

SPAIN

Patent Regulations

REGULATION OF EXECUTION OF LAW 24/2015, OF JULY 24, PATENTS

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TABLE OF CONTENTS

TITLE I Invention patents

CHAPTER I Patent request

Article 1. Patent application

Article 2. Requirements of the patent application request

Article 3. Content of the description

Article 4. Description requirements in inventions pertaining to biological matter

Article 5. Conditions for public access to the biological matter

Article 6. Figure of the independent expert

Article 7. Content and form of the claims

Article 8. Submission of drawings

Article 9. Invention summary

Article 10. General rules pertaining to the filing of application documents

Article 11. Prohibited elements

Article 12. Designation of the inventor

Article 13. Patent application priority

Article 14. Correction or amendment of a priority claim

Article 15. Exhibition at official or officially recognised exhibitions

CHAPTER II Granting procedure

Section 1. Admission to procedure and ex officio examination

Article 16. Receipt of application and referral to the Spanish Patents and Trademarks' Office

Article 17. Requirements to obtain a filing date

Article 18. Granting of the filing date and admission to procedure

Article 19. Incorporation by reference to a prior application

Article 20. Parts omitted from the description or drawings omitted

Article 21. Joint notification of defects and rectification period

Article 22. Patents of interest to national defence

Article 23. Ex officio examination

Article 24. Notification of defects
Article 25. Rejection of the application

Section 2. Report on the state of the art and written opinion
Article 26. Content of the report on the state of the art and written opinion
Article 27. Lack of clarity or coherence
Article 28. Applications which include a plurality of independent claims
Article 29. Lack of unity of invention
Article 30. Notification of the report on the state of the art and written opinion
Article 31. Publication of the application and the report on the state of the art
Article 32. Third-party observations about the application

Section 3. Substantive examination and decision
Article 33. Request for substantive examination
Article 34. Substantive examination and decision
Article 35. Granting of the patent

CHAPTER III Opposition procedure

Article 36. Opposition to granting
Article 37. Filing and processing of oppositions
Article 38. Notification of oppositions to the patent holder
Article 39. Examination of the oppositions and decision
Article 40. Concurrence of judicial procedure and opposition procedure

CHAPTER IV Revocation or limitation procedure

Article 41. Request for revocation or limitation
Article 42. Revocation or limitation procedure
Article 43. Request for limitation when a judicial procedure is pending

CHAPTER V Other procedures

Section 1. Divisional applications
Article 44. Division request
Article 45. Formalisation and processing of the divisional application

Section 2. Change in type
Article 46. Change in type

Section 3. Secret processing of patents that are of interest to national defence

Article 47. Patents of interest to national defence
Article 48. Applications claiming the priority of a foreign application declared to be secret
Article 49. Patent applications abroad claiming the priority of a national application declared to be secret
Article 50. First patent application abroad for inventions in Spain
Article 51. Processing of patent applications subject to a secrecy regime
Article 52. Lifting of secrecy
Article 53. Regime for patent applications or patents subject to secrecy

TITLE II Complementary medication protection certificates or their extension and phytosanitary products

Article 54. Filing of the application
Article 55. Examination of formalities and publication of the application
Article 56. Examination of the application
Article 57. Granting of the complementary protection certificate or extension

TITLE III Utility models

CHAPTER I Granting procedure

Article 58. Utility model application
Article 59. Assignment of filing date and ex officio examination
Article 60. Publication of the application
Article 61. Oppositions
Article 62. Examination of the oppositions

CHAPTER II Bringing of actions

Article 63. Request for report on the state of the art to bring legal actions

TITLE IV Common provisions in terms of procedure

CHAPTER I Modification and rectification of errors

Article 64. Modifications of the patent application or of the patent granted

Article 65. Rectification of errors in documents referred to the Spanish Patents and Trademarks' Office

Article 66. Rectification of errors in decisions issued by the Spanish Patents and Trademarks' Office

Article 67. Withdrawal of the application

CHAPTER II Measures in terms of timeframes

Article 68. Timeframe regime

Article 69. Extension of timeframes

Article 70. Request to reinstate rights

Article 71. Examination and decision regarding the application

CHAPTER III Patent registration and information to the public

Article 72. Registrable data

Article 73. Other registrable data

Article 74. Registration publicity

Article 75. Certifications

Article 76. Public consultation of procedures

TITLE V Registrations of the assignments, licenses and other modifications of rights and provisions of full licenses

CHAPTER I Registration of the assignments, licenses and other modifications of rights

Article 77. Content of the request for the registration of assignments

Article 78. Content of the request for registration of changes in the name or address of the party concerned or the representative

Article 79. Content of the request for the registration of licenses

Article 80. Content of the request for the registration of other legal transactions

Article 81. Content of the request for the cancellation or modification of the registration of assignments, changes in name or address, licenses and other legal transactions

Article 82. Procedure for the registration of assignments, changes in name or address, licenses and other legal transactions, as well as its cancellation or modification

CHAPTER II Registration of the provision of full licenses

Article 83. Request for the registration of the provision of full licenses

Article 84. Withdrawal of the provision of a full license

Article 85. Application to obtain a full license

TITLE VI Mandatory licenses

Article 86. Application for mandatory license

Article 87. Processing procedure

Article 88. Mandatory licenses for the manufacture of any medications intended for countries with public health issues

TITLE VII Patent expiry

CHAPTER I Owing to the absence of or insufficient exploitation of the patent

Article 89. Expiry owing to absence of or insufficient exploitation as per article 108.1.d) of the Act

Article 90. Expiry owing to absence of or insufficient exploitation as per article 108.1.e) of the Act

Article 91. Termination

CHAPTER II Owing to a waiver by the holder

Article 92. Total or partial waiver of the patent

TITLE VIII Application of international conventions

CHAPTER I Application of the Convention on the granting of European Patents

Article 93. Filing of European patent applications which do not claim the priority of a prior deposit in Spain

Article 94. Procedure for the provisional protection of the European patent application published

Article 95. Procedure for the permanent protection of the European patent

Article 96. Review of the translation

Article 97. Correction of pamphlets by the European Patent Office

Article 98. Transformation of the European patent application

CHAPTER II Application of the Patent Cooperation Treaty (PCT)

Article 99. The Spanish Patents and Trademarks' Office as the receiving Office

Article 100. Procedure for the provisional protection of the international application published

Article 101. Processing of the international application at the national stage

TITLE IX Claim of right to the patent

Article 102. Final nature of the dismissal judgment and resumption the procedure

Article 103. Final nature of the upholding judgment and options of the entitled holder

Article 104. Partial recognition of the right to obtain the patent

TITLE X Fees

Article 105. Reduction in fees set out in section 1, article 186 of the Act

Article 106. Subsidising of fees to Public Universities

TITLE XI Representation vis-à-vis the Spanish Patents and Trademarks' Office

Article 107. Representation in the context of the inventions

Article 108. Proof of representation in inventions

Article 109. Aptitude test

Article 110. Practising of professional activity and Special registration of Industrial Property Agents

Article 111. Registration of Professional Associations and Special Register of Industrial Property Agents

Article 112. Employees and auxiliary staff of representatives

Article 113 Freedom to provide service in the European Union

Article 114. Delegation of representation

Article 115. Continuous training in industrial property

TITLE I Invention patents

CHAPTER I Patent request

Article 1. Patent application

To obtain an invention patent, the application must be made referred to in article 23 and subsequent articles of Act 24 enacted on 24 July 2015 regarding Patents (henceforth, the Act), subject to that which is determined in the articles below.

Article 2. Requirements of the patent application request

(1) The request whereby the patent is applied for, which shall be formalised on an official template, must be sent to the Director of the Spanish Patents and Trademarks' Office and contain the following data:

- (a) Indication that an invention patent has been applied for.
- (b) The identity of the applicant. If there are several applicants, the identity of each of them shall be provided. When the applicant is a natural person, he shall be identified by his first name and surname or surnames, identity document, address and nationality; and when it is a legal person, it shall be identified by its complete business name or pursuant to the legal provisions to which it is subject, its NIF (taxpayer number), address and nationality.

In the event that there are several applicants, the address or means of communication of one of them shall be specified for notifications' purposes; should this not be the case, the notifications shall be sent to the applicant mentioned first in the application.

(c) Without prejudice to the provisions of article 175.2 of the Act, in the event that the applicant acts on its own behalf and does not have any real, effective address nor registered office or commercial establishment within the territory of the Spanish State, it must designate, for notifications' purposes, a postal address in Spain or state that the notifications should be sent to it via any other technical media allowed by the Spanish Patents and Trademarks' Office.

(d) The title of invention, free of fanciful language and as concisely as possible, setting out the technical designation for the invention which must be in accordance with the claims.

(e) The designation of the inventor or inventors, stating his first name and surname or surnames; if the applicant is not the inventor

or sole inventor, a statement attesting to how rights on the patent have been acquired for each of the inventors shall be submitted.

(f) A list of accompanying documents submitted with the application.

(g) The signature of the applicant or his representative.

(2) Where applicable, the request must be completed with the following data:

(a) When the applicant is acting through a representative, his identity shall be provided in accordance with paragraph b) above. In the event that the representative is an Industrial Property Agent referred to in article 176 of the Act, only the first name and surnames of the Agent shall be provided, natural person or business name of the legal person through which the Industrial Property Agent carries out his activity, mentioning the Agent code provided by the Spanish Patents and Trademarks' Office.

(b) In the event that a divisional patent has been applied for, a change in type, a transformation of a European patent application or a national stage entry of an international PCT application, the number and date of the original application shall be provided. It shall also be stated that the applicant is entitled to submit said application.

(c) When the application refers to an application filed previously in accordance with sections 1.c) and 2, article 24 of the Act, the number of said previous application shall be provided as well as the filing date and the office where or for which it was filed. It shall also be stated that the applicant is entitled to file said application.

(d) In the event that the inventor or inventors waive their right to be mentioned as such, this shall be stated in the request or, if the inventor or inventors are not the same entity as the applicant, a waiver statement signed by them shall be provided.

(e) In the event that one or several foreign or national priorities are claimed, the request must contain the number of each of the previous applications on which the priority is based, as well as the State and date of the priority claimed. It shall also be stated that the applicant is entitled to claim said priority.

(f) If the invention has been displayed at official or officially recognised exhibitions as per article 7.b) of the Act, the request must contain the name of the exhibition, as well as the place and date of the latter.

(g) When the invention refers to biological matter not accessible to

the public, or to the use thereof, and it cannot be described in the patent application, and the latter has been deposited at an institution legally recognised to this end, the deposit institution must be stated, the country, the deposit date and the deposit number assigned by the deposit institution.

(h) When the invention refers to biological matter, the geographic origin or source of origin of said matter shall be indicated if these data are known.

When the invention refers to a genetic resource or traditional knowledge associated with said resource covered by (EU) Regulation no. 511/2014 issued by the European Parliament and the Council on 16 April 2014 pertaining to the compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union, it shall be stated whether a genetic resource or traditional knowledge associated with said resource has been used. If affirmative, where applicable, the registration number shall be recorded justifying the filing of the statement of due diligence in accordance with article 14. 3 Royal Decree 124 enacted on 24 February 2017 pertaining to access to genetic resources deriving from wild taxa and usage control.

In any case, this information shall not prejudice patent validity as set out in article 23.2 of the Act.

(i) When the application contains lists of sequences of amino acids and nucleic acids, this circumstance shall be indicated.

(j) If the fee reduction foreseen in article 186 of the Act has been requested, this aspect must be mentioned.

(k) If the applicant is a public university, this aspect must be mentioned.

Article 3. Content of the description

(1) The description shall be drafted as clearly and succinctly as possible, without needless repetition, and in a manner which is consistent with the claims.

(2) The following data shall be provided therein:

(a) Mention of the technical field to which the invention relates.

(b) An indication of the prior art before the priority date, known to the applicant, which may be useful in understanding the invention and drawing up the report on the state of the art and for the examination citing, to the extent possible, the documents reflecting

the prior art.

(c) A disclosure of the invention as characterised in the claims in such terms that the technical problem and its solution can be understood, stating, if applicable, the advantages of the invention in reference to the prior art.

(d) A brief description of the content of the drawings, if any.

(e) A detailed description of at least one way of carrying out the invention, which may, as appropriate, be illustrated with examples and references to the drawings, if any.

(f) An indication of the way in which the invention is capable of being applied in industry, when this is not obvious from the description or nature of the invention. In the event that la invention consists of a total or partial sequence of a gene of a nucleic acid sequence, as set out in paragraph three of article 5.5 and article 5.6 of the Act, respectively, the industrial application must be clearly shown.

(3) The description shall be presented in the manner and order specified in section 2 unless, because of the nature of the invention, a different manner or order would afford a better understanding and more concise presentation.

Article 4. Description requirements in inventions pertaining to biological matter

(1) When the invention refers to a biological matter, the applicant must state, in the description, the name of the authorised institution where it deposited a sample of the biological matter and assign the number of identification key for said biological matter by the authorised Institution.

(2) If the biological matter deposited ceases to be available at the recognised depositing authority, it shall be assumed that accessibility has not been interrupted on condition that a new deposit has been made under the same conditions as those foreseen in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (drawn up in Budapest on 28 April 1977) and that, within four months after the new deposit date, the Spanish Patents and Trademarks' Office has been provided with a copy of the receipt of this new deposit issued by the deposit authority, accompanied by an indication of the number of the patent application or of the patent.

(3) The communication of this information implies the irrevocable consent of the applicant that the biological matter should be accessible to the public in accordance with article 56 of the Act.

Article 5. Conditions for public access to the biological matter

(1) Access to the biological matter deposited shall be obtained, within the timeframes foreseen in article 56 of the Act, by sending a sample of the biological matter requested, provided that the persona requesting access to the biological matter undertakes vis-à-vis the applicant or holder of the patent:

(a) Not to communicate nor hand over to third parties the biological matter which is the subject matter of the patent or any culture deriving from it, before the patent application has been rejected or withdrawn, in other words, considered to have been withdrawn or that the patent has expired.

(b) Not to use the biological matter which is the subject matter of the patent or any culture deriving from it, for anything but experimental purposes until the date on which the patent application has been rejected or withdrawn, or considered to have been withdrawn, or until the date of publication of the reference to the granting of the patent.

(2) When, for whatsoever reason, the authorised institution cannot send samples of the biological matter deposited, the provisions of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure and its Implementing Regulation (drawn up in Budapest on 28 April 1977).

(3) The provisions of the previous paragraphs shall be assumed to be without prejudice to the application of articles 6 and 7 of Royal Decree 124 enacted on 24 February 2017 pertaining to access to genetic resources deriving from wild taxa and usage control when involving material regulated by articles 71, 72, 74, 80 and 81 of Act 42 enacted on 13 December 2007 on Natural Heritage and Biodiversity.

Article 6. Figure of the independent expert

(1) The applicant may make a petition to the Spanish Patents and Trademarks' Office before the completion of the technical preparations for publication of the patent application to the effect

that access to the biological matter deposited and referred to in article 56 of the Act should only be carried out by providing the sample to an independent expert. This access is carried out within the following timeframes:

- (a) Before publication of the reference to the granting of the patent or, where applicable,
- (b) For twenty years since the filing date if the application has been rejected or withdrawn, or if it has been considered to have been withdrawn.

(2) The following may be appointed as an independent expert for the purposes foreseen in article 56 of the Act:

- (a) Any natural person provided that the petitioner demonstrates, at the time of making the petition that said appointment has the approval of the patent applicant.
- (b) Any natural person recognised as an independent expert by the Director of the Spanish Patents and Trademarks' Office.

The appointment must be accompanied by a statement by the independent expert in which he undertakes vis-à-vis the applicant to respect the provisions of article 56 of the Act, either until the patent expires or until the date stated in paragraph b), section 1 of the present article if the application has been rejected or withdrawn or is considered to have been withdrawn. In this regard, the party requesting the sample must be regarded as a third party and the provisions of article 56.2 of the Act shall apply.

(3) The petition referred to in section 1 shall be submitted to the Spanish Patents and Trademarks' Office. It shall be verified whether a patent application has been filed which refers to a biological matter deposited and that the requesting party or independent expert appointed by the applicant are authorised to receive a sample of said material.

Article 7. Content and form of the claims

(1) The claims shall define the subject matter for which protection has been requested in terms of the technical characteristics of the invention. Where appropriate, the claims must contain:

- (a) A preamble indicating the subject matter of the invention and the technical features which are necessary for the definition of the claimed subject matter but which, in combination, are part of the prior art.

(b) A characterising part which, starting with an expression of the type «characterised by», sets out the technical features for which, in combination with the features stated in paragraph a) above, protection is desired.

(2) Without prejudice to the provisions of article 26 of the Act, the same application may include more than one independent claim of the same category (product, procedure, device or usage), provided that the subject matter of the application consists of:

(a) A plurality of interrelated products.

(b) Different uses of a product or device.

(c) Alternative solutions to a specific problem when it is not appropriate to include these alternatives in the same claim.

(3) Any independent claim must include the essential features of the invention and it may be followed by one or several independent claims pertaining to specific forms of said invention.

(4) Any dependent claim, in other words, which includes all the features contained in any other claim, must contain, preferably at the start, a reference back to the claim on which they depend and then the additional features that it is wished to protect. A dependent claim referring to one or more dependent claims shall also be admissible. All dependent claims referring back to a single prior claim, and all dependent claims which refer to several prior claims, must be grouped together to the extent, and in as appropriate a manner as possible.

(5) The number of claims must be suitable and reasonable, bearing in mind the nature of the invention whose protection has been requested.

(6) The claims shall not make references to the description or to the drawings to define the technical features of the invention, unless this proves to be absolutely necessary. In particular, they must not contain expressions of the type «as described in part... of the description» or «as shown in figure... of the drawings».

(7) When the patent application contains drawings which include reference signs, the technical features claimed must preferably be followed by said reference signs that identify them provided that

this contributes to an understanding of the claim. Said signs shall be represented in brackets and they shall not be considered to limit the claims.

Article 8. Submission of drawings

(1) Drawings must be carried out in line with the requirements specified in the annex to this Regulation.

(2) Any schemas showing the stages of a process and the diagrams are regarded as drawings.

Article 9. Invention summary

(1) The summary referred to in article 29 of the Act shall be no more than one hundred and fifty words long, indicating the title of the invention and containing a concise account of the content of description, claims and, where applicable, the most characteristic drawing which must be situated separately from the text of the summary. Furthermore, the chemical formula may be indicated which, of those which feature in the patent application, best characterise the invention. The summary must allow an easy understanding of the technical issue raised, the solution provided and the main use or uses of the invention.

