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Intelectual relacionados con el Comercio

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PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO

Portugal

En el presente documento se reproduce¹ el Decreto-Ley N° 16/95, de 24 de enero de 1995, "Código de la Propiedad Industrial", notificado por Portugal en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/PRT/1) en relación con la recopilación de leyes y reglamentos realizada por la OMPI. El Decreto-Ley N° 15/95, que se menciona en el documento IP/N/1/PRT/1 junto con el Decreto-Ley 16/95, se distribuirá como documento IP/N/1/PRT/I/1/Add.1, cuando obre en poder de la Secretaría el texto de dicho Decreto-Ley.

¹En inglés solamente.

(This text replaces the one previously published under the same code number.)

PORTUGAL

Industrial Property Code*

(Decree-Law No. 16/95, of January 24, 1995)

TABLE OF CONTENTS**

	<i>Article</i>
PART I GENERAL PART	
Chapter I: General Provisions	
Social Function of Industrial Property	1
Scope of Industrial Property	2
Personal Scope of Application	3
System Applicable to Cases of More Than One Proprietor	4
Effects of the Registration	5
Proof of Industrial Property Rights	6
Supply of Certificates of Grant	7
Contents of Certificates	8
Calculation of Time Limits	9
Chapter II: Administrative Procedure	
Entitlement to File and Take Action	10
Priority of Filing	11
Proof of the Priority Right	12
Loss of the Priority Right	13
Rectification of Deficiencies	14
Notarization of Signatures	15
Notifications	16
Time Limit to Reply	17
Copies of Briefs Filed	18
Subsequent Formalities	19
Inspections	20
Official Inspections	21
Filing of Documents	22
Attachment to the File and Return of Docu- ments	23
Modification of the Decision <i>ex officio</i>	24
Grounds for Refusal	25
Amendment to Non-Essential Elements	26
Documents Attached to Other Files	27
Publication of Acts	28
Chapter III: Assignment and Licenses	
Assignment	29
Contractual Licensing	30
Registering the Rights	31

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Chapter IV: Termination of Industrial Property Rights	
Revocation	32
Annulment	33
Procedure for the Declaration of Revocation and Annulment	34
Effects of the Declaration of Revocation	35
Lapse	36
Renunciation	37
Chapter V: Appeal	
Section I: Judicial Appeal	
Persons Entitled to Appeal	38
Time Limit of Appeal	39
Reply; Submission of the File	40
Consultation of the File by the Opposing Party	41
Request for Technical Experts	42
Appeal Against a Judicial Decision	43
Publication of the Final Decision	44
Section II: Guarantees	
Preliminary Injunction System	45
Section III: Ministerial Appeal	
Ministerial Appeal	46

PART II INDUSTRIAL PROPERTY LEGAL SYSTEMS

Chapter I: Inventions	
Section I: General Provisions	
Subject Matter of the Patent	47
Limitations Regarding Subject Matter	48
Limitations Regarding the Patent	49
Requirements for Grant	50
State of the Art	51
Non-Opposable Disclosures	52
Right to the Patent	53
Employees' Rights	54
Inventor's Right	55
Priority Right	56
Section II: Patent Procedure	
Subsection I: National Route	
Form of Application	57
Documents to be Filed	58
Biotechnological Inventions	59
Time Limit for Submission of the Specification and Drawings	60
Unity of the Invention	61
Publication of the Application and Rights Conferred	62
Examination Report	63
Publication of the Notice of Acceptance of Grant or Refusal	64
Partial Grant	65
Opposition	66
Publication	67
Publication of the Complete Patent Specifi- cation	68
Grounds for Refusal	69
Notification of Grant to the Applicant	70

Subsection II: European Route	
Scope	71
Filing of European Patent Applications	72
Languages in Which European Patent Applications May Be Drawn Up	73
Rights Conferred by Published European Patent Applications	74
Translation of the Complete Specification of the European Patent	75
Time Limit to File the Translation of the Complete Specification of the European Patent	76
Effecting of Translations	77
Publication of the Notice Concerning the Translation	78
Record on Patent Registers	79
Authentic Text of a European Patent	80
Revision of the Translation	81
Conversion of a European Patent Application Into a Portuguese National Patent Application	82
Conversion of a European Patent Application Into a Portuguese Utility Model Application	83
Dual Protection Prohibition	84
Annual Fees	85
Subsection III: Patent Cooperation Treaty Route	
Definition and Scope	86
Filing of International Applications	87
Designated or Elected Office	88
Effects of International Applications	89
Time Limit to File the Translation of the International Application	90
Rights Conferred by Published International Applications	91
International Applications Containing Independent Inventions	92
Section III: Effects of the Patent	
Scope of Protection; Reversal of the Burden of Proof	93
Term of the Patent	94
Indication of the Patent	95
Rights Conferred by a Patent	96
Private Use	97
Limitation of the Rights Conferred by a Patent	98
Scope of the Right	99
Non-Opposability	100
Legal Monopoly System	101
Section IV: Conditions of Use	
Loss of a Patent	102
Compulsory Working	103
Certificate of Working	104
Compulsory Licenses	105
Insufficient Production of the Subject Matter of the Patent	106
Dependent Licenses	107
Public Interest	108
Non-Exclusive License	109
Application for the Grant of a Compulsory License	110
Application for Mediation by the National Institute of Industrial Property	111
Acceptance by the Institute to Mediate	112
Mediation Procedure	113
Agreement Between the Parties	114

Compulsory License Grant Procedure	115
Reply	116
Grant or Refusal of the License	117
Suspension of the Proceedings	118
Notification of Grant or Refusal to the Parties	119
Section V: Termination of the Patent	
Invalidity	120
Lapse	121
Chapter II: Utility Models	
Section I: General Provisions	
Subject of the Model	122
Exceptions to Protection	123
Employees' Rights; Inventor's Rights	124
Priority Right	125
Provisions Applicable	126
Section II: Utility Model Procedure	
National Route; Provisions Applicable	127
International Route; Provisions Applicable ..	128
Grounds for Refusal	129
Section III: Effects of the Utility Model	
Scope of the Protection	130
Term	131
Indication of the Model	132
Rights Conferred by the Model	133
Section IV: Conditions of Use	
Loss of the Model	134
Compulsory License	135
Appeal Against the Decision to Grant or Refuse a License	136
Section V: Termination of the Utility Model	
Invalidity	137
Lapse	138
Chapter III: Industrial Models and Designs	
Section I: General Provisions	
Subject of the Model	139
Subject of the Design	140
Subject of Legal Protection	141
Artistic Works	142
Exceptions to Protection	143
Novelty	144
Non-Opposable Disclosures	145
Right to the Model	146
Employees' Rights	147
Creator's Right	148
Priority Right	149
Section II: Registration Procedure	
Form of Application	150
Documents to be Filed	151
Unity of the Application	152
Publication of the Application and Rights Con- ferred	153
Examination Report	154
Partial Grant	155
Oppositions	156
Publication	157
Grounds for Refusal	158
Notification of Grant to the Applicant	159

Section III: Effects of Registration	
Term	160
Indication of the Model or Design	161
Rights Conferred by a Registration	162
Inalterability of Models and Designs	163
Section IV: Invalidity of the Registration	
Invalidity	164
Chapter IV: Trademarks	
Section I: General Provisions	
Subsection I: Product or Service Marks	
Composition of a Trademark	165
Exceptions	166
Proprietorship of the Trademark and Exclusive Rights Thereto	167
Right to the Registration	168
Extension of the Right to the Registration ...	169
Priority Right	170
Unregistered Trademark	171
Subsection II: Collective Marks	
Definition of a Collective Mark	172
Association Mark	173
Certification Mark	174
Right to the Registration of Collective Marks ...	175
Provisions Applicable to Collective Marks ...	176
Subsection III: Base Marks	
Definition of a Base Mark	177
Right to the Registration	178
Use of Base Marks	179
Provisions Applicable to Base Marks	180
Section II: Registration Procedure	
Subsection I: National Registration	
Applications	181
Elements Accompanying the Application	182
Language to be Used for the Wording of Trade- marks	183
Unity of Registration	184
Publication of the Application	185
Oppositions	186
Subsequent Formalities in the Procedure	187
Grounds for the Refusal of a Registration	188
Other Grounds for Refusal	189
Protection of Well-Known Trademarks	190
Protection of Trademarks of High Renown ...	191
Partial Refusal	192
Concept of Imitation	193
Special Registration Process	194
Declaration of Intention to Use	195
Subsection II: International Registration	
Right to the Registration	196
Application	197
Renunciation of the Registration	198
Modifications to the Registration	199
Publication of the Application	200
Oppositions	201
Procedural Formalities	202
Refusal of the Registration	203
Section III: Effects of the Registration	
Legal Presumption of the Registration	204
Term of the Registration	205

Indication of the Registration	206
Rights Conferred by a Registration	207
Scope of the Right	208
Limitation of the Rights Conferred by a Registration	209
Inalterability of Trademarks	210
Section IV: Assignment and Licenses	
Assignment	211
Limitations of the Assignment	212
Licenses	213
Section V: Termination of the Trademark Registration or Rights Derived Therefrom	
Annulment	214
Limitation in Consequence of Acquiescence ..	215
Lapse	216
Chapter V: Awards	
Section I: General Provisions	
Registrable Awards	217
Conditions Governing the Indication of Awards ..	218
Proprietorship of Awards	219
Section II: Registration Procedure	
Application	220
Elements Accompanying the Application	221
Refusal of the Registration	222
Return of Documents	223
Section III: Use and Assignment	
Indication of Awards	224
Legal Formalities and Record of the Registration	225
Section IV: Termination of Award Registrations	
Annulment	226
Lapse	227
Chapter VI: Names and Emblems of Establishment	
Section I: General Provisions	
Right to Names and Emblems	228
Composition of Names of Establishment	229
Composition of Emblems of Establishment ..	230
Exceptions to Protection	231
Rights Conferred by Names and Emblems ...	232
Section II: Registration Procedure	
Name and Emblem Applications	233
Elements Accompanying the Application	234
Publication of the Application	235
Opposition Time Limit	236
Subsequent Formalities of the Procedure	237
Refusal of the Registration	238
Modifications to Names or Emblems	239
Section III: Use and Assignment	
Indication of Name or Emblem	240
Inalterability of Names and Emblems	241
Term	242
Record of Assignment	243
Annulment	244
Lapse	245
Chapter VII: Logos	
Composition of Logos	246
Right to Logos	247
Rules Applicable	248

Chapter VIII: Appellations of Origin and Geographical Indications

Section I: General Provisions	
Definition and Proprietorship	249
Regional Demarcation	250
Rights Conferred by the Registration	251
Section II: Registration Procedure	
Subsection I: National Registration	
Application and Registration	252
Refusal of the Registration	253
Subsection II: International Registration	
Application Format	254
Section III: Effects and Cancellation of the Registration	
Term of the Registration	255
Lapse	256

**PART III
INFRINGEMENTS****Chapter I: Infringements Against Industrial Property**

Section I: General Provisions	
Industrial Property Guarantees	257
Subsidiary Right	258
Possibility of Inspection	259
Section II: Criminal Offenses	
Unfair Competition	260
Violation of the Exclusive Rights to the Invention	261
Patent Obtained in Bad Faith	262
Violation of the Exclusive Rights Conferred by Models and Designs	263
Counterfeiting, Imitation and Illegal Use of Trademarks	264
Preparatory Acts	265
Increased Penalty	266
Illegal Reference to or Use of Awards	267
Violation of Rights Conferred by Names and Emblems	268
Section III: Unlawful Acts	
Use of Illicit Trademarks	269
Failure to Use Compulsory Trademarks	270
Undue Use of Names or Emblems	271
False Reference to or Undue Use of Private Rights	272
Section IV: Procedure	
Assistants	273
Seizure at Customs	274
Body Competent to Institute Proceedings in Respect of Unlawful Acts	275
Body Competent to Apply Fines and Additional Penalties	276
Destination of Fines	277

**PART IV
FEES**

Fixing of Fees	278
Methods of Payment	279

Time Limits for Payment	280
Fines. Revalidation	281
Reduction of Fees	282
Refunding of Fees	283
Suspension of the Payment of Fees	284
Rights Belonging to the State	285

PART V
INDUSTRIAL PROPERTY BULLETIN
(BOLETIM DA PROPRIEDADE INDUSTRIAL)

Industrial Property Bulletin	286
Contents of the Bulletin	287
Bulletin Index	288
Distribution of the Bulletin	289

PART VI
PROTECTION IN MACAO

Registration of Trademarks	290
Filing of Applications	291
Publication of Applications	292
Extension to Macao	293

PART I
GENERAL PART

Chapter I
General Provisions

(Social Function of Industrial Property)

Art. 1. Industrial Property has the social function of guaranteeing fair competition by conferring the private rights regulated in this Code, as well as to prevent unfair competition.

(Scope of Industrial Property)

Art. 2. Industrial property covers industry and commerce as such, the fishing, agricultural, forestry, cattle and extractive industries and any natural or manufactured products and services.

(Personal Scope of Application)

Art. 3.-(1) The present Code shall be applicable to individual persons and corporate bodies being Portuguese or nationals of the member States of the International Union for the Protection of Industrial Property, hereinafter referred to as the Union, in accordance with the terms of the Paris Convention of March 20, 1883, and revisions thereof, irrespective of residence or establishment, with the exception of the special provisions as to competence and procedure.

(2) Nationals of any country who are resident or have an industrial or commercial establishment, in fact and not as a matter of form, in the territory of a member State of the Union, shall be considered as nationals of the member States.

(3) With regard to any other foreign nationals, the provisions of Conventions between Portugal and the respective countries shall be observed and, in the absence thereof, the system of reciprocity shall apply.

(4) References made in this Code to the Union or Paris Convention for the Protection of Industrial Property shall cover the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

(System Applicable to Cases of More Than One Proprietor)

Art. 4. In cases of more than one proprietor of industrial property rights, the relationship between them shall be governed, unless otherwise agreed, by the provisions of civil law relating to joint property.

(Effects of the Registration)

Art. 5.-(1) Notwithstanding the provisions of the following paragraph, the grant of industrial property rights shall imply only legal presumption of the requirements of grant.

(2) An award registration shall guarantee the veracity and authenticity of the titles by which they were conferred and shall assure the proprietor of his indefinite property and exclusive use thereof.

(3) Trademark, appellation of origin and name and emblem of establishment registrations shall constitute grounds for the refusal or annulment of confusingly similar company names or trade names for which an application for incorporation is filed after the respective applications for registration.

(4) Annulment actions brought under the provisions of the preceding paragraph may only be filed within 10 years after the incorporation of the company, unless such actions are filed by the Portuguese Public Prosecutor.

(5) The rights conferred by patents, models, designs and registrations shall cover all the Portuguese territory.

(Proof of Industrial Property Rights)

Art. 6.-(1) Proof of the industrial property rights referred to in this statute shall be given by means of the patent, model, design and registration certificates corresponding to the various categories governed herein.

(2) The holders of the various rights may have drawn up certified copies identical in content to the patent, model, design or registration certificate, in order to prove these rights in court or before any other official bodies.

(3) Certified copies of applications shall also be drawn up upon request of the applicant.

(Supply of Certificates of Grant)

Art. 7.-(1) Certificates of grant shall not be supplied to the interested parties before one month period after the expiration of the time limit for appeal or, if an appeal is filed, after the final court decision has been given.

(2) Certificates shall be supplied to the proprietor or his legal representative against issuance of a receipt.

(Contents of Certificates)

Art. 8.-(1) The certificates mentioned in the previous Articles shall contain the elements necessary for full identification of the right that they attest.

(2) Specimen certificates shall be approved by a decision of the Minister for the area of industry.

(Calculation of Time Limits)

Art. 9.-(1) Periods established in this statute shall be uninterrupted.

(2) Holders of the various rights shall be reminded punctually and duly in advance of the time limits for the payment of annuities and renewal and revalidation fees.

(3) If notification is not provided this cannot be cited as justification for non-payment of fees within the time limits prescribed.

Chapter II Administrative Procedure

(Entitlement to File and Take Action)

Art. 10.-(1) Persons entitled to take legal action before the National Institute of Industrial Property shall be those who have an interest in the acts mentioned in this statute or their legal representatives.

(2) Action can only be taken and the prosecution of proceedings handled by:

- (a) the actual interested party or the holder of the right, if established or resident in Portugal;
- (b) official industrial property agents;
- (c) appointed lawyers.

(3) If, during the prosecution of a particular act, the regulations governing legal representation stipulated in this Article are infringed, the represented party shall be directly notified to fulfill the legal formalities required within the non-extendible period of one month, without loss of the priorities to which he is entitled; failure to do so shall mean that such act shall be deemed null and void.

(4) Official agents and appointed lawyers representing parties shall always have access to the file.

(Priority of Filing)

Art. 11.-(1) Except in the cases provided for in this statute, patents, models, designs and registrations shall be granted to the first party having filed a regular application with the documents thereof.

(2) If applications are sent by mail, precedence shall be computed from the date on which the mail was registered or the date of the postmark.

(3) If two applications relating to the same right are received simultaneously or claim the same priority, no action shall be taken until the interested parties have settled the question of priority either by agreement or at the competent civil court.

(4) If the application comes from abroad, the interested party shall be notified to appoint a legal representative within one month, in accordance with paragraph (2), subparagraph (b) or (c) of the preceding Article, if a representative has not already been appointed.

(5) The application shall be refused if the notification referred to in the preceding paragraph is not complied with.

(6) If the application is not initially accompanied by all the documents required, priority shall be computed from the day and time that the last outstanding document is filed.

(7) If, due to amendments, the invention, model, design, trademark, name or emblem is to be considered as being noticeably different from the one first published in the Industrial Property Bulletin, a further notice shall be published for opposition purposes and the priority of the amendments shall be computed from the date on which the amendment was made.

(8) If the examination reveals that the application for the patent, model, design or registration was not correctly drawn up, the applicant shall be notified to file the application in accordance with the category stipulated.

(9) In the event of the preceding paragraph the application shall be republished in the Industrial Property Bulletin and the priorities to which the applicant is entitled shall not be affected.

(10) Until a decision is given, other amendments may be authorized, such as in respect of the name or head office of the applicant, provided that there are sufficient grounds for such amendments and they are duly published.

(Proof of the Priority Right)

Art. 12.—(1) The National Institute of Industrial Property may request parties claiming the right of priority to file, within a reasonable period of time, a duly certified copy, as well as certification of the date of filing and, if necessary, a translation.

(2) This may be requested at any time, but the applicant shall not be required to fulfill this formality before three months after the date on which the application was filed in Portugal.

(3) The copy of the application shall be exempt from legalization and may be filed free of charge within the time limit prescribed in the preceding paragraph.

(Loss of the Priority Right)

Art. 13. Failure to comply with the time limit of the preceding provisions shall lead to loss of the right of priority claimed.

(Rectification of Deficiencies)

Art. 14. If any deficiencies are revealed before publication of the notice in the Industrial Property Bulletin, the applicant shall be notified thereof by this means, in order to effect the necessary rectifications.

(Notarization of Signatures)

Art. 15. Signatures on documents not filed by an official agent or appointed lawyer shall always be notarized in accordance with legal stipulations.

(Notifications)

Art. 16.—(1) If oppositions are filed, the applicant shall be notified immediately by the National Institute of Industrial Property.

(2) Identical notification shall be made in respect of the filing of statements, lapse actions and other similar briefs.

(3) Notice of oppositions, replies and lapse actions may be published in the Industrial Property Bulletin for information purposes.

(Time Limit to Reply)

Art. 17.—(1) Applicants may reply to oppositions or similar briefs within two months after the date of notification thereof.

(2) If necessary, additional statements may be filed for further clarification.

