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Law 24/2015, of July 24, 2015, on Patents.

Head of State
"BOE" No. 177 of July 25, 2015 Reference: BOE-
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INDEX

Preamble.	3
TITLE I. Preliminary Provisions	12
TITLE II. Patentability	13
TITLE III. Right to patent and designation of inventor.	15
TITLE IV. Inventions made within the framework of an employment or service relationship	16
TITLE V. Application and granting procedure	19
CHAPTER I. Filing and requirements of the patent application	19
CHAPTER II. Concession Procedure	22
CHAPTER III. Oppositions and appeals	25
CHAPTER IV. Supplementary protection certificates for drugs and plant protection products	26
CHAPTER V. Provisions common to all proceedings and third party information	26
TITLE VI. Effects of patent and patent application	30
TITLE VII. Actions for infringement of patent rights	33
TITLE VIII. The patent application and the patent as objects of patent law.	35
CHAPTER I. Registration, co-ownership and expropriation.	35
CHAPTER II. Transfers, Licenses and Encumbrances.	36
CHAPTER III. Full licenses	38
TITLE IX. Obligation to operate and compulsory licensing	39
CHAPTER I. Obligation to exploit the invention and compulsory licensing requirements	39

CHAPTER II. Procedure for the granting of compulsory licenses	42
CHAPTER III. Compulsory licensing regime	43
TITLE X. Nullity, revocation and lapse of pat	44
CHAPTER I. Invalidity	44
CHAPTER II. Revocation or limitation at the patentee's request	45
CHAPTER III. Forfeiture	46
TITLE XI. Patents of interest to national defense	47
TITLE XII. Jurisdiction and procedural rules	49
CHAPTER I. General Provisions	49
CHAPTER II. Fact-finding proceedings	51
CHAPTER III. Precautionary measures	52
CHAPTER IV. Out-of-court settlement of disputes	54
TITLE XIII. Models	56
CHAPTER I. Object and requirements of protection	56
CHAPTER II. Application and granting procedure	56
CHAPTER III. Effects of the grant	59
TITLE XIV. Application of international conventions	60
CHAPTER I. Filing and effects of European patent applications and European patents in Spain	60
CHAPTER II. Implementation of the EU Cooperation Treaty	62
Section 1 Scope of application and international applications filed in Spain	62
Section 2. ^a International applications designating or choosing Spain	63
TITLE XV. Representation before the Spanish Patent and Trademark Office	65
TITLE XVI. Fees and annual duties	68
Additional Provisions	70
Transitional Provisions	72

Repealing Provisions	74
Final Provisions	74
ANEX	78

CONSOLIDATED TEXT

Last modified: July 4, 2018

FELIPE VI

KING OF SPAIN

To all who see and understand this document.

Be it known: That the Cortes Generales have approved and I have come to sanction the following law

PREAMBLE I

Law 11/1986, of March 20, 1986, on Patents, which at the time involved the complete reform of our patent system in the context of Spain's entry into the European Economic Community (EEC), the negotiation of which included a chapter on the subject, and the accession to the Convention on the Grant of the European Patent, signed in Munich on October 5, 1973, which took place in that year of 1986.

The solidity and flexibility of the Patent Law has made it possible, throughout its three decades of validity, to combine the stability of its regulatory framework with the necessary changes to adapt it to the Community and international evolution of this sector of the legal system, without the need for a new Law, partial reforms of its articles being sufficient.

Examples of this adaptive evolution were Law 10/2002, of April 29, 2002, which amends Law 11/1986, of March 20, 1986, on Patents, for the incorporation into Spanish law of Directive 98/44/EC of the European Parliament and of the Council, of July 6, 1986, on the legal protection of biotechnological inventions, and Law 19/2006, of June 5, 2006, extending the means of protection of intellectual and industrial property rights and establishing procedural rules to facilitate the application of various Community regulations, in addition to many other minor amendments, which affected both the Law and its subsequent regulatory development.

Nevertheless, based on the experience accumulated in applying the legislation in force to a reality that has changed substantially since 1986, a general updating of the regulations is necessary for which, on this occasion, given the number of precepts affected and the nature of the changes, a simple partial reform as those carried out to date is not sufficient.

At the international level, several factors have contributed to the change. One of them is the shift from national to international grant procedures and the growth, in number and proportion, of patents processed through the latter. In 1986, all patents were granted through the national route. Today more than 90 percent of patents with effects in Spain are granted by the European Patent Office (EPO), and our country can be designated or elected in international applications under the Patent Cooperation Treaty, made in Washington on June 19, 1970 (better known by its English acronym PCT), and the Spanish Patent and Trademark Office (SPTO) is also an International Search and Preliminary Examination Authority within the framework of said Treaty.

Another factor of change, associated with the decisive role of innovation as a support for international trade in an increasingly globalized economy, was the integration of Industrial Property, through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), within the framework of the Agreement establishing the World Trade Organization (WTO), signed in Marrakech on April 15, 1994, to which Spain acceded on January 1, 1995.

We must also take into account the subsequent development of patent law in the European Union, materialized so far in the aforementioned Directive on the protection of biotechnological inventions, and in the creation of supplementary protection certificates for medicinal products and for plant protection products (SPC). To this regulatory framework must be added the Patent Law Treaty, done in Geneva on June 1, 2000 (also known by its acronym in English, PLT), ratified by Spain in 2013, which aims to facilitate the processing and avoid the involuntary loss of rights for formal reasons.

The reform now being addressed aims, in this new context, to adapt the legal framework to current needs and to facilitate the rapid obtaining of solid titles for Spanish innovators, the main users of the system, since more than 95 percent of patents granted through national channels are of Spanish origin. The percentage is similar for utility models.

Therefore, one of the reasons for this update, in line with the objectives proposed in Law 2/2011, of March 4, on Sustainable Economy and Law 14/2011, of June 1, on Science, Technology and Innovation, is to simplify and speed up the protection of innovation through patents and to reinforce legal certainty, establishing as the only system for granting patents the prior examination of novelty and inventive step, whose gradual implementation was initially provided for in the Patent Law of 1986. Therefore, the current optional or "a la carte" system, introduced in the reform carried out by Royal Decree-Law 8/1998, of July 31, 1998, on urgent measures in the field of industrial property, is eliminated.

The figure of the utility model is also modified in substantial aspects, such as the determination of the relevant state of the art, the type of inventions that can be protected under this modality and the conditions to exercise the actions in defense of the right derived from this title of protection.

As for certificates of addition, which could be requested during the entire legal life of the patent, they are hardly reflected today in European comparative law. Except for some isolated exceptions, in the countries of our environment it is no longer considered necessary to regulate accessory titles that can be applied for during the entire legal life of the patent and do not require an inventive step in relation to the subject matter of the main patent, basically because this type of improvement falls within the scope of protection of the equivalent means of the parent invention.

Furthermore, the regulation of internal priority allows for a period of time the improved filing of subsequent applications and makes superfluous the maintenance of an otherwise marginal figure, which has been scarcely used by the holders of patents in force. For these reasons, they are eliminated from the regulation contained in Title X of the previous Law.

It also updates provisions referring to the so-called "labor inventions" in the 1986 Patent Law and includes others on SPCs, compulsory licenses, nullity, limitation and revocation procedures, access to professional representation and its exercise within the framework of the transposition of Directive 2006/123/EC of the European Parliament and of the Council of December 12, 2006, on services in the internal market. Likewise, as is usual in comparative law, the basic rules for the application of the European and international ways of protection of inventions, collected in two regulations after the 1986 Law, are recast in the Law. All these aspects will be referred to in later paragraphs of this introduction, the expository order of which follows the systematic order of the Law.

Finally, for the sake of simplification and clarity, it was necessary to update precepts that referred to provisions already repealed, to eliminate others that no longer made sense when the circumstances that justified them in their day disappeared, to unload the Law of rules that can be included in the regulations, providing the whole with greater adaptive flexibility, as well as to adjust the new text to the current criteria that impose the labeling of the articles.

It is obvious that this general revision cannot be approached from a simple partial reform in addition to the previous ones. A new legal text is needed that, while maintaining the structure of the previous regulatory framework in its essentials, incorporates these modifications in accordance with the current guidelines of regulatory technique, for greater clarity and systematic coherence of the regulation as a whole.

II

The preliminary provisions of Title I establish the unity of registration in relation to the principle of market unity and the national coverage of the certificates, among which are included the supplementary protection certificates for medicinal products and phytosanitary products, and extend the legitimacy to apply for them following the criterion opened for the Community certificates by their respective regulations of creation, which are recognized to natural or legal persons, including public law entities.

Title II, on patentability, incorporates the amendments adopted for European patents following the Act of Revision of the European Patent Convention (EPC), done in Munich on November 29, 2000, by making explicit the possibility of patenting substances or compositions already known for use as a medicine or for new therapeutic applications. As for surgical, therapeutic and diagnostic treatment methods, they will continue to be excluded from patent protection in the same cases as before, but without the need to resort to the fiction of their lack of industrial application.

For greater clarity, when delimiting prior art, express mention is made, among the interferences, of prior European patent applications that designate Spain and have been published in Spanish and international PCT applications entering the national phase in Spain, which were not explicitly mentioned in the previous Law either, because, when the latter was enacted, Spain was not yet a party to those Conventions.

The grace period is also eliminated for disclosures caused by the applicant or his assignor that do not involve exploitation or a commercial offer of the invention. This exception does not exist in European comparative law and may harm the novelty of the invention if the aim is to extend its protection to countries that do not recognize this grace period.

III

Title III, on the right to the patent and designation of the inventor, remains essentially unchanged. The regulation in Title IV of inventions made within the framework of an employment or service relationship does not change either as regards the attribution of ownership. However, the conditions for the exercise of the rights that the Law recognizes to each of the parties in the employment or service relationship are specified, seeking a better balance between the employee's duty to inform and the employer's duty to respond and execute the commitment assumed, as the case may be.

It also replaces the presumption *iuris et de iure*, which allowed the employer to claim ownership of inventions whose patent was applied for within the year following the termination of the employment relationship, with another presumption, which admits proof to the contrary, that such inventions were made during the term of the employment relationship.

With regard to inventions made by research personnel in the service of Public Universities, Public Research Bodies and Research Bodies of other Public Administrations, an attempt has been made to adapt the Patent Law to Law 14/2011, of June 1, on Science, Technology and Innovation—which modified the Patent Law itself in its second final provision—and to Law 2/2011, of March 4, on Sustainable Economy. This is a matter on which there will inevitably be a certain regulatory dispersion given the referral of the Patent Law itself to the governing bodies of the Universities and to the regulatory power of the Government or the Autonomous Communities.

IV

Title V is one of the main focuses of the reform and includes the patent application and grant, opposition and appeal procedures, the rules for the application of the Community regulations on supplementary certificates, and the general provisions common to all of them.

The Law simplifies as much as possible the requirements for obtaining a filing date, harmonized by the Patent Law Treaty (PTL) and already applied in the above-mentioned international procedures.

The requirements of the application include the obligation to inform about the geographical origin or source of origin of the biological material to which the invention refers, although this information does not prejudice the validity of the patent.

Another novelty is the recognition of internal priority, so as not to discriminate against those who file their first application in Spain and to allow them to file improved or corrected subsequent applications, benefiting from the effects of priority for the elements common to the two applications.

In the granting system, the Law departs from the optional regime introduced in the reform carried out by Royal Decree-Law 8/1998, of July 31, 1998, and returns to the prior or substantive examination of novelty and inventive step as the only system for granting patents, the gradual implementation of which, as mentioned above, was initially provided for in the 1986 Law.

The "à la carte" procedural model, based more on user preferences than on the incentive of innovation, sometimes ends up passing on to competitors the cost and burden of invalidating patents that should never have been granted, and encourages distortions of competition based on titles whose presumption of validity can only be destroyed in court.

The optional system is also inconsistent with the SPTO's status as an International Examining Authority within the framework of the PCT, equipped with the necessary training - in terms of personnel and specialization- required by the World Intellectual Property Organization (WIPO) to assume these functions, and implies an incorrect allocation of public resources dedicated to the legal protection of innovation in Spain, since the SPTO has to devote part of these resources to processing applications that are later abandoned after a lengthy technical and formalities examination, or that have to be granted in any case, regardless of the results of the prior art search.

Indeed, nothing justifies the grant of a patent when the report on the state of the art reveals that the invention that is the subject of the patent is not such, because it lacks novelty or inventive step.

Within the grant model with generalized prior examination that is now adopted, modifications are also introduced in the procedure in search of a more integrated model whose objective is to move directly to the search phase for all applications, as occurs in international procedures, so that its initiation is not subject to conditions other than those that are essential for carrying out the search itself.

The previous procedure is thus replaced by another that integrates the search with the technical examination, the conclusions of which will be set forth in the written opinion. This will already be a first communication from the examiner to whose observations and objections, if any, the interested party may reply when requesting the substantive examination if he decides to continue with the processing, modifying, if necessary, the application to the extent necessary to comply with the legal requirements.

By advancing the search, the procedure is accelerated in the essential aspect for the interested party, which is to facilitate timely access to the relevant information to decide to maintain the application and, if necessary, to patent abroad within the priority term. This is the reason for the initial payment of the search fee, as also occurs in the case of European patents and in the international PCT procedure.

On the other hand, the substantive examination will be aimed at verifying that both the patent application and the invention that constitutes its subject matter meet all the formal, technical and patentability requirements established in the Law.

In order to speed up the procedure, prior oppositions are replaced by a post-grant opposition system, which is the generalized system in comparative law, although third party observations are maintained, which, without being a party to the procedure, may be filed once the application has been published and may refer to any aspect related to the patentability of the invention. The deferred opposition system means that the system of administrative appeals against the grant of the patent must be modified accordingly. These may be filed by those who have been party to the opposition proceedings and will be directed against the decision on the opposition filed.

Chapter IV on CCP is limited to regulating certain matters whose verification the Community legislation leaves to domestic law and the system of fees. The rest of the regulation is already contained in the Community regulations, which are directly applicable to this type of securities.

Finally, the general rules on the procedure and information of third parties are harmonized with those established in common matters for the other Industrial Property modalities. Among the novelties to be highlighted is the possibility of invoking the reinstatement of rights for the priority term in line with what is established in international procedures and in the PLT, the rules relating to the amendment of the application and claims in the various procedures and the obligation to specify in writing the differences between the previous text and the new set of claims that modifies it.

V

Titles VI and VII have already been updated in previous reforms and have hardly undergone any changes. The first, which regulates the scope and limits of patent rights, was amended by the aforementioned Law 10/2002, of April 29, 2002, and by Law 29/2006, of July 26, 2006, on guarantees and rational use of medicines and health products, by expressly mentioning among the limits to patent rights, the studies and trials carried out for the authorization of medicines, including the preparation, obtaining and use of the active ingredient for these purposes.

However, the new Law separates the experimental use exception and the so-called "Bolar clause", which have different origins and purposes, as has been recognized by the case law of the Supreme Court.

Other minor modifications consist in making explicit the reference to equivalent means to determine the extent of protection, in eliminating some rules that have become obsolete due to the disappearance of the cases that justified them, and in clarifying the scope of exhaustion, as a general limit to the exercise of the right.

The patent owner's defense actions, referred to in Title VII, were also updated in Law 19/2006, of June 5, 2006, mentioned at the beginning of this presentation, which included rules on provisional and precautionary measures, the liability of intermediaries and the fixing of indemnities. However, the adaptation to Directive 2004/48/EC of the European Parliament and of the Council, of April 29, 2004, on the enforcement of intellectual property rights, is improved in some aspects by establishing, for the fixing of damages, a minimum fee and not a maximum fee as was the case until now.

The Law also adds coercive indemnities to guarantee the cessation of the infringing activity, and refers everything related to the calculation and settlement of the indemnity to the enforcement phase of the decision on the merits that has found the existence of infringement, since at the time of filing the lawsuit the plaintiff may lack the necessary information to specify its claim for indemnity. On the other hand, the considerable evidentiary and allegatory effort required by both the plaintiff and the defendant for the quantification of the damages entails an added complexity and cost overrun for the process that is not justified if the judgment is ultimately acquitted.

VI

Title VIII on the patent application and the patent as objects of property law begins with the general principles of registration law, such as publicity, registration qualification based on legality and the effect of registration closure, which is inherent to the principle of priority.

In addition, Law 25/2009, of December 22, 2009, amending several laws to adapt them to the Law on free access to service activities and their exercise, eliminated the requirement of a public document in the formalization of transfers and licenses, referring the conditions of form and documentation to the regulations.

Title IX is devoted to the obligation to exploit the invention and the compulsory licensing regime.

In this area, the adaptations made in subsequent laws, such as Law 66/1997, of December 30, 1997, on Tax, Administrative and Social Order Measures, consisted of reforms. The "de minimis" provisions were limited to deleting or modifying certain provisions that were manifestly incompatible with the TRIPS Agreement, but left intact the rest of the regulation, which was based on an assumption that ceased to exist once the Agreement became effective in Spain.

Indeed, when the 1986 Patent Law was drafted, the obligation to exploit the object of the patent required its manufacture or execution in national territory. After the application of TRIPS in Spain, it is sufficient to have the domestic market supplied by imports from any WTO member country. Such a radical change rendered a large part of the previous regulation inoperative, since it was intended to prevent imports from replacing manufacture in the country, and this was precisely what was later legalized. The consequences of this liberalizing model on Intellectual Property rights as a support for international trade are a good example of what later came to be known as globalization.

Today, the cases of lack or insufficiency of exploitation are basically limited to shortages or other abuses arising from anti-competitive practices or dominant positions, which can be dealt with under competition law or by means of direct intervention by the Government for reasons of public interest. These possibilities of action were already provided for in the 1986 Patent Law and are maintained, with some variations, in the current law.

The new Law therefore reorganizes and simplifies the regulation of compulsory licenses, eliminating numerous articles linked to the concept of exploitation prior to TRIPS. However, two new cases of compulsory licenses are included, namely the need to put an end to practices that have been declared contrary to antitrust legislation by a final administrative decision at national or Community level, or by a judgment, and the compulsory licenses for the manufacture of medicines intended for export to countries with public health problems provided for in Regulation (EC) No. 816/2006 of the European Parliament and of the Council of May 17, 2006, which regulates them.

The possibility of interrupting the operation is limited to one year instead of the previous three years, a period that was unjustifiably long when the operation is unrelated to manufacturing in the country. For the same reasons, the conditional submission to the compulsory licensing system is abolished.

In addition, the prior attempt at contractual licensing is not limited to the case of dependence and is now provided for in general, except for the cases exempted in the aforementioned TRIPS. It is also expressly established that the proof that the invention is being exploited corresponds to the patent holder.

The processing and resolution is simplified, regulating a procedure with the presentation of evidence and allegations by the parties, transfer, reply and the possibility of mediation or, failing that, of a commission of experts - one for each of the parties and a third party appointed by the Spanish Patent and Trademark Office - to determine the conditions of the license. The compulsory license shall extend to the SPCs that at the time the license is granted or subsequently fall on the subject matter of the basic patent included therein.

VII

The rules on nullity and revocation of patents contained in Title X undergo some modifications derived from their adaptation to subsequent rules, which are referred to below.

In the invalidity process, the prohibition to partially invalidate a claim is eliminated, and it is provided that the patent holder may limit the patent by amending the claims, so that the patent thus limited serves as a basis for the process, as is already the case with European patents, and the effects of the invalidity are extended to the SPCs insofar as it affects the right over the product protected by the basic patent that was the basis for granting them.

Chapter II of this same Title X regulates a revocation or limitation procedure at the request of the patent holder before the Spanish Patent and Trademark Office, which may be initiated at any time during the legal life of the patent, and whose effects are retroactive, as occurs with total or partial nullity.

The reinstatement of expired patents in case of force majeure is replaced by the broader and less rigid possibility of reinstatement of rights, which would apply to the same case, and consequently disappears as an autonomous figure. In any case, the lapse due to non-payment of an annuity will not occur before the expiration of the periods of delay provided for in the Law, and the payment may also be made by the owners of registered rights over the patent that could be affected by the lapse of the same.

With respect to applications and patents of national defense interest subject to the secret regime, whose regime is contemplated in Title XI, some changes are introduced in order to allow the continuity of their processing while said regime is maintained, and to specify the conditions that allow filing first applications abroad with the prior authorization of the Spanish Patent and Trademark Office, or in accordance with the provisions of international agreements on defense matters subscribed by Spain.

VIII

The rules on jurisdiction and procedural rules have already been updated with the reforms of Law 1/2000, of January 7, 2000, on Civil Procedure, Law 17/2001, of December 7, 2001, on Trademarks, and Law 19/2006, of June 5, 2006, which extends the means of protection of intellectual and industrial property rights and establishes procedural rules to facilitate the application of various Community regulations.

Chapter I of Title XII recognizes the legal standing to exercise the actions, in addition to the holders of the registered rights, to those who can prove that they have duly requested the registration of the legal act or business from which the right to be asserted arises, provided that such registration is granted.

As regards jurisdiction, the references to the Judge of First Instance disappear and in their place the territorial jurisdiction is attributed to the corresponding Commercial Judge, in accordance with article 86.ter.2 a) of Organic Law 6/1985, of July 1, 1985, of the Judiciary. The Law also tries to combine the proximity and decentralization of justice with the deepening of the model of judicial specialization in patent matters, consolidating this model by means of a concentration of the cases that attributes the objective competence to the Commercial Judge of the city where the Superior Court of Justice has its seat and in which the General Council of the Judiciary has agreed to attribute the exclusive knowledge of patent matters, maintaining the same criteria of territorial competence.

On the other hand, the procedural deadlines are adapted to the complexity of patent litigation, given the extraordinary importance of expert opinions in patent litigation and the need to have them available in a timely manner to guarantee the right of defense, extending the deadlines for answering claims and counterclaims in Article 119.

With regard to the nullity of the title raised, as an exception, the patent owner is allowed to request its treatment as a counterclaim or to limit its claims, either principally or subsidiarily, always in writing and with sufficient time for the applicant of the nullity to modify or maintain its claims in view of the proposed limitation.

It is also foreseen that when, due to unforeseen circumstances, the patent is amended outside the process, for example, in opposition proceedings before the European Patent Office, its owner may request that the patent thus amended be used as a basis for the process by giving the opposing party the opportunity to present its arguments.

Chapters II and III on fact-finding and precautionary measures include some modifications aimed at specifying their scope and allowing that when it is necessary to gather sensitive information, the necessary measures be adopted to make compatible the interests of the defendant in preserving the confidentiality of the information and the right to effective judicial protection of the procedural party that requires it.

It also clearly and unequivocally establishes the need for fact-finding procedures to be carried out without prior notification to the person who must bear them, so as not to frustrate their success.

With respect to the precautionary measures, the regulation of the substitute bond is specified, the amount of which will be set by the court during the processing of the measures and after hearing the parties, so that the bond may be set in the same proceeding without it being necessary to open another proceeding for allegations and evidence on such bond. A time limit is also established for the defendant, once the measures have been lifted, to specify, if appropriate, his claim for compensation, and it is provided that if the bond is not sufficient to cover all the damages caused, it will not be necessary to resort to another proceeding for the enforcement of a final decision that has already determined such damages, and the enforcement proceeding against the responsible party can be followed.

Finally, preventive writs are introduced as a procedural instrument to defend against the possibility of precautionary measures *inaudita parte* by those who have been requested or fear being subject to them, so that they can appear before the competent jurisdictional body and justify their position preventively.

Chapter IV of this Title XII deals with conciliation in matters of employee inventions and with arbitration and mediation as mechanisms for the out-of-court settlement of disputes.

As regards the first one, the rules of the Patent Law of 1986 referring to the conciliation before the Spanish Patent and Trademark Office in case of litigation, which becomes voluntary, and on the composition of the commission in charge of applying it, whose parity was questioned when, as was frequently the case, the employee, when filing the claim, had ceased to belong to the company's staff, are revised. The proposed agreement and the effects of its certification by the management of the Spanish Patent and Trademark Office if there is conformity are also more fully regulated, the execution of which will be carried out in accordance with the provisions of the Civil Procedure Law for the execution of judgments and judicially approved agreements.

This type of conciliation is maintained as one more option in addition to the existing mediation and arbitration options recognized in Article 136 of this Law and in whose application the future participation of the Spanish Patent and Trademark Office is foreseen, as its purposes and functions include those of a possible mediating and arbitration institution in accordance with the second final provision.

IX

For utility models, the common element in comparative law is, paradoxically, disparity. Being a title whose legal configuration is not subject to international harmonization criteria, this disparity affects not only the procedures, but also the very conception of the title and even its very existence, since this modality is not recognized in all countries.

In Spain, utility models have been a title of protection well adapted to the needs of our companies, as evidenced by the number of applications and the percentage of those filed that are of national origin, which reaches 95 percent. For this reason, its regulation, contained in Title XIII, maintains the current approach based on the *sui generis* model and not on the "simplified patent" model, but with some changes aimed at adapting this modality to current needs and speeding up its processing.

The first important novelty is the comparison of the relevant state of the art with that required for patents, thus avoiding the uncertainty involved in the concept of disclosure and eliminating the concept of relative novelty, which makes little sense in today's world, very different from that of 1986, when there were no possibilities of generalized access to all types of information and documentary funds through new technologies. On this point, the essential difference with patents continues to be the requirement for models to have a lower level of inventive step than that of patents.