(2) Both the title and the summary of the invention may be modified by the Spanish Patents and Trademarks' Office when it sees fit in order to provide better information to third parties. Said modification shall be notified to the applicant in the written opinion.

Article 10. General rules pertaining to the filing of application documents

The formal requirements for filing the application and accompanying documents are set out in the annex to the present Regulation.

Article 11. Prohibited elements

The patent application may not contain:

- (a) Elements contrary to public order and morality.
- (b) Injurious statements relating to the products or processes of third parties or the merits or validity of third-party patents or patent applications. Mere comparisons with the state of the art shall not be considered injurious per se.

(c) Matter obviously irrelevant or unnecessary to the application.

Article 12. Designation of the inventor

(1) The designation of the inventor or inventors contained in the patent application shall be included in the publications of the patent application and the granting, as well as on the pamphlets referred to in articles 31 and 35.3, respectively, of the present Regulation.

(2) If the inventor or inventors waive their right to be mentioned as such, the signed statement referred to in article 2.2.d) of the present Regulation must be provided before the completion of the technical preparations for publication of the patent application.

Article 13. Patent application priority

(1) The statement claiming a national or foreign priority as foreseen in article 31 of the Act, shall indicate, as stated in article 2.2.e) of the present Regulation, the prior application date, the State in which or for which it has been filed, as well as the number assigned to it. The priority claim shall imply payment of the relevant fee.

(2) When the priority claim is deemed to be relevant to determine the patentability of the invention, the Spanish Patents and Trademarks' Office may require the applicant to provide - within two months after the communication or sixteen months after the oldest priority date claimed, applying the timeframe that expires latest - a certified copy of the prior application issued by the office of origin, unless said document is included in the files of the Spanish Patents and Trademarks' Office or when it is available at a digital library accepted by the Spanish Patents and Trademarks' Office. If the prior application is not drafted in Spanish, the applicant shall also provide a translation into Spanish of said document within the same timeframe. If the certified copy is not provided, where applicable, the translation into Spanish within the stipulated timeframe, the priority right shall not be deemed to have been validly claimed.

Article 14. Correction or amendment of a priority claim

(1) An applicant may request the correction or amendment of the priority claim with regard to a patent application filed with the

Spanish Patents and Trademarks' Office. Any correction or amendment request must be signed and submitted within the timeframe which expires latest of the following:

(a) Within sixteen months after the oldest priority date or, when the correction or amendment entails any change in the oldest priority date, within the timeframe of sixteen months after the oldest modified priority date, applying the term of sixteen months which expires first;

(b) Within the term of four months after the patent application filing date.

(2) If a request for correction or amendment is received at the Spanish Patents and Trademarks' Office after the applicant has requested early publication under article 37.2 of the Act, the request for correction or amendment shall be deemed not to have been filed, unless the request for early publication is withdrawn before the technical preparations have been completed for publication of the patent application.

(3) In the event that a divisional patent has been applied for, a change in type, a transformation of a European patent application or a national stage entry of an international PCT application, the timeframe for requesting the correction or amendment of the priority claim shall be four months after the deposit date of the application in question or sixteen months after the priority date, applying the timeframe that expires later.

(4) The timeframes foreseen in the preceding paragraphs shall not be eligible for extension nor any request for reinstatement of rights.

(5) Before the Spanish Patents and Trademarks' Office rejects any amendment or correction to a priority claim, it shall grant the requesting party a term of ten days after publication of the intention to reject in the «Official Bulletin of Industrial Property» to make observations.

Article 15. Exhibition at official or officially recognised exhibitions

(1) In that case foreseen in paragraph two, article 7.b) of the Act and in article 2.2.f) of the present Regulation, the applicant must provide certification issued by the person designated as the

authority responsible for ensuring the protection of industrial property at said exhibition, which proves that the invention was actually displayed at the latter during the period of the exhibition. This certification must also mention the exhibition opening date and, where applicable, the date of the first disclosure of the invention of said two dates do not coincide. Upon certification, accompanying documents shall be provided which allow the identification of the invention, duly authenticated by the aforementioned authority.

(2) The timeframe for filing this certification, as well as the attached documentation, shall be four months as from the application filing date or until completion of the timeframe foreseen in article 24 of the present Regulation, applying whichever timeframe expires latest.

CHAPTER II Granting procedure

Section 1. Admission to procedure and ex officio examination

Article 16. Receipt of application and referral to the Spanish Patents and Trademarks' Office

(1) The body competent to receive the application pursuant to the provisions of article 22 of the Act will record the registration number as well as the day, time and minute of the deposit both at the place intended for this purpose in the application request, as well as in the accompanying documentation, where applicable.

(2) At the time of deposit, the competent body shall issue to the depositor a receipt serving as proof of the filing of the application which shall state the registration number and the place, day, hour and minute of deposit. If the application is accompanied by a copy, the receipt shall consist of the submission of said copy which shall state the registration number and the place, day, hour and minute of deposit.

(3) When the patent application has been filed to the competent body of an Autonomous Community, the latter shall refer the application, along with all the documentation provided, to the Spanish Patents and Trademarks' Office within the timeframe stipulated in article 32.2 of the Act.

(4) Once the application has been received by the Spanish Patents and Trademarks' Office, it shall be assigned a patent application number which shall be notified to the applicant.

Article 17. Requirements to obtain a filing date

(1) For the purposes of the provisions of article 24 of the Act and article 18 of the present Regulation, it shall be vital to submit, to obtain a patent application filing date, the following documents:

- (a) a specific or implicit indication that a patent has been applied for,
- (b) indications that allow the applicant to be identified or contacted and
- (c) a report which, at first glance, seems to constitute a description, even though it fails to comply with the formal requirements set out in the Act or Regulation, or an incorporation

by reference, in other words, a referral to an application filed previously.

(2) For the purposes of obtaining a filing date, the indications of paragraphs a) and b) of the previous section must be submitted in Spanish. However, the description may be drafted in any language, having to submit a translation into Spanish within two months after the date of depositing the patent application or until the end of the timeframe foreseen in article 24 of the present Regulation, applying whichever timeframe expires latest.

(3) For the purposes of obtaining a filing date, a referral to an application submitted previously shall replace the description and, where applicable, any drawings. To make this referral, the applicant, when filing the patent application, must make a request for incorporation by reference to a prior application in which it must state in Spanish:

(a) That the referral to the prior application replaces the description and, where applicable, the drawings.

(b) The prior application number, its filing date and the office at which or for which it has been filed.

(c) That the prior application has been filed by the applicant itself, its predecessor in title or its beneficiary.

(4) If the patent application refers to a prior application according to that foreseen in the preceding section, the applicant must provide, within two months after the application depositing date, a certified copy of the prior application and, where applicable, a translation into Spanish. It will not be necessary to provide a certified copy of the prior application anterior or the translation into Spanish if said copy or translation is contained in the files of the Spanish Patents and Trademarks' Office or is available at a digital library accepted by the Spanish Patents and Trademarks' Office.

Article 18. Granting of the filing date and admission to procedure

(1) Within ten days after receipt of the patent application at the Spanish Patents and Trademarks' Office, the latter shall examine whether it meets the requirements necessary to obtain a filing date in accordance with the provisions of article 24 of the Act and article 17 of the present Regulation.

(2) If, upon examining the requirements necessary to obtain a filing date, defects are detected, the applicant shall be informed thereof so that it can rectify them and lodge pleadings within two months after notification thereof, with an indication that, should it fail to do so, it shall not be admitted to the procedure and it shall be considered that the patent application has been withdrawn.

(3) If the defects are corrected in due time, the filing date granted shall be that pertaining to the day on which all the requirements have been complied with and this shall be communicated to the applicant. If the defects are not duly rectified within the stipulated timeframe, the application shall not be admitted as a patent application and shall be deemed to have been withdrawn. The withdrawal decision shall be notified to the applicant, indicating the grounds and it shall be published in the «Official Bulletin of Industrial Property».

(4) Once the filing date has been granted, it shall be examined whether the fees for the application and the drafting of the report on the state of the art have been paid. If any failure to pay the charges or insufficient payment is observed, the applicant shall be notified to make or complete payment within one month after publication of the defect in the «Official Bulletin of Industrial Property», with an indication that should it fail to do so, the application shall be deemed to have been withdrawn. The withdrawal decision shall be notified to the applicant and published in the «Official Bulletin of Industrial Property».

Article 19. Incorporation by reference to a prior application

(1) In the event that the applicant has requested incorporation by reference under the provisions of article 24.1.c) of the Act and article 17.3 of the present Regulation, but it has failed to provide a certified copy of the prior application in accordance with the provisions of section 4 of said article 17 and this document is not at the disposal of the Spanish Patents and Trademarks' Office, this circumstance shall be notified to the applicant so that it can provide said documentation within two months after notification thereof, with an indication that should it fail to do so, it shall not be admitted to the procedure and the patent application shall be

deemed to have been withdrawn.

(2) If the defects are corrected in due time, the filing date shall be maintained as that on which all the requirements of article 17.1 have been complied with and this shall be communicated to the applicant. If the defects are not duly rectified within the stipulated timeframe, the application shall not be admitted as a patent application and shall be deemed to have been withdrawn. The withdrawal decision shall be notified to the applicant and published in the «Official Bulletin Industrial Property».

Article 20. Parts omitted from the description or drawings omitted

(1) In the event that, upon examining whether the patent application meets the requirements necessary to obtain a filing date, the Spanish Patents and Trademarks' Office ascertains that part of the description seems to be missing or that the drawings to which the description refers seem to be missing, this defect shall be communicated to the applicant so that, within two months after notification thereof, it can complete the application or state whether it refers to a prior application whose priority is claimed.

(2) If the applicant completes the application within two months after the patent application deposit date or since the notification mentioned in the previous section, the date on which the omitted part of the description or the drawings omitted are received shall be granted as the filing date, or the date on which all the requirements set out in article 24 of the Act and article 17 of the present Regulation are complied with, applying whichever date is later. This date shall be notified to the applicant. The filing date shall be maintained as that on which all the requirements set out in article 24 of the Act and article 17 of the present Regulation are complied with, in the event that the applicant withdraws, within one month after its provision, that part omitted from the description or the drawing omitted.

(3) If the patent application claims the priority of a prior application, the applicant may indicate that this prior application is referred to in order to incorporate the omitted part from the description or the drawings omitted. Should this be the case, the part omitted from the description or the drawings omitted must all be contained in the previous application. The filing date shall be

maintained as that on which all the requirements set out in article 24 of the Act and article 17 of the present Regulation are complied with if the applicant files within the timeframe stipulated in section 2.

(a) A petition indicating that the content of the prior application is incorporated by reference into the application.

(b) A certified copy of the prior application and, where applicable, a translation into Spanish, unless said documents are at the disposal of the Office.

(c) An indication of the place at which that part omitted from the description or the drawing omitted are included in the prior application or in the translation, where applicable.

(4) In the event that the applicant fails to answer the communication set out in section 1, the filing date shall be the date on which all the requirements set out in article 24 of the Act and article 17 of the present Regulation have been complied with. However, the part omitted from the description and the drawings omitted shall not be taken into account.

Article 21. Joint notification of defects and rectification period

The defects foreseen in articles 18, 19 and 20 of the present Regulation may be notified to the applicant jointly by means of a single notification, granting a common timeframe of two months as from notification thereof for their rectification, with an indication that should it fail to do so the application shall be deemed to have been withdrawn.

Article 22. Patents of interest to national defence

(1) As regards admission to procedure of the application, the Spanish Patents and Trademarks' Office shall examine whether the subject matter of the invention may be of interest to national defence. If affirmative, in compliance with articles 33 and 34 of the Act, the Spanish Patents and Trademarks' Office will make the patent application available to the Defence Ministry once it has been admitted to procedure.

(2) If the Defence Ministry issues a well-founded report which considers the invention to be of interest to national defence, the secret processing of the patent application shall apply in accordance with the provisions of article 47 and subsequent articles

of the present Regulation.

Article 23. Ex officio examination

(1) Once the filing date has been granted and the relevant fees have been settled, the Spanish Patents and Trademarks' Office shall examine, for the purposes of the publication of the application:

(a) Whether the request complies with the stipulations of article 2 of the present Regulation.

(b) In the event that the description is provided in a language other than Spanish, if the applicant has provided the relevant translation referred to in article 17.2 of the present Regulation.

(c) If the application contains one or several claims in accordance with the provisions of article 23.1.c) of the Act or a reference to an application filed previously, under article 17.3 of the present Regulation, also indicating that it replaces the claims.

(d) In the event that the applicant has requested incorporation by reference in accordance with the provisions of article 24.1.c) of the Act and 17.3 of the present Regulation, if the applicant has provided the translation referred to in article 17.4 of the present Regulation.

(e) If the description, the claims, the drawings and the summary maintain the formalities foreseen in the annex to the present Regulation, solely insofar as compliance therewith is necessary for the purposes of uniform publication.

(f) If the application claims the priority of a prior application, national or foreign, or innocuous disclosure deriving from display at an official or officially recognised exhibition, it shall be examined whether the requirements set out in articles 13 to 15 of the present Regulation have been complied with.

(g) In the event of divisional patent applications, a change in type, a transformation of a European patent application or a national stage entry of an international PCT application, if the mentions to the number and date of the original patent application have been provided.

(h) Whether it complies with the requirements pertaining to representation in accordance with the provisions of article 175 of the Act and articles 107 and 108 of the present Regulation.

(i) If the subject matter of the application is not clearly, and in its entirety, excluded from patentability in compliance with articles 4.4 and 5 of the Act.

(2) The presence of formal defects in the documentation shall not suspend the drafting of the report on the state of the art provided that said defects are not of such a nature that they prevent the implementation thereof or undermine to such an extent the purpose of the search that their result proves to be unusable.

Article 24. Notification of defects

(1) If the patent application has any of the defects mentioned in the previous article, the Spanish Patents and Trademarks' Office shall notify the applicant about all the objections so that the latter, within two months after publication of the defects in the «Official Bulletin of Industrial Property», can rectify the defects or make such pleadings as it sees fit in defence of the patent application. Insofar as proves necessary to correct the defects notified, the applicant may modify the description, claims and drawings or biological sequences under the terms foreseen in article 48 of the Act.

(2) The answering of the notification of defects shall imply payment of the relevant fee.

Article 25. Rejection of the application

(1) Once the timeframe for rectifying any defects or submitting any pleadings as foreseen in article 24 of the present Regulation has elapsed, the Spanish Patents and Trademarks' Office shall examine whether the defects have been duly rectified and whether the relevant fee has been settled. Otherwise the application shall be rejected. Said decision, which must be properly justified, shall be notified to the applicant, also publishing in the «Official Bulletin of Industrial Property» a mention pertaining to the rejection with the data required for identification of the patent application.

(2) In the event that the defects refer to the priority right foreseen in article 13 or to the innocuous disclosure deriving from display at an official or officially recognised exhibition as foreseen in article 15, both set out in the present Regulation, the applicant shall be notified of the loss of this right.

Section 2. Report on the state of the art and written opinion

Article 26. Content of the report on the state of the art and written opinion

(1) The report on the state of the art shall mention those elements of the state of the art at the disposal of the Spanish Patents and Trademarks' Office at the time of drawing up the report, which may be taken into account when assessing the novelty and the inventive activity of the invention which is the object of the application, based on the claims, duly taking into account the description and, where applicable, the drawings or biological sequences.

(2) Each mention shall be made with regard to the attendant claims. As far as possible, the specific part of the document referred to shall be identified.

(3) The report on the state of the art must distinguish in the aforementioned documents between those published before the priority date, between the priority date and the filing date and on the filing date or at a later date. The report on the state of the art shall refer to the classification of the patent application, in accordance with the international patent classification.

(4) Any document referring to a verbal disclosure, a usage or any other disclosure prior to the filing date of the patent application, shall be mentioned in the report on the state of the art, specifying, where applicable, the date of publication of the document and of the unwritten disclosure.

(5) The report on the state of the art shall be accompanied by a preliminary, non-binding written opinion about whether the invention which is the object of the patent application seems to be new, to involve inventive activity and be capable of industrial usage, as well as whether the application meets the terms of the Act and of the present Regulation.

(6) Without prejudice to the provisions of article 36.5 of the Act, the report on the state of the art shall be drafted, accompanied by the written opinion, in the event that the international search report for all international applications has not been drafted or the national application includes elements for which no international search has been made.

Article 27. Lack of clarity or coherence

(1) If the Spanish Patents and Trademarks' Office ascertains any lack of clarity or coherence in the description or in the claims, or defects which totally or partially prevent a significant search from being carried out, the applicant shall be notified thereof so that, within two months after publication of the defects in the «Official Bulletin of Industrial Property», it can lodge those pleadings that it deems relevant, rectify any defects, modifying, where applicable, the description or the claims and, where applicable, the drawings, under the terms foreseen in article 48 of the Act, or specify the object of the search.

(2) Once said timeframe has elapsed, if the applicant fails to answer, or the defects have not been rectified and there is still a lack of clarity or coherence or precision as to the object of the search, the Spanish Patents and Trademarks' Office shall carry out, as far as proves possible, a partial search and this shall be set out in the report on the state of the art and the written opinion.

(3) If a lack of clarity or coherence persists with regard to the description or the claims which totally prevents a significant search from being carried out, the Spanish Patents and Trademarks' Office shall not draft the report on the state of the art nor the written opinion and it shall reject the patent application, setting out the underlying grounds and notifying the party concerned thereof. The reference to the rejection decision shall be published in the «Official Bulletin of Industrial Property».

Article 28. Applications which include a plurality of independent claims

(1) If the Spanish Patents and Trademarks' Office believes that the claims, in the manner in which they have been submitted, fail to meet the provisions of article 7.2 of the present Regulation, the applicant shall be notified to, within two months after publication of the defects in the «Official Bulletin of Industrial Property», lodge such pleadings as it sees fit or provide a new set of claims to serve as the basis for carrying out the search.

(2) If, within the stipulated timeframe, the applicant fails to provide the new set of claims or it does so without complying with the provisions of article 7.2 of the present Regulation, the search

shall be carried out with regard to the first claim of each category.