(3) If requested during the time limit prescribed in paragraph (1) and for justifiable reasons, an additional period of one month may be granted for the filing of the briefs mentioned therein.

(Copies of Briefs Filed)

Art. 18.—(1) Oppositions and briefs shall be accompanied by a copy thereof.

(2) The copies mentioned in the preceding paragraph shall be supplied to the opposing party by the National Institute of Industrial Property.

(Subsequent Formalities)

Art. 19. On the expiry of the time limit prescribed in Article 17, if no reply has been filed by the party which is entitled to exercise this right, the allegations made by the parties shall be examined and assessed, after which an opinion shall be given on the file and it shall be submitted for decision.

(Inspections)

Art. 20.—(1) Before the information mentioned in the preceding Article is provided, the inspection of any industrial establishment or other premises may be requested in order to back up or clarify the allegations made by the parties; the request shall not be accepted without a hearing of the other party.

(2) The request shall be well founded.

(3) Any costs involved in the inspection shall be borne by the party that requested it.

(4) The party that requested the inspection may freely withdraw it before it is begun.

(5) In the event of withdrawal in due time or refusal of the request for inspection, any expenses incurred shall be refunded upon the request of the interested party.

(Official Inspections)

Art. 21. An inspection may also be requested by the National Institute of Industrial Property of its own motion if it is found to be necessary in order to fully clarify the matter.

(Filing of Documents)

Art. 22.—(1) Documents shall be filed with the briefs containing the facts to which they refer.

(2) Documents may be filed in accordance with the following Article if it is proved to have been impossible to obtain them in due time.

(Attachment to the File and Return of Documents)

Art. 23.—(1) Oppositions and similar documents filed outside the respective time limit, as well as documents filed under the circumstances stipulated in paragraph (2) of the preceding Article, shall only be attached to the file by means of a decision.

(2) Any documents which are irrelevant or unnecessary shall be refused, even if they are filed in due time, as well as any documents drawn up in disrespectful or improper terms or documents considered as containing a repetition of allegations already made.

(3) The documents mentioned in the preceding paragraph shall be returned to the parties, who shall be notified officially in writing to collect them within a stipulated period, otherwise they shall be stored separately from the file.

(4) The notification mentioned in the preceding paragraph shall always be addressed to the actual interested party, even if a legal representative has been appointed.

(Modification of the Decision *ex officio*)

Art. 24.—(1) If, up to the moment of publication of a decision, it is found that it should be modified, the case shall be referred to a higher decision with information concerning the facts which have come to light and make it advisable to revoke the decision given.

(2) A higher decision shall mean a decision given by a body that is hierarchically superior to the body that signed the decision to be modified.

(Grounds for Refusal)

Art. 25.—(1) The following shall constitute grounds for the refusal of a patent, model, design or registration:

- (a) failure to pay fees;
- (b) omission of documents required;
- (c) failure to comply with other legal formalities;
- (d) if it is found that the applicant intends to practice unfair competition or that this is possible irrespective of his intention.

(2) In the cases provided for in subparagraphs (a), (b) and (c), the file shall not be submitted for decision without prior written notification to the applicant of a period within which he may rectify the application.

(Amendment to Non-Essential Elements)

Art. 26.—(1) Any amendment which does not affect the essential and characteristic elements of the patent, model, design or registration may be authorized in the same file, provided that it is duly justified and published for appeal purposes, in accordance with the provisions of Article 38 onwards.

(2) No request for amendment provided for in this Article shall be accepted if any lapse proceedings are pending in respect of the same file.

(Documents Attached to Other Files)

Art. 27.—(1) With the exception of powers of attorney, which shall be attached to all files even if the applicant has the same legal representative, documents relating to applications may be attached to one of the files and referred to in the others.

(2) In the event of an appeal the appellant shall complete at his own expense the files in which such documents are mentioned, by means of certified copies.

(3) Failure to fulfill the requirements of the previous paragraphs shall be mentioned in the notice submitting the file to court, the time limit of which shall not be extended for this reason.

(Publication of Acts)

Art. 28.—(1) Acts to be published in accordance with this statute shall be communicated to the parties and to the public through publication in the Industrial Property Bulletin.

(2) If the interested party is notified in writing, the time limit shall be stipulated therein and computed from the date thereof.

(3) Without prejudice to the rule stipulated in this Article, the parties or their legal representatives may obtain directly from the National Institute of Industrial Proper-

ty. before publication of the Bulletin, a certified copy of the decision given in respect of their applications.

(4) If a certified copy is requested by the losing party, the time limit for appeal shall be computed from the date in which the certified copy is provided and the other party, if any, shall be notified thereof on the same date.

(5) Any person may also request a certified copy of registrations effected and documents and files that are in the records, as well as photocopies or ordinary copies of drawings, photographs, plants and models filed with applications for patents for invention, utility models and industrial model or design and trademark and name and emblem of establishment registrations, once the respective files have been made available to the public and provided that third party rights are not prejudiced.

(6) In all files, being made available to the public shall be meant that the application is published in the Industrial Property Bulletin.

(7) Without prejudice to the provisions of the previous paragraphs, the National Institute of Industrial Property may provide information concerning trademark and name and emblem of establishment applications before they are made available to the public, through publication in the Bulletin.

Chapter III Assignment and Licenses

(Assignment)

Art. 29.-(1) The rights derived from patents, utility models, industrial model and design registrations and trademark registrations may be assigned with or without a consideration, as a whole or in part, for the full life thereof or for a shorter period, to be used in any part of the Portuguese territory or in some given localities.

(2) The provisions of the preceding paragraph shall apply to the rights derived from patent and utility model applications and applications for the registration of industrial models and designs and trademarks.

(3) Assignment by *inter vivos* shall be proven by means of a written document.

(4) The rights derived from name, emblem, logo and award applications or registrations may only be assigned, with or without a consideration, together with the establishment or part of the establishment to which they are associated.

(5) Without prejudice to the provisions of the following paragraph and unless expressly declared otherwise, assignment of the establishment shall include the respective name, emblem, logo or award.

(6) If the name, emblem or logo includes the personal name, trade name or company name of the owner of the

establishment or persons he represents, an express clause shall be necessary for the assignment thereof.

(Contractual Licensing)

Art. 30.-(1) The rights mentioned in paragraph (1) of the preceding Article may also be the subject of a license to work the right as a whole or in part, for the whole of Portuguese territory or a certain area, for the full life of the right or a shorter period.

(2) The provisions of the preceding paragraph shall apply while an application is pending, but refusal of the application shall imply the lapse of the license.

(3) The license contract shall be drawn up in written form.

(4) Unless otherwise stipulated, the licensee shall enjoy all the rights conferred upon the licensor for all legal effects, with the exception of the provisions of the following paragraphs.

(5) The right conferred by a license cannot be alienated without the written consent of the licensor.

(6) The grant of a license shall not prevent the licensor from retaining the right to directly work the licensed right.

(7) The license shall be presumed to be non-exclusive.

(8) An exclusive license shall mean that the proprietor of the patent renounces the right to grant other licenses for the rights that are the subject of the license while such license is in force.

(Registering the Rights)

Art. 31.-(1) In the cases provided for in Article 29, paragraphs (1), (2) and (4) and paragraphs (1) and (2) of the preceding Article, the assignment or license shall only take effect in respect of third parties after it has been recorded at the National Institute of Industrial Property.

(2) That record shall be endorsed on the certificate upon request of any of the interested parties, and documents attesting to the assignment or license must be provided.

(3) If the record of the assignment is requested by the assignor, the assignee shall also sign the document giving proof thereof or shall expressly declare that he accepts the assignment.

(4) After the record has been effected, the certificate shall be returned to the party that requested it and the request and the documents shall be attached to the respective file.

(5) Notice of that record shall be published in the Industrial Property Bulletin.

Chapter IV Termination of Industrial Property Rights

(Revocation)

Art. 32.—(1) Industrial property rights shall be rendered totally or partially null and void in the following cases:

- (a) if the subject matter cannot be protected;
- (b) if any formalities were not fulfilled in the grant of the right in such a way as to call into question the final result of the procedure.

(2) The revocation of the right may be declared while there is an interest in such declaration.

(Annulment)

Art. 33.—(1) Industrial property certificates may be totally or partially annulled if the proprietor has no right thereto, namely:

- (a) if the right does not belong to the proprietor;
- (b) if the grant of the right infringes third party rights based on priority or other legal title.

(2) The interested party may request the total or partial reversal of the right in its favor instead of the annulment thereof, provided that all legal requirements are met.

(Procedure for the Declaration of Revocation and Annulment)

Art. 34.—(1) The declaration of revocation or annulment may only be determined by a judicial decision.

(2) Action shall be taken by the Portuguese Public Prosecutor or any interested party against the registered proprietor of the right and shall be communicated to all the holders of registered rights derived therefrom, who may intervene in the proceedings.

(3) The judicial decision shall be recorded or noted at the National Institute of Industrial Property and published in the Industrial Property Bulletin.

(Effects of the Declaration of Revocation)

Art. 35. The retroactivity of the declaration of revocation shall not prejudice effects arising from the fulfillment of commitments, judicial decisions *res judicata* or settlements, even if they have not yet been validated, or as a result of other similar acts.

(Lapse)

Art. 36.—(1) Industrial property rights shall lapse:

- (a) on expiry of the period of validity;
- (b) in default of payment of fees.

(2) Lapse actions shall be filed at the National Institute of Industrial Property and the respective proceedings shall be suspended if the action is withdrawn.

(3) Lapse shall be recorded and a notice thereof shall be published in the Industrial Property Bulletin.

(4) Lapse shall only take effect after it has been declared in proceedings held at the National Institute of Industrial Property.

(5) The proprietor of the registration shall be notified of the lapse action in order that he may file his reply, if so desired, within two months.

(6) After this period has expired, the National Institute of Industrial Property shall give a decision on the declaration of the lapse of the registration within the same time limit.

(7) If the action is withdrawn before a decision is given, the lapse proceedings shall be suspended.

(Renunciation)

Art. 37.—(1) The proprietor may renounce his industrial property rights by means of an express declaration supplied to the National Institute of Industrial Property.

(2) Renunciation may be partial if the nature of the right so permits.

(3) The declaration of renunciation shall be made by means of a request to be attached to the respective file.

(4) If the request for renunciation is not signed by the interested party, the respective legal representative shall file a power of attorney with special powers.

(5) Renunciation shall not prejudice duly registered third party rights, provided that the respective proprietors, after due notification, substitute the proprietor of the main right for the purpose of retaining the certificates, insofar as is necessary for the safeguard of such rights.

(6) Renunciation shall be recorded and a notice thereof published in the Industrial Property Bulletin.

Chapter V Appeal

Section I Judicial Appeal

(Persons Entitled to Appeal)

Art. 38. Parties entitled to appeal against decisions of the National Institute of Industrial Property shall be the applicant, opponents and any other person who may be directly prejudiced by the decision.

(Time Limit of Appeal)

Art. 39. The appeal shall be filed within three months after the date of the publication of the decision in the Industrial Property Bulletin or the obtention of the certified copy of this decision if this date is prior.

(Reply; Submission of the File)

Art. 40.-(1) After the action has been filed in court, a copy of the petition and a certified copy of the contents of any documents of major interest shall be submitted to the National Institute of Industrial Property, so that the body which gave the decision appealed against may reply thereto and submit or order to be submitted the file, in respect of which the decision was given, to the court.

(2) If it is found that the file contains sufficient information for clarification of the court, it shall be submitted within 10 days, together with notice of submission.

(3) If this is not the case, the notice of submission shall contain a reply to the appeal and shall be submitted with the file within a period of 20 days.

(Consultation of the File by the Opposing Party)

Art. 41.-(1) Once the file is received by the court, it shall be made available for 20 days to the opposing party, if any.

(2) The National Institute of Industrial Property shall never be considered as an opposing party.

(3) Notification of the opposing party shall be made to the office of the party's appointed lawyer or, in the absence thereof, to the office of the duly identified official industrial property agent who has represented the party during the administrative proceedings, although the agent may only intervene in the proceedings through an appointed lawyer.

(4) On the expiry of the consultation period, the proceedings shall be concluded and the final decision given within 15 days, except in the case of a justifiable impediment.

(Request for Technical Experts)

Art. 42. If the appeal contains a technical problem requiring further information or if the judge considers it appropriate, he may at any time request the attendance, on a day and at a time that he designates, of any technical expert or experts on whose opinion the decision appealed against was based, in order to provide orally any clarifications necessary.

(Appeal Against a Judicial Decision)

Art. 43. It is possible to appeal against a judicial decision given in accordance with the general terms of the law.

(Publication of the Final Decision)

Art. 44. Once the final decision has become *res judicata*, the secretary's office of the court shall send a copy to the National Institute of Industrial Property for publication of the respective text and corresponding notice in the Industrial Property Bulletin and record thereof.

Section II
Guarantees

(Preliminary Injunction System)

Art. 45.-(1) Preliminary injunctions may be brought in any action taken in respect of an industrial property right.

(2) The provisions of civil procedure shall apply to this injunction system, but there shall always be a hearing of the opposing party unless, exceptionally, this could jeopardize the result of the actual injunction.

Section III
Ministerial Appeal

(Ministerial Appeal)

Art. 46.-(1) Decisions given by the President of the National Institute of Industrial Property which cannot be referred to appeal under Article 38 may be appealed against to the competent Minister.

(2) The terms of this Article shall not prevent other matters from being submitted for ministerial assessment and decision, should any doubts or difficulties arise which require recourse to ministerial authority, or if the Minister requests that any matter be brought before him.

PART II
INDUSTRIAL PROPERTY LEGAL SYSTEMS

Chapter I
Inventions

Section I
General provisions

(Subject Matter of the Patent)

Art. 47.-(1) New inventions involving an inventive step shall be patentable if they are susceptible of industrial application.

(2) New processes for obtaining products, substances or compositions that are already known shall also be patentable.

(Limitations Regarding Subject Matter)

Art. 48.—(1) The following shall be excepted from the preceding Article:

(a) discoveries, as well as scientific theories and mathematical methods;

(b) materials or substances already existing naturally and nuclear materials;

(c) aesthetic creations;

(d) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers, as such;

(e) presentations of information.

(2) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body shall not be patentable, although the products, substances or compositions used in any of these methods shall be patentable.

(3) The provisions of paragraph (1) shall only exclude patentability when the subject matter to be patented is limited to the elements mentioned therein.

(Limitations Regarding the Patent)

Art. 49.—(1) The following are not patentable:

(a) inventions the publication or exploitation of which would be against the law or contrary to public order, public health or morality;

(b) plant varieties and breeds of animal, as well as essentially biological processes for the production of plants and animals, although microbiological processes and the products obtained by such processes are patentable.

(2) A substance or composition included in the state of the art which is used in the working of one of the methods mentioned in Article 47, paragraph (2) can be patented, provided that its use for any of the methods mentioned therein is not included in the state of the art.

(Requirements for Grant)

Art. 50.—(1) An invention shall be considered to be new if it is not included in the state of the art.

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

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

(State of the Art)

Art. 51.—(1) The state of the art shall be held to comprise everything which, in Portugal or elsewhere, is available to the public before the date of the patent application by means of a description, by use or by any other means, in such a way as to be understood and worked by those skilled in the art.

(2) The contents of patent and utility model applications filed in Portugal before the date mentioned in this Article but not yet published shall also be considered as included in the state of the art.

(Non-Opposable Disclosures)

Art. 52.—(1) The following shall not prejudice the novelty of the invention:

(a) communications made before scientific societies or professional technical associations or for the purpose of Portuguese or international competitions, exhibitions or fairs which are official or officially recognized in any country of the Union, if the application for the respective patent is filed in Portugal within 12 months;

(b) disclosures resulting from evident abuse regarding the inventor or his successor in any title, or from publications unduly made by the National Institute of Industrial Property.

(2) The provisions of subparagraph (a) of the preceding paragraph shall only apply if the applicant declares, when filing the application, that the invention was actually disclosed in accordance with the terms stipulated therein.

(3) The applicant shall present proof of his declaration up to four months after the date of the application.

(Right to the Patent)

Art. 53.—(1) The right to the patent shall belong to the inventor or his successors in any title.

(2) If the inventors are two or more in number, the right to file the patent application shall belong to the group as a whole.

(Employees' Rights)

Art. 54.—(1) The right to the patent for an invention carried out during the performance of a work contract that provides for the inventive step and the special remuneration thereof shall belong to the employer company.

(2) If the special remuneration of the inventive step is not provided for, the inventor shall be entitled to remuneration according to the value of the invention.

(3) In the absence of the conditions stipulated in the preceding paragraph, if the invention falls within the scope of activity of the company:

(a) the company shall be entitled to assume the property of the invention or to reserve the right to the exclusive or non-exclusive working of the invention, the acquisition of the patent thereof and the right to apply for or acquire a foreign patent;

(b) the inventor shall be entitled to equitable remuneration, after deduction of the amount corresponding to any assistance supplied by the company in order to carry out the invention.

(4) The inventor shall inform the company about the inventions he has carried out within three months from the date the invention is considered as accomplished.

(5) Failure to meet the obligation mentioned in the preceding paragraph on the part of the inventor shall lead to the loss of his rights in this respect.

(6) The company may exercise its rights within three months after receipt of the notification given by the inventor.

(7) Acquisition of the rights of the company mentioned in the previous paragraphs shall be rendered null and void if remuneration is not paid in full within the stipulated time limit.

(8) If, in the event of paragraphs (2) and (3), the parties do not come to an agreement, the matter shall be resolved, in accordance with Decree-Law No. 31/86, of August 29, 1986, by a court of arbitration comprising an arbitrator appointed by the company, another by the inventor and a third by agreement, or, in default thereof, by the presiding judge of the court of appeal of the judicial district in which the employee normally carries out his duties.

(9) Inventions, the patents of which have been applied for within one year after the date on which the inventor leaves the company, shall be considered as having been carried out during the performance of the work contract.

(10) The preceding provisions shall apply to the State and administrative bodies regarding their civil servants and employees whose activity is carried out by law, regulations or contract.

(11) The rights conferred on the employee under this Article cannot be renounced in advance.

(Inventor's Right)

Art. 55.—(1) If the patent is not applied for in the name of the inventor, he shall have the right to be mentioned as such in the patent application and certificate.

(2) The inventor does not have to be mentioned as such in publications resulting from the application, unless he so requests at the National Institute of Industrial Property by means of a duly signed declaration.

(Priority Right)

Art. 56.—(1) A person who has duly filed in any of the countries of the Union an application for a patent, utility model, utility certificate or inventor's certificate, or his successor, shall enjoy, for the purpose of filing a patent application in Portugal, the right of priority established in the Paris Convention for the Protection of Industrial Property.

(2) Any application that is a regular national application, drawn up in accordance with the national law of each country of the Union or under bilateral or multilateral treaties between member States, shall also enjoy the right of priority.

(3) By a regular national application is meant any application filed in such a way as to establish the date on which it was filed in the country in question, irrespective of anything that may subsequently affect it in any way.

(4) Thus, an application subsequently filed in Portugal before the end of the period of priority shall not be deemed null by events occurring during the same period, namely by other applications or the publication or working of the invention.

(5) A later application with the same subject matter as an earlier first application shall be considered as the first application and the date on which it was filed shall indicate the beginning of the period of priority, provided that, on the date of the filing of the later application, the earlier application has been withdrawn, abandoned or refused, without having been open to public examination and without leaving any rights outstanding, and provided also that it has not served as a basis for claiming a right of priority.

(6) In the event of the preceding paragraph, the earlier application may never again serve as the basis for claiming the right of priority.

