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# Industrial Property Code

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# Industrial Property Code

## TITLE I GENERAL PART

### CHAPTER I General provisions

#### SECTION I Definitions

##### Article 1 Definitions

For the purposes of this law, the following terms shall have the meanings set out below:

- a) Industrial Property: a set of rights comprising manufacturing marks, trademarks, service marks, invention patents, utility models, industrial designs, trade names and insignia of establishments, logos, geographical indications, appellations of origin and awards;
- b) Patent: a right granted for the protection of an invention;
- c) Invention: an idea that finds a practical solution to a particular technical problem. The invention may be a product or a process or it may consist of both a product and a process at once;
- d) Utility model: an invention that gives an object or part of an object a shape, structure, mechanism or layout which functionally increases its utility or improves the conditions of its manufacture;
- e) Industrial design: any combination of lines or colours or three dimensional form, which gives a new and original appearance to a product or part of a product and which may serve as a model for the industrial or artisanal manufacture thereof;
- f) Product and service mark: a distinctive, clearly visible or audible sign, which is capable of being represented graphically and of distinguishing the products or services of one enterprise from those of another, and which consists of words, including personal names, designs, letters, numerals, the shape of the product or its packaging;



- g) Collective mark: a mark which is capable of distinguishing the origin or any other common characteristic, including the quality, of products or services of enterprises that are members of an association, group or entity;
- h) Certification mark: a mark that identifies services which, though used by persons other than the proprietor under the supervision of the proprietor, guarantee the particular characteristics or qualities or the services in which the mark is used;<sup>1</sup>
- i) Insignia of an establishment: a designation which identifies and distinguishes a business establishment;
- j) Trade name: a firm or company name or other name or expression which identifies an individual or a corporate entity;
- l) Logo: a sign or combination of signs which are capable of being represented graphically and of indicating any entity that offers products or services;
- m) Geographical indication: the name of a region, a specific place or in exceptional cases a country, which has become known as the centre for the production, transformation, extraction or creation of a particular product or the rendering of a particular service;
- n) Appellation of origin: the geographical name of a country, a region or a specific place used to designate a product originating in that country, region or place, whose qualities, characteristics or reputation are exclusively or essentially due to the geographical location, including either or both natural or human factors;
- o) Award: decorations of merit conferred by governments, namely, medals, diplomas and prizes in money or of any other nature obtained at official or officially recognised exhibitions, fairs and competitions held either in the country or abroad; certificates of analysis and diplomas of commendation issued by laboratories or State services or by organisations qualified to do so and, generally, any other prizes or demonstrations of an official nature.

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<sup>1</sup> Translator's note: on interpretation, it is suggested that this provision should read: "[...] a mark that identifies services which are used by persons other than the proprietor under the supervision of the proprietor, to guarantee the particular characteristics or qualities of the services in which the mark is used."

## SECTION II General principles

### **Article 2 Purpose**

This diploma establishes the special regime for industrial property rights and obligations, by providing for the award of invention patents and utility models, the registration of marks, industrial designs, insignia of establishments, trade names, appellations of origin, geographical indications, logos and awards, and the repression of infringements of industrial property rights.

### **Article 3 Scope of industrial property**

Industrial property shall extend to all commerce, services and industry proper, namely, to the agricultural, fishing, forestry, food, construction and extractive industries, and to all natural and manufactured products.

### **Article 4 Personal scope of application**

1. This diploma shall apply to all individual persons and corporate entities, whether they are Mozambicans or nationals of countries of the International Union for the Protection of Industrial Property, hereinafter referred to as the Union, under the terms of the Paris Convention for the Protection of Industrial Property of 20 March 1883 and subsequent revisions thereof, hereinafter referred to as the Paris Convention, and to the members of the World Trade Organisation, hereinafter referred to as the WTO; all regardless of their place of domicile or business, save for special provisions as to jurisdiction and procedure contained in the domestic legal order.
2. Nationals of any country, who are domiciled or who have an effective commercial or industrial establishment in the territory of a country that is a member of the Union or of the WTO, shall be treated as nationals of member countries.
3. With regard to any other foreign nationals, the provisions of conventions between Mozambique and the respective countries shall be observed and, in the absence of such conventions, the system of reciprocity shall apply.

### **Article 5 Administration of Industrial Property**

The Industrial Property Institute, hereinafter referred to as the IPI, will be responsible for the administration of industrial property.

SECTION III  
Administrative procedures

**Article 6**  
**Classifications and procedures**

The IPI shall establish the classifications and procedures relating to the procedural organisation of matters dealt with in this Code, in so far as they are not established by international agreements or treaties in force in Mozambique.

**Article 7**  
**Forms**

Applications for registration of industrial property rights shall be submitted using proper forms established by the IPI.

**Article 8**  
**Registration**

1. The IPI shall register industrial property rights, in accordance with this diploma.
2. When an application for the registration of a patent, mark, utility model, industrial design or other industrial property right is filed, the number, the date and time of receipt, the name and address of the applicant and his representative, if any, and the category of the industrial property rights in question, shall all be noted in accordance with the legal procedures.
3. The IPI shall also register contracts involving technology transfer, franchises and similar contracts, in order to make these effective as against third parties.

**Article 9**  
**Entitlement to take action**

Legal actions and procedural entries can be carried out or advanced before the IPI only by:

- a) An individual person who has an interest in or owns the industrial property right, or an agent especially empowered for the purpose, provided that they are established or domiciled in Mozambique;
- b) A corporate entity which has an interest in or owns the industrial property right, and has its head office in Mozambique, through its legal representative or an employee duly accredited for the purpose;
- c) An official industrial property agent invested by the IPI;

## **Article 10**

### **Verification of applications**

1. When an application is filed, the officers in charge of receiving the documents shall verify that the applications are correctly addressed, that they are duly signed, that the correct amount of fees is being paid and that all documents referred to in the application are attached thereto.
2. Notification shall be given of any omissions found subsequently.
3. The applicant shall have 15 days from the date of the notification within which to supply the missing or incorrect information.
4. If the provision of the preceding paragraph is not observed, the applicant will be considered to have surrendered the application.

## **Article 11**

### **Language of the application**

1. Applications shall be written in Portuguese or, if they are written in another language, they must be accompanied by an official translation of the application into Portuguese.
2. Regional and international applications shall be filed in English, French or Spanish or in any other official language so defined in the relevant implementing legal instruments, accompanied by an official translation into Portuguese of the description, claims, abstract and drawings included in the application.

## **Article 12**

### **Inspections**

1. The IPI, acting in coordination with the General Inspectorate of the Ministry of Industry and Trade, may conduct an inspection of any industrial establishment or other place where business is conducted, in order to clarify proceedings and any claims arising from the registration of industrial property rights.
2. An inspection may also be conducted at the request of an interested party in order to support or explain any allegations made in the process, and in this case the requesting party shall bear the costs of the inspection.
3. Every request for an inspection shall state the reasons on which it is based and, if it is allowed, the interested parties shall be notified.

**Article 13**  
**Proof of industrial property rights**

1. Proof of industrial property rights shall be provided by means of:
  - a) Patent and utility model certificates [*títulos*];
  - b) Registration certificates [*certificados de registo*] for industrial designs, marks, trade names, insignia of establishments, logos, geographical indications, appellations of origin and awards.
2. The models of these certificates shall be approved by order of the Minister in charge of the sector.

**Article 14**  
**Filing certificates (*Certidões*)**

1. Filing certificates may be issued to holders of the rights provided for in articles 58, 76, 82, 91 and 104 hereof, as evidence of those rights.
2. Declarations may also be issued to holders of industrial property rights as evidence of applications for register entries published in the official industrial property bulletin.
3. Filing certificates may also be issued to applicants of other industrial property rights as evidence of filing of the application to register those rights.
4. These certificates shall be delivered within five days after the request was submitted.
5. The certificates referred to in the preceding paragraphs shall bear the signature of the director general and the embossing seal of the IPI.
6. Models for these certificates shall be approved by order of the Minister in charge of the sector.

**Article 15**  
**Certificates of grant**

1. Certificates of grant of the industrial property rights contemplated in this diploma shall only be delivered to the interested parties after the order indicated in article 60 and in paragraphs 5 and 12 of article 118 has been issued or, if an appeal to the courts has been lodged, after notice has been given of the final court decision.
2. The certificates shall be delivered to the proprietor or to his legal representative against issuance of a receipt.

3. The certificates shall be signed by the director general of the IPI and shall bear the embossing seal of the IPI.

### **Article 16** **Content of certificates**

The certificates referred to in the preceding article shall identify the right that they attest, namely:

- a) Patent;
- b) Utility model;
- c) Industrial design;
- d) Mark;
- e) Trade name;
- f) Insignia of establishment;
- g) Logo;
- h) Appellation of origin;
- i) Geographical indication; and
- j) Award

### SECTION IV

Transferability, extinguishment and restoration of industrial property rights

### **Article 17** **Right to transfer**

1. Industrial property rights are transferable *inter vivos* and *in mortis causa*.
2. All transfers of rights, co-ownership, charges or encumbrances shall be noted on the certificate of grant.
3. Transfers *inter vivos* shall be in writing and require the express consent of the proprietor, whose signature must be certified by a notary.
4. Rights arising from applications to register trade names, insignia of establishments, logos and awards may be transferred with or without valuable consideration only together with the commercial or industrial establishment to which they are associated, save as agreed otherwise.

5. If a trade name, insignia of an establishment or logo features the personal name or firm or company name of the owner of the establishment or persons he represents, there must be express contractual provision for the transfer thereof.

### **Article 18** **Forms of extinguishment**

1. Industrial property rights shall be extinguished by:
  - a) Renunciation by the proprietor;
  - b) Annulment;
  - c) Nullity;
  - d) Lapse.
2. When an invention patent, utility model or industrial design is extinguished, its subject matter shall fall into the public domain.

### **Article 19** **Renunciation by the proprietor**

Industrial property rights may be renounced by means of an express declaration in writing by the proprietor or by his especially empowered representatives, addressed to the IPI.

### **Article 20** **Annulment**

1. Industrial property rights may be totally or partially annulled.
2. Only persons who have an interest under the terms of this diploma shall be entitled to seek annulment.
3. For the purposes of the preceding paragraph, annulment may be sought by the following:
  - a) A person who proves that the right belongs to him;
  - b) A person whose right based on priority or other legal title has been infringed by the grant.
4. When filing an application for annulment, the applicant may request the reversion of the right in its favour, provided that the legal conditions foreseen in this diploma have been met.

5. Annulment may be sought within one year of the date on which the grant was ordered.
6. The declaration of annulment can result only from the decision of the competent court.

### **Article 21 Nullity**

1. Industrial property rights shall be totally or partly null and void when:
  - a) The subject matter cannot be protected;
  - b) Procedures or formalities essential for the granting of the industrial property right were not fulfilled;
  - c) Rules of public order, safety and health have been violated;
  - d) The rights violate the rules of public morality and *bonos mores*.
2. Any interested party may invoke the nullity of industrial property rights at any time.
3. Nullity of registration is effective as of the date of filing of the application.
4. A declaration of nullity can result only from the decision of the competent court.

### **Article 22 Lapse**

1. Industrial property rights shall lapse, irrespective of the lapse being invoked:
  - a) On expiry of the period of validity;
  - b) In default of payment of fees.
2. Causes of lapse not envisaged in the preceding paragraph shall take effect only if an interested party invokes them.
3. Any interested party may also request the registration of a lapse of rights envisaged in paragraph 1 above, if such registration has not already been done.



