



PATENT AND UTILITY MODELS LAW No. 24.481
AMENDED BY LAW 24.572 (T. O. 1996) AND LAW 25.859

TITLE I

GENERAL PROVISIONS

ARTICLE 1. Inventions of all kinds in all areas of production shall confer such rights and impose such obligations on the authors thereof as are specified in this Law.

ARTICLE 2. Ownership of the invention shall be attested by the grant of the following industrial property titles:

- a) Invention patents; and
- b) Utility models certificates.

ARTICLE 3. The industrial property titles governed by this Law may be acquired by national or foreign natural persons or legal entities, having their actual or legal domicile in the country.

TITLE II

INVENTION PATENTS

CHAPTER I

PATENTABILITY

ARTICLE 4. - Inventions relating to products or processes shall be patentable, provided that they are new, that they involve an inventive activity and that they are susceptible of industrial application.

- a) For the purposes of this Law, any human creation enabling the transformation of matter or energy for its exploitation by humankind shall be considered an invention.
- b) Any invention not included in the state of the art shall likewise be considered novel.



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- c) State of the art shall mean the totality of technical knowledge that has been made public before the filing date of the patent application or of the recognized priority, if any, by means of an oral or written description, by exploitation or by any other means of dissemination of information in the country or abroad.
- d) There shall be inventive activity where the creative process or the results thereof cannot readily be deduced by an average person skilled in the corresponding art.
- e) There shall be industrial applicability where the subject matter of the invention causes an industrial result or product to be obtained, industry being understood as including agriculture, forestry, livestock breeding, fisheries, mining, processing industries in the strict sense and services.

ARTICLE 5.- Disclosure of an invention shall not affect its novelty, as long as within one (1) year prior to the filing date of the patent application, or the date of the recognized priority where applicable, the inventor or his/her successors in title have made the invention known by any means of communication or have displayed it at a national or international exhibition. The application shall in such a case be accompanied by documentary supporting evidence under such conditions as may be laid down in the regulations under this Law.

ARTICLE 6.- The following shall not be considered inventions for the purposes of this Law:

- a) Discoveries, scientific theories and mathematical methods;
- b) Literary or artistic works or any other aesthetic creation, as well as scientific works;
- c) Schemes, rules or methods for performing intellectual activities, playing games or engaging in economic and business activities, as well as for computer programs;
- d) Forms of data presentation;
- e) Methods of surgical, therapeutic or diagnostic treatment applicable to the human body or relating to animals;
- f) The juxtaposition of known inventions or mixtures of known products, changes in the shape, dimensions or constituent material, except in the case their combination or merging is such that they are unable to function separately or where the characteristic qualities or functions thereof are so modified as to produce an industrial result that is not obvious to a person skilled in the art concerned; and
- g) Any kind of living matter or substances already existing in nature.



ARTICLE 7.- The following shall not be patentable:

- a) Inventions whose exploitation (working) on the territory of the ARGENTINE REPUBLIC is to be prevented in order to protect the public good or morality, the health or life of persons or animals, the conservation of plants or to prevent serious damage to the environment.
- b) All biological and genetic material existing in nature or their replica, in biological processes implicit in animal, plant or human reproduction, including genetic processes related to the material capable of conducting its own duplication in normal and free conditions, in the same way as in nature.

CHAPTER II

RIGHT TO A PATENT

ARTICLE 8.- The right to a patent shall belong to the inventor or his/her successors in title, who shall be entitled to assign it or transfer it by any lawful means and enter into license agreements. The patent shall confer the following exclusive rights on its owner, without prejudice to the provisions in Articles 36 and 99 of this Law:

- a) Where the subject matter of the patent is a product, the right to prevent third parties from engaging without his/her consent in acts of manufacture, use, offering for sale, sale or importation of the product covered by the patent.
- b) Where the subject matter of the patent is a process, the right to prevent third parties from engaging, without his/her consent, in the act of utilization of the process and in the acts of use, offering for sale, sale or importation to these ends, the product obtained directly by means of said process.

ARTICLE 9.- In the absence of proof to the contrary, the natural person or persons designated as such in the application for a patent or utility model certificate shall be presumed to be the inventor or inventors. The inventor or inventors shall have the right to be mentioned in the corresponding title.

ARTICLE 10.- Inventions made in the course of employment relations:

- a) Those made by a worker during the course of the person's contract, or other employment or service relations with the employer, where the object thereof is entirely or partly the performance of inventive activity, shall belong to the employer.



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- b) The worker who has made an invention under the above circumstances, shall be entitled to additional remuneration for his inventive work if his/her personal contribution to the invention and its importance to the enterprise and the employer, clearly go beyond the express or implied terms of his/her contract or employment relations. In the absence of the conditions stipulated in clause a), if the worker has made an invention connected with his/her professional activity within the company and the making of the invention has been predominantly influenced by knowledge acquired within the company or by the use of means it has provided, the employer shall be entitled to ownership or a reserved right of exploitation of the invention. The employer shall exercise such option within the NINETY (90) days following the making of the invention.
- c) Where the employer assumes ownership or reserves the right of exploitation of an invention, the worker shall be entitled to a fair economic compensation, determined in relation to the industrial and commercial importance of the invention, bearing in mind the value of the means or knowledge made available by the company, and the contributions made by the worker himself/herself; in the event of the employer licensing the invention to third parties, the inventor shall have the right to claim payment from the owner of the patent of up to FIFTY PERCENT (50%) of the royalties effectively received by the former.
- d) An industrial invention shall be considered as developed during the performance of a labor contract or of a rendering of services contract, where the patent application is filed up to ONE (1) year after the date on which the inventor left the employment within the activity in which the invention was made.
- e) Work-related inventions not made under the circumstances foreseen in clauses a) and b) shall belong exclusively to the maker thereof.
- f) Any anticipated waiver by the worker of the rights conferred in this Article shall be null and void.