(7) Any person who wishes to exercise the right of priority of an earlier application shall make a declaration indicating the date and country of such application. This declaration shall be filed with the application or at any time up to a period of three months after the end of the period of priority.

(8) In the case of an application claiming several priorities, the period of priority shall be computed from the date of the earliest priority.

(9) A priority or a patent application may not be refused on the grounds of the applicant's claiming multiple priorities, even if they are in respect of different countries, or on the grounds that an application claiming one or more priorities contains one or more elements that were not included in the application(s) the priority of which is being claimed, provided that in both cases there is unity of invention.

(10) If the examination reveals that a patent application contains more than one invention, the applicant may, of his own motion or in fulfillment of notification, divide the application into divisional applications, which shall retain the date of the original application and, if relevant, the benefit of the right of priority.

(11) The applicant may also divide the patent application on his own motion, retaining as the date of each divisional application the date of the original application and, if relevant, the benefit of the right of priority.

(12) The priority may not be refused on the grounds that certain elements of the invention for which the priority is claimed do not appear among the claims made in the application filed in the country of origin, provided that the application as a whole accurately indicates such elements.

Section II *Patent Procedure*

Subsection I National Route

(Form of Application)

Art. 57.—(1) Patent applications shall be made by a request, drawn up in Portuguese on the appropriate printed form, indicating:

- (a) the applicant's name, trade name or company name, nationality and residence or place of business;
- (b) a heading or title resuming the subject matter of the invention;
- (c) the name and country of residence of the inventor;
- (d) if the applicant wishes to claim the right of priority, the country, date and number of the original application.

(2) The application shall be signed by the applicant or his legal representative, in which case it is compulsory to file a power of attorney.

(3) Fancy expressions used to designate the invention cannot be claimed but may be registered as a trademark.

(Documents to be Filed)

Art. 58. The following documents, in duplicate, shall be attached to the application and shall meet the requirements stipulated by a decision of the Minister responsible for the area of industry:

- (a) claims for what is considered as being new and which characterizes the invention;
- (b) a specification of the subject matter of the invention;
- (c) drawings necessary to perfectly understand the specification;
- (d) abstract of the invention.

(Biotechnological Inventions)

Art. 59.—(1) If the application mentions a biologically reproducible material which may not be described in such a way as to enable those skilled in the art to carry out the invention, and if this material is not available to the public, the application shall be completed by depositing this material with an authorized institution, in accordance with the international conventions in force in Portugal.

(2) The material shall be deposited no later than the date of the patent application in Portugal or, if a priority is claimed, no later than the date of this priority.

(3) All the available characteristics of the microorganism required for it to be correctly identified shall be indicated, including the name and address of the depositary institution and the date and number of the deposit of the culture at the institution.

(4) These characteristics shall be submitted to the National Institute of Industrial Property within 16 months after the date of the application filed in Portugal or, if a priority is claimed, after the priority date.

(5) Access to the microorganism culture may only be given at the institution mentioned, as from the date of publication of the application.

(Time Limit for Submission of the Specification and Drawings)

Art. 60. The specification of the invention and drawings may be furnished to the National Institute of Industrial Property within three months after the date of the application filed in Portugal.

(Unity of the Invention)

Art. 61.—(1) Applications may only be filed for a single patent and each patent shall relate to a single invention.

(2) A group of inventions so linked as to form a single general inventive concept shall be considered as a single invention.

(Publication of the Application and Rights Conferred)

Art. 62.—(1) Notice of the filing of the application shall be published in the Industrial Property Bulletin, with a copy of the abstract.

(2) Notice shall not be published before the end of the eighteenth month after the date on which the application was filed at the National Institute of Industrial Property, or after the date of the priority claimed.

(3) Publication may only be brought forward at the express request of the applicant.

(4) After publication, any person may request a copy of the corresponding claims, specification and drawings.

(5) Without prejudice to the provisions of the previous Articles, any claims or expressions that infringe the terms of Article 57, paragraph (3) shall be officially eliminated from the certificate for the patent as well as publications arising from the application.

(6) The patent application shall provisionally confer on the applicant, from the date of publication mentioned in the previous paragraphs, the protection that would be conferred by the grant of the right.

(7) The provisional protection mentioned in the preceding paragraph shall also apply, before the date of publication, to any person who is notified of the filing of the application.

(8) Judicial decisions concerning action taken based on provisional protection may not be given before the final grant or refusal of the patent.

(Examination Report)

Art. 63.—(1) When the specification and drawings are filed at the National Institute of Industrial Property, the Institute shall proceed with the examination of the corresponding patent application and the respective international classification, in accordance with the terms of the Strasbourg Agreement.

(2) Following this examination a report containing the examiner's opinion shall be drawn up within six months after the publication of the application.

(Publication of the Notice of Acceptance of Grant or Refusal)

Art. 64.—(1) If the examination concludes that the patent can be granted, the examiner shall propose the publication of the respective notice in the Industrial Property Bulletin.

(2) If the examination concludes that the application cannot be granted, the examination report shall be sent to the applicant, with notification to reply to the observations made within a period of two months.

(3) If the examiner decides from the applicant's reply that the patent can be granted, he shall propose the publication of the respective notice in the Industrial Property Bulletin.

(4) If the applicant does not reply to the notification the examiner shall propose the refusal of the patent.

(5) If the reply is considered insufficient, the examiner shall propose a decision in accordance with the examination report.

(6) If the patent is refused, the respective notice shall be published in the Industrial Property Bulletin.

(Partial Grant)

Art. 65.—(1) If the examiner only requires the limitation of the scope of the invention, the elimination of certain claims, drawings or phrases of the abstract or specification or the amendment of the title or heading of the invention, in accordance with the notification, and if the applicant does not voluntarily proceed with these modifications, the examiner may effect them and therefore propose the grant of the respective patent.

(2) If the examiner proposes the grant of the patent, the respective notices to be published in the Industrial

Property Bulletin shall indicate possible amendments to the heading, claims, specification or abstract.

(3) Partial grant shall be such that the refused part of the patent does not exceed the scope of the observations made in the examination report.

(Opposition)

Art. 66.—(1) The notices stating that the patent can be granted shall be published in the Industrial Property Bulletin so that those who consider themselves prejudiced may file oppositions.

(2) Oppositions shall be filed within three months after the date of publication of the Bulletin containing the notice.

(Publication)

Art. 67.—(1) If no oppositions are filed, notice of the grant of the patent shall be published.

(2) If any oppositions are filed, the applicant shall be notified to reply in accordance with the provisions of Article 17.

(3) After the opposition proceedings have ended, the application shall be reexamined and submitted for decision, which shall be published in the Industrial Property Bulletin.

(Publication of the Complete Patent Specification)

Art. 68. The complete patent specification may be published provided that the time limits stipulated in Article 17 have expired.

(Grounds for Refusal)

Art. 69.—(1) The patent shall be refused:

(a) if its subject matter is included under Article 48 or 49;

(b) if the heading or title of the invention fraudulently covers different subject matter, or if there are any differences between the specification and drawings and the respective duplicates;

(c) if the invention is not described adequately enough to be worked by any person skilled in the art;

(d) if, by virtue of its specification and claims, it is considered to be a utility model or an industrial model;

(e) if it is found that the provisions of Article 54 have been infringed.

(2) In the case provided for in subparagraph (e) of the preceding paragraph, instead of the patent being refused, its total or partial assignment to the interested party may be granted, if he so requests.

(Notification of Grant to the Applicant)

Art. 70. The applicant shall be notified of the grant of the patent, indicating the Bulletin in which notice thereof is to be published.

Subsection II
European Route

(Scope)

Art. 71.—(1) The following provisions shall apply to European patent applications and European patents taking effect in Portugal.

(2) The provisions of the present Code shall be applicable insofar as they do not violate the terms of the European Patent Convention of October 5, 1973.

(Filing of European Patent Applications)

Art. 72.—(1) European patent applications shall be filed at the National Institute of Industrial Property or at the European Patent Office.

(2) If the residence or head office of an applicant of a European patent is located in Portugal, the filing of the application at the National Institute of Industrial Property shall be compulsory, unless the European patent application claims the priority of an earlier application filed in Portugal for the same invention and if this invention is not considered as secret by the competent authorities.

(3) The terms of Decree-Law No. 42 201 of April 2, 1959, shall apply to the patent applications mentioned in the preceding paragraph.

(Languages in Which European Patent Applications May Be Drawn Up)

Art. 73.—(1) European patent applications filed in Portugal may be drawn up in any of the languages stipulated in Article 14, paragraphs 1 and 2 of the Munich Convention.

(2) If the European patent application is not filed in Portuguese, it shall be accompanied by a Portuguese translation of the specification, claims and abstract and a copy of the drawings included in the application, even if they do not contain wording to be translated, unless the European patent application claims the priority of an earlier patent filed in Portugal for the same invention.

(Rights Conferred by Published European Patent Applications)

Art. 74.—(1) European patent applications, as from publication in accordance with Article 93 of the Munich Convention, shall enjoy in Portugal provisional protection equivalent to that which is conferred on the publication of Portuguese national patent applications, as from the date on which a Portuguese translation of the claims

is made accessible to the public at the National Institute of Industrial Property, together with a copy of the drawings.

(2) The National Institute of Industrial Property shall publish in the Industrial Property Bulletin notice of the indications necessary for identification of the European patent application.

(3) As from the date of publication of the notice, any person may have access to the text of the translation and obtain reproductions thereof.

(Translation of the Complete Specification of the European Patent)

Art. 75. Whenever a patent is granted by the European Patent Office, the respective proprietor shall file at the National Institute of Industrial Property a Portuguese translation of the complete specification of the patent and, if applicable, the complete specification of the patent as modified during the opposition stage, under penalty of the patent not taking effect in Portugal.

(Time Limit to File the Translation of the Complete Specification of the European Patent)

Art. 76.—(1) The Portuguese translation of the complete specification of the European patent shall be filed at the National Institute of Industrial Property within three months after the date of publication in the European Patent Bulletin of the mention of the grant of the patent or, if applicable, the date of the mention of the decision concerning oppositions.

(2) Any fees due shall be paid during the time limit specified in the preceding paragraph.

(3) The translation of the complete specification of the European patent shall be accompanied by a copy of the drawings contained therein, even if they do not include expressions to be translated.

(Effecting of Translations)

Art. 77. If the residence or head office of the applicant or proprietor of the European patent is not located in Portugal, translations of the texts shall be effected under the responsibility of an official industrial property agent or a legal representative entitled to act before the National Institute of Industrial Property.

(Publication of the Notice Concerning the Translation)

Art. 78.—(1) The National Institute of Industrial Property shall proceed with the publication in the Industrial Property Bulletin of notice concerning the submission of the translation indicated in Article 75, containing the indications necessary for identification of the European patent.

(2) Notice shall only be published after the corresponding fee has been paid.

(Record on Patent Registers)

Art. 79.—(1) When the mention of the grant of a European patent has been published in the European Patent Bulletin, the National Institute of Industrial Property shall proceed with the record thereof on its patent register with the details mentioned on the European patent register.

(2) The date on which the translation mentioned in Article 75 is received shall also be recorded on the patent register at the National Institute of Industrial Property; if this translation is not submitted, the details mentioned on the European patent register concerning opposition proceedings shall be recorded, as well as the details specified for Portuguese patents.

(3) Record on the European patent register of acts assigning or modifying rights concerning a European patent application or a European patent shall make these acts opposable to third parties.

(Authentic Text of a European Patent)

Art. 80. If a Portuguese translation is filed in accordance within the terms of the previous Articles, it shall be considered as the authentic text if the protection conferred by the European patent application or the European patent, in the translated text, is narrower than the protection conferred by such application or patent in the language used in the proceedings.

(Revision of the Translation)

Art. 81.—(1) The applicant or proprietor of the European patent application may at any time revise the translation, which shall only take effect if it is made accessible to the public at the National Institute of Industrial Property and the respective fee is paid.

(2) Any person who, in good faith, has started to work an invention or who has made serious and effective preparations to this end, may continue to work the invention in the course of his business or for the needs thereof, without payment and with no obligation to pay compensation, provided that the working of the invention does not infringe the application or patent, in accordance with the text of the original translation.

(Conversion of a European Patent Application Into a Portuguese National Patent Application)

Art. 82.—(1) A European patent application may be converted into a Portuguese national patent application in the cases stipulated in Article 135, paragraph 1, subparagraph (a) of the European Patent Convention.

(2) A European patent application may also be converted into a Portuguese national patent application in the

case provided for in Article 90, paragraph 3 of the European Patent Convention, whenever Article 14, paragraph 2 of the Convention is applicable.

(3) A European patent application shall be considered as being a Portuguese national patent application as from the date on which the request for conversion is received by the National Institute of Industrial Property.

(4) The patent application shall be refused if, within two months after the receipt of the request for conversion, the applicant has not paid the fees due at the time of the filing of a Portuguese national patent application or, if applicable, the applicant has not filed a Portuguese translation of the original text of the European patent application.

(5) If the residence or head office of the applicant is not located in Portugal, he shall appoint an official industrial property agent in Portugal and communicate his name and address to the National Institute of Industrial Property.

(Conversion of a European Patent Application Into a Portuguese Utility Model Application)

Art. 83.—(1) A European patent application shall be converted into a Portuguese utility model application in the cases specified in the preceding Article.

(2) A European patent application which has been refused by the European Patent Office or which has been withdrawn or deemed to have been withdrawn, may be converted into a Portuguese utility model application.

(3) The provisions of the preceding Article shall apply to the request for the conversion of a European patent application into utility model application.

(Dual Protection Prohibition)

Art. 84.—(1) A Portuguese patent the subject matter of which is an invention already protected by a European patent granted to the same inventor, or with his consent, with the same date of filing or priority, shall cease to have effect as from:

(a) the date on which the time limit for filing oppositions against the European patent expires, if no oppositions have been filed;

(b) the termination of opposition proceedings and the European patent is maintained.

(2) If the Portuguese patent is granted after either of the dates indicated in subparagraphs (a) and (b) of the preceding paragraph, it shall not take effect.

(3) The subsequent termination or annulment of the European patent shall not affect the provisions of the previous paragraphs.

(Annual Fees)

Art. 85. For all European patents taking effect in Portugal, the annual fees applicable to Portuguese national patents shall be paid at the National Institute of Industrial Property within the time limits stipulated in the present Code.

Subsection III
Patent Cooperation Treaty Route

(Definition and Scope)

Art. 86.—(1) An international application shall be deemed to be an application filed in accordance with the terms of the Patent Cooperation Treaty concluded in Washington on June 19, 1970.

(2) The terms of the Patent Cooperation Treaty and the complementary provisions contained in the following Articles shall apply to all international applications for which the National Institute of Industrial Property acts as receiving Office or designated or elected Office.

(3) The provisions of the present Code shall be applicable insofar as they do not violate the terms of the Patent Cooperation Treaty.

(Filing of International Applications)

Art. 87.—(1) International applications formulated by individuals or corporate bodies with residence or head office in Portugal shall be filed at the National Institute of Industrial Property if no priority of an earlier patent application filed in Portugal is claimed.

(2) Under the circumstances specified in the preceding paragraph, the National Institute of Industrial Property shall act as receiving Office, in accordance with Articles 2(xv) and 10 of the Patent Cooperation Treaty.

(3) Any international application filed at the National Institute of Industrial Property, acting as receiving Office, shall be subject to payment of a transmittal fee equivalent to 50% of the fee for a Portuguese national application, as well as the fees stipulated in the Patent Cooperation Treaty.

(4) Payment of the transmittal fee shall be effected within one month after the date on which the international application is received.

(5) International applications filed at the National Institute of Industrial Property, acting as receiving Office, may be drawn up in French, English or German.

(6) International applications shall be accompanied by a Portuguese translation of the specification, claims and abstract and a copy of the drawings included in them even if they do not contain wording to be translated, unless the international application claims the priority of an earlier patent filed in Portugal for the same invention.

(Designated or Elected Office)

Art. 88. The National Institute of Industrial Property shall act as designated and elected Office, in accordance with Article 2 of the Patent Cooperation Treaty, in the case of international applications intended to protect an invention in Portugal, whenever these applications do not have the same effects as a European patent application.

(Effects of International Applications)

Art. 89. International applications for which the National Institute of Industrial Property acts as designated and elected Office, in accordance with the terms of the preceding Article, shall have the same effects in Portugal as a Portuguese patent application filed on the date of the international application.

(Time Limit to File the Translation of the International Application)

Art. 90.—(1) If an applicant wishes an international application to be prosecuted in Portugal, he shall file a Portuguese translation of the international application at the National Institute of Industrial Property within the time limit established in Article 22 and Article 39, paragraph (1) of the Patent Cooperation Treaty, according to the case, and within the same time limit shall pay the fee corresponding to a Portuguese national application.

(2) The applicant shall pay within this time limit the annual fee due for the third annuity if this fee is due earlier.

(3) If the applicant does not fulfill the requirements of paragraph (1) within the time limit indicated therein, he may still do so not later than two months after the expiration of that time limit by paying an additional fee of 50% of the fee for a Portuguese national patent application, whether there are one or two acts outstanding.

(Rights Conferred by Published International Applications)

Art. 91.—(1) International patent applications, as from publication in accordance with Article 21 of the Patent Cooperation Treaty, shall enjoy in Portugal provisional protection equivalent to that which is conferred by the publication of Portuguese national patent applications, as from the date on which a Portuguese translation of the claims is made accessible to the public at the National Institute of Industrial Property, together with a copy of the drawings even if they do not contain any wording to be translated.

(2) The National Institute of Industrial Property shall publish notice of the indications necessary for identification of the international patent application in the Industrial Property Bulletin.

(3) As from the date of publication of the notice, any person may have access to the text of the translation and obtain reproductions thereof.

(International Applications Containing Independent Inventions)

Art. 92.—(1) If part of an international application was not subject to an international search or a preliminary international examination because it was ascertained that the application contained independent inventions and that the applicant had not paid within the specified time limit the additional fee stipulated in the Patent Cooperation Treaty, the National Institute of Industrial Property shall reexamine the grounds for the decision not to carry out the search or examination in respect of the application in question.

(2) If the National Institute of Industrial Property considers the decision to be unfounded, the corresponding provisions of the Portuguese Industrial Property Code shall apply to the application.

(3) If the National Institute of Industrial Property considers that the decision is well-founded, the part of the application that was not subject to a search or examination shall be deemed to have been withdrawn at the Institute, unless the applicant, within one month after the notification being made, requests the division of the application in accordance with the terms of the present Code governing divisional patents.

(4) The fees corresponding to Portuguese national patent applications shall be due for each divisional application, in accordance with the provisions of the Portuguese Industrial Property Code.

Section III
Effects of the Patent

(Scope of Protection; Reversal of the Burden of Proof)

Art. 93.—(1) The scope of the protection conferred by the patent shall be determined by the contents of the claims and the specification and drawings shall be used to interpret them.

(2) If the subject matter of the patent relates to a process, the rights conferred by the patent shall extend to the products directly obtained by the patented process.

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

(Term of the Patent)

Art. 94. The term of the patent shall be 20 years as from the date of the respective application.

(Indication of the Patent)

Art. 95. During the term of the patent the patentee may use on the products the words "*Patenteado*" ("Patented"), "*Patente n.º*" ("Patent No.") or "*Pat. n.º*."

(Rights Conferred by a Patent)

Art. 96.—(1) A patent shall confer the exclusive right to work the invention in any part of the Portuguese territory.

(2) A patent shall also confer on the proprietor the right to prohibit third parties from manufacturing, offering, stocking, trading or working a patented product without his consent, or importing or taking possession thereof for any of the purposes mentioned.

(3) The patentee may oppose any acts that constitute infringement of his patent, even if such acts are based on another patent with a later date of priority, without having to attack the certificates or request the annulment of the patents against which he exercises this right.

