

REPUBLIC OF BURUNDI

OFFICE OF THE PRESIDENT

**LAW NO. 1/13 OF JULY 28, 2009 RELATING TO
INDUSTRIAL PROPERTY IN BURUNDI**

THE PRESIDENT OF THE REPUBLIC:

Given the Constitution of the Republic of Burundi;

Given Decree-Law No. 1/045 of July 9, 1993 on General Provisions of the Code of Commerce;

Given Law No. 1/021 of December 30, 2005 on the Protection of Copyright and Neighboring Rights in Burundi;

Given Law No. 1/02 of January 11, 2007 establishing the Customs Code;

Having reviewed Decree-Law No. 1/171 of July 1, 1968 amending the Law of August 20, 1964 on Industrial Designs, as amended to date;

Having reviewed Decree-Law No. 1/170 of July 1, 1968 on Patents, as amended to date;

Having reviewed Decree-Law No. 1/169 of July 1, 1968 amending the Law on Factory and Trademarks of August 20, 1964, as amended to date;

Given Law No. 1/142 of August 27, 1976 ratifying the Convention setting up the World Intellectual Property Organization;

Given the act of September 3, 1977 ratifying the Paris Convention for the Protection of Industrial Property of March 20, 1883, as amended on September 28, 1979;

Given the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, and the relevant Protocol of June 27, 1989;

Given the Agreement on Trade-related Aspects of Intellectual Property of 1994;

Given the Hague Agreement Concerning the International Registration of Industrial Designs of November 6, 1925;

Given the Nairobi Treaty on the Protection of the Olympic Symbol of 1981;

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16.06.2011

The Council of Ministers having deliberated;

The National Assembly and the Senate having adopted:

ENACTS:

PART ONE: GENERAL PROVISIONS

ONLY TITLE: PURPOSE AND DEFINITIONS

Article 1: The purpose of this Law is to organize and protect industrial property. It regulates in particular the rights relating to patents, utility model certificates, industrial designs, layout designs for integrated circuits, traditional knowledge, crafts objects and distinctive signs.

Article 2: For the purposes of this Law, the following definitions shall apply:

- Budapest Treaty, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, signed in Budapest on April 28, 1977 and amended on September 26, 1980;
- Certificate, the title issued to protect a utility model, an industrial design, a layout design for integrated circuits or a mark. It shall establish a presumption of the validity and of the possibility of applying the right in order to prohibit third parties from exploiting the right registered in Burundi. Certificates shall be issued by the Minister responsible for trade, without incurring the liability of the Government of Burundi with regard to the conditions for registrability and the right to titles;
- Certificate of addition, the title issued to protect the right to add to the invention changes, improvements or additions noted in the certificates issued in the same form as the primary patent and which produce the same effects as it does;
- Certification signs, signs or combinations of signs suitable for designating any characteristic common to goods or services, in particular their quality, origin or methods of production, and whose use is controlled by the owner of the signs;
- Collective mark, any mark belonging to a group such as a cooperative, association or federation of industrialists, producers or merchants;
- Compulsory license, an authorization granted by the competent authority to a person, company, private entity, an entity held or controlled by the State, for the exploitation of a patent, a utility model, a layout design or an industrial design in Burundi without the consent of the right holder;
- Counterfeit branded goods, all goods, including their packaging, which bear, without authorization, a factory or trademark which is identical to a factory or

trademark that has been validly registered for said goods, or whose essential aspects cannot be distinguished from this factory or trademark, and which therefore infringes the rights of the holder of the mark in question under the legislation in Burundi;

- Date of priority, the date of a prior request which serves as a basis for the right of priority provided for by the Paris Convention;
- Decision of the General Council of the World Trade Organization (WTO) of August 30, 2003, the decision of the WTO General Council on the implementation of paragraph 6 of the Doha Declaration on the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) and public health;
- Distinctive sign of a firm, a variety of designations such as marks, business symbols, emblems, logos and slogans used by a firm to make known, in the exercise of industrial or business activities, the identity of the firm and the products it manufactures or the services it provides;
- Industrial design, any combination of lines or colors or any plastic form, whether or not it is associated with lines or colors, provided this combination or this form gives a special appearance to an industrial or crafts product and can serve as a type for the manufacture of an industrial or crafts product, and that it attracts the eye and is judged visually;
- Exclusive license, a licensing contract which gives the licensee and, when this contract expressly so provides, the persons authorized by the licensee, the right to exploit the licensed industrial property to the exclusion of all other persons, including the rights holder;
- Geographical indication, an indication used to identify a product as being from the territory of a country, region or locality of this territory, when a quality, reputation or other given characteristic of the product can be essentially attributed to this geographical origin;
- Integrated circuit, the final or intermediate form of a product designed to perform an electronic function and in which the elements, at least one of which is active, and all or part of the interconnections are integrated in or on – or both in and on – a part of the materials;
- International classification, with regard to patents and utility models, the classification for patents, copyright certificates for inventions, utility models and utility model certificates, called “International Classification of Patents and Certificates”, established by the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, amended on September 28, 1979; with regard to industrial designs, the classification established by the Locarno Agreement Establishing an International Classification for Industrial Designs of October 8, 1968, in its most recent version; and, with regard to marks, the classification established by the Nice Agreement

Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, in its most recent version;

- Invention, an idea of an inventor which in practice makes it possible to solve a given problem in the technical field. An invention may consist of a product or process, or refer thereto;
- Layout design or topography, the three-dimensional view, expressed in any form whatever, of elements at least one of which is active, and the interconnections present in the integrated circuit or designed to be used for the manufacturing of an integrated circuit;
- Local communities, groups of citizens who are resident in Burundi and who collectively have a specific identity as well as social, cultural and linguistic and economic characteristics which are peculiar to them and which differentiate them from the rest of society in Burundi;
- Mark, any sign capable of being specifically represented graphically and making it possible to distinguish the products or the product mark, services or the service mark of a company from those of other companies. A mark may in particular consist of words, including names of persons, motifs, letters, colors or combinations of colors, figures or by the form of products or their packaging, by holograms, sounds, smells or tastes. When slogans are not long enough to be protected by copyright, they shall be protected as marks;
- Paris Convention, the Paris Convention for the Protection of Industrial Property of March 20, 1883, in its most recent version;
- Patent, the title issued to protect an invention. The patent establishes a presumption of the validity and the possibility of applying the right in order to prohibit third parties from exploiting the invention claimed in Burundi;
- Patent Cooperation Treaty, the Patent Cooperation Treaty signed in Washington, D.C. on June 19, 1970, and amended on September 28, 1979, February 3, 1984 and October 3, 2001;
- Pirated goods violating industrial property rights, any copies made without the consent of the holder of the right or a person duly authorized by him in the country of production and which are made directly or indirectly on the basis of an article in cases where the making of these copies would have infringed copyright or a related right under the legislation of Burundi;
- Producer, any farmer or other person who exploits natural products, any manufacturer of crafts or industrial products, and anyone who trades in said products;
- Product, any natural, agricultural, crafts or industrial product;

- Trade name, the name or designation identifying and distinguishing a firm;
- Traditional knowledge, the ideas, practices, uses and inventions which may or may not be linked to biological diversity, created by local indigenous communities in a traditional and informal manner, in response to the challenges posed by their material and cultural environment, and which serve as identifiers for these communities;
- Utility model, a technical creation which consists of a form, a new configuration of an object or the element of an object which enhances its functionality or usefulness.

PART TWO: PATENTS, UTILITY MODEL CERTIFICATES, INDUSTRIAL DESIGNS, LAYOUT DESIGNS FOR INTEGRATED CIRCUITS, TRADITIONAL KNOWLEDGE AND CRAFTS OBJECTS

TITLE 1: PATENTS

Chapter I: Patentable inventions

Article 3: An invention shall be patentable if it is new, involves an inventive step and is industrially applicable.

An invention shall be new if it has not been a part of any state of the art.

Article 4: The state of the art shall consist of everything that has been made available to the public, regardless of the place, means or manner, prior to the date of filing of the patent application in Burundi or that applied for abroad, for which priority has been validly claimed.

Article 5: The novelty of an invention shall not be defeated if, in the 12 months preceding the day covered by the previous article, this invention has been the subject of disclosure arising from:

- a clear abuse in relation to the applicant or his successor in title;
- the fact that the applicant or his successor in title has displayed it at an official or officially recognized international exhibition.

Article 6: An invention shall be deemed to involve an inventive step if, given the differences and similarities between the invention claimed and the state of the art as defined in Article 4, the claimed invention, considered as a whole, would not have been obvious to a person skilled in the art at the date of filing or, as the case may be, the date of priority of the claimed invention.

Article 7: An invention shall be deemed to be industrially applicable if its subject matter can be produced or used in any kind of industry. The term “industry” shall be

defined as any human economic activity leading to the production of goods and services; it shall cover in particular crafts, agriculture, fisheries and services.

Chapter II: Patent rights and mention of the inventor

Article 8: Patent rights shall belong to the inventor.

If several persons have jointly made an invention, they shall jointly own the patent rights.

Article 9: In the event that several persons have made the same invention independently of each other, the patent right shall belong to the person who has filed the application with the oldest filing date, or if a priority is claimed, the date of the validly claimed priority, as long as said application has not been withdrawn, abandoned or rejected.

