

INDUSTRIAL PROPERTY LAW

(of June 25, 1991, as last amended by
the Decree of December 26, 1997)

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Title I
General Provisions
Sole Chapter

10 Art. 1. The provisions of this Law are a matter of public policy and to be generally observed 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 agency of the Mexican Institute of Industrial Property.

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Art. 2. The purpose of this Law is:

20 III. to establish the bases that will permit the country's industrial and commercial activities to have a permanent system for the improvement of processes and products;

25 III. to promote and encourage inventive activity that has industrial applications and also technical improvements, and the dissemination of technological knowledge in production sectors;

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III. to promote and stimulate the improvement of the quality of goods and services in industry and trade in a manner consistent with the interests of consumers;

30 IV. to encourage creativeness in the design and presentation of new and useful products;

35 IV. to protect industrial property by regulating and granting patents, registrations of utility models, industrial designs, trademarks and advertising slogans, publishing trade names, declaring the protection of appellations of origin and regulating trade secrets;

VI. to prevent acts that infringe industrial property or constitute unfair competition in relation to industrial property, and to introduce sanctions and penalties for such acts.

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Art. 3. For the purposes of this Law,

I. "this Law" means the present Law;

II. "international treaties" means those concluded by Mexico in accordance with the Law on the Conclusion of Treaties;

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III. [repealed];

IV. "Institute" means the Mexican Institute of Industrial Property,

V. "Diario Oficial" means the Diario Oficial de la Federación, or Official Gazette;

VI. "Gazette" means the Gazette referred to in Article 8 of this Law.

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Art. 4. No patent, registration or authorization shall be granted, neither shall any publicity be given in the Gazette in respect of any of the legal devices or institutions regulated by this Law when their contents or form are contrary to public policy, morality or proper practice, or if they violate any legal provision.

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Art. 5. [Repealed]

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Art. 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 have the following powers:

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I. to liaise with the administrative organs of the Secretariat of Trade and Industrial Development, and with the various public and private institutions, national, foreign and international, the aims of which are the promotion and protection of industrial property rights, technology transfer, the study and promotion of technological development, innovation, the differentiation of goods and also to provide such information and technical cooperation as is required of it by the competent authorities in accordance with provisions and policies established for the purpose;

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5 II. to encourage the participation of the industrial sector in the development and implementation of technology that will increase the quality, competitiveness and productivity thereof, and also to conduct research on the progress and implementation of national and international industrial technology and its likely effect on the achievement of the said aims, and propose policies to stimulate its development;

10 III. to process applications for, and where appropriate to grant, patents and registrations of utility models, industrial designs, trademarks and advertising slogans, to issue declarations of protection of appellations of origin, to authorize the use thereof, to publish trade names and also to 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 under it for the recognition and preservation of industrial
15 property rights;

20 IV. to substantiate proceedings for the invalidation, lapse and cancellation of industrial property rights, to hand down rulings and issue the corresponding administrative declarations in accordance with the provisions of this Law and the regulations under it, and in general to rule on such requests as may arise from the implementation thereof;

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

30 VI. to appoint experts when requested to do so under the Law, to issue such technical rulings as may be required of it by individuals or by the Federal Public Prosecutor and to take such action and secure such proof as may be necessary for the issue of such rulings;

35 VII. to act as depositary when so designated under the Law, and to make available to the competent authority such goods as have been entrusted to

it;

VIII. to hear 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 it, to the regulations under it and any other relevant provisions;

IX. to 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 the said disputes expressly designate it, and in due conformity with the provisions contained in Title IV of Part V of the Code of Commerce;

X. to carry out the legal publication, in the Gazette, and also the dissemination of information deriving from patents, registrations, authorizations and publications granted and any other information relating to industrial property rights as entrusted to it by this Law;

XI. to disseminate, give advice and assistance and render services to the public in industrial property matters;

XII. to promote the creation of industrially applicable inventions, support their development and exploitation in industry and commerce and stimulate technology transfer through:

(a) the disclosure of documentary files on inventions published in the country or abroad, and assistance with the consultation and exploitation thereof,

(b) the compilation, updating and distribution of directories of natural persons and legal entities concerned with the making of inventions and with technological research work,

(c) the holding of competitions, contests or exhibitions and the award of prizes and other recognition that will promote inventive activity and

creativeness in the design 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) the dissemination among persons, groups, associations or institutions concerned with research, higher education or technical assistance, of knowledge of the provisions of this Law and their scope, such as will facilitate their work in the creation of inventions and the subsequent industrial and commercial development thereof,

(f) the conclusion of agreements providing for cooperation, coordination and concerted action with the governments of the federated entities, and also with national or foreign, public or private institutions, for promoting and developing inventions and creations susceptible of industrial and commercial application;

XIII. to participate in programs for the provision of encouragement and support for the protection of industrial property with a view to the generation, development and implementation of Mexican technology in economic activity, and also for the improvement of the productivity and competitiveness thereof;

XIV. to compile and update the files of inventions published in the country and abroad;

XV. to conduct searches of the state of the art in the various sectors of industry and technology;

XVI. to promote international cooperation through the exchange of administrative and legal experience with institutions responsible for the registration and legal protection of industrial property in other countries, including the following in particular: basic and further training of staff, transfer of work and organizational methodology, exchange of publications

and updating of documentary files and databases in the industrial property field;

5 IXVII. to conduct studies on the industrial property situation in the international field, and take part in international meetings or forums concerned with that subject;

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

15 XIX. to 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. to devise and implement its corporate operational program;

20 XXI. to take part, in coordination with the competent organs of the Secretariat of Trade and Industrial Development, in any negotiations lying within its sphere of competence;

25 XXII. to render such other services and take such measures as are necessary for the due exercise of its powers under this Law and whatever other legal provisions are applicable.

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

 Art. 7bis. The Board of Directors shall be composed of 10 representatives:

35 I. the Secretary of Trade and Industrial Development, who shall preside;

II. one representative designated by the Secretariat of Trade and Industrial Development;

5 III. two representatives designated by the Secretariat of Finance and Public Credit;

10 IV. one representative each of the Institutes of Foreign Affairs, Agriculture and Water Resources, Education and Health and of the National Board of Science and Technology and the National Metrology Center.

For each titular representative an alternate shall be appointed who shall attend the sessions of the Board of Directors in the absence of the former, with all the powers and rights accruing to him.

15 Art. 7bis.1. The Director General or his equivalent shall be the legal representative of the Institute and shall be appointed, on a proposal by the Federal Executive, acting through the Secretariat of Trade and Industrial Development, by the Board of Directors.

20 Art. 7bis.2. The Director General of the Institute shall be responsible for the exercise of the powers referred to in Article 6 of this Law and may, without prejudice to the direct exercise thereof, delegate those powers only on such terms as may be established in the relevant agreements, which shall be approved by the Board of Directors and published in the Diario Oficial.

25 Art. 8. The Institute shall every month issue the Gazette 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 known. Acts and instruments recorded in the said organ of
30 information shall be binding on third parties as from the day following the date on which it is distributed, which date shall be specified on each copy.

Title II
35 Inventions, Utility Models and Industrial Designs

Chapter I
Preliminary Provisions

5 Art. 9. The 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 it for his benefit, either himself or through others with his consent in accordance with the provisions of this Law and the regulations under it.

10 Art. 10. The right referred to in the foregoing Article shall be granted in the form of a patent for inventions and registration for utility models or industrial designs.

15 Art. 10bis. 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.

20 Where two or more persons make the same invention or utility model independently of each other, that person shall have the stronger right to obtain the patent or registration who files the first application for it or claims the earliest priority, provided that the application is not abandoned or refused.

25 The right to obtain a patent or registration may be transferred by inter vivos transaction or by succession.

30 Art. 11. The owners of patents or registrations may be natural persons or legal entities.

Art. 12. For the purposes of this Title:

35 I. "new" means anything not in the state of the art;

II. "state of the art" means the body of technical knowledge that has been

made public by oral or written description, by use or by any other means of dissemination of information both within the country and abroad;

5 III. "inventive step" means the creative process the results of which are not obviously deductible from the state of the art by a person skilled in the relevant art;

10 IV. "industrial application" means the possibility of an invention being produced or used in any branch of economic activity;

15 IV. "claim" means 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;

20 VI. "filing date" means that date on which the application is delivered to the Institute, or to the delegations of the Secretariat of Trade and Industrial Development within the country, provided and to the extent that it meets the requirements specified in this Law and in the regulations under it.

