
African Intellectual Property Organization (OAPI)
Agreement

**Relating to the Creation of an African Intellectual
Property Organization, Constituting a Revision
of the Agreement Relating to the Creation of an African
and Malagasy Office of Industrial Property**

(Bangui (Central African Republic), March 2, 1977)*

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The Government of the Central African Republic,
The Government of the Gabonese Republic,
The Government of the Islamic Republic of Mauritania,
The Government of the People's Republic of Benin,
The Government of the People's Republic of the Congo,
The Government of the Republic of Chad,
The Government of the Republic of the Ivory Coast,
The Government of the Republic of the Niger,
The Government of the Republic of Senegal,
The Government of the Republic of Upper Volta,
The Government of the Togolese Republic,
The Government of the United Republic of Cameroon,

Moved by the desire to protect intellectual property rights upon their territories in as effective and uniform a manner as possible;

* Official French title: Accord relatif à la création d'une Organisation Africaine de la Propriété Intellectuelle, constituant la révision de l'Accord relatif à la création d'un Office Africain et Malgache de la Propriété Industrielle.

Entry into force: February 8, 1982.

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** This Table of Contents has been added by WIPO for the convenience of the reader (Editor's note).

Undertaking, for this purpose, to accede to:

(i) the Paris Convention for the Protection of Industrial Property, of March 20, 1883, as last revised at Stockholm on July 14, 1967,

(ii) the Berne Convention for the Protection of Literary and Artistic Works, of September 9, 1886, as last revised at Paris on July 24, 1971, and/or the Universal Copyright Convention as revised at Paris on July 24, 1971,

(iii) the Hague Agreement Concerning the International Deposit of Industrial Designs, of November 6, 1925, as revised at The Hague on November 28, 1960, and at Stockholm on July 14, 1967,

(iv) the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, of October 31, 1958, as revised at Stockholm on July 14, 1967,

(v) the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967,

(vi) the Patent Cooperation Treaty, done at Washington on June 19, 1970,

(vii) the Trademark Registration Treaty, done at Vienna on June 12, 1973;

Having considered Article 4(iv) of the aforementioned Convention Establishing the World Intellec-

tual Property Organization, which provides that this Organization: "shall encourage the conclusion of international agreements designed to promote the protection of intellectual property";

Having considered Article 19 of the Paris Convention for the Protection of Industrial Property, which provides that: "... the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, insofar as these agreements do not contravene the provisions of this Convention," and Article 4A(2), which provides that: "Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority";

Having considered Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, which provides that: "The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, insofar as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention";

Having considered Article XIX of the Universal Copyright Convention, as revised at Paris on July 24, 1971, which provides that: "This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States";

Having considered Article 14(2)(a) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, which provides that: "Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of the Special Union";

Having considered Article 3(1) of the Patent Cooperation Treaty, which provides that: "Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty," as well as Article 45(1), which provides that: "Any treaty providing for the grant of regional patents ('regional patent treaty') and giving to all persons who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both

the regional patent treaty and the present Treaty may be filed as applications for such patents";

Having considered Article 25 of the Trademark Registration Treaty, which provides that: "Where the residents or nationals of all Contracting States are given the right under a treaty providing for the registration of regional marks ('regional treaty') to file applications and obtain registrations under such regional treaty by way of this Treaty, any Contracting State party to such regional treaty may declare, as provided in the Regulations, that its designation under this Treaty shall have the same effect as if the mark had been applied for as a regional mark effective in that State";

Having considered Article 27 of the Agreement relating to the Creation of an African and Malagasy Office of Industrial Property, done at Libreville on September 13, 1962, which provides that the said Agreement: "... shall be submitted to periodic revisions, particularly with the object of introducing into it modifications of a nature to improve the services rendered by ..." the African and Malagasy Office of Industrial Property;

Considering the advantages of establishing a uniform system for the protection of literary, artistic and industrial property, in particular, in the latter field, a system for the single deposit of applications for patents, registration of utility models, trademarks, service marks, industrial designs, trade names and appellations of origin, on the one hand, and a common system of protection against unfair competition, on the other hand, in order to facilitate recognition of the rights provided for in the laws of their countries;

Considering the advantages of creating a body responsible for applying the common administrative procedures deriving from a uniform system of protection of intellectual property,

Have resolved to conclude an Agreement establishing an African Intellectual Property Organization and have designated for this purpose plenipotentiaries, who have agreed upon the following provisions:

Article 1

(1) An African Intellectual Property Organization (hereinafter called "the Organization") is hereby established, which replaces the African and Malagasy Office of Industrial Property.

(2) The Organization shall be responsible for:

(a) implementing and applying the common administrative procedures deriving from a uniform

system for the protection of industrial property, as well as the provisions of international agreements in this field to which the member States of the Organization (hereinafter called "the member States") have acceded, and providing services related to industrial property;

(b) contributing to the promotion of the protection of literary and artistic property and to the recognition of the cultural and social values of artistic and literary property;

(c) encouraging the creation of national associations of authors in those member States where such bodies do not already exist;

(d) centralizing and coordinating information of all kinds relating to the protection of literary and artistic property and communicating this information to any member State requesting it.

(3) For each of the member States, the Organization shall serve both as the national industrial property service within the meaning of Article 12 of the aforementioned Paris Convention and as the central patent documentation and information body.

(4) For each of the member States also party to the Patent Cooperation Treaty, the Organization shall serve as the "national Office," the "designated Office," the "elected Office" or the "receiving Office" within the meaning of Article 2(xii), (xiii), (xiv) and (xv) of the aforementioned Treaty.

(5) For each of the member States also party to the Trademark Registration Treaty, the Organization shall serve as the "national Office" within the meaning of Article 2(xiii) and as the "designated Office" within the meaning of Article 2(xv) of the aforementioned Treaty.

Article 2

(1) Rights relating to the fields of intellectual property, as provided for in the Annexes to the present Agreement, shall be independent national rights subject to the legislation of each of the member States in which they have effect.

(2) Nationals may claim application for their benefit of the provisions of the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works and/or the Universal Copyright Convention, as well as the agreements, additional acts and closing protocols which have amended or will amend these Conventions, in cases where such provisions are more

favorable than those of the present Agreement and its Annexes in protecting intellectual property rights.

Article 3

(1) The Annexes to the present Agreement shall contain, respectively, the provisions to be applied in member States concerning patents (Annex I), utility models (Annex II), trademarks and service marks (Annex III), industrial designs (Annex IV), trade names and unfair competition (Annex V), appellations of origin (Annex VI), literary and artistic property (Annex VII), the organization of a central body for patent documentation and information (Annex VIII), the options offered to member States (Annex IX).

(2) Each member State shall be entitled, either at the moment of its ratification or accession, or subsequently, to give effect upon its territory to the amendments envisaged in Annex IX, to the exclusion of all others.

(3) Such amendments, as well as the date of their entry into force, shall be notified by each member State to the Director General of the Organization.

(4) Annexes I to IX, inclusive, constitute an integral part of the present Agreement.

Article 4

On decision by the Administrative Council, referred to in Article 18 of the present Agreement, the Organization may take all measures necessary for the application of the administrative procedures arising from implementation of the international conventions concerning intellectual property to which the member States have acceded.

Article 5

(1) Where applicants are domiciled in the territory of one of the member States, applications for patents and for the registration of utility models, trademarks, service marks or industrial designs shall be filed either with the national Authority or with the Organization, according to the legal provisions in force in the member State.

(2) Applicants domiciled outside the territories of the member States shall file the applications provided

for above directly with the Organization through an agent in one of the member States.

(3) Applications filed with the Organization may be transmitted by post.

(4) International patent applications by applicants domiciled on the territory of one of the member States shall be filed, under the provisions of the Patent Cooperation Treaty, with the Organization.

Article 6

(1) Subject to the provisions of paragraphs (2) to (4), below, any filing effected with the Authority of one of the member States, in accordance with the legislation of such State, or with the Organization, shall be equivalent to a national filing in each member State.

(2) Any filing of an international patent application which includes the designation of at least one member State shall be equivalent to a national filing in each member State which is also party to the Patent Cooperation Treaty.

(3) Any international trademark registration effected under the provisions of the Trademark Registration Treaty and including the designation of at least one member State shall have the effect of a national filing in each member State which is also party to the aforesaid Treaty.

(4) Any international deposit of an industrial design effected under the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs shall have the effect of a national deposit in each member State which is also party to the aforesaid Agreement.

Article 7

(1) The Organization shall undertake the administrative examination of patent and utility model applications in accordance with the common procedure prescribed by the laws of the member States.

(2) It shall grant patents, register utility models and assure their publication.

(3) The procedure before the Organization with regard to international applications filed in conformity with the rules of the Patent Cooperation Treaty shall be subject to the provisions of the aforesaid Treaty, as well as to the terms of the present Agreement and its Annex I.

(4) In each member State, utility models and, subject to the provisions of paragraph (5), hereafter, patents shall produce the effects provided for in the legislation in the said State.

(5) Patents granted in pursuance of international applications filed in accordance with the provisions of the Patent Cooperation Treaty shall produce their effects in those member States which are also party to the aforementioned Treaty.

Article 8

(1) The Organization shall undertake the administrative examination, registration and publication of trademarks or service marks in accordance with the common procedure provided for in the laws of the member States.

(2) In each of the member States, registered and published trademarks shall produce their effects in accordance with the national law of each State, subject to the provisions of paragraph (3), hereafter.

(3) The international registration of a trademark effected under the provisions of the Trademark Registration Treaty and having effect in at least one member State shall produce the same effects in each of the States party to the present Agreement and to the Trademark Registration Treaty as if the trademark had been registered with the Organization.

Article 9

(1) The Organization shall assure the registration, maintenance and publication of industrial designs in accordance with the common procedure prescribed by the laws of the member States.

(2) In each of the member States, registered and published industrial designs shall produce their effects in accordance with the national law of each State, subject to the provisions of paragraph (3), hereafter.

(3) The international deposit of an industrial design effected under the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs and having effect in at least one member State shall produce the same effects in each of the States party to the present Agreement and to the Hague Agreement as if the industrial design had been deposited with the Organization.

Article 10

(1) The Organization shall assure the registration, maintenance and publication of trade names in accordance with the common procedure prescribed by the laws of the member States.

(2) In each of the member States, registered and published trade names shall produce their effects in accordance with the national law of each State.

Article 11

(1) The Organization shall assure the registration and publication of registered appellations of origin in accordance with the common procedure prescribed by the laws of the member States.

(2) In each of the member States, registered and published appellations of origin shall produce their effects in accordance with the national law of each State, subject to the provisions of paragraph (3), hereafter.

(3) The international registration of an appellation of origin effected under the provisions of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration and having effect in at least one member State shall produce the same effects in each of the States party to the present Agreement and to the Lisbon Agreement as if the appellation of origin had been registered with the Organization.

Article 12

Any publication of the Organization shall be addressed to the Authority of each of the member States responsible, respectively, for industrial property or literary and artistic property.

Article 13

The Organization shall maintain for all the member States a special register of patents, a special register of utility models, a special register of trademarks or service marks, a special register of industrial designs, a special register of trade names and a special register of appellations of origin, in which the entries specified by the national laws shall be made.

Article 14

In the case of discrepancies between the provisions of the present Agreement and its Annexes and those of the international conventions to which the member States are party and which are administered by the International Bureau of the World Intellectual Property Organization, the latter shall prevail.

Article 15

Final legal decisions rendered in one member State in accordance with the provisions of Annexes I to IX of the present Agreement shall be binding on all other member States.

Article 16

(1) Any decision taken by the Organization rejecting the filing of an application for a title of protection concerning industrial property shall be subject to appeal to the High Commission of Appeals of the Organization.

(2) This Commission which shall, if necessary, hold one session per year, shall be composed of three members selected by drawing lots from a list of representatives from each of the member States, the first name drawn being that of the Chairman.

(3) Each member State shall designate its representatives for a two-year period and the mandate may be renewed.

(4) The appeals procedure shall be established in accordance with the rules provided for in Article 19.

Article 17

Any other action relating to the application of the laws of intellectual property may be entrusted to the Organization by unanimous decision of the Administrative Council provided for in Article 18.

Article 18

(1) The Organization shall be administered by an Administrative Council (hereinafter called "the Administrative Council") composed of representatives of member States on the basis of one representative per State.

(2) Any member State may, when necessary, entrust its representation on the Council to the representative of another member State. No member of the Council may represent more than two States.

(3) The Council shall adopt its rules of procedure and nominate annually its Chairman. It shall be convened on the initiative of its Chairman, of one-third of its members or, in an emergency, of the Director General of the Organization.

Article 19

In addition to performing the functions arising from other provisions of the present Agreement, the Administrative Council shall determine the general policy of the Organization and shall regulate and control the latter's activities and, in particular, shall:

(a) draw up the regulations necessary for the application of the present Agreement and its Annexes;

(b) establish the financial regulations, the regulations relating to fees, to the High Commission of Appeals and to the personnel;

(c) supervise the implementation of the regulations referred to in (a) and (b), above;

(d) vote the annual budget and, when necessary, any amended or additional budgets and control their implementation;

(e) examine and approve the annual accounts and inventory;

(f) approve the annual report on the activities of the Organization;

(g) nominate the Director General and the Deputy Director General, the Controller of Finance and the Auditors;

(h) determine the working language or languages of the Organization.

Article 20

(1) For decisions of the Administrative Council, the representative of each member State shall have one vote.

(2) Subject to the provisions of Article 17, above, decisions of the Administrative Council shall be taken by majority vote. In the event of a tied vote, the Chairman shall have the casting vote.

Article 21

In addition to the functions enumerated in Article 19 of the present Agreement and, where appropriate, according to the provisions of Article 18, above, the members of the Administrative Council representing States party to the present Agreement and to the Patent Cooperation Treaty, the Trademark Registration Treaty, the Hague Agreement Concerning the International Deposit of Industrial Designs or the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration shall, where necessary, draw up the appropriate regulations deriving from the implementation of the four aforementioned Treaties or Agreements, in view of their application on their respective national territories.

Article 22

The Director General shall be responsible for the administration of the Organization, in accordance with the provisions of the present Agreement and its Annexes, and with the regulations and guidelines drawn up by the Administrative Council.

Article 23

(1) The Organization shall have juridical status. In each of the member States it shall enjoy the widest legal entitlement recognized to legal persons by the national legislation.

(2) The Organization shall be responsible for the application of the uniform laws contained in Annexes I to VI, VIII and IX of the present Agreement, as well as their relevant regulations.

Article 24

The member States shall make an initial contribution, the amount of which shall be fixed by the Administrative Council and divided equally between the Contracting Parties.

Article 25

(1) The annual expenditure of the Organization shall be covered by:

(a) proceeds from fees provided for in the regulations of the Organization and in the laws of the member States;

(b) receipts in payment for services rendered;

(c) any other receipts, in particular, those deriving from property of the Organization.

(2) A special contribution by member States to the Organization shall be assured in cases where this may be necessary in order to balance the budget.

(3) Such a contribution shall be recorded in the budget of the Organization and divided equally between the Contracting Parties.

Article 26

The Administrative Council shall lay down the fees and receipts necessary for the functioning of the Organization and shall fix their amounts and the methods of payment.

Article 27

(1) On a decision by the Administrative Council, when appropriate, the Organization shall pay to each member State the budgetary surplus accruing to it, after deduction, where necessary, of its special contribution.

(2) Budgetary surpluses shall be fixed after making provision for the reserve funds and the special funds established by the financial regulations.

(3) Such surpluses shall be divided equally among the member States.

Article 28

The headquarters of the Organization shall be at Yaoundé (United Republic of Cameroon). The Organization shall be placed under the protection of the Government of the United Republic of Cameroon.

Article 29

The regulations drawn up by the Administrative Council under Article 19 for the application of the present Agreement and its Annexes shall, at the request of the Organization, be made applicable on the territory of each member State.

Article 30

Any State signatory to the present Agreement may ratify it and the instruments of ratification shall be deposited with the Director General of the Organization.

Article 31

(1) As from the date of entry into force of the present Agreement, the Libreville Agreement shall be closed to any new accession.

(2) The present Agreement shall replace in the relations between States party to it and, where it so applies, the Libreville Agreement.

(3) With respect to States which are not party to the present Agreement but which are party to the Libreville Agreement, the latter shall remain in force in its entirety.

(4) States party to the Libreville Agreement must take the necessary steps to become party to the present Agreement within a period of five years from signature of the present Agreement.

Article 32

(1) The present Agreement shall enter into force two months after the deposit of the instruments of ratification by at least two thirds of the signatory States.

(2) The date of entry into force of the Annexes to the present Agreement shall be fixed by the Organization.

Article 33

(1) Any African State which is not signatory to the present Agreement but which is party to the Convention Establishing the World Intellectual Property Organization, to the Paris Convention for the Protection of Industrial Property and to the Berne Convention for the Protection of Literary and Artistic Works and/or the Universal Copyright Convention may apply to accede to the present Agreement. The application shall be addressed to the Administrative Council, which shall take a decision by majority vote. Notwithstanding the provisions of Article 20(2) of the present Agreement, a tied vote shall be equivalent to rejection.

(2) The instruments of accession shall be deposited with the Director General of the Organization.

(3) Accession shall take effect two months after deposit unless a later date is specified in the instrument of accession.

Article 34

(1) Any State not party to the present Agreement may become an associated member by making an appropriate application to the Administrative Council.

(2) The Administrative Council shall decide on such application in the same way as that specified under Article 33(1).

(3) The capacity of associated member shall bestow upon the State possessing it, to the exclusion of any other, the right to benefit, under the conditions set out in Annex VIII to the present Agreement, from the services afforded by the central patent documentation and information body.

Article 35

(1) Any State party to the present Agreement may denounce it by notification in writing addressed to the Director General of the Organization.

(2) The denunciation shall take effect on December 31 of the second year following that in which the Director General of the Organization received the notification.

(3) Any member State which denounces one of the Conventions listed in Article 33(1), above, shall be deemed to have denounced the present Agreement and its Annexes.

Article 36

(1) The present Agreement may be revised from time to time, in particular, with a view to introducing amendments liable to improve the services rendered by the Organization.

(2) Should the present Agreement be revised as provided for in paragraph (1), above, the entry into force of the revised agreement shall *ipso facto* terminate the present Agreement and no State may thereafter accede to it.

Article 37

The Director General of the Organization shall inform the signatory or acceding States of:

- (a) the deposit of instruments of ratification;
- (b) the deposit of instruments of accession and the date upon which such accessions take effect;
- (c) where appropriate, under the provisions of Article 3(2), the amendments made by member States to the laws contained in Annexes I to IX and the date upon which such amendments take effect;
- (d) the date upon which the present Agreement enters into force, according to the provisions of Article 30;
- (e) denunciations made under the terms of Article 35 and the date upon which they take effect.

In witness thereof, the undersigned Plenipotentiaries, having presented their full powers, recognized as being in good and due form, have signed the present Agreement.

Done at Bangui on March 2, 1977, in a single copy in the French language which shall be deposited with the Director General of the African Intellectual Property Organization. The latter shall send a true certified copy by diplomatic channels to the Governments of each signatory or acceding State.

Annex I

Patents

PART I

General Provisions

Article 1

(1) A new invention involving an inventive step and which is industrially applicable may be the subject to a patent (hereinafter called "patent"), which confers upon the inventor, under the conditions and for the time limit hereinafter specified, the exclusive right to exploit it.

(2) Subject to the conditions and the time limits laid down in the present Annex, the owner of the right to the patent shall be entitled to preclude any person from exploiting the patented invention by carrying out any of the following acts:

(a) where the patent has been granted in respect of a product:

- (i) making, importing, offering for sale, selling and utilizing the product;
- (ii) stocking such product for the purposes of offering for sale, selling or utilizing;

(b) where the patent has been granted in respect of a process:

- (i) using the process;
- (ii) carrying out any of the acts referred to in subparagraph (a), above, in respect of a product obtained directly by means of the process.

Article 2

(1) An invention shall be new if it has not been anticipated by prior art.

(2) Prior art shall be considered everything made available to the public, in whatsoever place, by whatsoever means or methods, before the date either of the filing of the patent application or of a patent application filed abroad and for which priority has been validly claimed.

(3) The novelty of an invention shall not be denied if, during the six months preceding the date specified in paragraph (2), above, the invention was the subject of a disclosure resulting from:

(a) an obvious violation in relation to the applicant or his predecessor in title; or

(b) the fact that the applicant or his predecessor in title displayed it at an official or officially recognized international exhibition.

Article 3

An invention shall be considered as resulting from an inventive step if, having regard to the prior art, it would not have been obvious to a person having ordinary knowledge and skill in the art on the date of the filing of the patent application, or, if priority has been claimed, on the priority date validly claimed in respect thereof.

Article 4

An invention shall be considered industrially applicable if it can be made or used in any sort of industry, including agriculture.

Article 5

Patents shall not be issued for the following:

(a) inventions contrary to public order or morality, provided that the exploitation of the invention shall not be considered as contrary to public order or morality merely because it is prohibited by law or regulation;

(b) scientific and mathematical theories;

(c) inventions having as their object plant varieties, animal species, essentially biological processes for the breeding of plants or animals, other than microbiological processes and the products of such processes;

(d) schemes, rules or methods for doing business, performing purely mental acts or playing games;

(e) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods;

(f) straightforward presentation of information;

(g) computer programs;

(h) works of an exclusively ornamental nature.

Article 6

(1) Subject to the provisions of paragraphs (2) to (4) inclusive, hereafter, a patent shall expire at the end of the tenth calendar year following the date of filing of the application.

(2) On the request of the owner of a patent or of a licensee entered in the register of patents, made not more than six months and not less than one month before the expiration under paragraph (1), and on payment of a fee whose amount shall be fixed in the prescribed manner, the Organization shall extend the duration of that patent for a period of five years; however, this prolongation shall only be granted if the petitioner proves, to the satisfaction of the Organization, that the invention protected by the said patent is being worked on the territory of one of the member States at the date of the request, or that there are legitimate reasons for failing so to work it. Importation shall not constitute a legitimate reason.

(3) For the purposes of the provisions of the preceding paragraph, "worked" shall mean "the manufacture of a patented article, the application of a patented process or the use, in manufacture, of a patented machine, by an effective and serious establishment and on a scale which is adequate and reasonable in the circumstances."

(4) On request of the owner of a patent or of a licensee entered in the register of patents, made not more than six months and not less than one month before the expiration of the patent under paragraph (2), above, and on payment of a fee whose amount shall be fixed in the prescribed manner, the Organization may extend the duration of the patent for a further period of five years, if the petitioner proves to the satisfaction of the Organization that the invention protected by the said patent is being worked on the territory of one of the member States at the time of the request.