In order to establish the preferential right, the Industrial Property Director shall take account of what is claimed in the applications.

Article 10: The patent right may be assigned or bequeathed.

Article 11: If the invention has been made by an employee in the performance of an employment contract, the patent right shall belong to the employer, unless the contract specifically stipulates otherwise.

If the financial gains made by the employer are disproportionate in relation to the employee's salary and in relation to the gains which the employer could reasonably expect from his employee's inventive input when he hired him, the employee shall be entitled to fair compensation.

Article 12: In the event that the invention has been made by an employee outside the performance of an employment contract with the help of material, data or know-how belonging to the employer, the patent right shall belong to the employer, unless the contract stipulates otherwise.

The employee who has made the invention shall be entitled to compensation taking into account the importance of the patented invention; failing an agreement between the parties, such compensation shall be set by the courts.

Any promise or undertaking given by the inventor to his employer with the effect of waiving the compensation to which he is entitled under the previous subparagraph shall have no legal effect.

Article 13: In the event that the employer fails to file a patent application in the year following the date on which the employee informed him of the invention, the patent right, including the right to assign this right to any interested third party and to license the patent or assign it, if it has been issued, shall belong to the employee.

Article 14: Any invention claimed in a patent application filed by the employee in the year following the expiration of the employment contract which is part of the main activities of the former employer shall be deemed to have been made within the framework of the contract which has expired, unless the employee provides proof to the contrary.

Article 15: The inventor shall be mentioned as such in the patent unless, in a special written statement addressed to the Industrial Property Director, he indicates that he does not wish to be mentioned. Any promise or undertaking made towards anyone by the inventor to the effect of making such a statement shall have no legal effect.

Article 16: The provisions of this Chapter shall apply to civil servants, to persons governed by the Labor Code as well as to persons whose services have been hired pursuant to the provisions of the Civil Code.

Chapter III: Subject matter excluded from patent protection

Article 17: The following shall be excluded from patent protection:

- Discoveries, scientific theories and mathematical methods;
- Plans, principles or methods in the field of economic activities, in the performance of purely intellectual activities or in games;
- Methods of surgical or therapeutic treatment of the human or animal body as well as diagnostic methods. This provision shall not apply to the products used for the implementation of one of these methods;
- Natural substances, even if they had been purified, synthesized or isolated in another manner. This provision shall not apply to processes making it possible to isolate these natural substances from their original environment;
- Known substances for which a new use has been discovered;
- Plants and animals, including parts thereof, other than microorganisms, and essentially biological processes for the breeding of plants and animals and parts thereof, other than non-biological and microbiological processes;
- Animal breeds and plant varieties;
- Inventions whose exploitation is contrary to public order or morality, it being understood that the exploitation of said invention is not contrary to public order or morality owing to the sole fact that such exploitation is prohibited by legislation;
- Pharmaceutical products, up until January 1, 2016.

Article 18: The provisions of Article 17 shall not apply:

- to process inventions which consist in full or in part of procedures which are carried out by a computer and run by a computer program;
- to product inventions consisting of elements of an invention implemented by computer, in particular, a machine-readable computer code stored on a material medium such as a diskette, a computer hard drive or a computer memory and a universal calculator, the novelty of which in relation to prior art primarily stems from its combination with a specific software.

It is understood that persons filing patent applications concerning computer programs and inventions relating to computers covered by paragraph 1 have waived their right to any copyright protection.

Chapter IV: Patent application

Section 1: Filing of applications

Article 19: Patent applications shall be filed with the Industrial Property Director. They shall comprise a request, a description, one or more claims, one or more drawings, as the case may be, and a summary.

The request shall consist of a petition for the grant of a patent, the name and the other required information relating to the applicant and the inventor as well as the title of the invention.

If the applicant is not the inventor, the request shall be accompanied by a statement providing proof of the applicant's right to apply for the patent.

The filing of the application shall be subject to payment of the prescribed fee.

Article 20: The description must disclose the invention in a manner that is sufficiently clear and comprehensive so that a person skilled in the art and with average knowledge and skill can carry it out. It must in particular indicate at least one embodiment of the invention known to the inventor on the date of filing or, if priority is claimed, on the date of priority of the application.

For the purposes of this Article, a person skilled in the art and with average knowledge and skill shall mean a citizen of Burundi who has studied and carried out his profession in Burundi and who has acquired average skills and experience in the technical field to which the claimed invention belongs.

To evaluate whether disclosure is sufficient, it is appropriate to take into consideration the content of the description, the claims and drawings, as they appear on the date on which the sufficiency of disclosure was examined.

Article 21: The description must contain a clear indication of the origin of the genetic or biological resources collected in the territory of Burundi and used directly or indirectly in the making of the claimed invention as well as any element of the traditional knowledge which may or may not be linked to these resources that is protected under Title V of this part and that has been used directly or indirectly

in the making of the claimed invention without the prior informed consent of its individual or joint creators.

Article 22: The Industrial Property Director may, at any time prior to the grant of the patent, request that the description contained in foreign patent applications be adapted to fit the ordinary skills of Burundian citizens in order to ensure the dissemination of the technology.

Article 23: In the case of a patent application relating to microorganisms, the Industrial Property Director shall recognize the deposit and the date of deposit indicated by the international deposit authority as well as the sample of the microorganism deposited provided the applicant gives him a copy of the deposit receipt issued by the international deposit authority.

Article 24: Claims shall define the scope of the protection sought. The description and drawings may be used to interpret the claims.

Claims must be clear, concise and entirely based on the description.

Drawings must be provided when they are necessary for understanding the invention.

Article 25: The abstract must be concise and precise. It shall be solely for purposes of technical information and shall not be taken into consideration in assessing the scope of protection.

Unless it is necessary, the abstract must not be longer than 300 words.

Article 26: The applicant may withdraw the application at any time before the decision to grant the patent.

Article 27: A subsequent application may be filed in Burundi for the same invention if the application has been withdrawn without having been made available to the public for inspection. Such withdrawal shall only be possible if no right of priority has been claimed under this application and if no right related to the application is pending in Burundi.

The subsequent application shall be considered the first in Burundi as far as the invention is concerned.

After the subsequent application has been filed on the basis of the withdrawn application, no right of priority may be claimed.

Section 2: Unity of the invention, and modification and division of the application

Article 28: The application shall be limited to a single main subject matter with the detailed objects that compose it and the applications indicated. It may not contain restrictions, conditions or reservations. It shall indicate a title designating the subject matter of the invention in a concise and accurate manner.

Article 29: The applicant may modify the application up until the time it is noted that the application meets the necessary conditions for the grant of the patent. However, the modification may not go beyond the subject matter set out in the initial application.

Article 30: The applicant may divide the application into several applications known as divisional applications up until the time it is noted that the application meets the necessary conditions for the grant of the patent. However, no divisional application may go beyond the subject matter set out in the initial application. Each divisional application shall bear the date of filing and, as the case may be, the date of priority of the initial application.

Section 3: Priority claims

Article 31: Anyone wishing to claim the priority of a prior filing must attach the following to his patent application, at the latest within 12 months following the filing of his application, and send to the Industrial Property Director:

1. a written statement indicating the date and number of this prior filing, the country in which it was made and the name of the applicant;
2. a certified true copy of said prior application;
3. written authorization from the applicant or his successors in title empowering him to claim the priority in question if he is not the author of this application.

Article 32: An applicant wishing to claim several rights of priority for an application must, for each of them, comply with the same requirements set out in Article 31.

He must further pay a fee by right of priority claimed and produce proof of payment of said fee within the same period of 12 months provided for in that same Article.

Article 33: Failure to furnish any of the above-mentioned items in due time shall automatically lead, for the sole application considered, to the loss of benefit of the claimed right of priority.

Any item which reaches the Industrial Property Director later than 12 months after the filing of the application for registration shall be deemed inadmissible.

Article 34: The filing in Burundi of this application for the claiming of priority before the expiration of the set time limit of 12 months may not be invalidated by any act

which has occurred in the meanwhile, in particular by another deposit, the publication of the invention or its exploitation.

Section 4: Patent applications filed abroad

Article 35: Anyone wishing to claim a filing of a prior application concerning the same invention as the one claimed in the application filed in Burundi must produce:

1. a document indicating the date and number of the filing made abroad;
2. a copy of all communications received by the applicant relating to the results of any search or any examination made in relation to the foreign application;
3. a copy of the patent granted on the basis of the foreign application;
4. a copy of any final decision rejecting the foreign application or the request for grant made in the foreign application;
5. a copy of any final decision revoking the patent granted on the basis of the foreign application.

Section 5: Date of filing

Article 36: The Industrial Property Director shall assign as the date of filing the date of receipt of the application, provided it contains:

1. an express or implicit indication that the grant of a patent has been applied for;
2. the applicant's identity;
3. the description of an invention and one or more claims indicating the characteristic elements of the invention;
4. proof of payment of the prescribed fees.

Article 37: In the event that the Industrial Property Director notes, upon receiving a filing application, that it does not meet the conditions set out in Article 36, he shall invite the applicant to make the necessary correction and shall assign as the date of filing the date of receipt of the required correction.