The area of what can be protected as a utility model, until now practically restricted to the field of mechanics, is also broadened, excluding only, in addition to processes and inventions involving biological matter, which were also excluded, pharmaceutical substances and compositions, understanding as such those intended for use as medicines in human or veterinary medicine. The exclusion

is maintained for these sectors due to their special characteristics, but not for the rest of the chemical products, substances or compositions, which may benefit from this type of protection.

As regards the granting procedure, third party oppositions continue to be prior and not subsequent to the grant, since there will be no substantive examination as in the case of patents and, unlike industrial design, a utility model protects technical rules whose exclusivity generates a monopolistic projection that does not exist in the case of design. For the same reason, the exercise of the actions for the defense of the right is conditioned to the obtaining of a report on the state of the art referring to the object of the title on which the action is based, suspending the processing of the lawsuit, at the request of the defendant, until the plaintiff provides such report to the proceedings.

X

A new Title XIV is introduced relating to the application in Spain of the European Patent Convention (EPC), signed in Munich on October 5, 1973, and the Patent Cooperation Treaty (PCT), signed in Washington on June 19, 1970, which, as is customary in comparative law, integrates in the Law the rules of application of the European and international ways for the protection of inventions in Spain, recasting and synthesizing the main provisions already included in two regulations approved after the entry into force of Law 11/1986, of March 20, 1986, on Patents, when Spain adhered to said international conventions.

The rules on representation, agents and representatives, which are dealt with in Title XV, were already revised by Royal Decree-Law 8/1998, of July 31, 1998, on urgent measures in the field of industrial property and subsequently by the third additional provision of Law 17/2001, of December 7, 2001, on Trademarks.

The amendments now incorporated, referring to Industrial Property Agents, are adapted to Law 17/2009, of November 23, 2009, on free access to service activities and the exercise thereof, regulating the basic rules for access to and exercise of professional representation within the framework of Directive 2005/36/EC of the European Parliament and of the Council, of September 7, 2005, on the recognition of professional qualifications and Royal Decree 1837/2008, of November 8, 2008, which transposes it.

The aptitude examination for access to a regulated profession such as that of Industrial Property Agent is maintained, whose qualification must be accredited by means of a training certificate and the passing of the aptitude test, requirements that obviously can only be met by natural persons, but other requirements for access to this profession, such as the posting of a bond or the taking out of liability insurance, are eliminated. It also provides for the exercise of professional representation of agents through legal entities, which under certain conditions may be registered as authorized representatives in the Special Register of the Spanish Patent and Trademark Office.

Finally, what had already been updated by regulation is integrated into the Law, replacing the previous authorization system with a responsible declaration that enables the exercise of the professional representation activity to commence.

Title XVI, on fees and annuities, updates and reorganizes the rules on fees and the system of reimbursements, surcharges, maintenance and exemptions, establishing a 50 percent reduction of the fees paid for application, preparation of the report on the state of the art and examination, as well as the first three annuities, for certain entrepreneurs and SMEs. In addition, a 15 percent reduction is maintained in the amount of the fees linked to the electronic filing of applications or documents when they are paid previously or simultaneously by such technical means.

The payment of the annuities must be made within three months after the accrual date, with no advance payments. The accrual date for each annuity shall be the last day of the anniversary month of the date of submission of the application. However, in addition to the delays allowed with the corresponding surcharges, it will be possible to regularize the payment without loss of rights by paying the fee of

additional regularization provided for in the second tariff of the Law during the time elapsing until the date of accrual of the following annuity.

The additional provisions confirm the supplementary application of Law 30/1992, of November 26, 1992, on the Legal Regime of the Public Administrations and Common Administrative Procedure, provide for the future establishment of maximum periods for the resolution of procedures in accordance with the provisions of Article 59.3 of Law 2/2011, of March 4, 2011, on Sustainable Economy, and establish negative silence without prejudice to the obligation to resolve by means of an express resolution without any link to the sense of the silence.

Other additional provisions refer to the publication and consultation of files by telematic means, to communications with Courts and Tribunals in electronic format and to the establishment by the Ministry of Industry, Energy and Tourism of coordination and cooperation mechanisms between the SPTO and the Autonomous Communities, so that the latter remain informed throughout the procedure once the application has been published. It also provides for the possibility of preferential processing for applications relating to technologies related to the objectives contemplated in the aforementioned Sustainable Economy Law, as well as the establishment of accelerated grant programs to which the interested party may expressly apply under the conditions to be determined in the regulations.

The final provisions amend Law 17/1975, of May 2, 1975, on the creation of the Autonomous Body "Industrial Property Registry" (now SPTO) to include among its purposes the promotion of mediation and the performance as an arbitration institution and in accordance with Law 60/2003, of December 23, 2003, on Arbitration, the functions attributed to it by Royal Decree for the settlement of disputes relating to the acquisition, contracting and defense of Industrial Property rights in matters of free disposal.

The third and fourth final provisions amend Law 17/2001, of December 7, 2001, on Trademarks and Law 20/2003, of July 7, 2003, on the Legal Protection of Industrial Design, in their respective first additional provisions, in order to expressly recognize the competence of the Community Trademark Courts to hear civil litigation when Community and national actions are brought together whose titles are covering the same or a similar sign or design and at least one of them is based on a Community title.

The Law is enacted under the powers that the Spanish Constitution attributes to the State in Article 149.1.9 on legislation relating to industrial property and 149.1.6, which attributes to the State the exclusive power on procedural legislation.

TITLE I

Preliminary provisions

Article 1. *Object of the Law.*

For the protection of industrial inventions, the following Industrial Property titles shall be granted in accordance with the provisions of this Law:

- a) Invention patents.
- b) Utility models.
- c) Complementary certificates for the protection of medicines and phytosanitary products.

Article 2. *Patent Registration.*

1. The registration of the titles recognized in this Law shall be unique throughout Spanish territory and shall be granted by the Spanish Patent and Trademark Office, except as provided for in international treaties to which Spain is a party or in European Union law.

2. The application, grant and other legal acts or transactions affecting rights to the titles referred to in the preceding paragraph shall be recorded in the Patent Register, as provided for in this Law and its Regulations.

3. Entry in the Patent Register shall entitle the owner to bring the actions recognized in this Law in defense of the rights deriving from the titles mentioned in Article 1.

Article 3. *Legal standing.*

1. Industrial Property titles may be applied for by natural or legal persons, including public law entities.

2. The persons mentioned in paragraph 1 may invoke the application to their benefit of the provisions of any international treaty applicable in Spain, insofar as it is directly applicable to them, in all that is more favorable to them with respect to the provisions of this Law.

TITLE II

Patentability

Article 4. *Patentable inventions.*

1. Patentable, in all fields of technology, are inventions that are new, involve an inventive step and are susceptible of industrial application.

The inventions referred to in the preceding paragraph may have as their object a product composed of biological material or containing biological material, or a process by which biological material is produced, transformed or used.

2. Biological matter isolated from its natural environment or produced by means of a technical process may be the subject of an invention, even if it already exists in its natural state.

3. For the purposes of this Law, "biological material" means material containing genetic information that is self-reproducible or reproducible in a biological system and "microbiological process" means any process that uses microbiological material, that includes an intervention on microbiological material or that produces microbiological material.

4. In particular, they shall not be considered inventions within the meaning of the preceding paragraphs:

- a) Discoveries, scientific theories and mathematical methods.
- b) Literary, artistic or any other aesthetic creation, as well as scientific works.
- c) Plans, rules and methods for the exercise of intellectual activities, for games or for economic-commercial activities, as well as computer programs.
- d) The ways of presenting information.

5. The provisions of the preceding paragraph exclude the patentability of the subject matter or activities mentioned therein only to the extent that the patent application or patent refers exclusively to one of them considered as such.

Article 5. *Exceptions to patentability.*

They may not be patented:

1. Inventions whose commercial exploitation is contrary to public order or morality, without the exploitation of an invention being considered as such merely because it is prohibited by a legal or regulatory provision.

In particular, they shall not be considered patentable under the provisions of the preceding paragraph:

- a) Human cloning procedures.
- b) Procedures for modifying the germ line genetic identity of human beings.
- c) The use of human embryos for industrial or commercial purposes.

d) Procedures for modifying the genetic identity of animals that involve suffering for the animals without substantial medical or veterinary utility for man or animal, and animals resulting from such procedures.

2. Plant varieties and animal breeds. However, inventions involving plants or animals shall be patentable if the technical feasibility of the invention is not limited to a particular plant variety or animal breed.

3. The essentially biological processes of plant or animal breeding. For these purposes, those procedures that consist entirely of natural phenomena such as crossing or selection shall be considered essentially biological.

The provisions of the preceding paragraph shall not affect the patentability of inventions the subject matter of which is a microbiological process or any other technical process or a product obtained by such processes.

4. Methods of surgical or therapeutic treatment of the human or animal body, and diagnostic methods applied to the human or animal body. This provision shall not apply to products, in particular to substances or compositions, nor to inventions of apparatus or instruments for the implementation of such methods.

5. The human body in the different stages of its constitution and development, as well as the simple discovery of one of its elements, including the total or partial sequence of a gene.

However, an element isolated from the human body or otherwise obtained by a technical process, including the sequence or partial sequence of a gene, may be considered as a patentable invention, even if the structure of said element is identical to that of a natural element.

The industrial application of a total or partial sequence of a gene must be explicitly stated in the patent application.

6. A mere deoxyribonucleic acid (DNA) sequence with no indication of any biological function.

Article 6. *Novelty.*

1. An invention is considered to be new when it is not included in the prior art.

2. The state of the art is constituted by everything that prior to the filing date of the patent application has been made accessible to the public in Spain or abroad by a written or oral description, by a use or by any other means.

3. The content of Spanish patent or utility model applications, European patent applications designating Spain and PCT international patent applications that have entered the national phase in Spain, as originally filed, whose filing date is prior to that mentioned in the preceding paragraph and which have been published in Spanish on that date or on a later date, shall also be understood to be included in the state of the art.

4. The provisions of paragraphs 2 and 3 shall not exclude the patentability of any substance or composition covered by the prior art for use in any of the methods referred to in Article 5.4 provided that its use for any of those methods is not covered by the prior art.

5. The provisions of paragraphs 2 and 3 shall not exclude the patentability of a substance or composition referred to in paragraph 4 for a given use in one of the methods referred to in Article 5.4, provided that such use is not covered by the prior art.

Article 7. *Harmless disclosures.*

A disclosure of the invention that occurred within the six months prior to the filing date of the application, whether as a direct or indirect consequence, shall not be taken into consideration in determining the state of the art:

a) Of an obvious abuse against the applicant or the applicant's cause.

b) The fact that the applicant or his principal has exhibited the invention at official or officially recognized exhibitions within the meaning of the Convention Concerning the Protection of Industrial Property.

International Exhibitions, signed in Paris on November 22, 1928 and last revised on November 30, 1972.

In this case it will be necessary for the applicant, when filing the application, to declare that the invention has actually been exhibited and, in support of his declaration, to provide the corresponding certificate within the term and under the conditions to be determined by regulation.

Article 8. *Inventive activity.*

1. An invention is considered to involve an inventive step if it is not obvious to a person skilled in the art.

2. If the state of the art includes documents referred to in Article 6.3, they shall not be taken into consideration to decide on the existence of the inventive step.

Article 9. *Industrial application.*

An invention is considered susceptible of industrial application when its object can be manufactured or used in any kind of industry, including agriculture.

TITLE III

Patent rights and inventor designation

Article 10. *Right to the patent.*

1. The right to the patent belongs to the inventor or his successors in title and is transferable by all means recognized by law.

2. If the invention has been made by several persons jointly, the right to obtain the patent shall belong jointly to all of them.

3. Where the same invention has been made independently by several persons, the right to the patent shall belong to the person whose application has an earlier filing date in Spain, provided that the said application is published in accordance with the provisions of Article 37.

4. In the proceedings before the Spanish Patent and Trademark Office, it is presumed that the applicant is entitled to exercise the right to the patent.

Article 11. *Patent application by a person who does not have legal standing.*

1. Where, on the basis of the provisions of this Law, a final judgment has recognized the right to obtain a patent to a person other than the applicant, and provided that the patent has not yet been granted, that person may, within a period of three months from the date on which the judgment acquired the force of *res judicata*:

a) To continue the procedure related to the application by subrogating in the place of the applicant.

b) File a new patent application for the same invention that will enjoy the same priority.

c) Request that the application be denied.

2. The provisions of Article 26.3 are applicable to any new application filed in accordance with the provisions of the preceding paragraph.

3. Once the lawsuit aimed at obtaining the sentence referred to in paragraph 1 has been filed, the patent application may not be withdrawn without the consent of the plaintiff. The Judge may agree, as a precautionary measure in accordance with the provisions of Law 1/2000, of January 7, 2000, on Civil Procedure, to suspend the grant procedure, once the application has been published, until the finality of the judgment or of the decision that terminates the procedure is duly notified, if it rejects the plaintiff's claim, or until three months after such notification if it is upheld.

The suspension shall also be lifted if the decision terminating the proceeding is upheld and final and the plaintiff requests the continuation of the proceeding.

Article 12. *Claim of ownership.*

1. If the patent has been granted to a person not entitled to obtain it under Article 10, the person entitled under that Article may claim that ownership of the patent be transferred to him, without prejudice to any other rights or actions to which he may be entitled.

2. Where a person is entitled to only part of the patent, he may claim co-ownership of the patent in accordance with the provisions of the preceding paragraph.

3. The rights referred to in the preceding paragraphs may only be exercised within two years of the date on which the mention of the concession was published in the "Official Bulletin of Industrial Property. This term shall not be applicable if the owner, at the time of the grant or acquisition of the patent, knew that he was not entitled to it.

4. The filing of a judicial action for the exercise of the actions referred to in this Article, as well as the judgment or any other final decision that ends the proceedings initiated by virtue of said action, at the request of the interested party, shall be subject to annotation in the Patent Register for the purposes of publicity vis-à-vis third parties.

Article 13. *Effects of the change of ownership.*

1. Where there is a change in the ownership of an application or a patent as a result of a judgment as provided for in the preceding Article, the licenses and other rights of third parties to the patent shall be extinguished by the entry in the Patent Register of the person entitled thereto.

2. Both the owner of the application or of the patent and the owner of a license obtained before the registration of the filing of the legal action, who prior to that registration had exploited the invention or had made effective and real preparations for that purpose, may continue or begin exploitation provided that they request a non-exclusive license from the new owner registered in the Patent Register, within a period of two months in the case of the previous owner of the patent or, in the case of the licensee, within four months from the date of receipt of the notification from the Spanish Patent and Trademark Office informing them of the registration of the new owner. The license shall be granted for an appropriate period and under reasonable conditions, which shall be fixed, if necessary, by the procedure established in this Law for compulsory licenses.

3. The provisions of the preceding paragraph shall not apply if the patent or license holder acted in bad faith at the time when the exploitation or preparations for exploitation began.

Designation of the inventor.

The inventor has, vis-à-vis the owner of the patent application or patent, the right to be mentioned as such inventor in the patent.

TITLE IV

Inventions made within the framework of an employment or service relationship

Article 15. *Inventions belonging to the entrepreneur.*

1. Inventions made by the employee or service provider during the term of his contract or employment or service relationship with the employer that are the result of a research activity explicitly or implicitly constituting the subject matter of his contract belong to the employer.

2. The author of the invention shall not be entitled to additional remuneration for its realization, unless his personal contribution to the invention and the importance of the invention for the employer clearly exceeds the explicit or implicit content of his contract or employment relationship.

Inventions belonging to the employee or service provider.

Inventions whose realization does not meet the circumstances provided for in Article 15.1 belong to the author thereof.

Article 17. *Inventions that can be assumed by the employer.*

1. Notwithstanding the provisions of Article 16, when the employee makes an invention related to his professional activity in the company and its obtaining has been predominantly influenced by knowledge acquired within the company or the use of means provided by the company, the employer shall be entitled to assume ownership of the invention or to reserve the right to use it.

2. When the employer assumes the ownership of an invention or reserves the right to use it, the employee shall be entitled to a fair economic compensation fixed according to the industrial and commercial importance of the invention and taking into account the value of the means or knowledge provided by the company and the employee's own contributions. Said economic compensation may consist of a share in the profits obtained by the company from the exploitation or assignment of its rights over said invention.

Article 18. *Duty of information and exercise of rights by the employer and the employee.*

1. The employee who makes any of the inventions referred to in Articles 15 and 17 shall inform the employer by means of a written communication, with the data and information necessary for the latter to be able to exercise the rights to which he is entitled. This communication shall be made within a period of one month from the date on which the invention has been completed. The non-fulfillment of this obligation will carry with it the loss of the rights that are recognized to the employee in this Title.

2. In the case of an invention that may be taken over by the employer in accordance with the provisions of Article 17, the employer shall, within a period of three months from the day following receipt of the communication referred to in the preceding paragraph, evaluate the invention in question and notify the employee in writing of his intention to take over ownership of the invention or to reserve the right to use it.

If the employer does not communicate to the employee his willingness to assume the ownership of the invention within the terms provided, his right will expire, and the employee may file a patent application.

If the employer, having communicated to the employee his willingness to assume ownership of the invention, does not file the industrial property application within a reasonable additional period fixed with the employee, the employee may file the patent application in the name and on behalf of the employer.

3. Non-patentable technical improvements obtained by the employee in the course of the activities provided for in Articles 15 and 17 which, through their exploitation as a trade secret, offer the employer an advantageous position similar to that obtained from an industrial property right, shall entitle the employer to claim from the employer a reasonable compensation fixed in accordance with the criteria set forth in the aforementioned Articles as soon as the latter exploits the proposal.

4. Both the employer and the employee shall cooperate to the extent necessary for the effectiveness of the rights recognized in this Title, refraining from any action that may be detrimental to such rights.

Burden of proof and waiver of rights.

1. Unless proven otherwise, inventions for which an application for a patent or other exclusive protection title is filed within the year following the termination of the employment or service relationship shall be presumed to have been made during the term of the employment or service relationship.

2. Any anticipated waiver by the employee of the rights granted by the Law in this Title shall be null and void.

Article 20. Scope of application.

The rules of this Title shall also apply to civil servants, employees and workers of the State, Autonomous Communities, Provinces, Municipalities and other Public Bodies, without prejudice to the provisions of the following article.

Article 21. *Inventions made by the research personnel of the Public Universities and Public Research Entities.*

1. Inventions made by the research personnel of the Public Research Centers and Bodies of the General State Administration, of the Research Centers and Bodies of other Public Administrations, of the Public Universities, of the State Public Sector Foundations and of the State Mercantile Companies will belong to the entities whose researchers have obtained them in the exercise of their own functions, whatever the nature of the legal relationship by which they are linked to them.

For these purposes, research personnel is considered in all cases to be that defined as such in article 13 of Law 14/2011, of June 1, on Science, Technology and Innovation, technical personnel considered in said Law as research personnel and technical support personnel who, in accordance with the internal regulations of universities and research centers, are also considered to be research personnel.

2. The inventions contemplated in section 1 shall be communicated in writing to the public entity in whose service the researcher who is the author of the invention is employed within three months from the conclusion of the invention. The lack of communication on the part of the research personnel will carry with it the loss of the rights that are recognized to him in the following sections.

3. The organism or the public entity, in the term of three months counted from the reception of the notification referred to in the preceding paragraph, shall communicate in writing to the author or authors of the invention its will to maintain its rights on the invention, requesting the corresponding patent, or to consider it as industrial secret reserving the right of use on the same one in exclusive right. The result of a research susceptible of being patented may not be published before said term has elapsed or until the entity or the author has filed the patent application.

If the public body or entity does not communicate within the period indicated its willingness to maintain its rights over the invention, the author or authors of the invention may file the patent application in accordance with the provisions of Article 18.2.

4. The researcher will have in any case the right to participate in the benefits obtained by the entities in which he provides his services from the exploitation or assignment of his rights on said inventions, when the patent is requested in the name of the entity or the industrial secret is decided. These entities may also assign the ownership of said inventions to the author thereof, reserving a non-exclusive, non-transferable and free exploitation license or a share in the profits obtained from the exploitation of said inventions determined in accordance with the provisions of paragraphs 6 and 7.

5. In the contracts or agreements that the entities referred to in paragraph 1 shall enter into with public or private entities, it shall be stipulated to whom the ownership of the inventions that the research personnel may make within the framework of such contracts or agreements shall correspond, as well as everything related to the rights of use and commercial exploitation and to the distribution of the benefits obtained.

6. The Governing Council of the University shall determine the modalities and the amount of the participation of the University's research personnel in the profits obtained.

with the exploitation of the inventions contemplated in this article, and if applicable, of the participation of the University in the benefits obtained by the researcher with the exploitation of the same, without prejudice to the provisions of Article 83 of Organic Law 6/2001, of December 21, 2001, on Universities and Article 64 of Law 2/2011, of March 4, 2011, on Sustainable Economy.

7. The modalities and amount of the participation of the research personnel of the Public Research Entities in the benefits obtained from the exploitation or cession of the inventions contemplated in this article will be established by the Government taking into account the specific characteristics of each Public Research Entity. This participation will not have in any case a retributive or salary nature. The Autonomous Communities will be able to develop by means of regulation specific regimes of participation in benefits for the research personnel of Public Research Entities of their competence.

TITLE V

Application and granting procedure

CHAPTER I

Filing and requirements of the patent application

Article 22. *Submission of the application.*

1. The patent application shall be filed at the Spanish Patent and Trademark Office or at the competent body of any Autonomous Community.

2. The patent application may also be filed in the places provided for in Article 38.4 of Law 30/1992, of November 26, 1992, on the Legal Regime of Public Administrations and Common Administrative Procedure, addressed to any of the bodies which, in accordance with the preceding paragraph, are competent to receive the application.

3. Law 11/2007, of June 22, 2007, on citizens' electronic access to Public Services, shall apply to the electronic submission of applications.

Article 23. *Application requirements.*

1. The patent application must contain:

- a) An application form, according to the official model, addressed to the Director of the Spanish Patent and Trademark Office.
- b) A description of the invention for which the patent is sought.
- c) One or more claims.
- d) The drawings to which the description or claims refer and, if applicable, the biological sequences presented in the format established by regulations.
- e) A summary of the invention.

2. When the invention refers to biological material of vegetable or animal origin, the application shall include the mention of its geographical origin or the source of origin of such material if these data are known. This information shall not prejudice the validity of the patent.

In the cases provided for in Regulation (EU) No. 511/2014 of the European Parliament and of the Council of 16 April 2014 on measures for compliance by users of the Nagoya Protocol on access to genetic resources and fair and equitable sharing of the benefits arising out of their utilization in the Union, the patent application shall also contain, to the extent determined by regulation, the information that users of such resources are obliged to keep in accordance with the provisions of the aforementioned regulation. Nor shall the said information prejudice the validity of the patent.

3. Both the application and the other documents to be filed with the Spanish Patent and Trademark Office must be written in Spanish and comply with the requirements of the Spanish Patent and Trademark Office.

requirements to be established by regulation. Without prejudice to the provisions of Article 24.1.c), in Autonomous Communities where another official language exists, such documents may be drawn up in said language and must be accompanied by the corresponding translation into Spanish, which shall be considered authentic in the event of doubt between the two.

4. The filing of the application will give rise to the payment of the corresponding fee, as well as the fee for the preparation of the report on the state of the art.

Article 24. *Filing date.*

1. The filing date of the application shall be the date at which the applicant delivers to the offices authorized to receive patent applications the documentation containing at least the following elements:

- a) The indication that a patent is being applied for.
- b) Information that makes it possible to identify and contact the applicant.
- c) A description of the invention for which the patent is requested, even if it does not comply with the formal requirements established in the Law, or the reference to an application filed earlier.

For the purpose of obtaining a filing date, the description may be written in any language, and the corresponding translation into Spanish must be submitted within the regulatory period established.

2. The reference to a previous application must indicate its number, its filing date and the office where it was filed. The reference must state that it replaces the description and, if applicable, the drawings.

3. If the application refers to a previous application as provided for in the preceding paragraph, a certified copy of the previous application, accompanied, where appropriate, by the corresponding translation into Spanish, must be submitted within the time limit established in the implementing regulations.

4. The date of submission of applications deposited at a post office will be the date on which said office receives the documentation containing the elements mentioned in the previous sections, provided that they are submitted by registered mail in the manner provided for in Article 31 of the Regulations governing the provision of postal services, approved by Royal Decree 1829/1999, of December 3. In any case, the documentation must be addressed to the body competent to receive the application.

Designation of the inventor.

The application must designate the inventor. In the event that the applicant is not the inventor or is not the sole inventor, the designation must be accompanied by a statement expressing how the applicant has acquired the right to the patent.

Article 26. *Unity of invention.*

1. The patent application may not include more than a single invention or a group of inventions related to each other in such a way that they integrate a single general inventive concept.

2. Applications that do not comply with the provisions of the preceding paragraph shall be divided in accordance with the provisions of the regulations.

3. Divisional applications shall have the same filing date as the initial application from which they originate, to the extent that their subject matter is already contained in that application.