Article 7

(1) Subject to the legal provisions governing contracts for performing a certain work and employ-

ment contracts and, in the absence of contractual provisions to the contrary, the right to a patent for an invention made in execution of the contract shall belong to the person having commissioned the work or to the employer.

(2) The same provision shall apply when an employment contract does not require the employee to exercise any inventive activity, but when the employee has made the invention by using data or means that his employment has put at his disposal.

(3) In the circumstances provided for in paragraph (2), above, the employee who has made the invention shall have a right to remuneration taking into account his salary and the importance of the patented invention, which remuneration shall, in the absence of agreement between the parties, be fixed by the court. In the circumstances provided for in paragraph (1) of this Article, the said employee shall have a similar right if the invention is of very exceptional importance.

(4) The advantages given to the employee by the provisions of the preceding paragraph shall not be reduced by contract.

Article 8

Any patent application which fulfills the conditions specified under Annex II concerning utility models may be converted into an application for a utility model; in such cases, the patent application shall be considered as having been withdrawn and the Organization shall remove it from the special register of patents.

Article 9

The patent shall not have effect in respect of third parties who, at the time of application, already worked the invention on the territory of a member State or who had taken the necessary steps with a view to working it. The said third party shall be authorized to use the invention in his business, his own workshops or those of other persons. This right may only be transferred with the business.

Article 10

Foreigners may obtain patents under the conditions laid down by the present Annex.

PART II

*Article 13***Formalities Concerning the Grant of Patents**

SECTION I

Applications for Patents

Article 11

Any person wishing to obtain a patent for an invention shall file with the Minister responsible for industrial property, or send to him by registered post with a request for acknowledgment of receipt:

- (a) his application to the Director General of the Organization in duplicate;
- (b) the relevant paper proving the payment of filing and publication fees;
- (c) an unstamped power of attorney if the applicant is represented by an agent;
- (d) a sealed package containing in duplicate:
 - (i) a specification of the invention for which the application has been made, set out clearly and completely so that a person having ordinary knowledge and skill in the art could carry it out;
 - (ii) the drawings necessary or useful for the understanding of the specification;
 - (iii) a descriptive abstract containing a summary of the contents of the specification, the claim or claims specified under subparagraph (iv), hereafter, as well as all drawings relevant to the abstract; and
 - (iv) the claim or claims defining the scope of the protection sought, but which do not go beyond the contents of the specification mentioned under subparagraph (i), above.

Article 12

(1) The application shall be restricted to a single, principal subject, with the details that constitute it and its specified applications. It shall contain neither restrictions, conditions nor reservations. It shall have a title indicating in a precise and succinct manner the purpose of the invention.

(2) The documents mentioned under Article 11(d)(i) to (iv), above, shall be in one of the working languages of the Organization.

(1) Any person wishing to avail himself of the priority of an earlier application shall be required to attach to his application for a patent or to send to the Organization at the latest six months from the date of filing of the application:

(a) a written declaration indicating the date and number of the earlier application, the country in which it was made and the name of the applicant;

(b) a certified copy of the earlier application;

(c) and, if he is not the person having made the earlier application, a written authorization from the person having made it or the persons entitled empowering him to avail himself of the priority in question.

(2) The applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall, for each of them, comply with the provisions mentioned above; furthermore, he shall pay a fee for each priority right invoked and shall produce evidence of payment of the fee within the period of six months specified above.

(3) Failure to present any one of the documents referred to above within the time limit shall automatically entail, for the application under consideration, loss of the priority right invoked.

(4) Any document reaching the Organization more than six months after filing of the patent application shall not be admissible.

Article 14

Filing shall not be accepted unless the application is accompanied either by a receipt establishing payment of the filing and publication fees, or by a money order, a postal transfer receipt or notification of a bank transfer covering the amount of these fees.

SECTION II

Grant of Patents

Article 15

(1) Immediately after recording the application and within five days of the date of its filing, the

Minister responsible for industrial property shall transmit the package sent by the inventor to the Organization, attaching a copy of the application, a certified copy of the statement of filing, the document establishing evidence of payment of the fees and, where appropriate, the power of attorney mentioned in Article 11, as well as the priority documents.

(2) The Organization shall proceed with the opening and the recording of applications and the grant of patents as far as possible in the order of receipt of the said applications.

Article 16

(1) For any application for a patent, a search report shall be made to ensure that:

(a) the subject of the invention is not contrary to public order or morality;

(b) the invention mentioned in the application is not excluded from the protection afforded by the patent under the provisions of Article 5 of the present Annex;

(c) subject to the provisions of paragraph (3), hereafter, the claim or claims are in accordance with the provisions of Article 11 of the present Annex;

(d) the provisions of Article 12 of the present Annex are respected.

(2) Subject to the provisions of paragraph (3), hereafter, a search report shall also be made to ensure that:

(a) at the time of filing of the application for a patent, an earlier application for a patent or an application benefiting from a validly claimed priority and concerning the same invention was not in the process of being granted;

(b) the invention

(i) is new;

(ii) involves an inventive step; and

(iii) is industrially applicable.

(3) The Administrative Council shall decide whether, and to what extent, the provisions of paragraphs (1)(c) and (d) and 2(a) and (b), above, shall be applied; in particular, it shall decide whether all or some of the aforementioned provisions shall be applicable to one or several technical fields covered by the inventions. It shall establish such fields by reference to the International Patent Classification.

(4) The provisions of paragraphs (1) to (3), above, shall not be applicable to international patent applications covered by the Patent Cooperation Treaty.

Article 17

(1) Applications for patents which have been drawn up in due form shall be granted without examination as to substance or, where appropriate, after making a search report. Where the Organization has ascertained that all the requisite conditions and, where appropriate, the search report or reports mentioned under Article 16, above, have been fulfilled, it shall grant the patent applied for. However, in each case, the grant of the patent shall be at the risk and peril of the applicant and without guarantee as to the existence, the novelty or the merit of the invention or as to the truth or exactitude of the specification.

(2) The grant of the patent shall be dependent upon a decision of the Director General of the Organization or of an official of the Organization duly authorized to do so by the Director General of the Organization.

(3) Patents based on international applications as provided for in the Patent Cooperation Treaty shall be granted in the same way as that mentioned in the preceding paragraph with, however, reference to their international publication as prescribed in the said Treaty.

Article 18

(1) The patent shall not be granted until one year after the date of filing of the application if the said application contains an express request to this effect. Any person requesting the benefit of this provision may renounce it any time within the said period of one year.

(2) The benefit of the foregoing provision may not be claimed by persons who have already availed themselves of the priority period granted by international treaties and, in particular, by Article 4 of the Paris Convention for the Protection of Industrial Property.

Article 19

(1) Any application concerning an invention which is not patentable within the terms of Article 5 or which is not in accordance with the provisions of Article 16 shall be rejected.

(2) The same shall apply to any application which is not accompanied by a copy of the document prescribed in Article 11(d).

(3) An application which does not fulfill the provisions of Article 12(1) may, within a period of six months from the date of notification that the application cannot be accepted as presented on the grounds of not having one principal subject, be divided into a number of applications benefiting from the date of the initial application.

(4) With the exception of the provisions of Article 11(b), any application for which the conditions laid down in Articles 11 and 12 have not been fulfilled shall be returned to the applicant or his agent inviting him to correct the documents within a period of two months. This period may be extended, in cases of justifiable need, on request by the applicant or his agent. The application so corrected within the aforesaid period shall retain the date of the initial application.

(5) In the event that the corrected documents are not provided within the prescribed period, the application for a patent shall be rejected.

(6) No application may be rejected under the provisions of paragraphs (1) or (2) of the present Article without first having obtained the comments of the applicant or his agent.

(7) Prior to the grant, any application for a patent or for a certificate of addition may be withdrawn by the person having submitted it. The documents filed shall only be returned to him if he should so request.

Article 20

Subject to the provisions of Articles 27 and 29, hereafter, the Administrative Council shall in the prescribed manner draw up regulations concerning the acts to be entered in the special register of patents, on pain of not being enforceable against third parties.

SECTION III

Certificates of Addition

Article 21

(1) The patentee or the persons entitled shall, for the entire duration of the patent, have the right to introduce changes, improvements or additions, by

complying, for the purposes of filing the application, with the conditions specified in Articles 11, 12, 13 and 14 of the present Annex.

(2) Such changes, improvements or additions shall be established by certificates granted in the same form as the principal patent and which, as from the respective dates of the applications and their grant, shall have the same effects as the said principal patent.

(3) Certificates of addition taken out by one person entitled shall benefit all the other persons entitled.

Article 22

Certificates of addition shall terminate with the principal patent. However, the nullity of the principal patent shall not automatically result in the nullity of the corresponding certificate or certificates of addition; and, even when absolute nullity has been declared under the provisions of Article 40, the certificate or certificates of addition shall survive the principal patent until expiration of the normal term of the latter, subject to payment of the annual fees which would have been due if the said patent had not been annulled.

Article 23

Provided that a certificate of addition has not been granted, the applicant may obtain the conversion of his application for a certificate of addition into an application for a patent, for which the date of filing shall be that of the date of application for the certificate. Any patent ultimately granted shall then give rise to payment of the same annual fees as a patent filed at the latter date.

Article 24

Any patentee who wishes to obtain a principal patent for a change, improvement or addition, rather than a certificate of addition expiring with the initial patent, must comply with the provisions laid down in Articles 11, 12, 13 and 14.

Article 25

Any person having obtained a patent for an invention related to the subject of another patent shall have

no right to exploit the invention already patented and, reciprocally, the holder of the earlier patent may not exploit the invention which is the subject of the new patent.

SECTION IV

Transfer and Assignment of Patents and Contractual Licenses

Article 26

(1) Rights subsisting in an application for a patent or in a patent shall be transferable in whole or in part.

(2) Acts involving transfer of ownership, licensing of the right of exploitation or assignment of such right, or pledge or cancellation of a pledge, in respect of an application for a patent or a patent shall, on pain of nullity, be established in writing.

Article 27

(1) The acts mentioned in the preceding Article shall not be enforceable against third parties unless they are entered in the special register of patents kept by the Organization within a period of twelve months from the date on which they were carried out. A copy of such acts shall be kept by the Organization.

(2) Subject to the conditions established in the prescribed manner, the Organization shall furnish to any person who so requests a copy of the entries in the special register of patents, as well as the state of entries concerning patents which are the subject of a pledge or a certificate establishing the absence of any such entries.

Article 28

Those persons who have obtained from a patentee or from the persons entitled the right to exploit an invention shall automatically benefit from certificates of addition subsequently granted to the patentee or the persons entitled. Reciprocally, the patentee or the persons entitled shall benefit from certificates of addition which may subsequently be granted to persons having obtained the right to exploit the invention.

Article 29

(1) The registered owner of a patent may, by contract, grant to a natural or legal person a license enabling him to exploit the patented invention.

(2) The duration of the license may not be longer than the duration of the patent.

(3) The license contract shall be drawn up in writing and signed by the parties.

(4) The license contract shall be entered in the special register of the Organization within a period of twelve months from the date of the approval referred to in Article 31, hereafter. It shall have no effect against third parties until it is entered in the aforementioned register and published in the form specified in the rules of the present Annex.

(5) The license shall be cancelled from the register on request of the owner of the patent or the licensee, upon presentation of proof of the expiration or termination of the license contract.

(6) In the absence of provisions to the contrary in the license contract, the grant of a license shall not exclude for the licensor the possibility of either granting licenses to other persons, subject to notifying the licensee, or exploiting the patented invention himself.

(7) The grant of an exclusive license shall eliminate the possibility for the licensor of granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, of exploiting the patented invention himself.

Article 30

(1) Clauses in license contracts or relating to such contracts are null and void insofar as they impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the patent or which are not necessary for the upholding of such rights.

(2) The following shall not be considered as limitations under the terms of the preceding paragraph:

- (i) restrictions relating to the extent, the scope or the duration of exploitation of the patented invention;
- (ii) the obligation upon the licensee to abstain from any act liable to harm the validity of the patent.

(3) In the absence of provisions to the contrary in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sub-licenses.

Article 31

(1) License contracts, assignments and transfers of patents, their amendment or renewal must be submitted, on pain of nullity, to the competent national authority for prior control and approval within the twelve months following their conclusion and before their insertion in the special register of the Organization if they involve payments abroad or if they are granted to or obtained by natural or legal persons who are neither nationals nor resident on the national territory of one of the member States.

(2) The control of license contracts, assignments, transfers, amendments or renewals specified in the preceding paragraph shall consist in checking that they do not contain any clauses imposing upon the assignee or licensee restrictions not deriving from the rights conferred by the patent or which are not necessary for upholding such rights, in particular, clauses:

- (i) compelling the assignee or licensee to pay royalties for an invention which is not worked or a large proportion of the royalties before starting to work a protected invention;
- (ii) compelling the assignee or licensee to import raw materials, goods or equipment furnished by the assignor or licensor, unless there is no other way to ensure the quality of the goods to be produced;
- (iii) whose effect is to prevent exportation of the goods produced by the protected invention to certain or to all the member States or which authorize such exportation in return for additional royalties, or which limit the competitive possibilities for the assignee or licensee in such States.

SECTION V

Communication and Publication of Patent Specifications and Drawings

Article 32

(1) The specifications and drawings of granted patents and certificates of addition shall be kept by the

Organization where, after publication of the grant of patents or certificates of addition as provided for in Article 33, hereafter, they shall be communicated on request.

(2) After the same date, any person may obtain an official copy of the said specifications and drawings.

(3) The provisions of the two preceding paragraphs shall apply to official copies furnished by applicants seeking to avail themselves of the priority of an earlier filing and to the documents enabling certain such applicants to claim the priority.

(4) The applicant for a patent or for a certificate of addition seeking to avail himself abroad of the priority of his filing before the grant of the patent or certificate of addition may obtain an official copy of his application.

Article 33

(1) The Organization shall publish the following details for each patent or certificate of addition granted:

- (i) the number of the patent or certificate of addition;
- (ii) the name and address of the owner of the patent or certificate of addition;
- (iii) the name and address of the inventor, unless he has requested not to be mentioned on the patent or certificate of addition;
- (iv) the name and address of the agent if there is one;
- (v) the date of filing of the application;
- (vi) mention of priority if priority has been validly claimed;
- (vii) the date of the priority, the country or countries for which the earlier application was filed and the number of the earlier application;
- (viii) the date of the grant of the patent or certificate of addition;
- (ix) the title of the invention;
- (x) in the event that a search report was made, the symbol of the International Patent Classification (IPC).

(2) The Administrative Council shall establish and determine the conditions of publication of the specification of the invention, the drawings if any, the claims and the abstract.

PART III

Nullity, Forfeiture and Actions Relating Thereto

SECTION I

Nullity and Forfeiture

Article 34

(1) Patents granted in the following cases shall be declared null and void:

(a) if the invention is not new, does not involve an inventive step or if it is not industrially applicable;

(b) if the invention is not patentable within the terms of Article 5, without prejudice to the penalties which might ensue with regard to the manufacture or marketing of prohibited articles;

(c) if the title under which the patent was applied for fraudulently implies a different object other than the true object of the invention;

(d) if the specification attached to the patent does not conform to the provisions of Article 11(d)(i), above, or if it does not indicate in a complete and honest manner the true methods of the inventor.

(2) Certificates in respect of changes, improvements or additions which do not bear upon the principal patent, as provided for in the present Annex, shall likewise be declared null and void.

Article 35

(1) Any patentee not having paid his annual fees within the prescribed time limit after filing his application for a patent shall forfeit his rights.

(2) The patentee concerned shall, however, be entitled to six months respite during which he may make valid payment of the annual fees. In this case, he shall also pay an additional fee.

(3) Payments made as supplements to annual or additional fees during the six-month period mentioned above shall be considered as valid.

(4) Payments made as annual or additional fees falling due and relating to an application for a patent which results either from the conversion of an application for a certificate of addition in accordance with

Article 23, above, or from the division of an application for a patent under the terms of Article 19(3), above, shall also be considered as valid, provided that such payments are made within a period of six months from the date of application for conversion or the date of filing of the applications resulting from the division.

Article 36

(1) Without prejudice to the provisions of Articles 34 and 35, above, where a patent has not been renewed due to circumstances beyond the control of the registered owner of the said patent, the registered owner or the persons entitled may apply for restoration of the patent, against payment of the requisite annual fees as well as of a surcharge whose amount shall be fixed in the prescribed manner, within a period of six months from the date upon which the above-mentioned circumstances ceased to exist and, at the latest, within a period of two years from the date upon which renewal was due.

(2) The application for restoration of the patent, together with documents proving payment of the fees and surcharge mentioned in the previous paragraph, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the persons entitled consider the restoration justified.

(3) The Organization shall examine the reasons referred to above and shall either restore the patent or reject the application if it does not consider the grounds valid.

(4) Restoration shall not entail prolongation of the maximum duration of the patent. Third parties who started to work the invention after expiration of the patent shall have the right to continue working it.

(5) Restoration of the patent shall likewise entail restoration of the certificates of addition related to it.

(6) Restored patents shall be published by the Organization in the form prescribed by the rules of the present Annex.

Article 37

Any person who, by means of signs, notices, prospectuses, posters, marks or stamps, assumes the quality of a patentee, without being the registered owner of a patent granted in accordance with the laws

or after expiration of an earlier patent, or who, being a patentee, mentions his quality as patentee or his patent without adding the words "without guarantee of the Government," shall be liable to punishment by a fine of from 50,000 to 150,000 francs CFA. In the event of recidivism, the fine may be doubled.

SECTION II

Actions for Nullity or Forfeiture

Article 38

(1) Actions for nullity or forfeiture may be undertaken by any person having an interest therein.

(2) Such actions, as well as all disputes relating to the ownership of patents, shall be brought before the civil courts.

Article 39

If the action is simultaneously brought against the owner of the patent and one or more limited licensees, it shall be brought before the court sitting in the fixed or elected domicile of the above-mentioned owner.

Article 40

The matter shall be examined and judged in the manner prescribed for summary proceedings. If necessary, it shall be communicated to the Office of the Public Prosecutor.

Article 41

(1) In any proceedings seeking to declare the nullity or forfeiture of a patent, the Office of the Public Prosecutor may become an intervening party and request the declaration of nullity or absolute forfeiture of the patent.

(2) It may also petition directly by principal action for a declaration of nullity in the cases specified under Article 34(1)(b) and (c).

Article 42

In the cases specified in Article 41, above, all the persons entitled whose titles have been registered with the Organization in accordance with Article 27 must be made parties.

Article 43

Where the nullity or absolute forfeiture of the patent has been pronounced by a legal decision having the effect of *res judicata*, the Organization shall be informed thereof and the nullity or forfeiture pronounced on the territory of a member State shall be entered in the special register of patents and published in the form specified in Article 33, above, for granted patents.

PART IV

Compulsory Licenses

Article 44

(1) On the request of any person made after the expiration of a period of four years from the date of the filing of an application for a patent or three years from the date of the grant of a patent, whichever period expires last, a compulsory license may be granted where one or more of the following conditions are fulfilled:

- (i) the patented invention is not being worked on the territory of a member State at the time the request is made;
- (ii) the working of the patented invention on the above-mentioned territory does not meet, on reasonable terms, the demand for the protected product;
- (iii) the working of the patented invention on the above-mentioned territory is being prevented or hindered by importation of the protected product;
- (iv) by reason of the refusal of the owner of the patent to grant licenses on reasonable terms, the establishment or development of industrial or commercial activities on the above-mentioned territory is unfairly and substantially prejudiced.

(2) Notwithstanding the provisions of paragraph (1) above, a compulsory license may not be granted if the owner of the patent provides legitimate reasons for not working the invention, it being understood that importation shall not constitute a legitimate reason.

Article 45

(1) Where a patented invention cannot be worked without infringing rights under a patent granted on an earlier application or benefiting from a validly claimed earlier priority ("earlier patent"), a compulsory license may be granted to the owner of the later patent to the extent necessary for the working of his invention, insofar as such invention constitutes an important technical advance in relation to the earlier patent.

(2) If the owner of the later patent obtains a compulsory license in accordance with the provisions of paragraph (1), above, a compulsory license may be granted to the owner of the earlier patent with respect to the later patent.

Article 46

(1) The request for the grant of a compulsory license shall be made to the civil court of the domicile of the patentee or, if the latter is domiciled abroad, either to the civil court of his elected domicile or the place in which he named an agent for the purposes of filing. Only requests made by persons domiciled on the territory of a member State shall be considered.

(2) The request shall contain:

- (i) the name and address of the petitioner;
- (ii) the title of the patented invention and the number of the patent in respect of which a compulsory license is requested;
- (iii) a statement of the ground or grounds specified in Articles 44 and 45, above, on which the request is based and the facts justifying the grant of a compulsory license;
- (iv) in the case of a compulsory license requested pursuant to the provisions of Article 44, above, a statement by the petitioner in which he undertakes to work the patented invention on the territory of one of the member States in such a way as to remedy the insufficiencies which formed the basis for the request to grant a compulsory license.

(3) The request shall be accompanied:

- (i) by proof that the petitioner had previously approached the owner of the patent, by registered letter, requesting a contractual license, but had been unable to obtain such a license from him on reasonable terms and within a reasonable time;
- (ii) in the case of a compulsory license requested pursuant to Articles 44 or 45, by proof that the petitioner is capable of working the patented invention.

Article 47

(1) The civil court shall examine whether the request for the grant of a compulsory license satisfies the requirements of Article 46, above. If the said application does not satisfy the specified requirements, the court shall reject it. Before rejecting the request, the court shall inform the petitioner of the deficiencies of his request and shall allow him to make the necessary corrections.

(2) Where the request for the grant of a compulsory license satisfies the requirements of Article 46, above, the civil court shall notify the request to the owner of the patent concerned, as well as to any licensee whose name appears in the register of patents, and shall invite them to submit their observations on the said request in writing within a period of three months. Such observations shall be communicated to the petitioner. The civil court shall likewise notify the request to any Government authorities concerned. The civil court shall hold a hearing on the request and the observations received, to which the petitioner, the owner of the patent, any licensee whose name appears in the register of patents and any Government authorities concerned shall be invited.

(3) Once the procedure prescribed in paragraph (2), above, has been completed, the civil court shall take a decision on the request, either granting or refusing the compulsory license.

