



## Industrial Property Code

(Royal Decree-Law of July 26, 1929, as last amended by Law No. 12/1975 on the Protection of Plant Varieties and by Law No. 17/1975 of May 2, 1975, Creating the Autonomous Body, the “Registry of Industrial Property”)\*

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\* Spanish title: Estatuto de la Propiedad Industrial.

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Note: Law No. 11/1986 of March 20, on Patents has superseded certain provisions of this Code (see Repealing Provision 1 of the Law).

\*\* Added by WIPO (*Editor's note*).

## TITLE I GENERAL PROVISIONS

### Chapter I Legal Concept-Rights-Actions-Appeals

**1.** Industrial property is that which is acquired by the inventor or by the discoverer himself, as a result of the creation or discovery of an invention related to industry; and by the producer, manufacturer or merchant as a result of the creation of special marks used to differentiate the results of his work from those of others.

The Law does not create industrial property and its function is restricted to recognizing, regulating and controlling the rights acquired by the interested parties themselves as a result of the priority of invention, of use or of registration, following the completion of the formalities laid down in the present Law.

**2.** An industrial property right may be acquired through the registration of:

- (a) patents, patents of introduction and certificates of addition;
- (b) trademarks or distinctive signs of production or trade;
- (c) utility models, industrial designs and artistic designs;
- (d) trade names and business signs;
- (e) cinematographic films.

**3.** The protection afforded to industry and commerce by the present Decree-Law shall be regulated by the provisions laid down therein.

**4.** Protection of the various forms established in the present Decree-Law shall apply to industry and trade in all its forms, including the agricultural, forestry, livestock and biological industries. It grants the right to take action for unfair competition and false indications of source without prior completion of administrative formalities. [This protection extends not only to Spain, but also to its colonies and the Protectorate of Morocco.]

Without prejudice to the rights of interested parties to take action before the courts under the present Law against any person infringing their rights, which they may use when they deem it appropriate, the Registry of Industrial Property shall submit to the courts for their consideration any of the acts defined in Title VII hereafter, if they have been brought to its attention and if documentary proof has been provided.

**5.** The protection afforded by the present Decree-Law shall give the right to use the word “registered,” which may not be used alone when referring to another form of registration.

**6.** The scope of protection under the present Decree-Law shall be different for each title to which it relates, in accordance with the provisions laid down in the corresponding chapters, and it shall authorize the owner to take civil and penal action before the courts against whomever infringes his rights.

**7.** Patents, trademarks and other titles provided for in the present Decree-Law constitute a right the recognition of which emanates from registration in the Registry of Industrial Property attested by the certificate issued.

**8.** Fraud in its various forms, as constituted by falsification, passing off or imitation, unlawful competition and false indications of source, industrial standing and reputation, shall be punishable.

**9.** To the extent that they are not regulated under the present Decree-Law, penalties for acts shall be determined under the Civil Code.

**10.** Any Spanish or foreign natural or legal person establishing or having established a new industry on Spanish territory in accordance with the legislation in force shall have the right to its exclusive exploitation for a specific number of years in conformity with the conditions laid down in the present Decree-Law and provided that he has fulfilled the said conditions. He may request the registration of patents, trademarks, designs of all types, trade names, business signs and cinematographic films, and if registration is granted, he shall have the right to protection in accordance with the form and conditions provided for in the present Decree-Law.

**11.** Any grant of a patent, trademark, design, trade name, business sign and cinematographic film shall be indivisible in respect of the object, process, product or result used to obtain it, without prejudice to assignment by the owner or by the Law of the rights or benefits guaranteed by the aforesaid grant.

Where there are several owners, indivisibility shall be regulated by the provisions of the Civil Code regarding joint ownership.

Assignment of rights may be for specific provinces or areas of the Spanish territory[, its colonies and protectorates].

**12.** The grant of the various titles provided for in the present Decree-Law shall be made without prejudice to third parties.

The priority of rights for the various titles shall commence upon the date of filing, taking into account the day, the hour and the minute at the time of filing.

**13.** Questions concerning property and ownership shall be the responsibility of the courts of law. If, before issuing a registration certificate, the Registry of Industrial Property is informed by a court that an action for recovery has been commenced, decision on the case shall be adjourned until final judgment has been pronounced.

When a judge or court notifies the Registry of the seizure of a patent, a trademark or any other title, even though the person responsible may not have paid the annual or quinquennial fees or, where appropriate, has not proved the working of the invention, the aforesaid rights shall not become forfeit but shall remain in force for one month following the date upon which the said judge or court informs the Registry of the lifting of the seizure or decides that the right had been granted, so that during this period the owner or the new owner may pay the amounts and fees due. If he fails to do so, the right shall lapse.

**14.** The certificate granting the registration of a trademark or trade name constitutes a *juris tantum* presumption of property. The ownership of a trademark shall become incontestable three years after registration and uninterrupted working or orderly possession in good faith and rightful title.

In order to benefit from the protection of the present Decree-Law, the relevant registration certificate shall be obtained from the Registry of Industrial Property.

**15.** Contentious-administrative appeals against decisions by the Registry of Industrial Property may be lodged by interested parties in the form and under the conditions prescribed in the relevant legislation in force, except in cases provided for in the present Decree-Law, and without prejudice to administrative appeals that may be established.

**16.** Within 45 days following publication in the Official Bulletin of Industrial Property (*Boletín Oficial de la Propiedad Industrial*), a special appeal for review may be lodged through administrative channels against decisions on the grant, refusal, invalidation or forfeiture of applications for registration of industrial property titles, when the decision contested was clearly taken as a result of factual errors, as proved by documentary evidence.

Appeal for review shall not be allowed for refusal to register trademarks, designs, trade names and cinematographic films because they are similar or identical to others previously registered. Errors in interpreting the application of legal provisions or in the estimation of resemblance or similarity shall not be deemed to be factual errors.

Appeals for review shall be lodged with the Head of the Registry of Industrial Property who, after having considered a report by the relevant department, shall transmit it, together with his own report, to the Minister for a decision. This Royal Decree shall exhaust the administrative procedure.

**17.** Payment of ... pesetas shall be due for any rejected review appeal. A receipt for the deposit of ... pesetas with the Secretariat of the Registry shall accompany any application for review. If the appeal is allowed, the sum shall be reimbursed to the appellant.

Appeals made through an industrial property agent registered with the appropriate professional association (*Agente colegiado*) shall be exempt from the above-mentioned deposit, the agent guaranteeing the fulfillment of the above-mentioned obligations.

Payment of fees in respect of an appeal for revision shall under no circumstances be reimbursed to the interested party, irrespective of the decision taken.

**18.** Within 45 days, the Registry of Industrial Property may itself bring an appeal for review with the Minister of Industry and Energy if it becomes aware of a manifest error of fact. The corresponding files shall be submitted to the Office of the Legal Counsel of the Registry, which shall recommend the decision to be taken by the Minister.

Any appeal for review submitted by the Registry shall be transmitted to the interested party within the prescribed time limits so that he may put forward any reasons he considers relevant and pertinent to his right.

**19.** The files corresponding to the different titles of industrial property shall, in the provinces, be filed with the Delegations for Industry (*Delegaciones de Industria*); in Madrid, they shall be deposited directly with the recording department (*Negociado de Entrada*) of the Registry of Industrial Property. [In the colonies and protectorate, they shall be submitted to the respective commissioners.]

When the documents and objects are received, the departments concerned shall note in a special register and on the receipt sent to the interested party the date and exact time of filing.

Those details shall be noted by the officials responsible for the service and a copy, authorized by the secretaries of the Delegations for Industry, [the commissioners] or the recording department in Madrid, shall be annexed to the top of the file. The documents constituting the files corresponding to the different titles of industrial property shall be submitted in an envelope of sufficient size and strength so that they are neither folded nor damaged.

The Secretary of the Registry of Industrial Property or, in the provinces, the secretaries of the Delegations for Industry shall affix the seal of their respective offices and shall note the date and time of filing on the envelope.

**20.** An application filed in the provinces with a Delegation for Industry [or in the protectorates, with a Commissioner] shall be addressed to the Head of the Registry of Industrial Property and it shall not be necessary to transmit an additional application to the Governor. The application shall be accompanied by two revenue stamps of ..., one for the application form and the other for the interested party's receipt.

At the time of deposit, applicants seeking registration of any industrial property title shall pay a sum of ... in State stamped paper for each application file.

The Registry of Industrial Property alone shall be responsible for notifying errors or omissions in the documentation and for requesting the interested parties to rectify them within the time limit for publication prescribed in the present Decree-Law.

**21.** Officials charged with receiving files in the Registry of Industrial Property in Madrid and, in the provinces, the Delegations for Industry shall only record the deposit, by giving it the relevant number, and shall verify that it is accompanied by the documents mentioned in the list annexed to the application.

To be accepted, patent applications shall be accompanied by an application fee of ... in State stamped paper, a power of attorney, if the application is submitted neither by the interested party nor by an official industrial property agent, and at least one copy of the full description or the claims. Applications that are not in conformity with the conditions set out in paragraph (3) of Section 100 shall not be accepted. Applications for trademarks, trade names and designs shall be accompanied by the application fees and the power of attorney mentioned above, as well as a copy of the description, which shall be an exact replica of the printing block.

The omission of a document from the file shall not constitute a motive for its rejection, provided that the document is not included in the list of annexes.

Official industrial property agents may submit the authorization corresponding to the registration of applications made on behalf of third parties within one month from the date upon which the application was received at the Registry. If the authorization has not been submitted at the expiration of this time limit, the application shall be considered as null and void.

**22.** The notification of filing in the Registry and the receipt sent to the interested party shall mention whether any document has been omitted and shall specify the document omitted for each category of file.

The various departments shall keep daily statistics of fees collected and of application files processed, which shall be transmitted to the Secretary of the Registry.

**23.** The hours during which industrial property files may be submitted in Madrid and in the provinces shall be the same in all the registration offices and shall be fixed by the Head of the Registry of Industrial Property.

**24.** The Official Bulletin of Industrial Property shall be available to the public in all provincial Delegations for Industry and shall contain notifications made to the interested parties in accordance with the law.

**25.** In addition to the notifications mentioned in Section 24, above, when interested parties or their representatives visit the Registry to seek information on the situation of their respective files, they shall be informed orally of any errors contained therein and of any decisions concerning them so that they do not need to await publication in the Official Bulletin and may rectify any errors, effect payment or complete formalities where appropriate. When documents are required in order to rectify errors, they shall be submitted, with the appropriate form, to the recording department in Madrid or, in the provinces, to the Delegations for Industry.

Where appropriate, interested parties may rectify any errors they may themselves have noticed when preparing the documents.

**26.** Applicants for patents, trademarks, designs, etc., who are not resident in Spain shall appoint an official industrial property agent or a representative with sufficient power to request, administer and process the grant of a patent or trademark on his behalf and, in general, the rights derived from the procedures laid down in the present Decree-Law; however, in the latter case, the powers granted shall not permit the representative to act in more than three applications and shall not allow him to undertake representation of the same nature for another principal.

**27.** Where an agent intervenes, notifications regarding the procedure shall be sent directly to him, without prejudice to publication in the Official Bulletin of Industrial Property.

If notifications are not collected by agents within six days, they shall be put up on a special notice board set up for this purpose in the Registry of Industrial Property.

**28.** Before a registration certificate is issued, interested parties or their representatives may request the rectification of any errors of form or substantive errors that may have occurred when drawing up the specifications or descriptions, provided that the rectification does not alter the essence of the object of the grant nor the name of the person to whom it is granted.

If the original certificate is lost and a duplicate is requested, the request shall be published in the Official Bulletin of Industrial Property for a period of 15 days for which the interested party shall pay ... pesetas for each 100 words or fraction thereof. He shall also pay for a ... peseta revenue stamp to be attached to the said certificate.

**29.** The following provisions shall be observed for all time limits set out in the present Decree-Law:

- (1) when the date of expiry or the following days are holidays, the time limits shall be extended until the first working day;
- (2) delays for which interested parties are not responsible in completing administrative formalities shall not be prejudicial to them;
- (3) time limits expressed in months shall be understood to mean calendar months;
- (4) time limits shall become effective on the day following their notification or publication in the Official Bulletin of Industrial Property.

**30.** An interested party may at any time pay the total amount of annual fees remaining, with a reduction of 10% for a payment for 10 years and 20% for one of 20 years. The annual fees remaining shall be those between the second and the last payment.

This reduction shall also apply to the quinquennial fees for the various titles of industrial property.

Surcharges for delay in payment of annual or quinquennial fees as provided for in Section 340 of the present Decree-Law may not be waived in any case or for any reason.

## **Chapter II**

### **Assignment and Transfer of Rights**

**31.** The various industrial property titles governed by the present Decree-Law shall be transferrable by any means recognized by law; however, such transfers shall not have effect in respect of third parties unless they are authenticated at the Registry of Industrial Property by means of an official document. The rights thus assigned or transferred may be invalidated or may lapse in accordance with the provisions laid down in the relevant chapters.

**32.** For the transfer of rights acquired under the present Decree-Law to have effect against third parties, legal documents proving the transfer and showing that the tax on transfers of inheritance has been paid shall be submitted.

**33.** Acts of assignment or transfer established in foreign countries shall be valid when they conform to the legislation of the countries granting them.

Documentary proof of a change in rights shall be legalized by the Spanish Consul in the country in which the assignment or transfer took place. Where there are several transfers, only the last must be recorded, without prejudice to recording the intervening transfers.

**34.** Registration of an act involving a change of any importance whatsoever shall require an authenticated attestation of the act, contract of assignment or modification of rights.

**35.** Names and trade names shall not be extinguished upon the death of the founder of an establishment and, by means of a legal transfer, may become the property of the person considered to be the successor of the original establishment.

**36.** Trademarks containing names or trade names shall be transferred in the same form as they were granted when forming the object of an assignment.

The transfer of a trademark used to distinguish mineral-medicinal waters may not be registered unless it is accompanied by an official document testifying that the ownership of the said waters has been transferred to the said person or entity.

**37.** Where a trademark which is registered in an international registry and the country of origin of which is not Spain is transferred to a Spanish citizen, the latter shall request the registration of the said trademark in Spain and shall pay the relevant fees.

**38.** Any modification of patent rights shall also apply to the certificates of addition pertaining thereto, where appropriate.

Certificates of addition alone may not be assigned.

**39.** Any application or modification of rights shall be made on the appropriate form with a ... pesetas revenue stamp and shall be accompanied by proof of the modification and a copy thereof to be returned with a ... pesetas revenue stamp per sheet. The aforesaid documents shall be submitted to the recording department of the Registry of Industrial Property.

An unlimited number of transfers may be requested on the same form and the registration fee due for each one shall be that specified in Title XII, Chapter I, Section 340.

**40.** Following receipt of the request for registration of a change in rights or of a transfer, where the official responsible notes any errors in the documentation, he shall declare the registration suspended and shall publish the error noted in the Official Bulletin of Industrial Property so that, within 15 days after publication, the applicant may rectify it at the Registry.

When the applicant has appeared, he shall be given a reasonable time to rectify the error.

If this error is not rectified during the time limit, the application shall be considered as not having been formulated and the Head of the Registry shall authorize an annotation to this effect on the form. The application, together with the documentation submitted, shall be sent to the archives.

**41.** After having examined the registers and the respective files to ensure that the subject of the modification of rights was legally valid on the date shown on the documentary proof and on the registration, the official responsible for recording transfers and modifications of industrial property rights shall include an extract thereof in the corresponding file and shall propose the relevant recording of the title in the registers, with the authorization of the Head of the Registry.

