

MEXICO
Industrial Property Law
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TITLE I GENERAL PROVISIONS

ARTICLE 1.

The provisions of this Law are a matter of public policy enforceable throughout the Republic, without prejudice to the provisions of the international treaties to which Mexico is party. Its administrative enforcement is incumbent on the Federal Executive through the Mexican Institute of Industrial Property.

ARTICLE 2.

The purpose of this Law is to:

I. Lay the foundations to permit the country's industrial and trade activities to have a permanent system for the improvement of their processes and products;

II. Promote and encourage inventive steps with industrial applications technical improvements and the dissemination of technological knowledge in production sectors;

III. Promote and support quality improvements of goods and services from the industry and trade in a manner consistent with the interests of consumers;

IV. Encourage creativity in the design and presentation of novel and useful products;

V. Protect industrial property by means of regulation and granting of invention patents; registration of utility models, industrial designs, trademarks and advertisements; publication of commercial names; actions to protect appellations of origin and regulation of trade secrets;

VI. Prevent acts against industrial property or acts that constitute unfair competition in relation to industrial property, and implement sanctions and penalties for such acts and

VII. Establish legal certainty between parties in the operation of franchises, and guarantee non-discriminatory treatment of all franchisees from the same franchisor.

ARTICLE 3.

For the purposes of this Law:

I. "This Law" refers to the Industrial Property Law;

II. "International Treaties" refers to those treaties concluded by Mexico in compliance with the Law on the Conclusion of Treaties;

III. [Repealed]

IV. "Institute" refers to the Mexican Institute of Industrial Property;

V. "Official Journal" refers to the Official Journal of the Federation;

VI. "Gazette" refers to the Gazette mentioned in Article 8 of this Law.

ARTICLE 4.

No patent, registration or authorization shall be granted, nor shall any publicity be given in the Gazette to any of the legal authorities or institutions governed by this Law, where their contents or substance are contrary to public policy, morality or proper practice, or if said contents or substance violate any legal provision.

ARTICLE 5. [Repealed]

ARTICLE 6.

The Mexican Institute of Industrial Property, the administrative authority in industrial property matters, is a decentralized body with legal personality and its own assets, which shall be empowered to:

I. Liaise with the administrative units of the Ministry of Trade and Industrial Development, and with the different national, foreign and international public and private institutions of which their purpose is to promote and protect industrial property rights, to transfer technology to study and promote technological development, to implement innovations, to establish differentiation of goods and to provide information and technical cooperation as required by the proper authorities in compliance with the standards and policies established for such purpose;

II. Encourage the industrial sector involvement in the development and implementation of technology to improve its quality, competitiveness and productivity and conduct research on the progress and implementation of

national and international industrial technology and its effect on the achievement of such aims, as well as propose policies to stimulate development;

III. Process applications for and, where appropriate, grant invention patents and utility model registrations industrial designs, trademarks and advertisements, Issue declarations to the effect that trademarks are well known, issue declarations of protection for appellations of origin, authorize the use thereof, publish commercial names and also record renewals thereof and the transfer or licensing of their use and exploitation, and such other powers as are conferred on it by this Law and the regulations thereunder, for the recognition and preservation of industrial property rights;

IV. Substantiate proceedings for the invalidation, lapse and cancellation of industrial property rights, hand down rulings and issue the corresponding administrative actions, in compliance with the provisions of this Law and the Regulations thereunder and, in general, rule on such requests as may arise as a result of the implementation of this Law;

V. Conduct investigations into alleged administrative infringements, arrange and conduct inspections request information and particulars, order and implement precautionary measures to prevent or stop violations of industrial property rights; hear alleged infringers speak in their defense and impose the appropriate administrative sanctions in industrial property matters;

VI. Appoint experts when requested to do so under the Law; issue such technical rulings as may be required by individuals or by the Federal Public Prosecutor and take such proceedings and collect such proof as may be necessary for the issue of said rulings;

VII. Act as receiver when so designated under the Law, and make available to the proper authorities all goods as have been entrusted to it;

VIII. Substantiate and settle the administrative appeals provided for in this Law that are lodged against the rulings handed down by it, relating to acts performed pursuant to this Law the regulations thereunder and other relevant provisions;

IX. act as arbitrator in the settlement of disputes relating to the payment

of damages for violation of the industrial property rights protected by this Law where the parties to said disputes expressly designate it as such, in compliance with the provisions contained in Title IV of Part V of the Code of Commerce;

X. Carry out the legal publication, the Gazette, and disseminate information derived from patents, registrations, declarations of notoriety or fame of brands, authorizations and publications granted and any other information relating to industrial property rights conferred by this Law and establish the general rules for managing transactions through electronic media and putting it into operation;

Be published in the issue of the month immediately following their issuance, all rulings issued in the administrative action procedures as provided by this Act and petitions to amend the terms or scope of patents or registrations granted shall be published in the monthly issue immediately after their issuance;

XI. Disseminate, advise and render services to the public in industrial property matters;

XII. Promote the creation of industrially applicable inventions, support the development and use of said inventions in industry and trade. and encourage technology transfer through:

(a) Disclosure of documents on inventions published either in Mexico or abroad, and consultancy and use thereof;

(b) Compilation, updating and distribution of individuals or companies concerned with the making of inventions and with technological research work;

(c) Holding of competitions, contests or exhibitions and awarding of prizes and other recognition to promote inventive steps, design creativity and presentation of goods;

(d) Assistance to firms or financial intermediaries undertaking or financing the manufacture of prototypes and the industrial or commercial development of specific inventions;

(e) Dissemination of the provisions of this Law and their scope among individuals, groups, associations or institutions concerned with research, higher education or technical assistance in order to facilitate their work during the creation of inventions and their subsequent industrial and commercial development; and

(f) Conclusion of agreements providing for cooperation, coordination and concerted action with the governments of federated entities, and also

with national or foreign public or private institutions to promote and encourage industrially and commercially applicable inventions and creations;

XIII. Participate in encouragement and support programs for the protection of industrial property with a view to the generation, development and implementation of Mexican technology in the economic activities, as well as to improve productivity and competitiveness;

XIV. Compile and update the files of inventions published in Mexico and abroad;

XV. Conduct researches of the prior art in all industry and technology sectors;

XVI. Promote international cooperation through the exchange of administrative and legal experience with institutions responsible for the registration and legal protection of industrial property abroad, including among others: vocational training of staff, transfer of work and organizational methodology, exchange of publications and updating of documents and databases in the industrial property field;

XVII. Conduct studies on the industrial property situation at world-scale and take part in international meetings or fora concerned with said subject;

XVIII. Act as an advisory body on industrial property matters for the various departments and agencies of the Federal public administration, and also advise social and private institutions;

XIX. Take part in the training of human resources specialized in the various industrial property disciplines by means of the design and implementation of training, teaching and specialization programs and courses for professional, technical and auxiliary staff;

XX. Devise and implement an institutional operations program;

XXI. Take part in negotiations lying within its sphere of competence in coordination with the proper units of the Ministry of Trade and Industrial Development; and

XXII. Render such other services and take such measures as are necessary

for the due exercise of its powers under this Law and any other legal provisions applicable.

ARTICLE 7.

The Institute's administrative bodies shall be the Board of Directors and the Director General, who shall have the powers provided for in the Federal Law of Public-Sector Bodies and in the legal enactment by which it was created, without prejudice to the provisions of Articles 6 and 7 bis 2 of this Law.

ARTICLE 7 bis.

The Board of Directors shall be composed of 10 representatives:

I. The Minister of Trade and Industrial Development, who shall preside over it;

II. One representative appointed by the Ministry of Trade and Industrial Development;

III. Two representatives appointed by the Ministry of Finance and Public Credit;

IV One representative each of the Ministry of Foreign Affairs, the Ministry of Agriculture and Hydraulic Resources, the Ministry of Public Education the Ministry of Health, and of the National Science and Technology Council and the National Metrology Center.

An alternate shall be appointed for each head representative, and shall attend the sessions of the Board of Directors in the absence of the head representative, with all the powers and rights accruing to him.

ARTICLE 7 bis.1.

The Director General or an equivalent officer is the Institute's legal representative and shall be appointed by the Board of Directors on a proposal by the Federal Executive, acting through the Minister of Trade and Industrial Development.

ARTICLE 7 bis.2.

The Director General of the Institute shall, by means of agreement published in the Official Journal, frame the rules and specifications of the requests as well as the procedures and specific requirements to facilitate the operation of the Institute and to guarantee the juridical safety of the

individuals, including the general rules for the management of steps across mass media electronics.

ARTICLE 8.

The Institute shall issue the Gazette on a monthly basis, in which the publications referred to in this Law shall be made and any information with a bearing on industrial property and such other subjects as may be specified shall be made public. Acts recorded in said organ of information shall be binding on third parties from the day following the date on which said acts are distributed, and that date shall be specified on each Gazette copy.

TITLE II Inventions, Utility Models and Industrial Designs

CHAPTER I Preliminary Provisions

ARTICLE 9.

An individual who makes an invention or utility model or creates an industrial design, or his successor in title, shall have the exclusive right to use said invention, utility model or industrial design for their benefit, either themselves or through third parties with their consent in compliance with the provisions of this Law and the regulations thereunder.

ARTICLE 10.

The right referred to in ARTICLE 9 shall be granted in the form of a patent for inventions and in the form of a registration for utility models and industrial designs.

ARTICLE 10 bis.

The right to obtain a patent or a registration shall belong to the inventor or designer, as the case may be, without prejudice to the provisions of Article 14 of this Law. If the invention, utility model or industrial design has been made jointly by two or more persons the right to obtain the patent or registration shall belong to them jointly.

Where several individuals make the same invention or utility model independently of each other, the person who files the first application for said invention or utility model or claims the earliest priority shall have the prevailing right to obtain the patent or registration, provided that the application is not abandoned or refused.

The right to obtain a patent or registration may be transferred by intervivos transaction or by succession.

ARTICLE 11.

Patent or registration owners may be individuals or companies.

ARTICLE 12.

For the purposes of this Title:

I. "Novel" refers to anything not found in the prior art;

II. "Prior art" refers to all the technical knowledge that has been made public by oral or written means, by use or by any other dissemination

or information means, either in Mexico or abroad;

III. "Inventive step" refers to the creative process where the results of which are not obvious from the prior art to a person skilled in the art;

IV. Industrial application, the possibility that an invention has practical utility or can be made or used in any branch of economic activity, for the purposes stated in the application;

V. "Claim" refers to the essential characteristic of a product or process for which protection is precisely and specifically claimed in the application for a patent or registration and granted, where appropriate, in the corresponding title; and

VI. "Filing date" refers to the date on which the application is filed with the Institute, or with the local offices of the Ministry of Trade and Industrial Development within the country, provided that it meets the requirements specified in this Law and the regulations thereunder.

ARTICLE 13.

The individual(s) claiming to be the inventor(s) application for a patent or registration shall be presumed to be the inventor(s). The inventor(s) shall have the right to be mentioned in the corresponding title or to refuse such mention.

ARTICLE 14.

The provisions of Article 163 of the Federal Labor Law shall be applicable to inventions, utility models and industrial designs made by individuals under employment relationships.

CHAPTER II Patents

ARTICLE 15.

Any human creation that allows matter or energy existing in nature to be transformed for use by man for the satisfaction of his specific needs shall be considered an invention.

ARTICLE 16.

Novel inventions resulting from an inventive step and subject to industrial applicability under the terms of this Law shall be patentable, with the exception of:

I. Essentially biological processes for obtaining, reproducing and propagating plants and animals;

II. Biological and genetic material as found in nature;

III. Animal breeds;

IV. The human body and the living matter constituting it; and

V. Plant varieties.

ARTICLE 17.

The prior art on the filing date of the patent application or, where applicable, the recognized priority date, shall be used to determine whether an invention is novel and involves an inventive step. Furthermore, in order to determine whether an invention is novel, the prior art shall include all patent applications filed in Mexico prior to said date and still pending, even if the publication referred to in Article 52 of this Law occurs at a later date.

ARTICLE 18.

The disclosure of an invention shall not prevent it from continuing to be considered novel where, within the 12 months prior to the filing date of the patent application or where applicable, the recognized priority date, the inventor or his successor in title has made the invention public by any means of communication, by putting it into practice or by displaying it at a national or international trade show. When the corresponding application is filed, the confirming documentation shall be included in the manner laid down in the regulations under this Law.

The publication of an invention contained in a patent application or in a patent granted by a foreign office shall not be regarded as corresponding to any of the situations referred to in this Article.

ARTICLE 19.

For the purposes of this Law, the following shall not be considered inventions:

I. Theoretical or scientific principles;

II. Findings that consist in making public or disclosing something that already existed in nature, even though it was previously unknown to man;

III. Diagrams, plans, rules and methods for carrying out mental processes, playing games or doing business, and mathematical methods;

IV. Software;

V. Methods to present information;

VI. Aesthetic creations and artistic or literary works;

VII. Surgical and therapeutic treatment or diagnostic methods applicable to the human body and to animals; and

VIII. Juxtaposition of known inventions or mixtures of known products, or alteration of the use, form, dimensions or materials thereof, except where in reality they are so combined or merged so that they cannot function separately or where their particular features or functions have been so modified as to produce an industrial result or their use is not obvious to a person skilled in the art.

ARTICLE 20. [Repealed]

ARTICLE 21.

The right conferred by the patent shall be determined by the claims as approved. Descriptions and blueprints or, where applicable, the deposit of biological material referred to in Article 47, subparagraph I of this Law, shall be used to interpret them.

ARTICLE 22.

The right conferred by a patent shall not have any effect against the following:

I. A third party who, in the private or academic sphere and for non-commercial purposes, engages in scientific or technological research activities for purely experimental, testing or teaching purposes, and to that end manufactures or uses a product or a process identical to the one patented;

II. Any person who markets, acquires or uses the patented product or the product obtained by means of the patented process, after said product has been lawfully placed on the market;

III. Any person who, prior to the filing date of the patent application or where applicable the recognized priority date, uses the patented process, manufactures the patented product or undertakes the necessary preparations for such use or manufacture;

IV. The use of the invention referred to in transportation vehicles of other countries when it forms part of such vehicles and when the vehicles are in transit within the national territory;

V. A third party who, in the case of patents relating to living matter, makes use of the patented product as an initial source of variation or propagation to obtain other products, except where such use is made repeatedly; and

VI. A third party who, in the case of patents relating to products consisting of living matter, uses, distributes or markets the patented products for purposes other than multiplication or propagation, after said products have been lawfully placed on the market by the patent owner or by a licensee. Performance of any activity provided for in this Article shall not constitute an administrative infringement or offense within the scope of this Law.

