

**Royal Decree 1270/1997, of July 24, 1997,  
Organizing the Spanish Patent and Trademark Office\***

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**Final Provisions**

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\* *Spanish title:* Real Decreto 1270/1997, de 24 de julio, por el que se regula la Oficina Española de Patentes y Marcas.

*Entry into force:* August 31, 1997.

*Source:* Communication from the Spanish authorities.

\*\* Added by the International Bureau of WIPO.

## **Nature and Legal Regime**

1.—(1) The Spanish Patent and Trademark Office is an autonomous body attached to the Ministry of Industry and Energy and reporting to it through the Under-Secretariat.

(2) The Spanish Patent and Trademark Office has its own legal personality and authority to work in pursuance of its objectives, and is governed by Law 17/1975, of May 2, 1975, Creating the Autonomous Body, the “Registry of Industrial Property” [*Ley 17/1975, de 2 de mayo, sobre creación del organismo autónomo Registro de la Propiedad Industrial*] and Law 21/1992, of July 16, 1992, on Industry [*Ley 21/1992, de 16 de julio, de Industria*], and also by the terms of the General Budgetary Law [*Ley General Presupuestaria*] (RCL 1998/1966 and 2287) and any other provisions applicable to autonomous bodies within the General State Administration.

## **Aims**

2. The Spanish Patent and Trademark Office shall be responsible for the conduct of the administrative activity entrusted to the State in the industrial property field as provided in currently applicable legislation and international treaties, and shall be the instrument of technological policy in that field.

## **Functions**

3. The following functions are entrusted to the Spanish Patent and Trademark Office for the accomplishment of its aims:

1. administrative action serving to effect the recognition and maintenance of protection by registration of the various manifestations of industrial property, namely inventions, topographies of semiconductor products, creations of form and distinctive signs, including the processing and settlement of files, register entries for the record and the preservation and publicity of documentation;
2. the efficient periodical dissemination of technological information that has been registered, without prejudice to such other types of special publication as may prove advisable;
3. implementation, within the limits of its authority, of international treaties in force in the industrial property field, and proposal where appropriate of adherence by Spain to those that are not yet in force for it, and general promotion of international relations in that field;
4. promotion of initiatives and conduct of activities to bring about greater awareness and more appropriate protection of industrial property, both in the national and in the international field, and maintenance of direct relations with whatever Spanish or foreign organizations and bodies concern themselves with such matters;
5. information on preliminary draft legislation and other provisions of general character that have to be enacted in the field of industrial property;

6. the making of pronouncements on matters concerning industrial property when required to do so by authorities, courts or official bodies;
7. any other function that applicable legislation currently entrusts to the Spanish Patent and Trademark Office, or such as may henceforth be expressly entrusted to it in its specific areas of competence.

## **Structure**

4.—(1) The basic general structure of the Spanish Patent and Trademark Office, as provided in Law 17/1975 of May 2, 1975, shall consist of the following bodies:

- (a) the Management Board;
- (b) the Director of the Office;
- (c) the Secretariat General;
- (d) the Patents and Technological Information Department;
- (e) the Distinctive Signs Department;
- (f) the Legal Coordination and International Relations Department.

(2) There shall be a delegate representing the General State Administration assigned to the management of the Office, whose rank shall be specified in the appropriate schedule of appointments.

## **Management Board**

5.—(1) The Management Board shall be the supreme governing body of the Office and shall have the broadest functions for directing and supervising the management thereof.

(2) The Management Board shall be composed of a President, who shall be the Under-Secretary of the Ministry of Industry and Energy, and of the following ordinary members:

- (a) the Director of the Spanish Patent and Trademark Office;
- (b) two representatives of the Ministry of Industry and Energy;
- (c) one representative from each of the following Ministries: Foreign Affairs, Education and Culture, Economy and Finance, and Justice;
- (d) one representative from each of the following bodies: Higher Board of Chambers of Commerce, Industry and Navigation, and Higher Board of Scientific Research;
- (e) the Head of the Legal Department of the Ministry of Industry and Energy;
- (f) the Secretary General of the Spanish Patent and Trademark Office, who shall provide the secretariat of the Board and take part in meetings with the right to speak and vote.

