



Brazilian Patent Statute

Statute #9,279/1996 of May 14, 1996, as amended by Statutes #10,196 of February 14, 2001, #14,195 of August 26, 2001, and #14,200 of September 2, 2021.

Patents, utility models, industrial designs, trademarks, geographical indications and unfair competition.

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Preliminary Provisions

Article 1. This Statute provides for rights and obligations relating to industrial property.

Article 2. The protection of rights relating to industrial property, considering the interests of society, and the technological and economic development of the Country, occurs by means of:

- I - the grant of patents for inventions and for utility models;
- II - the grant of industrial design registrations;
- III - the grant of trademark registrations;
- IV - the repression of false geographical indications; and
- V - the repression of unfair competition.

Article 3. The provisions of this Statute also apply:

- I - to applications for patents or registrations originating from abroad and filed in the Country by a person having protection afforded by a treaty or convention in force in Brazil; and
- II - to nationals or persons domiciled in a country that affords reciprocity of identical or equivalent rights to Brazilians or persons domiciled in Brazil.

Article 4. The provisions of treaties in force in Brazil are applicable, under equal conditions, to natural and legal persons that are nationals or domiciled in the Country.

Article 5. For all legal effects, industrial property rights are considered to be chattels.

I. Patents

Chapter I. Ownership

Article 6. The author of an invention or of a utility model will be assured the right to obtain a patent that affords them the property, under the terms established by this Statute.

Paragraph 1. Unless there is evidence to the contrary, the applicant is presumed to have the right to obtain a patent.

Paragraph 2. A patent may be applied for by the author, their heirs, or successors, by the assignee or by whomever the law or a work or service contract determines to be the owner thereof.

Paragraph 3. When an invention or utility model is created jointly by two or more persons, the patent may be applied for by all or any one of them, by naming and qualifying the others to guarantee their respective rights.

Paragraph 4. The author will be named and qualified but may request their authorship not to be revealed.

Article 7. If two or more authors have independently devised the same invention or utility model, the right to obtain a patent will be assured to whoever proves the earliest filing, independently of the dates of invention or creation.

Sole Paragraph. The withdrawal of an earlier filing without producing any effects will give priority to the immediately subsequent filing.

Chapter II. Patentability

§I. Patentable inventions and utility models

Article 8. In order to be patentable, an invention must meet the requirements of novelty, non-obviousness, and industrial application.

Article 9. An object of practical use, or part thereof, is patentable as a utility model, when it is susceptible to industrial application, presents a new shape or arrangement, and involves an inventive act that results in a functional improvement in its use or manufacture.

Article 10. The following are not considered invention or utility model:

- I - discoveries, scientific theories, and mathematical methods;
- II - purely abstract concepts;
- III - schemes, plans, principles, or methods of a commercial, accounting, financial, educational, publishing, lottery, or fiscal nature;
- IV - literary, architectural, artistic, and scientific works or any aesthetic creation;
- V - computer programs per se;
- VI - the presentation of information;
- VII - rules of games;
- VIII - operative or surgical techniques and therapeutic or diagnostic methods, for use in the human or animal body; and
- IX - natural living beings, in whole or in part, and biological material, including the genome or germplasm of any natural living being, when found in nature or isolated therefrom, and natural biological processes.

Article 11. Inventions and utility models are considered novel when they are not already part of the state of the art.

Paragraph 1. The state of the art comprises everything made accessible to the public before the date of filing of a patent application, by written or oral description, by use or any other means, in Brazil or abroad, without prejudice to the provisions of Articles 12, 16 and 17.

Paragraph 2. For the purpose of determining novelty, the whole contents of an application filed in Brazil, but not yet published, will be considered as state of the art from the date of filing, or from the priority claimed, provided that it is published, even though subsequently.

Paragraph 3. The provisions of the previous Paragraph will apply to international patent applications filed in accordance with a treaty or convention in force in Brazil, provided that there is national processing.

Article 12. The disclosure of an invention or utility model which occurs during the twelve months preceding the date of filing or priority of the patent application will not be considered as part of the state of the art, provided such disclosure is made:

- I - by the inventor;
- II - by the Brazilian Patent and Trademark Office – BRPTO, by means of the official publication of a patent application filed without the consent of the inventor and based on information obtained from them or as a result of their acts; or
- III - by third parties, based on information received directly or indirectly from the inventor or as the result of their acts.

Sole Paragraph. The BRPTO may require the inventor to provide a declaration regarding the disclosure, accompanied or not by evidence, under the conditions set forth in the rules.

Article 13. An invention shall be taken to involve non-obviousness when, for a person skilled in the art, it does not derive in an evident or obvious manner from the state of the art.

Article 14. An utility model shall be taken to involve an inventive act when, for a person skilled in the art, it does not derive in a common or usual manner from the state of the art.

Article 15. Inventions and utility models are considered susceptible to industrial application when they can be made or used in any kind of industry.

§II. Priority

Article 16. Priority rights will be provided to a patent application filed in a country that holds an agreement with Brazil or in an international organization, that has the effects of a national filing, within the time limits established in the agreement, the filing not being invalidated nor compromised by facts that occur within such time limits.

Paragraph 1. Priority claims must be made at the time of filing but may be supplemented within 60 (sixty) days by other priorities earlier than the date of filing in Brazil.

Paragraph 2. A priority claim must be evidenced by a suitable document of origin, containing the number, date, title, specification and, when applicable, claims and drawings, accompanied by a free translation of the certificate of filing or equivalent document containing data identifying the application, the contents of which will be the entire responsibility of the applicant.

Paragraph 3. If not submitted at the time of filing, evidence must be presented within 180 (one hundred and eighty) days from filing.

Paragraph 4. For international applications filed by virtue of a treaty in force in Brazil, the translation referred to in Paragraph 2 must be submitted within a period of 60 (sixty) days from the date of entry into national processing.

Paragraph 5. When the application filed in Brazil is completely contained in the document of origin, a declaration by the applicant in this regard will suffice to substitute the free translation.

Paragraph 6. When the priority is obtained by virtue of assignment, the corresponding document must be filed within 180 (one hundred and eighty) days from filing or, in the case of entry into national processing, within 60 (sixty) days from the date of such entry, consular legalization in the country of origin being waived.

Paragraph 7. Failure to present evidence within the time limits established in this article will result in loss of the priority.

Paragraph 8. In the case of an application filed with a priority claim, any request for early publication must be made with evidence of the priority having been submitted.

Article 17. An application for a patent for invention or for a utility model originally filed in Brazil, without a priority claim and not yet published, will confer a right of priority to a later application in respect of the same subject matter filed in Brazil by the same applicant or by their successors, within the period of 1 (one) year.

Paragraph 1. Priority will only be accepted for subject matter that is disclosed in the earlier application and will not extend to any new matter that is introduced.

Paragraph 2. The pending earlier application will be considered as abandoned with chance to revive.

Paragraph 3. Priority claim shall not be based on patent application resulting from a division of a previous application.

§III. Non-Patentable Inventions and Utility Models

Article 18. The following are not patentable:

I - whatever is contrary to morals, good customs and public security, order, and health;

II - substances, matter, mixtures, elements, or products of any kind, as well as the modification of their physical-chemical properties and the respective processes of obtaining or modifying thereof, when resulting from the transformation of the atomic nucleus; and

III - living beings, in whole or in part, except transgenic micro-organisms meeting the three patentability requirements – novelty, non-obviousness, and industrial application – provided for in Article 8, and which are not mere discoveries;

Sole Paragraph. For the purposes of this Statute, transgenic micro-organisms are organisms, except the whole or part of plants or animals, which exhibit, due to direct human intervention in its genetic composition, a characteristic that cannot normally be attained by the species under natural conditions.

Chapter III. Patent Applications

§I. Filing an Application

Article 19. A patent application, in accordance with the conditions set forth by the BRPTO, will contain:

- I - a request;
- II - a specification;
- III - claims;
- IV - drawings, if any;
- V - an abstract; and
- VI - proof of payment of the filing fee.

Article 20. Once submitted, the application will undergo a preliminary formalities check and, if in due order, will be protocolled, the date of submission being considered as the filing date.

Article 21. An application that does not formally meet the requirements of Article 19, but which does contain data relating to the subject matter, the applicant, and the inventor, may be submitted, accompanying dated receipt, to the BRPTO, which will publish an office action with requirements to be met within a period of 30 (thirty) days, under penalty of return or dismissal of the documents.

Sole Paragraph. Once the office action has been complied with, filing will be considered to have been made on the date of the receipt.

§II. Conditions of Application

Article 22. An application for a patent for invention must refer to a single invention or to a group of inventions so linked as to form a single inventive concept.

Article 23. An application for utility model must refer to a single main model, which may include a plurality of additional different elements, or construction or embodiment variations, provided that the technical and functional unity and bodily unity of the subject matter is preserved.

Article 24. The specification must describe the subject matter clearly and sufficiently so as to enable a person skilled in the art to carry it out and to indicate, when applicable, the best mode of the invention.

Sole Paragraph. In the case of biological material essential for the practical implementation of the subject matter of the application, which cannot be described in the form of this article, and which has not been accessible to the public, the specification will be supplemented by a deposit of the material with an institution authorized by the BRPTO or indicated in an international agreement.

Article 25. The claims must be based on the specification, characterizing the particularities of the application, and clearly and precisely defining the subject matter to be protected.

Article 26. A patent application may, until the end of examination, be divided, ex officio or at the request of the applicant, into two or more applications, provided that the divisional application:

I - makes specific reference to the original application; and

II - does not extend beyond the subject matter disclosed in the original application.

Sole Paragraph. Requests to divide which are not in accordance with the provisions of this article will be shelved.

Article 27. Divisional applications will have the filing date of the original application and the benefit of the priority of the latter, if any.

Article 28. Each divisional application will be subject to payment of the corresponding fees.

Article 29. A patent application which is withdrawn or abandoned will be published.

Paragraph 1. A request for withdrawal must be filed within 16 (sixteen) months counted from the date of filing or of the earliest priority.

Paragraph 2. Withdrawal of an earlier application without producing any effect will confer priority on the immediately subsequent application.

§III. Prosecution and Substantive examination

Article 30. A patent application will be kept secret during 18 (eighteen) months counted from the date of filing or of the earliest priority, if any, after which it will be published, with the exception of the case provided for in Article 75.

Paragraph 1. Publication of the application may be anticipated upon request by the applicant.

Paragraph 2. The publication must include data identifying the patent application, a copy of the specification, claims, abstract and drawings being made available to the public at the BRPTO.

Paragraph 3. In the case provided for in the Sole Paragraph of Article 24, the biological material will be made available to the public at the time of the publication referred to in this article.

Article 31. Documents and information for aiding examination may be filed by interested parties between the publication of the application and completion of examination.

Sole Paragraph. Examination will not be initiated prior to 60 (sixty) days from publication of the application.

Article 32. In order to better clarify or define a patent application, the applicant may amend it up to the request for examination, provided that changes are limited to the subject matter initially disclosed in the application.

