

**Agreement of February 24, 1999, Revising the Bangui Agreement
of March 2, 1977, on the Creation of an African Intellectual
Property Organization***

(Bangui (Central African Republic))

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The Government of the Republic of Benin,
The Government of Burkina Faso,
The Government of the Republic of Cameroon,
The Government of the Central African Republic,
The Government of the Republic of Chad,
The Government of the Republic of the Congo,
The Government of the Republic of Côte d'Ivoire,
The Government of the Gabonese Republic,
The Government of the Republic of Guinea,
The Government of the Republic of Guinea-Bissau,
The Government of the Republic of Mali,
The Government of the Islamic Republic of Mauritania,
The Government of the Republic of the Niger,
The Government of the Republic of Senegal,
The Government of the Togolese Republic,

Moved by the desire to promote the effective contribution of intellectual property to the development of their States on the one hand, and concerned on the other hand to protect intellectual property rights on their territories in as effective and uniform a manner as possible;

Undertake, for that purpose, to accede to

(i) the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Stockholm on July 14, 1967,

(ii) the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as last revised at Paris on July 24, 1971, and/or the Universal Copyright Convention as revised at Paris on July 24, 1971,

(iii) the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925, as revised at The Hague on November 28, 1960, and at Stockholm on July 14, 1967,

(iv) the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised at Stockholm on July 14, 1967,

(v) the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967,

(vi) the Patent Cooperation Treaty, done at Washington on June 19, 1970,

(vii) the Nairobi Treaty on the Protection of the Olympic Symbol of 1981,

(viii) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 1977,

(ix) the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, October 23, 1978, and March 19, 1991,

(x) the Marrakesh Agreement Establishing the World Trade Organization, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, of April 15, 1994,

(xi) the Trademark Registration Treaty, done at Vienna on June 12, 1973,

(xii) the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961.

Having considered Article 4(iv) of the aforementioned Convention Establishing the World Intellectual Property Organization, which provides that the Organization “... shall encourage the conclusion of international agreements designed to promote the protection of intellectual property”;

Having considered Article 19 of the Paris Convention for the Protection of Industrial Property, which provides that “... the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention,” and Article 4A(2), which provides that “Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority”;

Having considered Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, which provides that “The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention”;

Having considered Article 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961;

Having considered Article XIX of the Universal Copyright Convention, as revised at Paris on July 24, 1971, which provides that “This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States”;

Having considered Article 14 of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which provides that “Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of the Special Union”;

Having considered Article 3(1) of the Patent Cooperation Treaty, which provides that “Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty,” Article 45(1), which provides that “Any treaty providing for the grant of regional patents (‘regional patent treaty’), and giving to all persons

who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents”;

Having considered Article 8 of the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, which provides that “Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement ...”;

Having considered Article 69 of the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, which provides that “Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights ...”;

Having considered Article 1 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, which provides that “The States party to this Treaty (hereinafter called ‘the Contracting States’) constitute a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedure”;

Having considered Article 36(1) of the Bangui Agreement of March 2, 1977, Relating to the Creation of an African Intellectual Property Organization, which provides that “The present Agreement may be revised from time to time, in particular, with a view to introducing amendments liable to improve the services rendered by the Organization”;

Considering the advantages of establishing a uniform system for the protection of literary and artistic property and industrial property and, particularly in the latter field, a system for the single deposit of applications for patents, registration of utility models, trademarks, service marks, industrial designs, trade names, geographical indications, integrated circuits, plant varieties and microorganisms on the one hand, and a common system of protection against unfair competition on the other hand, in order to facilitate recognition of the rights provided for in the legislation of their countries;

Considering the role played by intellectual property in the achievement of the aims of technological development;

Considering the advantages of creating a body responsible for applying common administrative procedures deriving from a uniform system for the protection of intellectual property;

Have resolved to revise the Bangui Agreement of March 2, 1977, on the Creation of an African Intellectual Property Organization, and have designated for that purpose plenipotentiaries, who have agreed on the following provisions:

Article 1 *Definitions*

The following terms have the meanings specified:

“Bangui Agreement” means the Agreement Relating to the Creation of an African Intellectual Property Organization, done at Bangui on March 2, 1977, and all the Annexes to it;

“Organization” means the African Intellectual Property Organization;

“High Commission of Appeal” means the High Commission of Appeal of the Organization;

“Chairman” means the Chairman of the Administrative Council of the Organization;

“Director General” means the Director General of the Organization;

“Member States” means the States members of the Organization;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property, concluded at Paris on March 20, 1883, as subsequently amended;

“Patent Cooperation Treaty” means the Treaty done at Washington on June 19, 1970, as subsequently amended;

“National administration” means the Ministry of each Member State that is in charge of industrial property matters;

“Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works, concluded at Berne on September 9, 1886, as subsequently amended;

“Rome Convention” means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome in 1961.

TITLE I GENERAL PROVISIONS

Section I Fundamental Principles

Article 2 Creation and Responsibilities

(1) The African Intellectual Property Organization created by the Bangui Agreement of March 2, 1977, is responsible for

(a) implementing and applying the common administrative procedures deriving from a uniform system for the protection of industrial property, as well as the provisions of international agreements in this field to which the member States of the Organization have acceded, and providing services related to industrial property;

(b) contributing to the promotion of the protection of literary and artistic property as an expression of cultural and social values;

(c) encouraging the creation of associations of national authors in those member States where such bodies do not exist;

(d) centralizing, coordinating and disseminating information of all kinds relating to the protection of literary and artistic property and communicating that information to any State party to this Agreement that requests it;

(e) promoting the economic development of member States, notably by means of effective protection of intellectual property and related rights;

(f) providing intellectual property training;

(g) undertaking any other assignment connected with its objective that might be entrusted to it by the member States.

(2) For each of the member States, the Organization shall serve both as the national industrial property service within the meaning of Article 12 of the aforementioned Paris Convention and as the central patent documentation and information body.

(3) For each of the member States also party to the Patent Cooperation Treaty, the Organization shall serve as the “national Office,” the “designated Office,” the “elected Office” or the “receiving Office” within the meaning of Article 2(xii), (xiii), (xiv) and (xv) of the said Treaty.

(4) For each of the member States also party to the Trademark Registration Treaty, the Organization shall serve as the “national Office” within the meaning of Article 2(xiii) and as the “designated Office” within the meaning of Article 2(xv) of the said Treaty.

Article 3 *Nature of the Rights*

(1) Rights relating to the fields of intellectual property, as provided for in the Annexes to this Agreement, shall be independent national rights subject to the legislation of each of the member States in which they have effect.

(2) Nationals may claim application for their benefit of the provisions of the Paris Convention for the Protection of Industrial Property (1967 Act), the Berne Convention for the Protection of Literary and Artistic Works (1971 Act), the Universal Copyright Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and also the agreements, additional acts and closing protocols that have amended or will amend those Conventions or that Agreement, in all cases where such provisions are more favorable than those of this Agreement and its Annexes in protecting the rights deriving from intellectual property.

Article 4 *Annexes*

(1) The Annexes to this Agreement contain, respectively, the provisions to be applied in each member State concerning

- patents ([Annex I](#));
- utility models ([Annex II](#));
- trademarks and service marks ([Annex III](#));
- industrial designs ([Annex IV](#));
- trade names ([Annex V](#));
- geographical indications ([Annex VI](#));
- literary and artistic property ([Annex VII](#));
- protection against unfair competition ([Annex VIII](#));
- layout-designs (topographies) of integrated circuits ([Annex IX](#));
- plant variety protection ([Annex X](#)).

(2) The Agreement and its Annexes shall be applicable in their entirety to every State that ratifies or accedes to the said Agreement.

(3) Annexes I to X inclusive form an integral part of this Agreement.

Article 5
Implementation of International Treaties

On a decision by the Administrative Council referred to in Article 27 and subsequent Articles of this Agreement, the Organization may take all measures necessary for the application of the administrative procedures arising from implementation of the international treaties concerning intellectual property to which the member States have acceded.

Section II
Operating Procedures and Rules

Article 6
Filing of Applications

(1) Patent applications, applications for the registration of utility models, trademarks or service marks, industrial designs, trade names, geographical indications or layout-designs (topographies) of integrated circuits and applications for plant variety certificates shall be filed direct with the Organization.

(2) Notwithstanding paragraph (1), any member State may demand that the application be filed with the national administration of that State where the applicant is domiciled on its territory. A record shall be taken, and a copy thereof issued to the applicant, by the national administration which shall attest every filing and specify the date and time of the filing of the documents. The national administration shall convey the application to the Organization within a period of five (5) working days from filing.

(3) Applicants domiciled outside the territory of the member States shall file through an agent selected in one of those member States. The exercise of the profession of agent accredited to the Organization shall be governed by special rules adopted by the Administrative Council.

(4) Applications filed with the Organization or the national administration may be conveyed by postal or any other legal means of communication.

(5)(a) The Organization shall act as receiving Office within the meaning of the Patent Cooperation Treaty with respect to international applications filed by residents and nationals of member States, except where an agreement within the meaning of subparagraph (b) below has been concluded.

(b) The Organization may, under the relevant provision of the Regulations Under the Patent Cooperation Treaty, agree with another Contracting State of the Patent Cooperation Treaty or with any other intergovernmental organization that the national Office of that State or that intergovernmental organization shall act in place of the Organization as receiving Office for applicants who are residents or nationals of a member State.

Article 7
Filing and Registration
of National and International Applications

(1) Subject to the provisions of paragraphs (2) to (4) below, any filing effected with the administration of one of the member States in accordance with the provisions of this Agreement, or with the Organization, shall be equivalent to a national filing in each member State.

(2) Any filing of an international patent application that includes the designation of at least one member State shall be equivalent to a national filing in each member State that is also party to the Patent Cooperation Treaty.

(3) Any international trademark registration effected under the provisions of the Trademark Registration Treaty and including the designation of at least one member State shall have the effect of a national filing in each member State that is also party to the said Treaty.

(4) Any international deposit of an industrial design effected under the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs shall have the effect of a national deposit in each member State that is also party to the said Agreement.

Article 8
Grant, Publication and Maintenance of Patents,
Registration of Utility Models,
and the Effects Thereof

(1) The Organization shall undertake the examination of patent and utility model applications according to the common procedure provided for in this Agreement and its Annexes I and II.

(2) It shall grant patents and register utility models and ensure their publication.

(3) The procedure before the Organization with regard to international applications filed in accordance with the rules of the Patent Cooperation Treaty shall be subject to the provisions of the said Treaty, complemented by those of this Agreement and its Annex I.

(4) In each Member State, utility models and, subject to the provisions of paragraph (5) below, patents shall produce the effects provided for in this Agreement and its Annexes.

(5) Patents granted in response to international applications filed in accordance with the provisions of the Patent Cooperation Treaty shall produce their effects in those member States that are also party to the said Treaty.

Article 9
Registration and Publication of Trademarks and Service Marks,
and the Effects Thereof

(1) The Organization shall undertake the examination, registration and publication of trademarks and service marks according to the common procedure provided for in this Agreement and its Annex III.

(2) In each of the member States, registered and published marks shall produce their effects in accordance with the provisions of this Agreement and its Annex III subject to the provisions of paragraph (3) below.

(3) The international registration of a mark effected under the provisions of the Trademark Registration Treaty and having effect in at least one member State shall produce the same effects in each of the States party to this Agreement and to the Trademark Registration Treaty as if the trademark had been registered with the Organization.

Article 10
Registration, Maintenance and Publication
of Industrial Designs,
and the Effects Thereof

(1) The Organization shall undertake the examination, registration and maintenance and the publication of industrial designs according to the common procedure provided for in this Agreement and its Annex IV.

(2) In each of the member States, registered and published industrial designs shall produce their effects in accordance with the provisions of this Agreement and its Annex IV, subject to the provisions of paragraph (3) below.

(3) The international deposit of an industrial design effected under the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs and having effect in at least one member State shall produce the same effects in each of the States party to this Agreement and to the Hague Agreement as if the industrial design had been deposited with the Organization.

Article 11
Registration and Publication of Trade Names,
and the Effects Thereof

(1) The Organization shall undertake the examination, registration and publication of trade names according to the common procedure provided for in this Agreement and its Annex V.

(2) In each of the member States, registered and published trade names shall produce their effects in accordance with this Agreement and its Annex V.

Article 12
Registration and Publication of Geographical Indications,
and the Effects Thereof

(1) The Organization shall undertake the examination, registration and publication of geographical indications according to the common procedure provided for in this Agreement and its Annex VI.

(2) In each of the member States, registered and published geographical indications shall produce their effects in accordance with the provisions of this Agreement and its Annex VI, subject to the provisions of paragraph (3) below.

(3) The international registration of a geographical indication effected under the provisions of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and having effect in at least one member State shall produce the same effects in each of the States party to this Agreement and to the Lisbon Agreement as if the geographical indication had been registered with the Organization.

Article 13
Registration, Maintenance and Publication
of Layout-Designs (Topographies) of Integrated Circuits,
and the Effects Thereof

(1) The Organization shall undertake the examination and registration and provide for the maintenance and publicity of layout-designs (topographies) of integrated circuits according to the common procedure provided for in this Agreement and its Annex IX.

(2) In each of the member States, registered and published layout-designs (topographies) of integrated circuits shall produce their effects in accordance with the provisions of this Agreement and its Annex IX.

Article 14
Registration, Maintenance and Publication
of New Plant Varieties

(1) The Organization shall undertake the examination and provide for the registration, maintenance and publicity of new plant varieties according to the common procedure provided for in this Agreement and its Annex X.

(2) In each of the member States, registered and published new plant varieties shall produce their effects in accordance with the provisions of this Agreement and its Annex X.

Article 15
Publications of the Organization

Any publication of the Organization shall be addressed to the administration of each of the member States responsible for industrial property, literary and artistic property or new plant varieties, as the case may be.

Article 16
Special Registers

(1) The Organization shall maintain, for all the member States, a Special Register of Patents, a Special Register of Utility Models, a Special Register of Trademarks and Service Marks, a Special Register of Industrial Designs, a Special Register of Trade Names, a Special Register of Geographical Indications, a Special Register of New Plant Varieties and a Special Register of Layout-Designs (Topographies) of Integrated Circuits, in which the entries specified by this Agreement shall be made.

(2) Any person may consult the Registers and obtain extracts therefrom on the terms specified in the Implementing Regulations.

Article 17
Divergent Provisions

In the case of discrepancies between the provisions of this Agreement or its Annexes and those of the international conventions to which the member States are party, the latter shall prevail.

Article 18
Scope of Legal Decisions

Final legal decisions relating to the validity of titles and rendered in one member State under the provisions of Annexes I to X of this Agreement shall be binding on all other member States, with the exception of decisions based on public policy and morality.

Article 19
Appeals

Decisions taken by the Organization on cases of rejection or opposition provided for in Article 33(2) below shall be subject to appeal to the High Commission of Appeal of the said Organization.

Article 20
Other Action

Any other action relating to the application of the laws of intellectual property may be entrusted to the Organization by unanimous decision of the Administrative Council.

TITLE II
MEMBER STATES

Section I
Membership

Article 21
Membership

(1) Membership of the Organization shall be determined by the principle of the sovereign equality of States.

(2) In addition to its members, the Organization may have associated States. Associated States are not member States.

Article 22
Member States

(1) African States party to the Bangui Agreement of March 2, 1977, are members of the Organization *ex officio*.

(2) Any African State that is not party to the Bangui Agreement but is party to the Convention Establishing the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works and/or the Universal Copyright Convention, and the Patent Cooperation Treaty may accede to this Agreement.

To that end, an application for accession shall be submitted to the Administrative Council, which shall rule by a majority vote of its members. Notwithstanding Article 32 of this Agreement, equally divided votes shall constitute rejection.

(3) Instruments of ratification of or accession to this Agreement shall be deposited with the Director General of the Organization.

(4) Accession shall take effect two months after the deposit referred to in paragraph (3) above, except where a later date has been specified in the instrument of accession.

Article 23
Associated States

(1) Any African State not party to this Agreement may acquire the status of associated State by filing an application to that end with the Administrative Council.

(2) The Administrative Council shall rule on that application in the same way as provided in Article 22(2) above.

Section II

Rights and Obligations of Member States

Article 24

Rights of Member States

In addition to exercising the responsibilities provided for in Article 2 above, the Organization shall offer member States all the required services connected with its aims, in accordance with the guidelines of the Administrative Council.

Article 25

Rights of Associated States

An associated State has the right, to the exclusion of any other right, to avail itself of the services offered by the Organization in connection with intellectual property documentation and information.

Article 26

Obligations

(1) An initial financial contribution shall be required of any State that becomes a member of the Organization or acquires the status of associated State.

The amount and methods of payment of that initial contribution shall be determined by the Administrative Council of the Organization.

Nevertheless, States recognized as *ex-officio* members of the Organization under Article 22(1) above shall be exempted from this initial contribution.

(2) Where required to balance the budget, an exceptional contribution shall be made to the Organization by member States and possibly also by associated States.

That contribution shall be entered in the budget of the Organization and distributed equally among the member States and the associated States where applicable.

TITLE III

ORGANS OF THE ORGANIZATION

Article 27

Organs of the Organization

Under this Agreement, the Organization shall have the following organs at its disposal for the conduct of its action:

- the Administrative Council;
- the High Commission of Appeal;
- the Directorate General.

Section I **Administrative Council**

Article 28 *Membership*

(1) The Administrative Council of the Organization shall be composed of representatives of the member States on the basis of one representative per State.

(2) Any member State may, where necessary, entrust its representation on the Council to the representative of another Member State. No member of the Council may represent more than two States.

(3) Associated States shall not be members of the Administrative Council.

Article 29 *Functions and Powers of the Administrative Council*

The Administrative Council is the highest authority of the Organization. In addition to performing the functions arising from other provisions of this Agreement, it shall determine the general policy of the Organization and regulate and control the latter's activities, and in particular shall

(a) draw up the regulations necessary for the application of this Agreement and its Annexes;

(b) establish the financial regulations and the regulations relating to the fees and to the High Commission of Appeal, the general staff regulations and the regulations on professional representatives;

(c) supervise the implementation of the regulations referred to in (a) and (b) above;

(d) approve the program and annually vote the budget and, where necessary, any amended or additional budgets, and control their implementation;

(e) examine and approve the Organization's annual accounts and inventory;

(f) approve the annual report on the activities of the Organization;

(g) appoint the holders of unclassified posts and designate the auditor of the Organization;

(h) rule on applications for admission as members or as associated States of the Organization;

(i) set the amount of any contribution to be made by member States or by associated States;

(j) decide where necessary on the creation of *ad hoc* committees on specific issues;

(k) determine the working language or languages of the Organization.

Article 30 *Special Functions*

In addition to the functions provided for in Article 29 of this Agreement and, where appropriate, according to the provisions of Article 28 above, the members of the Administrative Council representing States party to this Agreement and to the Patent Cooperation Treaty, the Trademark Registration Treaty, the Hague Agreement Concerning

the International Deposit of Industrial Designs, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, the International Convention for the Protection of New Varieties of Plants or the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure shall, where necessary, draw up the appropriate regulations deriving from the implementation of the said six Treaties or Agreements with a view to their application on their respective national territories.

Article 31

Sessions of the Administrative Council

- (1) The Administrative Council shall meet in one annual ordinary session.
- (2) Extraordinary sessions may be convened where necessary by the Chairman at the request of one-third of the membership, or at the request of the Director General.

Article 32

Decisions of the Administrative Council

- (1) For any decision of the Administrative Council, the representative of each member State shall have one vote.
- (2) Subject to the provisions of Article 22 above, decisions of the Administrative Council shall be taken by a simple majority of members present or represented.
- (3) Subject to the provisions of Article 22(2) above, in the event of equally divided votes, the Chairman shall have a casting vote.

Section II

High Commission of Appeal

Article 33

Name, Functions, Composition

- (1) The High Commission of Appeal shall be composed of three members selected by the drawing of lots from a list of representatives designated by the member States, each State having designated one representative.
- (2) The High Commission of Appeal shall be responsible for ruling on appeals following
 - (a) rejection of applications for titles of industrial property protection;
 - (b) rejection of requests for the maintenance or extension of terms of protection;
 - (c) rejection of requests for reinstatement;
 - (d) decisions on oppositions.
- (3) The sessions of the High Commission of Appeal and the appeal procedure before it shall be governed by rules adopted by the Administrative Council.

Section III

Directorate General

Article 34

Functions of the Directorate General

The Directorate General shall be placed under the authority of a Director General and responsible for the executive work of the Organization. It shall take care of the day-to-day management and continuity thereof. It shall implement the instructions of the Administrative Council and carry out the tasks deriving from the provisions of this Agreement and its Annexes, and shall report to the Administrative Council.

Article 35

Director General

- (1) The Director General shall be appointed for a five-year term which may be renewed once.
- (2) The Director General is the highest official of the Organization.
 - (a) He shall represent the Organization in all acts governed by civil law.
 - (b) He shall be answerable for the management of the Organization to the Administrative Council, to which he shall report and with whose instructions he shall comply in matters concerning the internal and external affairs of the Organization.
- (3) The Director General shall produce drafts for the budget, program and balance sheet and also periodical activity reports which he shall convey to the member States.
- (4) The Director General shall take part, without the right to vote, in all sessions of the Administrative Council. He shall be secretary of those sessions *ex officio*.
- (5) The Director General shall recruit, appoint, and dismiss or otherwise terminate the appointments of the staff of the Organization, with the exception of unclassified staff, in accordance with conditions laid down in the general staff regulations.

TITLE IV

FINANCIAL RESOURCES

OF THE ORGANIZATION

Article 36

Resources

- (1) The resources of the Organization shall consist of
 - (a) the proceeds from the fees provided for in the regulations of the Organization and in the laws of member States;
 - (b) the proceeds from remuneration for services rendered;
 - (c) any other receipts, notably revenue from property owned by the Organization;
 - (d) donations and bequests approved by the Administrative Council.
- (2) Where the balancing of the budget dictates, an exceptional contribution shall be made to the Organization by the member States and possibly also by associated States. That contribution shall be recorded in the budget of the Organization and shared equally among the member States and, where applicable, the associated States.

Article 37
Income and Fees

The Administrative Council shall lay down the fees and the income necessary for the running of the Organization and shall fix the amounts and methods of payment thereof.

Article 38
Budgetary Surpluses

(1) On a decision by the Administrative Council, the Organization shall, where appropriate, pay to each member State the share of any budgetary surplus accruing to it, after deduction, where necessary, of its special contribution.

(2) Budgetary surpluses shall be fixed after provision has been made for reserve funds and special funds established by the financial regulations.

(3) Surpluses shall be shared equally among the member States.

TITLE V
MISCELLANEOUS, TRANSITIONAL
AND FINAL PROVISIONS

Article 39
Legal Personality, Privileges
and Immunities of the Organization

(1) The Organization shall have legal personality. In each of the member States, it shall enjoy the broadest legal capacity accorded to legal entities by national legislation.

(2) The immunities and privileges generally accorded to international organizations shall be accorded to the Organization on the territories of the member States in order to facilitate the conduct of its action.

In particular, the member States grant the Organization the benefit of the following privileges and immunities:

(a) its officials, wherever they may be, shall enjoy immunity from prosecution except in so far as the Organization expressly waives it, either in a specific procedure or by contract. Officials of the Organization means the staff permanently working for it, experts for the duration of their assignments and the representatives of member States and their substitutes for the duration of the sessions of the Administrative Council;

(b) the property and assets of the Organization shall be exempt from search, requisitioning, confiscation, expropriation, sequestration or any other form of seizure ordered by the executive, legislative or judicial authorities of member States;

(c) the Organization may hold funds in local currency and open bank accounts in any currency, transfer its funds or currency and convert all currencies held by it into any other currency in accordance with the rules applicable thereto;

(d) the Organization, its assets, property and income and also its operations and transactions shall be exempt from all taxes, charges and customs duties in accordance with the headquarters agreement in the host State and the privileges accorded to international organizations in the other member States;

(e) the premises of the Organization shall be inviolable, and its property and assets unattachable;

(f) the archives of the Organization shall be inviolable subject to the rights of investigation and communication conferred on the judicial authorities;

(g) no import or export restriction may be imposed on it with respect to materials intended for the official and exclusive use of the Organization's services. Those materials may not be disposed of for local consumption otherwise than in accordance with provisions in force.

Article 40
Headquarters of the Organization

The headquarters of the Organization shall be at Yaoundé (Republic of Cameroon). The Organization shall be placed under the protection of the Government of the Republic of Cameroon.

Article 41
Duration of the Organization

The Organization shall be of unlimited duration.

Article 42
Signature and Ratification

Any State party to the Bangui Agreement of March 2, 1977, shall sign and ratify this Act and the instruments of ratification shall be deposited with the Director General of the Organization.

Article 43
Entry into Force and Effects

This Act of the Bangui Agreement shall enter into force two months after the deposit of instruments of ratification by at least two-thirds of the States party to the Bangui Agreement of March 2, 1977.

The date of entry into force of the Annexes to this Act of the Agreement shall be determined by decision of the Administrative Council.

(1) The Director General of the Organization shall notify signatory or acceding States of

(a) the deposit of instruments of ratification;

(b) the deposit of instruments of accession, and of the dates on which those accessions come into effect;

(c) the date on which this Act of the Agreement enters into force by virtue of the first paragraph of this Article;

(d) denunciations as referred to in Article 48, and the date on which they come into effect.

Article 44
Transitional Provisions

(1) After the date of entry into force of this Act of the Bangui Agreement, no country may accede to previous Acts of the said Agreement.

(2) This Act shall replace previous Acts of the Bangui Agreement in the relations between States party to it in so far as it is applicable.

(3) States party to earlier Acts of the Bangui Agreement shall take the necessary steps to become party to this Agreement within a period of two years from February 24, 1999.

(4) Applications for titles of protection filed prior to the entry into force of this Act of the Agreement shall remain subject to the provisions applicable to them on their filing date. However, the exercise of the rights deriving from the titles of protection granted as a result of those applications shall be subject to the provisions of the Annexes to this Agreement as from the date of entry into force of the said Agreement, subject to acquired rights, which shall remain reserved.

Article 45
Titles Granted in a State
Prior to its Accession

(1) Titles in force in a State prior to its accession to this Agreement shall continue to have effect in that State in accordance with the legislation in force when they were applied for.

(2) The owners of those titles who wish to extend the protection under them to the whole of the territory of the Organization prior to their expiry shall file a request for extension with the Organization according to the procedure laid down in the Implementing Regulations.

Article 46
Titles in Force within OAPI
Prior to the Accession of a State

The owners of titles in force within the Organization prior to the accession of a State who wish to extend protection to that State shall file a request for such extension with the Organization according to the procedure laid down in the Implementing Regulations.

Article 47
Revision

This Agreement may be revised from time to time, notably with a view to introducing amendments intended to improve the services rendered by the Organization, on the initiative of and according to the procedure laid down by the Administrative Council.

Article 48
Denunciation

(1) Any State party to this Agreement may denounce it by written notification addressed to the Director General of the Organization.

(2) The denunciation shall take effect on December 31 of the second year following that in which the Director General of the Organization received the notification.

(3) Industrial property titles in force in the State concerned shall be governed by national legislation after the denunciation.

In witness whereof, the undersigned Plenipotentiaries¹, having presented their full powers, recognized as being in good and due form, have signed this Agreement.

Done at Bangui on February 24, 1999, in a single copy in French which shall be deposited with the Director General of the Organization. The latter shall send a certified true copy by diplomatic channels to the Government of each signatory or acceding State.

[Annex I follows.]

ANNEX I PATENTS

TITLE I GENERAL PROVISIONS

Article 1 Definitions

For the purposes of this Annex,

“INVENTION” MEANS AN IDEA THAT PERMITS A SPECIFIC PROBLEM IN THE FIELD OF TECHNOLOGY TO BE SOLVED IN PRACTICE.

“Patent” means the title granted for the protection of an invention.

Article 2 Patentable Invention

(1) An invention that is new, involves an inventive step and is industrially applicable may be the subject of an invention patent (hereinafter called “patent”).

(2) The invention may consist of or relate to a product or a process or to a use thereof.

Article 3 Novelty

(1) An invention shall be new if it has not been anticipated by prior art.

(2) Prior art shall consist of everything made available to the public, in any place and by any means or method, before the filing date either of the patent application or of a patent application filed abroad the priority of which has been validly claimed.

(3) The novelty of an invention shall not be denied if, during the 12 months preceding the date specified in paragraph (2) above, the invention has been the subject of a disclosure resulting from

(a) an obvious violation committed against the applicant or his predecessor in title;

(b) the fact that the applicant or his predecessor in title has displayed it at an official or officially recognized international exhibition.

Article 4 Inventive Step

An invention shall be regarded as resulting from an inventive step if, having regard to the prior art, it would not have been obvious to a person having ordinary knowledge and skill in the art on the filing date of the patent application or, if priority has been claimed, on the priority date validly claimed for it.

Article 5
Industrial Applicability

An invention shall be considered industrially applicable if it can be made or used in any kind of industry. The term “industry” shall be understood in its broadest sense; in particular it shall cover handicraft, agriculture, fishery and services.

Article 6
Non-Patentable Subject Matter

Patents shall not be granted for the following:

(a) inventions the exploitation of which is contrary to public policy or morality, provided that the exploitation of the invention shall not be considered contrary to public policy or morality merely because it is prohibited by law or regulation;

(b) discoveries, scientific theories and mathematical methods;

(c) inventions having as their subject matter plant varieties, animal species and essentially biological processes for the breeding of plants or animals other than microbiological processes and the products of such processes;

(d) schemes, rules or methods for doing business, performing purely mental acts or playing games;

(e) methods for the treatment of the human or animal body by surgery or therapy, including diagnostic methods;

(f) mere presentations of information;

(g) computer programs;

(h) works of an exclusively ornamental nature;

(i) literary, architectural and artistic works or any other aesthetic creation.

Article 7
Rights Conferred by the Patent

(1) Subject to the conditions and within the limits set by this Annex, the patent shall confer on its owner the exclusive right to work the patented invention.

(2) Subject to the conditions and within the limits set by this Annex, the owner of the patent shall have the right to prohibit any person from working the patented invention.

(3) For the purposes of this Annex, the “working” of a patented invention means one or other of the following acts:

(a) where the patent has been granted for a product:

(i) manufacturing, importing, offering for sale, selling and using the product,

(ii) holding the product for the purposes of offering it for sale, selling it or using it;

(b) where the patent has been granted for a process:

(i) using the process,

(ii) engaging in the acts mentioned in subparagraph (a) above in relation to a product resulting directly from the use of the process.

(4) The owner also has the right to assign the patent, transfer it by succession and enter into license contracts.

(5) In addition to all other rights, remedies or actions available to him, the owner of the patent has the right to institute legal proceedings before the court of the place of the infringement against any person who commits an infringement of the patent by performing, without his consent, one of the acts mentioned in paragraph (3), or who performs acts that make it probable that an infringement will be committed.

Article 8
Limitation of the Rights
Conferred by the Patent

(1) The rights deriving from the patent shall not extend

(a) to acts in relation to subject matter brought on to the market on the territory of a member State by the owner of the patent or with his consent;

(b) to the use of objects on board foreign aircraft, land vehicles or ships that temporarily or accidentally enter the airspace, territory or waters of a member State;

(c) to acts in relation to a patented invention that are carried out for experimental purposes in the course of scientific and technical research;

(d) to acts performed by any person who in good faith on the filing date, or where priority is claimed, on the priority date of the application on the basis of which the patent is granted on the territory of a member State, was using the invention or making effective and genuine preparations for such use, in so far as those acts are not different in nature or purpose from the actual or planned earlier use.

(2) The right of the user referred to in paragraph (1)(d) may not be transferred or handed on otherwise than with the business or company or the part thereof in which the use or the preparations for use were made.

Article 9
Term of Protection

The patent shall expire at the end of the 20th calendar year following the filing date of the application, subject to the provisions of Article 40.

Article 10
Right to the Patent

(1) The right to the patent shall belong to the inventor; the applicant shall be deemed to be the owner of the right.

(2) Where two or more persons have made an invention jointly, the right to the patent shall belong to them jointly.

(3) If, and to the extent that, two or more persons have made the same invention independently of each other, the right to the patent shall belong to the one who filed the application bearing the earliest filing date or, where priority is claimed, the earliest validly claimed priority date, provided that the said application is not withdrawn, abandoned or rejected.

(4) The right to the patent may be assigned or transferred by succession.

Article 11
Right to the Patent: Employee Inventions

(1) Subject to the legal provisions governing contracts for performing a certain work and employment contracts, and in the absence of contractual provisions to the contrary, the right to a patent for an invention made under such a contract shall belong to the person who commissioned the work or to the employer.

(2) The same provision shall apply where an employment contract does not require the employee to exercise any inventive activity, but where the employee has made the invention using data or means available to him on account of his employment.

(3) In the circumstances provided for in paragraph (2) above, the employee who has made the invention shall have a right to remuneration reflecting the importance of the patented invention, which remuneration shall be fixed by the court in the absence of agreement between the parties. In the circumstances provided for in paragraph (1) above, the said employee shall have a similar right if the invention is of very exceptional importance.

(4) The provisions of this Article shall likewise be applicable to employees of the State, public associations and any other corporate entity under public law in the absence of specific provisions to the contrary.

(5) Where the employer expressly renounces his right to the patent, that right shall belong to the inventor.

(6) The provisions of paragraph (3) above are a matter of public policy.

Article 12
Conversion of a Patent Application
into a Utility Model Application

Any patent application that fulfills the conditions specified in Annex II concerning utility models may be converted into an application for a utility model; in such cases the patent application shall be deemed to have been withdrawn and the Organization shall enter a “withdrawn” notice in the Register of Patents.

Article 13
Right of Foreigners to Patents

Foreigners may obtain patents on the conditions specified in this Annex.