(4) If the compulsory license is granted, the decision of the civil court shall lay down:

- (i) the scope of the license, specifying, in particular, the acts referred to in Article 1(2) of the present Annex to which it extends and the period for which the license is granted, it being understood that a compulsory license granted under the provisions of Articles 44 or 45, above, may not extend to the act of importation;

- (ii) the amount of the remuneration to be paid by the licensee to the owner of the patent; in the absence of agreement between the parties, such remuneration shall be equitable with due regard to all the circumstances of the case.

(5) The decision of the civil court shall be in writing and shall state the grounds on which it is based. The civil court shall convey the decision to the Organization, which shall register it. The civil court shall publish the decision and shall notify it to the petitioner and to the holder of the patent. The Organization shall notify any licensee whose name appears in the register of patents of the decision.

Article 48

(1) After the expiration of the time limit for appeal specified in Article 51 of the present Annex, or once an appeal has been disposed of by upholding, in whole or in part, the decision by which the civil court granted the compulsory license, the grant of the latter shall authorize its beneficiary to exploit the patented invention according to the terms fixed in the decision of the civil court or in the decision on appeal, and shall require him to pay the remuneration fixed by the aforementioned decision.

(2) The grant of a compulsory license shall not affect either license contracts in force or compulsory licenses in force and shall not preclude the conclusion of other license contracts or the granting of other compulsory licenses. However, the patentee may not grant to other licensees more favorable terms than those of the compulsory license.

Article 49

(1) The beneficiary of the compulsory license may not, without the consent of the owner of the patent, grant permission to any third person to perform any of the acts which he is authorized to perform under the compulsory license.

(2) Notwithstanding the provisions of paragraph (1), above, a compulsory license may be transferred together with the establishment of the beneficiary of the compulsory license or with that portion of his establishment which exploits the patented invention. No such transfer shall be valid without the authorization of the civil court. Before granting the

authorization, the civil court shall give the owner of the patent an opportunity to be heard. The civil court shall notify the authorization to the Organization, which shall register and publish it. Any transfer authorized shall cause the new beneficiary of the compulsory license to accept the same obligations as those which devolved upon the former beneficiary.

Article 50

(1) On the request of the owner of the patent or the beneficiary of the compulsory license, the civil court may amend the decision on the grant of a compulsory license to the extent that new facts justify such amendment.

(2) On the request of the owner of the patent, the civil court shall withdraw the compulsory license:

- (i) if the grounds for its grant have ceased to exist;
- (ii) if the beneficiary exceeds the scope of the license pursuant to Article 47(4)(i), above;
- (iii) if the beneficiary is in arrears of payment of the remuneration pursuant to Article 47(4)(ii), above.

(3) Where the compulsory license is withdrawn under the provisions of paragraph (2)(i) above, a reasonable period shall be granted to the beneficiary of the compulsory license to enable him to cease working the invention in cases where immediate cessation would have serious consequences.

(4) The provisions of Articles 46 and 47 of the present Annex shall apply to the amendment or withdrawal of a compulsory license.

Article 51

(1) The owner of the patent, the beneficiary of a license whose name appears in the pertinent register or any person having requested the grant of a compulsory license may, within the period of one month dating from the publication specified in Article 47(5), 49(2) or 50(4), above, appeal to the competent higher jurisdiction against a decision taken within the terms of Article 47(3), 49(2) or 50, above.

(2) The appeal referred to in the preceding paragraph and contesting the grant of a compulsory license, authorization to transfer a compulsory license or the amendment or withdrawal of a compulsory license, shall have a staying effect.

(3) The decision on appeal shall be notified to the Organization, which shall register and publish it.

Article 52

(1) Any beneficiary of a contractual or compulsory license may, by registered letter, summon the owner of a patent to bring the necessary legal actions for civil or penal sanctions for any violation, indicated by the said beneficiary, of the rights conferred by the patent.

(2) If, within three months of the summoning specified in the preceding paragraph, the owner of the patent refuses or fails to institute the actions referred to in the said preceding paragraph, the beneficiary of a license which has been registered may institute the actions in his own name without prejudice to the owner's right to intervene in the actions.

Article 53

Any action for nullity of a patent shall be directed against the patentee. If a final legal judgment declares the nullity of the patent, the beneficiary of the compulsory license shall be freed from all the obligations resulting from the decision granting him the compulsory license.

PART V

Licenses of Right

Article 54

(1) Any owner of a patent not precluded by the terms of any previously registered license from granting further licenses may apply to the Organization to have, in respect of his patent, the mention "licenses of right" entered in the register. The mention shall be entered in the register and this fact shall be published by the Organization as soon as possible.

(2) The entry of this mention in the register shall entitle any person to obtain a license to exploit the said patent upon such terms as shall, in the absence of agreement between the interested parties, be fixed by the civil court.

(3) The owner of the patent may, at any time, apply to the Organization to cancel the entry "licenses of right." If no license is in force, or if all the licensees agree thereto, the Organization shall cancel the entry after payment of all fees which would have been payable had the entry not been made in the register.

(4) The provisions of Article 26(1) of the present Annex shall also apply to licenses of right.

(5) The grantee of a license of right may neither assign it nor grant sublicenses under it.

PART VI

Ex Officio Licenses

Article 55

(1) Notwithstanding the provisions of Articles 44 to 52, an *ex officio* license may be obtained at any time for the exploitation of a patented invention of vital importance to:

(a) national defense;

(b) public health;

(c) the national economy, provided that in this latter case, the protected article manufactured on the territory of the member State in question cannot be obtained on reasonable terms and in sufficient quantities.

(2) In the cases provided for in paragraph 1(a) and (b), an *ex officio* license may even be obtained for importation.

Article 56

(1) A member State may, at any time, for the requirements of national defense, obtain a license for the exploitation of an invention which is either the subject of a patent application or a patent.

(2) The exploitation mentioned above may be undertaken by the member State itself or on its behalf.

(3) The aforementioned license shall be granted on the request of the Minister responsible for national defense by a text issued by the Minister responsible for industrial property, in which shall be laid down the

terms of the said license with the exception of the conditions concerning the payment of remuneration for the license.

(4) The license shall have effect from the date upon which the application was made.

(5) In the absence of agreement between the interested parties, the amount of remuneration mentioned under paragraph (3), above, shall be fixed by the court.

(6) At all stages of the procedure in regard to the grant of the aforementioned license, persons having knowledge of the said procedure shall be compelled to secrecy.

Article 57

(1) On the request of the competent Ministers, the Minister responsible for industrial property may summon owners of patents protecting inventions mentioned under Article 55(1)(b) and (c), above, to exploit these inventions in such a way as to fulfill the requirements of public health or the national economy.

(2) If, within a period of twelve months, no steps have been taken in compliance with the aforesaid summoning and if the lack or insufficiency of the exploitation or the insufficient quality or quantity of the exploitation undertaken following the summoning endangers the public health or the national economy, the patents in question shall be the subject of licenses of exploitation by means of a text issued by the competent Minister in the Government of the member State in question, which text shall fix the conditions with regard to the duration and scope of the said licenses.

(3) The period mentioned in the preceding paragraph may be prolonged by the Minister responsible for industrial property upon request of the competent Minister and if the registered owner of the patent in question puts forward legitimate reasons.

(4) The license shall take effect upon the date on which the text mentioned in paragraph (2), above, is published. As from that date, the member State in question may either exploit the relevant invention on its own behalf or have it exploited.

(5) In the absence of agreement, the conditions of payment due for the licenses mentioned in the present Article shall be fixed by the court.

PART VII

Infringement, Legal Proceedings and Penalties

Article 58

(1) Subject to the provisions of paragraph (2), hereafter, any injury to the rights of a patentee either by manufacture of products or by the use of means forming the subject of his patent, shall constitute the offense of infringement. This offense shall be punished by a fine of from 50,000 to 300,000 francs CFA, without prejudice to the right to compensation.

(2) Nevertheless, no action for infringement of a patented invention shall be entertained if, within a period of five years from the date of the grant of the patent in question, the invention protected by the patent had not been exploited by the owner of the patent or the persons entitled on the territory of one of the member States, unless legitimate reasons justify such absence of exploitation.

Article 59

Subject to the provisions of Article 58(2), above, any person who has knowingly received, sold, exhibited for sale or introduced on the national territory of one of the member States one or several infringing objects shall be liable for the same penalties as the infringers.

Article 60

(1) The penalties specified under Articles 58 and 59 shall not be cumulative.

(2) The heaviest penalty alone shall be imposed for all acts prior to the first act of the proceedings.

Article 61

(1) In the event of recidivism, a penalty of imprisonment of from one to six months may be pronounced in addition to the price specified under Articles 58 and 59.

(2) Recidivism shall be deemed to have occurred when, within the preceding five years, a first conviction was pronounced for one of the offenses specified in the present Annex.

(3) A penalty of imprisonment of from one to six months may also be pronounced if the infringer is a workman or employee having worked in the workshops or establishment of the patentee, or if the infringer has joined with a workman or employee of the patentee in order thus to become acquainted with the processes described in the patent.

(4) In the latter case, the workman or employee may be prosecuted as an accomplice.

Article 62

The provisions of the national legislation of member States with regard to extenuating circumstances shall apply to the offenses specified in the present Annex.

Article 63

Criminal action for application of the above penalties may only be exercised by the Office of the Public Prosecutor upon complaint of the injured party.

Article 64

The criminal court, when dealing with an action for infringement, shall rule on the defenses put forward by the accused, such as the nullity or forfeiture of the patent or questions relating to ownership of the said patent.

Article 65

Acts occurring prior to the grant of a patent shall not be considered as being prejudicial to the rights of the patentee and may not justify conviction, even on a civil basis, with the exception, however, of acts subsequent to a notification to the alleged infringer of an official copy of the specification of the invention attached to the application for a patent.

Article 66

(1) Owners of patents may, in pursuance of an order from the president of the civil court within whose jurisdiction the action is to be taken, through bailiffs or public or ministerial officials and, if

necessary with the aid of an expert, make a detailed inventory and description, with or without seizure, of the alleged infringing objects.

(2) The order shall be made on request and upon presentation of the patent.

(3) Where seizure is involved, the said order may require the petitioner to furnish security, which he shall be required to deposit before seizure is effected.

(4) Security shall always be required from foreigners seeking seizure.

(5) The person in possession of the described or seized objects shall be given a copy of the order and, where appropriate, of the document verifying the deposit of security, on pain of nullity and damages against the bailiff or the public or ministerial official.

Article 67

Should the petitioner fail to take action within a period of one month, either by civil or criminal means, the seizure or inventory shall automatically become null, without prejudice to the damages, if any, that may be claimed.

Article 68

(1) The confiscation of recognized infringing objects and, where necessary, that of implements or tools specially intended for their manufacture shall, even in the case of acquittal, be enforced against the infringer, the receiver, the introducer or the retailer.

(2) The objects confiscated shall be handed over to the owner of the patent, without prejudice to the right to further damages and publication of the judgment, where appropriate.

PART VIII

Special and Transitional Provisions

Article 69

In pursuance of the provisions of the present Article, any patent granted or recognized under the terms

of the Libreville Agreement of September 13, 1962, and its Annexes I and IV shall remain in force for the duration specified in the said Agreement.

Article 70

(1) The present Annex shall apply to applications for patents filed as from the date of its entry into force, subject to the rights granted under Annex I of the Libreville Agreement of September 13, 1962.

(2) Applications for patents filed prior to the date of entry into force of the present Annex shall remain subject to the regulations which were applicable on the date of the said filing.

(3) However, the exercise of the rights conferred by patents granted under the terms of the preceding paragraph shall be subject to the provisions of the present Annex as from the date of its entry into force, subject to acquired rights which shall be upheld.

(4) Annex I, as well as Article 1 of Annex IV of the Libreville Agreement of September 13, 1962, are repealed.

Annex II

Utility Models

PART I

Article 3

General Provisions

Article 1

Within the meaning of the present Annex, utility models protected by registration certificates granted by the Organization shall be implements of work or objects to be utilized or parts of such implements or objects insofar as they are of use for the work or employment for which they are intended due to a new outline, a new arrangement or a new device, and are industrially applicable.

Article 2

Subject to the conditions and the time limit laid down in the present Annex, the owner of a registration certificate shall have the right to preclude any person from carrying out any of the following acts: making, importing, offering for sale, selling and using the utility model, and holding the latter for the purposes of offering for sale, selling or using.

(1) The implement or object or the parts of one or the other as specified in Article 1, above, shall not be considered as new if, on the date of filing of the application for registration with the Organization, they had been described in printed publications or if they had publicly been used on the territory of a member State.

(2) The novelty referred to in paragraph (1), above, shall not be denied if, during the six months preceding the date specified in the previous paragraph, the implement or object or the parts of one or the other were the subject of a disclosure resulting from:

(a) an obvious violation in relation to the applicant or his predecessor in title; or

(b) the fact that the applicant or his predecessor in title displayed them at an official or officially recognized international exhibition.

Article 4

A utility model shall be considered as industrially applicable if it can be made in any sort of industry, including agriculture.

Article 5

(1) A utility model which is contrary to public order or morality, public health, the national economy or the national defense may not be the subject of a registration, as specified in Article 1 of the present Annex, provided that exploitation of the said model shall not be considered as contrary to public order or morality merely because it is prohibited by law or regulation.

(2) No utility model may be protected under the terms of the present Annex if it has already been the subject of a patent for an invention or a registration of a utility model based on a prior application or an application benefiting from an earlier priority.

Article 6

(1) Subject to the provisions of paragraph (2), hereafter, the duration of the protection conferred by the registration of a utility model shall expire at the end of the fifth year following the date of filing of the application for registration.

(2) On the request of the registered owner of a utility model or of a registered licensee made not more than six months and not less than one month before the expiration under the preceding paragraph and on payment of a fee whose amount shall be fixed in the prescribed manner, the Organization shall extend the duration of the utility model for a period of three years; however, this prolongation shall only be granted if the petitioner proves, to the satisfaction of the Organization, that the protected utility model is being worked on the territory of one of the member States at the date of the request, or that there are legitimate reasons for failing so to work it. Importation shall not constitute a legitimate reason.

(3) For the purposes of the provisions of the preceding paragraph, "worked" shall mean "the manufacture of a protected utility model or the use, for manufacture, of a utility model, by an effective and serious establishment and on a scale which is adequate and reasonable in the circumstances."

Article 7

(1) Subject to the legal provisions governing contracts for performing a certain work and employment

contracts and in the absence of contractual provisions to the contrary, the right to the registration of a utility model developed in execution of the said contract shall belong to the person having commissioned the work or to the employer.

(2) The same provision shall apply when an employment contract does not require the employee to exercise any inventive activity, but when the employee has developed the utility model by using data or means that his employment has put at his disposal.

(3) In the circumstances provided for in paragraph (2), above, the employee who has developed the utility model shall have a right to remuneration taking into account his salary and the importance of the utility model registered, which remuneration shall, in the absence of agreement between the parties, be fixed by the court.

(4) In the circumstances provided for in paragraph (1), above, the employee shall have a similar right to that specified in paragraph (3), above, if the utility model is of very exceptional importance.

(5) The provisions of paragraphs (3) and (4), above, shall not be reduced by contract.

Article 8

The registered utility model shall not have effect in respect of third parties who, at the time of the filing of the application for registration, already worked the utility model on the territory of one of the member States or who had taken the necessary steps with a view to working it. The said third party shall be authorized to use the utility model for the needs of his business, in his own workshops or in those of other persons. This right may only be transferred with the business.

Article 9

Foreigners may avail themselves of the provisions of the present Annex if they fulfill the conditions specified by it.

PART II

Article 12

**Formalities Concerning the Registration of
Utility Models**

SECTION I

Applications for Registration
of Utility Models*Article 10*

Any person wishing to obtain the registration of a utility model shall deposit with the Minister responsible for industrial property or send to him by registered post with a request for acknowledgment of receipt:

- (a) his application to the Director General of the Organization;
- (b) the relevant paper proving payment of the application and publication fees;
- (c) an unstamped power of attorney, if the applicant is represented by an agent;
- (d) a sealed package containing in duplicate:
 - (i) a specification showing by what outline, arrangement or device the utility model may be used for the work or use for which it is intended; this specification shall be set out clearly and completely so that a person having ordinary knowledge and skill in the art could carry out the said model;
 - (ii) the drawings and blocks necessary or useful for understanding the specification and, where appropriate, two specimens of the model;
 - (iii) a descriptive abstract containing a summary of the contents of the specification;
 - (iv) an indication of the scope of the protection sought.

Article 11

(1) The application shall be restricted to a single principal subject; it shall have a title indicating in a precise and succinct manner the purpose of the utility model.

(2) The documents mentioned in Article 10(d)(i) to (iv), above, shall be in one of the working languages of the Organization.

(1) Any person wishing to avail himself of the priority of an earlier application shall be required to attach to his application for registration or to send to the Organization at the latest six months from the date of filing of his application:

(a) a written declaration indicating the date and number of the earlier application as well as the country in which it was made and the name of the applicant;

(b) a certified copy of the earlier application;

(c) and, if he is not the person having made the earlier application, a written authorization from the person having made it or the persons entitled empowering him to avail himself of the priority in question.

(2) The applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall, for each of them, comply with the provisions mentioned above; furthermore, he shall pay a fee for each priority right invoked and shall produce evidence of payment of the fee within the period of six months specified above.

(3) Failure to present any one of the documents referred to above within the time limit shall automatically entail, for the application under consideration, loss of the priority right invoked.

(4) Any document reaching the Organization more than six months after filing of the application for registration shall not be admissible.

Article 13

(1) Any person having filed an application for a patent may convert it into an application for a utility model.

(2) The possibility provided for in the preceding paragraph shall, however, not be available:

(i) after expiration of a period of 30 days from the date of notification of rejection of the application for a patent by the Organization in conformity with the provisions of Article 19 of Annex I concerning patents;

(ii) after expiration of a period of four years from the date of filing of the application for the above-mentioned patent or three years from the date of grant of the patent, whichever is the later, with the exclusion of the period mentioned in subparagraph (i).

(3) The application for registration of a utility model under the provisions of paragraphs (1) and (2), above, shall be considered as having been filed on the date of filing of the application for a patent.

(4) Where an application for a patent has been converted into an application for registration of a utility model under the provisions of paragraphs (1) and (2), above, it shall be considered as having been withdrawn and, if it has been entered in one of its registers, the Organization shall cancel it.

(5) Notwithstanding the provisions of paragraph (2), above, upon request by the applicant, the periods specified in the said paragraph may be prolonged for three periods of 60 days each, provided that the said applicant puts forward legitimate reasons which prevent him from applying for the conversion mentioned in paragraph (1), above. If the applicant has lodged an appeal against the rejection of the application for a patent, the prolongation shall be for 30 days from the date on which the decision with regard to his appeal was notified to him.

Article 14

No application for registration of a utility model shall be accepted unless it is accompanied either by a receipt establishing payment of the filing and publication fees to the Organization or by a money order, a postal transfer receipt or notification of a bank transfer covering the amount of these fees.

SECTION II

Grant of Registration Certificates for Utility Models

Article 15

(1) Immediately after recording the application and within five days of the date of its filing, the Minister responsible for industrial property shall transmit the package sent by the applicant to the Organization, attaching a copy of the application, a certified copy of the statement of filing, the document establishing evidence of payment of the fees and, where applicable, the power of attorney mentioned in

Article 10, above, as well as the priority documents specified in Article 12 of the present Annex.

(2) The Organization shall proceed with the opening and the recording of applications and with the grant of the relevant registration certificates in the order of receipt of the said applications.

Article 16

(1) Applications for utility models which have been drawn up in due form shall be granted without examination as to substance. Where the Organization has ascertained that all the requisite conditions have been fulfilled, it shall grant the registration certificate applied for. However, in each case, the grant of the said certificate shall be at the risk and peril of the applicants and without guarantee as to the existence, the novelty or the merit of the utility model or as to the truth or exactitude of the relevant specification.

(2) The grant of the registration certificate shall be dependent upon a decision of the Director General of the Organization or of an official of the Organization duly authorized to do so by the Director General of the said Organization.

Article 17

(1) An application which does not fulfill the provisions of Article 11(1), above, may, within a period of six months from the date of notification that the application cannot be accepted as presented on the grounds of not having one principal subject, be divided into a number of applications benefiting from the date of the initial application.

(2) With the exception of the provisions of Article 10(b), any application for which the conditions laid down in Articles 10 and 11 have not been fulfilled shall be returned to the applicant or his agent inviting him to correct the documents within a period of two months. This period may be extended, in cases of justifiable need, on request by the applicant or his agent. The application so corrected within the aforesaid period shall retain the date of the initial application.

(3) In the event that the corrected documents are not provided within the prescribed period, the application for registration of the utility model shall be rejected.

(4) Prior to the grant, any application for registration of a utility model may be withdrawn by the person having submitted it. The documents filed shall only be returned to him if he should so request.

PART III

Publication Concerning Utility Models

Article 18

(1) The specifications, drawings and blocks of registered utility models shall be kept by the Organization where, after the publication as provided for in Article 19, hereafter, they shall be communicated on request. The specimens of utility models shall be kept by the Organization for a period of eight years and may be examined by any interested party.

(2) After the publication specified in the preceding paragraph, any person may obtain an official copy of the aforementioned specifications, drawings and blocks.

(3) The provisions of the preceding two paragraphs shall apply to official copies furnished by applicants seeking to avail themselves of the priority of an earlier filing and to the documents enabling certain such applicants to claim the priority.

(4) The applicant for registration wishing to avail himself abroad of the priority of his filing before registration of the utility model may obtain an official copy of his application.

Article 19

(1) The Organization shall publish the following details for each utility model granted:

- (i) the number of the utility model;
- (ii) the name and address of the owner of the utility model;
- (iii) the name and address of the inventor of the utility model, unless he has requested not to be mentioned on the certificate of registration;
- (iv) where applicable, the name and address of the agent;
- (v) the date of filing of the application;

- (vi) mention of priority if priority has been validly claimed;
- (vii) the date of the priority, the country or countries for which the earlier application was filed and the number of the earlier application;
- (viii) the date of the grant of the utility model;
- (ix) the title of the utility model.

(2) The Administrative Council shall establish and determine the conditions of publication of the specification of the utility model, the drawings if any, the claims and the abstract.

SECTION IV

Transfer and Assignment of Utility Models and Contractual Licenses

Article 20

(1) Rights subsisting in an application for registration of a utility model or in a registered utility model shall be transferable in whole or in part.

(2) Acts involving transfer of ownership, licensing of the right of exploitation or assignment of such right, or pledge or cancellation of a pledge, in respect of an application for a utility model or a registered utility model shall, on pain of nullity, be established in writing.