Article 33. Substantive examination of a patent application must be requested by the applicant or by any interested party, within 36 (thirty six) months counted from the date of filing, under penalty of abandonment of the application.

Sole Paragraph. The patent application may be reinstated, upon request by the applicant, within 60 (sixty) days counted from the abandonment, upon payment of a specific fee, under penalty of abandonment without chance to revive.

Article 34. Once examination has been requested and whenever so requested, the following should be filed within 60 (sixty) days, under penalty of abandonment of the application:

I - objections, prior art searches, and the results of examination for the grant of corresponding applications in other countries, when there is a priority claim;

II - documents necessary to regularize the proceedings and substantive examination of the application; and

III - a free translation of the suitable document mentioned in Paragraph 2 of Article 16, should it have been substituted by the declaration provided for in Paragraph 5 of that same article.

Article 35. At the time of the substantive examination, a search report and an opinion will be prepared with

respect to:

- I - the patentability of the application;
- II - the adaptation of the application to the nature of protection claimed;
- III - the reformulation of the application or the division thereof; or
- IV - technical requirements.

Article 36. When the opinion is for non-patentability or for the inadequacy of the application with respect to the nature of protection claimed, or formulates any requirement, the applicant will be notified to reply within a period of 90 (ninety) days.

Paragraph 1. If no reply to the office action is filed, the application will be definitively dismissed.

Paragraph 2. If a reply to the office action is filed, but requirements are not met or its formulation is reconsidered, and irrespective of arguments filed regarding patentability or adequacy, examination will be continued.

Article 37. Once examination is completed, a decision will be issued allowing or rejecting the patent application.

Chapter IV. Patent Grant and Term

§I. Patent Grant

Article 38. A Patent will be granted after the application is allowed and, upon proof of payment of the corresponding fee, the respective Letters Patent will be issued.

Paragraph 1. Payment of the fee and the submission of proof thereof must be carried out within 60 (sixty) days from allowance.

Paragraph 2. The fee provided for in this Article may also be paid and evidenced within 30 (thirty) days after the time limit provided for in the previous Paragraph, independently of any notification, by payment of a specific fee, under penalty of irrevocable abandonment of the application.

Paragraph 3. The patent will be considered granted as of the date of publication of the respective act.

Article 39. The Letters Patent will include the respective number, title and nature of protection, the name of the inventor, in accordance with the provisions of Article 6, Paragraph 4, the identification and domicile of the holder, the term, the specification, the claims and the drawings, as well as data relating to priority.

§II. Patent term

Article 40. A patent for invention will have a term of 20 (twenty) years and a utility model patent a term of 15 (fifteen) years, counted from the filing date. [Revoked by Statute # 14,195, 2021](#)

Chapter V. Protection Conferred by a Patent

§I. The Rights

Article 41. The extension of the protection conferred by a patent will be determined by the contents of the claims, as interpreted in the light of the specification and drawings.

Article 42. A patent confers on its owner the right to prevent third parties from manufacturing, using, offering for sale, selling, or importing for such purposes without their consent:

I - a product that is the subject of a patent;

II - a process or product directly obtained by a patented process;

Paragraph 1. The patent holder is further assured the right to prevent third parties from contributing to the practice by other parties of the acts referred to in this article.

Paragraph 2. The rights in a process patent will be violated, insofar as item II is concerned, when the holder or owner of a product fails to prove, by a specific court order, that it was obtained by a manufacturing process different from that protected by the patent.

Article 43. The provisions of the previous article do not apply:

I - to acts practiced by unauthorized third parties privately and for non-commercial purposes, provided they do not result in prejudice to the economic interests of the patent holder;

II - to acts practiced by unauthorized third parties for experimental purposes, relating to studies or to scientific or technological research;

III - to the preparation of medicines according to medical prescription for individual cases, performed by a qualified professional, as well as to medicines thus prepared;

IV - to products manufactured in accordance with a process or product patent that has been placed on the internal market directly by the patent holder or with their consent;

V - to third parties who, in the case of patents related to living matter, use, for non-profit purposes, the patented product as the initial source of variation or propagation for obtaining other products;

VI - to third parties who, in the case of patents related to living matter, use, place on the market or commercialize a patented product that has been introduced lawfully onto the market by the patent holder or their licensee, provided that the patented product is not used for commercial multiplication or propagation of the living matter in question; and

VII - to acts practiced by unauthorized third parties, relating to the patented invention, carried exclusively to produce information, data, and test results to seek market approval in Brazil or abroad, in order to exploit or commercialize the patented product after the term set forth in Article 40 has expired.

Article 44. A patent holder is assured the right to obtain compensation for the unauthorized exploitation of the subject matter of the patent, including exploitation that occurred between the date of publication of the application and that of grant of the patent.

Paragraph 1. If the infringer obtains, by any means, knowledge of the contents of a filed application, prior to publication, the period of undue exploitation, for purposes of compensation, will be counted from the date of commencement of exploitation.

Paragraph 2. When the subject matter of a patent application relates to biological material, deposited under the terms of the Sole Paragraph of Article 24, the right to compensation will only be conferred when the biological material has been made available to the public.

Paragraph 3. The right to obtain compensation for unauthorized exploitation, including with respect to the period prior to grant of the patent, is limited to the contents of the subject matter of the patent, under the terms of Article 41.

§II. Prior User

Article 45. A person who in good faith, prior to the date of filing or of priority of a patent application, exploits its subject matter in the Country, will be assured, without charge, the right to continue the exploitation, in the previous form and under the previous conditions.

Paragraph 1. The right conferred under the terms of this article can only be assigned by transfer or leasing, together with the business or undertaking, or the part thereof which relates directly to the exploitation of the

subject matter of the patent.

Paragraph 2. The right to which this article refers will not be assured to a person who had knowledge of the subject matter of the patent due to disclosure under the terms of Article 12, provided that the application was filed within 1 (one) year from the disclosure.

Chapter VI. Patent Nullity

§I. General Provisions

Article 46. A patent is null and void when granted contrary to the provisions of this Statute.

Article 47. Nullity may not be applicable to all of the claims, a condition for partial nullity being that the subsisting claims constitute subject matter that is patentable per se.

Article 48. Nullity of a patent will produce effects as from the filing date of the application.

Article 49. In case the provisions of Article 6 not having been observed, the inventor may alternatively claim, in a court action, the adjudication of the patent.

§II. Administrative Nullity Procedure

Article 50. Nullity of a patent will be declared in the administrative instance when:

- I - any of the legal requirements have not been met;
- II - specification and claims do not meet the provisions of Articles 24 and 25, respectively;
- III - the subject matter to be protected by the patent extends beyond the contents of the application as originally filed; or
- IV - any of the essential formalities indispensable for grant were not complied with during prosecution.

Article 51. The nullity procedure may be instituted ex officio or at the request of any person having legitimate interest, within 6 (six) months counted from the grant of the patent.

Sole Paragraph. The nullity procedure will continue even if the patent is extinct.

Article 52. The holder will be notified to file a reply within a period of 60 (sixty) days.

Article 53. Independently of a reply having been filed, once the period set forth in the previous article has expired, the BRPTO will issue an opinion, notifying the holder and the applicant to reply within a common period of 60 (sixty) days.

Article 54. Once the period set forth in the previous article has expired, even if no replies have been filed, the procedure will be decided by the Commissioner of the BRPTO, thus terminating the administrative proceedings.

Article 55. The provisions of this § apply, where appropriate, to certificates of addition.

§III. Judicial Nullity Actions

Article 56. A nullity action can be filed at any time during the term of a patent by the BRPTO or by any legitimately interested party.

Paragraph 1. Nullity of a patent may be argued, at any time, for the purposes of defense.

Paragraph 2. The judge may, as a preventive or incidental measure, determine the suspension of the effects of a patent, provided the relevant procedural requirements are met.

Article 57. Nullity actions will be filed in the forum of the Federal Courts, and the BRPTO, when not plaintiff, will participate in the action.

Paragraph 1. The period for the defendant to reply will be 60 (sixty) days.

Paragraph 2. Once the decision on a nullity action becomes res judicata, the BRPTO will publish a notice to notify third parties.

Chapter VII. Assignment and Notations

Article 58. A patent application or patent, the contents of which are indivisible, may be assigned in whole or in part.

Article 59. The BRPTO will make notations of the following:

- I. assignments, mentioning the complete identification of the assignee;
- II. any limitation or charge that applies to the application or patent; and
- III. changes to name, headquarters, or address of the applicant or holder.

Article 60. Notations will take effect with respect to third parties as of their date of publication.

Chapter VIII. Licenses

§I Voluntary Licenses

Article 61. A patent holder or applicant may execute a license agreement for exploitation.

Sole Paragraph. The licensee may be invested by the holder with all powers to act in defense of the patent.

Article 62. A license agreement must be recorded at the BRPTO in order for it to take effect with respect to third parties.

Paragraph 1. The recording will take effect with respect to third parties as from the date of its publication.

Paragraph 2. A license agreement need not be recorded with the BRPTO for it to have effect for validating proof of use.

Article 63. Any improvement to a licensed patent belongs to the person who made it, the other contracting party being assured the right of preference for licensing.

§II. Offer to License

Article 64. A patent holder may request the BRPTO to place their patent on offer with a view to its exploitation.

Paragraph 1. The BRPTO shall publish the offer.

Paragraph 2. No exclusive voluntary license agreement will be recorded by the BRPTO, unless the holder has withdrawn the offer.

Paragraph 3. No patent subject to an exclusive voluntary license may be made the subject matter of an offer.

Paragraph 4. The holder may, at any time prior to the express acceptance of its terms by an interested party, withdraw the offer, whereby the provisions of Article 66 will not apply.

Article 65. In the absence of an agreement between the holder and the licensee, the parties may request the BRPTO to arbitrate the compensation.

Paragraph 1. For the purposes of this article, the BRPTO will observe the Paragraph provisions in Paragraph 4 of Article 73.

Paragraph 2. The compensation may be reviewed after 1 (one) year of it being established.

Article 66. A patent on offer will have its annuities reduced by one half during the period between the offer and the grant of the first license on any account.

Article 67. The patent holder may request cancellation of the license if the licensee does not initiate effective exploitation within 1 (one) year of the grant of the license, interrupts exploitation for a period longer than 1 (one) year or, further, if the conditions for exploitation are not satisfied.

§III. Compulsory Licenses

Article 68. The holder will be subject to have their patent licensed compulsorily if he exercises the rights resulting therefrom in an abusive manner or abuses of the economic power through it, proven as provided for by law, by an administrative or court decision.

Paragraph 1. The following may also result in compulsory license:

I. failure to exploit the subject matter of the patent in Brazilian territory, due to lack of manufacturing or incomplete manufacturing of the product or, furthermore, by lack of complete use of a patented process, except in the case of non-exploitation due to economic unfeasibility, in which case importation will be allowed; or

II. commercialization that fails to meet the needs of the market.

Paragraph 2. The license can only be requested by a party with legitimate interest and that has the technical and economic capacity to efficiently exploit the subject matter of the patent, that should be destined predominantly for the internal market, suppressing, in this case, the exceptionality provided for in item I of the previous Paragraph.

