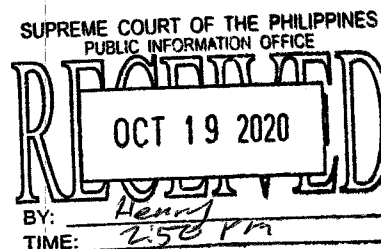


Republic of the Philippines
Supreme Court
Manila

A.M. No. 10-3-10-SC



**2020 REVISED RULES OF PROCEDURE
FOR INTELLECTUAL PROPERTY RIGHTS CASES**

RESOLUTION

WHEREAS, Section 13, Article XIV, of the 1987 Constitution provides that the State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law.

WHEREAS, Republic Act No. 8293, otherwise known as the “Intellectual Property Code of the Philippines,” provides that the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products.

WHEREAS, Section 5(5), Article VIII of the 1987 Constitution vests in the Supreme Court the power to promulgate rules concerning pleading, practice, and procedure in all courts;

WHEREAS, through Memorandum Order No. 82-2019 dated November 26, 2019, the Sub-Committee for the Revision of the Rules of Procedure for Intellectual Property Rights Cases was organized to review and revise A.M. No. 10-3-10-SC or the Rules of Procedure for Intellectual Property Rights Cases, and is composed of the following:

Chairperson: **Hon. Diosdado M. Peralta**
Chief Justice, Supreme Court

Vice-Chairpersons: **Hon. Alfredo Benjamin S. Caguioa**
Associate Justice, Supreme Court

Hon. Alexander G. Gesmundo
Associate Justice, Supreme Court

Consultant: **Hon. Francis H. Jardeleza (ret.)**

Members: **Hon. Jose Midas P. Marquez**
Court Administrator

Hon. Maria Rowena Modesto-San Pedro
Associate Justice, Court of Tax Appeals

Hon. Elma M. Rafallo-Lingan
Regional Trial Court of Pasig, Branch 195

Hon. Ethel V. Mercado-Gutay
Regional Trial Court of Makati, Branch 137

Atty. Nelson P. Laluces
Deputy Director General, Intellectual Property Office

Atty. Allan B. Gepty
Assistant Secretary, Department of Trade and Industry

Atty. Lolibeth R. Medrano
Director IV, Bureau of Patents, Intellectual Property Office

Atty. Ricardo R. Blancaflor
Intellectual Property Rights Practitioner

Atty. Ferdinand M. Negre
Intellectual Property Rights Practitioner

Atty. Ramon S. Esguerra
Intellectual Property Rights Practitioner

Atty. Dorothy L. Peralta
Representative, Office of the Chief Justice

Secretariat: **Atty. Jeffrey G. Gallardo**
Office of the Chief Justice

Atty. Justin Adriel Espaldon Ordoyo
Office of the Chief Justice

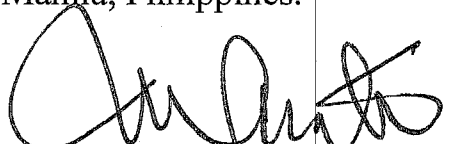
Atty. Antonio Ceasar Manila
Office of Associate Justice Alexander G. Gesmundo

Atty. Ma. Lisa L. Tolentino
Office of Associate Justice Alexander G. Gesmundo

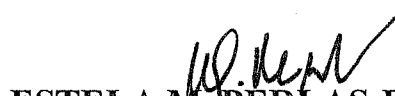
Atty. Camille Sue Mae L. Ting
Office of the Court Administrator

NOW, THEREFORE, acting on the recommendation of the Chairperson of the Sub-Committee for the Revision of the Rules of Procedure for Intellectual Property Rights Cases, the Court resolves to **APPROVE** the “2020 Revised Rules of Procedure for Intellectual Property Rights Cases”.

October 6, 2020, Manila, Philippines.



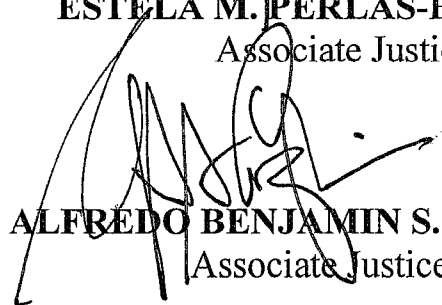
DIOSDADO M. PERALTA
Chief Justice



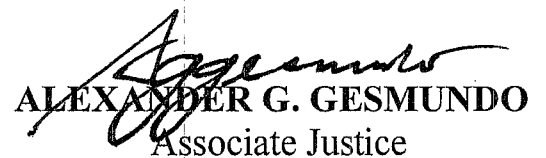
ESTELA M. PERLAS-BERNABE
Associate Justice



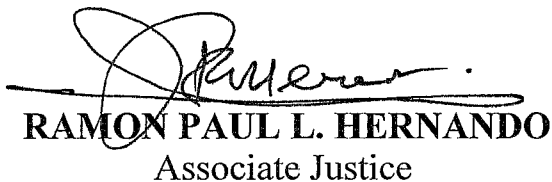
MARVIC M.V.F. LEONEN
Associate Justice



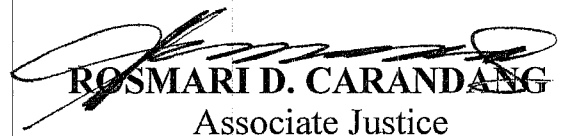
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



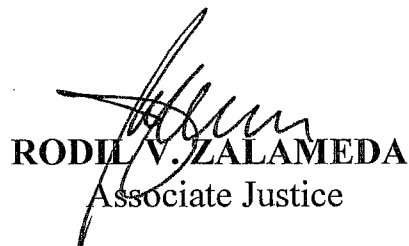
ROSMARI D. CARANDANG
Associate Justice



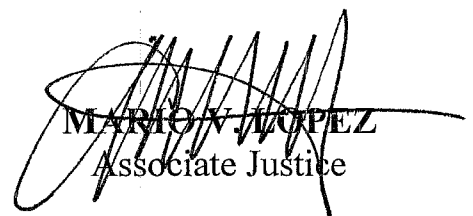
AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



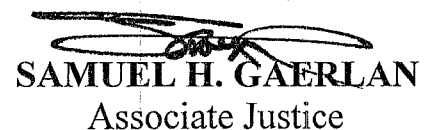
RODIL V. ZALAMEDA
Associate Justice



MARION LOPEZ
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

On leave
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

**2020 REVISED RULES OF PROCEDURE FOR INTELLECTUAL
PROPERTY RIGHTS CASES**

**Rule 1
GENERAL PROVISIONS**

SECTION 1. *Title.* – These Rules shall be known and cited as the “2020 Revised Rules of Procedure for Intellectual Property Rights Cases.”

SEC. 2. *In what courts applicable.* – These Rules shall be observed by the Regional Trial Courts designated by the Supreme Court as Special Commercial Courts.

SEC. 3. *Applicability of the Rules.* – These Rules shall apply to all cases involving Intellectual Property Rights.

When the court determines that the civil or criminal action involves several intertwined issues, it shall issue a special order that the regular procedure prescribed in the Rules of Court shall apply, stating the reason therefor.

Where applicable, the Rules of Court shall apply suppletorily to proceedings under these Rules.

SEC. 4. *Executory nature of orders.* – Unless restrained by the Supreme Court or the Court of Appeals, as the case may be, any order issued by the court under these Rules is immediately executory, except in the following:

- a) Order of destruction issued under Rule 20 hereof where a motion for reconsideration is filed; and
- b) Order of release of seized goods where a search warrant is quashed.

SEC. 5. *Verification and supporting documents.* – Any pleading filed by any interested party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his or her personal knowledge, or based on authentic records or on judicial affidavits referred to in Rule 3, Section 5.

SEC. 6. *Duty of the clerk of court.* – It shall be the duty of the branch clerk of court to notify in writing the Director-General of the Intellectual Property Office of the Philippines (IPO) within thirty (30) calendar days after the filing of any action, suit or proceeding involving a copyright, trademark, service mark, patent, industrial design, and utility model, including undisclosed information and technology transfer agreement where the subject matter includes an intellectual property right. *Provided,* that if the action pertains to an application for civil or criminal search warrant in anticipation of an action to be filed, or if such application is incident to a pending action,

the notification shall be made within thirty (30) calendar days after the issuance of an order granting or denying the application. Such notice shall set forth: the names and addresses of the litigants and the copyright, trademark, service mark, patent or design registrations involved and, where applicable, the numbers of their certificates of registration.

