

## **Decree-Law nr 15/95 of 24th January 1995**

The entry into force of a new Industrial Property Code requires a strengthening of the institutions responsible for its implementation. At the same time, in order that the rendering of specialised services in this field should more adequately meet the requirements of the foreseeable increase in demand that the new and more far-reaching regulations will inevitably cause, the legal framework of the services of official industrial property agents and authorised legal representatives is now changed.

Likewise, it seemed advisable to include rules which, by clarifying certain internal procedures of the Portuguese Institute of Industrial Property, will contribute to a greater understanding of its functioning and thus benefit the public.

Thus:

In accordance with **article 1, number 3**, paragraphs of Law no. 11/94 of 11th May 1994, and within the provisions of **article 20 1, number 1, paragraphs a) and b)** of the Portuguese Constitution, the Government decrees the following:

### **CHAPTER I INDUSTRIAL PROPERTY AGENTS**

#### **ARTICLE I (Official Industrial Property Agents)**

Official industrial property agents are those persons recognised as such by the Portuguese Institute of Industrial Property on the date that the Industrial Property Code shall enter into force and any person who shall be subsequently appointed as an official agent within the provisions of the present statute.

#### **ARTICLE 2 (Requirements for appointment)**

1. In order to act as an official agent, the following requirements shall be met:
  - a) Portuguese nationality, of age with full civil and political rights;
  - b) Freedom from any ban on carrying out professional activities by a decision *res judicata*,
  - c) Fulfilment of the requirements of military law, if applicable;
  - d) Place of business in Portugal;
  - e) Degree in the fields of engineering, law or economics studies.
2. For the purposes of the present statute, citizens of Member States of the European Community shall be considered as Portuguese nationals.

#### **ARTICLE 3 (Examination)**

1. Appointment of official industrial property agents shall be made by means of a qualifying examination open to any person holding any of the degrees indicated in **number 1, paragraph e)** of the preceding article.
2. The examination papers shall be conducted in Portuguese and shall consist of a written paper and an oral discussion.
3. The final classification shall be the average of the written and oral examinations.
4. The list of candidates who have passed the examination shall be submitted for recognition by the competent Minister and then published in the “Diário da República”.

#### **ARTICLE 4 (Examining board)**

The examining board shall be composed of the President of the Portuguese Institute of Industrial Property, the directors of the Trademark and Patent Departments and an official agent designated jointly by existing agents.

#### **ARTICLE 5 (Holding of examinations)**

1. Examinations shall be set through notices published in the “Diário da República” and two daily newspapers at least six months before their start.
2. Applications for the enrolment for the examination shall be submitted for a period not less than 30 days.
3. Candidates shall present the following documents with the application for the enrolment:
  - a) Photocopy of identity card, to be certified upon presentation;
  - b) Certificate indicating academic qualifications;
  - c) Certificate of criminal record.

#### **ARTICLE 6 (Formalities)**

1. After the expiration of the period for submitting applications to sit the examination, the names of the candidates shall be published in the “Diário da República”.
2. This notice shall indicate the date and time of the written paper.
3. The date and time of the oral discussion shall be set by the President of the Portuguese Institute of Industrial Property.

#### **ARTICLE 7 (Taking up of appointment)**

The candidates who have passed the examination shall take up appointment before the President of the Portuguese Institute of Industrial Property within three months from the date they have passed the respective examination.

### **ARTICLE 8 (Deposit and guarantees)**

The President of the Portuguese Institute of Industrial Property may make appointment subject to the provision of a deposit or other guarantees, the amount and nature of which shall be determined by a decree of the Minister of Industry and Energy.

### **ARTICLE 9 (Register of signatures)**

1. The full and abbreviated signatures of official agents and their assistants shall appear on a special register at the Portuguese Institute of Industrial Property.
2. No document signed by an official agent or assistant shall be accepted without legible indication of the respective name and office near the signature.

