

Patent Law

(No. 111 of October 11, 1864)

PART I

General Provisions

Article 1

New discoveries and inventions in all branches of industry shall confer on their authors the exclusive right of working them, for such time and under such conditions as shall be stated in conformity with the provisions of Article 17 of the

Constitution; the said right shall be proved by titles called *patents for invention*, issued in the form which this Law shall specify.

Article 2

The preceding Article shall extend not only to discoveries and inventions made in the country, but also to those made and patented abroad, always provided that the applicant is the inventor or his lawful successor in his rights and privileges, and in such cases and subject to such formalities as will hereinafter be set forth.

Article 3

The following shall be deemed to be new discoveries or inventions: new industrial products, new methods, and the new application of known methods for obtaining an industrial result or product.

Article 4

Pharmaceutical compositions, financial schemes, discoveries, or inventions which, prior to the application, have, in the country or outside it, been given sufficient publicity in printed works, pamphlets, or periodicals for their working, discoveries, or inventions which are purely theoretical and the industrial application of which is not indicated, and those which are contrary to morality and public order or to the Laws of the Republic shall not be patentable.

Article 5

Patents shall be granted for five, ten, or fifteen years according to the merits of the invention and the wishes of the applicant; the confirmation of foreign patents shall be limited to ten years, but in no case shall the term exceed the life of the original patent, with which the confirmation shall expire.

Article 6

For the grant of a new patent, a fee of 80,200 or 350 pesos fuertes shall be paid according to whether it is for five, ten, or fifteen years; for the confirmation of a foreign patent, an amount proportional to the time for which it is granted, calculated on the same basis as the fees, shall be paid.

Article 7

The payment of the fees shall be made in this manner: one half when the patent is applied for, and the other half in successive annual instalments.

Article 8

The Executive shall, by a special decree, regulate the manner in which the offices entrusted with the collection of the fees shall pay them over into the public funds.

PART II

The Patent Office

Article 9

The patents mentioned in the foregoing Articles shall be issued by an Office which is hereby especially created for that purpose.

Article 10

The staff of the Patent Office shall be composed of a Commissioner receiving one thousand two hundred pesos fuertes per annum, four Sub-commissioners receiving eight hundred pesos fuertes each year, a Secretary receiving six hundred pesos fuertes, and a porter receiving two hundred and forty pesos fuertes; the first five shall be appointed directly by the President of the Republic and the last two on the recommendation of the Commissioner.

Article 11

No employee of the said Office may have any interest, whether direct or indirect, in the patents which he handles, under pain of dismissal and a fine of from one hundred to one thousand pesos fuertes if an offense is proved against him.

Article 12

The Commissioner shall be the head of the Office and shall be answerable to the Government for all the papers and objects deposited therein, which he shall preserve with the greatest attention and subject to the most rigorous inventory.

Article 13

The Sub-commissioners shall possess special knowledge in the sciences frequently applied to industry, so that they may, under the direction of the Commissioner, examine the inventions and discoveries for which a patent is sought, without which requirement it may not be granted.

Article 14

The Office shall be under the authority of the Ministry of the Interior.

PART III

Section I

Formalities for the Grant of Patents

Article 15

Any person desirous of obtaining a patent for invention shall address an application to the Commissioner concerned. The application shall be made on paper stamped for twenty-five centavos and shall, in the Capital, be filed at the Patent Office and, in the provinces, at the main Post Offices; the application shall be accompanied, in duplicate, by a description of the invention, the drawings and samples necessary for an understanding thereof, and a list of the objects filed.

Article 16

When the application is handed to the postmasters, the applicant may submit the descriptions of the invention, the samples and the drawings in a packet closed and sealed with his seal, and may demand that such packet be sent intact, at his expense, to the Patent Office.

Article 17

The Commissioner of Patents shall provide the postmasters of the Post Offices mentioned in Article 15 with a

bound book, all its pages being numbered and indorsed by him, and having on the last page a note stating in letters the number of pages which it contains, and in which they shall record the filings of applications, stating the date and the hour on which and the order in which they were submitted. A register shall be kept in the Patent Office in a similar book and in a like manner. The record shall be made by a brief entry which shall state everything that has been filed and which shall be signed by the Commissioner, the Secretary and the applicant, or, in default of the latter, by a duly authorized representative. Whenever the applicant so requires, a certified copy of each entry shall be given to him free of any charge other than the cost of the stamped paper, on which it is made, which shall be fourth class.