Article 21

(1) The acts mentioned in Article 20(2), above, shall not be enforceable against third parties unless they are entered in the special register of utility models kept by the Organization within a period of twelve months from the date on which they were carried out. A copy of such acts shall be kept by the Organization.

(2) Subject to the conditions established in the prescribed manner, the Organization shall furnish to any persons who so request a copy of the entries in the special register of utility models, as well as the state of entries concerning utility models which are the subject of a pledge or a certificate establishing the absence of any such entries.

Article 22

(1) Those persons who have obtained from the owner of a utility model or the persons entitled the right to exploit a utility model shall automatically benefit from improvements made by the owner of the utility model or by the persons entitled to the said model. Reciprocally, the said owner or the persons entitled shall benefit from improvements subsequently made to the utility model by those persons having obtained the right to exploit the said model.

(2) Any person having the right to benefit from the aforementioned improvements may provide the Organization with a copy of the contract.

Article 23

(1) The owner of a utility model may, by contract, grant to a natural or legal person a license enabling him to exploit the registered utility model.

(2) The duration of the license may not be longer than that of the utility model.

(3) The license contract shall be drawn up in writing and signed by the parties.

(4) The license contract shall be entered in the special register of the Organization within a period of twelve months from the date of the approval referred to in Article 25, hereafter. It shall have no effect against third parties until it is entered in the aforementioned register and published in the form specified in the rules of the present Annex.

(5) The license shall be cancelled from the register on request of the owner of the utility model or the licensee, upon presentation of proof of the expiration or termination of the license contract.

(6) In the absence of provisions to the contrary in the license contract, the grant of a license shall not exclude for the licensor the possibility of either granting licenses to other persons, subject to notifying the licensee, or of exploiting the registered utility model himself.

(7) The grant of an exclusive license shall eliminate the possibility for the licensor of granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, of exploiting the registered utility model himself.

Article 24

(1) Clauses in license contracts or relating to such contracts are null and void insofar as they impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by the utility model or which are not necessary for the upholding of such rights.

(2) The following shall not be considered as limitations under the terms of the preceding paragraph:

- (i) restrictions relating to the extent, the scope or the duration of exploitation of the registered utility model;
- (ii) the obligation upon the licensee to abstain from any act liable to harm the validity of the registered utility model.

(3) In the absence of provisions to the contrary in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sub-licenses.

Article 25

(1) License contracts, assignments and transfers of utility models and their amendment or renewal must be submitted, on pain of nullity, to the competent national authority for prior control and approval within the twelve months following their conclusion and before their insertion in the special register of the Organization, if they involve payments abroad or if they are granted to or obtained by natural or legal persons who are neither nationals nor resident on the national territory of one of the member States.

(2) The control of license contracts, assignments, transfers, amendments or renewals specified in the preceding paragraph shall consist in checking that they do not contain any clauses imposing upon the assignee or licensee restrictions not deriving from the rights conferred by the registered utility model, or which are not necessary for upholding such rights, in particular, clauses:

- (i) compelling the assignee or licensee to pay royalties for a utility model which is not worked or a large proportion of the royalties before starting to work a utility model;
- (ii) compelling the assignee or licensee to import raw materials, goods or equipment furnished by the assignor or licensor, unless there is no other way to ensure the quality of the goods to be produced;

- (iii) whose effect is to prevent exportation of the goods produced by the protected utility model to certain or to all the member States or which authorize such exportation in return for additional royalties, or which limit the competitive possibilities for the assignee or licensee in such States.

PART V

Nullity, Forfeiture and Actions Relating Thereto

SECTION I

Nullity and Forfeiture

Article 26

(1) Utility models registered in the following cases shall be declared null and void:

(a) if, under the provisions of Articles 1, 3 and 4 of the present Annex, the utility model is not new or if it is not industrially applicable;

(b) if the utility model cannot be registered within the terms of Article 5, above, without prejudice to the penalties which might ensue with regard to the manufacture or marketing of prohibited articles;

(c) if the title under which registration of the utility model was applied for fraudulently implies a different object other than the true object of the said utility model;

(d) if the specification attached to the utility model does not conform to the provisions of Article 10(d)(i), above, or if it does not indicate in a complete and honest manner the true methods of the applicant.

Article 27

(1) Without prejudice to the provisions of the preceding Article, where the protection conferred by a registered utility model has not been renewed due to circumstances beyond the control of the owner of the said utility model, the owner or the persons entitled

may apply for its restoration, against payment of the requisite renewal fees as well as of a surcharge whose amount shall be fixed in the prescribed manner, within a period of six months from the date upon which the above-mentioned circumstances ceased to exist and at the latest within a period of one year from the date upon which renewal was due.

(2) The application for restoration of the above-mentioned utility model, together with documents proving payment of the fees and surcharge mentioned in the previous paragraph, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the persons entitled consider the restoration justified.

(3) The Organization shall examine the reasons referred to above and shall either restore the utility model or reject the application if it does not consider the grounds valid.

(4) Restoration shall not entail prolongation of the maximum duration of the utility model. Third parties who started to work the utility model after its expiration shall have the right to continue working it.

(5) Restored utility models shall be published by the Organization in the form prescribed by the rules of the present Annex.

Article 28

Any person who, by means of signs, notices, prospectuses, posters, marks or stamps, assumes the quality of owner of a utility model shall be liable to punishment by a fine of from 50,000 to 150,000 francs CFA, without prejudice to the right to compensation. In the event of recidivism, the fine may be doubled.

SECTION II

Actions for Nullity or Forfeiture

Article 29

(1) Actions for nullity or forfeiture may be undertaken by any person having an interest therein.

(2) Such actions, as well as all disputes relating to the ownership of utility models, shall be brought before the civil courts.

Article 30

If the action is simultaneously brought against the owner of the utility model and one or more limited licensees of the said model, it shall be brought before the court sitting in the fixed or elected domicile of the above-mentioned owner.

Article 31

The matter shall be examined and judged in the manner prescribed for summary proceedings. If necessary, it shall be communicated to the Office of the Public Prosecutor.

Article 32

(1) In any proceedings seeking to declare the nullity or forfeiture of a utility model, the Office of the Public Prosecutor may intervene and request the declaration of nullity or absolute forfeiture of the utility model.

(2) In the cases specified by Article 26(b) and (c), above, the Office may even, by principal action, have the utility model declared null.

Article 33

In the cases specified in Article 32, above, all the persons entitled whose titles to the utility model have been registered with the Organization in accordance with Article 19, above, must be made parties.

Article 34

Where nullity or absolute forfeiture of the utility model has been pronounced by legal decision having the effect of *res judicata*, the Organization shall be informed thereof and the nullity or forfeiture pronounced on the territory of a member State shall be entered in the special register of utility models and published in the form specified in Article 19, above.

PART VI

Infringement, Legal Proceedings and Penalties*Article 35*

(1) Subject to the provisions of paragraph (2), hereafter, any injury to the rights of the owner of a registered utility model either by manufacture of products or by the use of means forming the object of his utility model, shall constitute the offense of infringement. This offense shall be punished by a fine of from 30,000 to 180,000 francs CFA, without prejudice to the right to compensation.

(2) Nevertheless, no action for infringement of a registered utility model shall be entertained if, within a period of three years from the date of registration of the utility model in question, the protected utility model had not been exploited by the owner or the persons entitled on the territory of one of the member States, unless legitimate reasons justify such absence of exploitation.

Article 36

Any person who has knowingly received, sold, exhibited for sale or introduced on the national territory of one of the member States one or several infringing objects shall be liable for the same penalties as the infringers.

Article 37

(1) The penalties specified under Articles 35 and 36 shall not be cumulative.

(2) The heaviest penalty alone shall be imposed for all acts prior to the first act of the proceedings.

Article 38

(1) In the event of recidivism, a penalty of imprisonment of from 15 days to three months may be pronounced in addition to the fine specified under Articles 36 and 37.

(2) Recidivism shall be deemed to have occurred when, within the preceding two years, a first conviction was pronounced for one of the offenses specified in the present Annex.

(3) A penalty of imprisonment of from 15 days to three months may also be pronounced if the infringer is a workman or employee having worked in the workshops or establishment of the owner of the utility model, or if the infringer has joined with a workman or employee of the owner of the utility model in order thus to become acquainted with the processes described in the registration of the utility model.

(4) In the latter case, the workman or employee may be prosecuted as an accomplice.

Article 39

The provisions of the national legislation of member States with regard to extenuating circumstances shall apply to the offenses specified in the present Annex.

Article 40

Criminal action for application of the above penalties may only be exercised by the Office of the Public Prosecutor upon complaint of the injured party.

Article 41

The criminal court, when dealing with an action for infringement, shall rule on the defenses put forward by the accused, such as the nullity or forfeiture of the utility model or questions relating to ownership of the said utility model.

Article 42

Acts occurring prior to the registration of a utility model shall not be considered as being prejudicial to the rights of the owner of the utility model and may not justify conviction upon a civil basis, with the exception, however, of acts subsequent to a notification to the alleged infringer of an official copy of the specification of the invention attached to the application for a utility model.

Article 43

(1) Owners of utility models may, in pursuance of an order from the president of the civil court within

whose jurisdiction the action is to be taken, through bailiffs or public or ministerial officials, if necessary with the aid of an expert, make a detailed inventory and description, with or without seizure, of the alleged infringing objects.

(2) The order shall be made on request and upon presentation of the utility model.

(3) Where seizure is involved, the said order may require the petitioner to furnish security, which he shall be required to deposit before seizure is effected.

(4) Security shall always be required from foreigners seeking seizure.

(5) The person in possession of the described or seized objects shall be given a copy of the order and, where appropriate, of the document verifying the deposit of security, on pain of nullity and damages against the bailiff or the public or ministerial official.

Article 44

Should the petitioner fail to take action within a period of one month, either by civil or criminal means, the seizure or inventory shall automatically become null, without prejudice to the damages, if any, that may be claimed.

Article 45

(1) The confiscation of recognized infringing objects and, where necessary, that of implements or tools specially intended for their manufacture shall, even in the case of acquittal, be enforced against the infringer, the receiver, the introducer or the retailer.

(2) The objects confiscated shall be handed over to the owner of the utility model, without prejudice to the right to further damages and publication of the judgment, where appropriate.

PART VII

Special and Transitional Provisions

Article 46

The present Annex shall apply to applications for utility models as from the date of its entry into force.

Annex III

Trademarks and Service Marks

PART I

Article 4

General Provisions

Marks not having a distinctive character shall be null and void, in particular, if they consist exclusively of signs or indications constituting the necessary or generic designation of the product or its composition, together with marks containing indications liable to deceive the public.

Article 1

Trademarks or service marks shall be optional. However, member States may exceptionally declare them compulsory for the products or services they shall specify.

Article 5

Foreigners shall enjoy the benefits of the present Annex if they fulfill its conditions.

Article 2

(1) Any visible sign used or to be used to distinguish the goods or services of whatsoever enterprise shall be considered as a trademark or service mark, in particular, surnames by themselves or in a distinctive form, special, arbitrary or fanciful designations, the characteristic form or container of a product, labels, wrapping, emblems, prints, stamps, seals, vignettes, borders, combinations or arrangements of colors, drawings, reliefs, letters, numbers, devices, pseudonyms.

(2) The marks of goods or services whose conditions of use are laid down by ministerial decision ("regulation") shall be considered collective marks insofar as they are utilized solely by enterprises of public character, unions or groups of unions, associations, groups of producers, manufacturers, craftsmen or tradesmen, provided that they are officially recognized and have a legal character.

Article 6

Nationals may claim application for their benefit of the provisions of the Paris Convention for the Protection of Industrial Property, as well as the agreements, additional acts and closing protocols which have amended, or will amend, the said Convention, in cases where such provisions are more favorable than those of the present Annex in protecting industrial property rights.

Article 7

(1) Subject to the provisions hereafter, the ownership of a mark shall belong to the person who has first filed it.

(2) No person may claim the exclusive ownership of a mark by undertaking the acts specified in the provisions of the present Annex, unless he has filed it in accordance with the conditions prescribed in Article 9, hereafter.

(3) Where a mark has been filed by a person who, at the time of filing, had or should have had knowledge of the fact that another person had priority to use the said mark, the latter may claim ownership of the mark, provided that he files it within the six months following the first filing.

Article 3

Any sign whose use is contrary to public order or morality or to the law, together with the signs excluded under Article 6ter of the Paris Convention for the Protection of Industrial Property, may not constitute marks nor form part thereof.

(4) The use of a mark may only be proved by written or printed matter or documents contemporaneous with the facts they seek to establish.

Article 8

The owner of a well-known mark, within the meaning of Article 6bis of the Paris Convention for the Protection of Industrial Property, may claim the annulment, on the national territory of one of the member States, of the effects of the filing of a mark liable to create confusion with his own. Such action may not be taken after the expiration of a period of five years from the date of application, where the latter was made in good faith.

PART II

Filing, Registration and Publication

Article 9

(1) Any person wishing to file a mark must deposit with the clerk of the civil court of his domicile:

(a) an application for the registration of the mark addressed to the Director General of the Organization;

(b) an unstamped power of attorney, if the applicant is represented by an agent;

(c) a model of the mark containing the list of goods to which it applies and the classes corresponding to the classification in force; the model shall be filed in four copies, one of which shall be marked by the applicant with the word "Original"; each copy shall be signed by the applicant or his agent;

(d) the block of the mark.

(2) The right of priority attaching to an earlier filing shall be claimed at the time of filing the mark or, at the latest, within the following two months. In the latter case, the claim shall be addressed directly to the Organization. Any claim reaching the Organization more than two months after the filing of the mark shall be declared inadmissible.

(3) International applications and requests for the recording of later designations, within the meaning of

Articles 5 and 6 of the Trademark Registration Treaty, submitted by persons domiciled on the national territory of one of the member States may only be filed with the International Bureau of the World Intellectual Property Organization through the Organization, which must conform to the relevant rules of procedure laid down in the said Treaty and its Regulations.

(4) The international applications referred to in the preceding paragraph may only be filed by nationals domiciled on the said national territory if, at the time of such applications, the marks in question were the subject of applications for registration entered in the name of these nationals in the special register of trademarks of the Organization, at least for the goods or services mentioned in the international applications.

(5) Should an agency of the International Bureau, within the meaning of Article 32(2)(a)(ix) of the Trademark Registration Treaty, be established on the territory of the State in which the Organization has its headquarters, the application of the provisions of paragraph (3), above, shall be suspended during the functioning of the said agency.

Article 10

The mark may be registered for one or several classes of goods or services within the meaning of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

Article 11

(1) A written statement drawn up by the clerk of the court shall record each filing, specifying the date and the time the documents were handed over.

(2) A copy of this statement shall be given to the applicant.

(3) The clerk shall hand the documents over to the Organization within a period of five working days from the date of filing.

Article 12

(1) The Organization shall examine applications for the registration of marks to ensure that the con-

ditions set out in Articles 9 and 10, above, are fulfilled and that the fees due have been paid.

(2) Any filing which does not conform to the provisions of Article 3, above, shall be rejected.

(3) In the event of either a material error in respect of form as specified in Articles 9 and 10, or of failure to pay the fees due, a period of two months shall be granted to the applicant in order to rectify his filing. This period may be extended by 30 days on legitimate request by the applicant or his agent. Should the filing not be rectified within the prescribed period, it shall be rejected.

(4) The rejection shall be pronounced by the Director General of the Organization.

(5) No filing may be rejected without first having obtained the comments of the applicant or his agent.

(6) Where the Organization finds that the conditions referred to in paragraph (1), above, have been fulfilled, it shall register the mark and publish the registration.

Article 13

(1) The legal date of the registration shall be that of the filing.

(2) The original copy of the model of the mark shall determine the scope of the mark. It shall be recorded in the special register of marks provided for under Article 26, hereafter.

(3) The Organization shall return to the applicant a copy of the model of the mark bearing notice of the registration.

Article 14

The applicant may appeal to the Appeals Commission against rejection by the Organization, within 30 days of notification of the decision; the said Commission shall be the ultimate judge of the application in question.

Article 15

(1) Any interested party may oppose the registration of a mark by sending to the Organization a written statement setting out the reasons for his opposition,

within a period of six months from the publication mentioned under Article 12(6), above. Such reasons must be founded upon an infringement either of the provisions of Articles 2, 3 or 4 of the present Annex, or of a prior right belonging to the opposing party.

(2) The Organization shall send a copy of the statement of opposition to the applicant, who may reply, setting out his reasons, within the period fixed by the rules of the present Annex. If his reply does not reach the Organization within the prescribed time limit, the applicant shall be considered to have withdrawn his application for registration and it shall be cancelled.

(3) Before taking a decision on the opposition, the Organization shall, on request, hear either both or one of the parties or their agents.

(4) An appeal may be made to the Appeals Commission against the decision of the Organization cancelling the opposition, within a period of six months from the date of the notification of the decision to the interested parties.

(5) The Organization shall only cancel the registration insofar as the aforementioned opposition is valid.

Article 16

Subject to the provisions of Article 22, the registration of a mark shall only have effect for a period of ten years from the date of application for registration; however, the ownership of a mark may be preserved indefinitely through successive renewals effected every ten years.

Article 17

On registration, a certificate shall be issued to the owner of the registration setting out, in particular, the following information as recorded in the register:

- (i) the serial number of the mark;
- (ii) the date of filing of the application for registration, the date of registration, as well as the date of priority, if priority is claimed;
- (iii) the trade name or the surname and first name of the owner of the mark together with his address;
- (iv) an impression of the mark;
- (v) an indication of the classes of goods or services to which the registration relates.

Article 18

Any person may, at any time, consult the special register of marks of the Organization and may, at his own expense, obtain information, extracts or copies of such information.

Article 19

(1) The owner of a mark may only obtain the renewal referred to in Article 16, above, if he proves:

- (i) that he is using the said mark on the national territory of one of the member States or is causing it to be used by means of a license grant, proof being required for each of the classes indicated in the registration; and
- (ii) that he has paid the renewal fees fixed in the prescribed manner.

(2) The amount of the fee mentioned in subparagraph (ii), above, shall be paid during the last year of the ten-year period referred to in Article 16 of the present Annex; however, a period of grace of six months shall be granted for payment of the said tax after expiration of the tenth year, upon payment of the surcharge fixed in the prescribed manner.

(3) No changes may be made to the mark nor to the list of goods or services for which the said mark was registered, subject to the right of the registered owner to limit the list.

(4) Renewal of the registration of a mark shall not be subject to any renewed examination of the mark.

(5) The Organization shall enter the renewal in the special register of marks and shall publish it under the conditions specified in the present Annex, mentioning, where appropriate, any limitation of goods or services.

(6) A mark whose registration has not been renewed may not be registered for the benefit of a third party in respect of identical or similar goods or services until three years have elapsed after the expiration of the period of the registration or renewal.

Article 20

(1) Registration of the mark shall confer upon its owner the exclusive right to use the mark, or a sign resembling it in such a way as to be likely to mislead the public, for goods or services in respect of which it was registered, as well as for similar goods or services.

(2) Registration of the mark shall not confer upon its owner the right to preclude third parties from the use in good faith of their names, addresses, pseudonyms, geographical names, or exact indications concerning the kind, quality, quantity, destination, value, place of origin, or time of production of their products or of the furnishing of their goods or services, insofar as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services.

(3) Registration of the mark shall not confer upon its owner the right to preclude third parties from using the mark in relation to the goods lawfully sold under that mark on the national territory of the member State in which the prohibition is effective, provided that these goods have not undergone any change.

PART III

Renunciation, Cancellation and Nullity

Article 21

(1) The registered owner of a mark may renounce the registration either wholly or in respect of part of the goods or services for which the mark is registered.

(2) Renunciation shall be notified by registered letter with acknowledgment of receipt to the Organization, which shall enter it in the special register of marks and shall publish it.

(3) If a license is entered in the special register of marks, renunciation shall be entered only upon submission of a declaration by which the licensee consents to the renunciation.

Article 22

(1) At the request of any interested party, the court shall order the cancellation of any registered mark which, at the expiration of a period of five years from the date of its registration, has not been used on the national territory of one of the member States, provided that the registered owner does not have legitimate reasons for failing to do so; the cancellation may be extended to all or part of the goods or services for which the said mark was registered.

(2) The burden of proof regarding use of the mark shall rest with the owner.

(3) When the decision ordering cancellation becomes final, it shall be notified to the Organization, which shall enter it in the special register of marks.

(4) Cancellation shall be published in the form laid down by the rules of the present Annex. Registration of the mark shall then be deemed:

- (i) never to have had any effect, if the mark was never used after being registered;
- (ii) and to have ceased to have effect from the time it is no longer used, if the mark was used for some time after being registered.

Article 23

(1) The annulment of the effects on the national territory of the registration of a mark shall be pronounced by the civil courts, on the request either of the Office of the Public Prosecutor or of any interested person or professional group.

(2) At the request of the interested parties referred to above, or of the Organization, the Court shall declare the registration of a mark null and void if it is not in accordance with the provisions of Articles 2, 3 or 4 of the present Annex or conflicts with a prior right; in the latter case, annulment may only be pronounced at the request of the owner of the prior right. The annulment may apply either to the totality or to only a part of the goods or services for which the mark was registered.

(3) When the decision declaring the registration null and void becomes final, it shall be notified to the Organization.

(4) Annulment shall be published in the form laid down by the rules of the present Annex. The registration shall be deemed null and void as from the date of its initiation.

Article 24

(1) Without prejudice to the provisions of the preceding Article, where a registered mark has not been renewed due to circumstances beyond the control of the owner of the mark, the latter or the persons entitled may apply for restoration of the mark, against payment of the requisite renewal fees as well as of a surcharge whose amount shall be fixed in

the prescribed manner, within a period of six months from the date upon which the above-mentioned circumstances ceased to exist and at the latest within a period of two years from the date upon which renewal was due.

(2) The application for restoration of the above-mentioned mark, together with documents proving payment of the fees and surcharge mentioned in the previous paragraph, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the persons entitled consider the restoration justified.

(3) Restoration shall not entail prolongation of the maximum duration of the mark. Third parties who started to use the mark after its expiration shall have the right to continue using it.

(4) Restored marks shall be published by the Organization in the form prescribed by the rules of the present Annex.

PART IV

Transfer and Assignment of Marks and Contractual Licenses

Article 25

(1) Rights subsisting in a mark are transferable in whole or in part, separately or together with the enterprise.

(2) Acts involving transfer of ownership, licensing of the right to use the mark or the assignment of such right, or pledge or cancellation of a pledge, shall, on pain of nullity, be established in writing.