ARTICLE 23.

The patent shall have a non-renewable term of 20 years, starting from the filing date and shall be subject to payment of the relevant fees.

ARTICLE 24.

Once the patent has been granted, the patent owner may seek damages from

third parties who, prior to the grant, made use of the patented process or product without his consent, where said use is made after the date on which publication of the application in the Gazette takes effect.

ARTICLE 25.

The exclusive right of use of the patented invention shall confer the following prerogatives to its owner:

I. If the subject of the patent is a product, the owner has the right to prevent others from manufacturing, using, selling, offering for sale or importing the patented product without his consent; and

II. If the subject of the patent is a process, the owner has the right to prevent others from using said process and from using, selling, offering for sale or importing the product obtained directly by means of the process without his consent.

Use made by the person referred to in Article 69 of this Law shall be considered made by the patent owner.

ARTICLE 26.

The existence of a patent, either pending or granted, may be mentioned only in the case of products or processes covered by any of said situations.

CHAPTER III Utility Models

ARTICLE 27.

Utility models that are novel and industrially applicable shall be eligible for registration.

ARTICLE 28.

Objects, items, appliances or tools which, as a result of a modification in their arrangement, configuration, structure or form, offer a different function with respect to their component parts or advantages regarding their usefulness shall be considered utility models.

ARTICLE 29.

Utility models registration shall have a non-renewable term of 10 years starting from the filing date and shall be subject to payment of the relevant fees.

The use of the utility model and the limitations of the right conferred on the owner as a result of its registration shall be governed, as appropriate, by the provisions of Articles 22 and 25 of this Law.

ARTICLE 30.

The regulations contained in Chapter V of this Title, with the exception of Articles 45 and 52, shall apply as appropriate to the processing of a utility model registration.

CHAPTER IV Industrial Designs

ARTICLE 31.

Industrially applicable and novel industrial designs shall be eligible for registration.

Designs that are created independently of known designs or combinations of known features of designs, and which differ significantly therefrom, shall be considered as novel.

The protection conferred to an industrial design shall not cover those elements or features that were dictated solely by technical considerations or by the performance of a technical function, and which do not embody any arbitrary contribution on the part of the designer; it shall likewise not cover those elements or features of which their exact reproduction was necessary to allow the product incorporating the design to be mechanically assembled or connected to another product of which it constitutes an integral part or component; this limitation shall not apply to goods in which the design element lies in a shape or form intended to permit the multiple assembly or connection of the goods or their interconnection within a modular system.

An industrial design shall not be protected where its appearance consists solely of the elements or features referred to in the previous paragraph.

ARTICLE 32.

Industrial designs shall include:

I. Industrial blueprints, which are any combination of shapes, lines or colors incorporated in an industrial product for ornamentation purposes and which give it a specific appearance of its own; and

II. Industrial models, which are constituted by any three-dimensional shape that serves as a model or pattern for the manufacture of an industrial product, giving it a special appearance that does not involve any technical effects.

ARTICLE 33.

The following shall be enclosed with the applications for the registration of industrial designs:

I. A graphic or photographic reproduction of the design concerned; and

II. An indication of the type of product for which the design will be

used.

ARTICLE 34.

The description submitted in the application shall refer briefly to the design's graphic or photographic reproduction of the design, with a clear indication of the angle from which the illustration is depicted.

ARTICLE 35.

The industrial design name shall be given in the application in the form of a claim followed by the words "as referred and illustrated"

ARTICLE 36.

Industrial designs registration shall have a non-renewable term of 15 years, starting from the filing date and shall be subject to the payment of the relevant fees.

The use of industrial designs and the limitation of the rights conferred on the owner as a result of their registration shall, where appropriate, be governed by the provisions of Articles 22 and 25 of this Law.

ARTICLE 37.

The process of registering industrial designs shall, where appropriate, be carried out in compliance with the rules contained in Chapter V of this Title, with the exception of Articles 45 and 52.

CHAPTER V Processing of Patents

ARTICLE 38.

In order to obtain a patent a written application shall be filed with the Institute in which the inventor and applicant's name and address, the nationality of the latter, the invention's name and any other data required by this Law and the regulations thereunder shall be included, along with the receipt of the relevant fees, including those relating to the procedure and of substance examinations.

The pending patent application and its addenda shall be confidential until publication.

ARTICLE 38 bis.

The Institute shall recognize as the filing date of a patent application the date and hour of filing of the application, provided that said application complies with the requirements laid down in Articles 38, 47, subparagraphs I and III, 179 and 180 of this Law.

Where the application does not comply with the requirements laid down in the previous paragraph as of the filing date, the date on which it does comply with said requirements shall be considered as the filing date. The filing date shall determine the preemptive right.

The regulations under this Law may provide for other means by which applications and other submissions may be filed with the Institute.

ARTICLE 39.

The patent may be applied for directly by the inventor or by his successor in title or through his representatives.

ARTICLE 40.

Where a patent is requested having been applied for abroad, the filing date in the country of first filing may be recognized as the priority date, provided that filing in Mexico occurs within the periods specified by international treaties or, otherwise, within 12 months after the application for a patent in the country of origin.

ARTICLE 41.

To give priority referred to in the preceding article shall meet the following requirements:

I. Upon application for the patent, priority shall be claimed and the country of origin and the date on which the application was filed in that

country shall be specified;

II. The application filed in Mexico shall not seek the grant of rights additional to those deriving from the application filed abroad. For rights additional to those arising from the application filed abroad as a whole, the priority shall be only partial and relative to this application. The request for additional rights may be a new recognition of priority or, failing that, they will be subject to examination for novelty that corresponds to the filing date referred to in Article 38 bis;

III. The requirements specified in international treaties, this Law and the regulations thereunder shall be complied with within 3 months after filing the application.

IV. [Repealed]

ARTICLE 42.

Where several inventors have made the same invention independently of each other, the patent rights shall belong to the inventor whose application bears the earliest filing date or recognized priority date, as the case may be, provided that said application is not rejected or abandoned.

ARTICLE 43.

The patent application shall refer to a single invention, or to a group of inventions so related to each other that they constitute a single inventive concept.

ARTICLE 44.

If the application does not meet the provisions of the previous Article, the Institute shall notify the applicant in writing so that, within a 2-month period he may divide it into several applications, retaining as the date of each one that of the first application and that of any recognized priority. If, on expiration of the period allowed, the applicant has not divided the application, it shall be considered abandoned.

Where the applicant complies with the provisions of the previous paragraph, the divisional applications shall not be published as provided for in Article 52 of this Law.

ARTICLE 45.

A single patent application may contain:

I. Claims relating to a finished product and claims relating to processes specially devised for its manufacture or use;

II. Claims relating to a certain process and claims relating to an apparatus or means specially devised for its application; and

III. Claims relating to a finished product and claims relating to a process specially devised for its manufacture and to an apparatus or means specially devised for its application.

ARTICLE 46.

The process and machinery or apparatus for producing a utility model or an industrial design shall be subject of patent applications independent of the application for registration of said model or design.

ARTICLE 47.

A patent application shall be accompanied by:

I. The description of the invention, which must be sufficiently clear and complete to enable a full understanding of it and, where appropriate, to guide its accomplishment for a person who possesses know-how and average knowledge in the matter. Likewise, when it is not clear from the description of the invention, it must also include the best method known to the applicant to implement the invention, as well as information that illustrates the industrial application of the invention. In the case of biological material where the description of the invention cannot itself be sufficiently detailed, the application shall be completed with a record of the deposit of the material at an institution recognized by the Institute, in compliance with the provisions of the regulations under this Law;

II. The blueprints required for the description to be understood;

III. One or more claims, which shall be clear and concise and may not exceed the contents of the description; and

IV. An abstract of the description of the invention, which shall serve solely for the publication thereof and as an element of technical information.

ARTICLE 48.

Where a patent application has to be divided, the applicant shall submit

the descriptions, claims and blueprints necessary for each application, with the exception of the documentation relating to the priority claimed and the translation thereof included in the initial application and, where appropriate, the assignment of rights and power of attorney. The blueprints and descriptions submitted shall not be altered in any way that might modify the invention referred to in the original application.

ARTICLE 49.

The applicant may convert the patent application into one for the registration of a utility model or industrial design and vice versa, where it appears from the contents of the application that they are not consistent with the title of protection applied for.

The applicant may make such a conversion of the application only within three months of the filing date or within three months of the date on which the Institute requires him to make the conversion, provided that the application has not been abandoned. If the applicant does not convert the application within the time allowed by the Institute, the application shall be considered abandoned.

ARTICLE 50.

Once the application has been filed, the Institute shall perform a formal examination of the documents, and may require that further details or clarifications be provided wherever it considers this necessary, or that omissions be rectified. If the applicant fails to fulfill this requirement within two months, the application shall be considered abandoned.

ARTICLE 51. [Repealed]

ARTICLE 52.

The publication of the pending patent application shall take place as soon as possible following the expiration of the 18-month period from the filing date or, where applicable, from the date of recognized priority. At the request of the applicant the application shall be published prior to the expiration of said period.

ARTICLE 52 bis.

The Institute may receive information within six months from the date of publication in the Gazette from any person on the application that complies with the provisions of Articles 16 and 19 of this Act.

The Institute may, when deemed appropriate, without being obliged to decide on the scope thereof, consider the information and technical support

documents for the consideration of background on the request made. The Institute, if deemed appropriate, will review applicant data and documents submitted to it and will give a period to state in writing the arguments about his rights.

The presentation of information does not suspend the proceeding, nor confer on the person that has made the character of interest, or third hand, and, where applicable, shall exercise the actions envisaged in Article 78 of this Law.

ARTICLE 53.

Once the patent application has been published and the relevant fees have been paid, the Institute shall conduct a substantive examination of the invention in order to determine whether the requirements specified in Article 16 of this Law are complied with, or whether the invention is covered by any of the situations provided for in Articles 16 and 19 of this Law.

In order to conduct substantive examinations, the Institute may, where appropriate, request the technical support of national specialized agencies and institutions.

ARTICLE 54.

The Institute may accept or request the findings from substantive examinations or the equivalent thereof conducted by foreign patent offices or, where appropriate, a plain copy of the patent granted by any of said foreign offices.

ARTICLE 55.

The Institute may call upon the applicant in writing to submit, within a period of two months, such additional or complementary information or documentation as may be necessary, including that which relates to researches or examinations undertaken by foreign offices, to alter the claims, description or blueprints, or to make such clarifications as it deems relevant where:

I. In the opinion of the Institute this is necessary for the conduct of the substantive examination; and

II. During or as a result of the substantive examination it transpires that the invention, as identified in the application, does not meet the patentability requirements or falls into any of the cases provided for in Articles 16 and 19 of this Law.

If within the period referred to in this Article the applicant does not comply with the request served on him, his application shall be considered abandoned.

ARTICLE 55 bis.

Documents submitted either in compliance with any of the requests referred to in Articles 50 and 55 of this Law or in the case of voluntary amendments may not contain additional material or claims that give a scope greater than that contained in the original application considered as a whole. Voluntary amendments shall be accepted only up to before the issue of the decision on the appropriateness or otherwise of the grant of a patent referred to in Articles 56 and 57 of this Law.

ARTICLE 56.

Where the Institute refuses the patent, it shall notify the applicant in writing, stating the legal basis and grounds for its decision.

ARTICLE 57.

Where it is found that the grant of a patent may proceed, the applicant shall be notified in writing so that, within a period of two months, he meets the necessary requirements for its publication and submits to the Institute a receipt of the fees for the issue of the title. If the applicant does not meet the provisions of this Article within the fixed period, the application shall be considered abandoned.

ARTICLE 58.

The person concerned shall be allowed an additional 2-month period to comply with the requirements referred to in Articles 44, 50, 55 and 57 of this Law, without having to request it, subject to proof of payment of the fee applicable to the month of compliance.

The period referred to in the previous paragraph shall run as from the day following the day on which the 2-month period provided for in the Articles referred to above expires.

The application shall be considered abandoned if the applicant fails to comply with the requests served on him within the initial period or the additional period provided for in this Article, or if he fails to provide a receipt of the relevant fees.

ARTICLE 59.

The Institute shall issue the patent owner with a certificate for each patent, as proof and official recognition. The certificate shall comprise

one copy of each of the description, claims and blueprints, if any, and shall specify the following:

I. The number and classification of the patent;

II. The name and address of the person(s) to whom it is issued;

III. The name of the inventor(s);

IV. The filing date of the application and any recognized priority date, as well as the issue date of the patent;

V. The invention's name; and

VI. The effective and expiration date to maintain existing rights, specifying that it will be subject to payment of fees under the terms established by law.

ARTICLE 60.

Once the patent has been granted, the Institute shall proceed with its publication in the Gazette, which shall contain the information referred to in Articles 47, subparagraph IV, and 59 of this Law.

ARTICLE 61.

Changes in the text or blueprints of the patent protection title may be allowed only under the following circumstances:

I. To correct any obvious errors or errors in form; and

II. To limit the scope of the claims.

The changes authorized shall be published in the Gazette.

CHAPTER VI Licensing and Transfer of Rights

ARTICLE 62.

The rights conferred by a patent or registration, or those deriving from a pending application may be encumbered and transferred either wholly or partially under the conditions and formalities laid down in ordinary legislation. For the transfer of rights or encumbrance to be binding on third parties, it shall be registered with the Institute.

A single request may be filed seeking ownership transfer registration of two or more pending applications or two or more patents or registrations where the transferor and transferee are the same persons in each case. The applicant shall identify each of the applications, patents or registrations in respect of which the entry is to be made. The appropriate fees shall be paid according to the number of applications, patents or registrations involved.

ARTICLE 63.

The patent or registration owner may, by virtue of an agreement, license the use thereof. The license shall be registered with the Institute to be binding on third parties.

A single request may be filed seeking rights licensing registration in two or more pending applications or two or more patents or registrations where the licensor and licensee are the same persons in each case. The applicant shall identify each of the applications, patents or registrations in respect of which the entry is to be made. The appropriate fees shall be paid according to the number of applications, patents or registrations involved.

ARTICLE 64.

To register a patent transfer, registration, license or encumbrance with the Institute, it shall be sufficient to make the appropriate request in the manner specified in the regulations under this Law.

ARTICLE 65.