TITLE II
FORMALITIES CONCERNING
THE GRANT OF PATENTS
AND CERTIFICATES OF ADDITION

Section I
Applications for Patents

Article 14
Filing of the Application

(1) Any person wishing to obtain a patent for an invention shall file with the Organization or with the Ministry responsible for industrial property, or send to it by registered mail with a request for acknowledgement of receipt,

(a) his application to the Director General of the Organization in a sufficient number of copies;

(b) a document proving payment to the Organization of the filing and publication fees;

(c) an unstamped, private power of attorney if the applicant is represented by an agent;

(d) a sealed package containing in duplicate

(i) a specification of the invention for which the application has been made, set out clearly and completely so that a person having ordinary knowledge and skill in the art could carry it out,

(ii) the drawings necessary or useful for the understanding of the invention,

(iii) the claim or claims defining the scope of the protection sought, which shall not go beyond the contents of the specification referred to in subparagraph (i) above,

(iv) a descriptive abstract summarizing the contents of the specification, the claim or claims referred to in subparagraph (iii) above and any drawings relevant to the abstract.

(2) Where the invention involves a microorganism or the use of a microorganism, a receipt attesting the deposit of the microorganism, issued by a depositary institution or an international depositary authority specified in the Implementing Regulations, shall in addition be filed.

(3) The above documents shall be in one of the working languages of the Organization.

Article 15 *Unity of Invention*

The application shall be restricted to a single principal subject, with the details that constitute it and the uses specified. It shall contain no restrictions, conditions or reservations. It shall have a title that describes in a precise and succinct manner the purpose of the invention.

Article 16 *Claim of Priority*

(1) Any person wishing to avail himself of the priority of an earlier application shall be required to attach to his application for a patent or to send to the Organization at the latest six months following the filing date of his application

(a) a written declaration stating the date and number of the earlier application, the country in which it was filed and the name of the applicant;

(b) a certified true copy of the said earlier application;

(c) if he is not the person who filed the earlier application, a written authorization from the applicant or his successors in title authorizing him to avail himself of the priority in question.

(2) The applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall comply with the provisions mentioned above for each of them; he shall also pay a fee for each priority right claimed and shall produce evidence of payment of the fee within the six-month period mentioned in paragraph (1) above.

(3) Failure to present any one of the documents mentioned above within the time limit shall automatically entail, for the application under consideration, loss of the benefit of the priority right claimed.

(4) Any document that reaches the Organization more than six months after the filing of the patent application shall be declared inadmissible.

Article 17
Unacceptability Due to Non-Payment

No filing shall be acceptable if the application is not accompanied by a document attesting payment of the application and publication fees.

Article 18
Filing Date

(1) The Organization shall grant as the filing date the date of receipt of the application, written in one of its working languages, by the Ministry responsible for industrial property or by the Organization, provided that, at the time of receipt, the application contains

- (a) an express or implicit indication that the grant of a patent is requested;
- (b) information whereby the identity of the applicant may be established;
- (c) a part which, at first sight, purports to be the description of an invention and one or more claims;
- (d) proof of payment of the prescribed fees.

(2) The filing date of an international application shall be that assigned to it by the receiving Office.

Section II
Grant of Patents

Article 19
Transmittal of the Patent Application to OAPI

(1) Immediately after the statement of filing has been made out on the prescribed form and within five working days of the filing date, the Ministry responsible for industrial property shall transmit to the Organization, as provided in Article 11, the package sent by the applicant containing, in duplicate, the description of the invention, the claim or claims defining the scope of the protection sought, any drawings that may be necessary for the understanding of the invention and the descriptive abstract summarizing the description, enclosing with them one original and one copy of the statement, the documents attesting payment of the fees and the power of attorney where applicable.

(2) The Organization shall open the package as defined in the foregoing paragraph; it shall enter the application in the Register of Patent Applications, undertake the examination thereof and grant the patent where appropriate, as far as possible in the order of receipt of applications.

Article 20
Examination of Applications

(1) Any application for a patent shall undergo examination to ensure that

(a) the invention mentioned in the application is not excluded from the protection afforded by the patent under the provisions of Article 6 of this Annex;

(b) the claim or claims conform to the provisions of Article 14(1)(d)(iii) of this Annex;

(c) the provisions of Article 15 of this Annex have been respected.

(2) Subject to the provisions of paragraph (3) below, a search shall also be conducted to ensure that

(a) at the time of the filing of the patent application, an application for a patent filed earlier, or benefiting from a validly claimed earlier priority and concerning the same invention, was not in the process of being granted;

(b) the invention

(i) is new,

(ii) involves an inventive step,

(iii) is industrially applicable.

(3) The Administrative Council shall decide whether, and to what extent, the provisions of paragraph (2)(a) and (b) above shall be applied; in particular, it may decide whether all or some of the said provisions are applicable to one or several fields of technology covered by the inventions; it shall determine such fields by reference to the International Patent Classification.

(4) Where the invention relates to the use of a microorganism, the Organization shall reserve the right to require the applicant to deposit a sample of the microorganism as issued by the depositary institution or the international depositary authority.

(5) For international applications under the Patent Cooperation Treaty, the Organization may avail itself of the provisions of Articles 20 and 36 of the said Treaty, which relate to the international search report and the international preliminary examination report, respectively.

Article 21

Amendment of the Claims, the Description, the Drawings and the Abstract

(1) The applicant may amend the claims, the description, the drawings and the abstract prior to grant.

(2) The amendment shall not go beyond the disclosure of the invention appearing in the application as filed.

Article 22

Grant

(1) Where the Organization finds that all the conditions for the grant of the patent have been met and that a search report under Article 20, where applicable, has been drawn up, it shall notify the decision and grant the patent applied for. In all cases, however, the grant of patents shall be at the applicant's own risk and without any guarantee either as to the reality, novelty or merits of the invention or as to the truth or accuracy of the description.

(2) The grant of the patent shall take place on a decision by the Director General of the Organization or on a decision by a staff member of the Organization duly authorized to that end by the Director General.

(3) Patents based on international applications under the Patent Cooperation Treaty shall be granted in the same manner as provided for in the foregoing paragraph, but with reference to the international publication provided for in the said Treaty.

(4) Any application for a patent or for a certificate of addition may be withdrawn prior to grant by the person who filed it. The documents shall be returned to him only at his request.

Article 23
Deferment of Grant

(1) Notwithstanding the provisions of paragraph (1) of the foregoing Article, the applicant may ask for grant to take place one year after the filing date of the application if the said application contains an express request to that effect. A person who has requested the benefit of this provision may renounce it at any time within the said period of one year.

(2) The same shall apply to any application that is not accompanied by a copy of the documents provided for in paragraphs (1)(d) and (2) of Article 14.

(3) The benefit of the foregoing provision may not be claimed by persons who have already availed themselves of the priority periods granted by international treaties, and in particular by Article 4 of the Paris Convention for the Protection of Industrial Property.

Article 24
Conditions Governing Rejection

(1) Any application concerning an invention that is not patentable under Article 6 or does not conform to the provisions of Article 20 shall be rejected.

(2) The same shall apply to any application that is not accompanied by a copy of each of the documents prescribed in Article 14(d).

(3) An application that does not fulfill the provisions of Article 15 may, within a period of six months from the date of notification that the application cannot be accepted as filed because it does not have one principal subject, be divided into a number of applications benefiting from the date of the initial application.

(4) Any application for which the other requirements of Article 14, except for its subparagraph (b), and those of Article 15 have not been fulfilled is defective. The defect shall be notified to the applicant or his agent, who shall be invited to correct the documents within a period of three months from the date of the notification. That period may be extended by 30 days, in cases of justifiable need, at the request of the applicant or his agent. The application so corrected within the said period shall retain the date of the initial application.

(5) In the event of the corrected documents not being provided within the prescribed period, the patent application shall be rejected.

(6) No application may be rejected under paragraphs (1), (2), (3) or (4) of this Article without the applicant or his agent having first been given the opportunity to correct the said application to the extent and according to the procedure prescribed.

Article 25
Recording of Acts
in the Special Register of Patents

Subject to the provisions of Articles 33 and 35 below, the Administrative Council shall draw up regulations concerning the acts to be recorded in the Special Register of Patents, on pain of their not being enforceable against third parties.

Section III
Certificates of Addition

Article 26
Right to Certificates of Addition

(1) The patentee or entitled persons shall, for the entire duration of the patent, have the right to make changes, improvements or additions to the invention, complying, for the filing of the application, with the formalities laid down in Articles 14, 15, 16 and 17 of this Annex.

(2) Such changes, improvements or additions shall be recorded in certificates granted in the same form as the principal patent which, as from the dates of application and grant respectively, shall have the same effects as the said principal patent.

(3) Certificates of addition taken out by one of the entitled persons shall benefit all the others.

Article 27
Duration

Certificates of addition shall terminate with the principal patent. However, invalidation of the principal patent shall not invalidate as of right the corresponding certificate or certificates of addition, and, even where absolute invalidity has been declared under the provisions of Article 43(3), the certificate or certificates of addition may survive the principal patent until the normal term of the latter expires, subject to continued payment of the annual fees that would have been payable had the said patent not been invalidated.

Article 28
Conversion of an Application
for a Certificate of Addition
into a Patent Application

Provided that a certificate of addition has not been granted, the applicant may effect the conversion of his application for a certificate of addition into a patent application, for which the filing date shall be the date of application for the certificate. Any patent eventually granted shall then give rise to payment of the same annual fees as a patent filed on the latter date.

Section IV
Communication and Publication
in Relation to Patents
and Certificates of Addition

Article 29
Formalities for Conversion of an Application
for a Certificate of Addition
into a Patent Application

Any patentee who wishes to obtain a principal patent for a change, improvement or addition rather than a certificate of addition expiring with the initial patent shall comply with the formalities laid down in Articles 14 and 16.

Article 30
Independence of the Right to Exploit Patents Relating to
the Same Subject Matter

Any person who has obtained a patent for an invention related to the subject matter of another patent shall have no right to exploit the invention already patented and, conversely, the holder of the earlier patent may not exploit the invention that is the subject of the new patent.

Article 31
Communication of Descriptions and Drawings
of Patents and Certificates of Addition

(1) The descriptions and drawings of granted patents and certificates of addition shall be kept by the Organization which, after publication of the grant of patents or certificates of addition as provided in Article 33 below, shall communicate them on request.

(2) After the same date, any person may obtain an official copy of the said descriptions and drawings.

(3) The provisions of the preceding two paragraphs shall apply to official copies furnished by applicants seeking to avail themselves of the priority of an earlier filing and to the documents authorizing certain such applicants to claim that priority.

(4) The applicant for a patent or for a certificate of addition wishing to avail himself abroad of the priority of his filing before the patent or certificate of addition is granted may obtain an official copy of his application.

Article 32
Publication of Patents and Certificates of Addition

(1) The Organization shall publish the following details for each patent or certificate of addition granted:

- (i) the number of the patent or certificate of addition;
- (ii) the name and address of the owner of the patent or certificate of addition;
- (iii) the name and address of the inventor, unless he has requested not to be mentioned in the patent or certificate of addition;
- (iv) the name and address of the agent, if any;

- (v) the filing date of the application;
 - (vi) a mention of the priority or priorities if one or more priorities have been validly claimed;
 - (vii) the date of the priority, the country in which or the country or countries for which the earlier application was filed and the number of the earlier application;
 - (viii) the date of the grant of the patent or certificate of addition;
 - (ix) the title of the invention;
 - (x) the date and number of the international application, where applicable;
 - (xi) the symbols of the International Patent Classification.
- (2) The Administrative Council shall establish and determine the conditions of publication of the description of the invention, the drawings if any, the claims and the abstract.

Section V **Transfer and Assignment** **of Patents and Contractual Licenses**

Article 33 *Transfer and Assignment of Rights*

- (1) The rights subsisting in an application for a patent or in a patent shall be transferable in whole or in part.
- (2) Acts involving transfer of ownership, the licensing of the right of exploitation or the assignment of that right, or a pledge or cancellation of a pledge, in respect of an application for a patent or a patent shall, on pain of invalidity, be evidenced in writing.

Article 34 *Enforceability Against Third Parties*

- (1) The acts referred to in the foregoing Article shall not be enforceable against third parties unless they are recorded in the Special Register of Patents kept by the Organization. A record of such acts shall be kept by the Organization.
- (2) Subject to the conditions established by regulation, the Organization shall furnish to any person who so requests a copy of the entries in the Special Register of Patents, and also a record of the entries concerning patents that are the subject of a pledge, or a certificate attesting the absence of any such entries.

Article 35 *Exploitation of the Patent* *and its Certificates of Addition as of Right*

Those persons who have obtained from a patentee or from entitled persons the right to exploit an invention shall benefit as of right from certificates of addition subsequently granted to the patentee or to the entitled persons. Conversely, the patentee or entitled persons shall benefit from certificates of addition that may subsequently be granted to persons having obtained the right to exploit the invention.

Article 36
License Contract

(1) The owner of a patent may, by contract, grant to a person, whether natural person or legal entity, a license enabling him to exploit the patented invention.

(2) The duration of the license may not be longer than that of the patent.

(3) The license contract shall be drawn up in writing and signed by the parties.

(4) The license contract shall be entered in the Special Register of Patents. It shall not be binding on third parties until it is entered in the said Register and published in the form specified in the Implementing Regulations relating to this Annex.

(5) The license shall be cancelled from the Register at the request of the owner of the patent or the licensee on presentation of proof of the expiry or termination of the license contract.

(6) In the absence of provisions to the contrary in the license contract, the grant of a license shall not preclude the licensor from either granting licenses to other persons, subject to notifying the licensee, or exploiting the patented invention himself.

(7) The grant of an exclusive license shall preclude the licensor from granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, from exploiting the patented invention himself.

Article 37
Invalid Clauses

(1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the patent or not necessary for the upholding of such rights.

(2) The following shall not be considered restrictions within the meaning of paragraph (1) above:

(i) limitations relating to the extent, the scope or the duration of exploitation of the patented invention;

(ii) the obligation on the licensee to abstain from any act liable to harm the validity of the patent.

(3) In the absence of provisions to the contrary in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sublicenses.

Article 38
Recognition of Invalid Clauses

Recognition of the invalid clauses referred to in Article 37 above shall be done by the civil court at the request of any interested party.

TITLE III
INVALIDITY, FORFEITURE
AND ACTIONS RELATING THERETO

Section I
Invalidity and Forfeiture

Article 39
Invalidity

(1) Patents granted in the following cases shall be declared invalid:

(a) if the invention is not new, does not involve an inventive step or is not industrially applicable;

(b) if the invention is not patentable within the meaning of Article 6, without prejudice to the penalties that might be incurred for the manufacture or marketing of prohibited articles;

(c) if the specification attached to the patent does not conform to the provisions of Article 14(d)(i) above, or if it does not state in a complete and honest manner the true methods of the inventor.

(2) Certificates in respect of changes, improvements or additions that are not connected with the principal patent, as provided for in this Annex, shall likewise be declared invalid.

(3) Invalidity may relate to all or only some of the claims.

Article 40
Forfeiture

(1) Any patentee who has not paid his annual fees on the anniversary date of the filing of his patent application shall forfeit all his rights.

(2) The patentee concerned shall however be allowed a six-month period of grace within which he may still validly pay the annual fees. In that case, he shall also pay an additional fee.

(3) Payments made to complement annual or additional fees during the six-month period mentioned above shall be considered valid.

(4) Payments made as annual or additional fees payable for a patent application resulting either from the conversion of an application for a certificate of addition under Article 28 above or from the division of a patent application under Article 24(3) above shall also be considered valid provided that the payments are made within a period of six months from the date of the application for conversion or the filing date of the applications resulting from the division.

Article 41
Restoration

(1) Without prejudice to the provisions of Articles 39 and 40 above, where a patent has not been renewed owing to circumstances beyond the control of the owner thereof, the owner or entitled persons may apply for its restoration, against payment of the requisite annual fee and of a surcharge the amount of which shall be fixed by regulation, within a period of six months from the date on which the said circumstances ceased to exist, and at the latest within a period of two years from the date on which renewal was due.

(2) The application for restoration of the patent, together with documents proving payment of the fee and surcharge mentioned in the foregoing paragraph, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.

(3) The Organization shall examine the grounds referred to above and shall either restore the patent or reject the application if it does not consider the grounds valid.

(4) Restoration shall not entail prolongation of the maximum duration of the patent. Third parties who started to work the invention after the expiry of the patent shall have the right to continue such working.

(5) Restoration of the patent shall likewise cause any certificates of addition related to it to be restored.

(6) Restored patents shall be published by the Organization in the form prescribed by the Implementing Regulations relating to this Annex.

(7) Paragraphs (1) to (6) shall be applicable where the patent application has not been filed within the time limits set by international treaties.

(8) Appeals from decisions of the Organization concerning restoration shall lie to the High Commission of Appeal within a period of thirty days from the date of receipt of notice of the decisions.

Article 42 *Appropriation*

Any person who, by means of signs, notices, prospectuses, posters, marks or stamps, assumes the status of patentee without holding a patent granted in accordance with this Agreement and the Implementing Regulations under it or after an earlier patent has expired shall be punished with a fine of 1,000,000 to 3,000,000 CFA francs. In the event of recidivism, the fine may be doubled.

Section II **Actions Seeking Invalidity or Forfeiture**

Article 43 *Initiation of the Invalidity or Forfeiture Action*

(1) Actions seeking invalidity or forfeiture may be brought by any person having an interest therein.

(2) In any action seeking the invalidity or forfeiture of a patent, the Office of the Public Prosecutor may be an intervening party and make submissions seeking a declaration of absolute invalidity or forfeiture of the patent.

(3) It may even enter directly a principal suit seeking a declaration of invalidity in the cases provided for in Article 39(1)(b).

(4) In the cases provided for in the foregoing paragraph, all holders of rights in the patent whose acts have been entered in the Special Register of Patents of the Organization under Article 34 shall be party to the proceedings.

Article 44
Competent Jurisdiction

(1) The actions referred to in Article 43 above and all disputes relating to patent ownership shall be brought before the civil courts.

(2) If the action is simultaneously brought against the owner of the patent and one or more limited licensees, it shall be brought before the court sitting in the established or elected domicile of the said owner.

(3) The matter shall be examined and judged in the manner prescribed for summary proceedings. If necessary, it shall be communicated to the Office of the Public Prosecutor.

Article 45
Recording of the Judicial Decision
on Invalidity or Forfeiture

Where the absolute invalidity or forfeiture of a patent has been pronounced by a court decision that has become *res judicata*, the competent court shall inform the Organization thereof, and the invalidity or forfeiture pronounced on the territory of a member State shall be entered in the Special Register of Patents and published in the form specified in Article 32 above for granted patents.

TITLE IV
NON-VOLUNTARY LICENSES

Article 46
Non-Voluntary License for Non-Working

(1) At the request of any person made after the expiry of a period of four years from the filing date of the patent application or three years from the date of grant of the patent, whichever period expires last, a non-voluntary license may be granted where one or more of the following conditions are fulfilled:

(a) the patented invention is not being worked on the territory of a member State at the time the request is made;

(b) the working of the patented invention on such territory does not meet the demand for the protected product on reasonable terms;

(c) on account of the refusal of the owner of the patent to grant licenses on reasonable commercial terms and procedures, the establishment or development of industrial or commercial activities on such territory is unfairly and substantially prejudiced.

(2) Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may not be granted if the owner of the patent provides legitimate reasons for the non-working of the invention.

Article 47
Non-Voluntary License
for a Dependent Patent

Where a patented invention cannot be worked without infringing the rights under an earlier patent whose owner refuses to authorize its use on reasonable commercial terms and procedures, the owner of the later patent may obtain a non-voluntary license for such use from

the court on the same terms as those that apply to the non-voluntary licenses granted under Article 46 and on the following additional conditions:

(a) the invention claimed in the later patent must represent substantial technical progress, of considerable economic interest, in relation to the invention claimed in the earlier patent;

(b) the owner of the earlier patent has the right to a reciprocal license on reasonable terms for the use of the invention claimed in the later patent;

(c) the use authorized in relation to the earlier patent shall be intransferable except where the later patent is also transferred.

Article 48
Request for the Grant
of a Non-Voluntary License

(1) The request for the grant of a non-voluntary license shall be made to the civil court of the domicile of the patentee or, if the latter is domiciled abroad, to the civil court of either his elected domicile or the place in which he has named an agent for the purposes of filing. Only requests made by persons domiciled on the territory of a member State shall be considered.

The owner of the patent or his agent shall be informed thereof without delay.

(2) The request shall contain

(a) the name and address of the requester;

(b) the title of the patented invention and the number of the patent in respect of which a non-voluntary license is requested;

(c) evidence that the working of the patented invention on the above-mentioned territory does not meet demand for the protected product on reasonable terms;

(d) in the case of a non-voluntary license requested under Article 45 above, a statement by the requester in which he undertakes to work the patented invention on the territory of one of the member States in such a way as to meet the needs of the market.

(3) The request shall be accompanied

(a) by proof that the requester has previously approached the owner of the patent, by registered letter, requesting a contractual license, but has been unable to obtain such a license from him subject to reasonable commercial terms and procedures and within a reasonable time;

(b) in the case of a non-voluntary license requested under Article 46 or 47, by proof that the requester is capable of working the patented invention.

Article 49
Grant of Non-Voluntary License

(1) The civil court shall examine whether the request for the grant of a non-voluntary license satisfies the requirements of Article 48 above. If the request does not satisfy the said specified requirements, the court shall reject it. Before rejecting the request, the court shall inform the requester of the deficiencies of his request and shall allow him to make the necessary corrections.

(2) Where the request for the grant of a non-voluntary license satisfies the requirements of Article 48 above, the civil court shall notify it to the owner of the patent concerned, and also to any licensee whose name appears in the Register of Patents, and shall invite them to submit their observations on the said request in writing within a period of three months. Such observations shall be communicated to the requester. The civil court shall likewise notify the request to any government authorities concerned. The civil court shall hold a hearing on the request and the observations received to which the requester, the owner of the patent, any licensee whose name appears in the Register of Patents and any government authorities concerned shall be invited.

(3) Once the procedure prescribed in paragraph (2) above has been completed, the civil court shall take a decision on the request, either granting or refusing the non-voluntary license.

(4) If the non-voluntary license is granted, the decision of the civil court shall specify

(a) the scope of the license, specifying in particular the acts referred to in Article 1(2) of this Annex to which it extends and the period for which it is granted, it being understood that a non-voluntary license granted under Article 46 or 47 above cannot extend to the act of importation;

(b) the amount of the remuneration to be paid by the licensee to the owner of the patent; in the absence of agreement between the parties, such remuneration shall be equitable, due regard being had to all the circumstances of the case.

The said amount shall be subject to judicial revision.

(5) The decision of the civil court shall be in writing and shall state the grounds on which it is based. The civil court shall convey the decision to the Organization, which shall register it. The civil court shall publish the decision and shall notify it to the requester and to the owner of the patent. The Organization shall notify the decision to any licensee whose name appears in the Special Register of Patents.

Article 50
Rights and Obligations of the Holder
of a Non-Voluntary License

(1) After the expiry of the time limit for appeal specified in Article 52 of this Annex, or once an appeal decision has been handed down that wholly or partly upholds the decision by which the civil court granted the non-voluntary license, the grant of the latter shall authorize the licensee to exploit the patented invention according to the terms laid down in the decision of the civil court or in the appeal decision, and shall require him to pay the remuneration specified in the said decisions.

(2) The grant of a non-voluntary license shall not affect either license contracts in force or non-voluntary licenses in force and shall not preclude the conclusion of other license contracts or the grant of other non-voluntary licenses. The patentee may not however grant to other licensees more favorable terms than those of the non-voluntary license.

Article 51
Limitation of the Non-Voluntary License

(1) The beneficiary of the non-voluntary license may not, without the consent of the owner of the patent, grant any third party permission to perform any of the acts that he is authorized to perform under the non-voluntary license.

(2) Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may be transferred together with the establishment of the beneficiary of the non-voluntary license or with the portion of his establishment that exploits the patented invention. No such transfer shall be valid without the authorization of the civil court. Before granting the authorization, the civil court shall give the owner of the patent a hearing. The civil court shall notify the authorization to the Organization, which shall register and publish it. Any transfer so authorized shall cause the new beneficiary of the non-voluntary license to accept the same obligations as those that were incumbent on the former beneficiary.

Article 52
Amendment and Withdrawal
of the Non-Voluntary License

(1) At the request of the owner of the patent or the beneficiary of the non-voluntary license, the civil court may amend the decision on the grant of the non-voluntary license where new facts justify such amendment.

(2) At the request of the owner of the patent, the civil court shall withdraw the non-voluntary license

(a) if the grounds for its grant have ceased to exist;

(b) if the beneficiary exceeds the scope of the license under Article 49(4)(a) above;

(c) if the beneficiary is in arrears with the payment of the remuneration referred to in Article 49(4)(b) above.

(3) Where the non-voluntary license is withdrawn under paragraph (2)(a) above, the beneficiary of the non-voluntary license shall be allowed a reasonable period within which to cease working the invention where immediate cessation would have serious adverse consequences for him.

(4) The provisions of Articles 48 and 49 of this Annex shall apply to the amendment or withdrawal of the non-voluntary license.

Article 53
Appeals

(1) The owner of the patent, the licensee whose name appears in the Special Register or any person who has requested the grant of a non-voluntary license may, within a period of one month from the publication specified in Articles 49(5), 51(2) or 52(4) above, appeal to the competent higher jurisdiction against a decision taken under Articles 49(3), 51(2) or 52 above.

(2) The appeal referred to in paragraph (1) above contesting the grant of a non-voluntary license, the authorization to transfer a non-voluntary license or the amendment or withdrawal of a non-voluntary license shall have staying effect.

(3) The decision on appeal shall be notified to the Organization, which shall register and publish it.

Article 54
Defense of Rights Granted

(1) Any beneficiary of a contractual or non-voluntary license may, by registered letter, summon the owner of a patent to bring the necessary judicial actions for civil or criminal sanctions for any violation, mentioned by the said beneficiary, of the rights under the patent.

(2) If, within three months of the summons provided for in paragraph (1) above, the owner of the patent refuses or fails to institute the actions referred to in the said paragraph, the beneficiary of a license that has been registered may institute the actions in his own name, without prejudice to the owner's right to intervene in the actions.

Article 55
Cessation of the Obligations of the Beneficiary
of the Non-Voluntary License

Any action seeking invalidation of the patent shall be directed against the patentee. If a final legal judgment declares the patent invalid, the beneficiary of the non-voluntary license shall be released from all obligations resulting from the decision granting him the non-voluntary license.

Article 56
Ex-Officio Licenses

(1) Where certain patents are of vital interest to the economy of the country, public health or national defense, or where non-working or insufficient working of such patents seriously compromises the satisfaction of the country's needs, they may be made subject, by an administrative enactment of the competent Minister of the member State concerned, to the non-voluntary license regime. The said enactment shall specify the beneficiary administration or organization, the conditions, term and scope of the non-voluntary license and the amount of royalties payable.

(2) In the absence of amicable agreement between the owner of the patent and the administration concerned on the said conditions, they shall be set by the civil court.

(3) *Ex-officio* licenses shall be subject to the same conditions as the non-voluntary licenses granted under Article 46.

Article 57
Licenses of Right

(1) Any owner of a patent not precluded by the terms of any previously registered license from granting further licenses may apply to the Organization to have, in respect of his patent, the notice "licenses of right" entered in the Register. The notice shall be entered in the Register and published by the Organization as soon as possible.

(2) The entry of such a notice in the Register shall entitle any person to obtain a license to work the said patent on terms that shall, in the absence of agreement between the parties concerned, be fixed by the civil court. It shall also cause the annual fee to be reduced.

(3) The owner of the patent may at any time apply to the Organization for cancellation of the "licenses of right" entry. If no license is in force, or if all the licensees agree to cancellation, the Organization shall cancel the entry after payment of all the annual fees that would have been payable had the entry not been made in the Register.

(4) The provisions of Article 26(1) of this Annex shall also apply to licenses of right.

(5) The beneficiary of a license of right may neither assign it nor grant sublicenses under it.

TITLE V
INFRINGEMENT, LEGAL PROCEEDINGS
AND PENALTIES

Article 58
Infringement

Subject to the provisions of Articles 8 and 46 to 56, any violation of the rights of a patentee by the use of means forming the subject matter of his patent, by the receiving or sale or display for sale or by the introduction into the national territory of one of the member States of one or more objects shall constitute the offense of infringement. That offense shall be punished with a fine of 1,000,000 to 3,000,000 CFA francs, without prejudice to the right to compensation.

Article 59
Recidivism and Aggravating Circumstances

(1) In the event of recidivism, imprisonment for a term of one to six months may be imposed in addition to the fine specified in Article 58.

(2) Recidivism shall be deemed to have occurred when, within the preceding five years, the defendant has received a first conviction for one of the offenses provided for in this Annex.

(3) Imprisonment for a term of one to six months may also be imposed if the infringer is a worker or employee who has worked in the workshops or establishment of the patentee, or if the infringer, having joined a worker or employee of the patentee, has become acquainted through him with the processes described in the patent.

(4) In the latter case, the worker or employee may be prosecuted as an accomplice.

Article 60
Extenuating Circumstances

The provisions of the national legislation of member States on extenuating circumstances shall apply to the offenses provided for in this Annex.

Article 61
Condition for Initiation of Criminal Proceedings

Criminal action seeking the imposition of the above penalties may only be brought by the Office of the Public Prosecutor on a complaint by the injured party.

Article 62
Exceptional Competence of the Criminal Court

The criminal court, when dealing with an action for infringement, shall rule on the arguments put forward by the accused in his defense, such as the alleged invalidity or forfeiture of the patent or questions relating to ownership of the said patent.

Article 63
Acts Prior to Grant

Acts occurring prior to the grant of a patent shall not be considered prejudicial to the rights of the patentee and may not be invoked to justify conviction, even under civil law, with

the exception however of acts subsequent to the communication to the alleged infringer of an official copy of the description of the invention attached to the patent application.

Article 64
Infringement Seizure

(1) Owners of patents may, acting in pursuance of an order from the president of the civil court within whose jurisdiction the action is to be taken, engage bailiffs or public or ministerial officials, including customs officials, if necessary with the aid of an expert, to make a detailed inventory and description, with or without seizure, of allegedly infringing objects.

(2) The order shall be made on request and on presentation of the patent.

(3) Where seizure is involved, the said order may require the complainant to furnish security, which he shall be required to provide before seizure is effected. The security shall be sufficient but not such as would discourage recourse to the procedure.

(4) Security shall always be required of foreigners seeking seizure.

(5) The person in possession of the objects described or seized shall be given a copy of the order and, where appropriate, of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff or the public or ministerial official or the customs official, as the case may be.

Article 65
Time Limit for Initiating Substantive Proceedings

Should the complainant fail to take action under either civil or criminal law within a period of 10 working days from the seizure or inventory, the said seizure or inventory shall become void as of right, without prejudice to any damages that may be claimed.

Article 66
Burden of Proof

For the purposes of the civil procedure for violation of the owner's rights referred to in Article 1, if the subject matter of the patent is a process for making a product, the judicial authority shall be authorized to order the defendant to prove that the process used to make an identical product is different from the patented process in one of the following situations:

(a) the product made by the process is new;

(b) there is a strong probability of the identical product having been made by means of the process and of the owner of the patent having been unable, in spite of reasonable effort, to establish what process was actually used.

Article 67
Other Sanctions

(1) The confiscation or destruction of recognized infringing objects and, where necessary, that of implements or tools specially intended for their manufacture shall, even in the case of acquittal, be ordered against the infringer, the receiver, the introducer or the retailer.

(2) The objects confiscated may be handed over to the owner of the patent, without prejudice to the right to further damages and publication of the judgment, where appropriate.

TITLE VI
MISCELLANEOUS, TRANSITIONAL
AND FINAL PROVISIONS

Article 68
Continued Validity of Patents
Granted or Recognized Under
the Bangui Agreement of March 2, 1977

Under this Article, any patent granted or recognized under the Bangui Agreement of March 2, 1977, and its Annex I shall remain in force for a period of 20 years as from its filing date.

Article 69
Acquired Rights

(1) This Annex shall apply to patent applications filed as from the date of its entry into force, subject to the rights acquired under Annex I of the Bangui Agreement of March 2, 1977.

(2) Patent applications filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of the said applications.

(3) However, the exercise of the rights deriving from patents granted under the provisions referred to in paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

(4) Annex I of the Bangui Agreement of March 2, 1977, is repealed.

[Annex II follows.]

ANNEX II UTILITY MODELS

TITLE I GENERAL PROVISIONS

Article 1 Definition and Criteria

Within the meaning of this Annex, utility models protected by registration certificates granted by the Organization shall be implements of work or objects to be utilized or parts of such implements or objects in so far as they are useful for the work or employment for which they are intended on account of a new configuration, a new arrangement or a new component device, and are industrially applicable.

Article 2 Novelty

(1) The implement or object or the parts of the one or the other as specified in Article 1 above shall not be considered new if, on the date of the filing of the application for registration with the Organization, they have been described in publications or if they have been publicly used on the territory of a member State.

(2) The novelty referred to in paragraph (1) above shall not be denied if, during the twelve months preceding the date specified in paragraph (1) above, the implement or object or the parts of the one or the other have been the subject of a disclosure resulting from

- (a) an obvious violation committed against the applicant or his predecessor in title; or
- (b) the fact that the applicant or his predecessor in title has displayed them at an official or officially recognized international exhibition.

Article 3 Industrial Applicability

A utility model shall be considered industrially applicable if it can be made or used in any kind of industry. The term “industry” shall be understood in its broadest sense; in particular it shall cover handicraft, agriculture, fishery and services.

Article 4 Subject Matter Not Qualifying for Utility Model Protection

The following may not be registered as a utility model:

(1) A utility model according to Article 1 of this Annex that is contrary to public policy or morality, public health, the national economy or national defense, provided that the exploitation of the said model shall not be considered contrary to public policy or morality merely because it is prohibited by law or regulation.

(2) No utility model may be protected under this Annex if it has already been the subject of a patent or a utility model registration based on a prior application or an application validly claiming an earlier priority.

Article 5
Rights Conferred

Subject to the conditions and within the limits set by this Annex, the owner of a registration certificate shall have the right to prohibit any person from exploiting the utility model by carrying out any of the following acts: manufacturing, offering for sale, selling and using the utility model, and importing and holding it for the purposes of offering it for sale, selling it or using it.

Article 6
Term of Protection

Subject to the provisions of Article 35 below, the term of protection conferred by the certificate of registration of a utility model shall expire at the end of the tenth year following the filing date of the application for registration.