Paragraph 3. In case a compulsory license is granted by virtue of abuse of economic power, the licensee proposing to manufacture locally will be assured of a period of time, limited to that provided for in Article 74, to proceed with the importation of the subject matter of the license, provided it has been placed on the market directly by the holder or with their consent.

Paragraph 4. In the case of importation to exploit a patent and in the case of importation as provided for in the previous Paragraph, the importation by third parties of a product manufactured according to a process or product patent will also be allowed, provided it has been placed on the market directly by the holder or with their consent.

Paragraph 5. A compulsory license, as referred to in Paragraph 1, may only be requested after 3 (three) years from grant of the patent.

Article 69. A compulsory license will not be granted if, on the date of the request, the holder:

I - justifies non-use for legitimate reasons;

II - proves that serious and effective preparative procedures for exploitation have been carried out; or

III - justifies lack of manufacturing or commercialization due to legal obstacles.

Article 70. A compulsory license will also be granted when the following hypotheses are shown to exist cumulatively:

I - a situation of dependency of one patent on another is characterized;

II - the subject matter of the dependent patent constitutes a substantial technical advance over the earlier patent; and

III - the holder fails to reach an agreement with the holder of the dependent patent for the exploitation of the earlier patent.

Paragraph 1. For the purposes of this article, a dependent patent is that whose exploitation depends

mandatorily on the use of the subject matter of the earlier patent.

Paragraph 2. For the purposes of this article, a process patent may be considered as dependent upon a patent for the respective product, just as a product patent may be dependent upon a process patent.

Paragraph 3. The owner of a patent licensed under the terms of this article will have the right to a compulsory cross license of the dependent patent.

Article 71. In cases of national emergency or public interest declared in law or in an act of the Executive Branch, or of the recognition by the Brazilian Congress of a state of public calamity nationwide, provided that the patent holder or their licensee fail to meet this need, a temporary ex officio non-exclusive compulsory license for the exploitation of the patent or patent application may be granted, without prejudice to the rights of the respective holder. [\(Wording by Statute #14,200, of 2021\)](#)

Paragraph 1 - The act of granting the license shall establish its term and the possibility of extension. [\(Renumbered from the sole paragraph by Statute #14,200, 2021\)](#)

Paragraph 2 - In the cases provided for in the *caput* of this Article, the Executive Branch shall publish a list of patents or patent applications potentially useful for dealing with the situations provided for in the *caput* of this article, within 30 (thirty) days from the publication date of the declaration of emergency or public interest, or the recognition of a state of public calamity, except patents and patent applications that are subject of agreements for the transfer of production technology or voluntary licensing capable of ensuring internal demand, in accordance with the conditions provided for in regulation, the secrecy term provided for in Article 30 of this Statute not being applicable. [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 3 Public entities, educational and research institutions and other entities representing society and the productive sector shall be consulted in the process of developing the list of patents or patent applications that may be subject of compulsory license, in accordance with the conditions provided for in regulation. [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 4 - Any public or private institution may submit an application for inclusion of a patent or patent application in the list referred to in Paragraph 2 of this Article. [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 5 - The list referred to in Paragraph 2 of this Article shall contain sufficient information and data to allow individualized analysis of the usefulness of each patent and patent application, and shall include at least: [\(Included by Statute #14,200, of 2021\)](#)

- I - the individualized number of patents or patent applications which may be subject of compulsory licensing; [\(Included by Statute #14,200, of 2021\)](#)
- II - the identification of the respective holders; [\(Included in Statute #14,200, of 2021\)](#)
- III - the specification of the objectives for which each compulsory licensing will be authorized. [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 6 - From the list published in accordance with Paragraph 2 of this Article, the Executive Branch shall perform, within 30 (thirty) days, extendable for the same period, the individualized evaluation of the inventions and utility models listed, and will grant the compulsory license, in a non-exclusive manner, only to producers who have proven technical and economic capacity for the production of the subject matter of the patent or the patent application, provided that it concluded by the usefulness in dealing with the situation that underlies it. [\(Included in Statute #14,200, 2021\)](#)

Paragraph 7 - Patents or patent applications that have not been yet subject to compulsory license may be excluded from the list referred to in Paragraph 2 of this Article in cases where the competent authority defined by the Executive Branch considers that its holders have made objective commitments capable of ensuring internal demand under volume, price and term conditions, compatible with the needs of national or international emergency, of public interest, or of state of public calamity nationwide through one or more of the following alternatives: [\(Included by Statute #14,200, of 2021\)](#)

- I - direct exploitation of the patent or patent application in the country

[of 2021\)](#)

II - voluntary licensing of the patent or patent application; or [\(Included by Statute #14,200, of 2021\)](#)

III – transparent contracts for the sale of a product associated with the patent or patent application [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 8 (VETOED). [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 9 (VETOED). [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 10. (VETOED [\(Included by Statute #14,200, of 2021\)](#))

Paragraph 11. Public institutions that have information, data and documents related to the subject matter of the patent or patent application shall share all the elements useful to the reproduction of the licensed object. In this case, the rules relating to data protection or the provisions of item XIV of the *caput* of article 195 of this Statute are not applicable [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 12. The circumstances of each case shall be observed when determining the compensation of the patent holder or the patent application, being mandatory to consider the economic value of the license granted, the duration of the license, and the investments estimates necessary for its exploitation, as well as the production costs and the sales price of the product associated with it in the domestic market. [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 13. The compensation to the holder of patent or patent application subject to compulsory license shall be fixed at 1.5% (one whole and five tenths percent) on the net selling price of the product associated with it until its value is actually established. [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 14. The compensation to the holder of the patent application subject to compulsory license will only be due if the patent is granted, and the payment, corresponding to the entire period of the license, shall be effected only after the of the patent grant [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 15. The authority with jurisdiction shall give priority to the examination of patent applications which are compulsorily licensed [\(Included by Statute #14,200, of 2021\)](#)

Paragraph 16. Products that are subject to the health surveillance regime shall comply with all the requirements provided for in the health legislation and can only be marketed after authorization is granted, definitively or for emergency use, by the Federal health authority, in accordance with the conditions provided for in regulation [\(Included by Statute #14,200, 2021\)](#)

Paragraph 17. (VETOED [\(Included by Statute #14,200, of 2021\)](#))

Paragraph 18. Regardless of the granting of compulsory license, the government will give priority to the execution of technical cooperation agreements and contracts with the patent holder for the acquisition of productive technology and for its transfer process. [\(Included by Statute #14,200, of 2021\)](#)

Article 71-A. For humanitarian reasons and under the terms of the international treaty to which the Federative Republic of Brazil is a party, a compulsory license of patents for products intended for exportation to countries with insufficient or no manufacturing capacity in the pharmaceutical sector to serve its population may be granted [\(Included by Statute #14,200, of 2021\)](#)

Article 72. Compulsory licenses will always be granted without exclusivity, and sublicensing is not permitted.

Article 73. An application for a compulsory license must be prepared by indicating the conditions offered to the patent holder.

Paragraph 1. Once the application for a license has been filed, the holder will be notified to reply within 60 (sixty) days, at the end of which, in the absence of a reply from the holder, the proposal will be considered as accepted under the conditions offered.

Paragraph 2. An applicant for a license who alleges abuse of patent rights or abuse of economic power must file documentary evidence.

Paragraph 3. If a compulsory license is requested on the basis of lack of exploitation, it will rest with the patent holder to prove exploitation.

Paragraph 4. If there is a request for reconsideration, the BRPTO may take the necessary steps, including the appointment of a committee that may include specialists that are not part of the BRPTO, with a view to arbitrating the compensation that will be paid to the holder.

Paragraph 5. The bodies and entities of direct or indirect, federal, state, and municipal public administration will provide the BRPTO with such information as is requested in order to assist the arbitration regarding compensation.

Paragraph 6. In arbitrating compensation, the circumstances of each case will be considered by mandatorily taking into account the economic value of the license granted.

Paragraph 7. Once the proceeding is duly filed, the BRPTO will come to a decision regarding the grant and the conditions of the compulsory license within a period of 60 (sixty) days.

Paragraph 8. Appeals against decisions granting a compulsory license will not operate as supersedeases.

Article 74. In the absence of legitimate reasons, the licensee must initiate exploitation of the subject matter of the patent within 1 (one) year from the grant of the license, interruption for an equal period being permitted.

Paragraph 1. The holder may request revocation of the license whenever the provisions under this article are not met.

Paragraph 2. The licensee will be vested with all powers to act in defense of the patent.

Paragraph 3. After grant of a compulsory license, the assignment thereof will only be permitted when it is carried out together with the assignment, transfer or leasing of that part of the undertaking that exploits it.

Chapter IX. Patents of Interest to National Defense

Article 75. A patent application originated in Brazil which subject matter is of interest to national defense will be processed in secrecy and will not be subject to the publications provided for in this Statute.

Paragraph 1. The BRPTO will immediately refer the application to the competent body of the Executive Branch for the purpose of providing, within 60 (sixty) days, an opinion regarding secrecy. If such period has elapsed without any opinion by the competent body, the application will be normally processed.

Paragraph 2. Filing abroad patent application which subject matter is of interest to national defense is forbidden, as well as any disclosure thereof, except when expressly authorized by the competent body.

Paragraph 3. The exploitation and the assignment of an application or patent of interest to national defense are conditioned to prior authorization by the competent body, being assured due compensation in case of restriction to the applicant's or holder's rights.

Chapter X. Certificate of Addition of an Invention

Article 76. On payment of a specific fee, the applicant or holder of a patent for invention may request a certificate of addition to protect an improvement or a development added to the subject matter of the invention, even if lacking non-obviousness, provided that it shares the same inventive concept.

Paragraph 1. If the main application has already been published, the application for certificate of addition will be immediately published.

Paragraph 2. Substantive examination of the application for certificate of addition will comply with the provisions of Articles 30 to 37, without prejudice to the provisions of the previous Paragraph.

Paragraph 3. An application for certificate of addition will be rejected if its subject matter does not show the

same inventive concept.

Paragraph 4. The applicant may, within the period for appeal, upon payment of the corresponding fee, request the conversion from an application for certificate of addition to a patent application benefiting from the date of filing of the application for certificate of addition.

Article 77. A certificate of addition is accessory to the patent, has the same expiry date, and accompanies it for all legal effects.

Sole Paragraph. In a nullity procedure, the holder may request an assessment of the subject matter contained in the certificate of addition on the possibility of its subsistence, without prejudice to the patent validity term.

Chapter XI. Extinction of Patents

Article 78. A patent shall become extinct:

- I - on expiry of the term of protection;
- II - on waiver by the holder, without prejudice to the rights of third parties;
- III - on forfeiture;
- IV - on non-payment of the annual fee, within the periods provided for in Paragraph 2 of Article 84 and in Article 87; and
- V - on non-observance of the provisions of Article 217.

