Law No. 19.039
Establishing the Rules Applicable to Industrial Titles and the Protection of Industrial Property Rights

(of January 24, 1991)*

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Title I
General Provisions

1. This Law contains the provisions applicable to industrial titles and the protection of industrial property rights. Those titles include trademarks, patents, utility models, industrial designs and any other titles of protection that may be established by law.

2. Any person, whether natural person or legal entity, Chilean or foreign, may enjoy the industrial property rights guaranteed by the Constitution, having previously to procure the relevant title of protection in accordance with the provisions of this Law. Natural persons or legal entities resident abroad shall, for the purposes of this Law, appoint an agent or representative in Chile.

3. The processing of applications, the grant of titles and other services relating to industrial property shall be the responsibility of the Department of Industrial Property, hereinafter referred to as "the Department," under the Ministry of Economic Affairs, Development and Reconstruction.

Applications may be presented in person or by an agent.

4. When an application has been accepted for processing, publication of an extract therefrom in the Official Gazette [*Diario Oficial*], in the manner established in the Regulations, shall be mandatory.

5. Any interested party may file an objection to an application with the Department within a period of 30 days reckoned from the date of publication of the extract.

The period indicated in the preceding paragraph shall be 60 days in the case of an application for a patent.

6. Following the period specified in the preceding Section, the Head of the Department shall order the making of an expert report on an application for a patent, utility model or industrial design, in order to verify that it meets the conditions laid down in Section 32, 56 or 62 of this Law, as appropriate.

7. In procedures relating to patents, utility models and industrial designs, the applicant shall be given a transcript of any opposition in order that he may assert his rights within a period of 60 days. Such period shall be 30 days in the case of trademarks.

8. In the event of any disputes over relevant substantive matters, evidence shall be heard within a period of 60 days, which may be extended for a further 60 days if either of the parties has his domicile abroad. In trademark disputes, the period for receiving evidence shall be 30 days, which may be extended for a further 30 days in cases duly specified by the Head of the Department.

9. Where an expert report has been requested, it shall be prepared within a period of 120 days reckoned from acceptance of the assignment. This period may be extended up to a further 120 days in cases where, in the opinion of the Head of the Department, such extension is required.

The report of the expert shall be notified to those concerned, who shall have 120 days reckoned from such notification to make whatever comments they may consider appropriate. This period may be extended once only, at the request of the party concerned, for up to 120 days.

10. The cost of the expert report shall comprise the fees of the person who undertakes it and the necessary related expenses, which shall be borne by the applicant for the patent, utility model or industrial design or by the person requesting that the titles be invalidated.

11. The periods of days specified in this Law shall be irrevocable and shall refer to working days, with Saturday not being considered a working day for those purposes.

12. In this procedure, the parties may avail themselves of all the usual forms of evidence in such matters, and also those indicated in the Code of Civil Procedure, with the exception of testimony.

The provisions of the second paragraph of Section 64 of the said Code shall also be applicable in this procedure.

13. Notifications shall be made as prescribed in the Regulations.

14. Industrial property rights shall be transferable on death and may be the subject of any type of legal act, which shall be evidenced by public deed and shall be recorded in the margin of the relevant register.

Notwithstanding the above, in the case of assignment of an application for the registration of an industrial title, a private deed signed before a notary public shall be sufficient and subsequent recording shall not be necessary. In all cases, registrations of trademarks shall be indivisible and none of the elements or characteristics protected by the title may be either partly or separately transferred.

15. Powers relating to industrial property may be granted by public or private instrument signed before a notary or before the competent civil registration official in communes where there is no notary. Mandates from outside the country may be authorized or authenticated in the presence of the competent Chilean Consul without any subsequent formality, or in the manner established in Section 345 of the Code of Civil Procedure.

16. The offenses defined in this Law shall give rise to public proceedings based on the ordinary judicial rules concerning crimes or offenses.

In such cases, evidence shall be assessed in due conscience, and the Department shall be heard before a ruling is made.

17. Cases concerning opposition, the invalidation of registrations or transfers and any complaint concerning the validity or effects thereof or concerning industrial property rights in general shall be brought before the Head of the Department in accordance with the formalities laid down in this Law and in the Regulations.

The ruling shall be accompanied by a statement of reasons and shall conform as closely as possible to the provisions of Section 170 of the Code of Civil Procedure.