25 Art. 13. The natural person or persons claiming to be the inventor or inventors in the application for a patent or registration shall be presumed to be the inventor or inventors. The inventor or inventors shall have the right to be mentioned in the corresponding title or to oppose such mention.

30 Art. 14. The provisions of Article 163 of the Federal Labor Law shall be applicable to inventions, utility models and industrial designs made by persons subject to employment relations.

Chapter II Patents

35 Art. 15. Any human creation that allows matter or energy existing in nature to be transformed for utilization by man for the satisfaction of his specific needs shall be considered an invention.

Art. 16. Inventions that are new, the result of an inventive step and susceptible of industrial application within the meaning of this Law shall be patentable, with the exception of:

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

10 II. biological and genetic material as found in nature;

III. animal breeds;

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

15 V. plant varieties.

Art. 17. The state of the 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 new and the result of an inventive step. Furthermore, in order to determine whether an invention is new, the state of the art shall be regarded as including all patent applications filed in Mexico prior to the said date and still pending, even if the publication referred to in Article 52 of this Law occurs at a later date.

25 Art. 18. The disclosure of an invention shall not prevent it from continuing to be considered new when, within the 12 months prior to the filing date of the patent application, or where applicable prior to the recognized priority date, the inventor or his successor in title has made the invention known by any means of communication, by putting it into
30 practice or by displaying it at a national or international exhibition. When the corresponding application is filed, the evidentiary documents 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
35 patent granted by a foreign office shall not be regarded as corresponding to any of the situations referred to in this Article.

Art. 19. The following shall not be considered inventions for the purposes of this Law:

5 I. theoretical or scientific principles;

II. discoveries that consist in making known or revealing something that already existed in nature, even though it was previously unknown to man;

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

IV. computer programs;

15 V. methods of presenting information;

VI. esthetic creations and artistic or literary works;

20 VII. methods of surgical, therapeutic or diagnostic treatment applicable to the human body and to animals;

25 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 that they cannot function separately, or where their characteristic qualities or functions have been so modified as to produce an industrial result or use not obvious to a person skilled in the art.

30 Art. 20. [Repealed]

Art. 21. The right conferred by the patent shall be determined by the claims as approved. The description and drawings, or where applicable the deposit of biological material referred to in Article 47, subparagraph I, of this Law, shall be used to interpret them.

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Art. 22. The right conferred by a patent shall not have any effect

against:

5 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;

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

15 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 makes the necessary preparations for such use or manufacture;

20 IV. the use of the patented invention in transportation vehicles of other countries when it forms part of such vehicles and when the vehicles are in transit on the national territory;

25 V. a third party who, in the case of patents relating to live material, makes use of the patented product as an initial source of variation or propagation to obtain other products, except where such use was made previously;

30 VI. a third party who, in the case of patents relating to products consisting of live material, uses, brings into circulation or markets the patented products for purposes other than multiplication or propagation, after the said products have been properly placed on the market by the owner of the patent or by a licensee.

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

Art. 23. The patent shall have a term of 20 years, which shall not be renewable and shall be counted from the filing date of the application, and be subject to payment of the relevant fees.

5 Art. 24. Once the patent has been granted the patent owner may seek damages from third parties who make use of the patented process or product without his consent prior to the grant, when the use is made after the date on which the publication of the application in the Gazette becomes effective.

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Art. 25. The exclusive right of exploitation of the patented invention shall confer the following prerogatives on its owner:

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

20 II. if the subject matter of the patent is a process, the right to prevent others from using that process and from using, selling, offering for sale or importing the product obtained directly by means of that 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.

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Art. 26. The existence of a patent, either pending or granted, may be mentioned only in the case of products or processes in respect of which either situation obtains.

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Chapter III

Utility Models

Art. 27. Utility models that are new and susceptible of industrial application shall be eligible for registration.

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Art. 28. Objects, utensils, 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 with respect to their use shall be considered utility models.

- 5 Art. 29. The registration of utility models shall be for a term of 10 years which shall not be renewable and shall be counted from the filing date of the application and be subject to the payment of the relevant fees.

10 The use of the utility model and the limitation of the right conferred by its registration on the holder shall be governed as appropriate by the provisions of Articles 22 and 25 of this Law.

15 Art. 30. The rules appearing in Chapter V of this Title shall apply as appropriate to the processing of a utility model registration, with the exception of Articles 45 and 52.

Chapter IV Industrial Designs

- 20 Art. 31. Industrial designs that are new and susceptible of industrial application shall be eligible for registration.

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

30 The protection conferred on an industrial design shall not cover those elements or features that have been 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 whose exact reproduction has been necessary to enable 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
35 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 foregoing paragraph.

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Art. 32. Industrial designs shall include:

I. two-dimensional industrial designs, 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;

II. three-dimensional industrial designs or models, 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.

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Art. 33. The following shall be enclosed with applications for the registration of industrial designs:

I. a graphic or photographic reproduction of the design concerned;

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

Art. 34. The description submitted in the application shall refer briefly to the graphic or photographic reproduction of the design, with a clear indication of the angle from which the illustration is seen.

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Art. 35. The name of the industrial design shall be given in the application in the form of a claim followed by the words "as described and illustrated" ["Tal como se ha referido e ilustrado"].

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Art. 36. The registration of industrial designs shall have a term of 15 years, which shall be non-renewable and shall run from the filing date of the application and be subject to the payment of the relevant fees.

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The use of industrial designs and the limitation of the rights conferred by registration on the holder thereof shall where appropriate be governed by the provisions of Articles 22 and 25 of this Law.

- 5 Art. 37. The prosecution of the registration of industrial designs shall be carried out, where appropriate, pursuant to the rules contained in Chapter V of this Title, with the exception of Articles 45 and 52.

Chapter V

10 Processing of Patents

- 15 Art. 38. For a patent to be obtained, a written application shall be filed with the Institute in which the name and address of the inventor and of the applicant, the nationality of the latter, the name of the invention and any other data required by this Law and the regulations under it shall be included, and proof of payment of the fees, including those relating to the examinations as to form and as to substance, shall be submitted.

- 20 The pending patent application and its annexes shall be confidential until such time as they are published.

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

- 30 Where the application does not, on the date of its filing, comply with the requirements laid down in the foregoing paragraph, the date on which it does comply with those requirements shall be considered the filing date.

- The filing date shall determine the relative precedence of applications.

- 35 The regulations under this Law may lay down other means by which applications and other instruments may be filed with the Institute.

- Art. 39. The patent may be applied for direct by the inventor or by his

successor in title or through his representatives.

5 Art. 40. When a patent is sought after having been applied for in other countries, the filing date in the country of the first filing may be recognized as the date of priority, provided that the filing in Mexico occurs within the periods specified by international treaties or, failing that, within the 12 months following the application for a patent in the country of origin.

10 Art. 41. For the priority referred to in the previous Article to be recognized, the following requirements shall be met:

15 I. on 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.

20 If rights additional to those deriving from the application filed abroad, considered as a whole, are sought, the priority shall be only partial and consistent with that application. A further request may be made for the recognition of priority in respect of claims for additional rights;

25 III. the requirements specified in international treaties, this Law and the regulations under it shall be complied with within the three months following the filing of the application;

30 IV. [repealed].

35 Art. 42. When two or more inventors have made the same invention independently of each other, the patent rights shall belong to the one whose application bears the earliest filing date or recognized priority date, as the case may be, provided that the said application is not rejected or abandoned.

Art. 43. The application for a patent shall refer to a single invention, or to a group of inventions so related to each other that they constitute a single inventive concept.

5 Art. 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 period of two months, he may divide it into several applications, retaining as the date of each one that of the initial application and that of any recognized priority. If on expiration of the period allowed the
10 applicant has not divided the application, it shall be considered abandoned.