Nevertheless, if no correction is made, the application shall be deemed not to have been filed.

Article 38: In the event that the application refers to drawings that have not been included, the Industrial Property Director shall invite the applicant to furnish the missing drawings. If the applicant complies, the Industrial Property Director shall assign the date of receipt of said drawings as the date of filing.

Should this not be the case, he shall assign as the date of filing the date of receipt of the application and shall consider any reference to the drawings as non-existent.

Section 6: Classification

Article 39: After the Industrial Property Director has assigned a date of filing and the invention has been classified according to the International Classification, he shall verify whether the application meets all of the conditions set out in this Law and its regulations.

In each instance, a ministerial ordinance shall determine the substantive and formal conditions that must be met by the applicant.

Section 7: Examination of applications

Article 40: For every patent application, an examination shall be made to ascertain that:

1. the invention which forms the subject matter of the patent application is not excluded from the protection granted by the patent, under Articles 17 and 18 of this Law;
2. the claims comply with the provisions of Article 19 of this Law;
3. the provisions of Articles 28, 29 and 30 are respected;
4. at the time the patent application is filed, no prior patent application filed before or benefiting from a validly claimed prior priority and concerning the same invention is about to be granted;
5. the invention is new, arises from an inventive step and is industrially applicable.

Article 41: Patents shall be granted without prior examination of the patentability of inventions, with no guarantee as to the merits of the inventions or the accuracy of the description thereof and at applicants' own risks.

Article 42: The Industrial Property Director shall decide if all or part of the provisions of Article 40 apply to one or more of the technical fields under which the inventions fall. He shall determine such fields in relation to the International Patent Classification.

Article 43: For all international applications, the Industrial Property Director shall take into consideration:

1. the findings of any international search report and any international preliminary examination report prepared according to the Patent Cooperation Treaty;

2. a search and examination report forwarded in accordance with Article 35 or a final decision rejecting the foreign application;
3. a search and examination report prepared at his request by an outside authority responsible for search and examination or a specialized body in Burundi.

Section 8: Publication and opposition

Article 44: After the expiration of a period of 18 months as from the date of filing, the Industrial Property Director shall make the patent application available to the public for inspection. The public shall be informed of this act through the publication, in the Official Journal of Burundi, of the following elements:

- the number and date of filing of the application;
- the title of the invention;
- the name(s) of the applicant(s) and of the inventor(s);
- the date of priority;
- the international classification;
- the drawing, as the case may be, which illustrates the main element(s) of the invention;
- the abstract.

Article 45: The Industrial Property Director shall not grant third parties access to the content of the patent application or furnish any information on its contents to third parties prior to such publication.

Article 46: The fee for filing the application must be set high enough to cover the costs of publication and the notice that the application has been made available to the public for inspection.

Any interested person may obtain a copy of the full contents of the patent applications made available to the public for inspection.

Article 47: Once the prescribed fee has been paid, at any time between the date of filing and the end of the period of 18 months, the applicant may ask the Industrial Property Director to make the application available to the public for inspection earlier than foreseen.

Article 48: Within 90 days following the publication provided for in Article 43, any interested person may file a notice of opposition with the Industrial Property Director. Such opposition shall indicate the patent application concerned as well as the arguments and evidence put forward by the opposing party to prevent the grant of the patent. The opposing party must further pay the prescribed fee.

The Industrial Property Director shall publish the opposition in the Official Journal of Burundi.

The person filing the patent application shall have 60 days as from the publication of the notice of opposition to submit a reply.

Article 49: Before taking a decision, the Industrial Property Director shall hear the patent applicant and the opposing party, who shall put forward their respective arguments and present additional proof, including testimonial evidence.

Chapter V: Grant and rights conferred by the patent

Section 1: Grant of the patent

Article 50: If the Industrial Property Director notes that all of the conditions for granting a patent have been met, he shall grant it. Should this not be the case, he shall reject the application and notify the applicant of this decision.

Article 51: In the event that he grants a patent, the Industrial Property Director shall proceed to:

- publish a reference to the grant of the patent;
- give the applicant the certificate of grant for the patent and a copy of the patent;
- register the patent;
- supply copies of the patent to the public subject to payment of the prescribed fee.

Article 52: At the patent holder's request, the Industrial Property Director shall make changes to the patent text or drawings designed to limit the scope of the protection granted by the patent. The changes made may in no case go beyond the claim made in the initial application, at the risk of being null and void.

Section 2: Rights granted by the patent

Article 53: The patent shall give its holder the exclusive right to exploit the patented invention as well as the right to prohibit any party from exploiting the patented invention.

Article 54: "Exploitation" of a patented invention shall be defined as one of the following acts:

1. If the patent has been granted for a product:
 - making, importing, offering for sale, selling or using the product;
 - holding this product with a view to offering it for sale, selling it or using it;

2. If the patent has been granted for a process:

- using the process;
- accomplishing one of the acts mentioned under point 1 of this Article in relation to a product, such that it stems directly from the utilization of the process.

Article 55: The owner of a patent shall also have the right to assign or to transfer by means of succession the patent, or to conclude license contracts.

Article 56: Patent holders shall be entitled to bring proceedings before the competent court against any party who counterfeits a patent by performing, without his consent, one of the acts mentioned in Article 53 or which make it likely that counterfeiting will be committed.

Section 3: Limits on the rights conferred by the patent

Article 57: The rights arising from the patent shall not cover:

1. acts relating to goods placed on sale in Burundi or in any other country by the patent holder or with his consent, leading to the exhaustion of the patent holder's rights;
2. use of goods on board aircraft, land vehicles or foreign vessels which enter temporarily or accidentally the airspace, territory or waters of Burundi;
3. acts relating to a patented invention performed solely for the purposes of experimentation in the case of scientific and technical research;
4. acts performed by any person who, in good faith, before the date of filing or, if priority has been claimed, on the date of priority for the application on the basis of which the patent has been granted and, in the territory of the WTO Member State, used the invention or made effective and serious preparations to use it in the case that the acts do not differ in terms of their nature or their purpose of the effective or envisaged prior use;
5. the acts of any person who makes, produces, uses or sells a patented invention solely for purposes having a reasonable relationship with the gathering and transmission of the information required by a law of Burundi or another country regulating the manufacturing, use or sale of any product.

Article 58: The user's right referred to in Article 57(4) may only be transferred or devolved with the firm or company in which the use or preparations for use took place.

Article 59: Without prejudice to the provisions of Article 57(1), the Minister responsible for trade shall be entitled to declare, either on his own initiative or at the request of any interested party, that the patent rights have been exhausted and hence authorize a third party to import the patented product or a product manufactured directly or indirectly by means of the patented invention in another territory if this product is not available in the territory of Burundi or is available in

insufficient quality and quantity to meet local demand or at prices which the Minister deems abusive or for any other reason of public interest, including anti-competitive practices, provided that:

1. the product has been introduced into commercial channels in the territory from which it is to be imported by the patent holder or with his consent;
2. the patent claiming the product or process used for its manufacture is in force in the territory from which the product is to be imported and is the property of the same person who holds the patent in Burundi or that of a person under his control.

Article 60: In the event that the importer fails to meet the goal which had justified the decision of the Minister responsible for trade to consider the patent rights exhausted, the Minister shall revoke the authorization on his own initiative or at the request of the patent holder.

Article 61: In the event that the conditions which have led to the Minister's decision to consider the patent exhausted no longer obtain, the Minister may, on his own initiative or at the request of the patent holder or owner of the mark, revoke the authorization, provided that the legitimate interests of the importer are safeguarded, primarily to the effect that the importer shall retain the right to clear his stock.

Section 4: Term of protection and annual fees

Article 62: The patent shall expire at the end of the twentieth year as from the date of filing.

If the patent is granted more than four years after the date of filing, the term of protection granted by this patent shall be automatically extended by the entire period which has elapsed as from the date of filing.

Article 63: A progressive annual fee must be paid in advance to the Industrial Property Office as from the first year following the filing date of the patent application in order to maintain the patent or patent application in force.

Any patentee who fails to pay his annuity on the dating of filing of his patent application shall be stripped of all his rights.

Nevertheless, the patentee shall have a six-month grace period to make payment. Under these circumstances, he shall be obliged to pay a surcharge for late payment.

Section 5: Restoration of patent

Article 64: In the event that the protection conferred by a patent has not been renewed owing to circumstances outside the patent holder's control, he or his successors in title may, subject to payment of the prescribed annual fee and, as the case may be, payment of a late surcharge, request the restoration of the protection, within a period of six months as from the date at which the above-mentioned circumstances ceased to obtain, and at the latest, within a period of two years as from the date on which the renewal should have been made.

Article 65: Requests for restoration of the patent, accompanied by receipts for payment of the fee, as necessary, the surcharge for late payment and the corresponding grounds, shall be addressed to the Industrial Property Director.

The Director shall examine the above-mentioned grounds and restore the patent or reject the request if he feels that the grounds are not substantiated.

Article 66: Restoration shall not imply an extension of the maximum term of the patent. Third parties who have started to exploit the invention after expiration of the patent shall be entitled to continue such exploitation.

