

Decree No. 117 of January 14, 1994, Implementing Decision No. 344 of the Commission of the Cartagena Agreement*

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* *Spanish title:* Decreto No 117 por el cual se reglamenta la Decisión 344 de la Comisión del Acuerdo de Cartagena.

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Chapter I Patents

(Transfer of Economic Benefit)

1. Pursuant to [Article 10](#) of Decision No. 344 of the Commission of the Cartagena Agreement,¹ any public body may determine the percentage of the economic benefit deriving from innovations that it will transfer to its employee inventors, and also the procedure for the grant of such incentives.

(State Funding of Research)

2. For the purposes of the [second paragraph of Article 10](#) of Decision No. 344, State entities shall lay down, in the document that specifies the conditions of funding, that part of the royalties

¹ See *Industrial Property Laws and Treaties*, MULTILATERAL TREATIES — Text 1-012 (Editor's note).

received from the marketing of inventions that they have to reinvest in order to accumulate a continuous supply of research funds and stimulate researchers.

3. For the purposes of [Article 3\(b\)](#) of Decision No. 344, the title or name of the invention shall reflect the subject matter and industrial field to which it is related and shall conform to the subject matter described and claimed.

(Additional Requirements for the Application)

4. The requirements referred to in [Article 14\(c\)](#) of Decision No. 344 are the following:
- (a) if the power of attorney mentioned in [Article 14\(a\)](#) of Decision No. 344 is on record at the Directorate General of Industry and Commerce, a mention of the record number;
 - (b) a card for indexing by subject and another for indexing by owner, according to formats laid down by the Directorate General of Industry and Commerce;
 - (c) the publication extract, executed in the format laid down by the Directorate General of Industry and Commerce, which shall contain the following identity of the inventor, title of the invention, the most relevant of the claims, the final art of the drawing or most characteristic figures, if any, in two copies measuring 6 × 6 centimeters;
 - (d) such drawings, plans or figures as are necessary for the understanding of the invention, numbered individually and serially, executed in accordance with the rules of technical drawing, on *oficio* format paper, on one side only and in indelible black ink, using reference numbers and/or signs which must be defined in the text of the description; chemical or mathematical formulae that are not typewritten or printed in the text of the description shall be considered figures;
 - (e) in the event of priority being claimed, the official translation of the claims of the first patent application, where appropriate;
 - (f) in the event of the priority of applications filed in countries not party to the Cartagena Agreement being claimed, a mention of the legal derivation of the reciprocal treatment provided for in [Article 12](#) of Decision No. 344;
 - (g) the documents attesting the legal existence accrediting the legal representatives of the entity filing the application.

(Prolongation)

5. For the purposes of [Article 22](#) of Decision No. 344, the request for prolongation shall be filed before the term expires, and shall be accompanied by proof of payment of the fee payable for prolongation. It is understood that the said prolongation shall start on the day following that on which the initial term expires, without need for any pronouncement.

(Change of Type of Industrial Property Right)

6. For the change of type of industrial property right referred to in [Articles 17 to 20](#) of Decision No. 344 to occur, the applicant shall, within the period allowed, prove payment of the prescribed fee, whereupon the examination referred to in [Article 21](#) of the same Decision shall proceed in relation to the new type of industrial property right.

(Publication)

7. The publication referred to in [Article 23](#) of Decision No. 344 shall contain the particulars recorded in the extract referred to in [Article 4\(c\)](#) of this Decree.

(Submission of Observations)

8. The Directorate General of Industry and Commerce shall not entertain any observations that do not fulfill the following requirements:

- (a) the name and address of the person submitting observations; in the case of a legal entity, the documents attesting its legal existence and accrediting its legal representatives shall likewise be submitted;
- (b) where applicable, the duly granted power of attorney or a mention of the registration thereof with the Directorate General of Industry and Commerce, and the address of the authorized agent;
- (c) the original and one copy of a written text specifying the legitimate interest relied upon and the grounds on which the observation is based;
- (d) the evidence underlying the challenge to the patentability of the invention;
- (e) the correct identification of the file and the issue of the Gazette in which the application was published;
- (f) submission within the prescribed period;
- (g) proof of payment of the prescribed fee for submission.

(Registration of Assignments, Licenses and Changes in the Name and Address of the Owner)

9. Such requests shall comply with the following requirements:

- (a) the name, address and domicile of the requesting party or his authorized agent, if any;
- (b) the number of the file or of the certificate attesting the rights granted;
- (c) where appropriate, the duly granted power of attorney or a mention of the registration thereof with the Directorate General of Industry and Commerce;
- (d) the documents attesting the legal existence and accrediting the legal representatives of the entity filing the request;
- (e) a duly granted document attesting the license, assignment or change of name or address;
- (f) proof of payment of the prescribed fee for submission.