CIVIL PROCEDURE

Rule 2

NATURE OF PROCEEDINGS

SECTION 1. Scope. – Rules 2 to 9 shall apply to all civil actions for violations of intellectual property rights provided for in Republic Act No. 8293 or the Intellectual Property Code, as amended, including Repetition of Infringement of Patent (Section 84), Utility Model (Section 108) and Industrial Design and Layout of Integrated Circuits (Section 119), Trademark Infringement (Section 155 in relation to Section 170), Unfair Competition (Section 168 in relation to Section 170), False Designations of Origin; False Description or Representation (Section 169.1 in relation to Section 170), infringement of copyright, moral rights, performers' rights, producers' rights, and broadcasting rights (Section 177, 193, 203, 208 and 211 in relation to Section 216), Infringement of Plant Variety Protection under Republic Act No. 9168 or the Plant Variety Protection Act (Section 47), and other violations of intellectual property rights as may be defined by law.

SEC. 2. Special Commercial Courts with authority to issue writs of search and seizure enforceable nationwide. – Special Commercial Courts in the City of Manila, Quezon City, Makati City, Pasig City, Baguio City, Iloilo City, Cebu City, Cagayan de Oro City, and Davao City shall have authority to act on applications for the issuance of writs of search and seizure in civil actions for violations covered by Section 1 of Rule 2, which writs shall be enforceable nationwide. The issuance of these writs shall be governed by the rules prescribed in *Re: Rule on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights* (A.M. No. 02-1-06-SC). Within their respective territorial jurisdictions, the Special Commercial Courts in the judicial regions where the violation of intellectual property rights occurred shall have concurrent jurisdiction to issue writs of search and seizure.

Rule 3

COMMENCEMENT OF ACTION

SECTION 1. Pleadings. – The only pleadings allowed to be filed are the complaints, compulsory counterclaims and cross-claims pleaded in the answer, and the answers thereto, as well as those not expressly prohibited under Section 4 of this Rule. All pleadings shall be verified.

SEC. 2. *Who may file an action under these Rules.* – Any intellectual property right owner, or anyone possessing any exclusive right, title or interest under claim of ownership in any intellectual property right, or an exclusive licensee to a copyright, whose right may have been violated, may file an action under these Rules.

Any person who is a national, or who is domiciled, or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to file an action under these Rules.

Any foreign national or juridical person who meets the requirements of the immediately preceding paragraph, and does not engage in business in the Philippines, may also file an action under these Rules.

SEC. 3. *Form and contents of the complaint.* – The complaint shall be verified and shall state the full names of the parties to the case. Facts showing the capacity of a party to sue or be sued, or the authority of a party to sue or be sued in a representative capacity, or the legal existence of an organized association of persons that is made a party, must be averred. In case of juridical entities, proof of capacity to sue must be attached to the complaint.

The complaint shall contain a concise statement of the ultimate facts, including the evidence, constituting the complainant's cause(s) of action. It shall specify the relief(s) sought, but it may add a general prayer for such further or other relief(s) as may be deemed just or equitable.

The judicial affidavits referred to in Section 5 hereof and the relevant evidence shall be made part of the complaint.

The complaint shall include a certification that the party commencing the action has not filed any other action or proceeding involving the same issue(s) before any tribunal, agency, or quasi-judicial body nor is such action or proceeding pending before any other tribunal, agency or quasi-judicial body; *Provided, however*, that if any such action is pending, the status of the same must be stated, and should knowledge thereof be acquired after the filing of the complaint, the party concerned shall undertake to notify the court within five (5) calendar days from such knowledge.

When the party-litigant is a juridical entity, the verification/certification of non-forum shopping required should be executed by a natural person duly authorized by the juridical entity, through a special power of attorney or a resolution issued by the juridical entity for the purpose, attached to the complaint.

The complaint shall further be accompanied by proof of payment of docket and other lawful fees.

Failure to comply with the foregoing requirements shall not be remedied by mere amendment of the complaint. The court, *motu proprio*, shall dismiss the case without prejudice.

The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt, without prejudice to the corresponding administrative, civil and criminal liabilities. If the acts of a party or their counsel clearly constitute willful and deliberate forum shopping, the same shall be a ground for summary dismissal with prejudice and shall constitute direct contempt.

SEC. 4. *Prohibited pleadings and motions.* – The following pleadings and motions are prohibited:

- a) Motion to dismiss, except on the following grounds:
 - 1) That the court has no jurisdiction over the subject matter;
 - 2) That there is another action pending between the same parties for the same cause; or
 - 3) That the cause of action is barred by a prior judgment or by statute of limitation;
- b) Motion for reconsideration of a final order or judgment, except with regard to an order of destruction issued under Rule 20 hereof;
- c) Reply, except when an actionable document is attached in the Answer;
- d) Petition for relief from judgment;
- e) Motion for extension of time to file pleadings or other written submissions, except for the answer for meritorious reasons and provided that only one (1) motion for extension of time to file an answer shall be allowed, which shall not exceed thirty (30) calendar days;
- f) Motion for postponement, except if it is based on acts of God, *force majeure*, or physical inability of the witness to appear and testify. The grounds raised for the postponement of the hearing due to physical inability of the witness to appear must be justified and substantiated. A motion for postponement, whether written or oral, shall, at all times, be accompanied by the original official receipt from the Office of the Clerk of Court evidencing payment of the postponement fee under Section 21(b), Rule 141 of the Rules of Court, to be submitted either at the time of the filing of said motion or not later than the next hearing date;
- g) Third-party complaint;
- h) Motion to hear affirmative defenses; and
- i) Any pleading or motion which is similar to or of like effect as any of the foregoing.

SEC. 5. *Judicial Affidavits.* – The judicial affidavits required to be submitted with the complaint in a question-and-answer format numbered consecutively shall state only facts of direct personal knowledge of the affiants which are admissible in evidence. The judicial affidavits shall also show the competence of the affiants to testify to the matters stated therein.

A violation of this requirement may subject the party or the counsel who submits the same to disciplinary action, and shall be a ground for the court to order that the inadmissible affidavit or portion thereof be expunged from the records.

SEC. 6. *Failure to file complaint where a writ of search and seizure is issued.* – Upon motion of the party whose goods have been seized, with notice to the applicant, the issuing court may lift its writ and order the return of the seized goods if no case is filed with the appropriate court and/or quasi-judicial agency, including the IPO, within forty-five (45) calendar days from the date of issuance of the writ.

If upon hearing of the motion, even when no complaint was filed but the seized goods are hazardous under Rule 20, upon due notice to appropriate government regulatory agencies, the court shall order the destruction of the same.

If no motion for the return of the seized goods is filed within sixty (60) calendar days from the issuance of the writ under the first paragraph, the court shall order the disposal and/or destruction of the goods, as may be warranted under Rule 20, after hearing with notice to the parties.

Rule 4

SUMMONS, ORDERS, COURT PROCESSES, AND ANSWER

SECTION 1. *Summons.* – The summons and the complaint, including its attachments, shall be served not later than five (5) calendar days from receipt of the complaint by the court to which it is assigned or raffled.

SEC. 2. *Service of summons, orders and other court processes.* – Summons, orders and other court processes may be served by the sheriff, their deputy or other proper court officer or for justifiable reasons, by the counsel or representative of the plaintiff or any suitable person authorized by the court issuing the summons.

Any private person who is authorized by the court to serve summons, orders and other court processes shall, for that purpose, be considered an officer of the court.

If, for justifiable causes, the defendant cannot be served personally after at least three (3) attempts on two (2) different dates, service may be effected:

- a) By leaving copies of the summons at the defendant's residence to a person at least eighteen (18) years of age and of sufficient discretion residing therein;
- b) By leaving copies of the summons at the defendant's office or regular place of business with some competent person in charge thereof. A competent person includes, but is not limited to, one who customarily receives correspondences for the defendant;
- c) By leaving copies of the summons, if refused entry upon making his or her authority and purpose known, with any of the officers of the homeowners' association or condominium corporation, or its chief security officer in charge of the community or the building where the defendant may be found; and
- d) By sending an electronic mail to the defendant's electronic mail address, if allowed by the court.