There shall be grounds to cancel the registration of a license in any of the following cases:

I. When the patent or registration owner and the licensee jointly so request;

II. When the patent or registration is declared invalid or lapses;

III. [Repealed]

IV. When a court order so rules.

ARTICLE 66.

The license shall not be registered when the patent or registration has expired or where its duration is longer than the term of the patent or registration.

ARTICLE 67.

Unless provided otherwise, the grant of a license shall not prevent the patent or registration owner from granting other licenses, or from making use of the patent at the same time himself.

ARTICLE 68.

The person to whom a license registered with the Institute has been granted shall, unless stipulated otherwise, be entitled to institute legal proceedings in defense of the patent rights as if he were the actual owner of those rights.

ARTICLE 69.

The use of the patent by the person to whom a license registered with the Institute has been granted, shall be considered as being done by the patent owner, except in the case of compulsory licenses.

ARTICLE 70.

In the case of inventions, after three years from the date of grant of the patent, or four years from the filing of the application, whichever period expires later, any person may apply with the Institute for the grant of a compulsory license to use said invention, where it has not been used, unless there are duly justified reasons for such non-use. A compulsory license shall not be granted when the patent owner or the holder of a contractual license have been importing the patented product or a product obtained with the patented process.

ARTICLE 71.

Whoever applies for a compulsory license must have the technical and economic ability to use the patented invention efficiently.

ARTICLE 72.

Prior to granting the first compulsory license, the Institute shall give

the patent owner the opportunity to make use of the patent within a period of one year from the date of the personal notification addressed to him. After the parties have been heard, the Institute shall decide on the grant of the compulsory license and, if it decides to grant the license, shall specify the duration, terms and scope thereof and the amount of the royalties payable to the patent owner.

In the event of a compulsory license being applied for where another already exists, the person holding the earlier license shall be notified and heard.

ARTICLE 73.

On expiration of the period of two years following the date of grant of the first compulsory license, the Institute may for administrative purposes declare the patent lapse if the grant of the compulsory license has not remedied the non-working thereof, or if the patent owner has not proved the working thereof or the existence of reasons that are justified in the opinion of the Institute.

The payment of royalties under a compulsory license shall end when the patent expires or is invalidated, or for any other reason provided for in this Law.

ARTICLE 74.

At the request of the patent owner or of the holder of the compulsory license, the conditions of the license may be modified by the Institute when circumstances so dictate, and, in particular, when the patent owner has granted contractual licenses that are more favorable than the compulsory license. The Institute shall rule on the modification of the compulsory license conditions after hearing the parties.

ARTICLE 75.

Whoever holds a compulsory license shall start making use of the patent within two years from the date on which the license was granted to him. Failure to comply with this condition, unless there are reasons that are justified in the opinion of the Institute, shall constitute grounds for the revocation of the license either ex officio or at the request of the patent owner.

ARTICLE 76.

The compulsory license shall not be exclusive. The person to whom it is granted may assign it only with the authorization of the Institute and provided that it is transferred together with that part of the production unit in which the licensed patent is being used.

ARTICLE 77.

For reasons of national emergency or security, and for as long as those reasons persist, including the outbreak of serious diseases declared as requiring priority attention by the General Health Council, the Institute shall, in a declaration published in the Official Journal, determine that use may be made of certain patents by means of the grant of licenses of public utility in cases where, if such use were not made, the production supply or distribution to the public of staple goods and services or medicines would be prevented, hindered or made more expensive.

In cases of serious diseases causing an emergency situation or threatening national security, the General Health Council shall issue the declaration of priority attention either on its own initiative or in response to a written request by the national institutions specialized in diseases which are accredited by the General Health Council, in which it justifies the need for priority attention. Once the Council's declaration has been published in the Official Journal, pharmaceutical firms may request that the Institute grants a license of public utility, and the Institute shall grant said license after hearing the parties, for a period as short as justified by the case in accordance with the opinion of the General Health Council, within 90 days, starting from the date on which the request is submitted to the Institute.

The Ministry of Health shall determine the production and quality conditions, the duration and scope of application of said license, and the classification of the applicant's technical ability. After listening to both parties, the Institute shall establish a reasonable total in royalties for the patent owner. The grant may cover one or all of the prerogatives referred to in subparagraphs I or II of Article 25 of this Law. With the exception of the grant of licenses of public utility as referred to in paragraphs two and three of this Article, other licenses shall be granted in accordance with the terms contained in paragraph two of Article 72. None of the licenses referred to in this Article may be exclusive or transferable.

CHAPTER VII Invalidity and Lapse of Patents and Registrations

ARTICLE 78.

The patent or registration shall be invalid in the following cases:

I. when it is granted in violation of the provisions on the requirements and conditions for the grant of patents or registrations of utility models and industrial designs. For the purposes of the provisions of this subparagraph, the requirements and conditions for the grant of patents and registrations shall be those laid down in Articles 16, 19, 27, 31 and 47;

II. When such grant takes place in violation of the provisions of the law in force at the time of grant of the patent or registration. An action seeking invalidation under this subparagraph may not be based on the disputing of the legal representation of the patent or registration applicant;

III. When abandonment of the application occurs in the course of processing; and

IV. When the grant has been invalidated by serious error or negligence, or has been made to a person not entitled to it. An action seeking invalidation as provided for in subparagraphs I and II above, may be brought at any time; that deriving from the circumstances provided for in subparagraphs III and IV above may be brought within five years following the date on which the publication of the patent or registration in the Gazette becomes effective.

Where the invalidation affects only one or some of the claims, or part of a claim, invalidation shall be declared only in respect of the claim(s) affected, or the affected part of a claim. Invalidation may be declared in the form of a limitation or specification of the corresponding claim.

ARTICLE 79.

The action for invalidity shall be made for administrative purposes by the Institute, either ex officio or at the request of an individual or the Federal Public Prosecutor, where the Federal Government has some interest in the case, as provided for in this Law. The action for invalidity shall cancel the patent or registration effects concerned with retroactive effect to the filing date of the application.

ARTICLE 80.

Patents or registrations shall expire and the rights that they protect shall become in the public domain under the following circumstances:

I. upon expiry of their term;

II. When the fee provided for the maintenance of the rights therein is not paid, or is not paid within the six-month grace period following said expiry date;

III. In the case provided for in Article 73 of this Law.

Lapse due solely to the passage of time shall not require an administrative action by the Institute.

ARTICLE 81.

The reinstatement of the patent or registration that has expired owing to failure to pay the fee on time may be requested, provided that the appropriate request is made within the six months following the grace period referred to in subparagraph II of the previous Article and the unpaid fee is settled, together with any surcharges.

TITLE III Trade Secrets

ARTICLE 82.

Any industrially or commercially applicable information which an individual or company keeps and which is confidential in nature and associated with securing or retaining a competitive or economic advantage over third parties in the conduct of economic activities, and regarding to which said individual or company has adopted sufficient means or systems to preserve its confidentiality and restrict access thereto, shall be considered a trade secret.

The information constituting a trade secret shall necessarily relate to the nature, characteristics or purposes of products, to production methods or processes or to ways or means of distributing or marketing products or rendering services.

Information that is in the public domain, is obvious to a person skilled in the art on the basis of previously available information or must be disclosed by virtue of a legal provision or court order shall not be considered a trade secret. Information that is supplied to any authority by a person possessing it as a trade secret shall not be considered as entering the public domain or being disclosed by virtue of a legal provision, when it is supplied for the purpose of obtaining licenses, permits, authorizations, registrations or any other official documents.

ARTICLE 83.

The information referred to in the previous Article shall consist of documents, electronic or magnetic media, optical disks, microfilms, films or other similar material.

ARTICLE 84.

The person who keeps a trade secret may transfer it to or authorize its use by a third party. The authorized user shall be under the obligation not to disclose the trade secret by any means.

In agreements under which technical knowledge, technical assistance and basic or detailed engineering are provided, confidentiality clauses may be included to protect any trade secrets covered, which shall specify the aspects to be treated as confidential.

ARTICLE 85.

Any person who, by reason of his work, employment, function or post, the practice of his profession or the conduct of business relations, has access to a trade secret the confidentiality of which he has been warned of shall

abstain from revealing it without just cause and without the consent of the person keeping said secret or of the authorized user thereof.

ARTICLE 86.

Any individual or company engaging either a worker who is working or has worked for, or a professional, adviser or consultant who is rendering or has rendered his services on behalf of another person, with a view to obtaining trade secrets from the latter, shall be liable for payment of damages for any harm caused to that person.

Any individual or company who by any unlawful means obtains information constituting a trade secret shall likewise be liable for the payment of damages.

ARTICLE 86 bis.

The information required by special laws to determine the safety and efficacy of pharmaceutical and agricultural products that make use of new chemical components shall be protected under the terms of the international treaties to which Mexico is party.

ARTICLE 86 bis.1.

Where one of the parties involved in any judicial or administrative proceeding is required to reveal a trade secret, the authority hearing the proceeding shall take the necessary measures to prevent its disclosure to third parties having no connection with the dispute.

No interested party may in any event reveal or make use of the trade secret referred to in the previous paragraph.

TITLE IV Trademarks, Advertisements and Commercial Names

CHAPTER I Trademarks

ARTICLE 87.

Industrialists, traders or service providers may use trademarks in industry or trade or in the services that they provide. However, the right to their exclusive use shall be obtained through their registration with the Institute.

ARTICLE 88.

A trademark is understood as being any visible sign that distinguishes products or services from others of the same type or category in the market.

ARTICLE 89.

The following signs may constitute trademarks:

I. Visible names and figures that are sufficiently distinctive and capable of identifying the products or services to which they are applied, or are intended to be applied, compared with others of the same type or category;

II. Three-dimensional shapes;

III. Commercial names and company or business names, provided that they are not covered by the following Article; and

IV. The proper name of an individual, provided that it is not the same as a registered trademark or published commercial name.

ARTICLE 90.

The following may not be registered as trademarks:

I. Three-dimensional animated or changing names, figures or shapes that are expressed in motion even when visible;

II. The technical or commonly used names of products or services for which the protection of the trademark is sought, and also those words that have turned into the usual or generic designation of said products or services in everyday language or business practice;

III. Three-dimensional shapes that are in the public domain or have come

into common use, those that lack the originality that readily distinguishes them, and the usual and everyday shapes of products or those determined by their nature or industrial function;

IV. Three-dimensional names, figures or shapes which, when their characteristics are considered as a whole, are descriptive of the products or services to which they are intended to afford trademark protection. The above shall include descriptive or indicative words which, in trade, serve to identify the kind, quality, quantity, composition, purpose, value or place of origin of the products or the time of their production;

V. Isolated letters, digits or colors, except where they are combined with or accompanied by elements such as signs, designs or names that give them distinctive character;

VI. The translation into other languages, the arbitrarily changed spelling or the artificial construction of words not eligible for registration;

VII. Signs that reproduce or imitate, without authorization, the coats of arms, flags or emblems of any country, State, municipality or equivalent political divisions, and the names, abbreviations, symbols or emblems of international, governmental or non-governmental organizations, or of any other officially recognized organization, as well as the verbal designation thereof;

VIII. Signs that reproduce or imitate official signs or seals of control and guarantee adopted by a State, without the authorization of the proper authority, or coins, banknotes, commemorative coins or any national or foreign legal tender;

IX. Signs that reproduce or imitate the names or graphic representation of decorations, medals or other prizes awarded at officially recognized trade shows, fairs, congresses or cultural or sporting events;

X. Proper or common geographical names and maps, and also gentilic nouns and adjectives, where they indicate the origin of the products or services and may cause confusion or error regarding such origin;

XI. The names of towns or places known for the manufacture of certain products, to protect those products, except the names of places in private ownership, where they are special and not liable to be confused, and where

the consent of the owner has been obtained;

XII. The names, pseudonyms, signatures and portraits of persons, without the consent of the persons concerned or, if they are deceased, of their surviving spouse, blood relations in direct line and by adoption and collateral relations, both down to the fourth level of relationship, in that order;

XIII. The titles of intellectual or artistic works and the titles of publications and periodicals distributed, the names of fictional or symbolic characters or real personages portrayed, stage names and the names of performing groups, except where the owner of the corresponding rights has expressly authorized such registration;

XIV. Three-dimensional names, figures or shapes liable to deceive or mislead the public, understood as being those that constitute false indications as to the nature, components or qualities of the products or services that they claim to protect;

XV. Three-dimensional names, figures or shapes identical or similar to a trademark that the Institute considers or has declared well known in Mexico, to be applied to any product or service.

This impediment shall apply in any case where the use of the trademark for which registration is sought:

- a) Is liable to cause confusion or a risk of association with the owner of the well-known trademark; or
- b) Is liable to constitute an unauthorized appropriation by the owner of the well-known trademark; or
- c) Is liable to discredit the well-known trademark; or
- d) Is liable to dilute the distinctive character of the well-known trademark.

This impediment shall not be applicable where the applicant for registration is the owner of the well-known trademark; and,

XVbis. Three-dimensional names, figures or shapes identical or confusingly similar to a trademark that the Institute considers or has declared famous under the terms of Chapter II bis, to be applied to any product or service. This impediment shall not be applicable where the applicant for registration is the owner of the famous trademark;

XVI. A trademark that is identical or confusingly similar to another in

respect of which an application has been filed earlier and is awaiting registration or to another that is already registered and in force, and is applied to the same or similar products or services. However, a trademark identical to one previously registered may be registered if the application is made by the same owner for use in connection with similar products or services; and

XVII. A trademark that is identical or confusingly similar to a commercial name applied to a firm or industrial, commercial or service establishment of which the principal business is the manufacture or sale of the products or the provision of the services that the trademark is intended to protect, provided that the commercial name has been used prior to the filing date of the application for registration of the trademark or the date of the declared use thereof; the foregoing shall not be applicable where the application for a trademark is filed by the owner of the commercial name, if no other identical commercial name exists that has been published.

ARTICLE 91.

A registered trademark or a trademark confusingly similar to another previously registered trademark may not be used or form part of the commercial name or company or business name of any establishment or company where:

I. The establishments or companies concerned are engaged in the production, import or marketing of goods or services identical or similar to those to which the registered trademark applies; and

II. There is no consent in writing from the owner of the trademark registration or from the person empowered to give such consent. Violation of this principle shall lead to the imposition of the sanctions provided for in this Law, which shall be independent of the possibility of legally seeking the removal of the registered trademark or the trademark confusingly similar to the previously registered trademark from the commercial name or company or business name concerned and the payment of damages.