### **ARTICLE 10 (Assistant of an industrial property agent)**

1. An official agent may have an assistant for the fulfilment of his duties and shall be responsible for the actions of the assistant.
2. The assistant shall be a Portuguese citizen or a citizen of a Member State of the European Community, have a good reputation and provide the Portuguese Institute of Industrial Property with guarantees that he will properly fulfil his duties.
3. Documents signed by the assistant shall be considered, for all legal purposes, to have been signed by the official agent.
4. Assistants who fulfil the requirements of [article 2, number 1, paragraphs a\), b\), c\), and e\)](#) may, in the event of the death or permanent impediment of the respective official agent, continue to sign any official documentation until applications for enrolment for the next examination may be submitted.
5. The President of the Portuguese Institute of Industrial Property may authorise the assistant to continue to sign such documentation until the result of the examination is known, if the assistant has applied for the position of official agent.

### **ARTICLE 11 (Transition from assistant of an agent or legal representative to agent)**

Assistants of official industrial property agents and authorised legal representatives may be appointed official agents, if they apply for the position within a period up to three years after the entry into force of the present statute and provided that the following requirements are met:

- a) On the date of the entry into force of the present statute, the candidate shall be acting as an assistant of an official agent or be authorised to take action and handle the prosecution of proceedings at the Portuguese Institute of Industrial Property.
- b) The candidate shall hold a degree in any of the subjects indicated in [article 2, number 1, paragraph e](#) or complete the degree within a three years period after the date of the entry into force of the present statute;
- c) If no such degree is held, the candidate shall have been accepted onto a university course and have at least a three year experience as an assistant of an official agent or, under authorisation, have taken action and handled the prosecution of proceedings at the Portuguese Institute of Industrial Property.
- d) The candidate shall not be forbidden to carry out professional duties in the field.

## **ARTICLE 12 (Supplementary law)**

Activities of official agents that are not expressly stipulated in the present statute shall be governed by the provisions of civil law in respect of legal representation.

## **ARTICLE 13 (Exemption)**

1. Official agents shall be exempt from filing a power of attorney in order to act on behalf and in the interest of their clients and parties that they represent, except in the case of acts involving the withdrawal of an application for a patent, deposit or registration or the renunciation of industrial property rights.

2. The competent head of department may, however, request at any time that official agents provide proof of their capacity as such by presenting instructions from clients or a notarised power of attorney.

## **ARTICLE 14 (Omission of references)**

Official agents may only indicate their name and title of office in applications and correspondence with the Portuguese Institute of Industrial Property.

## **ARTICLE 15 (Suspension of activities)**

1. Official industrial property agents may suspend their activities provided that they notify the Portuguese Institute of Industrial Property thereof.

2. Suspension of the activities of an agent shall mean that the assistant shall cease his activities carried out before the Portuguese Institute of Industrial Property.

3. An agent who has suspended his activities may at any time make a request to resume activity.

## **ARTICLE 16 (Undue reference to the position of industrial property agent)**

Any person who falsely calls himself an official agent or who in any way publicises this fact shall be subject to the penalty for the crime of usurpation of functions stipulated in the Portuguese Penal Code.

## **ARTICLE 17 (Acts forbidden of employees)**

1. Employees of the Portuguese Institute of Industrial Property shall be strictly forbidden to substitute official agents or other legal representatives or to illegitimately make contact with them, directly or indirectly, in matters falling within the competence of the Institute.
2. It shall be presumed that any person providing verbal or written information or clarification is acting as an authorised representative, except in the case of employees competent to do so.

## **ARTICLE 18 (Authorised legal representatives)**

1. Individual persons who are not official industrial property agents and who, on the date of the entry into force of the present statute, have taken action and handled the prosecution of proceedings at the Portuguese Institute of Industrial Property during the previous three years with special authorisation, may request that they be appointed as authorised legal representatives.
2. Authorised legal representatives, in their capacity as such, may take action and handle the prosecution of proceedings by filing a simple power of attorney with special powers for each file.

## **ARTICLE 19 (Penalty system)**

The penalty system in respect of the breach of the professional duties of official industrial property agents shall be the subject of a separate statute.

# **CHAPTER II PORTUGUESE INSTITUTE OF INDUSTRIAL PROPERTY**

## **ARTICLE 20 (Access to information)**

The Portuguese Institute of Industrial Property shall provide information concerning all the categories of industrial property.

