

SPAIN
Patent Law

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TITLE I Preliminary provisions

Article 1. Purpose of the Law.

In order to protect industrial inventions, the following Industrial property rights shall be granted in accordance with the provisions of this Law:

- a) Invention patents.
- b) Utility models.
- c) Supplementary protection certificates for medications and plant protection products.

Article 2. Patent Registration.

1. The registration of the rights recognized by this Law is exclusive throughout the Spanish territory and is granted under the authority of the Spanish Patent and Trademark Office, unless otherwise specified in international treaties to which Spain is a signatory or in the laws of the European Union.

2. Any applications, grants, or other legal actions or negotiations affecting the rights mentioned in the previous paragraph shall be recorded in the Patent Registry in the manner set out in this Law and its corresponding Regulations.

3. Registration in the Patent Registry shall grant to the patent owner standing to carry out all actions recognized in this Law in the defense of those rights arising from the titles mentioned in Article 1.

Article 3. Standing.

1. Natural or legal persons, including entities governed by public law, may apply for Industrial Property titles.

2. The persons mentioned in paragraph 1 may invoke, in their own interest, the application of the provisions of any international treaty found to be applicable in Spain, to the extent that it applies to them directly and to the extent that such application is more favorable to them with respect to the provisions of this Law.

TITLE II Patentability

Article 4. Patentable inventions.

1. Those inventions, in all fields of technology, which are novel, which involve inventive activity and which have an industrial application, are patentable.

The inventions referred to in the previous paragraph may have as their object a product composed of biological material or containing biological material, or a procedure by means of which a biological material is produced, transformed or utilized.

2. Biological material that has been isolated from its natural environment or produced by means of a technical procedure may be the object of an invention, even if such material already exists in a natural state.

3. For the purposes of this Law, "biological material" shall be defined as material which contains genetic information that is self-reproducible or reproducible in a biological system, and "microbiological procedure" shall be defined as any procedure which uses a microbiological material, involves any intervention therewith or produces a microbiological material.

4. The following shall not be considered inventions in the sense referred to in the previous paragraphs:

- a) Discoveries, scientific theories and mathematical methods.
- b) Literary or artistic works or any other aesthetic creation, or scientific works.
- c) Plans, rules, and methods for the performance of games, intellectual activities or economic/commercial activities, as well as computer programs.
- d) Methods used for the presentation of information.

5. The provisions of the foregoing paragraph preclude the patentability of the materials or activities mentioned therein only to the extent that the patent application or the patent makes specific reference to one of them, considered as such.

Article 5. Exceptions to patentability.

The following may not be the object of a patent:

1. Inventions whose commercial use is contrary to public policy or

accepted morality, notwithstanding that the working of an invention may not be considered as such due to the mere fact that it is prohibited by a legal or regulatory provision.

In particular, the following shall be considered unpatentable by virtue of the provisions of the previous paragraph:

- a) Procedures for the cloning of human beings.
- b) Procedures for the modification of the germ line genetic identity of human beings.
- c) Uses of human embryos for industrial or commercial purposes.
- d) Procedures for the modification of the genetic identity of animals involving the suffering of the latter with no substantial medical or veterinary benefit for humans or for the animal, and the animals resulting from such procedures.

2. Plant varieties and animal breeds. Nevertheless, inventions whose object consists of plants or animals shall be patentable if the technical viability of the invention is not limited to a given plant variety or animal breed.

3. Essentially biological procedures for obtaining plants or animals. For the purposes of this provision, those procedures consisting entirely of natural phenomena such as cross-breeding and selection shall be considered essentially biological.

The provisions of the foregoing paragraph shall not affect the patentability of inventions whose object is a microbiological procedure or any other technical procedure or any product obtained through such procedures.

4. Methods of surgical or therapeutic treatment used on human or animal bodies, and diagnostic methods applied to human or animal bodies. This provision shall not apply to products, and in particular to substances or combinations of substances, nor to the invention of devices or instruments used for the implementation of such methods.

5. The human body, at the various stages of its constitution and development, as well as the mere discovery of one of its components, including the full or partial sequence of a gene.

Nevertheless, an isolated component of the human body, or one obtained by means of a technical procedure, including the sequencing or partial sequencing of a gene, may be considered a patentable invention even if the structure of such component is identical to that of a natural

component.

The industrial application of a total or partial gene sequence must be stated explicitly in the patent request.

6. A mere sequence of deoxyribonucleic acid (DNA) with no indication of biological function.

Article 6. Novelty.

1. An invention is considered novel if it does not fall within the current state of the art.

2. The state of the art consists of all that which, prior to the date on which the patent application is submitted, has become accessible to the public in Spain or abroad by means of a written or oral description, by virtue of its use or by any other method.

3. The state of the art shall also include the content of Spanish patent applications or utility models, of European patent applications which designate Spain and of PCT international patent requests that have entered the national phase in Spain as originally filed whose filing date is prior to that mentioned in the previous paragraph and which had been published in Spanish on that date or are published at a later date.

4. The provisions of paragraphs 2 and 3 do not preclude the patentability of any substance or combination of substances included within the state of the art, for use in one of the methods mentioned in Article 5.4, provided that its use for any such method is not already included in the state of the art.

5. The provisions of paragraphs 2 and 3 do not preclude the patentability of any substance or combination of substances designated in paragraph 4 for a given use in one of the methods mentioned in Article 5.4, provided that such use is not already included in the state of the art.

Article 7. Non-prejudicial disclosures.

For the purpose of determining the state of the art, the disclosure of an invention shall not be taken into account if it occurred within six months prior to the application filing date as the direct or indirect result of:

- a) A clear abuse committed against the applicant or its principal.
- b) The applicant or its principal having exhibited the invention at official exhibitions or those officially recognized within the terms of the Convention on International Exhibitions signed in Paris on November 22, 1928 and last revised on November 30, 1972.

In the latter case, upon submitting the application, the applicant shall be required to declare that the invention has been exhibited and to provide the corresponding certificate in order to support that claim within the time period and under the conditions set out by pertinent regulations.

Article 8. Inventive activity.

1. An invention is considered to involve inventive activity if it does not result from the state of the art in a manner that is evident to an expert in the subject.

2. If the state of the art involves any of the documents mentioned in Article 6.3, these shall not be taken into account in determining the existence of inventive activity.

Article 9. Industrial application.

An invention is considered suitable for industrial application if the object thereof may be manufactured or used in any type of industry, including agriculture.

TITLE III Right to the patent and designation of the inventor

Article 10. Right to the patent.

1. The right to the patent belongs to the inventor or to his successors and is transferable by all means recognized by law.

2. If the invention was made jointly by several persons, the right to obtain the patent shall belong to all of them.

3. In the event that several persons have created the same invention independently, the right to the patent shall belong to that person whose application has the earliest filing date in Spain, provided that the application in question is published in accordance with the provisions of Article 37.

4. In the procedure carried out with the Spanish Patent and Trademark Office, it is assumed that the applicant has standing to exercise the patent right.

Article 11. Patent application by a person without standing.

1. When a final judgment is rendered on the basis of this Law recognizing the right of a person other than the applicant to obtain the patent, and provided that the patent has not yet been granted, that person may, within a period of three months following the date on which such judgment takes on the force of res judicata:

- a) Continue the application procedure in subrogation to the position held by the applicant.
- b) Submit a new patent application for the same invention, which will be granted the same priority.
- c) Petition for the application to be denied.

2. The provisions of Article 26.3 are applicable to any new application submitted in accordance with the provisions set out in the previous paragraph.

3. Once a complaint has been submitted with the intent of obtaining the judgment referred to in paragraph 1, the patent application may not be withdrawn without the consent of the plaintiff. By way of injunctive relief and pursuant to the provisions of Law 1/2000, of December 7, on Civil Procedure, once the application has been published, the judge may choose to suspend the grant procedure until the

definitive nature of the judgment or of the resolution finalizing the procedure has been duly reported, should the result thereof be the denial of the plaintiff's claim, or until three months after notification should the claim be upheld.

The suspension shall also be lifted provided the resolution that ends the procedure upholds the complaint and is final, and the plaintiff requests the continuation thereof.

Article 12. Claim to ownership.

1. If the patent has been awarded to a person who lacks standing to obtain it in accordance with the provisions of Article 10, the person who holds such standing by virtue of the said article may demand to have the ownership of the patent transferred to him, without prejudice to any other rights or actions to which he may be entitled.

2. When a person holds the right to only a part of the patent, he may demand to be assigned co-ownership thereof in accordance with the provisions of the previous paragraph.

3. The rights mentioned in the previous paragraphs shall be enforceable only within a period of two years following the publication date of the notice of grant in the "Boletín Oficial de la Propiedad Industrial" (Official Industrial Property Gazette). This time limit shall not apply if the owner knew at the time of grant or acquisition of the patent that he held no right thereto.

4. An annotation shall be entered in the Patent Registry for the purpose of informing third parties of the filing of any legal complaint for the purpose of bringing the actions mentioned in this article, as well as of the judgment or any other final ruling that ends the procedure initiated by virtue of said complaint at the request of an interested party.

Article 13. Effects of change of ownership.

1. Whenever a change takes place to the ownership of a patent application or of a patent as a result of any of the judgments provided for in the previous article, all licenses and other third-party rights to the patent shall be extinguished upon registration of the person with standing in the Patent Registry.

2. The owner of the patent application, as well as the owner of any

license obtained before the filing of the legal complaint who, prior to such filing, had worked the invention or who had engaged in real and effective preparations to that end, may continue or begin such working provided that he requests a non-exclusive license from the new owner registered in the Patent Registry within a period of two months in the case of the previous patent owner, or, in the case of a licensee, within four months following receipt of notification from the Spanish Patent and Trademark Office indicating the registration of the new owner. The license must be granted for a suitable period and under reasonable conditions, which shall be established, if necessary, by the procedure established in this Law for compulsory licenses.

3. The provisions of the previous paragraph shall not apply if the owner of the patent or license acted in bad faith at the time he began working or undertook preparations for the same.

Article 14. Designation of the inventor.

The inventor has the right to require the owner of the patent application or of the patent to mention him as the inventor in the patent.

TITLE IV Inventions produced within the framework of an employment or service relationship

Article 15. Inventions belonging to the employer.

1. Inventions made by an employee or by a person rendering services during the effective period of his employment or service contract or relationship with the employer, and which are the result of research activity that explicitly or implicitly constitutes the object of their contract, belong to the employer.

2. The author of the invention shall have not right to supplemental compensation for the production thereof, unless his personal contribution to the invention and the significance thereof clearly exceed the explicit or implicit content of his contract or employment relationship.

Article 16. Inventions belonging to the employee or service provider.

Inventions whose production is not attended by the circumstances set out in Article 15.1 belong to the author thereof.

Article 17. Inventions that are assumable by the employer.

1. Notwithstanding that which is set out in Article 16, if the employee produces an invention related to his professional activity within the company and if the production thereof is predominantly influenced by knowledge obtained within the company or through the use of means provided by the latter, the employer shall have the right to assume ownership of the invention or to reserve the right to make use of the same.

2. When the employer assumes the ownership of an invention or reserves a right to make use thereof, the employee shall have the right to fair economic compensation, to be set in accordance with the industrial and commercial significance of the invention and taking into account the value of the means or knowledge provided by the company and the contributions made by the employee. Such economic compensation may consist of a share of the profits obtained by the company from the working of said invention or the transfer of its rights thereto.

Article 18. Duty of the employer and the employee to report and exercise their rights.

1. An employee who produces any invention of the type referred to in

Articles 15 and 17 must report such invention to the employer in writing, including the data and information necessary for the latter to exercise the rights to which it is entitled. This communication must be made within a period of one month following the date on which the invention is completed. The failure to meet this obligation shall lead to the loss of the employee's rights as recognized in this Title.

2. In the case of an invention that is assumable by the employer in accordance with the provisions of Article 17, the employer, within a period of three months from the day following the date of receipt of the communication referred to in the previous paragraph, must evaluate the invention in question and inform the employee in writing of its intention to assume ownership of the invention or to reserve a right to make use of the same.

If the employer does not inform the employee of its intention to assume ownership of the invention within the time periods specified, its right shall expire and the employee shall be entitled to submit an application for the patent.

If the employer, having informed the employee of its intention to assume ownership of the invention, should fail to submit the industrial property application within a reasonable additional period to be agreed with the employee, the latter may submit the patent application in the name and on behalf of the employer.

3. Unpatentable technical improvements achieved by the employee in the course of his activities as set out in Articles 15 and 17 and which, as a result of their use as an industrial secret, provide the employer with an advantageous position similar to that which would be obtained from an industrial property right, shall grant to the employee the right to claim reasonable compensation from the employer, established in accordance with the criteria set out in the aforementioned articles, from the moment when the latter begins to make use of the proposal.

4. Both the employer and the employee must collaborate to the extent necessary for the effective application of the rights recognized in this Title, refraining from any actions that could be detrimental to such rights.

Article 19. Burden of proof and waiver of rights.

1. In the absence of proof to the contrary, any inventions for which an application is filed within one year following the termination of

the employment or service relationship in order to obtain a patent or any other instrument granting exclusive protection, shall be assumed to have been produced during the effective period of the latter.

2. Any premature waiver by the employee of the rights granted to him by the Law in this Title shall be considered null and void.

Article 20. Scope of application.

The rules set out in this Title shall also apply to the officials, employees, and workers of the National Government, Autonomous Communities, Provinces, Municipalities and other Public Entities, without prejudice to that which is set out in the following article.

Article 21. Inventions made by research personnel at Public Universities and Public Research Entities.

1. Inventions made by research personnel of the Public Administration's Public Research Centers and Organizations, Research Centers and Organizations associated with other Public Administrative bodies, Public Universities, State Foundations in the Public Sector or State-Owned Trading Companies, shall be the property of the entities whose researchers produced them in the course of performing the functions assigned to them, whatever the nature of the legal relationship by which they are linked to the entity.

For the purposes of this article, research personnel shall be defined in all cases as set out in Article 13 of Law 14/2011, of June 1st, on Science, Technology and Innovation. Technical personnel defined as research personnel in said Law, and supporting technical personnel, in accordance with the internal regulations of universities and research centers, shall also be considered research personnel.

2. Inventions which fall within the scope of paragraph 1 must be reported in writing to the public entity for which the researcher/inventor renders services, within a period of three months following the completion of the invention. Failure to effect such communication shall lead to the loss of the research personnel's rights as recognized in the following paragraphs.

3. Within a period of three months following receipt of the notification referred to in the previous paragraph, the public organization or entity must inform the author or authors of the invention in writing of its intention to maintain its rights in the

invention by applying for the corresponding patent, or to treat it as an industrial secret, reserving exclusive right to its use. The results of patentable research may not be published until the said period has elapsed or until the entity or author has filed the patent application. If the public organization or entity fails to communicate its intention to maintain its rights in the invention within the specified period, the author or authors thereof may submit the patent application in accordance with the provisions of Article 18.2.

4. In any case, the researcher shall have the right to share in the profits obtained by the entities for which he renders services, arising from the working of such inventions or the transfer of the rights thereto, at the time the patent is applied for on behalf of the entity or when the latter chooses to maintain it as an industrial secret. These entities may also transfer the ownership of the inventions in question to the inventor thereof, reserving for themselves a non-exclusive, non-transferable, royalty-free usage license or a share of the profits obtained from working said inventions, to be determined in accordance with the provisions of paragraphs 6 and 7.

5. Any contracts or agreements entered into by the entities referred to in paragraph 1 with public or private entities must specify who is entitled to the ownership of any inventions produced by research personnel within the framework of such contracts or agreements, as well as all matters relating to commercial use and working and the distribution of profits obtained.

6. The University's Governing Board shall determine the types and amounts of profit to share with university research personnel resulting from those profits obtained from working the inventions mentioned in this article, and, if applicable, the University's share of any profits obtained by the researcher as a result of working such inventions, without prejudice to that which is set out in Article 83 of Organic Law 6/2001, of December 21st, on Universities, and Article 64 of Law 2/2011, of March 4th, on Sustainable Economy.

7. The types and amounts of profit sharing with the research staff of Public Research Entities, arising from profits that are earned from the working of the inventions contemplated in this article or the transfer of the rights thereto, shall be established by the Governing Board in accordance with the specific characteristics of each Public

Research Entity. In no case shall such profit sharing be in the form of employment compensation or salary. The Autonomous Communities may, by regulatory means, develop specific profit sharing schemes for the research personnel of Public Research Entities falling within their jurisdiction.

TITLE V Application and granting procedure

CHAPTER I Patent application filing and requirements

Article 22. Filing of the application.

1. The patent application shall be filed with the Spanish Patent and Trademark Office or with the competent body within any Autonomous Community.

2. The patent application may also be filed at the locations specified in Article 38.4 of Law 30/1992, of November 26th, on the Legal Framework of Public Administration and Common Administrative Procedures, and addressed to any of the organizations which have jurisdiction to receive the application, in accordance with the preceding paragraph.

3. The electronic filing of applications shall be subject to Law 11/2007 of June 22, on citizens' electronic access to Public Services.

Article 23. Application requirements.

1. The patent application must contain:

- a) An application form in the official format addressed to the Director of the Spanish Patent and Trademark Office.
- b) A description of the invention to be patented.
- c) One or more claims.
- d) All drawings referred to in the description of the claims, and all biological sequences, if applicable, presented in the format established by regulation.
- e) A summary of the invention.

2. If the invention refers to biological material of plant or animal origin, the application must include a reference to its geographical origin or to the source from which the material is obtained, if this information is known. This information shall not prejudice the validity of the patent.

In those instances for which provision is made in Regulation (EU) No. 511/2014 of the European Parliament and Council, of April 16, 2014, on measures to be taken by users to comply with the Nagoya Protocol when accessing genetic resources and the fair and equitable sharing of profits arising from their utilization in the Union, the patent application must also contain, to the extent determined by regulation,

the information that users of such resources are required to maintain, pursuant to the above-mentioned standard. The aforementioned information likewise shall not prejudice the validity of the patent.

3. The application, as well as the other documents that must be filed with the Spanish Patent and Trademark Office, must be written in Spanish and must meet the requirements established by regulation. Without prejudice to the provisions of Article 24.1.c), in those Autonomous Communities where there is a different official language, the documents in question may be written in that language but must be accompanied by the corresponding translation in Spanish, which shall be considered authentic in the event that questions should arise involving the two versions.

4. A filing fee shall accompany the corresponding application, as well as a state of the art report generation fee.

Article 24. Filing date.

1. The application filing date shall be that date on which the applicant delivers documentation containing at least the following items to the offices authorized to receive patent applications:

- a) The indication that a patent is being applied for.
- b) Information making it possible to identify and contact the applicant.
- c) A description of the invention for which the patent is being applied for, even if such description does not meet the formal requirements established by Law, or a reference to a previously filed application. For the purpose of obtaining a filing date, the description may be written in any language, followed by the filing of the corresponding Spanish translation within the time period established by regulation.

2. A reference to a previous application must indicate the application number, its filing date and the office where it was filed. The reference must state for the record that it replaces the description and, if applicable, the drawings.

3. If the application refers to a previous application, as provided for in the previous paragraph, a certified copy of the previous application must be filed, accompanied by the corresponding translation in Spanish, if applicable, by the deadline established by regulation.

4. The filing date of applications filed at a post office shall be that of the day on which the office in question receives the documentation containing the items mentioned in the foregoing paragraphs, provided they are submitted by certified mail in the manner set out in Article 31 of the Regulations on the provision of postal services, approved by Royal Decree 1829/1999, of December 3rd. In all cases, the documentation must be addressed to the organization with jurisdiction to receive the application.

Article 25. Designation of the inventor.

The application must designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation must be accompanied by a statement indicating how the applicant acquired the right to the patent.

Article 26. Single invention.

1. The patent application may not include more than one invention or group of interrelated inventions, but must constitute a single, general inventive concept.

2. Applications which do not comply with the provisions of the previous paragraph must be divided in accordance to regulatory provisions.

3. The resulting separate applications shall have the same filing date as the initial application from which they originated, to the extent that their object was contained in the previous application.

Article 27. Description of the invention.

1. The invention must be described in the patent application in a manner that is clear and complete enough that an expert in the subject could execute it.

2. If the invention makes reference to biological material that is not accessible to the public or to the use of such material, and if the biological material cannot be described in the patent application in such a manner that an expert could reproduce the invention, the description shall be deemed to comply with the provisions of the previous paragraph only if the following requirements are met concurrently and exactly as developed by regulations:

a) The biological material must have been deposited no later than the filing date of the patent application in an institution that is legally

recognized for this purpose, under conditions identical to those set out in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, signed in Budapest on April 28, 1977 (hereinafter the Budapest Treaty). In any case, those international deposit authorities that have acquired their ranking in accordance with Article 7 of the aforementioned treaty shall be recognized as such.

b) The application, exactly as filed, must contain all relevant information in the applicant's possession regarding the characteristics of the biological material deposited.

c) The name and number of the depository institution must be specified in accordance with the provisions of the Regulations.

3. If the biological material deposited in accordance with the provisions of the previous paragraph should become unavailable at the recognized depository institution, a new deposit of the material shall be authorized in conditions analogous to those set out in the Budapest Treaty.