Sole Paragraph. Once a patent becomes extinct, its subject matter will be in the public domain.

Article 79. Waiver will only be accepted if it does not prejudice the rights of third parties.

Article 80. A patent becomes forfeit, ex officio, or at the request of any party with a legitimate interest if, after 2 (two) years from the grant of the first compulsory license, such period has not been sufficient to prevent or correct abuse or disuse, excepting legitimate reasons.

Paragraph 1. A patent will become forfeit when, on the date of the request for forfeiture or of the ex officio institution of the respective process, its exploitation has not been initiated.

Paragraph 2. In the process for forfeiture instituted at the request of any party with a legitimate interest, the BRPTO may continue the process in case of waiver by that party.

Article 81. The holder will be notified to issue a manifestation on the request for forfeiture within a period of 60 (sixty) days, having the burden of proof regarding exploitation.

Article 82. A decision will be pronounced within 60 (sixty) days counted from the end of the period mentioned in the previous Article.

Article 83. A decision of the forfeiture process will enter into effect as of the date of the request or of the publication of the ex officio institution of the process.

Chapter XII. Annual Fees

Article 84. The Applicant and the holder are subject to the payment of annual fees, as from the beginning of the third year counted from the date of filing.

Paragraph 1. Advance payment of the annual fees will be regulated by the BRPTO.

Paragraph 2. The payment should be made within the first 3 (three) months of each annual period but may still be made within the following 6 (six) months, regardless of note, by payment of an additional fee.

Article 85. The provisions of the previous Article apply to international applications filed by virtue of a treaty in force in Brazil, the annual fees due before the date of entry into national processing shall be paid within a

period of 3 (three) months counted from that date.

Article 86. Failure to pay the annual fee, pursuant to Articles 84 and 85, will result in the abandonment of the application or extinction of the patent.

Chapter XIII. Restoration

Article 87. The patent and the patent application may be restored, if the holder or the Applicant so requests, within 3 (three) months counted from the notice of abandonment of the application or of extinction of the patent, upon payment of a specific fee.

Chapter XIV. Inventions and Utility Models Made by Employees or Service Providers

Article 88. An invention or utility model will belong exclusively to the employer when it results from a work contract being performed in Brazil, and which subject matter is the research or the employment of non-obviousness, or when it results from services for which the employee was hired to provide.

Paragraph 1. Compensation for the work to which this Article refers will be limited to the salary agreed upon, except when contractually provided otherwise.

Paragraph 2. A patent for invention or utility model will be considered as having been developed while the contract was in force if filed by the employer within 1 (one) year from the extinction of the employment relationship, in the absence of proof to the contrary.

Article 89. An employer, who is the holder of a patent, may grant the employee, who is the author of the invention or improvement, a participation in the economic gains resulting from the exploitation of the patent, as negotiated with the interested party, or as provided for in the company's bylaws.

Sole Paragraph. The participation referred to in this Article will not, in any way, be incorporated into the employee's salary.

Article 90. The employee shall be the exclusive holder of the invention or utility model provided for it was developed unconnected to their work contract, and when it does not result from the use of the employer's resources, means, data, materials, installations, or equipment.

Article 91. The ownership of an invention or utility model will be common, in equal parts, when it results from the personal contribution of the employee and from employer's resources, data, means, materials, installations, or equipment, except when expressly stated otherwise in contractual provisions.

Paragraph 1. When there is more than one employee, the due part will be equally shared between all of them, except when agreed otherwise.

Paragraph 2. The employer will be assured the right to an exclusive license for exploitation and the employee will be guaranteed fair compensation.

Paragraph 3. Exploitation of the subject matter of the patent, in the absence of an agreement, must be initiated by the employer within 1 (one) year counted from the date of the grant, under penalty of the ownership of the patent being transferred exclusively to the employee, without prejudice to the hypothesis of non-exploitation for legitimate reasons.

Paragraph 4. In case of assignment, any of the co-owners may exercise the right of preference under identical conditions.

Article 92. The provisions of the preceding Articles, as far as they are applicable, apply to the relationship between an autonomous worker, or a trainee, and the contracting company, and between contracting and contracted companies.

Article 93. The provisions of this Chapter, as far as they are applicable, apply to entities of the direct or indirect, and federal, state, municipal or related to foundation, Public Administration.

Sole Paragraph. In the hypothesis of Article 88, a reward corresponding to part of the value of the advantages obtained as a result of the application or the patent will be assured to the inventor, under the terms and conditions provided for in the company's bylaws or regulations to which this Article refers, by way of monetary incentive.

II. Industrial Designs

Chapter I. Ownership

Article 94. The right to obtain a registration for industrial design that grants the ownership is assured to the author, under the terms established by this Statute.

Sole Paragraph. The provisions of Articles 6 and 7 will apply, as far as they are applicable, to the patents for industrial designs.

Chapter II. Registration

§I. Patentable Industrial Designs

Article 95. An industrial design is considered any ornamental plastic form of an object or any ornamental arrangement of lines and colors that may be applied to a product, that provides a new and original visual result in its external configuration, and that may serve as a type for industrial manufacture.

Article 96. An industrial design is considered novel when not comprised by the state of the art.

Paragraph 1. The state of the art comprises everything made accessible to the public before the filing date of the application, in Brazil or abroad, by use or any other means, without prejudice to the provisions of Paragraph 3 of this Article, and Article 99.

Paragraph 2. For the sole purpose of determining novelty, the whole contents of an application for a patent or a registration filed in Brazil, but not yet published, will be considered as included in the state of the art from the date of filing, or from the priority claimed, provided that it is published, even though subsequently.

Paragraph 3. An industrial design which disclosure occurred within the 180 (one hundred and eighty) days preceding the date of filing of the application or of the priority claimed will not be considered included in the state of the art, provided such disclosure is made in accordance with the situations described in items I to III of Article 12.

Article 97. An industrial design is considered original when it results in a distinctive visual configuration in relation to other prior objects.

Sole Paragraph. The original visual result may be developed from the combination of known elements.

Article 98. Designs having a purely artistic nature are not considered to be industrial designs.

§II. Priority

Article 99. The provisions of Article 16 apply for the patent applications, as far as they are applicable, except for the time limit provided for in Paragraph 3 of that Article, which will be 90 (ninety) days.

§III. Non-patentable Industrial Designs

Article 100. An industrial design is non-patentable when:

I - it is contrary to morals and good customs, or offends the honor, or image of people, or is contrary to the liberty of conscience, belief, religious cults, or ideas, and feelings worthy of respect, and veneration.

II - it is the necessary common or ordinary shape of an object or, further, when is determined essentially by technical or functional considerations.

Chapter III. Applications for Industrial Design

§I. Filing the Application

Article 101. An application for registration of industrial design, in accordance with conditions set forth by the BRPTO, will contain:

I - a request;

II - a specification, if applicable;

III - claims, if applicable;

IV - drawings or photographs;

V - the field of employment of the object; and

VI - proof of payment of the filing fee.

Sole Paragraph. The documents comprising an application for registration of industrial design must be filed in the Portuguese language.

Article 102. Once submitted, the application will undergo a preliminary formalities check, if in due order, will be protocolled, the date of submission being considered as the filing date.

Article 103. An application that does not formally meet the requirements of Article 101, but which does contain sufficient data relating to the Applicant, to the industrial design, and to the author, may be submitted with a dated receipt to the BRPTO, which will publish office actions with requirements to be met within a period of 5 (five) days, under penalty of being considered nonexistent.

Sole Paragraph. Once the office action has been complied with, filing will be considered to have been made on the date of the receipt.

§II. Conditions of the Application

Article 104. An application for registration of industrial design must refer to a single object, a plurality of variations being admitted provided that aiming the same purpose, and maintaining the same preponderant distinctive features between them, each application being limited to a maximum of 20 (twenty) variations.

Sole Paragraph. The drawing must clearly and sufficiently represent the object, and its variations, if any, to allow its reproduction by a person skilled in the art.

Article 105. When secrecy is requested under the terms of Article 106, Paragraph1, the application may be withdrawn up to 90 (ninety) days counted from the date of filing.

Sole Paragraph. Withdrawal of a previous application without producing any effect will confer priority on the immediately subsequent application.

§III. Substantive examination and process of an Application

Article 106. Once an application for industrial design has been filed and the provisions of Articles 100, 101, and 104 have been observed, it will be automatically published, and the registration for industrial design will be simultaneously granted, the respective certificate being issued.

Paragraph 1. On request by the Applicant at the time of filing, the application may be kept secret for a period of 180 (one hundred and eighty) days counted from the filing date, after which it will be processed.

Paragraph 2. If the Applicant benefits from the provisions of Article 99, the application process will await submission of the priority document.

Paragraph 3. If the provisions of Articles 101, and 104 are not met, an office action will be made to which a response shall be filed within 60 (sixty) days, under penalty of definitive abandonment.

Paragraph 4. If the provisions of Article 100 are not met, the application registration of industrial design will be rejected.

Chapter IV. Grant and Term of the Registration

Article 107. The certificate must include the number and title, the name of the author, observing the provisions of Paragraph 4 of Article 6, the name, nationality and domicile of the holder, the term, the drawings, data relating to any foreign priority and, when applicable, the specification and claims.

Article 108. The registration for industrial design will have a term of 10 (ten) years counted from the date of filing and will be renewable for three successive periods of 5 (five) years each.

Paragraph 1. A request for extension must be filed during the last year of the term of the registration for industrial design and be accompanied by proof of payment of the respective fee.

Paragraph 2. If a request for extension has not been submitted prior to the end of the term of the registration for industrial design, the holder may submit such request within the subsequent 180 (one hundred and eighty) days, upon payment of an additional fee.

Chapter V. Protection granted by the Registration for industrial design

Article 109. The ownership of an industrial design follows a validly granted patent.

Sole Paragraph. The provisions of Article 42 and of items I, II, and IV of Article 43, will apply to the registration for industrial design, as far as applicable.

Article 110. A person who in good faith exploited the subject matter of an application for registration of industrial design in the Country, prior to the date of filing or of priority, will be assured the right to continue the exploitation in the previous manner and conditions, without charge.

Paragraph 1. The right conferred under the terms of this Article can only be assigned together with the business or company, or part thereof which relates directly to the exploitation of the subject matter of the registration for industrial design by alienation or leasing.

Paragraph 2. The right to which this Article refers will not be guaranteed to a person who had knowledge of the subject matter of the registration for industrial design due to disclosure under the terms of Paragraph 3 of Article 96, provided that the application was filed within 6 (six) months from the disclosure.

Chapter VI. Examination on Merit

Article 111. An Applicant of a registration for industrial design may, at any time during the term of registration, request examination as to novelty and originality of the subject matter.

