

# LAW N° 19.039 ON INDUSTRIAL PROPERTY

## TITLE I PRELIMINARY PROVISIONS

### SECTION 1 SCOPE OF APPLICATION

**Article 1.-** The existence, scope, and exercise of industrial property rights shall be governed by the provisions of this Law. These rights include trademarks, patents, utility models, industrial designs, and drawings, layout designs or topographies of integrated circuits, geographical indications, and appellations of origin, as well as other forms of protection that may be established by law.

This Law also defines acts that shall be considered unfair in the context of the protection of undisclosed information.

**Article 2.-** Any natural person or legal entity, whether national or foreign, shall be entitled to the industrial property rights guaranteed by the Political Constitution, provided that the corresponding title of protection has been previously obtained in accordance with this Law. Persons or entities residing abroad must appoint an agent or representative in Chile for the purposes of this Law.

Industrial property rights granted under this Law and subject to registration shall become fully effective from the date of registration, without prejudice to any rights to which the applicant is entitled and other rights set forth by this Law.

**Article 3.-** The National Institute of Industrial Property<sup>1</sup>, hereinafter referred to as "the Institute", which operates under the Ministry of Economy, Development, and Tourism, is responsible for processing applications, granting titles, and providing other services related to industrial property.

Applications may be filed directly by the applicant or through an agent.

This Law ensures that the protection conferred by the industrial property rights regulated herein will duly safeguard and respect the national biological and genetic heritage as well as traditional knowledge. The granting of industrial property rights involving protected elements developed using material derived from such heritage or knowledge shall be subject to the condition that such material has been acquired in accordance with the applicable legal framework.

### SECTION 2 GENERAL OPPOSITION AND REGISTRATION PROCEDURES

**Article 4.-** Once an application has been filed and accepted for processing, it shall be published in the Official Gazette in the manner and under the conditions established in the Regulations of this Law. Errors in the publication that, in the opinion of the National Director, are not substantial may be corrected by a decision ordering such correction to be made in the corresponding file. In the case of substantial errors, the National Director shall order a new publication to be made within 10 days from the date of the resolution ordering such publication.

**Article 5.-** Any interested party may file a notice of opposition with the Institute against an application for a trademark, patent, utility model and industrial design, layout or topography of integrated circuits, geographical indication, or appellation of origin.

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<sup>1</sup> [INAPI](#), the Chilean Industrial Property Office.

The notice of opposition must be filed within 30 days from the date of publication. In the case of an application for a patent, utility model, industrial design, layout or topography of integrated circuits, geographical indication, or appellation of origin, the aforementioned term is 45 days. In contentious proceedings in which the Institute acts as a court of first instance, the parties must be represented by a qualified lawyer, pursuant to the provisions of Law No. 18,120<sup>2</sup>.

**Article 6.-** When the term referred to in the preceding article has expired, the National Director shall refer the applications for patents, utility models, industrial designs, layout designs or topographies of integrated circuits to an expert to verify that they meet the requirements set forth in Articles 32, 56, 62, and 75 of this Law, as applicable.

**Article 7.-** Once the expert's report is ordered, it must be issued within 60 days from the date the expert accepts the appointment. This term may be extended for an additional 60 days if, in the opinion of the National Director, it is necessary. The expert's report shall be notified to the parties, who shall have 60 days from the date of notification to submit any comments they deem appropriate. This term may be extended only once during the proceedings, at the request of any interested party, for an additional 60 days. The comments of the parties shall be communicated to the expert, who shall have 60 days to respond.

**Article 8.-** After the expert's report has been ordered, the applicant must provide proof of payment of the corresponding fee within the following 60 days. If payment is not made within this term, the application will be considered abandoned. In qualifying cases, the applicant shall pay, within the next 30 days, a specific amount to cover expenses incurred in conducting the examination, as determined by the National Director at the request of the expert. Such expenses shall be paid by the applicant for a patent, utility model, industrial design, layout design or topography of integrated circuits, or by the plaintiff in a cancellation action of such rights.

**Article 9.-** In proceedings in which an opposition is filed, the applicant will be given a term of 30 days for trademarks and 45 days for patents, utility models, industrial designs, layout designs or topographies of integrated circuits, geographical indications, and appellations of origin within which to respond to the opposition.

**Article 10.-** If there are relevant, substantial, and disputed facts, a resolution with a term of 45 days to submit evidence will be issued, except in the case of trademarks, where the evidentiary term will be 30 days. This evidentiary term may be extended for an additional 30 days in qualifying cases.

**Article 10 bis.-** In the event that a resolution with a term to submit evidence is issued within the proceeding, all documents shall be submitted in Spanish or properly translated if required by the Institute.

Once the proceedings have reached the stage of issuing a decision, no other documents or evidence will be admitted, except those related to the assignment of the application, settlements, requests for withdrawal, or limitation of the petition.

**Article 11.-** The terms in days established in this Law and its Regulations cannot be extended and apply only to working days. For this purpose, Saturdays shall not be considered working days.

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<sup>2</sup> Law 18.120, which establishes the general rules for appearing in court.

**Article 12.-** In these proceedings, the parties may use all the means of evidence commonly used in such matters and those provided for in the Code of Civil Procedure, with the exception of testimonial evidence.

In these proceedings, the provisions of the second paragraph of Article 64<sup>3</sup> of the said Code shall also apply.

**Article 13.-** All notifications relating to the procedure for the grant of an industrial property right, oppositions, cancellations and, in general, all matters before the Institute shall be made through the official list of notifications<sup>4</sup> prepared by the Institute in the form prescribed by the Regulations. Any decision appearing in the official list of notifications shall be deemed to have been notified, except for those for which the law prescribes a different form of notification.

Notification of opposition to the application for registration shall be made by the electronic means indicated by the applicant in the file. In such cases, the notification shall be deemed to have been duly made by sending a complete copy of the opposition and the official statement thereon. If, in addition to the notice of opposition, a substantive official action concerning the application for registration has been issued, such decision shall also be notified by electronic means together with the notice of opposition. If notification by electronic means is not possible, the corresponding action shall be deemed to have been notified through the official notification lists in accordance with the provisions of the Regulations.

Notice of actions for revocation or cancellation of a registration shall be given in accordance with the provisions of Articles 40 et seq<sup>5</sup> of the Code of Civil Procedure, for which foreign applicants shall provide a valid domicile in Chile. Actions for revocation or cancellation of a registration granted to a person without domicile or residence in Chile shall be notified to the agent or representative referred to in paragraph 1 of Article 2.

Notifications by the Industrial Property Court<sup>6</sup> shall be made by means of the official list of notifications to be prepared by its Secretary.

The date and manner of notification shall be recorded in the file.

**Article 14.-** Industrial property rights are transmissible upon death and may be subject to all types of agreements and acts, which must be executed at least by means of a private deed, with a side note of the extract of such document to be recorded in the corresponding register.

The extract must indicate the date on which the act or agreement was executed and other information specified in the Regulations.

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<sup>3</sup> "The parties may agree, at any stage of the proceedings, to suspend the proceedings up to two times per instance, whether or not for equal periods, up to a maximum of 90 days per instance, without prejudice to the possibility of agreeing it additionally before the Supreme Court when an extraordinary appeal (*recourses de casación o queja*) against the final judgment is pending before that court. The running time shall be suspended upon the filing of the respective appeal and shall continue to run upon the expiration of the agreed suspension period".

<sup>4</sup> The official list of notifications prepared by the Institute is referred to in Spanish as "**Estado Diario**".

<sup>5</sup> Personal Notification [Court Receiver]

<sup>6</sup> [\*Tribunal de Propiedad Industrial\*](#) is a special and independent judicial body, subject to the administrative, corrective, and economic supervision of the Supreme Court. It is competent to review appeals against decisions made by the National Director of INAPI in the first instance, in accordance with Industrial Property Law No. 19,039, as well as certain resolutions issued by the Committee for the Evaluation of Plant Varieties, under Law No. 19,342, which regulates the rights of breeders of new plant varieties. Additionally, the Court has sole jurisdiction to decide requests for patent term extensions due to unjustified delays in granting the patent or the relevant regulatory authorization for pharmaceutical products (supplementary protection).

It is important to note that the Industrial Property Court does not have jurisdiction over the enforcement of industrial property rights, which is within the purview of ordinary civil or criminal courts.

Likewise, acts or agreements executed abroad may be recorded in the margin of the corresponding register.

In the case of the assignment of pending applications for the registration of an industrial property right, a private deed is sufficient, and evidence of such assignment must be included in the corresponding proceedings.

Trademarks are indivisible, and none of the elements or characteristics of the distinctive sign protected by the register may be transferred partially or separately. However, a trademark protected by a registration covering one or more unrelated classes may be partially transferred, while the rest of the registration remains the property of its owner.

With regard to geographical indications and appellations of origin, the matter is governed by Article 92 of this Law.

**Article 15.-** Powers of Attorney relating to industrial property shall be granted by private deed. Notwithstanding the foregoing, they may be granted by public deed or by private deed signed before a notary public or, in areas where there is no notary public, before a competent official of the Civil Registry. Powers of Attorney from abroad may be granted without any other formality before the Chilean Consul or in the form established in Article 345 of the Code of Civil Procedure<sup>7</sup>.

The power to withdraw an application or renounce a registration must be expressly granted, otherwise, it shall be deemed to be excluded from the powers of the representative.

Notwithstanding the provisions of the first paragraph, it shall be sufficient for the representative to indicate in the application the name of the applicant on whose behalf he is acting. In such cases, the Institute shall grant a term of 30 days for national residents and 60 days for foreign residents to submit the corresponding power of attorney. At the end of this term, the application will be considered abandoned.

**Article 16.-** In the proceedings referred to in this Section, evidence shall be assessed according to the rules of sound judgment.

**Article 17.-** Proceedings for opposition, cancellation or transfer of a registration, revocation, as well as any action relating to their validity or effects, or to industrial property rights in general, shall be brought before the National Director and shall comply with the formalities established by this Law and its Regulations.

The decision issued shall be well-founded and shall comply with the rules established in Article 170 of the Code of Civil Procedure<sup>8</sup>.

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<sup>7</sup> Legalization of public documents issued outside Chile (or apostille of public documents issued in a State Party to the Hague Convention, in accordance with Article 345 bis of the Code of Civil Procedure).

<sup>8</sup> "The final judgments of the first or sole instance, and those of the second instance which modify or annul in their operative part the judgments of other courts, shall contain:

1. The exact names of the litigants, their domiciles and their professions or trades;
2. A brief statement of the claims or actions brought by the plaintiff and the reasons for them;
3. The same enumeration of the exceptions or defenses raised by the defendant;
4. The considerations of fact or law on which the judgment is based;
5. The statement of the laws and, in their absence, of the principles of equity, according to which the judgment is rendered; and
6. The decision of the dispute. This decision must include all the pleas and exceptions raised in the trial; however, the resolution of those that are incompatible with those accepted may be omitted.

The final judgments of the second instance, confirming without modification the judgments of the first instance, if the latter do not meet all or some of the requirements indicated in the preceding sentence, must be rendered in the same manner.

**Article 17 bis A.-** Within 15 days from the date of notification, both at first instance and at second instance, decisions relating to proceedings in which an opposition has been filed and which contain or are based on obvious errors of fact shall be corrected ex officio or at the request of one of the parties. In the case of proceedings in which no opposition has been filed, they may be corrected in the same manner until the expiry of the time limit for appeal against the decision closing the registration proceedings.

**Article 17 bis B.-** Decisions of the National Director in the first instance may be appealed whether or not oppositions have been filed. Appeals must be filed within 15 days from the date of notification of the decision and will be heard by the Industrial Property Court.

The appeal will be granted in both effects<sup>9</sup> and will be against final or interlocutory decisions. Final decisions of the second instance may be subject to an extraordinary appeal to the Supreme Court<sup>10</sup>.

Appeals are filed and processed in accordance with the provisions of the Code of Judicial Organization and the Code of Civil Procedure.

However, it is not necessary to appear before the Industrial Property Court in order to proceed with the appeal.

### **SECTION 3 INDUSTRIAL PROPERTY COURT**

**Article 17 bis C.-** The Industrial Property Court, hereinafter referred to as "the Court," is a special and independent judicial body, subject to the direction, correction, and economic supervision of the Supreme Court, with its seat in the city of Santiago.

The Court is composed of six judges and four alternates. Each judge is appointed by the President of the Republic, by Supreme Decree of the Ministry of Economy, Development and Tourism, from a list of three candidates proposed by the Supreme Court, based on a public call for antecedents. This call must meet objective, public, transparent, and non-discriminatory conditions established by the Supreme Court.

The members of the Court must have a legal qualification of at least 5 years. The selection of at least four of the members and two of the alternates shall require specialized knowledge in the field of industrial property.