**42.** On the proposal of the official responsible for the transfer section, the Head of the Registry of Industrial Property shall authorize, suspend or reject the registration of transfers, in accordance with the documentation submitted and the information in the Registry. He shall sign the entry on the bottom of the official act or documents submitted and shall return them to the interested party, retaining one copy to be annexed to the transfer application.

Interested parties may lodge an appeal against rejection with the Minister within 30 days.

**43.** When the registration of the transfer or modification of rights has been granted, the official responsible for the registers shall record the modification of rights granted therein, inserting the name of the new owner in the corresponding register's index.

**44.** Any modification of rights shall be published in the Official Bulletin of Industrial Property.

## TITLE II PATENTS

### Chapter I Patents in General

**45.** Patent shall mean the certificate granted by the State recognizing the right to exclusive employment and use of an invention in industry and to trade and sale of the products manufactured under the said invention for a specified time, subject to the conditions laid down in the present Decree-Law.

Patents may be of invention or of introduction.

Patents of invention shall confer on their owners the exclusive right to manufacture, execute or produce, sell or use the object of the patent for industrial and profitable working under the conditions laid down in the present Decree-Law.

Patents of introduction shall confer the right to manufacture, execute, produce and sell products manufactured in the country, but they do not give rise to the right to prevent others from introducing similar products from abroad, subject to the restrictions prescribed in the legislation protecting national production.

**46.** Any improvement designed to modify the basic conditions of a process so as to give further advantages in addition to those already known may be the subject of a patent; therefore, equipment, instruments, processes or a series of mechanical or chemical operations the application or nature of which is neither wholly nor partially known in Spain or abroad are patentable, provided that they lead to the obtainment of an industrial result or product.

The above-mentioned list, within the context of the preceding paragraph, shall be purely indicative and not restrictive.

**47.** A scientific discovery may also be the subject of a patent, provided that it is recognized as being the discoverer's own work and is original, following a period of public information during which the report submitted by competent academies and centers on the nature of the discovery shall of necessity be taken into account and in accordance with what is decided in each case.

Improvements in economic-commercial processes may also be the subject of a patent, provided that they constitute a substantive or effective development and are both practical and capable of being used in industry.

Such economic-commercial patents shall, in all aspects, be governed by the provisions regulating patents in general and shall be subject to the regulations on working and licenses laid down in Sections 84 and 89 of the present Decree-Law.

Foreigners may benefit from the advantages of this type of patent, provided that there is reciprocity in their respective countries.

**48.** The following may not be the subject of a patent:

- (1) ideas, however ingenious, if they cannot be transformed into practical reality and are not capable of being industrialized through mechanical, chemical or economic-commercial means;
- (2) industrial products or results, pharmaceutical or medical formulae and foodstuffs for humans or animals; however, the equipment used to make them may be patented;
- (3) changes in the shape, dimensions, proportions and material used in the patented object, unless they basically modify attributes of the latter or their use leads to a new result;
- (4) the juxtaposition of elements in the public domain or patented elements, unless they are combined in such a way as to be incapable of functioning independently and have thereby lost their characteristic function;
- (5) the application of one industry's methods or equipment to another;
- (6) inventions which manifestly and obviously lack novelty;
- (7) plant varieties coming under the protection of the Law on the Protection of Plant Varieties.

**49.** For the purposes of the present Decree-Law, that which is neither known nor implemented in Spain or abroad shall be considered to be new.

The following shall not be considered to be new:

- (1) that which has been published and described in such a way that it may be used by a person skilled in the art;
- (2) that which has been used or implemented, either directly or indirectly, abroad or in Spain;
- (3) that which is within the public domain;
- (4) that which has been in constant use for 50 years;

(5) that which has been the subject of invalidation, in conformity with Section 115.

**50.** The fact that an invention appears or has appeared in a public exhibition and that tests were carried out before requesting the patent shall not destroy novelty, provided that the invention was exhibited or tested by the inventor or his successor in title.

**51.** Novelty shall not be invalidated by the prior submission of patent applications for the same invention in countries members of the International Union of March 20, 1883 (Paris Union), nor by any disclosure that might have been made concerning the said invention in those countries, provided that the periods specified in Article 4 of the said Convention, revised at The Hague in 1925,<sup>1</sup> or the provisions of subsequent international conventions, are respected.

**52.** The following shall not be considered to be infringements of a patentee's rights:

(1) the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of the said country, provided that such devices are used there exclusively for the needs of the vessel;

(2) the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the said country.

**53.** When an invention has military or national defense implications, the applicant may request on his application that the invention remain secret and that it be communicated to the army, naval and air ministries so that, within a maximum period of six months from the date of communication, a decision should be taken on the importance of the invention and the advisability of granting a patent and keeping it secret. If the report shows that the patent specification is incomplete or unclear, the Registry of Industrial Property shall declare the application null and void.

If the Registry of Industrial Property considers it advisable, it may request the report mentioned in the preceding paragraph from various ministerial departments.

**54.** Where inventors consider that their patent may be of advantage to the State, they may offer it to the Ministry of Industry and Energy, through the Registry of Industrial Property, once the registration certificate has been granted.

**55.** Where the general interest requires the diffusion of an invention or its exclusive use by the State, expropriation of the patent may be pronounced by means of a law declaring the invention to be of public utility and specifying the compensation to be paid to the patentee, as well as designating the authority responsible for payment.

**56.** The working of granted patents shall be subject to the restrictions and prohibitions temporarily or indefinitely prescribed in the legislation and in the provisions made by the constituent powers.

**57.** No patent may cover more than one industrial object, that is to say, where the various parts comprising the invention cannot be used separately or are combined in such a way as to form a whole in which, if one element is missing, the remaining elements become inoperative for carrying out their tasks or the functioning becomes defective. It shall also be understood that there is only one object, even if there are a number of applications, provided that the said applications do not necessitate a new explanation or description which, in the opinion of the Registry of Industrial Property, implies a new invention.

When a patent applicant under the International Union claims priority or the date of a foreign application, the Spanish application may mention the contents of previous applications in the country of origin, provided that there is unity of invention in accordance with Spanish legislation.

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<sup>1</sup> Spain has been bound, since April 14, 1972, by the Stockholm Act of 1967 of the Paris Convention (*Editor's note*).

**58.** As manufacturing processes and equipment are essentially different, they may not be combined in the same patent; separate patents shall be applied for in each case.

**59.** An invention shall be deemed to belong to the applicant even if the patent application is filed not by the inventor himself but by the person, company or corporation to which the inventor has transferred his right by any of the means recognized by the law; it shall not be necessary, for the purposes of the registration, to submit any evidence of the transfer, but note thereof shall be made on the application.

Where a company or legal entity applies for a patent, the name or names of the inventor or inventors shall be mentioned on the application and shall be noted on the relevant certificate.

**60.** Where a patent has been issued for an invention the subject of which is a State monopoly, the State may acquire the invention from the owner and may use it, its legal duration being terminated if it is not worked. If the monopoly was established subsequent to the grant of the patent, the owner shall have the right to compensation from the State the amount of which shall be fixed on the basis of a report by experts appointed by both parties.

**61.** Patents shall be granted without prior examination as to novelty or utility.

The owner shall be responsible for the declaration of novelty, ownership and utility of an invention, as well as for the effects of his statements.

The grant of a patent shall not imply that the State guarantees the necessity and exactitude of the statements made by the applicant in his application and specification.

**62.** Patent applications shall be the subject of an examination as to form carried out by the patents section, whose report shall be limited to patentability and exceptions under Section 48, as well to the adequacy of the specification, which must be sufficiently detailed and complete to allow the invention to be executed by a person skilled in the art.

When examination of the claims shows that the subject matter of the application comes under the models section, the Registry of Industrial Property shall transmit it to that section, maintaining the priority acquired and after having given the applicant a hearing.

**63.** Where the examination referred to in the preceding Section reveals that the specification is incomplete or includes restrictions or reservations, the procedure shall be suspended and the interested party shall be given a period of two months to make good the omissions or errors notified to him. If he has not done so at the expiration of this time limit, the application shall be considered null and void.

**64.** Following the report on the adequacy of the specification, the patent registration certificate shall be granted and issued, and shall be handed over to the interested party upon payment of the fees and transmittal of the revenue stamp to be affixed to the certificate.

**65.** Owners of foreign patents to whom the conventions in force recognize the right to registration by virtue of priority in the countries members of the Union may contest the registration of a patent granted within the period laid down in the Convention. If the administration accepts the opposition, the patentee shall have no right to reimbursement either of the fees paid or of any other expenses incurred. If it can be shown that he acted in bad faith when applying for the patent, he shall be responsible before the courts.

**66.** The term of the patent shall be 20 years and it may not be renewed. It shall be subject to the payment of a periodic fee as specified in the relevant chapter.

**67.** The Registry of Industrial Property shall not be competent to consider claims against the grant of patents. Any such claims made shall be rejected forthwith, without prejudice to the right of the claimant to apply to the relevant court.

## Chapter II Patents of Introduction

**68.** An invention which has been disclosed or patented abroad but has not been disclosed, executed or worked in Spain may be the subject of a patent of introduction, following a declaration by the interested party, for which he takes full responsibility.

**69.** The requirements and conditions for a patent of introduction shall be the same as those for a patent of invention and shall be subject to the same formalities.

**70.** An applicant for a patent of introduction shall indicate on the application the number, date and origin of the foreign patent or the requisite source of information if he does not know those details.

**71.** A patent of introduction applied for in Spain before the expiration of the period of one year as provided for in Article 4 of the Paris Convention shall be considered null and void if the owner of the foreign patent files a corresponding application within the said period. Invalidation shall be declared upon request by an interested party in accordance with the provisions of Section 65 and Title IX of the present Decree-Law.

**72.** The term of a patent of introduction shall be 10 years and shall be coupled with the obligation to prove working each year as from the third year after it has been granted, and to pay the relevant annual fees. Proof of its working shall be provided.

## Chapter III Certificates of Addition

**73.** The owner of a patent who introduces developments or improvements in the subject of the patent may claim the benefit of such developments and improvements through the granting of a certificate designated a “certificate of addition.”

**74.** A certificate of addition shall be complementary to the principal patent and shall produce the same effects and term.

No certificate of addition may be granted until the principal patent has been issued.

**75.** Not more than three certificates of addition may be granted for the same patent.

**76.** A certificate of addition shall be issued in the same manner and form and shall be subject to the same formalities as the principal patent; it shall be subject to the fees provided for in Title XII.

**77.** A person applying for a certificate of addition shall have priority over any other applicant who, on the same day, applies for a patent the subject of which relates to the improvement covered by the certificate of addition.

**78.** Certificates of addition that alter the basic characteristics of the principal patent shall not be valid. In such cases, the ordinary courts shall declare invalidation at the request of the interested party.

**79.** The owner of a certificate of addition may transform it into a patent following renunciation of the principal patent; in such cases, the principal patent shall be considered as not having been formulated and the certificate of addition shall be subject to the same annual fees as those for the principal patent. The term of the certificate of addition shall be the unexpired term of the principal patent.

The registration certificates of the principal patent and certificate of addition shall be annexed to the request so as to invalidate the former and to note the requested transformation on the second.

**80.** Certificates of addition may not be granted for patents of introduction.

**81.** A certificate of addition requested by the co-owner of a patent may not be granted in his name alone without the consent of the other owner or owners.

**82.** Within the priority year as laid down in Article 4 of the Paris Convention, a certificate of addition based on a foreign patent may be the subject of an application for a patent.

#### **Chapter IV**

### **Working of Patents: Utilization and Licenses for Working (*Licencia de explotación*)**

**83.** According to the fourth paragraph of the draft protocol of the Madrid International Conference of April 15, 1891, working a patent shall mean the realization of that which is the subject of the patent to a degree proportionate to its use and consumption.

**84.** Within three years from the date upon which a patent or certificate of addition was granted, the owner may prove that it is being worked by setting up a new industrial undertaking in the country.

The owner shall prove utilization before the Registry of Industrial Property by submitting a certificate issued by an engineer belonging to the Delegation for Industry in the province where utilization is being proved. The engineer shall be appointed by the Head of the above-mentioned administration observing a strict system of rotation among all the engineers who are employees thereof. The certificate issued shall mention the town, place or factory in which the invention is being worked and the owner shall pay a fee of ... pesetas.

Utilization certificates for patents of an economic-commercial nature shall be issued by technicians or experts appointed by the Head of the Registry of Industrial Property and shall mention the town and the establishment or establishments in which the relevant improvements in economic-commercial processes are being worked. For this purpose, the interested party shall make a written application to the Registry within the aforementioned period of three years for the appointment of the expert responsible for verifying utilization and the owner of the patent shall pay the sum of ... pesetas for the issue of the relevant certificate.

**85.** Once proof has been submitted, the Head of the Registry shall declare the invention to be utilized, shall note the fact on the file and shall communicate it to the owner.

Communications and documentation shall be submitted to the provincial Delegations for Industry or to the Registry of Industrial Property.

**86.** If the utilization certificate only proves the existence of the means required to work the subject of the patent, the owner, within one year from the date on the engineer's certificate, shall be obliged to prove effective working, namely, the manufacture, sale and utilization of the subject of the patent, or to grant a patent license under the conditions set out in Section 90. This provision shall not be applicable to patents of introduction.

The fact that the owner of a patent manufactures and uses the subject of the patent exclusively to establish or set up a new industrial undertaking in the country shall be sufficient proof of utilization.

**87.** Owners of patents may renew proof of utilization annually in the same form and under the same conditions as the first utilization, by submitting a request to the Registry which shall transmit it to the competent Delegation for Industry.

Patents benefiting from this possibility may not be considered to have lapsed according to the provisions of paragraph (4) of Section 116 of the present Decree-Law.

**88.** Owners of patents transferred to the State shall be exempt from proving utilization, provided that they can prove the transfer.

**89.** Owners of patents who are unable to prove utilization may prevent the lapse thereof if they undertake to grant a license for working through the Registry of Industrial Property to any person who so requests.

In order to receive the benefits of a license for working, the owner shall offer it to the Registry of Industrial Property making a written application bearing a ... peseta revenue stamp.

The license for working offered shall be published in the Official Bulletin of Industrial Property, in a widely circulated daily newspaper and in an industrial or commercial newspaper or magazine. The owner of the patent shall be responsible for payment of the advertisements. The written application for a license for working shall be accompanied by a copy of the newspapers or magazines in which the advertisement for the license appeared.

**90.** The offer of a license for working shall be renewed annually in conformity with the conditions set out in Section 89, above. However, in the following cases of manifest abuse, offers of patent licenses, notwithstanding the fact that they were duly made by the patent owners, may be declared lapsed upon request by a party and subject to the patentee being given an opportunity to be heard:

(1) the introduction into Spain of the elements constituting the subject of the patent for which a license has been granted, provided that the elements have been imported for commercial purposes and in violation of the specific conditions agreed between the owner of the patent and the holder of the license for working;

(2) when the patentee refuses to grant a license because he does not accept the remuneration offered by the applicant, provided that the remuneration was fixed by experts. For remuneration to have effect, it shall be fixed by two experts appointed by both parties or by a third expert appointed by the Registry in cases of disagreement.

**91.** A license for working may be withdrawn before it has been requested by a third party, provided that the owner duly proves utilization and working under the conditions laid down in Section 84, above.

