

GOVERNMENT AGREEMENT NUMBER 89-2002

Guatemala, March 18, 2002

The President of the Republic,

WHEREAS:

The Industrial Property Law, Decree Number 57-2000 of the Congress of the Republic, has the objective of protecting, stimulating and encouraging the intellectual creativity in the industry and commerce fields, specially related to the obtainment, maintenance and protection of distinctive signs, patents for invention and utility and industrial designs, as well as protecting trade secrets and prohibiting unfair competition;

WHEREAS:

To apply the precepts contained in the aforementioned Law, a legal instrument developing the procedures provided for the registration of the Industrial Property rights, and enabling the Intellectual Property Registry, as the administrative authority responsible in this matter, to fulfill all the functions and attributions assigned to such by this Law is required:

THEREFORE:

In the exercise of the functions conferred in section 183, subparagraph e) of the Political Constitution of the Republic, and based on Decree Number 57-2000 of the Congress of the Republic, Industrial Property Law.

AGREES:

To issue the following:

REGULATIONS TO THE INDUSTRIAL PROPERTY LAW

CHAPTER I

GENERAL PROVISIONS

SECTION 1. Object

The objective of these regulations is that of developing the regulatory provisions contained in the Industrial Property Law-Decree Number 57-2000 of the Congress of the Republic- and the functions of the Intellectual Property Registry as the administrative authority responsible for the registration of the industrial property rights.

SECTION 2. Definitions*

The definitions contained in section 4 of the Industrial Property Law and the ones that follow are applicable to these regulations:

Tariff:

The Government Agreement by which the tariffs to be applied by the Intellectual Property Registry in matters of Industrial Property are established.

Classification of Designs:

The International Classification for Industrial Designs, established by the Locarno Agreement on October 8, 1968, with its corresponding reviews and updates.

Patent Classification:

The International Patent Classification established by the Strasbourg Agreement on March 24, 1971.

Classification of Goods and Services:

The International Classification of Goods and Services for purposes of the Registration of Marks, established by the Nice Agreement on June 15, 1957.

Paris Convention:

The Paris Convention for the Protection of Industrial Property according to the text adopted in accordance with the Stockholm Act on July 14, 1967.

Law:

The Industrial Property Law, Decree Number 57-2000 of the Congress of the Republic.

Regulations:

The Regulations of the Industrial Property Law.

Registrar:

The officer responsible of the Intellectual Property Registry or the officer in charge.

New Product:

The pharmaceutical or agricultural chemical products are new when they contain a new chemical entity of which there is no public information available by any means, in any country in the world; the product does not have or enjoy any protection in the country where the first approval for its sale, use, commercialization or distribution was granted.

New chemical entity:

A new chemical entity will be any active principle, chemical compound or molecule that has not been presented before a competent authority in Guatemala, and at the same time it has not been previously described in any national or international recognized publication, as long as it is in accord with the Paris Convention of the Industrial Property, and with the national law related to patents.

* The last two paragraphs were added by Section 1 of the Government Agreement Number 3-2005 on 01-08-2005.

SECTION 3. Common Requirements for the First Application¹

Without prejudice to the special requirements established in the Law and in these Regulations for each case in particular the first application filed with the Registry must have:

- a) Complete names and surnames and the nationality of the applicant, and when concerning legal entities, the corporate name and place of incorporation;
- b) Complete names and surnames and, if applicable, the nationality of the legal representative;
- c) Address of service;
- d) Place and date of the application, and
- e) Signatures of the appearing parties and of the attorney, member of the bar, as well as his seal; if the appearing party doesn't know how to or cannot sign, another person or his lawyer must sign in his name.

When the application is filed by two or more persons, such will designate a common representative in which to unify their legal status. If there is no such designation, the appearing party that appears first in the application shall be considered as such.

¹ Amended by Section 1 of Government Agreement Number 15-2005 dated January 18, 2005, published in the Official Gazette on January 24, 2005, an effective as of February 2005.

To facilitate the communication with the Registry, the applicant may indicate in its application other data such as physical and email address, telephone and/or facsimile number.

SECTION 4. Requirements for Other Formalities

In the other formalities submitted with regard to the same matter, the following shall be indicated:

- a) the number of the file;
- b) the complete names and surnames of the applicant or his representative;
- c) the distinctive sign, invention or industrial design to which it refers; and
- d) the requirements considered in subparagraphs d) and e) of section 3 of these Regulations.

SECTION 5. Copies

All the applications and documents submitted shall include a copy for replacement purposes, and shall have as many copies as the appearing parties that must be notified. Patent applications are excluded, in which case that established by section 105 of the Law shall apply.

All the rulings or edicts that are issued shall have a copy for replacement purposes, which can be contained in a magnetic media.

SECTION 6. Use of Forms

The applications shall be filed in the forms provided by the Registry to the users.

SECTION 7. Notifications

The Registry without formalities by the party, shall notify of all resolutions in which the execution of an act is ordered, in which the delivery of a document is requested and of the final resolutions that are issued in any of the following ways:

- a) In the registered office of the Registry;
- b) In the address of service;
- c) Through a notary; or
- d) By certified mail at the expense of the interested party.

In any case the notifications presented in the place indicated by the applicant will be considered well rendered, as long as there is no change of address.

SECTION 8. REPEALED*

* Repealed by Judgment of the Constitutional Court dated September 10, 2003, published in the Official Gazette on November 25, 2003. The provision ceases to be effective as of March 25, 2003 when the temporary suspension was published.

SECTION 9. Bond²

The attorney-in-fact, to respond for the results of the matter in the event that the interested party does not approve of that done in his name, will constitute a bond for a one-year term and for the amount fixed by the Registry, in favor of the represented party, which may not be greater than five thousand Quetzals –official currency of Guatemala-- (Q.5,000.00).

In case the decision is made to provide and keep in force a bond that covers the possible responsibilities for the future actions of the attorney-in-fact, the interested party must request such, in writing, to the Registry. The corresponding ruling shall individualize the applicant and shall fix the amount to be guaranteed for the sum of one hundred and fifty thousand Quetzals (Q.150,000.00). The bond shall be issued in favor of the Registry for a one-year term starting as of the date of the resolution, which may be endorsed in favor of the affected party.

For that effect the Registry will keep a control record of attorneys-in-fact stating the name of the lawyer, his bar number, his address, the number of the authorization file and the date on which the guarantee expires.

SECTION 10. Priority

The legalized copy of the priority application referred to in sections 18 and 104 of the Law must certify that such application was filed before the office or competent authority according to the applicable law, and its filing date.

When the last day of the term established in the Law to invoke a priority right of an application is a non workday, the expiration of such term shall be considered extended to the first workday thereafter.

SECTION 11. Filing of Applications

When any type of application has been presented, the Registry shall write down the date and time of its reception, shall assign a number to the file, when applicable, and hand over a copy of such application, in which the mentioned data is recorded, to the interested party.

SECTION 12. Modification to Applications

² Amended by Section 2 of Government Agreement Number 15-2005 dated January 18, 2005, published in the Official Gazette on January 24, 2005, an effective as of February 2005.

When modifying the original application, the applicant may also divide or subdivide the application into two or more applications, as long as that does not imply an essential change or extension of such. Each divisional application will preserve the date of the initial application and the benefit of the right of priority, if any.

For the effect of creating the corresponding file for divisional applications on the subject of trademarks and other distinctive signs, when applicable, the applicant shall present the list of goods and services in groups as appropriate for each of them, and also will give to the Registry as many simple copies of the documents of the initial application as necessary. The Registrar, at the expense of the applicant, shall certify the copies that are necessary to create the file of each divisional application.

If before presenting the petition of division or subdivision a preliminary requirement has been notified, the division will not be approved while such error or omission has not been resolved. The same applies when, when referring to registration applications for trademark and other distinctive signs, notice is provided with regard to objections which according to the Registry impede the approval of the application. The publication of the application made before the division will become effective for each of the divisional applications.