A decision that contains or is based on manifest errors of fact may be remedied *ex officio* or at the request of a party within five days reckoned from the date of its notification.

An appeal may be made against a decision of the Head of the Department within a period of 15 days reckoned from the time of notification thereof, and shall be heard by the Arbitration Tribunal referred to in the following paragraphs.

The Industrial Property Arbitration Tribunal shall comprise three members who shall be appointed every two years by the Ministry of Economic Affairs, Development and Reconstruction, one being freely chosen by the Ministry, another proposed by the President of the State Defense Council from among its body of attorneys and the third elected from a list of three persons submitted by the Court of Appeal of Santiago. The Tribunal shall also have a secretary-attorney who shall be an official of the Ministry of Economic Affairs, Development and Reconstruction.

In drawing up the list of three names referred to in the preceding paragraph, the Court of Appeal of Santiago shall include persons who have held office as judges in any court of appeal in the country or as attorneys at such courts.

When the Arbitration Tribunal has before it matters that require specialized knowledge, it may appoint a technical expert, the cost of whose services shall be met by the appellant.

The Arbitration Tribunal shall meet as often as is deemed necessary and its members shall be remunerated from the budget of the Ministry of Economic Affairs, Development and Reconstruction, in the manner specified by the Regulations, for their presence at each session. Such remuneration shall be compatible with any other remuneration for a State appointment. The same Regulations shall specify the manner in which the Tribunal is to operate and receive administrative support.

18. The grant of patents, utility models and industrial designs shall be subject to the payment of a fee equivalent to one monthly accounting unit [*unidad tributaria mensual*] in respect of every five years for which the privilege is granted.

Precautionary patents shall be subject to the payment of a fee equivalent to half a monthly accounting unit.

The registration of trademarks shall be subject to the payment of a fee equivalent to two monthly accounting units, with the equivalent of half a monthly accounting unit to be paid on the filing of the application, without which it shall not be processed. Where the application is granted, the balance of the fee shall be paid; where it is rejected, the amount already paid shall inure to the benefit of the State.

The renewal of trademark registrations shall be subject to payment of twice the fee amounts provided for in the preceding paragraphs.

Appeals made in cases relating to trademarks, patents, utility models and industrial designs shall be subject to payment of a fee equivalent to two monthly accounting units. Where the appeal is accepted, the Arbitration Tribunal shall order repayment of the fee amount in accordance with the procedure established in the Regulations.

Registration of transfers of ownership, licenses for use, pledges and changes of name and any other type of encumbrance that may affect a patent, utility model, industrial design or trademark shall be subject to payment of a fee equivalent to half a monthly accounting unit. Such acts may not be invoked against third parties until they are registered with the Department.

All the fees provided for in this Section shall inure to the benefit of the State and shall be paid to the Department within a period of 60 days reckoned from the date of the decision authorizing registration in the relevant register, failing which the application shall be considered abandoned and shall be shelved.

Registration of trademarks that identify services and are restricted to one or more provinces shall be deemed to extend throughout the country.

Registrations of trademarks by province to protect business establishments shall be deemed to cover the whole region or regions in which the province concerned is located.

The holders of registrations as referred to in the preceding two paragraphs who, for the purposes of this Section, extend the territorial protection of their marks may not provide services or install business establishments protected by those marks in provinces in which the same or similar marks have been registered for services or establishments of the same type, on pain of liability for the offense referred to in Section 28*(a)* of this Law.

Title II
Trademarks

19. The term “trademark” shall mean any visible, novel and characteristic sign that serves to distinguish products, services or industrial or business establishments.

Promotional or advertising slogans may also be registered, on condition that they are combined or associated with a mark for the product, service or business or industrial establishment for which they are to be used; the slogan must necessarily contain the registered mark that is the subject of the advertisement.

If an application is made for a trademark that contains word forms, prefixes, suffixes or roots in common use or likely to be of a generic, indicative or descriptive nature, the title may be granted with the express indication that it is granted without protection for the said elements considered in isolation. Similarly, the registration of a mark consisting of a label shall confer protection on the whole and not individually to any of its constituent elements.

Where the applicant gives a name to the label, the word constituting that name must be the one that appears most conspicuously and shall also be afforded trademark protection, but any other words contained in the label shall not, which fact shall be noted in the register.