When the defendant is a foreign private juridical entity which has transacted or is doing business in the Philippines, as defined by law, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers, agents, directors or trustees within the Philippines.

If the foreign private juridical entity is not registered in the Philippines, or has no resident agent but has transacted or is doing business in it, as defined by law, such service may, with leave of court, be effected outside of the Philippines through any of the following means:

- a) By personal service coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs;
- b) By publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the defendant;
- c) By facsimile;
- d) By electronic means with the prescribed proof of service; or
- e) By such other means as the court, in its discretion, may direct.

Should either personal or substituted service fail, summons by publication shall be allowed. In the case of juridical entities, summons by publication shall be done by indicating the names of the officers or their duly authorized representative. Extraterritorial service of summons, as provided for

in international conventions to which the Philippines is a party, shall also be allowed.

SEC. 3. Answer. – Within thirty (30) calendar days from service of summons, the defendant shall file his or her answer to the complaint, including the evidence therein, and serve a copy thereof on the plaintiff. Affirmative and negative defenses not pleaded in the answer shall be deemed waived, except when the court has no jurisdiction over the subject matter, when there is another action pending between the same parties for the same cause, or when the action is barred by a prior judgment or by the statute of limitations. Cross-claims and compulsory counterclaims not asserted in the answer shall be considered barred. The answer to counterclaims or cross-claims shall be filed and served within fifteen (15) calendar days from service of the answer in which they are pleaded.

SEC. 4. Effect of failure to answer. – Should the defendant fail to answer the complaint within the period stated above, the court, *motu proprio* or on motion of the plaintiff, shall render judgment as may be warranted by the allegations of the complaint, as well as the affidavits and other evidence on record, unless the court in its discretion requires the plaintiff to submit additional evidence. Such reception of additional evidence may be delegated to the clerk of court. In no case shall the court award a relief beyond or different from that prayed for; *Provided*, that the court may, in its discretion, reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable.

SEC. 5. Judicial Affidavits. – The judicial affidavits required to be submitted with the answer in a question-and-answer format numbered consecutively shall state only facts of direct personal knowledge of the affiants which are admissible in evidence. The judicial affidavits shall also show the competence of the affiants to testify to the matters stated therein.

A violation of this requirement may subject the party or the counsel who submits the same to disciplinary action, and shall be ground for the court to order that the inadmissible affidavit or portion thereof be expunged from the records.

Rule 5

MODES OF DISCOVERY

SECTION 1. In general. – A party can avail of any of the modes of discovery in accordance with the Rules of Court not later than thirty (30) calendar days from the joinder of issues.

SEC. 2. Objections. – Any mode of discovery, such as interrogatories, request for admission, production or inspection of documents or things, may be objected to within ten (10) calendar days from receipt of the request for

discovery and only on the ground that the matter requested is manifestly incompetent, immaterial, or irrelevant or is undisclosed information or privileged in nature, or the request is for harassment. The requesting party may comment in writing within three (3) calendar days from receipt of the objection. Thereafter, the court shall rule on the objection not later than ten (10) calendar days from receipt of the comment or the expiration of the three-day period.

SEC. 3. *Depositions.* – Upon *ex parte* motion of a party, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject of the pending action, subject to the provisions of Rule 23 of the Rules of Court.

The court may allow a deponent to give his or her deposition through electronic means, such as teleconferencing or videoconferencing.

The other modes of discovery under the Rules of Court, including the use of electronic means, shall be allowed.

SEC. 4. *Production or inspection of documents or things.* – Upon motion of any party showing good cause therefor, the court where the action is pending may order any party to produce documents, papers, books, accounts, letters, photographs, or files, or its electronic counterpart, and/or to permit the inspection and copying or photographing thereof, by or on behalf of the moving party.

SEC. 5. *Compliance.* – Compliance with any mode of discovery shall be made within ten (10) calendar days from receipt of the request for discovery, or if there are objections, from notice of the ruling of the court.

SEC. 6. *Sanctions.* – The sanctions prescribed by the Rules of Court in relation to the modes of discovery shall apply.

Rule 6 PRE-TRIAL

SECTION 1. *Pre-trial; mandatory nature.* – Within five (5) calendar days after the period for availing of, or compliance with, any of the modes of discovery prescribed in Rule 5 hereof, whichever comes later, the handling court shall immediately issue a notice setting the case for pre-trial and directing the parties to submit their respective pre-trial briefs. The notice of pre-trial shall include the dates respectively set for:

- a) Pre-trial;
- b) Court-Annexed Mediation; and
- c) Judicial Dispute Resolution, if necessary.

The parties shall file with the court and furnish each other copies of their respective pre-trial briefs in such manner as to ensure receipt by the court

and the other party at least five (5) calendar days before the date set for the pre-trial.

The parties shall set forth in their pre-trial briefs, among other matters, the following:

- a) A concise statement of the case and the reliefs prayed for;
- b) A summary of admitted facts and proposed stipulation of facts;
- c) The main factual and legal issues to be tried or resolved;
- d) The propriety of referral of factual issues to an expert or committee of experts under Section 4 of Rule 17;
- e) The documents or other object evidence to be marked, stating the purpose thereof;
- f) The names of the witnesses, and the summary of their respective testimonies;
- g) A brief statement of points of law and citation of authorities;
- h) Requests for closed door hearings in cases involving trade secrets, undisclosed information and patents; and
- i) Such other matters as may aid in the just and speedy disposition of the case.

SEC. 2. *Nature and purpose of pre-trial.* – Before the pre-trial, the court shall require the marking of documentary or object evidence by the branch clerk of court or any authorized court personnel.

During the pre-trial, the court shall, with its active participation, ensure that the parties consider in detail all of the following:

- a) The possibility of an amicable settlement;
- b) Facts that need not be proven, either because they are matters of judicial notice, or expressly or deemed admitted;
- c) The possibility of obtaining stipulations and admissions of facts and documents;
- d) Objections to the admissibility of testimonial, documentary and other evidence;
- e) Simplification of the issues; and
- f) Such other matters as may aid in the speedy and summary disposition of the case.

SEC. 3. *Termination.* – The pre-trial shall be terminated not later than thirty (30) calendar days after its commencement.

SEC. 4. *Pre-Trial Order.* – On the day of the termination of the pre-trial, the court shall issue a pre-trial order, which shall recite in detail the matters taken up. The order shall include:

- a) An enumeration of the admitted facts;
- b) The minutes of the pre-trial conference;
- c) The legal and factual issue/s to be tried;
- d) The applicable law, rules, and jurisprudence;

- e) The evidence marked;
- f) The specific trial dates for continuous trial, which shall be within the period provided by these Rules;
- g) The case flowchart to be determined by the court, which shall contain the different stages of the proceedings up to the promulgation of the decision and the use of time frames for each stage in setting the trial dates;
- h) A statement that the one-day examination of witness rule and most important witness rule under A.M. No. 03-1-09-SC (Guidelines for Pre-Trial) shall be strictly followed; and
- i) Any of the following statements:
 - i. That the court shall render judgment immediately upon termination of the pre-trial, such as judgment on the pleadings or summary judgment under the Rules of Court;
 - ii. That the court shall require submission of position papers under Section 7 herein;
 - iii. That the court shall conduct clarification hearings under Section 8 herein;
 - iv. That the court shall refer the case to an expert or committee of experts under Section 4 of Rule 17 herein; or
 - v. That the court shall conduct trial.

Postponement of presentation of the parties' witnesses at a scheduled date is prohibited, except if it is based on acts of God, *force majeure* or duly substantiated physical inability of the witness to appear and testify. The party who caused the postponement must still terminate the presentation of its evidence within the remaining dates previously agreed upon.

Should the opposing party fail to appear without valid cause stated in the next preceding paragraph, the presentation of the scheduled witness will proceed with the absent party being deemed to have waived the right to interpose objection and conduct cross-examination.

The contents of the pre-trial order shall control the subsequent proceedings, unless modified before trial to prevent manifest injustice.

SEC. 5. *Court-Annexed Mediation and Judicial Dispute Resolution.* – On the day of the termination of the pre-trial, the court shall refer the parties for mandatory court-annexed mediation.