Article 7
*Right to the Certificate of Registration
of the Utility Model*

- (1) The right to the registration of a utility model shall belong to its creator; the applicant shall be deemed to be the owner of the right.
- (2) Where two or more persons have made a creation jointly, the right to its registration as a utility model shall belong to them jointly.
- (3) If, and to the extent that, two or more persons have made the same creation independently of each other, the right to its registration as a utility model shall belong to the one who filed the application bearing the earliest filing date or, where priority is claimed, the earliest validly claimed priority date, provided that the said application is not withdrawn, abandoned or rejected.
- (4) The right to the registration of a utility model may be assigned or transferred by succession.

Article 8
*Right to the Certificate of Registration
of the Utility Model. Creations by Employees*

- (1) Subject to the legal provisions governing contracts for performing a certain work and employment contracts, and in the absence of contractual provisions to the contrary, the right to the registration of a utility model developed in pursuance of such a contract shall belong to the person who commissioned the work or to the employer.
- (2) The same provision shall apply where an employment contract does not require the employee to exercise any inventive activity, but where the employee has developed a utility model using data or means available to him on account of his employment.
- (3) In the circumstances provided for in paragraph (2) above, the employee who has developed the utility model shall have a right to remuneration reflecting the importance of the utility model registered. That remuneration shall be fixed by the court in the absence of agreement between the parties.
- (4) In the circumstances provided for in paragraph (1) above, the employee shall have the same right as that referred to in paragraph (3) above if the utility model is of very exceptional importance.

(5) The provisions of paragraphs (3) and (4) above are a matter of public policy.

Article 9
Limitation of the Rights Conferred by
the Certificate of Registration of the Utility Model

(1) The rights deriving from the certificate of registration of the utility model shall not extend

(a) to acts in relation to subject matter brought on to the market on the territory of a member State by the owner of the utility model or with his consent;

(b) to the use of objects on board foreign aircraft, land vehicles or ships that temporarily or accidentally enter the airspace, territory or waters of a member State;

(c) to acts in relation to a registered utility model that are carried out for experimental purposes in the course of scientific and technical research;

(d) to acts performed by any person who in good faith on the filing date of the application, or where priority is claimed on the priority date of the application on the basis of which the utility model is registered on the territory of a member State, was using the utility model or making effective and genuine preparations for such use, in so far as those acts are not different in nature or purpose from the actual or planned earlier use.

(2) The right of the user referred to in paragraph (1)(d) may not be transferred or handed on otherwise than with the business or company or the part thereof in which the use or the preparations for use were made.

Article 10
Right of Foreigners to Certificates
of Registration of Utility Models

Foreigners may obtain certificates of registration of utility models on the conditions specified in this Annex.

TITLE II
FORMALITIES CONCERNING
THE REGISTRATION OF UTILITY MODELS

Section I
Applications for Registration of Utility Models

Article 11
Filing of the Application

(1) Any person wishing to secure the registration of a utility model shall file with the Organization or with the Ministry responsible for industrial property, or send to it by registered mail with a request for acknowledgement of receipt,

(a) his application to the Director General of the Organization in a sufficient number of copies;

(b) a document proving payment to the Organization of the filing and publication fees;

(c) an unstamped, private power of attorney if the applicant is represented by an agent;

(d) a sealed package containing in duplicate

(i) a description showing by what configuration, arrangement or component device the utility model may be useful for the work or purpose for which it is intended; that description shall be set out clearly and completely so that a person having ordinary knowledge and skill in the art could produce the said model,

(ii) the drawings and photographs necessary or useful for the understanding of the description,

(iii) a descriptive abstract summarizing the contents of the description,

(iv) the claim or claims defining the scope of the protection sought, which shall not go beyond the contents of the description referred to in subparagraph (i) above.

(2) The above documents shall be in one of the working languages of the Organization.

Article 12
Unity of the Utility Model

The application shall be restricted to a single principal subject, with the details that constitute it and the uses specified. It shall contain no restrictions, conditions or reservations. It shall have a title that describes in a succinct and precise manner the purpose of the invention.

Article 13
Claim of Priority

(1) Any person wishing to avail himself of the priority of an earlier application shall be required to attach to his application for registration or to send to the Organization at the latest six months following the filing date of his application

(a) a written declaration stating the date and number of the earlier application, the country in which it was filed and the name of the applicant;

(b) a certified true copy of the said earlier application;

(c) if he is not the person who filed the earlier application, a written authorization from the applicant or his successors in title authorizing him to avail himself of the priority in question.

(2) The applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall comply with the provisions mentioned above for each of them; he shall also pay a fee for each priority right claimed and shall produce evidence of payment of the fee within the six-month period mentioned above.

(3) Failure to present any one of the documents mentioned above within the time limit shall automatically entail, for the application under consideration, loss of the benefit of the priority right claimed.

(4) Any document that reaches the Organization more than six months after the filing of the application for registration shall be declared inadmissible.

Article 14
Conversion of a Patent Application
into an Application for Registration
of a Utility Model and Vice Versa

(1)(a) At any time prior to the grant of a patent or the rejection of his patent application, a patent applicant may, after payment of the prescribed fee, convert his

application into an application for registration of a utility model, which shall be accorded the filing date of the original application.

(b) At any time prior to the grant of a certificate of registration of a utility model or the rejection of his application, the applicant for registration of a utility model may, after payment of the prescribed fee, convert his application into a patent application, which shall be accorded the filing date of the original application.

(2)(a) Where a patent application has been converted under paragraph (1)(a) above into an application for registration of a utility model, it shall be deemed to have been withdrawn and the Organization shall enter a “withdrawn” notice in the Register of Patents.

(b) Where an application for registration of a utility model has been converted under paragraph (1)(b) above into a patent application, it shall be deemed to have been withdrawn and the Organization shall enter a “withdrawn” notice in the Register of Utility Models.

(3) An application may not be converted more than once under paragraph (1).

Article 15 *Unacceptability Due to Non-Payment*

No application for registration of a utility model shall be acceptable if it is not accompanied by a document attesting payment of the application and publication fees to the Organization.

Article 16 *Filing Date*

The Organization shall grant as the filing date the date of receipt of the application, written in one of its working languages, by the Ministry responsible for industrial property, or where appropriate by the Organization, provided that, at the time of receipt, the application contains

- (a) an express or implicit indication that the grant of a certificate of registration of a utility model is requested;
- (b) information whereby the identity of the applicant may be established;
- (c) a part which, at first sight, purports to be the description of an invention and one or more claims;
- (d) proof of payment of the prescribed fees.

Section II **Grant of Certificates of Registration** **for Utility Models**

Article 17 *Transmittal of the Application for a Certificate* *of Registration of the Utility Model*

(1) Immediately after recording the application and within five working days of the filing date, the Ministry responsible for industrial property shall transmit the package sent by the applicant to the Organization, attaching a copy of the application, a certified copy of the record of filing, the document attesting payment of the fees and, where applicable, the power of attorney mentioned in Article 11 and the priority documents specified in Article 13 of this Annex.

(2) The Organization shall proceed to open and record applications and grant the relevant certificates of registration in the order of receipt of the said applications.

Article 18
Examination of Applications

(1) Any application for a certificate of registration of a utility model shall undergo examination to ensure that

(a) the creation in respect of which a certificate of registration is applied for is not excluded from utility model protection under the provisions of Article 4 of this Annex;

(b) the claim or claims conform to the provisions of Article 11(d)(iv) of this Annex;

(c) the provisions of Article 12 of this Annex have been respected.

(2) A search shall also be conducted to ensure that

(a) at the time of the filing of the application for a certificate of registration, an application for a certificate of registration filed earlier, or benefiting from a validly claimed earlier priority and concerning the same invention, was not in the process of being granted;

(b) the invention

(i) is new,

(ii) is industrially applicable.

(3) The Administrative Council shall decide whether, and to what extent, the provisions of paragraph (2)(a) and (b) above shall be applied; in particular, it may decide whether all or some of the said provisions are applicable to one or several fields of technology covered by the inventions; it shall determine such fields by reference to the International Patent Classification.

(4) For international applications under the Patent Cooperation Treaty, the Organization may avail itself of the provisions of Articles 20 and 36 of the said Treaty, which relate to the international search report and the international preliminary examination report, respectively.

Article 19
Grant

(1) Where the Organization finds that all the conditions for the grant of a certificate of registration have been met and that a report has been drawn up under Article 18(2) above, it shall grant the certificate of registration of the utility model applied for. In all cases, however, the grant of certificates of registration of utility models shall be at the applicant's own risk and without any guarantee either as to the reality, novelty or merits of the invention or as to the truth or accuracy of the description.

(2) The grant of the certificate of registration of the utility model shall take place on a decision by the Director General of the Organization or on a decision by a staff member of the Organization duly authorized to that end by the said Director General.

(3) Certificates of registration based on international applications under the Patent Cooperation Treaty shall be granted in the same manner provided for in paragraph (2) above, but with reference to the international publication provided for in the said Treaty.

Article 20
Conditions Governing Rejection

(1) An application that does not fulfill the provisions of Article 12 above may, within a period of six months from the date of notification that the application cannot be accepted as filed because it does not have one principal subject, be divided into a number of applications benefiting from the date of the initial application.

(2) Any application for which the requirements of Article 11, except for its subparagraph (b), and those of Article 12 have not been fulfilled is defective. The defect shall be notified to the applicant or his agent, who shall be invited to correct the documents within a period of three months from the date of the notification. That period may be extended by 30 days, in cases of justifiable need, at the request of the applicant or his agent. The application so corrected within the said period shall retain the date of the initial application.

(3) In the event of the corrected documents not being provided within the prescribed period, the application for registration of the utility model shall be rejected.

(4) No application may be rejected under paragraph (3) above without the applicant or his agent having first been given the opportunity to correct the said application to the extent and according to the procedure prescribed.

Section III
Improvement Certificates

Article 21
Right to an Improvement Certificate

(1) The creator of a utility model or the persons entitled to a certificate of registration of a utility model shall, for the entire duration of the utility model, have the right to make changes, improvements or additions to the creation, complying, for the filing of the application, with the formalities laid down in Articles 11 and 13 of this Annex.

(2) Such changes, improvements or additions shall be recorded in certificates granted in the same form as the main certificate of registration which, as from the dates of application and grant respectively, shall have the same effects as the said main certificate of registration.

(3) Improvement certificates taken out by one of the entitled persons shall benefit all the others.

Article 22
Duration of the Improvement Certificate

Improvement certificates shall terminate with the main certificate of registration. However, invalidation of the main certificate of registration shall not invalidate as of right the corresponding improvement certificate or certificates and, even where absolute invalidity has been declared under the provisions of Article 34, the improvement certificate or certificates may survive the main certificate of registration until the normal term of the latter expires, subject to continued payment of the annual fees that would have been payable had the certificate of registration not been invalidated.

Article 23
Conversion of an Application
for an Improvement Certificate
into an Application for a Certificate
of Registration of a Utility Model

Provided that an improvement certificate has not been granted, the applicant may effect the conversion of his application for an improvement certificate into an application for a certificate of registration of a utility model, the date of which shall be that of the original application.

Article 24
Formalities for Conversion of an Application
for an Improvement Certificate
into an Application for a Certificate
of Registration of a Utility Model

Any creator who wishes to obtain a main certificate of registration of a utility model for a change, improvement or addition rather than an improvement certificate expiring with the earlier certificate of registration shall comply with the formalities laid down in Articles 11 and 13.

Article 25
Independence of the Right to Exploit
Certificates of Registration of Utility Models
Relating to the Same Subject Matter

Any person who has obtained a certificate of registration of a utility model for a creation related to the subject matter of another utility model shall have no right to exploit the creation already protected and, conversely, the owner of an earlier certificate of registration may not exploit the creation that is the subject of the new certificate of registration of a utility model.

TITLE III
PUBLICATION

Article 26
Communication of Descriptions,
Drawings and Photographs

(1) The descriptions, drawings and photographs of registered utility models shall be kept by the Organization which, after the publication provided for in Article 27 below, shall communicate them on request.

(2) After the publication referred to in paragraph (1) above, any person may obtain an official copy of the said descriptions, drawings and photographs.

(3) The provisions of paragraphs (1) and (2) above shall apply to official copies furnished by applicants seeking to avail themselves of the priority of an earlier filing and to the documents authorizing certain such applicants to claim that priority.

(4) The applicant for registration wishing to avail himself abroad of the priority of his filing before registration of the utility model may obtain an official copy of his application.

Article 27
Publication of Certificates
of Registration of Utility Models

- (1) The Organization shall publish the following details for each utility model granted:
- (i) the number of the certificate of registration;
 - (ii) the name and address of the owner of the certificate of registration of the utility model;
 - (iii) the name and address of the creator of the utility model, unless he has requested not to be mentioned in the certificate of registration;
 - (iv) the name and address of the agent, if any;
 - (v) the filing date of the application;
 - (vi) a mention of the priority if priority has been validly claimed;
 - (vii) the date of the priority, the country in which or the country or countries for which the earlier application was filed and the number of the earlier application;
 - (viii) the date of the grant of the certificate of registration;
 - (ix) the title of the utility model;
 - (x) the number and publication date of the international application, where applicable.
- (2) The Administrative Council shall establish and determine the conditions of publication of the description of the utility model, the drawings if any, the claims and the abstract.

TITLE IV
TRANSFER AND ASSIGNMENT OF RIGHTS
AND CONTRACTUAL LICENSES

Article 28
Transfer and Assignment of Rights

- (1) The rights subsisting in an application for registration of a utility model or in an application for registration of a registered utility model shall be transferable in whole or in part.
- (2) Acts involving transfer of ownership, the licensing of the right of exploitation or the assignment of that right, or a pledge or cancellation of a pledge, in respect of an application for registration of a utility model or a registered utility model shall, on pain of invalidity, be evidenced in writing.

Article 29
Recording of Acts
in the Special Register of Utility Models

- (1) The acts referred to in Article 28(2) above shall not be binding on third parties unless they are entered in the Special Register of Utility Models kept by the Organization. A record of such acts shall be kept by the Organization.
- (2) Subject to the conditions established by regulation, the Organization shall furnish to any person who so requests a copy of the entries in the Special Register of Utility Models, and

also a record of the entries concerning utility models that are the subject of a pledge, or a certificate attesting the absence of any such entries.

Article 30
Exploitation as of Right of the Utility Model
and Improvements to It

(1) Those persons who have obtained from the owner of a certificate of registration of a utility model or from entitled persons the right to exploit the utility model shall benefit as of right from improvements made by the owner of the utility model or by the entitled persons to the said model. Conversely, the said owner or entitled persons shall benefit from improvements subsequently made to the utility model by those persons having obtained the right to exploit the said model.

(2) Any person entitled to benefit from the said improvements may provide the Organization with a copy of the relevant contract.

Article 31
License Contract

(1) The owner of a certificate of registration of a utility model may, by contract, grant to a person, whether natural person or legal entity, a license enabling him to exploit the registered utility model.

(2) The duration of the license may not be longer than that of the utility model registration.

(3) The license contract shall be drawn up in writing and signed by the parties.

(4) The license contract shall be entered in the Special Register of Utility Models. It shall not be binding on third parties until it is entered in the said Register and published in the form specified in the Implementing Regulations relating to this Annex.

(5) The license shall be cancelled from the Register at the request of the owner of the certificate of registration of the utility model or the licensee on presentation of proof of the expiry or termination of the license contract.

(6) In the absence of provisions to the contrary in the license contract, the grant of a license shall not preclude the licensor from either granting licenses to other persons, subject to notifying the licensee, or exploiting the registered utility model himself.

(7) The grant of an exclusive license shall preclude the licensor from granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, from exploiting the registered utility model himself.

Article 32
Invalid Clauses

(1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the certificate of registration of the utility model or not necessary for the upholding of such rights.

(2) The following shall not be considered restrictions within the meaning of paragraph (1) above:

(a) limitations relating to the extent, the scope or the duration of exploitation of the certificate of registration of the registered utility model;

(b) the obligation on the licensee to abstain from any act liable to harm the validity of the registered utility model.

(3) In the absence of provisions to the contrary in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sublicenses.

Article 33
Recognition of Invalid Clauses

Recognition of the invalid clauses referred to in Article 32 above shall be done by the civil court at the request of any interested party.

TITLE V
INVALIDITY, FORFEITURE
AND ACTIONS RELATING THERETO

Section I
Invalidity and Forfeiture

Article 34
Invalidity

(1) Utility models registered in the following cases shall be declared invalid:

(a) if, under the provisions of Articles 2 and 3 of this Annex, the utility model is not new and not industrially applicable;

(b) if the utility model cannot be registered under Article 4 above, without prejudice to the penalties that might be incurred for the manufacture or marketing of prohibited articles;

(c) if the specification attached to the utility model does not conform to the provisions of Article 11(d)(i) above, or if it does not state in a complete and honest manner the true methods of the applicant.

(2) Improvements that are not connected with the utility model, as provided for in this Annex, shall likewise be declared invalid.

(3) Invalidity may relate to all or only some of the claims.

Article 35
Forfeiture

(1) The owner of the certificate of registration of the utility model who has not paid his annual fees on the anniversary date of the filing of his application shall forfeit all his rights.

(2) The person concerned shall however be allowed a six-month period of grace within which he may still validly pay the annual fees. In that case, he shall also pay an additional fee.

(3) Payments made to complement annual or additional fees during the six-month period mentioned above shall be considered valid.

(4) Payments made as annual or additional fees payable for an application for registration of a utility model resulting from conversion into an application for a certificate of

registration of a utility model under Article 14 shall also be considered valid provided that the payments are made within a period of six months from the date of the application for conversion.

Article 36
Restoration

(1) Without prejudice to the provisions of Articles 34 and 35 above, where the protection conferred by a registered utility model has not been maintained owing to circumstances beyond the control of the owner of the said utility model, the owner or entitled persons may apply for its restoration against payment of the requisite annual fee and of a surcharge the amount of which shall be fixed by regulation, within a period of six months from the date on which the said circumstances ceased to exist, and at the latest within a period of one year from the date on which renewal was due.

(2) The application for restoration of the above-mentioned utility model, together with documents proving payment of the fee and surcharge mentioned in the foregoing paragraph, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.

(3) The Organization shall examine the grounds referred to above and shall either restore the utility model or reject the application if it does not consider the grounds valid.

(4) Restoration shall not entail prolongation of the maximum duration of the utility model. Third parties who started to work the utility model after its term expired shall have the right to continue such working.

(5) Restoration of the utility model shall likewise cause any improvement certificates related to it to be restored.

(6) An appeal from the rejection decision following the application for restoration shall lie to the High Commission of Appeal within a period of 30 working days following receipt of notice thereof.

(7) Restored utility models shall be published by the Organization in the form prescribed by the Implementing Regulations relating to this Annex.

(8) Paragraphs (1) to (6) shall be applicable where the application for registration of the utility model has not been filed within the time limits set by international treaties.

Article 37
Appropriation

Any person who, by means of signs, notices, prospectuses, posters, marks or stamps, assumes the status of owner of a utility model without holding a certificate of registration of the utility model granted in accordance with this Agreement and the Implementing Regulations under it shall be punished with a fine of 1,000,000 to 3,000,000 CFA francs, without prejudice to the right to compensation. In the event of recidivism, the fine shall be doubled.

Section II

Actions Seeking Invalidity or Forfeiture

Article 38

Initiation of the Action

(1) Actions seeking invalidity or forfeiture may be brought by any person having an interest therein.

(2) In any action seeking the invalidity or forfeiture of a utility model, the Office of the Public Prosecutor may be an intervening party and make submissions seeking a declaration of absolute invalidity or forfeiture of the utility model.

(3) It may even enter directly a principal suit seeking a declaration of invalidity in the cases provided for in Article 34(1)(b).

(4) In the cases provided for in the foregoing paragraph, all holders of rights in the certificate of registration of the utility model whose acts have been entered in the Special Register of Utility Models of the Organization under Article 29 above shall be party to the proceedings.

Article 39

Competent Jurisdiction

(1) The actions referred to in Article 38 above and all disputes relating to the ownership of utility models shall be brought before the civil courts.

(2) If the action is simultaneously brought against the owner of the certificate of registration of the utility model and one or more limited licensees of the said model, it shall be brought before the court sitting in the established or elected domicile of the said owner.

(3) The matter shall be examined and judged in the manner prescribed for summary proceedings; if necessary it shall be communicated to the Office of the Public Prosecutor.

Article 40

Recording of the Judicial Decision on Invalidity or Forfeiture

Where the absolute invalidity or forfeiture of the utility model has been pronounced by a court decision that has become *res judicata*, the competent court shall inform the Organization thereof, and the invalidity or forfeiture pronounced on the territory of a member State shall be entered in the Special Register of Utility Models and published in the form specified in Article 27 above for granted utility models.

TITLE VI

INFRINGEMENT, LEGAL PROCEEDINGS AND PENALTIES

Article 41

Infringement

Any violation of the rights of the owner of a registered utility model by manufacture of products, by the use of means forming the subject matter of his utility model, by the receiving or sale or display for sale or by the introduction into the national territory of one of the member States of one or more objects shall constitute the offense of infringement. That

offense shall be punished with a fine of 1,000,000 to 6,000,000 CFA francs, without prejudice to the right to compensation.

Article 42
Recidivism and Aggravating Circumstances

(1) In the event of recidivism, imprisonment for a term of one to six months may be imposed in addition to the fine specified in Article 41.

(2) Recidivism shall be deemed to have occurred when, within the preceding two years, the defendant has received a first conviction for one of the offenses provided for in this Annex.

(3) Imprisonment for a term of 15 days to 3 months may also be imposed if the infringer is a worker or employee who has worked in the workshops or establishment of the owner of the utility model, or if the infringer, having joined a worker or employee of the owner of the utility model, has become acquainted through him with the processes described in the registration of the utility model.

(4) In the latter case, the worker or employee may be prosecuted as an accomplice.

Article 43
Extenuating Circumstances

The provisions of the national legislation of member States on extenuating circumstances shall apply to the offenses provided for in this Annex.

Article 44
Condition for Initiation of Criminal Proceedings

Criminal action seeking the imposition of the above penalties may only be brought by the Office of the Public Prosecutor on a complaint by the injured party.

Article 45
Exceptional Competence of the Criminal Court

The criminal court, when dealing with an action for infringement, shall rule on the arguments put forward by the accused in his defense, such as the alleged invalidity or forfeiture of the utility model or questions relating to ownership of the said utility model.

Article 46
Acts Prior to Registration

Acts occurring prior to the registration of a utility model shall not be considered prejudicial to the rights of the owner of the utility model and may not be invoked to justify conviction, even under civil law, with the exception however of acts subsequent to the communication to the alleged infringer of an official copy of the description of the invention attached to the application for registration of the utility model.

Article 47
Infringement Seizure

(1) Owners of certificates of registration of utility models or holders of exclusive exploitation rights may, acting in pursuance of an order from the president of the civil court within whose jurisdiction the action is to be taken, engage bailiffs or public or ministerial

officials, including customs officials, if necessary with the aid of an expert, to make a detailed inventory and description, with or without seizure, of the allegedly infringing objects.

(2) The order shall be made on request and on presentation of the certificate of registration of the utility model and the provision of proof of non-lapse.

(3) Where seizure is involved, the said order may require the complainant to furnish security, which he shall be required to provide before seizure is effected. The security shall be sufficient but not such as would discourage recourse to the procedure.

(4) Security shall always be required of foreigners seeking seizure.

(5) The person in possession of the objects described or seized shall be given a copy of the order and, where appropriate, of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff or the public or ministerial official or the customs official, as the case may be.

Article 48

Time Limit for Initiating Substantive Proceedings

Should the complainant fail to take action under either civil or criminal law within a period of ten working days from the seizure or inventory, the said seizure or inventory shall become void as of right, without prejudice to any damages that may be claimed.

Article 49

Other Sanctions

(1) The confiscation of recognized infringing objects and, where necessary, that of implements or tools specially intended for their manufacture shall, even in the case of acquittal, be ordered against the infringer, the receiver, the introducer or the retailer.

(2) The objects confiscated may be handed over to the owner of the utility model, without prejudice to the right to further damages and publication of the judgment, where appropriate.

TITLE VII

TRANSITIONAL AND FINAL PROVISIONS

Article 50

Acquired Rights

(1) This Annex shall apply to utility model applications filed as from the date of its entry into force, subject to the rights acquired under Annex II of the Bangui Agreement of March 2, 1977.

(2) Utility model applications filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of the said applications.

(3) However, the exercise of the rights deriving from utility model registrations granted under the provisions referred to in paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

(4) Annex II of the Bangui Agreement of March 2, 1977, is repealed.

[Annex III follows.]

ANNEX III TRADE MARKS AND SERVICE MARKS

TITLE I GENERAL PROVISIONS

Article 1 Optional Character of the Mark

Trademarks or service marks shall be optional. However, member States may exceptionally declare them compulsory for the goods or services that they shall specify.

Article 2 Signs Recognized as Marks

(1) Any visible sign used or intended to be used and capable of distinguishing the goods or services of any enterprise shall be considered a trademark or service mark, including in particular surnames by themselves or in a distinctive form, special, arbitrary or fanciful designations, the characteristic form of a product or its packaging, labels, wrappers, emblems, prints, stamps, seals, vignettes, borders, combinations or arrangements of colors, drawings, reliefs, letters, numbers, devices and pseudonyms.

(2) The trademarks or service marks shall be considered collective marks where the conditions for their use are laid down in rules approved by the competent authority and where they may be used only by enterprises of public character, unions or groups of unions, associations, groups of producers, manufacturers, craftsmen or tradesmen, provided that the latter are officially recognized and have legal personality.

Article 3 Marks Not Eligible for Registration

A mark may not be validly registered if

(a) it is devoid of distinctiveness, notably owing to the fact that it consists of signs or matter constituting the necessary or genetic designation of the product or the composition thereof;

(b) it is identical to a mark that belongs to another owner and is already registered, or the filing or priority date of which is earlier, and which relates to the same or similar goods or services, or where it so resembles such a mark that it is liable to mislead or confuse;

(c) it is contrary to public policy, morality or the law;

(d) it is liable to mislead the public or business circles, notably as to the geographical origin, nature or characteristics of the goods or services in question;

(e) it reproduces, imitates or incorporates armorial bearings, flags or other emblems, the abbreviated name or acronym or an official sign or hallmark indicating control and warranty of a State or intergovernmental organization established by an international convention, except where the competent authority of that State or of that organization has given its permission.

Article 4
Acquisition of Rights by Foreigners

Foreigners shall enjoy the benefits of this Annex if they fulfill the conditions imposed by it.

Article 5
Right to the Mark

(1) Subject to the provisions set forth below, ownership of a mark shall vest in the person who files it first.

(2) No person may claim exclusive ownership of a mark by performing the acts specified in the provisions of this Annex unless he has filed it for registration in accordance with the conditions prescribed in Article 8 below.

(3) Where a mark has been filed by a person who at the time of filing knew, or should have known that another person had a prior right to use the said mark, the latter may file a claim of ownership of the mark with the Organization, provided that he does so within six months following the publication of the record of the first filing.

(4) The Organization shall rule on the priority claim after an inter partes proceeding provided for in the Regulations.

(5) The use of a mark may only be proved by written or printed matter or documents contemporaneous with the facts that they seek to establish.

Article 6
Well-Known Marks

The owner of a well-known mark within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property and Article 16, paragraphs (2) and (3), of the Agreement on Trade Related Aspects of Intellectual Property Rights may apply to the court for the invalidation, on the national territory of one of the member States, of the effects of the filing of a mark liable to be confused with his own. Such action may not be taken after a period of five years has expired following the date of the application in so far as the latter was filed in good faith.

Article 7
Rights Conferred by Registration

(1) Registration of a mark confers on its owner the exclusive right to use the mark, or a sign resembling it, in connection with the goods or services for which it has been registered and similar goods or services.

(2) Registration of the mark likewise confers on the owner the exclusive right to prevent all third parties from making use in business without his consent, of identical or similar signs for goods or services that are themselves similar to those for which the trademark or service mark has been registered where such use is liable to cause confusion. Where an identical sign is used for identical goods and services, a risk of confusion shall be presumed to exist.

(3) Registration of the mark does not confer on its owner the right to prohibit a third party from making use in good faith of his name or address, a pseudonym, a geographical name or accurate information concerning the nature, quality, quantity, purpose, value, place of origin or time of production of his goods or rendering of his services in so far as the use in

question is limited to the purpose of mere identification or information and cannot mislead the public as to the source of the goods or services.

(4) Registration of a mark does not confer on its owner the right to prohibit a third party from making use of the mark in relation to goods that have been lawfully sold under the mark on the national territory of the member State in which the right of prohibition is exercised, on condition that the goods have not undergone any alteration.

TITLE II FILING, REGISTRATION AND PUBLICATION

Article 8 *Filing of the Application*

Any person wishing to obtain the registration of a mark shall file with the Organization or with the Ministry responsible for industrial property, or send it by registered mail with a request for acknowledgement of receipt

(a) his application, addressed to the Director General of the Organization in a sufficient number of copies;

(b) a document proving payment to the Organization of the filing fee;

(c) an unstamped private power of attorney if the applicant is represented by an agent;

(d) a reproduction of the mark, including a list of the goods or services to which the mark applies, with the corresponding classes of the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Agreement); the number of reproductions of the mark to be supplied shall be laid down in the Implementing Regulations relating to this Annex;

(e) the rules referred to in Article 2(2) in the case of a collective mark.

Article 9 *Scope of Registration*

The mark may be registered for one or more classes of goods or for one or more classes of services within the meaning of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

Article 10 *Statement of Filing and* *Transmittal of Documents*

(1) A statement drawn up by the Organization or by the Ministry responsible for industrial property shall note each filing and specify the date and time of submission of the documents.

(2) A copy of the statement shall be issued to the applicant.

(3) The Ministry responsible for industrial property shall transmit the documents to the Organization within a period of five working days from the filing date.

Article 11
Claim of Priority

(1) Any person wishing to avail himself of the priority of an earlier application shall be required to attach to his application for registration or to send to the Organization at the latest three months following the filing date of his application

(a) a written declaration stating the date and number of the earlier application, the country in which it was filed and the name of the applicant;

(b) a certified true copy of the said earlier application.

(2) The applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall comply with the provisions mentioned above for each of them; he shall also pay a fee for each priority right claimed and shall produce evidence of payment of the fee within the three-month period mentioned in paragraph (1) above.

(3) Any priority claim that reaches the Organization more than three months after the filing of the application shall be declared inadmissible.

Article 12
Unacceptability Due to Non-Payment

No filing shall be acceptable if the application is not accompanied by a document proving payment of the application fee.

Article 13
Conditions of Acceptability and Filing Date

The Organization shall grant as the filing date the date of receipt of the application for registration, made on the prescribed form, by the Ministry responsible for industrial property or by the Organization, provided that, at the time of receipt, the application contains

(a) the requisite information concerning the name and address, nationality and domicile of the applicant;

(b) signature; in the case of a legal entity, the identity and title of the signatory shall be specified;

(c) the goods and services to which the mark concerned applies;

(d) information concerning payment of the application fee;

(e) where an agent has been appointed, that fact and the agent's name and address.

Article 14
Registration of the Mark

(1) For every application for registration of a mark, the Organization shall examine whether the conditions of form referred to in Articles 8 and 9 of this Annex have been met, and whether the prescribed fees have been paid.

(2) Any filing that does not conform to the provisions of Article 3(c) and (e) shall be rejected.

(3) Any application, in respect of which the conditions of form referred to in Article 8, with the exception of paragraph (1)(b), and in Article 11 have not been observed, is irregular. The irregularity shall be notified to the applicant or to his agent, who shall be invited to put

the documents in order within a period of three months following the date of notification. That period may be extended by 30 days in a case of proven necessity at the request of the applicant or his agent. An application thus put in order within the said period shall retain the date of the original application.

(4) Where rectified documents are not produced within the period allowed, the application for registration of the mark shall be rejected.

(5) Rejection shall be pronounced by the Director General of the Organization.

(6) No application may be rejected under paragraphs (2), (4) and (5) of this Article without the opportunity having been given to the applicant or his agent to rectify it to the extent and according to the procedures and forms prescribed.

(7) Where the Organization finds that the conditions referred to in paragraph (1) above have been met, it shall register the mark and publish the registration.

(8) The legal date of the registration shall be that of the application.

Article 15
Appeal Against Rejection of the Application

If an application is rejected by the organization, the applicant has sixty days in which to appeal against the decision. In this case, the said Commission shall be the judge and arbiter of final instance of the application in question.

Article 16
Issue of the Certificate of Registration

(1) When registration has taken place, a certificate shall be issued to the owner of the registration setting out the following information, in particular, as recorded in the Register:

(a) the serial number of the mark;

(b) the filing date of the application for registration, the date of registration and the priority date if priority is claimed;

(c) the trade name or surname and forename of the owner of the mark, together with his address;

(d) a reproduction of the mark;

(e) a mention of the classes of goods and services to which the registration relates.

Article 17
Publication

The Organization shall publish the particulars referred to in Article 16 above for every certificate of registration issued. Those particulars shall be entered in the Special Register of Marks.

Article 18
Opposition

(1) Any interested party may oppose the registration of a mark by sending to the Organization, within a period of six months from the publication mentioned in Article 17 above, a written statement setting out the reasons for his opposition, which reasons must be

based on an infringement either of the provisions of Article 2 or 3 of this Annex, or of a prior right belonging to the opposing party.

(2) The Organization shall send a copy of the statement of opposition to the applicant or to his agent, who may reply, setting out his reasons, within a once-renewable period of three months. The reply shall be forwarded to the opponent or to his representative. If his reply does not reach the Organization by the prescribed time limit, the applicant shall be deemed to have withdrawn his application for registration and the registration shall be cancelled.

(3) Before taking a decision on the opposition, the Organization shall, on request, hear each or either of the parties or their agents.

(4) An appeal from the Organization's decision on the opposition shall lie to the High Commission of Appeal within a period of three months from the date of receipt of notice of the decision by the interested parties.

(5) The Organization shall only cancel the registration in so far as the aforementioned opposition is valid.

(6) The final decision on cancellation shall be published in the official Bulletin of the Organization.

Article 19 Duration of Rights

The registration of a mark shall be valid for only ten years from the filing date of the application for registration; however, the ownership of a mark may be preserved indefinitely through successive renewals of the registration, which may be effected every ten years.