## **Article 23**

### **Restoration of rights**

1. An applicant or proprietor of an industrial property right who, through no fault directly attributable to him and despite all the diligence demanded by the circumstances, has been unable to meet a deadline which could result in the refusal or affect the validity of the right, shall on application have his rights restored.
2. The application shall be duly reasoned and submitted in writing within two months after cessation of the hindrance that prevented the deadline from being met, and the application will only be accepted within one year of the unobserved deadline.
3. The omitted act must be performed within the two-month period referred to in the preceding paragraph, together with payment of a restoration fee.
4. The provisions of this article shall not apply to the periods referred to in article 51 (3), article 59 (1) and (2), article 117 (1) and (2) and article 200, when any lapse proceedings are pending in respect of that same industrial property right.
5. An applicant or proprietor whose industrial property rights are restored cannot invoke these rights against a third party who, between the time when the rights were lost and the time when notice of the restoration was published, has in good faith started to work or market the subject matter of the rights or made serious and effective preparations for such end.
6. In the case of filing of an application for registration or a registration, a third party that can avail himself of the provisions of the preceding paragraph may, within two months after publication of the notice of restoration, lodge an opposition against the decision to restore the rights of the applicant or proprietor.

**TITLE II**  
**Industrial Property Regime**

**CHAPTER I**  
**Invention patents**

**SECTION I**  
**Patentability**

**Article 24**  
**Patentability requirements**

An invention shall be patentable if it is new, if it involves an inventive activity and if it is capable of industrial application.

**Article 25**  
**Novelty**

An invention shall be considered new where it has no precedent in the state of the art.

**Article 26**  
**State of the art**

State of the art shall comprise everything that has been publicised in Mozambique or in any other part of the world, by means of a verbal description, by use or by any other means, prior to the date of filing or the date of priority, if any, of the patent application in which the invention is claimed.

**Article 27**  
**Inventive activity**

An invention shall be considered to involve an inventive activity if, for a person skilled in the art, the result is not obvious from the state of the art.

**Article 28**  
**Industrial application**

An invention shall be considered capable of industrial application if its subject matter can be manufactured or used in any type of industry.

**Article 29**  
**Invention not deprived of novelty**

1. An invention shall not be considered as forming part of the state of the art if it was disclosed during the twelve months preceding the date of filing or of priority of the patent application, in the following cases:
  - a) Where the disclosure of the invention was promoted by the inventor or his successors in title, to scientific or professional institutions or publications, or in competitions, exhibitions and trade fairs which are official or officially recognised by the government;
  - b) Where the disclosure was a result of obvious abuse by third parties against the inventor or his successors in title.
2. As regards the case provided for in line a) of the preceding paragraph, the inventor shall, at the time of filing of the application, make a written declaration that the invention was effectively exhibited or disclosed, and he shall provide evidence of this within three months from the date of filing.

**Article 30**  
**Exceptions to patentability**

1. The following shall not be considered inventions for the purposes of this diploma:
  - a) Scientific theories and mathematical methods;
  - b) Discoveries aimed at making known or revealing something which already exists naturally, notwithstanding that it was heretofore unknown to man;
  - c) Systems, plans, rules and methods for the performance of purely intellectual activities, playing games or economic activities;
  - d) Computer programmes;
  - e) Aesthetic creations and artistic or literary works;
  - f) Presentation of information;
  - g) Methods of surgical, therapeutic or diagnostic treatment applicable to the human body or animals, although the products, substances or compositions used in any of such methods shall be patentable;
  - h) Substances, materials, mixtures, elements or products of any type resulting from atomic nuclear transformation, as well as the modification of their

physical and chemical properties and the respective processes for obtaining or modifying them.

2. The following are excluded from patent protection:
  - a) That which is contrary to morality, *bonos mores*, public safety, public order and public health;
  - b) All or part of living beings, although microbiological processes and products obtained from such processes are patentable.

## SECTION II Ownership of inventions

### **Article 31 Right to the patent**

The right to a patent shall belong to the inventor or to his successors in title.

### **Article 32 Co-ownership**

When an invention is discovered by two or more persons, any or all of them shall be entitled to apply for the patent, with an express indication of this qualification by all of them.

### **Article 33 Presumption of entitlement**

It shall be presumed that the applicant is entitled to the grant of the patent until the contrary is proved.

### **Article 34 First to file rule**

1. If two or more persons have discovered the same invention independently of one another, the right to the patent shall belong to the inventor who first files a valid application, irrespective of the dates of the invention, unless a right of priority is being claimed.
2. Where there was an agreement prior to the invention, all of them may appear as applicants in the patent application.
3. In the absence of an agreement about ownership of the patent, the inventors may submit the dispute to arbitration or judicial decision.

## **Article 35 Inventions by employees**

If the inventor is an employee, entitlement to the patent shall be determined in the following way:

- a) If the invention was created during the performance of an employment contract that provides for an inventive activity, or that corresponds to the actual functions performed by the employee in the context of a study or research contract specifically assigned to him, then the patent shall belong to the employer;
- b) If the invention is part of the activity of an enterprise, commercial company or other corporate entity, then these entities shall have an option to take ownership of the patent.

## **Article 36 Concept of employee**

For the purposes of this diploma, an employee shall mean any person who undertakes to perform for an employer work the subject matter or the result of which is an inventive activity, whether or not such work is performed under direct legal subordination.

## **Article 37 Remuneration of employees**

1. In the cases provided for in article 35 (a), the employee shall be entitled to the remuneration agreed on under the particular employment contract, and in the cases provided for in article 35 (b), the employee shall be entitled to equitable remuneration.
2. The amount of the equitable remuneration may be established by arbitration, if the parties have not made any other provision or if there is disagreement as to the amount.
3. The amount of the remuneration may be stipulated before or after the invention is obtained.
4. If the employee is not remunerated in full within the agreed time limit, due to a supervening event, there shall be an agreement to reschedule the outstanding payments according the legislation in force or to applicable commercial practice.
5. In case of failure to remunerate the employee after an agreement has been made pursuant to the preceding paragraph, all the rights of the employer in respect of the patent shall lapse and be assigned to the employee.

**Article 38**  
**Communication of the invention**

1. The inventor shall inform the employer of his invention, in writing with recorded delivery, within six months from the date when the invention was completed, after which the employer shall avail itself of rights in respect of the invention.
2. If the obligations set down in this article have not been met by the end of the aforementioned period, the rights of the defaulting party shall lapse.

**Article 39**  
**Period of validity**

Every invention shall be considered as discovered during the performance of an employment contract when the patent is applied for during the year following the date on which the inventor leaves the enterprise or company.

**Article 40**  
**Employees and other officers in the public service**

The provisions of this section shall also apply to the organs and institutions of public administration, in relation to employees and other officers in the public services.

**Article 41**  
**Non-limitation of rights**

The rights conferred on an employee under the terms of this section may not be limited by contract nor may they be renounced in advance.

**Article 42**  
**Inventor's right**

If the patent is not applied for in the name of the employee, he shall have the right to be mentioned as such in the patent application and the certificate of grant.

SECTION III  
Filing of the application

**Article 43**  
**Applicant and place of application**

1. The provisions of article 9 of this diploma shall be observed for the purposes of filing an application.
2. The application shall be filed at the IPI, either directly or by correspondence.

**Article 44**  
**Documents to be filed**

1. The patent application shall contain the following documents:
  - a) Report;
  - b) One or more claims;
  - c) Drawings if necessary;
  - d) Abstract.
2. Fancy expressions used to designate the invention cannot be claimed, but may be registered as a mark.
3. When the application is filed, it must be accompanied by proof of payment of the prescribed fee.

**Article 45**  
**Compulsory information in the application**

1. The letter of application for the patent shall contain the following particulars:
  - a) The name, nationality and identification of the applicant, the inventor or his successor in title, or the applicant's agent;
  - b) The title of the invention.
2. Where the applicant is not the inventor or his successor, the application shall contain a declaration justifying the applicant's right to the patent.

**Article 46**  
**Description of the invention**

1. The report shall describe the invention sufficiently clearly and fully so as to enable a person skilled in the art to execute the invention, and shall indicate at least one way of executing the invention known to the applicant, on the date of filing or, in the case of a claim for priority, on the date of priority of the application.
2. Claims shall be clear and concise and shall be based entirely on the descriptive report.
3. Drawings shall be furnished when they are necessary for understanding the invention.

4. The abstract shall be for the purposes of technical information only and shall not determine the scope of protection for the invention.

**Article 47**  
**Structure of the claim**

1. The definition of the technical characteristics of the invention shall be in two parts: one introductory part, which mentions the known technical characteristics and one other part, which elaborates on the technical characteristics for which protection is claimed.
2. The claim shall be clear and concise and shall be based entirely on the description.

**Article 48**  
**Scope of protection**

The patent claim or claims shall define the scope of protection for the invention described.

**Article 49**  
**Inadequate description or claim**

An applicant who has submitted an application in which the description or the claim is inadequate shall rectify the shortcoming within sixty days from the date on which he is notified to do so.

**Article 50**  
**Unity of the invention**

1. Applications may only be filed for a single patent, and each patent shall relate to a single invention.
2. Several inventions so linked as to form a single inventive concept may be included in a single application.
3. The applicant may modify an application or divide it into two or more applications before the examination stage, provided that the modification does not go beyond the information included in the initial application.
4. Each divisional application shall benefit from the date of filing and the date of priority, if any, of the original application.



SECTION IV  
Right of priority

**Article 51**  
**Period of priority**

1. A person who has duly filed a patent application in any country of the Union or any member country of the WTO shall enjoy a right of priority for a period of twelve months. The applicant shall invoke such right of priority and provide proof of the prior application, which shall be certified by the authority that received it and, if the application was made in a foreign language, it shall be accompanied by an official translation thereof.
2. The applicant may only claim the right of priority in the application and request the IPI to grant him time within which to produce the evidence referred to in the preceding paragraph, which time shall not exceed sixty days.
3. Where the time referred to in the preceding paragraph expires before the applicant has met the requirements, the claim for a right of priority shall be treated as not having been made.
4. Without prejudice to the provisions of article 49 of this diploma, the right of priority shall attach only to matters contained in the prior application and a claim for a right of priority in respect of matters introduced after the prior application shall not be valid.

**Article 52**  
**Assignment of a priority right**

Where a right of priority is assigned, documentary proof of the assignment shall be presented within one hundred and eighty days from the date of filing, or within sixty days from the date on which the application was lodged with IPI, if such is the case, and consular legalisation in the country of origin is dispensed with.

**Article 53**  
**Claims for multiple priorities**

An applicant may claim multiple priorities originating from applications in different countries, or the multiplicity of applications may also derive from the fact that the application claimed [*sic*] contains elements that were not included in the application whose priority is being claimed, provided that there is unity of invention under the terms of this diploma.<sup>2</sup>

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<sup>2</sup> Translator's note: on interpretation, it is suggested that this provision is intended to read: "[...] the multiplicity of applications may also derive from the fact that the application **claiming the priorities** contains elements that were not included in the application whose priority is being claimed, provided that there is unity of invention under the terms of this diploma."

**Article 54**  
**Foreign applications for patents or similar rights of protection**

The applicant is under an obligation to inform the IPI of the date and number of every application for a patent or other right of protection filed in any other country in respect of the same invention applied for in Mozambique, and must also furnish the following:

- a) A copy of any communication received by the applicant in relation to the results of searches or examinations conducted abroad;
- b) A copy of the patent or other right of protection granted on the basis of the foreign application;
- c) A copy of any final or provisional decision to refuse or grant the foreign application;
- d) A copy of any decision to grant a patent or other right of protection granted on the basis of the foreign application.

