

Law No. 8632

THE LEGISLATIVE ASSEMBLY OF THE REPUBLIC OF COSTA RICA
HEREBY DECREES:

**AMENDMENT OF VARIOUS ARTICLES OF LAW NO. 7978
ON TRADEMARKS AND OTHER DISTINCTIVE SIGNS,
LAW NO. 6867 ON PATENTS, INDUSTRIAL DESIGNS
AND UTILITY MODELS, AND LAW NO. 7788 ON BIODIVERSITY**

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ARTICLE 1.–

Law No. 7978 of January 6, 2000 on Trademarks and Other Distinctive Signs is hereby amended as follows:

- (a) add to Article 1 a second paragraph, to read as follows:

“Article 1.– Purpose

[...]

It shall further develop the procedures needed to guarantee the effective application of the commitments laid down in existing international treaties, where necessary, failing such an explicit procedure therein, in all matters not opposed to and compatible with the said treaties.”

- (b) the definition of “geographical indication” contained in Article 2 is amended to read as follows:

“Article 2.– Definitions

For the purposes of this Law, the following concepts are defined:

[...]

Geographical indication: an indication which identifies a product as originating from the territory of a country or a region or locality in that territory, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin. Any sign or combination of signs, in any form, shall be capable of constituting a geographical indication.

[...]”

- (c) The first paragraph of Article 3 is amended to read as follows:

“Article 3.– Signs which may constitute a trademark

Trademarks refer in general to any sign or combination of signs capable of distinguishing goods or services, especially words or groups of words – including the names of persons–, letters, numbers, figurative elements, figures, monograms, portraits, labels, coats of arms, stamps, stickers, logos, lines or borders, combinations and arrangements of colors as well as sounds. Similarly, they may consist of the form, presentation or packaging of products, their wrapping or cover or the channels or outlets for distributing the corresponding goods or services.

[...]”

- (d) Subparagraphs (a), (b), (c) and (i) of Article 8 are amended to read as follows:

“Article 8.– Trademarks which are inadmissible owing to third party rights

No sign may be registered as a trademark where this affects any rights of third parties, in the following cases, *inter alia*:

- (a) where the sign is identical or similar to a trademark, geographical indication or appellation of origin, which has been registered to or applied for by a third party at an earlier date, and distinguishes the same goods or services and others related thereto, which may cause confusion among the consumer public;

(b) where use of the sign is likely to cause confusion, because it is identical or similar to a trademark, geographical indication or appellation of origin, which has been registered to or applied for by a third party at an earlier date, and distinguishes the same goods or services or goods and services which are different but are likely to be associated with those distinguished by the earlier trademark, geographical indication or appellation of origin;

(c) where use of the sign is likely to create confusion, because it is identical or similar to a trademark, geographical indication or appellation of origin used, from an earlier date, by a third party with a better right to obtain registration, according to Article 17 of this Law, for the same goods or services or for goods or services which are different but are likely to be associated with those which distinguish the respective trademark, geographical indication or appellation of origin in use;

[...]

(i) where the sign constitutes a reproduction or imitation, in full or in part, of a protected certification trademark from an earlier date.

[...]"

(e) subparagraph (h) of Article 8 is repealed.

(f) subparagraph (j) of Article 9 and the paragraph following the said subparagraph are amended to read as follows:

“Article 9.– Application for registration

Applications for trademark registration shall be filed with the Industrial Property Registry and shall contain the following:

[...]

(j) proof of payment of the required fee.

Applicants may file with the Registry in person, with the help of a lawyer and notary, or through an agent. Where an agent handles filing, he shall present the corresponding power of attorney, in accordance with the requirements of Article 82*bis* of this Law. If an entry is made in the Industrial Property Registry concerning said power of attorney, it shall indicate the trademark file, its number and the application or registration number where it is to be found; the agent may act up to the limits of the powers initially granted.

[...]

(g) subparagraph (e) of Article 10 is amended to read as follows:

“Article 10.– Admission for processing of a filed application

The Industrial Property Registry shall assign a date and time of filing to an application for registration, and shall accept it for processing if it meets the following requirements:

[...]

(e) it includes proof of payment of the required fee.”

(h) the fifth paragraph of Article 18 is amended to read as follows:

“Article 18.– Decisions

If one or more oppositions have been filed, they shall be decided, together with the main features of the application, in a single act, through a substantiated decision.