(3) The Ministry of Industry and Energy shall appoint those members of the Board who have representative character. Those serving as representatives of ministerial departments shall be appointed and removed on a proposal by the head of department concerned. Those serving as representatives of other organizations or bodies shall be appointed on a proposal by the organization or body concerned.

(4) The President of the Management Board shall appoint a Vice-President from among the ordinary members.

(5) The members of the Board who are serving as representatives of ministerial departments shall be in the Director General category or shall have responsibilities of comparable rank, and may delegate an Under-Director General from their department to attend meetings of the Board.

(6) The powers of the Management Board shall be

- (a) to set out the policy of the Office and lay down guidelines for its operation;
- (b) to approve the management activity of the Director of the Office;
- (c) to be informed of the operation of the Spanish Patent and Trademark Office by means of reports periodically submitted by the Director;
- (d) to approve the preliminary draft budget of income and expenditure, and the end-of-year accounts;
- (e) to approve the annual report on the Office's activities;
- (f) to negotiate and enter into agreements on matters that are brought to its notice on account of their nature and importance;
- (g) any that are specific to its status as supreme body of the Office.

(7) Persons who, without being members of the Board, have special qualifications may attend its meetings when invited to do so by the President.

(8) The Management Board shall meet in ordinary session once every year and also whenever convened by its President. The Board's deliberations and decision-making procedure shall conform to the provisions of Chapter II of Title II of Law 30/1992 of November 26, 1992, on the Legal Regime of Public Administrations and Common Administrative Procedure [*Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*].

## **Director**

6.—(1) The Director of the Spanish Patent and Trademark Office shall implement the policies and guidelines set out by the Management Board, and shall exercise supreme authority over the corresponding services.

(2) The Director of the Spanish Patent and Trademark Office shall be in the Director General category and shall be appointed and removed by Royal Decree on a proposal by the Ministry of Industry and Energy.

(3) The competence of the Director shall include

- (a) exercising administrative authority over all the services of the Office;
- (b) overseeing and controlling all departments under his responsibility and establishing the internal regime governing them;
- (c) settling matters within the competence of the Spanish Patent and Trademark Office and any appeals filed against decisions by bodies under its authority;
- (d) drawing up the preliminary draft budget of income and expenditure, and authorizing and ordering expenditure specific to the individual departments within the limits of the credit authorized, with the exception of that within the reserved jurisdiction of the Board of Ministers or the Minister of the Department, and also contracting obligations and ordering the corresponding payments;
- (e) signing, on behalf of the Office, contracts relating to matters specific to his competence;
- (f) exercising administrative, managerial and disciplinary authority over the staff under his authority, as provided in the laws in force;
- (g) ordering paid service assignments;
- (h) issuing service instructions and orders to ensure the smooth operation of the Office;
- (i) communicating direct on all service matters with such Spanish or foreign organizations and entities as concern themselves or have a connection with industrial property;
- (j) assuming the representation of the Spanish Patent and Trademark Office in national and international dealings in cases of non-attendance by the President of the Management Board, and exercising all the other powers, prerogatives and functions entrusted to him by the provisions in force.

## **Secretariat General**

7.—(1) The Secretariat General, which shall have the organic rank of Under-Directorate General, shall be the body of the Spanish Patent and Trademark Office responsible for the Office's general and administrative services.

(2) It shall be responsible for the following functions in particular:

- (a) drawing up the annual preliminary draft budget of income and expenditure of the Office;
- (b) directing and managing human resources and communicating with the Office's staff representation bodies;
- (c) ensuring the economic and financial management of the Office and engaging in administrative negotiations, and also presiding over the Office's negotiating bodies;

- (d) directing the development and implementation of the Office's computerization plans and the functions connected with the computer applications specified therein, and also technical assistance and support services in that area for the benefit of others within the Office;
- (e) managing archiving, information and deposit services and publications and overseeing the internal regime;
- (f) acting as the normal channel of communication with ministerial departments, organizations and bodies that entertain relations with the Spanish Patent and Trademark Office;
- (g) managing affairs relating to the College of Industrial Property Agents;
- (h) dealing with matters of general character that have not been assigned to other departments of the Office.

(3) The Head of the Secretariat General shall temporarily replace the Director of the Office in the event of the latter's absence, illness or unavailability.