Article 27. *Description of the Invention.*

1. The invention must be described in the patent application in a manner sufficiently clear and complete for a person skilled in the art to be able to carry it out.

2. Where the invention relates to biological material not accessible to the public, or to its use, and where the biological material cannot be described in the patent application of the invention, the invention must be described in the patent application.

In such a way that a skilled person can reproduce the invention, the description shall only be considered to comply with the provisions of the previous paragraph if the following requirements, as developed in the regulations, are met:

a) That the biological material has been deposited no later than the filing date of the patent application in an institution legally recognized for that purpose, under conditions equal to those established by the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977 (hereinafter referred to as the Budapest Treaty). In any case, the international depositary authorities that have acquired such status in accordance with Article 7 of the said Treaty shall be considered as recognized.

b) That the application, as filed, contains the relevant information available to the applicant on the characteristics of the biological material deposited.

c) That in accordance with the provisions of the Regulations, the name of the depositary institution and its number be indicated.

3. If the biological material deposited in accordance with the provisions of the preceding paragraph is no longer available in the recognized depositary institution, a new deposit of such material shall be authorized, under conditions analogous to those provided for in the Budapest Treaty.

4. Any new deposit must be accompanied by a declaration signed by the depositor certifying that the biological material that is the subject of the new deposit is the same as that which was initially deposited.

Article 28. *Claims.*

The claims define the subject matter for which protection is sought. They must be clear and concise and must be based on the description.

Article 29. *Summary.*

The summary of the invention shall serve exclusively for technical information purposes. It may not be taken into consideration for any other purpose, and in particular may not be used either for the determination of the scope of protection applied for, or for delimiting the state of the art for the purposes of Article 6.3.

Article 30. *Priority.*

1. Those who have regularly filed a first application for a patent of invention, utility model or utility certificate in or for any of the States party to the Paris Convention for the Protection of Industrial Property, done at Paris on March 20, 1883, or to the Agreement establishing the World Trade Organization, or their successors in title, shall enjoy, for the filing of a patent application in Spain on the same invention, a right of priority of twelve months from the filing date of the said first application, national or foreign, or their successors in title, shall enjoy, for the filing of a patent application in Spain on the same invention, a right of priority of twelve months from the filing date of the said first application, national or foreign, under the conditions established in Article 4 of the Paris Convention.

2. Those who have filed a first application for protection in or for a State not mentioned in paragraph 1 which recognizes applications filed in Spain as having a right of priority under conditions and with effects equivalent to those provided for in the Paris Convention shall have the same right of priority referred to in the preceding paragraph.

3. By virtue of the exercise of the right of priority, the filing date of the earlier application whose priority has been validly claimed shall be considered as the filing date of the application for the purposes of Articles 6, 10.3 and 139.

Article 31. *Claiming priority.*

1. An applicant wishing to claim the priority of an earlier application shall file, in the form and within the time limits established by regulations, a declaration of priority and a copy certified by the office of origin of the earlier application accompanied by its translation into Spanish when it is written in another language.

2. However, it will not be necessary to submit the copy of the previous application or the translation when the priority claim is not considered relevant to determine

the patentability of the invention, or the earlier application or its translation is already in the possession of the Spanish Patent and Trademark Office or is available in a digital library.

3. Multiple priorities may be claimed for the same application and, as the case may be, for the same claim, even if they originate in different States. If multiple priorities are claimed, the periods to be computed from the priority date shall be counted from the earliest priority date.

4. When one or more priorities are claimed, the right of priority shall cover only those elements of the application which are contained in the application or applications whose priority has been claimed.

5. Even if certain elements of the invention for which priority is claimed do not appear among the claims formulated in the earlier application, priority may be granted for them if the whole of the documents of that earlier application disclose such elements in a sufficiently clear and precise manner.

6. The claim of priority shall imply the payment of the corresponding fee.

CHAPTER II

Granting Procedure

Receipt of the application and referral to the SPTO.

1. The competent body in accordance with the provisions of Article 22 shall record at the time of receiving the application its registration number, the day, hour and minute of its presentation, and shall issue an accrediting receipt or stamped copy of the documentation presented in the form to be determined by regulation. If the time has not been recorded, the last hour of the day shall be assigned. If the minute is not stated, the last minute of the hour shall be assigned.

2. When the competent body for receiving the application is that of an Autonomous Community, it shall send the documentation submitted to the Spanish Patent and Trademark Office within three days of its receipt. Failure to comply with this period shall in no case be prejudicial to the applicant.

Article 33. *Establishment of filing date and admission for processing.*

1. Within 10 days following its receipt, the Spanish Patent and Trademark Office shall check whether the patent application meets the requirements for it to be granted a filing date and, if so, shall admit it for processing and proceed in accordance with the provisions of Article 34.

2. If any of the requirements necessary to obtain a filing date are missing, the interested party will be notified of the defects so that they may correct them within the established period. In this case, the filing date will be the date on which the Spanish Patent and Trademark Office receives the documentation with the defects duly corrected. If the defects are not corrected within the time limit, the application will not be admitted for processing and the applicant will be so notified, stating the reasons.

3. If the application fees and the fee for the preparation of the report on the state of the art have not been paid with the application, or have not been paid in full, the applicant shall be notified of this circumstance so that he/she may make or complete the payment within the established period. Once said term has elapsed without making or completing the payment, the application shall be considered withdrawn.

4. The deadlines mentioned in the preceding paragraphs are those set forth in the implementing regulations of this Law.

Patents of interest for national defense.

The Spanish Patent and Trademark Office shall make available to the Ministry of Defense, for the purposes provided for in Title XI of this Law, all patent applications that may be of interest to national defense, establishing for this purpose the necessary coordination with said Ministry.

Article 35. *Ex officio review.*

1. Once the application has been accepted for processing, the Spanish Patent and Trademark Office will verify:

a) If the subject matter thereof is not manifestly and totally excluded from patentability by application of Articles 4.4 and 5 of this Law.

b) If the requirements relating to the representation and the claim of priority, if any, as well as any other requirement relating to the formal regularity of the application, the verification of which must be carried out, in accordance with the provisions of the Regulations, before the publication of the application, are complied with.

2. The presence of formal defects in the documentation shall not suspend the preparation of the report on the state of the art referred to in the following article, provided they are not of such a nature as to prevent its preparation.

3. If from the verification it appears that the object of the application is excluded from patentability according to section 1.a), or the requirements mentioned in section 1 b) are not fulfilled, these circumstances shall be communicated to the interested party so that he may present his allegations or correct the defects within the established term. If the obstacles persist or the defects are not corrected in due time, the application shall be rejected by means of a reasoned decision. When the defects refer to the right of priority, the applicant shall lose this right.

Issuance of the report on the state of the art and of the written opinion.

1. The Spanish Patent and Trademark Office shall issue, as established by regulation, a report on the state of the art and a written opinion, preliminary and non-binding, relating to the patent application, made on the basis of the claims, taking due account of the description and, where appropriate, the drawings or biological sequences. Both the report on the state of the art and the written opinion shall be forwarded to the applicant.

2. The report on the state of the art shall be based on a search which, in accordance with the provisions of Article 6.2 of this Law, shall extend to everything that has been made accessible to the public in Spain or abroad by a written or oral description, by use or by any other means.

3. When the lack of clarity or coherence of the description or of the claims prevents to proceed in whole or in part to the elaboration of the report, the Spanish Patent and Trademark Office will make the opportune notification to the applicant so that he formulates his allegations or corrects the defects in the established regulatory term. In order to remedy the defects, the applicant may amend the claims. If the applicant does not respond within the established term, or does not specify the object of the search to a sufficient extent to correct the defects indicated, the said Office shall issue a report on the state of the art based on a partial search. If this is not possible, the application shall be rejected by means of a reasoned decision, and the applicant shall be so notified.

4. If there is a lack of unity of invention and the applicant, at the request of the Spanish Patent and Trademark Office, does not divide his application or does not pay additional fees, the procedure shall continue for the invention or group of inventions claimed first that meet the conditions of Article 26, and the applicant shall be deemed to have abandoned the remaining inventions.

5. Applications for which the international search report has been carried out by the Spanish Patent and Trademark Office in its capacity as International Searching Authority shall not be the subject of the prior art report or the written opinion.

Publication of the application and the report.

1. After eighteen months have elapsed from the filing date of the application or from the priority date that has been claimed and passed the ex officio examination, the Spanish Patent and Trademark Office shall publish the patent application as soon as possible, making the corresponding announcement in the "Official Industrial Property Gazette" and making the documents contained in the published patent application file available to the public. Likewise, a leaflet will be published containing the text of the description with the

claims and, where appropriate, drawings or biological sequences, in the form and with the elements to be established in the Implementing Regulations.

2. At the request of the applicant, the patent application may be published, even if the period referred to in paragraph 1 has not expired.

3. Publication will not take place when the application has been refused, or is considered withdrawn or abandoned, or has been withdrawn by the applicant before the technical preparations for publication have been completed.

4. The report on the state of the art will be published, making the corresponding announcement in the "Official Bulletin of Industrial Property", and issuing a brochure with said report together with the patent application or subsequently, if it has already been published.

Article 38. *Observations by third parties.*

Once the application has been published, any person may make duly reasoned and documented observations on the patentability of the invention that is the subject matter thereof in the manner and within the period established by regulation, without interrupting the processing. Such third parties shall not be considered parties to the proceedings.

Article 39. *Substantive review.*

1. The Spanish Patent and Trademark Office shall examine, at the request of the applicant and in accordance with the provisions of the Regulations, whether the patent application and the invention that constitutes its subject matter meet the formal, technical and patentability requirements laid down in the Law.

2. The request, which may be made by the applicant as from the filing of the application, shall in any case be filed before the expiration of a period of three months counted from the publication of the report on the state of the art, and shall not be deemed to have been made until the examination fee has been paid. The revocation of the request for examination shall be equivalent to the withdrawal of the patent application.

3. Together with the request for substantive examination the applicant may submit observations to the prior art report, to the written opinion and to the observations of third parties and amend, if he deems it appropriate, the claims and the remaining documents of the application subject to the provisions of Article 48.

4. If the time limit referred to in paragraph 2 has elapsed without the applicant having filed his request for examination, it shall be understood that his application has been withdrawn.

Article 40. *Processing and resolution.*

1. When the examination does not reveal the lack of any requirement that would prevent it, the Spanish Patent and Trademark Office will grant the patent applied for.

2. If, as a result of the examination, reasons are found that prevent the grant of the patent in whole or in part, these shall be communicated to the applicant so that, within the period established by regulations, he may reply to the objections pointed out by the Spanish Patent and Trademark Office or modify the claims, if he deems it appropriate.

3. In case the applicant does not perform any act to obviate the objections formulated by the Spanish Patent and Trademark Office, the patent shall be denied. In all other cases, the Spanish Patent and Trademark Office will decide once it has received the applicant's reply.

4. If, once the Spanish Patent and Trademark Office has received the applicant's reply and despite the allegations or amendments provided, it considers that there are still grounds that prevent the grant of the patent in whole or in part, the applicant will be informed of these, giving him new opportunities to correct his application or to make allegations, under the conditions and within the time limits established in the Regulations, before taking a final decision on the grant or refusal of the patent.

Announcement of the grant and publication of the patent.

The grant of the patent shall be announced in the "Official Bulletin of Industrial Property", making available to the public the documents contained in the file of the granted patent.

Article 42. *Publication of the patent brochure.*

For each granted patent a booklet shall be published containing the text of the description, with the claims and drawings and, where appropriate, the biological sequences, as finally granted. The brochure, the contents of which shall be established by regulation, shall also mention the "Official Industrial Property Gazette" in which the grant was announced.

The prospectus shall state that the patent is granted without prejudice to third parties and without guarantee of the State as to the validity of the patent and the utility of the subject matter to which it relates.

CHAPTER III

Oppositions and appeals

Article 43. *Oppositions.*

1. Within six months following the publication of the grant in the "Official Industrial Property Gazette", any person may oppose the grant on any of the following grounds:

- a) The claimed invention does not meet any of the patentability requirements established in Title II of this Law.
- b) Your description is not sufficiently clear and complete for an expert in the field to execute it.
- c) The subject matter of the granted patent exceeds the content of the application as filed.

2. The opposition must be addressed to the Spanish Patent and Trademark Office in a reasoned document, accompanied by the corresponding supporting documents and upon payment of the corresponding fee.

3. Once the notice of opposition has been admitted for processing, it will be communicated to the owner of the registered patent so that he may present his allegations and modify, if he deems it appropriate, the claims. The Spanish Patent and Trademark Office will transfer to each of the parties the allegations and proposed amendments presented by the other, granting them a reply in each case, all within the terms and conditions established in the regulations.

4. Once the periods mentioned in the preceding paragraph have elapsed, the Spanish Patent and Trademark Office shall decide to uphold all or part of the oppositions filed, when any of the grounds for opposition indicated in paragraph 1 are present, or reject them in the opposite case. Nevertheless, when in spite of the modifications or allegations provided, reasons persist that prevent in whole or in part the maintenance of the patent, the owner shall be granted at least one opportunity to correct the defect, or to present new allegations, before deciding definitively on the opposition presented.

5. The decision of the Spanish Patent and Trademark Office shall be published in the Official Industrial Property Gazette, including, where appropriate, any amendments that may have been made to the patent. The protection conferred by this Law shall be extended retroactively to the patent thus amended.

6. The retroactive effect of the revocation shall be subject, as the case may be, to the provisions of Article 104 regarding nullity.

Article 44. *Appeals.*

1. The administrative appeal against the grant of a patent may only be filed by those who have been party to an opposition proceeding and shall be directed against the act resolving the opposition filed. For these purposes, the opposition may be understood to have been rejected if no express decision has been handed down after the period for resolving and notifying it has elapsed.

2. The applicant for a patent may file an administrative appeal against the decision of the Spanish Patent and Trademark Office to reject the patent application.

3. In the appeal procedure the patent owner may amend the application subject to the provisions of Article 48.

CHAPTER IV

Supplementary protection certificates for medicines and phytosanitary products

Article 45. Applications.

1. Applications for supplementary protection certificates for medicinal products, for their extension, and for supplementary protection certificates for phytosanitary products, shall be addressed to the Spanish Patent and Trademark Office on the standard form made available to users by the Office, which shall contain the declarations and data provided for in the Community regulations as they have been developed by regulation.

2. Applications for supplementary protection certificates and their extension shall be subject to payment of the corresponding fee.

Article 46. Processing.

1. The Spanish Patent and Trademark Office will check whether the application for a certificate and the product to which it refers, or the extension, as the case may be, comply with the requirements established in Community regulations. The Office will not investigate ex officio whether the marketing authorization is the first one as a medicinal product or phytosanitary product in the European Union.

2. If the application and the product covered by the certificate or its extension comply with the conditions laid down in Community regulations, the Office shall grant them. Otherwise, the applicant shall be notified of the defects so that he may remedy them or submit his observations within the time limit laid down in the regulations. Where the deficiencies are not remedied within the time limit and the Office considers that the objections raised in the notification still exist, the application will be refused.

Both the application and the final decision shall be published in the "Official Bulletin of Industrial Property", in accordance with the provisions of the regulations. An appeal may be lodged against the decisions of the Office in accordance with the provisions of the legal regime of the Public Administrations and the Common Administrative Procedure and the first additional provision of this Law.

Article 47. Maintenance.

The fee for the maintenance of the supplementary protection certificate shall be paid in a single payment, the amount of which shall be fixed according to the duration of the certificate.

CHAPTER V

Provisions common to all procedures and to the information of third parties

Article 48. Modifications.

1. Except in those cases in which it is a question of correcting manifest errors, the interested party may only amend the claims in those steps of the grant procedure in which it is allowed by this Law, and subject to what is established by regulation. The possibility of amending the claims includes the possibility of amending the description and, as the case may be, the drawings or the biological sequences.

2. The applicant may amend the claims, in accordance with the provisions of the preceding paragraph, without the consent of those who have rights registered on his application in the Patent Register.

3. Any amendment must be accompanied by a written statement in which the applicant specifies the differences between the new text and the text replaced, indicating the reason for the amendments and the scope of the amendments.

4. Where the patent has been amended as a result of opposition, limitation or appeal proceedings or a court decision, a new prospectus shall be issued, which shall contain the full text of the patent document as amended, the provisions of Article 43(5) being applicable.

In the absence of payment of the fee, the patent shall not be effective. If the procedure is for limitation, it shall be considered as not having been carried out.

5. The patent application or the patent may not be amended in such a way that its subject matter exceeds the contents of the application as originally filed.

6. In opposition proceedings, or in limitation proceedings, as the case may be, the patent may not be amended in such a way as to extend the protection it confers.

Article 49. *Correction of errors.*

At the request of the applicant, the modifications of the defects of expression or transcription or of the errors contained in any document of the application will be admitted subject to the limitations established by regulation. However, if the request for rectification affects the description, the claims, the drawings or the biological sequences, the rectification must be evident in the sense that it is immediately clear that no other text, drawing or sequence than the one resulting from the modification could have been proposed by the applicant.

Article 50. *Suspension of proceedings.*

The presence of defects in the documentation will interrupt the procedure from the moment the applicant is notified of the existence of such defects, by means of the corresponding suspension in the processing, until said defects are corrected or the term for doing so expires.

Article 51. *Change of modality.*

1. At any time prior to the completion of the substantive examination provided for in Article 39, the interested party may request the conversion of his application so that the subject matter of the application is protected under a different Industrial Property title.

2. The Spanish Patent and Trademark Office, as a result of the examination that it must carry out pursuant to the provisions of Articles 35 and 40, may propose to the interested party the change of modality of the application. The applicant may accept or reject the proposal, it being understood that he rejects it if within the period provided for in the Regulations he does not expressly request the change of type.

If the proposal is rejected, the file will continue to be processed in the requested modality.

3. In the event that the applicant requests a change of modality, the change will be agreed upon, and the applicant will be notified of the documents to be submitted within the regulatory period established for the new processing to which the application must be submitted. If the new documentation is not submitted in due time, the applicant shall be considered to have withdrawn and shall be so notified.

4. When the resolution agreeing the change of modality occurs after the publication of the patent application, it shall be published in the "Official Bulletin of Industrial Property".

Withdrawal of the application.

1. The patent application may be withdrawn by the applicant at any time before the patent is granted.

2. When third party rights are registered in the Patent Register, the application may only be withdrawn with the consent of the owners of such rights.

Article 53. Reinstatement of rights.

1. The applicant for or owner of a patent or any other party to a proceeding who, despite having shown all the diligence required by the circumstances, has failed to comply with a time limit in any of the proceedings provided for in this Law shall, on request, have his rights restored if the omission has had the direct consequence, by virtue of the provisions of this Law or its Regulations, of forfeiting a right. In the event that the time limit corresponds to the filing of an appeal, it shall result in its admission for processing, except as provided for in paragraph 5.

2. The request must be submitted in writing within the earlier of the following deadlines:

- i) two months counted from the cessation of the impediment;
- ii) twelve months from the date of expiration of the omitted formality or, where a request relates to the non-payment of a maintenance fee, twelve months from the date of expiration of the six-month period of payment with surcharges referred to in Article 185.

The unfulfilled procedure must be carried out within that period. However, in the event that the reinstatement of rights is requested for the period provided for in Article 30, the request must be submitted within two months of the expiration thereof or before the technical preparations for the publication of the subsequent request are completed, whichever period expires earlier.

3. The request must be reasoned, stating the facts and justifications alleged in its support. It shall only be deemed to have been filed when the fee for the reinstatement of rights has been paid.

4. The body that is competent to decide on the petition shall be the body that is competent to decide on the act that has not been complied with.

5. The provisions of this Article shall not apply to the time limits referred to in paragraph 2 of this Article and in Articles 43.1 and 144. Nor shall they apply to the time limit for lodging an administrative appeal against an act declaring rights.

6. The owner of the application or registration whose rights have been restored may not invoke those rights against a third party who, in good faith, in the period between the loss of the right and the publication of the mention of the restoration of that right, has begun to work the invention that is the subject matter of the application or patent, or has made serious and effective preparations for that purpose, provided that the third party merely begins or continues such working in his business or for the needs of his business.

7. An appeal may be lodged against the decision restoring the rights of the applicant, both by the third party who may benefit from the right to continue or begin exploitation of the invention provided for in paragraph 6, and by the third party against whom the prior rights deriving from the application that is the subject of the restoration of rights may be invoked.

8. The decision to reinstate rights shall be recorded in the Patent Register and published in the "Official Bulletin of Industrial Property".

Article 54. Review of acts in administrative and contentious-administrative proceedings.

1. The acts and decisions issued by the bodies of the Spanish Patent and Trademark Office may be appealed in accordance with the provisions of this Law and Law 30/1992, of November 26, 1992, on the Legal Regime of the Public Administrations and Common Administrative Procedure.

2. The resolutions of the administrative appeals issued by the competent bodies of the Spanish Patent and Trademark Office that put an end to administrative proceedings may be appealed before the Contentious-Administrative Jurisdiction.

3. The Spanish Patent and Trademark Office may not, *ex officio* or at the request of a party, exercise the power of review provided for in the following provisions against a decision granting a patent

Article 102 of Law 30/1992 of November 26, 1992, if the nullity of the patent is based on any of the grounds provided for in Article 102 of this Law. Said causes of nullity may only be asserted before the courts.

Article 55. Consultation of files.

1. The files relating to applications for patents, utility models or supplementary protection certificates that have not yet been published may be consulted only with the consent of the applicant. After their publication, they may be consulted subject to conditions to be established by regulation.

2. Any person who proves that the applicant for a patent, utility model or supplementary protection certificate has sought to assert against him the rights deriving from his application may consult the file prior to publication without the consent of the applicant.

3. When a divisional application, a new patent application filed under the provisions of Article 11.1 or the application resulting from a change in the modality of protection under Article 51 is published, any person may consult the file of the initial application before its publication and without the consent of the applicant.

4. The files corresponding to applications that have been denied, withdrawn or deemed withdrawn prior to publication will not be accessible to the public.

5. In the event that one of the applications mentioned in the previous paragraph is filed again, it shall be considered as a new application without prejudice to the possible right of priority that may derive from the previous application.

Article 56. Accessibility of biological material.

1. The deposited biological material referred to in article 27 shall be accessible:

a) Before the first publication of the patent application, only to those who have the right to consult the file in accordance with the provisions of the previous article.

b) Between the first publication of the application and the grant of the patent, to any person who requests it or only to an independent expert if so requested by the patent applicant.

c) After the grant of the patent, and even if the patent expires or is annulled, to any person who requests it.

2. Access will be granted by means of the delivery of a sample of the deposited biological material, provided that the person requesting it undertakes to do so for the duration of the effects of the patent:

a) Not to supply to third parties any sample of the biological material deposited or of any material derived therefrom, and

b) Not to use any sample of the biological material deposited, or derived from the same, except for experimental purposes, unless the applicant or the patent holder expressly renounces this commitment.

3. In the event of refusal or withdrawal of the application, access to the deposited subject matter shall be limited, at the request of the applicant and for twenty years from the filing date of the patent application, to an independent expert. In this case the provisions of paragraph 2 shall apply.

4. The applicant's requests referred to in paragraph (b) of subsection 1 and subsection 3 may only be filed up to the date on which the technical preparations for publication of the patent application are deemed to have been completed.

Obligation to provide information to third parties.

1. Anyone who intends to assert against a third party rights deriving from a patent application or from a patent already granted shall inform him of the number of the patent.

2. Whoever includes on a product, on its labels or packaging, or in any kind of advertisement or printed matter, any mention tending to produce the impression that it exists

the protection of a patent application or of a patent already granted shall state the number of the same.

TITLE VI

Effects of the patent and the patent application

Article 58. *Duration and computation of the effects.*

The patent has a non-extendable term of twenty years, counted from the filing date of the application and produces its effects from the day on which the mention that it has been granted is published.

Prohibition of direct exploitation of the invention.

1. The patent confers on its owner the right to prevent any third party without his consent:

a) The manufacture, offering for sale, introduction into commerce or use of a product that is the subject of the patent or the importation or possession thereof for any of the aforementioned purposes.

b) The use of a process that is the subject of the patent or the offer of such use, when the third party knows, or the circumstances make it evident that the use of the process is prohibited without the consent of the patent holder.

c) The offering for sale, introduction into commerce or use of the product directly obtained by the process that is the object of the patent or the importation or possession of said product for any of the aforementioned purposes.

2. Where the subject matter of the patent is biological material which, by reason of the invention, possesses specific properties, the rights conferred by the patent shall extend to any biological material obtained from the patented biological material by reproduction or multiplication, in identical or differentiated form and possessing the same properties.

3. Where the subject matter of the patent is a process by which biological material is produced which, by reason of the invention, possesses specific properties, the rights conferred by the patent shall extend to the biological material directly obtained by the patented process and to any other biological material obtained therefrom by reproduction or multiplication, in identical or differentiated form, and possessing the same properties.

4. Where the patent relates to a product containing genetic information or consisting of genetic information, the rights conferred by the patent shall extend, without prejudice to the provisions of Article 5(5), to any material in which the product is incorporated and in which the genetic information is contained and performs its function.

Prohibition of indirect exploitation of the invention.

