

INDUSTRIAL PROPERTY LAW OF THE DOMINICAN REPUBLIC

COURTESY TRANSLATION PREPARED BY:

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NATIONAL CONGRESS OF THE DOMINICAN REPUBLIC

CONSIDERING: That by resolution No. 2-95, of January 20 1995, the Dominican Republic ratified the Marrakech Agreement, by which was created the World Trade Organization.

CONSIDERING: That the Agreement on Trade Related Intellectual Property Aspects (TRIPs) is part of the Marrakech Agreement.

CONSIDERING: That the legislative and institutional reform of the industrial property area, in accordance with TRIPs, requires a new industrial property law that contributes to the transfer and diffusion of technology, in mutual benefit of the producers and users of technological knowledge and in a way that favors social and economical well being of the country.

CONSIDERING: That an effective protection of industrial property rights must exist along with clearly established obligations for the title bearers of said rights, in order to achieve a balance of the rights and obligations that promotes the social, economical and technological development of the country.

CONSIDERING: That in accordance with TRIPs, the country assumed the compromise to adapt its legislation to said agreement no further than January 1st of the year 2000.

THE FOLLOWING LAW HAS BEEN CREATED:

INDUSTRIAL PROPERTY LAW Official Gazette #10044 dated May 10th, 2000

TITLE I

ON INVENTIONS, UTILITY MODELS AND INDUSTRIAL DESIGNS

CHAPTER I

INVENTIONS

SECTION I

PROTECTION OF INVENTIONS AND THE RIGHT TO AN INVENTION PATENT

Article 1.- Definition of Invention

An invention is understood to be any idea, creation of human intellect, capable of being applied in industry, which meets the conditions of patentability set forth in this law. An invention may refer to a product or a procedure.

Article 2.- Items excluded from Protection by Patent of Invention

1) That which does not fall within the definition of Article 1 of this Law is not considered to be an invention, and thus are excluded from protection by patent of invention. The following, in particular, are not considered inventions:

- a) Discoveries that consist of making known something which already exists in nature, scientific theories and mathematical methods.
- b) Exclusively aesthetic creations.
- c) Economic or business plans, principles or methods, and those referring to purely mental or industrial activities or to games.
- d) Presentations of information.
- e) Computer software.
- f) Therapeutic or surgical methods for human or animal treatment, as well as diagnostic methods.
- g) All kinds of living matter and substances preexisting in nature.
- h) The juxtaposition of known inventions or mixtures of known products, variation in their form, dimensions or materials, unless said combination or fusion is such that it does not allow its elements to function separately or that the characteristic qualities or functions of the same are modified so as to obtain an industrial result not obvious to a technician in the field.
- i) Already patented products or procedures, due to their having been given a use different from that covered in the original patent.

- 2) The following inventions shall not be patented nor shall they be published.
 - a) Those that the exploitation of which would be contrary to public order or morality.
 - b) Those which would evidently be harmful to the health or life of persons or animals or capable of gravely damaging the environment.
 - c) Plants and animals, except for microorganisms, and essentially biological procedures for the production of plants or animals that are not non-biological or microbiological procedures. Vegetable findings will be regulated by a special law, in compliance with article 27.3(b) of the TRIPS Agreement.

Article 3.- Requirements for Inventions to be Patentable

An invention is patentable when it is capable of industrial application, is novel, and has a degree of inventiveness.

Article 4.- Industrial Application

An invention is capable of industrial application when its object can be produced or utilized in any kind of industry. For this purpose, the expression industry is understood in its broadest sense and includes, among other things, crafts, agriculture, mining, fishing and services.

Article 5.- Novelty

- 1) An invention is novel when it does not exist previously in the state of the art.
- 2) The state of the art includes everything that has been disclosed or made accessible to the public, in any place in the world, by means of a publication in tangible form, oral disclosure, marketing, use or any other means, before the date of filing of the patent application in the Dominican Republic or, as the case may be, before the date of filing of the foreign application the priority of which is claimed according to Article 135. Also included within the state of the art are the contents of an application being processed by the General Agency for Industrial Property (*Dirección General de Propiedad Industrial*) given that the date of filing or, as the case may be, of priority is prior to that of the application being examined, but only to the degree to which those contents are included in the application of prior date upon being publishing.
- 3) For the determination of the state of the art, that which may have been disclosed within the year preceding the filing date of the application in the Dominican Republic shall not be taken into account, so long as such disclosure was the direct or indirect result of

actions of the inventor himself or herself or his or her assignee, or of an abuse of confidence, violation of contract or illegal act committed against any of them.

- 4) Disclosure as a result of a publication made by an office of industrial property within the procedure of the granting of a patent is not included in the exception of the preceding paragraph, unless the application had been filed by someone who did not have a right to the patent, or if the publication have been carried out unduly.

Article 6.- Degree of Inventiveness

An invention has a degree of inventiveness if, to a specialized person or expert in the corresponding technical field, the invention is neither obvious nor evidently derived from the pertinent state of the art.

Article 7.- Right to the Patent

- 1) The right to the patent belongs to the inventor, without prejudice to the provisions of Articles 8 and 9. When several persons have made an invention together, the right to the patent belongs to them jointly.
- 2) The right to the patent may be transferred by a legal document between living persons or by succession.
- 3) If several persons made the same invention independently of one another, the patent is granted to the first who files a patent application or who claims the priority of the earliest date pursuant to Article 135.

Article 8.- Inventions Made in Performance of a Contract

- 1) When an invention has been made in fulfillment or performance of a contract for a job or service or a labor contract, the right to the patent for that invention belongs to the person who contracted the job or service, or to the employer, as the case may be, unless there is a contractual provision contrary to this.
- 2) When the invention has an economic value much greater than that which the parties could reasonably have foreseen at the time of signing the contract, the inventor has the right to a special remuneration which is set by the competent court in the absence of agreement among the parties.
- 3) Any contractual provision less favorable than the provisions of this article to the inventor is null and void.

Article 9.- Inventions Made by an Employee Who Is Not an Inventor

- 1) When an employee, who is not obliged by his or her labor contract to carry out inventive activities makes an invention through the use of data or means to which he or she has access by reason of his or her employment, he or she shall immediately communicate this fact to his or her employer in writing. If, within two months of the date on which the employer received said communication or had knowledge of the invention by some other means, the earlier date being applicable, the employer notifies the employee in writing of his or her interest in the invention, the same shall belong to the employer and the right to the patent shall be deemed to have belonged to the employer from the beginning. Should the employer not effect the notification within the established time limit, the right to the patent shall belong to the employee.
- 2) In case the employer notifies its interest in the invention, the employee shall have the right to an equitable remuneration, taking into account his or her salary and the estimated economic value of the invention. In the absence of agreement among the parties, the remuneration shall be set by the competent court.
- 3) Any contractual provision less favorable to the inventor than the provisions of this article shall be null and void.

Article 10.- Reduction of Fees for Inventors

- 1) When the applicant for a patent is the inventor himself, and his or her economic position does not permit him to pay the amount of the fees for filing or processing his or her application or for maintaining the granted patent, he or she may state this circumstance in the patent application and at the time of paying the corresponding annual fees. In such a case, the General Agency for Industrial Property, after studying the economic position of the inventor applicant, may rule that said inventor pay only a part of the amount of the fees due, which in no case can be less than 10% of the normal amount, so long as the economic position of the inventor-applicant continues to exist.
- 2) If the application for a patent being processed or the patent granted should be transferred to a person not in the mentioned economic condition, the transfer shall not be recorded until the payment is made of the fees that would have been paid if the statement indicated in Article 318.1 had not been made.

SECTION II

PROCEDURE FOR GRANTING THE PATENT

Article 11.- Application for a Patent

- 1) The applicant for a patent may be an individual or a corporation. If the applicant is not the inventor, the application must contain documentation that justifies his or her right to obtain the patent.
- 2) The application for a patent for invention must be filed in the General Agency for Industrial Property. It shall include a statement of the data relating to the applicant, the inventor and the agent, if any, as well as the name of the invention and the other data required by this law and its regulation.
- 3) The application shall include a description, one or more claims, the relevant drawings, a summary, and proof of payment of the filing fee.
- 4) The application must indicate the date, the number and the filing office of all applications for patents or other protective title that have been filed, or the title that has been obtained, in another office of industrial property, and which refers totally or partially to the same invention claimed in the application filed in the Dominican Republic.
- 5) Likewise, the application must include a certified copy of all applications for patents or other protective titles that have been filed, or of the title or certificate which has been obtained in another country and which refers totally or partially to the same invention claimed in the application filed in the Dominican Republic.

Article 12.- Admission and filing date of the application

The date of the filing of the application shall be considered to be the date of its filing in the General Agency for Industrial Property, so long as said application contains at least the following elements:

- a) The identification of the applicant and his or her domicile in the Dominican Republic for purposes of notifications.
- b) A document containing a description of the invention and one or more claims.
- c) The receipt for payment of the filing fee.

Article 13.- Description

- 1) The description must disclose the invention in a sufficiently clear and complete fashion so as to be able to evaluate it and so that a person knowledgeable in the corresponding technical subject can execute it.
- 2) The description of the invention shall indicate the name of the invention and shall include the following information:
 - a) the technological, agricultural, scientific, etc. sector to which the invention belongs or to which it is applied.
 - b) the earlier technology known to the applicant which could be considered useful for the comprehension and the examination of the invention, and references to earlier documents and publications related to said technology.
 - c) a description of the invention in terms permitting the understanding of the technical problem and the solution contributed by the invention and indicating the advantages it may have over the earlier technology.
 - d) a brief description of the drawings, if any.
 - e) the best way known to the applicant to execute or put into practice the invention, using examples and references to the drawings.
 - f) the way in which the invention lends itself to industrial application, except when this is evident from the description or the nature of the invention.
- 3) When the invention concerns biological material which cannot be described in such a manner that the invention could be executed by a person knowledgeable in the subject, and such material is not available to the public, the description will be complemented by the deposit of said material in a deposit institution designated beforehand by the General Agency for Industrial Property.
- 4) When the deposit of biological material to complement the description has been made, this circumstance shall be indicated in the description together with the name and address of the institution of deposit, the date of the deposit and the order number given to the deposit by the institution. It shall also describe the nature and characteristics of the material deposited when this is relevant to the disclosure of the invention.

Article 14.- Drawings

The presentation of drawings is indispensable when they are necessary to understand, evaluate or execute the invention.

Article 15.- Claims

Claims [*reivindicaciones*] define the item for which patent protection is desired. Claims must be clear and concise, and be entirely supported by the description.

Article 16.- Summary

- 1) The summary shall include a synthesis of what is disclosed in the description, and a review of the claims and the drawings if any, and, if that should be the case the chemical formula or the drawing which best characterizes the invention shall be included. The summary shall permit the essential technical problem and the solution contributed by the invention to be understood, as well as the main use of the invention.
- 2) The summary shall serve for the purpose of technical information and publication, and shall not be used to determine or interpret the degree of protection conferred by the patent.

Article 17.- Unity of the Invention

A patent application may only cover one invention, or a group of interrelated inventions which represent a single inventive concept.

Article 18.- Division of the Application

- 1) The applicant may divide his or her application into two or more fractional applications, but none of the fractional applications may amplify the disclosure contained in the initial application.
- 2) The filing date of the initial application shall be attributed to each fractional application.
- 3) The established fee for filing a patent application shall be paid for each fractional application, with that was fee paid for the initial application being computed as a credit.

Article 19.- Examination of Form

- 1) The General Agency for Industrial Property shall examine, within sixty (60) days of the date of the application, whether the application complies with the requirements of Articles 11 and 13 and the corresponding regulatory provisions.
- 2) If any omission or deficiency is found, the applicant shall be notified so that he or she can make the necessary correction within a term of two months, or risk being considered abandoned and filed away on the initiative of the Agency. If the applicant does not comply in making the correction within the indicated time limit, the General Agency for Industrial Property shall confirm the abandonment through an official communication.
- 3) If any of the elements indicated in Article 320 have been omitted, but the omission is remedied within the time limit stated in the preceding paragraph, the date on which the omission is remedied shall be assigned as the date of the application.
- 4) If the description refers to drawings and these have not been included when the application was filed, the General Agency for Industrial Property shall notify the applicant so that he or she can file them. If the omission is remedied within the time limit indicated in numeral 2), the date the drawings are received shall be the filing date of the application. Otherwise it shall be deemed that reference to drawings has not been made.

Article 20.- Change of the Patent Application

- 1) The applicant may request, before the publication indicated in Article 21, that his or her application be changed to an application for a patent for utility model and that it be processed as such. The applicant for a patent for a utility model may request that his or her application be changed to an application for a patent for invention. The request for change shall incur in the established fee.
- 2) The change of the application shall be acceptable only when the nature of the invention permits it.

Article 21.- Publication and Observations

- 1) Upon completion of the eighteen-month period counted from the filing date of the patent application or, should it be the case, from the date of the applicable priority, the application shall be open to the public for information purposes. The General Agency for Industrial Property shall publish in its official organ, at the expense of the interested party, an announcement containing the data and elements established in the regulation. The applicant may require that the publication be made before the completion of the indicated period.

- 2) Any interested person may present substantiated observations regarding the patentability of the invention which is the subject of the application, detailing the relevant factual and legal bases. The filing of observations shall not suspend the processing of the application. The observation may be filed within 60 days after the date of the publication.
- 3) The General Agency for Industrial Property shall notify the applicant of the observations, and the latter shall present such comments, arguments or documents as may be appropriate, within 60 days of receipt of the observations. The observations and his or her comments must be taken into account in the detailed examination of the application.

Article 22.- Examination of the Merits

- 1) The applicant must pay the fee for the examination of the merits of the patent application within a time limit of twelve months counted from the date of the appearance of the announcement of publication of the application. If this limit should expire without the fee having been paid, the application shall by full law fall into abandonment and shall be filed away automatically.
- 2) The patent application shall be examined to determine if its object constitutes an invention according to Articles 309 and 310.1, if the invention is patentable according to Articles 1 and 2 and Articles 3, 4, 5 and 6 if it fulfills the requirements of Articles 13, 14, 15, 16 and 17 and, when such is the case, Articles 18, numeral 1) and 135, and the corresponding regulatory provisions.
- 3) The examination shall be able to be carried out directly by the General Agency for Industrial Property or by means of independent experts or public or private entities, either local or foreign within the framework of international, regional or bilateral agreements. The cost of this examination shall be covered by the fee indicated in paragraph 1.
- 4) The examination may take into account documents relating to the examinations for novelty or patentability made by other industrial property offices or within the procedure indicated by the Patent Cooperation Treaty (PCT), which refer to the same item claimed in the application being examined. The General Agency for Industrial Property may recognize the results of such examinations as sufficient to certify the fulfillment of the conditions for patentability of the invention.
- 5) If any of the requirements for granting the patent are not fulfilled, the General Agency for Industrial Property shall notify the applicant so that he or she may, within a period of

three months, complete the documentation filed, correct, modify or divide the application, or present such comments or documents as he may deem advisable.