**Article 55**  
**Date of filing**

1. The date of filing shall be taken to be the date on which the application is received, provided that at the time of receipt, the application contains:
  - a) An express or implied indication that a grant of a patent is sought;
  - b) Information making it possible to establish the identity of the applicant;
  - c) Elements which, upon initial examination, appear to be a description of an invention.
2. Where the application refers to drawings that are not included in the application, the applicant shall have sixty days within which to produce such drawings, counting from the date on which he is notified to do so:
  - a) If the applicant then includes the said drawings, the date of filing shall be the date on which the drawings are received;
  - b) If the applicant fails to include the drawings, then the date of filing shall be the date of receipt of the application and any reference to the said drawings shall be ignored.

**Article 56**  
**Examination as to form**

1. Once a date of filing has been given, the IPI shall proceed to examine the form of the application to verify whether or not it meets the conditions set out in articles 10, 44, 45 and 46 of this diploma and the regulatory provisions in respect thereof.
2. The IPI may, if it deems it to be necessary, request national or international specialised persons or experts to provide technical assistance or conduct a special examination.

**Article 57**  
**Publication**

1. A transcript of the abstract of the patent shall be published in the industrial property bulletin.
2. The publication shall not be done before eighteen months have elapsed since the date of filing or the date of priority.
3. The publication may be brought forward at the express request of the applicant.
4. After publication of the application, any person may request a copy of the claims, description and drawings pertaining to the patent application.
5. Without prejudice to the provisions of the preceding articles, any claims that infringe the terms of article 44 (2) shall be officially eliminated from the patent certificate and from publications arising from the application.

**Article 58**  
**Provisional protection**

A patent application shall confer provisionally upon the applicant, from the date of the publication mentioned in the preceding article, the protection that he would receive on being granted the right.

**Article 59**  
**Opposition**

1. Any person who feels that the grant of a patent would be detrimental to him shall be entitled to oppose the application under the terms of the following articles, within sixty days after the date of publication of the industrial property bulletin containing the notice, and against payment of the appropriate fee.

2. The period referred to in the preceding paragraph may be extended once only for a maximum of sixty days, at the request of the interested party, against payment of the applicable fee.
3. The opposition shall be lodged in triplicate and shall contain the matters of fact and law that support it.
4. The IPI shall send a copy of the opposition to the applicant, giving him notice to respond to the opposition within a period of thirty days.
5. The period referred to in the preceding paragraph may be extended once only for thirty days, at the request of the interested party, against payment of the applicable fee.
6. Should the applicant fail to respond within the specified period, the application shall be treated as surrendered.
7. After all interested parties have been heard, the director general of the IPI shall decide on the outcome of the opposition and shall notify his decision to the interested parties.
8. The abovementioned decision may be appealed against to the courts.

## SECTION V

### Grant or refusal of the patent

#### **Article 60**

#### **Grant or refusal of the patent**

1. The decision to grant or refuse the patent shall be delivered after the period referred to in article 59 (1) has expired or after discussions have ended.
2. The patent shall be granted when the opposition, if one has been lodged, is considered unfounded.
3. The patent shall be refused when the opposition, if one has been lodged, is considered well founded.
4. The applicant shall be notified immediately of the decisions referred to in the preceding paragraphs.

#### **Article 61**

#### **Modification of the patent**

The director general of the IPI may, at the request of the proprietor of the patent, limit the scope of the protection granted to the patent.

**Article 62**  
**Failure to provide a translation**

Failure to provide a translation into Portuguese of the description and the claims pertaining to the patent may be rectified within a period of ninety days of the date of filing.

**Article 63**  
**Refusal on ground of complexity of initial application**

1. Where the initial application is complex, the director general of the IPI shall notify the applicant to divide the application within a period of one hundred and eighty days.
2. If the applicant does not proceed to divide the application and does not provide any observations on the rectification required, the application shall be refused.
3. Where the applicant makes observations and the director general of the IPI does not accept these, then the applicant shall be given a further period of no more than thirty days to comply with the notification given to him.

**Article 64**  
**Withdrawal of the application**

The applicant may at any time withdraw his patent application, for which purpose he shall submit a written declaration, with the agreement of all co-applicants and all holders of real rights in security or rights under licences.

**Article 65**  
**Transformation of the patent application**

An applicant for a patent may, at any time prior to the examination of the application, change the application for a patent into an application for a utility model.

SECTION VI  
Rights conferred by the patent

**Article 66**  
**Period of validity of the patent**

Patents shall be valid for a period of twenty years from the date of filing.

**Article 67**  
**Rights conferred by the patent**

1. Without prejudice to the other provisions of this chapter, the proprietor of a patent shall enjoy the following exclusive rights in respect of his invention:
  - a) Right to work the patented invention;
  - b) Right to grant or dispose of the patent;
  - c) Right to enter into patent licensing contracts;
  - d) Right to oppose the improper use of the patent.
2. The rights set down in the preceding paragraph may be exercised by third parties expressly authorised to do so by the proprietor of the patent.
3. For the purposes of this diploma, when a patent has been granted for a product, the working of a patented invention shall be understood to mean any of the following acts:
  - a) Manufacture, importation, offer for sale, sale and use of the product;
  - b) Storing of the product, for the purposes of the sale, offer for sale, or use thereof;
4. Where the patent was awarded for a process:
  - a) Use of the process;
  - b) Carrying out any of the acts referred to in subparagraph (a) of the preceding paragraph, in respect of a product derived directly from the use of the process.
5. During the validity of the patent, the proprietor may use the words “*patente número ...*” (patent number ...) or “*Pat. N.º...*” (Pat. Nr. ....) on the products.

**Article 68**  
**Limits of rights conferred by the patent**

The following shall not be within the scope of the patent:

- a) Acts related to a patented invention for the purposes of scientific research;
- b) Acts related to products placed on the market in Mozambique by the proprietor of the patent or so placed with the proprietor’s consent;

- c) The use of products on board foreign aircraft, vehicles or vessels entering Mozambican airspace, territory or territorial waters temporarily or accidentally.

**Article 69**  
**Rights arising by virtue of prior use**

1. Protection shall be afforded under the provisions of the following paragraph to acts carried out in good faith by any person who, at the date of filing of the patent application or the date of priority, uses or takes effective and serious preparatory steps towards the manufacture of the product or the process of the invention claimed in a patent application.
2. The third party who in good faith carries out the acts described in the preceding paragraph shall have the right to work the patented invention.
3. The right referred to in this article may only be transferred together with the enterprise or company in which the preparatory acts or use of the product or process subject to the patent were carried out.

**Article 70**  
**Assignment of a patent**

The proprietor of a patent or his successors in title may assign the patent by public notarial deed, and this assignment shall be effective against third parties once it has been registered.

**Article 71**  
**Co-ownership of a patent**

1. In the absence of agreement between co-proprietors of a patent, the co-proprietors may, separately, assign their rights, work the patented invention and take judicial action against persons who work the invention without their consent.
2. A patent licensing contract shall require the consent of all the co-proprietors of the patent.

SECTION VII  
Regional patent

**Article 72**  
**Scope**

1. A patent granted by the African Regional Industrial Property Organisation, hereinafter referred to as ARIPO, of which Mozambique is a designated State, shall be equivalent to a national patent.
2. Regional patents, utility models and industrial designs shall be governed by the Harare Protocol on Patents and Industrial Designs adopted on 10 December 1982, and subsequent amendments thereto, hereinafter referred to as the Harare Protocol.
3. The provisions of the present diploma and the regulations hereto shall apply on a supplementary basis, insofar as they do contradict the provisions of the preceding paragraph.

**Article 73**  
**Filing of regional patent applications**

1. Regional patent applications shall be filed using a proper form at the IPI or at the ARIPO offices.
2. Regional patent applications filed in Mozambique shall be written in English and accompanied by an official translation into Portuguese.
3. Regional patent applications filed at the IPI, acting as the receiving office, shall be subject to payment of a national transmittal fee, in addition to the fees prescribed by ARIPO.

**Article 74**  
**Transformation of regional patent applications**

1. A regional patent application that has been refused or withdrawn may be changed into a national patent application.
2. A regional patent application that has been refused or withdrawn may also be changed into a national application for a utility model.

**Article 75**  
**Translation of the specification of a regional patent**

1. Whenever a patent is granted by ARIPO, the proprietor shall file at the IPI a Portuguese translation of the specification of the patent, under pain of the patent not taking effect in Mozambique.



2. The same requirement applies in those cases where the specification of the patent has been modified during the opposition phase.

**Article 76**  
**Provisional protection**

Once a regional patent application has been published under rule 19-bis of the Harare Protocol, in which Mozambique is a designated State, the patent shall enjoy provisional protection under the terms of article 58 of the present diploma.

SECTION VIII  
International patent

**Article 77**  
**Scope**

1. International patent applications shall be governed by the provisions of the Patent Cooperation Treaty concluded on 19 June 1970 and subsequent amendments thereto, hereinafter referred to as the PCT.
2. The provisions of the present diploma and the regulations hereto shall apply insofar as they are not contrary to the provisions of the PCT and other provisions on the subject.

**Article 78**  
**Filing of international patent applications**

1. International patent applications shall be filed using a proper form, in English, French or Spanish or in any other language designated as an official language by the treaty's implementing legal instruments, and shall be accompanied by a Portuguese translation of the description, the claims and the abstract and a copy of the drawings appearing therein.
2. International patent applications filed at the IPI, acting as the receiving office, shall be subject to payment of a national transmittal fee in addition to the fees stipulated in the PCT.

**Article 79**  
**Receiving office**

The IPI may act as the receiving office for international patent applications filed by Mozambican nationals and Mozambique residents.

**Article 80**  
**Designated or elected office**

The IPI shall act as the designated or elected office, in the terms of article 2 of the PCT, for international applications intended to protect inventions in Mozambique.

**Article 81**  
**Effect of international patent application**

International patent applications for which the IPI acts as receiving office shall have the same effects as a national patent.

**Article 82**  
**Provisional protection**

Once an international patent application has been published pursuant to article 21 of the PCT, in which Mozambique is a designated State, the patent shall enjoy provisional protection under the terms of article 58 of the present diploma

SECTION IX  
Working of the patent

**Article 83**  
**Compulsory working**

1. The proprietor of a patent shall be required to work the patented invention, either directly or indirectly.
2. Working shall commence within three years after the date on which the patent was granted, or within four years after the application was filed, whichever period is longer.
3. If the proprietor fails to work the invention within the stipulated periods, he may be compelled to grant a licence to a third party.
4. The proprietor of the patent may also be compelled to grant a licence to a third party to work the patent if the use of another patent depends on it.
5. A compulsory licence will only be granted, as envisaged in the preceding paragraphs, when the potential user has made efforts to obtain the patent proprietor's agreement on reasonable conditions and the negotiations have not been successful.

## **Article 84 Licence of right**

1. The proprietor of a patent may enter into licensing contracts for the working of the patent.
2. Licensing contracts shall only be effective against third parties after they have been registered with the IPI.
3. Any improvement to the licensed patent shall belong to the person making the improvement, but the other contracting party shall have a right of first refusal to register it.
4. The proprietor of the patent may request the IPI to place the patent on offer for licensing.
5. A patent on offer for licensing shall have its annuity reduced to half during the period between the offer and the first licence.
6. A patent under an exclusive licence cannot be the subject of an offer.
7. The proprietor of the patent may at any time withdraw the offer before its terms have been expressly accepted, in which case the provisions of paragraph 5 of this article shall not apply.

