

REVISED TEXT OF THE INDUSTRIAL PROPERTY LAW

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TITLE I Preliminary provisions

Paragraph 1: Scope of application

Article 1.- The standards concerning the availability, scope and exercise of industrial property rights shall be governed by the present Law. Rights shall include marks, invention patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications and appellations of origin and other titles of protection that may be established by law.

Also, this Law categorizes conduct considered as unfair in the sphere of the protection of undisclosed information.

Article 2.- Any natural person or legal entity, Chilean or foreign, may enjoy the industrial property rights guaranteed by the Political Constitution, having previously to procure the relevant title of protection in accordance with the provisions of this Law. Natural persons or legal entities resident abroad shall, for the purposes of this Law, appoint an agent or representative in Chile.

Industrial property rights that are registered in accordance with the law shall have full effect from registration, without prejudice to the rights of the applicant and the other rights established in this Law.

Article 3.- The processing of applications, the grant of titles and other services relating to industrial property shall be the responsibility of the Department of Industrial Property, hereinafter the Department, under the Ministry of Economy, Development and Reconstruction.

Applications may be filed in person or by an agent.

The present Law shall guarantee that the protection afforded by industrial property rights regulated herein shall be granted while safeguarding and respecting biological and genetic heritage, as well as national traditional knowledge. The awarding of industrial property rights that constitute protectable elements, developed on the basis of the material obtained from that heritage or that knowledge shall be subordinated to the acquisition of that material in accordance with the law in force.

Paragraph 2: General procedures of opposition and registration

Article 4.- When an application has been filed and accepted for processing, publication of an extract therefrom in the Official Gazette [Diario Oficial], in the manner established in the Regulations, shall be mandatory. Publication errors considered to be non-substantive in the opinion of the Head of Department may be corrected by means of a resolution issued in the respective file. In the event of substantive errors, the Head of Department shall order a new publication, to be issued within 10 days of the date of the resolution ordering it.

Article 5.- Any interested party may file an objection to an application for marks, invention patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications and appellations of origin with the Department. The objection shall be made within 30 days of the publication of the relevant extract.

The period indicated in the preceding subparagraph shall be 45 days for invention patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications and appellations of origin.

Article 6.- Following the period specified in the preceding Article, the Head of the Department shall order the preparation of an expert report on applications for invention patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, in order to verify that they meet the conditions laid down in Articles 32, 56, 62 and 75 of this Law, as appropriate.

Article 7.- Where an expert report has been requested, it shall be prepared within a period of 60 days beginning from acceptance of the task. This period may be extended for another 60 days in cases where, in the opinion of the Head of Department, this is necessary.

The expert report shall be notified to those concerned, who shall have 60 days beginning from such notification to make whatever comments they consider appropriate. This period may be extended only once during the procedure, at the request of the party concerned, for up to 60 days. The comments of the parties shall be communicated to the expert, who will then have 60 days to respond to said comments.

Article 8.- Once the expert examination has been ordered, the applicant shall provide evidence of payment of the relevant fee in the following 60 days. If payment is not made within this time, the application shall be considered to be abandoned. In certain cases and at the request of the expert, the Head of Department shall set a specific sum to cover expenses useful and necessary for this to be carried out. The sum shall be paid by the applicant within 30 days. The cost shall be borne by the applicant for the invention patent, utility model, industrial drawing or design, layout designs or topography of integrated circuits or by the person requesting that the rights be invalidated.

Article 9.- In procedures where opposition has been raised, the applicant shall be given a transcript of this in order that he/she may assert his/her rights within 30 days in the case of marks, and within 45 days in the case of invention patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits, geographical indications and appellations of origin.

Article 10.- In the event of any disputes over relevant substantive matters, evidence shall be heard within a period of 45 days, except in the case of marks (in which case the period for receiving evidence shall be 30 days).

The period for receiving evidence may be extended by up to 30 days, in certain cases.

Article 11.- The periods of days specified in this Law and its Regulations shall be irrevocable and shall refer to working days, with Saturday not being considered a working day for those purposes.

Article 12.- In this procedure, the parties may avail themselves of all the usual forms of evidence in such matters, and also those indicated in the Code of Civil Procedure, with the exception of testimony.

The provisions of the second subparagraph of Article 64 of the said Code shall also be applicable in this procedure.

Article 13.- Notifications shall be made as prescribed in the Regulations.

Article 14.- Industrial property rights shall be transferable on death and may be the subject of any type of legal act, which shall be evidenced at least by private deed signed in the presence of a notary and recorded in short form in the margin of the relevant register.

For assignment of pending applications for registration of industrial property rights, a private deed signed in the presence of a notary, for which evidence is to be left in the respective file, shall suffice. In any event, trademarks shall be indivisible and none of the elements or characteristics of the distinctive sign covered by the title may be partly or separately transferred. In contrast, a mark covered by a record that includes one or more coverages for which it is registered and unrelated, while the rest of the record remains the property of the holder, may be partly transferred.

Geographical indications and appellations of origin shall be governed by Article 92 of this Law.

Article 15.- Powers relating to industrial property may be granted by public deed or private instrument signed before a notary or before the competent civil registration official in communes where there is no notary. Mandates from outside the country may be authorized or authenticated by the competent Chilean Consul without any other subsequent formality, or in the manner established in Article 345 of the Code of Civil Procedure.

Article 16.- In the procedures referred to in this Paragraph, evidence shall be assessed according to logical and reasonable rules.

Article 17.- Proceedings of opposition, invalidity of registration or transfer, lapse or any claim relating to their validity or effects, or industrial property rights in general, shall be heard by the Head of Department, in accordance with the formalities established in this Law.

The ruling shall be accompanied by a statement of reasons and shall conform as closely as possible to the provisions of Article 170 of the Code of Civil Procedure, where relevant.

Article 17 bis A.- Resolutions handed down in procedures involving objections and that contain or are based on manifest errors of fact may be remedied *ex officio* or at the request of a party within 15 days beginning from the date of its notification, both at first and second instance. For resolutions entered as part of proceedings involving no objection, these can be corrected in the same way, up to the end of the period stipulated for appealing a resolution that puts an end to the registration procedure.

Article 17 bis B.- The appeal procedure shall be used against resolutions handed down at first instance by the Head of Department, irrespective of whether any opposition was involved. The appeal should be made within 15 days of the notification of the resolution, to be submitted to the Industrial Property Tribunal.

The appeal procedure shall be devolutive and suspensive and shall apply to resolutions that are definitive or interlocutory.

Final judgments at second instance shall be appealed on merits before the Supreme Court.

Appeals shall be made and processed according to the relevant provisions of the Organic Courts Code and the Code of Civil Procedure.

Paragraph 3: Industrial Property Tribunal

Article 17 bis C.- The Industrial Property Tribunal, hereinafter the Tribunal, shall be a special and independent jurisdictional body, subject to the directive, correctional and economic authority of the Supreme Court, and shall be based in Santiago.

The Tribunal shall comprise six full members and four alternates. Each of the members shall be appointed by the President of the Republic, by means of a Supreme Decree of the Ministry of Economy, Development and Reconstruction, from a shortlist of three candidates put forward by the Supreme Court, drawn up following an open competition based on qualifications. Said competition should be based on objective, public, transparent and non-discriminatory conditions, established by means of a Supreme Court Resolution.

The members of the Tribunal shall be able to prove that they have held a lawyer's qualification for a minimum period of five years. In the selection of four of the full members and two of the alternates, specialized knowledge of industrial property shall be a requirement.

Article 17 bis D.- The Tribunal shall ordinarily operate in two courts and extraordinarily in three. Each court shall be made up of at least two full members. To settle the cases submitted to it, each court shall sit for at least three days a week.

The quorum for the court to sit shall be three members.

Resolutions shall be adopted by simple majority, with a casting vote by whoever presides in case of a tie. Furthermore, the rules contained in the Organic Courts Code shall be followed.

In complex cases, the Tribunal may order an expert report and determine who must bear the costs of it, without prejudice to the final settlement in terms of costs. In matters referred to the Tribunal, except those relating to trademarks, at the request of any of the parties the Tribunal shall order the report of one or more experts, who will then participate in its deliberations with a right to speak.

The President of the Tribunal, as well as the President of each court, shall be elected by the respective full members.

Article 17 bis E.- The monthly remuneration of the members of the Tribunal shall be 50 monthly tax units for full members and 20 monthly tax units for alternates.

In addition, members of the Tribunal shall receive 0.4 monthly tax units per case submitted to and settled by them. In all cases, the total monthly amount received by each member in this way may not exceed 50 monthly tax units.

Article 17 bis F.- The members of the Tribunal shall be subject to the grounds of legal impediment and objection established in Articles 195 and 196 of the Organic Courts Code.