Article 20 Access to Information in the Special Register

Any person may, at any time, against payment of the prescribed fee, consult the Organization's Special Register of Marks or request, at his own expense, information, extracts or copies of such information.

The consultation, information, extracts or copies referred to above may relate to one mark only.

Article 21 Renewal of the Registration of the Mark

(1) The owner of a mark may only effect the renewal referred to in Article 19 above if he has paid the amount of fees prescribed by regulation.

(2) The amount of the fees provided for in paragraph (1) above shall be paid during the last year of the ten-year period referred to in Article 19 of this Annex; however, a six-month period of grace shall be allowed for payment of the said fee after the end of that year, subject to payment also of a surcharge fixed by regulation.

(3) No changes may be made either to the mark or to the list of goods or services for which the said mark was registered, subject to the right of the registered owner to limit the list.

(4) Renewal of the registration of a mark shall not entail renewed examination of the mark.

(5) The Organization shall enter the renewal in the Special Register of Marks and publish it in the manner specified in this Annex, mentioning, where appropriate, any limitation of the goods or services.

(6) A mark whose registration has not been renewed may not be registered for the benefit of a third party in respect of identical or similar goods or services until three years have elapsed since the term of the registration or renewal expired.

TITLE III RENUNCIATION, CANCELLATION AND INVALIDITY

Article 22 Renunciation

(1) The registered owner of a mark may renounce the registration either wholly or in respect of part of the goods or services for which the mark is registered.

(2) Renunciation shall be notified by registered letter with acknowledgement of receipt to the Organization, which shall enter it in the Special Register of Marks and shall publish it.

(3) If a license has been recorded in the Special Register of Marks, renunciation shall be entered only on submission of a declaration by which the licensee consents to the renunciation, except where the said licensee has expressly waived that right in the license contract.

Article 23 Cancellation

(1) At the request of any interested party, the court may order the cancellation of any registered mark which, for an uninterrupted period of five years prior to the request, has not been used on the national territory of one of the member States, except where the registered owner has legitimate reasons for having failed to use it; the cancellation may be extended to all or part of the goods or services for which the said mark was registered.

(2) The burden of proof regarding use of the mark shall rest with the owner. Use of a mark by another person shall be recognized as use of the mark, subject to endorsement by the owner.

(3) When the decision ordering cancellation becomes final, it shall be notified to the Organization, which shall record it in the Special Register of Marks.

(4) Cancellation shall be published in the form laid down in the Implementing Regulations relating to this Annex. Registration of the mark shall then be deemed never to have had any effect.

Article 24 Invalidity

(1) The invalidation of the effects on the national territory of the registration of a mark shall be pronounced by the civil courts, at the request either of the Office of the Public Prosecutor or of any interested person or professional group.

(2) At the request of the interested parties referred to above or of the Organization, the court shall declare the registration of a mark invalid if it does not conform to the provisions of Articles 2 and 3 of this Annex or conflicts with a prior right; in the latter case, invalidation

may only be pronounced at the request of the owner of the prior right. The invalidity may apply either to all or to only some of the goods or services for which the mark was registered.

(3) When the decision declaring the registration invalid becomes final, it shall be notified to the Organization.

(4) Invalidity shall be published in the form laid down in the Implementing Regulations relating to this Annex. The registration shall be deemed invalid as of the date on which it took place.

Article 25 *Restoration*

(1) Without prejudice to the provisions of Article 24 above, where the protection conferred by a registered mark has not been renewed owing to circumstances beyond the control of the owner of the mark, the owner or entitled persons may apply for its restoration, against payment of the requisite renewal fee and of a surcharge the amount of which shall be fixed by regulation, within a period of six months from the date on which the said circumstances ceased to exist, and at the latest within a period of two years from the date on which renewal was due.

(2) The application for restoration of the above-mentioned mark, together with documents proving payment of the fee and surcharge mentioned in paragraph (1) above, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.

(3) The Organization shall examine the grounds referred to above and shall either restore the mark or reject the application if it does not consider the grounds valid.

(4) Restoration shall not entail prolongation of the maximum duration of the mark. Third parties who started to use the mark after the registration thereof expired shall have the right to continue such use.

(5) Restored marks shall be published by the Organization in the form prescribed by the Implementing Regulations relating to this Annex.

(6) An appeal from the rejection decision following the application for restoration shall lie to the High Commission of Appeal within a period of 30 days following notification of the said decision.

(7) Paragraphs (1) to (6) shall be applicable where the application for registration of the mark has not been filed within the time limits set by international treaties.

TITLE IV TRANSFER AND ASSIGNMENT OF MARKS AND CONTRACTUAL LICENSES

Article 26 *Transfer of Rights*

(1) The rights subsisting in a mark shall be transferable in whole or in part.

(2) Acts involving transfer of ownership, the licensing of the right of exploitation or the assignment of that right, or a pledge or cancellation of a pledge, in respect of a mark shall, on pain of invalidity, be evidenced in writing.

(3) The transfer of ownership or the licensing of the right of exploitation may relate to all or only some of the goods or services to which the mark applies. Only the licensing of the right of exploitation may have its validity limited to the national territory of one of the member States.

Article 27
Enforceability Against Third Parties

(1) The acts referred to in Article 26 above shall not be enforceable against third parties unless they are recorded in the Special Register of Marks kept by the Organization.

(2) Subject to the conditions established by regulation, the Organization shall furnish to any person who so requests a copy of the entries in the Special Register of Marks or a record of the entries concerning marks that are the subject of a pledge, or a certificate attesting the absence of any such entries, and also identity certificates reproducing the information on the original specimen of the mark.

Article 28
Recording of the Judicial Decision
on Invalidity

Any final decision declaring the effects of the filing of a mark invalid on the national territory of one of the member States shall be entered in the Special Register of Marks on notification by the judicial body concerned, and a mention thereof shall be published by the Organization.

Article 29
License Contract

(1) The owner of a mark may, by contract, grant to a person, whether natural person or legal entity, a license enabling him to use the said mark for all or some of the goods or services in respect of which the mark is registered.

(2) The duration of the license may not be longer than that of the registration of the mark.

(3) The license contract shall be drawn up in writing and signed by the parties on pain of invalidity.

(4) The license contract shall be entered in the Special Register of Marks of the Organization. It shall not be enforceable against third parties until it is entered in the said Register and published in the form specified in the Implementing Regulations relating to this Annex.

(5) The license shall be cancelled from the Register at the request of the owner of the mark or the licensee on presentation of proof of the expiry or termination of the license contract.

(6) In the absence of provisions to the contrary in the license contract, the grant of a license shall not preclude the licensor from either granting licenses to other persons, subject to notifying the licensee, or from using the mark himself.

(7) The grant of an exclusive license shall preclude the licensor from granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, from using the mark himself.

Article 30
Invalid Clauses

(1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the registration of the mark or not necessary for the upholding of such rights.

(2) The following shall not be considered restrictions within the meaning of paragraph (1) above:

(a) limitations relating to the extent, the scope or the duration of use of the mark, or to the quality or quantity of the goods or services for which the mark may be used;

(b) the obligation on the licensee to abstain from any act liable to harm the validity of the registration of the mark.

(3) In the absence of provisions to the contrary in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sublicenses.

Article 31
Recognition of Invalid Clauses

The recognition of the invalid clauses referred to in Article 30 above shall be done by the civil court at the request of any interested party.

TITLE V
COLLECTIVE MARKS

Article 32
Right to the Collective Mark

In the general interest and in order to facilitate the development of commerce, industry, crafts and agriculture, the State, public companies, unions or groups of unions and associations or groups of producers, manufacturers, craftsmen and tradesmen may, provided that they are officially recognized and have legal status, own collective marks for goods or services.

Article 33
Use of the Collective Mark

Collective marks shall be affixed either directly by the groups mentioned in Article 32 above as a means of control, or by members of the said groups on the goods or objects traded by them; whatever the circumstances, this shall be done under the supervision of the group concerned and in accordance with the provisions of the texts governing the collective marks in question.

Article 34
Registration of a Collective Mark

The filing application for registration of a collective mark shall include the approved rules for its use. If those rules are contrary to the provisions of Article 3 or if the prescribed fees have not been paid, the application shall be rejected. Any amendments to the said rules that are contrary to public policy or morality shall likewise be rejected.

Article 35
Defense of the Collective Mark

Any member of the group owning the collective mark may institute the civil and criminal proceedings provided for in this Annex, on condition that he proves the failure of the said group to act and calls upon it to act.

Article 36
Transfer, Invalidity and Forfeiture
of the Collective Mark

(1) Collective marks shall not be either assigned or transferred.

(2) Nevertheless, in the event of a legal merger, the Minister responsible for industrial property may authorize its transfer to the new group created by the merger.

(3) The court may declare a collective mark invalid or forfeit if

(a) the owner of the mark, as defined in Article 32, has ceased to exist;

(b) the rules governing its use are contrary to public policy or morality;

(c) the mark does not fulfill the conditions set forth in the provisions of this Title;

(d) the owner of the mark referred to in subparagraph (a) above has knowingly used the collective mark, or allowed it to be used, under conditions other than those provided for in the rules referred to in subparagraph (b) above.

(4) Where the collective mark has been declared invalid or forfeit, it may not be appropriated for the same goods or services by virtue of a new registration or used for any purpose at all. However, on the expiration of a period of ten years from the date of the final decision declaring the mark invalid or forfeit, the said mark may be registered as such by a group as defined in Article 32, provided that the latter has the same nationality as the previous owner.

TITLE VI
PENALTIES

Article 37
Penalties for Unlawful Exploitation
of a Registered Mark

(1) The following persons shall be punished by a fine of 1,000,000 to 6,000,000 CFA francs and with imprisonment for a term of three months to two years:

(a) those who fraudulently affix on their goods or on objects traded by them a mark belonging to another;

(b) those who knowingly sell or offer for sale one or more goods bearing a counterfeit or fraudulently affixed mark, or those who knowingly sell, offer for sale, provide or offer to provide goods or services under such a mark;

(c) those who make a fraudulent imitation of a mark in such a way as to mislead the buyer or who make use of a fraudulently imitated mark;

(d) those who knowingly sell or offer for sale one or more goods bearing a fraudulently imitated mark or information liable to mislead the buyer as to the nature of the goods, or those who provide or offer to provide goods or services under such a mark.

(2) The following persons shall also be punished with the penalties referred to in paragraph (1) above:

(a) those who knowingly provide a product or render a service other than that requested of them under a registered mark;

(b) those who make use of a mark bearing information liable to mislead the buyer as to the nature of the goods.

Article 38
Penalties in Connection with
Compulsory Marks and Prohibited Signs

The following persons shall be punished with a fine of 1,000,000 to 2,000,000 CFA francs and with imprisonment for a term of 15 days to six months, or to only one of those penalties:

(a) those who do not affix to their goods a mark that has been declared compulsory;

(b) those who sell or offer for sale goods that do not bear a mark declared compulsory for that type of goods;

(c) those who violate the terms of decisions taken under Article 1 of this Annex;

(d) those who incorporate in their marks signs that are prohibited under the provisions of this Annex.

Article 39
Penalties Not Cumulative

(1) The penalties specified in Articles 37 and 38 of this Annex shall not be cumulative.

(2) The severest penalty alone shall be imposed for all acts prior to the first act proceeded against.

Article 40
Penalties in the Event of Recidivism

(1) In the event of recidivism, the penalties specified in Articles 37 and 38 shall be doubled.

(2) Recidivism shall be deemed to have occurred when, within the preceding five years, the offender has been found guilty of one of the offenses specified in this Annex.

Article 41
Extenuating Circumstances

The provisions of the national legislation of member States on extenuating circumstances shall apply to the offenses provided for in this Annex.

Article 42
Deprivation of Electoral Rights

(1) Offenders may, in addition, be deprived of the right to participate in elections to professional groups such as chambers of commerce and industry and chambers of agriculture for a period not exceeding ten years.

(2) The court may order the display of the judgment in places that it shall specify and also its publication in full or in the form of extracts in the newspapers that it shall designate, all at the expense of the offender.

Article 43
Fate of Counterfeited Marks and Goods

(1) The court may order the confiscation of goods bearing a mark recognized as being contrary to the provisions of Article 37, even in the case of acquittal, and also that of the implements or tools that served specifically for the commission of the offense.

(2) The court may order that the objects confiscated be surrendered to the owner of the mark that has been counterfeited or fraudulently affixed or imitated, regardless of the right to any further damages, that may be appropriate.

(3) In all cases the court may order the destruction of goods bearing marks recognized as being contrary to the provisions of Article 37 above.

Article 44
Other Measures Relating to Compulsory Marks

(1) In the cases provided for in Article 38 the court shall always order that the marks declared compulsory be affixed to the goods affected by its ruling.

(2) The court may order the confiscation of goods if the accused has been found guilty of one of the offenses provided for in Article 38 during the preceding five years.

Article 45
Penalties in Connection with Collective Marks

The penalties provided for in Articles 37, 38, 40, 42, 43 and 44 of this Annex shall apply to collective marks for goods or services. In addition, the following persons shall be punished with the penalties provided for in Article 37 above:

(a) those who knowingly make any use of a collective mark under conditions other than those specified in the rules of use referred to in Article 34;

(b) those who sell or offer for sale goods bearing a collective mark unlawfully used under the terms of the provisions governing marks for goods or services;

(c) those who knowingly make any use at all of a mark reproducing or imitating a collective mark within a period of ten years following the date of invalidation of the said collective mark;

(d) those who, within a period of ten years from the date of invalidation of a collective mark, knowingly sell, offer for sale, provide or offer to provide goods or services under a mark reproducing or imitating the said collective mark.

Article 46
Right to Bring Infringement Action

(1) Civil action for the infringement of a mark shall be brought by the owner thereof. However, the beneficiary of an exclusive right of use may bring an infringement action, unless otherwise provided in the contract, if the owner fails to act after having been called upon to do so.

(2) Any party to a license contract shall be entitled to intervene in infringement proceedings brought by another party in order to secure compensation for prejudice specific to him.

(3) Any action for infringement of a subsequently registered mark whose use has been tolerated for three years shall be inadmissible except where it has been filed for registration in bad faith. However, the inadmissibility of the action shall be confined to those goods and services for which the use was tolerated.

TITLE VII JURISDICTION

Article 47 *Competent Jurisdiction*

(1) Civil actions relating to marks shall be brought before the civil courts and judged as summary proceedings.

(2) If the accused in an action brought before a criminal court raises questions in his defense concerning the ownership of the mark, the competent court shall pass judgment thereon.

Article 48 *Infringement Seizure*

(1) The owner of a mark or holder of an exclusive right of exploitation may, acting in pursuance of an order from the president of the civil court within whose jurisdiction the action is to be taken, including at the border, engage bailiffs or public or ministerial officials, including customs officials, if necessary with the aid of an expert, to make a detailed inventory, with or without seizure, of the goods or services that he claims have been marked, provided or furnished to his prejudice in breach of the provisions of this Annex.

(2) The order shall be made on request, subject to proof that the mark is registered and that it has neither lapsed nor been cancelled.

(3) Where seizure is applied for, the judge may require the complainant to furnish security, which he shall be required to provide before seizure is effected. Security shall always be required of foreigners seeking seizure.

(4) The persons in possession of the objects described or seized shall be given a copy of the order and, where appropriate, of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff or the public or ministerial official or the customs official, as the case may be.

Article 49 *Time Limit for Initiating Substantive Proceedings*

Should the complainant fail to take action under either civil or criminal law within a period of ten working days, the inventory or seizure shall become void as of right, without prejudice to any damages that may be claimed.

TITLE VIII
TRANSITIONAL AND FINAL PROVISIONS

Article 50
Continued Validity of Marks
Registered or Recognized Under
the Bangui Agreement of March 2, 1977

Under this Article, any mark registered or recognized under the Bangui Agreement of March 2, 1977, and its Annex III shall remain in force for the term specified in that Agreement.

Article 51
Acquired Rights

(1) This Annex shall apply to marks filed for registration as from the date of its entry into force, subject to the rights acquired under Annex III of the Bangui Agreement of March 2, 1977.

(2) Applications for the registration of marks filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of the said applications.

(3) However, the exercise of the rights deriving from marks registered under the provisions referred to in paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

(4) Annex III of the Bangui Agreement of March 2, 1977, is repealed.

[Annex IV follows.]

ANNEX IV INDUSTRIAL DESIGNS

TITLE I GENERAL PROVISIONS

Article 1 Definition

(1) For the purposes of this Annex, any arrangement of lines or colors shall be considered a design, and any three-dimensional shape, whether or not associated with lines or colors, shall be considered a model, provided that the said arrangement or shape gives a special appearance to an industrial or craft product and may serve as a pattern for the manufacture of such a product.

(2) If the object can at the same time be considered a new design and a patentable invention and if the elements constituting the novelty of the design are inseparable from those of the invention, the said object may only be protected under the provisions of Annex I on Patents or Annex II on Utility Models.

(3) The protection accorded by this Annex shall not exclude any rights deriving from other legislative provisions of member States, in particular those concerning literary and artistic property.

Article 2 Industrial Designs Eligible for Registration

(1) An industrial design may be registered if it is new.

(2) An industrial design is new if it has not been disclosed anywhere in the world by publication in tangible form, by use or by any other means before the filing date or, where applicable, before the priority date of the application for registration.

(3) The novelty referred to in paragraph (1) above shall not be denied if, during the 12 months preceding the date specified in the said paragraph, the industrial design was the subject of disclosure resulting from

(a) an obvious violation in relation to the applicant or his predecessor in title; or

(b) the fact that the applicant or his predecessor in title has displayed it at an official or officially recognized international exhibition.

(4) Industrial designs the exploitation of which is contrary to public policy or morality may not be registered, on the understanding that the commercial exploitation of the said designs is not considered contrary to public policy or morality merely on account of its being prohibited by a legal or regulatory provision.

Article 3 Rights Conferred by Registration

Any creator of an industrial design and his successors in title shall have the exclusive right to exploit the said design and to sell or cause to be sold for industrial or commercial purposes the goods in which the design is incorporated, subject to the conditions of this Annex, without prejudice to the rights conferred by other legal provisions.

Article 4
Right to the Industrial Design

(1) Only designs deposited in the proper manner shall enjoy the benefits of this Annex.

(2) The ownership of a design shall vest in the person who created it or in his successors in title, but in the absence of proof to the contrary the first applicant shall be presumed to be the creator of the design.

Article 5
Acquisition of Rights by Foreigners

Foreigners shall enjoy the benefits of this Annex if they fulfill the conditions thereof.

Article 6
Designs Created by Employees

(1) Subject to the legal provisions governing contracts for performing a certain work and employment contracts, and in the absence of contractual provisions to the contrary, the right to the registration of an industrial design made under such a contract shall belong to the person who commissioned the work or to the employer.

(2) The same provision shall apply when an employment contract does not require the employee to exercise any creative activity, but where the employee has created the industrial design using data or means available to him on account of his employment.

(3) In the circumstances provided for in paragraph (2) above, the employee who has created the industrial design shall have a right to remuneration reflecting the importance of the design created, which remuneration shall be fixed by the court in the absence of agreement between the parties.

(4) The provisions of this Article shall likewise be applicable to employees of the State, public associations and any other corporate entity under public law in the absence of specific provisions to the contrary.

(5) Where the employer expressly renounces his right to the design, that right shall belong to the creator.

(6) The provisions of paragraph (3) are a matter of public policy.

Article 7
Limitation of the Rights Conferred

The registered industrial design shall not be binding on third parties who, at the time of filing of the application for registration, were already exploiting the said design on the territory of one of the member States or had taken the necessary steps with a view to exploiting it. The said third party shall be authorized to use the industrial design in his business or his own workshops or in those of other persons. That right may only be transferred with the business.

TITLE II
DEPOSIT AND PUBLICITY

Article 8
Filing of the Application

(1) Any person wishing to have an industrial design registered shall file with the Organization or with the Ministry responsible for industrial property, or send it by registered mail with a request for acknowledgement of receipt

(a) his application, addressed to the Director General of the Organization, in the number of copies prescribed by regulation;

(b) a document proving payment of the prescribed fees to the Organization;

(c) an unstamped private power of attorney if the applicant is represented by an agent;

(d) a mention of the type of product for which the design is to be used;

(e) on pain of invalidity of the application, a sealed package containing two identical copies of a graphic or photographic representation of the design, in dimensions specified by regulation.

(2) The same filing may include from one to 100 designs, which shall be numbered from first to last, provided that they belong to the same class of the International Classification (Locarno Agreement) or to the same set or range of articles. Designs additional to the hundredth shall not be considered validly deposited under this Annex.

(3) At the time of filing, the application may contain a request for publication of the design, once registered, to be delayed for a period not exceeding 12 months following the filing date of the application, or following the priority date thereof where priority is claimed.

Article 9
Claim of Priority

(1) Any person wishing to avail himself of the priority of an earlier application shall be required to attach to his application or to send to the Organization, at the latest three months following the filing date of his application,

(a) a written declaration stating the date and number of the earlier application, the country in which it was filed and the name of the applicant;

(b) a certified true copy of the said earlier application.

(2) The applicant who seeks to avail himself of two or more rights of priority shall comply with the provisions mentioned above for each of them; he shall also pay a fee for each priority right claimed and shall produce evidence of payment of the fee within the three-month period mentioned in paragraph (1) above.

(3) Any priority claim that reaches the Organization more than three months after the filing of the application shall be declared inadmissible.

Article 10
Statement of Filing
and Transmittal of Documents

(1) A statement drawn up by the Organization or by the Ministry responsible for industrial property shall note each filing and specify the date and time of submission of the documents.

(2) A copy of the statement shall be issued to the applicant.

(3) The Ministry responsible for industrial property shall transmit the documents to the Organization within a period of five working days from the filing date.

Article 11
Registration of the Design

(1) For every application for registration of an industrial design, the Organization shall examine whether the conditions of form referred to in Articles 8 and 9 of this Annex have been met, and whether the prescribed fees have been paid.

(2) Any application in respect of which the conditions of form referred to in Article 8, with the exception of paragraph (1)(b), and in Article 9(1) have not been observed is irregular. The irregularity shall be notified to the applicant or to his agent, who shall be invited to put the documents in order within a period of three months following the date of notification. That period may be extended by 30 days in a case of proven necessity at the request of the applicant or his agent. An application thus put in order within the said period shall retain the date of the original application.

(3) Where rectified documents are not produced within the period allowed, the application for registration of the design shall be rejected.

(4) Rejection shall be pronounced by the Director General.

(5) No application may be rejected under paragraphs (3) and (4) of this Article without the opportunity having been given to the applicant or his agent to rectify it to the extent and according to the procedures and forms prescribed.

(6) Where the Organization finds that the conditions referred to in paragraph (1) above have been met, it shall register the design and publish the registration.

(7) The legal date of the registration shall be that of the application.

Article 12
Term of Protection

(1) Subject to the provisions of paragraph (2) below, the term of the protection conferred by a certificate of registration of an industrial design shall expire at the end of the fifth year following the filing date of the application for registration.

(2) The registration of a design may be renewed for a further two consecutive periods of five years on payment of a renewal fee the amount of which shall be fixed by regulation.

(3) The renewal fee for an industrial design shall be paid within the twelve months preceding the expiration of the current period of registration. However, a six-month period of grace shall be allowed for payment of the fee after such expiration, subject to payment of a surcharge fixed by regulation.

Article 13
Restoration

(1) Where the protection conferred by an industrial design has not been renewed owing to circumstances beyond the control of the owner thereof, the owner or entitled persons may apply for its restoration, against payment of the requisite renewal fee and of a surcharge the amount of which shall be fixed by regulation, within a period of six months from the date on which the said circumstances ceased to exist, and at the latest within a period of one year from the date on which renewal was due.

(2) The application for restoration of the above-mentioned industrial design, together with documents proving payment of the fee and surcharge mentioned in paragraph (1) above, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.

(3) The Organization shall examine the grounds referred to above and shall either restore the design or reject the application if it does not consider the grounds valid.

(4) Restoration shall not entail prolongation of the maximum duration of the industrial design. Third parties who started to exploit the design after the registration thereof expired shall have the right to continue such exploitation.

(5) Restored designs shall be published by the Organization in the form prescribed by the Implementing Regulations relating to this Annex.

(6) An appeal from the rejection decision following the application for restoration shall lie to the High Commission of Appeal within a period of 30 days following notification of the said decision.

(7) Paragraphs (1) to (6) shall be applicable where the application for registration of the design has not been filed within the time limits set by international treaties.

Article 14
Communication of Application Documents

(1) The descriptions, drawings and photographs of registered industrial designs shall be kept by the Organization which, after the publication provided for in Article 15 below, shall communicate them on request. Specimens of industrial designs shall be kept by the Organization for a period of eight years and may be examined by any interested person.

(2) After the publication referred to in paragraph (1) above, any person may obtain an official copy of the said descriptions, drawings and photographs.

(3) The provisions of paragraphs (1) and (2) above shall apply to official copies furnished by applicants seeking to avail themselves of the priority of an earlier filing and to the documents authorizing certain such applicants to claim that priority.

(4) The applicant for registration wishing to avail himself abroad of the priority of his filing before registration of the industrial design may obtain an official copy of his application.

Article 15
Publication

(1) Where the Organization finds that the conditions referred to in Article 11 have been met, it shall publish the following details for each industrial design registered:

(a) the number of the design;

- (b) the name and address of the owner of the design;
 - (c) the name and address of the creator of the design, unless he has requested not to be mentioned on the certificate of registration;
 - (d) the name and address of the agent, if any;
 - (e) the filing date of the application;
 - (f) a mention of the priority if priority has been validly claimed;
 - (g) the date of the priority, the country in which or the country or countries for which the earlier application was filed and the number of the earlier application;
 - (h) the registration date of the design;
 - (i) the title of the design.
- (2) The Administrative Council shall establish and determine the conditions of publication of the description of the design and any photographs or drawings.

Article 16
Publicity

- (1) The Organization shall cause the designs filed for registration to be reproduced.
- (2) A copy of the reproduction shall be made available to the public at the Organization.
- (3) Copies mentioning the publication of the application shall be given to the applicant or his successors in title, and also to any party engaged in a legal dispute concerning the design.

Article 17
Duration of Preservation

Where designs have not been claimed by their owners within two years following the expiration of the period of protection, they shall be destroyed.

Article 18
Application Fees

The application shall be subject to payment in advance of

- (a) an application fee, regardless of the number of designs filed for registration;
- (b) a fee for each design so filed.

Article 19
Unacceptability Due to Non-Payment

No filing shall be acceptable if the application is not accompanied by a document attesting payment to the Organization of the fees referred to in the foregoing Article.

TITLE III
TRANSFER AND ASSIGNMENT OF
INDUSTRIAL DESIGNS

Article 20
Transfer of Rights

- (1) The rights subsisting in an industrial design shall be transferable in whole or in part.
- (2) Acts involving transfer of ownership, the licensing of the right of exploitation or the assignment of that right, or a pledge or cancellation of a pledge, in respect of a design shall, on pain of invalidity, be evidenced in writing.

Article 21
Recording of Acts in the Special Register

- (1) The acts mentioned in Article 20 above shall not be binding on third parties unless they are entered in the Special Register of Designs kept by the Organization. A record of such acts shall be kept by the Organization.
- (2) The Organization shall furnish to any person who so requests a copy of the entries in the Special Register of Designs, and also a record of the entries concerning industrial designs that are the subject of a pledge, or a certificate attesting the absence of any such entries.

Article 22
Exercise of the Rights of Joint Owners

In the absence of any provision to the contrary between the parties, joint owners of a registered design may separately transfer their shares, use the design and exercise the exclusive rights conferred by Article 3 of this Annex, but may only jointly license a third party to exploit the design.

TITLE IV
LICENSE CONTRACTS

Article 23
License Contract

- (1) The owner of an industrial design may, by contract, license any person, whether natural person or legal entity, to exploit the said design.
- (2) The duration of the license may not be longer than that of the registration of the design.
- (3) The license contract shall be evidenced in writing and signed by the contracting parties on pain of invalidity.
- (4) The license contract shall be entered in the Special Register of Designs kept by the Organization, on payment of a fee fixed by regulation; the license shall not be enforceable against third parties until so entered.
- (5) The entry concerning a license shall be removed at the request of the owner of the design or the licensee when evidence is given of the expiration of the license.

Article 24
Invalid Clauses

(1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the registration of the industrial design or not necessary for the upholding of such rights.

(2) Recognition of the invalid clauses referred to in paragraph (1) above shall be done by the civil court at the request of any interested party.

TITLE V
PENALTIES

Article 25
Penalties for Infringement of Rights

Any knowingly committed violation of the rights guaranteed by this Annex shall be liable to punishment with a fine of 1,000,000 to 6,000,000 CFA francs.

Article 26
Penalties in the Event of Recidivism

(1) In the event of recidivism, or if the offender was employed by the injured party, imprisonment for a term of one to six months shall be imposed in addition to the fine under Article 25.

(2) Recidivism shall be deemed to have occurred when, within the preceding five years, the offender has already received a first conviction for one of the offenses specified in this Annex.

(3) The provisions of the national legislation of member States on extenuating circumstances shall apply to the offenses provided for in this Annex.

Article 27
Deprivation of Electoral Rights

(1) Offenders may, in addition to receiving the penalties provided for in Articles 25 and 26 above, be deprived of the right to participate in elections to professional groups such as chambers of commerce and industry and chambers of trade for a period not exceeding ten years.

(2) The court may order the display of the judgment and its publication in full or in the form of extracts in the newspapers that it shall designate, all at the expense of the offender.

Article 28
Confiscation

(1) Confiscation in favor of the injured party of objects infringing the rights guaranteed by this Annex shall be ordered by the court even in the case of acquittal.

(2) The court may also, in the case of conviction, order confiscation of the implements that served specially for the making of the offending objects.

TITLE VI
LEGAL ACTIONS AND PROCEDURE

Article 29
Competent Jurisdiction

(1) Civil actions relating to industrial designs shall be brought before the civil courts and judged as summary proceedings.

(2) If the accused in an action brought before a criminal court raises questions in his defense concerning the ownership of the designs, the competent court shall pass judgment thereon.

Article 30
Condition for Initiation
of Criminal Proceedings

Criminal action seeking imposition of the penalties provided for in Title V may only be brought by the Office of the Public Prosecutor on a complaint by the injured party.

Article 31
Infringement Seizure

(1) The injured party may, acting in pursuance of an order from the president of the civil court within whose jurisdiction the action is to be taken, including at the border, engage bailiffs or public or ministerial officials, including customs officials, if necessary with the aid of an expert, to make a detailed inventory, with or without seizure, of the offending objects or instruments.

(2) The order shall be made on request and on presentation of an affidavit of publication issued by the Organization, subject to proof that registration has not lapsed or been cancelled.

(3) Where seizure is applied for, the judge may require the complainant to furnish security, which he shall be required to provide before seizure is effected.

Security shall always be required of foreigners seeking seizure.

(4) The persons in possession of the objects described shall be given a copy of the order and, where appropriate, of the document attesting the deposit of security, on pain of invalidity and damages against the bailiff or the public or ministerial official or the customs official, as the case may be.

Article 32
Time Limit for Instituting Substantive Proceedings

Should the complainant fail to take action under either civil or criminal law within a period of ten working days, the inventory or seizure shall become void as of right, without prejudice to any damages that may be claimed.

Article 33
Communication of Documents to Judicial Bodies

Any judicial body to which a lawsuit has been referred may request the Organization to communicate an industrial design that has been filed for registration or registered.

Article 34
Defense of Rights Granted

(1) Any beneficiary of a contractual or compulsory license may, by registered letter, call upon the owner of a registered industrial design to bring the necessary legal action seeking civil or criminal sanctions for any violation of the rights under the industrial design registration that is reported by the said beneficiary.

(2) If, within three months following the summons provided for in the preceding paragraph, the owner of the registered industrial design refuses or fails to bring the action referred to in the said preceding paragraph, the registered licensee may institute them in his own name, without prejudice to the right of the owner of the registered design to intervene in the action.

TITLE VII
TRANSITIONAL AND FINAL PROVISIONS

Article 35
Continued Validity of Industrial Designs
Registered or Recognized Under
the Bangui Agreement of March 2, 1977

Under this Article, any industrial design registered or recognized under the Bangui Agreement of March 2, 1977, and its Annex IV shall remain in force for the term specified in that Agreement.

Article 36
Acquired Rights

(1) This Annex shall apply to applications for the registration of industrial designs filed as from the date of its entry into force, subject to the rights acquired under Annex IV of the Bangui Agreement of March 2, 1977.

(2) Applications for the registration of industrial designs filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of the said applications.

(3) However, the exercise of the rights deriving from industrial design registrations granted under the provisions referred to in paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

(4) Annex IV of the Bangui Agreement of March 2, 1977, is repealed.

[Annex V follows.]

ANNEX V TRADE NAMES

Article 1 Definition

Within the meaning of this Annex, a trade name shall be the name under which a trade, industrial, craft or agricultural establishment is known and exploited.

Article 2 Name or Designation Not Admissible as a Trade Name

A name or designation shall not be admissible as a trade name if, by reason of its nature or the use to which it may be put, it is contrary to morality or public policy and if, in particular, it is liable to mislead trade circles or the public as to the nature of the trade, industrial, craft or agricultural establishment of that name.

Article 3 Right to the Trade Name

(1) Subject to the provisions hereafter, a trade name shall belong to the person having first made use of it or having first registered it.

(2) The use of a trade name may only be proved by written or printed matter or documents contemporaneous with the facts they seek to establish.

(3) Where a registered trade name has been publicly used in a continuous manner on the national territory for at least five years without having given rise to a legal action recognized as being well-founded, ownership of the trade name may not be challenged on the ground of priority of use, unless it can be proved that, at the time of the filing of the application for registration, the applicant could not have been unaware of the existence of the trade name of the initial user.

Article 4 Specific Effects of Registration of a Trade Name

Only trade names registered in accordance with the provisions of this Annex may be the subject of the penal sanctions specified in Article 16(3) and (4), hereafter.

Article 5 Conditions for Using Trade Names

(1) It shall be illegal to use on the national territory of one of the member States a trade name registered for the same trade, industrial, craft or agricultural activity as that of the owner of the registered trade name if such utilization is liable to create confusion between the enterprises in question.