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

(Private Use)

Art. 97. The protection conferred by a patent shall not include private use with no commercial purpose.

(Limitation of the Rights Conferred by a Patent)

Art. 98. The rights conferred by a patent shall not cover:

(a) the preparation of medicines made instantly and for individual cases in pharmacy laboratories by means of a prescription, or acts related to medicines prepared in this way;

(b) acts carried out exclusively for testing or experimental purposes;

(c) use on board ships from other States party to Paris Convention for the Protection of Industrial Property of the subject matter of the patented invention, in the body of the ship, the machinery, masts, equipment or other accessories, when such ships temporarily or accidentally enter Portuguese waters, provided that the subject matter in question is exclusively used for the purposes of the ship;

(d) use of the subject matter of the patented invention in the construction or operation of air or land transport vehicles from other States party to Paris Convention for the Protection of Industrial Property or accessories for these vehicles, if they temporarily or accidentally enter the territory of a contracting State;

(e) the acts specified in Article 27 of the Convention of December 7, 1944, concerning international civil aviation, if such acts relate to aircraft which belong to another State but are governed by the provisions of the aforementioned Article.

(Scope of the Right)

Art. 99. The rights conferred by a patent shall not include acts in connection with the patented products after they have been put on the market in the European Community, by the patentee or with his express consent.

(Non-Opposability)

Art. 100.—(1) The rights conferred by a patent cannot oppose any person who in good faith, in Portuguese territory and before the date of the application or the date of priority, if claimed:

- (a) took knowledge of the invention through his own means;
- (b) used the invention or took effective and serious steps towards such use.

(2) This provision shall not apply if the party in question takes knowledge of the invention through illicit acts or acts contrary to morality used against the patentee.

(3) The burden of proof shall lie with parties invoking the situations specified in paragraph (1).

(4) Earlier use or preparations made to this end based on the information mentioned in Article 52, subparagraph (a) shall not prejudice good faith.

(5) The cases provided for in paragraph (1) include the right to continue or begin to use the invention to the extent of previous knowledge thereof for the needs of the company of the party in question, but this right may only be assigned together with the commercial establishment where the invention is used.

(Legal Monopoly System)

Art. 101.—(1) When a patent is granted for an invention the subject matter of which constitutes a legal monopoly, the monopolist may only work the invention with the consent of the patentee, but he shall be obliged to use in his industry the inventions which involve a notable technical advance for such industry, obtaining the corresponding right to work the invention.

(2) The obligation stipulated in the preceding paragraph may be voluntarily fulfilled on the initiative of the monopolist, the patentee or the Portuguese Public Prosecutor.

(3) The amount to be paid to the patentee shall be fixed by an agreement between the parties or by a judicial decision.

(4) Patents the subject matter of which is not worked due to an impediment resulting from the existence of a legal monopoly shall not require annuities to be paid.

Section IV
Conditions of Use

(Loss of a Patent)

Art. 102.—(1) A person may be legally deprived of a patent on account of commitments made with other persons or if the patent is expropriated for a public purpose.

(2) The Portuguese State may, for a public purpose and on payment of an indemnity, expropriate any patent should it become necessary to make the invention accessible to the public or should its use by public bodies so require.

(3) The terms of the Portuguese Expropriation Code, duly adapted, shall be applicable.

(Compulsory Working)

Art. 103.—(1) The patentee shall be required to work the patented invention, either directly or through a person he shall authorize, by means of its execution in Portuguese territory and the marketing of the results obtained in such a way as to satisfy the needs of the national market.

(2) Working shall begin within three years after the date of publication in the Industrial Property Bulletin of notice of the grant of the patent, but never later than four years after the date of the filing of the patent application.

(3) For the purposes of the working of the patented invention by means of its exploitation, any territory belonging to the European Community shall be considered as equivalent to Portuguese territory.

(4) Without prejudice to the provisions of the preceding paragraph, the marketing in Portuguese territory of objects or products manufactured abroad shall not constitute the working of the invention.

(Certificate of Working)

Art. 104.—(1) The patentee may prove the working of the patent before the National Institute of Industrial Property by means of an official certificate issued by the competent body in each case.

(2) The certificate of working shall only be issued if actual manufacturing has been verified at the industrial premises where the invention is being worked and if the subject matter of the invention is actually being marketed.

(3) The certificate shall be issued within three months from the date on which it was requested and shall expressly mention that the patent is being worked.

(4) The certificate of working shall be recorded on the patent file at the National Institute of Industrial Property.

(5) Once the working of the patent has been proven before the National Institute of Industrial Property by means of the appropriate certificate, it shall be presumed that the patent is being worked in compliance with the stipulations of Article 103, unless proven otherwise.

(Compulsory Licenses)

Art. 105.—(1) Compulsory licenses may be required against a specific patent in any of the following cases:

- (a) non-working or insufficient working of the patented invention;
- (b) for export needs;
- (c) dependency between patents;
- (d) for reasons of public interest.

(2) Any patentee who ceases to work the invention for a period of three consecutive years, without just reason or legal grounds, may also be required to grant a license to work the invention.

(3) Compulsory license applications shall be examined in the order that they are filed at the National Institute of Industrial Property.

(4) While the compulsory license is in force, the patentee cannot be compelled to grant another license before the previous one has been canceled.

(5) A compulsory license may only be assigned, even in the form of a sublicense, with the part of the company or establishment that works it.

(6) Importation by the licensee of the patented product, even if it is obtained by a different process, shall determine the cancellation of the respective license.

(Insufficient Production of the Subject Matter of the Patent)

Art. 106. If the export market is not adequately supplied due to the insufficient production of the subject matter of the patent and if this causes serious losses to Portugal's economic or technological development, the Government may, by decree, submit the patent to the system of compulsory licenses, exclusively in order to meet the unsatisfied export needs.

(Dependent Licenses)

Art. 107.—(1) If it is not possible to work an invention protected by a patent without infringing the rights conferred by an earlier patent, the proprietor of the later patent may at any time request the grant of a compulsory license against the earlier patent, provided that his invention is used for different industrial purposes or represents a considerable technical advance in relation to the subject matter of the first patent.

(2) If inventions covered by dependent patents are used for the same industrial purposes and a compulsory license is granted in favor of the proprietor of the depen-

dent patent, the proprietor of the earlier patent may also request the grant of a compulsory license against the later patent.

(3) If the subject matter of an invention is a process for the preparation of a chemical, pharmaceutical or food product protected by a patent that is in force and if this process patent represents a considerable technical advance in relation to the earlier patent, both the proprietor of the process patent and the proprietor of the product patent shall have the right to request a compulsory license against the patent of the other proprietor.

(4) Compulsory licenses in respect of dependent patents may only be granted if it is ascertained that the license is indispensable and such license shall only be granted for the part necessary for the working of the later invention.

(Public Interest)

Art. 108.—(1) For reasons of public interest the patentee may be compelled to grant a license to work the respective invention.

(2) Reasons of public interest shall be considered to exist if the start, increase or generalization of the working of the invention or the improvement of the conditions in which such working is carried out are of great importance to public health or national defense.

(3) Reasons of public interest shall also be considered to exist if failure to work the invention or insufficient working as regards quality or quantity cause serious damage to Portugal's economic or technological development.

(4) The Portuguese Government shall be competent to grant a license for reasons of public interest, and shall assess the prosecution of the license application and give a decision on it by decree.

(Non-Exclusive License)

Art. 109. Compulsory licenses shall be non-exclusive and shall be applied for at the National Institute of Industrial Property. The license applicant shall provide evidence giving grounds for the license application.

(Application for the Grant of a Compulsory License)

Art. 110.—(1) Once the period stipulated in Article 103, paragraph (2) has expired, any person may request the grant of a compulsory license against a patent if, without just reason, at the time of the filing of the license application, the working of the patented invention has not yet begun or no effective and serious preparations have been made for this working or if such working has been interrupted for more than three consecutive years.

(2) Objective difficulties of a technical or legal nature that make the working of the invention impossible or

insufficient shall be considered as just reasons, irrespective of the wishes and situation of the patentee, but economic or financial difficulties shall not be considered as such.

(Application for Mediation by the National Institute of Industrial Property)

Art. 111.—(1) Before applying for a compulsory license, the interested party may request the mediation of the National Institute of Industrial Property in order to obtain a contractual license against the patent.

(2) A fee shall be paid in respect of the application for prior mediation, which shall contain the following elements:

- (a) full identification of the applicant;
- (b) the patent to which the request refers as well as identification of the title thereof;
- (c) circumstances that have occurred and may justify the grant of a compulsory license;
- (d) scope of the license desired and grounds therefor;
- (e) data allowing a decision to be taken regarding the ability of the applicant to effect the actual and effective working of the patented invention and to make the reasonable guarantees required by the patentee for the grant of a license.

(3) The application for mediation shall be made by means of a request drawn up on the appropriate printed form and accompanied by the following elements in duplicate:

- (a) documents justifying the contents of the application for mediation;
- (b) a document attesting to the provision of a deposit the amount of which shall be fixed regularly and shall be used to meet the procedural costs to be borne by the applicant for mediation.

(Acceptance by the Institute to Mediate)

Art. 112.—(1) Once the application for mediation has been filed, the National Institute of Industrial Property shall decide upon possible mediation within one month.

(2) The National Institute of Industrial Property shall accept mediation if the examination of the application for mediation, the accompanying documents and the investigations carried out by the Institute itself give a reasonable indication that:

- (a) there are circumstances susceptible of giving rise to the grant of compulsory licenses against the patent;
- (b) the applicant for mediation can afford the funds or means necessary to seriously work the patented invention.

(3) The National Institute of Industrial Property shall notify the applicant for mediation and the patentee of its decision and shall send the latter a copy of the application for mediation.

(4) An appeal cannot be filed against the decision mentioned in the preceding paragraph.

(Mediation Procedure)

Art. 113.—(1) Once mediation has been accepted, the National Institute of Industrial Property shall invite the interested parties to open negotiations for the grant of a contractual license, the Institute participating in its capacity as mediator.

(2) The negotiations shall be of a duration of up to two months as from the date of the invitation.

(3) The National Institute of Industrial Property, as mediator, shall make every effort to bring together the positions of the interested parties and facilitate the securing of a contractual license.

(4) From the time that mediation is accepted and during the negotiation period, the National Institute of Industrial Property shall make any investigations necessary for an understanding of the case and the assessment of the positions of the interested parties, assessing in particular whether there are circumstances that justify the grant of a compulsory license.

(5) The investigation procedure mentioned in the preceding paragraph shall take place whatever the course of the negotiations, even if they are unsuccessful or have not begun.

(6) If no agreement concerning the contractual license is reached on the expiry of the period mentioned in paragraph (2), the National Institute of Industrial Property shall consider its role as mediator and investigator to have ended and shall notify the interested parties accordingly.

(7) The two-month period may be extended for a specific period at the joint request of the parties, provided that the National Institute of Industrial Property considers that the extension may be used effectively for securing the grant of the license.

(8) If the National Institute of Industrial Property decides that there is no possibility of reaching an agreement, it may consider its mediation to have ended even if the extended period has not expired.

(9) The mediation file may only be consulted by the parties, who may request copies of all the documents.

(10) The parties and employees of the Institute having access to the file shall keep its contents a secret.

(Agreement Between the Parties)

Art. 114.—(1) If, as a result of the negotiations mediated by the Institute, the parties agree to the grant of a license against the patent, they may request that no compulsory license applications be accepted in respect of such patent during the period necessary for the licensee to begin working the patent.

(2) The period mentioned in the preceding paragraph may never exceed one year.

(3) The request mentioned in paragraph (1) may only be granted if the following requirements are met:

(a) the parties shall have agreed upon an exclusive license, which shall not frustrate the objectives of the grant of compulsory licenses against the patent;

(b) documentary evidence shall have been provided showing that the licensee has the means necessary to work the patent and that the period requested is essential for such working to begin;

(c) the interested parties shall have guaranteed that they can accept liability if the working of the invention is not begun within the stipulated time limit;

(d) the fee established by law shall have been paid.

(4) Taking account of the documentation filed by the interested parties and once the investigations and consultations deemed appropriate have been made, the National Institute of Industrial Property may suspend the filing of compulsory license applications in respect of the patent in question for a fixed period, if it is considered that, under the circumstances, the parties seriously wish to start working the patented invention as quickly as possible.

(5) Suspension shall be recorded at the National Institute of Industrial Property.

(6) The interested parties shall submit monthly reports on the steps being taken to begin working the invention and the National Institute of Industrial Property shall order any inspections deemed appropriate.

(7) The Institute may revoke the suspension of the filing of compulsory license applications if it considers that it has been proven that an error was made in the assessment of the circumstances giving grounds for its decision, or if the interested parties do not make serious and continuous efforts to begin working the invention within the period foreseen.

(Compulsory License Grant Procedure)

Art. 115.-(1) Three months after the expiry of the period mentioned in Article 103, paragraph (2) or after decision of the National Institute of Industrial Property not to accept the mediation proposed, or after the end of the mediation period, if the parties have not reached an agreement, the Institute may be requested to grant a compulsory license to work the patent.

(2) In the compulsory license application subject to the payment of the fee stipulated by law, the interested party, based on the elements contained in the file on the prior mediation procedure, if applicable, and any possible documents produced, shall substantiate its request, setting forth and giving proof of the alleged grounds for the license application, namely:

(a) the interest in the working of the patent;

(b) the means intended to be used to carry out the actual and effective working of the patented invention;

(c) the guarantees that can be given if the license is granted.

(3) The compulsory license application shall be accompanied by the following elements:

(a) documents which attest to the allegations made in the license application and do not appear in the file on the possible prior mediation;

(b) a document attesting to the provision of a deposit the amount of which shall be fixed at a general rate and shall be used to meet the procedural costs to be borne by the license applicant;

(c) a copy of the license application and the documents filed.

(Reply)

Art. 116.-(1) Once the compulsory license application has been filed in accordance with the provisions of the preceding Article, the National Institute of Industrial Property shall open a file containing the documents concerning possible prior mediation and shall send a copy of the license application and accompanying documents to the patentee in order that he may file a reply, if he so desires, within a period of up to one month.

(2) If the compulsory license application is filed together with a document attesting that the Institute did not accept prior mediation, the period in which the patentee may reply shall be two months.

(3) The reply shall take into consideration the contents of the file on prior mediation, if applicable, and it shall be accompanied by evidence giving grounds for the allegations which are made therein and do not appear in the aforementioned file.

(4) A copy of the reply shall be attached to the file to be sent to the applicant of the compulsory license.

(5) If insufficient working of the patented invention is invoked, the patentee shall include in his reply material concerning this working together with proof thereof.

(Grant or Refusal of the License)

Art. 117.-(1) Once the reply has been received, the National Institute of Industrial Property shall send it to the license applicant and within one month shall grant or refuse the compulsory license.

(2) If no replies are filed on the expiry of the period stipulated in the preceding paragraph the National Institute of Industrial Property shall immediately grant the license.

(3) The grant decision shall determine all the contents of the license and shall stipulate the scope of the licensing, rights, duration, guarantees that the licensee shall make, when working of the invention is to begin and any

other clauses ensuring the serious and effective working of the patented invention.

(4) The decision of grant or refusal shall stipulate the costs to be borne by each of the parties, the joint costs being payable in equal parts.

(5) If it is concluded that one of the parties acted without just grounds or in bad faith, this party alone shall bear all costs.

(6) The decision of grant or refusal given by the National Institute of Industrial Property may be referred to appeal in accordance with Article 38.

(7) The filing of an appeal shall not have a suspensive effect.

(8) If a license is granted, the National Institute of Industrial Property may authorize the licensee to postpone, by means of a request, the start of the working of the invention until the appeal has been the subject of a decision *res judicata*.

(Suspension of the Proceedings)

Art. 118.—(1) Once the compulsory license application has been filed, the National Institute of Industrial Property may take any action which it considers appropriate and which may be relevant to the respective decision.

(2) At the duly justified joint request of the license applicant and the patentee, the National Institute of Industrial Property may at any time and only once suspend the proceedings for a period of up to three months, at whatever stage they may be.

(3) After the suspension period, the National Institute of Industrial Property shall notify the parties and continue with the proceedings.

(Notification of Grant or Refusal to the Parties)

Art. 119. The grant of the license and the respective conditions of working or the refusal thereof shall be communicated to both parties by the National Institute of Industrial Property.

Section V Termination of the Patent

(Invalidity)

Art. 120.—(1) As well as the cases stipulated in Article 32, a patent shall be rendered null and void:

(a) if its subject matter does not meet the requirements of novelty, inventive step and industrial application;

(b) if the heading or title given to the invention covers different subject matter;

(c) if its subject matter is not described in such a way as to enable it to be carried out by those skilled in the art.

(2) One or more affected claims may be declared null and void or annulled, but the partial invalidity of a single claim cannot be declared.

(Lapse)

Art. 121. As well as the cases stipulated in Article 36, a patent shall lapse under the following circumstances:

(a) non-working or insufficient working of the invention over a period of two years following the grant of the first compulsory license as a result of non-working;

(b) non-working or insufficient working of the invention irrespective of whether or not a compulsory license has been granted, if the patentee is not covered by the terms of the Paris Convention.

Chapter II Utility Models

Section I General Provisions

(Subject of the Model)

Art. 122.—(1) New inventions which involve an inventive step and are susceptible of industrial application may be protected as utility models if they consist of giving an object a shape, structure, mechanism or layout which increases its utility or improves its conditions of use.

(2) In particular, utensils, instruments, tools, apparatus, devices or parts thereof, vessels and other objects which meet the requirements of the preceding paragraph may be protected as utility models.

(Exceptions to Protection)

Art. 123. Process inventions and objects falling under the scope of Articles 48 and 49 shall not be protected as utility models.

(Employees' Rights; Inventor's Rights)

Art. 124. The provisions of Articles 54 and 55 shall apply to utility models.

(Priority Right)

Art. 125.—(1) Any person who has duly filed in any of the countries of the Union an application for a utility model, patent, utility certificate or inventor's certificate, or his successor, shall enjoy, for the purpose of filing a utility model application in Portugal, the right of priority established in the Paris Convention for the Protection of Industrial Property.

(2) The provisions of paragraphs (2) to (9) of Article 56 shall apply to utility models.

(Provisions Applicable)

Art. 126. In the absence of provisions expressly applicable to utility models, the provisions established for patents for inventions shall apply, provided that they are not incompatible with utility model particularities.

Section II *Utility Model Procedure*

(National Route; Provisions Applicable)

Art. 127.—(1) The provisions of Articles 57, 58, 61 to 68 and 70 shall apply to utility model applications.

(2) The time limit stipulated in Article 63, paragraph (2) shall here be 12 months as from the date of the filing of the specification and drawings.

(International Route; Provisions Applicable)

Art. 128. With the exception of the provisions governing fees, the provisions of Articles 86 to 92 shall apply to utility models.

(Grounds for Refusal)

Art. 129.—(1) The model shall be refused:

(a) if its subject comes under any of the situations mentioned in Articles 48 and 49;

(b) if the heading or title of the model fraudulently covers a different subject, or if there are any differences between the specification and drawings and the respective duplicates;

(c) if the specification is drawn up in ambiguous or confusing terms, or if the invention is not explained in such a way that it may be worked by any person skilled in the art;

(d) if, by virtue of its specification and claims, it is considered to be a patent for invention or an industrial model;

(e) if it is found that the provisions of Article 124 have been infringed.

(2) In the case provided for in subparagraph (e) of the preceding paragraph, instead of the model being refused, its total or partial assignment to the interested party may be granted, if he so requests.