Article 29. Lack of unity of invention

(1) If, upon commencing the search, the Spanish Patents and Trademarks' Office ascertains that the patent application fails to meet the requirement of unity of invention foreseen in article 26 of the Act, it shall issue a partial report on the state of the art with regard to those parts of the application that refer to the invention or group of inventions first mentioned in the claims. Said partial report, accompanied by the written opinion, shall be notified to the applicant so that, within two months after publication in the «Official Bulletin of Industrial Property» of the defect of the lack of unity of invention, it can make the necessary pleadings with regard to said objection of a lack of unity of invention, divide up the application or pay an additional fee for the request for a report on the state of the art for each additional invention claimed. When paying the additional fees, the applicant may also lodge pleadings about the objection in terms of a lack of unity of invention.

(2) Notwithstanding the provisions of the previous section above, on the grounds of procedural efficiency, at the same time as a search is carried out with regard to the main invention, a search may also be made for one or more additional inventions if said search involves little or no additional effort.

(3) If, upon hearing the pleadings of the applicant filed within the timeframe stated in section 1, the Spanish Patents and Trademarks' Office ends up considering that there is unity of invention, a search shall be carried out for the patent application claims which were not initially searched and a final report on the state of the art and written opinion shall be issued for the application as a whole. If additional fees have been paid, they shall be returned to the applicant. If, within the stipulated timeframe, the applicant files one or more divisional applications, the partial report and the written opinion shall be regarded as final for the invention or group of inventions with regard to which they have been carried out for the original invention.

(4) If the applicant has paid the additional fees within the

stipulated timeframe, the Spanish Patents and Trademarks' Office shall carry out a search for those parts of the application which are related with the inventions or group of inventions for which the fees have been paid and it shall issue the final report on the state of the art and written opinion.

(5) If, within the stipulated timeframe, the applicant fails to rectify the defects or pay the additional fees or fails to divide up the application, the Spanish Patents and Trademarks' Office shall regard the partial report accompanied by the written opinion as final for the invention or group of inventions with regard to which they have been carried out. The procedure shall only continue for those claims with regard to which the report has been drafted and this shall be stated in the written opinion.

Article 30. Notification of the report on the state of the art and written opinion

Once the report on the state of the art and the written opinion have been drafted, the Spanish Patents and Trademarks' Office shall notify the patent applicant thereof. At the same time, the latter shall be given access to the aforementioned documents.

Article 31. Publication of the application and the report on the state of the art

(1) Without prejudice to the provisions of article 37.2 of the Act, once eighteen months have elapsed since the filing date of the application or since the priority date that has been claimed, once the ex officio examination has been passed, the Spanish Patents and Trademarks' Office shall publish, as soon as possible, a reference in the «Official Bulletin of Industrial Property» to the effect that the patent application has been made available to the public.

(2) At the request of the applicant, the application may be published before the term of eighteen months mentioned in article 37.1 of the Act, provided that the application has passed the ex officio examination.

(3) The mention in the «Official Bulletin of Industrial Property» referred to in section 1 shall include the following indications:

- (a) The number of the application and the publication.
- (b) The filing date of the application.

- (c) The full data of the priority or priorities claimed.
- (d) The international patent classification.
- (e) The title of the invention.
- (f) The identification of the applicant and its representative, where applicable.
- (g) The identification of the inventor or inventors, unless they have waived any mention of themselves as such.
- (h) The summary.
- (i) The most representative drawing, where applicable.

(4) At the same time, a patent application pamphlet shall be published which, besides the indications included in section 3, shall contain the description, the claims and, where applicable, the drawings. It shall also mention the «Official Bulletin of Industrial Property» in which the patent application is published. The biological sequences shall be made accessible to the public and this shall be mentioned in the pamphlet.

(5) If, upon publication of the patent application the report on the state of the art is available, the Spanish Patents and Trademarks' Office shall simultaneously publish in the «Official Bulletin of Industrial Property» a reference to the publication of the application and of the making available to the public both of the report and of the written opinion. The patent application pamphlet referred to in the preceding section shall also include the report on the state of the art.

(6) If, in application of article 36.5 of the Act, the report on the state of the art is not drafted, a mention of the publication of the international search report shall be published in the «Official Bulletin of Industrial Property». As from said publication in the «Official Bulletin of Industrial Property», the calculation shall be commenced of the timeframe foreseen in article 39.2 of the Act. Where applicable, a written opinion shall be issued about the object of the application, which shall be notified to the applicant and made available to the public.

Article 32. Third-party observations about the application

(1) Once the notice of publication of the patent application has been provided in the «Official Bulletin of Industrial Property», anyone may make duly well justified and documented observations

about the patentability of the invention which is the object of the application until the juncture prior to the completion of the substantive examination.

(2) The third-party observations shall be submitted to the Spanish Patents and Trademarks' Office shall not interrupt the processing of the application and they shall be transferred to the applicant who may make pleadings should it see fit.

Section 3. Substantive examination and decision

Article 33. Request for substantive examination

(1) The applicant may draft the request for the substantive examination as from the deposit of the application and until three months have elapsed as from the publication date in the «Official Bulletin of Industrial Property» of the reference to the making available to the public of the report on the state of the art. The request for substantive examination shall imply payment of the relevant fee.

(2) The applicant may make observations on the report on the state of the art and on the written opinion and, where applicable, on third-party observations, as well as modify the patent application under the terms foreseen in article 48 of the Act, until the end of the timeframe stated in the previous section.

(3) Once the stipulated timeframe has elapsed without any request for substantive examination having been made or without payment of the relevant fee, the patent application shall be deemed to have been withdrawn. The decision declaring the withdrawal of the application shall be notified to the applicant and published in the «Official Bulletin of Industrial Property».

(4) Pursuant to article 39.2 of the Act, the examination request may be revoked at any time of the procedure. Should this be the case, the Spanish Patents and Trademarks' Office shall deem the patent application to have been withdrawn and this shall be published in the «Official Bulletin of Industrial Property». This revocation shall be subject to the same limitations as the withdrawal of the patent application, pursuant to article 67 of this Regulation. If the examination has been started, the substantive examination fee

shall not be returned.

Article 34. Substantive examination and decision

(1) Once the report on the state of the art has been published and the request for examination filed in due time with payment of the relevant fee, as well as, where applicable, the filing of the relevant observations and modifications, the examination shall be commenced.

(2) The Spanish Patents and Trademarks' Office shall consider the report on the state of the art and the written opinion as the initial communication to the applicant about whether the invention meets the formal technical and patentability requirements foreseen in the Act. Nevertheless, a complementary search may be carried out with a view to discovering the existence of the documents that have been published or made available to the public after the date on which the report has been drafted on the state of the art.

(3) When the examination does not result in the non-compliance with any requirement that prevents it, the patent applied for shall be granted pursuant to the provisions of article 35 of the present Regulation. If the applicant has modified its patent application, it shall be verified that said modifications meet the requirements of articles 48 of the Act and 64 of the present Regulation.

(4) The Spanish Patents and Trademarks' Office shall reject the patent in the event that the applicant has not carried out any act to avoid the objections contained in the initial communication. The rejection decision must be notified, setting out the grounds, and a reference to the rejection shall be published in the «Official Bulletin of Industrial Property».

(5) In any other cases if, in light of the answer received and despite the pleadings or modifications provided, the Spanish Patents and Trademarks' Office considers that there are still grounds which wholly or partially prevent the granting of the patent, these shall be communicated to the applicant, giving it the chance to make observations or correct its application within two months after the publication of the reference to objections in the «Official Bulletin of Industrial Property». Upon correcting the application, the applicant may modify, under the terms foreseen in article 48 of the

Act, the description, the claims and the drawings or biological sequences, where applicable, drafting the patent in the manner in which it is wished it should be granted.

(6) The Spanish Patents and Trademarks' Office may repeat the communication of objections, sending any new communications of defects, providing new opportunities to the applicant to be rectified within two months in each case, as from the publication in the « Official Bulletin of Industrial Property», if, despite its replies, it has still not managed to fully correct the defects that prevented the granting of the patent, whenever it is considered that the remaining defects may be rectified and that the applicant has clearly tried to correct them.

(7) The new opportunities referred to in the previous section may consist of one or several written proceedings or be focused on one single oral hearing when deemed appropriate or requested by the applicant. In the event of the absence of the patent applicant, the procedure shall be deemed to have been completed and the processing shall be continued. As regards those subject matters dealt with in the oral hearing, short minutes shall be drawn up and the agreed texts shall be attached thereunto. The applicant must provide the description and the claims, in the manner agreed, meeting the formal requirements demanded in the present Regulation within ten business days as from the day subsequent to publication of the announcement of the registration of the minutes in the «Official Bulletin of Industrial Property».

(8) Once the actions of the three previous sections have been completed, the Spanish Patents and Trademarks' Office shall reach a final decision about the granting or rejection of the patent, taking into account the text provided by the applicant.

(9) An appeal to a higher authority may be lodged by the patent applicant against the decision rejecting the patent application. The timeframe for bringing the appeal shall be one month as from the date of publication of the rejection in the «Official Bulletin of Industrial Property». Notwithstanding, this timeframe may be subject to the reinstatement of rights under the conditions and assumptions foreseen in article 53 of the Act.

(10) In the appeal procedure, the patent holder may modify the application, subject to the provisions of article 48 of the Act.

(11) The appeal decision shall put an end to any administrative option.

Article 35. Granting of the patent

(1) The granting of the patent and the mention that the procedure is available to the public shall be published in the «Official Bulletin of Industrial Property».

(2) The mention in the «Official Bulletin of Industrial Property» referred to in section 1 shall include the following indications:

- (a) The number of the application and the publication.
- (b) The filing date of the application.
- (c) The full data of the priority or priorities claimed.
- (d) The application publication date and, if they do not coincide, the date of publication of the report on the state of the art or the reference to the publication of the international search report.
- (e) Reference to the modifications made to the claims.
- (f) The international patent classification.
- (g) The title of the invention.
- (h) The identification of the holder and its representative, where applicable.
- (i) The identification of the inventor or inventors, unless they have waived any mention of themselves as such.
- (j) The granting date.
- (k) The summary.

(3) At the same time, a patent pamphlet shall be published which, besides the mentions included in the previous section, an indication shall be provided as to «Official Bulletin of Industrial Property» in which the granting was announced, which shall contain the description, the claims and, where applicable, the drawings in the manner in which they were granted. The biological sequences shall be made accessible to the public and this shall be mentioned in the pamphlet. The pamphlet shall mention that the patent has been granted without prejudice to any third party and without any State guarantee as regards the validity thereof and the usefulness of the object to which it pertains.

CHAPTER III Opposition procedure

Article 36. Opposition to granting

(1) Pursuant to the stipulations of section 1, article 43 of the Act, anyone may oppose the granting of a patent by filing a notice of opposition within the six months subsequent to publication of the granting in the «Official Bulletin of Industrial Property».

(2) The notice of opposition, referred to in article 43 of the Act, duly justified, must be filed with the Spanish Patents and Trademarks' Office. Said document must be accompanied by the attendant pleadings, facts and evidence invoked to support them. If the evidence is not drafted in Spanish, a translation into Spanish must be provided. The filing of the notice of opposition shall imply payment of the relevant fee.

(3) The notice of opposition must contain the following data:

(a) The identity of the opponent, in accordance with the provisions of paragraphs b) and c), article 2.1 of the present Regulation.

(b) When the opponent acts through a representative, its identity shall be provided, in accordance with the provisions of paragraph a) of article 2.2 of the present Regulation.

(c) The number of the patent application against which opposition has been brought, as well as the identification of the holder.

(d) The grounds on which said opposition is based in accordance with the provisions of article 43.1 of the Act, as well as a statement specifying to what extent the opposition lodged affects the patent, detailing the claims affected by the opposition.

(e) The signature of the opponent or its representative.

(4) The opposition shall not be accepted if it has not been filed within the timeframe of six months foreseen in article 43.1 of the Act.

(5) In those eventualities in which the notice of opposition fails to meet the provisions of sections 1 and 2 or when the opposition fee has not been paid or the payment is insufficient, any irregularities observed shall be notified to the opponent so that it can rectify them within the timeframe of one month after publication of any defects in the «Official Bulletin of Industrial Property», indicating that if it fails to do so, the opposition shall be deemed

to have been withdrawn.

(6) The decision admitting the opposition, rejecting it or deeming it to be withdrawn shall be notified to the opponent, setting out the grounds, and a mention shall be published in the «Official Bulletin of Industrial Property» about the decision. Any decision not admitting the decision or deeming the opposition to have been withdrawn shall be notified to the patent holder.

Article 37. Filing and processing of oppositions

(1) Opposition may be filed against a patent, even if its holder has waived the patent or the latter has expired.

(2) If the holder waives the patent or the latter expires during the processing of an opposition, the opponent shall be notified thereof and the latter may request in writing the continuation of the opposition procedure within the timeframe of one month after publication of notification of the opponent in the «Official Bulletin of Industrial Property».

(3) In any case, once the opposition has been admitted to the procedure, it may be processed by the Spanish Patents and Trademarks' Office, even if the opponent passes away or withdraws the notice of opposition.

Article 38. Notification of oppositions to the patent holder

(1) Once the opposition filing timeframe has elapsed, the patent holder shall be notified about any oppositions admitted to the procedure, making available the attached documentation so that, within the timeframe of three month after publication of notification of the oppositions in the «Official Bulletin of Industrial Property», it may make pleadings and, insofar as proves necessary to rectify any defects notified, modify the claims, description and drawings or biological sequences under the terms of articles 48 of the Act and 64 of the present Regulation.

(2) In the event that the patent holder answers the oppositions, the Spanish Patents and Trademarks' Office shall concurrently notify all the opponents, if there are several of them, about any pleadings and proposed modifications filed by the patent holder, granting them a rebuttal in each case for a common term of two months after

publication of notification of the reply to the oppositions in the «Official Bulletin of Industrial Property».

Article 39. Examination of the oppositions and decision

(1) To examine the notices of opposition, as well as, where applicable, the reply and rebuttals, a Commission shall be formed comprising three technically qualified experts from the Spanish Patents and Trademarks' Office, one of whom shall serve as the Chairman. The Commission shall be completed by a legal expert from the same Office if the nature of the decision so requires. If the votes are tied, the Chairman shall have the casting vote. The Commission members shall be designated by the Director of the Patents and Technological Information, in line with the criteria of experience and specialisation.

(2) The Spanish Patents and Trademarks' Office shall examine the grounds for the opposition, as well as the pleadings of all the parties, including, where applicable, any modifications filed by the patent holder. In the event that it believes that there are no grounds of opposition that prevent the maintenance of the patent in the manner in which it was granted, it shall dismiss the opposition or the oppositions, where applicable. The dismissal decision shall be notified to the holder and to the opponents, setting out the reasons why and rejecting the modification proposal. Said decision shall be published in the «Official Bulletin of Industrial Property» and it shall include a mention of the maintenance of the patent in the form in which it was granted.

(3) When, in light of the pleadings received, including the modifications filed by the patent holder, the Spanish Patents and Trademarks' Office believes that the granting of the patent may be maintained in the modified manner proposed by the holder, it shall decide to partially or totally uphold the oppositions, maintaining the granting of the patent in modified fashion.

(4) When, despite the pleadings or modifications submitted by the holder, there are still reasons that prevent maintenance of the patent, the holder shall be granted a new timeframe of one month as from publication of its mention in the «Official Bulletin of Industrial Property» to submit new pleadings or modifications to the claims, the description and, where applicable, the drawings or

biological sequences, under the terms foreseen in articles 48 of the Act and 64 of the present Regulation. New opportunities shall be afforded when it is deemed that the objections can be rectified and that the holder has clearly tried to correct them. Before reaching a final decision, a timeframe of 10 days shall be granted to the opponents to submit such final pleadings as they deem to be appropriate.

(5) The processing of new opportunities for the holder and final pleadings for the opponents referred to in the previous section may consist of one or several written procedures or be focused on one single oral hearing, when deemed appropriate, or at the request of the patent holder or any of the opponents. The absence of the opponents shall not prevent the staging of the hearing. In the event of the absence of the patent holder, the procedure shall be deemed to have been completed and the processing shall be continued. As regards those matters dealt with in the oral hearing, some short minutes shall be drawn up and the texts proposed by the holder shall be attached thereunto. The holder must provide the description, the claims and, where applicable, the drawings or biological sequences, in the manner proposed, meeting the formal requirements demanded in the present Regulation within ten business days as from the day subsequent to publication of the announcement of the registration of the minutes in the «Official Bulletin of Industrial Property».

(6) If the Spanish Patents and Trademarks' Office finally decides to totally or partially uphold the oppositions, the granting of the patent shall be revoked or the granting of the patent shall be maintained in modified fashion.

(7) The duly justified decision revoking the patent shall be notified to the holder and the opponents, setting out the grounds, and a mention of the revocation shall be published in the «Official Bulletin of Industrial Property».

(8) The mention in the «Official Bulletin of Industrial Property» referred to in the previous section shall include the following indications:

- (a) The number of the application and the publication.
- (b) The filing date of the application.
- (c) The full data of the priority or priorities claimed.

- (d) The international patent classification.
- (e) The title of the invention.
- (f) The identification of the holder and its representative, where applicable.
- (g) Identification that the patent has been revoked and the decision of the revocation decision.

(9) The duly justified whereby it has been agreed to maintain the patent in modified fashion shall be notified to the holder and to the opponents. A reference to the fact that the patent has been maintained in modified fashion and that it is available to the public shall also be published in the «Official Bulletin of Industrial Property».

(10) The mention in the «Official Bulletin of Industrial Property» referred to in the previous section shall include the following indications:

- (a) The number of the application and the publication.
- (b) The filing date of the application.
- (c) The full data of the priority or priorities claimed.
- (d) The application publication date and, if they do not coincide, the date of publication of the report on the state of the art or the reference to the publication of the international search report.
- (e) Reference to the modifications made to the claims.
- (f) The international patent classification.
- (g) The title of the invention.
- (h) The identification of the holder and its representative, where applicable.
- (i) The identification of the inventor or inventors, unless they have waived any mention of themselves as such.
- (j) The date of the decision whereby it is agreed to maintain the patent in modified fashion.
- (k) The date of modification of the claims.
- (l) The summary.

(11) At the same time, a patent pamphlet shall be published which, besides the indications included in the previous section, shall contain the description, the claims and, where applicable, the drawings in their modified form. The biological sequences shall be made accessible to the public and this shall be mentioned in the pamphlet.