## **Article 85 Compulsory licence**

1. The invention may be worked under authorisation given by the responsible Ministry, without the consent of the proprietor of the patent, for reasons of public interest.
2. For the purposes of this article, an invention is of public interest if it is of fundamental importance to public health, national defence and economic and technological development.
3. The application for a compulsory licence shall be addressed to the IPI, accompanied by evidence that the applicant sought a contractual licence from the proprietor of the patent but did not obtain one on reasonable commercial conditions and within a reasonable time.
4. The provisions of the preceding paragraph shall not apply to cases of national emergency or other circumstances of extreme urgency.
5. In all cases referred to in this article, the IPI shall immediately inform the proprietor of the patent of the grounds for the grant of a compulsory licence.

6. The proprietor of the patent shall be given adequate remuneration, adjusted according to each particular case, taking into account the economic value of the patent.
7. The extent and duration of the use shall be limited to the purposes for which it was authorised.
8. The use provided for under the terms of this article shall not be exclusive.
9. The use provided for under the terms of this article cannot be assigned.
10. The use provided for under the terms of this article may only be transferred together with the enterprise or the goodwill of the enterprise that works the patented invention.
11. The working of the invention by a third party or a legal entity designated by the Government shall be aimed predominantly at supplying the market in Mozambique.

**Article 86**  
**Opposition against the compulsory licence**

The proprietor of the patent may at any time oppose an application by a third party for a compulsory licence, on grounds that show that the failure to observe the law was not attributable to him.

**Article 87**  
**Proof of working**

1. Proof that a patent is being worked may be supplied by means of an official certificate issued by a competent body in the area of work in question.
2. The certificate of working shall certify that the invention is being used in manufacturing processes at the industrial establishment where it is claimed the invention is being worked, or that the subject matter of the invention is actually being marketed.

**Article 88**  
**Dependent patents**

1. For the purposes of compulsory licences, a dependent patent shall be one the working of which relies necessarily on using the subject matter of a previous patent.
2. A process patent may be considered dependent upon a patent for the respective process [*sic*], and a product patent may be considered dependent upon a process patent.

3. When the above circumstances occur, there shall be no right to obtain a crossed compulsory license on the dependent patent.

## **CHAPTER II**

### **Utility models**

#### **Article 89**

#### **Requirements**

Every new invention that involves a significant inventive activity and is capable of industrial application shall be eligible for protection as a utility model.

#### **Article 90**

#### **Inventive activity**

For the purposes of this chapter, an invention shall be considered to involve an inventive activity if it functionally increases the utility of an object or improves the conditions of its manufacture.

#### **Article 91**

#### **Application of the provisions on patents**

Except for the provisions of the preceding article, the provisions in respect of patents for inventions shall apply, with the necessary changes, to utility models and to applications in respect of utility models, provided that such provisions are not incompatible with the specific characteristics of utility models.

#### **Article 92**

#### **Procedure**

The procedural processes in respect of applications for utility models should be more simplified and faster than the procedures for patent applications.

#### **Article 93**

#### **Publication**

Publication in the industrial property bulletin shall take place within six months of the date of the application for registration, unless a request has been made for the publication to be postponed or brought forward.

#### **Article 94**

#### **Unity of invention**

The application for a utility model shall refer to a single principal model, which may include several distinct or additional elements or constructive or configurative

variants, provided that the technical-functional and corporeal unity of the object is maintained.

#### **Article 95 Duration**

1. The duration of a utility model shall be fifteen years from the date of filing.
2. For a utility model to remain valid for the duration referred to in the preceding paragraph, the applicable annuities must be paid.

#### **Article 96 Rights conferred by registration**

1. The provisions concerning the rights conferred by patents shall apply to utility models, subject to the necessary changes.
2. During the validity of the utility model, the proprietor may use the words “*modelo de utilidade número ...*” (utility model number ...), or “*Mod. Util. N.º...*”, or the abbreviation “*M.U. N.º...*”, on the products.

#### **Article 97 Transformation of a utility model application**

Before the examination stage of the application, the applicant may transform a utility model application into a patent application, once only, against payment of the applicable fee, and in this case he will benefit from the date of filing of the initial application.

### **CHAPTER III Industrial designs**

#### **SECTION I General principles**

#### **Article 98 Requirements**

1. The following are the requirements for protection of an industrial design:
  - a) It shall not have been disclosed by means of publication in a tangible form, nor used in any other way, prior to the date of filing or to the date of priority of the application for registration;
  - b) It shall not be contrary to the law or offensive to public order and morality or *contra bonos mores*.

2. For the purposes of subparagraph a), the following shall not be considered new:
- a) An industrial design which has already been subject to an earlier registration, even though it is null or has lapsed;
  - b) That which has been described in publications in such a way as to make it capable of being known and worked by persons skilled in the art;
  - c) An industrial design used in a well-known manner or which has become part of the public domain in any way whatsoever.

**Article 99**  
**Ownership of rights conferred by industrial designs**

1. Rights conferred by industrial designs shall belong to the creator thereof, or to the creator's successors in title.
2. Where various persons are creators of the same industrial design, then they shall own the right in common.
3. Where various people have, independently of one another, created the same industrial design, then the right shall belong to the person who first files an application.

**Article 100**  
**Inventions created by employees**

As regards designs created by employees during the course of their employment contracts, the provisions of articles 35 *et seq* of this diploma shall apply, with the necessary changes.

**Article 101**  
**Right of priority**

Any person who has duly filed an application for an industrial design in any country of the Union under the terms of the Paris Convention, or in any member country of the WTO or a member country of ARIPO, shall enjoy a right of priority for the purpose of filing an application for registration in Mozambique

SECTION II  
The application and its effects

**Article 102**  
**Application**

1. The application for registration of an industrial design shall be filed at the IPI.
2. The application shall consist of a letter of application accompanied by drawings, photographs or other graphic images that adequately represent the subject matter of the industrial design for which it is intended, and it may include an example of the subject matter of the industrial design, and must include proof of payment of the corresponding fee.
3. If the applicant is not the inventor, the application shall include a statement justifying the applicant's entitlement to register the industrial design.
4. While the application is pending, the applicant may withdraw it any time.

**Article 103**  
**Filing and examination of the application**

1. The date of filing shall be the date on which the application is received, provided that, at the time of filing, the corresponding fee has been paid and the application includes the name of the applicant and an example of the subject matter of the industrial design, or a graphic image thereof.
2. Once a date of filing has been given, the IPI shall examine the application to verify that it meets all the requirements set out in article 98 of this diploma.
3. Two or more industrial designs may be included in a single application, provided that they are included in the same class or they make up one whole or a single composition of industrial objects.

**Article 104**  
**Provisional protection**

1. The application for an industrial design shall provisionally confer upon the applicant, from the date of publication, the protection that he would receive upon being granted the right.
2. The protection afforded under the preceding paragraph shall apply, before the date of publication, in relation to any person who has notice of the filing of the application.



3. Judicial decisions in respect of actions instituted on the basis of provisional protection shall not be given before the final grant or refusal of the industrial design.

### **Article 105 Publication**

The application to register an industrial design shall be published immediately in the industrial property bulletin, unless a stay of publication has been requested.

### **Article 106 Application of rules on patents**

The provisions in respect of invention patents shall apply, with the necessary changes, to industrial designs and to applications in respect of industrial designs, provided that such provisions are not incompatible.

## **SECTION III Effects of registration**

### **Article 107 Duration**

1. The duration of an industrial design shall be five years from the date of filing, renewable for like periods up to a maximum of twenty-five years.
2. For an industrial model to remain valid for the duration referred to in the preceding paragraph, the applicable annuities must be paid.

### **Article 108 Rights conferred by registration**

1. The working of an industrial design registered in Mozambique, by any person other than the registered proprietor thereof, shall require the said proprietor's consent.
2. A registered industrial design gives its proprietor the right to prevent any third party from producing, manufacturing, selling or working the subject matter of the design without the proprietor's consent.
3. In addition to the rights referred to in the preceding paragraphs, the registered proprietor of an industrial design shall be entitled to take judicial action against any person who infringes the exclusive rights of the industrial design or who makes preparations for that end without the proprietor's consent.

3. During the validity of the registration, the proprietor may use the words “*Desenho Nr...*” (Design Nr....), or the abbreviation “*D. Nr ...*”, on the design.

**Article 109**  
**Effects of regional registration**

An industrial design registered by ARIPO, of which Mozambique is a designated State, shall have the same effect in Mozambique as an industrial design registered under the terms of this diploma, unless IPI has notified ARIPO of a decision under which the registration is not effective in Mozambique.

**CHAPTER IV**  
**Marks**

**SECTION I**  
**Requirements**

**Article 110**  
**Requirements**

The requirements for protection of a mark are:

- a) It shall be capable of distinguishing the products or services of one enterprise from those of another;
- b) It shall not be contrary to the law or offend against public order and morality or *bonos mores*;
- c) It shall not be capable of misleading consumers or the public in regard to the specific characteristic features of the product or service to which the mark relates, namely, the geographical origin, the nature or the characteristics of the products or services in question;
- d) It shall not reproduce, imitate or contain features of coats of arms, flags, emblems, coins, escutcheons, shields, abbreviations or other official symbols belonging to a State, municipalities, other national or foreign public entities or intergovernmental organisations, created by international or regional convention, save as authorised by such State or organisation;
- e) It shall not reproduce official badges, stamps and seals relating to any inspection and warranty, or private emblems or the name of the red cross or other similar organisations;
- f) It shall not be identical or similar to a mark of high renown or a mark that is well-known in Mozambique;

- g) It shall not reproduce or imitate the characteristic elements of other distinctive signs of trade registered in Mozambique;
- h) It shall not constitute a generic, common, ordinary or simply descriptive feature of the products or services for which protection is sought;
- i) It shall not be identical to or imitate a mark that has already been registered in Mozambique or has an earlier date of filing, belonging to a different proprietor for the same products or services.

**Article 111**  
**Imitation of a mark**

It is considered that a registered has been imitated by another mark when all of the following occur:

- a) The registered mark has priority; and
- b) Both marks relate to identical products or services; and
- c) The marks display graphic, figurative or phonetic similarity that is likely to confuse consumers.

SECTION II  
National registration

**Article 112**  
**Application**

1. Applications for registration of marks shall be in Portuguese and filed at the IPI together with proof of payment of the corresponding fee, a copy of the mark and a list of the products or services for which registration of the mark is sought.
2. The applicant may only file an application to register a mark for an activity that he actually conducts lawfully, either directly or through businesses that he controls directly or indirectly.
3. The products and services shall be arranged by class, according to the international classification provided for in the Nice Agreement of 15 June 1957 and subsequent amendments thereto.
4. Where the application claims a priority, the IPI may require a certified copy of the previous application.