SECTION 13. Proof of Payment of Fee

The payment of the fees established in the Tariff may be proven in the corresponding file, enclosing the original document issued in favor of the interested party, or with a photocopy of the same, legalized by a notary.

SECTION 14. Abandonment or Denial³

The application shall be considered abandoned and will be put away for filing when the interested party ceases to proceed or fails to comply with that requested by the Registry within the corresponding term or that established by section 12 of the Law; whenever the Registry has exhausted its corresponding activity and has notified. Before putting away the application, the cause of the abandonment must be recorded in the file.

SECTION 15. Appeal

An appeal for review may be lodged against the rulings putting an end to the procedure, according to that established in the Administrative Law. Those rulings suspending the procedure or those that are a mere formality shall be considered final rulings.

³ Amended by Section 3 of Government Agreement Number 15-2005 dated January 18, 2005, published in the Official Gazette on January 24, 2005, an effective as of February 1, 2005.

CHAPTER II

PROVISIONS REGARDING THE TRADEMARK REGISTRATION APPLICATION

SECTION 16. Requirements for the Application⁴

All trademark registration applications shall adjust to the requirements provided in sections 5 and 22 of the Law, and to the provisions of these Regulations, without prejudice to the capacity of the applicant to state any other information that he considers appropriate.

SECTION 17. Reproductions of the Trademark

When the registration of a denominative trademark with particular graphics, shape or color or of a figurative or mixed trademark is requested, the reproductions shall have the dimensions which are established for this effect by the Registry.

When concerning a three-dimensional trademark, the reproductions shall represent the same by means of a graphic reproduction or a two-dimensional photography. The reproduction may consist of one view or more than one different view.

SECTION 18. Translation of the Trademark

The Registry will require that a translation of a denominative trademark or an element of the same is provided, when it is written in a language other than Spanish, whenever the applicant has neglected to provide the translation or has neglected to indicate that the trademark has no meaning in Spanish.

SECTION 19. List of Goods and Services

The listing of goods and services for which the registration of the trademark has been requested will be done preferably using the names that appear in the alphabetic list of the Classification of Goods and Services. For this effect, the Registry will keep issues of the Classification at the disposal of the users so that they can consult them at no cost.

When one or more goods or services included in the enumeration of the application have been imprecisely and incomprehensibly designated or do not coincide with the type for which the application has been filed, the Registry will notify the applicant so he can make the necessary correction to the listing, according to that provided in section 25 of the Law.

SECTION 20. Reservation

⁴ Amended by Section 4 of Government Agreement Number 15-2005 dated January 18, 2005, published in the Official Gazette on January 24, 2005, an effective as of February 1, 2005.

The mere filing of the trademark registration application shall be understood as the intention of the applicant to register and protect the sign, exactly as it appears in the application, or as the case may be, in the reproduction that shall be attached to the same. When the trademark has one or more particular colors that are reserved, the application shall indicate the color or colors which are being reserved.

If the applicant does not want to reserve the graphic representations or particular colors, the trademark will be presented in normal writing with letters, figures and/or punctuation marks typed in capital or lower case letters.

SECTION 21. Multiple Priorities

When multiple or partial priorities are invoked in the application, the data relating to all of such shall be indicated and the corresponding documents shall be submitted.

For such effects, the following shall be understood:

a) Multiple priorities: Priorities invoked when the list of goods or services of the filed application combines the lists of goods or services of two or more priority applications;

b) Partial priority: Priority invoked when the list of goods or services of the filed application only partially includes the products or services included in the list of the priority application.

When the registration application invokes a priority to enforce the temporary protection in accordance with section 11 of the Paris Convention, it will be accompanied by documentary evidence issued by the organizing authority of the international exhibition, with a simple translation if necessary, certifying that the exhibition of the goods or services with the trademark and indicating the date on which such were exhibited for the first time in the exposition.

CHAPTER III

PROVISIONS REGARDING THE TRADEMARK REGISTRATION PROCEDURE

SECTION 22. REPEALED*

* Repealed by Section 8 of Government Agreement Number 15-2005, dated January 18, 2005, published in the Official Gazette on January 24, 2005, and effective as of February 1, 2005.

SECTION 23. Objections

Without prejudice to the requirements established in sections 5 and 27 of the Law and section 3 of these Regulations, the objection document shall contain:

- a) The trademark and number of the application file against which the objection is expressed;
- b) The arguments and proofs on which the objection is based;
- c) If the objection is based on a derivative right of a registered or previously applied for trademark, a reproduction of the same and the indication of the goods or services for which they were requested or registered, and the goods or services regarding which the objection is presented;
- d) If the objection is based on a derivative right of a well-known, non-registered trademark or in the process of being registered in the country, a reproduction of the same and proof evidencing its status as a well-known trademark.
- e) If the objection is based on a derivative right of a trade name or emblem, the description of the activities that constitute the commercial line of business or activity of the company or establishment that such identifies; and
- f) If the objection is based on a copyright or on an industrial design right, the graphic representation of the protected element, when applicable.

SECTION 24. Criteria to Determine Trademark Recognition

When determining if a trademark is a well-known trademark, any circumstance from which the trademark recognition can be inferred must be taken into account, particularly the information relating to:

- a) The scope and degree of its being known as a distinctive sign of the goods and services to which the sign was applied by the relevant sector of the public. Any of the following, among others, shall be considered relevant sectors to determine trademark recognition:
 - i. The real and/or potential consumers of the type of goods and services to which the mark is applied; or
 - ii. The persons participating in the distribution or commercial channels of the type of goods and services to which the mark is applied, or
 - iii. The business and commercial circles performing in lines of business referring to the type of establishment, activity, goods or services to which the mark is applied.
- b) The geographic strength and scope of dissemination, advertising or promotion of the mark;
- c) The period of existence of the mark and the duration, dimension and geographical scope of any use of the same; and

d) The production and marketing analysis of the goods and services which the trademark distinguishes.

SECTION 25. REPEALED*

* Repealed by Section 8 of Government Agreement Number 15-2005, dated January 18, 2005, published in the Official Gazette on January 24, 2005, and effective as of February 1, 2005.

SECTION 26. Edict of Transfer, Change of Name or License

The Registry shall not record the transfer, change of name or of license, until an issue of the applicable fragment in the Official Gazette in which the edict referred to in article 47 of the Law appears is presented.

SECTION 27. Franchises

Unless otherwise provided in the franchise contract, the provisions of section 45 of this Law shall be applicable to the license for use of the trademark contained in this contract.

For the effects of registration of the license for use of a trademark contained in a franchise contract, the submittal by the applicant of the portion of the contract referring to the license or a summary of such, containing at least the information requested in section 46 of the Law, shall suffice.

The procedure established in sections 47 of this Law and 26 of these Regulations shall be applicable for the registration of the license of use contained in the franchise contract.

CHAPTER IV

PROVISIONS REGARDING COLLECTIVE MARKS AND

CERTIFICATION MARKS

SECTION 28. Applicable Regime

In addition to the special provisions contained in this chapter, those provisions regarding trademarks contained in these regulations, when appropriate, are applicable to registration application of collective and certification marks.

SECTION 29. Titleholder of a Collective Mark*

Any association that according to the applicable law has legal status may apply for the registration of a collective mark.

* Amended by Section 1 of Government Agreement Number 242-2006, published in the Official Gazette on Monday, May 15, 2006.

SECTION 30. Regulations on the Use of the Collective Mark

The Regulations on the use of the collective mark must at least contain the following:

- a) The name or identification of the applicant entity, its place of residence and the address of its registered office;
- b) The object of the association;
- c) The administrative body that according to its standards is authorized to represent the entity;
- d) The conditions of membership;
- e) The requirements that the members shall satisfy to obtain the authorization for the use of the mark;
- f) The common characteristics that must be present in the goods and services referring to the geographical origin, the methods of manufacture, the materials used or any other matter;
- g) The rules and other conditions under which the collective mark may be used by the persons who are authorized to use it.
- h) The supervisory and verification mechanisms to control the use of the collective mark according to the rules and conditions referred to in the aforementioned subparagraph;
- i) The infringements and the corresponding sanctions for the use of the mark in a way other than that ordered in the regulation, including the temporary or permanent suspension or cancellation of the authorization for use of the mark;
- j) The procedures to apply the sanctions; and
- k) The means to contest the decisions related to the granting of authorizations or to its suspension or cancellation.