- 6) If the applicant should not respond to the notification within the established time limit, or if, in spite of the reply, the General Agency for Industrial Property should find that the requirements for granting the patent are not satisfied, it shall be denied by means of a substantiated resolution.
- 7) For the purposes of the patentability examination the applicant shall provide, at the request of the General Agency for Industrial Property, the translation, when so required, of one or more of the following documents relating to one or more of the foreign applications referring to the invention being examined:
 - a) a copy of the foreign application.
 - b) a copy of the results of novelty or patentability examinations made with regard to the foreign application.
 - c) A copy of the patent or other protective title granted on the basis of the foreign application.
- 8) When necessary to better resolve a patent application or the validity of a granted patent, the General Agency for Industrial Property may at any time request the applicant or holder of a patent to present the following documents relating to a foreign application or protective title referring to the same invention:
 - a) a copy of any resolution or decision whereby the foreign application has been rejected or denied.
 - b) A copy of any resolution or decision whereby the patent or another protective title granted on the basis of the foreign application has been revoked, annulled or invalidated
- 9) If the applicant, having the information or document required available, should not comply with providing it within the time period indicated in the notification, which shall not be less than three months counted from the date of the notification, the patent shall be denied.
- 10) Upon the request by the applicant, or on its own initiative, the General Agency for Industrial Property may suspend the processing of the patent application when some document that should have been presented according to this article is still pending before a foreign authority.

11) The applicant may present observations and comments on any information or document he or she provides in compliance with this article.

Article 23.- Granting the Patent

- 1) If the examination established in Article 22 is favorable, the General Agency for Industrial Property shall grant the patent. If partially unfavorable, the title shall be granted only to the claims accepted. If altogether unfavorable, the patent shall be denied. The decisions of the General Agency for Industrial Property as to complete or partial denial shall be conveyed in writing to the applicant expressing the reasons and legal bases of its decision.
- 2) Upon the granting of the patent, the Registry of Industrial Property shall:
 - a) Record the patent in the corresponding register.
 - b) Deliver to the applicant a certificate of grant and an example of the patent document.
 - c) Issue a copy of the patent document to the party requesting it, upon payment of the established fee.

Article 24.- On the Publication

The announcement of the granting of the patent shall be published at the expense of the interested party in the Official Bulletin of the General Agency for Industrial Property. Said publication must contain the following indications:

- a) The number of the patent granted.
- b) The class or classes in which the patent has been included.
- c) The given and surnames, or the corporate name and nationality of the applicant, and as the case may be, of the inventor, as well as their domicile.
- d) The summary of the invention and the claims.
- e) The reference to the bulletin in which the application for the patent had been made public and, as the case may be, the modifications introduced in its claims.
- f) The date of the application and the granting.
- g) The period for which it is granted.

Article 25.- Corrections to the Patent

Changes in the text of the patent title shall not be permitted, except to correct material errors or errors of form.

Article 26.- Publicity of the Patent

Invention patents that have been granted shall be of public knowledge and a copy of the documentation shall be provided to whoever requests it, upon payment of the established fees. The file cannot be consulted by third parties until the publication provided for in Article 21 has been carried out, unless there is written consent from the petitioner.

SECTION III

RIGHTS, OBLIGATIONS AND LIMITATIONS REGARDING THE PATENT.

Article 27.- Term of the Patent

The patent has a non-extendible duration of twenty (20) years counted from the date of the filing of the application in the Dominican Republic.

Article 28.- Annual Fees

- 1) In order to maintain a patent or a patent application being processed in effect, annual fees must be paid. The payments shall be made before the beginning of the corresponding yearly period. The first annual fee shall be paid before the beginning of the third year counted from the date of the patent application. Two or more annual fees may be paid in advance.
- 2) A grace period of six months shall be granted for the payment of an annual fee, by the payment of the established surcharge. During the grace period, the patent or application for patent, as the case may be, remains fully in force.
- 3) Failure to pay any of the annual fees pursuant to this article, automatically causes the expiration of the patent or the patent application, as the case may be.

Article 29.- Rights and Protection Conferred by the Patent

- 1) The patent confers upon its holder the right to exclude third parties from the exploitation of the patented invention. Thereby, and with the limitations established in this law, the holder of the patent shall have the right to act against any person who carries out any of the following actions without his authorization:

- a) when the patent has been granted for a product:
 - i) manufacturing the product.
 - ii) offering for sale, selling or utilizing the product, importing it or warehousing it for any of these purposes.
- b) when the patent has been granted for a procedure:
 - i) using the procedure
 - ii) performing any of the actions indicated in subparagraph a) with regard to a product obtained directly from the utilization of the procedure.
- 2) The extent of the protection conferred by the patent is determined by the claims. The claims shall be understood in the light of the description and the drawings and, if such be the case, of the biological material that has been deposited.

Article 30.- Limitation and Extent of the Rights of the Patent

The patent does not give the right to prevent:

- a) Actions carried out in private and with non-commercial purposes.
- b) Actions carried out exclusively for purposes of experimentation with regard to the patented invention.
- c) Actions carried out exclusively for purposes of teaching or of scientific or academic research.
- d) The sale, leasing, use, usufruct, importation or any means of marketing a product protected by patent or obtained by a patented process, once said product has been placed on the market in any country with the consent of the holder or of a licensee or in any other legal manner. Products and procedures shall not be considered legally placed on the market if placed in violation to industrial property law.
- e) Actions referred to in the fifth Article of the Paris Convention for the Protection of Industrial Property.
- f) When the patent protects biological material capable of reproducing itself, the use of that material as the initial basis for obtaining a new viable biological material, except when such obtaining requires the repeated use of the patented material.

- g) Those uses necessary for obtaining health approval and for marketing a product after the expiration of the patent protecting it.

Article 31.- Right of the User Prior to the Invention

- 1) The rights conferred by a patent cannot be prevailed upon against a person who, in this country, in good faith and prior to the date of filing or, as the case may be, of priority of the corresponding patent application, was already in the country producing the product or using the procedure which constitutes the invention, or had made effective and serious preparations for carrying out such production or use.
- 2) That person shall have the right to continue producing the product or using the procedure as he had been doing, or to begin the production or use that he or she had foreseen intended. This right can only be assigned or transferred to the company or establishment in which such production or use was being carried out or was intended to be carried out.
- 3) The exception indicated in this article shall not be applicable if the person who desires to take advantage of it had acquired knowledge of the invention by an illegal act.

Article 32.- Transfer of the Patent

- 1) A patent or patent application may be transferred by a legal act between living persons or by succession.
- 2) All transfers relating to a patent or a patent application must be confirmed in writing and recorded in the General Agency for Industrial Property. The transfer has legal effect for third parties only after being recorded. The established fee for recording shall be paid.
- 3) An issued patent may be given as a guaranty for an obligation assumed by its holder. For such purposes, the General Agency for Industrial Property shall carry out the recording of the privilege in favor of the creditor, issuing the corresponding certification. Likewise, the General Agency for Industrial Property, upon receiving formal evidence of the termination of the obligations originating said guaranty, shall cancel the record of the privilege. In the case of a transfer of the patent in foreclosure of the guaranty, the unpaid creditor shall deposit the documentation corresponding to said foreclosure and shall proceed according to Articles 340.1 and 340.2 of this article.

Article 33.- Contractual Licenses

- 1) The holder or applicant of a patent may grant to third parties one or more licenses for exploitation of the invention that is the object of the patent or application.

- 2) Every contract for a license to exploit an invention must be confirmed in writing and recorded in the General Agency for Industrial Property. The license will have legal effect for third parties only after being recorded. The established fee shall be paid for the recording.
- 3) In the absence of a stipulation to the contrary in the contract for an exploitation license, the following standards are applicable:
 - a) the license covers all acts indicated in Article 29, numeral 1), during the entire life of the patent, in all of the territory of this country and with regard to any application of the invention.
 - b) the licensee cannot assign the license or grant sublicenses.
 - c) the license is not exclusive and the licensor can give other licenses for the exploitation of the patent in this country, and as well may himself or herself exploit the patent in this country.
 - d) When the license is granted as exclusive, the licensor can neither give other licenses for the exploitation of the patent in this country nor himself or herself exploit the patent in this country.
- 4) Licensing contracts must not contain restrictive commercial clauses affecting the production, marketing or technological development of the licensee and restricting competition, such as exclusive conditions for reciprocity, those which prevent challenge to validity, and those which impose compulsory joint licenses, or any other conduct which is anti-competitive or restrictive to competition.

Article 34. Annulment and Expiration of the Patent

- 1) Patents granted in violation of the provisions of this law shall automatically be null and void. The action for annulment or expiration may be carried out by any interested person via defense or exception. In particular, the General Agency for Industrial Property may at any time, at the request of any interested person or competent authority, declare a patent null and void in any of the following cases:
 - a) the object of the patent does not constitute an invention according to Articles 1 and 2, numeral 1).
 - b) the patent was granted for an invention included in the prohibition of Article 2, numeral 2), or does not fulfill the conditions of patentability set forth in Articles 3, 4, 5 and 6.

- c) the patent does not disclose the invention pursuant to Articles 13 and 14..
 - d) the claims included in the patent do not fulfill the requirements of Article 15.
 - e) The patent granted contains a broader disclosure than that contained in the initial application.
- 2) The General Agency for Industrial Property shall annul a patent when it has been granted to a person who does not have the right to obtain it according to Articles 7, 8 and 9. In this case the annulment can be requested only by the person who claims to have the right to the patent, and the action shall lapse in five years counted from the granting of the patent.
 - 3) When the causes of annulment affect only some claim or some part of a claim, the annulment shall be declared only with regard to such claim or part, as the case may be. In this case, the annulment may be stated in the form of a limitation of the corresponding claim.
 - 4) The request for nullification or annulment may also be entered as a defense or counterclaim in any action for violation relating to the patent.
 - 5) Patents shall automatically expire in the following cases:
 - a) At the end of their period in force.
 - b) For non-payment of the fees to keep them in effect. The holder shall have a grace period of one hundred eighty (180) days to pay the fee owed, at the end of which time the expiration shall become effective.
 - 6) The General Agency for Industrial Property may declare the expiration of a patent in the following cases:
 - a) If, two (2) years after the granting of the first compulsory license, the purposes for which it was granted have not been satisfied.
 - b) When it is necessary to protect public health, human, animal or vegetable life or to avoid serious damage to the environment.

Article 35.- On the Appeal for Reconsideration

- a) The appeal for reconsideration of a resolution rejecting or annulling a patent is acceptable only when it is presented in writing in the General Agency for Industrial

Property itself within a time limit of thirty (30) days counted from the date of notification of the respective resolution. The appeal shall be accompanied by the documentation confirming its acceptability.

- b) When the arguments set forth in the appeal and the documents provided have been analyzed, the General Agency for Industrial Property shall issue the appropriate resolution, which must be communicated to the appellant in writing.
- c) If the resolution issued by the General Agency for Industrial Property denies the acceptability of the appeal, the same shall be communicated to the appellant in writing and published in the organ for official publication. When the resolution is favorable to the appellant, the terms of Article 23 of this law shall be carried out, if this should be appropriate.

Article 36.- Waiver and Limitation of the Patent

- 1) The holder of the patent may waive one or more of the claims of the patent, or the entire patent, at any time through a written statement presented to the General Agency for Industrial Property. Likewise he may limit or reduce the scope of the patent by filing new claims for this purpose. Article 135 is applicable to the limitation of the patent.
- 2) The waiver or limitation takes effect as of the date of its filing, without prejudice to that which is provided by numeral 3.
- 3) When some guaranty or attachment or other restriction on control in favor of a third party is found to be recorded, the waiver shall be admitted only upon the prior filing of a written statement with the authenticated signature of that person by virtue of which he consents to the waiver, unless the General Agency for Industrial Property proves the existence of circumstances that justify the admission of the waiver in any case.

Article 37.- Modification of the Claims

- 1) The holder of a patent may request at any time that one or more of the claims of the patent be modified so as to reduce or limit their scope.
- 2) No modification shall be admitted which may imply a broadening of the disclosure contained in the initial application.
- 3) Once the modification has been recorded, the General Agency for Industrial Property shall issue a new grant certificate and the patent document with the modified claims, and shall announce the same in the organ for official publication
- 4) The established fee shall be paid for the request for modification.

Article 38.- Division of the Patent

- 1) The holder of a patent may request at any time that the patent be divided into two or more fractional patents. In this case, the General Agency for Industrial Property shall divide the registration of the patent and issue new certificates for each of the fractional patents resulting from the division. The division shall be announced in the organ for official publication.
- 2) The term of effectiveness of the fractional patents shall be calculated as of the filing date of the original patent application.
- 3) The request for division shall be paid for at the established fee for each fractional patent that must be issued.

SECTION IV

COMPULSORY LICENSES AND OTHER MEASURES RELATED TO THE EXPLOITATION OF PATENTS

Article 39.- Exploitation of the Patent

For the effects of Article 41 of this law, exploitation of a patent is understood as follows:

- a) When the patent has been granted for a product or for a procedure for the obtaining of a product, supply to the internal market in reasonable quantity, quality and price, through production in this country and importation.
- b) When the patent has been granted for a procedure not included in subparagraph a), the use of the procedure on a commercial scale in this country.

Article 40.- Compulsory Licenses

When a potential user has attempted to obtain the granting of a license from the patent holder under reasonable commercial terms and conditions and such attempts have not been effective after a period of two hundred and ten (210) days, counted from the date on which the respective license was applied for, the General Agency for Industrial Property, after prior hearing of the holder, shall be able to issue compulsory licenses relating to that patent.

PARAGRAPH.- In all cases that merit it, the National Agency for Industrial Property shall concede compulsory licenses when the interested party demonstrates:

- a) That he/she possesses the technical and economic capacity to confront the exploitation in question. Technical capacity shall be evaluated by the competent authority, in compliance with the specific regulations in the country that exist in each field of activity. Economic capacity shall be understood as the possibility to fulfill the obligation that derive from the exploitation that is to be undertaken.
 - b) When the patent refers to raw material from which a final product is to be developed, that the applicant is able to develop the final product independently or through third parties in the country, save cases in which production is impossible in national territory.
- 2) To determine what is understood by reasonable commercial terms and conditions, the particular circumstances of each case and the economic value of the authorization must be taken into account, keeping in mind the average rate of royalties for the sector in question in contracts for commercial licenses between independent parties.

Article 41.- Compulsory License for Lack of Exploitation

- 1) After three (3) years from the granting of the patent, or four (4) years from the filing of the application, applying whichever term expires later, if the invention has not been exploited or when the exploitation of the same has been interrupted for more than one (1) year without justifiable cause, any person with the ability to exploit the invention may apply to the General Agency for Industrial Property to grant him or her an compulsory license for the patent in question.
- 2) A compulsory license shall not be granted when it is demonstrated that the lack or insufficiency of exploitation is due to fortuitous circumstances or *force majeure*, or to circumstances beyond the will or control of the patent holder and which justify the lack or insufficiency of exploitation. The lack of economic resources and the lack of economic viability of the exploitation are not considered justifying circumstances.