ARTICLE 11.- The right conferred by the patent shall be determined by the first of the approved claims, which shall define the invention and demarcate the scope of the said rights. The description and the drawings or plans, or where applicable the deposit of biological material shall be used to interpret them.



CHAPTER III

GRANT OF THE PATENT

ARTICLE 12.- In order to obtain a patent it shall be necessary to file with the NATIONAL PATENT ADMINISTRATION of the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY an application with the characteristics and other data that this Law and its regulations shall indicate.

ARTICLE 13.- The patent may be applied for directly by the inventor or by his/her successors in title or through their representatives. Where a patent is applied for in this country after doing so in other countries it shall be considered as its priority date the date in which the first patent application was filed, provided that no more than ONE (1) year had elapsed following the original filing.

ARTICLE 14.- The right of priority provided for in the foregoing Article, shall be claimed at the moment of filing the patent application. The NATIONAL PATENT ADMINISTRATION shall be entitled to request, during the substantive examination stage, the priority document with its corresponding Spanish translation where the said application is drafted in another language.

In addition, in order to acknowledge the priority right, the following requirements shall be met:

- 1) Filing the assignment of priority rights document, where appropriate;
- 2) That the application filed in the ARGENTINE REPUBLIC does not have a broader scope than that claimed in the foreign application; if it is, the priority shall be partial only and referred to the foreign application;
- 3) There must be reciprocity in the country of the first application.

ARTICLE 15.- When various inventors have made the same invention independently of each other, the right to the patent shall belong to the inventor whose application bears the earliest filing date or acknowledged priority date, as the case may be. If the invention has been made jointly by various persons, the right to patent shall belong jointly to all of them.

ARTICLE 16.- The applicant may abandon his/her application at any time during its processing. Where the application belongs to more than one applicant, the abandonment shall be done jointly, failing which the rights of the abandoning party shall accrue to the remaining applicants.

ARTICLE 17.- The patent application may not comprise more than one invention or group of inventions so related as to constitute a single general inventive concept. Applications not complying with this requirement shall be divided as provided for by regulation.



ARTICLE 18.- The filing date of the application shall be the date on which the applicant submits the following to the NATIONAL PATENT ADMINISTRATION created by this Law:

- a) A declaration stating that a patent is applied for;
- b) The identity of the applicant;
- c) A description and one or more claims even if they do not meet the formal requirements established in the present Law.

ARTICLE 19.- For a patent to be granted, the following shall also be file:

- a) The name and description of the invention;
- b) The plans or technical drawings required for the understanding of the description;
- c) One or more claims;
- d) An abstract of the description of the invention that shall be used only for publication and as a source of technical information;

Having THIRTY (30) days elapsed as from the filing date of the application without complying with the aforementioned requirements, it shall be refused without further processing.

ARTICLE 20.- The invention shall be described in the application with sufficient clarity and completeness for an average person skilled in the art concerned to be able to carry it out. It shall likewise include a clear and accurate account of the best known method of carrying out and implementing the invention, and of the materials used.

The methods and processes described shall be directly applicable in production.

In the case of applications relating to microorganisms, the product obtainable by a claimed process shall be described as well as the process itself in the relevant application, and the strain shall be deposited in an institution authorized for the purpose, as provided for by regulation.

The public shall have access to the microorganism culture at the depository institution, as from the day of publication of the patent application, on conditions established by regulation.

ARTICLE 21.- Supporting drawings, plans and diagrams submitted shall be sufficiently clear for the description to be understood.



ARTICLE 22.- The claims shall define the subject matter for which protection is sought, and shall be clear and concise. Said claims may be one or more and shall be based on the description without exceeding it.

The first claim shall refer to the main subject matter and the remainder shall be subordinate thereto.

ARTICLE 23.- During its processing, a patent application may be converted into an application for a utility model certificate and vice versa.

The applicant may carry out the conversion within THIRTY (30) days counted from the filing date of the application; or within THIRTY (30) days counted from the conversion requirement by the NATIONAL PATENT ADMINISTRATION.

In case the applicant fails to effect such conversion within the stipulated term, the application shall be considered abandoned.

ARTICLE 24.- The NATIONAL PATENT ADMINISTRATION shall conduct a preliminary examination of the application and may ask to have points specified or clarified where it considers this necessary, or to correct errors or omissions.

If the applicant does not comply with such a request within a period of THIRTY (30) days, the application shall be considered abandoned.

ARTICLE 25.- The pending patent application and its annexes shall remain confidential until the time of its publication.