Section III *Effects of the Utility Model*

(Scope of Protection)

Art. 130.—The scope of protection conferred by the model shall be determined by the contents of the claims

and the specification and drawings shall be used to interpret them.

(Term)

Art. 131. The term of the utility model shall be 15 years as from the date of the respective application.

(Indication of the Model)

Art. 132. During the term of the model its proprietor may use on the products the words "*Registado*" ("Registered"), "*Modelo de utilidade n.º*" ("Utility model No.") or the abbreviation "*M. U. n.º*."

(Rights Conferred by the Model)

Art. 133. Articles 96, 97, 99 and 100 shall be applicable, with the necessary adaptations.

Section IV *Conditions of Use*

(Loss of the Model)

Art. 134. The provisions of Article 102 shall be applicable, with the necessary adaptations.

(Compulsory License)

Art. 135.—(1) The proprietor of the utility model shall be required to work the registered model, either directly or through a person he shall authorize, by means of its exploitation in Portuguese territory in such a way as to satisfy the needs of the national market.

(2) Proprietors of utility models who, without just reason or legal grounds, fail to work the model either directly or through a license agreement in any part of Portuguese territory or fail to do so in such a way as to satisfy national needs, for a period of four years after the filing of the application or three years after the grant of the model, whichever is the longer period, may be compelled to grant a license to work the utility model.

(3) Compulsory licenses shall be non-exclusive and shall be applied for at the National Institute of Industrial Property. The license applicant shall provide evidence giving grounds for the license application.

(4) When the National Institute of Industrial Property receives a compulsory license application, the proprietor of the utility model shall be notified in order that, within two months, he may make any observations and provide the respective evidence.

(5) The National Institute of Industrial Property shall assess the allegations made by the parties and the guarantees of the working of the invention furnished by the applicant of the compulsory license and shall decide whether or not the license shall be granted.

(6) If the compulsory license application is accepted, both parties shall be notified to name an expert who, together with an expert named by the National Institute of Industrial Property, shall discuss the conditions of the compulsory license and the compensation to be paid to the proprietor of the utility model.

(7) Any proprietor who ceases to work the model for a period of three consecutive years and without just reason or legal grounds may also be compelled to grant a license.

(8) In the case of two or more compulsory license applications, they shall be examined in the same order that they are filed at the National Institute of Industrial Property.

(9) While the compulsory license is in force, the proprietor of the model cannot be compelled to grant another license before the previous one has been canceled.

(10) The importation or sale in Portuguese territory of objects or products manufactured abroad shall not constitute working of the utility model.

(11) A compulsory license may only be assigned, even in the form of a sublicense, with the part of the company or establishment that works it.

(12) Importation by the licensee of the product protected by the model, even if it is obtained by a different process, shall determine the cancellation of the respective license.

(13) Compulsory licenses may also be canceled if the licensee does not work the utility model in such a way as to satisfy national needs.

(Appeal Against the Decision to Grant or Refuse a License)

Art. 136.—(1) The grant or refusal of a license and the respective conditions of working shall be communicated to both parties by the National Institute of Industrial Property.

(2) Under the provisions of Article 38 onwards, an appeal may be filed against the decision of the National Institute of Industrial Property to grant or refuse a license, or simply against the conditions under which such license was granted, within three months after the notification mentioned in this Article.

(3) The grant decision shall only take effect after it has become *res judicata* and has been recorded at the National Institute of Industrial Property, where the respective fees shall be paid in the same way as with an ordinary license.

(4) An extract of the record mentioned in the preceding paragraph shall be published in the Industrial Property Bulletin.

Section V *Termination of the Utility Model*

(Invalidity)

Art. 137.—(1) As well as the cases stipulated in Article 32, a utility model shall be rendered null and void:

(a) if the heading or title given to the invention covers a different subject;

(b) if the subject of the model is not described in such a way as to enable it to be worked by those skilled in the art.

(2) One or more affected claims may be declared null and void or annulled, but the partial invalidity of a single claim cannot be declared.

(Lapse)

Art. 138. As well as the cases stipulated in Article 36, a utility model shall lapse under the following circumstances:

(a) non-working or insufficient working of the model over a period of two years following the grant of the first compulsory license as a result of non-working;

(b) non-working or insufficient working of the model irrespective of whether or not a compulsory license has been granted, if the proprietor of the model is not covered by the terms of the Paris Convention.

Chapter III Industrial Models and Designs

Section I *General Provisions*

(Subject of the Model)

Art. 139.—(1) The following may be protected as industrial models: molds, shapes, patterns, reliefs, dies and other objects used as types in the manufacture of an industrial product, to define its shape, structure or ornamentation.

(2) For these models, only the geometric or ornamental shape shall be protected.

(Subject of the Design)

Art. 140. The following may be protected as industrial designs:

(a) figures, paintings, photographs, prints or any combination of lines, colors or lines and colors, whether ornamental or not, when applied to a product for commercial purposes by any manual, mechanical or chemical process;

(b) characters, types, typographical dies of any kind, printing plates in cardboard, metal or metal alloys and

engravings in wood or any other material to be used in the typographical printing of letters, numerals, musical notes or other signs, symbols, monograms, emblems, borders and fillets.

(Subject of Legal Protection)

Art. 141. Legal protection shall only be conferred on new models or designs or, if they are not completely new, those that are new combinations of known elements, or different arrangements of elements that are already in use giving the respective objects a distinct general appearance.

(Artistic Works)

Art. 142.—(1) The following shall not be considered as industrial models or designs: works of sculpture, architecture and painting, prints, enamels, embroidery, photographs and purely artistic designs.

(2) The provisions of the preceding paragraph shall not apply to reproductions made for industrial purposes by any processes that allow them to be easily copied in such a way that they lose the individuality characteristic of artistic works.

(Exceptions to Protection)

Art. 143. The following may not be registered:

- (a) models or designs which are incapable of practical application or which cannot be manufactured;
- (b) models or designs the use of which would be against the law or contrary to public order or morality;
- (c) models or designs which are devoid of novelty.

(Novelty)

Art. 144.—(1) A model or design shall be considered as new if, before the date of the respective application, it was not disclosed in Portugal or elsewhere in such a way as to be understood and worked by persons skilled in the art.

(2) The following shall not be considered as new:

- (a) a model or design which, in Portugal or elsewhere, has already been the subject of an earlier registration, even if it is null and void or has lapsed;
- (b) a model or design which has already been described in publications in such a way as to be understood and worked by persons skilled in the art;
- (c) a model or design which has been widely used or has come under public proprietorship in any way whatsoever.

(Non-Opposable Disclosures)

Art. 145.—(1) The following shall not prejudice the novelty of the model or design:

(a) communications made before scientific societies or professional technical associations or for the purpose of Portuguese or international competitions, exhibitions or fairs which are official or officially recognized in any country of the Union, if the respective application is filed in Portugal within six months;

(b) disclosures resulting from evident abuse regarding the creator or his successor by any title, or from publications made unduly by the National Institute of Industrial Property.

(2) The provisions of subparagraph (a) of the preceding paragraph shall only be applicable if the applicant declares, when filing the application, that the invention was actually disclosed in accordance with the terms stipulated therein.

(Right to the Model)

Art. 146.—(1) The right to the registration shall belong to the creator of the model or design or his successors in any title.

(2) If the creators of the model or design are two or more in number, the right to file the application for registration shall belong to the group as a whole.

(Employees' Rights)

Art. 147.—(1) Industrial models and designs created by private or State wage-earners or employees as part of their duties shall be considered to belong to the employer and shall be paid for by the respective salaries and, unless otherwise agreed, the models and designs cannot be filed or reproduced by such persons or in their name, under penalty if they are considered as usurpers or infringers, although they shall be entitled to be recognized as the creators of the industrial models or designs and have their names mentioned on the respective certificate.

(2) In cases other than those stipulated in the preceding paragraph, if the model or design falls within the scope of the activity of the company, the latter shall be entitled to assume proprietorship of the registration or to reserve the right to the exclusive or non-exclusive working of the model or design, the acquisition of the registration and the right to apply for or acquire a foreign registration.

(3) In the case provided for in the preceding paragraph, the creator shall be entitled to equitable remuneration, less the amount corresponding to any assistance supplied by the company in order to carry out the model or design.

(4) The creator shall inform the company of any applications that he has filed, within a period up to three months after the date that the model or design was considered as accomplished.

(5) Failure to meet the obligation mentioned in the preceding paragraph on the part of the creator shall lead to the loss of his rights in this respect.

(6) The company may exercise its rights within three months after receipt of the notification given by the creator.

(7) Acquisition of the right mentioned in the previous paragraphs shall be rendered null and void if remuneration is not paid in full within the specified period.

(8) If, in the event of paragraphs (2) and (3), the parties do not reach an agreement, the matter shall be resolved, in accordance with Decree-Law No. 31/86 of August 29, 1986, by a court of arbitration comprising one arbitrator appointed by the company, another by the creator of the model or design and a third by agreement or, in default thereof, by the presiding judge of the court of appeal of the judicial district in which the worker normally carries out his duties.

(9) For the purposes of the previous paragraphs, models or designs for which applications are filed within one year after the date on which the creator leaves the company shall be considered as having been carried out during the performance of the contract.

(Creator's Right)

Art. 148. If the registration is not applied for directly in the name of the creator, he shall have the right to be designated as such in the application and respective certificate.

(Priority Right)

Art. 149.-(1) Any person who has duly filed in any of the countries of the Union a utility model or industrial model or design application, or his successor, shall enjoy, for the purpose of filing the application in Portugal, the right of priority established in the Union of Paris Convention for the Protection of Industrial Property.

(2) The provisions of Article 56, paragraphs (2) to (8) shall apply to industrial models and designs.

Section II Registration Procedure

(Form of Application)

Art. 150. The provisions of Article 57 shall apply, with the following modifications:

(a) the heading or title shall designate the object to be registered or the purpose for which it is intended, as the case may be;

(b) the novelty attributed to the industrial model or design shall be mentioned.

(Documents to be Filed)

Art. 151. The documents stipulated in a decision given by the Minister responsible for the area of industry shall be attached to the application.

(Unity of the Application)

Art. 152.-(1) Applications may only be filed for a single registration and each model or design shall correspond to a different registration.

(2) Models or designs consisting of several parts all essential to form a whole shall be included in a single registration.

(3) Up to a maximum of ten models or designs may be included in a single registration provided that the objects, although different, have the same use.

(4) The model of an object and the design that will eventually be applied to it may be registered.

(5) Registered models and designs that have been enlarged or reduced to scale do not require a new registration.

(6) Differences in color or material do not require separate registrations.

(Publication of the Application and Rights Conferred)

Art. 153.-(1) When the application is filed at the National Institute of Industrial Property, the Institute shall proceed with the examination and classification thereof.

(2) Following the examination a report containing the examiner's opinion shall be drawn up.

(3) If the application fulfills the legal requirements stipulated, notice thereof shall be published in the Industrial Property Bulletin together with a reproduction of the industrial model or design.

(4) Notwithstanding the provisions of the following paragraph, the notice mentioned in the preceding paragraph shall not be published before the end of the twelfth month after the date on which the application was filed at the National Institute of Industrial Property, or after the date of the priority claimed.

(5) Publication may be brought forward at the express request of the applicant.

(6) After publication, any person may request a copy of the corresponding drawings or photographs.

(7) The provisions of Article 62, paragraphs (6) to (8) shall apply to industrial model and design applications, with the necessary adaptations.

(Examination Report)

Art. 154.-(1) If the application does not meet the legal requirements stipulated, the examination report shall be sent to the applicant, with notification to rectify the irregularities and submit the outstanding elements within two months.

(2) If the examiner decides from the applicant's reply that the application can be granted, he shall propose the

publication of the respective notice in the Industrial Property Bulletin.

(3) If the applicant does not reply to the notification or if the reply is considered insufficient by the examiner, he shall propose the refusal of the application and the publication of the respective notice in the Industrial Property Bulletin.

(Partial Grant)

Art. 155.—(1) If the examiner only requires the amendment of the title or heading or, in the specific case of industrial models or designs applied for under Article 152, paragraph (3), the elimination of certain objects in accordance with the notification, and if the applicant does not voluntarily proceed with these modifications, the examiner may effect them and therefore propose the grant of the respective model or design.

(2) If the examiner proposes the grant of the model or design, the respective notices to be published in the Industrial Property Bulletin shall indicate possible amendments to the heading or eliminated objects.

(3) Partial grant shall be such that the refused part does not exceed the scope of the observations made in the examination report.

(Oppositions)

Art. 156.—(1) The notices stating that the industrial model or design can be granted shall be published in the Industrial Property Bulletin so that those who consider themselves prejudiced may file oppositions.

(2) The oppositions shall be filed within two months after the date of publication of the Bulletin containing the notice.

(Publication)

Art. 157. The provisions of Article 67 shall be applicable, with the necessary adaptations.

(Grounds for Refusal)

Art. 158.—(1) Registration shall be refused:

(a) if it is intended for objects that are expressly declared as unable to be protected;

(b) if it is found that there is already an earlier model or design registration that may be confused with the application;

(c) if the registration is designed to obtain the protection granted to a registered trademark, in the event that it is not possible to obtain the respective registration by virtue of the grounds for refusal stipulated for this category, or if the model or design is already included in a trademark registered in the name of another for an identical or similar product;

(d) if, by virtue of the specification, the model is considered to be a patent for invention or a utility model;

(e) if it is found that the terms of Article 147 have been infringed.

(2) In the case provided for in subparagraph (e) of the preceding paragraph, instead of the registration being refused, its total or partial assignment to the interested party may be granted, if he so requests.

(Notification of Grant to the Applicant)

Art. 159.—(1) The applicant shall be notified of the grant of the registration, indicating the Bulletin in which notice thereof is to be published.

(2) In order to maintain the validity of the registration, the proprietor shall pay the respective fees.

Section III Effects of Registration

(Term)

Art. 160. The term of the registration shall be 25 years as from the date of the respective application.

(Indication of the Model or Design)

Art. 161. During the term of the registration the proprietorship may use on the products the words "*Registado*" ("Registered"), "*Modelo industrial nº.*" ("Industrial Model No."), "*Desenho industrial nº.*" ("Industrial Design No.") or the abbreviations "*M.L nº.*" or "*D.L nº.*", for models and designs respectively.

(Rights Conferred by a Registration)

Art. 162.—(1) A registration shall confer the right to exclusive use in any part of Portuguese territory, for the production, manufacture, sale or working of the object of the registration under the obligation to do so as a matter of fact and in accordance with the needs of the Portuguese economy.

(2) The provisions of Article 96, paragraphs (2) and (3), Article 97, Article 98, subparagraphs (b) to (d), Article 99 and Article 100 shall be applicable, with the necessary adaptations.

(Inalterability of Models and Designs)

Art. 163.—(1) During the term of a registration, the model or design shall remain unaltered under penalty of cancellation.

(2) Any alteration to the essential elements of models and designs shall always require a new registration.

Section IV
Invalidity of the Registration

(Invalidity)

Art. 164.—(1) As well as the cases stipulated in Article 32, a registration shall be rendered null and void:

(a) if the industrial model or design does not meet the requirements of novelty;

(b) if the heading or title given to the model or design covers a different subject.

(2) The registration of one or more objects included under the same registration may be declared null and void or annulled, but the partial invalidity of the registration in respect of a single object cannot be declared.

Chapter IV
Trademarks

Section I
General Provisions

Subsection I
Product or Service Marks

(Composition of a Trademark)

Art. 165.—(1) A trademark may consist of a sign or set of signs which are capable of being represented graphically, namely words, including personal names, designs, letters, numerals, sounds, the shape of the product or its packaging, and which are capable of distinguishing the products or services of one company from those of other companies.

(2) Trademarks may also consist of advertising slogans for products or services, irrespective of copyright, provided that they have distinctive character.

(Exceptions)

Art. 166.—(1) The following do not meet the requirements of the preceding Article:

(a) signs that consist exclusively of the shape resulting from the nature of the product itself, the shape of the product necessary for obtaining a technical result or the shape that gives the product its own substantial value;

(b) signs or indications that may be used commercially to designate the kind, quality, quantity, purpose, value, geographical origin, the time of production of the product or of rendering of the service, or other characteristics thereof;

(c) signs or indications that have become customary in current language or in *bona fide* and established commercial practices;

(d) colors, except when they are combined together or with graphics, wording or other elements in a particular and distinctive manner.

(2) The generic elements mentioned in subparagraphs (b) and (c) of the preceding paragraph that constitute part of the trademark shall not be for the exclusive use of the applicant, unless the signs have acquired in commercial practice distinctive character.

(Proprietorship of the Trademark and Exclusive Rights Thereto)

Art. 167.—(1) Any person who adopts a particular trademark to distinguish the products or services of an economic or professional activity, shall enjoy proprietorship of the trademark and exclusive rights thereto provided that legal stipulations, particularly those relating to registration, are complied with.

(2) The Portuguese State may also enjoy proprietorship of and exclusive rights to the trademarks that it uses provided that legal provisions are complied with.

(Right to the Registration)

Art. 168. The right to the registration shall belong to any person having a legitimate interest therein, namely:

(a) industrialists or manufacturers, to designate the products of their manufacture;

(b) traders, to designate the products of their trade;

(c) farmers and cattlemen, to designate products of agriculture, cattle breeding and, in general, any agricultural, zootechnic, forestry or extractive exploitation;

(d) craftsmen, to designate the products of their craft, trade or profession;

(e) any person who provides services, to designate the respective activity.

(Extension of the Right to the Registration)

Art. 169. The agent or representative of the proprietor of a trademark in the countries of the Union may apply for its registration with the authorization of the proprietor.

(Priority Right)

Art. 170.—(1) Any person who has duly filed an application for registration of a trademark, either in person or through a legal representative, in any country of the Union or at any intergovernmental body competent to register trademarks having effect in any of the countries of the Union, shall enjoy, for the purpose of filing the same application in Portugal, the right of priority established by the Paris Convention for the Protection of Industrial Property.

(2) Any application that is a regular national application, drawn up in accordance with the national law of each country of the Union or bilateral or multilateral treaties between member States, shall enjoy the right of priority.

(3) A regular national application shall mean any application effected in such a way as to establish the date on which it was filed in the country in question or at the competent intergovernmental body, irrespective of anything that may subsequently affect it in any way.

(4) Thus, an application subsequently filed in Portugal before the end of the period of priority may not be invalidated by events occurring during this time, namely by other applications, use of the trademark or any act carried out by third parties.

(Unregistered Trademark)

Art. 171.-(1) Any person who uses a free or unregistered trademark for a period not exceeding six months shall enjoy, during this period, a right of priority for effecting the registration thereof and may oppose applications filed by others during such period.

(2) The authenticity of documents filed as proof of this right of priority shall be freely examined, except in the case of authentic deeds.

Subsection II Collective Marks

(Definition of a Collective Mark)

Art. 172.-(1) A collective mark shall be understood to be an association mark or a certification mark.

(2) Signs or indications used commercially to designate the geographical origin of products or services may constitute collective marks.

(3) The registration of a collective mark shall also give its proprietor the right to control the marketing of the respective products, on the terms stipulated by law or in statutes.

(Association Mark)

Art. 173. An association mark is a specific sign belonging to an association of natural or legal persons whose members use or have the intention of using the sign for products or services.

(Certification Mark)

Art. 174.-(1) A certification mark is a specific sign belonging to a corporate body that controls the products or services or establishes the regulations that they must comply with.

(2) Such sign is to be used in respect of products or services which are subject to the aforementioned control or for which the regulations were established.

(Right to the Registration of Collective Marks)

Art. 175.-(1) The right to the registration of collective marks shall belong to:

(a) corporate bodies that have been legally granted or attributed a guarantee or certification mark and may apply it to specific and determined qualities of the products or services;

(b) corporate bodies that oversee, control or certify economic activities, to designate the products of these activities or products that come from certain regions, according to their uses and within the terms of the respective statutes or charters.