Where the complete rejection of the registration applied for is not warranted or where the opposition filed is limited and the coexistence of both trademarks is not likely to create confusion, registration may be granted solely for some of the goods or services indicated in the application or granted with an explicit limitation for given goods or services.

A trademark registration shall not be rejected owing to the existence of a prior registration if the defense provided for in the second paragraph of Article 39 of this Law is invoked and proves to be well-founded.

If no opposition is filed within the period set, the Industrial Property Registry shall register the trademark.”

(i) the first paragraph of Article 25 and subparagraph (a) thereof are amended to read as follows:

“Article 25.– Rights conferred by registration

The owner of a factory mark or trademark that has already been registered shall enjoy an exclusive right to prevent third parties from using, without his consent, in the course of business dealings, identical or similar signs, including geographical indications and appellations of origin,

for goods or services which are identical or similar to those registered for the mark, where use gives rise to the likelihood of confusion. In the case of use of an identical sign, including geographical indications and appellations of origin, for identical goods or services, it shall be assumed that there is a likelihood of confusion. Consequently, a trademark registration shall confer on its holder or his successors in title the right to take action against third parties who perform any of the following acts without his consent:

(a) applying or affixing the mark or an identical or similar distinctive sign to goods or services for which the mark has been registered or to goods, wrapping, envelopes, packaging or conditioning for those goods relating to the goods or services for which the mark has been registered.

[...]"

(j) the first and third paragraphs of Article 35 are amended to read as follows:

“Article 35.– Licenses for trademark use

The holder of the right in a mark which is registered or applied for may grant a license for use. Registration of the said license shall not be a requirement for its validity, for asserting any right in a mark, or for other purposes as well. However, the said license may be registered for the purposes of certainty and publication of registration. If the assignee decides to register his right, the entry sought shall be subject to payment of the fee established in Article 94 of this Law.

[...]

Requests for licenses for trademark use shall be accompanied by the licensing documents signed by both parties and duly authenticated. They shall also be accompanied by the documents referred to in subparagraphs (b), (c), (g) and (h) of Article 31 of this Law.

[...]"

(k) the second and third paragraphs of Article 44 are amended to read as follows:

“Article 44.– Protection of well-known trademarks

[...]

This Law recognizes the right, for holders of a well-known trademark, as this concept is defined in Joint Recommendation No. 833, of September 1999, of WIPO and the Assembly of the Paris Union, to prevent unauthorized third parties from taking unfair advantage of the repute of the trademark or diminishing of its distinctiveness or commercial or advertising value. The Industrial Property Registry may, *ex officio* or at the request of the interested party, reject or cancel the registration and prohibit the use of a factory mark or trademark, or of a service mark which constitutes a written reproduction, imitation or translation of a well-known trademark, registered or not, and used for identical or similar goods, which is likely to create confusion.

The Industrial Property Registry may not register as a trademark signs which are identical or similar to a well-known trademark, registered or not, to be applied to any good or service, where the use of the mark by the applicant for registration may create confusion or a risk of association with the goods or services of the person who uses that trademark, constitute unfair advantage of the repute of the trademark or suggest a connection with it, and where its use may harm the interests of that person.

[...]"

(l) the name of Chapter II of Title VIII is amended to read as follows:

“TITLE VIII

[...]

CHAPTER II

APPELLATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

(m) Articles 74 to 81 are amended to read as follows:

“Article 74.– Registration of appellations of origin and geographical indications

The Industrial Property Registry shall keep a register of appellations of origin and geographical indications.

National or foreign appellations of origin and geographical indications shall be registered at the request of one or more producers, manufacturers or craftsmen, whose establishment for production or manufacture is located in the region or locality to which the appellation of origin or geographical indication corresponds, or at the request of any competent public authority.

In the case of homonymous geographical indications or appellations of origin, protection shall be granted to each one, subject to the provisions of the first paragraph of Article 71 of this Law. The Regulations shall set out the conditions for differentiating the homonymous indications or appellations in question, taking into consideration the need to ensure that the goods concerned receive equal treatment and that consumers are not misled.”