## **ARTICLE 21 (Organisation of information)**

1. The Portuguese Institute of Industrial Property shall be required to have available information organised in such a way as to make it possible to identify and verify the following acts:

- a) The filing of any documents concerning the various categories of industrial property, in particular the date of the filing of applications;
- b) Decisions given by the Institute concerning action taken, the prosecution of proceedings and records endorsed on certificates;
- c) Judicial decisions affecting the various categories of industrial property rights;
- d) Receipt and dispatch of correspondence;
- e) Collection and possible refunding of fees and revenue from services rendered.

2. Besides the information organised in the manner indicated in this article, there may be other elements of information or ways of organising these elements which are of recognised utility.

## **ARTICLE 22 (Keeping of records)**

1. In the basic records of the Portuguese Institute of Industrial Property all documents shall be kept in such a way as to facilitate the consultation thereof.

2. After the expiry of the legally established terms, the documents mentioned in the preceding number may be destroyed or put on record at the Portuguese Institute of Industrial Property using an appropriate support, allowing them to be reproduced in full without losing any of their content.

## **ARTICLE 23 (Guarantee of retention of documents)**

1. Filed or pending documents shall not be removed from the Portuguese Institute of Industrial Property for any reason whatsoever, except in the case of *force majeure*, and any judicial or extrajudicial measures requiring the presentation of such documents shall be carried out at the Institute itself.

2. The submission of a file to the court competent to rule on an appeal against a decision given shall also be exempt from the provisions of the preceding number.

3. The submission of a file to court and the receipt thereof shall be recorded by the respective department when the file is submitted and received.

## **ARTICLE 24 (Filing register)**

Applications for patents, models, designs and registrations shall, at the time of filing, be recorded in accordance with legal procedure, indicating the number, date and time of receipt thereof, the name and address of the applicant and his legal representative, if applicable, and the relevant legal category of industrial property.

### **ARTICLE 25 (Fiscal duties)**

No act submitted for registration and subject to duties or taxes due to the Portuguese Public Treasury may be considered as being permanently registered without proof of the payment of duties or taxes previously due or a guarantee that outstanding duties and taxes shall be paid, in accordance with the stipulations of the respective regulations.

### **ARTICLE 26 (Return of documents)**

1. Documents whose original or certified copy is, in Portugal, permanently kept in any national archive or notary's office shall be returned to the interested parties after the record is carried out. Any other documents shall be kept in the files on the Portuguese Institute of Industrial Property, except in the cases stipulated in this statute.

2. If the documents and copies filed are written or drawn up in such a way as to hinder the reading or examination thereof, the interested party may be required to file copies that may be easily read or examined.

3. Documents issued by foreign authorities or departments shall only be accepted, for any purpose, after they have been legalised in accordance with the terms of procedural law.

4. Cases in which current international conventions expressly exempt the legalisation of documents drawn up in countries where such conventions are applicable shall be excepted from the stipulations of the preceding paragraph.

### **ARTICLE 27 (Checking of applications)**

1. When applications are filed, the employees responsible for the receipt of documents shall only verify that they are directed to the correct department and duly signed, what fees are due and whether all the documents mentioned in the applications are attached thereto.

2. Any discrepancies detected shall be notified.

### **ARTICLE 28 (Certified copies)**

Certified copies shall be drawn up in time to be provided the day after they are requested.

### **ARTICLE 29 (Forms)**

Requests shall be made on the appropriate printed form whenever required by the Portuguese Institute of Industrial Property.

### **ARTICLE 30 (Bulletin)**

A complete collection of the Bulletin shall be available at the Portuguese Institute of Industrial Property for consultation by the public.

### **ARTICLE 31 (Entry into force)**

The present statute shall enter into force on 1st June 1995.

Seen and approved by the Council of Ministers. 10th November 1994. — Anibal António Cavaco Silva — Alvaro José Brilhante Laborinho Lúcio — Luis Fernando Mira Amaral.

Enacted on 28th December 1994.

To be published.

The President of the Republic, MÁRIO SOARES.

Countersigned on 2nd January 1995.

The Prime Minister, Anibal António Cavaco Silva.