

PRIME MINISTER'S OFFICE

Decree-Law no. 110/2018

of 10 December

Industrial property currently plays an extremely important role in economic growth, job creation and in developing the innovation system, becoming an ever-increasing part of the value of companies, both technologically and commercially, allowing for return on their investments in innovation and creating competitive advantage that allow them to more effectively and safely respond to the challenges posed by globalised markets.

This importance has been confirmed in the study regarding the impact of intellectual property rights on the European economy – “Intellectual property rights intensive industries and economic performance in the European Union,” October 2016 – drafted jointly by the European Patent Organisation and by the European Union Intellectual Property Office, according to the study, companies that intensively use trade marks and patents in their strategic action were responsible for approximately 28% of jobs in the European Union. The main conclusions of the study also point to the fact that these companies have represented more than 42% of the European Union’s total economic activity, reaching a value of 5.7 billion euros, which is an increase over the numbers reported in the previous 2013 study.

Growing recognition by economic agents of the importance and advantages associated with use of industrial property has invariably led to an increase in demand for the services provided by the public authorities that are responsible for protecting industrial property rights, a situation that accentuates the urgency to continuously seek out solutions that allow for a swift and suitable response to the real needs of citizens and businesses. It is also in terms of cooperation between States that we can recognise this fundamental role, as with the International Agreement on a Unified Patent Court, approved by the Portuguese Republic via Assembly of the Republic Resolution no. 108/2015 and ratified via President of the Republic Decree no. 90/2015, both published in the Government Gazette, 1st series, no. 152 of 6 August, along with the decision to establish a local division of the Unified Patent Court in Portugal.

On a national level, for several years now there has continued to be a trend toward high demand for trade mark protection – although in terms of patents the trend has been less pronounced – with the number of registration applications filed at the Instituto Nacional da Propriedade Industrial, I. P. (INPI, I.P.) having risen annually, thereby positioning Portugal, from the point of view of trade mark registration, as one of the European Union countries with the highest number of registration applications per one million inhabitants.

The last decade has seen a very significant series of reforms in order to effectively respond to this current high level of interest in industrial property among economic agents and in order to create the necessary conditions for them to maintain their trust in the registration system offered by the State.

On a national level, for instance, and similarly to the efforts made both in terms of technological modernisation of the INPI, I.P. services, which currently allow interested parties to submit registration applications online, and in terms of reducing costs for citizens and businesses through a policy of moderate fees or a strong investment in dissemination of information, we also point to the efforts made in the past years to introduce simplification measures and measures that simplify and promote access to the trade marks and patents protection system. An example of this is the amendment of the Industrial Property Code in 2008, through approval of Decree-Law no. 143/2008 of 25 July.

The present legislative initiative seeks to continue this overall strategy that has been followed in Portugal in view of increasing the use of industrial property in the country, improving conditions for businesses to innovate and successfully differentiate their products and services on the national and European markets. Accordingly, simplifying procedures with the aim of eliminating the inefficiency and bureaucracy that limits the activity of economic agents and providing the latter with the necessary predictability, are fundamental concerns and actions of the government. The 21st constitutional government program establishes as one of its priorities the simplification of the relationship between citizens and businesses and administrative services, reducing business costs and eliminating bureaucracies that only serve to hinder the growth and dynamism of innovation. It also sets administrative modernisation as one of its main pillars of government action by using entirely digital procedures that facilitate access to public services, along with the aim to promote decongestion of the courts by creating mechanisms that permit protection of the rights of citizens and businesses without using the courts. It also considers promotion of foreign investment in Portugal to be an essential goal for government, reducing the obstacles faced by businesses in performing their R&D activities in Portugal, also establishing targets related to creating incentives for technological companies, namely through patent registration.

In line with these goals established by the Programme of the 21st Constitutional Government and with the aim of ensuring compliance of the national framework with the most recent European instruments that simplify access to the industrial property system and strengthening of the rights it attributes, the present decree-law: a) transposes to internal rule of law Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015, which serves to approximate the laws of Member States relating to trade marks (reformulation); b) transposes to in internal rule of law Directive (EU) 2026/943 of the European Parliament and of the Council of 8 June 2016 regarding the protection of know-how and confidential commercial information (commercial secrets) against illegal acquisition, use and disclosure; c) simplifies and clarifies administrative procedures pertaining to attributing, maintaining and ceasing of the validity of the industrial property rights provided for in the Industrial Property Code; and lastly, d) introduces mechanisms that allow the rights protection system to be strengthened.

Firstly, Directive (EU) 2105/2436 of the European Parliament and of the Council of 16 December 2015 shall be transposed to internal rule of law, serving to approximate the laws of Member States relating to trade marks, henceforth referred to as the “Trade Marks Harmonisation Directive” for short.

The Trade Marks Harmonisation Directive, together with Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 (henceforth referred to as the “European Union Trade Mark Regulation”), was the end product of the discussion process surrounding the operation of the trade marks system in Europe, begun in 2008 with the European Commission Communication “A European strategy for industrial property rights.”

Approval of these two legal instruments did not bring any profound changes to the main models on which trade mark registration in the various European Union countries is based, but it translates a very significant effort to modernise the various existing systems and facilitate access to trade mark protection, thus promoting entrepreneurship and competitiveness in Europe.

Because the Trade Marks Harmonisation Directive and the European Union Trade Mark Regulation are an integral part of a single legislative package, the goal is to achieve two complementary objectives. On the one hand, they create a legal framework that seeks to promote and spark innovation and economic growth by offering trade mark registration systems that are more efficient and accessible for citizens and businesses, in terms of reducing costs, simplicity and quickness of administrative procedures, as well as predictability and legal security. On the other hand, it maintains one of the cornerstone principles of the current legal framework, namely coexistence and complementarity between trade mark protection frameworks on a national and European Union level, while still clearly recognising the goal of strengthening the cooperation mechanism, the convergence of practices and development of common platforms between the national trade mark registration authorities and the European Union Intellectual Property Office.

As regards administrative procedures related to trade mark registration, the Trade marks Harmonisation Directive has incorporated a series of rules that previously applied only to European trade marks (currently identified as “European Union Trade Marks”) and once they are standardised among the various Member States they will certainly facilitate cross-border activity for businesses. Some of these rules, which in some cases have best practices based on procedures followed by the European Union Intellectual Property Office and in other cases they implement the jurisprudence of the Court of Justice of the European Union, simplify submission of the trade mark registration, namely elimination of the requirement to submit a graphic representation of the sign, which has now been replaced with the requirement to submit a representation of the sign that allows for clear and precise determination of the subject matter of the protection that is offered to the owner of the trade mark.

Facilitated access to trade mark registration and exercising of the economic activity is also increased through administrative mechanisms that supply the interested parties with simplified instruments to eliminate exclusive rights that for various reasons should not unduly hinder that activity. It should be pointed out in this regard, that the possibility of invoking non-genuine use of a trade mark was introduced, in order to prevent opposition to a registration or the establishment of an administrative new process for assessing the validity of registrations, which is a power that is currently held by the Intellectual Property Court. As regards the latter, the obligation imposed on Member States, so that to the benefit of users, efficient and quick administrative procedures can be established to assess the validity of the trade mark

registrations, will surely be a major challenge that will also extend to other registrations, including designs or models. As regards the protection granted to trade mark registration, the present decree-law incorporates the rules that are stipulated in the Directive in relation to the scope and limitations of the powers attributed to the owners of the registrations, while also strengthening the latter's mechanisms for responding to goods in transit that are suspected to have infringed upon the owners' trade mark registration within the European Union. A more exhaustive regulation of the powers granted to the owners of trade mark registrations, which essentially translates into a strengthening of these powers, in order to counter the progressive increase in the illegal activities that infringe upon rights on a European scale, will not only allow some of the uncertainties that negatively affected the ability of those owners to exercise their rights, but will also provide greater security and predictability to third party actions, which will better comprehend the limits of using certain distinctive signs. This is also an opportunity to clarify the powers of the licensees in judicial actions claiming trade mark infringement.

For transparency reasons, however, they recommend that some changes be made to association trade marks and certification trade marks, now known as "collective trade marks" and "certification or guarantee trade marks," as they cease to be regulated by an essentially remissive framework that often ignored the specificities of these trade marks and instead benefitting from a more complete and clarifying framework.

Because they are included in the same category of distinctive signs of trade, this justifies inclusion of logotypes in some of the procedural rules which, through the novelty of the latter and their normative relevance, are introduced into the field of trade mark registration, namely with respect to elimination of the requirement to graphically represent the sign, strengthen the rights granted through the registration and implementation of a process for assessing the validity of the registrations. The same reasons justify that this new registration validity process be extended to appellations of origin, geographical indications and rewards.

Secondly, Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 was transposed and pertains to protecting know-how and confidential commercial information (trade secrets) against the illegal acquisition, use and disclosure.

The Trade Secrets Directive seeks to harmonise, between the various Member States, the protection levels that a diverse range of know-how or confidential information needs to have and which today have become increasingly important in a knowledge-based economy, in which innovation and research are the driving forces behind economic growth, scientific and technological progress, employment and corporate competitiveness.

Trade secrets are currently one of the most common means used by companies to protect their intellectual creations and they are valued to the extent that companies often use them as a complement to industrial property.

The importance that trade secrets currently have in terms of innovative companies, especially small and medium enterprises, however, contrasts with a legal framework that is still insufficient at a European Union level in relation to protecting access to and exploiting those secrets, guarding them from being illegally obtained by third parties, often leaving economic agents exposed to illegal use of their intellectual capital.

The Trade Secrets Directive seeks to respond to this shortcoming in legal framework currently in force, implementing a series of civil mechanisms that help prevent illegal practices in this area, while not adversely affecting fundamental rights and freedoms or the public interest. A strengthened legal framework, bolstered with balanced and effective legal mechanisms, will surely serve as an incentive for companies to continue to use and profit from trade secrets more securely, encouraging them to continue with their innovation activities that are so necessary for the proper performance of economies and social progress.

As such, the section existing in the Industrial Property Code can be adapted to trade secrets, in terms of measures and procedures that seek to ensure respect for industrial property rights. This option goes beyond the obligations that ensue from the minimum legal framework imposed by the Directive, creating a legal framework that is clearly more robust for proprietors of trade secrets.

Simultaneously and lastly, through the present legislative initiative, some improvements have been made to other regimes provided for in the Industrial Property Code, in order to continue the efforts made in the past years to facilitate access to the industrial property system by economic agents. As such, some changes have been made in order to simplify, add flexibility and modernise the various applicable administrative procedures, while also promoting transparency through the clarification of some aspects that hinder access to and use of some of the legal mechanisms available to citizens and companies, in order to ensure protection of inventions, creations and distinctive signs. Some legal frameworks have also been adapted to use digital means as the favoured means of interaction between interested parties and the INPI, I. P.

Introduction of improvements into the frameworks provided for in the Industrial Property Code also requires improving some of the mechanisms that suppress behaviours that violate industrial property rights, in line with the investment that has been made by public authorities to prevent counterfeiting. According to a series of studies undertaken by the European Union Industrial Property Office, every year 48 billion euros are lost in Europe in various activity sectors due to the existence of falsified products on the market. As regards Portugal, it is estimated that there has been a direct annual loss of 1 billion euros, corresponding to 9.2% of sales, which translates into over 22,200 jobs lost in certain sectors.

Much has already been done to fight counterfeiting, both in terms of consumer awareness and cooperation with relevant authorities in these areas, strengthening of the mechanisms available to interested parties in order to prevent and respond to violations of industrial property rights, expecting that this legislative initiative will serve as one more contribution in this area. As such, the present decree-law seeks to promote standardisation of the criminal framework that encompasses various types of rights, expressly seeking to provide for accessory sanctions pertaining to criminal actions and administrative offences, creating the obligation to communicate to the owners of the rights the seizures of goods made by the criminal police authorities, in order to reduce the number of cases in which the lack of knowledge of the seizures may lead to dismissal of the inquiry due to lack of interest on the part of the interested parties, as well as introducing a new instrument that allows seized goods to be destroyed even before a court decides on whether or not rights have been violated. This new

instrument seeks to respond to some of the problems that have been experienced by criminal police authorities whenever they seize goods, namely in terms of storage of goods and the costs associated with that, a problem which has worsened with the increased efforts to fight counterfeiting and piracy, particularly with the increase in seizures made by inspection authorities. The present decree-law thus seeks to continue the efforts that have been made to strengthen and add efficacy to the industrial property protections system, giving the economic agents the necessary confidence to be able to profit from their investments and see their innovation and differentiation efforts pay off.

Given the broad scope of the matters introduced herein and the successive changes that were introduced into the Industrial Property Code over almost 15 years, the decision was made to repeal Decree-Law no. 36/2003 of 5 March and approve a new Industrial Property Code, the wording of which was the result of broad debate promoted among the interested parties and the numerous contributions made by entities representing the business sector, academic sector, public authorities with responsibilities in the defence of industrial property rights and the jurisdictional system.

To conclude, recognising that the circumstances that led to the approval of Law no. 62/2011 of 12 December that created a framework consisting of disputes emerging from industrial property rights when reference medicinal products and generic drugs were involved are no longer pertinent and conditions were in place to re-analyse this matter, the decision was made to revoke the mandatory arbitration framework that had been created at the time, allowing the parties to choose between voluntary arbitration or the applicable court of justice.

The Supreme Judicial Council, the Prosecutor-General's Office, the Association of Solicitors and Enforcement Agents, the APDI – Portuguese Association of Intellectual Property Right, the Arbitration Centre for Industrial Property, Domain Names, Names and Designations, the CIP—Confederation of Portuguese Business, the ACPI – Portuguese Association of Intellectual Property Consultants, the AIPPI – Portuguese Group of the International Association for Intellectual Property Protection, Apogen – Portuguese Association of Generic Medications and Biosimilars, OTEC Portugal – Corporate Association for Innovations, the government bodies of the autonomous regions, the Union of Trade Marks, and post-secondary educational institutions were heard.

The Board of Governors of Administrative and Tax Courts, the Bar Association, the AMEP—Portuguese Association of Patent Attorneys, Apiframa – Portuguese Association of the Pharmaceutical Industry, Centromarca – Portuguese Association of Trade Marks Products Companies, the Intellectual Property Committee of ICC Portugal, and business associations that are interested parties were heard.

Thus:

In accordance with the legal authority granted under Law no. 65/2018 of 30 November and pursuant to sub-paragraphs a) and b) of no. 1 of article 198 of the Constitution, the government has decreed the following:

CHAPTER I

General provisions

Article 1.

Object

1 – The present decree-law approves the Industrial Property Code and transposes the following to internal rule of law:

a) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015, which serves to approximate the laws of Member States relating to trade marks (reformulation);

b) Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 pertaining to protecting know-how and confidential commercial information (trade secrets) against illegal acquisition, use and disclosure.

2 – The present decree-law also undertakes the following:

a) The fifth amendment of Law no. 62/2013 of 26 August, amended via Laws nos. 40 - A/2016 of 22 December and 94/2017 of 23 August, via Organic Law no. 4/2017 of 25 August and via Law no. 23/2018 of 5 June, which approves the Judicial System Organisation Law;

b) The first amendment to Law no. 62/2011 of 12 December, which creates a framework consisting of disputes emerging from industrial property rights when reference medicinal products and generic drugs are involved, leading to the fifth amendment of Decree-Law no. 176/2006 of 30 August and the second amendment to the general framework of government subsidies in the price of medications, approved in the annex to Decree-Law nom 48-A/2010 of 13 May;

c) Repeal of Decree-Law no. 36/2003 of 5 March, amended via Decree-laws nos. 318/2007 of 26 September and 360/2005 of 2 November, via Law no. 16/2008 of 1 April, via Decree-Law no. 143/2008 of 25 July and via Laws nos. 52/2008 of 28 August, 46/2011 of 24 June. and 83/2017 of 18 August, which approves the new Industrial Property Code.

Article 2.

Approval of the Industrial Property Code

The Industrial Property Code is hereby approved and annexed to the present decree-law and constitutes an integral part thereof.

CHAPTER II

Legislative amendments

Article 3.

Amendment to the Judicial System Organisation Law

Article 111. of the Judicial System Organisation Law, approved via Law no. 62/2013 of 26 August, in its current wording, shall now be worded as follows:

“Article 111.

[. . .]

1 -- [. . .]:

a) [. . .];

b) [. . .];

c) Actions of nullity and annulment of patents, supplementary protection certificates, utility models and semiconductor topography as provided for in the Industrial Property Code and other applicable legislation, along with applications for nullity or annulment of designs or models registrations, trade marks, logotypes, rewards, appellations of origin and geographical indications claimed in counter-actions;

d) [. . .];

e) [. . .];

f) [. . .];

g) [. . .];

h) [. . .];

i) [. . .];

j) Actions in which the cause for a petition stems from the practice of acts of unfair competition or infringement of trade secrets pertaining to industrial property;

k) [. . .];

2 -- [. . .].”

Article 4.

Amendment to Law no. 62/2011 of 12 December

Articles 2. And 3. of Law no. 62/2011 of 12 December shall now have the following wording:

“Article 2.

Voluntary arbitration

Disputes arising from invoking industrial property rights, including injunctions related to reference medicinal products, namely medications that are authorised on the basis of pre-clinical and clinical drug trials and generic drugs, regardless of whether process patents, products, use, or supplementary protection certificates are at stake, may be subject to voluntary arbitration, whether institutional or non-institutional.

Article 3.

[. . .]

1 – Within a period of 30 days counting from publication on the website of INFARMED – Autoridade Nacional do Medicamento e Produtos de Saúde, I. P. (INFARMED, I. P.) of all applications for authorisation or registration, for market introduction of generic drugs, the interested party that wishes to invoke his or her industrial property right in accordance with the previous article must do so at the Intellectual Property Court, or if the parties agree, at the institutional arbitration court, or make a request to submit the dispute to non-institutional arbitration.

2 – When no counter-action is filed within a period of 30 days following a summons pertaining to the suit filed at the Intellectual Property Court or the notification filed by the court of arbitration, the party requesting the authorisation or registration for market introduction of the generic drug may not begin to industrially or commercially exploit it in accordance with the industrial property rights invoked pursuant to the previous number.

3 – During the arbitration process, the patent's invalidity may be invoked and recognised with effects that are merely *inter partes*.

4 – In the arbitration process:

- a) The evidence shall be provided by the parties, duly enumerated;
- b) Once the counterstatement is submitted, a date and time is set for the taking of evidence hearing, which will take place orally;
- c) The hearing mentioned in previous sub-paragraph shall take place within a maximum period of 60 days subsequent to submission of the opposition.

5 – (*Previous no. 6*)

6 – For the purposes stipulated in the previous number, the court shall be responsible for deciding which parts of the decision are not to be made public, and if that should be the case, it shall send to the Instituto Nacional da Propriedade Industrial, I. P. the decision that is to be published, without those parts.

7 -- [. . .].

8 – [. . .].”

CHAPTER III

Transitional provisions

Article 5.

Statistical analysis

After one year of the coming into force provided for in no. 1 of article 6., the Justice Policy Directorate-General shall submit a report to the member of government responsible for justice, including an analysis of the statistical data related to the functioning of the intellectual property court, specifically with respect to disputes arising from invoking industrial property rights related to reference medicinal products.

Article 6.

Utility models without examination

1 – Provisions that were previously in force shall be applied to utility model applications without examination that have been submitted before the present decree-law has come into force and that have not yet been finalised in an order.

2 – Applicants or owners who wish examination of a pending application or a utility model that has been granted without examination before the present decree-law comes into force can go to the Instituto Nacional da Propriedade Industrial, I. P. (INPI, I. P.) to demonstrate interest in holding this examination while the utility model remains valid.

3 – The provisions of the previous number are compulsory whenever the owner of the utility model wishes to propose judicial or arbitration actions to defend the rights that they guarantee.

Article 7.

Deadlines

1 – The deadlines that are valid at the date of coming into force of the present decree-law shall be subject to the previously in effect provisions whenever the latter provide for a longer deadline.

2 – Trade mark and logotype registrations granted before the present decree-law comes into force shall be subject to the deadline duration previously in effect and the subsequent renewals of the time periods shall begin to be counted in accordance with the change made to the Industrial Property Code as a result of the present decree-law.

Article 8.

Association trade marks and certification trade marks

1 – Applications for association trade marks and certification trade marks that have been submitted before the coming into force of the present decree-law and which have not yet been finalised in an order shall henceforth be referred to as applications for collective trade marks and applications for certification and guarantee trade marks, respectively.

2 – Registration of association trade marks and certification trade marks existing at the date of coming into force of the present decree-law shall automatically be referred to as collective trade mark registrations and certification or trade mark registrations, respectively.

3 – Registration of expired association trade marks and certification or guarantee trade marks for which the revalidation time period is underway at the time the present decree-law comes into force shall automatically be renamed collective trade mark registrations and certification or trade mark registrations, respectively.

4 – Association and certification trade mark registrations existing at the date when the present decree-law comes into force and which consist of signs or indications used in commerce to identify the geographical origin of the products or services shall not be subject to causes of nullity pertaining to inclusion of geographic terms.

Article 9.

Invoking non-genuine use when opposing registration and during infringement procedure

1 – Applicants for registration of trade marks and logotypes against which a claim has been made before the present decree-law has come into force shall not be allowed to invoke

non-genuine use of trade mark registration as the basis of the claim during the course of opposition proceedings and without any recourse to a declaration of revocation application.

2 – As regards infringement actions that have been instituted before the present decree-law has come into force, there shall be no possibility of invoking non-genuine use of trade mark registration on which the action is based without filing a declaration of revocation application.

Article 10.

Declaration of nullity and annulment procedures

1 – The time periods of the deadlines for requesting the annulment of a right as provided for in the Industrial Property Code that are running their course at the date of coming into force of the present decree-law shall be subject to the previously applicable provisions.

2 – The powers of the Intellectual Property Court to declare nullity and annulment of registrations of designs or models, trade marks, logotypes, appellations of origin, geographical indications, rewards, names of establishments and establishment insignias whose nullity and annulment declaration actions have been instituted before the present decree-law has come into force shall remain intact.

Article 11.

Infringement of name and establishment insignia and logotype

An infringement of name, establishment insignia and logotype rights that has occurred before the present decree-law has come into force shall be subject to the provisions that were previously in force and which punished conduct as an administrative offence.

Article 12.

Promotion of acts at the Instituto Nacional da Propriedade Industrial, I. P.

Acts pertaining to applications for declaration of revocation whose deadline periods are running their course when the present decree-law comes into force shall be subject to previously in effect provisions regarding legitimacy to execute acts at the INPI, I.P.

Article 13.

Transitional provisions stipulated in Decree-Law no. 36/2003 of 5 March

In cases where they still apply, the transitional provisions provided for in Decree-Law no. 36/2002 of 5 March shall remain in force in their current wording.

CHAPTER IV

Final provisions

Article 14.

Revocatory norm

Notwithstanding the provisions of the previous article, Decree-Law no. 36/2003 of 5 March is hereby revoked in its current wording.

Article 15.

Application over time

Notwithstanding the provisions of the following articles, the provisions of the Industrial Property Code introduced via the present decree-law shall apply to the following:

- a) Patent applications, utility models, supplementary protection certificates, designs or models, trade marks, logotypes, appellations of origin, geographical indications and rewards that have been submitted before the present decree-law came into force and that have not yet been formalised in an order;
- b) Applications that have been submitted before the present decree-law has come into force and that have not yet been formalized via a decision;
- c) Patents, utility models, supplementary protection certificates, registrations of designs or models, trade mark registrations, logotype registrations, appellations of origin registrations, geographical indications registrations, registrations of rewards, registrations of establishment names and establishment insignias existing at the date of coming into force of the present decree-law.

Article 16.

Coming into force

1 – Article 4 of the present decree-law shall come into force 30 days after publication of the present decree-law.

2 – The provisions of the Industrial Property Code as pertains to protection of trade secrets shall come into force on 1 January 2019.

3 – All other provisions of the Industrial Property Code approved in the annex to the present decree-law, along with the amendment to the Judicial System Organisation Law approved via Law no. 62/2013 of 26 August, in its current wording, shall come into force on 1 July 2019.

Seen and approved by the Cabinet of the Prime Minister on 6 December 2018. —
António Luís Santos da Costa — Augusto Ernesto Santos Silva — Mário José Gomes de Freitas Centeno — Francisca Eugénia da Silva Dias Van Dunem — Pedro Gramaxo de Carvalho Siza Vieira — Manuel Frederico Tojal de Valsassina Heitor.

Promulgated on 7 December 2018.

To be published.

The President of the Republic, MARCELO REBELO DE SOUSA.

Countersigned on 7 December 2018.

The Prime Minister, *António Luís Santos da Costa*

ANNEX

(as per article 2)

Industrial Property Code

TITLE I

Overview

CHAPTER I

General provisions

Article 1.

Purpose of industrial property

Industrial property serves the purpose of guaranteeing fair competition by attributing private rights over the various technical processes of producing and developing wealth.

Article 2.

Scope of industrial property

Industrial property includes industry and commerce and the fishing, agricultural, forestry, livestock and mining industries, along with all natural or manufactured products and services.

Article 3.

Personal scope of application

1 – The present Code shall apply to all individual or legal persons, Portuguese or foreigners from countries that are part of the International Union for the Protection of Industrial Property, henceforth referred to as the Union, pursuant to the Paris Convention of 20 March 1883 and its revisions, and the World Trade Organisation, henceforth referred to as the WTO, without any conditions relating to domicile or establishment, barring special provisions regarding jurisdiction and procedure.

2 – Nationals from all other countries that are domiciled or whose industrial or commercial establishment, real or fictitious, is in the territory of one of countries of the Union or WTO shall be equivalent to being nationals of the countries of the Union or WTO.

3 – As regards all other foreigners, the provisions of the conventions between Portugal and the respective countries shall apply, and when there are no such conventions, the reciprocity regime shall apply.

Article 4.

Effects

1 – Rights granted through patents, utility models and registrations shall cover the entire national territory.

2 – Without prejudice to the provisions of the following number, the granting of intellectual property rights requires only a legal presumption of the requirements for granting them.

3 – Registration of rewards ensures the veracity and authenticity of the titles of its granting and ensures the owners that they shall have exclusive use for an indefinite period of time.

4 – Registration of trade marks, logotypes and appellations of origin and geographical indications constitute grounds for refusing or annulling corporate names that can be confused with them if the applications for authorisation or alteration were made after the registration applications.

5 – Actions for annulling acts ensuing from the provisions of the previous number shall only be admissible within a period of 10 years counting from the date of publication in the

Government Gazette pertaining to the change in corporate name of the legal person, unless proposed by the Public Prosecutor.

Article 5.

Provisional protection

1 – The application for a patent, utility model or registration shall grant the applicant provisional protection, as of respective publication in the Industrial Property Bulletin, identical to that which would be granted through granting the right, to be taken into account when calculating any possible compensation.

2 – The provisional protection mentioned in the previous number shall be enforceable before being published against anyone who has been notified of the submission of the application and received the necessary documentation pertaining to the proceedings.

3 – Rulings pertaining to actions based on provisional protection cannot be rendered before the final granting or refusal of the patent, utility model or registration, and the proceedings shall be stayed following completion of the enumeration of facts phase.

Article 6.

Guarantee rights

1 – Rights emerging from patents and utility models and from registrations of semiconductor topography, designs or models and trade marks and other distinctive signs of commerce shall be subject to seizure and lien and may be pledged as a security or subject to other legally executed seizures of goods.

2 – The provisions of the previous number shall apply to rights ensuing from the applications.

Article 7.

Proof of rights

1 – Proof of industrial property rights shall be provided through titles corresponding to their various types.

2 – The titles shall contain the information necessary for proper identification of the right that they refer to.

3 – Industrial property rights certificates issued by international organisations to take effect in Portugal shall have the value of the titles mentioned in the previous numbers.

4 – Owners of rights may receive certificates of content analogous to the respective title.

5 – At the request of the applicant or the owner, the following documents may be issued:

a) Certificates of the applications;

b) Certificates for the protection of the industrial property rights granted by international organisations in order to take effect in Portugal.

Article 8.

Re-establishment of rights

1 – An applicant or owner of an industrial property right who, despite all the oversight required under the circumstances, has failed to comply with a deadline that may lead to

refusal or affect the respective validity, and the cause of the failure to comply cannot be directly attributed to him or her, shall have his or her rights re-established if he or she so requests.

2 – The duly reasoned request shall be submitted in writing within a period of two months counted from the end of the fact that prevented compliance with the deadline, and shall only be accepted within a period of one year as of the deadline that was not observed, whatever the circumstances.

3 – When the deadlines mentioned in article 13 are in question, the request shall only be admitted within a period of two months counted from the end of the unobserved deadline.

4 – The omitted act shall be complied with during the two-month deadline mentioned in no. 2, along with payment of a rights re-establishment fee.

5 – The provisions of the present article shall not apply to the deadlines referred to in nos. 2 and 4 and articles 17 and 369 when the extension deadline provided for in the present Code is involved and when a declaration of revocation procedure is pending.

6 – The applicant or owner of a right whose rights have been re-established may not invoke them from a third party who in good faith during the period spanning from the loss of granted rights and publication of the mention of re-establishment of these rights, has begun exploiting or commercializing the subject matter of the right or has made effective and serious preparations to exploit them and market them.

7 – A third party who may avail him or herself of the provisions of the previous number may, within a period of two months counted from the date of publication of the mention of re-establishment of the right, oppose the decision that reinstates the applicant or owner of the rights, the latter benefitting from an identical deadline for responding to the opposition.

CHAPTER II

Administrative process

Article 9.

Legitimacy to practice the acts

Anyone who has interest in practicing legal acts at the Instituto Nacional da Propriedade Industrial, I. P. (INPI, I. P.) has legitimacy to do so.

Article 10.

Legitimacy to practice acts

1 – Acts and terms of the procedure can only be executed by:

a) The interested party or owner of the right, if the latter is established or domiciled in Portugal, or by a party who is established or domiciled in Portugal and is not an official industrial property agent, attorney or solicitor, exhibiting a letter of attorney to that effect;

b) The interested party or owner of the right if the latter is established or domiciled in a foreign country;

c) An official industrial property agent;

d) An appointed attorney or solicitor.

2 – Applications for declaration of revocation and requests for annulment or declaration of nullity that must be submitted to the INPI, I. P., along with all acts pertaining to such procedures, can only be made by an official industrial property agent, attorney or solicitor.

3 – The persons mentioned in sub-paragraph b) of no. 1 shall:

- a) Indicate an address in Portugal; or
- b) Indicate an e-mail address or fax number.

4 – The entities mentioned in the previous number shall always have access to the file and may obtain a copy of it in electronic format or photocopies of the documents that are of interest, which shall be duly authenticated, upon request.

5 – In the cases provided for in no. 3, notifications shall be sent, for all legal intents and purposes, to the address in Portugal, to the e-mail address or to the fax number indicated by the interested party, owner of the right or representative.

6 – When the parties are represented by a proxy, notifications shall be sent directly to him or her.

7 – Barring any indication to the contrary by the applicant or owner of the right, notifications shall be addressed to the last proxy who intervened in the proceedings, regardless of the person who paid the maintenance fees.

8 – If irregularities or omissions have occurred during the execution of a certain act, the party shall be directly notified to comply with the applicable legal provisions within an inextensible period of one month, otherwise the said act shall be considered null and void, but without losing the date attributed to the application and the priorities it is entitled to.

Article 11.

Form of practicing the acts

1 – The acts mentioned in the present Code and the communications between the INPI, I. P. and interested parties shall preferably be performed via electronic data transmission.

2 – When an act is practiced via electronic transmission of data, all other acts, including communications with the INPI, I. P. shall preferably take place in the same manner.

3 – Qualified or advanced electronic signing of the acts practiced by the interested parties or by the INPI, I. P. shall replace and dispense with the handwritten signature on paper for all intents and purposes, as long as the requirements of the State Electronic Certification System are complied with.

Article 12.

Date of the application

1 – Barring the exceptions stipulated in the present decree-law, the date of the application for the patent, utility model or registration shall be the date when the application was submitted together with all the elements stipulated in no. 3 of article 61., no. 3 of article 63., no. 3 of article 126., no. 3 of article 183., no. 3 of article 222. and no. 2 of article 284.

2 – If the applications are submitted via e-mail, with all the elements stipulated in the previous number, the date of the application is considered to be the date of registration or of the expedition stamp.