Article 42.- Compulsory Licenses for Anti-competitive Practices

Compulsory licenses shall be granted when the General Agency for Industrial Property has determined that the patent holder has indulged in anti-competitive practices. In such cases, without prejudice to the appeals available to the patent holder, the concession shall be carried out without the need to apply the procedure set forth in numeral 2 of Article 43.

For the purposes of this law, the following practices, among others, are considered to be anti-competitive:

- a) Setting excessive or discriminatory prices for the patented products. In particular, when there are offers of supply to the market at prices significantly lower than those offered by the patent holder for the same product.

- b) Failure to supply the market under reasonable commercial conditions.
- c) Hindrance of commercial or productive activities
- d) The other actions set forth as such by this code and every other action which national legislation typifies as anti-competitive, limiting or restrictive to competition.

Article 43.- Application for and Granting of Compulsory Licenses

- 1) Any person interested in obtaining a compulsory license must apply for it to the General Agency for Industrial Property. The application must indicate the conditions under which he or she intends to obtain the compulsory license.
- 2) The person applying for a compulsory license must confirm that he or she has previously requested a contractual license from the patent holder, and has not been able to obtain it under the conditions and within the time limits set forth in Article 40.

It shall not be necessary to fulfill this requirement in cases of national emergency or extreme urgency, or cases of a commercial use of the invention by a public agency. In such cases the patent holder shall be informed without delay of the granting of the license. Nor shall it be necessary to fulfill that requirement when the purpose of the license is to remedy an anti-competitive practice.

- 3) Without prejudice to that which is set forth in numeral 2, the General Agency for Industrial Property shall notify the patent holder of an application for compulsory license within a period of thirty (30) days, counted as of day of the filing of the application.
- 4) The patent holder must present his statements and arguments within a time limit no more than sixty (60) days, counted from the date of notification of the application for a compulsory license. If this time limit passes without the holder having expressed himself, the conditions presented by the applicant shall be considered as accepted.
- 5) In case the holder responds, the General Agency for Industrial Property, after first hearing the parties and if they should not come to agreement, shall set a reasonable remuneration which the patent holder shall receive, which shall be established according to Article 40.
- 6) The decisions with reference to the granting of these uses must be adopted within one hundred twenty (120) days from the filing of the application and the same shall be appealable. The substantiation of the appeal shall not have the effect of suspension.

Article 44.- Conditions for the Granting of Compulsory Licenses

- 1) To grant compulsory licenses, the following provisions must be observed:

- a) The granting of same must be by the General Agency for Industrial Property.
 - b) The circumstances of each case shall be considered.
 - c) The compulsory licenses shall be extended to patents relating to the components and processes permitting their exploitation
 - d) The granting of these licenses shall not be exclusive.
 - e) They may not be assigned, except for that part of the company or of its intangible asset that forms part of it.
 - f) They shall be granted principally to supply the internal market, except in the cases established in Articles 41 and 46.
 - g) The patent holder shall receive a reasonable remuneration according to the circumstances of each case, taking into account the economic value of the authorization. In determining the amount of the remuneration in cases in which the compulsory licenses have been granted to remedy anti-competitive practices, the necessity of correcting such practices shall be taken into account and the revocation of the grant may be denied if it is considered probable that the conditions that caused that granting have been repeated.
- 2) The person to whom the compulsory license is granted must begin its exploitation within two years of the granting of the license to him.
- 3) When the patent protects any semiconductor technology, compulsory licenses shall be granted only for non-commercial public use, or to rectify a practice declared to be contrary to competition.
- 4) A compulsory license may be completely or partially revoked by the court created by this Code, upon request by the holder, if the circumstances that gave rise to the license have ceased to exist and it is improbable that they will again arise, so long as such revocation does not affect the legitimate interests of the licensee.
- 5) A compulsory license can be modified by the court created by this Code, upon application by an interested party, when so justified by new facts or circumstances.

Article 45.- Compulsory License in the Case of Dependent Patents

- 1) When an invention claimed in a subsequent patent cannot be exploited in this country without infringing an earlier patent, the General Agency for Industrial Property, upon the request of the holder of the first mentioned patent or of his licensee, or of the beneficiary of

a compulsory license for that patent, may grant a compulsory license with regard to the earlier patent insofar as may be necessary to avoid the infringement.

2) The compulsory license shall be granted only when the invention claimed in the subsequent patent implies an important technical advance of considerable economic significance with regard to the invention claimed in the earlier patent.

3) When a compulsory license is granted in conformity with numeral 1, a compulsory license may be granted in the same circumstances with regard to the later patent, if the holder of the earlier patent, his licensee or the beneficiary of a compulsory license for said earlier patent applies for it.

4) A compulsory license of those set forth in this article cannot be granted as exclusive. This compulsory license can only be the object of transfer simultaneously with the dependent patent the industrial exploitation of which requires the license. The transfer of the compulsory license shall be subject to the provisions of Article 32, numeral 2, insofar as is appropriate.

5) The provisions of Articles 43 and 44, insofar as they are appropriate, are applicable to the licenses set forth in this article.

Article 46.- Public Interest Licenses

For reasons of public interest, and in particular for reasons of emergency or national security declared by the Executive Power, the General Agency for Industrial Property, at the request of any interested person or competent authority, or on its own initiative, shall at any time order the following:

- a) that an invention which is the object of a patent or patent application being processed be exploited by a government agency or by one or more public or private persons designated for the purpose.
- b) that an invention that is the object of a patent or of a patent application being processed be open for the granting of licenses in the public interest, in which case the General Agency for Industrial Property shall grant a license for exploitation to any person who applies for it and has the ability to carry out such exploitation in this country.

Article 47.- Conditions for Public Interest Licenses

- 1) Every public interest license implies the corresponding payment to the patent holder. After prior hearing of the parties, and in the absence of an agreement, the amount and method of payment shall be set by the General Agency for Industrial Property, according to Articles 44, literal g).

- 2) A public interest license can refer to the execution of any of the actions referred to in Article 29, numeral 1.
- 3) The provisions of Articles 43 and 44, insofar as appropriate, are applicable to the granting of public interest licenses.
- 4) The granting of a compulsory license by reason of public interest shall not diminish the right of the patent holder to continue exploiting it.

Article 48.- Revocation of the Patent in Case of Abuse

- 1) At the request of any interested person or of any competent authority, the General Agency for Industrial Property can revoke a patent when the rights conferred by the patent are abused with regard to anti-competitive practices or abuse of a dominant market position in such a way that the national economy is unduly affected.
- 2) The request for revocation may not be presented until two years have passed counting from the date of granting of the first compulsory license.

CHAPTER II

UTILITY MODELS

Article 49.- Definition of a Utility Model

- 1) A utility model is considered to be any new form, configuration or arrangement of elements of any device, tool, instrument, mechanism or other object, or some part of the same, which permits better or different functioning, utilization or manufacture of the object incorporating it, or which gives it some utility, advantage or technical effect it did not have before.
- 2) Utility models are protected through the granting of patents.

Article 50.- Application of the Provisions Regarding Patents for Invention

The provisions of Chapter I relating to patents for invention are applicable, insofar as they are appropriate, to patents for utility model, except for the special provisions contained in this chapter. Article 28, numeral 1), is not applicable to patents for utility model.

Article 51.- Items Excluded from Protection as Utility Models

The following cannot be the object of a patent for utility model:

- a) procedures.

- b) chemical, metallurgical or any other kind of substances or compounds.
- c) items excluded from protection by invention patent invention pursuant to this law.

Article 52.- Unity of the Application

The application for a utility model patent can only refer to one object, without prejudice to the fact that said object can include two or more parts that function as a joint unit. Several elements or aspects can be claimed for said object in the same application.

Article 53.- Term for the Patent for Utility Model

- 1) The patent for utility model expires in fifteen years counted from the filing date of the patent application in the Dominican Republic.
- 2) The patent for utility model shall be subject to maintenance fees payable at the fifth and tenth years counted from the filing date of the application.. Their payment shall be subject to the provision for payment of the yearly fees for patents for invention.

CHAPTER III

INDUSTRIAL DESIGNS

SECTION I

PROTECTION OF INDUSTRIAL DESIGNS

Article 54.- Definition of Industrial Design

- 1) Industrial design is considered to be any group of lines or combinations of colors or any two dimensional or three dimensional external form which incorporates an industrial or craft product so as to give it a special appearance, without changing the function or purpose of said product.
- 2) The protection conferred upon an industrial design in the application of this law does not exclude or affect the protection that might belong to the same design by virtue of other legal provisions, in particular those relating to copyright.

Article 55.- Excluded Items

- 1) An industrial design shall not be protected the aspect of which is determined solely by a technical function and does not involve any arbitrary contribution by the designer.

- 2) An industrial design shall not be protected which consists of a form the exact reproduction of which was necessary to allow for the product incorporating to be mechanically mounted or connected to another product of which it constitutes an integral part.
- 3) An industrial design shall not be protected which is contrary to public order or morality.

Article 56.- Right to Protection

- 1) The right to obtain protection for an industrial design belongs to the designer. If the design has been created by two or more persons together, the right belongs to all of them jointly. This right may be transferred by an act between living persons or through succession.
- 2) When the industrial design has been created in fulfillment of a work or service contract, or a labor contract, the right to obtain its registration belongs to the person who contracted the work or the service, or the employer, unless there are contractual provisions to the contrary.
- 3) The designer shall be mentioned as such in the corresponding registration and in the official documents relating to the same unless, by a written statement to the General Agency for Industrial Property, the designer should indicate that he or she does not wish to be mentioned. Any pact or agreement whereby the designer of an industrial design is obliged in advance to make such a statement is null and void.

Article 57.- Acquisition of Rights

The protection of an industrial design that fulfills the conditions of Article 54 is acquired through the registration as established in this chapter and in the corresponding regulatory provisions.

Article 58.- Requirements for Protection

- 1) An industrial design is protected if it is new.
- 2) An industrial design is considered new if it has not been disclosed or made accessible to the public any place in the world through publication, marketing, use or any other means, before the date on which the person having the right to obtain the protection filed an application for registration of the industrial design in the Dominican Republic or, should such be the case, the date of the recognized priority.
- 3) For the purpose of determining that it is new, disclosure that may have occurred within the twelve months preceding the date of application for registration is not taken into account, so long as such disclosure has resulted directly or indirectly from actions by the

designer of the design or his assignee, or from an abuse of confidence, contract violation or illegal act committed against either of them.

- 4) An industrial design is not considered new solely because it presents minor differences from other previous ones.

SECTION II

SCOPE OF THE RIGHTS

Article 59.- Scope of the Protection

- 1) The protection of an industrial design confers upon its holder the right to exclude third persons from the exploitation of the industrial design. By virtue of this, and with the limits set forth in this law, the holder has the right to act against any person who, without his or her authorization, manufactures, sells, offers for sale or utilizes, or imports or warehouses for any of these purposes, a product which reproduces or incorporates the protected industrial design, or the appearance of which gives a general impression identical to the protected industrial design.
- 2) Performance of one of the actions referred to in numeral 1) is not considered legal solely because the design reproduced or incorporated is applied to a type or kind of product different from those indicated in the registration of the protected design.

Article 60.- Limitations on the Protection of the Design

- 1) The protection of an industrial design does not include those elements or characteristics of the design determined solely by the realization of a technical function, and do not incorporate any arbitrary contribution of the designer.
- 2) The protection of an industrial design does not include those elements or characteristics of the design the reproduction of which are necessary to permit the product which incorporates it to be mechanically mounted or connected to another product of which it constitutes an integral part.

SECTION III

REGISTRATION PROCEDURE

Article 61.- The Capacity of the Applicant

- 1) The applicant for registration of an industrial design may be an individual or a corporation.
- 2) If the applicant was not the designer, the application must indicate how the right to obtain the registration was obtained.

Article 62.- Application for Multiple Designs

The registration of two or more industrial designs can be applied for in one application, so long as all of them are applied to products included within the same class of the classification.

Article 63.- Application for Registration

- 1) The application for registration of an industrial design shall be filed in the General Agency for Industrial Property, and shall include the following:
 - a) a request for the granting of registration with the data of the applicant and the designer and such data as may be set forth in the regulation.
 - b) the graphic or photographic reproduction of the industrial design; more than one view of the design may be presented when it is three dimensional; in the case of two dimensional designs of textile material, paper or other flat material, a sample of the product incorporating the design may be substituted for the reproduction.
 - c) the designation of the products to which the design is applied and the class and subclasses of the products.
 - d) the receipt for payment of the established fee depending on the number of subclasses of the products and the number of designs for each product.
- 2) The regulation shall clearly indicate the number of examples and the dimensions of the reproductions of the industrial design and may regulate other aspects relating to them. When the application includes two or more industrial designs, their respective reproductions shall be numbered in an unmistakable way.

Article 64.- Admission and Filing Date of the Application

- 1) The filing date of the application shall be considered to be that of its receipt by the General Agency for Industrial Property, so long as it contains at least the following elements:

- a) an express or implicit indication that registry of an industrial design is applied for.
- b) sufficient information to identify the applicant.
- c) Graphic or photographic reproduction of the industrial design; when it is a question of two-dimensional designs of textile material, paper or other flat material, a sample of the product incorporating the design may be substituted for the reproduction.

2) If the application is filed omitting some of the elements indicated in numeral 1), the General Agency for Industrial Property shall notify the applicant so that he or she can remedy the omission. If the omission is remedied, the date of receipt of the omitted elements shall be assigned as the filing date of the application. So long as the omission is not remedied, the application shall be considered not to have been filed.

Article 65.- Examination of the Application

The General Agency for Industrial Property shall examine whether the object of the application constitutes an industrial design in conformity with Article 54, and whether the application satisfies the requirements of Article 55, numeral 3 and if the application is conformity with the Article 58.

Article 66.- Resolution and Registry

If the established requirements have been satisfied, the General Agency for Industrial Property shall register the industrial design, issue a certificate of registry containing the data included in the corresponding registry, and order the registry to be announced in the official organ.

SECTION IV

STANDARDS FOR THE REGISTERED INDUSTRIAL DESIGN

Article 67- Duration of the Registry

- 2) The registry of an industrial design shall expire after five years counted from the filing date of the respective application at the General Agency for Industrial Property.
- 3) The registry of an industrial design may be extended for two additional periods of five years each by payment of the established fee for extension.
- 4) The fee for extension shall be paid before the expiration of the period in effect that is being extended. It may also be paid within a grace period of six months after the

expiration, together with the established surcharge. The registration shall remain fully in effect during the grace period.