Article 67: Restoration of the patent shall also imply restoration of the certifications of addition relating to said patent. The certificates of addition taken by one of the successors in title shall benefit all others.

Restored patents shall be published by the Industrial Property Director in the forms set out in Article 44.

Article 68: Decisions of the Industrial Property Director may be appealed to an Appeals Commission within a period of 30 days as from the date of notification.

The make-up, tasks and functioning of said Commissions shall be defined in a decree.

Chapter VI: Licensing contracts

Section 1. Signature and term of licensing contracts

Article 69: A patent holder may, by contract, assign to a natural person or legal entity a license enabling him/it to exploit the patented invention. The term of the license may not exceed that of the patent.

The licensing contract shall be drawn up in writing and signed by the parties.

Article 70: The licensing contract must be entered in the special patent register maintained by the Industrial Property Director.

It shall only become binding on third parties once it has been entered in the above-mentioned register and published in the forms provided for in Chapter IV, Section 8.

Article 71: The license shall be struck from the register at the request of the patent holder or licensee upon presentation of proof that the licensing contract has expired or been terminated.

Article 72: Unless stipulated otherwise in the licensing contract, the granting of a license shall not preclude for the licensor either the possibility of granting licenses to other persons provided he informs the licensee, or that of himself exploiting the patented invention.

Section 2: Unenforceable clauses

Article 74: Any clauses contained in the licensing contracts or agreed in relation to these contracts shall be null and void if they impose on the licensee, in industrial or commercial terms, limitations which do not stem from the rights conferred by the patent or are not necessary for the maintenance of such rights.

Article 75: Unless stipulated otherwise in the licensing contract, the license may not be assigned to third parties and the licensee shall not be authorized to grant sub-licenses.

Article 76: The following shall not be considered limitations as defined by Article 74:

1. Restrictions concerning the measurement, scope or term of exploitation of the patented invention;
2. The obligation for the licensee to refrain from any act which could harm the validity of the patent.

Article 77: Ascertainment of the unenforceable clauses as defined by Articles 74 to 76 shall be made by the competent court, at the request of any interested party.

Chapter VII: Compulsory and non-voluntary licenses

Section 1: Compulsory licenses for failure to work

Article 78: At the request of any interested person or the Public Prosecutor's Office, submitted after the expiration of a period of four years as from the date of filing of the patent application or three years as from the grant of the patent, it being necessary to apply the period which expires last, a compulsory or non-voluntary license may be granted if one or more of the following conditions has been met:

1. The public interest, in particular national security, nutrition, health or the development of other vital sectors of the national economy, so requires;
2. A judicial or administrative body has deemed that the way in which the patent holder or his licensee are exploiting the invention is abusive, anti-competitive or fails to meet reasonable conditions of demand for the protected product in sufficient quality and quantity;

3. The refusal of the patent holder to grant licenses on reasonable commercial conditions and terms;
4. The establishment or development of industrial or commercial activities suffers unfair or substantial damage.

Nevertheless, a compulsory license may not be granted if the patent holder gives legitimate grounds to justify his failure to work the invention.

Section 2: Compulsory licenses for dependent patents

Article 79: In the event that an invention protected by a patent cannot be used without infringing the rights attached to a prior patent whose holder refuses to authorize use on reasonable commercial conditions and procedures, the holder of the subsequent patent may obtain a non-voluntary license from the court for such use, on the same conditions as those which apply to the non-voluntary licenses granted under Article 78 as well as on the following additional conditions:

1. The invention claimed in the subsequent patent represents significant technical progress of considerable economic interest in relation to the invention claimed in the prior patent;
2. The holder of the prior patent is entitled to a reciprocal license on reasonable conditions to use the claimed invention;
3. The use authorized in relation to the prior patent shall be non-transferable unless the subsequent patent is assigned as well.

Section 3: Compulsory licenses granted by the Minister responsible for trade

Article 80: The Minister may decide that, even without the consent of the patent holder, a State service or a third party designated by him may exploit the invention.

Every request for compulsory licensing shall be examined by the Minister on its own merits. Exploitation of the invention shall be limited to the purposes for which the license was granted and shall be subject to the payment, to the patent holder, of appropriate compensation according to the case at hand, in view of the economic value of the Minister's decision, as it is determined in said decision and, if the decision is taken on the basis of a court judgment, in view of the need to correct anti-competitive practices.

The Minister shall take his decision after hearing the patent holder and any interested persons, if they wish to be heard.

Article 81: Decisions relating to compensation for a compulsory license covering a patent claiming a pharmaceutical product or manufacturing process for a pharmaceutical product must take into consideration, as the case may be, the procedures and conditions set in the decision of the WTO General Council of August 30, 2003, if no other process for manufacturing the same product is known or available.

Article 82: The Minister may, at the patent holder's request and after hearing the parties, modify the terms of the decision authorizing the exploitation of the patented invention insofar as a change in circumstances warrants such modification.

Article 83: The Minister shall put an end to the compulsory license, at the patent holder's request, if he is convinced that the circumstances which led him to take his decision have ceased to obtain and shall not reoccur or that the State service or third party appointed by him has failed to respect the terms of the decision.

Article 84: The compulsory license may only be transferred with the firm or goodwill of this person or with the part of the firm or goodwill within which the patented invention is exploited.

Article 85: The compulsory license shall always be non-exclusive. As a result, it shall not prohibit:

- exploitation of the invention by the patent holder himself, either by manufacturing in Burundi, by import, or by both means;
- signature of licensing contracts by the patent holder;
- continued exercise, by the patent holder, of the rights granted to him.

Article 86: A request for a compulsory license must be addressed to the Minister responsible for trade.

It must be accompanied by proof indicating that the patent holder has refused to grant the applicant a contractual license on reasonable conditions and procedures and within a reasonable time frame.

Save in exceptional circumstances, the maximum period shall be six months between the date on which the patent holder was informed of the request for a voluntary license and the date on which the applicant was informed by the patent holder of the final decision to reject the proposal.

Article 87: Evidence of an attempt to obtain a voluntary license, as defined by Article 86, shall not be required in case of a national emergency or in other situations of extreme urgency, in case of non-commercial public use or if the license is granted to remedy a practice that has been recognized as anti-competitive at the conclusion of judicial or administrative proceedings.

Notwithstanding, in such a case, the patent holder must be informed of the decision taken.

Article 88: Exploitation of the invention by the State service or the third party to which/whom the Minister has granted a license must be primarily aimed at supplying the market in Burundi, unless the compulsory license concerns a patent relating to a pharmaceutical product or a manufacturing process for a pharmaceutical product, provided that no other process for manufacturing the

same product is known or available and that the license is for the export of patented products or products manufactured by means of the patented process in a foreign territory or country with non-existent or insufficient manufacturing capacities, in accordance with the procedures set by the decision of the WTO General Council dated August 30, 2003.

Article 89: Compulsory licenses for the exploitation of inventions in the field of semi-conductor technology shall only be granted for non-commercial public use or if an administrative or judicial body has ruled that the way in which the patented invention is exploited by the patent holder or his licensee is anti-competitive.

Article 90: In the event that a compulsory license is granted under Article 80, the holder of the first patent shall be entitled to a reciprocal license, on terms to be determined in the regulations, to exploit the invention claimed in the second patent.

The license granted for the first patent may not be assigned unless the second patent is assigned.

Section 4: Grant of a compulsory license by the courts

Article 91: Requests for the grant of a compulsory license shall be filed with the commercial court of the patentee's domicile, or if the patentee is domiciled abroad, with the court of the place where domicile has been elected or an agent authorized for filing purposes.

The patent holder or his agent shall be notified of the request within eight days at the latest.

Article 92: The request must contain:

- the name and address of the applicant;
- the title of the patented invention and the patent number for which the compulsory license is sought;
- proof that the industrial exploitation of the patented invention does not meet reasonable conditions of demand for the protected product;
- proof that the applicant first wrote by registered letter to the patent holder asking him for a contractual license, but was not able to obtain such a license from him on commercial conditions and procedures within a reasonable time frame;
- proof that the applicant is capable of industrially exploiting the patented invention.

Article 93: The court hearing the matter shall examine whether the request for the grant of a compulsory license meets the conditions set out in this Chapter.

After examining the case, the court shall take a decision to grant or refuse the non-voluntary license.

Article 94: In the event that the compulsory license is granted, the court's decision shall specify:

1. The field of application of the license, that is, the acts it covers and its period of validity, it being understood that a non-compulsory license does not cover the act of importing;
2. The fee due from the beneficiary of the license to the patent holder, in the absence of an agreement between the parties. This fee must be fair and may be subject to judicial review.

Article 95: The court shall notify the decision to the Industrial Property Director, the applicant and the patent holder. This same decision shall be brought to the attention of any beneficiary of a license whose name appears in the special patent register, by the Industrial Property Director. This decision shall be the subject of publication in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade.

Section 5: Appeals against decisions to grant a compulsory license

Article 96: The patent holder, the holder of a license whose name appears in the special patent register or any person who has requested the grant of a compulsory license may, within a period of one month, as from notification, lodge an appeal against the decision handed down by the first judge with the next higher legal instance.

Article 97: Appeals lodged against a decision to grant a compulsory license shall stay its execution. Decisions handed down on appeals shall be forwarded to the Industrial Property Director with a view to their publication.