20. The following may not be registered as marks:

(a) the coats of arms, flags or other emblems, names or symbols of any State, international organization or public service of a State;

(b) technical or scientific names for the object for which they are intended, common international names recommended by the World Health Organization and names indicating therapeutic properties;

(c) the name, pseudonym or likeness of any natural person, except with the consent of that person or of his heirs where he is deceased. The names of historical persons may be registered if at least 50 years have elapsed since their death and on condition that their honor is not thereby prejudiced.

Names of persons may in any event not be registered when that would constitute an infringement of paragraphs *(e), (f), (g)* and *(h),* below:

(d) marks that reproduce or imitate official signs or hallmarks indicating control or warranty adopted by a State, without the authorization of the latter;

those which reproduce or imitate medals, diplomas or distinctions awarded at national or foreign exhibitions, where the registration thereof is applied for by a person other than the person who won them;

(e) expressions used to indicate the type, nature, origin, nationality, source, destination, weight, value or quality of the products, services or establishments; expressions that may be in general use in trade to describe a certain class of products, services or establishments, and those that have no novel character or merely describe the products, services or establishments to which they are to be applied;

(f) expressions that mislead or deceive as to the source, quality or type of the products, services or establishments;

(g) identical marks or marks that graphically or phonetically so resemble one another as to be confused with other marks registered abroad for the same products, services or business and/or industrial establishments, insofar as the latter marks enjoy fame and renown.

Where registration has been refused or cancelled on such grounds, the foreign owner shall request registration of the mark within a period of 90 days; if he fails to do so, the mark may be filed by any person, priority being given to that person whose application was rejected or whose registration was cancelled:

(h) identical marks or marks that graphically or phonetically so resemble one another as to be confused with other marks that have been previously registered or validly filed in the same class;

(i) the form, color, ornamentation and accessories of either the product or the packaging;

(j) marks contrary to public policy, morality and proper practice, including the principles of fair competition and trade ethics.

21. The registration of trademarks shall take place at the Department, and applications for registration shall be filed in accordance with the provisions and in the manner established by the Regulations.

22. Before the Registrar of Marks agrees to process an application for a mark, the Department shall undertake a search or preliminary examination in order to determine whether any of the grounds for irregularity specified in Section 20 exists.

An appeal against a decision by the Registrar of Marks not to process an application in accordance with Section 4 of this Law may be filed with the Head of the Department within a period of 20 days.

23. A mark may only be applied for and registered for specific products or for one or more classes of the International Classification. Similarly, service marks may only be applied for and registered for specific services identified in the various classes of the International Classification. Marks may likewise be applied for and registered for the purposes of distinguishing industrial or business establishments engaged in manufacturing or marketing activities associated with one or more classes of specific products, as they may for promotional slogans to be applied in the advertising of marks already registered.

For the purposes of the payment of fees, an application or registration of a mark shall be treated as a separate application or registration for each class.

Registrations of marks to distinguish products, services and industrial establishments shall be valid throughout the Republic.

Registrations of marks to protect business establishments shall serve only for the region in which the establishment is located. If the interested party wishes to extend ownership of the same mark to other regions, he shall mention this in his application for registration and shall pay the corresponding application or registration fee for each region.

24. The registration of a mark shall have a term of 10 years, reckoned from the date of registration in the relevant register. The holder shall be entitled to request renewal for equal periods during that term or within 30 days following the expiration thereof.

25. Any registered mark used in trade shall visibly display the words "*Marca Registrada*" [registered trademark], or the abbreviation "M.R." or the letter "R" inside a circle. Failure to do so shall not affect the validity of the registered trademark, but a person who fails to comply with this requirement shall not be able to bring the criminal actions provided for in this Law.

26. The registration of a trademark may be invalidated where one of the prohibitions referred to in Section 20 of this Law has been violated.

27. An action to invalidate the registration of a mark shall be barred after five years, reckoned from the date of registration. At the end of that period, the Head of the Department shall officially declare such actions barred and shall not entertain the invalidation action.

28. The following persons shall be sentenced to a fine of 100 to 500 monthly accounting units payable to the State:

(a) anyone who with ill intent uses a mark identical or similar to another already registered in the same class of the Classification currently in force;

(b) anyone who fraudulently uses a registered trademark;

(c) anyone who in any form of advertising uses or imitates a registered trademark in the same class of the Classification currently in force, thereby committing a fraudulent act;

(d) anyone who uses an unregistered, lapsed or invalidated mark in a manner indicating that it is a registered mark;

(e) anyone who uses containers or packaging bearing a registered mark that does not belong to him, without having first previously erased it, except where the packaging so marked is intended to contain products of a type different from that protected by the mark.