ARTICLE 26.- The NATIONAL PATENT ADMINISTRATION shall proceed with publication of the pending patent application within EIGHTEEN (18) months, as from the filing date. At the applicant's request, the application shall be published before the said term expires.

ARTICLE 27.- On payment of the fee which shall be established by the implementing Decree, the NATIONAL PATENT ADMINISTRATION shall carry out a substantive examination, to determine compliance with the requirements stipulated in TITLE II, CHAPTER I of this Law.

The NATIONAL PATENT ADMINISTRATION may request a copy of any substantive examination conducted by foreign examining offices according to the procedure established by the implementing Decree, and may also require reports from the researchers working in universities or scientific-technological institutes in the country, who in each case shall be rewarded, as provided for in the implementing Decree.

If the patent applicant considers it necessary, the applicant may request the Administration to conduct the examination on his/her premises.



Where EIGHTEEN (18) months counted from the filing date of the application have elapsed and the applicant has not paid the fee corresponding to the substantive examination, said application shall be considered withdrawn.

ARTICLE 28.- Where the application calls for comment, the NATIONAL PATENT ADMINISTRATION shall notify them to the applicant so that, within the term of SIXTY (60) days, the applicant may provide such clarification as he/she considers appropriate or submit the information or documentation that has been requested of him/her. Should the applicant not comply with such requirements within the stipulated term, said application shall be considered withdrawn.

All comments shall be made in one single act by the NATIONAL PATENT ADMINISTRATION, except where prior clarifications or explanations are requested of the applicant.

Any person may raise objections based on the patent application and add documentary proof within a term of SIXTY (60) days as from the publication provided for in Article 26. The objections shall consist of the non-fulfillment or insufficient fulfillment of the legal requirements for the grant of a patent.

ARTICLE 29.- Where the comments made by the NATIONAL PATENT ADMINISTRATION are not satisfactorily addressed by the applicant, the patent application shall be rejected, and such decision shall be notified to the applicant in writing, stating the reasons and arguments underlying the decision.

ARTICLE 30.- Where all the corresponding requirements have been met, the NATIONAL PATENT ADMINISTRATION shall grant the title.

ARTICLE 31.- The grant of the patent shall take place without prejudice to any third party claim to a stronger right than the applicant, and without any guarantee from the State of the usefulness of its subject matter.

ARTICLE 32.- The grant of the patent shall be published in the website of the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY according to what is to be established by the ruling of the enforcement authority.

ARTICLE 33.- The only changes that may be introduced in the text of the title of a patent are the ones aimed to correct material or formal errors.

ARTICLE 34.- Granted invention patents shall be a matter of public knowledge, and a copy of the documentation shall be issued to whomever requests it against payment of the fees that shall be established.



CHAPTER IV

TERM AND EFFECTS OF THE PATENT

ARTICLE 35.- The patent has a non-renewable term of TWENTY (20) years, as from the filing date of the application.

ARTICLE 36.- The right conferred by a patent shall have no effect against:

- a) A third party who privately or in an academic field and without gainful intent, conducts scientific or technological research activities for purely experimental, testing or teaching purposes, and to that end manufactures or uses a product or applies a process identical to the one patented;
- b) The routine preparation of medicines by authorized professionals, individually on medical prescription, or against acts relating to the medicines so prepared;
- c) Any person who acquires, uses, imports or in any way markets the patented product or obtained by the patented process, once the said product has been lawfully placed in the market in any country. It shall be understood that the placing in the market is legal when it complies with the Agreement of Intellectual Property Rights Related to Commerce. Part III Section IV TRIP'S-GATT Agreement.
- d) The use of inventions patented in our country on board of foreign, land, air or maritime vehicles that accidentally or temporarily travel within the jurisdiction of the ARGENTINE REPUBLIC, if they are used exclusively for the need thereof.

CHAPTER IV

TRANSFER AND CONTRACTUAL LICENSES

ARTICLE 37.- Patents and utility models shall be transferable and may be licensed, either fully or in part, in the manner and subject to the formalities established in the Law. For the assignment to become binding on third parties it will have to be registered before the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY.

ARTICLE 38.- License agreements shall not contain restrictive trade clauses affecting the production, marketing or technological development of the licensee, restrict the competition or impose any other procedure such as exclusive transfer-back conditions, conditions preventing any



challenge to validity, those that impose mandatory joint licenses or any other of the practices contemplated in Law No. 22.262 or any other amending or substituting the same.

ARTICLE 39.- In the absence of any provision to the contrary, the grant of a license shall not exclude the possibility of the owner of the patent or utility model granting other licenses or engaging in simultaneous exploitation (working) himself/herself.

ARTICLE 40.- The beneficiary of a contractual license shall have the right to bring such legal actions as are available to the owner of the inventions, only where the said owner does not bring them himself/herself.

CHAPTER VI

EXCEPTIONS TO THE RIGHTS GRANTED

ARTICLE 41.- The NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY may, at the reasoned request of the competent authority, introduce limited exceptions to the rights conferred by a patent. Such exceptions shall not unjustifiably prejudice the normal exploitation (working) of the patent or do unjustified harm to the legitimate interests of the owner of the patent, bearing in mind the legitimate interests of third parties.