There shall be grounds for impediment for the respective member of the Court where a case submitted to him/her involves the interest of a spouse or relative to the third degree of consanguinity or second degree of affinity; or people related to him/her by ties of adoption, or companies in which those people are his/her legal representatives, agents, directors, managers or in other managerial positions, or own directly or through other natural or legal persons a percentage of the company that enables them to participate in its administration or choose or have chosen one or more administrators.

The grounds may be accepted by the member in question. Otherwise, the matter shall be settled outright by the Tribunal, excluding the member concerned. A fine shall be applied of up to 20 monthly tax units to the party who filed the charge if the impediment or objection is unanimously rejected.

If for any reason the Tribunal does not have a quorum for at least one court to operate, there shall be a subrogation with ministers from the Santiago Court of Appeals, in accordance with the provisions of the Organic Courts Code.

The rules contained in Articles 319 to 331 of the Organic Courts Code shall apply to members of the Tribunal, with the exception of the provisions of Article 322. Full and alternate members of the Tribunal shall remain in their posts for three years, and may be reappointed for successive new periods.

Article 17 bis G.- The members of the Industrial Property Tribunal shall leave their posts on the following grounds:

- (a) end of legal term of appointment;
- (b) voluntary resignation;
- (c) reaching the age of 75;
- (d) dismissal for gross misconduct;

(e) supervening incapacity. This is understood as incapacity that prevents the member from carrying out duties for a period of three consecutive months or six months out of a year.

The measures relating to (d) and (e) above shall be enforced by the Supreme Court, at the request of the President of the Tribunal or two of its members, without prejudice to the disciplinary authority of the Supreme Court.

The resolution enforcing the dismissal shall indicate the facts on which it is based and the information reviewed to prove them.

If upon leaving a post there remained more than 180 days of the term, a replacement shall be appointed in accordance with the rules established in Article 17 bis C of this Law. In the cases listed in (b), (d) and (e) above, the replacement shall remain in the post for the time remaining of the term.

Article 17 bis H.- The Tribunal shall be guaranteed to have its own secretary-attorney, two court rapporteurs and four administrative officials from the staff of the Under-Secretariat of Economy, Development and Reconstruction, who will be permanently assigned to the Industrial Property Tribunal. In all matters, they shall be governed by the rules applicable to officials of the Under-Secretariat, except where this is incompatible with the nature of their duties.

Any of the rapporteurs may replace the secretary-attorney, and vice versa.

Article 17 bis I.- The secretary-attorney, rapporteurs and administrative officials may, when necessary, be replaced or substituted by officials from the Under-Secretariat of Economy, Development and Reconstruction who fulfill the requirements for occupying the post for which they are the substitute or replacement, as required. Staff may also be recruited on a temporary basis when so required by the Tribunal, subject to the prior authorization of the Budget Department.

The furniture, equipment, material and any service or material needed for the normal functioning of the Tribunal shall be the administrative and financial responsibility of the Under-Secretariat of Economy, Development and Reconstruction.

The Public Sector Budget Law shall, each year, include the resources necessary for the functioning of the Tribunal. For this purpose, the President of the Tribunal shall communicate the financial requirements to the Minister of Economy, Development and Reconstruction, who shall include them in the requirements of that Ministry, in accordance with the rules established for the public sector.

Article 17 bis J.- The secretary-attorney shall be the direct authority for the staff assigned to the Tribunal for administrative purposes, without prejudice to other specific duties and assignments that may be assigned or delegated by the Tribunal.

Article 17 bis K.- Before taking up their post, the members of the Tribunal, secretary-attorney and rapporteurs shall swear or promise to uphold the Constitution and laws of the Republic before the President of the Tribunal, with the secretary-attorney acting as authenticating officer. The President shall, in turn, take the oath before the longest-serving Minister.

Paragraph 4: Payment of fees

Article 18.- The grant of invention patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits shall be subject to the payment of a fee the equivalent of two monthly tax units for every five years for which the right is granted. The equivalent of one monthly tax unit shall be paid on the filing of the application, without which it shall not be processed. Once the application has been accepted, the fee shall be paid for the first 10 years for invention patents and the first five years for utility models, industrial drawings and designs, layout designs or topographies of integrated circuits.

Were the application to be rejected, the sum paid would inure to the State.

The payment of fees for the second decade or five-year period (depending on whether this is for invention patents, utility models, industrial drawings and designs, layout designs or topographies of integrated circuits) shall be made before the end of the first decade or five-year period, or within six months following the end of that period, with a surcharge of 20 per cent for every month or portion of a month from the first month of the grace period. If the payment is not made within the stipulated time, the rights referred to in this article shall expire.

Article 18 bis A.- Applicants for rights referred to in the previous article, who lack the relevant financial means, shall have access to registration without the need to pay any type of fees. To benefit from this, the applicant should attach to the application: a sworn statement declaring lack of financial means, as well as the documents required by the Regulations under this Law.

Once this benefit has been granted, the holder shall not have to make the payments referred to in the first subparagraph of Article 18, deferring what was not paid for successive years as determined by the Regulations. The registration shall

include an indication of the deferment and the obligation to pay the sum deferred. This obligation shall apply to whoever may be the holder of the registration.

The cost of the expert report referred to in Article 6 of this Law shall also be deferred, and the Head of Department must appoint an expert from the register that the Department uses according to a rotation system established by the Regulations Under this Law. The expert shall be obliged to accept the assignment or else face being removed from the register, and must perform the assignment with due diligence and speed. In the register there shall be noted the name of the expert who completes the report and the fees earned; these must be paid in the time established by the Regulations by the person who appears as registration holder.

If the deferred expert fees and duties are not paid in time, the Department shall declare the patent to have lapsed.

Article 18 bis B.- The registration of trademarks, geographical indications and appellations of origin shall be subject to the payment of a fee the equivalent of three monthly tax units. The equivalent of one monthly tax unit shall be paid on the filing of the application, without which it shall not be processed. Once the application has been accepted, the payment of the fee shall be completed. Were the application to be rejected, the sum paid would inure to the State.

Renewals of mark registration shall be subject to the double payment of the fee indicated in the previous subparagraph. The payment may be made within six months of the registration expiry, with a surcharge of 20 per cent for every month or portion of month from the first month after expiry of the period established in Article 24 of this Law.

Geographical indications and appellations of origin shall not be the subject of renewal payments established for trademarks in the previous subparagraph.

Article 18 bis C.- The filing of appellations shall be subject to the payment of a fee the equivalent of two monthly tax units. The filing should be accompanied by the receipt of payment of the relevant fee. If the appellation is accepted, the Industrial Property Tribunal shall order the reimbursement of the sum deposited, in accordance with the procedure indicated in the Regulations.

Article 18 bis D.- The registration of transfers of domain, licenses for use, pledges and changes of name and any other type of encumbrance that may affect invention patents, utility models, industrial drawings and designs, trademarks, layout designs or topographies of integrated circuits shall be preceded by payment of a fee the equivalent of one monthly tax unit. Said acts may not be invoked against third parties unless they are registered with the Department.

Article 18 bis E.- The fees stipulated in the previous articles shall inure to the State, and evidence of payment provided within 60 days from the date of enactment of the resolution authorizing the relevant registration shall be provided; otherwise the application shall be considered abandoned and shall be shelved.

This resolution shall be notified by certified letter according to the form and conditions established by the Regulations.

Article 18 bis F.- Registrations of trademarks that identify services and are restricted to one or more provinces shall be deemed to extend throughout the country.

Registrations of trademarks made by province to cover commercial establishments shall be understood to cover the entire region or regions in which the respective provinces are located.

Holders of registrations referred to in the two previous subparagraphs who, for the purposes of this article, extend the territorial scope of their mark protection, may not provide services or set up commercial establishments under those marks in the same provinces where the same or similar marks are registered for services or establishments of the same kind, on pain of liability for the offence referred to in Article 28(a) of this Law.

TITLE II Trademarks

Article 19.- The term trademark shall include any sign likely to be a distinguishable graphical representation in the market of goods, services or industrial or commercial establishments. Such signs may consist of words, including personal names, letters, numerals, figurative elements such as images, graphics, symbols, combinations of colors, as well as any combination of these signs. When the signs are not inherently distinctive, they may still be registered if they have become distinctive through use in the national market.

Marketing or advertising phrases may also be registered, provided that they are associated with or attached to a registered mark of the good, service or commercial or industrial establishment for which they will be used.

The nature of the goods or services to which a mark is to be applied shall in no case form an obstacle to registration of the mark.

Article 19 bis A.- Invalidation or expiry for non-payment of renewal fees shall produce the same effects for marketing phrases associated with the registration. As a result, when marks have been cancelled or expired, the Department shall cancel registrations of marketing phrases attached to the cancelled or expired mark *ex officio*. A margin note of this should be made in the corresponding registration.

Article 19 bis B.- Marketing phrases may not be assigned or transferred, unless they are assigned or transferred with the main registration with which they are associated.

Article 19 bis C.- Registrations of marks that contain signs; figures; numerals; colors; word forms, prefixes, suffixes roots or segments in common use or likely to be those of a generic, indicative or descriptive nature, shall be understood to grant protection to the mark as a whole and shall be awarded with explicit reference to the fact that protection is not afforded to the elements considered in isolation.