3 – When two applications pertaining to the same right are simultaneous or have the same application date, they shall not be implemented without the interested parties having first resolved said issue via agreement or in a court of law or court of arbitration with the appropriate jurisdiction.

4 – If the application is not accompanied by all the elements stipulated in no. 1, the application date shall be one on which the last of these elements was submitted.

5 – If the design or model, trade mark, logotype, appellation of origin or geographical indication has been changed with regard to any essential information before initial publication, the date of the application shall be the date on which the change was requested.

6 – Without prejudice to the provisions of no. 4 of article 50. and no. 3 of article 119., if subsequent to the examination it is determined that the application for the patent, utility model or registration was not correctly formulated, the applicant shall be notified to make the submission in the manner that has been indicated to said party.

7 – Before a decision is issued, the applicant may, at his or her initiative, reformulate the application in a manner that is different from the one that was initially submitted.

8 – Once the decision is issued, the applicant, during the course of the appeal time period or if an appeal has been launched, may up until final judgment is rendered, transfer the rights ensuing from the application, limit their subject matter or add documents or statements to the proceedings.

9 – In the case provided for in the previous number and taking into account a possible appeal, any other interested party may add documents or statements to the proceedings.

10 – In the cases provided for in nos. 6 and 7, the request shall be published in the Industrial Property Bulletin, taking into account the applicant's initial request date and the priorities said party is entitled to.

11 – Up until the moment of the decision, other formal corrections may be authorised, as long as a reasoned request is made, and said corrections shall be the **object** of a publication.

12 – The priority date set in accordance with the provisions of the following article shall count as the request date for the purpose of no. 3 of the present article.

Article 13.

Priority and claiming the right of priority

1 – Anyone who has regularly submitted an application for a patent, utility model, utility certificate, invention author certificate, registration of design or model, or trade mark, in any Union or WTO country or any inter-governmental organisation with sufficient powers to grant rights that are enforceable in Portugal, shall, just like his or her successor, when submitting an application in Portugal, be entitled to priority as established in article 4. of the Paris Convention for the Protection of Industrial Property.

2 – Any application formulated and classified as a regular national application in accordance with the internal law of each Member State of the Union or the WTO or bilateral or multi-lateral treaties signed between countries that are members of the Union or the WTO, shall result in entitlement to priority.

3 – A regular national application shall be any application that was made under conditions that allow establishment of the date when it was submitted in the country in question, regardless of what circumstances may subsequently affect it in any way.

4 – Consequentially, an application that is subsequently submitted in Portugal before the priority time period has expired cannot be invalidated by facts that have occurred during that period, namely by another period or by the publication of the invention, design or model or its exploitation.

5 – A subsequent application that has the same subject matter as a previous application shall be considered the first application, whose submission date shall signal the beginning of the priority time period, as long as at the date of submission of the subsequent application, the previous application has been withdrawn, abandoned or refused without having been submitted to public examination, without having ceased to replace rights and without also having served as a basis for claiming the right of priority.

6 – In the case provided for in the previous number, the previous application cannot once again serve as a basis for claiming the right of priority.

7 – Anyone who wishes to claim the priority of previous application shall formulate a declaration indicating the country, date and number of that application, and said declaration may be submitted within a period of one month counted from the end of the priority time

period, when dealing with a registration application, a period of four months counted from the end of the priority period, when dealing with a patent or utility model application.

8 – If various priorities are claimed in one application, the time period shall be that of the older priority date.

9 – A priority or an application for a patent, utility model or design, or model registration cannot be refused because an applicant has claimed multiple priorities, even if they originate from different countries, or because an application that claims one or more priorities contains one or more elements that were not included in the applications whose priority is 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 refused on the basis that certain elements of the invention or, if dealing with designs or models, of the creation for which priority is claimed, are not included among the claims made or among the reproductions of the designs or models included in the application in the country of origin, as long as the group of components of the application precisely indicates those elements.

Article 14.

Proof of right of priority

1 – The INPI, I. P. may require that the person who claims a right of priority must submit a certified copy of the first application, of the certificate attesting to the date of its submission and, if necessary, a translation into Portuguese, within a period of two months counted from the date of the respective notification.

2 – The time period provided for in the previous number may be extended only once and for a period of one month.

3 – Submission of a copy of the application within the time periods established in the previous numbers shall not be subject to any fee.

4 – Lack of compliance with the provisions of the present article shall entail the loss of the claimed right of priority.

Article 15.

Corrections

If before publication of the notice in the Industrial Property Bulletin any irregularities are detected, the applicant shall be notified to undertake the necessary corrections.

Article 16.

Notifications

1 – The parties that participate in the administrative process shall be notified of the final decisions of the INPI, I. P. and such notifications shall be made exclusively via publication in the Industrial Property Bulletin whenever a granting decision has been issued with respect to cases in which no opposition has been submitted.

2 – If there are complaints in any case, the applicant shall be immediately notified of them by the INPI, I. P.

3 – Identical notifications are also made with respect to contestations, observations, applications for revocation and other procedural components added to the case.

4 – In the cases stipulated in no. 1 in which notification is exclusively made through publication in the Industrial Property Bulletin, INPI, I. P. shall notify the applicants of that publication via the means deemed appropriate.

Article 17.

Deadlines for complaints and contestations

1 – The deadline for submitting complaints or in the cases stipulated in no. 1 of article 226. and no. 1 of article 286. for third party observations, shall be two months counted from publication of the application in the Industrial Property Bulletin.

2 – The applicant may respond to the complaints, or in the cases stipulated in no. 1 of article 226. and no. 1 of article 286., to third party observations, in the reply to the opposition, within a period of two months counted from the respective notification.

3 – When no decision has yet been issued regarding the application and it is deemed necessary to better clarify the case, further additional observations may be accepted.

4 – During the course of the time periods established in nos. 1 and 2, the INPI, I. P. may grant a single extension of one more month, in terms of the time period for complaints, contestations or submission of third-party observations, in accordance with no. 1 of article 226. and no. 1 of article 286., and the counterparty shall be notified if it is granted.

Article 18.

Suspension of the examination

1 – At the request of the interested party and when applicable, with agreement from the counterparty, the examination of the file can be suspended for a period of no more than six months that cannot be extended.

2 – The examination may also be suspended ex officio or at the request of the interested party for the period during which there is a prejudicial cause that is liable to affect the decision regarding the examination.

Article 19.

Addition and return of documents

1 – Documents are added to the written pleading that claims the facts that they refer to.

2 – When it has been shown that it was impossible to obtain them in a timely fashion, they can be added to the proceedings via authorisation decision, and in such cases the counterparty shall be notified.

3 – Addition of irrelevant or unnecessary documents shall be refused, even if they are added in a timely fashion, along with all other written documents that have been drafted in a disrespectful or inconvenient manner, or when such documents unnecessarily repeat allegations that have already been made.

4 – The documents referred to in the previous number shall be returned to the parties, who shall be notified via notice and via their legal representative, in order to receive them in a timely fashion, otherwise they will be filed outside of the case file.

5 – The notifications mentioned in the previous number shall also be addressed to the parties.

Article 20.

Inspections

1 – In view of supporting or clarifying the allegations laid out in the case, the interested party may make a reasoned request to INPI, I. P. for an inspection of any establishment or other location and the request may not be granted without the subject of the inspection being heard.

2 – Expenses resulting from the inspection shall be paid by the party who requests them.

3 – The party that requested the diligence may cancel it at will before it starts.

4 – The amounts that are deposited shall be returned at the request of the interested party when cancellations are made in a timely manner or when the inspection request has been denied.

5 – The inspection may also be conducted upon initiative of the INPI, I. P. if it is believed that it is indispensable to full clarification of the case.

6 – Refusal of cooperation, as requested by INPI, I. P. from the participants in any case, in view of clarifying the situation shall be freely assessed when making the decision, notwithstanding reversal of the burden of proof when the counterparty has culpably made it impossible to do so.

Article 21.

Subsequent formalities

Once the time periods stipulated in article 17 and 18 have expired, the content of what was stated by the parties will be examined and assessed, after which a report shall be made for the proceedings and a decision issued.

Article 22.

Modification of the decision

1 – If within a period of two months after publication of a decision it is recognised that it must be modified, the case shall be submitted for a decision from a higher level with information on the reasons recommending revocation of the decision that was rendered.

2 – A decision from a higher level shall be a decision that is rendered by a hierarchical superior of the person who signed the decision to modify.

3 – When a request for decision modification is submitted, if there are parties to respond to it they shall be notified within a period of one month, and this period may be extended only once for the same period of time at the request of the interested party.

4 – When no decision has yet been issued regarding the decision modification request and it is deemed necessary to have it in order to provide further information on the case, additional observations may be accepted.

5 – When applicable, decision modification requests that are based on the existence of a prior trade mark shall be subject to the procedures stipulated in articles 227 and 230 with the necessary adaptations.

6. The INPI, I. P. orders mentioned in no. 2 of article 34 shall be excluded from the present article.

Article 23.

General grounds for refusal

1 – The following are considered general grounds for refusal:

- a) Failure to pay required fees;
- b) Failure to submit the elements necessary for full fact finding in the case;
- c) Failure to observe the formalities or procedures that are essential to granting the right;
- d) Submission of a request whose subject matter is impossible or unintelligible.

2 – In the cases provided for in the previous number, the requested act cannot be submitted for a decision without the applicant being notified in advance to correct it within the time period stipulated therein.

Article 24.

Change or correction of non-essential elements

1 – Any change or correction that does not affect the elements that are essential and characteristic of the patent, utility model or registration can be authorised in the same case.

2 – No request for change or correction, provided for in the present article can be received if there is a declaration of revocation case pending with respect to the same industrial property right.

3 – The changes or corrections mentioned in no. 1 shall be published, for appeal purposes, in accordance with articles 38 and subsequent articles and included in the respective files.

Article 25.

Documents added to other files

1 – With the exception of the letter of attorney, which is always attached to each case, even if the applicant is represented by the same proxy, documents that are to be used to formulate the applications may be attached to one of them and referred to in the others.

2 – In the event of an appeal, as provided for in articles 38. and subsequent, the appellant shall be obliged to complete, at his or her own expense, using certificates, the files in which such documents were mentioned.

3 – Lack of compliance with the provisions of the previous numbers shall be mentioned in the notice of court submission.

Article 26.

Submission of concession titles

Titles pertaining to the granting of industrial property rights shall only be issued and submitted to titleholders upon request one month subsequent to the end of the appeal time period, or if the appeal has been lodged, after the court decision or final arbitration ruling has been handed down.

Article 27.

Counting of deadline time periods

The deadline time period stipulated in the present Code shall be continuous.

Article 28.

Publication

1 – The parties and general public shall be notified of acts that are to be published via the Industrial Property Bulletin.

2 – Publication in the Industrial Property Bulletin shall serve as direct notification of the parties and barring any provision to the contrary, it shall mark the start of the time periods provided for in this Code.

3 – The parties or any other interested parties may request that the INPI, I. P. issue them a certificate of the final decision pertaining to the request and respective reasoning, even before the corresponding notice has been published in the Industrial Property Bulletin.

4 – Any interested person may also request a certificate of the elements that have been included in the files, but only when the elements are in the publication stage, there is no prejudice to the rights of third parties, and there are no documents that are classified or that reveal trade or industrial secrets.

5 – In any case, the publication stage shall be considered reached when the application has been published in the Industrial Property Bulletin.

6 – Notwithstanding, the provisions of the previous numbers, INPI, I. P. may supply information regarding registration of trade marks, logotypes, rewards, appellations of origin and geographical indications, even before the publication stage has been reached.

Article 29.

Entry in the Registry

1 – The following are subject to entry in the registry of the INPI, I. P.:

- a) Transfer and renunciation of private rights;
- b) Granting of exploitation, contractual or compulsory licenses;
- c) Establishment of rights of guarantee or usufruct, along with liens, seizure and other apprehension of goods performed legally;
- d) The filing of legal actions declaring nullity or annulment, the court filing of counterclaims for the same purpose and applications for declaration of nullity or annulment of private rights submitted to INPI, I. P.;
- e) Facts or decisions that modify or extinguish private rights;
- f) Regulations for use of collective trade marks and certification or guarantee trade marks, along with respective changes.

2 – The facts referred to in the previous number shall only take effect in relation to third parties after the date of the respective entry in the registry.

3 – Facts that are subject to entry in the registry, but not yet entered in the registry, may be invoked between the parties or their successors.

4 – Entry in the registry shall be performed at the request of any interested party, formulated in accordance with the documents proving the fact that they pertain to.

5 – Facts entered in the registry are also entered into the title, when it exists.

6 – Notice of the entry in the registry shall also be published in the Industrial Property Bulletin.

CHAPTER III

Transfer of licenses

Article 30.

Transfer

1 – Rights ensuing from patents, utility models, registration of semiconductor topography, designs or models and trade marks can be transferred fully or, with the exception of rights ensuing from patents, utility models and registrations of semiconductor topography, partially, free of charge or at a cost.

2 – The provisions of the previous number shall apply to the rights ensuing from the respective applications.

3 – If the logotype or trade mark contains the individual name, trade name or corporate name of the individual or person applying for the respective registration, or of someone whom he or she represents, a clause shall be necessary for its transfer.

4 – A transfer via *inter vivos* act shall be proven via written document, but if the recording of the transfer is required by the transferor, the transferee shall also sign the document that proves the transfer or make statement attesting to acceptance of the transfer.

Article 31.

Contractual licenses

1 – The rights referred to in no. 1 of the previous article may be the subject matter of an exploitation license, whether total or partial, free of charge or at a cost, in a particular zone or throughout national territory, for the entire time of its duration or for a shorter period of time.

2 – The provisions of the previous number shall apply to rights ensuing from the respective applications; however, refusal shall entail revocation of the license.

3 – The license contract must be in written form.

4 – Barring express stipulation to the contrary, the licensee, for all legal intents and purposes, shall enjoy all the benefits granted to the owner of the right that is the subject matter of the license, except for what is listed in the following numbers.

5 – The license shall be presumed to be non-exclusive.

6 – An exclusive license is one in which the owner of the right renounces the power to grant other licenses for the rights that are the subject matter of the license, as long as the license remains valid.

7 – The granting of an exclusive exploitation license shall not prevent the owner from also directly benefitting from the right that is the subject matter of the license, barring stipulation to the contrary.

8 – Barring a stipulation to the contrary, the right obtained via exploitation license may not be disposed of without written consent from the owner of the right.

9 – If the granting of sub-licenses is not provided for in the license contract, it can only be done with written authorisation from the owner of the right.

CHAPTER IV

Extinction of industrial property rights

Article 32.

Nullity

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

a) When their subject matter cannot be protected;

- b) When during the respective granting certain essential procedures or formalities have been omitted in order to grant the right;
- c) When rules of public order have been violated.

2 – Nullity cannot be invoked by any interested party at any time.

Article 33.

Annulability

1 – Patents, utility models and registrations shall be fully or partially annulable when the owner is not entitled to them, namely:

- a) When the right does not belong to him or her;
- b) When they have been granted while omitting the rights stipulated in articles 57. to 59, 123., 124., 156., 157., 180., 181., and 212.

2 – In the cases provided for in sub-paragraph b) of the previous number the interested party may, instead of the annulment and as long as the proper legal conditions have been met, request full or partial reversal of the right in his or her favour.

Article 34.

Procedures for declaring nullity and annulment

1 – A declaration of nullity or annulment of patents, supplementary protection certificates, utility models and semiconductor topography can only result from a court decision.

2 – A declaration of nullity or annulment of registrations of designs or models, trade marks, logotypes, appellations of origin, geographical indications and rewards shall ensue from an INPI, I. P. decision, unless it ensues from a counterclaim application lodged against an action that is running its course in the courts.

3 – The Public Prosecutor or any interested party shall be legitimately entitled to institute the legal actions mentioned in the previous number, and a summons shall be served to all persons, in addition to the owner of the registered right, who at the date of publication of the entry in the registry stipulated in sub-paragraph d) of no. 1 of article 29, have requested an entry in the registry of derived rights at the INPI, I. P. and also the Public Prosecutor whenever it acts in representation of the State or absent parties.

4 – Any interested party shall be legitimately entitled to submit the applications referred to in the first part of no. 2 and a summons or notification shall be served to all persons, in addition to the owner of the registered right, who at the date of publication of the entry in the registry stipulated in sub-paragraph d) of no. 1 of article 29, have requested an entry in the registry of derived rights at the INPI, I. P.

5 – In the cases provided for in no. 1, when final judgment is rendered, the court's clerk shall submit said decision to the INPI, I. P., whenever possible always via electronic transmission of data or in a format considered suitable, for the purpose of publishing the respective text and the corresponding notice in the Industrial Property Bulletin, along with the respective entry in the registry.

6 – Whenever the legal actions mentioned in no. 1 and in the final part of no. 2 are instituted, the court shall communicate such a fact to the INPI, I. P., if possible via electronic transmission of data for the purpose of the respective entry in the registry.

7 – Legal actions for annulment and annulment applications submitted to the INPI, I. P. shall be instituted or submitted within a period of five years counted from the decision issued for granting the patents, utility models and registrations pertaining to them.

Article 35.

Effects of the declaration of nullity

The retroactive efficacy of the declaration of nullity or annulment shall not prejudice the effects produced in compliance with any obligation, final judgment, transaction – even if not ratified – or as a result of acts of an analogous nature.

Article 36.

Revocation

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

- a) When their duration period has expired;
- b) When the fees have not been paid.

2 – The causes of revocation not stipulated in the previous number only take effect if invoked by any interested party.

3 – Any interested party may request an entry in the registry of the revocation provided for in no. 1 if it has not been done.

Article 37.

Renunciation

1 – The owner may renounce his or her industrial property rights, as long as he or she expressly declares such at the INPI, I. P.

2 – Renunciation may be partial, when the nature of the right permits.

3 – The declaration of renunciation shall be made in a request that is attached to the respective case.

4 – If the renunciation request has not been signed by the person in question, his or her representative must add a letter of attorney with special powers.

5 – Renunciation shall not prejudice the derived rights that have been entered into the registry, as long as the owners, duly notified, have substituted the owner of the main right to the extent necessary for safeguarding those rights.

CHAPTER V

Appeals

SUB-CHAPTER I

Judicial appeal

Article 38.

Decisions subject to appeal

Decisions rendered by the INPI, I. P. may be appealed by the court with the applicable jurisdiction:

- a) Granting or refusing industrial property rights;

b) Regarding transfers, licenses, declarations of revocation, declarations of nullity and annulments, or any other acts that affect, modify or extinguish industrial property rights.

Article 39.

Court of applicable jurisdiction

1 – The intellectual property court shall preside over the appeals stipulated in the previous article.

2 – For the purposes stipulated in article 80 to 92 of Regulation (EC) no. 6/2002 of the Council of 12 December 2001 and articles 123 to 133 of Regulation (EU) no. 2017/1001 of the European Parliament and of the Council of 14 June 2017, the intellectual property court shall have the appropriate jurisdiction.

Article 40.

Legitimacy

1 – Parties who may legitimately appeal the decisions of the INPI, I. P. include the applicant and the opponents, along with the party who is directly and effectively prejudiced by the decision.

2 – In an accessorial fashion, anyone who although not an appellant, demonstrates an interest in maintaining the decision of the INPI, I. P.

Article 41.

Deadline

The appeal shall be lodged within a period of two months counted from the date of publication in the Industrial Property Bulletin of the decisions mentioned in article 38, the final decision to maintain or revoke the respective certificate, rendered in accordance with article 22., or the date of issue of the respective certificates requested by the appellant when they are issued first.

Article 42,

Response-delivery

1 – Once the file has been distributed, the INPI, I. P. shall receive a copy of the petition with the respective documents, so that the entity that issued the appealed decision may respond as it deems fit and deliver or decide to deliver to the court the case that said decision pertained to.

2 – If the case contains sufficient information to inform the court, it is sent within a period of 10 days, accompanied by a delivery notice.

3 – Otherwise, the delivery notice, containing the response to what the appellant has alleged in his or her petition, shall be sent along with the case, within a period of 20 days.

4 – When for justified reasons the deadlines established in the previous numbers cannot be met, INPI, I. P. shall request that the court undertake the respective extension in a timely fashion for the amount of time and in accordance with the terms deemed necessary.

5 – The communications mentioned in the present article shall be made, whenever possible, via electronic data transmission.

Article 43.

Summons of the counterparty

1 – Once the case is received by the court, the counterparty, should there be one, shall be summoned, in order to respond, if so willing, within a period of 30 days.

2 – The party shall be served a summons at the office of his or her legal representative, or if there is none, at the office of the industrial property official agent who represented the party during the administrative process; in such cases, however, the party is cautioned that he or she can only intervene in the case through a legal representative.

3 – Once the response time has expired, the case shall be concluded for final decision, which shall be rendered within a period of 30 days, barring any duly justified impediments.

4 – The ruling that revokes or changes, fully or partially the appealed decision shall replace it in accordance with the exact terms under which it was rendered.

5 – Under no circumstances shall INPI, I. P. be considered a counterparty.

Article 44.

Requisitioning of technicians

During the appeal, when an issue that requires more information arises or when the court deems convenient, it can at any time request the appearance of the technician or technicians whose opinion was used to issue the appealed decision at the time and place it determines, in order to provide the necessary clarifications in a verbal manner.

Article 45.

Appeal of the court's decision

1 – The rendered ruling may be appealed in accordance with civil procedure legislation at the Court of Appeals that has jurisdiction over the district where the head office of the intellectual property court is located, notwithstanding the provisions of no. 3.

2 – The rulings of the intellectual property court that allow for appeals, in accordance with the terms of the general framework of administrative offences and articles 80 to 92 of Regulation (EC) no. 6/2002 of the Council of 12 December 2001 and article 123 to 133 of Regulation (EC) no. 2107 /1001 of the European Parliament and of the Council of 14 June 2017, may be challenged at the Court of Appeals with jurisdiction over the district where the head office of the intellectual property court is located.

3 – The Court of Appeals ruling may not be appealed at the Supreme Court of Justice, notwithstanding cases in which an appeal is always admissible.

Article 46.

Publication of the final decision

The provisions of no. 5 of article 34 shall apply to appeals.

SUB-CHAPTER II

Arbitration appeal

Article 47.

Court of arbitration

1 – Notwithstanding the possibility of use of other extra-judicial mechanisms to resolve disputes, a court of arbitration may be set up to resolve all matters that may be subject to judicial appeal.

2 – Excepted from the previous number are cases in which there are counterclaimants, unless they accept to be bound by arbitration.

3 – The court of arbitration may decide to publish the decision in accordance with no. 5 of article 34.

Article 48.

Arbitration bond

1 – An interested party who wishes to go to arbitration within the scope of the disputes provided for in the previous article may request the signing of an arbitration bond, in accordance with the voluntary arbitration law and agree to submit the dispute to arbitration.

2 – Submission of a request in accordance with the previous number shall suspend the time periods for judicial appeal.

3 – Notwithstanding the provisions of the following number, the signing of an arbitration bond by the INPI, I. P. shall be subject to a decision from the President of the Directive Council to be issued within a period of 30 days counted from the date on which the request is submitted.

4 – INPI, I. P. may be generally bound to arbitration centres in a voluntary and institutionalised manner with powers to resolve the conflicts mentioned in no. 1 of the previous article, via decision of the member of the government responsible for this Institute, which establishes the type and maximum value of the disputes involved, granting the interested parties the power to go to these centres to resolve disputes.

5 – Whenever the INPI, I. P. is bound in accordance with the terms of the previous number and the counterparty accepts it, the arbitration ruling that is rendered may be appealed at the Court of Appeals with jurisdiction over the district where the head office of the intellectual property court is located, in accordance with civil procedure legislation.

Article 49.

Establishment and operation

The court of arbitration shall be established and shall function in accordance with voluntary arbitration legislation.

TITLE II

Industrial property legal frameworks

CHAPTER I

Inventions

SUB-CHAPTER I

Patents

SECTION I

General provisions

Article 50.

Object

1 – New inventions that entail inventive activity may be the subject matter of a patent if they have an industrial application, even when they involve a product that consists of biological material or that contains biological material, or a process that allows for production, treatment or use of biological material.

2 – Patents may be obtained for any inventions, whether they involve products or processes, in all areas of technology, as long as those inventions respect what has been established in the previous number.

3 – New processes used to obtain products, substances or compositions that are already known may also be patented.

4 – The protection of an invention that pertains to the conditions established in no. 1 can be chosen to be made by the applicant in the form of a patent or utility model.

5 – The same invention may be the subject matter of a patent application and application for a utility model.

6 – Submission of the applications mentioned in the previous number can only be permitted within the period of one year counted from the date of submission of the first application.

7 – In the cases provided for in no. 5, the utility model shall expire after a patent has been granted for the same invention.

Article 51.

Limitations regarding the subject matter

1 – The following shall be excepted from the provisions of the previous article:

- a) Discoveries, along with scientific theories and mathematical methods;
- b) Materials or substances that already exist in nature and nuclear materials;
- c) Aesthetic creations;
- d) Projects, principles and methods of exercising intellectual activities involving games or economic activities, along with computer programmes without any technical contribution;
- e) Information presentations.

2 – The provisions of the previous number shall only exclude patentability when the subject matter for which the patent is requested is limited to the elements mentioned in it.

Article 52.

Limitations of the patent

1 – Inventions for which commercial exploitation is illegal, counter to the public order, public health and proper customs shall not be patentable and they cannot be exploited if they are prohibited by law or regulation.

2 – Pursuant to the terms of the previous number, the following shall not be patented:

- a) Processes for cloning human beings;
- b) Processes for modifying the germinal genetic identity of human beings;

c) Use of human embryos for industrial or commercial purposes;
d) Processes for modifying the genetic identity of animals that may cause them suffering without any substantial medical usefulness for humans or the animal, along with the animals obtained for those processes.

3 – The following may also not be patented:

a) The human body, during the various stages of its form and development, along with the mere discovery of one of its elements, including the sequence or partial sequence of a gene, notwithstanding the provisions of sub-paragraph c) of no. 1 of the following article;

b) Plant varieties or animal breeds, along with processes that are essentially biological for obtaining plants or animals and the plants or animals that are obtained exclusively via these processes;

c) Surgical or therapeutic treatment methods for the human or animal body and diagnostic methods applied to the human or animal body, and the products, substances or compounds used in any of these methods can be patented.

Article 53.

Special patentability cases

1 – The following can be patented:

a) A substance or composition included in the state of the art for use in a method listed in sub-paragraph c) of no. 3 of the previous article, under the condition that such use, for any of the methods mentioned therein, is not included in the state of the art;

b) The substance or compound referred to in the previous sub-paragraph for any other specific use in a method listed in sub-paragraph c) of no. 3 of the previous article, as long as that use is not included in the state of the art;

c) A new invention that entails inventive activity and has an industrial application and that applies to any isolated part of the human body or is produced in another manner via technical process, including the sequence or partial sequence of a gene, even if the structure of that element is identical to a natural element, as long as the industrial application of a sequence or a partial sequence of a gene is specifically observed and shown in the patent application;

d) Notwithstanding sub-paragraph b) of no. 3 of the previous article, an invention whose subject matter is plants or animals, if its technical executability is not limited to a certain variety of plant or animal breed;

e) A biological material that is isolated from its natural environment or that is produced using a technical process, even if it already exists in a natural state;

f) An invention whose subject matter is a microbiological process or other technical processes or products obtained via those processes.

2 – An essentially biological process for obtaining plants or animals is any process that consists entirely of natural phenomena, such as cross-breeding or selection.

3 – A microbiological process is any one that uses a microbiological material that includes an intervention involving a microbiological material or that produces a microbiological material.

4 – Any material that contains genetic information and which is self-replicating or replicable within a biological system is a biological material.

Article 54.

Patentability requirements

1 – An invention is considered new when it is not included in the state of the art.

2 – An invention is considered to entail inventive activity if a person skilled in the art deems that it does not evidently ensue from the state of the art.

3 – The documents mentioned in no. 2 of the following article are not taken into account when assessing the inventive activity mentioned in the previous number.

4 – An invention is deemed likely to have an industrial application if its subject matter can be manufactured or used in any type of industry or in agriculture.

Article 55.

State of the art

1 – State of the art consists of all that inside or outside of Portugal has been made accessible to the public before the date of the patent application, via description, use or by any other means.

2 – Also deemed to be included in the state of the art is the content of the applications for patents and utility models requested prior to the date of the patent application, for enforcement in Portugal and not yet published, as long as they are published on the same date or at a date that is later than the patent application date.

3 – For the purposes of the present article, the priority date granted in accordance with article 12 shall count as the application date.

Article 56.

Non-prejudicial disclosures

1 – The following shall not negatively affect the novelty of the invention:

a) Disclosures at official exhibitions or exhibitions that are officially recognised by the Convention on International Exhibitions if the request for the respective patent is submitted in Portugal within a period of six months;

b) Disclosures resulting from evident abuse of the inventor or his or her successor in any form, or from any publication unduly made by the INPI, I. P.

2 – The provision of sub-paragraph a) of the previous number shall only apply if the applicant proves within one month from the date of the patent application that the invention was in fact shown or disclosed in accordance with the terms stipulated in the aforementioned sub-paragraph, thereby submitting a certificate issued by the entity responsible for the exposition, indicating the date on which the invention was first shown or disclosed at that exposition, along with identification of the invention in question.

3 – At the request of the applicant, the time period stipulated in the previous number may be extended one single time for an equal period.

Article 57.

General rule regarding the patent right

1 – The patent right shall belong to the inventor or his or her successors in any form.

2 – If there are two or more authors of the invention either one shall be entitled to apply for the patent on behalf of all the authors.

Article 58.

Special rules regarding ownership of the patent

1 – If the invention is made during execution of an employment contract in which the inventive activity is provided for, the patent right shall belong to the respective company.

2 – In the case referred to in the previous number, if the inventive activity is not specially remunerated, the inventor shall be entitled to be remunerated in accordance with the importance of the invention.

3 – Regardless of the conditions stipulated in no. 1:

a) If the invention is part of the company's business activity, the company shall be entitled to an option on the patent via remuneration in accordance with the importance of the invention and it may have priority or reserve the right to exclusive exploitation, acquisition of the patent or the option of applying for or acquiring a foreign patent;

b) The inventor shall inform the company of the invention that he or she has made, within a period of three months as of the date when the invention was considered concluded;

c) If during that period, the inventor applies for a patent for that invention, the time period for informing the company shall be one month as of submission of the respective application to the INPI, I. P.;

d) Failure to comply with the obligations mentioned in sub-paragraphs b) and c) by the inventor shall imply civil and employment liability, pursuant to applicable general terms;

e) The company may exercise its right of option within a period of three months as of the date of reception of the inventor notification.

4 – If in accordance with the provisions of sub-paragraph e) of the previous number, the remuneration payable to the inventor has not been fully paid within the established time period, the company shall forfeit the right to the patent mentioned in the previous numbers to the inventor.

5 – Inventions whose patent application has been filed during the year subsequent to the date when the inventor leaves the company shall be considered made during execution of the employment contract.

6 – If the parties fail to reach an agreement under the circumstances stipulated in nos. 2 and 3, the matter shall be resolved via arbitration.

7 – Barring an agreement to the contrary, inventions that are made to order shall be subject to the provisions of nos. 1, 2, 4 and 5 with the necessary adaptations.

8 – Barring a provision to the contrary, the previous terms shall apply to the Public Administration and its workers and staff members employed in any shape or form, notwithstanding the following article.

9 – Rights that are recognised as belonging to the inventor may not be subject to prior renunciation.

Article 59.

Research and development activities

1 – Inventions created by the workers or staff members of the public collective legal person as a result of their research activities shall belong to the collective legal person whose statutory scope includes research and development activities.

2 – The author of the inventions referred to in the previous number shall give notice of them to the public collective legal person that the worker or staff member works for within a period of three days.

3 – The inventor shall, whatever the circumstance, have the right to participate in the economic benefits offered by the public legal person in the exploitation or assignment of the patent rights, with the types and terms of this participation stipulated in the articles of association or intellectual property regulations of these legal persons.

4 – A public legal person may transfer ownership of the inventions referred to no. 1 to the inventor and may reserve the right to retain ownership of a non-exclusive exploitation license that is non-transferrable and free of charge.

5 – If in the case stipulated in the previous number the inventor obtains economic benefits from exploiting an invention mentioned in no. 1, the public legal person shall be entitled to a percentage of those benefits in accordance with the terms of its articles of association or the industrial property regulations of the respective institution.