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

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Art. 45. A single patent application may contain:

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

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

25 III. claims relating to a certain product and claims relating to a process specially devised for its manufacture and to apparatus or means specially devised for its application.

30 Art. 46. The process and machinery or apparatus for producing a utility model or an industrial design shall be the subject of patent applications independent of the applications for registration of the said model or design.

Art. 47. The patent application shall be accompanied by:

35 I. a description of the invention, which shall be sufficiently clear and complete to be fully understood and where appropriate to serve as a guide

for a person with average skill in the art to make it; it shall also mention the best method known to the applicant of carrying out the invention when this is not clear from the description thereof.

- 5 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 accordance with the provisions of the regulations under this Law;
- 10 II. the drawings required for the understanding of the description;
- III. one or more claims, which shall be clear and concise and may not exceed the contents of the description;
- 15 IV. an abstract of the description of the invention, which shall serve solely for the publication thereof and as an element of technical information.
- 20 Art. 48. When a patent application has to be divided, the applicant shall submit the descriptions, claims and drawings 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 the power of attorney. The drawings and descriptions submitted shall not be altered in any way that might modify
- 25 the invention referred to in the original application.
- Art. 49. The applicant may convert the patent application into one for the registration of a utility model or industrial design and vice versa when it
- 30 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 the three months following the filing date or within three months following
- 35 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.

5 Art. 50. Once the application has been filed, the Institute shall make an examination of the form 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 does not fulfill this requirement within a period of two months, the application shall be considered abandoned.

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Art. 51. [Repealed]

15 Art. 52. The publication of the pending patent application shall take place as soon as possible following the expiration of a period of 18 months from the filing date of the application, or where applicable from the date of recognized priority. The application shall be published prior to the expiration of the said period at the request of the applicant.

20 Art. 53. Once the patent application has been published and the appropriate fee has been paid, the Institute shall conduct an examination of the substance of the invention in order to determine whether the conditions specified in Article 16 of this Law are met, or whether the invention is in any of the situation provided for in Articles 16 and 19 of this Law.

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

30 Art. 54. The Institute may accept or require the findings of substantive examinations or the equivalent thereof conducted by foreign patent offices, or where appropriate a mere copy of the patent granted by any of the said foreign offices.

35 Art. 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

searches or examinations undertaken by foreign offices, to alter the claims, description or drawings, or to make such clarifications as it considers relevant where:

5 I. in the opinion of the Institute this is necessary for the conduct of the substantive examination;

10 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.

15 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.

20 Art. 55bis. 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 alterations may not contain additional material or claims that give a scope greater than that contained in the original application considered as a whole.

25 Voluntary alterations shall be accepted only up to 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.

Art. 56. Where the Institute refuses the patent, it shall notify the applicant in writing, stating the legal basis and grounds for its decision.

30 Art. 57. When 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 may meet the necessary requirements for its publication and submit to the Institute proof of payment of the fees for the issue of the title. If the applicant does not meet the provisions of this Article within
35 the said period, his application shall be considered abandoned.

Art. 58. The person concerned shall be allowed an additional period of two months 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 appropriate fees within a month of compliance.

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The period referred to in the foregoing paragraph shall be counted as from the day following that of the expiration of any of the two-month periods provided for in the Articles referred to above.

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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 proof of payment of the appropriate fees.

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Art. 59. The Institute shall issue a title for each patent, as a record and official recognition, to the owner thereof. The title shall comprise one copy each of the description, claims and drawings, if any, and shall specify:

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I. the number and classification of the patent;

II. the name and address of the person or persons to whom it is issued;

III. the name of the inventor or inventors;

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IV. the filing date of the application and the dates of any recognized priority and of the issue of the patent;

V. the name of the invention;

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VI. the term of the patent.

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Art. 60. Once the patent has been granted the Institute shall proceed with its publication in the Gazette, which publication shall contain the information referred to in Articles 47, subparagraph IV, and 59 of this Law.

Art. 61. Changes in the text or drawings of the patent protection title may be allowed only under the following circumstances:

- I. to correct any obvious errors of form;
- II. to limit the scope of the claims.

The changes authorized shall be published in the Gazette.

Chapter VI
Licensing and the Transfer of Rights

Art. 62. The rights conferred by a patent or registration, or those deriving from a pending application may be encumbered and transferred either wholly or in part subject to the conditions and formalities laid down in ordinary legislation. For the transfer of rights to be binding on third parties, it shall be registered with the Institute.

A single request may be filed seeking registration of transfers of ownership 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.

Art. 63. The owner of the patent or registration 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 registration of the licensing of rights 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.

5 Art. 64. To register the transfer of a patent, 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.

10 Art. 65. There shall be grounds to cancel the registration of a license in
any of the following cases:

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

15 II. when the patent or registration is declared invalid or expires;

III. [repealed];

IV. when a court order so rules.

20 Art. 66. The license shall not be registered when the patent or
registration has expired or where its duration is longer than the term
thereof.

25 Art. 67. Unless otherwise provided, the grant of a license shall not
prevent the owner of the patent or registration from granting other
licenses, or from working the patent at the same time himself.

30 Art. 68. The person to whom a license has been granted and registered with
the Institute shall, unless otherwise stipulated, be entitled to institute
legal proceedings in defense of the patent rights as if he were the actual
owner thereof.

35 Art. 69. The working of the patent by the person to whom a license has
been granted and registered with the Institute shall be considered done by
the patent owner, except in the case of compulsory licenses.

Art. 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 elapses later, any person may apply to the Institute for the grant of a compulsory license to use the said invention where it has not
5 been used unless there are duly justified reasons for such non-use.

There shall be no grounds for the grant of a compulsory license when the patent owner or the holder of a contractual license has been importing the patented product or a product obtained using the patented process.
10

Art. 71. Whoever applies for a compulsory license must have the technical and economic ability to use the patented invention efficiently.

Art. 72. Prior to granting the first compulsory license, the Institute shall give the patent owner the opportunity of working 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 it, shall specify the duration, terms and scope thereof and the amount of the royalties payable to the owner of the patent.
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20

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.
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Art. 73. On expiration of a period of two years following the date of grant of the first compulsory license, the Institute may administratively declare the patent lapsed 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.
30

The payment of royalties under a compulsory license shall end when the patent lapses or is invalidated, or for any other reason provided for in this Law.
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Art. 74. At the request of the patent owner or of the holder of the compulsory license, the conditions of the said 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.

Art. 75. Whoever holds a compulsory license shall start working the patent within a period of two years from the date on which the said patent was granted. Failure to comply with this condition, unless there are reasons for non-working 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.

Art. 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.

Art. 77. For reasons of national emergency or security, and for as long as those reasons obtain, the Institute shall, in a declaration published in the Diario Oficial, declare 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 or the supply or distribution to the public of staple goods and services would be prevented, hindered or made more expensive.

The procedure laid down in the second paragraph of Article 72 shall be observed for the grant of such licenses, which shall not be either exclusive or transferable in character.

Chapter VII Invalidity and Lapse of Patents and Registrations

Art. 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 the registration of utility models and industrial designs. For the purposes of this paragraph, 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 applicant for the patent or registration;

III. when abandonment of the application occurs in the course of processing;

IV. when the grant has been flawed by serious error or negligence, or has been made to a person not entitled to it.

An action seeking invalidation under 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 or claims affected, or the affected part of a claim. Invalidation may be declared in the form of a limitation or specification of the corresponding claim.

Art. 79. The declaration of invalidity shall be made administratively by the Institute, either ex officio or at the request of an individual or of the Federal Public Prosecutor when the Federal Government has some interest

in the case, as provided in this Law. The declaration of invalidity shall cancel the effects of the patent or registration concerned with retroactive effect to the filing date of the application.

5 Art. 80. Patents or registrations shall lapse and the rights that they confer shall become public property under the following circumstances:

I. on expiration of their term;

10 II. when the fees provided for the maintenance of the rights therein are not paid, or are not paid within the six-month period of grace following the said expiration;

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

15

Lapse due solely to the passage of time shall not require an administrative declaration on the part of the Institute.