(12) An appeal to a higher authority may only be lodged against the granting of a patent by whosoever has been party to an opposition procedure and it shall be addressed against the act deciding upon the opposition brought. For these purposes, any opposition may be dismissed if, when the timeframe to decide upon and notify it has elapsed, no specific decision has been made in this regard. The timeframe for bringing the appeal shall be one month as from the date of publication of the decision in the «Official Bulletin of Industrial Property». Notwithstanding, this timeframe may be subject to the reinstatement of rights under the conditions and assumptions foreseen in article 53 of the Act.

(13) In the appeal procedure, the patent holder may modify the application, subject to the provisions of article 48 of the Patent Act.

(14) The appeal decision shall put an end to any administrative option.

Article 40. Concurrence of judicial procedure and opposition procedure

(1) In the event that at the Patent Registry there is an annotation of the processing of a judicial procedure regarding the validity of the patent or infringement against which the opposition has been filed, the Spanish Patents and Trademarks' Office shall notify the Judge or Court, to all relevant intents and purposes, about the processing of an opposition procedure.

(2) Once the timeframe has elapsed for the filing of oppositions, any third party may ask to intervene in the opposition procedure provided that it submits notice of opposition in the form foreseen in article 36 of this Regulation and it proves that the holder has brought a an action for breach against it or that after having been asked by the patent holder to cease the presumed violation of said patent, it has brought a negatory action, pursuant to the provisions of article 121 of the Act. The declaration of intervention shall be filed within a timeframe of three months after the date on which the relevant judicial action is brought. Once the request for intervention by a third party has been admitted, it shall be processed as an opposition.

CHAPTER IV Revocation or limitation procedure

Article 41. Request for revocation or limitation

(1) The holder may request the total revocation or limitation of its patent in the manner in which it was granted or limited in a prior opposition or limitation procedure.

(2) The request for revocation or limitation, which shall entail payment of the relevant charge, must be submitted in writing to the Spanish Patents and Trademarks' Office using an official template which must contain the following data:

(a) The identity of the patent holder, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(b) If the holder has designated a representative, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The application number, the publication number, the publication date and the document type code of the patent whose revocation or limitation has been requested.

(d) If the holder requests the limitation of the patent, an indication that it provides a set of modified claims and, where applicable, a modification of the description, of the drawings or of the biological sequences, under the terms foreseen in articles 48 of the Act and 64 of the present Regulation.

(e) If there are rights in rem registered, call options, seizures, licenses or a legal claim, an indication that the consent of the holders of these rights or of the claimant has been provided.

(f) The signature of the applicant or his representative.

(3) The holder may not submit a request for limitation during the opposition filing timeframe foreseen in article 43.1 of the Act, nor whilst an opposition is being processed against is the granting of the patent or a previously requested limitation being processed.

(4) The application must be accompanied by the documents referred to in paragraphs d) and e) of section 2 of this article.

Article 42. Revocation or limitation procedure

(1) The Spanish Patents and Trademarks' Office shall examine whether the documentation submitted meets the requirements set out in

articles 105 of the Act and 41 of the present Regulation. If the examination carried out results in any irregularity or defect, the processing shall be suspended, notifying the holder about the objections observed so that, within two months after publication of the suspension on the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings.

(2) Once the term of two months has elapsed, if the defects have been duly corrected, the Spanish Patents and Trademarks' Office shall make a decision about that requested. Otherwise the request for revocation or limitation shall be rejected. In both cases, the attendant decision must be notified, setting out the grounds, and a reference to the revocation, limitation or rejection thereof shall be published in the «Official Bulletin of Industrial Property». The mention of the limitation shall contain the indications referred to in article 39.8 of the present Regulation.

At the same time, a patent pamphlet shall be published with the indications referred to in article 39.11 of the present Regulation, substituting the references to the granting in a manner modified by the limitation.

Article 43. Request for limitation when a judicial procedure is pending

(1) When a judicial procedure is pending vis-à-vis the validity of the patent contained on the Patent Register, the Spanish Patents and Trademarks' Office shall inform the Judge or Court about the limitation request to all intents and purposes. The rejection of the authorisation shall entitle the patent holder to ask the Spanish Patents and Trademarks' Office to return the limitation fee.

(2) If, once a limitation has commenced, a judicial procedure vis-à-vis the validity of the patent is notified and registered on the Patent Register, the Spanish Patents and Trademarks' Office shall notify the Judge or Court about the existence of a limitation procedure being processed, for the relevant purposes.

(3) Once the limitation procedure has been processed, the Spanish Patents and Trademarks' Office shall notify the Judge or Court about the decision, providing the patent in its modified fashion.

CHAPTER V Other procedures

Section 1. Divisional applications

Article 44. Division request

(1) Any applications that fail to meet the requirement for unity of invention set out in article 26 of the Act may be divided up by the applicant, subject to a request from the Spanish Patents and Trademarks' Office, in line with the way in which it is regulated in articles 29 and 59 of this Regulation.

(2) The applicant for a patent may request, at its own initiative, the division of its application at any time prior to completion of the substantive examination.

The applicant for a utility model may request, at its own initiative, the division of its application at any time prior to the decision referred to in sections 3 and 4, article 62 of the present Regulation.

(3) Upon filing the divisional application, the applicant must justify to what extent the object of protection of the divisional application forms part and is not essentially the same as that of the original application.

Article 45. Formalisation and processing of the divisional application

(1) Upon requesting the division of the patent application or utility model, the applicant must formalise its divisional application which must meet the requirements set out in Chapter I, Title I of the present Regulation.

(2) For the purposes of maintaining as the filing date that assigned to the original application, the Spanish Patents and Trademarks' Office shall verify whether the object of the divisional application is included in the original application.

(3) In the event that the division of a patent application is requested, the application fee and the fee for the report on the state of the art must be settled within the timeframe of one month after the deposit of the divisional application. If, as regards the initial application, the additional fees referred to in article 29

of the present Regulation have been paid, the applicant will not have to pay, with regard to the divisional application, the fee for the request for the report on the state of the art, insofar as the object of the divisional application has already been subject to a search. Should this be the case, a written opinion shall be issued about the object of the divisional application, which shall be notified to the applicant and made available to the public. Furthermore, a mention shall be published in the «Official Bulletin of Industrial Property» to the publication of the report on the state of the art drafted with regard to the original application. As from said publication in the «Official Bulletin of Industrial Property», the calculation shall commence of the timeframe foreseen in article 39.2 of the Act to request substantive examination.

(4) In the event that the fee for the report on the state of the art has not been paid or it has not been paid in full or if, despite having paid the additional fees referred to in article 29 of the present Regulation, it turns out that the object or part of the object of the divisional application has not been subject to a search, the applicant shall be notified of the need to pay the fee or complete the payment within the timeframe of one month as from publication of the defect in the «Official Bulletin of Industrial Property», indicating that if this is not done, it shall be decided to consider the divisional application to have been withdrawn. The withdrawal decision shall be notified to the applicant and published in the «Official Bulletin of Industrial Property».

(5) The description and the drawings, both in the original application for the patent or utility model, as well as any divisional application, must only refer, in theory, to those elements that it is wished to protect in said application. However, when it proves necessary to describe in an application those elements for which protection has been requested in another application, reference must be made to this other application.

Section 2. Change in type

Article 46. Change in type

(1) The applicant for a patent may request, at any time prior to the completion of the substantive examination, for its patent application to be transformed into an application for the protection

of the object of its invention under another type of industrial property.

The applicant for a utility model may request, at any time prior to the decision referred to in sections 3 and 4 of article 62 of the present Regulation, for its utility model to be transformed into an application for the protection of the object of its invention under another type of Industrial Property.

The request for the change in type shall imply payment of the relevant fee.

(2) The Spanish Patents and Trademarks' Office, as a consequence of the ex officio examination of article 35 of the Act or of the substantive examination of article 40 of the Act or of the ex officio examination of article 142 of the Act, may propose to the applicant a change in the type of application, notifying it to, within the timeframes foreseen in articles 24, 34.5 and 59.3, respectively, of the present Regulation, accept or reject the proposal, assuming that it has rejected it if, within the timeframe mentioned, it has not specifically requested any change in type. If the proposal is rejected, the processing of the procedure shall continue in that type originally requested.

(3) When the applicant requests a change in type, the Spanish Patents and Trademarks' Office shall decide upon the change and shall inform the party concerned about the decision, indicating the documentation it has to submit, informing it that it has a timeframe of two months to this end as from publication of the notice of a change in type in the «Official Bulletin of Industrial Property». If any failure to pay the fee or insufficient payment is detected, the applicant shall also be notified to make or complete the payment within said timeframe. Failure to submit the new documentation or make payment of the fee within the timeframe stated will mean that the application for a change in type shall be deemed to have been withdrawn, the attendant application for the new type shall be cancelled and the processing of the original application shall be continued.

(4) If the applicant provides, within the stipulated timeframe, the documentation indicated or deals with payment of the fee, the Spanish Patents and Trademarks' Office shall duly process it, maintaining, where applicable, the filing date of the original

application.

Section 3. Secret processing of patents that are of interest to national defence

Article 47. Patents of interest to national defence

(1) The content of all the applications for patents shall be kept secret until one month has elapsed since their filing date. Before its termination, the Spanish Patents and Trademarks' Office shall extend this timeframe, in accordance with the provisions of article 111.1 of the Act by up to four months if it believes that the invention which is the object thereof may be of interest to national defence.

(2) The Spanish Patents and Trademarks' Office shall notify the extension to the applicant and shall send to the Ministry of Defence a copy of the patent application so it can make its opinion known about whether the object of the patent application is of interest to national defence.

(3) In the event that the Ministry of Defence believes that the invention is of interest to national defence, it shall ask the Spanish Patents and Trademarks' Office to, before the end of the four-month timeframe, order the secret processing thereof. The resolution ordering the secret processing of the patent application shall be notified to the applicant, also informing the Ministry of Defence thereof.

Article 48. Applications claiming the priority of a foreign application declared to be secret

(1) If a patent application filed with the Spanish Patents and Trademarks' Office claims the priority of a patent application declared to be secret by a country belonging to the North Atlantic Treaty Organisation (NATO) or with which Spain has signed an international defence agreement, it shall be assigned at least the same level of secrecy as that granted by the country of origin.

(2) According to Article III of the NATO Agreement on safeguarding the secrecy of defence-related inventions with regard to which patent applications have been filed (carried out in Paris on 21 September 1960), the secrecy of the invention is safeguarded if the

applicant waives any claim for damage compensation solely due to the imposition of secrecy on the invention by the country of origin. In the event that it does not submit a compensation waiver, the Spanish Patents and Trademarks' Office shall reject the patent application and shall return to the applicant the documents sent.

Article 49. Patent applications abroad claiming the priority of a national application declared to be secret

(1) The applicant may not file any protection applications abroad claiming the priority of a patent application filed with the Spanish Patents and Trademarks' Office until one month has elapsed since the filing date, unless specifically authorised by the Spanish Patents and Trademarks' Office.

(2) The Spanish Patents and Trademarks' Office may not grant this authorisation for those patent applications that have been made available to the Ministry of Defence under the provisions of article 111.1 of the Act or which are subject to a secrecy regime, unless said Ministry specifically authorises this.

Article 50. First patent application abroad for inventions in Spain

(1) When it involves inventions made in Spain, the party concerned may not file a patent application as a first application abroad, unless specifically authorised by the Spanish Patents and Trademarks' Office. The request for authorisation must be filed by the party concerned with the Spanish Patents and Trademarks' Office.

(2) To evaluate whether the invention is of interest to national defence, the party concerned must provide, under secrecy, a copy of the patent application in the manner in which it is intended to be filed abroad, along with the description, claims and drawings and, where applicable, a translation into Spanish of said documentation.

(3) The Spanish Patents and Trademarks' Office shall authorise, within no more than one month, the filing of a first application abroad when it believes that the invention is of an interest to national defence and its filing abroad does not contravene the stipulations of the International Defence Agreements signed by Spain.

(4) However, if the Spanish Patents and Trademarks' Office believes

that the invention may be of interest to national defence, it shall reject, within the same timeframe of one month as set out in the previous section, the authorisation to file a first application abroad and this shall be notified to the party concerned. Should this be the case, authorisation shall only be granted if the party concerned provides specific authorisation from the Ministry of Defence.

Article 51. Processing of patent applications subject to a secrecy regime

(1) Chapters I, II and III of the present Title I shall be applicable to patent applications declared to be under a secrecy regime, except with regard to publication and disclosure. Notifications shall be made directly to the applicant or to its representative.

(2) Procedures pertaining to patent applications processed under a secrecy regime shall be annotated on the Register of Secret Patents which shall only be accessible to authorised staff in accordance with the regulations in force on the protection of classified information of the Ministry of Energy, Tourism and Digital Agenda.

(3) Once the secrecy has been lifted, the Spanish Patents and Trademarks' Office shall continue with the relevant procedures foreseen in Title I of the present Regulation. Any annotations made on the Register of Secret Patents shall be informer to the Patent Register referred to in article 79 of the Act.

In the event that the lifting of the secrecy has taken place after the patent has been granted, the granting shall be published in the «Official Bulletin of Industrial Property» and the relevant pamphlet shall be issued as foreseen in article 35 of the present Regulation. As from this publication the opposition filing timeframe set out in article 43 of the Act shall commence.

Article 52. Lifting of secrecy

(1) Any applications for a patent or patents subject to a secrecy regime declared by a country belonging to the North Atlantic Treaty Organisation (NATO) or with which Spain has signed an international defence agreement, shall maintain said regime until the Spanish Patents and Trademarks' Office receives notification of the lifting of secrecy.

(2) Both patent applications that are being processed under a secrecy regime as well as those patent applications that have been rejected under this form of processing, shall maintain this secrecy regime until the Ministry of Defence agrees to the lifting of secrecy.

(3) Secret patents whose granting has been produced during its processing under the secrecy regime shall be automatically maintained under this same regime as from the granting date for renewable years until the Ministry of Defence announces the lifting of secrecy. The Spanish Patents and Trademarks' Office shall then notify the patent holder thereof.

Article 53. Regime for patent applications or patents subject to secrecy

(1) Any patent applications or patents subject to secrecy cannot be withdrawn, waived, revoked or limited without the specific authorisation of the authority that declared the secrecy.

(2) Secret patents shall not be subject to the payment of annual instalments. Once secrecy has been lifted, in accordance with article 52 of the present Regulation, the patent holder must make those annual payments that fall due as from publication of the granting in the «Official Bulletin of Industrial Property».

TITLE II Complementary medication protection certificates or their extension and phytosanitary products

Article 54. Filing of the application

(1) Any application for a complementary protection certificate or its extension shall be submitted on an official template and must contain:

(a) When the application refers to medications:

(i) The stipulations of article 8 of (EC) Regulation no.469/2009 issued by the European Parliament and the Council on 6 May 2009 pertaining to the complementary protection certificate for medications (henceforth, (EC) Regulation no. 469/2009).

(ii) Information that the product is protected by the basic patent designated by its holder for the purposes of the procedure to obtain the certificate.

(b) When the application refers to phytosanitary products:

(i) The stipulations of article 8 of (EC) Regulation no.1610/96 issued by the European Parliament and the Council on 23 July 1996 pertaining to the creation of a complementary protection certificate for phytosanitary products (henceforth, (EC) Regulation no. 1610/96).

(ii) Information that the product is protected by the basic patent designated by its holder for the purposes of the procedure to obtain the certificate.

(c) When the application refers to an extension of the complementary medication protection certificate:

(i) The stipulations of article 8, section d) of (EC) Regulation no. 469/2009.

(ii) Statement of compliance about the content of the documents provided, indicating the European Union Member States they pertain to.

(d) The signature of the applicant or his representative.

(2) The filing of the application for a complementary protection certificate or its extension shall entail payment of the relevant fee.

Article 55. Examination of formalities and publication of the application

(1) The Spanish Patents and Trademarks' Office shall verify whether the fee has been paid for the application for a complementary

protection certificate or its extension and whether the necessary data have been gathered for publication foreseen in article 9 of (EC) Regulation no. 1610/96 or article 9 of (EC) Regulation no. 469/2009. In the event that any defect is detected, the applicant shall be notified thereof, granting it a timeframe of ten days as from publication of the defect in the «Official Bulletin of Industrial Property» to improve the application, indicating that if it fails to do so, the application shall be rejected.

(2) Once the examination has been passed, within three months the Spanish Patents and Trademarks' Office shall publish in the «Official Bulletin of Industrial Property» the application for a complementary protection certificate or extension in accordance with article 9 of (EC) Regulation no. 469/2009 and article 9 of (EC) Regulation no. 1610/96.

Article 56. Examination of the application

(1) Once the application has been published, the Spanish Patents and Trademarks' Office shall verify whether the application for a complementary protection certificate or its extension and the product referred to comply with the requirements set out in (EC) Regulation no. 469/2009 and (EC) Regulation no. 1610/96. There shall be no verification ex officio whether the marketing authorisation is the first authorisation as a phytosanitary product or medication in the European Union.

(2) If any irregularities are detected in the documentation or if the application or object thereof fail to meet the conditions set out in (EC) Regulation no. 469/2009 or (EC) Regulation no. 1610/96, respectively, the defects shall be communicated to the applicant so that it can rectify them or make its pleadings within two months after its publication in the «Official Bulletin of Industrial Property», indicating that if it fails to rectify them, the application shall be rejected.

(3) When the defects are not rectified or it is deemed that the objections set out in the notification persist, the application for a complementary protection certificate or the request for extension shall be rejected, setting out the grounds, and the decision shall be published in the «Official Bulletin of Industrial Property».

Article 57. Granting of the complementary protection certificate or extension

If the application for the complementary protection certificate or the extension and the product to which it refers comply with the conditions set out in Community regulations, the Spanish Patents and Trademarks' Office shall grant the certificate or the extension and it shall publish in the «Official Bulletin of Industrial Property» the decision to grant in accordance with the stipulations of article 11 of (EC) Regulation no. 469/2009 and article 11 of (EC) Regulation no. 1610/96.

TITLE III Utility models

CHAPTER I Granting procedure

Article 58. Utility model application

(1) To obtain a utility model, an application must be filed which will have to contain the documentation referred to in article 141.1 of the Act, as set out in this Regulation.

(2) For the purposes of obtaining a filing date, the description may be drafted in any language, having to submit a translation into Spanish within two months after the date of depositing the utility model application or until the end of the timeframe foreseen in article 59.3 of the present Regulation, applying whichever timeframe expires latest.