Any person committing a second or subsequent offense within five years of any of the offenses referred to in this Section shall be sentenced to a fine of up to double the preceding fine.

29. Persons found guilty under the preceding Section shall be sentenced to pay the costs, damages and prejudice caused to the owner of the mark.

The tools and equipment used for the counterfeiting or imitation shall be destroyed and the objects bearing the counterfeit mark shall be confiscated for the benefit of the owner of the trademark. The court hearing the case may also order their immediate seizure, without prejudice to its authority to adopt the necessary provisional measures.

30. Where an unregistered trademark has been used by two or more persons at the same time, the one who registers it may not prosecute any who continue to use it for at least 120 days from the date of registration.

Title III
Patents

31. The word "invention" shall mean any solution to a technical problem arising in an industrial concern. An invention may be or may relate to a product or a process.

The word "patent" shall mean the exclusive right granted by the State for the protection of an invention. The effects, obligations and limitations embodied in the patent shall be determined by this Law.

32. An invention shall be patentable where it is new, involves an inventive step and is susceptible of industrial application.

33. An invention shall be considered new if it does not already form part of the state of the art. The state of the art shall be held to comprise everything disclosed or made available to the public anywhere in the world by publication in tangible form, sale or marketing or use, or in any other manner, before the date of filing of the patent application in Chile. The subject matter of a patent application that has been filed with the Department prior to the date of the application being examined shall also be regarded as forming part of the state of the art.

34. Where a patent has been applied for previously abroad, the party concerned shall have priority for a period of one year, reckoned from the date of filing in the country of origin, for the filing of an application in Chile.

35. An invention shall be regarded as involving an inventive step if it is neither obvious to a person of average skill in the art nor obviously derived from the state of the art.

36. An invention shall be considered susceptible of industrial application if it can, in principle, be made or used in any kind of industry. For such purposes, the word "industry" shall be understood in its broadest sense, including activities such as manufacturing, mining, building, crafts, agriculture, forestry and fishing.

37. The following shall not be regarded as inventions and shall be excluded from patent protection:

(a) discoveries, scientific theories and mathematical methods;

(b) plant or animal varieties;

(c) economic, financial, easily verified trade and taxation systems, methods, principles or plans, and the rules for performing purely mental or intellectual activities or playing games;

(d) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body, except products for use in any of these methods;

(e) new uses of articles, objects or elements known and already used for specific purposes, and changes of shape, dimensions, proportions or materials in the subject matter applied for, except where the qualities of the subject matter are essentially altered or where its use solves a technical problem that did not previously have an equivalent solution.

38. Inventions contrary to the law, public policy, State security, morality or proper practice, or those filed by a person who is not their legitimate owner, shall not be patentable.

39. Patents shall be granted for a non-renewable term of 15 years.

Without prejudice to the provisions of Section 34, applications submitted in Chile for inventions already patented or for which an application is pending in another country shall only be granted for the time remaining before the right expires in the country in which the patent has been applied for or obtained, and without exceeding the term indicated in the preceding paragraph.

40. Improvements shall mean alterations made to a known invention, on condition that they represent novelty and clear, relevant advantages compared with the earlier invention.

41. Applications for patents relating to improvements on inventions already patented in the country, where these are still in force, shall be filed by their authors and shall be subject to the following provisions:

(a) where the person who made the improvement is the owner of the original invention, he shall be granted the patent for the time remaining to complete the term of the earlier patent;

(b) where the person who made an improvement is a third party and the term of the patent to which the improvement has been made has not ended, a patent may only be granted if the original inventor gives prior authorization to the second inventor to use the original idea together with the innovations concerned; the patent may be granted to both inventors jointly or to only one of them, in which case this fact shall be recorded in writing and attached to the application in question;

(c) where there is no agreement, the author of the improvement may apply for a patent in respect of that improvement; when this occurs, the date of validity and the term of the complementary patent shall be decided by the Head of the Department, for which purpose the inventor shall make his intention known to the Department within a period of 90 days reckoned from the date of the original application.