20 Art. 81. The reinstatement of the patent or registration that has lapsed for failure to pay the fees on time may be requested provided that the appropriate request is made within the six months following the period of grace referred to in subparagraph II of the foregoing Article and the unpaid fees are settled, together with any surcharges.

25 Title III

Trade Secrets

Sole Chapter

30 Art. 82. Any information susceptible of industrial application that a natural person or legal entity keeps, is of confidential character and is associated with securing or retaining a competitive or economic advantage over third parties in the conduct of economic activities, and regarding which the said person or entity has adopted sufficient means or systems of preserving confidentiality and restricting access, shall be considered a
35 trade secret.

5 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.

10 Information that is public property, is evident 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 public property or be disclosed by virtue of a legal provision when it is supplied for the purpose of obtaining licenses, permits, authorization, registrations or any other official documents.

15 Art. 83. The information referred to in the foregoing Article shall consist of documents, electronic or magnetic media, optical discs, microfilm, film or other similar material.

20 Art. 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.

25 In agreements under which know-how, technical assistance and basic or detailed engineering are provided, confidentiality clauses may be included to protect any trade secrets that may form part of such services, and the said clauses shall specify the aspects to be treated as confidential.

30 Art. 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 the said secret or of the authorized user thereof.

35 Art. 86. Any natural person or legal entity 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 or entity with a view to obtaining trade secrets from the latter, shall be liable for payment of damages for any prejudice caused to that person or
5 entity.

Any natural person or legal entity who by any unlawful means obtains information constituting a trade secret shall likewise be liable for the payment of damages.
10

Art. 86bis. The information required by special laws to determine the safety and efficacy of pharmaceutical and agricultural chemicals that make use of new chemical compounds shall be protected in terms of the international treaties to which Mexico is party.
15

Art. 86bis.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 action to prevent the disclosure thereof to third parties having no connection with the
20 dispute.

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

25 Title IV
Marks, Advertising Slogans and Trade Names

Chapter I
Marks
30

Art. 87. Industrialists, traders or providers of services may use a mark in industry or trade or in the services that they provide, provided that the right to its exclusive use shall be obtained by its registration with the Institute.
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Art. 88. A mark is understood as being any visible sign that distinguishes

products or services from others of the same type or category on the market.

Art. 89. The following signs may constitute marks:

5 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;

10 II. three-dimensional shapes;

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

15 IV. the proper name of a natural person, provided that it is not the same as a registered mark or published trade name.

Art. 90. The following shall not be registrable as marks.

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

25 II. the technical or commonly used names of products or services for which the protection of the mark is sought, and also those words that everyday language or business practice has made into the usual or generic designation of the said products or services;

30 III. three-dimensional shapes that are public property 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;

35 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;

5 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;

10 VII. signs that reproduce or imitate, without authorization, the coats of arms, flags or emblems of any country, State, municipality or equivalent political division, and the full or abbreviated names, symbols or emblems of governmental or non-governmental international organizations, or of any other officially recognized organization, including the verbal designation
15 thereof;

VIII. signs that reproduce or imitate official signs or seals of control and warranty adopted by a State, without the authorization of the competent authority, or coins, banknotes, commemorative coins or any domestic or
20 foreign legal tender;

IX. signs that reproduce or imitate the names or graphic representations of decorations, medals or other prizes awarded at officially recognized exhibitions, fairs, congresses or cultural or sporting events;

25 X. proper or common geographical names and maps, and also gentilic nouns and adjectives when they indicate the origin of the products or services and can cause confusion or error regarding such origin;

30 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 when they are special and not liable to be confused, and when the consent of the owner has been obtained;

35 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 also collateral relations, both down to the fourth level of relationship;

5 XIII. the titles of intellectual or artistic works and the titles of periodicals and other distributed publications, 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;

10

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;

15

IXV. three-dimensional names, figures or shapes identical or similar to a mark that the Institute considers well known in Mexico, to be applied to any product or service.

20

A mark 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 mark as a result of business activities conducted in Mexico or abroad by a person who makes use of the mark in connection with his goods or services; this shall include knowledge that is had of the mark within the territory as a result of the promotion or advertising thereof.

25

All forms of proof permitted by this Law may be used for the purpose of demonstrating the notoriety of the mark.

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This impediment shall apply in any case where the use of the mark by the person applying for its registration is liable to create confusion or a risk of association with the owner of the well-known mark, or where it constitutes an appropriation liable to discredit the mark. The impediment shall not be applicable where the applicant for registration is the owner of the well-known mark;

35

XVI. a mark 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, provided that a mark 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;

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

Art. 91. A registered mark or a mark confusingly similar to another previously registered mark may not be used or form part of the trade name or corporate or business name of any establishment or legal entity where:

I. the establishments or legal entities concerned are engaged in the production, importation or marketing of goods or services identical or similar to those to which the registered trademark applies;

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 mark or the mark confusingly similar to the previously registered mark from the trade name or corporate or business name concerned and the payment of damages.

These provisions shall not be applicable where the trade name or corporate or business name already incorporated the mark prior to the date of filing

or first declared use of the registered mark.

Art. 92. Registration of a mark shall not be effective against:

- 5 I. a third party who in good faith uses the same or a confusingly similar mark 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 mark prior to the filing date of the application for registration, or the date of the first declared use of the mark. The third party shall have the right to apply for registration of the mark within three years following the day on which the registration was published, in which case he shall previously apply for and obtain a declaration of invalidity of the said registration;
- 10
- 15 II. any person who markets, distributes, acquires or uses the product to which the trademark is applied after the said product has been lawfully introduced to the market by the owner of the registered mark or his licensee.
- 20 This case shall include the importation of legitimate products to which the registered mark is applied, carried out by any person for use, distribution or marketing in Mexico by him pursuant to the terms and conditions laid down in the regulations under this Law;
- 25 III. a person, whether natural person or legal entity, who applies his own name or his corporate or business name to the goods that he produces or distributes, to the services that he renders or to his places of business, or who uses it as part of his trade 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 mark or published as a trade name.
- 30

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

Art. 93. Marks shall be registered in relation to specific products or services according to the classification provided for in the regulations under this Law.

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

Art. 94. Once a mark 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.

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

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Art. 95. The registration of a mark shall have a term of 10 years from the filing date of the application, which may be renewed for periods of the same duration.

20 Chapter II
Collective Marks

Art. 96. Legally incorporated associations or groups of producers, manufacturers, traders or providers of services may apply for registration of a collective mark to distinguish the products or services of their members on the market from those of third parties.

25

Art. 97. The rules for the use of a collective mark shall be filed with the application for the said mark.

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Art. 98. The collective mark 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 marks.

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Chapter III
Advertising Slogans

5 Art. 99. The exclusive right to use an advertising slogan shall be obtained by the registration thereof with the Institute.

10 Art. 100. Sentences or statements whose purpose 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 advertising slogans.

15 Art. 101. If the purpose of the advertising slogan is to publicize products or services, those products or services shall be specified in the application for registration.

20 Art. 102. If the purpose of the advertising slogan 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.

25 Art. 103. The registration of an advertising slogan shall have a term of 10 years from the filing date of the application, which may be renewed for periods of the same duration.

30 Art. 104. In the absence of special provisions, advertising slogans shall be governed by the provisions of this Law relating to marks.

Chapter IV
Trade Names

35 Art. 105. The trade name of an industrial, commercial or service firm or establishment and the right to its exclusive use shall be protected without the necessity of registration. The protection shall cover the geographical area of the actual clientele of the firm or establishment to which the trade

name is applied, and shall extend to the entire Republic if the name is widely and consistently publicized at the national level.

5 Art. 106. Any person using a trade name may apply to the Institute for its publication in the Gazette. Such publication shall produce the effect of establishing a presumption of good faith in the adoption and use of the trade name.

10 Art. 107. The application for publication of a trade name shall be filed in writing with the Institute together with the documents that prove the effective use of the trade name in connection with a certain area of business.

15 Art. 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 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 mark the registration of which is pending or which has already been
20 registered, protecting identical or similar products or services related to the principal business of the firm or establishment involved. If there is no anticipation, publication may proceed.