Article 19 bis D.- A mark shall grant the holder the exclusive and excluding right to use it in the course of trade, in the form in which it has been awarded and in order to distinguish goods, services and commercial or industrial establishments included in the registration.

As a result, the holder of a registered mark may prevent any third party from using, without his/her consent, identical or similar marks in the course of trade for goods, services or commercial or industrial establishments that are the same or similar to those for which the registration has been granted (provided that the use made by the third party may be misleading or confusing).

When the use made by the third party relates to an identical mark for identical goods, services or commercial or industrial establishments, it shall be presumed that confusion exists.

Article 19 bis E.- The right awarded by the mark registration shall not authorize the holder to prohibit third parties from using the mark for goods legally marketed with that mark in any country by the holder or with the holder's explicit consent.

Article 20.- The following may not be registered as marks:

- (a) Coats of arms, flags or other emblems, the names or acronyms for any State, international organizations or State public services.
- (b) Referring to their subject, technical or scientific terms, names of plant varieties, common terms recommended by the World Health Organization (WHO) and those indicating therapeutic effect.
- (c) The name, pseudonym or likeness of any natural person, except with consent of that person or the heirs if the former is deceased. However, the names of historical figures may be registered if at least 50 years have elapsed since their death, provided that this does not affect their honor.

Names of people may in any event not be registered when that would constitute an infringement of letters (e), (f), (g) and (h) below.

- (d) Those that reproduce or imitate official signs and hallmarks indicating control or warranty adopted by a State without its authorization; and those that reproduce or imitate medals, diplomas or distinctions awarded in national or foreign exhibitions, where the registration thereof is applied for by a person other than the one who won them.
- (e) Expressions or signs used to indicate the type, nature, origin, nationality, provenance, destination, weight, value or quality of goods, services or establishments; those generally used in trade to designate a certain class of products, services or establishments, and that do not have a distinctive character or describe goods, services and establishments to which they apply.
- (f) Those that could be misleading or deceptive in terms of the provenance, quality or type of goods, services or establishments, including those belonging to different classes whose coverage is linked to or indicates a connection to the respective goods, services or establishments.
- (g) Identical marks or graphically or phonetically similar marks that may be confused with other marks registered abroad to distinguish the same goods, services or commercial or industrial establishments, insofar as the latter marks enjoy fame and renown in the sector of the public that usually consumes those commercial or industrial goods, requests those services or has access to such establishments in the country of origin of the registration.

Once the registration has been rejected or invalidated on these grounds, the holder of the well-known mark registered abroad shall apply for registration of the mark within 90 days. If the holder does not do so, the mark may be applied for by any person, with priority given to the person whose application was rejected or invalidated for the 90 days following expiry of the right of the holder of the mark registered abroad.

Similarly, marks registered in Chile that are famous and well known shall be able to prevent the registration of identical or similar signs that are the subject of applications to distinguish goods, services or commercial or industrial establishments that are different and unrelated, provided that the latter have some connection with the goods, services or commercial or industrial establishments distinguished by the well-known mark and also provided that this protection is likely to damage the interests of the holder of the registered well-known mark. In this case, the fact of being famous and well known shall be determined in the relevant sector of the public that usually uses those goods, requests those services or has access to commercial or industrial establishments in Chile.

(h) Those identical or graphically or phonetically similar that could be confused with others already registered or validly requested previously for identical or similar goods, services or commercial or industrial establishments belonging to the same or related classes.

These grounds shall also be applicable to unregistered marks that have been genuinely and effectively in use prior to the application for registration within the

national territory. Once the registration has been rejected or invalidated on these grounds, the user of the mark shall apply for registration of the mark within 90 days. If the user does not do so, the mark may be applied for by any person, with priority given to the person whose application was rejected or invalidated for the 90 days following expiry of the right of the user.

Notwithstanding the provisions of the first subparagraph of this letter, the Department shall accept trademark coexistence agreements, provided that this does not transgress rights previously acquired by third parties or lead to confusion among public consumers.

(i) The shape or color of goods or packages, including the color itself.

(j) Geographical indications and appellations of origin, legally protected, in relation to the object they cover.

(k) Those that contradict public order, morals or proper practice, including the principles of fair competition and trade ethics.

Article 20 bis.- In the event of a mark having being previously applied for abroad, the interested party shall have priority for filing the application in Chile during the six months following the filing date in the country of origin.

Article 21.- The registration of trademarks shall be carried out in the Department and applications for registration shall be filed in accordance with the instructions and form established in the Regulations.

Article 22.- Once an application is filed, the Registrar of Marks shall check compliance with all the formalities required for the application to be valid. Were the Registrar of Marks to detect some error or omission in this formal examination, it would be up to the interested party to make the relevant corrections or clarifications within 30 days, without losing the date of priority. If the correction is not received in that time, the application shall be considered abandoned. The resolution declaring the application abandoned may be challenged with the Head of Department, in accordance with the general rules. If no correction is made or complaint accepted, the application shall be considered abandoned.

If the Head of Department accepts the application for processing, the application may not subsequently be rejected *ex officio* for the same reason and legal grounds cited when the complaint was made.

If avoiding the previous objection raised to the application requires other formalities to be carried out, the applicant has the right to ask for the procedure to be suspended until these are completed. If the formalities that formed the basis of the request do not begin within 60 days from the date when this is legally possible, the application shall be considered abandoned.

Once the period for raising oppositions has ended, the Head of Department shall carry out an in-depth analysis of the application and shall indicate if there are grounds for ordering the *ex officio* rejection of the request.

These comments shall be forwarded to the applicant, who must respond to them within the time given to answer oppositions and at the same time, where they exist.

Following this period, having complied with the other due diligence in the procedure, the Head of Department shall hand down a final resolution on the acceptance or rejection of the application. In this case, the application shall not be rejected on different grounds from those contained in oppositions or in the comments of the Head of Department.

Article 23.- Each mark may only be applied for to cover specific and particular goods or services, with an indication of the class(es) of the International Classification to which they belong.

Applications may be made for marks to distinguish commercial or industrial manufacturing or merchandising establishments associated with specific and determined products from one or more classes; and advertising phrases to be used to advertise already registered marks.

Article 23 bis A.- For the purposes of the payment of fees, the application or registration of a mark for goods and services shall be considered a different application or registration for each class, irrespective of the number of specific products or services included in each one. What is stipulated in the previous article shall also be applicable to the various classes of goods covered by industrial and commercial establishments. This principle shall be extended to both new registrations and registration renewals.

Article 23 bis B.- Registrations of marks to distinguish industrial goods, services and establishments shall be valid for the entire territory of the Republic.

Registrations of marks that protect commercial establishments shall only apply to the region where the establishment is located. Should the interested party wish to have the ownership of the same mark extended to other regions, this should be stated in the registration application, and the fee corresponding to an application and registration per region shall be paid.

Article 24.- Registration of a mark shall be for a term of ten years beginning from the date of registration. The holder shall have the right to request renewal by equal periods while it is in force or within 30 days of the expiry of the period.

Article 25.- Any registered mark used in trade shall visibly bear the words “Marca Registrada” (registered mark), or the initials “M.R.”, or the letter “R” inside a circle. Although failure to fulfill this requirement shall not affect the validity of the registered mark, those who do not comply with this provision will be unable to bring the criminal proceedings referred to in this Law.

Article 26.- A declaration of invalidity of the registration of trademarks shall be issued when any of the prohibitions established in Article 20 of this Law is infringed.

Article 27.- The action invalidating the registration of a mark shall expire after five years following the date of registration.

The action invalidating a registration obtained in bad faith shall not expire.

Article 28.- A fine of between 25 and 1,000 monthly tax units payable to the State shall be imposed upon:

(a) those who with ill intent use, for commercial purposes, a mark identical or similar to one already registered for the same goods, services or establishments or for goods, services or establishments related to those included in the registered mark. This shall be understood without prejudice to the provisions of Article 19 bis E.

(b) those who use, for commercial purposes, a non-registered, expired or cancelled mark, with the indications corresponding to a registered mark or imitating them.

(c) those who, for commercial purposes, use containers or packaging that bear a registered mark without the right to use it and without the mark having been previously erased, unless the marked packaging is used to package products different from and unrelated to those protected by the mark.

Any person committing a second or subsequent offense within five years following the application of a fine, shall receive another fine no less than the double of the previous one and up to a maximum of 2,000 monthly tax units.

Article 29.- Those ordered to pay a fine under the previous article shall also be bound to pay the costs and losses and damages of the owner of the mark.

The equipment and elements directly used for falsification or imitation and the objects bearing the counterfeited marks shall be confiscated. Objects with counterfeited marks shall be destroyed. As for equipment and elements used, it shall be up to the competent judge to decide their fate by ordering that they be destroyed or given to charity.