**Article 113**  
**Documents accompanying the application**

1. The following documents shall be attached to the letter of application:
  - a) The appropriate business licence, if the applicant is a natural person who carries out any commercial or industrial activity;
  - b) Articles of association published in the *Boletim da República* (Official Gazette) or a licence to conduct commercial or industrial activity, if the applicant is a juristic person;
  - c) Two graphic images of the mark;
  - d) One photo-print or other support;
  - e) Authorisation from the proprietor of a foreign mark for whom the applicant is an agent or representative in Mozambique, by means of a licence to pursue the activity of representing a foreign business in the Republic of Mozambique;
  - f) Authorisation from the person, not being the applicant, whose name, firm name, company name, insignia or picture appears in the mark;
  - g) Authorisation from the competent authority to include in the mark any flags, coat of arms, shields, escutcheons, coins or emblems of the State, municipalities or other public or private bodies, whether national or foreign, official badges, stamps or seals related to inspection or warranties, private emblems or the name of the red cross or any other similar organisation;
  - h) Diplomas of decoration or other distinctions referred to or reproduced in the mark, which are not considered as awards according to the concept set out in this diploma;
  - i) A certificate issued by the competent register attesting to the right to include in the mark the name of or any reference to particular rural or urban real estate, and authorisation from the proprietor to do so, if the proprietor is not the applicant;
  - j) Authorisation from the proprietor of an earlier registration and the holder of an exclusive licence, if any, save as otherwise provided for in the contract.
2. Where the mark contains inscriptions in little-known characters, the applicant shall submit a transliteration and, if possible, a translation of such inscriptions.

3. Once an application has been presented, it shall be submitted to a preliminary examination or examination as to form and, if the application has been properly made, the date of filing shall be the date on which it was presented.
4. An application that does not meet the requirements contained in articles 110 and 112 (1) and (2) of this diploma, as a matter of form, but which contains sufficient information about the person filing the application, the features of the mark and the class, may be lodged against a dated receipt, which shall specify the requirements that the filer must meet within five days, under pain of the application being deemed non-existent.
5. Once the requirements provided for in the preceding paragraph have been fulfilled, the date of filing shall be considered as the date specified in subparagraph 3 above.

#### **Article 114 Single registration**

The same mark used for the same product or service shall be registered once only.

#### **Article 115 Priority**

1. An application may contain a declaration claiming priority of a national registration over a previous registration, under the conditions set down in the Paris Convention, and the IPI may require the applicant to produce a duly certified copy of the earlier application.
2. Once the certification has been confirmed, the application shall have the effects provided for under the Paris Convention.
3. In the absence of the certification referred to in paragraph 1, the priority shall be deemed non-existent.
4. While the application is pending, the applicant may withdraw it at any time, by means of a letter of request addressed to the IPI.

#### **Article 116 Publication**

Once all the requirements have been met, the IPI shall immediately publish the application as it was accepted, in the industrial property bulletin.

## **Article 117 Opposition**

1. Any person who feels that the grant of a mark would be detrimental to him shall be entitled to oppose the application under the provisions of the following articles, within sixty days after the date of publication of the industrial property bulletin containing the notice, and against payment of the appropriate fee.
2. The period referred to in the preceding paragraph may be extended once only for a maximum of sixty days, at the request of the interested party, against payment of the applicable fee.
3. The opposition shall be lodged in triplicate and shall contain the matters of fact and law that support it.
4. The IPI shall send a copy of the opposition to the applicant, giving him notice to respond to the opposition within a period of thirty days.
5. The period referred to in the preceding paragraph may be extended once only for thirty days, at the request of the interested party, against payment of the applicable fee.
6. Should the applicant fail to respond within the specified period, the application shall be treated as surrendered.
7. After all interested parties have been heard, the director general of the IPI shall decide on the outcome of the opposition and shall notify his decision to the interested parties.
8. The abovementioned decision may be appealed to the courts.

## **Article 118 Examination**

1. On expiry of the time period referred to in article 117 (1) above, or once the discussion has ended, the IPI shall proceed to examine the application file.
2. The examination shall consist mainly and compulsorily of an examination of the mark under application, comparing it with marks registered for the same product or service or for similar or like products or services, after which the file shall be prepared and submitted to the director general of the IPI for a decision, which may be to grant or provisionally refuse the application.
3. The decision referred to in the preceding paragraph shall be handed down within thirty days from the date indicated in paragraph 1 of this article.

4. When examining the application, the IPI shall verify whether it fulfils the requirements in articles 110, 112 (3), 113 and 114 of this diploma.
5. The registration shall be granted when, on examination, there are no grounds to refuse it.
6. The registration shall be refused provisionally if the examination reveals grounds for refusal.
7. The applicant shall be notified immediately of a provisional refusal.
8. The applicant shall respond to the notice of provisional refusal within thirty days, failing which the refusal shall automatically become final.
9. If, in view of the applicant's response, the IPI concludes that the refusal was groundless or that the objections raised have been remedied, then it shall issue a decision to grant the application, within thirty days after the said response was received.
10. If, in view of the applicant's response, the assessment remains unchanged, then the director general of the IPI shall issue a decision of final refusal.
11. If there are grounds to refuse to register a mark only with respect to some of the products or services for which the mark is being sought, then the refusal shall extend only to those products or services.
12. The applicant shall be notified of the final decision of grant or refusal.

### **Article 119** **Grounds for refusal**

The following shall be grounds for refusal:

- a) If any of the elements indicated in articles 110, 113 and 114 of this diploma are lacking;
- b) If the provisions of article 112 (3) of this diploma are not observed;
- c) If any of the infringements indicated in articles 125 (1), article 126 (1) and 173 of this diploma are committed;
- d) If the mark comprises signs that consist exclusively of the shape resulting from the nature of the product itself, the shape of the product necessary for obtaining a technical result or the shape that gives the product its own substantial value;

- e) If the mark comprises signs that consist exclusively of indications that may be used commercially to designate the kind, quality, quantity, purpose, value, geographical origin, the time or the means of production of the product or of rendering the service, or other characteristics thereof;
- f) If the mark comprises signs that consist of elements or indications that have become customary in current language or in *bona fide* and established commercial practices;
- g) If the mark consists of colours, except when they are combined together or with graphics, wording or other elements in a particular and distinguishing manner;
- h) If it is found that the applicant intends to practise unfair competition, or that this is possible irrespective of the applicant's intention.

**Article 120**  
**Duration and renewal of protection**

1. Protection of a mark shall endure for a period of ten years, starting from the date of filing of the application.
2. The protection referred to in the preceding paragraph may be renewed indefinitely for like periods, upon payment of the applicable renewal fee.

**Article 121**  
**Assignment**

1. The proprietor of a registered mark shall be entitled to assign the mark, either with or without the enterprise to which the mark belongs.
2. The transfer of the right recognised under the preceding paragraph must conform to the provisions of article 17.

**Article 122**  
**Licence to use**

1. The proprietor of a registered mark may enter into licensing contracts for the use of the mark, without prejudice to his right to exercise effective control over the specifications, nature and quality of the relevant products or services.
2. The proprietor may give the licensee the power to take action to defend the mark, without prejudice to the rights of the proprietor.
3. The licensing contract shall be registered at the IPI in order for it to be effective against third parties.



### **Article 123**

#### **Entitlement to register**

1. The following shall be entitled to apply for the registration of a mark: industrialists or manufacturers, traders, farmers, craftspeople or any other producers and economic associations that provide services.
2. The right to register collective marks is afforded to corporate entities that have been legally granted or attributed a guarantee or certification mark and may apply it to certain and specific qualities of the products or services.
3. The right to register a certification mark is afforded to corporate entities that oversee, control or certify economic activities, to designate the products or services of those activities or products or services that come from certain regions, according to their purposes and within the terms of their respective articles of incorporation or charters.

### **Article 124**

#### **Rights conferred by registration**

1. Registration of a mark shall confer upon its proprietor the right to the exclusive use of the mark, and to prohibit third parties from using in the course of their business, without the proprietor's consent, identical or similar signs for products or services identical or similar to those in respect of which the mark was registered, where such use would be capable of leading to confusion.
2. The provisions of the preceding paragraph shall be without prejudice to the preferential right of registration afforded to *bona fide* users of a similar or identical mark, provided that such use occurred prior to the date of filing or priority of the registration in the country.
3. The right referred to in the preceding paragraph may be assigned only together with the enterprise or company or part thereof which is directly connected with the use of the mark.
4. The right referred to in paragraph 2 of this article shall not be afforded to users who, after the application to register the mark was published, failed to lodge an opposition to the registration in the terms established in article 117 of this diploma.
5. The proprietor of a registered mark shall be entitled to bring judicial proceedings against any person who infringes upon his rights, including by the commission of preparatory acts.
6. The rights afforded by registration do not cover acts in respect of items put on the market in Mozambique by the proprietor or with the proprietor's consent.

7. During the validity of the registration, the proprietor may use the words “*marca registada*” (registered trademark) or the symbol ® on the products

**Article 125**  
**Well-known marks**

1. Registration shall be refused or annulled in the case of a mark that wholly or essentially constitutes a reproduction, imitation or translation of another mark that is well known in Mozambique, if it is used for identical or similar products or services and is liable to create confusion therewith.
2. Parties with an interest in the refusal or annulment of the registration of marks referred to in the preceding paragraph may only intervene in the respective proceedings after they have registered or applied to register, in Mozambique, the mark giving rise to and grounds for their interest.
3. For the purposes of this diploma, a mark is considered well known when it is well known among the interested public as a result of promotion of the mark in Mozambique.

**Article 126**  
**Marks of high renown**

1. Registration shall be refused or annulled if the mark, although used on products or services that are not identical or similar, wholly or essentially constitutes a reproduction, imitation or translation of another mark that enjoys high renown in Mozambique or in the world, and whenever use of the later mark intends to take undue advantage of, or may be detrimental to, the distinguishing character or renown of the mark.
2. The provisions of article 125 (2) shall apply to the preceding paragraph.
3. For the purposes of this diploma, a mark is considered as a mark of high renown when it is well known among the interested public as a result of promotion of the mark in Mozambique or in the world.

**Article 127**  
**Declaration of intention to use**

1. Every five years commencing from the date of registration, a declaration of the intention to use the mark shall be filed with the IPI, subject to payment of the applicable fee.
2. The declaration referred to in the preceding paragraph shall be submitted during the course of the year commencing six months before and ending six months after the expiration of the five-year period to which it refers.

3. Marks for which no declaration is submitted shall not be enforceable against third parties, and the director general of the IPI shall declare the lapse of the registration at the request of any interested party or when third party rights are found to be prejudiced during proceedings for other registrations.
4. If the lapse of the registration has been neither requested nor declared, it shall once again be considered to be in force, provided that the proprietor of the mark files a declaration of intention to use the mark and can prove that he is using it.
5. Renewal may be granted even if proof of use of the mark is not supplied, but the registration shall still be subject to the application of paragraphs 3 and 4 of this article.
6. In the case contemplated in paragraph 3 of this article, notice must be given to the registered proprietor.
7. The declaration of intention to use a mark shall include the products or services contained in the certificate, under pain of the registration lapsing partially, in relation to those products or services not declared.

### SECTION III International registration

#### **Article 128 Right to register**

1. The proprietor of a registered mark, being a Mozambican national or having his domicile or place of business in Mozambique, may, under the terms of the Madrid Agreement concerning the international registration of marks, of April 14 1891, secure protection for his mark in States that are party or become party to the Agreement.
2. An applicant for registration of a mark, being a Mozambican national or having his domicile or place of business in Mozambique, may, under the terms of the Madrid Protocol of June 17 1989, secure protection for his mark in States that are party or become party to the Protocol.