(2) Nevertheless, the registered owner of a trade name may not preclude third parties from the use in good faith of their names, their addresses, a pseudonym, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin or time of production of their goods or of the supply of their services, in so far as such use is

confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services.

(3) An interested party whose name and first name are similar to those of a registered trade name, where his rights to the trade name of his establishment are subsequent to those of the registered trade name, shall take all necessary measures, by an addition to his trade name or in any other manner, to distinguish his trade name from that of the registered trade name.

(4) The provisions of paragraphs (1) to (3), above, shall be applicable to any trade, industrial, craft or agricultural activity ensuing from the establishment in question, in so far as it has been registered.

Article 6 *Filing of the Application*

The owner of a trade, industrial, craft or agricultural enterprise situated on the national territory of one of the member States wishing to register the trade name of his establishment shall file with the Organization, with the clerk of the civil court of his domicile or with the Ministry responsible for industrial property, or send by registered mail with a request for acknowledgement of receipt,

(a) an application for registration, in a sufficient number of copies, addressed to the Director General of the Organization and containing

- (i) the surname, forenames, address and nationality of the applicant,
 - (ii) the trade name for which registration is requested and, where appropriate, reproductions of the trade name in a sufficient number of copies,
 - (iii) the location and type of activity of the establishment in question;
- (b) a document proving payment to the Organization of the filing and publication fees;
- (c) an unstamped private power of attorney if the applicant is represented by an agent.

Article 7 *Statement of Filing*

(1) A statement drawn up by the Organization or by the clerk of the court or by the Ministry responsible for industrial property shall note each filing and specify the date and time of submission of the documents.

(2) A copy of the statement shall be issued to the applicant.

(3) Immediately after recording the application and within five working days of the date of its filing, the clerk or the Ministry responsible for industrial property shall transmit the cover referred to in Article 6(a) to the Organization, attaching a copy of the application, a certified copy of the statement of filing, the proof of payment of the fees and, where appropriate, the power of attorney mentioned in Article 6.

(4) The Organization shall proceed with the opening and the recording of applications in the order of their receipt.

Article 8 *Registration of the Application*

(1) For every application for registration of a trade name, the Organization shall register and publish the trade name, after having ascertained that it is not contrary to the

provisions of Article 2, that it has been correctly filed and that the prescribed fees have been paid.

(2) The registration shall have effect as from the date of filing.

(3) The Organization shall send a copy of the specimen of the trade name, bearing a notice of the registration, to the applicant.

(4) Any filing that does not conform to the provisions of Article 2 shall be rejected.

(5) Any application in respect of which the conditions of form referred to in Article 6, with the exception of letter (*b*), have not been observed is irregular. The irregularity shall be notified to the applicant or to his agent, who shall be invited to put the documents in order within a period of three months following the date of notification. That period may be extended by 30 days in a case of proven necessity at the request of the applicant or his agent. An application thus put in order within the said period shall retain the date of the original application.

(6) Where rectified documents are not produced within the period allowed, the application for registration of the trade name shall be rejected.

(7) Rejection shall be pronounced by the Director General and notified to the applicant.

(8) No application may be rejected under paragraphs (4), (6) and (7) of this Article without the opportunity having been given to the applicant or his agent to rectify it to the extent and according to the procedures and forms prescribed.

(9) Within 30 days from the date of notification of the rejection, the applicant may appeal to the High Commission of Appeal; the Commission shall be the judge and arbiter of final instance of the application in question.

Article 9 *Opposition*

(1) Any interested party may oppose the registration of a trade name by sending to the Organization, within a period of six months from the publication mentioned in Article 8(1) above, a written statement setting out the reasons for his opposition, which reasons must be based on an infringement either of the provisions of Articles 1, 2 and 5(1), or of a prior right belonging to the opposing party.

(2) The Organization shall send a copy of the statement of opposition to the applicant, who may reply, setting out his reasons, within a period of three months, renewable once only at the reasoned request of the interested party. If his reply does not reach the Organization by the prescribed time limit, the applicant shall be deemed to have withdrawn his application for registration and the registration shall be cancelled.

(3) Before taking a decision on the opposition, the Organization shall, on request, hear each or either of the parties or their agents.

(4) An appeal from the Organization's decision on canceling the opposition shall lie to the High Commission of Appeal within a period of 3 months from the date of receipt of notice of the decision by the interested parties.

(5) The registration shall only be cancelled in so far as the aforementioned opposition is valid.

Article 10
Certificates of Registration

On registration, a certificate shall be issued to the owner of the registration setting out, in particular, the following information as recorded in the Special Register of Trade Names:

- (a) the serial number of the trade name;
- (b) the date of filing of the application for registration and the date of registration;
- (c) the trade name as registered or, where appropriate, the reproduction of the trade name;
- (d) the place where the establishment in question is situated, together with the type of activity in which it engages;
- (e) the surname and forename of the registered owner, together with his address.

Article 11
Duration of Rights

(1) The registration of a trade name shall be valid for only 10 years from the date of filing; however, the right afforded by registration of a trade name may be preserved indefinitely through successive renewals of the registration every 10 years.

(2) Renewal of a registration may be obtained on request by the owner of the registration submitted during the final year of the ten-year period and on payment of a renewal fee the amount of which shall be fixed by regulation.

(3) However, the owner of the registration shall enjoy a six-month period of grace as from the expiry referred to in paragraph (1) above to enable him to make valid payment of the required fee. In such case, he shall also be required to pay a surcharge laid down by regulation.

Article 12
Restoration

(1) Without prejudice to the provisions of Article 11 above, where the protection conferred by a registered trade name has not been renewed owing to circumstances beyond the control of the owner of such trade name, the owner or entitled persons may apply for its restoration against payment of the requisite renewal fee and of a surcharge the amount of which shall be fixed by regulation, within a period of six months from the date on which the said circumstances ceased to exist, and at the latest within a period of two years from the date on which renewal was due.

(2) The application for restoration of the above-mentioned trade name, together with documents proving payment of the fee and surcharge mentioned in the foregoing paragraph, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the entitled persons consider the restoration justified.

(3) Restoration shall not entail prolongation of the maximum duration of protection for the trade name. Third parties who started to use the trade name after the registration thereof expired shall have the right to continue such use.

(4) Restored trade names shall be published by the Organization in the form prescribed by the Implementing Regulations relating to this Annex.

(5) An appeal from the rejection decision following the application for restoration shall lie to the High Commission of Appeal with a period of 30 days from the date of notification of the said decision.

Article 13
Renunciation

The owner of a registered trade name may at any time renounce the trade name by a written declaration sent to the Organization. The renunciation shall take effect on the date on which it is entered in the Special Register of Trade Names.

Article 14
Invalidity of Trade Names

(1) The invalidation of the effects of the registration of a trade name on the national territory of one of the member States shall be pronounced by the civil courts, at the request either of the Office of the Public Prosecutor or of any interested natural or legal person.

(2) At the request of the interested parties referred to above or of the Organization, the court shall declare the registration of a trade name invalid if it does not conform to the provisions of Articles 1, 2 and 5(1) above or conflicts with a prior right; in the latter case, invalidity may only be pronounced at the request of the owner of the prior right.

(3) When the decision declaring the registration invalid becomes final, it shall be notified to the Organization, which shall enter it in the Special Register of Trade Names.

(4) Invalidity shall be published in the form laid down in the Implementing Regulations relating to this Annex. The registration shall be deemed invalid as of the date on which it took place.

Article 15
Transfer of Trade Names

(1) A trade name may be assigned or transferred only with the trade, industrial, craft or agricultural establishment, or with the part of such establishment designated under the trade name.

(2) The assignment of a trade name shall be done in writing and shall require the signatures of the contracting parties. Transfers by merger of trade, industrial, craft or agricultural establishments or any other form of succession may be made by any other document proving such transfer.

(3) The acts referred to in the first paragraph above shall only be enforceable against third parties if they have been entered in the Special Register of Trade Names kept by the Organization and published in the form laid down by the Implementing Regulations relating to this Annex. A copy of such acts shall be kept by the Organization.

Article 16
Legal Action and Penalties

(1) Where the rights attaching to a trade name are threatened with infringement, the registered owner of such rights may initiate any legal action to prevent such infringement.

(2) In the event of infringement of rights referred to in the preceding paragraph, the owner of the rights may prohibit continuation and claim payment of damages, as well as any other sanction provided for in the Civil Code.

(3) Without prejudice to any damages, a person who has affixed or caused to appear, by suppression or by any alteration whatsoever on manufactured articles, the name of a manufacturer or craftsman other than the originator, or the trade name of an establishment other than that where the articles were made, shall be liable to punishment by imprisonment of from three months to one year and by a fine of from 1,000,000 to 6,000,000 CFA francs, or by either of these penalties.

(4) Any person who has knowingly displayed for sale or placed on the market articles marked with fictitious or falsified names shall be liable to the same punishment as that specified in paragraph (3).

Article 17
Scope

The provisions of this Annex shall be applicable to any trade, industrial, craft or agricultural establishment, subject to the special provisions applicable elsewhere to the establishments in question.

Article 18
Continued Validity of Trade Names
Registered or Recognized Under
the Bangui Agreement of March 2, 1977

Under this Article, any trade name registered or recognized under the Bangui Agreement of March 2, 1977, and its Annex V shall remain in force for the term specified in that Agreement.

Article 19
Acquired Rights

(1) This Annex shall apply to trade names applications made as from the day of its entry into force, subject to the rights acquired under Annex V of the Bangui Agreement of March 2, 1977.

(2) Applications for the registration of trade names filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of the said applications.

(3) However, the exercise of the rights deriving from trade names registered under the provisions referred to in paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

(4) Annex V of the Bangui Agreement of March 2, 1977, is repealed.

[Annex VI follows.]

ANNEX VI GEOGRAPHICAL INDICATIONS

TITLE I GENERAL PROVISIONS

Article 1 Definitions

For the purposes of this Annex,

(a) “geographical indication” means an indication that serves to identify a product as originating from a territory, a region, or a locality within that territory, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin;

(b) “product” means any natural, agricultural, craft or industrial product;

(c) “producer” means

- any producer of agricultural products or any other person exploiting natural products,
- any manufacturer of products of craft or industry,
- any trader dealing in such products.

Article 2 Marks Containing a Geographical Indication

(1) Registration of a trademark containing a geographical indication or constituted by such indication shall be refused or invalidated if the use of such indication in the trademark for such products is liable to mislead the public as to the true place of origin.

(2) Likewise, registration of a geographical indication which, although literally exact with respect to the territory, region or locality from which the products originate, shall also be refused or invalidated if it suggests to the public that the products originate from a different territory.

Article 3 Acquisition of Rights by Foreigners

Foreigners shall enjoy the benefits of this Annex if they fulfill the conditions imposed by it.

TITLE II CONDITIONS FOR PROTECTION

Article 4 Conditions for Protection

(1) Geographical indications shall be protected as such if they have been registered by the Organization or are to be treated as having been registered by virtue of an international convention to which the member States are party.

(2) Geographical indications foreign to the territories of the member States of the Organization may be registered by the Organization only where provided for in an international convention to which the member States are party or in the enforcing legislation.

Article 5
Geographical Indications Excluded from Protection

The following shall not be protected as geographical indications:

- (a) indications which do not correspond to the definition in Article 1(a);
- (b) indications which are contrary to morality or public policy or those which, in particular, are liable to deceive the public as to the nature, the source, the manufacturing process, the characteristic qualities or the suitability for their purpose of the goods concerned;
- (c) indications which are not protected in their country of origin or have ceased to be protected or have fallen into disuse in that country.

TITLE III
REGISTRATION PROCEDURE

Article 6
Entitlement to File an Application

Natural or legal persons carrying on an activity as a producer in the geographical area specified in the application, with respect to the products specified in the application, as well as groups of such persons, groups of consumers and any competent authority shall be entitled to file an application for registration of a geographical indication.

Article 7
Filing of the Application

Any person wishing to obtain the registration of a geographical indication shall file with the Organization or with the Ministry responsible for industrial property, or send to it by registered mail with a request for acknowledgment of receipt,

- (a) an application to the Director General of the Organization in a sufficient number of copies;
- (b) a document proving payment to the Organization of the filing fee;
- (c) the geographical area to which the indication applies;
- (d) the products for which the indication is used;
- (e) the quality, reputation or other characteristic of the products for which the indication is used.

Article 8
Statement of Filing

(1) A statement drawn up by the Organization or by the Ministry responsible for industrial property shall note each filing and specify the date and time of submission of the documents.

- (2) A copy of the statement shall be issued to the applicant.

(3) The Ministry responsible for industrial property shall forward the documents to the Organization within a period of five working days from the date of filing.

Article 9
Examination and Registration of Applications

(1) For every application for registration of a geographical indication, the Organization shall examine whether the applicant is entitled to apply for registration, whether the application contains the particulars required under Articles 5(b) and 7 and whether the prescribed fees have been paid.

(2) Where the applicant is not entitled to apply for registration, where the prescribed fees have not been paid or where the geographical indication is contrary to public policy or morality, the application shall be rejected.

(3) Where the application does not contain the particulars required under Article 7, with the exception of the requirement under letter (b), the application shall be deemed irregular. The irregularity shall be notified to the applicant or his agent with an invitation to regularize the elements within a period of three months as from the date of notification. That period may be extended by 30 days in a case of proven necessity at the request of the applicant or his agent. An application thus put in order within the said period shall retain the date of the original application. Failing regularization of the application within the prescribed time limits, the application shall be rejected.

(4) Where the requirements of paragraph (1) are fulfilled, the geographical indication shall be registered in the Special Register of Geographical Indications.

(5) No filing may be rejected under paragraph (3) of this Article unless an opportunity has been given to the applicant or his agent to correct such application to the extent and in accordance with the prescribed procedures and form.

Article 10
Unacceptability Due to Non-Payment

No filing shall be acceptable if the application is not accompanied by a document attesting payment to the Organization of the prescribed fees.

Article 11
Publication

(1) The Organization shall publish the registration and issue to the owner of the registration a certificate containing, in particular, the following particulars as they appear in the Register:

- (a) serial number of the geographical indication;
- (b) filing date of the application for registration;
- (c) geographical area to which the indication applies;
- (d) products to which the indication applies;
- (e) identity of the applicant.

(2) As from publication referred to in paragraph (1) above, any person may obtain an official copy and an extract of entries at his own expense.

Article 12
Opposition

(1) Any interested party may oppose the registration of a geographical indication by sending to the Organization, within a period of six months from the publication mentioned in Article 11 above, a written statement setting out the reasons for his opposition, which reasons must be based on an infringement either of the provisions of Articles 5 and 6 of this Annex, or of a prior right belonging to the opposing party.

(2) The Organization shall send a copy of the statement of opposition to the applicant or to his agent, who may reply, setting out his reasons, within a once-renewable period of 3 months. The reply shall be forwarded to the opponent or to his representative. If his reply does not reach the Organization by the prescribed time limit, the applicant shall be deemed to have withdrawn his application for registration and the registration shall be cancelled.

(3) Before taking a decision on the opposition, the Organization shall, on request, hear each or either of the parties or their agents.

(4) An appeal from the Organization's decision on canceling the opposition shall lie to the High Commission of Appeal within a period of three months from the date of receipt of notice of the decision by the interested parties.

(5) The Organization shall only cancel the registration in so far as the aforementioned opposition is valid.

(6) The final decision on cancellation shall be published in the official Bulletin of the Organization.

Article 13
Access to Information in the Special Register

(1) Any person may, at any time, against payment of the prescribed fee, consult the Special Register or request, at his own expense, information, extracts or copies of such information.

(2) The consultation, information, extracts or copies referred to above may relate to one geographical indication only.

Article 14
Cancellation and Modification of Registrations

(1) Any interested person or competent authority may request the court of a member State to order:

(a) cancellation of the registration of a geographical indication on the grounds that, with respect to Article 5, the indication may not as such enjoy protection;

(b) modification of the registration of a geographical indication on the grounds that the geographical area referred to in the registration does not correspond to the geographical indication or that the mention of the products for which the geographical indication is used or the mention of the quality, reputation or other characteristic of the products has been omitted or is not justified.

(2) In any action instituted under this Article, a notification of the request for cancellation or modification shall be made to the person who has filed the application for registration of the geographical indication or to his successor in title and shall be communicated, by publication in the manner laid down by the Implementing Regulations

relating to this Annex, to all persons entitled to use the geographical indication in accordance with Article 15 hereafter.

(3) The persons referred to in paragraph (2) and any other interested person may submit a petition to intervene within the time limit laid down by the court of the member State in the aforementioned notification and publication.

TITLE IV
RIGHT TO USE A GEOGRAPHICAL INDICATION;
UNLAWFUL USE

Article 15
Use of a Geographical Indication

(1) Subject to paragraphs (2) and (3) hereafter, only producers carrying on their activity for commercial purposes in the geographical area specified in the Register shall have the right to use a registered geographical indication with respect to the products specified in the register, provided that such products possess the essential characteristic qualities specified in the register.

(2) Where products have been put into circulation under the conditions defined in the preceding paragraph, under a registered geographical indication, any person shall have the right to use the geographical indication for those products.

(3) Apart from the cases referred to in the preceding paragraphs (1) and (2), it shall be unlawful to use, for commercial purposes, a registered geographical indication, or a similar designation, with respect to the products specified in the Register or similar products, even if the true origin of the products is indicated or if the geographical indication is in the form of a translation or is accompanied by terms such as “kind”, “type”, “make”, “imitation” or the like.

(4) The competent national authority of the member State concerned may decide by regulation that the quality of products put on sale or used under a registered geographical indication shall be subjected to control or that the use of such geographical indication shall be prohibited.

(5) It shall be unlawful to use in the designation or presentation of a product any means that infers or suggests that the product concerned originates in a geographical area other than its true place of origin in a manner likely to mislead the public as to the geographical origin of the product.

(6) The owner of an earlier mark that is identical with or similar to a geographical indication may continue to use his mark, except where such mark concerns wines or spirits.

Article 16
Civil Action

(1) Any interested person or any interested group of producers or consumers may bring actions to obtain the relief provided for in paragraph (2) against persons making unlawful use, within the meaning of Article 15(3) and (5), of a registered geographical indication and against persons contributing to such use.

(2) Without prejudice to paragraph (3), the actions shall be to enjoin the unlawful use, within the meaning of Article 15(3) and (5), of a registered geographical indication, or to prohibit such use where it is imminent, and to destroy the labels and other documents which have contributed or are likely to contribute to such unlawful use.

(3) Any person who has suffered damage as a result of the unlawful use, within the meaning of Article 15(3) and (5), of a registered geographical indication may require compensation from the person making unlawful use of the indication and persons who have contributed to such use.

Article 17
Penal Action

Any person intentionally making unlawful use, within the meaning of Article 15(3) and (5), of a registered geographical indication shall be liable to a term of imprisonment of not less than three months and not more than one year and to a fine of from 1,000,000 to 6,000,000 CFA francs, or one only of these penalties.

TITLE V
TRANSITIONAL AND FINAL PROVISIONS

Article 18
Acquired Rights

(1) This Annex shall apply to applications for protection of geographical indications filed as from the date of its entry into force, subject to the rights acquired under Annex VI of the Bangui Agreement of March 2, 1977.

(2) Applications for registration of appellations of origin filed prior to the date of entry into force of this Annex shall remain subject to the provisions that were applicable on the filing date of the said applications.

(3) However, the exercise of the rights deriving from appellations of origin registered under the provisions referred to in paragraph (2) above shall be subject to the provisions of this Annex as from the date of its entry into force, subject to acquired rights, which shall be maintained.

(4) Annex VI of the Bangui Agreement of March 2, 1977, is repealed.

[Annex VII follows.]

ANNEX VII
LITERARY AND ARTISTIC PROPERTY

Article 1
General

The common rules laid down in this Annex shall cover

- (a) the protection of copyright;
- (b) the protection of the rights of artists, performers, phonogram producers and broadcasting organizations (related rights);
- (c) the protection and promotion of the cultural heritage.

TITLE I
COPYRIGHT AND RELATED RIGHTS

PART ONE
COPYRIGHT

Chapter I
Introductory Provisions

Article 2
Definitions

The following terms and their alternatives as used in this Annex shall have the following meanings:

- (i) “Work” means any literary or artistic creation within the meaning of Article 5.
- (ii) “Audiovisual work” means a work consisting of a series of related images giving an impression of movement, whether or not accompanied by sounds, and, if accompanied by sounds, capable of being heard.
- (iii) “Work of applied art” means a two-dimensional or three-dimensional artistic creation having a utilitarian function or embodied in a utilitarian article, whether a work of handicraft or a work produced by industrial processes. “Utilitarian article” means an article fulfilling an intrinsic utilitarian function not consisting solely of presenting the appearance of an article or transmitting information.
- (iv) “Work of joint authorship” means a work in whose creation two or more authors have collaborated.
- (v) “Collective work” means a work created at the initiative of a natural or legal person who discloses it under his direction and name and in which the individual contributions of the various authors participating in its creation merge in the whole for which it was created so that it is impossible to attribute to each of them a separate right in the whole work once completed.
- (vi) “Composite work” means a new work in which a preexisting work is incorporated without the collaboration of the author of the latter.
- (vii) “Photographic work” means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, whatever

the nature of the technology (chemical, electronic or other) through which the recording is effected. A still image extracted from an audiovisual work shall not be deemed a photographic work, but a part of the audiovisual work concerned.

(viii) “Author” means the natural person who has created a work.

(ix) “Producer of a work” means the natural or legal person who takes the initiative and assumes the responsibility of creating such work.

(x) “Producer of an audiovisual work” means the natural or legal person who takes the initiative and the responsibility of having such work created.

(xi) “Broadcasting” means the communication of a work (including the presentation or performance of a work) to the public by wireless transmission; “Rebroadcasting” means the emission of a broadcast work. “Broadcasting” includes broadcasting by satellite which means broadcasting from the injection of a work towards a satellite, including both the uplink and downlink in the transmission, to the point where the work is communicated to the public.

Broadcasting shall also include communication of works by television.

(xii) “Communication of a work to the public” (including its presentation, performance or broadcasting) means the fact of making a work accessible to the public by means other than the distribution of copies. Any process required to make a work accessible to the public, and which so permits, shall be a “communication” and a work shall be deemed “communicated to the public” even if nobody in the public for which the work is intended actually receives it, sees it or hears it.

(xiii) “Public communication by cable” means the communication of a work to the public by wire or any other means constituted by a material substance.

(xiv) “Communication to the public” means the transmission by wire or wireless means of the images, the sounds, or the images and sounds, of a work in such a way that they may be perceived by persons outside the family circle or the immediate circle of friends in one or more places sufficiently distant from the place of origin of the transmission that, without such transmission, the images or the sounds cannot be perceived in such place, irrespective of whether those persons may perceive the images or the sounds in the same place and at the same time, or in different places and at different times.

(xv) “Public performance” means the fact of reciting, playing, dancing or otherwise performing a work either directly or through any device or process or, in the case of an audiovisual work, of showing the images in sequence or of making the accompanying sounds audible in one or more places where persons outside the family circle or the immediate circle of friends are or may be present, irrespective of whether they are or may be present in the same place and at the same time or in different places and at different times, where the performance may be perceived without there necessarily being communication to the public within the meaning of the preceding paragraph.

(xvi) “Published” means that copies of the work have been made accessible to the public with the consent of the author, by sale, rental or public lending or by any other transfer of ownership or possession, on condition that, taking into account the nature of the work, the number of such published copies is sufficient to meet the normal needs of the public. A work shall also be considered “published” if it has been stored in the memory of a computer system and made accessible to the public by any means of retrieval.

(xvii) “Reproduction” means the making of one or more copies of a work or of a part of such work in any material form whatsoever, including sound and visual recordings. The making of one or more three-dimensional copies of a two-dimensional work and the making of one or more two-dimensional copies of a three-dimensional work, as also the inclusion of a

work or a part of such work in a computer system (either in the internal memory unit or the external memory unit of a computer) shall also constitute “reproduction”.

(xviii) “Reprographic reproduction” of a work means the making of facsimile copies of originals or copies of a work by means other than painting, for instance by photocopying. The making of facsimile copies that are reduced or enlarged shall also be deemed “reprographic reproduction”.

(xix) “To perform” a work means to recite it, play it, dance it or perform it, either directly or by any device or process or, in the case of an audiovisual work, to show the images in any sequence whatsoever or to make the sounds accompanying it audible.

(xx) “Expressions of folklore” means the production of characteristic elements of the traditional artistic heritage developed and perpetuated by a community or by individuals recognized as meeting the expectations of such community, and includes folk tales, folk poetry, folk songs and instrumental music, folk dancing and entertainments as also the artistic expressions of rites and productions of folk art.

(xxi) “Copy” means the outcome of any act of reproduction of a work already fixed on a medium.

(xxii) “Computer program” means a set of instructions expressed in words, codes, schemes or any other form capable, once incorporated in a machine-readable medium, to carry out or obtain a task or particular result by a computer or by an electronic process capable of processing information.

(xxiii) “Database” means a compilation of data or of facts.

(xxiv) “Public lending” means the transfer of possession of the original or of a copy of a work for a limited period of time, for non-profit-making purposes, by an institution providing services to the public, such as a public library or public records.

(xxv) “Rental” means the transfer of possession of the original or a copy of a work for a limited period of time, for profit-making purposes.

Article 3 *Scope of Application*

(1) The provisions of this part of the Annex shall apply

(i) to works of which the author or any other original holder of copyright is a national of one of the member States of the Organization or has his habitual residence or headquarters in such State;

(ii) to audiovisual works of which the producer is a national of one of the member States of the Organization or has his habitual residence or his headquarters in such State;

(iii) to works published for the first time on the territory of one of the member States of the Organization or published for the first time in a foreign country and also published in one of the member States of the Organization within a period of 30 days;

(iv) to works of architecture erected in one of the member States of the Organization.

(2) In the case of a work of joint authorship, it shall suffice, in order that the provisions of this part of the Annex apply, for one of the joint authors to meet the requirements of paragraph (1)(i) above.

(3) The relevant provisions of the Agreement Revising the Bangui Agreement of March 2, 1977, shall apply *mutatis mutandis* in this part of the Annex.

(4) The provisions of international treaties shall remain unaffected.

Chapter II **Subject Matter of Protection**

Article 4

Subject Matter of Protection: General

(1) The author of any original literary or artistic work of the mind shall enjoy, by the mere fact of its creation, an exclusive incorporeal property right in the work which shall be enforceable against all persons. This right shall include attributes of an intellectual and moral nature as well as attributes of an economic nature, as determined by this Annex.

(2) The protection deriving from the rights laid down in paragraph (1), hereinafter referred to as “protection”, shall begin with the creation of the work even if the work is not fixed on a material medium.

Article 5

Subject Matter of Protection: Works

(1) This Annex shall apply to literary and artistic works, hereinafter referred to as “works”, constituting original creations of the mind in the literary, artistic and scientific fields, such as

- (i) works expressed in writing, including computer programs;
- (ii) lectures, addresses, sermons and other works composed of words and expressed orally;
- (iii) musical works, whether or not accompanied by words;
- (iv) dramatic and dramatico-musical works;
- (v) choreographic works and mimed works;
- (vi) audiovisual works;
- (vii) works of fine art: drawings, paintings, sculptures, engravings and lithographs;
- (viii) works of architecture;
- (ix) photographic works;
- (x) works of applied art;
- (xi) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science;
- (xii) expressions of folklore and works derived from folklore.

(2) Protection shall be independent of the mode or form of expression, of the quality and of the purpose of the work.

Article 6

Subject Matter of Protection: Derivative Works and Collections

(1) The following shall also be protected as works:

(i) translations, adaptations, arrangements and other transformations of works and of expressions of folklore;

(ii) collections of works, of expressions of folklore or of simple facts or data, such as encyclopedias, anthologies and databases, whether reproduced on a medium that may be processed by a machine or in any other form, which, by reason of the selection, coordination or arrangement of their contents, constitute creations of the mind.

(2) The protection of the works referred to in paragraph (1) shall not affect the protection of existing works used in the making of such works.

Article 7
Subject Matter Not Protected

The protection afforded by this part of the Annex shall not extend

(i) to official texts of a legislative, administrative or judicial nature or to the official translations thereof;

(ii) to news of the day;

(iii) to simple facts and data.

Chapter III
Rights Protected

Article 8
Moral Rights

(1) Independently of his economic rights and even after assignment of such rights, the author of a work shall have the right

(i) to claim authorship of his work, in particular the right to have his name affixed to copies of his work and, wherever possible and in the usual manner, in relation with any public use of his work;

(ii) to remain anonymous or to use a pseudonym;

(iii) to oppose any distortion, mutilation or other modification of his work or any other action derogatory to it where such action might be prejudicial to his honor or reputation.

(2) An author shall have the right to disclose his work. He shall determine the disclosure process and lay down the conditions thereof. Notwithstanding assignment of his right of exploitation, an author shall enjoy a right to reconsider or of withdrawal, even after publication of his work, with respect to the assignee. However, he may only exercise such right on condition that he indemnify the assignee beforehand for any prejudice the reconsideration or withdrawal may cause him. If the author decides to have his work published after having exercised his right to reconsider or of withdrawal, he shall be required to offer his rights of exploitation in the first instance to the assignee he originally chose and under the conditions originally determined.

Article 9
Economic Rights

(1) An author shall enjoy the exclusive right to exploit his work in any form whatsoever and to obtain monetary advantage therefrom. Subject to the provisions of Articles

10 to 21, the author of a work shall enjoy, in particular, the exclusive right to perform or authorize the following acts:

- (i) reproduce his work;
- (ii) translate his work;
- (iii) adapt, arrange or otherwise transform his work;
- (iv) distribute copies of his work to the public by means of sale or any other transfer of ownership or by rental;
- (v) perform his work in public;
- (vi) communicate his work (including performance) to the public by broadcasting (or retransmission) or by television;
- (vii) communicate his work (including performance or broadcasting) to the public by cable or by any other means.

(2) The rental right referred to in paragraph (1)(iv) shall not apply to the rental of computer programs in those cases where the program itself is not the essential subject matter of the rental.

Article 10 *Resale Royalty*

(1) Authors of graphic and three-dimensional works, and of manuscripts, shall have an inalienable right, regardless of any transfer of the original work, to participate in the proceeds of any sale of such work or manuscript by public auction or through a dealer, whatever the conditions under which the transaction was carried out by the latter.

(2) The above provision shall not apply to works of architecture or to works of applied art.

(3) The conditions for exercising such right, as also the rate of participation in the proceeds of sale, shall be determined by the competent national authority.

Chapter IV **Limitations on Economic Rights**

Article 11 *Free Reproduction for Private Purposes*

(1) Notwithstanding the provisions of Article 9, and subject to those of paragraph (2) of this Article and those of Article 58, it shall be permitted, without the consent of the author and without payment of remuneration, to reproduce a lawfully published work exclusively for the private use of the user.

(2) Paragraph (1) shall not apply to

(i) the reproduction of works of architecture in the form of buildings or other similar constructions;

(ii) the reprographic reproduction of works of fine art in a limited quantity, the graphical presentation of musical works (scores) and exercise manuals and other publications used once only;

(iii) the reproduction of the whole or of significant parts of databases;

(iv) the reproduction of computer programs, except in the cases provided for in Article 18;

(v) any other reproduction of a work that would prejudice the normal exploitation of the work or would cause unwarranted prejudice to the legitimate interests of the author.

Article 12
Free Reproduction in the Form of Quotation

Notwithstanding the provisions of Article 9, it shall be permitted, without the consent of the author and without payment of a remuneration, to quote a lawfully published work in another work, on condition that the source and the name of the author be stated, if the name of the author is given in the source, and on condition that such quotation is compatible with fair practice and that its extent does not exceed that justified by the intended purpose.

Article 13
Free Use for Teaching

Notwithstanding the provisions of Article 9, it shall be permitted, without the consent of the author and without payment of remuneration, but subject to the requirement of stating the source and the name of the author if such name is given in the source,

(i) to use a lawfully published work as an illustration in publications, broadcasts or sound or visual recordings intended for teaching;

(ii) to reproduce, by reprographic means for teaching, or for examinations within teaching establishments whose activities are not directly or indirectly profit-making, and to the extent justified by the intended purpose, lawfully published individual articles from a newspaper or periodical, and short extracts from a lawfully published work.

Article 14
Reprographic Reproduction
by Libraries and Archive Services

Notwithstanding the provisions of Article 9, a library or archive service whose activities are not directly or indirectly profit-making may, without the consent of the author or other holder of copyright, make individual copies of a work by means of reprographic reproduction,

(i) where the work reproduced is an article or a short extract from a written work, other than a computer program, with or without illustration, published in a collection of works or in an issue of a newspaper or periodical, and where the purpose of reproduction is to meet the request of a natural person;

(ii) where the making of such copy is for the purpose of preserving and, if necessary, in the event of it having been lost, destroyed or made unusable, replacing it or, for replacing a copy that has been lost, destroyed or rendered unusable in the permanent collection of another library or other archive service.

Article 15
Free Reproduction for Judicial
and Administrative Purposes

Notwithstanding the provisions of Article 9, it shall be permitted, without the consent of the author and without payment of remuneration, to reproduce a work intended for a judicial or administrative procedure to the extent justified by the intended purpose.

Article 16
Free Use for Informatory Purposes

Notwithstanding the provisions of Article 9, it shall be permitted, without the consent of the author and without payment of remuneration, but subject to the requirement of stating the source and the name of the author if such name is given in the source,

(i) to reproduce in the press, to broadcast or to communicate to the public, an economic, political or religious article published in newspapers or periodicals, or a broadcast work of like nature, in those cases where the right of reproduction, broadcasting or communication to the public has not been expressly reserved;

(ii) to reproduce or make available to the public, for the purposes of reporting on current events by means of photography, cinematography, or through broadcasting or communication to the public by cable, a work seen or heard during such event, to the extent justified by the intended informatory purpose;

(iii) to reproduce in the press, to broadcast or communicate to the public political speeches, lectures, addresses, sermons or other works of like nature given in public, as also pleadings made in legal proceedings, for the purposes of information and to the extent justified by the intended purpose, whereby the authors shall maintain their right to publish collections of such works.

