules.

Article 118 Inspection proceedings

At any stage of a procedure, or before its commencement, an inspection may be carried out ex officio or at the request of a party. This will be carried out by the competent Directorate or by the person designated by it.

The inspection request shall be duly supported; likewise, the payment of the corresponding fee must be accredited and the place where it shall be carried out shall be indicated.

In the case of inspections at the request of a party, these shall be carried out after coordination with the applicant, who has a period of thirty (30) working days to carry out said coordination. After the indicated period has lapsed without the latter taking place, the file shall be abandoned if the inspection visit constitutes the purpose of the procedure or if, together with it, the complaint was to be notified to the alleged offender; in other cases, the procedure will continue according to the state in which it is found.

Whenever an inspection is carried out, a report shall be drawn up and signed by the person in charge of the inspection as well as by those who participated in it. If the accused, his representative or the person in charge of the establishment refuse to do so, this fact shall be recorded.

Article 119 Intervention of the National Police

For the purposes of the use of evidence, as well as for the performance of the proceedings, the competent national Directorate or the person designated by it may request the intervention of the National Police in order to guarantee the fulfillment of its functions.

CHAPTER VI Sanctions, Final Measures and Coercive Fines

Subchapter 1 Sanctions

Article 120 Sanctions

Without prejudice to the measures which are ordered so as to end the acts of infringement or to prevent such acts occurring, the following sanctions may be imposed:

- (a) a warning
- (b) a fine.

The fines which the competent national Directorate may determine for infringements of industrial property rights shall be no more than one hundred and fifty (150) UIT. In cases where actual unlawful benefits obtained from the infringing activity are higher than the equivalent of seventy-five (75) UIT, the fine may be 20 per cent of the sales or gross income obtained through the infringing activity.

A repeat offense shall be considered an aggravating circumstance, which is why the applicable sanction shall not be less than the preceding sanction.

If the obligor fails to comply within five (5) working days with the terms of the decision that concludes proceedings or which exhausts the administrative remedies, a sanction shall be imposed of up to the maximum permitted fine and the enforced collection thereof shall be ordered. If the obligor persists in failing to comply, the competent national Directorate may subsequently and unlimitedly double the fine imposed until the obligor complies with the decision, without prejudice to being able to denounce the party responsible before the Public Prosecutor with a view to the latter ordering the appropriate criminal proceedings.

Article 120-A Non-compliance with the rules applicable to genetic resources and traditional knowledge

The failure of the patent applicant to comply with the contract requirement referred to in article 26, letters h) and i), of Decision 486 of the Andean Community Commission, and developed in articles 20 and 21 of the Regulation on Access to Genetic Resources, will give rise to one or more of the following sanctions, unless the applicant withdraws from the patent granting procedure or

provides a satisfactory explanation that the invention does not use such traditional knowledge or genetic resource of which Peru is the country of origin:

- (a) Fine of up to 1,000 UIT.
- (b) Compensation.
- (c) Fair and equitable distribution of benefits, including distribution of royalties and/or other monetary or non-monetary measures.
- (d) Technology transfer and capacity building.
- (e) Authorizations for use.

Whenever compulsory licenses are required in the field of patents, Articles 61 to 69 of Decision 486 of the Andean Community Commission and Article 40 of the legislative decree of this Law shall apply.

Article 121 Determination of the sanction

To determine the sanction to be applied, the competent national authority shall take into consideration, among others, the following criteria:

- (a) the actual or potential illicit benefit from the commission of the infringement;
- (b) the probability of detection of the infringement;
- (c) the modality and scope of the infringing act;
- (d) the effects of the infringing act;
- (e) the duration in time of the infringing act;
- (f) the recidivism in the commission of an infringing act;
- (g) the bad faith in the commission of the infringing act.

If applicable, these criteria may also be taken into account for the purposes of graduating the fine to be imposed.

Subchapter 2 Final measures

Article 122 Final measures

Without prejudice to the sanction which is imposed for the commission of an infringing act, the competent national authority may order, inter alia, the following final measures:

- (a) the cessation of the acts that constitute the infringement;
- (b) the withdrawal from commercial channels of the products resulting from the infringement, including packaging,

- wrappings, labels, printed materials or advertising or other materials, including the materials and means used to commit the infringement;
- (c) the prohibition against the importation or exportation of the products, materials or means referred to in item (b);
 - (d) the measures necessary to prevent the continuation or repetition of the infringement;
 - (e) the destruction of the products, materials or means referred to in item (b) or the temporary or definitive closure of the establishment of the defendant; or
 - (f) the temporary or definitive closure of the establishment of the defendant;
 - (g) the publication of the decision that concludes the proceedings and its notification to the persons concerned, the cost of which shall be borne by the infringer.