Article 68.- Nullity and Annulment of the Registration

- 1) Upon request by any interested person, and after hearing the holder of the registration of the industrial design, the General Agency for Industrial Property shall declare the registration null and void if it was carried out in violation of any of the provisions of these chapters.
- 2) The request for declaration of nullity may be made in defense or by way of counterclaim in any action for infraction relating to a registered industrial design.

Article 69.- Application of the Provisions on Inventions

The provisions relating to patents of invention contained in Articles 18, 23, 25, 29 (1) and 2)); 30, 31, 32, 34 y 38 shall be applicable to industrial designs insofar as they are appropriate.

TITLE II

ON DISTINCTIVE SYMBOLS

CHAPTER I

DEFINITIONS

Article 70.- Concepts Utilized

For purposes of this law, the following terms are understood as indicated below:

- a) "trademark", any visible symbol that serves to distinguish the products or services of a company from the products or services of other companies.
- b) "collective trademark", a trademark whose holder is a collective entity which groups together persons authorized to use the trademark.
- c) "trademark for certification", a trademark applied to products or services of third persons, the characteristics or quality of which have been certified by the holder of the trademark;
- d) "commercial name", the name, denomination, designation or abbreviation that identifies a company or establishment;

- e) "sign", any visible symbol used to identify a specific commercial location;
- f) "emblem", any figurative symbol used to identify a company;
- g) "distinctive symbol", any symbol constituting a trademark, a commercial name, a sign or an emblem;
- h) "geographic indication", any name, denomination, expression, image or symbol that indicates, directly or indirectly, that a product or service originates in a country, in a group of countries, in a region, in a locality or in a specific place;
- i) "denomination of origin", a geographic indication comprising the denomination of a country, of a region or a specific place used to designate a product originating in the same the quality, reputation or other characteristic of which is attributable essentially to the geographic medium in which it is produced, including natural and human factors; a denomination which identifies a product as originating in a country, region or place without being a geographic name shall also be considered a denomination of origin;
- j) "well-known distinctive symbol", a distinctive symbol known by the relevant sector of the public or of the business circles in this country, or in international trade, independently of the way or means by which it may have become known.

CHAPTER II

TRADEMARKS

SECTION I

RIGHTS TO THE TRADEMARK

Article 71.- Acquisition of the Right to the Trademark

- 1) The right to exclusive use of a trademark is acquired by means of its registration.
- 2) The person who has been using the trademark in this country without interruption and in good faith from the earliest date shall have preference for obtaining the registry of a trademark. For these purposes, use for less than six months shall not be taken into account. If a trademark has not been in use in this country, the first person to file the corresponding application shall have preference.
- 3) That which is provided in the preceding paragraph shall be without prejudice to the right of priority that the parties might invoke.

Article 72.- Symbols considered as Trademarks

- 1) Trademarks may consist, among other things, of words, fantasy denominations, names, pseudonyms, commercial slogans, letters, numbers, monograms, figures, portraits, labels, shields, stamps, cartoons, borders, lines and bands, combinations and arrangements of colors and three-dimensional forms. They may likewise consist of the form, presentation or conditioning of the products or their containers and wrappings, or of the means and locations of expending the corresponding products or services.
- 2) Without prejudice to the other provisions of this law and other applicable standards, trademarks may also consist of local or foreign geographical indications, so long as they are sufficiently arbitrary and distinctive with regard to the products or services to which they are applied, and their use not be likely to create confusion with respect to the origin, point of departure, qualities or characteristics of the products or services for which the trademarks are used.

Article 73.- Trademarks Not Admissible for Reasons Intrinsic to the Symbol

- 1) A symbol included in any of the following prohibitions cannot be registered as a trademark:
 - a) they consist of usual or ordinary forms for products or their containers, or forms that are necessary or imposed by the very nature of the product or service in question.
 - b) they consist of forms which give a functional or technical advantage to the product or service to which they are applied.
 - c) they consist exclusively of a symbol or an indication that can be used in business to qualify or describe some characteristic of the products or services in question.
 - d) they consist exclusively of a symbol or an indication which, in ordinary language or in the business usage of this country, is a generic designation, common or usual for the products or services in question, or is the scientific or technical name of a product or service, so as to differentiate them from the same analogous or similar products or services.
 - e) they consist of a simple color considered in isolation.
 - f) they do not have sufficient distinctive character with regard to the products or services to which they are applied, to differentiate them from analogous or similar products or services.
 - g) they are contrary to morality or public order.

- h) they consist of symbols, words or expressions that ridicule or tend to ridicule persons, ideas, religions or national symbols, of other countries or of international entities.
- i) they may deceive commercial media or the public as to the source, nature, method of manufacture, qualities, aptness for use or consumption, quantity or any other characteristic of the products or services in question.
- j) they reproduce or imitate a denomination of origin registered pursuant to this law for the same products, or different products, if there is a risk of confusion about origin or other characteristics of the products or a risk of taking unfair advantage of the prestige of the denomination of origin, or they consist of a geographic indication which does not conform to the provision of Article 72, numeral 2).
- k) they reproduce or imitate coats of arms, flags and other emblems, rubrics, denominations or abbreviations of denominations of any State or any international organization, without the authorization of the competent authority of the State or the international entity in question.
- l) they reproduce or imitate official symbols for control or guarantee adopted by a State or a public entity, without the authorization of the competent authority of that State.
- ll) they reproduce coins or bills of legal tender legal in the territory of any country, titles, securities or other commercial documents, fiscal seals, stamps, letterheads etc. in general.
- m) they include or reproduce medals, prizes, diplomas or other elements that give the idea of the obtaining of prizes with respect to the products in question, except for such prizes as really have been given to the applicant for their registration or his or her assignee and this is confirmed at the time of applying for the registration.
- n) they include the denomination of a variety of vegetation protected in the country or in another country, if the symbol is destined for products or services relating to that variety or its use is likely to cause confusion or association with that variety.
- ñ) they are contrary to any provision of this or another law
- o) they are identical to or resemble, in such way as might cause the public to err, a trademark the registration of which has expired and not been renewed, or which has been cancelled upon the request of its holder, and which, applied to those same products or services or other products or services that by their nature might be associated with those, unless one year has passed after the date of expiration or cancellation.

- 2) Notwithstanding that which is set forth in letters c), d) and e) of numeral 1), a symbol may be registered as a trademark when it is proved that for the effects of constant use in this country, the trademark has acquired sufficient distinctive character in business and before the public to merit protection as a trademark with regard to the products or services to which it is applied.

Article 74.- Trademarks Inadmissible because of Rights of Third Parties

A symbol cannot be registered as a trademark when it would affect some right of a third party. The following cases, among others, will be considered in which the symbol intended for registration:

- a) is identical to, or resembles to the point that it could create confusion, a trademark that is registered or in the registration process within the terms of Article 75 by a third party as of a previous date, which distinguishes the same products or services, or products or services that are different but might be associated or connected with those which the earlier trademark distinguishes.
- b) is identical to or resembles to the point that it could create confusion, a trademark that is not registered but is used by a third party who would have better right to obtain the registry, so long as the trademark is for the same products or services, or for products or services that are different but might be associated or connected with those that the utilized trademark distinguishes.
- c) is identical to or resembles a commercial name, a sign or an emblem used or registered in this country by a third party as of an earlier date, so long as confusion might be caused, given the circumstances of the case.
- d) constitutes the complete or partial reproduction, imitation, translation or transcription of a distinctive symbol which is widely known in the country by the relevant sector of the public, whatever may be the products or services to which the symbol is applied, when its use might cause confusion, a risk of association with that third party, taking unfair advantage of the notoriety of the symbol, or the dilution of the distinctive power of its commercial or publicity value.
- e) would affect the personal rights of a third party, especially regarding the name, signature, title, hypocoristic or portrait of a person different from the one applying for the registration, unless the consent of that person be confirmed or, if he or she has died, that of his or her closest descendents or antecedents.

- f) would affect the right to the name, image or prestige of a corporation or a local, regional or national entity or collectivity, unless the express consent of that person or of the competent authority of that entity or collectivity be confirmed.
- g) would infringe on copyright or a right to industrial property that pre-exists or has been applied for so as to perpetrate or consolidate acts of unfair competition.

SECTION II

PROCEDURE FOR REGISTRY OF THE TRADEMARK

Article 75.- Application for Registration

- 1) The applicant for a registry may be an individual or a corporation.
- 2) The application shall be filed in the General Agency for Industrial Property and shall include the following:
 - a) name and domicile of the applicant.
 - b) name and domicile of the representative in this country, when the applicant has neither domicile nor establishment in the country.
 - c) the denomination of the trademark whose registry is being applied for, when it is a question of a nominative trademark.
 - d) reproductions of the trademark when denominative, stylized, with particular shape, kind or color, or figurative, mixed or three-dimensional trademarks with or without color.
 - e) a list of products or services for which it is desired to protect the trademark, grouped by classes according to the International Classification of Products and Services in effect, with an indication of the number of each class.
 - f) the documents or authorizations required in the cases set forth in Articles 73 and 74, as relevant.
 - g) the signature of the applicant or his or her duly empowered representative, if any.
 - h) proof of payment of the established fee.

Article 76.- Filing Date of the Application

- 1) The date of receipt of the application by the General Agency for Industrial Property shall be considered as its filing date, so long as it contains at least the following elements:
 - a) an indication that the registration of a trademark is applied for.
 - b) the identification of the applicant.
 - c) the denomination of the trademark whose registration is being applied for, or reproductions of the same when it is a question of figurative, mixed or three-dimensional trademarks with or without color.
 - d) a list of the products or services for which it is desired to protect the trademark, as well as the indication of the classes to which the products or services belong.
- 2) If the application to be filed omits any of the elements indicated in the preceding paragraph, the General Agency for Industrial Property shall notify the applicant so that he or she may remedy the omission. Until the omission is remedied the application is considered not to have been filed.

Article 77.- Division of the Application

- 1) The applicant may divide his or her application at any time during processing in order to separate in two or more applications the products or services contained in the list of the initial application. A division is not admitted if it implies a broadening of the list of products or services presented in the initial application, but that list may be reduced or limited.
- 2) Each fractional application shall keep the filing date and right of priority, when applicable, of the initial application. From the moment of the division, each fractional application shall be independent. The publication of the application carried out before making the division shall be effective for each fractional application.

Article 78.- Examination of Form

- 1) The General Agency for Industrial Property shall investigate whether the application complies with the provision of Article 75, and corresponding regulatory provisions.
- 2) In case some of the requirements of Article 75 or the corresponding regulatory provisions have not been met, the Agency shall notify the applicant so that he or she can remedy the error or omission within a time limit of thirty days, under penalty of the application being considered abandoned and filed away on the agency's initiative. If the error or omission should not be remedied within the established time limit, the Agency shall make the abandonment effective.

Article 79.- Detailed Examination

- 1) The General Agency for Industrial Property shall examine whether the trademark incurs some of the prohibitions set forth in Articles 73 and 74 letter a). The Agency may investigate, on the basis of the information on hand, whether the trademark incurs the prohibition of Article 74 letter d).
- 2) If the trademark should be included in some of the prohibitions referred to, the Agency shall notify the applicant, indicating the objections preventing its registration and giving him a period of sixty days to retire, modify or limit his or her application, or to respond to the objections made, as the case may be. Should the indicated time limit pass without the applicant having resolved the matter or if, having done so, the Agency should consider that the objections made continue to be valid, registry shall be denied through a substantiated resolution.

Article 80.- Publication, Opposition and Issuance of the Certificate

- 1) Once the examination of the application has been completed, the General Agency for Industrial Property shall order the publication of an announcement of the application for registration, at the expense of the applicant, in the official organ of the General Agency for Industrial Property.
- 2) Any third party can enter an appeal in opposition to the application for registration within a time limit of 45 days counted from the publication of the announcement referred to in numeral 1.
- 3) When the time limit for the presentation of oppositions has passed, the General Agency for Industrial Property shall decide upon the application and the opposition actions which may have been entered into a single act, according to the procedure of Article 154. If it is resolved to grant the registration, a certificate of registration of the trademark, containing the data set forth in the regulatory provisions, shall be issued to the holder.

SECTION III

DURATION AND RENEWAL OF THE REGISTRATION

Article 81- Term of the Registration

The registration of a trademark expires in ten years counted from the date of granting of the registration.

Article 82.- Renewal of the Registration

The registration of a trademark may be renewed for successive periods of ten years counted from the date of expiration of the preceding period.

Article 83.- Procedure for Renewal of the Registration

- 1) The application for renewal of a registration must be accompanied by a sworn statement affirming the frequency and manner of use of the trademark, as well as the evidence of use which the regulation may determine. The renewal of a registration shall be carried out by means of the simple payment of the renewal fee, within six months before the date of expiration of the preceding period. The renewal may also be made within a grace period of six months counted from the expiration date of the registration, in which case the established surcharge must be paid, in addition to the corresponding renewal fee. The registration of the trademark remains in full force during the grace period.
- 2) No change or broadening of the list of products or services for which the trademark was registered may be introduced when making the renewal, but the holder of the trademark may reduce or limit said list.
- 3) A certificate shall be issued in which the registry of the renewal in the register is confirmed, and the same shall mention any reduction or limitation made in the list of products or services that the trademark distinguishes. After the issuance of said certification, the Agency shall publish the renewals in the official publicity organ at the expense of the applicant.

Article 84.- Broadening the Products or Services Covered

In order to broaden the list of the products or services distinguished by a registered trademark it is necessary to carry out a new registration of the trademark for the additional products or services which it is desired to cover. Such registration shall be applied for and processed according to the provisions established for the registration of trademarks.

Article 85.- Divisions of the Registration

- 1) The holder of a registration may request at any moment that the registration of the trademark be divided so as to separate the products or services indicated in the initial registration into two or more registrations.
- 2) When the division has been carried out, each separate registration shall be independent, but shall keep the date of granting and of expiration of the initial registration. Their renewals shall be made separately.

SECTION IV

RIGHTS, OBLIGATIONS AND LIMITATIONS OF THE REGISTRATION

Article 86.- Rights Conferred by the Registration

- 1) The registration of a trademark confers upon its holder the right to act against any third party who performs any of the following actions without his or her consent:
 - a) applying, adhering or fixing in any way a distinctive symbol identical or similar to the registered trademark on products for which the trademark has been registered, or on containers, wrappings, packaging or treatments of such products, or on products that have been produced, modified or treated via of services for which the trademark has been registered, or which in some other way can be connected to those services.
 - b) suppressing or modifying the trademark which the holder or another person authorized to do so has applied, adhered or fixed on the products referred to in the preceding letter.
 - c) making labels, containers, wrappings, packaging or other analogous elements which reproduce or contain a reproduction of the registered trademark, as well as marketing or unlawfully holding such elements.
 - d) refilling or re-using containers, wrappings or packaging that have the trademark on them for commercial purposes.
 - e) using commercially a symbol identical or similar to the trademark for the same products or services for which the trademark has been registered, or for different products or services when the use of such a symbol with regard to those products or services might create confusion or the risk of association with the holder of the registration.
 - f) using commercially a symbol identical or similar to the registered trademark when such use might cause error or confusion to the public, or might cause unfair economic or commercial harm to its holder because of a dilution of the distinctive power or commercial value of the trademark or of taking unfair advantage or the prestige of the trademark.
 - g) publicly using a symbol identical or similar to the trademark, even for non-commercial purposes, when it might cause a dilution of the distinctive power or commercial or publicity value of the trademark, or might take unfair advantage of its prestige.

