

Industrial Property Code



2008

Industrial Property Code

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Industrial Property Code

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Law 16/2008 of 1 April)

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The importance of the industrial property system to economic development is well known, especially when associated with scientific and technological development and sustained and sustainable growth of the economy, as it inspires and protects the results of creative and inventive activities.

Industrial property is one of the most important competitive factors in a knowledge-oriented economy focusing on innovation and based on distinctive marketing strategies and is also a mechanism for regulating competition and ensuring consumer protection.

The industrial property system is therefore linked more than ever to the essential aspects of macroeconomic policies or modern, competitive business strategies, which are conditioned by the information society and a globalised economy.

In this context, it is vital to ensure that there is a modern industrial property code, with regard not only to the international legal framework but also the imperatives of national administrative efficiency, the reinforcement of citizenship and the efficacy of corporate strategies, none of which are compatible with the current code.

There is therefore an urgent need to approve a new Industrial Property Code that will clarify, correct, simplify and improve on that approved in Decree-Law 16/95 of 24 January, many aspects of which are now out of date. It is necessary because of the vertiginous changes in the technological processes of creating products and services and developments in international law on the subject.

The new code is the result of a long maturing process that began with the publication of the 1995 code, continued with the work of a committee of specialists set up by Ordinance 12519/98 of 7 July and culminated with a wide public debate.

We now have a new, updated, modern, flexible code that is the fruit of the urgent transposition into Portuguese law of EU instruments, such as Directive 98/44/EC of 6 July on the protection of biotechnological inventions and Directive 98/71/EC of 13 October on the legal protection of designs and models. It also includes rules arising from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) set up by the World Trade Organization, of which Portugal has been a full member since January 1996.

The code has also been enhanced, as it incorporates Decree-Law 106/99 of 31 March, which regulates Regulation 1768/92/EC of 18 June regarding the creation of supplementary protection certificates for medicinal products and Regulation 1610/96/EC of 23 July on the creation of supplementary protection certificates for phytopharmaceutical products, not to mention alignment **with the commission's latest proposals on utility models.**

The code also corrects terminology, errors and imperfections in the 1995 code. Examples of this are provisional protection for all private rights and the equivalence of industrial property certificates granted by international organisations, grant documents granted at national level, the inclusion of the reestablishment of rights, express provision for the possibility of transforming an application for or registration of an EU brand into an application for registration of a national brand, inclusion of a

legal framework on topographies of semiconductor products, simplification of applications for mandatory licences, improvement of restraining order procedures, greater guarantees for individuals and companies, abolition of basic marks, cessation of the requirement for brands and trade names to be in Portuguese and recourse to extrajudicial dispute settlement instruments.

This code carries a commitment to a new administrative dynamic enshrined in a reduction in intervention times by the National Industrial Property Institute in terms that do not jeopardise the reliability and security of the system. This option does not, however, mean that other registration procedures that further reduce waiting times will not still be considered, by means of analyses of the results of foreign experience of abolishing *ex officio* studies of reasons for refusal.

Finally, the new administrative dynamic that this code introduces is guaranteed not only by the effort to simplify internal circuits but also by the use of new information technologies in modernising computer processes, including digitisation of databases, the use of email, telecopy and telematic communication networks as a universal way of accessing databases and application deposits, monitoring processes and managing rights.

Therefore:

Under the legislative authority granted by Law 17/2002 of 15 July and the terms of Article 198(a) and 198(b) of the Constitution, the Government decrees the following:

Article 1
APPROVAL

The Industrial Property Code, which is published as an annex to this decree-law of which it is an integral part, is hereby approved.

Article 2
SCOPE OF APPLICATION

Without prejudice to the provisions of the following articles, the rules set forth in this code apply to applications for patents, utility models and registration of industrial models and designs made before it came into force but that have not yet been subject to a final decision.

Article 3
PATENT APPLICATIONS

The patent applications referred to in the previous article whose grant notice has not yet been published on the date of entry into force of this code shall be the subject of a publication containing the bibliographical data of the process for the purpose of oppositions, followed by the other formalities set forth in the code.

Article 4
UTILITY MODEL APPLICATIONS

1 – The utility model applications referred to in Article 2 shall undergo examination.

2 – Utility model applications whose grant notices have not been published on the date of entry into force of this code shall undergo a similar procedure to that set forth in Article 3 of this decree-law for patent applications.

Article 5

APPLICATIONS TO REGISTER UTILITY MODELS OR INDUSTRIAL DESIGNS

1 – Although the applications to register utility models or industrial designs referred to in Article 2 shall maintain their object, they shall be called design or model registration applications.

2 – The applications mentioned in the previous paragraph shall be subject to examination.

3 – Their publication and that of those that have already undergone an examination shall occur no later than six months after the date of entry into force of this code.

Article 6

DURATION OF PATENTS

1 – Patents whose applications were made before the entry into force of Decree-Law 16/95 of 24 January shall continue to have a duration of 15 years as of date of granting or 20 years as of date of application, whichever is longer, as set forth in Decree-Law 141/96 of 23 August.

2 – Patent applications made before the entry into force of Decree-Law 16/95 of 24 January that have not been subject to a final decision shall be subject to the provisions of the previous paragraph.

Article 7

DURATION OF UTILITY MODELS

1 – Utility models granted before the entry into force of Decree-Law 16/95 of 24 January shall expire 15 years as of the due date of the first annuity occurring after 1 June 1995.

2 – Applications for utility models made before the entry into force of Decree-Law 16/95 of 24 January and subsequently granted shall continue to last for 15 years as of date of grant.

3 – Other utility models applied for and granted while Decree-Law 16/95 of 24 January was in force shall last for 15 years as of date of application.

Article 8

DURATION OF REGISTRATIONS OF INDUSTRIAL MODELS AND DESIGNS

1 – Industrial models and designs granted before the entry into force of Decree-Law 16/95 of 24 January shall expire 25 years after the due date of the first annuity occurring after 1 June 1995.

2 – Applications for industrial models and designs made before the entry into force of Decree-Law 16/95 of 24 January and granted afterwards shall still last 25 years as of date of grant.

3 – Other industrial models and designs applied for and granted while Decree-Law 16/95 of 24 January was in force shall still last 25 years as of date of application.

4 – Payment of maintenance fees for the registrations mentioned in the previous paragraphs shall be made for periods of five years up to the expiry of their respective rights.

5 – The first payment referred to in the previous paragraph made under Decree-Law 16/95 of 24 January occurring after the entry into force of this code shall cover the five-year period in question.

Article 9

PATENTS, UTILITY MODELS AND REGISTRATIONS OF INDUSTRIAL DESIGNS AND MODELS BELONGING TO THE STATE

1 – Patents, utility models and registrations of industrial designs and models belonging to the state that were granted while Decree 30679 of 24 August 1940 was in force shall expire on the anniversary of the date of their effect occurring 20, 10 and 25 years, respectively, after the entry into force of this code.

2 – Maintenance of the rights referred to in the previous paragraph, provided that they are used by companies of any nature, shall be subject to the fees set forth in this code.

Article 10

EXTENT AND SCOPE OF APPLICATION

The provisions of this code apply to applications to register trademarks, trade names and signs, logotypes, awards, appellations of origin, and geographical indications made before its entry into force that have not yet been subject to a final decision.

Article 11

**DURATION OF REGISTRATION OF NAMES,
INSIGNIAS AND LOGOTYPES**

1 – Registrations of trade names and insignias and logotypes granted before the entry into force of Decree-Law 16/95 of 24 January shall maintain the validity attributed to them by Decree 30679 of 24 August 1940 until the first renewal after this date. Future renewals shall be made for periods of 10 years.

2 – Registrations of trade names and insignias and logotypes granted while Decree-Law 16/95 of 24 January was in force shall maintain the validity attributed to them by this decree-law until the first renewal after this date. Future renewals shall be made for periods of 10 years.

Article 12

REGISTERED TRADEMARKS

1 – Owners of registered trademarks for products intended exclusively for export under Article 78 § 2 of Decree 30679 of 24 August 1940 may request withdrawal of this limitation.

2 – Until withdrawal of this limitation is requested, the trademarks referred to in the previous paragraph may not be used in any part of national territory on pain of cancellation of their registration.

3 – Registered trademarks with no expiry date under *Carta de Lei* of 4 June 1883 for brands or trademarks are subject to the provisions of this code. The time limits for future renewals shall count as of its entry into force.

4 – The products for which the registration is to remain valid and which will be classified in accordance with the

current table shall be indicated during the act of renewal of registrations of trademarks for classes in table II referred to in Article 1 of the Decree of 1 March 1901.

5 – Rights resulting from registration of basic trademarks made before the entry into force of this code shall remain in effect on the terms on which they were granted.

Article 13

REGISTRATION OF TRADEMARKS AND TRADE NAMES AND INSIGNIAS

1 – The applications to register trademarks referred to in paragraph 4 of the previous article that have not yet been subject to a final decision must, on pain of refusal, be converted into applications for registration of trademarks of products and services, as set forth in this code, by attaching a request to this effect.

2 – After an application has been converted, as set forth in the previous paragraph, it shall maintain the priority of the application for registration of a basic mark.

3 – Applicants for registration of trademarks who applied while Decree 30679 of 24 August 1940 was in force and have not yet received a final decision must, within six months of the entry into force of this code, demonstrate whether they still manufacture or sell the products for which they applied for protection of the insignia or whether they still provide the services that the trademark represents or at least if they intend to do so, on pain of refusal of the registration application.

4 – Applicants for registration of trade names and insignias who applied while Decree 30679 of 24 August 1940 was in force and have not yet received a final decision must, within six months of the entry into force of this code, submit proof of the actual existence of the trade that they

wish to identify, under the terms of the code, on pain of refusal of the registration application.

Article 14
REGULATIONS

Matters related to applications, notifications and publicity shall be regulated within 90 days of the entry into force of this code in order to allow the introduction and use of new information technologies, with regard to the use of email, telecopy and telematic communication networks as a universal way of accessing databases and application deposits, monitoring processes and managing rights.

Article 15
REVOCATION

The following are hereby revoked:

- a) Decree-Law 16/95 of 24 January in the wording of Decree-Law 141/96 of 23 August, and Article 7 of Decree-Law 375-A/99 of 20 September;
- b) Decree-Law 106/99 of 31 March;
- c) Law 16/89 of 30 June;
- d) Ordinance 67/95 of 27 April.

Article 16
ENTRY INTO FORCE

This decree-law shall enter in force on 1 July 2003.

Seen and approved by the Council of Ministers on 11

December 2002. – José Manuel Durão Barroso – Maria Manuela Dias Ferreira Leite – Maria Celeste Ferreira Lopes Cardona – José Luís Fazenda Arnaut Duarte – Carlos Manuel Tavares da Silva – Pedro Lynce de Faria.

Promulgated on 10 February 2003.

Let it be published.

The President of the Republic, JORGE SAMPAIO.

Countersigned on 14 February 2003.

The Prime Minister, José Manuel Durão Barroso.

Decree-Law
143/2008 of 25
July

This decree-law approves measures for the simplification of and access to industrial property, thereby implementing a measure of the SIMPLEX Programme.

The Programme of the 17th Constitutional Government says that **“citizens and companies cannot be burdened with bureaucratic impositions that add nothing to the quality of service”** and that **“in the joint interest of citizens and companies, administrative controls will be simplified and registration and notary acts and practices that do not add value and complicate the lives of citizens and companies will be abolished”**.

This decree-law achieves this aim of simplification set out in the Programme of the 17th Constitutional Government in the area of justice, with regard to acts and procedures pertaining to industrial property. It is a measure aimed at placing industrial property at the service of citizens and companies, economic development and the promotion of investment in Portugal.

The measures in this decree-law are not alone in the current simplification process in the area of justice. They are part of a series of measures that are currently in effect and **include the creation of “one-stop shops”, the elimination of formalities, the simplification of procedures and the provision of new online services.**

As a result, the following one-stop shops are already in operation: **“Empresa na Hora”, “Marca na Hora”, “Casa Pronta”, “Associação na Hora”, “Divórcio com Partilha e Heranças”** and **“Documento Único Automóvel”**.

As regards the elimination of unnecessary formalities,

several measures have been adopted in the company registry, vehicle registration and registry office sectors. In the area of company registries, it is no longer necessary to sign a **public deed for events in the company's life and compulsory accounting books** have been abolished.

Where vehicle registration is concerned, the log book and registration have been replaced by a single document – the registration certificate. Finally, where registry offices are concerned, marriage and divorce procedures have been simplified and it is no longer necessary to submit hard-copy certificates if the information exists at the registry office.

The justice sector now has a number of services available on the internet, such as online company, vehicle and industrial property registration, an example of which is “Empresa Online”, online company registry entries, the “permanent certificate” (all on www.empresonline.pt), online publication of events in company life (www.publicacoes.mj.pt), simplified corporate information (www.ies.gov.pt), “marca online” and “patente online” (www.inpi.pt) and “automóvel online” (www.automoveonline.mj.pt).

This decree-law simplifies and improves access to industrial property on the part of citizens and companies. For this purpose, it adopts measures in five areas: reducing time limits for acts by the competent authorities, eliminating formalities by simplifying procedures, promoting **users' access to and understanding** of the industrial property system, encouraging innovation and, finally, promoting foreign investment through direct access to the Portuguese industrial property system by interested parties domiciled or residing abroad.

Firstly, this decree-law is intended to continue efforts to reduce the time necessary to register industrial property.

The procedure for registering trademarks has therefore been reformulated, the times for examination by the National Industrial Property Institute (INPI) have been reduced, internal processing of applications has been perfected and other time limits have been reduced, while always safeguarding the rights involved.

The reformulation of procedures for registering designs or models will also make it possible to significantly reduce the time taken to grant these rights. These times will be reduced by means of publication of registration applications after their submission and not after six months, as before.

Secondly, a number of formalities that placed an unnecessary burden on users of the industrial property system have been eliminated.

Where trademarks are concerned, it is no longer necessary to obtain a registration certificate or periodically submit a declaration of intent to use, thereby reducing costs of obtaining and maintaining a trademark, which previously placed too great a burden on citizens and companies. Regarding trademarks, logotypes and designs or models, it is no longer necessary to submit a photolithograph or several graphic representations. For designs or models, it is no longer necessary to submit a description of the design or model to be protected, which proved to be inappropriate.

More generally, the notarisation of signatures, documents in duplicate and various documents like property registry certificates for trademarks is no longer necessary, as they are unnecessary formalities.

Thirdly, several simplifications have been introduced to make the industrial property system more accessible and understandable to citizens and companies.

An example of this is the abolition of the ex officio examination of the novelty of applications to register designs or models, while still safeguarding the possibility of opposition by interested parties. This change is due not only to the fact that research done for this purpose is necessarily incomplete as there are no sufficiently reliable international databases, but also because of the need to speed up the granting of these rights. In addition, this is a predominant trend in Europe and the EU.

Also regarding designs or models, the capacity for multiple applications has been increased from 10 to 100 products to make this mechanism more attractive and avoid submission of several applications.

Three forms of industrial property rights (names, establishment insignias and logotypes) have also been merged into one (logotypes). This aggregation makes it possible to distinguish more clearly between the different forms of protection of industrial property and avoids recourse to several registrations and payments for the same purpose.

Fourthly, new services are enshrined to encourage innovation.

It is now possible to submit a provisional patent application, in Portuguese or English, to immediately establish the priority of an invention with a minimum of formalities, and a 12-month time limit is granted for

submitting the necessary documentation. If it is not submitted, the patent's priority is cancelled. The idea of the possibility of submitting this provisional application is to encourage small and medium-sized inventors to apply for patents so that they can immediately establish priority simply and at lower cost in the initial phase.

Fifthly and finally, this decree-law also promotes foreign investment by providing direct access to the Portuguese industrial property system by interested parties or owners of industrial property rights, irrespective of the country of residence. This measure will make the Portuguese industrial property system truly global, as industrial property acts related to national rights, such as submission of a trademark or patent registration application, can be carried out online by applicants of any nationality anywhere in the world.

By means of these measures aimed at simplification and access to industrial property, this decree-law pursues the policy of promoting investment in Portugal by simplifying procedures and reducing costs.

The Magistrates Council, the Council of Administrative and Tax Courts, the Public Prosecution Council and the Portuguese Bar Association were consulted.

The Chamber of Solicitors was also heard.

The following bodies were heard on an optional basis: Associação de Consultores de Propriedade Industrial, Associação Empresarial de Portugal, Associação Industrial Portuguesa, Associação Portuguesa de Direito Intelectual, Associação Portuguesa da Indústria Farmacêutica, Associação Portuguesa de Medicamentos Genéricos, Centro Português do Design, Centro Tecnológico da Cerâmica e do

Vidro, Centro Tecnológico das Indústrias Têxtil e de Vestuário, Confederação da Indústria Portuguesa, Confederação Portuguesa das Micro, Pequenas e Médias Empresas, Fundação Luís de Molina, Instituto Pedro Nunes, Instituto Superior Técnico, Union Geral dos Trabalhadores, Universidade do Algarve, Universidade do Porto, Universidade dos Açores, Universidade de Trás-os-Montes e Alto Douro, Universidade da Beira Interior, Associação Comercial e Industrial do Funchal, Associação Comercial do Porto, Confederação do Comércio e Serviços de Portugal, Câmara de Comércio e Indústria Portuguesa, Conselho Empresarial do Centro, Confederação Geral dos Trabalhadores Portugueses, Confederação do Turismo Português, Fórum para a Competitividade, Associação das Micro, Pequenas e Médias

Empresas de Portugal, Associação dos Industriais Metalúrgicos, Metalomecânicos e Afins de Portugal, Associação Comercial Portuguesa, Associação Nacional de Designers, Associação Portuguesa de Designers, Centro Tecnológico da Indústria de Moldes, Ferramentas Especiais, Centro Tecnológico da Cortiça, Centro Tecnológico do Calçado de Portugal, Conselho de Reitores das Universidades Portuguesas, Sociedade de Promoção e Desenvolvimento do Parque da Ciência e Tecnologia da Área de Lisboa and Associação Universidade Empresa para o Desenvolvimento.

Therefore:

Under Article 198(1)(a) of the Constitution, the Government decrees the following:

CHAPTER I

Legislative amendments

(...)

CHAPTER II

Final and transitory provisions

Article 4

APPLICATION OVER TIME

1 – Without prejudice to the following articles, the amendments made to the Industrial Property Code by this decree-law apply to:

a) Applications for patents, utility models and registration of industrial property rights that were submitted before the entry into force of this decree-law and that have not yet been subject to a final decision;

b) Requests that were submitted before the entry into force of this decree-law and that have not yet been subject to a final decision;

c) Patents, utility models and registrations existing at the time of entry into force of this decree-law.

2 – The provisions already in effect on the matter shall apply to claims and similar documents that were submitted outside the time limit before the entry into force of this decree-law and that have not yet been subject to a final decision.

Article 5 **TIME LIMITS**

Time limits that are counting the entry into force of this decree-law shall be subject to previous provisions, whenever they establish a longer time limit.

Article 6 **APPLICATIONS FOR PATENTS AND UTILITY MODELS**

The provisions already in effect on non-prejudicial disclosures shall apply to applications for patents and utility models that were submitted before the entry into force of this decree-law and that have not yet been subject to a final decision.

Article 7

APPLICATIONS TO REGISTER DESIGNS OR MODELS

1 – The provisions on examinations already in effect shall apply to applications for patents and utility models that have not yet been subject to a final decision and for which an examination has been requested.

2 – Applications to register designs or models that were submitted before the entry into force of this decree-law and are awaiting publication in the Industrial Property Bulletin shall be subject to examination as to form and an ex officio examination under the terms of the amendments made by this decree-law, after which they shall be published.

3 – If the applications to register designs or models referred to in the previous paragraph are multiple applications, the provisions already in force on formal requests shall apply.

Article 8

EXAMINATION OF DESIGNS OR MODELS

1 – Applicants or owners who wish an examination to be made in a pending application or provisional registration of a design or model in existence at the time of the entry into force of this decree-law may come and express their interest in an examination being made within six months as of the entry into force of this decree-law.

2 – After the time limit set forth in the previous paragraph has elapsed and if no examination has been requested, provisional registrations are automatically converted into final registrations.

Article 9

APPLICATIONS FOR PRIOR PROTECTION

Applications for prior protection submitted before the entry into force of this decree-law shall be subject to the provisions already in effect.

Article 10

STATEMENT OF INTENT TO USE

1 – Trademark registrations which on date of publication of this decree-law are awaiting the end of the time limit for submitting a statement of intent to use shall be subject to the amendments to the Industrial Property Code made by this decree-law and their owners shall not be required to submit one.

2 – The previous paragraph applies to owners of trademark registrations who, on date of publication of this decree-law, have not submitted a statement of intent to use in due time, and the National Industrial Property Institute shall no longer be able to declare the expiry of these registrations ex officio or at the request of any interested party.

Article 11

CHANGE OF DESIGNATION

1 – Applications to register establishment names and establishment insignias that were submitted before the entry into force of this decree-law and have not yet received a decision or judicial ruling shall now be called logotype registration applications and the amendments to the

Industrial Property Code made by this decree-law shall apply.

2 – Expired registrations of establishment names and establishment insignias that are awaiting revalidation on the date of entry into force of this decree-law shall be called logotype registrations when revalidation is approved.

3 – Registrations of establishment names and establishment insignias that are awaiting payment of the registration fee on the date of entry into force of this decree-law shall now be called logotype registrations at time of payment.

4 – After the entry into force of this decree-law, owners of registrations of establishment names and establishment insignias may, at any time and at no extra cost, request conversion of these rights to logotype registrations.

5 – Registrations of establishment names and establishment insignias that have not been converted under the terms of the previous paragraph shall be automatically converted to logotype registrations on first renewal after the entry into force of this decree-law.

6 – The renewal mentioned in the previous paragraph shall be subject to the fee charged for renewal of a logotype registration.

7 – Applications and registrations converted under the terms of the previous paragraphs shall maintain their object and their conversion shall be published by notice in the Industrial Property Bulletin, with an indication of their new case number, if applicable.

Article 12

REGISTRATION OF ESTABLISHMENT NAMES AND INSIGNIAS

Establishment names and insignias in existence on the

date of entry into force of this decree-law shall be subject, with the necessary adaptations, to the provisions on logotype registrations, without prejudice to the following article.

Article 13

INDICATION OF ESTABLISHMENT NAME OR INSIGNIA

While a registration is in effect, its owner may use the designation “registered name”, “registered insignia” or simply “RN” or “RI” in the name or insignia.

Article 14

REVOCATIONS

The following are revoked: Article 11(4) and 11(5), Article 15, Article 17(5), 17(6) and 17(7), Articles 18 and 20, Article 24(1)(d) and 24(1)(e), Article 27(2), Article 28(2) and 28(3), Article 30(5), Article 31(3) and 31(4), Article 52(2), Articles 64 and 67, Article 76(3), Article 87(1) and 87(2), Article 91(3), Article 94(2), Articles 126, 129 and 175, Article 185(1)(a) and 185(1)(d), Article 190(6), Articles 191 to 196, Article 197(1)(d) to 197(1)(g), Article 198, Article 208(2), Article 209(2), Articles 211 to 221, Article 237(2), 237(7) and 237(10), Article 238(1)(d) and 238(2), Article 246, Article 247(2)(c), Article 248(2), Article 256, Article 265(1)(b), Article 270(5), Articles 282 to 304, Article 338(c) and Article 356(1)(f) and 356(2) of the Industrial Property Code approved by Decree-Law 36/2003 of 5 March.

Article 15
REPUBLICATION

The Industrial Property Code approved by Decree-Law 36/2003 of 5 March and amended by Decree-Law 318/2007 of 26 September and Decree-Law 360/2007 of 2 November and Law 16/2008 of 1 April is republished in its current version as an annex to this decree-law, of which it is an integral part.

Article 16
ENTRY INTO FORCE

1 – This decree-law shall enter into force on 1 October 2008.

2 – The provisions of Article 10 of this decree-law, Article 11(3), the final part of Article 27, Articles 48 and 49, Article 107(7), Article 270(2), Article 348(4) and Article 353 of the Industrial Property Code in the version set out in this decree-law shall enter into force on the day following its publication.

3 – The revocation of Article 256 of the Industrial Property Code in the version set out in this decree-law shall enter into force on the day following its publication.

4 – The provisions of Article 62(2), Article 185(1)(c) and 185(4), Article 234(1), Article 247(2)(b) and Article 304-E(1) of the Industrial Property Code in the version set out in this decree-law, regarding the issue of the regulations set forth therein, shall enter into force on the day following its publication.

Seen and approved by the Council of Ministers on 6 March 2008. – José Sócrates Carvalho Pinto de Sousa – Emanuel Augusto dos Santos – Alberto Bernardes Costa –

António José de Castro Guerra – José Mariano Rebelo Pires
Gago.

Promulgated on 8 July 2008.

Let it be published.

The President of the Republic, Aníbal Cavaco Silva.

Countersigned on 9 July 2008.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa

Industrial Property Code

(Republication following Decree-Law 143/2008 of 25 July, which approves measures for the simplification of and access to industrial property)

TITLE I

General part

CHAPTER I

General provisions

Article 1

FUNCTION OF INDUSTRIAL PROPERTY

The function of industrial property is to guarantee fair competition by awarding private rights over technical processes of production and the development of wealth.

Article 2

SCOPE OF INDUSTRIAL PROPERTY

Industry and trade, in their strict sense, the fishery, agriculture, forestry, stockbreeding and extractive industries, as well as all natural or manufactured products and services, fall within the scope of industrial property.

Article 3

PERSONAL SCOPE OF APPLICATION

1 – This code applies to all natural or legal persons of Portuguese nationality or nationals of the countries belonging to the International Union for the Protection of Industrial Property, hereinafter referred to as the Union, under the terms of the Paris Convention of 20 March 1883 and its revisions and the World Trade Organization, hereinafter referred to as the WTO, without depending on the condition of residence or establishment, with the

exception of special provisions on competence and procedure.

2 – Nationals of any other states that have an effective, non-fictitious residence or industrial or commercial establishment in one of the countries of the Union or WTO are considered equivalent to nationals of the countries of the Union or WTO.

3 – Regarding any other foreign nationals, the provisions of conventions between Portugal and their countries shall be considered or, if there are none, the principles of reciprocity.

Article 4

EFFECTS

1 – The rights granted by patents, utility models and registrations cover the whole national territory.

2 – Without prejudice to the following paragraph, the granting of industrial property rights entails a mere legal assumption of the requirements for granting them.

3 – The registration of awards guarantees the veracity and authenticity of ownership and guarantees their owners exclusive use for an indefinite time.