SECTION 31. Collective Mark Registration Application

In addition to the requirements established in sections 5 and 49 of the Law and 3 of these Regulations, the registration application for a collective mark must contain:

- a) The name of the applicant entity and the place of its incorporation;
- b) The trademark which registration is being applied for and a reproduction of the same when concerning denominative trademarks with a particular graphic, shape, or color, or figurative, mixed or three-dimensional trademarks with or without color;
- c) The list of the goods or services that distinguishes the trademark, indicating the corresponding class number; and
- d) The common characteristics that the goods and services referred to the geographical origin, the methods of manufacture, the materials used or any other matter must have.

SECTION 32. Regulations of Use of a Certification Mark

Without prejudice of other requirements requested by the competent administrative authority for the approval of the regulations for use of the certification marks, these shall contain at least the following:

- a) The name or identification of the applicant entity, its place of residence, and the address of its registered office;
- b) The object of the entity;
- c) The administrative body that according to its standards is authorized to represent the entity;
- d) The requirements that the companies satisfy to request the authorization of use of the certification mark, including the characteristics that shall be present in the goods and services for which the use of the mark is authorized.
- e) The rules and other conditions under which the collective mark may be used by the persons who are authorized to use it.
- f) The supervisory and verification mechanisms to control the use of the certification mark according to the rules and conditions referred to in the aforementioned subparagraph;
- g) The motives that will put an end to the authorization for the use of the mark.

SECTION 33. Certification Mark Registration Application

In addition to the requirements established in sections 5 of the Law and 3 of these Regulations, the registration application for a certification mark must contain:

- a) The name of the applicant entity and the place of its incorporation;

- b) The trademark which registration is being applied for and a reproduction of the same when concerning denominative trademarks with a particular graphic, shape, or color, or figurative mixed or three-dimensional trademarks with or without color;
- c) The detailed indication of the characteristics of the goods or services guaranteed by the mark;
- d) The indication of the quality regulations or standards that shall be used as parameters to evaluate the characteristics that are guaranteed in the goods and services to which the trademark may be incorporated; and
- e) The name of the entity or administrative authority that approves the regulations of use of the mark.

SECTION 34. Attached Documents

The following shall be submitted along with the registration application for a collective and certification mark:

- a) The authorizations requested in the cases considered in subparagraphs l) and m) of the first paragraph of section 20 and subparagraph d) and e) of section 21 of the Law, when applicable;
- b) The proof of payment of the established fee.
- c) Four reproductions of the trademark application, in case such is one of those mentioned in section 17 of these Regulations;
- d) Three issues of the regulations for use, of which at least one must be in paper. The rest of the issues of such regulations may be presented in an electronic version on a magnetic media duly identified and in a computer language or program compatible to the one used in the Registry system. One of the issues will correspond to the copy for effects of reposition as referred to in section 5 of these Regulations.

SECTION 35. Examination of the Application of a Collective or Certification Mark

When concerning registration applications for collective marks in which the sign or an element of the same refers to the geographical origin, methods of manufacture, materials used or to any other common characteristic, or of certification marks, the registration may not be objected because the sign is considered descriptive, as long as it does not cause confusion.

When the collective mark refers to a geographical indication the registration will be denied if this has become a generic name of the goods or services that the mark

intends to identify. Registration shall also be denied if the characteristics of the product are exclusively or essentially due to the geographical environment.

If in the regulations of use of the collective mark the common characteristics that the authorized users must share are described, the Registry will verify that the conditions of membership to the holding entity enable the admission to any person capable of satisfying these requirements.

SECTION 36. Updating the Information

The holder of a certification mark will inform the Registry of any change introduced and authorized in the regulations for use of a mark, as well as those changes relating to quality regulations or standards used as a parameter to evaluate the characteristics that are guaranteed in the goods or services to which the mark may be incorporated.

SECTION 37. Authorization of the Regulations for Use of Certification Marks

Together with the regulations, the applicant entity of a certification mark shall prove its technical capacity to verify the characteristics of the goods or services that are going to be certified, also including the standards serving as a basis to provide such qualification. The certification entities shall annually update the information regarding the standards.

CHAPTER V

PROVISIONS REGARDING TRADE NAMES AND

EMBLEMS

SECTION 38. Trade Name Registration Application

In addition to the requirements established in sections 5 of the Law and 3 of these Regulations, the registration application of a trade name must contain the following:

- a) The trade name as it is used, and one reproduction of the same when it includes figurative elements;
- b) A translation of the trade name, when it is written in a language other than Spanish;
- c) The address or location of the entity, company or commercial establishment that it identifies;
- d) The line of business or activity of the entity, company or commercial establishment that identifies;

e) Repealed by Judgment of the Constitutional Court dated September 10, 2003, published in the Official Gazette on November 25, 2003. The provision ceases to be effective as of March 25, 2003 when the temporary suspension was published.

f) The information regarding the registration of the entity, company or establishment in a public registry or other public office, if such is the case;

g) The date on which the public use of the sign began in the country;

h) The indication that the public use has not been interrupted, or else, the periods of interruption and its causes; and

i) Any other information that is considered convenient to provide in order to prove the effective public use of the trade name related to the stated line of business.

SECTION 39. Attached Documents

The following must be attached to the trade name registration application:

a) The notarial certificate containing the sworn statement by the applicant regarding the matters referred to in subparagraphs e), g), h) and i) of the aforementioned section;

b) The documents that prove that the entity, company or establishment was registered in a public registry or other public office;

c) The proof of payment of the established fee; and

d) Four reproductions of the trade name.

SECTION 40. Examination of the Application

The Registry will examine if the application complies with the requirements established in these Regulations and if the trade name is included in any of the cases of inadmissibility provided in section 72 of the Law.

SECTION 41. Resolution

If as a consequence of the examination referred to in the aforementioned section, the Registry notices the noncompliance of any of the preliminary requirements and/or that in its opinion the registration of the trade name is not legal, a resolution should be issued containing the following:

a) A detail of errors or omissions as to form found and the request to correct the same in a period of one month; and b) The duly justified reasons that support the

objection or objections for the registration of the sign, giving to the applicant a term of two months to state its case with regard to the objection(s).

SECTION 42. Edict

The edict that must be published regarding the trade name registration application shall contain the following information:

- a) The complete name and surnames of the applicant and the place of residence;
- b) The complete name and surnames of the representative of the applicant, as well as the capacity in which he acts, as the case may be;
- c) The filing date of the application;
- d) The corresponding file number;
- e) The trade name, as it was applied for;
- f) The address or location of the entity, company or commercial establishment that it identifies;
- g) The line of business or activity of the entity, company or commercial establishment that it identifies;
- h) The date and signature of the Registrar or of the officer of the Registry appointed by him for such effect be means of an internal agreement; and
- i) The seal of the Registry.

SECTION 43. Objections

Without prejudice to the requirements established in sections 5 and 27 of the Law, and 4 of these Regulations, the objection document shall include the following:

- a) The trade name and the file number of the application against which the objection has been filed;
- b) The arguments and proofs on which the objection is based;
- c) If the objection is based on a derivative right of a registered or previously applied for trademark, a reproduction of the same, and the indication of the goods or services for which such is requested or registered, and the goods and services with respect to which the objection has been filed;

d) If the objection is based on a derivative right of a unregistered well-known mark or that is in the process of being registered in the country, a reproduction of the same;

e) If the objection is based on a derivative right of a trade name or emblem:

i. the description of the activities that constitute the line of business or commercial activity of the objecting party:

ii. the date on which the public use of such began in the commerce;

iii. the address or location of the entity, company or commercial establishment of the objecting party; and

iv. Repealed by Judgment of the Constitutional Court dated September 10, 2003, published in the Official Gazette on November 25, 2003. The provision ceases to be effective as of March 25, 2003 when the temporary suspension was published.

j) If the objection is based on a copyright, the graphic representation of the protected element, when applicable.