42. Any inventor domiciled in the country and engaged in research on an invention who needs to make experiments or construct some machinery or apparatus that compels him to make his idea public may provisionally protect his rights against possible infringement by requesting, for that purpose, a certificate of protection or provisional patent which the Department shall grant him for a period of one year subject to payment of the relevant fees.

The possession of this certificate gives its owner a preferential legal right over any other person who applies for privileges in relation to the same subject matter during the year of protection. In any case, the term of the final patent shall be reckoned from the time of the application for the provisional patent.

Where the owner of a provisional patent allows the year to pass without applying for the final patent, the invention shall become public property.

43. Once the application has been filed with the Department, a preliminary examination shall be undertaken in which it shall be verified that at least the following supporting material is attached:

— an abstract of the invention;

— a description of the invention;

— a claims sheet;

— drawings of the invention where appropriate.

The description shall be sufficiently clear and complete for an expert or a person skilled in the art to reproduce the invention without need for any other information.

Where examination of the claims of the patent applied for reveals that it corresponds to a utility model or industrial design, it shall be analyzed and treated as such, with the priority accorded it being retained.

44. Declarations relating to the novelty, ownership and usefulness of the invention shall be incumbent on the interested party, who shall make them on his own responsibility.

The grant of a patent shall not mean that the State guarantees the necessity and exactness of the information provided by the applicant in the application and the description.

45. Where the material attached is incomplete, this may be remedied within a period of 40 days from notification of the decision noting the omission, in which case the date of the initial application shall apply. Otherwise it shall be deemed not to have been filed and the date of the correction or new filing shall be considered the filing date.

Applications that fail to meet any other requirement for processing within the periods indicated in this Law or its Regulations shall be deemed to have been abandoned and shall be shelved. In such a case the applicant may request reinstatement of the application within 120 days of the date on which it was deemed abandoned, without loss of the application's priority date.

46. Applicants for patents already applied for in other countries shall submit the result of any search and examination already undertaken by the office in the other country, whether or not the earlier application resulted in the grant of a patent.

47. All the supporting material relating to a patent application shall be kept at the disposal of the public in the Department following the publication referred to in Section 4.

48. Once the patent grant has been approved and payment of the corresponding fees made, the patent shall be granted to the interested party and a certificate issued according protection from the date on which the application was filed.

49. The owner of a patent shall have the exclusive right to manufacture, sell or market in any form the product or other subject matter of the invention and generally to exploit it in any other way.

This privilege shall be extended throughout the territory of the Republic until the date on which the term of the patent grant expires.

50. A patent may be invalidated on the following grounds:

(a) where the person who obtained the patent is neither the inventor nor his licensee;

(b) where the patent has been granted on the basis of an erroneous or manifestly deficient expert report;

(c) where the title has been granted in contravention of the rules of patentability and related requirements, as provided in this Law.

A patent may be the subject of an invalidation action during a period of 10 years.

51. Non-voluntary licenses may only be granted where the holder of a patent has committed a monopoly abuse according to the Resolution Committee established under Decree-Law No. 211 of 1973, which shall be the body responsible for determining the existence of an offense and taking a decision thereon.

The Committee's decision shall take at least the following aspects into consideration:

— the existence of a monopoly abuse;

— where such an abuse is established, the decision of the Committee shall determine the conditions under which the licensee is to work the patent, the time for which the license is to be granted and the amount of compensation that the person using the non-voluntary licensing procedure must periodically pay to the holder of the patent.

For all the purposes of analyzing the financial and accounting statements, the rules of the *Superintendencia de Valores y Seguros* [Supervisory Body for Securities and Insurance] for open corporations shall be applicable.

52. The following persons shall be liable to a fine of 100 to 500 monthly accounting units payable to the State:

(a) any person who defrauds another by using unpatented subject matter accompanied by indications that suggest the existence of a patent, or who practices a similar deception;

(b) any person who without due authorization manufactures, markets or imports a patented invention for the purposes of sale;

(c) any person who fraudulently makes use of a patented procedure. This provision shall not apply where the use of the patented procedure is exclusively for experimental or teaching purposes;

(d) any person who commits fraud by imitating a patented invention;

(e) any person who with ill intent imitates or makes use of an invention for which a patent application has been filed, provided that the patent is eventually granted.

Persons found guilty shall be sentenced to pay the costs, damages and prejudice caused to the owner of the patent.