Section 5: Rights and obligations of compulsory license holders

Article 98: Compulsory licenses shall authorize their holder to exploit a patented invention, in accordance with the conditions set by the court.

Article 99: The grant of a compulsory license shall not affect the licensing contracts or compulsory licenses in force and shall not preclude the signing of other licensing contracts or the grant of other non-voluntary licenses.

Nevertheless, the patentee may not sign licensing agreements on more favorable terms than those of the compulsory licenses.

Section 7. Limitations on compulsory licenses

Article 100: The holder of the compulsory license may not, without the patent holder's consent, authorize a third party to perform the acts which fall within the field of application of his non-voluntary license.

Notwithstanding the provisions of Article 84, a compulsory license may be transmitted with the license holder's establishment or with the part of this establishment which exploits the patented invention.

Section 8. Modification and withdrawal of the compulsory license

Article 101: At the request of the patent holder or compulsory license holder, the competent court may amend the decision to grant the compulsory license in the event that new facts so warrant.

Article 102: The court shall withdraw the compulsory license at the patent holder's request in one of the following cases:

1. the reasons for its granting have ceased to obtain;
2. the compulsory license holder has not respected the license's field of application;
3. the compulsory license holder is in arrears with the payment of the fee provided for in Article 94.

TITLE X: REGISTRATION OF UTILITY MODELS

Chapter 1. Registration of utility models

Section 1. Utility models suitable for registration

Article 103: An invention shall be suitable for registration as a utility model if it is new, involves a sufficiently inventive step, and is industrially applicable.

A utility model shall be new if there is no prior art.

Article 104: Prior art encompasses everything that has been made public, anywhere in the world, in a publication in tangible form or via oral disclosure, through use or in any other fashion, before the date of filing or, as the case may be, the date of priority of the application in which the invention is claimed.

Article 105: Disclosure of the invention shall not be taken into consideration if:

1. it occurs within the twelve months prior to the date of filing or, as the case may be, the date of priority of the application;
2. it arises directly or indirectly from fraudulent acts committed by the applicant or his successor in title;
3. it arises from an abuse committed by a third party towards the applicant or his successor in title.

Article 106: A utility model shall be deemed to involve a sufficiently inventive step if, for a person skilled in the art and average skill and know-how, given the differences and similarities between the utility model claimed and the prior art made public as defined in Article 103, the utility model cannot be easily deduced from the prior art of interest for an average person skilled in the art.

Article 107: A utility model shall be deemed suitable for industrial application if its subject matter can be entirely or partly manufactured or used in any kind of industry.

Any kind of industry shall be defined as designating any human economic activity leading to the production of goods and services, especially crafts, agriculture, fisheries and services.

Article 108: Utility models whose commercial exploitation must be banned on the territory of Burundi to protect public order or morality may not be registered.

Section 2. Right to the registration certificate for utility models

Article 109: The right to the registration certificate for a utility model shall belong to the inventor.

If several persons have made a utility model jointly, they shall be jointly entitled to the registration certificate.

Article 110: In the event that several persons have made the same invention independently of each other, the right to the registration certificate shall belong to the person who filed the application for which the date of filing, the validly claimed date of priority is the oldest, provided said application is not withdrawn, abandoned or rejected.

To establish the right of preference, the court shall take into consideration the subject matter claimed in the applications.

Article 111: The inventor shall be mentioned as such in the certificate unless, in a special written statement signed by him and addressed to the Industrial Property Director, he indicates that he does not wish to be mentioned. Any promise or undertaking given to anyone by the inventor to make such a statement shall have no legal effect.

Article 112: The right to the certificate may be assigned or bequeathed.

Chapter II: Subject matter excluded from protection by registration certificates for utility models

Article 113: The following shall be excluded from protection by the certificate:

- Discoveries, scientific theories and mathematical methods;
- Plans, principles or methods in the field of economic activities, in the exercise of purely intellectual activities, or in games;

- Methods of surgical or therapeutic treatment for the human or animal body, as well as diagnostic methods applied to the human or animal body; this provision shall not apply to products used for the implementation of one of these methods;
- Natural substances, even if they are purified, synthesized or isolated in another manner; this provision shall not apply to processes used to isolate these natural substances from their original environment;
- Known substances for which a new utilization has been discovered;
- Plants and animals, including parts thereof, other than microorganisms, and essentially biological processes for breeding plants or animals or parts thereof, other than non-biological and microbiological processes;
- Animal breeds and plant varieties;
- Registration certificates for utility models whose exploitation is contrary to public order or morality, it being understood that the exploitation of said certificate is not contrary to public order or morality owing to the sole fact that such exploitation is prohibited by legislation;
- Pharmaceutical products, up until January 1, 2016.

Article 114: The provisions of Article 113 shall not apply:

- to process certificates which consist in full or in part of procedures performed by a computer and run by a computer program;
- to product certificates consisting of elements of an invention implemented by a computer, in particular a machine-readable decipherable computer code stored on a material medium such as a computer diskette or hard drive or computer memory and a universal calculator, whose novelty in relation to prior art primarily stems from its combination with a specific software.

It is understood that persons applying for a utility model certificate linked to the computers in question have waived their right to any copyright protection.

Chapter III: Applications for registration certificates for utility models

Section 1. Filing of applications for registration

Article 115: Applications for registration certificates for utility models shall be filed with the Industrial Property Director. They shall comprise a request, a description, one or more claims, one or more drawings, as the case may be, and an abstract. Filing of the application shall be subject to payment of the prescribed fee.

Article 116: The request shall comprise a petition for the grant of a certificate, the name of the applicant, the inventor and, as the case may be, the agent and the other required information relating to these persons and to the title of the utility model.

In the event that the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the certificate.

Article 117: The description must disclose the utility model in a sufficiently clear and complete manner that a person skilled in the art and with average skill and know-how can carry it out.

It must in particular indicate how the claimed utility model enhances the utility or functionality of the object.

Article 118: The claims shall define the subject matter for which protection is sought. The description and the drawings may be used to interpret the claims. These must be clear, concise, and based entirely on the description.

Drawings shall be provided when they are necessary for understanding the utility model.

Article 119: The summary shall be used solely for providing technical information. It shall not be taken into consideration when assessing the scope of protection.

Article 120: The applicant may withdraw the application at any moment while it is pending before the decision to grant the registration certificate for the utility model.

Section 2. Unity of the invention, modification and division of the application

Article 121: The application may only cover a single utility model or a group of utility models related to each other in such a way that they form a single general inventive concept.

Article 122: The applicant may modify the application, but the modification must not go beyond the subject matter claimed in the initial application, until the time it is noted that the application meets the necessary conditions for the grant of the certificate.

Article 123: The applicant may divide the application into several applications called divisional applications up until the time when the application meets the necessary conditions for the grant of the certificate. However, divisional applications may not go beyond the subject matter claimed in the initial application and must cover an inventive concept in its entirety.

Each divisional application is supposed to bear the date of filing and, as the case may be, the date of priority of the initial application.

Section 3. Priority claims

Article 124: Any party wishing to claim the priority of a prior filing must attach to his application for a utility model certificate or forward to the Industrial Property Director at the latest 12 months as from the filing of his application the following:

1. A written statement indicating the date and number of this prior filing, the country in which it was made and the applicant's name;
2. A certified true copy of said prior application;
3. A written statement from the applicant or his successors in title authorizing him to claim the priority in question if he is not the author of this application.

Article 125: An applicant seeking to claim several rights of priority for a single application must, for each of them, comply with the same requirements provided for under Article 124.

He must further pay a fee for each right of priority claimed and produce proof of payment thereof within the same period of 12 months provided for under the same Article.

Article 126: Failure to produce in good time any of the above-mentioned items shall automatically lead to the loss of the right of priority claimed, for the sole application considered.

Any item which reaches the Industrial Property Director later than 12 months after the filing of the application for registration shall be deemed inadmissible.

Article 127: The filing, in Burundi, of this application for claiming priority before the expiration of the 12-month time limit may not be invalidated by any act issued in the meanwhile and in particular by another filing, a publication of the invention or its exploitation.

Section 4. Applications for registration certificates for utility models filed abroad

Article 128: Anyone wishing to claim a filing from a prior application concerning the same invention as the one claimed in the application filed in Burundi must produce:

1. a document indicating the application and the number of any application for a certificate filed abroad;
2. a copy of all communications received by the applicant relating to the results of any search or examination conducted with regard to the foreign application;
3. a copy of the certificate issued on the basis of the foreign application;
4. a copy of any final decision rejecting the foreign application or the request for grant made in the foreign application;

5. a copy of any final decision revoking the certificate granted on the basis of the foreign application.

Section 5. Date of filing and classification

Article 129: The Industrial Property Director shall assign, as the filing date, the date of receipt of the application, provided that it contains:

1. an express or implicit indication according to which the grant of a utility model certificate has been applied for;
2. indications making it possible to establish the applicant's identity;
3. Part of the indications which constitute a description of a utility model;
4. One or more claims specifying the characteristic elements of the utility model.

Article 130: In the event that the Industrial Property Director notes, upon receipt of an application for filing, that it does not meet the conditions set out in Article 129, he shall invite the applicant to make the necessary correction and shall assign, as the date of filing, the date of receipt of the required correction.