Article 30.- When an unregistered mark is being used by two or more people at a time, the person who registers the mark may not take action against those who might continue using the mark until at least 180 days following the date of registration.

Similarly, if a mark is cancelled, the holder of the registration used as a basis to announce the invalidity, shall not take action against the holder of the cancelled registration until at least 180 days following the enactment of the relevant decision.

TITLE III INVENTIONS

Article 31.- Invention is understood to mean any solution to a technical problem arising in an industrial concern. The invention may be or relate to a product or a process.

Patent is understood to mean the exclusive right granted by the State to protect an invention. The effects, obligations and limitations inherent in the patent are determined by this Law.

Article 31 bis.- In hearing civil proceedings for infringements of process patents, the judge shall have the authority to order the plaintiff to prove that he/she used a procedure different from the patented one, provided that the products obtained by the patented procedure is new.

In such processes it shall be assumed, unless otherwise proven, that any identical product has been obtained through the patented process.

For the purposes of the article, a product shall be understood to be novel if it fulfils, at least, the novelty requirement of Article 33 at the date when the process patent application was filed in Chile or the priority date validated in Chile, in accordance with Article 34. To clarify this, the judge shall request a report from the Head of Department, the cost of which shall be borne by the applicant.

Consideration shall be given, in the presentation of evidence to the contrary, to the legitimate interests of the defendant insofar as the protection of his/her industrial and commercial secrets is concerned.

Article 32.- Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are industrially applicable.

Article 33.- Any invention which is not included in the prior art shall be considered novel. Prior art shall mean all the technical knowledge which has been made public prior to the patent application filing date in Chile or the priority date claimed under Article 34, by means of an oral or written description, sale, marketing, use, or any other means of dissemination or information, anywhere in the world.

The prior art shall also be considered to include national patent or utility model applications, as they have originally been filed, the filing date of which is prior to the date mentioned in the previous subparagraph and which have been published on the latter date or on a subsequent date.

Article 34.- In cases where a patent has been previously applied for abroad, the interested party shall have priority for filing the application in

Chile for one year following the date of application in the country of origin.

Article 35.- An inventive step shall be involved where the creative process or its results are not obvious from the prior art for a person with average skills in the technical field concerned.

Article 36.- An invention is considered to be industrially applicable when its subject can, in principle, be produced or used in any type of industry. For these purposes, the term “industry” shall be understood in its broadest sense, to include activities such as manufacturing, mining, construction, crafts, agriculture, forestry and fishing.

Article 37.- The following shall not be considered inventions and shall be excluded by the patent protection of this Law:

- (a) Discoveries, scientific theories and mathematical methods.
- (b) Plants and animals, except microorganisms that meet the general conditions of patentability. Plant varieties shall be protected only in accordance with the provisions of Law No. 19.342 on the Rights of Breeders of New Plant Varieties. Also non patentable are essentially biological procedures for producing plants and animals, except microbiological procedures. For these purposes, an essentially biological procedure is one that consists entirely of natural phenomena, such as crossing and selection.
- (c) Economic, financial, commercial, easily verified trade and taxation systems, methods, principles or plans; and those relating to purely mental or intellectual activities or playing games.
- (d) Methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods applied to the human or animal body, except for products destined to put one of these methods into practice.
- (e) A new use, change of shape, change of dimensions, change of proportions or change in the materials of articles, objects, or elements known and used with specific purposes. Without prejudice to the foregoing, a new use of known articles, objects or elements may constitute inventions that can be protected, provided that the new use solves a technical problem with no previous equivalent solution, fulfils the requirements referred to in Article 32 and requires a change in the dimensions, proportions or materials of the known article, object or element to obtain the relevant solution to the technical problem concerned. The new claimed use should be certified using experimental evidence in the patent application.
- (f) Any partial living thing as found in nature, natural biological processes, and biological material, as existing in nature, or able to be separated, including the genome or germplasm of any living thing. However, protection may be afforded to procedures that use one or more of the aforementioned biological materials and

products directly obtained through them, provided that they satisfy the requirements laid down in Article 32 of the present Law, that the biological material is appropriately described and that its industrial application is explicitly included in the patent application.

Article 38.- Non patentable shall be inventions of which it is necessary to prevent the commercial exploitation to protect public order, State security, morals and decency, the health or life of people or animals, or to preserve plants or the environment, provided that this exclusion is not made simply because of a legal or administrative provision prohibiting or regulating that exploitation.

Article 39.- Invention patents shall be granted for a non-renewable period of 20 years from the filing date of the application.

Article 40.- Repealed.

Article 41.- Repealed.

Article 42.- For the purposes of determining the novelty of the invention, disseminations carried out in the six months leading up to the filing of the application shall not be considered, to the extent that they have been a direct or indirect result of:

(a) practices, trials and construction of mechanisms or equipment that have to be carried out by the applicant with an invention under consideration.

(b) exhibitions of the invention carried out by the applicant or his successor in title in official or officially recognized exhibitions.

(c) misconduct and unfair practices suffered by the applicant or bequeather.

Article 43.- The following documents should accompany the patent application:

- An abstract of the invention.
- Description of the invention.
- Claims sheet.
 - Drawings of the invention (where appropriate).

Article 43 bis.- The abstract shall have a purely technical purpose and cannot be considered for any other purpose, not even to determine the sphere of protection applied for.

The claims sheet shall define the subject of the protection applied for. Claims shall be clear and concise and must be based on the description.

The description shall be clear and complete, so as to enable an expert in such matters to reproduce the invention without the need for other

information.

Article 44.- Declarations relating to novelty, ownership and use of the invention shall be incumbent upon the interested party, who shall make them on his/her own responsibility.

The granting of a patent shall not mean that the State guarantees the necessity for and accuracy of the comments of the applicant in the application and the description.

Article 45.- Once the application enters the Department, a preliminary examination shall be carried out to check that the documents stipulated in Article 43 have been attached. If any error or omission is detected in the preliminary examination, the interested party shall be informed so that he/she can make the corrections, clarifications or attach the relevant documents within 60 days, without losing the priority date. If the errors or omissions are not rectified within that time, the application shall be considered as not filed.

Applications that do not comply with any other processing requirement, within the periods established by this Law or its Regulations, shall be considered as abandoned and shall be shelved. Without prejudice to the foregoing, the applicant may request that the application be reopened, provided that he/she rectifies the processing requirements within the 125 days following the date of abandonment, without losing the right to priority. If this period ends without the errors or omissions having been rectified, the application shall be considered permanently abandoned.

When the examination of an application for an industrial property right reveals that the right claimed corresponds to another category, it shall be analyzed and processed as such, and the priority acquired conserved.

Article 46. Applicants for patents that have already been applied for abroad shall present the result of the search and the examination carried out by the foreign office, if they have been carried out, regardless of whether they resulted in the granting of the patent.

Article 47.- All of the supporting material relating to a patent application shall be kept in the Department at the disposal of the public, following the publication referred to in Article 4.

Article 48.- Once the grant has been approved and the payment of the relevant fees certified, the patent shall be granted to the interested party and a certificate issued to provide protection from the date on which the application was filed.

Article 49.- The owner of an invention patent shall have the exclusive right to produce, sell or market, in any form, the product or subject of the invention and, generally speaking, carry out any other type of exploitation thereof.

In process patents, the protection shall cover products directly obtained through said procedure.

The scope of protection granted by the patent or patent application shall be determined by the content of the claims sheet. The description and drawings shall be used to interpret the claims.

The patent right shall apply to the entire territory of the Republic until the date of expiry of the patent grant.

The invention patent shall not grant the right to prevent third parties from marketing the product covered by the patent where legitimately acquired by the parties after the product has been legally traded in any country by the right holder or a third party with the former's consent.

Article 50.- A patent shall be declared invalid on any of the following grounds:

- (a) When the person who obtained the patent is not the inventor or his/her licensee.
- (b) When the patent has been granted on the basis of erroneous or manifestly deficient expert reports.
- (c) When the registration has been granted in contravention of the rules of patentability and its requirements, in accordance with the provisions of this Law.

The action invalidating an invention patent shall expire after five years following the date of registration of the patent.

Article 51.- A decision shall be announced on an application for a non-voluntary license in the following cases:

- (1) When the patentee has engaged in forms of conduct or practices declared contrary to free competition, in direct relation with the use or exploitation of the patent, according to the final decision of the free competition court.
- (2) When, for reasons of public health, national security, non-commercial public use, national emergency or any other reasons of extreme urgency, declared by the competent authority, the granting of such licenses is justified.

(3) When the subject of the non-voluntary license is the exploitation of a subsequent patent that could not be exploited without infringing a previous patent. The granting of non-voluntary licenses for dependent patents shall be subject to the following rules:

- (a) The invention claimed in the subsequent patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent.
- (b) The non-voluntary license to exploit the previous patent may only be transferred with the subsequent patent.
- (c) The holder of the previous patent may, in the same circumstances, obtain a non-voluntary license in reasonable conditions to exploit the invention claimed in the subsequent patent.

