



## WORLD INTELLECTUAL PROPERTY ORGANIZATION

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### **MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS AND PROTOCOL RELATING TO THAT AGREEMENT**

#### **Portugal: Requirement to File a Declaration of Intention to Use a Mark**

1. Article 195 of the Portuguese Industrial Property Code, in the version that is in force as from June 1, 1995, governs the procedure relating to the declaration of intention to use a mark and the consequences of failure to file such a declaration.
2. Paragraph 1) of the above-mentioned Article provides that “A declaration of intention to use the trademark should be filed with the National Institute of Industrial Property every five years as from the date of registration, with the exception of those years in which renewal fees are due.”
3. Paragraph 2) specifies that the said declaration “should be filed during a period of one year, starting six months before, and ending six months after, the due date of the five-year period concerned.”
4. Paragraph 6) provides that “with respect to international registrations, the time limit to file a declaration of intention to use a trademark starts on the date of the international registration.” For example, where an international registration bears the date of January 10, 1995 (and where Portugal was designated in the international application), the declaration of intention to use the mark should be filed with the National Institute of Industrial Property of Portugal (INPI) within the prescribed time limits before and after the due date of January 10, 2000, that is, between July 10, 1999, and July 10, 2000.
5. In addition, with respect to Article 195.1), INPI states that *the payment of the balance at the expiration of the first ten-year period is considered as a renewal, and the declaration of intention is therefore not required on this occasion.*

#### International Registrations Effected Before April 1, 1996

6. In the example given in paragraph 4,
  - (a) where the basic fee has been paid for 20 years, the declaration of intention to use the mark should be filed within the prescribed time limits before and after the due dates of January 10, 2000, January 10, 2005, and January 10, 2010;
  - (b) on the other hand, where the basic fee has been paid for 10 years, the declaration of intention to use the mark will not be required on January 10, 2005, when the payment of the second installment for the second period of 10 years becomes due; it will only have to be filed within the prescribed time limits before and after the due dates of January 10, 2000, and January 10, 2010.

### International Registrations Renewed Before April 1, 1996

7. In the case, for example, of an international registration that was renewed on January 10, 1995, the declaration of intention to use the mark will have to be filed with the Portuguese INPI every five years, within the prescribed time limits before and after the due dates of January 10, 2000, January 10, 2005, and January 10, 2010.

### International Registration Effected or Renewed as from April 1, 1996

8. In the case of an international registration dated April 10, 1996, or renewed on this date (and in respect of which the fees have been paid for a period of 10 years), the declaration of intention to use the mark will only be required within the prescribed time limits before and after the due dates of April 10, 2001, and April 10, 2011.

### Subsequent Designations

9. Where Portugal has been the subject of a subsequent designation under Article 3<sup>ter</sup>(2) of the Madrid Agreement or Protocol, the period of five years at the end of which the declaration of intention must be filed likewise starts to run from the date of the international registration, and not from the date of the subsequent designation of Portugal. However, Article 195.7) of the Code provides that this declaration “may not be required before the expiry of a period of five years from the date of the subsequent designation of Portugal.” Thus, for example, in the case of an international registration dated January 10, 1996, the declaration of intention to use the mark will not be required on April 10, 2001, if Portugal has been the subject of a subsequent designation recorded in the International Register between these two dates. The said declaration will be required for the first time within the prescribed time limits before and after the due date of April 10, 2011.

### Consequences of Failure to File a Declaration of Intention to Use the Trademark

10. The wording of paragraphs 3) to 5) of Article 195 of the Portuguese Industrial Property Code is as follows:

“3) Trademarks for which no declaration is filed shall not be opposable to third parties and the lapse of the respective registration shall be declared at the request of any interested party or if third party rights are prejudiced during the grant proceedings in respect of other registrations.

“4) If the lapse of the registration is neither requested nor declared, the registration shall once again be considered to be in force, on condition that the proprietor provides proof of use of the trademark.

“5) Even if proof of use of the trademark is not filed, renewal may be accepted, but the registration shall still be subject to paragraphs 3) and 4).”

11. The present notice, which has been approved by INPI, replaces the Corrigendum of October 6, 1995, inserted in *Les Marques internationales* No. 8/1995.

June 30, 1998