SECTION 44. Resolution

Within the month following the expiration of the term to respond to the objection or of the test period, as may be the case, the Registry will decide on the objection(s) submitted along with the application, in a reasonable manner and assessing the submitted proof.

If the matter is resolved in favor of the application, the Registry will order that prior to paying the respective fee, the trade name be registered, without prejudice of the stronger right to third parties and that the corresponding certification or title is issued.

SECTION 45. Registration

The registration of a trade name must contain:

a) The name, place of residence and nationality of the holder and the place of incorporation, with regard to a legal entity;

b) Name of the representative of the holder, if such is the case;

c) The trade name and a reproduction of the same when it includes figurative elements;

d) The address or location of the entity, company or commercial establishment that it identifies;

- e) The line of business or commercial activity of the entity, company or commercial establishment that it identifies;
- f) The date on which the public use of the sign began in the country;
- g) The dates on which the edict was published in the Official Gazette;
- h) The explanation that the registration is performed without prejudice of a stronger right to third parties;
- i) The registration number, date and signature of the Registrar; and
- j) The seal of the Registry.

The title or certificate of the registration of the trade name issued in favor of the holder shall contain the data referred to in the aforementioned paragraph.

SECTION 46. Emblems

The special provisions of this chapter relating to trade names are also applicable to emblems.

CHAPTER VI

PROVISIONS REGARDING ADVERTISING SLOGANS OR SIGNS

SECTION 47. Applicable Regime

The provisions regarding trademarks contained in these regulations are applicable to the registration applications for advertising slogans or signs, as appropriate.

CHAPTER VII

PROVISIONS REGARDING

DESIGNATIONS OF ORIGIN

SECTION 48. Registration Application*

The registration application for a designation of origin may be filed by one or several persons, individual or legal entities, nationals or foreigners that are or that group producers, manufacturers or craftsmen as may be the case that carry out their activity with the designation requested in the corresponding region or locality.

In any case, the application shall comply with that established in sections 5 and 85 of the Law and 3 of the Regulations. In order to provide the information referred to

in subparagraphs b), d), e) and f) of section 85 of the Law, the applicant shall describe in detail the following:

- a) The activities and the place where the production establishments are located;
- b) The geographical area of production comprising the designation of origin, indicating the applicable altitudes and latitudes, regions, localities or places that it comprises, the particular characteristics of soils, rainfall, climate variations and other natural factors that affect a given product;
- c) The production, manufacture or extraction process, indicating the general and special characteristics of the same, detailing the elements that directly affect the qualities or characteristics of a given product, including the human and cultural factors, as may be the case;
- d) The given product, indicating the general characteristics and the special characteristics or qualities that are exclusively or essentially due to the geographical environment in which they are produced, derived from the influence of the factors which are mentioned in subparagraph a) of this section;
- e) The relation between the product, the natural factors and the human factors described according to subparagraphs a), b), and c) of this section; and
- f) A historical description of the planning period of the designation of origin in relation to the product that it protects and any other element that the public in general may have regarding the degree of knowledge of such designation.

* Amended by Section 2 of Government Agreement Number 242-2006, published in the Official Gazette on Monday, May 15, 2006.

SECTION 49. Documents that Shall Accompany the Registration Application

The registration application of a designation of origin shall be accompanied by all the appropriate documents to certify the information and data referred to in sections 85 of the Law and 48 of these Regulations, including:

- a) The map(s) that is necessary to identify the geographical area;
- b) The analysis or technical studies that support the information regarding the characteristics of the product, the natural and human factors and the relation of the product with these factors;
- c) The summary or synthesis of the application;
- d) The documents proving that the applicant has practiced and still practices a productive or handicraft activity, as may be the case, in the geographical area that

comprises the designation, at least for a period of two years prior to the application;
and

e) The proof of payment of the established fee.

SECTION 50. Summary of the Application

The summary or synthesis of the registration application for a designation of origin referred to in the third paragraph of section 86 of the Law and in the aforementioned section shall contain:

a) The complete name and surnames of the applicant or applicants, and if the applicant is a public or private law entity, its name and the name of its legal representative;

b) The designation of origin which registration is being requested;

c) The regions, localities or places that comprise the geographical area of production to which the designation of origin corresponds; and

d) The product that will identify the designation of origin and the description of the characteristics that shall be combined to qualify under such designation.

SECTION 51. Examination of the Application

The Registry will examine the application to check if such fulfills the requirements established in sections 5 and 85 of this Law and 3 of these Regulations.

If as a consequence of the examination referred to in the aforementioned section, the Registry notices the non fulfillment of any of the requirements as to form and/or that the information provided or the accompanied documentation do not satisfy the legal requirements or is insufficient for the examination of the application, it will request that the errors or omissions be corrected and/or that the additional information or documentation be submitted, establishing a term of two months for such effects.

SECTION 52. Publication of the Application

The edict which publication shall to be ordered by the Registry, besides the information contained in the summary shall indicate:

a) The filing date of the application;

b) The corresponding file number;

- c) The date of the edict;
- d) The signature of the Registrar or of the officer of the Registry appointed by him for such effect by means of an internal agreement; and
- e) The seal of the Registry.

SECTION 43. Observations on the Designation of Origin Registration

Within the two months following the publication of the edict, any person may make observations, objecting, explaining, or adding to the information provided by the applicant. The interested person shall accompany the documentation that supports such observations.

The applicant shall be granted a hearing, for a term of two months, with regard to the observations made.

SECTION 54. Resolution

Within the month following the expiration of the term provided to make the observations or the term granted to the applicant to state its opinion on such observations, when such have been made, the Registry will decide on the application in a reasonable manner referring to the observations that had been made.

If the application is considered appropriate, in addition to the requirements referred to in Section 87 of the Law, the ruling that orders the registration of the designation of origin will order that the corresponding rules of use and management of such designation of origin be prepared and submitted to the Registry e within the term established in the Law.

Within the month following the date of the final ruling, the resolution referred to in the aforementioned paragraph must be published one time in the Official Gazette, for which the Registry, at its own initiative, shall issue the corresponding certificate, all at the expense of the applicant, except if concerning any of the Ministries referred to in section 84 of this Law.

SECTION 55. Administrative Regulations of the Designation of Origin

The rules of use and management of the designation of origin referred to in section 87 of the Law shall at least contain the following:

- a) The information referred to in sections 85 and 87 of this Law and 48 of these Regulations, according to the ruling of the Registry that approves the registration of a given designation of origin;

- b) The incorporation of the administrative body of the designation of origin and the way in which its members may be substituted in case of temporary or permanent absence.
- c) The functions and actions of the Administrative Body.
- d) The way of modifying the administrative regulations and use of the designation of origin, prior to its filing before the Registry to request its approval.
- e) The requirements that the producers, manufacturers or craftsmen shall satisfy in order to obtain the authorization of use of the designation of origin and the procedure applicable to the applications;
- f) The rights and obligations of the persons authorized to use the designation of origin;
- g) The procedures and requirements that must be satisfied to obtain the renewal of term for the authorization to use the designation of origin;
- h) The supervisory and verification mechanisms that will be applied to assure the correct use of the designation of origin;
- i) The infringements and sanctions applicable in the event of the non fulfillment of the obligations that should be observed by the persons authorized to use the designation of origin; and
- j) The causes for the cancellation of the authorization of use granted to a person.

SECTION 56. Approval of the Regulations

Once the regulations regarding the administration and use of the designation of origin have been submitted, the Registry will examine if the same complies with the provisions of the Law and these Regulation. Should it consider it convenient, it may require the applicant to modify the proposed regulations.

In a term of no more than one month starting as of the date of submittal, or from the moment the requested modifications are made, the Registry will issue a resolution authorizing the rules of use and management and will order that the same be published for just one time in the Official Gazette at the expense of the applicant, except when concerning any of the Ministries referred to in section 84 of this Law. The rules of use and management will be in effect eight days after its publication.