CHAPTER VII

OTHER USES NOT REQUIRING AUTHORIZATION BY THE OWNER OF THE PATENT

ARTICLE 42.- Where a prospective user has attempted to secure the grant of a license from the owner of a patent on reasonable commercial terms and conditions under Article 43, and such attempts have had no effect after ONE HUNDRED AND FIFTY (150) days have elapsed from the date on which the license in question was requested, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY, may allow other uses of the said patent without authorization of the owner thereof. Without prejudice to the foregoing, notice shall be given to the authorities created by Law No. 22.262 or such law as may amend or replace it, on the protection of free competition, for whatever purposes may be appropriate.

ARTICLE 43.- If after THREE (3) years have elapsed since the grant of the patent, or FOUR (4) since the filing of the application, the invention has not been exploited, except in cases of *force majeure*, or if no genuine and effective preparations have been made for the exploitation of the invention which is the subject matter of the patent, or where the exploitation of said patent has been



interrupted for more than ONE (1) year, any person may apply for authorization to use the invention without seeking permission of the owner thereof.

It shall be considered *force majeure*, in addition to such legally recognized causes, the objective difficulties of technical and legal character, such as delays in obtaining registration with the authorities to secure marketing authorization that are beyond the control of the owner of the patent and make the exploitation of the invention impossible. Lack of financial resources or the lack of economical viability of the exploitation shall not in themselves constitute justification.

The NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY shall notify the owner of the patent the non-fulfillment of the provisions of the first paragraph before allowing use of the patent without authorization from said owner.

The implementing authority, after having heard the parties, and if they do not reach an agreement, shall establish a reasonable remuneration that the owner of the patent shall receive, which shall be set forth in accordance to the circumstances of each case and taking into account the economic value of the authorization, bearing in mind the average rate royalty payable in the sector concerned under contractual licenses between independent parties. Decisions on the licensing of such uses shall be taken within NINETY (90) working days from the filing of the application and appeals therefrom shall lie with the Civil and Commercial Federal Courts. The substantiation of the appeal shall have no suspensive effects.

ARTICLE 44.- The right of exploitation (working) conferred by a patent shall be granted without permission from the owner thereof, when the competent authority had determined that the said owner had engaged in anticompetitive practices. In such cases, without prejudice to the remedies available to the owner of the patent, the grant shall be effected without the need for application of the procedure established in Article 42.

For the purposes of this Law, the following practices, among others, shall be considered anticompetitive:

- a) The setting of comparatively excessive prices, with respect to the market average or discriminatory of the patented products; particularly where alternative proposals exist for supplying the market at prices significantly lower those offered by the patent owner for the same product;
- b) Refusal to supply the local market on reasonable commercial terms;
- c) The slowing-down of marketing or production activities;
- d) Any other act capable of being included among the practices considered punishable by Law No. 22.262 or any other replacing or substituting the same.



ARTICLE 45.- The NATIONAL EXECUTIVE POWER may, for reasons of sanitary emergency or of national security, order the exploitation of certain patents by means of the grant of exploitation rights under a patent; the scope and duration thereof shall be limited to the purposes of the grant.

ARTICLE 46.- The right of use without authorization from the owner of the patent shall be granted to permit the exploitation of a patent-the second patent-that cannot be worked without infringing another patent-the first patent-provided that the following conditions are met:

- a) The invention claimed in the second patent must represent significant technical progress, of considerable economic importance, compared with that claimed in the first patent;
- b) The owner of the first patent shall be entitled to cross-licensing on reasonable terms for the exploitation of the invention claimed in the second patent; and
- c) The authorized use of the first patent may not be assigned without assignment also of the second patent.

ARTICLE 47.- When other uses without authorization from the owner of the patent are allowed, the following provisions shall be observed:

- a) The authorization of said uses shall be given by the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY;
- b) The authorization of said uses shall be considered in light of the particular circumstances of each case;
- c) For the uses contemplated in Article 43 and/or 46, before grant the prospective user shall have attempted to obtain an authorization from the owner of the rights on commercial terms and conditions according to Article 43 and such attempts having had no effect within the term provided for in Article 42. In the case of non-commercial public use, where the Government or the Contracting Party, without having conducted a patent search, knows or has good reason to know that a valid patent is being or will be used by or on behalf of the Government, the owner of the said patent shall be informed accordingly without delay;
- d) The authorization shall extend to patents for the manufacturing components and processes for that permit the exploitation of the patent;
- e) Those uses shall not be non-exclusive in character;
- f) They may not be assigned, except with that part of the business or intangible assets concerned by them;



- g) They shall be authorized to supply mainly the domestic market, except as provided for in Articles 44 and 45;
- h) The owner of the rights shall receive a reasonable remuneration according to the particular circumstances of each case, considering the economic value of the authorization, according to the procedure set forth in Article 43; when the amount of remuneration authorized to remedy anticompetitive practices is determined, due account shall be taken of the need to correct said practices and revocation of the authorization may be refused if it is considered probable that, under the circumstances that gave rise to the license, the practices will continue;
- i) For the uses established in Article 45, and any other use not provided for, the scope and duration thereof shall be restricted to the purposes for they have been authorized, and the authorization may be withdrawn if the circumstances that gave rise to it no longer obtain and are unlikely to recur, the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY being empowered to ascertain, in response to a reasoned request, whether the circumstances continue to exist. Where such permitted uses remain without effect, due account shall be taken of the legitimate interests of the persons who have received such authorization. In the case of semiconductor technology, it may only be subjected to non-commercial public use or to rectify a practice declared anticompetitive in judicial or administrative proceeding.