1. The patent also confers on its owner the right to prevent that without his consent any third party delivers or offers to deliver means for the implementation of the patented invention relating to an essential element thereof to persons not entitled to exploit it, when the third party knows or the circumstances make it evident that such means are suitable for the implementation of the invention and are intended for it.

2. The provisions of the preceding paragraph are not applicable when the means referred to therein are products commonly found in commerce, unless the third party incites the person to whom the delivery is made to commit acts prohibited in the preceding article.

3. Persons who perform the acts provided for in the following paragraphs shall not be considered as persons entitled to exploit the patented invention within the meaning of paragraph 1.

a) a) to d) of the following article.

General limits and exhaustion of the patent right.

1. The rights conferred by the patent do not extend:

- a) To acts carried out in a private environment and for non-commercial purposes.
- b) To acts performed for experimental purposes relating to the subject matter of the patented invention.
- c) To carry out the studies and trials necessary to obtain authorization to market drugs in Spain or outside Spain, and the consequent practical requirements, including the preparation, procurement and use of the active ingredient for these purposes.
- d) To the preparation of medicines made in pharmacies extemporaneously and per unit in execution of a medical prescription nor to the acts related to the medicines thus prepared.
- e) To the use of the object of the patented invention on board ships of countries of the Paris Union for the protection of Industrial Property, in the body of the ship, in the machinery, in the gear, in the apparatus and in the remaining accessories, when those ships temporarily or accidentally enter Spanish waters, provided that the object of the invention is used exclusively for the needs of the ship.
- f) To the use of the object of the patented invention in the construction or operation of means of locomotion, aerial or terrestrial, belonging to member countries of the Paris Union for the protection of Industrial Property or accessories thereof, when such means of locomotion temporarily or accidentally enter Spanish territory.
- g) To the acts provided for in Article 27 of the Convention on International Civil Aviation, done at Chicago on December 7, 1944, when such acts relate to aircraft of a State to which the provisions of the said Article are applicable.

2. The rights conferred by the patent do not extend to acts relating to a product protected by the patent after that product has been put on the market in the European Economic Area by the patent owner or with his consent unless there are legitimate grounds for the patent owner to oppose further commercialization of the product.

3. The rights conferred by the patent shall not extend to acts relating to biological material obtained by reproduction or multiplication of a protected biological material covered by the patent, after the latter has been placed on the market in the European Economic Area by the owner of the patent or with his consent, where the reproduction or multiplication is the necessary result of the use for which the said biological material has been marketed, and provided that the material obtained is not subsequently used for further reproduction or multiplication.

This limitation shall not apply when there are legitimate reasons that justify the patent holder's opposition to the further commercialization of the biological material.

Article 62. *Exceptions of the stockbreeder and the farmer.*

1. Notwithstanding the provisions of Article 59, the sale, or any other form of marketing of plant propagating material carried out by the patent owner or with his consent to a farmer for his farm, shall imply the right of the latter to use the product of his harvest for further propagation carried out by himself on his own farm. The scope and modalities of this exception shall correspond to those provided for in Article 14 of Council Regulation (EC) No. 2100/94 of July 27, 1994, on Community plant variety rights and Law 3/2000 of January 7, 2000, on the legal regime for the protection of plant varieties.

2. Notwithstanding the provisions of Article 59, the sale or any other form of marketing of breeding animals or animal reproductive material carried out by the patent owner or with his consent to a farmer or stockbreeder shall imply authorization for the latter to use the protected livestock for agricultural or stockbreeding purposes. This shall include the making available of the livestock or other breeding material to a farmer or stockbreeder.

animal reproduction to enable the farmer or stockbreeder to continue his agricultural or stockbreeding activity, but not the sale within the framework of a commercial reproduction activity or for that purpose. The scope and modalities of this exception will correspond to those to be established by regulation.

Rights derived from prior use.

1. The owner of a patent does not have the right to prevent those who in good faith and prior to the priority date of the patent had been exploiting in Spain what turns out to constitute the object of the patent, or had made serious and effective preparations to exploit said object, from continuing or initiating its exploitation in the same form in which they had been doing it until then or for which they had made the preparations and to the extent adequate to meet the reasonable needs of their business. The exploitation rights are only transferable together with the companies that have been exercising them.

2. The rights conferred by the patent shall not extend to acts relating to a product covered by the patent after that product has been put on the market by the person enjoying the right of exploitation provided for in the preceding paragraph.

Article 64. *Lack of coverage against prior patents.*

The owner of a patent may not invoke it to defend himself against actions brought against him for infringement of other patents having a priority date prior to that of his own.

Article 65. *Dependent patents.*

The fact that the invention that is the subject of a patent cannot be exploited without using the invention protected by an earlier patent belonging to a different patentee shall not be an obstacle to the validity of that patent. In this case, neither the owner of the prior patent may exploit the subsequent patent during the term of the latter without the consent of its owner, nor may the owner of the subsequent patent exploit either of the two patents during the term of the prior patent, unless he has the consent of the owner of the latter or has had a compulsory license.

Article 66. *Legal Limitations.*

The exploitation of the subject matter of a patent may not be carried out in an abusive manner or contrary to the law, morality, public order or public health, and shall be subject, in any case, to the prohibitions or limitations, temporary or indefinite, established or to be established by legal provisions.

Article 67. *Provisional protection.*

1. From the date of its publication, the patent application confers on its owner a provisional protection consisting of the right to demand compensation, reasonable and appropriate to the circumstances, from any third party who, between that date and the date of publication of the mention that the patent has been granted, has carried out a use of the invention that after that period would be prohibited by virtue of the patent.

2. The same provisional protection shall apply even before publication of the application against the person to whom the filing and contents of the application have been notified.

3. Where the subject matter of the patent application is a process relating to a microorganism, provisional protection shall commence only when the microorganism has been made available to the public.

4. It is understood that the patent application has never had the effects provided for in the preceding paragraphs when it has been or is considered to have been withdrawn, or when it has been refused or revoked by virtue of a final decision.

Article 68. Scope of protection.

1. The scope of protection conferred by the patent or patent application is determined by the claims. The description and drawings will serve to interpret the claims.

2. For the period prior to the grant of the patent, the scope of protection shall be determined by the claims of the application, as published. However, the patent as granted, or as amended in the course of opposition, appeal, limitation or invalidity proceedings, shall retroactively determine the said protection, provided that it has not been extended.

3. In determining the scope of protection according to paragraphs 1 and 2 above, due account shall be taken of any element equivalent to an element indicated in the claims.

Scope of protection in process patents.

1. Where a product is introduced into Spain in relation to which there is a process patent for the manufacture of the said product, the owner of the patent shall have the same rights with respect to the product introduced as are granted to him by this Law in relation to products manufactured in Spain.

2. If a patent relates to a process for the manufacture of new products or substances, it is presumed, in the absence of proof to the contrary, that any product or substance of the same characteristics has been obtained by the patented process.

3. The legitimate interests of the defendant for the protection of his trade and business secrets shall be taken into consideration in the taking of the steps for the proof to the contrary provided for in the preceding paragraph.

TITLE VII

Actions for infringement of patent rights

Article 70. Defense of the right.

The owner of a patent may bring the appropriate actions before the courts, whatever their kind and nature, against those who infringe his right and demand the necessary measures to safeguard it.

Article 71. Civil actions.

1. The owner whose patent right is infringed may, in particular, request:

a) The cessation of the acts that violate their right, or their prohibition if these have not yet occurred.

b) Compensation for damages suffered.

c) The seizure of the objects produced or imported in violation of its right and of the means exclusively destined to such production or to the realization of the patented process.

d) The attribution in ownership of the objects or means seized by virtue of the provisions of the preceding paragraph when possible, in which case the value of the goods affected shall be imputed to the amount of the compensation for damages. If the aforementioned value exceeds the amount of the compensation awarded, the patent owner shall compensate the other party for the excess.

e) The adoption of the necessary measures to prevent further infringement of the patent and, in particular, the transformation of the objects or means seized under paragraph (c), or their destruction where this is indispensable to prevent infringement of the patent.

f) Exceptionally, the judicial body may also, at the request of the patent owner, order the publication of the judgment condemning the patent infringer, at the expense of the convicted party, by means of announcements and notifications to the persons concerned.

The measures included in paragraphs c) and e) shall be carried out at the expense of the offender, unless good cause is shown why this should not be the case.

2. The measures referred to in paragraphs a) and e) of the preceding section may also be requested, where appropriate, against intermediaries whose services are used by a third party to infringe patent rights, even if the acts of such intermediaries do not in themselves constitute an infringement, without prejudice to the provisions of Law 34/2002 of July 11, 2002, on information society services and electronic commerce. Such measures shall be objective, proportionate and non-discriminatory.

Article 72. Presuppositions for the compensation of damages.

1. Any person who, without the consent of the patent owner, manufactures, imports objects protected by the patent or uses the patented process shall in any case be liable for the damages caused.

2. All those who carry out any other act of exploitation of the object protected by the patent shall only be obliged to compensate the damages caused if they have acted knowingly or with fault or negligence. In any case, it shall be understood that the infringer has acted knowingly if he has been warned by the owner of the patent of the existence of the patent, suitably identified, and of the infringement thereof, with the requirement that he cease the infringement.

Exhibit of documents for the calculation of the indemnity.

1. In order to determine the amount of damages suffered as a result of unauthorized exploitation of the invention, the patent owner may demand the production of the documents of the person responsible that may serve that purpose.

2. In the execution of this measure, the legitimate interests of the defendant for the protection of his trade and business secrets shall be taken into consideration, without prejudice to the right of the patent owner to have the necessary information to be able to determine the scope of the compensation in his favor when the investigation for this purpose is carried out during the execution phase of the decision on the merits that has assessed the existence of infringement.

Article 74. Calculation of damages and coercive compensations.

1. The compensation for damages due to the owner of the patent shall include not only the value of the loss he has suffered, but also the value of the profit that the owner has ceased to derive from the infringement of his right. The amount of compensation may include, where appropriate, the costs of investigation incurred in obtaining reasonable evidence of the commission of the infringement that is the subject matter of the legal proceedings.

2. In order to fix the compensation for damages, at the option of the injured party, the following shall be taken into account:

a) The negative economic consequences, including the profits that the owner would have foreseeably obtained from the exploitation of the patented invention if there had been no competition from the infringer or, alternatively, the profits that the latter has obtained from the exploitation of the patented invention. In the case of moral damages, compensation will be payable, even if the existence of economic damage is not proven.

b) A lump sum that at least includes the amount that the infringer would have had to pay to the patent owner for the grant of a license that would have allowed him to carry out his exploitation in accordance with the law. In fixing the amount, special account shall be taken of, among other factors, the economic importance of the patented invention, the remaining term of the patent at the time the infringement began, and the number and type of licenses granted at that time.

3. Where the court considers that the owner does not comply with the obligation to exploit the patent as provided for in Article 90, the profit foregone shall be fixed in accordance with the provisions of paragraph b) of the preceding subparagraph.

4. When ordering the cessation of acts that infringe a patent, the Court shall fix a coercive compensation in favor of the plaintiff appropriate to the circumstances.

per day elapsed until the effective cessation of the infringement. The definitive amount of this compensation, which shall be accumulated to that which he is entitled to receive in general in application of paragraph 2, as well as the day from which the obligation to compensate shall arise, shall be fixed in the execution of the sentence, in accordance with the provisions of Law 1/2000, of January 7, of Civil Judgment.

5. The proceedings relating to the calculation or quantification and liquidation of damages in accordance with the criteria established in this article shall be carried out on the basis of the bases established in the judgment in accordance with the procedure provided for in Chapter IV of Title V of Book III of the Civil Procedure Act.

Incidence of commercial benefits.

1. In order to determine the profit foregone according to the criteria established in Article 74.2, the profits produced by the exploitation of those things of which the invented object constitutes an essential part from the commercial point of view may be included in the calculation of the profits, in such proportion as the court deems reasonable.

2. It is understood that the invented object constitutes an essential part of a good from the commercial point of view when the consideration of the incorporated invention supposes a determining factor for the demand of said good.

Article 76. Compensation for discredit.

The owner of the patent may also claim compensation for the damage caused by the loss of prestige of the patented invention caused by the infringer for any reason whatsoever and, in particular, as a result of defective performance or inadequate presentation of the invention on the market.

Deduction of compensation already received.

The compensation due by anyone who has produced or imported without the consent of the owner of the patent the objects protected by the same shall be reduced by the compensation that the latter has received for the same concept from those who have exploited the same object in any other way.

Article 78. Statute of limitations and limit to the exercise of actions.

1. Civil actions arising from infringement of patent rights shall be barred after five years from the date on which they could have been brought.

2. The owner of the patent may not bring the actions provided for in this Title against those who exploit objects that have been introduced into commerce by persons who have adequately compensated him for the damages and prejudice caused.

TITLE VIII

The patent application and the patent as objects of property law

CHAPTER I

Registration, co-ownership and expropriation

Article 79. Registration in the Patent Register.

1. Both patent applications and patents already granted shall be entered in the Patent Register in the form provided for in the regulations.

2. Except in the case provided for in Article 13.1, the transfer, licenses and any other acts or legal transactions, whether voluntary or necessary, that affect patent applications or patents already granted, shall only be effective against bona fide third parties once they have been entered in the Patent Register. The form and documentation required for such registrations shall be established by regulation.

3. Rights on patent applications or patents that are not duly registered in the Patent Register may not be invoked against third parties. Nor may anyone who does not have a sufficient right to make such a mention on his products mention a patent application or a patent. Acts carried out in violation of the provisions of this paragraph shall be punishable as acts of unfair competition.

4. The Spanish Patent and Trademark Office shall qualify the legality, validity and effectiveness of the acts to be recorded in the Patent Register. The Patent Register shall be public.

5. Once any of the rights or encumbrances referred to in Article 82(1) has been recorded in the Patent Register, no other right or encumbrance of the same or an earlier date that is opposed to or incompatible with that right or encumbrance may be recorded. If only the application for registration has been noted down, no other incompatible right or encumbrance may be registered until the application is resolved.

Article 80. Co-ownership.

1. Where the patent application or the patent already granted belongs pro indiviso to several persons, the resulting community of property shall be governed by the agreement between the parties, failing that by the provisions of this Article and ultimately by the rules of the common law on community of property.

2. However, each of the participants alone will be able to:

a) To dispose of the part that corresponds to him by notifying the other co-proprietors, who may exercise their right of first refusal and pre-emptive rights. The term for the exercise of the right of first refusal shall be two months, counted from the sending of the notification, and that of the right of withdrawal, one month from the registration of the assignment in the Patent Register.

b) Exploit the invention after notifying the other co-owners.

c) To perform the acts necessary for the preservation of the application or patent.

d) To bring civil or criminal actions against third parties who in any way infringe the rights deriving from the application or from the common patent. The participant who brings such actions shall be obliged to notify the other co-proprietors of the action taken, so that they may join the action.

3. The granting of a license to a third party to exploit the invention must be granted jointly by all the participants, unless the court, for reasons of equity, given the circumstances of the case, authorizes any of them to grant the aforementioned license.

Article 81. Expropriation.

1. Any patent application or patent already granted may be expropriated for reasons of public utility or social interest, by means of fair compensation.

2. Expropriation may be carried out so that the invention falls into the public domain and may be freely exploited by anyone, without the need to apply for licenses, or so that it may be exploited exclusively by the State, which will acquire, in this case, ownership of the patent.

3. The public utility or social interest shall be declared by the Law ordering the expropriation, which shall stipulate whether the invention is to fall within the public domain or whether the State is to acquire ownership of the patent or the application. The proceedings to be instituted shall conform in all respects, including the fixing of the price, to the general procedure laid down in the Law of December 16, 1954, on Forced Expropriation.

CHAPTER II

Transfers, Licenses and Encumbrances

Article 82. General principles.

1. Both the patent application and the patent are transferable and may be pledged as security or be the subject of other rights in rem, licenses, purchase options, liens, other legal transactions or measures resulting from the enforcement procedure. In the

In the event that a chattel mortgage is constituted, it will be governed by its specific provisions and will be recorded in the fourth section of the Register of Movable Goods with notification of said recording to the Patent Register for its registration therein. For these purposes, both registries will be coordinated in order to communicate telematically the encumbrances registered or recorded in them.

2. The acts referred to in the preceding paragraph, when performed between living persons, must be recorded in writing in order to be valid.

3. For the purposes of their assignment or encumbrance, the patent application or the patent already granted are indivisible, although they may belong jointly to several persons.

4. The provisions of this Chapter are without prejudice to the rules relating to the content and limits of assignment and licensing contracts on intangible assets imposed in other applicable national laws, or to the application, by the corresponding national or Community bodies, of the provisions established in Community regulations relating to the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of technology transfer agreements.

Article 83. *Contractual licenses.*

1. Both the patent application and the patent may be the object of licenses in its totality or in some of the faculties that make up the exclusive right, for all or part of the national territory. Licenses may be exclusive or non-exclusive.

2. The rights conferred by the patent or by the application may be exercised against a licensee who violates any of the limits of his license established by virtue of the provisions of the preceding paragraph.

3. Holders of contractual licenses may not assign them to third parties, nor grant sublicenses, unless otherwise agreed.

4. Unless otherwise agreed, the holder of a contractual license shall have the right to perform all acts that make up the exploitation of the patented invention, in all its applications, throughout the national territory and during the entire term of the patent.

5. It shall be presumed that the license is non-exclusive and that the licensor may grant other licenses and exploit the invention himself.

6. The exclusive license prevents the granting of other licenses and the licensor may only exploit the invention if he has expressly reserved this right in the contract.

Article 84. *Technical knowledge.*

1. Unless otherwise agreed, whoever transfers a patent application or a patent or grants a license thereon shall be obliged to place at the disposal of the acquirer or licensee the know-how in his possession that is necessary for the proper exploitation of the invention.

2. The acquirer or licensee to whom secret knowledge is communicated shall be obliged to take the necessary measures to prevent its disclosure.

Liability of the transferor and the licensor.

1. A person who transfers for consideration a patent application or a patent that has already been granted or grants a license therefor shall be liable, unless otherwise agreed, if it is subsequently declared that he did not have the ownership or the powers necessary for the conduct of the business in question. Where the application is withdrawn or refused, the patent is revoked or declared null and void, the provisions of Article 104(3) shall apply in any case, unless a greater liability has been agreed upon for the transferor or licensor.

2. The transferor or licensor shall always be liable when he has acted in bad faith. Bad faith is presumed, in the absence of proof to the contrary, when he has not made known to the other contracting party, by recording it in the contract with individual mention of such documents, the reports or resolutions, Spanish or foreign, of which he has or will have at his disposal.

The existence of a patent application or patent application, concerning the patentability of the invention that is the subject matter of the application or patent, must be proved.

3. The actions referred to in the preceding paragraphs shall expire after six months, counted from the date of the final decision or final judgment on which they are based. The rules of the Civil Code on avoidance of title shall be applicable to the same.

Liability to third parties.

1. Any person who transfers a patent application or a patent already granted or grants a license thereon shall be jointly and severally liable with the acquirer or licensee for any indemnity payable as a result of damages caused to third parties by defects inherent in the invention that is the subject matter of the application or patent.

2. The party making the payment of the indemnity referred to in the preceding paragraph may recover the amounts paid from the party declared liable, unless otherwise agreed, or unless he has acted in bad faith, or unless, given the circumstances of the case and for reasons of equity, it is he who must bear all or part of the indemnity established in favor of the third parties.

CHAPTER III

Full licenses

Article 87. Full licenses.

Licenses of right are those resulting from a public offer of non-exclusive contractual licenses, made by the patent owner, in accordance with the provisions of this Chapter.

Article 88. Offering of licenses by operation of law.

1. If the owner of the patent makes an offer of licenses of full right, declaring in writing to the Spanish Patent and Trademark Office that he is willing to authorize the use of the invention to any interested party, as licensee, the amount of the annual fees that accrue to the patent after receipt of the declaration shall be reduced to half the amount of the annual fees that accrue to the patent after receipt of the declaration. When there is a total change of ownership of the patent as a result of the exercise of the legal action provided for in Article 12, the offer shall be considered to have been withdrawn upon registration of the new owner in the Patent Register. The Spanish Patent and Trademark Office shall record in the Patent Register and shall give adequate publicity to offers of licenses of right.

2. The offer may be withdrawn at any time by means of a written notification addressed to the Spanish Patent and Trademark Office provided that no one has yet communicated to the patent owner his intention to use the invention. The withdrawal of the offer will be effective from the moment of its notification.

3. The amount of the fee reduction that has taken place from the time the offer was communicated until the withdrawal of the offer shall be paid within the month following the withdrawal of the offer. The provisions of Article 184.3 shall apply in this case, and the period of six months provided therein shall be calculated from the expiry of the aforementioned period.

4. The offer of licenses of right may not be made when an exclusive license is registered in the Patent Register or when an application for registration of such a license has been filed. Once the offer of licenses of right has been filed, no application for the registration of an exclusive license in the Patent Register may be admitted, unless the offer is withdrawn or deemed to have been withdrawn.

5. Acceptance of a public offer of full licenses entitles any person to use the invention as a non-exclusive licensee.

Article 89. *Obtaining licenses by operation of law.*

1. Anyone wishing to use the invention on the basis of the offer of licenses of right must notify the Spanish Patent and Trademark Office indicating the use to be made of the invention. The Spanish Patent and Trademark Office will send the notification to both the patent holder and the applicant.

2. The license applicant shall be entitled to use the invention in the form indicated by him within a period of one month from receipt of the notification sent to him by the Spanish Patent and Trademark Office.

3. In the absence of an agreement between the parties within the period indicated, the Spanish Patent and Trademark Office shall, at the written request of either of them and after hearing both, fix the appropriate amount of compensation to be paid by the licensee or modify it if facts have occurred or have become known that make it appear that the amount fixed is manifestly inadequate. An application for modification of the compensation thus fixed may be made only after one year has elapsed since the compensation was last fixed. In order for the request to fix or modify the compensation to be considered to have been filed, the corresponding fee must have been paid.

4. At the end of each quarter of the calendar year, the licensee shall inform the patent owner of the use he has made of the invention and shall pay him the corresponding compensation. If the licensee fails to comply with the above obligations, the patent owner may grant him a reasonable additional period within which to comply with them. If the term has elapsed unsuccessfully, the license shall be cancelled, upon a justified request by the patent owner.

TITLE IX

Obligation to operate and compulsory licenses

CHAPTER I

Obligation to exploit the invention and compulsory licensing requirements.

Article 90. *Obligation to operate.*

1. The patent owner is obliged to exploit the patented invention either by himself or by a person authorized by him by means of its execution in Spain or in the territory of a member state of the World Trade Organization, in such a way that such exploitation is sufficient to supply the demand in the Spanish market.

2. Exploitation must be carried out within four years from the filing date of the patent application, or three years from the date on which its grant is published in the "Official Industrial Property Gazette", whichever term expires later being automatically applied.

3. Proof that the invention is being exploited in accordance with the provisions of paragraph 1 shall be the responsibility of the patent owner.

Article 91. *Cases for the granting of compulsory licenses.*

Compulsory licenses shall be granted for a given patent in the following cases:

- a) Lack of or insufficient exploitation of the patented invention.
- b) Dependence between patents, or between patents and plant breeders' rights.
- c) The need to put an end to practices that a final administrative or jurisdictional decision has declared contrary to national or Community antitrust legislation.
- d) Existence of public interest reasons for the concession.

e) Manufacture of pharmaceutical products for export in application of Regulation (EC) No. 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems.

Article 92. *Compulsory licenses due to lack or insufficiency of exploitation.*

1. After the expiration of the period provided for in Article 90 for commencing exploitation of the patented invention, any person may request the grant of a compulsory license if, at the time of the request, and except for legitimate excuses, exploitation of the patent has not been commenced or where such exploitation, after the expiration of the said period, has been interrupted for more than one year.

2. Objective difficulties of a technical-legal nature, beyond the will and circumstances of the patent owner, which make it impossible to exploit the invention or prevent it from being exploited to a greater extent than it is, shall be considered legitimate excuses.

Article 93. *Compulsory leaves of absence by dependency.*

1. Where it is not possible to exploit the invention protected by a patent without prejudice to the rights conferred by a patent or by a prior plant variety right, the holder of the later patent may request a compulsory license, for the exploitation of the subject matter of the patent or of the variety covered by the prior plant variety right, against payment of an appropriate royalty.

2. When it is not possible to exploit a plant breeder's right without prejudice to the rights conferred by a prior patent, the breeder may request a compulsory license, for the exploitation of the invention protected by the patent, against payment of an appropriate fee.

3. If a patent relates to a process for obtaining a chemical or pharmaceutical substance protected by a patent in force, both the holder of the process patent and the holder of the product patent shall be entitled to obtain a compulsory license on the other holder's patent.

4. Applicants for the licenses referred to in the preceding paragraphs must demonstrate:

a) That the invention or variety represents a significant technical progress of considerable economic importance in relation to the invention claimed in the prior patent or to the variety protected by the prior plant variety right.

b) That they have tried, without succeeding within a reasonable period of time, to obtain from the owner of the patent or prior plant variety right, a contractual license under the terms provided for in Article 97.1.

5. Where the grant of a compulsory license by dependency is appropriate, the owner of the patent or prior plant variety right may also request the grant, on reasonable terms, of a license to use the invention or variety protected by the patent or by the subsequent plant variety right.