SECTION 57. Modifications to the Rules

The administrative body has the power to request the Registry to approve the modifications to the rules of use and management of the designation of origin. In such case, the procedure established in the aforementioned section will apply.

SECTION 58. Administrative Body*

The administrative body of a designation of origin shall be incorporated by:

- a) A representative of the Ministry of Agriculture, Livestock and Food;
- b) A representative of the Ministry of Culture and Sports;
- c) A representative of the Registry; and
- d) The representatives appointed by the producers, manufacturers or craftsmen that had been authorized to use such designation of origin.

The term in which they will exercise their positions and the way of their designation will be specified in the rules of use and management.

When the administrative body of a designation of origin is incorporated for the first time, the term of the initial operation period shall not be for more than one year, and in substitution of the representatives of the producers, manufacturers or craftsmen that had been qualified to use it, such will be integrated by the representatives that are designated by the applicants of the registration of the designation of origin, or else, by the representatives designated by the producers, manufacturers or craftsmen of the product which corresponds the designation of origin and that have performed their activities in the place designated by such during the last two years.

* Amended by Section 3 of Government Agreement Number 242-2006, published in the Official Gazette on Monday, May 15, 2006.

SECTION 59. Authorization of Use

The persons interested in using a designation of origin shall request the corresponding authorization to the administrative body, according to the requirements and the procedure established in the rules of use and management.

The administrative body shall consequently keep a registration of the authorizations of use granted, and when appropriate, shall apply the provisions contained in these Regulations concerning the registration activity.

SECTION 60. Cancellation of Authorization

The authorization of use of a designation of origin may be cancelled in the following cases:

- a) Upon the expiration of the authorization term, if the renewal has not been requested on time;
- b) If the holder waives the authorization;
- c) If the designation of origin is used in a way other than as established in the rules of use and management, when that use threatens or discredits the designation of origin, including the loss of economic value of the same; and
- d) For the other reasons established by the rules of use and management.

When the Registry has knowledge of any cause of cancellation contained in the aforementioned subparagraphs c) and d), it may obtain other information or complementary documentation of the complaint and provided proof, and shall afford a hearing for a period of one month to the authorized person and to the administrative body to state their case regarding such matter.

When the hearing has been held or the fixed term has expired, the Registry shall decide if the cancellation of the authorization for use proceeds or not, and in its case, will notify the administrative body to make the corresponding entry.

CHAPTER VIII

PROVISIONS REGARDING PATENTS FOR INVENTIONS

SECTION 61. Formalities of a Patent Application

In addition to the requirements established in the Law and in section 3 of these Regulations, the patent application shall indicate, when appropriate, if the invention has been object of prior disclosure as a direct or indirect result of the acts referred to in paragraphs three and four of section 94 of this Law.

All the pages of the application and of the annexed documents referred to in section 105 of the Law that justify the patentability of the invention shall be numbered with Arabic numbers.

The units of weight and measurement shall be expressed according to the metric system; the temperatures shall be expressed in degrees Celsius, and the density in metric units.

The indications of heat, energy, light, sound and magnetism, the mathematical formulas and the electrical units shall be expressed in a way that they can be understood by a qualified person in the corresponding technical area. The chemical formulas shall be identified by symbols, atomic weights and molecular formulas of general use.

When concerning an invention referred to a product or a procedure related to a biological material, the documentation that proves the deposit of such material shall be submitted no later than three months following the filing of the application.

SECTION 61 bis. Title to Be Patented⁵

The title with which the applicant justifies the right to obtain the patent, which has to be attached to the application according to subparagraph f) of section 105 of the Law may be:

- a) The document evidencing the transfer of the right to be patented, referred to in the second paragraph of section 99 of the Law;
- b) The contract in the cases referred to in Section 100 of the Law; or
- c) The contract or agreement entered into by the employer and the employee, according to the last paragraph of section 101 of the Law.

SECTION 62. Reduction of Fees

To obtain the benefit of the reduction of fees established in section 169 of the Law, the appearing party needs only to expressly state this in his application, attaching the affidavit in which the sworn statement is recorded.

If the Registry subsequently establishes that the circumstances established in section 169 of the Law do not concur in the applicant, he will order the inventor to proceed to pay the difference that was not paid by virtue of the benefit, within the following five days, without prejudice of certifying that which is relevant to the criminal courts if the content of the statement contains misstatements.

SECTION 63. Unity of Invention⁶

When the application refers to a group of inventions related among them, it will be understood as a unity of invention when the independent claims are part of the same inventive concept, even though they are part of different categories. In any case unity of invention shall exist when the same application contains independent claims in the following combinations:

- a) Product and procedure for its preparation or manufacture;

⁵ Added by Section 5 of Government Agreement Number 15-2005, dated January 18, 2005, published in the Official Gazette on January 24, 2005, and effective as of February 1, 2005.

⁶ Amended for annulment of words in the original text, according to Judgment of the Constitutional Court dated September 10, 2003, published in the Official Gazette on November 25, 2003. The provision ceases to be effective as of March 25, 2003 when the temporary suspension was published.

- b) Product and use or application of such;
- c) Product, procedure for its preparation or manufacture and use or application of the product;
- d) Procedure for the preparation or manufacture of the product and use or application of the product;
- e) Procedure and device or means to implement the procedure; or
- f) Product, procedure for its preparation or manufacture and device or means to implement the procedure.

SECTION 64. Drawings

The drawings are considered necessary to understand the utility designs and the industrial designs. The drawings must meet the following requirements:

- a) They shall be made with clear and uniform black lines;
- b) A same page may have two or more figures, but they shall be clearly separated and preferably be placed in a vertical position.
- c) Every element of each figure of the drawing must be identified by a reference sign, preferably with Arabic numbers;
- d) The same reference signs shall be used for the same elements or figures when they appear more than once and when they are mentioned in the description or the claims;
- e) They should not exceed the size of a sheet of letter paper.

SECTION 65. Authority of the Registry to Require the Submittal of Drawings

If the application is not accompanied by the drawings, and according to the Registry these are necessary for a better understanding of the invention, the applicant may be requested to submit them within a term of two months starting as of the date of the corresponding notification.

The drawings may not extend the content or scope of the application.

SECTION 66. Photographs

The Registry may require the submittal of photographs as a complement to the drawings, if such drawings are unable to clearly show the characteristics of the invention or they are not suitable to fulfill such objective. In such case, the number

of photographs submitted shall equal the number of accompanying copies of the application.

The photographs may not extend the content or scope of the application.

SECTION 67. Independent and Dependent Claims

A claim shall be considered independent when it defines the protected subject matter without referring to another claim. A claim shall be considered dependent when it comprises or refers to another claim. When the dependent claim refers to two or more claims, it will be considered a multiple dependent claim.

Every dependent claim shall indicate in its preamble the number of the claim upon which it is based.

The dependent claims shall be recorded following to the claims upon which they are based.

SECTION 68. Depository Institutions for Biological Material

The Registry will keep an updated list of the recognized national or international institutions for the deposit of samples of biological material, for the effects of that established in the second paragraph of section 109 of this Law.

The recognition of the depository institutions shall be made by the Registry in accordance to the special provisions issued for such effect, based on the criteria and rules contained in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 1977 and its Regulations.

SECTION 69. Consultation of the File

The consultation of a patent application file for information purposes referred to in the last paragraph of section 114 of the Law, shall be performed exclusively at the offices of the Registry and in the presence of an officer or employer of the Registry.

Draft decisions and any other preliminary documents prepared by the examiners or by other officers or personnel of the Registry shall not be considered part of the file accessible to the public for consultation.

SECTION 70. Substantive Examination

The substantive examination shall preferably be performed by the examiners of the Registry in accordance with that set forth in section 117 of this Law. In special circumstances, the Registry may order that such examination be performed by independent technicians, or by public or private, national or foreigner entities. For such effect, the Registry shall establish in its ruling the minimum requirements for the independent examiners or that the mentioned entities shall fulfill, the

corresponding remuneration and the procedure to choose the candidates, unless cooperation agreements or treaties have been previously coordinated with such entities according to subparagraph g) of section 90 of these Regulations, in which case the same will be observed.