The period for court-annexed mediation shall not exceed thirty (30) calendar days and is non-extendible.

If the court-annexed mediation failed and only if the judge of the court to which the case was originally raffled is convinced that settlement is still possible, the case may be referred to another court for judicial dispute resolution (JDR). The JDR shall be conducted within a non-extendible period of fifteen (15) calendar days from notice of the JDR court of the failure of the court-annexed mediation. The period for judicial dispute resolution shall not exceed fifteen (15) calendar days and is non-extendible.

If judicial dispute resolution fails, trial before the original court shall proceed on the dates agreed upon.

All proceedings during the court-annexed mediation and the judicial dispute resolution shall be confidential.

SEC. 6. *Effect of failure to appear.* – The failure of the plaintiff to submit a pre-trial brief within the specified period or to appear in the pre-trial, court-annexed mediation and, if necessary, judicial dispute resolution, shall be cause for the dismissal of the complaint with prejudice, unless otherwise ordered by the court. The defendant who submits a pre-trial brief and who appears during the pre-trial shall be entitled to a judgment on the counterclaim unless the court requires evidence *ex parte* for a judgment. Any cross-claim shall be dismissed.

The failure of the defendant to submit a pre-trial brief within the specified period or to appear in the pre-trial, court-annexed mediation and, if necessary, judicial dispute resolution shall be a cause for the dismissal of the counterclaim. The plaintiff who submits a pre-trial brief and who appears during the pre-trial shall be entitled to a judgment on the complaint unless the court requires evidence *ex parte* for a judgment.

SEC. 7. *Submission of position papers.* – If the case is to be submitted for decision on the basis of position papers, the court, in the Pre-Trial Order, shall direct the parties to file their respective position papers, setting forth the law and the facts relied upon by them and other evidence on the factual issues defined in the order, or, if so desired, the respective draft decisions of both parties, within a non-extendible period of thirty (30) calendar days from receipt of the order. No reply or rejoinder position paper shall be allowed.

SEC. 8. *Clarification hearing or hearings following pre-trial.* – If there are matters to be clarified, the court shall include in the Pre-Trial Order the schedule of clarification hearing or hearings, which must commence within thirty (30) calendar days from the termination of the pre-trial, and be completed not later than fifteen (15) calendar days thereafter.

At least three (3) calendar days before the scheduled clarification hearing, the parties may submit questions which the court, in its discretion, may propound.

SEC. 9. *Schedule of trial.* – If the court deems it necessary to hold trial, the court shall include in the Pre-Trial Order the schedule of hearings, which shall begin within sixty (60) calendar days from the termination of the pre-trial or the clarification hearing/s, whichever is later. The trial shall be completed not later than sixty (60) calendar days from the date of the initial trial, excluding the period when the case is referred to an expert or committee of experts under Section 4 of Rule 17.

Rule 7
CLARIFICATION HEARING AND TRIAL

SECTION 1. *Clarification hearings.* – During clarification hearing or hearings, parties must have representatives or their counsels, with special power of attorney or resolution as the case may be, ready for questioning by the court.

Immediately after termination of such clarification hearing(s), the court shall order the parties to file, within ten (10) calendar days from such date, their respective position papers as required under Section 7 of the preceding Rule.

SEC. 2. *Clarification hearing or hearings following submission of position papers.* – Upon submission of the parties' position papers after the pre-trial as required under Section 7 of the preceding Rule, and the court deems it necessary to hold clarification hearing or hearings on any matter before rendering judgment, it shall set the case for such purpose.

The order setting the case for clarification hearing must be issued not later than fifteen (15) calendar days after receipt of the last position paper or the expiration of the period for filing the same and the clarification hearing must be scheduled within fifteen (15) calendar days from the issuance of such order and completed not later than fifteen (15) calendar days.

SEC. 3. *Period of trial.* – A period not exceeding thirty (30) calendar days shall be allotted to the plaintiff and a similar period to the defendant in the manner prescribed in the Pre-Trial Order. The failure of a party to present a witness on a scheduled trial date shall be deemed a waiver of such trial date. However, a party may present such witness or witnesses within the party's remaining allotted trial dates. No postponement shall be allowed by the judge except for acts of God, *force majeure* or physical inability of the witness to appear and testify, in accordance with Section 4 (f) of Rule 3.

SEC. 4. *Offer of and ruling on evidence.* – Evidence presented during the trial and not otherwise admitted by the parties or ruled upon by the court during the pre-trial shall be offered orally immediately after the completion of the presentation of evidence of the party concerned. The opposing party shall immediately raise the objections on the offer of evidence, and thereafter, the court shall at once rule on the offer and objections in open court.

SEC. 5. *Submission of memoranda or draft decisions.* – Immediately after an oral ruling on the last offer of evidence, the court may order the parties to simultaneously submit their memoranda and/or respective draft decisions, within a non-extendible period of thirty (30) calendar days.

Rule 8 JUDGMENT

SECTION 1. *When to render judgment.* – Where the case is submitted for decision immediately after pre-trial in accordance with Section 4(i)(i) of Rule 6, the court shall render judgment within sixty (60) calendar days after pre-trial.

Where the parties are required to submit position papers under Section 7 of Rule 6 or Section 1 of Rule 7, the court shall render judgment within sixty (60) calendar days from receipt of the last position paper, or upon the expiration of the period to file the same.

Where a clarification hearing is conducted under Section 2 of Rule 7, the court shall render judgment within sixty (60) calendar days from the termination of the last clarification hearing.

Where the court conducted trial, it shall render judgment within sixty (60) calendar days from the oral ruling on the last offer of evidence, or, when required by the court, from submission of the memoranda or draft decision under Section 5 of Rule 7, or upon the expiration of the period to file thereof.

SEC. 2. *Judgments executory pending appeal.* – Unless restrained by a higher court, the judgment of the court shall be executory even pending appeal under such terms and conditions as the court may prescribe.

Rule 9 APPEAL

SECTION 1. *Who may appeal.* – Any party may appeal from a judgment or final order.

SEC. 2. *How appeal taken.* – All decisions and final orders shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.

The petition for review shall be taken within fifteen (15) calendar days from notice of the decision or final order of the Regional Trial Court designated by the Supreme Court as a Special Commercial Court. Upon proper motion and the payment of the full amount of the legal fee prescribed in Rule 141, as amended, and before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) calendar days within which to file the petition for review. No further extension shall be granted except for the most compelling reasons, and in no case to exceed fifteen (15) calendar days.

CRIMINAL PROCEDURE

Rule 10 NATURE OF PROCEEDINGS

SECTION 1. *Scope.* – Rules 10 to 15 shall apply to all criminal actions for violations of intellectual property rights provided for in Republic Act No. 8293 or the Intellectual Property Code, as amended, including Repetition of Infringement of Patent (Section 84), Utility Model (Section 108) and Industrial Design and Layout of Integrated Circuits (Section 119), Trademark Infringement (Section 155 in relation to Section 170), Unfair Competition (Section 168 in relation to Section 170), False Designations of Origin; False Description or Representation (Section 169.1 in relation to Section 170), infringement of copyright, moral rights, performers' rights, producers' rights, and broadcasting rights (Sections 177, 193, 203, 208 and 211 in relation to Section 217), Cybersquatting under Section 4(a)(6)(i) and (iii) of Republic Act No. 10175 or the Cybercrime Prevention Act of 2012, Infringement of Plant Variety Protection under Republic Act No. 9168 or the Plant Variety Protection Act (Section 47 in relation to Section 56), Republic Act No. 8203 or the Special Law on Counterfeit Drugs (Section 3(b) in relation to Section 4), or Republic Act No. 10088 or the Anti-Camcording Act of 2010 (Section 3 in relation to Section 4), which involves intellectual property rights, and other violations of intellectual property rights as may be defined by law.

SEC. 2. *Special Commercial Courts with authority to issue search warrants enforceable nationwide.* – Special Commercial Courts in the City of Manila, Quezon City, Makati City, Pasig City, Baguio City, Iloilo City, Cebu City, Cagayan de Oro City, and Davao City shall have authority to act on applications for the issuance of search warrants involving violations covered by Section 1 of Rule 10, which search warrants shall be enforceable nationwide. Within their respective territorial jurisdictions, the Special Commercial Courts in the judicial regions where the violation of intellectual property rights occurred shall have concurrent jurisdiction to issue search warrants.