25 Art. 109. Trade names that lack elements distinguishing the firm or business involved from others of the same kind, and those that violate such provisions contained in Article 90 of this Law as are applicable, shall not be published.

30 Art. 110. The effects of publication of the trade name shall last for 10 years from the filing date of the application, and may be renewed for periods of the same duration. If not renewed, the effects shall cease.

35 Art. 111. Unless otherwise provided, the transfer of a firm or establishment shall include that of the right to the exclusive use of the trade name.

Art. 112. In the absence of special provisions, trade names shall be governed by such of the provisions of this Law relating to marks as are applicable.

5 Chapter V
Registration of Marks

Art. 113. For the registration of a mark, an application containing the following particulars shall be filed in writing with the Institute:

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I. name, nationality and address of the applicant;

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

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

IV. the products or services to which the mark is to be applied;

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

25

Art. 114. The application for registration of a mark shall be accompanied by proof of payment of the fees payable for processing of the application, registration and the issue of the relevant title, and copies of the mark where it is devoid of verbal element, three-dimensional or mixed.

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Art. 115. The copies of the mark 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 mark without any verbal element or a three-dimensional mark, the copies of the said application shall not contain any words that constitute or might constitute a mark, except where
35 an express reservation to that effect is included.

Art. 116. Where the mark 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 mark and the transfer of rights in it shall be filed together with the application.

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Art. 117. When the registration of a mark 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.

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Art. 118. For the priority referred to in the foregoing 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 filing of the application in that country, on applying for registration;

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

20

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

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IV. [repealed].

Art. 119. Once the application has been received, it and the documentation filed shall be subjected to an examination of form to determine whether the requirements specified in this Law and in the regulations under it are met.

30

Art. 120. [Repealed]

Art. 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

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requirements are met within the prescribed time limit shall be so considered.

The filing date shall determine precedence between applications.

5

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

Art. 122. On completion of the examination as to form, a substantive examination shall be made to determine whether the mark is eligible for registration under 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 mark 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 the anticipations cited. If the applicant does not respond within the time allowed, his application shall be considered abandoned.

Art. 122bis. The person concerned shall be allowed an additional period of two months within which to comply with the requirements referred to in the foregoing Article without having to request it, subject to proof of payment of the appropriate fees within a month of compliance.

The said further period shall be counted from the day following that of the expiration of the two-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 appropriate fees.

Art. 123. If the applicant, on responding within the time allowed for remedying the legal impediment to registration, alters or replaces the mark,

that mark shall be subjected to renewed processing, with the applicant having to pay fees as for a new application and meet the requirements of Articles 113 and 114 of this Law and such of the regulations under it as are applicable. In that event the date on which the renewed processing is applied for shall be considered the filing date.

Art. 124. If the impediment relates to the existence of one or more registrations of identical or confusingly similar marks and if invalidation, revocation or cancellation proceedings are pending at the request of a party or ex officio, the Institute shall suspend the processing of the application until the said proceedings are ruled upon.

Art. 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 mark, it shall inform the applicant in writing and state the reasoning and legal grounds underlying its decision.

Art. 126. The Institute shall issue a certificate for each mark as proof of its registration. The certificate shall include a specimen of the mark and shall specify the following:

- I. registration number of the mark;
- II. distinctive sign constituting the mark, mentioning whether it is verbal, non-verbal, three-dimensional or mixed;
- III. products or services to which the mark will be applied;
- IV. name and address of the owner;
- V. location of the establishment, where applicable;
- VI. filing date of the application and dates of recognized priority, first use if any and issue;

VII. term of the mark.

5 Art. 127. Decisions on registrations of marks and on renewals shall be published in the Gazette.

10 Art. 128. The mark shall be used on the national territory in the form in which it was registered or with only such modifications as do not alter its distinctive character.

15 Art. 129. The Institute may declare the registration and use of marks mandatory in respect of any product or service, or prohibit or regulate the use of marks, registered or not, either ex officio or at the request of representative organizations, when:

20 I. use of the mark 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;

25 II. use of the mark impedes the efficient distribution, production or marketing of goods and services;

30 III. use of marks prevents, hampers or increases the cost of the production and supply of staple goods or services and their distribution to the public in cases of national emergency and for as long as such emergency persists.

The said declaration shall be published in the Diario Oficial.

35 Art. 130. If for three consecutive years a mark 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 declaration of lapse, or where a situation has arisen that is beyond the control of the owner of the

mark and 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 mark is applied.

5 Art. 131. The display of the legend "registered trademark" ["marca registrada"], the letters M.R. or a circled letter R may be used only in connection with the products or services for which the mark in question is registered.

10 Art. 132. [Repealed]

Art. 133. The renewal of the registration of a mark shall be requested by the owner six months prior to the expiration of its term, provided that the Institute shall nevertheless process requests that are filed within a period
15 of six months following the expiration of the term of registration. Once that period expires without any request for renewal having been filed, the registration shall lapse.

Art. 134. Renewal of the registration of a mark shall proceed only if the
20 person concerned submits proof of payment of the appropriate fees and makes a sworn statement in writing attesting his use of the mark 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
25 provided for in Article 130 of this Law.

Art. 135. If one and the same mark is registered to protect particular
goods or services, there need only be justification for renewal of any of
those registrations for the use of the mark to have effect on and to benefit
30 all the registrations, subject to submission of proof of payment of the corresponding fees.

Chapter VI
Licensing and Assignment of Rights

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Art. 136. The owner of a registered or pending trademark may, by

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

5

Art. 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.

10 One submission may be made to request registration of the licensing of rights in two or more pending applications in two or more registered marks when 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 entry is to be made. The corresponding fees shall be paid according to
15 the number of applications or registrations involved.

Art. 138. There shall be grounds for cancellation of the registration of a license in the following cases:

20 I. when it is jointly applied for by the owner of the mark and the licensed user;

25 II. owing to invalidity, expiration or cancellation of the registration of the mark, or where the marks in question were pending and their registration is not granted;

III. when a court order so rules.

30 Art. 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 mark. Moreover, those products or the establishment in which the services are rendered or contracted for shall state the name of the user and any other particulars required by the regulations under this Law.

35 Art. 140. The person holding a license registered at the Institute shall, unless otherwise stipulated, be empowered to institute legal action for the

protection of the rights in the mark as if he were the owner.

Art. 141. Use of the mark by the user holding a license registered with the Institute shall be considered made by the owner of the mark.

5

Art. 142. A franchise shall exist when, together with the licensing of the use of a mark, 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 mark, in order that the quality, prestige and image of the products or services distinguished by the said mark may be maintained.

The franchisor shall provide the prospective franchisee, prior to the signing of the corresponding agreement, with the relevant information on the state of his firm, as provided in the regulations under this Law.

The provisions of this Chapter shall be applicable to the registration of franchises.

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Art. 143. The rights deriving from an application for the registration of a mark or those conferred by a registered mark 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 in the regulations under this Law to be enforceable against third parties.

25

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 marks when 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 entry is to be made. The corresponding fees shall be paid according to the number of applications or registrations involved.

30

Art. 144. When legal entities are merged it shall be understood that,

unless otherwise stipulated, all trademark rights are transferred.

5 Art. 145. For the purposes of their transfer, the registrations of the marks of one and the same owner shall be considered linked when the said marks are identical and protect similar products or services, or are confusingly similar and applied to the same or similar products or services.

10 Art. 146. When the owner of the registrations of two or more linked marks 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 mark concerned is applied, he may apply for the removal of the linkage. The Institute shall make the appropriate final ruling.

15 Art. 147. The transfer of any of the linked marks shall be registered only when all of them are transferred to the same person.

20 Art. 148. When registration is sought for any transfer of a registered or pending mark that has been the subject of earlier, unregistered transfers, those earlier transfers shall likewise be registered with the Institute.

25 Art. 149. [Repealed]

Art. 150. The Institute shall refuse the registration of a license or transfer of rights where the registration of the mark is not in force.