(3) Transfer of property or licensing of the right of use may be effected for all or certain of the goods to which the mark applies. Only licenses to use may include a limitation of their validity on the national territory.

Article 26

(1) The acts mentioned in the preceding Article shall not be enforceable against third parties unless they are entered in the special register of marks of the Organization. A copy of such acts shall be kept by the Organization.

(2) Subject to the conditions established in the prescribed manner, the Organization shall furnish to any persons who so request a copy of the entries in the special register of marks, the state of entries concerning marks which are the subject of a pledge or a certificate establishing the absence of any such entries, as well as identity certificates reproducing the indications on the original copy of the model of the mark.

Article 27

Any final legal decision declaring the annulment, on the national territory of one of the member States, of the effects of the filing of the mark shall be entered in the special register of marks upon notification by the clerk to the Organization and shall be published by the said Organization.

Article 28

(1) The registered owner of a mark may, by contract, grant to a natural or legal person a license enabling him to use the said mark for all or certain of the goods or services in respect of which the mark is registered.

(2) The duration of the license may not be longer than the duration of registration of the mark.

(3) On pain of nullity, the license contract shall be drawn up in writing and signed by the parties.

(4) The license contract must be entered in the special register of the Organization within a period of twelve months from the date of the approval referred to in Article 30. It shall have no effect against third parties until it is entered in the aforementioned register and published in the form specified in the rules of the present Annex.

(5) The license shall be cancelled from the register on request of the owner of the mark or the licensee, upon presentation of proof of the expiration or termination of the license contract.

(6) In the absence of provisions to the contrary in the license contract, the grant of a license shall not exclude for the licensor the possibility of either granting licenses to other persons, subject to notifying the licensee, or of using the mark himself.

(7) The grant of an exclusive license shall eliminate the possibility for the licensor of granting licenses to other persons and, in the absence of provisions to the contrary in the license contract, of using the mark himself.

Article 29

(1) Clauses in license contracts or relating to such contracts are null and void insofar as they impose on the licensee, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by registration of the mark or which are not necessary for upholding such rights.

(2) The following shall not be considered as limitations under the terms of the preceding paragraph:

- (i) restrictions relating to the extent, the scope or the duration of use of the mark, or the quality or quantity of the goods or services for which the mark may be used;
- (ii) the obligation upon the licensee to abstain from any act liable to harm the validity of the registration of the mark.

(3) In the absence of provisions to the contrary in the license contract, the license shall not be assignable to third parties and the licensee shall not be authorized to grant sub-licenses.

Article 30

(1) License contracts, assignments and transfers of ownership of registered marks, their amendment or renewal must, on pain of nullity, be submitted to the competent national authority for prior control and approval within the twelve months following their conclusion and before their insertion in the special register of the Organization, if they involve payments abroad or if they are granted to or obtained by natural or legal persons who are neither nationals nor resident on the national territory of one of the member States.

(2) The control of license contracts, assignments, transfers, amendments or renewals specified in the preceding paragraph shall consist in checking that they do not contain any clauses imposing upon the assignee or licensee restrictions not deriving from the rights conferred by registration of the mark, or which are not necessary for upholding such rights, in particular, clauses:

- (i) compelling the assignee or licensee to pay royalties for a mark which is not used or a large proportion of the royalties before starting to use a protected mark;
- (ii) compelling the assignee or licensee to import raw materials, goods or equipment furnished by the assignor or licensor unless there is no other way to ensure the quality of the goods to be produced;

(iii) whose effect is to prevent exportation of the goods made under a mark to certain or to all the member States, or which authorize such exportation in return for additional royalties, or which limit the competitive possibilities for the assignee or licensee in such States.

(2) In the case of a license contract, the control mentioned in the preceding paragraph shall also consist in verifying the existence of relations or stipulations between the owner of the mark and the licensee ensuring effective control by the owner of the quality of the goods to which the license applies.

PART V

Collective Marks

Article 31

In the general interest and in order to facilitate the development of commerce, industry, crafts and agriculture, the State, enterprises of public character, unions or groups of unions, and associations or groups of producers, manufacturers, craftsmen and tradesmen may own collective marks for goods or services, provided that they are officially recognized and have a legal character.

Article 32

Without prejudice to the application of the provisions of Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property, foreign groups in one of the categories mentioned in the preceding Article and who, in their own countries, may bring legal actions, shall enjoy the advantages of the present Annex with regard to collective marks duly registered in their country of origin, subject to reciprocity of protection in the said country.

Article 33

Collective marks shall be affixed either directly by the groups mentioned in Article 31, above, as a measure of control, or by members of the said groups,

on the goods or objects of their commerce; whatever the circumstances, this shall be done under the supervision of the group concerned and in accordance with the provisions of the texts regulating the collective marks in question.

Article 34

The filing of a collective mark shall include the ministerial decision fixing its conditions of use. If the said decision is contrary to the provisions of Articles 3 or 4, above, or if the prescribed fees have not been paid, the application for registration shall be rejected. Any amendments made to the said decision which are contrary to public order or morality shall likewise be rejected.

Article 35

Members of the group owning the collective mark may undertake the civil and criminal proceedings provided for in the present Annex, provided that they prove the failure of the group owning the said mark to act and that they summon it to act.

Article 36

(1) Collective marks shall not be transferred or assigned.

(2) Nevertheless, in the event of a legal merger, the Minister responsible for industrial property may authorize its transfer to the new group created by the merger.

(3) The court may declare the nullity or forfeiture of a collective mark if:

- (i) the owner of the mark, within the meaning of Article 31, has ceased to exist;
- (ii) the ministerial decision laying down the conditions for its use is contrary to public order or morality;
- (iii) the said mark does not fulfill the conditions set out in the provisions of the present Part;
- (iv) the owner of the mark mentioned under subparagraph (i), above, has knowingly used or allowed to be used the collective mark under conditions other than those provided for in the decision mentioned in subparagraph (ii), above.

(4) Where nullity or forfeiture has been declared, the collective mark may not be used for the same goods or services by means of a new registration nor may it be used for any purpose whatsoever. However, at the expiration of a period of ten years from the date of the final decision declaring the nullity or forfeiture, the collective mark, as such, may be registered by a group, as defined in Article 31, provided that the latter has the same nationality as the group which was the previous owner.

PART VI

Penalties

Articles 37

The following persons shall be punished by a fine of from 50,000 to 300,000 francs CFA and by imprisonment of from three months to three years, or to either of these penalties:

(a) those persons who have counterfeited a mark or who have made use of a counterfeited mark;

(b) those persons who have fraudulently affixed to their goods or the objects of their commerce a mark belonging to another;

(c) those persons who have knowingly sold or offered for sale goods bearing a counterfeit or fraudulently affixed mark or those who have knowingly sold, offered for sale, provided or offered to provide, goods or services under such a mark;

(d) those persons who have knowingly provided goods or services, other than those called for, under a registered mark.

Article 38

The following persons shall be punished by a fine of from 50,000 to 150,000 francs CFA and by imprisonment of from one month to one year, or to either of these penalties:

(a) those persons who, while not counterfeiting a mark, have made a fraudulent imitation of one liable to mislead the buyer or who have made use of a fraudulently imitated mark;

(b) those persons who have made use of a mark bearing indications liable to mislead the buyer as to the nature of the goods;

(c) those persons who have knowingly sold or offered for sale goods bearing a fraudulently imitated mark or bearing indications liable to mislead the buyer as to the nature of the goods or those who have provided or offered to provide goods or services under such a mark.

Article 39

The following persons shall be punished by a fine of from 50,000 to 100,000 francs CFA and by imprisonment of from 15 days to six months, or to either of these penalties:

(a) those persons who have not affixed to their goods a mark which has been declared compulsory;

(b) those persons who have sold or offered for sale goods which do not bear the compulsory mark for that type of goods;

(c) those persons who have violated the provisions of decisions taken in execution of Article 1 of the present Annex;

(d) those persons who have displayed on their marks signs which are prohibited under the provisions of the present Annex.

Article 40

(1) The penalties specified under Articles 37, 38 and 39 of the present Annex shall not be cumulative.

(2) The heaviest penalty alone shall be imposed for all acts prior to the first act of the proceedings.

Article 41

(1) In the event of recidivism, the penalties specified in Articles 37, 38 and 39 may be doubled.

(2) Recidivism shall be deemed to have occurred when, within the preceding five years, a conviction has been pronounced against the accused for one of the offenses specified in the present Annex.

Article 42

The provisions of the national legislation of member States with regard to extenuating circumstances shall apply to the offenses specified in the present Annex.

Article 43

(1) Offenders may, in addition, be deprived of the right to participate in elections of chambers of commerce, industry or agriculture for a period not to exceed ten years.

(2) The court may order display of the judgment in the places it shall specify and its publication in full or in part in the publications it chooses, the foregoing at the expense of the offender.

Article 44

(1) The court may order the confiscation of the goods bearing a mark recognized as contrary to the provisions of Articles 37 and 38, even in the case of acquittal, as well as the implements or tools having served to commit the offense.

(2) The court may order that the objects confiscated be handed over to the owner of the mark which has been counterfeited or fraudulently affixed or imitated, irrespective of the right to further damages, where appropriate.

(3) In all cases, the court shall order the destruction of the marks recognized as contrary to the provisions of Articles 37 and 38, above.

Article 45

(1) In the cases provided for in Article 39(a) and (b), the court shall always order that the marks declared as compulsory be affixed to the goods subject to such a ruling.

(2) The court may order the confiscation of goods if the accused has been convicted of one of the offenses set out in Article 39(a) and (b) during the preceding five years.

Article 46

The penalties provided for in Articles 37 to 39, 41 and 43 to 45, inclusive, of the present Annex shall apply to collective trademarks or service marks. In addition, the following persons shall be punished by the penalties laid down in Article 37, above:

(a) those persons who have knowingly made any use of a collective mark under conditions other than those prescribed by the ministerial decision fixing the conditions of use as prescribed in Article 34;

(b) those persons who have sold or offered for sale goods bearing a collective mark unlawfully used in regard to the regulations governing trademarks or service marks;

(c) those persons who have knowingly made any use whatsoever of a mark reproducing or imitating a collective mark within a period of ten years following the annulment of the said collective mark;

(d) those persons who, within a period of ten years from the date of annulment of a collective mark, have knowingly sold, offered for sale, provided or offered to provide goods or services under a mark reproducing or imitating the said collective mark.

Article 47

(1) Actions for the infringement of a mark may not be initiated until the owner of the said mark or the persons entitled have started to use the mark continuously on the national territory of one of the member States.

(2) Whatever the circumstances, sanctions resulting from the actions mentioned in the previous paragraph may only be applied for the period subsequent to the date upon which the use specified in the previous paragraph has begun.

PART VII

Jurisdiction*Article 48*

(1) Civil proceedings in regard to marks shall be brought before the civil courts and judged as summary proceedings.

(2) In the case of an action brought before a criminal court, if the accused, in his defense, raises questions concerning the ownership of the mark, the criminal court shall pronounce judgment thereon.

Article 49

(1) The owner of a mark may, in pursuance of an order from the president of the civil court within whose jurisdiction the action is to be taken, through bailiffs or public or ministerial officials, if necessary with the aid of an expert, make a detailed inventory, with or without seizure, of the goods or services he claims have been marked, provided or furnished to his prejudice in breach of the provisions of the present Annex.

(2) The order shall be made on request and upon proof of the registration of the mark.

(3) Where seizure is involved, the judge may require the petitioner to furnish security, which he shall be required to provide before seizure is effected. Security shall always be required from foreigners seeking seizure.

(4) The persons in possession of the goods or services shall be given a copy of the order and, where appropriate, of the document verifying the deposit of security, on pain of nullity and damages against the bailiff or the public or ministerial official.

Article 50

Should the petitioner fail to take action, within a period of one month, either by civil or criminal means, the seizure or inventory shall automatically become null, without prejudice to the damages, if any, that may be claimed.

PART VIII

Special and Transitional Provisions*Article 51*

In pursuance of the provisions of the present Article, any mark registered or recognized under the terms of the Libreville Agreement of September 13, 1962, and its Annexes II and IV shall remain in force for the duration specified in the said Agreement.

Article 52

(1) The present Annex shall apply to marks filed as from the date of its entry into force, subject to the rights granted under Annex II of the Libreville Agreement of September 13, 1962.

(2) Applications for registration of marks filed prior to the date of entry into force of the present Annex shall remain subject to the regulations which were applicable on the date of filing of the said application.

(3) However, the exercise of the rights derived from marks registered under the terms of the preceding paragraph shall be subject to the provisions of the present Annex as from the date of its entry into force, subject to acquired rights which shall be maintained.

(4) Annex II and Article 2 of Annex IV of the Libreville Agreement of September 13, 1962, are repealed.

Annex IV

Industrial Designs

PART I

General Provisions

Article 1

Any creator of an industrial design or his successors in title shall have the exclusive right to exploit the said design, to sell or cause to be sold for industrial or commercial purposes the goods in which the design is incorporated, subject to the conditions of the present Annex, without prejudice to the rights conferred by other legal provisions.

Article 2

(1) The present Annex shall apply to any new design, any new three-dimensional form or to any industrial object which differs from like objects either by a distinct and recognizable form giving it an aspect of novelty, or by one or several external effects giving a new and distinct appearance.

(2) If the object can at the same time be considered a new design and a patentable invention and if the elements constituting the novelty of the design are inseparable from those of the invention, the said object may only be protected under the provisions of Annex I on Patents.

(3) The protection accorded by the present Annex shall not exclude any rights resulting from other legislative provisions of member States, in particular, those concerning literary and artistic property.

Article 3

(1) Industrial designs shall not be considered as new if, on the date of filing of the application for registration or on the date of the validly claimed priority, they had been described in printed publications or if they had manifestly been utilized on the territory of one of the member States.

(2) The novelty referred to in the preceding paragraph shall not be denied if, during the six months

preceding the date specified in the said paragraph, the industrial design was the subject of a disclosure resulting from:

(a) an obvious violation in relation to the applicant or his predecessor in title; or

(b) the fact that the applicant or his predecessor in title displayed it at an official or officially recognized international exhibition.

Article 4

Registration shall not be granted for a design, as specified in Article 1 of the present Annex, which is contrary to public order or morality, provided that the exploitation of the said design shall not be considered as contrary to public order or morality merely because it is prohibited by law or regulation.

Article 5

(1) Only designs deposited in accordance with the regulations shall enjoy the benefits of the present Annex.

(2) The ownership of a design shall belong to the person having created it or to his successors in title; in the absence of proof to the contrary, the first applicant shall be presumed to be the creator.

Article 6

Foreigners shall enjoy the benefits of the present Annex if they fulfill its conditions.

Article 7

(1) Subject to the legal provisions governing contracts for performing a certain work and employment contracts and, in the absence of contractual provisions to the contrary, the right to the registration of an industrial design made in execution of such contracts shall belong to the person having commissioned the work or to the employer.

(2) The same provision shall apply when an employment contract does not require the employee to exercise any creative activity, but when the employee has created the industrial design by using data or means that his employment has put at his disposal.

(3) In the circumstances provided for in paragraph (2), above, the employee who has created the industrial design shall have a right to remuneration taking into account his salary and the importance of the design created. In the absence of agreement between the parties, the remuneration shall be fixed by the court.

(4) The advantages given to the employee by the provisions of the preceding paragraph shall not be reduced by contract.

Article 8

The registered industrial design shall not produce effects in respect of third parties who, at the time of filing of the application for registration, already exploited the said design on the territory of one of the member States or who had taken the necessary steps with a view to exploiting it. The said third party shall be authorized to use the industrial design in his business, his own workshops or those of other persons. This right may only be transferred with the business.

PART II

Deposit and Publication

Article 9

(1) Any person wishing to deposit an industrial design shall send to the clerk of the civil court of his domicile :

- (a) a declaration of deposit;
- (b) an unstamped power of attorney, if the applicant is represented by an agent;
- (c) on pain of annulment of the deposit, a sealed package containing two identical copies of a representation or specimen of the design.

(2) The same deposit may comprise from one to one hundred designs, which shall be numbered from first to last. Designs above the number one hundred shall not be considered as validly deposited under the terms of the present Annex.

Article 10

(1) Any person wishing to avail himself of the priority of an earlier deposit shall be required to attach to his application for registration a written declaration indicating the date and number of the earlier deposit, the country in which it was made and the name of the applicant, and to send to the Organization at the latest three months from the date of filing of his application :

- (a) a certified copy of the earlier application ; and
- (b) if he is not the person having made the earlier application, a written authorization from the person having made it or the persons entitled empowering him to avail himself of the priority in question.

(2) Failure to present any one of the documents referred to above within the time limit shall automatically entail, for the application under consideration, loss of the priority right invoked.

Article 11

(1) A written statement drawn up by the clerk of the court shall note each deposit, specifying the date and the time the documents were handed over.

(2) A copy of this statement shall be given to the applicant.

(3) The clerk shall hand the documents over to the Organization within a period of five days from the date of filing.

Article 12

(1) The Organization shall register the deposit after having ascertained that it is in due form and in accordance with the provisions of Article 4, above. It shall send a certificate of registration to the applicant.

(2) The legal date of the registration shall be that of the deposit.

(3) In the event either of a material error not entailing annulment of the deposit or of failure to pay the required fees, a period of two months shall be granted to the applicant in order to rectify his deposit. This period may be extended upon legitimate request by the applicant or his agent. Should the deposit not be rectified within the prescribed period, it shall be rejected.

(4) The rejection shall be declared by the Director General of the Organization.

Article 13

(1) Subject to the provisions of paragraph (2), hereafter, the duration of protection conferred by a certificate of registration for an industrial design shall expire at the end of the fifth year following the date of deposit of the application for registration.

(2) The registration of a design may be renewed for two subsequent consecutive periods of five years upon payment of a renewal fee the amount of which shall be fixed in the prescribed manner.

(3) The renewal fee for an industrial design shall be paid within the twelve months preceding expiration of the period of registration. However, a period of grace of six months shall be granted for payment of the said fee after such expiration, upon payment of the surcharge fixed in the prescribed manner.

Article 14

(1) Where the protection granted to an industrial design has not been renewed due to circumstances beyond the control of the owner of the said design, the latter or the persons entitled may apply for its restoration against payment of the requisite renewal fee, as well as of a surcharge whose amount shall be fixed in the prescribed manner, within a period of six months from the date upon which the above-mentioned circumstances ceased to exist and, at the latest, within a period of one year from the date upon which renewal was due.

(2) The application for restoration of the above-mentioned industrial design, together with documents proving payment of the fees and surcharge mentioned in the previous paragraph, shall be sent to the Organization and shall contain a statement of the grounds on which the owner or the persons entitled consider the restoration justified.

(3) The Organization shall examine the reasons referred to above and shall either restore the design or reject the application if it does not consider the grounds valid.

(4) Restoration shall not entail prolongation of the maximum duration of the industrial design. Third parties who started to exploit the industrial design after expiration of the industrial design shall have the right to continue exploiting it.

(5) Restored designs shall be published by the Organization in the form prescribed by the rules of the present Annex.

Article 15

(1) The specifications, drawings and specimens of registered industrial designs shall be kept by the Organization where, after publication as specified in Article 16, hereafter, they shall be communicated upon request. Specimens of industrial designs shall be kept in the Organization for a period of eight years and may be examined by any interested person.

(2) After publication, any person may obtain an official copy of the specifications, designs and specimens mentioned above.

(3) The provisions of the two preceding paragraphs shall apply to official copies furnished by applicants seeking to avail themselves of the priority of an earlier deposit and to the documents enabling certain such applicants to claim the priority.

(4) The applicant for registration seeking to avail himself abroad of the priority of his deposit before registration of the industrial design may obtain an official copy of his application.

Article 16

(1) The Organization shall publish the following details for each industrial design granted:

- (i) the number of the industrial design;
- (ii) the name and address of the owner of the design;
- (iii) the name and address of the creator of the design, unless he has requested not to be mentioned on the certificate of registration;
- (iv) the name and address of the agent if there is one;
- (v) the date of filing of the application;
- (vi) mention of priority, if priority has been validly claimed;
- (vii) the date of priority, the country or countries in which or for which the earlier application was filed and the number of the earlier application;
- (viii) the date of registration of the design;
- (ix) the title of the design.

(2) The Administrative Council shall establish and determine the conditions of publication of the spe-

cification of the model, any specimens or designs and the claims.

Article 17

(1) The Organization shall reproduce the designs deposited.

(2) Proof of the reproduction shall be at the disposal of the public at the Organization.

(3) Proof regarding publication of the application shall be given to the applicant or his successors in title, as well as to any party engaged in legal proceedings concerning the design.

Article 18

Where designs have not been claimed by their owner within two years following the expiration of the period of protection, they shall be destroyed.

Article 19

(1) The deposit shall be subject to payment in advance of:

(a) a deposit fee independent of the number of designs applied for;

(b) a fee for each design deposited.

(2) No deposit shall be admissible if the fees provided for in the preceding paragraph, the amount of which shall be fixed in the prescribed manner by the Administrative Council, have not been paid.

PART III

Transfer and Assignment of Industrial Designs

Article 20

(1) Rights subsisting in an industrial design are transferable in whole or in part.

(2) Acts involving transfer of ownership or the grant of the right of exploitation or the assignment of such right, pledge or cancellation of a pledge in respect

of a design shall, on pain of nullity, be established in writing.

Article 21

(1) The acts mentioned in the preceding Article shall not be enforceable against third parties unless they have been entered in the special register of designs kept by the Organization. A copy of such acts shall be kept by the Organization.

(2) The Organization shall furnish to any person who so requests a copy of the entries in the special register of industrial designs, as well as the state of entries concerning industrial designs which are the subject of a pledge or a certificate establishing the absence of any such entries.

Article 22

In the absence of any provision to the contrary between the parties, joint owners of a registered design may, separately, transfer their shares, use the design and exercise the exclusive rights conferred by Article 1 of the present Annex, but may only jointly grant a license to a third party to exploit the design.

PART IV

License Contracts

Article 23

(1) The owner of an industrial design may, by contract, grant to another person or enterprise a license to exploit the said design.

(2) The license contract shall be drawn up in writing and shall require the signatures of the contracting parties.

(3) The license contract shall be recorded in the relevant register kept by the Organization, upon payment of a fee fixed in the prescribed manner by the Administrative Council; the license shall not be enforceable against third parties until so recorded.

(4) The recording of a license shall be removed on request of the owner of the design or the holder of the license, upon evidence of termination of the license.

Article 24

Clauses in license contracts or relating to such contracts are null and void insofar as they impose upon the holder of the license, in the industrial or commercial sphere, restrictions not deriving from the rights conferred by registration of the industrial design or not necessary for the maintenance of such rights.