Accordingly, the Executive Judges are hereby relieved of the duty to issue search warrants involving violations of the Intellectual Property Code in criminal cases as stated in Sec. 12, Chapter V of A.M. No. 03-8-02-SC (Guidelines on the Selection and Appointment of Executive Judges and Defining their Powers, Prerogatives and Duties).

Rule 11 COMMENCEMENT OF ACTION

SECTION 1. *How commenced.* – The filing of criminal cases falling within the scope of this Rule shall be by information after a prior verified complaint is filed under Rule 12 on Preliminary Investigation.

When the information is filed, the verified complaint and the judicial affidavits of witnesses together with other evidence, in such number of copies as there are accused, plus two (2) copies for the court's files, shall be attached thereto.

SEC. 2. *Where to file.* – The information, together with attachments, shall be filed with the court referred to in Section 2 of Rule 1, which has jurisdiction over the territory where any of the elements of the offense occurred.

SEC. 3. *When warrant of arrest may issue.* – Within ten (10) calendar days from the filing of the information, the judge shall personally evaluate the information, together with the resolution of the prosecutor and its supporting documents. The judge may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If the judge finds probable cause, he or she shall issue a warrant of arrest, or a commitment order if the accused has already been arrested. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) calendar days from notice and the issue must be resolved by the court within fifteen (15) calendar days from the presentation of the additional evidence.

SEC. 4. *Disposition of goods seized pursuant to search warrant.* – If a criminal action has been instituted, only the trial court where the criminal action is filed shall rule on a motion to quash a search warrant or to suppress evidence obtained thereby or to release seized goods.

It shall be the duty of the applicant or private complainant to file a motion for the immediate transfer of the seized goods and records of the case with the issuing court, within ten (10) calendar days from the filing of the information in the trial court, which motion shall be immediately acted upon by the issuing court. Failure of the applicant or private complainant to comply therewith shall subject the seized goods to disposal and/or destruction under Rule 20 by the issuing court.

If no criminal action has been instituted, the motion to quash a search warrant or to suppress evidence obtained thereby or to release seized goods may be filed in and resolved by the issuing court. If, pending resolution of the motion, a criminal case is filed in another court, the incident shall be transferred to and resolved by the latter court.

Upon motion of the party whose goods have been seized, with notice to the applicant, the issuing court may quash the search warrant and order the return of the seized goods if no criminal complaint is filed within sixty (60) calendar days from the issuance of the search warrant.

If upon hearing of the motion, even when no criminal complaint was filed but the seized goods are hazardous under Rule 20, upon due notice to appropriate government regulatory agencies, the court shall order the destruction of the same.

If no criminal complaint is filed before the Office of the Prosecutor or the appropriate office in the Department of Justice and no motion for the return of the seized goods is filed within sixty (60) calendar days from the issuance of the search warrant, the issuing court shall require the parties, including the private complainant, if any, to show cause as to why the search warrant should not be quashed. If compliance with the show cause order is deemed insufficient, the seized goods shall be subject to disposal and/or destruction under Rule 20 by the issuing court.

The return of the search and seizure warrant shall be in accordance with the provisions of Rule 126 of the Rules of Court.

SEC. 5. *Prohibited motions.* – The following motions shall not be allowed:

- a) Motion to quash the information, except on the ground of lack of jurisdiction;
- b) Motion for judicial determination of probable cause;
- c) Unmeritorious motion for reinvestigation of the prosecutor recommending the filing of information once the information has been filed before the court or if the motion is filed without prior leave of court;
- d) Motion for bill of particulars that does not conform to Section 9, Rule 116 of the Rules of Court;
- e) Motion to suspend the arraignment based on grounds not stated under Section 11, Rule 116 of the Rules of Court;
- f) Motion for extension of time to file affidavits or any other papers; and
- g) Motion for postponement except if it is based on acts of God, force majeure or physical inability of the witness to appear and testify. A motion for postponement, whether written or oral, shall, at all times, be accompanied by the original official receipt from the office of the clerk of court evidencing payment of the postponement fee under Section 21(b), Rule 141 of the Rules of Court, to be submitted either at the time of the filing of said motion or not later than the next hearing date.

SEC. 6. *Civil liability arising from the criminal offense.* – When a criminal action is instituted pursuant to these Rules, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action, subject to the provisions of Rule 111 of Rules of Court.

Rule 12
PRELIMINARY INVESTIGATION

SECTION 1. *Complaint.* – The complaint shall be filed with the appropriate office in the Department of Justice or the Office of the Prosecutor that has jurisdiction over the offense charged:

- a) The complaint shall state the full name of the complainant and the facts showing the capacity or authority of the complaining witness to institute a criminal action in a representative capacity, and the legal existence of an organized association of persons that is instituting the criminal action. In case of juridical persons, proof of capacity to sue must be attached to the complaint. Where the complainant is a juridical person not registered in the Philippines, documents proving its legal existence and/or its capacity to sue, such as a certificate of registration or extracts from relevant commercial registries or offices having jurisdiction over said entities, shall be accepted if these are originals or in case of public documents, certified true copies thereof executed by the proper officer of such registries or offices.

Where the complainant is a foreign national or is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, the verified complaint must contain such facts showing entitlement to file the action.

- b) The complaint shall state the address of the respondent and shall be in such number of copies as there are respondents, plus two (2) copies for the investigating prosecutor. The complaint shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public. The administering officer must certify that he or she personally examined the complainant and that he or she is satisfied that the complainant voluntarily executed and understood the complaint.
- c) The complaint shall be accompanied by the affidavits of the complainant and their witnesses, as well as other supporting documents to establish probable cause. Notarized affidavits of witnesses shall be allowed and admitted as part of the complaint, provided that affidavits executed by non-residents of the Philippines shall be duly authenticated by the concerned Philippine consular or diplomatic office.

In instances where multiple complaints are filed by the same complainant, copies of the supporting documents shall be admitted after they

are compared with and shown to be faithful reproductions of the originals or certified documents referred to in subparagraphs (a) and (c) above.

SEC. 2. Procedure. – The preliminary investigation shall be conducted as follows:

- a) Within ten (10) calendar days after the filing of the complaint, the investigating prosecutor, on the basis of the complaint, affidavits, and other evidence accompanying the same, may dismiss the case outright for being patently without basis or merit, and order the release of the accused if in custody, and/or seized articles in custody, if any.
- b) When the complaint is not dismissed pursuant to the immediately preceding paragraph, the investigating prosecutor, within ten (10) calendar days from the filing of the complaint, shall issue an order to the respondent attaching thereto a copy of the complaint and its supporting affidavits and documents, and require the respondent to submit his or her counter-affidavit and the affidavits of his or her witnesses and other documentary evidence in the format required under Section 1 hereof, wherever applicable, serving copies thereof on the complainant not later than ten (10) calendar days from receipt of said order. The affidavits shall be subscribed and sworn to and certified as provided in paragraphs (b) and (c) of Section 1 hereof. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.
- c) If the respondent cannot be served with the order of the investigating prosecutor, or if served, does not submit his or her counter-affidavit within the ten (10)-calendar-day period, the investigating prosecutor shall resolve the complaint based on the evidence presented by the complainant.
- d) The investigating prosecutor may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating prosecutor questions which may be asked to the party or witness concerned.
- e) Within ten (10) calendar days from the last written submission by the parties or the expiration of the period for such submission, the investigating prosecutor shall determine whether or not there is sufficient ground to hold the respondent for trial.

SEC. 3. When accused lawfully arrested without warrant. – When a person is lawfully arrested without a warrant, the information may be filed by

a prosecutor without need of such investigation provided an inquest had been conducted in accordance with existing Rules.

Before the information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he or she must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his or her counsel. Notwithstanding the waiver, he or she may apply for bail and the investigation must be terminated within fifteen (15) calendar days from its inception.

After the filing of the information in court without preliminary investigation, the accused may, within five (5) calendar days from the time he or she learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his or her defense as provided in this Rule.

Rule 13 **ARRAIGNMENT AND PRE-TRIAL**

SECTION 1. *Arraignment.* – The arraignment shall be conducted in accordance with Rule 116 of the Rules of Court.