**92.** A person seeking a license for working shall submit an application to the Registry of Industrial Property, which shall communicate it to the owner of the patent so that the two parties may reach an agreement and formalize the contract. The latter shall be sent to the Registry of Industrial Property so that the transfer section may take note of it, subject to the payment of the relevant fees.

**93.** Owners of patents of introduction may not take advantage of the benefits of a license for working.

**94.** The period of three years for proving utilization of the patent and its renewal may be extended, provided that documentary proof of reasons of *force majeure* is submitted.

**95.** The owner of a patent or certificate of addition taking advantage of the license-for-working system shall be obliged to grant the said license to any person requesting it through the Registry of Industrial Property, subject to payment of a sum to be agreed by the interested parties, and a copy of the contract shall be deposited at the Registry. The license shall be granted for Spain as a whole.

The contract shall be noted in the file once the fees laid down for modification of rights have been paid.

Holders of licenses shall be obliged to prove working within a period of one year under the conditions laid down in Section 89, above, *et seq.*

**96.** If a third party alleges before the Registry of Industrial Property that there is no true and appropriate industrial working of an invention, and if the allegation is proved, the patent shall be declared forfeit and the invention shall come under the public domain.

Verification shall be carried out by a technical advisor from the Registry, and the decision shall be taken by the Minister.

The cost of the technical inspection shall be paid by the third party who shall deposit a sum to be fixed by the Head of the Registry.

**97.** The owner of a patent who does not prove utilization or does not offer a patent license within the legal period shall lose his right and the patent shall lapse.

Owners who have paid the first annual fee and the fees due for the patent registration certificate, taking into account the delays authorized under Section 340 of the present Decree-Law, may prove utilization within an extended period corresponding to the date on which payment was made.

**98.** A patent shall not lapse when the holder of the license for working has not proved working within the period of one year set out in Section 95; however, the license granted shall be considered null and the owner of the patent shall renew the offer of the patent license under the same conditions as those laid down in Section 90, above, *et seq.*

**99.** The working of a certificate of addition shall be subject to the provisions set out in the above sections and the effects of the certificates attesting utilization shall be the same as those of the principal patent. All utilization attested to by the certificates of addition that are granted shall be noted in the file concerning the principal patent.

## Chapter V Patent Procedure

**100.** The following documents and information shall be submitted in order to obtain a patent, a patent of introduction or a certificate of addition:

(1)

(a) an application addressed to the Head of the Industrial Property Office, bearing a ... pesetas revenue stamp, showing the first name, surname or trade name, nationality, residence and usual domicile of the interested party, as well as those of his agent if the latter is applying for the patent; the surname shall be made to stand out from the other information.

If the patent is being applied for by an entity or by several persons, the name of the inventor or inventors shall be noted;

(b) a description of the industrial object of the patent, which shall be as specific as possible and shall not contain any designation;

(c) a declaration that the subject of the patent is new and is the inventor's own work, in the case of patents, or that it is new and has not been executed in Spain, for patents of introduction;

(d) a declaration stating whether the application is for a patent, a patent of introduction or a certificate of addition; in the latter case, the number of the principal patent shall be indicated;

(e) where there is more than one applicant and no agent has been appointed, an indication of to whom official communications should be sent;

(f) the signature of the interested party or of his agent, where appropriate;

(g) in order to benefit from the provisions of the Paris Convention, the date of registration in the country of origin and in other countries shall be shown;

(2) a power of attorney bearing a ... peseta revenue stamp and signed by the interested party, which does not have to be legalized, if the application is made by an agent registered with the Registry of Industrial Property.

Where the application is made by a person who is not an official industrial property agent, each file shall be accompanied by a power of attorney showing the subject of the patent; in the application, the person concerned shall declare, on his own responsibility, that he has not submitted more than three files during the year. If the administration is not convinced of the authenticity of the aforementioned authorization, it may, in cases of doubt, call for legalization of the signature, provided that the rights of the person mentioned as principal before the courts are safeguarded;

(3) a declaration in triplicate clearly describing the industrial object of the patent so that there may be no doubt as to the said object or characteristic which is stated either to be new and the inventor's own work or as not having been executed in the country.

At the top of the specification, the first name and surnames or trade name of the applicant, his nationality, residence, domicile and the subject of the patent applied for shall be mentioned.

The specification shall be written in Spanish, without any abbreviations, amendments or deletions and without any restrictions or reservations whatsoever. References to weights and measures shall be given in the decimal system; indications of temperature shall be given in centigrade; density shall be the specific weight; internationally recognized standards shall be used for electrical elements and the symbols, elements, atomic weights and molecular formulae in general use shall be given for chemical formulae.

The three copies shall be typed, handwritten or printed on one side of a single or several sheets of thick white paper measuring 31 cm x 21 cm. The sheets shall be numbered consecutively and shall have a left-hand margin of 4 cm, in which a ... revenue stamp per page shall be affixed on two copies. A space of 8 cm shall be left at the top of the first sheet and at the foot of the last page.

The specification shall not contain any designs whatsoever. It shall be worded correctly, as concisely as possible, within the limits of clarity, and shall have no useless repetition.

Lines shall be numbered in groups of five and sufficient space shall be left between the lines.

At the end of the specification, there shall be a note explaining clearly and distinctly the part or parts, piece, movement, mechanism, operation, process or material that is claimed as the sole object of the patent. The patent granted shall only cover the claims contained in that note. The final claim shall be constituted by the object of the patent, described in the same form and with the same wording as in the application and on the heading of the specification, and shall be dated and signed by the applicant or by his legal representative;

(4) designs which the interested party deems necessary for better understanding of the invention, in triplicate; one of the copies shall be on thick, smooth, matt, white paper; the second copy shall be on tracing paper and the third on the paper deemed most appropriate by the applicant.

The sheets shall be 31 cm long x 21, 42 or 63 cm wide. If necessary, several numbered sheets may be used.

All the figures on the sheet shall be contained within a frame drawn 2 cm from the edge of the paper. The figures, letters, and indications shall be set out in such a way that they may be read vertically.

The design as a whole shall be drawn out in black, indelible lines, without washes or colors, and shall be suitable for photographic reproduction. Cross sections shall be shown by diagonal lines which shall not prevent clear recognition of reference signs and lines.

The scale of the designs shall be determined by necessity, taking into account the complexity of the figures, but they shall be of a size that allows all the details to be perceived when the designs are reproduced photographically on a reduced scale.

The various figures shall be spaced sufficiently far apart so as not to induce confusion and superfluous figures and waste of space shall be avoided. The figures shall be numbered consecutively, irrespective of the numbering of the sheets.

Numbers constituting part of the figures shall be clear. Numbers indicating cross sections shall be shown with the same characters. To the extent required for better understanding of the description, the various parts of the figures shall be shown with the same reference signs, which shall correspond to those on the description.

The designs shall not contain any explanations or captions.

Designs on thick paper shall not be rolled or creased, nor shall they be torn or split in a manner prejudicial to photographic reproduction. The name of the applicant and the total number of pages shall be indicated outside the frame on every page, together with the number of the page itself. Each page of the design shall bear ... revenue stamp. The designs shall be signed by the applicant or his representative;

(5) a list of the documents submitted, signed by the applicant or his representative;

(6) the models or samples deemed necessary by the applicant;

(7) when the patent seeks the benefit of the provisions of Article 4 of the Paris Convention of 1883, the certificate of origin with its translation into Spanish. Translation of the specification annexed to the certificate shall not be required.

**101.** The specification shall be considered to be the description itself, together with the designs, samples or models submitted as an integral part thereof.

**102.** When the documents have been filed in the recording office (*Registro de entradas*) of the patent section, the claims as contained in the specification, plans, models or samples shall be compared and examined. If they are consistent, the secretary of the office shall take the necessary steps and shall place a seal on the copies of the specifications and plans. The competent official shall then determine the class in which the application should be filed.

**103.** Patent applicants seeking the benefits of the Paris Convention shall submit a certificate of origin, accompanied by its translation into Spanish, together with the specification bearing the seal of the office of origin. Those documents shall be exempt from legalization.

Justification for the applicant's right of priority shall be provided within three months of the date of filing and shall be noted on the registration certificate. Where the right of priority has not been proved within the period mentioned in the previous sentence, the owner of the patent may not subsequently claim it. The failure to submit the certificate of origin shall not suspend the patent procedure.

**104.** If the official responsible for the grant of the patent finds defects in the document or if the specification does not fulfill the conditions laid down in paragraph (1) of Section 100, he shall note the fact on the application. When the Head of the Registry so requires or when the applicant contests the objections raised by the administration, an engineer from the Registry shall report on the comprehensiveness and clarity of the specification and on the patentability of the invention, without going into its utility.

**105.** Defects shall be rectified by the interested party or by his representative within a maximum period of two months from the date of publication in the Official Bulletin of Industrial Property. Publication shall serve as notification and the defect or defects noted shall be clearly specified therein.

If the defects have not been corrected within the period indicated, the application shall be considered as not having been made.

**106.** Following completion of the formalities outlined in the foregoing sections, the head of the section shall make a report stating:

- (1) whether the form of the application is in conformity with the provisions of Section 100, above;
- (2) whether the specification, designs, models and samples have been annexed in triplicate;
- (3) whether the three copies of the specification, designs, samples and models were in conformity on all points;
- (4) whether the object of the patent is among the objects prohibited under Section 48;
- (5) whether, in view of the above, the application may be granted or rejected.

**107.** For applications that do not contain any errors, the Registry of Industrial Property shall submit the above-mentioned report within eight days from the date upon which the application was filed in the recording office. For applications that contain defects, the period shall be eight days from the date upon which the defects were made good.

**108.** The Minister and, acting by delegation, the Head of the Registry, shall take a decision on the application within 15 days from the date upon which the section made its proposal.

The registration certificate shall be issued at the same time as the application is granted and shall bear the same date.

At the expiration of a period of 45 days during which no appeal for review has been made, the grant shall become final and administrative appeals shall no longer be available. A contentious-administrative appeal may still be lodged before the Third Chamber of the Supreme Court.

**109.** When an application has been the object of a favorable decision, the applicant shall pay the amount of the first annual fee in State stamped paper and shall transmit the revenue stamp, which shall be attached to the registration certificate and cancelled with the date of grant. The certificate shall then be handed to the owner or, where appropriate, his agent, together with a copy of the specification and the plans or models.

*[Repealed]*

**110.** The heading of the registration certificate shall be in larger characters than the rest of the text and shall state “Patent of..., with no Government guarantee as to the novelty, adequacy, utility and importance of the object to which it refers” (“*Patente de ..., sin garantía del Gobierno en cuanto a la novedad, conveniencia, utilidad e importancia del objeto sobre que recae*”).

The registration certificate shall also contain the following information: the first names, surnames, or trade name of the owner; the date and place of filing; the object for which a patent application has been made; the class to which it belongs; the rights and obligations of the patentee.

**111.** *[Repealed]*

There shall be no exemption from these fees.

**112.** Each year, before the end of the month in which the patent was first granted or within the following six months subject to a surcharge of ... up to a maximum of six months’ arrears, the annual fees shall be paid in State stamped paper.

If the fees and relevant surcharge have not been paid within this period, the interested party shall be considered to have renounced his rights and the invention shall become part of the public domain and the patent shall be declared to have lapsed, in accordance with Section 116 of the present Decree-Law.

First annual fees which have not been paid within the specified period may be paid within the following six months subject to a surcharge of .... If payment is not made, the patent shall be considered null and void.

**113.** Interested parties may correct any errors made in determining the nature of the patent requested, provided that the proposed change is from a patent for an invention to a patent of introduction and that it is requested before the patent is granted.

**114.** Documents may not be detached from invalidated applications; however, copies of the specification and plans may be authorized if an application is made in writing. The word “invalidated” and the date and seal of the Registry shall be affixed to the copies.

## **Chapter VI**

### **Invalidation and Forfeiture of Patents**

**115.** Patents shall be invalid in the following cases:

- (1) when it is proved, in respect of the object of a patent or certificate of addition, that the declaration regarding ownership and novelty of the invention is not in conformity with reality, or that the patent has lapsed or that the invention is in the public domain. The same shall apply in the case of patents of introduction concerning the declaration that the invention has not been established, worked or disclosed on Spanish territory or in respect of any similar fact put forward as the basis of the application;
- (2) when the object of the patent affects public order or security or is contrary to public morality or the country’s legislation;
- (3) when the object for which the patent application was made is not the same as that realized under the patent;
- (4) when it is shown that the elements contained in the specification do not allow the object of the patent to be executed;
- (5) when a patent has been granted in error, without taking into account the prohibitions contained in the present Decree-Law;
- (6) when the provisions set out in the present Decree-Law have not been complied with before granting registration;
- (7) at the specific request of the applicant.

Certificates of addition related to invalidated patents shall also be declared invalid.

Action to declare the invalidation of a patent shall be brought before the courts by those who consider they have suffered damage.

In the cases mentioned in subparagraphs (2) and (5), above, the legal advisor, on behalf of the Registry, shall seek a declaration of invalidation from the courts, in accordance with the decision taken by the Minister.

In the cases mentioned in subparagraphs (6) and (7), above, the administration shall declare the patent's invalidation.

**116.** In addition to the provisions under Sections 90, 96 and 97, patents shall be declared forfeit and come into the public domain when:

- (1) their term of validity has expired;
- (2) the owner has not paid the relevant fees within the period set out in the present Decree-Law and has not provided documentary evidence that it was for reasons of *force majeure*. Claims to *force majeure* shall be published in the Official Bulletin of Industrial Property for one month;
- (3) the object of the patent has not been utilized on Spanish territory nor has a license for working been offered within the period provided for in the relevant sections.
- (4) the owner of the patent has failed to work it for one month and a day and has not provided documentary evidence of reasons of *force majeure*. In addition to the cases of *force majeure* contained in common law, the absence of authorization to work a patent in an industry where working requires the prior authorization of the Government shall also be a case of *force majeure*.

**117.** Declaration of a patent's forfeiture shall be made by the Registry of Industrial Property, with the exception of the case provided for in subparagraph (4), above, which shall come under the competence of the courts.

In the cases under the first three subparagraphs, declaration of the patent's forfeiture shall be automatic. The patent application file and registers shall be stamped with the word "forfeited" and the motive therefor.

The forfeiture of patents shall be published in the Official Bulletin of Industrial Property.

## TITLE III TRADEMARKS

### Chapter I Trademarks in General

**118.** Trademark shall mean any sign or material means of whatever type or form used to designate or distinguish products of industry, commerce and labor from others that are similar.

**119.** The following in particular may constitute trademarks: trade names, pseudonyms and names with special characteristics, vignettes, covers, mottoes, stamps, postage stamps, "*ex libris*," headings and titles of newspapers and reviews; reliefs, printed margins, embroideries, filigrees, coats of arms, engravings, monograms, signs, emblems, containers, bindings, hallmarks, inspection stamps, labels, etc., in the distinctive form adopted by the interested party. This list is indicative and not restrictive.

**120.** All trademarks used to distinguish a product shall be registered, whatever their nature or type.

Failure to fulfill the obligation prescribed in the previous paragraph shall be punished with the fines specified in Section 237 of the present Decree-Law.

It shall also be compulsory to register seals used on taxi meters and the special hallmarks guaranteeing jewelry and precious metals, subject to the relevant provisions.