Nevertheless, if no correction is made, the application shall be deemed not to have been filed.

Article 131: In the event that the application refers to drawings that have not been included, the Industrial Property Director shall invite the applicant to supply the missing drawings. If the applicant complies, the Industrial Property Director shall assign, as the date of filing, the date of receipt of said drawings.

Should this not be the case, he shall assign as a date of filing the date of receipt of the application, and shall consider any reference to these drawings as non-existent.

Article 132: The Industrial Property Director shall order the utility model that forms the subject matter of an application for a certificate to be classified. Classification shall take place according to the international classification.

Section 6. Examination of applications and grant of certificates

Article 133: For any application for a registration certification for a utility model, an examination shall be made to ascertain that:

1. the creation which forms the subject matter of the application for a registration certificate is not excluded under the provisions of Article 113 and 114 of this Law on the protection granted by the utility model;
2. the claims comply with the provisions of Article 129 of this Law;

3. the provisions of Article 121 of this Law are respected;
4. when the application for the registration certificate is filed, no application for a registration certificate filed elsewhere or benefiting from validly claimed prior priority concerning the same invention is about to be granted;
5. the invention is new and is industrially applicable.

Article 134: In the event that the Industrial Property Director notes that the application meets the conditions indicated in Article 133, he shall grant the requested utility model certificate.

To this end, he shall notify the applicant that the certificate has been granted and give him a copy after registering it.

In addition, the Industrial Property Director shall publish a reference to the grant of the certificate in the Official Journal of Burundi and shall make copies of the certificate available to the public subject to payment of the prescribed fee.

Article 135: Any application that does not comply with the requirements set out in Articles 115 to 122 shall be deemed irregular. Such irregularity shall be notified to the applicant or his agent, who shall be invited to rectify the documents within a period of three months as from the date of notification.

This period may be extended by 30 days in the case of justifiable need, at the request of the applicant or his agent.

The application which has been thus rectified within said period shall retain the date of the initial application. If the rectified documents are not supplied in time, the application for the registration certificate for the utility model shall be rejected.

Article 136: The Industrial Property Director, at the certificate holder's request, shall make to the text or drawings of the certificate the modifications designed to limit the scope of the protection granted, provided these modifications do not cause the claimed subject matter contained in the certificate to go beyond the subject matter claimed in the initial application on the basis of which the certificate was issued.

Section 7. Rights conferred by the utility model certificate

Article 137: Utility model certificates shall give their holder the right to prevent third parties from exploiting a utility model registered in Burundi.

Exploitation of a utility model shall be defined as the following acts:

- making, importing, offering for sale, selling and using the product;
- holding this product with a view to offering it for sale, selling it or using it.

Article 138: The certificate holder shall also be entitled to assign or bequeath the utility model and to sign licensing contracts.

Article 139: The holder of the utility model certificate shall be entitled to institute judicial proceedings before the competent judge against any party who counterfeits a utility model certificate by performing, without his consent, one of the acts which are mentioned in Article 137 or which make it likely that counterfeiting will be committed.

Section 8. Limitation of rights conferred by utility model certificates

Article 140: The rights arising from a utility model certificate shall not cover:

1. acts relating to goods placed on sale in Burundi or in any other country by the holder of the utility model certificate or with his consent which lead to the exhaustion of the rights of the holder of the utility model certificate;
2. the use of goods on board aircraft, land vehicles or foreign vessels which enter, temporarily or accidentally, the airspace, territory or waters of Burundi;
3. acts relating to utility model certificates which are performed solely for purposes of experimentation in the case of scientific and technical research;
4. acts performed by any party who, in good faith, before the date of filing or, if priority is claimed, on the date of priority of the application on the basis of which the certificate is granted, used the utility model certificate or made effective and serious preparations to use it in the case of acts which do not differ in terms of their nature or purpose from the previous effective or envisaged use;
5. acts by a person who makes, manufactures, uses or sells a utility model certificate solely for purposes which are reasonably related to the gathering and transmission of information required by a law in Burundi or a country other than Burundi regulating the manufacture, use or sale of any product.

Article 141: The user's right referred to in Article 140 may only be transferred or devolved with the firm or the company or the part of the firm or company in which the use or preparations for use took place.

Article 142: Without prejudice to the provisions of Article 140, the Minister responsible for trade shall be entitled to declare on his own initiative or at the request of any interested party that the rights conferred by the utility model certificate have been exhausted and to authorize third parties to import the product produced directly or indirectly by means of a utility model certificate from another territory if this product is not available in the territory of Burundi or is available in insufficient quantity or quality to meet local demand or at prices which the Minister deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that:

1. the product has been introduced into commercial channels in the territory from which it is to be imported by the certificate holder or with his consent;
2. the certificate claiming the product or process used for its manufacturing is in force in the territory from which the product is to be imported and is the property of the same person who holds the certificate in Burundi or that of a person under his control.

Article 143: In the event that the importer has not achieved the goal that justified the decision by the Minister responsible for trade to consider the rights granted by the certificate exhausted, the Minister shall revoke the authorization on his own initiative or at the certificate holder's request.

Article 144: In the event that the conditions which led to the decision by the Minister to consider the utility model certificate exhausted no longer obtain, the Minister responsible for trade may, on his own initiative or at the request of the certificate holder or the owner of the mark, revoke the authorization, provided that that the importer's legitimate interests are taken into consideration, primarily to the effect that the importer shall retain the right to clear his stock.

Section 9. Term of protection and annual fees

Article 145: The utility model certificate shall expire ten years after the corresponding application is filed.

In the event that the utility model certificate is issued more than four years after the date of filing, the term of protection conferred by this certificate shall be automatically extended by the entire period which has elapsed since the date of filing.

Article 146: A progressive annual fee must be paid in advance to the Industrial Property Director as from the first year following the date on which the application for the utility model certificate is filed, in order to maintain the validity of the utility model certificate or its application.

A holder of a utility model certificate who has failed to pay his annuity on the date on which the application for the utility model certificate is filed shall lose all his rights.

Nevertheless, the holder of the utility model certificate shall have a six-month grace period to make payment. Should this be the case, he shall be obliged to pay a surcharge for late payment.

Section 10. Re-establishment of the utility model certificate

Article 147: If the protection granted by a utility model certificate has not been renewed owing to circumstances beyond the holder's control, he or his successors in title may, subject to payment of the prescribed annual fee and, as the case may be, payment of a surcharge for late payment, request its restoration within a period of six months as from the date on which the above-mentioned circumstances

ceased to obtain and at the latest within a period of two years as from the date on which renewal should have been made.

Article 148: The request for the re-establishment of the certificate, accompanied by proof of payment of the fee, and as appropriate the surcharge for late payment, and the corresponding grounds, shall be addressed to the Industrial Property Director.

He shall ascertain whether the above-mentioned grounds have been substantiated and restore the certificate. Should this not be the case, he shall reject the request.

Article 149: The re-establishment of a utility model certificate shall not result in an extension of the maximum term of the certificate.

Any third parties who have started exploiting a certificate after its expiration shall be entitled to continue such exploitation.

Article 150: The re-establishment of a utility model certificate shall also result in the re-establishment of the corresponding certificate of addition obtained by one of the successors in title and shall benefit all the others.

Re-established certificates shall be published by the Industrial Property Director in the forms prescribed by law.

Article 151: Decisions of the Industrial Property Director shall be subject to review by an appeals commission within a period of 30 days as from the date of notification.

The make-up, tasks and functioning of said commission shall be determined by decree.

Chapter IV. Licensing contracts

Section 1. Signature and term of licensing contracts

Article 152: Holders of a utility model certificate may, by contract, grant a natural person or legal entity a license enabling him/it to exploit the utility model certificate. The term of the license may not exceed that of the certificate.

Licensing contracts shall be drawn up in writing and signed by the parties.

Article 153: Licensing contracts must be entered in the special register for utility model certificates. They shall only be binding on third parties once they have been entered in the above-mentioned register and published in the forms prescribed by this Law.

Article 154: The license shall be struck from the register at the request of the certificate holder or licensee upon presentation of proof of the expiration or termination of the licensing contract.

Article 155: Unless stipulated otherwise in the licensing contract, the grant of a license shall not preclude for the licensor the possibility of granting licenses to other persons provided that he informs the licensee, or that of himself exploiting the utility model certificate.

Article 156: The grant of an exclusive license shall prevent the licensor from giving licenses to other persons and, unless the licensing contract stipulates otherwise, from exploiting the utility model certificate himself.

Section 2. Unenforceable clauses

Article 157: Unenforceable clauses shall be defined as those contained in licensing contracts or agreed in relation to such contracts, insofar as they impose on the licensee, from an industrial or commercial standpoint, limitations which do not arise from the rights granted by the utility model certificate and which are not necessary for the maintenance of such rights.

Article 158: Unless stipulated otherwise in the licensing contract, the license may not be transferred to third parties, and the licensee shall not be entitled to grant sub-licenses.

Article 159: The following shall not be considered limitations covered by Article 157:

1. restrictions concerning the measurement, scope or term of exploitation of the utility model certificate;
2. the obligation for the licensee to refrain from any act likely to harm the validity of the utility model certificate.