In the case of products that bear a false trademark, the suppression or removal of the trademark must be accompanied by actions aimed at preventing these products from being introduced into commerce. Likewise, these products will not be allowed to be re-exported in the same state, nor to be subjected to a different customs procedure.

Cases duly qualified by the competent national authority, or those that have express authorization from the owner, will be excepted.

The Intellectual Property Division of INDECOPI has the same powers as the competent bodies in the first administrative instance for the issuance of definitive measures.

Article 122-A Destination of physical samples provided

In cases where samples are presented that by their nature pose a risk to health or that by their size or characteristics present difficulties for their storage, they may, alternatively, be discarded or returned to the administered. If the decision is made to return them, the administered party will be summoned to collect them, under penalty of disposing of said samples in accordance with the provisions of the following paragraph. In any case, the relevant parts of the physical samples must be kept for the resolution of the dispute, or photocopies, photographic records of the products or any other suitable means must be

obtained that allows their evidentiary value to be preserved, leaving a record in the file of the relevant characteristics of the physical samples provided.

Once the procedure has been concluded, and the decision has not been challenged before the Judiciary within the legal term, the competent Directorate may order the return of the physical samples to the parties that have provided them as evidence, for which purpose it orders them to collect them within ten (10) business days, under penalty of ordering their destruction or adjudication, in accordance with the provisions of article 63 of Legislative Decree 807. In this case, the competent Directorate makes the necessary arrangements to obtain photocopies, photographic records of the products or any other suitable means that allows preserving the evidentiary value of the same, leaving a record in the file of the relevant characteristics of the physical samples provided.

This provision is applicable to all procedures that are processed in the respective Intellectual Property Directorates.

Subchapter 3 Coercive fines

Article 123 Fines

If the party obligated to comply with a precautionary measure ordered by the competent National Directorate does not do so, he shall have a fine of no more than one hundred and fifty (150) UIT imposed on him, for the gradation of the fines the criteria established for the determination of the sanction shall be taken into account. The corresponding fine shall be paid within a period of five (5) working days, upon expiry of which enforced collection shall be ordered.

In the case of persistent non-compliance as referred to in the preceding paragraph, the competent National Directorate may impose a new fine, subsequently and unlimitedly doubling the amount of the last imposed fine.

Article 124 False accusations

Any party who is aware of the falseness of the accusation or the lack of a reasonable motive and who denounces any natural or legal person or other public or private law entity, whether State or non-State, profit-making or non-profit making, by attributing

to it a punishable infringement shall be sanctioned with a fine of up to fifty (50) UIT through a decision duly justified. The administrative sanction shall apply without prejudice to the criminal sanction or the appropriate compensation for damages.

Subchapter 4 Reduction of the fine

Article 125 Reduction of the fine

The fine applicable shall be reduced by twenty-five (25) per cent where the infringer pays the amount thereof prior to the expiry of the period for appealing against the decision which imposed that fine, provided that no appeal against the aforementioned decision has been filed.

CHAPTER VII Costs and Fees

Article 126 Costs and fees

At the request of a party, the competent National Directorates shall order the losing party to assume the payment of the costs and expenses of the procedure incurred by the other party or by INDECOPI. To this end, the winning party must prove the expenses incurred for the aforementioned concepts.

The provisions of the preceding paragraph are also applicable to frivolous oppositions referred to in article 23, without prejudice to the corresponding fine.

Article 127 Grounds

The competent National Directorates, shall establish, by means of a reasoned decision, the scope of the award of costs and fees, both in terms of the amount and in terms of the obligated parties and beneficiaries, according to the incidents of the proceeding and in accordance with the liquidation that, for such purpose, the winning party submits, once the resolution imposing them is consented.

The decision which determines the costs and fees, once consented to, shall have the status of an enforceable title.

CHAPTER VIII Term for the conclusion of the proceedings

Article 128 Term for the conclusion of the proceedings

The competent National Directorates shall have maximum term of one hundred and eighty (180) working days to issue a decision on the disputed matter.

CHAPTER IX Compensation for damages

Article 129 Compensation for damages

Once the administrative remedies has been exhausted, compensation for damages which may have occurred may be requested through civil remedies. The civil action shall be limited to two (2) years after the administrative process is concluded.