6 – When the worker or staff member obtains the invention during and as a result of execution of a contract with a private or public entity that is different from the public legal person that he or she is a worker or staff member of, said contract shall stipulate who becomes the owner of the patent of that invention.

7 – The participation of the worker or staff member in the economic benefits ensuing from exploitation of the inventions referred to in nos. 2 to 6 shall not be of a remunerative or salary nature.

8 – The provisions of the present article shall apply without prejudice to stipulations or provisions to the contrary.

Article 60.

Inventor rights

1 – If the patent has not been filed under the name of the inventor, the latter shall be entitled to be mentioned as the inventor in the patent application and title.

2 – If the inventor requests so in writing, he or she may opt not to be mentioned as the inventor in the publications that ensue from the application.

SECTION II

Patent process

SUBSECTION I

National route

Article 61.

Form of the application

1 – The patent application shall be filed in an application drafted in Portuguese indicating or containing:

a) The name, trade name or corporate name of the applicant, his or her nationality, domicile or place of establishment, tax number when dealing with a resident of Portugal and e-mail address, should it exist;

b) An epigraph or title that summarises the subject matter of the invention;

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

d) The country where the first application was filed, the date and number of that submission, should the applicant wish to claim the priority right;

e) Mention that a utility model was requested for the same invention, if in fact it was, pursuant to no. 5 of article 50.;

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

2 – Drawn figures used to identify the invention shall not be the subject matter of a claim.

3 – For the purpose of no. 1 of article 12, in addition to the elements required in subparagraph a) of no. 1, shall be submitted a document describing the subject matter of the application in a manner that permits execution of the invention by a person skilled in the art or in replacement thereof, when the priority of a previous application is claimed, indication of the number and date of the previous application and the organisation where it was made.

Article 62.

Documents to submit

1 – The application shall also be accompanied by the following elements drafted in Portuguese:

- a) Claims of what is considered new and which characterise the invention;
- b) Description of the subject matter of the invention;
- c) The designs necessary for proper understanding of the description;
- d) Summary of the invention.

2 – The elements referred to in the previous number shall respect the formal requirements stipulated in the decision issued by the President of the Directive Council of INPI, I. P.

3 – The claims shall define the subject matter of the protection that is requested and they must be clear, concise, correctly worded and when appropriate, based on description and content:

a) A preamble that mentions the subject matter of the invention and the technical characteristics necessary for defining the claimed elements, which are part of the state of the art when combined;

b) A characterising part preceded by the expression “characterised by” indicating the technical characteristics in connection with the characteristics indicated in the previous subparagraph, shall define the scope of the requested protection.

4 – The description shall clearly indicate, without reservations or omissions, all that constitutes the subject matter of the invention, offering a detailed explanation of at least one way of executing the invention, in such a manner that a person skilled in the art would be able to execute it.

5 – Drawings shall consist of figures in a quantity that is strictly necessary to comprehend the invention.

6 – The summary of the invention to be published in the Industrial Property Bulletin shall:

a) Consist of a brief exposition of what is mentioned in the description, claims and designs and preferably shall not contain more than 150 words;

b) Serve exclusively for technical information purposes and shall not be taken into consideration for any other purposes, namely for determining the scope of the requested protection.

7 – The elements provided for in the previous numbers may be submitted in English and the applicant shall be notified to submit a translation into Portuguese within a period of one month, extendable only once for an identical period of time, failing this, the application shall be denied.

Article 63.

Provisional patent application

1 – Anyone who wishes to guarantee a patent application date, but does not yet possess all the elements stipulated in the previous article may submit a provisional application and

postpone submission of those elements up until a maximum of 12 months for conversion into a final patent application.

2 – The provisional patent application shall be filed in a request drafted in Portuguese or English, indicating or containing the following:

a) The name, corporate name or trade name of the applicant, his or her nationality, domicile or place of establishment, tax number when dealing with a resident of Portugal and e-mail, should it exist;

b) An epigraph or title that summarises the subject matter of the invention;

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

d) The signature or electronic identification of the applicant or his or her representative;

3 – For the purposes of no. 1 of article 12., a date is attributed to a temporary application, that, in addition to the elements required under the previous number, is accompanied by a document that describes the subject matter of the request in a manner that allows for execution of the invention by a person skilled in the art.

4 – The applicant of a provisional application may not claim priority of a previous application.

5 – At the request of the applicant and up until a maximum period of 10 months counted from the date of the provisional application, a search is done on the basis of the document mentioned in no. 3, whenever the latter contains technical matters that can be searched.

Article 64.

Conversion of the provisional patent application

1 – Before the 12 month period has expired, counted from submission of the provisional application, this application shall be converted into a final patent application accompanied by the elements stipulated in articles 61 and 61, duly drafted in Portuguese, and said conversion may not result in an application that is altered to the point that it contains technical materials that exceeds its content in relation to the description provided for in no. 3 of the previous article.

2 – If the elements stipulated in articles 61. and 62. are not submitted duly drafted in Portuguese, the conversion application shall be refused.

3 – After conversion into a final patent application, an examination is conducted with respect to the form and limitations of the subject matter or the patent, pursuant to the terms stipulated in article 67.

4 – The publication mentioned in article 69 shall be made 18 months from the date on which the provisional application has been requested, followed by the terms of the process stipulated in article 70 and subsequent.

5 – Whenever there has been the conversion mentioned in no. 1, the duration of the patent mentioned in article 100 shall be counted from the date of the provisional application.

6 – When no conversion takes place the provisional application shall be considered withdrawn.

7 – Applicants may be reminded of the time period mentioned in no. 1 in a merely informative manner.

8 – Failure to make the notification mentioned in the previous number shall not constitute justification for failure to comply with such a time period.

9 – In cases where there have been changes made to the content of the application that do not comply with the provisions of no. 1, the applicant shall be notified in order to make the respective correction, otherwise face refusal of the application.

Article 65.

Biotechnological inventions

1 – If an invention pertains to biological material that is not accessible to the public and cannot be described in the patent application in a manner that would allow it to be executed by a person skilled in the art, or that would allow the use of that type of material, the description shall only be considered sufficient for the purpose of obtaining the patent if:

a) The biological material has been deposited no later than the date of submission of the patent application at recognised deposit institutions, such as those international deposit institutions that have acquired such a status in accordance with the Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;

b) The application includes pertinent information that the applicant has with respect to the characteristics of the biological material that is deposited;

c) The patent application mentions the deposit institution and the deposit number.

2 – Access to the deposited biological material shall be guaranteed via delivery of a sample:

a) No later than the first publication of the patent application, solely to persons who are entitled to access under national law;

b) Between first publication of the application and the granting of the patent to any person who requests it, or at the request of the depositor, solely to an independent expert;

c) Following the granting of the patent and even in the event of termination of the patent due to invalidity or revocation, to anyone who requests it.

3 – Delivery shall only be made if the person who requests it agrees to do the following for the duration of the patent:

a) Not to supply third parties with any sample of a biological material that has been deposited or any material derived from it;

b) Not to use any sample of the deposited material or material derived from it, except for experimental purposes, excepting express renunciation of the applicant or owner of the patent with respect to that commitment.

4 – If the patent application is refused or withdrawn, access to the deposited material may, at the request of the depositor, remain limited to an independent expert for 20 years counted from the date of submission of the patent, in which case the provisions of the previous number shall apply.

5 – The requests of the depositor mentioned in sub-paragraph b) of no. 2 and no. 4 can only be submitted up until the date when the technical preparations for publication of the patent application are considered concluded.

6 – When the biological material deposited in accordance with the provisions of the previous numbers is no longer available at the recognised deposit institution, a new deposit of the material is permitted under the conditions stipulated in the Budapest Treaty.

7 – Any new deposit shall be accompanied by a statement signed by the depositor, certifying that the biological material that is the subject matter of the new deposit is identical to the one that was initially deposited.

Article 66

Descriptive sufficiency

The invention shall be described in the patent application in a manner that is sufficiently clear and complete and which allows it to be executed by a person skilled in the art.

Article 67.

Formal examination

1 – Once the patent application is filed at the INPI, I. P., an examination shall be conducted within a period of two months in order to verify fulfilment of the minimum elements stipulated in no. 3 of article 61., in order to attribute a date to the application, and an examination conducted pertaining to the form and limitations of the subject matter or patent in order to verify whether it fulfils the requirements established in articles 51., 52., and 61. to 65.

2 – If as a result of the examination, the INPI, I. P. ascertains the absence of some of the minimum elements mentioned in no. 3 of article 61., the existence of formal irregularities or limitations pertaining to the subject matter or the patent, the applicant shall be notified to correct them within an inextensible time period of two months.

3 – If subsequent to an insufficient response, the INPI, I. P. ascertains that the application still exhibits formal irregularities, the lack of some of the minimum elements mentioned in no. 3 of article 61. or limitations regarding the subject matter or the patent, the applicant shall be notified once again to correct them within an inextensible time period of one month.

4 – If the application contains all the elements and requirements mentioned in no. 1 or if the applicant makes the correction within the established time periods the application shall be published in accordance with article 69.

5 – If the application does not contain all the elements and requirements mentioned in no. 1 and the applicant fails to make the correction within the established time periods, the application shall be refused and the respective decision shall be published in the Industrial Property Bulletin, and in such a case there shall be no publication like the one provided for in article 69.

Article 68.

Search report

1 – Once the examination stipulated in the previous article has been performed and up until a maximum period of 10 months counted from the date of the application, a search shall be conducted on the state of the art in order to assess the requirements of patentability.

2 – The search report shall not be binding and shall be immediately sent to the applicant.

Article 69.

Publication of the application

1 – If the patent application has been submitted properly or has been corrected in accordance with the terms of no. 4 of article 67. it is published in the Industrial Property Bulletin with mention of the elements stipulated in articles 61. and 62. that are considered relevant for publication purposes, including transcription of the summary and international classification of patents, along with reproduction of the search report stipulated in the previous article.

2 – The publication mentioned in the previous number shall be made 18 months from the date of the patent application filed at the INPI, I. P. or the oldest priority that is claimed.

3 – The publication may be made earlier at the express request of the applicant.

4 – Notwithstanding the provisions of the previous articles, claims or expressions that violate the provisions of no. 2 of article 61. shall be deleted, ex officio, both in terms of the patent title and the publications that ensue from the application.

Article 70.

Examination of the invention

1 – INPI, I. P. shall examine the invention by taking into consideration all the elements of the case.

2 – Once the opposition stage has ended without any complaints having been made, an examination report shall be drafted within a period of one month.

3 – If there is opposition, the report shall be drafted after the last procedural written pleading mentioned in article 17. has been submitted.

4 – If subsequent to the examination it has been concluded that the patent may be granted, the respective notice is published in the Industrial Property Bulletin.

5 – If subsequent to the examination it is concluded that the patent cannot be granted, the report is sent to the applicant with notification to respond to the observations that are made within a period of two months.

6 – If after the applicant has responded there are still objections to granting the patent, a new notification is issued so that within a period of two months all points for which doubts persist shall be clarified, and another notification may be made, if justified, with an identical response time.

7 – When upon the applicant's response it is determined that the patent may be granted, the respective notice is published in the Industrial Property Bulletin.

8 – If the response to the notifications is not considered sufficient, the refusal or partial granting notice is published in accordance with the examination report.

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

Article 71.

Partial granting

1 – When what is merely involved is the limiting of the protected subject matter, eliminating claims, designs, summary or description phrases or changing the title or epigraph of the invention in accordance with the notification, the applicant shall undertake such modifications, otherwise face full refusal of the application, by submitting the fascicle duly altered, after which the INPI, I. P. shall publish the notice of partial granting of the respective patent in the Industrial Property Bulletin.

2 – The publication of the notice mentioned in the previous number shall contain indication of any possible changes to the epigraph, claims, description or summary.

3 – Partial granting shall be given in a manner that does not allow the refused party to exceed the limits of the examination report.

Article 72.

Changes to the application

1 – If the application undergoes any changes during the examination stage the granting notice published in the Industrial Property Bulletin shall contain such an indication.

2 – The changes made to the application during the examination stage shall be communicated to the opponents, if they exist, for the purpose of appeals.

3 – The application cannot be changed in such a manner that it contains technical material that exceeds its content at the application date.

4 – In cases where there are changes that do not respect the provisions of the previous number, the applicant shall be notified in order to make the corresponding corrections, otherwise face refusal of the application.

Article 73.

Unity of invention

1 – The same application cannot be used to apply for more than one patent, nor one single patent for more than one invention.

2 – A plurality of inventions that are interconnected in such a way that they make up a single general inventive concept shall be considered one single invention.

3 – By initiative of the applicant or subsequent to an examination revealing that a patent application does not respect the unity of invention, the applicant may divide the application into a certain number of divisional applications, each preserving the initial application date and, if applicable, the benefit of the right of priority.

4 – For the purposes stipulated in the previous number, a divisional application can only contain elements that do not exceed the content of the initial application.

Article 74.

Publication of the fascicle

The patent fascicle shall be published together with the notice of the respective granting.

Article 75.

Grounds for refusal

1 – Beyond what is stipulated in article 23., the patent shall be refused when:

a) The invention does not feature any novelty, inventive activity or does not have any industrial application;

b) Its subject matter is included in the provisions of articles 51. or 52.;

c) The epigraph or title given to the invention covers a different subject matter or there is a divergence between the description and the designs;

d) Its subject matter has not been described in a manner that permits execution of the invention by a person skilled in the art, as per article 66.;

e) All that constitutes the subject matter of the invention has not been described clearly;

f) It has been recognised as a design or model due to its description and claims;

g) If the provisions of articles 57 to 59 have been violated.

2 – In the case provided for in sub-paragraph g) of the previous number, instead of refusal of the patent it may be transferred to the interested party if the latter has requested it.

3 – Recognition that the applicant intends to undertake unfair competition or that such is possible regardless of the applicant's intention shall also constitute reason for refusal.

Article 76.

Notification of the final decision

The final decision shall be immediately given notice of in accordance with the terms of no. 1 of article 16., with indication of Industrial Property Bulletin in which the respective notice was published.

SUB-SECTION II

European route

Article 77.

Scope

1 – The following provisions shall apply to all European patent applications and European patents that take effect in Portugal.

2 – The provisions of the present Code shall apply to all that does not contradict the European Patent Convention of 5 October 1973.

Article 78.

Submission of European patent applications

1 – European patent applications shall be submitted to the INPI, I.P. or European Patent Office.

2 – When the applicant of a European patent is domiciled or headquartered in Portugal, the application shall be filed at the INPI, I. P., otherwise it may not take effect in Portugal, unless it claims the priority of a previous application submitted in Portugal.

Article 79.

Languages in which the European patent applications can be drafted

1 – European patent applications filed in Portugal shall be drafted in any of the languages listed in the European Patent Convention.

2 – If the European patent application is filed in a language that is other than Portuguese, it must be accompanied by a translation into Portuguese with respect to the description, claims and summary, along with a copy of the drawings, even if they do not contain any text to translate, unless the European patent application claims the priority of an application previously submitted in Portugal.

3 – The translation mentioned in the previous number shall be submitted to the INPI, I. P. within a period of one month counted from the date when the European patent application was filed in Portugal.

Article 80.

Rights attributed subsequent to the published European patent applications

1 – European Patent applications, once published in accordance with the European Patent Convention, shall enjoy a provisional protection in Portugal equal to that which is granted to published national patents, as of the date when a translation of the claims is accessible to the public at the INPI, I. P. in Portuguese, accompanied by a copy of the drawings.

2 – The INPI, I. P. shall undertake publication in the Industrial Property Bulletin of a notice with the indications necessary for identifying the European patent application.

3 – As of the date of publication of the notice mentioned in the previous number any person may obtain access to the text of the translation and obtain copies of it.

Article 81.

Translation of the European patent

1 – Whenever the European Patent Office grants a patent to be validated in Portugal the respective owner shall submit a translation into Portuguese of the description, claims and summary, along with a copy of the patent drawings and if applicable, modifications that have been introduced during the opposition stage, failing this, the patent shall not be valid in Portugal.

2 – The translation of the European patent shall be accompanied by a copy of the drawings, even if they do not contain any text to translate.

3 – The provisions of the previous numbers shall always apply whenever the European Patent Office limits a European patent at the request of the owner.

Article 82.

Deadline for submitting the translation of the European patent

1 – The translation of the description, claims and summary into Portuguese, along with a copy of the European patent drawings shall be submitted to the INPI, I. P. within a period of three months counted from the date of publication of the patent granting notice in the European Patent Bulletin, or if applicable, as of the date of the notice of the decision pertaining to opposition or limitation of the European patent.

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

3 – If the applicant has not met all the requirements stipulated in no. 1 of the deadline indicated therein, he or she can do so within a period of one month counted from the end of the period, subject to payment of a surcharge calculated on the basis of the fee of the national patent application.

Article 83.

Responsibility for the translations

When the applicant or owner of the European patent is not domiciled or headquartered in Portugal, the translations of the texts shall be executed under the responsibility of an official industrial property agent or a representative accredited by the INPI, I. P.

Article 84.

Publication of translation notice

1 – The INPI, I. P. shall undertake to publish in the Industrial Property Bulletin a notice regarding the delivery of the translations mentioned in article 81., containing the indications necessary for identifying the European patent and any limitations that may exist.

2 – Publication of the notice shall only take place after the corresponding fee has been paid.

Article 85.

Entry in the patents registry

1 – When the granting of the European patent has been the subject matter of a notice in the European Patent Bulletin, the INPI, I. P. shall enter it in the patents registry with the data mentioned in the European patents registry.

2 – The date when the translations mentioned in article 81. were received shall also be entered in the INPI, I. P. patents registry, or if said translations have not be delivered, the data mentioned in the European patents registry pertaining to the opposition process, along with data pertaining Portuguese patents.

3 – Entry of acts into the European patents registry that transfer or modify the rights pertaining to a European patent application or a European patent shall make them enforceable in relation to third parties.

4 – A patent that has been granted via the European route can be limited or revoked at the request of the owner in the cases provided for under the European Patent Convention and such a fact shall be entered into the INPI, I. P. patents registry.

5 – In the acts provided for under the previous number, and after payment of the corresponding fee, a notice shall be published in the Industrial Property Bulletin.

Article 86.

Authentic text of the European patent

When a translation has been submitted in Portuguese, in accordance with the previous articles, said translations shall be considered authentic if the European application or patent grants, in the translated text, protection that is less than the one granted by the same application or patent drafted in the language used in the process.

Article 87.

Revision of the translation

1 – The applicant or owner of the European patent may revise the translation at any time and said revision shall only take effect if it is accessible to the public at the INPI, I. P. and the respective fee has been paid.

2 – Any person who in good faith has begun to exploit an invention or has made real and serious preparation to that end, without said exploitation constituting a counterfeit of the application or patent, in accordance with the text of the initial translation, may continue to exploit the invention at his or her company or in accordance with its needs, free of charge and without obligation to provide compensation.

Article 88.

Transformation into a national patent

1 – A European patent application can be transformed into a national patent application in the cases provided for under the European Patent Convention.

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

3 – The possibility of transformation mentioned in the previous numbers may also apply to cases in which the European patent has been revoked.

4 – The European patent application shall be considered a national patent as of the date of reception of the transformation request by the INPI, I. P.

5 – The national patent application shall be given the date of the European patent application and, if applicable, the date of the respective priority, unless attribution of that date is not admissible under the European Patent Convention.

6 – The patent application shall be refused if within a period of two months counted from the date of reception of the transformation request, the applicant fails to pay applicable

fees for a national patent application, or, if relevant, has not submitted a translation of the original text of the European patent application into Portuguese.

Article 89.

Transformation into Portuguese utility model application

The provisions of the previous article shall apply, with the respective adaptations, whenever a request is made for transformation into a utility model application.

Article 90.

Annual fees

All European patents that take effect in Portugal shall be subject to annual fees payable at the INPI, I. P., applicable to national patents within the time periods stipulated in the present Code.

SUB-SECTION III

Patent Cooperation Treaty route

Article 91.

Definition of the scope

1 – An international application is one that is submitted in accordance with the Patent Cooperation Treaty signed in Washington on 19 June 1970.

2 – The provisions of the Patent Cooperation Treaty and in a supplementary manner the provisions of the following articles, shall be applicable to international applications, for which the INPI, I. P. shall act in the capacity of a receiving office or designated or -elected office-.

3 – The provisions of the present Code shall apply to all that does not contradict the Patent Cooperation Treaty.

Article 92.

Submission of international applications

1 – International applications formulated by individual or legal persons who are domiciled or headquartered in Portugal shall be submitted to the INPI, I. P., the European Patent Office or the World Intellectual Property Organisation.

2 – Whenever no priority has been claimed for a previous application made in Portugal the international application shall be submitted to the INPI, I. P., otherwise it shall not take effect in Portugal.

3 – Under the conditions stipulated in no. 1, the INPI, I. P. shall act in the capacity of a receiving office, pursuant to the terms of the Patent Cooperation Treaty.

4 – Any international application submitted to the INPI, I. P. in its capacity as a receiver administration, shall be subject to payment of a transfer fee in addition to the fees provided for in the Patent Cooperation Treaty.

5 – The transfer fee shall be paid within a period of one month counted from the date when the international application is received.

6 – International applications submitted to the INPI, I. P. in its capacity as receiver administration may be drafted in Portuguese, French, English or German.

7 – Within a period of one month counted from the date of reception of the international application by the receiver administration, applicants of international applications drafted in Portuguese shall submit to this administration a translation of the international application into one of the other languages stipulated in the previous number.

8 – If the applicant has failed to meet the requirements stipulated in the previous number within the time period indicated therein he or she may do so in accordance with the terms of the Patent Cooperation Treaty for international applications, subject to payment of the surcharge stipulated in the regulations for executing the Patent Cooperation Treaty.

9 – International applications shall be accompanied by a Portuguese translation of the description of the claims and of the summary, and a copy of the drawings, even if they do not contain any text to translate, unless the international application claims the priority of a previous application made in Portugal with respect to the same invention.

Article 93.

Designated and elected administration

The INPI, I. P. acts in the capacity of a designated and elected administration in accordance with the terms of the Patent Cooperation Treaty for the international applications that seek protection of the invention in Portugal.

Article 94.

Effects of international applications

International applications for which the INPI, I. P. acts as a designated and elected administration in accordance with the previous article shall produce in Portugal the same effect as a Portuguese patent application filed on the same date.

Article 95.

Deadline for submitting the translation of the international application

1 – Whenever an applicant wishes the process of an international application to take place in Portugal he or she shall submit a translation into Portuguese of all the elements that make up the international application, within the time period established in the Patent Cooperation Treaty and simultaneously pay the fee applicable to a national application.

2 – If the applicant has failed to meet all the requirements stipulated in the previous number within the time period indicated therein he or she may do so within a period of one month counted from the end of the aforementioned time period upon payment of a surcharge calculated on the basis of the fee applicable to the national patent application.

Article 96.

Rights conferred by the published international applications

1 – Once published, in accordance with the Patent Cooperation Treaty, international applications enjoy a provisional protection in Portugal that is equivalent to that which is granted to national patent applications published as of the date when a Portuguese translation of the

claims is accessible to the public at the INPI, I. P., accompanied by a copy of the drawings, even if they do not contain any text to translate.

2 – The INPI, I. P. shall undertake publication of a notice in the Industrial Property Bulletin with all the indications necessary for identifying the international application.

3 – As of the date of publication of the notice, any person may become aware of the text of the translation and obtain copies of it.

Article 97.

International application containing independent inventions

1 – When a part of the international application has not been the subject matter of international search or an international preliminary examination because the application contained independent inventions and the applicant had not paid the additional fee provided for in the Patent Cooperation Treaty within the prescribed time period, the INPI, I. P. shall re-examine the grounds of the decision not to execute the search or examination of the aforementioned application.

2 – When the INPI, I. P. concludes that the decision was not well founded, such an application shall be subject to the corresponding provisions of the present Code.

3 – If the INPI, I. P. believes that the decision is well founded, the part of the application that was not subject to search or examination shall be considered null and void, unless the applicant requests division of the application within a period of two months counted from the notification that has been issued to the applicant, in accordance with the provisions of the present Code pertaining to divisional applications.

4 – As regards each of the divisional applications, they shall be subject to fees corresponding to national patent applications, under the conditions stipulated in the present Code.

SECTION III

Effects of the patent

Article 98.

Scope of the protection

1 – The scope of the protection granted by the patent shall be determined by the content of the claims and the description and drawings shall be used to interpret the claims.

2 – If the subject matter of the patent pertains to a process, the rights conferred by that patent shall cover the products directly obtained through the patented process.

3 – The protection conferred by a patent with respect to biological material equipped with certain properties, as a result of the invention, shall cover any biological material obtained from the aforementioned material by reproduction or multiplication, in an identical or differentiated manner and equipped with those same properties.

4 – The protection conferred by a patent with respect to a process that produces biological material equipped with certain properties, as a result of the invention, shall cover any biological material directly obtained by that process and any other biological material obtained from the biological material obtained directly by reproduction or multiplication, in an identical or differentiated manner and equipped with those same properties.

5 – The protection conferred by a patent with respect to a product that contains genetic information or that consists of genetic information shall cover, notwithstanding sub-paragraph

a) of no. 3 of article 52., any material which the product is incorporated into or containing it and exercising its function.

6 – In derogation of nos. 3 to 5:

a) The sale or other form of commercialisation by the owner or with his or her consent of any material that is of plant production to a farmer for the purpose of agricultural exploitation shall require permission given to the farmer to use the product of his or her harvest in order for the farmer to be able to reproduce or multiply it in his or her exploitation;

b) The sale or other form of commercialization by the owner, or with his or her consent, of livestock or other animal reproduction material to a farmer shall require permission being granted to the farmer to use the animals that are protected for agricultural purposes, such permission including making the animal or any other animal reproduction material available for executing his or her agricultural activity, but not including its sale in view of undertaking a reproduction activity for commercial purposes or within its scope.

Article 99.

Reversal of the onus of proof

If the subject matter of a patent includes a manufacturing process for 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 100

Duration

The patent shall have a duration of 20 years counted from the date of the respective application.

Article 101.

Indication of the patent

For the duration of the patent the owner may use the word “patented,” “patent no.” or “Pat. No.”

Article 102

Rights conferred by the patent

1 – The patent grants exclusive right to exploit the invention anywhere within Portuguese territory.

2 – The patent shall also entitle the owner to prevent third parties from doing the following without his or her consent:

a) Manufacture, supply, warehousing, marketing or use of a product that is the subject matter of a patent or its import or possession for some of the purposes mentioned;

b) Use of the process that is the subject matter of the patent or offering its use if the third party has knowledge or should have had knowledge that use of the process without the consent of the owner is prohibited;

c) Offering, warehousing, marketing and use or import or possession for such purposes of products obtained directly through the process that is the subject matter of the patent.

3 – The patent also guarantees the owner the right to prevent third parties to, without the owner’s consent, offer or make available to any person who is not entitled to exploit the patented invention, the means to execute it with respect to an essential element, if the third party has or should have the knowledge that such means are adequate and destined for such execution.

4 – The provisions of the previous number shall not apply if the means are products that are commonly found on the market, unless the third party induces the person to whom the delivery is made to practice the acts stipulated in no. 2.

5 – For the purposes stipulated in no. 3, persons who commit the acts stipulated in subparagraphs a) to d) of the following article shall not be considered entitled to exploit the invention.

6 – The owner may oppose all the acts that constitute infringement of his or her patent, even if they are based on another patent with a subsequent application or priority date, without the need to oppose to the titles or request annulment of the patents on which that right is based.

7 – The rights conferred by the patent may not exceed the scope defined by the claims.

8 – The owner may submit a request to the INPI, I. P. asking for limitation of the scope of the protection of the invention by modifying the claims.

9 – If subsequent to the examination it is concluded that limitation request can be accepted, the INPI, I. P. shall allow for publication of the notice mentioning the modification of the claims, otherwise the request shall be refused and the applicant shall be notified of the decision.

Article 103.

Limitation of the rights conferred by the patent

1 – The rights conferred by the patent shall not cover the following:

- a) Acts performed within a private scope and without any commercial purposes;
- b) Preparation of medications done on the spot and for individual cases, subject to medical prescription at pharmacy laboratories, or acts pertaining to medications that are thusly prepared;
- c) Acts performed exclusively for testing or experimental purposes related to the subject matter of the patented invention, including experiments for preparing the processes that are necessary for the approval of products by the relevant authorities; however, industrial or commercial exploitation of those products cannot begin before verifying revocation of the patent protecting them;
- d) Use of biological material for the purpose of growing or discovering and developing new varieties of plants;
- e) Use of the subject matter of the patented invention onboard ships of other countries that are members of the Union or WTO, within the body of the ship, its engines, masts, finishing and other accessories when the ships temporarily or accidentally enter the waters of Portugal, as long as the aforementioned invention is exclusively used for the needs of the ship;
- f) Use of the subject matter of the patented invention in the construction or functioning of airborne or land locomotion vehicles of other countries that are members of the Union or WTO, or accessories of those vehicles when they temporarily or accidentally enter national territory;
- g) The acts provided for under article 27 of the Convention of 7 December 1944 with respect to international civil aviation if they pertain to aircraft from another State to which the provisions of said article apply;
- h) A farmer’s use of the product of his or her harvest for reproduction or multiplication purposes in his or her exploitation, as long as the reproduced plant material has been sold or

commercialised in another way to the farmer for agricultural purposes by the owner or with his or her consent;

i) Use of protected animals by a farmer for agricultural purposes, as long as the livestock or other animal reproduction materials have been sold or commercialised in another manner to the farmer by the owner or with the latter's consent;

j) The acts and use of the information obtained under the conditions permitted by applicable legislation in terms of legal protection for computer programmes, namely the respective provisions with respect to decompiling and interoperability.

2 – For the purposes stipulated in sub-paragraph i) of the previous number, the use mentioned therein shall include making available the animal or other animal reproduction material for the purposes of agricultural activity, but not the respective sale in view of a reproduction activity for commercial purposes or within the scope of said activity.

3 – The protection mentioned in nos. 3 to 5 of article 98. does not cover biological material obtained via reproduction or multiplication of biological material commercialised by the owner or with his or her consent within the European economic area if the reproduction or multiplication necessarily results from the use for which the biological material was placed on the market, as long as the biological material obtained is not subsequently used for other reproductions or multiplications.

Article 104.

Exhaustion of the right

The rights conferred by the patent shall not permit the owner to prohibit acts pertaining to the products that it protects after their commercialisation by the owner or with his or her consent, within the European economic space, unless there are legitimate reasons for the owner to oppose the products continuing to be commercialised.

Article 105.

Unenforceability

1 – The rights conferred by the patent shall not be enforceable within national territory and before the application date or before the priority date when it is claimed, in relation to anyone who in good faith has by his or her own means arrived at knowledge of the invention and used the invention or made actual and serious preparations in view of such use.

2 – The provisions of the previous number shall not apply when the knowledge results from illicit acts or runs counter to proper customs, practiced against the owner.

3 – The burden of proof shall fall upon whoever invokes the situations stipulated in no. 1.

4 – Prior use or preparations for such use based on the information stipulated in sub-paragraph a) of no. 1 of article 56. shall not harm the principle of good faith.

5 – In the cases provided for in no. 1, the beneficiary shall be entitled to continue or initiate use of the invention, in accordance with prior knowledge, for the purposes of the actual company, but can only transfer it together with the commercial establishment where said use takes place.

SECTION IV

Conditions of use

Article 106.

Loss and expropriation of the patent

1 – Under the law, a person who must answer for obligations to another party may be deprived of the patent, and any person who has been expropriated from the patent for reasons of utility shall be deprived of it as well.

2 – Any patent can be expropriated due to public utility upon payment of fair compensation, if the need for extension of the invention or its use by public entities so requires.

3 – The provisions of the Expropriations Code shall apply with applicable adaptations.

Article 107.

Obligation to exploit

1 – The owner shall be obliged to exploit the patented invention directly or via an intermediary authorised by him or her and to commercialise the results obtained in order to meet the needs of the national market.

2 – Exploitation shall begin within a period of four years counted from the date of the patent application or within a period of three years counted from the date when it was granted, whichever time period is longer.

3 – It is possible to enjoy patent rights without discrimination as to the location of the invention, technological field and whether the products are imported from any member country of the European Union or WTO, or produced locally.

Article 108.

Compulsory licenses

1 – Compulsory licenses may be granted with respect to a particular patent in one of the following cases:

- a) Lack of or insufficient exploitation of the patented invention;
- b) Interdependency between patents;
- c) Reasons of public interest.