6. Compulsory licenses by dependency shall be granted only with the necessary content to allow the exploitation of the invention protected by the patent, or of the variety protected by the plant breeder's right in question, and shall cease to have effect upon the declaration of nullity or lapse of any of the titles among which the dependency is given.

7. The processing and resolution of applications for compulsory licenses by dependency for the non-exclusive use of a patented invention shall be governed by the provisions of this Law. The processing and settlement of applications for compulsory licenses by dependency for the use of a variety protected by a breeder's right shall be governed by its specific legislation.

Compulsory licenses to remedy anticompetitive practices.

1. The final administrative or jurisdictional decision that has declared the infringement of the right of competition by the patent holder shall be communicated to the Spanish Patent and Trademark Office by the National Commission of Markets and Competition or by the Judge or Court that has issued it.

2. When the decision directly decrees that the patent is subject to the compulsory licensing system, the Spanish Patent and Trademark Office shall publish it in the Official Industrial Property Gazette and shall proceed in accordance with the provisions of Articles 98 and 99 of this Law.

3. In this case, the justification of prior negotiation between the patent holder and the potential user, applicant of the compulsory license, shall not be required. The need to correct anti-competitive practices may be taken into account when determining the license fee.

4. Without prejudice to the provisions of the preceding paragraphs, where the Government considers that there are reasons of public interest to put an end to anti-competitive practices, the subjection of the patent to the compulsory licensing regime may be agreed by royal decree in accordance with the provisions of the following article.

Article 95. *Compulsory licenses for reasons of public interest.*

1. For reasons of public interest, the Government may, at any time, subject a patent application or a patent already granted to the compulsory licensing system, by Royal Decree.

2. In any case, reasons of public interest shall be deemed to exist when:

a) The initiation, increase or generalization of the exploitation of the invention, or the improvement of the conditions under which such exploitation is carried out, are of paramount importance for public health or national defense.

b) The lack of exploitation or the insufficiency in quality or quantity of the exploitation carried out implies serious damage to the economic or technological development of the country.

c) National supply needs so require.

3. The royal decree referred to in paragraph 1 shall be agreed upon at the proposal of the Ministry of Industry, Energy and Tourism. In cases where the importance of the exploitation of the invention is related to public health or national defense, the proposal must be formulated jointly with the Minister competent in matters of health or defense, respectively.

4. The royal decree that provides for subjecting the patent to the compulsory licensing system may directly establish, in whole or in part, the scope, conditions and license fee in the cases provided for in Article 97(2), or refer the establishment of such conditions to the appropriate procedure before the Spanish Patent and Trademark Office provided for in the following Chapter for its specification in the decision granting the license.

5. When subjection to the compulsory licensing regime for reasons of public interest is due to its importance for national defense, the possibility of requesting such licenses may be reserved for one or more specific companies.

Compulsory licenses for the manufacture of drugs for countries with public health problems.

1. The applications for compulsory licenses presented in application of the Regulation (EC) n.º 816/2006 of the European Parliament and of the Council, of May 17, 2006, on the concession of compulsory licenses on patents related to the manufacture of pharmaceutical products destined for export to countries with public health problems, will be directed to the Spanish Patent and Trademark Office, in the standardized models that are established to the effect. The licenses will be processed in accordance with the provisions of the aforementioned Regulation (EC) No. 816/2006 and will be governed by the provisions thereof.

2. The license shall take effect as from the date on which the resolution granting the license is notified to the applicant and the holder of the right, whichever is later. The resolution granting the license shall establish the license fee. The license may be revoked by

the Spanish Patent and Trademark Office if the licensee does not comply with the conditions under which it was granted in accordance with the provisions of Article 16 of the aforementioned Regulation (EC) No. 816/2006.

3. Without prejudice to any other legally foreseen consequence, any infringement of the prohibition provided for in Article 13 of Regulation (EC) No. 816/2006 and in Article 2 of Council Regulation (EC) No. 953/2003 of May 26, 2003, aimed at preventing the diversion of certain essential medicines into the European Union, shall be considered an infringement of the patent to which the license relates.

CHAPTER II

Compulsory licensing procedure

Article 97. *Prior justification by the license applicant.*

1. Prior to the request of a compulsory license the interested party shall prove that he has tried, without succeeding within a reasonable period of time, to obtain from the patent holder a contractual license under reasonable commercial terms and conditions. For the licenses foreseen in Article 96, and unless the circumstances foreseen in Article 9.2 of Regulation (EC) No. 816/2006 referred to in paragraph 1 of the preceding Article are met, this period shall in any case be thirty days, prior to the filing of the application.

2. The provisions of the preceding paragraph shall not apply:

- a) In cases of national emergency or in other circumstances of extreme urgency.
- b) In cases of non-commercial public use.
- c) In the case provided for in letter c) of Article 91.

Article 98. *Application for a license.*

1. The application for a compulsory license, addressed to the Spanish Patent and Trademark Office on the standard form to be established for that purpose, shall be accompanied by proof of the prior attempt at a contractual license, except in the cases provided for in paragraph 2 of the foregoing Article. The application shall be subject to payment of the corresponding fee.

2. The applicant, in addition to specifying his request, must state the circumstances that justify it, provide the evidence available to support his claims, and prove that he has sufficient means and guarantees to carry out a real and effective exploitation of the patented invention in accordance with the purpose of the license.

Article 99. *Processing and resolution.*

1. The Spanish Patent and Trademark Office will transfer a copy of the application with the accompanying documents to the patent owner, in order for him to reply within a maximum period of one month. The answer must be accompanied by the evidence that justifies the allegations made. If the patent owner does not reply within the time limit, the said Office shall proceed to grant the license.

2. When, having assessed the allegations and evidence submitted, the Spanish Patent and Trademark Office considers that the circumstances justifying the grant of the license exist, it shall invite the parties to appoint a common mediator within a period of two months or, failing that, each party shall appoint an expert who, together with a third expert appointed by the aforementioned Office, shall agree on the terms and conditions of the license.

3. In the absence of agreement on the appointment of a mediator or expert, or on the terms of the license within two additional months, the Spanish Patent and Trademark Office shall decide on the granting of the license and shall rule accordingly.

4. The resolution granting the license shall determine its content. In particular, it shall establish the scope of the license, the royalty, the duration, the guarantees to be provided by the licensee, and any other clauses that ensure the licensee's compliance with the conditions that justify the granting of the license.

5. During the processing of the file, the Spanish Patent and Trademark Office may carry out ex officio such actions as are pertinent and may be useful for deciding on the granting of the license. Said Office will be able to suspend for only one time the

processing at the justified request of both parties, in the circumstances provided for in the implementing regulations of this Law.

6. The resolution shall determine the expenses to be borne by each party, which shall be those caused at its request. The common expenses shall be paid in halves. The payment of all expenses may be imposed on one of the parties when it is declared that he has acted recklessly or in bad faith.

7. The filing of an administrative or jurisdictional appeal against the decision that terminates the proceedings shall not suspend the execution of the contested act, but the Spanish Patent and Trademark Office may authorize the licensee, upon a well-founded request by the latter, to delay the commencement of exploitation until the grant of the license is final.

CHAPTER III

Compulsory licensing regime

Article 100. *Characteristics of compulsory licenses.*

1. Compulsory licenses will not be exclusive.

2. The license shall be accompanied by an appropriate remuneration according to the circumstances of each case, taking into account the economic importance of the invention.

3. If the patent relates to semiconductor technology, compulsory licenses may only be for public non-commercial use or used to rectify a practice declared anti-competitive following a judicial or administrative proceeding.

4. The relations between the patent owner and the licensee in connection with the grant of a compulsory license shall be in good faith. For the patent owner, the application of this principle shall include the obligation to place at the disposal of the licensee the technical knowledge he possesses and which is necessary to be able to proceed with an adequate commercial exploitation of the invention.

In case of violation of this principle, declared by judicial sentence, on the part of the patent holder, the licensee may request the Spanish Patent and Trademark Office to reduce the royalty fixed for the license, in proportion to the importance that the unfulfilled obligation has for the exploitation of the invention. If, under the same conditions, the licensee's actions are declared contrary to contractual good faith, the licensor may request the termination of the compulsory license from the said Office.

5. The compulsory license shall include the complementary protection certificates that, at the time the license is granted or subsequently, fall on the object of the basic patent included in the scope of the compulsory license.

6. Insofar as they do not conflict with the provisions of this Title or with Community regulations, the rules established for contractual licenses provided for in Title VIII, Chapter II, of this Law shall apply to compulsory licenses.

Assignment, modification and cancellation of compulsory licenses.

1. For the assignment of a compulsory license to be valid, it will be necessary that the license is transferred together with the company or part of the company that exploits it and that the assignment is expressly noted by the Spanish Patent and Trademark Office. In the case of patent dependency licenses, it will also be necessary that the license is transferred together with the dependent patent.

2. In any case, the granting of sublicenses by the holder of a compulsory license shall be null and void.

3. Both the licensee and the patent owner may request the Spanish Patent and Trademark Office to modify the fee or other conditions of the compulsory license when there are new facts that justify the change and, in particular, when the patent owner grants, subsequent to the compulsory license, contractual licenses under conditions that are unjustifiably more favorable than those of the compulsory license.

4. If the licensee seriously or repeatedly fails to comply with any of the obligations that correspond to it under the compulsory license, the Spanish Patent and Trademark Office shall be obliged to pay the licensee the amount of the compulsory license.

Marks, after hearing the affected party, on its own motion or at the request of an interested party, may cancel the license.

TITLE X

Nullity, revocation and forfeiture of the patent

CHAPTER I

Nullity

Causes of nullity.

1. The patent shall be declared null and void:

a) When it is justified that none of the patentability requirements contained in Title II of this Law are met with respect to the subject matter of the patent.

b) When it does not describe the invention in a manner sufficiently clear and complete for it to be performed by a person skilled in the art.

c) When its subject matter exceeds the content of the patent application as filed, or in the event that the patent has been granted as a consequence of a divisional application or as a consequence of an application filed on the basis of the provisions of Article 11, when the subject matter of the patent exceeds the content of the initial application as filed.

d) When the protection conferred by the patent has been extended after the grant.

e) When the owner of the patent is not entitled to obtain it in accordance with the provisions of Article 10.

2. If the causes of invalidity only affect a part of the patent, it will be limited by the amendment of the affected claim or claims and will be declared partially invalid. For these purposes, in the response to the nullity allegations, the patent owner, without prejudice to being able to defend the validity of the granted claims as a main claim, may defend the set or sets of claims proposed in the response as a subsidiary claim.

Exercise of the nullity action.

1. The action to challenge the validity of the patent shall be public. However, in the case provided for in paragraph 1, subparagraph e) of the preceding Article, only the person entitled to obtain the patent may request a declaration of nullity.

2. The nullity action may be brought during the entire legal life of the patent and during the five years following its expiration.

3. The action shall always be directed against whoever is the registered owner of the patent at the time of filing the lawsuit, and this must be notified to all persons holding rights over the patent duly registered in the Patent Register so that they may appear and intervene in the process.

4. In invalidity proceedings, the patent owner may limit the scope of the patent by amending the claims. The patent, thus limited, will serve as the basis for the proceeding.

5. The nullity of a patent may not be claimed before the civil jurisdiction, invoking the same cause of nullity that has already been the subject of a ruling, as to the substance of the matter, in a judgment handed down in contentious-administrative proceedings, on the same facts invoked as a cause of nullity.

Effects of the declaration of nullity.

1. The declaration of nullity implies that the patent was never valid, being considered that neither the patent nor the application that originated it have ever had the effects foreseen in Title VI of this Law, to the extent that the nullity has been declared.

2. The nullity of the patent shall determine the nullity of its complementary certificates insofar as it affects the right to the product protected by the basic patent on the basis of which they were granted.

3. Without prejudice to the compensation for damages and prejudices that may be due when the patent owner has acted in bad faith, the retroactive effect of the nullity shall not affect:

a) To decisions on patent infringement that have acquired the force of *res judicata* and have been enforced prior to the declaration of invalidity.

b) To contracts concluded prior to the declaration of nullity, insofar as they were executed prior to the declaration of nullity. However, for reasons of equity and to the extent justified by the circumstances, it shall be possible to claim restitution of sums paid under the contract.

4. Once final, the declaration of nullity of the patent shall have the force of *res judicata* against all.

5. The judgment declaring the total or partial invalidity of the patent shall, in any case, be communicated to the Spanish Patent and Trademark Office for the cancellation of its registration or the modification of the registered title.

CHAPTER II

Revocation or limitation at the patentee's request

Petition for revocation or limitation.

1. At the request of its owner, the patent whose grant is final may be revoked or limited by amending the claims at any time during its legal life, including the period of validity of the complementary certificates, if any.

2. The request for revocation or limitation addressed to the Spanish Patent and Trademark Office shall be formulated on the official form established for that purpose and shall only be considered validly formulated after payment of the corresponding fee.

3. The revocation or limitation of a patent on which there are real rights, purchase options, liens or licenses recorded in the Patent Register shall not be admitted without the consent of the owners of those rights. Neither shall the request for revocation or limitation be admitted if the filing of a legal action claiming the ownership of the patent or the recognition of other economic rights over the same is recorded in the Patent Register, as long as the consent of the plaintiff is not on record.

4. Where judicial proceedings on the validity of the patent are pending, and without prejudice to the provisions of Article 120, the request for limitation, addressed to the Spanish Patent and Trademark Office, shall be authorized by the Judge or Court hearing the proceedings.

Article 106. Procedure.

1. The Spanish Patent and Trademark Office shall check the regularity of the documents filed and shall examine whether, where appropriate, the amended claims comply with the provisions of Articles 28 and 48.

2. If the documentation presents defects or if the new set of claims does not limit the subject matter of the patent, the objections will be communicated to the interested party, indicating the reasons, so that he may correct the defects or present his arguments within the period established by regulation. The application will be rejected if the defects are not corrected within the term. If there are no objections, or if these are overcome, the revocation or the requested limitation will be resolved.

Effects of revocation or limitation.

1. The effects of revocation or limitation are the same as those of total or partial invalidity. The amended claims will retroactively determine the scope of protection conferred by the patent.

2. The effects of the revocation or limitation on previous resolutions and contracts concluded prior to the resolution declaring it shall be those provided for in Article 104.

CHAPTER III

Expiration

Article 108. *Causes of forfeiture.*

1. Patents expire:

- a) Upon expiration of the term for which they were granted.
- b) By resignation of the holder.
- c) For failure to timely pay an annuity and, if applicable, the corresponding surcharge.
- d) If the invention is not exploited within two years after the grant of the first compulsory license.
- e) For failure to comply with the obligation to exploit provided for in Article 90, where the owner of the patent cannot benefit from the provisions of the said Paris Convention for the Protection of Industrial Property of March 20, 1883, or the Agreement on Trade-Related Aspects of Intellectual Property Rights, done at Marrakesh on April 15, 1994, and habitually resides or has his industrial or commercial establishment in a country whose legislation permits the adoption of a similar measure.

2. Without prejudice to its declaration by the Spanish Patent and Trademark Office and its publication in the "Official Industrial Property Gazette", the lapse of a patent incorporates the patented object into the public domain from the moment in which the facts or omissions that gave rise to it occurred, except in the part in which the same object was covered by another prior and valid patent. The provisions of Article 104(2) on invalidity shall be applicable to the lapse of the basic patent for any of the reasons provided for in paragraphs 1(b) to 1(e), and from the time when such lapse occurs.

3. In cases of non-payment of an annuity, it is understood that the omission giving rise to lapse occurs at the beginning of the year of the life of the patent for which the annuity has not been paid. Notwithstanding the provisions of the preceding paragraph, the lapse shall not occur in this case before the six months of delay have elapsed without the payment of the annuity and the corresponding surcharge, or, as the case may be, the corresponding regularization fee.

4. In the case of paragraph 1, subparagraph d), the lapse shall be declared after the Spanish Patent and Trademark Office has conducted the corresponding administrative proceedings.

Article 109. *Forfeiture for failure to pay an annuity in due time.*

1. Where there is a lien on a patent or a claim in progress and the owner thereof has not paid an annuity in due time, the said patent shall not lapse until the lien has been lifted or the claim has been finally dismissed. The owner of the seized patent may, however, avoid lapse by paying the accrued annuities within a period of two months from the date on which he is notified of the cancellation of the seizure.

2. If, as a result of the proceedings referred to in the preceding paragraph, there is a change in the ownership of the patent, the new owner may pay the accrued annuities within a period of two months from the date on which the judgment on the claim has become final or from the date on which the competent authority or court has notified the Spanish Patent and Trademark Office of the definitive adjudication of the seized patent.

3. Once the periods provided for in paragraphs 1 and 2 have elapsed, the patent shall lapse if the corresponding payment has not been made.

4. Nor shall a patent lapse for failure to pay an annuity in due time when a chattel mortgage on it is registered in the Patent Register. The mortgagee may make payment on behalf of the owner within a period of one month following the end of the period for surcharges provided for in Article 185. The owners of other registered rights in the patent that may be affected by its lapse may also make payment under the same conditions, without prejudice to their right to reimburse the owner of the patent for the amounts paid.

When the mortgage has been constituted in favor of the Treasury, the payment will be suspended until the cancellation of the same, without the expiration of the patent for lack of payment of the pending annuities, which will have to be paid, either by the holder of the patent who mortgaged the same, or by whoever becomes the new owner after the execution of the mortgage guarantee by the administrative procedure of enforcement.

Article 110. *Resignation.*

1. The patentee may disclaim the entire patent or one or more claims of the patent.
2. The waiver, addressed to the Spanish Patent and Trademark Office, shall be filed in writing and shall only be effective against third parties once it has been recorded in the Patent Register.
3. When the surrender is partial, the patent shall remain in force with reference to the claims not covered by the surrender, provided that the surrender does not involve the extension of the subject matter of the patent.
4. The surrender of a patent on which there are real rights, purchase options, liens or licenses registered in the Patent Register shall not be admitted without the consent of the owners of those rights. Renunciation shall also not be admitted if there is an ongoing claim or nullity action on the patent and the consent of the plaintiff is not on record.
5. The renunciation of the patent shall be published in the "Official Bulletin of Industrial Property". When the renunciation is partial, a new patent brochure shall be published, subject to payment of the corresponding fee, in accordance with the provisions of the regulations.

TITLE XI

Patents of national defense interest

Article 111. *Subjection to the secrecy regime.*

1. The content of all patent applications will be kept secret until one month has elapsed from the date of filing. Before it ends, the Spanish Patent and Trademark Office will extend this term up to four months when it considers that the invention may be of interest for the national defense, notifying the extension to the applicant and immediately making available to the Ministry of Defense a copy of the patent application filed.
2. To the mentioned effects the necessary coordination will be established between the Ministry of Defense and the Spanish Patent and Trademark Office to determine when an invention can be of interest for the national defense. The Ministry of Defense will be able to know under secret regime all the presented applications.
3. When the interest of national defense so requires, the Ministry of Defense shall request the Spanish Patent and Trademark Office to decree secret processing and notify the applicant accordingly before the end of the period established in paragraph 1.
4. As long as the patent application or the patent is subject to the secrecy regime, the applicant or the owner shall refrain from any act that may allow unauthorized persons to become acquainted with the invention. The Ministry of Defense may, at the request of the owner, authorize acts aimed at the total or partial exploitation of the subject matter of the application or patent, and shall specify the conditions to which such acts shall be subject.

5. The Spanish Patent and Trademark Office, following a favorable report from the Ministry of Defense, may lift the secrecy imposed on an application or on a specific patent.

6. Those patent applications or patents that have been declared secret in a country belonging to the North Atlantic Treaty and that claiming the right of priority are filed in Spain, will be kept secret as long as said regime has not been lifted in the country that declared it. Such applications may not be withdrawn without the express permission of the authority that declared the secrecy.

Article 112. *Processing.*

1. Patent applications subject to the secrecy regime will follow a similar procedure to those not subject to secrecy, except with regard to disclosure and publication, informing the Ministry of Defense and the owner of the application or his representative of the proceedings in all cases.

2. As long as the secrecy regime is maintained, the time limits that are computed for the applicant as from the publication of the report on the state of the art will start to run from the moment the Spanish Patent and Trademark Office notifies the applicant of the possibility of carrying out the actions subject to said time limits.

3. The period for filing opposition to the grant of the patent shall not begin until the grant is published in the "Official Industrial Property Gazette" once the secrecy regime has been lifted.

Maintenance of the secrecy regime.

A patent whose grant has been processed in secret shall be entered in a Secret Register of the Spanish Patent and Trademark Office, and shall be kept under the same regime for one year from the date of its grant. The extension of this period shall be renewed annually, with the corresponding notification to the patent holder.

Annuities and compensation.

1. Secret patents shall not be subject to the payment of annuities.

2. The patent owner may claim compensation from the State for the time during which the patent was kept secret. This compensation, which may be claimed for each year elapsed, shall be agreed between the parties. If no agreement is reached, the compensation shall be fixed judicially, taking into account the importance of the invention and the benefit that the owner could have obtained from the free exploitation thereof.

3. If the invention that is the subject matter of the secret patent has been disclosed through the fault or negligence of its owner, the latter shall lose the right to compensation, without prejudice to any criminal liability that may arise.

Article 115. *Applications abroad.*

1. For the purposes of the provisions of the previous articles, in the case of inventions made in Spain and where the priority of a previous deposit in Spain is not claimed, a patent may not be applied for in any foreign country before the periods provided for in Article 111.1 have elapsed, unless it has been done with the express authorization of the Spanish Patent and Trademark Office. This authorization may not be granted for those inventions that interest the national defense unless the Ministry of Defense expressly authorizes it.

2. The request for authorization shall be formalized, in accordance with the provisions of the regulations, by filing with the Spanish Patent Office the application with the documents necessary for the Office to carry out the examination provided for in Article 111(1) under conditions of secrecy. The Office may require the filing of a translation if necessary.

In the event that the invention is not of interest for national defense, and its presentation outside Spain does not contravene the provisions of international defense agreements signed by Spain, the Spanish Patent and Trademark Office will notify the applicant within a maximum period of one month, authorizing him/her to present it as

first application abroad. The authorization shall be deemed to have been granted if the Office has not ruled on the matter at the expiry of the said period.

3. When the applicant has his domicile, registered office or habitual residence in Spain, it will be presumed that the invention was made in Spanish territory, unless there is proof to the contrary.

TITLE XII

Jurisdiction and procedural rules

CHAPTER I

General Provisions

Article 116. *Jurisdiction.*

The knowledge of all litigation arising as a consequence of the exercise of actions of any kind and nature derived from the application of the precepts of this Law shall correspond to the civil, criminal or contentious-administrative jurisdictions, according to their jurisdictional delimitation.

Article 117. *Standing to bring actions.*

1. In addition to the owners of the rights entered in the Patent Register, those who can prove that they have duly requested the entry in the said Register of the act or business from which the right to be asserted arises shall be entitled to bring the actions referred to in Article 2.3 of this Law, provided that such entry is granted.

2. Unless otherwise agreed, the holder of an exclusive license may bring in his own name all the actions that this Law recognizes for the holder of the patent against third parties who infringe his right, but the grantee of a non-exclusive license may not bring such actions.

3. The licensee who, in accordance with the provisions of the preceding paragraph, is not entitled to bring an action for infringement of the patent, may reliably request the owner of the patent to bring the corresponding legal action. If the owner refuses or fails to bring the appropriate action within a period of three months, the licensee may bring the action in his own name, together with the request made. Prior to the expiration of the aforementioned period, the licensee may request the Judge to adopt urgent precautionary measures when he justifies the need for them in order to avoid significant damage, upon presentation of the aforementioned request.

4. A licensee who brings an action under the provisions of any of the foregoing paragraphs shall notify the owner of the patent in a reliable manner, who may appear in person and intervene in the proceedings, either as a party thereto or as an intervener.

Article 118. *Jurisdiction.*

1. Civil disputes that may arise under this Law shall be resolved in the corresponding trial in accordance with Law 1/2000, of January 7, 2000, on Civil Proceedings.

2. The Mercantile Judge of the city where the Superior Court of Justice of those Autonomous Communities in which the General Council of the Judiciary has agreed to grant exclusive jurisdiction over patent matters will be objectively competent.

3. In particular, the specialized Commercial Court referred to in the preceding paragraph corresponding to the domicile of the defendant or, failing that, the place of residence of the authorized representative in Spain to act on behalf of the owner, shall have territorial jurisdiction, if in the Autonomous Community of his domicile there are Commercial Courts specialized in patent matters in accordance with paragraph 2.

If there is none, at the option of the plaintiff, any Commercial Judge who is competent to hear patent matters in accordance with paragraph 2 shall have jurisdiction.

4. In the case of actions for infringement of patent rights, the same court referred to in the preceding paragraph of the Autonomous Community where the infringement was committed or its effects were produced shall also have jurisdiction, at the choice of the plaintiff, provided that there are Commercial Courts in said Autonomous Community specializing in patent matters in accordance with paragraph 2.

If there is none, at the plaintiff's choice, any Commercial Judge who is competent to hear patent matters in accordance with paragraph 2 shall have jurisdiction.

Article 119. *Time limits in patent litigation.*

1. The defendant in any civil action governed by this Law shall have a period of two months to answer the claim and, if applicable, to file a counterclaim.