Article 18

Filing of the application shall not be permitted without the deposit at the same time of half of the above-mentioned fee, which deposit shall be recorded in the entry mentioned in the preceding Article; any employee who neglects this requirement and accepts the application without previous compliance therewith, shall pay twice the said amount by way of fine. Postmasters who do not, by the first post, send the Commissioner of Patents the applications filed with them (which fact shall be substantiated by a certified copy of the record of the deposit and a certificate from the Postmaster General) shall pay a like fine, unless it is a case of material lack of time, fortuitous events, or *force majeure*.

Article 19

The application shall be restricted to a single principal object with the accessories constituting it and the uses which shall have been indicated; it shall state the term for which the patent is sought, without containing restrictions, conditions or reservations; it shall have a title which clearly and succinctly describes the invention; it shall be written in Spanish; corrections in or additions to the text shall be collocated at the foot thereof; the accompanying drawings shall be made in ink and based on a metric scale.

Section II

Article 20

As soon as the application is in the possession of the Commissioner, and if it appears that the subject of the application is among those falling within Article 3, without being excluded by Article 4, the patent shall be granted, provided that the term for which it is sought does not exceed ten years; when it does exceed that time, and the term applied for is considered fair, the file, together with a report, shall be sent to the Ministry of the Interior, which, after taking such steps as it may deem advisable, shall return it, to be granted or to be restricted to the term indicated by the Ministry; from such decisions there shall be no appeal.

Article 21

The patent shall be issued in the name of the Nation, with a reference to authorization from the Government, and shall

bear the signatures of the Commissioner and Secretary and the seal of the Office, and shall consist of the decree granting it accompanied by the duplicate of the description and of the drawings.

Article 22

Immediately upon issue of the patent, it shall be delivered to the applicant or to his agent in person at the Office; if, however, the application was handed in through a postmaster, the patent shall be remitted through the same channel, and the postmaster shall acknowledge receipt thereof to the Commissioner as soon as the patent comes into his possession; any fresh certified copies for which application is made shall be furnished against a fee of five pesos fuertes per copy.

Article 23

The grant of a patent shall not preclude the raising of the exceptions provided for in Article 46.

Article 24

If the applicant does not comply with the provisions of Article 15, the patent shall be denied him, in which case half of the amount paid shall be returned to him, the other half being forfeited by way of fine.

Article 25

From refusals to grant patents, an appeal may be made within ten days to the Ministry of the Interior which, after receiving the necessary reports, shall confirm or revoke the refusal; in the former case, the entire amount deposited shall be forfeited.

Article 26

Every three months, the Commissioner shall send the Government a statement of the patents granted and of those refused, giving the dates of each, and the Government shall cause such statement to be published.

Section III

Certificates of Addition or Improvement

Article 27

Any person who improves upon a patented discovery or invention, shall be entitled to apply for a certificate of addition which may not be granted for a longer time than that remaining until the expiry of the principal patent, provided that it does not exceed ten years, excepting when half of the said time has elapsed or when the improvement reduces, by at least half, the cost of production, the time, the risk to persons or things, or has other similar results, in which case the Commissioner shall, at his discretion, decide the time for which it shall be granted.

Article 28

In order to obtain a certificate of addition, the same formalities as for a patent shall be complied with, except as regards the fee, for which only one-fourth of the sum corresponding to the patent shall be paid if the applicant is the proprietor of the patent, and one-half if he is a third party.

Article 29

If the person obtaining a certificate of addition is a third party, he shall not enjoy the exclusive working of his invention except on condition that he pays a royalty to the first inventor, the amount of which shall be decided by the Commissioner, taking into account the importance of the improvement and of the part of the original invention retained.

Article 30

The original inventor shall have the option of accepting the royalty prescribed by the preceding Article or working the improvement in competition with the improver; should he decide on the latter course, he shall be granted a patent of addition subject to the same rights and conditions as those granted to the improver.

Article 31

In no case shall the improver acquire the right to work the original invention alone, and the original inventor may work the improvement only in the second case provided for in the preceding Article.