Article 75.– Prohibitions on registration

At the request of any party with a legitimate interest or *ex officio*, the Industrial Property Registry may not register as an appellation of origin or geographical indication any sign which:

- (a) does not comply with the definition of appellation of origin or geographical indication contained in Article 2 of this Law;
- (b) is contrary to good practices or public order or may mislead the public as to the geographical origin, nature, manufacturing method, characteristics or qualities or suitability for use or consumption of the respective goods;
- (c) is the common or generic name for a good. A name shall be deemed to be common or generic where it is considered as such by those familiar with this type of product and by the public in general;
- (d) is likely to be confused with a trademark, geographical indication or appellation of origin which is the subject of a pending application or registration filed in good faith;
- (e) is likely to be confused with a trademark or geographical indication or appellation of origin used from an earlier date by a third party with a better right to obtain registration, in accordance with Article 17 of this Law, for the same goods or services or for goods or services which, albeit different, are likely to be associated with those distinguished by the respective trademark, geographical indication or appellation of origin in use.

An appellation of origin or a geographical indication may be registered together with the generic name of the respective good or an expression related to this good, but protection shall not extend to the generic name or expression used.

Article 76.– Applications for registration

Applications for registration of an appellation of origin or geographical indication shall indicate:

- (a) the name, address and nationality of the applicants and the place where their establishments for production or manufacture are located;
- (b) the appellation of origin or geographical indication applied for;
- (c) the geographical area of production to which the appellation of origin or geographical indication refers;
- (d) the goods or services for which the appellation of origin or geographical indication is used;
- (e) an overview of the essential qualities or characteristics of the goods or services for which the appellation of origin or geographical indication is used.

Applications for the registration of a geographical indication or an appellation of origin shall be subject to payment of the required fee, except where registration is sought by a public authority. In the case of foreign public authorities, this exemption shall be subject to reciprocity.

Article 77.– Registration procedure

Applications for registration of an appellation of origin or geographical indication shall be examined to ascertain whether:

- (a) they meet the requirements set out in Article 76 of this Law and the corresponding regulatory provisions;
- (b) the appellation of origin or geographical indication applied for is not subject to any of the prohibitions provided for in the first paragraph of Article 75 of this Law.

Procedures relating to the examination and registration of appellations of origin and geographical indications shall be governed, as appropriate, by the provisions concerning the registration of trademarks.

Article 78.– Grant of registration

Decisions to grant the registration of an appellation of origin or a geographical indication and the corresponding entry shall indicate:

- (a) the delimited geographical area of production whose producers, manufacturers or craftsmen shall be entitled to use the appellation of origin or geographical indication;
 - (b) the goods or services to which the appellation of origin or geographical indication applies;
 - (c) the essential qualities or characteristics of the goods or services to which the appellation of origin or geographical indication shall apply, except where, owing to the nature of the good or service or other circumstances, it is not possible to specify such characteristics.
- Registrations of appellations of origin and geographical indications shall be published in the Official Gazette *La Gaceta*.

Article 79.– Term and modification of registration

Registrations of appellations of origin or geographical indications shall be of indefinite duration. They may be amended at any time where this changes any of the points referred to in the first paragraph of Article 78 of this Law. Amendment of registration shall be subject to payment of the required fee and, as appropriate, to the procedure laid down for the registration of appellations of origin and geographical indications.

Article 80.– Right to use the appellation of origin or geographical indication

Only those producers, manufacturers or craftsmen who have been authorized to use commercially a registered appellation of origin or geographical indication may employ, next to it, the expression “appellation of origin” or “geographical indication”.

Proceedings relating to the right to use a registered appellation of origin or geographical indication shall be brought before the courts.

The provisions of Articles 26 and 73 of this Law shall apply, as appropriate, to registered appellations of origin and geographical indications.

Article 81.– Cancellation of registration

At the request of any party with a legitimate interest, the Registry shall invalidate the registration of an appellation of origin or geographical indication where it is proven to be subject to any of the prohibitions laid down in Article 75 of this Law, or where the appellation of origin or geographical indication is used in trade in a way that does not correspond to that which is indicated in the respective entry, in accordance with the first paragraph of Article 78 of this Law.”

- (n) the second paragraph of Article 82 is amended to read as follows:

“Article 82.– Representation

[...]

Applicants may deal with the Registry in person, with the help of a lawyer or notary, or through an agent. Operating agents shall present the corresponding power of attorney, in accordance with the requirements of Article 82bis of this Law. If the said power of attorney is recorded in the Industrial Property Registry, it shall indicate the trademark file, its name and the number of the application or registration in which it is to be found. Agents may act to the limit of the powers initially authorized.

[...]