Once the court has acquired jurisdiction over the person of the accused, the arraignment of the accused and the pre-trial shall be set simultaneously within ten (10) calendar days from the date of the court's receipt of the case for a detained accused, and within thirty (30) calendar days from the date the court acquires jurisdiction over a non-detained accused, unless a shorter period is provided by special law or Supreme Court circular.

SEC. 2. *Pre-trial.* – During the pre-trial, a stipulation of facts may be entered into, or the propriety of allowing the accused to enter a plea of guilty to a lesser offense may be considered, or such other matters as may be taken up to clarify the issues and to ensure a speedy disposition of the case. However, no admission by the accused shall be used against him or her unless reduced to writing and signed by the accused and counsel. A refusal or failure to stipulate shall not prejudice the accused.

The pre-trial shall be terminated not later than thirty (30) calendar days from the date of its commencement.

Should a party desire to present additional judicial affidavits as part of his or her direct evidence, the party shall so manifest during the pre-trial, stating the purpose thereof. If allowed by the court, the additional judicial affidavits shall be submitted to the court and served on the adverse party not later than five (5) calendar days after the termination of the pre-trial. If the additional judicial affidavits are presented by the prosecution, the accused may file his or her judicial affidavits and serve the same on the prosecution within five (5) calendar days from such service.

Before the pre-trial, the court shall require the marking of documentary or object evidence by the branch clerk of court or any authorized court personnel.

SEC. 3. *Non-appearance at the pre-trial.* – If the counsel for the accused or the prosecutor does not appear at the pre-trial and does not offer an acceptable excuse for his or her lack of cooperation, the court is authorized to impose any and all available sanctions and penalties that are allowed under existing and relevant rules of procedure.

SEC. 4. *Pre-trial Order.* – On the day of the termination of the pre-trial, the court shall issue a pre-trial order stating the matters taken up therein, including but not limited to:

- a) Plea bargaining;
- b) The stipulations or admissions entered into by the parties;
- c) Whether, on the basis of the stipulations and admissions made by the parties and upon agreement of the parties, judgment may be rendered without the need of further proceedings, in which event judgment shall be rendered within thirty (30) calendar days from issuance of the order;
- d) A clear specification of material facts which remain controverted;
- e) Trial dates of each party;
- f) Statement of the parties' respective theories of the case and/or defenses;
- g) A tabular presentation of the parties' respective pre-marked exhibit be included to facilitate the subsequent conduct of trial and to properly guide both parties and the court;
- h) A statement that the One-Day Examination of Witness Rule and Most Important Witness Rule under A.M. No. 03-1-09-SC (Guidelines for Pre-Trial) shall be strictly followed; and
- i) Such other matters intended to expedite the disposition of the case.

SEC. 5. *Referral to mediation.* – On the day of the termination of the pre-trial, the judge shall order the parties to appear before the Philippine Mediation Center for court-annexed mediation on the civil aspect of the criminal action for a non-extendible period of thirty (30) calendar days. After the lapse of the mediation period or if mediation fails, trial shall proceed.

Rule 14 TRIAL AND JUDGMENT

SECTION 1. *Affidavits and other evidence at the trial.* – The Court shall hear the evidence of the parties on the trial dates agreed upon by them during the pre-trial. The judicial affidavits of the witnesses of the parties which form part of the record of the case, such as those submitted: (a) during the preliminary investigation; and/or (b) during the pre-trial, shall constitute the direct testimonies of the witnesses who executed them. Such witnesses may be subjected to cross-examination by the adverse party.

SEC. 2. *Conduct of trial.* – The court shall conduct hearings expeditiously so as to ensure speedy trial. Each party shall have a maximum period of sixty (60) calendar days to present their evidence-in-chief on the trial dates agreed upon during the pre-trial.

SEC. 3. *Demurrer to Evidence.* – After the prosecution has rested its case, the court shall inquire from the accused if he or she desires to move for leave of court to file a demurrer to evidence, or to proceed with the presentation of his or her evidence.

If the accused orally moves for leave of court to file a demurrer to evidence, the court shall orally resolve the same. If the motion for leave is denied, the court shall issue an order for the accused to present and terminate his or her evidence on the dates previously scheduled and agreed upon, and to orally offer and rest his or her case on the day his or her last witness is presented.

If despite the denial of the motion for leave, the accused insists on filing a demurrer to evidence, or if the accused files a demurrer to evidence without seeking a prior leave of court, the previously scheduled dates for the accused to present evidence shall be cancelled, and the accused shall be deemed to have waived the right to present evidence and submits the case for judgment on the basis of the evidence of the prosecution.

The demurrer to evidence shall be filed within a non-extendible period of ten (10) calendar days from the date when leave of court is granted or denied, or within a non-extendible period of ten (10) calendar days from the date when the prosecution has rested its case, in case no such prior leave of court was sought. The corresponding comment shall be filed within a non-extendible period of ten (10) calendar days counted from date of receipt of the demurrer to evidence. The demurrer shall be resolved by the court within a non-extendible period of thirty (30) calendar days from date of the filing of the comment or lapse of the period to file the same.

If the motion for leave of court to file demurrer to evidence is granted, and the subsequent demurrer to evidence is denied, the accused shall likewise present and terminate his or her evidence and shall orally offer and rest his or her case on the day his or her last witness is presented. The court shall rule on the oral offer of evidence of the accused and the comment or objection of the prosecution on the same day of the offer. If the court denies the motion to present rebuttal evidence because it is no longer necessary, it shall consider the case submitted for decision.

If the court grants the motion to present rebuttal evidence, the prosecution shall immediately proceed with its presentation after the accused had rested his/her case, and orally rest its case in rebuttal after the presentation of its last rebuttal witness. Thereafter, the accused shall immediately present sur-rebuttal evidence, if there is any, and orally rest the case in sur-rebuttal after the presentation of its last sur-rebuttal witness. Thereafter, the court shall submit the case for decision.

SEC. 4. *Submission of memoranda.* – Upon termination of trial, the court may order the parties to submit within a non-extendible period of thirty (30) calendar days their memoranda setting forth the law and the facts relied upon by them.

SEC. 5. *Judgment.* – The court shall promulgate the judgment not later than sixty (60) calendar days from the time the case is submitted for decision, with or without the memoranda. The IPO shall be furnished a copy of the judgment.

Rule 15 APPEAL

SECTION 1. *Who may appeal.* – Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy.

SEC. 2. *How appeal taken.* – The appeal shall be taken in the manner provided under Rule 122 of the Rules of Court.

Rule 16 COMMON RULES ON ADMISSIBILITY AND WEIGHT OF EVIDENCE

SECTION 1. *Evidence of good faith.* – In cases of patent, trademark, and copyright infringement, fraudulent intent on the part of the defendant or the accused need not be established. Good faith is not a defense unless the defendant or the accused claims to be a prior user under Sections 73 and 159 of the Intellectual Property Code, or when damages may be recovered under Sections 76, 156, and 216 of the Code.

SEC. 2. *Foreign official documents.* – If an official document, including notarial acts, is kept in a foreign country, which is party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19, Rule 132 of the Rules of Court, the certificate or its equivalent regarding such document shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not party to a treaty or convention referred to in the next preceding sentence, the certificate regarding such document may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent, or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being prima facie evidence of the due execution and genuineness of the

document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality.

SEC. 3. *Deposition of foreign witness.* – The deposition of any witness abroad shall be taken within sixty (60) calendar days from the date of the order allowing the deposition, unless the failure to take the deposition within the period is caused by a fortuitous event, fraud, accident, mistake or excusable negligence. The deposition must be taken under the same procedure provided in Rule 5.

SEC. 4. *Presumptions in the Intellectual Property Code.* – The presumptions in the Intellectual Property Code on patents, trademarks and copyright shall apply to these Rules.

SEC. 5. *Suppletory application of the rules on discovery and evidence.* – Unless inconsistent with these Rules, the rules on discovery and evidence under the Rules of Court shall apply.

SEC. 6. *Admission of electronic evidence.* – Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document. An electronic document is admissible in evidence if it complies with the rules on admissibility under A.M. No. 01-7-01-SC, or the Rules on Electronic Evidence.