As far as semiconductor technology is concerned, the license may only be granted for non-commercial public purposes or to rectify practice declared to be unfair competition.

Article 51 bis A.- The person who applies for a non-voluntary license shall certify that he/she previously requested a contractual license from the patent holder, and that he/she was unable to obtain it in reasonable time and conditions. This requirement shall not be demanded in terms of the grounds established in Article 51(2) of this Law. Nor shall this requirement be demanded when the aim of the non-voluntary license is to put a stop to practices declared to be unfair competition.

Article 51 bis B.- The application for the granting of a non-voluntary license constitutes a request and shall contain all the requirements of Article 254 of the Code of Civil Procedure. It shall be considered by:

- (1) In the case of Article 51(1), the free competition court, in accordance with the procedure provided for in Law No. 19.911.
- (2) In the case of Article 51(2), the Head of the Industrial Property Department, in accordance with the patent invalidation procedure established in this Law. Furthermore, a reasoned decision to resolve a special incident may be used to accept the request provisionally. This decision shall remain in force while the facts that, on good grounds, motivated it remain or until the final decision.
- (3) In the case of Article 51(3), the professional or civil judge, according to the competition rules of the Code of Civil Procedure and in accordance with the summary procedure.

Article 51 bis C.- The relevant authority shall make a decision on the application for a non-voluntary license based on its circumstances.

If a positive pronouncement is made, the free competition court, the Head of Department or the professional or civil judge (depending on whether the case is that provided for in Article 51 (1), (2) or (3)) shall set the duration and scope of the license, limiting it to the purposes for which it was granted, and shall also set the amount of remuneration that the licensee will periodically pay to the patent holder. The license granted through this procedure shall be non-exclusive and may not be assigned, except with that part of the enterprise that holds the patent.

Article 51 bis D.- The non-voluntary license shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be partially or entirely null and void if the circumstances which led to it cease to exist and are unlikely to recur. The free competition court, the Head of Department or professional or civil judge, following consultation with the competent authority, where appropriate, shall have the authority to review, upon reasoned request, the continued existence of these circumstances.

Termination of a non-voluntary license shall not be granted if and when the conditions which led to its granting are likely to recur. Similarly, the free competition court, the Head of Department or professional or civil judge, depending on the case, may at the request of an interested party amend a non-voluntary license when this is justified by new facts or circumstances, particularly when the patent holder has granted contractual licenses in more favorable conditions than those granted to the beneficiary of the non-voluntary license.

In application procedures for non-voluntary licenses, in the cases provided for in Article 51 (1) and (3), the Department shall have a say before the ruling is handed down.

Article 52.- A fine of between 25 and 1,000 monthly tax units payable to the State shall be imposed upon:

- (a) those who with ill intent manufacture, use, offer or introduce into trade a patented invention or import it or are in possession of it for commercial purposes. This shall be understood without prejudice to the provisions of the fifth subparagraph of Article 49.
- (b) those who, for commercial purposes, use a non-patented object or one whose patent has expired or been cancelled, using with that object the indications corresponding to invention patents or imitating them.
- (c) those who with ill intent, for commercial purposes, use a patented process.
- (d) those who with ill intent imitate or use an invention that is the subject of a pending patent application, unless the patent is eventually not granted.

Those ordered to pay a fine under this article shall also be bound to pay the costs and losses and damages of the owner of the patents.

The equipment and elements directly used to commit any of the offenses mentioned in this article and the illegally produced objects will be confiscated. Illegally produced objects shall be destroyed. As for equipment and elements used, it shall be up to the judge to decide their fate by ordering that they be destroyed or given to charity.

Any person committing a second or subsequent offence within five years following the application of a fine, another fine no less than the double of the previous one and up to a maximum of 2,000 monthly tax units shall be applied.

Article 53.- Any patented object shall bear the indication of the patent number, either on the product itself or on the packaging, and the expression "Patente de Invención" (invention patent) or the initials "P.I." and the registration number shall be visibly marked.

Procedures that by their nature make it impossible to fulfill this requirement shall be exempt from the obligation established in the previous subparagraph.

Although failure to fulfill this requirement does not affect the validity of the patent, those who do not comply with this provision will be unable to bring the criminal proceedings referred to in this Law.

When there are applications pending, this situation should be indicated, in the event of the products contained in the application being manufactured or marketed for commercial purposes.

TITLE IV UTILITY MODELS

Article 54.- The following shall be considered as utility models: instruments, apparatus, tools, devices, objects and parts thereof, where a claim can be made on the form, both in external appearance and functioning, and provided that it results in a utility, in other words that it contributes to the function for which they are designed a benefit, advantage or technical effect that it did not have previously.

Article 55.- The provisions of Title III, relating to invention patents, shall be applicable, where appropriate, to utility model patents, without prejudice to the special provisions contained in the present Title.

Article 56.- A utility model shall be patentable when it is new and industrially applicable.

A patent shall not be granted when the utility model presents only minor or secondary differences that provide no discernible utilitarian characteristic compared with previous inventions or utility models. The application for a utility model patent may only refer to an individual object, without prejudice to the fact that several elements or aspects of that object may be claimed in the same application.

Article 57.- Utility model patents shall be granted for a non-renewable

period of 10 years from the date of application.

Article 58.- The following documents shall accompany the utility model application:

- Abstract of utility model.
- Description of utility model
- Claims sheet.
- Drawings of the utility model.

Once the application enters the Department, a preliminary examination shall be carried out to check that the documents stipulated above have been attached.

Article 59.- Every utility model shall visibly bear the expression "Modelo de Utilidad" (utility model) or the initials "M.U.", and the registration number. These indications may be placed on the packaging, provided that this is of the type presented to the consumer sealed, so that it is necessary to destroy them to access the product. Although failure to fulfill this requirement does not affect the validity of the utility model, those who do not comply with this provision shall be unable to bring the criminal proceedings referred to in this Law.

Article 60.- The declaration of invalidity for utility model patents shall be on the same grounds as those stipulated in Article 50.

Article 61.- A fine of between 25 and 1,000 monthly tax units payable to the State shall be imposed upon:

- (a) those who with ill intent manufacture, market, import or use, for commercial purposes, a registered utility model. This shall be understood without prejudice to the provisions of Article 49(5), which shall also be applicable to this category of rights.
- (b) those who, for commercial purposes, use the indications corresponding to a utility model whose registration has expired or been cancelled and those who, for the same purposes, imitate these when no registration exists.

Those ordered to pay a fine under this article shall also be bound to pay the costs and losses and damages of the holder of the utility model.

The equipment and elements directly used to commit any of the offences mentioned in this article and the illegally produced objects shall be confiscated. Illegally produced objects shall be destroyed. As for equipment and elements used, it shall be up to the judge to decide their fate by ordering that they be destroyed or given to charity.

Any person committing a second or subsequent offence within five years following the application of a fine shall receive another fine no less than the double of the previous one and up to a maximum of 2,000 monthly tax units.

TITLE IV INDUSTRIAL DESIGNS AND DRAWINGS

Article 62.- The term industrial design shall include any three-dimensional form, associated with colors or not, and any industrial or craft product that can be used as a pattern to manufacture other units and that is distinguishable from similar items by form, geometrical shape, decoration or a combination of these, provided that said characteristics confer upon it a special appearance perceptible to the eye, so as to result in a new character.

The term industrial drawing shall include any arrangement, set or combination of figures, lines or colors that are developed in a plan to be incorporated in an industrial product for decorative purposes and that provide the product with a new appearance.

Industrial drawings and designs shall be considered new to the extent that they differ significantly from known industrial drawings or designs or combinations of characteristics of known industrial drawings or designs.

Packaging shall be included among the articles that can be protected as industrial designs, provided that it meets the aforementioned novelty requirement.

Prints on cloth, fabric or any sheet materials shall be included among the articles than can be protected as industrial drawings, provided that they meet the aforementioned novelty requirement.

Article 62 bis.- The protection afforded to industrial drawings and designs and established in this Law shall be understood without prejudice to the protection that may be provided to them in application of the rules of Law No. 17.336.

Article 62 ter.- Designs the appearance of which is dictated entirely by technical or functional considerations and that fail to incorporate any arbitrary contribution by the designer may not be registered as industrial designs or drawings.

Also non-registerable as industrial designs shall be products of clothing or those that consist only of a form, the exact reproduction of which proved necessary in order to permit the mechanical assembly or connection of the product incorporating the design with another product of which it is a part. This prohibition shall not be applicable to products in which the design consists of another way to permit the assembly or the multiple connection of the products or of their connection within a modular system.

Article 63.- The provisions of Title III, relating to invention patents, shall be applicable, where appropriate, to industrial drawings and designs, without prejudice to the special provisions contained in the present Title. In terms of the ownership right, this shall be governed by the provisions of Article 20 bis of this Law.

The declaration of invalidity of industrial drawings and designs shall be based on the same grounds stipulated in Article 50 of this Law.