Article 160: DETERMINATION OF THE UNENFORCEABLE CLAUSES COVERED BY ARTICLES 157, 158 AND 159 SHALL be made by a commercial court, at the request of any interested party.

Chapter V. Compulsory or non-voluntary licenses

Section 1. Compulsory licenses for failure to work

Article 161: At the request of any interested person, submitted after the expiration of a period of four years as from the date on which the application for the certificate was filed or three years as from the grant of the utility model certificate, as the period which expires the latest must be applied, a compulsory or non-voluntary license may be granted if one or more of the following conditions has been met:

1. The public interest, in particular national security, nutrition, health or the development of other sectors which are vital for the national economy, so requires;
2. A judicial or administrative body has deemed that the manner in which the utility model certificate holder or his licensee are exploiting the invention is abusive, anti-competitive or fails to meet reasonable conditions of demand for the protected product in sufficient quality and quantity;
3. The refusal of the patent holder to grant licenses on reasonable commercial conditions and terms;
4. The establishment or development of industrial or commercial activities suffers unfair or substantial damage.

A compulsory license may not be granted if the holder of the utility model certificate justifies the failure to exploit on legitimate grounds.

Section 2 Compulsory licenses for certificates of dependency

Article 162: If the utility model certificate protected by the certificate cannot be exploited without infringing the right attached to a prior utility model certificate whose holder refuses to authorize use on reasonable commercial conditions and procedures, the holder of the subsequent certificate may obtain a non-voluntary license from the court for such use, on the same terms as those which apply to non-voluntary licenses granted under Article 161 as well as on the following additional conditions:

1. the utility model invention claimed in the subsequent utility model certificate represents significant technical progress of considerable economic interest in relation to the invention claimed in the prior utility model certificate;
2. the holder of the prior certificate shall be entitled to a mutual license on reasonable conditions to use the claimed utility model certificate;

3. the use authorized in relation to the prior certificate shall only be assignable if the subsequent certificate is also assigned.

Section 3. Grants of compulsory licenses by the court

Article 163: Requests for the grant of a compulsory license shall be lodged with the commercial court of the domicile of the holder of the utility model certificate, or if he is domiciled abroad, with the court of the place at which he has elected domicile or appointed an agent for filing purposes.

The certificate holder or his agent shall be notified of the request within a time limit of eight days at the latest.

Article 164: The request must contain:

- the name and address of the applicant;
- the title of the utility model certificate and the certificate number for which the compulsory license is sought;
- proof that the industrial exploitation of the utility model certificate does not meet reasonable conditions of demand for the protected product;
- proof that the applicant first wrote by registered letter to the holder of the utility certificate model, asking him for a contractual license, but was not able to obtain such a license from him on commercial conditions and procedures within a reasonable time frame;
- proof that the applicant is capable of industrially exploiting the certificate;
- the utility model.

Article 165: The court hearing the matter shall ascertain whether the request for the grant of the compulsory license meets the conditions set out in Articles 162 to 164.

After examining the file, the court shall take a decision to grant or reject the non-voluntary license.

Article 166: In the event that the compulsory license is granted, the decision of the court shall specify:

1. the field of application of the license, that is, the acts it covers and its term of validity, it being understood that a non-compulsory license shall not cover the act of importing;
2. the fee due from the license holder to the certificate holder failing an agreement between the parties must be fair and may be subject to judicial review.

Article 167: The court shall notify the decision to the Industrial Property Director and the applicant as well as the certificate holder. The same decision shall be brought to the attention of any holder of a license whose name appears in the special certificate register by the Industrial Property Director. This decision shall be the subject of publication in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade.

Section 4. Appeals against decisions to grant a compulsory license

Article 168: Holders of a utility model certificate, certificate holders whose name appears in the special certificate register or any person having requested the grant of a compulsory license may, within a period of one month, as from notification, lodge an appeal with the higher competent legal instance against the decision handed down by the first judge.

Article 169: Appeals lodged against a decision to grant a compulsory license shall stay the execution thereof. The decision on the appeal shall be communicated to the Industrial Property Director with a view to its publication.

Section 5. Rights and obligations of compulsory license holders

Article 170: A compulsory license shall entitle its holder to exploit the utility model certificate in accordance with the conditions set by the court.

Article 171: The grant of the compulsory license shall not affect existing licensing contracts or compulsory licenses and shall not preclude either the signature of other licensing contracts or the grant of other non-voluntary licenses.

Nevertheless, the holder of the utility model certificate may not sign licensing contracts on more favorable conditions than those of the compulsory licenses.

Section 6. Limitation on compulsory licenses

Article 172: Holders of compulsory licenses may not, without the consent of the holder of the utility model certificate, grant authorization to a third party to accomplish acts which fall within the field of application of a non-voluntary license.

Compulsory licenses may be transmitted with the establishment of the holder of the license or the part of this establishment which exploits the utility model certificate.

Section 7. Modification and withdrawal of compulsory licenses

Article 173: At the request of the holder of a utility model certificate or the compulsory license holder, the competent court may amend the decision to grant the compulsory license if new facts so warrant.

Article 174: The court shall withdraw the compulsory license at the request of the holder of the utility model certificate in one of the following cases:

1. the grounds for its granting no longer obtain;
2. the holder has failed to respect the field of application of his license;
3. the holder is late in paying the fee provided for in Article 166.

Chapter IV. Provisions common to patents and utility model certificates

Section 1. Actions for nullity of a patent or utility model certificate

Article 175: A commercial court shall revoke the utility model certificate or patent if the person requesting revocation proves that one of the conditions provided for in Articles 8 to 32 relating to patents and in Articles 91 to 96 and Article 103 relating to utility model certificates has not been met or that the certificate holder is not the inventor or his successor in title.

Article 176: If grounds for revocation have only been established for part of the invention or utility model certificate, only the corresponding claim(s) shall be revoked.

Article 177: Any revoked patent or utility model certificate, or any revoked claim or part of a revoked claim, shall be deemed to be null and void on the date on which the patent or certificate is granted.

Article 178: In the event of a legal dispute concerning the right to the patent or the utility model certificate, the interested person may ask the court to transfer the title to him rather than revoking it.

Article 179: The court's final decision shall be notified to the Industrial Property Director, who shall register and publish it without delay.

Section 2. Conversion of applications for patents or utility model certificates

Article 180: Before the technical examination, an application for a patent or a utility model certificate or in any event, before the grant of a patent or the rejection of a patent application, the applicant may, subject to payment of the prescribed fee, turn his application into an application for a utility model certificate to which the date of filing of the initial application has been assigned.

Article 181: Before the grant of a utility model certificate or the rejection of an application for a utility model certificate, the applicant may, subject to payment of the prescribed fee, turn his application into a patent application to which the date of filing of the initial application is assigned.

Article 182: A request may not be converted more than once pursuant to Articles 180 and 181.

Article 183: The provisions of Title I of Part Two relating to patents as well as other provisions which apply to patents and patent applications shall apply to utility model certificates if they are compatible or have not been replaced by the provisions of this Title.

TITLE III. INDUSTRIAL DESIGNS

Chapter I. Designs accepted for registration

Section 1. Registration of industrial designs

Article 184: To be accepted for registration, an industrial design must be new.

An industrial design shall be considered to be new if it has not been disclosed in any part of the world, by publication in a tangible form or by use or in any other form prior to the date of filing or, as the case may be, the date of priority of the application for registration.

Industrial designs and references which are contrary to public order or morality may not be accepted for registration.

Section 2. Rights to industrial designs and references to the creator

Article 185: An industrial design shall be owned by the person who has created it or to his successors in title, but the first applicant shall be considered to be the creator thereof, unless there is evidence to the contrary.

If several persons have jointly created a design, the right to the industrial designs shall belong to them.

Article 186: If the industrial design has been created by an employee in the performance of an employment contract, the right in the industrial designs shall belong to the employer, unless the contract stipulates otherwise.

In the event that the financial gains derived by the employer are disproportionate in relation to the employee's salary and in relation to the gains which the employer could reasonably expect from his employee's inventive input when he hired him, the employee shall be entitled to fair compensation.

Article 187: If the invention has been made by an employee outside the performance of an employment contract with the help of material, information or know-how belonging to the employer, the right to the industrial designs shall belong to the employer, unless the contract stipulates otherwise.

The employee who has made the invention shall be entitled to compensation equivalent to at least one-third of the net direct and indirect gains which the employer has obtained from exploiting the invention.

The obligation to pay compensation shall arise from the making of a patentable invention, not the patent.

Any promise or undertaking which the inventor may give his employer to the effect that he waives the compensation to which he is entitled under the previous sub-paragraph, shall have no legal effect.

Article 188: If the employer does not file an application for the industrial design in the year following the date on which the employee shared his invention with him, the right in the industrial designs, including the right to transfer this right to any interested third party and to grant a license for the industrial design or to assign it, if it has been granted, shall belong to the employee.

Article 189: Any invention claimed in an application for an industrial design which is filed by the employee in the year following the expiration of the employment contract and which fits into the main activities of the former employer shall be considered to have been made within the framework of the contract which has expired, unless the employee proves otherwise.