Article 59. Assignment of filing date and ex officio examination

(1) The procedure for obtaining a filing date shall be that regulated in articles 17 to 21 of the present Regulation.

(2) Once the filing date for the utility model application has been granted and the relevant fees have been paid, the Spanish Patents and Trademarks' Office shall examine whether the requirements laid down for patent applications in article 23 del Regulation have been met, except for that pertaining to the summary foreseen in paragraph e) and paragraph i). It shall also verify whether its object is liable for protection as a utility model.

(3) If, as a result of the ex officio examination, it is ascertained that the application has defects or that its object is not liable for protection as a utility model, but through another type of industrial property, the Spanish Patents and Trademarks' Office shall declare the procedure to have been suspended and shall grant the applicant a timeframe of two months to rectify, where applicable, the defects indicated or make the relevant pleadings. Insofar as proves necessary to correct the defects notified, the applicant may modify the description, claims and drawings under the terms foreseen in article 48 of the Act, divide up the application or request a change in type.

(4) Once the timeframe for rectifying any defects or submitting any

pleadings has elapsed, the Spanish Patents and Trademarks' Office shall examine whether the defects have been duly rectified and whether the relevant fee has been settled. Otherwise, it shall reject the application. The utility model application shall also be rejected, despite the pleadings of the applicant, if it is considered that the object of the application is not liable to protection by way of a utility model and it has not specifically request any change in type.

The rejection decision shall be notified to the applicant, setting out the grounds for it, and a mention shall be published in the «Official Bulletin of Industrial Property» pertaining to the rejection with the data required for identification of the utility model application.

In the event that the defects refer to the priority right foreseen in article 13 or to the innocuous disclosure deriving from display at an official or officially recognised exhibition as foreseen in article 15, both set out in the present Regulation, the applicant shall be notified of the loss of this right.

If, despite the pleadings of the applicant, the Spanish Patents and Trademarks' Office still considers that the invention which is the object of the utility model application still lacks unity of invention, it shall grant a timeframe of one month to divide the application and proceed in accordance with the provisions of article 45 of the present Regulation.

(5) When the applicant has requested a change in type and paid the relevant fee, the Spanish Patents and Trademarks' Office shall decide upon the change and shall inform the party concerned about the decision, indicating the documentation it has to submit, granting it, to this end, a timeframe of two months as from publication in the «Official Bulletin of Industrial Property» of the decision to make a change in type. If the new documentation is not submitted within the timeframe indicated, the application for a change in type shall be deemed to have been withdrawn and this shall be duly communicated; the relevant application for the new type shall also be cancelled. Furthermore, the utility model application shall be rejected in accordance with that foreseen in the previous section. The withdrawal decision shall be notified, setting out the grounds for it, and published in the «Official Bulletin of Industrial Property».

If the applicant provides, within the stipulated timeframe, the

documentation indicated, the Spanish Patents and Trademarks' Office shall duly process it, maintaining, where applicable, the filing date of the original application.

Article 60. Publication of the application

(1) If the ex officio examination fails to detect any defects that prevent the granting or when said defects have been duly rectified, the Spanish Patents and Trademarks' Office shall notify the party concerned about the decision favourable to the continuation of the procedure and it shall duly make available to the public the utility model application, making the relevant mention in the «Official Bulletin of Industrial Property».

The indications which must be included in the mention in the «Official Bulletin of Industrial Property» shall be those referred to in article 31.3 of the present Regulation, also including any claims of the utility model applied for and, where applicable, a reproduction of the drawings.

(2) At the same time, a pamphlet of the utility model application shall be published which shall contain those mentions indicated in article 31.4 of the present Regulation, except for that pertaining to the summary.

Article 61. Oppositions

(1) The sufficiently well justified notice of opposition must be sent to the Spanish Patents and Trademarks' Office and submitted within two months after publication of the application in the «Official Bulletin of Industrial Property». The notice of opposition must be accompanied by the attendant pleadings, including the facts and evidence invoked to support them. If the evidence is not drafted in Spanish, a translation into Spanish must be provided. The filing of the notice of opposition shall imply payment of the relevant fee.

(2) The notice of opposition must contain the following data:

(a) The identity of the opponent, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(b) If the opponent has designated a representative, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The number of the utility model application against which opposition has been brought, as well as the identification of the

applicant.

(d) The grounds on which said opposition is based in accordance with the provisions of article 144.1 of the Act, as well as a statement specifying to what extent the opposition lodged affects the utility model, detailing the claims affected by the opposition.

(3) If the opposition has been lodged in due time, if the extension of two extra months set out in article 144.2 of the Act is requested, it shall be indicated to what extent it is intended to complete pleadings or provide additional documentary evidence.

(4) The opposition shall not be admitted:

(a) When the notice of opposition is not filed within the timeframe foreseen in section 1.

(b) The opposition fee has not been paid.

(c) The notice of opposition does not allow the unequivocal identification of the application against which the opposition has been lodged, the identity of the opponent or the grounds and reasons on which it is based are not provided.

(d) The power of attorney has not been submitted.

In that eventuality foreseen in paragraphs b), c) and d), the opponent shall be given the chance to rectify the defects or make pleadings within ten days after its publication in the «Official Bulletin of Industrial Property», indicating that if it fails to do so, the opposition shall not be admitted.

If the notice of opposition fails to meet the provisions of the present article, any irregularities observed shall be notified to the opponent so that it can rectify them within the timeframe of one month after publication of any defects in the «Official Bulletin of Industrial Property», indicating that if it fails to do so, the opposition shall be deemed to have been withdrawn.

(5) The decision not to admit the opposition or deeming it to be withdrawn shall be notified to the opponent and to the applicant for the utility model, setting out the grounds, and a mention shall be published in the «Official Bulletin of Industrial Property» about the decision.

(6) The Spanish Patents and Trademarks' Office shall notify the applicant for the utility model about any oppositions admitted along with the attached documentation so that, within two months after

publication in the «Official Bulletin of Industrial Property» of the notification of opposition, if it sees fit, it can make pleadings, modify the claims, description and drawings, under the terms foreseen in article 48 of the Act or request the continuation of processing. If the applicant fails to answer in due time, the processing shall be continued.

(7) In the event that the utility model applicant answers the oppositions, the Spanish Patents and Trademarks' Office shall concurrently notify all the opponents, if there are several of them, about any pleadings and proposed modifications filed by the applicant, granting them a rebuttal in each case for a common term of ten days after publication of notification of the reply to the oppositions in the «Official Bulletin of Industrial Property».

(8) The opponent may withdraw the notice of opposition until the timeframe determined in the previous section has elapsed.

Article 62. Examination of the oppositions

(1) To examine the notices of opposition, as well as, where applicable, the reply and rebuttals, a Commission shall be formed comprising three technically qualified experts from the Spanish Patents and Trademarks' Office, one of whom shall serve as the Chairman. The Commission shall be completed by a legal expert if the nature of the decision so requires. If the votes are tied, the Chairman shall have the casting vote.

(2) When the Spanish Patents and Trademarks' Office believes that, despite the modifications or pleadings of the applicant, there are still grounds which prevent the granting of the utility model, it shall grant to the applicant a timeframe of one month as from the publication of the objection to the granting in the «Official Bulletin of Industrial Property» to rectify the defect or submit new pleadings. Insofar as proves necessary to correct the defects, the applicant may modify the description, claims and drawings, where applicable, under the terms foreseen in article 48 of the Act and 64 of the present Regulation.

(3) Finally, the Spanish Patents and Trademarks' Office shall each a decision, upholding all or part of the oppositions filed, granting the application, where applicable, in modified fashion or totally

rejecting the application for the utility model when any of the grounds for opposition set out in article 144.1 of the Act occurs.

(4) In the event that no oppositions have been filed or they have all been rejected or dismissed, the Spanish Patents and Trademarks' Office shall grant the utility model.

(5) The rejection or granting of the application for a utility model shall be notified to the holder and the opponents, setting out the grounds, and a mention of the decision shall be published in the «Official Bulletin of Industrial Property».

(6) The publication of the rejection decision shall contain the following data:

- (a) The number of the application and the publication.
- (b) The filing date of the application.
- (c) The full data of the priority or priorities claimed.
- (d) The international patent classification.
- (e) The title of the invention.
- (f) The identification of the applicant and its representative, where applicable.
- (g) The identification of the inventor or inventors, unless they have waived any mention of themselves as such.
- (h) Rejection date.

(7) The publication of the granting decision shall mention:

- (a) The number of the application and the publication.
- (b) The filing date of the application.
- (c) The full data of the priority or priorities claimed.
- (d) The international patent classification.
- (e) The title of the invention.
- (f) The identification of the applicant and its representative, where applicable.
- (g) The identification of the inventor or inventors, unless they have waived any mention of themselves as such.
- (h) The publication date of the application.
- (i) It shall include, where applicable, any modifications made to its claims.
- (j) The granting date.
- (k) The making available to the public of the utility model documentation.

(8) The decision to grant or reject the utility model may be appealed to a higher authority within the timeframe of one month after the publication of the decision in the «Official Bulletin of Industrial Property». Notwithstanding, this timeframe may be subject to the reinstatement of rights under the conditions and assumptions foreseen in article 53 of the Act.

(9) Any appeal lodged against the granting of the utility model may only refer to those issues that may be resolved by the Spanish Patents and Trademarks' Office during the registration procedure.

(10) Any appeal based on the grounds of rejection of the utility model not examined ex officio by the Spanish Patents and Trademarks' Office may only be lodged by whosoever has been party to an opposition procedure against the granting of the utility model based on said grounds and it shall be brought against the act deciding upon the opposition raised. For these purposes, the opposition may be dismissed if, when the timeframe to decide upon and notify it has elapsed, no specific decision has been made in this regard.

(11) In the appeal procedure, the patent holder may modify the application, subject to the provisions of article 48 of the Patent Act. If, as a result of an appeal, the utility model is modified, this circumstance shall be published in the attendant notice in the «Official Bulletin of Industrial Property», including the claims of the registered model and, where applicable, a reproduction of the drawings.

(12) The appeal decision shall put an end to any administrative option.

CHAPTER II Bringing of actions

Article 63. Request for report on the state of the art to bring legal actions

(1) The request for a report on the state of the art for the purposes of the provisions of article 148.3 of the Act shall entail payment of the attendant fee. If the Spanish Patents and Trademarks' Office detects that the fee has not been paid or that insufficient payment has been made, it shall grant the petitioner a timeframe of ten days to make due settlement, informing it that if it fails to do so, the petition shall not be admitted.

(2) Once the request for the report has been admitted, the Spanish Patents and Trademarks' Office shall draw up a report on the state of the art which shall be accompanied by the written opinion, preliminary and non-binding, and it shall inform the petitioner thereof.

(3) Both the request and the report on the state of the art and the written opinion shall be included in the utility model procedure. In light of the report, the utility model applicant may submit pleadings and, where applicable, modify the claims, in those procedures allowed in Chapter I, Title IV of the present Regulation.

(4) In light of the report, the holder may request the limitation of the utility model under the conditions and with the requirements foreseen in article 105 and subsequent articles of the Act and in article 41 and subsequent articles of the present Regulation.

TITLE IV Common provisions in terms of procedure

CHAPTER I Modification and rectification of errors

Article 64. Modifications of the patent application or of the patent granted

(1) The applicant or patent holder may only modify the claims when processing the procedures foreseen in the Act and in the present Regulation. When modifying the claims, the applicant or holder may, to maintain coherence, modify the description and, where applicable, the drawings or the biological sequences, under the terms foreseen in article 48 of the Act.

(2) When the applicant or holder makes a modification, it must submit the complete set of claims to replace the claims filed previously and, where applicable, the description, drawings or biological sequences.

(3) The modification will be accompanied by a document in which the applicant identifies the differences between the prior claims and the modified claims. Furthermore, it must state the reasons for the modification and the scope thereof.

(4) Modified claims may not refer to subject matter which has not been subject to a search as it is not included, forming a single general inventive concept, in the invention or group of inventions claimed originally. Nor may they refer to subject matter which has not been subject to a search under articles 27 or 28 of the present Regulation.

(5) The applicant may modify the claims pursuant to the stipulations of the first section of this article, without the need for the consent of those who have rights registered with regard to their application in the Patent registration.

(6) The designation of the inventor or inventors may not be modified without the consent of the other inventors designated in the patent application, as well as of the applicant or patent holder.

Article 65. Rectification of errors in documents referred to the Spanish Patents and Trademarks' Office

(1) Any defects of expression or transcription and any errors contained in any document sent to the Spanish Patents and Trademarks' Office may be rectified at the request of the applicant or holder.

(2) For the purposes of the provisions of the previous section above, if the purpose of the request for rectification is the description, the claims, the drawings or the biological sequences, the rectification must be evident in such a way that no other text except for the rectified text could have been proposed by the applicant. In this case, the Spanish Patents and Trademarks' Office shall only take into account the content of the description, the claims, the drawings or the biological sequences and, where applicable, the correction or modification provided by the applicant.

(3) In the event if any error in any other document of the application, the Spanish Patents and Trademarks' Office shall take into account the content of the actual application, as well as any other document included in the procedure prior to the request for rectification and, where applicable, the correction or corrected document provided by the applicant.

Article 66. Rectification of errors in decisions issued by the Spanish Patents and Trademarks' Office

According to the stipulations of article 109.2 of Act 39 enacted on 1 October 2015 regarding the Common Administrative procedure of the Public Administrations, at the request of the parties or at its own initiative, the Spanish Patents and Trademarks' Office may rectify, at any time, any material, de facto, or arithmetic errors to be found in its decisions or communications, provided that said rectification does not affect or alter the meaning of the act.

Article 67. Withdrawal of the application

(1) The patent application may be withdrawn by the applicant at any time before the patent has been granted. The withdrawal request must be submitted to the Spanish Patents and Trademarks' Office and it must include:

(a) An indication that the withdrawal of the application of the

patent has been requested.

(b) The identity of the applicant, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(c) If a representative has been designated, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(d) The application number of the patent whose withdrawal has been requested.

(e) Signature of the holder of the patent application or its representative.

(2) When, in accordance with articles 11.3 and 52.2 of the Act, it proves necessary for acceptance of the withdrawal that the consent of the holder of any right registered over the patent application must be stated, a declaration must accompany the request signed by said holder of the rights or its representative, accepting said withdrawal.

(3) The Spanish Patents and Trademarks' Office shall examine whether the withdrawal application meets the requirements and conditions foreseen in the Act and in this Regulation. In the event that there are irregularities, the processing shall be suspended and said irregularities shall be notified to the party concerned who, within two months after publication of suspension in the «Official Bulletin of Industrial Property», shall answer them. If, within the timeframe determined, the defects indicated are not rectified, the withdrawal request shall be rejected.

(4) The Spanish Patents and Trademarks' Office shall inform the applicant of the decision to grant or reject - setting out the grounds - the withdrawal and it shall publish notice of the decision in the «Official Bulletin of Industrial Property».

CHAPTER II Measures in terms of timeframes

Article 68. Timeframe regime

(1) To calculate the timeframes foreseen in the Act and in the present Regulation, the provisions of Chapter II, Title II of Act 39 enacted on 1 October 2015 regarding the Common Administrative procedure for Public Administrations shall be complied with. Notwithstanding the above, to pay the annual instalments that fall due subsequent to publication of the granting, the calculation shall be carried out in calendar months.

(2) The presence of defects in the documentation shall interrupt the procedure provided that the applicant is notified of the existence thereof by means of an attendant suspension in the processing, until said defects have been rectified or the timeframe to this end has expired, applying the timeframe that expires first.

(3) The maximum timeframes with regard to any decision and notification or publication of all the procedures foreseen in the Act and in the present Regulation shall be those determined in the ministerial order on maximum timeframes which is adopted in application of the provisions of the second additional provision of the Act.

(4) If the maximum timeframe expires for taking a decision regarding an application pertaining to any procedure processed with the Spanish Patents and Trademarks' Office in application of the Act y of the present Regulation without any specific decision having been notified, the party concerned shall be entitled to consider it to have been dismissed for the sole purposes of allowing the lodging of any applicable administrative or litigious-administrative appeal. Under no circumstances shall the presumed dismissal exclude the duty to issue a specific decision which shall be adopted without being bound by its silence.

Article 69. Extension of timeframes

(1) Except for the provisions of section 3 of the present article, the Spanish Patents and Trademarks' Office may extend for two months timeframes determined in the Act and in the present Regulation.

(2) The extension of a timeframe must be request in writing before

the timeframe has elapsed whose extension has been requested and the Spanish Patents and Trademarks' Office must make a decision in this regard within said timeframe.

(3) Any timeframes that concern interested third parties may not be extended and, in particular:

(a) The extension of a timeframe which has already been extended.

(b) The timeframe for requesting an extension or to request the reinstatement of rights.

(c) The timeframe for making the annual payments.

(d) The timeframe for claiming priority, as well as the timeframe for the correction, amendment or reinstatement of the priority right.

(e) The timeframe for filing opposition and lodging an administrative appeal.

(f) The timeframe to replying to a communication from the Spanish Patents and Trademarks' Office as part of an adversarial procedure.

(4) The Spanish Patents and Trademarks' Office shall examine whether the application for extension is admissible and it shall reach a decision to grant or reject, indicating the grounds. The decision shall be notified to the applicant and it shall publish notice of the decision in the «Official Bulletin of Industrial Property».

Article 70. Request to reinstate rights

(1) Any request to reinstate a right shall be filed with the Spanish Patents and Trademarks' Office, paying the attendant fee and it shall contain the following data:

(a) The identity of the applicant or holder of the right whose reinstatement has been requested, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(b) The identity of the representative, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The timeframe or procedure not complied with.

(d) Where applicable, the resolution and date of the extinguishing of the right and of its publication or notification.

(e) Date of cessation of impediment.

(f) Grounds for the breach, justification, evidence and pleadings to support the claim.

(g) The signature of the party concerned or his representative.

(2) With the request for the reinstatement of the right, the procedure omitted must be complied with, being accompanied by the formalisation of the act or the application, document or documentation which was omitted in due time in said procedure and whose absence led to the loss of the right.

Article 71. Examination and decision regarding the application

(1) It shall be examined whether the request for the reinstatement of rights has been submitted within the timeframe stipulated in article 53.2 of the Act and whether the timeframe not complied with is subject to reinstatement under sections 1 and 5 of article 53 of the Act and article 14.4 of the present Regulation. Otherwise, it shall be decided not to admit the request for the reinstatement of rights.