Article 17
Free Use of the Images of Works
Permanently Located in Public Places

Notwithstanding the provisions of Article 9, it shall be permitted, without the consent of the author and without payment of remuneration, to reproduce, broadcast or communicate to the public by cable an image of a work of architecture, a work of fine art, a photographic work or a work of applied art that is permanently located in a place open to the public, except if the image of the work is the main subject of such reproduction, broadcast or communication and if it is used for profit-making purposes.

Article 18
Free Use and Adaptation of Computer Programs

(1) Notwithstanding the provisions of Article 9, the lawful owner of a copy of a computer program may, without the consent of the author and without payment of separate remuneration, make a copy or an adaptation of the program on condition that such copy or such adaptation be

(i) necessary for the use of the computer program for the purposes for which the program was obtained; or

(ii) necessary for the purpose of archiving and in order to replace a lawfully held copy where such copy has been lost, destroyed or rendered unusable.

(2) No copy or no adaptation may be made for purposes other than those set out in paragraph (1) and any copy or adaptation shall be destroyed if the prolonged possession of the copy of the computer program ceases to be lawful.

Article 19
Free Ephemeral Recording
by Broadcasting Organizations

Notwithstanding the provisions of Article 9, a broadcasting organization may, without the consent of the author and without payment of separate remuneration, make an ephemeral recording by means of its own facilities and for the purposes of its own broadcasts of a work it is authorized to broadcast. The broadcasting organization shall be required to destroy such recording within six months of it having been made, unless a longer period has been agreed with the author of the work thus recorded.

However, without such agreement, a single copy of such registration may be kept for the exclusive purpose of the conservation of archives.

Article 20
Free Public Performance

Notwithstanding the provisions of Article 9, it shall be permitted, without the consent of the author and without payment of remuneration, to publicly perform a work

- (i) at official ceremonies to the extent justified by the nature of the ceremonies;
- (ii) at religious ceremonies on premises intended for that purpose;

(iii) as part of the activities of a teaching establishment for the staff and students of such establishment, if the audience is constituted exclusively by the staff and students of the establishment or by the parents and supervisors or other persons directly related to the activities of the establishment.

Article 21
Importing for Personal Purposes

The importing of a copy of a work by a natural person, for personal purposes, shall be permitted without the consent of the author or of any other holder of the copyright in the work.

Chapter V
Term of Protection

Article 22
Term of Protection: General

Except as otherwise provided in this Chapter, the economic rights in a work shall be protected during the lifetime of the author and for seventy years after his death.

The moral rights shall be without limit in time. After the expiry of protection of the economic rights, the national collective rights administration body referred to in Article 60 shall be entitled to ensure compliance with the moral rights for the benefit of the authors.

Article 23
Term of Protection for Works of Joint Authorship

The economic rights in a work of joint authorship shall be protected during the lifetime of the last surviving author and for seventy years after his death.

Article 24
Term of Protection for Anonymous
and Pseudonymous Works

The economic rights in a work published anonymously or under a pseudonym shall be protected until the expiry of a period of seventy years as from the end of the calendar year in which such work has been lawfully published for the first time or, failing such event occurring during the seventy years following the making of the work, seventy years as from the end of the calendar year in which such work has been lawfully made accessible to the public or, failing such event occurring during the seventy years following the making of the work, seventy years as from the end of the calendar year of its making, except where, prior to the expiry of such periods, the identity of the author is disclosed or leaves no doubt, in which case the provisions of Article 22 or Article 23 shall apply.

Article 25
Term of Protection for Collective
and Audiovisual Works

The economic rights in a collective work or in an audiovisual work shall be protected until the expiry of a period of seventy years as from the end of the calendar year in which such work has been lawfully published for the first time or, failing such event occurring during the period of seventy years as from the making of the work, seventy years as from the end of the calendar year in which such work has been made accessible to the public or, failing such event occurring during the period of seventy years as from the making of the work, seventy years as from the end of the calendar year of its making.

Article 26
Term of Protection for Works of Applied Art

The economic rights in a work of applied art shall be protected until the expiry of a period of 25 years as from the making of such work.

Article 27
Calculation of Terms

In this Chapter, each time limit shall expire at the end of the calendar year during which it would normally lapse.

Chapter VI
Ownership of Rights

Article 28
Ownership of Rights: General

The author of a work shall be the first owner of the moral and economic rights in his work.

Article 29
Ownership of Rights in Works of Joint Authorship

The joint authors of a work of joint authorship shall be the first joint owners of the moral and economic rights in that work. However, if a work of joint authorship may be divided into independent parts, that is to say if the parts of such work may be reproduced, performed or otherwise used separately, the joint authors shall enjoy independent rights in

those parts, whilst remaining joint owners of the rights in the work of joint authorship considered as a whole.

Article 30
Ownership of Rights in Collective Works

The first owner of the moral and economic rights in a collective work shall be the natural or legal person on whose initiative and under whose responsibility the work has been created and who has published it under his name.

Article 31
Ownership of Rights in Works
Created Under a Work Contract
or on Commission

Where a work is created on behalf of a natural or legal person, private or public, under a work contract of the author or where the work is commissioned from the author by such person, the first owner of the economic and moral rights shall be the author, but the economic rights in the work shall be deemed to have been transferred to the employer to the extent justified by the habitual activities of the employer or of such natural or legal person at the time of the creation of the work.

Article 32
Ownership of Rights in Audiovisual Works

(1) In the case of an audiovisual work, the first owners of the moral and economic rights shall be the joint authors of the work, such as the director, the scriptwriter, the composer of the music. The authors of preexisting works adapted or used for audiovisual works shall be deemed to have been assimilated to such joint authors.

(2) Except as otherwise provided, the contract concluded between the producer of an audiovisual work and the joint authors of such work, other than the authors of musical works included therein, shall imply assignment to the producer of the economic rights of the joint authors in their contributions. However, the joint authors shall maintain, unless otherwise agreed in the contract, their economic rights in other uses of their contributions to the extent that the latter may be used separately from the audiovisual work.

Article 33
Presumption of Ownership: Authors

(1) In order that the author of a work be deemed such, in the absence of proof to the contrary, and consequently be entitled to institute proceedings, it shall suffice for his name to appear on the work in the usual manner.

(2) In the case of an anonymous work or of a pseudonymous work, except where the pseudonym leaves no doubt as to the identity of the author, the publisher whose name appears on the work shall be deemed, in the absence of proof to the contrary, to represent the author and, in that capacity, to be entitled to protect and ensure compliance with the rights of the author. This paragraph shall cease to apply when the author reveals his identity and proves his authorship.

Chapter VII

Assignment of Rights and Licensing

Section I General

Article 34 *Assignment of Rights*

(1) Economic rights shall be assignable by transfer *intra vivos* and by testament or by the effect of law by reason of death.

(2) Moral rights shall not be assignable by transfer *intra vivos* but may be assigned by testament or by the effect of law by reason of death.

Article 35 *Licenses*

(1) The author of a work may grant licenses to other persons to carry out the acts covered by his economic rights. Such licenses may be non-exclusive or exclusive.

(2) A non-exclusive license shall entitle its holder to perform, in the manner authorized to him, the acts that it concerns at the same time as the author and other holders of non-exclusive licenses.

(3) An exclusive license shall entitle its holder, to the exclusion of any other person, including the author, to carry out, in the manner authorized to him, the acts that it concerns.

(4) No license may be deemed an exclusive license unless expressly stipulated in the contract between the author and the holder of the license.

Article 36 *Form of Assignment and Licensing Contracts*

On pain of invalidity, contracts for the assignment of economic rights or the grant of licenses to carry out the act concerned by the economic rights shall be concluded in writing.

Article 37 *Scope of Assignments and Licensing*

(1) Total assignment of future works shall be invalid.

(2) The assignment of economic rights and licenses to carry out the acts concerned by the economic rights may be limited to certain specific rights as also with respect to the aims, duration, territorial applicability and scope or to the means of exploitation.

(3) Failure to mention the territorial applicability for which the economic rights are assigned or the licenses granted to carry out the acts concerned by the economic rights shall be deemed to limit the assignment or the license to the country in which the assignment has been made or the license has been granted.

(4) Failure to mention the scope or the means of exploitation for which the economic rights have been assigned or the license has been granted to carry out the acts concerned by the economic rights shall be deemed to limit the assignment or license to the scope and means of exploitation necessary for the aims referred to when making the assignment or granting the license.

Article 38
Sale of Originals or Copies of Works
and Assignment and Licensing
of Copyright in Such Works

(1) An author who transfers an original or a copy of his work by sale shall be deemed, unless stipulated to the contrary in the contract, to have assigned none of his economic rights nor to have granted a license for carrying out the acts concerned by the economic rights.

(2) Notwithstanding paragraph (1), the legitimate acquirer of an original or of a copy of a work, unless otherwise stipulated in the contract, shall enjoy the right of presentation of such original or copy directly to the public.

(3) The right under paragraph (2) shall not extend to persons who have obtained possession of originals or copies of a work by means of rental or any other means, without having acquired ownership of them.

Section II
Special Contracts

Article 39
Publishing Contracts

(1) A publishing contract is one under which the author of a work or his successors in title assign to a publisher, under specified conditions, the right to make or have made sufficient copies of the work, whereby the publisher is required to effect publication and dissemination thereof.

(2) A publishing contract shall be in writing, on pain of invalidity. The form and mode of expression, the conditions for carrying out the publication and, where appropriate, the termination clauses shall be laid down in the contract.

(3) A publishing contract shall be subject to the provisions of the national code governing civil and commercial obligations.

Article 40
Contracts at the Author's Expense

(1) A contract known as a contract "at the author's expense" shall not constitute a publishing contract within the meaning of Article 39 above.

(2) Under such contract, the author or his successors in title pay to the publisher an agreed remuneration against which the latter makes a number of copies of the work in the form and according to the modes of expression specified in the contract and effects their publication and dissemination.

(3) Such contract shall constitute a contract for services governed by usage and the provisions of the national code governing civil and commercial obligations.

Article 41
Contracts at Joint Expense

(1) A contract known as a contract "at joint expense" shall not constitute a publishing contract within the meaning of Article 39 above.

(2) Under such contract, the author or his successors in title commission a publisher to make at his expense a number of copies of the work in the form and according to the modes of expression specified in the contract and to effect publication and dissemination in accordance with the agreement reciprocally contracted to share profits and losses of exploitation in the agreed proportion.

(3) Such contract shall constitute a joint undertaking.

Article 42
Obligations of the Publisher

The publisher shall be required to furnish the author with all evidence required to establish the accuracy of his accounts, failing which he may be obliged to do so by the courts.

Article 43
Performance Contracts

(1) A performance contract is a contract under which an author or a professional association of authors affords to a natural or legal person or to an entertainment promoter the faculty of performing his works or the works that constitute the repertoire of such body under the conditions that he stipulates.

(2) A contract by which an author or a professional association of authors affords to an entertainment promoter the faculty of performing, during the term of the contract, the present or future works that constitute the repertoire of the author or of such association, under the conditions laid down by the author or his successors in title or by such association, is known as a “general performance contract”.

Article 44
Form of Performance Contracts

(1) The right of performance may be assigned free of charge or against payment.

(2) A performance contract shall be in writing, on pain of invalidity. It shall be concluded for a specified duration or for a specified number of communications to the public. The exclusive rights, the conditions of execution and, where appropriate, the termination clauses shall be laid down in the contract.

Article 45
Obligations of Entertainment Promoters

(1) An entertainment promoter shall be required to inform the author or his representatives of the exact program of public performances and to furnish to them a certified statement of his takings.

(2) An entertainment promoter shall be required to effect the public performance under technical conditions suitable to ensure the intellectual and moral rights of the author.

(3) An entertainment promoter may not transfer the enjoyment of the contract without the consent of the author.

PART TWO
RIGHTS OF PERFORMERS,
PRODUCERS OF PHONOGRAMS
AND BROADCASTING ORGANIZATIONS
(RELATED RIGHTS)

Chapter I
Introductory Provisions

Article 46
Definitions

The following terms and their alternatives as used in this part of the Annex shall have the following meanings:

(i) “Performers” means the actors, singers, musicians, dancers and other persons who perform, sing, deliver, play in or otherwise perform literary or artistic works or expressions of folklore.

(ii) “Copy of a phonogram” means any material medium containing sounds reproduced directly or indirectly from a phonogram and which incorporate all or a substantial part of the sounds fixed on such phonogram.

(iii) “Fixation” means the incorporation of sounds, images or of sounds and images in a material medium that is permanent or sufficiently stable to permit their perception, reproduction or communication in any manner whatsoever during a period of time that is more than provisional.

(iv) “Phonogram” means any exclusively sound fixation of sounds from a performance or of other sounds.

(v) “Phonogram producer” means the natural or legal person who is first to take the initiative and responsibility for fixing sounds from a performance or other sounds.

(2) The definitions contained in Article 2 of Part One of this Annex shall *mutatis mutandis* to this Part.

Article 47
Scope of Application of the Law

(1) The provisions of this Part of the Annex shall apply

(i) to performances where

— the performer is a national of one of the member States of the Organization,

— the performance takes place on the territory of one of the member States of the Organization,

— a performance which has not been fixed on a phonogram is incorporated in a broadcast program protected under this Part of the Annex;

(ii) to phonograms where

— the producer is a national of one of the member States of the Organization or

— the first fixation of the sounds has been done in one of the member States of the Organization;

(iii) to broadcast programs where

— the headquarters of the organization is located on the territory of one of the member States of the Organization or

— the broadcast program has been transmitted from a station located on the territory of one of the member States of the Organization.

(2) The relevant provisions of the Agreement Revising the Bangui Agreement of March 2, 1977, shall apply *mutatis mutandis* to this Part of the Annex.

(3) The provisions of international treaties shall remain unaffected.

Chapter II **Authorization Rights**

Article 48 *Authorization Rights of Performers*

(1) Subject to the provisions of Articles 52 to 54, a performer shall have the exclusive right to carry out or authorize the following acts:

(i) the broadcasting of his performance, except where the broadcast

— is made by means of a fixation of the performance other than a fixation made under Article 54 or

— is a retransmission authorized by the broadcasting organization that was the first to transmit the performance;

(ii) the communication to the public of his performance, except where such communication

— is made by means of a fixation of the performance or

— is made by means of a broadcast of the performance;

(iii) the fixation of his non-fixed performance;

(iv) the reproduction of a fixation of his performance;

(v) the distribution of copies of the fixation of his performance by sale or by any other transfer of ownership or by rental.

(2) Unless otherwise agreed,

(i) the broadcasting authorization shall not imply authorization to permit other broadcasting organizations to transmit the performance;

(ii) the broadcasting authorization shall not imply authorization to fix the performance;

(iii) the authorization to broadcast and fix the performance shall not imply authorization to reproduce the fixation;

(iv) the authorization to fix the performance and to reproduce the fixation shall not imply authorization to broadcast the performance by means of the fixation or of its reproductions.

Article 49
Authorization Rights of Phonogram Producers

Subject to the provisions of Articles 52 and 54, a phonogram producer shall have the exclusive right to carry out or authorize the following acts:

- (i) the direct or indirect reproduction of his phonogram;
- (ii) distribution to the public of copies of his phonogram by sale or by other transfer of ownership or by rental.

Article 50
Authorization Rights of Broadcasting Organizations

Subject to the provisions of Articles 52 and 54, a broadcasting organization shall have the right to carry out or authorize the following acts:

- (i) the retransmission of its broadcast programs;
- (ii) the fixation of its broadcast programs;
- (iii) the reproduction of a fixation of its broadcast programs;
- (iv) communication to the public of its television programs.

Chapter III
Equitable Remuneration
for the Use of Phonograms

Article 51
Equitable Remuneration for Broadcasting
or Communication to the Public

(1) Where a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or communication to the public, an equitable single remuneration, intended both for the performers and the producer, shall be paid by the user to the national collective rights administration body.

(2) The amount collected for the use of a phonogram shall be shared between the producer and the performers. The latter shall share the amount received or will use it in accordance with the agreements that exist between them.

Chapter IV
Free Use

Article 52
Free Use: General

Notwithstanding the provisions of Articles 48 to 51, the following acts shall be permitted without the consent of the entitled persons referred to in those Articles and without payment of remuneration:

- (i) private use subject to the provisions of Article 58;
- (ii) reporting on current events, on condition that use is made only of short fragments of a performance, a phonogram or a broadcast program;

(iii) use solely for the purposes of teaching or scientific research;

(iv) quotation, in the form of short fragments, from a performance, a phonogram or a broadcast program on condition that such quotations comply with fair use and are justified by their informatory aim;

(v) all other uses that constitute exceptions with respect to works protected by copyright under this Annex.

Article 53
Free Use of Performances

Once performers have authorized the incorporation of their performances in fixations of images or images and sounds, the provisions of Article 48 shall cease to apply.

Article 54
Free Use by Broadcasting Organizations

The authorizations required under Articles 48 to 51 for making fixations of performances and of broadcast programs and for reproducing such fixations and reproducing phonograms published for commercial purposes shall not be required where the fixation or the reproduction has been made by a broadcasting organization using its own facilities and for its own programs, on condition that

(i) for each broadcast of a fixation of a performance or of its reproductions, made under this Article, the broadcasting organization is entitled to broadcast the performance concerned;

(ii) for each broadcast of a fixation of a program, or of a reproduction of such fixation, made under this Article, the broadcasting organization is entitled to broadcast the program;

(iii) for any fixation made under this Article or reproductions thereof, the fixation and its reproductions are destroyed within a period having the same duration as that applying to fixations and reproductions of works protected by copyright under Article 19 of this Annex, with the exception of a single copy which may be kept for the exclusive purpose of archive conservation.

Chapter V
Term of Protection

Article 55
Term of Protection for Performances

The term of protection afforded to performances under this part of the Annex shall be fifty years as from

(i) the end of the year of fixation for performances fixed on a phonogram;

(ii) the end of the year in which the performance took place for performances not fixed on phonograms.

Article 56
Term of Protection for Phonograms

The term of protection afforded to phonograms under this part of the Annex shall be fifty years as from the end of the year of fixation.

Article 57
Term of Protection for Broadcasts

The term of protection afforded to broadcasts under this part of the Annex shall be twenty-five years as from the end of the year in which the broadcast took place.

PART THREE
COMMON PROVISIONS

Article 58
Remuneration for Private Copying

(1) The authors of literary and artistic works, performers in respect of their performances fixed on phonograms and phonogram producers shall be entitled to remuneration for the reproduction of such works, performances and phonograms intended for strictly personal and private use and made in accordance with the provisions of Articles 11 and 52 of this Annex.

(2) The national laws of the member countries shall have the faculty of determining any conditions relating to such remuneration for private copying.

Article 59
Paying Public Domain and
Exploitation of Expressions of Folklore

(1) The exploitation of expressions of folklore and that of works or productions that have fallen into the public domain on expiry of the terms of protection referred to in Chapters V of Part One and Part Two of this Annex shall be subject to the user entering into an undertaking to pay to the national collective rights administration body a relevant royalty.

(2) In the case of works or productions that have fallen into the public domain, the royalty shall be equal to one half the rate of remuneration normally agreed in the contracts or by usage with respect to authors and holders of related rights in protected works and productions. The revenue from the collection of such royalties shall be devoted to welfare and cultural purposes.

(3) A part of the royalties collected with respect to the exploitation of expressions of folklore shall be devoted to welfare and cultural purposes.

PART FOUR
COLLECTIVE ADMINISTRATION

Article 60
Collective Administration

(1) The protection, exploitation and administration of the rights of authors of works and the rights of holders of related rights as defined in this Annex together with the defense of their moral interests shall be entrusted to a national collective rights administration body of which the structure, tasks and operation are to be determined by the competent national authority of each member State of the Organization.

(2) The provisions of paragraph (1) above shall in no event prejudice the faculty enjoyed by the authors of works and their successors in title and by the holders of related rights to assert the rights afforded them by this Annex.

(3) The national collective rights administration body shall administer on its national territory the interests of the other national and foreign bodies within the framework of conventions or agreements that it may conclude with them.

PART FIVE
MEASURES, REMEDIES AND SANCTIONS
CONCERNING PIRACY
AND OTHER INFRINGEMENTS

Article 61
Persons Entitled to Act

The following, in particular, shall be entitled to act:

- (i) the holders of infringed rights or their successors in title;
- (ii) the national collective rights administration body;
- (iii) the professional associations of rightholders regularly constituted to defend the collective interests of their members.

Article 62
Protective Measures

(1) At the request of the persons referred to in the preceding Article, the court competent to hear the proceedings instituted under civil law in accordance with this Annex shall be empowered, subject to the relevant provisions of the national codes of civil and criminal procedure, and subject to the conditions it deems reasonable,

(i) to issue an order prohibiting the committing or ordering the cessation of the infringement of any right protected under this Annex;

(ii) to order the seizure of copies of works or of sound recordings suspected of having been made or imported without the consent of the holder of the right protected under this Annex where the making or importing of copies is subject to authorization, and of the packaging of such copies, the devices that have been used to make them and the documents, accounts or business papers relating to such copies.

(2) The provisions of the national codes of civil and criminal procedure in respect of search and seizure shall apply *mutatis mutandis* to infringements of the rights protected under this Annex.

(3) The provisions of the national customs codes relating to the suspension of release of goods suspected of being unlawful shall apply *mutatis mutandis* to the articles or equipment protected under this Annex.

Article 63
Civil Penalties

(1) The persons referred to in Article 61 whose recognized rights have been infringed shall be entitled to obtain payment, by the infringer, of damages to compensate the prejudice they have suffered as a consequence of the infringement and the payment of the costs arising from the infringing act, including legal costs.

The amount of damages shall be determined in accordance with the relevant provisions of the national civil code, taking into account the gravity of the material and moral prejudice

suffered by the rightholder and of the size of the profit that the infringer has derived from the infringement.

(2) Where copies made in infringement of rights exist, the judicial authorities shall be empowered to order that such copies and their packaging be destroyed or that they be disposed of in some other reasonable manner, outside the commercial circuits, in order to avoid causing prejudice to the rightholder, unless the rightholder requests otherwise.

(3) Where there is a danger of the equipment being used to commit, or to continue to commit, infringing acts, the court, wherever reasonable, shall order that it be destroyed, that it be disposed of in some other manner outside the commercial circuits in order to reduce to a minimum the risk of further infringement, or that it be handed to the rightholder.

(4) Where the danger exists that the infringing acts will continue, the court shall expressly order the cessation of such acts. It shall also determine an amount to be paid as a daily fine.

Article 64 *Criminal Penalties*

(1) Any infringement of a right protected under this Annex, if committed with intent or by gross negligence and with a profit-making aim, shall be punished, in accordance with the relevant provisions of the national criminal code and of the national code of criminal procedure, by imprisonment or a sufficiently dissuasive fine or by both penalties.

(2) The court shall be empowered

(i) to double the upper limit of the penalties laid down in paragraph (1) where the accused person is sentenced for a further act constituting infringement of rights less than five years after having been sentenced for earlier infringement or where it is established that he habitually commits such acts;

(ii) to order confiscation of the seized revenue on behalf of the holder of the infringed rights;

(iii) to order confiscation and destruction of infringing works and of the equipment that has served to commit the infringement;

(iv) to order the provisional or definitive closure of the establishment in which the work has been published, reproduced, formed or communicated or any other place in which the infringement has been committed;

(v) to order publication of the sentence at the expense of the person sentenced.

(3) The court shall also apply the measures and penalties referred to in Articles 62 and 63 under criminal proceedings, save where a decision on the penalties has already been taken in civil proceedings.

Article 65 *Measures, Damages and Penalties* *for Abuse of Technical Facilities*

(1) The following acts shall be deemed unlawful and, for the purposes of Articles 62 to 64, shall be assimilated to an infringement of the rights of authors and of other holders of copyright:

(i) making or importing, for sale or rental of a device or facility specially designed or adapted to render inoperative any device or facility intended to prevent or restrict the

reproduction or impair the quality of copies made (the latter device or facility is hereinafter referred to as a “device or facility for protection against copying or for regulating copying”);

(ii) making, or importing, for sale or rental, of a device or facility such as to permit or facilitate the reception of an encoded program broadcast or communicated in any other manner to the public, by persons not entitled to receive it.

(2) For the implementation of Articles 62 to 64, a device or facility specifically designed or adopted to render inoperative any device or facility for protection against copying or for regulating copying as referred to in paragraph (1) shall be assimilated to infringing copies of works.

(3) The author of a work or any other holder of copyright in a work shall be entitled to damages as provided for in Article 62(1) in the same way as when his rights have been infringed, in cases where

(i) although copies of a work have been made by the author himself, or with his authorization, and offered for sale or rental in electronic form together with a device or facility for protection against copying or for regulating copying, a device or facility for protection or regulation is made or imported for sale or rental;

(ii) although the work is included in an encoded program that is broadcast or communicated in some other manner to the public by the author himself, or with his authorization, a device or facility permitting or facilitating the reception of the program by persons not entitled to receive it is made or imported for sale or rental.

PART SIX SPECIAL PROVISIONS

Article 66 *Retroactive Effect*

(1) Subject to the provisions of Article 59, the provisions of this Annex shall also apply to works that were created, to performances that took place or were fixed, to phonograms that have been fixed and to broadcasts that have taken place, prior to the date of entry into force of this Annex, on condition that such works, performances, phonograms, and broadcasts have not yet fallen into the public domain by reason of the expiry of the term of protection which they enjoyed under the preceding legislation or under the legislation of their country of origin.

(2) The legal effects of acts and contracts concluded or stipulated prior to the date of entry into force of this Annex shall remain entirely unaffected.

TITLE II PROTECTION AND PROMOTION OF THE CULTURAL HERITAGE

Chapter I **Definitions**

Article 67 *Cultural Heritage*

(1) The cultural heritage comprises all those material or immaterial human productions that are characteristic of a nation over time and space.

(2) Such productions relate to

- (i) folklore;
- (ii) sites and monuments;
- (iii) ensembles.

Article 68
Folklore

(1) Folklore means the literary, artistic, religious, scientific, technological and other traditions and productions as a whole created by communities and handed down from generation to generation.

(2) The following, in particular, shall be included in that definition:

(a) literary works of all kinds, whether in oral or written form, stories, legends, proverbs, epics, chronicles, myths, riddles;

(b) artistic styles and productions:

(i) dances,

(ii) musical productions of all kinds,

(iii) dramatic, dramatico-musical, choreographic and pantomime productions,

(iv) styles and productions of fine art and decorative art by any process,

(v) architectural styles;

(c) religious traditions and celebrations:

(i) rites and rituals,

(ii) objects, vestments and places of worship,

(iii) initiations;

(d) educational traditions:

(i) sports, games,

(ii) codes of manners and social conventions;

(e) scientific knowledge and works:

(i) practices and products of medicine and of the pharmacopoeia,

(ii) theoretical and practical attainments in the fields of natural science, physics, mathematics and astronomy;

(f) technical knowledge and productions:

(i) metallurgical and textile industries,

(ii) agricultural techniques,

(iii) hunting and fishing techniques.

Article 69

Sites

Sites are works of man or joint works of man and of nature and also those areas, including archeological sites, designated as of importance from a historical, esthetic, ethnological or anthropological, paleontological or archeological point of view.

Article 70

Monuments

(1) Monuments means works of architecture, sculpture or monumental painting, elements or structures of an archeological nature, rock painting sites, inscriptions, caves and groups of elements whose conservation is of public interest from the point of view of the history of arts or science, of paleontology or of the environment, of archeology, prehistory or history.

(2) Consequently, movable and immovable property designated, for religious or non-religious purposes, as of importance for archeology, prehistory, history, literature, art or science are considered monuments if they belong to the following categories:

(a) collections and rare specimens of zoology, botany, mineralogy and anatomy, articles having a paleontological interest;

(b) property relating to history, including the history of science and technology, military and social history and the life of national leaders, thinkers, scholars, artists and events of national importance;

(c) the produce of archeological digs, both regular and clandestine, together with archeological discoveries, particularly paleontological findings, archeological sites, rock painting sites and archeological objects of national importance;

(d) elements from the dismantling of artistic or historic monuments and archeological sites;

(e) items of antiquity such as inscriptions, coins and engraved seals, weights and measures;

(f) products of an ethnographical nature, such as ornaments and costumes, religious objects, musical instruments, objects of furnishing, languages and dialects, systems of writing, products of the traditional pharmacopoeia, medicine and psychotherapy, food and clothing traditions;

(g) items of artistic interest, such as

(i) pictures, paintings and drawings made entirely by hand in any medium and of any material, excluding industrial designs and manufactured articles decorated by hand,

(ii) original productions of statuary art and sculpture in all materials,

(iii) original engravings, etchings and lithographies,

(iv) original tapestries, weaving, assemblages and montages in all materials;

(h) rare manuscripts and incunabula, books, documents and ancient publications of special interest, particularly with respect to history, art, science, literature, whether individually or in collections;

(i) postage stamps, taxation stamps and the like, whether individually or in collections;

(j) archives, including photographic, phonographic, cinematography, computer and multimedia;

(k) furnishings, mosaics and ancient musical instruments.

Article 71
Ensembles

Ensembles are groups of individual or assembled constructions which, by reason of their architecture, unity or integration in the landscape, are designated as of importance from an esthetic, ethnological or anthropological, paleontological or archeological point of view.

Chapter II
Protection

Section I
General

Article 72
Protection Procedure

(1) The protection, safeguard and promotion of the cultural heritage as defined in Articles 68, 69 and 70 above, shall be the responsibility of the State.

(2) In order to provide such protection, safeguard and promotion, the State shall carry out an inventory, determine, classify, place in security and illustrate the elements that make up the cultural heritage.

Article 73
Prohibited Acts

(1) It shall be prohibited to denature, destroy, exploit, sell, dispose of or transfer illegally any or a part of the property that makes up the cultural heritage.

(2) Except where a special authorization is issued by the competent national authority designated to that end, the following shall remain prohibited when carried out for profit making purposes:

(a) the publication, reproduction and distribution of copies of any cultural property, whether classified or not, listed or not, ancient or recent, and considered by this Act as part of the national cultural heritage;

(b) any recitation, public performance, any transmission by wire or by wireless means and any other form of communication to the public of any cultural asset, whether classified or not, identified or not, ancient or recent and considered by this Act as an element of the national cultural heritage.

Article 74
Free Use

(1) The provisions of Article 73(2) shall not apply in the following cases:

(a) use for teaching;

(b) use as illustration of the original work of an author on condition that the scope of such use remains compatible with honest practice;

(c) borrowings for the creation of an original work from one or more authors.

(2) The provisions of Article 73(2) shall not apply in the cases referred to in Chapter IV of Title I of this Annex.

Article 75
State Controls

In order to prevent looting, loss or deterioration, the State shall undertake the control of export, distribution, disposal and sale of cultural property, whether classified or not, listed or not, or whether ancient or recent.

Article 76
Right of Preemption

The State shall enjoy a right of preemption with regard to any property liable to enrich the cultural heritage of the nation.

Section II
Inventory and Classification
Procedures

Article 77
Notification of Entry

Entry in the inventory of cultural property shall be notified to its owner, holder or occupier.

Article 78
Time Limits for Classification

(1) An entry shall be without effect if it is not followed within six months of notification by a decision to classify.

(2) An entry may be extended where necessary; in no case may the total duration exceed 18 months.

Article 79
Notification of Classification

Classification shall be notified to the owner, holder or the occupier by the competent national authority.

Section III
Effects of Inventory and Classification

Article 80
Prior Authorization

Entry in the inventory shall imply for the owner, holder or occupier the obligation to apply to the competent national authority for prior authorization before making any modification to the location or the object or before undertaking work other than normal maintenance or everyday utilization.

Article 81
Right of Opposition

- (1) Entry shall further permit the administrative authority to oppose
 - (a) any work liable to prejudice the integrity of the cultural property;
 - (b) the export or transfer of listed movable property.
- (2) The effect of opposition shall be to prohibit work up to the expiry of the total duration of the listing.

Article 82
Effects of Classification

The effects of classification shall continue to apply to the cultural property in the event of any change of ownership.

Article 83
Conditions of Disposal

- (1) Anyone who disposes of classified property, either by sale or by any other means, shall be required, prior to carrying out the act of disposal, on pain of invalidity of such act,
 - (a) to inform the other party of the status of such property;
 - (b) to inform the competent authority within the fifteen (15) days preceding the act of disposal of such property.
- (2) Any classified property belonging to a public legal person may be disposed of only with the express consent of the competent administrative authority.

Article 84
Right to Restore Classified Property

The State may have carried out at its own cost such work as is indispensable for the restoring or conserving of classified property that does not belong to it. For such purpose, it may take *ex-officio* possession of such property during the time required for carrying out the work.

Article 85
Right to Indemnity

The owners, holders or occupiers may, where appropriate, claim the allocation of an indemnity for loss of enjoyment of ownership, to be determined in accordance with the relevant national provisions.

Article 86
Right of Visit

In view of the costs borne by the State and where the classified property is such that it may be opened to the public or viewed by it, a fee for visiting may be decided, to the benefit of the special fund referred to in Article 95(2) hereinafter and of which the amount shall be laid down by the competent authority.

Article 87
Violation of Prior Consent

Where work referred to in Article 80 above is undertaken without prior consent, the competent national authority, once it has become aware of such fact, shall order the immediate suspension of the work and restoral to the previous state, at the expense of the offenders, of the cultural property for which it is responsible or which it supervises, until the property has fully recovered its identity.

Article 88
Unlawful Disposal of Materials or Fragments

(1) The disposal of materials or fragments that have been unlawfully removed from a cultural property that has been classified or listed in the inventory, or any act by which the possession or holding of such materials or fragments is transferred to third parties, shall be invalid.

(2) Such third parties, who shall be jointly responsible with the owners for the return of any such materials or fragments supplied to them, may not claim any indemnity from the State.

(3) The indemnity due under Article 90(1) below may be applied for and paid only if, within the year following the date of declaration, there has been no amicable agreement on the expropriation indemnity or no court expropriation decision.

Article 89
Protection of Classified Immovable Property

(1) No building may be erected at a classified site or contiguous with a classified building; no conventional easement may be agreed with respect to classified property without the consent of the competent national authority.

(2) Legal easements such as to degrade property shall not apply to immovable property that has been classified or listed in the inventory.