**Article 17 bis D.-** The Court holds regular sessions in two courtrooms and extraordinary sessions in three courtrooms. At least two members are present in each courtroom. Each courtroom holds hearings at least three days a week to resolve the cases brought before it.

The quorum for holding a hearing is three members.

Decisions are made by a simple majority. In the event of a tie, the presiding judge casts the deciding vote. Other procedural matters are governed by the provisions of the Code of Judicial Organization. In complex cases, the Court may order an expert opinion and decide who shall bear the costs thereof, irrespective of the final decision on the costs of the case. In cases before the Court other than those relating to trademarks, the Court shall, at the request of one of the parties, order the report of one or more experts. In such cases, such experts shall take part in the deliberations without the right to vote.

The President of the Court and the President of each courtroom shall be elected by their respective members.

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If the judgment of the first instance meets these requirements, the judgment of the second instance, modifying or annulling it, need not contain a statement of the circumstances referred to in numbers 1, 2 and 3 of this article, and it shall be sufficient to refer to it".

<sup>9</sup> This means that the first instance proceedings are suspended until a final decision is made.

<sup>10</sup> "*Recurso de Casación*"

**Article 17 bis E.-** The remuneration of the members of the Court shall be the equivalent of 50 *Unidades Tributarias Mensuales* (UTM)<sup>11</sup> for its members and 20 UTM for its alternates. In addition, each member of the Court shall receive the sum of 0.4 UTM for each case heard and decided. However, the total amount that each member may receive in this regard per month is limited to 50 UTM.

**Article 17 bis F.-** Members of the Court shall be subject to recusal, disqualification, or challenge on the grounds set forth in Articles 195 and 196 of the Code of Judicial Organization.

Likewise, it shall be grounds for recusal or disqualification of a member of the Court if, in a case under consideration by him, his spouse or a relative up to the third degree of consanguinity or the second degree of affinity, or persons related to him by adoption, or companies in which the same persons are shareholders, have an interest; or persons related to him by adoption, or companies in which the same persons are their legal representatives, attorneys, directors, managers, or occupy other managerial positions, or own, directly or through other natural or legal persons, a percentage of the company which allows them to participate in its management, or elect or have elected one or more of its administrators.

The reasons invoked may be accepted by the member concerned; if not, the case will be heard by the Tribunal with the exclusion of that member. A fine of up to 20 UTM will be imposed on the party that has invoked the grounds for recusal or disqualification and the request has been unanimously rejected.

If, for any reason, the Court does not have a sufficient quorum to function in at least one chamber, the judges of the Court of Appeals of Santiago may substitute, in accordance with the provisions of the Code of Judicial Organization.

The provisions of Articles 319 to 331 of the Code of Judicial Organization, with the exception of Article 322, shall apply to the members of the Court.

The term of office of the members and alternates of the Court shall be 3 years and shall be renewable for new consecutive periods.

**Article 17 bis G.-** The members of the Industrial Property Court shall cease to hold office for the following reasons:

- a) Expiration of the legal term of appointment;
- b) Voluntary resignation;
- c) Attainment of the age of 75 years;
- d) Removal from office for gross neglect of duty;
- e) Sudden disability. This means a disability that prevents the person from performing his duties for a total of 3 consecutive months or 6 months over one year.

The measures referred to in points (d) and (e) above shall be taken by the Supreme Court at the request of the President of the Court or of two of its members, without prejudice to the disciplinary powers of the Supreme Court.

The decision to remove a member from office shall state the factual reasons for the dismissal and the evidence.

After the decision of dismissal, if the remaining term of office exceeds one hundred and eighty days, a new appointment shall be made in accordance with the provisions of Article 17 bis C of this Law. With regard to points b), d), and e) above, the substitute judge shall remain in office for the entire duration of the remaining term of office.

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<sup>11</sup> UTM means *Unidad Tributaria Mensual* (Monthly Tax Unit), a unit of account that is used for several purposes and is adjusted monthly according to the rate of inflation, i.e. the change in the Consumer Price Index. Initially, it was used only for tax purposes by the Tax Administration, but its use has been extended to other purposes. It is paid and/or collected in its Chilean peso equivalent, available [here](#).

**Article 17 bis H.-** The Court will have a guaranteed staff of one legal secretary, two court reporters, and four administrative assistants, all of whom shall be members of the staff of the Under-Secretariat of Economy and Small Businesses and shall be permanently assigned to the Industrial Property Court. They shall be subject to the rules applicable to the staff of the Under-Secretariat of Economy and Small Businesses, unless this is incompatible with the nature of their duties.

Any of the court reporters may replace the secretary, who in turn may replace them.

**Article 17 bis I.-** The secretary, the court reporters and the administrative staff may, if necessary, be replaced or substituted by employees of the Under-Secretariat of Economy and Small Enterprises, provided that they meet the requirements for the position they are replacing or substituting, and, if the needs of the Court so require, temporary staff may be hired with the prior approval of the Budget Office.

The furniture, equipment, materials and all services necessary for the normal functioning of the Court shall be the administrative and economic responsibility of the Under-Secretariat of Economy and Small Businesses.

The Public Sector Budget Act shall provide each year for the appropriations necessary for the functioning of the Court. To this end, the President of the Court shall communicate the economic requirements to the Minister of Economy, Development and Tourism, who shall include them in those of the Ministry, according to the rules established for the public sector.

**Article 17 bis J.-** The Secretary shall be the chief administrative officer of the Court staff for administrative purposes, notwithstanding any other specific duties and responsibilities assigned or delegated by the Court.

**Article 17 bis K.-** Before entering upon their duties, the members of the Court, the Secretary, and the court reporters shall swear an oath or make a promise to uphold the Constitution and laws of the Republic before the President of the Court and the Secretary. The President shall administer the oath before the senior judge.

#### **SECTION 4 PAYMENT OF RIGHTS (OFFICIAL FEES)**

**Article 18.-** The granting of patents, utility models, industrial designs and layout designs or topographies of integrated circuits is subject to the payment of an official fee of 2 UTM<sup>12</sup> for each 5-year period for which the right is granted. At the time of filing, an application fee of 1 UTM is paid to initiate the procedure. Once the application has been accepted, the fee is payable for the first 10 years in the case of patents and for the first 5 years in the case of utility models, industrial designs and layout designs or topographies of integrated circuits.

Notwithstanding the provisions of the preceding paragraph, the Institute may, at the request of the applicant, grant a filing date to an application even if the required payment has not been credited, but the application shall not be processed until such payment has been credited, which must be done within 30 days of the granting of the filing date, under warning of the application being deemed not to have been filed.

Any patent application exceeding 80 pages shall be subject to payment, together with the filing fee, of an additional fee equal to 1 UTM for each additional 20 pages or fraction thereof.

Payment of the fees corresponding to the second 10-year period for patents, the second 5-year period for utility models and layout designs or topographies of integrated circuits, and the second and third 5-year periods for industrial designs may, at the option of the applicant, be made in one of the following ways:

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<sup>12</sup> See footnote No. 11

- a) annual and equal payments of 0.4 UTM<sup>13</sup> from the end of the first 10 year or 5-year period, as the case may be. Such payments shall be made within the year prior to the corresponding annuity or within a grace period of 6 months following the expiration of each year, with a surcharge of 20% for each month or fraction thereof, commencing with the first month of the grace period; or
- b) a single payment before the expiry of the first 10 year or 5-year period, as the case may be, corresponding to 4 UTM in the case of patents and industrial designs and to 2 UTM in the case of utility models and layout designs or topographies of integrated circuits. The single payment must be made within the year preceding the expiration of the first 10 year or 5-year period, as the case may be, or within a grace period of 6 months following the expiration thereof, with a surcharge of 20% for each month or fraction thereof, starting from the first month of the grace period.

If payment is not made within the periods referred to in paragraphs a) or b) above, the rights referred to in this article shall lapse.

**Article 18 bis A.-** Applicants for the rights referred to in the preceding article who lack the economic means may request registration without paying any fees. To benefit from this provision, the applicant must submit a sworn declaration of lack of economic means, along with the documents required by the Regulations.

Once the benefit is granted, the applicant shall not be required to make the payments mentioned in the first paragraph of Article 18, deferring any payments for the following years in accordance with the Regulations. The deferral and the obligation to pay the deferred amount shall be registered. This obligation will remain with the registration, and shall be the responsibility of whoever holds the right.

The cost of the expert's report referred to in Article 6 of this Law shall also be deferred. The National Director shall appoint an expert from the Institute's register, following the rotation system established by the Regulations. The expert must accept the obligation, under penalty of being removed from the register, and perform the task with due diligence and promptness. Likewise, the name of the expert who issued the report and the fees due shall be recorded and paid by the holder of the registration on the date established in the Regulations.

If the deferred fees are not paid, the Institute shall declare the expiration of the patent registration.

**Article 18 bis B.-** The registration of a trademark, geographical indication, or appellation of origin is subject to the payment of a fee equal to 3 UTM<sup>14</sup>. At the time of filing, an application fee of 1 UTM must be paid; otherwise, the application will not be accepted for processing. If the application is granted registration, the payment of the fee must be completed.

The renewal of trademarks is subject to the payment of a fee of 6 UTM per class. Proof of such payment must be submitted with the renewal application. Renewal applications filed after the expiration date of the registration to be renewed will incur a surcharge of 20% for each month or fraction thereof following the expiration date of the registration.

Geographical indications and appellations of origin are not subject to the renewal fee established for trademarks in the preceding paragraph.

**Article 18 bis C.-** The filing of an appeal is subject to the payment of a fee of 2 UTM. The payment receipt must be submitted with the appeal. If the appeal is accepted, the Industrial Property Court will order the refund of the amount paid in accordance with the procedure established by the Regulations.

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<sup>13</sup> See footnote No. 11

<sup>14</sup> See footnote No. 11

**Article 18 bis D.-** The recordal of assignments, licenses of use, pledges, change of name and any other type of lien affecting patents, utility models, industrial designs, trademarks and layout designs or topographies of integrated circuits shall be made prior to the payment of a fee of 1 UTM<sup>15</sup>, which payment shall be credited at the time of filing. The above instruments shall not be enforceable against third parties until they have been registered with the Institute.

**Article 18 bis E.-** The above-mentioned fees are for fiscal benefit.

In order to complete the payment of the fees corresponding to the acceptance of an industrial property registration, such payment shall be accredited within 60 days from the date on which the resolution authorizing the registration becomes enforceable in the relevant registry, failing which the application shall be deemed abandoned and will be archived, without prejudice to the provisions of paragraph 2 of Article 45.

The resolution referred to in the preceding paragraph shall be notified by electronic means in the manner and under the conditions established by the Regulations.

**Article 18 bis F.-** Paid fees are non-refundable.

## **SECTION 5**

### **REGISTRATION CANCELLATION PROCEDURE**

**Article 18 bis G.-** Any interested party may request the cancellation of the registration of an intellectual property right.

The cancellation action shall contain at least the following information:

- a) Name, address and profession of the plaintiff.
- b) Name, address and profession of the defendant.
- c) Number and date of the registration whose cancellation is requested, and the identification of the right concerned.
- d) The facts and legal grounds on which the cancellation action is based.

**Article 18 bis H.-** In the case of patents and utility models, cancellation may be requested in respect of the entire registration or in respect of one or more of its claims.

**Article 18 bis I.-** The holder of the industrial property right or his representative shall be notified of the cancellation action and a time limit shall be set for his reply. In the case of patents, utility models, industrial designs, layout designs or topographies of integrated circuits and geographical indications and appellations of origin, this term shall be 60 days. In the case of trademarks, the time limit shall be 30 days.

**Article 18 bis J.-** With the response to the cancellation action of a patent, utility model, industrial design, layout design or topography of integrated circuits and geographical indications and appellations of origin, or in the absence of a response from the defendant, a report shall be ordered by one or more experts on the facts contained in the cancellation action and the response. The expert shall be appointed at a hearing by agreement of the parties or, in the absence of agreement or if the hearing is not held for any reason, by the National Director.

In any event, the party aggrieved by the expert's report may request a second report, in which case the procedure set forth in this article shall be followed.

The National Director may, at any time, hold a private hearing with the expert(s) who issued the report at the time of the application for registration as a precursor to a better resolution of the matter.

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<sup>15</sup> See footnote No. 11

**Article 18 bis K.-** If an expert is appointed by the National Director, the parties may, within 5 days of the date of the decision appointing the expert, file an objection based solely on one or more of the following grounds:

- a) Having publicly expressed an opinion on the matter.
- b) Family ties, apparent friendship or enmity with one of the parties.
- c) Lack of fitness or competence with respect to the matter under consideration.
- d) For having rendered professional services, either in an employed or self-employed capacity, to one of the parties within the last 5 years, or for having had an economic or business relationship with one of the parties during the same period.

The other party shall have 20 days to respond to the expert's objection, and in the event of a response or failure to respond, the National Director shall decide the matter without further formality.