Transit stamps and stamps showing the source of manufacture compulsorily registered with the General Directorate of Customs shall be deposited with the Registry of Industrial Property without charge and shall be accompanied by the designs and other complementary data, all of which must be deposited in duplicate. The Registry shall transmit the relevant notification of deposit to the Directorate. Such stamps

shall be deposited for this sole purpose and shall not be subject to the other provisions of the present Decree-Law applicable to trademarks.

**121.** The following may make use of trademarks and register them for the purposes of the present Decree-Law:

(a) all manufacturers, merchants, farmers, breeders and, in general, all producers, whether natural persons or legal entities, so as to distinguish their product or produce offered on the market for any use and whatever the nature of the product;

(b) all collectivities constituted to exploit a collective trademark, provided that they fulfill the obligations stipulated in each case;

(c) subjects and citizens of the States constituting the Union for the Protection of Industrial Property, in conformity with Article 2 of the Paris Convention of 1883, as revised at The Hague in 1925.<sup>2</sup>

The Ministry for Industry and Energy may order the establishment of national trademarks for specific products, subject to the agreement of the Council of Ministers.

**122.** Persons in trade or industry against whom a final judgment of prohibition has been issued may not obtain trademarks.

**123.** A person who obtains a certificate of ownership for a trademark under the present Decree-Law shall be authorized to:

(1) oppose the grant of a trademark comprised in the prohibitions set out in Section 124;

(2) take criminal action before the courts against persons who violate his rights;

(3) take civil action before the courts for payment of damages and prejudice caused by the persons referred to in the preceding subparagraph;

(4) take civil action for damages against a merchant who deletes the trademark or producer's mark without his specific consent, although the merchant may not be prevented from adding his own trademark or the distinctive sign of his trade separately.

**124.** The following may not be accepted by the Registry as trademarks:

(1) distinguishing marks whose phonetic or graphic similarity to other marks already registered may lead to error or confusion in the trade.

Phonetic similarity shall be deemed to exist when the vocal or tonic syllable is dominant so that the pretonic and post-tonic are absorbed and only the characteristic tonic of the designation registered is heard;

(2) the national coat of arms of Spain, provincial and municipal arms or coats of arms and Spanish emblems, insignia and decorations, as well as the arms, armorial bearings and mottoes on the coats of arms of foreign countries, unless specific authorization for their use has been given. Only those who have the right may use personal coats of arms and decorations. In any case, they may only constitute an additional element to the main distinguishing feature.

The authorization to use the national coat of arms shall be governed by the provisions of the Royal Decree of July 16, 1926;

(3) names or trade names that are not those of the applicant and that have not been specifically authorized, initials or monograms that are not the applicant's own or the significance of which cannot be explained. When an application is made to use a surname as a distinguishing trademark, it shall lose its quality as such for the purposes of the requisite examination and shall be subject to the provisions of subparagraph (1) of the present Section;

(4) pictures of persons, if they constitute the sole characteristic element, without specific authorization and provided that they cannot be confused with others previously registered;

(5) generic terms and terms generally used to define types, classes, prices, quality, weights or measurements and other similar terms;

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<sup>2</sup> See footnote 1, above (*Editor's note*).

- (6) geographical and regional names; such names may only be the subject of collective trademarks, in conformity with Section 136;
- (7) the insignia, emblem or motto of the Red Cross and those adopted under the Geneva Convention;
- (8) Spanish trademarks which contain expressions in foreign languages and which do not show in legible characters the name of the Spanish manufacturer or dealer and the place of production or manufacture in Spain. When the expression in a foreign language refers to merchandise or products distinguishing a trademark, a Spanish translation shall be given;
- (9) trademarks whose application to a specific product may be deduced from the design and when the application has been made for other articles as well. In such cases, only the trademark for the product shown on the design may be registered, together with the packaging, which shall not have any other elements, whether engraved, printed or applied by any other process, that characterize and distinguish it as trademark packaging;
- (10) official designs or marks adopted by the Ministry for the Army and used when testing firearms; official hallmarks guaranteeing precious metals and their names, whether or not followed or preceded by a name or denomination;
- (11) designations already registered, with the deletion or addition of a word or words;
- (12) marks that contain immoral designs or inscriptions that are contrary to any religion, that may be the cause of scandal or that ridicule ideas, persons or objects worthy of consideration, or the effigies and emblems of the Catholic faith, without written permission from the diocesan ecclesiastical authorities;
- (13) marks containing wording that might constitute a false indication of origin, of standing or of industrial reputation;
- (14) trademarks used to distinguish documentation, publicity and commercial, industrial or professional correspondence, with the exception of those of a graphic nature, whether for private persons or for banking, financial, cultural, recreational or professional companies;
- (15) designs and the reproduction of artistic works that are protected by previous registration, in conformity with Section 190 of the present Decree-Law, provided that there is opposition to this right.

**125.** In cases of similarity of trademarks, the Registry may require as evidence the submission of copies of the said trademarks in the form and manner in which they are used or are proposed to be used, so as to be able to take an informed decision.

**126.** Size and color alone may not constitute a trademark, unless they are combined in a specific shape. The exceptions with regard to color shall be the emblems of fighting bulls and colored selvages in which a color or combination of colors constitutes a specific characteristic; the former shall be registered together with the relevant breeder's brand mark and the second may be constituted by a single color or a combination of several colors, the distinguishing feature being the unmistakable combination of colors. They may be made up of straight, broken or curved lines or combinations thereof.

Previous registration of trademarks for colored selvages made up of one or several colors shall not prevent the registration of subsequent colored selvages in which some of the same colors are contained, provided that the combination applied for is distinct and unmistakable.

**127.** The combination of the colors red and yellow, which constitute the Spanish flag, may not become the property of a specific Spanish manufacturer; however, this combination may be used in a geometric form or in a characteristic print layout, but only as an additional element.

**128.** Nominal trademarks used to distinguish chemical, pharmaceutical, medicinal or veterinary products shall contain the name of the maker or the applicant, with his authorization in good and due form, although the foregoing does not affect the claiming being of the designation.

Trademarks distinguishing mineral-medicinal waters shall be nominal or graphic, or capable of being the subject of a designation; in the latter case, the graphic sign adopted shall be combined with the designation. The design of the label adopted and the colors used shall be annexed to the specifications accompanying the request for registration of such trademarks. Rights acquired for registration of trademarks

used to distinguish mineral-medicinal waters shall be respected; however, at the time of renewal the provisions of the present Decree-Law (see Section 36) shall be respected.

**129.** Registration of a trademark shall be granted for a period of 20 years from the date of grant.

During the last quarter of the legal term of protection, the registration may be renewed by the owner of the mark or by his successors in title, who must prove their status by submitting an official document. Renewal shall be granted without any examination or other procedure upon the filing of the relevant application together with the printing block and 50 drawings. The new registration certificate shall be issued and published in the Official Bulletin of Industrial Property, with the exception of the trademarks distinctive features of which are mentioned in subparagraph (12) of Section 124, above, for which the authorizations mentioned therein shall be submitted in order to obtain renewal. The application for renewal and other relevant documents shall be annexed to the original application.

Where renewal has been granted, the interested party shall pay the corresponding fees within one month and shall provide the revenue stamp for the registration certificate.

If the applicant has changed during the official term of protection of the trademark, the name of the owner may be changed at the time of renewal.

**130.** A single trademark application shall not contain more than one class of products under the official classification.

If the owner of a trademark wishes to apply it to products comprised in other classes of the classification, he shall submit a new trademark application, in conformity with the procedure laid down in the present Decree-Law.

If he wishes to extend the trademark to other products within the same class, he shall submit the relevant application accompanied by new descriptions, 50 proofs and a printing block for publication.

The date and time of submission shall be noted by the Registry in the margin of the application form.

The application shall be dealt with as a new application and if it is accepted, the applicant shall make a single payment of ... pesetas for extension fees and shall provide a ... peseta revenue stamp to be annexed to the original certificate, on which the extension granted shall be noted.

**131.** When the owner of a previously registered trademark applies for registration of a trademark in which the main distinctive feature remains the same, but in which the outline or additional elements of the design vary, the trademark shall be registered as a “derivative trademark” (“*marca derivada*”).

**132.** Where two or more persons seek the registration of the same trademark, the right of priority shall belong to the person who first submitted an application, according to the day and time on which it was filed (see Section 145, below).

The provisions of the previous paragraph shall not invalidate the provisions contained in Article 4C of the Paris Convention, which lays down a period of priority of six months for trademarks.

**133.** The system applicable to foreigners or nationals of States which do not belong to the Union shall be that as defined in the provisions of international treaties signed with their respective countries and, in the absence of such treaties, the principle of reciprocity shall be respected (see subparagraph (6) of Section 144).

**134.** International marks shall be those which, under the Madrid Agreement of April 14, 1891, as revised at Washington in 1911 and at The Hague in 1925,<sup>3</sup> are considered to be registered and protected in Spain as a result of their having been filed with the International Bureau in Berne,<sup>4</sup> with the right of refusal recognized in Article 5 and the other provisions of the said Agreement.

**135.** Likewise, trademarks registered in Spain may be registered in all States party to the said Agreement through the International Bureau in Berne.<sup>5</sup>

In order to benefit from this provision, an application shall be submitted to the Registry of Industrial Property accompanied by the following documentation: the official form provided by the Registry in duplicate; a printing block of 10 cm maximum dimension; ... pesetas in State stamped paper and a check for ..., for the first trademark, and for ... for each of the other trademarks deposited at the same time. The applicant may decide to pay only ... for the first registration and ... for each of the remaining registrations submitted at the same time, however, before the expiration of a period of 10 years from the date of international registration, he shall pay a supplement of ... for the first registration and ... for each one of the remaining registrations. If a claim is made for the color, 50 proofs in the color or colors claimed shall accompany the application.

The duration of international registration shall be 20 years and affords the trademark, in the Contracting States, the same legal protection as that granted to the citizens of the other States.

Nevertheless, when the legal duration of the trademark in Spain has terminated or when the trademark has been declared forfeit, the international protection shall terminate.

## Chapter II Collective Marks

**136.** The following shall be considered collective marks:

(1) marks of an exclusive nature adopted by associations, collectivities or communities to distinguish the products made by the individual members of the group;

(2) marks adopted by industrial or trading entities of known repute and situated in a given municipality or province to distinguish a specific natural or characteristic product therefrom.

If the mark consists of the geographical name of a locality, its use shall extend to all producers and merchants established therein. It shall be exclusive and shall guarantee the owner's rights;

(3) marks adopted by officially constituted entities to safeguard the collective industrial interests of a specific branch of industry or a regional name for a typical product.

Such official entities shall be under the control of the Registry of Industrial Property and shall be governed by regulations which shall be submitted for the Registry's approval, without prejudice to the general rules on collective marks also applicable to them.

**137.** Collective marks shall be applied for by the person or persons legally representing the collectivity according to its statutes. A copy of the statutes shall be annexed to the application, together with an official copy of the minutes of the meeting at which it was decided to adopt or register the mark.

**138.** For the purposes of exploiting a collective mark, the statutes shall show the applicant's domicile, the object and purpose of the enterprise, the organs representing the enterprise, the persons entitled to make use of the mark and the conditions and reasons that might prohibit a member of the group from using the mark adopted.

The rights and obligations of interested parties in cases of infringement of the mark shall be specified in respect of the groups mentioned in subparagraph (3).<sup>6</sup>

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<sup>3</sup> Spain has been bound, since June 8, 1979, by the Stockholm Act of 1967 of the Madrid Agreement (*Editor's note*).

<sup>4</sup> Since 1960, the International Bureau has been located in Geneva (*Editor's note*).

<sup>5</sup> See footnote 4, above (*Editor's note*).

Modification of the statutes of the enterprise in this regard shall be transmitted to the Registry of Industrial Property for approval, where appropriate, as well as any change in membership, which shall require the Registry's approval.

**139.** Conviction for offenses committed as a result of the illegal use of a collective mark shall give rise to payment of compensation to the group's members.

**140.** Collective marks shall be subject to the provisions laid down for trademarks in general, without prejudice to any special regulations governing them.

The terms of protection and the fees to be paid shall be those fixed for individual trademarks.

**141.** Trademarks may not be transferred to third persons nor may authorization be given for their use by individuals who are not officially recognized by the group.

**142.** Municipalities, committees and official bodies not set up with this object shall not be authorized to register a collective mark, subject to acquired rights.

**143.** Collective marks shall be declared forfeit for any of the reasons applicable to individual marks and following dissolution of the group that is the owner thereof.

Requests for the forfeiture of collective marks shall be accompanied by authenticated documentary evidence and such marks shall not be permitted to lapse without a hearing being given to the group.

### Chapter III Trademark Application Procedure

**144.** In order to obtain the registration of a trademark the following documents shall be submitted:

(1) an application for registration of the trademark made on the form supplied by the Registry and bearing a ... peseta revenue stamp. The application shall indicate the first name, surname or trade name of the interested party as well as his domicile, and, where appropriate, the name of the agent or representative; the specific designation of the products to be distinguished and the class of the official classification in which they are contained, together with information as to whether or not the trademark has been registered abroad shall also be indicated (see Section 137);

(2) a description of the filed trademark in duplicate showing the name of the applicant and the product to which the trademark applies. This description shall be drafted in Spanish and shall be typed or printed on sheets of paper measuring 31 cm x 21 cm, using one side of the paper, with a left-hand margin of 4 cm and shall bear a ... revenue stamp. The description shall contain no modifications, abbreviations, deletions, restrictions or reservations.

A sheet of equal size shall be joined to each copy of the description showing the design of the trademark, which may be drawn, printed or engraved on the sheet or simply superposed on or glued to it;

(3) an additional description, worded in the same way as the previous descriptions and written on one side of the paper, for the registration's publication in the Bulletin of Industrial Property;

(4) a typographic line cut printing block, whose maximum dimensions shall not exceed 10 cm.

On printing blocks of trademarks constituted by selvedges, the cloth shall be represented by a squared surface and the edges constituting the margin by wide lines at the extremities of which shall be shown the relevant color;

(5) fifty proofs from the printing block;

(6) a certificate of origin of the trademark registration where it is applied for by a foreign national of one of the countries of the Union or under a treaty guaranteeing the right of reciprocity;

[Footnote continued from previous page]

<sup>6</sup> Of Section 136 (*Editor's note*).

- (7) proof of industrial awards figuring in trademarks when they have not previously been entered in another register. The proof may be the original titles or legal attestations thereof and shall be accompanied by one copy to be joined to the application after comparison;
- (8) proof of the status of pharmacist, doctor or veterinary surgeon for trademarks for medicinal products;
- (9) when the procedure is to be carried out through an industrial property agent, an authorization by the interested party and the agent's agreement, or a power of attorney when the procedure is to be carried out by a person who is not an agent;
- (10) a list of the documents constituting the file.

**145.** Any changes in the design of a trademark as a result of its modification shall be published in the Official Bulletin of Industrial Property; however, priority shall be from the date on which the modification was made and not from the date of submission of the file.

For publication of such changes, an amount corresponding to the space occupied in the Bulletin shall be paid at the rate of ... pesetas per 100 words or fraction thereof.

**146.** When the design of a trademark shows blank spaces, the applicant shall provide the generic terms or names that he has already registered or that he intends to insert in the said spaces.

**147.** Where the application file has been received in the trademark department, assigned a number and noted in the register, the descriptions shall be examined for conformity and verified with the printing block. If errors are found in the documents, that fact shall be noted on the application file and a period of one month from the date of publication of the notice in the Official Bulletin of Industrial Property shall be granted for their correction, and the file shall be handed over to the relevant examiner.