#### **Article 129 Special registration process**

1. If the proprietor or applicant for registration of a mark, being a Mozambican national or having his domicile or place of business in Mozambique, wishes to secure, under the terms of the Madrid Agreement and Protocol, respectively, the rights resulting from international registration of marks and protection for his mark in States that are party or come to be party to the Agreement or Protocol,

then he shall include in his letter of application a request for early examination of the application.

2. Such applications for registration shall be published urgently in a special section of the industrial property bulletin, after the director general of the IPI has examined and ruled on them, taking into account the period of priority.
3. Counting from the publication of the industrial property bulletin containing the application, there shall be a period of thirty days during which parties who feel that the registration would be detrimental to them may lodge oppositions.
4. If the application is granted, the applicant shall proceed to make the corresponding application for international registration within sixty days of the decision.
5. If international registration is not sought within the stipulated time limit, the national registration shall lapse.
6. The applicant shall be notified of the final decision to grant or refuse the application, with an indication of the bulletin in which notice of the decision is to be published.

### **Article 130** **Application for registration**

Applications for international registration shall be made using a special form and filed at the IPI.

### **Article 131** **Renunciation of protection**

The proprietor of an international registration may at any time renounce the protection for his mark, in whole or part, in one or several contracting countries, by means of a simple declaration submitted to the IPI, for subsequent notification to the International Bureau.

### **Article 132** **Changes to the register**

1. The IPI shall notify the International Bureau of all changes to national marks that may affect the international register, for the purposes of recording the changes in the international register and to give publicity and notice to contracting parties that have afforded protection.
2. No application relating to the transfer of a mark to persons lacking the legal capacity required to obtain international registration shall be considered.

### **Article 133 Publication**

A notice shall be published in the industrial property bulletin about any application for protection in Mozambique, so that persons who consider that such protection would be detrimental to them can lodge oppositions.

### **Article 134 Opposition**

Any person who considers that the grant of a mark would be detrimental to them may lodge an opposition against the application within a period of sixty days from the date of publication of the industrial property bulletin containing the notice, subject to payment of the applicable fee.

### **Article 135 Procedural formalities**

1. The provisions in respect of national registration shall apply to the international registration of marks, with the necessary changes.
2. The provisions applicable to international registration shall also govern the subsequent steps of the process.

### **Article 136 Grounds for refusal of registration**

Protection in Mozambique of a mark that is the subject of international registration shall be refused when there would be grounds to refuse registration in the terms of this diploma.

### **Article 137 Declaration of intention to use**

1. The provisions of article 127 of this diploma shall apply to international marks.
2. Time limits for filing declarations of intentions to use shall run from the date of international registration.
3. If an extension is granted subsequent to registration, the declaration shall not be required until five years have elapsed after the date of the extension.

**CHAPTER V**  
**Trade names and insignia of establishments**

**SECTION I**  
General principles

**Article 138**  
**Subject matter of trade names and insignia**

The subject matter of a trade name and insignia of an establishment is the establishment itself, and the purpose is to afford an exclusive designation and individuality.

**Article 139**  
**Right to trade name and insignia**

All persons having a legitimate interest, namely, farmers, livestock farmers, industrialists, traders and, in general, all entrepreneurs whose domicile or place of business is in Mozambique, are entitled to have a trade name or insignia for their establishment.

**Article 140**  
**Composition of trade names**

The following may constitute trade names:

- a) Any fancy or specific names;
- b) Historic names, except where their use would be offensive or lead to an interpretation that differs from their true meaning;
- c) The name of the property or location of the establishment, when this is admissible or contains a distinguishing feature;
- d) The name, firm name or company name, pseudonym or coined name of the proprietor.

**Article 141**  
**Composition of insignia**

1. The insignia of an establishment may consist of any external sign composed of figures or designs, alone or combined with the names or designations referred to in the preceding article or other words or devices, provided that the whole constitutes a specific form or shape as a distinguishing and characteristic feature of the establishment.

2. The ornamentation of shop fronts and parts of shops, warehouses or factories that are exposed to the public, as well as the colours of a flag, may likewise constitute an insignia provided that they distinguish the particular establishment perfectly.

### **Article 142** **Exceptions to protection**

1. The following shall not be protected:
  - a) An individual, firm or company name belonging to a third party, unless the third party consents or the legitimate use of the name is proven;
  - b) Expressions pertaining to establishments whose name or insignia is registered in favour of another person;
  - c) Elements that constitute a mark or industrial design protected by another.
2. The provision of subparagraph (b) of the preceding paragraph shall not prevent two or more persons with identical names from including them in the trade names or insignia of their respective establishments, provided that they are perfectly distinguishable.

### **Article 143** **Rights conferred by registration of a trade name or insignia**

1. Registration of the insignia of an establishment guarantees the ownership and right to the exclusive use thereof.
2. Priority to register a trade name at the IPI shall be afforded to the individual person or lawfully established corporate entity whose name it is.
3. Ownership of a trade name and the insignia of an establishment shall also confer on the proprietor the right to prevent the unlawful use thereof.
4. Throughout the duration of the registration, the proprietor of the establishment or the company to which the trade name or insignia refers shall have the right to add the words “*nome registado*” (registered name) or “*insígnia registada*” (registered insignia) or the initials “*NR*” or “*IR*” to their name or insignia.

### **Article 144** **Inalterability of the name or insignia**

Throughout the duration of the registration, the trade name and insignia of an establishment must remain unaltered in their composition or form, under pain of lapse, but the materials with which they are made or on which they are applied and the place where they are positioned in the establishment, may be altered.

**Article 145**  
**Application to register a trade name or insignia**

1. The application to register the trade name and insignia of an establishment shall be filed using a special form addressed to the director general of the IPI.
2. The letter of application shall contain the following:
  - a) The name, firm name or company name, nationality and domicile of the proprietor, and the place where the establishment is located;
  - b) The trade name or insignia for which registration is sought;
  - c) The business licence of the applicant, if the applicant is a natural person who carries out any commercial or industrial activity;
  - d) Articles of association published in the *Boletim da República* (Official Gazette) or a licence to conduct commercial or industrial activity, if the applicant is a juristic person.
3. For the insignia of an establishment, the application shall contain two graphic images.
4. The registration of an insignia that includes references to any awards shall require prior registration of these.
5. Where the proprietor has other establishments, he may use the registered trade name and insignia for such other establishments, without the need for any further registration.

**Article 146**  
**Protection of trade names**

Notwithstanding any other legislative or regulatory provision establishing a duty to register trade names, such names are protected against any unlawful act committed by third parties, even before they are registered.

SECTION II  
Application procedure

**Article 147**  
**Application procedure**

The following documents shall be attached to the application:



- a) A land registry certificate or other title attesting that the applicant is the lawful proprietor of the establishment;
- b) A certificate attesting that the trade name or insignia of the establishment to be registered is not already in use (*certidão negativa*).

#### **Article 148 Publication**

A notice of the application for protection shall be published in the industrial property bulletin, so that persons who consider that the registration would be detrimental to them may lodge oppositions.

#### **Article 149 Opposition**

1. Any person who considers that the grant of a trade name or insignia of an establishment would be detrimental to them may lodge an opposition against the application within a period of sixty days from the date of publication of the industrial property bulletin containing the notice, subject to payment of the applicable fee.
2. The abovementioned period may be extended once only for a maximum of sixty more days, at the request of the interested party, subject to payment of the applicable fee.

#### **Article 150 Subsequent formalities**

The provisions of article 118 of this diploma apply, with the necessary changes.

#### **Article 151 Modification of a trade name or insignia**

The trade name or insignia of the establishment may be modified at the request of the interested party, to which effect the procedural formalities set out in the preceding provisions shall be followed.

#### **Article 152 Duration and renewal of protection**

1. Protection of a trade name or insignia of an establishment shall endure for a period of ten years, starting from the date of filing of the application.
2. The protection referred to in the preceding paragraph may be renewed indefinitely for like periods, upon payment of the applicable fee.

### **Article 153 Lapse**

In addition to the cases set out in article 22 of this diploma, the registration of a trade name or insignia of an establishment shall lapse:

- a) By reason of the closure or liquidation of the establishment to which it pertains;
- b) If the registered trade name or insignia is not used for period of three consecutive years.

### **Article 154 Transferability**

Ownership of the trade name and insignia of an establishment may be transferred only together with the enterprise to which they relate.

## **CHAPTER VI Appellations of origin and geographical indications**

### **Article 155 General principles**

1. Once an appellation of origin and a geographical indication have been registered, they are the common property of those who reside or whose place of business is in the geographical area in question, and they may be used by any person who carries out a characteristic productive activity in that area.
2. The right referred to in the preceding paragraph may be exercised without reference to the extent of the operation or the nature of the products and it shall apply to all products that are characteristic of and originate in the geographical area in question.

### **Article 156 Applicable rules**

The provisions relating to marks shall apply to appellations of origin and geographical indications, with the necessary changes.

### **Article 157 Regional demarcation**

If the geographical area to which an appellation of origin or geographical indication belongs does not have demarcated boundaries, then such boundaries shall be declared by the officially recognised authority responsible for the area and for the

field of production therein, taking into account uses and customs and also the higher interests of the national or regional economy.

### **Article 158**

#### **Application for registration**

The application for registration of an appellation of origin or geographical indication shall be filed using a special form and addressed to the director general of the IPI, accompanied by proof of payment of the applicable fee and by the following:

- a) The name of the individuals and corporate entities, both public and private, who are legally entitled to obtain registration;
- b) The name of the product or services, including the appellation of origin or geographical indication;
- c) The traditional or regulatory conditions for the use of the appellation of origin or geographical indication and the boundaries of the particular geographical area.

### **Article 159**

#### **Grounds for refusal of registration**

Registration of an appellation of origin or geographical indication shall be refused where:

- a) The application is made by somebody who is not legally entitled to do so;
- b) Elements contained in the definitions in lines l) and m) of article 1 are missing;
- c) It constitutes a reproduction or imitation of a previously registered appellation of origin or geographical indication;
- d) It is liable to mislead the public as to the nature, quality and geographical origin of the particular product;
- e) It constitutes an infringement of industrial property rights or copyright or, in general, may encourage unfair competition

### **Article 160**

#### **Rights conferred by registration**

1. After registration, the proprietors of the appellation of origin or geographical indication shall enjoy the exclusive use thereof, and they shall be entitled to prohibit the use by third parties who intend to deceive or mislead the public as

to the true geographical origin of the product and, in general, any use that constitutes an act of unfair competition.

2. The right referred to in the preceding paragraph shall also apply in cases where an indication of the true geographical origin of the product is accompanied by qualifiers, expressions, graphic arrangements or any other representation liable to mislead purchasers.

### **Article 161** **Duration of registration**

1. Appellations of origin and geographical indications shall endure indefinitely and their ownership shall be protected under the provisions of this diploma and other applicable legislation, as well as by measures in place against false descriptions, which are effective even prior to registration.
2. During the validity of the registration, the following words may be used on the products for which the respective uses are authorised:
  - a) “*Denominação de origem registada*” (registered appellation of origin) or “DO”;
  - b) “*Indicação geográfica registada*” (registered geographical indication) or “IG”.

### **Article 162** **Lapse**

1. The registration shall lapse at the request of any interested party, when the appellation of origin or geographical indication is transformed into a simple generic designation for a manufacturing process or a particular type of known products.
2. Products whose appellation of origin or geographical indication is covered by special protective or supervisory legislation shall be exempt from the provision of the preceding paragraph.

### **Article 163** **Non-transferability of the right**

Ownership of the appellation of origin or geographical indication is not transferable, except in cases that are explicitly provided for by law.