Article 32

If two or more persons apply at the same time for a certificate of addition for the same improvement, and the applicants do not come to an agreement, the certificate of addition shall not be issued; this provision shall extend to patents.

Section IV

Provisional Patents

Article 33

Any person engaged in an invention or improvement may apply for a provisional patent which shall be valid for one year and may be renewed each time it expires.

Article 34

Such patent shall be obtained on payment of fifty pesos fuertes and by means of an application which shall be filed in the manner indicated in Article 15, and in which the subject and the means of the invention shall be stated.

Article 35

Immediately upon receipt of such application, the Commissioner shall proceed to issue the provisional patent and shall register it in a special book which he shall have in his charge and which he shall keep in a secret file, together with the papers referring to such patents.

Article 36

A provisional patent shall not be granted in respect of the inventions prohibited by Article 4.

Article 37

The effect of a provisional patent shall be that, during its life, no patent relating to the subject of the invention or improvement to which the provisional patent refers shall be granted without prior notification being made to the person who has obtained the provisional patent, for which purpose he shall keep the Office informed of his address.

Article 38

The person who has obtained a provisional patent may, within three months from the notification, enter opposition to the grant of a patent of the kind for which he has applied and, if he does not do so within that time, or if he has failed to indicate a change of address, he shall lose all rights therein.

Article 39

If the person who has obtained a provisional patent opposes the grant of the patent sought, the Commissioner shall hear both applicants separately, and, if it appears that the inventions are the same, he shall not grant a patent to either applicant, unless the two applicants come to an agreement; if the inventions are not the same, he shall grant the patent applied for.

Article 40

The fee paid for a provisional patent shall be deducted from that payable in respect of an industrial patent or a certificate of addition applied for before the provisional patent expires.

PART IV

Section I

Transfer of Patents

Article 41

Any person who has obtained a patent or a certificate may transfer his rights under such conditions as he may deem suitable; but the transfer must always be made by a public deed and after the whole of the fee indicated in Article 6 has been paid. Moreover, in order that the transfer may be valid as against third parties, it must be registered in the Patent Office, if in the Capital, or at the post offices aforesaid, if in the provinces; in order that this record may be made, it shall be necessary to produce the public deed of assignment and the patent. Within five days from the making of the aforesaid record, or by the first post if in the provinces, a certified copy of the entry and of the deed of assignment shall be sent to the Patent Office, in which a record of the transfer shall be made immediately on receipt of these documents, in a book which shall be kept for this special purpose, and the entries of which shall be published at the end of every quarter.

Article 42

All the rights assigned by the patentee shall be annexed to the patent and shall be transferred with it, unless the patentee especially reserves them in the deed of assignment.

Section II

Communication and Publication of Patents

Article 43

Upon the issue of a patent or certificate, the Commissioner shall inform the public thereof by means of an advertisement in the press in which the name of the grantee and the period of the patent shall be stated, and a concise description of the discovery or invention given.

Article 44

The descriptions, drawings, samples and models of granted patents, if such patents are not of the sort to which Article 33 refers, shall remain in the Patent Office at the disposal of any person wishing to examine them; they shall be open for inspection free of charge to any person applying therefor, and a copy of all the documents shall be given to him free of any charge other than the cost of the stamped paper, on which the copies are made, which shall be fourth class.

Article 45

At the commencement of each year, the Commissioner of Patents shall publish in one volume an account of the patents granted in the preceding year with the descriptions and illustrations necessary for an understanding of the patented inventions or discoveries. A copy of this publication shall be deposited at the Patent Office and in the post offices to which Article 15 refers so that it may be consulted free of charge by anyone wishing to do so.

PART V

Nullity and Lapsing of Patents

Article 46

Patents or certificates obtained in contravention of Article 4 shall be null. They shall likewise be null: if they have been obtained by means of a fraudulently false title which does not apply to the invention; if the drawing or the description is inaccurate or incomplete; if, in the case of a certificate, it refers to a patent which has not been obtained; or if, in the case of a foreign invention, the patent for which confirmation has been granted for the Republic has lapsed, or the discovery or invention which was its object was already being worked in the Republic at the date of the patent.

Article 47

Patents validly issued shall lapse: if two years have expired from their issue without the invention for which they were granted being worked; if working is interrupted for a like period, unless it be by reason of *force majeure* or fortuitous event, the decision as to which shall rest with the Office; and upon expiry of the term for which they were granted.