Article 130 Unconsidered profits

In addition to the provisions in Article 243 of Decision 486 and with regard to the alleged counterfeiting of trademarks, any profits obtained by the offender and attributable to the infringement shall be taken into account, if applicable, provided that they have not been considered at the time of calculating the amount of compensation.

TITLE XII APPEAL ACTIONS

Article 131 Appeal for reconsideration

Except for infringement proceedings, an appeal for reconsideration may be brought against decisions issued by the competent Directorate within fifteen (15) days following notification thereof and shall be accompanied by new evidence. The appeal for reconsideration cannot be based on the modification of the descriptive report, the claims or the drawings.

Article 132 Appeal

An appeal may be filed against the decision that brings the proceedings to a close issued by the competent Directorates within fifteen (15) days following notification thereof. The appeal cannot be based on the modification of the descriptive report, the claims or the drawings.

Article 133 Scope of the appeal in infringement proceedings

In infringement proceedings, the appeal may be filed, in addition to the case contemplated in the preceding article, against the resolution that imposes fees, against the resolution that rules on a request for precautionary measures, against administrative acts that determine the impossibility of continuing the procedure and against acts that may cause defenselessness.

The only appeal that may be filed during the processing in the infringements areas of the competent Directorates is the appeal. The time limit for the filing of the appeal in proceedings of the areas of infringements of the competent Directorates is fifteen (15) working days.

Article 134 Admissibility of the appeal

Appeals must be supported by the same authority that issued the resolution, with the presentation of new documents, with a different interpretation of the evidence produced or with questions of pure law, also specifying the grievance produced.

Once the requirements established in this article and in the Single Text of Administrative Procedures (TUPA) of INDECOPI have been verified, the competent body must grant the appeal and

elevate the proceedings to the second administrative instance.

In the case of appeals filed against the resolutions referred to in paragraphs 4.3 and 4.4 of article 4, the competent Directorate grants the appeal and elevates the proceedings to the respective Commission, which acts as the last administrative instance.

Article 135 Effect of the appeal

The appeal against decisions which bring to a close the proceedings shall be granted with suspensive effect.

The appeal against fines shall be granted with suspensive effect.

The appeal against decisions which order precautionary measures shall be granted without suspensive effect.

The appeal of administrative acts that determine the impossibility of continuing the procedure and administrative acts that may cause defenselessness are granted with suspensive effect.

Where relevant, the appeal shall be processed in a different case record.

TITLE XIII PROCEEDINGS BEFORE THE TRIBUNAL

Article 136 Proceedings before the Tribunal

In all cases, the Specialized Chamber for Intellectual Property shall forward the appeal to the other party so that it may comply with presenting its arguments, within a period equivalent to that which the appellant had to file its appeal.

When responding to the transfer, said party may adhere to the appeal, having to comply with the requirements required for filing the appeal, except for the period for its presentation. The response shall be made known to the appellant for a period equal to that indicated in the previous paragraph.

Failure to reply to the appeal or the response is not considered an element of judgment against the situation of the party that did not do so.

The maximum period of the appeal procedure before the Specialized Chamber for Intellectual Property is one hundred and eighty (180) business days.

Article 136-A Submission of briefs to the Specialized Chamber on Intellectual Property

The parties have the right to submit briefs and documents that they consider relevant before the file moves to the stage of being resolved. The Technical Secretariat prepares a record certifying that the file is in this stage, which is attached to the file and notified to the parties, and will take effect from the day after its notification.

The parties are not permitted to submit briefs reiterating the factual or legal arguments that have been previously presented.

Article 136-B Prohibition of reform for the worse

The decision of the second administrative instance cannot impose sanctions or definitive measures more serious for the offender than those established by the first administrative instance, unless the complaining party has also appealed or has joined the appeal questioning such matters.

Article 136-C Inadmissibility of return of notifications

The return of notifications made to the last address specified by the parties is inadmissible, alleging that the address no longer belongs to them or because there has been a change of representative. Notification made to said address produces full effects.

Article 136-D Application of procedural rules in the Directorates

The provisions of this title are also applicable, as appropriate, to the procedures followed before the Directorates.

Article 137 Evidence

No evidence other than documents shall be accepted.

Without prejudice thereto, any party may request the floor and shall specify whether this refers to factual or legal questions. Processing or rejecting the said request shall be at the discretion of the Chamber, depending on the importance and weight of the case.

Once the parties have been summoned to an oral report, the report shall be given in the presence of those who attend the hearing.