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

3 – Compulsory licenses can only be granted when the potential licensee has undertaken efforts in view of obtaining from the owner a contractual license with acceptable commercial conditions and such efforts are not successful within a reasonable time period.

4 – The compulsory license may be revoked, without prejudice to proper protection of the legitimate interests of the licensees if and when the circumstances that were at its origin have ceased to exist and are not liable to be repeated, and the relevant authority may re-examine continuation of the aforementioned circumstances, subject to a reasoned request.

5 – When a patent's subject matter is semiconductor technology, only compulsory licenses with a public non-commercial purpose may be granted.

6 – The owner shall receive remuneration suited to each specific case, taking into account the economic value of the license.

7 – The decision that grants or refuses remuneration shall be subject to judicial or arbitration recourse, pursuant to articles 47. to 49.

Article 109.

License due to lack of exploitation of an invention

1 – Once the time periods mentioned in no. 2 of article 107 have expired, the owner who without proper reason or legal basis fails to exploit the invention directly or via license or does not do so in a manner that meets national needs, may be obliged to cede the patent exploitation license.

2 – A owner who for a period of three consecutive years and without just cause or legal basis ceases to undertake exploitation of the invention may also be obliged to cede the invention exploitation license.

3 – Just motives shall include objective difficulties of a technical or legal nature, regardless of the will and situation of the owner, which make it impossible or insufficient to exploit the invention, but shall not include economic or financial difficulties.

4 – While a compulsory license remains in force, the owner may not be obliged to grant another one before said compulsory license has been cancelled.

5 – The compulsory license can be cancelled if the licensee does not exploit the invention in a manner that meets national needs.

Article 110.

Dependent licenses

1 – When it is not possible to exploit an invention that is protected by a patent, without prejudice to the rights granted by a previous patent and both inventions serve different industrial purposes, the license can only be granted if the first invention is deemed indispensable for exploiting the second one and only in so far as it is necessary to execute the second one, the owner of the first patent being entitled to fair compensation.

2 – When the inventions protected by dependent patents serve the same industrial purposes and a compulsory license is granted, the owner of the earlier patent may also demand granting of a compulsory license relative to a subsequent patent.

3 – When an invention's subject matter is a preparation process pertaining to a chemical, pharmaceutical or food product that is protected by a valid patent and whenever that process patent represents a notable technical process in relation to the prior patent, both the owner of the process and the owner of the product shall be entitled to demand a compulsory license for the patent of the other owner.

4 – When a breeder of a variety of plant is unable to obtain or exploit a right for plant breeding without violating a prior patent, he or she may request a compulsory license for non-exclusive exploitation of the invention that is protected by the patent, in so far as that license is necessary for exploiting the same variety of plant, in exchange for payment of appropriate remuneration.

5 – Whenever a license of the type provided for in the previous number is granted, the owner shall be entitled to a reciprocal license, under reasonable conditions, in order to use that protected variety.

6 – When the owner of a biotechnological invention cannot exploit it without violating a previous plant breeding right pertaining to a variety of plant, he or she may request a compulsory license for non-exclusive exploitation of the variety protected by that breeding right in exchange for suitable payment.

7 – Whenever a license of the type stipulated in the previous number is granted, the owner or the breeding right shall be entitled to a reciprocal license with reasonable conditions in order to use the protected invention.

8 – The applicants of the licenses mentioned in nos. 4 and 6 shall prove the following:

a) That they have been unsuccessful in their approach of the owner or owner of the plant breeding right in view of obtaining a contractual license;

b) The plant variety or invention represents important technical progress that is of considerable economic interest, with respect to the invention claimed in the patent or the variety of plant that is to be protected.

9 – The provisions of the present article shall also apply whenever one of the inventions is protected by a patent and the other invention is protected by a utility model.

Article 111.

Public interest

1 – The owner may be obliged to grant a license for exploiting the respective invention for reasons of public interest.

2 – Reasons of public interest are considered to exist when the beginning, increase or generalisation of the exploitation of the invention or improvement of the conditions under which such an exploitation shall take place are of primary importance to public health or national defence.

3 – Reasons of public interest shall also be deemed to exist when there is absence of exploitation or when said exploitation is of insufficient quality or quantity in a manner that results in serious losses to the country's economic or technological development.

4 – The license granted for reasons of public interest shall be issued via a decision from the member of the government responsible for such matters.

Article 112.

Compulsory license applications

1 – Compulsory licenses shall be requested from the INPI, I. P. with the applicant submitting the necessary elements of proof that justify his or her request.

2 – Compulsory license requests shall be examined in the order that they are requested from the INPI, I. P.

3 – Once the application for compulsory license is received, the INPI, I. P. shall notify the owner to within a period of two months make any statements deemed necessary, submitting all respective evidence.

4 – The INPI, I. P. shall assess all allegations made by the parties and the invention exploitation guarantees offered by the applicant of the compulsory license, and within a period of two months shall decide whether or not the license should be granted.

5 – If it is granted, both parties shall be notified in order to within a period of one month appoint an expert, which together with the expert appointed by the INPI, I. P. shall agree, within a period of two months, on the conditions of the compulsory license and the compensation to pay the owner.

Article 113.

Notification and appeal of the granting or refusal of the license

1 – Notice shall be given to both parties by the INPI, I. P. pertaining to the granting or refusal of the license and respective conditions of exploitation.

2 – The INPI, I. P. decision that granted or refused the license or the conditions under which it was granted may be appealed in the court with the relevant jurisdiction, pursuant to article 38. and subsequent articles within a period of three months counted from the notification date mentioned in the previous number.

3 – A decision that is favourable to the granting shall only take effect after the final unappealable decision is reached and entered in the registry of INPI, I. P., where the respective fees are paid as if it were an ordinary license.

4 – An excerpt of the registration mentioned in the previous number shall be published in the Industrial Property Bulletin.

SECTION V

Invalidity of the patent

Article 114.

Nullity

In addition to the provisions of article 32., patents shall be null in the following cases:

- a) When its subject matter does not satisfy the requirements of novelty, inventive activity and industrial application;
- b) When its subject matter cannot be protected in accordance with articles 50. to 52.;
- c) When it is recognised that the title or epigraph given to the invention covers a different subject matter;
- d) When its subject matter has not been described in a manner that allows its execution by a person skilled in the art.

Article 115.

Declaration of nullity or partial annulment

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

2 – During court proceedings the owner may undertake to limit the scope of the invention protection by modifying the claims.

3 – If there is declaration of nullity or annulment of one or more claims, the patent shall continue to be valid with respect to the remainder of the claims, as long as there continues to be sufficient material for an independent patent.

SECTION VI

Supplementary protection certificate for medications and phytopharmaceutical products

Article 116.

Certificate application

1 – An application for a supplementary protection certificate for medications and phytopharmaceutical products submitted to the INPI, I. P. shall include a request drafted in Portuguese indicating or containing the following:

- a) The name, trade name or corporate name of the applicant, his or her nationality and domicile or place of establishment, tax number when dealing with a resident of Portugal and e-mail address, should it exist;
- b) The patent number, along with the epigraph or title of the invention that is protected by that patent;

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

d) Reference to the simultaneous submission of a request for an extension of the validity of the supplementary protection certificate, when applicable;

e) Signature or electronic identification of the applicant or his or her representative.

2 – The application shall be accompanied by a copy of the first marketing authorisation in Portugal that allows the product to be identified, including the number and date of the authorisation, along with a summary of the characteristics of the product.

3 – The name of the authorised product shall be indicated, along with the legal provision under which the marketing authorisation took place, together with a copy of the publication of that authorisation in the official bulletin, if the authorisation mentioned in the previous number is not the first one for marketing authorisation within the European economic area as a medication or phytopharmaceutical product.

4 – The application for the supplementary protection certificate shall be published in the Industrial Property Bulletin with indication of the information stipulated in no. 1, accompanied by mention of the product that is identified by the marketing authorisation of the product.

5 – The publication referred to in the previous number shall not include the tax number, domicile or place of establishment and e-mail address of the applicant.

Article 117.

Request for extension of the validity of a certificate

1 – A request for extension of the validity of a supplementary protection certificate may be submitted when it pertains to paediatric medication.

2 – The extension request may be submitted to the INPI, I. P. when the request for the supplementary protection certificate is made, with a pending status, or if it pertains to a certificate that is has already been granted, up to two years before its validity expires.

3 – When the extension request has been submitted at the same time as the request for the supplementary protection certificate, the request mentioned in the previous article shall include a copy of the certification of compliance with an approved and completed paediatric research plan, along with proof of the marketing authorisations in all the Member States of the European Union, if the procedures stipulated in Decree-Law no. 176/2006 of 30 August in its current wording are relevant to the matter.

4 – When a supplementary protection certificate is pending, the extension request shall be submitted in a manner that includes a reference to the already submitted certificate request, in addition to the information indicated in the previous number.

5 – When the extension request pertains to a supplementary protection certificate that has already been issued, the request shall include a reference to this certificate, in addition to the information stipulated in no. 3.

6 – The extension request shall be published in the Industrial Property Bulletin with indication of the information referred to in no. 1 of the previous article, except for the tax number, domicile or place of establishment, and e-mail address of the applicant.

7 – When the supplementary protection certificate has been issued, the INPI, I. P. shall examine the extension request within a period of six months counted from the date when this request is made.

Article 118.

Examination and publication

1 – Once the application has been submitted to the INPI, I. P., the respective examination shall be made within a period of 12 months counted from the date when the submission has been made, and it shall be checked whether it was submitted within the deadline and whether it meets the conditions stipulated in applicable legislation regarding the creation of supplementary protection certificates for medication and phytopharmaceutical products.

2 – If the certificate application and the product that is the subject matter of the application meet the conditions stipulated in the previous number, the INPI, I. P. shall issue the certificate and undertake publication of the application and notice of grant in the Industrial Property Bulletin.

3 – If the certificate application does not meet the conditions stipulated in the previous number the INPI, I. P. shall notify the applicant in view of proceeding with the correction of the irregularities within a period of two months, and there may be a need for a second notification with an identical response time.

4 – When following the response of the applicant the INPI, I. P. ascertains that the certificate application meets the required conditions it shall undertake to publish the certificate application and the notice of its grant in the Industrial Property Bulletin.

5 – The application shall be refused if the applicant fails to comply with the notification, and the application and notice of refusal shall be published in the Industrial Property Bulletin.

6 – Without prejudice to no. 3, the certificate shall be refused if the application or product it pertains to does not meet the conditions stipulated in applicable European Union legislation or the conditions established in the present Code, and the application and notice of refusal shall be published in the Industrial Property Bulletin.

7 – Publication shall include at least the following indications:

- a) Name and address of the applicant;
- b) Patent number;
- c) Epigraph or title of the invention;
- d) Number and date of the marketing authorisation in Portugal, along with identification of the product that is the subject matter of the authorisation;
- e) Number and date of the first marketing authorisation for the product in the European economic area, if applicable;
- f) Date of grant and validity period of the certificate or notice of refusal, depending on each particular case.

8 – The terms of the present article shall apply, with the necessary adaptations, to the requests for extension of the validity of the supplementary protection certificates.

9 – At the request of the interested party and with the necessary justifications, the INPI, I. P. may correct the validity period of a supplementary protection certificate whenever the date of the first marketing authorisation for the product within the European economic area is incorrect, as indicated in the request.

10 – The INPI, I. P. may correct ex officio the validity period of a supplementary protection certificate when it ascertains that there has been an error in counting said period.

11 – Without prejudice to the provisions of no. 1 of article 34., the supplementary protection certificate may ex officio be declared null by the INPI, I. P. if the underlying patent has expired before the end of its validity period or the underlying patent has been annulled.

12 – In the cases provided for under nos. 10 and 11, the owner shall be duly notified and the correction of the validity period and decision that is rendered by the INPI, I. P. shall be published, respectively.

SUB-CHAPTER II

Utility models

SECTION I

General provisions

Article 119.

Object

1 – New inventions may be protected as utility models if they entail inventive activity and if they have an industrial application.

2 – The utility models seek to protect the inventions through an administrative procedure that is more simplified and quicker than the patents procedure.

3 – The protection of an invention that meets the conditions established in no. 1 can be undertaken as an option of the applicant, with respect to the utility model or patent.

4 – The same invention can be the subject matter of a patent application and a utility model application.

5 – Submission of the applications mentioned in the previous number can only be permitted within a period of one year counted from the date of submission of the first application.

6 – In the cases provided for in no. 4, the utility model shall expire once a patent has been issued for the same invention.

Article 120.

Limitations pertaining to the subject matter

The provisions of article 51. shall apply to utility models.

Article 121.

Limitations pertaining to the utility model

1 – The following may not be the subject matter of a utility model:

a) Inventions whose commercial exploitation is counter to the law, public order, public health and proper customs; however, exploitation should not be considered illegal merely because it is prohibited under legal or regulatory provisions;

b) Inventions that involve biological materials;

c) Inventions that involve compounds or chemical substances in and of themselves and chemical processes;

d) Inventions that involve substances or pharmaceutical compounds and pharmaceutical processes;

e) Inventions that involve food products or processes for preparing, obtaining or manufacturing such products.

2 – Without prejudice to the provisions of the previous number, the provisions of article 52. shall apply to utility models.

Article 122.

Requirements for grant

1 – An invention shall be considered new when it is not part of the state or the art.

2 – An invention entails inventive activity when it fulfils one of the following requirements:

a) If, according to a person skilled in the art, it does not evidently result from the state of the art.

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

3 – When assessing the inventive activity mentioned in the previous number, the documents referred to in no. 2 of article 55. shall not be taken into account.

4 – An invention shall be considered to have industrial application if its subject matter can be manufactured or used in any type of industry or agricultural activity.

5 – Utility models shall be subject to the provisions of article 55. and 56., subject to the necessary adaptations.

Article 123.

General rule regarding entitlement to a utility model

The provisions of article 57 shall apply to utility models.

Article 124,

Special rules for utility model ownership

Article 58. and 59 shall apply to utility models.

Article 125.

Inventor rights

Article 60 shall apply to utility models.

SECTION II

Utility model process

SUB-SECTION I

National route

Article 126.

Form of the application

1 – A utility model application shall be made via a request drafted in Portuguese, indicating the following:

a) The name, trade name or corporate name of the applicant, his or her nationality, domicile or establishment location, tax number when dealing with a resident of Portugal and e-mail address, should it exist;

b) The epigraph or title that summarises the subject matter of the invention;

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

d) The country where the first application was filed, the date and number of that submission, in the event that the applicant wishes to claim the right of priority;

e) Mention that an application was filed for the same invention under no. 5 of article 50., if that is the case.

f) Signature or electronic identification of the applicant or his or her representative.

2 – The drawings used to illustrate the invention shall not be considered a subject matter of claim.

3 – For the purpose of the provisions of no. 1 of article 12., in addition to the elements required in sub-paragraph a) of no. 1, shall be submitted a document that describes the subject matter of the application in a manner that would allow execution of the invention by a person skilled in the art, or in the absence of such a document, when the priority of a prior application has been claimed, an indication of the number and date of the previous application and the organisation where such an application was filed.

4 – The document stipulated in the previous number may be submitted in English and the applicant shall be notified to provide within a period of one month, extendable one single time for an identical period, a Portuguese translation, otherwise face refusal of the application.

Article 127.

Documents to be submitted

Article 62. shall apply to utility models.

Article 128.

Descriptive sufficiency

Article 66. shall apply to the utility models.

Article 129.

Formal examination

1 – Once the patent application is submitted to the INPI, I. P. an examination shall be conducted within a period of two months, in order to verify compliance with the minimum elements mentioned in the no. 3 of article 126. for the purposes of attributing a date to the application and conducting an examination regarding the form and limitations of the subject matter or utility model, in order to verify whether it meets the requirements established in articles 120., 121., 126. And 127.

2 – If as a result of the examination the INPI, I. P. ascertains the lack of one of the minimum elements referred to in no. 3 of article 126., the existence of formal irregularities or limitations regarding the subject matter or utility model, the applicant shall be notified to correct them within the inextensible period of two months.

3 – If the INPI, I. P. in the face of an insufficient response, ascertains that the application still has formal irregularities, lacks of any of the minimum elements mentioned in no. 3 of article 126, or has limitations regarding the subject matter or utility model, the applicant shall once again be notified to correct them within an inextensible period of one month.

4 – If the application contains all the elements and requirement stipulated in no. 1 or if the applicant corrects it within the established time periods, the application shall be published pursuant to the terms of article 131.

5 – If the application does not contain all the elements and requirements referred to in no. 1 and the applicant fails to correct it within the established time periods, the application shall be refused and the respective decision published in the Industrial Property Bulletin, and in such a case there shall be no publication like the one referred to in article 131.

Article 130.

Search report

1 – Once the examination stipulated in the previous article has been performed and up until a maximum period of 10 months counted from the date of the application, a search shall be conducted on the state of the art in order to assess the patentability requirements.

2 – The search report shall not be binding and shall be immediately sent to the applicant.

Article 131.

Publication of the application

1 – If the utility model application has been submitted in a proper manner or corrected in accordance with no. 4 of article 129., it shall be published in the Industrial Property Bulletin with a mention of the elements stipulated in articles 126. and 127. that are considered relevant to the publication, including a transcription of the summary and the international patent classification, along with a copy of the search report stipulated in the previous article.

2 – The publication referred to in the previous number shall be undertaken six months from the date of the application; however, it may be published earlier at the express request of the applicant.

3 – The publication can also be postponed at the request of the applicant for a period of no more than 18 months counted from the date of the utility model application or of the claimed priority.

4 – Utility models shall be subject to the provisions of no. 4 of article 69.

Article 132.

Examination of the invention

1 – The INPI, I. P. shall undertake examination of the invention, taking into account all the elements of the case.

2 – Once the opposition time period has elapsed without any opposition having been submitted, a report on the examination shall be drafted within a period of one month.

3 – If there is opposition, the examination shall be conducted after submission of the last procedural written pleading mentioned in article 17.

4 – If the examination concludes that the utility model can be issued, a grant notice shall be published in the Industrial Property Bulletin.

5 – If on the contrary, it is concluded that utility model cannot be issued, the report shall be sent to the applicant with notification to respond to the comments made within a period of two months.

6 – If after the applicant's response there are still objections as to the grant of the utility model, a new notification shall be made so that, within a period of two months, all unanswered questions can be addressed, and, if necessary, another notification can be made with an identical time period.

7 – When subsequent to the response it is concluded that the utility model can be issued, the grant notice shall be published in the Industrial Property Bulletin.

8 – If the response to the notifications is considered insufficient, the refusal or partial grant notice shall be published in accordance with the examination report.

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

Article 133.

Partial grant

Article 71. shall apply to utility models.

Article 134.

Amendments to the application

Article 72. shall apply to utility models.

Article 135.

Unity of invention

Article 73. shall apply to utility models.

Article 136.

Publication of the fascicle

Article 74. shall apply to utility models.

Article 137.

Grounds for refusal

1 – In addition to what is stipulated in article 23., a utility model shall be refused if:

- a) The invention lacks novelty, inventive activity or has no industrial application;
- b) The subject matter is included in articles 120 or 121.;
- c) The epigraph or title given to the invention covers subject matter that is different or if there is a difference between the description and the drawings;
- d) Its subject matter is not described in a manner that permits execution of the invention by a person skilled in the art, as provided for in article 128.;
- e) If all that constitutes the subject matter of the invention is not described clearly;
- f) If it is considered a design or model due to its description and claims;
- g) There has been infringement of article 57. to 59.

2 – In the case provided for in sub-paragraph g) of the previous number, instead of refusal of the utility model, it may be transferred to the interested party if the latter has requested such.

3 – Recognition that the applicant intends to undertake unfair competition or that it is possible that this will take place, regardless of his or her intention shall also constitute motives for refusal.

Article 138.

Notification of the final decision

Article 76. shall apply to utility models.

SUB-SECTION II

Patent Cooperation Treaty route

Article 139.

Applicable provisions

Articles 91. to 97. shall apply to utility models, subject to the necessary adaptations.

SECTION III

Effects of the utility model

Article 140.

Scope of the protection

1 – The scope of the protection conferred by the utility model shall be determined by the content of the claims, and the description and drawings shall be used to interpret them.

2 – If the subject matter of the utility model pertains to a process, the granted rights shall cover the products obtained directly through the process protected by the utility model.

Article 141.

Reversal of the burden of proof

Article 99. shall apply to utility models.

Article 142.

Duration

1 – The duration of the utility model shall be six years counted from the application filing date.

2 – During the last six months of the validity of the utility model the owner may request its extension for a period of two years.

3 – During the last six months of the period mentioned in the previous number the owner may submit a second and last request for extending the duration of the protection for a new period of two years.

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

Article 143.

Indication of utility model

During the validity of the utility model its owner may use the expression “Utility model no.” and “UM no.” on the products.

Article 144.

Rights conferred by a utility model

1 – The utility model grants the exclusive right to exploit the invention anywhere within Portuguese territory.

2 – If the subject matter of the utility model is a product, it shall entitle its owner to prohibit third parties from manufacturing, using, or offering the product for sale or importing it for such purposes without the owner's consent.

3 – If the subject matter of the utility model is a process, it shall entitle the owner to prohibit third parties from using the process, or using or offering for sale or selling or importing for such purposes the product directly obtained through that process without the owner's consent.

4 – The owner of the utility model may oppose all acts that constitute an infringement of his or her invention even if they are based on another utility model with a later priority date, without the need to oppose to the titles or request annulment of the utility models on which that right is based.

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

Article 145.

Limitation of the rights conferred by the utility model

1 – The rights conferred by the utility model shall not cover:

- a) Acts performed privately and without any commercial purpose;
- b) Acts performed for experimental purposes that involve the protected subject matter.

2 – The provisions of sub-paragraphs e), f) and g) of article 103. shall apply to utility models.

Article 146.

Exhaustion of the right

The rights conferred by the utility model shall not allow the owner to prohibit the acts pertaining to the products protected by the utility model after their commercialisation by the owner or with his or her consent, within the European economic space, unless there are legitimate reasons for the owner of the utility model to oppose commercialisation of the products.

Article 147.

Unenforceability

Article 105. shall apply to utility models.

SECTION IV

Conditions of use

Article 148.

Loss and expropriation of the utility model

Article 106. shall apply to utility models.

Article 149.

Obligation to exploit

Article 107. shall apply to utility models.

Article 150.

Compulsory licenses

Article 108. to 113. shall apply to utility models.

SECTION V

Invalidity of the utility model

Article 151.

Nullity

In addition to the provisions of article 32., utility models shall be considered null in the following cases:

- a) When their subject matter does not meet novelty, inventive activity and industrial application requirements;
- b) When their subject matter cannot be protected under articles 119. to 121.;
- c) When it has been recognised that the title or epigraph given to the invention covers a different object;
- d) When its subject matter has not been described in a manner that allows its execution by a person skilled in the art.

Article 152.

Declaration of nullity or partial annulment

Article 115. shall apply to utility models.

CHAPTER II

Semiconductor topographies

SECTION I

General provisions

Article 153.

Definition of a semiconductor

A semiconductor is the final or intermediate form of any product that cumulatively:

- a) Consists of material body that includes a layer of semiconductor material;
- b) Has one or more layers consisting of conductor, insulator or semiconductor material, said layers being arranged in accordance with a pre-determined three-dimensional model;
- c) Used to perform an electronic function, whether exclusively or together with other functions.

Article 154.

Definition of the topography of a semiconductor

The topography of a semiconductor is a series of related images, fixed and codified, representing the three-dimensional arrangement of the layers that make up the product, whereby each image contains the arrangement or part of the arrangement of a surface of the same product, during any phase of its manufacture.

Article 155.

Object of legal protection

1 – Only topographies of semiconductors that are the result of intellectual efforts by the person who created them and are not known in the semiconductor industry can be legally protected.

2 – Topographies that consist of elements that are known in the semiconductor industry shall also be legally protected as long as the combination of those elements as a whole satisfies the conditions stipulated in the conditions of the previous number.

3 – The protection granted to semiconductor topographies shall only apply to the topographies themselves, excluding all concepts, processes, systems, techniques or codified information that they may incorporate.

4 – All creators of the final or intermediate topography of a semiconductor shall enjoy exclusive right of access to that topography, as long as it meets applicable legislation, namely with respect to registration.

5 – Registration cannot, however, take place after a period of 2 years counted from the first commercial exploitation of the topography in any location, nor can it take place after a period of 15 years counted from the date of first commercial exploitation that was established or codified for the first time if it has never been exploited.

Article 156.

General rule regarding right of registration

Article 57. shall apply to semiconductor topographies.

Article 157.

Special rules for registration ownership

Articles 58. and 59. shall apply to semiconductor topographies.

Article 158.

Creator rights

Article 60. shall apply to semiconductor topographies.

Article 159.

Applicable rules

Semiconductor topographies shall be subject to patent legislations in all that does not contradict the nature of that private right.

SECTION II

Registration process

Article 160.

Form of the application

An application for registration of semiconductor topographies shall be subject to articles 61., 62, and 67 to 74., subject to the necessary adaptations.

Article 161.

Grounds for refusal

1 – In addition to what is stipulated in article 23., registration of the semiconductor topography shall be refused if:

- a) The semiconductor topography is not a topography as worded in article 153. and 154.;
- b) The semiconductor topography does not fulfil the requirements established in article 155.;
- c) The epigraph or title given to a semiconductor topography covers a different subject matter or there is a difference between the description and the drawings;
- d) Its subject matter is not described in a manner that allows execution of the semiconductor topography by a person skilled in the art;
- e) Articles 57. to 59. have been violated.

2 – In the case provided for in sub-paragraph e) of the previous number, instead of refusing the registration, transfer to the interested party may be granted if he or she has requested it.

3 – Recognition that the applicant wishes to undertake unfair competition or that such may be possible regardless of his or her intention shall also constitute a reason for refusal.

SECTION III

Effects of the registration

Article 162.

Duration

The duration of the registration shall be 10 years, counted from the date of the respective application or the date when the topography was first exploited in any location, if this took place first.

Article 163.

Indication of registration

During the validity of the registration, its owner may use the capital letter “T” in one of the following manners for semiconductors manufactured using protected topographies:

T, “T,” [T], (T) T* or T

Article 164.

Rights conferred by the registration

1 – Registration of the topography shall entitle the owner to exclusive use throughout all of Portuguese territory, producing, manufacturing, selling or exploiting that topography or the products to which it applies, with the obligation to do so effectively and in accordance with market needs.

2 – Registration of the topography shall also entitle the owner to authorise or prohibit any of the following acts:

- a) Reproduction of the protected topography;
- b) Import, sale or distribution by any other form with a commercial purpose of a protected topography, a semiconductor that incorporates a protected topography, or an article that incorporates that type of semiconductor, only in so far as it continues to include an illegally reproduced topography.

Article 165.

Limitation of the rights conferred by the registration

The rights conferred by the topography registration shall not cover the following:

- a) Private reproduction of a topography for non-commercial purposes;
- b) Reproduction for the purpose of analysis, assessment or education;
- c) Creation of a distinctive topography on the basis of the analysis or assessment mentioned in the previous sub-paragraph that may benefit from the protection stipulated in the present Code;
- d) Execution of any of the acts mentioned in no. 2 of the previous article in relation to a semiconductor that incorporates an illegally reproduced topography or any item that incorporates a semiconductor of that type, if the person who executed or ordered execution of those acts did not know or had no obligation to know, at the time of acquiring the semiconductor or the item that incorporated the semiconductor that said item incorporated an illegally reproduced topography;
- e) If the person mentioned in the previous sub-paragraph has received sufficient information that the topography was reproduced illegally before he or she performs any of the acts in question in relation to the products in his or her power or ordered before that time, he or she shall pay the equivalence of a royalty in an amount suited to the one applicable under a freely negotiated license for a topography of that type.

Article 166.

Exhaustion of the right

The rights conferred by the registration of the topography shall not allow their owner to prohibit acts pertaining to topographies or semiconductors that the right protects, after commercialisation by the owner or with his or her consent within the European Economic area, unless there are legitimate reasons for the owner of the registration to oppose their continued commercialisation.

Article 167.

Unenforceability

Article 105 shall apply to the rights granted by the registration of semiconductor topographies.

SECTION IV

Conditions of use

Article 168.

Loss and expropriation of the registration

Article 106 shall apply to semiconductor topographies.

Article 169.

Compulsory exploitation license

Semiconductor topographies shall be subject to articles 107. to 113. in cases where the compulsory licenses have a public purpose that is not commercial.

SECTION V

Invalidity of the registration

Article 170.

Nullity

In addition to the provisions of article 32., registration of the semiconductor topography shall be null in the following cases:

- a) When its subject matter does not satisfy the requirements stipulated in article 153, 154. and 155;
- b) When it is recognised that title or epigraph given to the topography covers a different subject matter;
- c) When its subject matter has not been described in a manner that allows it to be executed by a person skilled in the art.

Article 171.

Declaration of nullity or partial annulment

Article 115. shall apply to registration of semiconductor topographies.

Article 172.

Revocation

In addition to the provisions of article 36., the registration of the semiconductor topography shall expire under the following conditions:

a) Ten years after the last day of the calendar year during which the registration application was formally made, or the last day of the calendar year when the topography was commercially exploited in any location if the latter occurred first;

b) If the topography has not been commercially exploited, 15 years after the date when the topography was established or codified for the first time.

CHAPTER III

Designs or models

SECTION I

General provisions

Article 173.

Definition of design or model

The design or model shall depict the appearance of all or part of a product resulting from the characteristics of the lines, contours, colours, form, texture or materials of the actual product and its ornamentation.

Article 174.

Definition of product

1 – Product refers to any industrial or artisanal item, including, among others, components for assembling a complex product, packaging, presentation elements, graphic symbols and typographical characters, excluding computer software programmes.

2 – A complex product refers to any product consisting of multiple components that can be removed from the product to disassemble it and reinsert the components in the product to assemble it once again.

Article 175.

Requirements for grant

1 – Designs or models that are new and have a distinctive character shall be legally protected.

2 – Designs or models that are not entirely new, but undertake new combinations of known elements or different arrangements of already used elements, so as to give the respective products a distinctive character shall also be legally protected.

3 – Without prejudice to the previous numbers, up until the publication of the design or model, the same applicant may apply for the registration of other designs or models that differ from the one that was initially submitted, with respect to insignificant details.

4 – A design or model that is applied or incorporated into a product that is a component of a complex product shall be considered new and possess a distinctive characteristic whenever the following cumulative characteristics are present:

a) If from it one can reasonably expect that even after it is incorporated into the complex product it continues to be visible during normal use of said product;

b) The visible characteristics of this component fulfil the requirements of novelty and distinctiveness character.

5 – For the purpose of the provisions of sub-paragraph a) of the previous number, normal use is that which is performed by the final user, excluding acts of conservation, maintenance or repair.

6 – The following are not protected by the registration:

a) The appearance characteristics of a product that are exclusively determined by its technical function;

b) The appearance characteristics of a product that shall necessarily be reproduced in their exact form and dimensions, in order to allow the product into which the design or model is incorporated or applied to be mechanically connected to another product, whether placed inside of it, around it or against that other product, so that both can carry out their function.

7 – Registration of the design or model shall be possible under the conditions stipulated in the following article and article 177., as long as its purpose is to allow a multiple assembly of interchangeable products, or connection to a modular system, without prejudice to the provisions of sub-paragraph b) of the previous number.

8 – If the registration was refused, pursuant to nos. 1 to 3 and sub-paragraphs a), d) to f) of no. 4 of article 192., or declared null or annulled in accordance with articles 202. to 207., the design or model may be registered or the respective right maintained in an unaltered form, as long as the following conditions have been met cumulatively:

a) Its identity has been maintained;

b) The necessary amendments are made in order to fulfil the protection requirements.

9 – Registration or maintaining it in an amended format, stipulated in the previous number, may be accompanied by a declaration of partial renunciation by its owner or of the decision via which partial nullity was declared or via which the registration was partially annulled.

Article 176.

Novelty

1 – The design or model shall be considered new if, before the respective registration application or the claimed priority, no identical design or model has been disclosed to the public inside or outside of the country.

2 – Designs or models whose specific characteristics differ only with respect to insignificant details shall be considered identical.

Article 177.

Distinctive character

1 – A design or model shall possess a distinctive character if the overall impression that it causes on the informed user differs from the overall impression caused to said user by any other design or model that has been disclosed to the public before the registration application date or the claimed priority.

2 – When assessing the distinctive character, the degree of freedom enjoyed by the creator for undertaking the design or model shall be considered.