(3) Any classified site within an urban development plan shall constitute an unconstructible zone.

(4) Subject to the penal and administrative sanctions provided in such matters, the posting of bills and installation of extraneous advertising devices shall be prohibited on classified monuments and, where appropriate, in the vicinity as determined, in each case, in the prescribed manner.

Article 90
Classification Conditions

(1) The classification of property may give rise to payment of an indemnity to make good any prejudice arising therefrom.

(2) The administrative acts of classification shall lay down the classification conditions by amicable agreement.

(3) Failing the owner's consent, classification shall be given *ex officio*. Claims for indemnities shall be submitted to the competent national administration within six (6) months of notification of the act of *ex-officio* classification, on pain of foreclosure. Disputes concerning the principle or the amount of the indemnity shall be brought before the jurisdiction within whose competence the property classified *ex officio* is situated or held.

Article 91
Expropriation in the Public Interest

(1) The State may expropriate, in compliance with the legislation on expropriation in the public interest, owners of their classified or listed property and owners of property whose acquisition is necessary in order to isolate, open up or improve classified property.

(2) The declaration of public interest shall automatically entail the classification of the listed property.

Article 92
Exception to Expropriation

No classified or listed property may be included in an enquiry for the purposes of expropriation in the public interest or in a special land development zone, unless it has been previously declassified or unless the listing has been discontinued by reason of the legitimate priority afforded the planned land development over considerations of a cultural nature; exceptions should be made only where such development is not detrimental in any way to the conservation and preservation of the classified property.

Chapter III
Safeguards

Article 93
Measures of Safeguard

The safeguard of the cultural heritage shall be ensured, in particular, by

- (a) the creation and development of museums, the constitution of collections of all kinds, of funds, of foundations and of conservation structures;
- (b) the survey, listing and restoring of sites and monuments;
- (c) recording by image and by sound the cultural traditions of the nation;
- (d) the setting up of written, visual and sound archives;
- (e) the regulation of access to sites, monuments and protected ensembles.

Chapter IV
Promotion

Article 94
Right to the Cultural Heritage

The State shall afford

- (a) to all citizens, a right of access to the values of the cultural heritage;
- (b) to craftsmen, artists and other creators, a right to assistance and encouragement.

Article 95
Measures to Promote the Cultural Heritage

The State shall guarantee and ensure the exercise of the rights referred to in Article 94

(a) by means of information and education in all forms, particularly by the inclusion of the values of the cultural heritage in educational, teaching and training programs in public and private institutions at all levels;

(b) by the creation of a special fund devoted to cultural and welfare purposes, particularly

(i) to the upkeep, conservation and enrichment of the cultural heritage,

(ii) to the exploitation of the riches of the cultural heritage,

(iii) to archeological investigations and digs,

(iv) to the support and encouragement of

— artists, craftsmen, authors and other creators,

— cultural initiatives and activities of all kinds,

— by measures furthering priority integration of all types of individual and collective, national or African, works into the national life,

— by the allocation of at least one percent of the cost of public buildings or buildings open to the public to their decoration and furnishing by national or African artists and craftsmen.

Chapter V **Sanctions**

Article 96

Penalties for Offenses

Against the Protection of Cultural Property

(1) Any infringement of the provisions of Articles 80 and 81 of this Annex shall be punished by a fine of which the amount shall be laid down in accordance with the provisions of the relevant national legislation, without prejudice to any action for damages which may be brought by the competent national authority.

(2) Any person who knowingly infringes the provisions of Article 73 of this Annex shall be punished by a term of imprisonment and a fine in accordance with the relevant provisions of the national legislation, without prejudice to any damages.

(3) Any infringement of the provisions of Articles 83 and 88 of this Annex shall be liable to a term of imprisonment or a fine or both penalties.

(4) Any person who infringes the provisions of Article 92 above shall be liable to a fine of which the amount shall be determined by regulations. Where the work referred to in the aforementioned Article has prejudiced the integrity of the property, the offender shall be liable to the penalties provided for in paragraph (3) above.

Chapter VI
Miscellaneous and Final Provisions

Article 97
High Commission for the National Cultural Heritage

There shall be established in each member State a High Commission for the Cultural Heritage. The Commission shall be consulted on all matters concerning the protection, safeguard and promotion of the cultural heritage.

Article 98
Implementing Conditions

The implementing conditions for the provisions of Articles 72, 75, 76, 86 and 87 shall be laid down by regulations.

Article 99
Final Provisions

Annex VII of the Bangui Agreement of March 2, 1977, is repealed.

[Annex VIII follows.]

ANNEX VIII PROTECTION AGAINST UNFAIR COMPETITION

Article 1 General Principles

(1)(a) Apart from the acts and practices referred to in Articles 2 to 6, an act of unfair competition shall be constituted by any act or practice which, in the course of industrial or commercial activities, is contrary to honest practice.

(b) Any natural or legal person who has suffered damage or is liable to suffer damage due to an act of unfair competition may institute proceedings before the court of a member State and may obtain injunctions, damages and any other remedy provided by civil law.

(2) Articles 1 to 6 shall apply independently of and in addition to any legislative provision protecting inventions, industrial designs, trademarks, literary and artistic works and other subject matter of intellectual property.

Article 2 Confusion with Another's Enterprise or Activities

(1) Any act or practice which, in the course of industrial or commercial activities, generates or is likely to generate confusion with the enterprise or activities of another person, in particular with the products or services proposed by such enterprise, shall constitute an act of unfair competition.

(2) Confusion may concern, in particular,

(a) a trademark, whether registered or not;

(b) a trade name;

(c) the distinctive sign of an enterprise other than a trademark or a trade name;

(d) the external appearance of a product;

(e) the get-up of products or services;

(f) a famous person or well-known fictional character.

Article 3 Acts Damaging to Another's Image or Reputation

(1) Any act or practice which, in the course of industrial or commercial activities, damages or is liable to damage the image or reputation of another's enterprise, whether the act or the practice generates confusion or not, shall constitute an act of unfair competition.

(2) Damage to another's image or reputation may result, in particular, from a weakening of the image or reputation attaching to

(a) a trademark, whether registered or not;

(b) a trade name;

(c) the distinctive sign of the enterprise other than a trademark or a trade name;

(d) the external appearance of a product;

- (e) the get-up of products or services;
- (f) a famous person or a well-known fictional character.

Article 4
Deceiving the Public

(1) Any act or practice which, in the course of industrial or commercial activities, misleads or is likely to mislead the public with respect to an enterprise or its activities, in particular the products or services proposed by the enterprise, shall constitute an act of unfair competition.

(2) The public may be misled by advertising or promotional activities, particularly with respect to the following elements:

- (a) the manufacturing product process of a product;
- (b) the suitability of a or service for a given purpose;
- (c) the quality, quantity or other characteristic of a product or service;
- (d) the geographical origin of a product or service;
- (e) the conditions under which a product or service is proposed or supplied;
- (f) the price of a product or service or its method of calculation.

Article 5
Disparaging Another's Enterprise
or Activities

(1) Any false or abusive allegation, in the course of industrial or commercial activities, which discredits or is liable to discredit another's enterprise or activities, in particular the products or services proposed by the enterprise, shall constitute an act of unfair competition.

(2) Disparagement may result from advertising or promotional activities and concern, in particular, the following elements:

- (a) the manufacturing process of a product;
- (b) the suitability of a product or service for a given purpose;
- (c) the quality, quantity or other characteristic of a product or service;
- (d) the conditions under which a product or service is proposed or supplied;
- (e) the price of a product or service or its method of calculation.

Article 6
Unfair Competition
Concerning Confidential Information

(1) Any act or practice which, in the course of industrial or commercial activities, leads to the disclosure, acquisition or use by third parties of confidential information without the consent of the person legally entitled to possess such information (hereinafter referred to as "the lawful holder"), in a manner contrary to honest commercial practice, shall constitute an act of unfair competition.

(2) The disclosure, acquisition or use of confidential information by a third party without the consent of the lawful holder may, in particular, result from the following acts:

- (a) industrial or commercial espionage;
- (b) breach of contract;
- (c) breach of trust;
- (d) instigation to commit one of the acts referred to in subparagraphs (a) to (c);
- (e) acquisition of confidential information by a third party who knew that such acquisition involved one of the acts referred to in subparagraphs (a) and (b) or whose ignorance of that fact constituted gross negligence.

(3) For the purposes of this Article, information shall be considered “confidential” when

(a) in its totality or in the configuration or exact assembly of its elements, it is not generally known to persons belonging to the circles that normally deal with that type of information or is not readily available to them;

(b) it has a commercial value because it is confidential;

(c) its lawful holder has taken reasonable precautions, in view of the circumstances, to keep it confidential.

(4) Any act or practice which, in the course of industrial or commercial activities, constitutes or leads to

(a) dishonest use in commerce of confidential data obtained from tests or other confidential data whose production requires considerable effort and which have been communicated to a competent authority for the purpose of obtaining authorization to market pharmaceutical products or chemical products for agriculture comprising new chemical entities, or

(b) disclosure of such data, except where necessary to protect the public or unless measures have been taken to ensure that the data are protected against dishonest use in commerce,

shall be considered an act of unfair competition.

Article 7
Disorganization of a Competing Enterprise
and of the Market

Any act or practice which, in the course of industrial or commercial activities, is liable to disorganize a competing enterprise, its market or the market of the profession concerned, shall constitute an act of unlawful competition.

Disorganization may be achieved by:

(a) suppression of advertising;

(b) diverting of orders;

(c) practicing abnormally low prices;

(d) disorganizing the sales network;

(e) poaching staff;

(f) inducing staff to strike;

(g) failure to comply with the regulations on the exercise of the activity concerned.

Article 8
Interpretation

For the purposes of this Annex:

(a) “weakening of the image or reputation” means lessening the distinctive character or advertising value of a trademark, a trade name or other distinctive sign of an enterprise, of the external appearance of a product or of the get-up of products or services, or of a famous person or a well-known fictional character;

(b) “industrial or commercial activities” also means activities of the liberal professions;

(c) “external appearance of a product” means the packaging, shape, color or other non-functional characteristics of products;

(d) “trademarks” means marks relating to products, marks relating to services and marks relating to both products and services;

(e) “practice” means not only an act in the strict sense, but also any omission to perform an act;

(f) “presentation of products or services” means advertising, in particular;

(g) “distinctive sign of an enterprise” covers the whole range of signs, symbols, emblems, logos, slogans, etc., used by an enterprise in the course of industrial or commercial activities, to lend a certain identity to the enterprise and to the products it manufactures or the services it provides.

[Annex IX follows.]

ANNEX IX
LAYOUT-DESIGNS (TOPOGRAPHIES)
OF INTEGRATED CIRCUITS

Article 1
Definitions

For the purposes of this Annex:

(a) “integrated circuit” means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in or on a piece of material and which is intended to perform an electronic function;

(b) “layout-design” (synonym of “topography”) means the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such three-dimensional disposition prepared for an integrated circuit intended for manufacture;

(c) “holder” means the natural or legal person who is to be regarded as the beneficiary of the protection referred to in Article 5.

Article 2
Subject Matter and Protection

(1) Layout-designs of integrated circuits may be protected under this Annex if, and to the extent that, they are original within the meaning of Article 3 below.

(2) A registration may be applied for only if the layout-design has not yet been commercially exploited or, if commercially exploited, for not more than two years anywhere in the world.

Article 3
Originality

(1) A layout-design shall be deemed original if it is the result of its creator’s own intellectual effort and is not commonplace among creators of layout-designs and manufacturers of integrated circuits.

(2) A layout-design that consists of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, is original within the meaning of paragraph (1).

Article 4
Right to Protection

(1) The right to protection of a layout-design shall belong to its creator. It may be assigned or transferred by succession. Where several persons have jointly created a layout-design, the right shall belong to them jointly.

(2) Where a layout-design has been created under a contract for service or an employment contract, the right to protection shall belong to the commissioner or to the employer, unless otherwise provided in the contract.

Article 5
Rights Conferred

(1) The protection afforded under this Annex shall be independent of the fact whether the integrated circuit incorporating the protected layout-design is or is not itself incorporated in an article. Subject to the provisions of Articles 6 and 15, the following acts shall be unlawful when carried out without the authorization of the holder:

(a) the act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not fulfill the requirement of originality referred to in Article 3;

(b) the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated or an article in which such integrated circuit is incorporated to the extent that it continues to contain a layout-design that is unlawfully reproduced.

Article 6
Limitations of the Rights Conferred

(1) The protection afforded a layout-design under this Annex shall not extend

(a) to the reproduction of a protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching;

(b) to the incorporation, in an integrated circuit, of a layout-design based on such analysis or evaluation and itself possessing originality within the meaning Article 3, nor to the carrying out with respect to such layout-design of any of the acts referred to in Article 5;

(c) to the carrying out of any of the acts referred to in Article 5(b) above where the act is carried out with respect to a protected layout-design, or an integrated circuit in which such layout-design is incorporated, which has been placed on the market by the holder or with his consent;

(d) to the carrying out of any of the acts referred to in Article 5(b) with respect to an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating an unlawfully reproduced layout-design or any article incorporating such integrated circuit where the person performing or ordering such act did not know and had no reasonable grounds to know, when acquiring the integrated circuit or article incorporating such integrated circuit, that it incorporated an unlawfully reproduced layout-design; however, once such person has been duly advised of the fact that the layout-design has been unlawfully reproduced, he may carry out any of the aforementioned acts with regard solely to the stocks at his disposal or which he had ordered before being advised and shall be required to pay to the holder an amount equivalent to a reasonable royalty that would be required under a freely-negotiated license with respect to such layout-design;

(e) to the carrying out of any of the acts referred to in Article 5(b) where the act is carried out with respect to an identical original layout-design created independently by a third party.

Article 7
Start and Term of Protection

(1) The protection afforded a layout-design under this Annex shall take effect

(a) on the date of the first commercial exploitation of the layout-design, anywhere in the world, by the holder or with his consent, on condition that an application for protection be

filed by the holder with the Ministry responsible for industrial property or with the Organization within the time limit referred to in Article 2(2); or

(b) on the filing date allocated to the application for registration of the layout-design filed by the holder if the layout-design has not been the subject of prior commercial exploitation anywhere in the world.

(2) The protection afforded a layout-design under this Annex shall cease at the end of the tenth calendar year following the date on which it took effect.

Article 8 *Filing an Application*

(1) A separate application shall be filed for each layout-design.

(2) Any person wishing to obtain a certificate of registration of a layout-design shall file with the Organization or with the Ministry responsible for industrial property, or send to it by registered mail with a request for acknowledgement of receipt, a file containing

(a) a request for registration of the layout-design in the Register of Layout-Designs in a sufficient number of copies;

(b) a document proving payment to the Organization of the filing and publication fees;

(c) a short and precise description of the layout-design;

(d) the applicant's name, address, nationality and, where the nationality is different from the address given, the address of habitual residence;

(e) the powers of the applicant's representative, where appropriate, a copy or a drawing of the layout-design, together with information defining the electronic function that the integrated circuit is intended to perform; however, the applicant may omit from the copy or from the drawing those parts that concern the method of manufacturing the integrated circuit, on condition that the parts submitted are sufficient to permit identification of the layout-design;

(f) the date of the first commercial exploitation of the layout-design anywhere in the world or a statement that exploitation has not yet begun;

(g) particulars establishing the entitlement to protection under Article 4.

Article 9 *Unacceptability Due to Non-Payment*

No application for registration shall be acceptable if it is not accompanied by a document attesting payment of the application and publication fees.

Article 10 *Filing Date*

The Organization shall grant as the filing date the date of receipt of the application, written in one of its working languages, by the Ministry responsible for industrial property or by the Organization, provided that, at the time of receipt, the application contains

(a) an express or implicit indication that registration of a layout-design is requested;

(b) information whereby the identity of the applicant may be established;

(c) a copy or drawing of the layout-design;

(d) proof of payment of the prescribed fees.

Article 11
Conditions Governing Rejection

(1) Where an application does not comply with the requirements of Article 8, except for its subparagraph (b), it shall be returned, where appropriate, to the applicant or his agent, who shall be invited to correct the documents within a period of three months from the date of notification. That period may be extended by thirty days, in cases of justifiable need, at the request of the applicant or his agent. The application so corrected within the said period shall retain the date of the initial application.

(2) In the event of the corrected documents not being provided within the prescribed period, the application for registration of the layout-design shall be rejected.

(3) No application may be rejected under paragraph (2) above without the applicant or his agent having first been given the opportunity to correct the said application to the extent and according to the procedure prescribed.

Article 12
Examination

With respect to each application for registration of a layout-design, the Organization shall examine whether the application complies with the requirements of Articles 2 and 8 above, without carrying out an examination of originality, of the applicant's right to protection or of the correctness of the statements made in the application.

Article 13
Registration

(1) Where the Organization ascertains that an application complies with the requirements of Articles 2 and 8, it shall register the layout-design in the Special Register of Layout-Designs in which, for each protected layout-design, it shall make the entries as provided in this Annex.

(2) The registration of a layout-design shall be effected on a decision by the Director General of the Organization or on a decision by an official of the Organization duly authorized thereto by the Director General.

(3) Prior to registration, any application for a layout-design may be withdrawn by its author. The documents filed will be returned to him only at his request.

Article 14
Publication

The Organization shall publish the following details for each registered layout-design:

(a) the number of the registered layout-design;

(b) the title of the layout-design;

(c) the filing date, and where given in the application pursuant to Article 8(2)(d), the date of first commercial exploitation of the layout-design anywhere in the world;

(d) the name and address of the holder of the layout-design, unless the holder has requested not to be entered on the registration certificate;

(e) the name and address of the agent, if any.

Article 15
The Special Register of Layout-Designs

(1) The Organization shall keep a register, known as “the Special Register of Layout-Designs”, in which it shall be required, for each protected layout-design, to make all the entries as provided in this Annex.

(2) The Administrative Council shall lay down by regulation those acts that are to be entered, on pain of non-enforceability against third parties.

Article 16
Access to Information
in the Special Register of Layout-Designs

Any person may, at any time, against payment of the prescribed fee, consult the Special Register of Layout-Designs of the Organization or request, at his own expense, information, extracts or copies of such information.

Article 17
Right of Transfer

Where the essential contents of an application have been taken from the layout-design of a third party without his consent and the application has already led to a registration, such third party may petition the civil court for transfer of the registration to him.

The decision transferring the registration shall be communicated to the Organization which shall enter it in the Special Register.

Article 18
Transfer and Assignment of Rights

(1) The rights subsisting in an application for registration of a layout-design or in a layout-design shall be transferable in whole or in part.

(2) Acts involving the transfer of ownership, the licensing of the right of exploitation or the assignment of that right, or a pledge or cancellation of a pledge, in respect of an application for registration of a layout-design (topography) of an integrated circuit shall, on pain of invalidity, be evidenced in writing.

Article 19
Recording of Acts in the Special Register

(1) The acts referred to in the preceding Article shall not be binding on third parties unless they are entered in the Special Register of Layout-Designs kept by the Organization; a record of such acts shall be kept by the Organization.

(2) Subject to the conditions established by regulation, the Organization shall furnish to any person who so requests a copy of the entries in the Special Register of Layout-Designs, and also a record of the entries concerning layout-designs that are the subject of a pledge, or a certificate attesting the absence of any such entries.

Article 20
Licensing Contract

(1) The holder of a layout-design may, by contract, grant to a person, whether natural person or legal entity, a license enabling him to exploit the protected layout-design.

(2) The duration of the license may not be longer than that of the layout-design.

(3) The license contract shall be entered in the Special Register of Layout-Designs. It shall not be binding on third parties unless it is entered in the said Register and published in the form specified in the Implementing Regulations relating to this Annex.

(4) The license shall be cancelled from the Register at the request of the holder of the layout-design or the licensee on presentation of proof of the expiry or termination of the license contract.

(5) In the absence of provisions to the contrary in the license contract, the grant of a license shall not preclude the licensor from either granting licenses to other persons, subject to notifying the licensee, or exploiting the protected layout-design himself.

(6) The grant of an exclusive license shall preclude the licensor from granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, from exploiting the protected layout-design himself.

Article 21 *Invalid Clauses*

(1) Clauses in license contracts or relating to such contracts shall be invalid in so far as they impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the layout-design or not necessary for the upholding of such rights.

(2) The following shall not be considered restrictions within the meaning of paragraph (1) above:

(a) limitations relating to the extent, the scope or the duration of exploitation of the layout-design;

(b) the obligation on the licensee to abstain from any act liable to harm the validity of the layout-design.

(3) In the absence of provisions to the contrary in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sublicenses.

Article 22 *Recognition of Invalid Clauses*

Recognition of the invalid clauses referred to in Article 21 above shall be done by the civil court at the request of any interested party.

Article 23 *Non-Voluntary License for Non-Working*

(1) At the request of any person made after the expiry of a period of four years from the filing date of the application for the registration of a layout-design, or three years from the date of registration of the layout-design, whichever period expires last, a non-voluntary license may be granted where one or more of the following conditions are fulfilled:

(a) the protected layout-design is not being worked on the territory of a member State at the time the request is made;

(b) the working of the protected layout-design on such territory does not meet the demand for the protected product on reasonable terms;

(c) on account of the refusal of the holder of the layout-design to grant licenses on reasonable commercial terms and procedures, the establishment or development of industrial or commercial activities on such territory is unfairly and substantially prejudiced.

(2) Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may not be granted if the holder of the layout-design provides legitimate reasons for the non-working.

Article 24
Request for the Grant
of a Non-Voluntary License

(1) The request for the grant of a non-voluntary license shall be made to the civil court of the domicile of the holder of the layout-design or, if the latter is domiciled abroad, to the civil court of either his elected domicile or the place in which he has named an agent for the purposes of filing. Only requests made by persons domiciled on the territory of a member State shall be considered.

The holder of the layout-design or his agent shall be informed thereof without delay.

(2) The request shall contain

(a) the name and address of the requester;

(b) the title of the layout-design and the number of the layout-design in respect of which a non-voluntary license is requested;

(c) evidence that the working of the layout-design on the above-mentioned territory does not meet demand for the protected product on reasonable terms;

(d) in the case of a non-voluntary license requested under Article 23 above, a statement by the requester in which he undertakes to work the layout-design on the territory of one of the member States in such a way as to meet the needs of the market.

(3) The request shall be accompanied

(a) by proof that the requester has previously approached the holder of the layout-design, by registered letter, requesting a contractual license, but has been unable to obtain such a license from him subject to reasonable commercial terms and procedures and within a reasonable time;

(b) by proof that the requester is capable of working the protected layout-design.

Article 25
Grant of Non-Voluntary License

(1) The civil court shall examine whether the request for the grant of a non-voluntary license satisfies the requirements of Article 24 above. If the request does not satisfy the said specified requirements, the court shall reject it. Before rejecting the request, the court shall inform the requester of the deficiencies of his request and shall allow him to make the necessary corrections.

(2) Where the request for the grant of a non-voluntary license satisfies the requirements of Article 24 above, the civil court shall notify it to the holder of the layout-design concerned, and also to any licensee whose name appears in the Special Register of Layout-Designs, and shall invite them to submit their observations on the said request in writing within a period of three months. Such observations shall be communicated to the requester. The civil court shall likewise notify the request to any government authorities concerned. The civil court

shall hold a hearing on the request and the observations received to which the requester, the holder of the layout-design, any licensee whose name appears in the Special Register of Layout-Designs and any government authorities concerned shall be invited.

(3) Once the procedure prescribed in paragraph (2) above has been completed, the civil court shall take a decision on the request, either granting or refusing the non-voluntary license.

(4) If the non-voluntary license is granted, the decision of the civil court shall specify

(a) the scope of the license, specifying in particular the acts referred to in Article 1(2) of this Annex to which it extends and the period for which it is granted, it being understood that a non-voluntary license granted under Article 23 above cannot extend to the act of importation;

(b) the amount of the remuneration to be paid by the licensee to the holder of the layout-design; in the absence of agreement between the parties, such remuneration shall be equitable, due regard being had to all the circumstances of the case. The said amount shall be subject to judicial revision.

(5) The decision of the civil court shall be in writing and shall state the grounds on which it is based. The civil court shall convey the decision to the Organization, which shall register it. The civil court shall publish the decision and shall notify it to the requester and to the holder of the layout-design. The Organization shall notify the decision to any licensee whose name appears in the Special Register of Layout-Designs.

Article 26
Rights and Obligations
of the Holder of a Non-Voluntary License

(1) After the expiry of the time limit for appeal specified in Article 29 of this Annex, or once an appeal decision has been handed down that wholly or partly upholds the decision by which the civil court granted the non-voluntary license, the grant of the latter shall authorize the licensee to exploit the protected layout-design according to the terms laid down in the decision of the civil court or in the appeal decision, and shall require him to pay the remuneration specified in the said decisions.

(2) The grant of a non-voluntary license shall not affect either license contracts in force or non-voluntary licenses in force and shall not preclude the conclusion of other license contracts or the grant of other non-voluntary licenses. The holder of the layout-design may not however grant to other licensees more favorable terms than those of the non-voluntary license.

Article 27
Limitation of the Non-Voluntary License

(1) The beneficiary of the non-voluntary license may not, without the consent of the holder of the layout-design, grant any third party permission to perform any of the acts that he is authorized to perform under the non-voluntary license.

(2) Notwithstanding the provisions of paragraph (1) above, a non-voluntary license may be transferred together with the establishment of the beneficiary of the non-voluntary license or with the portion of his establishment that exploits the protected layout-design. No such transfer shall be valid without the authorization of the civil court. Before granting the authorization, the civil court shall give the holder of the layout-design a hearing. The civil court shall notify the authorization to the Organization which shall register and publish it.

Any transfer so authorized shall cause the new beneficiary of the non-voluntary license to accept the same obligations as those that were incumbent on the former beneficiary.

*Article 28
Amendment and Withdrawal
of the Non-Voluntary License*

(1) At the request of the holder of the layout-design or the beneficiary of the non-voluntary license, the civil court may amend the decision on the grant of a non-voluntary license where new facts justify such amendment.

(2) At the request of the holder of the layout-design, the civil court shall withdraw the non-voluntary license

(a) if the grounds for its grant have ceased to exist;

(b) if the beneficiary exceeds the scope of the license under Article 25(4)(a) above;

(c) if the beneficiary is in arrears with the payment of the remuneration referred to in Article 25(4)(b) above.

(3) Where the non-voluntary license is withdrawn under paragraph (2)(a) above, the beneficiary of the non-voluntary license shall be allowed a reasonable period within which to cease working the layout-design where immediate cessation would have serious adverse consequences for him.

(4) The provisions of Articles 24 and 25 of this Annex shall apply to the amendment or withdrawal of a non-voluntary license.

*Article 29
Appeals*

(1) The holder of the layout-design, the licensee whose name appears in the Special Register or any person who has requested the grant of a non-voluntary license may, within a period of one month from the publication specified in Articles 25(5), 27(2) or 28(4) above, appeal to the competent higher jurisdiction against a decision taken under Articles 25(3), 26(1) or 27.

(2) The appeal referred to in paragraph (1) above contesting the grant of a non-voluntary license, the authorization to transfer a non-voluntary license or the amendment or withdrawal of a non-voluntary license shall have staying effect.

(3) The decision on appeal shall be notified to the Organization, which shall register and publish it.

*Article 30
Defense of Rights Granted*

(1) Any beneficiary of a contractual or non-voluntary license may, by registered letter, call upon the holder of a layout-design to bring the necessary legal actions for civil or criminal sanctions for any violation, mentioned by the said beneficiary, of the rights under the layout-design.

(2) If, within three months of the summons provided for in paragraph (1), the holder of the layout-design refuses or fails to institute the actions referred to in the said paragraph, the beneficiary of a license that has been registered may institute the actions in his own name, without prejudice to the holder of the layout-design's right to intervene in the actions.

Article 31
Cessation of the Obligations
of the Beneficiary
of the Non-Voluntary License

Any action seeking invalidation of the layout-design shall be directed against the holder of the layout-design. If a final legal judgment declares the layout-design invalid, the beneficiary of the non-voluntary license shall be released from all obligations resulting from the decision granting him the non-voluntary license.

Article 32
Ex-Officio License

(1) The Minister responsible for industrial property matters of a member State may decide, even without the consent of the holder, that a public body or a third party he designates may exploit the layout-design on the territory of such State where

(a) the public interest, particularly concerning national security, food, health or other vital sectors of the national economy of a member State, requires the exploitation of a protected layout-design for public and non-commercial purposes; or where

(b) a judicial or administrative body holds that the conditions of exploitation, by the holder or his licensee, of a protected layout-design to be contrary to competition and where the Minister is convinced that exploitation of the layout-design in accordance with this Article would put an end to such practices.

The authorization to exploit shall be limited, in its scope and duration, to the purpose for which it has been granted and it shall be principally intended for the supply of the domestic market of the member State. Such right of exploitation shall be non-exclusive and shall give rise to payment to the holder of appropriate remuneration taking into account the economic value of the ministerial authorization as determined in the decision of the Minister and, where appropriate, of the need to combat anti-competition practices.

(2) The request seeking the authorization of the Minister shall be accompanied by proof that the holder has received, from the person making the request, an application for a contractual license, but that he has not been able to obtain a license under reasonable commercial conditions and within a reasonable period of time.

(3) At the request of the holder or the beneficiary of authorization, the Minister may, after hearing the parties, if one or both of them wish to be heard, modify the decision authorizing exploitation of the layout-design to the extent justified by the circumstances.

(4)(a) At the request of the holder, the Minister shall withdraw the authorization if he is convinced that the circumstances that led to his decision no longer hold and are unlikely to re-occur or that the beneficiary of the authorization has not complied with its conditions.

(b) Notwithstanding the provisions of subparagraph (a), the Minister shall not withdraw the authorization if he is convinced that protection of the legitimate interests of the beneficiary of the authorization justify maintaining it.

(5) Where a third party has been designated by the Minister, the authorization may be transferred only with the enterprise of the beneficiary of the authorization or that part of the enterprise in which the layout-design is exploited.

(6) The decisions of the Minister taken under this Article may be appealed to the court of the member State concerned.

Article 33
Cancellation

(1) Any concerned person may request that a layout-design be removed from the Register on the grounds that

(a) the layout-design is not eligible for protection under Articles 2 and 3;

(b) the holder is not entitled to enjoy the protection provided for in Article 4;

(c) if the layout-design has been commercially exploited anywhere in the world prior to the filing of the relevant application for registration, such application has not been filed within the time limit laid down in Articles 2(2) and 7(1).

(2) If the grounds for cancellation affect only a part of a layout-design, cancellation shall be effected only to the corresponding extent.

(3) A request for cancellation of the registration of a layout-design based on paragraphs (1) and (2) shall be submitted to the court in writing and duly reasoned.

(4) Any registration or part of a registration of a layout-design that has been cancelled shall be deemed invalid as from the date on which protection took effect.

(5) The final decision of the court of the member State concerned shall be notified to the Director General, who shall enter it in the Special Register and publish a relevant notice as soon as possible.

Article 34
Infringement of Rights

The carrying out of any act termed unlawful in Article 5 shall constitute an infringement of the rights deriving from a layout-design.

Article 35
Remedies for Infringement of Rights

At the request of the holder, or of his licensee if the latter has requested the holder to institute legal proceedings for specific damages and the holder has refused or failed to do so within a reasonable time, the court may order any measure in order to stop the infringement or to prevent an imminent infringement, grant damages and order any other means of sanction provided by law.

Article 36
Penalties for Infringement of Rights

Any person who, knowingly and without authorization, carries out any of the acts termed unlawful in Article 5 shall be guilty of an offense subject to a fine of between 1,000,000 and 6,000,000 CFA francs or a term of prison not exceeding six months, or both penalties.

Article 37
Other Penalties

The court may also order the seizure, confiscation and destruction of layout-designs, integrated circuits or incriminated articles and of all equipment or tools having served specially to commit the offense.

Article 38
Competent Jurisdiction

(1) Civil actions relating to layout-designs shall be brought before the civil courts and judged as summary proceedings.

(2) If the accused in an action before a criminal court raises questions in his defense concerning the ownership of the layout-design, the competent court shall pass judgment thereon.

ANNEX X
PLANT VARIETY PROTECTION

TITLE I
GENERAL PROVISIONS

Article 1
Definitions

For the purposes of this Annex:

(a) “*plant variety certificate*” means a title issued to protect a new plant variety;

(b) “*plant variety*” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, whether or not it meets the conditions for the grant of a plant variety certificate, can be:

(i) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;

(ii) distinguished from any other plant grouping by the expression of at least one of the said characteristics and

(iii) considered a unit with regard to the possibility of reproducing it unchanged;

(c) “*botanical taxon*” means the unit of the botanical classification of the genus and the species in particular;

(d) “*protected variety*” means a variety that is the subject of a plant variety certificate;

(e) “*essentially derived variety*” means a variety which:

(i) is predominantly derived from another variety, the “*initial variety*”, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

(ii) is clearly distinguishable from the initial variety; and

(iii) except for the differences resulting from the derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety. Essentially derived varieties may be obtained for example by the selection of a natural or induced mutant or somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing or transformation by genetic engineering;

(f) “*breeder*” means the person who has discovered and developed a variety. The term does not include a person who has redeveloped or rediscovered a variety whose existence is publicly known or is a matter of common knowledge;

(g) “*variety-related material*” means:

- (i) reproductive or vegetative propagating material in whatever form;
- (ii) harvested material, including entire plants and parts of plants;
- (iii) products made directly from harvested material.

Article 2
Plant Variety Certificate

(1) The breeding of a new plant variety shall give the breeder the right to a protection title known as a “*plant variety certificate*”.

(2) Plant variety protection shall be obtained by registration.

(3) A plant variety certificate shall be granted for one variety only.

Article 3
Botanical Taxa Eligible for Protection

All botanical taxa shall be protected by this Annex, except for wild species, that is, species that have been neither planted nor improved by man.

TITLE II
CONDITIONS FOR THE ISSUE OF
A PLANT VARIETY CERTIFICATE

Article 4
Criteria for the Protection of a Plant Variety

In order to enjoy the protection afforded by this Annex, a variety shall be:

- (a) new;
- (b) distinct;
- (c) uniform;
- (d) stable and
- (e) given a denomination devised in accordance with the provisions of Article 23.