2) For the purposes of this law, the following acts, among others, constitute the commercial use of a symbol:

i) introducing into business, selling, offering for sale or distributing products or services with the symbol.

ii) Importing, exporting, warehousing or transporting products with the symbol.

iii) Using the symbol in publicity, publications, documents, written or oral commercial communications.

Article 87.- Limitation of Rights by the Use of Certain Indications

1) The holder of a registered trademark may not prevent a third party from using in business with relation to products or services:

a) his or her name and address, or those of his or her business establishments.

b) statements or information about the characteristics of the products or services that he or she produces or markets, among others, those referring to quantity, quality, utilization, geographic origin or price.

c) statements or information about the availability, use, application or compatibility of his or her products or services, in particular with relation to replacement parts or accessories.

2) The limitations indicated in the preceding paragraph shall apply so long as such use is made in good faith, is not likely to create the risk of confusion, and does not constitute an act of unfair competition.

Article 88.- Limitation of Rights through Extinction

1) The registration of the trademark does not confer upon its owner the right to prohibit a third party from the use of the trademark in relation to legitimately marked products which the holder or some other person with his or her consent or economically linked to him may have introduced into the market in this country or abroad, on the condition that those products and the containers or packaging which were in immediate contact with such products have neither been in any way modified or altered nor have they deteriorated.

2) It is understood that two persons are economically linked when one can exercise, decisive influence, directly or indirectly, over the other with regard to the exploitation of the trademark, or when a third party can exercise such influence over both persons.

SECTION V

TRANSFER OF AND LICENSE FOR THE USE OF THE TRADEMARK

Article 89.- Transfer of the Trademark

- 1) The rights relating to a trademark that is either registered or in process of registration can be transferred by an act between living persons or through succession.
- 2) Transfer may be made independently of the company or on behalf of the company of the holder of the right, and with respect to all or some of the products or services that the trademark distinguishes. When the transfer is limited to one or some of the products or services, the registration shall be divided by opening a new one in the name of the acquirer.
- 3) A transfer relating to a trademark that is registered or in process of registration shall have legal force for third parties only after being recorded in the General Agency for Industrial Property. The established fee shall be paid for the recording.
- 4) A commercial slogan must be transferred together with the trademark symbol with which it is associated, and its period of effectiveness shall be subject to that of the symbol.
- 5) The Regulation shall establish the conditions and documents necessary for recording the transfer.

Article 90.- License for the Use of the Trademark

- 1) The holder of the right to a trademark may grant a license to use the trademark. A license for a trademark that is registered or in process of registration shall have legal force for third parties only after being recorded in the General Agency for Industrial Property. The established fee shall be paid for the recording.
- 2) In the absence of a stipulation to the contrary in a licensing contract, the following standards are applicable:
 - a) the licensee shall have the right to use the trademark during the entire period of effectiveness of the registration, including its renewals, in all of the territory of this country and with respect to all of the products or services for which the trademark has been registered.
 - b) the licensee may not assign the license or grant sub-licenses.

- c) the license shall not be exclusive, and the licensor may grant other licenses to use the trademark in this country, and as well may himself or herself use the trademark in this country.
- d) when the license has been granted as exclusive, the licensor cannot grant other licenses for the use of the trademark in this country, nor can he or she himself or herself use the trademark in this country.

Article 91.- Quality Control

Upon the request of any interested person and after hearing the holder of the registration of the trademark, a competent court may annul the recording of the licensing contract and prohibit the use of the trademark by the licensee when, for lack of adequate quality control or because of some abuse of the license, there may occur confusion among, deception of or damage to the consumer public.

SECTION VI

TERMINATION OF THE REGISTRATION OF THE TRADEMARK

Article 92.- Nullity of the Registration

- 1) At the request of any interested person, the General Agency for Industrial Property shall declare the registration of the trademark null and void if it has been made in violation of any of the prohibitions set forth in Articles 73 and 74.
- 2) The registration of a trademark cannot be declared null and void for causes that have ceased to be applicable at the time of the resolution of annulment. When the causes of annulment are only given with regard to one or some of the products or services for which the trademark was registered, it shall be declared null and void only for those products or services, and they shall be removed from the respective list in the registration of the trademark.
- 3) The request for a declaration of annulment can be lodged as a defense or as a counterclaim in any action for infraction relating to the registered trademark.
- 4) An action for annulment based on the superior right of a third party to obtain the registration of the trademark can only be lodged by the person claiming such right
- 5) A request for annulment based on a violation of Article 74 must be filed within five years after the date of the contested registration. The action for annulment shall have no time

limit when the contested registration has been made in bad faith, or when it was based on a violation of Article 73.

Article 93.- Cancellation of the Registration for Non-Use of the Trademark.

1) At the request of any interested person, the General Agency for Industrial Property shall cancel the registration of a trademark when the same has not been used in this country for an uninterrupted period of three years preceding the date on which the cancellation action is initiated. The request for cancellation shall not be applicable before three years have passed counting from the date of the registration of the trademark. The registration shall not be cancelled when there are justifiable reasons for the lack of use.

2) The cancellation of a registration for lack of use of the trademark can also be requested as a defense against a request for a declaration of annulment of the registration of trademark or against an action for infraction relating to the registered trademark. In these cases the cancellation shall be resolved by the General Agency for Industrial Property upon considering the action for violation being heard.

Article 94.- Definition of the Use of the Trademark

1) It is understood that a trademark is in use when the products or services that it distinguishes have been put on the market or are available in the national market under that trademark, in the quantity and manner normally appropriate taking into account the size of the market for the product in question, the nature of the products or services in question and the ways in which its marketing is carried out.

2) The use of a trademark in relation to products destined for exportation from the national territory, or with relation to services rendered abroad from the national territory, also constitutes use of the trademark.

3) Use of a trademark in a way that differs from the way in which it was registered only insofar as elements which do not alter the distinctive character of the trademark, shall not be a reason for the cancellation of the registration, and shall not diminish the protection corresponding to the trademark.

Article 95.- Provisions Relating to the Use of the Trademark

1) Situations caused by circumstances beyond the control of the holder of the trademark, which he or she has been unable to avoid or remedy, are considered justifiable reasons for the non-use of a trademark. Economic or technical resources insufficient to carry out a productive or commercial activity, or the insufficiency of demand for the product or service which the trademark distinguishes are not considered justifiable reasons.

2) When considering the circumstances for the non-use of the trademark, the actions already carried out by the holder with an eye to its effective use shall be taken into account, so long as they show a serious intention to put the trademark into use and such use is imminent.

3) When the non-use of a trademark affects only one or some of the products or services for which the trademark was registered, the resolution of cancellation of the registration shall be for a reduction or limitation of the list of the products or services included in the registration of the trademark, by removing those products or services with respect to which the trademark has not been used.

Article 96.- Proof of Use of the Trademark

- 1) The burden of proof of the use of the trademark is upon the holder of the trademark.
- 2) Use of the trademark shall be confirmed by any proof admitted by law which shows that the trademark has been used in accordance with the indications of Article 94.
- 3) All proofs of use of a trademark presented for the purposes of this law shall have the force of sworn statements, the holder of the trademark being responsible for their veracity.

Article 97.- Cancellation or Limitation of the Registration by Request of the Holder

- 1) The holder of the registration of a trademark may at any time request from the General Agency for Industrial Property the cancellation of that registration, or that the list of products or services for which the trademark had been registered be reduced or limited. The established fee shall be paid for the request for cancellation, reduction or limitation of the registration.
- 2) When some right of guaranty or an attachment or other restriction of control in favor of a third person should appear recorded with relation to a trademark, the cancellation can only be recorded after the filing of a written statement with the authenticated signature of that person by virtue of which he or she consents to such cancellation.

CHAPTER III

COLLECTIVE TRADEMARKS

Article 98.- Applicable Provisions

The provisions of chapter II of this title are applicable to collective trademarks, except for the special provisions contained in this chapter.

Article 99.- Application for Registration of the Collective Trademark

- 1) The application for the registration of a collective trademark must indicate that the trademark is a collective trademark, and must include the regulation for the use of the trademark.
- 2) The regulation for the use of the collective trademark must detail the common characteristics or the qualities in common of the products or services for which the trademark will be used, the conditions and manners under which the trademark may be used and the persons who shall have the right to utilize it. It must also contain provisions towards ensuring and controlling the trademark's being used in conformity with its regulation of use and stipulate sanctions for every use contrary to said regulation.

Article 100.- Examination of the application for Registration of the Collective Trademark

The examination of the application for a collective trademark shall include the verification of requisites of Article 99. The protection of foreign collective trademarks shall not be refused to any collectivity which existence is not contrary to the law of the country of origin for the act of not being established in the Dominican Republic or because it has not been constituted according to Dominican Law, unless the trademark is contrary to the national public order.

Article 101.- Registration and Publication of the Collective Trademark.

- 1) Collective trademarks shall be recorded in the registry of trademarks. A copy of the regulation for use of the trademark shall be included in the registry.
- 2) The publication of the registration of a collective trademark shall include a brief summary of the regulation for the use of the trademark.

Article 102.- Changes in the Regulation for Use of the Collective Trademark.

- 1) The holder of a collective trademark shall communicate all changes made in the regulation for use of the collective trademark to the General Agency for Industrial Property.
- 2) The changes in the regulation for use of the trademark shall be recorded in the registry through payment of the established fee, and shall become effective only after they are recorded.

Article 103.- License of the Collective Trademark

A collective trademark cannot be the object of a license for use in favor of persons different from those authorized to use the trademark according to the regulation for use of the trademark.

Article 104.- Use of the Collective Trademark

- 1) The holder of a collective trademark may use the trademark for himself, so long as it is also used by the persons authorized to do so pursuant to the regulation for use of the trademark.
- 2) The use of a collective trademark by the persons authorized to use it is considered to be carried out by the holder.

Article 105.- Nullity of the Registration of the Collective Trademark

At the request of any interested person, the General Agency for Industrial Property, in conformity with the procedure for the registration of trademark, shall declare null and void the registration of a collective trademark in any of the following cases:

- a) the trademark was registered in violation of Articles 73 o 74.
- b) the regulation for use of trademark is contrary to morality or to public order.

Article 106.- Cancellation of the Registration of the Collective Trademark

Upon the request of any interested person, the General Agency for Industrial Property, pursuant to the procedure of Article 154, shall cancel the registration of a trademark in any of the following cases:

- a) if for at least three years the trademark is not used by the persons authorized pursuant to its regulation for use, even though it was used by the holder.
- b) the holder of the trademark uses the trademark, or permits it to be used, in a way contrary to the provisions of its regulation for use, or effects the use or allows the use of the trademark in a manner that lends itself to deceiving the business community or the public about the origin or any other characteristic of the products or services for which the trademark is used; likewise the cancellation of the trademark may be declared when the holder tolerates such illicit use or is unaware of it because of the lack of sufficient control.
- c) the protection for foreign collective trademarks cannot be refused to any collectivity the existence of which is not against the law in its country of origin because of its not being

established in the Dominican Republic, or because it has not been organized according to Dominican law, unless the trademark should be contrary to the national public order.

CHAPTER IV

TRADEMARKS FOR CERTIFICATION

Article 107.- Applicable Provisions

The provisions of chapter II shall be applicable to the trademarks for certification, except for the special provisions contained in this chapter. Likewise, Articles 105 and 106 shall be applicable as to the annulment and cancellation of the registration.

Article 108.- Ownership of the Trademark for Certification

A local or foreign company or institution, either private or public, or a state, regional or national agency, can be the holder of a trademark of certification.

Article 109.- Formalities for the Registration

- 1) The application for registration of a trademark for certification must be accompanied by the regulation for use of the trademark indicating the products or services that may be the object of certification by its holder and establishing the characteristics guaranteed by the presence of the trademark and the way in which control shall be exercised over such characteristics before and after the authorization of the use of the trademark.
- 2) The regulation for use shall be approved by the administrative authority competent as to the product or service in question, and shall be recorded together with the trademark. The regulation for application of this law shall determine the conditions and requirements that must be satisfied by the regulation for use of the trademark for certification.

Article 110.- Use of the Trademark of Certification

- 1) The holder of a trademark of certification shall authorize the use of the trademark by third parties when the conditions established in the regulation for use of the trademark are fulfilled.

- 2) The trademark for certification may not be used with relation to products or services produced, rendered or marketed by the holder of the trademark.

Article 111.- Taxation and Transfer of the Trademark for Certification

- 1) A trademark for certification may not be the object of any charge or taxation or of any attachment or other preventive measure or measure of judicial enforcement.
- 2) A trademark for certification can only be transferred with the entity that is the holder of the registration. In the case of the dissolution or disappearance of the holding entity, the trademark for certification can be transferred to another appropriate entity, with prior authorization by the competent authority.

Article 112.- Reservation of the Extinct Trademark for Certification

A trademark for certification the registration of which has expired without being renewed, has been cancelled or annulled at the request of its holder, or which has fallen into disuse because of the dissolution or disappearance of its holder, cannot, for a term of five years counted from the expiration cancellation, annulment, dissolution or disappearance, as the case may be, be used or registered as a distinctive symbol by a person different from the holder.

CHAPTER V

COMMERCIAL NAMES, SIGNS AND EMBLEMS

SECTION I

COMMERCIAL NAMES

Article 113.- Acquisition of the Right to a Commercial Name

- 1) The right to exclusive use of a commercial name is acquired by virtue of its first use in business. The commercial name shall be protected without any obligation of registration, whether or not it is part of a trademark.
- 2) The right of exclusive use of a commercial name terminates with the abandonment of the name.
- 3) A commercial name is abandoned when it ceases to be used in business by its holder for more than five consecutive years without justifiable cause. The abandonment must

be declared by following the procedure established in this law for the manufacturer's trademark [*marca de fábrica*].

Article 114.- Inadmissible Commercial Names

A commercial name cannot be made up, completely or partially, of a designation or other symbol which, by its type or by the use that might be made of it, is contrary to morality or public order, or would be likely to cause confusion in the business community or among the public about the identity, nature, activities or any other aspect related to the company or the establishment identified by that commercial name, or relating to the products or services produced or marketed.

Article 115.- Protection of the Commercial Name

- 1) The holder of a commercial name has the right to act against any third party who, without its consent, carries out any of the following acts:
 - a) commercial use of a distinctive symbol identical to the commercial name.
 - b) commercial use of a distinctive symbol that resembles the commercial name, when it might cause confusion.
- 2) The provisions established in Article 75 and preceding, shall be applicable to the protection of the commercial name.