- (o) an Article 82bis is added, which reads as follows:

“Article 82bis.– Powers of attorney for intellectual property

The requirement for acting on behalf of a natural person or legal entity in respect of any of the acts related to intellectual property shall be the authorization of the principal, in an authenticated mandate with minimum formality, which shall not require registration in any case.

Where a power of attorney covers other countries, it may be formalized in accordance with the domestic law of the country granting it, and shall be authenticated.

Unless otherwise stipulated, any agent shall be deemed to have sufficient authorization to carry out all of the acts authorized by law for the holder of the corresponding intellectual or industrial property rights, in respect of any authority, office or public register, for recording, registration, renewal, transfer, licensing and other applicable acts, the conservation or defense of his rights, both at the administrative headquarters and in court, in all of their bodies and instances.”

(p) in Article 94, subparagraph (e) is amended and subparagraphs (h), (i), (j), (k), (l) and (m) are added, to read as follows:

“Article 94.– Fees

The fees charged by the Industrial Property Registry shall be as follows, it being understood that they may be paid in the equivalent in colones at the official rate of the banking institution which receives the payment:

[...]

(e) for transferring, licensing for use, changing the name of or cancelling trademarks: twenty-five US dollars (US\$ 25.00) for each international nomenclature

[...]

(h) For each opposition filed: twenty-five US dollars (US\$ 25.00);

(i) For each amendment or correction of an application: twenty-five US dollars (US\$ 25.00);

(j) for each divisional application: fifty US dollars (US\$ 50.00);

(k) for each application for an appellation of origin or a geographical indication: fifty US dollars (US\$ 50.00);

(l) as a surcharge for renewal during the six-month grace period: twenty-five US dollars (US\$ 25.00);

(m) for applications for invalidation or cancellation of each distinctive sign in each class: twenty-five US dollars (US\$ 25.00).”

ARTICLE 2.–

Law No. 6867 of April 25, 1983 on Patents, Industrial Designs and Utility Models is hereby amended as follows:

(a) Subparagraphs (c) and (d) of Article 1(4) are amended to read as follows:

“Article 1.– Inventions

[...]

4.– The following may not be patented:

[...]

(c) plants and animals, except microorganisms, provided that they are not microorganisms as found in nature;

(d) essentially biological procedures for the production of plants or animals, where they are not non-biological or microbiological procedures.”

(b) subparagraphs (4) and (6) of Article 2 are amended to read as follows:

“Article 2.– Patentable inventions

[...]

4. Disclosure arising from a publication made by an Industrial Property Office as part of the patent grant procedure shall be considered part of prior art, except in the case of the patent applicant or where the application in question has been filed by someone who was not authorized to obtain the patent or where publication has been improperly made.

[...]

6. An invention shall be considered industrially applicable if it has a specific, substantive and credible use.

[...]

(c) subparagraphs (2) and (3) of Article 6 are amended to read as follows:

“Article 6.– Application

[...]

2. Where the applicant wishes to claim the priority conferred by an earlier application filed in another country, he shall file the application within 12 months following the filing date of the first application which serves as a basis for claiming the priority right, in accordance with the provisions of Article 4 of the 1967 Paris Convention for the Protection of Industrial Property.

3. The application shall contain the name and means for the service of notifications, which may be by fax, telegram, e-mail or post office box, in accordance with the respective Regulations

and other information prescribed therein relating to the applicant, the inventor and the agent, if any, and the title of the invention. If the applicant is not the inventor, the application shall be accompanied by a statement justifying the applicant's right to the patent.

[...]"

(d) subparagraph (8) of Article 6 is repealed.

(e) a subparagraph (10) is added to Article 6, to read as follows:

“Article 6.– Application

[...]

10. In the event that, at the date on which the application is filed, it does not include at least the name of the applicant, the description, the claims and any drawings necessary to understand the invention, the Industrial Property Registry shall assign as the filing date the date on which full compliance is achieved with the corresponding requirements.”

(f) subparagraph (1) of Article 8 is amended to read as follows:

“Article 8.– Amendment, division and withdrawal of the application

1. The applicant may amend his application and may also amend the claims, but this may not entail a broadening of the invention disclosed or an expansion of the disclosure contained in the initial application.

[...]"

(g) Article 9 is amended to read as follows:

“Article 9.– Formal examination

1. The Industrial Property Registry shall ascertain whether the application meets the requirements of paragraphs 1, 2 and 3 of Article 6 and the provisions corresponding to the Regulations.