Where the errors have not been corrected within the period granted, the file shall be invalidated, but no documents may be detached therefrom.

**148.** Where the documents are in conformity with the provisions set out in Section 144 or, where appropriate, when the errors have been corrected, the trademark registration application shall be published in the Official Bulletin of Industrial Property so that, within a period of two months, any person who considers that registration would be prejudicial to him may oppose it, providing documentary evidence for his claims.

Oppositions shall be made at the Registry of Industrial Property and shall be accompanied by a copy of the brief to be transmitted to the trademark applicant.

**149.** Where an opposition is based on the claim that the name requested comes under subparagraph (5) of Section 124, proof of that claim shall be submitted. Evidence may be submitted in the form of reports by chambers of commerce, industry and agriculture, as well as reports of associations and unions in the branch to which the trademark refers. The Registry shall freely evaluate the worth of such evidence.

If opposition is based on the claim that the applicant does not have the status of producer, merchant or manufacturer, or where the Registry considers it necessary, proof and justification of his status may be requested before granting registration, by means of a certificate from the register of commerce or a receipt for payment thereto.

**150.** The trademark examiner to whom the application file has been sent shall examine it and shall report on whether or not the mark requested is included in the cases prohibited under Section 124. In the affirmative, he shall propose a suspension of the procedure, which shall be authorized by the head of the trademark section. If there is opposition to registration, that fact shall be communicated, together with the examiner's comments.

Notification shall be made in the form prescribed in Section 25 so that within one month the applicant may put forward the arguments he considers relevant to his right, amend the trademark or submit the authorization for the original grant so that the mark may be registered. In respect of a case of identity, the trademark may not be changed nor shall submission of the authorization have any effect.

The only modifications admitted shall be those consisting in the deletion from the design of the element constituting the irregularity.

In such case, a new printing block, description and proofs shall be submitted but payment of fees for amendment shall not be required.

**151.** The examination or report referred to in the preceding paragraphs shall be made within the two-month period provided for publication.

At the expiration of this period and, where appropriate, after having annexed any oppositions to the file, the notifications authorized by the head of the trademark section shall be made in execution of the provisions of the previous Section.

**152.** In the case of markings for fighting bulls, branding irons or breeding marks, if the Registry is seized with a question of similarity or the right to use particular colors or branding markings, a report may be requested from the national association of cattle breeders or the association of breeders of fighting bulls, where appropriate.

**153.** When notification has been contested within a non-extendable period of one month and when the allegations have been examined, the head of the trademark section shall, also within a one-month period, take a decision on granting or refusing the registration of the trademark applied for.

If the interested party does not contest the application within the period fixed, the application procedure shall continue and the head of the section shall propose the refusal or grant of registration depending upon the case. If a favorable decision is reached, a certificate shall be issued, which shall bear the same date of grant and shall be authorized at the same time as the decision.

**154.** Where the application has been accepted and the decision published in the Official Bulletin of Industrial Property, the interested party or his representative shall pay the first quinquennial fees in State stamped paper within one month and shall hand over the revenue stamp for the registration certificate. The revenue stamp shall be affixed to the registration certificate and cancelled with a special stamp; the certificate shall then be handed over to the interested party or his representative. The action taken shall be noted in the file, which shall be signed by the person receiving the said document.

**155.** The Minister and, by delegation, the Director General, shall take a decision upon the file within the period prescribed in the previous article and shall sign the certificate.

At the expiration of a period of 45 days during which no appeal for review has been lodged, the decision shall become final and the possibility of an administrative appeal shall be exhausted. Appeals contesting registration may then be lodged with the third chamber of the Supreme Court.

**156.** Marks shall be recorded in a filing system in which the relevant data and information shall be noted, together with the design of the trademark.

**157.** Registration of a trademark shall be subject to payment of the fees fixed in the relevant title, and the fees shall be paid in four installments corresponding to the four quinquennia. The first payment shall be made simultaneously with transmission of the revenue stamp and the remaining installments shall be paid each quinquennium before the end of the months in which the trademark was registered.

## **Chapter IV**

### **Forfeiture and Invalidation of Trademarks**

**158.** Trademarks shall be deemed forfeit through:

- (1) termination of their legal duration, that is to say, where the 20-year registration period has terminated without the trademark having been renewed or restored;
- (2) failure to pay one of the quinquennial fees;
- (3) termination of the status of the owner of a trademark in the absence of a legal successor;
- (4) the wish of the interested party;

(5) failure to use the trademark during five consecutive years, except where there is documentary proof of *force majeure*.

**159.** In the first four cases, the Registry of Industrial Property shall *ex officio* declare forfeiture of the trademarks and in the fifth case, the courts shall have this responsibility.

**160.** Trademarks declared forfeit under the provisions of subparagraphs (1) and (2) of Section 158 may be restored by their owners or successors in title, provided that restoration is requested within three years following publication of the forfeiture in the Official Bulletin of Industrial Property.

If restoration is not applied for during the above-mentioned period, the owner of the forfeited trademark shall lose his right to it and the trademark may be registered anew by the first person who applies to do so.

**161.** The owners of forfeited trademarks mentioned in the preceding Section may not exercise the rights recognized in the present Decree-Law, except for the right to request restoration.

An application for restoration shall be dealt with in the same way as an application for renewal and, in addition to the fees fixed for renewal, the owner shall pay the fees corresponding to the quinquennia since the forfeiture of the trademark. Restoration may be requested even though the Registry of Industrial Property has not yet published the forfeiture.

Trademarks that have been forfeited according to the provisions of subparagraphs (3), (4) and (5) of Section 158 of the present Decree-Law may not be restored by their owners. They shall become free trademarks available to anyone who wishes to adopt them by applying for registration in their own name.

**162.** When forfeited trademarks contain elements that appear in other trademarks still in force belonging to the same owner, the said elements shall not be considered part of the public domain.

**163.** Trademarks may be invalidated when:

- (1) the interested party renounces them before the registration certificate is issued;
- (2) the fees are not paid within the prescribed period;
- (3) a final judgement is issued by the courts.

In the first two cases, the Registry shall declare invalidation.

## TITLE IV DESIGNS

### Chapter I Designs in General

**164.** This Title shall comprise all matters concerning the registration of utility models, industrial designs and artistic designs with industrial applications.

**165.** The registration of designs confers the exclusive right to execute, manufacture, produce, sell, utilize and work the object of registration; this right is acquired by obtaining a certificate from the Registry of Industrial Property, which shall grant it subject to the rights of third parties.

**166.** Those rights shall be granted without prior examination as to novelty, ownership and utility, but shall require notification for the purposes of opposition.

**167.** A person who is granted a registration certificate for a design in accordance with the present Decree-Law shall be authorized to:

- (1) take any action in the form indicated in Title IX of the present Decree-Law;

(2) oppose, before the Registry of Industrial Property, the grant of a registration certificate for designs which he considers to be harmful to his rights, subject to the provisions laid down in the present Decree-Law.

**168.** Spanish citizens or foreigners established in Spain, be they physical persons or legal entities, shall have the right to apply for the registration of designs.

The same benefits shall be enjoyed by nationals and citizens of the States members of the Union for the Protection of Industrial Property, in accordance with the provisions of Article 2 of the Paris Convention of March 20, 1883, as last revised at The Hague in 1925.<sup>7</sup>

Foreigners who are nationals of countries which are not members of the said Union shall enjoy the rights granted to them in specific treaties and, in their absence, the principle of reciprocity shall be strictly observed.

Designs filed with the International Bureau in Berne,<sup>8</sup> in accordance with the provisions of The Hague Agreement of 1925, shall enjoy corresponding legal protection in Spain.

The designs of Spanish nationals filed directly with the International Bureau shall not enjoy protection in Spain until they are directly registered with the Spanish Registry of Industrial Property.

**169.** In order to establish rules distinguishing between what may be the object of an industrial design or of a utility model, the standard shall be the object of protection, that is to say, a utility model protects the form of execution and leads to an industrial result, while an industrial design protects only the form.

**170.** The following documents shall accompany an application for registration of designs included in this Title (see Sections 19 to 22):

- (1) an application showing the first name and surname or trade name of the applicant and his representative; the residence and usual domicile of both, the class of the design applied for and a declaration of novelty;
- (2) a description of the design in duplicate, with a summary showing the claims, accompanied by a sheet of paper on which the design is affixed;
- (3) a line cut printing block of the design;
- (4) fifty copies of the said block.
- (5) a list of the documents filed;
- (6) a certificate of origin for designs applied for by foreign citizens seeking protection under the present Decree-Law.

The dimensions of the descriptions and printing blocks shall be the same as those for trademarks.

In addition to utility, descriptions of utility models shall specify the new effect obtained, whether it involves saving time, energy or labor, or improves the hygienic or psychophysiological working conditions.

The application shall also be accompanied by the enumeration of claims, written on sheets of paper, for publication in the Bulletin, for which the applicant shall pay ... pesetas per 100 words or fraction thereof.

## Chapter II Utility Models

**171.** The Registry of Industrial Property shall grant patents for the registration of utility models. For this purpose, models are deemed to be instruments, apparatus, tools, mechanisms, objects or parts thereof in which the form may be the subject of a claim, whether because of its external aspect or its functioning and providing that it is of utility, that is to say, that it contributes some benefit or new effect or a saving in time, energy or labor, or improves the hygienic or psychophysiological working conditions.

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<sup>7</sup> See footnote 1, above (*Editor's note*).

<sup>8</sup> See footnote 4, above (*Editor's note*).

**172.** The interested party shall make a declaration of a utility model and the description of the characteristics constituting the claim of utility and novelty, which shall constitute the basis of the Registry's consideration of whether or not it is a utility model, an industrial or artistic design or a patent.

**173.** Registration of a utility model shall be for 20 years.

The Registry of Industrial Property shall decide upon the possibility of transforming a utility model into a patent at the request of the applicant.

**174.** The elements prohibited in subparagraphs (3), (4) and (5) of Section 48 concerning patents and those which have been disclosed or worked in Spain may not be the subject of utility models.

**175.** The form for the filing of utility models shall be the same as that laid down for patents, both with respect to the provisions of Article 4 of the Paris Convention and to the periods during which the interested party shall pay the first and subsequent annual fees (see Sections 100, 103, 112 and 170).

In addition, owners of utility models shall be obliged to prove utilization in the same form and manner and under the same conditions as those laid down for patents (see Sections 83 to 99).

**176.** Registration of a utility model shall be granted without prior examination as to novelty or practical utility, but with notification for the purposes of opposition, which shall be formulated in writing and submitted within two months from the date of publication of the application in the Official Bulletin of Industrial Property.

The oppositions shall be accompanied by a copy for transmission to the applicant.

**177.** Opposition shall be communicated to the interested party so that within 15 days he may put forward the arguments he considers relevant to his rights. The Registry of Industrial Property shall decide upon the matter, taking into account the arguments made by the parties.

**178.** The following may be put forward as grounds for opposition and may therefore not be registered as utility models:

- (1) objects that the Registry of Industrial Property has declared to be patents or industrial designs in view of their content or claims;
- (2) objects that are prejudicial to public morality and security;
- (3) objects that had been produced in Spain or had been widely disclosed prior to the date of the application. Proof in such cases shall be in writing;
- (4) objects that had previously been registered as patents or industrial designs, although they had not been worked;
- (5) objects that may prejudice national production.

In the cases mentioned in subparagraphs (2) and (5), the Registry of Industrial Property may refuse registration without the need for opposition.

**179.** Where examination of claims for the object filed as a utility model shows that its subject matter belongs to the patent or industrial or artistic design section, the Registry of Industrial Property shall transmit it to the section concerned, with the priority acquired on the date of filing and after having given a hearing to the applicant so that he may give or withhold his consent. If he does not give his consent, the application shall be transmitted to the technical section, which shall submit a report.

**180.** Utility models shall be considered invalid when:

- (1) it can be proved that the declaration made by the interested party in the registration application to the effect that the object is not known or worked in Spain is false;
- (2) the requirements set out in Sections 105, 109 and 112 have not been fulfilled;
- (3) the interested party so desires.

In the first case, invalidation shall be declared by the courts and in the second and third cases by the Registry of Industrial Property.

**181.** Utility models shall be deemed forfeit when:

- (1) their legal term has expired;
- (2) they have not been worked during one year, unless the owner can prove reasons of *force majeure*;
- (3) the annual fees have not been paid.

Forfeiture of a utility model shall be declared by the Registry of Industrial Property in the same form as for patents, except for the second case, which shall be within the competence of the courts.

### **Chapter III** **Industrial and Artistic Designs**

**182.** A three-dimensional industrial design (*modelo industrial*) shall mean any object used as a pattern for the manufacture of a product and which may be described by means of its structure, configuration, decoration or representation.

A two-dimensional industrial design (*dibujo industrial*) shall mean any arrangement or combination of lines or colors, or lines and colors used for commercial purposes for the decoration of a product, using any manual, mechanical, chemical or combined means.

**183.** The registration of a two or three-dimensional industrial design shall be granted without prior examination as to novelty or utility, but with notification for the purposes of opposition, which must be signed and submitted with the relevant documentation and copies thereof within two months from the date of publication of the application in the Official Bulletin of Industrial Property.

Opposition shall be notified to the applicant so that within 15 days following notification he may put forward arguments he considers relevant to his rights and, taking into account the statements by both parties, the Registry of Industrial Property shall take a decision.

**184.** A two or three-dimensional industrial design composed of several parts that form a whole, such as, playing cards, chess sets, alphabets, tableware, dominos, etc., shall be considered to be a single design.

Single applications may be made for one to 10 designs when they have the same use, even though they are different, for instance, sets of cutlery, printed cards, etc.

In such cases, there shall be only one registration number to which letters of the alphabet shall be added.

**185.** The term of protection for a two or three-dimensional industrial design shall be 10 years, renewable for a further period of 10 years under the same conditions as those provided for trademarks in Section 129 of the present Decree-Law. The sum of ... pesetas shall be payable for each new quinquennium.

The form, payment and procedure for industrial and artistic designs shall be those laid down for trademarks.

**186.** Two and three-dimensional industrial designs shall be entered in two separate registers, one for two-dimensional designs and one for three-dimensional designs.

**187.** In addition to the prohibitions regarding trademarks set out in Section 124, which are applicable in this instance, packaging containing designs that form part of trademarks or names may not be registered as two or three-dimensional industrial designs.

**188.** The following may be grounds for opposition and may lead to refusal to grant a two or three-dimensional industrial design:

- (1) the design is included in the examples mentioned in Section 187;
- (2) the characteristics of the design show that the application relates to other titles of protection in the present Decree-Law;
- (3) documentary proof of the absence of novelty is provided to the Registry of Industrial Property.

**189.** Owners of industrial designs who wish to benefit from the provisions of The Hague Agreement of 1925 shall previously deposit their designs with the Registry of Industrial Property.

Application for international deposit of national designs shall conform to the provisions laid down in Section 135 on applications for the international registration of trademarks, with the exception of the following fees paid to the International Bureau in Berne<sup>9</sup>: ....

**190.** Designs comprising the reproduction of a work of art and used for industrial purposes shall be included in this category. Consequently, decorative works, works used to embellish a manufactured product, original photographs, etc., shall be included in this chapter, independently of any other relevant intellectual property rights.

**191.** In the case of reproductions of artistic works protected by intellectual property rights, the application shall be accompanied by specific authorization by the author or by his successors in title, when the artistic work is not considered to be in the public domain.