The expert's report shall be communicated to the parties, who shall have 60 days within which to submit their comments.

If there are relevant, substantial and disputed facts, the National Director shall open 45-day term for submitting evidence, which may be extended only once for an additional 45 days in duly qualified cases.

After considering all arguments offered by the parties and the expert's report, the National Director shall rule on the cancellation action.

**Article 18 bis L.-** In the case of trademarks, once the term for responding the cancellation action has expired and there are relevant, substantial and disputed facts, the National Director shall open a 30-day term for submitting evidence, which may be extended only once for an additional 30 days in duly qualified cases as determined by the National Director.

**Article 18 bis M.-** The provisions of Articles 10 bis, 12 and 16 of this Law apply to the cancellation procedure.

**Article 18 bis N.-** The canceled registration shall be considered null and void as of its effective date.

The decision to cancel the registration in whole or in part shall be recorded in the margin of the respective registration.

**Article 18 bis O.-** The rules of procedure established in this section shall apply to all other proceedings under the jurisdiction of the National Director, in accordance with what is established in Article 17 of this Law.

## **TITLE II TRADEMARKS**

**Article 19.-** A trademark is any sign that is capable of distinguishing goods or services in commerce. Such signs may consist of words, including personal names, letters, numbers, figurative elements such as images, graphics, symbols, combinations of colors, sounds, smells, or three-dimensional shapes, and any combination of these signs. If the signs are not inherently distinctive, registration may be granted if they have acquired distinctiveness through use in the domestic market.

Advertising or promotional phrases or slogans may also be registered, provided that they accompany or are attached to a registered trademark of the goods or services for which they are to be used.

The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to its registration.

**Article 19 bis.-** Where registration of a trademark is applied for in the name of two or more holders, they may, acting jointly and by common agreement, also apply for the registration of rules of use and control for the trademark, which shall be binding on the holders but not enforceable against third parties. In this case, the co-holders may waive their right to request the division of their community for a specified period of time or indefinitely.

The Institute may object to the registration of the rules if they contain provisions that are illegal or that may cause error or confusion to the consuming public.

The rules of use and control will be filed with the trademark application and will be decided together with it. The Institute may object to them before issuing its final decision, and they must be corrected within 60 days.

Failure by any of the co-holders to comply with the provisions of the rules of use and control shall entitle the others to institute legal actions for enforcement and/or to claim damages in accordance with the provisions of Title X of this Law.

**Article 19 bis A.-** Cancellation or revocation shall have the same effect on the advertising phrases associated with the registration. Consequently, upon cancellation or revocation of a trademark, the Institute will automatically cancel or revoke the registrations of advertising phrases associated with the trademark that has been declared cancelled or revoked. This will be recorded by means of a side note in the corresponding registration.

**Article 19 bis B.-** Advertising phrases or slogans may not be assigned or transferred, unless assigned or transferred together with the principal registration to which they are attached.

**Article 19 bis C.-** Trademark registrations containing signs, figures, numbers, colors, prefixes, suffixes, roots, or segments that are commonly used or that may be considered generic, indicative, or descriptive shall be deemed to confer protection on the trademark as a whole and shall be registered with the specific condition that no protection is granted to such elements when considered independently.

**Article 19 bis D.-** A trademark confers on its holder the exclusive right to prevent others from using it in commerce in the manner for which it was granted and to distinguish the goods or services covered by the registration.

Accordingly, the holder of a registered trademark may prevent any third party from using in commerce, without authorization, identical or similar trademarks for goods or services that are identical or similar to those for which the registration was granted, if such use by a third party would cause mistake or confusion.

If the third party's use relates to an identical trademark for identical goods or services, confusion is presumed.

**Article 19 bis E.-** The right conferred by the registration of a trademark does not entitle its holder to prevent third parties from using it in respect of goods lawfully marketed under that trademark in any country by the holder or with his express consent.

The rights conferred on the holder of a trademark registration shall in no way prevent the exercise of the right of any person to use, in the course of his business, his name or pseudonym or that of his predecessor in business, except where such name is used in such a way as to mislead or confuse the consuming public.

Likewise, the holder of a registered trademark containing geographical terms or indications relating to the category, nature, variety, origin, nationality, source, destination, weight, value, quality, characteristics or other descriptive terms of goods or services shall not be entitled to prevent the use of such terms or indications where they are used precisely to identify or inform the geographical origin, category, nature, variety, origin, nationality, source, destination, weight,

value, quality or other descriptive characteristics of a good or service, provided that such use does not mislead or confuse the consuming public.

**Article 20.-** It is not possible to register as a trademark:

- a) The designation of coats of arms, flags, or other emblems, as well as the names or acronyms of any state, international organization, or government public service.
- b) Regarding the object to which they refer, technical or scientific denominations, the names of vegetable varieties, common denominations recommended by the World Health Organization, and those indicative of therapeutic action.
- c) The name, pseudonym, or portrait of any person, unless consent has been granted by such person or by the heirs in the event of their death. However, the names of historic figures may be registered provided that at least 50 years has passed since their death and that there is no impact on their honor. In any case, the names of persons cannot be registered if they contravene the provisions set out in letters e), f), g) and h).
- d) The signs that reproduce or imitate medals, diplomas, or distinctions awarded at national or foreign exhibitions, whose inscription is requested by a person other than the person who obtained them.
- e) The expressions or signs used to indicate category, nature, origin, nationality, source, destination, weight, value or quality of the goods or services; those that are generally used in trade to designate a certain type of good or service and those that are not distinctive or describe the goods or services to which they are to be applied.
- f) The signs that are intended to mislead or deceive as to the origin, quality or category of the goods or services, including those belonging to different classes whose scopes of protection are related or indicate a connection between the respective goods or services.
- g) The trademarks which are identical or graphically or phonetically similar to others registered abroad for the protection of the same goods or services and which are liable to cause confusion, provided that they are famous and well known in the relevant sector of the public which usually consumes the goods or demands the services in the country of origin.

If a trademark registration is refused or canceled for this reason, the holder of the registered trademark that is well known abroad shall apply for its registration within 90 days. Otherwise, the trademark may be applied for by any person, and the person whose application was refused or whose registration was canceled shall have priority within the following 90 days from the date of expiration of the right of the holder of the well-known trademark.

Likewise, trademarks registered in Chile that are famous and well known may prevent the registration of other identical or similar signs applied for to distinguish different and unrelated goods or services, provided that, on the one hand, the latter have some connection with the goods or services distinguished by the well-known trademark and, on the other hand, it is likely that such protection will harm the interests of the holder of the well-known registered trademark. In this case, the fame and reputation of the earlier trademark will be determined in the relevant sector of the public that usually consumes the goods or services in question in Chile.

- h) The trademarks which are identical or graphically or phonetically similar to other trademarks already registered or pending registration for identical or similar goods or services in the same class or related classes and which may cause confusion.

This ground also applies to unregistered trademarks that are actually and effectively used in the national territory prior to the application for registration. If a registration is refused or canceled for this reason, the user of the trademark must apply for its registration within 90 days. Otherwise, the trademark may be applied for by any person within 90 days of the expiration of the user's right, with the priority of the person whose trademark was refused or canceled. Notwithstanding the provisions of the first paragraph of this article, the

Institute may accept coexistence agreements for trademarks, provided that they do not infringe the rights previously acquired by third parties or mislead the public.

- i) The color of the goods or packages and the color itself.
- j) Those that may be considered misleading or likely to cause confusion to the consuming public as to the origin or characteristics of the product that it seeks to protect in Chile through a geographical indication or appellation of origin.
- k) The trademarks that violate moral codes, standards of good conduct and public policy, including the principles of fair competition and business ethics.

**Article 20 bis.-** If a trademark application has been filed abroad, the applicant has a priority term of 6 months from the filing date in the country of origin to file the application in Chile.

The priority right may be accredited in accordance with the means and modalities established in the Regulations.

**Article 21.-** The Trademark Registry shall be maintained in and by the Institute, and applications for registration shall be made in accordance with the rules and in the form set forth in the Regulations.

Any application listing several classes of goods and/or services, hereinafter referred to as "original application" may, at the request of the applicant, be divided into two or more applications, hereinafter referred to as "divisional applications". For this purpose, the applicant shall indicate in each of them the division of the goods and/or services. The divisional applications shall retain the filing date of the original application and the benefit of any priority right. The divisional applications shall give rise to the corresponding payments as if they were new applications.

The request to divide the trademark application may be filed prior to the Institute's final decision on the original application for registration, whether or not it was the subject of an opposition. Similarly, the request to divide the trademark application may be filed during the appeal or complaint stage against the grant decision.

Trademark registrations in force may always be divided. In cases where the validity of a registered trademark is challenged before the Institute or during the appeal in a cancellation proceeding, its division may be requested in similar terms as indicated in the preceding paragraphs.

During the processing of a substantive Office action, opposition, cancellation action or other pending appeal, the division of the application or registration shall be permitted only if, as a result of the division, the substantive Office action, opposition, cancellation action or appeal in question is limited to one of the divided applications or registrations.

**Article 22.-** Once a trademark application has been filed, the Trademark Registrar will verify that all required formalities for the validity of the application have been met. If, during the formal examination, the Trademark Registrar identifies any errors or omissions, the applicant will be informed of the necessary corrections or clarifications to be made within 30 days, without prejudice to the priority date of the application. If the required corrections are not made within the specified time limit, the application shall be considered abandoned. To contest the decision declaring the application abandoned, a complaint before the National Director may be submitted, in accordance with the general rules. If the complaint is denied, the application will be considered abandoned.

If the National Director accepts an application for processing, it may not subsequently be rejected ex officio on the same legal grounds and reasoning that were known to the Director at the time the complaint was filed.

If further formalities are required to address an objection raised against an application, the applicant has the right to request a suspension of the procedure until such formalities have been completed. If the formalities on which the objection is based are not initiated within 60 days

from the date on which it is legally possible to do so, the application shall be considered abandoned.

Upon expiration of the opposition period, the National Director shall analyze the merits of the application and determine whether there are grounds for a substantive Office action. These grounds shall be communicated to the applicant, who shall respond within the same time limit set for responding to oppositions, and jointly with them, if any.

Upon expiration of the time limit and completion of the other actions required by the procedure, the National Director shall issue a final decision granting or refusing the application. In this case, the application may not be rejected on grounds other than those stated in the opposition or in the substantive Office action.

**Article 23.-** Each trademark application may be filed only for specific and determined goods or services, indicating the class or classes to which they belong according to the International Classification of Goods and Services.

Trademark applications may be filed to distinguish advertising phrases or slogans to be used in the advertisement of already registered trademarks.

Where goods and/or services belonging to several classes of the International Nice Classification have been included in a single application, such application will result in a single registration.

**Article 23 bis A.-** A collective mark is any sign or combination of signs which is capable of distinguishing in the market the goods or services of the members of an association from those of third parties.

For these purposes, an association is a group of producers, manufacturers, traders or service providers having legal personality.

The collective mark may not be transferred to third parties.

**Article 23 bis B.-** A certification mark is any sign or combination of signs which is capable of distinguishing in the market the goods or services of third parties, guaranteeing that they comply with common requirements and characteristics.

The holder of a certification mark may not be a person who manufactures or markets goods or services identical or similar to those to which the certification mark is to be applied.

The holder of a certification mark shall authorize its use by any person whose goods or services meet the conditions set forth in the rules for use of the certification mark.

**Article 23 bis C.-** Applications for registration of collective or certification marks shall be accompanied by rules of use.

The rules of use shall meet the following requirements:

- a) contain the identification data of the holder
- b) specify the goods or services to be distinguished by the collective mark or the goods and services to be certified
- c) state the conditions and modalities for use of the mark
- d) specify the grounds on which the use of the collective mark may be refused to a member of the association or, in the case of a certification mark, to the person previously authorized to use it
- e) contain the other indications established by the Regulations of this Law.

The Institute may object to the registration of the rules of use or to their amendment, as it deems appropriate, at the formal or substantive examination stage, if it considers that they contravene legal or regulatory provisions or contain provisions that are contrary to public policy or that may mislead or confuse the consuming public.

**Article 23 bis D.-** For the purpose of payment of fees, the application or registration of a trademark for goods and services is considered a separate application or registration for each class, regardless of the number of specific goods or services included in each class. This principle applies to both new applications and renewals.

**Article 23 bis E.-** Trademark registrations are valid throughout the territory of the Republic.

**Article 24.-** The registration of a trademark is valid for 10 years from the date of registration in the register. Its holder shall be entitled to request its renewal for equal periods during the 6 months prior to its expiry and up to 6 months after its expiry, subject to the provisions of Article 18 bis B concerning the applicable fees.

At the end of the period referred to in the preceding paragraph, the registration shall lapse if no request for renewal is submitted.