ARTICLE 48.- In all cases the decisions relating to the uses not authorized by the owner of the patent shall be subject to judicial review, as shall matters pertaining to the appropriate remuneration, if any is payable.

ARTICLE 49.- Appeals lodged against administrative acts connected with the authorization of the uses foreseen in the present Chapter, shall have no suspensive effect.

ARTICLE 50.- Any person who applies for any of the uses contemplated in this Chapter shall possess the economic ability to carry out efficient exploitation of the patented invention and shall have available premises authorized for the purpose by the competent authority.

CHAPTER VIII

PATENTS OF ADDITION OR IMPROVEMENT PATENTS

ARTICLE 51.- Any person who improves a patented invention shall be entitled to apply for a patent of addition.



ARTICLE 52.- Patents of addition shall be granted for the remainder of the lifespan of the patent of invention on which they depend. If there are two or more such patents, the one that expires last shall be taken into account.

TITLE III

UTILITY MODELS

ARTICLE 53.- Any new arrangement or form obtained or incorporated in tools, working instruments, utensils, devices or known objects suitable for practical work, insofar as they make for better performance of the operations for which they are intended, shall confer on the owner thereof exclusive rights of exploitation, which shall be attested by titles known as utility model certificates.

This right shall be granted only to the new form or arrangement as defined; a utility model certificate may not be granted within the scope of protection of a patent of invention in force.

ARTICLE 54.- The utility model certificates shall be valid for a term of TEN (10) non-extendable years, as from the filing date of the application, and shall be subject to the payment of the fees established by the implementing Decree.

ARTICLE 55.- The essential requisites determining the issue of such certificates contemplated shall be that the inventions provided for under this Title are new and that they are industrial in nature.

ARTICLE 56.- The application for a utility model certificate shall be accompanied by:

- a) The title designating the invention in question;
- b) A description relating to a single main instance of the new configuration or arrangement of the object in practical use or of the functional improvement, with an explanation of the causal relationship between the new configuration or arrangement and the functional improvement, in such way that the invention in question can be reproduced by an average person skilled in the art, and an explanation of the drawing or drawings;
- c) The claim or claims of the invention concerned;
- d) The necessary drawing or drawings.

ARTICLE 57.- Having filed the utility model application and paid the fees corresponding to the substantive examination, the NATIONAL PATENT ADMINISTRATION will examine it to determine if it complies with the provisions of Articles 53 and 55. Having approved said examination, the application will be published.



Within the term of THIRTY (30) counted from the publication, any person may formulate reasoned objections against the utility model application and accompany documentary evidence. Objections must be based in the lack, or insufficiency, of the legal requisites for its grant.

Having the above term elapsed, the NATIONAL PATENT ADMINISTRATION will proceed to decide on the matter issuing the utility model certificate, if appropriate.

Having THREE (3) months counted from the filing date of the application elapsed without the applicant having paid the fee corresponding to the substantive examination, said application shall be considered abandoned.

ARTICLE 58.- Those provisions on patents shall be applicable to utility models that are not incompatible with them.

TITLE IV

INVALIDITY AND LAPSE OF PATENTS AND UTILITY MODELS

ARTICLE 59.- Invention patents and utility model certificates shall be wholly or partly null and void when they have been granted in violation of the provisions of this Law.

ARTICLE 60.- If the causes of invalidity affect only part of the patent or utility model, partial invalidity shall be declared by means of the cancellation of the affected claim or claims. It shall not be possible to declare a claim partially invalid.

Where the invalidity is partial, the patent or the utility model shall remain in force with respect to the claims that have not been invalidated, insofar as they can themselves constitute the subject matter of an independent utility model or patent.

ARTICLE 61.- The declaration of invalidity of a patent shall not in itself cause the invalidation of the additions thereto, provided that the conversion of the said additions into independent patents is applied for within NINETY (90) days following notification of the declaration of invalidity.

ARTICLE 62.- Patents and utility model certificates shall lapse in the following cases:

- a) On expiration of their term;
- b) On renunciation by their owner. In the case that the patent belongs to two or more persons, the renunciation shall be done jointly. The resignation may not affect third-party rights;



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- c) On failure to pay the annual maintenance fees to which they are subject; on attainment of the relevant due dates, the owner shall have a grace period of ONE HUNDRED AND EIGHTY (180) days to pay the updated fee, at the end of which period lapse shall occur, except where the non-payment is due to *force majeure*;
- d) Where a license of use has been granted to a third party and the invention has not been worked within TWO (2) years for reasons attributable to the owner of the patent.

The administrative decision declaring the lapse of a patent shall be subject to judicial appeal. The appeal shall have no suspensive effect.

ARTICLE 63.- No judicial declaration shall be necessary for invalidity or lapse to have the effect of making the invention to public property; both invalidity and lapse shall take effect automatically.