Article 5
Novelty

(1) A variety shall be deemed new if, on the filing date of the application or on the priority date if any, reproductive or vegetative propagating material or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder or of his successor in title or assignee, for the purposes of exploitation of the variety:

- (a) on the territories of the member States of the Organization, for more than one year;
- (b) on the territories of non-member States, for more than:

- (i) six years, in the case of trees and vines;
 - (ii) four years, in the case of other species.
- (2) Novelty shall not be lost by sale or disposal to others:
- (a) where it is due to an abuse committed to the detriment of the breeder or of his successor in title or assignee;
 - (b) where it forms part of an agreement for the transfer of the rights in the variety;
 - (c) where it forms part of an agreement under which a third party has multiplied reproductive or vegetative propagating material of the variety concerned on behalf of the breeder or his successor in title or assignee, on condition that the multiplied material reverts to the breeder or his successor in title or assignee and on condition that the said material is not used for the production of another variety;
 - (d) where it forms part of an agreement under which a person has undertaken field tests or laboratory trials or small-scale processing trials in order to evaluate the variety;
 - (e) where it forms part of the fulfilment of a statutory or regulatory obligation, in particular concerning biological safety or the entry of varieties in an official catalogue of varieties passed for marketing; or
 - (f) where it relates to harvested material that is a by-product or surplus product of the creation of the variety or of the activities referred to under (c) to (e) of this paragraph, on condition that the material is sold or otherwise disposed of anonymously (without variety identification) for the purposes of consumption.
- (3) Where the production of a variety requires repeated use of one or more other varieties, the sale or disposal to others of propagating material or of harvested material of the former variety shall constitute facts relevant to the novelty of the latter variety or varieties.

Article 6 *Distinctness*

- (1) A variety shall be deemed distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the filing date of the of the application or on the priority date if any.
- (2) The filing, in any country, of an application for a plant variety certificate or for entry in a catalogue of varieties passed for marketing shall be deemed to render the variety that is the subject of the said application a matter of common knowledge as from the application date, provided that the application leads to the issue of a plant variety certificate or to entry in the catalogue, as the case may be.
- (3) The fact that the existence of another variety is a matter of common knowledge may be established by various factors such as:
- (a) exploitation of the variety already in progress;
 - (b) entry of the variety in a variety register kept by a recognized professional association, or
 - (c) the inclusion of the variety in a reference collection.

Article 7
Uniformity

A variety shall be deemed uniform if, subject to the variation expected on account of the particular features of its reproductive or vegetative propagation, it is sufficiently homogenous in its relevant characteristics.

Article 8
Stability

A variety shall be deemed stable if its relevant characteristics remain unchanged after repeated propagation or, where there is a particular cycle of reproductive or vegetative propagation, at the end of each such cycle.

Article 9
Right to a Plant Variety Certificate

- (1) The right to a plant variety certificate shall belong to the breeder.
- (2) If two or more persons have bred a variety jointly, the right to a plant variety certificate shall belong to them jointly.
- (3) The right to a plant variety certificate may be assigned or transferred by succession.
- (4) The breeder shall be mentioned as such on the plant variety certificate.
- (5)(a) In the absence of proof to the contrary the applicant shall be considered the person entitled to a plant variety certificate.

(b) Where a person not entitled to a plant variety certificate has filed an application, the entitled person may institute proceedings for transfer of the application or of the plant variety certificate if already issued. Proceedings for transfer shall be statute-barred five years after the publication date of the issue of the plant variety certificate. No time limit shall apply to proceedings brought against a defendant who has acted in bad faith.

Article 10
Plant Varieties Bred by Employees

- (1) Subject to the statutory provisions governing contracts of service or of employment and except where otherwise agreed by contract, the right to a plant variety certificate for a variety bred in fulfilment of such a contract shall belong to the principal or employer.
- (2) The same provision shall apply where an employee is not required by his employment contract to engage in inventive activity, but has bred the variety using information or facilities that his employment has made available to him.
- (3) In the case referred to in paragraph (2) above, the employee who has bred the variety shall be entitled to remuneration that reflects the importance of the variety and, failing agreement between the parties, shall be laid down by the court. In the case referred to in paragraph (1) above, the aforesaid employee shall have the same right if the invention is of very exceptional importance.
- (4) The provisions of this Article shall also apply to servants of the State, of local communities and of any legal entity under public law, except where specifically provided otherwise.
- (5) If the employer expressly waives his right to the plant variety certificate, the right shall belong to the employee-breeder.

(6) The provisions of paragraph (3) above shall be a matter of public policy.

Article 11
National Treatment

Foreigners may also obtain plant variety certificates in accordance under the conditions laid down in this Annex.

TITLE III
PROCEDURE FOR THE GRANT OF
A PLANT VARIETY CERTIFICATE

Article 12
Filing the Application

(1)(a) Where the application for a plant variety certificate is filed with the Ministry responsible for industrial property, a record, one copy of which shall be handed to the applicant, shall be drawn up by the competent official of the said Ministry recording the filing and specifying the date on which and the time at which the documents were submitted. The Ministry shall forward the application to the Organization within five working days of the filing date.

(b) Where the application is filed directly with the Organization, the competent official shall draw up the record referred to in the above subparagraph.

(2) The application shall contain:

(a) the name and other prescribed information relating to the applicant, the breeder and the representative if any;

(b) identification of the botanical taxon (Latin name and common name);

(c) the denomination proposed for the variety or a provisional designation, and

(d) a succinct technical description of the variety.

(3) Proof of payment of the required fees shall be attached to the application.

(4) The above documents shall be in one of the working languages of the Organization.

(5) The applicant may withdraw his application at any time until it is ruled that the application satisfies the conditions necessary for a plant variety certificate to be issued.

Article 13
Claiming Priority

(1) Any person wishing to avail himself, under Article 11 of the International Convention for the Protection of New Varieties of Plants, of the priority of an earlier filing shall be required to attach to his application for a plant variety certificate, or to submit to the Organization within four months of the date of his application:

(a) a written statement specifying the date and number of the earlier filing, the country in which it was made and the name of the applicant;

(b) a certified copy of the earlier application;

(c) if he is not the person who filed that application, written authority from the applicant or his successors in title empowering him to avail himself of the priority concerned.

(1) Where there are two or more earlier applications, priority may be based only on the earliest application.

(2) Priority may be claimed only within a period of 12 months from the filing date of the first application.

(3)(a) Priority shall have the effect of the application being deemed to have been filed on the filing date of the first application with regard to the conditions governing the protection accorded to the variety.

(b) The applicant shall moreover have the faculty of requesting deferment of the examination of the variety for not more than two years from the expiry date of the priority term or three years from the filing date of the first application. However, if the first application is rejected or withdrawn, examination of the variety may be commenced before the date specified by the applicant; in that case the applicant shall be afforded a reasonable period within which to furnish the information, documents or material required for examination.

(5) Failure to submit in due time any of the aforementioned items shall result as of right in loss of the benefit of the priority right claimed. Any item that reaches the Organization more than four months after the filing of the application for a plant variety certificate shall be declared inadmissible.

Article 14
Inadmissibility for Non-Payment

No application shall be admissible if the application is not accompanied by a document proving payment of the prescribed fees.

Article 15
Filing Date

(1)(a) The Organization shall allocate as the filing date the date of receipt of the application at the Ministry responsible for industrial property or at the Organization on condition that, at the time of receipt, the application contains at least the items referred to in Article 12(2).

(b) If the Organization finds that, at the time of receiving the application, not all the items referred to in Article 12(2) have been furnished, it shall request the applicant to make the necessary corrections and shall allocate as the filing date the date of receipt of the corrections requested; if the correction is not made within the time allowed, the application shall be deemed not to have been filed.

(2) If the application contains defects other than that referred to in the preceding subparagraph, the Organization shall invite the applicant to rectify it; if the application is not rectified within the time allowed, it shall be deemed not to have been filed.

Article 16
Publication of the Application

The Organization shall publish a notice of filing of the application containing at least the items mentioned in Article 12(2)(a) to (c).

Article 17
Objections to the Issue of a Plant Variety Certificate

(1) Once the application has been published, any person may file with the Organization, within the prescribed time limit and in the prescribed form, written and reasoned objections to the issue of a plant variety certificate. A fee shall be charged on the filing of an objection.

(2) Objections may be filed exclusively for the purpose of asserting that the variety is not new, distinct, uniform or stable or that the applicant is not entitled to protection.

(3) The Organization shall send a copy of the notice of objection to the applicant who may respond, stating the grounds for his response, within a period of three months, renewable once. If the applicant's response does not reach the Organization by the prescribed time limit, he shall be deemed to have withdrawn his application for registration.

(4) Before ruling on the objection, the Organization shall hear the parties or one of the parties, or their representatives, if so requested.

(5) The Organization's ruling on the objection shall be subject to appeal to the High Commission of Appeal within a period of 30 days from notification of the decision to the parties concerned.

Article 18
Examination of the Application for a Plant Variety Certificate and
Technical Examination of the Variety

(1) The Organization shall examine the application as to form and as to substance in order to verify, on the basis of the information supplied:

(a) that a filing date can be allocated in accordance with Article 15;

(b) that the documents in the application are complete and satisfy the requirements laid down in Articles 12 and 13;

(c) that the application is not excluded under the provisions of Article 3;

(d) that the variety applied for is new.

(2) If the items in the application are incomplete or do not conform, the Organization shall invite the applicant to put the application in order within a period of 60 days from the date of receipt of the notification. Any application not put in order within the time allowed shall be deemed not to have been filed.

(3) A technical examination shall also be carried out, on the basis of growing trials and other necessary tests, to ensure:

(a) that the variety belongs to the taxon specified;

(b) that the variety is distinct, uniform and stable, and to establish,

(c) where the variety is found to satisfy the above conditions, the official description of that variety.

(4) The technical examination shall be conducted by an authorized institution approved by the Organization.

(5) Where the growing trials and other necessary tests have been carried out by the relevant service of a Contracting Party of the International Convention for the Protection of

New Varieties of Plants, or are being carried out by that service, and the results can be obtained by the Director General, the examination shall be based on those results.

(6) The Organization shall determine the practical conditions for the technical examination.

Article 19
Information, Documents and Material Required for Examination;
Examination Fee

(1) The applicant is required to provide all information, documents or material required by the Organization for the technical examination; failure to do so shall cause the application to be rejected unless the applicant is able to give good grounds for his inaction.

(2) The creator of a new plant variety may be required to submit additional information and documents to support his variety, together with the plant material required for the technical examination.

(3) The cost of the technical examination shall be borne by the applicant and shall be paid directly to the Organization. The latter shall establish a schedule of fees for the principal botanical taxa.

Article 20
Confidentiality of Applications

Applications for plant variety certificates shall be kept secret by the Organization, the administrations and institutions involved in the procedures. Access to information concerning applications shall be regulated. No information relating to applications may be disclosed without the consent of the breeder, except in special cases determined by the Organization.

Article 21
Grounds for Rejection of Applications

(1) An application shall be rejected prior to registration if it is established that:

(a) the applicant is not entitled to file an application;

(b) the applicant has not responded within the prescribed time limit to the rectification notices issued by the Organization, notably where:

(i) the information given was erroneous or incomplete;

(ii) the application contained a material irregularity;

(c) the variety to which the application refers:

(i) does not satisfy the requirements of Articles 4 to 8;

(ii) belongs to a botanical taxon that is excluded under Article 3;

(d) the applicant refuses or is unable to propose an acceptable denomination.

(2) The Organization shall notify its decision to the applicant, record it and publish a notice of rejection. The rejection decision shall be subject to appeal to the High Commission of Appeal.

Article 22
Issue of Plant Variety Certificate and Publication

(1) Where the Organization determines, as a result of the technical examination of the variety, that the variety satisfies the conditions set forth in Article 4 and that the applicant has met the other conditions set forth in this Annex, it shall issue a plant variety certificate.

(2) The Organization:

(a) shall publish a notice of issue of a plant variety certificate;

(b) shall issue to the applicant a plant variety certificate containing a description of the variety;

(c) shall register the said certificate, and

(d) shall make copies of the variety description available to the public against payment of the prescribed fee.

TITLE IV
VARIETY DENOMINATION

Article 23
Subject of the Denomination and Signs Admissible as a Denomination

(1) The denomination shall constitute the generic designation of the variety.

(2) A denomination may consist of any word, combination of words and figures and combination of letters and figures, with or without an existing meaning, provided that such signs serve to identify the variety.

(3) Where a denomination has already been used for the variety in a member State or in a Contracting Party of the International Convention for the Protection of New Varieties of Plants, or proposed or registered in a member State or a Contracting Party, only that denomination may be used for the purposes of the procedure before the Organization, unless there is a ground for refusal under Article 24. Any synonyms shall be recorded in the register of applications and in the register of grants.

(4)(a) For as long as the variety is exploited, it shall be prohibited to use, on the territory of the member States, a designation that is identical or confusingly similar to the denomination of that variety in relation to another variety of the same or a closely related species. The prohibition shall remain in force after the variety has ceased to be exploited where the denomination has acquired particular significance in relation to the variety.

(b) The above prohibition shall also apply to denominations registered in the Contracting Parties of the International Convention for the Protection of New Variety of Plants.

(5) Any person who offers for sale, sells or otherwise markets reproductive or vegetative propagating material of a protected variety shall be required to use the denomination of that variety. This obligation shall also apply to the varieties referred to in Article 29(4).

(6) The obligation to use a denomination shall not end with the plant variety certificate that gave rise to it.

(7) Prior rights of third parties shall not be affected.

(8) Where a variety is offered for sale or otherwise marketed, it shall be permissible to use a trademark or service mark, a trade name or similar designation in conjunction with the registered variety denomination, subject to the denomination remaining easily recognizable.

Article 24
Grounds for Refusal of a Denomination

(1) Without prejudice to the provisions of the Convention and the rules adopted by the International Union for the Protection of New Varieties of Plants, a designation shall be refused registration as a denomination if:

(a) it does not conform to the provisions of Article 23;

(b) it is not suitable for identifying the variety, notably for want of distinctiveness or linguistic suitability;

(c) it is contrary to public policy or morality;

(d) it is composed exclusively of signs or indications capable of serving, in the plant variety and seed sector, to denote the species, quality, quantity, intended purpose, value, geographical origin or time of production;

(e) it is liable to mislead or confuse as to the characteristics, value or geographical origin of the variety, or as to the links between the variety and persons such as the breeder or the applicant, or

(f) it is identical or confusingly similar to a denomination that designates, on the territory of one of the member States, or of a Contracting Party of the International Convention for the Protection of New Varieties of Plants, an existing variety of the same or a closely related species, except where that existing variety is no longer exploited and its denomination has not acquired any particular significance.

(1)(a) Without prejudice to the provisions of the Convention and the rules adopted by the International Union for the Protection of New Varieties of Plants, registration as a variety denomination shall also be refused for a designation comprising an element that hampers or is liable to hamper the free use of the denomination with respect to the variety, in particular any element the registration of which as a trademark for products associated with the variety would be refused under trademark law.

(b) Such designations shall be refused registration on the opposition of the owner of the rights in the element concerned, filed in writing with the Organization.

Article 25
Denomination Registration Procedure

(1)(a) The denomination proposed for the variety for which protection is sought shall be filed at the same time as the application.

(b) On payment of a special fee and the proposal of a provisional designation in the application, the applicant may defer the denomination registration procedure. In that case the applicant shall submit the proposed denomination within the time limit specified by the Organization. If no proposal is submitted within the time allowed, the application shall be rejected.

(2) The Organization shall publish the denomination proposal unless it notes the existence of a ground for refusal under Article 24(1) or has knowledge of a ground for refusal under Article 24(2)(a). The proposal shall also be communicated to the relevant services of

the Contracting Parties of the International Convention for the Protection of New Varieties of Plants.

(3) The denomination shall be registered at the same time as the plant variety certificate is issued.

Article 26

Opposition to Registration of a Denomination

(1) Any concerned person may, within the prescribed time limit, file opposition to the registration of a denomination based on any of the grounds for refusal set forth in Article 24. The relevant services of the Contracting Parties may submit observations.

(2) Oppositions and observations shall be communicated to the applicant in order that he may respond to them or, where appropriate, submit a new proposal.

(3) Where the proposal for a denomination does not conform to the provisions of Article 23, the Organization shall request the applicant to submit a new denomination proposal. If the proposal is not submitted within the time allowed, the application shall be rejected.

(4)(a) The new proposal shall be subject to the examination and publication procedure set forth in this Article.

(b) Where the new proposal does not conform to the provisions of Article 23, the Organization may serve formal notice on the applicant to propose a denomination that does conform. If the applicant fails to do so, the application shall be rejected.

(5) The Organization's decision on the opposition shall be subject to appeal to the High Commission of Appeal during a period of three months from the receipt of notification of the decision to the persons concerned.

Article 27

Cancellation of a Denomination and Registration of a New Denomination

(1) The Organization shall cancel a registered denomination:

(a) if it proves that the denomination was registered in spite of the existence of grounds for rejection under Article 21(1);

(b) if the owner so requests, invoking a legitimate interest, or

(c) if a third party produces a court decision prohibiting the use of that denomination in connection with the variety.

(2) The Organization shall advise the owner of the proposal to cancel and shall invite him to submit a proposal for a new denomination within the time limit specified. If the variety is no longer protected, the proposal may be made by the Organization.

(3) The proposal for a new denomination shall be subject to the examination and publication procedure set forth in Article 25. The new denomination shall be registered and published once it has been approved; the former denomination shall be cancelled at the same time.

TITLE V
RIGHTS CONFERRED BY THE PLANT VARIETY CERTIFICATE

Article 28
General

(1) Under the conditions and within the limits laid down in this Annex, the plant variety certificate confers on its owner the exclusive right to exploit the variety to which it relates.

(2) Under the conditions and within the limits laid down in this Annex, a plant variety certificate also confers on its owner the right to prohibit any person from exploiting the variety to which it relates.

(3) The owner of a plant variety certificate moreover has the right to assign or transfer the certificate by succession and to conclude licensing contracts.

(4) Subject to Article 36, the owner of a plant variety certificate has the right, in addition to all other rights, remedies and actions at his disposal, to institute legal proceedings against any person who infringes the rights that the plant variety certificate confers on the said owner by performing, without his consent, any of the acts referred to in Article 29(1), or who performs acts that make it probable that an infringement will be committed.

(5) The owner of a plant variety certificate also has the right, in addition to all other rights, remedies or actions at his disposal, to institute legal proceedings against any person who uses a designation in violation of Article 23(4) or who in violation of Article 23(5) fails to use a variety denomination.

Article 29
Scope of Rights Conferred by the Plant Variety Certificate

(1) Subject to Articles 30 and 31, “*exploitation*” means, for the purposes of this Title, any one of the following acts carried out in relation to propagating material of a protected variety:

- (a) production or reproduction;
- (b) processing for the purpose of propagation;
- (c) offering for sale;
- (d) sale or other marketing;
- (e) export;
- (f) import;
- (g) stocking for any of the purposes mentioned in (a) to (f) above.

(2) Subject to Articles 30 and 31, “*exploitation*” also means, for the purposes of this Title, acts as mentioned in paragraph (1)(a) to (g) carried out in relation to harvested material, including entire plants and parts of plants, obtained through unauthorized use of reproductive or vegetative propagating material of the protected variety, except where the owner has had reasonable opportunity to exercise his rights in relation to the said propagating material.

(3) Subject to Articles 30 and 31, “*exploitation*” further means, for the purposes of this Title, acts as mentioned in paragraph (1)(a) to (g) carried out in relation to products made directly from harvested material of the protected variety covered by the provisions of paragraph (2) through unauthorized use of such harvested material, except where the owner has had reasonable opportunity to exercise his rights in relation to the said harvested material.

(4) The provisions of paragraphs (1) to (3) shall also apply:

(a) to varieties that are essentially derived from the protected variety where the protected variety is not itself an essentially derived variety;

(b) to varieties that are not clearly distinguishable from the protected variety as provided in Article 6, and

(c) to varieties whose production requires repeated use of the protected variety.

Article 30

Exceptions to the Rights Conferred by the Plant Variety Certificate

The rights conferred by the plant variety certificate shall not extend to:

(a) acts performed privately for non-commercial purposes;

(b) acts performed for experimental or research purposes;

(c) acts performed for the purpose of breeding other varieties and, except where the provisions of Article 29(4) apply, acts mentioned in Article 29(1) to (3) that are performed in relation to such other varieties;

(d) use by a farmer on his own holding, for the purposes of propagation, of harvested material that he has obtained by cultivating, on his own holding, a protected variety or a variety covered by Article 29(4)(a) or (b); this exception shall not apply to fruit, forestry or ornamental plants; and

(e) acts carried out by any third party in good faith prior to the filing of the application for a plant variety certificate.

Article 31

Exhaustion of Rights Conferred by the Plant Variety Certificate

The rights conferred by a plant variety certificate do not extend to acts concerning material of the protected variety or a variety covered by Article 29(4) that has been sold or otherwise marketed on the territory of a member State by the owner or with his consent or any material derived from such material, except where such acts:

(a) involve further propagation of the variety in question, or

(b) involve the export of material of the variety with which the variety can be propagated to a country that does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is intended for consumption.

Article 32

Market Control Measures

The rights conferred by a plant variety certificate shall be independent of measures adopted by member States as a means of controlling on their territory the production, certification and marketing of variety material or the import or export of such material.

Article 33

Term of the Plant Variety Certificate; Maintenance of Rights

(1) Subject to the provisions of paragraph (2) below, a plant variety certificate shall expire 25 years after its date of issue.

(2) For a plant variety certificate to be maintained, an annual fee shall be paid to the Organization in advance of each year, with the first fee due one year after the date of issue of the certificate. A six-month period of grace shall be allowed for payment of the annual fee after the due date, subject to payment of the prescribed additional fee. If an annual fee is not paid in accordance with the provisions of this paragraph, the owner of the plant variety certificate forfeits his rights.

Article 34
Provisional Protection

An applicant shall enjoy all the rights provided for in this Title as from the filing of the application, provided that proceedings may not be instituted for damages occasioned through the fault of the defendant after publication of the application until the plant variety certificate has been issued.

Article 35
Restoration of Protection

(1) Without prejudice to the provisions of Article 33(2) above, if the protection conferred by a plant variety certificate has not been renewed for reasons beyond the control of the owner the latter may, on payment of the required annual fee and of a restoration fee, request that it be restored within a period of six months from the date on which the said reasons ceased to obtain, and at the latest within two years from the date on which renewal was due.

(2) The request for restoration of the plant variety certificate, accompanied by documentary evidence of payment of the fees referred to in the preceding paragraph, shall be filed with the Organization and shall set forth the reasons which, for the owner or his successor in title, justify restoration.

(3) The Organization shall examine the above-mentioned reasons and shall restore the plant variety certificate or reject the request if it does not consider the reasons justified.

(4) Restoration shall not have the effect of prolonging the term of the plant variety certificate. Any third parties who have begun to exploit the variety prior to restoration of the certificate shall be entitled to complete such exploitation.

(5) Restored plant variety certificates shall be published by the Organization in the manner prescribed by the Implementing Regulations.

(6) The decisions of the Organization with respect to restoration shall be subject to appeal to the High Commission of Appeal within a period of 30 days from the date of receipt of the notification thereof.

Article 36
Exploitation by the Public Authorities or by a Third Party Authorized by Them

(1)(a) The Government may decide that a variety shall be exploited, without the consent of the owner of the plant variety certificate, by a State service or by a third party designated by the Government where:

(i) the public interest, particularly the food supplies of the member State concerned or public health, so demands; or

(ii) a judicial or administrative body has ruled that the manner in which the owner of the plant variety certificate or his licensee exploits the variety is anti-competitive and the

Government is convinced that exploitation of the variety pursuant to this Article will enable that practice to be remedied.

(b) Exploitation of a variety pursuant to this Article shall be subject to payment of equitable remuneration to the owner of the plant variety certificate.

(c) The Government shall take the decision referred to above only if the following conditions are met:

(i) the owner of the plant variety certificate has been put on formal notice to remedy the situation and has not taken the necessary steps within the prescribed time limit;

(ii) the relevant State service or the designated third party is in a position to exploit the variety in a competent and efficient manner;

(iii) three years have elapsed between the date of issue of the plant variety certificate and the date of the decision.

(d) When taking the decision referred to above, the Government shall specify the manner in which the relevant State service or designated third party shall exploit the variety, particularly the authorized acts of exploitation, the duration of exploitation and the amount and mode of payment of the remuneration payable to the owner of the plant variety certificate.

(2) The Government may require the owner of the plant variety certificate to make available to the relevant State service or designated third party, against payment of suitable remuneration, the quantity of propagating material required for reasonable use to be made of the authorization to exploit.

(3)(a) The Government may, at the request of the owner of the plant variety certificate, relevant State service or designated third party, modify the conditions of the authorization to exploit the variety in so far as a change in the circumstances justifies such modification.

(b) The Government shall terminate the authorization to exploit the variety prematurely, at the request of the owner of the plant variety certificate, if the relevant State service or designated third party fails to abide by the manner of exploitation specified by the Government or does not exploit the variety in a competent and efficient manner.

(c) The Government may extend the authorization to exploit the variety, after having heard the parties, if it is convinced, on the basis of a new examination, that the circumstances that led it to take the initial decision still obtain.

(4) An authorization to exploit a variety granted to a third party may not be transferred except with the enterprise or business of that third party or with that part of the said enterprise or business in which the variety is exploited.

(5) An authorization shall not exclude:

(a) exploitation of the variety by the owner of the plant variety certificate, or

(b) the conclusion of licensing contracts by the owner.

(6) Exploitation of the variety by the relevant State service or designated third party shall serve exclusively to supply the domestic market of the member State.

(7) The parties shall be heard before any decision is taken under this Article. Such decision shall be subject to appeal to the competent administrative court.

TITLE VI
OBLIGATIONS OF THE OWNER OF
THE PLANT VARIETY CERTIFICATE

Article 37
Maintenance of the Variety

(1) The owner of the plant variety certificate is required to maintain the protected variety or where appropriate its hereditary components, at his own expense, throughout the period of validity of the certificate.

(2) At the request of the Organization he is obliged to furnish to any authority designated by it, within the prescribed time limit and at his own expense, the information, documents or material deemed necessary for verifying the maintenance of the variety.

Article 38
Furnishing of Samples

(1) The owner of a plant variety certificate is required to furnish at his own expense to any authority designated by the Director General, within the time allowed, suitable samples of the protected variety, or where appropriate of its hereditary components, for the purpose of:

- (a) establishing or renewing the official sample of the variety, or
- (b) carrying out the comparative examination of varieties for the purposes of protection.

(2) The owner of a plant variety certificate may be required to maintain or preserve the official sample himself.

TITLE VII
CHANGE OF OWNERSHIP, INVALIDATION, FORFEITURE

Article 39
Change and Division of Ownership

(1)(a) A plant variety certificate may be assigned or transferred by succession.

(b) Any change of ownership shall be recorded in writing. It shall also be registered by the Organization and shall not be binding on third parties unless recorded in the special register; the Organization shall publish a notice of the change of ownership.

(2)(a) The owner of a plant variety certificate may grant exclusive or non-exclusive licenses.

(b) Any license shall be evidenced in writing and shall be registered by the Organization; it shall not be binding on third parties unless recorded in the special register; the Organization shall publish a notice thereof.

Article 40
Invalidation of the Plant Variety Certificate

(1) Any person having a legitimate interest may file a request for invalidation with the Director General.

(2) The court shall invalidate the plant variety certificate if it is established:

(a) that the variety was not new or distinct on the filing date of the application or on the priority date if any;

(b) that, where the issue of the plant variety certificate was essentially based on information and documents submitted by the applicant, the variety was not uniform or stable on the aforesaid date, or

(c) that the plant variety certificate has been issued to a person not entitled thereto and the entitled person has not instituted or has abstained from instituting proceedings for judicial assignment under Article 9(5)(b).

(3) An invalidated plant variety certificate shall be deemed invalid as of its date of issue.

(4) Invalidation shall be registered by the Director General, who shall publish a notice thereof.

Article 41 *Forfeiture*

(1) The Organization shall deprive the owner of his plant variety certificate if it is established that he has failed in his obligation under Article 37(1) and that the variety is no longer uniform or stable.

(2)(a) The Organization shall also deprive the owner of his plant variety certificate:

(i) if the said owner does not respond to a request by the Director General under Article 37(2) with regard to verification of maintenance of the variety, or

(ii) if the Organization intends to cancel the variety denomination and the owner does not propose a suitable denomination within the time allowed.

(b) Forfeiture may not be declared until the owner has been put on formal notice to meet the obligation incumbent on him within a reasonable period which shall have been notified to him.

(3) Forfeiture shall take effect on the date of its registration; the Organization shall publish a notice thereof.

TITLE VIII PROCEDURAL TIME LIMITS

Article 42 *Extension of Time Limits*

Where the Organization deems such action justified by the circumstances it may, on being so requested in writing, extend, on conditions that it shall specify, the time limit prescribed for performing an act or taking a step in accordance with the provisions of this Annex or of the Implementing Regulations by notifying its decision to the parties concerned. Extension may be granted even if the time limit concerned has expired.

TITLE IX
INFRINGEMENT AND OTHER UNLAWFUL ACTS

Article 43
Infringement

(1) Subject to Articles 30, 31 and 36, any of the acts referred to in Article 29 carried out on the territory of a member State by a person other than the owner of the plant variety certificate and without his consent constitutes an infringement.

(2)(a) At the request of the owner of the plant variety certificate, or of the licensee where the latter has invited the owner to institute legal proceedings and the owner has refused or failed to do so, the court may grant an injunction for cessation of the infringement or prevention of an imminent infringement or the committing of an act of unfair competition referred to in Annex VIII, and may award damages and order any other remedy provided for in domestic legislation.

(b) The court may, at the request of a competent authority or of any other concerned person or association or union, particularly of breeders, seed producers or farmers, award the same remedies as in the case of an act of unfair competition referred to in Annex VIII.

(3) Any person who knowingly commits an infringement within the meaning of paragraph (1) or an act of unfair competition within the meaning of Annex VIII shall be guilty of an offense and liable to a fine of between 1,000,000 and 3,000,000 CFA francs or to a prison term of between one month and six months or to both penalties, without prejudice to civil damages.

Article 44
Infringement Seizure

(1) Owners of plant variety certificates or of exclusive exploitation rights may, under an order from the presiding judge of the civil court within the jurisdiction of which the action is to be taken, cause bailiffs or public or judicial officers, including customs officers, if necessary with the aid of an expert, to make an inventory and detailed description, with or without seizure, of allegedly infringing objects.

(2) The order shall be given on a simple request and on presentation of the plant variety certificate and proof that it has not been invalidated or forfeited.

(3) In the event of seizure, the order may require the petitioner to deposit security, which he shall do before the operation is carried out. The security shall be sufficient but not such as would discourage recourse to the procedure.

(4) Security shall be required in all cases where a foreigner requests seizure.

(5) The holder of the objects that have been described or seized shall be handed a copy of the order, and of the act recording the deposit of security where appropriate, in each case on pain of nullity and damages against the bailiffs or public or judicial officers, including customs officers.

Article 45
Time Limit for Instituting Substantive Proceedings

Where the petitioner fails to institute proceedings, whether civil or criminal, within a period of ten working days from the seizure or description, the seizure or description shall become null and void as of right, without prejudice to any damages that may be claimed.

Article 46
Other Sanctions

(1) The judge may order those items to which the infringement related and which are held by the infringer to be confiscated, and where appropriate destroyed or handed to the owner of the plant variety certificate where, in view of the circumstances, such action is necessary:

- (a) to act as a deterrent to infringers, or
- (b) to safeguard third-party interests.

(2) The judge may also order that the devices or means specially intended for the perpetration of the infringement be confiscated and that the sentence be made public.

(3) The infringing items and the devices or means that have been confiscated may be sold by public auction for the benefit of the State.

Article 47
Usurpation

Any person who improperly avails himself of the status of owner of a plant variety certificate or of an application for such a certificate shall be liable to a fine of between 1,000,000 and 3,000,000 CFA francs. In the event of repetition of the offense, the fine shall be doubled.

Article 48
Extenuating Circumstances

The provisions on extenuating circumstances in the domestic legislation of the member States shall apply to the offenses referred to in this Annex.

Article 49
Conditions for the Institution of Correctional Proceedings

Correctional proceedings for the application of the above penalties may be brought by the public prosecutor only on a complaint from the injured party.

Article 50
Exceptional Jurisdiction of the Correctional Court

The correctional court hearing infringement proceedings shall pronounce on the objections of the accused person who invokes either the nullity or the lapse of the plant variety certificate or issues relating to the ownership of the certificate.

Article 51
Fraud in Relation to Variety Denominations

Any person who knowingly uses a designation in violation of Article 23(4) or who in violation of Article 23(5) fails to use a variety denomination shall be liable to a fine of between 400,000 and 1,000,000 CFA francs.

TITLE X
TRANSITIONAL AND FINAL PROVISIONS

Article 52
Protection of Known Varieties

(1) Notwithstanding Article 5, a plant variety certificate may also be issued, on the following conditions, for a variety that is no longer new on the date of entry into force of this Annex:

(a) the application shall be filed within the year following the above date, and

(b) the variety must:

(i) have been entered in the national catalogue of varieties passed for marketing of a member State or of a Contracting Party of the International Convention for the Protection of New Varieties of Plants or in a variety register kept by a professional association and accepted by the Organization for the purposes of this Article;

(ii) have been the subject of a plant variety certificate in a Contracting Party, or of an application for a plant variety certificate in a Contracting Party, on condition that such application subsequently leads to the issue of a certificate, or

(iii) be the subject of documents confirming, to the satisfaction of the Organization, the date on which the variety ceased to be new within the meaning of Article 5.

(2) Where protection is granted, the term thereof shall be reduced by the number of years that have elapsed between the time at which the variety was first offered for sale or distributed and that at which the application was filed.

(3) Where a plant variety certificate is issued under this Article, the owner may not prohibit exploitation by any third party who was exploiting the variety in good faith prior to the filing of the application.

* *French title:* Accord du 24 février 1999 portant révision de l'Accord de Bangui du 2 mars 1977 instituant une Organisation Africaine de la Propriété Intellectuelle.

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¹ Not indicated here (*Editor's note*).