**Article 25.-** The words "Registered Trademark" or the initials "M.R." or the letter "R" within a circle must be clearly and prominently displayed on all registered trademarks when used in commerce.

Failure to comply with this requirement shall not affect the validity of the registered trademark; however, the holder shall be deprived of the right to pursue the criminal actions outlined in this Law.

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**Article 26.-** Violation of any of the prohibitions set forth in Article 20 of this Law shall result in cancellation of the trademark registration.

**Article 27.-** The statute of limitations for cancellation actions against a trademark registration is 5 years as from their granting date.

There is no statute of limitations for trademark registrations obtained in bad faith.

**Article 27 bis A.-** The declaration of total or partial revocation of a trademark registration shall be applicable if one of the following circumstances occurs:

- a) If, after a period of 5 years from its granting date, the trademark has not been put to actual and effective use in the national territory, by its holder or by a third party with his consent, to distinguish one or more of the goods and/or services for which it was registered, or if such use has been continuously interrupted for the same period of time.
- b) If its holder has caused or tolerated its transformation into the common name of a good or service for which it is registered, in such a way that, in the course of commercial operations and in the general use of the public, the trademark has lost its force or capacity to distinguish the goods or services to which it is applied. However, the trademark holder shall not be deemed to have caused or tolerated such transformation if the indications of a registered trademark referred to in Article 25 have been properly used.

Revocation may not be declared ex officio and may only be requested by a legitimately interested party.

**Article 27 bis B.-** The burden of proving the use of the trademark shall be borne by its holder. The effective use of a trademark shall be proved by any evidence permitted by this Law, which proves that the trademark has been used in the territory of the country. Any evidence of use of a trademark submitted for the purposes of this Law shall have the value of an affidavit, and the trademark holder shall be held responsible for its veracity.

If the holder does not prove the effective use of the trademark in the required manner, the declaration of revocation shall be made, unless the holder can prove that there were valid reasons based on the existence of obstacles to the use of the trademark.

Circumstances arising independently of the will of the holder and constituting an obstacle to the use of the trademark, such as import restrictions or other official requirements imposed on the protected goods or services, are recognized as valid reasons for non-use.

**Article 27 bis C.-** A counterclaim for revocation may be filed by anyone who is sued for cancellation or opposition on the basis of an earlier registered trademark and must be filed in the statement of defense. The counterclaim shall be processed and decided together with the main action.

Once the counterclaim has been filed, it shall be served on the plaintiff, who shall respond within 30 days from the date of service, at the end of which the case shall be received as evidence of all actions taken, which shall follow the same procedure.

**Article 27 bis D.-** The revocation shall be effective from the date of the total or partial cancellation of the corresponding registration ordered by a final judgment.

If the grounds for revocation apply only to a part of the goods or services for which the trademark registration was granted, the declaration of revocation shall apply only to the affected goods and/or services. The trademark registration shall continue to be valid for the remaining goods and/or services.

**Article 28.-** The following shall be punishable by a fine<sup>16</sup> of 25 to 1,000 UTM<sup>17</sup>:

- a) Any person who, in bad faith, uses for commercial purposes a trademark identical to or similar to another trademark registered for the same goods or services, or for goods or services related to those protected by the registered trademark. This is without prejudice to the provisions of Article 19 bis E<sup>18</sup>.
- b) Any person who uses for commercial purposes an unregistered, expired, or cancelled trademark by using the markings corresponding to or simulating a registered trademark.
- c) Any person who uses for commercial purposes containers or packaging materials bearing a registered trademark without being entitled to use it or without having it previously removed, unless the marked packaging is intended to package goods different from and not related to those protected by the trademark.

Anyone who commits the same offense within 5 years from the date of the fine will be liable to an additional fine of at least twice the previous fine, up to a maximum of 2,000 UTM.

**Article 28 bis.-** The penalty for counterfeiting a registered trademark for the same goods or services shall be imprisonment for a term ranging from the minimum to the medium grade<sup>19</sup>:

- a) Whoever counterfeits a registered trademark for the same products or services.
- b) Whoever manufactures, imports, distributes, or sells goods bearing counterfeit trademarks for the same goods or services, for profit and for commercial distribution.

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<sup>16</sup> Fine for the benefit of the Treasury.

<sup>17</sup> See footnote No. 11

<sup>18</sup> Exhaustion of rights (parallel imports).

<sup>19</sup> The expression in Spanish is "*reclusión menor en su grado mínimo a medio*" which refers to a prison sentence under the Chilean Penal Code, applicable to offenses of a commercial or patrimonial nature (as opposed to more serious offenses against individuals). This penalty is divided into three grades: minimum, medium, and maximum.

- Minimum grade corresponds to a sentence ranging from 61 to 540 days of imprisonment.
- Medium grade corresponds to a sentence ranging from 541 to 1,080 days of imprisonment.

In the context of Article 28 bis of Law No. 19.039, this means that a convicted individual may face a sentence within the combined range of 61 to 1,080 days. The judge has discretion to determine the exact length of the sentence, taking into account the circumstances of the offense, including any aggravating or mitigating factors.

Any individual or entity that markets or sells goods or services bearing counterfeit trademarks to the public shall be subject to the minimum term of imprisonment.

**Article 29.-** Those convicted under Articles 28 and 28 bis shall be required to pay court costs and damages caused to the trademark holder.

Any tools or items directly used in the forging or imitation of objects bearing counterfeit trademarks shall be confiscated. Any items bearing counterfeit trademarks will be destroyed. As for the tools and items used, the presiding judge will determine their disposition, which may include ordering their destruction or donation to charity.

**Article 30.-** In the event that an unregistered trademark is being used by two or more individuals or entities simultaneously, the party that obtains the registration cannot pursue responsibility from those who continue its use until at least 180 days have elapsed from the date of registration.

Similarly, once a trademark has been cancelled, the holder of the registration that was used for the cancellation action may not pursue responsibility from the owner of the cancelled registration for at least 180 days as of the date of the cancellation's incontestability.

### **TITLE III INVENTIONS**

#### **SECTION 1 INVENTIONS IN GENERAL**

**Article 31.-** An invention is defined as a solution to a technical problem that results in an industrial activity. The invention may be a product or a process, or be related to them.

A patent is a state-granted exclusive right that protects an invention. This Law determines the effects, obligations, and limitations inherent to the patent.

**Article 31 bis.-** In the context of civil proceedings related to infringement of process patents, the judge shall have the authority to order the defendant to demonstrate that the process used to obtain a product is distinct from the patented process, provided that the product obtained by the patented process is new.

In the absence of proof to the contrary, all identical products will be presumed to have been obtained by the patented process in these proceedings.

For the purposes of this article, a product will be considered new if it complies with the requirement of novelty set out in Article 33 at the time the patent application was filed in Chile or when the date of priority was validated in Chile, according to Article 34. To qualify for this status, the judge will request information from the National Director at the applicant's expense. However, if evidence is submitted to the contrary, the legitimate interests of defendants in protecting their trade secrets will be taken into account.

**Article 32.-** A patent may be obtained for any invention, whether a product or a process, in any field of technology, provided that it is new, has an inventive level, and is suitable for industrial application.

**Article 33.-** An invention is considered new when it did not exist previously in the state of the art. The state of the art encompasses all information that has been disclosed or made available to the public, anywhere in the world, by any means, before the filing date of the patent application in Chile or the priority claimed according to Article 34.

Furthermore, the content of national patent or utility model applications, as originally filed, whose filing date is prior to that indicated in the preceding paragraph and which have been published on that date or on a later date, shall also be included within the state of the art.

**Article 34.-** In the event that a patent has been previously applied for abroad, the interested party shall have priority for a period of one year, commencing from the filing date in the country of origin, to file the application in Chile.

The applicant may request the restoration of the priority right within 2 months of the expiration of the priority period indicated in the preceding paragraph.

The priority right may be accredited in accordance with the means and modalities established in the Regulations.

**Article 35.-** An invention will be considered as having inventive level when it is not obvious to a person skilled in the art and it is not an evident result of the state of the art.

**Article 36.-** An invention will be considered suitable for industrial application if it can be produced or used in any industry, according to its nature. For the purposes of this definition, the term "industry" will be understood in its broadest sense, encompassing a wide range of activities, including manufacturing, mining, construction, handicrafts, agriculture, forestry, and fishing.

**Article 37.-** The following will not be considered an invention and, as such, will be excluded from patent protection:

- a) Scientific discoveries, theoretical models, and mathematical methods.
- b) Plants and animals, with the exception of microorganisms that comply with the general conditions for patentability. With regard to plant varieties, the protection provided for in Law No. 19.342 on Rights of Breeders of New Plant Varieties shall prevail. The production of plants and animals through essentially biological processes is not eligible for patenting, with the exception of microbiological procedures. In accordance with the provisions of this legislation, a procedure that is essentially biological is defined as one that is entirely comprised of a natural phenomenon, such as crossing and selection.
- c) Systems, methods, economic, financial, or commercial plans and principles, business plans or plans of simple verification and supervision; and those that refer to pure mental or intellectual activities or gambling matters.
- d) Methods for surgical or therapeutic treatment of the human or animal body, as well as diagnostic methods applied to the human and animal body, with the exception of products intended for the practical implementation of one of these methods.
- e) A new use, change of form, change of dimensions, change of proportions, or change of materials of devices, objects, or elements that have already been known and employed for determined purposes. Nevertheless, the new use of goods, objects, or elements may be considered an invention that can be protected if the new use solves a technical problem that did not have an equivalent solution previously and complies with the requirements set forth in Article 32. In addition, the new use must result in alterations to the dimensions, proportions, or materials of the previously known device, object, or element in order to achieve the desired technical solution. The claimed new use must be substantiated by means of experimental evidence presented in the patent application.
- f) The components of living beings that are found in nature, the natural biological processes that occur in nature, the biological material that exists in nature, or the material that can be isolated, including the genome or germoplasm, are all included in this definition. Nevertheless, procedures employing one or more of the aforementioned biological materials and the products directly derived from those procedures shall be eligible for protection, provided that they comply with the requirements set forth in Article 32 of this

Law. In particular, the biological material must be adequately described, and the industrial application of the same must be explicitly outlined in the patent application.

**Article 38.-** Inventions whose commercial exploitation must be prevented in order to safeguard national security, public morals, standards of conduct, public order, or the protection of human, animal, or plant life or health, or to preserve plants or the environment, shall not be patentable. This exclusion shall apply only if the prohibition is not based solely on the existence of a law or regulation that prohibits or regulates such exploitation.

**Article 39.-** Patents shall be granted for a non-renewable period of 20 years from the filing date of the application.

**Article 40.-** Without prejudice to the provisions of Article 42, any person who has an invention but who is not yet in a position to comply with all the requirements for filing a patent application in accordance with the provisions of Article 43 may file a provisional patent application, which shall be recognized by the Institute for a period of 12 months upon payment of the corresponding fee.

The provisional patent application shall confer on its holder a right of priority for the period referred to in the preceding paragraph, counted from the date of its filing. The provisional application may not claim the priority of a previous application.

Without prejudice to the provisions of the Regulations, the provisional patent application shall not require the filing of claims or of the statements referred to in Article 44.

The provisional patent application shall also be accompanied by a document in Spanish or English describing the invention in a sufficiently clear and complete manner. If necessary, it shall also be accompanied by at least one drawing.

Before the expiry of a period of 12 months from the date of filing of the provisional application, the holder shall file the application for the definitive patent, accompanied by all the documents referred to in Articles 43, 43 bis and 44, duly drawn up in Spanish.

If, on the expiry of the period referred to in the preceding paragraph, the holder of a provisional patent has not filed the application for the definitive patent, it shall be deemed not to have been filed.

The definitive application shall retain the priority of the provisional application, provided that its contents do not imply a broadening of the field of invention of the latter or of the disclosure contained in the provisional application. If the definitive application extends the said field, the amended contents shall have the filing date of the definitive application for all legal effects.

The term of validity of the definitive patent application shall run from the filing date of the provisional patent application.

**Article 41.-** Repealed.

**Article 42.-** Disclosures made within 12 months prior to the filing date of the application shall not be considered in determining the novelty of the invention or the inventive step, if the public disclosure:

- a) was made by, authorized by, or derived from the patent applicant; or
- b) was made on the occasion of, or was derived from, abuses and unfair practices to which the applicant or his assignee has been subjected.

**Article 43.-** The application for an invention patent must be accompanied by the following documents

The following documents:

- An abstract of the invention.
- A specification of the invention.

- A set of claims.
- Drawings of the invention, if necessary.

**Article 43 bis.-** The abstract is for technical purposes only and cannot be for any other purpose, not even for determining the scope of protection.

The claims define the subject matter to be protected. The claims must be clear and precise and based on the specification.

The specification must be clear and complete so that a person skilled in the art can reproduce the invention without additional information.

**Article 44.-** Declarations of novelty, property and utility of the invention are the sole responsibility of the interested person.