The tools and equipment used in committing any of the offenses mentioned in this Section and unlawfully produced objects shall be confiscated for the benefit of the owner of the patent. The court may moreover order their immediate seizure, without prejudice to its powers to adopt the necessary provisional measures.

A second or subsequent offense shall be punishable by double the fine specified in the first paragraph.

53. Any patented subject matter shall display the number of the patent either on the product itself or on the packaging, and the words "*Patente de Invención*" [patent] or the abbreviation "PI" and the number of the title shall be visibly shown.

The only exceptions to the above obligation shall be processes whose nature is such that the requirement cannot be met.

Failure to meet the requirement shall not affect the validity of the patent, but a person who does not comply with this provision may not bring the criminal actions referred to in this Law.

Where applications are pending, this shall be indicated where the products concerned by the application are being manufactured, marketed or imported for commercial purposes.

Title IV
Utility Models

54. Instruments, apparatus, tools, devices and objects or parts thereof in a form for which a claim may be made in respect of both their external appearance and their operation, on condition that the said form lends them utility, in the sense that the function for which they are intended thereby gains a benefit, advantage or technical effect that it did not previously have, shall be considered utility models.

55. The provisions of Title III concerning patents shall be applicable as appropriate to utility model patents, without prejudice to the special provisions contained in this Title.

56. A utility model shall be patentable when it is new and susceptible of industrial application.

A patent shall not be granted when the utility model presents only minor or secondary differences which do not make for any discernible usefulness compared with previous inventions or utility models.

An application for a utility model patent may only relate to an individual object, without prejudice to the fact that various elements or aspects of that object may be claimed in the same application.

57. A utility model patent shall be granted for a non-renewable period of 10 years reckoned from the application date.

58. When the application has been received by the Department, a preliminary examination shall be made in order to establish that it is accompanied by at least the following supporting material:

— an abstract of the utility model;

— a description of the utility model;

— a claims sheet;

— drawings of the utility model.

59. A utility model shall visibly display the notice "*Modelo de Utilidad*" [utility model] or the abbreviation "MU" and the number of the title. Failure to do so shall not affect the validity of the utility model but shall deprive its owner of the right to bring the criminal actions provided for in this Law.

60. Utility model patents may be invalidated on the same grounds as those specified in Section 50.

61. The following persons shall be liable to a fine of 100 to 500 monthly accounting units payable to the State:

(a) any person who defrauds another by using unpatented subject matter accompanied by indications that suggest the existence of a utility model patent, or who practices a similar deception;

(b) any person who without due authorization manufactures, markets or imports a patented utility model for the purposes of sale;

(c) any person who commits fraud by imitating a patented utility model;

(d) any person who with ill intent imitates or makes use of a utility model for which an application has been filed, provided that the utility model patent is eventually granted.

Persons found guilty shall be sentenced to pay the costs, damages and prejudice caused to the owner of the patent.

The tools and equipment used in committing any of the offenses mentioned in this Section and unlawfully produced objects shall be confiscated for the benefit of the owner of the patent. The court may moreover order their immediate seizure, without prejudice to its powers to adopt the necessary provisional measures.

A second or subsequent offense shall be punishable by double the fine specified in the first paragraph.

Title V
Industrial Designs

62. The term "industrial design" shall include any three-dimensional form, colored or not, and any industrial or craft product that serves as a pattern for the manufacture of others like it and is distinguished from similar products either by its form, geometrical shape or

decoration or a combination of these, insofar as those characteristics give it a special appearance perceptible to the eye in such a way that an original, new and different character results.

Containers shall be included among the articles that may be protected as industrial designs on condition that they meet the conditions of novelty and originality specified above.

No articles of clothing of any kind may be protected as industrial designs.

63. The provisions of Title III concerning patents shall be applicable as appropriate to industrial designs, without prejudice to the special provisions under this Title.

Industrial designs may be invalidated on the same grounds as those specified in Section 50.

64. The grant of an industrial design title shall be requested by the filing of at least the following documents:

— an application;

— a description;

— a drawing;

— a prototype or model where appropriate.

65. An industrial design title shall be granted for a non-renewable term of 10 years reckoned from the date of application.

66. An industrial design shall visibly display the notice "*Diseño Industrial*" (industrial design) or the abbreviation "DI" and the number of the title. Failure to do so shall not affect the validity of the industrial design but shall deprive its owner of the right to bring the criminal actions provided for in the following Section.