4 – Registrations of trademarks, logotypes, appellations of origin and geographical indications are grounds for refusal or annulment of company names that may be confused with them, if the applications for authorisation or alteration are submitted later than registration applications.

5 – Suits annulling acts arising from the previous paragraph are only admissible within 10 years of the publication of the *Diário da República* establishing or altering the company name of the legal person, unless brought by the Public Prosecutor's Office.

Article 5

PROVISIONAL PROTECTION

1 – An application for a patent, utility model or registration provisionally grants the applicant the right, as of its publication in the Industrial Property Bulletin, to the same protection as that granted by the right, to be considered in the calculation of any compensation.

2 – The provisional protection referred to in the previous paragraph is opposable, even before publication, by anyone who has been notified of the submission of the application and received the details of the case.

3 – Verdicts in suits brought on the basis of provisional protection cannot be delivered before the final granting or refusal of a patent, utility model or registration and the case shall be suspended at the end of the arguments.

Article 6

RIGHTS TO GUARANTEE

The rights emerging from patents and utility models and registrations of topographies of semiconductor products, designs or models and trademarks and other distinctive trade signs shall be subject to attachment and seizure and may be attached or subject to other forms of confiscation of property under the law.

Article 7

PROOF OF RIGHTS

1 – Proof of industrial property rights shall be given by means of grant documents corresponding to their different

forms.

2 – Grant documents must contain the necessary details for perfect identification of the right to which they refer.

3 – Industrial property certificates issued by international organisations for use in Portugal have the same value as the grant documents referred to in the previous paragraphs.

4 – Owners of rights may be issued certificates with similar contents to their document of title.

5 – The following may also be issued at the request of an applicant or owner:

a) Application certificates;

b) Protection certificates for industrial property rights granted by international organisations for use in Portugal.

Article 8

RE-ESTABLISHMENT OF RIGHTS

1 – The rights of applicants for or owners of industrial property rights who, in spite of all the attention required by the circumstances, have failed to respect a time limit, non-compliance with which may result in its not being granted or affect its validity, and the cause is not directly imputable to them, shall be re-established at their request.

2 – A duly justified request shall be submitted in writing within two months of the cessation of the circumstance that prevented compliance with the time limit but will only be allowed, in any case, within one year of the end of the time limit missed.

3 – In the case of the time limits mentioned in Article 12, requests are only allowed within two months as of the end of the time limit missed.

4 – The omitted act must be performed within the two-month period referred to in paragraph 2 along with a

payment of a fee for the re-establishment of rights.

5 – The provisions of this article do not apply to the time limits referred to in paragraphs 2 or 4 and Articles 17 and 350, if it is a question of extending a time limit set forth in this code and if a declaration of expiry case is pending for that industrial property right.

6 – Applicants for or owners of rights that are re-established may not invoke them to a third party who, in good faith, in the period between the loss of the rights granted and the publication of the notice of re-establishment of the rights, has begun operation or sale of the object of the right or has made actual, serious preparations for its operation or sale.

7 – Third parties who may avail themselves of the provision in the previous paragraph may oppose the decision to re-establish rights of the applicant or owner within two months of the date of publication of the notice of re-establishment of the right.

CHAPTER II

Administrative formalities

Article 9

LEGITIMACY TO PERFORM ACTS

Those who have an interest in the legal acts have the legitimacy to perform them before the National Industrial Property Institute.

Article 10

LEGITIMACY TO PROMOTE ACTS

1 – The acts and terms of the procedure may only be promoted:

a) By the interested party or owner of the right, if established or domiciled in Portugal or by a person who is established or domiciled in Portugal and, while not an official agent of the industrial property, a lawyer or solicitor, submits power of attorney for the purpose;

b) By the interested party or owner of the right, if established or domiciled in a foreign country;

c) By an official industrial property agent;

d) By a representing lawyer or solicitor.

2 – The persons mentioned in subparagraph b) of the previous paragraph shall:

a) Indicate an address in Portugal, or

b) Indicate an email address or fax number.

3 – The entities mentioned in the previous paragraphs may always have access to the case files and obtain photocopies of documents of interest, which shall be duly authenticated on request.

4 – In the case set forth in paragraph 2, notifications shall be sent for all legal purposes to the address in Portugal, the email address or fax number indicated by the interested party, owner of the right or a representative.

5 – When parties are represented by attorneys, the notifications shall be sent to them directly.

6 – Unless otherwise indicated by the applicant for or owner of the right, notifications shall be sent to the last attorney intervening in the case, irrespective of whoever pays the maintenance fees.

7 – If there are irregularities or omissions in the promotion of a certain act, the party shall be ordered

directly to comply with the applicable legal provisions within no more than one month, on pain of ineffectiveness of the act, though without forfeiting any priorities to which they are entitled.

Article 10-A

WAY OF PERFORMING ACTS

1 – The acts set forth in this code and communications between the National Industrial Property Institute and interested parties may be performed by electronic data transmission.

2 – If an act is performed by electronic data transmission, all other acts, including communications with the National Industrial Property Institute, should preferably be performed via the same medium.

3 – The appending of a qualified or advanced electronic signature in acts performed by interested parties or the National Industrial Property Institute for all purposes replaces and dispenses with a handwritten signature on paper, provided that the requirements of the state's electronic certification system are respected.

Article 11

PRIORITY

1 – Save for the exceptions set forth in this code, a patent, utility model or registration is granted to whomsoever first submits an application with all the required elements.

2 – If applications are submitted by post, precedence shall be assessed by the date of registration or postmark.

3 – In the event of two applications for the same right

being simultaneous or of the same priority, the cases shall not proceed until the interested parties have settled the issue of priority, by agreement or in a competent court or arbitration tribunal.

4 – (Revoked.)

5 – (Revoked.)

6 – If an application is not initially accompanied by all the required elements, priority shall count from the date and time at which the last missing document is submitted.

7 – If an invention, design or model, trademark, logotype, award, designation of origin or geographical indication is altered in relation to the initial publication, a new notice shall be published in the Industrial Property Bulletin and the priority of the alteration shall count from the date on which it was requested.

8 – Without prejudice to Article 51(4) and Article 117(3), if, as a result of the examination, it is found that an application for a patent, utility model or registration has not been correctly formulated, the applicant shall be instructed to submit it in the form indicated.

9 – Before a decision is issued, applicants can, on their own initiative, reformulate an application in a different form from that initially submitted.

10 – After a decision has been issued, during the time limit for appeals or, if an appeal has been lodged, until the ruling has been confirmed, applicants may transfer the rights pertaining to an application, limit its object or add documents or statements to the case file.

11 – In the case set forth in the previous paragraph, with a view to a possible appeal, any other interested party may add documents or statements to the case file with a view to a possible appeal.

12 – In the cases set forth in paragraphs 8 and 9, applications are published again in the Industrial Property Bulletin, while the priorities to which the applicants were

entitled are maintained.

13 – Until a decision is issued, other formal rectifications may be authorised, provided that they are requested with due justification, which shall be published.

Article 12

CLAIMING THE RIGHT TO PRIORITY

1 – Anyone who has submitted a regular application for a patent, utility model, certificate of utility, inventor's certificate, registration of a design or model or a trademark in any country of the Union or WTO or to any intergovernmental body with the power to grant rights having effect in Portugal is entitled, as is his successor for the purpose of submitting the application in Portugal, to the right to priority established in Article 4 of the Paris Convention of the Union for the Protection of Industrial property.

2 – Any application made with the same value as a regular, national application under the law of each member state of the Union or WTO or bilateral or multilateral treaties between members of the Union or WTO shall grant a property right.

3 – A regular, national application is understood to be any application for which it is possible to establish the date on which it was submitted in the country in question, irrespective of anything that may in any way subsequently affect it.

4 – As a result, an application submitted later in Portugal before expiry of its priority period cannot be invalidated by reason of events occurring in this period, for example another application or publication or exploitation of the invention, design or model.

5 – A later application with the same object as a prior first

application shall be considered a first application, the date of submission of which will mark the beginning of the priority period, provided that, on the date of submission of the latter, the prior application has been withdrawn, abandoned or refused without undergoing public examination, without any rights persisting and without having served as a basis for a priority right claim.

6 – In the case set forth in the previous paragraph, the prior application may not serve as a basis for a priority right claim again.

7 – Persons wishing to avail themselves of priority of a prior application must draft a statement indicating the country, date and number of this application. This statement may be submitted within one month of the end of the priority period if it is a registration application, or within four months of the end of the priority period in the case of a patent or utility model application.

8 – If several priorities are claimed in one application, the period shall count from the oldest priority date.

9 – Priority or an application for a patent, utility model or registration of a design or model cannot be denied on the grounds that the applicant claims several priorities, even if they come from different countries, or on the grounds that an application claiming one or more priorities contains one or more elements that were not included in the applications for which priority is being claimed, on the condition that, in both cases, there is unity of invention or creation in the case of designs or models.

10 – Priority cannot be denied on the grounds that certain elements of the invention or, in the case of designs or models, of the creation for which priority is being claimed, do not figure among the claims made or reproductions of the designs or models submitted in the application in the country of origin, provided that all the components of the application accurately show these elements.

11 – If the examination reveals that a patent or utility model application contains more than one invention or, in the case of multiple applications for registration of designs or models, that the products do not belong to the same international classification class of industrial designs and models, applicants may, on their own initiative or in compliance with an order, divide the application into a certain number of split applications, with each maintaining its original date of application and, if applicable, the right to priority.

12 – Applicants may also divide an application for a patent, utility model or registration of a design or model on their own initiative, and the date of each split application will remain the same as that of the original application and, if applicable, the priority right.

Article 13

PROOF OF PRIORITY RIGHT

1 – The National Industrial Property Institute may require anyone invoking a priority right to, within two months of the order, submit an authenticated copy of the first application, a certificate of the date of its submission and, if necessary, a Portuguese translation.

2 – The time limit indicated in the previous paragraph may be extended once, by one month.

3 – Submission of the copy of the application within the time limit set in the previous paragraph is free of charge.

4 – Failure to comply with this article shall result in loss of the priority right claimed.

Article 14
REGULARISATION

If any irregularities are detected before the publication of the notice in the Industrial Property Bulletin, the applicant will be ordered to make the necessary regularisations.

Article 15
NOTARISATION OF SIGNATURES

(Revoked.)

Article 16
NOTIFICATIONS

1 – The parties involved in an administrative procedure shall be notified of the final decisions of the National Industrial Property Institute, said notifications being given exclusively by publication in the Industrial Property Bulletin whenever a grant is made in cases in which no claim has been submitted.

2 – If there are objections in any procedure, the National Industrial Property Institute shall inform the applicant immediately.

3 – Similar notifications will also be made of contestations, expositions, applications for expiry and other procedural components attached to the case files.

4 – In the case set forth in paragraph 1, in which notification is given exclusively by publication in the Industrial Property Bulletin, the National Industrial Property Institute shall advise applicants of publication by the means it deems appropriate.

Article 17

TIME LIMITS FOR OPPOSITION AND REPLY

1 – The time limit for submitting oppositions is two months as of publication of the application in the Industrial Property Bulletin.

2 – Applicants may reply to oppositions within two months as of notification thereof.

3 – If no opinion has been issued on an application and it is necessary to clarify the procedure, additional expositions may be accepted.

4 – During the time limits established in paragraphs 1 and 2 and on justified request by the interested party, the National Industrial Property Institute may grant a single extension of one month for opposition and reply, in which case the opposing party shall be notified.

5 – (Revoked.)

6 – (Revoked.)

7 – (Revoked.)

Article 17-A

SUSPENSION OF STUDY

1 – On request by the interested party and with the assent of the opposing party, the study of the case may be suspended for no longer than six months.

2 – The study may also be suspended ex officio or at the request of the interested party for the duration of a prejudicial cause likely to affect the decision thereon.

Article 18
DUPLICATE OF ARGUMENTS

(Revoked.)

Article 19
ADDITION AND RETURN OF DOCUMENTS

1 – Documents are attached to the piece in which the facts to which they refer are alleged.

2 – If it is demonstrated that it is impossible to obtain them in due time, they may be attached to the case file after authorisation, in which case the opposing party will be notified.

3 – The addition of irrelevant or unnecessary documents shall be refused even if added in due time, as shall any texts written in disrespectful or inappropriate terms or containing superfluous repetition of allegations already made.

4 – The documents referred to in the previous paragraph shall be returned to the parties, who will be ordered by letter and through their attorney to take delivery of them by a certain deadline, after which they will be filed outside the case files.

5 – The notifications referred to in the previous paragraph shall also be sent to the parties.

Article 20
LATE OPPOSITIONS

(Revoked.)

Article 21
INSPECTIONS

1 – In order to substantiate or clarify allegations made in the procedure, an interested party may submit a justified request to the National Industrial Property Institute for an inspection of any establishment or other site, though the request may not be granted without the subject of the inspection being heard.

2 – The costs of inspection shall be borne by the person requesting it.

3 – The party that requested the inspection is free to withdraw the request before it is conducted.

4 – The amounts deposited shall be returned at the **interested party's request, in the event of timely withdrawal** or denial of the application for an inspection.

5 – An inspection may also be conducted on the initiative of the National Industrial Property Institute, if it is essential to a clear understanding of the case.

6 – Refusal to cooperate when the parties involved in any case are so requested by the National Industrial Property Institute, for clarification of the situation, shall be freely considered at the time of the decision, without prejudice to the reversal of the burden of proof if the opposing party has deliberately made it impossible.

Article 22
SUBSEQUENT FORMALITIES

After the time limits set forth in Article 17 have expired, **the parties' allegations are examined and considered and the findings will be added to the case file for a decision to be made.**

Article 23

ALTERATION OF DECISION

1 – If within two months of publication of a decision, it is decided that it should be altered, the case will be submitted to a higher authority along with all the known facts that justify reversal of the decision made.

2 – Higher authority is understood to be the immediate superior of the person who actually signed the decision to be altered.

Article 24

GENERAL GROUNDS FOR REFUSAL

1 – The following are general grounds for refusal:

- a) Failure to pay fees
- b) Failure to submit the necessary elements for full documentation of the case;
- c) Non-fulfilment of essential formalities or procedures for granting of the right;
- d) (Revoked.)
- e) (Revoked.)
- f) Submission of a request with an impossible or unintelligible object.

2 – In the cases set forth in the previous paragraph, the requested act cannot be submitted for a decision without the applicant being ordered in advance to come and regularise it by a certain deadline.

Article 25

**ALTERATION OR CORRECTION OF NON-
ESSENTIAL ELEMENTS**

1 – Any alteration or correction that does not affect the essential elements or characteristics of the patent, utility model or registration may be authorised in the same case.

2 – No application for an alteration or correction set forth in this article may be accepted if a declaration of expiry is pending for the same industrial property right.

3 – The alterations or corrections referred to in paragraph 1 shall be published for the purpose of appeal as set forth in articles 39 et seq. of this code and noted in the files in question.

Article 26

**DOCUMENTS ATTACHED TO OTHER CASE
FILES**

1 – With the exception of the power of attorney, which is always attached to each case file, even if the applicant is represented by the same attorney, the documents pertaining to applications may be attached to one and mentioned in the others.

2 – In the event of an appeal, as set forth in Articles 39 et seq., appellants are obliged to use certificates to complete, at their own cost, cases in which said documents have been mentioned.

3 – Failure to comply with the previous paragraphs must be mentioned in the letter sending the case to court.

Article 27

HANDING OVER OF GRANT DOCUMENTS

1 – Grant documents to industrial property rights shall only be issued and handed over to holders on application one month after the end of the appeal period or, if an appeal has been lodged, after the final judicial or arbitral ruling has been made.

2 – (Revoked.)

Article 28

TIME LIMITS

1 – The time limits stipulated in this code are continuous.

2 – (Revoked.)

3 – (Revoked.)

Article 29

PUBLICATION

1 – Acts that must be published are given notice to the parties and the public by publication in the Industrial Property Bulletin.

2 – Publication in the Industrial Property Bulletin serves as direct notification to the parties and, unless otherwise indicated, marks the beginning of the time limits set forth in this code.

3 – The parties in the case or any other interested parties may request the National Industrial Property Institute to issue them with a certificate attesting to the final decision on the application and its grounds, even before the notice is published in the Industrial Property Bulletin.

4 – Any interested party may also request a certificate of entries, documents and files and photographic or ordinary copies of designs, photographs, plans and models submitted with applications for a patent, utility model or registration, but only if the case has reached the publicity phase, the rights of third parties are not infringed and none of the documents are classified or disclose trade or industrial secrets.

5 – The publicity phases shall be deemed to have been reached in any case when the application is published in the Industrial Property Bulletin.

6 – Without prejudice to the provisions of the previous paragraphs, the National Industrial Property Institute may provide information on applications to register trademarks, logotypes, awards, appellations of origin and geographical indications, even before the publicity phase has been reached.

Article 30 **ANNOTATION**

1 – The following shall be annotated at the National Industrial Property Institute:

- a)** Transfer and renunciation of private rights;
- b)** Grant of contractual or mandatory exploitation licences;
- c)** The constitution of rights of guarantee or use and the seizure, confiscation and other apprehensions of goods performed under the law;
- d)** Lawsuits to annul or declare the nullity of private rights;
- e)** Events or decisions that change or eliminate private rights.

2 – The events referred to in the previous paragraph shall only be effective with regard to third parties after the date of their annotation.

3 – Events requiring annotation, even if not yet annotated, may be invoked by the parties or their successors.

4 – Annotation is carried out at the request of any of the interested parties accompanied by documents proving the events to which they refer.

5 – (Revoked.)

6 – Events annotated are also added to the document of title, if any, or to a document attached thereto.

7 – A notice of an annotation shall be published in the Industrial Property Bulletin.

CHAPTER III

Transfer and licences

Article 31

TRANSFER

1 – The rights emerging from patents, utility models, registrations of topographies of semiconductor products, designs or models and trademarks can be totally or partially transferred free of charge or against payment.

2 – The previous paragraph applies to rights emerging from the applications in question.

3 – (Revoked.)

4 – (Revoked.)

5 – If a logotype or trademark contains the individual,

business or company name of the holder of or applicant for registration or his representative, a clause is necessary for its transfer.

6 – A transfer between living persons shall be proven by a written document. However, if the annotation of the transfer is requested by the transferring party, the recipient must also sign the document proving it or make a statement accepting the transfer.

Article 32

CONTRACTUAL LICENCES

1 – The rights referred to in paragraph 1 of the previous article may be subject to a total or partial exploitation licence, free of charge or in return for payment, in a certain area or throughout the country for the whole of their duration or for a shorter time.

2 – The previous paragraph applies to the rights emerging from the applications in question, though refusal shall result in expiry of the licence.

3 – Licence contracts must be drawn up in writing.

4 – Unless otherwise expressly stipulated, for all legal purposes a licensee enjoys the faculties belonging to the holder of the right to which the licence applies, with the exception of the provisions of the following paragraphs.

5 – The licence shall be understood to be non-exclusive.

6 – An exclusive licence is one in which the holder of the right renounces the faculty to grant other licences for the rights covered by the licence while it remains in effect.

7 – The grant of an exclusive exploitation licence does not prevent the holder from also directly exploiting the right in the licence, unless otherwise stipulated.

8 – Unless otherwise stipulated, a right obtained in an

exploitation licence cannot be transferred without the written consent of the holder of the right.

9 – If the grant of sublicences is not provided for in the licence contract, they may only be granted with the written authorisation of the holder of the right.

CHAPTER IV

Extinction of industrial property rights

Article 33

NULLITY

1 – Patents, utility models and registrations shall be totally or partially null:

- a) If their object cannot be protected;
- b) If, when granted, procedures or formalities essential to the grant of the right have been omitted;
- c) If public rules have been violated.

2 – Nullity can be invoked at any time by any interested party.

Article 34

ANULLABILITY

1 – Patents, utility models and registrations shall be totally or partially anullable if the holders are not entitled to them, i.e.:

- a) If the right does not belong to them;

b) If they were granted with disregard for the rights set forth in Articles 58, 59, 121, 122, 156, 157, 181, 182 and 226;

2 – In the cases set forth in paragraph b) of the previous paragraph, instead of annulment, interested parties may request the total or partial reversion of a right in their favour, if legally able to do so.

Article 35

DECLARATION OF NULLITY AND ANNULMENT

1 – A declaration of nullity or annulment may only result from a judicial decision.

2 – The Public Prosecutor's Office or any interested party is entitled to bring the suit referred to in the previous paragraph and, in addition to the holder of the right registered against whom the suit is brought, all those who on date of publication of the annotation set forth in Article 30(1)(d) have requested annotation of derivative rights at the National Industrial Property Institute must also be cited.

3 – After the judicial verdict has become final, the court secretariat shall send to the National Industrial Property Institute, whenever possible by electronic data transmission, a typed copy or another acceptable form for publication of the document and notice in the Industrial Property Bulletin and for annotation.

4 – Whenever the suits referred to in this article are brought, the court shall inform the National Industrial Property Institute of the fact, if possible by electronic data transmission, for the purpose of annotation.

Article 36
**EFFECTS OF DECLARATION OF NULLITY OR
 ANNULMENT**

The retroactive effectiveness of a declaration of nullity or annulment shall not prejudice the effects of compliance with the obligation, final verdict or transaction even if not yet countersigned, or as a consequence of similar acts.

Article 37
EXPIRY

1 – Industrial property rights shall expire irrespective of their invocation:

- a)** When their duration terminates;
- b)** On failure to pay fees.

2 – Causes of expiry not provided for in the previous paragraph shall only be effective if invoked by an interested party.

3 – Any interested party may also request the annotation of expiry set forth in paragraph 1, if this has not already been done.

Article 38
RENUNCIATION

1 – Holders may renounce their industrial property rights, provided that they so declare expressly to the National Industrial Property Institute.

2 – Renunciation may be partial, if the nature of the right so allows.

3 – Declarations of renunciation are made on forms that

are attached to the case files in question.

4 – If a renunciation form is not signed by the party in question, his attorney must attach power of attorney with special powers.

5 – Renunciation shall not prejudice derivative rights that have been annotated, provided that their holders are duly notified and replace the holder of the principal right to the extent necessary to safeguard these rights.

CHAPTER V

Appeals

SUBCHAPTER I

Judicial appeals

Article 39

DECISIONS PERMITTING APPEALS

The following decisions by the National Industrial Property Institute may be appealed against in full jurisdiction to the competent court:

- a)** Those granting or refusing industrial property rights;
- b)** Those regarding transfers, licences, declarations of expiry or any other acts that affect, alter or extinguish industrial property rights.

Article 40

COMPETENT COURT

1 – The Lisbon Commercial Court is competent for the appeals set forth in the previous article.

2 – For the purposes of Articles 80 to 92 of Regulation (EC) 6/2002 of the Council of 12 December 2001 and Articles 91 to 101 of Regulation (EC) 40/94 of the Council of 20 December 1993, the Lisbon Commercial Court and Lisbon Court of Appeal are territorially competent in the first and second instance, respectively.

Article 41

LEGITIMACY

1 – The applicant and claimants and anyone directly and effectively prejudiced by a National Industrial Property Institute decision are legitimate parties to appeal.

2 – Accessorily, anyone who has not submitted a claim but demonstrates that he has an interest in maintaining decisions by the National Industrial Property Institute may also participate in an appeal.

Article 42

TIME LIMIT

Appeals must be lodged within two months of publication in the Industrial Property Bulletin of the decisions set forth in Article 39 or final decisions made under Article 23 or the date of their respective certificates requested by the claimant, if made earlier.

Article 43
REPLY LETTER

1 – After the case files have been distributed, a copy of the plea is sent to the National Industrial Property Institute with its respective documents, so that the entity that made the appealed decision can respond as it sees fit and forward the case files on which the decision was made to the court.

2 – If the case files contain sufficient information to clarify the court, they shall be sent within 10 days, accompanied by a reply letter.

3 – Otherwise, the reply letter containing a response to the appellant's arguments in his plea shall be sent with the case files within 20 days.

4 – If, for a justified reason, the time limits fixed in the previous paragraphs cannot be respected, the National Industrial Property Institute shall ask the court to extend the limits for a time and on the terms that it deems necessary.

5 – The communications referred to in this article must be made by electronic data transmission whenever possible.

Article 44
SUMMONS BY THE OPPOSING PARTY

1 – After the case files have been received by the court, the opposing party, if any, shall be summoned to respond within 30 days, if he so wishes.

2 – The summons of the party shall be carried out at the office of legal counsel or, if there is none, at the office of the official industrial property agent who represented the party in the administrative proceeding. In the latter case, however, he will be warned that he will only be able to intervene in the case if represented by counsel.

3 – At the end of the time limit for a response, the case shall be adjourned for a final decision, which shall be given in 15 days, except in the case of just impediment.

4 – A verdict that revokes or totally or partially alters the appealed decision replaces it in the exact terms in which it was given.

5 – The National Industrial Property Institute shall not, under any circumstances, be considered an opposing party.

Article 45

REQUISITION OF EXPERTS

If, during an appeal, a question addressed requires further information or if the court considers it advisable, the court may at any time request and establish a date and time for the appearance of one or more experts on whose opinion the appealed decision was based so that they can give any necessary oral clarifications.

Article 46

APPEAL AGAINST COURT DECISION

1 – Appeals may be lodged against the verdict given under the general law of civil procedure, without prejudice to the following paragraph.

2 – There shall be no appeal to the Supreme Court of Justice against decisions by the Court of Appeal, without prejudice to cases in which it is always admissible.

Article 47

PUBLICATION OF FINAL DECISION

Article 35(3) applies to appeals.

SUBCHAPTER II

Arbitral appeal

Article 48

ARBITRATION TRIBUNAL

1 – Without prejudice to the possibility of recourse to other extrajudicial dispute settlement mechanisms, an arbitration tribunal may be set up to try all issues that may be appealed.

2 – Exceptions to the previous paragraph are cases involving third parties, unless they agree to an arbitration agreement.

3 – The arbitration tribunal may order the publication of the decision under Article 35(3).

Article 49

ARBITRATION AGREEMENT

1 – An interested party wishing to have recourse to arbitration in disputes set forth in the previous paragraph may request the signing of an arbitration agreement under the law on voluntary arbitration and agree to submit the dispute to arbitration.

2 – Submission of a request under the previous paragraph shall suspend the time limits for court appeals.

3 – Without prejudice to the following paragraph, the signing of an arbitration agreement by the National Industrial Property Institute is subject to the approval of the Chairperson of the Board of Directors, which shall be given in 30 days as of the date of the request.

4 – The generic binding of the National Industrial Property Institute to institutionalised voluntary arbitration centres with powers to settle the disputes referred to in paragraph 1 of the previous article may be determined by order of the government member to whom the institute answers, which shall establish the type and maximum value of disputes covered, granting the interested parties the power to resort to these centres to settle said disputes.