Article 48

An action for nullity or lapse may be brought, by an interested party only, before the District Courts.

Article 49

A judicial declaration is not necessary in order that nullity or lapsing of a patent should have the effect of bringing the patented discovery or invention into the public domain; it is sufficient for such lapsing or nullity to have occurred in order that all may be authorized freely to work the patented subject matter.

Article 50

If the proprietor of a patent which has lapsed or is null interferes with the free working of the invention or discovery to which it refers, either by bringing an action or in any other

manner, the appropriate remedy may be sought from the same district Judges, upon proof of the lapse or nullity.

Article 51

The proceedings shall be summary; legal methods of proof shall be admitted as valid; nevertheless, the patentee may not produce evidence proving the contrary of what is shown by the documents issued by the Office and substantiating his privileges; the period for taking evidence shall be determined by the Judge at his discretion, but shall never exceed six months, and this period shall be granted only as an extension for overseas in exceptional cases, and against a sufficient security to answer and submit, given by the person applying for the extension. Within a period not exceeding ten days from the expiry of the period for taking evidence, the Judge shall give his judgment and shall expressly condemn the unsuccessful party to pay the costs; from such judgment an appeal shall lie, to be lodged within three days before the Supreme Court which, upon a report from the Patent Office, shall give a final decision without further procedure.

Article 52

When the lapse or nullity of a patent has been declared in an action at law, and the declaration has become *res judicata*, the Court shall inform the Commissioner of Patents thereof, so that he may publish it in the prescribed manner.

PART VI

Infringements, their Prosecution and Penalties

Article 53

The defrauding of the rights of a patentee shall be deemed to be counterfeiting and shall be punished by a fine of from fifty to five hundred pesos fuertes, or by from one to six months' imprisonment and the confiscation of the counterfeited objects, all without prejudice to compensation for any damage which may have been caused.

Article 54

The same penalties provided for in the preceding Article shall be incurred by those who, knowing of the infringement, cooperate therein by selling, exhibiting, introducing, or communicating the invention.

Article 55

If, within five years following condemnation for such offense, any person repeats an infringement, the penalties prescribed above shall be doubled.

Article 56

To have been a workman or employee of the patentee, or to have obtained knowledge of the invention from the latter fraudulently, shall be deemed an aggravating circumstance.

Article 57

An action for the application of the penalties stated shall be private and shall be filed before the said District Courts, accompanied by the patent; if the patent is not produced, the action shall not be proceeded with; the defendant may oppose

in defense only nullity or lapse, or joint or exclusive ownership, of the patent.

Article 58

The plaintiff may exact security from the defendant, so as not to interfere with the latter's working of the invention should he wish to proceed therewith, and, in default of such security, may apply for the working to be suspended and the articles which are the subject matter thereof to be seized, giving in his turn suitable security, if required. The seizure shall be effected with all legal formalities.

Article 59

Any person who, not being a patentee or not at the time enjoying the privileges of a patent, bases claims thereon as if he were entitled thereto shall be deemed to be a counterfeiter and shall incur the penalties provided for such, excepting confiscation of the counterfeited objects.

Article 60

The proceeds of the fines imposed by this Law shall be equally divided between the Treasury and the accusers.

PART VII

Confirmation of Provincial Patents

Article 61

Proprietors of provincial patents who at the time of the promulgation of this Law were in enjoyment thereof, may, within the six months following, apply for confirmation thereof and shall for that purpose send in the patent, with an application in the form prescribed in Article 15.

Article 62

Provincial patents not confirmed within the time specified shall have no effect whatsoever before the Courts of the Nation.

Article 63

Confirmation may be applied for either for the same province in which the provincial patent was held or for the entire Republic. In the former case, it shall be granted free of charge and without previous examination; in the latter case, it shall be treated as if it were a new patent and payment of that part of the fee which corresponds to the term for which it is granted shall be made in the prescribed manner.

Article 64

Confirmation, when granted for the same province, shall be only for the remaining term of the patent and shall only confer rights in such province. When it is for the entire Republic, it may be granted for a term which, when added to the period already elapsed, does not exceed ten years.

Article 65

A special register shall be opened in which confirmations which are made shall be entered.

Article 66

As from the promulgation of this Law, all provisions to the contrary are repealed.