Article 178.

Disclosure

1 – For the purpose of article 176. and the previous article, a design or model shall be considered publically disclosed if it has been published following registration, or under any other circumstance, introduced at an exposition, used in commerce, or made known in any other way, unless such facts could not have reasonably become known to the specialists in the sector in question working in the European Union, during the course of their daily activity, before the registration application or claimed priority.

2 – However, the mere fact that the design or model has been introduced to a third party under explicit or implicit conditions of confidentiality shall not be considered public disclosure.

Article 179.

Non-prejudicial disclosures

1 – For the purpose of articles 176. and 177., if the design or model whose registration is sought has been publicly disclosed under the following cumulative conditions it shall not be considered disclosure:

a) By the creator, his or her successor or by a third party, subsequent to information provided or measures taken by the creator or his or her successor;

b) During a period of 12 months that precedes the date when the registration application was submitted, or if priority is claimed, the priority date.

2 – Number 1 shall also apply if the design or model has been disclosed to the public as a result of abuse of the creator or his or her successor.

3 – An applicant who wishes to benefit from the provisions of the previous numbers shall indicate, at the time of submission of the application or within a period of one month, the date and location where the disclosure or exposition took place, submitting a supporting document that indicates said date and reproduces the products into which the design or model was incorporated or in which it was applied.

4 – A design or model registration applicant who has exhibited products into which the design or model was incorporated or applied, at an official or officially recognised international exposition that falls within the provisions of the Convention Relating to International Exhibitions signed in Paris on 22 November 1928 and revised on 30 November 1972, if an application is submitted within a period of six months counted from the first date of exposition of said products, may claim a priority right as of that date, pursuant to article 13.

5 – An applicant who wishes to claim priority in accordance with the previous number shall submit an application, or within a period of one month, a certificate issued by the entity responsible for the exposition, indicating the date of first public disclosure and which reproduces the products in which the design or model was incorporated or to which the design or model was applied.

6 – At the request of the applicant, the time periods mentioned in nos. 3 and 5 can be extended only once for an equal period of time.

Article 180.

General rule regarding right to registration

Article 57 shall apply to designs or models.

Article 181.

Special rules regarding ownership of the registration

Article 58. shall apply to designs or models, without prejudice to provisions pertaining to copyright.

Article 182.

Creator rights

Article 60. shall apply to designs or models.

SECTION II

Registration process

Article 183.

Filing of applications

1 – The registration application for a design or model shall be made via an application drafted in Portuguese, indicating or containing the following:

a) The name, trade name or corporate name of the applicant, his or her nationality, domicile or place of establishment, tax number when dealing with a resident of Portugal and e-mail address, should it exist;

b) Indication of the products in which the design or model is to be applied or incorporated, using the terms of the international classification of designs and industrial models;

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

d) The country where the first application was filed, the date and number of that submission, if the applicant wishes to claim the right of priority;

e) The colours, if they are claimed;

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

2 – The illustrations or any other figures used to identify or describe the design or model, or which are included in its depictions shall not be considered a subject matter of protection, nor shall they determine its scope.

3 – For the purpose of no. 1 of article 12., in addition to the elements required in subparagraph a) of no. 1, shall be submitted a representation of the design or model, or instead of this, when priority of a prior application has been claimed, indication of the number and date of the previous application and the organisation where such an application was submitted.

Article 184.

Documents to be submitted

1 – The request shall be joined by graphic or photographic illustrations of the design or model, for the purpose of publication, with a representation of the product whose design or model is to be registered.

2 – The application shall also be accompanied by the following elements:

a) Authorisation to include any symbols, coats of arms, emblems or badges of the State, municipalities or other public or private entities, national or foreign, the emblem and name of the Red Cross, or other similar organisations, along with any signs covered by article 6. of the Paris Convention for the Protection of Industrial Property;

b) Authorisation, when applicable, to include signs with a high symbolic value in the design or model, namely religious symbols;

c) Authorisation of the person whose name or photograph figures on the design or model and is not the applicant.

3 – Upon his or her initiative, or via notification of the INPI, I. P., the applicant may submit a description, containing no more than 50 words per product, mentioning only the elements that appear on the illustrations of the design or model or in the sample that is submitted, refraining from making mentions pertaining to any possible novelty, the distinctive nature or technical value of the design or model.

5 – When the subject matter of the application is a complex product, the graphic illustrations referred to in no. 1 shall illustrate and identify the parts of the product that are visible during its normal use.

6 – When the subject matter of the application is a two-dimensional drawing and the application includes, in accordance with article 190., a request to postpone the publication, the graphic illustrations referred to in no. 1 may be replaced with a sample of the product into which the drawing has been incorporated or applied, without prejudice to its presentation at the end of the postponement period.

7 – The graphic or photographic illustrations of the design or models' requests referred to in no. 1 of article 186. shall be numbered sequentially in accordance with the total number of designs or models that are to be included in the same application.

8 – Subject to notification from the INPI, I. P., the applicant shall submit the actual product or other photographs taken from points of view that concurrently form a more precise idea of the design or model.

9 – When the applications for registering the design or model include a claim for a combination of colours, the graphic or photographic illustrations shall depict the claimed colours and the description, when depicted, shall refer to them.

Article 185.

Unity of the application

1 – No more than one registration can be requested in the same application and each design or model shall require a different registration.

2 – Designs or models that constitute various parts that are indispensable to forming a whole shall be included in a single registration.

Article 186.

Multiple applications

1 – Without prejudice to the previous article, one application may include up to 100 products, as long as they belong to the same class of the international classification of industrial designs and models.

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

3 – At the initiative of the applicant or subsequent to an examination revealing that an application for multiple registration of a design or model includes products that do not belong to the same class of international classification of industrial designs and models, the applicant may, at his or her own initiative or in compliance with a notification, divide the application into a certain number of individual applications, each one preserving the date of the initial application and if applicable, the benefit of the right of priority.

4 – For the purposes mentioned in the previous number, a divisional application may only contain elements that do not go beyond the content of the initial application.

5 – Each design or model included in the multiple application or registration can be separated or transferred independently of the others.

6 – If it is deemed that some of the products included in a multiple application do not constitute a design or model in accordance with article 173. and 174., the applicant shall be notified to undertake the respective reformulation for a patent or utility model, the initial application date being maintained as the application date.

Article 187.

Examination of the form and ex officio examination

1 – Once the application for registration has been submitted to the INPI, I. P., the formal requirements established in articles 173., 174., nos. 3 and 5 of article 179, and articles 183 to 186. shall be examined within a period of one month.

2 – Over the course of the time period mentioned in the previous number, the INPI, I. P. shall also verify ex officio whether the application infringes some of the prohibitions stipulated in nos. 1 to 3 of article 192.

3 – If the INPI, I. P. ascertains that there are formal irregularities in the application or some of the grounds for refusal are present as per nos. 1 to 3 of article 192., the applicant shall be notified to correct or rectify the objections that have been pointed out within a period of one month.

4 – At the request of the applicant, the time period mentioned in the previous number may be extended only once for the same amount of time.

5 – If subsequent to the response of the applicant the irregularities have been corrected and the objections rectified, the application shall be published for the purposes of the following article.

6 – If, on the contrary, the irregularities or objections remain, the registration shall be refused and the respective decision shall be published in the Industrial Property Bulletin.

7 – When the objections pertain only to some of the products, the application shall be published with respect to the other products with a mention of the products for which there are objections that were not addressed.

8 – Notification shall be immediately given of the refusal decision provided for in no. 6, in accordance with no. 1 of article 16., with indication of the Industrial Property Bulletin in which the respective decision was published.

9 – After the time periods stipulated in article 17. have elapsed, the provisions of the present article shall not hinder the INPI, I. P. from claiming lack of compliance with the requirements mentioned in no. 1 or the existence of the prohibitions mentioned in no. 2, notifying the applicant to correct or rectify the objections that have been signalled, in accordance with the time periods provided for in this article.

Article 188.

Publication

1 – If the application has been properly submitted or the irregularities have been corrected and the objections rectified, pursuant to no. 5 of the previous article, the registration application shall be published in the Industrial Property Bulletin, with mention of the elements provided for under article 183. and 184. that are considered relevant for publication purposes, including reproduction of the design or model and the international classification of the designs and industrial models, for the purpose of allowing claims by anyone who considers him or herself to have been harmed by the grant of the registration.

2 – The publication referred to in the previous number may be postponed in accordance with article 190.

3 – Notwithstanding the provisions of the previous article and whenever the applicant fails to submit the necessary clarifications or authorisations, the expressions indicated in no. 2 of article 183. shall be eliminated ex officio from the product indications and shall not be included in its publication.

Article 189.

Amendment of the application

After the application has been published it can only be amended at the request of the applicant in order to limit the number of products or to correct the name or address indicated in the application, textual or transcription errors, or manifest errors, as long as the amendment does not substantially affect the design or model or does not broaden the scope of the indication of the products in which the design or model is to be applied or incorporated.

Article 190.

Postponement of the publication

1 – Upon submitting the registration application for a design or model, the applicant may ask that the publication be postponed for a period that does not exceed 30 months counted from date on which the application was submitted or the priority was claimed.

2 – Requests for postponement of the publication that are submitted after the registration application date shall be subject to approval and decision by the INPI, I. P.

3 – If publication is postponed, the design or model shall be entered into the INPI, I. P. registries, but the application process shall not be disclosed.

4 – Whenever the applicant requests postponement of publication, the INPI, I. P. shall publish, four months after the application submission date, a notice of that postponement, which shall include indications that at least identify the applicant, submission date of the application and the requested postponement period.

5 – At the request of the applicant, publication of the application may be undertaken before the postponement period has ended if all the required legal formalities have been complied with.

Article 191.

Subsequent formalities

1 – At the end of the opposition time period if no opposition has been submitted, registration is issued, fully or partially, and the grant decision shall be published, whether full or partial, in the Industrial Property Bulletin.

2 – Whenever an opposition has been submitted, once the discussion has ended, the INPI, I. P. shall undertake analysis of the grounds for refusal invoked by the opponent, within the period of one month.

3 – The grounds for refusal stipulated in nos. 4 and 5 of the following article shall only be analysed by the INPI, I. P. if invoked by the opponent.

4 – When the opposition is considered valid, the registration is refused, and the refusal decision shall be published in the Industrial Property Bulletin.

5 – When the opposition is considered invalid, registration is issued, and the grant decisions published in the Industrial Property Bulletin.

6 – When the opposition is considered valid only with regard to some products included in the application, registration shall be partially issued for the other products, and the partial grant decision shall be published in the Industrial Property Bulletin with mention of the products that are the object of the refusal.

7 – The orders mentioned in the previous numbers shall immediately be given notice of in accordance with no. 1 of article 16. with indication of the Industrial Property Bulletin in which the respective decision was published.

Article 192.

Grounds for refusal

1 – In addition to the provisions of article 23., registration of a design or model that contains the following shall be refused:

a) Any symbols, coats of arms, emblems or badges of the State, municipalities or other public or private entities, national or foreign, the emblem and name of the Red Cross, or other similar organisations, along with any signs covered by article 6. of the Paris Convention for the Protection of Industrial Property, unless authorised;

b) Signs that have a high symbolic value, namely religious symbols, unless authorised, when applicable, and except when they are common in the current language or bona fide and established practices of the trade of the products that the design or model pertain to and are accompanied by elements that grant them a distinctive character;

c) Expressions or figures that run counter to the law, morals, public order and proper customs.

2 – Registration of a design or model that consists exclusively of the flag of the Portuguese Republic or of some of its elements shall also be refused.

3 – Registration of a design or model shall also be refused if it contains, among other elements, the flag of the Portuguese Republic in cases that lead to the following:

a) The consumer is led to suppose wrongly that the products or services come from an official entity;

b) Produce disrespect or lead to reduced prestige of the Portuguese national flag or any one of its elements.

4 – When invoked by an interested party the registration is refused if:

a) The design or model does not meet the conditions stipulated in articles 175. to 179.;

b) If there has been an infringement of the provisions of articles 57. to 58. subject to the necessary adaptations;

c) The design or model interferes with a previous design or model that was publicly disclosed after the date of the application or the claimed priority date and has been protected since a previous date by an application or registration of a design or model;

d) A distinctive sign is used in a subsequent design or model and EU law or the provisions that regulate that sign issue the right to prohibit that use;

e) The design or model constitutes unauthorised use of a work that is protected by copyright;

f) The design or model includes names, portrayals or any expressions or figures without having obtained authorisation from the people they pertain to and if they are deceased, from their heirs or parents up until the 4th degree, or if it has been obtained, it results in disrespect or loss of prestige for those persons;

g) The registration application has been made in bad faith.

5 – A design or model may also be refused registration when an interested party invokes recognition that the applicant wishes to undertake unfair competition or that such may be possible regardless of his or her intention.

SECTION III

Effects of registration

Article 193.

Scope of the protection

1 – The scope of the protection issued through registration covers all designs or models that do not lead to a different overall impression on the informed user.

2 – When assessing the scope of the protection, the degree of freedom that the creator has to execute his or her design or model shall be taken into account.

Article 194.

Relationship with copyright

Any registered design or model shall also benefit from the protection issued under legislation with regard to copyright as of the date when the design or model was created or defined in any form.

Article 195.

Duration

1 – The duration of the registration shall be 5 years counted from the date of the application and it may be renewed fully or partially for equal periods of time up until a limit of 25 years.

2 – The renewals mentioned in the previous numbers shall be required during the last six months of the validity of the registration.

Article 196.

Indication of the design or model

During the validity of the registration its owner may use the expression “Design or model no.” or the abbreviations “DM no.” on the products.

Article 197.

Rights conferred by the registration

1 – Registration of a design or model shall grant its owner the exclusive right to use and prohibit its use by third parties without his or her consent.

2 – The use referred to in the previous number shall particularly cover the manufacture, offering, marketing, importing, exporting or use of a product into which that design or model was incorporated or to which it was applied, along with warehousing of that product for such purposes.

Article 198.

Limitation of the rights conferred by the registration

The rights conferred by the registration shall not cover:

- a) Acts performed within a private scope and without commercial gain;
- b) Acts performed for experimental purposes;
- c) Acts pertaining to reproduction or for reference or educational purposes, as long as they are compatible with fair trading practices, do not unduly harm normal exploitation of the design or model, and the source is mentioned;
- d) Equipment onboard ships and aircraft registered in another country when they temporarily pass through national territory;
- e) The importing of spare parts and accessories to repair such ships and aircraft;
- d) Execution of the repairs on such ships and aircraft.

Article 199.

Exhaustion of the right

The rights conferred by the registration shall not allow their owner to prohibit acts pertaining to products into which a design or model that was the subject matter of previous protection under a registration was incorporated or applied when the product was commercialised by the owner or with his or her consent within the European Economic area.

Article 200.

Unamendability of the designs or models

- 1 – As long as the registration is valid, the designs or models shall remain unamended.
- 2 – Expansion or reduction at scale shall not affect the unamendability of the designs or models.

Article 201.

Amendment of the designs or models

1 – Any amendment made to the specific essential characteristics of the designs or models may be registered as long as it respects the requirements established in article 175.

2 – The amendments made by the owner of the registration with respect to the designs or models that only change insignificant details can be the subject matter of a new registration or registrations.

3 – The registration or registrations referred to in the previous number shall be entered in the registry and included, when they exist, in the initial title and in all titles of the registrations undertaken in accordance with the same provision.

4 – The amended registrations referred to in no. 2 shall revert to the public domain in accordance with the validity of the initial registration.

SECTION IV

Invalidity of the registration

Article 202.

Nullity

In addition to the provisions of article 32., the registration of a design or model shall be null and void when upon its grant the provisions of nos. 1 to 3 and sub-paragraphs a), c) and g) of no. 4 of article 192. have been violated.

Article 203.

Annulability

In addition to the provisions of article 33., the registration of the design or model shall be annulable when upon its grant, the provisions of sub-paragraphs d) to f) of no. 4 of article 193 have been violated.

Article 204.

Process for declaring nullity and annulment

1 – Persons who are legitimately entitled to file at INPI, I. P. an application for declaration of nullity or annulment of a registration of a design or model shall do so through a request drafted in Portuguese, containing the reasons on which such a request was based.

2 – For the purpose of the provisions of nos. 3 and 4 of article 34., the following shall constitute an interested party that is legitimately entitled to submit an application for declaration of nullity or annulment, respectively:

a) Any individual or legal person and any association representing manufacturers, producers, service suppliers, merchants or consumers who have the capacity to be a plaintiff or a defendant;

b) The owner of one of the rights referred to in no. 4 of article 192.

3 – An application for declaration of nullity or annulment shall be inadmissible if a request related to the same subject matter and same cause for request among the same parties has already been the subject matter of a final administrative or judicial decision on the substance.

4 – The INPI, I. P. shall refuse an application for declaration of nullity or annulment whenever there is a prior counter-action for declaration of nullity or annulment that is pending with the same subject matter and involving the same parties.

5 – In addition to what is stipulated in article 32. and 33., the applications referred to in the previous numbers may be based on any of the reasons stipulated in article 202 and the previous article.

6 – The owner of the registration of the design or model on which the declaration of nullity or annulment was based shall be notified to respond within a period of two months if he or she wishes.

7 – At the request of the interest party, the time period referred to in the previous number may be extended only once for one more month.

8 – Ex officio or at the request of one of the parties, each party may be granted an inextensible time period of two months in order to submit observations.

9 – In the case provided for in the previous number each party shall be granted an inextensible time period of one month to submit additional observations.

10 – Declaration of nullity and annulment processes shall be subject to article 18.

Article 205.

Renunciation during declaration of nullity and annulment process

1 – In cases where during the course of a declaration of nullity or annulment process of a registration of a design or model the respective owner has submitted a request for renunciation, the decision regarding this request shall be suspended and the applicant of the declaration of nullity or annulment shall be notified to, within an inextensible period of one month, indicate whether or not he or she wishes to continue the process.

2 – If after the time period stipulated in the previous number the applicant fails to respond or if he or she responds indicating that he or she wishes to close the process, the renunciation shall take effect and the application for declaration of nullity or annulment shall be considered withdrawn.

3 – If after the period stipulated in no. 1, the applicant indicates that he or she wishes to continue the process, a decision shall be rendered in accordance with the following article.

4 – In cases where nullity is declared or the registration of the design or model has been annulled with regard to all of the products, renunciation shall not take effect.

5 – In cases where nullity has been declared or the registration of the design or model has been annulled only for some products, the renunciation shall take effect only with respect to those products for which registration was not declared null or annulled.

Article 206.

Decision and effects of the declaration of nullity and annulment

1 – Once the time periods stipulated in article 204. and in the previous article have elapsed, the INPI, I. P. shall render a decision regarding the declaration of nullity or annulment.

2 – If the assessment of the application for declaration of nullity or annulment results in the finding that the registration of the design or model should have been refused with respect to all or part of the products for which it was registered, nullity shall be declared or the registration annulled with respect to the products in question.

3 – If the registration of the design or model has been declared null or annulled, it shall be deemed that it did not, from its beginning, produce the effects stipulated in the present code, without prejudice to the provisions of article 35.

4 – The declaration of nullity or annulment of the registration of the design or model shall be entered in the registry and notice of this shall be published in the Industrial Property Bulletin.

5 – The decisions mentioned in the present article shall immediately be given notice of in accordance with no.1 of article 16., with indication of the Industrial Property Bulletin in which they have been published.

Article 207.

Application for counterclaim of declaration of nullity or annulment

1 – Application for declaration of nullity or annulment of registrations of designs or models filed as part of a counterclaim shall be decided by the courts, except when declaration of nullity or annulment applications have been submitted to the INPI, I. P. prior to the filing of the application for counterclaim, in which case the proceedings shall be suspended until the decision regarding the application submitted at said Institute has been rendered final or the application has been withdrawn.

2 – The court shall refuse the application for counterclaim of the declaration of nullity or annulment whenever the INPI, I. P. has already rendered a final decision on the substance involving the same parties regarding an application involving the same subject matter and same cause.

3 – Whenever the counterclaim applications referred to in no. 1 have been filed, the court shall communicate said fact to the INPI, I. P. for the purpose of the respective entry in the registry and the provisions of no. 4 of article 204.

4 – If an application for declaration of nullity or annulment prior to the filing of the counterclaim is pending at the INPI, I. P., the Institute shall inform the court of that fact, following the communication referred to in the previous number.

5 – If a counterclaim application is filed, the court may suspend the proceedings at the request of the applicant and after the other parties have been heard, asking the defendant to submit to the INPI, I. P. an application for declaration of nullity or annulment within a period of 10 days.

6 – If the application for declaration of nullity or annulment referred to in the previous number has not been submitted, the counterclaim application shall be considered withdrawn.

CHAPTER IV

Trade marks

SECTION I

General provisions

SUB-SECTION I

Trade marks of products or services

Article 208.

Establishment of a trade mark

A trade mark may consist of a sign or series of signs that can be graphically illustrated, namely words, including names of people, drawings, letters, numbers, sounds, colour, the form of the product or the respective packaging, or via a sign or series of signs that can be represented in a way that allows determination of the subject matter of the protection granted to its owner in a clear and precise manner, as long as they are suitable for distinguishing the products or services of a company from those of other countries.

Article 209.

Exceptions

1 – The following do not meet the requirements of the previous article:

a) Trade marks that are devoid of any distinctive characteristic;

b) Signs consisting exclusively of their form or other characteristic imposed by the very nature of the product, its form or any other characteristic of the product necessary for obtaining a technical result or through their form or any other characteristic that gives substantial value to the product;

c) Signs consisting exclusively of indications that may serve in commerce to identify the type, quality, quantity, destination, value, geographical origin, time or means of production of the product or the supply of service, or other characteristics thereof;

d) Trade marks consisting exclusively of signs or indications that have become usual in current language or in bona fide and established practices of the trade.

2 – The generic elements referred to in sub-paragraphs a), c) and d) of the previous number that are included into the composition of a trade mark shall not be considered for exclusive use by an applicant, except when in commercial practice the signs have acquired distinctive character.

3 – At the request of the applicant or opponent, the INPI, I. P. shall indicate in the grant decision which constitutive elements of the trade mark shall not be exclusively used by the applicant.

Article 210.

Ownership and exclusivity

1 – Registration shall grant the owner right of ownership and exclusivity over the trade mark for the products and services for which the trade mark is registered.

2 – The State may also enjoy ownership and exclusivity over the trade marks that it uses as long as it meets applicable legislation.

Article 211.

Right of registration

The right of registration of a trade mark shall be enjoyed by the persons who have a legitimate interest in it:

a) Industrialists or manufacturers, in order to identify the products that it manufactures;

b) Merchants in order to identify the products that they sell;

c) Farmers and producers, in order to identify the products of their activity;

d) Creators or trades workers to identify the products of their art, trade or profession;

e) Those persons who supply services, in order to identify the respective activity.

Article 212.

Registration by an agent or representative of the owner

1 – If the agent or representative of the owner of a protected trade mark in one of the member countries of the Union or the WTO, but not registered in Portugal, applies for registration of that trade mark in his or her own name, without authorisation of said owner, the latter shall be entitled to oppose the registration of the trade mark or its use, unless the agent or representative justifies his or her procedure.

2 – The owner mentioned in the previous number may request total or partial reversion of the application for registration or the registration in his or her favour.

Article 213.

Unregistered trade mark

1 – A person who uses an unregistered trade mark for a period that does not exceed six months, shall for the duration of that period, have priority to undertake registration and may oppose to what has been claimed by another party.

2 – The veracity of the documents given as proof of this right of priority shall be assessed freely, unless authentic documents are involved.

SUB-SECTION II

Collective trade marks and certification or guarantee trade marks

Article 214.

Collective trade mark

1 – A collective trade mark is a sign that is determined to belong to an association of individual or legal persons whose members use it or intend to use it in order to distinguish the products or services of the members of the association from those from other entities.

2 – Registration of the collective trade mark shall entitle its owner to discipline commercialisation of the respective products, under the conditions established by law, articles of association or internal regulations.

3 – The provisions of nos. 2 to 4 of article 258. shall apply, subject to the necessary adaptations, to all persons who are qualified to use the trade mark.

Article 215.

Certification or guarantee trade mark

1 – A certification or guarantee trade mark is a particular sign that belongs to an individual or legal person who controls the products or services or establishes norms that they must comply with as regards the material, method of manufacture of the products or supply of the services, quality, precision or other characteristics of the products or services, with the exception of the respective geographical origin.

2 – This sign shall be used in the products or services that are submitted to that control or for which norms were not established.

3 – The provisions of nos. 2 and 3 of the previous article shall apply to certification or guarantee trade marks.

Article 216.

Right to registration

1 – The right to registration of certification or guarantee trade marks and collective trade marks shall be attributed to:

a) Individual or legal persons, including institutions, authorities and public law bodies to which a certification or guarantee trade mark has been legally attributed or for which a certification or guarantee trade mark has been recognised and it can be applied to certain qualities of the products or services;

b) Legal persons who are responsible for, who control or certify economic activities, in order to identify the products of those activities or those products that come from certain

regions, depending on their purposes and in accordance with the respective articles of association or legislation.

2 – The persons mentioned in sub-paragraph a) of the previous number may not perform a business activity that involves the supply of certified products or services.

Article 217.

Regulation of the use of the trade mark

1 – The persons mentioned in the previous article shall undertake inclusion of provisions in the trade mark use regulations that identify the persons who are entitled to use the trade mark, affiliation conditions in the association if dealing with a collective trade mark, the conditions under which the trade mark should be used, including respective sanctions, the trade mark use plan and the rights and obligations of the interested parties in the event of usurpation or counterfeiting.

2 – The applicant of a collective trade mark and of a certification or guarantee trade mark shall submit to the INPI, I. P. the trade mark use regulation, which shall contain the indications mentioned in the previous number.

3 – The trade mark use regulations shall authorise any person whose products or services come from the geographic zone in question to become a member of the association that owns the trade mark, as long as said person fulfils all the conditions stipulated in the regulations.

4 – Amendments to the use regulation that serve to modify the legal framework of the trade mark shall only take effect if they are communicated to the INPI, I. P. for the purposes of entry in the registry.

5 – The amendments provided for in the previous number shall not be entered in the registry if the amended use regulations do not meet the requirements of the present subsection.

Article 218.

Grounds for refusing the registration

1 – Collective trade marks and certification or guarantee trade marks shall be subject to the reasons of refusal stipulated for products and services trade marks, subject to the necessary adaptations.

2 – Registration of the trade mark shall also be refused when:

- a) The trade mark fails to meet the conditions stipulated in article 214. and 215.;
- b) The provisions of article 216. have not been complied with;
- c) The trade mark is likely to mislead the public with respect to the character or meaning of the trade mark, namely if it is likely to give the impression that the reality is one other than a collective trade mark or a certification or guarantee trade mark;
- d) The trade mark use regulations have not been submitted;
- e) The trade mark use regulations do not contain the necessary indications or are contrary to public order and proper customs.

Article 219.

Revocation

1 – Collective trade marks and certification or guarantee trade marks shall be subject to the causes of revocation stipulated for products and services trade marks, with the necessary adaptation.

2 – Registration of a trade mark shall also expire when:

a) The owner does not adopt reasonable measures to prevent the use of the trade mark that is incompatible with the conditions stipulated in the respective use regulations, including any amendments that have been duly entered in the registry;

b) Use of the trade mark by qualified persons may mislead the public with respect to the character or meaning of the trade mark, namely if it is likely to give the impression that the reality is one other than that of a collective trade mark or certification or guarantee trade mark;

c) Amendments to the use regulation were entered in the registry without having respected the provisions of no. 5 of article 217., unless the owner of the trade mark meets the requirements of the present sub-section, via a new amendment.

Article 220.

Nullity and annullability

1 – Collective trade marks and certification or guarantee trade marks shall be null and annulable for the reasons stipulated, with the necessary adaptations for the products and services trade marks.

2 – Registration of a trade mark shall also be null when the provisions of no. 5 of article 217. have been violated, unless the owner of the trade mark meets the requirements of the present sub-section through a new amendment.

Article 221.

Applicable provisions

Collective trade marks and certification or guarantee trade marks shall be subject to the provisions of the present Code regarding products and services trade marks, subject to the necessary adaptations.

SECTION II

Registration process

SUB-SECTION I

National registration

Article 222.

Filing of applications

1 – Application for trade mark registration shall be made through an application drafted in Portuguese, indicating the following:

a) The name, trade name or corporate name of the applicant, his or her nationality, domicile or place of establishment, tax number when dealing with a resident of Portugal, and e-mail address, should it exist;

b) The products or services that the trade mark will pertain to, grouped according to the categories of the international classification of products and service, with each group preceded

by the number of the class it pertains to and identified with sufficient clarity and precision, preferably in accordance with the terms of the alphabetical list of the aforementioned classification, allowing the scope of the necessary protection to be determined;

c) Express indication that the trade mark is collective or a certification or guarantee trade mark, whatever the case may be;

d) Express indication of the type of trade mark that is to be registered, in cases where three-dimensional, sound, multimedia, hologram or movement trade marks are involved, among others;

e) The number of the registration of the reward included or mentioned in the trade mark;

f) The colour or colours in which the trade mark is used, if they are claimed as a distinctive element;

g) The country in which the first trade mark registration application was submitted, the date and number of that submission if the applicant wishes to claim right of priority;

h) Indication of the date as of which the trade mark has been used, in the case provided for under article 213.;

i) Signature or electronic identification of the applicant or respective representative.

2 – Whenever for the purposes stipulated in sub-paragraph b) of the previous number the applicant uses the indications included in the titles of the international classification categories of products and services, the scope of the registration application is considered to include all products and services covered by the literal sense of the indications used, and the latter cannot be interpreted as covering products or services that cannot be included in them.

3 – For the purpose of the provisions of no. 1 of article 12., in addition to the elements required in sub-paragraphs a) and b) of no. 1, shall be submitted a representation of the intended trade mark shall be submitted that allows for clear and precise determination of the subject matter of the protection granted to its owner.

Article 223.

Documents to be submitted

1 – The application shall include a graphic representation of the sign or other form of representation that allows clear and precise determination of the subject matter of the protection granted to the respective owner, in accordance with the terms of the decision of the president of the directive council of the INPI, I. P.

2 – When the registration applications include a claim pertaining to a colour or combination of colours, the representation mentioned in the previous number shall exhibit the claimed colours.

3 – The application shall also be accompanied by the following elements:

a) Authorisation from the person whose name or picture figures on the trade mark and is not the applicant;

b) Indication of the legal provisions, articles of association or internal regulations that govern their use, when dealing with collective trade marks and certification or guarantee trade marks;

c) Authorisation to include any symbols, coats of arms, emblems or badges of the State, municipalities or other public or private entities, national or foreign, the emblem or name of the Red Cross or other similar signs covered by article 6. of the Paris Convention for the Protection of Industrial Property;

d) Authorisation from the owner of the previous registration and holder of the exclusive license, if it exists, and barring a contract provision to the contrary, pursuant to article 236.;

e) When applicable, authorisation to include signs of a high symbolic value in the trade mark, namely religious symbols.

4 – The lack of compliance with the requirements mentioned in the previous number shall not prevent attribution of a date to the application, for the purpose of no. 1 of article 12.

5 – When the trade mark contains writing in characters that are not well known, the applicant shall submit transliteration and translation of that writing, if possible.

6 – When verbal elements are included in the figurative elements of a trade mark the applicant shall specify this in the application.

Article 224.

Unity of the registration

The same trade mark that is to be used for the same product or service can only be registered once.

Article 225.

Divisional applications and registrations

1 – At the initiative of the applicant or owner of the trade mark registration an application or registration can be divided into a certain number of applications or divisional registrations, each one preserving the date of the initial application and the benefit of the right of priority, if applicable.

2 – For the purposes stipulated in the previous number an application or divisional registration can only contain elements that correspond to the content of the initial application.

Article 226.

Publication of the application

1 – A notice shall be published in the Industrial Property Bulletin regarding the submission of the application to allow any persons who believe to be harmed by the possible grant of the registration to submit an opposition, on the basis of the provisions of articles 232. to 235. or to allow third parties to make observations on the basis of article 231.

2 – The publication shall contain a representation of the trade mark, classification of the products and services in the respective categories of the international classification and shall mention the indications referred to in no. 1 of article 222., with the exception of the tax number, domicile or place of establishment and e-mail address of the applicant.

3 – The INPI, I. P. shall be responsible for verifying the classification mentioned in the previous number, correcting it if necessary by inserting precise terms or deleting incorrect terms.