The same time limit shall apply for answering the counterclaim, as well as for answering the limitation of the patent requested by the patentee as a result of the challenge to the validity of the title made by way of counterclaim or exception by the defendant.

2. The provision contained in Article 337 of the Code of Civil Procedure shall not apply unless the defendant fully justifies the impossibility of providing the report or reports it intends to rely on when answering the claim or, as the case may be, the counterclaim.

Nullity of the patent of the plaintiff.

1. The person against whom an action for infringement of the rights deriving from a patent is brought may, in all kinds of proceedings, by way of counterclaim or by way of exception, plead the total or partial invalidity of the patent of the plaintiff, in accordance with the rules of ordinary procedural law. For such purposes, the provisions of Article 103 shall be taken into account.

2. If the nullity is raised by way of an exception, the patent owner shall have 8 days from the receipt of the answer to the complaint to request the Judge or Court to treat the exception as a counterclaim.

3. In the event that the patent owner, either principally or subsidiarily, chooses to limit the patent by amending its claims, he shall submit the new set or sets of claims and their justification in the response to the nullity action, the response to the counterclaim or the response to the plea of nullity. The owner of the patent who has brought an action for infringement of the same shall, in the same proceedings for contesting the challenge to his patent, give reasons and, where appropriate, prove how the proposed limitations affect the infringement action brought against the defendant.

4. Without prejudice to the provisions of the preceding paragraph, when due to supervening circumstances the patent is amended outside the proceedings, the owner of the patent may request that the patent thus amended serve as a basis for the proceedings. In such cases the judge or court shall allow the other parties to the proceedings to present their arguments.

5. The Judge or Court shall transfer the request for limitation to the party requesting the nullity in turn of allegations, so that he maintains or modifies his pretensions, in view of the proposed limitation. The computation of the two-month period provided for in Article 119.1 shall start from the moment of receipt of the request for limitation of the patent filed by the plaintiff.

6. Once the request for limitation has been filed, either principally or subsidiarily, the Judge or Court shall send an official notice to the Spanish Patent and Trademark Office for its registration as a preventive annotation. The final decision on the limitation of the patent shall be notified ex officio to the said Office for its registration and, where appropriate, amendment of the patent.

7. In proceedings in which the validity of a patent is challenged, the Judge or Court may order, in accordance with the provisions of the Civil Procedure Law and upon payment of the corresponding fee when requested at the request of a party, the issuance of an expert report from the Spanish Patent and Trademark Office for the purpose of

to give a written opinion on those specific points on which the expert reports provided by the parties are contradictory. The author of the report may be called to testify on the content of the report when required to do so by the Judge or Court hearing the case. In no case shall this provision be understood as limiting the discretion of the Judge or Court to seek this opinion from the center or institution it considers most appropriate given the circumstances of the case.

Article 121. *Denial action.*

1. Any interested party may bring an action against the owner of a patent, so that the competent court may declare that a given action does not constitute an infringement of that patent.

2. The interested party, prior to the filing of the lawsuit, shall request the patent owner, in a reliable manner, to make a pronouncement on the opposability between the same and the industrial exploitation that the applicant carries out on Spanish territory or against the serious and effective preparations that he develops for such effects. If one month has elapsed from the date of the request without the owner of the patent having made a pronouncement or when the applicant is not satisfied with the response, he may bring the action provided for in the preceding paragraph.

3. The action referred to in paragraph 1 may not be brought by a person who has been sued for infringement of the patent in question.

4. If the plaintiff proves that the action referred to in his complaint does not constitute an infringement of the patent, the Judge shall make the required declaration.

5. The lawsuit shall be notified to all persons holding rights over the patent duly registered in the Patent Register, so that they may appear and intervene in the proceedings. However, contractual licensees may not appear in the proceedings when so provided in their license agreement.

6. The action referred to in this Article may be brought together with the action for a declaration of invalidity of the patent.

Treatment of confidential information.

When for the clarification of the facts that are the object of the judicial proceedings referred to in this chapter, either through the practice of preliminary proceedings or measures for the securing of evidence, it is necessary to obtain information that in the opinion of the Judge or Court is of a confidential nature, the jurisdictional body shall adopt the decision to obtain or request the same and shall provide, at the request of the parties, the necessary measures and actions to guarantee the confidentiality of the information requested and the right to effective judicial protection of the procedural party requesting the information.

CHAPTER II

Fact-finding procedures

Article 123. *Request for proceedings.*

1. The person entitled to exercise the actions derived from the patent may request the Judge to urgently order the practice of proceedings for the verification of facts that may constitute an infringement of the exclusive right granted by the patent, without prejudice to those that may be requested under Article 256.1 of Law 1/2000, of January 7, 2000, on Civil Procedure.

2. Before deciding on the petition, the Judge may request such reports and order such investigations as he deems appropriate.

3. The taking of proceedings may only be ordered when, given the circumstances of the case, infringement of the patent is presumable and it is not possible to verify the reality of the infringement without resorting to the requested proceedings.

4. When agreeing, as the case may be, to the practice of the requested proceedings, the Judge, in accordance with the provisions of the Civil Procedure Law, will fix the security to be provided by the petitioner to respond for the damages that may eventually be caused.

5. If the Judge does not consider the claim to be sufficiently grounded, he will deny it by means of an order that may be appealed in both effects.

Article 124. Practice of the proceedings.

1. Without in any case prior notification of its practice to the person who must bear it, in the diligence of verification the Judge, with the intervention of the expert or experts that to such effect has designated, and heard the manifestations of the person with whom the diligence is understood, will determine if in view of the practiced examination the alleged infringement of the patent can be being carried out. When the invention is not manufactured or executed in Spain, the examination and verification will refer to the imported and/or commercialized products that are the object of the diligence.

2. When the Judge considers that, in view of the examination carried out, it is not presumable that the infringement of the patent is taking place, he shall terminate the proceedings, shall order the formation of a separate file containing the proceedings, which shall be kept secret, and shall order the Clerk of the Court to notify the petitioner that it is not appropriate to inform him of the outcome of the proceedings.

3. In other cases, the Judge, with the intervention of the expert or experts appointed for this purpose, shall make a detailed description of the machines, devices, products, procedures, installations or actions through the use of which the alleged infringement is presumably carried out.

4. In any case, the judge shall ensure that the verification process does not serve as a means to violate industrial secrets or to carry out acts that constitute unfair competition.

5. No appeal shall be allowed against the Judge's decision on the result of the proceedings.

Article 125. Certifications and copies of the proceedings.

1. No other certifications or copies of the verification procedures carried out may be issued other than the one intended for the affected party and the one required for the applicant to initiate the corresponding legal action. The applicant may only use this documentation to bring such action, and is prohibited from disclosing it or communicating it to third parties.

2. If within 30 working days from the date of delivery to the applicant of the certification of the proceedings the corresponding lawsuit has not been filed, the proceedings shall be null and void and may not be used in any other legal action.

Compensation of the affected party.

The party affected by the verification measures may in any case claim, from the party requesting the measures, security for the costs and damages incurred, including loss of profit. Payment shall only be made if the main action is not brought or is rejected, without prejudice to the general liability for damages that may have been incurred by the applicant for the measures in the cases that may arise.

CHAPTER III

Precautionary measures

Article 127. Request for precautionary measures.

Whoever exercises or is going to exercise an action provided for in this Law may request from the judicial body that is to hear the same the adoption of precautionary measures aimed at ensuring the effectiveness of such actions, in accordance with the provisions of the same and of Law 1/2000, of January 7, of Civil Procedure.

Article 128. Possible precautionary measures.

1. Precautionary measures may be taken against the alleged infringer to ensure the full effectiveness of the eventual ruling that may be handed down, and in particular the following:

- a) The cessation of acts that could infringe the petitioner's right or its prohibition, when there are reasonable indications to suppose the imminence of such acts.
- b) The retention and deposit of the goods alleged to infringe the right of the patent holder and of the means exclusively intended for such production or for the carrying out of the patented process.
- c) The guarantee of the eventual indemnification of damages.
- d) The appropriate registry annotations.

2. The precautionary measures provided for in paragraph 1 may also be requested, where appropriate, against intermediaries whose services are used by a third party to infringe patent rights, even if the acts of such intermediaries do not in themselves constitute an infringement, without prejudice to the provisions of Law 34/2002 of July 11, 2002, on information society services and electronic commerce. Such measures shall be objective, proportionate and non-discriminatory.

3. The adoption of precautionary measures shall not proceed when it appears that the defendant is protected by a right based on a prior use according to article 63.

Article 129. Bonds.

1. When agreeing, as the case may be, on the precautionary measures requested, the Judge will fix the bond to be provided by the petitioner to respond for the damages that may eventually be caused. If the petitioner does not provide the security within the term indicated by the Judge, which in no case will be less than 5 working days, it will be understood that he waives the measures.

2. In the event that the measures requested imply restrictions for the industrial or commercial activity of the defendant, the Judge may indicate at the time of agreeing them, the amount of the bond by means of the provision of which said defendant may replace at any time the effectiveness of said restrictive measures agreed upon.

3. In any case, the bonds that are decreed for the defendant as principal or substitute, will always be fixed in a percentage per period of time that elapses, when they derive from acts of industrial or commercial exploitation that may have indefinite continuity.

4. The bond may consist of a bank guarantee. Personal guarantees will not be accepted.

5. For the fixing of the amount of the bonds the Judge will have to hear both parties during the processing of the measures, without prejudice to the application of article 733.2 of the Civil Procedure Law.

Article 130. Precautionary measures in case of appeal.

1. If the first instance judgment issued in the substantive civil proceeding establishes condemnatory pronouncements for any of the parties and is subject to appeal, the appealed party will be informed of the appeal so that it may, within a period of 3 days, demand from the Judge the adoption of the corresponding precautionary measures or the provision of the appropriate substitute bond, in order to ensure the effectiveness of the ruling, provided that these measures have not been previously adopted or are insufficient.

2. The Judge of first instance will maintain the competence to process and resolve the pertinent aspects of this securing incident, independently of the admission of the appeal and the elevation of the main case files to the Court to which it corresponds to hear the appeals.

Article 131. *Lifting of precautionary measures.*

1. In the event that the request for precautionary measures is filed before the main action is brought, they will be rendered ineffective in their entirety if the lawsuit is not filed within the term provided for in Article 730.2 of Law 1/2002, of January 7, 2002, on Civil Procedure.

2. The precautionary measures that may have been agreed upon, as the case may be, will always be without effect, if the sentence dictated in the first instance is not favorable to the petitions for the assurance of whose effectiveness those measures have been requested, or if the sentence of first instance is revoked, in the event that it would have been favorable to the referred petitions. The provisions of article 744 of the aforementioned Civil Procedure Law will be applicable in all cases.

3. The Judicial Secretary will proceed to return the guarantees to the applicant of the precautionary measures two months after their lifting, without prejudice to the term to which the injured party by the precautionary measures has the right to request compensation for damages caused by such measures.

4. Compensation shall be determined in accordance with the provisions of article 712 and concordant articles of the Civil Procedure Law, and if the bond is not sufficient to cover all the damages caused, the liable party shall be subject to the enforcement proceeding.

Article 132. *Preventive writings.*

1. The person who foresees the filing of a request for precautionary measures without prior hearing against him, may appear in legal form before the judicial body or bodies that he considers competent to hear such possible measures and justify his position by means of a preventive writ.

The Judge or Court will agree to the formation of a proceeding for precautionary measures which will be notified to the patent owner and, if within three months the precautionary measures are filed, he may give the proceeding the course provided for in Articles 733.1 and 734.3 of the Civil Procedure Law, without this being an obstacle to the possibility of agreeing them without further formality by order under the terms and within the time limits of Article 733.2 of said Law.

2. The holder who considers that the Judge or Court before which the preventive writ was filed is not the competent one, may file his request for precautionary measures before the one he considers to be really competent, having to state in his request the existence of the preventive writ and the judicial body before which it was filed.

CHAPTER IV

Out-of-court dispute resolution

Article 133. *Conciliation in matters of employee inventions.*

Before initiating legal action based on the application of the rules of Title IV of this Law relating to inventions made within the framework of an employment or service relationship, the disputed matter may be submitted, if the parties so agree, to an act of conciliation before the Spanish Patent and Trademark Office.

Article 134. *Conciliation Commission.*

1. For the conciliation, a commission shall be formed, in accordance with the provisions of the regulations, chaired by an expert of the Spanish Patent and Trademark Office appointed by its Director and two others chosen respectively by each of the parties in conflict, or when the inventor is a person in the service of any of the Public Administrations, and with regard to the representative of the latter, in the manner established by regulations within the framework of the labor or statutory legislation applicable to the employment relationship.

2. In the case of inventions made by the personnel referred to in Article 21(1), the member of the committee representing the University or the

The President of a research organization or center shall be appointed in the manner provided for in the statutes or other internal regulations of the University or in the regulations governing the research organization or center. Failing this, the appointment shall correspond, in the case of Universities, to the Governing Council and, in the case of research bodies or centers, to their highest governing body.

Proposal of agreement and conformity.

1. A settlement proposal must be issued by the commission within a maximum period of two months after the conciliation was requested, and the parties must state within a maximum period of 15 days whether or not they are in agreement with such proposal. If it is not possible to constitute the conciliation commission due to non-appearance of any of the parties, or if any of them does not accept the settlement proposal within the respective time limits, the procedure shall be deemed to be terminated. The acceptance must be express. In case of silence, it shall be understood that there is no agreement.

2. If there is conformity, the Director of the Spanish Patent and Trademark Office will issue a certification of the agreement according to the proposal accepted by the parties. For the purposes of Article 517, section 2.9.º of the Civil Procedure Act, the certification of the Director of the Spanish Patent and Trademark Office of the agreement, according to the proposal accepted by the parties, shall be enforceable.

3. The execution of the agreement will be carried out in accordance with the provisions of the Civil Procedure Law for the execution of judgments and judicially approved agreements.

Article 136. Arbitration and mediation.

1. The interested parties may resort to mediation or submit to arbitration the litigious matters arising between them on the occasion of the exercise of the rights recognized in this Law, in those matters not excluded from the free disposition of the parties according to law.

2. Matters relating to the procedures for granting, opposition or appeals concerning the titles regulated in this Law are not freely available, and are excluded from mediation or arbitration, when the object of the controversy is the fulfillment of the requirements demanded for their granting, their maintenance or their validity.

3. The final arbitration award shall produce the effects of *res judicata* in accordance with the provisions of Article 43 of Law 60/2003, of December 23, 2003, on Arbitration, which shall be applicable in all matters not provided for in this Article, and the Spanish Patent and Trademark Office shall proceed to carry out the necessary actions for its enforcement.

4. The mediation agreement signed by the mediator and the parties, once it has been executed in a public deed or approved by the judge, shall be executed in accordance with the provisions of Law 5/2012, of July 6, on mediation in civil and commercial matters, and the Spanish Patent and Trademark Office shall be notified in order to proceed with its execution.

5. The Spanish Patent and Trademark Office shall be notified of the filing of any appeals filed against the arbitration award or the exercise of a nullity action against what has been agreed in the mediation agreement. Once the corresponding decisions have become final, they shall be reliably notified to the Spanish Patent and Trademark Office for the purposes provided for in the preceding paragraph.

TITLE XIII
Utility models

CHAPTER I
Object and protection requirements

Article 137. *Inventions that may be protected as utility models.*

1. Industrially applicable inventions which, being new and involving an inventive step, consist of giving an object or product a configuration, structure or composition resulting in some practically appreciable advantage for its use or manufacture, may be protected as utility models in accordance with the provisions of this Title.

2. In addition to the subject matter and inventions excluded from patentability under Articles 4 and 5 of this Law, procedural inventions, inventions involving biological material and pharmaceutical substances and compositions may not be protected as utility models.

Article 138. *Right to protection.*

The right to utility model protection belongs to the inventor or his successor in title and is transferable by all means recognized by law.

Article 139. *State of the art.*

1. The state of the art with reference to which the novelty and inventive step of inventions protectable as utility models must be judged shall be the same as that established in Article 6.2 for invention patents.

2. The content of the prior applications referred to in Article 6.3 shall also be understood to be included in the state of the art.

Article 140. *Inventive activity.*

1. For protection as a utility model, an invention is considered to involve an inventive step if it does not result from the state of the art in a manner that is very obvious to a person skilled in the art.

2. If the state of the art includes documents referred to in Article 139.2, they shall not be taken into consideration to decide on the existence of the inventive step.

CHAPTER II
Application and granting procedure

Submission and content of the application.

1. In order to obtain a utility model, an application must be submitted to the Spanish Patent and Trademark Office indicating that this is the modality being applied for, with the documentation referred to in Article 23.1. The application shall be subject to the payment of the corresponding fee.

2. The date of submission of the application shall be the date at which the competent body, as provided for in Article 22, receives the documentation containing at least the following elements:

- a) The indication that a utility model is being applied for.
- b) Information that makes it possible to identify or contact the applicant.

c) A description of the invention for which the utility model is requested, even if they do not comply with the formal requirements established in the Law, or the reference to a previously filed application.

The reference to a previous application must indicate its number, its filing date and the office where it was filed. The reference must state that it replaces the description or, as the case may be, the drawings.

A certified copy of the above request, accompanied, if necessary, by the corresponding translation into Spanish, must be submitted within the period provided for in the Implementing Regulations.

3. The date of submission of applications filed at a post office shall be as provided in Article 24.4.

Assignment of filing date and ex officio examination.

1. The Spanish Patent and Trademark Office will check whether the application meets the requirements to obtain a filing date and whether the corresponding fee has been paid. The provisions of Article 33.2 for patents of invention shall be applicable.

2. If the fee has not been paid with the application, or has not been paid in full, the applicant shall be notified of this circumstance so that he/she may make or complete the payment within the period established by regulation. Once the said period has elapsed without making or completing the payment, the application shall be considered withdrawn.

3. Once the application has been accepted for processing, the Spanish Patent and Trademark Office will verify:

a) If its object is susceptible of protection as a utility model.

b) If it complies with the requirements established in Title V, Chapter I, as developed in the regulations.

The Spanish Patent and Trademark Office will not examine the novelty, the inventive step, the sufficiency of the description or the industrial application. Neither the report on the state of the art nor the written opinion, as provided for invention patents, will be issued.

4. If the examination reveals defects in the documentation or that the object of the application is not susceptible of protection as a utility model, these circumstances shall be communicated to the interested party so that he may correct them or formulate his allegations within the regulatory period established. In order to correct the aforementioned defects, the applicant may modify the claims or divide the application.

5. The application shall be rejected by means of a reasoned decision when its subject matter is not susceptible of protection as a utility model or when defects or irregularities persist that have not been remedied. The mention of the refusal shall be published in the "Official Bulletin of Industrial Property".

Article 143. *Publication of the application.*

If there are no grounds for refusal, or if these have been remedied, the Spanish Patent and Trademark Office will make the documents of the model applied for available to the public by making the corresponding announcement in the "Official Bulletin of Industrial Property", in which the claims of the model applied for and, if applicable, a reproduction of the drawings will also be published.

Opposition to the application.

1. Within two months following the publication of the application, any person may file an opposition, alleging the lack of any of the legal requirements for its grant, including novelty, inventive step, industrial application or sufficiency of the description. The lack of legal standing of the applicant may not be alleged, which must be asserted before the ordinary Courts.

2. The period provided for in the preceding paragraph may be extended for an additional two months to submit evidence or complete arguments, provided that the opposition is validly filed within the initial period and the extension is requested before the expiration of such period.

Article 145. Procedure and resolution.

1. The opposition shall be filed with the Spanish Patent and Trademark Office, by means of a reasoned written statement accompanied, where appropriate, by the corresponding supporting documents. The notice of opposition shall be accompanied by proof of payment of the opposition fee.

2. Once the legal terms have elapsed without any opposition having been filed, the Spanish Patent and Trademark Office will issue a decision granting the utility model applied for.

3. If oppositions are filed, the Spanish Patent and Trademark Office shall communicate them to the applicant so that, within the period established by the regulations, he may present his arguments in writing and modify, if he deems it appropriate, the claims, transferring to the parties the documents presented by the other party, under the conditions established in the Regulations for the execution of the Law.

4. Once the periods of answer and reply have elapsed, the Spanish Patent and Trademark Office will resolve to accept in whole or in part the oppositions presented when the reasons for opposition foreseen in article 144 concur, or rejecting them in the opposite case. Nevertheless, when in spite of the modifications or allegations provided, reasons persist that prevent in whole or in part the granting of the model, a new term will be granted to the applicant, giving him at least one opportunity, in accordance with the provisions of said Regulations, to correct the defect or present new allegations, before resolving definitively the opposition raised.

5. The grant of the utility model shall be announced in the "Official Bulletin of Industrial Property", making the documents contained in the file available to the public.

6. For utility models, the brochures referred to in Article 42 shall not be published.

Article 146.

1. The administrative appeal against the grant of the utility model may only refer to those issues that can be resolved by the Administration during the registration procedure.

2. The administrative appeal based on grounds for refusal of registration not examined ex officio by the Administration may only be filed by those who have been party to an opposition proceeding against the granting of registration based on such grounds, and shall be directed against the act resolving the opposition raised. For these purposes, the opposition may be understood to have been rejected if, once the period for resolving and notifying it has elapsed, no express decision has been handed down.

3. Against the decision to grant a utility model, the Spanish Patent and Trademark Office may not exercise ex officio or at the request of a party the power of review provided for in Article 102 of Law 30/1992, of November 26, 1992, cited above, if the invalidity of the model is based on any of the causes provided for in Article 149 of this Law. Said causes of nullity may only be asserted before the courts.

Article 147. Publication of amendments.

Amendments to the utility model as a result of an opposition or an appeal shall be published by making the corresponding announcement in the "Official Bulletin of Industrial Property". The publication shall include the claims of the registered model and, if applicable, a reproduction of the drawings.

CHAPTER III

Effects of the concession

Article 148. *Content of the right and exercise of actions.*

1. The protection of a utility model grants its holder the same rights as the invention patent.
2. The term of protection of utility models shall be ten years, non-extendable, counted from the filing date of the application, and shall produce its effects as from the publication of the mention of its grant in the "Official Bulletin of Industrial Property".
3. For the exercise of actions aimed at giving effect to the exclusive rights derived from a utility model applied for after the entry into force of this Law, it shall be necessary to have previously obtained or applied for, by paying the corresponding fee, the report on the state of the art provided for in Article 36.1 for patents, referring to the subject matter of the title on which the action is based.
4. The report, once prepared, will be notified to the petitioner and made available to the public attached to the model file. In the event that the lawsuit is filed before such report is provided, the defendant may request the suspension of the time limit to answer the lawsuit until such report is provided to the case file.
5. Once the report on the state of the art has been requested, and even if this has not yet been provided, the adoption of provisional and precautionary measures may be requested, in accordance with the provisions of this Law and the Civil Procedure Law, provided that these do not consist of the paralysis or cessation of the industrial or commercial activity of the defendant in relation to the protected object.

Article 149. *Nullity.*

1. The protection of the utility model shall be declared null and void:
 - a) When its object is not susceptible of protection in accordance with the provisions of Articles 137 to 140 and Title II of this Law, insofar as it does not contradict the provisions of the aforementioned articles.
 - b) When it does not describe the invention in a manner sufficiently clear and complete for it to be performed by a person skilled in the art.
 - c) When its subject matter exceeds the content of the utility model application as filed or, in the event that the utility model has been granted as a result of a divisional application or as a result of a new application filed on the basis of the provisions of Article 11, when the subject matter of the utility model exceeds the content of the initial application as filed.
 - d) When the scope of protection has been extended after the grant.
 - e) When the owner of the utility model is not entitled to obtain it in accordance with the provisions of Articles 10 and 138.
2. If the grounds for invalidity only affect a part of the utility model, it shall be limited by amending the affected claim or claims and shall be declared partially invalid.

Article 150. *Application of the provisions on patents.*

In the absence of a rule expressly applicable to utility models, the provisions laid down in this Law for patents shall apply to them, provided that they are not incompatible with the specialty of the former. The rules contained in Title III on the right to the patent and designation of the inventor, Title IV on employee inventions, Chapter V of Title V on general provisions of the procedure and the information of third parties, and Title X on nullity, revocation and limitation at the request of the owner and lapse of the patent shall in any case be applicable to them.

TITLE XIV
Application of international conventions

CHAPTER I
Filing and effects of European Patent Applications and European Patents in Spain

Article 151. *Scope of application.*

The provisions of this Law and its Implementing Regulations shall apply to European patent applications and European patents that produce effects in Spain, in everything that does not oppose the Convention on the Grant of European Patents, done at Munich on October 5, 1973, hereinafter referred to as the EPC.

Filing of European patent applications.

1. European patent applications may be filed with the Spanish Patent and Trademark Office or with the Autonomous Communities competent to accept national patent applications as provided for in Article 22. The Autonomous Communities shall forward such European patent applications to the Spanish Patent and Trademark Office.

2. In the case of inventions made in Spain and the priority of an earlier filing in Spain is not claimed, the application shall necessarily be filed in accordance with the provisions of paragraph 1. If the applicant has his domicile, or registered office or habitual residence in Spain, it shall be presumed, unless there is proof to the contrary, that the invention was made in Spanish territory. The provisions of Article 34 and Title XI of this Law shall be applicable to these applications. In the absence of compliance with this obligation, the patent shall not produce effects in Spain.