Sole Paragraph. The BRPTO will issue an opinion on merit that, if it concludes for the absence of at least one of the requirements established by Articles 95 to 98, will serve as the basis for the ex officio institution of nullity procedure of the registration for industrial design.

Chapter VII. Nullity of Registration for industrial design

§I. General Provisions

Article 112. A registration is null if granted contrary to the provisions of this Statute.

Paragraph 1. The nullity of a registration for industrial design will produce effects as from the date of filing of the application.

Paragraph 2. In case of inobservance of the provisions of Article 94, the author may alternatively claim adjudication of the registration for industrial design.

§II. Administrative Nullity Proceedings

Article 113. Nullity of a registration for industrial design will be declared administratively when it has been granted contrary to Articles 94 to 98.

Paragraph 1. Nullity proceedings may be instituted ex officio or upon request of any person having a legitimate interest within 5 (five) years from grant of the registration for industrial design, without prejudice to the hypothesis provided for in the Sole Paragraph of Article 111.

Paragraph 2. A request or ex officio institution will suspend the effects of grant of a registration for industrial design if submitted or published within 60 (sixty) days from grant.

Article 114. The holder will be notified to issue a manifestation within 60 (sixty) days counted from the date of publication.

Article 115. The BRPTO will issue an opinion after the period specified in the previous Article, whether there is a manifestation or not, notifying the holder and the Applicant to manifest within 60 (sixty) days.

Article 116. After the period specified in the previous Article, even if no manifestation has been made, the process will be decided by the Commissioner of the BRPTO, thereby bringing the administrative instance to a close.

Article 117. Nullity proceedings will be continued even when the registration for industrial design is extinct.

§III. Judicial Nullity Actions

Article 118. As far as they are applicable, the provisions of Articles 56 and 57 will apply to nullity actions for a registration for industrial design.

Chapter VIII. Extinction of Registrations

Article 119. A registration for industrial design will become extinct:

- I - on expiry of the term of protection;
- II - on waiver by the holder, without prejudice to the rights of third parties;
- III - on non-payment of the fee, provided for in Articles 108 and 120; or
- IV - on non-observance of the provisions of Article 217.

Chapter IX. Quinquennial Fee

Article 120. The holder of a registration for industrial design is subject to the payment of a quinquennial fee as of the second quinquennial from the filing date.

Paragraph 1. Payment of the second quinquennial will be made during the 5 (fifth) year of the term of grant.

Paragraph 2. Payment of the following quinquennial fees will be submitted together with the application for renewal referred to in Article 108.

Paragraph 3. Payment of quinquennial fees may still be made within the 6 (six) months following the period established in the previous Paragraph, by payment of an additional fee.

Chapter X. Final Provisions

Article 121. As far as they are applicable, the provisions of Articles 58 to 63 apply to subject matter covered by the present Title, the rights of the employee or supplier of services being provided in Articles 88 to 93.

III. Trademarks

Chapter I. Registration

§I. Signs Registrable as Trademarks

Article 122. Any visually perceptible distinctive sign, when not prohibited under the law, is susceptible to registration as a trademark.

Article 123. For the effects of this Statute, the following definitions apply:

I - product or service trademark: that used to distinguish a product or service from one having a different origin, but is identical, similar or akin;

II - certification trademark: that used to attest that a product or service conforms with determined technical norms or specifications, notably with reference to its quality, its nature, the material used, and the methodology employed; and

III - collective trademark: that used to identify products or services originated by members of a given entity.

§II. Signs Non-Registrable as Trademarks

Article 124. The following are non-registrable as trademarks:

I - crests, armorial bearings, medals, flags, emblems, official public distinctions, and monuments, be they national, foreign, or international, as well as any respective designations, figures, or imitations;

II - an isolated letter, digit, or date, except when sufficiently distinctive;

III - expressions, figures, drawings, or any other sign contrary to morals and good customs, or which offend a person's honor or image, or are an affront to the liberty of conscience, beliefs, religious cults, or to ideas and sentiments worthy of respect and veneration;

IV - designations or acronyms of a public entity or establishment, when registration is not requested by that public entity or establishment;

V - reproductions or imitations of a characteristic or differentiating element of a title of establishment

or the name of a third party's company, which are likely to cause confusion or association with such distinctive signs;

VI - signs of a generic, necessary, common, usual, or simply descriptive nature, when related to the product or service to be distinguished, or those commonly used to designate a characteristic of the product or service with respect to its nature, nationality, weight, value, quality, and moment of production, or of service supply, except when presented in a sufficiently distinctive manner;

VII - signs or expressions used only as advertising means;

VIII - colors and their names, except when arranged or combined in an unusual and distinctive manner;

IX - geographic indications, imitations thereof likely to cause confusion, or signs that might falsely suggest a geographic indication;

X - signs that suggest a false indication with respect to origin, source, nature, quality, or utility of the product or service to which the trademark is directed;

XI - reproductions or imitations of official seals, normally adopted for the guarantee of a standard of any type or nature;

XII - reproductions or imitations of signs that have been registered as a collective or a certification trademark by a third party, meeting the provisions of Article 154;

XIII - names, prizes, or symbols of sporting, artistic, cultural, social, political, economic, or technical official or officially recognized events, as well as imitations likely to cause confusion, except when authorized by the competent authority or entity promoting the event;

XIV - reproductions or imitations of titles, bonds, coins and bank notes of the Union, the States, the Federal District, the Territories, the Municipalities, or of any country;

XV - personal names or signatures thereof, family, or patronymic names and images of third parties, except with the consent of the owner, heirs, or successors thereof;

XVI - well-known pseudonyms or nicknames, and singular or collective artistic names, except with the consent of the owner, heirs, or successors thereof;

XVII. literary, artistic, or scientific works, as well as titles protected by copyright and likely to cause confusion or association, except with the consent of the author or owner;

XVIII - technical terms used in the industry, science, or art that is related to the product or service to be distinguished;

XIX - reproductions or imitations, in whole or in part, even with additions, of a trademark registered by a third party, to distinguish or certify a product or service that is identical, similar or the like, and which are likely to cause confusion or association with the third party's trademark;

XX - duplications of trademarks of a single holder for the same product or service, except when, in the case of trademarks of the same nature, they are presented in a sufficiently distinctive manner;

XXI - necessary, common, or usual shapes of a product or of its packaging, or shapes that cannot be disassociated from a technical effect;

XXII - objects that are protected by a registration for industrial design in the name of third parties; and

XXIII - signs that imitate or reproduce, wholly or in part, a trademark of which the Applicant could obviously not fail to have knowledge in view of their activity, which the holder is established or domiciled in the national territory, or in a country with which Brazil maintains an agreement or guarantees reciprocity of treatment, if the trademark is intended to distinguish a product or service that is identical, similar or akin, and is likely to cause confusion or association with such third party trademark.

§III. Famous Trademarks

Article 125. Trademarks registered in Brazil and considered to be famous will be guaranteed special protection, in all fields of activity.

§IV. Well-known Trademarks

Article 126. Marks that are well-known in their field of activity in the terms of Article *6bis* (1) of the Paris Convention for the Protection of Industrial Property will enjoy special protection, regardless of whether they have been previously filed or registered in Brazil.

Paragraph 1. The protection to which this Article refers is also applicable to service trademarks.

Paragraph 2. The BRPTO may reject ex officio an application to register a trademark that wholly or partially reproduces or imitates a well-known trademark.

Chapter II. Priority

Article 127. Priority rights will be assured to an application for the registration of a trademark filed in a country that holds an agreement with Brazil, or in an international organization, that has the effects of a national filing, within the time limits established in the agreement, the filing not being invalidated nor compromised by facts that occur within such time limits.

Paragraph 1. Priority claims must be made at the time of filing but may be supplemented within 60 (sixty) days by other priorities earlier than the date of filing in Brazil.

Paragraph 2. A priority claim must be evidenced by a suitable document of origin, containing the number, date, title, specification and, when applicable, claims and drawings, accompanied by a free translation of the certificate of filing or equivalent document containing data identifying the application, the contents of which will be the entire responsibility of the applicant.

Paragraph 3. If not submitted at the time of filing, the evidence must be presented within 4 (four) months from filing, under penalty of losing the priority.

Paragraph 4. When the priority is obtained by virtue of assignment, the corresponding document must be filed together with the priority document itself.

Chapter III. Applicants for Registration

Article 128. Private individuals, or private or public legal entities may apply for the registration of a trademark.

Paragraph 1. Private legal entities may only apply for the registration of a trademark relating to the activity that they effectively and licitly exercise, directly or through companies that they directly or indirectly control, and such condition should be stated on the application, subject to the penalties of the law.

Paragraph 2. The registration of a collective trademark may only be applied by a legal entity representing a group, such legal entity may exercise an activity different from that of its members.

Paragraph 3. The registration of a certification trademark can only be applied by a person without any direct commercial or industrial interest in the product or service being certified.

Paragraph 4. A priority claim does not exempt the application from the provisions of this Title.

Chapter IV. Rights Relating to a Mark

§I. Acquisition

Article 129. The ownership of a trademark is granted by a validly issued registration, in accordance with the provisions of this Statute, the holder being guaranteed exclusive use thereof throughout the national territory, without prejudice to the provisions of Articles 147 and 148 with respect to collective and certification trademarks.

Paragraph 1. Any person who in good faith was using an identical or similar mark for at least 6 (six) months prior to the date of priority or of the application in the Country, to distinguish or certify a product or service that is identical, similar or the like, will have preferential right to registration.

Paragraph 2. The preferential right can only be assigned, by transfer or leasing, together with the business of a company, or part thereof, that has a direct relation to the use of the trademark.

§II. Protection Conferred by a Registration

Article 130. The holder of, or the Applicant for, a trademark is also granted the right to:

- I - assign his registration or application for registration;
- II - license its use;
- III - care for its material integrity or reputation.

Article 131. The protection granted by this Statute extends to the use of the trademark on papers, printed matter, advertisements, and documents related to the holder's activity.

Article 132. The holder of a trademark shall not:

- I - prevent dealers and resellers from using distinctive signs that belong to them, together with the trademark of the product for its promotion and sales;
- II - prevent accessories manufacturers from using the trademark to indicate the destination of the product, observed the fair competition practices;
- III - prevent the free circulation of products placed on the internal market by themselves or by one with their consent, without prejudice to the provisions of Paragraph 3 and Paragraph 4 of Article 68; and
- IV - prevent the trademark to be mentioned in speeches, scientific or literary works, or in any other type of publication, if it is made without any commercial connotation, and without prejudice to its distinctive character.

Chapter V. Term, Assignment and Notations

§I. Term

Article 133. The registration of a trademark will have a term of 10 (ten) years counted from the date of its grant, it being extended for equal and successive periods.

Paragraph 1. A request for extension may be made during the last year of the term of registration and must be accompanied by proof of payment of the respective fee.

Paragraph 2. If the request for extension has not been made by the end of the term of registration, the holder may make such request within the following 6 (six) months on payment of an additional fee.