Article 116.- Registration of the Commercial Name

- 1) The holder of a commercial name may register it in the General Agency for Industrial Property. The registration of the commercial name is declaratory with respect to the right to exclusive use of the same. Said registration shall have the effect of establishing a presumption of good faith regarding the adoption and use of the commercial name.
- 2) The registration of a commercial name lasts for ten years and may be renewed for like consecutive periods. The registration may be cancelled at any time at the request of its holder.
- 3) The registration of a commercial name in the General Agency for Industrial Property shall be made without prejudice to the provisions relating to the recording of the businessmen and civil and commercial companies in the corresponding public registries, and without prejudice to the rights resulting from such recording.

Article 117.- Procedure for Registration of the Commercial Name

- 1) The registration of a commercial name and its modifications and annulment shall be carried out by following the procedures established for the registration of trademarks, insofar as is appropriate, and the fees established for trademarks shall be paid. The General Agency for Industrial Property shall investigate whether the name violates the provision of Article 114.
- 2) The classification of products and services utilized for trademarks shall not be applicable to the registration of the commercial name.

Article 118.- Transfer of the Commercial Name

- 1) The transfer of a company or establishment implies the transfer of the commercial name that identifies it, unless there is agreement to the contrary.
- 2) The transfer of a registered commercial name may be recorded in the General Agency for Industrial Property by virtue of any public document proving the transfer. The recording of the transfer shall be carried out according to the procedure applicable to the transfer of trademarks, insofar as appropriate, and shall be paid for at the rate established for that procedure.

Article 119.- Cancellation of the Commercial Name

- 1) At the request of any interested person and after hearing the holder, the General Agency for Industrial Property shall cancel the registration of a commercial name that is not in conformity with the stipulations of this law.
- 2) At the request of any interested party, the General Agency for Industrial Property shall cancel the registration of the commercial name that has been abandoned.

Article 120.- Application of Provisions concerning Trademarks

The registration of the commercial name shall be governed insofar as is applicable, and insofar as no specific provision exists, by the stipulations for trademarks in this Law.

SECTION II

SIGNS

Article 121.- Protection of the Sign

A sign used in a place of business shall be protected according to the provisions relating to the commercial name, which shall be applicable insofar as is appropriate. The sign may be registered according to those provisions.

SECTION III

EMBLEMS

Article 122.- Protection of the Emblem

An emblem used by a company shall be protected according to the provisions relating to the commercial name, which shall be applicable to it insofar as is appropriate. The emblem may be registered according to those provisions.

SECTION IV

COMMERCIAL SLOGANS

Article 123.- Registration of a Commercial Slogan

- 1) The exclusive right to use a commercial slogan shall be obtained through registration in the office of the General Agency for Industrial Property.
- 2) The application for registration of a commercial slogan must specify the trademark for which it will be used.
- 3) Commercial slogans containing allusions to similar products or trademarks or expressions that might damage such products or trademarks cannot be registered
- 4) A commercial slogan must be transferred together with the trademark symbol with which it is associated and its period of effectiveness shall be subject to that of the symbol.
- 5) The registration of a commercial slogan shall be in effect for 10 years as of the date of filing of the application and can be renewed for like periods while the trademark to which it refers is in force.
- 6) Relevant provisions contained in the chapter for trademarks shall be applicable to commercial slogans.

CHAPTER VI

GEOGRAPHIC INDICATIONS

SECTION I

GEOGRAPHIC INDICATIONS IN GENERAL

Article 124.- Utilization of Geographic Indications

A geographic indication may not be used commercially with relation to a product or service when such indication is false or deceptive with respect to the origin of the product or service, or when its use is likely to cause confusion to the public regarding the origin, quality, point of departure, characteristics or qualities of the product or service.

Article 125.- Indications Relating to the Merchant

Without prejudice to the standards for cutting and packaging, a merchant may place its name and domicile on the products that it sells, even when these come from a different place, so long as that name or domicile is presented along with a precise indication, in sufficiently prominent characters, of the place of manufacture or production of the products, or with another indication sufficient to avoid any error about the true origin of the products.

Article 126.- Actions against the Incorrect Use of Geographic Indications

Any interested person, and in particular the producers, manufacturers and craftsmen, consumers and the public ministry, may bring action, individually or jointly, before the competent authorities for any purpose relating to the fulfillment of what is set forth in Article 124.

SECTION II

DENOMINATIONS OF ORIGIN

Article 127.- Registration of Denominations of Origin

- 1) The General Agency for Industrial Property shall maintain a registry of denominations of origin, in which the denominations of domestic origin shall be registered, upon application by one or more of the producers, manufacturers or craftsmen who have their production establishment in the region or the locality of the country to which the denomination of origin corresponds, or by a corporation which groups them together, or upon application by any competent public authority.
- 2) Foreign producers, manufacturers or craftsmen, or the corporations that group them together, as well as competent public authorities of foreign countries, may register the

relevant foreign denominations of origin when this is set forth in any agreement or treaty of which the Dominican Republic is a party, or when reciprocity of treatment is granted to citizens and residents of the Dominican Republic in the corresponding foreign country.

Article 128.- Prohibitions to Registration

The following symbols cannot be registered as denomination of origin:

- a) one that does not conform to the definition of Article 70 letter i).
- b) one contrary to morality or public order, or which might lead the public to error concerning the point of origin, nature, method of manufacture, characteristics or qualities, or the aptness for use or consumption of the respective products.
- c) one which is the common or generic denomination of some product, a denomination being considered common or generic when it is considered as such both by those who are knowledgeable about that type of product and by the general public.

Article 129.- Application for Registration of the Denomination of Origin

- 1) The application for registration of a denomination of origin must indicate:
 - a) The name, address and nationality of the applicant or applicants and the place where their production or manufacturing establishments are located.
 - b) the denomination of origin whose registration is applied for.
 - c) the geographic area of production to which the denomination of origin refers.
 - d) the products for which the denomination of origin is used.
 - e) a summary of the essential qualities or characteristics of the products for which the denomination of origin is used.
- 2) The registration of origin can be applied for along with the generic name of the respective product or an expression related to that product, but the protection conferred by this law does not extend to the generic name or expression used.
- 3) The established fee shall be paid for the application for registration of a denomination of origin.

Article 130.- Procedure for Registration of the Denomination of Origin

- 1) The application for registration of a denomination of origin shall be examined in order to verify:
 - a) that the requirements of Article 129, numeral 1) and the corresponding regulatory provisions are met.
 - b) that none of the prohibitions set forth in Article 128 apply to the denomination the registration of which is applied for.
- 2) The procedures relating to the examination, the publication of the application, opposition, and the registration of the denomination shall be governed by the provisions applicable to the registration of trademarks, insofar as they are relevant.

Article 131.- Granting the Registration of the Denomination of Origin

- 1) The resolution by which the registration of a denomination of origin is granted, and its recording in the corresponding registry, shall indicate:
 - a) the geographic area of production to which the denomination of origin refers, the producers, manufacturers or craftsmen of which shall have the right to use said denomination.
 - b) the products to which the denomination of origin applies
 - c) the essential qualities or characteristics of the products to which the denomination of origin will be applied, except in cases in which, due to the nature of the product or some other circumstance, it is not possible to specify such characteristics.
- 2) The registration of a denomination of origin shall be published by the publication organ of the General Agency for Industrial Property.

Article 132.- Duration and Modification of the Registration of the Denomination of Origin

- 1) The registration of a denomination of origin has an indefinite duration.
- 2) The registration of the denomination of origin may be modified at any time that any of the points referred to in Article 131, numeral 1) has changed. The modification of the

registration shall be paid for at the established rate, and shall be subject to the procedure set forth for the registration of denominations of origin, insofar as it may be relevant.

Article 133.- Right of Utilization of the Registered Denomination of Origin

1) A registered denomination of origin may be used for commercial purposes, for the products indicated in the registration, only by the producers, manufacturers or craftsmen who carry out their activity within the geographic area indicated in the registration.

The use of the same by unauthorized persons shall be considered an act of unfair competition subject to sanction under relevant legislation.

2) All producers, manufacturers or craftsmen who carry out their activity within the geographic area and with relation to the products indicated in the registration, have the right to use the registered denomination of origin, even though they are not among those who applied for that registration.

3) Actions relating to the right to utilize a registered denomination of origin shall be brought before the General Agency for Industrial Property.

Article 134.- Annulment of the Registration of a Denomination of Origin

1) Upon application by any of the persons indicated in Article 126, the Registrar of Industrial Property shall declare null and void the registration of a denomination of origin when it is demonstrated that it is contained in any of the exclusions set forth in Article 128.

2) Upon application by any of the persons indicated in Article 126, the Registrar of Industrial Property shall cancel the registration of a denomination of origin when it is demonstrated that the qualities or characteristics indicated in the registration regarding the products designated by the denomination of origin do not correspond to those of the products put on the market with such denomination. However, the interested parties may apply for it again when they consider that the conditions for their protection have been restored.

TITLE III

COMMON STANDARDS

CHAPTER I

GENERAL PROVISIONS

Article 135.- Right to Priority

- 1) Any right to priority set forth in a treaty binding upon the Dominican Republic shall be governed by the relevant provisions of that treaty and, additionally, by those of this law.
- 2) A person who has filed an application for a patent for invention or utility model, or for registration of an industrial design or a trademark, in a country which grants reciprocity for these purposes to persons of Dominican nationality or domiciled in the Dominican Republic, as well as their assignees, has the right to priority to apply in this country for a patent or a registration for the same protection.
- 3) The right to priority lasts for twelve months, counted from the date of the first application in any foreign country, for patents for invention and for utility model, and six months for registrations of industrial designs and trademarks. An application filed in the Dominican Republic under a right of priority shall not be denied, invalidated or annulled by acts occurring during the period of priority that are carried out by the applicant himself or herself or by a third party, and these acts shall not produce the acquisition of any right by third parties with regard to the object of that application.
- 4) The claim of priority shall be made through an express statement which must be filed together with the application for patent or for registration, or within a period of two months counted from the date of the application. The statement of priority shall indicate, with regard to each application for which priority is invoked, the name of the country or of the office in which the priority application was filed, the filing date of that application and its number if known.
- 5) A copy of the application originating the priority must be filed within the three months following the filing of the application, including, when relevant, the description, the drawings and the claims, with certification of consent by the office of industrial property which has received said application, and accompanied by a certificate of the filing date of the priority application issued by said office; these documents are exempt from any notarization, and shall be accompanied by the corresponding translation.
- 6) For a single application for patent, and, if such be the case, for a single claim, a number of priorities or partial priorities can be claimed, which can originate from two or more different offices; in such case the period of priority shall be counted from the date of the earliest priority claimed and the right of priority shall cover only the elements of the application filed in the Dominican Republic which were contained in the application or applications. priority for which is claimed.

Article 136.- Joint Ownership

- 1) Joint title of application or of ownership of industrial property is governed by the following norms when there is no agreement to the contrary.
 - a) the modification, reduction, limitation or withdrawal of an application being processed must be effected jointly.
 - b) each co-holder must exploit or personally use the invention, utility model, industrial design or distinctive symbol that is the object of the application or the protective title, but must equitably compensate the co-holders who do not exploit or use said object and have not granted a license for exploitation or use of the same; in the absence of an agreement the compensation shall be set by the competent court.
 - c) transfer of the application or the protective title shall be effected by common agreement, but each co-holder may assign his or her quota separately, and the others have the right to preference for a period of sixty (60) days counted from the date on which the co-holder notifies them of his or her intention to assign his or her quota.
 - d) each co-holder may grant to third parties a non-exclusive license for exploitation or use of the invention, utility model, industrial design or distinctive symbol that is the object of the application or of the protective title, but must equitably compensate the co-holders who do not exploit said object and have not granted a license for exploitation or for use of the same; in the absence of an agreement the compensation shall be set by the competent court.
 - e) an exclusive license for exploitation or use can only be granted by common agreement among all of the holders.
 - f) the waiver, reduction, limitation or voluntary cancellation, complete or partial, of a title to industrial property shall be made via common agreement by all of the co-holders.
 - g) any co-holder may notify the others that it is abandoning its part of the application or title to industrial property in their benefit, freeing itself of any obligation to the others from the moment of the recording of the abandonment in the corresponding registry or, if it is an application, from the moment of the notification of abandonment to the General Agency for Industrial Property; the abandoned part shall be distributed among the remaining co-holders in proportion to their respective rights in the application or title.
- 2) The provisions of ordinary law on co-ownership shall be applied to whatever was not set forth in this article.

Article 137.- Constitution of a Guaranty

A patent for invention or for utility model, a registration for industrial design and a registration for trademark may be granted as guaranty for an obligation assumed by the holder, and may be the object of attachment or other restrictions on control. Such rights and measures must be recorded in favor of the creditor in the General Agency for Industrial Property, without which they shall have no legal effect. Such recording shall cease to be effective when the interested party so requests the General Agency for Industrial Property, appending the documents giving evidence of the termination of the obligation or of the lifting of the measure of attachment or other which had been recorded. The enforcement of the guaranty, attachment or other measure recorded shall be carried out pursuant to the applicable provisions of the ordinary law.

TITLE IV

OF THE NATIONAL OFFICE OF INDUSTRIAL PROPERTY

CHAPTER I

COMPOSITION, ATRIBUTES AND REQUISITES OF THE OFFICIALS OF THE NATIONAL OFFICE ON INDUSTRIAL PROPERTY

SECTION I

NATIONAL OFFICE OF INDUSTRIAL PROPERTY

Art. 138.- Creation of the National Office of Industrial Property.

The National Office of Industrial Property is hereby created under the Secretariat of State of Industry and Commerce with technical autonomy and with its own property. The National Office of Industrial Property shall have its principle domicile in the city of Santo Domingo. The National Office of Industrial Property shall also be able to establish other offices in other cities of the country.

Art. 139.- Attributes of the National Office of Industrial Property.

The National Office of Industrial Property shall have the attributions contemplated in the present law relative to its concession, maintenance and term of the patents of invention and the utility models, and of the registry of industrial designs and distinctive symbols.

Art. 140. Exemptions

The National Office of Industrial Property shall be exempt of all national and municipal taxes and fees, that could befall on its acts or judicial business.

SECTION II

OF THE DIRECTORY

Art.141.- Directory Composition.-

- 1) The National Office of Industrial Property shall function under the direction of a Directory, integrated by five (5) members: Secretary of State of Industry and Commerce, who shall preside it, Technical State Secretary to the Presidency, Secretary of State of Public Health and Social Assistance, Secretary of State of Education and Culture, and the Director of the Dominican Institute of Industrial Technology.
- 2) The members integrating this Executive Directory shall have as substitutes their respective appointed legal substitutes of the Institutions or Organisms they represent.