The grant of a patent does not imply any guarantee by the State as to the necessity or accuracy of the statements made by the applicant in the application and in the specification.

**Article 45.-** Once the application has been filed with the Institute, a preliminary examination will be carried out to verify that the documents referred to in Article 43 have been submitted. If the preliminary examination reveals an error or omission, the applicant will be notified to make the necessary corrections or clarifications or to submit any other relevant documents within 60 days, without losing the priority date. If the errors or omissions are not corrected within the specified period, the application shall be deemed not to have been filed.

Applications that do not comply with any other processing requirement within the time limits specified in this Law or its Regulations shall be deemed abandoned and will be archived. Notwithstanding the above, the applicant may request reinstatement, provided that the processing requirements are met within the following 45 days, counted from the date of abandonment, without losing the right of priority, upon payment of a fee equivalent to 2 UTM<sup>20</sup>, which must be accredited. If the errors or omissions are not corrected by the end of this period, the application shall be considered definitively abandoned.

If, during the examination of an application for an industrial property right, it is established that the right applied for belongs to a different category, it shall be analyzed and treated accordingly, maintaining the acquired priority.

**Article 46.-** Applicants for patents already filed abroad must provide the results of the search and examination conducted by the foreign office, if available, regardless of whether the patent has been granted or not.

**Article 47.-** The complete information relating to a patent application shall be kept at the Institute and shall be available to the public after the publication referred to in Article 4.

**Article 48.-** Upon approval of the application and payment of the appropriate fees, the patent is granted to the applicant and a certificate of protection is issued with the date of filing.

**Article 49.-** The patent holder has the exclusive right to manufacture, sell or market the product or subject matter of the invention in any form and, in general, to engage in any other form of commercial exploitation.

In the case of process patents, the protection extends to the products directly obtained by the process.

The scope of protection granted by the patent or patent application is determined by the content of the claims. The claims shall be interpreted on the basis of the specification and drawings.

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<sup>20</sup> See footnote No. 11

The patent right extends to the entire territory of the Republic until the date of expiration of the patent.

The patent does not confer the right to prevent third parties from marketing the product covered by the patent, which they have lawfully acquired, after said product has been lawfully introduced into the commerce of any country by the holder of the right or by a third party with the consent of the former.

The patent does not confer the right to prevent third parties from importing, exporting, manufacturing, producing, or using the subject matter protected by the patent for the sole purpose of obtaining registration or sanitary approval of a pharmaceutical, chemical-agricultural, or similar product. The foregoing does not authorize the marketing of such products without the consent of the patent holder.

The right conferred by the patent does not extend to:

- a) acts carried out privately and without commercial motives.
- b) acts carried out exclusively for experimental purposes relating to the subject matter of the patented invention.
- c) the preparation of medicines under medical prescription for individual cases.
- d) the use of means constituting the subject of the patent on board vessels of other countries, in the hull of the vessel, in machinery, apparatus, equipment and other accessories, when said vessels temporarily or accidentally enter Chilean territorial waters, provided that said means are used exclusively for the needs of the vessel.
- e) the use of means constituting the subject of the patent in the construction or operation of air or land vehicles of other countries, or in the accessories of such vehicles, when they temporarily or accidentally enter Chilean territory.

**Article 50.-** A patent may be subject to cancellation on any of the following grounds:

- a) Repealed
- b) If the grant was based on erroneous or manifestly deficient examination reports.
- c) If the registration was granted in violation of the rules of patentability and its requirements in accordance with the provisions of this Law.

The statute of limitations for cancellation actions against a patent registration is 5 years from their granting date.

**Article 50 bis.-** In instances where the patent was granted to an illegitimate holder, the rightful holder is entitled to request the transfer of the registration and the corresponding compensation. This action may be exercised throughout the entire term of the registration. The matter will be heard by a civil judge in accordance with the general rules of jurisdiction and the summary procedure established by the Code of Civil Procedure.

**Article 51.-** An application for a non-voluntary license may be filed in the following cases:

1. When the patent holder has engaged in practices or behaviors that have been declared contrary to the principles of free competition and that are directly related to the use or exploitation of the patent, according to a final decision of the Competition Tribunal<sup>21</sup>.
  2. When the granting of such licenses can be justified by the competent authority for reasons of public health, national security, non-commercial public use, national emergency or other reasons of extreme urgency.
  3. Where the purpose of the non-voluntary license is to exploit a later patent which cannot be exploited without infringing an earlier patent.
- The grant of a non-voluntary license to a dependent patent shall be subject to the following rules:

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<sup>21</sup> [Tribunal de Defensa de la Libre Competencia.](#)

- a) The invention claimed in the later patent must involve a relevant technical advance of substantial economic importance over the invention claimed in the first patent;
- b) The non-voluntary license to use the earlier patent can only be transferred with the later patent;
- c) The holder of the earlier patent could, under the same circumstances, obtain a non-voluntary license on reasonable terms to exploit the invention claimed in the later patent.

In the case of semiconductor technology, the license shall be granted only for public non-commercial purposes or to remedy a practice declared to be anticompetitive.

**Article 51 bis A.-** The person applying for a non-voluntary license must demonstrate that efforts have been made to obtain a contractual license from the patent holder on reasonable terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement shall not be necessary in the case referred to in N° 2 of Article 51 of this Law. This requirement shall also not be necessary when the purpose of the non-voluntary license is to stop practices that are considered to be anticompetitive.

**Article 51 bis B.-** An application for the granting of a non-voluntary license shall be regarded as a claim and, as such, shall comprise all the requirements set forth in Article 254 of the Code of Civil Procedure. The aforementioned action shall be heard by the following authorities:

1. In the case of N° 1 of Article 51, the Competition Tribunal, in accordance with the procedure established in Law No. 19,911<sup>22</sup>.
2. In the case of N° 2 of Article 51, the National Director of the National Institute of Industrial Property shall proceed in accordance with the established procedure for the cancellation of patents as set forth in this Law. Furthermore, a duly substantiated decision may grant the action on a provisional basis. This resolution shall remain in force until the grounds that motivated the action cease to exist or until a final decision is issued.
3. In the case of N° 3 of Article 51, a civil judge in accordance with the general rules of jurisdiction and the summary procedure established by the Code of Civil Procedure.

**Article 51 bis C.-** The competent authority shall decide on the application for a non-voluntary license on the basis of its merits.

Cases related to situations provided for in N° 1, 2 and 3 of Article 51, in which the license is granted, the Competition Tribunal, the National Director or the civil judge shall decide on the duration and scope of the license, which shall be limited to the purposes for which it was granted. They shall further determine the amount of royalties to be paid periodically by the licensee to the patentee. The license granted by this procedure shall be non-exclusive and cannot be assigned, except with that part of the company holding the patent.

**Article 51 bis D.-** A non-voluntary license may be declared invalid in whole or in part, provided that the legitimate interests of the licensee are adequately safeguarded, if the circumstances giving rise to the non-voluntary license have ceased to exist and are unlikely to recur. Therefore, upon reasoned request, the Competition Tribunal, the National Director or the civil judge, after prior consultation with the competent authority, may verify whether such circumstances still exist.

In cases where the circumstances that led to the granting of the non-voluntary license are likely to recur, the request to revoke a non-voluntary license will not be accepted. Similarly, the Competition Tribunal, the National Director or the Civil Judge may, at the request of any interested party, modify the terms of a non-voluntary license if new facts or circumstances so

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<sup>22</sup> Law N° 19.911, which creates the Competition Tribunal (*Tribunal de Defensa de la Libre Competencia*).

warrant, in particular where the patent holder has granted contractual licenses on terms more favorable than those agreed for the beneficiary of the non-voluntary license.

In the case of an application for a non-voluntary license, the Institute shall be heard before a decision is taken in the cases provided for in Article 51, N° 1 to 3.

**Article 52.-** The following shall be punishable by a fine<sup>23</sup> of 25 to 1,000 UTM<sup>24</sup>:

- a) Any person who, in bad faith, manufactures, uses, offers, introduces into commerce, imports, or possesses a patented invention for commercial purposes. This is without prejudice to the provisions of the fifth paragraph of Article 49<sup>25</sup>.
- b) Any person who uses, for commercial purposes, an object that is not patented, or an object whose patent has expired or been cancelled, with indications corresponding to or simulating a registered patent.
- c) Any person who, in bad faith, uses a patented process.
- d) Any person who, in bad faith, imitates or uses an invention for which a patent application has been filed, unless the patent is ultimately not granted.

Those convicted under this article shall be required to pay court costs and damages caused to the patent holder.

Any tools or items directly used in the commission of any of the offenses described in this article, as well as any illegally produced items, will be confiscated. Illegally produced items will be destroyed. As for the tools and items used, the presiding judge will determine their disposition, which may include ordering their destruction or donation to charity.

Anyone who commits the same offense within 5 years from the date of the fine will be liable to an additional fine of at least twice the previous fine, up to a maximum of 2,000 UTM.

**Article 53.-** The words "Patent of Invention" or the initials "P.I.", followed by the registration number, must be clearly and prominently displayed on all patented objects.

Process patents that, due to their nature, cannot comply with this requirement are exempt from it.

Failure to comply with this requirement shall not affect the validity of the registered patent; however, the holder shall be deprived of the right to pursue the criminal actions outlined in this Law.

In the case of pending applications for products being manufactured or sold for commercial purposes, this situation must be indicated.

## **SECTION 2 SUPPLEMENTARY PROTECTION**

**Article 53 bis 1.-** Within 60 days of the granting of a patent, the holder shall have the right to request a Supplementary Protection Term, provided that there has been unjustified administrative delay in granting the patent and the granting process has taken more than 5 years from the filing date of the application, or more than 3 years from the request for examination, whichever occurs later.

It shall be understood that the request for examination is made upon acceptance of the charge referred to in the first paragraph of Article 7<sup>26</sup>.

The supplementary protection shall be granted only for the period of unjustified administrative delay demonstrated, and no supplementary protection term may exceed 5 years.

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<sup>23</sup> Fine for the benefit of the Treasury.

<sup>24</sup> See footnote No. 11

<sup>25</sup> Exhaustion of rights (parallel imports).

<sup>26</sup> Article 7 refers to the date the expert accepts the appointment to issue the expert's report, which marks the start of the substantive examination stage.

**Article 53 bis 2.-** Within 60 days of the granting of a sanitary authorization for a pharmaceutical product protected by a patent, the holder shall have the right to request a Supplementary Protection Term for that part of the patent covering the pharmaceutical product, provided there has been unjustified delay in granting the sanitary authorization. This supplementary protection may be requested by holders whose sanitary authorization was granted more than 1 year after the filing date of the corresponding application.

The supplementary protection shall be granted exclusively for the duration of the administrative authority's demonstrated term of unjustifiable delay in granting the sanitary authorization.

**Article 53 bis 3.-** Unjustified delays do not include those attributable to:

- a) Opposition or any appeal or judicial action;
- b) Waiting for reports or actions from national or international bodies or agencies required for the patent registration process; and
- c) Actions or omissions of the applicant.

**Article 53 bis 4.-** The request for Supplementary Protection shall be submitted to the Industrial Property Court, which will rule on the existence of unjustified delays and their duration in a single instance, in accordance with the procedure established for appeal. The decision that declares this will have as its sole effect the extension of the protection term and shall not give rise to any liability of any kind.

Prior to the hearing, the Court will instruct the relevant authority to issue its opinion within 60 days.

**Article 53 bis 5.-** The supplementary protection term must be recorded in the margin of the respective registration, upon payment of a fee of 1 UTM<sup>27</sup> for each year or fraction of a year of additional protection. The payment may only be made within 30 days following the resolution that requires it, after which the protection established in this paragraph will not apply.

## **TITLE IV UTILITY MODELS**

**Article 54.-** A utility model is defined as an instrument, apparatus, tool, device, or object, or part thereof, for which the shape is claimable in terms of both its external appearance and its functionality. This is provided that the object in question produces a utility, which is defined as a benefit, advantage, or technical effect that is not present in the function for which it is intended.

**Article 55.-** The provisions of Title III, relating to patents, shall apply, as appropriate, to utility models, without prejudice to the special provisions contained in this Title.

**Article 56.-** A utility model may be considered patentable if it is novel and has the potential for industrial application. A patent shall not be granted when the utility model presents only minor or secondary differences that do not provide any discernible utilitarian characteristics over prior inventions or utility models. A utility model application may only refer to a single object; however, multiple elements or aspects of that object may be claimed within the same application.

**Article 57.-** Utility models shall be granted for a non-renewable period of 10 years from the date of filing of the application.

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<sup>27</sup> See footnote No. 11

**Article 58.-** The application for a utility model must be accompanied by the following documents:

- An abstract of the utility model.
- A specification of the utility model.
- A set of claims.
- Drawings of the utility model.