(2) Once it has been admitted to the procedure, the Spanish Patents and Trademarks' Office shall examine whether the request for the reinstatement of the right meets the requirements foreseen in the previous article and in article 53 of the Act and whether all the formalities of the act or procedure omitted have been duly complied with when submitting the request for reinstatement.

(3) If any irregularity or defect is observed in the documentation submitted, they shall be communicated to the applicant so that, within the timeframe of ten days, it can rectify them or submit its pleadings. The request for reinstatement shall be deemed to have been withdrawn if the irregularities or defects are not corrected in due time.

(4) When no irregularities or defects are observed in the documentation submitted, or when these have been rectified, it shall be examined whether due diligence has been proven in the circumstances of the case.

(5) Once said examination has been carried out, it shall be decided to uphold or dismiss the request for the reinstatement of the right. In the latter case, before dismissing the reinstatement of rights, the petitioner shall be granted an additional timeframe of ten days to make its observations.

(6) A reference to the reinstatement of rights shall be published in

the «Official Bulletin of Industrial Property».

CHAPTER III Patent registration and information to the public

Article 72. Registrable data

(1) The Patent Register referred to in article 79 of the Act shall take the form of an electronic database and shall be open for public consultation. The following mentions shall be entered therein, referring both to the patent applications and the patents granted:

(a) The application number.

(b) The filing date of the application.

(c) The title of the invention.

(d) The classification symbols assigned.

(e) The identity of the patent applicant or holder, pursuant to the provisions of article 2.1 b) of the present Regulation.

(f) The name of the inventor designated by the patent applicant or holder provided that the inventor has not waived being designated as such.

(g) The identity of the proxy or representative, unless it is an employee of the applicant; should this be the case, an indication of his identifying post in the company of the applicant shall suffice. When there are several representatives, it shall suffice to register that referred to first, followed by the terms «and others».

(i) Any indications pertaining to the priority claim (date, status and number of prior application deposit).

Any indications pertaining to exhibition priority (date, status and number of exhibition).

(j) In the event of the division of the patent application, the divisional application numbers.

(k) An indication, where applicable, that it is a divisional application and the filing date and number of the application or registration it derives from.

(l) The application publication date and, if they do not coincide, the date of publication of the report on the state of the art or the reference to the publication of the international search report.

(m) An indication that it is a patent owing to the transformation of a European patent application and the data pertaining to this application.

(n) An indication that it is a national stage entry of an international PCT application and the data pertaining to this application.

(o) The filing date for third-party observations.

(p) The date of the decision and the publication of the mention of

the decision owing to which the patent application or patent has been withdrawn, granted, maintained in modified fashion, rejected, withdrawn or deemed to have been withdrawn, limited or revoked.

(q) Any data pertaining to the oppositions filed and the lodging and resolution of any administrative and jurisdictional appeals.

(r) The data pertaining to limitations or revocations of the patent.

(s) The data pertaining to requests and decision regarding the reinstatement of rights.

(t) The data pertaining to the signing of an arbitration agreement, any award given and, where applicable, to any appeals lodged against the latter and to any decisions adopted in this regard.

(u) The date of the patent expiry decision, the reason and the date of the production of effects.

(v) Any payments made.

(2) In addition to any entries referred to in the previous paragraphs above, the following shall be annotated on the Patent Register, always indicating the registration date:

(a) Any changes in name, address or nationality of the applicant or of the patent holder, or the State in which it has its domicile, registered office or establishment.

(b) Any changes in the name or business address of the representative, except when it involves the representative referred to in article 56.3 of the Regulation to implement Act 17 enacted on 7 December 2001 regarding Brands, approved by Royal Decree 687 enacted on 12 July 2002.

(c) In the event that a new representative is designated, its identity, pursuant to the provisions of article 2.2.a) of the present Regulation.

(d) Any requests to assign the application or patent and the date on which the registration of the change in ownership is rejected or granted.

(e) The formation, modification or assignment of a right in rem and the date on which the registration is rejected or granted. In the case of a chattel mortgage, its registration date on the chattels register shall be annotated.

(f) Any mandatory enforcement measures and insolvency procedures.

(g) Any applications for registration, modification or assignment of licenses and the date on which their registration is rejected or granted.

(h) The provision of a full license as well as any application for a

full license.

(i) The subsection of the patent to the mandatory license regime, as well as any application for a mandatory license and the date on which it is rejected or granted.

(j) Any requests to cancel the registrations mentioned in paragraphs e) to i) and the date on which their cancellation is registered.

(k) Preventive annotations, the bringing of lawsuits, the bringing of lawsuits to exercise claim and invalidity actions (direct or by way of a counterclaim), any applications to limit the patent with a principal or subsidiary nature as part of a process regarding the validity thereof, any other precautionary measures, judgments and other final court decisions that put an end to said procedures as well as any others foreseen in the Patents' Act or in any other applicable laws.

(l) Any registration annotations deriving from judicially formalised or approved mediation agreements.

(3) The Patent Register shall also contain, in a similar way as that stated in the present chapter, any data pertaining to application for utility models and any utility models granted.

(4) Furthermore, in a similar way as that stated in the present chapter, any data shall be registered which pertains to applications for complementary protection certificates and the complementary protection certificates granted, as well as any extensions thereunto.

Article 73. Other registrable data

(1) Any court decisions pertaining to the patent application or the patent shall be registered, subject to notification of the competent Judge or Court or a request from an interested party.

(2) By way of a duly justified decision by the Director of the Spanish Patents and Trademarks' Office the registration on the Patent Register of other mentions not foreseen in the previous article may be made available.

Article 74. Registration publicity

The Patent registration is public. The publicity shall become effective by way of the consultation of the database, the obtaining of computer lists or certification issued by the competent employee.

The Spanish Patents and Trademarks' Office shall provide, free of charge, public consultation of the database by making it available publicly on electronic communication networks.

Article 75. Certifications

(1) Certification shall be the sole means of reliably proving the content of the registration entries.

(2) Certification may be requested by the party concerned through filing with the Spanish Patents and Trademarks' Office an application which shall set out the specific aspects it has to deal with. When general certification is requested for the registration entries or the status as regards procedures pertaining to patents, complementary protection certificates or their extensions or utility models, it may consist of the attendant computing statement from the database, certified by the competent employee. The certification application shall imply payment of the relevant fee.

Article 76. Public consultation of procedures

(1) The public consultation of procedures referred to in article 55 and the fifth additional provision of the Act shall be carried out on the original documents or copies thereof. When procedures are kept on electronic storage supports, public consultation shall be carried out on these electronic media. The Spanish Patents and Trademarks' Office shall determine the manner of completing the consultation. The public consultation application shall imply payment of the relevant fee.

(2) For the purposes of the consultation referred to in article 55.2 of the Act, the party concerned, besides that determined in this article, must provide documentary evidence that the party requesting the procedure whose consultation has been requested wished to enforce vis-à-vis the latter those rights deriving from said procedure. The Spanish Patents and Trademarks' Office shall admit the consultation referred to in this section if it deems the evidence provided by the party concerned to be sufficient.

(3) The following shall also be excluded from the public consultation:

(a) Any draft agreements and reports, as well as any document intended for the preparation of agreements and reports, which have

not been communicated to the parties.

(b) Communications between Administration bodies of equal importance.

(c) Any documentation regarding the designation of the inventor if the latter has waived its personal right to be mentioned in the patent.

(d) The parts or documents of the procedure whose confidentiality has been requested by the party concerned prior to the consultation request, as set out in section 5 of the fifth additional provision of the Act.

(4) Subject to a request, public consultation shall be carried out by issuing copies of the documents of the procedure. To obtain said copies the attendant fee must be paid.

(5) Access to the biological matter deposited pursuant to article 27 of the Act shall be carried out under the conditions and forms foreseen in articles 56 of the Act and 5 and 6 of the present Regulation.

TITLE V Registrations of the assignments, licenses and other modifications of rights and provisions of full licenses

CHAPTER I Registration of the assignments, licenses and other modifications of rights

Article 77. Content of the request for the registration of assignments

(1) The request to register the assignment of a patent or its application must be submitted by means of a request on an official template. The submission of the request for registration shall be subject to payment of the attendant fee and it must include:

(a) The identity of the applicant or holder of the right which is being transferred, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(b) The identity of the new applicant or holder, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(c) When the party requesting registration is acting through a representative, the identity of the latter pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(d) Indication of the document or act serving as proof of assignment.

(e) The application number of the patent which is being transferred.

(f) The signature of the applicant or his representative.

(2) If the change in ownership derives from an agreement, the request for registration must be submitted accompanied by any of the following documents:

(a) A sworn copy of the agreement or an uncertified copy thereof with the authentication of signatures carried out before a notary or other competent public authority.

(b) Extract from the agreement in which it is stated by way of a notarial certified copy or some other competent public authority that the extract conforms to the original agreement.

(c) Certificate or document of transfer signed both by the holder and by the new owner, consisting of the official templates.

(3) If the change in ownership has occurred owing to a merger, reorganisation or division of a legal person by legal imperative, administrative decision or judicial decision, the request for registration must be accompanied by a certified copy issued by the

public authority that issues the document or a copy of the document that proves the change, sworn or authenticated by a notary or another competent public authority. Notwithstanding, for the registration of seizures, bankruptcies and other judicial measures the timely order issued to this end by the Judge or Court that laid them down or by the competent administrative body. The request for registration of the assignments foreseen in this section shall be subject, where applicable, to the stipulations of section 1 of this article.

(4) The request for registration of assignment may include several patents and patent applications, on the condition that the present registration holder and the new holder are the same for each of the patents or applications concerned, paying the attendant fee for each of them.

Article 78. Content of the request for registration of changes in the name or address of the party concerned or the representative

(1) When there is no change in the applicant or patent holder, but there is in its name or address, said change shall be entered at the Patent Register at the request of the party concerned.

(2) Any request for registration of a change in name or address which, where applicable, shall be subject to payment of the attendant fee, must include:

(a) The number of the application or the patent concerned.

(b) The identity of the patent applicant or holder, as stated at the Patent Register.

(c) The indication of the new name or address of the applicant or patent holder, in the manner in which it has to be registered at the Patent Register after the change which has been made, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(d) If a representative has been designated, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(e) The signature of the party concerned or his representative.

(3) All the applications or patents pertaining to the party concerned may be grouped under a single request for a change in name or address. In this case, the numbers of all the applications or

patents concerned must be indicated, paying the attendant fee for each of them.

(4) When the Spanish Patents and Trademarks' Office has reasonable doubts about the truthfulness of the change in name or address requested, it may ask the party concerned to provide documentary evidence of said change.

(5) The previous sections shall apply to the change in name and address of the representative and, pursuant to its specific nature, also to any changes in the nationality of the applicant or holder of the right or of the State where it has its domicile, registered office or establishment.

Article 79. Content of the request for the registration of licenses

(1) The request to register a license for a patent or its application must be submitted by means of a request on an official template.

(2) The request, which shall be subject to payment of the attendant fee, must include the mentions contained in article 77.1 of this Regulation and be submitted accompanied by any of the documents considered in sections 2 and 3 of said article, referring to the licensing agreement and the grantor and holder of the license.

(3) When the documentary evidence of the license is any of that foreseen in article 77.2 c) of the present Regulation, said documents shall consist of the official templates.

(4) In the request for registration of the license, it shall be indicated whether it is exclusive or not, as well as any limitations to the agreement in terms of its duration, form of operation, territorial scope or uses. It shall also be indicated whether the licensee may assign it or grant sublicenses. In the event that the request for registration does not indicate any of the aspects mentioned, the license shall be registered pursuant to the legal assumptions set out in article 83 of the Act.

(5) The request for registration of the license may include several applications or patents on the condition that the present licensor and the licensee are the same for each of the applications or

patents concerned, paying the attendant fee for each of them.

Article 80. Content of the request for the registration of other legal transactions

(1) The request for registration of other acts or legal transactions which may be registered in accordance with the stipulations of articles 79.2 and 82.1 of the Act, unless the chattels mortgage which shall be subject to its specific provisions complies with the requirements and conditions foreseen in article 77 of this Regulation, duly adapted to the nature of the act or right to be registered. The request for registration of call options or the formation of rights in rem must also be accompanied by documentary evidence, pursuant to paragraphs a) or b) of article 77.2 of this Regulation.

(2) In the event of registration of bankruptcy administration, seizures or any other mandatory enforcement measures, the request for registration on the Patent Register submitted by the competent authority shall not be subject to the payment of fees. In particular, if bankruptcy administration has been registered at the Office, any action geared towards the extinguishing of the right concerned shall be suspended until the attendant judicial authorisation has been received. Once judicial authorisation has been received, there shall be a timeframe of two months to rectify the right concerned.

Article 81. Content of the request for the cancellation or modification of the registration of assignments, changes in name or address, licenses and other legal transactions

(1) The registration of assignments, changes in name or address, licenses and other legal transactions referred to in article 80 of this Regulation shall be cancelled or modified at the request of one of the parties by way of an official template.

(2) The request for cancellation or modification shall contain the following indications:

(a) The identity of the applicant, pursuant to the provisions of paragraph b), article 2.1 of the Regulation.

(b) If a representative has been designated, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

- (c) Number of the procedure it is wished to cancel or modify.
- (d) Number of the application or patent affected by the right that has to be cancelled or modified in the event of cancellation or partial modification.
- (e) Indication of the right whose cancellation or modification has been requested.
- (f) The signature of the applicant or his representative.

(3) The provisions of sections 2 and 3, article 77 of the present Regulation shall be applicable, pursuant to their actual nature, to the request for cancellation or modification foreseen in this article.

Article 82. Procedure for the registration of assignments, changes in name or address, licenses and other legal transactions, as well as its cancellation or modification

(1) The registration of assignments, changes in name or address, licenses and the legal transactions referred to in article 80 of this Regulation may be requested by either of the parties. The Spanish Patents and Trademarks' Office shall number and date the application and shall issue the attendant receipt which serves as proof of submission which may consist of a copy of the application submitted which shall state the number, place, date and time of submission.

(2) Once the application has been received, the Spanish Patents and Trademarks' Office shall examine whether the documentation submitted meets the requirements set out in articles 77 to 80 of the Act of the Regulation. If the examination carried out results in any irregularity or defect, the processing shall be suspended, notifying the applicant about the objections observed so that, within two months after publication of the suspension on the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Once this timeframe has elapsed, a decision shall be made about the request for registration.

(3) When the Spanish Patents and Trademarks' Office has any reasonable doubt about the truthfulness of any indication contained in the request for registration or in its accompanying documents, it may require the applicant to provide documentary evidence of the truthfulness of said indications. The communication shall indicate

the reasons why there is doubt about the truthfulness of said information.

(4) The Spanish Patents and Trademarks' Office shall not register any assignments to natural or legal persons who, pursuant to the provisions of article 3 of the Act or the civil or commercial regulations cannot be holders thereof.

(5) The Spanish Patents and Trademarks' Office shall decide to wholly or partially grant or reject the request for registration. In the event of rejection, the grounds for it shall be indicated. The decision made shall be published in the «Official Bulletin of Industrial Property».

(6) The previous sections above shall apply to any requests for cancellation or modification foreseen in article 81 of the present Regulation.

(7) In the event that a chattels mortgage is formed, the latter shall be subject to its specific provisions and shall be registered in section four of the Chattels Register, with the notification of said registration to the Patent Register for its registration thereat. For these purposes, both registrations shall be coordinated to electronically communicate any encumbrances registered or annotated thereat. For the sake of appropriate coordination, the Spanish Patents and Trademarks' Office and the Directorate-General of Registrations and Notaries may sign an agreement in which the technical specifications and conditions for electronic communication shall be determined.

CHAPTER II Registration of the provision of full licenses

Article 83. Request for the registration of the provision of full licenses

(1) Any holder who, under article 88 of the Act, wishes to authorise the use of the invention which is the object of its patent to any party concerned in the capacity of licensee, must submit a request to the Spanish Patents and Trademarks' Office. The application shall imply payment of the relevant fee.

(2) The request for registration of the provision of a full license must include:

(a) The identity of the patent holder.

(b) When the holder is acting through a representative, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The patent application number for which it is making the provision.

(d) The signature of the applicant or his representative.

(3) Once the application has been received, if the examination carried out shows up any irregularity or defect, the processing shall be suspended, notifying the objections observed to the patent holder so that within the timeframe of two months after publication of the suspension in the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Once this timeframe has elapsed, a decision shall be made about the request for registration.

(4) The Spanish Patents and Trademarks' Office shall decide to grant or reject the request for registration. In the event of rejection, the grounds for it shall be indicated. The decision made shall be published in the «Official Bulletin of Industrial Property».

Article 84. Withdrawal of the provision of a full license

(1) Any patent holder who wishes to withdraw its provision of a full license, must file a request with the Spanish Patents and Trademarks' Office which must include:

(a) The identity of the patent holder.

(b) When the holder is acting through a representative, the identity of the latter, pursuant to the provisions of paragraph a), article

2.2 of the present Regulation.

(c) The patent application number for which it wishes to withdraw the provision.

(d) The signature of the applicant or his representative.

(2) Once the application has been received, the Spanish Patents and Trademarks' Office shall examine whether the documentation submitted meets the requirements set out in the section above and, in particular, whether any application has been filed for the use of an invention subject to the full license regime. If the examination carried out shows up any irregularity or defect, the processing shall be suspended, notifying the objections observed to the patent holder so that, within the timeframe of two months after publication of the suspension in the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Once this timeframe has elapsed, the application for withdrawal of provision shall be decided upon, granting or rejecting the request for registration of withdrawal. In the event of rejection, the grounds for it shall be indicated. The decision made shall be published in the «Official Bulletin of Industrial Property».

(3) Upon publication of the granting of the registration of withdrawal of the provision of a full license, the timeframe shall commence foreseen in article 88.3 of the Act for payment of reductions in the annual payments.

Article 85. Application to obtain a full license

(1) Any party concerned, in the capacity of licensee, who wishes to use the invention which has been the object of the provision of a full license, must file a request with the Spanish Patents and Trademarks' Office which must include:

(a) The identity of the license applicant, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(b) When the party concerned is acting through a representative, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The patent application number for which it is requesting the full license.

(d) Indication of the use it is going to make of the invention.

(e) The signature of the applicant or his representative.

(2) Once the application has been received, if the examination carried out shows up any irregularity or defect, the processing shall be suspended, notifying the objections observed to the applicant so that, within the timeframe of two months after publication of the suspension in the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Once this timeframe has elapsed, a decision shall be made about the application to obtain a full license.