4. Each new deposit must be accompanied by a statement signed by the depositor certifying that the biological material in the new deposit is that same as that which was deposited initially.

Article 28. Claims.

The claims define the object for which protection is being requested. They must be clear and concise, and must be based on the description.

Article 29. Summary.

The only purpose of the invention summary is to provide technical information. It may not be taken into consideration for any other purpose, nor be used to determine the scope of protection applied for, nor to delimit the state of the art for the purposes set out in Article 6.3.

Article 30. Priority.

1. Those persons who have properly filed a first application for an invention patent, utility model, or utility certificate in or for any of the signatory States to the Paris Convention for the Protection of Industrial Property, signed in Paris on March 20, 1883, or the Accord which establishes World Trade Organization, or their successors, when filing a patent application in Spain for the same inventions, shall

be entitled to a priority period of twelve months beginning on the filing date of the first applications, whether domestic or foreign, in the conditions set out in Article 4 of the Paris Convention.

2. The same right to priority mentioned in the previous paragraph shall also be granted to those who have filed a first application for protection in or for a State that is not mentioned in paragraph 1, provided that such state recognizes the right to priority of applications filed in Spain under conditions and with effects equivalent to those provided for in the Paris Convention.

3. By virtue of the exercise of the right to priority, the filing date of the previous application, whose priority has been validly claimed, shall be taken as the application filing date for the purposes set out in Articles 6, 10.3 and 139.

Article 31. Claim to priority.

1. An applicant who wishes to claim priority for a previous application must submit, in the form and within the time established by regulation, a statement of priority and a copy certified by the office of origin of the previous application, accompanied by a Spanish translation if it was written in a different language.

2. However, the filing of the copy of the previous application and of the translation will not be necessary if the claim to priority is not considered relevant for determining the invention's patentability or if the previous application or its translation are already found in the Spanish Patent and Trademark Office or are available in a digital library.

3. For a given application and, if applicable, for a given claim, multiple priorities may be claimed even if they originated in different States. If multiple priorities are claimed, any deadlines to be calculated based on the priority date shall be counted from the oldest priority date.

4. Whenever one or more priorities are claimed, the priority right shall support only those elements of the application that are contained in the application or applications for which a priority has been claimed.

5. Even if certain elements of the invention for which the priority is claimed do not appear among the claims formulated in the previous application, priority may be granted to them if the full set of documents related to the previous application disclose such elements in a sufficiently clear and precise manner.

6. A priority claim must be accompanied by the payment of the corresponding fee.

CHAPTER II Grant Procedure

Article 32. Receipt of application and remittance to the SPTO.

1. The competent authority, based on that which is set out in Article 22, shall, at the time it receives the application, officially record its registration number, the date, hour, and minute of filing, and shall issue a supporting receipt or sealed copy of the documentation submitted in the manner prescribed by regulation. If no record was made of the hour, the last hour of the day shall be assigned. If no record was made of the minute, the last minute of the hour shall be assigned.

2. If the competent authority that receives the application is a body of an Autonomous Community, it shall send the documentation filed to the Spanish Patent and Trademark Office within three days following the date of receipt. Failure to meet this deadline shall in no case prejudice the applicant.

Article 33. Establishment of the filing date and the date of acceptance for processing.

1. Within 10 days following its receipt, the Spanish Patent and Trademark office shall determine whether the patent application meets the requirements to be granted a filing date and, if the determination is positive, shall accept it for processing and shall proceed as set out in Article 34.

2. If any of the requirements for obtaining a filing date are not met, the interested party shall be notified of such defects so that he may remedy them by the established deadline. In such case, the filing date shall be the date on which the Spanish Patent and Trademark Office receives the documentation with the defects duly corrected. If the defects are not remedied by the deadline, the application will not be accepted for processing and this fact shall be communicated to the applicant with an explanation of the reasons.

3. If the application fees and the state-of-the-art report preparation fee are not paid with the application or are not paid in full, the applicant shall be notified of this fact so that he may complete the payment by the established deadline. If the period in question elapses without they payment having been made or completed, the application shall be considered withdrawn.

4. The deadlines mentioned in the previous paragraphs are those established in the implementing regulations of this Law.

Article 34. Patents of interest for national defense.

For the purposes set out in Title XI of this Law, the Spanish Patent and Trademark office shall make available to the Ministry of Defense all patent applications that might be of interest for national defense, establishing for this purpose the necessary means of coordination with the said Ministry.

Article 35. Ex officio examination.

1. Once the application has been accepted for processing, the Spanish Patent and Trademark Office shall verify:

a) Whether the object thereof is not manifestly and entirely excluded from patentability by the application of Articles 4.4 and 5 of this Law.

b) Whether the requirements relating to representation and priority claim, if applicable, have been met, as well as any other requirements which must be verified regarding the formal validity of the application, in accordance with that which is set out in the Regulations, prior to the publication of the application.

2. The presence of formal defects in the documentation shall not prevent the preparation of the report on the state of the art to which reference is made in the next article, provided that such defects are not of a nature that would impede its preparation.

3. If, as a result of such verification, it is determined that the object of the application is excluded from patentability in accordance with paragraph 1.a) or that the requirements mentioned in paragraph 1.b) have not been met, these circumstances shall be communicated to the interested party so that he may present further arguments or remedy the defects by the established deadline. If the obstacles persist or the defects are not corrected by the deadline, the application shall be denied by means of a reasoned decision. If the defects are related to the right to priority, the applicant shall lose that right.

Article 36. Issuance of the report on the state of the art and the written opinion.

1. As established by regulation, the Spanish Patent and Trademark

Office shall issue a report on the state of the art and a preliminary, non-binding written opinion regarding the patent application based on the claims, properly taking into account the description and, if applicable, the drawings or the biological sequences. Both the report on the state of the art and the written opinion shall be sent to the applicant.

2. The state of the art shall be based on a search which, in accordance with that which is set out in Article 6.2 of this Law, shall encompass all that has been made accessible to the public in Spain or abroad by means of a written or oral description, by virtue of its use or by any other method.

3. If the lack of clarity or coherence of the description or the claims prevents the preparation of the report in whole or in part, the Spanish Patent and Trademark Office shall notify the applicant in a timely manner so that he may prepare further arguments or remedy the defects within the time period established by regulation. In order to remedy the defects the applicant may modify the claims. If the applicant does not respond within the established time period or fails to specify the object of the search sufficiently to remedy the defects pointed out, the aforementioned Office shall prepare a report on the state of the art based on a partial search. If this is not possible, the application shall be denied by means of a reasoned decision, of which the applicant shall be notified.

4. If there is a lack of unity of invention and the applicant fails to divide its application or to pay additional fees as requested by the Spanish Patent and Trademark Office, the procedure shall continue for the first invention or group of inventions claimed which satisfy the conditions of Article 26, and the remaining inventions shall be deemed withdrawn.

5. Any applications whose international search report was prepared by the Spanish Patent and Trademark Office acting in its capacity as International Searching Authority shall not be the object of the report on the state of the art or of the written opinion.

Article 37. Publication of the application and the report.

1. Eighteen months after the application filing date or after the priority date claimed and approved by the ex officio examination, the

Spanish Patent and Trademark Office shall publish the patent application as soon as possible, issuing the corresponding announcement in the Official Industrial Property Gazette and making available to the public the documents included in the file of the published patent application. In addition, a pamphlet shall be published containing the text of the description along with the claims and, if applicable, the drawings or biological sequences, in the form and with the elements established in the implementing Regulations.

2. The patent application may be published at the request of the applicant even if the period specified in paragraph 1 has not elapsed.

3. Publication shall not occur if the application has been denied or deemed withdrawn or dismissed, or has been withdrawn by the applicant prior to the conclusion of technical preparations for its publication.

4. The report on the state of the art shall be published and the corresponding notice included in the Official Industrial Property Gazette, and a pamphlet with the aforementioned report shall be issued simultaneously with the patent application or thereafter, if the latter has already been published.

Article 38. Third-party observations.

Following the publication of the application, any person may formulate duly reasoned and documented observations regarding the patentability of the invention that is the object thereof, in the manner and within the time period established by regulation, without interrupting the processing of the application. Such third parties shall not be considered parties to the procedure.

Article 39. Substantive examination.

1. Upon request of the applicant and in accordance with that which is set out in the Regulations, the Spanish Patent and Trademark Office shall examine whether the patent application and the invention which is its object meet the formal, technical, and patentability requirements established by Law.

2. The request, which the applicant may make from the time the application is filed, must be submitted within a period of three months from the publication date of the report on the state of the art, and shall not be considered to have been made until the examination fee

has been paid. The revocation of the examination request shall be equivalent to the withdrawal of the patent application.

3. Along with the substantive examination request, the applicant may submit observations on the report on the state of the art, on the written opinion and on the third-party observations and may, if it considers it appropriate, modify the claims and the remaining application documents subject to the provisions of Article 48.

4. If the applicant does not submit his examination request within the period mentioned in paragraph 2, the application shall be considered withdrawn.

Article 40. Processing and resolution.

1. If the examination does not reveal a lack of compliance with any requirement that would prevent the granting of the patent, the Spanish Patent and Trademark Office shall grant it.

2. If, as a result of the examination, reasons are identified that prevent the granting of the patent in whole or in part, such reasons shall be communicated to the applicant so that he may respond to the objections raised by the Spanish Patent and Trademark Office within the period established by regulation or modify the claims, if he considers it appropriate to do so.

3. If the applicant does not act to overcome the objections stated by the Spanish Patent and Trademark Office, that patent must be denied. In all other cases, the Spanish Patent and Trademark Office shall rule on the applicant's response once it has been received.

4. Once the applicant's response has been received, if the Spanish Patent and Trademark Office determines that in spite of the allegations or modifications provided, there are still reasons which prevent the granting of the patent in whole or in part, such reasons shall be communicated to the applicant, who shall be given new opportunities to correct the application or to state new arguments under the conditions and within the periods set out in the Regulations before a final resolution is made concerning the granting or denial of the patent.

Article 41. Announcement of the granting and publication of the patent.

The granting of the patent shall be announced in the Official Industrial Property Gazette and the documents contained in file of the granted patent shall be made available to the public.

Article 42. Publication of the patent pamphlet.

For each patent granted, a pamphlet shall be published containing the text of the description along with the claims and the drawings and, if applicable, the biological sequences, in the form finally granted. The pamphlet, whose content shall be established by regulation, shall also mention the Official Industrial Property Gazette in which the grant was announced.

The pamphlet shall state that the patent is granted without prejudice to third parties and with no State guarantee of the validity thereof or of the utility of the object to which it applies.

CHAPTER III Opposition and appeals

Article 43. Opposition.

1. Within six months following the publication of the grant in the Official Industrial Property Gazette, any person may oppose the grant for any of the following reasons:

- a) The claimed invention fails to meet one of the patentability requirements set out in Title II of this Law.
- b) The description thereof is not sufficiently clear and complete that an expert in the field could execute it.
- c) The object of the patent granted exceeds the content of the application as filed.

2. The opposition must be addressed to the Spanish Patent and Trademark Office in the form of a reasoned pleading accompanied by the corresponding supporting documents and subject to payment of the corresponding fee.

3. Once the statement of opposition has been accepted, the owner of the registered patent shall be notified so that he may submit his allegations and modify the claims, if he considers it appropriate to do so. The Spanish Patent and Trademark Office shall send to each of the parties the allegations and proposals for modification submitted by the other party, granting to each a procedure for replying in each case, all within the time periods and under the conditions established by regulation.

4. Once the time periods mentioned in the previous paragraph have elapsed, the Spanish Patent and Trademark Office shall decide on the issue by admitting in whole or in part the opposition filed if any of the reasons for opposition stated in paragraph 1 apply, or dismissing them if such reasons do not apply. Nevertheless, if, in spite of the modifications or allegations provided, reasons remain which would prevent the patent from being maintained, the owner shall be granted at least one opportunity to remedy the defect or to submit new arguments before a final ruling is made regarding the stated opposition.

5. The decision of the Spanish Patent and Trademark Office shall be published in the Official Industrial Property Gazette, including, if applicable, any modifications that have been made to the patent. The protection granted by this Law shall extend retroactively to the patent

thus modified.

6. The provisions of Article 104 regarding nullity shall apply, if applicable, to the retroactive effect of the revocation.

Article 44. Appeals.

1. An administrative appeal against the granting of a patent may be filed only by those who been a party to an opposition procedure and shall be directed against the action by which a final decision was rendered regarding such opposition. For this purpose, the opposition may be considered set aside if the period specified for the resolution and notification thereof elapses without the adoption of an express judgment.

2. A patent applicant may file an administrative appeal against a decision of the Spanish Patent and Trademark Office to deny the patent application.

3. In the appeal process, the patent owner may modify the application subject to the provisions of Article 48.

CHAPTER IV Supplementary protection certificates for medications and plant protection products

Article 45. Applications.

1. Applications for supplementary certificates for the protection of medications, extensions of such certificates, and supplementary certificates for the protection of plant protection products shall be addressed to the Spanish Patent and Trademark Office using the standard form made available to users by the Office and which are to include the statements and data specified in Community legislation as it has been developed in regulations.

2. Applications for supplementary protection certificates and for the extension thereof are subject to the payment of the corresponding fee.

Article 46. Processing.

1. The Spanish Patent and Trademark Office shall verify whether the application for a certificate and the product to which it refers, or the extension thereof, if applicable, meets the requirements established by community legislation. The Office shall not investigate ex officio whether the authorization to market the product is the first as a medication or a plant protection product in the European Union.

2. If the application and the product which is the object of the certificate or of the extension satisfy the conditions established in Community legislation, the Office shall grant them. Otherwise, the applicant shall be notified of the defects so that he may remedy them or prepare further arguments within the period established by regulation. If the defects are not corrected within the time permitted and the Office is of the opinion that the objections pointed out in the notification persist, the request shall be denied.

Both the request and the final resolution shall be published in the Official Industrial Property Gazette in accordance with that which is set out in the regulations. An appeal may be filed against the resolutions of the Office in accordance with the provisions of the legal system governing Government Agencies and Common Administrative Procedure and the first additional provision of this Law.

Article 47. Maintenance.

The fee for maintenance of the supplementary protection certificate

shall be paid in a single payment, whose amount shall be determined based on the duration of the certificate.

CHAPTER V Provisions common to all procedures and to information provided to third parties

Article 48. Modifications.

1. Except in those cases dealing with the correction of manifest errors, the interested party may modify the claims only in those grant procedures for which this Law permits such modifications, and subject to that which is established by regulation. The option of modifying the claims includes the option to modify the description and, when applicable, the drawings or biological sequences.

2. The applicant may modify the claims in accordance with the provisions of the previous paragraph, without the need to obtain the consent of those who may have registered rights with respect to the application in the Patent Registry.

3. Every modification must be accompanied by a document in which the applicant specifies the differences between the new text and the text that was replaced, indicating the reasons for and the scope of the modifications.

4. If the patent has been modified as a result of an opposition, limitation, or appeal procedure or a judicial resolution, a new pamphlet will be published containing the full text of the patent document exactly as modified, subject to application of that which is set out in Article 43.5.

The patent will not take effect unless the patent fee has been paid. In the case of a limitation procedure, the latter shall be considered not to have been carried out.

5. The patent application or the patent may not be modified in such a manner that its object exceeds the content of the application as initially filed.

6. In an opposition procedure, or in a limitation procedure if applicable, that patent may not be modified in such a manner as to expand the protection conferred.

Article 49. Rectification of errors.

At the request of the applicant, modifications shall be permitted to correct errors of expression or transcription, or the errors contained

in any document, subject to the limitations established by regulation. Nevertheless, if the petition for rectification affects the description, the claims, the drawings or the biological sequences, the rectification must be evident in the sense that it must be immediately deducible that no text, drawing, or sequence other than that resulting from the modification could have been proposed by the applicant.

Article 50. Suspension of procedures.

The existence of defects in the documentation shall halt the procedure from the time the applicant is notified of their existence, by suspending the procedure until the defects in question are remedied or until the time period established for such remedy expires.

Article 51. Change of type.

1. At any time prior to the completion of the substantive examination provided for in Article 39, the interested party ask to have his request changed so that the object thereof is protected under a different Industrial Property title.

2. As a result of the examination that it must carry out by virtue of the provisions of Articles 35 and 40, the Spanish Patent and Trademark Office may propose a change of application type to the interested party. The applicant may accept or reject the proposal, with the understanding that he rejects it if he does not expressly request the change of type within the period set out in the Regulation.

If the proposal is rejected, the processing of the file will continue with the requested type.

3. If the applicant requests a change of type, the change will be agreed and the applicant will be informed of the documents he must submit within the period established by regulation for the new procedures to which the application will be subject. If the new documentation is not submitted in a timely manner, it will be considered to have been withdrawn and the applicant will be so notified.

4. If the resolution agreeing to the change of type occurs after the publication of the patent application, it must be published in the Official Industrial Property Gazette.

Article 52. Withdrawal of the application.

1. The patent application may be withdrawn by the applicant at any

time before the patent is granted.

2. If third party rights regarding the patent have been recorded in the Patent Registry, the application may be withdrawn only with the consent of the owners of such rights.

Article 53. Reestablishment of rights.

1. The applicant or owner of a patent or any other party to a procedure who, in spite of having acted with all diligence required by the circumstances, was unable to meet a deadline in connection with one of the procedures set out in this Law shall, upon request, have his rights restored if a direct consequence of the omission was, by virtue of the provisions of this law or of its Regulations. The loss of a right. If the deadline in question was for the filing of an appeal, the result shall be its acceptance for processing unless the provisions of paragraph 5 apply.

2. The petition for reestablishment must be submitted in writing within one of the following periods, whichever expires first:

i) two months beginning on the date of removal of the cause of non-compliance;

ii) twelve months following the expiration date of the omitted procedure or, if the petition is related to the lack of payment of a maintenance fee, twelve months following the expiration date of the six-month period for payment with surcharges referred to in Article 185.

The omitted procedure must be carried out within that period. Nevertheless, if the reestablishment of rights is requested for the period set out in Article 30, the petition must be submitted within two months following the expiration thereof or before the conclusion of the technical preparations for the publication of the subsequent application, whichever period expires first.

3. The petition must be reasoned, specifying the facts and the justifications that support it. The petition shall be deemed to have been submitted only upon payment of the fee for reestablishment of rights.

4. Whichever body is competent to rule on the action that was omitted shall be competent to rule on the petition.

5. The provisions of this article shall not apply to the periods mentioned in paragraph 2 of this article and in Articles 43.1 and 144. Neither shall they apply to the period specified for the filing of an administrative appeal against an adjudicative decree of rights.

6. The owner of the application or registration whose rights are restored may not invoke such rights against a third party who has begun in good faith to work the invention covered by the application or the patent within the period beginning with the loss of the right and ending with the publication of the notice of reestablishment of that right, or who has made serious and real preparations to that end, provided that the third party limits his activities to initiating or continuing such working within his own company or to meet the needs of that company.

7. An appeal to a higher authority may be made against the resolution reestablishing the rights of the applicant, either by a third party who may benefit from the right to continue or initiate the working of the invention as set out in paragraph 6 or by a third party that may be subject to the invocation of the aforementioned rights arising from the application to which the rights have been restored.

8. The resolution reestablishing rights shall be recorded in the Patent Registry and shall be published in the Official Industrial Property Gazette.

Article 54. Review of actions in administrative and contentious-administrative proceedings.

1. All acts and resolutions issued by the bodies of the Spanish Patent and Trademark Office shall be subject to appeal in accordance with the provisions of this Law and of Law 30/1992, of November 26, on the Legal Framework of Public Administration and Common Administrative Procedures.

2. Any resolutions of administrative appeals issued by the competent bodies of the Spanish Patent and Trademark Office which put an end to administrative proceedings shall be subject to appeal before the Contentious-Administrative Jurisdiction.

3. In response to a resolution granting a patent, the Spanish Patent and Trademark Office may not exercise its powers of review as set out

in Article 102 of Law 30/1992, of November 26, either ex officio or at the request of the party, if the nullity of the patent is based on any of the grounds set out in Article 102 of this Law. Such causes of nullity may be enforced only before the courts.

Article 55. File consultations.

1. Files relating to patent applications, utility models or supplementary protection certificates that have not yet been published may be consulted only with the consent of the applicant. Once they are published, they may be consulted subject to the conditions established by regulation.

2. Any person who can prove that an applicant for a patent, a utility model or a supplementary protection certificate has attempted to enforce the rights derived from its application against that party may consult the file before its publication without the request of the applicant.

3. Upon publication of a divisional application, a new patent application filed by virtue of the provisions of Article 11.1, or an application arising from a change of protection type, as established in Article 51, any person may consult the initial application file prior to its publication and without the consent of the applicant.

4. Files corresponding to applications that have been denied, withdrawn, or deemed abandoned before publication shall not be accessible to the public.

5. In the event that any of the applications mentioned in the previous paragraph should be re-filed, it shall be considered a new application, without prejudice to any possible right to priority that may derive from the previous application.

Article 56. Accessibility of biological material.