ARTICLE 64.- Action for invalidation or lapse may be brought by any person who has a legitimate interest therein.

ARTICLE 65.- Actions seeking invalidity or lapse may be opposed by way of defense procedures or claims of exceptions.

ARTICLE 66.- Where a court ruling has ordered the invalidity or lapse of a patent or utility model, and the ruling has become *res judicata*, the appropriate notification shall be sent to the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY.

TITLE V

ADMINISTRATIVE PROCEEDINGS

CHAPTER I

PROCEEDINGS

ARTICLE 67.- Patent and utility model applications shall be subject to the effective payment of the corresponding filing fee. Otherwise, the NATIONAL PATENT ADMINISTRATION shall reject the application.

ARTICLE 68.- The representation capacity invoked in patent and/or utility model applications shall have the force of a sworn statement. Should it be considered necessary, the NATIONAL PATENT ADMINISTRATION will request the documentation attesting the invoked capacity.



In the case that the capacity of business manager is invoked, said capacity shall be ratified within the term of FORTY (40) working days counted from the filing date, on pain of declaring the application abandoned.

ARTICLE 69.- In every application, the applicant shall elect legal domicile within the national territory and shall notify the NATIONAL PATENT ADMINISTRATION of any amendment thereto. Where no notice is given of a change of domicile, notifications shall be deemed validly sent to the domicile on record.

ARTICLE 70.- Until the time of the publication referred to in Article 26, pending files may be consulted only by the applicant, his/her legal representative, or persons authorized thereby.

The staff of the NATIONAL PATENT ADMINISTRATION engaged in the processing of applications, shall be obliged to keep the contents of the files confidential.

The foregoing shall not apply to any information that is of official character or any that may be required by the judicial authorities.

ARTICLE 71.- The employees of the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY may not, either directly or indirectly, process rights on behalf of third parties until TWO (2) years have elapsed since the date on which their employment relations with the mentioned institute ceased, on pain of dismissal and a fine.

CHAPTER II

APPEAL FOR REVIEW

ARTICLE 72.- An administrative appeal may be lodged against a decision refusing a patent or utility model application, and shall be lodged in writing with the President of the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY within an absolute period of THIRTY (30) working days following the date of notification of the relevant decision. The appeal shall be accompanied by documentation in support of its validity.

ARTICLE 73.- After analyzing the arguments put forward in the appeal and the documents submitted, the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY shall issue the corresponding decision.

ARTICLE 74.- Where the decision issued by the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY denies the validity of the appeal, the appellant shall be notified thereof in writing. Where the decision is favorable, the procedure provided for in Article 32 of the present Law shall be observed.



TITLE VI

VIOLATION OF THE RIGHTS CONFERRED BY THE PATENT AND THE UTILITY MODEL

ARTICLE 75.- Infringement of the inventor's rights shall be treated as an offense of counterfeiting and punished by imprisonment for a term of SIX (6) months to THREE (3) years and a fine.

ARTICLE 76.-The penalty provided for in the foregoing Article shall likewise be imposed on any person who knowingly, without prejudice to the rights conferred on third parties by this Law:

- a) Produces or causes to be produced one or more objects in violation of the rights of the owner of the patent or utility model.
- b) Imports, sells, places on sale, or markets, or displays, or introduces into the territory of the ARGENTINE REPUBLIC, one or more objects in violation of the rights of the owner of the patent or the utility model.

ARTICLE 77.- The same penalty, increased by one-third, shall be imposed on:

- a) Any person who has been a partner, agent, advisor, employee or worker of the inventor or his/her successors in title and who unlawfully appropriates or discloses the invention while it is still unprotected;
- b) Any person who by corrupting the partner, agent, advisor, employee or worker of the inventor or his/her successors in title, obtains the disclosure of the invention;
- c) Any person who violates the obligation of secrecy imposed by this Law.

ARTICLE 78.- A fine shall be imposed to any person who is not the owner of a patent or utility model or no longer enjoys the rights conferred thereby but makes use on his/her products or in his/her advertising designations liable to mislead the public as to the existence thereof.

ARTICLE 79.- In case of repetition of the offenses punished by this Law, the penalty shall be doubled.

ARTICLE 80.- Criminal participation and complicity shall be applied in accordance with the Penal Code.



ARTICLE 81.- In addition to criminal actions, the owner of the patent of invention and his/her licensee or the owner of the utility model, may bring civil actions seeking the prohibition of continued unlawful exploitation and compensation for any prejudice sustained.

ARTICLE 82.- The lapsing of the actions established under this Title shall operate in accordance with the Basic Codes.

ARTICLE 83.- I. On submission of the patent or utility model certificate, the injured party may seek the following precautionary measures, subject to such security as the court may consider necessary:

- a) Seizure of one or more samples of the offending articles, or a description of the offending process;
- b) The inventory or the embargo of the offending articles and of the machines specially designed for the manufacture of the products or to the performance of the offending process.