Rule 17

EVIDENCE IN PATENT CASES

SECTION 1. *Burden of proof in patent infringement; presumption regarding process patents.* – a) The burden of proof to substantiate a charge for patent infringement rests on the party alleging the same, subject, however, to sub-Section b) below, and other applicable laws.

b) If the subject matter of a patent is a process for obtaining a product, any identical product is presumed to have been obtained through the use of the patented process if: (i) the product is new; or (ii) there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable, despite reasonable efforts, to determine the process actually used. In such cases, the court shall then order the defendant or alleged infringer to prove that the process to obtain the identical product is different from the patented process, subject to the court's adoption of measures to protect, as far as practicable, said defendant or alleged infringer's manufacturing and business secrets.

SEC. 2. *Patents issued presumed valid.* – In all cases, a letters patent issued by the IPO – Bureau of Patents, or successor-agencies, is *prima facie* evidence of its existence and validity during the term specified therein against all persons, unless the same has already been cancelled or voided by a final and executory judgment or order.

Moreover, letters patents issued by the IPO – Bureau of Patents, or successor-agencies, are presumed to have been validly issued by said government agency in accordance with applicable laws, unless otherwise contradicted or overcome by other admissible evidence showing that the same was irregularly issued.

SEC. 3. *Presumption regarding knowledge of existing patent rights.* – For purposes of awarding damages in patent infringement cases, it is presumed that the defendant or alleged infringer knew of the existence of a patent over a protected invention or process, if: (a) on the patented invention or product manufactured using the patented process; (b) on the container or package in which said article is supplied to the public; or (c) on the advertising material relating to the patented product or process, are placed the words “Philippine Patent” with the number of the patent.

SEC. 4. *Request for technical advice.* – In patent infringement cases, the court, *motu proprio* or upon motion by a party, may appoint one (1) expert, or order the creation of a committee of three (3) experts to provide advice on the technical aspects of the patent in dispute, including construction of claims, if necessary.

If the court orders the creation of a committee of three (3) experts, each party shall, within thirty (30) calendar days from receipt of such order, nominate an expert, who shall then both be appointed by the court. Thereafter, the court shall appoint the third expert from a list submitted by the experts of each side.

All fees and expenses relating to the appointment of an expert or committee of experts shall be initially equally shouldered by the parties but may later on be adjudicated by the court in favor of the prevailing party.

To assist in the trial involving highly-technical evidence or matters, the court may also request the IPO to provide equipment, technical facilities, and personnel.

SEC. 5. *Application to utility models and industrial designs.* – The above rules shall likewise be applicable to infringement cases involving utility models and industrial designs, with corresponding registrability report.

Rule 18

EVIDENCE IN TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION CASES

SECTION 1. *Certificate of registration.* – A certificate of registration of a mark shall be *prima facie* evidence of:

- a) the validity of the registration;
- b) the registrant’s ownership of the mark; and

- c) the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

SEC. 2. Evidence of actual use. – The following shall be accepted as proof of actual use of the mark:

- a) Labels of the mark as these are used;
- b) Downloaded pages from the website of the applicant or registrant clearly showing that the goods are being sold or the services are being rendered in the Philippines;
- c) Photographs, including digital photographs printed on ordinary paper, of goods bearing the marks as these are actually used or of the stamped or marked container of goods and of the establishment/s where the services are being rendered;
- d) Brochures or advertising materials showing the actual use of the mark on the goods being sold or services being rendered in the Philippines;
- e) For online sale, receipts of sale of the goods or services rendered or other similar evidence of use, showing that the goods are placed on the market or the services are available in the Philippines or that the transaction took place in the Philippines;
- f) Copies of contracts for services showing the use of the mark. Computer printouts of the drawing or reproduction of marks will not be accepted as evidence of use; and
- g) Such other proofs that the court may deem acceptable.

SEC. 3. Well-known mark. – In determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark. The following criteria or any combination thereof may be taken into account in determining whether a mark is well-known:

- a) the duration, extent and geographical area of any use of the mark; in particular, the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;
- b) the market share, in the Philippines and in other countries, of the goods and/or services to which the mark applies;
- c) the degree of the inherent or acquired distinction of the mark;
- d) the quality-image or reputation acquired by the mark;
- e) the extent to which the mark has been registered in the world;
- f) the exclusivity of registration attained by the mark in the world;
- g) the extent to which the mark has been used in the world;
- h) the exclusivity of use attained by the mark in the world;
- i) the commercial value attributed to the mark in the world;
- j) the record of successful protection of the rights in the mark;

- k) the outcome of litigations dealing with the issue of whether the mark is a well-known mark; and
- l) the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services and owned by persons other than the person claiming that his or her mark is a well-known mark.

Provided, that the mark may be well-known, regardless of whether the mark is registered in the Philippines.

SEC. 4. *Presumption of likelihood of confusion.* – Likelihood of confusion shall be presumed in case an identical sign or mark is used for identical goods or services.

SEC. 5. *Likelihood of confusion in other cases.* – In determining whether one trademark is confusingly similar to or is a colorable imitation of another, the court must consider the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade, and giving the attention such purchasers usually give in buying that class of goods. Visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace must be taken into account. Where there are both similarities and differences in the marks, these must be weighed against one another to determine which predominates.

In determining likelihood of confusion between marks used on non-identical goods or services, several factors may be taken into account, such as, but not limited to:

- a) the strength of plaintiff's mark;
- b) the degree of similarity between the plaintiff's and the defendant's marks;
- c) the proximity of the products or services;
- d) the likelihood that the plaintiff will bridge the gap;
- e) evidence of actual confusion;
- f) the defendant's good faith in adopting the mark;
- g) the quality of defendant's product or service; and/or
- h) the sophistication of the buyers.

“Colorable imitation” denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, as to cause him or her to purchase the one supposing it to be the other.

Absolute certainty of confusion or even actual confusion is not required to accord protection to trademarks already registered with the IPO.

SEC. 6. *Likelihood of confusion; Determination of related goods or services.* – Goods or services may not be considered as being similar or

dissimilar to each other on the ground that, in any registration or publication by the Office, they appear in same or different classes of the Nice Classification.

SEC. 7. *Intent to defraud or deceive.* – In an action for unfair competition, intent to defraud or deceive the public shall be presumed:

- a) when the defendant passes off a product as theirs by using imitative devices, signs or marks on the general appearance of the goods, which misleads prospective purchasers into buying their merchandise under the impression that they are buying that of their competitors;
- b) when the defendant makes any false statement in the course of trade to discredit the goods and business of another; or
- c) where the similarity in the appearance of the goods as packed and offered for sale is so striking.

SEC. 8. *Generic marks.* – A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service.

The test for determining whether the mark is or has become the generic name of goods or services on or in connection with which it has been used shall be the primary significance of the mark to the relevant public rather than purchaser motivation.

SEC. 9. *Market Survey.* – A market survey is a scientific market or consumer survey which a party may offer in evidence to prove (a) the primary significance of a mark to the relevant public, including its distinctiveness, its descriptive or generic status, its strength or well-known status and/or (b) likelihood of confusion.

Rule 19

EVIDENCE IN COPYRIGHT CASES

SECTION 1. *When copyright presumed to subsist.* – In copyright infringement cases, copyright shall be presumed to subsist in the work or other subject matter to which the action relates, and ownership thereof shall be presumed to belong to complainant if he, she, or it so claims through affidavit evidence under Section 218 of the Intellectual Property Code, as amended.

Copyright shall be presumed to subsist in the work or other subject matter to which the action relates if the defendant or accused does not put in issue the question of whether copyright subsists in the work or other subject matter.

Where the subsistence of the copyright is established, the plaintiff shall be presumed to be the owner of the copyright if he, she, or it claims to be the owner thereof, and the defendant does not put in issue the question of his or her ownership.

A mere denial of the subsistence of copyright and/or ownership of copyright based on lack of knowledge shall not be sufficient to rebut the presumption.

SEC. 2. *Effect of registration and deposit.* – Registration and deposit of a work with the National Library or the IPO shall not carry with it the presumption of ownership of the copyright by the registrant or depositor, nor shall it be considered a condition sine qua non to a claim of copyright infringement.

SEC. 3. *Presumption of authorship.* – The natural person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the author of the work. This presumption applies even if the name is a pseudonym, provided the pseudonym leaves no doubt as to the identity of the author.

The person or body corporate whose name appears on an audiovisual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of said work.