67. The following persons shall be liable to a fine of 100 to 500 monthly accounting units payable to the State:

(a) any person who without due authorization manufactures, markets or imports a registered industrial design for commercial purposes;

(b) any person who with ill intent imitates a registered industrial design;

(c) any person who with ill intent imitates or makes use of an industrial design for which an application has been filed, provided that the title is eventually granted.

Persons found guilty shall be sentenced to pay the costs, damages and prejudice caused to the owner of the title.

The tools and equipment used in committing any of the offenses mentioned in this Section and unlawfully produced objects shall be confiscated for the benefit of the owner of the title. The court may moreover order their immediate seizure, without prejudice to its powers to adopt the necessary provisional measures.

A second or subsequent offense shall be punishable by double the fine specified in the first paragraph.

Title VI
Service Inventions

68. Employment on service contracts the subject of which is the performance of an inventive or creative activity and the power to apply for the title and any industrial property rights shall belong exclusively to the employer or to the party requesting the service, except where expressly provided to the contrary.

69. The right to apply for the title and any industrial property rights deriving from an invention by a worker who, according to his employment contract, is under no obligation to do inventive or creative work shall belong exclusively to him.

If, however, to make the invention he has clearly availed himself of knowledge acquired within and used means provided by the undertaking, the aforesaid powers and rights shall belong to the employer, in which case the latter shall grant the worker additional remuneration to be agreed upon by the parties.

The above shall apply to a person who makes an invention that goes beyond the framework of the tasks assigned to him.

70. The right to apply for the corresponding title and any industrial property rights deriving from the inventive or creative activity of persons contracted to engage in dependent or independent work by a university or research institution as referred to in Decree-Law No. 1.263 of 1975 shall belong to the latter entity or to those whom it may specify, without prejudice to the regulation by its statutes of the manner in which the inventor or creator shall share in the benefits achieved through his work.

71. The rights established in favor of the worker in the preceding Sections shall be unrenounceable prior to the grant of a patent or utility model registration, as the case may be. Any provision to the contrary shall be deemed not to have been written.

Any disputes under this Title shall be within the competence of the Arbitration Tribunal referred to in the fifth and subsequent paragraphs of Section 17 of this Law.

72. The costs incurred by the Arbitration Tribunal referred to in Section 17 of this Law shall be charged to subheading 21, item 03, allocation 001 of the budget of the Under-Secretariat of Economic Affairs.

Title VII
Final Provisions

73. Decree-Law No. 958 of 1931 on Industrial Property, Sections 16 and 17 of Law No. 18.591, Section 38 of Law No. 18.681 and Law No. 18.935 are hereby repealed.

Title VIII
Transitional Provisions

1. Notwithstanding the provisions of the second paragraph of Section 39 of this Law, a patent for medicines of any type and for medicinal pharmaceutical products and their chemical preparations and reactions may only be applied for where a patent application has been filed in the country of origin after the entry into force of this Law.

2. The rules referred to in Section 73 shall be applicable to periods that have already started and to decisions already notified prior to the entry into force of this Law.

Appeals pending before the Arbitration Commission referred to in Section 17 of Decree-Law No. 958 of 1931 shall be heard and ruled upon by the Arbitration Tribunal established under Section 17 of the present Law. Such appeals shall be exempt from payment of the appeal fee referred to in Section 18.

3. Applications for patents and industrial designs that are pending and do not contravene this Law shall continue to be processed in accordance with the provisions of Decree-Law No. 958 of 1931.

Notwithstanding the foregoing, applicants who so wish may, within 120 days of the entry into force of this Law, file new applications conforming to the provisions thereof. The new applications shall retain the priority of the original applications.

4. This Law shall begin to operate on the day of publication in the *Diario Oficial* of the Regulations under it enacted by the President of the Republic, which shall occur within a year of the publication of this Law.

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* *Spanish title:* Ley Núm. 19.039 Establece normas aplicables a los privilegios industriales y protección de los derechos de propiedad industrial.

Entry into force: On the date of publication in *Diario Oficial* of the Regulations, which shall occur within one year of the publication of this Law.

Source: Diario Oficial de la República de Chile, No. 33.877 of January 25, 1991, pp. 1*et seq* .

** Added by WIPO.