## **CHAPTER VII Logos**

### **Article 164 Applicable rules**

The rules applicable to insignia of establishments shall apply to logos, with the necessary changes.

### **Article 165 Proof of existence of the entity**

1. The actual existence of the entity to be designated by the logo, and the justification for the elements contained in the logo or the expressions accompanying it, shall be proved by means of any document constituting the existence of the entity in question.
2. During the validity of the registration, the proprietor may add the words “*Logotipo Registado*” (registered logo), “*Log. Reg.*” or the abbreviation “LR” to the logo.

## **CHAPTER VIII Awards**

### **SECTION I General provisions**

### **Article 166 Conditions for protection**

For protection to be afforded under this diploma to an award that is included in any mark, trade name or insignia of an establishment or is applied to products or services, the award must be registered.

### **Article 167 Ownership of awards**

Awards of any type shall be the property of the industrialists, traders, farmers or other economic operators to whom they were awarded.

### **Article 168 Application for registration**

1. Proprietors of awards referred to in the preceding article or their representatives may apply to the director general of the IPI for the registration of the award.

2. The application referred to in the preceding paragraph shall contain the following:
  - a) The name, firm or company name, nationality, domicile or place of business of the proprietor of the award;
  - b) An indication of the awards to be registered and the bodies that awarded them;
  - c) An indication of the products or services for which the awards were granted;
  - d) The name of the establishment, products or services to which the awards are to be applied.

## SECTION II Use and transfer

### **Article 169 Use of awards**

1. A person who has legitimately acquired an award may use it even prior to its registration.
2. The words “*recompensa registada*” (registered award) or the abbreviation “R.R.” or “RR” may be used with references to or copies of the award only after registration.

### **Article 170 Transfer**

The ownership of an award may be transferred only in accordance with the legal formalities required for the transfer of the property to which the award relates or to which it is ancillary.

## SECTION III Termination of the registration

### **Article 171 Annulment**

1. In addition to the provisions of article 20 of this diploma, the registration of an award shall be annulled:
  - a) When the right to the award is cancelled;
  - b) If it is found that the award was obtained by unlawful means.

2. The entities referred to in article 1 (n) of this diploma shall be entitled to seek the annulment of an award.

## **Article 172**

### **Lapse**

1. A registration shall lapse if the grant of the award to which it relates is revoked.
2. The right to use the award is extinguished when the registration lapses.

## **TITLE III**

### **Offences**

## **CHAPTER I**

### **Offences**

## **SECTION I**

### **Classification of offences**

## **Article 173**

### **Infringement of industrial property rights**

For the purposes of this diploma, the following acts constitute infringements of industrial property rights:

- a) Unfair competition;
- b) Infringement of the exclusive right in a patent;
- c) Infringement of the exclusive rights in industrial designs;
- d) Counterfeiting, imitation and the illegal and illicit use of marks;
- e) Illegal reference to or use of awards;
- f) Infringement of the exclusive rights to a trade name or insignia of an establishment;
- g) Illegal use of a logo;
- h) Improper reference to or use of private rights;
- i) Counterfeiting, imitation and the illegal and illicit use of appellations of origin and geographical indications.

## **Article 174**

### **Unfair competition**

1. Every act contrary to the good practices and usage in industrial or commercial activity or in service provision shall constitute an act of unfair competition.
2. For the purposes of this diploma, a person who does any of the following commits the offence of unfair competition:
  - a) Displays, sells, puts on sale or into circulation a product, declaring that it is the subject of a patent that has been filed or granted or of a registered industrial design, when it is not, or stating in any kind of advertisement or commercial papers that the product is filed or patented or registered, when it is not;
  - b) Displays, sells, puts on sale or into circulation a product with a mark, a logo, a trade name or insignia of an establishment, an award, a geographical indication or an appellation of origin, declaring that it has been filed or registered when it has not, or stating in any kind of advertisement or commercial papers that it has been filed or registered, when it is not;
  - c) Commits acts liable to cause confusion, in any way, with the establishment, products, services or industrial or commercial activities of a competitor;
  - d) Uses or makes references to a trade name or insignia of an establishment or to marks belonging to another without authorisation from the lawful proprietor, with a view to taking advantage of their reputation or good name;
  - e) Makes or gives false statements or information, in the course of business, in such a way as to discredit the establishment, services or industrial or commercial activity of a competitor;
  - f) Misleads the public as to the nature, method of manufacture, characteristics and use of products and services, in the course of business;
  - g) Directly or indirectly uses a false indication as to the source of a product or service or the identity of the producer, manufacturer or trader;
  - h) Directly or indirectly uses a false appellation of origin or imitates an appellation of origin, even if the true origin is mentioned or if the appellation is accompanied by terms such as “kind”, “type”, “method”, “imitation” or other similar expressions;



- i) Suppresses, conceals, or modifies the appellation of origin or geographical indication of the products or the registered mark of the producer or manufacturer, on products which are intended for sale and the packaging of which has not been modified;
3. A person also commits the offence of unfair competition who takes, discloses or uses confidential data or information about the production or the use of certain products or processes or about the provision of services of a competitor, without his consent and in a manner contrary to honest trade practices, provided that such information:
- a) Is secret, in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons in circles that normally deal with the kind of information in question;
  - b) Has a commercial value because it is secret;
  - c) Has been subject to reasonable steps under the circumstances, by the person legally in control of the information, to keep it secret.
4. The offences referred to in the preceding paragraph are punishable by a fine of one hundred and twelve times the minimum wage, if the offender is an individual, and two hundred and twenty four times the minimum wage, if the offender is a corporate entity.

**Article 175**  
**Infringement of exclusive rights in a patent**

1. A person who does any of the following commits the offence of infringement of the exclusive rights conferred by a patent:
- a) Produces goods that are the subject of a patent for invention or utility model without authorisation from the proprietor thereof;
  - b) Uses the product or process that is the subject of a patent without permission from the lawful proprietor;
  - c) Exports or imports, puts on sale or into circulation or conceals in bad faith products obtained in any of the ways referred to in the preceding subparagraphs;
  - d) Discloses a patent for invention without permission from the lawful proprietor.

2. The offence in the preceding paragraph is punishable by a fine of eighty nine times the minimum wage, if the offender is an individual, and two hundred times the minimum wage, if the offender is a corporate entity.

**Article 176**  
**Infringement of exclusive rights in an industrial design**

1. A person who does any of the following commits the offence of infringement of the exclusive rights conferred by an industrial design:
  - a) Uses, reproduces or imitates industrial designs, wholly or partly, without authorisation from the proprietor thereof;
  - b) Exports, imports or puts on sale or into circulation a registered industrial design without the consent of the proprietor thereof;
  - c) Produces goods that incorporate a registered industrial design, without the consent of the proprietor thereof;
  - d) Exports or imports, puts on sale or into circulation or conceals in bad faith products that incorporate a registered industrial design, without the consent of the proprietor thereof.
2. The offence in the preceding paragraph is punishable by a fine of thirty three times the minimum wage, if the offender is an individual, and one hundred and twelve times the minimum wage, if the offender is a corporate entity.

**Article 177**  
**Counterfeiting, imitation and illegal and illicit use of a mark**

1. A person who does any of the following commits the offence of counterfeiting, imitation and illegal use of a mark:
  - a) Totally or partially counterfeits or reproduces a registered mark without authorisation from the proprietor thereof;
  - b) Changes the registered mark of another already placed on products on sale in the market;
  - c) Uses counterfeit or imitated marks;
  - d) Uses, reproduces or imitates well-known marks or marks of high renown;
  - e) Uses a mark to identify products or services different from those of the proprietor of the registered mark, in such a way as to deceive consumers as to the origin of the products or services;

- f) Exports or imports, sells or puts on sale or into circulation products or articles with a mark that is counterfeit, imitated or used under the circumstances mentioned in the preceding subparagraphs.
2. A person who does any of the following commits the offence of illicit use of a mark:
    - a) Uses a mark to identify his products or services which has not been authorised or whose application for registration has been refused by the IPI;
    - b) Uses a mark containing expressions or figures that are against this diploma and public order or are offensive to *bonos mores*;
    - c) Exports, imports, sells or puts on sale or into circulation products or articles with prohibited marks.
  3. The offences referred to in the preceding paragraphs are punishable by a fine of one hundred and twelve times the minimum wage, if the offender is an individual, and two hundred and twenty four times the minimum wage, if the offender is a corporate entity.

**Article 178**  
**Illegal reference to or use of an award**

1. A person who does any of the following commits the offence of illegal reference to or use of an award:
  - a) Displays an award on his products or services without authorisation from the lawful proprietor of the award;
  - b) Totally or partially reproduces or imitates an award without authorisation from the lawful proprietor thereof;
  - c) Displays or falsely claims to be the holder of an award that was not granted to him or never existed.
2. The offence in the preceding paragraph is punishable by a fine of twenty two times the minimum wage, if the offender is an individual, and seventy eight times the minimum wage, if the offender is a corporate entity.

**Article 179**  
**Infringement of exclusive rights to a trade name or insignia of an establishment**

1. A person who does any of the following commits the offence of infringement of the exclusive rights conferred by a trade name or insignia of an establishment:

- a) Uses on his establishment, in advertisements, in correspondence, on products or services or in any other manner, a trade name or insignia that is a reproduction or imitation of a trade name or insignia already registered for an establishment by someone else, without authorisation from the lawful proprietor;
  - b) Displays, sells, puts on sale or stores products with references to a trade name or insignia of an establishment without authorisation from the lawful proprietor.
2. The offence in the preceding paragraph is punishable by a fine of eleven times the minimum wage, if the offender is an individual, and twenty two times the minimum wage, if the offender is a corporate entity.

### **Article 180** **Illegal use of a logo**

A person who illegally uses, on printed matter, on his establishment, on products or in any other manner, a sign which is a reproduction or imitation of a logo already registered by another shall be liable to pay a fine of eleven times the minimum wage, if the offender is an individual, or twenty two times the minimum wage, if the offender is a corporate entity.

### **Article 181** **Improper reference to or use of private rights**

1. A person who does the following commits improper reference to or use of private rights:
  - a) Claims to be the holder of an industrial property right when such right does not belong to him, has been declared null or has lapsed, or when the application to register the right was refused;
  - b) Is the proprietor of an industrial property right and uses his private rights for products or services other than those that the registration protects.
2. The offence in the preceding paragraph is punishable by a fine of forty four times the minimum wage, if the offender is an individual, and eighty eight times the minimum wage, if the offender is a corporate entity.

### **Article 182** **Counterfeiting, imitation and illegal and illicit use of appellations of origin and geographical indications**

1. A person who does any of the following commits the offence of counterfeiting, imitation and illegal use of appellations of origin and geographical indications:

- a) Totally or partially reproduces or imitates a registered appellation of origin or geographical indication;
  - b) Having no right to an appellation of origin or geographical indication, uses on his products any signs that constitute a reproduction, imitation or translation of such an appellation or indication, even if the true origin is mentioned or if the appellation or indication is accompanied by terms such as “kind”, “type”, “quality”, “method”, “imitation”, “rival of”, “superior to” or other similar expressions;
  - c) Manufactures, imports, exports, sells, displays, offers for sale or stores a product that bears a false geographical indication or appellation of origin.
2. A person who does any of the following commits the offence of illicit use of appellations of origin and geographical indications:
- a) Uses an appellation of origin or geographical indication to identify his products or services, which has not been authorised or whose application for registration has been refused by the IPI;
  - b) Uses an appellation of origin or geographical indication containing expressions or figures that are against this diploma and public order or are offensive to *bonos mores*;
  - c) Exports, imports, sells or puts on sale or into circulation products or articles with prohibited appellations of origin or geographical indications.
3. The offences referred to in the preceding paragraphs are punishable by a fine of one hundred and twelve times the minimum wage, if the offender is an individual, and two hundred and twenty four times the minimum wage, if the offender is a corporate entity.