In case of doubt, the San Fernando Academy of Fine Arts shall submit a report.

In the descriptions, the applicant shall show which is the original reproduced.

**192.** Designs whose application results in depreciation or contempt for the original work of art shall not be accepted by the Registry.

**193.** Grant of the deposit of an artistic design reproduced shall only permit exclusive application of the work of art for a single industrial object or for a single form of decoration; the owners may therefore not prevent another person or other persons from using the same work of art for different objects or decoration.

## **Chapter IV**

### **Invalidation and Forfeiture of Industrial Designs**

**194.** Industrial and artistic designs shall be deemed to be invalid and to have no legal effect in the following cases:

- (1) the owner has not paid the relevant fees for the first quinquennium within the period prescribed in the present Decree-Law;
- (2) any errors noted have not been corrected within the period stipulated in the present Decree-Law;
- (3) there is an obvious, manifest error of fact;
- (4) there are duly proven reasons of public expedience;
- (5) where a final judgment has been issued by the courts.

In the cases mentioned under subparagraphs (1) and (2), above, invalidation shall be declared by the Registry of Industrial Property and in the cases mentioned in subparagraphs (3) and (4) by the Ministry for Energy and Industry.

**195.** Industrial designs shall be deemed forfeit and part of the public domain when:

- (1) their legal term has expired;
- (2) the fees for the second quinquennium have not been paid;
- (3) the interested party so desires.

Forfeiture shall be declared automatically by the Registry of Industrial Property under the same conditions and in the same form as for trademarks.

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<sup>9</sup> See footnote 4, above (*Editor's note*).

## TITLE V TRADE NAMES AND BUSINESS SIGNS

### Chapter I Trade Names

**196.** A trade name shall mean the name of a person or business, even when constituted by initials, whether it is the name of an individual, an enterprise or an entity of any sort employed in the exercise of a profession, in trade or in industry in any of its forms.

**197.** Trade names shall be registered for Spain as a whole [and for its colonies and protectorate], subject to the provisions of Article 8 of the Paris Convention of 1883, as last revised at The Hague in 1925.<sup>10</sup>

**198.** Industrial and commercial enterprises whose trade name consists of an imagined name shall be obliged to register it previously as a trademark.

Other entities whose objectives are banking, financial, cultural, recreational or professional, may obtain registration without prior fulfillment of this condition.

In order to obtain registration of their trade name, enterprises engaged in a form of international relations and which are governed by boards or councils of an international nature shall provide proof of their status, accompanied by a copy of their statutes and a certificate from the provincial authority where the enterprise has its head office.

**199.** Registration of a trade name shall be optional and shall be independent of the activities of merchants carried out in accordance with the Code of Commerce.

Registration of a trade name in the Registry of Industrial Property shall give exclusive right to its use and to take action against any person using an identical or similar name subsequent to registration.

**200.** Where an application is made for a trade name that does not consist of the name of the applicant or that contains a qualifying expression such as “successor to” (“*Sucesor de*”), “formerly” (“*Antiguo encargado*”), “former manager” (“*Antiguo gerente*”), “son” (“*Hijo*”), “nephew” (“*Sobrino*”), or another similar expression, the applicant shall submit the relevant written authorization together with proof of his status to present such an application.

**201.** The following may not be registered as trade names:

- (a) names applied for by individuals and consisting of collective names or trade names, unless the applicants can provide documentary evidence proving their right to the use of a pre-existing name;
- (b) names applied for by individuals or enterprises which might be confused with other names previously registered for similar objectives;
- (c) fanciful or imaginary names that cannot be distinguished from other trade names or trademarks previously registered for products or objects of the same industry or trade;
- (d) names containing designs, drawings, figures or graphic features, as well as those included, in respect of indications, in Section 124 regarding trademark prohibitions;
- (e) imaginary names may not be registered for individual persons; however, rights acquired prior to the entry into force of the Royal Decree-Law of July 26, 1929, shall be respected, provided that the name of the owner is added at the end of the said name.

**202.** Enterprises seeking registration of their trade name shall provide justification of their right by filing a copy of the document or statutes setting up the enterprise.

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<sup>10</sup> See footnote 1, above (*Editor's note*).

**203.** Trade names may only be registered for Spanish citizens or foreign citizens established in Spain.

Trade names belonging to foreign enterprises shall be in the original language and, if that language is Spanish, in the case of Spanish-speaking American countries, the relevant nationality shall be mentioned below the name.

Spanish groups or citizens may not register names written in foreign languages.

**204.** The words “Spanish” (“*español*,” “*española*”), “national” (“*nacional*”) or other words having the same meaning and forming part of the trade name shall only be authorized for persons of Spanish nationality or legal entities established in Spain in conformity with Spanish legislation.

**205.** Modifications and changes to a trade name shall be the subject of a new registration.

**206.** The term of a trade name shall be indefinite; however, it shall be renewed every 20 years.

Renewal may be applied for by either the owner or his successors in title, who must provide documentary proof of their status, and shall follow the procedure laid down for trademarks.

Trade names which have not been renewed at the end of their legal term shall be declared forfeit for the purposes of registration, in the same manner as that provided for trademarks; however, they may be restored within the periods and under the conditions laid down in Sections 160 and 161.

Trade names that are renewed shall be subject to the conditions and requirements of the present Royal Decree-Law. They shall be considered to be a business sign or name if they meet the required conditions, and modifications relevant to their renewal may be made.

**207.** The owner of a registered trade name shall enjoy recognition of the same rights as the owner of a trademark.

**208.** Opposition to registration and the time limits for dealing with trade names shall be governed by the rules laid down for trademarks (see Sections 144 *et seq.*).

## **Chapter II** **Business Signs** **(*Rótulos de establecimiento*)**

**209.** A business sign shall mean the name under which an agricultural, manufacturing or trading establishment is known to the public and therefore surnames, with or without the first name, in full or abbreviated, trade names or titles, and commercial and imaginary designations shall be considered to be business signs.

The decoration of façades and interiors of establishments may be registered as industrial designs.

**210.** When the name shown on the application for registration of a business sign implies that the applicant is an agricultural, industrial or commercial establishment, a legal document attesting the nature of the establishment shall be annexed to the application.

**211.** Business signs shall be registered for the municipal district or districts mentioned in the application.

Consequently, the registration of a business sign shall specify the municipality or municipalities in which the establishment and the branches for which registration is requested are situated, as well as the trade or industry carried out.

When branches are extended to other municipal districts, there shall be a new registration and priority shall be from the date upon which the interested party made the new application.

**212.** A business sign that is not sufficiently distinct from a name registered as a trademark, a trade name or another sign within the same municipality may not be registered.

For any establishment open to the public, it shall not be possible to register more than one business sign to be used for the principal establishment and the branches specifically mentioned in the application for registration.

**213.** The owner of a business sign shall inform the Registry of Industrial Property of the branches which are open to the public under the same name in the same municipal district.

**214.** Where a business sign is used simultaneously as a trademark or trade name, the latter shall be registered separately, since the trademark constitutes the distinctive character of the objects made and sold on the market, the trade name is used for commercial transactions and the sign only applies to shop signs, displays and other accessories used to differentiate the establishment from similar establishments.

Failure to fulfill the provisions of the preceding paragraph and, therefore, the use of a sign as a name on products sold to the detriment of a trademark shall be considered as an act of unfair competition (see Section 233).

**215.** For any purposes not specifically defined in this chapter, the registration of a business sign and its term shall be governed by the provisions adopted for trade names. The rules established for trademarks shall be followed in respect of opposition, procedure and time limits.

**216.** The registration of a trade name shall be invalid in the following cases:

- (1) when the composition of the proprietary enterprise is amended;
- (2) when the name consists of a commercial name or a corporate name and the establishment of such an enterprise has not been proved;
- (3) in the cases provided for invalidation of the registration of trademarks.

The registration of business signs shall be invalid in the cases set out in subparagraphs (2) and (3).

**217.** Trade names and business signs shall be deemed forfeit in the following cases:

- (1) where their legal term has expired without renewal of registration;
- (2) where the proprietary enterprise is dissolved and its legal personality extinguished without there being any legal successor;
- (3) where the quinquennial fees have not been paid;
- (4) at the request of the owner.

**218.** Forfeiture shall be declared, *ex officio*, in the cases provided for in subparagraphs (1), (3) and (4) by the Registry of Industrial Property; forfeiture in the case provided for in subparagraph (2) and invalidation in the cases provided for in subparagraphs (1) and (3) shall be declared by the competent courts at the request of the interested party.

## TITLE VI CINEMATOGRAPHIC FILMS

**219.** Independently of the intellectual property guarantees and rights which legal provisions or regulations grant or recognize to the authors of scripts for cinematographic films, property constituted by the distinctive character of themes or screenplays for cinematographic films produced for industrial working shall be protected by the present Industrial Property Code, subject to the provisions contained therein.

**220.** In order that cinematographic films may be protected under the present Code, they shall be filmed, printed or prepared for industrial working before the certificate-title of registration is granted.

**221.** The authors of films and those who can provide documentary proof that they are the proprietors of the films or are the licensees for their working for an equal or greater number of years than the term of registration specified in the present Code may apply to register films.

If the persons seeking registration are the licensees of the films, the application shall also be accompanied by certified authorization by the producer.

**222.** The following documents shall be submitted in order to obtain registration of the title in respect of the theme or screenplay of a specific cinematographic film (see Sections 19 to 22):

(1) an application to the Head of the Registry of Industrial Property bearing a ... peseta revenue stamp showing the first name, surnames, or trade name, nationality, residence and domicile of the interested party; the first name, surnames and nationality of the author of the film, if the applicant is not the author, and the first names, surnames and nationalities of the authors of the screenplay, the music and the artistic direction of the film, if, at the time of application, the film was made, printed and prepared for industrial working; in addition, where appropriate, the application shall contain the first name, surnames and nationality of the agent or representative, as well as the title of the film and a declaration as to whether it has been registered abroad;

(2) State revenue paper in the amount of ... pesetas for submission fees;

(3) two copies of the theme or screenplay of the film;

(4) a typographic line cut printing block the dimensions of which do not exceed 4 cm;

(5) fifty proofs from the printing block;

(6) a text for publication in the Official Bulletin of Industrial Property giving a concise summary of the film's screenplay or theme.

The interested party shall pay ... pesetas per 100 words or fraction thereof for publication;

(7) six graphic reproductions measuring 9 cm x 10 cm in duplicate showing the main scenes and sites of the action;

(8) where appropriate, the certificate of origin;

(9) an authorization signed by the interested party where an agent belonging to the professional association of industrial property agents is acting in his behalf;

(10) where a person who is not an official agent belonging to the said association is acting, a notarized power of attorney;

(11) a list of the documents submitted in respect of the application;

(12) a complete copy of the text of the film and of its musical accompaniment, together with the name of its author and a certificate attesting that it has been filed in the Registry of Intellectual Property.

For the purposes of obtaining the right of priority, applications for registration shall be accompanied by the documents mentioned in subparagraphs (2), (6) and (10) and by the list referred to in subparagraph (11) (see Sections 19 to 23, 227 and 228).

**223.** Cinematographic films shall be accepted for registration without prior examination, but with notification for the purposes of opposition, which may be formulated within one month from the date following that on which the application was published in the Official Bulletin of Industrial Property, setting out the grounds on which opposition is based.

**224.** If opposition to a film's registration is formulated in the requisite form and within the specified time, it shall be transmitted to the applicant so that, within a non-extendable period of one month, he may put forward arguments relevant to his rights. For this purpose, the opposition document shall be submitted in duplicate.

When the period specified has expired without any opposition having been formulated, the applicant may request the Registry to authorize the preparation and production of the film. The total period for filming and printing for industrial working shall be one year from the date following the end of the month in which the application was published in the Official Bulletin of Industrial Property. At the request of the interested party, this period may be extended.

At the expiration of the period of one year or of its extension, if the film has not been terminated, the application for registration shall be considered null and void for all purposes.

**225.** The following may be put forward as grounds for opposition:

- (1) prior registration of another film with the same characteristics or the same title or with characteristics or a title that are so similar that they may give rise to error or confusion;
- (2) the applicant does not provide proof of his status or right to request registration;
- (3) the film's theme concerns work belonging to the public domain and the characteristics of the film submitted for registration are not sufficiently distinct from others previously registered;
- (4) the right claimed by the applicant is subsequent to a prior authorization still in force to work the same film.

The Registry of Industrial Property may reject the application, without there being the need for opposition, when the film contains passages contrary to morality, the nation, religion or public order.

**226.** Film titles that correspond to books, novels, theatrical works, etc., regularly entered in the Registry of Intellectual Property, shall not be granted unless they are applied for by the owner of the title or with his specific authorization.

**227.** When a film's title consists of a name in a foreign language, it shall be accompanied by a translation into Spanish, which shall also be used on posters and programs.

Foreign documents accompanying the application shall be submitted together with a literal translation into Spanish.

**228.** Persons applying for the registration of films adapted from works in the public domain shall provide documentary evidence of the adaptation, in addition to fulfilling the requirements specified in Section 222.

If an application is made for another film based on the same work in the public domain, its characteristics shall be distinct from those of the film previously registered and the title shall be notably different.

**229.** Protection for cinematographic films shall be granted for five years from the date of registration and may be renewed for a further five years. Such extension shall be requested on the appropriate form.

Fees due for the registration of films shall be the following: ... pesetas registration fees and ... pesetas for the registration certificate.

Renewal for a further five years shall give rise to payment of ... pesetas.

At the expiration of the first five years, registrations that have not been renewed shall become forfeit.

Registrations shall also become forfeit at the expiration of the five-year renewal period. Forfeiture shall be declared by the Registry of Industrial Property in the same form as for trademarks.

**230.** Registration fees shall be paid in State stamped paper. The revenue stamp for the certificate shall also be paid in State stamped paper at the time it is handed over, which may be the day following the grant of registration.

**231.** When working films, the word "Registered" ("*registrada*") shall appear together with the relevant registration number. This declaration shall appear both on the film itself and on the posters and programs advertising it.

**232.** The following shall be deemed to be grounds for invalidating applications for cinematographic films:

- (1) the applicant has received notification of opposition, but has not duly proved his rights;
- (2) the documentation specified in Section 222 has not been supplied within the legal period of one year or the extension thereof if the latter has been specifically requested;
- (3) registration of a film has been granted following an error in implementation of the legal provisions;
- (4) as a result of a claim made, a better right to registration is proved;
- (5) the registration fees have not been paid within 15 days from the date of publication of the grant;

- (6) the film is contrary to public order or morality;
- (7) a decision is handed down by the courts.

In the cases mentioned under subparagraphs (1), (2), (5) and (6), above, invalidation shall be declared by the Registry of Industrial Property and in those mentioned under subparagraphs (3) and (4), by the courts.

## TITLE VII INFRINGEMENT OF INDUSTRIAL PROPERTY

### Chapters I and II

**233 to 243.** [These Sections of the Code were repealed by the Decree of May 22, 1931. Sections 131 to 144 of the Law of May 16, 1902, concerning unfair competition and the falsification and passing off of industrial property remain in force.]

### Chapter III False Indications of Source, of Standing and of Industrial Reputation

**244.** An indication of source shall mean the designation of a geographic name, whether on the trademark or not, as the place of production, manufacture or extraction of the product.

**245.** All manufacturers or producers established in a locality shall have the right to use the latter's name as an indication of source on the products of their industry (see Sections 136 to 143, and Section 139 of the Law of 1902).