Article 50

CONSTITUTION AND FUNCTIONING

The arbitration tribunal shall be set up and function under the terms provided for by the law on voluntary arbitration.

Title II

Industrial
Property Law

CHAPTER I

Inventions

SUBCHAPTER I

Patents

SECTION I

General provisions

Article 51

OBJECT

1 – New inventions involving inventive activity can be patented if they have an industrial use, even if they apply to a product consisting of or containing biological material or to a process that produces, treats or uses biological material.

2 – Patents may be obtained for any inventions, be they products or processes, in all fields of technology, provided that these inventions comply with the previous paragraph.

3 – New processes for obtaining known products, substances or compositions may also be patented.

4 – An invention complying with the conditions set forth in paragraph 1 may be protected, at the applicant's choice,

with a patent or utility model.

5 – The same invention may be the object simultaneously or subsequently of an application for a patent and for a utility model.

6 – The successive submission of applications referred to in the previous paragraph shall only be allowed within one year as of the date of the first application.

7 – In the cases set forth in paragraph 5, a utility model expires after a patent has been granted for the same invention.

Article 52

LIMITATIONS ON OBJECT

1 – The following are exceptions to the previous article:

a) Discoveries, scientific theories and mathematical methods;

b) Materials or substances already existing in nature and nuclear materials;

c) Aesthetic creations;

d) Schemes, rules or methods for intellectual acts, playing a game or doing business and computer programs, as such, with no contributions;

e) Presentations of information.

2 – (Revoked.)

3 – Paragraph 1 only excludes patentability if the object for which a patent is requested is limited to the elements mentioned in it.

Article 53

LIMITATIONS ON PATENT

1 – Inventions whose commercial exploitation is against the law or contrary to public policy, public health or morality are not patentable and their exploitation may not be considered as such due to the simple fact that it is forbidden by law or regulations.

2 – Under the previous paragraph, the following are not patentable:

- a)** Processes for cloning human beings;
- b)** Processes for modifying the germinal genetic identity of human beings;
- c)** The use of human embryos for industrial or commercial purposes;
- d)** Processes for modifying the genetic identity of animals which may cause them suffering without any substantial medical benefit to man or animal and also animals resulting from such processes.

3 – The following are also not patentable:

- a)** The human body, at the various stages of its formation and development and the simple decoding of one of its elements, including the discovery of a sequence or partial sequence of a gene, without prejudice to (1)(c) of the following article;
- b)** Plant and animal varieties and essentially biological processes for obtaining plants or animals;
- c)** Surgical or therapeutic methods for treating the human or animal body and diagnostic methods used on the human or animal body, though products, substances or compositions used in any of these methods may be patented.

Article 54

SPECIAL CASES OF PATENTABILITY

1 – The following may be patented:

a) A substance or composition included in the state of the art for use in a method referred to in paragraph (3)(c) of the previous article, on the condition that this use for any method mentioned therein is not included in the state of the art;

b) The substance or composition referred to in the previous paragraph for any other specific use in a method mentioned in paragraph (3)(c) of the previous article, provided that this use is not included in the state of the art;

c) A new invention that involves an inventive step and is susceptible of industrial application relating to any isolated element of the human body or produced in any other way by a technical process, including a sequence or partial sequence of a gene, even though the structure of this element is identical to that of a natural element, provided that the industrial application of a sequence or partial sequence of a gene is expressly observed and specifically described in the patent application;

d) An invention relating to plants or animals, if its technical feasibility is not confined to a particular plant variety or breed of animal;

e) A biological material isolated from its natural environment or produced on the basis of a technical process, even if it pre-exists in a natural state;

f) An invention relating to a microbiological process or other technical processes or products obtained by means of these processes.

2 – An essentially biological process for obtaining plants or animals is any process that consists wholly of natural phenomena, such as crossing or selection.

3 – A microbiological process is any process involving or performed upon or resulting in microbiological material.

4 – Biological material is any material that contains genetic information and is capable of reproducing itself or being reproduced in a biological system.

Article 55

PATENTABILITY REQUIREMENTS

1 – An invention is considered new if it does not form part of the state of the art.

2 – An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

3 – An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry or in agriculture.

Article 56

STATE OF THE ART

1 – The state of the art shall be held to comprise everything made available to the public within the country or abroad by means of a description, by use or in any other way.

2 – Additionally, the content of patent and utility model applications filed prior to the patent application for effect in Portugal but not yet published shall also be considered as comprised in the state of the art.

Article 57

NON-PREJUDICIAL DISCLOSURES

1 – The following shall not prejudice the novelty of an invention:

a) Disclosure in official or officially recognised exhibitions falling within the terms of the Convention of International Exhibitions if the application for the patent is filed in Portugal within six months;

b) Disclosure resulting from evident abuse of any kind in relation to the inventor or his successor in title or publications made unduly by the National Industrial Property Institute.

2 – Subparagraph a) of the previous paragraph shall only apply if the applicant proves, within one month as of the date of filing the patent application, that the invention was actually displayed or disclosed as set forth in said subparagraph and submits a certificate issued by the body in charge of the exhibition indicating the date on which the invention was first displayed or disclosed at the exhibition and the name of the invention in question.

3 – At the applicant's request, the time limit indicated in the previous paragraph may be extended once only for the same period.

Article 58

GENERAL RULE ON THE RIGHT TO PATENT

1 – The right to patent shall belong to the inventor or his successors in title.

2 – If two or more persons have made an invention, any of them may apply for a patent on behalf of all.

Article 59

**SPECIAL RULES ON ENTITLEMENT TO A
PATENT**

1 – If an invention was made during the performance of an employment contract in which inventive activity is provided for, the right to the patent belongs to the company.

2 – In the case referred to in the previous paragraph, if the inventive activity is not especially remunerated, the inventor is entitled to remuneration in keeping with the importance of the invention.

3 – Irrespective of the conditions set forth in paragraph 1:

a) If an invention is part of its activity, the company has a pre-emptive right to the patent in return for remuneration in keeping with the importance of the invention and may assume ownership of it or reserve the right to its exclusive exploitation, acquisition of the patent or the ability to apply for or acquire a foreign patent;

b) The inventor shall inform the company of the invention that he has made within three months of the date on which it is deemed to have been completed;

c) If, during this period, the inventor applies for a patent for this invention, the time limit for informing the company is one month as of the filing of the application with the National Industrial Property Institute;

d) Breach by the inventor of the obligations set forth in subparagraphs b) and c) shall result in general civil and labour-law liability;

e) The company may exercise its pre-emptive right within **three months of receipt of the inventor's notification.**

4 – If, under subparagraph e) of the previous paragraph, the remuneration owed to the inventor is not paid in full within the established time limit, the company shall forfeit

the right to the patent referred to in the previous paragraphs to the inventor.

5 – Inventions for which a patent has been applied for in the year following the date on which the inventor left the company shall be considered to have been made during the performance of the employment contract.

6 – If, in the cases set forth in paragraph 2 and 3, the parties do not reach an agreement, the question shall be settled by arbitration.

7 – Unless otherwise agreed, paragraphs 1, 2, 4 and 5 shall apply to inventions made to order, with the necessary adaptations.

8 – Unless otherwise set forth, the previous provisions shall be applicable to the state and administrative bodies and their employees and service providers for any purpose.

9 – The inventor's recognised rights may not be renounced in advance.

Article 60

INVENTOR'S RIGHTS

1 – If the patent is not applied for in the inventor's name, he has the right to be mentioned as such in the application and the patent.

2 – If he so requests in writing, the inventor may not be mentioned as such in any publications resulting from the application.

SECTION II

Patent process

SUBSECTION I

National route

Article 61

FORM OF APPLICATION

1 – Patent applications shall be submitted on a form in Portuguese that indicates or contains:

a) The applicant's name, nationality, address or place of business, tax number if resident in Portugal and email address, if any;

b) A name or title summarising the invention;

c) The name and country of residence of the inventor;

d) The country in which the first application was filed, the date and number of this application, if the applicant wishes to claim a priority right;

e) A mention that he has applied for a utility model for the same invention, if applicable, under Article 51(5);

f) The signature or electronic ID of the applicant or his representative.

2 – Fancy expressions for the invention shall not be the subject of claims.

3 – For the purpose of Article 11(1), priority shall be granted to a patent application that, in addition to the details required in paragraph 1(a), first indicates the number

and date of the previous application and the body to which it was submitted, when priority of a prior application is claimed.

Article 62

DOCUMENTS TO BE SUBMITTED

1 – The application shall be accompanied by the following information in Portuguese:

- a)** Claims as to what is considered new and characterises the invention;
- b)** Description of the invention;
- c)** Drawings required for a perfect understanding of the description;
- d)** Summary of the invention.

2 – The elements referred to in the previous paragraph shall comply with the formal requirements fixed by order of the Chairperson of the Board of Directors of the National Industrial Property Institute.

3 – Claims shall define the object of the protection requested and shall be clear, concise, correctly written and based on a description. They shall contain, when appropriate:

- a)** A preamble mentioning the object of the invention and the technical characteristics required to define the elements claimed, but that, in combination, form part of the state of the art;
- b)** A description preceded by the words “characterised by” and describing the technical characteristics that, in connection with the characteristics indicated in the previous subparagraph, define the extent of the protection requested.

4 – The description shall give a brief, clear indication, with no reservations or omissions, of everything making up the

invention and contain a detailed explanation of at least one way of making the invention, so that any person skilled in the art may carry it out.

5 – Drawings must consist of figures confined to the number strictly necessary for an understanding of the invention.

6 – The summary of the invention for publication in the Industrial Property Bulletin:

a) Consists of a brief overview of the description, claims and drawings and preferably shall not contain more than 150 words;

b) Is exclusively for technical information purposes and shall not be taken into consideration for any other purpose, such as determining the extent of the protection requested.

7 – The elements set forth in the previous paragraphs may be submitted in English and the applicant shall be notified to submit a Portuguese translation under the terms of Article 65.

Article 62-A

PROVISIONAL PATENT APPLICATION

1 – Anyone wishing to ensure the priority of a patent application but not having all the elements set forth in the previous article may file a provisional application and postpone the submission of these elements for a maximum of 12 months.

2 – For the purpose of Article 11(1), priority is granted to a provisional application drafted in Portuguese or English that indicates:

a) The applicant's name, nationality, address or place of business, tax number if resident in Portugal and email address, if any;

- b) A name or title summarising the invention;
- c) The name and country of residence of the inventor;
- d) The signature or electronic ID of the applicant or his representative;
- e) A document describing the object of the application in such a way that the invention can be carried out by a person skilled in the art.

3 – A person submitting a provisional application cannot claim priority of a prior application.

4 – **At the applicant's request and before the expiry of the 12-month time limit as of submission of the provisional application, a search shall be conducted on the basis of the document mentioned in paragraph 2(e), whenever this contains searchable technical material.**

Article 62-B

CONVERSION OF A PROVISIONAL PATENT APPLICATION

1 – Before expiry of the 12-month time limit as of submission of the provisional application, this application shall be converted into a definitive patent application and accompanied by the elements set forth in Articles 61 and 62, duly drafted in Portuguese.

2 – If the claims in the definitive application are not based on the document submitted by the applicant under paragraph 2(e) of the previous article, the priority of the application shall count from the date of submission of said claims and not that of the provisional application.

3 – After conversion into a definitive patent application, an examination of the form and limitations of the object or patent shall be conducted, as set forth in Article 65

4 – The publication referred to in Article 66 shall be

carried out 18 months after the date of submission of the provisional application, followed by the terms of the procedure set forth in Article 68 et seq.

5 – Whenever the conversion mentioned in paragraph 1 occurs, the duration of the patent set forth in Article 99 shall count from the date of submission of the provisional application.

6 – If paragraph 1 is not respected, the provisional application shall be deemed to have been withdrawn.

7 – Applicants may be reminded of the end of the time limit mentioned in paragraph 1 for information purposes only.

8 – Failure to give the reminder mentioned in the previous paragraph shall not constitute justification for not respecting the time limit.

Article 63

BIOTECHNOLOGICAL INVENTIONS

1 – If an invention concerns biological material not accessible to the public and cannot be described in the patent application so that a person skilled in the art could carry it out, or entails the use of a material of this type, the description shall only be considered sufficient for the purpose of obtaining a patent, if:

a) The biological material has been deposited up to the date of submission of the patent application at a recognised depositary institution, such as international depositary institutions that have acquired this status under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977;

b) The application as filed gives such relevant information as is available to the applicant on the characteristics of the

biological material deposited;

c) The depositary institution and the accession number of the deposited biological material are stated in the application.

2 – Access to the deposited biological material must be ensured by submission of a sample:

a) By the first publication of the patent application, solely to persons who are so entitled under national law;

b) Between the first publication of the patent application and the grant of the patent, to any person so requesting or, at the request of the depositor, solely to an independent expert;

c) After the grant of the patent, and even in the event of cessation of the patent due to invalidity or expiry, to anyone requesting it.

3 – The material will only be handed over if the person requesting it undertakes, for the duration of the patent:

a) Not to allow access by third parties to any sample of the deposited biological material or a material derived from it;

b) Not to use any sample of the deposited biological material or of a material derived from it, except for experimental purposes, unless the applicant or patent holder expressly waives this undertaking.

4 – If the patent application is refused or withdrawn, access to the deposited material may, at the depositor's request, be confined to an independent expert for 20 years as of the date of submission of the patent application, in which case paragraph 3 applies.

5 – The requests from the depositor referred to in paragraph 2(b) and 4 may only be submitted up to the date on which the technical preparations for publication of the patent application are considered complete.

6 – If biological material deposited as set forth in the previous paragraphs ceases to be available at the recognised

depository institution, a new deposit of the material is allowed under the conditions of the Budapest Treaty.

7 – Any new deposit shall be accompanied by a statement signed by the depositor certifying that the biological material in the new deposit is identical to that originally deposited.

Article 64

TIME LIMIT FOR SUBMITTING DESCRIPTION AND DRAWINGS

(Revoked.)

Article 65

EXAMINATION OF FORM AND LIMITATIONS

1 – After a patent application has been submitted to the National Industrial Property Institute, an examination of the form and limitations of the object or patent shall be performed within one month to check that it meets the requirements of Articles 52, 53 and 61 to 63

2 – If the National Industrial Property Institute finds that the application contains formal irregularities or that there are limitations regarding the object or patent, the applicant shall be given two months to correct them.

3 – If he does not do so within the specified time, the application shall be refused and the decision shall be published in the Industrial Property Bulletin, in which case the publication set forth in Article 66 will not be made.

Article 65-A
SEARCH REPORT

1 – After the examination set forth in the previous article, there shall be a search of the state of the art based on all the elements in the case file in order to assess whether the novelty and inventive step requirements have been met.

2 – The search report, which is not binding, shall be sent to the applicant immediately.

Article 66
PUBLICATION OF THE APPLICATION

1 – If the application is in order or has been regularised under Article 65(2), it shall be published in the Industrial Property Bulletin with a copy of the summary and the international patent classification.

2 – The publication referred to in the previous paragraph shall be made 18 months after the date of submission of the patent application at the National Industrial Property Institute or of the priority claim.

3 – The publication may be brought forward at the applicant's express request.

4 – After publication, anyone may request a copy of the elements in the file.

5 – Without prejudice to the previous articles, any claims or expressions violating Article 61(2) shall be ex officio deleted in the patent and in any publications resulting from the application.

Article 67
OPPOSITION

(Revoked.)

Article 68
EXAMINATION OF INVENTION

1 – The National Industrial Property Institute shall promote the examination of an invention, considering all elements in the file.

2 – If no opposition has been filed within the time limit the examination report shall be drafted within one month.

3 – If an opposition has been filed, the report shall be drafted within one month of the submission of the last part of the procedure referred to in Article 17.

4 – If the examination shows that the patent can be granted, the respective notice shall be published in the Industrial Property Bulletin.

5 – If the examination shows that the patent cannot be granted, the report and copies of all the elements mentioned in it shall be sent to the applicant, who shall be given two months to respond to the remarks made.

6 – If, after the applicant's response, it is found that there are still objections to the grant of the patent, the applicant shall be given one month to clarify the points on which doubts persist.

7 – If, as a result of the applicant's response, it is found that the patent can be granted, the respective notice shall be published in the Industrial Property Bulletin.

8 – If the response to notifications is not considered sufficient, a notice of refusal or partial grant shall be published, in keeping with the examination report.

9 – If the applicant does not respond to the notification, the patent shall be refused and the respective notice shall be published in the Industrial Property Bulletin.

Article 69

PARTIAL GRANT

1 – If it is merely a question of delimiting the material protected, eliminating claims, drawings, phrases in the summary or description or altering the title or heading of an invention, in keeping with that in the notification and if the applicant does not make these alterations voluntarily, the National Industrial Property Institute may make them and publish a notice of partial grant of the patent in the Industrial Property Bulletin.

2 – The publication of the notice mentioned in the previous paragraph must contain an indication of any alterations to the heading, claims, description or summary.

3 – A partial grant shall be made in such a way that the part refused does not exceed the limits in the examination report.

Article 70

ALTERATIONS TO AN APPLICATION

1 – If an application is altered during the examination phase, the grant notice published in the Industrial Property Bulletin shall so indicate.

2 – Claimants, if any, shall be informed of any alterations made to an application during the examination phase for the purpose of appeals.

Article 71

UNITY OF INVENTION

1 – It is not possible to apply for more than one patent or a single patent for more than one invention in the same application.

2 – A number of inventions that are interconnected in such a way as to constitute a single general inventive concept are considered a single invention.

Article 72

PUBLICATION OF FASCICLE

At the end of the time limits set forth in Article 27(1), the patent fascicle may be published.

Article 73

REASONS FOR REFUSAL

1 – In addition to the provisions of Article 24, a patent shall be refused if:

a) The invention lacks novelty or an inventive step or has no industrial application;

b) Its object falls under the provisions of Article 52 or 53;

c) The heading or title of the invention covers a different object or there is a discrepancy between the description and drawings;

d) Its object is not described in such a way as to allow the invention to be carried out by a person skilled in the art;

e) It is considered a design or model due to its description and claims;

f) There is a violation of Article 58 or 59;

g) It concerns an invention for which a European patent valid in Portugal has been granted to the same inventor or with his consent.

2 – In the case set forth in paragraph f) of the previous paragraph, instead of a refusal of the patent, total or partial transfer to the interested party may be granted, if he has so requested.

3 – Recognition that the applicant intends to engage in unfair competition or that this is possible irrespective of his intention is also a reason for refusal.

Article 74

NOTIFICATION OF FINAL DECISION

Notification of the final decision shall be made immediately under Article 16(1), with an indication of the Industrial Property Bulletin in which the notice was published.

SUBSECTION II

European route

Article 75

SCOPE

1 – The following provisions apply to European patent applications and European patents effective in Portugal.

2 – The provisions of this code apply to all matters that do not go against the European Patent Convention of 5

October 1973.

Article 76

**SUBMISSION OF EUROPEAN PATENT
APPLICATIONS**

1 – European patent applications shall be submitted to the National Industrial Property Institute or European Patent Office.

2 – If an applicant for a European patent is resident or has its place of business in Portugal, the application shall be filed at the National Industrial Property Institute on pain of not being effective in Portugal, unless it claims priority of a prior application filed in Portugal.

3 – (Revoked.)

Article 77

**LANGUAGES IN WHICH EUROPEAN PATENT
APPLICATIONS MAY BE DRAFTED**

1 – European patent applications filed in Portugal may be drafted in any of the languages provided for in the European Patent Convention.

2 – If a European patent application is filed in a language other than Portuguese it shall be accompanied by a Portuguese translation of the description, claims and summary and a copy of the drawings, even if they contain no expressions to be translated, unless the European patent application claims priority of a prior application filed in Portugal.

3 – The translation mentioned in the previous paragraph shall be submitted to the National Industrial Property

Institute within one month of the date of the European patent application filed in Portugal.

Article 78

RIGHTS GRANTED BY PUBLISHED EUROPEAN PATENT APPLICATIONS

1 – After European patent applications have been published under the terms of the European Patent Convention, they shall enjoy provisional protection equivalent to that afforded to published national patent applications as of the date on which a Portuguese translation of the claims, accompanied by a copy of the drawings, is available to the public at the National Industrial Property Institute.

2 – The National Industrial Property Institute shall publish a notice in the Industrial Property Bulletin with the indications necessary to identify the European patent application.

3 – As of the date of publication of the notice referred to in the previous paragraph, anyone may have access to the translated text and obtain copies thereof.

Article 79

TRANSLATION OF EUROPEAN PATENTS

1 – Whenever the European Patent Office grants a patent to be valid in Portugal, the patentee shall submit to the National Industrial Property Institute a Portuguese translation of the description, claims and summary, together with a copy of the patent drawings and, if applicable, of any alterations made during the opposition phase, on pain of

the patent not being effective in Portugal.

2 – The translation of the European patent shall be accompanied by a copy of the drawings, even if they contain no expressions to be translated.

3 – The provisions of the previous paragraphs shall apply whenever the European Patent office limits a European patent **at the applicant's request**.

4 – In the cases set forth in paragraphs 1 and 2 and for the purposes of Articles 73 and 88, the patentee shall also mention whether the invention to which the European patent refers has been patented or is the object of a patent application already filed in Portugal, indicating its number, date of application and any other relevant remarks.

Article 80

TIME LIMIT FOR SUBMISSION OF TRANSLATION OF EUROPEAN PATENT

1 – The Portuguese translation of the description, claims and summary and a copy of the drawings of the European patent shall be submitted to the National Industrial Property Institute within three months of the date of publication in the European Patent Bulletin of the grant notice or, if applicable, of the date of the notice on an opposition or limitation of the European patent.

2 – The documents mentioned in the previous paragraph shall be submitted jointly and accompanied by the fees payable.

3 – If the applicant has not met all the requirements set forth in paragraph 1 within the time indicated he may do so within one month of its end, against payment of a surcharge calculated with reference to the national patent application fee.

Article 81

RESPONSIBILITY FOR TRANSLATIONS

If an applicant for or holder of a European patent does not have a domicile or registered office in Portugal, the translations must be performed under the responsibility of an official industrial property agent or a representative accredited by the National Industrial Property Institute.

Article 82

**PUBLICATION OF NOTICE REGARDING
TRANSLATION**

1 – The National Industrial Property Institute shall publish in the National Patent Bulletin a notice regarding the translations referred to in Article 79 containing the indications necessary to identify the European patent and any limitations.

2 – The notice shall only be published after payment of the corresponding fee.

Article 83

ENTRY IN THE PATENT REGISTER

1 – After the grant of a European patent has been published in the European Patent Bulletin, the National Industrial Property Institute shall enter it in its patent register with the particulars mentioned in the European Patent Register.

2 – The translations mentioned in Article 79 shall also be entered in the National Industrial Property Institute patent register on date of receipt or, if these translations have not

been sent, the particulars in the European Patent Register regarding the opposition process and the particulars set forth for Portuguese patents.

3 – Entry in the European Patent Register of acts transferring or altering rights concerning a European patent application or a European patent renders them opposable by third parties.

4 – A patent granted under the European system may be limited or revoked at the patentee's request in the cases provided for in the European Patent Convention, and this fact shall be entered in the National Industrial Property Institute patent register.

5 – A notice of the acts set forth in the previous paragraph shall be published in the European Patent Bulletin after payment of the corresponding fee.

Article 84

AUTHENTIC TEXT OF THE EUROPEAN PATENT APPLICATION

If a Portuguese translation has been submitted under the previous articles, this translation shall be considered authentic if, in the translated text, the application or European patent grants less protection than that granted by the same application or patent in the language used in the file.

Article 85

REVISION OF TRANSLATION

1 – An applicant for or holder of a European patent may at any time revise the translation, which shall only come into

effect if it is accessible to the public at the National Industrial Property Institute and the fee has been paid.

2 – Anyone who, in good faith, has begun using an invention or has made effective, serious preparations to do so, without this use constituting an infringement of the application or patent in the original translation, may continue such use in the course of his business or for the needs thereof without payment or the obligation to compensate.

Article 86

CONVERSION INTO NATIONAL PATENT APPLICATION

1 – A European patent application can be converted into a national patent application in the cases set forth in the European Patent Convention.

2 – Whenever a European patent application has been withdrawn, deemed to be withdrawn or refused, it may also be converted into a national patent application.

3 – The ability to convert mentioned in the previous paragraphs may also apply in cases in which the European patent has been revoked.

4 – A European patent application shall be deemed to be a national patent application from the date of receipt of the conversion request by the National Industrial Property Institute.

5 – A national patent application shall be given the date of the European patent application and, if applicable, its priority, unless the allocation of this date is not allowed by the European Patent Convention.

6 – A patent application shall be refused if the applicant does not pay the fees payable for a national patent application or, if applicable, has not submitted a Portuguese

translation of the original European patent application within two months of the date of receipt of the conversion request.

Article 87

CONVERSION TO A PORTUGUESE UTILITY MODEL APPLICATION

1 – (Revoked.)

2 – (Revoked.)

3 – The previous article applies, with the necessary adaptations, whenever a request for conversion to a utility model application is requested.

Article 88

PROHIBITION OF DUAL PROTECTION

1 – A national patent for an invention for which a European patent valid in Portugal has been granted with the same date of application or priority to the same inventor or with his consent shall expire when:

a) The time limit for opposing the European patent has expired with no opposition having been filed;

b) The opposition process has ended and the European patent has been maintained.

2 – If a national patent is granted after any of the dates indicated in subparagraphs a) and b) of the previous paragraph, this patent shall expire and the corresponding notice shall be published in the Industrial Property Bulletin.

3 – The subsequent extinction or annulment of the European patent shall not affect the provisions in the previous paragraphs.

Article 89
ANNUAL FEES

For all European patents effective in Portugal, the annual fees applicable to national patents shall be paid to the National Industrial Property Institute within the time limits set forth in this code.

SUBSECTION III

patent cooperation treaty route

Article 90
DEFINITION AND SCOPE

1 – An international application is an application submitted under the Patent Cooperation Treaty signed in Washington on 19 June 1970.

2 – The provisions of the cooperation treaty and the provisions of the following articles shall be applicable to international applications for which the National Industrial Property Institute acts as the receiving office or designated or elected administration.

3 – The provisions of this code shall apply to all matters that do not go against the cooperation treaty.

Article 91

**SUBMISSION OF INTERNATIONAL
APPLICATIONS**

1 – International applications by natural or legal persons with residence or registered office in Portugal shall be submitted to the National Industrial Property Institute, European Patent Office or World Intellectual Property Organization.

2 – Whenever no priority of a prior application filed in Portugal is claimed, an international application shall be submitted to the National Industrial Property Institute, on pain of not being effective in Portugal.

3 – (Revoked.)