Paragraph 3. Extension will not be granted if the provisions of Article 128 are not met.

§II. Assignment

Article 134. Registrations and applications for registration may be assigned, provided that the assignee meets the legal requirements for requesting such registration.

Article 135. An assignment must include all the registrations or applications, in the name of the assignor, for identical or similar trademarks relating to a product or service that is identical, similar or the like, under penalty of cancellation of the registrations or abandonment of the unassigned applications.

§III. Notations

Article 136. The BRPTO will record notations of the following:

- I - assignments, indicating the complete qualification of the assignee;
- II - any limitation or charge on the application or registration; and
- III - alterations of the name, headquarters or address of the applicant or registrant.

Article 137. Notations will produce effect with respect to third parties as from the date of their publication.

Article 138. Appeals may be filed against a decision which:

- I - rejects the notation of assignment; and
- II - cancels the registration or rejects the application under the terms of Article 135.

§IV. License of Use

Article 139. The holder of a registration or the Applicant of an application for registration may execute a license agreement for use of the trademark, without prejudice to their right to exercise effective control over the specifications, nature and quality of the respective products or services.

Sole Paragraph. The licensee may be vested by the licensor with full powers to act in defense of the trademark, without prejudice to their own rights.

Article 140. License agreements must be registered at the BRPTO in order to produce effect with respect to third parties.

Paragraph 1. Registrations will produce effect with respect to third parties as from the date of their publication.

Paragraph 2. In order to validate proof of use, license contracts need not be registered at the BRPTO.

Article 141. An appeal may be filed against a decision rejecting the registration of a license agreement.

Chapter VI. Loss of Rights

Article 142. The registration of a trademark will become extinct:

- I - on expiry of the term of protection;
- II - on waiver, which may be total or partial, with respect to the products or services indicated by the trademark;
- III - on forfeiture; or
- IV - on non-observance of the provisions of Article 217.

Article 143. A registration will become forfeit, on the request of any person with a legitimate interest, if, after 5 (five) years from its grant, on the date of such request:

- I - use of the trademark in Brazil has not been initiated; or

II - use of the trademark has been interrupted for more than 5 (five) consecutive years, or if, within that time, the trademark has been used in a modified form that implies alteration in its original distinctive character as found on the certificate of registration.

Paragraph 1. The trademark will not become forfeit if the holder justifies the lack of use for legitimate reasons.

Paragraph 2. The holder will be notified to reply within a period of 60 (sixty) days, having to prove the use of the trademark or justify its lack of use for legitimate reasons.

Article 144. Use of the trademark must include products or services mentioned on the certificate, under penalty of partial forfeiture of the registration with respect to those products or services not similar or akin to those for which use of the trademark has been proved.

Article 145. Requests for forfeiture will not be known if use of the trademark has been proved or if its lack of use has been justified in an earlier procedure requested less than 5 (five) years previously.

Article 146. A decision declaring or rejecting forfeiture is appealable.

Chapter VII. Collective, and Certification trademarks

Article 147. An application for the registration of a collective trademark must include regulations of use, determining the conditions and prohibitions for use of the trademark.

Sole Paragraph. The regulations of use, when not submitted with the application, must be protocolled within a period of 60 (sixty) days from filing, under penalty of abandonment with no chance to revive the application.

Article 148. An application for the registration of a certification trademark must include:

- I - the characteristics of the product or the service to be certified; and
- II - the control measures to be adopted by the holder.

Sole Paragraph. The documentation required in items I and II of this Article, when not submitted with the application, must be protocolled within a period of 60 (sixty) days, under penalty of abandonment with no chance to revive the application.

Article 149. Any alteration in the regulations of use must be communicated to the BRPTO, by means of a duly protocolled petition, containing all the altered conditions, under penalty of being rejected.

Article 150. Use of the trademark will be independent of a license, the authorization in the regulations of use being sufficient.

Article 151. In addition to the grounds for extinction established in Article 142, registrations for collective, and certification trademarks will become extinct when:

- I - the entity ceases to exist; or
- II - the trademark is used under conditions that differ from those foreseen in the regulations of use.

Article 152. Waiver of a registration for a collective trademark will only be admitted when requested in accordance with the terms of the company's Article of incorporation or bylaws or, further, in accordance with the regulations of use.

Article 153. Forfeiture of the registration will be declared if the collective trademark is not used by more than one authorized person, without prejudice to the provisions of Articles 143 to 146.

Article 154. Collective trademarks and certification trademarks that have already been used and had its registrations extinct may not be registered in the name of a third party, within a period of 5 (five) years counted from the extinction of the registration.

Chapter VIII. Filing

Article 155. The application must refer to a single distinctive sign and, in accordance with the conditions established by the BRPTO, must contain:

- I - a request;
- II - prints, when applicable; and
- III - proof of payment of the filing fee.

Sole Paragraph. The request and any documents that accompany it must be submitted in the Portuguese language and, whenever there is a document in a foreign language, a free translation must be submitted at the time of filing the application or within the following 60 (sixty) days, under penalty of the document not being taken into consideration.

Article 156. Once submitted, the application will undergo a preliminary formalities check and, if in due order, will be protocolled, the date of submission being considered as the filing date.

Article 157. Applications that do not formally meet the provisions of Article 155, but which does contain data relating to the applicant, the mark sign and the class may be submitted, accompanying dated receipt, to the BRPTO, which will publish office actions with requirements to be met by the applicant within 5 (five) days, under penalty of being considered non-existent.

Sole Paragraph. Once the office action has been complied with, the filing will be considered as having been made on the date of the receipt.

Chapter IX. Examination

Article 158. Once protocolled, the application will be published for the filing of oppositions within a period of 60 (sixty) days.

Paragraph 1. The applicant will be notified of the opposition and may respond within a period of 60 (sixty) days.

Paragraph 2. Oppositions, administrative nullity procedures and judicial nullity actions based on item XXIII of Article 124 or Article 126 will not be recognized if no proof of the filing of an application for the registration of the mark in accordance with this Statute is provided within 60 (sixty) days after the filing date.

Article 159. Once the period for opposition has passed or, if such has been filed, after the period for reply, examination will be conducted during which office actions may be formulated, which must be responded to within a period of 60 (sixty) days.

Paragraph 1. If no response to an office action is filed, the application will be abandoned with no chance to revive.

Paragraph 2. Once a response has been filed, even if the requirement has not been met or the formulation thereof has been reconsidered, the examination will be resumed.

Article 160. Once examination has been concluded, a decision will be issued allowing or rejecting the application for registration.

Chapter X. Issuance of Certificates of Registrations

Article 161. A certificate of registration will be granted after the application has been allowed and payment of the corresponding fees has been proved.

Article 162. The payment of the fees and the respective proof thereof, relating to the issuance of the certificate

of registration and the first ten year period of protection, must take effect within 60 (sixty) days counted from the allowance.

Sole Paragraph. The fees may still be paid and proved within 30 (thirty) days after the period provided for this Article, independently of notification, by payment of a specific fee, under penalty of abandonment with no chance to revive of the application.

Article 163. The certificate of registration will be considered as having been granted on the publication date of the corresponding act.

Article 164. The certificate must mention the trademark, the number and date of registration, the name, nationality, and domicile of the owner, the products or services, the characteristics of the registration and the foreign priority.

Chapter XI. Cancellation of Registrations

§I. General Provisions

Article 165. A registration is null if granted contrary to the provisions of this Statute.

Sole Paragraph. The cancellation of a registration may be total or partial, a condition for partial cancellation that the remaining part can be considered registrable.

Article 166. The owner of a trademark in a country signatory to the Paris Convention for the Protection of Industrial Property may, alternatively, by means of court action, claim adjudication of the registration, pursuant to Article 6*septies* (1) of the Convention.

Article 167. A declaration for cancellation will take effect as of the date of filing of the application.

§II. Administrative Nullity Procedure

Article 168. The cancellation of a registration may be administratively declared if it was granted in conflict with the provisions of this Statute.

Article 169. A nullity procedure may be commenced ex officio or on the request of any person with a legitimate interest, within 180 (one hundred and eighty) days counted from the date of issuance of the certificate of registration.

Article 170. The owner will be notified to respond within a period of 60 (sixty) days.

Article 171. Once the period referred to in the previous Article has passed and even if no reply has been submitted, the procedure will be decided by the Commissioner of the BRPTO, thereby terminating the administrative instance.

Article 172. The nullity procedure will be continued even if the registration is terminated.

§III. Judicial Nullity Actions

Article 173. A judicial nullity action may be filed by the BRPTO or by any person with a legitimate interest.

Sole Paragraph. The judge may, in the case records of the action, grant an injunction suspending the effects of the registration and of the use of the trademark, provided that the appropriate procedural requirements are met.

Article 174. The limitation for bringing an action for declaring the cancellation of a registration is 5 (five) years from the date of granting.

Article 175. Judicial nullity actions must be brought before the Federal Courts of Justice and the BRPTO, when

it is not the plaintiff, will participate in the action.

Paragraph 1. The period for a reply by a defendant that is an owner will be 60 (sixty) days.

Paragraph 2. Once the decision in a judicial nullity action is *res judicata*, the BRPTO will publish a notation for third parties.

IV. Geographical Indications

Article 176. A geographical indication is constituted by an indication of source or an appellation of origin.

Article 177. An indication of source is considered as the geographical name of a country, city, region, or locality of its territory, which has become known as a center of extraction, production, or manufacture of a determined product or for providing a determined service.

Article 178. An appellation of origin is considered as the geographical name of a country, city, region, or locality of its territory, which designates a product or service, the qualities, or characteristics of which are exclusively or essentially due to the geographical environment, including natural and human factors.

Article 179. Protection will be extended to the graphical or figurative representation of a geographical indication, as well as to the geographical representation of the country, city, region, or locality of its territory, the name of which is a geographical indication.

Article 180. When a geographical name comes into common use, with respect to a given product or service, it will not be considered as a geographical indication.

Article 181. A geographical name that does not constitute an indication of source or an appellation of origin may serve as a characteristic element of a trademark for a product or service provided that it does not suggest a false source.

Article 182. The use of a geographical indication is restricted to the producers and providers of services established in the locality, quality requirements also having to be met in relation to appellations of origin.

Sole Paragraph. The BRPTO will establish the conditions of registration for geographical indications.

V. Crimes Against Industrial Property

Chapter I. Crimes Against Patents

Article 183. A crime is committed against a patent for invention or for utility model by those who:

I - manufacture a product that is the subject matter of a patent for invention or for utility model, without authorization of the holder; or

II - use a means or process that is the subject matter of a patent for invention, without authorization of the holder.

Penalty – detention of 3 (three) months to 1 (one) year, or a fine.

Article 184. A crime is committed against a patent for invention or for utility model by those who:

I - export, sell, exhibit, or offer for sale, maintain in stock, hide, or receive, with a view to use for economic purposes, a product manufactured in violation of a patent for invention or for utility model, or that is obtained by a patented means or process; or

II - import a product that is the subject matter of a patent for invention or for utility model or is obtained by a means or process patented in the Country, for the purposes provided for in the previous item, and that has not been placed on the external market directly by the patent holder or with their consent.