## **Patents and Technological Information Department**

**8.**—(1) The Patents and Technological Information Department, which shall have the organic rank of Under-Directorate General, shall be responsible for the administrative action required for the recognition and maintenance of the protection by registration of patents, topographies of semiconductor products, utility models and industrial and artistic designs. It shall likewise be responsible for bringing the technological information contained in patent documents to the notice of concerned public and private undertakings, research bodies and any other entities with a view to promoting technological innovation.

- (2) It shall be responsible for the following functions, in particular,
  - (a) receiving, processing and studying, and proposing decisions on, those application files for the grant of patents, topographies of semiconductor products, utility models and industrial and artistic designs and invalidation and termination files that are within the area of competence of the Office, and also files relating to the licensing and transfer of rights and other events;
  - (b) ensuring the performance of all supporting administrative action that is necessary for the proper discharge of the assignments entrusted to it;
  - (c) issuing certificates and authorized copies of the documents contained in files in the archives that relate to specific subject matter within its competence;
  - (d) archiving settled files and ensuring their preservation;
  - (e) issuing reports and drawing up statistics on the operation, activities and output of the various services of the Department;
  - (f) organizing and keeping up to date a search file of the technology content of the patents of Spain and the main technology-generating countries;

- (g) providing interested circles with access to information by means of systematic and selective communication of the documentary files at its disposal;
- (h) analyzing and proposing in due time such action as may be expected to improve technological information services, in coordination with international recommendations;
- (i) whatever administrative and technical action is necessary for the efficient performance of the functions assigned to it.

### **Distinctive Signs Department**

**9.**—(1) The Distinctive Signs Department, which shall have the organic rank of Under-Directorate General, shall be responsible for administrative action directed towards the recognition and maintenance of the protection by registration of national and international marks, trade names and business signs.

(2) It shall be responsible for the following functions, in particular,

- (a) receiving, processing and studying, and proposing decisions on, those application files for the grant of all of the subject matter specifically entrusted to it and invalidation and termination files that are within the area of competence of the Office, and also files relating to the licensing and transfer of rights and other events;
- (b) ensuring the performance of all supporting administrative action that is necessary for the proper discharge of the assignments entrusted to the Department;
- (c) issuing certificates and authorized copies of documents contained in the appropriate files in the archives;
- (d) archiving settled files and ensuring their preservation;
- (e) issuing reports and drawing up statistics on the operation, activities and output of the various services;
- (f) whatever administrative action may be necessary for the efficient conduct of the activities entrusted to it.

### **Legal Coordination and International Relations Department**

**10.**—(1) The Legal Coordination and International Relations Department, which shall have the organic rank of Under-Directorate General, shall be responsible for giving legal support to the Director of the Office, and also for the conduct of international relations in the industrial property field, which it shall do in coordination with the Ministry of Foreign Affairs.

(2) It shall be responsible for the following functions, in particular,

- (a) studying and proposing such amendment of the industrial property legislation in force as may be necessary;

- (b) drawing up reports on preliminary draft legislation and other provisions of general character;
- (c) drawing up reports and rulings on matters relating to industrial property that are requested by authorities, courts and official bodies;
- (d) studying, classifying and compiling collections of legal provisions, case law and legal literature concerning industrial property, and keeping abreast of relevant comparative legislation;
- (e) ensuring the proper application, within the limits of the Office's competence, of international industrial property treaties in force, and making proposals as appropriate regarding Spain's adherence to those that are not yet in force for it;
- (f) promoting, in agreement with the Ministry of Foreign Affairs, relations and international cooperation in the field of industrial property, and maintaining contact with intergovernmental organizations and with such public or private national or international bodies as may be concerned with the subject;
- (g) representing the Director of the Office where necessary at international meetings to which the Spanish Patent and Trademark Office has been convened or in which it has to take part;
- (h) directing the analysis and handling and proposing the solution of appeals lodged against any decision of the Office, in accordance with applicable legal provisions, and also entertaining relations with the courts;
- (i) preparing international meetings and conferences on industrial property that are held in Spain;
- (j) drawing up the annual report on activities that has to be submitted to the Management Board for consideration.

## **Assets and Economic Resources**

**11.—**(1) The Spanish Patent and Trademark Office shall for the achievement of its aims have its own assets and also such property and rights as may be allocated to it by the General State Administration.