1. The deposited biological material referred to in Article 27 shall be accessible:

a) Before the first publication of the patent application, only to those who have the right to consult the file in accordance with that which is set out in the previous article.

b) Between the first publication of the request and the granting of the patent, to every person who so requested or only to an independent

expert, if so requested by the patent applicant.

c) After the granting of the patent, to every person who so requests, even if the patent has expired or been annulled.

2. Access shall be made by means of the delivery of a sample of the deposited biological material, provided that the person making the request promises the following for as long as the effects of the patent are in force:

a) Not to provide third parties with any sample of the biological material deposited or of any material derived therefrom.

b) Not to use any sample of the biological material deposited or derived therefrom, except for experimental purposes, unless an express waiver of such commitment is granted by the applicant or the owner of the patent.

3. In the event the application is denied or withdrawn, access to the deposited material shall, at the request of the applicant and for twenty years beginning with the filing date of the patent application, remain limited to an independent expert. In this case, the provisions of paragraph 2 shall apply.

4. The requests by the applicant referred to in paragraph b) of paragraph 1 and in paragraph 3 may only be submitted until such a date as the technical preparations for the publication of the patent application are deemed to have been completed.

Article 57. Obligation to provide information to third parties.

1. Any person who enforces the rights arising from a patent application or a granted patent against a third party must make the application or patent number known to that party.

2. Any person who includes any mention on any product, on its labels or packaging, or in any other type of advertisement or printed matter, that would tend to suggest the existence of protection by a patent application or a granted patent, must include therein the number of such application or patent.

TITLE VI Effects of the patent and of the patent application

Article 58. Duration and calculation of the effects.

The patent has a non-extensible duration of twenty years from the filing date of the application and goes into effect on the day on which notice is published to the effect that it has been granted.

Article 59. Prohibition of direct working of the invention.

1. The patent conveys to its owner the right to prevent any third party from doing any of the following without its consent:

a) Manufacturing, offering for sale, placing on the market, or using the product covered by the patent or importing or possessing the same for any of the mentioned purposes.

b) Using the procedure covered by the patent or offering such use when the third party knows, or the circumstances make it clear, that the use of the procedure is prohibited without the consent of the patent owner.

c) Offering for sale, placing on the market, or using the product directly obtained through the procedure covered by the patent or importing or possessing such product for any of the mentioned purposes.

2. When the object of the patent is a biological material which, by virtue of its invention, possesses certain properties, the rights conferred by the patent shall extend to any biological material obtained from the patented biological material by reproduction or multiplication, whether in an identical or differentiated manner, which possesses the same properties.

3. When the object of the patent is a procedure that makes it possible to produce a biological material which, by virtue of its invention, possesses certain properties, the rights conferred by the patent shall extend to the biological material obtained directly by means of the patented procedure and to any other biological material obtained therefrom by reproduction or multiplication, whether in an identical or differentiated manner, and which possesses the same properties.

4. When the object of the patent is a product containing genetic information or consisting of genetic information, the rights conferred by the patent shall, without prejudice to that which is set out in paragraph 4 of Article 5, extend to all material into which the product is incorporated and in which its genetic information is contained and

the function thereof is carried out.

Article 60. Prohibition of indirect working of the invention.

1. The patent also confers to its owner the right to prevent any third party, without its consent, from delivering or offering to deliver means for the implementation of the patented invention relating to an essential element thereof to persons who are not authorized to work it, when the third party knows, or the circumstances make clear, that such methods are suitable for the implementation of the invention and intended for that purpose.

2. The provisions of the previous paragraph do not apply when the means to which it refers are products that are commonly used in trade, unless the third party incites the person to whom it makes such delivery to commit acts that are prohibited in the previous article.

3. Persons who carry out the acts set out in paragraphs a) and d) of the next article are not considered to be persons authorized to work the patented invention, in the sense of paragraph 1.

Article 61. General limits and exhaustion of the patent right.

1. The rights conferred by the patent do not extend:

a) To acts carried out privately and for non-commercial purposes.

b) To acts carried out for experimental purposes with reference to the object of the patented invention.

c) To the performance of studies and trials needed to obtain authorization for the marketing of medications within or outside of Spain, and the related practical requirements, including the preparation, obtaining and use of the principal ingredient for these purposes.

d) To the preparation of medications carried out extemporaneously and on a unit-by-unit basis in pharmacies in order to fill a medical prescription, nor to acts relating to the medications thus prepared.

e) To the use of the object of the patented invention on board ships from countries of the Paris Union for the Protection of Industrial Property, on the body of the ship, on its machinery, riggings, apparatus and other accessories, when such ships temporarily or accidentally enter Spanish waters, provided that the object of the invention is used exclusively for the needs of the ship.

f) To use the object of the patented invention in the construction or operation of means of air or land locomotion which belong to member

countries of the Paris Union for the Protection of Industrial Property or of the accessories thereof, when such means or locomotion temporarily or accidentally enter Spanish territory.

g) To the acts set out in Article 27 of the Convention on International Civil Aviation, adopted in Chicago on December 7, 1944, when such acts are in reference to the aircraft of a State to which the provisions of the aforementioned article apply.

2. The rights conferred by the patent do not extend to acts relating to a product protected thereby once the product in question has been placed on the market in the European Economic Space by the patent owner or with his consent, unless there are legitimate reasons justifying the patent owner's opposition to subsequent marketing of the product.

3. The rights conferred by the patent do not extend to acts related to the biological material obtained through the reproduction or multiplication of a biological material covered by the patent, once such material has been placed on the market in the European Economic Space by the patent owner or with his consent, when such reproduction or multiplication is the necessary result of the use for which the biological material in question was marketed, and on the condition that the material obtained is not used subsequently for new reproductions or multiplications.

This limitation shall not apply when there are legitimate reasons justifying the patent owner's opposition to subsequent marketing of the biological material.

Article 62. Exceptions for ranchers and farmers.

1. Notwithstanding the provisions of Article 59, the sale or any other form of marketing of plant propagation material carried out by the patent owner or with his consent to a farmer for agricultural use shall entail the right of the latter to use the product of his harvest for subsequent reproduction or multiplication, carried out by the farmer in the course of his own use. The scope and types of this exception shall correspond to those set out in Article 14 of (EC) Council Regulation No. 2100/94, of July 27, on Community protection of plant variety rights and to Law 3/2000, of January 7, which establishes the legal regime for the protection of plant variety rights.

2. Notwithstanding the provisions of Article 59, the sale or any other

form of marketing of breeding stock or animal reproduction material carried out by the patent owner or with his consent to a farmer or a rancher shall entail the right of the latter to use the protected livestock for agricultural or breeding purposes. This shall include making the livestock or other animal reproduction material available so that the farmer or rancher may pursue his agricultural or stock raising activity, but not sales within the framework of a commercial reproduction activity or for that purpose. The scope and types of this exception shall be those which are established by regulation.

Article 63. Rights derived from prior use.

1. The owner of a patent does not have the right to prevent those who, in good faith and before the date of priority of the patent, have been working, in Spain, that which is determined to be the object thereof or have made serious and effective preparations to work such object, from pursuing or beginning such working in the same manner in which they had been doing until that point or had been preparing to so do and to the extent that is appropriate to meet the reasonable needs of their company. Working rights are only transferable jointly with whatever companies are exercising such rights.

2. The rights conferred by the patent do not extend to actions relating to a product that is supported by that patent once the product has been placed on the market by the person who enjoys the working right established in the previous paragraph.

Article 64. Lack of coverage with respect to previous patents.

The owner of a patent may not invoke it as a defense against action directed against him due to a violation of other patents with a date of priority earlier than that of the patent that he owns.

Article 65. Dependent Patents.

The fact that the invention covered by a patent may not be worked without making use of the invention protected by a previous patent belonging to a different owner shall not be an obstacle to the validity of the former. In this case, the owner of the previous patent may not work the later patent during the effective period of the latter without the consent of its owner, nor may the owner of the later patent work either of the two patents during the effective period of the former one, unless he has the consent of the former patent owner or has obtained a compulsory license.

Article 66. Legal limitations.

The object of a patent may not be worked in an abusive manner or contrary to Law, ethics, public order or public health, and shall in all cases be contingent upon established prohibitions or limitations, whether temporary or permanent, currently established or to be established in the future by legal provisions.

Article 67. Provisional protection.

1. Beginning on the date of its publication the patent confers provisional protection to its owner, consisting of the right to demand reasonable compensation, appropriate to the circumstances, from any third party who, between that date and the publication date of the notice of patent grant, makes any use of the invention which would be prohibited after that period by virtue of the patent.

2. This same provisional protection shall apply even before the publication of the application with respect to any person who has been notified of the filing and content of the patent.

3. When the object of the patent request consists of a procedure relating to a microorganism, the provisional protection shall begin only when the microorganism has been made accessible to the public.

4. When a patent application has been withdrawn or deemed so, or when it has been denied or revoked by virtue of a final resolution, the patent application is understood to have never had the effects set out in the previous paragraphs.

Article 68. Scope of protection.

1. The scope of the protection conferred by the patent or by the patent application is determined by the claims. The description and the drawings shall be used to interpret the claims.

2. For the period prior to the granting of the patent, the scope of protection shall be determined by the claims found in the application exactly as published. Notwithstanding the foregoing, the patent itself, exactly as granted or modified during the course of an opposition, appeal, limitation, or nullity procedure, shall determine the aforementioned protection retroactively, provided that such protection has not been expanded.

3. In order to determine the scope of protection pursuant to the foregoing paragraphs 1 and 2, all elements that are equivalent to an element specified in the claims must be duly taken into account.

Article 69. Scope of protection in process patents.

1. Whenever a product is introduced in Spain with respect to which there exists a patent for the product's manufacturing process, the patent owner shall possess the same rights with respect to the newly introduced product that this Law grants to him with respect to products manufactured in Spain.

2. If the object of a patent is the manufacture of new products or substances, it is assumed, unless otherwise proven, that every product or substance with the same characteristics has been obtained through the patented process.

3. In the practice of proceedings intended to provide the contrary evidence set out in the previous paragraph, the legitimate interests of the defendant in connection with the protection of manufacturing and business secrets shall be taken into consideration.

TITLE VII Actions arising from violation of the patent right

Article 70. Defense of the right.

The patent owner may carry out any appropriate actions, whatever their type and nature, before judicial bodies against those who injure their rights and may demand that necessary measures be taken to protect such rights.

Article 71. Civil actions.

1. An owner whose patent right is violated may request the following in particular:

- a) Cessation of all acts which violate his rights, or the prohibition of such actions if they have not yet occurred.
- b) Compensation for the damages suffered.
- c) Seizure of the objects produced or imported in violation of his rights and of any means used exclusively for the production thereof or to carry out the patented process.
- d) Attributing ownership of the objects or means of production seized pursuant to the previous paragraph whenever possible, in which case the value of the affected goods shall be imputed to the amount of compensation of damages. If the aforementioned value exceeds the amount of compensation granted, that patent owner must compensate the other party for the excess amount.
- e) The adoption of those measures necessary to prevent the continuation of the patent violation and, in particular, the transformation of the objects or means seized by virtue of the provisions of paragraph c) or their destruction if indispensable to prevent the patent infringement.
- f) In exceptional cases, the judicial body may also, at the request of the patent owner, order the publication of the guilty verdict against the patent infringer, at the expense of the guilty party, by means of announcements and notices to interested parties.

The measures encompassed by paragraphs c) and e) shall be carried out at the expense of the infringer, unless well-founded reasons for not doing so are put forward.

2. The measures set out in letters a) and e) of the previous paragraph may also be requested, when appropriate, against intermediaries whose services are employed by a third party to infringe patent rights, even when the actions of such intermediaries do not of themselves constitute infringement, without prejudice to that which is set out Law 34/2002 of July 11, on Services of the Information Society and Electronic

Commerce. Such measures must be objective, proportional, and non-discriminatory.

Article 72. Situations justifying the compensation of damages.

1. Any person who, without the consent of the patent owner, manufactures, imports objects protected thereby or uses the patented procedure, shall in all cases be obligated to respond for the damages caused.

2. All persons who carry out any other act of working of the object protected by the patent shall be obligated to compensate the damages caused only if they acted knowingly or through fault or negligence. In all cases, the infringer shall be deemed to have acted knowingly if he has been advised by the patent owner of the existence of the patent, properly identified, and of the infringement thereof, with a demand to cease such infringement.

Article 73. Presentation of documents for calculating compensation.

1. In order to determine the amount of damages suffered as a result of the unauthorized working of the inventions, the patent owner may require responsible party submit those documents that could be used to this end.

2. The enforcement of this measure shall take into account the legitimate interests of the defendant with respect to the protection of his company's manufacturing and business secrets, without prejudice to the right of the patent owner to obtain the information necessary to determine the extent of the compensation in its favor when the investigation for this purpose is carried out in the resolution enforcement phase and where it has been determined that an infringement has occurred.

Article 74. Calculation of coercive compensation of damages.

1. The compensation of damages owed to the patent owner shall include not only the amount of the loss suffered, but also that of profits not earned by the owner as a result of the violation of his rights. The award for damages may include, as applicable, investigation expenses incurred to obtain reasonable evidence of the commission of the infringement covered by the judicial proceeding.

2. In order to establish compensation of damages, the following shall

be taken into account, at the election of the damaged party:

a) Negative economic consequences, including the profits that the owner would foreseeably have earned from the working of the patented invention in the absence of competition by the infringer, or alternatively, any profits earned by the latter from the working of the invention. Compensation for non-material damages, even if the existence of economic harm is not proved.

b) A lump sum covering at least the amount that the infringer would have had to pay to the patent owner for the granting of a license that would have allowed him to work the object of the patent legally. The setting of this amount shall take into account, among other factors, the economic importance of the patented invention, the remaining effective period of the patent at the time the infringement began, and the number and type of licenses granted at that time.

3. If the jurisdictional body determines that the owner is not in compliance with the obligation to work the patent as found in Article 90, lost profits shall be established in accordance with paragraph b) of the previous paragraph.

4. When a judgment is issued requiring the cessation of actions that infringe the patent, the Court shall establish a coercive compensation in favor of the plaintiff, appropriate for the circumstances, to be paid on a daily basis until the infringement actually ceases. The definitive amount of this compensation, which shall be added to that which the owner is generally entitled to receive by the application of paragraph 2, as well as the date on which the obligation to indemnify shall begin, shall be set as part of the enforcement of the judgment in accordance with the provisions of Law 1/2000 of January 7, on Civil Procedure.

5. All procedures relating to the calculation or quantification and settlement of damages in accordance with the criteria established in this article shall be carried on the basis of that which is established in the ruling in accordance with the procedure set out in Chapter IV of Title V of Book III of the Civil Procedure Law.

Article 75. Impact on business profits.

1. In order to determine the amount of lost earnings based on the criteria established in Article 74.2, the profit calculation may, to the extent deemed reasonable by the jurisdictional body, include

earnings obtained through the working of the goods of which the invented object constitutes an essential part from a trade standpoint.

2. The invented object is considered to be an essential part of a good from trade standpoint when the incorporation of the invention constitutes a determining factor for the demand of the good in question.

Article 76. Compensation for damage to reputation.

The patent owner may also demand compensation for damage to the reputation of the patented invention caused by the infringer for any reason, and in particular as a result of the deficient realization of the invention or its unsuitable placement in the market.

Article 77. Deduction of compensations already paid.

The compensation owed by any person who has produced or imported the objects protected by the patent without the consent of the patent owner shall be reduced by any compensation that the latter has received for the same reason from those who have worked the same object in any manner.

Article 78. Statute of limitations and limits to the exercise of legal action.

1. Civil actions arising from the infringement of the patent right prescribe after five years from the date on which they could first be exercised.

2. The patent owner may not exercise the actions set out in this Title against those who work objects that have been placed in the market by persons who have appropriately compensated him for the damages caused.

TITLE VIII The patent application and the patent as industrial property

CHAPTER I Registration, joint ownership and expropriation

Article 79. Registration in the patent registry.

1. Both patent applications and granted patents are to be registered in the Patent Registry in the manner established by regulation.

2. Except in the case provided for in Article 13.1, transmission, licensing, and all other legal acts or business, whether optional or obligatory, which affect patent applications or previously granted patents, shall have effect with respect to third parties acting in good faith only after they have been registered in the Patent Registry. The form and documentation necessary for such registration shall be established by regulation.

3. Rights to patent applications or to patents that are not duly registered in the Patent Registry may not be invoked against third parties. Neither may mention be made in products of a patent application or a patent for which the corresponding right to make such a mention has not been registered. Any actions carried out in violation of the provisions of this paragraph shall be sanctioned as acts of unfair competition.

4. The Spanish Patent and Trademark Office shall qualify the legality, validity and efficacy of any acts that may be registered in the Patent Registry. The Patent Registry shall be public.

5. Once any of the rights or encumbrances contemplated in Article 81.1 have been recorded in the Patent Registry, no other such right or encumbrance with the same or a prior date may be recorded if it is opposed to or incompatible with the former. If only the registration application has been recorded, no other incompatible right or encumbrance may be recorded until the application is resolved.

Article 80. Joint ownership.

1. Where a patent application or patent already granted belongs to a number of persons in undivided parts, the resultant co-ownership shall be governed by agreement among the parties or, in its absence, by the provisions of the present article, or, ultimately, by the common law provisions on joint ownership

2. However, any one of the parties alone may:

a) Dispose of the part belonging to him, notifying the other joint owners that they may exercise their preemption and buy-out rights. The time limit for exercising the right of preemption shall be two months from the date on which the notification is sent, and for buy-out it shall be one month from the date of recording of the patent in the Patent Registry.

b) Work the invention following notification to the other joint owners.

c) Carry out the acts required to maintain the application or patent.

d) Bring civil or criminal action against third parties who in any way injure the rights conferred by the joint application or patent. The party exercising such action shall be obliged to notify the other joint owners of the action taken so that they may also take part.

3. A license to a third party to work the invention shall be granted by the parties jointly, unless the jurisdictional body deems that, for reasons of equity given the particular circumstances, one of the parties should be authorized to grant the said license.

Article 81. Expropriation.

1. Any patent application or patent already granted may be expropriated for reasons of public utility or public interest, subject to fair compensation.

2. Expropriation may be for the purpose of placing the invention within the public domain so that it may be freely worked by any person without the need to apply for licenses, or it may be for the purpose of exclusive working by the State, which would then acquire ownership of the patent.

3. Public utility or public interest shall be declared in the Law authorizing the expropriation, which shall also state whether the invention shall fall within the public domain or whether the State shall acquire ownership of the patent or application. The procedure to be followed shall conform in every aspect, including fixing of fair compensation, to the general procedure set out in the Law on Compulsory Expropriation of December 16, 1954.

CHAPTER II Transfers, Licenses and Encumbrances

Article 82. General Principles.

1. Both patent applications and patents are transferable and may be used as security or may function as the object of other real rights, licenses, purchase options, seizures, other legal business or measures resulting from enforcement proceedings. In the event that a chattel mortgage is established, the latter shall be governed by its specific provisions and shall be recorded in paragraph four of the Movable Property Registry and said recording shall be reported to the Patent Registry so that it can be recorded therein. To this end, both registries shall be coordinated in order effect on-line communication of the encumbrances recorded or noted therein.

2. To be valid, the acts mentioned in the preceding paragraph shall be put in writing when performed inter vivos.

3. For the purposes of assignment or encumbrance, patent applications or patents already granted shall be indivisible, although they may be the joint property of several persons.

4. The provisions of this Chapter are understood to be without prejudice to standards governing the content and limits of transfer and license contracts for intangible assets imposed by other applicable national legislation or, if applicable, by the corresponding national or Community bodies, arising from the provisions established in Community regulation regarding the application of paragraph 3 of Article 101 of the Treaty on the Functioning of the European Union to certain categories of technology transfer agreements.

Article 83. Contractual Licenses.

1. Both patent applications and patents may be the object of licenses covering the whole or part of the powers constituting an exclusive right, for all or part of the Spanish territory. Licenses may be exclusive or non-exclusive.

2. The rights conferred by the patent or application may be exercised against a licensee who violates the restrictions placed on the license in accordance with the provisions of the preceding paragraph.

3. Unless otherwise agreed, owners of contractual licenses may not transfer them to third parties nor grant sub-licenses.

4. Unless otherwise agreed, owners of contractual licenses shall have the right to carry out all the acts comprised in working the patented invention, for all applications, in the whole of the Spanish territory and for the whole term of the patent.

5. Unless otherwise agreed, a license shall not be deemed to be exclusive and the licensor may grant licenses to other persons and work the invention himself.

6. Exclusive licenses shall prevent the granting of other licenses and the licensor may work the invention only if he has specifically reserved this right in the contract.

Article 84. Technical knowledge.

1. Unless otherwise agreed, any person who transfers a patent application, a patent already granted or who grants a corresponding license, shall be obliged to make available to the transferee or licensee the technical data he possesses that is necessary to work the invention satisfactorily.

2. The transferee or licensee to whom secret data has been communicated shall be obliged to take the necessary measures to prevent their disclosure.

Article 85. Responsibility of the transferor and of the licensee.