These provisions shall not be applicable where the commercial name or corporate or business name already incorporated the trademark prior to the filing or first declared use date of the registered trademark.

ARTICLE 92.

Registration of a trademark shall not be effective against:

I. A third party who in good faith, used the same or a confusingly similar trademark on the national territory for the same or similar products or services, provided that the third party had begun to make uninterrupted use of the trademark prior to the filing date of the application for registration, or the date of the first declared use of the trademark. The third party shall have the right to apply for registration of the trademark within three years following the day on which the registration was published, in which case he shall first apply for and obtain an action for invalidity of said registration; and

II. Any person who markets, distributes, acquires or uses the product to which the registered trademark is applied, after said product has been lawfully introduced on to the market by the owner of the registered trademark or his licensee.

This case shall include the import of lawful products to which the trademark is applied, carried out by any person for their use, distribution or marketing in Mexico, pursuant to the terms and conditions laid down in the regulations under this Law; and

III. An individual or company who applies his own name or his company or business name to the goods that he renders or distributes, to the services that he provides or to his places of business, or who uses it as part of his commercial name, provided that he applies it in the form in which he is accustomed to using it and that it has features that clearly distinguish it from a homonym already registered as a trademark or published as a commercial name.

The conduct of any activity provided for in this Article shall not constitute an administrative infringement or an offense within the meaning of this Law.

ARTICLE 93.

Trademarks shall be registered in relation to specific products or services according to the classification provided for by the regulations under this Law.

Any doubt as to the class to which a given product or service belongs shall be settled finally by the Institute.

ARTICLE 94.

Once a trademark has been registered, there may be no increase in the number of products or services that it protects, even where they belong to the same class, but it may be restricted to certain products or services

as often as requested.

In order to protect a different product or service subsequently with a previously registered trademark, it shall be necessary to obtain a new registration.

ARTICLE 95.

The registration of a trademark shall have a term of 10 years, starting from the filing date of the application, and may be renewed for periods with same duration.

CHAPTER II Collective Trademarks

ARTICLE 96.

Legally incorporated associations or groups of producers, manufacturers, traders or service providers may apply for registration of a collective trademark to distinguish the products or services of their members on the market from those of third parties.

ARTICLE 97.

The rules for the use of a collective trademark shall be filed with the application for said trademark.

ARTICLE 98.

The collective trademark may not be transferred to third parties, and its use shall be reserved for association members.

In the absence of special provisions, collective marks shall be governed by the provisions of this Law that relate to trademarks.

CHAPTER II bis Well-known and famous trademarks

ARTICLE 98 bis.

For the purposes of its assessment or declaration by the Institute, a trademark shall be considered well known in Mexico when a given sector of the public or of the country's business circles is aware of the trademark as a result of business activities conducted in Mexico or abroad by a person who makes use of the trademark in connection with his goods or services, or as a result of the promotion or advertising thereof.

For the purposes of its assessment or declaration by the Institute, a trademark shall be considered famous in Mexico when the majority of consumers are aware of the trademark.

All forms of proof permitted by this Law may be used for the purpose of demonstrating that the trademark is well known or famous.

ARTICLE 98 bis.1.

The declaration or any updates issued shall constitute an administrative act by means of which the Institute declares, based on the evidence provided, that the conditions by virtue of which a trademark is well known or famous persist at the time that the act is issued.

The impediments provided for in ARTICLE 90, subparagraphs XV and XV bis, for the protection of well-known or famous trademarks, shall apply independently of whether those trademarks are registered or declared. However, so that the owner of a trademark may obtain a declaration, the trademark shall be registered in Mexico to protect the products or services in which the notoriety or fame of the trademark originated.

ARTICLE 98 bis.2.

For the purpose of obtaining the declaration to the effect that a trademark is well known, the applicant must provide, *inter alia*, the following information:

I. The sector of the public comprising real or potential consumers who identify the trademark with the products or services which it protects, based on a market survey or study or any other method permitted by law;

II. Other sectors of the public excluding real or potential consumers that identify the trademark with the products or services which it protects, based on a market survey or study or any other method permitted by law;

III. The commercial circles comprising traders, industrialists or service

providers connected with the type of products or services, who identify the trademark with the products or services protected by the trademark, based on a market survey or study or any other method permitted by law;

IV. The date of first use of the trademark in Mexico and, where applicable, abroad;

V. The period of continued use of the trademark in Mexico and, where applicable, abroad;

VI. The marketing channels in Mexico and, where applicable, abroad;

VII. The methods of disseminating the trademark in Mexico and, where applicable, abroad;

VIII. The period of actual advertising of the trademark in Mexico and, where applicable, abroad;

IX. The investment made during the previous three years in advertising and promoting the trademark in Mexico and, where applicable, abroad;

X. The actual geographical area of influence of the trademark;

XI. The sales volume of the products or the revenue received from the provision of the services protected by the trademark, during the previous three years;

XII. The economic value represented by the mark in the shareholders' equity of the company owning the trademark, or in accordance with a valuation of the company;

XIII. The registrations of the trademark in Mexico and, where applicable, abroad;

XIV. The franchises and licenses that have been granted with respect to the trademark; and

XV. The percentage of the share of the trademark in the relevant market sector or segment.

ARTICLE 98 bis .3.

The Institute shall assume, except where there is evidence to the contrary, that the conditions which gave rise to the declaration or its updates shall persist for a period of five years from the date of issue; consequently, during that period, the impediment provided for in ARTICLE 90, subparagraph XV, or the provisions of subparagraph XV bis, shall apply, as applicable, expeditiously.

The declaration may be updated at any time, at the request of the person with a legal interest in such, provided that the person proves that the conditions which gave rise to said declaration persist on the date of the relevant application.

ARTICLE 98 bis. 4.

The application for a declaration to the effect that a trademark is well known shall be filed in writing in accordance with the formalities laid down for applications and submissions in this Law and the Regulations thereunder, and accompanied by the evidentiary elements on which the request is based, and shall include at least the following:

I. The name, nationality, address, telephone number, fax number and e-mail of the applicant and, where applicable, his agent;

II. The trademark and registration number; and

III. The evidentiary documents and elements accompanying the application.

ARTICLE 98 bis.5.

Once the Institute has received the application and the relevant fees have been paid, the elements, data and documents provided shall be examined. If, in the opinion of the Institute, the aforementioned elements, data and documents do not meet the legal requirements or are insufficient for the understanding and analysis of any of the elements of the application, the applicant shall be required to make the necessary clarifications or additions, for which purpose he shall be granted a 4-month period . If the applicant fails to comply with the requirement within the period granted, the request shall be rejected.

ARTICLE 98 bis.6.

Once the application has been processed and the legal and regulatory requirements have been met, the relevant declaration shall be issued. In the event that the Institute denies the issue of the declaration, it

shall notify the applicant in writing, stating the reasons and legal grounds for its decision and assessing all the evidentiary elements received.

ARTICLE 98 bis.7.

Decisions on declarations to the effect that a trademark is well known shall be published in the Gazette.

ARTICLE 98 bis.8.

The declaration shall be invalid if:

It was granted in violation of the provisions of this Chapter;

The evidence supporting the declaration is false;

It was granted based on an incorrect assessment of the evidence;

It was granted to a person who had no right thereto.

Administrative actions for invalidity shall be issued by the Institute, at the request of persons having a legal interest who prove the grounds on which their request is based.

When the trademark registration or registrations based on which the action was issued become invalid, expire or are cancelled, the declaration shall lose its evidentiary value.

ARTICLE 98 bis.9.

For the purposes of its transfer, the declaration shall be considered linked to the trademark registration(s) which gave rise thereto.

CHAPTER III Advertisements

ARTICLE 99.

The exclusive right to use advertisements shall be obtained by its registration with the Institute.

ARTICLE 100.

Sentences or statements the purpose of which is to make commercial, industrial or service establishments or businesses, products or services known to the public so that they may be distinguished from others of the same kind shall be considered as advertisements.

ARTICLE 101.

If the purpose of a piece of advertisement is to publicize products or services, said products or services shall be specified in the registration application.

ARTICLE 102.

If the purpose of the piece of advertisement is to publicize a certain establishment or business, of whatever type, it shall be considered included in a special complementary class of the classification provided for in the regulations under this Law. In such cases, the registration shall not protect products or services, even where they are related to the establishment or business.

ARTICLE 103.

The registration of advertisements shall have a term of 10 years, starting from the filing date of the application, and may be renewed for periods with same duration.

ARTICLE 104.

In the absence of special provisions, advertisements shall be governed by the provisions of this Law that relate to trademarks.

CHAPTER IV Commercial Names

ARTICLE 105.

The commercial name of an industrial, commercial or service firm or establishment and the right to its exclusive use shall be protected without the need for registration. The protection shall cover the geographical area of the actual clients of the firm or establishment to which the commercial name is applied, and shall extend to the entire Republic if the name is widely and consistently publicized at the national level.

ARTICLE 106.

Any person using a commercial name may apply with the Institute for its publication in the Gazette. Such publication shall produce the effect of establishing the presumption of good faith in the adoption and use of the commercial name.

ARTICLE 107.

The application for publication of a commercial name shall be filed in writing with the Institute together with the documents that prove the actual use of the commercial name in connection with a certain area of business.

ARTICLE 108.

Once the application has been received and the legal requirements have been met, a substantive examination shall be made to determine whether there exists any identical or confusingly similar commercial name that is applied to the same area of business, the registration of which is pending or which has been published earlier, or any identical or confusingly similar trademark the registration of which is pending or which has already been registered, protecting identical or similar products or services related to the principal business of the firm or establishment involved. If there is no prior art, publication may proceed.

ARTICLE 109.

Commercial names that lack elements distinguishing the firm or business involved from others of the same kind, and those that infringe such provisions contained in ARTICLE 90 of this Law as are applicable, shall not be published.

ARTICLE 110.

The effects of publication of a commercial name shall last for ten years,

starting from the filing date of the application, and may be renewed for periods with same duration. If not renewed, the effects shall cease.

ARTICLE 111. Unless provided otherwise, the transfer of a firm or establishment shall include the right to the exclusive use of the commercial name.

Article. 112. In the absence of special provisions and where applicable, commercial names shall be governed by the provisions of this Law relating to trademarks.

CHAPTER V Trademark Registration

ARTICLE 113.

For the registration of a trademark, an application containing the following information shall be filed in writing with the Institute:

I. The name, nationality and address of the applicant;

II. The distinctive sign constituting the trademark, with a mention of whether it embodies a nominative element, or no such element, or if it is three-dimensional or mixed;

III. The date of first use of the trademark, which may not be subsequently modified, or a mention that it has not been used; in the absence of any indication, it shall be presumed that the trademark has not been used;

IV. The products or services to which the trademark is to be applied; and

V. all other information provided for in the regulations under this Law.

ARTICLE 114.

The application for registration of a trademark shall be accompanied by proof of payment of the fees payable for processing of the application, registration and issue of the relevant title, and copies of the trademark where it is devoid of a verbal element, three-dimensional or mixed.

ARTICLE 115.

The copies of the trademark filed with the application shall contain no words or captions that might deceive or mislead the public. When an application is filed for the protection of a trademark without any verbal element or a three-dimensional trademark, the copies of the application shall not contain any words that constitute or might constitute a trademark, except where an express reservation to that effect is included.

ARTICLE 116.

Where the trademark is applied for in the name of two or more persons, the rules agreed upon between the applicants regarding the use and licensing of the trademark and the transfer of rights in it shall be filed together with the application.

ARTICLE 117.

When the registration of a trademark is applied for in Mexico within the periods specified in international treaties or, failing that, within six months of the filing of applications in other countries, the filing date in the country of first filing may be recognized as the priority date.

ARTICLE 118.

For the priority referred to in the previous Article to be recognized, the following requirements shall be met:

I. The priority must be claimed, and proof given of the country of origin and of the filing date of the application in that country, when applying for registration;

II. The application filed in Mexico must not seek to cover products or services additional to those provided for in the application filed abroad, in which case priority will be recognized only for those specified in the application filed in the country of origin;

III. The requirements specified in international treaties, this Law and the regulations thereunder must be met within three months of the filing of the application; and

IV. [Repealed]

ARTICLE 119.

Once the application has been received, the documentation filed shall undergo a formal examination to determine whether the requirements specified in this Law and in the regulations thereunder have been met.

ARTICLE 120 [Repealed]

ARTICLE 121.

If at the time of filing the application meets the requirements of Articles 113, subparagraphs I, II and IV, 114, 179 and 180 of this Law, that date shall be the filing date thereof; otherwise the date on which the requirements are met within the prescribed time limit shall be considered as the filing date.

The filing date shall determine precedence between applications.

The regulations under this Law may provide for other means by which applications and other submissions may be filed with the Institute.

ARTICLE 122.

On completion of the formal examination a substantive examination shall be made to determine whether the trademark is eligible for registration under the provisions of this Law.

If the application or documentation submitted does not comply with legal or regulatory requirements, if there is any impediment to the registration of the trademark or if there are anticipations, the Institute shall inform the applicant accordingly in writing, allowing him a period of two months within which to rectify the errors or omissions that he has committed and to make whatever statement best serves his interests in relation to the impediments and anticipations cited. If the applicant does not respond within the time allowed, his application shall be considered abandoned.

ARTICLE 122 bis.

The person concerned shall be allowed an additional period of two months within which to comply with the requirements referred to in the previous Article, without having to request it, subject to proof of payment of the fee applicable in the month of compliance.

The additional period shall run from the day following that of the expiry of the 2-month period provided for in Article 122 above.

The application shall be considered abandoned if the applicant fails to comply with the requirements specified within the initial period or the additional period referred to in this Article, or fails to provide proof of payment of the relevant fees.

ARTICLE 123.

If the applicant, on responding within the time allowed for remedying the legal impediment to registration, alters or substitutes the trademark, said trademark shall be subject to renewed processing, with the applicant having to pay the fee applicable to a new application and meet the requirements of Articles 113 and 114 of this Law and the applicable provisions of the regulations thereunder. In that event the date on which the renewed processing is applied for shall be considered the filing date.

ARTICLE 124.

If the impediment relates to the existence of one or more registrations of identical or confusingly similar trademarks and if invalidation, lapse or cancellation proceedings are pending at the request of a party or ex officio, the Institute shall suspend the processing of the application until said proceedings are ruled upon.

ARTICLE 125.

Once the application has been processed and the legal and regulatory requirements have been complied with, the title shall be issued. Where the Institute refuses registration of the trademark, it shall inform the applicant in writing, stating the reasoning and legal grounds underlying its decision.