4 – In the conditions set forth in paragraph 1, the National Industrial Property Institute shall act as receiving office under the cooperation treaty.

5 – Any international application submitted to the National Industrial Property Institute acting as receiving office is subject to payment of the fees set forth in the cooperation treaty plus a transmittal fee.

6 – The payment of the transmittal fee shall be made within one month of the date of receipt of the international application.

7 – International applications submitted to the National Industrial Property Institute acting as receiving office may be written in Portuguese, French, English or German.

8 – Persons submitting international applications in Portuguese shall submit to the office a translation of the international application in one of the languages indicated in the previous paragraph within one month of the date of receipt of the international application by the receiving office.

9 – If the applicant does not satisfy the requirements set

forth in the previous paragraph within the time limit set forth therein, he may do so under the terms of the cooperation treaty for international applications by paying to the receiving office the surcharge set forth in the implementing regulations of the cooperation treaty.

10 – International applications shall be accompanied by a Portuguese translation of the description, claims, summary and a copy of the drawings, even if they have no expressions to be translated, unless the international application claims priority of a prior application filed in Portugal for the same invention.

Article 92

DESIGNATED OR ELECTED OFFICE

The National Industrial Property Institute shall act as a designated and elected office under the cooperation treaty for international applications aimed at protecting an invention in Portugal, whenever they do not have the effect of a European Patent application.

Article 93

EFFECTS OF INTERNATIONAL APPLICATIONS

International applications for which the National Industrial Property Institute acts as designated and elected office under the previous article shall have the same effect in Portugal as those of a Portuguese patent application filed on the same date.

Article 94

**TIME LIMIT FOR SUBMISSION OF A
TRANSLATION OF AN INTERNATIONAL
APPLICATION**

1 – Whenever an applicant wishes a procedure concerning an international application to be pursued in Portugal, he shall submit to the National Industrial Property Institute a Portuguese translation of all the elements of the international application within the time limit established in the cooperation treaty, and at the same time pay the fee corresponding to the national application.

2 – (Revoked.)

3 – If an applicant does not fulfil all the requirements set forth in paragraph 1 within the time limit established therein, he may do so within one month of its end on payment of a surcharge calculated with reference to the national patent application fee.

Article 95

**RIGHTS CONFERRED BY INTERNATIONAL
APPLICATIONS ON PUBLICATION**

1 – After publication under the cooperation treaty, international applications shall enjoy provisional protection in Portugal equivalent to that conferred to national patent applications published after the date on which a Portuguese translation of the claims accompanied by a copy of the drawings, even if they contain no expressions to be translated, is made available at the National Industrial Property Institute.

2 – The National Industrial Property Institute shall publish a notice with the particulars necessary to identify the

international application in the Industrial Property Bulletin.

3 – As of the date of publication of the notice, anyone may have access to the translation and obtain reproductions thereof.

Article 96

INTERNATIONAL APPLICATION CONTAINING INDEPENDENT INVENTIONS

1 – If a part of an international application has not been the subject of an international search or preliminary international examination due to the fact that the application contains independent inventions and the applicant has not paid the additional fee set forth in the cooperation treaty within the time limit, the National Industrial Property Institute shall re-examine the grounds for the decision not to perform the search or examination of the application.

2 – If the National Industrial Property Institute concludes that the decision was not justified, the corresponding provisions of this code shall apply to said application.

3 – If the National Industrial Property Institute deems that the decision is justified, the part of the application that was not the subject of a search or examination shall be considered null and void, unless the applicant requests the division of the application within two months of notification, under the terms of this code for divided applications.

4 – The corresponding fees shall be owed for national patent applications as set forth in this code for each divided application.

SECTION III

Effects of patent

Article 97

EXTENT OF PROTECTION

1 – The extent of the protection conferred by a patent shall be determined by the content of the claims and the description and drawings shall serve to interpret them.

2 – If a patent concerns a process, the rights conferred by it shall cover the products obtained directly by the patented process.

3 – The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

4 – The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

5 – The protection conferred by a patent of a product that contains or consists of genetic information shall extend to any material in which the product is incorporated, contained and performs its function, save as provided for in Article 53(3)(a).

6 – By way of derogation of paragraphs 3 to 5 of this

article:

a) The sale or other form of commercialisation of plant propagating material to a farmer by the holder of the patent, or with his consent for agricultural use, implies authorisation for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm;

b) The sale or any other form of commercialisation of breeding stock or other animal reproductive material to a farmer by the holder of the patent or with his consent implies authorisation for the farmer to use the protected livestock for an agricultural purpose. This includes making the animal or other animal reproductive material available for the purposes of pursuing his agricultural activity but not sale within the framework or for the purpose of a commercial reproduction activity.

Article 98

REVERSAL OF BURDEN OF PROOF

If a patent is for a manufacturing process of a new product, the same product manufactured by a third party shall be considered to have been manufactured by the patented process unless proven otherwise.

Article 99

DURATION

The duration of a patent is 20 years from date of application.

Article 100

INDICATION OF PATENT

While a patent is in effect, its holder may use the words “patented” “patent no.” or “Pat no.” on the product.

Article 101

RIGHTS CONFERRED BY PATENT

1 – A patent confers the exclusive right to exploit the invention anywhere in Portuguese territory.

2 – A patent also confers upon its holder the right to prevent others from manufacturing, offering, storing, commercializing or using a patented product or importing or possessing it for any of the aforementioned purposes without his consent.

3 – A patentee may oppose all acts constituting a violation of his patent, even if they merge with another patent with a later priority date, with no need to impugn titles or request annulment of patents with which this right merges.

4 – The rights conferred by a patent shall not exceed the scope defined by the claims.

5 – A patentee may ask the National Industrial Property Institute, on payment of a fee, to limit the scope of protection of the invention by altering the claims.

6 – If the examination shows that the request for limitation can be granted, the National Industrial Property Institute shall promote the publication of a notice of the alteration of the claims, otherwise the request shall be denied and the decision communicated to the requester.

Article 102
**LIMITATION OF RIGHTS CONFERRED BY A
PATENT**

The rights conferred by a patent do not extend to:

a) Acts performed in private and not for commercial purposes;

b) The preparation of medicinal products performed at the time and for individual cases on the **basis of a doctor's** prescription at pharmaceutical laboratories or acts relating to the medicinal products prepared in this way;

c) Acts performed exclusively for trial or experimental purposes, including experiments for the preparation of the administrative processes required for the approval of products by the competent official bodies, though industrial or commercial exploitation of these products may not commence before expiry of the patent protecting them;

d) Use on board ships from other countries belonging to the Union or WTO of a patented invention in the hull, machinery, rigging, gear or other accessories of the ship, if they temporarily or accidentally enter the waters of the country, provided that said invention is used exclusively to serve the **ship's needs**;

e) The use of a patented invention in the construction or operation of aircraft or land vehicles of other countries belonging to the Union or WTO or their accessories, if they temporarily or accidentally enter national territory;

f) The acts set forth in Article 27 of the Convention of 7 December 1944 concerning international civil aviation if they have regard to aircraft from another state to which the provisions of said article apply.

Article 103

EXHAUSTION OF THE RIGHTS

1 – The rights conferred by a patent do not allow its holder to forbid acts related to the products protected by it after its sale by the patentee or with his consent, in the European economic area.

2 – The protection referred to in Article 97(3) to 97(5) does not cover biological material obtained by propagation or multiplication of a biological material sold by the patentee or with his consent, in the European economic area, if the propagation or multiplication is the necessary result of the use for which the biological material was placed on the market, provided that the material obtained is not then used for further propagation or multiplication.

Article 104

NON-OPPOSABILITY

1 – The rights conferred by a patent are not opposable in Portuguese territory before the date of the application or of priority, if it is claimed against someone who, in good faith, has learned of the invention by his own means and used it or made effective, serious preparations to use it.

2 – The previous paragraph does not apply if the knowledge is the result of unlawful or immoral acts against the patentee.

3 – The burden of proof lies with the person invoking the situations set forth in paragraph 1.

4 – Prior use or preparations therefor based on the information referred to in Article 57(1)(a) does not prejudice good faith.

5 – In the cases set forth in paragraph 1, the beneficiary

has the right to pursue or commence use of the invention, within the limits of his prior knowledge, for his own business purposes, but may only transfer it in conjunction with the business establishment in which use is made.

SECTION IV

Conditions of use

Article 105

LOSS AND EXPROPRIATION OF PATENT

1 – Anyone who is liable for obligations undertaken in relation to third parties or whose patent is expropriated in the public interest may be deprived of a patent under the law.

2 – Any patent may be expropriated in the public interest on payment of fair compensation, if the need for dissemination of the invention or use by public bodies so requires.

3 – The Expropriation Code is applicable, with the necessary adaptations.

Article 106

OBLIGATION TO EXPLOIT

1 – The patentee is obliged to exploit a patented invention directly or through a person authorised by him and to market the results obtained in order to fulfil the needs of the national market.

2 – Exploitation shall begin within four years of the date of the patent application or three years of the grant date, whichever is greater.

3 – It is possible to enjoy patent rights with no discrimination as to place of invention, the technological field or the fact that the products are imported from any country belonging to the European Union or WTO or produced locally.

Article 107

COMPULSORY LICENCES

1 – Compulsory licences may be granted for a certain patent, in any of the following cases:

a) Lack or insufficient exploitation of a patented invention;

b) Dependency between patents;

c) Reasons of public interest.

2 – Compulsory licences shall be non-exclusive and may only be transferred with the part of the company or establishment that exploits them.

3 – Compulsory licences may only be granted if the potential licensee has made efforts to obtain a contractual licence from the patentee on acceptable commercial conditions and said efforts have not been successful within a reasonable period of time.

4 – A compulsory licence may be revoked without prejudice to the appropriate protection of the licensees' legitimate interests if and when the circumstances that gave rise to it cease to exist or are not likely to occur again. The competent authority may re-examine the continuation of said circumstances on duly justified request.

5 – If a patent concerns semiconductor technology,

compulsory licences may only be granted for a non-commercial, public purpose.

6 – The patentee shall receive appropriate payment in each concrete case on the basis of the economic value of the licence.

7 – A decision granting or denying payment is subject to judicial or arbitral appeal under Articles 48 to 50.

Article 108

LICENCE DUE TO FAILURE TO EXPLOIT INVENTION

1 – After the time limits referred to in Article 106(2) have expired, a patentee who, without a good reason or legal basis, does not exploit an invention, directly or under licence, or does not do so in such a way as to meet national needs, may be obliged to grant a licence for its exploitation.

2 – A patentee may also be obliged to grant an exploitation licence for an invention if he ceases to exploit it for three consecutive years without a good reason or legal basis.

3 – Objective technical or legal reasons beyond the **patentee's control and irrespective of his situation making** the exploitation of the invention impossible or insufficient are considered good reason, but not economic or financial difficulties.

4 – For as long as a compulsory licence remains in force, the patentee may not be obliged to grant another before the previous one is cancelled.

5 – A compulsory licence may be cancelled if the licensee does not exploit the invention in such a way as to meet national needs.

Article 109

DEPENDENT LICENCES

1 – If it is not possible to exploit a patented invention, without prejudice to the rights conferred by a previous patent, and the two inventions are used for different industrial purposes, a licence may only be granted if the first invention is essential to the exploitation of the second, and only in the part necessary for said exploitation, and the holder of the first patent is entitled to fair compensation.

2 – If inventions protected by dependent patents serve the same industrial purpose and a compulsory licence is to be granted, the previous patentee may also demand a compulsory licence for the previous patent.

3 – If an invention concerns a process for preparing a chemical, pharmaceutical or food product protected by a current patent, and whenever this process patent represents notable technical progress in relation to the previous patent, both the holder of the process patent and the holder of the product patent are entitled to demand a compulsory licence **for the other holder's patent.**

4 – If the obtainer of a plant variety cannot obtain or exploit a plant securing right without infringing a prior patent, he may request a compulsory licence for non-exclusive exploitation of the invention protected by the patent, provided that this licence is necessary for the exploitation of the same plant variety, on payment of appropriate remuneration.

5 – Whenever a licence of the type provided for in the previous paragraph is granted, the patentee is entitled to a reciprocal licence on reasonable terms to use the protected variety.

6 – If the holder of a patent for a biotechnological invention is unable to exploit it without infringing a previous plant variety securing right, he may request a

compulsory licence for non-exclusive exploitation of the variety protected by the securing right on payment of an appropriate sum.

7 – Whenever a licence of the type provided for in the previous paragraph is granted, the holder of the securing right is entitled to a reciprocal licence on reasonable terms to use the protected invention.

8 – Applicants for the licences referred to in paragraphs 4 and 6 must prove that:

a) They approached the patentee or plant securing right holder in vain to obtain a contractual licence;

b) The plant variety or invention represents important technical progress of considerable economic interest in relation to the invention claimed in the patent or to the plant variety being protected.

9 – This article also applies whenever one of the inventions is protected by a patent and the other by a utility model.

Article 110 PUBLIC INTEREST

1 – A patentee may, in the public interest, be obliged to grant a licence for the exploitation of his invention.

2 – There are considered to be reasons of public interest if the start, increase or generalisation of the exploitation of the invention, or an improvement in the conditions of its exploitation, is of vital importance to public health or national defence.

3 – There are also considered to be reasons of public interest if failure to exploit or insufficient quality or quantity of exploitation is **highly detrimental** to the country's economic or technological development.

4 – The government shall be responsible for granting a

licence in the public interest.

Article 111

REQUESTS FOR COMPULSORY LICENCES

1 – Compulsory licences shall be requested from the National Industrial Property Institute. Applicants shall submit proof to justify their request.

2 – Requests for compulsory licences shall be examined in the order in which they are submitted to the National Industrial Property Institute.

3 – On receiving a request for a compulsory licence, the National Industrial Property Institute shall give the patentee two months in which to say anything he sees fit and to submit proof.

4 – The National Industrial Property Institute shall consider the parties' arguments and the guarantees of exploitation of the invention offered by the applicant for the compulsory licence and decide, within two months, whether or not it should be granted.

5 – If it decides in favour, it shall give both parties one month to appoint an expert who, together with the expert appointed by the National Industrial Property Institute, shall agree, within two months, on the conditions of the compulsory licence and the compensation to be paid to the patentee.

Article 112

NOTIFICATION OF AND APPEAL AGAINST GRANT OR REFUSAL OF LICENCE

1 – The National Industrial Property Institute shall inform

both parties of the grant or refusal of a licence and its exploitation conditions.

2 – Appeals may be lodged against the decision of the National Industrial Property Institute to grant or refuse the licence, or only the conditions in which it has been granted, to the competent court under the terms of articles 39 et seq., within three months of the date of the notification referred to in the previous paragraph.

3 – A decision to grant shall only be effective after its confirmation and annotation at the National Industrial Property Institute, where the appropriate fees shall be paid as for an ordinary licence.

4 – An extract of the registration referred to in the previous paragraph shall be published in the Industrial Property Bulletin.

SECTION V

Invalidity of a patent

Article 113

NULLITY

In addition to the provisions of Article 33, patents shall be null and void in the following cases:

- a)** If its object does not meet the requirements of novelty, inventive step and industrial application;
- b)** If its object cannot be protected under Articles 51, 52 and 53;
- c)** If it is recognised that the title or heading given to the invention covers a different object;

d) If its object has not been described in such a way that anyone skilled in the art can carry it out.

Article 114

DECLARATION OF NULLITY OR PARTIAL ANNULMENT

1 – One or more claims may be declared null and void or annulled, but partial nullity may not be declared nor may a claim be partially annulled.

2 – In court proceedings, a patentee may limit the scope of protection of an invention by altering the claims.

3 – If one or more claims are declared null and void or annulled, the patent shall remain in effect for the remaining claims, whenever there is material for an independent patent.

SECTION VI

Supplementary protection certificate for medicinal and phytopharmaceutical products

Article 115

APPLICATION FOR CERTIFICATE

1 – Applications for supplementary protection certificates for medicinal and phytopharmaceutical products submitted to the National Industrial Property Institute shall include an application form in Portuguese indicating or containing:

a) The applicant's name or company name, nationality, address or place of business, tax number for residents in Portugal and email address, if any;

b) The patent number and heading or title of the invention protected by the patent;

c) The number and date of the first market authorisation in Portugal and, if this is not the first marketing authorisation in the European economic area, the number and date of that authorisation;

d) A reference to simultaneous submission of a request to extend the validity of the supplementary protection certificate, if applicable;

e) The signature or electronic ID of the applicant or his representative.

2 – The application shall be accompanied by a copy of the first market authorisation for Portugal identifying the product and including the number and date of the authorisation and a summary of product characteristics.

3 – The denomination of the authorised product and the law under which it was authorised must be indicated and a copy of the publication of said authorisation in the official bulletin shall be attached, if the authorisation referred to in the previous paragraph is not the first marketing authorisation for the product in the European economic area as a medicinal or phytopharmaceutical product.

Article 115-A

APPLICATION FOR AN EXTENSION OF THE DURATION

1 – A request for an extension of a supplementary protection certificate may be submitted in the case of medicinal products for paediatric use.

2 – A request for an extension may be submitted to the National Industrial Property Institute at the time of submission of a request for a supplementary protection certificate, while it is pending or, if a certificate has already been granted, up to two years before it expires.

3 – For five years after the entry into force of Regulation (EC) 1901/2006 of the European Parliament and of the Council of 12 December, requests for extension of the supplementary protection certificates already granted may be submitted up to six months before the expiry of said certificate.

4 – If a request for an extension is submitted at the time of submission of a request for a supplementary protection certificate, the request set forth in the previous paragraph shall be accompanied by a copy of the certification of compliance with an approved, completed paediatric research plan and, in the case of the procedures set forth in Decree-Law 176/2006 of 30 August, proof of marketing authorisations for all European Union Member States.

5 – If a request for a supplementary protection certificate is pending, the request for an extension shall be submitted in a form that indicates not only the particulars set forth in the previous paragraph but also includes a reference to the request for a certificate already submitted.

6 – If a request for an extension concerns a supplementary protection certificate already granted, the request must include not only the particulars set forth in paragraph 4 but also a reference to this certificate.

Article 116

EXAMINATION AND PUBLICATION

1 – After a request has been submitted to the National Industrial Property Institute, the examination shall be

performed to check whether it was submitted within the time limit and meets the conditions set forth in Article 115 of Regulation (EEC) 1768/92 of the Council of 18 June and Regulation (EC) 1610/96 of the European Parliament and of the Council of 23 July regarding the creation of supplementary protection certificates for medicinal and phytopharmaceutical products.

2 – If a request for a certificate and the product to which it refers fulfil the conditions set forth in the previous paragraph, the National Industrial Property Institute shall grant the certificate and publish the request and decision granting it in the Industrial Property Bulletin.

3 – If a request for a certificate does not fulfil the conditions set forth in the previous paragraph, the National Industrial Property Institute shall give two months for the correction of the irregularities found.

4 – If the National Industrial Property Institute finds, from the applicant's reply, that the request for a certificate fulfils the required conditions, it shall publish the request for a certificate and the notice of its grant in the Industrial Property Bulletin.

5 – A request shall be denied if the applicant does not comply with the notification, and the request and a notice of its refusal shall be published in the Industrial Property Bulletin.

6 – Without prejudice to paragraph 3, a certificate shall be refused if the request or the product to which it refers does not fulfil the conditions in the Regulation or those established in this code. The request and a notice of its refusal shall be published in the Industrial Property Bulletin.

7 – The publication shall include at least the following indications:

- a) Name and address of applicant;
- b) Patent number;
- c) Heading or title of invention;

d) Number and date of market authorisation in Portugal and the identification of the product authorised;

e) Number and date of the first market authorisation in the European economic area, if applicable;

f) Notice of grant and period of validity of the certificate or notice of refusal, as the case may be.

8 – This article, with the necessary adaptations, applies to applications for an extension of the duration of supplementary protection certificates.

SUBCHAPTER II

Utility models

SECTION I

General provisions

Article 117

OBJECT

1 – New inventions involving an inventive step can be protected as utility models, if they have an industrial application.

2 – The aim of utility models is to protect inventions by means of a simpler, speedier administrative procedure than that for patents.

3 – An invention that abides by the conditions established in paragraph 1 can be protected by a utility

model or patent, as the applicant chooses.

4 – The same invention may be simultaneously or successively the subject of a patent and utility model application.

5 – The successive submission of applications referred to in the previous paragraph may only be allowed within one year of the date of submission of the first application.

6 – In the cases set forth in paragraph 4, a utility model shall expire after grant of a patent for the same invention.

Article 118 **LIMITATIONS AS TO OBJECT**

Article 52 is applicable to utility models.

Article 119 **LIMITATIONS AS TO UTILITY MODEL**

The following cannot be the object of a utility model:

a) Inventions whose commercial exploitation is against the law or contrary to public policy, public health or morality and their exploitation may not be considered as such due to the simple fact that it is forbidden by law or regulations;

b) Inventions involving biological material;

c) Inventions involving chemical or pharmaceutical substances or processes.

Article 120
GRANT REQUIREMENTS

1 – An invention shall be considered new if it does not form part of the state of the art.

2 – An invention shall be considered as involving an inventive step, if it meets one of the following requirements:

a) If it is not obvious to a person skilled in the art;

b) If it offers a practical or technical advantage for the manufacture or use of the product or process in question.

3 – An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry or in agriculture.

4 – The provisions of Articles 56 and 57 apply to utility models with the necessary adaptations.

Article 121
**GENERAL RULE ON THE RIGHT TO A UTILITY
MODEL**

Article 58 applies to utility models.

Article 122
**SPECIAL RULES ON OWNERSHIP OF A UTILITY
MODEL**

Article 59 applies to utility models.

Article 123
INVENTOR'S RIGHTS

Article 60 applies to utility models.

SECTION II

Utility model process

SUBSECTION I

National route

Article 124
FORM OF APPLICATION

1 – Utility model applications shall be submitted on a form in Portuguese that indicates or contains:

a) The applicant's name, nationality, address or place of business, tax number if resident in Portugal and email address, if any;

b) A name or title summarising the invention;

c) The name and country of residence of the inventor;

d) The country in which the first application was filed, the date and number of this application, if the applicant wishes to claim a priority right;

e) A mention that a patent has been requested for the same invention, if applicable, under the terms of Article 51(5);

f) The signature or electronic ID of the applicant or his representative.

2 – Fancy names for the invention shall not be the subject of claims.

3 – For the purpose of Article 11(1), priority shall be granted to a utility model application that, in addition to the details required in paragraph 1(a), first submits a document describing the object of the application in such a way that a person skilled in the art may carry out the invention or, in substitution, when priority of a prior application is claimed, an indication of the number and date of the prior application and the body to which it was submitted.

4 – The document provided for in the previous paragraph may be submitted in English and the applicant shall be ordered to submit a Portuguese translation under Article 127.

Article 125

DOCUMENTS TO BE SUBMITTED

Article 62 applies to utility models

Article 126

TIME LIMIT FOR SUBMISSION OF THE DESCRIPTION AND DRAWINGS

(Revoked.)

Article 127

EXAMINATION OF FORM AND LIMITATIONS

1 – After a utility model application has been submitted to the National Industrial Property Institute, an examination of the form and limitations of the object and utility model shall be performed within one month to check that it meets the requirements in Articles 118, 119, 124 and 125.

2 – If the National Industrial Property Institute finds that the application contains formal irregularities or that there are limitations regarding the object or utility model, the applicant shall be given two months to correct them.

3 – If he does not do so within the specified time, the application shall be refused and the decision shall be published in the Industrial Property Bulletin, in which case the publication set forth in Article 128 shall not be made.

Article 127-A

SEARCH REPORT

1 – After the examination set forth in the previous article has been performed, and whenever the examination set forth in Article 132 is requested, there shall be a search of the state of the art based on all the elements in the case file in order to assess whether the requirements of novelty and inventive step have been met.

2 – The search report, which is not binding, shall be sent to the applicant immediately.

Article 128

PUBLICATION OF THE APPLICATION

1 – If the application is in order or has been regularised under Article 127(2), the utility model application shall be published in the Industrial Property Bulletin with a copy of the summary and international patent classification.

2 – The publication referred to in the previous paragraph shall be made up to six months after the date of application, though it may be brought forward at the applicant's express request.

3 – Publication may also be postponed at the applicant's request for a period of no more than 18 months as of the date of application for a utility model or priority claim.

4 – The postponement shall cease as of the time when an examination is requested by third parties or the applicant himself.

5 – After publication, anyone may request a copy of the elements in the file.

6 – Article 66(5) applies to utility models.

Article 129

OPPOSITION

(Revoked.)

Article 130

PROVISIONAL GRANT

1 – If no examination has been requested and there is no opposition, the utility model shall be granted provisionally and the applicant notified of the decision.

2 – The provisional grant document shall only be given to the applicant on request.

3 – The validity of a provisional utility model shall cease as soon as an examination of the invention is requested.

Article 131

REQUEST FOR EXAMINATION

1 – An examination may be requested in the application phase or while the provisional utility model is still valid.

2 – The examination fee shall be paid by the person requesting it within one month of the date of request.

3 – If the holder of a provisional utility model wishes to bring lawsuits or request arbitration to defend the rights that it confers, he must ask the National Industrial Property Institute to conduct the examination referred to in the following article. Article 5 applies.

Article 132

EXAMINATION OF INVENTION

1 – The National Industrial Property Institute shall promote the examination of the invention at the request of the applicant or any interested party.

2 – If an examination is requested before the end of the time limit for opposition and no claims are submitted, the examination report shall be drafted within one month.

3 – If there is opposition, the examination shall be carried out within one month of the submission of the last part of the procedure referred to in Article 17.

4 – If an examination is requested after a provisional utility model has been granted, the one-month time limit mentioned in paragraph 2 shall count from the date on

which the examination is requested.

5 – If the examination shows that the utility model can be granted, the notice shall be published in the Industrial Property Bulletin.

6 – If, however, it is concluded that it cannot be granted, the report and copies of all the elements mentioned in it shall be sent to the applicant, who shall be given two months to respond to the remarks made.

7 – If, after the applicant's response, it is found that there are still objections to the grant of the utility model, the applicant shall be given one month to clarify the points on which doubts persist.

8 – If, as a result of the applicant's response, it is found that the utility model can be granted, a notice shall be published in the Industrial Property Bulletin.

9 – If the response to notifications is not considered sufficient, a notice of refusal or partial grant shall be published, in keeping with the examination report.

10 – If the applicant does not respond to the notification, the utility model shall be refused and a refusal notice shall be published in the Industrial Property Bulletin.

Article 133 **PARTIAL GRANT**

Article 69 applies to utility models.

Article 134 **ALTERATIONS TO AN APPLICATION**

Article 70 applies to utility models.

Article 135
UNITY OF INVENTION

Article 71 applies to utility models.