(2) The corporate bodies mentioned in subparagraph (b) of the preceding paragraph shall arrange for the inclusion, in the respective charters or their statutes, of provisions indicating the persons who are entitled to use the mark, the conditions under which it shall be used and the rights and obligations of the interested parties in the event of usurpation or infringement.

(3) Alterations to the charters or statutes that modify the system governing the collective mark shall be communicated within one month to the National Institute of Industrial Property by the management of the body that owns the mark.

(Provisions Applicable to Collective Marks)

Art. 176. The provisions of this Code covering product and service marks shall apply to collective marks, with the necessary adaptations.

Subsection III Base Marks

(Definition of a Base Mark)

Art. 177. A base mark is a mark that identifies the commercial or industrial origin of a series of products or services produced by a multi-activity company or a group of companies.

(Right to the Registration)

Art. 178.-(1) The right to the registration of a base mark shall belong to the multi-activity company or the group of companies that use it or intend to use it for their products or services.

(2) The bodies mentioned in the preceding paragraph shall arrange for the inclusion in the respective statutes of provisions relating to the right to use the mark, the conditions under which it shall be used and the rights and obligations of users in the event of usurpation or infringement.

(3) Decisions that modify the system governing base marks shall be communicated within one month to the National Institute of Industrial Property by the management of the body that owns the mark.

(Use of Base Marks)

Art. 179. Base marks may only be used when accompanied by a specific mark pertaining to each product or service.

(Provisions Applicable to Base Marks)

Art. 180. The provisions of this Code covering product and service marks shall apply to base marks, with the necessary adaptations.

Section II
Registration Procedure

Subsection I
National Registration

(Applications)

Art. 181.—(1) Applications for registration of trademarks shall be made by a request, drawn up in Portuguese on the appropriate printed form, containing or indicating:

- (a) the applicant's name, trade name or company name, nationality and residence or place of business;
- (b) the products or services covered by the trademark, grouped in accordance with the classes of the International Classification and specified using accurate terms, preferably the terms appearing in the alphabetical list contained in the aforementioned classification;
- (c) express mention that the mark is a collective or base mark;
- (d) express mention that the mark is a three-dimensional or sound mark;
- (e) the registration number of any award reproduced or mentioned in the trademark;
- (f) the colors used in the trademark, if they are claimed as a distinctive element;
- (g) graphic representation of the sounds or pieces of music contained in the trademark;
- (h) if the applicant wishes to claim the right of priority, the country, date and number of the first application;
- (i) two graphic representations of the trademark, if possible a photocopy or drawing, printed or glued in the space provided on the application form;
- (j) whether the trademark is industrial or commercial, if the applicant so desires.

(2) Applications for collective or base marks shall also indicate the legal or statutory provisions governing their use.

(3) The application shall be signed by the applicant or his legal representative.

(Elements Accompanying the Application)

Art. 182.—(1) The following documents, in duplicate, shall be attached to the application and shall meet the re-

quirements stipulated by a decision of the Minister responsible for the area of industry:

- (a) two graphic representations of the trademark;
- (b) a photoprint or any other support;
- (c) authorization of the proprietor of the foreign trademark for which the applicant is the agent or representative in Portugal;
- (d) authorization of any person other than the applicant whose name, trade name, company name, emblem or picture appears in the trademark;
- (e) authorization for the inclusion in the trademark of any flags, coats of arms, shields, escutcheons or emblems belonging to the State, municipalities or other Portuguese or foreign public or private bodies, badges, stamps or seals, being official, fiscal or of guarantee, private emblems or the name of the Red Cross or other similar organizations;
- (f) diplomas conferring any honor or other distinction that are mentioned or reproduced in the trademark and are not to be considered as awards in accordance with the express concept contained in the following chapter;
- (g) certificate issued by the competent register attesting to the right to include in the trademark the name of or any reference to a particular urban or rural property and the authorization of the proprietor to do so, if he is not the applicant;
- (h) authorization of the proprietor of an earlier registration and, if applicable, of the holder of an exclusive license provided that the contract does not stipulate otherwise, for the purposes of Article 189, paragraph (2).

(2) If the elements mentioned in subparagraphs (c) to (h) are not filed, the priority of the application shall not be lost.

(3) If the trademark contains inscriptions in little-known characters, the applicant shall file a transliteration thereof and, if possible, a translation of the inscriptions.

(Language to be Used for the Wording of Trademarks)

Art. 183.—(1) Wording included in trademarks shall be in Portuguese.

(2) Any term having the general appearance of a Portuguese word shall be considered as being worded in Portuguese.

(3) The terms of this Article shall not, however, prevent the use of Latin words.

(4) The terms of this Article and its paragraphs shall not apply to:

- (a) trademarks to be used simultaneously in Portugal and abroad, which may be worded in any language;
- (b) internationally registered trademarks and trademarks whose applicants are not resident or established in Portugal.

(5) Any person wishing to benefit from the provisions of subparagraph (a) of the preceding paragraph shall, within a non-extended period of 12 months after the date of the application filed in Portugal, present proof of having applied for the same registration in any other member State of the Paris Convention, under penalty of the refusal or lapse of the registration.

(Unity of Registration)

Art. 184. The same trademark designating the same product or service may only be the subject of one registration.

(Publication of the Application)

Art. 185.—(1) Notice of the filing of the application indicating the classification of the trademark shall be published in the Industrial Property Bulletin so that those who consider themselves prejudiced by the possible grant of the registration may file oppositions.

(2) It shall be the responsibility of the National Institute of Industrial Property to check the classification of the products and services in the respective classes, in accordance with the Nice Agreement, and to carry out any corrections required.

(Oppositions)

Art. 186. Oppositions shall be filed within two months after the date of publication of the Bulletin containing the application.

(Subsequent Formalities in the Procedure)

Art. 187.—(1) On the expiry of the opposition time limit or once the opposition proceedings have ended, an examination of the application shall be made by the National Institute of Industrial Property, consisting mainly and compulsory of the examination of the trademark under application, comparing it with trademarks registered for the same product or service or similar or like products or services, after which an opinion shall be given on the file and it shall be submitted for decision, which may be the grant, refusal or provisional refusal of the registration.

(2) The decision shall be given within 18 months after the date of publication of the Industrial Property Bulletin containing the application.

(3) Registration shall be granted if the examination does not reveal any grounds for refusal and any oppositions filed are considered to be groundless.

(4) Registration shall be refused if it is considered that the opposition is well-founded.

(5) Registration shall be provisionally refused if the examination reveals grounds for refusal and any oppositions filed are considered to be groundless.

(6) The applicant shall be notified immediately of the provisional refusal.

(7) The applicant shall reply to the notice of provisional refusal within two months, otherwise the refusal shall automatically become final.

(8) If, in view of the applicant's reply, the National Institute of Industrial Property considers that the refusal is groundless or that the objections raised have been rectified, a decision shall be given within 90 days after the filing of the reply, without prejudice to the provisions of Article 11, paragraph (7).

(9) If, in the light of the applicant's reply, there is no alteration in the assessment already made, the provisional refusal shall become final.

(10) The time limit stipulated in paragraph (7) may be extended once for the same period by a decision of the President of the National Institute of Industrial Property.

(11) The applicant shall be notified of the final decision of grant or refusal, indicating the Bulletin in which notice thereof is to be published.

(Grounds for the Refusal of a Registration)

Art. 188.—(1) Registration of trademarks shall be refused:

(a) if they consist of signs unable to be graphically represented;

(b) if they consist exclusively of signs or indications mentioned in Article 166, paragraph (1);

(c) if it is found that the provisions of Article 169 have been infringed.

(2) In the case provided for in subparagraph (c) of the preceding paragraph, instead of the registration being refused, its total or partial assignment to the proprietor may be granted, if he so requests.

(3) Registration of a trademark consisting exclusively of signs or indications mentioned in Article 166, paragraph (1), subparagraphs (b) and (c) shall not be refused if the trademark has acquired distinctive character.

(Other Grounds for Refusal)

Art. 189.—(1) Registration shall also be refused in the case of trademarks which violate the provisions of Articles 165, 168 and 183 or which, in any or all of their elements, contain:

(a) flags, coats of arms, shields and other emblems belonging to the State, municipalities or other Portuguese or foreign public bodies, without the respective authorization;

(b) badges, stamps or seals, being official, fiscal or of guarantee, in respect of trademarks intended for products or services identical or similar to those to which they are applied, unless authorization is obtained;

(c) heraldic insignia or escutcheons, medals, decorations, surnames, titles and distinctions of honor to which the applicant has no right or, when he has the right, if disrespect or discredit of a similar sign is caused;

(d) the emblem or name of the Red Cross or other bodies to which the Portuguese Government has granted the exclusive right to their use, unless special authorization is obtained;

(e) fancy medals or designs liable to be confused with official decorations or medals and awards conferred at official meetings and exhibitions;

(f) a trade name, company name or name or emblem of an establishment which does not belong to the applicant of the registration or which he is not authorized to use, or merely the characteristic part thereof, if it is liable to mislead or confuse consumers;

(g) personal names or pictures without the consent of the persons concerned or, if deceased, their heirs or relatives to the fourth degree or, when consent is obtained, if disrespect or discredit of such persons is caused;

(h) signs that infringe copyrights or industrial property rights;

(i) signs with symbolic meaning, namely religious symbols, unless authorization is obtained;

(j) expressions or figures that are contrary to morality or against Portuguese or Community law or public order;

(l) signs that are liable to mislead the public, namely as to the kind, qualities, purpose or geographical origin of the product or service designated by the trademark;

(m) a reproduction or imitation as a whole or in part of a trademark previously registered by another, for the same product or service or a similar or like product or service, which may mislead or confuse consumers.

(2) In order to obtain the grant of the registration of a trademark which is confusingly similar to a previously registered trademark and which would not mislead the public as to the quality of the product or service, it is necessary to obtain the authorization of the proprietor of such registration and, if applicable, the holder of an exclusive license, provided that the respective contract does not stipulate otherwise.

(Protection of Well-Known Trademarks)

Art. 190.—(1) Registration shall be refused in the case of trademarks which constitute, as a whole or essentially, the reproduction, imitation or translation of another trademark well known in Portugal to belong to a national of any of the member States of the Union, if it is applied to identical or similar products or services and is confusingly similar to such trademark.

(2) Parties interested in the refusal of the registrations mentioned in the preceding paragraph may only intervene in the respective proceedings after they have filed an application for registration of the trademark giving rise to and grounds for such interest.

(Protection of Trademarks of High Renown)

Art. 191. Without prejudice to the provisions of the preceding Article, registration shall also be refused if the trademark, even if it designates products or services which are not similar, is graphically or phonetically identical or similar to an earlier trademark enjoying high renown in Portugal or the European Community and whenever use of the later trademark unjustly intends to derive undue benefit from the distinctive character or prestige of the trademark or may prejudice these aspects.

(Partial Refusal)

Art. 192. When there are grounds for the refusal of a registration in respect of only some of the products or services included in the application, refusal shall cover these products or services only.

(Concept of Imitation)

Art. 193.—(1) A registered trademark shall be considered as being imitated or usurped by another trademark, as a whole or in part, when the following circumstances occur simultaneously:

(a) if the registered trademark has priority;

(b) if the trademarks are intended to designate identical products or services or products or services with obvious affinity;

(c) if they display graphic, figurative or phonetic similarity that is liable to easily mislead or confuse consumers or cause a risk of association with a previously registered trademark, so that consumers would only be able to distinguish the two trademarks by means of a careful examination or comparison thereof.

(2) Partial imitation or usurpation of a trademark may comprise the use of a particular fancy expression forming part of a trademark previously registered by another or merely the external appearance of the packaging or wrapping, with the respective colors and layout of wording, medals or awards, so that persons who are unable to interpret them cannot distinguish them from others adopted by holders of legitimately used trademarks, particularly those of international prestige or repute.

(Special Registration Process)

Art. 194.—(1) The applicant of a trademark registration of Portuguese nationality or with residence or place of business in Portugal who, in accordance with the terms of the Madrid Agreement concerning the international registration of trademarks and its Protocol, when ratified by Portugal, wishes to protect the same trademark in the States which are party or come to be party to this Agreement or Protocol, shall request in the application the early examination thereof.

(2) These applications shall be published in the Industrial Property Bulletin as urgently as possible in a spe-

cial section and the National Institute of Industrial Property shall examine the applications and give a decision thereon taking into account the period of priority.

(3) As from the publication of the Bulletin containing the application, there shall be a one-month period during which oppositions may be filed by those who consider themselves prejudiced by the possible grant of the registration.

(4) If the application is totally granted, the applicant shall proceed with the corresponding international application within one month after the date of the decision.

(5) If the international application is not filed within this time limit, the Portuguese national registration shall lapse.

(6) If the application is partially granted, the applicant may proceed with the international application in respect of the products protected, observing the provisions of paragraphs (4) and (5), or request that the application be republished in full in the Industrial Property Bulletin, followed by the procedural stipulations of Article 185, paragraph (1) and Article 186, remaining unaffected, the priorities to which the applicant is entitled.

(7) If it is considered that the application cannot be granted, the applicant may request that it be republished in the Industrial Property Bulletin, in accordance with the preceding paragraph.

(8) The republication of the application provided for in paragraphs (6) and (7) shall be requested within two months otherwise the decision shall be revoked or the file closed, as the case may be.

(9) The final decision of grant or refusal shall be communicated to the applicant indicating the Bulletin in which notice thereof is to be published.

(Declaration of Intention to Use)

Art. 195.—(1) Every five years, computed from the date of registration, except the years when renewal fees are due, a declaration of intention to use the trademark shall be filed at the National Institute of Industrial Property, without which it shall be presumed that the trademark is no longer in use.

(2) The declaration mentioned in the preceding paragraph shall be filed during the period of one year, which shall begin six months before and expire six months after the expiry of the respective five-year period.

(3) Trademarks for which no declaration is filed shall not be opposable to third parties and the lapse of the respective registration shall be declared at the request of any interested party or if third party rights are prejudiced during the grant proceedings in respect of other registrations.

(4) If the lapse of the registration is neither requested nor declared the registration shall once again be consid-

ered to be in force, on condition that the proprietor provides proof of use of the trademark.

(5) Even if proof of use of the trademark is not filed, renewal may be accepted, but the registration shall still be subject to the paragraphs (3) and (4).

(6) For international registrations, the time limit in which to file declarations of intention to use shall be computed from the date of the international registration.

(7) If an extension is granted after registration, this declaration cannot be required before the end of the fifth year after the date of the extension.

Subsection II International Registration

(Right to the Registration)

Art. 196.—(1) The proprietor of a trademark registration of Portuguese nationality or with his residence or place of business in Portugal may, in accordance with the terms of the Madrid Agreement concerning the international registration of trademarks, protect his trademark in the States which are party or become party to this Agreement.

(2) The applicant of a trademark registration of Portuguese nationality or with his residence or place of business in Portugal may, in accordance with the terms of the Protocol relating to the Agreement mentioned in the preceding paragraph, when ratified by Portugal, protect his trademark in the States which are party or become party to this Protocol.

(Application)

Art. 197. International applications shall be drawn up on the appropriate printed form and filed at the National Institute of Industrial Property, in accordance with the terms of the Agreement or the Protocol.

(Renunciation of the Registration)

Art. 198. The proprietor of an international registration may at any time renounce protection of his trademark, as a whole or in part, in one or more of the States where it is protected, by means of a simple declaration supplied to the National Institute of Industrial Property, to be communicated to the International Bureau.

(Modifications to the Registration)

Art. 199.—(1) The National Institute of Industrial Property shall notify the International Bureau of any modifications to Portuguese national trademarks which may have an effect on the international registration, for the purposes of inclusion in the latter, publication and notification of the contracting States that have granted protection to the trademarks.

(2) Requests for the assignment of trademarks to persons without legal capacity to obtain an international registration shall be rejected.

(Publication of the Application)

Art. 200. Notice of the application for protection in Portugal shall be published in the Industrial Property Bulletin so that those who consider themselves prejudiced by the possible grant of protection may file oppositions.

(Oppositions)

Art. 201. Oppositions shall be filed within two months after the date of publication of the Bulletin containing the notice.

(Procedural Formalities)

Art. 202.-(1) The provisions of Article 187, paragraphs (1) and (3) to (9) shall apply to international registrations.

(2) The subsequent steps in the procedure shall also be governed by the provisions that apply to Portuguese national registrations and the provisions of the Madrid Agreement and the Protocol.

(Refusal of the Registration)

Art. 203. Protection of international registrations in Portuguese territory shall be refused in the event of any of the grounds for the refusal of Portuguese national registrations.

Section III
Effects of the Registration

(Legal Presumption of the Registration)

Art. 204. Registration shall imply only legal presumption of the novelty or difference of the trademark in respect of previously registered trademarks.

(Term of the Registration)

Art. 205. The term of the registration shall be 10 years as from the date of the respective grant and shall be indefinitely renewable for equal periods of time.

(Indication of the Registration)

Art. 206. During the term of the registration, its proprietor may use on the products the words "*Marca registrada*" ("Registered mark"), the initials "M.R.," or simply the symbol "R" or ®.

(Rights Conferred by a Registration)

Art. 207. A registration shall confer upon its proprietor the right to prohibit third parties from using in their

economic activity, without his consent, any sign which is identical or confusingly similar to his trademark in relation to products or services that are identical or similar to those for which the trademark is registered, or any sign which, due to the identity or similarity of the signs or the affinity between the products or services, creates in the mind of the consumer a risk of confusion which includes a risk of association between the sign and the trademark.

(Scope of the Right)

Art. 208.-(1) The rights conferred by a registration shall not permit the proprietor to prohibit the use of the trademark for products marketed in the Community under the same trademark by the proprietor or with his consent.

(2) The provisions of the preceding paragraph shall not be applicable whenever there are legitimate reasons for the proprietor to oppose further marketing of the products, namely if the condition of the products is modified or altered after they have been put on the market.

(Limitation of the Rights Conferred by a Registration)

Art. 209. The right conferred by a registration shall not permit the proprietor to prohibit third parties from using any of the following in their economic activity, provided that such use is in accordance with honest practices and usage in industrial and commercial matters:

- (a) their own name and address;
- (b) indications concerning the kind, quality, quantity, purpose, value, geographical origin, the time of production of the product or of rendering of the service or any other characteristics of the products or services;
- (c) the trademark, where it is necessary to indicate the purpose of a product or service, namely as an additional or complementary item.

(Inalterability of Trademarks)

Art. 210.-(1) Trademarks shall remain unaltered and any change in their component elements shall require a new registration.

(2) This Article shall exclude simple modifications that do not prejudice the identity of the trademark and only affect its proportions, the material on which it is stamped, engraved or reproduced or the ink or color, if the color is not expressly claimed as one of the characteristics of the trademark.

(3) The inclusion or elimination of the express indication of the product or service for which the trademark is intended, or any modification concerning the residence or place where the proprietor is established, shall not prejudice the identity of the trademark.

(4) Word marks shall only be subject to the rules of inalterability as regards their component expressions and may be used with any device provided that it does not infringe third party rights.

Section IV
Assignment and Licenses

(Assignment)

Art. 211.—(1) Conveyance of the establishment shall imply the assignment of the application or proprietorship of the trademark, unless otherwise stipulated.

(2) The application or proprietorship of a registered trademark may be assigned separately from the establishment, provided that this does not mislead the public as to the origin of the product or service or the characters necessary for it to be understood.

(3) If the assignment is partial in respect of the products or services a copy of the file shall be requested, to be used as the basis for an independent registration, including the right to the certificate of registration.