ARTICLE 126.

The Institute shall issue a certificate for each trademark as proof of its registration. The certificate shall include a specimen of the trademark and shall specify the following:

- I. Registration number of the trademark;
- II. Distinctive sign constituting the trademark, mentioning whether it is nominative, non-appellative, three-dimensional or mixed;
- III. Products or services to which the trademark will be applied;
- IV. Name and address of the owner;
- V. Location of the establishment, where applicable;
- VI. Filing date of the application and recognized priority and first use dates, if any, and issue date; and
- VII. Term of the trademark.

ARTICLE 127.

Decisions on registrations of trademarks and their renewals shall be published in the Gazette.

ARTICLE 128.

The trademark shall be used on the national territory in the form in which it was registered or with modifications that do not alter its distinctive character.

ARTICLE 129.

The Institute may declare the registration and use of trademarks as mandatory in respect of any product or service, or prohibit or regulate the use of trademarks, registered or not, either ex officio or at the

request of representative organizations, where:

I. Use of the trademark is a factor associated with monopolistic or oligopolistic practices or unfair competition which cause serious distortions in the production, distribution or marketing of certain products or services;

II. Use of the trademark impedes the efficient distribution, production or marketing of goods and services; and

III. Use of trademarks prevents, hinders or increases the cost of the production supply or distribution of staple goods or services to the public in cases of national emergency and for as long as such an emergency persists. The relevant declaration shall be published in the Official Journal.

ARTICLE 130.

If for three consecutive years a trademark is not used for the products or services for which it was registered, there shall be grounds for the lapse of the registration thereof, except where the owner or registered licensee has used it during the three consecutive years immediately prior to the filing of the request for the administrative action for lapse, or where a situation has arisen that is beyond the control of the owner of the trademark which constitutes an obstacle to the use thereof, such as the restriction of imports or other government requirements applicable to the goods or services to which the trademark is applied.

ARTICLE 131.

The display of the legend "registered trademark" the letters M.R. or the ® symbol may be used only in connection with the products or services for which the trademark in question is registered.

ARTICLE 132 [Repealed]

ARTICLE 133.

The renewal of the registration of a trademark shall be requested by the owner six months prior to the expiration of its term. However, the Institute shall nevertheless process requests that are filed within six months of the expiry of the term of registration. Once that period expires without any request for renewal having been filed, the registration shall expire.

ARTICLE 134.

Renewal of the registration of a trademark shall proceed only if the person concerned submits proof of payment of the appropriate fee and makes a sworn statement in writing attesting his use of the trademark on at least one of the goods or services to which it is applied, such use not having been interrupted, without just cause, for a period equal to or longer than that provided for in Article 130 of this Law.

ARTICLE 135.

If one and the same trademark is registered to protect particular goods or services, there need only be renewal of any of those registrations for the use of the trademark to have effect on and to benefit all the registrations, subject to submission of proof of payment of the relevant fees.

CHAPTER VI Licensing and Transfer of Rights

ARTICLE 136.

The owner of a registered or pending trademark may, by agreement, license one or more persons to use the trademark in relation to all or some of the goods or services to which said trademark applies. The license shall be registered with the Institute in order to be binding on third parties.

ARTICLE 137.

For a license to be registered with the Institute, it shall be sufficient to file the corresponding application in the manner specified in the regulations under this Law.

A single submission may be made to request registration of the licensing of rights relating to two or more pending applications or two or more registered trademarks, where the licensor and licensee are the same in all of them. The applicant shall identify each of the applications or registrations in respect of which the registration is to be made. The corresponding fees shall be paid according to the number of applications or registrations involved.

ARTICLE 138.

There shall be grounds for cancellation of the registration of a license in the following cases:

I. Where it is jointly applied for by the owner of the trademark and the licensed user;

II. Owing to invalidity, lapse or cancellation of the registration of the trademark, or where the trademarks in question were pending and their registration is not granted; and

III. Where a court order so rules.

ARTICLE 139.

The products sold or the services rendered by the licensee shall be of the same quality as those manufactured or rendered by the owner of the trademark. Moreover, those products or the establishment in which the services are rendered or contracted, shall state the name of the user and any other particulars required by the regulations under this Law.

ARTICLE 140.

The person holding a license registered with the Institute shall, unless stipulated otherwise, be empowered to institute legal proceedings for the protection of the rights in the trademark as if he were the owner.

ARTICLE 141.

Use of the trademark by the user holding a license registered with the Institute shall be considered made by the owner of the trademark.

ARTICLE 142.

A franchise shall exist where, together with the licensing of the use of a trademark, granted in writing, technical know-how is transferred or technical assistance provided, so that the person to whom the license is granted can produce or sell goods or provide services consistently according to the operating, commercial and administrative methods established by the owner of the trademark, in order that the quality, prestige and image of the products or services distinguished by said trademark may be maintained.

The franchisor shall provide the prospective franchisee, at least thirty days before the signing of the corresponding agreement, with the relevant information on the state of his firm, as provided for in the regulations under this Law.

In the event that the information referred to in the previous paragraph is not truthful, the franchisee shall have the right, in addition to demanding that the contract be declared null and void, to demand compensation for damage suffered by it as a result of the non-compliance. The franchisee may exercise such right during the year following conclusion of the contract. After that period has passed, the franchisee shall have the right only to demand that the contract be declared null and void. The provisions of this Chapter shall apply to the registration of franchises.

Article 142 bis.

The franchise agreement shall be drawn up in writing and contain at least the following:

- I. The geographical area in which the franchisee shall carry out the activities covered by the contract;
- II. The location, minimum dimension and characteristics of the investments in infrastructure, with respect to the establishment in which the franchisee

will carry out the activities covered by the contract;

III. The inventory, marketing and advertising policies, as well as the provisions relating to the supply of goods and contracting of suppliers, where applicable;

IV. The policies, procedures and deadlines relating to repayments, financing and other consideration borne by the parties under the terms agreed upon in the contract;

V. The criteria and methods applicable to determining the profit and/or commission margins of the franchisees;

VI. The characteristics of the technical and operational training of the franchisee's staff, as well as the method or form in which the franchisor is to provide technical assistance;

VII. The criteria, methods and procedures for supervision, information, evaluation and classification of the performance, as well as the quality, of the services for which the franchisor and franchisee are responsible;

VIII. To establish the terms and conditions for subfranchising, where the parties agree to such;

IX. The clauses for termination of the franchise agreement;

X. The circumstances in which the terms or conditions relating to the franchise agreement may be revised and, where applicable, modified, by mutual agreement;

XI. The franchisee shall not be under the obligation to transfer ownership of its assets to the franchisor or to anyone designated by the franchisor on termination of the contract, except where it has been agreed to the contrary; and

XII. The franchisee shall not be under the obligation at any time to transfer shares in his company to the franchisor or make it a partner in his company, except where it has been agreed to the contrary.

This Article shall, where applicable, comply with the provisions of the Regulations under this Law.

Article 142 bis. 1.

The franchisor may interfere in the organization and running of the franchisee only to guarantee compliance with the standards of management and image of the franchise in compliance with the provisions of the contract. The franchisor shall not be considered as interfering in the case of a merger, split, conversion, amendment to articles of association or transfer or encumbrance of shares in the franchisee's company, which results in a change in the personal characteristics of the franchisee as laid down in the relevant contract as determining the franchisor's willingness to conclude the contract with the franchisee concerned.

Article 142 bis.2.

The franchisee shall, during the term of the contract and after the termination thereof, keep confidentiality of information which is of a confidential nature or of which it becomes aware, and which is the property of the franchisor, including information concerning the operations and activities carried out under the contract.

Article 142 bis.3.

The franchisor and franchisee may not consider the contract terminated or cancelled unilaterally, except where the contract has been concluded for an indefinite period or there is justified cause. In order for the franchisee or franchisor to consider the contract terminated early, either by mutual agreement or cancellation, the grounds and procedures agreed upon in the contract must be complied with.

In the event of a violation of the provisions of the previous paragraph, the early termination effected by the franchisor or franchisee shall give rise to the payment of the conventional penalties agreed upon in the contract or compensation for damage caused, where appropriate.

ARTICLE 143.

The rights deriving from an application for the registration of a trademark or those conferred by a registered trademark may be encumbered or transferred in the manner and according to the procedures laid down in ordinary legislation. Such encumbrance or transfer of rights shall be registered with the Institute as provided for in the Regulations under this Law, in order to be enforceable against third parties.

A single submission may be made to request registration of the transfer of ownership of two or more pending applications or two or more registered trademarks, where the person transferring them and the person acquiring them are the same in all cases. The applicant shall identify each of the

applications or registrations in respect of which the registration is to be made. The corresponding fees shall be paid according to the number of applications or registrations involved.

ARTICLE 144.

Where companies are merged it shall be understood that, unless stipulated otherwise, the registered trademark rights are transferred.

ARTICLE 145.

For the purposes of their transfer, the registrations of the trademarks of one and the same owner shall be considered linked when said trademarks are identical and protect similar products or services, or are confusingly similar and are applied to the same or similar products or services.

ARTICLE 146.

Where the owner of the registrations of two or more linked trademarks considers that there will be no confusion in the event of one of them being used by another person for the products or services to which the trademark concerned is applied, he may apply for the removal of the linkage. The Institute shall make the appropriate final ruling.

ARTICLE 147.

The transfer of any of the linked trademarks shall be registered only where all of them are transferred to the same person.

ARTICLE 148.

When registration is sought for any transfer of a registered or pending trademark that has been the subject of earlier, unregistered transfers, those earlier transfers shall likewise be registered with the Institute.

ARTICLE 149 [Repealed]

ARTICLE 150.

The Institute shall refuse the registration of a license or transfer of rights where the registration of the trademark is not in force.

CHAPTER VII Invalidity, Lapse and Cancellation of Registration

ARTICLE 151.

The registration of a trademark shall be invalid when:

I. It is granted in violation of the provisions of this Law or that which was in force at the time of registration;

Notwithstanding the provisions of this subparagraph, the invalidation action may not be based on a challenge to the legal representation of the applicant for the registration of the trademark.

II. The trademark is identical or confusingly similar to another that has been used in the country or abroad prior to the filing date of the application in respect of the registered trademark and has been applied to the same or similar products or services, provided that the person who asserts the stronger right by virtue of prior use proves uninterrupted use of the mark in the country or abroad prior to the filing date or, where applicable, prior to the date of first declared use by the person who has registered it;

III. The registration was granted on the basis of false information contained in the application;

IV. The registration was granted in error, by mistake, or owing to a difference of judgment, there being another registration in force which is considered infringed because it is that of an identical or confusingly similar trademark applied to identical or similar services or products; and

V. The agent, representative, user or distributor of the owner of a trademark registered abroad applies for and secures the registration of the trademark or of a confusingly similar trademark in his own name without the express consent of the owner of the foreign trademark, in which case the registration shall be regarded as having been obtained in bad faith.

Invalidation proceedings under this Article may be instituted within a period of five years from the date on which the publication of the registration in the Gazette becomes effective, with the exception of actions under subparagraphs I and V, which may be instituted at any time, and under subparagraph II, which may be exercised within a period of three years.

ARTICLE 152. The registration shall expire in the following cases:

I. When it is not renewed as provided for by this Law; and

II. When the trademark ceases to be used during the three consecutive years immediately prior to the request for an administrative action for lapse, except where there are reasons for the non-use that are justified in the opinion of the Institute.

ARTICLE 153.

There shall be grounds for cancellation of the registration of a trademark if its owner has caused or condoned its conversion into a generic name denoting one or more of the products or services for which it was registered in such a way that, in commercial circles and in the course of its generalized use by the public, the trademark has lost its distinctive character as a means of distinguishing the product or service to which it is applied.

ARTICLE 154.

The owner of a registered trademark may at any time, in writing, request the cancellation of the registration thereof. The Institute may require authentication of the signature on the request in the cases provided for in the regulations under this Law.

ARTICLE 155.

The action for invalidity, lapse or cancellation of the registration of a trademark shall be made for administrative purposes by the Institute, either ex officio or at the request of a party or the Federal Public Prosecutor, where there is an interest on the part of the Federal Government. Lapse as referred to in Article 152, subparagraph I of this Law shall not require an administrative action on the part of the Institute.

TITLE V Appellations of Origin

CHAPTER I Protection of Appellations of Origin

ARTICLE 156.

An appellation of origin shall be understood to be the name of a geographical region of the country that is used to designate a product originating therein of which its qualities or characteristics are due exclusively to the geographical environment, including both natural and human factors.

ARTICLE 157.

The protection that this Law affords to appellations of origin begins with a declaration issued to that effect by the Institute. Illegal use of the appellation shall be punished, including cases in which it is accompanied by indications such as "kind," "type," "style," "imitation" or other similar terms that create confusion in the mind of the consumer or imply unfair competition.

ARTICLE 158.

The declaration of protection of an appellation of origin shall be made ex officio or at the request of any person who demonstrates that he has a legal interest therein. For the purposes of this Article, The following shall be considered to have a legal interest:

I. Individuals or companies directly involved in the extraction, production or manufacture of the product or products to be covered by the appellation of origin;

II. Chambers or associations of manufacturers or producers; and

III. Agencies or entities of the Federal Government and the governments of the states of the Federation.

ARTICLE 159.

The application for a declaration of protection of an appellation of origin shall be made in writing and be accompanied by the evidence on which the application relies, and shall specify the following:

I. Name, address and nationality of the applicant; if a company is involved, its nature and the activities in which it is engaged shall also be mentioned;

II. Legal interest of the applicant;

III. Name constituting the appellation of origin;

IV. Detailed description of the finished product(s) that will be covered by the appellation, including its characteristics, components, method of extraction and production or manufacturing processes. The official standards laid down by the Ministry of Trade and Industrial Development to which the product, its method of extraction, its manufacturing or production processes and its forms of packing or packaging are subject shall be stated when they determine the relation to be established between the appellation and the product;

V. Place or places of extraction, production or manufacture of the product to be protected by the appellation of origin, and boundaries of the territory of origin, due account being taken of geographical features and political divisions;

VI. Detailed mention of the links between the appellation, product and territory; and

VII. Any other information considered necessary or relevant by the applicant.

ARTICLE 160.

Once the request has been received by the Institute and payment of the relevant fees has been made, the information and documents submitted shall be examined.

If, in the opinion of the Institute, the documents filed do not meet the legal requirements or are insufficient for the understanding and analysis of any of the elements of the application, the applicant shall be required to make the necessary clarifications or additions, for which purpose he shall be granted a period of two months.