PART V

Compulsory Licenses*Article 25*

(1) On the request of any person made after the expiration of a period of four years from the date of the filing of an application for an industrial design or three years from the date of the grant of a registration certificate for an industrial design, whichever period expires last, a compulsory license may be granted where one or more of the following conditions are fulfilled:

- (i) the registered industrial design is not being worked on the territory of one of the member States at the time the request is made;
- (ii) the working of the registered industrial design on the above-mentioned territory does not meet, on reasonable terms, the demand for the protected product;
- (iii) the working of the industrial design on the above-mentioned territory is being prevented or hindered by importation of the protected product;
- (vi) by reason of the refusal of the owner of the registered industrial design to grant licenses on reasonable terms, the establishment or development of industrial or commercial activities on the above-mentioned territory is unfairly and substantially prejudiced.

(2) Notwithstanding the provisions of paragraph (1), above, a compulsory license may not be granted if the owner of the registration provides legitimate reasons for not working it, it being understood that importation shall not constitute a legitimate reason.

(3) For the purposes of the present Article, "worked" shall mean "the manufacture of a regis-

tered industrial design, or the use in the manufacture of an industrial design, by an effective and serious establishment and on a scale which is adequate and reasonable in the circumstances."

Article 26

(1) The request for the grant of a compulsory license shall be made to the civil court of the domicile of the owner of the registration or, if the latter is domiciled abroad, to the civil court of his elected domicile. Only requests made by persons domiciled on the territory of one of the member States shall be considered.

(2) The request shall contain:

- (i) the name and address of the petitioner;
- (ii) the title and number of the registered industrial design in respect of which a compulsory license is requested;
- (iii) a statement of the ground or grounds specified in Article 25, above, on which the request is based and the facts justifying the grant of a compulsory license;
- (iv) in the case of a compulsory license requested pursuant to the provisions of Article 25, above, a statement by the petitioner in which he undertakes to work the registered industrial design on the territory of one of the member States in such a way as to remedy the insufficiencies which formed the basis for the request to grant a compulsory license.

(3) The request shall be accompanied:

- (i) by proof that the requesting party had previously approached the owner of the industrial design, by registered letter, requesting a contractual license but had been unable to obtain such a license from him on reasonable terms and within a reasonable time;
- (ii) in the case of a compulsory license requested under Article 25, by proof that the requesting party is capable of working the registered industrial design.

Article 27

(1) The civil court shall examine whether the request for the grant of a compulsory license satisfies the requirements of Article 25, above. If the said application does not satisfy the specified requirements, the Court shall reject it. Before rejecting the request, the court shall inform the petitioner of the

deficiencies in his request and shall allow him to make the necessary corrections.

(2) Where the request for grant of a compulsory license satisfies the requirements of Article 25, above, the civil court shall notify the request to the owner of the registered industrial design concerned, as well as to any licensee whose name appears in the register of industrial designs and shall invite them to submit their observations on the said request in writing within a period of three months. Such observations shall be communicated to the petitioner. The civil court shall likewise notify the request to any competent Government authorities concerned. The civil court shall hold a hearing on the request of the owner of the registered industrial design, to which any licensee whose name figures in the register of industrial designs and any competent Government authority concerned shall be invited.

(3) Once the procedure prescribed in paragraph (2), above, has been completed, the civil court shall take a decision on the request, either granting or refusing the compulsory license.

(4) If the compulsory license is granted, the decision of the civil court shall lay down:

- (i) the scope of the license, specifying, in particular, the acts referred to in Article 1 of the present Annex to which it extends and the period for which the license is granted, it being understood that a compulsory license granted under the provisions of Article 25, above, may not extend to the act of importation;
- (ii) the amount of the remuneration to be paid by the licensee to the owner of the registered industrial design, in the absence of agreement between the parties, such remuneration being reasonable with due regard to all the circumstances of the case.

(5) The decision of the civil court shall be in writing and shall stated the grounds on which it is based. The civil court shall convey the decision to the Organization, which shall register it. The civil court shall publish the decision and shall notify it to the petitioner and to the owner of the industrial design. The Organization shall notify any licensee whose name appears in the register of industrial designs of the decision.

Article 28

(1) After the expiration of the time limit for appeal specified in Article 31 of the present Annex, or once

an appeal has been disposed of by upholding, in whole or in part, the decision by which the civil court granted the compulsory license, the grant of the latter shall authorize its beneficiary to exploit the industrial design according to the terms fixed in the decision of the civil court or in the decision on the appeal, and shall require him to pay the remuneration fixed by the aforementioned decisions.

(2) The grant of a compulsory license shall not affect either license contracts in force or compulsory licenses in force and shall not preclude the conclusion of other license contracts or the granting of other compulsory licenses. However, the owner of a registered industrial design may not grant to other licensees more favorable terms than those of the compulsory license.

Article 29

(1) The beneficiary of a compulsory license may not, without the consent of the owner of the registered industrial design, grant permission to any third person to perform any of the acts which he is authorized to perform under the compulsory license.

(2) Notwithstanding the provisions of paragraph (1), above, a compulsory license may be transferred together with the establishment of the beneficiary of the license or with that portion of his establishment which exploits the registered industrial design. No such transfer shall be valid without the authorization of the civil court. Before granting the authorization, the civil court shall give the owner of the industrial design an opportunity to be heard. The civil court shall notify the authorization to the Organization, which shall register and publish it. Any transfer authorized shall cause the new beneficiary of the license to accept the same obligations as those which devolved upon the former beneficiary.

Article 30

(1) On the request of the owner of the registered industrial design or of the beneficiary of the compulsory license, the civil court may amend the decision on the grant of a compulsory license to the extent that new facts justify such amendment.

(2) On the request of the owner of the registered industrial design, the civil court shall withdraw the compulsory license:

- (i) if the grounds for its grant have ceased to exist;

(ii) if the beneficiary exceeds the scope of the license specified under Article 27(4)(i), above;

(iii) if the beneficiary is in arrears of payment of the remuneration pursuant to Article 27(4)(ii), above.

(3) Where the compulsory license is withdrawn under the provisions of paragraph (2)(i), above, a reasonable period shall be granted to the beneficiary of the compulsory license to enable him to cease working the industrial design in cases where immediate cessation would have serious consequences.

(4) The provisions of Articles 26 and 27 of the present Annex shall apply to the amendment or withdrawal of a compulsory license.

Article 31

(1) The owner of the registered industrial design, the beneficiary of a license whose name appears in the pertinent register or any person having requested the grant of a compulsory license may, within the period of one month dating from the publication specified in Articles 27(5), 29(2) or 30(4), above, appeal to the competent higher jurisdiction against a decision taken within the terms of Articles 27(3), 29(2) or 30, above.

(2) The appeal referred to in the preceding paragraph and contesting the grant of a compulsory license, authorization to transfer a compulsory license or the amendment or withdrawal of a compulsory license shall have a staying effect.

(3) The decision on appeal shall be notified to the Organization, which shall register and publish it.

PART VI

Penalties

Article 32

Any injury knowingly made to the rights guaranteed by the present Annex shall be liable to punishment by a fine of from 50,000 to 300,000 francs CFA.

Article 33

(1) In the event of recidivism, or if the offender was employed by the injured party, a sentence of imprisonment of from one to six months shall also be pronounced.

(2) Recidivism shall be deemed to have occurred when, within the preceding five years, a first conviction was pronounced for one of the offenses specified in the present Annex.

(3) The provisions of the national legislation of member States with regard to extenuating circumstances shall apply to the offenses specified in the present Annex.

Article 34

(1) In addition, offenders may be deprived of the right to participate in elections to chambers of commerce or industry for a period not to exceed ten years.

(2) The court may order display of the judgment and its publication in full or in part in the publications it designates, the foregoing at the expense of the offender.

Article 35

(1) Confiscation for the benefit of the injured party of the objects having infringed the rights guaranteed by the present Annex shall be pronounced, even in the case of acquittal.

(2) The court may, in the case of conviction, also order confiscation of the implements which served to make the implicated objects.

PART VII

Legal Actions and Procedure

Article 36

Civil proceedings in regard to industrial designs shall be brought before the civil courts and judged as summary proceedings.

Article 37

Criminal action for the application of the above penalties may only be exercised by the Office of the Public Prosecutor upon complaint by the injured party.

Article 38

In the case of criminal action, the court shall rule on the defenses put forward by the accused, such as the nullity of the deposit or questions relating to ownership of the industrial design.

Article 39

(1) The injured party may, in pursuance of an order from the president of the civil court within whose jurisdiction the action is to be taken, through bailiffs or public or ministerial officials, if necessary with the aid of an expert, make a detailed inventory, with or without seizure, of the objects or instruments implicated. The order shall be made on request and upon presentation of an affidavit of publication furnished by the Organization.

(2) Where seizure is involved, the judge may require the petitioner to furnish security, which he shall be required to deposit before seizure is effected. Security shall always be required from foreigners seeking seizure.

(3) The persons in possession of the objects described shall be given a copy of the order and, where appropriate, of the document verifying the deposit of security, on pain of nullity and damages against the bailiff or the public or ministerial official.

Article 40

Should the petitioner fail to take action within a period of one month, either by civil or criminal means, the inventory or seizure shall automatically become null, without prejudice to the damages, if any, that may be claimed.

Article 41

Any jurisdiction dealing with a lawsuit may request the Organization to transmit a deposited or registered industrial design.

Article 42

(1) Any beneficiary of a contractual or compulsory license may, by registered letter, summon the owner of a registered industrial design to bring the necessary legal action to obtain civil or penal sanctions for any violation, indicated by the said beneficiary, of the rights conferred by the registered industrial design.

(2) If, within three months following the summoning provided for in the preceding paragraph, the owner of the registered industrial design refuses or fails to institute the proceedings specified in the said preceding paragraph, the beneficiary of the license which has been registered may institute them in his own name, without prejudice to the right of the owner of the registered design to intervene in the action.

PART VIII

Special and Transitional Provisions*Article 43*

In pursuance of the provisions of the present Article, any industrial design registered or recognized under the terms of the Libreville Agreement of September 13, 1962, and its Annexes III and IV shall remain in force for the duration specified in the said Agreement.

Article 44

(1) The present Annex shall apply to applications for the registration of industrial designs filed as from the date of its entry into force, subject to the rights granted under Annex III of the Libreville Agreement of September 13, 1962.

(2) Applications for registration of industrial designs filed prior to the date of entry into force of the present Annex shall remain subject to the regulations which were applicable on the date of the said filings.

(3) However, the exercise of the rights conferred by industrial designs granted under the terms of the preceding paragraph shall be subject to the provisions of the present Annex as from the date of its entry into force, subject to acquired rights which shall be upheld.

(4) Annex III as well as Article 3 of Annex IV of the Libreville Agreement of September 13, 1962, are hereby repealed.

Annex V

Trade Names and Protection Against Unfair Competition

PART I

Trade Names

Article 1

Within the meaning of the present Annex, a trade name shall be the name under which a trade, industrial, crafts or agricultural establishment is known and exploited.

Article 2

A name or designation shall not be admissible as a trade name if, by reason of its nature or the use to which it may be put, it is contrary to morality or public order and if, in particular, it is liable to deceive trade circles or the public as to the nature of the trade, industrial, crafts or agricultural establishment of that name.

Article 3

(1) Subject to the provisions hereafter, a trade name shall belong to the person having first made use of it or having first registered it.

(2) The use of a trade name may only be proved by written or printed matter or documents contemporaneous with the facts they seek to establish.

(3) Where a registered trade name has been publicly used in a continuous manner on the national territory for at least five years without having given rise to a legal action recognized as being well-founded, ownership of the trade name may not be challenged on the ground of priority of use, unless it can be proved that, at the time of the filing of the application for registration, the applicant could not have been ignorant of the existence of the trade name of the initial user.

Article 4

Only trade names registered in accordance with the provisions of the present Annex may be the subject of the penal sanctions specified in Article 15 (3) and (4), hereafter.

Article 5

(1) It shall be illegal to use on the national territory of one of the member States a trade name registered for the same trade, industrial, crafts or agricultural activity as that of the owner of the registered trade name if such utilization is liable to create confusion between the enterprises in question.

(2) Nevertheless, the registered owner of a trade name may not preclude third parties from the use in good faith of their names, their addresses, a pseudonym, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin or time of production of their goods or of the supply of their services, insofar as such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services.

(3) The interested party whose name and first name are similar to those of a registered trade name, where his rights to the trade name of his establishment are subsequent to those of the registered trade name, shall take all necessary measures, by an addition to his trade name or in any other manner, to distinguish his trade name from that of the registered trade name.

(4) The provisions of paragraphs (1) to (3), above, shall be applicable to any trade, industrial, crafts or agricultural activity ensuing from the establishment in question, insofar as it has been registered.

Article 6

The owner of a trade, industrial, crafts or agricultural enterprise situated on the national territory of

one of the member States wishing to register the trade name of his establishment shall file with or send to the clerk of the civil court of his domicile by registered post with a request for acknowledgment of receipt:

(a) an application for registration, in duplicate, addressed to the Director General of the Organization and containing:

(i) the name, first name or names, address and nationality of the applicant;

(ii) the trade name for which registration is requested and, where appropriate, two copies of the block of the trade name;

(iii) the location and type of activity of the establishment in question;

(b) the relevant paper proving payment to the Organization of the filing and publication fees specified in the present Annex;

(c) an unstamped power of attorney, if the applicant is represented by an agent.

Article 7

(1) A report drawn up by the clerk of the court shall record each filing, specifying the date and the time the documents were handed over.

(2) A copy of this statement shall be given to the applicant.

(3) Immediately after recording the application and within five days of the date of its filing, the clerk shall transmit the package referred to in Article 6 to the Organization, attaching a copy of the application, a certified copy of the statement of filing, the document establishing evidence of payment of the fees and, where appropriate, the authorization mentioned in Article 6.

(4) The Organization shall proceed with the opening and the recording of applications in the order of receipt of the said applications.

Article 8

(1) The Organization shall register and publish the trade name, after having ascertained that it is not contrary to the provisions of Article 2, above, that it has been filed properly and that the fees have been paid.

(2) The registration shall have effect as from the date of filing.

(3) The Organization shall send a copy of the model of the trade name bearing notice of the registration to the applicant.

(4) Any filing which does not conform to the provisions of Article 2, above, shall be rejected.

(5) In the event of a material error, a period of 30 days shall be granted to the applicant in order to rectify his application. This period may be extended by 30 days upon legitimate request by the applicant or his agent. Should the application not be rectified within the prescribed period, it shall be rejected.

(6) The rejection shall be declared by the Director General of the Organization and notified to the applicant.

(7) No filing may be rejected without first having obtained the comments of the applicant or his agent.

(8) Within 30 days from the date of notification of the rejection, the applicant may appeal to the Appeals Commission, the said Commission shall be the final judge of the application in question.

Article 9

(1) Any interested party may oppose the registration of a trade name within a period of six months from the publication mentioned under Article 8(1), above, by sending to the Organization a written statement setting out the reasons for his opposition, which must be based on a violation of Articles 1, 2 and 5(1) or of a prior right belonging to the opposing party.

(2) The Organization shall send a copy of the statement of opposition to the applicant, who may reply, setting forth his reasons, within the period fixed by the rules of the present Annex. If his reply does not reach the Organization within the prescribed time limit, the applicant shall be considered as having withdrawn his application for registration and the latter shall be cancelled.

(3) Before taking a decision on the opposition, the Organization shall, on request, hear either both or one of the parties or their agents.

(4) The decision of the Organization on the opposition, which must be rendered within six months, may be appealed to the Appeals Commission within a period of 30 days from the date of the notification of the decision to the interested parties.

(5) The registration shall only be cancelled to the extent that the aforementioned opposition is valid.

Article 10

On registration, a certificate shall be issued to the owner of the registration setting out, in particular, the following information as recorded in the special register of trade names:

- (i) the serial number of the trade name;
- (ii) the date of filing of the application for registration as well as the date of registration;
- (iii) the trade name as registered, or, where appropriate, the reproduction of the trade name;
- (iv) the place where the establishment in question is situated, together with the type of activity in which it engages;
- (v) the name, first name or names of the registered owner, together with his address.

Article 11

(1) Registration of a trade name shall only have effect for ten years from the date of filing; however, ownership of a trade name can be retained without limitation of duration by successive renewals of the registration.

(2) Renewal of the registration may be obtained on request by the owner of the said registration submitted at least one month before expiration of the preceding period of validity of registration and on payment of a renewal fee the amount of which shall be fixed by the rules of the present Annex.

Article 12

The owner of a registered trade name may at any time renounce the said trade name by a written declaration sent to the Organization. The renunciation shall take effect on the date on which it is recorded in the special register of trade names.

Article 13

(1) Annulment of the effects of the registration of a trade name on the national territory of one of the member States shall be declared by the civil courts, on the request either of the Office of the Public Prosecutor or of any interested natural or legal person.

(2) At the request of the applicants referred to above or of the Organization, the court shall declare

the registration of a trade name null and void if it is not in accordance with the provisions of Articles 1, 2 and 5(1), above, or is in conflict with a prior right; in the latter case, annulment may only be declared at the request of the owner of the prior right.

(3) Where the decision declaring the registration null and void becomes final, it shall be notified to the Organization, which shall enter it in the special register of trade names.

(4) Annulment shall be published in the forms laid down by the rules of the present Annex. The registration shall be deemed null and void as from the date of the said registration.

Article 14

(1) The trade name may only be assigned or transferred with the trade, industrial, crafts or agricultural establishment, or with the part of the said establishment designated under the trade name.

(2) The assignment of a trade name must be done in writing and shall require the signatures of the contracting parties. Transfers by merger of trade, industrial, crafts or agricultural establishments or any other form of succession may be made by any other document proving such transfer.

(3) The acts referred to in the first paragraph shall only be enforceable against third parties if they have been entered in the special register of trade names kept by the Organization within a period of twelve months from the date on which they were carried out. A copy of such acts shall be kept by the Organization.

Article 15

(1) Where the rights attaching to a trade name are threatened with infringement, the registered owner of such rights may initiate any legal action to prevent such infringement.

(2) In the event of infringement of rights referred to in the preceding paragraph, the owner of the said rights may prohibit continuation and claim payment of damages, as well as any other sanction provided for in the Civil Code.

(3) Without prejudice to damages if any, any person who has affixed or caused to appear, by sup-

pression or by any alteration whatsoever on the objects made, the name of a manufacturer or craftsman other than the originator, or the trade name of an establishment other than that where the objects were made shall be liable to punishment by imprisonment of from three months to one year and by a fine of from 50,000 to 30,000 francs CFA, or by either of these penalties.

(4) Any person who has knowingly displayed for sale or circulated objects marked with fictitious or falsified names shall be liable to the same punishment as that specified in paragraph (3)

Article 16

The provisions of the present Annex shall be applicable to any trade, industrial, crafts or agricultural establishment, subject to the special provisions applicable elsewhere to the establishments in question.

PART II

Protection Against Unfair Competition

(1) Any act of competition contrary to honest practices in industry, commerce, crafts or agriculture shall be unlawful.

(2) It shall, in particular, be unlawful:

(a) to make direct or indirect use of a false or deceptive indication of the source of goods or services or of the identity of their producer, manufacturer, or supplier;

(b) all acts of such a nature as to create confusion or fraud by any means whatsoever with the trade name, the establishment, the goods, the services or the industrial or commercial activities of a competitor;

(c) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, the services, or the industrial or commercial activities of a competitor;

(d) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods or services.

Annex VI

Appellations of Origin

PART I

General Provisions

Article 1

For the purposes of the present Annex:

(a) "appellation of origin" means the geographical name of a country, region or specific place which serves to designate a product originating therein, the characteristic qualities of which are due exclusively or essentially to the geographical environment, including natural factors, human factors, or both natural and human factors; any name which is not that of a country, region or specific place is also considered a

geographical name if it relates to a specific geographical area when used in connection with certain products;

(b) "product" means any natural, agricultural, handicraft or industrial product;

(c) "producer" means:

(i) any producer of agricultural products or any other person exploiting natural products,

(ii) any manufacturer of products of handicraft or industry, and

(iii) any trader dealing in the said products;

(d) "application" means an application for the registration of an appellation of origin;

(e) "Organization" means the African Intellectual Property Organization.

Article 2

Foreigners shall enjoy the benefits of the provisions of the present Annex if they fulfill its conditions.

PART II

Conditions for Protection*Article 3*

(1) Appellations of origin shall be protected as such if they have been registered by the Organization, or are to be treated as having been registered by virtue of an international convention to which the member States are party.

(2) Foreign appellations of origin may be registered by the Organization only where provided for in an international convention to which the member States are party or in the enforcing legislation.

Article 4

The following shall not be protected as appellations of origin:

(a) appellations which do not correspond to the definition in Article 1(a); or

(b) appellations which are contrary to morality or public order or those which, in particular, are liable to deceive the public as to the nature, the source, the manufacturing process, the characteristic qualities, or the suitability for their purpose of the goods concerned.

PART III

Registration Procedure*Article 5*

The following shall have the right to file an application with the Organization:

(a) natural or legal persons carrying on an activity as a producer in the geographical area specified in the

application, with respect to the products specified in the application, as well as groups of such persons; or
(b) any competent authority.

Article 6

Any person wishing to obtain the registration of an appellation of origin shall file with the Minister responsible for industrial property, or send to him by registered post with a request for acknowledgment of receipt, an application addressed to the Director General of the Organization and containing:

(a) the name, address and nationality of the natural or legal person filing the application, and the capacity in which the applicant is applying for registration;

(b) the appellation for which registration is sought;

(c) the geographical area to which the appellation applies;

(d) the products for which the appellation is used, in terms sufficiently precise to show, in particular, whether the products are raw materials, semifinished products or finished products;

(e) where applicable, the essential characteristic qualities of the products for which the appellation is used;

(f) proof that the prescribed fees have been paid.

Article 7

After a written statement has been made specifying the day and time of filing, the application shall be sent to the Organization together with a certified copy of the statement of filing, provided that the Minister responsible for industrial property has not made any objection to it.

Article 8

The Administrative Council shall fix, in the prescribed manner, the amount of the fees for the filing of an application and for the registration of an appellation of origin.

Article 9

(1) The Organization shall examine whether the applicant is qualified to apply for registration, whether the application contains the particulars required

under Article 6, and whether the prescribed fees have been paid.

(2) Where the applicant is not qualified to apply for registration, the application shall be rejected.

(3) Where the application does not contain the particulars required under Article 6 or where the prescribed fees have not been paid, the Organization shall allow the applicant time to remedy the defect. Where the application is not rectified in time, it shall be rejected.