For the effects of that provided in the fourth paragraph of section 117 of the Law, it shall be understood that the facts mentioned in subparagraph a) and b) will be considered to establish the novelty of the invention, and the facts mentioned in subparagraph a), b), c) and d) to establish the inventive step of the invention.

When performing the substantive examination, as long as such has been submitted within the term set out in Section 116 of the Law, the Registry must take the following into consideration:

- a) The observations made by third parties;
- b) The information and documentation submitted by the applicant regarding these observations;

SECTION 71. Exhibition of the Invention

The Registry may require the applicant to temporarily exhibit or furnish a model of the invention which protection is being applied for, whether in its normal size or made to scale, and depending on the case and its nature, when it considers necessary in order to perform the substantive examination, and when the description and the drawings do not suffice in order to understand the invention.

SECTION 72. Granting of Patent

If the patentability of the invention is determined based on the result of the substantive examination, the Registry will proceed to register such, after the payment of the corresponding fee has been made. If the applicant fails to pay within the term established by section 12 of this Law, the application shall be regarded as abandoned.

If the patentability of the invention had been partially determined, the registration will not proceed until the applicant submits all the claims according to that approved by the Registry.

SECTION 73. Patent Certificate

The patent certificate, besides the registration data, shall indicate the term and expiration date of the patent.

To issue the patent certificate, the applicant shall submit the description, approved claims, drawings, and summary of the invention, in accordance to the terms in which the patentability was determined by the Registry, which shall be attached to

the certificate, signed and sealed by the Registrar. The Registry will not issue the certificate until the updated documents are submitted by the applicant.

SECTION 74. Annual Fees

The first annual fee for maintaining a patent in force shall be paid before beginning the third year, starting as of the filing date of the application, as long as the patent certificate has been issued. Otherwise, the annual fees produced as of the date of issuance of the certificate must be paid within the two months following that date, without prejudice of the grace period right referred to in the third paragraph of section 170 of this Law.

The applicant may pay the amount of the annual fees established in the Tariff in advance.

SECTION 75. Title That Justifies the Transfer, Change of Name or License

The title that must be submitted to the Registry and by virtue of which the transfer or change of name relating a patent application or a patent already granted shall be recorded, or else, a license for use contract for such patent, may consist of a legalized copy of the original document or a summary of the same signed by both parties.

SECTION 76. Division of the Application

In any case involving the division of a patent application, in addition to that established in section 121 of the Law, the Registry shall satisfy the following requirements:

- a) The Registry shall certify, at the expense of the applicant, the copies of the original file that are necessary to create the file of each of the divisional applications;
- b) Every divisional application shall mention the number of the original application and the filing date of such;
- c) Once the division has been made, each of the divisional applications shall be processed separately as if they had been presented independently from the beginning; and
- d) The publication of the edict referred to in section 114 of the Law will take effect for every divisional application.

SECTION 77. Modification and Correction of Applications

In any case involving the division or correction of the application, according to that established by sections 121 and 123 of the Law, the applicant has the obligation of re-submitting the documents referred to in section 105 and others that have been

requested by the Registry as per that set forth in section 118 of the same Law and of these Regulations.

SECTION 78. Compulsory Licenses

When an authority or an interested person requests the granting of a compulsory license in the cases provided in sections 134 of the Law, the Registry shall grant a hearing to the patent holder for a period of one month.

If the Registry considers it necessary to receive the means of proof offered by the parties, or those that it considers necessary to obtain at its own initiative, the admittance of the proof shall be ordered for a term of two calendar months.

Upon the expiration of the above mentioned term, the Registry shall resolve in a reasonable manner and, when the petition has been consented to, it shall pronounce itself in relation to the terms and conditions referred to in sections 135 and 136 of this Law. The motion for reversal established in the Administrative Law is the only motion applicable against this resolution.

SECTION 79. Cancellation, Modification, or Refusal of Compulsory Licenses

The Registry shall grant a hearing to the holder of the license for a term of one month when the request for cancellation, modification or refusal of a compulsory license has been received. If the Registry considers it necessary to receive means of proof offered by the parties in this procedure, or those that it considers necessary to obtain such at its own initiative, the admittance of the proof shall be ordered for a term of two calendar months.

Within the month following the expiration of the terms established in the aforementioned paragraph, the Registry shall rule on the application in a reasonable manner, making the corresponding statements according to that set forth in sections 136, 137, and 138 of the Law. The motion for reversal established in the Administrative Law is the only motion applicable against this ruling.

CHAPTER IX

PROVISIONS REGARDING UTILITY MODELS

SECTION 80. Utility Models

The provisions contained in these Regulations relating to patents for an invention shall be applicable, as appropriate, to the utility models.

CHAPTER X

PROVISIONS RELATING TO INDUSTRIAL DESIGNS

SECTION 81. Industrial Designs

The regulations contained in the Regulations relating to patents for an invention shall be applicable to industrial designs, as appropriate, except for the special provisions of this chapter.

SECTION 82. Description of the Design

The graphic reproduction or photographs of an industrial design that are accompanied to a registration application for such, in accordance with that stipulated in section 156 of the Law, may be complemented by a descriptive narration of the form of the design, with the objective of facilitating the substantive examination performed by the Registry.

SECTION 83. Modification and Correction of the Design Application

No modification or correction of an industrial design registration application shall involve an alteration of the reproductions of an industrial design contained in the original application.

SECTION 84. Registration of the Industrial Design

The registration certificate of an industrial design, in addition to the registration data shall state the term and the expiration date, the indication that the registration is granted without prejudice of the stronger right of third parties and shall be signed by the Registrar.

In order to issue the certificate, the applicant shall submit the description and the drawings of the design, according to the terms in which the registration has been granted, which will be attached to the certificate, signed and sealed by the Registrar. The Registry will not issue the certificate until the updated documents are submitted by the applicant.

CHAPTER XI

REGARDING UNDISCLOSED INFORMATION

SECTION 85. Repealed by Judgment of the Constitutional Court dated September 10, 2003, published in the Official Gazette on November 25, 2003. The provision ceases to be effective as of March 25, 2003 when the temporary suspension was published.

SECTION 86. Disclosure Obligation

Information that must be disclosed according to legal provisions shall not be considered a trade secret.

The following shall not be considered to be of public domain or disclosed according to legal provisions:

- a) That information which submittal is required by a judicial authority; and
- b) The test data or other information that must be presented before the competent authority, by reason or as part of the administrative procedure that must be followed to obtain the authorization for the commercialization and sale of a pharmaceutical or agrochemical product.

SECTION 87. Protection of Test Data and Other Information

To enjoy the protection of the test data or other information that is provided to obtain the marketing approval of a pharmaceutical or agrochemical product:

- a) The applicant shall expressly indicate that he provides the information under confidentiality;
- b) The product whose approval is being requested has to contain a new chemical component or active ingredient; and
- c) The information provided should not have been previously disclosed in any part of the world.

Likewise, the applicant shall accompany the sworn statement expressing the concurrence of the conditions established in the aforementioned subparagraphs, and also declaring that he is the legitimate owner of the data since he has produced such, or else, that he has legitimately obtained such from a third party.

The protection that corresponds by virtue of that established in section 177 of the Law does not extend to other documents or administrative acts contained in the corresponding file, which are of a public nature by virtue of that established in section 30 of the Political Constitution of the Republic.