1. Unless otherwise agreed, any person who transfers a patent application or a patent already granted or who grants a corresponding license against payment shall be responsible if subsequently it is declared that he lacked the ownership or the powers necessary to complete the business in question. When an application is withdrawn or refused or a patent is revoked or invalidated, the provisions of Article 104.3 shall apply in all cases, unless there is agreement on the increased liability of the transferor or licensor.

2. The transferor or licensor shall be liable when he has acted in bad faith. Unless there is proof to the contrary, bad faith shall mean that the other party has not been informed, by means of specific mention in each document in the contract, of the Spanish or foreign

reports or decisions available or known to the transferor or licensor concerning the patentability of the invention covered by the application or patent.

3. The time limit for the actions referred to in the preceding paragraphs shall be six months from the date of the final decision or judgment on which it is based. The provisions of the Civil Code on compensation for eviction shall apply.

Article 86. Responsibility to third parties.

1. Any person who transfers a patent application or a patent already granted or who grants a corresponding license shall be liable jointly with the transferee or licensee for compensation due as a result of damages caused to third parties by defects inherent in the invention that is the subject matter of the application or patent.

2. The party who pays the compensation mentioned in the preceding paragraph may demand compensation for the amounts paid from the party found to be at fault, unless a different agreement has been made, he has acted in bad faith or, given the circumstances of the case and for reasons of equity, he should bear the cost of all or part of the compensation due to third parties.

CHAPTER III Licenses of right

Article 87. Licenses of right.

Licenses of right are those which result from a public offering of non-exclusive contractual license made by the patent owner in accordance with the provisions of this Chapter.

Article 88. Offering of licenses of right.

1. Where the owner of the patent offers licenses of right, informing the Spanish Patent and Trademark Office in writing that he is willing to authorize the use of the invention by any interested party in the capacity of licensee, the annual fees to be paid for the patent shall be reduced by half following receipt of his declaration. Where there is a total change in ownership of a patent as a result of the exercise of the legal action provided for in Article 12, above, the offer shall be considered to have been withdrawn when the new owner is entered in the Patent Registry. The Spanish Patent and Trademark Office shall enter offers of licenses of right in the Patent Registry and shall appropriately publicize them.

2. The offer may be withdrawn at any time through notification in writing addressed to the Spanish Patent and Trademark Office, provided that no person has informed the owner of the patent of his intention to use the invention. Withdrawal of the offer shall take effect from the time of notification.

3. The amount of the corresponding reduction in fees that occurs from the time the offer is communicated until it is withdrawn shall be paid within the month following withdrawal of the offer. The provisions of Article 184.3 shall apply in such cases and the period of six months provided for therein shall be calculated from the end of the period previously specified.

4. Licenses of right may not be offered when the Patent Registry shows that there is an exclusive license or that an application for a license of this type has been made. When an offer of licenses of right has been made, no application to record an exclusive license in the Patent Registry shall be permitted unless the offer has been withdrawn or is deemed to have been withdrawn.

5. The acceptance of a public offer of licenses of right entitles any

person to use the invention in the capacity of a non-exclusive licensee.

Article 89. Acquisition of licenses of right.

1. Any person who wishes to use the invention on the basis of an offer of a license of right shall notify the Spanish Patent and Trademark Office accordingly in triplicate, indicating the use he intends to make of the invention. The Spanish Patent and Trademark Office shall send the notification both to the patent owner and to the applicant.

2. The applicant for a license shall be entitled to use the invention in the manner indicated by him within one month after the date of receipt of the notification sent to him by the Spanish Patent and Trademark Office.

3. In the absence of agreement between the parties, the Spanish Patent and Trademark Office, at the written request of either of the parties and after having heard both parties, shall fix a reasonable amount for the remuneration to be paid by the licensee or shall modify it if subsequent acts have occurred or facts made known which show that the amount fixed is obviously insufficient. Requests for modification of the remuneration fixed in this manner may only be made after a period of one year has elapsed since it was previously fixed. Any request to fix or modify the remuneration shall only be taken into consideration if the corresponding fee has been paid.

4. At the expiration of each quarter of the calendar year, the licensee shall inform the owner of the patent of the use he has made of the invention and shall pay the corresponding remuneration. If he does not fulfill those obligations, the owner of the patent may grant him an additional period that will reasonably allow him to do so. If he has not done so at the expiration of that period, the license shall be invalidated.

TITLE IX Obligation to work and compulsory licenses

CHAPTER I Obligation to work the invention and requirements for the granting of compulsory licenses

Article 90. Obligation to work.

1. The owner of a patent shall be obliged to work the patented invention either himself or through a person authorized by him, by implementing it in Spain or within the territory of a Member of the World Trade Organization in such a manner that the working is sufficient to satisfy demand in the Spanish market.

2. Working must take place within a period of four years from the date of filing the patent application or three years from the date on which grant of the patent was published in the Official Industrial Property Gazette, the period which expires latest being automatically applied.

3. The burden of proof that the invention is being worked in compliance with the provisions of paragraph 1 falls on the patent owner.

Article 91. Situations justifying the granting of compulsory licenses.

A compulsory license to a given patent may be granted in any of the following circumstances:

- a) Failure or insufficiency of working of the patented invention.
- b) Interdependence between patents, or between patents and plant variety rights.
- c) The need to halt practices that a final administrative or jurisdictional decision has declared to be contrary to national or Community legislation in defense of free competition.
- d) The existence of reasons for such grant based on the public interest.
- e) The manufacture of pharmaceutical products intended for export in application of (EC) Regulation No. 816/2006 of the European Parliament and Council, of May 17, 2006, on the granting of compulsory licenses for patents relating to the manufacture of pharmaceutical products intended for export to countries with public health problems.

Article 92. Compulsory licenses due to failure or insufficiency of working.

1. Following expiration of the period set out in Article 90 for beginning to work the patented invention, any person may request the granting of a compulsory license if, at the time of the request and

unless there are legitimate excuses, the working of the patent has not commenced or if such working has been halted for more than one year at the time the period elapses.

2. Legitimate excuses shall be deemed to be objective difficulties of a legal/technical nature, independent of the will and circumstances of the patent owner, which make the working of the patent impossible or prevent its working from being more extensive than it is.

Article 93. Compulsory license due to dependency.

1. When it is not possible to work the invention protected by a patent without harming the rights conferred by an earlier patent or plant variety right, the owner of the later patent may at any time request the granting of a compulsory license for the working of the object of the prior patent or variety covered by the plant variety right, by paying an appropriate fee.

2. When it is not possible to work a plant variety right without injuring the rights conferred by an earlier patent, the plant breeder may request a compulsory license in order to work the invention protected by the patent, by paying an appropriate fee.

3. Where the subject matter of a patent is a process to obtain a chemical or pharmaceutical substance protected by a patent in force, both the owner of the process patent and the owner of the product patent shall have the right to obtain a compulsory license for the patent of the other party.

4. The license applicants referred to in the previous paragraphs must demonstrate:

a) That the invention or variety represents significant technical progress of considerable economic importance with respect to the invention claimed in the previous patent or the variety protected by the previous plant variety right.

b) That they have attempted, without success within a reasonable time, to obtain a contractual license from the owner of the previous patent or plant variety right under the terms set out in Article 97.1.

5. When the granting of a compulsory license is required for reasons of dependency, the owner of the previous patent or plant variety right may also request the grant, under reasonable conditions, of a license

to use the invention or variety protected by later patent or plant variety right.

6. Compulsory licenses due to dependency are granted only with such content as is necessary to allow the working of the invention protected by the patent or of the variety protected by the plant variety right in question, and shall remain null and void when any of the titles among which the dependency occurs is declared null or expired.

7. The processing and resolution of applications for compulsory licenses due to dependency for the non-exclusive use of a patented invention shall be governed by the provisions of the present Law. The processing and resolution of applications for compulsory licenses due to dependency for the use of the variety protected by a plant breeding right shall be governed by specific applicable legislation.

Article 94. Compulsory licenses to remedy anticompetitive practices.

1. A definitive administrative or jurisdictional ruling declaring a violation of the rights of free competition by the patent owner shall be communicated to the Spanish Patent and Trademark Office by the National Commission on Financial Markets and Competition or by the issuing Judge or Court.

2. If the resolution directly decrees that the patent is subject to the compulsory license system, the Spanish Patent and Trademark Office shall publish it in the Official Industrial Property Gazette and shall proceed in accordance with the provisions of Article 98 and 99 of this Law.

3. In this case, it will not be necessary to justify the prior negotiation between the patent owner and the potential user requesting the compulsory license. The need to correct anticompetitive practices may be taken into account in determining the license fee.

4. Without prejudice to that which is set out in the preceding paragraphs, if the Government believes that there are reasons of public interest to put an end to anticompetitive practices, the subjection of the patent to the compulsory licensing regime may be established by royal decree in accordance with the provisions of the previous article.

Article 95. Compulsory license for reasons of public interest.

1. For reasons of public interest, the Government may at any time make a patent application or a patent already granted subject to the grant of compulsory licenses, acting in that respect by royal decree.

2. Reasons of public interest shall be deemed to exist when:

a) The initiation, increase or generalization of working of the invention, or improvement of the conditions in which it is being worked, are of paramount importance for public health or national defense.

b) Failure to work or the insufficient quality or quantity of working leads to serious prejudice to Spain's economic or technological development.

c) National supply needs so require.

3. The royal decree to which reference is made in paragraph 1 shall be drawn up at the proposal of the Ministry for Industry, Energy and Tourism. In cases where the importance of working the invention concerns public health or national defense, the proposal shall be formulated jointly with the competent Minister for health or defense, respectively.

4. The royal decree making a patent subject to the granting of compulsory licenses may establish directly, in whole or in part, the scope, conditions, and license fee for the conditions contemplated in Article 97.2 or may refer the setting of such conditions to the Spanish Patent and Trademark Office for timely resolution as set out in the next chapter, so that they may be specified in the resolution granting the license.

5. When the imposition of the grant of compulsory licenses for reasons of public interest is due to their importance for national defense, the opportunity to apply for such licenses may be limited to one or more specific companies.

Article 96. Compulsory licenses for the manufacture of medications intended for countries with public health problems.

1. Applications for compulsory licenses filed pursuant to (EC) Regulation No. 816/2006 of the European Parliament and Council, of 17 May, 2006, on the granting of compulsory licenses for patents relating to the manufacture of pharmaceutical products intended for export to countries with public health problems, shall be addressed to the

Spanish Patent and Trademark Office using the standardized forms provided for this purpose. The licenses shall be processed in accordance with the provisions of the aforementioned (EC) Regulation No. 816/2006 and shall be governed by the provisions thereof.

2. The license shall enter into force beginning on the date on which the applicant and the owner of the right is notified, whichever is later. The resolution establishing the license shall also establish the corresponding fee. The license may be revoked by the Spanish Patent and Trademark Office if the licensee fails to comply with the conditions under which it was granted in accordance with the provisions of Article 16 of the aforementioned (EC) Regulation No. 816/2006.

3. Without prejudice to any other legally established consequence, any violation of the prohibition set out in Article 13 of (EC) Regulation No. 816/2006 and in Article 2 of (EC) Council Regulation No. 953/2003, dated 26 May, 2003, intended to prevent trade diversion into the European Union of certain essential medications, shall be considered a violation of the license's underlying patent.

CHAPTER II Procedure for granting compulsory licenses

Article 97. Prior justification of the license applicant.

1. Before applying for a compulsory license, the interested party must prove that he has attempted, without success within a reasonable time, to obtain a contractual license from the patent owner under reasonable commercial conditions. For the licenses contemplated in Article 96, and in the absence of the circumstances set out in Article 9.2 of (EC) Regulation No. 816/2006, to which reference is made in paragraph 1 of the previous article, this term shall in all cases be thirty days prior to the filing of the application.

2. The provisions of the previous paragraph shall not apply:

- a) In situations of national emergency or in other circumstance of extreme urgency.
- b) In cases of non-commercial public use.
- c) In the situation described under letter c) in Article 91.

Article 98. License Application.

1. The application for a compulsory license, addressed to the Spanish Patent and Trademark office using the standard form provided for this purpose, must be accompanied by documentation supporting the prior attempt to obtain a contractual license, except in those cases set out in paragraph 2 of the previous article. The application is subject to payment of the corresponding fee.

2. In addition to filing his request, the applicant must state the circumstances that justify it, provide whatever evidence he possesses in support of his affirmations, and work the invention in a real and effective manner in accordance with the purpose of the license.

Article 99. Processing and resolution.

1. The Spanish Patent and Trademark Office will send a copy of the application with its accompanying documents to the patent owner so that he may respond in a period not to exceed one month. The response must be accompanied by evidence supporting the allegations made. If the patent owner does not respond within the designated period, the Office will proceed to grant the license.

2. If, after evaluating the statements and evidence submitted, the Spanish Patent and Trademark Office is of the opinion that the

circumstances justify the granting of the license, it will invite the parties to designate a common mediator within a period of two months or, alternatively, for each to name an expert who, together with a third expert named by the aforementioned Office, will agree upon the conditions of the license.

3. If, within the additional two-month period, the parties have not come to agreement concerning the designation of the mediator or expert or concerning the license conditions, the Spanish Patent and Trademark office will render a decision on the granting of the license and will come to a decision accordingly.

4. The resolution granting the license must determine the content thereof. Specifically, it must set the scope of the license, the fee, the duration, the guarantees to be provided by the licensee, and any other clauses that ensure its compliance with the conditions that justify the granting of the license.

5. During the processing of the file, the Spanish Patent and Trademark Office may, *ex-officio*, perform whatever actions it deems appropriate and useful to resolve the granting of the license. The Office may suspend the processing of the request one time only upon reasonable request by both parties, under the circumstances set out in the implementing regulations of this Law.

6. The resolution shall specify the expenses to be borne by each party, which shall be those incurred at their behest. Common expenses shall be divided equally between the parties. The payment of all expenses may be required of one of the parties if it is declared to have acted recklessly or in bad faith.

7. The filing of an administrative or jurisdictional appeal against the resolution ending the procedure shall not suspend the enforcement of the challenged act, but the Spanish Patent and Trademark Office may authorize the licensee, upon receipt of a well-founded petition from the latter, to delay the beginning of working until the granting of the license is definitive.

CHAPTER III Compulsory License System

Article 100. Characteristics of compulsory licenses.

1. Compulsory licenses are non-exclusive.

2. The license shall provide for suitable remuneration according to the particular circumstances of each case, due regard being given to the economic importance of the invention.

3. If the patent is based on semiconductor technology, the object of the compulsory licenses shall be limited to non-commercial public use or to usage intended to rectify a practice declared non-competitive following a judicial or administrative proceeding.

4. Relations between the owner of the patent and the licensee who has been granted a compulsory license shall be governed by the principle of good faith. For the patent owner, the application of this principle shall include the obligation to make available to the licensee the technical knowledge that he possess and that is necessary in order to proceed to properly work the invention for commercial purposes. In the event of the violation of this principle by the patent owner as declared by a judicial ruling, the licensee may request that the Spanish Patent and Trademark Office reduce the established license fee in proportion to the impact of the unfulfilled obligation on the working of the invention. If under the same circumstances, the actions of the licensee are declared to be contrary to contractual good faith, the licensor may request that the aforementioned Office terminate the compulsory license.

5. The compulsory license shall include the supplementary protection certificates which apply to the object of the underlying patent included within the scope of the compulsory license at the time it is granted or later.

6. To the extent that they do not contradict the provisions of this Title or of Community legislation, the regulations established for contractual licenses set out in Title VIII, Chapter II of this Law shall apply to compulsory licenses.

Article 101. Grant, modification and cancellation of compulsory licenses.

1. In order for the grant of a compulsory license to be valid, the license must be transmitted with the company or part of the company that is working it and the grant must be expressly recorded by the Spanish Patent and Trademark Office. In the case of licenses issued due to patent dependency, the license must also be transmitted together with the dependent patent.

2. In all cases, the granting of sublicenses by the owner of a compulsory license shall be null and void.

3. Both the licensee and the patent owner may request that the Spanish Patent and Trademark office modify the fee or other conditions of the compulsory license when new facts justifying such a change are made known and, in particular, when the patent owner, subsequent to the issuing of the compulsory license, unjustifiably grants contractual licenses under conditions that are more favorable than those granted to the former.

4. If the licensee commits serious or repeated breaches of any of the obligations that it has undertaken by virtue of the compulsory license, the Spanish Patent and Trademark Office, after hearing the complaint of the affected party, may cancel the license ex officio or at the request of the interested party.

TITLE X Nullity, Revocation and Expiration of the Patent

CHAPTER I Nullity

Article 102. Grounds for nullity.

1. The patent shall be declared invalid:
 - a) If it has been determined that one or more of the patentability requirements contained in Title II of this Law is not met.
 - b) If it does not describe the invention with sufficient clarity and completeness that a subject matter expert could execute it.
 - c) If its object exceeds the content of the patent application as filed or, in the case of a patent granted as a result of a divisional application or as a result of an application filed pursuant to the provisions of Article 11, if the object of the patent exceeds the content of the initial application as filed.
 - d) If the protection conferred by the patent was expanded after it was granted.
 - e) If the patent owner does not have the right to obtain it pursuant to the provisions of Article 10.
2. If the grounds for nullity affect only a part of the patent, the latter shall be limited by modifying the claim or claims affected and shall be declared partially null. For this purpose, the patent owner, in his statement of opposition to the allegations and without prejudice to his ability to defend principally the validity of the claims granted, may defend subsidiarily the set or sets claims proposed in his response.

Article 103. Exercise of the action for annulment.

1. The action to challenge the validity of the patent shall be public. Notwithstanding the foregoing, in the case provided for in paragraph 1, paragraph e) of the preceding article, a declaration of nullity may be requested only by the person with standing to obtain the patent.
2. The action for annulment may be exercised throughout the entire legal existence of the patent and for five years following the expiration thereof.
3. The action shall in all cases be directed against the registered patent owner at the time the action is filed, and such action must be reported to all persons who hold rights to the patent and who are duly registered in the Patent Registry, so that they may appear in person

and participate in the process.

4. During the annulment proceeding, the patent owner may limit the scope thereof by modifying the claims. The patent thus limited will serve as the basis for the proceedings.

5. It is not permitted to file suit in the Civil Courts for the annulment of a patent by invoking the same grounds for nullity that have already been the object of a ruling on the substance of the matter in contentious-administrative litigation based on the same facts there invoked as grounds for nullity.

Article 104. Effects of the declaration of nullity.

1. A declaration of nullity means that the patent was never valid and that neither the patent nor the application that originated it have ever had the effects set out in Title VI of this Law, to the extent that such nullity has been declared.

2. The nullity of the patent shall determine that of its supplementary certificates to the extent that it affects the right to the product protected by the underlying patent that served as the basis for the granting of the certificates.

3. Without prejudice to compensation for damages that may be appropriate in the event that the patent owner has acted in bad faith, the retroactive effect of the nullity shall not affect:

a) Any resolutions regarding the patent infraction that have the force of res judicata and have been enforced prior to the declaration of nullity.

b) Any contracts entered into prior to the declaration of nullity, to the extent that they have been executed prior to such declaration. Notwithstanding the foregoing, for reasons of equity and to the extent justified by the circumstances, it shall be possible to claim restitution for sums paid by virtue of the contract.

4. Once finalized, the declaration of nullity of the patent shall have the force of res judicata with respect to all parties.

5. The ruling declaring the total or partial nullity of the patent shall in all cases be communicated to the Spanish Patent and Trademark Office so that it may proceed with the cancellation of its registration

or the modification of the registered title.

CHAPTER II Revocation or limitation at the request of the patent owner

Article 105. Petition for revocation or limitation.

1. At the request of its owner, a patent whose grant has been finalized may be revoked or limited by modifying the claims at any time during its legal existence, including the effective period of the supplementary certificates, if any.

2. The petition for revocation or limitation addressed to the Spanish Patent and Trademark Office shall be included in the official printed publication established for this purpose and shall be considered valid only after payment of the corresponding fee.

3. The revocation or limitation of a patent shall not be permitted if it is subject to real rights, purchase options, encumbrances or licenses recorded in the Patent Registry, without the consent of the owners of such rights. Neither shall the petition for revocation or limitation be allowed if a lawsuit has been filed and recorded in the Patent Registry claiming ownership of the patent or recognition of other property rights therein, without the consent of the plaintiff.

4. When there is a pending legal proceeding challenging the validity of the patent, and without prejudice to the provisions of Article 120, the petition for limitation addressed to the Spanish Patent and Trademark Office must be authorized by the Judge or Court assigned to hear the proceeding.

Article 106. Procedure.

1. The Spanish Patent and Trademark Office shall verify the validity of the documents submitted and shall determine, if applicable, whether the modified claims meet the provisions of Articles 28 and 48.

2. If the documentation is deficient or if the new set of claims does not limit the object of the patent, the interested party shall be notified of the objections and the reasons thereof so that he may remedy the defects or respond with further arguments within the period established by regulation. The petition will be denied if the defects are not remedied by the deadline. If there are no objections or if these are successfully answered, a resolution shall be issued granting the requested revocation or limitation.

Article 107. Effects of the revocation or limitation.

1. The effects of revocation or limitation are the same as those of total or partial nullity. The modified claims shall retroactively determine the scope of the protection conferred by the patent.