Notwithstanding the preceding paragraph, no person may use the name of a geographic locality on products coming from other localities.

**246.** An indication of the place of origin shall be clearly visible on the trademarks of all products imported from abroad and, when the name of the place is identical or similar to a locality on Spanish territory, the said trademarks shall show the country where the locality is situated.

**247.** The Spanish Customs shall seize upon entry any foreign products or merchandise whose trademark does not comply with the conditions laid down in Section 246 or which bear trademarks belonging to Spanish producers, whether completely new trademarks or an imitation or falsification of registered trademarks, without prejudice to the right of the owners of the trademarks to take any action recognized by the law. Products showing a false indication within the meaning of Section 248 shall also be seized.

**248.** A false indication of source shall exist when a geographic locality is indicated as the place of production, manufacture or extraction of a product which has been produced, manufactured or extracted in another locality.

**249.** It shall be an indispensable requirement for the existence of a false indication of source that the product specified on the trademark showing the indication and the indication itself be contradictory.

**250.** As a result of the provisions of the preceding Section, false indications of source shall not exist when the trademark shows the name of a geographic locality as the natural area of a product sold in another locality, provided that the place of residence and the name of the person specified are also shown on the trademark so that the consumer shall be aware of the duplication of localities, one being the natural area of the product and the other being the residence of the person selling it, and also provided that the product in question truly comes from the locality shown.

**251.** False indications of source shall not exist when a product is distinguished by the name of a geographic locality which, through constant commercial use, has acquired the status of a generic name and is not used to designate the origin of the product but its nature, composition or special form.

In case of doubt concerning names which, because of their generic character, are not comprised among the indications of source, the Ministry for Industry and Energy shall take a decision, following a report from the Registry of Industrial Property and any other reports it deems necessary. The exception to which the present Section refers shall not be applicable to wine products and mineral-medicinal waters.

**252.** Any products whose trademarks or distinctive features show a false indication of source shall be confiscated and shall not be utilized. The perpetrators of acts constituting a false indication of source shall be punished for having committed an offense of unfair competition and shall receive the punishment provided for such an offense in Section 239 of the present Decree-Law.

**253.** Indications of standing and industrial reputation shall mean an indication referring to the quality or special conditions of the product or products, to the esteem gained through the public's custom or to officially recognized merit.

False indications of this type shown on trademarks, for example, stating that the product has won awards at competitions or exhibitions, has been recommended or adopted by entities or high official bodies, shall be considered to be false indications of standing and shall be punished in the same way as false indications of source.

False indications of standing or industrial reputation shall also comprise the use of the coats of arms and emblems specified in subparagraphs (2), (3) and (7) of Section 124 without the relevant authorization. The use of the words "gold" ("*oro*"), "silver" ("*plata*") or "platinum" ("*platino*") for other metals or alloys shall be considered to be unfair competition.

## TITLE VIII TEMPORARY PROTECTION

**254.** Temporary protection shall be granted for any invention that is the object of a patent and for any trademark, design or cinematographic film of any nature whatsoever, shown at international exhibitions or official exhibitions held in Spain.

Such temporary protection shall not extend the periods laid down in Article 4 of the Paris Convention.

**255.** Temporary protection shall guarantee to interested parties a right of priority for one year from the date of admission of the object in the exhibition.

**256.** A person wishing to benefit from temporary protection shall submit an application to the admissions committee of the exhibition stating concretely the object to be protected, the date of admission by the exhibition committee, the name of the applicant and his residence and domicile.

For inventions, designs or cinematographic films, the application shall be accompanied by an explanatory note in quadruplicate of the object exhibited and the plans, designs and photographs necessary to its comprehension.

For trademarks, five copies of the design and statements of the products to which it applies shall accompany the application.

Each application shall only refer to one invention, trademark, design or film.

**257.** The admissions committee shall issue a receipt showing the time of filing, its object and the relevant number, which shall be different for each form. For these purposes, an official of the Registry of Industrial Property shall be assigned to the committee.

**258.** Within a maximum period of nine months from the date of opening of the exhibition, the exhibition secretariat shall transmit to the Registry of Industrial Property three copies of the descriptions, notes, explanations, designs and drawings submitted for temporary protection, accompanied by a summary of each application showing the date and time of submission, the object of the protection and the name and residence of the applicant. A fourth copy of the texts and designs, together with the original application forms, shall be filed at the exhibition and shall be at the disposal of the Registry of Industrial Property and, where necessary, shall be available for consultation by the legal or administrative authorities.

The provisions set out in the preceding paragraph shall be applicable to exhibitions held in Spain and to international exhibitions; when an applicant for a patent, trademark, design, etc., seeks the benefits of temporary protection, he shall submit a certificate showing clearly the same information as that required for national exhibitions and trade fairs.

**259.** The fact that a patent, trademark, design or film has been shown at an exhibition shall not imply recognition of a grant of protection by the Registry of Industrial Property. The grant of protection and the procedure relating thereto shall be subject to the provisions of the present Decree-Law.

**260.** Exhibitors who have sought temporary protection during a national exhibition or trade fair shall, within one year from the date of admission of the invention, trademark, design or film to the exhibition, make the relevant application to the Registry of Industrial Property, directly through the Ministry or the secretariat of the provincial Delegation for Industry, in conformity with the provisions for the various industrial property titles contained in the present Decree-Law. The application shall mention that temporary protection had been obtained and shall contain the information relating hereto as well as the registration number.

If protection originates from an international exhibition, the application shall be accompanied by the certificate required under Section 258.

**261.** The right of priority granted for temporary protection shall not affect the provisions thereon contained in international conventions, in conformity with the provisions of The Hague Conference of 1925.<sup>11</sup>

**262.** For the purposes of the priority mentioned, when a trademark is submitted for temporary protection, the delegation from the Registry of Industrial Property present at the exhibition or trade fair shall, within the requisite period, submit a drawing of the said trademark to the Registry through the Committee so that any similar petition submitted to it within the term of protection may be suspended.

**263.** If no application to register the trademark has been made to the Registry of Industrial Property within the period of one year mentioned in Section 260, there shall be no impediment to granting another similar trademark applied for at the Registry.

**264.** Protection under a temporary grant shall be invalid in the following cases:

(1) where the application mentioned in Section 260 has not been made in due form or the fact that temporary protection for national exhibitions or trade fairs has not been mentioned or, in the case of international exhibitions, the certificate of protection has not been annexed;

(2) where it is shown that the application refers to objects that are different from those specifically mentioned in the application for temporary protection;

(3) where the Registry of Industrial Property rejects the patent, trademark or design in the light of the legislation in force;

In the cases mentioned in subparagraphs (1) and (3), above, invalidation shall be declared by the Registry of Industrial Property and, in the case mentioned in subparagraph (2), by the courts.

Where appropriate, the declaration of invalidation for the reasons mentioned in subparagraph (2) shall be granted following a request by the interested party.

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<sup>11</sup> See footnote 1, above (*Editor's note*).

**265.** Documents concerning the granting of temporary protection transmitted to the Registry of Industrial Property shall be annexed to the application files drawn up in application of Section 258.

**266.** In addition to the above-mentioned provisions, temporary protection shall be decided upon in each case, taking into account specific circumstances of time and place.

## TITLE IX JURISDICTION AND PROCEDURAL REGULATIONS

**267.** The ordinary courts shall be competent to hear questions related to both civil and criminal actions under the present Decree-Law.

**268.** The territorial courts (*Audiencias Territoriales*) in whose jurisdiction the defendant has his domicile shall be competent to hear and judge actions for the invalidation of any of the titles of industrial property (patents, trademarks, trade names and others).

**269.** In other cases, the competence of the judge shall be determined in accordance with the provisions laid down in the legislation on civil and penal procedure.

In the case of penal actions, however, the judge competent for the action in the first instance, at the choice of the plaintiff, shall be the judge in the place where the offense was committed or where material proof of the offense was discovered.

**270.** In civil actions for the invalidation of a registration, the procedure shall be governed by the following provisions:

- (1) without an act of conciliation, the procedure shall be opened by a document stating the intention to contest the grant in question and requesting that the administrative file relating thereto be obtained from the Registry of Industrial Property. The document shall be submitted to the court of first instance in the city where the competent territorial court is established, in conformity with the provisions of Section 268;
- (2) the judge shall obtain the administrative file directly from the Head of the Registry of Industrial Property and shall inform the plaintiff immediately when it has been received so that the plaintiff may file his petition within a period of 20 days, which may be extended by a further 10 days;
- (3) an indication of the evidence of which the plaintiff wishes to avail himself shall be attached to the original petition and the number of copies of the petition and annexes thereto that are required to be filed shall correspond to the number of defendants;
- (4) the defendants shall be summoned by the receipt of the said copies to appear within 30 days. Annexed to his written reply, the defendant shall also indicate the evidence of which he wishes to avail himself;
- (5) the judge shall then open the period for the admission of evidence for a duration of 30 days. During the first five days of this period, the plaintiff may submit evidence concerning new facts alleged in the defendant's reply;
- (6) the judge shall intervene in the admission of evidence by posing any questions to the parties, or to experts or witnesses, that he deems pertinent where documentary evidence or partial testimony is invoked;
- (7) if the judge considers it necessary in order to better adjudicate, he may permit the admission of other evidence;
- (8) after the closing of the period for the admission of evidence, the judge shall transmit the file to the territorial court and shall summon the parties to appear before it within eight days;

(9) following receipt of the file and after having heard the parties, the civil chamber shall transmit the file, for inquiry, to the legal counsel of the Registry of Industrial Property in Madrid or to the public prosecutor representing the Registry in the capital of the province within the jurisdiction of the territorial court, so that within 40 days the legal counsel or public prosecutor may issue a written opinion in favor of or against the petition. Within the first 15 days of the said period, the public prosecutor concerned shall examine the case and, in the light of the allegations by the parties and the evidence received, shall present a proposal for an opinion, together with the reasons therefor, to the Registry of Industrial Property, which, through its legal counsel, shall propose to the directorate general of litigation the instructions to be transmitted to the public prosecutor if it is decided to modify the proposal. If the public prosecutor does not receive contrary instructions five days before expiration of the period during which the opinion has to be issued, the proposal shall be deemed to be approved and the opinion shall therefore be presented to the chamber by transmitting the file thereto;

(10) when the opinion of the legal counsel of the Registry of Industrial Property or of the public prosecutor, as the case may be, has been received, a magistrate-arbitrator shall be appointed and the date for the hearing fixed; the latter shall take place within the following 40 days, and the decision with regard thereto shall be notified to the parties and to the representatives of the Registry of Industrial Property;

(11) the chamber shall pronounce judgment within 10 days following the hearing and the losing party shall be required to pay costs;

(12) the judgment thus pronounced shall be subject to only one appeal, either for violation of the law or of procedure. When the judgment becomes final, the file shall be returned to the Registry of Industrial Property with a copy of the judgment rendered;

(13) procedure shall be governed by the Code of Civil Procedure in respect of anything not provided for in the above provisions.

**271.** In actions for invalidation, the parties shall be duly represented by lawyers and counsel legally entitled to exercise their professions.

**272.** In judgments for invalidation, legal stamped paper of class 11 shall be used. The legal counsel of the Registry shall use official paper.

In such judgments, the fees of the clerks of the courts, court officials and other assistant and junior officials of the justice administration shall be those laid down in the respective rates for summary proceedings.

**273.** Preventive seizure of the products may not be ordered nor may seals be placed on machinery or apparatus covered by a patent in force; therefore, *a priori* the defendant may not be deprived of the exercise of his industry where the competent courts have not pronounced final judgment on the invalidity of the defendant's patent or on the validity of the plaintiff's patent. However, the owner of the subsequent patent, whether the plaintiff or the defendant, may be obliged to deposit sufficient security, either in cash, bond or surety, to cover the expenses of the judgment and, where appropriate, to indemnify the owner of the original patent.

In addition, the aforementioned measures shall not be ordered if it is shown that the defendant owned, worked and utilized the object of the patent prior to its registration.

The court may nevertheless adopt any preventive measures it deems necessary so as not to be deprived of investigatory elements as well as those for the determination of responsibility.

The provisions of the present Section shall apply to all forms of industrial property.

**274.** Proceedings for the invalidation of a registration brought before the Madrid courts in accordance with the provisions of the Royal Decree-Law of July 26, 1929, shall continue to be subject to the jurisdiction of those courts until their conclusion, provided that written response to the application had already been submitted at the time of publication of the present Royal Decree-Law. If such is not the case, the Madrid courts shall withdraw in favor of the competent courts specified in the provisions of the present Decree-Law.

## TITLE X OFFICIAL AGENTS AND REPRESENTATIVES

**275.** The following persons may submit and process applications with the Registry of Industrial Property:

- (1) the interested parties themselves which, in the case of applications by legal entities, shall mean persons who, in accordance with the acts of incorporation or with the codes or legislation, represent the said bodies;
- (2) any Spanish citizen with the legal right to represent another person, who submits a power of attorney issued by a notary, with the restriction that each individual may not submit more than three applications each year, even when they are on behalf of the same person or body;
- (3) official industrial property agents.

**276.** Spanish citizens over 21 years of age and who meet one of the following requirements shall be entitled to be industrial property agents:

- (1) persons having a degree in law, engineering, architecture, science or some other similar university title;
- (2) persons who do not have one of the qualifications mentioned in the preceding paragraph, but who have worked for five years in the office of an agent without any unfavorable comments having been noted in their files;
- (3) persons who do not fulfill any of the above conditions but who, following an examination, have shown their aptitude for the exercise of this profession.

Persons wishing to take advantage of the provisions laid down in subparagraph (2) shall have been registered as an authorized assistant during this period of time in the registry of agents kept by the secretariat.

The examination referred to in subparagraph (3) shall be held before an appointed board and shall comprise material contained in a questionnaire to be published in the Bulletin three months in advance.

**277.** Persons who fulfill the requirements laid down in the preceding Section and who wish to exercise the profession of agent shall make an application to the Head of the Registry, who shall grant it if there is a vacancy. If there is no vacancy, the candidate shall be entered under the relevant number in the list of candidates.

**278.** Applicants shall submit the following documents to the Secretariat of the Registry:

- (1) a civil registry certificate showing nationality and age;
- (2) a notarial document certifying that the applicant possesses one of the required university titles or a certificate issued by the Secretary of the Registry certifying that the applicant has been registered and has regularly acted as an assistant during the previous five years or a document stating that the applicant has been declared apt to exercise the profession by the examining board;
- (3) proof of the deposit of a guarantee of ... pesetas in State bonds or in cash at the general deposit bank, to be at the disposal of the Head of the Registry of Industrial Property;
- (4) a receipt for the professional contribution paid in order to exercise the profession when the status of agent is based on a university title, and in the other cases a receipt corresponding to the second tariff, first or third class, items 6 and 7. The receipt for the contribution may be replaced by a duplicate of the tax declaration filed with the delegation of the Ministry of Finance. The copy and, where appropriate, the receipt shall be returned to the interested party when note has been taken thereof.

**279.** When the aforementioned documents have been examined by the legal counsel of the Registry and have been found to be in order, the candidate shall take an oath or make a promise, on his word of honor, before the Head of the Registry or its Secretary, to carry out his task loyally and faithfully, to maintain professional secrecy and not to represent opposing interests in the same affair. His name shall thereupon be entered in the register of agents and he shall be granted the title of official industrial property agent; until the issuance of the certificate, however, he shall not be permitted to act as an agent. The Secretary of the Registry of Industrial Property shall communicate this information to the secretary of the official association of agents.