Article 136
PUBLICATION OF FASCICLE

Article 72 applies to utility models.

Article 137
REASONS FOR REFUSAL

1 – In addition to the provisions of Article 24, a utility model shall be refused if:

a) The invention lacks novelty or an inventive step or has no industrial application;

b) Its object falls under the provisions of Articles 118 or 119;

c) The heading or title of the invention covers a different object or there is a discrepancy between the description and drawings;

d) Its object is not described in such a way as to allow the invention to be carried out by a person skilled in the art;

e) It is considered a design or model due to its description and claims;

f) There is a violation of Article 58 or 59;

g) It concerns an invention for which a European patent valid in Portugal has been granted to the same inventor or with his consent.

2 – In the case set forth in subparagraph (f) of the previous paragraph, instead of a refusal of the utility model,

total or partial transfer to the interested party may be granted, if he has so requested.

3 – Recognition that the applicant intends to engage in unfair competition or that this is possible irrespective of his intention is also a reason for refusal.

4 – The reason for refusal provided for in paragraph 1(g) is also grounds for expiry of the utility model, in which case Article 88 shall apply, with the necessary adaptations.

Article 138

NOTIFICATION OF FINAL DECISION

Article 74 applies to utility models.

SUBSECTION II

Patent cooperation treaty route

Article 139

APPLICABLE PROVISIONS

Articles 90 to 96 apply to utility models, with the necessary adaptations.

SECTION III

Effects of utility model

Article 140

EXTENT OF PROTECTION

1 – The extent of the protection conferred by a utility model patent shall be determined by the content of the claims, and the description and drawings shall serve to interpret them.

2 – If a utility model concerns a process, the rights conferred by it shall cover the products obtained directly by the patented process.

Article 141

REVERSAL OF BURDEN OF PROOF

Article 98 applies to utility models.

Article 142

DURATION

1 – The duration of a utility model shall be six years from date of application.

2 – In the last six months of validity of a utility model, the holder may request its extension for two years.

3 – In the last six months of the period referred to in the previous paragraph, the holder may submit a second and final request for an extension of protection for another two

years.

4 – The duration of a utility model may not exceed 10 years as of the date of submission of the respective application.

Article 143

INDICATION OF UTILITY MODEL

While a utility model is in effect, its holder may use the expression “Utility model no.” and “UM no.” or, in the case provided for in Article 130, the expression “Provisional utility model no.” and “Provisional UM no.”.

Article 144

RIGHTS CONFERRED BY UTILITY MODEL

1 – A utility model confers the exclusive right to exploit the invention anywhere in Portuguese territory.

2 – If a utility model concerns a product, it entitles its holder to forbid others to manufacture, use, offer for sale, sell or import the product for these purposes without his consent.

3 – If a utility model concerns a process, it entitles its holder to forbid others to use the process or use, offer for sale or sell or import for these purposes the product directly obtained by this process.

4 – The holder of a utility model may oppose all acts constituting a violation of his invention, even if they merge with another utility model with a later priority date, with no need to impugn titles or request annulment of utility models with which this right merges.

5 – The rights conferred by a utility model shall not exceed the scope defined by the claims.

Article 145
**LIMITATION OF RIGHTS CONFERRED BY
UTILITY MODEL**

- 1 – The rights conferred by a utility model do not cover:
- a) Acts performed in private and not for commercial purposes;
 - b) Experimental acts involving the protected object.
- 2 – The provisions of Article 102(d), 102(e) and 102(f) apply to utility models.

Article 146
EXHAUSTION OF THE RIGHTS

The rights conferred by a utility model do not allow its holder to forbid acts related to the products protected by it, after its sale by the holder, or with his consent, in the European economic area.

Article 147
NON-OPPOSABILITY

Article 104 applies to utility models.

SECTION IV

Conditions of use

Article 148

LOSS AND EXPROPRIATION OF UTILITY MODEL

Article 105 applies to utility models.

Article 149

OBLIGATION TO EXPLOIT

Article 106 applies to utility models.

Article 150

COMPULSORY LICENCES

Articles 107 to 112 apply to utility models.

SECTION V

Invalidity of utility model

Article 151

NULLITY

1 – In addition to Article 33, a utility model shall be null

and void in the following cases:

- a) If its object does not meet the requirements of novelty, inventive step and industrial application;
- b) If its object cannot be protected under Articles 117, 118 and 119;
- c) If it is recognised that the title or heading given to the invention covers a different object;
- d) If its object has not been described in such a way that anyone skilled in the art can carry it out.

2 – Only utility models whose invention has been subject to an examination may be declared null and void.

Article 152

**DECLARATION OF NULLITY OR PARTIAL
ANNULMENT**

Article 114 applies to utility models.

CHAPTER II

Topography of semiconductor products

SECTION I

General provisions

Article 153

DEFINITION OF A SEMICONDUCTOR PRODUCT

A semiconductor product is the final or intermediate form of any product meeting all the following criteria:

a) It consists of a body of material including a layer of semiconducting material;

b) It has one or more layers composed of conducting, insulating or semiconducting materials and they are arranged in accordance with a predetermined three-dimensional pattern;

c) It is intended to perform an electronic function, exclusively or in conjunction with other functions.

Article 154

DEFINITION OF TOPOGRAPHY OF SEMICONDUCTOR PRODUCT

The topography of a semiconductor product is a set of related fixed or encoded images that represent the three-

dimensional layout of the layers making up the product, in which each image shows the layout or part of the layout of a surface of the same product in any stage of its manufacture.

Article 155

OBJECT OF LEGAL PROTECTION

1 – Only topographies of semiconductor products that result from the intellectual efforts of their creator and are not known in the semiconductor industry may be protected.

2 – Topographies consisting of elements known in the semiconductor industry may also be protected, provided that the combination of these elements, as a whole, fulfils the conditions in the previous paragraph.

3 – Protection granted to topographies of semiconductor products applies only to the topographies themselves and not to any concept, process, system, technique or encoded information incorporated in them.

4 – Any creator of a final or intermediate topography of a semiconductor product enjoys the exclusive right to use this topography, provided that he meets legal requirements, such as those regarding registration.

5 – Registration may not, however, occur two years after the first commercial exploitation, anywhere, of the topography or after the time limit of 15 years as of the date on which it was fixed or encoded for the first time, if it has never been exploited.

Article 156

GENERAL RULE ON RIGHT TO REGISTER

Article 58 applies to topographies of semiconductor products.

Article 157

**SPECIAL RULES ON ENTITLEMENT TO
REGISTRATION**

Article 59 applies to topographies of semiconductor products.

Article 158

CREATOR'S RIGHTS

Article 60 applies to topographies of semiconductor products.

Article 159

APPLICABLE RULES

The provisions on patents are applicable to topographies of semiconductor products in as far as they do not go against the nature of this private right.

SECTION II**Registration process**

Article 160

FORM OF APPLICATION

Articles 61, 62 and 65 to 72 apply to applications to register topographies of semiconductor products, with the

necessary adaptations.

Article 161

REASONS FOR REFUSAL

1 – In addition to Article 24, registration of a topography of semiconductor product shall be refused if:

a) The topography of the semiconductor product is not a topography in the sense of Articles 153 and 154;

b) The topography of a semiconductor product does not meet the requirements established in Article 155;

c) The heading or title given to the topography of a semiconductor product concerns a different object or there is a discrepancy between the description and drawings;

d) Its object is not described in such a way that any person skilled in the art could carry out the topography of the semiconductor product;

e) There is an infringement of Article 58 or 59.

2 – In the case provided for in subparagraph e) of the previous paragraph, instead of refusing registration, total or partial transfer to the interested party may be granted, if he has so requested.

3 – Recognition that the applicant intends to engage in unfair competition or that this is possible irrespective of his intention is also a reason for refusal.

SECTION III

Effects of registration

Article 162

DURATION

The duration of a registration is 10 years from the date of application or the date on which the topography was first exploited in any location, if earlier.

Article 163

INDICATION OF REGISTRATION

While the registration is in effect, its holder may use the upper-case letter “T” with one of the following: T, “T”, [T], (see original document), T* or T on semiconductor products manufactured through the use of protected topographies.

Article 164

RIGHTS CONFERRED BY REGISTRATION

1 – Registration of a topography entitles its holder to exclusive use throughout Portuguese territory, producing, manufacturing, selling or exploiting the topography or objects in which it is used, with the obligation to do so effectively and in keeping with market needs.

2 – Registration of a topography also entitles its holder to authorise or forbid any of the following acts:

a) Reproduction of the protected topography;

b) Import, sale or distribution in any other form, for a commercial purpose, of protected topography of a semiconductor product in which a protected topography is incorporated, or of an article in which a semiconductor product of this type is incorporated, only to the extent that it continues to include a topography reproduced unlawfully.

Article 165

LIMITATION OF RIGHTS CONFERRED BY REGISTRATION

Rights conferred by registration of a topography do not cover:

a) Private reproduction of a topography for non-commercial purposes;

b) Reproduction for the purposes of analysis, assessment or teaching;

c) The creation of a different topography from the analysis or assessment referred to in the previous paragraph, which may benefit from the protection provided for in this code;

d) The performance of any of the acts referred to in paragraph 2 of the previous article relating to a semiconductor product in which an unlawfully reproduced topography is incorporated, or to any article in which a semiconductor product of this type is incorporated, if the person who performed or ordered these acts did not know and was not obliged to know, on acquiring the semiconductor product or article in which the semiconductor product was incorporated, that it incorporated an unlawfully reproduced topography;

e) The performance, after the person referred to in the previous subparagraph has received sufficient information that the topography has been reproduced unlawfully, of any

of the acts in question relating to the products in his possession, or ordered before that time, shall be subject to payment to the registration holder of a sum equivalent to appropriate royalties as payable under a freely negotiated licence for a topography of this type.

Article 166

EXHAUSTION OF THE RIGHTS

The rights conferred by registration of a topography do not allow its holder to forbid acts concerning topographies or the semiconductor products protected by it after their sale, by the holder or with his consent, in the European economic area.

Article 167

NON-OPPOSABILITY

Article 104 applies to rights conferred by the registration of topographies of semiconductor products.

SECTION IV

Conditions of use

Article 168

LOSS AND EXPROPRIATION OF REGISTRATION

Article 105 applies to topographies of semiconductor

products.

Article 169

COMPULSORY EXPLOITATION LICENCE

Articles 106 to 112 apply to topographies of semiconductor products in cases in which the compulsory licences are for a public, non-commercial purpose.

SECTION V

Invalidity of registration

Article 170

NULLITY

In addition to the provisions of Article 33, a registration of a topography of a semiconductor product shall be null and void in the following cases:

- a) If its object does not fulfil the requirements set forth in Articles 153, 154 and 155;
- b) If the title or heading of the topography is seen to cover a different object;
- c) If its object has not been described in such a way that it can be carried out by a person skilled in the art.

Article 171

**DECLARATION OF NULLITY OR PARTIAL
ANNULMENT**

Article 114 applies to registrations of topographies of semiconductor products.

Article 172

EXPIRY

In addition to the provisions of Article 37, a registration of a topography of a semiconductor product expires:

- a)** 10 years after the last day of the calendar year in which the registration application was formally submitted or the last day of the calendar year in which the topography was commercially exploited in any place, if earlier;
- b)** If the topography has not been commercially exploited, 15 years after the date on which it was fixed or encoded for the first time.

CHAPTER III

Designs or models

SECTION I

General provisions

Article 173

DEFINITION OF A DESIGN OR MODEL

A design or model represents the appearance of a product in whole or in part by virtue of such characteristics as lines, contours, colours, forms, textures or materials used in the product itself and its ornamentation.

Article 174

DEFINITION OF PRODUCT

1 – A product is any industrial or crafted article, including, inter alia, the components for assembling a complex product, packaging, presentation elements, graphic signs and typographic characters, but excluding computer programs.

2 – A complex product is any product composed of multiple components that can be removed from it for the purpose of stripping it, and replaced in it for the purpose of reassembling it.

Article 175

LIMITATIONS ON REGISTRATION

(Revoked.)

Article 176

REQUIREMENTS FOR GRANT

1 – New designs or models that are distinctive in character shall have legal protection.

2 – Designs or models that are not entirely new but involve novel combinations of known elements or a different layout of elements already used in such a way as to endow their products with a distinctive character shall also have legal protection.

3 – Without prejudice to the previous paragraphs, the same applicant may, before the disclosure of the design or model, apply for registration of other designs or models that differ from that originally submitted only in insignificant details.

4 – A design or model applied to or incorporated in a product constituting a component of a complex product is considered to be new and distinctive in character if it fulfils all the following criteria:

a) It can reasonably be expected that even after being incorporated into the complex product, it will continue to be visible during the normal use of the complex product;

b) The visible characteristics of that component meet the requirements of novelty and distinctiveness of character.

5 – For the purpose of subparagraph (a) of the previous paragraph, normal use shall be understood as any use made by the end user other than conservation, maintenance or repair.

6 – The following are not protected by registration:

a) The visible characteristics of a product resulting exclusively from its technical function;

b) The characteristics of the appearance of a product that must necessarily be reproduced in their exact form and dimensions so that the product into which the industrial model or design is incorporated, or in which it is applied, be it mechanically connected to another product or inserted into, around or against the other product, so that both can perform their function.

7 – Registration of a design or model is possible under the conditions set forth in Articles 177 and 178 is possible, provided that its purpose is to permit a multiple assembly of interchangeable products, or their connection to form a modular system, without prejudice to subparagraph (b) of the previous paragraph.

8 – If registration has been refused under subparagraphs Article 197(1) to (3) or Article 197(4)(a), 197(4)(d) and 197(4)(e) or declared null and void or annulled under Article 208(1) and Articles 209 and 210, the design or model may be registered or its right maintained in an altered form, provided that all the following criteria are met:

a) Its identity is maintained;

b) The necessary alterations are made in order to meet the protection requirements.

9 – The registration or its maintenance in an altered form referred to in the previous paragraph may be accompanied by a declaration whereby the holder partially renounces his right or the court decision by which the registration was declared partially null or partially annulled.

Article 177

NOVELTY

1 – A design or model shall be new if, before the

application for registration or priority claim, no identical design or model has been disclosed to the public in Portugal or abroad.

2 – Designs or models are considered identical if their specific characteristics differ only in insignificant details.

Article 178

DISTINCTIVE CHARACTER

1 – A design or model is considered to be distinctive if the overall impression that it gives to an informed user differs from the overall impression caused to that user by any model or design published prior to the date of the registration application or priority claim.

2 – Appreciation of distinctive character shall take into account the degree of freedom afforded to the creator to create the design or model.

Article 179

DISCLOSURE

1 – For the purpose of Articles 177 and 178, a design or model shall be considered to have been disclosed to the public if it has been published following registration, or in any other circumstance, presented at an exhibition, used in trade or made known in any other way, except if these facts could not reasonably have come to the knowledge of persons operating in the European Union and skilled in the art in question in the course of their normal activity, before the date of the registration application or priority claim.

2 – An industrial model or design shall, however, not be considered disclosed by the simple fact of being made known to a third party in explicit or implicit confidence.

Article 180

NON-PREJUDICIAL DISCLOSURES

1 – For the purpose of Articles 177 and 178, a design or model to be registered shall not be considered to have been disclosed if it has been disclosed to the public:

a) By the creator or his successor or by a third party following information provided or measures taken by the creator or his successor;

b) In the 12 months preceding the date of submission of a registration application or, if priority is claimed, the date of priority.

2 – Paragraph 1 also applies if a design or model has been disclosed to the public as a result of an abuse regarding the creator or his successor.

3 – An applicant wishing to benefit from the provisions of the previous paragraphs shall, when submitting the application or within one month, indicate the date and place where the disclosure or exhibition took place and submit a probative document showing said date and reproducing the products in which the design or model was incorporated or to which it was applied.

4 – An applicant for registration of a design or model who has exhibited products in which the design or model was incorporated or to which it was applied, at an official or officially recognised international exhibition falling within the scope of the Convention relating to International Exhibitions signed in Paris on 22 November 1928 and revised on 30 November 1972, may, if he submits the application within six months of the date of the first exhibition of these products, claim a priority right as of that date, pursuant to Article 12

5 – An applicant who wishes to claim priority under the previous paragraph shall, when submitting the application or within one month, submit a certificate issued by the

entity responsible for the exhibition showing the date of the first public disclosure and reproducing the products in which the design or model was incorporated or to which it was applied.

6 – At the applicant's request, the time limits set forth in paragraphs 3 and 5 may be extended, once only, for the same period.

Article 181

GENERAL RULE ON RIGHT TO REGISTRATION

Article 58 applies to designs or models.

Article 182

SPECIAL RULES ON OWNERSHIP OF REGISTRATION

Article 59 applies to the registration of designs or models, without prejudice to provisions regarding copyright.

Article 183

CREATOR'S RIGHTS

Article 60 applies to designs or models.

SECTION II

Registration process

Article 184

FORM OF APPLICATION

1 – An application to register a design or model shall be made on a form in Portuguese indicating or containing:

a) The applicant's name, nationality, address or place of business, tax number if resident in Portugal and email address, if any;

b) An indication of the products in which the design or model is intended to be applied or incorporated using the international classification for industrial designs and models;

c) The creator's name and country of residence;

d) The country in which the first application was submitted and the date and number of said application if the applicant wishes to claim priority;

e) The colours, if they are part of the claim;

f) The signature or electronic ID of the applicant or his representative.

2 – Fancy expressions used to designate a design or model or figuring on its representations may not be protected.

3 – For the purpose of Article 11(1), priority shall be granted to the registration application for a design or model that, in addition to the particulars required in paragraph 1(a), first submits a representation of the design or model or, instead, if priority of a previous application is requested, an indication of the number and date of the previous application and the body to which it was submitted.

Article 185

DOCUMENTS TO BE SUBMITTED

1 – Applications shall be accompanied by the following elements in Portuguese:

a) (Revoked.)

b) Drawings or photographs of the design or model;

c) A drawing or photograph of the design or model in a form defined by order of the Chairperson of the Board of Directors of the National Industrial Property Institute for the purpose of publication, with a reproduction of the product whose design or model is to be registered;

d) (Revoked.)

2 – Applications shall also be accompanied by the following elements:

a) Authorisation to include in the design or model any symbols, crests, emblems or distinctions of the state, municipalities or other Portuguese or foreign public or private bodies, the emblem and name of the Red Cross or other similar bodies and any signs covered by Article 6-ter of the Paris Convention for the Protection of Industrial Property;

b) Authorisation to include in the design or model signs of a high symbolic value, such as religious symbols.

3 – On his own initiative or by order of the National Industrial Property Institute, an applicant may submit a description in no more than 50 words per product mentioning only the elements figuring in the representations of the design or model or in the sample submitted, omitting any mention of the novelty, distinctiveness or technical value of the design or model.

4 – The elements referred to in the previous paragraphs shall abide by the formal requirements fixed by order of the Chairperson of the Board of Directors of the National Industrial Property Institute.

5 – If the object of an application is a complex product, the drawings referred to in paragraph 1 shall represent and identify the parts of the product that are visible during normal use.

6 – If the object of an application is a two-dimensional design and the application includes, pursuant to Article 190, a request to postpone publication, the drawings referred to in paragraph 1 may be replaced by a specimen or sample of the product into which the design is incorporated or applied, without prejudice to their presentation at the end of the postponement period.

7 – The drawings or photographs of designs or models referred to in Article 187(1) shall be sequentially numbered in accordance with the total number of designs or models to be included in the same application.

8 – On being instructed to do so by the National Industrial Property Institute, the applicant shall submit the product itself or other photographs taken from angles that make it possible to form a more precise idea of the design or model.

9 – If a design or model registration application claims a colour combination, the drawings or photographs shall show the colours claimed and the description, if any, shall make reference thereto.

Article 186

UNITY OF APPLICATION

1 – The same application may not be used to request more than one registration and a different registration shall correspond to each design or model.

2 – Designs or models comprising several essential parts to form a whole shall be included in a single registration.

Article 187

MULTIPLE APPLICATIONS

1 – Without prejudice to the previous article, an application may include up to 100 products, provided that they belong to the same class in the international classification of industrial designs and models.

2 – If products do not belong to the same class, the applicant shall be instructed to divide the application.

3 – Each design or model included in a multiple application or registration may be separated or transmitted independently of the others.

4 – If it is decided that some of the products included in a multiple application are not designs or models under Articles 173 and 174, the applicant shall be instructed to reformulate them as a patent or utility model, though the date of the original application shall remain as the date of application.

Article 188

**EXAMINATION AS TO FORM AND EX OFFICIO
EXAMINATION**

1 – After a registration application has been submitted to the National Industrial Property Institute, the formal requirements set forth in Articles 173 and 174, Article 180(3) and 180(5) and Articles 184 to 187 shall be examined within one month.

2 – During the time limit mentioned in the previous paragraph, the National Industrial Property Institute shall ascertain ex officio whether the application incurs any of the prohibitions set forth in Article 197(1) to 197(3).

3 – If the National Industrial Property Institute finds formal irregularities in the application or any of the grounds

for refusal set forth in Article 197(1) to 197(3), the applicant shall be given one month to correct or remedy the objections made.

4 – At the applicant’s request, the time limit mentioned in the previous paragraph may be extended once only for the same period.

5 – If, in the applicant’s response, the irregularities are corrected or the objections remedied, the application shall be published for the purposes set forth in the following article.

6 – If, on the other hand, the irregularities or objections persist, registration shall be refused and the decision published in the Industrial Property Bulletin, with a reproduction of the design or model.

7 – If the objections have regard to only some of the products, the application shall be published for the others, with a mention of the products related to which there are objections that have not been remedied.

8 – Immediate notification will be made of the refusal set forth in paragraph 6, pursuant to Article 16(1), with an indication of the Industrial Property Bulletin in which the decision was published.

9 – The provisions of this article shall not prevent the National Industrial Property Institute from invoking breach of the requirements mentioned in paragraph 1 or the existence of the prohibitions mentioned in paragraph 2, after the time limits set forth in Article 17 and instructing the applicant to correct or remedy the objections made on the terms and within the time limits set forth in this article.

Article 189 PUBLICATION

1 – If a registration application is in order or any

irregularities have been corrected or objections remedied pursuant to paragraph 5 of the previous article, it shall be published in the Industrial Property Bulletin with a reproduction of the design or model and the international classification of industrial designs and models, for the purpose of objections by anyone considering themselves to have been prejudiced by the grant of the registration.

2 – The publication referred to in the previous paragraph may be postponed under the terms of the following article.

3 – After publication, anyone so wishing may request a copy of the elements in the case file.

4 – Without prejudice to the previous article, whenever an applicant fails to submit the necessary clarifications or authorisations, any expressions breaching Article 184(2) shall be removed ex officio from the indication of the products, and from the representations of the design or model and publications resulting from the application.

Article 190

POSTPONEMENT OF PUBLICATION

1 – On submitting an application to register a design or model, the applicant may request that its publication be postponed for no more than 30 months as of the date of submission of the application or priority claimed.

2 – Requests to postpone publication submitted after the date of the registration application shall be considered and decided upon by the National Industrial Property Institute.

3 – If publication is postponed, the design or model shall be entered in the registrations of the National Industrial Property Institute, but the application process will not be disclosed.

4 – Whenever an applicant requests postponement of publication, four months after submission of the

application, the National Industrial Property Institute shall publish a notice of said postponement, which shall include indications that at least identify the applicant, date of presentation of the application and the postponement period requested.

5 – At the applicant’s request, the application may be published before the end of the postponement period, if all the necessary legal formalities have been completed.

6 – (Revoked.)

Article 190-A

SUBSEQUENT FORMALITIES

1 – If no opposition has been filed within the time limit, total or partial registration shall be granted and the decision on the total or partial grant shall be published in the Industrial Property Bulletin.

2 – Whenever an opposition is submitted, after the discussion has ended, the National Industrial Property Institute shall analyse the grounds for refusal alleged by the claimant within one month.

3 – The grounds for refusal set forth in Article 197(4) and 197(5) shall only be analysed by the National Industrial Property Institute if invoked by the claimant.

4 – If an opposition is considered to be founded, registration shall be refused and the decision to refuse shall be published in the Industrial Property Bulletin.

5 – If an opposition is considered unfounded, registration shall be granted and the decision to grant shall be published in the Industrial Property Bulletin.

6 – If an opposition is considered to be founded only with regard to some of the products included in the application, registration shall be partially granted for the remaining products and the partial grant shall be published in the

Industrial Property Bulletin decision with a mention of the products refused.

7 – Notification of the decisions mentioned in the previous paragraphs shall be given immediately as set forth in Article 16(1) with an indication of the Industrial Property Bulletin in which the decision was published.

Article 191

OPPOSITION

(Revoked.)

Article 192

PROVISIONAL REGISTRATION

(Revoked.)

Article 193

REQUEST FOR EXAMINATION

(Revoked.)

Article 194

EXAMINATION

(Revoked.)

Article 195
PARTIAL GRANT

(Revoked.)

Article 196
ALTERATIONS TO APPLICATION

(Revoked.)

Article 197
REASONS FOR REFUSAL

1 – In addition to the provisions of Article 24, registration of a design or model shall be refused if it contains:

a) Symbols, crests, emblems or distinctions of the state, municipalities or other Portuguese or foreign public or private bodies, the emblem and name of the Red Cross or other similar bodies and any signs covered by Article 6-ter of the Paris Convention for the Protection of Industrial Property, unless authorised;

b) Signs of a high symbolic value, such as religious symbols, unless authorised;

c) Expressions or figures against the law, morality, public policy and accepted principles;

d) (Revoked.)

e) (Revoked.)

f) (Revoked.)

g) (Revoked.)

2 – Registration of a design or model shall also be refused if it consists exclusively of the Portuguese flag or some of its elements.

3 – Registration of a design or model containing the Portuguese flag, among other elements, is also refused if it is likely to:

a) Mislead a consumer into thinking that the products or services come from an official body;

b) Result in disrespect for the Portuguese flag or any of its elements.

4 – When invoked in an objection, registration shall be refused if:

a) A design or model does not fulfil the conditions set forth in Articles 176 to 180;

b) There is a breach of Article 58 or 59, with the necessary adaptations;

c) A design or model interferes with a previous design or model disclosed to the public after the date of the application or priority claim and protected since a prior date by a design or model application or registration;

d) A distinctive sign is used in a later design or model and EU law or the provisions regulating this sign confer the right to prohibit its use;

e) A design or model constitutes unauthorised use of a work protected by copyright.

5 – Recognition that the applicant wishes to engage in unfair competition or that this is possible, irrespective of his intention, is also grounds for refusal of a design or model registration when involved in an objection.

Article 198

NOTIFICATION OF FINAL DECISION

(Revoked.)