Penalty – detention of 1 (one) to 3 (three) months, or a fine.

Article 185. Supplying a component of a patented product or material or equipment for carrying out a patented process, provided that the final application of the component, material, or equipment necessarily leads to the exploitation of the subject matter of the patent.

Penalty – detention of 1 (one) to 3 (three) months or a fine.

Article 186. The crimes of this Chapter are committed even if the violation does not affect all the claims of the patent or if it is restricted to the use of means equivalent to the subject matter of the patent.

Chapter II. Crimes Against Industrial Designs

Article 187. Manufacturing, without the authorization of the holder, a product that incorporates a registered industrial design or a substantial imitation thereof that may lead to error or confusion.

Penalty – detention of 3 (three) months to 1 (one) year, or a fine.

Article 188. A crime is committed against an industrial design registration by those who:

I - export, sell, exhibit, or offer for sale, maintain in stock, hide, or receives, with a view to use for economic purposes, an object that illicitly incorporates an industrial design registration or a substantial imitation thereof that may lead to error or confusion; or

II - import a product that incorporates an industrial design registered in the Country or a substantial imitation thereof that may lead to error or confusion, for the purposes provided for in the previous item, and which was not placed on the external market directly by the holder or with their consent.

Penalty – detention of 1 (one) to 3 (three) months, or a fine.

Chapter III. Crimes Against Trademarks

Article 189. A crime is committed against the registration of a trademark by those who:

I - reproduce a trademark wholly or in part without the authorization of the owner or imitate it in a manner that may lead to confusion; or

II - alter the trademark of a third party already applied to a product placed on the market.

Penalty – detention of 3 (three) months to 1 (one) year, or a fine.

Article 190. A crime is committed against a trademark by those who import, export, sell, offer, or exhibit for sale, hide, or maintain in stock:

I - a product wholly or in part branded with an illicitly, reproduced, or imitated trademark of a third party; or

II - a product from their industry or commerce, held in a vessel, container, or package carrying a legitimate trademark of a third party.

Penalty – detention of 1 (one) to 3 (three) months, or a fine.

Chapter IV. Crimes Committed by Means of Trademarks, Business Names and Advertising Signs

Article 191. Reproducing or imitating wholly or in part, in a manner that may lead to error or confusion, armorial bearings, crests or official public distinctions, be they national, foreign, or international, without the necessary authorization, in a trademark, name of business, commercial name, insignia, or advertising sign, or using such reproductions or imitations for economic purposes.

Penalty – detention of 1 (one) to 3 (three) months, or a fine.

Sole Paragraph. Those who sell or exhibit or offer for sale products branded with such trademarks are subject to the same penalty.

Chapter V. Crimes Against Geographical Indications and Other Indications

Article 192. Manufacturing, importing, exporting, selling, exhibiting, or offering for sale or maintaining in stock a product that presents a false geographical indication.

Penalty – detention of 1 (one) to 3 (three) months, or a fine.

Article 193. Using, on a product, container, casing, belt, label, invoice, newsletters, poster or on any other means of disclosure or advertisement, indicative terms, such as “type”, “species”, “kind”, “system”, “similar”, “substitute”, “identical”, or the equivalent, without making clear the true source of the product.

Penalty – detention of 1 (one) to 3 (three) months, or a fine.

Article 194. Using a trademark, commercial name, title of establishment, insignia, advertising expression or sign or any other form that indicates a source other than the true one or selling or exhibiting for sale a product carrying such signs.

Penalty – detention of 1 (one) to 3 (three) months, or a fine.

Chapter VI. Crimes of Unfair Competition

Article 195. A crime of unfair competition is committed by those who:

- I - publish, by any means, a false affirmation, in detriment to a competitor, with a view to obtaining advantage;
- II - provide or discloses, with respect to a competitor, false information, with a view to obtaining advantage;
- III - use fraudulent means to divert, for their own or a third party's benefit, another's clientele;
- IV - use another's advertising expression or sign or imitate it so as to cause confusion between the products or establishments;
- V - unduly use another's commercial name, title of establishment or insignia or sell, exhibit, or offer for sale or maintains in stock a product with such references;
- VI - substitute, with their own name or company name, on a product of another party, the name or company name of such other party, without their consent;
- VII - claim, as a means of advertising, to have received a prize or distinction that they did not obtain;
- VIII - sell, exhibit, or offer for sale, in the container or package of a third party, an adulterated or falsified product, or use it to do business with a product of the same type, even if not adulterated or falsified, if the fact does not constitute a more serious crime;
- IX - give or promise money or other utility to the employee of a competitor, whereby that employee, by failing in their employment's duty, provides him with an advantage;
- X - receive money or other utility, or accept a promise of payment or reward, for, by failing in their employment's duty, providing a competitor with an advantage;
- XI - disclose, exploit, or use, without authorization, confidential knowledge, information, or data, usable in industry, commerce or the providing of services, excepting that which is of public knowledge, or which is obvious to a person skilled in the art, to which they had had access by means of a contractual or employment relationship, even after the termination of the contract;

XII - disclose, exploit, or use, without authorization, knowledge, or information as provided for in the previous item, when directly or indirectly obtained by illicit means or to which they had had access by fraud;

XIII - sell, exhibit, or offer for sale a product which they declare to be subject of a patent filed or granted or of an industrial design registration, when it is not, or mention it, in a commercial announcement or paper, as filed or patented or registered, when it is not; or

XIV - disclose, exploit, or use, without authorization, the results of tests or other undisclosed data the elaboration of which involved considerable effort, and which has been submitted to government entities as a condition for approving the commercialization of products.

Penalty – detention of 3 (three) months to 1 (one) year, or a fine.

Paragraph 1. The employer, partner, or administrator of an undertaking that commits an act falling in the types of crime established in items XI and XII of this Article are included in the hypotheses to which such items refer.

Paragraph 2. The provisions of item XIV do not apply with respect to disclosure by a government entity competent to authorize commercialization of a product, when necessary to protect the public.

Chapter VII. General Provisions

Article 196. The penalties of detention provided for in Chapters I, II and III of this Title will be increased by one third to one half when:

I - the party is or was a representative, proxy, agent, partner, or employee of the patent holder or owner or, further, of their licensee; or

II - the altered, reproduced, or imitated trademark is well-renowned, well-known or is a certification or collective trademark.

Article 197. The penalties of fines provided for in this Title will be fixed at a minimum of 10 (ten) and a maximum of 360 (three hundred and sixty) days of fine, in accordance with the Brazilian Criminal Code system.

Sole Paragraph. The fine may be increased or reduced by up to 10 (ten) times in view of the personal conditions of the agent and of the magnitude of the advantage obtained, independently of the provisions established in the previous Article.

Article 198. The customs authorities may seize, ex officio or at the request of an interested party, at the time of checking, any products carrying falsified, altered, or imitated trademarks or a false indication of source.

Article 199. An action against crimes provided for in this Title will be brought through the filing of a complaint, except in the case of the crime of Article 191, in which case the criminal action will be public.

Article 200. Criminal actions and preliminary measures of search and seizure, in the case of crimes against industrial property, will be regulated by the provisions of the Brazilian Criminal Process Code, with the modifications present in the articles of this Chapter.

Article 201. During the execution of a search and seizure measure, with respect to a crime against a patent relating to a process, the bailiff will be accompanied by an expert who will preliminarily verify the existence of the illicit act, the judge being able to order the seizure of products obtained by the infringer using the patented process.

Article 202. Apart from the preliminary measures of search and seizure, the interested party may request:

I - seizure of a falsified, altered, or imitated trademark at its place of preparation or where it is found, prior to use for criminal purposes; or

II - destruction of a falsified trademark on packets or products that contain it, before they are distributed, even if the packages or even the products themselves are destroyed.

Article 203. In the case of legally organized and publicly functioning industrial or commercial establishments, the preliminary measures will be limited to the inspection and seizure of the products, when so ordered by the judge, not being permitted the paralyzation of their legally exercised activity.

Article 204. Once a search and seizure measure has been carried out, those who requested it in bad faith, in a spirit of rivalry, mere caprice or gross error will be liable for losses and damages.

Article 205. An allegation of nullity of the patent or registration on which the action is based may constitute matter of defense in a criminal action. Absolution of the defendant, however, will not entail the nullity of the patent or registration which can only be requested in an action before the competent courts.

Article 206. If, in the course of a court action, information of a confidential nature is revealed, be it an industrial or trade secret, the judge must determine that the action continues *in camera*, the use of such information by the other party for other purposes also being forbidden.

Article 207. Independently of the criminal action, the aggrieved party may file civil actions that they consider suitable, as laid down in the Brazilian Code of Civil Procedure.

Article 208. Compensation will be determined by the benefits that the injured party would have gained had the violation not occurred.

Article 209. The aggrieved party is reserved the right to receive losses and damages in compensation for losses caused by acts of violation of industrial property rights and acts of unfair competition that are not provided for in this Statute but which tend to prejudice another's reputation or business or to cause confusion between commercial or industrial establishments or providers of services, or between products and services placed on the market.

Paragraph 1. The judge may, in the case records of the same action, so as to avoid irreparable damages or damages that would be difficult to recover, grant an injunctive order to suspend the violation or act that has such in view, before summoning the defendant, against, if deemed necessary, monetary caution or a fiduciary guarantee.

Paragraph 2. In the case of flagrant reproduction or imitation of a trademark, the judge may determine the seizure of all the merchandise, products, objects, packages, labels, and the like that carry the falsified or imitated trademark.

Article 210. Loss of profits will be determined by the most favorable to the injured party from the following criteria.

- I - The benefits that would have been gained by the injured party if the violation had not occurred;
- II - The benefits gained by the author of the violation of the rights; or
- III - The compensation that the author of the violation would have paid to the owner of the violated rights for a granted license which would have legally permitted him to exploit the subject of the rights.

VI. Transfer of Technology and Franchising

Article 211. The BRPTO make effective the registration of agreements which involve transfer of technology, franchising agreements and the like so that they may produce effect with respect to third parties.

Sole Paragraph. A decision with respect to applications for the registration of agreements of the type to which this Article refers will be given within a period of 30 (thirty) days counted as of date of the application for registration.

VII. General Provisions

Chapter I. Appeals

Article 212. In the absence of express provisions to the contrary, appeals may be filed against decisions provided for in this Statute within a period of 60 (sixty) days.

Paragraph 1. Appeals will be received with suspensive and full staying effects, all provisions pertinent to examination in the first instance, insofar as they are applicable, being applied.

Paragraph 2. An appeal cannot be filed against a decision determining the abandonment with no chance to revive of an patent application or for a registration or against that regarding the allowance of an patent application, certificate of addition, or trademark.

Paragraph 3. The appeals will be decided by the Commissioner of the BRPTO, thus terminating the administrative instance.