(4) When the requirements specified in paragraph (1), above, have been fulfilled, the appellation of origin shall be recorded in the special register of appellations of origin.

Article 10

(1) The Organization shall publish the registration and shall notify it to the applicant.

(2) The register may be consulted. Any person may obtain extracts therefrom at his own expense.

(3) The conditions of application of this Article shall be fixed by the rules.

PART IV

Right to Use the Registered Appellation of Origin and Sanctions against Unlawful Use

Article 11

(1) Subject to paragraphs (2) and (3), hereafter, only producers carrying on their activity for commercial purposes in the geographical area specified in the register shall have the right to use a registered appellation of origin with respect to the products specified in the register, provided that such products possess the essential characteristic qualities specified in the register.

(2) Where products have been put into circulation under the conditions defined in the preceding paragraph, under a registered appellation of origin, any person shall have the right to use the appellation of origin for those products.

(3) Apart from the cases provided in the two preceding paragraphs, it shall be unlawful to use, for commercial purposes, a registered appellation of origin, or a similar name with respect to the products specified in the register or similar products, even if the true origin of the products is indicated or if the appellation is in the form of translation or is accompanied by terms such as "kind," "type," "make," "imitation," or the like.

(4) The competent Minister may order that the quality of products put on the market under a registered appellation of origin shall be subject to control and that the use of such an appellation for products of inferior quality shall be unlawful. The order shall specify the authority competent to exercise such control and to declare the use of an appellation of origin to be unlawful; the relevant procedure shall be laid down in the order.

Article 12

(1) Any interested person as well as any interested group of producers or consumers may bring actions to obtain the relief provided for in paragraph (2) against persons making unlawful use, within the meaning of Article 11(3), of a registered appellation of origin and against persons contributing to such use.

(2) Without prejudice to paragraph (3), the actions shall be to enjoin the unlawful use, within the meaning of Article 11(3), of a registered appellation of origin or to prohibit such use where it is imminent, and to destroy the labels and other documents which have contributed or are likely to contribute to such unlawful use.

(3) Any person who has suffered damage as a result of the unlawful use, within the meaning of Article 11(3), of a registered appellation of origin may demand compensation from the person making unlawful use of the appellation and persons who have contributed to such use.

Article 13

Any person intentionally making unlawful use, within the meaning of Article 11(3), of a registered appellation of origin shall be liable to a term of imprisonment of not less than three months and not more than one year and to a fine of from 50,000 to 300,000 francs CFA, or to either of these penalties.

Annex VII

Copyright and the Cultural Heritage

Article 1

The common rules provided for in the present Annex shall cover:

- (1) the protection of copyright;
- (2) the protection and promotion of the cultural heritage.

PART I

Copyright

CHAPTER I

Protection of Copyright

Article 2

(1) The author of any original intellectual work, literary, artistic or scientific, shall, by the mere fact of its creation, enjoy an exclusive incorporeal property right in the work which shall be exclusive and enforceable against all persons. This right includes attributes of an intellectual and moral nature, as well as attributes of a patrimonial nature, as determined by the present Annex.

(2) The existence or the conclusion by the author of an intellectual work of a contract to perform a certain work or service shall not in any way derogate from enjoyment of the right recognized in Article 1, above.

(3) The following shall, in particular, be considered as intellectual works within the meaning of the present Annex:

- (i) books, pamphlets and other writings;
- (ii) lectures, addresses, sermons and other works of such nature;
- (iii) works created for the stage, including both dramatic and dramatico-musical works and choreographic and mimed works, the acting form of which is fixed in writing or otherwise;
- (iv) musical works whether or not in a written form and with or without words;

- (v) pictorial works and drawings, lithographs, etchings, wood engravings and other works of the same nature;
- (vi) sculptures, bas-reliefs and mosaics of all kinds;
- (vii) architectural works, including both plans and models and the construction itself;
- (viii) tapestries and objects created by artistic professions and by the applied arts, including both drawings and models, as well as the works themselves, whether produced as handicrafts or by industrial processes;
- (ix) maps, graphic and three-dimensional reproductions of a scientific or technical nature;
- (x) cinematographic, broadcasting and audio-visual works;
- (xi) photographic works of artistic or documentary character, to which are assimilated, for the purposes of the present Annex, works expressed by a process analogous to photography;
- (xii) translations, arrangements or adaptations of the above-mentioned works;
- (xiii) folklore and works derived from folklore, subject to the provisions of Part II concerning protection of the cultural heritage.

(4) The title of a work shall enjoy the same protection as the work itself insofar as it is original in character. Even if the work is no longer protected, this title may not be used to distinguish a work of the same kind if such use is liable to create confusion in the public mind.

(5) Protection shall not extend to:

- (i) laws, legal and administrative decisions, as well as to the official translations of such texts, and
- (ii) the daily news published, broadcast or communicated to the public.

Article 3

(1) Copyright shall include the exclusive right to undertake or authorize the undertaking of any one of the following acts:

- (i) the reproduction of the work in any material form, including thereby cinematographic

films and sound recordings, or by magnetic processes or by the repeated carrying out of a plan or model plan;

- (ii) the communication of the work to the public by display, performance, broadcasting or television;
- (iii) the communication of the broadcast or televised work to the public by wire, loudspeaker, or by any other instrument which transmits signs, sounds or images;
- (iv) the making of any translation or adaptation of the work;
- (v) the doing of any of the acts specified in subparagraphs (i), (ii) and (iii), above, in relation to a translation or adaptation of the work.

(2) For the purposes of the present Article, the work shall mean both the work in its original form and in a form derived from the original.

Article 4

(1) Notwithstanding any assignment of the original work, the authors of graphic and three-dimensional works and manuscripts shall have an inalienable right to a share in the proceeds of any sale of that work or manuscript by public auction or through a dealer, whatever the methods used by the latter to carry out the operation.

(2) The foregoing provision shall not apply to architectural work or works of applied art.

(3) The conditions for the exercise of this right, as well as to the proportion of participation in the proceeds of sales, shall be determined by a rule to be published by the competent national authority.

Article 5

(1) The author of a work is the person who has created it. Authorship shall belong, in the absence of proof to the contrary, to the person or persons under whose name or names the work is disclosed.

(2) Where the work is created by an author for a natural or legal person, private or public, within the framework of an author's employment contract, or where the work is commissioned from the author by such a person, the copyright shall be owned in the first instance by the author, unless otherwise stipulated in writing in the contract.

Article 6

(1) "Work of joint authorship" means a work created jointly by two or more authors insofar as the contribution of one author is separable from that of the other author or authors.

(2) "Composite work" means a new work in which a pre-existing work is incorporated without the collaboration of the author of the latter.

(3) "Collective work" means a work created on the initiative of a natural or legal person who or which discloses it under his or its direction and name and in which the individual contributions of the various authors participating in its creation merge in the whole for which it was created so that it is impossible to attribute to each author a separate right in the whole work once completed.

Article 7

(1) The authors of translations and arrangements or adaptations of literary, artistic or scientific works shall enjoy the protection provided by the present Annex, without prejudice to the rights of the author of the original work as defined in Article 3, above.

(2) The foregoing shall apply to authors of encyclopedias, anthologies or collections of various works which, by reason of the selection and arrangement of their contents, constitute intellectual creations.

Article 8

(1) Folklore belongs, in the first instance, to the cultural heritage.

(2) Without prejudice to the provisions of Article 46, hereafter, for the purposes of Part I, folklore shall mean literary, artistic or scientific works as a whole created by the national ethnic communities of the member States, which are passed from generation to generation and which constitute one of the basic elements of the African cultural heritage.

(3) "Work inspired by folklore" means any work composed with the help of elements borrowed from the traditional African cultural heritage.

(4) The adaptation of folklore or the utilization of elements borrowed from folklore shall be notified to the body provided for in Article 44, hereafter.

(5) The proceeds from royalties deriving from exploitation of the works referred to in the present Article shall be used for cultural and social purposes. The conditions under which such royalties are shared shall be fixed in a rule to be promulgated by the competent national authority.

Article 9

(1) The author shall have the right to claim ownership of his work. His name shall be indicated, to the extent and in the form compatible with customary practices, on any copy of his work and whenever his work is made available to the public, except where the work is incidentally or accidentally included in the reporting of current events by means of broadcasting or television.

(2) The author shall have the right to enforce against any distortion, mutilation or other modification of his work and to any other action derogatory to it, where such action is or might be prejudicial to his honor or reputation and he shall have the right to seek compensation.

(3) The rights granted to the author under the preceding paragraphs shall be perpetual, inalienable and infeasible.

CHAPTER II

Limitations on Copyright

SECTION I

Permanent Limitations

Article 10

Where the work has lawfully been made available to the public, the following shall be lawful:

- (1) Communications such as performance, broadcasting, television:
 - (i) if they are private, take place exclusively within a family circle and do not give rise to receipts of any kind;
 - (ii) if they take place free of charge for strictly educational or scholastic purposes or in the

course of a religious service in premises reserved to this end.

Nevertheless, the organizers of such communications shall notify in advance either the author or the persons entitled, or the National Copyright Office or the National Society of Authors and Composers as specified in Article 44, hereafter.

(2) Reproduction, translation and adaptation for strictly personal and private use, subject to clear mention of the source, that is to say the title of the work and the name of the author if his name figures in the source.

Article 11

(1) Quotations and references from works already lawfully available to the public, provided that this is compatible with fair practice and justified by scientific, critical, educational or informative objectives, including quotations and references from newspaper articles and periodicals in the form of press reviews.

(2) Such quotations and references may be used in the original language or in translation and shall mention the source and the name of the author of the said work.

Article 12

Unless the right to reproduction has been specifically reserved, articles concerning political, social, economic or religious news, political addresses, speeches made during legal debates, sermons, lectures, talks and other works of such nature may be reproduced in the press or broadcast in the original language or in translation. However, the source must always be clearly indicated.

Article 13

In reporting a current event by means of photography, cinematography, broadcasting or television, the reproduction and public communication of literary, artistic or scientific works which may be seen or heard in the course of the said event shall be lawful, to the extent justified by the objective of obtaining information.

Article 14

The reproduction, for the purposes of cinematography, broadcasting or television, and the public communication of works of art and of architecture permanently located in a public place or whose inclusion in a film or program is purely secondary and incidental to the main subject shall be lawful.

Article 15

Notwithstanding the provisions of Article 3, above, any broadcasting organ may, without the permission of the author or the owner of the right of reproduction of the work in question, make, for the purposes of its own broadcasts and by means of its own facilities, an ephemeral recording, in one or several copies, of any work which it is authorized to broadcast. All the copies shall be destroyed within six months of their recording or within any longer term agreed to by the author; however, where such recording has an exceptional documentary character, one copy may be preserved in the official archives.

Article 16

Public libraries, non-commercial documentation centers, scientific institutions and educational establishments may lawfully translate and/or reproduce works of any sort which have already been lawfully made available to the public, in the number of copies necessary for their activities, provided that such a translation and/or reproduction does not harm the normal exploitation of the work or cause unreasonable prejudice to the legitimate interests of the author.

Article 17

The utilization of works under the conditions specified in the present Section shall not give rise to any royalties for the authors or the persons entitled. Nevertheless, in all cases of reservation, the provisions of Article 9, above, shall remain applicable.

SECTION II

Exceptional Limitations

Article 18

(1) Subject to the reservations and under the conditions laid down in the Annex to the Paris Act (1971) of the Berne Convention for the Protection of

Literary and Artistic Works or similar provisions in the Universal Copyright Convention, licenses may be granted by the competent administrative authority to any natural or legal person national of a member State, with a view to:

- (i) translating foreign works already made available to the public and to publish in printed form or in any similar form of reproduction, on the territory of the said State, the works so translated;
- (ii) reproducing and publishing in printed form or in any similar form of reproduction, on the territory of the said State, foreign works already made available to the public.

(2) However, such licenses shall not be granted for the publication of literary or scientific works of which a French-language edition is available abroad unless such publication on the national territory has considerable advantages for the distribution desired.

Article 19

In the cases specified in the present Section, the rights of the author as recognized in Article 9, above, may not be prejudiced. In addition, the author shall have the right to an equitable fixed remuneration, which, in the absence of agreement, shall be fixed by the competent administrative authority, whose decision may be referred to the competent court in accordance with Article 37, hereafter.

CHAPTER III

Transfer of Copyright

Article 20

(1) Copyright shall be transferable. It may be passed on to the heirs of the author or to the persons entitled. It may be assigned in whole or in part.

(2) However, the total assignment of future works shall be null and void.

(3) Transfer of any one of the rights referred to in Article 3, above, must be in writing.

(4) Where the transfer of copyright is to the benefit of the State, through succession, the copyright shall be extinguished without prejudice to the rights of creditors and to the execution of such assignment

contracts as may have been entered into by the author or the persons entitled.

Article 21

(1) Assignment of the right to communicate the work to the public shall not imply the right to reproduce it.

(2) Assignment of the right to reproduce the work shall not imply the right to communicate it to the public.

(3) Where a contract entails total assignment of one of the two rights specified in the present Article, the scope of that assignment shall be limited to the methods of exploitation provided for in the contract.

Article 22

The transfer of the sole copy or of one or several copies of a work shall not imply the transfer of the copyright.

Article 23

Unless otherwise provided, authorization to broadcast the work shall cover all gratuitous communications made, by its own means and under its own responsibility, by the broadcasting or television organ. In accordance with Article 3, above, this authorization shall not extend to communications of programs in places open to the public nor to any transmissions by wire or wireless made by third parties.

CHAPTER IV

Cinematographic Works

Article 24

(1) Copyright of a cinematographic work belongs in the first instance to the intellectual creators of the work.

(2) The natural or legal person taking the initiative for making, and the financial responsibility for exploiting, the work, called the producer, shall be obliged, before undertaking the making of the cinematographic work, to enter into contracts with all those whose works are to be used for the production of the film.

(3) These contracts, with the exception of those concluded with the authors of pre-existing works utilized in making the cinematographic work and of those concluded with the authors of musical compositions, with or without words, shall, in the absence of a clause to the contrary, imply the assignment to the producer of the rights necessary for the cinematographic exploitation of the work; they shall be made in writing.

Article 25

(1) The director of a cinematographic work is the natural person who assumes the direction of, and the artistic responsibility for, the transformation into pictures and sound and the cutting of the cinematographic work, as well as the final editing.

(2) The cinematographic work shall be considered completed as soon as the first "master print" has been established by common consent between the director and the producer.

Article 26

(1) If one of the collaborators in the cinematographic work refuses to complete his contribution to the work, or is unable to complete it due to circumstances beyond his control, he may not object to the use of the part of his contribution already in existence for the purpose of the completion of the work.

(2) In the absence of an agreement to the contrary, the collaborators in a cinematographic work may dispose freely of their personal contributions with a view to their exploitation in a different *genre*, provided that this does not prejudice the exploitation of the work to which they have contributed.

CHAPTER V

Publishing Contracts

Article 27

(1) The publishing contract is that under which the author of the work or the persons entitled assign to the publisher, under specified conditions, the right to manufacture or have manufactured sufficient copies of the work, on condition that he ensures publication and dissemination thereof.

(2) A publishing contract must be in writing. The form and mode of expression, the terms of execution of the publication and, where applicable, the cancellation clauses shall be specified in the contract.

(3) A publishing contract shall be subject to the provisions of the national code governing civil and commercial obligations.

Article 28

(1) A contract for publication at the author's expense ("*à compte d'auteur*") shall not constitute a publishing contract within the meaning of Article 27, above.

(2) Under such a contract, the author or the persons entitled remit an agreed sum to the publisher, on condition that the latter manufacture copies of the work in the quantity, form and according to the modes of expression specified in the contract, and ensure its publication and dissemination.

(3) Such a contract shall constitute a business contract governed by the present Annex, practice and the provisions of the national code on civil and commercial obligations.

Article 29

(1) A shares contract ("*compte à demi*") shall not constitute a publishing contract within the meaning of Article 27, above.

(2) Under such a contract, the author or the persons entitled commission a publisher to manufacture, at his expense and in quantity, copies of the work in the form and according to the modes of expression specified in the contract, and to ensure their publication and dissemination, subject to a reciprocally contracted agreement to share the profits and losses of exploitation in the proportion specified.

(3) Such a contract constitutes a joint undertaking.

Article 30

The publisher shall be required to provide the author with all appropriate proof to establish the

accuracy of his accounts; should he fail to do so, he may be so compelled by the competent court.

CHAPTER VI

Performance Contracts

Article 31

(1) A performance contract is that under which an author or a professional body of authors grant to a natural or legal person or an entertainment promoter the right to perform the work or works constituting the repertoire of the said body under conditions which it shall determine.

(2) A contract under which a professional body of authors confers on an entertainment promoter the right to perform, for the duration of the contract, the existing or future works constituting the repertoire of the said body, under conditions determined by the author or the persons entitled, shall be described as a general performance contract. In this case, an exception may be made to the provisions of Article 20(2).

Article 32

(1) The right to perform may be assigned gratuitously or subject to payment.

(2) A performance contract must be in writing and shall be concluded for a limited period or for a specified number of communications to the public. The rights of exclusivity, the terms of execution and, where applicable, the cancellation clauses shall be specified in the contract.

Article 33

(1) The entertainment promoter shall be required to inform the author or his representatives of the exact program of public performances and to provide them with a documented statement of his receipts.

(2) The entertainment promoter must ensure that public performance takes place under the technical conditions which guarantee the author's intellectual and moral rights.

CHAPTER VII

Duration of Protection

Article 34

(1) Copyright shall subsist during the lifetime of the author and 50 calendar years from the end of the year of his death, with the exception of:

- (i) cinematographic, radiophonic or audiovisual works, whose duration of protection shall expire 50 years after the work is made available to the public with the consent of the author. If this does not take place within 50 years from the date of the making of the work, it shall expire 50 years after such making;
- (ii) photographic works or works of applied arts, whose duration of protection shall expire 25 years from the making of such a work.

(2) In the case of works of joint authorship, the calculation of the duration of protection shall only be considered from the date of the death of the last living joint author.

Article 35

Copyright shall expire 50 calendar years from the end of the year in which the work was lawfully made accessible to the public:

- (i) in the case where the copyright belongs in the first instance to a legal person, with the exception of the right of the State regarding folklore, which is indefeasible;
- (ii) in the case of anonymous or pseudonymous works, for as long as the author remains unknown;
- (iii) in the case of posthumous works.

Article 36

(1) On expiration of the terms of protection referred to in Articles 34 and 35, above, during which a recognized exclusive right belongs to the authors, their heirs or the persons entitled, the exploitation of works of folklore or works falling into the public domain shall be subject to the agreement by the person exploiting them to pay to the national authority a royalty calculated on the basis of the gross profit of the exploitation.

(2) Such royalty shall be equal to one half of the rate of remuneration usually granted to authors of protected works according to the contracts or practice in force.

(3) The proceeds from royalties thus made under the provisions of the present Article shall be used for cultural and social purposes.

CHAPTER VIII

Procedure and Sanctions

Article 37

(1) Without prejudice to the right of the injured party to institute legal action, all disputes relative to the application of the present Annex shall be within the competence of the civil courts dealing with the matter according to the normal procedure. However, where the subject of the action concerns solely payment of royalties to the State, administrative procedures shall be applied.

(2) The National Copyright Office or the National Society of Authors and Composers may institute legal proceedings with a view to defending the economic rights of authors which it is authorized to recover. Its intervention in the proceedings is compulsory in cases of direct actions by the owners of rights.

(3) Professional associations of authors duly constituted shall only be able to act in defense of the collective interests of their members.

(4) In cases of attachment with regard to the rights of exploitation, an author with no other resources may obtain a daily allowance for necessities, consisting of a specified share of the sums seized, from the president of the competent court.

Article 38

(1) Any publication, reproduction, performance or distribution by any means whatsoever, or the importation on to the national territory of a work protected by the present Annex in violation of the copyright, shall constitute the offense of infringement as specified and shall be punished by the provisions of the national penal code.

(2) Any person exploiting a work of folklore or a work in the public domain who fails to make a prior declaration to the national authority shall be punishable by a fine whose minimum amount shall be fixed by the said authority and which, where appropriate, may be equivalent to twice the amount of the royalties not paid.

Article 39

(1) At the request of any author of a work protected by the present Annex, of the persons entitled, of the National Copyright Office or of the National Society of Authors and Composers, the competent examining magistrate, taking cognizance of the infringement, or the competent president of the court, may, in all cases, including those where the copyright is threatened with immediate infringement, and upon the provision of security where necessary, order the seizure, in any place and even at times other than those specified in the national code of civil procedure, of copies manufactured or in the course of manufacture of an unlawfully produced work, of unlawfully used copies and of receipts from the infringement of a protected work; he may also order the suspension of any manufacture, public performance in progress or announced, which constitutes an infringement or an act preparatory to infringement.

(2) The provisions of the preceding paragraph shall also be applicable to unauthorized exploitation of a work of folklore or a work falling into the public domain.

Article 40

(1) The measures ordered by the competent examining magistrate under Article 39, above, shall be lifted automatically in the event of a nonsuit or order of *nolle prosequi*.

(2) They may be lifted at any time by the examining magistrate or by the criminal court subject, if appropriate, to the provision of security or the designation of an administrator-receiver responsible for the resumption of the manufacture or the public performances and for holding the proceeds from the exploitation of the work on behalf of the person to whom the work belongs.

(3) The measures ordered by the president of the competent court shall be lifted automatically on the thirtieth day following the decision where the plaintiff has failed to refer the matter to the competent civil court, unless criminal proceedings are in progress; they may also be lifted at any time by the president of the court in a summary proceeding, or by the civil court hearing the main issue, as appropriate, under the conditions prescribed by paragraph (2) of the present Article.

Article 41

Material proof of an act constituting an infringement as specified in Article 38, above, or an act preparatory to infringement of a protected work, may derive either from the reports of officers or agents of the judicial police or from statements by sworn agents of the National Copyright Office or the National Society of Authors and Composers.

CHAPTER IX

Field of Application of Part I

Article 42

(1) The provisions of Part I shall apply to all works which, at the time the present Annex enters into force, have not fallen into the public domain.

(2) Contracts concluded before such date shall, subsequent to the entry into force, be governed by these provisions.

Article 43

(1) The provisions of the present Part shall apply to:

(i) all works for which the original owner of the copyright at the time of completion of the work:

(a) is a national of one of the member States of the Organization or has his customary

residence there, where natural persons are concerned;

- (b) is subject to the jurisdiction of one of the member States, where legal persons are concerned;
- (ii) works published for the first time on the territory of one of the member States, or published on such territory within 30 days of the first publication in a foreign country;
- (iii) works of architecture built on the territory of one of the member States and any work of art incorporated in a building on the territory of any one of these States.