Chapter II Utility Models

(Formalities)

10. Applications for utility model patents and other formalities associated therewith shall be governed by the provisions laid down for invention patents in Decision No. 344 and these provisions, *mutatis mutandis*.

(Classification)

11. The International Patent Classification shall be used for utility model patents.

Chapter III Industrial Designs

(Requirements)

12. The application referred to in [Article 61](#) of Decision No. 344 shall relate to one design only and comply with the following requirements:

- (a) if the power of attorney mentioned in [Article 61](#) of Decision No. 344 is on record at the Directorate General of Industry and Commerce, a mention of the record number;
- (b) a card for indexing by subject and another for the indexing of owners, according to formats laid down by the Directorate General of Industry and Commerce;
- (c) the publication extract, executed in the format laid down by the Directorate General of Industry and Commerce, which shall contain the following: the identity of the designer, the name of the industrial design, the final art of the design or the most characteristic figures, in three copies measuring 6×6 centimeters;
- (d) in the case of a three-dimensional industrial design, a graphic representation of the design including elevations, sectional views, orthogonal projections (upper, lower, rear, front and side) or photographs, as necessary, and also a general or overall view; in the case of a two-dimensional design combining lines and colors, such graphics or plans as are necessary shall be enclosed.

The graphics shall be executed to scale, on *oficio* paper, in indelible black ink and shall be duly numbered;

- (e) in the event of priority being claimed, a copy of the first application, with an official translation if necessary;
- (f) proof of payment of the prescribed fee for filing;
- (g) documents attesting the legal existence and accrediting the legal representatives of the entity filing the application.

(Formalities)

13. Applications for the registration of industrial designs and other formalities associated therewith shall be governed by the provisions on invention patents of Decision No. 344 and these provisions, *mutatis mutandis*.

Chapter IV Marks

(Additional Requirements for the Application)

14. The requirements referred to in [Article 88\(e\)](#) of Decision No. 344 are the following:

- (a) if the power of attorney mentioned in [Article 88\(a\)](#) of Decision No. 344 is on record at the Directorate General of Industry and Commerce, a mention of the record number;
- (b) the publication extract, executed in the format specified by the Directorate General of Industry and Commerce, which shall contain the following: the mark, the class, the name of the applicant, his domicile, the name of the authorized agent, the type of mark, the goods or services for which registration is sought and the final art, in three copies measuring 6 x 6 centimeters;
- (c) in the event of priority being claimed, the official translation of the first application in respect of the mark, where necessary;
- (d) in the event of the priority of applications filed in countries not party to the Cartagena Agreement being claimed, a mention of the legal derivation of the reciprocal treatment provided for in [Article 103](#) of the Decision;
- (e) documents attesting the legal existence and accrediting the legal representatives of the entity filing the application;
- (f) a mention of the goods or services in the class in which the registration of the mark is sought, according to the Nice International Classification, including the updated and amended versions thereof.

(Submission of Observations)

15. The Directorate General of Industry and Commerce shall not entertain observations that are included in the cases mentioned in [Article 94](#) of Decision No. 344, or those that do not fulfill the following requirements:

- (a) name and address of the person submitting the observations; in the case of a legal entity, the documents attesting its legal existence and accrediting its legal representatives shall likewise be submitted;
- (b) where applicable the duly granted power of attorney or a mention of the registration thereof with the Directorate General of Industry and Commerce, and the address of the authorized agent;
- (c) the original and one copy of a written text specifying the legitimate interest relied upon and the grounds on which the observation is based;
- (d) the evidence underlying the challenge to the registrability of the sign;
- (e) where the observation is based on figurative or composite distinctive signs, an exact and detailed reproduction thereof, in the form in which they were registered, deposited or applied for, shall be enclosed;
- (f) the correct identification of the file and the issue of the Gazette in which the application was published.

(Requirements for the Renewal Application)

16. The application for renewal of a mark shall meet the following requirements:

- (a) name, address and domicile of the applicant and of his authorized agent, if any;
- (b) where applicable, the duly granted power of attorney or a mention of the registration thereof with the Directorate General of Industry and Commerce;

- (c) the precise identification of the mark to be renewed, mentioning: the class and the certificate number, or a copy of the resolution constituting grant of trademark registration or of the most recent renewal, as the case may be;
- (d) proof of payment of the prescribed fee for filing;
- (e) documents attesting the legal existence of the legal entity filing the application and the legal status of the representatives thereof.

(Requirements for a Request for Registration of an Assignment, Change of Domicile, Change of Ownership, License of Use and Agreements)

17. In addition to compliance with those of the requirements specified in the foregoing Article that are relevant, an authentic copy of the document evidencing the assignment, license for use, change of name or domicile or agreement provided for in [Article 107](#) of Decision No. 344, as the case may be, shall likewise be filed.