II. The judges may order preliminary measures in connection with a granted patent, in conformity with Articles 30, 31 and 32 of the Law, in order to:

- 1) Prevent the infringement of the patent and, in particular, to avoid the entry of goods, included imported ones, into the commercial channels, immediately after Customs clearance;
- 2) Preserve relevant evidences with regard to the alleged infringement, provided that the following conditions are verified:
 - a) There is a likelihood that the patent, if challenged by the defendant as being invalid, shall be declared valid;
 - b) It is summarily proven that any delay in granting such measures shall cause an irreparable prejudice to the patentee;
 - c) The prejudice that may be caused to the patentee exceeds the one that the alleged infringer shall suffer in case the measures were wrongly granted; and
 - d) There is a reasonable likelihood that the patent is being infringed.-

If the cited conditions are met, in exceptional cases, where there is a demonstrable risk of evidence being destroyed, the Judges may grant such measures “*inaudita altera parte*”.

In any case, prior to granting the measure, the Judge shall officially design an expert who shall pronounce about clauses a) and d) within a term of FIFTEEN (15) days.



In case of granting any of the measures provided for in this Article, the Judges shall request the plaintiff a bond or equivalent guarantee sufficient to protect the defendant and avoid excesses.

ARTICLE 84.- The measures provided for in the foregoing Article shall be carried out by an Officer of the Court, assisted at the request of the plaintiff by one or more experts.

The record shall be signed by the plaintiff or the person duly authorized thereby, by the expert(s), by the owner or the persons in charge at that moment of the establishment and by the Officer of the Court.

ARTICLE 85.- Any person having in his/her possession infringing goods shall provide a full account of the name of the person sold them to him/her or procured them for him/her, the quantity and value thereof as well as the time at which the retail sales began, on pain of being considered an accomplice of the infringer.

The Officer of the Court shall set down in the record the explanations that the person involved supplies voluntarily or at the request of said Officer.

ARTICLE 86.- The measures specified in Article 83, shall have no further effect after a period of FIFTEEN (15) days have elapsed if the applicant has not brought the appropriate legal action, without prejudice to the evidentiary value of the official record.

ARTICLE 87.- In the cases in which no preliminary measures have been granted in conformity with Article 83 of the present Law, the plaintiff may demand security of the defendant in order to avoid interrupting the exploitation of the invention, where he/she wishes to continue with said exploitation.

ARTICLE 88.- For the purposes of civil procedures, where the subject matter of a patent is a process for obtaining a product, the Judges shall order the defendant to prove that the process for obtaining the product is different from the patented process.

Nevertheless, the Judges shall be empowered to order the plaintiff to prove that the process used by the defendant infringes the patented process if the product obtained from the patented process is not new. Unless proven otherwise, it shall be presumed that the product obtained by the patented process is not new if the defendant, or an expert designed by the Judge upon his/her request, can prove the existence in the market of a product identical to the product obtained as a result of the patented process, but without infringement, and having been originated from a source different from that of the patent holder or of the defendant.

When providing the evidence under this article, it must be taken into account the legitimate interests of the defendants as to as the protection of their trade and industrial secrets.



ARTICLE 89.- Federal judges having jurisdiction in Civil and Commercial Matters shall be competent concerning civil suits, which shall follow ordinary legal proceedings, and the Federal Judges having jurisdiction in Criminal and Correctional Matters shall be competent concerning penal actions which shall follow correctional legal procedures.

TITLE VII

ORGANIZATION OF THE NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY

ARTICLE 90.- The NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY is hereby created as a self-governing body with legal personality and its own assets, which shall operate within the scope of the MINISTRY OF ECONOMY AND PUBLIC WORKS. It shall be the implementing authority for this Law, Law No. 22.362, Law No. 22.426, and Decree-Law No. 6.673 of August 9, 1963.

The assets of the Institute shall consist of:

- a) Annual fees and charges arising from the laws that it applies and also the fees payable for any additional services that it provides;
- b) Contributions, subsidies, bequests and donations;
- c) Property belonging to the Temporary Center for the Creation of the NATIONAL INSTITUTE OF THE INDUSTRIAL.
- d) The sum that the NATIONAL CONGRESS sets aside for the Institute in the ANNUAL NATIONAL BUDGET.

ARTICLE 91.- The NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY shall be directed and administered by a President appointed by the NATIONAL EXECUTIVE who, in case of absence or temporary or permanent inability to serve, shall be replaced by a Vice-president also appointed by the NATIONAL EXECUTIVE. Furthermore, the Vice-president shall exercise the attributions delegated to him/her by the President.

The President and the Vice-president shall be exclusively devoted to their duties and shall be subject to the incompatibilities established by the law for the holders of public office and shall only be removed from their posts by means of a reasoned order issued by the NATIONAL EXECUTIVE.

The President and the Vice-president shall have a term of office of FOUR (4) years and may be re-elected an indefinite number of times.



A Control Office shall operate within the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY which shall be responsible for the supervision and control of the acts of the constituent bodies of the said Institute.

The Control Office shall be under the direction of a titular Controller and a deputy designated by the NATIONAL EXECUTIVE on a proposal of the GENERAL AUDIT OFFICE OF THE NATION.