Article 64.- The following documents shall accompany the application for an industrial drawing or design:

- application.
- description.
- drawing.
- prototype or model, where appropriate.

Once the application enters the Department, a preliminary examination shall be carried out to check that the documents stipulated above have been attached.

Article 65.- The registration of an industrial drawing or design shall be granted for a non-renewable period of 10 years from the date of application.

Article 66.- Every industrial drawing and design shall visibly bear the expression "Dibujo Industrial" (industrial drawing) or "Diseño Industrial" (industrial design) or the initials "D.I." and the registration number. These indications may be placed on the packaging, provided that this is of the type presented to the consumer sealed, so that it is necessary to destroy them to access the product.

Although failure to fulfill this requirement does not affect the validity of the industrial drawing or design, those who do not comply with this provision will be unable to bring the criminal proceedings referred to in the following article.

Article 67.- A fine of between 25 and 1,000 monthly tax units payable to the State shall be imposed upon:

- (a) those who with ill intent manufacture, market, import or use, for commercial purposes, a registered industrial drawing or design. This shall be understood without prejudice to the provisions of Article 49(5), which shall also be applicable to this category of rights.
- (b) those who, for commercial purposes, use the indications corresponding to a registered industrial drawing or design, or imitate them when there is no registration or when the registration has expired or been cancelled.

Those ordered to pay a fine under this article shall also be bound to pay the costs and losses and damages of the holder of the industrial drawing or design.

The equipment and elements directly used to commit any of the offenses mentioned in this Article and the illegally produced objects shall be confiscated. Illegally produced objects shall be destroyed. As for equipment and elements used, it shall be up to the judge to decide their fate by ordering that they be destroyed or given to charity.

Any person committing a second or subsequent offense within five years following the application of a fine shall receive another fine no less than the double of the previous one and up to a maximum of 2,000 monthly tax units.

TITLE VI SERVICE INVENTIONS

Article 68.- In work contracts and the delivery of services, defined by the completion of an inventive or creative activity, the power to apply for registration and the possible industrial property rights shall lie exclusively with the employer or the party requesting the service, except where expressly provided to the contrary.

Article 69.- The worker who, according to his/her work contract, is not obliged to carry out an inventive or creative function, shall have the authority to apply for registration, as well as for the possible industrial property rights resulting from his/her inventions, which will belong to him/her exclusively.

However, if to make the invention he/she has clearly availed him/herself of knowledge acquired in the company and used means provided by the undertaking, that authority and those rights shall belong to the employer, in which case the latter shall grant the worker additional remuneration to be agreed upon by the parties.

The above shall extend to a person who obtains an invention that surpasses the framework of the tasks assigned to him/her.

Article 70.- The power to apply for the respective registration as well as the possible industrial property rights resulting from the inventive and creative activity of people working on a salaried or independent basis for universities or research institutes included in Decree-Law No. 1.263, of 1975 shall belong to the latter entities, without prejudice to the statutes of those entities regulating the arrangements under which the inventor or creator shares in the benefits achieved through his/her work.

Article 71.- The rights established in favor of the worker in the previous articles shall be non-renounceable prior to the grant of a patent, utility model or layout design or topography of integrated circuits, as appropriate. Any clause to the contrary shall be deemed not to have been written.

Article 72.- All disputes relating to the application of the provisions of this Title shall be within the competence of the Industrial Property Tribunal referred to in Paragraph 3 of Title 1 of this Law.

TITLE VII LAYOUT DESIGNS OR TOPOGRAPHIES OF INTEGRATED CIRCUITS

Article 73.- Integrated circuit shall be understood as a product, in its final form or an intermediate form, which is intended to perform an electronic function, in which the elements, at least one of them being an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material.

Article 74.- Layout designs or topographies of integrated circuits shall be understood as the three-dimensional arrangement of its elements, expressed in any form, intended for manufacture.

Article 75.- Layout designs or topographies of integrated circuits shall be protected by means of this Law, to the extent that they are original.

Original means the result of intellectual effort on the part of its creator and is not usual or commonplace knowledge to the creators of layout designs or manufacturers of topographies of integrated circuits at the time of its creation.

A layout design or topography of integrated circuits consisting of a combination of elements or interconnections that are usual or commonplace at the time of its creation may only be protected if the combination, taken as a whole, satisfies the conditions of the previous subparagraphs.

Article 76.- The owner of a layout design or topography of integrated circuits shall have the exclusive right to produce, sell or market in any form the subject of the protection and right granted to him/her.

As a result, the owner of a layout design or topography of integrated circuits may prevent any third party from doing the following without his/her authorization:

1.- Reproducing the protected layout design or topography of integrated circuits in its entirety, or any part thereof, by incorporation in an integrated circuit or otherwise, except the act of reproducing any part that does not comply with the originality requirement mentioned in Article 75 of this Law.

2.- Selling or in any form distributing the following for commercial purposes: a protected layout design or topography of integrated circuits; an integrated circuit incorporating a protected layout design or topography of integrated circuits; or a product incorporating an integrated circuit that itself contains an unlawfully reproduced layout design or topography of integrated circuits.

Article 77.- The exclusive right of exploitation described in the previous article shall not extend to:

1.- Reproductions of layout designs or topographies of integrated circuits that incorporate a layout design or topography of integrated circuits produced by third parties for private purposes or for the sole purpose of evaluation, analysis, research or teaching.

2.- Acts of commercial exploitation referred to in this article, in respect of a layout design or topography of integrated circuits that, in accordance with the requirements of Article 75 of this Law, has been created as a result of the evaluation or analysis of another protected layout design or topography of integrated circuits.

3.- Acts of commercial exploitation referred to in this article, in respect of an integrated circuit incorporating an unlawfully reproduced layout design or topography of integrated circuits or any article incorporating such an integrated circuit where the third party performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design or topography of integrated circuits.

Notwithstanding the foregoing, once the third party has found out or has grounds to believe that the layout design or topography of integrated circuits was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design or topography of integrated circuits.

The court competent to try infringements relating to layout designs or topographies of integrated circuits shall settle disputes that may arise from the determination of the royalty referred to in the previous subparagraph, according to the rules established for incidents in the Code of Civil Procedure, without hearing witnesses, while proceeding *ex aequo et bono*.

4.- In respect of an identical original layout design or topography of integrated circuits that has been independently created by a third party.

Article 78.- The protection of layout designs or topographies of integrated circuits shall last for a non-renewable period of 10 years from the filing date of the application for registration or the date of the first commercial exploitation in any part of the world.

Article 79.- The registration of layout designs or topographies of integrated circuits shall be carried out in the Industrial Property Department.

Article 80.- The following documents shall accompany the application for a layout design or topography of integrated circuits:

- application.
- description.

- prototype or model, where appropriate.

- additional documents, if necessary.

Once the application enters the Department, a preliminary examination shall be carried out to check that the documents stipulated above have been attached.

Article 81.- The application for registration may be filed before the beginning of the commercial exploitation of the layout design or topography of integrated circuits, or within the two years following that, from the date of said exploitation. In the latter case, the applicant shall attach to the application for registration a sworn declaration to certify the date of the first commercial exploitation.

The processing of the application, as well as its publication and resolution, shall comply with the limitations established by the Regulations for this purpose.

Article 82.- The layout design or topography of integrated circuits shall be declared invalid on any of the following grounds:

(a) When the person who obtained the layout design or topography of integrated circuits is not the legitimate creator or his/her licensee;

(b) When the patent has been granted on the basis of an erroneous or manifestly deficient expert report;

(c) When the registration was granted in contravention of the protection requirements established in Article 75;

(d) When the commercial exploitation of the layout design or topography of integrated circuits started more than two years prior to the filing of the application.

Article 83.- The provisions of Titles III and VI, relating to invention patents and service inventions, respectively, shall be applicable, where appropriate, to layout designs or topographies of integrated circuits, without prejudice to the special provisions contained in the present Title.

Article 84.- Any layout design or topography of integrated circuits must visibly bear the capital letter "T" within a circle. These indications may be placed on the packaging, provided that this is of the type presented to the consumer sealed, so that it is necessary to destroy it to access the product. Although failure to fulfill this requirement shall not affect the validity of the layout design or topography of integrated circuits, those who do not comply with this provision will be unable to bring the criminal proceedings referred to in the following article.

Article 85.- A fine of between 25 and 1,000 monthly tax units payable to the State shall be imposed upon:

(a) those who with ill intent manufacture, market, import or use, for commercial purposes, a registered layout design or topography of integrated

circuits. This shall be understood without prejudice to the provisions of Article 49(5), which shall also be applicable to this category of rights.

(b) those who, for commercial purposes, use the indications corresponding to a registered layout design or topography of integrated circuits, or imitate them when there is no registration or when the registration has expired or been cancelled.

Those ordered to pay a fine under this Article shall also be bound to pay the costs and losses and damages of the holder of the layout design or topography of integrated circuits.