(Limitations of the Assignment)

Art. 212. Trademarks registered in the name of bodies that oversee or control economic activities cannot be assigned, unless specially stipulated by law or in their statutes.

(Licenses)

Art. 213.—(1) The proprietor of a registration may invoke the rights conferred by the registration against any licensee who infringes any of the clauses of the contract, in particular with respect to the period of validity, the constitution of the trademark, the kind of products or services for which the license was granted, the delimitation of the area or territory or the quality of the products manufactured or services rendered by the licensee.

(2) An exclusive license agreement may allow the licensee to grant sublicenses.

Section V
Termination of the Trademark Registration or
Rights Derived Therefrom

(Annulment)

Art. 214.—(1) As well as the cases stipulated in Article 33, the registration may be annulled if the beneficiary has no right to the registration, namely:

(a) if the grant of the registration infringed provisions stipulating authorization or consent and this has not been given;

(b) if the registration was granted to the agent or representative of the proprietor of a trademark in one of the countries of the Union without the authorization of such proprietor.

(2) Parties interested in the annulment of registrations based on Article 190 shall apply for registration of the trademark on which the request for annulment is based.

(3) In the case provided for by paragraph (1), subparagraph (b) the proprietor may request at the National Institute of Industrial Property the assignment of the registration in his favor, instead of the annulment thereof.

(4) The registration cannot be annulled on the grounds mentioned in Article 33, paragraph (1), subparagraph (b) if the earlier trademark cited in opposition does not meet the requirements of serious use, in accordance with Article 216, paragraph (5).

(5) Annulment actions may be brought within 10 years after the date of the grant of the registration, without prejudice to the provisions set forth hereunder.

(6) There is no time limit in respect of the right to request the annulment of a trademark registered in bad faith.

(Limitation in Consequence of Acquiescence)

Art. 215.—(1) Where the proprietor of a registered trademark has acquiesced, for a period of five consecutive years, in the use of a later registered trademark while being aware of such use, he shall no longer be entitled on the basis of his earlier trademark, to request the annulment of the later trademark registration or oppose the use thereof in respect of the products and services for which the later trademark has been used, unless registration of the later trademark was effected in bad faith.

(2) The five-year period stipulated in the preceding paragraph is for lapse and shall be computed from the time when the proprietor took knowledge or should have taken knowledge of the fact.

(3) The proprietor of the later registered trademark shall not be entitled to oppose the earlier right, even though the earlier right may no longer be invoked against the later trademark.

(Lapse)

Art. 216.—(1) As well as the cases stipulated in Article 36, the registration shall lapse:

(a) if the trademark is not put to serious use over a period of five consecutive years, without just reason and without prejudice to the provisions of paragraphs (5) to (9);

(b) if the trademark is modified in such a way as to prejudice its identity.

(2) The registration shall also lapse if, after the date of registration:

(a) the trademark becomes the usual designation in commerce for the product or service for which it was registered, as a result of the activity or inactivity of the proprietor;

(b) the trademark becomes liable to mislead the public, namely as to the kind, quality and geographical origin of the products or services, as a result of use thereof by the proprietor of the trademark or by a third party with

the consent of the proprietor, for the products or services for which it was registered.

(3) A collective mark registration shall also lapse:

(a) if the corporate body in whose name the mark was registered ceases to exist;

(b) if such corporate body permits the mark to be used in a manner contrary to its general purposes or statutory provisions.

(4) A base mark registration shall lapse if the base mark is used without the specific mark.

(5) The following shall be deemed to be serious use of the trademark:

(a) exportation of products or services;

(b) use of the trademark that differs from the form in which it was registered only in respect of elements which do not modify the distinctive character of the mark.

(6) Use with the consent of the proprietor shall be considered as use of a collective mark.

(7) Use made by a qualified person shall be considered as use of a certification mark or a guarantee mark.

(8) The registration shall not lapse if serious use of the trademark has been started or resumed before the lapse action is filed.

(9) The commencement or resumption of use during the three months immediately preceding the filing of the lapse action, as from the end of the uninterrupted five-year period of non-use, shall, however, be disregarded where preparations for the commencement or resumption of use occur only after the proprietor becomes aware that a lapse action may be filed.

(10) The period mentioned in paragraph (1), subparagraph (a), shall commence upon registration of the trademark, which in the case of international trademarks shall be the date of registration at the International Bureau.

(11) If there are grounds for the lapse of the registration in respect of only some of the products or services for which the registration was effected, cancellation shall only cover these products or services.

Chapter V Awards

Section I General Provisions

(Registrable Awards)

Art. 217. The following shall be considered as awards:

(a) decorations of merit conferred by the Portuguese Government or by foreign governments;

(b) medals, diplomas and prizes in money or of any other nature obtained at official or officially recognized exhibitions, fairs and competitions held in Portugal or abroad;

(c) diplomas and certificates of analysis or commendation issued by Portuguese State departments or laboratories or other competent bodies;

(d) titles of supplier to the Portuguese Head of State, Government or other Portuguese or foreign official establishments or organizations;

(e) any other prizes or demonstrations of preference of an official character.

(Conditions Governing the Indication of Awards)

Art. 218.-(1) Unregistered awards may not be added to any trademark or name or emblem of establishment.

(2) Awards may not be applied to products or services other than those for which they were conferred.

(Proprietorship of Awards)

Art. 219. Awards of any kind granted to industrials, traders, farmers and other businessmen shall constitute their own property.

Section II Registration Procedure

(Application)

Art. 220. Award applications shall be made by a request, drawn up in Portuguese on the appropriate printed form, indicating:

(a) the applicant's name, trade name or company name, nationality and residence or place of business;

(b) the awards to be registered, the bodies that conferred them and the respective dates;

(c) the products or services in respect of which the awards were conferred;

(d) name of establishment to which the award relates, as a whole or in part.

(Elements Accompanying the Application)

Art. 221.-(1) The award application shall be accompanied by originals or certified photocopies of the diplomas or other documents attesting to the grant thereof.

(2) Proof of the grant of the award may also be provided by means of a duly legalized copy of the official publication in which the award was conferred or published, or merely the part necessary and sufficient for identification thereof.

(3) The National Institute of Industrial Property may request Portuguese translations of diplomas or other documents drawn up in foreign languages.

(4) Award registrations shall imply the prior registration of the name of establishment.

(5) Notice of the filing of the application and the respective decision shall be published in the Industrial Property Bulletin.

(Refusal of the Registration)

Art. 222. Registration of awards shall be refused:

(a) if, by their very nature, they do not come under any of the categories stipulated in the present statute;

(b) if it is proven that they have been applied to products or services other than those for which they were conferred;

(c) if proprietorship thereof is assigned without the establishment or respective part thereof;

(d) if it is shown that the award has been revoked or does not belong to the applicant.

(Return of Documents)

Art. 223.-(1) On the expiry of the time limit for appealing against the grant or refusal of the registration, the diplomas or other documents contained in the file shall be returned to the applicant upon request and shall be substituted in the file by certified photocopies.

(2) The return of documents to applicants shall be done by means of a receipt to be attached to the file.

Section III Use and Assignment

(Indication of Awards)

Art. 224. The use of legitimately obtained awards shall be permitted without registration, but the term "*Recompensa registada*" ("Registered award") or the abbreviations "R.R.", "RR" or RR may only be used with references thereto or copies thereof after such registration has been effected.

(Legal Formalities and Record of the Registration)

Art. 225. Assignment of the proprietorship of awards shall be effected in accordance with the legal formalities required for the assignment of the property to which they relate.

Section IV Termination of Award Registrations

(Annulment)

Art. 226. The registration may be annulled if the right to the award is annulled.

(Lapse)

Art. 227.-(1) Registration shall lapse if the grant of the award is revoked or canceled by any person having legal capacity to do so.

(2) The lapse of the registration shall extinguish the right to use the award.

Chapter VI Names and Emblems of Establishment

Section I General Provisions

(Right to Names and Emblems)

Art. 228. Any person having a legitimate interest, namely farmers industrialists, breeders, traders and other businessmen resident or established in any part of Portuguese territory, shall have the right to adopt a name or emblem to designate or make known their establishment, in accordance with the provisions set forth hereunder.

(Composition of Names of Establishment)

Art. 229. Names of establishment may consist of:

(a) fancy or specific designations;

(b) historical names, with the exception of those the use of which would be detrimental or offensive to the esteem in which such names are generally held;

(c) the name of the property or premises of the establishment, when this is admissible or when accompanied by a distinctive element;

(d) the name, trade name, company name, pseudonym or coined name of the proprietor.

(Composition of Emblems of Establishment)

Art. 230.-(1) An emblem of establishment may consist of any external sign composed of figures or designs, alone or combined with the names or designations mentioned in the preceding Article or other words or devices, provided that the whole constitutes a specific form or configuration as a distinctive and characteristic element.

(2) The ornamentation of frontages and the parts of shops, warehouses or factories exposed to the public, as well as the colors of a flag, may constitute emblems that perfectly distinguish the respective establishment.

(Exceptions to Protection)

Art. 231.-(1) The following may not form part of names or emblems of establishment:

(a) any personal name, trade name or company name that does not belong to the proprietor of the establishment, unless consent or the legitimate use thereof is proven;

(b) expressions such as "former warehouse," "former company," "former factory" and other similar terms referring to an establishment whose name or emblem is registered in the name of another, unless the consent of the respective proprietor is proven;

(c) expressions such as "former employee," "former proprietor," "former manager" and other similar terms referring to another individual person or corporate body, unless the consent of the latter is proven;

(d) indications of relationship and the terms "heir," "successor," "representative" or "agent" and other similar terms, unless the legitimate use thereof is proven;

(e) the contents of Article 188, paragraph (1) and Article 189 in respect of trademarks;

(f) elements constituting a trademark or industrial model or design protected by another for products manufactured or sold in the establishment for which the name or emblem is intended;

(g) names, designations, figures or designs that constitute a reproduction or imitation of a name or emblem already registered by another in Portuguese territory;

(h) words or phrases in a foreign language other than simple geographical designations, unless the establishment belongs to nationals of the respective country;

(i) designations such as "national," "Portuguese," "luso-," "lusitanian" and other terms with a similar meaning, if the establishment does not belong to an individual person or corporate body of Portuguese nationality.

(2) Authorization to use names, symbols or other such elements shall be considered as assignable by legal succession, unless expressly restricted.

(3) The provision of paragraph (1), subparagraph (g) shall not prevent two or more persons with identical surnames from including them in the name or emblem of the respective establishment, provided that they are perfectly distinguishable.

(Rights Conferred by Names and Emblems)

Art. 232. Proprietorship and exclusive use of names and emblems of establishment shall be guaranteed by their registration, without prejudice to the provisions of Article 8 of the Paris Convention.

Section II Registration Procedure

(Name and Emblem Applications)

Art. 233.—(1) Name of establishment applications shall be made by a request, drawn up in Portuguese, on the appropriate printed form, indicating:

- (a) the name, trade name or company name, nationality, residence and place of business of the proprietor;
- (b) the name to be registered.

(2) Emblem of establishment applications shall be made by a request, drawn up in Portuguese, on the appropriate printed form, indicating:

- (a) the name, trade name or company name, nationality, residence and place of business of the proprietor;
- (b) two graphic representations of the emblem, if possible a photocopy or drawing, printed or glued in the space provided on the application form.

(3) Emblem registrations that include references to any awards shall require the latter to be registered.

(4) Registered names or emblems may be used on other establishments by the same proprietor, with or without registration.

(Elements Accompanying the Application)

Art. 234. The following documents, in duplicate, shall be attached to the application and shall meet the requirements stipulated by a decision of the Minister responsible for the area of industry:

- (a) certificate issued by the land registry or any other document attesting that the applicant is the legal proprietor of the establishment;
- (b) document attesting that the applicant owns the establishment in fact and not as a matter of form, unless the establishment is an agricultural property;
- (c) a photoprint or other support;
- (d) two graphic representations of the emblem;
- (e) documents attesting to any authorization or justification required.

(Publication of the Application)

Art. 235. Notice of the filing of the application shall be published in the Industrial Property Bulletin so that those who consider themselves prejudiced by the possible grant of the registration may file oppositions.

(Opposition Time Limit)

Art. 236. Oppositions shall be filed within two months from the date of publication of the Bulletin containing the application.

(Subsequent Formalities of the Procedure)

Art. 237. On the expiry of the opposition time limit or once the opposition proceedings have ended, the application shall be studied, whereby the name or emblem shall be examined and compared with names and emblems that have already been registered, after which an opinion shall be given on the file and it shall be submitted for decision.

(Refusal of the Registration)

Art. 238. Registration of names or emblems that infringe any of the express prohibitions of Article 231 shall be refused.

(Modifications to Names or Emblems)

Art. 239. Applications for registration of any modifications to names or emblems liable to prejudice the identity thereof shall be dealt with in accordance with the terms of the previous provisions.

Section III
Use and Assignment

(Indication of the Name or Emblem)

Art. 240. During the term of the registration, the proprietor of the name or emblem has the right to add thereto the designation "*Nome registado*" ("Registered name") or "*Insignia registada*" ("Registered emblem"), the initials "N.R." or "L.R." or simply "NR" or "IR" or NR or IR.

(Inalterability of Names and Emblems)

Art. 241.—(1) During the term of the exclusive right and under penalty of lapse, the composition or form of names and emblems of establishment shall remain unmodified, but the materials of which they are made or to which they are applied and their position on the establishment may be changed.

(2) The inalterability of names and emblems shall not be affected by additions, eliminations or other modifications which simply concern the assignment of the proprietorship of the establishment, a change of premises or any other legitimate cause.

(3) The inalterability of names shall also be subject to the provisions applicable to word marks under Article 210, paragraph (4).

(Term)

Art. 242. The term of the registration shall be 20 years as from the date of the respective grant and can be renewed indefinitely for equal periods of time.

(Record of Assignment)

Art. 243. Assignment of the proprietorship of names or emblems shall be effected in accordance with the legal formalities necessary for the assignment of the establishment to which they relate.

(Annulment)

Art. 244. As well as the cases stipulated in Article 33, the registration may be annulled if in the grant thereof the provisions requiring authorization or consent were infringed.

(Lapse)

Art. 245. As well as the cases stipulated in Article 36, name or emblem registrations shall lapse:

(a) if the respective establishment is closed or goes into liquidation;

(b) if the name or emblem is not used over a period of five consecutive years;

(c) if the name or emblem is modified in such a way as to prejudice its identity.

Chapter VII
Logos

(Composition of Logos)

Art. 246. Compositions consisting of letters that may or not be associated to drawings shall be considered as logos, provided that the whole constitutes a specific form or configuration as a distinctive and characteristic element suitable for indicating any body that renders services or offers products.

(Right to Logos)

Art. 247. Any public or private individual or collective body with legitimate interest shall be entitled to apply for the registration of a logo.

(Rules Applicable)

Art. 248.—(1) All the provisions of this Code applicable to emblems shall apply to logos with the necessary adaptations.

(2) In order to prove the existence in fact and not as a matter of form of the body to be designated by the logo and justify the elements contained therein or the accompanying expressions, any suitable document may be used.

Chapter VIII
Appellations of Origin
and Geographical Indications

Section I
General Provisions

(Definition and Proprietorship)

Art. 249.—(1) An appellation of origin shall be considered to be the name of a region, a specific locality or in exceptional cases a country used to designate or identify the following types of products:

(a) products originating from the region, specific locality or country in question;

(b) products the quality or characteristics of which are essentially or exclusively due to the geographical environment, including natural and human factors, and the production, transformation and creation of which are carried out in the demarcated geographical area.

(2) Appellations of origin may also include certain traditional designations, whether geographical or not, indicating a product which comes from a region or specific locality and which meets the requirements stipulated in subparagraph (b) of the preceding paragraph.

(3) A geographical indication shall be considered to be the name of a region, a specific locality or in exceptional cases a country used to designate or identify the following types of products:

(a) products originating from the region, specific locality or country in question;

(b) products the reputation, specific quality or other characteristics of which may be attributed to such geographical region and/or the production, transformation and creation of which are carried out in the demarcated geographical area.

(4) An appellation of origin and geographical indication, when registered, shall constitute the common property of the residents or persons who are actually and seriously established in the locality, region or territory and may be used indiscriminately by persons who, in the respective area, work any field of characteristic production.

(5) The exercising of this right shall not depend on the extent of the working or the nature of the products, and the appellation of origin or geographical indication may thus be applied to any characteristic product originating from the locality, region or territory, under traditional and usual or duly regulated conditions.

(Regional Demarcation)

Art. 250. If the boundaries of the locality, region or territory to which a particular appellation or indication belongs have not been demarcated in a legal statute and if no other method has been provided for this purpose, the boundaries shall be declared by the officially recognized bodies responsible for the respective area and field of production, which shall take into consideration *bona fide* and established practices, in conjunction with the higher interests of national or regional economy.

(Rights Conferred by the Registration)

Art. 251.-(1) The appellation of origin or geographical indication registration shall confer the right to prohibit:

(a) the use by third parties, in the designation or presentation of a product, of any sort of indication or suggestion that the product in question originates from a geographical region other than the true place of origin in such a way as to mislead the public as to the geographical origin of the product;

(b) any use that constitutes an act of unfair competition, within the terms of Article 10bis of the Paris Convention (1967).

(2) Words constituting a legally defined, protected and monitored appellation of origin or geographical indication may not include in any form designations, tags, labels, advertisements or any other documents concerning products that do not originate from the respective demarcated regions.

(3) This prohibition shall be applicable even if the true origin of the products is mentioned or if the words constituting the appellation or indication are accompanied by qualifiers such as "kind," "type," "quality," "rival of," "superior to" or a specific indication of the region; this shall also apply to the use of any expression, display or graphic combination liable to confuse the consumer.

(4) The terms of the previous paragraphs shall not prevent the seller from applying his name, address or trademark on the products originating from a region or country different from the one where the products are sold. However, in such cases the trademark of the producer or manufacturer shall not be removed.

Section II Registration Procedure

Subsection I National Registration

(Application and Registration)

Art. 252.-(1) Applications for appellations of origin or geographical indications shall be made by a request, drawn up in Portuguese on an appropriate printed form, indicating:

(a) the name of the individual persons or corporate bodies, public or private, with capacity to acquire the registration;

(b) the name of the product or products, including the appellation of origin or geographical indication;

(c) the traditional conditions or regulations for use of the appellation or the indication and the boundaries of the respective locality, region or territory.

(2) Where applicable, the grant procedure shall be the same as for the registration of names of establishment.

(3) The certificate of registration shall be drawn up in the name of the applicant body.

(Refusal of the Registration)

Art. 253. Registration of an appellation of origin or geographical indication shall be refused:

(a) if it was applied for by a party without legal capacity to acquire it;

(b) if it cannot be considered as being an appellation or indication, in accordance with the terms of Article 249;

(c) if it constitutes a reproduction or imitation of a previously registered appellation or indication;

(d) if it is liable to mislead the public, namely as to the nature, quality and geographical origin of the respective product;

(e) if it violates industrial property rights or copyright, is against the law, public order or morality or if it may encourage acts of unfair competition.

Subsection II International Registration

(Application Format)

Art. 254.-(1) The bodies mentioned in Article 252, paragraph (1), may only apply for international registrations for their appellations of origin in accordance with the provisions of the Lisbon Agreement of October 31, 1958.

(2) Applications for international registrations shall be filed at the National Institute of Industrial Property, in accordance with the provisions of the Lisbon Agreement.

(3) The protection of appellations of origin registered under the Lisbon Agreement shall be subject to the provisions governing the protection of appellations of origin in Portugal, insofar as this does not violate the terms of the Agreement.