**280.** Fees for registration in the register of agents shall be ... pesetas and the certificate shall be subject to a ... peseta revenue stamp.

**281.** The secretariat shall keep a register of agents where all those who exercise the profession shall be entered in order of seniority, as well as a personal file on each agent containing all relevant information shall be noted.

**282.** The number of official industrial property agents shall be limited and shall not exceed 60.<sup>12</sup> When circumstances so require, the Minister may increase or decrease this figure, but shall respect acquired rights.

**283.** Agents may retire temporarily from the profession, provided that they appoint another agent to replace them and that he accepts responsibility for the acts of the retired agent in the affairs pending.

No application may be made on behalf of an agent who has retired temporarily.

Temporary retirement shall be for up to one year, which may be extended by a further year, provided that the Head of the Registry does not consider that this would hinder functioning of the service.

At the expiration of the period of one year or the extension, where appropriate, retirement shall be final and steps shall be taken to fill the vacancy.

Agents who retire temporarily in order to act as deputies or associates for other agents in activity shall not be subject to a limited period of retirement and the situation may continue for the whole period during which they act as associates or deputies of the other agent.

**284.** Agents may employ assistants and deputies who, in their name and under their responsibility, carry out the various operations of the business. They shall be entered in a special register and shall pay the registration fees prescribed for each category in Section 340 of the present Decree-Law.

Each agent may employ a maximum of two assistants and four deputies.

Only those persons registered as assistants and who regularly act at the Registry may acquire the capacity to apply to exercise the profession of agent.

Employees of agents whose functions are limited to submitting files and documents to the Registry of Industrial Property and to provincial Delegations for Industry as well as to signing records of filing shall not have the status of assistants. For the purposes of those functions, it shall be sufficient to have, and to show whenever requested, a written authorization from the employer, endorsed annually with the Secretary's signature and the Registry's seal.

The agent shall pay endorsement fees of ... pesetas in cash.

Persons not yet 18 years of age may not carry out the functions of employees of an agent.

**285.** If the Head of the Registry has well-grounded reasons for opposing the registration of an assistant, the agent shall be so informed, following a report by the official association of agents. There shall be no appeal against refusal of registration.

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<sup>12</sup> Currently 120 (Decree of October 30, 1953, *Boletín Oficial del Estado* of November 14, 1953).

**286.** Agents residing outside Madrid may delegate their representation to a colleague, following written communication to the Secretariat of the Registry. In such cases, the substitute shall use the following signature “On behalf of my colleague, Mr. ...” (“*Por mi compañero D. ...*”)

The substitute and the person substituted shall be jointly responsible in cases in which the former acts, and the substitute may not use his delegated authority in applications to which he is already party, as an agent representing different interests.

Violation of the provisions of the preceding paragraph by the substitute shall be considered a serious misdemeanor, involving temporary suspension which may become permanent in cases of contumacy.

In such a case, the affair in question shall be suspended and the fact directly communicated to the applicant, who shall be granted a period of 15 days in which to appear himself or to appoint another agent to represent him.

**287.** When the total number of persons entitled to act as official industrial property agents is complete, a list of candidate agents shall be drawn up, comprising those who wish to fill the vacancies in order of receipt of their applications.

The list shall not include those who, at the time of applying for a vacancy, did not have the legal status to exercise the profession of agent.

Vacancies shall be filled among the candidates strictly in accordance with the order of seniority.

**288.** An agent registered with the Registry of Industrial Property shall lose his status if he loses his Spanish nationality, is sentenced to prohibition by the courts, does not belong to the official association of agents or is not up to date in paying his contribution.

**289.** Industrial property agents may not use in their correspondence and publicity names other than their own followed by the mention of their status as an official agent and the number under which they are registered.

Documents relating to the affairs that they are handling, as well as registration certificates, shall not bear any advertisements, headings, distinguishing marks or seals of any sort whatsoever (see Section 301).

**290.** Officials of the Registry of Industrial Property may not be registered as agents. Officials no longer employed by the Registry may not become agents until two years have elapsed following their cessation of service. This prohibition shall extend to officials belonging to the staff of the Ministry for Industry and Energy, as well as to the Ministry of Labor until two years have elapsed following the separation of the Registry of Industrial Property from the latter Ministry to become part of the Ministry for Industry and Energy.

**291.** Where the right to registration has been granted and the agent receives instructions from his client to withdraw or if he has not been supplied with the necessary funds, the agent shall notify this fact to the Registry in a signed statement within the period laid down for payment, without taking extensions into account. The Registry shall transmit directly to the applicant the declarations made by his agent.

Failure to make this declaration shall oblige the agent to make the payment, even if the applicant has not supplied the necessary funds. If his declarations are proven to be incorrect, he shall be liable to a fine of ... pesetas on the first occurrence and, in cases of recidivism, he shall lose his status as an agent.

**292.** Penalties that may be imposed on agents for faults committed in carrying out their tasks or for ignoring the orders of the Head of the Registry shall be: warnings, fines, temporary suspension and permanent loss of status to exercise the profession. Fines may not exceed ... pesetas and temporary suspension may not exceed six months.

It shall not be necessary to constitute a file for the purposes of a warning. All other cases shall be investigated by the legal counsel who shall propose the penalty to be imposed for the fault committed. In cases of that type, the official association of agents and the interested party shall be heard.

When the fine does not exceed ... pesetas, the penalty shall be imposed by the Director General for Industry, with possibility of appeal to the Minister. In the other cases, the latter shall take a decision on the file. Contentious appeals may be lodged against the ministerial decision.

**293.** If a fine imposed on an agent for his faults or for those of his assistants or employees has not been paid within 15 days, it shall be deducted from the guarantee deposit and if this sum is not reimbursed within the period fixed by the Registry of Industrial Property, permanent loss of status shall ensue.

**294.** In the case of the death of an agent, his family shall appoint another person to continue and terminate his pending affairs, provided that in his will the agent has not appointed his executor. In the absence of any such appointments, the association shall appoint one of its members to carry out this task.

Fees due for those affairs, even if they have been paid after the agent's death, shall belong to the heirs of the deceased agent, provided that they are his descendants, parents or surviving spouse.

The widow and children of the deceased agent may, as his heirs, continue to act in winding up the agency in the same manner as the original agent, unless a clause in the will provides otherwise.

For this purpose, the widow and children shall appoint an acting official agent, who in his name and under his sole responsibility may carry out the technical tasks and advise on the affairs, while the family shall deal with the economic and administrative aspects until such time as one of them fulfills the conditions required to exercise the profession, in accordance with the provisions of subparagraph (3) of Section 276 of the present Code.

The period for proving the ability mentioned in the preceding paragraph shall be four years from the date of the death of the original agent. At the expiration of that period, if no such application has been made, the right granted in this Section shall be invalid.

Agents appointed under the provisions of the present Code may only effect transfers or carry out acts of cessation related to the agency through an acting official agent; their nomination may not prevent the appointment of the next candidate on the list to occupy the vacancy caused by the death of the original agent.

**295.** Officials of the Registry of Industrial Property may not deal with affairs or provide applicants or their agents with private information, nor may they be dependents or employees of applicants or their agents. Whoever violates that prohibition shall be liable to the relevant punishment to be imposed by the Head of the Registry or, where appropriate, shall be the subject of a file to be transmitted to the Minister, who may decide upon permanent dismissal.

**296.** Only natural persons may be registered as official agents. However, there shall be a special register of enterprises dealing with industrial property matters and fulfilling the following requirements:

- (1) they are not public companies;
- (2) an acting registered official agent is one of the members;
- (3) no official of the Registry or any person who is excluded from exercising the profession of agent is included among the members.

**297.** Registration of enterprises in the Registry shall be optional; however, only registered enterprises shall have the following rights:

- (1) if the registered agent included among the members ceases to exercise his profession because of death or any other cause, he may automatically be replaced by another partner indicated in the statutes, his activities being guaranteed by the guarantee deposit of his predecessor, provided that the replacement possesses the capacity to exercise his profession;
- (2) the enterprise may declare that it deals with industrial property matters.

**298.** The registration application shall be accompanied by a notarized copy of the statutes. Should the latter be amended, an attestation of the new document shall be submitted.

**299.** Where the guarantee deposited by a registered agent belonging to an aforementioned enterprise is not sufficient to cover the monetary responsibilities incurred, the enterprise shall make up the deficit.

**300.** Enterprises dealing with industrial property matters may not have a trade name that resembles the name of the official association of agents or that might be confused with the name of any official body. Enterprises already having such a trade name shall modify it before they may be registered.



**301.** Only agents and enterprises registered with the Registry of Industrial Property shall be entitled to declare themselves as industrial property agents.

In order to avoid confusion that might encourage imposters, publicity, newspapers, offices, headings on correspondence and invoices, etc., shall only mention the agent's name and the fact that he is an industrial property agent, while enterprises shall mention their name or trade name with the indication "Registered in the Registry of Industrial Property" (*"Matriculada en el Registro de la Propiedad Industrial"*).

The official association of industrial property agents and any official agent shall be entitled to take civil and penal action against persons declaring themselves to be industrial property agents when they do not have that status.

**302.** The official association of industrial property agents, created by the Royal Decree of May 6, 1927, shall be made up of all registered agents authorized to exercise the profession.

It shall be compulsory for agents to join the association.

Agents shall cease to belong to the association when they have permanently been removed from the Registry of Industrial Property.

**303.** The official association of agents shall be governed by regulations adopted by Royal Decree of the Ministry of Labor of March 15, 1927.

Amendments that the association desires to make to this Decree shall be submitted to the Ministry for Industry and Energy for approval.

**304.** In order to provide support for the association, the latter may approve, in a general assembly, the establishment of a seal that must be affixed to applications for the registration of any title of industrial property. The amount for affixing the seal may not exceed ... pesetas.

**305.** Any association that is formed or has already been constituted by official industrial property agents, whatever its objective, whether charitable, cultural, for international relations, etc., shall differentiate itself from the official association of agents by including the word "private" (*"privada"*) in its title.

**306.** The rates for agents' fees shall be submitted to the Ministry for the National Economy for approval, following a report by the Registry's legal and technical counsels and its Head.

Technical and legal work that is not included in the agent's normal duties, such as providing evaluations, advice, opinions, reports and other work carried out by the agent by virtue of his official academic titles, shall not be included in the said rates.

Agents shall draw up accounts duly distinguishing between expenses and fees, mentioning the relevant fee tariff number.

**307.** The list of official agents kept at the Registry of Industrial Property shall first show the agents currently registered in accordance with the Law of 1902 and the Regulations of 1903 and 1924, without the need to fulfill any new requirements or complete any formalities.

## TITLE XI ORGANIZATION OF THE REGISTRY OF INDUSTRIAL PROPERTY

### Chapter I Organization

[Repealed]

## Chapter II Bulletin, Archives and Publicity

**326.** The organ of the Registry of Industrial Property is the Bulletin of Industrial Property, created by the Royal Decree of August 2, 1886, in which all applications, decisions and notifications concerning the service shall be inserted.

Industrial property legislation and civil, penal and administrative jurisprudence of the Supreme Court concerning industrial property, as well as foreign jurisprudence deemed to be of importance or of general interest shall also be published therein.

**327.** Notifications made in the Bulletin shall be deemed to have an official character and failure to be aware of them or ignorance may not be invoked in any claims made. Notifications and publication in the Bulletin shall have legal authority before the courts.

**328.** The Head of the Registry of Industrial Property shall be the Director of the Bulletin and the Secretary of the Registry shall be its administrator.

**329.** Owners of patents and designs of all types shall transmit a copy of the object thereof with their application. Upon receipt, the relevant service shall group them and classify them in conformity with the official classification, so that the office of the Head of the Registry, together with the Secretary, may organize a museum of inventions or a trade fair, of a permanent nature, in the form deemed appropriate.

Owners of trademarks shall likewise transmit a copy of their trademarks in the exact form in which they appear on the market, so that they may appear in the trademark section of the said exhibition or trade fair, grouped according to the class under which they were granted.

Only objects corresponding to grants still in force and without arrears in payment of annual or quinquennial fees shall appear in the exhibition.

**330.** In accordance with the provisions of Article 12 of the Paris Convention of 1883, as last revised at The Hague in 1925,<sup>13</sup> the archives of designs for which the Registry of Industrial Property is responsible shall be organized in such a way that they permit communication to the public of patents, utility models, industrial designs, trademarks and, in general, information relating to the various titles governed by the present Decree-Law.

The files of all completed affairs, including their various steps, the designs and samples accompanying applications, as well as official publications concerning the service received by the Registry of Industrial Property and technological publications acquired by it shall be kept in the archives.

**331.** These general archives, together with the museum and library, shall be the responsibility of the Secretary of the Registry of Industrial Property, who shall issue all required certifications relating to archived documents and extracts from the registers. In no case may negative certifications be issued.

**332.** Certifications required by the courts shall be exempt from the payment of fees; however, those requested by a litigant shall be subject to payment.

**333.** Certifications issued by the Secretary of the Registry of Industrial Property shall be endorsed by the Head of the Registry and shall have legal authority before the courts.

So that they may have legal effect abroad, the signatures of the Head and the Secretary shall be registered with the legations and consulates of all countries that have accredited representatives in Madrid so that there may be direct consular legalization of industrial property documents.

In the event of delegation, the signatures of the heads of the trademark and patent services shall also be recognized for the aforementioned purpose.

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<sup>13</sup> See footnote 1, above (*Editor's note*).



**334.** Making copies of descriptions of patents, trademarks and designs, etc., shall be permitted. If the interested parties wish the Secretary of the Registry of Industrial Property to endorse the copies, he shall compare the original documents with the copies and shall endorse the latter with his signature and the Office's seal.

Such copies shall be liable to payment of endorsement fees of ... pesetas and shall bear a ... peseta revenue stamp.

Requests for endorsement shall be made in accordance with the following model: "Request: the specification or description heretofore and the plans or designs annexed thereto are exact copies of the original contained in the file of ... No. ..., submitted by ..., resident in ..., of ... Madrid, ..."

**335.** Certifications shall be liable to payment of fees amounting to ... pesetas for each sheet, in addition to a ... peseta revenue stamp per sheet.

**336.** Endorsed or certified copies shall be made on ordinary paper and shall be applied for on the corresponding stamped paper; the application shall be submitted to the recording department of the Registry of Industrial Property.

**337.** No endorsed or certified copy may be issued, even to the interested parties, until the application file has been transmitted to the archives or until the first annual or quinquennial fees have been paid.

Nevertheless, endorsed or certified copies may be issued to applicants wishing to exercise the right of priority within the Paris Union, provided that they submit proof that they have made a declaration of priority in a country of the Union within the period laid down in Article 4 of the Paris Convention.

Copies made by the Registry of Industrial Property shall, in addition to the fees mentioned above, be liable to payment of ... pesetas for every two sheets typewritten on one side.

**338.** Certifications of the copy of a patent specification or description shall be liable to payment of the fees prescribed above for certificates, in addition to the fees liable for copies.

**339.** The archives of the Registry of Industrial Property shall be public and shall remain open during working hours, so that, upon request, patent specifications, plans, samples, designs, trademark descriptions, etc., may be examined.

## TITLE XII FEES; CLASSIFICATION

### Chapter I Fees

**340.** *[Repealed]*

### Chapter II Classification

**341.** *[Repealed]*