If the applicant does not meet the requirement within the time allowed, the application shall be considered abandoned, but the Institute may ex officio continue the processing thereof under the provisions of this Chapter if it considers such action as appropriate.

ARTICLE 161.

When the documents filed meet the legal requirements, the Institute shall publish an extract from the application in the Official Journal.

If the procedure is initiated ex officio, the Institute shall publish in the Official Journal an extract from the submissions and particulars required under Article 159, subparagraphs III to VII inclusive, of this Law.

In both cases the Institute shall allow a period of two months from the date of publication for any third party who justifies his legal interest to make observations or objections and provide such proof as he considers relevant.

ARTICLE 162.

For the purposes of this Chapter, All types of evidence shall be acceptable with the exception of personal statements and testimonials. Expert testimony shall be the responsibility of the Institute or of such other person as the latter may designate. The Institute may at any time prior to the declaration make such investigations as it considers appropriate and gather such elements as it considers necessary.

ARTICLE 163.

Once the period referred to in Article 161 of this Law has expired and once the investigations have been made and the evidence exhibited, the Institute shall hand down the appropriate ruling.

ARTICLE 164.

If the ruling referred to in the previous Article grants protection to an appellation of origin, the Institute shall make the declaration and proceed to publish it in the Official Journal. The declaration by the Institute granting protection to the appellation of origin shall determine finally the elements and requirements provided for in Article 159 of this Law.

ARTICLE 165.

The duration of the declaration of protection for an appellation of origin shall be determined by the subsistence of the grounds on which it was made, and it shall cease to be effective only by virtue of another declaration by the Institute.

ARTICLE 166.

The terms of the declaration of protection for an appellation of origin may be amended at any time, either ex officio or at the request of an interested party, in accordance with the procedure laid down in this Chapter. The relevant request shall state what is required by Article 159,

subparagraphs I to III of this Law and give a detailed account of the amendments requested and the grounds on which those amendments are based.

ARTICLE 167.

The Mexican State shall be the owner of the appellation of origin. It may only be used by virtue of authorization issued by the Institute.

ARTICLE 168.

The Institute, acting through the Ministry of Foreign Affairs, shall process the registration of appellations of origin in respect of which a declaration of protection has been made under this Law with a view to securing their recognition abroad in accordance with international treaties.

Chapter II Authorization of Use

ARTICLE 169.

Applications for authorization to use an appellation of origin shall be filed with the Institute, and authorization shall be granted to any individual or company meeting the following requirements:

I. Being directly engaged in the extraction, production or manufacture of the products protected by the appellation of origin;

II. Engaging in such activity within the territory specified in the declaration;

III. Complying with the official standards set by the Ministry of Trade and Industrial Development in accordance with the relevant laws as applied to the products involved; and

IV. any other person specified in the declaration.

ARTICLE 170.

The application for authorization to use an appellation of origin shall contain the particulars and be accompanied by the documents specified in the regulations under this Law.

ARTICLE 171.

On receiving the application for authorization to use an appellation of origin, the Institute shall proceed as provided for in Article 160 of this Law and, if the legal requirements are met, it shall proceed to grant the authorization.

ARTICLE 172.

The effects of the authorization to use an appellation of origin shall have a duration of ten years, starting from the date on which the application is filed with the Institute, and may be renewed for equal periods.

ARTICLE 173.

The user of an appellation of origin shall be under the obligation to use it in the form in which it is protected according to the declaration. If it is not used in the form specified, there shall be grounds for cancellation of the authorization.

ARTICLE 174.

The right to use an appellation of origin may be transferred by the authorized user in compliance with the provisions of ordinary legislation. Any such transfer shall be effective only from the time of its registration with the Institute, after proof has been given of the new user meeting the conditions and requirements laid down in this Law for the grant of the right to use the appellation of origin.

ARTICLE 175.

The authorized user of an appellation of origin may in turn, by agreement, allow the use of the appellation, but only by those persons who distribute or sell products bearing his trademarks. The agreement shall be sanctioned by the Institute and shall become effective upon its registration by it. The agreement shall contain a clause placing the distributor or trader under the obligation to comply with the requirements laid down in Article 169, subparagraphs III and IV of this Law and those in the regulations thereunder. Should the distributor or trader fail to meet this obligation, there shall be grounds for cancellation of the registration.

ARTICLE 176.

The authorization granted to the user of an appellation of origin shall cease to be effective under the following circumstances:

I. invalidity, in any of the following cases:

- (a) When it has been granted in violation of the provisions of this Law;
- (b) When it has been granted on the basis of false information and documents;

II. Cancellation, when the authorized user uses the appellation of origin in a manner different from that specified in the declaration of protection;

III. Expiry of its term.

ARTICLE 177.

Administrative actions for invalidity and cancellation shall be made by the Institute either ex officio or at the request of a party or the Federal Public Prosecutor.

ARTICLE 178.

In addition to the publications provided for in this Chapter, declarations issued and authorizations granted by the Institute, and also any act that puts an end to the effects of the rights granted in connection with an

appellation of origin, shall be published in the Gazette.

TITLE V bis Layout Designs of Integrated Circuits

ARTICLE 178 bis.

The layout designs of integrated circuits shall be registered and protected in accordance with this Title. To that end, the Institute shall have the following powers:

I. To process and, where appropriate, to grant the registration of layout designs of integrated circuits, and also the registration of transfers and licenses for the use and exploitation thereof, in compliance with this Law and the regulations thereunder;

II. To substantiate the proceedings for the administrative action for infringement, invalidity or lapse in connection with the registration of layout designs of integrated circuits, to issue the rulings to which said proceedings give rise and to impose such sanctions as may be appropriate; and

III. Where not agreed between the parties, to set the amount of the royalties referred to in the second paragraph of Article 178 bis⁵, subparagraph V of this Title.

ARTICLE 178 bis.1.

For the purposes of this Title:

I. "Integrated circuit" refers to a product, in its final or an intermediate form, in which the elements, at least one of them being an active element, and some or all of the interconnections form an integral part of the body or surface of a piece of semiconductor material, and which is intended to perform an electronic function;

II. "Layout design" or "topography" refers to the three-dimensional arrangement, expressed in any form, of the elements, at least one of which is an active element, and some or all of the interconnections of an integrated circuit, or such a three-dimensional arrangement designed for an integrated circuit intended for manufacture;

III. "Protected layout design" refers to a layout design of integrated circuits in relation to which the requirements of protection referred to in this Title are satisfied; and

IV. "Original layout design" refers to a layout design of integrated circuits that is the result of intellectual effort on the part of its creator and is not usual or commonplace to the creators of layout designs or manufacturers of integrated circuits at the time of its creation.

Article 178 bis.2.

An original layout design may be eligible to be registered, whether incorporated in an integrated circuit or not, where it has not been commercially used anywhere in the world. It may also be registered, even where it has been commercially used in the ordinary way, in Mexico or abroad, provided that the application for registration is filed with the Institute within two years following the date on which the applicant first commercially used it in the ordinary way anywhere in the world.

A layout design consisting of a combination of elements or interconnections that are usual or commonplace to creators of layout designs or manufacturers of integrated circuits at the time of its creation may be registered only if the combination as a whole is considered original within the meaning of subparagraph IV of Article 178 bis 1 of this Title, and if meets the other conditions laid down in the previous paragraph.

Article 178 bis.3.

The registration of a layout design shall have a non-renewable term of ten years, starting from the filing date of the application for registration, and shall be subject to payment of the applicable fee.

Article 178 bis.4.

The registration of a layout design shall confer on its owner the right to prevent others from doing the following without his authorization:

I. Reproducing the protected layout design in its entirety, or any part thereof that is considered original in itself within the meaning of subparagraph IV of Article 178 bis 1 of this Law, by incorporation in an integrated circuit or otherwise; and

II. Importing, selling or distributing in any form for commercial purposes any of the following:

- a) A protected layout design;
- b) An integrated circuit incorporating a protected layout design; or
- c) A product incorporating an integrated circuit that itself incorporates an unlawfully reproduced protected layout design.

ARTICLE 178 bis 5.

The right conferred by the registration of a layout design shall have no effect on any third party who:

I. reproduces a protected layout design without the owner's authorization for private purposes or for the sole purpose of evaluation, analysis, research or teaching;

II. creates a layout design that meets the originality requirement based on the evaluation or analysis of a protected layout design referred to in subparagraph I of this Article;

The creator of the second layout design may perform any of the acts referred to in the previous Article in relation to the layout design created by him, without the authorization of the owner of the first protected layout design.

III. has independently created an original layout design identical to the protected layout design prior to the publication of the registration in the Gazette;

Anyone who seeks to avail himself of this exception in an administrative action shall bear the burden of proof.

IV. performs any of the acts referred to in subparagraph II of the previous Article in relation to the following. without the owner's authorization and after they have been lawfully placed on the market in Mexico or in any part of the world by the owner or with his consent:

- a) a protected layout design;
- b) an integrated circuit incorporating a protected layout design; or
- c) a product incorporating an integrated circuit that itself incorporates a protected layout design;

V. sells or distributes, in any form without the owner's authorization, an integrated circuit incorporating an unlawfully reproduced protected layout design, insofar as the person who performs or orders those acts did not know and had no reasonable means of knowing, on acquiring such an integrated circuit, that it incorporates an unlawfully reproduced protected layout design.

As of the moment when the third party acting in good faith receives sufficient notice that the protected layout design has been unlawfully reproduced, he shall be obliged to pay a reasonable royalty such as would be payable under a freely negotiated license for such a layout design, with a view

to exhausting current stocks or fulfilling orders made prior to the notification.

The performance of any activity provided for in this Article shall not constitute an administrative infringement or offense within the meaning of this Law.

ARTICLE 178 bis.6.

In addition to the particulars specified in Article 38 of this Law, the application for registration shall be accompanied by the following:

I. a sworn declaration stating the date and place of first ordinary commercial use anywhere in the world, or stating that there has been no exploitation;

II. a graphic or photographic reproduction of the layout design; and

III. a mention of the electronic function performed by the integrated circuit in which the layout design is incorporated.

The applicant may exclude the parts of the graphic or photographic reproduction that relate to the method of manufacture of the integrated circuit, provided that the parts shown are sufficient for the layout design to be identified.

ARTICLE 178 bis.7.

The registration of a layout design shall be effected in compliance with the applicable provisions of Articles 34, 35, 38, 38 bis, 39, 50 and 55 bis to 60 of this Law.

The provisions contained in Articles 62 to 69 of this Law shall be applicable to the transfer or licensing of the rights conferred by the registration of a protected layout design. There shall be no grant of compulsory licenses.

ARTICLE 178 bis.8.

The registration of a protected layout design shall be null and void where it has been granted in violation of the provisions of Article 178 bis.2 of this Title, the provisions of Articles 78 to 81 of this Law being applicable as appropriate.

ARTICLE 178 bis.9.

For the purposes of Article 229 of this Law, protected layout designs or the integrated circuits in which they are incorporated shall display a circled or otherwise enclosed letter "M" or "T" , accompanied by the

name of the owner, in either the full or the abbreviated form by which he is generally known.

The owner of the registration of a layout design may seek damages from third parties who, before the grant of said registration, have used the layout design without his consent, provided that said use took place after the filing date of the application for registration and the layout design concerned complies with the provisions of the previous paragraph.

Title VI Administrative Procedures

Chapter I General Rules of Procedure

ARTICLE 179.

Any application or submission filed with the Institute that relies on the provisions of this Law and other provisions derived from this Law shall be filed in writing and be written in Spanish.

Documents filed in a different language shall be accompanied by a Spanish translation.

ARTICLE 180.

The applications and submissions must be signed by the applicant or his representative and be accompanied by proof of payment of the prescribed fee, if applicable. The lack of signature in the application or submission will render it incomplete, and in the case of non-payment of the fees, the Institute will notify the applicant or his representative to remedy the omission within a period of five consecutive working days, and if he does not follow the notice, the Institute will reject the applications or submission.

ARTICLE 181.

When applications and submissions are filed through an agent, the agent shall prove his status:

I. in a simple power of attorney signed before two witnesses if the principal is an individual;

II. in a simple power of attorney signed before two witnesses if, in the case of legal entities, the case involves applications for patents or registrations or the registration of licenses or transfers of licenses. In the latter case the power of attorney shall specify that the person granting is invested with the power to do so, and shall quote the instrument by which that power is conferred;

III. in cases not covered by the previous subparagraph, in a public document or power of attorney with authentication of signatures before a notary or intermediary when a Mexican company is involved, the legal existence of the latter and the powers of the grantor having also to be verified; and

IV. in cases not covered by subparagraph II, in a power of attorney granted under the applicable legislation of the place in which it is granted or in accordance with international treaties where the principal is a foreign company. When in such a power of attorney proof is given of the legal existence of the company in the name of which the power is granted, and of the grantor's right to confer said power, the validity of the power shall be presumed in the absence of proof to the contrary.

To substantiate the status of the agent, in the application for registration, subsequent renewals, and registration of relevant licenses or transfers of trademark, collective mark, trade announcement and publication of trade names, it is sufficient that the president simply states in the application that the agent has powers to carry out the necessary formalities, as long as the same agent handles it from start to completion of the procedure. If after the filing of the application a new agent involves, he shall prove his status according to this article.

ARTICLE 182.

When an application or submission is filed by several individuals, the relevant document shall specify which of them is the common representative, failing which it shall be understood that the first person mentioned is the common representative.

ARTICLE 183.

In any application the applicant shall give an address for the service and receipt of notifications on the national territory, and he shall communicate any change in that address to the Institute. If no notice of a change of address is given, notifications shall be considered to have been legally served at the address appearing in the file.

ARTICLE 184.

Where this Law expresses periods in a given number of days, only working days shall be counted; in the case of terms expressed in months or years, the calculation shall be from date to corresponding date, with non-working days included.

Periods shall start on the day following the relevant notification. Publications in the Gazette shall have the effect of notifications on the date specified in the Gazette itself or, if none is specified, on the day following that on which the Gazette was brought into circulation.

Article 185.

The files of patents and registrations in force, and also those relating

to published commercial names and appellations of origin, shall always be available for all types of consultation and for use in filing submissions.

Article 186.

Pending patent, utility model and industrial design files may be consulted only by the applicant or his representative, or persons authorized by the same, except when said files are cited as anticipations to another applicant, or where they are submitted as proof in an administrative action procedure, in which case the measures necessary for the preservation of confidentiality shall be observed.