(Requirements for a Request for Cancellation)

18. A request for cancellation of the registration of a mark shall be filed in writing, in the original with one copy, and shall comply with the following requirements:

- (a) name, address and domicile of the requesting party and of his authorized agent if any;
- (b) where applicable, the duly granted power of attorney or a mention of the registration thereof with the Directorate General of Industry and Commerce;
- (c) the precise identification of the mark to be cancelled, specifying: the mark, the class and the certificate number;
- (d) the grounds on which the request for cancellation is based;
- (e) the evidence that is to be invoked;
- (f) the documents attesting the legal existence and accrediting the legal representatives of the entity filing the request.

(Requirements for Applications Relating to Advertising Slogans)

19. The application for the registration of an advertising slogan shall comply with the requirements laid down for the registration of marks in both Decision No. 344 and these provisions, with in addition the identification of the mark with which the advertising slogan is to be used, the class and certificate number or the number of the file in which the application was processed, as appropriate. All other formalities relating to advertising slogans shall be governed by the provisions on marks of Decision No. 344 and these provisions, *mutatis mutandis*.

Chapter V Trade Names and Business Signs

(Application for the Filing of a Trade Name or Business Sign)

20. The application for the filing of a trade name or business sign shall comply with the following requirements:

- (a) name, address and domicile of the applicant and of his authorized agent, if any;
- (b) where applicable, the duly granted power of attorney or a mention of the registration thereof with the Directorate General of Industry and Commerce;
- (c) a clear and complete description of the name or sign filed for registration;
- (d) an indication of the activities engaged in by the entrepreneur or conducted through the commercial establishment, in a manner conforming to the classification of marks insofar as it is compatible;
- (e) where the name or sign contains figurative elements, the final art in three copies measuring 6 x 6 centimeters;
- (f) proof of payment of the prescribed fee for filing;
- (g) the documents attesting the legal existence and accrediting the legal representatives of the entity filing the application.

Chapter VI Appellations of Origin

(Additional Requirements for the Application)

21. The requirements referred to in [Article 134\(e\)](#) of Decision No. 344 are the following:

- (a) the name, address and domicile of the authorized agent, if any;
- (b) where applicable, the duly granted power of attorney or a mention of the registration thereof with the Directorate General of Industry and Commerce;
- (c) evidence showing that the qualities or characteristics of the product are exclusively or essentially due to the geographical environment in which it is produced, including both natural and human factors;
- (d) proof of payment of the prescribed fee for filing.

(Formalities)

22. The formalities associated with appellations of origin shall be governed by the provisions on marks of Decision No. 344 and these provisions, *mutatis mutandis*.

Chapter VII Supplementary Provisions

(Notification)

23. The notification referred to in [Articles 22](#), [26](#), [27](#), [91](#) and [95](#) of Decision No. 344, and the notification of the requirements complied with under [Article 12](#) of the Code of Administrative Litigation shall be effected by means of a report which shall specify:

- (a) the type of formality;
- (b) the file number;

- (c) the resolution number;
- (d) the name of applicant and authorized agent, if any;
- (e) the date of the report, with the signature of the official appointed for the purpose.

The report shall be displayed in a visible place in the public area of the entity, and shall remain on display during the working hours of the day in question.

(Publication)

24. The Directorate General of Industry and Commerce shall publish, in the Industrial Property Gazette, extracts from the instruments relating to industrial property provided for in Decision No. 344 and these provisions, subject to payment of the appropriate fees.

(Lapse)

25. The Directorate General of Industry and Commerce shall declare the lapse of entries relating to grants, renewals, transfers, prolongations, licenses, changes in the name and address of the owner, granted as from the date of publication of this Decree, payment for which has not been credited to the said entity within the three months following the date on which the administrative act concerned came into effect. The period shall be six months for patents.

The lapse shall likewise be declared of those titles specified in the foregoing paragraph and granted between April 8, 1992, and the date of publication of this Decree, payment for which has not been credited to the Directorate General of Industry and Commerce within three months following the date on which this Decree entered into force.

(Extension of Patents)

26. The owners of patents granted prior to January 1, 1994, shall file proof of working together with the application for extension thereof.

(Final Art)

27. The final art referred to in [Articles 4\(c\)](#), [12\(c\)](#) and [14\(b\)](#) of this Decree shall be filed in a format measuring 12 x 12 centimeters as from March 10, 1994, the other conditions laid down in the said Articles being observed.

(Entry Into Force)

28. This Decree shall operate as from the date of the publication thereof and shall supersede Decree No. 575 of 1992, with the exception of Article 33 thereof, and any other provisions contrary to it.