2. In the event that any omission or defect is noted, the applicant shall be notified so that he can make the necessary correction within the following 15 working days. If the applicant fails to make the correction within the said period, the Registry shall consider the application withdrawn.”

(h) subparagraph (1) of Article 12 is amended to read as follows:

“Article 12.– Opposition and observations

1. Anyone who is opposed to the grant of the patent because he considers that the application violates the substantive requirements prescribed in this Law may file an opposition within a period of three months, beginning from the date of the third publication of the application in the Official Gazette *La Gaceta*. The opposition shall be duly substantiated, and shall be accompanied by the relevant evidence or the offering thereof, and proof of payment of the opposition fee. Evidence or evidence for better provision shall be submitted within two months following the filing of the opposition, on pain of inadmissibility.

[...]

(i) subparagraphs (2) and (6) of Article 13 are amended to read as follows:

“Article 13.– Substantive examination

[...]

2. The Industrial Property Registry shall rely on professional examiners to conduct the substantive examination of patents, the cost of which shall be fixed by tariffs set for this purpose by the Administrative Board of the National Registry. Similarly, the Registry may request an opinion from official, higher education, scientific, technological or professional establishments, national or foreign, or, failing this, from independent experts in the field, as to the novelty, the inventive step and the industrial applicability of the invention. In all cases, the appointed examiner shall be independent and honest and not have a conflict of interests. He shall also respect the confidentiality of the information being examined. The above-mentioned centers that depend on or are funded by the State and the professional bodies shall be obliged to provide the required advice. Any person signing the reports shall be held responsible for their content, as the case may be, in accordance with the provisions of Article 199 of the General Law of Public Administration.

Reports submitted by the centers, entities or experts consulted shall be issued within the period set by the Industrial Property Registry, depending on the complexity of the matter, and shall

contain a detailed justification of the conclusions. The cost, which shall be set in accordance with the Regulations, shall be borne by the applicant.

[...]

6. The technical report referred to in paragraph 2 of this Article shall be concluded within a non-extendable period of two years, computed from the receipt of the application for study by the corresponding body. The substantive examination shall be concluded within a period of 30 months, beginning from the receipt of the application for study by the corresponding entity.”

(j) a subparagraph (4) is added to Article 16, to read as follows:

“Article 16.– Rights conferred by the patent. Limitations

[...]

4. With regard to the marketing approval process for drugs, the Ministry of Health and other competent authorities shall take steps to prevent any person other than the patent owner from marketing a product covered by the patent which encompasses the previously approved product or its authorized use for the duration of the patent, unless the patent owner has given his consent or approval.”

(k) Article 17 is amended to read as follows:

“Article 17.– Duration of patent protection

1. The patent shall be valid for 20 years, beginning from the date on which the application is filed with the Industrial Property Registry in the case of patents processed under the 1957 Paris Convention for the Protection of Industrial Property, or, failing that, in the case of patents processed under the Patent Cooperation Treaty, from the date of international filing.

2. Notwithstanding the provisions of paragraph 1 above, only in the case of product patents if the Industrial Property Registry takes more than five years to grant the patent, beginning from the date on which the application is filed with it, or takes more than three years, beginning from the application for the substantive examination of the patent provided for in Article 13 of this Law, whichever comes last, the holder shall be entitled to petition the Industrial Property Registry for compensation for the period of patent validity. Said petition shall be filed in writing within three months following the grant of the patent.

3. Once it receives such a request, the Industrial Property Registry shall provide compensation for the period of the patent, by granting one day for every day over the periods referred to in paragraph 2. However, periods ascribable to actions taken by the applicant shall not be included in the determination of such delays. Notwithstanding the above, total compensation for the patent term may under no circumstances exceed 18 months.

4. Notwithstanding the provisions laid down in paragraph 1 above, in the case of existing patents which cover any pharmaceutical product, where Health Registry approval for the first marketing of said pharmaceutical product in the country granted by the Ministry of Health takes more than three years, beginning from the date of filing of the application with the Health Registry for pharmaceutical products in the country, the patent owner shall be entitled to petition the Industrial Property Registry for compensation for the term of the patent. Said petition shall be filed in writing, within three months following Health Registry approval for the first marketing of the pharmaceutical product in the country.