SECTION 87 bis.⁷

In order to guarantee the protection of the test data or other information referred to in the aforementioned section, the following shall be taken into account:

- a) The competent authority shall verify that the approval applications for the sale, use, commercialization or distribution of pharmaceutical and agricultural chemical products satisfy the following requirements: that the product is new in Guatemala; that it has not been disseminated in any recognized national or international publication; and that the information or test data is internationally protected.
- b) The competent authority may approve the sale, use, commercialization or distribution of pharmaceutical and agricultural chemical products, as long as it determines that it is new in Guatemala, and that such no longer enjoy protection in

⁷ Added by Section 2 of Government Agreement 3-2005.

the country where the approval for the sale, use, commercialization or distribution of a pharmaceutical or agricultural chemical product was granted for the first time.

c) The competent authority may approve the sale, use, commercialization or distribution of pharmaceutical or agricultural chemical products by the owner of the test data or undisclosed information for the remaining period during which it is protected in the country where he obtained the first approval for sale, use, commercialization or distribution.

d) The test data shall be protected for a period of 5 years for pharmaceutical products, and of 10 years for agricultural chemical products when the information has not been disseminated in any media in any country; is new in Guatemala, and prior authorization for sale, use, commercialization or distribution has not been obtained in any country worldwide.

e) The competent authority may grant the approval for the sale, use, commercialization or distribution of a pharmaceutical or agricultural chemical product, when the corresponding authority has previously determined that the owner of the test data or undisclosed information incurs in anticompetitive practices that enables, among others, the abuse of their dominant position in the market or promotes monopoly practices.

SECTION 88. Scope of the Right

The right referred to in the second paragraph of section 177 of the Law, will not prevent a third party from requesting the marketing approval of an equal or similar product containing the same chemical component or active ingredient, even though it is based on the same test data, if the new applicant proves that he obtained that information in a legitimate way or that he had access to the same because it was disseminated in any other part of the world. In any case, the new applicant shall accompany his application with a sworn statement regarding such matters.

SECTION 89. Responsibility

Every government employee or public servant that because of its employment or position had access to the test data or other information referred to in section 177 of the Law, shall abstain from disclosing such without a justified cause, or shall otherwise be subject to the corresponding civil or criminal responsibilities.

CHAPTER XII

REGARDING THE STRUCTURE AND OPERATION OF THE REGISTRY, IN INDUSTRIAL MATTERS

SECTION 90. Intellectual Property Registry

The Registry is the administrative agency of the Ministry of Economy responsible for the inscription and registration of the intellectual property rights. With respect to Industrial Property, such Registry shall be in charge of the following:

- a) The structure and administration of the Industrial Property right records, particularly regarding the procedures for the obtainment and maintenance of the rights related to the distinctive signs, inventions, utility models and industrial designs;
- b) The planning and development of dissemination, training and educational programs regarding Industrial Property rights, directly or in cooperation with national or international entities;
- c) The coordination of policies, strategies and actions with public or private institutions, whether national or foreign, regional or international, that involve or have an interest in the development and protection of the Industrial Property rights, the transfer of technology, as well as with the study and promotion of the technological development and innovation.
- d) To provide information to the public and users regarding the Industrial Property, as well as that information and technical cooperation that is requested by the competent authorities;
- e) To provide technical and legal consultation to the national inventors, lawyers, users and public in general regarding the filing of applications and the fulfillment of the requirements and procedures established in the Law and in these Regulations;
- f) To promote the intellectual creativity in inventions of industrial application, supporting its development and promoting the transfer of technology through the dissemination of documentary resources about the inventions published in the country or abroad, the advice regarding its consultation and use and, when the necessary resources are available, by organizing national, regional or international expositions and competitions, giving awards and acknowledgements that encourage the inventive activity;
- g) To celebrate cooperation or coordination agreements with public or private institutions, whether national, regional or international, to comply with its objectives, mainly to exchange administrative experiences and work methodologies, training of its personnel, organization of its databases, share publications and update documentary resources concerning Industrial Property;
- h) To perform studies on the national or international situation of the Industrial Property and participate in meetings or international forums related with this matter, as ordered by the authorities of the Ministry of Economy;

- i) To act as a consultation organization in matters of Industrial Property for the different agencies and entities of public administration.
- j) To participate, in coordination with the competent agencies of the Ministry of Economy, in the commercial negotiations about the matter;
- K) To prepare the annual report every year, including statistical data about the registration activities for that period;
- l) To inform the Attorney General about the infringements of Industrial Property rights in which the interests of the State are affected, so the appropriate actions are practiced;
- m) To report the offenses against the Industrial Property rights that such has knowledge of; and
- n) To comply with all the other functions, attributions, and activities that are assigned in accordance with the Law and these Regulations.

SECTION 91. Structure of the Registry

The Registrar will be in charge of the Registry, he will be assisted for the fulfillment of his important functions by one or more Assistant Registrars. In order to fulfill its functions the Registry is structured with the following departments:

- a) The Trademark and other Distinctive Signs Department;
- b) The Patent and Industrial Design Department;
- c) The Copyright and Neighboring Rights Department; and
- d) The Administrative Department.

The Departments may have the technical support of the consultations that are deemed necessary to fulfill their obligations.

The Administrative Department shall ensure the efficient and effective performance of the Registry, and shall be in charge of supervising the financial administration, human resources and computer and system resources.

The Registry shall also have a Secretary General that may be in charge of the Administrative Department.

SECTION 92. Functions of the Registrar

The Registrar will have the following functions:

- a) To issue the resolutions corresponding to the matters submitted for his/her knowledge, and to require the interested parties to submit the additional documents that he deems necessary to resolve such matter;
- b) To authorize, with his signature and seal of the Registry, the corresponding registrations and entries;
- c) To issue the certificates or titles certifying the ownership of the registered rights, as well as the replacements of such in case they are lost or destroyed;
- d) To issue reports or opinions about matters of his jurisdiction when these are required by the competent superior or legal administrative authorities;
- e) To organize and manage the work and activities that corresponds to the Registry;
- f) To formulate the budget plan of the institution and execute the same;
- g) To authorize the publications carried out by the Registry on the topic of intellectual property.
- h) To issue internal agreements, circulars, manuals and criteria guides related with their activities;
- ii) To provide the corresponding disciplinary measures in relation to the administrative officers and employees; and
- j) Any others that are necessary or convenient for a good and effective management.

SECTION 93. Authority of the Assistant Registrars and Those Responsible for the Departments

The directors of the department will issue the resolutions of formal requirement in the matters subjected to their knowledge and if they hold the position of Assistant Registrars, they will authorize the corresponding registrations and entries with their signature.

CHAPTER XIII

REGISTRATION ACTIVITY

SECTION 94. Numbering the Files

The files that are created in the Registry will be numbered in separate annual series that will begin with the first application filed each year. The number of each file will consist of the four digits of the year on which the application is filed,

followed by the correlative number that corresponds to the same considering the filing date and time.

SECTION 95. Control of Documents and Registrations

The Registry, through adequate means, shall keep a record of the following documents and registrations:

- a) The filing of applications;
- b) The registration of trademarks;
- c) The registration of Names and Emblems;
- d) The registration of advertising slogans or signs;
- e) The registration of Designations of Origin;
- f) The registration of Patents for Invention;
- g) The registration of Patents for Utility Models;
- h) The registration of Industrial Designs;
- i) The taxes on registered rights;
- j) Attorneys-in-fact and bonds; and
- k) Any other that the Registrar considers necessary for the adequate and efficient development of the registration activity.

The Registrar shall also have a special archive to keep the numerical control of the regulations of use of collective and certification marks, and the regulations of use of designations of origin.

SECTION 96. Registration Books

When the registrations are kept in books, the cover shall include an identification that shall state the name and number of order of the book. These shall be authorized by the corresponding officer of the Ministry of Economy, specifying the book number and folios making up the book, and stating that all of such folios are duly numbered and sealed.

The books of the Registry will be numbered in chronological order and, when necessary, several volumes of the same class may be kept at a time.

SECTION 97. Other Registration Systems

The Ministry of Economy, through a Ministerial Agreement, will authorize the establishment of a registration system different from that stated in the aforementioned section, such as the system of movable pages or that of the electronic registration and signature.

SECTION 98. Advertising

The records, files and archives, when applicable, may be directly consulted by the interested party under the responsibility of an official of the registry. The interested party may obtain, at his expense, simple or certified copies and written proof or certificates of the documents and registrations that are kept in the Registry.