2. The effects of the revocation or limitation on previous resolutions and contracts entered into prior to the declaring resolution shall be as set out in Article 104.

CHAPTER III Expiration

Article 108. Grounds for expiration.

1. Patents expire:

- a) Upon expiration of the term for which they were granted.
- b) When forfeited by the owner.
- c) Due to lack of timely payment of an annual fee and, if applicable, the corresponding surtax.
- d) If the invention is not worked within two years following the granting of the first compulsory license.
- e) Due to a breach of the obligation to work as set out in Article 90, when the patent owner cannot benefit from the provisions of the aforementioned Paris Convention for the Protection of Industrial Property, of March 20, 1883 or the Agreement on Trade-Related Aspects of Intellectual Property Rights, signed in Marrakesh on April 15, 1994, and customarily resides or maintains his industrial or commercial establishment in a country whose legislation allows the adoption of a similar measure.

2. Without prejudice to the declaration made by the Spanish Patent and Trademark Office and published in its Official Industrial Property Gazette, the expiration of a patent causes the patented object to pass into the public domain from the time of occurrence of the acts or omissions that gave rise thereto, except to the extent that the same object is supported by another, previous patent in force. The provisions of Article 104.2 regarding nullity shall apply to the expiration of the underlying patent due to any of the grounds set out in paragraphs 1.b) and 1.e) with respect to nullity.

3. In cases involving a failure to pay an annual fee, the omission giving rise to expiration is understood to occur at the beginning of the year of existence of the patent for which the annual fee was not paid. Notwithstanding that which is set out in the previous paragraph, expiration shall not take place in this case until six months have passed without payment of the annual fee and the corresponding surtax or, if applicable the corresponding regularization fee.

4. In the case set out in paragraph 1, Paragraph d), expiration shall be declared following examination of the corresponding administrative file by the Spanish Patent and Trademark Office.

Article 109. Expiration due to lack of timely payment of an annual fee.

1. When there are encumbrances registered against a patent or a claim action in progress and the owner has failed to make an annual payment on a timely basis, said patent shall not expire until the encumbrance is lifted or the claim action has been definitively dismissed. The owner of the patent with an encumbrance may nevertheless prevent its expiration by paying the accrued annual fees within a period of two months beginning on the date on which he is informed of the cancellation of the encumbrance.

2. If as a result of the procedures referred to in the previous paragraph a change is made to the ownership of a patent, the new owner may pay the accrued annual fees within a period of two months beginning on the date on which the ruling on the claim action became official or on which the competent authority or court notified the Spanish Patent and Trademark Office of the final ruling on the encumbered patent.

3. Upon completion of the periods specified in paragraphs 1 and 2, the patent shall expire if the corresponding payment has not been made.

4. Neither shall a patent expire due to lack of timely payment of an annual fee if a chattel mortgage has been filed against it in the Patent Registry. The mortgage owner may make the payment on behalf of its owner within a period of one month, counted from the end of the surcharge period set out in Article 185. The payment may also be made under the same conditions by the owners of other rights registered against the patent that could be affected by its expiration, without prejudice to their right to require reimbursement of the amounts paid from the patent owner. If the chattel mortgage has been set up in favor of the Public Treasury, the payment shall be suspended until the cancellation thereof and the patent shall not expire due to lack of payment of annual payment in arrears, which must be paid either by the owner of the patent who mortgaged it or by whomever becomes the new owner after the enforcement of the mortgage guarantee through collection procedures.

Article 110. Forfeiture.

1. The owner may forfeit the entire patent or one or more claims found therein.

2. The statement of forfeiture, addressed to the Spanish Patent and Trademark Office, must be submitted in writing and shall exert effects against third parties only after it has been recorded in the Patent Registry.

3. In the event of a partial forfeiture, the patent shall remain in force with respect to those claims not included in the forfeiture, provided the forfeiture does not involve the expansion of the object of the patent.

4. The forfeiture of a patent shall not be permitted if it is subject to real rights, purchase options, encumbrances or licenses recorded in the Patent Registry, without the consent of the owners of such rights. Neither shall the forfeiture be admitted if a claim or annulment action is in progress with respect to the patent and the plaintiff has not given his consent.

5. The forfeiture of the patent shall be published in the Official Industrial Property Gazette. In the event of a partial forfeiture, a new patent pamphlet will be published in accordance with regulatory provisions after payment of the corresponding fee.

TITLE XI Patents of interest for national defense

Article 111. Subjection to secrecy rules.

1. The content of all patent applications shall remain secret for one month following their filing date. Before the end of this period, the Spanish Patent and Trademark Office may extend it by up to four months if it is of the opinion that the invention could be of interest to national defense, by notifying the applicant of the extension and making a copy of the filed patent application available immediately to the Defense Ministry.

2. For the purposes stated, necessary means of coordination shall be established between the Defense Ministry and the Spanish Patent and Trademark Office in order to determine when an invention may be of interest to national defense. The Defense Ministry may be made aware of all application files under conditions of secrecy.

3. When so required by a national defense interest, the Defense Ministry shall require the Spanish Patent and Trademark Office to order secret processing and to so notify the applicant, before the end of the period established in paragraph 1.

4. While the patent application or patent are subject to secrecy rules, the applicant or owner must refrain from any action that would allow the invention to be made known to unauthorized persons. At the request of the patent owner, the Defense Ministry may authorize actions directed toward total or partial working of the application or patent, specifying the conditions to which such actions are subject.

5. Upon receiving a favorable report from the Defense Ministry, the Spanish Patent and Trademark Office may lift the secret status of a given application or patent.

6. Those patent applications or patents that have been declared secret in a country belonging to the North Atlantic Treaty Organization and which are filed in Spain in such a manner as to claim the right of priority, shall remain subject to secrecy rules until the application of such rules has been lifted in the country which imposed them. These applications may not be withdrawn without the express permission of the authority who declared them to be secret.

Article 112. Processing.

1. Patent applications that are subject to an obligation of secrecy shall undergo processing similar to that of non-secret applications, save with respect to disclosure and publication, and such procedures shall in all cases be reported to the Defense Ministry and to the application owner or his representative.

2. For as long as the secrecy obligation is maintained, those time periods that are calculated for the applicant based on the publication of the report on the state of the art shall begin to run from the time the Spanish Patent and Trademark Office informs him that they are authorized to carry out the actions subject to the said terms.

3. The period for filing opposition to the grant of the patent shall not begin until the secrecy obligation has been lifted and the grant is published in the Official Industrial Property Gazette.

Article 113. Maintenance of the secrecy obligation.

A patent whose grant was processed secretly shall be registered in a Secret Registry of the Spanish Patent and Trademark Office and shall be kept in that same status for a year following the grant date. The extension of that period must be renewed annually by notifying the patent owner accordingly.

Article 114. Annual payments and compensation.

1. Secret payments are not subject to the payment of annual fees.

2. The owner of a patent may claim compensation from the State for the time during which the patent remains secret. Such compensation may be claimed for each succeeding year and shall be agreed between the parties. Where no agreement can be reached, compensation shall be fixed judicially, taking into account the importance of the invention and the profits the owner could have expected to obtain from its unrestricted working.

3. If the invention that is the subject matter of the patent is disclosed through the fault or negligence of its owner, the latter shall lose the right to compensation, without prejudice to any criminal liability that may apply.

Article 115. Applications in foreign countries.

1. For the purposes of the provisions set out in the preceding Articles, in the case of inventions made in Spain where no claim is made for the priority of a previous filing in Spain, patents may not be applied for in any foreign country until the period set out in Article 111.1 has elapsed, unless the Spanish Registry of Industrial Property authorizes otherwise. Such authorization may not be given for inventions that are of interest for national defense, unless the Defense Ministry gives special authorization.

2. The petition for authorization must be formalized in accordance with regulatory provisions, by filing the petition with the Spanish Patent and Trademark Office together with those documents required for the Office to carry out the examination described in Article 111.1 in conditions of secrecy. The Office may require a translation to be submitted if necessary.

If the invention is not of interest for national defense and its filing outside of Spain does not violate the terms of international defense agreements to which Spain is a signatory, the Spanish Patent and Trademark Office shall communicate this fact to the applicant within a period of one month, authorizing him to file the first application in a foreign country. Such authorization is deemed to have been made if the stated period elapses without the Office having made any ruling on the matter.

3. If the applicant's registered address, business address or customary residence is in Spain, the invention shall be presumed to have been made in Spain, in the absence of evidence to the contrary.

TITLE XII Jurisdiction and procedural rules

CHAPTER I General provisions

Article 116. Jurisdiction.

All litigation that may arise as a result of the exercise of actions of any type and nature arising from the application of the provisions of this Law shall correspond to the civil, criminal, or contentious-administrative jurisdictions, depending on the competencies of each.

Article 117. Standing to pursue legal action.

1. In addition to the owners of rights registered in the Patent Registry, all persons who can demonstrate that they have duly requested the entry in that registry of an act or business forming the basis of the right that they seek to enforce, shall have standing to pursue the legal actions referred to in Article 2.3 of this Law, provided that such registration is eventually granted.

2. Unless otherwise agreed, the owner of an exclusive license may, in his own name, exercise any action recognized in the present Law that may be exercised by the owner of a patent in respect of third parties who infringe his rights; however, the owner of a non-exclusive license may not exercise such actions.

3. A licensee who, according to the provisions of the preceding paragraph, is not entitled to bring an action for infringement of a patent may, by registered means, request the owner of the patent to commence the relevant legal action. Where the owner refuses to do so or does not bring the appropriate action within a period of three months, the licensee may do so in his own name, annexing the request made. Prior to expiration of the aforementioned period, the licensee, submitting the request referred to above, may request a judge to provide injunctive relief if it is justified in order to avoid serious damage.

4. A licensee who brings an action in accordance with the provisions of the preceding paragraphs shall inform the owner of the patent accordingly so that he may appear and take part in the hearing, either as a party thereto or as an intervenor.

Article 118. Competition.

1. All civil cases under the provisions of the present Law shall be dealt with by means of the procedure specified by Law 1/2000, of January 7, on Civil Procedure.

2. The objectively competent authority shall be the Commercial Court Judge of the city which hosts the Superior Court of Justice in those Autonomous Communities where the General Council of the Judiciary has agreed to grant exclusive jurisdiction over patent matters.

3. In particular, the territorially competent authority shall be the specialized Commercial Court Judge to whom reference is made in the previous paragraph, corresponding to the domicile of the defendant or, in the absence thereof, to the place of residence of the representative authorized in Spain to act on behalf of the patent owner, if Commercial Courts specializing in patent matters pursuant to paragraph 2 are found in the Autonomous Community of his domicile.

If such courts do not exist, and at the option of the plaintiff, any Commercial Court Judge designated to hear patent matters in accordance with paragraph 2 shall be competent.

4. In the case of actions arising from a patent right violation, at the option of the plaintiff, the same Court referred to in the previous paragraph, located in the Autonomous Community where the violation was committed or its effects occurred, shall also be competent, provided that Commercial Courts specializing in patent matters pursuant to paragraph 2 are found in that Autonomous Community.

If such courts do not exist, and at the option of the plaintiff, any Commercial Court Judge designated to hear patent matters in accordance with paragraph 2 shall be competent.

Article 119. Deadlines in patent litigation.

1. The defendant in any civil action governed by this Law shall have a period of two months to respond to the complaint and, if applicable, to formulate a counterclaim. The same period shall apply to the response to the counterclaim, as well as to a response to a patent limitation requested by the patent owner in response to a challenge to the validity of the title made by means of a counterclaim or defense presented by the defendant.

2. The provision contained in Article 337 of the Civil Procedure Law

shall not apply unless the defendant can fully demonstrate the impossibility of providing the report(s) on which he claims to rely in responding to the claim or, if applicable, the counterclaim.

Article 120. Nullity of the plaintiff's patent.

1. The person against whom legal action is taken for violation of the rights arising from a patent may, in every type of proceeding, allege the complete or partial nullity of the plaintiff's patent by means of a counterclaim or defense plea, in accordance with the standards of common procedural law. The provisions of Article 103 shall be taken into account for this purpose.

2. If nullity is alleged in a defense plea, the patent owner shall have 8 days from the receipt of the statement of defense to petition the Judge or Court to treat the defense plea as a counterclaim.

3. If the patent owner, acting either primarily or in the alternative, chooses to limit the patent by modifying its claims, he must provide the new set(s) of claims and their justification as part of the procedure by which he responds to the action for nullity, the response to counterclaim or the response to the defense plea based on nullity. The owner of a patent who has brought action for an infringement of the same must, in the written response to the challenge to his patent, justify and, if applicable, prove the effects of the proposed limitations to the infringement action brought against the defendant.

4. Without prejudice to that which is established in the previous paragraph, whenever the patent is modified outside of the proceeding due to any circumstances, the patent owner may request that the patent so modified serve as the basis of the proceeding. In such cases the Judge or Court must grant a pleading stage to the other parties to the proceeding.

5. The Judge or Court shall convey the petition for limitation to the party claiming nullity during the exchange of pleadings to that he may maintain or modify his contentions in the light of the proposed limitation. The calculation of the two-month period provided for in Article 119.1 shall begin upon receipt of the petition for patent limitation filed by the plaintiff.

6. Once the petition for limitation has been filed either primarily

or in the alternative, the Judge or Court shall issue an official communication to the Spanish Patent and Trademark Office so that it may be registered as a provisional filing. The final ruling on the limitation of the patent shall be reported ex officio to the aforementioned Office for entry in the registry and, if applicable, the modification of the patent.

7. In proceedings in which actions are brought to challenge the validity of a patent, the Judge or Court may, in accordance with the provisions of Civil Procedure Law and upon payment of the corresponding fee when requested by a party, order the issue of an expert report by the Spanish Patent and Trademark Office so that the latter may rule, in writing, on those specific points of contradiction between the expert reports provided by the parties. The author of the report may also be called upon to testify on the content of the report when so required by the Judge or Tribunal hearing the matter. In no case shall this provision be understood to limit the discretion of the Judge or Court to obtain this report from the center or institution that it deems most appropriate given the circumstances of the case.

Article 121. Actio negatoria.

1. Any interested party may bring an action against the owner of the patent so that the competent judge may declare that a particular act does not constitute infringement of the patent.

2. Before bringing his action, the interested party shall, by registered means, ask the owner of the patent to make known his views on the effectiveness of the patent vis-à-vis the industrial working being carried out in Spain by the plaintiff or the serious and effective preparations being made for that purpose. At the expiration of a period of one month from the date of such request, if the owner of the patent has not replied or if the plaintiff does not agree with his reply, he may bring the action specified in the preceding paragraph.

3. The action specified in paragraph 1, above, may not be brought by any person against whom a claim for infringement of the said patent has been made.

4. If the defendant proves that the act referred to in the claim does not constitute infringement of the patent, the judge shall make the necessary declaration.

5. The claim shall be communicated to all persons owning rights in the patent and duly entered in the Registry so that they may appear and take part in the hearing. Holders of contractual licenses may not, however, appear in proceedings when their license contracts so specify.

6. The action referred to in the present Article may be brought jointly with an action to declare the nullity of the patent.

Article 122. Handling of confidential information.

Whenever it is necessary to gather information that the Judge or Court considers confidential, in order to clarify the facts examined in legal proceedings discussed in this chapter, either as part of pretrial investigation or in order to preserve evidence, the jurisdictional body shall make the decision to obtain or request such information and shall, at the request of the parties, order those measures and actions necessary to ensure the confidentiality of the information required and the right of effective legal protection of the party to the proceedings that requires the information.

CHAPTER II Inquiries to substantiate facts

Article 123. Petition for inquiries.

1. The person with standing to bring actions derived from the patent may request the judge urgently to order inquiries to substantiate facts that could constitute an infringement of the exclusive right granted by the patent, without prejudice to those that may be requested pursuant to Article 256.1 of Law 1/2000, of January 7, on Civil Procedure.

2. Before deciding upon the request made, the judge may require the reports and order the inquiries he deems necessary.

3. Inquiries may be ordered only when, given the circumstances of the case, it may be presumed that there has been infringement of the patent and that it is not possible to prove the facts without carrying out the requested inquiries.

4. When agreeing to any requested inquiry, the judge shall, in accordance with the Civil Procedure Law, fix the security to be deposited by the petitioner to satisfy any damages or prejudice that might be caused to the other party.

5. If the judge does not consider the request to be sufficiently well founded, he shall reject it by means of an order that is subject to appeal in both its effects.

Article 124. Conducting of inquiries.

1. Inquiries shall be conducted in all cases without prior notification of the party that is the object of the inquiry. During an inquiry to substantiate facts, the judge, with the assistance of the expert or experts designated for the purpose, and after having heard the statements of the person participating in the inquiry, shall determine whether, on the basis of the completed inquiry, it is possible that the alleged patent infringement is taking place. If the invention is not manufactured or executed in Spain, any examination and testing shall be in reference to imported and/or marketed products that are the object of the investigation.

2. Where the judge deems that, in light of the inquiry conducted, it is not likely that the patent is being infringed, he shall terminate

the inquiry and shall order a separate record to be made showing the actions taken, which shall be kept secret, and shall have the Clerk of the Court notify the petitioner that he will not be informed of the result of the inquiries carried out.

3. In all other cases, the judge, with the assistance of the expert or experts designated for the purpose, shall make a detailed description of the machines, devices, products, processes, facilities or activities by means of which the alleged infringement is presumably being carried out.

4. In all cases, the Judge shall ensure that the inquiry to substantiate the facts will not be used to violate trade secrets or to carry out acts of unfair competition.

5. No appeal may be lodged against the judge's decision on the result of the inquiry.

Article 125. Certifications and copies of the inquiries.

1. No other certificates or copies of the inquiries to substantiate the facts may be sent other than the copy sent to the party concerned and the information necessary to enable the petitioner to bring the corresponding legal action. The petitioner may only use such documentation to bring the said action and he may not disclose or communicate it to third parties.

2. Where no request for legal action has been made within 30 days following the date on which the certification of the inquiries was delivered to the requesting party, such inquiries shall have no effect and they may not be used for any other legal action.

Article 126. Compensation of the party affected.

The party affected by the inquiries to substantiate the facts may claim any costs and damages these may have caused, including loss of profits, from the person requesting the inquiry. Such payment may be made only if the principal action is not brought or if it is rejected, all without prejudice to general liability for damages that the party requesting these measures may have incurred in those cases where it applies.

CHAPTER III Injunctive relief

Article 127. Petition for injunctive relief.

Any person bringing or about to bring any action of the type provided for in the present Law may request the judicial body hearing the case to provide injunctive relief in order to ensure the effectiveness of said actions, in accordance with that which is set out herein and in Law 1/2000, of January 7, on Civil Procedure.

Article 128. Possible injunctive relief.

1. The injunctive relief measures that may be adopted against the presumed infringer are those that duly ensure the total effectiveness of any judgment that may eventually be pronounced, and in particular the following:

- a) Cessation or prohibition of acts that could infringe the plaintiff's rights, when there are reasonable grounds to suppose that such acts are imminent.
- b) Withholding and storing of the goods which presumably infringe the rights of the patent owner and of any means exclusively used for such production or for carrying out the patented process.
- c) Security for any compensation for damage and prejudice.
- d) Relevant annotations in the registry.

2. The injunctive relief measures set out in paragraph 1 may also be requested, when appropriate, against intermediaries whose services are employed by a third party to infringe patent rights, even when the actions of such intermediaries do not of themselves constitute infringement, without prejudice to that which is set out Law 34/2002 of July 11 governing Services of the Information Society and Electronic Commerce. Such measures must be objective, proportional, and non-discriminatory.

3. The adoption of injunctive relief shall not be admitted when it is determined that the defendant is covered by a right based on prior use in accordance with Article 63.

Article 129. Security.

1. Where the judge agrees to the injunctive relief requested, he shall fix the security to be provided by the plaintiff to cover any damage or prejudice that such measures might cause. If the latter does not

deposit the security within the period specified by the Judge, which in no case shall be less than 5 working days, he shall be deemed to have waived the preventive measures.

2. Where the measures requested involve restrictions on the defendant's industrial or commercial activity, the judge shall, when deciding with respect thereto, fix the amount of the security by which the defendant may at any time substitute the effectiveness of the said restrictive measures agreed upon.

3. In any case, the securities, whether principal or substitutionary, declared for the protection of the defendant shall consist of a fixed sum for a fixed period of time when they are related to acts of industrial or commercial working that may continue indefinitely.

4. The security may consist of a bank draft. Personal sureties shall not be permitted.

5. In fixing the security amounts, the judge shall hear both parties during the proceedings dealing with the measures, without prejudice to the application of Article 733.2 of the Civil Procedure Law.

Article 130. Injunctive relief in the event of appeal.

1. If a decision at first instance in the substantive civil procedure pronounces judgment against one of the parties and is the subject of appeal, an account of the appeal shall be given to the appellee so that, within a period of 3 days, he may request the judge to adopt the relevant injunctive relief measures or to call for the appropriate substitutionary security ensuring the effectiveness of the judgment reached, provided that those measures have not been adopted previously or were insufficient.