The staff of the Institute who intervene in the various procedures to be conducted pursuant to this Law and the regulations thereunder shall be bound to observe absolute secrecy regarding the contents of pending files, failing which they shall be punished in accordance with the Federal Law on Accountability of Public Servants, regardless of whatever sanctions may be appropriate in such cases. The staff of public or private bodies that may be privy to said contents in dealings with the Institute in the course of their duties shall be bound by the same obligation.

Information with official nature or required by the judicial authority is excluded from the foregoing.

Chapter II Administrative Action Procedure

Article 187.

Statements of administrative action for invalidity, lapse, cancellation and administrative infringement under this Law shall be examined and ruled upon according to the procedure specified in this Chapter and the formalities laid down in this Law, and the Federal Code of Civil Procedure shall be subsidiarily applicable insofar as it does not contravene this Law.

ARTICLE 188.

The Institute may initiate the administrative action procedure ex officio or upon request by anyone with a legal interest and grounds for his claim. Similarly, any person may state in writing to the Institute the existence of grounds for initiating administrative action procedure ex officio, in which case the Institute may consider such information as evidence to determine the start of the procedure, if deemed appropriate.

ARTICLE 189.

Any statement of administrative action shall contain the following particulars:

- I. name of the requestor and of his representative if any;
- II. address for the service and receipt of notifications;
- III. name and address of the other party or of his representative;
- IV. the subject of the request, expressed in clear and precise terms;
- V. an account of the facts; and
- VI. the underlying legal grounds.

ARTICLE 190.

Originals or duly certified copies of the documents and statements on which the action relies shall be submitted with the request for an administrative action, and the corresponding proof shall be offered. Proof submitted later shall not be allowed unless it materializes later. The requestor shall also submit the number of simple copies of the application and accompanying documents as is necessary to pass on to the other party.

Where any document that is available in the archives of the Institute is offered as proof, it shall be sufficient for the requestor to specify the file in which it is to be found and to request the issue of the appropriate certified copy or, where applicable, the certification of the plain copy that is submitted, and request that the Institute summon the owner concerned using the plain copy of said proof.

ARTICLE 191.

If the requestor fails to comply with the requirements referred to in Article 189 of this Law or fails to submit the copies of the application and accompanying documents as referred to in Article 190 of this Law, the Institute shall call upon him once, and only once, to remedy the omission or to provide the appropriate clarifications; to that end he shall be allowed a period of eight days, and, if the requirement is not complied with in the time allowed, the request shall be rejected.

The request shall also be rejected for failure to submit a document attesting the requestor's status, or if the registration, patent, authorization or publication on which the action relies is invalid.

ARTICLE 192.

All types of evidence shall be allowed in the administrative action procedures, with the exception of testimonials and personal statements, unless the testimonial or personal statement is in documentary form, and evidence that is contrary to morality and the law.

Without prejudice to the provisions of the previous paragraph, evidentiary value shall be accorded, for the purposes of this Law, to invoices issued and inventories drawn up by the owner or his licensee.

ARTICLE 192 bis.

For the substantiation of facts liable to constitute an infringement of any one or more of the rights protected by this Law, or in administrative action procedures, the Institute may avail itself of such elements of proof as it considers necessary.

Where the affected owner or alleged infringer has submitted a sufficient amount of proof to which he could reasonably have access in support of his claims and has specified the relevant proof to substantiate those claims that is in the possession of the opposing party, the Institute may order the latter to submit said proof, subject, where appropriate, to such conditions as will guarantee the protection of confidential information.

Where the affected owner or alleged infringer refuses access to proof

or fails to provide relevant proof in his possession in a reasonable time, or significantly obstructs the procedure, the Institute may hand down preliminary and final rulings, either favorable or adverse, on the basis of the proof submitted, including the arguments put forward by the person adversely affected by the denial of access to the proof, on condition that the parties concerned are given the opportunity to be heard in relation to the arguments and to the proof submitted.

ARTICLE 192 bis.1.

Where the subject matter of the patent is a process for the manufacture of a product, the alleged infringer shall, in the procedure for the administrative action for infringement, prove that said product has been manufactured according to a process different from the patented process where:

I. the product obtained using the patented process is new; and

II. there is a significant probability that the product has been manufactured using the patented process and the owner of the patent has not succeeded, in spite of having tried, in establishing the process actually used.

ARTICLE 193.

On accepting the statement of administrative action for invalidity, lapse and cancellation, with the plain copy of the application and accompanying documents, the Institute shall notify the owner concerned of such, allowing him a period of one month within which to make, in writing, whatever statement best serves his interests. Procedures for the administrative action for infringement shall conform to the provisions of Articles 209, subparagraph IX, and 216 of this Law. The notification shall be made to the address given by the party requesting the administrative action.

ARTICLE 194.

Where it has not been possible to make the notification referred to in the previous Article on account of a change of address, whether that specified by the requestor or that found in the relevant file, and the new address is not known, the notice shall be served at the expense of the person requesting the measure by publication, once and only once, in the Official Journal and in a major national newspaper. The publication shall disclose an extract from the statement of administrative action and a period of one month shall be specified for the owner concerned to

make whatever statement best serves his interests.

ARTICLE 195.

In the administrative action procedure issues specially ruled upon previously shall not be examined, but will be settled when the appropriate finding is handed down.

ARTICLE 196.

When the Institute initiates the administrative action procedure ex officio, notice shall be served on the owner concerned or, where applicable, on the alleged infringer, at the address specified in the relevant file and, if any change has occurred without the Institute being notified, by publication as provided for in Article 194 of this Law.

ARTICLE 197.

The document in which the owner concerned or, where applicable, the alleged infringer, makes his statements shall contain:

I. name of the owner concerned or alleged infringer and that of his representative if any;

II. address for the service and receipt of notifications;

III. exceptions and defenses;

IV. statements on or rebuttals of each of the points in the request for an administrative action; and

V. legal grounds.

The provisions of Article 190 of this Law shall apply to the filing of the aforementioned document and the submission of evidence.

ARTICLE 198.

When the owner concerned, or where applicable, the alleged infringer, is unable to submit all or part of the evidence within the period allowed, owing to the evidence being abroad, he may be granted a further period of 15 days for its submission, provided that he proposes it in his document and makes a statement to that effect.

ARTICLE 199.

Once the period for the affected owner or the alleged infringer, to make

his statements and, where applicable, the further period referred to in the previous Article, have expired, following a study of applicable precedents and the consideration of all the evidence, the appropriate administrative ruling shall be handed down and the parties concerned shall be notified accordingly at the addresses mentioned in the file or, where necessary, By means of publication as provided for in Article 194 of this Law.

In the case of procedures for the administrative action for infringement, the same ruling shall likewise impose the sanction where one is appropriate.

ARTICLE 199 bis.

In administrative action procedures relating to the infringement of any of the rights protected by this Law, the Institute may adopt the following measures:

I. order the withdrawal from circulation or ban the distribution of merchandise that infringes such rights as are protected by this Law;

II. order the withdrawal from circulation of:

- a) objects manufactured or used illegally,
- b) objects, wrappers, containers, packaging, paperwork, advertising material and similar Articles that infringe any of the rights protected by this Law,
- c) signs, labels, tags, paperwork and similar Articles that infringe any of the rights protected by this Law, and
- d) implements or instruments intended or used for the manufacture, preparation or production of any of the Articles specified in items a, b and c, above;

III. prohibit with immediate effect the marketing or use of the goods by which one of the rights protected by this Law is infringed;

IV. order the seizure of goods, which shall take place in accordance with the provisions of Articles 211 to 212 bis.2;

V. order the alleged infringer or third parties to suspend or discontinue the acts constituting a violation of the provisions of this Law; and

VI. order the suspension of the rendering of the service or the closure of the establishment where the measures provided for in the previous subparagraphs are not sufficient to prevent or avoid the infringement

of the rights protected by this Law.

If the product or service is on the market, the traders or service providers shall be under the obligation to abstain from disposing of the product or rendering the service as from the date on which the ruling is notified to them.

Producers, manufacturers and importers shall be under the same obligation, as shall their distributors, who shall be responsible for immediately recovering any goods that are already on the market.

ARTICLE 199 bis.1.

Before ordering the implementation of the measures referred to in the previous Article, the Institute shall call upon the requestor to:

I. prove his ownership of the rights and any of the following circumstances:

- a) the existence of an infringement of his rights,
- b) the imminence of the infringement of his rights,
- c) the existence of the possibility of irreparable damage being sustained, and
- d) the existence of a justified fear that evidence might be destroyed, concealed, lost or altered;

II. provide sufficient security to cover any damages that might be caused to the person against whom the measure is sought; and

III. provide the necessary information for the identification of the goods, services or establishments with which or in which the infringement of industrial property rights has been committed.

A person against whom the measure has been granted may provide counter-security to cover any damages that might be caused to the party seeking it, with a view to having it lifted.

The Institute shall take into consideration the seriousness of the infringement and the nature of the measure sought.

To determine the amount of the security, the Institute shall consider the elements that the right holder brings as well as those arising from the actions. The amount of the counter-security shall include the amount of the security provided by the applicant and a forty percent of that. The Institute may require the applicant to increase the security, when the practice of action is clear that the initially granted security is insufficient to cover any damages that may cause the person against whom action is sought. Similarly, the Institute may order an increase in counter-security.

ARTICLE 199 bis.2.

A person against whom any of the measures referred to in Article 199 bis of this Law has been ordered shall have a period of ten days within which to submit to the Institute any observations that he might have regarding said measure.

The Institute may amend the terms of the measure that has been adopted in the light of any observations made to it.

ARTICLE 199 bis.3.

The party requesting the provisional measures referred to in Article 199 bis shall be liable for the payment of damages caused to the person against whom they have been carried out when:

I. the final ruling handed down on the merits of the dispute finds that there has been no infringement or threat of infringement of the rights of the party seeking the measure; and,

II. precautionary measures have been requested, and the petition or statement of administrative action for infringement has not been filed with the competent authority or the Institute on the substance of the dispute within a period of 20 days beginning with the implementation of the measure.

ARTICLE 199 bis.4.

The Institute shall hand over to the person concerned any security or counter-security that may have been deposited when the procedure for administrative action for an infringement is settled.

ARTICLE 199 bis.5.

The Institute shall, in the final ruling on the administrative action for infringement procedure, decide on the lifting or confirmation of the measures adopted.

Article 199 bis.6.

It shall be ensured, in any provisional measures ordered, that they do not serve as the means of violating trade secrets or engaging in acts that constitute unfair competition.

ARTICLE 199 bis 7.

The requesting party may only use the documentation relating to the application of provisional measures to institute the appropriate

proceedings or for inclusion in files pertaining to pending procedures, and shall be prohibited from using it, disclosing it or communicating it to third parties.

ARTICLE 199 bis.8.

In the procedures for the administrative action for infringement, the Institute shall at all times seek to reconcile the interests of those involved.

Chapter III Appeal for Reconsideration

ARTICLE 200.

An appeal for reconsideration may be made against a decision refusing a patent or utility model or industrial design registration; it shall be filed with the Institute in writing within a period of 30 days from the date on which notice is given of the relevant ruling. The appeal shall be accompanied by the documentation attesting its legal basis.

ARTICLE 201.

Once the arguments presented in the appeal and the documents provided have been examined, the Institute shall issue the appropriate ruling, which shall be communicated to the appellant in writing.

ARTICLE 202.

If the ruling issued by the Institute rejects the appeal, that fact shall be communicated to the appellant in writing and published in the Gazette. When the ruling is in the appellant's favor, the procedure specified in Article 57 of this Law shall apply.

Title VII Inspection, Administrative Infringements and Sanctions, and Offenses

Chapter I Inspection

ARTICLE 203.

In order to verify compliance with the provisions of this Law and other provisions derived therefrom the Institute shall carry out inspections and monitoring in accordance with the following procedures:

- I. requests for reports and information; and,
- II. inspections.

ARTICLE 204.

All persons shall be under the obligation to provide the Institute, within a period of 15 days, with such reports and information as are requested of them in writing in connection with their observance of the provisions of this Law and other provisions derived therefrom.

ARTICLE 205.

Inspections shall be carried out on working days and during working hours, only by staff authorized by the Institute, and on presentation of identification and the appropriate warrant.

The Institute may also authorize the conduct of inspections on non-working days and outside working hours in order to prevent infringements from being committed, in which case the warrant shall specify such authorization.

ARTICLE 206.

The proprietors or those in charge of establishments that manufacture, store, distribute or sell products, or offer products for sale or render services shall be under the obligation to admit the staff holding the warrant to carry out the inspections, provided that they comply with the requirements laid down in the previous Article.

ARTICLE 207.

Inspections shall be understood as being those conducted at locations where products are manufactured, stored, shipped, delivered or marketed, or where services are rendered, for the purpose of examination of the products or the conditions under which the services are rendered, and the documents relating to the activity in question.

ARTICLE 208.

Every inspection shall give rise to the production of a detailed record in the presence of two witnesses proposed by the person with whom the inspection has been arranged, or by the inspector who carried it out if the latter has refused to propose such witnesses.

ARTICLE 209.

The record shall contain:

- I. the hour, day, month and year when the inspection was carried out;
- II. the street, number, locality and state in which the site where the inspection was carried out is located;
- III. the number and date of the warrant authorizing the inspection, including the identity of the inspector;
- IV. the name and position of the person with whom the inspection was arranged;
- V. the names and addresses of the persons acting as witnesses, whether designated by the party visited or, failing that, by the inspector;
- VI. a mention of the opportunity given to the party visited to exercise his right to make observations to the inspector in the course of the inspection;
- VII. information on the conduct of the inspection;
- VIII. a statement by the party visited, if he wished to make one;
- IX. a mention of the opportunity given to the party visited to exercise his right to confirm in writing the observations that he made at the time of the inspection, and to make additional observations on the production of the record within a period of ten days; and
- X. the names and signatures of the persons who took part in the inspection, including the inspector, and, where applicable, a mention that the party visited refused to sign the record.

ARTICLE 210.

When making observations either during the inspection or in writing, the parties visited may offer proof relating to the facts contained in the record.

ARTICLE 211.

If in the course of the inspection irrefutable proof is provided of any of the acts having been committed or the events having occurred that are provided for in Articles 213 and 223, the inspector shall, as a precautionary measure, confiscate the products with which such infringements or offenses were presumably committed, and shall make an inventory of the goods confiscated, which shall be mentioned in the record of the inspection, the person in charge or the proprietor of the establishment in which they were found being designated as depositary if said establishment has fixed premises, failing which the products shall be consigned to the Institute. If acts are involved that could possibly constitute offenses, the Institute shall state that fact in the ruling that it issues on the subject.