The equipment and elements directly used to commit any of the offenses mentioned in this article and the illegally produced objects shall be confiscated. Illegally produced objects shall be destroyed. As for equipment and elements used, it shall be up to the competent judge to decide their fate by ordering that they be destroyed or given to charity.

Any person committing a second or subsequent offense within five years following the application of a fine, another fine no less than the double of the previous one and up to a maximum of 2,000 monthly tax units shall be applied.

TITLE VIII

Industrial secrets and information submitted to the authority to obtain health certificates or clearances

Paragraph 1.- Industrial secrets

Article 86.- Industrial secrets shall be understood as any knowledge of industrial products or processes, the keeping of which provides its owner with an improvement, advance or competitive advantage.

Article 87.- The unlawful acquisition of the industrial secret, its disclosure or exploitation without the authorization of the holder and the disclosure or exploitation of industrial secrets by those who have had lawful access but with a duty to keep the secret shall constitute violations of industrial secrecy, provided that the violation was carried out with the intent of obtaining advantages for oneself or another party or of causing injury to the owner.

Article 88.- Without prejudice to the relevant criminal responsibility, the rules of Title X relating to compliance with industrial property rights shall be applicable to violations of industrial secrets.

Paragraph 2.- Information submitted to the authority to obtain health certificates or clearances

Article 89.- When the Institute of Public Health of the Agriculture and Livestock Service requires the submission of test data or other data relating to the safety and effectiveness of a pharmaceutical or chemical-agricultural product that uses a new chemical entity that has not been previously approved by the competent authority, said data shall be considered classified, in accordance with the legislation in force.

The nature of undisclosed shall be deemed to be satisfied if reasonable means have been employed to keep the data secret and they are not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question.

The competent authority may not disclose or use those data to grant a health certificate or clearance to someone who does not have the permission from the holder of those data, for a period of five years for pharmaceutical products and 10 years for chemical-agricultural products, from the first health certificate or clearance awarded by the Institute of Public Health or the Agricultural and Livestock Service, as appropriate.

To be protected by this article, the undisclosed nature of the test data referred to shall be explicitly mentioned in the application for the health certificate or clearance.

Article 90.- New chemical entity shall be understood as an active principle that has not previously been included in health certificates or clearances awarded by the Institute of Public Health or the Agricultural and Livestock Service, as appropriate, or that has not been marketed on national territory before the application for the health certificate or clearance.

For the purposes of this Paragraph, active principle shall be understood to be a substance with one or more pharmacological effects or chemical-agricultural uses, whatever its form, expression or arrangement, including its salts and complexes. Under no circumstances shall the following be considered as a new chemical entity:

1. Uses or therapeutic indications different from those authorized in other previous health certificates or clearances for the same chemical entity.
2. Changes in the method of administration or forms of dosage authorized in other previous health certificates or clearances for the same chemical entity.
3. Changes in the pharmaceutical forms, formulations or combinations of chemical entities already authorized or certified.
4. Salts, complexes, crystalline forms or those chemical structures based on a chemical entity with a previous health certificate or clearance.

Article 91.- The protection of this Paragraph shall not apply when:

(a) The owner of the test data referred to in Article 89 has engaged in forms of conduct or practices declared as contrary to free competition in direct relation to the use or exploitation of that information, according to the final decision of the free competition court.

(b) For reasons of public health, national security, non-commercial public use, national emergency or other circumstances of extreme urgency declared by the competent authority, ending the protection referred to in Article 89 shall be justified.

(c) The pharmaceutical or chemical-agricultural product is the subject of a compulsory license, according to what is established in this Law.

(d) The pharmaceutical or chemical-agricultural product has not been marketed in the national territory after 12 months from the health certificate or clearance granted in Chile.

(e) The pharmaceutical or chemical-agricultural product has a health certificate or clearance abroad that has been in force for over 12 months.

TITLE IX

Geographical indications and appellations of origin

Article 92.- The present Law recognizes and protects geographical indications and appellations of origin in accordance with the following provisions:

(a) Geographical indication shall be understood as identifying a product as originating in a country, region or area of the national territory, when its quality, reputation or other characteristic is, fundamentally, attributable to its geographical origin.

(b) Appellation of origin shall be understood as identifying a product as originating in a country, region or area of the national territory, when its quality, reputation or other characteristic is, fundamentally, attributable to its geographical origin, also taking into consideration other natural and human factors that impact the characterization of the product.

Article 93.- Geographical indications and appellations of origin shall be governed by the rules of this Law and the specific Regulations of use that are approved. The foregoing shall be understood without prejudice to the provisions governing the appellations of origin of Pisco, Pajarete and Vino Asoleado, and those that refer to vine zoning, with precedence being given to the specific rules contained in Law No. 18.455.

Geographical indications and appellations of origin may not be the subject of appropriation or encumbrance to limit or prevent their use by interested parties who comply with the requirements established in this Law and the Regulations for use of the indication or appellation.

Article 94.- The recognition of a geographical indication or appellation of origin shall be carried out by the Department, by incorporating the latter in a Register of Geographical Indications and Appellations of Origin that shall be kept for that purpose.

Any natural or legal person may apply to register a geographical indication or

appellation of origin, provided that the person represents a significant group of producers, manufacturers or craftsmen, whose properties or establishments of extraction, production, transformation or manufacture are located in the area defined by the geographical indication or appellation of origin applied for, and comply with the other requirements indicated in this Law. The recognition of a geographical indication or appellation of origin may also be applied for by national, regional, provincial or communal authorities, where the geographical indications or appellations of origin are located within the territories of their remit.

Article 95.- The following signs or expressions may not be recognized as geographical indications or appellations of origin:

- (a) Those that do not comply with the definitions contained in Article 92 of this Law.
- (b) Those that are contrary to morals or public order.
- (c) Those that may mislead the public about the geographical provenance, nature, method of manufacture, characteristics or qualities or suitability for the use or consumption of the product.
- (d) Those that are common or generic indications to distinguish the product in question, and therefore those that are understood to be considered as such by those familiar with such matters and by the public in general, except where they have been recognized as geographical indications or appellations of origin by virtue of international treaties ratified by Chile.
- (e) Those that are identical or similar to another geographical indication or appellation of origin for the same product. Nonetheless, in the case of homonymous geographical indications or appellations of origin for wines, it shall be possible for more than one registration to exist, provided that they incorporate elements to ensure that consumers shall not be misled or confused.

Article 96.- Foreign geographical indications and appellations of origin may be registered in Chile, in accordance with the rules of this Law. When these cease to be protected or have fallen into disuse in their country of origin, they shall not be protected or shall lose protection in if they had it.

In particular, the protection established in this Law shall not apply to foreign geographical indications and appellations or origin that identify wines and spirits in relation to goods and services, and that have been continuously used by nationals or residents in the national territory to identify, in Chile, those same or related goods or services, in good faith, before April 15, 1994, or for a minimum of 10 years prior to that date, unless the contrary is provided for in an international treaty ratified by Chile.

Article 97.- The application for recognition of a geographical indication or appellation of origin shall indicate:

(a) Name, address, Single Taxpayer Roll (RUT), where appropriate, and the applicant's activity as it relates to the indication or appellation applied for.

(b) The geographical indication or appellation of origin.

(c) The geographical area of production, extraction, transformation or manufacture of the product to be distinguished by the indication or appellation, limiting this to the geographical characteristics and political and administrative division of the country.

(d) A detailed description of the product or products to be distinguished by the indication or appellation applied for, as well as the essential characteristics or qualities of the product(s).

(e) Technical study, carried out by a qualified professional, to provide information on whether the characteristics or qualities associated with the product are fundamentally or exclusively attributable to its geographical origin.

(f) Specific draft Regulations for use and control of the indication or appellation applied for.

Article 98.- In the case of Chilean applications for geographical indications or appellations of origin relating to products from forestry and agriculture or agribusiness, registration shall also require a favorable report from the Ministry of Agriculture regarding compliance with the requirements established in Article 97. In the case of foreign geographical indications and appellations of origin relating to the aforementioned products, a report from the Ministry of Agriculture shall be required.

Said report shall be issued within 120 days from the date of it being requested by the Head of Department.

Article 99.- The resolution granting registration of a geographical indication or appellation of origin shall mention:

(a) The geographical indication or appellation of origin recognized.

(b) The defined geographical area of production, extraction, transformation or manufacture whose producers, manufacturers or craftsmen have the right to use the indication or appellation.

(c) The products to which the geographical indication or appellation of origin shall apply and the essential characteristics or qualities that these must have.

(d) The qualification, according to the merit of the information attached, of being a geographical indication or appellation of origin.

The resolution shall also approve and order the registration of the specific Regulations for the use and control of the recognized geographical indication or appellation of origin.

Article 100.- The registration of a geographical indication or appellation of origin shall last indefinitely.

The registration may be amended at any time when any of the circumstances in Article 97 changes. The amendment shall be subject to the registration procedure, where appropriate.