Section III Effects and Cancellation of the Registration

(Term of the Registration)

Art. 255.-(1) Appellations of origin and geographical indications shall be of unlimited duration and the proprietorship thereof shall be protected by the application of the provisions against false indications of origin, irrespective of the registration and whether or not it forms part of a registered trademark.

(2) During the term of the registration, the following wording may be used on the products for which the respective use is authorized:

(a) "*Denominação de origem registada*" ("Registered appellation of origin"), "*Denominação de origem protegida*" ("Protected appellation of origin"), "DOR" or "DOP";

(b) "*Indicação geográfica registada*" ("Registered geographical indication"), "*Indicação geográfica protegida*" ("Protected geographical indication"), IGR or IGP.

(Lapse)

Art. 256.-(1) A registration shall lapse at the request of any interested party if, by virtue of *bona fide*, traditional and established commercial practices, the appellation of origin or geographical indication becomes a

simple generic designation for a manufacturing system or a particular type of product known exclusively by such appellation or indication.

(2) Wine products, medicinal mineral waters and other products with a geographical appellation of origin covered by special protective and supervisory legislation in the respective country shall be exempt from the provisions of this Article.

PART III INFRINGEMENTS

Chapter I Infringements Against Industrial Property

Section I General Provisions

(Industrial Property Guarantees)

Art. 257. Industrial property shall have the guarantees established under Portuguese law for property in general and shall be specially protected in accordance with the terms of the present statute and other laws and conventions in force.

(Subsidiary Right)

Art. 258. The rules laid down in Decree-Law No. 28/84 of January 20, 1984 shall apply subsidiarily insofar as they do not violate the provisions of this Code, namely in respect of the criminal liability and liability for unlawful acts on the part of corporate bodies and liability incurred by acting in the name of another.

(Possibility of Inspection)

Art. 259. The inspection of products and services in defense of industrial property rights may be carried out at any stage and in all sectors of the production process, including the public sector.

Section II Criminal Offenses

(Unfair Competition)

Art. 260. Any person who commits an act of competition contrary to honest practices and usage in any field of activity, with the intention of causing damages to another or for the illegal benefit of himself or a third party, shall incur a prison sentence of up to three years or a fine accumulating for up to 360 days, namely:

(a) acts liable to cause confusion with the establishment, products, services or credit of competitors, whatever the means employed;

(b) false statements made during the course of trade or industry, for the purpose of discrediting the establishment, products, services or reputation of competitors;

(c) unauthorized statements or references made in respect of a name, establishment or trademark belonging to another;

(d) false indication of one's own credit or reputation as regards the capital or financial situation of the establishment, the nature or scope of its activities and business and the quality or quantity of its clientele;

(e) deceptive advertising and false specifications or indications in respect of the nature, quality and utility of products or merchandise;

(f) false indications of origin, locality, region or territory, factory, workshop, property or establishment, whatever the means employed;

(g) use of registered appellations of origin or fancy names, when not in accordance with traditional, usual or statutory provisions;

(h) suppression, concealment or modification, on the part of the seller or any intermediary, of the appellation of origin of the products or registered trademark of the producer or manufacturer on products which are intended for sale and the packaging of which has not been modified;

(i) illegal appropriation, use or disclosure of industry or trade secrets belonging to another.

(Violation of the Exclusive Rights to the Invention)

Art. 261. A prison sentence of up to three years or a fine accumulating for up to 360 days shall be incurred by any person who prejudices the patentee in the exercising of his rights, with the intention of causing damages to another or for the illegal benefit of himself or third parties, by:

(a) manufacturing, without a license from the patentee, the articles or products protected by the patent;

(b) employing or applying, without such license, the methods or processes protected by the patent;

(c) importing, selling, putting on sale or into circulation or concealing in bad faith products obtained in any of the ways mentioned above.

(Patent Obtained in Bad Faith)

Art. 262.—(1) Any person who, in bad faith, obtains the grant of a patent for an invention which does not legitimately belong to him or which does not differ essentially from another earlier invention shall incur a prison sentence of up to one year or a fine accumulating for up to 120 days.

(2) In the event of the circumstances of Article 33, paragraph (1), subparagraph (b), the court shall officially revoke the patent in the decision convicting the respective party of the crime stipulated in the present Article.

(3) Any person who sells, puts on sale or conceals objects manufactured or obtained through the working of

a patent conferred under the circumstances mentioned in paragraph (1), in the knowledge thereof, shall incur a prison sentence of up to one year or a fine accumulating for up to 120 days.

(Violation of the Exclusive Rights Conferred by Models and Designs)

Art. 263. A prison sentence of up to three years or a fine accumulating for up to 360 days shall be incurred by any person who, obtaining illegal benefits or intentionally causing damages to another:

(a) produces, manufactures or uses the object protected by a utility model without a license from the proprietor thereof;

(b) imports, conceals, sells, puts on sale or puts into circulation the products obtained by the means indicated in the preceding subparagraph;

(c) reproduces or imitates an industrial model or design as a whole or in any of its characteristic elements without the consent of the proprietor thereof;

(d) works, introduces into Portugal, sells, puts on sale or puts into circulation the objects protected by a reproduced or imitated model or design;

(e) works a registered model or design belonging to another.

(Counterfeiting, Imitation and Illegal Use of Trademarks)

Art. 264. A prison sentence of up to two years or a fine accumulating for up to 240 days shall be incurred by any person who, with the intention of causing damages to another or for obtaining illegal benefits:

(a) totally or partially counterfeits or in any way reproduces a registered trademark, without the consent of the proprietor;

(b) imitates a registered trademark, as a whole or in any of its characteristic elements;

(c) uses counterfeit or imitated trademarks;

(d) uses, infringes or imitates well-known trademarks or trademarks of high renown whose registration has been applied for in Portugal;

(e) displays on his products a registered trademark belonging to others;

(f) uses his registered trademark on products belonging to others in such a way as to deceive the consumer as to the origin of the products.

(2) Any person who sells, puts on sale or puts into circulation products or articles with a trademark that is counterfeit, imitated or used under the circumstances mentioned in the preceding paragraph, in the knowledge thereof, shall incur a prison sentence of up to one year or a fine accumulating for up to 120 days.

(Preparatory Acts)

Art. 265. Any person who, with the intention of preparing to commit the acts mentioned in paragraph (1) of

the preceding Article, manufactures, imports, acquires or keeps for himself or another signs that constitute registered trademarks shall incur a prison sentence of up to one year or a fine accumulating for up to 120 days.

(Increased Penalty)

Art. 266. The penalties stipulated in Articles 260 to 265 shall be increased by a third in respect of their minimum and maximum limits if the offenses are committed by an employee or former employee of the injured party or with the complicity thereof.

(Illegal Reference to or Use of Awards)

Art. 267. A prison sentence of up to one year or a fine accumulating for up to 120 days shall be incurred by any person who, with the intention of causing damages to another or obtaining illegal benefits:

(a) refers to or mentions an award registered in the name of another;

(b) uses or falsely claims to be the holder of an award which was not granted to him or which has never existed;

(c) uses designs or any indication imitating awards to which he has no right, in correspondence or advertising matter, on the signboards, frontages or windows of his establishment or in any other way.

(Violation of Rights Conferred by Names and Emblems)

Art. 268.—(1) A prison sentence of up to one year or a fine accumulating for up to 120 days shall be incurred by any person who, with the intention of causing damages to another or for the illegal benefit of himself or third parties:

(a) falsely claims to possess an establishment in order to obtain the registration of a name or emblem, for the sole purposes of speculation or unfair competition;

(b) uses on his establishment, in advertisements or correspondence or in any other manner, a name or emblem which is a reproduction or which constitutes an imitation of a name or emblem already registered by another for an establishment situated in Portuguese territory.

(2) Article 193 of this Code shall be correspondingly applicable for defining imitation of a name or emblem.

Section III
Unlawful Acts

(Use of Illicit Trademarks)

Art. 269. A fine of between 50,000 and 500,000 escudos shall be incurred by any person who, with the intention of causing damages to another or for the illegal benefit of himself or third parties commits any of the following acts. This fine shall be between 600,000 and 6,000,000 escudos in the case of corporate bodies:

(a) infringement of the provisions of Article 189 by wrongfully using in a trademark any of the signs mentioned in subparagraphs (a) to (g) of such Article;

(b) use of trademarks containing expressions or figures that are against the law, public order or morality;

(c) use of trademarks with false indications as to the origin or nature of the products;

(d) sale or putting on sale of products or articles with trademarks prohibited by the previous paragraphs.

(Failure to Use Compulsory Trademarks)

Art. 270. Any person who manufactures, markets or imports products or renders services without a trademark when a trademark is compulsory for these products or services shall incur a fine of between 20,000 and 400,000 escudos. This fine shall be between 200,000 and 4,000,000 escudos in the case of corporate bodies.

(Undue Use of Names or Emblems)

Art. 271. Any person who illegitimately uses in his name or emblem of establishment, whether registered or not, the expressions, names or figures mentioned in Article 231, paragraph (1), subparagraphs (a) to (f) shall incur a fine of between 20,000 and 300,000 escudos. This fine shall be between 200,000 and 3,000,000 escudos in the case of corporate bodies.

(False Reference to or Undue Use of Private Rights)

Art. 272. A fine of between 40,000 and 400,000 escudos shall be incurred by any person or between 500,000 and 5,000,000 escudos in the case of any corporate body that:

(a) claims, in any manner, to be the holder of any of the industrial property rights stipulated in this statute, when such rights do not belong to him, have been declared null and void or have lapsed;

(b) unduly uses or applies the indications of registration authorized only to the holders of such rights by Articles 95, 132, 161, 206 and 240;

(c) uses, as holder of an industrial property right, such right for products or services other than those that the registration protects.

Section IV
Procedure

(Assistants)

Art. 273. Apart from the persons entitled under Portuguese Criminal Procedure Law to act as prosecutors, employers, syndicates and legally created interested associations shall have legal capacity to intervene as prosecutors in the criminal proceedings provided for under this Code.

(Seizure at Customs)

Art. 274.—(1) Any products or merchandise which directly or indirectly bear false indications or appellations of origin or trademarks or names that are illegally used or applied or display evidence of an offense stipulated in this Code, shall be seized by Customs during the act of importation or exportation.

(2) Seizure shall be carried out on the initiative of the actual customs authorities, which shall immediately inform the interested party, whether an individual person or a corporate body, allowing such party to rectify the object of the preventive seizure, without prejudice, however, to liabilities that have already been incurred.

(3) The seizure may subsequently be confirmed or requested by the competent judicial authority, at the instigation of the Portuguese Public Prosecutor or at the request of the injured party.

(Body Competent to Institute Proceedings in Respect of Unlawful Acts)

Art. 275. The institution of proceedings in respect of the unlawful acts provided for under this Code shall fall within the competence of the *Inspecção-Geral das Actividades Económicas* ("Portuguese Bureau of Economic Activities").

(Body Competent to Apply Fines and Additional Penalties)

Art. 276. The fines and additional penalties provided for under this Code shall fall within the competence of the President of the National Institute of Industrial Property.

(Destination of Fines)

Art. 277. Sixty percent of the fines applied shall constitute revenue of the Portuguese State, 20% revenue of the National Institute of Industrial Property and 20% revenue of the Portuguese Bureau of Economic Activities.

PART IV
FEES

(Fixing of Fees)

Art. 278. For the various acts stipulated in this statute, fees shall be due as stipulated by a joint decree of the Minister of Finance and Minister of Industry and Energy.

(Methods of Payment)

Art. 279.—(1) All payments shall be made in cash, by cheque or by postal order together with the applications for the acts provided for, and they shall constitute revenue of the National Institute of Industrial Property.

(2) Once the fees have been paid, they shall be processed in accordance with the public accounting regulations that apply to the National Institute of Industrial Property.

(Time Limits for Payment)

Art. 280.—(1) Fees in respect of patents, models and designs, for which annuities shall be computed from the date of application, shall be paid as follows:

(a) fees in respect of the first two annuities due shall be included in the application fees;

(b) fees in respect of the third annuity and the certificate and any annuities already accrued shall be paid after the date of the grant decision up to the anniversary of the application following the date of publication of the decision, to which three months are added;

(c) subsequent annuity fees shall be paid annually during the final six months of validity of the right.

(2) Fees in respect of registrations, the duration of which shall be computed from the date of grant, shall be paid as follows:

(a) together with the fees for the respective certificate, after the date of grant up to a maximum period of six months after the date of publication of the grant in the *Industrial Property Bulletin*;

(b) fees for the renewal of a registration shall be paid during the final six months of its validity.

(Fines. Revalidation)

Art. 281.—(1) The fees mentioned in the previous Article may be paid, with a fine, up to a maximum of six months after the validity of the right, under penalty of lapse.

(2) It is possible to request the revalidation of any patent, model or design certificate that has lapsed due to failure to pay fees, up to the anniversary of the application following the date of publication of the notice of lapse, to which three months are added.

(3) It is also possible to request the revalidation of any certificate of registration that has lapsed due to failure to pay fees up to one year after the date of publication of the notice of lapse.

(4) The revalidation mentioned in paragraphs (2) and (3) may only be authorized upon payment of three times the amount of the outstanding fees and without prejudice to third party rights.

(Reduction of Fees)

Art. 282.—(1) Applicants for patents, models or designs who prove that they do not have sufficient income to bear the expenses in respect of applications and the maintenance of rights, shall be exempt from the payment of 80% of all fees, up until the seventh annuity, if they so request before filing the respective application.

(2) It shall be the responsibility of the President of the National Institute of Industrial Property to examine the proof mentioned in this Article and give a decision on the request made.

(Refunding of Fees)

Art. 283.-(1) The fees mentioned in the previous provisions shall not be refunded to the parties.

(2) By a decision of the President of the National Institute of Industrial Property, unduly paid fees may, however, be refunded at the request of the interested party.

(3) Amounts of money paid to cover fees for unauthorized inspections or inspections which were withdrawn in due time shall be refunded at the request of the party that made the payment.

(Suspension of the Payment of Fees)

Art. 284.-(1) If legal action concerning any industrial property right is pending in court or if the seizure or attachment made in respect of such right is not lifted, the respective patent, deposit or registration shall not lapse in default of payment of periodical fees that may have fallen due.

(2) Once any of the decisions mentioned in the preceding paragraph have become *res judicata*, notice thereof shall be published in the Industrial Property Bulletin.

(3) Following publication of the notice mentioned in the preceding paragraph, all outstanding fees shall be paid, with no fine, by the deadline applicable as indicated below:

(a) for patents, models and designs, up to the anniversary of the application following the date of publication of the notice, to which three months are added;

(b) for any other industrial property rights, up to one year after the date of publication of the notice.

(4) If, on the expiry of the time limits stipulated in the previous paragraphs, any outstanding fees have not been paid, the respective industrial property right shall be declared to have lapsed.

(5) The interested party shall request in court that the official notification necessary be furnished to the National Institute of Industrial Property. The judge shall also inform the National Institute of Industrial Property, *ex officio* or at the request of the interested party, as soon as the legal action has ended or the seizure or attachment has been lifted.

(Rights Belonging to the State)

Art. 285. Industrial property rights belonging to the Portuguese State shall be subject to the formalities and duties stipulated in respect of an application, grant or reg-

istration and renewals and revalidations thereof when worked or used by companies of any kind.

PART V
INDUSTRIAL PROPERTY BULLETIN
(BOLETIM DA PROPRIEDADE INDUSTRIAL)

(Industrial Property Bulletin)

Art. 286. The Industrial Property Bulletin (*Boletim da Propriedade Industrial*) shall be published monthly as an appendix to the *Diário da República*.

(Contents of the Bulletin)

Art. 287.-(1) The following shall be published in the Industrial Property Bulletin:

(a) notice of applications in the various categories, oppositions, replies and other notices;

(b) notification of decisions;

(c) grants and refusals;

(d) renewals and revalidations;

(e) declarations of renunciation;

(f) assignments;

(g) lapsed certificates;

(h) examinations and reports concerning industrial property and related matters;

(i) judicial decisions which have been given in appeals or which establish industrial property jurisprudence;

(j) Portuguese and foreign legislation of interest to the international legal movement for the protection of industrial property;

(l) charts and statistics;

(m) other acts and matters of which the public must be informed.

(2) The Bulletin may also contain, in addition to any announcements concerning the matter in question, the addresses of practicing official agents.

(Bulletin Index)

Art. 288. At the beginning of every year, the competent authorities shall draw up an index of all matters contained in the Bulletin during the preceding year.

(Distribution of the Bulletin)

Art. 289.-(1) The Bulletin may be distributed to any interested Portuguese authorities and academic institutions, the World Intellectual Property Organization, foreign industrial property authorities and other Portuguese and foreign entities on an exchange basis.

(2) The Bulletin may also be acquired by any interested party on payment of the respective subscription or the price of a single copy indicated on it.

PART VI
PROTECTION IN MACAO

(Registration of Trademarks)

Art. 290.-(1) In the territory of Macao, the Department of Economy shall be competent for receiving documentation concerning the protection of rights in respect of trademarks and for taking the steps necessary for such rights to become effective in Macao.

(2) At the Department of Economy of Macao, action can only be taken and the prosecution of proceedings handled by:

- (a) the actual interested party or the holder of the right, if established or resident in Portugal or Macao;
- (b) official industrial property agents;
- (c) appointed lawyers.

(3) If, during the prosecution of a particular act, the regulations governing legal representation stipulated in this Article are violated, the provisions of Article 10, paragraph (3) shall be applied.

(Filing of Applications)

Art. 291.-(1) Macao trademark applications may be filed at the National Institute of Industrial Property or at the Department of Economy of Macao, which shall forward them to the Institute.

(2) The terms of this Article shall apply to any requests made, in respect of trademarks, as provided for under the present Code.

(3) The Department of Economy of Macao shall indicate the date and time of filing on all applications received.

(Publication of Applications)

Art. 292.-(1) Macao trademark applications for registration shall be published separately in the Industrial Property Bulletin, in accordance with the legal formalities specified in this Code for the registration of Portuguese national trademarks.

(2) The Department of Economy of Macao shall publish in the Official Bulletin of Macao the trademark applications for this territory, as well as any notices considered necessary.

(3) Applications and the respective photoprint filed at the Department of Economy of Macao shall be sent on a weekly basis to the National Institute of Industrial Property, keeping a copy in the respective sections of the Department.

(4) The duplicates of Macao applications filed at the National Institute of Industrial Property shall be sent, with the respective photoprint, to the Department of Economy of Macao.

(5) Macao registrations shall be granted or refused within a time limit of three months computed from the date on which the file becomes ready to have an opinion given and then be submitted for decision. The Director of the Trademark Department of the National Institute of Industrial Property shall be responsible for the judicious management of this time limit.

(6) The National Institute of Industrial Property shall send five copies of the Industrial Property Bulletin to the Department of Economy of Macao.

(7) Fees due for action taken in respect of each application shall be collected by the authorities where the application is filed.

(Extension to Macao)

Art. 293.-(1) With respect to registrations exclusively applied for Macao, if the examination carried out by the National Institute Industrial Property reveals similarity to an earlier trademark which has been only applied for or granted in Portugal and which, in the examiner's opinion, may justify the refusal of the registration, the respective proprietor or applicant shall be notified to file an extension to Macao of his own application or registration, if desired, within a time limit of 90 days, during which he may file an opposition.

(2) An earlier registration or application may only be considered as grounds for refusal if this notification is fulfilled.

(3) The proprietor or applicant of an earlier registration valid only in Portugal may, on his own motion and without notification from the examiner, request the extension to Macao of his own registration and, if desired, file an opposition against the new application within a time limit of 90 days, computed from the date of publication of the Industrial Property Bulletin containing the application.