SECTION III

Effects of registration

Article 199

EXTENT OF PROTECTION

1 – The scope of the protection conferred by registration shall cover all designs or models that do not give a different overall impression to an informed user.

2 – In the appreciation of scope of protection, the degree of freedom that the creator had to carry out his design or model should be taken into account.

Article 200

RELATIONSHIP WITH COPYRIGHT

Any registered design or model also enjoys the protection conferred by legislation on copyright, as of the date on which the design or model was created or defined in any form.

Article 201

DURATION

1 – The duration of registration shall be five years as of the date of application and it can be renewed for equal periods up to a limit of 25 years

2 – The renewals referred to in the previous paragraph shall be requested in the last six months of validity of the registration.

Article 202

INDICATION OF DESIGN OR MODEL

While a registration is in effect, its holder may use on the products the expression “Design or model no.” or the abbreviations “DM no.”.

Article 203

RIGHTS CONFERRED BY REGISTRATION

1 – Registration of a design or model confers on its holder the exclusive right to use it and prohibit its use by third parties without his consent.

2 – The use referred to in the previous paragraph particularly covers the manufacture, offer, commercializing, import, export or use of a product in which this design or model has been incorporated or to which it has been applied and the storage of said product for the same purposes.

Article 204

**LIMITATION OF RIGHTS CONFERRED BY
REGISTRATION**

The rights conferred by registration do not cover:

- a)** Acts performed in private and not for commercial purposes;
- b)** Acts for experimental purposes;
- c)** Acts of reproduction for the purpose of reference or for didactic purposes, provided that they are compatible with fair commercial practices, do not unduly prejudice the normal exploitation of the design or model and that the

source is mentioned;

d) Equipment on board ships and aircraft registered in another country when temporarily passing through Portuguese territory;

e) The import of spare parts and accessories for these ships and aircraft;

f) Repairs to these ships and aircraft.

Article 205

EXHAUSTION OF THE RIGHTS

The rights conferred by registration do not allow their holder to prohibit acts relating to products in which a design or model has been incorporated or to which it has been applied when the design or model is the object of prior protection by registration, when the product has been marketed by the holder or with his consent in the European economic area.

Article 206

INALTERABILITY OF DESIGNS OR MODELS

1 – Designs or models shall remain unaltered for as long as registration is in effect.

2 – Enlargement or reduction to scale shall not affect the inalterability of designs or models.

Article 207

ALTERATIONS TO DESIGNS OR MODELS

1 – Any alteration to the essential specific characteristics

of designs or models may be registered provided that it abides by the requirements set forth in Article 176

2 – Modifications made to designs or models by the registration holder that only change insignificant details may be the object of a new registration or registrations.

3 – The registration or registrations referred to in the previous paragraph shall be annotated in the case file and entered, if any, in the original title document and in all registrations made under the same provision.

4 – The modified registrations referred to in paragraph 2 shall revert to the public domain at the end of the validity of the original registration.

SECTION IV

Invalidity of registration

Article 208

NULLITY

1 – In addition to the provisions of Article 33, the registration of a design or model is rendered null when, in the process of granting it, the provisions of Article 197(1-3), (4)(a) and (4)(c) are violated.

2 – (Revoked.)

Article 209

ANNULLABILITY

1 – In addition to the provisions of Article 33, the

registration of a design or model is annulable when, in the process of granting it, the provisions of Article 197(4)(d),(4)(e) and (5) are violated.

2 – (Revoked.)

Article 210

DECLARATION OF NULLITY OR PARTIAL ANNULMENT

1 – The registration of one or more products in one and the same registration can be declared null or annulled, but one cannot partially declare the nullity of a registration or partially annul the registration for a product.

2 – In the event of declaration of nullity or annulment of one or more products, the respective registration remains valid for the remaining part of the registration.

SECTION V

Prior protection

SUBSECTION I

General provisions

Article 211

OBJECT OF APPLICATION

(Revoked.)

Article 212

APPLICATION FOR PRIOR PROTECTION

(Revoked.)

Article 213

SECURITY AND FILING

(Revoked.)

SUBSECTION II

Protection application process

Article 214

FORM OF APPLICATION

(Revoked.)

SUBSECTION III

Effects of application for prior protection

Article 215

DURATION

(Revoked.)

Article 216

REGULARISATION OF APPLICATION

(Revoked.)

Article 217

RIGHTS CONFERRED BY PRIOR PROTECTION

(Revoked.)

Article 218

EXPIRY

(Revoked.)

Article 219

CONVERSION OF APPLICATION

(Revoked.)

Article 220

**REGISTRATION OF AN APPLICATION FOR
ADMINISTRATIVE ACTS OR LAWSUITS**

(Revoked.)

Article 221

FEES

(Revoked.)

CHAPTER IV

Trademarks

SECTION I

General provisions

SUBSECTION I

Trademarks of products and services

Article 222

COMPOSITION OF TRADEMARK

1 – A trademark may consist of a sign or set of signs that can be represented graphically, namely words - including the names of persons -, drawings, letters, numbers and sounds, the form of the product or respective packaging, provided that they adequately distinguish the products and services of one company from those of others.

2 – A trademark may also consist of advertising phrases for the respective products or services, provided that they are distinct in character, regardless of the protection conferred upon them by copyrights.

Article 223
EXCEPTIONS

1 – The conditions in the preceding article are not met by:
a) Trademarks that are devoid of any distinctive character;
b) Signs that exclusively consist of the form imposed by the nature of the product itself, the form of the product necessary for obtaining a technical result or the form that confers a substantial value on the product;

c) Signs that are exclusively made up of indications that may serve in commerce to designate the type, quality, quantity, purpose, value, geographic origin, period or means of production of the product or the service, or other characteristics thereof;

d) Trademarks that exclusively consist of signs or indications that have become common use in modern-day language or in the habitual and constant habits of commerce;

e) Colours, save where they are combined with each other or with graphics, wording or other particular and distinctive elements.

2 – The generic elements referred to in a), c) and d) of the preceding paragraph that are part of the composition of a trademark will not be considered for the exclusive use of the applicant, except where, in commercial practice, the signs have taken on distinctive effectiveness.

3 – At the request of the applicant or a complainant, the National Industrial Property Institute identifies, in the respective grant order, the elements that make up the trademark for which the applicant does not have exclusive rights of use.

Article 224

OWNERSHIP AND EXCLUSIVE RIGHT

1 – Registration confers upon the holder the right of property and exclusivity of the trademark for the respective products and services for which it is designed.

2 – The state may likewise enjoy the right of property and exclusivity of the trademarks it uses provided that it satisfies the legal provisions.

Article 225

RIGHT TO REGISTRATION

The right to register a trademark belongs to those with a legitimate interest, namely:

a) Industries or manufacturers, for the purpose of distinguishing the products they manufacture;

b) Traders, for the purpose of distinguishing the products they sell;

c) Farmers and producers, for the purpose of distinguishing the products of their activities;

d) Artists and craftsmen, for the purpose of distinguishing the products of their art, craft or profession;

e) Service providers, for the purpose of distinguishing their respective activities.

Article 226

**REGISTRATION BY AN AGENT OR
REPRESENTATIVE OF THE RIGHTS HOLDER**

If the agent or representative of the holder of the rights over a trademark registered in one of the EU or WTO

Member States but not registered in Portugal applies for registration of that trademark in his own name, without authorisation from the aforementioned holder, the latter has the right to oppose to the application, unless the agent or representative can justify the proceedings.

Article 227

UNREGISTERED TRADEMARKS

1 – Whoever uses a unregistered trademark for a period of no more than six months has the right of priority, during that period, to register the trademark and can oppose to any registration applications made by other entities.

2 – The veracity of the documents provided as proof of that priority shall be evaluated freely, with the exception of authentic documents.

SUBSECTION II

Collective trademarks

Article 228

DEFINITION

1 – A collective trademark is defined as an association trademark or certification trademark.

2 – The signs or indications used in commerce to designate the geographic origin of the products or services can constitute a collective trademark.

3 – Registration of a collective trademark also confers

upon the holder the right to control the commercialization of the respective products, pursuant to the terms established in the law, statutes or internal regulations.

Article 229

ASSOCIATION TRADEMARKS

An association trademark is a specific sign belonging to an association of natural or legal persons, the members of which use it, or intend to use it, for products or services related to the association's object.

Article 230

CERTIFICATION TRADEMARKS

1 – A certification trademark is a specific sign belonging to a legal person that controls the products or services or establishes standards to which said products or services must adhere.

2 – This sign serves for use on products or services subjected to that control or for which the standards were established.

Article 231

RIGHT TO REGISTRATION

1 – The following have the right to register collective trademarks:

a) Legal persons to which a guarantee mark or certification mark has been attributed or recognised and which can apply said mark to certain qualities of products or

services;

b) Legal persons that supervise, control or certify economic activities, in order to distinguish the products of these activities, or that come from certain regions, depending on their objects and pursuant to the respective statutes or organic laws.

2 – The legal persons referred to in the preceding subparagraph b) must promote inclusion, in the respective organic laws, statutes or internal regulations, of provisions that define the persons that have the right to use the trademark, the conditions in which such use must take place and the rights and obligations of interested parties in the case of usurpation or counterfeit.

3 – Amendments to the organic laws, statutes, or internal regulations that modify the collective trademark regime only take effect in relation to third parties if the National Industrial Property Institute is informed of them by the organisation Directive Council that has registered the trademark.

Article 232

APPLICABLE PROVISIONS

The provisions of this code on product and service trademarks are applicable to collective trademarks, with the due adjustments.

SECTION II

Registration process

SUBSECTION I

National route

Article 233

APPLICATION

1 – An application to register a design or model shall be made on a form in Portuguese indicating or containing:

a) The applicant's name, nationality, address or place of business, tax number if resident in Portugal and email address, if any;

b) The products or services the trademark is designed for, grouped in accordance with the categories in the international product and service classification, and defined in precise terms, preferably using the alphabetical terms in the list of the aforementioned classification;

c) Express indication that the trademark is an association or certification trademark, should the applicant wish to register a collective trademark;

d) Express indication that the trademark is a three-dimensional or sound mark;

e) The registration number of any award featured or referred to in the trademark;

f) The colours in which the trademark is used, if these are claimed as a distinctive element;

g) The country of first application for registration of the

trademark, and the date and the number of that application, in the event that the applicant wishes to claim right of priority;

h) Indication of the date from which the applicant has been using the trademark, in the event of the situation provided for in Article 227;

i) The signature or electronic id of the applicant or respective representative.

2 – For the purposes of Article 11(1), priority is given to the registration application that first submits a representation of the intended trademark, in addition to the information required under 1 (a) and (b).

Article 234

PREPARING AN APPLICATION

1 – An application must be accompanied by a graphic representation of the sign or, when the trademark is a sound mark, the respective musical phrases, in a support defined by an order of the Chairperson of the Board of Directors of the National Industrial Property Institute.

2 – When a registration application claims the rights for a certain combination of colours, the graphic representation referred to in the preceding paragraph must show the respective colours.

3 – An application must also be accompanied by the following:

a) Authorisation from any person whose name or portrait may feature in the trademark and who is not the applicant;

b) Indication of the legal and statutory provisions or internal regulations that govern the use of the trademark when it is a collective one;

c) Authorisation to include in the design or model any symbols, crests, emblems or distinctions of the state,

municipalities or other Portuguese or foreign public or private bodies, the emblem and name of the Red Cross or other similar bodies and any signs covered by Article 6-ter of the Paris Convention for the Protection of Industrial Property;

d) Authorisation from the holder of a prior registration and the holder of an exclusive licence, if applicable, and, save provisions to the contrary in the contract, for the purposes of Article 243;

e) Authorisation to include in the trademark signs of a high symbolic value, such as religious symbols.

4 – Failure to meet the requirements referred to in the preceding paragraph does not affect the relevance of the application for the purposes of priority.

5 – When a trademark features inscriptions in little-known characters, the applicant shall submit a transliteration and, if possible, a translation of said inscriptions.

6 – When the figurative elements of a trademark contain verbal elements, the applicant must specify these in the registration application.

Article 235

SINGLE REGISTRATION

There may only be one registration for the same trademark for one and the same product or service.

Article 236

PUBLICATION OF THE APPLICATION

1 – Notification of submission of an application is published in the Industrial Property Bulletin so that it may

be opposed by whoever feels they would be prejudiced if the registration in question is granted.

2 – The notification must include a reproduction of the trademark, classification of the products and services in their respective categories, in line with the international classification, as well as the information referred to in Article 233(1), with the exception of the applicant's tax number and electronic mail address.

3 – The National Industrial Property Institute is responsible for checking the classification referred to in the preceding paragraph, and correcting it where necessary through inclusion of the exact category terms and removal of incorrect terms.

Article 237

PROCEDURAL FORMALITIES

1 – The National Industrial Property Institute analyses the application, which consists of examination of the trademark to be registered and comparison with other trademarks and distinctive trade signs.

2 – (Revoked.)

3 – Registration is granted if, after completion of the examination, no grounds for refusal are identified and any opposition, if lodged, is dismissed as unfounded.

4 – Registration is refused immediately if an opposition is considered to be founded.

5 – Registration is provisionally refused when the examination reveals grounds for refusal and any possible opposition is considered unfounded.

6 – The applicant is notified of the provisional refusal and must respond within a period of one month, on pain of the refusal becoming final if the objections detected are maintained. This period can be extended once for the same

period of time at the request of the interested party.

7 – (Revoked.)

8 – If, following the applicant’s response, it is concluded that the refusal is unfounded, or that the objections raised have been resolved, the grant order is issued within a period of one month beginning on the date of submission of the response, without prejudice to Article 11(7).

9 – If, following the applicant’s response, the original assessment is not altered, the provisional refusal is confirmed by a definitive order.

10 – (Revoked.)

11 – Notification of the definitive order is immediately made in accordance with Article 16(1), indicating the Industrial Property Bulletin in which the respective notification is published.

Article 238

GROUNDS FOR REFUSAL OF A REGISTRATION

1 – In addition to the provisions of Article 24, registration of a trademark is refused when:

a) It consists of signs that cannot be represented graphically;

b) It consists of signs devoid of any distinctive character;

c) It consists exclusively of signs or indications referred to in Article 223(1)(b) to (e);

d) (Revoked.)

e) It contradicts the provisions of Articles 222, 225, 228 to 231 and 235.

2 – (Revoked.)

3 – Registration of a trademark consisting exclusively of signs or indications referred to in Article 223(1)(a), (c) and (d) is not refused if it has acquired distinctive character.

4 – Registration of a trademark will also be refused if it

contains in some or all of its constitutive elements:

a) symbols, crests, emblems or distinctions of the state, municipalities or other Portuguese or foreign public or private bodies, the emblem and name of the Red Cross or other similar bodies and any signs covered by Article 6-ter of the Paris Convention for the Protection of Industrial Property;

b) signs of a high symbolic value, such as religious symbols, unless these are authorised;

c) Expressions or figures that are contrary to the law, morals, public order and morality;

d) Signs that may mislead the public, namely as to the nature, properties, utility or geographic origin of the product or service for which the trademark is designed.

5 – Registration of a trademark that is made up exclusively of the national flag of the Portuguese Republic or some of its constitutive elements will also be refused.

6 – Registration will also be refused for a trademark that contains, amongst other elements, the national flag, wherever the trademark is likely to:

a) Mislead the public as to the geographic origin of the products or services for which it is designed;

b) Lead the consumer to erroneously think that the products or services come from an official body;

c) Generate disrespect or a diminution of prestige for the national flag or any of its elements.

Article 239

OTHER GROUNDS FOR REFUSAL

1 – Further grounds for refusal of registration of a trademark are:

a) Reproduction or imitation of all or part of a trademark previously registered by another person for identical or

similar products or services that may mislead or confuse the consumer or comprise the risk of association with the already registered trademark;

b) Reproduction or imitation of all or part of a logotype already registered by another person to distinguish an entity whose activity is identical or similar to the products or services for which the trademark is designed, if it is likely to mislead or confuse the consumer;

c) Violation of other industrial property rights;

d) The use of names, portraits or any other expressions or figurations without the authorisation of the persons they relate to or, if these are deceased, of the heirs or relatives to the fourth degree or, if authorisation is obtained, if it generates disrespect or diminution of prestige for those persons;

e) Recognition that the applicant's intent is one of unfair competition or that unfair competition is a possible outcome, regardless of the applicant's intention.

2 – When cited in an opposition, the following are also grounds for refusal:

a) Reproduction or imitation of a business or corporate name and other distinctive signs, or merely a characteristic part thereof, that do not belong to the applicant or where the applicant is not authorised to use them, if it is likely to mislead or confuse the consumer;

b) Violation of copyrights;

c) Use of references to a specific rural or urban real estate property that does not belong to the applicant;

d) Violation of Article 226.

3 – In the case set forth in subparagraph d) of the preceding paragraph, in lieu of refusal of the registration, its transfer, either in part or whole, may be granted in favour of the holder, if the latter so requests.

Article 240

IMITATION OF UNREGISTERED PACKAGING OR LABELS

1 – Registration will also be refused for trademarks which, pursuant to Article 245(1)(b) and (c), are a reproduction or imitation of a certain external feature – namely packaging or a label, including the respective form, colouring and layout of wording, medals, awards and other elements – that is proven to be used by others in their registered trademarks.

2 – The interested parties in the refusal of trademarks under this article may only intervene in the respective process after they have made the application for registration of their trademark with the external features referred to in the preceding paragraph.

Article 241

WELL-KNOWN TRADEMARKS

1 – Registration will also be refused for a trademark that, as a whole or in an essential part, is a copy, imitation or interpretation of another well-known trademark in Portugal if it is applied to identical or similar products or services and may be mistaken for the other trademark, or if, through this application, it is possible to establish an association with the holder of the well-known trademark.

2 – The interested parties in the refusal of the registration of the trademarks as referred to in the preceding paragraph may only intervene in the respective process after they have made the application for registration of the trademark that gives origin to and is the basis of their interest.

Article 242
PRESTIGIOUS TRADEMARKS

1 – Without prejudice to the preceding article, registration will also be refused if a trademark, even when it is designed for products or services without identity or affinity, is an interpretation of, or is identical or similar to, an already existing trademark that enjoys prestige in Portugal or the European Union, if it is registered in the European Union, and whenever use of the subsequent trademark seeks to take undue advantage of the distinctive character or prestige of the trademark or may prejudice it.

2 – The provisions of paragraph 2 of the preceding article apply to the above paragraph 1, whereby it is understood that, in this case, registration of the trademark for the products or services that gave it the prestige must be applied for.

Article 243
DECLARATION OF CONSENT

Registration of a trademark that may be confused with already registered trademarks or other industrial property rights requires a declaration of consent from the holders of said rights and the holders of exclusive licences, where these exist and the contracts do not establish otherwise.

Article 244
PARTIAL REFUSAL

Whenever there are grounds for refusing registration of a trademark only with respect to some of the products or

services for which it was applied for, the refusal applies only to those specific products or services.

Article 245

CONCEPT OF IMITATION OR USURPATION

1 – A registered trademark is considered to have been imitated or usurped, as a whole or in part, by another trademark, when, cumulatively:

- a)** The registered trademark has priority;
- b)** Both trademarks are designed for identical or similar products or services;
- c)** The trademarks are so similar in graphic, figurative, phonetic or any other terms that the consumer can easily be misled or confused, or that it comprises a risk of association with the already registered trademark, so that the consumer can only distinguish between them after attentive scrutiny or comparison.

2 – For the purposes of paragraph 1(b) above:

- a)** Products and services in the same Nice classification category may be considered to be not similar;
- b)** Products and services that are not in the same Nice classification category may be considered to be similar.

3 – Partial imitation or usurpation of a trademark is defined as the use of a certain fantasy name that is part of another already registered trademark.

Article 246

SPECIAL REGISTRATION PROCESS

(Revoked.)

SUBSECTION II

Community trademark

Article 247

**CONVERSION TO APPLICATION FOR
NATIONAL TRADEMARK APPLICATION**

1 – When an application for registration of a Community trademark is refused, withdrawn or considered withdrawn, or when the registration of a Community trademark is no longer in effect, the respective applicant or holder may apply for conversion of its application or registration into a national trademark registration application, pursuant to the Regulations referred to in Article 40(2).

2 – Upon receipt of a conversion application, pursuant to the preceding paragraph, the National Industrial Property Institute decides on its admissibility; if admissible, it notifies the applicant to perform the following within a period of two months beginning on the date of notification:

a) Fill out a special national registration application form in Portuguese;

b) Submit a graphic representation of the sign, or, if the trademark consists of sounds, the respective musical phrases on a support defined in an order of the Chairperson of the Board of Directors of the National Industrial Property Institute;

c) (Revoked.)

d) Provide an address in Portugal, an e-mail address or fax number, if the applicant is in the conditions provided for in Article 10(1)(b), for the purposes of paragraph 4 of the same article;

e) Pay the corresponding national registration application

fee.

3 – When the requirements listed in the preceding paragraph are met, the application is given a national registration case file number and the corresponding formalities can ensue.

SUBSECTION III

International registration

Article 248

RIGHT TO REGISTRATION

1 – The applicant or holder of a trademark registration that is a Portuguese national or is domiciled or has a place of business in Portugal can ensure protection of its trademark in the member states that are contracting parties of the Madrid Union, in accordance with the Madrid Agreement or Protocol.

2 – (Revoked.)

Article 249

APPLICATION

An application for international registration is made on a special form that is submitted to the National Industrial Property Institute, in accordance with the provisions of the Agreement or Protocol.

Article 250
RENUNCIATION

The holder of an international registration can at all times renounce protection of its trademark, totally or in part, in the territory of one or more contracting states, in accordance with the Madrid Agreement or Protocol.

Article 251
ALTERATIONS TO REGISTRATION

1 – The National Industrial Property Institute notifies the aforementioned International Secretary of all amendments to the registration of national trademarks that may affect international registration, for the purpose of registration in the latter, as well as the publication and notification to the contracting states that have granted them protection.

2 – All applications for registration of the transfer of trademarks to persons without the legal capacity to obtain an international registration shall be refused.

Article 252
PUBLICATION OF THE APPLICATION

A notice of the application for protection in Portugal is published in the Industrial Property Bulletin for the purpose of allowing oppositions by whoever may consider himself prejudiced by the possible grant of the registration.

Article 253

PROCEDURAL FORMALITIES

1 – The provisions of Article 237 (1) and (3) to (11) apply to internationally registered trademarks.

2 – The subsequent terms of the procedure are likewise regulated by the provisions applicable to national registration and those provided for in the Madrid Agreement or Protocol.

Article 254

GROUND FOR REFUSAL

Protection within Portugal for internationally registered trademarks is refused whenever there are any grounds for refusal of national registration.

SECTION III**Effects of registration**

Article 255

DURATION

A registration has a duration of 10 years, beginning on the date of the respective grant. It may be indefinitely renewed for identical periods.

Article 256
STATEMENT OF INTENT TO USE

(Revoked.)

Article 257
INDICATION OF REGISTRATION

During the registration's period of validity, the proprietor may use the words "registered trademark", the initials "R.T." or also simply.

Article 258
RIGHTS CONFERRED BY REGISTRATION

Registration of a trademark confers upon the proprietor the right to prevent third parties from using an identical or similar sign without its consent in economic activities for products or services that are identical or similar to those for which the trademark was registered and which, as a result of the similarity between the signs and the affinity between the products or services, may give rise to a risk of confusion or association in the mind of the consumer.

Article 259
EXHAUSTION OF THE RIGHTS

1 – The rights granted by the registration do not allow the proprietor to prohibit the use of the trademark on products commercialized by itself or with its consent in the European economic area.

2 – The preceding paragraph does not apply whenever there are legitimate grounds for the prohibition, such as when the products are modified or altered after they are placed in the market.

Article 260

LIMITS TO RIGHTS GRANTED BY REGISTRATION

The rights granted by registration of a trademark do not entitle the proprietor to prevent third parties from using, in their economic activities, provided that it is carried out in conformity with the regulations and honest practices in industrial and commercial matters:

- a) Their own name and address;
- b) Indications relating to the type, quality, quantity, purpose, value, geographic origin and period and means of production of the product or service or other features of the products or services;
- c) The trademark, whenever this is required to indicate the purpose of a product or service, such as in the form of accessories or spare parts.

Article 261

INALTERABILITY OF A TRADEMARK

1 – A trademark must be kept unaltered. Any change to its constitutive elements is subject to a new registration.

2 – Excepted from the preceding paragraph are simple modifications that do not prejudice the identity of the trademark and only affect its dimensions, the material on which it has been stamped, printed or reproduced and the ink or colour, if the latter has not been expressly claimed as

one of the specific features of the trademark.

3 – The identity of a trademark is also not affected by the inclusion or suppression of express indication of the product or service for which the trademark is designed, nor by any **alteration of the proprietor's domicile or place of business.**

4 – A nominative trademark is only subject to the rules of inalterability in relation to the expressions that make up the trademark. It may be used with any figurative aspect provided it does not violate the rights of third parties.

SECTION IV

Transfer and licences

Article 262

TRANSFER

1 – Trademark registrations are transferable where a transfer would not mislead the public as to the origin of the product or service or as to the essential characters for its appreciation.

2 – Whenever a transfer is partial, in terms of the products or services, a copy of the process should be requested, which will serve as the basis for an autonomous registration, including the title rights.

3 – The provisions of the preceding paragraphs apply to registration applications and, in the event of partial transfer, new applications retain the rights of priority already held.

Article 263

TRANSFER RESTRICTIONS

Trademarks registered to organisations that monitor or control economic activities are not transferable, save where allowed by a special provision in the law, statutes or internal regulations.

Article 264

LICENCES

The proprietor of a trademark registration may invoke the rights granted by the registration against a licensee that violates any clause or provision of the licensing contract, **particularly relating to the contract's term of validity, the identity of the trademark, the nature of the products or services for which the licence was granted, the demarcation of the licence zone or territory or the quality of the products manufactured or services provided by the licensee.**

SECTION V

**Extinction of a trademark registration
or rights derived from it**

Article 265

NULLITY

1 – In addition to the provisions of Article 33, a trademark registration is null and void when, in the process of granting

it, the following provisions are violated:

a) Article 238(1) and (4) to (6);

b) (Revoked.)

2 – The provisions of Article 238(3) apply to nullity actions, with the necessary adjustments.

Article 266 **ANULLABILITY**

1 – In addition to the provisions of Article 34, a trademark registration is annulable when, in the process of granting it, the provisions of Articles 239 to 242 have been violated.

2 – Pursuant to Article 241 or 242, the interested party in the annulment of a trademark must apply for registration of the trademark that gives rise to the request for annulment for the products or services that gave the mark renown or prestige, respectively.