Once the application is submitted to the Institute, a preliminary examination will be conducted to verify that the aforementioned documents have been included.

**Article 59.-** The words "Utility Model" or the initials "U.M.", followed by the registration number, must be clearly and prominently displayed on all utility models. These markings may be placed on the packaging, provided that the packaging is of the type that is sealed and must be destroyed in order to access the product. Failure to comply with this requirement shall not affect the validity of the utility model; however, the holder shall be deprived of the right to pursue the criminal actions outlined in this Law.

**Article 60.-** The grounds for cancellation set forth in Article 50 are applicable to utility models.

**Article 61.-** The following shall be punishable by a fine<sup>28</sup> of 25 to 1,000 UTM<sup>29</sup>:

- a) Any person who maliciously manufactures, markets, imports, or uses a registered utility model for commercial purposes. This is without prejudice to the provisions of the fifth paragraph of Article 49<sup>30</sup>, which shall also apply to this category of rights.
- b) Any person who, for commercial purposes, uses the indications corresponding to a utility model whose registration has expired or been cancelled, or who simulates such indications when no registration exists.

Those convicted under this article shall be required to pay court costs and damages caused to the utility model holder.

Any tools or items directly used in the commission of any of the offenses described in this article, as well as any illegally produced items, will be confiscated. Illegally produced items will be destroyed. As for the tools and items used, the presiding judge will determine their disposition, which may include ordering their destruction or donation to charity.

Anyone who commits the same offense within 5 years from the date of the fine will be liable to an additional fine of at least twice the previous fine, up to a maximum of 2,000 UTM.

## **TITLE V INDUSTRIAL DESIGNS AND DRAWINGS**

### **SECTION 1 REGISTRATION OF INDUSTRIAL DESIGNS AND DRAWINGS**

**Article 62.-** The term "industrial design" refers to any three-dimensional shape, whether or not associated with colors, as well as any industrial or handcrafted item that serves as a model for the manufacture of other units and is distinguishable from similar items by its shape, geometric configuration, ornamentation, or a combination of these elements. These characteristics must give the item a unique appearance that is perceptible to the human eye, resulting in a new and distinct look.

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<sup>28</sup> Fine for the benefit of the Treasury.

<sup>29</sup> See footnote No. 11

<sup>30</sup> Exhaustion of rights (parallel imports).

The term "industrial drawing" refers to any arrangement, set, or combination of figures, lines, or colors developed on a plane to be incorporated into an industrial product for ornamental purposes, which imparts a new appearance to the product.

Industrial drawings and designs are considered new to the extent that they differ significantly from previously known industrial drawings or designs, or from combinations of known industrial design features.

Packaging is included among the items that may be protected as industrial designs, provided they meet the aforementioned novelty requirement.

Printed patterns on fabrics, textiles, or any sheet material are included among the items that may be protected as industrial drawings, provided they meet the aforementioned novelty requirement.

**Article 62 bis.-** The protection granted to industrial drawings and designs under this Law shall be understood without prejudice to any protection that may be granted under the provisions of Law No. 17,336<sup>31</sup>.

**Article 62 ter.-** Industrial designs and drawings are not eligible for registration if their appearance is entirely dictated by technical or functional considerations, with no arbitrary contribution from the designer.

Additionally, products of any kind of clothing or those consisting of a shape whose exact reproduction is necessary to allow the product incorporating the design to be mechanically assembled or connected with another product of which it forms part cannot be registered as industrial designs. This prohibition does not apply to products in which the design consists of a shape intended to allow the assembly or multiple connection of products, or their connection within a modular system.

**Article 63.-** The provisions of Title III, relating to patents, shall apply, as appropriate, to industrial designs and drawings, without prejudice to the special provisions contained in this Title. Regarding the priority right, it shall be governed by the provisions of Article 20 bis of this Law. The grounds for cancellation set forth in Article 50 are applicable to industrial designs and drawings.

**Article 64.-** The application for an industrial design or drawing must be accompanied by the following documents:

- Application form.
- Description of the industrial design or drawing.
- Drawings.
- Prototype or model, if applicable.

Once the application is submitted to the Institute, a preliminary examination will be conducted to verify that the aforementioned documents have been included.

**Article 65.-** The registration of an industrial design or drawing shall be granted for a non-renewable period of up to 15 years from the date of filing of the application.

**Article 66.-** Every industrial design and drawing must clearly display the words "Industrial Drawing" or "Industrial Design" or the initials "I.D.", followed by the registration number. These markings may be placed on the packaging, provided that the packaging is of the type that is sealed and must be destroyed in order to access the product.

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<sup>31</sup> Law No. 17,336 on Intellectual Property (Copyright and Related Rights)

Failure to comply with this requirement shall not affect the validity of the industrial design or drawing; however, the holder shall be deprived of the right to pursue the criminal actions outlined in the following article.

**Article 67.-** The following shall be punishable by a fine<sup>32</sup> of 25 to 1,000 UTM<sup>33</sup>:

- a) Any person who maliciously manufactures, markets, imports, or uses a registered industrial design or drawing for commercial purposes. This is without prejudice to the provisions of the fifth paragraph of Article 49<sup>34</sup>, which shall also apply to this category of rights.
- b) Any person who, for commercial purposes, uses the indications corresponding to an industrial design or drawing whose registration has expired or been cancelled, or who simulates such indications when no registration exists.

Those convicted under this article shall be required to pay court costs and damages caused to the utility model holder.

Any tools or items directly used in the commission of any of the offenses described in this article, as well as any illegally produced items, will be confiscated. Illegally produced items will be destroyed. As for the tools and items used, the presiding judge will determine their disposition, which may include ordering their destruction or donation to charity.

Anyone who commits the same offense within 5 years from the date of the fine will be liable to an additional fine of at least twice the previous fine, up to a maximum of 2,000 UTM.

## **SECTION 2**

### **DEPOSIT CERTIFICATE OF INDUSTRIAL DESIGNS AND DRAWINGS**

**Article 67 bis A.-** When filing an application for an industrial design or drawing, it will be understood that the applicant has opted for the general registration procedure as set forth in Titles I, III, and V of this Law. If the applicant intends to use the expedited procedure to obtain a deposit certificate, as outlined in this Section, this must be explicitly stated.

The expedited procedure for obtaining a deposit certificate does not include a substantive examination to verify compliance with the requirements set forth in Article 62 for industrial design or drawing applications.

The holder of a deposit certificate obtained through the expedited procedure may not exercise the actions described in the preceding Section until the application has undergone and passed the substantive examination required under the general registration procedure.

**Article 67 bis B.-** Once the application has been filed under the expedited procedure for obtaining a deposit certificate, the Institute will carry out a preliminary examination to verify full compliance with the formal requirements for submission set forth in this Law and its Regulations.

If the preliminary examination reveals any error or omission, the applicant will be notified to make the necessary corrections, clarifications, or provide the relevant documents within 30 days, without losing the priority date. If the errors or omissions are not corrected within the specified period, the application will be deemed not to have been filed.

If the applicant partially or incorrectly addresses the corrections, the Institute will issue a single reminder for the remaining issues, with the warning that failure to fully correct them within 30 days will result in the application being deemed not to have been filed.

**Article 67 bis C.-** Once compliance with the formal requirements for submission has been verified, or the errors or omissions have been corrected within the established period, the

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<sup>32</sup> Fine for the benefit of the Treasury.

<sup>33</sup> See footnote No. 11

<sup>34</sup> Exhaustion of rights (parallel imports).

Institute will issue the deposit certificate for the industrial design or drawing that is the subject of the application, stating that this certificate was issued under the expedited procedure for obtaining a deposit certificate and that, therefore, no substantive examination has been conducted to grant the holder the right to exercise the actions outlined in the first Section of this Title.

**Article 67 bis D.-** The deposit certificate for the industrial design or drawing obtained under this Title shall have a maximum duration of 15 years, starting from the filing date of the respective application. This certificate grants the holder a definite date for the purpose of verifying, in a potential substantive examination, compliance with the requirements set forth in Article 62.

**Article 67 bis E.-** Once the deposit certificate for the industrial design or drawing has been issued, an extract of the corresponding application shall be published in the Official Gazette, in the form and within the deadlines established by the Regulations.

**Article 67 bis F.-** From the publication referred to in the previous article, both the holder and any interested party may request, at their own expense, a substantive examination of the industrial design or drawing to verify its compliance with the requirements set forth in Article 62. This examination shall be carried out in accordance with the general procedure established in this Law.

Any party requesting the substantive examination must provide proof of payment of the expert fee as established in Article 8. Failure to do so will result in the examination request being considered as not filed.

**Article 67 bis G.-** If the substantive examination referred to in the previous article is not approved, the Institute will automatically cancel the deposit certificate.

If the examination is favorable, this will be published in the Official Gazette in the form and within the deadlines set by the Regulations. The processing of the industrial design or drawing application covered by the deposit certificate will continue in accordance with the general opposition rules. If no opposition is filed within the period specified in Article 5, or once the opposition procedure is ready for resolution, the Institute will issue a decision to either accept or reject the industrial design or drawing application, in accordance with the applicable rules of the general registration procedure.

If the industrial design or drawing application covered by the deposit certificate is accepted for registration, it will be treated, for all purposes, as an industrial design or drawing application filed under the general registration procedure, and the provisions of Article 18 will apply for the payment of the corresponding fees.

**Article 67 bis H.-** The application for a deposit certificate for industrial designs and drawings under the expedited procedure established in this Section shall be subject to the payment of a fee equivalent to 1 UTM<sup>35</sup>, without which the processing of the application will not proceed. This fee will be for fiscal benefit and shall not be refundable under any circumstances.

## **TITLE VI**

### **SERVICE INVENTIONS**

**Article 68.-** In employment and service contracts, where the nature of the work is the performance of inventive or creative activities, the right to file for registration, as well as any potential industrial property rights, shall exclusively belong to the employer or the party that commissioned the service, unless otherwise expressly agreed.

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<sup>35</sup> See footnote No. 11

**Article 69.-** An employee who, under their employment contract, is not required to perform inventive or creative tasks, shall have the right to apply for registration and any potential industrial property rights arising from inventions made, which shall belong exclusively to the employee.

However, if the employee has clearly benefited from knowledge acquired within the company or has used resources provided by the company to develop the invention, such rights shall belong to the employer, who must grant the employee additional compensation to be agreed upon by both parties.

This provision also applies to any individual who creates an invention beyond the scope of the work originally assigned to them.

**Article 70.-** The right to apply for registration, as well as any potential industrial property rights arising from the inventive and creative activities of individuals employed in dependent or independent relationships, by universities or certain research institutions<sup>36</sup>, shall belong to these entities or to those designated by them, without prejudice to the provisions of their statutes regarding the manner in which the inventor or creator participates in the benefits derived from their work.

**Article 71.-** The rights granted for the benefit of the employee in the preceding articles shall be irrevocable prior to the granting of the patent, utility model, or layout design or topography of integrated circuits, as applicable. Any clause to the contrary shall be deemed null and void.

**Article 72.-** All disputes relating to the application of the provisions of this Title shall be settled by the ordinary courts in accordance with the summary procedure laid down by the applicable general rules.

## **TITLE VII LAYOUT DESIGNS OR TOPOGRAPHY OF INTEGRATED CIRCUITS**

**Article 73.-** An integrated circuit is a product, in its final or intermediate form, designed to perform an electronic function, in which at least one of the elements is active, and some or all of the interconnections form an integral part of the body or surface of a piece thereof.

**Article 74.-** The term "layout designs or topography of integrated circuits" shall refer to the three-dimensional arrangement of its elements, expressed in any form, designed for its manufacture.

**Article 75.-** Layout designs or topographies of integrated circuits shall be protected under this Law to the extent that they are original.

A layout design or topography shall be considered original if it is the result of the intellectual effort of its creator and is not commonly known among the creators of layout designs or topographies of integrated circuits and the manufacturers of integrated circuits at the time of its creation.

A layout design or topography of integrated circuits that consists of a combination of elements or interconnections that are commonplace will only be protected if the combination as a whole meets the conditions set forth in the preceding paragraphs.

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<sup>36</sup> Research institutions included in Decree Law No. 1,263 of 1975, Organic Decree-Law on State Financial Administration.

**Article 76.-** The holder of a layout design or topography of integrated circuits shall have exclusive rights to produce, sell, or commercially exploit the subject of the protection and the rights granted to them.

Therefore, the holder of a layout design or topography of integrated circuits may prevent any third party, without their consent, from:

1. Reproducing, in whole or in part, by incorporation into an integrated circuit or in any other form, the protected layout design or topography of integrated circuits, except for the act of reproducing any part that does not meet the originality requirement set forth in Article 75 of this Law.
2. Selling or distributing in any other form for commercial purposes the protected layout design or topography of integrated circuits, an integrated circuit in which the protected layout design or topography is incorporated, or a product that incorporates an integrated circuit containing an unlawfully reproduced layout design or topography of integrated circuits.