5. After receiving such a request, the Industrial Property Registry shall provide compensation for the patent term, by granting one day for every day over the period referred to in paragraph 4, provided that the remaining validity of the patent does not exceed 12 years. Notwithstanding the above, total compensation for the patent term may under no circumstances exceed 18 months.”

(l) subparagraphs (2), (4) and (11) of Article 18 are repealed.

(m) subparagraphs (5) and (6) of Article 18 are amended to read as follows:

“Article 18.– Failure to work or insufficient industrial working

[...]

5. Upon the expiry of the periods referred to in paragraph 1 of this Article, any party may apply during the following year for the grant of a compulsory license due to failure to work. In the event that the grant of the compulsory license does not suffice to correct the failure to use the patent, the patent shall be declared to have lapsed. No proceedings with a view to the lapsing or

revocation of a patent may be brought before the expiry of a period of two years, beginning from the grant of the first compulsory license.

6. Authorization for compulsory licenses shall be considered on a case-by-case basis and shall extend to patents relating to components and processes which enable its working. Such uses shall be authorized primarily to supply the domestic market, in accordance with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property. Before a compulsory license is granted, the applicant must prove that he has sufficient capacity to work the patented invention and that he has endeavored to obtain the authorization of the right holder on reasonable commercial terms and conditions, and that such attempts have not succeeded within the term set in the first paragraph of this Article.

[...]"

- (n) a subparagraph (4) is added to Article 20, to read as follows:

“Article 20.– Licenses in the public interest

[...]

4. Licenses in the public interest shall enable the competent authorities to make use of test data utilized to register a product in the country, with a view to obtaining Health Registry registration and temporary marketing approval for the products to which such licenses refer, without disclosing the protected information. The competent authority shall protect such information against any unfair commercial use.”

- (o) subparagraph (1) of Article 21 is amended to read as follows:

“Article 21.– Invalidity

1. At the request of any interested party or *ex officio*, and provided that the patent owner is heard, the Industrial Property Registry shall declare the said patent invalid, if it can be demonstrated that it was granted in violation of any of the provisions of Articles 1 and 2 of this Law. Any party requesting the invalidation of a patent may provide all the proof he deems relevant.

[...]

- (p) Articles 32 and 33 are amended to read as follows:

“Article 32.– Abandonment

Applications for registration and other actions taken under this Law shall be deemed to have been abandoned and shall lapse by operation of the law if they are not taken in due time, within a period of three months, beginning from the date of the last notice served on the interested parties.

Article 33.– Fees for invention patents

The fees for patents shall be as follows:

- (a) filing of the application, which includes processing and formal examination: five hundred US dollars (US\$ 500.00);
- (b) for each divisional application: five hundred US dollars (US\$ 500.00);
- (c) recording and dispatching of the patent registration certificate: five hundred US dollars (US\$ 500.00);
- (d) opposition: twenty-five US dollars (US\$ 25.00);
- (e) request for an extension of the patent term: one hundred and fifty US dollars (US\$ 150.00);
- (f) annual fees: five hundred US dollars (US\$ 500.00);
- (g) surcharge for payment during the grace period: thirty per cent (30%) of the corresponding annual fee.

The fees applicable under this Law shall be paid into the budget of the Industrial Property Registry with a view to its strengthening, and may be settled in their equivalent in colones, at the official exchange rate of the banking institution which receives the payment.

Where the applications referred to in subparagraphs (a), (b), (c) and (e) of this Article have been filed by inventors who are natural persons, by micro or small enterprises according to Law No. 8262, by public institutions of higher education, or by public-sector institutes for science and technology research, these may pay only thirty per cent (30%) of the rate established for the fee, as well as thirty per cent (30%) of the rate established in subparagraph (f) for annual fees during the term of the patent. For this to be the case, the application must be accompanied by the following documents, in addition to proof of payment:

- I. A sworn statement to the effect that they come under one of the categories listed in the preceding paragraph;
- II. A copy of the tax identity card for natural persons and a copy of the corporation card in the case of legal entities.

To proceed with the recording of the transmission of rights to a third party who does not come under any of the categories enumerated in this provision, that party shall cover the remaining seventy per cent (70%) of the current rates not initially covered by the transferor. Similarly, once this transmission has taken place, the transferee shall pay all of the annual fees set in order to keep his right.”