3 – A registration cannot be annulled if the already existing trade name invoked in an opposition does not satisfy the condition of serious use in accordance with Article 268.

4 – Annulment actions must be proposed within the 10-year period beginning on the date of issue of the registration grant order, without prejudice to the right to apply for annulment of a trademark registered in bad faith, which is imprescriptible.

Article 267 **PRECLUSION BY TOLERANCE**

1 – The proprietor of a registered trademark that has knowledge of and tolerates the use of a trademark registered after registration of its own mark for a period of five

consecutive years forfeits the right, based on propriety of a prior trademark, to apply for annulment of the registration of the later trademark or to oppose to its use in relation to the products or services the later trademark has been used for, unless the later trademark has been registered in bad faith.

2 – The five-year period provided for in the preceding paragraph begins on the date on which the proprietor takes knowledge of the fact.

3 – The proprietor of a subsequently registered trademark cannot oppose the pre-existing rights, even if the latter cannot be invoked against the later trademark.

Article 268

USE OF TRADEMARK

1 – The following are considered serious uses of a trademark:

a) Use of the trademark in its registered form or in a form that only differs in elements that do not alter its distinctive character, in accordance with Article 261, by the trademark proprietor, or a licensee with a duly registered licence;

b) Use of the trademark, as defined in the preceding subparagraph, for products or services destined for export only;

c) Use of the trademark by a third party, provided this is controlled by the proprietor and is for the purpose of retaining the registration.

2 – Use of a collective trademark is defined as that carried out with the consent of the proprietor.

3 – Use of a guarantee or certification trademark is defined as that carried out by a qualified person.

4 – The commencement or resumption of serious use in the three-month period immediately prior to submission of

an application for declaration of expiry, beginning on the date of the end of an uninterrupted period of five years of non-use, is not taken into consideration if the diligences for the commencement or resumption of use only take place after the proprietor takes knowledge of the fact that such an application for declaration of expiry may be filed.

Article 269

EXPIRY

1 – In addition to the provisions of Article 37, expiry of a registration shall be declared if the trademark has not been the object of serious use for a period of five consecutive years, unless there are just grounds for the non-use and without prejudice to the provisions of Article 268(4).

2 – Expiry of a registration shall also be declared if, after the date on which the registration was made:

a) The trademark itself becomes the usual designation in commerce for the product or service for which it was registered, as a consequence of the activity or inactivity of the proprietor;

b) The trademark becomes likely to mislead the public, namely as to the nature, quality and geographic origin of the products or services, as a result of the use of the trademark **by the proprietor or by a third party with the proprietor's consent** for the products or services for which it was registered.

3 – Expiry of a collective trademark registration shall be declared if:

a) The legal person in whose favour it was registered ceases to exist;

b) That legal person consents to the trademark being used in a fashion contrary to its general purposes or to statutory provisions.

4 – Registration does not expire when serious use of the trademark commences or is resumed before application for a declaration of expiry, without prejudice to paragraph 4 of the preceding article.

5 – The period referred to in paragraph 1 begins on the date of registration of the trademark, which, for international trademarks, is the date of registration with the International Secretary.

6 – Whenever there are grounds for expiry of a trademark registration only in relation to some of the products or services it was designed for, the expiry shall only affect those products or services.

Article 270

DECLARATION OF EXPIRY APPLICATIONS

1 – Declaration of expiry applications are submitted to the National Industrial Property Institute.

2 – The aforementioned applications may be based on any of the grounds set forth in paragraphs 1 to 3 of the preceding article.

3 – The proprietor of a registration is always notified of an application for declaration of expiry so that it may respond within a period of one month.

4 – At the request of the interested party, submitted in due time, the period referred to in the preceding paragraph can be extended, once only, by one more month.

5 – (Revoked.)

6 – It is the responsibility of the registration proprietor or licensee, if applicable, to provide proof of use of the trademark, without which it is presumed that it is not used.

7 – At the end of the response period, the National Industrial Property Institute decides, again within a period of one month, whether to declare the registration expired or

not.

8 – The declaration of expiry procedure is terminated before a decision is reached if the respective application is withdrawn.

9 – Expiry only enters into force after it has been declared following conclusion of the full procedure at the National Industrial Property Institute.

10 – The expiry is registered and notice thereof is published in the Industrial Property Bulletin.

CHAPTER V

Awards

SECTION I

General provisions

Article 271

OBJECT

Awards are defined as:

a) Accolades of merit awarded by the Portuguese state or by foreign states;

b) Medals, diplomas and pecuniary or any other prizes obtained at official or officially recognised exhibitions, fairs and competitions held in Portugal or in foreign countries;

c) Diplomas and certificates of analysis, or praise, issued by state laboratories or agencies or organisations qualified for that purpose;

d) Warrants of purveyor to heads of state, the government or other official establishments, both national and foreign;

e) Any other accolades or demonstrations of preference of an official nature.

Article 272

CONDITIONS FOR MENTIONING AWARDS

Awards may not be applied to products or services other than those for which they were granted.

Article 273

OWNERSHIP

Awards of any type granted to manufacturers, traders, farmers and any other entrepreneur are their property.

SECTION II

Registration process

Article 274

APPLICATION

1 – An application to register a design or model shall be made on a form in Portuguese indicating or containing:

a) The applicant's name, nationality, address or place of business, tax number if resident in Portugal and email

address, if any;

- b) The awards for which registration is being applied and the organisation that granted them and respective dates;
- c) The products or services distinguished with the awards;
- d) Either the complete or partial logotype for the corresponding award, if applicable;
- e) The signature or electronic identification of the applicant or respective representative.

Article 275

PREPARING THE APPLICATION

1 – The application must be accompanied by the original diplomas or other documentation proving the granting of the award, or authenticated photocopies thereof.

2 – Proof of receipt of an award can also be provided by enclosing a duly certified copy of the official publication in which the award is granted or published, or just the part of that publication that suffices to identify it.

3 – The National Industrial Property Institute may demand translation into Portuguese of foreign-language diplomas or other documentation.

4 – Registration of awards that include references to logotypes requires prior registration of said logotypes.

Article 276

GROUND FOR REFUSAL

In addition to the provisions of Article 24, registration of an award is refused when:

- a) The type of award is not included in any of the categories provided for in this code;
- b) It is proven to have been applied to products or

services other than those for which it was granted;

c) There has been transfer of ownership of the award, without transfer of establishment or of the relevant part of the latter, should this be the case;

d) It is demonstrated that the award was revoked or does not belong to the applicant.

Article 277

RETURN OF DOCUMENTS

1 – At the end of the period for lodging appeals, the diplomas or other documents submitted in the procedure are returned to the applicants that submit a corresponding request and are substituted by authenticated photocopies.

2 – Documents are returned against receipt, which is added to the procedure file.

SECTION III

Use and transfer

Article 278

INDICATION OF AWARD

The use of legitimately obtained awards is permitted even if they are not registered, but only when registration has been carried out can the reference to them or copy of them be accompanied by the designation “Registered Award” or the abbreviated forms “RA” or “RA”.

Article 279
TRANSFER

Ownership of the awards is transferred with the legal formalities required for transfer of the assets to which they are an accessory.

SECTION IV

Extinction of registration

Article 280
ANNULLABILITY

In addition to the provisions of Article 34, registration is annulable when the award is annulled.

Article 281
EXPIRY

1 – A registration expires when the award is revoked or cancelled.

2 – Expiry of a registration results in termination of the use of the award.

CHAPTER VI

Trade name and insignia

SECTION I

General provisions

Article 282

RIGHT TO REGISTRATION

(Revoked.)

Article 283

COMPOSITION OF TRADE NAME

(Revoked.)

Article 284

COMPOSITION OF INSIGNIA

(Revoked.)

Article 285

GROUND FOR REFUSAL

(Revoked.)

SECTION II

Registration process

Article 286
APPLICATION

(Revoked.)

Article 287
PREPARING THE APPLICATION

(Revoked.)

Article 288
DECLARATION OF CONSENT

(Revoked.)

Article 289
SINGLE REGISTRATION

(Revoked.)

Article 290

PUBLICATION OF THE APPLICATION

(Revoked.)

Article 291

SUBSEQUENT FORMALITIES

(Revoked.)

Article 292

REFUSAL

(Revoked.)

SECTION III**Effects of registration**

Article 293

DURATION

(Revoked.)

Article 294

INDICATION OF TRADE NAME OR INSIGNIA

(Revoked.)

Article 295

RIGHTS GRANTED BY REGISTRATION

(Revoked.)

Article 296

INALTERABILITY OF TRADE NAME OR INSIGNIA

(Revoked.)

SECTION IV**Transfer, nullity, annullability and
expiry of registration**

Article 297

TRANSFER

(Revoked.)

Article 298
NULLITY

(Revoked.)

Article 299
ANULLABILITY

(Revoked.)

Article 300
EXPIRY

(Revoked.)

CHAPTER VII

Logotypes

Article 301
COMPOSITION OF LOGOTYPES

(Revoked.)

Article 302
RIGHT TO LOGOTYPE

(Revoked.)

Article 303
INDICATION OF LOGOTYPE

(Revoked.)

Article 304
APPLICABLE RULES

(Revoked.)

SECTION I

General provisions

Article 304-A
COMPOSITION OF LOGOTYPE

1 – A logotype may consist of a sign or number of signs that can be represented graphically, namely by nominative or figurative elements or a combination of both.

2 – A logotype must be appropriate for distinguishing an entity that provides services or commercializes products. It can be used, for instance, in places of business, advertising, forms and correspondence.

Article 304-B
RIGHT TO REGISTER

Any individual or collective person, public or private, may legitimately apply for registration of any logotype provided they have a legitimate interest therein.

SECTION II

Registration process

Article 304-C
SINGLE REGISTRATION

1 – The same sign, when it serves to distinguish one and the same entity, may only be the object of one logotype registration.

2 – One and the same entity may be distinguished through more than one logotype registration.

Article 304-D
APPLICATION

1 – Application for registration of a trademark is made on a form, in Portuguese, indicating or containing:

a) The applicant's name, nationality, address or place of business, tax number if resident in Portugal and email address, if any;

b) The type of services provided or products commercialized by the entity wishing to distinguish itself,

along with indication of the respective Portuguese economic activity classification code;

c) The colours in which the logotype is used, if these are claimed as distinctive elements of the logotype;

d) The signature or electronic ID of the applicant or its representative.

2 – For the purposes of Article 11(1), priority is given to the registration application that first submits a representation of the intended logotype, in addition to the information required under a) and b) of the preceding paragraph.

Article 304-E

DOCUMENTS

1 – The application must be accompanied by a graphic representation of the insignia on a support defined in an order issued by the Chairperson of the Board of Directors of the National Industrial Property Institute.

2 – When a registration application claims the rights for a certain combination of colours, the graphic representation referred to in the preceding paragraph must show the respective colours.

3 – An application must be accompanied by the authorisations referred to in Article 234(3).

4 – The lack of the authorisations referred to in the preceding paragraph does not affect the relevance of an application for the purposes of priority. However, registration can only be granted if all requirements referred to above have been met.

5 – When a logotype contains inscriptions in little-known characters, the applicant must submit a transliteration and, if possible, a translation of such inscriptions.

6 – When the figurative elements of a logotype contain

verbal elements, the applicant must specify these in the registration application.

Article 304 -F

PUBLICATION OF THE APPLICATION

1 – Notification of submission of an application is published in the Industrial Property Bulletin so that it may be opposed by anyone who feels they would be prejudiced if the registration in question is granted.

2 – The publication shall contain a reproduction of the logotype and include the indications referred to in Article 304-D(1), with the exception of the applicant's tax number and email address.

Article 304 -G

PROCEDURAL FORMALITIES

The procedural formalities for trademarks referred to in Article 237 also apply to the registration of logotypes, with the necessary adjustments.

Article 304 -H

GROUND S FOR REFUSAL OF A REGISTRATION

1 – In addition to the provisions of Article 24, registration of a logotype is refused when:

- a)** It consists of signs that cannot be represented graphically;
- b)** It consists of signs devoid of any distinctive character;
- c)** It consists exclusively of signs or indications referred to

in Article 223(1)(b) to (e):

d) It violates Articles 304-A to 304-C.

2 – Registration of a logotype consisting exclusively of signs or indications referred to in Article 223(1)(a), (c) and (d) is not refused if it has acquired distinctive character.

3 – Registration of a logotype will also be refused if it contains in some or all of its constitutive elements:

a) Symbols, crests, emblems or distinctions of the state, municipalities or other Portuguese or foreign public or private bodies, the emblem and name of the Red Cross or other similar bodies and any signs covered by Article 6-ter of the Paris Convention for the Protection of Industrial Property, unless these are authorised;

b) Signs of a high symbolic value, such as religious symbols, unless these are authorised;

c) Expressions or figures that are contrary to the law, public order and morality;

d) Signs that may mislead the public, in particular as to the activity carried out by the entity wishing to distinguish itself.

4 – Registration of a logotype that is made up exclusively of the national flag of the Portuguese Republic or some of its constitutive elements will also be refused.

5 – Registration will also be refused for a logotype that contains, amongst other elements, the Portuguese flag, wherever the logotype is likely to:

a) Mislead the public as to the geographic origin of the products commercialized or services provided by the entity for which it is designed;

b) Lead the consumer to erroneously think that the products or services come from an official body;

c) Generate disrespect or a diminution of prestige for the Portuguese flag or any of its elements.

Article 304 -I

OTHER GROUNDS FOR REFUSAL

1 – Further grounds for refusal of a registration are:

a) Reproduction or imitation of all or part of a logotype previously registered by another person to distinguish an entity whose activity is identical or similar to that of the entity wishing to distinguish itself, if it may mislead or confuse the consumer;

b) Reproduction or imitation of all or part of a mark previously registered by another person for products or services that are identical or similar to those included in the activity carried out by the entity wishing to distinguish itself, if this may mislead or confuse the consumer or create the risk of association with the already registered trademark;

c) Violation of other industrial property rights;

d) The use of names, portraits or any other expressions or figurations without the authorisation of the persons they relate to, or, if these are deceased, of the heirs or relatives to the fourth degree or, if authorisation is obtained, if it generates disrespect or diminution of prestige for those persons;

e) Recognition that **the applicant's intent is one of unfair competition or that unfair competition is a possible outcome, regardless of the applicant's intentions.**

f) The use of names, appellations, figures or designs that are a reproduction or imitation of a logotype already registered by another person; however, it is permissible that two or more persons with identical surnames include those names in their respective logotypes, provided that they are completely distinguishable from each other.

2 – The grounds for refusal set forth in Articles 240 to 242, with the necessary adjustments, also apply to logotype registration.

3 – When cited in an opposition, the following are also

grounds for refusal:

- a) Reproduction or imitation of a business or corporate name, or merely a characteristic part thereof, that do not belong to the applicant or where the applicant is not authorised to use them, if this is likely to mislead or confuse the consumer;
- b) Violation of copyright;
- c) Use of references to a specific rural or urban real estate property that does not belong to the applicant.

Article 304 -J

DECLARATION OF CONSENT

The provisions of Article 243 apply to the registration of logotypes, with the necessary adjustments.

SECTION III

Effects of registration

Article 304-L

DURATION

A registration has a duration of 10 years, beginning on the date of the respective grant. It may be indefinitely renewed for identical periods.

Article 304-M
INDICATION OF LOGOTYPE

During the registration's period of validity, the proprietor may use the designation "Registered Logotype", "Registered Logo" or simply "RL" on the logotype.

Article 304-N
RIGHTS GRANTED BY REGISTRATION

Registration of a logotype confers upon the proprietor the right to prevent third parties from using, without its consent, any other identical or similar sign that is a reproduction or imitation of its own.

Article 304-O
INALTERABILITY OF LOGOTYPE

1 – A logotype must be kept in an unaltered state. Any change to its constitutive elements is subject to a new registration.

2 – Inalterability is defined in accordance with the rules established for trademarks in Article 261(2), (3) and (4), with the necessary adjustments.

SECTION IV

**Transfer, nullity, annullability and
expiry of registration**

Article 304-P

TRANSFER

1 – Logotype registrations are transferable where a transfer would not mislead or confuse the public.

2 – When it is used in an establishment, the rights resulting from a logotype registration application or registration can only be transferred, be it a free or paid transfer, together with the establishment, or part of the establishment, with which the logotype is associated.

3 – Without prejudice to Article 31(5), the transfer of the establishment involves the respective logotype, which may remain as it is registered, unless the transferor reserves it for another existing or future establishment.

Article 304-Q

NULLITY

1 - In addition to the provisions of Article 33, a logotype registration is null and void when, in the process of granting it, Article 304-H(1) and (3) to (5) are violated

2 - The provisions of Article 234-H(2) apply to nullity actions, with the necessary adjustments.

Article 304-R
ANNULLABILITY

1 - In addition to the provisions of Article 34, a registration is null and void when, in the process of granting it, the provisions of Article 304-I are violated.

2 - Annulment actions must be proposed within the ten-year period beginning on the date of issue of the registration grant order, without prejudice to the provisions of the following paragraph.

3 - The right to apply for annulment of a logotype registered in bad faith is imprescriptible.

Article 304-S
EXPIRY

In addition to the provisions of Article 37, a registration expires:

a) Due to closure and liquidation of the establishment or extinction of the entity;

b) Due to failure to use the logotype during a period of five consecutive years without just grounds.

CHAPTER VIII

Appellations of origin and geographic indications

SECTION I

General provisions

Article 305

DEFINITION AND OWNERSHIP

1 – Denomination of origin is defined as the name of a region, of a specific place or, in exceptional cases, of a country, which serves to designate or identify a product:

- a) Originating from that region, specific place or country;
- b) Whose quality or characteristics are derived, essentially or exclusively, from the geographic environment, including the natural and human factors, and whose production, processing and development are carried out within the demarcated geographic area.

2 – Certain traditional appellations, be they geographic or not, which designate a product originating from a specific region or place and which satisfy the conditions provided for in (b) of the preceding paragraph are also considered appellations of origin.

3 – A geographic indication is understood to mean the name of a region, a specific place or, in exceptional cases, a country that serves to designate or identify a product:

- a) Originating from that region, specific place or country;
- b) Whose reputation, specific quality or another

characteristic can be attributed to that geographic origin and whose production, processing or development are carried out within that demarcated geographic area.

4 – Appellations of origin and geographic indications, when registered, are the common property of the residents or those established in the place, region or territory in an effective and serious manner and can be used indistinctly by those, within the respective area, who are engaged in any characteristic production branch, when authorised by the holder of the registration.

5 – Exercise of this right does not depend on the importance of the business operation or the nature of the products. An appellation of origin or a geographic indication can, consequently, be applied to any typical product from the place, region or territory that meets the traditional and customary, or duly regulated, conditions.

Article 306

REGIONAL DEMARCATION

If the boundaries of a place, region or territory pertaining to a certain appellation or indication are not demarcated by law, said boundaries are defined by the officially recognised bodies that control, in the respective area, the corresponding production branch, which take into account the traditional and constant practices together with the higher interests of the national or regional economy.

SECTION II

Registration process

SUBSECTION I

National route

Article 307

APPLICATION

1 – The application for registration of appellations of origin and geographic indications is made in a form, in Portuguese, indicating:

- a) The name of the natural or legal persons, public or private, with the capacity to acquire the registration, the respective tax number and email address, if any;
- b) The name of the product or products, including the appellation of origin or the geographic indication;
- c) The traditional or regulated conditions for the use of the appellation of origin, or the geographic indication, and the boundaries of the respective place, region or territory;
- e) The signature or electronic ID of the applicant or his representative.

2 – The conditions for national registration of a trademark apply to these registrations, with the necessary adjustments.

Article 308

GROUNDS FOR REFUSAL

In addition to the provisions of Article 24, registration of an appellation of origin or geographic indication is refused when:

- a) The application is made by a person without the capacity to acquire it;
- b) The appellation of origin or geographic indication in question does not meet the conditions of Article 305;
- c) It constitutes a reproduction or imitation of an already registered appellation of origin or geographic indication;
- d) It may mislead the public, in particular as to the nature, quality and geographic origin of the respective product;
- e) It violates industrial property rights or copyright;
- f) It violates the law, public order or morality;
- g) It may favour unfair competition.

SUBSECTION II**International route**

Article 309

**INTERNATIONAL REGISTRATION OF
APPELLATIONS OF ORIGIN**

1 – The entities referred to in Article 307(1)(a) may affect international registration of their appellations of origin pursuant to the Lisbon Agreement of 31 October 1958.

2 – International registration applications must be submitted to the National Industrial Property Institute in

accordance with the Lisbon Agreement.

3 – Protection of appellations of origin registered under the Lisbon Agreement is, in all matters that do not contradict that agreement, subject to the rules that govern the protection of appellations of origin in Portugal.

SECTION III

Effects, nullity, annullability and expiry of registration

Article 310

DURATION

An appellation of origin and a geographic indication have an unlimited duration and their ownership is protected by the rules set forth in this code, in special legislation and in any rules or legislation established against false indications of origin, even if they are registered and regardless of whether they are part of a registered trademark or not.

Article 311

INDICATION OF REGISTRATION

During the period of validity of a registration, the products for which the respective uses are authorised may bear the following references:

- a) “Registered Appellation of Origin” or “AO”;
- b) “Registered Geographic Indication” or “GI”.

Article 312

RIGHTS GRANTED BY REGISTRATION

1 – Registration of an appellation of origin or geographic indication confers upon the proprietor the right to prevent:

a) The use by third parties, in the designation or presentation of a product, of any means that indicates or suggests that the product in question originates from a geographic region other than the true place of origin;

b) Use that would constitute unfair competition as defined in Article 10bis of the Paris Convention, as modified by the Stockholm Revision of 14 July 1967;

c) Use by persons not authorised by the registration holder.

2 – The wording that makes up a legally defined, protected and controlled appellation of origin or a geographic indication may not feature in any form in appellations, labels, advertising or any documentation on products that do not come from the respective demarcated regions.

3 – The aforementioned prohibition also applies when the true origin of the products is mentioned or the wording belonging to the appellations or indications in question are accompanied by qualifiers such as “type”, “style”, “quality” or similar expressions and also extends to the use of any expression, presentation or graphic combination that may mislead or confuse the consumer.

4 – Likewise prohibited is the use of a appellation of origin or geographic indication of prestige in Portugal or the European Union for products without identity or affinity, whenever the use thereof seeks to unjustly derive benefit from the distinctive or prestigious character of the previously registered appellation of origin or geographic indication or can be prejudicial to them.

5 – The provisions of the preceding paragraphs do not

prohibit a seller from putting its name, address or trademark on products coming from a region or country different from that in which the same products are sold. In such a case, the seller may not, however, suppress the trademark of the producer or manufacturer.

Article 313

NULLITY

In addition to the provisions of Article 33, the registration of an appellation of origin or geographic indication is null and void when, in the process of granting it, the provisions of Article 308(b), (d) and (f) have been violated.

Article 314

ANNULLABILITY

1 – In addition to the provisions of Article 34, the registration of an appellation of origin or a geographic indication is annulable when, in the process of granting it, the provisions of Article 308(a), (c) (e) or (g) are violated.

2 – Annulment actions must be proposed within a period of ten years beginning on the date of the registration grant order, without prejudice to the following paragraph.

3 – The right to apply for annulment of a registration made in bad faith is imprescriptible.

Article 315

EXPIRY

1 – Registration expires, at the request of any interested

party, when the appellation of origin or geographic indication transforms itself – in accordance with the traditional, customary and constant practices of the economic activity – into a simple generic designation for a manufacturing system or a certain type of product.

2 – Wine products, mineral/medicinal waters and other products whose geographic appellation of origin is the object of special protection and supervision laws in their respective country are exempt from the provisions of the preceding paragraph.

TITLE III

Infringements

CHAPTER I

General provisions

Article 316

GUARANTEES OF INDUSTRIAL PROPERTY

Industrial property has the guarantees established by law for property in general and enjoys special protection under this code and other legislation and conventions in force.

Article 317

UNFAIR COMPETITION

1 – Unfair competition is defined as all acts of competition that contradict the rules and honest practices in any branch of economic activity, in particular:

a) Acts that may create confusion as to the company, establishment, products or services of competitors, regardless of the means employed;

b) False statements made in carrying out an economic activity with the aim of discrediting competitors;

c) Unauthorised claims or references made with the aim of deriving benefit from the credit or reputation of another person's name, establishment or trademark;

d) False indications as to one's own credit or reputation, relating to the capital or financial situation of the company or establishment, to the nature and scope of its activities and business or to the quality or quantity of its clientele;

e) False descriptions or indications as to the nature, quality or utility of the products or services, as well as false information on the origin, locality, region or territory of a

factory, workshop, premises or establishment, regardless of the mode adopted;

f) Suppression, concealment or alteration, by the seller or any other intermediary, of the appellation of origin or geographic indication of the products or the registered trademark of the producer or manufacturer on products for sale whose packaging has not been altered in any way.

2 – The measures provided for in Article 338-I apply, with the necessary adjustments.

Article 318

PROTECTION OF UNDISCLOSED INFORMATION

Pursuant to the preceding article, an illicit act is defined in particular as the disclosure, acquisition or use of the business secrets of a competitor without its consent, provided that said information:

a) Is secret in the sense that it is not common knowledge or easily accessible, in its totality or in the exact configuration and connection of its constitutive elements, for persons in the circles that normally deal with the type of information in question;

b) Has commercial value based on the fact that it is secret;

c) Has been the object of considerable diligences on the part of the person with legal control over it, with a view to keeping it secret.

Article 319

INTERVENTION BY CUSTOMS AUTHORITIES

1 – The Customs authorities that carry out interventions

will retain or suspend Customs clearance of goods that show evidence of violation of this code, regardless of the Customs situation said goods are in.

2 – The intervention referred to in the preceding paragraph may be requested by any interested party or at the initiative of the Customs authorities themselves.

3 – The Customs authorities shall immediately notify the interested parties of the retention or suspension of the clearance authorisation for the goods.

4 – The Customs intervention expires if, within a period of ten working days beginning on the date of receipt of the respective notification to the rights holder, the competent legal proceedings with a request for seizure of the goods in question are not initiated.

5 – The period provided for in the preceding paragraph can be extended by an identical period in duly justified cases.

CHAPTER II

Criminal and administrative offences

SECTION I

General provisions

Article 320

SUBSIDIARY RIGHT

The provisions of Decree-Law 28/84 of 20 January apply subsidiarily, namely with respect to the criminal liability and liability in terms of administrative offences of legal persons and vicarious liability, whenever said provisions are not contrary to the provisions of this code.