**Article 77.-** The exclusive right of exploitation granted in the preceding article shall not extend to:

1. The reproduction of a layout-design or topography of integrated circuits in which a layout-design or topography created by a third party has been incorporated, for private purposes or solely for the purpose of evaluation, analysis, research, or teaching.
2. Commercial exploitation, as defined in the preceding article, of a layout-design or topography of integrated circuits that, while meeting the requirements of Article 75 of this Law, has been created as a result of the analysis and evaluation of a separate protected layout-design or topography of integrated circuits.
3. Commercial exploitation, as defined in the preceding article, of an integrated circuit that incorporates an unlawfully reproduced layout-design or topography of integrated circuits, or any object incorporating such an integrated circuit, when the third party performing or ordering such acts did not know, nor have reasonable grounds to know, at the time of acquiring the integrated circuit or object, that it incorporated an unlawfully reproduced layout-design or topography of integrated circuits.

Notwithstanding the above, once the third party becomes aware or has reason to believe that the layout-design or topography of integrated circuits was unlawfully reproduced; such third party may perform any actions regarding the existing inventory or products ordered before that time. In such cases, the holder of the protected right may only demand payment of a sum equivalent to a reasonable royalty for a freely negotiated license of the layout-design or topography of integrated circuits.

The competent court to on infringements regarding layout-designs or topographies of integrated circuits shall also resolve any disputes concerning the determination of the royalty referred to in the preceding paragraph, in accordance with the rules established for incidents in the Code of Civil Procedure, without testimonial evidence and by means of a fair and equitable decision.

4. An identical and original layout-design or topography of integrated circuits that has been independently created by a third party.

**Article 78.-** The protection period of a layout-design or topography of integrated circuits shall have a non-renewable duration of 10 years from the date of filing of the application or the first commercial exploitation anywhere in the world.

**Article 79.-** The registration of the layout designs or topographies of integrated circuits shall be carried out at the National Institute of Industrial Property.

**Article 80.-** The application for a layout-design or topography of integrated circuits must be accompanied by the following documents:

- Application form.
- A specification of the layout-design or topography of integrated circuits.
- Prototype or model, if applicable.
- Supporting documents, if any.

Once the application is submitted to the Institute, a preliminary examination will be conducted to verify that the aforementioned documents have been included.

**Article 81.-** The application may be filed before the commercial exploitation of the layout-design or topography of integrated circuits begins, or within 2 years following that date. In the latter case, the applicant must submit, along with the application, an affidavit certifying the date of the first commercial exploitation.

The processing of the application, as well as its publication and resolution, shall comply with the provisions established in the Regulations.

**Article 82.-** A layout-design or topography of integrated circuits may be subject to cancellation on any of the following grounds:

- a) If the person who obtained the registration is neither the rightful creator of the layout-design or topography of integrated circuits nor their assignee.
- b) If the grant was based on erroneous or manifestly deficient expert reports.
- c) If the registration was granted in contravention of the protection requirements set forth in Article 75.
- d) If the commercial exploitation of the layout-design or topography of integrated circuits commenced more than 2 years prior to the filing of the application.

**Article 83.-** The provisions of Titles III and VI, relating to patents and service inventions, shall apply, as appropriate, to layout-designs or topographies of integrated circuits, without prejudice to the special provisions contained in this Title.

**Article 84.-** Every layout-design or topography of integrated circuits must clearly display the capital letter "T" within a circle. This marking may be placed on the packaging, provided that the packaging is of the type that is sealed and must be destroyed in order to access the product. Failure to comply with this requirement shall not affect the validity of the layout-design or topography of integrated circuits; however, the holder shall be deprived of the right to pursue the criminal actions outlined in the following article.

**Article 85.-** The following shall be punishable by a fine<sup>37</sup> of 25 to 1,000 UTM<sup>38</sup>:

- a) Any person who maliciously manufactures, markets, imports, or uses a registered layout-design or topography of integrated circuits for commercial purposes. This is without prejudice to the provisions of the fifth paragraph of Article 49<sup>39</sup>, which shall also apply to this category of rights.
- b) Any person who, for commercial purposes, uses the indications corresponding to a layout-design or topography of integrated circuits whose registration has expired or been cancelled, or who simulates such indications when no registration exists.

Those convicted under this article shall be required to pay court costs and damages caused to the holder of the layout-design or topography of integrated circuits.

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<sup>37</sup> Fine for the benefit of the Treasury.

<sup>38</sup> See footnote No. 11

<sup>39</sup> Exhaustion of rights (parallel imports).

Any tools or items directly used in the commission of any of the offenses described in this article, as well as any illegally produced items, will be confiscated. Illegally produced items will be destroyed. As for the tools and items used, the presiding judge will determine their disposition, which may include ordering their destruction or donation to charity.

Anyone who commits the same offense within 5 years from the date of the fine will be liable to an additional fine of at least twice the previous fine, up to a maximum of 2,000 UTM.

## **TITLE VIII**

### **TRADE SECRETS AND UNDISCLOSED INFORMATION SUBMITTED TO THE COMPETENT AUTHORITY FOR THE PURPOSE OF SANITARY REGISTRATION OR AUTHORIZATION**

#### **SECTION 1**

##### **TRADE SECRETS**

**Article 86.-** A trade secret is any undisclosed information that a person possesses under their control and that may be used in any productive, industrial, or commercial activity, provided that such information meets the following cumulative requirements:

1. It is secret in the sense that it is not, as a whole or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
2. It has commercial value because it is secret; and
3. Reasonable steps have been taken under the circumstances by the person lawfully in control of the information to keep it secret.

**Article 87.-** The unauthorized acquisition, disclosure, or exploitation of a trade secret by any means, or the disclosure or exploitation of a trade secret to which one has had lawful access but with a duty of confidentiality, shall constitute a violation of the trade secret, provided that the violation was carried out with the intent to obtain a benefit, either for oneself or for a third party, or to harm the rightful holder of the trade secret.

**Article 88.-** Without prejudice to any criminal liability that may apply, the provisions of Title X regarding the enforcement of industrial property rights shall be applicable to the violation of trade secrets.

#### **SECTION 2**

##### **UNDISCLOSED INFORMATION SUBMITTED TO THE COMPETENT AUTHORITY FOR THE PURPOSE OF SANITARY REGISTRATION OR AUTHORIZATION**

**Article 89.-** Where the competent authority<sup>40</sup> requires the submission of proof or other undisclosed information concerning the safety and effectiveness of a pharmaceutical or agricultural chemical product that utilizes a new chemical entity that has not been previously approved by the competent authority, such information shall be considered confidential pursuant to the applicable regulations.

The nature of non-disclosure shall be deemed satisfied if the data has been subject to reasonable measures to keep it undisclosed and are not generally known to or easily accessible by persons within the circles that normally handle such information.

The competent authority may not disclose or utilize such data to grant a sanitary registration or authorization to anyone without the permission of the holder thereof, for a period of 5 years for

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<sup>40</sup> The competent authority in Chile is *Instituto de Salud Pública - ISP* (Public Health Institute) for pharmaceutical products and *Servicio Agrícola y Ganadero - SAG* (Agricultural and Livestock Service) for agrochemicals.

pharmaceutical products and 10 years for agricultural chemicals, starting from the date of the first sanitary registration or authorization granted by ISP or SAG, as the case may be. To enjoy protection under this article, the nature of non-disclosure of such data must be expressly stated in the sanitary registration or authorization application.

**Article 90.-** An active ingredient that has not been previously included in sanitary registrations or authorizations granted by ISP or SAG, as the case may be, or that has not been marketed in the national territory prior to the sanitary registration or authorization application, shall be considered a new chemical entity. For the purposes of this section, a substance having one or more pharmacological effects or agricultural chemical uses, regardless of its form, expression, or arrangement, including its salts and complexes, shall be considered an active ingredient. In no case shall the following be considered a new chemical substance:

- a) therapeutic uses or indications other than those authorized in prior sanitary registrations or authorizations of the same chemical substance;
- b) changes in the method of administration or dosage forms from those authorized in prior sanitary registrations or authorizations of the same chemical substance;
- c) changes in authorized or registered pharmaceutical forms, formulations, or combinations of chemical substances;
- d) salts, complexes, crystalline forms, or similar chemical structures based on a chemical substance that has a prior sanitary registration or authorization.

**Article 91.-** Protection under this section shall not apply where:

- a) the holder of the information providing proof indicated in Article 89 has engaged in conduct or practices declared anti-competitive, directly related to the use or exploitation of such information, according to a final or binding decision by the Competition Tribunal;
- b) on justified grounds of public health, national security, non-commercial public use, national emergency, or other extremely urgent circumstances declared by the competent authority, the protection set out in Article 89 may be terminated;
- c) the pharmaceutical product or agricultural chemical is the subject of a non-voluntary license pursuant to the stipulations in this Law;
- d) the pharmaceutical product or agricultural chemical has not been marketed within the national territory by the end of a 12-month period beginning from the date of the sanitary registration or authorization granted in Chile;
- e) the application for registration or sanitary authorization of the pharmaceutical product or agricultural chemical is filed in Chile 12 months after the first registration or sanitary authorization has been obtained abroad.

## **TITLE IX**

### **GEOGRAPHICAL INDICATIONS AND APELLATIONS OF ORIGIN**

**Article 92.-** This Law recognizes and protects geographical indications and appellations of origin in accordance with the following provisions:

- a) A geographical indication identifies a product as originating from the country or from a region or locality within the national territory, where the quality, reputation, or other characteristic of the product is primarily attributable to its geographical origin.
- b) An appellation of origin identifies a product as originating from the country, or from a region or locality within the national territory, where the quality, reputation, or other characteristic of the product is primarily attributable to its geographical origin, taking into account, in addition, other natural and human factors that contribute to the product's characteristics.

**Article 93.-** Geographical indications and appellations of origin shall be governed by this Law and by the specific regulations on their use that are approved. The foregoing shall be understood without prejudice to the provisions governing the appellations of origin for *Pisco*, *Pajarete*, and *Vino Asoleado*, as well as those relating to viticultural zoning, where the specific rules contained in Law No. 18,455<sup>41</sup> shall take precedence.

Geographical indications and appellations of origin may not be subject to appropriation or encumbrance that limits or prevents their use by interested parties who meet the requirements set forth in this Law and in the regulations governing the use of the indication or appellation.

**Article 94.-** The recognition of a geographical indication or appellation of origin shall be granted by the Institute, through the inclusion of the indication in a Register of Geographical Indications and Appellations of Origin established for this purpose.

Any natural person or legal entity may apply for the registration of a geographical indication or appellation of origin, provided they represent a significant group of producers, manufacturers, or artisans, regardless of their legal form, whose premises or establishments for extraction, production, transformation, or manufacture are located within the delimitation zone established by the requested geographical indication or appellation of origin and meet the other requirements set forth in this Law. National, regional, provincial, or local authorities may also request the recognition of a geographical indication or appellation of origin when it concerns indications or appellations located within their respective jurisdictions.

**Article 95.-** The following signs or expressions may not be recognized as geographical indications or appellations of origin:

- a) Those that do not conform to the definitions set forth by Article 92 of this Law.
- b) Those that are contrary to morals or public order.
- c) Those that may mislead or confuse the public regarding the origin of the geographical indication or appellation of origin or the attributes of the products they aim to distinguish.
- d) Those that are common or generic indications used to distinguish the product in question, understood as those considered as such by experts in the field or by the general public, unless they have been recognized as geographical indications or appellations of origin under international treaties ratified by Chile.
- e) Those that graphically, phonetically, or conceptually resemble, in such a way that they may be confused with other distinctive signs previously applied for or registered in good faith for identical or related products or services.
- f) Those that graphically, phonetically, or conceptually resemble in such a way that they could cause confusion with an unregistered distinctive sign that has been in actual use prior to the application for recognition, by a third party who would have a superior right to obtain the registration, provided that the indication or appellation has been applied for identical or related products or services for which the distinctive sign has been used by that third party.
- g) Those that constitute the total or partial reproduction, imitation, translation, or transcription of a well-known trademark, appellation of origin, or geographical indication in Chile, within the relevant sector of the public, whether registered or not, and regardless of the products for which the sign is applied, when its use, in relation to the requested products, is likely to cause confusion or mislead or deceive the public about the product's origin, or where there is a risk of associating the requested geographical indication or appellation of origin with the holder of the well-known trademark, appellation of origin, or geographical indication, or constitutes an unfair exploitation of their reputation, including dilution of their distinctive power, provided that such registration or its subsequent use is

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<sup>41</sup> Law No. 18,455 establishes regulations on the production, manufacture, and marketing of ethyl alcohol, alcoholic beverages, and vinegar.

likely to harm the interests of the holder of the well-known trademark, appellation of origin, or geographical indication.