2. The judge of first instance shall have competence to hear and decide upon anything relevant to such security, independently of the admissibility of the appeal and the transmission of the principal decisions to the court hearing appeals.

Article 131. Lifting of injunctive relief.

1. If the request for injunctive relief is made before the principal action is brought, such measures shall be wholly without effect if the

principal action is not brought within the period set out in Article 730.2 of Law 1/2002, of January 7, on Civil Procedure.

2. Any injunctive relief authorized shall be without effect if the judgment of first instance was not favorable to the petition to ensure effectiveness for which the measures were sought, or the judgment of first instance shall be annulled if the judgment of first instance was favorable to the said petition. In all cases, the provisions of Article 744 of the aforementioned Civil Procedure Law shall apply.

3. Two months after the lifting of the injunctive relief, the Clerk of the Court shall proceed to return the security to the party that requested such measures, without prejudice to the time period to which the party damaged by the injunctive relief measures is entitled in order to petition for compensation of any damages caused thereby.

4. Such compensation must be determined in accordance with that which is established in Article 712 and related provisions of the Civil Procedure Law, and if the security is not sufficient to compensate for all of the damages caused, legal collection action may be pursued against the responsible party.

Article 132. Preventive pleading.

1. A person who anticipates the filing of a petition for injunctive relief without a prior hearing of opposing arguments, may appear in legal proceedings before the judicial body or bodies that he considers competent to rule on such possible measures, in order to support his position by means of a preventive pleading.

The Judge or Court shall order the formation of an injunctive relief proceeding and shall notify the patent owner of such proceeding; if injunctive relief measures are filed for within a period of three months, the above-mentioned Judge or Court may expedite the proceeding as set out in Articles 733.1 and 734.3 of the Civil Procedure Law, notwithstanding such action cannot prevent the ordering of the measures without further formalities by judicial decision pursuant to the terms and periods set out in Article 733.2 of said Law.

2. A patent owner who believes that the Judge or Court to which the preventive pleading was submitted lacks competence may file his petition for injunctive relief with the one that he believes is competent, but his petition must mention the existence of the

preventive pleading and the judicial body with which it has been filed.

CHAPTER IV Extrajudicial resolution of controversies

Article 133. Conciliation in matters relating to employee's inventions.

Before bringing any judicial action based on the application of the principles of Title IV of the present Law dealing with inventions made within the framework of an employment or service relationship, the dispute may be brought for conciliation before the Spanish Patent and Trademark Office if the parties so agree.

Article 134. Conciliation Commission.

1. For the purpose of conciliation, a commission shall be set up in accordance with regulatory requirements, to be chaired by an expert from the Spanish Patent and Trademark Office designated by the Director thereof, and two other members chosen, respectively, by each of the parties to the controversy, or when the inventor is a person employed by any Public Administration, the representative thereof is to be chosen in the manner established by regulation within the framework of labor or statutory law applicable to the employment relationship.

2. In the case of inventions made by the personnel to whom reference is made in Paragraph 1 of Article 21, the commission member representing the University or the research body or center shall be designated in the manner provided for in the by-laws or other internal regulations of the University or in the governing regulations of the research body or center. In the absence of such regulations, the designation shall be made by the Governing Board, in the case of universities, or by the highest governing body in the case of research centers.

Article 135. Draft agreement.

1. A draft agreement shall be proposed by the commission within a period not to exceed two months following the request for conciliation and, within a period not to exceed 15 days, the parties shall state whether or not they accept the proposal. If it is not possible to form the conciliation commission due to the failure of any the parties to appear, or if one of them does not accept the draft agreement within the designated period, the procedure shall be concluded. Acceptance must be express. Silence shall be construed as non-acceptance.

2. If there is agreement, the Director of the Spanish Patent and Trademark Office shall issue a certificate of agreement based on the

draft agreement accepted by both parties. For the purposes provided in Article 517, paragraph 2.9.º of the Civil Procedure Law, the certification of the agreement by the Director of the Spanish Patent and Trademark Office, based on the proposal accepted by both parties, is directly enforceable.

3. The enforcement of the agreement shall be carried out in accordance with the provisions of the Civil Procedure Law for the enforcement of judicially approved rulings and covenants.

Article 136. Arbitration and mediation.

1. The interested parties may make use of mediation or submit to arbitration any controversies that arise between them in the course of exercising the rights recognized in this Law, concerning all matters that the law allows the parties to settle in a discretionary manner.

2. Those matters that may not be settled in a discretionary manner and which are excluded from mediation or arbitration include matters relating to grant, opposition, or appeal proceedings in connection with the titles regulated by this Law, when the subject of the controversy is compliance with the requirements for their grant, maintenance, or validity.

3. The arbitration award shall have the effects of *res judicata* in accordance with the provisions of Article 43 of Law 60/2003, of December 23, on Arbitration, which shall apply to all matters not specified by this Article, and the Spanish Patent and Trademark Office shall proceed to carry out all actions necessary for its enforcement.

4. The mediation agreement signed by the mediator and the parties, once recorded as public instrument or approved by the Judge, becomes an executable instrument in accordance with the provisions of Law 5/2012, of July 6, on mediation in civil and trade matters, and shall be communicated to the Spanish Patent and Trademark Office which shall proceed to enforce it.

5. The Spanish Patent and Trademark Office must be informed of any appeals filed against an arbitration award or of any action for nullity brought against that which is agreed in a mediation agreement. Once the corresponding resolutions are finalized, they shall be communicated by registered means to the Spanish Patent and Trademark

Office for those purposes set out in the previous paragraph.

TITLE XIII Utility models

CHAPTER I Purpose of, and requirements for, protection

Article 137. Inventions that may be protected as utility models.

1. In accordance with the provisions of the present Title, inventions with an industrial application that are new and involve an inventive step, and that confer on a product or object a form, structure or composition that results in an appreciable advantage to its use or manufacture, may be protected as utility models.

2. In addition to those materials and inventions that are excluded from patentability by application of Articles 4 and 5 of this Law, inventions consisting of procedures, those based on biological material, and pharmaceutical substances and compositions cannot be protected as utility models.

Article 138. Right to protection.

The right to protection of utility models shall belong to the inventor or his successor in title and shall be transferable by all means recognized by law.

Article 139. State of the art.

1. The state of the art according to which the novelty and inventive step in respect of inventions protected as utility models is to be judged shall be the same as is established in Article 6.2 for invention patents.

2. The state of the art is also understood to include the content of previous applications referred to in Article 6.3.

Article 140. Inventive activity.

1. For purposes of protection as a utility model, an invention is considered to involve inventive activity if it does not result from the state of the art in a manner that is evident to an expert in the subject.

2. If the state of the art includes any of the documents mentioned in Article 139.2, the latter shall not be taken into account in determining the existence of inventive activity.

CHAPTER II Application and grant procedure

Article 141. Filing and content of the application.

1. In order to obtain a certificate of protection for a utility model, an application indicating that this is the type being applied for shall be addressed to the Spanish Patent and Trademark Office together with the documentation referred to in Article 23.1. It shall not be necessary to include an abstract of the invention that is its subject matter. The application is subject to payment of the corresponding fee.

2. The filing date of the application shall be that date on which the competent body, in accordance with the provisions of Article 22, receives documentation containing at least the following elements:

- a) The indication that a utility model is being applied for.
- b) Information making it possible to identify or contact the applicant.
- c) A description of the invention for which the utility model is being requested, even if such description does not meet the formal requirements established by Law, or a reference to previously filed application.

A reference to a previous application must indicate the application number, its filing date, and the office where it was filed. The reference must state for the record that it replaces the description or, if applicable, the drawings.

A certified copy of the previous application, accompanied, if applicable, by the corresponding translation in Spanish, must be filed within the regulatorily determined period for compliance.

3. The filing date for applications filed at a post office shall be as set out in Article 24.4.

Article 142. Assignment of filing date and ex officio examination.

1. The Spanish Patent and Trademark Office shall verify whether the application meets all the requirements to be assigned a filing date and whether the corresponding fee has been paid. The provisions of Article 33.2 shall be applicable to invention patents.

2. If the fee has not been paid with the application or has not paid in full, the applicant shall be notified of this fact so that he may make or complete the payment by the deadline established by regulations. If the time period in question elapses without they payment having

been made or completed, the application shall be considered withdrawn.

3. Once the application has been accepted for processing, the Spanish Patent and Trademark Office shall verify:

a) Whether the object of the application is eligible for protection as a utility model.

b) Whether the application meets the requirements set out in Title V, Chapter I exactly as developed regulatorily.

The Spanish Patent and Trademark office shall not examine novelty, inventive activity, the adequacy of the description or the industrial application. Neither shall it prepare the report on the state of the art or issue the written opinion provided for invention patents.

4. If the examination reveals documentation deficiencies or that the object of the application is not eligible for protection as a utility model, the interested party shall be informed of these circumstances so that he may correct them or respond with further arguments within the period established by regulation. In order to remedy the defects pointed out, the applicant may modify the claims or divide the application.

5. If the object of the application is not eligible for protection as a utility model or if deficiencies or irregularities remain uncorrected, the application will be denied by means of a substantiated decision. A notice of the denial shall be published in the Official Industrial Property Gazette.

Article 143. Publication of the application.

In the absence of reasons for denial, or if such reasons have been remedied, the Spanish Patent and Trademark Office shall make available to the public the documents of the model applied for and shall publish the corresponding notice in the Official Industrial Property Gazette, including as well the claims of the model applied for and, if applicable, a reproduction of the drawings.

Article 144. Opposition to the application.

1. During the two months following the publication of the application, any person may formulate opposition, alleging the lack of any of the legal requirements that must be met for the granting of the application, including novelty, inventive activity, industrial application or adequacy of the description. The applicant's lack of standing may not

be alleged, as this is a matter for the ordinary courts.

2. The deadline stated in the previous paragraph may be extended for another two months in order to submit evidence or finalize allegations, provided that the opposition is validly filed before the initial deadline and the extension is requested before the expiration thereof.

Article 145. Procedure and resolution.

1. The opposition must be submitted to the Spanish Patent and Trademark Office by means of a substantiated document accompanied, if applicable, by the corresponding supporting documents. The statement of opposition must be accompanied by proof of payment of the opposition fee.

2. If the legal deadlines elapse and no opposition is filed, the Spanish Patent and Trademark Office shall issue a decision granting the utility model applied for.

3. If statements of opposition are filed, the Spanish Patent and Trademark Office shall inform the applicant about them so that he may prepare his defense in writing within the regulatorily established period and, if appropriate, modify the claims, providing to each of the parties the written statements filed by the other, in the conditions set out in the implementing regulations of the Law.

4. Once the time periods for response and reply have elapsed, the Spanish Patent and Trademark Office shall decide on the issue by admitting the opposition submitted in whole or in part if any of the reasons for opposition stated in paragraph 144 apply, or dismissing them if such reasons do not apply.

Nevertheless, if, in spite of the modifications or allegations provided, reasons remain which would prevent the model from being granted, the owner shall be given at least one opportunity, in accordance with the aforementioned Regulations, to remedy the deficiency or to submit new allegations before a final ruling is made regarding the stated opposition.

5. The granting of the utility model shall be announced in the Official Industrial Property Gazette and the documents contained in file shall be made available to the public.

6. The pamphlets to which reference is made in Article 42 shall not

be published for utility models.

Article 146. Appeals.

1. An administrative appeal against the granting of the utility model may refer only to those matters that can be resolved by the Administration during the registration process.

2. An administrative appeal based on grounds for the denial of registration that have not been examined ex officio by the Administration may be filed only by persons who have been a party to an opposition proceeding against the granting of the registration based on those grounds, and shall be directed against the action by which a final decision was rendered regarding such opposition. For this purpose, the opposition may be considered set aside if the period specified for the resolution and notification thereof elapses without the adoption of an express judgment.

3. In response to a resolution granting a utility model, the Spanish Patent and Trademark Office may not exercise its powers of review as set out in Article 102 of Law 30/1992, of November 26, either ex officio or at the request of the party, if the nullity of the utility model is based on any of the causes set out in Article 145 of this Law. Such causes of nullity may be enforced only before the courts.

Article 147. Publication of modifications.

Modifications made to the utility model as a result of an opposition or an appeal shall be published and the corresponding notice included in the Official Industrial Property Gazette. The publication shall include the claims in the registered model and, if applicable, a reproduction of the drawings.

CHAPTER III Effects of the grant

Article 148. Content of the right and exercise of actions.

1. The protection of the utility model affords to the owner the same rights as a patent to an invention.
2. The duration of the protection afforded by utility models shall be ten years, not eligible for extension, counted from the application filing date, and shall enter into force from the date of notice of its grant in the Official Industrial Property Gazette.
3. In order to exercise actions intended to give effect to the exclusive rights derived from a utility model applied for after the entry into force of the present Law, it will be necessary to have previously obtained or requested the report on the state of the art provided for in Article 36.1 for patents, in reference to the title object on which the action is based, by paying the corresponding fee.
4. Once the report has been prepared, the petitioner shall be notified and it shall be made available to the public together with the model file. In the event that the suit is filed before the report is provided, the defendant may request suspension of the time period for responding to it until the report in question has been provided.
5. Once the report on the state of the art has been requested, and even if it has not yet been provided, the adoption of provisional measures and injunctive relief may be requested in accordance with the provisions of this Law and of the Civil Procedure Law, provided that these do not consist of the stoppage or cessation of the defendant's industrial or commercial activity with respect to the protected object.

Article 149. Nullity.

1. The protection of the utility model shall be declared null:
 - a) When its object is not eligible for protection in accordance with the provisions of Articles 137 to 140 and in Title II of this Law, to the extent that it does not contradict that which is established in the mentioned articles.
 - b) If it does not describe the invention with sufficient clarity and completeness that a subject matter expert could execute it.
 - c) When its object exceeds the content of the utility model application as filed or, if the utility model was granted as a result of a

divisional application or as the result of a new application filed on the basis of the provisions of Article 11, when the object of the utility model exceeds the content of the initial application as filed.

d) When the scope of protection was expanded after it was granted.

e) When the utility model owner does not have the right to obtain it in accordance with the provisions of Articles 10 and 138.

2. If the grounds for nullity affect only a part of the utility model, the latter shall be limited by modifying the claim or claims affected and shall be declared partially null.

Article 150. Application of the provisions on patents.

In the absence of a regulation expressly applicable to utility models, the latter shall be governed by the provisions established in this Law for invention patents, provided that they are not incompatible with the special nature of the former. In all cases, they shall be subject to the regulations contained in Title III on rights in the patent and the designation of the inventor, Title IV on employee inventions, Chapter V of Title V on general provisions of the procedure and reporting to third parties, and Title X on nullity, revocation and limitation at the request of the owner and expiration of the patent.

TITLE XIV Application of international conventions

CHAPTER I Filing and effects of European patent applications and European patents in Spain

Article 151. Scope of application.

The provisions of this Law and of its implementing regulations shall apply to European patent applications and to European patents which are effective in Spain, in all matters that do not contradict the Convention on the Grant of European Patents, entered into in Munich on October 5, 1973, hereinafter referred to as the EPC.

Article 152. Filing of European patent applications.

1. European patent applications may be filed with the Spanish Patent and Trademark Office or with those Autonomous Communities that are competent to receive national patent applications as set out in Article 22. The Autonomous Communities shall remit the said European patent applications to the Spanish Patent and Trademark Office.

2. For inventions made in Spain with no claim of priority for a prior filing in Spain, the application must be filed in accordance with the provisions found in paragraph 1. If the applicant has a place of business or registered office or customary residence in Spain, it shall be presumed, unless proven otherwise, that the invention was made on Spanish territory. These applications will be subject to the provisions found in Article 34 and in Title XI of this Law. The patent will not take effect in Spain unless this obligation is met.

3. European patent applications which do not satisfy the conditions of the previous paragraph may be filed directly in the European Patent Office.

4. Applications filed in Spain may be written in any of the languages specified in paragraphs 1 and 2 of Article 14 of the EPC. If they are written in a language other than Spanish, the Spanish Patent and Trademark Office may request a Spanish translation in accordance with regulatory requirements.

Article 153. Value of the European patent application and the European patent.

In the conditions set out in the EPC, a European patent application

that has been granted a filing date and a European patent have, respectively, the value of a national filing duly carried out with the Spanish Patent and Trademark Office and of a national patent.

Article 154. Rights conferred by the published European patent application.

1. Once European patent applications have been published as provided for in Article 93 of the EPC, they shall enjoy provisional protection in Spain equivalent to that conferred to the publication of national applications, beginning on the date on which a Spanish translation of the claims is made accessible to the public by the Spanish Patent and Trademark Office, and subject to the payment of the corresponding fee. A copy of the drawings, if applicable must accompany the translation, even if it does not include translatable expressions.

2. If the owner does not have a place of business or registered address in Spain, the translation must be made by an Industrial Property Agent accredited with the Spanish Patent and Trademark Office or by a Sworn Translator-Interpreter appointed by the Ministry of Foreign Affairs and Cooperation. Other validation criteria guaranteeing the authorization and faithfulness of the translations mentioned in this article may be established by regulation.

Article 155. Translation and publication of the European patent.

1. When the European Patent Office grants a European patent which designates Spain, its owner must provide the Spanish Patent and Trademark Office with a Spanish translation of the European patent exactly as granted. A translation must also be provided in those cases in which the patent has been maintained in modified or limited form by the European Patent Office.

2. The translation must be submitted to the Spanish Patent and Trademark Office within a period of three months following the date on which the notice of the patent's grant, modification, or limitation is published in the European Patent Bulletin in the cases set out in paragraph 1. A copy of the drawings, if applicable, must accompany the translation, even if it does not contain translatable expressions. The provisions of paragraph 2 of the preceding article shall apply.

In the absence of the aforementioned translation and the payment of the publication fee by the established deadline, the patent shall have no effect in Spain.

3. Within a period of one month following the submission date of the translation, the Spanish Patent and Trademark Office shall publish a notice of the same in the Official Industrial Property Gazette, with the data necessary to identify the European patent and, subject to the payment of the corresponding fee, a pamphlet with the translation of the European patent.

Article 156. Registration of European patents.

1. As soon as the grant of the European patent has been mentioned in the European Patent Bulletin, the Spanish Patent and Trademark Office shall enter it into its Registry, with the data mentioned in the European Patent Registry.

2. The date on which the translation mentioned in Article 155 was received and published and, if applicable, the lack of said translation, shall also be entered into the Registry. The data mentioned in the European Patent Registry relating to opposition, appeal, or limitation proceedings shall also be published, as well as the data required for Spanish patents.

Article 157. Reliable text of the European patent application and the European patent.

1. The Spanish translation of the European patent application and of the European patent, fulfilling the requirements established in the preceding articles, shall be deemed reliable if the translated text confers a lower level of protection than that granted by the same application or the same patent in the original language.

2. The applicant or the owner of the patent may revise the translation at any time; the revision will not take effect until it is published by the Spanish Patent and Trademark Office. It will not be published if the payment of the corresponding fee has not been substantiated.

3. Any person who, acting in good faith, starts working the invention or has made effective and serious preparations for it, without the work infringing the application or the patent in accordance with the original text of the translation, may continue the work in their company or for their company's needs without paying any compensation whatsoever.

Article 158. Conversion of the European patent application into a national patent application.

1. A European patent application may be converted into a national patent application:

- a) In the circumstances set out in Article 135.1.a) of the EPC.
- b) Where the application is deemed to be withdrawn pursuant to Article 90.3 of the EPC as it concerns Article 14.2 thereof.

2. As of the date when the Spanish Patent and Trademark Office receives the request for conversion, the European patent application is deemed as a national patent application and shall have the filing date given by the European Patent Office to the European patent application.

3. The patent application shall be deemed withdrawn if, within the period and conditions set out in the Regulations under this Law, there is no proof of the payment for the fees required for a Spanish patent application at the time of filing and if there is no Spanish translation of the original text of the European patent application or, if applicable, of the modified text in the course of the proceedings before the European Patent Office, which is the basis for the granting procedure before the Spanish Patent and Trademark Office. Article 154.2 shall apply to the translation.

Article 159. Conversion of a European patent application to a utility model application.

1. The European patent application may be converted to a Spanish utility model application when it has been denied or withdrawn, or it has been deemed withdrawn under the EPC.

2. Paragraphs 2 and 3 of the preceding articles shall apply to the utility models.

Article 160. Prohibition of dual protection.

1. Inasmuch as the object of a national patent is an invention for which a European patent effective in Spain was granted to the same inventor or his successor, with the same filing or priority date, the patent based on a national application shall cease to have effect once:

- a) The period for filing an opposition against the European patent has expired, without an opposition having been filed.
- b) The opposition procedure has terminated, the European patent being

maintained.

2. If the national patent has been granted after any of the dates listed in paragraphs a) and b), this patent shall be void.

3. The subsequent termination or cancellation of the European patent shall not prevent the national patent from regaining its effects.

Article 161. Annual fees.

1. The annual fees set out in current national patent legislation must be paid to the Spanish Patent and Trademark Office for any European patent having effect in Spain.

2. The annual fees shall be payable in the SPTO as of the beginning of the year in the term of the patent following the year in which the granting of the European patent was published in the "European Patent Bulletin".