25 Chapter VII
Invalidity, Lapse and Cancellation
of Registration

30 Art. 151. The registration of a mark 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.

35 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 mark;

5 II. the mark 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 mark 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 said filing date or, where applicable, prior to the date of first declared use by the person who has registered it;

10 III. the registration was granted on the basis of particulars contained in the application that were false;

15 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 mark applied to identical or similar services or products;

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

25 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.

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Art. 152. The registration shall lapse in the following cases:

- I. when it is not renewed as provided in this Law;
- 35 II. when the mark ceases to be used during the three years immediately prior to the request for an administrative declaration of lapse, except

where there are reasons for the non-use that are justified in the opinion of the Institute.

5 Art. 153. There shall be grounds for cancellation of the registration of a mark if its owner has caused or condoned its transformation into a generic name denoting one or more of the products or services for which it was registered in such a way that, in the commercial circles and in the course of its generalized use by the public, the mark has lost its distinctive character as a means of distinguishing the product or service to which it is
10 applied.

Art. 154. The owner of a registered mark 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
15 for in the regulations under this Law.

Art. 155. The declaration of invalidity, lapse or cancellation of the registration of a mark shall be made administratively by the Institute, acting ex officio or at the request of a party or the Federal Public
20 Prosecutor when there is any 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 declaration on the part of the Institute.

25 Title V
Appellations of Origin

Chapter I

Protection of Appellations of Origin

30 Art. 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 whose quality or characteristics are due exclusively to the geographical environment, including both natural and human factors.

35 Art. 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 same appellation shall be punished, including that 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.

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Art. 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. The following are considered to have a legal interest for the purposes of this Article:

10

I. natural persons or legal entities directly involved in the extraction, production or manufacture of the product or products to be covered by the appellation of origin;

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II. chambers or associations of manufacturers or producers;

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

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Art. 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:

25

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

II. legal interest of the applicant;

30

III. name constituting the appellation of origin;

IV. detailed description of the finished product or products that will be covered by the appellation, including characteristics, components, methods of extraction and production or manufacturing processes. The official standards laid down by the Secretariat of Trade and Industrial Development to which the product, its method of extraction, its manufacturing or

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production processes and its forms of packing or packaging are subject shall be stated when they determine the relation between the appellation and the product;

5 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;

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

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

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Art. 160. Once the request has been received by the Institute and payment of the corresponding fees has been made, an examination shall be made of the information and documents submitted.

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If, in the opinion of the Institute, the documents filed do not meet the legal requirements, or if they 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 allowed a period of two months.

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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 this Chapter if it considers such action appropriate.

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Art. 161. When the documents filed meet the legal requirements, the Institute shall publish an extract from the application in the Diario Oficial.

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If the procedure is initiated ex officio, the Institute shall publish in

the Diario Oficial an extract from the submissions and particulars required under Article 159, subparagraphs III to VII inclusive, of this Law.

5 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.

10 Art. 162. All types of evidence shall be acceptable under this Chapter 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.

15 Art. 163. Once the period referred to in Article 161 of this Law has elapsed and once the investigations have been made and the tests completed, the Institute shall hand down the appropriate ruling.

20 Art. 164. If the ruling referred to in the foregoing Article grants protection to an appellation of origin, the Institute shall make the formal declaration and shall proceed to publish it in the Diario Oficial. 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.

25 Art. 165. The duration of the declaration of protection of 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.

30 Art. 166. The terms of the declaration of protection of an appellation of origin can be amended at any time, either ex officio or at the request of an interested party, in accordance with the procedures laid down in this Chapter. The relevant request shall state what is required by Article 159, subparagraphs I to III inclusive, of this Law and give a detailed account of

the amendments requested and the grounds on which those amendments are based.

5 Art. 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.

10 Art. 168. The Institute, acting through the Secretariat 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.

15 Chapter II
Authorization of Use

20 Art. 169. Applications for authorization to use an appellation of origin shall be filed with the Institute, and authorization shall be granted to any natural person or legal entity meeting the following requirements:

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

25 II. engaging in such activity within the territory specified in the declaration;

30 III. complying with the official standards set by the Secretariat of Trade and Industrial Development pursuant to the relevant laws as applied to the products involved;

IV. any other person or entity specified in the declaration.

35 Art. 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.

Art. 171. On receiving the application for authorization to use an appellation of origin, the Institute shall proceed as provided in Article 160 of this Law and, if the legal requirements are met, it shall proceed to grant the authorization.

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Art. 172. The effects of the authorization to use an appellation of origin shall have a duration of 10 years from the date of filing with the Institute, and may be renewed for equal periods.

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Art. 173. The user of an appellation of origin shall be bound 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.

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Art. 174. The right to use an appellation of origin may be transferred by the authorized user in accordance with ordinary legislation. Any such transfer shall be effective 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 by this Law for the grant of the right to use the appellation of origin.

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Art. 175. The authorized user of an appellation of origin may himself, by agreement, allow the use of the appellation, but only by those persons who distribute or sell products bearing his marks. The agreement shall be sanctioned by the Institute and shall become effective on registration by it.

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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 under it. Should the distributor or trader fail to meet this obligation, there shall be grounds for cancellation of the registration.

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Art. 176. The authorization granted to the user of an appellation of origin shall cease to operate under the following circumstances:

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I. invalidity, in any of the following cases:

(a) when it has been granted in violation of the provisions of this Law,

5 (b) when it has been granted on the basis of false information and documents;

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

III. expiration of its term.

15 Art. 177. Administrative declarations of invalidity and cancellation shall be made by the Institute ex officio, or at the request of a party or the Federal Public Prosecutor.

20 Art. 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 Vbis

Layout Designs of Integrated Circuits

25 Art. 178bis. 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:

30 I. to consider 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 accordance with this Law and the regulations under it;

35 II. to conduct the proceedings for the administrative declaration of infringement, invalidity or lapse in connection with the registration of layout designs of integrated circuits, to issue the rulings to which the

said proceedings give rise and to impose such sanctions as may be appropriate; and

5 III. where not agreed between the parties, to set the amount of the royalties referred to in the second paragraph of Article 178bis.5.V, of this Title.

Art. 178bis.1. For the purposes of this Title:

10 I. "Integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of them being an active element, and some or all of the interconnections are integrally formed in and/or on a piece of semiconductor material, and which is intended to perform an electronic function;

15 II. "Layout design" or "topography" means the three-dimensional disposition expressed in any of the elements form, at least one of them being an active element, and some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition designed for an
20 integrated circuit intended for manufacture;

25 III. "Protected layout design" means a layout design of integrated circuits in relation to which the conditions of protection referred to in this Title are fulfilled; and

30 IV. "Original layout design" means 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.

35 Art. 178bis.2. An original layout design shall be registrable, whether incorporated in an integrated circuit or not, where it has not been commercially exploited anywhere in the world. It shall also be registrable, even where it has been commercially exploited in the ordinary way, in Mexico or abroad, provided that the application for registration is filed before the Institute within the two years following the date on which the applicant

first commercially exploited 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 shall only be registrable if the combination, taken as a whole, is considered original within the meaning of subparagraph IV of Article 178bis.1 of this Title, and if it meets the other conditions laid down in the foregoing paragraph.

Art.178bis.3. The registration of a layout design shall have a non-renewable term of 10 years counted from the filing date of the application for registration, and shall be subject to payment of the prescribed fee.

Art. 178bis.4. The registration of a layout design shall confer on its owner the right to prohibit other persons 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 178bis.1 of this Law, by incorporation in an integrated circuit or otherwise;

II. importing, selling or in any form distributing the following 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.

Art. 178bis.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;

5

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

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

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

20 Anyone who seeks to avail himself of this exception in an administrative declaration proceeding shall bear the burden of proof;

25 IV. performs any of the acts referred to in subparagraph II of the foregoing 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;

30 (b) an integrated circuit incorporating a protected layout design; or

(c) a product incorporating an integrated circuit that itself incorporates a protected layout design;

35 V. sells or in any form distributes, without the owner's authorization, an integrated circuit incorporating an unlawfully reproduced protected layout design, in so far as the person who performs or orders those acts did not

know and had no reasonable means of knowing, on acquiring the said integrated circuit, that it incorporated an unlawfully reproduced protected layout design.