Art. 142.- Of the Directory's attributions.-

The National Office of Industrial Property shall have the following attributions:

- a) To designate the General Director of the National Office of Industrial Property;
- b) To ratify the Institution's officials proposed by the Executive Director;
- c) To approve the office's annual budget, its annual program and its organizational and operational manual;
- d) To propose to the government national policy with regard to Industrial Property, and to dictate the office's policy in accordance with it;
- e) To recommend to the executive power the modifications to the laws it should submit, as well the modifications to the regulations, resolutions and others that are necessary to adequate the country to the international conventions on this matter;
- f) To recommend the adhesion to treaties on the matter and to assure their application and enforcement in the country;

- g) Any other matter that pertains to the better functionality of the National Office of Industrial Property and of the development and protection of Industrial Property in the country;

Art.143 Of the General Director.

- 1) The General Director of the National Office of Industrial Property shall be the legal representative of the office. It shall have under its command the supervision of the technical and administrative officials of the said office. It shall designate the managers and the directors of the departments, as well as the examiners of each department.
- 2) The General Director of the National Office of Industrial Property shall have the following functions and attributions.
 - a) To elaborate the office's annual budget, its annual program and its operational manual, and to execute and apply the same, once approved by the office's Directory;
 - b) To technically support the office's Directory in the elaboration of policies regarding Industrial Property and to prepare the necessary documents to this end;
 - c) To prepare and to present to the Directory recommendations for the modification of the law, regulations, resolutions and other dispositions of Industrial Property of the country, as well as those necessary to give compliance to the treaties binding upon the country on this matter, as well as to prepare the documents and proposals to this effect;
 - d) To propose to the Directory the adhesion to treaties on Industrial Property and to prepare the documentation to this effect;
 - e) To propose to the Directory the officials of the Office for their ratification;
 - f) To discuss and decide, assisted by the body of advisors on the appeals submitted against the decisions of the Directors of the Departments;
 - g) To grant compulsory licenses, when such licenses are required, after the opinion of the body of advisors;
 - h) To take the necessary security measures in order to protect all information and data which, by their characteristics, must remain in a condition of confidentiality in order to prevent unauthorized disclosures.
- 3) The General Director shall be designated by the Directory, every five (5) years and may be removed from its office for reasonable causes;

- 4) It shall be considered reasonable causes that justify the removal of the Executive Director the following:
 - a) When negligence is manifestly proven in the fulfillment of the office on which case without the proper justification he shall stop fulfilling the obligations which have been conferred to him in accordance with the law, the regulations and the decisions of the Directory;
 - b) When the Director is responsible of fraudulent, illegal acts or operations or evidently opposed to the ends and interests of the institution;
 - c) By judgement subject to no recourse dictated by a criminal court of law. In case of imprisonment we shall remain disabled for the exercise of its office and shall be substituted by its legal substitute.
- 5) The General Director shall have a Superior Studies degree or its equivalent, with a minimum of five (5) years of practice in its area, proven experience on this field and be in complete exercise of its civil rights.

Art. 144.- Department Directors.

Department Directors shall have a Superior Studies degree or its equivalent, with a minimum of five (5) years of practice in their area, proven experience on this field and be in complete exercise of their civil rights.

Art. 145.- Distinctive signs and Inventions Department.

- 1) The National Office of Industrial Property shall have a Department of Distinctive Signs and other Inventions. The regulation shall be capable of creating other Departments.
- 2) It shall correspond to the Department of Distinctive signs to intervene on trademarks, commercial names and origin or geographic denominations.
- 3) It shall pertain to the Inventions Department to intervene on patents, industrial designs and utility models.

Art. 146.- Department Attributions

It shall be the attribution of the Departments:

- a) To hold and resolve in First Administrative Instance the Procedures of its competence;

- b) To hold and resolve the reconsideration recourses submitted against resolutions they have issued;
- c) To keep the corresponding registry in the area of their jurisdiction, being authorized to register rights, renew registrations and declare their annulment, cancellation or expiry;
- d) To declare the abandonment of registration application;
- e) To Authenticate or certify the transcripts of the documents they issue;
- f) To require to public sector entities, through the General Director, the data and information they require for the fulfillment of their obligations;
- g) To qualify as classified certain documents submitted to their review, in such cases where industrial or commercial secrets might be breached against any of the parties involved.

147.- Body of Advisors.

- 1) The body of advisors shall be the technical advisory branch of the National Office of Industrial Property and shall assist the General Director in the review of recourses submitted against the decisions taken by the Department Directors;
- 2) The Body of Advisors shall be integrated by five (5) members, the legal counsel of the National Office of Industrial Property, who shall function as Secretary and four (4) members chosen by the Directory by proposal of the General Director. Members shall be elected for a term of three (3), renewable years;
- 3) In those cases in which the workload merits it, they shall convene more than two times each month;
- 4) To qualify to be a member of the Body of Advisors, it is necessary to have a Superior Studies degree or its equivalent and be in full exercise of ones civil rights.

CHAPTER II PROCEDURE

Art. 148.- Representation

- 1) All persons may directly process their applications.

- 2) When an applicant or a bearer of an Industrial Property Right, has his or her domicile or headquarters outside the Dominican Republic, he or she must be represented by an agent domiciled in the Dominican Republic to whom all resolutions, correspondence, briefs and any other documentation emanating from the National Office of Industrial Property shall be serviced.

Art.- 149 Modification of the application

- 1) The applicant may modify or correct his or her application while it is being processed. The modification or correction of the application shall yield the established rates, save cases when such corrections are simple orthographic errors, which may be corrected free of payment.
- 2) In the case of an invention or utility model application, no modification or correction shall be admitted, if it implies an enlargement of the information contained in the original application.

Art.- 150 Modification and correction of the patent or registry.

- 1) The holder of a patent or a registry may at any time petition to register a change in the name, domicile or other information relative to the title-bearer, or to correct any error relative to the patent or registry. The change or correction shall take legal effect with regards to third parties from the moment of its inscription in the National Office of Industrial Property.
- 2) When the mistake may be attributed to the National Office of Industrial Property, the correction may be officially made.
- 3) With regards to patents, no correction or change shall be admitted when it implies a broadening of the technical disclosure contained in the initial application. With regards to trademark registrations, no change or correction shall be admitted that implies a change in the trademark or a broadening of products or services mentioned in the registry.
- 4) Having the modification been registered, the National Office of Industrial Property shall issue a new patent or registry certificate and shall announce it in the Official Branch.
- 5) The petition to register a modification or correction, shall yield the established rate, save when made to correct an error attributable to the National Office of Industrial Property.

Art. 151.- Withdrawal of an Application.

The applicant may withdraw an application while it is still being processed. The withdrawal of an application shall not give right to a refund of the rates paid.

Art. 152.- Deadlines

Deadlines shall be computed in accordance to Dominican Common Law.

Art. 153.- Continuances on Deadlines.

On petition of the interested party the National Office of Industrial Property may, under just cause, prudently delay the aforementioned deadlines mentioned in this law and in its regulatory dispositions, in order to answer a suit or to respond to any legal notice.

Art. 154.- Legal Actions before the National Office of Industrial Property.

Legal Actions before the National Office of Industrial Property shall be substantiated in accordance to the following terms:

- a) Lawsuits shall be submitted in written form, before the Director of the relevant Department, who shall decide over it, assisted by two of the departments examiners;
- b) The director of the relevant Department shall notify, in ten (10) days time, to be counted from the date of receipt, the suit submitted to the title-bearer of the rights, who shall answer in (30) days not counting the date of receipt of the notice and the date of term.
- c) The suit shall be served by the Director of the corresponding department, in under ten (10) days from the date of receipt of the same, to anyone registered in the registry and to anyone who had any registered right with regard to the Industrial Property Right, object of the suit.
- d) The response of a Title-Bearer shall be notified to the party pursuing the suit within (10) days from the day he received notice, who may exercise its right to respond to the arguments of the Title-Bearer, within thirty (30) days not counting the date of receipt of the notice and the date of term. The Director of the relevant Department must dictate a duly motivated resolution in under two (2) months from the expiry of the last deadline awarded to the parties.

e) Having fulfilled the response and evidence procedures, the file shall be sent to the Director and the examiners, for a decision, and when the nature of the suit shall call for it, one or more technical reports shall be made.

f) The Director of the relevant department shall dictate his duly motivated resolution in under three (3) months, from the day of the expiry of the last deadline awarded to the parties.

g) The resolution dictated by the Director of any of the Departments, must be notified to the parties, in the form established by the Regulation.

Art. 155.- Intervention by Interested third parties.

In all of the procedures relative to the concession of an compulsory license, the withdrawal, annulment, cancellation, revocation, or expropriation of an industrial property right, any registered licensee and any beneficiary of any guarantee right, or of a seizure or any other registered dominion restriction with regards to the industrial property rights, object of the suit.

Art. 156.- Effects of the declaration of annulment

- 1) The effects of the annulment declaration of a patent or registry could be predated to the date of respective concession, without any harm or damage of the conditions or exceptions established in the resolution that declares the annulment.
- 2) When the annulment of a patent or registry is declared, with respect to which an exploitation or use license was granted, the licensor shall be exempted from returning the payments made by the licensee, unless the licensee had economically benefited from the license.

Art.157.- Administrative Appeals.

- 1) The Resolutions dictated by the Department Directors may be appealed, in the term of fifteen (15) days, starting with the date of valid written notification of the resolution. The Appellate recourse shall be ruled by the General Director assisted by the Consultant Body.
- 2) The resolution of the General Director extinguishes the administrative action and becomes mandatory. This Resolution may be appealed in the Appellate Court of the relevant Judicial Department in which the National Office of Industrial Property is located, in its Civil and Commercial attributions, in the term of thirty (30) days not

counting the day of proper and valid written notification and the day of arrival of the term. The ruling of the Courts of Appeals may either confirm or revoke the resolution of the General Director.

Art.158.- Of the appeal before the Supreme Court.

The rulings and sentences rendered by the Court of Appeals shall be susceptible of appeal before the Supreme Court, according to the dispositions established for civil and commercial matters in Law No. 3726, of December 29th 1953, or by any subsequent law that modifies or substitutes the preceding law.

CHAPTER III

REGISTRY AND PUBLICATION

Art.159.- Registration and Publication of the Resolutions.

The National Office of Industrial Property shall register in the corresponding registry and shall order the publication in the official organ, of the resolutions and rulings pertaining to the of concession of both compulsory licenses, and public interest licenses as well as those pertaining to the annulment, revocation, renouncement, cancellation or impounding of any Industrial Property right.

Art. 160.- Registry consultation

- 1) The Industrial Property Registries are public and may be examined and consulted by any person, at no cost, in the National Office of Industrial Property.-
- 2) Any person may obtain copies of the registry's inscriptions, providing the payment of the established fee.

Art. 161.- File Consultation

- 1) Any person may consult in the National Office of Industrial Property, files relative to the patent or registry applications which have been published.
- 2) If an applicant has not given his written consent, the file of his\her patent or registry application of industrial design may not be consulted by third parties before its publication, unless the person requesting to consult the file proves that the applicant has served him to cease an industrial or commercial activity, invoking the processing of the

application. Also may not be consulted without the written consent of the applicant, the applications that before their publication have been withdrawn or have been abandoned.

- 3) Any person may obtain copies of the documents contained in the files of an application that has been published by paying the established rate, as well as accessing the filed biological material.

CHAPTER II

CLASSIFICATIONS

Article 162.- Classification of Patents

For the purposes of classification by technical subject of the documents relating to patents for inventions and for utility models, the International Classification for Patents, established by the Strasbourg Agreement of 24 March, 1971, with its revisions and updates, shall be applied.

Article 163.- Classification of Industrial Designs

For purposes of systematic classification of industrial designs, the International Classification of Industrial Drawings and Models, established by the Locarno Agreement of 8 October 1968, with its revisions and updates, shall be applied.

Article 164.- Classification of Trademarks

For purposes of the classification of the products and services regarding which the trademarks are used, the International Classification of Products and Services for the Registration of Trademarks, established by the Nice Agreement of 15 June, 1957, with its revisions and updates, shall be applied.

Article 165.- Application of the Classifications

The Director of Industrial Property may establish a program for gradual application of the classifications referred to in this Chapter if it is necessary for the classification or

reclassification of the inventions and trademarks recorded in the General Agency for Industrial Property.

TITLE V

ON THE VIOLATIONS OF THE RIGHTS TO INDUSTRIAL PROPERTY

UNIQUE CHAPTER

ON THE INFRINGEMENTS, PROCEDURE, SANCTIONS AND LAPSE OF RIGHTS TO INDUSTRIAL PROPERTY

Article 166.- On Sanctions

Whoever intentionally commits the following offenses shall incur in three months to two years of correctional prison and a fine of RD\$50,000.00 to RD\$100,000.00 or both penalties:

- a) Without the consent of the holder of a distinctive symbol, it uses an identical symbol or a registered trademark, or a direct copy or fraudulent imitation of that trademark, with relation to the products or services which it distinguishes, or to related products or services.
- b) Without the consent of the holder of a distinctive symbol it carries out, with respect to a commercial name, a sign or emblem, the following acts:
 - i) It uses commercially an identical distinctive symbol for an identical or related business.
 - ii) It uses commercially a similar distinctive symbol when this is likely to cause confusion.
- c) It uses commercially, with relation to a product or service, a geographic indication that is false or might deceive the public about the point of origin of that product or service or about the identity of the producer, manufacturer or merchant of the product or service.
- d) It uses commercially, with relation to a product, a denomination of origin that is false or deceptive or the imitation of a denomination or origin, even though the true origin of the product is indicated, a tradition of the denomination of origin is employed or the

denomination of origin is used accompanied by expressions such as "type", "kind", "manner", "seizure", and other similar qualifications.

- e) It continues to use an unregistered trademark similar, to the point of confusion, to another registered one or after the administrative sanction imposed for this reason becomes definitive.
- f) It offers for sale or puts into circulation the products or renders the services with the trademarks referred to in the preceding violation.
- g) It manufactures or makes products protected by a patent for invention or of utility model without the consent of its holder or without the respective license.
- h) It offers for sale or puts into circulation products protected by a patent for invention or utility model knowing that they were manufactured or made without the consent of the holder of the patent or registration or without the respective license.
- i) It uses patented processes without the consent of the holder of the patent or without the respective license.
- j) It offers for sale, sells or uses, imports or warehouses products which are the direct result of the utilization of patented processes, knowing that they were utilized without the consent of the holder of the patent or the person who has a license for exploitation.
- k) It reproduces or imitates industrial designs protected by a registration, without consent of their holder or without the respective license.
- l) Not being the holder of a patent or utility model or not already possessing the rights conferred by the same, it uses in its products or in its advertising denominations that might cause the public to err as to their existence.
- ll) It hides information or supplies false information to the General Agency for Industrial Property with the purpose of obtaining a patent that does not fulfill the requirements for patentability.

PARAGRAPH.- The responsibility for the actions above described, is extended to those who order or dispose their realization, to the legal representatives of the moral persons and to all those who, aware of the illegality of the action, take part in it, facilitate it or cover it.