3. Notwithstanding Article 141.2 of the EPC, annual fees must be paid in line with the accrual scheme, term, quantity, form and other conditions set out in current national patent legislation.

CHAPTER II Application of the Patent Cooperation Treaty

Paragraph 1. Scope of application and international applications filed in Spain

Article 162. Scope of application.

1. This chapter applies to international applications in the sense of Article 2 of the Patent Cooperation Treaty, for which the Spanish Patent and Trademark Office acts as receiving office, designated office or elected office.

2. The provisions of this Law and its Regulation applies to applications designating Spain and which have initiated their processing before the Spanish Patent and Trademark Office and for every aspect not included in the above-mentioned Treaty.

Article 163. The Spanish Patent and Trademark Office as Receiving Office.

1. The Spanish Patent and Trademark Office shall act as Receiving Office, in the sense of Article 2.xv) of the Patent Cooperation Treaty, with respect to international applications by Spanish nationals or persons having their registered office or place of business in Spain.

2. For inventions made in Spain with no claim of priority of prior filing in Spain, the international application must be filed in the Spanish Patent and Trademark Office. Failing to fulfill this obligation shall render the international application devoid of effect in Spain.

When the applicant has a place of business or registered office or habitual residence in Spain, it shall be presumed, unless proven otherwise, that the invention was made on Spanish territory.

3. The international application filed in Spain shall be written in Spanish. In addition to the fees prescribed by the above-mentioned Treaty, filing the international application implies the payment of the transmission fee in the annex hereof and in the implementing regulations of the Treaty.

Article 164. Conversion of international applications.

1. The provisions contained in Title XI hereof shall apply to international applications filed before the Spanish Patent and

Trademark Office.

2. Where Spain is the designated State, if the Ministry of Defense has not granted the authorization set out in Article 111, the international application shall be deemed a national application as of its filing date. In this case, the transmission fee shall be deemed a national application filing fee.

3. The previous paragraphs shall not apply when the international application claims priority of a prior national application, the content or processing of which has not been kept secret by the Spanish Patent and Trademark Office.

Article 165. Claim to priority of prior filing in Spain.

If the international application claims priority of prior filing in Spain, the priority document issued by the Spanish Patent and Trademark Office may, at the applicant's request under the conditions set out in the implementing regulation of the Patent Cooperation Treaty, be directly forwarded to the International Office. The request shall be subject to the fee listed in the annex hereof payable by the applicant to the Spanish Patent and Trademark Office.

Article 166. Extension of payment due dates.

Fees paid in response to an invitation addressed to the applicant, by virtue of the implementing Regulation of the Treaty, shall be subject to the late fees set out in rule 16.bis.2. of the Treaty payable to the Spanish Patent and Trademark Office. This fee must be paid within one month as of the notification date of the invitation and its amount shall be determined on a case-by-case basis according to the criteria set out in the above-mentioned Regulation.

Paragraph 2. International applications that designate or elect Spain

Article 167. The Spanish Patent and Trademark Office acting as Designated or Elected Office.

The Spanish Patent and Trademark Office shall act as the Designated or Elected Office in the sense of Article 2.xiii) and xiv) of the Patent Cooperation Treaty when Spain has been mentioned for this purpose, with a view to obtain a national patent, in the international application, or in the preliminary international request for examination.

Article 168. Filing date and effects of the international application.

As of the moment when an international filing date has been granted by virtue of Article 11 of the Patent Cooperation Treaty, an international application designating Spain shall have the same effects as a national application duly filed before the Spanish Patent and Trademark Office as of the same date. This date shall be deemed the effective filing date in Spain.

Article 169. Processing of the international application.

1. For the Spanish Patent and Trademark office to initiate processing of the international application, its Spanish translation must be filed within the applicable time limit by virtue of Article 22 or Article 39.1 of the Patent Cooperation Treaty, as originally filed as well as, if applicable, the translation of any modifications made by virtue of Article 19 or Article 34 of the Treaty.

2. The Spanish Patent and Trademark Office shall request the applicant, if it deems it necessary, to deliver the translation of the international application within the time limit provided, stamped by an Industrial Property Agent certified before the Spanish Patent and Trademark Office or by a Sworn Translator-Interpreter appointed by the Ministry of Foreign Affairs and Cooperation. Other validation criteria guaranteeing the authorization and faithfulness of the translations mentioned in this article may be established by regulation.

3. Within the time limit set out in paragraph 1, the applicant must pay the application and state-of-the-art report creation fees required for national patents.

Article 170. Publication of the international application.

1. The publication of an international application for which the Spanish Patent and Trademark Office acts as Designated Office, in accordance with Article 21 of the Patent Cooperation Treaty, takes the place of the publication of the national patent application.

2. If the international application was published in Spanish, the provisional protection set out in Article 67 hereof shall take effect with regard to this application as of the date of international publication. If the application is in another language, provisional protection shall take effect as of the date it is translated into Spanish under the conditions of Article 154.2. and made publicly available in the Spanish Patent and Trademarks Office. To this end, a mention of the date when the translation of the application is made publicly available shall be published in the Official Industrial Property Gazette.

Article 171. Review by the Spanish Patent and Trademark Office.

1. When a Receiving Office other than the Spanish Trademark and Patent Office denies the international deposit date for an international application designating or electing Spain, or declares that this application is considered withdrawn by virtue of Article 25.1.a) or 25.1.b) of the Patent Cooperation Treaty, the applicant may request that the Spanish Patent and Trademark Office review the issue within a period of two months from the date of notification and decide whether the denial or declaration were justified in accordance with the provisions of this Treaty. The Spanish Patent and Trademark Office may decide to process the application in the national phase as a result of this review.

2. The applicant may request the review mentioned in the preceding paragraph, under the same conditions, provided that the international application designating or electing Spain was deemed withdrawn by the International Office by virtue of Article 12.3 of the Patent Cooperation Treaty.

Article 172. Effects of a patent granted on the basis of an international application.

1. A patent granted by the Spanish Patent and Trademark Office on the basis of an international application, designating or electing Spain, shall have the same effects and the same value as a patent granted on

the basis of a national application submitted in accordance herewith.

2. When, due to an incorrect translation, the scope of a patent granted on the basis of an international application exceeds the content of the international application in its original language, the patent's scope shall be retroactively limited and declared null and void to the extent that it exceeds its allotted scope based on the application in its original language.

Article 173. Effects of the granting of a patent based on an international application, on a patent based on a national application.

1. To the extent that a patent based on a national application consists of an invention for which a patent based on an international application was granted to the same inventor or his successor, with the same filing or priority date, the patent based on a national application shall cease to have effect once the patent based on the international application is granted.

2. The patent based on a national application shall be void if it is granted on a date later than when the patent based on an international application is granted.

3. The subsequent termination or cancellation of the patent based on the international application shall not affect the provisions set out herein.

Article 174. The Spanish Office as the International Searching and Preliminary Examination Authority.

The Spanish Patent and Trademark Office shall act as the International Searching Authority and as the Preliminary Examination Authority in accordance with the Patent Cooperation Treaty under the agreement between the Spanish Patent and Trademark Office and the World Intellectual Property Organization.

TITLE XV Representation before the Spanish Patent and Trademark Office

Article 175. Capacity and Representation.

1. The following may act before the Spanish Patent and Trademark Office:

a) Interested parties empowered to act in accordance with Title III of Law 30/1992, of November 26, on the Legal Regime for Public Administrations and Joint Administrative Procedure.

b) Industrial Property Agents.

2. Notwithstanding Article 7.2 of the Patent Law Treaty, adopted in Geneva on June 1st, 2000, those residing outside a Member State of the European Union must act through an Industrial Property Agent.

Article 176. Industrial Property Agents.

1. Industrial Property Agents are legally qualified persons who, as individual professionals, offer and customarily provide their services to advise, attend to and represent third parties in obtaining the various types of Industrial Property and defend the rights arising from these types before the Spanish Patent and Trademark Office.

2. Agents may operate individually or through legal entities that conform to the legislation of a Member State of the European Union, with a registered office or principal place of business in the Community territory. Both the Agents and the legal entities through which they operate may register in the Special Agent Registry of the Spanish Patent and Trademark Office.

3. For a legal entity to obtain registration in the Special Agent Registry of the Spanish Patent and Trademark Office, at least one of its members or associates must provide proof of his status as an Agent in accordance with the provisions of the following article. The registered legal entity shall lose authorization to perform this professional activity if at any moment it fails to fulfill this requirement.

4. Both the legal entity and the Agent operating through it shall be responsible for ongoing professional management on a corporate or associative basis.

5. Industrial Property Agents shall be obliged to keep the affairs

they are involved in confidential and shall have the right to refuse to disclose communications exchanged with their clients or with third parties in proceedings before the Spanish Patent and Trademark Office. Among others, these conditions shall apply to any communication or document relating to:

- a) the assessment of an invention's patentability, the registrability of an industrial design, a trademark or trade name;
- b) the preparation or processing of a patent application, utility model, industrial design, trademark or trade name;
- c) any opinion relating to the validity, scope of protection or infringement of the object of a patent, utility model, industrial design, trademark or trade name, and likewise for an application for any of these types.

6. The representatives mentioned in Article 175.1 who are not Industrial Property Agents shall be subject to the same provisions established in the preceding paragraph.

Article 177. Access to the Industrial Property Agent profession.

1. To become an Industrial Property Agent, the following is necessary:

- a) Be of legal age and have full legal capacity.
- b) Have an establishment or professional office in a Member State of the European Union.
- c) Have no prior convictions for intentional crimes, unless the candidate has undergone rehabilitation.
- d) Hold an official Bachelor's, Graduate, Architecture or Engineering Degree, issued by the deans of the universities, or other legally equivalent official degrees.
- e) Pass a qualifying examination proving the knowledge necessary for the professional activity defined in the previous article as determined by corresponding regulation.

2. The freedom of establishment in Spain for those who acquire the professional qualification of Industrial Property Agent in another Member State of the European Union shall be governed by the provisions of Community legislation and in the internal corporate rules and their implementing regulations, pursuant to Royal Decree 1837/2008 of November 8.

Article 178. Incompatibility.

The practice of the Industrial Property Agent profession, whether

directly or through legal entities, is incompatible with any active employment in the Spanish Patent and Trademark Office, in the Ministry to which it is attached, in the Ministry of Industry for the Autonomous Communities or in their bodies which have assumed competence in the area of Industrial Property, and in International Organizations related to Industrial Property.

Article 179. Exercise of professional activity and Special Agent Registry and the Spanish Patent and Trademark Office.

1. To commence activity as an Industrial Property Agent, directly or through a legal entity, the individual must have previously filed a statement of compliance with the Spanish Patent and Trademark Office in which, in accordance with the implementing regulations of this Law, the interested party demonstrates compliance with all the requirements established in Articles 176 and 177 and is not affected by any of the incompatibilities from Article 178, that he possesses the documentation certifying the above and that he is committed to maintaining compliance until his leave for any of the reasons set out in Article 180.

Fulfilling these requirements entitles the individual to practice the professional activity throughout the national territory indefinitely.

2. Documentation certifying the fulfillment of the legal requirements must be available for submission before the Spanish Patent and Trademark Office when required. To this end, documents from other Member States of the European Union demonstrating that these requirements are met shall be accepted, under the terms of Article 17.2 of Law 17/2009 of November 23, on free access to service activities and the exercise thereof.

3. Once the statement referred to in paragraph 1 is received by the Spanish Patent and Trademark Office, and upon payment of the corresponding fee, the Agent shall be automatically registered in the Special Agent Registry of Industrial Property as representatives legally authorized to act as such before the Spanish Patent and Trademark Office.

4. When interacting with the Spanish Patent and Trademark Office, Agents must use their own name, followed by the indication of their status as Agent and, for legal entities, the corporate name under which they operate, as well as the corresponding registered place of

business.

Article 180. Revocation of authorization to carry out professional representation activities.

1. Revocation of legal authorization to act as an Industrial Property Agent may come about due to any of the following reasons:

- a) By death, in the case of natural persons, or winding-up in the case of legal entities.
- b) By written resignation submitted to the Spanish Patent and Trademark Office.
- c) By reasoned decision of the Spanish Patent and Trademark Office, subject to proof of non-compliance by the interested party with the requirements demanded by this Law for his authorization to act as Agent. If this occurs, the interested party may only submit a new statement of compliance, subject to demonstration of compliance with the aforementioned legal requirements.
- d) By court order.

2. In all the above cases, the Spanish Patent and Trademark Office shall cancel ex officio the corresponding registration in the Special Registry of Industrial Property Agents.

3. When the revocation of legal authorization occurs in application of paragraph 1.c) and the Spanish Patent and Trademark Office demonstrates any essential falsehood, inaccuracy or omission in the information required to exercise the professional activity, said Office may initiate the penalty proceeding established by regulation and propose to the Minister of Industry, Energy and Tourism the revocation of the authorization to act as professional representative for a maximum period of three years.

4. The Spanish Patent and Trademark Office may also de-register the Agent or the authorized representative from its Agent Registry and, if applicable, initiate the penalty proceeding under the terms established in the above paragraph, if the Agent has been convicted by final judgment as a consequence of the acts carried out in the exercise of his professional activity.

Article 181. Community freedom for the provision of services and information obligations.

1. Industrial Property Agents established in another Member State who

temporarily provide their services in Spain must comply with the regulations on access and practice of professions approved by Royal Decree 1837/2008, of November 8, whereby Directive 2005/36/EC of the European Parliament and of the Council, of September 7, 2005, and Directive 2006/100/EC of the Council, of November 20, 2006 on the recognition of professional qualifications, are included in Spanish legislation, together with certain aspects of professional practice as an attorney and the implementing regulations, in view of which they must submit a prior declaration, as per the model approved by the Spanish Patent and Trademark Office, which must be renewed on an annual basis if the corresponding Agent continues to provide temporary services.

2. Persons registered in the Special Registry of Industrial Property Agents must inform the recipients of their services under the terms established by Article 22 of Law 17/2009, of November 23, on the free access to service activities and the exercise thereof, and comply with the obligations established in said Law.

TITLE XVI Fees and annual payments

Article 182. Fees.

1. The bases and types of taxes on fees for administrative Industrial Property services and activities with regard to patents, utility models and supplementary protection certificates for medicines and plant protection products, shall be those set out in the annex to this Law, which forms an integral part thereof. The amounts set out in said annex shall be adjusted, if applicable, in accordance with those established by means of ordinary Law or the corresponding Law on the General State Budget for fees in general.

Their regulation shall be subject to the provisions contained in this Law and, insofar as there is no conflict with the provisions thereof, in Law 17/1975, of May 2, on the Creation of the Autonomous Body, the "Industrial Property Registry," in Law 8/1989, of April 13, on Public Fees and Prices, and in General Tax Law 58/2003, of December 17 and supplementary provisions.

2. Failure to pay the fee within the established legal or regulatory period shall leave without effect the act for which the payment should have been made.

3. If the fee established for processing a patent application, covering any of the rights regulated in this Law, is not paid, the application shall be deemed to have been withdrawn.

Article 183. Reimbursement of fees.

1. If the patent application or the application for another protection right provided for in this Law is withdrawn, deemed abandoned or rejected before commencing the corresponding administrative service or activity, the respective fees paid for such purposes shall be returned to the applicant, with the exception of the application fee.

2. Where it is possible to base the report on the state of the art either partly or entirely on the international search report drawn up under the Patent Cooperation Treaty, the applicant shall have 25%, 50%, 75% or 100% of the fee refunded, depending on the scope of the said report.

3. Where it is possible to base the substantive examination either partly or entirely on the international preliminary examination

undertaken by the competent International Preliminary Examination Authority, the applicant shall have 25%, 50%, 75% or 100% of said fee refunded, depending on the scope of the said report.

4. The filing of an appeal shall result in the payment of the appeal fee. The reimbursement of the fee shall not apply unless the appeal is fully admitted upon determination that the legal grounds on which the appealed decision, attributable to the Spanish Patent and Trademark Office, were improperly taken into account. Reimbursement of the fee shall be requested upon filing the appeal and shall be granted at the moment the appeal is decided.

Article 184. Annual payments and maintenance fees.

1. In order to keep a patent, utility model or supplementary protection certificate in force, the applicant or owner thereof must make the annual fee payments or, in the case of supplementary certificates, pay the maintenance fee, as set out in the annex mentioned in article 182.1.

2. The annual fees shall be paid one year in advance during the term of the patent or of the utility model. The due date of each annual fee shall be the last day of the month in which the application was filed.

3. The annual payments due and payable before the publication of the granting of the patent in the Official Industrial Property Gazette must be made within three months of the date of said publication.

The annual payments due and payable after the publication of the patent grant, or on the same date, must be made within three months of the date the corresponding payment is due and payable.

If the term has expired for the payment of the annual fee and payment has not been made, said payment may be made together with the corresponding surcharge within the following six months.

Notwithstanding, for annual payments whose due date falls after or on the same day as the publication of the patent grant in the Official Industrial Property Gazette, the payment may be regularized, during the time that elapses from the end of the period with surcharge until the due date of the following annual payment, by paying the regularization fee established in the second tariff of this Law whose amount shall be added to the second surcharge established in article 185.

4. The fee to be paid for filing a patent or utility model application shall exempt the applicant from paying the first two annual fees.

5. The due date of the maintenance fee for supplementary protection certificates or their renewals shall be their effective date.

When the due date is before the publication of the granted certificate or, if applicable, the renewal thereof, in the Official Industrial Property Gazette, the payment must be made within three months of the publication date.

When the due date is on or after said publication date, the payment must be made within three months of the due date.

If the term has expired for the payment of the maintenance fee and payment has not been made, said payment may be made together with the corresponding surcharge within the following six months.

Article 185. Surcharges.

1. After the period for the annual payment has elapsed and the corresponding amount has not been paid, the payment may be made with a 25% surcharge within the first three months, and a 50% surcharge if paid within the next three months, up to a maximum delay of six months.

2. After the period for the payment of the maintenance fee of the supplementary certificates or of the renewal of the supplementary protection certificates for medicines has elapsed and the corresponding amount has not been paid, the payment may be made with a 25% surcharge within the first three months, and a 50% surcharge if paid within the next three months, up to a maximum delay of six months.

Article 186. Fee discounts.

1. Entrepreneurs, classified as natural persons or small and medium-sized enterprises (SMEs), who wish to obtain the protection of an invention through a national patent or utility model may request that it be granted with the payment of 50% of the following fees: the application fee, the third, fourth and fifth annual payments, and in the case of national patents, the fee for requesting a report on the state of the art and of the substantive examination.

For such purpose, it is necessary to submit the fee discount request together with the national patent or utility model application and to demonstrate, with the documentation required by regulation, that such party is an entrepreneur as per the definition in Law 14/2013, of September 27, on support to entrepreneurs and their

internationalization, and the definition of small and medium-sized enterprises (SMEs) adopted by European Commission Recommendation 2003/361/EC of May 6, concerning the definition of micro, small and medium-sized enterprises, or if the same is modified or replaced, it shall be as per the applicable definition at the moment the application is filed.

2. Applications or documents filed by electronic means shall have a 15% discount on the fees to which said applications or documents are subject if they are filed and the fees are paid before or at the same time, by said electronic means.

3. No exemptions or discounts shall be admitted other than those expressly recognized in this Law, or other than those, if applicable, established by international treaties or agreements or in execution thereof.

Additional provision

First additional provision. Legal procedural regime.

The administrative procedures set out in this Law shall be governed by its specific legislation, and for matters not provided therein, they shall be governed by the provisions of Law 30/1992, of November 26, on the Legal Regime of Public Administration and Common Administrative Procedures.

Second additional provision. Maximum time periods for the completion of Industrial Property procedures.

1. In accordance with the provisions of article 59.3 of Law 2/2011, of March 4, on Sustainable Economy, the maximum time periods for the completion of administrative procedures for the granting and registration of the different types of Industrial Property shall be established by order of the Minister for Industry, Energy and Tourism, subject to proposal of the Spanish Patent and Trademark Office.

2. In case of any change of type, the maximum completion period shall begin to be counted as of the filing date of the corresponding documentation of the new type.

3. Should the time period to carry out a process in any of the procedures set out in the Laws governing the different types of industrial property expire on a Saturday, the process in question may be validly carried out on the first working day after the Saturday in question.

4. The expiration of the maximum period to process an application without an express decision having been made known, shall entitle the interested party to deem it to have been rejected, for the sole purpose of enabling such party to file the applicable administrative or contentious-administrative appeal. The presumed rejection shall under no circumstances preclude the obligation to issue an express decision, which shall be adopted independently of the prior failure to issue a decision.

Third additional provision. Preferential processing of applications.

At the proposal of the Spanish Patent and Trademark Office and by order of the Minister for Industry, Energy and Tourism, preferential treatment may be given to patent and utility model applications

regarding technologies related to the sustainability objectives set out in Law 2/2011, of March 4, on Sustainable Economy.

Fourth additional provision. Fees for services provided by the Spanish Patent and Trademark Office within the framework of the Patent Cooperation Treaty (PCT).