- (q) an Article 33bis is added, to read as follows:

“Article 33bis.– Payment of annual fees

1. The annual fees to maintain the validity of the patent may be paid in advance for two or more annual periods.
2. In the event that the annual fee is paid during the grace period, the fee due and the respective surcharge shall be paid simultaneously. During the grace period, the patent shall remain in force.
3. If the Industrial Property Registry notes that payment of the respective annual fee has not been made during the same period, it shall send the payment reminders provided for in Article 150 of the General Law of Public Administration. If payment has still not been made within the period set for this purpose, the Director of the Industrial Property Registry shall make official notice of the arrears.
4. Payment of annual fees shall be entered in the Registry, in the section corresponding to the patent for which the fee has been paid. The entry shall indicate the amount paid, the annual period or periods to which the payment corresponds, and the date on which payment was received.
5. In the case of renunciation, expiry or declaration of invalidity, it shall not be possible to recover fees or annual payments made in advance.

- (r) an Article 34bis is added, to read as follows:

“Article 34bis.– Formality of powers of attorney

To act on behalf of a natural person or legal entity performing any act relating to intellectual property, it shall be necessary to obtain the authorization of the principal, in the form of an authenticated mandate, as a minimum formality. In any event, it shall not be necessary to register the said mandate.

Where a power of attorney also covers other countries, it may be formalized in accordance with the domestic law of the country granting it, and shall be authenticated.

Unless otherwise agreed, all agents shall have sufficient authority to perform all of the acts which the laws authorize the actual holder of the corresponding intellectual or industrial property rights to perform, in relation to any authority, office or public register, for the recording, registration, transfer, licensing or other acts applied, and the conservation or defense of his rights, in both administrative and judicial proceedings, in all of their bodies and instances.”

- (s) a new Article 36 is added, to read as follows:

“Article 36.– Substantive examiners

The Administrative Board of the National Registry shall set up its own salary system for personnel who stand out as institutional substantive examiners, and shall be authorized to hire the necessary technical and professional staff who meet the public service requirements of the Industrial Property Registry. This staff shall be paid out of the funds of the Administrative Board, for the period stipulated or indefinitely. The staff contracted under this arrangement shall not have the status of civil servants.

The Administrative Board of the National Registry shall issue regulations to establish a special system for hiring outside staff, with a view to guaranteeing the suitability, honesty and impartiality of their functions.”

ARTICLE 3.– Amendment of Law No. 7788

Subparagraph 23 of Article 7 and subparagraph 3 of Article 78 of Law No. 7788 of April 30, 1998, on Biodiversity are hereby amended to read as follows:

“Article 7.– Definitions

[...]

23.– **Microorganism:** any microscopic organism, including bacteria, viruses, unicellular protozoa and algae, as well as microscopic fungi, which belong to a category of life different from that of the animal and plant kingdom. Although the cells and tissue of higher plants and animals are studied in microbiology, they are not microorganisms.

[...]”

“Article 78.– Form and limits of protection

[...]

3. Microorganisms as they are found in nature.

[...]

TRANSITIONAL ARTICLE I.–

The Executive is hereby given a period of one year, beginning from the date of publication of this Law, to establish the necessary procedures for the application of the provisions incorporated in paragraphs 2 to 5 of Article 17 of Law No. 6867 of April 25, 1983 on Patents, Industrial Designs and Utility Models.

TRANSITIONAL ARTICLE II.–

The provisions incorporated in paragraphs 2 to 5 of Article 17 of Law No. 6867 of April 25, 1983 on Patents, Industrial Designs and Utility Models shall apply to all patent applications filed as from 12 months following the date of publication of this Law.

TRANSITIONAL ARTICLE III.–

The requirements of Article 82bis of Law No. 7978 of January 6, 2000 on Trademarks and Other Distinctive Signs shall apply to all pending applications for recording or related treatment of any intellectual property rights which are being processed.

TRANSITIONAL ARTICLE IV.–

The provisions of Article 34bis of Law No. 6867 on Invention Patent, Industrial Designs and Utility Models shall apply retroactively to all pending applications for the recording of any intellectual property rights which are being processed.

In force from the time of its publication.

THIRD PLENARY LEGISLATIVE COMMITTEE.– Adopted on March 12, 2008.

Francisco Javier Marín Monge
CHAIRPERSON

José Manuel Echandi Meza
SECRETARY

LEGISLATIVE ASSEMBLY.– The twenty-fifth day of March of the year two thousand and eight.