SEC. 4. *International registration of works.* – A statement concerning a work, recorded in an international register in accordance with an international treaty to which the Philippines is or may become a party, shall be construed as true until the contrary is proved, except:

- a) Where the statement cannot be valid under Republic Act No. 8293, as amended, or any other law concerning intellectual property; or
- b) Where the statement is contradicted by another statement recorded in the international register.

Rule 20

DISPOSAL AND/OR DESTRUCTION OF INFRINGEMENT GOODS, RELATED OBJECTS, OR DEVICES

SECTION 1. *Disposal and/or destruction of infringing goods, related objects, or devices; when to file motion.* – At any time after the filing of the complaint or information, a motion for the disposal and/or destruction of the seized infringing goods, or materials and implements predominantly used in the infringement, may be filed by the plaintiff, complainant or right-holder before the court.

There is destruction when the infringing goods are completely destroyed and are put beyond further use. There is disposal when the infringing goods are effectively prohibited from re-entry into the channels of commerce but may be reused for some other lawful purpose.

In case the infringing goods are counterfeit or pirated, the procedure for their disposal and/or destruction shall be summary in nature with notice to the defendant or the accused to his or her last known address to afford him or her

the opportunity to oppose the motion. For this purpose, the lack of authority of the defendant or the accused to exercise any of the rights of the right holder shall be a sufficient ground for the disposal and/or destruction of infringing goods.

Counterfeit trademark goods means goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question.

Pirated copyright goods means any goods which are copies made without the consent of the right-holder or person duly authorized by the right-holder, and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right.

The motion for disposal and/or destruction shall be granted where the violation of the intellectual property right of the owner or right-holder is established.

In case any genuine issue is raised, such as but not limited to, where the infringement may involve determination of confusing similarity, applicability of fair use or other limitations and exceptions, substantial equivalence, construction of claims, and/or good faith, the court shall continue to receive evidence of the parties during trial in support of their respective claims and defenses, and the disposal and/or destruction of the goods, related objects, or devices shall be resolved after trial.

SEC. 2. *Contents of a motion for disposal and/or destruction.* – The motion for disposal and/or destruction of infringing goods, related objects, or devices shall contain the following:

- a) An inventory and photographs of the infringing goods, related objects, or devices at the place where the goods are stored;
- b) The complete address of the place where the infringing goods, related objects, or devices are being stored;
- c) The classification and nature of the infringing goods, related objects, or devices, whether hazardous or non-hazardous;
- d) The proposed manner, method and plan of disposal and/or destruction;
- e) Estimated cost of disposing and/or destruction of the goods, if any; and
- f) Other facts and evidence relied on in support of the motion.

SEC. 3. *Hazardous classification of infringing goods.* – The infringing goods, related objects, or devices are hazardous when they present:

- a) Short-term acute hazards, such as acute toxicity by ingestion, inhalation or skin absorption, corrosivity or other skin or eye contact hazards, or the risk of fire or explosion;
- b) Long-term environmental hazards, including chronic toxicity upon repeated exposure, carcinogenicity, which may in some cases result from acute exposure but with a long latent period, resistance to detoxification process such as biodegradation, the potential to pollute underground or surface waters, or aesthetically objectionable properties such as offensive odors; or
- c) Unreasonable risk and/or injury to health and safety and to the environment.

Hazardous goods, related objects, and devices also include health sensitive infringing goods, which are considered harmful as a result of sub-standard or incorrect active pharmaceutical ingredients or lack of therapeutic benefits, which can further endanger the public's health.

Hazardous goods, related objects and devices shall only be subject to destruction. All other infringing goods, related objects and devices shall be subject to disposal and/or destruction.

SEC. 4. *Manner or method of disposal and/or destruction of infringing goods.* – The manner or method of disposal and/or destruction of infringing goods, related objects, or devices depends on their nature and circumstances, and whether hazardous or non-hazardous.

The proposed manner or method of disposal and/or destruction of infringing goods must be compliant with existing laws and regulations.

- a) The following methods of destruction may be allowed by the court, depending on the nature and circumstances of the infringing goods, related objects, or devices:
 - i. Crushing, shredding, and discarding at sanitary landfills;
 - ii. Incineration;
 - iii. Encapsulation; or
 - iv. Other methods that do not pose any risk to the environment or public health and safety.

Provided that open burning, or placing these goods in non-sanitary and open landfills shall not be allowed.

- b) The following methods of disposal may be allowed by the court, depending on the nature and circumstances of the infringing goods, related objects, or devices:
 - i. Recycling;
 - ii. Humanitarian donation; or
 - iii. Other methods that do not pose any risk to the environment or public health and safety.

Provided that the manner of disposal must effectively prevent the re-entry of the infringing goods, related objects, or devices into the channels of commerce.

SEC. 5. *Order of disposal and/or destruction of infringing goods.* – Once the court determines that the motion for disposal and/or destruction is meritorious, it shall issue an order of disposal and/or destruction of infringing goods, related objects, or devices, including but not limited to, sales invoices, other documents evidencing sales, labels, signs, prints, packages, wrappers, receptacles, and advertisements and the like used in the infringing act. The order shall include the manner, method, and plan of disposal and/or destruction, if any.

Upon issuance of the order, the movant must comply with the following:

- a) An inventory and photographs of the infringing goods must have been taken before the disposal and/or destruction at the place where the seized infringing goods are stored;
- b) The taking of the inventory and photographs must be witnessed and attested to by: (1) the defendant, or accused or counsel or agent, or in their absence, an officer of the barangay where the seized infringing goods are stored; (2) the plaintiff, complainant or right-holder, or his or her representative or counsel; (3) the public officer who seized the items or a representative of his or her office; (4) a court officer authorized by the court; and/or (5) authorized representative of the regulatory government agency involved, to supervise the disposal and/or destruction of the infringing goods;
- c) Representative samples of the infringing goods have been retained in a number and nature as to suffice for evidentiary purposes;
- d) An inventory of the representative samples has been made by the persons enumerated under (b) above;
- e) The court officer authorized to supervise the destruction has submitted a report thereon, within five (5) calendar days from the date of the disposal and/or destruction, to which is attached (i) the inventory and photographs of the infringing goods and (ii) the inventory of the representative samples; and
- f) The movant has posted a bond in an amount fixed by the court sufficient to answer for any damage that the adverse party may suffer.

Within ten (10) calendar days after the disposal and/or destruction, the movant must file a report with the court stating that he, she, or it has complied with the above conditions and with the order of the court granting the disposal and/or destruction of the seized infringing goods, related objects, or devices.

SEC. 6. *Admissibility of representative samples.* – Representative samples of the goods, objects and devices referred to in this Rule, together

with the inventory and photographs of the same, shall be admissible in lieu of the actual items.

SEC. 7. Humanitarian donation. – The court may issue an order disposing the seized infringing goods, related objects, or devices by way of donation for humanitarian use, subject to the following conditions:

- a) The infringing goods will not cause harm to the donee(s);
- b) All infringing marks or features identifying the complainant, plaintiff, or right-holder as the source of the goods shall be removed to the most possible extent; and
- c) The government entities or charitable institutions to which the infringing goods are to be donated must be properly identified.

Rule 21

REPORTORIAL REQUIREMENTS

Within thirty (30) calendar days from the issuance of the decision or final order, the court shall furnish the IPO a copy of the decision or final order.

Rule 22

MONITORING, EVALUATION AND TRAINING

The application of and adherence to these Rules shall be subject to periodic monitoring by the Office of the Court Administrator (OCA) by visitation and submission of data.

For this purpose, all courts covered by these Rules shall accomplish and submit a periodic report of data in a form to be generated and distributed by the OCA.

Training of judges and court personnel shall be undertaken by the PHILJA in coordination with the OCA.

Rule 23

TRANSITORY AND REPEALING PROVISIONS

SECTION 1. Transitory Provision. – These Rules shall be applicable to all pending intellectual property cases, whenever practicable as determined by the court.

SEC. 2. Repealing Clause. – All rules, resolutions, regulations or circulars of the Supreme Court or parts thereof that are inconsistent with any provision of these Rules are hereby deemed repealed or modified accordingly.

Rule 24

EFFECTIVITY

These Rules shall take effect on November 16, 2020 following their publication in two (2) newspapers of national circulation.