When the Registry has the possibility of establishing new methods of services, the consultations may be performed by electronic means, determined by the Registry itself.

SECTION 99. Replacement of Books

When the books of the Registry are totally or partially lost or destroyed, damaged or illegible due to a disaster or a fraudulent or culpable act, the Registrar shall draw up a certification that clearly certifies which books are missing or have suffered damage, and the security and conservation measures that had been provided.

The Ministry of Economy, through an Agreement, and based on the certification referred to in the aforementioned paragraph, shall order the replacement of the books, cautioning the interested parties, through notices published in the Official Gazette and in another newspaper of broad circulation, that within the following three months, starting as of the date of the publication, they must submit to the Registry the certification or title that proves the right that they have filed. Such term shall be extended depending on the circumstances.

If the interested parties do not present themselves within the established term, the Registrar shall newly record the corresponding registrations based on the documentation kept in the Registry, without any responsibility on its part.

SECTION 100. Replacement of Files

Without prejudice to the responsibilities provided for and to imposing disciplinary measures on the responsible personnel, the replacement of a file that has been totally or partially, lost or destroyed, shall be immediately ordered by the Registrar, at its own initiative or at the request of the interested party. For such effects, the Registrar shall keep the archive of duplicate applications, resolutions, edicts and documents organized and updated, and such may be contained in a magnetic media.

When concerning the replacement of a file created before these Regulations become effective and which does not have a duplicate in the archive, the Registrar shall order the replacement based on the copies of the initial application, the notified resolutions, the publications, and any other documentation that it deems necessary to request the applicant to provide. In view of the documentation that is obtained or that is submitted by the interested party, the Registrar shall order the replacement stating, in its ruling, the measures adopted, the records and documents to be replaced, and the condition of the file based on which the corresponding process shall continue. In such cases, the replacement shall not damage the rights or interests of third parties, who may promote the corresponding actions.

SECTION 101. Replacement of Edict and Order of Payment

The Registry may order, for a single time only and at the expense of the interested party, to proceed with the replacement of an edict or of an order of payment, as long as it is requested in writing and that the terms regarding each right category have not elapsed, and are applicable according to that established in the Law or in these Regulations.

CHAPTER XIV

REGISTRATION

SECTION 102. How to Perform Registration

Each registration shall have the corresponding correlative number at the beginning. The blank spaces that allow for insertions will be filled with a line before the registration is signed.

The additions, interlineations and testate will be null if they are not entirely certified before the signature of the Registrar, and deletions or erasures are absolutely prohibited.

SECTION 103. Correction of Errors

The Registrar, at the request of the owner or through a court order, may modify a registration to correct any error made. The material errors may be corrected through an entry on the margin of the registration and the concept error by means of a new registration.

A material error shall be understood to have been made when some words have been written instead others, and when the expression of any requirement or circumstance, which absence does not cause nullity, has been omitted, or else, when some of the requirements of the registration have been recorded incorrectly, as long as it does not change the general meaning of the registration or of any of their concepts.

A concept error shall be understood to exist when any of the words expressed in the registration alter or change its true meaning without causing nullity.

SECTION 104. Entries

All entries regarding transfers, licenses, modifications, limitations, real rights, cancellations or other circumstances that affect the filed right shall be evident in the same folio where the registration would have been performed, when this is materially possible.

If it is not possible to make the entry in the same folio as the registration, a brief account of the relation between them, and another indicating the volume, number and folio of the new entry shall be written on the margin of such.

In any case, the resolution, title, judicial report or other document giving rise to such shall be mentioned and identified in the entries.

SECTION 105. Scope of the Registration of Trademarks and Other Signs

If applicable, the Registry will place a seal at the bottom of every registration entry of a mark or other distinctive sign and in the certificate or title issued, certifying that the exclusivity or scope of the protection of the sign does not extend to those terms or elements that are of generic or common use.

CHAPTER XV

CLASSIFICATIONS

SECTION 106. Classification of Trademarks⁸

The International Classification of Goods and Services for the Purposes of the Registration of Marks referred to in section 164 of this Law is the classification established by the Nice Agreement on June 15, 1957.

If as a consequence of applying a new version of the Classification of Goods and Services by virtue of that specified in section 167 of the Law, the goods and services for which a mark was registered do not partially or totally correspond to the new version, the holder may request the modification of the original registration.

SECTION 107. Applying the Classification

The goods and services grouped in their appropriate class shall be deemed not to exhaust such class. The classification of goods and services referred to in the aforementioned section will exclusively be for administrative effects.

⁸ Amended by Section 6 of Government Agreement Number 15-2005, dated January 18, 2005, published in the Official Gazette on January 24, 2005, and effective as of February 1, 2005.

Consequently, the goods and services will not be considered to be similar because they appear in the same class of classification of the Nice Agreement, or that the goods and services are different because they appear in different categories of such classification.

SECTION 108. Classification of Patents

The International Classification of Patents referred to in section 165 of the Industrial Property Law is a classification established by the Strasbourg Agreement on March 24, 1971.

SECTION 109. Classification of industrial designs

The International Classification of Industrial Designs referred to in section 166 of the Industrial Property Law is the classification established by the Locarno Agreement on October 8, 1968.

SECTION 110. Consultation

The Registry shall make copies or issues of the international classification referred to in the aforementioned sections available to users and to the general public for the effects of guaranteeing their correct implementation and exclusively for consultation purposes.

SECTION 111. Figurative Elements of Distinctive Signs

For the internal effects of the substantive examination that must be performed for the registration applications of marks and other distinctive signs, the Registry shall keep an archive of the protected figurative elements and emblems, organized according to the classification referred to in the Vienna Agreement through which an International Classification of the Figurative Elements of Marks is established on June 8, 1973.

When the mark or other distinctive sign only consists of a sign or figurative or three-dimensional element, the Registry shall designate or identify it with a name or a brief description of such, exclusively for purposes of its classification, according to that provided in these Regulations.

CHAPTER XVI

FINAL AND TRANSITIONAL PROVISIONS

SECTION 112. Extension of Term

According to that established in paragraph 2 of section 70 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the terms of protection of the inventions and industrial designs in force to December 31, 1999, are extended without requiring any statement, to the maximum terms established in sections 126 and 159 of the Law.

With the objective of the Registry proceeding to make an entry regarding the extension in the corresponding registration, the applicant may file an application at any moment and request that the certification be extended.

The object of the application referred to in section 211 of the Law shall be that the Registry records the title of the patent or the registration of the design.

SECTION 112 bis. Signature and Recordings⁹

The Registrar of the Intellectual Property has the authority, in a period of six months, to sign the registrations, entries and cancellations, which signature in the corresponding books is pending on the date in which this Agreement becomes effective; even when such were made prior to the date on which such Registrar took office. The signatures that are placed in accordance with this Agreement will not determine the validity of the given registrations, entries and cancellations in advance. The Registrar, without prejudice of the responsibilities of the person incurring in the omission, will sign and will record the cause for the subscription of the entries on the margin or at the bottom of such.

SECTION 113. Unforeseen Situations

Any unforeseen situation in these Regulations shall be resolved by the Registrar with the spirit of the provisions of the Law concerning the nature of the matter in mind.

SECTION 114. Headings

Headings regarding the identification of the content of the rules contained in these Regulations and those that precede each section lack any interpretative value.

Section 115. Legal Effect

These Regulations shall become effective eight days after their publication in the Official Gazette.

LET IT BE KNOWN

ALFONSO PORTILLO

PRESIDENT OF THE REPUBLIC OF GUATEMALA

⁹ Added by Section 5 of Government Agreement Number 15-2005, dated January 18, 2005, published in the Official Gazette on January 24, 2005, and effective as of February 1, 2005.

ARTURO MONTENEGRO C.

MINISTER OF ECONOMY

LIC. J. LUIS MIJANGOS C.

SECRETARY GENERAL TO THE PRESIDENT OF THE REPUBLIC