(3) If the Spanish Patents and Trademarks' Office considers that there is no impediment, it shall communicate the application to obtain the full license to the patent holder and to the applicant for the authorisation, indicating that, once the timeframe of one month has elapsed since receipt of the communication, the applicant is authorised to use the invention in the manner indicated in the application.

(4) If, within the timeframe of one month indicated in the previous section above, the parties fail to reach an agreement about the compensation that the licensee has to pay, either of them may ask the Spanish Patents and Trademarks' Office to determine the suitable amount of said compensation. The application shall be filed with the Spanish Patents and Trademarks' Office and it shall entail payment of the attendant fee. The Spanish Patents and Trademarks' Office, before reaching a decision, shall first hear both parties and it may address that institution it deems most appropriate in view of the circumstances of the case to request the designation of the expert to advise it on the determination of the compensation to be paid by the licensee. The decision shall be communicated to the parties.

(5) In the event that events have occurred or been known which have shown the amount determined to be clearly insufficient, either of the parties may ask the Spanish Patents and Trademarks' Office to modify it. The application shall be filed with the Spanish Patents and Trademarks' Office and it shall entail payment of the attendant fee. The Spanish Patents and Trademarks' Office, before reaching a decision, shall first hear both parties and it may address that institution it deems most appropriate in view of the circumstances of the case to request the designation of the expert to advise it on the determination of the compensation to be paid by the licensee. The decision shall be communicated to the parties.

TITLE VI Mandatory licenses

Article 86. Application for mandatory license

(1) Anybody who, under article 92 of the Act or the holder of a subsequent patent who, under article 93 of the Act, wishes to request a mandatory license, must submit to the Spanish Patents and Trademarks' Office an application on an official template. The application shall be subject to payment of the attendant fee and it must include:

(a) The identity of the applicant, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(b) When the party concerned is acting through a representative, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The application number of the patent to which the mandatory license application refers, as well as the identification of the patent holder.

(d) Evidence of the circumstances in place and which may justify the granting of mandatory licenses.

(e) Documentary evidence of a prior attempt to obtain a contractual license, except in those cases foreseen in article 97.2 of the Act.

(f) The purpose and scope of the license it is wished to obtain and the reasons on which said claim is based.

(g) The data which allow it to be ascertained that the applicant has the means to carry out the real, effective exploitation of the invention patented and that it offers the guarantees that the patent holder may reasonably require to grant a license.

(h) The signature of the applicant or his representative.

(2) If, in application of the provisions of articles 94 and 95 of the Act, the submission of a patent to the mandatory license regime is decreed, the Spanish Patents and Trademarks' Office shall publish a mention thereof in the «Official Bulletin of Industrial Property». As from that time onwards, anyone who wishes to apply for a mandatory license must file an application in accordance with the requirements determined in the previous section above.

(3) Once the application has been received, the Spanish Patents and Trademarks' Office shall examine whether the documentation submitted meets the requirements set out in the previous sections. If the

examination carried out results in any irregularity or defect, the processing shall be suspended, notifying the applicant about the objections observed so that, within two months after publication of the suspension on the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Otherwise the granting of the mandatory license shall be rejected. The rejection decision shall be notified to both parties and published in the «Official Bulletin of Industrial Property».

Article 87. Processing procedure

(1) If the examination does not show up any defects in the application for a mandatory license or said defects have been duly rectified, the Spanish Patents and Trademarks' Office shall notify the patent holder regarding the application for a mandatory license with the accompanying document so that within the maximum timeframe of one month after publication of the suspension in the «Official Bulletin of Industrial Property», it can file such pleadings as it deems appropriate and where applicable, it can provide documentary evidence to back up its pleadings

(2) If the patent holder fails to answer within the stipulated timeframe, the Spanish Patents and Trademarks' Office shall proceed with the granting of the mandatory license. If the patent holder answers, the Spanish Patents and Trademarks' Office shall evaluate the pleadings and evidence submitted by both parties.

(3) At the request of both parties, the Spanish Patents and Trademarks' Office may suspend on one sole occasion the processing of the procedure for such time period as it sees fit in light of the circumstances of the case. This timeframe may not exceed six months.

(4) When the Spanish Patents and Trademarks' Office believes that the circumstances are in place which justify the granting of the mandatory license and it shall thus publish it in the «Official Bulletin of Industrial Property», proceeding in accordance with the provisions of sections 2 to 4, article 99 of the Act. Otherwise the granting of the mandatory license shall be rejected.

(5) The Spanish Patents and Trademarks' Office shall address the institution it deems to be most appropriate in view of the circumstances of the case to request the designation of the expert

who has to be appointed under section 2, article 99 of the Act.

(6) The decision to grant the mandatory license must determine the content of the latter. In particular, it must determine the scope of the license, the fee, the duration, the guarantees that the licensee must provide, the time from when it must start exploitation and any other clauses that ensure that it will exploit the invention patented in a serious, effective manner. The decision shall also determine any expenses that have to be paid by each party which shall be those caused at its request and payment of all the expenses may be imposed upon one of the parties when it is declared that it has acted recklessly or in bad faith. Any common expenses shall be paid 50-50.

(7) Both the decision granting the license and that denying it shall be notified to both parties and published in the «Official Bulletin of Industrial Property».

Article 88. Mandatory licenses for the manufacture of any medications intended for countries with public health issues

The application and processing procedure in the event of mandatory licenses for the manufacture of any medications intended for countries with public health issues foreseen in article 96 of the Act shall be subject to the provisions of (EC) Regulation no. 816/2006 issued by the European Parliament and the Council on 17 May 2006 regarding the granting of mandatory licenses for patents pertaining to the manufacture of pharmaceutical products intended for export to countries with public health issues.

TITLE VII Patent expiry

CHAPTER I Owing to the absence of or insufficient exploitation of the patent

Article 89. Expiry owing to absence of or insufficient exploitation as per article 108.1.d) of the Act

(1) The instigation of the administrative expiry procedure foreseen in article 108.1.d) and 4 of the Act may be commenced ex officio or at the request of the party concerned.

(2) The petition for expiry shall be notified to the patent holder and to the licensees of all the mandatory licenses registered or undergoing registration processing so that, within two months after notification, they can submit their timely pleadings.

(3) Once the timeframe indicated in the previous section has elapsed, the Spanish Patents and Trademarks' Office shall make a decision, taking into account the content of the license granted pursuant to article 99 of the Act, particularly as regards the scope of the license and other relevant clauses pertaining to exploitation or any delay in the commencement of exploitation, pursuant to the stipulations of paragraphs 4 and 7 of said article.

(4) The patent expiry may not be decided upon of, once two years have elapsed since the granting of the first mandatory license, the invention is being exploited or if, if there is no exploitation, there are applications for mandatory licenses being processed pursuant to article 98 of the Act or other mandatory licenses granted, which shall give rise to the cancellation of all the mandatory licenses granted and not exploited in the two years subsequent to their granting. For the purposes of article 108.1.d) of the Act, a mandatory license which has been cancelled shall not be regarded as the first mandatory license granted, except in the event that all the mandatory licenses granted have been cancelled and there are no applications for mandatory licenses pending.

Article 90. Expiry owing to absence of or insufficient exploitation as per article 108.1.e) of the Act

(1) The expiry foreseen in article 108.1.e) of the Act must be declared subject to instigation of the attendant procedure,

commenced ex officio or at the request of the party concerned.

(2) The patent holder shall be notified of the expiry petition so that, within two months after notification, it may submit pleadings and evidence justifying the circumstances that have limited the exploitation.

(3) Once the timeframe stated in the section above has elapsed, the Spanish Patents and Trademarks' Office shall make a decision.

Article 91. Termination

(1) If the Spanish Patents and Trademarks' Office declares the expiry of the patent owing to an absence of or insufficient exploitation, in accordance with article 108.1.d) or 108.1.e) of the Act, the holder shall be notified and, where applicable, the mandatory licensee, as well as the holder of any right registered with regard to the patent and it shall be published in the «Official Bulletin of Industrial Property».

(2) If the Spanish Patents and Trademarks' Office duly cancels a mandatory license not exploited in accordance with article 89.4 of the present Regulation, the decision shall be notified both to the patent holder and the licensee of the mandatory license cancelled, as well as the holder of any right registered with regard to the patent and it shall be published in the «Official Bulletin of Industrial Property».

CHAPTER II Owing to a waiver by the holder

Article 92. Total or partial waiver of the patent

(1) Any request of waiver of the patent in accordance with the provisions of article 110 of the Act must be filed with the Spanish Patents and Trademarks' Office which must include:

(a) An indication that the total or partial waiver of the patent has been requested.

(b) The identity of the patent holder, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(c) If a representative has been designated, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(d) The application number of the patent whose waiver has been requested.

(e) In the event that a partial waiver has been requested, an indication of the claims which are being waived.

(f) Signature of the patent holder or his representative.

(2) When, in accordance with section 4, article 110 of the Act, it proves necessary for acceptance of the waiver that the consent of the holder of any right registered over the patent must be stated or, where applicable, of the claimant in a claim or invalidation action with regard to the patent, a declaration must accompany the request signed by said holder of the right or the claimant, accepting said waiver.

(3) The Spanish Patents and Trademarks' Office shall examine whether the waiver request meets the requirements and conditions foreseen in the Act and in this Regulation. In particular, in the event that a partial waiver is requested, it shall be checked that said waiver does not entail any extension of the object of the patent. In the event that there are irregularities, processing shall be suspended and they shall be notified to the holder so that, within the timeframe of two months after publication of suspension in the Official Bulletin of industrial property», it can answer them. If, within the timeframe determined, the defects indicated are not rectified, the registration of the waiver requested shall be rejected.

(4) The Spanish Patents and Trademarks' Office shall publish in the

«Official Bulletin of Industrial Property» the waiver acceptance agreement. In the event of a total waiver, the patent shall expire in accordance with article 108.1.b) of the Act. In the event of a partial waiver, the claims shall be specified which have been subject to the waiver and those for which the patent has persisted. In the latter eventuality, if the patent holder has provided any new text adapting the claims, a new pamphlet shall be published, subject to payment of the attendant fee, which shall include those indications referred to in article 39.9 of the present Regulation, replacing the references to the maintenance of the granting in modified fashion with an indication of partial waiver.

TITLE VIII Application of international conventions

CHAPTER I Application of the Convention on the granting of European Patents

Article 93. Filing of European patent applications which do not claim the priority of a prior deposit in Spain

(1) Any European patent applications which are filed with the Spanish Patents and Trademarks' Office and which do not claim the priority of a prior deposit in Spain and are drafted in a language other than Spanish, must be accompanied by a translation into Spanish of at least the title and the summary. In the event that this translation has not been provided, the applicant shall be required, within the timeframe of one month after publication in the «Official Bulletin of Industrial Property», to provide the translation.

(2) If, in application of article 34 and Title XI of the Act, the Spanish Patents and Trademarks' Office considers that the invention which is the object of the European patent application may be of interest to national defence, it shall require the applicant to, within the timeframe of one month, provide a translation into Spanish of the description and the claims and a copy of the drawings, where applicable, even when they do not contain expressions that need to be translated.

(3) Once the documentation has been received, it shall be sent to the Ministry of Defence so that, as soon as possible within the timeframe for the sending of European patent applications to the European Patent Office set out in Rule 37.1.b) of the Implementing Regulations of the European Patent Convention on the granting of European Patents (issued in Munich on 5 October 1973), it can issue a duly grounded report on whether the object of the European patent application may be of interest to national defence.

(4) In the event that the Ministry of Defence believes that the invention is of interest to national defence, it shall ask the Spanish Patents and Trademarks' Office to order the secret processing thereof and to duly notify the applicant. Furthermore, before the stipulated timeframe set out in the previous paragraph has elapsed, the Spanish Patents and Trademarks' Office shall inform

the European Patent Office that it will not transfer the European patent application.

Article 94. Procedure for the provisional protection of the European patent application published

(1) To obtain the provisional protection referred to in article 154 of the Act, the European patent applicant must request it from the Spanish Patents and Trademarks' Office. The application shall imply payment of the relevant fee.

(2) The provisional protection application must include:

(a) The identity of the applicant for a European patent, pursuant to the provisions of paragraph b) of article 2.1 of the present Regulation.

(b) When the applicant is acting through a representative, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The number of the application or publication of the European patent whose provisional protection has been requested.

(d) The title of the invention referred to in the European patent application, translated into Spanish.

(e) The signature of the applicant or his representative.

(3) The application will be accompanied by a translation into Spanish of the claims, as well as a copy of the drawings, where applicable, and a translation of the expressions they contain. As regards the formal requirements of the claims translated, these shall be those foreseen in the annex of the present Regulation.

(4) Once the application has been received, the Spanish Patents and Trademarks' Office shall examine whether the documentation submitted meets the requirements set out in the previous sections. If the examination carried out results in any irregularity or defect, the processing shall be suspended, notifying the applicant about the objections observed so that, within two months after publication of the suspension on the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Once this timeframe has elapsed, a decision shall be made about the application.

(5) Within one month as from the date of the sending of the translation or the rectification of the defects, a notice shall be

published in the «Official Bulletin of Industrial Property» granting or rejecting provisional protection. Furthermore, where applicable, a pamphlet shall be published with the claims and drawings, if there are any.

Article 95. Procedure for the permanent protection of the European patent

(1) Under the provisions of article 155 of the Act and within the timeframe foreseen in its section two, the holder of a European patent who wishes to obtain permanent protection in Spain must file with the Spanish Patents and Trademarks' Office the translation of the European patent in the manner in which it has been granted. The application for permanent protection shall imply payment of the relevant fee.

(2) The application for permanent protection must include:

(a) The identity of the European patent holder, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(b) When the holder is acting through a representative, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The number of the application or publication of the European patent whose permanent protection has been requested.

(d) The title of the invention referred to in the European patent, translated into Spanish.

(e) The signature of the holder or his representative.

(3) The application shall be accompanied by a translation into Spanish of the complete pamphlet of the European patent in the manner in which it was granted, modified or limited by the European Patent Office. As regards the formal requirements of the pamphlet translated (description, claims, drawings and biological sequences, where applicable), these shall be those foreseen in the annex of the present Regulation.

(4) Once the application has been received, the Spanish Patents and Trademarks' Office shall examine whether the documentation submitted meets the requirements set out in the previous sections. If the examination carried out results in any irregularity or defect, the processing shall be suspended, notifying the holder about the objections observed so that, within two months after publication of

the suspension on the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Once this timeframe has elapsed, a decision shall be made about the application.

(5) Within one month as from the date of the sending of the translation or the rectification of the defects, a notice shall be published in the «Official Bulletin of Industrial Property» granting or rejecting permanent protection. Where applicable, a pamphlet shall be published under the same conditions and with the same content as for national patents, with the exception of the summary.

Article 96. Review of the translation

(1) The applicant or holder of a European patent may, at any time and throughout the legal life of the patent, revise the translation provided previously to the Spanish Patents and Trademarks' Office.

(2) The procedure for requesting publication of the review of the translation shall be that foreseen in the previous articles and shall be subject to payment of the attendant fee.

Article 97. Correction of pamphlets by the European Patent Office

As regards those pamphlets published by the European Patent Office with regard to which the applicant or the holder has filed a translation into Spanish with the Spanish Patents and Trademarks' Office, in the event that the European Patent Office publishes a correction, the applicant or holder of the European patent must file with the Spanish Patents and Trademarks' Office the attendant correction of the pamphlet translated into Spanish or an indication that said correction does not affect the European patent with effects in Spain. If the applicant or holder fails to submit the translation of the correction, the latter shall not take effect in Spain.

Article 98. Transformation of the European patent application

(1) The European patent application shall be regarded - from the date of receipt of the request for transformation by the Spanish Patents and Trademarks' Office - as a national application.

(2) Once the request for transformation has been received, the Spanish Patents and Trademarks' Office shall inform the applicant thereof so that, within two months after publication in the

«Official Bulletin of Industrial Property», it can submit the national application and pay the relevant fees. At this time, it must choose whether it wishes to protect the invention by way of a patent or a utility model.

(3) The patent application or utility model shall be subject to the requirements and procedures foreseen in the Act and the present Regulation. As regards the translation into Spanish, if the text of the European patent application has undergone any modifications during the course of the procedure with the European Patent Office, the applicant may provide, within the timeframe foreseen in the previous section above, a translation of the text on which it wishes to base the granting procedure to the Spanish Patents and Trademarks' Office.

(4) The national application deriving from the transformation of a European patent application shall maintain the filing date that was agreed by the European Patent Office.

CHAPTER II Application of the Patent Cooperation Treaty (PCT)

Article 99. The Spanish Patents and Trademarks' Office as the receiving Office

The international application filed with the Spanish Patents and Trademarks' Office as the receiving office shall give rise to payment of the transfer fee foreseen in article 163.3 of the Act. Said fee must be paid within one month as from receipt of the international application by the Spanish Patents and Trademarks' Office. If the fee is not paid, the provisions of Rule 16 bis of the PCT shall be followed.

Article 100. Procedure for the provisional protection of the international application published

(1) For the purposes of article 170.2 of the Act, when the international application has been published in a language other than Spanish, the applicant must request provisional protection from the Spanish Patents and Trademarks' Office. The application shall imply payment of the relevant fee.

(2) The provisional protection application must include:

(a) The identity of the party requesting international application, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation.

(b) When the applicant is acting through a representative, the identity of the latter, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation.

(c) The number of the application or publication of the international application whose provisional protection has been requested.

(d) The title of the invention referred to in the international application, translated into Spanish.

(e) The signature of the applicant or his representative.

(3) The application will be accompanied by a translation into Spanish of the international application, as well as a copy of the drawings, where applicable, and a translation of the expressions they contain. As regards the formal requirements of the documents translated, these shall be those foreseen in the annex of the present Regulation.

(4) Once the application has been received, the Spanish Patents and Trademarks' Office shall examine whether the documentation submitted meets the requirements set out in the previous sections. If the examination carried out results in any irregularity or defect, the processing shall be suspended, notifying the holder about the objections observed so that, within two months after publication of the suspension on the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Once this timeframe has elapsed, a decision shall be made about the application.

(5) Within one month as from the date of the sending of the translation or the rectification of the defects, a notice shall be published in the «Official Bulletin of Industrial Property» granting or rejecting provisional protection. Where applicable, a pamphlet shall be published under the same conditions and with the same content as for national patents.