Article 101.- Any interested party may seek to have the registration of a geographical indication or appellation of origin declared invalid when any of the prohibitions established in this Law have been violated.

Article 102.- Where appropriate, the rules of Titles I and II and the regulatory provisions relating to trademarks shall be applicable to the examination, publication, registration and invalidation procedures for geographical indications and appellations of origin that form the subject of this Title.

Article 103.- All producers, manufacturers or craftsmen who carry out their activity within the defined geographical area, even those who were not among those who initially applied for recognition, shall have the right to use the geographical indication or appellation of origin with regard to the products mentioned in the registration, provided that they comply with the provisions that regulate their use. Only they may use, to identify the product, the expression "Indicación Geográfica" (geographical indication), "Denominación de Origen" (appellation of origin) or the initials "I.G." or "D.O.", respectively. These indications may be placed on the packaging, provided that this is of the type presented to the consumer sealed, so that it is necessary to destroy it to access the product.

Article 104.- Civil actions relating to the right to use a registered geographical indication or appellation of origin, and those aimed at preventing the illegal use thereof, shall be tried by the ordinary courts, in accordance with the rules established in Title X relating to enforcement.

In the case of registered geographical indications or appellations of origin that identify wines and spirits, the civil actions referred to in the previous subparagraph shall apply when a geographical indication or appellation of origin is used without the right to use it, or translated, or when it is accompanied by terms such as "class", "type", "style", "imitation" or equivalent terms, and even when the real origin of the product is indicated.

Article 105.- A fine of between 25 and 1,000 monthly tax units payable to the State shall be imposed upon:

(a) Those who with ill intent use a registered geographical indication or appellation of origin to name a product of the same type as protected, without having the right to do so.

(b) Those who, for commercial purposes, use the indications corresponding to a geographical indication or appellation of origin that is unregistered, has expired or has been cancelled, or imitate them.

(c) Those who, for commercial purposes, use containers or packaging that bear a registered geographical indication or appellation of origin, without the right to use it and without it having been previously erased, unless the marked packaging is used to package products different from and unrelated to those protected by the geographical indication or appellation of origin.

Those ordered to pay a fine under this article shall also be bound to pay the costs and losses and damages of the legitimate users of the geographical indication or appellation of origin.

The equipment and elements directly used to commit any of the offenses mentioned in this article and the objects bearing counterfeited geographical indications or appellations of origin shall be confiscated. Objects with counterfeited geographical indications or appellations of origin shall be destroyed. As for equipment and elements used, it will be up to the competent judge to decide their fate by ordering that they be destroyed or given to charity.

Any person committing a second or subsequent offense within five years following the application of a fine shall receive another fine no less than the double of the previous one and up to a maximum of 2,000 monthly tax units.

TITLE X

Enforcement of industrial property rights

Paragraph 1

Civil actions

Article 106.- The holder whose industrial property right has been infringed upon may bring civil proceedings for:

- (a) the cessation of acts violating the protected right.
- (b) compensation of losses and damages.
- (c) adoption of the necessary measures to prevent the infringement from continuing.
- (d) publication of the ruling against the guilty party by means of announcements in a daily newspaper selected by the plaintiff. This measure shall be applicable when explicitly stipulated in the ruling.

Article 107.- The civil proceedings described in Article 106 shall be heard in accordance with the summary procedure and shall be applicable to any party with an interest in bringing them, without prejudice to any criminal proceedings that may apply.

Article 108.- The compensation of damages may be determined, at the choice of the plaintiff, in accordance with the general rules or according to one of the following rules:

(a) The profits that the holder would have lost out on as a result of the infringement;

(b) The profits that the infringer has made as a result of the infringement, or

(c) The price that the infringer would have had to pay the right holder for the granting of a license, taking account of the commercial value of the infringed right and the contractual licenses already granted.

Article 109.- Without prejudice to other actions covered in this Title, persons who have marketed products that infringe an industrial property right shall not be answerable for damages and losses, unless those same persons manufactured or produced the products, or marketed them in the knowledge that they were committing an infringement of an industrial property right.

Article 110.- The judge trying the case shall have the authority to order, in the sentence, the infringer to provide the information he/she has on the persons who participated in the production or preparation of the products or processes that are the subject of the infringement, and on the distribution channels of these products.

Article 111.- In these proceedings, the judge shall assess the evidence according to logical and reasonable rules.

Paragraph 2 Precautionary measures

Article 112.- Precautionary measures shall apply in all matters relating to infringements of industrial property rights.

Without prejudice to other precautionary measures, the Tribunal may decree the following:

(a) Immediate cessation of the acts that constitute the alleged infringement;

(b) The seizure of the products that are the subject of the alleged infringement and the materials and means used mainly to commit it. In the case of distinctive signs, the seizure of containers, packaging, labels, printed or advertising material bearing the sign that is the subject of the alleged infringement may also be

ordered;

(c) Appointment of one or more auditors;

(d) Prohibition on advertising or promoting, in any way, the products that are the subject of the alleged infringement; and

(e) The holding, by a credit establishment or third party, of the goods, monies or values originating from the sale or marketing of said products, in any way.

Paragraph 3 Preliminary steps

Article 113.- The precautionary measures detailed in Paragraph 2 of Title X of this Law and those considered in Titles IV and V of the Second Book of the Code of Civil Procedure may be requested as preliminary steps.

Article 114.- Decree-Law No. 958, of 1931, on Industrial Property; Articles 16 and 17 of Law No. 18.591; Article 38 of Law No. 18.681, and Law No. 18.935 are hereby repealed.

TITLE XI Final article TRANSITIONAL ARTICLES

Article 1.- Appeal procedures pending before the Industrial Property Arbitration Tribunal at the time when the present Law enters into force shall be heard and ruled on by the Industrial Property Tribunal referred to in (20) of the single article of this Law.

In the time between the publication of this Law and its entry into force, the President of the Republic shall appoint the members of the Industrial Property Tribunal, in accordance with Article 17 bis C, incorporated by (20) of the single article of this Law.

When this Law enters into force and by its mere operation, the members of the Industrial Property Arbitration Tribunal shall be relieved of their duties.

Article 2.- Without prejudice to the contents of the first subparagraph of the previous article, applications to register marks, patents, utility models and industrial designs filed before the entry into force of this Law shall continue to be processed in accordance with the rules in force at the time they were filed.

Provisional patents applied for before the entry into force of this Law, shall continue to be processed and shall be granted in accordance with the rules in force at the time of the respective application.

Notwithstanding the foregoing, applicants to register marks or patents with no

opposition pending or utility models or industrial designs, who so wish, may, within 120 days of the entry into force of this Law, file new applications conforming to the provisions thereof. The new applications shall retain the priority of the original applications.

Within the same period established in the previous subparagraph, the holders of an invention patent with no opposition pending or an industrial design, or his/her licensees, who consider that their invention or design corresponds to a layout design or topography of integrated circuits, in accordance with Title VII of this Law, may file new applications conforming to the provisions thereof. The new applications shall retain the priority of the original applications.

Article 3.- An application to renew a registered mark filed before the entry into force of this Law, for which the application and registration cover one or more classes of the International Classification, shall specify the specific and particular goods or services, with an indication of the class(es) of the International Classification to which they belong.

When, as a result of an amendment to the International Classification, one or more products or services change class, then at the time of the renewal application for a registered mark, the protection for all of the products or services covered by the original registration may be maintained, even when this means obtaining protection in one or more additional classes.

Article 4.- Applications for the registration of marks, invention patents, utility models, industrial designs and layout designs or topographies of integrated circuits filed after the entry into force of this Law shall be subject to the payment of fees referred to in Article 18 of Law No. 19.039, which is replaced by the single article of this Law.

In the case of registration applications filed before and accepted after the entry into force of this Law, the payment of the relevant fee shall be made in accordance with the rules in force at the time of filing.

Applications for the renewal of mark registrations filed after the entry into force of this Law that concern registrations originally granted before the entry into force, shall be subject to the payment of a fee in accordance with subparagraph 4 of Article 18 cited above.

Article 5.- Invention patents granted between January 1, 2000 and the entry into force of this Law shall be protected for a non-renewable period of 20 years, beginning from the date of filing of the respective application, except where the protection period thus calculated is shorter than the one that would be granted at that time by Law No. 19.039, in which case the latter shall prevail.

Article 6.- Within six months of the date of publication of this Law, the President of the Republic shall dictate its Regulations.

Article 7.- This Law shall begin to operate on the day of publication in

the *Diario Oficial* of the Regulations referred to in the previous transitional provision.

Article 8.- Within a year of the date of publication of this Law, the President of the Republic, by means of one or more decrees with the force of law, shall establish the amended, coordinated and systematized text of Law No.19.039.

Article 9.- The increased fiscal spending required for the functioning of the Industrial Property Tribunal incorporated by the single article of this Law, shall be charged to subheading 21, item 03, allocation 001 of the budget of the Under-Secretariat of Economy.