**Article 96.-** Foreign geographical indications and appellations of origin may be registered in Chile, in accordance with the provisions of this Law. They shall not be protected, or will lose protection if they have it, when they cease to be protected or are no longer in use in their country of origin.

In particular, foreign geographical indications and appellations of origin that identify wines and spirits in relation to goods and services, and that have been continuously used by nationals or residents within the national territory to identify, in Chile, those same goods or services or other related ones, in good faith, prior to April 15, 1994, or for at least 10 years before that date, shall not be subject to the protection established by this Law, unless otherwise provided by an international treaty ratified by Chile.

**Article 96 bis A.-** When, by application of the provisions of this Law or international treaties ratified by Chile, the Institute is convinced that coexistence between trademarks and geographical indications or appellations of origin, or between the latter, is possible, the final decision shall establish the conditions under which the geographical indications, appellations of origin, or trademarks must be used in order to avoid misleading or confusing the consuming public.

When one or more of the products in question are of a silvoagropecuaria or agro-industrial nature, the Institute, in forming its conviction regarding the possibility of coexistence, shall request a report from the Ministry of Agriculture.

In any case, the conditions of use shall be part of the respective registration.

Failure to comply with the conditions of use shall deprive the holder of the ability to enforce the actions established by this Law.

**Article 97.-** The application for the recognition of a geographical indication or appellation of origin must include the following information:

- a) The name, address, Tax Identification Number (if applicable), and the activity of the applicant related to the requested geographical indication or appellation of origin.
- b) The geographical indication or appellation of origin.
- c) The geographical area of production, extraction, transformation, or elaboration of the product to be distinguished by the geographical indication or appellation, with boundaries defined according to the geographical features and the political-administrative divisions of the country.
- d) A detailed description of the product or products to be distinguished by the requested geographical indication or appellation, as well as its essential characteristics or qualities.
- e) A technical study, prepared by a qualified professional, providing evidence that the characteristics or qualities attributed to the product are primarily or exclusively due to its geographical origin.
- f) A draft specific regulation for the use and control of the requested geographical indication or appellation.
- g) Any additional information required by the Regulations.

**Article 98.-** Regarding compliance with all or some of the requirements set forth in the previous article, the Institute may request a report from other ministries or public agencies, which must provide it within 45 days from the notification of the request.

**Article 99.-** The decision granting the registration of a geographical indication or appellation of origin shall state:

- a) The recognized geographical indication or appellation of origin.

- b) The geographically delimited area for production, extraction, transformation, or manufacturing, whose producers, manufacturers, or artisans are entitled to use the geographical indication or appellation of origin.
- c) The products to which the geographical indication or appellation of origin will apply, and the essential qualities or characteristics that these products must possess.
- d) The assessment, based on the merit of the supporting documents, as to whether it is a geographical indication or an appellation of origin.

Additionally, such decision shall approve and order the registration of the specific regulation for the use and control of the recognized geographical indication or appellation of origin.

**Article 100.-** The registration of a geographical indication or appellation of origin shall have indefinite duration, as long as the conditions that led to its recognition are maintained. Any person may file a petition for cancellation on the grounds that the product is no longer being produced in the protected area or that the conditions justifying its recognition are no longer being met, with no time limitation.

The registration may be modified at any time if any of the circumstances established in Article 97 change. The modification must comply with the registration procedure, as applicable.

**Article 101.-** Any interested party may file a cancellation action for the registration of a geographical indication or appellation of origin in case of violation of any of the prohibitions set forth in this Law.

**Article 102.-** As applicable, the provisions related to trademarks in Titles I and II of this Law and its Regulations shall apply to the examination, publication, registration, and cancellation procedures of the geographical indications and appellations of origin covered by this Title.

**Article 103.-** All producers, manufacturers, or artisans operating within the delimited geographical area, including those who were not part of the initial application for recognition, shall have the right to use the geographical indication or appellation of origin in connection with the products listed in the register, as long as they comply with the specific regulations for their use and control. Only they may use the expressions "Geographical Indication" or "Appellation of Origin," or the initials "G.I." or "A.O.," respectively, when identifying the product. These markings may be placed on the packaging, provided that the packaging is of the type that is sealed and must be destroyed in order to access the product.

**Article 104.-** Civil actions related to the right to use a registered geographical indication or appellation of origin, and actions intended to prevent their unlawful use, shall be brought before the ordinary courts of law, in accordance with the provisions set forth in Title X regarding enforcement.

In the case of registered geographical indications or appellations of origin identifying wines and spirits, the civil actions mentioned in the previous paragraph shall apply when a geographical indication or appellation of origin is used without the right to do so, or is translated, or when accompanied by terms such as "class", "type", "style", "imitation", or other similar expressions that may mislead consumers as to the origin or nature of the product, even if the true origin of the product is indicated.

**Article 105.-** The following shall be punishable by a fine<sup>42</sup> of 25 to 1,000 UTM<sup>43</sup>:

- a) Any person who, in bad faith, designates a product of the same type as those protected by a registered geographical indication or appellation of origin, without being entitled to do so.

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<sup>42</sup> Fine for the benefit of the Treasury.

<sup>43</sup> See footnote No. 11

- b) Any person who uses for commercial purposes the markings of an unregistered, expired, or cancelled geographical indication or appellation of origin, or simulates them.
- c) Any person who uses for commercial purposes containers or packaging materials bearing a registered geographical indication or appellation of origin without being entitled to use it or without having it previously removed, unless the marked packaging is intended to package goods different from and not related to those protected by the geographical indication or appellation of origin.

Those convicted under this article shall be required to pay court costs and damages caused to the legitimate users of the geographical indication or appellation of origin.

Any tools or items directly used in the commission of any of the offenses described in this article, as well as objects bearing counterfeit geographical indications or appellations of origin, will be confiscated. Objects bearing counterfeit geographical indications or appellations of origin will be destroyed. As for the tools and items used, the presiding judge will determine their disposition, which may include ordering their destruction or donation to charity.

Anyone who commits the same offense within 5 years from the date of the fine will be liable to an additional fine of at least twice the previous fine, up to a maximum of 2,000 UTM.

## **TITLE X ENFORCEMENT**

### **SECTION 1 CIVIL ACTIONS**

**Article 106.-** The holder whose industrial property right has been infringed or affected may file a civil action for:

- a) An injunction to cease acts that infringe the protected right.
- b) Compensation for damages.
- c) The adoption of necessary measures to prevent the continuing infringement.
- d) The publication of the judgment at the expense of the defendant, through advertisements in a newspaper of the claimant's choice. This measure shall apply when expressly stated in the judgment.

**Article 107.-** The civil actions established in Article 106 shall be processed in accordance with the summary procedure<sup>44</sup> and may be filed by anyone with an interest in initiating them, without prejudice to any criminal action that may apply.

**Article 108.-** The compensation for damages may be determined, at the claimant's discretion, in accordance with the general rules<sup>45</sup> or by applying one of the following methods:

- a) The profits that the holder would have earned had it not been for the infringement;
- b) The profits that the infringer has earned as a result of the infringement; or
- c) The reasonable royalty that the infringer would have paid to the holder for a license, taking into account the commercial value of the infringed right and any licenses that have already been granted.

In the case of trademark counterfeiting, once the infringement has been judicially established, the claimant may request that the damages be replaced with a lump sum determined by the

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<sup>44</sup> It refers to the summary procedure established by the Code of Civil Procedure.

<sup>45</sup> "The general rules" refers to the provisions set forth in the Chilean Civil Code regarding compensation for damages. These rules encompass the standard principles for calculating damages, including actual damages (*daño emergente*), loss of profit (*lucro cesante*), and non-economic damages (*daño moral*).

tribunal, based on the severity of the infringement. This sum shall not exceed 2,000 UTM<sup>46</sup> per infringement. This option must be asserted in the damages claim.

**Article 109.-** Notwithstanding any other actions provided in this Title, those who have marketed products infringing an industrial property right shall not be liable for damages, unless they have manufactured or produced the goods, or have marketed them with actual knowledge that they were infringing an industrial property right.

**Article 110.-** The competent judge may order, in the judgment, that the infringer provide information about those involved in the manufacture or preparation of the products or processes that are the subject of the infringement, as well as regarding their distribution channels.

**Article 111.-** In these proceedings, the judge shall assess the evidence according to the rules of sound judgment.

## **SECTION 2 PRECAUTIONARY MEASURES**

**Article 112.-** Precautionary measures shall apply in all matters related to infringements of industrial property rights.

Without prejudice to other precautionary measures, the tribunal may order the following:

- a) An injunction to cease acts constituting the alleged infringement;
- b) The seizure of the products subject to the alleged infringement and of the materials and means primarily used to commit it. In the case of distinctive signs, the seizure may also extend to packaging, labels, printed material, or promotional materials bearing the sign involved in the alleged infringement;
- c) The appointment of one or more monitors<sup>47</sup>;
- d) The prohibition of advertising or promoting, in any way, the products involved in the alleged infringement; and
- e) The retention, by a financial institution or a third party, of goods, money, or assets derived from the sale or commercialization of such products, in any form.

## **SECTION 3 PRELIMINARY MEASURES**

**Article 113.-** As preliminary measures, the precautionary measures set forth in Section 2 of Title X of this Law and the measures provided for in Titles IV and V of Part Two of the Code of Civil Procedure may be requested.

## **TITLE XI PROCESSING OF INTERNATIONAL PATENT OR UTILITY MODEL APPLICATIONS**

**Article 114.-** An international application refers to a patent or utility model application filed in accordance with the Patent Cooperation Treaty (PCT).

**Article 115.-** The National Institute of Industrial Property (INAPI) shall serve as the Receiving Office in Chile for international applications filed under the PCT by Chilean nationals or residents. International applications must be filed in Spanish, and pay the applicable fees under the PCT.

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<sup>46</sup> See footnote No. 11

<sup>47</sup> A court-appointed administrator (*interventor*).

Additionally, the Institute shall act as a Designated and/or Elected Office when Chile has been designated or elected as State, with the purpose of obtaining a patent or utility model registration in the national phase under the PCT.

**Article 116.-** When the international application has a filing date later than the priority deadline under the PCT, the applicant may request the restoration of the priority right before the Institute acting as Receiving Office, within 2 months from the priority deadline.

In the same case, the applicant may request the restoration of the priority right before the Institute acting as Designated and/or Elected Office upon entering the national phase, if the request for restoration has been properly filed with the corresponding Receiving Office and it has either failed to make a decision or has rejected the request.

In both cases, the request must be made at the time of filing the application, providing proof of payment of the applicable fee, stating the reasons for the failure to meet the priority deadline, and submitting the relevant supporting evidence.

**Article 117.-** Applications for patents or utility models must be filed in Chile in the national phase under the PCT before the expiration of the 30-month period from the priority date. If the international application does not claim any priority, it may be filed with the Institute before the expiration of the 30-month period from the international filing date. Once the 30-month period specified in the previous paragraph has expired, the applicant may request the restoration of rights before the Institute. The request must be made at the time of filing the application, providing proof of payment of the applicable fee, stating the reasons for the failure to meet the deadline, and submitting the relevant supporting evidence.

**Article 118.-** To initiate the processing of an international application in the national phase, without prejudice to any other requirements established by this Law, the applicant must:

- a) Submit a translation into Spanish of the international application, if it was not filed in this language, along with a translation of any amendments made during the international phase, together with the appropriate form;
- b) Pay the fee established in Article 18 of this Law for the filing of the application, as well as any other fees set by the Institute, in accordance with the provisions of the PCT.

In cases where the Institute has issued an international search report and written opinion acting as the International Searching Authority, or has issued an international preliminary examination report acting as the International Preliminary Examining Authority, the applicant may submit, together with the national-phase application, a written statement addressing the observations made in these reports and written opinion, which shall be considered for the purposes of examination.

In the event that the applicant responds to the international search reports and written opinion of the International Searching Authority or International Preliminary Examining Authority, as described in the previous paragraph, they will only be required to pay 50 percent of the examination fee, as established in Article 8.

**Article 119.-** The provisions of Article 4 shall apply to applications for patents or utility models filed in Chile in the national phase under the PCT. Any interested party may file an opposition to such applications within the time period specified in the second paragraph of Article 5.

**Article 120.-** Applications for patents or utility models filed in Chile in the national phase under the PCT shall be governed, with respect to their substantive aspects, by the provisions of this Law and its Regulations.

**Article 121.-** The term of validity for patents and utility models filed in Chile in the national phase under the PCT shall be calculated from the filing date of the corresponding international application.

## **TITLE XII**

### **FINAL ARTICLE**

**Article 122.-** Decree Law No. 958 of 1931 on Industrial Property; Articles 16 and 17 of Law No. 18.591; Article 38 of Law No. 18.681; and Law No. 18.935 are hereby repealed.