(2) The economic assets and resources of the Spanish Patent and Trademark Office shall be the following:

- (a) the credits allocated to it every year in the General Budgets of the State;
- (b) the property and rights constituting its own assets and any proceeds, income or dividends that may derive therefrom;
- (c) income deriving from the fees that it is responsible for charging, and also payments for services rendered and the proceeds from the sale of goods and rendering of services to the public;
- (d) income received from the World Intellectual Property Organization (WIPO), the European Patent Office (EPO) and the Office for Harmonization in the



Internal Market (OHIM) under the applicable Community law and signed international treaties, and also any other income that may be generated under international treaties or conventions that the Spanish Government may enter into;

- (e) subsidies, voluntary contributions or donations granted or accorded to it by national or international public or private bodies;
- (f) any other ordinary or extraordinary financial resources that may be allocated to it.

## **Deconcentration, Delegation and Allocation of Functions**

**12.**—(1) In accordance with the provisions of [Article 12\(2\)](#) of Law 30/1992, of November 26, 1992, and [Article 5](#) of Law 17/1975, of May 2, 1975, the following duties of the Director of the Office are deconcentrated and transferred to the Under-Director General of the Patents and Technological Information Department:

- (a) settlement of patent files;
- (b) settlement of files on topographies of semiconductor products;
- (c) settlement of utility model files;
- (d) settlement of files on industrial and artistic designs;
- (e) settlement of files on supplementary protection certificates for drugs;
- (f) settlement of files on supplementary protection certificates for phytosanitary products.

(2) Also in accordance with the said provisions, the following duties of the Director of the Office are deconcentrated and transferred to the Under-Director General of the Distinctive Signs Department:

- (a) settlement of files on national marks;
- (b) settlement of files on international marks;
- (c) settlement of files on trade names and business signs.

(3) Decisions issued by the Under-Directors of the Patents and Technological Information and Distinctive Signs Departments shall not exhaust administrative remedies, and appeals from them shall lie to the Director of the Spanish Patent and Trademark Office by the lodging of an ordinary appeal as provided in the Law on the Legal Regime of Public Administrations and Common Administrative Procedure.

(4) The Director of the Spanish Patent and Trademark Office may take over the hearing of whatever cases he considers fit and the settlement of which belongs, either ordinarily or by delegation, to the Under-Directors General and other bodies under the authority of the Office, as provided in [Article 14](#) of Law 30/1992, of November 26, 1992.

## **SOLE ADDITIONAL PROVISION**

### **Elimination of Bodies**

The following units having the organic rank of Under-Directorate General are hereby eliminated:

- (a) Technological Information Department;
- (b) Studies and International Relations Department;
- (c) Patents and Designs Department.

## **SOLE TRANSITIONAL PROVISION**

### **Units and Workplaces of Organic Rank Below Under-Directorate General**

Units and workplaces of organic rank below Under-Directorate General shall continue to exist and shall be remunerated from the same budgetary allocations until such time as the schedules of appointments corresponding to the organic structure introduced by this Royal Decree have been approved. The adaptation shall in no event bring about an increase in cost to the public.

The units and workplaces forming part of the bodies eliminated by this Royal Decree shall be provisionally allocated, by order of the Director of the Office and until such time as the new schedule of appointments comes into effect, to the bodies provided for in this Royal Decree, according to the responsibilities assigned to them.

## **SOLE REPEAL PROVISION**

### **Repeal of Provisions**

Any provisions of equal or lower rank that conflict with the provisions of this Royal Decree are repealed, especially the Organic Regulations of the Spanish Patent and Trademark Office approved by Royal Decree 2573/1977, of June 17, 1977 (RCL 1977/21/93 and ApNDL 11782), and amended by Royal Decree 305/1993, of February 26, 1993 (RCL 1993/714).

## **FINAL PROVISIONS**

### **Development Powers**

*First.* The Ministry of Industry and Energy is authorized to adopt such measures as may be necessary for the development and implementation of this Royal Decree.

### **Budgetary Modifications**

*Second.* The budgetary modifications necessary for the implementation of the provisions of this Royal Decree shall be made by the Ministry of Economy and Finance.

### **Entry into Force**

*Third.* This Royal Decree shall enter into force on the day following that of its publication in the Official Bulletin of the State [*Boletín Oficial del Estado*].

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