3. European patent applications in which the circumstances of the preceding paragraph are not met may be filed directly at the European Patent Office.

4. Applications filed in Spain may be drafted in any of the languages provided for in Article 14(1) and (2) of the EPC. If they are in a language other than Spanish, the Spanish Patent and Trademark Office may request a translation into Spanish, in accordance with the provisions of the regulations.

Value of the European patent application and the European patent.

Under the conditions provided for in the EPC, the European patent application to which a filing date has been granted and the European patent have, respectively, the value of a national filing regularly made with the Spanish Patent and Trademark Office and that of a national patent.

Rights conferred by the published European patent application.

1. European patent applications, after their publication as provided for in Article 93 of the EPC, shall enjoy in Spain provisional protection equivalent to that conferred upon the publication of national applications as from the date on which, upon payment of the corresponding fee, a Spanish translation of the claims is made available to the public by the Spanish Patent and Trademark Office. A copy of the drawings, if any, shall accompany the translation, even if it does not include expressions to be translated.

2. When the holder has neither domicile nor registered office in Spain, the translation must be carried out by an Industrial Property Agent accredited before the Spanish Patent and Trademark Office or by a Sworn Translator/Interpreter appointed by the Ministry of Foreign Affairs and Cooperation. Other validation criteria that guarantee the authenticity and fidelity of the translations mentioned in this article may be established by regulation.

Article 155. *Translation and publication of the European patent.*

1. When the European Patent Office grants a European patent designating Spain, the holder must provide the Spanish Patent and Trademark Office with a Spanish translation of the European patent as granted. The translation must also be provided in those cases in which the patent has been maintained in modified form, or limited by the European Patent Office.

2. The translation shall be sent to the Spanish Patent and Trademark Office within three months from the date of publication in the "European Patent Bulletin" of the mention that the patent has been granted, amended or limited in the cases provided for in paragraph 1. A copy of the drawings, if any, shall accompany the translation, even if it does not contain expressions to be translated. The provisions of paragraph 2 of the preceding Article shall be applicable.

In the absence of such translation and the payment of the fee for its publication within the established term, the patent will not produce effects in Spain.

3. The Spanish Patent and Trademark Office, within a period of one month from the date of submission of the translation, shall publish an indicative mention of the translation in the "Official Industrial Property Gazette", with the necessary data for the identification of the European patent and, upon payment of the corresponding fee, a brochure with the translation of the European patent.

Article 156. *Registration of European Patents.*

1. As soon as the granting of the European patent has been mentioned in the "European Patent Bulletin", the Spanish Patent and Trademark Office will enter it in its Register, with the data mentioned in the European Patent Register.

2. The date on which the translation referred to in Article 155 was received and published or, as the case may be, the absence of such translation, shall also be recorded. The data mentioned in the European Patent Register relating to opposition, appeal or limitation proceedings, as well as the data provided for Spanish patents, shall also be recorded.

Reliable text of the European patent application and of the European patent.

1. The translation into Spanish of the European patent application and of the European patent, complying with the requirements established in the preceding articles, shall be considered as reliable if the translated text confers a lesser protection than that which is granted by said application or said patent in the language in which the application was filed.

2. A revision of the translation may be made at any time by the owner of the application or of the patent, which will not become effective until it is published by the Spanish Patent and Trademark Office. The said publication will not be made if the payment of the corresponding fee has not been justified.

3. Any person who, in good faith, begins to work an invention or has made effective and serious preparations to do so, without such working constituting an infringement of the application or of the patent according to the text of the initial translation, may continue without compensation to work the invention in his business or for the needs of his business.

Transformation of the European patent application into a national patent application.

1. A European patent application can be converted into a national patent application:

a) In the cases provided for in article 135.1.a) of the EPC.

b) When it is considered rejected by application of article 90.5 of the EPC insofar as it refers to article 14.2 of the same.

2. The European patent application is considered, from the date of receipt by the Spanish Patent and Trademark Office of the request for conversion, as an application for a European patent.

The filing date will be the date granted by the European Patent Office to the European patent application.

3. The patent application shall be considered abandoned if, within the term and under the conditions provided for in the Regulations of this Law, the payment of the fees required for a Spanish patent application at the time of filing is not justified and a translation into Spanish of the original text of the European patent application or, as the case may be, of the text amended in the course of the proceedings before the European Patent Office, on which the grant procedure before the Spanish Patent and Trademark Office is to be based, is not provided. Article 154.2 shall be applicable to the translation.

Transformation of the European patent application into a utility model application.

1. The European patent application may be converted into a Spanish utility model application when the former has been refused or withdrawn, or has been considered withdrawn, in accordance with the provisions of the EPC.

2. The provisions of paragraphs 2 and 3 of the preceding article shall be applicable to utility models.

Article 160. Prohibition of double protection.

1. To the extent that a national patent has as its object an invention for which a European patent with effects in Spain has been granted to the same inventor or to his successor in title, with the same filing or priority date, the national patent ceases to produce effects from the moment in which it is granted:

a) The time limit for filing opposition to the European patent has expired, without any opposition having been filed.

b) The opposition procedure is terminated and the European patent is maintained.

2. In the event that the national patent has been granted after any of the dates indicated in paragraphs a) and b), this patent shall not produce effects.

3. The subsequent termination or cancellation of the European patent will not cause the national patent to regain its effects.

Article 161. Annuities.

1. For all European patents that have effects in Spain, the annual fees provided for in the legislation in force on national patents must be paid to the Spanish Patent and Trademark Office.

2. The annuities will be payable at the SPTO from the year of the patent's life following the year in which the mention of the grant of the European patent was published in the "European Patent Bulletin".

3. Without prejudice to the provisions of Article 141.2 of the EPC, the payment of annuities shall be made in accordance with the accrual, term, amount, form and other conditions set forth in the legislation in force for national patents.

CHAPTER II

Implementation of the Patent Cooperation Treaty

Section 1 Scope of application and international applications filed in Spain

Article 162. Scope of application.

1. This Chapter shall apply to international applications within the meaning of Article 2 of the Patent Cooperation Treaty for which the Spanish Patent and Trademark Office acts as receiving office, designated office or elected office.

2. The provisions of this Law and its Regulations shall apply to applications that designate Spain and that have begun their processing before the Spanish Patent and Trademark Office, in everything that does not oppose the aforementioned Treaty.

The Spanish Patent and Trademark Office as Receiving Office.

1. The Spanish Patent and Trademark Office shall act as Receiving Office, within the meaning of Article 2(xv) of the Patent Cooperation Treaty, in respect of international applications filed by Spanish nationals or persons having their registered office or domicile in Spain.

2. In the case of inventions made in Spain, and the priority of an earlier filing in Spain is not claimed, the international application must be filed with the Spanish Patent and Trademark Office. Failure to comply with this obligation shall deprive the international application of its effects in Spain.

When the applicant has his domicile or registered office or habitual residence in Spain, it shall be presumed, unless there is evidence to the contrary, that the invention was made in Spanish territory.

3. The international application filed in Spain shall be drafted in Spanish. In addition to the fees prescribed by the said Treaty, the filing of the international application shall give rise to the payment of the transmittal fee provided for in the Annex to this Law and in the Regulations implementing the Treaty.

Conversion of International Applications.

1. The provisions of Title XI of this Law shall apply to international applications filed with the Spanish Patent and Trademark Office.

2. In the case of Spain being a designated State, if the authorization of the Ministry of Defense provided for in Article 111 is not granted, the international application shall be considered, as from its filing date, as a national application. In this case, the transmittal fee shall be considered as a national filing fee.

3. The foregoing paragraphs shall not apply where the international application claims the priority of an earlier national application the contents or processing of which are not kept secret by the Spanish Patent and Trademark Office.

Article 165. *Claiming priority of prior filing in Spain.*

If the international application claims the priority of an earlier filing in Spain, the priority document issued by the Spanish Patent and Trademark Office may, at the request of the applicant under the conditions provided for in the Regulations for Implementing the Patent Cooperation Treaty, be transmitted directly to the International Bureau. The request shall be subject to the payment of the fee set out in the Annex to this Law, which shall be paid by the applicant to the Spanish Patent and Trademark Office.

Article 166. *Extension of deadlines for payment of fees.*

The payment of fees made in response to an invitation addressed to the applicant, by virtue of the provisions of the Regulation implementing the Treaty, shall be subject, in favor of the Spanish Patent and Trademark Office, to the payment of the late payment fee provided for in Rule 16.bis.2 thereof. This fee must be paid within a period of one month from the date of notification of the invitation and its amount shall be determined in each case according to the criteria provided for in the said Regulation.

Section 2 International applications designating or selecting Spain

Acting of the Spanish Patent and Trademark Office as a Designated or Elected Office.

The Spanish Patent and Trademark Office shall act as Designated or Elected Office within the meaning of Article 2.xiii) and xiv) of the Patent Cooperation Treaty when Spain has been mentioned for such purpose, with a view to obtaining a

national patent, in the international application, or in the demand for international preliminary examination.

Filing Date and Effects of the International Application.

An international application designating Spain shall, as soon as it has been accorded an international filing date under Article 11 of the Patent Cooperation Treaty, have the effects of a national application duly filed with the Spanish Patent and Trademark Office as from the said date. This date shall be considered as the effective filing date in Spain.

Processing of the International Application.

1. In order for the Spanish Patent and Trademark Office to initiate the processing of the international application, a translation thereof into Spanish, as originally filed and, where applicable, of the amendments made pursuant to Article 19 or Article 34 of the said Treaty, shall be filed within the time limit applicable under Article 22 or Article 39(1) of the Patent Cooperation Treaty.

2. The Spanish Patent and Trademark Office may request the applicant, if it deems it necessary in the specific case, to submit, within the period specified, the translation of the international application certified by an Industrial Property Agent accredited before the said Office or by a Sworn Translator/Interpreter appointed by the Ministry of Foreign Affairs and Cooperation. Other criteria of validation that guarantee the authenticity and fidelity of the translations mentioned in this article may be established by regulation.

3. The applicant shall pay, within the period provided for in paragraph 1, the fees for the application and for the drawing up of the report on the state of the art provided for national patents.

Publication of the International Application.

1. The publication, in accordance with Article 21 of the Patent Cooperation Treaty, of an international application for which the Spanish Patent and Trademark Office acts as Designated Office replaces the publication of the national patent application.

2. If the international application has been published in Spanish, the provisional protection provided for in Article 67 of this Law shall be effective in respect of the said application as from the date of the international publication. If it has been published in another language, the provisional protection shall be effective as from the date on which its translation into Spanish, carried out under the conditions of Article 154(2), is made available to the public at the Spanish Patent and Trademark Office. For these purposes, a mention of the date from which the translation of the application is available to the public shall be published in the "Official Bulletin of Industrial Property".

Revision by the Spanish Patent and Trademark Office.

1. Where a Receiving Office other than the Spanish Patent and Trademark Office has refused an international filing date to an international application designating or choosing Spain, or has declared that such application is considered as withdrawn, or that the designation of Spain is considered withdrawn, under Articles 25.1.a) or 25.1.b) of the Patent Cooperation Treaty, the applicant may request the Spanish Patent and Trademark Office, within two months from the date of the notification, to review the matter and decide whether the refusal or declaration was justified in accordance with the provisions of the said Treaty. This review may result in a decision by the Spanish Patent and Trademark Office to process the application in the national phase.

2. The revision provided for in the preceding paragraph may be requested, under the same conditions, in the event that the international application designating or choosing Spain has been considered withdrawn by the International Bureau under Article 12(3) of the Patent Cooperation Treaty.

Effects of a Patent Granted on the Basis of an International Application.

1. A patent granted by the Spanish Patent and Trademark Office on the basis of an international application, designating or choosing Spain, shall have the same effects and the same value as a patent granted on the basis of a national application filed in accordance with this Law.

2. Where, because of an incorrect translation, the scope of a patent granted on the basis of an international application exceeds the contents of the international application in its original language, the scope of the patent shall be limited retroactively and declared null and void to the extent that it exceeds that which corresponds to it according to the application in its original language.

Effects of the Grant of a Patent Based on an International Application on a Patent Based on a National Application.

1. To the extent that a patent based on a national application relates to an invention for which a patent has been granted on the basis of an international application, to the same inventor or his successor in title, with the same filing or priority date, the patent based on a national application shall cease to have effect as from the grant of the patent based on the international application.

2. A patent based on a national application shall not be effective when granted after the date of grant of the patent based on an international application.

3. The lapse or subsequent cancellation of the patent based on the international application shall not affect the provisions of this Article.

The Spanish Office as International Searching and Preliminary Examining Authority.

The Spanish Patent and Trademark Office will act as International Searching Authority and as International Preliminary Examining Authority in accordance with the provisions of the Patent Cooperation Treaty, in accordance with the agreement concluded between the Spanish Patent and Trademark Office and the International Bureau of the World Intellectual Property Organization.

TITLE XV

Representation before the Spanish Patent and Trademark Office.

Article 175. Capacity and representation.

1. They may act before the Spanish Patent and Trademark Office:

a) Interested parties with capacity to act in accordance with the provisions of Title III of Law 30/1992, of November 26, 1992, of the Legal Regime of the Public Administrations and of the Common Administrative Procedure.

b) Industrial Property Agents.

2. Without prejudice to the provisions of Article 7.2 of the Patent Law Treaty, done at Geneva on June 1, 2000, non-residents of a Member State of the European Union shall act through an Industrial Property Agent.

Article 176. Industrial Property Agents.

1. Industrial Property Agents are legally qualified persons who, as liberal professionals, offer and habitually render their services to advise, assist and represent third parties in obtaining the different types of Industrial Property and in the defense before the Spanish Patent and Trademark Office of the rights derived therefrom.

2. Agents may exercise their activity individually or through legal entities validly constituted in accordance with the legislation of a Member State of the European Union and whose registered office or principal place of business is located in Community territory. Both Agents and the legal entities through which they exercise their activity may be registered in the Special Register of Agents of the Spanish Patent and Trademark Office.

3. In order for a legal entity to obtain registration in the Special Register of Agents of the Spanish Patent and Trademark Office, at least one of its partners or associates must prove that he is an Agent in accordance with the provisions of the following article. The registered legal entity will lose the authorization for the exercise of this professional activity if at any time this requirement is no longer fulfilled.

4. Both the legal entity and the Agent acting through it shall be liable for the professional management carried out under the corporate or associative form.

5. Industrial Property Agents shall be obliged to maintain the confidentiality of the matters in which they intervene and shall have the right to refuse to disclose the communications exchanged with their clients or with third parties relating to the proceedings before the Spanish Patent and Trademark Office.

Among others, any communication or document related to the following shall be subject to these conditions:

a) the assessment of the patentability of an invention, the registrability of an industrial design, a trademark or a trade name;

b) the preparation or prosecution of an application for a patent, utility model, industrial design, trademark or trade name;

c) any opinion concerning the validity, scope of protection or infringement of the subject matter of a patent, utility model, industrial design, trademark or trade name, as well as of an application for any of said modalities.

6. The representatives referred to in Article 175.1 and who are not industrial property agents shall be bound by the same provisions as those set forth in the preceding paragraph.

Access to the profession of Industrial Property Agent.

1. To enter the regulated profession of Industrial Property Agent it will be necessary:

a) Be of legal age and have full capacity to act.

b) Have an establishment or professional office in a Member State of the European Union.

c) Not having been convicted of an intentional crime, unless rehabilitation has been obtained.

d) To be in possession of the official degrees of Bachelor's Degree, Graduate, Architect or Engineer, issued by the Rectors of the Universities, or other official degrees that are legally equivalent to these.

e) Pass an aptitude test accrediting the knowledge necessary for the professional activity defined in the previous article, in the manner to be determined by regulation.

2. The freedom of establishment in Spain for those who have acquired the professional qualification of Industrial Property Agent in another Member State of the European Union shall be governed by the provisions of the Community regulations and the internal provisions of incorporation and development thereof, applying for such purposes the provisions of Royal Decree 1837/2008, of November 8, 2008.

Article 178. Incompatibilities.

The exercise of the profession of Industrial Property Agent, either directly or through legal entities, is incompatible with any active employment in the Spanish Patent and Trademark Office, in the Ministry to which it is attached, in the Ministries of Industry

of the Autonomous Communities or in the bodies of the same that have assumed competences in Industrial Property matters, and in International Organizations related to Industrial Property.

Exercise of the professional activity and Special Registry of Agents and the Spanish Patent and Trademark Office.

1. In order to engage in the activity of Industrial Property Agent, either directly or through a legal entity, it shall be necessary to have previously filed with the Spanish Patent and Trademark Office a declaration of responsibility in which, in accordance with the provisions of the Regulations for the implementation of this Law, the interested party declares under his responsibility that he complies with all the requirements established in Articles 176 and 177 and is not subject to the incompatibilities of Article 178, that he has the documentation that accredits it and that he undertakes to maintain his compliance with them until he is removed from office due to any of the circumstances provided for in Article 180.

The fulfillment of these requirements enables the exercise of the professional activity throughout the national territory and for an indefinite period of time.

2. The documentation proving compliance with the legal requirements must be available for submission to the Spanish Patent and Trademark Office when so required by the latter. For these purposes, documents from another Member State of the European Union that demonstrate that such requirements are fulfilled will be accepted, under the terms provided for in Article 17.2 of Law 17/2009, of November 23, 2009, on free access to service activities and the exercise thereof.

3. Once the declaration referred to in paragraph 1 has been received, the Spanish Patent and Trademark Office shall, upon payment of the corresponding fee, register ex officio the Agent in its Special Register of Industrial Property Agents as representatives legally entitled to act as such before the Office.

4. In their relations with the Spanish Patent and Trademark Office, Agents must use their own name, followed by an indication of their status as Agents and, in the case of legal entities, the company name under which they act, as well as the corresponding registered office.

Article 180. *Termination of the authorization to engage in the activity of professional representation.*

1. The cessation of the legal authorization to act as an Industrial Property Agent may occur for any of the following reasons:

- a) By death, in the case of individuals, or extinction, in the case of legal entities.
- b) By waiver filed in writing with the Spanish Patent and Trademark Office.
- c) By reasoned resolution of the Spanish Patent and Trademark Office, after verification of the non-compliance by the interested party of the requirements demanded by this Law for his qualification as an Agent. When this happens, the interested party will only be able to file again a responsible declaration, previous accreditation of the legal requirements mentioned.
- d) By judicial resolution.

2. In all the above cases, the Spanish Patent and Trademark Office shall ex officio cancel the corresponding entry in the Special Register of Industrial Property Agents.

3. When the termination of the legal entitlement occurs in application of section 1.c) and the Spanish Patent and Trademark Office ascertains the falsity, inaccuracy or omission of an essential nature in the data required for the exercise of the professional activity, said Office may conduct the sanctioning proceedings established by regulations and propose to the Minister of Industry, Energy and Tourism the termination of the entitlement to exercise the professional representation for a maximum period of three years.

4. The Spanish Patent and Trademark Office may also remove the Agent or the authorized representative from its Register and initiate, as the case may be, the sanctioning proceedings in the following cases

terms provided for in the preceding paragraph, when the Agent has been convicted by a final judgment as a consequence of acts carried out in the exercise of his professional activity.

Community freedom to provide services and information obligations.

1. Industrial Property Agents established in another Member State who temporarily provide their services in Spain must comply with the rules on access to and practice of the profession approved by Royal Decree 1837/2008, of November 8, 2008, which transposes into Spanish law Directive 2005/36/EC of the European Parliament and of the Council, of September 7, 2005, and Council Directive 2006/100/EC, of November 20, 2006, on the recognition of professional qualifications and on certain aspects of the practice of the profession of lawyer and the regulations implementing it, of the Council, of November 20, 2006, regarding the recognition of professional qualifications and certain aspects of the exercise of the profession of lawyer and the regulations that develop it, having to present a previous declaration according to the model approved by the Spanish Patent and Trademark Office, which must be renewed annually in case of continuing the temporary rendering of services.

2. Persons registered in the Special Register of Industrial Property Agents must inform the recipients of their services under the terms established by Article 22 of Law 17/2009, of November 23, 2009, on free access to service activities and the exercise thereof, and comply with the obligations established in the aforementioned Law.

TITLE XVI

Rates and annuities

Article 182. Fees.

1. The bases and rates of taxation of the fees for the performance of services, services and administrative activities relating to Industrial Property in the field of patents, utility models and complementary certificates for the protection of medicines and phytosanitary products shall be those contained in the Annex to this Law, of which it forms an integral part. The amounts contained in the said Annex shall be updated as may be established by means of an ordinary Law or in the corresponding General State Budget Law for fees in general.

Its regulation shall be subject to the provisions of this Law, and insofar as they do not oppose the provisions of the same, of Law 17/1975, of May 2, 1975, on the creation of the Autonomous Body "Industrial Property Registry", of Law 8/1989, of April 13, 1989, on Public Fees and Prices, and of Law 58/2003, of December 17, 2003, on General Taxation and complementary provisions.

2. Failure to pay the fee within the legal or regulatory period established shall deprive the act for which it was due of all effectiveness.

3. If a fee established for the processing of the application for the granting of any of the titles regulated in this Law is not paid, the application shall be deemed to have been withdrawn.

Article 183. Reimbursement of fees.

1. In the event that the application for a patent or other title of protection provided for in this Law is withdrawn, deemed to have been withdrawn or refused before the corresponding provision, service or administrative activity begins, the fees paid for these items, with the exception of the application fee, shall be refunded to the applicant.

2. Where the prior art report may be based in whole or in part on the international search report carried out under the Patent Cooperation Treaty, the applicant shall be reimbursed 25 percent, 50 percent, 75 percent or 100 percent of the fee, depending on the scope of such report.

3. Where the substantive examination may be based in whole or in part on the international preliminary examination report made by the competent International Preliminary Examining Authority, the applicant shall be reimbursed 25 per cent, 50 per cent, 50 per cent, 50 per cent, 50 per cent, 50 per cent, 50 per cent, 50 per cent, 50 per cent and 50 per cent respectively.

percent, 75 percent or 100 percent of such rate, depending on the scope of such report.

4. The filing of an appeal shall give rise to the payment of the appeal fee. The fee shall not be refunded except when the appeal is fully upheld on the grounds of legal reasons improperly assessed in the decision appealed against that are attributable to the Spanish Patent and Trademark Office. The refund of the appeal fee must be requested when the appeal is filed and will be agreed upon in the resolution of the appeal.

Annuities and maintenance fee.

1. In order to maintain in force a patent or utility model or a supplementary protection certificate, the applicant or the holder thereof shall pay the annual fees, or in the case of supplementary certificates the maintenance fee, set out in the Annex referred to in Article 182(1).

2. The annuities shall be paid in advance, during the entire term of the patent or utility model. The date of accrual of each annuity shall be the last day of the month of the anniversary of the filing date of the application.

3. The payment of the annuities accrued prior to the publication of the grant of the patent in the "Official Industrial Property Gazette" shall be made within three months from the date of such publication.

Payment of annuities accrued after the publication of the patent grant or on the same date shall be made within three months after the date of accrual of the corresponding annuity.

Upon expiration of the term for the payment of an annuity without having paid the amount thereof, the same may be paid with the corresponding surcharge within the following six months.

However, for annuities whose accrual date is after the date of publication of the grant in the "Official Industrial Property Gazette" or coincides with the same, and during the time elapsing from the end of the period with surcharge until the date of accrual of the following annuity, payment may be regularized by paying the regularization fee provided for in the second tariff of this Law, the amount of which shall be added to the second of the surcharges provided for in Article 185.

4. The fee payable for the filing of the patent or utility model application exempts the payment of the first two annual fees.

5. The date of accrual of the fee for the maintenance of supplementary protection certificates or their extension will be the date of their entry into force.

When the accrual date is prior to the date of publication in the "Official Industrial Property Gazette" of the granting of the certificate or, as the case may be, of the extension, payment must be made within three months after the date of publication.

When the accrual date coincides with or is subsequent to said publication date, payment must be made within three months after the accrual date.

Upon expiration of the term for payment of the maintenance fee without having paid the amount, the same may be paid with the corresponding surcharge within the following six months.

Article 185. Surcharges.

1. Once the term for the payment of an annuity has elapsed without having paid the amount thereof, the same may be paid with a surcharge of 25 percent within the first three months and 50 percent within the following three months, up to a maximum of six months in arrears.

2. Once the period for payment of the fee for the maintenance of the supplementary certificates or for the extension of the supplementary protection certificate for medicinal products has elapsed without having paid the amount thereof, it may be paid with a surcharge of 25 percent within the first three months and 50 percent within the following three months, up to a maximum of six months in arrears.

Article 186. Reduction of fees.

1. Entrepreneurs who, being considered natural persons or small and medium-sized enterprises (SMEs), wish to obtain protection of an invention by means of a national patent or utility model, may apply for it to be granted by paying 50 percent of the amount of the patent or utility model.

The fees established for the application, the third, fourth and fifth annuities, and in the case of national patents, the request for a report on the state of the art and the substantive examination, shall be one hundred percent of the established fees.