SECTION II

Criminal offences

Article 321

VIOLATION OF PATENT EXCLUSIVITY, THE UTILITY MODEL OR THE SEMICONDUCTOR TOPOGRAPHY

The following acts, carried out without the consent of the

holder of the respective right, are punishable by a prison sentence of up to three years or a fine of up to three hundred and sixty days:

a) Manufacture of artefacts or products that are covered by the patent, the utility model or the semiconductor topography;

b) Use or application of means or processes that are the object of the patent, the utility model or the semiconductor topography;

c) Import or distribution of products obtained through any of the aforementioned methods.

Article 322

VIOLATION OF EXCLUSIVE RIGHTS TO DESIGNS OR MODELS

The following acts, without the consent of the holder of the respective right, are punishable by a prison sentence of up to three years or a fine of up to three hundred and sixty days:

a) Reproduction or imitation of the whole or some of the characteristic parts of a registered design or model;

b) Exploiting a registered design or model belonging to another person;

c) Importing or distributing designs or models obtained through any of the means mentioned in the preceding subparagraphs.

Article 323
**COUNTERFEITING, IMITATION OR ILLEGAL USE
OF TRADEMARK**

The following acts, without the consent of the proprietor of the respective right, are punishable by a prison sentence of up to three years or a fine of up to three hundred and sixty days:

- a)** Counterfeiting, totally or partially, or by any other means reproducing a registered trademark;
- b)** Imitating a registered trademark either as a whole or using characteristic parts thereof;
- c)** Using counterfeit or imitated trademarks;
- d)** Using, counterfeiting or imitating well-known trademarks for which registration has already been applied for in Portugal;
- e)** Using, even if in products or services without identity or affinity, trademarks that are an interpretation or are identical or similar to previously existing trademarks for which registration has been applied for and that enjoy prestige in Portugal or the European Union, if they are Community trademarks, whenever the use of the subsequent trademarks seeks to unjustly derive undue benefit from the distinctive or prestigious character of the prior trademarks or may be prejudicial to them;
- f)** Using, in products, services, or an establishment or company, a registered trademark belonging to another person.

Article 324
**SALE, CIRCULATION OR CONCEALMENT OF
PRODUCTS OR ARTICLES**

The act of selling, putting into circulation or concealing counterfeit products, produced by any of the means and in any of the conditions referred to in Articles 321 to 323, with knowledge of that situation, is punishable with a prison sentence of up to one year or a fine of up to 120 days.

Article 325
**VIOLATION AND ILLEGAL USE OF AN
APPELLATION OF ORIGIN OR GEOGRAPHIC
INDICATION**

The following acts are punishable by a prison sentence of up to three years or a fine of up to 360 days:

- a) Reproducing or imitating, totally or partially, a registered appellation of origin or geographic indication;
- b) Using in one's products, without the right of use of an appellation of origin or geographic indication, signs that constitute reproduction, imitation or expression thereof, even if the true origin of the products in question is indicated or the appellation or indication is accompanied by qualifying expressions such as "style", "type", "quality", "method", "imitation", "rival to", "superior to" or others.

Article 326

**PATENTS, UTILITY MODELS AND
REGISTRATIONS OF DESIGNS OR MODELS
OBTAINED IN BAD FAITH**

1 – Whoever, acting in bad faith, succeeds in being granted a patent, utility model or registration of a design or model that does not legitimately belong to them – in accordance with Articles 58, 59, 121, 122, 156, 157, 181 and 182 – shall be punished by a prison sentence of up to one year or a fine of up to 120 days.

2 – Through its sentence, the court automatically annuls the patent, utility model or registration or, at the request of the interested party, transfers them to the inventor or creator.

3 – Legal proceedings for the transfer of a patent, utility model or registration referred to in the preceding paragraph can be initiated independently of any criminal proceedings brought about by this crime.

Article 327

**REGISTRATION OBTAINED OR MAINTAINED
BY ABUSE OF RIGHT**

Whoever applies for, secures or maintains in validity, on its own behalf or on behalf of a third party, the registration of a trademark, name, insignia or logotype that is a reproduction or imitation of a trademark or commercial name belonging to a national of any member state of the Union, regardless of whether it enjoys priority in Portugal, as established in Article 12, and with the proven purpose of affecting the assets of, and consequently creating a loss for, the affected party in question, or obtaining an illegitimate economic

advantage, is punished by a prison sentence of up to three years or a fine of up to 360 days.

Article 328

REGISTRATION OF A NON-EXISTENT ACT OR REGISTRATION WITH CONCEALMENT OF THE TRUTH

Whoever performs a legally non-existent act or an act with manifest concealment of the truth, independently of the violation of the rights of third parties, is subject to a prison sentence of 3 years or a fine of up to 360 days.

Article 329

COMPLAINT

The investigation of the crimes provided for in this code depends on a complaint being lodged.

Article 330

DISPOSAL OF SEIZED ITEMS

1 – The objects manifesting a crime provided for in this code are forfeited in favour of the state, as well as the materials or instruments predominantly used in the practice of that crime, unless the offended holder of the respective right gives its express consent that said objects can once again enter the commercial circuits or that they are given another purpose.

2 – Objects declared forfeited, as referred to in the preceding paragraph, are totally or partially destroyed

whenever it is not possible to eliminate the part of them or the distinctive sign on them that constitutes violation of the right.

SECTION III

Administrative offences

Article 331

UNFAIR COMPETITION

Whoever practises any of the acts of unfair competition defined in Articles 317 and 318 is subject to punishment by a fine of (euro) 3,000 to (euro) 30,000, if the person in question is a legal person, and (euro) 750 to (euro) 7,500, in the case of a natural person.

Article 332

INVOCATION OR ILLEGAL USE OF AWARD

Whoever commits any of the following acts, without the consent of the holder of the respective right, is subject to punishment by a fine of (euro) 3,000 to (euro) 30,000, if the person is a legal person, and (euro) 750 to (euro) 7,500, in the case of a natural person:

- a) Invoking or making reference to an award registered in another person's name;
- b) Using, or falsely claiming possession of an award that was not granted or never existed;
- c) Using designs or any other indications that constitute

imitation of awards to which the person is not entitled in correspondence or advertising, on signs, façades or windows of the establishment or in any other fashion.

Article 333

VIOLATION OF RIGHTS TO NAME AND INSIGNIA

Whoever, without consent from the holder of the respective right, uses in its establishment, in advertising, correspondence, products or services, or in any other fashion, a name or emblem that constitutes a reproduction or is an imitation of a name or emblem already registered by another person is subject to punishment by a fine of (euro) 3,000 to (euro) 30,000, if the person is a legal person, and (euro) 750 to (euro) 7,500, in the case of a natural person.

Article 334

VIOLATION OF EXCLUSIVENESS OF LOGOTYPE

Whoever, without the consent of the holder of the respective right, uses in its establishment or entity, in advertising, correspondence, products, services or in any other fashion, a sign that constitutes a reproduction or is an imitation of a logotype already registered by another person is subject to punishment by a fine of (euro) 3,000 to (euro) 30,000, if the person is a legal person, and (euro) 750 to (euro) 3,740, in the case of a natural person.

Article 335

PREPARATORY ACTS

Whoever, without the consent of the holder of the respective right, and with the intention of preparing commitment of the acts referred to in Articles 321 to 327 of this code, manufactures, imports, acquires or keeps for itself, or for another party, signs that are constitutive elements of registered trademarks, names, emblems, logotypes, appellations of origin or geographic indications is subject to punishment by a fine of (euro) 3,000 to (euro) 30,000, if the person is a legal person, and (euro) 750 to (euro) 7,500, in the case of a natural person.

Article 336

USE OF UNLAWFUL TRADEMARKS

1 – Whoever uses, as non-registered distinctive signs, any of the signs indicated in Article 238(4)(a) and b) and 238(6), and those indicated in Article 239(1)(d) is subject to punishment by a fine of (euro) 3,000 to (euro) 30,000, if the person is a legal person, and (euro) 750 to (euro) 3,740, in the case of a natural person.

2 – The products or articles with the marks prohibited under the preceding paragraph may be seized and declared forfeited in favour of the state, at the request of the Public Prosecution Service.

Article 337

**IMPROPER USE OF A NAME, INSIGNIA OR
LOGOTYPE**

Whoever unlawfully uses in its name or in the signs of its establishment or in its logotype, be it registered or not, a business name or corporate name that does not belong to the applicant, or even only a characteristic part of said names, where it may mislead or confuse the consumer is subject to punishment by a fine of (euro) 3,000 to (euro) 30,000, if the person is a legal person, and (euro) 750 to (euro) 3,740, in the case of a natural person, unless it can prove consent for, or legitimacy of, said use.

Article 338

**INVOCATION OF IMPROPER USE OF PRIVATE
RIGHTS**

The following acts are punishable by a fine of (euro) 3,000 to (euro) 30,000, if the person is a legal person, and (euro) 750 to (euro) 7,500, in the case of a natural person:

- a) Presenting oneself as the holder of an industrial property right provided for in this code when one is not the holder of the right or when the right has been declared null and void or has expired;
- b) Unduly using or applying the patent, utility model or registration indications authorised solely for the holders of the respective rights;
- c) (Revoked.)

CHAPTER III

Procedure

SECTION I

Measures and procedures to ensure the enforcement of the industrial property rights

SUBSECTION I

General provisions

Article 338-A

COMMERCIAL SCALE

1 – For the purposes of Article 338-C(2), Article 338-H(2)(a) and Article 338-J(1), acts committed at the commercial scale shall mean all those that violate industrial property rights and are designed to create a direct or indirect economic or commercial advantage.

2 – Acts committed by end consumers acting in good faith are excluded from the definition in the preceding paragraph.

Article 338-B
LEGITIMACY

The preventive measures and procedures provided for in this section can be requested by all persons with a direct interest in having them decreed, such as the holders of the industrial property rights and, also, save stipulation to the contrary, the holders of licences in accordance with the respective contracts.

SUBSECTION II

Evidence

Article 338-C
MEASURES TO OBTAIN EVIDENCE

1 – Whenever evidence is in the possession of, held by, or under the control of the opposing or a third party, the interested party may request of the court that it be presented, provided that, to justify its intentions, it presents sufficient indication of a violation of industrial property rights.

2 – When the acts in question are practised at the commercial scale, the claimant may also ask the court for the presentation of banking, financial, accounting or commercial documents that are in the possession of, accessible to or under the control of the opposing or third party.

3 – In compliance with the provisions in the preceding paragraphs, the court, while guaranteeing protection of

confidential information, notifies the respondent that it must present the evidence in its possession within the designated period, implementing the necessary actions in the event of non-compliance.

Article 338-D

MEASURES TO PRESERVE EVIDENCE

1 – Whenever industrial property rights are violated, or there are grounds to believe a third party may cause serious, difficult-to-repair harm to said rights, the interested party may request urgent and effective provisional measures aimed at preserving evidence of the alleged violation.

2 – These evidence preservation measures may include a detailed description, with or without samples, or the effective seizure of the goods suspected of violating industrial property rights, as well as, whenever considered appropriate, of the materials and instruments used in producing and distributing said goods, as well as documentation pertaining to them.

Article 338-E

FORMALITIES AND CONTESTATION

1 – Whenever a delay in implementing the measures may cause irreparable damages to the claimant, or whenever there is a serious risk of destruction or concealment of evidence, the measures provided for in the preceding paragraph may be applied without a prior hearing of the respondent.

2 – When the evidence preservation measures are implemented without a prior hearing of the respondent, the

latter is immediately notified of this.

3 – Following the notification provided for in the preceding paragraph, the respondent may request a review of the implemented measures within a period of ten days, providing evidence and presenting arguments not yet taken into account by the court.

4 – When the respondent has been heard, the court may decide on the alteration, revocation or confirmation of the measures implemented.

Article 338-F

CAUSES OF EXTINCTION AND EXPIRY

The causes of extinction and expiry provided for in Article 389 of the Code of Civil Procedure apply to the measures for obtaining and preserving evidence, except where they function as preliminary measures for the lodging of preventive orders in accordance with Article 338-I.

Article 338-G

APPLICANT'S RESPONSIBILITY

1 – Application of the evidence preservation measures may depend on the provision of an agreement or other guarantee by the claimant aimed at guaranteeing the compensation provided for in paragraph 3 herein.

2 – In fixing the agreement value, the economic capacity of the claimant should be taken into account, amongst other relevant factors.

3 – Whenever an applied evidence preservation measure is considered unjustified or ceases to produce effects due to a fact imputable to the claimant, as well as in cases in which

it is proven that there was no violation or that the fear that another party may cause serious and difficult-to-repair harm to an industrial property right is unfounded, the court may order the claimant, if the respondent so requests, to pay appropriate compensation for repairing any damage caused by application of the measures.

SUBSECTION III

Information

Article 338-H

OBLIGATION TO PROVIDE INFORMATION

1 – The interested party may request the provision of detailed information on the origin and distribution networks of the goods or services it suspects violate industrial property rights, namely:

a) The names and addresses of producers, manufacturers, distributors, suppliers and other prior holders of the goods or services, as well as the targeted wholesalers and retailers;

b) Information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services.

2 – Provision of the information provided for in this article can be demanded from the alleged violator or any other person which:

a) Is found in possession of the goods or is found using or providing the services on the commercial scale that are suspected of violating industrial property rights;

b) Is indicated by a person referred to in the preceding

subparagraph as having participated in the production, manufacture or distribution of the goods or in the provision of the services suspected of violating industrial property rights.

3 – The provisions of this article are without prejudice to the application of other legislative or regulatory provisions, namely those which:

a) Confer upon the interested party the right to more extensive information;

b) Regulate its use in civil or criminal proceedings;

c) Regulate responsibility for abuse of the right to information;

d) Confer the right not to make any statements that may oblige any of the persons referred to in paragraph 2 above to admit to their own participation or that of their immediate family members;

e) Confer the right to claim professional secrecy, protection of the confidentiality of information sources or the legal system of personal data protection.

SUBSECTION IV

Preventive procedures

Article 338-1 INJUNCTIONS

1 – Whenever there is violation of, or justified fear that another party may cause serious and difficult-to-repair harm to an industrial property right, the court may, if the interested party so requests, order the appropriate measures

to:

- a) Rule out any imminent violation; or
- b) Prohibit continuation of the violation.

2 – The court will demand that the claimant provide proof that it is the holder of the industrial property right in question, or that it is authorised to use it and that a violation is existent or imminent.

3 – The measures provided for in paragraph 1 may also be ordered against any intermediary whose services are used by third parties to violate industrial property rights.

4 – The court may, as a matter of procedure or at the request of the claimant, decide on a compulsory monetary penalty with a view to guaranteeing execution of the measures provided for in paragraph 1.

5 – The provisions of Articles 338-E and 338-G apply to this article.

6 – At the request of the respondent, the measures decreed referred to in paragraph 1 may be substituted by an agreement, whenever, after hearing the claimant, said agreement proves adequate for guaranteeing compensation to the holder of the right.

7 – In determining the measures provided for in this article, the court shall take into account the type of industrial property rights in question, safeguarding, in particular, the possibility of the holder of the right continuing to enjoy its rights without any restriction.

Article 338-J

SEIZURE

1 – In the case of an infraction at the commercial scale, whether existent or imminent, and whenever the interested party can prove the existence of circumstances that may

compromise the collection of the compensation for losses and damages, the court may order the preventive seizure of the movable and immovable assets of the alleged violator, including the balances of its bank accounts. The judge may also order communication of or access to banking, financial or commercial data and information relating to the violator.

2 – Whenever there is violation of industrial property rights, the court may, if the interested party so requests, order the seizure of the goods suspected of violating those rights or of the instruments that may merely serve for the execution of the unlawful act.

3 – For the purposes of the preceding paragraphs, the court may demand that the claimant provide all reasonably accessible evidence to prove that it is the holder of the industrial property right in question, or that it is authorised to use it, and that a violation is existent or imminent.

4 – The provisions of Articles 338-E to 338-G apply to this article.

SUBSECTION V

Compensation

Article 338-L

COMPENSATION FOR LOSSES AND DAMAGES

1 – Whoever illegally violates the industrial property rights of another person, be it with criminal intent or by mere blame, must pay compensation to the injured party for the damages resulting from the violation.

2 – In determining the amount of compensation for losses and damages, the court shall take into account, in particular,

the profit obtained by the violator and the resulting damages and lost profits suffered by the injured party. It shall also take into consideration the costs borne with the protection of the right in question and the investigation and termination of the harmful conduct.

3 – In calculating the compensation to be paid to the injured party, the revenue resulting from the violator's unlawful conduct shall be taken into account.

4 – The court shall also take the moral damages caused by the violator's conduct into account.

5 – If, under the preceding paragraphs, it is impossible to quantify the losses effectively suffered by the injured party, the court may, provided this is not opposed by the injured party, alternatively define a fixed amount with recourse to equity, that is based, as a minimum value, on the remuneration that the injured party would have received if the violator had requested authorisation to use the industrial property rights in question and the costs borne with the protection of the industrial property right and the investigation and termination of the harmful conduct.

6 – When, in relation to the injured party, the violator's conduct constitutes a repeated practice or proves to be particularly grievous, the court may determine the compensation due with recourse to the accumulation of all or some of the aspects provided for in paragraphs 2 to 5.

7 – In any case, the court shall fix a reasonable amount aimed at covering the duly documented costs borne by the injured party in investigating, and bringing to an end the violation of its rights.

SUBSECTION VI

Measures arising from decision of merit

Article 338-M

ADDITIONAL PENALTIES

1 – Without prejudice to fixation of compensation for losses and damages, the court's decision of merit, shall, at the request of the injured party and at the cost of the violator, decide on measures relating to the fate of the goods that have violated the industrial property rights.

2 – The measures provided for in the preceding paragraph must be adequate, necessary and proportionate to the gravity of the violation. They may include destruction or withdrawal or definitive exclusion from commercial circuits without any compensation to the violator.

3 – In applying these measures, the court shall take the legitimate rights of third parties – in particular consumers – into account.

4 – The instruments used in producing the goods that violate the industrial property rights shall also be the object of the additional penalties provided for in this article.

Article 338-N

RESTRAINING MEASURES

1 – The court's decision of merit may also impose upon the violator measures aimed at preventing continuation of the proven infraction.

2 – These measures may include:

a) Temporary prohibition of certain business activities or professions;

b) Loss of the right to take part in fairs or markets;

c) Temporary or definitive closure of the establishment.

3 – The provisions of this article apply to any intermediary whose services are used by third parties to violate industrial property rights.

4 – In decisions determining termination of an unlawful activity, the court may include a compulsory monetary penalty aimed at ensuring execution of the sentence.

SUBSECTION VII

Publicity measures

Article 338-0

PUBLICATION OF JUDICIAL DECISIONS

1 – At the request of the injured party, and at the expense of the violator, the court may order public notification of its final decision.

2 – Said public notification may be made through publication in the Industrial Property Bulletin or disclosure in any media outlet considered appropriate.

3 – Public notification will take the form of a statement containing elements of the decision and sentence, as well as identification of the parties involved.

SUBSECTION VIII

Subsidiary provisions

Article 338-P **SUBSIDIARY RIGHT**

In all matters not specifically regulated in this section, the other measures and procedures provided for in the law, in particular the Code of Civil Procedure, apply subsidiarily.

Article 339 **UNSPECIFIED INJUNCTIONS**

(Revoked.)

Article 340 **SEIZURE**

(Revoked.)

SECTION II

Procedures for criminal and administrative offences

Article 341

INTERVENING PARTIES

In addition to the persons upon which the criminal proceedings laws confer the right of joining proceedings as intervening parties, legally constituted entrepreneurial associations also have legitimacy to intervene in this capacity in the criminal proceedings provided for in this code.

Article 342

INSPECTION AND SEIZURE

1 – Before the opening of an enquiry and without prejudice to Article 329, the criminal police perform their normal investigative and preventive duties.

2 – Objects that manifest a crime pursuant to this code, as well as the materials and instruments predominantly used in the practice of said crime, are seized in all cases.

3 – Regardless of whether the injured party lodges a complaint or not, the judicial authority orders the expert examination of the seized objects referred to in the preceding paragraph whenever this proves necessary for determining whether or not they are manufactured or commercialized by the holder of the right or by someone with the holder's authorisation.

Article 343

**INITIATION OF ADMINISTRATIVE OFFENCE
PROCEEDINGS**

Initiation of the administrative offence proceedings provided for in this code is the responsibility of the Autoridade de Segurança Alimentar e Económica.

Article 344

TRIAL AND APPLICATION OF PENALTIES

The Directive Council of the National Industrial Property Institute is responsible for deciding on and applying the fines and additional penalties provided for in this code.

Article 345

APPROPRIATION OF FINES

Fines are distributed as follows:

- a) 60% to the state;
- b) 20% to the Autoridade de Segurança Alimentar e Económica;
- c) 20% to the National Industrial Property Institute.

Title IV

Fees

Article 346

ESTABLISHMENT OF FEES

Fees are due for the diverse acts provided for in this code. The fees are fixed by a joint order issued by the Government minister responsible for the area of finance and the Government member to whom the National Industrial Property Institute reports, upon a proposal by this institute.

Article 347

FORMS OF PAYMENT

1 – All amounts that constitute revenue of the National Industrial Property Institute are paid in cash, by cheque or postal order, with the respective requests for the listed acts, and, once checked, are processed in accordance with the public accounting rules applicable to the National Industrial Property Institute.

2 – The National Industrial Property Institute may allow for other forms of payment, without prejudice to the preceding paragraph.

Article 348

COUNTING OF MAINTENANCE FEES

1 – The annual fees for patents, utility models and the registration of semiconductor topographies and the quinquennial fees for registration of designs or models are counted from the dates of the respective applications.

2 – The annual fees for supplementary protection certificates are counted from the day following the end of validity of the respective patent.

3 – The maintenance fees for all other forms of registration are counted from the date of the respective grant.

4 – Whenever, due to a court or arbitration decision or the application of transitory provisions, the date of commencement of a patent's, utility model's or registration's term of validity does not coincide with the date outlined in the preceding paragraphs, the respective annual or periodical maintenance fees shall count from the former (i.e. actual) date.

Article 349

PAYMENT TIME LIMITS

1 – Only those annual fees for the third year of validity and the following years for patents, utility models and semiconductor product topographies are payable, as are the 2nd quinquennial and subsequent period fees for designs and models.

2 – Annual and quinquennial fees are paid in the six-month period prior to their respective due dates, even if the rights have not yet been granted.

3 – Without prejudice to the preceding paragraph, or to paragraph 1 of the following article, the first payment of annual fees relating to European and international rights for which applications for registration in Portugal are made, and the applications for patents and utility models resulting from the conversion set forth in Articles 86 and 87, can be made within a period of no more than three months after the date of the first anniversary following the date of validation or conversion.

4 – The first payment of annual fees for supplementary protection certificates is made in the last six months of the validity of the respective patent. No payment is due when

the certificate's period of validity is less than six months. The subsequent annual fees are paid in the six-month period prior to the respective due date.

5 – Fees for the grant of registrations are paid after the date of the grant within a maximum period of six months beginning on the date of publication of the grant in the Industrial Property Bulletin.

6 – The subsequent payments of maintenance fees for all other registrations are made in the last six months of the validity of the respective right.

7 – The fees referred to in the preceding paragraphs may also be paid, with a surcharge, within a period of six months beginning on the end of the period of validity. Failure to do so will result in expiry.

8 – Holders of rights are reminded of the dates on which the payment periods referred to in the preceding paragraphs end, by way of information.

9 – Lack of the notification referred to in the preceding paragraph does not constitute grounds for non-payment of fees on the due dates.

Article 350

REVALIDATION

1 – An application for revalidation of any patent, utility model or registration title that expires due to failure to pay fees can be made within the period of one year beginning on the date of publication of the notice of expiry in the Industrial Property Bulletin.

2 – The revalidation referred to in the preceding paragraph can only be authorised with payment of three times the amount of the fees in arrears, without prejudice to the rights of third parties.

Article 351
REDUCTION

1 – Applicants for patents, utility models and registrations of semiconductor product topographies and designs or models that provide proof that they do not have the revenues allowing them to cover the costs for the registration and maintenance of those rights are exempt from payment of 80% of all fees up to the 7th annual fee and the 2nd quinquennial fee if they request this before submitting their application.

2 – The Board of Directors of the National Industrial Property Institute assesses the proof referred to in the preceding paragraph and issues its decision on the request in an order.

Article 352
REIMBURSEMENT

1 – As a matter of procedure or at the request of the interested party, fees are reimbursed whenever they are shown to have been unduly paid.

2 – Amounts deposited towards the costs of inspections that are not authorised, or are withdrawn in due time, are reimbursed at the request of the depositor.

Article 353
SUSPENSION OF PAYMENT

1 – While legal proceedings are pending in a court or arbitration tribunal on any industrial property right, or while the seizure or confiscation that may affect a right, or any

other form of apprehension performed under the law, is not lifted, expiry of the respective patent, utility model or registration is not declared on the grounds of failure to pay the maintenance fees that fall due.

2 – When any of the decisions referred to in the preceding paragraph becomes final, notice of this fact is published in the Industrial Property Bulletin.

3 – All fees owed should be paid, without any surcharge, within a period of one year beginning on the date of publication of the notice, referred to in the preceding paragraph, in the Industrial Property Bulletin.

4 – At the end of the period established in the preceding paragraph without payment of the fees owed, expiry of the respective industrial property right is declared.

5 – As a matter of procedure the tribunal informs the National Industrial Property Institute of pending proceedings.

6 – When proceedings are ended, or a seizure, confiscation or any other apprehension performed under the law is lifted, the tribunal shall inform the National Industrial Property Institute of this as a matter of procedure.

Article 354

RIGHTS BELONGING TO THE STATE

Industrial property rights belonging to the state are subject to the same formalities and fees for application, approval, renewals and revalidations when exploited or used by enterprises of any type.

Title V

Industrial Property Bulletin

Article 355

INDUSTRIAL PROPERTY BULLETIN

The Industrial Property Bulletin is published by the National Industrial Property Institute.

Article 356

CONTENT

1 – The following are published in the Industrial Property Bulletin:

a) Notices of applications for patents, utility models and registration;

b) Amendments to initial applications;

c) Expiry notices;

d) Grants and refusals;

e) Revalidations;

f) (Revoked.)

g) Declarations of renunciation and withdrawals;

h) Transfers and awards of exploitation licences;

i) Final decisions in judicial proceedings on industrial property;

j) Other facts or decisions that modify or extinguish exclusive rights, as well as all acts and matters that should be made known to the public;

c) The constitution of rights of guarantee or use and the seizure, confiscation and other apprehensions of goods performed under the law;

m) Mention of the re-establishment of rights.

2 – (Revoked.)

Article 357
TABLE OF CONTENTS

(Revoked.)

Article 358
DISTRIBUTION

(Revoked.)

This translation is not an official translation of the Decree-Law 36/2003 of 5 March and it has been prepared by INPI for information purposes only.

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