Article 101. Processing of the international application at the national stage

(1) The timeframe for entering the national stage, as set out in article 169.1 of the Act, shall be that set out in articles 22 or 39 of the PCT.

(2) To enter the national stage, the applicant must submit to the Spanish Patents and Trademarks' Office the following documentation and information:

(a) A request indicating that this is an international application which is entering a national stage vis-à-vis the Spanish Patents and Trademarks' Office, as indicated in article 2.2.b) of the present Regulation;

(b) Desired form of protection: patent or utility model. Only one form of protection may be requested for each international application.

(c) The identity of the applicant, pursuant to the provisions of paragraph b), article 2.1 of the present Regulation and of its representative, where applicable, pursuant to the provisions of paragraph a), article 2.2 of the present Regulation. In the event that the applicant is not the same entity as the party requesting the international application on the international filing date, an assignment document must be assigned, unless the change in the applicant entity has occurred in accordance with Rule 92 bis of the

PCT.

(d) Any priority claim indicated in the international application. In the event that the applicant is not the same entity as the party featuring in the priority application, a document must be provided which contains proof of the applicant's right to claim priority of the previous application. This documentary evidence will not need to be provided if the petition for an international application PCT contains a declaration pertaining to Rule 4.17.iii) of the PCT, which has been accepted by the competent receiving Office or by the International Office of the World Intellectual Property Organisation. Furthermore, the priority fee must be paid.

(e) The translation into Spanish of the international application in the manner in which it was originally deposited and, where applicable, of any modifications made under articles 19 or 34 of the PCT. In the event that the applicant, upon entering the national stage, wishes to make any modifications, it must provide them in Spanish and attach a document indicating the differences between the international applications PCT in the manner in which it was deposited or modified at the international stage and the modifications made upon entering the national stage. Said document must indicate the reasons for these modifications and specify the documents of the description, claims and, where applicable, the drawings on which it wishes to base the granting procedure before the Spanish Patents and Trademarks' Office.

(3) To enter the national stage the applicant must pay, within the timeframe foreseen in section 1, the application fee and, where applicable, the priority charge foreseen in section 2.d). When the form of protection requested is a patent, the applicant must also pay within the same timeframe the fee for carrying out the report on the state of the art foreseen for national patents.

(4) If the Spanish Patents and Trademarks' Office detects any irregularity by dint of sections 1 and 2, this shall be notified to the applicant so that, within two months after the publication of the suspension in the «Official Bulletin of Industrial Property», it can file pleadings or rectify the shortcomings detected, indicating that, otherwise, the application shall be deemed to have been withdrawn. The withdrawal decision shall be notified to the applicant and published in the «Official Bulletin of Industrial Property».

(5) Once compliance with the requirements of the previous sections has been observed, the international application shall be processed like a national application for a patent or utility model in accordance with the Act and the present Regulation.

(6) Once the national stage has commenced, it shall be verified whether the fees referred to in section 3 have been settled. If any failure to pay the fees or insufficient payment is detected, the applicant shall be asked to make or complete payment within one month after publication of the defect in the «Official Bulletin of Industrial Property», indicating that, should it fail to do so, the application shall be deemed to have been withdrawn. The withdrawal decision shall be notified to the applicant and published in the «Official Bulletin of Industrial Property».

(7) The defects foreseen in articles 1 to 3 of the present article may be notified to the applicant jointly by means of a single notification, granting a common timeframe of two months as from notification thereof for their rectification, with an indication that should it fail to do so the application shall be deemed to have been withdrawn.

(8) When, in accordance with article 17.3 of the PCT, the international search report has not been drafted except with regard to one or several claims, as the international application fails to meet the requirement of unity of invention, the Spanish Patents and Trademarks' Office shall verify whether the invitation was justified which was made to the applicant by the Administration responsible for the international search to pay the additional fees. If the Spanish Patents and Trademarks' Office considers that the request was justified, it shall act in accordance with the stipulations of the Patents' Act and the present Regulation for those applications that fail to comply with the requirement of the unity of invention. If, on the other hand, the Spanish Patents and Trademarks' Office considers that there was unity of invention, a search shall be carried out for the claims not searched and a report shall be issued on the state of the art and a written opinion.

TITLE IX Claim of right to the patent

Article 102. Final nature of the dismissal judgment and resumption the procedure

Once the final nature of the judgment has been notified or the decision putting an end to the procedure whereby the claim has been dismissed as referred to in article 11 of the Act, the Spanish Patents and Trademarks' Office shall publish in the «Official Bulletin of Industrial Property» a dismissal of the claim, lifting the suspension of the procedure and resuming the granting procedure.

Article 103. Final nature of the upholding judgment and options of the entitled holder

(1) Once the final nature of the judgment has been duly notified or of the decision putting an end to the procedure upholding the claim referred to in article 11 of the Act, and whenever the patent has not yet been granted, the plaintiff choose one of the options set out in section 1 of article 11 within the timeframe of three months after said final sentence. Once the timeframe of three months has elapsed without the plaintiff having communicated its choice, it shall be assumed that the patent application has been rejected. In this case, the Spanish Patents and Trademarks' Office shall comply with the provisions of section 4 of the present article.

(2) If the plaintiff opts to continue the procedure pertaining to the application, being subrogated the position of the applicant:

- (a) When the Judge has not decided upon the suspension of the granting procedure, the procedure shall continue with the new applicant by way of the attendant processing;
- (b) When the judge has decided upon the suspension of the granting procedure, the suspension shall be rendered null and void and the Spanish Patents and Trademarks' Office shall publish in the «Official Bulletin of Industrial Property» the resumption of the granting procedure with the new applicant by way of the attendant processing.

(3) If the plaintiff opts to file a new patent application for the same invention, the new application, pursuant to the provisions of article 26.3 of the Act, shall maintain the filing date of the original application, insofar as its object was already contained in said application. As from the date of deposit of the new

application, the original application shall be deemed to have been withdrawn.

The plaintiff shall maintain this right to file a new patent application, without prejudice to the application for the original patent having been rejected, withdrawn or deemed to have been withdrawn.

(4) If the applicant opts to ask for the application to be rejected, the Spanish Patents and Trademarks' Office shall decide to reject and shall publish the decision in the «Official Bulletin of Industrial Property».

Article 104. Partial recognition of the right to obtain the patent

Article 11 of the Act and articles 102 and 103 of the present Regulation shall apply, *mutatis mutandis*, when the judicial decision declares that the plaintiff is only entitled to obtain the patent as a co-holder of the patent application.

TITLE X Fees

Article 105. Reduction in fees set out in section 1, article 186 of the Act

(1) Any entrepreneurs who, having status as a natural person or a small or medium-sized enterprise, apply for a patent or utility model, they must ask the Spanish Patents and Trademarks' Office to recognise a reduction in fees as foreseen in article 186 of the Act. Along with the request, they must provide documentary evidence, by any means recognised by law, that the applicant conforms to the definition of entrepreneur set out in Act 14 enacted on 27 September 2013 regarding support to entrepreneurs and their globalisation and the definition of small or medium-sized enterprises adopted by Recommendation 2003/361/EC issued by the European Commission on 6 May, regarding the definition of micro companies and small or medium-sized enterprises.

(2) If any irregularity or defect is detected or any documentation is missing, the defects observed shall be notified to the applicant so that, within two months after publication of the suspension on the «Official Bulletin of Industrial Property», it can rectify them or submit its pleadings. Once this timeframe has elapsed, a decision shall be made about the application pertaining to recognition of the right to a reduction in fees.

(3) When a decision has been made, the provisional processing of the patent or utility model procedure shall be carried out, with the applicant having to pay 50 per cent of the fees due and with the Spanish Patents and Trademarks' Office annotating the payment made.

(4) The decision pertaining to the recognition of the right to a reduction in fees shall be notified to the applicant and published in the «Official Bulletin of Industrial Property». If it is a rejection, a timeframe of ten days shall be granted to pay the total amount of the fees due, with an indication that should it fail to do so, the application shall be deemed to have been withdrawn.

(5) In the event of a decision recognising the right, the procedure shall be processed, duly recording any amounts that accrue in each administrative act and that are being paid over time.

Article 106. Subsidising of fees to Public Universities

(1) In the event that a Public University wishes to benefit from a one hundred percent subsidy of the fees referred to in section 2, additional provision ten of the Act, said refund shall be requested from the Spanish Patents and Trademarks' Office.

(2) The procedure and conditions for application of the refund shall be those set out in article 124 and subsequent articles of Act 58 enacted on 17 December 2003 regarding General Taxation and its implementing Regulation. Furthermore, along with the application for a refund, the applicant must prove that the invention which is the object of the patent, the utility model or the complementary protection certificate or its extension with regard to which the refund of charges has been requested is being economically exploited in real, effective fashion. The means of proof shall be those admitted in law.

(3) Any fees falling due after recognition of the right to a refund must be settled at the rate of 50% in accordance with the provisions of section 1 of the tenth additional provision of the Act, without prejudice to requesting a 100% subsidy. With this in mind, the refund of that which has been paid in the manner foreseen in the previous section above, providing a statement of compliance by the holder to the effect that the invention which is the object of the patent, the utility model or the complementary protection certificate or its extension is still being exploited.

TITLE XI Representation vis-à-vis the Spanish Patents and Trademarks' Office

Article 107. Representation in the context of the inventions

Except for the provisions of article 175.2 of the Act, no-one shall be required to be represented vis-à-vis the Spanish Patents and Trademarks' Office. Notwithstanding, whosoever is a party to a procedure with the Spanish Patents and Trademarks' Office in which they are acting on their own behalf and do not have any address or registered office in Spain, must designate, for the purposes of notifications, a postal address in Spain or, alternatively, indicate that the notifications should be addressed to them by any other technical means of communication at the disposal of the Office.

Article 108. Proof of representation in inventions

(1) It will not be necessary to provide any power of attorney except in the following eventualities:

(a) In the event of any reasonable doubt about the right to act of the representative.

(b) When an appointment occurs or any document is submitted by a representative not indicated on the filing date in the application for a patent, utility model or complementary protection certificate or its extension.

(c) When the registration of an assignment, change in name, license or other legal transactions is requested.

(d) When the registration of a waiver is requested, withdrawal, limitation or revocation is requested.

(e) When an opposition to an application for a utility model or to the granting of a patent is filed.

(2) In those eventualities in which representation has to be proven, the representatives must file with the Spanish Patents and Trademarks' Office the attendant power of attorney signed by the party concerned for its inclusion in the procedure. The power of attorney may be granted for one or more applications or for one or more registrations identified in the power of attorney. A general power of attorney may be submitted, empowering the representative to act with regard to any procedures pertaining to any patents for inventions, utility models, complementary protection certificates or their extensions with regard to the principal.

(3) When the Spanish Patents and Trademarks' Office is notified of the designation of a representative, the attendant power of attorney must be filed within two months after said communication or within two months after publication of the notice in the «Official Bulletin of Industrial Property», applying whichever timeframe expires latest. In the event that no power of attorney is submitted within the timeframes stipulated above, the procedure shall continue with the party represented. Any acts carried out by the non-accredited representative, with the exception of the filing of the application for a patent, utility model or complementary protection certificate or its extension, shall be deemed not to have been made if they are not confirmed by the party represented within the timeframes foreseen above. All of this being without prejudice to the provisions of section one of the present article.

(4) Any representative who, for whatsoever reason, ceases to be a proxy, shall continue to be regarded as such until notification of the Spanish Patents and Trademarks' Office or competent body of the termination of their power of attorney.

(5) Unless the power of attorney states otherwise, its extinguishing owing to the decease of the principal shall not prevent the proxy from carrying out before the Spanish Patents and Trademarks' Office any acts of upkeep, defence and maintenance of the applications and registrations of the principal which prove to be vital until granting of a new power of attorney or the designation of a new proxy by the heirs of the latter or the personal appearance thereof.

Article 109. Aptitude test

(1) To carry out the aptitude examination referred to in article 177.1.e) of the Act, the Director of the Spanish Patents and Trademarks' Office shall carry out the attendant public notices of convening annually and it may lengthen said timeframe to no more than two years for duly justified reasons.

(2) The guidelines for convening shall regulate the procedure for access to tests and that of their implementation and classification, in accordance with the following guidelines:

(a) The aptitude examination shall set out to ascertain whether the candidate has the necessary knowledge to perform the professional activity defined in article 176.1 of the Act, in particular, whether

the candidate has sufficiently broad knowledge of the national and international standards that regulate and affect industrial property and whether it is familiar with the handling of said knowledge, to apply it under those conditions usually afforded to an industrial property Agent during the practising of his profession, including the knowledge of foreign languages.

(b) The examination shall consist of theoretical, practical and foreign language tests, tests which must all be passed on an individual basis, based on the programme that will be made public along with the notice of convening.

(3) The certification board shall be designated in the notice of convening and it shall be made up of an odd number of members, of no less than five, also designating the alternate members. The board members shall be designated from amongst specialists in industrial property who have qualifications equal to or greater than that required in article 177.1.d) of the Act. The board will be responsible for the classification of the selection tests in accordance with the convening guidelines. The respective notices of convening may determine that the proof of having obtained a University Master's which includes modules, subject matters or competences related with industrial property, shall increase the classification obtained in the attendant theoretical test of the aptitude examination and by twenty five percent of the maximum possible score assigned to the theoretical tests for candidates who have passed the attendant exercise.

(4) The certification board shall inform the Director of the Spanish Patents and Trademarks' Office about the list of candidates who have passed the aptitude examination. The Director of the Spanish Patents and Trademarks' Office shall provide appropriate advertising to the list of approved candidates and shall issue the attendant aptitude certificates, serving as proof of the requirement set out in article 177.1.e) of the Act.

Article 110. Practising of professional activity and Special registration of Industrial Property Agents

(1) To start exercising activity as an Industrial Property Agent, it will be necessary to have first submitted to the Spanish Patents and Trademarks' Office a statement of compliance in which the parties concerned state, under their responsibility, that they meet the

requirements set out in article 177 of the Act, that they have documentary accreditation, that they do not find themselves involved in any of the incompatibilities set out in article 178 of the same legal text and that they undertake to maintain their compliance for as long as they do not cease the activity, owing to any of the circumstances foreseen in article 180 of the Act.

(2) The statement of compliance affords entitlement to practice the activity, as from its submission, throughout national territory and for an indefinite period. Once the statement of compliance has been received, the Spanish Patents and Trademarks' Office shall duly proceed ex officio with the registration of the industrial property agent on the Special Register of Industrial Property Agents. If the statement of compliance has any flaw, the Spanish Patents and Trademarks' Office shall ask the party concerned to, within ten days, rectify it, indicating that, should it fail to do so, the statement of compliance shall be deemed not to have been submitted.

(3) The submission of documentary evidence of compliance with the requirements may not be required along with the statement of compliance. Nevertheless, this documentation must be available for submission to the Spanish Patents and Trademarks' Office when so required.

For the purposes of proving compliance with the requirements laid down by the regulations in force, documents from another European Member State shall be accepted which demonstrate that said requirements have been met under the terms foreseen in article 17.2 of Act 17 enacted on 23 November 2009 regarding free access to service activities and the exercising thereof.

Article 111. Registration of Professional Associations and Special Register of Industrial Property Agents

(1) For the purposes of article 176 of the Act, in order for a legal person to be able to obtain registration on the Special Register of Agents of the Spanish Patents and Trademarks' Office, the statement of compliance it submits must contain the following data:

(a) Name of the legal person, tax identification number, registered office, address for notifications' purposes, mention to the fact that the legal person is registered as a Professional Association as well as the data of the partner who is a practising industrial property Agent.

(b) Submission of the request for registration, which entails payment of the attendant charge, must be signed by the person entitled to represent the Professional Association.

(2) If the Spanish Patents and Trademarks' Office detects that any requirement is missing, it shall inform the registration applicant thereof, granting a timeframe of ten days for its rectification and indicating that otherwise the request for registration will be deemed to have been withdrawn.

(3) For the timely registration purposes, the Professional Association shall inform the Spanish Patents and Trademarks' Office about any changes made to the status of its partner who is an industrial property agent and its corporate designation.

Article 112. Employees and auxiliary staff of representatives

(1) In its action vis-à-vis the Spanish Patents and Trademarks' Office, the representatives, whether they are natural or legal persons, may be regarded as employees or auxiliary staff who, under their management, surveillance and responsibility carry out the material operations specific to their management such as the payment of charges, the filing of documents, appearance to pick up official communications, the withdrawal of titles or other similar ones, to which end they shall submit the attendant authorisation and justification of payment of the attendant charge.

(2) In order to be an employee or auxiliary staff member of a representative, the person must be an adult and not be involved in any of the incompatibilities determined to this end. The representatives shall inform the Office about any modification or completion of the purposes of authorisations granted to its employees or auxiliary staff members.

Article 113 Freedom to provide service in the European Union

Any industrial property agents established in another European Union Member State who provide their services on a temporary basis in Spain must comply with the standards on access and the practising of the profession approved by Royal Decree 1837 enacted on 8 November 2008, which incorporates into Spanish legislation Directive 2005/36/EC issued by the European Parliament and the Council of 7 September and the Directive 2006/100/EC of the Council on 20

November 2006 pertaining to the recognition of professional qualifications as well as certain aspects of the practising of the profession of lawyer and its implementing regulations, having to submit a prior declaration in accordance with the template approved by the Spanish Patents and Trademarks' Office which must be renewed every year if the temporary rendering of services is continued.

Article 114. Delegation of representation

(1) Industrial Property Agents may delegate their representation to another Industrial Property Agent, but in this case the Industrial Property Agent must always use the following signer's identification: «By the Industrial Property Agent Mr./ Mrs.....», stating the registration number on the Register of both. In procedures involving an alternate, in accordance with the stipulations of this section, its responsibility shall be affected along with that of the Industrial Property Agent substituted.

(2) Industrial Property Agents may not intervene by way of delegation in those procedures to which they are party, involving some other representation whose interests are different. When this occurs, the procedure shall be declared to have been suspended and the represented part shall be notified directly, granting it a timeframe of fifteen days to appear or, where applicable, appoint another Industrial Property Agent to represent it.

(3) Everything foreseen under the ordinal numbers above shall be applicable when, during the delegation, a legal person is involved who is registered on the Special Register of Industrial Property Agents.

Article 115. Continuous training in industrial property

The Spanish Patents and Trademarks' Office may periodically convene courses in industrial property matters in order to provide continuous training in this field.