5 As from the moment at which 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 the said layout design with a view to exhausting current stocks or fulfilling orders made prior to the
10 notification.

The performance of any act provided for in this Article shall not constitute an administrative contravention or offense within the meaning of this Law.
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Art. 178bis.6. In addition to the particulars specified in Article 38 of this Law, the application for registration shall be accompanied by the following:

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

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

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

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

35 Art. 178bis.7. The registration of a layout design shall be effected in accordance with such of Articles 34, 35, 38, 38bis, 39, 50 and 55bis to 60 of this Law as are applicable.

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. The grant of compulsory licenses shall not be appropriate.

Art. 178bis.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 178bis.2 of this Title, the provisions of Articles 78 to 81 of this Law being applicable as appropriate.

Art. 178bis.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 the said registration, have exploited the layout design without his consent, provided that the said exploitation took place after the filing date of the application for registration and the layout design concerned complies with the provisions of the foregoing paragraph.

Title VI
Administrative Procedures

Chapter I
General Rules of Procedure

Art. 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.

Art. 180. The applications and submissions shall be signed by the interested party or his representative and shall be accompanied by proof of payment of the corresponding fees, if applicable. If any of the said elements is lacking, the Institute shall simply reject the application or submission.

Art. 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 a natural person;

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 it 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 foregoing subparagraph, in a public instrument or power of attorney with authentication of signatures before a notary or other law officer when a Mexican legal entity is involved, the legal existence of the latter and the powers of the grantor having also to be verified;

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 legal entity. When in such power proof is given of the legal existence of the legal entity in the name of which the power is granted, and of the grantor's right to confer the said power, the validity of the power shall be presumed in the absence of proof to the contrary.

In each file processed, evidence shall be given of the legal status of the

applicant or the party filing the submission, provided that it shall be sufficient to submit a simple copy of the record of registration if the power is registered in the General Register of Powers kept by the Institute.

5 Art. 182. When an application or submission is filed by two or more natural persons or legal entities, the relevant document shall specify which of them is the common representative. If this is not done, it shall be understood that the first person mentioned is the common representative.

10 Art. 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 is given of a change of address, notifications shall be considered to have been legally served at the address appearing in the file.

15 Art. 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.

20 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.

25 Art. 185. The files of patents and registrations in force, and also those relating to published trade names and appellations of origin, shall always be available for all types of consultation and for use in filing submissions.

30 Art. 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 the said files are cited as anticipations to another applicant, or where they are submitted as proof in an administrative declaration procedure, in which case the necessary measures for the preservation of confidentiality shall be observed.

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The staff of the Institute who intervene in the various procedures to be conducted pursuant to this Law and the regulations under it 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 the said contents in dealings with the Institute in the course of their duties shall be under the same obligation.

Information of official character or that required by the judicial authority is excluded from the foregoing.

Chapter II

Administrative Declaration Procedure

Art. 187. Requests for the administrative declaration of invalidity, lapse, cancellation and administrative contravention 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.

Art. 188. The Institute may initiate the administrative declaration procedure ex officio or at the request of any person who has a legal interest therein and provides grounds for his claim.

Art. 189. Any request for an administrative declaration shall contain the following particulars:

I. name of the requester 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;

5 VI. the underlying legal grounds.

10 Art. 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 declaration, and the corresponding proof shall be offered. Proof submitted later shall not be allowed unless it materialized later.

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

20 Art. 191. If the requester does not comply with the requirements referred to in Article 189 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.

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

30 Art. 192. All types of evidence shall be allowed in the administrative declaration procedure with the exception of testimonials and personal statements, unless the testimonial or statement is in documentary form, and evidence that is contrary to morality and the law.

35 Without prejudice to the provisions of the foregoing 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.

5 Art. 192bis. For the substantiation of facts liable to constitute a violation of any one or more of the rights protected by this Law, or in administrative declaration procedures, the Institute may avail itself of such elements of proof as it considers necessary.

10 Where the affected owner or alleged infringer has submitted a sufficient amount of that 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 the said proof, subject, where appropriate, to such conditions as will guarantee the protection of confidential information.

15 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
20 adversely affected by the denial of access to the proof, on condition that the parties concerned are given a hearing in relation to the arguments and to the proof submitted.

25 Art. 192bis.1. Where the subject matter of the patent is a process or the manufacture of a product, the alleged infringer shall, in the procedure for the administrative declaration of infringement, prove that the said product has been manufactured according to a process different from the patented process where:

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

II. there is a significant probability that the product has been
35 manufactured using the patented process and the owner of the patent has not succeeded, in spite of having attempted, to establish what process actually was used.

Art. 193. On accepting the request for an administrative declaration of invalidity, lapse and cancellation, the Institute shall notify the owner concerned accordingly, allowing him a period of one month within which to make, in writing, whatever statement best serves his interests. Procedures for the administrative declaration of infringement shall conform to the provisions of Articles 209, subparagraph IX, and 216 of this Law. The notification shall be made at the address given by the party requesting the administrative declaration.

Art. 194. When it has not been possible to make the notification referred to in the foregoing Article on account of a change of address, whether that specified by the requester 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 Diario Oficial and in a major national newspaper. The publication shall show an extract from the request for administrative declaration and a period of one month shall be specified for the owner concerned to make whatever statement best serves his interests.

Art. 195. In the administrative declaration procedure issues specially ruled upon previously shall not be examined, but will be settled when the appropriate finding is handed down.

Art. 196. When the Institute initiates the administrative declaration 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 notification of the Institute, by publication as provided in Article 194 of this Law.

Art. 197. The document in which the owner concerned, or where applicable the alleged infringer, makes his statements shall contain:

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

II. the address for the service of notifications;

III. exceptions and defenses;

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

V. legal grounds.

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

15 Art. 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.

20 Art. 199. Once the period for the affected owner, or where applicable the alleged infringer, to make his statements, and where appropriate the further period referred to in the foregoing 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 publication as provided in Article 194 of this
25 Law.

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

30 Art. 199bis. In administrative declaration procedures relating to the violation of any of the rights protected by this Law, the Institute may do the following:

35 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,

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(b) objects, wrappers, containers, packaging, paperwork, advertising material and similar articles that infringe any of the rights protected by this Law,

10 (c) signs, labels, tags, paperwork and similar articles that infringe any of the rights protected by this Law,

(d) implements or instruments intended or used for the manufacture, or production of any of the articles specified in items (a), (b) and (c),
15 above;

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

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

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

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VI. order the suspension of the rendering of the service or the closing of the establishment where the measures provided for in the foregoing subparagraphs are not sufficient to prevent or avoid the violation of the rights protected by this Law.

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If the product or service is on the market, the traders or the providers of the service 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.

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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.

5 Art. 199bis.1. Before ordering the implementation of the measures referred to in the foregoing Article, the Institute shall call upon the petitioner to:

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

1.. the existence of a violation of his rights,

15 (b) the imminence of the violation of his rights,

(c) the existence of the possibility of irreparable damage being sustained,

20 (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;

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

30 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.

35 The Institute shall take due account of the seriousness of the infringement and the nature of the measure sought when deciding to implement it and determine the amount of the security and counter-security.

5 Art. 199bis.2. A person against whom any of the measures referred to in Article 199bis of this Law has been ordered shall have a period of 10 days within which to submit to the Institute any observations that he might have regarding the said measure.

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

10 Art. 199bis.3. The party requesting the provisional measures referred to in Article 199bis shall be liable for the payment of damages caused to the person against whom they have been carried out when:

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

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

25 Art. 199bis.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 declaration of an infringement is settled.

30 Art. 199bis.5. The Institute shall, in the final ruling on the administrative declaration of infringement, decide on the lifting or confirmation of the measures adopted.

35 Art. 199bis.6. It shall be ensured, in any provisional measures ordered, that they do not serve as the means of violating industrial secrets or engaging in acts that constitute unfair competition.

Art. 199bis.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.

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Art. 199bis.8. In the procedure for the administrative declaration of infringement the Institute shall at all times seek to reconcile the interests of those involved.