The amount of fees, which, pursuant to the Patent Cooperation Treaty (PCT), are established at each Office for their services as a Receiving Office and PCT International Searching Authority, shall be, with reference to the Spanish Patent and Trademark Office, as indicated in the annex to this Law.

The other fees applicable by the Spanish Patent and Trademark Office within the framework of this Treaty shall be those established in the Regulations of the PCT, in the Agreement between the Spanish Patent and Trademark Office and the International Bureau of the World Intellectual Property Organization in relation to the operation of the Spanish Patent and Trademark Office as a PCT International Searching Authority, and in the Special Agreement between the European Patent Organization and the Government of the Kingdom of Spain for Cooperation on matters related to the PCT, in force at the moment the corresponding service is requested.

Fifth additional provision. Publication of applications and decisions and public consultation of files.

1. The publication of applications and decisions regarding the granting of Industrial Property rights shall include the full name of the applicant or owner in the case of natural persons, or the trade name or business name in the case of legal entities, as well as their nationality and zip code.

2. Once the applications have been published, the documents comprising the files of the corresponding rights may be consulted without the need to obtain the consent of the applicants or grantees or other appearing or participating parties.

Public consultations may be made in person or by electronic means, subject to the legal or regulatory limitations established in the Industrial Property law in force.

3. Public consultations must include the necessary data to identify and contact the owner of the application or of the Industrial Property right, as well as the parties appearing or participating in the

procedure, and particularly their full name in the case of natural persons, or trade name or business name in the case of legal entities, as well as their nationality and zip code.

4. Save express opposition of the interested party in the case of natural persons, the public consultation may include the telephone number and tax ID number.

5. The parts or documents of the file whose confidentiality has been requested by the interested party prior to the consultation request, shall be omitted from the public consultation, provided that:

(1) They do not correspond to the public information purposes pertaining to the Patent Registry, and

(2) The consultation is not justified by the legitimate and preponderant interests of the party requesting the consultation.

Sixth additional provision. Accelerated grant program.

1. The Management of the Spanish Patent and Trademark Office may establish, by means of instruction, accelerated grant programs for applications that do not claim priority from earlier applications and with respect to which the interested party:

a) Expressly accepts the accelerated grant program.

b) Files the advanced publication application and the examination request, paying the corresponding fees, either together with the application or within the time period established by regulation.

Should the application present defects, the Spanish Patent and Trademark Office shall inform the applicant giving him a certain period of time to correct the discovered defects. Once said period has elapsed without the defects having been corrected, the accelerated application shall be deemed not to have been formulated and the procedure shall continue through the normal channel, outside of the accelerated grant program.

2. It shall not be necessary to provide reasons for either the accelerated processing request made by the applicant or the application of the program by the body responsible for its processing.

Seventh additional provision. Coordination with competent bodies of the Autonomous Communities.

The Ministry for Industry, Energy and Tourism shall establish suitable coordination and cooperation mechanisms between the Spanish Patent and

Trademark Office and the competent Autonomous Communities in order to receive applications addressed to said Office. The competent body of the Autonomous Community through whom the documentation is submitted, if applicable, must remain informed throughout the procedure once the application is published. For such purpose, intercommunication and coordination systems of the corresponding Registries shall be put in place, ensuring computer system compatibility and the electronic transmission of entries.

Eighth additional provision. Electronic communications with Courts and Tribunals.

1. Documents sent to the Courts and Tribunals for their inclusion in any kind of proceeding shall be sent by electronic means in accordance with the provisions on electronic communications set out in Law 18/2011 of July 5, governing the use of information technologies and communication in the Administration of Justice, provided they have the necessary computer systems to receive them and through the closed communication channels at their disposal, which shall ensure, in any event, the security and protection of the transmitted data and/or documents.

2. Public or private electronic documents shall be attached as annexes to the main document, following the procedures set out in this Law or in its implementing regulations and pursuant to the provisions of Law 59/2003 of December 19, on electronic signatures.

Ninth additional provision. Filing of actions based on rights whose granting is not final in an administrative proceeding.

1. Article 120.4 shall apply, in any event, at the request of any party to the process whose purpose is to file actions for nullity or for patent infringement, when the right is modified outside of the process as the consequence of a final decision in an administrative proceeding on the granting of the right on which the action is based.

2. If a contentious-administrative appeal is filed against the final decision, article 42 of Law 1/2000, of January 7, on Civil Procedure, shall apply.

Tenth additional provision. Application of the regime of fees for the obtaining and maintenance of rights provided for in this Law.

1. Public universities shall be entitled to a reimbursement of fifty

percent of the amount of fees paid to obtain and maintain the industrial property rights regulated by this Law and applied for after the entry into force thereof.

2. The reimbursement shall be one hundred percent, provided they demonstrate that a real and effective economic exploitation of the patent or of the utility model has occurred within the time period established in article 90.2. In this case, universities may request the refund of the amount of fees paid under the terms established by regulation.

Transitional provision

First transitional provision. Transitional procedural regime.

1. The administrative procedures set out in this Law and initiated prior to the entry into force of this law shall be processed and resolved in accordance with the legislation in force on the filing date of the corresponding applications.

2. In this regard, in applications made for division, change of type or transformation of an application, the filing date shall be deemed the filing date of the original application.

Second transitional provision. Legislation applicable to invention patents granted in accordance with the above law.

Invention patents applied for under Law 11/1986 of March 20, on Patents, shall be subject to the provisions contained under the titles and in the chapters of this Law, specified hereunder:

(1) Chapter V of Title V "Common provisions for all procedures and for the information of third parties" to the extent that said procedures refer to actions taken subsequent to the granting of the right.

(2) Title VI, "Effects of the patent and of the patent application"; Title VII, "Actions due to infringement of a patent right"; Title VIII, "The patent application and the patent as objects of property rights"; Title IX, "Obligation to work compulsory licenses"; Title V, "Nullity, revocation and expiration of the patent"; Title XII, "Jurisdiction and procedural rules"; Title XIV, "Application of International Conventions".

(3) Chapter III of Title XIII, "Effects of the grant" with the exception of the causes of nullity referred to in article 149.1.a), which shall be those established in articles 153.1.a) of Law 11/1986, of March 20, on Patents.

Third transitional provision. Fees and annual payments.

1. The bases and types of taxes on the fees referred to in article 182.1 shall be those in force when the application is filed or when the administrative service or activity in question is requested.

2. The period for annual payments of patents granted in accordance with the above Law, whose due date is on or after the effective date

of this Law and that have not been paid before such date, shall be as established in article 184.3.

3. The fee discounts established in article 186.1 shall apply to patent and utility model applications filed after the entry into force of this Law.

4. Paragraph 3 of article 186 shall apply to applications filed after the entry into force of this Law.

5. The application and maintenance fees for supplementary protection certificates shall be those in force when the certificate or its renewal is applied for.

Fourth transitional provision. Non-prejudicial disclosures.

Applications filed within six months after the entry into force of this Law shall be subject to article 7 of Law 11/1986, of March 20, on Patents.

Fifth transitional provision. Application of the regime on the exploitation and assignment of inventions made by Public Research Entities.

The references in Royal Decree 55/2002, of January 18, on the exploitation and assignment of inventions made at public research entities, in accordance with the provisions of article 20 of Law 11/1986 of March 20, on Patents, are understood to refer to article 21 of this Law.

Sixth transitional provision. Legal actions.

Legal actions filed before the entry into force of this Law shall be prosecuted through the same proceeding according to which they were initiated.

Repealing provision**Repeal of law.**

Law 11/1986 of March 20, on Patents is repealed, as are any provisions of equal or lower hierarchy which oppose this Law, without prejudice to the transitional provisions.

Final provision

First final provision. Amendment of the Law of December 16, 1954 on chattel mortgages and non-possessory security interests.

Articles forty-five and forty-six of Law of December 16, 1954 on chattel mortgages and non-possessory security interests, are now worded as follows:

"Article forty-five.

1. The rights protected by the Industrial Property law such as patents, topographies of semiconductor products, trademarks, trade names, industrial designs, plant varieties and any other typical varieties, in accordance with the corresponding regulatory Law, may be subjected to chattel mortgage.

2. A mortgage may be created either by the owner or by the licensee with power to transfer his right to a third party, on either the right itself or on the application for the grant of the right. Licensees with full ownership of licenses or of any of the rights of exclusivity for the entire national territory or part thereof, may create a mortgage on their respective rights, with the condition of exclusive or non-exclusive license.

3. Chattel mortgages may not be created on registerable but unregistered industrial property, fundamental rights lacking any tangible value or which are non-transferable and, in general, rights not susceptible to individual appropriation.

4. The guarantee is extended to rights and improvements resulting from the addition, modification or formalization of the registered rights.

5. Immediately after the respective entries are recorded in the Personal Property Registry, the Registrar shall send ex officio a certification of its content to the Spanish Patent and Trademark Office in order to be recorded therein and for the coordination of both public registry services. The registry guarantee is deemed constituted for the effects established in this Law from the moment it is registered in the Personal Property Registry.

6. Internet domain names shall be subject to the regulations of the corresponding Registry, and no chattel mortgage may be created on rights not susceptible to voluntary disposition in accordance with the

applicable law.

7. The provisions of this Chapter establish the common rules for chattel mortgages on industrial property rights and for chattel mortgages on rights protected by intellectual property legislation referred to in the following article”.

“Article forty-six.

1. A chattel mortgage may be created both on the exploitation rights of a work and on those rights and types of intellectual property with a tangible value, which are susceptible to inter vivos transfer pursuant to the regulatory Law. A mortgage may also be created on the exploitation rights of a cinematographic work under the terms established by Law.

2. The guarantee may be created by both the owner and by the transferee, either exclusively or as partial transferee, provided he has the right to transfer to a third party.

3. Chattel mortgages may not be created on registerable but unregistered intellectual property, fundamental rights such as the so-called author's moral rights, non-transferable rights and, in general, rights not susceptible to individual appropriation.

4. Unless agreed otherwise, the guarantee on the original work is not extended to translations and adaptations; revisions, updates or annotations; abstracts, summaries or extracts; musical arrangements or any alteration of the work. Said alterations may be subject to other separate guarantees.

5. Immediately after the respective entries are recorded in the Personal Property Registry, the Registrar shall send ex officio a certification of its content to the competent Public Registry where the type of Industrial Property, object of the guarantee, is recorded in the registry and for the coordination of both public registry services. The chattel mortgage is deemed constituted for the effects established in this Law from the moment it is registered in the Personal Property Registry.”

Second final provision. Amendment of Law 17/1975 of May 2, on the Creation of the Autonomous Body, the "Industrial Property Registry."

In Law 17/1975 of May 2, on the Creation of the Autonomous Body, the "Industrial Property Registry," paragraph six of article two is amended and a new paragraph seven is added to the same article, with the following wording:

"Six. To act as a mediation and arbitration body and, in accordance with the provisions of Law 5/2012, of July 6, on mediation in civil and commercial disputes, and Law 60/2003, of December 23, on Arbitration, the functions attributed by royal decree for the settlement of disputes in relation to the acquisition, use, contracting and defense of Industrial Property rights in matters not precluded from the free disposition of parties pursuant to law.

Seven. Any other function attributed to the Spanish Patent and Trademark Office by the law in force or those expressly attributed for the matters pertaining to its competence."

Third final provision. Amendment of Law 17/2001, of December 7, on Trademarks.

The first additional provision of Law 17/2001, of December 7, on Trademarks, is now worded as follows:

"First additional provision. Jurisdiction and procedural rules.

1. The rules in force set out in Title XII of Law 24/2015, from July 24, on Patents, shall apply to the different types of distinctive marks contained in this Law, for all matters that are not incompatible due to the nature thereof, without prejudice to that established in the following paragraph.

2. Commercial Courts, which, pursuant to Organic Law 6/1985, of July 1, on the Judiciary, possess the functions of Community Trademark Courts, in application of Council Regulation (EC) No. 207/2009 of February 26, 2009 on the Community trade mark, shall be competent to hear civil disputes derived from this Law when simultaneous actions are filed concerning community and national or international trade marks which are identical or similar, or if there is any other connection between the claims and at least of these is based on a Community trademark registration or application. In such cases, the Community Trademark Courts shall have exclusive jurisdiction."

Fourth final provision. Amendment of Law 20/2003, of December 7, on Legal Protection of Industrial Designs.

Articles 24, 29, 76, First additional provision and the fee annex of Law 20/2003, of December 7, on Legal Protection of Industrial Designs, are amended, now being worded as follows:

Article 24. Paris Convention Priority Right.

A new paragraph 4 is added, with the following wording:

"4. However, the filing of the copy of the previous application and of the translation will not be necessary if the claim to priority is not considered relevant for determining the invention's validity, or if the previous application or its translation are already found in the Spanish Patent and Trademark Office or are available in a digital library or database."

Article 29.

Paragraph 1 of article 29, "Ex Officio Examination" is amended, now being worded as follows:

"1. Having passed the preliminary examination and, if applicable, having received the application sent by the competent body of the autonomous community, the Spanish Patent and Trademark Office shall examine ex officio:

a) Whether the object of the application is a design in accordance with paragraph 2.a) of Article 1 of this Law.

b) Whether the design whose registration is sought is contrary to public policy or accepted principles of morality.

c) Whether the design whose registration is sought involves a misuse of the elements mentioned in paragraph e) of article 13 of this Law."

Article 76.

Paragraphs 4 and 5 of article 76, "Rejection and granting of protection in Spain" are modified, now being worded as follows:

"4. The Spanish Patent and Trademark Office shall inform the International Office, in the manner and within the period established in said Geneva Act, of the reasons for the rejection of the international registration effects in Spain.

5. If the Spanish Patent and Trademark Office has not rejected the protection in Spain following the ex officio examination or examination of an opposition proceeding, the protection of a design granted as per the international registration shall produce effects as of its date of publication by the International Bureau. The owner of the international registration shall have the same rights and remedies as the applicant or owner of the national registration."

First additional provision. Jurisdiction and procedural rules.

The first additional provision reads as follows:

"1. Notwithstanding the provisions in paragraph 2, the current rules contained in Title XII of Law 24/2015 of July 24, on Patents, shall apply to the exercise of actions arising from this Law and the adoption of provisional and preventive measures on all matters not incompatible with the provisions thereof.

2. Under the Organic Law of the Judiciary, commercial courts are granted the same powers as Community Trademark Courts under CE Regulation No. 6/2002 of the Council, of December 12, 2001, on Community models and drawings, shall have jurisdiction to hear civil actions arising from this Law when they are brought as a consolidated action based on national or international Community titles on a same or similar design, or if there is any connection among the claims and at least one of them is based on a Community title application or registration. In such cases, the Community Trademark Courts shall have exclusive jurisdiction."

Schedule of Fees.

Amendment of the first fee of the fee schedule provided in the third additional provision of Law 20/2003 of July 7, on Legal Protection of Industrial Designs.

Paragraph 1.7 of the first fee is amended as follows:

"1.7 Oppositions: To file an opposition: 43.70 euros.

For additional designs beyond the tenth challenged in the same opposition:

11-20 designs: 34.96 euros.

21-30 designs: 27.96 euros.

31-40 designs: 22.37 euros.

41-50 designs: 17.89 euros."

Fifth Final Provision. Amendment to Law 2/2014 of March 25, on the Action and the State Foreign Service.

Additional provision sixteen of Law 2/2014 of March 25, on the Action and State Foreign Service reads as follows:

"Sixteenth Additional Provision. Official Translations and Interpretations.

1. The requirements for official translations and interpretations from a foreign language to Spanish and vice-versa shall be determined by regulation. In all cases, they shall be considered official if they

have been prepared by any person bearing the title of Sworn Translator-Interpreter, which is granted by the Ministry of Foreign Affairs and Cooperation. The requirements for the granting of this title, as well as the rest of the items comprising the legal regime thereof, shall be determined by regulation.

2. The official nature of a translation or interpretation means that it may be brought before legal and administrative bodies under the terms determined by regulation.

3. The Sworn Translator-Interpreter shall certify with his signature and seal the truth and accuracy of the translation and interpretation.

4. Any translation prepared by a Sworn Translator-Interpreter may be reviewed by the Office of Language Interpretation of the Ministry of Foreign Affairs and Cooperation at the request of the director of any administrative or legal body, registry or competent authority with which it is filed. "

Sixth Final Provision. Jurisdictional Authority.

This Law is enacted under the state jurisdiction provided by Article 149.1.9. of the Constitution regarding industrial property legislation. The foregoing does not include Title VII, Title XII, the ninth additional provision, the sixth transitory provision, the second, third and fourth final provisions, which rely on Article 149.1.6. of the Constitution, which grants the State exclusive jurisdiction on procedural legislation.

This also does not include the first final provision, which relies on Article 149.1.8. of the Constitution, which grants the State exclusive jurisdiction on civil legislation, without prejudice to the preservation, modification or exercise by the Autonomous Communities of any civil, local or special rights, wherever they may exist. Furthermore, the fifth final provision relies on Article 149.1.18., which grants the State exclusive jurisdiction over the bases of the legal regimes of government bodies and the statutory regime of employees.

Seventh Final Provision. Implementation of the Law.

The Government is authorized to enact as many provisions as necessary to implement and enforce this Law.

Eighth Final Provision. Safeguard Clause.

The measures included in this Law shall receive ordinary funding from the organization's budget and may not assume any increased funding, compensation or other expenses from personnel serving in the public sector.

Ninth Final Provision. Entry into Force.

This Law shall enter into force on April 1, 2017.

Accordingly,

I order all Spaniards, individuals and authorities to obey and enforce this law.

Madrid, July 24, 2015.

FELIPE R.

ANNEX

The unified special taxes and fees referred to in Article 10 of Law 17/1975 of May 2, creating the autonomous body, the "Industrial Property Registry," applying to services, benefits and activities of the Industrial Property Registry arising from this Law, shall be as follows:

First Fee. Acquisition and Defense of Rights

1.1 Applications:

Application for a patent or utility model deposit request, whether directly or as a continuation of an application, including publication of the application in the Official Industrial Property Gazette 100.38

Application to change the type of protection 10.30

Application for a state-of-the-art search report 684.65

Application for a substantive examination 389.77

Application to file an appeal or request for review 88.09

Application for accelerated processing 47.39

Application for renewal 105.35

Application for revocation or limitation 74.19

Appeal or request for review 88.09

Application for registration in the Special Industrial Property Agents Registry 74.01

Application for processing supplementary protection certificates (SPCs) for medications/plant protection products 517.21

Application to extend supplementary protection certificates for medications 517.21

1.2 Priority:

For each priority claimed on patents and utility models 19.65

1.3 Amendments:

Any amendments to the file, whether to the application, description or claims, whether it be to provide further documentation or correct material, arithmetic or factual errors and, in general, any amendment authorized by law. 23.19

1.4 Response to Suspension of Action:

Response to suspension of action arising from formal defects of any kind of file processed under this Law 42.06.

1.5 Oppositions:

To file opposition to granted patents and utility models 43.27

Second Fee. Maintenance and Transfer of Ownership

2.1 Annual Fees:

3rd 18.48
4th 23.06
5th 44.11
6th 65.10
7th 107.47
8th 133.78
9th 167.88
10th 216.06
11th 270.82
12th 317.98
13th 365.05
14th 412.56
15th 440.59
16th 458.85
17th 490.00
18th 490.00
19th 490.00
20th 490.00

2.1.1 Maintenance fees for supplementary protection certificates for medications and plant protection products:

SPC up to one year 803.93
SPC up to two years 1,688.24
SPC up to three years 2,661.05
SPC up to four years 3,731.05
SPC up to five years 4,908.12
SPC extension up to one year 803.93

2.2 Late Payments and Fees:

For late annual fee payments, surcharges of 25% for the first three months, 50% for the next three, for up a maximum of six months. Nevertheless, in the following six months and up to the due date of the following annual fee, the patent owner may still pay the unpaid annual fee by paying the regularization fee established herein.

Regularization of annual fee payments as provided for by Article 184.3
100.00

2.3 Working and Licenses:

Processing of files for the start-up of patents and utility models
21.87

Processing of all offers of licenses of right or compulsory licenses
where provided for by law. 19.68

Mediation by the Office in obtaining a contractual license 131.14

2.4 Transfers:

Processing of files for registration of transfers, assignments or
amendments. Each registration made 13.24

2.5 Registration of change of Ownership:

Each registration 16.38

Third Fee. Other Services

3.1 For each certificate of registered information for patents,
utility models or supplementary protection certificates, or the
extension thereof, as well as for the issue of authorized copies of
each of the documents permitted by law 20.60

3.2 Query and consult a file 3.56

Copy of file documents 11.38

Each page over 10 1.13

Announcement of administrative appeal in the "BOPI" (Boletín Oficial
de la Propiedad Industrial" (Official Industrial Property Gazette)
142.24

Announcement of contentious-administrative judgment in the "BOPI."
142.24

3.3 Request for any of the expert reports provided for by Article
120.7 2,400

Fourth Fee

4.1 European Patents:

Publication of claims 107.80

Publication of a specification (max. 22 pages) 320.93

Additional page in specification 12.90

4.2 International Patents:

Transfer fee 74.25

Priority document transfer fee 29.69

International preliminary examination fee 583.65

Additional international preliminary examination fee 583.65