ARTICLE 212.

A copy of the inspection record shall be left with the person with whom the inspection was arranged, even where that person has refused to sign it, its validity being unaffected thereby.

ARTICLE 212 bis.

The confiscation referred to in Article 211 of this Law may be practiced on:

I. equipment, instruments, machinery, devices, designs, specifications, plans, manuals, molds, printing blocks, plates and, in general, any other means used in the performance or perpetration of the acts regarded in this Law as infringements or offenses;

II. Books, registries, documents, models, samples, labels, paperwork, advertising material, invoices and, in general, any other material from which elements of proof may be inferred; and

III. merchandise, products and any other goods in relation to which the infringement of the rights protected by this Law takes place.

ARTICLE 212 bis 1.

In the confiscation of goods referred to in the previous Article, the

person or institution whom or which the party applying for the measure appoints under his own responsibility shall be the preferred depositary.

ARTICLE 212 bis 2.

In the event of the final ruling on the substance of the dispute finding that an administrative infringement has indeed been committed, the Institute shall decide on the fate of the confiscated goods, after hearing the parties, and in doing so shall abide by the following rules:

I. it shall make available to the competent judicial authority the goods that have been confiscated as soon as it receives notice that the judicial action seeking compensation for material damages or payment of damages has been initiated;

II. it shall place them at the disposal of any persons specified by the award where an arbitration procedure has been chosen;

III. it shall where appropriate proceed according to the terms laid down in the agreement that the owner concerned and the presumed infringer have entered into regarding the fate of the goods;

IV. in the cases not included in the previous subparagraphs, each of the parties concerned shall submit in writing, within the five days following that on which they are given sight thereof, his proposal regarding the fate of the confiscated goods that have been withdrawn from circulation or whose marketing has been prohibited;

V. it shall give the parties sight of the proposals submitted in order that they, by common consent, may decide on the fate of said goods, which decision they shall communicate to the Institute in writing within the five days following that on which they were given sight; and

VI. if the parties fail to announce in writing their agreement on the fate of the goods within the period allowed, or if none of the situations referred to in subparagraphs I to III above has arisen within a period of 90 days from the issue of the final decision, the board of Directors of the Institute may decide on:

a) the donation of the goods to departments and agencies of the Federal Public Administration, states, municipal councils or public, charity or social security institutions, provided that the public interest is not affected thereby; or

b) the destruction thereof.

Chapter II Administrative Infringements and Sanctions

ARTICLE 213.

The following shall constitute administrative infringements:

I. engaging in acts contrary to proper practice and custom in industry, commerce and services, which amount to unfair competition and which relate to the subject matter regulated by this Law;

II. causing to appear as patented products goods that are not. If the patent has expired or been declared invalid there shall be infringement after one year following the date of lapse or, where applicable, the date on which the action for invalidity became effective;

III. Distributing or placing products on sale or offering services with the indication that they are protected by a registered trademark when they are not; if the registration of the trademark has expired or been declared invalid or cancelled, there shall be infringement one year after the date of lapse or, where applicable, the date on which the relevant action became effective;

IV. using a trademark confusingly similar to another registered trademark to protect products or services identical or similar to those protected by the registered trademark;

V. using a registered trademark or one confusingly similar thereto without the consent of its owner as an element of a commercial name or business name, or vice versa, provided that said commercial names or business names are related to establishments working with the products or services protected by the trademark;

VI. using, within the geographical area of the actual clients or in any part of the Republic in the case provided for in Article 105 of this Law, a commercial name that is identical or confusingly similar to another already being used by a third party to protect an industrial, commercial or service establishment in the same or a similar field;

VII. using a trademark the names, signs, symbols, abbreviations or emblems referred to in Articles 4 and 90, subparagraphs VII, VIII, IX, XII, XIII, XIV and XV of this Law;

VIII. using a trademark previously registered or confusingly similar thereto as a commercial name or business name or part of such a name by an individual or company whose activity is the production, import or marketing of goods or services identical or similar to those to which the registered trademark is applied without the written consent of the owner of the trademark registration or of the person empowered to give such consent;

IX. performing, in the course of industrial activities or trade, acts that confuse, mislead or deceive the public by causing it wrongly to believe or assume:

- a) that a relation or association exists between a given establishment and that of a third party,
- b) that products are manufactured according to specifications, licenses or authorizations from a third party,
- c) that services are rendered or products sold according to authorizations, licenses or specifications from a third party,
- d) that the product concerned comes from a territory, region or locality different from the true place of origin, in such a way as to mislead the public as to the geographical origin of the product;

X. pursuing or achieving the aim of denigrating the products or services, the industrial or commercial activity or the establishment of another party. This provision shall not apply to the comparison of products or services protected by the trademark for the purpose of informing the public, provided that the comparison is not biased, false or exaggerated within the meaning of the Federal Consumer Protection Law;

XI. manufacturing or developing goods protected by a patent or by a utility model or industrial design registration without the consent of the owner thereof or without the appropriate license;

XII. offering for sale or distributing goods protected by a patent or by a utility model or industrial design registration in the knowledge that they have been manufactured or developed without the consent of the owner of the patent or registration or without the appropriate license;

XIII. using patented processes without the consent of the owner of the patent or without the appropriate license;

XIV. offering for sale or distributing goods that are the result of the

use of patented processes, in the knowledge that they have been used without the consent of the owner of the patent or of the person who holds a license of use thereof;

XV. reproducing or imitating industrial designs protected by registration without the consent of the owner thereof or without an appropriate license;

XVI. using registered advertisements or advertisements confusingly similar thereto without the consent of the owner thereof or without the appropriate license for the purpose of advertising goods, services or establishments identical or similar to those to which the announcement applies;

XVII. using a commercial name or a name confusingly similar thereto without the consent of the owner thereof or without the appropriate license to protect an industrial, commercial or service establishment in the same or a similar branch;

XVIII. using a registered trademark without the consent of the owner thereof or without the appropriate license on goods or services identical or similar to those to which the trademark is applied;

XIX. offering for sale or distributing goods identical or similar to those to which a registered trademark is applied in the knowledge that said trademark has been used on those goods without the consent of the owner thereof;

XX. offering for sale or distributing goods to which a registered trademark is applied and which have been altered;

XXI. offering for sale or distributing goods to which a registered trademark is applied after having partially or totally altered, replaced or deleted said trademark;

XXII. using an appellation of origin without the appropriate authorization or license;

XXIII. reproducing a protected layout design without the authorization of the owner of the registration in its entirety, or any part that is considered original in itself, by incorporation in an integrated circuit or in another way;

XXIV. importing, selling or distributing any of the following in violation of the provisions of this Law, without the authorization of the owner of the registration, in any form for commercial purposes:

- a) a protected layout design;
- b) an integrated circuit incorporating a protected layout design; or
- c) a product incorporating an integrated circuit that itself incorporates an unlawfully reproduced protected layout design;

XXV. not providing the franchisee with the information referred to in Article 142 of this Law, provided that the relevant period has expired and that the information has been requested;

XXVI. Using a combination of distinctive signs, and operating elements and image, to identify products or services identical or confusingly similar to others protected by this Act and, through their use, to induce the public to cause confusion, mistake or deception, to believe or assume the existence of a relationship between the owner of the rights protected and the unauthorized user. Use of such operating elements and image in the manner indicated is unfair competition in terms of Section I of this article;

XXVII. When the patentee or his licensee, user or distributor, start infringement proceedings against one or more third parties, once the Institute has been determined in a procedure that caused previous administrative enforcement, the lack of the same offense, and

XXVIII. The other violations of the provisions of this Act do not constitute crimes.

ARTICLE 214.

Administrative infringements of this Law or other provisions derived therefrom shall be sanctioned as follows:

I. a fine of up to 20,000 days of the general minimum salary payable in Mexico City;

II. an additional fine of up to 500 days of the general minimum salary payable in Mexico City for each day that the infringement persists;

III. temporary closure for up to 90 days;

IV. permanent closure;

V. administrative detention for up to 36 hours.

ARTICLE 215.

The investigation of administrative infringements shall be carried out by the Institute either ex officio or at the request of the interested party.

ARTICLE 216.

Should the nature of the administrative infringement not warrant an inspection, the Institute shall serve notice on the presumed infringer, with the elements and proof on which the alleged infringement relies, allowing him a period of ten days within which to make whatever statement best serves his interests and submit the corresponding proof.

ARTICLE 217.

Once the term referred to in Articles 209, subparagraph IX and 216 of this Law has expired, the Institute shall hand down the appropriate ruling on the basis of the inspection record issued and, where no record was warranted by the nature of the infringement, on the basis of the elements appearing in the file, taking due account of the statements and evidence submitted by the interested party.

ARTICLE 218.

In the event of a second or subsequent offense the fines previously imposed shall be doubled, but the amount thereof shall not exceed three times the applicable maximum set in Article 214 of this Law.

For the purposes of this Law and the other provisions deriving therefrom, second or subsequent offense refers to every subsequent infringement of one and the same provision, committed within the two years following the date on which the ruling on the infringement was handed down.

ARTICLE 219.

Closures may be ordered in the decision that rules on the infringement in addition to a fine or without a fine having been imposed. There shall be grounds for permanent closure when the establishment has been temporarily closed twice within a period of two years if, during said period, the infringement is repeated regardless of whether the location thereof has changed.

ARTICLE 220.

For determining sanctions the following shall be taken into account:

I. the intentional nature of the act or omission constituting the infringement;

II. the economic circumstances of the infringer; and

III. the seriousness of the infringement in relation to the trading of products or the rendering of services, and also the harm done to those directly affected.

ARTICLE 221.

The sanctions provided for in this Law and other provisions deriving therefrom shall be imposed in addition to appropriate indemnification for damages of the parties affected under ordinary legislation and without prejudice to the provisions of the following Article.

ARTICLE 221 bis.

Compensation for material damages or indemnification for damages due to violation of the rights conferred by this Law shall in no case be less than 40 percent of the public sale price of each product or the price of the rendering of services where infringement of any one or more of the industrial property rights provided for in this Law is involved.

ARTICLE 222.

If, on examining the file relating to the investigation of an administrative infringement, the Institute notes that acts have been committed that might constitute any of the offenses provided for in this Law, it shall state that fact in the decision that it issues.

Chapter III Offenses

ARTICLE 223.

The following shall constitute offenses:

I. repeating the conduct provided for in Article 213, subparagraphs II to XXII of this Law once the first administrative sanction imposed on that account has been enforced;

II. falsifying trademarks, protected by this Law, on a commercial scale and with ill intent;

III. producing, storing, transporting, introducing into the country, distributing or selling, on a commercial scale and with ill intent, items which display falsifications of trademarks protected by this Law, as well as knowingly providing or supplying in any form raw or other materials intended for the production of objects which display falsifications of trademarks protected by this Law;

IV. revealing to a third party a trade secret that was known by virtue of employment, position, responsibility, the practice of a profession or business relations, or as a result of the grant of a license for its use, without the consent of the person keeping the trade secret, having been advised of its confidentiality, for the purpose of procuring an economic benefit for oneself or for the third party, or for the purpose of doing harm to the person keeping the secret;

V. appropriating a trade secret without the right to do so and without the consent of the person who keeps it or its authorized user, in order to use it or reveal it to a third party for the purpose of procuring an economic benefit for oneself or for the third party, or for the purpose of doing harm to the person keeping the trade secret or to the authorized user thereof; and

VI. using information constituting a trade secret that is known by virtue of employment, responsibility or position, the practice of a profession or business relations, without the consent of the person keeping it or the authorized user thereof, or that has been revealed to one by a third party, in the knowledge that said third party was so acting without the consent of the person keeping the trade secret or the authorized user thereof, for the purpose of procuring an economic benefit or doing harm

to the person keeping the trade secret or the authorized user thereof. The offenses provided for in this Article shall be prosecuted at the instigation of the aggrieved party.

ARTICLE 223 bis.

Imprisonment ranging from two to six years in length and a fine of 100 to 10,000 days of the general minimum salary payable in Mexico City shall be imposed on persons selling to any end consumer on highways or in public places, on a commercial scale and with ill intent, items displaying falsifications of marks protected by this Law. If the sale is made in commercial establishments, either in an organized or permanent fashion, it shall be done in accordance with the provisions of Articles 223 and 224 of this Law. This crime is subject to prosecution ex officio.

ARTICLE 224.

Imprisonment ranging from 2 to 6 years in length and a fine of 100 to 10,000 days of the general minimum salary payable in Mexico City shall be imposed on persons who commit the offenses specified in Article 223, subparagraphs I, IV, V or VI of this Law. In the case of the offenses provided for in subparagraphs II or III of Article 223, imprisonment ranging from 3 to 10 years in length and a fine of 2,000 to 20,000 days of the general minimum salary in force in Mexico City shall be imposed.

ARTICLE 225.

For the institution of the criminal action in the circumstances provided for in Article 223, subparagraphs I and II, the Institute shall be requested to issue a technical ruling which shall not prejudice such civil or criminal action as may be appropriate.

ARTICLE 226.

Regardless of the institution of criminal proceedings, the aggrieved party in any of the offenses referred to in this Law may demand from the perpetrator or perpetrators thereof compensation and the payment of damages, as provided for in Article 221 bis of this Law, for the harm sustained as a result of said offenses.

ARTICLE 227.

The Federal courts shall have jurisdiction over the offenses referred to in this Chapter, and also over commercial and civil disputes and the precautionary measures arising out of the implementation of this Law. When such disputes affect only private interests, they may be heard by

the ordinary courts if the plaintiff so chooses, without prejudice to the right of the parties to submit the proceeding to arbitration.

ARTICLE 228.

In the judicial proceedings referred to in the previous Article, the judicial authority may adopt the measures provided for in this Law and in international treaties to which Mexico is party.

ARTICLE 229.

For the exercise of the civil and criminal actions arising from the infringement of industrial property rights, and also for the adoption of the measures provided for in Article 199 bis of this Law, it shall be necessary for the owner of the rights to have affixed to the goods, containers or packaging of goods covered by an industrial property right the indications and notices referred to in Articles 26 and 131 of this Law, or by any other means to have stated or brought to the notice of the public that the goods or services are protected by industrial property rights.

This requirement need not be met in cases of administrative infringements that do not involve violation of industrial property rights.

Transitional Provisions (Omitted)