Article 227.

Invocation of non-genuine use of the trade mark in an opposition process

1 – Whenever after publication of the registration application an opposition is submitted on the basis of the existence of a previous trade mark that at the date of submission of the registration application in question, or if applicable, at the date of the respective claimed priority, has already been registered for at least five years, the applicant may use the opposition to request that the opponent submit proof that the trade mark that is the subject matter of the opposition has been subject to the genuine use stipulated in nos. 1 to 3 of article 267. during a

consecutive five-year period prior to the aforementioned dates, or that there was a proper reason for non-use.

2 – In cases where the opponent, after having been notified to so do within a period of one month, extendable by one more month, does not prove that the trade mark was the object of genuine use in accordance with the previous number, or that there was a proper reason for non-use, the opposition shall be refused.

3 – In cases where the opponent submits new evidence proving that his or her trade mark was the object of genuine use for all or only some of the products or services for which it was registered, or that there was a proper reason for non-use, the opposition shall be assessed taking into account those products and services.

4 – The provisions of the present article shall apply even if a European Union trade mark is at stake and in such cases genuine use shall be determined in accordance with applicable legislation for such trade marks.

5 – The provisions of the present article shall not involve any assessment regarding the possible revocation of the trade mark registration on which the trade mark was based, and said revocation shall only be assessed if the procedures stipulated in article 269. are triggered.

Article 228.

Amendment of the application

After publication of the application, said publication can only be amended at the request of the applicant, in order to limit the list of products or services or in order correct the name or address indicated in the application, textual or transcription errors or manifest errors, as long as the amendment does not substantially affect the trade mark or does not expand the list of products or services.

Article 229.

Procedural formalities

1 – The INPI, I. P. shall exam the file, which involves examining the registered trade mark and comparing it with other trade marks and distinctive trade signs.

2 – Registration shall be granted when subsequent to examination, no reason for refusal has been found and complaints or observations by third parties, if they exist, are considered unfounded.

3 – Registration shall be immediately refused if the opposition or observation is considered unfounded.

4 – Registration shall be temporarily refused when the examination reveals reason for refusal and the complaints or observations of third parties, if they exist, have not been considered founded.

5 – The provisional refusal shall be given notice of and the applicant shall respond within a period of one month, otherwise the refusal shall become final if the objections that were made still remain in place, and this time period may be extended only once for the same amount of time at the request of the interested party.

6 – If given the response of the applicant, pursuant to no. 1 of the subsequent article there must be a notification of the owner of the trade mark that was invoked in the provisional refusal, the subsequent procedural formalities stipulated in that article shall apply.

7 – If subsequent to the response of the applicant it is concluded that the refusal is unfounded, or that the objections that were raised were corrected, the decision shall be issued within a period of one month counted from the submission of said response.

8 – If, subsequent to the response of the applicant the assessment is not changed, the provisional refusal shall be the object of a final decision.

9 – The final decision is immediately given notice of, pursuant to no. 1 of article 16. with indication of the Industrial Property Bulletin in which the respective notice was published.

Article 230.

Invocation of non-genuine use of the trade mark in the response to a provisional refusal

1 – Whenever the provisional refusal stipulated in the previous article is based on the existence of a trade mark that on the date of the submission of the registration application that is the subject matter of the examination stipulated in no. 1 of that article or, if applicable, on the date of the respective claimed priority, has been registered for at least five years, the applicant may in the response to the provisional refusal, request that the owner of that trade mark be notified to within a period of one month, extendable by one more period, submit evidence that his or trade mark was the object of the genuine use stipulated in nos. 1 to 3 of article 267. during a period of consecutive five years prior to the aforementioned dates, or that there was a proper reason for non-use.

2 – Whenever subsequent to the notification stipulated in the previous number and after the end of the time period stipulated therein the owner of the trade mark fails to prove that it was the object of genuine use or that there was a good reason for non-use, the objections raised in the provisional refusal shall be considered corrected, and the decision shall be issued within a period of one month.

3 – Whenever the owner of the previous trade mark submits evidence showing that his or her trade mark was the object of genuine use for all or only some of the products or services for which it is registered, or that there is a proper reason for non-use, the reason that served as a basis for a provisional refusal is assessed taking into account those products or services.

4 – In the cases provided for in the previous number and if there was no change made to the assessment that was conducted on the provisional refusal, said provisional refusal shall be the object of the final decision.

5 – The provisions of the present article shall apply even if a European Union trade mark is involved and, in such cases, genuine use shall be determined in accordance with legislation applicable to such trade marks.

6 – The provisions of the present article shall not imply any assessment of any possible revocation of the trade mark registration on which the provisional refusal was based, said revocation is only assessed if the procedures stipulated in article 269. are triggered.

7 – The final orders stipulated in the present article shall be subject to the provisions of no. 9 of the previous article.

Article 231.

Grounds for refusal of the registration

1 – In addition to what was stipulated in article 23., registration of a trade mark shall be refused when it:

- a) Is made up of signs that cannot be graphically illustrated or in a manner that allows for clear and precise determination of the subject matter of the protection granted to its owner;
- b) Consists of signs that do not have any distinctive characteristics;
- c) Consists exclusively of the signs or indications that are mentioned in sub-paragraphs b) to d) of no. 1 of article 209.;
- d) Contradicts the provisions of articles 208., 211. and 224.

2 – A registration of a trade mark consisting exclusively of the signs or indications mentioned in sub-paragraphs a), c) and d) of no. 1 of article 209. shall not be refused if prior to the date of the registration application and subsequent to the use that was made of it, the trade mark has acquired a distinctive characteristic.

3 – A trade mark registration shall also be refused if all or some of its elements contain the following:

a) Symbols, coats of arms, emblems or badges of the State, municipalities or other public or private entities, national or foreign, the emblem and name of the Red Cross, or other similar organisations, along with any signs covered by article 6. of the Paris Convention for the Protection of Industrial Property, unless authorised;

b) Signs of a high symbolic value, namely religious symbols, barring authorisation, when applicable and except when they are common in the current language or bona fide and established practices of the trade of the products that the design or model pertain to and are accompanied by elements that grant them a distinctive character;

c) Expressions or figures that run counter to the law, morals, public order and proper customs;

d) Signs that may mislead the public, namely with respect to the nature, qualities, utility or geographic origin of the product or service that the trade mark pertains to;

e) Signs or indications that contradict the provisions of national legislation, European Union legislation or international agreements that the European Union is a party to and which grant protection to appellations of origin and geographic indications;

f) Signs or indications that contain, in all or some of their elements, traditional mentions pertaining to wine that are protected under European legislation or international agreements that the European Union is a party to;

g) Signs or indications that contain, in all or some of their elements, guaranteed traditional specialties that are protected under European legislation or international agreements that the European Union is a party to;

h) Signs or indications that contain, in all or some of their elements, classifications of plant varieties that are protected under European Union legislation or international agreements that the European Union is a party to.

4 – Registration of a trade mark that consists exclusively of the flag of the Portuguese Republic or of some of its elements shall also be refused.

5 – Registration of a design or model shall also be refused if it contains, among other elements, the flag of the Portuguese Republic in cases that can lead to the following:

a) Mislead the public with regard to the geographic origin of the products or services that it pertains to;

b) Lead the consumer to suppose wrongly that the products or services come from an official entity;

c) Produce disrespect or lead to reduced prestige of the Portuguese national flag or any one of its elements.

6 – When invoked by an interested party it also constitutes grounds for refusal the recognition that the registration application was made in bad faith.

Article 232.

Other grounds for refusal

1 – The following shall also constitute grounds for refusal of registration of the trade mark:

a) Reproduction of a trade mark previously registered by another party for identical products or services;

b) Reproduction of a trade mark previously registered by another party for similar products or services or imitation, in whole or in part, of a trade mark previously registered by another party for identical or similar products and services that may mislead or confuse consumers, or which would entail the risk of association with the registered trade mark;

c) Reproduction of a logotype previously registered by another party to distinguish an entity whose activity is identical to the products or services that the trade mark pertains to;

d) Reproduction of a logotype previously registered by another party in order to distinguish an entity whose activity is similar to the products or services that the trade mark pertains to, or imitation, in whole or in part, of the logotype previously registered by another party in order to distinguish an entity whose activity is identical or similar to the products or services that the trade mark pertains to, if it is likely to mislead or confuse consumers;

e) Reproduction or imitation, in whole or in part, of the appellation of origin or geographical indication that merits protection under the present Code, European Union legislation or international agreements that the European Union is party to, and whose application has been submitted before the date of submission of the trade mark registration application, or if applicable, before the date of the respective claimed priority, under reservation of its subsequent registration;

f) Infringement of other industrial property rights;

g) Use of names, pictures or any other expressions of figures without having obtained authorisation from the persons involved and if they are deceased, from their heirs or relatives until the 4th degree, or if obtained, it disrespects reduces the prestige of said persons;

h) Recognition that the applicant wishes to undertake unfair competition or that such is possible regardless of his or her intention.

2 – When invoked by an interested party, the following also constitutes a reason for refusal:

a) Reproduction or imitation of the name, corporate name and other distinctive signs, or merely a characteristic part of them that do not belong to the applicant, or that the latter is unauthorised to use, if it is likely to mislead or confuse the consumer;

b) Infringement of copyright;

c) Infringement of the provisions of article 212.

3 – In the case mentioned in sub-paragraph c) of the previous number, instead of refusal of the registration, its full or partial transfer may be granted to the owner if the latter has requested such.

4 – For the purpose of the present article and the following articles, a previously registered trade mark shall refer to any registration of a national trade mark or a European Union trade mark that takes effect in Portugal.

5 – The provisions of sub-paragraphs a) to d) of no.1 cover the registration applications mentioned therein, provided that they have been subsequently registered.

Article 233.

Imitation of unregistered packages or labels

1 – Registration of trade marks that under sub-paragraphs b) and c) of no. 1 of article 238. are a reproduction or imitation of a particular external aspect, namely packaging or label, with the respective form, colour and layout of wording, medals, rewards and other elements, proven to have been used by another party in its registered trade marks shall also be refused.

2 – Parties who are interested in refusal of the trade marks mentioned in this article may only intervene in the respective process after they have submitted the registration application for their trade mark with the elements of the exterior appearance referred to in the previous number.

Article 234.

Well-known trade marks

1 – A trade mark containing the following shall be refused:

a) Reproduction of a previous trade mark that is well-known in Portugal, if it is applied to identical products or services;

b) Reproduction of a previous trade mark that is well-known in Portugal, if it is applied to similar products or services, or imitation or translation, in whole or in part, of a previous trade mark that is well-known in Portugal, if it is applied to identical or similar products or services, whenever it may be confused with the well-known trade mark or if from such an application it is possible to establish an association with the owner of the well-known trade mark.

2 – Parties who are interested in the refusal of the trade mark registrations mentioned in the previous number may only intervene in the respective process after they have submitted the application for registration of the trade mark that is at the origin of and constitutes the reason for their interest.

Article 235.

High-reputation trade marks

Without prejudice to the provisions of the previous article, a registration application shall also be rejected if the trade mark, although destined for products or services without any related identity or affinity, constitutes a translation, or is the same or similar to a previously registered trade mark that enjoys high-reputation in Portugal or the European Union, and whenever use of the subsequent trade mark seeks to derive undue benefit from the distinctive character or reputation of the trade mark or may prejudice the latter.

Article 236.

Declaration of consent

Registration of a trade mark that reproduces or imitates trade marks or other industrial property rights that have been previously registered shall require a declaration of consent from the owners of those rights and holders of exclusive licenses, if they exist and the contracts do not stipulate otherwise.

Article 237.

Partial refusal

When there is reason to refuse the registration of a trade mark only with respect to some of the products services for which the registration was requested, the refusal shall only cover those products and services.

Article 238.

Concept of imitation or usurpation

1 – A registered trade mark shall be considered imitated or usurped by another, in whole or in part, when the following occurs cumulatively:

a) The registered trade mark has priority;

b) Both are used to identify identical or similar products or services;
c) They have such a graphic, figurative, phonetic or other similarity that will easily mislead consumers or confuse them, or will result in risk of association with a previously registered trade mark in such a way that consumers cannot differentiate them without careful examination or comparison.

2 – For the purpose of sub-paragraph b) of the previous number:

a) Products and services that are included in the same class of the Nice classification may not be considered similar;

b) Products and services that are not included in the same class of the Nice Classification may be considered similar.

3 – Partial imitation or usurpation of the trade mark shall include use of a certain distinctive element that is part of another previously registered trade mark.

SUB-SECTION II

European Union Trade Mark

Article 239.

Transformation into application for registration of national trade mark and termination of seniority effects for European Union trade mark registrations

1 – When the application for European Union trade mark registration is rejected, withdrawn or considered withdrawn, or when the registration of the European Union trade mark ceases to have any effect, the respective applicant or owner may request transformation of his or her application or registration into a national trade mark application, pursuant to the provisions of the Regulation referred to in no. 2 of article 39.

2 – Once the transformation request has been received in accordance with the previous number, the INPI, I. P. shall decide on its admissibility and afterwards it shall notify the applicant to do the following within a period of two months as of that notification:

a) Fill out the national registration application form in Portuguese;

b) Add a graphic representation of the sign or other form of representation that allows for clear and precise determination of the subject matter of the protection granted to the owner;

c) Indicate the address in Portugal, e-mail address or fax number if it is in accordance with the conditions stipulated in sub-paragraph b) of no. 1 of article 10. for the purposes of no. 5 of the same article;

d) Pay the fee pertaining to the national registration application.

3 – Once the requirements indicated in the previous number have been met, a national registration case number shall be attributed, followed by the corresponding procedures.

4 – The seniority that is claimed for registration of a European Union trade mark shall cease to take effect in cases where it is subsequently ascertained that the national or international registration of the trade mark that served as the basis of the seniority was extinguished or the object of a renunciation, as long as the extinction could have taken place or could have been declared at the time when the trade mark was extinguished or was the object of a renunciation.

SUB-SECTION III

International registration

Article 240.

Right to registration

The applicant or owner of a trade mark registration who is of Portuguese nationality, domiciled or established in Portugal, may ensure protection of his or her trade mark with the contracting parties that are included in the Union of Madrid, in accordance with the provisions of the Madrid Agreement or Protocol.

Article 241.

Filing of applications

The international registration application shall be filled out using a specific form and submitted to the INPI, I. P. in accordance with the provisions of the Agreement or Protocol.

Article 242.

Renunciation

The owner of an international registration may always renounce the protection of his or her trade mark, fully or partially, within the territory of one or various contracting parties, in accordance with the provisions of the Madrid Agreement or Protocol.

Article 243.

Amendments to the registration

1 – The INPI, I. P. shall notify the aforementioned International Bureau of all the amendments that have been made to the registration of national trade marks that may influence international registration for the purposes of being part of said registry, as well as giving notice of publication and notification to the contracting countries that have granted protection.

2 – All requests for recording of transfer of trade marks to persons with no legal personality in order to obtain an international registration shall be refused.

Article 244.

Publication of the application

A notice shall be published in the Industrial Property Bulletin regarding the protection application in Portugal, for the purpose of lodging complaints or submitting observations by third parties that consider themselves harmed by the possible granting of the registration.

Article 245.

Procedural formalities

1 – The provisions of articles 229. and 230. shall apply to the trade marks of the international registry.

2 – The terms of the process shall also be regulated by the provisions applicable to the national registry and the provisions stipulated in the Agreement and Protocol of Madrid.

Article 246.

Grounds for refusal

Trade marks that have been internationally registered shall be refused protection within Portuguese territory when there has been reason for refusal of national registration.

SECTION III

Effects of registration

Article 247.

Duration

The registration shall be valid for 10 years counted from the date when the application has been submitted and may be indefinitely renewed, fully or partially, for equal periods of time.

Article 248.

Indication of registration

During the validity period of the registration, its owner may use the words “Registered Trade Mark,” the initials “R. T. M.” or simply ®.

Article 249.

Rights conferred by the registration

1 – Without prejudice to the rights acquired by the owner before the date of submission of the registration application or the claimed priority date, registration of the trade mark shall grant its owner the right to prevent third parties from using any sign during the course of economic activities without the owner’s consent if the following occur:

a) That sign is identical to the trade mark used in relation to products or services that are identical to the products or services covered by the registration;

b) That sign is identical to the trade mark and is used in relation to products or services that are similar to the products or services covered by the registration or if that sign is similar to the trade mark and is used in relation to products or services that are identical or similar to the products or services that are covered by the registration, in the event of risk of confusion or association by the consumer;

c) That sign is identical or similar to the trade mark and is used in relation to products or services that may or may not be covered by the registration, if the trade mark enjoys high-reputation in Portugal or the European Union, if it is a European Union trade mark and use of the sign derives undue benefit from the distinctive character or reputation of the trade mark or harms it.

2 – Pursuant to the previous number, the following shall be prohibited:

a) Affixation of the sign on products, their packaging or by any other means by which they are marketed;

b) Offering the products for sale bearing the sign, along with respective marketing or warehousing for that purpose, or offering or supplying services that bear the sign;

c) Importing or exporting products that bear the sign;

d) Use of the sign, in whole or in part, as a trade name or corporate name as a characteristic part of that trade name or corporate name;

- e) Use of the sign in commercial documents and advertising;
- f) Use of the sign in comparative advertising when the latter contradicts applicable legislation regarding advertising.

3 – The owner of a trade mark registration may require the publisher of a dictionary, encyclopaedia or other similar reference book, printed or in electronic format, to reproduce his or her trade mark in that work with an immediate mention that it is a registered trade mark, whenever the manner in which the trade mark is reproduced gives the impression that it is the generic name of the products or services mentioned in the work.

Article 250.

Preparatory acts

When performed during the course of the commercial operations, the owner of the trade mark registration shall be entitled to prevent the following preparatory acts:

a) Affixation of a sign that is the same or similar to his or her trade mark on labels, tags, security or authenticity elements or devices, or any other medium on which the trade mark may be affixed, if there is a risk that they may be used with products or services and said use constitutes infringement of the rights of the trade mark;

b) The offer or marketing, or respective warehousing and the import or export of packaging, labels, tags, security or authenticity elements or devices, or any other medium on which a sign that is the same or similar to his or her trade mark has been affixed, if there is a risk that they may be used in relation to products or services and said use constitutes infringement of the rights of the trade mark.

Article 251.

Goods in transit

1 – Without prejudice to rights acquired before the application filing date or the date of the priority of the registered trade mark, the owner of the registration may prevent third parties from introducing, during the course of commercial operations, goods into national territory, even if they are not in free circulation, if said goods, including the respective packaging, come from third party countries and bear a trade mark that is the same as or similar to the trade mark registered for those goods without authorisation.

2 – The right of the trade mark owner provided for in the previous number shall expire if during the legal action to determine whether there has been infringement of the registered trade mark, instituted in accordance with applicable legislation with respect to the intervention of customs authorities in order to ensure compliance with intellectual property rights, the declarant or holder of the goods provides evidence that the owner of the registered trade mark cannot prohibit the marketing of these goods in the country of final destination.

Article 252.

Legal action due to infringement

1 – The owner of a registered trade mark can only prevent use of a sign if at the date on which he or she institutes legal action in which he or she claims infringement of the trade mark, his or her right is not liable to expire pursuant to no. 1 of article 268.

2 – If registration of the invoked trade mark has completed five years at the date when the legal action is instituted, the alleged infringer may request upon contestation that the owner

of the registration submit proof that his or her trade mark meets the requirement of genuine use, as stipulated in articles 267. and 268., or that there is a proper reason for non-use.

3 – The owner of a registered trade mark may not subsequently prevent use of a registered trade mark in Portugal or the European Union if it is a European Union trade mark, when said trade mark cannot be declared null or annulled, pursuant to nos. 3 or 4 of article 260. of nos. 1 or 2 of article 261. and no. 4 of article 263. of the present Code or nos. 1, 3 or 4 of article 60. of no.1 or no. 2 of article 61., and no. 2 of article 64. of Regulation (EU) no. 207/10001 of the European Parliament and of the Council of 14 June 2017.

4 – In the cases provided for in the previous number, the owner of the subsequently registered trade mark may not oppose use of the previous trade mark, even if this right can no longer be invoked against his or hers.

Article 253.

Exhaustion of the right

1 – The rights conferred by the registration shall not allow the owner to prohibit use of the trade mark with products that are commercialised by the owner him or herself with his or her consent, within the European economic area.

2 – The provisions of the previous number shall not apply whenever there are legitimate reasons, namely when the state of those products is modified or changed after they are put on the market.

Article 254.

Limitations on the rights conferred by the registration

The rights conferred by the registered trade mark shall not allow the owner to prevent third parties from using the trade mark during their economic activity, as long as such is done in accordance with the standards and honest practices pertaining to industrial and commercial materials:

- a) His or her own name and address if the third party is an individual person;
- b) Signs or indications that are not distinctive or that refer to the type, quality, quantity, destination, value, geographical origin, time and means of production of the product or supply of service or other characteristics of the products or services;
- c) The trade mark for purposes of identification or reference to products or services as if they belonged to the owner of the trade mark, especially whenever such is necessary in order to indicate the destination of a product or service, namely in the form of accessories or spare parts.

Article 255.

Unamendability of the trade mark

1 – The trade mark shall remain unamended and any changes to its elements shall be subject to a new registration.

2 – Simple modifications that do not harm the identity of the trade mark and only affect its proportions, the material used to stamp it, engrave it or reproduce it and the dye or colour, if it has not been expressly claimed as one of the characteristics of the trade mark shall be excepted from the previous number.

3 – Inclusion of the identity of the trade mark or deletion of the indication expressed in the product or service that the trade mark is destined for and the production year shall also not

harm the identity of the trade mark, nor shall a change in domicile or place of establishment harm the identity of the trade mark.

4 – The nominative trade mark shall only be subject to unamendability rules with respect to the written expressions included in it and it can be used with any figurative aspect as long as it does not violate third party rights.

SECTION IV

Transfer and licenses

Article 256.

Transfer

1 – When the transfer of a registration is partial in relation to the products or services for which the trade mark was registered, a copy of the case must be requested and it shall serve as the basis for an independent registration, including the right to the title.

2 – Transfer of the entire company shall imply transfer of the trade mark, unless otherwise stipulated or if the contrary clearly ensues under the circumstances.

3 – The provisions of the previous number shall apply to the registration applications and in the case of partial transmission, new applications shall preserve the priorities they were entitled to.

Article 257.

Limitations of transfer

Trade marks that are registered in the name of organisations that are responsible for or that control economic activities shall not be transferrable, barring special legal provisions, articles of association or internal regulations.

Article 258.

Licenses

1 – The owner of the registered trade mark may invoke the rights conferred by the registration against a licensee that infringes any clause or provision of the license contract as regards its validity duration, the identity of the trade mark, the nature of the products or services for which the license was granted, the boundaries of the zone or territory or the quality of the products manufactured or services supplied by the licensee.

2 – Unless otherwise stipulated and without prejudice to the provisions of the following number, the licensee may only institute legal proceedings in which infringement of the right of a trade mark is claimed if consent of the respective owner has been obtained.

3 – The owner of an exclusive license may institute the legal proceedings mentioned in the previous number if after prior notification the owner of the registered trade mark does not institute such proceedings within a period of no more than six months.

4 – Pursuant to the terms and deadlines stipulated in civil procedure legislation, any licensee may intervene in an action in which infringement of a trade mark is claimed, in order to compensate for losses that have been incurred.

SECTION V

Extinction of the trade mark registration or the rights derived therefrom

Article 259.

Nullity

1 – In addition to the provisions of article 32., trade mark registration shall be null when upon its grant, the provisions of nos. 1 and 3 of article 231. have been violated.

2 – The provisions of no. 2 of article 231. shall apply to actions of nullity.

Article 260.

Annulability

1 – In addition to the provisions of article 33., trade mark registration shall be annulable when upon its grant the provisions of articles 232. to 235. have been violated, excepting the provisions of sub-paragraph h) of no.1 of article 232.

2 – An interested party who wishes to annul a trade mark registration on the basis of articles 234. or 235. shall apply for registration of the trade mark that has originated the annulment request for the products or services that gave it well-knownness or high-reputation, respectively.

3 – When the annulment is based on article 235., registration cannot be annulled if on the date that the respective registration application was made or on the date of the respective claimed priority, the claimed previous trade mark did not yet enjoy any high-reputation.

4 – Registration may not be annulled if on the date when the respective registration application was made or on the date of the respective claimed priority the invoked previous trade mark does not satisfy the condition of genuine use in accordance with article 267. or if said trade mark has not acquired distinctive character through the use that was made of it, or if it has not become sufficiently distinctive to the point of causing the risk of confusion stipulated in article 232.

5 – The registration cannot be annulled if the declaration provided for in article 236. has been obtained.

Article 261.

Preclusion due to acquiescence

1 – The owner of a registered trade mark who, aware of the fact, has acquiesced for a period of five consecutive years the use of a subsequent registered trade mark, shall cease to be entitled, on the basis of his or her previous trade mark, to request annulment of the registration of the subsequent trade mark or oppose its use in relation to the products or services with which the subsequent trade mark has been used, unless the subsequent trade mark was registered in bad faith.

2 – The period of five years provided for in the previous number shall be counted as of the time when the owner becomes aware of the fact.

3 – The owner of the subsequent registered trade mark may not oppose the previous right, even if it can no longer be invoked against the subsequent trade mark.

Article 262.

Declaration of nullity and annulment process

1 – Persons who are legitimately entitled to file with the INPI, I. P. an application for declaration of nullity or annulment of a trade mark registration shall do so through a request drafted in Portuguese, listing the reasons on which the requests were based.

2 – For the purpose of the provisions of nos. 3 and 4 of article 34., an interested party who is legitimately entitled to submit an application for declaration of nullity or annulment, respectively, shall be the following:

a) Any individual or legal person or association representing manufacturers, producers, service providers, merchants or consumers, having the capacity to take legal action or defend against it;

b) The owner of one of the rights referred to in articles 232. to 235.

3 – The application for declaration of nullity or annulment shall be inadmissible if a request associated with the same subject matter and same cause for request among the same parties has been the subject matter of a final decision of merit, administrative or judicial.

4 – The INPI, I. P. shall immediately refuse an application for declaration of nullity or annulment whenever a counterclaim of declaration of nullity or annulment is pending in the courts, filed previously with the same subject matter and involving the same parties.

5 – In addition to what is stipulated in articles 32. and 33., the applications referred to in the previous numbers can be based on any of the reasons provided for in articles 259. and 260.

6 – The owner of the registered trade mark who provides a reason for declaration of nullity or annulment shall be notified to respond, if he or she so wishes, within a period of two months.

7 – At the request of the interested party, the time period referred to in the previous number may be extended only once, for one more month.

8 – Ex officio or at the request of one of the parties, each party may be granted an inextensible time period of two months in order to submit observations.

9 – In the case provided for under the previous number, each party shall be granted an inextensible period of one month to submit additional observations.

10 – The declaration of nullity and annulment processes shall be subject to article 18 with the necessary adaptations.

Article 263.

Invocation of non-genuine use of the trade mark in an annulment process

1 – Whenever the application for annulment has been submitted on the basis that there is a previous trade mark that at the time of filing of said application has already been registered for at least five years, the owner of the registration in relation to which the application of annulment has been submitted may request that the owner of the prior trade mark submit proof that it met the condition of genuine use provided for in nos. 1 to 3 of article 267. during a period of five consecutive years before the aforementioned date, or that there was a proper reason for non-use.

2 – If at the date of the registration application or date of claimed priority of the subsequent trade mark the five year period has already ended during which the previous trade mark should have been the object of genuine use as per no. 1 of article 268., the owner of the previous trade mark registration shall submit, in addition to the evidence stipulated in the previous number, proof that his or her trade mark was the object of genuine use for a period of five years prior to the date of registration application or prior to the claimed priority date for the subsequent trade mark, or that there was a proper reason for non-use.

3 – The proof referred to in the previous numbers may be requested in the response to the annulment application or in the observations provided for in the previous article.

4 – In cases where the owner of the registered trade mark on which the annulment application has been based, after being notified to do so within a period of one month, extendable by one more month, fails to prove that the trade mark was the object of genuine use in accordance with nos. 1 or 2, or that there was a proper reason for non-use, the annulment application shall be refused.

5 – In cases where the owner of the registered trade mark who provides a reason for the annulment application submits proof that his or her trade mark was the object of genuine use for all or only some of the products or services for which it is registered, or that there was a proper reason for non-use, the annulment application shall be assessed by taking into account those products or services.

6 – The provisions of the present article shall apply even when dealing with a European Union trade mark, and in such cases genuine use shall be determined in accordance with legislation applicable to these trade marks.

7 – The provisions of the present article shall not involve any assessment regarding the possible revocation of the trade mark registration on which the annulment application is based, and said revocation shall only be assessed if the procedures stipulated in article 269. are triggered.

Article 264.

Renunciation during declaration of nullity and annulment process

1 – In cases where during the course of a declaration of nullity or annulment process of a trade mark registration the respective owner submits a request for renunciation, the decision regarding this request shall be suspended and the applicant of the declaration of nullity or annulment application shall be notified to within an inextensible period of one month, indicate whether he or she wishes to continue the process.

2 – If after the time period stipulated in the previous number the applicant fails to respond or if he or she responds indicating that he or she wishes to terminate the process, the renunciation shall take effect and the application for declaration of nullity or annulment shall be considered withdrawn.

3 – If after the time period stipulated in no. 1 the applicant indicates that he or she wishes to continue the process, the decisions shall be rendered in accordance with the following article.

4 – In cases where nullity is declared or the trade mark registration is annulled for all of the products or services, renunciation shall not take effect.

5 – In cases where nullity is declared or the trade mark registration is annulled only for some of the products or services, renunciation shall only take effect with respect to the products or services for which the registration was not declared null or annulled.

Article 265.

Decision and effects of the declaration of nullity and annulment

1 – Once the time periods stipulated in articles 262. to 264. have elapsed, the INPI, I. P. shall decide on the application for declaration of nullity.

2 – If subsequent to the assessment of the declaration of nullity or annulment it is determined that the trade mark registration should have been refused for all or part of the products or services for which it was registered, nullity shall be declared or the registration annulled for the products and services in question.

3 – If the trade mark registration is declared null or annulled, it shall be determined that, since its beginning, it did not produce the effects stipulated in the present code, without prejudice to the provisions of article 35.

4 – The declaration of nullity or annulment of the trade mark registration shall be entered in the registry and notice shall be given of it in the Industrial Property Bulletin.

5 – The decisions mentioned in the present article shall immediately be given notice of, pursuant to no. 1 of article 16., with indication of the Industrial Property Bulletin in which they shall be published.

Article 266.

Application for counterclaim of declaration of nullity or annulment

1 – Applications for declaration of nullity or annulment of registrations of trade marks filed as part of a counterclaim shall be decided by the courts, except when declaration of nullity or annulment applications have been submitted to the INPI, I. P. prior to the filing of the application for counterclaim, in which case the proceedings shall be suspended until the decision regarding the application submitted at said Institute has been rendered final or the application has been withdrawn.

2 – The court shall refuse the application for counterclaim of the declaration of nullity or annulment whenever the INPI, I. P. has already rendered a final decision on the substance involving the same parties regarding an application involving the same subject matter and same cause.

3 – Whenever the counterclaim applications referred to in no. 1 have been filed, the court shall communicate said fact to the INPI, I. P. for the purpose of the respective recording and the provisions of no. 4 of article 262.

4 – If an application for declaration of nullity or annulment prior to the filing of the counterclaim is pending at the INPI, I. P., the Institute shall inform the court of that fact, following the communication referred to in the previous number.

5 – If a counterclaim application is filed, the court may suspend the proceedings at the request of the applicant and after the other parties have been heard, asking the defendant to submit to the INPI, I. P. an application for declaration of nullity or annulment within a period of 10 days.

6 – If the application for declaration of nullity or annulment referred to in the previous number has not been submitted, the counterclaim application shall be considered withdrawn.

Article 267.

Use of the trade mark

1 – The following shall be considered genuine use of the trade mark:

a) Use of the trade mark as it is registered or in a manner that does not differ from it, except with regard to elements that do not change its distinctive character, in accordance with article 255., undertaken by the owner of the registration or by the licensee, with a duly entered in the registry license, regardless of whether or not the trade mark, in the form that it is used, is also registered under the name of the owner;

b) Use of the trade mark, as defined in the previous sub-paragraph, for products or services for which it was registered, or in the respective packages, used only for export;

c) Use of the trade mark by a third party, as long as it is with the consent of the owner and for the purposes of maintaining the registration.