(2) In the case of a work of joint authorship, it shall be sufficient, for the provisions of Part I to apply, for only one of the joint authors to fulfill the conditions laid down in sub-paragraph (1) (i), above.

(3) Works not falling into one of the categories referred to above shall only enjoy the protection provided by the present Annex on condition that the State of which the original copyright owner is a national, or in which he has his customary residence, grants equivalent protection to the works of nationals of member States of the Organization. States for which this condition is deemed to be fulfilled shall be decided upon by the competent national authority.

(4) The provisions of international treaties shall remain reserved.

Article 44

(1) The administration of the rights referred to in Article 3, above, as well as the defense of the moral interests referred to in Article 9, above, shall be entrusted to a National Copyright Office and/or a National Society of Authors and Composers, set up in each member State by virtue of the present Annex and which shall be empowered to act as agent for the issue of authorizations and for the collection of royalties deriving therefrom.

(2) The structure and operation of the said body shall be fixed by the competent national authority.

(3) The Organization shall be responsible for centralizing and coordinating all information relating to the protection of literary and artistic property and for communicating such information to any member State which so requests.

PART II

Protection and Promotion of the Cultural Heritage

CHAPTER I

Definitions

Article 45

For the purposes of Part II, in addition to folklore, the following shall be considered as belonging to the cultural heritage of the nation: sites and monuments, property which, on religious or secular grounds, is deemed by the State to be of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (i) collections and rare zoological, botanical, mineralogical and anatomical specimens; objects of prehistoric interest;
- (ii) property concerning history, including scientific, technical, military and social history and the lives of national leaders, thinkers, scholars and artists, and important national events;
- (iii) the results of archaeological excavations, both authorized and clandestine, as well as archaeological discoveries;
- (iv) objects coming from an artistic or historic monument or an archaeological site;
- (v) objects of antiquity more than 25 years old, such as inscriptions, coins, carved seals, weights and measures, etc.;
- (vi) ethnographic material, such as ornaments and jewellery, religious objects, musical instruments, furniture, languages and dialects, products of the pharmacopoeia, traditional medicine and psychotherapy, culinary and clothing traditions;
- (vii) property of artistic interest such as:
 - (a) pictures, paintings and drawings entirely done by hand, on any backing and in any material (with the exception of industrial drawings and manufactured objects decorated by hand);
 - (b) original statues and sculptures in any material;
 - (c) original engravings, prints and lithographs;

- (d) original tapestries, weaving, combinations and settings in any material;
- (viii) rare manuscripts and incunabula, old books, documents and publications of special interest (historic, artistic, scientific, literary, etc.), alone or in collections;
- (ix) postage stamps, revenue stamps and similar, alone or in collections;
- (x) archives, including photographic, phonographic and cinematographic archives.

Article 46

(1) For the purposes of Part II, "folklore" means the literary, artistic, religious, scientific, technological and other traditions and products as a whole, created by African communities and handed down from generation to generation and which constitute the bases of the African cultural heritage.

(2) The following shall be included in this definition:

- (a) literary works of any kind, in oral or written form, stories, legends, proverbs, epics, chronicles, myths;
- (b) artistic styles and productions:
 - (i) dances;
 - (ii) musical works of any sort;
 - (iii) dramatic, dramatic-musical, choreographic and pantomimic productions;
 - (iv) works and styles of the plastic and decorative arts by any process;
 - (v) architectural styles;
- (c) religious traditions and celebrations:
 - (i) rites and rituals;
 - (ii) objects, vestments and places of worship;
- (d) educational traditions: initiations, sports, games, codes of manners and social conventions;
- (e) scientific knowledge and works:
 - (i) practices and products of medicine and the pharmacopoeia;
 - (ii) theoretical and practical attainments in the fields of the natural sciences, physics, mathematics and astronomy;
- (f) technological knowledge and works:
 - (i) metallurgical and textile industries;
 - (ii) agricultural techniques;
 - (iii) hunting and fishing techniques.

Article 47

For the purposes of Part II, the following shall be deemed to be sites and monuments: movable property

and real estate, public or private, including natural monuments, places, resorts and sites whose preservation and conservation are of historical, artistic, scientific, legendary or picturesque interest.

CHAPTER II

Protection

SECTION I

General Provisions

Article 48

The protection, safeguarding and promotion of the cultural heritage as defined in Articles 45, 46 and 47, above, shall be assured by the State.

Article 49

In order to assure such protection, safeguarding and promotion, the State shall undertake the listing, assessment, classification, security and illustration of the constituent elements of the cultural heritage.

Article 50

(1) It shall be forbidden to unlawfully denature, destroy, export, sell, alienate or transfer, in whole or in part, any of the constituent elements of the cultural heritage.

(2) In the absence of a special authorization issued by the designated competent authority, it shall remain forbidden to make a reproduction for gain, by any process whatsoever, including photographic reproduction, of any unclassified cultural property, listed or not, ancient or modern, and considered as a constituent of the national cultural heritage within the meaning of the present Annex.

Article 51

In order to prevent its looting, loss or deterioration, the State shall assure the control of exportation,

distribution, alienation and sale of unclassified cultural property, listed or not, ancient or modern.

Article 52

The State shall enjoy the right of preemption with regard to any property liable to enrich the cultural heritage of the nation.

SECTION II

Listing and Classification Procedures

Article 53

The listing of a cultural property shall be notified to the owner, the holder or the occupant.

Article 54

(1) Where the listing is not followed within six months by a decision to classify the property, the listing shall become null and void.

(2) Where necessary, the listing may be prolonged, but, in any event, it shall not exceed 18 months.

Article 55

The classification shall be notified to the proprietor, the holder or the occupant by the administrative authority of the place where the cultural property is situated or held.

SECTION III

Effects of Listing and Classification

Article 56

Listing shall imply for the proprietor, the holder or the occupant the obligation to give three months' notice to the competent authority before making any

changes in the place or object, or undertaking any work other than that of normal maintenance or everyday exploitation.

Article 57

(1) In addition, listing shall empower the administrative authority to oppose:

- (i) any works liable to injure the integrity of the cultural property;
- (ii) the exportation or transfer of listed movable objects.

(2) Such opposition shall prohibit the work until expiration of the total period of listing.

Article 58

The classification shall follow the cultural property itself regardless of to whom the property shall pass.

Article 59

Any person who alienates a classified property by sale or otherwise shall, on pain of it being declared null and void, before concluding the act of alienation:

- (a) inform the beneficiary of the status of the property;
- (b) inform the competent authority of the act of alienation of the said property within a period of 15 days.

Article 60

Any classified property belonging to a legal person under public law may not be alienated without the specific authorization of the competent administrative authority.

Article 61

The State shall have the right to undertake, at its own expense, the work necessary for the restoration or preservation of classified property which it does not own. To this end, it may, *ex officio*, take possession of the said property during the period required to complete the work.

Article 62

The owners, holders or occupants may, where appropriate, claim the payment of an indemnity for loss of possession. Such payment shall be fixed in accordance with the provisions in force regarding such matters.

Article 63

Having regard to the expenditure to be thus borne by the State and where the listed property is in a position to be opened to the public or viewed by it, a fee for visits may be fixed, whose amount shall be determined by the competent authority and which shall be paid into the special fund specified under Article 72(ii).

Article 64

Where work as referred to in Article 57, above, is undertaken without statutory approval, upon the competent administrative authority's becoming aware of the fact, it shall order the immediate suspension of the work and the return to the *status quo ante*, at the expense of the offenders, of the cultural property for which it is responsible or which it supervises, until the property recovers its integral identity.

Article 65

The alienation of materials or parts unlawfully detached from classified or listed cultural property, as well as any act having the effect of transferring the possession of such materials or parts to third parties, shall be null and void. The third parties, jointly responsible with the owners for the return of such materials or parts, may not claim any indemnity from the State.

Article 66

(1) No building may be erected on a classified site or against a classified property and no common easement may be undertaken on a classified property, without the authorization of the competent administrative authority.

(2) Lawful easements liable to degrade property shall not apply to listed or classified property.

(3) Any classified site within a town planning zone shall constitute an area *non aedificandi*.

(4) Subject to the penal and administrative sanctions provided for in such matters, the posting of bills and the setting up of extraneous publicity devices shall be prohibited on classified monuments and, where appropriate, in the vicinity, determined, in each case, in the prescribed manner.

Article 67

(1) The classification of property may give rise to payment of an indemnity in reparation for the prejudice which may result.

(2) Administrative acts of classification shall establish the conditions for classification by mutual agreement.

(3) In the absence of consent by the proprietor, classification shall be made *ex officio*. Claims for indemnity shall be submitted to the administration within six months of notification of *ex officio* classification, on pain of foreclosure. Disputes concerning the principle or the amount of the indemnity shall be brought before the jurisdiction within whose competence the property classified *ex officio* is situated or held.

Article 68

(1) The State may expropriate owners of their classified or listed property according to the procedure established in the legislation concerning expropriation in the public interest, as well as owners whose property is necessary in order to isolate, open up or improve the classified property.

(2) The declaration of public interest shall automatically entail the classification of the listed property.

(3) The indemnity to be paid under Article 67(1), above, may not be claimed or paid if, during the year following the date of declaration, the statement of mutual agreement on the indemnity for expropriation or the legal decision on expropriation has not yet been made.

Article 69

No listed or classified property may be included in an inquiry for the purposes of expropriation in the public interest or in a special zone of real estate planning, unless it is previously declassified or unless the listing is annulled owing to the legitimate priority of the real estate plan proposed over considerations of a cultural nature; an exception shall only be made where the said plan is not prejudicial to the conservation and preservation of the classified property.

CHAPTER III

Safeguards

Article 70

The safeguarding of the cultural heritage shall, in particular, be assured by:

- (a) the creation and promotion of museums, collections of any sort, sites and monuments;
- (b) the preservation by image and sound of the traditional culture of the nation;
- (c) the setting up of written, visual and sound archives.

CHAPTER IV

Promotion

Article 71

The State shall recognize:

- (i) for all citizens, the right of access to the advantages of the cultural heritage;
- (ii) for craftsmen, artists and other creative persons, the right to assistance and encouragement.

Article 72

The State shall guarantee and assure exercise of such rights by:

- (i) information and education in any form, particularly the inclusion of the values of the cultural heritage in educational, teaching and training programs in public and private institutions at all levels;
- (ii) the creation of a special fund for cultural and social purposes, in particular:
 - (a) the upkeep, preservation and enrichment of the cultural heritage;
 - (b) the support and encouragement of:
 - (i) artists, craftsmen, authors and other creative persons;
 - (ii) cultural ventures and activities of any sort;
 - (iii) measures furthering the immediate integration in the national life of national or African works of any sort, whether individual or collective and, in particular, cinematographic works;
 - (iv) the allocation of at least five per cent of the cost of public buildings or buildings open to the public for the decoration and furnishing of such buildings by national or African artists or craftsmen.

CHAPTER V

Final Provisions

Article 73

Any offense against the provisions of Articles 56 and 57 of the present Annex shall be punished by a fine of from 12,000 to 200,000 francs CFA, without prejudice to any action for damages which the competent administrative authority may bring.

Article 74

Any person having knowingly transgressed the provisions of Article 50 of the present Annex shall be punished by a term of imprisonment of from one month to two years and by a fine of from 24,000 to 120,000 francs CFA, without prejudice to any damages.

Article 75

Any infraction of the provisions of Articles 59 and 65 of the present Annex shall be punished by a term of imprisonment of from six months to five years or by a fine of from 10,000,000 to 50,000,000 francs CFA, or to both penalties.

Article 76

Any person having transgressed the provisions of Article 69, above, shall be liable to a fine of from 50,000 to 2,500,000 francs CFA. Where the work specified in the above-mentioned Article has injured the integrity of the property, the offender shall be liable to the punishment provided for in Article 75, above.

CHAPTER VI

Other Provisions

Article 77

A High Commission for the National Cultural Heritage shall be established. It shall be consulted on any question concerning the protection, safeguarding and promotion of the cultural heritage.

Article 78

The means of application of the provisions of Articles 49, 51, 52, 63 and 77 of the present Annex shall be established by the regulations.

Article 79

Any prior provisions contrary to the provisions of the present Annex are hereby repealed.

Annex VIII

**Central Body for Patent Documentation
and Information
(Documentation Center)**

*Article 1***Definitions**

For the purposes of the present Annex:

- (i) "Organization" means the African Intellectual Property Organization (OAPI);
- (ii) "Agreement" means the Agreement relating to the creation of an African Intellectual Property Organization, constituting a revision of the Agreement relating to the creation of an African and Malagasy Office of Industrial Property, done at Libreville on September 13, 1962;
- (iii) "Documentation Center" means the central body for patent documentation and information created by the Agreement and the present Annex;
- (iv) "Administrative Council" means the Administrative Council as provided for in Article 18 of the Agreement;
- (v) "Director General" means the Director General of the Organization;

- (vi) "Committee of Experts" means the Committee of Experts set up under Article 6 of the present Annex.

*Article 2***Aims and Statutes of the Documentation Center**

(1) The Documentation Center shall contribute to the promotion of the technical and industrial development of the member States of the Organization by putting at their disposal documents and information relating to inventions.

(2) The Administrative Council may entrust the Documentation Center with other tasks.

*Article 3***Functioning of the Documentation Center**

(1) The Administrative Council shall determine the activities and lay down guidelines for the development policy of the Documentation Center.

(2) Any rule in force within the Organization shall apply to the Documentation Center and its technical staff, subject to any special provisions established by the Administrative Council.

(3) The Administrative Council shall name the Technical Director of the Documentation Center upon the proposal of the Director General.

(4) The Technical Director shall organize the activities of the Documentation Center and shall supervise their implementation.

Article 4

Associated States

(1) Any African State which is not a member of the Organization may request the right to participate in the Documentation Center as an associated State.

(2) The request shall be made to the Administrative Council, which shall decide by majority vote; a tied vote shall be equivalent to rejection.

Article 5

Beneficiaries of the Services of the Documentation Center

(1) On payment of the fees set in the prescribed manner, governmental authorities of member States and associated States and natural or legal persons of any nationality having their residence or headquarters on the national territory of one of the aforementioned States may benefit from the services of the Documentation Center.

(2) The Administrative Council, upon the proposal of the Director General, shall establish which inter-governmental organizations, other African States, as well as natural or legal persons residing or having their headquarters on the territory of such African States may benefit from the services of the Documentation Center, on payment of the fees set in the prescribed manner.

Article 6

Committee of Experts

(1) A Committee of Experts is hereby created, which shall be attached to the Administrative Council and shall be responsible for:

(a) assisting the Director General in the constitution and extension of the documentation belonging to the Documentation Center;

(b) advising on the contents of the publications of the Documentation Center;

(c) advising with regard to cooperation activities with the appropriate national services of the member States or the associated States;

(2) The Committee of experts shall consist of:

(a) a governmental expert from each member State;

(b) a representative from each associated State;

(c) a representative from the competent research authority of each of the member States;

(d) at least one representative from the profession of consulting patent engineer and from chambers of commerce and industry;

(e) any other expert whom the Director General sees fit to include.

Article 7

Financing of the Documentation Center

(1) The funds of the Documentation Center shall be composed of:

(a) a share of the budget of the Organization to be fixed by the Administrative Council;

(b) receipts from fees charged for services rendered;

(c) any other receipts, in particular, those arising from publications;

(d) gifts and legacies of any sort.

(2) Where the budget of the Documentation Center is not balanced by the aforementioned receipts, the member States and the associated States specified in Article 5 of the present Annex shall provide for its balance by financial contributions in equal parts.

(3) Three copies of all the publications of the Documentation Center shall be furnished free of charge to the national administrations of member States and associated States.

(4) The Director General shall administer the budget of the Documentation Center.

Article 8

Working Agreements

The Director General shall be responsible for drawing up the plan of work with the national and international patent institutions and for concluding relevant agreements after approval by the Administrative Council.

Annex IX

Article 1

Member States shall have the option of replacing as a whole Articles 11 and 15 of Annex I on Patents by the following provisions:

Article 11 – Any person wishing to obtain a patent shall file with the African Intellectual Property Organization, or send to it by registered post with a request for acknowledgment of receipt:

(a) his application to the Director General of the Organization;

(b) the relevant paper proving the payment of the publication fee;

(c) an unstamped power of attorney, if the applicant is represented by an agent;

(d) a sealed package containing in duplicate:

(i) a specification of the invention for which the application has been made, set out clearly and completely so that a person having ordinary knowledge and skill in the art could carry it out;

(ii) the drawings necessary for the understanding of the specification;

(iii) a descriptive abstract containing a summary of the contents of the specification, the claim or claims specified under subparagraph (iv), hereafter, as well as all drawings relevant to the abstract; and

(iv) the claim or claims defining the scope of the protection sought, but which do not go beyond the contents of the specification mentioned under subparagraph (i), above.

Article 15 – The Organization shall proceed with the opening and the recording of applications and grant patents in the order of receipt of the said applications.

Article 2

Member States shall have the option of replacing as a whole Articles 10 and 15 of Annex II on Utility Models by the following provisions:

Article 10 – Any person wishing to obtain the registration of a utility model shall deposit with the African Intellectual Property Organization, or

send to it by registered post with a request for acknowledgment of receipt:

(a) his application to the Director General of the Organization;

(b) the relevant paper proving payment of the publication fee;

(c) an unstamped power of attorney, if the applicant is represented by an agent;

(d) a sealed package containing in duplicate:

(i) a specification showing by what outline, arrangement or device the utility model may be used for the work or use for which it is intended; this specification shall be set out clearly and completely so that a person having ordinary knowledge and skill in the art could carry out the said model;

(ii) the drawings and blocks necessary or useful for understanding the specification and, where appropriate, two specimens of the model;

(iii) a descriptive abstract containing a summary of the contents of the specification;

(iv) an indication of the scope of the protection sought.

Article 15 – The Organization shall proceed with the opening and recording of applications and with the grant of the relevant registration certificates in the order of receipt of the said applications.

Article 3

Member States shall have the option of replacing as a whole Articles 9 and 11 of Annex III on Trademarks and Service Marks by the following provisions:

Article 9 – (1) Any person wishing to apply for a mark shall deposit with the African Intellectual Property Organization, or send to it by registered post with a request for acknowledgment of receipt:

(a) a request for registration of the mark addressed to the Director General of the Organization;

(b) an unstamped power of attorney, if the applicant is represented by an agent;

(c) a model of the mark containing the list of goods and services to which it applies and the classes

corresponding to the classification in force; the model shall be submitted in four copies, one of which shall be marked by the applicant with the word "Original"; each copy shall be signed by the applicant or his agent;

(d) the block of the mark.

(2) The right of priority attaching to an earlier application shall be claimed at the time of application for the mark or, at the latest, within the following two months. In the latter case, the claim shall be addressed directly to the Organization. Any claim reaching the Organization more than two months after the filing of the mark shall be inadmissible.

(3) International applications and requests for the recording of later designations, within the meaning of Articles 5 and 6 of the Trademark Registration Treaty, submitted by persons domiciled on the national territory of one of the member States may only be filed with the International Bureau of the World Intellectual Property Organization through the Organization, which must conform to the relevant rules of procedure laid down in the said Treaty and its regulations.

(4) The international applications referred to in the preceding paragraph may only be filed by nationals domiciled on the said national territory if, at the time of such applications, the marks in question were the subject of applications for registration entered in the name of these nationals in the special register of trademarks of the Organization, at least for the goods or services mentioned in the international applications.

(5) Should an agency of the International Bureau, within the meaning of Article 32(2)(a)(ix) of the Trademark Registration Treaty, be established on the territory of the State in which the Organization has its headquarters, the application of the provisions of paragraph (3), above, shall be suspended during the functioning of the said agency.

Article 11 – (1) A written statement drawn up by the Organization shall record each filing, specifying the date and the time the documents were handed over or were received, if they were sent by post.

(2) A copy of this statement shall be given or sent to the applicant.

Article 4

Member States shall have the option of replacing as a whole Articles 9 and 11 of Annex IV on Industrial Designs by the following provisions:

Article 9 – (1) Any person wishing to apply for an industrial design shall deposit with the African Intellectual Property Organization, or send to it by registered post with a request for acknowledgment of receipt:

(a) a declaration of deposit addressed to the Director General of the Organization;

(b) an unstamped power of attorney, if the applicant is represented by an agent;

(c) on pain of annulment of the deposit, a sealed package containing two identical copies of a representation or specimen of the design.

(2) The same deposit may comprise from one to one hundred designs, which shall be numbered from first to last. Designs above the number one hundred shall not be considered as validly deposited under the terms of the present Annex.

Article 11 – (1) A written statement drawn up by the Organization shall record each deposit, specifying the date and the time the documents were handed over or were received, if they were sent by post.

(2) A copy of this statement shall be given or sent to the applicant.

Article 5

Member States shall have the option of replacing as a whole Articles 6 and 7 of Annex V on Trade Names and Protection against Unfair Competition by the following provisions:

Article 6 – The owner of a trade, industrial, crafts or agricultural enterprise situated on the national territory of one of the member States wishing to register the trade name of his establishment shall file with the African Intellectual Property Organization, or send to it by registered post with a request for acknowledgment of receipt:

(a) a request for registration addressed to the Director General of the Organization and containing:

(i) the name, first name or names, address and nationality of the applicant;

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- (ii) the trade name for which registration is requested and, where appropriate, two copies of the block of the trade name;
 - (iii) the location and type of activity of the establishment in question;

(b) the relevant paper proving payment to the Organization of the filing and publication fees specified in the present Annex;

(c) an unstamped power of attorney, if the applicant is represented by an agent.

Article 7 – (1) A written statement drawn up by the Organization shall record each filing, specifying the date and the time the documents were handed over or were received, if they were sent by post.

(2) A copy of this statement shall be given or sent to the applicant.

Article 6

(1) Member States shall have the right to determine the courts whose clerks are authorized to receive applications for trademarks and industrial designs.

(2) The list of such courts shall be notified to the Organization.

Article 7

Member States shall have the right to amend the list of bodies in whose elections offenders may not participate, as specified in Article 43 of Annex III on Trademarks and Service Marks, and Article 34 of Annex IV on Industrial Designs.

Article 8

Member States shall have the right to amend the minimum amount of the fines provided for in Articles 37 and 58 of Annex I, Articles 37, 38 and 39 of Annex III and Article 32 of Annex IV.