Article 213. Interested parties will be notified to file counter-arguments to the appeal, within a period of 60 (sixty) days.

Article 214. For the purposes of complementing the arguments of the appeal brief, the BRPTO can issue an office action, which should be met within the period of 60 (sixty) days.

Sole Paragraph. Once the period defined in the *caput* has passed, a decision on the appeal will be given.

Article 215. An appeal decision is final and unappealable in the administrative instance.

Chapter II. Acts of the Parties

Article 216. The acts provided for in this Statute will be practiced by the parties or by their duly qualified attorneys.

Paragraph 1. Powers of attorney, in the form of an original, an official copy or an authenticated photocopy, must be in the Portuguese language, consular legalization and notarial recognition being waived.

Paragraph 2. The power of attorney must be filed within 60 (sixty) days counted from the practice of the first act by the party in the process, independently of notification or office action, under penalty of abandonment, it being the abandonment with no chance to revive of a patent application, an application for the registration of industrial design or an application for a trademark.

Article 217. A person domiciled abroad must permanently maintain a duly qualified attorney domiciled in the Country, with powers to represent him administratively and judicially, including for receiving summons.

Article 218. Briefs will not be recognized:

I - when submitted after the legal deadline; or

II - when they are not accompanied by proof of payment of the respective fee having the value in force at the date of its presentation.

Article 219. Briefs, oppositions, and appeals shall not be recognized when:

I - submitted after the period provided for in this Statute;

II - having no legal basis; or

III - not accompanied by proof of payment of the respective fee.

Article 220. The BRPTO will make use of the acts of the parties, whenever possible, making any applicable office actions.

Chapter III. The Terms

Article 221. The terms established in this Statute are continuous, the right to carry out the act becoming automatically terminated, unless the party proves that it was not carried out for legitimate reasons.

Paragraph 1. A legitimate reason is considered as an unforeseen event, outside the control of the party and which prevented the party from carrying out the act.

Paragraph 2. When legitimate reasons are recognized, the party will carry out the act within the period granted by the BRPTO.

Article 222. In calculating terms, the first day should be excluded and the last day should be included.

Article 223. Terms only begin to run from the first working day after notification which will be made by publication in the official means of communication of the BRPTO.

Article 224. In the absence of express stipulation in this Statute, the terms for practicing acts will be 60 (sixty) days.

Chapter IV. Limitations

Article 225. The limitation for actions for repairing damages caused to industrial property rights is 5 (five) years.

Chapter V. Acts of the BRPTO

Article 226. Acts of the BRPTO in administrative processes relating to industrial property will only produce effect as from their publication in the respective official means of communication, except:

- I - those that expressly do not depend on notification or publication by virtue of the provisions of this Statute;
- II - administrative decisions when notification is made by post or knowledge is given to the party interested in the process; and
- III - internal opinions and dispatches that do not need to be known by the parties.

Chapter VI. Classifications

Article 227. Classifications relative to the subject matter of Titles I, II and III of this Statute will be established by the BRPTO, when they are not determined in an international treaty or agreement in force in Brazil.

Chapter VII. Fees

Article 228. Fees will be charged for the services provided for in this Statute, the values and manner of collection of which will be established by act of the head officer of the federal public administrative entity to which the BRPTO is bound.

VIII. Transitory and final Provisions

Article 229. The provisions of this Statute shall be applied to all pending applications, except with respect to the patentability of applications filed until December 31, 1994, in which protection is sought for subject matter comprising substances, matter, or products obtained by chemical means or processes and alimentary and chemical-pharmaceutical substances, matter, mixtures or products and medicaments of any type, as well as the respective processes of obtaining or modifying them, and the applicants of which have not used the right

provided in Articles 230 and 231 of this Statute, and in which case those applications shall be considered as rejected for all purposes, the BPTO publishing the notices concerning the cited rejections.

Sole Paragraph. The criteria for patentability established in this Statute shall be applied to the applications relative to pharmaceutical products and chemical products intended for agriculture, having been filed between January 1, 1995 and May 14, 1997, from the effective date of filing of the application in Brazil or that of the priority, where applicable, the protection being assured as of date the patent is granted, through the remaining term counted from the filing date in Brazil, limited to the term provided in the *caput* of Article 40.

Article 229-A. The patent applications relative to processes filed between January 1, 1995, and May 14, 1997, and in which to no protection was provided by Article 9, subitem “c” of Statute #5,772 of December 21, 1971, shall be deemed rejected and the BPTO shall provide the publication of the notices concerning the cited rejection decisions.

Article 229-B. The patent applications relative to products filed between January 1, 1995, and May 14, 1997, to which no protection was granted in Article 9, subitem “c” of Statute #5,772 of December 21, 1971, and in connection wherewith the filing applicants failed to avail themselves of the right provided in Articles 230 and 231, shall be decided until December 31, 2004, pursuant to this Statute.

Article 230. A patent application may be filed relating to substances, matter or products obtained by chemical means or processes and alimentary and chemical-pharmaceutical substances, matter, mixtures or products and medicaments of any type, as well as the respective processes of obtaining or modifying them, by those who have protection guaranteed by treaty or convention in force in Brazil, the date of the first foreign filing being recognized, provided that its subject matter has not been placed on any market on the direct initiative of the holder or by third parties with their consent, nor have third parties carried out, in the Country, serious and effective preparations for exploiting the subject matter of the application or patent.

Paragraph 1. The application must be filed within the period of 1 (one) year from the publication of this Statute and must indicate the date of the first application filed abroad.

Paragraph 2. Patent applications filed on the basis of this Article will be published automatically, interested parties having the right to intervene, within a period of 90 (ninety) days, with respect to whether the conditions of the *caput* of this Article have been met.

Paragraph 3. Without prejudice to Articles 10 and 18 of this Statute, and once the conditions established in this Article have been met and the granting of a patent in the country in which the first application was filed has been proved, the patent will be granted in Brazil exactly as granted in the country of origin.

Paragraph 4. A patent granted on the basis of this Article will be guaranteed the remainder of the term of protection in the country in which the first application was filed, counted as of date of filing in Brazil and limited to the term defined in Article 40, the provisions of the Sole Paragraph thereof not being applicable.

Paragraph 5. An applicant that has a pending application, relating to substances, matter or products obtained by chemical means or processes and alimentary and chemical-pharmaceutical substances, matter, mixtures or products and medicaments of any type, as well as the respective processes of obtaining or modifying them, may file a new application, within the time period and under the conditions established in this Article, submitting proof of desistance of the pending application.

Paragraph 6. The provisions of this Statute will apply, as appropriate to applications filed and to patents granted in accordance with this Article.

Article 231. A patent application may be filed, relating to a subject matter to which the previous Article refers to, by a national or a person domiciled in the Country, the date of disclosure of the invention being ensured, provided that its subject matter has not been placed on any market on the direct initiative of the holder or by third parties with their consent, nor have third parties carried out, in the Country, serious and effective preparations for exploiting the subject matter of the application.

Paragraph 1. The application must be filed within the period of 1 (one) year from the publication of this statute.

Paragraph 2. Patent applications filed on the basis of this Article will be processed pursuant to this Statute.

Paragraph 3. A patent granted on the basis of this Article will be guaranteed the remainder of the term of protection of 20 (twenty) years from the date of disclosure of the invention, counted from the date of filing in Brazil.

Paragraph 4. An applicant that has a pending application, relating to the subject matter to which the previous Article refers, may file a new application, within the time period and under the conditions established in this Article, submitting proof of desistance of the pending application.

Article 232. The production or use, pursuant to the previous legislation, of substances, matter or products obtained by chemical means or processes and alimentary and chemical-pharmaceutical substances, matter, mixtures or products and medicaments of any type, as well as the respective processes of obtaining or modifying them, even when protected by product or process patents in another country, in accordance with a treaty or convention in force in Brazil, may continue under the same conditions existing prior to the approval of this Statute.

Paragraph 1. No retroactive or future claim, of any value or on any grounds, will be admitted relating to products produced or processes used in Brazil in conformity with this Article.

Paragraph 2. Likewise, no claim in the terms of the previous Paragraph will be admitted when, during the period prior to the entry into force of this Statute, significant investments have been made for the exploitation of a product or of a process as referred to in this Article, even if they are protected by product or process patents in another country.

Article 233. Applications for the registration of advertising expressions and signs and for declarations of notoriety will be abandoned with no chance to revive whereas such registrations and declarations will remain in force for the remainder of their terms but may not be renewed.

Article 234. Guarantees of priority, as provided for in Article 7 of Statute #5,772 of December 21, 1971, are guaranteed to the applicant until the end of any current time limit.

Article 235. All current time limits granted under Statute #5,772 of December 21, 1971, are guaranteed.

Article 236. Industrial model patent application and applications for the registration of industrial design that were filed when Statute #5,772 of December 21, 1971, was in force will automatically be named as applications for the registration of industrial design and, for all legal effects, the publication will be considered as already having taken effect.

Sole Paragraph. In such adapted applications, payments will be considered for the effect of calculation of the quinquennial fee.

Article 237. The provisions of Article 111 will not apply to industrial model patent applications or applications for the registration of industrial design that have already been examined in accordance with Statute #5,772 of December 21, 1971.

Article 238. Appeals filed when Statute #5,772 of December 21, 1971, was in force, will be decided in accordance therewith.

Article 239. The Government is authorized to promote any changes in the BRPTO that are necessary to ensure financial and administrative autonomy thereto, and the BRPTO is able to:

- I - contract technical and administrative personnel by way of public competition;
- II - establish a table of salaries for its employees, which will be subject to approval by the Ministry to which the BRPTO is bound; and
- III - propose a basic structure and internal regulations that will be subject to approval by the ministry to which the BRPTO is bound.

Sole Paragraph. Expenses resulting from the application of this Article will be at the cost of the funds of the BRPTO itself.

Article 240. Article 2 of Statute #5,648 of December 11, 1970 will be altered to have the following wording:

“Article 2 – The main purpose of the BRPTO is the national execution of the norms that regulate industrial property, taking into account its social, economic, juridical and technical function, as well as making pronouncements regarding the convenience of signature, ratification and termination of conventions, treaties, pacts and agreements relating to industrial property”.

Article 241. The Judiciary Branch is authorized to create special courts to settle questions relating to intellectual property.

Article 242. The Government will submit to the National Congress a bill intended to promote, whenever necessary, the harmonization of this Statute with the policy for industrial property adopted by the other countries that are members of the MERCOSUL.

Article 243. This Statute will enter into force on the date of its publication with respect to the subject matter contained in Articles 230, 231, 232 and 239, and 1 (one) year after its publication with respect to the remaining articles.

Article 244. Statute #5,772 of December 21, 1971, Statute #6,348 of July 7, 1976, Articles 187 to 196 of Decree-Statute #2,848 of December 7, 1940, Articles 169 to 189 of Decree-Statute #7,903 of August 27, 1945, and other contrary provisions are revoked.

Brasilia, May 14, 1996.

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