Article 167.- On Actions

- 1) Actions for the application of the penalties indicated in the preceding article must be initiated by the holder of the right.
- 2) The provisions of ordinary penal law are applicable additionally and as long as they do not contradict this law.
- 3) None of the procedures contemplated in the present law, shall be submitted to the posting of the guarantee established in article 16 of the Civil Code and articles 166 and 167 of the Civil Procedure Code and its modifications.

Article 168.- Civil suit for Infraction

- 1) The holder of a right protected by virtue of this law may bring a civil suit before the competent court against any person infringing that right. He may also act against the person who carries out acts that evidently show the imminence of an infraction.
- 2) In the event of joint holding of a right, any of the joint holders may bring suit against an infraction of this right without the need of the consent of the others, unless there is an agreement to the contrary.

Article 169.- Active Legitimization of Licensees

- 1) An exclusive licensee whose license is recorded and a licensee under a compulsory license may take legal action against any third party who commits an infraction of the right that is the object of the license. For such purposes, the licensee who does not have a mandate to act from the holder of the right must, upon initiating the action, prove that he or she has requested that the holder bring the action and that more than two months have passed without the holder having acted. Even before this period has passed, the licensee may request that preservative measures be taken in conformity with Article 174. The holder of the right that is the object of the infringement may at any time appear in person at the hearings.
- 2) Every recorded licensee and every beneficiary of any right or credit recorded with regard to the infringed right has the right to appear personally at hearings at any time. For that purpose, the suit shall be notified to all persons whose rights appear recorded in relation to the infringed right.

Article 170.- Presumption of Use of the Patented Procedure

- 1) For purposes of civil proceedings, when the object of a patent is a procedure to obtain a new product within the terms of this law, the competent court may order that the defendant, who is commercializing an identical product, prove that the procedure used to obtain said product is different from the patented procedure. In the presentation of proofs in rebuttal, the legitimate interests of the defendant as to protection for his or her business and manufacturing secrets shall be taken into account.
- 2) In the cases set forth in this article it shall be presumed, unless there is proof to the contrary, that any identical product produced by a third party without the consent of the holder of the patent has been obtained through the patented procedure, so long as the product obtained by the patented procedure is new in terms of this law.

Article 171.- Claims to the Right to Protective Title

- 1) When a patent for invention, a patent for utility model, a registration of industrial design or a registration of distinctive symbol has been applied for or obtained by a person who does not have the right to obtain the patent or the registration, the affected person shall be able to bring action for recovery of his or her right before the National Copyright Office {*Oficina Nacional de Derecho de Autor*) so that the application being processed or the title or registration granted may be transferred to him or her, or so that he or she be recognized as the applicant or holder of the right. Indemnity for the damage caused may be demanded in the same action.
- 2) The suit for recovery of the right cannot be brought after the passage of five years counted from the date of granting the patent or the registration, or two years counted from the date on which the invention, utility model, industrial design or distinctive symbol began to be exploited or used in this country, whichever period expires later.

Article 172.- Limit for the Action for Infraction

The civil action for infringement of the rights conferred by this law lapses upon the passage of two years counted from the holder's having knowledge of the infringement, or five years counted from the last time the offender committed the act of infraction, whichever period expires first.

Article 173.- Measures Subject to Demand in an Action for Infraction

In a suit for infringement of the rights protected by virtue of this law, one or more of the following measures may be requested:

- a) Cessation of the actions which infringe the rights.
- b) Indemnity for damages and losses.
- c) Attachment of the objects resulting from the infraction, from publicity material making reference to those objects, and from the means which have been used exclusively to commit the infringement.
- d) Attribution of ownership of the objects or means referred to in letter c) in which case the value of the goods shall be imputed to be amount of the indemnity for damages.
- e) The measures necessary to avoid the continuation or repetition of the infraction, including the destruction of the attachment measures by virtue of that which is provided by letter c), when this is indispensable.

Article 174.- Preservative Measures (*Medidas Conservatorias*)

- 1) The person who brings or is going to bring suit for infraction of a right to industrial property may request from the court order immediate preservative measures with the object of ensuring the effectiveness of that action or the compensation for damages.
- 2) The court shall order preservative measures only when the person requesting them shows, by means of proofs that the court considers sufficient, the commission or imminence of the infraction.
- 3) The preservative measures may be requested before bringing action for infraction, together with it or after its commencement. If the measures are ordered before the action is initiated, they shall become ineffective if the action is not brought within a period of ten (10) days counted from the order.
- 4) The competent court may order as preservative measures those that would be appropriate to ensure the realization of the judgment that may be given in the respective action. The following preservative measures may be ordered, among others.
 - a) The immediate cessation of the acts which are alleged to constitute infraction, except that the defendant may opt to continue said actions by posting a bond or guarantee which the court will set.
 - b) Preventive attachment (*embargo preventivo*), inventory or deposit of samples of the objects involved in the infraction and of the means exclusively intended for carrying out the infraction.

- c) The competent court must order the plaintiff to contribute a deposit or equivalent guarantee sufficient to compensate the defendant for damages occasioned by the accusation in case the definitive decision should be adverse.
- d) When the holder of a right to trademarks has valid reasons to suspect that the importation of merchandise is being prepared under such conditions that its rights would be diminished, it may request the court to order the customs houses of the Dominican Republic, as a preventive measure, to suspend the release of said merchandise for free circulation or the exploitation of the same as the case may be.
- 5) The court will only accept the suit and adopt measures if the applicant presents, together with the suit and in writing, a sufficiently detailed description of the merchandise so that these may easily be recognized by the customs authorities.
- 6) The court shall order the deposit of a sum or a deposit of not less than three times the value of the importation in question, in cash or certified check, in the secretariat of the court, to guarantee the damages the defendant might suffer in case the plaintiff is unsuccessful in his or her suit.

Article 175.- Calculation of the Indemnity for Damages

For purposes of the calculation of the indemnity for damages, the corresponding part of the interrupted profits that should be replaced shall be calculated in terms of any of the following criteria:

- a) according to the benefits which the holder of the right would foreseeably have obtained if the competition from the offender had not existed.
- b) according to the amount of the profits obtained by the offender as a result of the acts of infringement.
- c) according to the price which the offender would have had to pay to the holder of the right for a contractual license, taking into account the commercial value of the object of the infringed right and the contractual licenses already granted.

PARAGRAPH: Any person who files a suit for infraction of rights shall be liable for the damages occasioned to the presumed offender in case of malicious or negligent legal actions or accusations.

TITLE VI

UNFAIR COMPETITION CONNECTED TO INDUSTRIAL PROPERTY

CHAPTER I

ACTS OF UNFAIR COMPETITION

Article 176.- General Principles

- 1) Every act carried out in the commercial or professional environment that is contrary to honest usage and practice is considered unfair.
- 2) In order for an act to be deemed one of unfair competition, it shall not be necessary that the person carrying it out be a businessman or professional, nor that a competitive relationship exist between the active subject and the passive subject of the act.
- 3) The provisions of this title may be applied independently of the provisions that protect industrial property and repress its infraction.

Article 177.- Unfair Competition Relating to Distinctive Elements of the Company

The following, among others, constitute acts of unfair competition:

- a) acts that are likely to cause confusion or a risk of association with regard to the products, the services, the company or the establishment of other persons.
- b) using or propagating false or unnecessarily injurious indications or allegations capable of vilifying or discrediting the products, the services, the company or the establishment of others.
- c) using or propagating indications or allegations that are likely to deceive or cause errors with regard to the business source, the geographic origin, the nature, the method of manufacture, the aptness for use or consumption, the quantity or other characteristics of products or services of one's own or of others.
- d) acts which imply taking undue advantage of the prestige or of the reputation of a person or of the company or distinctive symbols of a third party.
- e) acts that might damage or dilute the prestige or the reputation of a person or of the company or distinctive symbols of a third party, even though such acts do not cause confusion.

- f) using as a trademark, commercial name or other distinguishing business mark, a symbol the registration of which is prohibited in conformity with Article 73 letters g), h), i), j), k), l), ll), m) n), and ñ).
- g) using in trade a symbol the registration of which is prohibited in accordance with Article 74, without prejudice to the provisions concerning infraction of the rights regarding distinctive symbols.

Article 178.- Definition and Conditions to Protect a Secret

- 1) Any undisclosed commercial information that an individual or corporation possesses that might be used in any productive, industrial or commercial activity, and which is capable of being transmitted to a third party, shall be considered as a business secret.
- 2) A business secret shall be recognized as such for purposes of its protection when the information which constitutes it:
 - a) is not, jointly or in the configuration and precise joining of its components, generally known or easily accessible by persons who are in the circles that normally manage the respective information.
 - b) Has been subject to reasonable measures taken by its legitimate owner to keep it secret.

Article 179.- Unfair Competition Relating to Business Secrets

The following acts carried out with respect to a business secret shall constitute unfair competition:

- a) exploiting, without the authorization of its legitimate owner, a business secret to which access has been attained subject to an obligation of reservation resulting from a contractual or labor relationship.
- b) communicating or disclosing, without the authorization of its legitimate owner, the business secret referred to in subparagraph a) for the his/her advantage or the advantage of a third party, or to damage said owner.
- c) acquiring a business secret by illicit means or by means contrary to honest commercial usage.
- d) exploiting, communicating or disclosing a business secret that has been acquired by the means referred to in letter c)

- e) exploiting a business secret that has been obtained from another person when it is known, or should be known, that the person communicating it acquired the secret by the means referred to in letter c), or that he or she did not have authorization from its legitimate owner to communicate it.
- f) Communicating or disclosing the business secret obtained as in letter e), to one's own advantage or that of a third party, or to damage the legitimate owner of the business secret.

Article 180.- Unfair Means of Access to a Business Secret

A business secret is considered to be acquired by means contrary to honest usage and practices when the acquisition results, among others things, from industrial espionage, violation of a contract or other obligation, abuse of trust, unfaithfulness, violation of a duty of loyalty, or the instigation to carry out any of these actions.

Article 179.- Information to Authorize Sale

- 1) When the procedure before the national competent authority to authorize the marketing or the sale of a pharmaceutical or agrochemical product containing a new chemical component requires the presentation of secret data or information, these are protected from unfair commercial use by third parties.
- 2) The secret data or information referred to in the preceding paragraph are protected against disclosure. The disclosure may be carried out by the national competent authority when it is necessary to protect the public, or when adequate measures have been adopted to ensure that the data or information are protected against their unfair commercial use by third parties.

CHAPTER II

ON ACTIONS AGAINST UNFAIR COMPETITION

Article 182.- Proving an Act of Unfair Competition

Without prejudice to any other action, any interested person may request the court to pronounce upon the legality or illegality of any act or commercial practice in the light of the provisions of this title.

Article 183.- Action against an Act of Unfair Competition

- 1) Any person who considers himself or herself affected by an act of unfair competition may initiate action before the competent judicial authority.
- 2) Besides the person directly damaged by the act, any association, federation, union or other entity representative of any professional, business or consumer sector shall be enabled to exercise judicial action when the interests of their members are affected.

Article 184.- Limit to the Action for Unfair Competition

The action for unfair competition is limited to four years counted from the last time the unfair act was committed.

TITLE VII

TRANSITORY AND FINAL PROVISIONS

CHAPTER I

TRANSITORY PROVISIONS

Article 185.- Applications for Patents in Process

Applications for patents for invention that are being processed on the date this law comes into force, shall continue being processed according to the preceding legislation, but the patents granted from that date on shall be subject to the provisions contained in this law, with the exception of those relating to the nullity of the patent set forth in Article 34 for which the provisions of the former legislation shall be applied.

Article 186.- Patents in Force

- 1) Patents for invention granted pursuant to Law 4994 of April 26, 1911, shall be governed by the provisions of that legislation, with the sole exception of matters relating to the aspects treated in the following articles of this law and the corresponding regulatory provisions, which shall be applicable to those patents as of the date on which this law comes into force:
 - a) Article 10, with regard to the fees for maintaining the patent.

- b) Article 28, whereby the annual fees shall be charged only for the remaining years of effectiveness of the patent and the scale of annual fees shall be applied beginning with the lowest fee set forth in that scale.
 - c) Articles 29, 30, 31, 32, 33, numerals 2) and 3), 34, numeral 5, 36, 38, 40, 41, 42, 43, 44, 45, 46, 47 and 48.
 - d) Articles 136, 150, 154, 155, 156, 157 and
 - e) Articles contained in Titles 6 and 7, insofar as relevant, when the corresponding actions are brought after the date of this law coming into force..
- 2) Patents for invention granted under Law 4994 of 1911 shall last only for the term granted pursuant to said law.

Article 187.- Applications Being Processed Relating to Trademarks

Applications for registration or renewal of trademark which are in process on the date this law comes into force, shall continue being processed according to the former legislation, but the registrations and renewals granted shall be subject to the provisions of this law.

Article 188.- Registrations in Force

Trademarks and other distinctive symbols registered pursuant to the former legislation shall be governed by the provisions of that legislation, except for the matters treated in the following articles of this law and the corresponding regulatory provisions which shall be applicable to trademarks and distinctive symbols as of the date this law comes into force:

- a) Articles 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96 and 97.
- b) Articles 116, 118, 119 and 120.
- c) Articles 150, 152, 154, 155, 156, 157, insofar as relevant, when the corresponding actions are initiated after the date this law comes into force.
- d) Articles contained in Title 6 and 7 insofar as relevant when the actions are initiated after the date of enforcement the present law.

Article 189.- Transitory

Conflicts about industrial property shall be tried by the ordinary courts. For such purposes, the presentation of expert opinion shall be required as indispensable to bringing the corresponding case to trial.

CHAPTER II

FINAL PROVISIONS

Article 190.- Regulation

The President of the Republic shall promulgate the regulation for this law within one hundred and twenty days counted from its publication in the Official Gazette.

Article 191.- Amount of the Fees Set Forth in the Law

- 1) The amounts of the fees set forth in this law shall be determined by the General Agency for Industrial Property. The annual fees for maintenance of patents for invention and patents for utility model shall be established on an ascending scale.
- 2) The General Agency for Industrial Property shall establish the charges which shall correspond to such new information services as may be established.

Article 192.- Repeals

Law 1450 of December 30, 1937 on Trade Marks; Law 4994 of 1991 on Patents for Invention; Law 2926 on Descriptive Model for Empty Bottles, and any other provision contrary to this law, are repealed.

Article 193.- Application of the law.

The present law shall be applicable from the date of its promulgation.

In Santo Domingo, National District, this April 4th, 2000.

Rafaela Alburquerque
President

Ambrosina Saviñón Cáceres
Secretary

Rafael Angel Franjul Troncoso
Secretary

LEONEL FERNANDEZ
President of the Dominican Republic

By the attributions invested in me by article 55 of the Constitution of the Republic:

I hereby promulgate the present law and dispose that the same be publicized in the Official Gazette for its general knowledge and compliance;

In Santo Domingo, National District, this May 8th, 2000.

Leonel Fernández