2 – Use of the collective trade mark shall be that which is done with the consent of the owner.

3 – Use of the certification or guarantee trade mark shall be that which is done by a qualified person.

4 – The beginning or resuming of genuine use during the three months that immediately precede the submission of a declaration of revocation application, counted as of the end of the uninterrupted five-year period of non-use shall not, however, be taken into account if the diligences for beginning or resuming the use have only taken place after the owner has become aware that an application for declaration of revocation is going to be filed.

Article 268.

Revocation

1 – In addition to what is stipulated in article 36., the revocation of the registration shall be declared if the trade mark has not been the object of genuine use for five consecutive years for the products or services for which it was registered, barring proper reason and without prejudice to no. 4 and the previous article.

2 – Revocation of the declaration shall also be declared if after the date on which it was made:

a) The trade mark has become the usual trade name of the product or service for which it was registered, as a consequence of the activity or inactivity of the owner;

b) The trade mark has become liable to mislead the public, namely with respect to the nature, quality and geographical origin of those products or services, subsequent to the use undertaken by the owner of the trade mark or by third parties with his or her consent, for the products or services for which it was registered.

3 – Revocation of the collective trade mark shall be declared:

a) If the legal person under whose name it was registered ceases to exist;

b) If that legal person consents in allowing the trade mark to be used in a manner that is contrary to its general purposes or that runs contrary to articles of association.

4 – The registration shall not expire if, before the application for declaration of revocation has been submitted, genuine use of the trade mark has already begun or resumed, without prejudice to the provisions of no. 4 of the previous article.

5 – The time period mentioned in no. 1 shall begin with registration of the trade mark.

6 – In the case of international trade marks, the time period referred to no. 1 shall begin on the date when the trade mark ceases to be subject to refusal or opposition.

7 – For the purposes stipulated in the previous number, if opposition has been filed or a refusal has been given notice of, the time period shall be calculated from the date when the final decision was rendered or opposition was withdrawn.

8 – When there are grounds for revocation of a trade mark registration for only some of the products or services for which it was created, revocation shall only cover those products or services.

Article 269.

Applications for declaration of revocation

1 – Applications for declaration of revocation shall be submitted to the INPI, I. P.

2 – The applications referred to in the previous number may be based on any of the reasons established in nos. 1 to 3 of the previous article.

3 – The owner of the registration shall always be notified of the application for declaration of revocation in order to respond to it within a period of one month, if he or she so wishes.

4 – At the request of the interested party, submitted in a timely manner, the time period referred to in the previous number may be extended only once for one more month.

5 – The owner of the registration, or its licensee if there is one, shall be responsible for proving use of the trade mark, otherwise the trade mark shall be considered unused.

6 – Once the response time period has elapsed, the INPI, I. P. shall render a decision regarding the declaration of revocation of the registration, within a period of one month.

7 – The revocation process shall be extinguished if, before the decision, the respective application has been withdrawn.

8 – Revocation shall be declared via a process that runs its course at the INPI, I. P. and shall take effect from the date of the application for declaration of revocation, unless, at the request of one of the parties, a prior date has been stipulated in the declaration of revocation, when one of the grounds for revocation was verified.

9 – Revocation shall be entered into the registry and notice of it shall be published in the Industrial Property Bulletin.

CHAPTER V

Rewards

SECTION I

General provisions

Article 270.

Object

The following shall be considered rewards:

- a) Awards for merit bestowed by the Portuguese State or by foreign countries;
- b) Medals, diplomas and monetary prizes or prizes of any other nature obtained at expositions, fairs and contests that are official or officially recognised, held in Portugal or in foreign countries;
- c) Diplomas and certifications of analysis or praise, issued by laboratories or State services or organisations qualified for such purposes;
- d) Titles of supplier of the Head of State, Government and other entities or official establishments, national or foreign;
- e) All other prizes or official demonstrations of preference.

Article 271.

Conditions under which rewards are mentioned

Rewards cannot be applied to products or services that are different from those for which they were granted.

Article 272.

Ownership

Rewards of any kind, granted to industrialists, merchants, farmers and other entrepreneurs shall be considered to be their own property.

SECTION II

Registration process

Article 273.

Filing of applications

The application for registration of rewards shall be made via request drafted in Portuguese, indicating the following:

- a) The name, trade name or corporate name of the applicant, his or her nationality, domicile or place of establishment, tax number when dealing with a resident of Portugal and e-mail address, if it exists;
- b) The rewards that are to be registered, the entities that bestowed them and respective dates;
- c) The products or services that merited grant of the reward;
- d) The logotype that the reward is linked to, in whole or in part, when such is the case;
- e) The signature or electronic identification of the applicant or respective representative.

Article 274.

Documents to be submitted

1 – Originals or certified photocopies of the diplomas or other documents proving the grant of the reward shall be added to the application.

2 – Proof of the grant of the reward may also be given by adding a duly authenticated copy of the official publication in which the reward was issued or published, or only the part necessary and sufficient for identifying it.

3 – The INPI, I. P. may require submission of Portuguese translations of the diplomas or other documents drafted in foreign languages.

4 – The registration of rewards that contain references to logotypes shall require prior registration of the logotype.

Article 275.

Grounds for refusal

In addition to the provisions of article 23., registration of rewards shall be refused when:

- a) By their very nature they cannot be included in any of the categories stipulated in the present Code;
- b) If it is proven that they have been applied to products or services that are different from those for which they were bestowed;
- c) There has been transfer of its ownership without transfer of the establishment's ownership or the part of the latter that is of interest, when this is the case;
- d) If it is demonstrated that the reward was revoked or does not belong to the applicant.

Article 276.

Return of documents

1 – Once the time period for filing an appeal has passed, the diplomas or other documents that are part of the process shall be returned to the applicants who request them in writing and they shall be replaced with copies in electronic format or certified copies.

2 – The return shall be made with a receipt that shall be included in the process documents.

SECTION III

Use and transfer

Article 277.

Indication of rewards

Use of rewards that have been legitimately obtained shall be permitted, regardless of registration, but only when the registration has been made can the reference or copy of the rewards be accompanied by the phrase “Registered reward” or the abbreviations “R. R.,” “RR” or “RR.”

Article 278.

Transfer of ownership

Transfer of ownership of the rewards shall entail applicable legal formalities with respect to transfer of ownership of the property associated with them.

SECTION IV

Extinction of the registration

Article 279.

Annulability

1 – In addition to the provisions of article 33., the registration shall be annulable when the reward title has been annulled.

2 – With the necessary adaptations, the provisions of article 262. to 265. shall apply, with the exception of no. 2 of the latter article and article 266.

Article 280.

Revocation

1 – The registration shall expire when the grant of the reward has been revoked or cancelled.

2 – Revocation of the registration shall lead to extinction of the use of the reward.

CHAPTER VI

Logotypes

SECTION I

General provisions

Article 281.

Composition of the logotype

1 – The logotype may consist of a sign or group of signs that can be graphically illustrated, namely through nominative or figurative elements or a combination of both, or by a group of signs that can be represented in a manner that allows for clear and precise determination of the subject matter of the protection that was granted to the owner.

2 – The logotype shall be suited to identifying an entity that provides services or markets products, usable with establishments, advertisements, printed material or correspondence.

Article 282.

Right to registration

Any individual or collective entity, whether public or private, shall be legitimately entitled to apply for registration of a logotype that said entity has a legitimate interest in.

SECTION II

Registration process

Article 283.

Unity of the registration

1 – The same sign, when used to individualize one single entity, can only be the subject matter of one logo registration.

2 – The same entity may be individualized through different logotype registrations.

Article 284.

Filing of applications

1 – The application for registration of a logotype shall be submitted through a request drafted in Portuguese, indicating or containing the following:

a) The name, trade name or corporate name of the applicant, his or her nationality, domicile, tax number when dealing with a resident of Portugal and e-mail address, should it exist;

b) Indication of the services provided or products marketed by the entity that wishes to distinguish itself, accompanied by indication of the respective Portuguese standard industrial classification code;

c) The colour or colours used in the logotype, if they are claimed as a distinctive element;

d) Signature or electronic identification of the applicant or his or her representative.

2 – For the purpose of no. 1 of article 12., in addition to the elements required in subparagraphs a) and b) of the previous number, shall be submitted a representation of the intended logotype shall be provided.

Article 285.

Documents to be submitted

1 – The application shall be accompanied by a graphic representation of the sign or another form of representation that allows for clear and precise determination of the subject matter of the protection granted to the owner, in a format stipulated by a decision issued by the president of the directive council of the INPI, I. P.

2 – When the applications for registration claim a colour a combination of colours, the representation mentioned in the previous number shall depict the claimed colours.

3 – The application shall be accompanied by the authorisations mentioned in no. 3 of article 223.

4 – The lack of the authorisations referred to in the previous number shall not prevent attribution of a date to the application for the purpose of the provisions of no.1 of article 12.

5 – When the logotype contains inscriptions in characters that are not well known, the applicant shall submit a transliteration and a translation of those inscriptions, if possible.

6 – When the figurative elements of a logotype contain verbal elements, the applicant shall specify them in the application.

Article 286.

Publication of the application

1 – A notice shall be published in the Industrial Property Bulletin regarding the submission of the application to allow any persons who believe to be harmed by the possible grant of the registration to make an opposition, on the basis of the provisions of article 289. or to allow third parties to make observations on the basis of article 288.

2 – The publication shall contain a reproduction of the logotype and mention the indications stipulated in no. 1 of article 284., with the exception of the tax number, domicile or place of establishment and e-mail address of the applicant.

Article 287.

Procedural formalities

Registration of the logotypes shall be subject to the procedural formalities pertaining to trade marks, with the necessary adaptations and with the exception of the provisions of articles 227. and 230.

Article 288.

Grounds for refusal of the registration

1 – In addition to the provisions of article 23., registration of a logotype shall be refused when:

a) It consists of signs that cannot be graphically represented or represented in a manner that allows clear and precise determination of the subject matter of the protection granted to the owner.

b) It consists of signs that are devoid of any distinctive character;

c) It consists exclusively of signs or indications mentioned in sub-paragraphs b) to d) of no. 1 of article 209.;

d) It contradicts the provisions of articles 281. to 283.

2 – A logotype consisting exclusively of the signs or indications mentioned in subparagraphs a), c) and d) of no. 1 of article 209. shall not be refused if before the registration application date and subsequent to the use that is made of it, it has acquired distinctive character.

3 – Registration of a logotype shall be refused if it contains the following in some or all of its elements:

a) Symbols, coats of arms, emblems or badges of the State, municipalities or other public or private entities, national or foreign, the emblem and name of the Red Cross, or other similar organisations, along with any signs covered by article 6. of the Paris Convention for the Protection of Industrial Property, unless authorised;

b) Signs that have a high symbolic value, namely religious symbols, unless authorised, when applicable, and except when they are common in the current language or bona fide and established practices of the trade of the marketed products or the services provided by the entity that that the logotype pertains to and are accompanied by elements that grant them a distinctive character;

c) Expressions or figures that run counter to the law, morals, public order and proper customs;

d) Signs that are likely to mislead the public, namely with respect to the activity that is exercised by the entity that wishes to distinguish itself;

e) It consists of signs or indications that contain, in all or some of its elements, appellations of origin and geographical indications that are protected under national law, European Union legislation or international agreements that the European Union is a party to.

f) Signs or indications that contain, in all or some of their elements, traditional mentions of wine that are protected under European Union legislation or by international agreements that the European Union is a party to;

g) Signs or indications that contain, in all or some of their elements, guaranteed traditional specialties that are protected under European Union legislation or by international agreements that the European Union is a party to;

h) Signs or indications that contain, in all or some of their elements, designations of plant varieties that are protected by European Union legislation or international agreements that the European Union is a party to.

4 – A logotype that consists exclusively of the national flag of the Portuguese Republic or of some of its elements shall also be refused.

5 – A logotype that contains, among other elements, the Portuguese national flag in cases where the following situations may occur:

a) Misleading the public as to the geographical origin of the commercialised products or services provided by the entity it pertains to;

b) Leading the consumer to suppose wrongly that the products or services come from an official entity;

c) Producing disrespect or leading to reduced prestige of the Portuguese national flag or any one of its elements.

6 – When invoked by an interested party, it also constitutes grounds for refusal the recognition that the registration application was made in bad faith.

Article 289.

Other grounds for refusal

1 – The following shall also constitute reason for refusal of the registration:

a) Reproduction of a logotype previously registered by another party to distinguish an entity whose activity is identical to the one performed by the entity that wishes to distinguish itself;

b) Reproduction of a logotype previously registered by another party to distinguish an entity whose activity is similar to the one performed by the entity that wishes to distinguish itself, or imitation, in whole or in part, of a logotype previously registered by another party to distinguish an entity whose activity is identical or similar to the one performed by the entity that wishes to distinguish itself, if consumers are likely to be misled or confused;

c) Reproduction of a trade mark previously registered by another party for products or services identical to those covered by the scope of the activity performed by the entity that wishes to distinguish itself;

d) Reproduction of a trade mark previously registered by another party for products or services that are similar to those covered by the scope of the activity performed by the entity that wishes to distinguish itself, or imitation, in whole or in part, of a trade mark previously registered by another party for products or services identical or similar to those covered by the scope of the activity performed by the entity that wishes to distinguish itself, if it is likely that consumers will be misled or confused or if there is a risk of association with the registered trade mark.

e) Reproduction or imitation, in whole or in part, of the appellation of origin or of the geographical origin that is subject to protection under the present Code, European Union legislation or international agreements that the European Union is a party to and whose application was submitted before the date on which the logotype registration application was submitted, with reservation of its subsequent registration;

f) Infringement of other industrial property rights;

g) The use of names, pictures or any other expressions or figures without having obtained authorisation from the persons who they pertain to, and if they are deceased, from their heirs or parents up until the 4th degree, or if it has been obtained, it results in disrespect or loss of prestige for those persons;

h) Recognition that the applicant intends to undertake unfair competition or that such is possible regardless of the applicant's intention;

i) Use of names, designations, figures or drawings that are a reproduction or imitation of a logotype that has already been registered by another party; however, it shall be possible for two or more persons with the same surname to include them in their respective logotype, as long as they are perfectly distinguishable.

2 – The grounds for refusal stipulated in articles 233. to 235. shall also apply to registration of the logotype, with the necessary adaptations.

3 – The following shall also constitute a reason for refusal when invoked by an interested party:

a) Reproduction or imitation of the trade name and corporate name, or only part of their characteristic, that do not belong to the applicant or that the latter is not authorised to use, if this is likely to mislead consumers or cause them confusion.

b) Infringement of copyright.

4 – For the purpose of sub-paragraphs c) and d) of no. 1, a previously registered trade mark shall be any registration of a national trade mark, European Union trade mark or international trade mark that is enforceable in Portugal.

5 – The provisions of sub-paragraphs a) to d) of no. 1 shall cover the registration applications mentioned therein, with reservation of their subsequent registration.

Article 290.

Declaration of consent

Article 236. shall apply to the registration of logotypes, subject to the necessary adaptations.

SECTION III

On the effects of registration

Article 291.

Duration

The registration shall have a duration of 10 years counted from the date of filing of the application and it may be indefinitely renewed for equal amounts of time.

Article 292.

Indication of the logotype

During the validity of the registration its owner may use the phrase "Registered Logotype," "Regist. logotype" or simply "RL" on the logotype.

Article 293.

Rights conferred by the registration

1 – Registration of the logotype shall entitle its owner to prevent third parties from using, without his or her consent, any sign identical or liable to be confused that is to be used to individualise an identical or similar activity and may cause confusion or association in the mind of the consumer.

2 – Article 249. shall apply to logotypes, subject to the necessary adaptations.

Article 294.

Unamendability of the logotype

1 – The logotype shall remain unamended and any change made to its elements shall be subject to new registration.

2 – Unamendability shall be understood with the necessary adaptations, in compliance with the rules established in nos. 2, 3 and 4 of article 255. Regarding trade marks.

SECTION IV

Transfer, nullity, annullability and revocation of the registration

Article 295.

Transfer

1 – When the rights ensuing from an application for registration or logotype registration are used at an establishment they can only be transferred free of charge or at a fee, along with the establishment or part of the establishment that they are linked to.

2 – Without prejudice to the provisions of no. 3 of article 30., the transfer of the establishment shall involve the respective logotype, which may continue as it has been registered, unless the transferer reserves it for another present or future establishment.

Article 296.

Nullity

1 – In addition to what is stipulated in article 32., the registration of the logotype shall be null when upon its grant, the provisions of nos. 1 and 3 to 6 of article 288. have been violated.

2 – The provisions of articles 262, to 266. and no. 2 of article 288. shall apply to applications for declaration of nullity, subject to the necessary adaptations.

Article 297.

Annulability

1 – In addition to the provisions of article 33., the registration shall be annulable when upon grant, the provisions of article 289. have been violated, excepting the provisions of sub-paragraph h) of no. 1 of that article.

2 – The provisions of article 262. to 266. shall apply to applications for annulment, subject to the necessary adaptations and with the exception of the provisions of article 263.

Article 298.

Revocation

1 – In addition to what is stipulated in article 36., the registration shall expire in the following cases:

a) For reasons of closure and liquidation of the establishment or extinction of the entity;
b) Due to non-use of the logotype for a period of five consecutive years, barring a proper reason.

2 – The provisions of articles 267. to 269. shall apply to the declaration of revocation process, subject to the necessary adaptations.

CHAPTER VII

Appellations of origin and geographical indications

SECTION I

General provisions

Article 299.

Definition and ownership

1 – Appellation of origin is understood to be the name of a region, specific location or in exceptional cases, a country that is used to designate or identify a product:

a) Originating from that region, that specific location or that country;
b) Whose quality or characteristics are essentially or exclusively due to its geographic environment, including natural and human factors, and whose production, transformation and creation take place within the boundaries of the geographical area.

2 – Certain traditional designations, geographical or otherwise, that designate a product as originating from a region or specific location and that meet the conditions stipulated in sub-paragraph b) of the previous number shall also be considered appellations of origin.

3 – A geographical location is understood to be the name of a region, specific location, or in exceptional cases, a country that is used to designate or identify a product:

- a) That originates from that region, that specific location or that country;
- b) Whose reputation, specific quality or other characteristic can be attributed to that geographical origin and whose production, transformation or creation take place within the demarcated geographic location.

4 – The appellations of origin and geographic indications, when registered, shall constitute common property of the residents or persons established in the location, region or territory, in a genuine and effective manner and they can be used indistinctively by said persons who, in that area, exploit any type of typical production, when authorised by the owner of the registration.

5 – The exercising of that right shall not depend on the importance of the exploitation or the nature of the products and consequentially, the appellation of origin or geographical indication may apply to any products that are typical and native to the location, region or territory, under traditional, usual or regulated conditions.

Article 300.

Regional demarcation

If the boundaries of the location, region or territory that a certain designation or indication belongs to has not been demarcated by law, the boundaries shall be officially recognised by organisations that oversee production in the respective location, and which take into account the bona fide and established practices of the trade, together with the overarching interests of the national or regional economy.

SECTION II

Registration process

SUBSECTION I

National registration

Article 301.

Filing of applications

1 – The application for registration of appellations of origin or geographic indications shall be made in a request drafted in Portuguese, indicating the following:

- a) The name of individual or legal persons, public or private, with capacity to acquire the registration, respective tax number and e-mail address, should it exist;
- b) The name of the product or products, including the appellation of origin or geographical indication;
- c) The traditional or regulated conditions for use of the appellation of origin or geographical indication and the limits of the respective location, region or territory;
- d) The signature or electronic identification of the applicant or his or her representative.

2 – Grant of the registration shall be subject to the provisions of the national trade mark registration process, subject to the necessary adaptations.

Article 302.

Grounds for refusal

1 – In addition to the provisions of article 23., registration of appellations of origin or geographical indications shall be refused when:

- a) It has been requested by a person without any qualification to acquire it;
- b) It should not be considered appellation of origin or geographical indication, in accordance with article 299.;
- c) It constitutes reproduction or imitation of appellation of origin or geographical indication that was previously registered;
- d) It is liable to mislead the public, namely with respect to the nature and quality and geographical origin of the respective product;
- e) It constitutes copyright infringement;
- f) It is against the law, public order or proper customs;
- g) It may favour acts of unfair competition.

2 – When a previous trade mark exists, there shall only be refusal of a registration of an appellation of origin or geographical indication for a name whose protection, given the reputation, well-knownness or high-reputation of said trade mark, may mislead the consumer with respect to the real identity of the products.

SUBSECTION II

International registration

Article 303.

International registration of appellations of origin

1 – The entities referred to in sub-paragraph a) of no. 1 of article 301. may undertake international registration of the appellations of origin, pursuant to the provisions of the Lisbon Agreement of 31 October 1958.

2 – The request for international registration shall be submitted to the INPI, I. P. in accordance with the provisions of the Lisbon Agreement.

3 – Protection of the appellations of origin registered under the Lisbon Agreement shall be subject to the norms that regulate the protection of appellations of origin in Portugal, in all that does not contradict the provisions of said Agreement.

SECTION III

Effects, nullity, annullability and revocation of the registration

Article 304.

Duration

The appellation of origin and geographical indication shall have an unlimited duration and its ownership shall be protected through the application of the rules provided for in the present Code, in special legislation, and those that were decreed against false indications of origin, regardless of the registration and of whether or not they are part of the registered trade mark.

Article 305.

Indication of the registration

During the validity of the registration, the following mentions may appear on the products whose use has been authorised:

- a) "Registered Appellation of Origin" or "AO";
- b) "Registered Geographical Indication" or "GI."

Article 306.

Rights conferred by the registration

1 – The registration of appellations of origin or geographical indications shall grant the right to prevent:

a) Use, by third parties, in designating or presenting a product, by any means indicating or suggesting that the product in question originates from a geographic region that is different from the real place of origin;

b) Use that constitutes an act of unfair competition in accordance with article 10 of the Paris Convention, as ensues from the Stockholm Revision of 14 July 1967;

c) Use by someone who has not been authorised to do so by the owner of the registration.

2 – The words that make up an appellation of origin or a legally defined, protected and inspected geographical indication can in no way be included in designations, tags, labels, advertising or any documents pertaining to products that do not come from the respective demarcated regions.

3 – This prohibition shall also be applied when the true origin of the products is mentioned, or the words pertaining to the designations or indications are accompanied by corrections, such as "sort," "type," "quality" or other similar words and shall extend to the use of any expression, presentation or graphic combination that is likely to mislead consumers or confuse them.

4 – It is also prohibited to use an appellation of origin or geographical indication that has high reputation in Portugal or the European Union for products that have no identity or affinity whenever such use seeks to without any proper reason, derive undue benefit from the distinctive character or high-reputation of the appellation of origin or previously registered geographical indication, or said use may harm them.

5 – The provisions of the previous numbers shall not prevent the seller from affixing his or her name, address or trade mark on the products that originate from a region or country that is different from the one where the products are sold, and in such cases, the producer or manufacturer's trade mark cannot be suppressed.

6 – A trade mark that is registered in good faith at a time prior to the protection of an appellation of origin or a geographical indication can continue to be used and renewed.

Article 307.

Nullity

1 – In addition to the provisions of article 32., registration of an appellation of origin or geographical indication shall be null when the respective registration application has been made in bad faith or when upon its grant, the provisions of sub-paragraphs b), d) and f) of article 302. have been violated.

2 – Applications for declaration of nullity shall be subject to articles 262. to 266, subject to the necessary adaptations.

Article 308.

Annulability

1 – In addition to the provisions of article 33., registration of an appellation of origin or geographical indication shall be annulable when upon its grant, the provisions of subparagraphs a), c) and g) of no. 1 and no. 2 of article 302. have been violated.

2 – Applications for annulment shall be subject to articles 262. to 266., subject to the necessary adaptations and with the exception of article 263.

Article 309.

Revocation

1 – Registration shall expire at the request of any interested party when the appellation of origin or geographical indication is transformed, in accordance with bona fide and established practices of the trade, into a mere generic designation of a manufacturing system or a certain type of products.

2 – Excepted from the previous number are wine products, mineral-medicinal waters and all other products whose geographical denomination of origin is the object of special legislation for protection and inspection in the respective country.

TITLE III

Infractions

CHAPTER I

General provisions

Article 310.

Industrial property legal remedies

Industrial property shall offer the legal remedies established by law for property in general and it shall be especially protected under the present Code and all other applicable legislation and agreements.

Article 311.

Unfair competition

1 – Unfair competition shall be all acts of competition that run counter to the standards and honest use of any sector of economic activity, namely:

a) Acts that are liable to cause confusion involving the company, establishment, products, or services of competitors, whatever the means employed;

b) False statements made while performing an economic activity for the purpose of discrediting competitors;

c) Unauthorised claims or references made in view of benefitting the credit or reputation of a name, establishment or trade mark;

d) False indications of credit or own reputation pertaining to the capital or financial situation of the company or establishment, the nature or scope of its activities and businesses and the quality or quantity of the clientele;

e) False descriptions or indications regarding the nature, quality or usefulness of the products or services, along with false indications regarding origin, location, region or territory, manufacture, workshop, ownership or establishment, whatever the adopted method;

f) Suppression, hiding or alteration by the seller or any intermediary of the appellation of origin or geographical indication of the products or trade mark of the producer or manufacturer with respect to products destined for sale and that have not been modified with respect to their packaging.

2 – The measures stipulated in article 345. shall apply with the necessary adaptations.

Article 312.

Intervention by customs authorities

1 – Customs authorities that are responsible for customs interventions shall retain or suspend customs clearance of goods that exhibit indications of an infringement that is stipulated in the present Code, regardless of the customs situation they are in.

2 – The intervention mentioned in the previous number shall be undertaken at the request of any party who has an interest in it or at the initiative of the actual customs authorities.

3 – Customs authorities shall immediately notify interested parties of the withholding or suspension of the authorisation for the release of the goods.

4 – The customs intervention shall expire if, within a period of 10 working days counted from the date of reception of the respective notification issued to the owner of the right, the applicable legal proceedings have not been initiated with a request for seizure of the goods.

5 – The time period stipulated in the previous number may be extended for an equal period of time in duly justified cases.

CHAPTER II

Protection of trade secrets

Article 313.

Object of protection

1 – A trade secret is understood to entail information that cumulatively includes the following requirements and is therefore protected:

a) Information that is secret to the extent that it is not generally known or easily accessible as a whole or in terms of the exact configuration and connection of constitutive elements for persons from environments that normally deal with the type of information in question;

b) Information that has commercial value due to the fact that it is secret;

c) Information that has been the object of reasonable diligence, under the circumstances, on the part of the person who legally controls the information in view of keeping it secret.

2 – Protection shall extend to products whose design, characteristics, functioning, production or commercialisation process significantly benefits from trade secrets that are illegally obtained, used or disclosed.

3 – The owner of a trade secret is understood to be an individual or legal person that legally exercises control over a trade secret.

Article 314.

Illegal acts

1 – An illegal act shall consist of obtaining a trade secret without the consent of the respective owner, whenever that act results from the following:

a) Access, appropriation or unauthorised copying of documents, objects, materials, substances or electronic files that are legally under the control of the owner of the trade secret and that contain said secret or via which the secret can be obtained;

b) Any other conduct that under the specific circumstances shall be considered contrary to honest trade practices.

2 – An illegal act shall also be one that involves use or disclosure of a trade secret, without the consent of the respective owner, by a person who meets one of the following conditions:

a) Has obtained the trade secret illegally;

b) Infringes a confidentiality agreement or any other duty of non-disclosure of the trade secret;

c) Infringes a contractual duty or any other duty to limit the use of the trade secret.

3 – An illegal act shall also constitute obtaining, using or disclosing a trade secret whenever a person, at the time of obtaining, using or disclosing, had or should have had knowledge, under the specific circumstances, that the trade secret has been directly or indirectly obtained from another person who was using it or disclosing it illegally pursuant to the previous number.

4 – Illegal use of a trade secret shall also include production, offering or marketing of goods that are illegal, or importing, exporting or warehousing of goods that are illegal for such purposes, whenever the person that performs these activities had or should have had knowledge, under the specific circumstances, that the trade secret had been used under the conditions stipulated in no. 2.

Article 315.

Illegal acquisition, use and disclosure of trade secrets

Obtaining a trade secret shall constitute an illegal act when it results from:

a) Discovery or independent creation;

b) Observation, study, disassembly or testing of a product or object that has been made available to the public or that is legally in the possession of the acquirer of the information, the latter not being subject to any legally binding duty to limit obtaining the trade secret;

c) Exercise the right of workers or their representatives to information and consultations in accordance with national practices or applicable legislation;

d) Any imposition or permission applicable under the law;

e) Any other practice that, under the specific circumstances, is in accordance with honest commercial practices.

CHAPTER III

Criminal and administrative offence acts

SECTION I

General provisions

Article 316.

Subsidiary law

In a subsidiary manner, the provisions of Decree-Law no. 28/284 of 20 January in its current wording, namely with respect to the criminal and administrative offence liability of legal persons and liability in acting on behalf of another party, whenever the opposite does not ensue from the present Code.

Article 317.

Supplementary sanctions

1 – The following supplementary sanctions may be applied to the crimes and administrative offences provided for under the present Code:

- a) Loss of objects belonging to the agent;
- b) Interdiction of the exercising of certain activities or professions;
- c) Deprivation of the right to participate in fairs and markets;
- d) Closure of an establishment;
- e) Advertising of the sentence.

2 – Whenever the practice of an administrative offence is in question, the supplementary sanctions mentioned in sub-paragraphs b) to d) of the previous number shall have a maximum duration of two years counted as of the final sentence.

3 – The supplementary sanction provided for under sub-paragraph e) of no. 1 may be applied via publication in the Industrial Property Bulletin, publication in any communication media deemed appropriate, or posting at the actual establishment or place where the agent's activity is performed.

4 – The prerequisites for applying the supplementary sanctions are stipulated in the present Decree-Law no. 28/84 of 20 January in its current wording and in the general administrative offence legal framework.

SECTION II

Criminal acts

Article 318.

Infringement of the exclusive patent, utility model or semiconductor topography

Anyone who without the consent of the owner of the right does the following shall be punished with a prison sentence of up to three years or a fine sentence of up to 360 days:

- a) Manufacture the articles or products that are the subject matter of the patent, utility model or semiconductor topography;
- b) Employ or apply the means or processes that are the subject matter of the patent, utility model or semiconductor topography;
- c) Import or distribute products obtained through any of the stipulated methods.

Article 319.

Infringement of exclusive rights pertaining to designs or models

Anyone who without consent from the owner of the right does the following shall be punished with a prison sentence of up to three years or a fine sentence of up to 360 days:

- a) Reproduce or imitate, partially or in terms of some of the characteristic parts, a registered design or model;
- b) Exploit a registered design or model that belongs to someone else;
- c) Import or distribute designs or models obtained in any of the ways mentioned in the previous sub-paragraphs.

Article 320.

Counterfeiting, imitation and illegal use of the trade mark

Anyone who without the consent of the owner of the right does the following, shall be punished with a prison sentence of up to three years or a fine sentence of up to 360 days:

- a) Manufacture, import or keep for him or herself or for another party for any of the purposes mentioned in the following sub-paragraphs, any formats that reproduce or imitate a trade mark, in whole or in terms of some of its characteristic parts;
- b) Use of counterfeited or imitated trade marks in his or her products or packages;
- c) Offer or supply services containing counterfeited or imitated trade marks;
- d) Import, export, distribute, market or warehouse products with counterfeited or imitated trade marks;
- e) Use a reproduction or imitation of a registered trade mark as a trade name or corporate name;
- f) During the performance of the activities mentioned in sub-paragraphs b) and e), use counterfeited or imitated trade marks in commercial documents or in advertising;
- g) Use, counterfeit or imitate well-known trade marks whose registrations have already been requested in Portugal;
- h) Use, even if with products or services without any identity or affinity, trade marks that constitutes a translation or that are the same as or similar to previous trade marks whose registration has been requested and that enjoy high-reputation in Portugal or in the European Union, whenever the use of the subsequent trade mark seeks to derive undue benefit, without any proper reason, from the distinctive character or high-reputation of the previous trade marks or its use may harm them;
- i) Use, in his or her products, services, establishments or company, packages, stickers or other media with registered trade marks legitimately affixed.

Article 321.