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Chapter III Appeal for Reconsideration

Art. 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.

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Art. 201. Once the arguments presented in the appeal and the documents have been examined, the Institute shall issue the appropriate ruling, which shall be communicated to the appellant in writing.

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Art. 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.

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Title VII Inspection, Administrative Infringements and Sanctions, and Offenses

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Chapter I Inspection

Art. 203. In order to verify compliance with the provisions of this Law and other provisions derived therefrom the Institute shall carry out

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inspections and monitoring according to the following procedures:

I. requests for reports and information;

5 II. inspection tours.

Art. 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.

Art. 205. Inspection tours 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.

15 The Institute may also authorize the carrying out 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.

20 Art. 206. The proprietors or those in charge of the establishments that manufacture, store, distribute or sell products or offer products for sale or provide services shall be under the obligation to admit the staff holding the warrant for making the inspection tours, provided that they comply with the requirements laid down in the foregoing Article.

25 Art. 207. Inspection tours 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.

30 Art. 208. Every inspection tour 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.

Art. 209. The record shall contain:

- 5 I. the hour, day, month and year when the inspection was carried out;
- II. the street, number, locality and state of the site on which the tour was conducted;
- 10 III. the number and date of the warrant authorizing the inspection, and the identity of the inspector;
- IV. the name and position of the person with whom the inspection tour was arranged;
- 15 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 tour;
- 20 VII. information on the conduct of the tour;
- VIII. a statement by the party visited, if he wished to make one;
- 25 IX. a mention of the opportunity given to the party visited to exercise the right to confirm in writing the observations that he made at the time of the tour, and to make additional observations on the making of the records within a period of 10 days;
- 30 X. the names and signatures of the persons who took part in the tour, including the inspector, and where applicable a mention that the party visited refused to sign the record.

35 Art. 210. When making observations either during the tour or in writing, the parties visited may offer proof relating to the facts contained in the record.

Art. 211. If in the course of the visit 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
5 precautionary measure, confiscate the products with which such infringement 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 the said establishment has
10 fixed premises, failing which the products shall be consigned to the Secretariat.

If acts are involved that could possibly constitute offenses, the Institute shall state that facts in the ruling that it issues on the
15 subject.

Art. 212. A copy of the inspection record shall be left with the person with whom the inspection was arranged even where the said person has refused
20 to sign it, its validity being unaffected thereby.

Art. 212bis. The confiscation referred to in Article 211 of this Law may be practiced on:

25 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 infringement or offenses;

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

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

Art. 212bis.1. In the confiscation of goods referred to in the foregoing Article, the person or institution whom or which the party applying for the measure appoints under his own responsibility shall be the preferred depository.

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Art. 212bis.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:

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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 and prejudice has been initiated;

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

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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;

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IV. in cases not included in the foregoing 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 goods that have been confiscated or withdrawn from circulation or whose marketing has been prohibited;

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

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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 governing board of the Institute may decide on:

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

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(b) the destruction thereof.

Chapter II

Administrative Infringements and Sanctions

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Art. 213. The following shall constitute administrative infringements:

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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;

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

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

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

registered mark;

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

10 VI. using, within the geographical area of the effective clientele or in any part of the Republic in the case provided for in Article 105 of this Law, a trade 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;

15 VII. using as marks 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;

20 VIII. using a mark previously registered or confusingly similar thereto as a trade name or business name or part of such a name by a natural person or legal entity whose activity is the production, importation or marketing of goods or services identical or similar to those to which the registered mark is applied without the written consent of the owner of the registration or of the person empowered to give such consent;

25 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:

30 (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,

35 (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;

5

IX. 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 mark for the purpose of informing the public, provided that the comparison is not tendentious, false or exaggerated within the meaning of the Federal Consumer Protection Law;

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

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XII. offering for sale or bringing into circulation goods covered 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;

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

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XIV. offering for sale or bringing into circulation 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 an exploitation license;

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

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XVI. using a registered trade announcement or one 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;

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

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

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

20 XX. offering for sale or bringing into circulation goods to which a registered mark is applied and which have been altered;

XXI. offering for sale or bringing into circulation goods to which a registered mark is applied after having partially or totally altered, replaced or deleted the said mark;

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

30 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;

35 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

5 (c) a product incorporating an integrated circuit that itself incorporates an unlawfully reproduced protected layout design;

XXV. All other violations of the provisions of this Law that do not constitute offenses.

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Art. 214. Administrative infringements of this Law and other provisions derived therefrom shall be punished as follows:

15 I. a fine of up to 20,000 days of the general minimum salary payable in the Federal District;

20 II. an additional fine of up to the amount of 500 days of the general minimum salary payable in the Federal District for each day that the infringement persists;

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III. temporary closure for up to 90 days;

IV. permanent closure;

25 V. administrative detention for up to 36 hours.

Art. 215. The investigation of infringements shall be carried out by the Institute either ex officio or at the request of the interested party.

30 Art. 216. Should the nature of the administrative infringement not warrant an inspection tour, 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 10 days within which to make whatever statement best serves his interests and submit the corresponding proof.

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Art. 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.

Art. 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 means 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.

Art. 219. Closure 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 the said period, the infringement is repeated regardless of whether the location thereof has changed.

Art. 220. For determining sanctions the following shall be taken into account:

- I. the intentional character of the act or omission constituting the infringement;
- II. the economic circumstances of the infringer;
- 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.

Art. 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.

Art. 221bis. Compensation for material damages or indemnification for damages and prejudice due to violation of the rights conferred by this Law shall in no case be less than 40 percent of the public selling price of each product or the price of the rendering of services where violation of any one or more of the industrial property rights provided for in this Law is involved.

Art. 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 so state in the decision that it issues.

Chapter III Offenses

Art. 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. counterfeiting marks on a commercial scale with ill intent;

III. produce, store, transport, introduce to a country, distribute or sell, with ill intent and with commercial speculation purpose, objects that show counterfeit of protected trademarks by this law, and so as contribute or provide in any form, mainly, natural resources aimed to the production of objects that show counterfeit of trademarks protected by this law.

35

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 said 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 said third party, or for the purpose of doing harm to the person keeping the trade secret or to the authorized user thereof;

VI. using information constituting a trade secret that is known by virtue of employment, position, responsibility, 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 the 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.

Art. 223 bis. Imprisonment of two to six years and a fine of 100,000 minimum wage payable in the Federal District on persons that sell to any final consumer in a public place, with ill intentions or with commercial speculation purposes, objects that show counterfeit of trademarks protected by this Law. If the sell is carried out in a commercial establishment, or in an organized or permanent form, it will be pursuant to articles 223 and 224 of this Law.

Art. 224. Imprisonment for two to six years and a fine corresponding from 100 to 10,000 days of the general minimum wage payable in the Federal District shall be imposed on persons who commit any of the offenses specified in subparagraphs I, IV, V or VI of article 223 of this Law. In case of the offenses provided in subparagraphs II or III of the same article

223, imprisonment from three to ten years and a fine of 2,000 to 20,000 days of the general minimum wage payable in the Federal District shall be imposed.

5 Art. 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.

10 Art. 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 in Article 221bis of this Law, for the prejudice sustained as a result of the said offenses.

15 Art. 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.

20 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.

25 Art. 228. In the judicial proceedings referred to in the foregoing Article, the judicial authority may adopt the measures provided for in this Law and in international treaties to which Mexico is party.

30 Art. 229. For the exercise of the civil and criminal actions arising from the violation of industrial property rights, and also for the ordering of the measures provided for in Article 119bis 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 those particulars and notices that are referred to in Articles 26 and 131 of this Law, or by any other means to have stated or brought to the notice of
35 the public that the goods or services are protected by industrial property rights.

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

5 TRANSITIONAL PROVISIONS

Decree of December 26, 1997

1. This Decree shall enter into force on January 1, 1998.
2. The provisions of this Decree shall apply to all layout designs of integrated circuits whose first commercial exploitation, either separately or incorporated in an integrated circuit, in any part of the world occurred as from the entry into force of this Decree.



MACOTELA CERVANTES
Y ASOCIADOS S.C.
Patents and Trademarks