For this purpose, the request for fee reduction must be submitted, together with the national patent or utility model application, and accredit, with the documentation required by regulations, that they comply with the definition of entrepreneur of Law 14/2013, of September 27, on support for entrepreneurs and their internationalization and the definition of small and medium-sized enterprises (SME) adopted by Recommendation 2003/361/EC of the European Commission, of May 6, on the definition of micro, small and medium-sized enterprises or to that which, in the event of modification or replacement thereof, is applicable at the time of filing the application.

2. Applications or writings submitted by electronic means will have a 15 percent reduction in the amount of the fees to which such applications and writings are subject, if the same are submitted and the fees are paid previously or simultaneously by such technical means.

3. No exemptions or reductions other than those expressly recognized in this Law or those established by international agreements or treaties or in execution thereof, as the case may be, shall be admitted.

First additional provision. *Legal regime of the procedures.*

The administrative procedures provided for in this Law shall be governed by its specific regulations, and in all matters not provided for therein, by the provisions of Law 30/1992, of November 26, 1992, on the Legal Regime of the Public Administrations and Common Administrative Procedure.

Second Additional Provision. *Maximum time limits for the resolution of Industrial Property proceedings.*

1. Pursuant to the provisions of Article 59.3 of Law 2/2011, of March 4, on Sustainable Economy, the maximum periods for the resolution of the administrative procedures for the granting and registration of the various types of Industrial Property shall be established by order of the Minister of Industry, Energy and Tourism, following a proposal by the Spanish Patent and Trademark Office.

2. In the event of a change of modality, the maximum term for resolution will begin to run from the date of presentation of the documentation corresponding to the new modality.

3. When the period for carrying out a procedure in any of the procedures provided for in the Laws governing the various forms of industrial property expires on a Saturday, the procedure in question may be validly carried out on the first working day following that Saturday.

4. The expiration of the maximum term for resolving an application without an express resolution having been notified shall entitle the interested party to understand it to have been rejected for the sole purpose of allowing the filing of the appropriate administrative or contentious-administrative appeal. The presumptive rejection will in no case exclude the duty to issue an express resolution, which will be adopted without any link whatsoever to the sense of the silence.

Third additional provision. *Preferential processing of applications.*

At the proposal of the Spanish Patent Office and by order of the Minister of Industry, Energy and Tourism, preferential processing of applications for patents and utility models relating to technologies related to the sustainability objectives established in Law 2/2011, of March 4, on Sustainable Economy, may be arranged.

Fourth additional provision. *Fees for the actions of the Spanish Patent and Trademark Office within the framework of the Patent Cooperation Treaty (PCT).*

The amount of the fees that, according to the provisions of the Patent Cooperation Treaty (PCT), each Office establishes for acting as Receiving Office and

The International PCT Administration shall be, as far as the Spanish Patent and Trademark Office is concerned, the one indicated in the Annex to this Law.

The remaining fees applicable by the Spanish Patent and Trademark Office within the framework of this Treaty shall be those established in the Regulations of the PCT Treaty, in the Agreement between the Spanish Patent and Trademark Office and the International Bureau of the World Intellectual Property Organization concerning the operation of the Spanish Patent and Trademark Office as PCT International Authority, as well as in the Special Agreement between the European Patent Organization and the Government of the Kingdom of Spain concerning Cooperation in matters relating to the PCT, which are in force when the corresponding service is requested.

Fifth additional provision. *Publicity of applications and resolutions and public consultation of files.*

1. The publication of applications and decisions granting Industrial Property titles shall include the name and surname of the applicant or owner, in the case of natural persons, or the name or company name in the case of legal entities, as well as their nationality and postal address.

2. Once the applications have been published, the documents that make up the files of the corresponding titles may be consulted, without the need for the consent of the applicants or concessionaires thereof or of the other parties or intervening parties.

The public consultation may be carried out in person or by telematic means and subject to the legal or regulatory limitations established in the Industrial Property legislation in force.

3. The public consultation shall necessarily include the data necessary to identify and contact the owner of the application or of the Industrial Property right, as well as the parties or intervening parties in the proceedings, and in particular the name and surname, in the case of natural persons, their name or company name in the case of legal persons, and their postal address.

4. The public consultation may include, unless expressly opposed by the interested party when they refer to natural persons, the telephone number and the tax identification number.

5. The parts or documents of the file whose confidentiality has been requested by the interested party prior to the request for consultation shall be exempted from public inspection, provided that:

1.º Do not respond to the purposes of public information proper to the Patent and Trademark Registry.

2.º Its consultation is not justified by legitimate and preponderant interests of the party requesting it.

Sixth additional provision. *Accelerated grant programs.*

1. The Directorate of the Spanish Patent and Trademark Office may establish by means of instructions accelerated patent granting programs for those applications that do not claim priority from previous applications and in respect of which the interested party:

a) Expressly avails itself of the accelerated patent granting program.

b) Submit the application for early publication and the request for examination, paying the corresponding fees, either with the application or within the period established by regulations.

In the event that the application presents defects, the SPTO will communicate this to the applicant and will give the applicant a period of time to correct the defects found. Once the term has elapsed without the defects having been corrected, it will be considered that the application for accelerated grant has not been formulated and the procedure will continue by the usual route outside the accelerated grant program.

2. Neither the request for expedited processing by the applicant, nor the application of the program by the body responsible for its processing, need to be justified.

Seventh additional provision. *Coordination with the competent bodies of the Autonomous Communities.*

The Ministry of Industry, Energy and Tourism will establish the appropriate coordination and cooperation mechanisms between the Spanish Patent and Trademark Office and the Autonomous Communities competent to receive the corresponding applications addressed to said Office. The competent body of the Autonomous Community through which the documentation has been submitted, if applicable, must remain informed throughout the procedure once the application has been published. To this effect, systems of intercommunication and coordination of the corresponding Registries will be implemented to guarantee the computer compatibility and the telematic transmission of the entries.

Eighth additional provision. *Telematic communications with Courts and Tribunals.*

1. The documents to be sent to the Courts and Tribunals for their inclusion in any type of procedure shall be sent in electronic format in accordance with the provisions on electronic communications in Law 18/2011, of July 5, 2011, regulating the use of information and communication technologies in the Administration of Justice, provided that they have the necessary computer systems for their reception and through the closed communication environments made available to them, which shall in all cases guarantee the security and protection of the data and/or documents transmitted.

2. Public or private electronic documents shall be incorporated as an annex to the main document, following the systems provided for in this Law or in its implementing rules and in accordance with the provisions of Law 59/2003, of December 19, 2003, on electronic signatures.

Ninth additional provision. *Exercise of actions based on titles whose concession is not final in administrative proceedings.*

1. Article 120.4 shall apply, in any case, at the request of any of the parties to the proceedings for the exercise of actions for nullity or infringement of the patent, when the title is modified outside the proceedings as a result of a final administrative decision on the grant of the title on which the action is based.

2. If the final resolution is appealed in contentious-administrative proceedings, Article 42 of Law 1/2000, of January 7, 2000, on Civil Procedure, shall be applicable.

Tenth additional provision: *Application of the system of fees for obtaining and maintaining the titles provided for in this Law.*

1. Public universities shall be entitled to a fifty percent rebate on the amount of the fees paid for obtaining and maintaining the industrial property titles regulated in this Law and applied for after the entry into force of this Law.

2. The rebate shall be one hundred percent, provided that they can prove that within the term established in Article 90.2 there has been a real and effective economic exploitation of the patent or utility model. In this case, the universities may request the refund of the amount of the fees paid, under the terms established by regulation.

First transitory provision. *Transitory regime of the procedures.*

1. The administrative procedures provided for in this Law and initiated prior to its entry into force shall be processed and resolved in accordance with the legal regulations in force on the date of filing of the corresponding applications.

2. For these purposes, in applications originated by division, change of modality or transformation of an application, its filing date shall be deemed to be the filing date of the original application.

Second transitory provision. *Regulations applicable to the titles of protection of inventions granted in accordance with the previous legislation.*

To the titles of protection of inventions applied for under Law 11/1986, of March 20, 1986, on Patents, the provisions contained in the following titles and chapters of this Law shall apply:

1. Chapter V of Title V "Provisions common to all proceedings and to the information of third parties" insofar as such proceedings refer to actions subsequent to the granting of the title.

2. Title VI, "Effects of the patent and the patent application"; Title VII, "Actions for infringement of the patent right"; Title VIII, "The patent application and the patent as objects of property rights"; Title IX, "Obligation to exploit and compulsory licenses"; Title X, "Nullity, revocation and lapse of the patent"; Title XII, "Jurisdiction and procedural rules"; Title XIV, "Application of International Conventions".

3. Chapter III of Title XIII "Effects of the grant" with the exception of the grounds for invalidity referred to in Article 149.1.a), which shall be those provided for in Article 153.1.a) of Law 11/1986, of March 20, 1986, on Patents.

Third Transitory Provision. *Fees and annuities.*

1. The bases and rates of the fees referred to in Article 182.1 shall be those in force at the time the application is filed or the service, provision or administrative activity in question is requested.

2. The term for the payment of annuities for patents granted under the previous Law, whose accrual date is equal to or subsequent to the date of entry into force of this Law and which have not been paid prior to that date, shall be as provided in Article 184.3.

3. The fee reduction provided for in Article 186.1 shall apply to patent and utility model applications filed after the entry into force of this Law.

4. Paragraph 3 of Article 186 shall apply to applications filed after the entry into force of this Law.

5. The application and maintenance fees for supplementary protection certificates shall be those in effect at the time the certificate or the extension thereof is applied for.

Fourth transitory provision. *Innocuous disclosures.*

Article 7 of Law 11/1986, of March 20, 1986, on Patents shall apply to applications filed within six months after the entry into force of this Law.

Fifth transitory provision: *Application of the regime on exploitation and transfer of inventions made by the Public Research Entities.*

The references in Royal Decree 55/2002, of January 18, 2002, on exploitation and assignment of inventions made in public research entities, in accordance with the provisions of Article 20 of Law 11/1986, of March 20, 1986, on Patents, are understood to refer to Article 21 of this Law.

Sixth transitory provision. *Legal actions.*

Legal actions initiated prior to the entry into force of this Law shall follow the same procedure under which they were initiated.

Sole derogatory provision. Repeal of regulations.

Law 11/1986, of March 20, 1986, on Patents and any other provisions of equal or lower rank that oppose the provisions of this Law are hereby repealed, except as provided for in the transitory provisions.

Amendment of the Law of December 16, 1954 on chattel mortgages and nonpossessory pledges.

Articles forty-five and forty-six of the Law of December 16, 1954 on chattel mortgages and nonpossessory pledges shall read as follows:

"Article forty-five.

1. Rights protected by Industrial Property legislation, such as patents, topographies of semiconductor products, trademarks, commercial names, industrial designs, plant varieties and any other typical modalities, may be subject to chattel mortgage in accordance with their regulatory law.

2. The mortgage security may be created both by the owner and by the licensee with the power to assign his right to a third party, both on the right itself and on the application for the granting of the right. Licensees who are holders of licenses in its entirety or in any of the faculties that make up the exclusive right, for the entire national territory or for a part thereof; with the condition of exclusive or non-exclusive license, may grant a mortgage security interest in their respective rights.

3. Industrial property rights that are registrable but not registered, very personal rights that lack patrimonial content or are not alienable and, in general, those that are not susceptible to individual appropriation are not subject to chattel mortgage.

4. The guarantee extends to the rights and improvements resulting from the addition, modification or improvement of the registered rights.

5. Immediately after having made the respective entries in the Register of Movable Property, the Registrar will send ex officio certification of its content to the Spanish Patent and Trademark Office for its registry record in the latter and the coordination between both services of publicity. The registration guarantee shall be deemed to have been constituted for the purposes provided for in this Law as soon as it is recorded in the Register of Movable Property.

6. With respect to domain names on the Internet, the provisions of the rules of the corresponding Registry shall apply, and rights not subject to voluntary alienation may not be encumbered with a chattel mortgage in accordance with the provisions of the applicable regulations.

7. The rules of this Chapter establish the common rules for chattel mortgages on industrial property rights and on chattel mortgages on rights protected by intellectual property law referred to in the following Article."

"Article forty-six.

1. A chattel mortgage may be imposed both on the exploitation rights of the work and on all those rights and forms of intellectual property with patrimonial content that are susceptible to inter vivos transfer in accordance with its regulatory law. The exploitation rights of a cinematographic work may also be subject to a chattel mortgage under the terms provided for in the Law.

2. The guarantee may be constituted either by the owner or by the assignee, either exclusively or as a partial assignee, provided that the owner has the power to transfer his right to a third party.

3. Intellectual property rights that are registrable but not registered are not subject to chattel mortgage, nor are very personal rights such as the so-called moral rights of authorship, those that are not alienable and in general those that are not subject to individual appropriation.

4. Unless otherwise agreed in the contract, the warranty on the original work does not extend to translations and adaptations; revisions, updates or annotations; abridgements, summaries or extracts; musical arrangements or any other transformations of the work. Such transformations may be the subject of separate warranties.

5. Immediately after having made the respective entries in the Register of Movable Property, the Registrar shall send ex officio a certificate of its content to the competent public Register where the type of Industrial Property that is the object of the guarantee is registered for its registration and the coordination between the two publicity services. The chattel mortgage shall be deemed to have been constituted for the purposes provided for in this Law as soon as it is recorded in the Register of Movable Property."

Second Final Provision. Amendment of Law 17/1975, of May 2, 1975, on the creation of the Autonomous Body "Industrial Property Registry".

In Law 17/1975, of May 2, 1975, on the creation of the Autonomous Body "Industrial Property Registry", paragraph six of article two is amended and a new paragraph seven is added to the same article, with the following wording:

"Six. To perform as a mediating and arbitration institution, and in accordance with the provisions of Law 5/2012, of July 6, on mediation in civil and commercial matters and Law 60/2003, of December 23, on Arbitration, the functions assigned to it by Royal Decree for the settlement of disputes relating to the acquisition, use, contracting and defense of Industrial Property rights in those matters not excluded from the free disposition of the parties in accordance with the law.

Seven. Any other function that current legislation currently attributes to the Spanish Patent and Trademark Office or those that may hereinafter be expressly entrusted to it in matters within its competence."

Third final provision. Modification of Law 17/2001, of December 7, 2001, on Trademarks.

The first additional provision of Law 17/2001, of December 7, 2001, on Trademarks, is worded as follows:

"First additional provision. Jurisdiction and procedural rules.

1. The current rules contained in Title XII of Law 24/2015, of July 24, 2015, on Patents shall be applicable to the different types of distinctive signs under this Law in everything that is not incompatible with their own nature, without prejudice to the provisions of the following section.

2. The Commercial Courts which, in accordance with Organic Law 6/1985, of July 1, 1985, on the Judiciary, have been assigned the functions of Community Trademark Courts pursuant to Council Regulation (EC) No. 207/2009, of February 26, 2009, on Community Trademarks, shall have jurisdiction to hear civil litigation arising from this Law when actions concerning Community Trademarks are brought in a cumulative manner. No. 207/2009, of February 26, 2009, on the Community Trademark, will be competent to hear civil litigation arising from this Law when actions concerning identical or similar Community and national or international trademarks are brought together; or if there is any other connection between the claims and at least one of them is based on a registration or application for a Community trademark. In these cases, jurisdiction shall correspond exclusively to the Community Trademark Courts."

Fourth final provision. *Modification of Law 20/2003, of July 7, 2003, on the Legal Protection of Industrial Design.*

Articles 24, 29, 76, the First Additional Provision and the Annex of Fees of Law 20/2003, of July 7, 2003, on the Legal Protection of Industrial Design, are amended and shall be worded as follows:

Article 24. *Unionist Right of Priority.*

A new paragraph 4 is added with the following wording:

"4. It shall not, however, be necessary to file a copy of the earlier application or translation when the priority claim is not considered relevant for determining the validity of the registered design or the earlier application or its translation is already in the possession of the Spanish Patent and Trademark Office or is available in a digital library or database."

Article 29.

Paragraph 1 of Article 29 "Examination by Office" is amended to read as follows:

"Once the examination as to form has been completed and, where appropriate, the application sent by the competent body of the Autonomous Community has been received, the Spanish Patent and Trademark Office shall examine ex officio:

- a) If the subject matter of the application constitutes a design in accordance with the provisions of section 2.a) of article 1 of this Law.
- b) If the design for which registration is sought is contrary to public order or morality.
- c) If the design for which registration is sought involves an improper use of any of the elements mentioned in paragraph (e) of Article 13 of this Law."

Article 76.

Paragraphs 4 and 5 of Article 76 "Refusal and granting of protection in Spain" are amended to read as follows:

"4. The Spanish Patent and Trademark Office shall notify the International Bureau, in the manner and within the time limit established in the said Geneva Act, of the reasons justifying the refusal of the effects of the international registration in Spain.

5. Where the Spanish Patent and Trademark Office has not refused protection in Spain following ex officio examination or opposition proceedings, the protection conferred by the international registration of a design shall produce effects from the date of its publication by the International Bureau. The holder of the international registration shall have the same rights and remedies as the applicant or holder of a national registration."

First additional provision. *Jurisdiction and procedural rules.*

The first additional provision shall read as follows:

"1. Without prejudice to the provisions of paragraph 2, the rules in force contained in Title XII of Law 24/2015, of July 24, 2015, on Patents shall be applicable with regard to the exercise of actions arising from this Law and the adoption of provisional and precautionary measures, in all that is not incompatible with the provisions of the same.

2. The Commercial Courts which, in accordance with the Organic Law of the Judiciary, have been assigned the functions of Community Trade Mark Courts pursuant to Council Regulation (EC) No. 6/2002 of 12 December 2001.

The Community Trademark Courts shall have jurisdiction to hear civil litigation arising from this Law when actions based on Community and national or international titles for the same or a similar design are brought together, or if there is any other connection between the claims and at least one of them is based on a registration or application for a Community title. In such cases the Community Trademark Courts shall have exclusive jurisdiction."

Annex of Fees.

Modification of the first tariff of the annex of fees provided for in the third additional provision of Law 20/2003, of July 7, 2003, on the Legal Protection of Industrial Design.

Section 1.7 of the first tariff is modified as follows:

"1.7 Oppositions: per formulation of opposition: 43.70 euros.

For the additional designs challenged in the same opposition formulation from the tenth:

From 11 to 20 designs: 34,96 Euros

From 21 to 30 designs: 27,96 euros

From 31 to 40 designs: 22,37 Euros

From 41 to 50 designs: €17.89."

Fifth final provision. *Modification of Law 2/2014, of March 25, on the Action and Foreign Service of the State.*

The sixteenth additional provision of Law 2/2014, of 25 March, on State Action and Foreign Service, shall read as follows:

"Sixteenth additional provision. *Official translations and interpretations.*

1. Regulations shall determine the requirements for translations and interpretations from a foreign language into Spanish and vice versa to have official status. In any case, they will have this character if they have been made by a person in possession of the title of Sworn Translator-Interpreter granted by the Ministry of Foreign Affairs and Cooperation. The requirements for the granting of this qualification, as well as the rest of the elements that make up its legal regime, shall be developed by regulation.

2. The official nature of a translation or interpretation means that it may be provided before judicial and administrative bodies under the terms to be determined by regulation.

3. The Sworn Translator-Interpreter shall certify with his signature and seal the fidelity and accuracy of the translation and interpretation.

4. The translation and interpretation performed by a Sworn Translator-Interpreter may be reviewed by the Language Interpretation Office of the Ministry of Foreign Affairs and Cooperation at the request of the head of the administrative, judicial, registry or competent authority before whom it is submitted."

Sixth final provision. *Competent title.*

This Law is enacted under the protection of the State competence provided for in Article 149.1.9 of the Constitution in the field of Industrial Property legislation. Title VII, Title XII, the ninth additional provision, the sixth transitory provision, the second, third and fourth final provisions, which are covered by Article 149.1.6 of the Constitution, which grants the State exclusive competence over procedural legislation, are excepted from the foregoing.

The first final provision, which is based on Article 149.1.8 of the Constitution, which grants the State exclusive jurisdiction over civil legislation, without prejudice to the preservation, modification and development by the Autonomous Communities of civil, foral or special rights, wherever they exist, is also exempted.

On the other hand, the fifth final provision is based on Article 149.1.18, which attributes to the State exclusive competence in matters of the bases of the legal system of the Public Administrations and the statutory regime of their civil servants.

Seventh Final Provision. *Development of the Law.*

The Government is authorized to issue such provisions as may be necessary for the development and application of this Law.

Eighth final provision. *Safeguard clause.*

The measures included in this Law shall be met with the ordinary budgetary allocations of the agency and may not entail an increase in allocations or remuneration or other personnel expenses in the service of the public sector.

Ninth final provision. *Entry into force.*

This Law shall enter into force on April 1, 2017.

Therefore,
I command all Spaniards, individuals and authorities, to observe and enforce the observance of the following
this law.

Madrid, July 24, 2015.

FELIPE R.

The President of the
Government, MARIANO
RAJOY BREY

ANNEX

The unified fees and parafiscal charges referred to in Article 10 of Law 17/1975, of May 2, 1975, on the creation of the Autonomous Body "Industrial Property Registry", applied to services, benefits and activities of the Industrial Property Registry deriving from this Law, shall be as follows:

	Euros
<i>Tariff one. Acquisition and defense of rights</i>	
1.1 Applications:	
For the filing of an application for the filing of an invention or utility model patent, either directly or as a result of the division of an application including the insertion of the application in the "Official Bulletin of Industrial Property".	100,38
Per request for change of protection modality	10,30
Per request for state-of-the-art report	684,65
Per request for substantive review	389,77
For the filing of an appeal or request for review	88,09
Request for urgent resolution of a file	47,39
By request for reinstatement of rights	105,35
By request for revocation or limitation	74,19
Appeal or request for review	88,09
For application for registration in the Special Registry of Industrial Property Agents	74,01
Application for the processing of complementary certificates for the protection of medicinal products. phytosanitary products (CCP)	517,21
For request for extension of supplementary protection certificates for medicines	517,21
1.2 Priority:	
For each priority claimed in the field of patents and utility models	19,65
1.3 Modifications:	
For any amendment to the file, whether to the application, description or claims, whether subsequent contributions of documents or rectification of material, arithmetical or arithmetical errors, or of and in general for any modification in cases authorized by law.	23,19
1.4 Response to suspense:	
For reply to suspense caused by formal defects of any type of file. processed under this Law	42,06
1.5 Oppositions:	
For the filing of oppositions to the granting of patent and utility model applications.	43,27

	Euros
<i>Second tariff. Maintenance and transfer of rights</i>	
2.1 Annuities:	
3. ^a	18,48
4. ^a	23,06
5. ^a	44,11
6. ^a	65,10
7. ^a	107,47
8. ^a	133,78
9. ^a	167,88
10. ^a	216,06
11. ^a	270,82
12. ^a	317,98
13. ^a	365,05
14. ^a	412,56
15. ^a	440,59
16. ^a	458,85
17. ^a	490,00
18. ^a	490,00
19. ^a	490,00
20. ^a	490,00
2.1.1 Maintenance fees for supplementary protection certificates for drugs and medicines of phytosanitary products:	
CCP with a duration of one year or less	803,93
CCP with a duration of two years or less	1.688,24
CCP with a term of three years or less	2.661,05
CCP with a duration of four years or less	3.731,05
CCP with a duration of five years or less	4.908,12
Extension of CPC with a duration equal to or less than one year	803,93
2.2 Delays and regularization:	
For late payment of the annuity, surcharges of 25% within the first three months and 50% within the following three months, up to a maximum of six months in arrears. However, in the following six months and up to a maximum period of time coinciding with the anniversary date of the following annuity, the interested party may regularize the payment of the annuity not yet paid. paid by paying the regularization fee established in this section.	
For the regularization in the payment of annuities provided for in Article 184.3	100,00
2.3 Operation and licensing:	
For the processing of patent and utility model start-up files.	21,87
For the processing of each of the offers of full licenses or licenses of right. mandatory in the cases provided for by law	19,68
Through the Office for obtaining a contract license	131,14
2.4 Transfers:	
For the processing of registration of transfers, assignments or modifications. For each record made	13,24
2.5 For the registration of a change of name of the owner:	
For each affected record	16,38
<i>Third tariff. Other services</i>	
3.1 For each certification of registered data relating to patents, utility models or supplementary protection certificates or their extensions, as well as for the issuance of copies of the same authorized for each of the documents permitted by law.	20,60
3.2 Consultation and viewing of a file	3,56
Copying documents from a file	11,38
For each page exceeding 10	1,13
Announcement in the "BOPI" of the filing of a contentious-administrative appeal.	142,24
Announcement in the "BOPI" of the decision of the contentious-administrative appeal.	142,24
3.3 For the request for expert reports provided for in Art. 120.7	2.400
<i>Fourth tariff</i>	
4.1 European Patents:	
Publication of claims	107,80
Publication of a fascicle (up to 22 pages)	320,93
Additional page fascicle	12,90
4.2 International patents:	
Transmission rate	74,25
Priority document transmission fee	29,69
International preliminary examination fee	583,65
Additional international preliminary examination fee	583,65

See, regarding the modification of the amounts of the fees contained in this Annex, art. 96 of Law 6/2018, of July 3. [Ref. BOE-A-2018-9268](#)

This consolidated text has no legal value.