ARTICLE 92.- The NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY shall have the following duties:

- a) To ensure the observance of the provisions of this Law and those of Laws 22.362 and 22.426 and of the Decree-Law No. 6673/63;
- b) To hire necessary technical and administrative staff as may be necessary for the performance of its duties;
- c) To enter into agreements with private and public bodies for the performance of tasks within its area of concern;
- d) To establish, modify and eliminate fees in relation to the proceedings carried out before said Institute including those in connection with the maintenance of the owners' rights and to manage the funds that it receives as remuneration for its service;
- e) To draw up an annual Report and Balance;
- f) To draw up a schedule of remuneration for the staff that performs tasks within the Institute;
- g) To publish in the Trademark and Patent Gazettes and in the registers of marks, patents, utility models and industrial models and designs;
- f) To create a Data Bank;
- i) To promote its activities;
- j) To publicize its action;
- k) To regulate the proceedings of invention patents and utility models, in all aspects that facilitate them, to adapt obsolete requirements for the implementation of new technologies and to simplify the grant procedure in favor of the administered party and society as a whole.



ARTICLE 93.- The functions of the Board of the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY shall be the following:

- a) To propose to the NATIONAL EXECUTIVE, through the MINISTRY OF ECONOMY AND PUBLIC WORKS AND SERVICES, such amendments to regulations and national policy as it considers appropriate in relation to the laws for the protection of industrial property rights;
- b) To issue guidelines for the operation of the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY;
- c) To exercise the budgetary control over the funds collected by the Institute;
- d) To hold contests, competitions or exhibitions and to award prizes and fellowships to foster inventive activity;
- e) To appoint the Directors of Trademarks, Industrial Models and Designs and Technology Transfer and the Commissioner and Under-Commissioner of Patents;
- f) To appoint the registrars of Trademarks, Industrial Models and Designs and Technology Transfer;
- g) To organize the creation of an Advisory Council;
- h) To issue internal regulations;
- i) To hear appeals filed with the Institute;
- j) To grant the licenses provided for in TITLE II, CHAPTER VIII of the present Law;
- k) To perform any other duty that may arise from the present Law.

ARTICLE 94.- The NATIONAL PATENT ADMINISTRATION is hereby created, as a department of the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY. The administration shall be carried by a Commissioner and an Under-commissioner of Patents, both appointed by the Board of the Institute.

ARTICLE 95.- The NATIONAL EXECUTIVE shall exercise control over the operation of the NATIONAL INSTITUTE OF THE INDUSTRIAL PROPERTY.



TITLE VIII

FINAL AND TRANSITIONAL PROVISIONS

ARTICLE 96.- The implementing Decree shall set the amount of fines and annual fees and charges, and specify the method of adjusting them.

ARTICLE 97.- Patents granted under the Law hereby repealed shall retain the validity accorded them until they expire, but they shall remain subject to the provisions of this Law and the regulations thereunder.

ARTICLE 98.- This Law shall not afford exemption from compliance with the requirements laid down in Law No. 16.463 for the authorization of the manufacture and marketing of pharmaceutical products in Argentina.

ARTICLE 99.- The provisions of Article 26 of this Law on publication of applications shall not apply to patent applications that are pending on the date of its entry into force, and the patent need only be published as provided for in Article 32.

ARTICLE 100.- Inventions relating to pharmaceutical products shall not be patentable until FIVE (5) years have elapsed following the publication of this Law in the Official Gazette. Until that date, none of the Articles contained in this Law that provide for the patentability of inventions of pharmaceutical products shall have effect, neither shall any other provisions that are inseparably related to such patentability.

ARTICLE 101.- Without prejudice to the provisions of the foregoing Article, patent applications may be filed for pharmaceutical products in the form and under the conditions laid down in this Law, provided that the patents shall be granted as from FIVE (5) years following publication of this Law in the Official Gazette.

The term of the patents mentioned above shall be that arising from the application of Article 35.

The owner of the patent shall have exclusive rights in his/her invention as from FIVE (5) years following the publication of this Law in the Official Gazette, except where the third party or parties making use of his/her invention without his/her authorization guarantee that the domestic market will be fully supplied at the same actual prices. In such a case the owner of the patent shall have the right only to collect fair and reasonable remuneration from the said third parties that are making the use from the time of the patent grant until the expiration thereof. If there is no agreement between the parties, the NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY shall set the remuneration in accordance with Article 43. The provisions of this paragraph shall apply unless the amendment thereof is required to implement decisions of the World Trade Organization adopted by virtue of the TRIPS Agreement, compliance with which is mandatory for the ARGENTINE REPUBLIC.



ARTICLE 102.- Patent applications filed abroad prior to the enactment of the present law, whose subject matter was not patentable under Law No. 111 but is patentable under this Law, may be filed in the country provided that the following conditions are met:

- a) The first application must have been filed within the year preceding the enactment of the present Law;
- b) The applicant shall prove, in the manner and under the conditions provided for in the implementing Decree that the patent application has been filed in a foreign country;
- c) Neither exploitation nor importation of the invention must have started on a commercial scale;
- d) The validity of patents granted under the provisions of this Article, shall end on the same date as it does in the country in which the first application was filed, provided the term of TWENTY (20) years provided for in this Law is not thereby exceeded.

ARTICLE 103.- Article 5 of Law No. 22.262 is hereby repealed.

ARTICLE 104.- The NATIONAL EXECUTIVE shall issue the regulations under this Law.

ARTICLE 105.- The foregoing shall be communicated to the NATIONAL EXECUTIVE.