Article 138 Decision of the Chamber

The decision of the Intellectual Property Chamber may not include the imposition of graver sanctions and final measures on the party concerned, where the latter is appealing against the decision of the competent Directorate, except where the challenge has also been raised by the other party to the procedure.

Article 139 Functions of the Technical Secretary

The Technical Secretary is empowered, among others, to:

1. Issue certified copies of the files that are in the Chamber;
2. Evaluate the admission for processing of the adhesions to the appeal, as well as any document that is presented in the files under the charge of the Chamber;
3. Decide on requests for confidentiality of documents;
4. Make requests for information, with the warnings indicated by law;
5. Accept or reject requests for the holding of hearings for the exhibition of documents.

6. Any other power that the Members of the Specialized Chamber on Intellectual Property delegate to him expressly and in writing.
7. At the request of a party, the Technical Secretary may meet with any of the parties in the proceedings that are in progress in the second instance. This meeting may be held without the need to summon the counterparty, unless the Technical Secretary considers it necessary.
8. Delegate to the staff of his Technical Secretariat, through written communication, some of his functions, as well as the signing of acts or decisions under his responsibility.

**Article 140 Challenge to the resolutions of the Specialized Chamber
on Intellectual Property**

Pursuant to the provisions of article 18 of Legislative Decree No. 1033, the resolutions issued by the Specialized Chamber on Intellectual Property exhaust the administrative route and can only be challenged through the contentious-administrative process. The documents submitted by the parties to the administrative headquarters, aimed at challenging the validity or the grounds of such resolutions, are not admissible. This is without prejudice to the power of the Chamber to declare the nullity of its own resolutions ex officio.

FINAL SUPPLEMENTARY PROVISIONS

FIRST. National industrial property legislation

This Legislative Decree shall be issued to supplement the provisions contained in Decisions 486 and 632 (Common Regime on Industrial Property), which shall be considered national law.

SECOND. Use of other signs

The use of the denomination "registered mark", "R.M.", or other equivalent, together with signs which do not possess mark registration before the competent Directorate of Peru shall be prohibited. The adoption of these identification symbols which do not possess a registered mark shall be sanctioned by the competent Office, with the confiscation of the goods and the destruction of the identification signs.

Likewise, the use in commerce of the expression "appellation of origin", "A.O.", or other equivalent, on products which do not have an appellation of origin or for which the corresponding authorization of use has not been obtained from the competent Directorate shall be prohibited.

In the cases provided for in this provision, the procedure shall be initiated ex officio and shall be subject to the provisions established in Title XI, on "Provisions relating to actions for infringement of rights" of this Legislative Decree, as appropriate.

THIRD. Technical Report

In the case of offenses against industrial property rights, before the Public Prosecutor's Office issues an accusation and an opinion, as the case may be, the Competent Directorate of INDECOPI shall issue a technical report within a period of five days. This technical report does not have the status of an expert or testimonial document, and is not subject to ratification by the official issuing the report.

FOURTH. Civil actions

Where the interested party opts to take civil action, the provisions contained in the special legislation shall apply.

For the issuance of precautionary measures, the judicial

authorities shall have the power to order the seizure of the allegedly infringing products, any related material and implement, and documentary evidence relating to the infringement. They may also require any evidence that the plaintiff reasonably possesses, as well as the constitution of a reasonable bond or equivalent guarantee, which shall not unreasonably deter the right of the holder to access the procedures established in this regulation.

FIFTH. Supplementary application rules

In as much as it is not specifically provided for in this Legislative Decree, Legislative Decree No. 807, Law on Powers, Rules and Organization of INDECOPI, and the amendments and replacements thereto; Law No. 27444, Law on General Administrative Procedure; and the other relevant rules shall prevail, insofar as they apply to industrial property rights and the associated procedures.

SIXTH. Validity

This Legislative Decree shall enter into force from the time when the Trade Promotion Agreement, signed between the Republic of Peru and the United States of America, comes into effect.

SEVENTH. Signs

For the purposes of the provisions of Article 155 of Decision 486, it shall be understood that the expression 'sign' also includes geographical indications.

TRANSITIONAL SUPPLEMENTARY PROVISIONS

FIRST. Application

The records being processed at the time of entry into force of this Legislative Decree shall be processed in accordance with the rules thereof, in the state in which they exist.

SUPPLEMENTARY REPEAL PROVISIONS

FIRST. Repealed rules

Legislative Decree No. 823 and other provisions which oppose this Legislative Decree are hereby repealed.