Sale or hiding of products

Anyone who sells or hides for the purpose of selling, products that are in the conditions stipulated in article 318. to 320. shall be punished with a prison sentence of up to 18 months or with a fine sentence of up to 120 days.

Article 322.

Infringement of rights pertaining to name and insignia

Anyone who without consent of the owner of the right uses at his or her establishment, in advertisements, correspondence, products or services, or by any other means, a name or insignia that constitutes a reproduction or imitation of a name or insignia that have already been

registered by another party shall be punished with a prison sentence of up to three years or with a fine sentence of up to 360 days.

Article 323.

Infringement of the exclusivity of the logotype

Anyone who, without the consent of the owner of the right, uses at his or her establishment or entity, in advertisements, correspondence, products or services, or by any other means, a sign that constitutes a reproduction or an imitation of a logotype that has already been registered by another party shall be punished with a prison sentence of up to three years or with a fine sentence of up to 360 days.

Article 324.

Infringement and illegal use of the appellation of origin or geographical indication

Anyone who does the following shall be punished with a prison sentence of up to three years or with a fine sentence of up to 360 days:

a) Reproduce or imitate, fully or partially, a registered appellation of origin or a geographical indication;

b) Without being entitled to using a appellation of origin or geographical indication, use in his or her products signs that constitute a reproduction, imitation or translation of them, even if the true origin of the products has been indicated or the appellation or indication has been accompanied by expressions such as "Sort," "Type," "Quality," "Manner," "Imitation," "Rival of," "Better than" or other similar expressions.

Article 325.

Patents, utility models and registrations of designs or models obtained in bad faith

1 – Anyone who in bad faith succeeds in being issued a patent, utility model or registration of a design or model that legitimately does not belong to him or her, pursuant to articles 57. to 59., 123., 124., 156., 157., 180. and 181. shall be punished with a prison sentence of up to one year or with a fine sentence of up to 120 days.

2 – In the court's decision it shall ex officio annul the patent, utility model or registration at the request of the interested party and transfer them to the inventor or creator.

3 – The request to transfer the patent, utility model or registration mentioned in the previous number may be attempted legally, regardless of the criminal proceedings that such a crime leads to.

Article 326.

Registration obtained or maintained with abuse of right

Anyone who requests, obtains or maintains valid under his name or that of a third party, a registration of trade mark, name insignia or logotype that constitutes a reproduction or imitation of a trade mark or commercial name belonging to a national from any country of the Union, regardless of whether in Portugal he or she enjoys the priority established in article 13., for the proven purpose of limiting that person to a possession of assets that will induce a loss or in view of obtaining an illegitimate economic advantage shall be punished with a prison sentence of up to three years or with a fine sentence of up to 360 days.

Article 327.

Registration of an inexistent act or act that has been performed by hiding the truth

Anyone who, regardless of the infringement of the rights of third parties undertakes to register a legally inexistent act or act that has been performed by hiding the truth, shall be punished with a prison sentence of up to three years or a fine sentence of up to 360 days.

Article 328.

Complaint

1 – Procedures involving the crimes provided for in the present Code shall require that a complaint be filed.

2 – The criminal police body or police entity that has knowledge of facts that may constitute crimes provided for under the present Code shall inform the owner of the right of complaint, within a period of 10 days, of the facts that were made known, and the objects that were seized, also informing the owner of the right of the time period awarded for exercising the right to formalise a complaint.

3 – The information stipulated in the previous number shall also apply to the licensee if the latter, pursuant to no. 4 of article 31., enjoys the benefits granted to the owner of the right of the license.

Article 329.

Destination of the seized products

1 – Products that exhibit a crime provided for under the present Code, along with the materials or instruments that were mainly used to practice that crime, except if the owner of the offended right has given his or her express consent for such products to be re-introduced into commercial circuits or to give such products another use.

2 – The products that are declared lost and referred to in the previous number shall be fully or partially destroyed whenever it is not possible to eliminate the part of them or distinctive sign they contain that constitutes the infringement of the right.

3 – The provisions of the present article shall always apply whenever an administrative offence has been committed pursuant to the present code.

SECTION III

Administrative offences

Article 330.

Unfair competition

Whoever commits any of the unfair competition acts defined in article 311. shall be punished with a fine of €5,000 to €100,000 when dealing with a legal person and €1,000 to €30,000 when dealing with an individual person.

Article 331.

Infringement of protected trade secret

Whoever does the following without the consent of the owner of the right shall be punished with a fine of €5,000 to €100,000 when dealing with a legal person and €1,000 to €30,000 when dealing with an individual person:

a) Obtains a trade secret that is legally under the control of its owner, through an act that results from unauthorised access or appropriation of any medium that contains that secret or via which it is possible to infer it, or via conduct that runs counter to honest commercial practices;

b) Use or disclose a trade secret having obtained said secret illegally or in infringement of a confidentiality agreement or any other duty of non-disclosure;

c) Use or disclose a trade secret in infringement of a contractual duty or any other duty to limit the use of the trade secret;

d) Obtain, use or disclose a trade secret with the knowledge or duty to know, under the specific circumstances, that the trade secret had been obtained directly or indirectly from another person who was using it or illegally disclosing it pursuant to sub-paragraph b) and the previous sub-paragraph;

e) Manufacture, offer for sale, market, import, export or warehouse products for such purposes, with knowledge or having the duty to know, under the specific circumstances, that the trade secret had been used under the conditions stipulated in sub-paragraphs b) and c).

Article 332.

Illegal claiming or use of a reward

Whoever does the following without the consent of the owner of the right shall be punished with a fine of €3,000 to €30,000 when dealing with a legal person and €750 to €7,500 when dealing with an individual person:

a) Claim or mention a reward that has been registered under another party's name;

b) Use or falsely claim to be the holder of a reward that was not attributed to him or her or that never existed;

c) Use drawings or any other indications that constitute an imitation of rewards that he or she is not entitled affixed on correspondence or advertising, signs, facades or windows of the establishment or via any other means.

Article 333.

Preparatory acts

Whoever, without the consent of the owner of the right and with the intention of preparing execution of the acts referred to in articles 322, to 324., manufacturing, importing, exporting, acquiring or keeping for oneself or for others, registered signs consisting of names, insignias, logotypes, appellations of origin or geographical indication shall be punished with a fine of €3,000 to €30,000 when dealing with a legal person and €750 to €7,500 when dealing with an individual person.

Article 334.

Use of illegal trade marks

1 – Whoever uses, as unregistered distinctive signs, any of the signs indicated in sub-paragraphs a) and b), f) to h) of no. 3, no. 5 of article 231., and sub-paragraph g) of no.1 of article

232., shall be punished with a fine of €3,000 to €30,000 when dealing with a legal person and €750 to €7,500 when dealing with an individual person.

2 – Products and articles that contain prohibited trade marks in accordance with the previous number can be seized and declared forfeited to the State, at the request of the Public Prosecutor.

Article 335.

Undue use of a name, insignia or logotype

Whoever illegally uses in the name or insignia of his or her establishment, or in the registered or unregistered logotype, a trade name or corporate name that does not belong to the applicant, or only a characteristic part of the latter, if this may mislead or confuse consumers, unless he or she proves consent or legality of the use, shall be punished with a fine of €3,000 to €30,000 when dealing with a legal person, and €750 to €7,500 when dealing with an individual person.

Article 336.

Undue claim or use of private rights

Whoever does the following shall be punished with a fine of €3,000 to €30,000 when dealing with a legal person and €750 to €7,500 when dealing with an individual person:

a) Presents him or herself as the owner of the industrial property right stipulated in the present decree-law without said right belonging to him or her, or when it has been declared null or expired;

b) Unduly uses or applies the indications of the patent, utility model or registration that have been authorised only for the owners of the respective rights.

CHAPTER IV

Process

SECTION I

Measures and procedures that seek to guarantee respect for industrial property rights and trade secrets

SUBS-SECTION I

General provisions

Article 337.

Commercial scale

1 – For the purpose of no. 2 of article 339., sub-paragraph a) of no. 2 of article 344. and no. 1 of article 346., acts practiced on a commercial scale shall include all those that violate industrial property rights and whose purpose is to gain a direct or indirect economic or commercial advantage.

2 – The definition stipulated in the previous number shall exclude acts practiced by end consumers acting in good faith.

Article 338.

Legitimacy

The precautionary measures and procedures stipulated in the present sub-section may be requested by all persons with a direct interest in their decree, namely by the owners of the industrial property rights and trade secrets, and also, barring any stipulation to the contrary, by the owners of the licenses, pursuant to the terms of the respective contracts.

SUB-SECTION II

Evidence

Article 339.

Measures for obtaining evidence

1 – Whenever elements of evidence are in the possession, dependency or control of a counterparty or third party, the interested party may petition the court that they be presented, as long as such a request is backed by sufficient proof regarding infringement of industrial property rights or trade secrets.

2 – When dealing with acts practiced on a commercial scale, the applicant can also petition the court that any bank, financial, accounting or commercial documents that are in the possession, dependency or control of the counterparty or third parties be submitted.

3 – In accordance with the provisions of the previous numbers, the court, ensuring the protection of confidential information, shall notify the defendant to within the stipulated time period submit the elements of proof that are in its possession, taking the necessary actions in the event of non-compliance.

Article 340.

Measures for preserving evidence

1 – Whenever there is an infringement or well founded reason for fearing that someone will cause serious harm to the industrial property right or trade secret that cannot be easily repaired, the interested party may request urgent provisional and effective measures to preserve evidence of the alleged infringement.

2 – The evidence preservation measures may include a detailed description, with or without collection of samples, or effective apprehension of the goods that are suspected to have violated industrial property rights or trade secrets and, whenever appropriate, materials and instruments used in the production or distribution of those goods, along with the documents that pertain to them.

Article 341.

Due diligence and contention

1 – Whenever any possible delay in applying the measures may cause irreparable harm to the applicant, or whenever there is a serious risk of destruction or obstruction of evidence, the measures provided for in the previous article may be applied without requiring a prior hearing of the defendant.

2 – When the evidence preservation measures are applied without prior hearing of the defendant, the latter shall be immediately notified.

3 – Following the notification provided for in the previous number, the defendant may request, within a period of 10 days, the review of the applied measures, producing evidence and claiming facts that were not taken into account by the court.

4 – Once the defendant has been heard, the court may determine a change, revocation or confirmation of the applied measures.

Article 342.

Causes of extinction and revocation

1 – The measures for obtaining and preserving evidence shall be subject to the causes for extinction and revocation provided for in the Code of Civil Procedure, except when they are preliminary measures for instituting injunctions in accordance with article 345.

2 – In addition to the causes of extinction mentioned in the previous number, when there is allegedly an infringement of a trade secret, the measures cease to take effect, subject to request from the defendant, if the requirements stipulated in article 313. are no longer met for reasons not attributable to that party.

Article 343.

Responsibility of the applicant

1 – Application of measures for preserving evidence may be subject to the lodging by the applicant of an adequate security or an equivalent assurance intended to ensure the compensation stipulated in no. 3.

2 – When determining the amount of the security, the economic capacity of the applicant shall be taken into account, among other factors.

3 – Whenever the measure used to preserve evidence is considered unjustified or ceases to be enforceable for reasons attributable to the applicant, or when it has been petitioned in an abusive manner or in bad faith, it is ascertained that there was no infringement or the fear that another would cause serious a injury to an industrial property right or trade secret that would be difficult to repair was unfounded, the court may order the applicant, at the request of the defendant or a third injured party, to pay adequate compensation to repair any damages caused by application of the measures.

SUB-SECTION III

Information

Article 344.

Obligation to provide information

1 – The interested party may request that detailed information be provided regarding the origin of and distribution networks of the goods or services that are suspected to have violated the industrial property rights or trade secrets, namely:

a) The names and addresses of the producers, manufacturers, distributors, suppliers and other previous possessors of the goods or services, along with the wholesalers and retailers that were to receive them.

b) Information regarding the amounts produced, manufactured, delivered, received or ordered, along with the price obtained for the goods or services.

2 – The supply of the information stipulated in the present article may be demanded from the alleged infringer or any person who:

a) Was found in possession of the goods or using or supplying the services, on a commercial scale, that are suspected to have violated industrial property rights or trade secrets;

b) Was identified by a person mentioned in the previous sub-paragraph as having participated in the production, manufacture or distribution of the goods or the supply of the services that are suspected to have violated industrial property rights or trade secrets.

3 – The provisions of the present article shall not hinder the application of other legal or regulatory provisions that:

a) Grant the interested party the right to more extensive information;

b) Regulate its use in civil or criminal procedures;

c) Regulate responsibility due to abuse of right to information;

d) Grant the right not to make statements that may oblige any of the persons mentioned in the previous number to admit their own participation or that of close family members;

e) Grant the right to claim professional secrecy, protection of confidentiality of information sources or application of the legal framework for the protection of personal data.

SUB-SECTION IV

Provisional and precautionary measures

Article 345.

Injunctions

1 – Whenever there is an infringement or well founded fear that another party will cause serious harm to the industrial property right or trade secret that is difficult to repair, the court may, at the request of the interested party, decree the appropriate measures for:

a) Preventing any imminent infringement; or

b) Prohibiting continuation of the infringement.

2 – The court requires that the applicant supply the elements of proof to demonstrate that he or she owns the industrial property right or trade secret, or that he or she is authorised to use it, and that an infringement has occurred or is imminent.

3 – The measures provided for in no. 1 may also be decreed against any intermediary whose services are being used by third parties to violate the industrial property rights or trade secrets.

4 – The court may ex officio, or at the request of the applicant, decree a compulsory monetary sanction in view of ensuring execution of the measures stipulated in no. 1.

5 – Articles 341. to 343. shall apply to the present article.

6 – At the request of the defendant, the decreed measures referred to in no. 1 may be replaced by a security whenever, after having heard the applicant, it is deemed to be enough to compensate the owner.

7 – When determining measures provided for in the present article, the court shall take into account the nature of the industrial property rights or trade secret, safeguarding, in particular, the possibility of the owner continuing to exploit his or her rights, without restriction.

Article 346.

Seizure

1 – In the event of an infringement on a commercial scale, current or imminent, and whenever the interested party proves the existence of circumstances that are liable to compromise collection of the compensation due to losses and damages, the court may order preventive seizure of the movable and immovable property of alleged infractors, including the balances of their bank accounts, and the judge may order communication of or access to data and banking, financial or commercial information pertaining to the infringer.

2 – Whenever there has been an infringement of industrial property rights or trade secrets, the court may, at the request of the interested party, order seizure of the goods that are suspected to have violated those rights or secrets, including goods that are imported in order to prevent their entry or circulation within the market, or instruments that can only be used to practice the illegal act.

3 – For the purpose of the previous numbers, the court requires that the applicant supply all elements of proof that are reasonably available to demonstrate that he or she is the owner of the industrial property right or trade secret, or that he or she is authorised to use it and that there has been an infringement, or that it is imminent.

4 – Articles 341. to 343., shall apply to the present article.

SUB-SECTION V

Compensation

Article 347.

Compensation for losses and damages

1 – Anyone who deliberately or culpably illegally infringes the industrial property rights or trade secrets of another party shall be obliged to compensate the injured party for the damages that ensue from the infringement.

2 – When determining the amount of the compensation for losses and damages, the court shall take into account the profit obtained by the infringer and the ensuing damages and lost profits incurred by the injured party, and shall take into account the charges incurred as a result of protection, research and stoppage of conduct injurious of his right.

3 – When calculating the compensation that is owed to the injured party, the amount of the revenue resulting from the illegal conduct of the infringer shall be considered.

4 – The court shall also take into consideration non-pecuniary damage caused by the infringer's conduct.

5 – Should it be impossible to determine the amount of losses actually incurred in accordance with the previous numbers, the amount of actual losses suffered by the injured party and as long as the latter does not oppose it, the court may as an alternative establish a fixed amount based on the principle of fairness, which takes into account, at the very least, remuneration that would have been earned by the injured party if the infringer had requested authorisation to use the industrial property rights or trade secrets in question and the costs of protecting the industrial property right or trade secret, along with research and stoppage of the injurious conduct.

6 – When, in relation to the injured party, the conduct of the infringer constitutes a repeated practice or if it is especially serious, the court may decide to award compensation through accumulation of all or some of the aspects provided for in nos. 2 to 5.

7 – Whatever the circumstance, the court shall establish a reasonable amount to cover costs that have been duly proven and incurred by the injured party with respect to research and stoppage of the injurious conduct.

SUB -SECTION VI

Measures ensuing from the decision on the substance

Article 348.

Supplementary sanctions

1 – Without prejudice to establishment of compensation for losses and damages, the court's decision on the substance shall, at the request of the injured party and expense of the infringer, determine the measures pertaining to what is to be done with the goods that exhibit infringement of industrial property rights or trade secrets.

2 – The measures provided for in the previous number shall be suitable, necessary and proportionate to the seriousness of the infringement and may include destruction, removal or permanent exclusion from the commercial circuits, without attributing any compensation to the infringer.

3 – When applying these measures, the court shall take into account the legitimate interests of third parties, especially consumers.

4 – The instruments used to manufacture the goods that exhibit infringement of industrial property rights or trade secrets shall also be the subject matter of supplementary sanctions provided for in the present article.

Article 349.

Corrective measures

1 – The court decision on the substance may also impose on the infringer a measure for inhibiting the continuation of the verified infringement.

2 – The measures provided for in the previous number may include:

- a) Temporary interdiction of the performance of certain activities or professions;
- b) Deprivation of the right to participate in fairs or markets;
- c) Temporary or permanent closure of the establishment.

3 – The provisions of the present article shall apply to any intermediary whose services are being used by third parties to violate industrial property rights or trade secrets.

4 – In decisions to force stoppage of an illegal activity the court may apply a compulsory monetary sanction in view of enforcing the respective decision.

SUB-SECTION VII

Publicity

Article 350.

Publication of court decisions

1 – At the request of the injured party and at the expense of the infringer, the court may order publication of the final decision.

2 – The publication referred to in the previous number may be undertaken through publication in the Industrial Property Bulletin or through disclosure via any communication media deemed appropriate.

3 – The publication shall be done via excerpt containing parts of the sentence and identification of the perpetrators.

SECTION III

Special norms pertaining to trade secrets

Article 351.

Limits and exceptions

1 – Measures, procedures and reparation methods provided for in the present and previous section shall be refused whenever a trade secret has been obtained, used or disclosed in one of the following situations:

a) Exercising of the right to freedom of expression and information guaranteed under the Charter of Fundamental Rights of the European Union, including respect for liberty and pluralism of the media;

b) Revelation of bad conduct, irregularity or illegal activity, as long as the alleged infringer has acted to protect the general public interest;

c) Disclosure by workers to the respective representatives within the scope of legitimately representing the workers, pursuant to applicable legislation, as long as such a disclosure has been necessary for said representation;

d) Protection of legally recognised legitimate interest.

2 – Application of the measures, procedures and reparation measures stipulated in the present and previous section shall be ensured in view of avoiding abuse or creation of obstacles to legitimate commerce.

Article 352.

Preservation of confidentiality of trade secrets in legal proceedings

1—Any person who participates in legal proceedings through which he or she has access to the documents pertaining to it shall not be authorised to use or disclose any trade secret or alleged trade secret that the court, in response to a duly reasoned request made by the interested party, has identified as confidential and of which he or she has gained knowledge as a result of that participation or access.

2 – The confidentiality obligation shall not be extinguished with the end of the judicial proceedings, except when a final judgment has been rendered stating that the alleged trade secret does not meet the requirements stipulated in article 313. or that the information in question has become known to the persons in the circles that normally deal with this type of information or the information has become easily accessible to these persons.

3 – Subsequent to a duly reasoned request from one of the parties upon initiative of the court and always taking into account the need to safeguard the right to legal action and an impartial court, along with the interests of the parties or third parties, specific and proportionate measures may be taken to preserve the confidentiality of any trade secret or alleged trade secret used or mentioned during the course of the legal proceedings, namely the following:

a) Limitation of access to documents containing trade secrets or alleged trade secrets and which have been submitted by the parties or third parties, in whole or in part, to a restricted number of people;

b) Limitation to a restricted number of persons with access to hearings, along with the respective records and transcripts, when there is the possibility of disclosure of trade secrets or alleged trade secrets;

c) Access given to a non-confidential version of court judgments from which sections containing trade secrets have been removed or hidden to persons who have not been included in the restricted number referred to in the previous sub-paragraphs.

4 – The number of persons mentioned in sub-paragraphs a) and b) of the previous number shall not exceed the number necessary for ensuring compliance with the right of the parties to legal action and an impartial court and shall include at least one individual person from each party and the respective proxies or other representatives.

Article 353.

Limitation period

1 – The time limitation for infringement of trade secrets is 5 years and is counted from the time when the right can be exercised.

2 – Rules pertaining to interruption and suspension of the time limitation stipulated in the Civil Code shall be subordinately applicable with the necessary adaptations.

354.

Injunctions

1 – When the infringement of trade secrets is at stake, in addition to the requirements listed in article 345., the court shall also take into account, if applicable, the value of the secret or other specific characteristics, the measures taken to protect them, the conduct of the respondent, the impact of illegal use or disclosure, along with the legitimate interests of the parties, third parties and the public interest, along with the safeguarding of fundamental rights.

2 – Disclosure of a trade secret in exchange for a guarantee is prohibited.

Article 355.

Supplementary sanctions

1 – The application of the measures provided for in article 348. can under no circumstances hinder the protection of the trade secret in question.

2 – When assessing and applying the supplementary sanctions, the court shall take into account the previous article.

3 – As an alternative to the measures stipulated in article 348. and at the request of the person that is subject to them, the court may rule to award payment of reasonably satisfactory monetary compensation to the injured party whenever execution of the measures causes disproportionate damage to the person subject to them and said person had no knowledge of or reason to have knowledge of the fact that the goods had been subject to infringement of trade secrets.

4 – The compensation stipulated in the previous number may not exceed the amount of remunerations that would have been earned by the injured party if the infringer had requested authorisation to use the trade secrets in question during the period in which that use was prohibited.

Article 356.

Injunctive measures

1 – When the infringement of trade secrets is at stake the court judgment may impose the following on the infringer:

a) Stoppage, or depending on the particular case, prohibition of use or disclosure of the trade secret;

b) Prohibition of producing, offering, marketing or using goods that are illegal, or importing, exporting or warehousing for such purposes goods that are illegal.

2 – If the court rules to limit the duration of the measures stipulated in the previous number, the established duration shall be suitable to eliminating any commercial or economic advantage that the infringer may have benefitted from as a result of illegally obtaining, using or disclosing the trade secret.

3 – When assessing and applying the measures provided for in the present article, the court shall take into account the provisions of article 354.

4 – Numbers 3 and 4 of the previous article, together with the causes for extinction and revocation stipulated in article 342., shall apply to injunctive measures, subject to the necessary adaptations.

Article 357.

Publication

1 – The publication stipulated in article 350. shall be undertaken using an excerpt containing information from the ruling and sentence, as well as identifying the perpetrators, except for cases in which it is deemed that such an identification is not justified, taking into account the potential damages that such a measure would cause to the privacy and reputation of the infringer.

2 – Publication shall preserve the confidentiality of the trade secrets and the court shall take into account article 354.

SECTION III

Subsidiary provision

Article 358.

Subsidiary law

All that is not especially regulated by the present section shall be subordinately subject to other measures and procedures provided for under the law, namely the Code of Civil Procedure.

SECTION IV

Criminal and administrative offence procedure

Article 359.

Civil party

In addition to the persons to whom criminal procedure legislation grants the right of being civil parties, legally constituted business associations are allowed to participate in that capacity in criminal cases provided for under the present Code.

Article 360.

Inspection and seizure

1 – Before an enquiry is opened and without prejudice to the provisions of article 328., criminal police bodies shall ex officio undertake inspection and preventive diligences.

2 – Objects exhibiting an illegality stipulated in the present code, along with materials or instruments that have been predominantly used to practice the illegal act.

3 – Regardless of any complaint submitted by the injured party, criminal police bodies shall directly examine the seized products when it is known that they have not been manufactured or sold by the owner of the right or by someone with his or her authorisation, and in all other cases the legal authority may order an expert examination.

4 – When formal charges have been laid, the owner or possessor of the products that are suspected to have violated industrial property rights shall be questioned by the criminal police body or relevant judiciary authority if he or she opposes destruction of the seized products.

5 – The judiciary authority shall declare the seized products forfeited to the State and shall immediately undertake their destruction, except if:

a) The accused is opposed; or

b) The owner of the injured right expressly consents to allow the products to be used in some other way, whenever it is possible to eliminate the part or distinctive sign that the products contain that is suspected to violate industrial property right.

6 – For the reasons stipulated in sub-paragraph b) of the previous number, the judiciary authority shall order notification of the owner of the right and his or her consent shall be presumed if he or she has not responded within a period of 10 days.

7 – Whenever it is not possible to identify the owner or possessor of the seized products by the time of validation of the seizure by the judiciary authority and there is suspicion that these products violate industrial property rights, said authority shall, within the time period legally provided for validation, even if no formal complaint has been made, declare the seized property forfeited to the State and immediately determine its destruction, except if the owner of the injured right expressly consents to allow them to be used in some other way, whenever it is possible to eliminate the part or distinctive sign that they contain which is suspected to constitute an infringement of industrial property right.

Article 361.

Warehousing and destruction costs

Costs pertaining to warehousing and destruction of seized articles are considered case costs and the persons responsible for paying them shall be determined in accordance with criminal procedure legislation.

Article 362.

Fact finding in administrative offence files

Fact finding in administrative offence files as provided for under the present Code shall be undertaken by the Autoridade de Segurança Alimentar e Económica (Authority for Food and Economic Safety).

Article 363.

Judgment and applicable sanctions

The directive council of the INPI, I. P. shall decide on and apply the fines and supplementary sanctions stipulated in the present Code.

Article 364.

Distribution of the amounts of the fines

The product resulting from application of fines shall be distributed as follows:

- a) 60% to the State;
- b) 20% to the Autoridade de Segurança Alimentar e Económica;
- c) 20% to the INPI, I. P.

TITLE IV

Fees

Article 365.

Establishment of fees

Fees shall be paid for the acts provided for under the present Code, as determined by joint ordinance from the member of the government responsible for finance and the member of the government responsible for the INPI, I. P., subject to proposal from the latter institute.

Article 366.

Forms of payment

1 – All amounts that constitute own revenue of INPI, I. P. shall be paid in cash, by cheque, postal money order or by electronic means, in accordance with the requirements for the listed acts and later verified and processed in accordance with public accounting rules applicable to the INPI, I. P.

2 – The INPI, I. P. may allow for other forms of payment, without prejudice to the provisions of the previous number.

Article 367.

Counting of periodic fees

1 – Annual fees pertaining to patents, utility models, registration of semiconductor topographies and five-year periods pertaining to registrations of designs or models shall be counted from the date of the respective applications.

2 – Annual fees pertaining to supplementary protection certificates shall be counted from the day that follows the end of the validity of the respective patent.

3 – Periodic fees pertaining to all other registrations shall be counted as of the date of filing of the registration application.

4 – Whenever because of a court or arbitration ruling or application of transitional provisions the initial date of validity of the patents, utility models or registrations does not coincide with the date mentioned in the previous numbers, the respective annual or periodic fees shall be counted as of that date.

Article 368.

Payment deadlines

1 – Only annual fees pertaining to the 3rd year of validity and subsequent years for patents, utility models and semiconductor topographies, along with the 2nd and subsequent five-year period relative to designs or models shall be payable.

2 – Annual fees and five-year periods shall be paid within the six months that precede the respective due dates, even if the rights have not yet been granted.

3 – Without prejudice to the provisions of the previous number and no. 1 of the following article, the first payments of the annual fees pertaining to the European and international methods, required for enforcement in Portugal, and the patent applications and utility models resulting from the transformation stipulated in articles 88. to 89. may be made within a period that does not exceed three months from the date of the first anniversary that follows the validation date of the transformation.

4 – The first payment of the annual fees for supplementary protection certificates shall be made within the last six months of the validity of the respective patent, and said payment shall not be required when the validity period of the certificate is less than six months, and all subsequent annual fees shall be payable during the last six months that precede the respective due date.

5 – Fees pertaining to the grant of registrations shall be paid after the grant date and no later than the maximum period of six months counted from the publication date of that grant decision in the Industrial Property Bulletin.

6 – Subsequent payments of periodic fees pertaining to all other registrations shall be paid during the last six months of the validity of the respective right.

7 – The fees referred to in the previous numbers may also be paid with a surcharge, within a period of six months counted from the end of the validity period, otherwise revocation shall ensue.

8 – The owners of the rights shall be informed of the end of the payment deadlines provided for in the previous numbers and the following article in a merely informative manner, at least six months in advance.

9 – Lack of notification mentioned in the previous number shall not constitute justification or failure to pay the stipulated fees.

Article 369.

Revalidation

1 – It shall be possible to request validation for any patent title, utility model or registration that has expired due to lack of payment of fees within a period of one year counted from the date of publication of the notice of revocation in the Industrial Property Bulletin.

2 – The revalidation referred to in the previous number shall only be authorised upon payment of triple the amount of the outstanding fees and notwithstanding rights of third parties.

3 – The owner of the revalidated right may not invoke it in relation to a third party who has in good faith, during the period spanning between the loss of the issued rights and the publication of the mention of revalidation, has initiated exploitation or commercialisation of the subject matter of the right or made real and serious preparations to exploit and commercialise it.

4 – Third parties who avail themselves of the provisions of the previous number may, within a period of two months counted from the date of publication of the revalidation notice, oppose the decision that revalidates the right, and the owner of the revalidated right shall have an identical time period to respond to such an opposition.

Article 370.

Reduction

1 – Applicants of patents, utility models and registrations of semiconductor topographies and designs or models that prove that they do not receive revenue that would allow them to pay expenses pertaining to requests and maintenance of those rights shall be exempt from payment of 80% of all fees up until the 7th annual fee and until the 2nd five-year period if they so request before submitting the respective application.

2 – The directive council of the INPI, I. P. shall be responsible for assessing the proof mentioned in the previous number and the decision regarding the request.

Article 371.

Refund

1 – Ex officio or at the request of the interested party, fees shall be refunded whenever it is recognised that they have been unduly paid.

2 – The amounts deposited for paying expenses for inspections that have not been authorised or that were canceled in a timely fashion shall be refunded at the request of the person who deposited them.

Article 372.

Suspension of payment

1 – While a declaration of nullity or annulment process is pending at the INPI, I. P., or a case is pending in court or at an arbitration tribunal regarding an industrial property right or the seizure or lien has not been lifted from the right, along with any other seizure performed in accordance with applicable legislation, no revocation shall be declared for the respective patent, supplementary protection certificate, utility model, or registration due to lack of payment of periodic fees that may become due.

2 – When any of the decisions mentioned in the previous number are rendered final, this fact shall be published in the Industrial Property Bulletin.

3 – All outstanding fees shall be paid without any surcharge within a period of one year counted from the date of publication of the notice mentioned in the previous number in the Industrial Property Bulletin.

4 – Once the time period stipulated in the previous number has elapsed without payment of the outstanding fees, revocation of the respective industrial property right shall be declared.

5 – The court shall automatically communicate the pending nature of the action to the INPI, I. P.

6 – Once the legal action has been concluded or the seizure, lien or other apprehension has been lifted pursuant to applicable legislation, the court shall automatically communicate this fact to the INPI, I. P.

Article 373.

Rights pertaining to the State

Industrial property rights pertaining to the State shall be subject to the formalities and charges associated with the application, its grant and renewal, and revalidation when exploited or used by any type of company.

TITLE V

Industrial Property Bulletin

Article 374.

Industrial Property Bulletin

The Industrial Property Bulletin shall be published in electronic format by the INPI, I. P.

Article 375.

Content

The following shall be published in the Industrial Property Bulletin:

- a) Notices pertaining to patent application, supplementary protection certificates, utility models and registration;
- b) Amendments to the initial application;
- c) Revocation notices;
- d) Issuances and refusals;
- e) Notices of revalidation applications and the decision issued regarding such applications;
- f) Declarations of renunciation and withdrawals;
- g) Transfers and granting of exploitation licenses;
- h) Final judgments regarding court file cases pertaining to industrial property;
- i) Other facts or decisions that modify or extinguish private rights, along with all acts and matters that must be brought to the attention of the public;
- j) Establishment of rights of guarantee or usufruct, along with a lien, seizure and other apprehensions of goods conducted in accordance with applicable legislation;
- k) Notices of requests for re-establishment of rights and the decision issued regarding such applications.

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