### **Article 183** **Repeated offences**

1. A repeated offence is committed when a perpetrator who has been punished for an offence under the terms of this diploma commits another identical offence within two years from the date on which the relevant punishment was imposed.
2. A person who repeats an offence provided for in this diploma shall be liable to pay the fine applicable to the relevant offence, but the minimum and maximum amounts of the fine shall be first doubled and then tripled.

## **CHAPTER II Procedure**

### **SECTION I General provisions**

#### **Article 184 Protection of industrial property rights**

Industrial property rights are afforded the protection that is established by law for property in general and, in particular, the protection established by the provisions of this diploma and other legislation and conventions in force.

#### **Article 185 Rights in security**

Industrial property rights are subject to attachment and seizure and may be pledged as security.

#### **Article 186 Jurisdiction**

1. The Common Court shall have jurisdiction to settle all disputes arising between private persons as a result of infringements of the industrial property rights provided for in this diploma.
2. The onus shall be on the interested party to prove his industrial property right and the harm that has been caused to it.

#### **Article 187 Provisional remedies**

An interested party may request the Common Court to order such provisional remedies as are deemed appropriate to safeguard the industrial property rights provided for in this diploma.

### **SECTION II Appeals**

#### **Article 188 Appeals**

1. Appeals may be made against decisions to grant, refuse or suspend rights under the terms of this diploma.

2. The appeal must be lodged within sixty days after the date of publication of the decision or the notice, by petition addressed to the director general of the IPI.
3. Persons who have requested or obtained rights that are the subject of a decision referred to in paragraph 1 of this article are entitled to lodge appeals.
4. The director general of the IPI must hand down a decision on the appeal within thirty days after the appeal was lodged.
5. The decision referred to in the preceding paragraph shall be subject to a further judicial appeal.

### **Article 189 Judicial appeal**

A judicial appeal shall lie to the Administrative Court against decisions about industrial property rights under this diploma, and such an appeal shall have suspensive effects.

## **SECTION III Supervision of industrial property rights**

### **Article 190 Competent authority**

1. The General Inspectorate of the Ministry of Industry and Trade shall be responsible, in consultation with the IPI, for investigating the offences listed in article 173 of this diploma.
2. The general rules that govern the activities of the General Inspectorate of the Ministry of Industry and Trade shall apply to the performance of the tasks referred to in the preceding paragraph.

### **Article 191 Procedures**

1. Investigations of offences shall be launched on the initiative of the General Inspectorate of Industry and Trade or the IPI, or pursuant to a complaint made by an interested party.
2. A joint brigade comprising members of the General Inspectorate of Industry and Trade and the IPI shall be established to give effect to the provisions of the preceding paragraph.

3. Upon finding an infringement against industrial property rights provided for in this diploma, the brigade shall prepare a charge sheet, which shall be submitted to the General Inspectorate of Industry and Trade and the IPI.
4. The Inspector General of the Ministry of Industry and Trade, having heard the director general of the IPI, shall have the power to apply the sanctions provided in this diploma.
5. The powers exercised pursuant to the preceding paragraph shall not include the power to paralyse any activity being carried out lawfully by legally authorised or licensed industrial or commercial establishments.

#### **Article 192**

##### **Ministerial appeal**

1. Measures taken pursuant to article 191 (4) above may be appealed to the Minister of Industry and Trade, which appeal must be lodged within thirty days after notice of the relevant sanction has been given.
2. The Minister of Industry and Trade shall hand down its decision on the appeal within thirty days after the appeal was lodged.

#### **Article 193**

##### **Judicial investigation of the case**

1. The General Inspectorate of the Ministry of Industry and Trade, in consultation with the IPI, may refer the case to the Common Court, if such is thought to be appropriate and in the interests of the public or of the injured party.
2. The General Inspectorate of the Ministry of Industry and Trade may gather additional evidence to support its allegations.

#### **Article 194**

##### **Seizure of products or merchandise for import or export**

1. Products or merchandise that violate industrial property rights and are in the process of being imported or exported shall be seized.
2. Seizure shall be carried out on the initiative of the customs authorities, acting in collaboration with the General Inspectorate of the Ministry of Industry and Trade.
3. Seizure may also be carried out at the request of any party having an interest therein.



4. The customs authorities shall immediately give the interested party notice to adduce evidence that no infringement of industrial property rights has been committed under the terms of this diploma.
5. The interested party shall be entitled to request the customs authorities to take such measures as are appropriate to safeguard the integrity of the seized goods.
6. The interested party shall be entitled to lodge an appeal to the Customs Court against decisions taken pursuant to the provisions of this article.
7. The interested party may request the Customs Court to order such provisional remedies as are deemed appropriate to safeguard his rights.

**Article 195**  
**Destination of seized goods**

1. The goods seized under the terms of this diploma and the materials or instruments predominantly used for committing an infringement of industrial property rights shall be declared forfeit to the State.
2. Items that have been declared forfeit to the State shall be totally or partly destroyed whenever it is not possible to eliminate the part thereof or the distinctive sign thereon that is in violation of the offended industrial property right.
3. The competent court shall order the destruction of goods which the competent authorities have declared noxious or which in any way endanger public health.

**Article 196**  
**Payment of fines**

1. The time limit for voluntary payment of the fines established in this diploma shall be fifteen days from the date of notification.
2. Payment shall be made by means of a payment form issued by the General Inspectorate of the Ministry of Industry and Trade, and deposited with the revenue department in the area where the establishment is located or the business is carried out.
3. If the fine is not paid voluntarily within the period set in paragraph 1 above, the case shall be referred to the competent court.

**Article 197**  
**Destination of fines**

The proceeds of fines established in this diploma shall be appropriated in the manner prescribed by a joint diploma of the Ministers that oversee the areas of industry, trade and finance.

**TITLE IV**  
**Fees**

**Article 198**  
**Consideration**

1. As consideration for the protection of the rights governed by this diploma, the interested party shall be liable to pay certain fees upon making an application to the IPI.
2. The fees shall be established according to each type of service to be rendered or right to be protected under the terms of article 204 of this diploma.
3. The IPI shall determine the methods of payment of the fees referred to in paragraph 1 above.
4. No act that has been requested and for which fees are payable shall be considered registered until the corresponding fees have been paid.

**Article 199**  
**Time limits for payment**

1. The first two annuities in respect of patents, utility models and industrial designs shall be paid at the time of filing of the application.
2. Subsequent annuities shall be paid during the last six months of each year, counting from the date on which the right was granted.
3. The fees referred to in the preceding paragraph may also be paid, with a fifty per cent surcharge, within a maximum of six months after the end of the validity of the right, under pain of lapse.
4. The provisions of the preceding paragraphs shall also apply to international applications filed under any treaty or agreement in force in the country, in which case the annuities referred to in paragraph 1 above shall be payable on the date of the application for entry into the national phase.
5. Fees for the grant of registrations of marks, trade names, insignia of establishments, logos, awards, appellations of origin and geographical

indications shall be paid upon filing of the application for registration thereof at the IPI.

6. Fees for renewal of registrations of marks, trade names, insignia of establishments and logos shall be paid during the final six months of the validity of the registration, and they may also be paid within a maximum period of six months after the end of the validity of the registration, subject to a fifty per cent surcharge.

### **Article 200** **Revalidations**

It is possible to request the revalidation of certificates of grant and certificates of registration that have lapsed due to failure to pay fees, up to one year after the date of publication of the notice of lapse in the industrial property bulletin, upon payment of three times the amount of the fees outstanding.

### **Article 201** **Reduction of fees**

1. Applicants for invention patents, utility models and industrial designs, who are able to prove that they do not earn sufficient income to cover the costs of applications for maintaining their rights, may be entitled to an eighty per cent reduction of all fees, up until the fifth annuity, if they so request before filing the respective application.
2. It shall be the responsibility of the director general of the IPI to examine the proof referred to in the preceding paragraph and issue an order with his decision on the request.

### **Article 202** **Exemption from fees**

1. Applicants referred to in the preceding article, who can prove that they do not have the financial means to pay the costs of maintaining their rights, may be exempt from the payment of fees.
2. Institutions for scientific research and investigation may also request an exemption from fees in respect of rights derived from the work they do as part of their activities.
3. It shall be the responsibility of the director general of the IPI to examine the proof referred to in the preceding paragraph and issue an order with his decision on the request.

### **Article 203**

#### **Suspension of fees**

1. A patent, filing or registration of a mark shall not lapse by reason of failure to pay periodic fees that fall due while a court action is pending in regard to the particular industrial property right, or while the right remains subject to judicial attachment or execution.
2. Once a final sentence has been passed on the actions referred to in the preceding paragraph, notice of this shall be published in the industrial property bulletin.
3. Once the notice referred to in the preceding paragraph has been published, all outstanding fees must be paid, without any surcharge, by the applicable deadline.
4. If all outstanding fees have not been paid before the expiration of the time limits applicable under this diploma, the industrial property right in question shall lapse.

### **Article 204**

#### **Approval and updating of fees**

The amounts of fees shall be approved and updated by means of a joint diploma issued by the Ministers that oversee the areas of industry, trade and finance.

### **Article 205**

#### **Rights belonging to the State**

Industrial property rights belonging to the State are subject to the formalities and charges in respect of the application, grant or registration and the renewals and revalidations thereof, whether they are worked or used by the State or by undertakings of any kind.

### **Article 206**

#### **Rights belonging to non-profit organisations**

Industrial property rights belonging to non-profit organisations shall be exempt from registration fees.

**TITLE V**  
**Industrial property bulletin**

**Article 207**  
**Industrial property bulletin**

An industrial property bulletin, hereinafter referred to as the bulletin, is created and shall be published every two months by the IPI.

**Article 208**  
**Contents of the bulletin**

The bulletin referred to in the preceding article shall publish the different legal acts pertaining to the administration of industrial property, in particular:

- a) Notices of applications for registration of the different categories of industrial property rights;
- b) Amendments to initial applications;
- c) Decisions issued in respect of industrial property rights;
- d) Applications for restoration of rights;
- e) Applications to register technology transfer, franchising and similar contracts;
- f) Renewals and revalidations;
- g) Declarations of surrender and renunciations;
- h) Assignments, grants of licences and changes to the identity, head office or residence of proprietors;
- i) Placing a patent on offer for working;
- j) Lapsed rights;
- k) Final court decisions in proceedings concerning industrial property rights;
- l) Addresses of practising official industrial property agents;
- m) Notices and results of examinations of official industrial property agents;
- n) Other acts and matters relating to industrial property rights of which the public should be informed.

**Article 209**  
**Bulletin index**

At the beginning of each year, the IPI shall draw up an index of all matters contained in the issues of the bulletin published during the preceding year.

**Article 210**  
**Distribution of the bulletin**

1. The bulletin may be distributed to academic institutions and national services having an interest, to the World Intellectual Property Organisation, to regional industrial property organisations, to foreign industrial property services and to any other national or foreign entities on an exchange basis.
2. The bulletin may also be purchased by any interested person, upon payment of the corresponding subscription fee or the single-issue price affixed thereto.