Chapter II. Applications to register industrial designs

Section 1. Filing of applications

Article 190: Applications for the registration of an industrial design shall be filed with the Industrial Property Director, and shall comprise a request, drawings, photographs or other appropriate graphic representations of the subject matter incorporating the industrial design and an indication of the type of products for which the industrial design is to be used. In the case of a two-dimensional drawing, the application for registration may be accompanied by a copy of the subject matter incorporating the design. The application shall be subject to payment of the prescribed fee.

Article 191: If the applicant is not the creator, the request must be accompanied by a statement justifying his right to register the industrial design.

Article 192: Two or more industrial designs may be the subject of the same application, provided they come under the same class in the international classification or refer to the same set or assortment of articles.

Article 193: At the time of filing, the application may contain a request for the postponement of the publication of the design after its registration for a period not exceeding 12 months as from the date on which the application was filed or, if priority is claimed, as from its date of priority.

Article 194: While the application is pending, the applicant may withdraw it at any time.

Section 2. Examination, registration or publication of industrial designs

Article 195: The Industrial Property Director shall assign as the date of filing the date on which the application was received, provided that, on that date, the application contained indications making it possible to establish the identity of the applicant and a graphic representation of the subject matter incorporating the industrial design.

Article 196: Once the date of filing has been assigned, the Industrial Property Director shall examine whether the application meets the conditions set out in Articles 190 to 193 and in the regulations, and verify that the prescribed fee has been paid.

Article 197: In the event that the Industrial Property Director notes that the conditions set out in Articles 190 to 193 have been met, he shall publish in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade a notice that he is prepared to register the industrial design; publish a reference to the registration; and give the applicant a certificate of registration for the industrial design. Should this not be the case, he shall reject the application.

Article 198: Within a period of 90 days as from the publication of the notice referred to in Article 197, the applicant must pay the prescribed fee, the amount of which shall be set in such a way as to cover the costs of registration, publication and the grant of the certificate of registration, as well as the cost of protection for a period of five years.

If the fee is not paid within the time limit, the Industrial Property Director may extend the time limit of 90 days if it has been established that the applicant can provide proof of his inability to pay the fee within the prescribed time limit.

Should this not be the case, he shall reject the application. Rejected applications may not be restored.

Article 199: Notwithstanding the provisions set out in Article 197, if a request for postponement of publication has been submitted under Article 193, neither the representation of the industrial design nor the file relating to the application may be made available to the public for consultation following the registration of the industrial design.

Should this be the case, the Industrial Property Director shall publish a notice relating to the postponement of publication of the industrial design indicating the identity of the holder of the registration, the date of filing of the application, the term of the period for which postponement has been requested, and any other required information.

Upon expiration of the postponement period, the Industrial Property Director shall publish the registered industrial design.

Article 200: The initiation, within the period of postponement, of judicial proceedings relating to a registered industrial design shall be subject to the proviso that the conditions contained in the register and in the file relating to the application are communicated to the person against whom the judicial proceedings have been brought.

Chapter III. Priority claims

Article 201: Anyone wishing to claim priority for a prior filing must attach the following to his application for the registration of an industrial design, at the latest within a

period of 12 months calculated as from the filing of his application, and send to the Industrial Property Director:

1. a written statement indicating the date and number of this prior filing, the country in which it was made, and the applicant's name;
2. a certified true copy of said prior application;
3. written authorization from the applicant or his successors in title to claim the priority in question if he is not the author of this application.

Article 202: An applicant wishing to claim several rights of priority for a single application must observe the same instructions set out in Article 201 for each of them.

In addition, he must pay a fee for each right of priority claimed and provide proof of payment thereof within the same time limit of 12 months provided for in this same Article.

Article 203: Failure to provide in good time any of the documents referred to in Article 201 shall automatically lead to the loss of the benefit of the right of priority claimed, for the sole application considered.

Article 204: The filing, in Burundi, of this application for claiming priority before the expiration of the period of 12 months may not be invalidated by any act issued in the meanwhile, in particular by another filing, a publication of the creation or its exploitation.

Chapter IV. Rights conferred by registration, term and renewal

Section 1. Rights conferred by certificates of registration for industrial designs

Article 205: A certificate of registration for an industrial design shall entitle its holder to prevent third parties from exploiting an industrial design registered in Burundi.

Exploitation of a registered industrial design shall mean the manufacture, sale or import of goods incorporating the industrial design in question.

Section 2. Limitation of the rights granted by certificates of registration for industrial designs

Article 206: The rights arising from the certificate of registration for an industrial design shall not cover acts relating to goods placed on sale in Burundi or in any other country by the patent holder or with his consent.

Article 207: Without prejudice to the provisions of Article 185, the Minister responsible for trade shall be entitled to declare, on his own initiative or at the request of any interested party, that the rights to the registration of an industrial design have been exhausted and to authorize third parties to import the registered product or a product created directly or indirectly by means of a certificate from another territory if this product is not available in the territory of Burundi or is available in insufficient quality or quantity to meet local demand or at prices which the Ministry deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that:

1. The product has been introduced into commercial channels in the territory from which it is to be imported by the certificate holder or with his consent;
2. The certificate claiming the product or process used for its creation is in force in the territory from which the product is to be imported and is the property of the same person who holds the certificate in Burundi or that of a person under his control.

Article 208: In the event that the importer has not reached the goal which justified the decision by the Minister to consider the rights to the certificate to be exhausted, the Minister shall revoke the authorization on his own initiative or at the request of the certificate holder.

Article 209: In the event that the conditions which led to the decision by the Minister to consider the certificate to be exhausted no longer obtain, the Minister may, on his own initiative or at the request of the certificate holder or the owner of the mark, revoke the authorization, provided that the legitimate interests of the importer are safeguarded, primarily to the effect that the importer shall retain the right to clear his stock.

Article 210: Holders of the registration of an industrial design shall be entitled to institute judicial proceedings against anyone who infringes the rights arising from the registration of the design by performing, without their consent, one of the acts mentioned in Article 205 or by performing acts which make it likely that there will be a risk of infringement.

Section 3. Term of validity, fees and expiration

Article 211: The term of validity of the registration of an industrial design shall be five years as from the date on which the application for registration is filed.

At the holder's request, in accordance with the regulations and subject to payment of the prescribed fee, registration may be renewed for two consecutive periods of five years each.

Article 212: A six-month grace period shall be granted for payment of the renewal fee after the due date, subject to payment of the surcharge for late payment. Should this not be the case, the registered design shall be invalidated

Article 213: Registered designs which have been invalidated may not be restored.

Chapter V. Licensing contracts for industrial designs

Section 1. Signature of licensing contracts

Article 214: Holders of industrial designs may, by contract, give any natural person or legal entity a license enabling him/it to exploit the design.

The term of the license may not exceed that of the registration of the design.

On pain of nullity, the licensing contract must be drawn up in writing and signed by the contracting parties.

Article 215: Licensing contracts must be entered in the special register for designs kept by the Industrial Property Director, subject to payment of the prescribed fee. Licenses shall only be binding on third parties once they have been entered therein and published in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade.

Article 216: The entry for a license shall be struck out at the request of the holder of the design or the license holder upon presentation of proof that the license has expired.

Section 2. Unenforceable clauses

Article 217: The following clauses shall be deemed unenforceable: clauses contained in licensing agreements or agreed in relation to such contracts, insofar as they impose on the license holder, from an industrial or commercial standpoint, limitations which do not arise from the rights conferred by the registration of the design or which are not necessary for the maintenance of such rights.

Article 218: Determination of the unenforceable clauses covered by Article 217 shall be made by a commercial court at the request of any interested party.

TITLE IV. LAYOUT DESIGNS FOR INTEGRATED CIRCUITS

Chapter 1. Layout designs for integrated circuits accepted for registration

Section 1. Registration

Article 219: To be accepted for registration, a layout design must be original. A layout design shall be considered original if it is the fruit of the intellectual effort of its creator and if, at the time of its creation, it is not common for creators of layout designs and manufacturers of integrated circuits.

Article 220: Registration of the layout design may only be requested if it has not yet been commercially exploited or if it has been commercially exploited for a maximum of two years, anywhere in the world.

Section 2. Rights to layout designs for integrated circuits

Article 221: The right to protection for the layout design shall belong to the creator of the design. It may be transferred *inter vivos* or bequeathed. In the event that several persons have jointly created a layout design, the right shall belong to them jointly.

For the purposes of this Part, owner shall mean the natural person or legal entity considered to be the beneficiary of the protection within the meaning of this Article.

Article 222: Protection under this part may be obtained for layout designs for integrated circuits if they are original as defined by Article 219.

Article 223: A layout design consisting of a combination of elements and interconnections which are routine shall only be protected if the combination, taken as a whole, is original within the meaning of Article 219.

Chapter II. Applications for registration

Section 1. Filing of applications

Article 224: Applications for registration of layout designs must be filed in writing with the Industrial Property Director. A separate application must be filed for each layout design.

Article 225: Applications must:

- contain a request for the layout design to be entered in the register of layout designs as well as a brief and accurate description of the layout design;
- indicate the applicant's name, address and nationality and, if it is different from his address, his usual place of residence;

- be accompanied by the power of attorney containing the designation of the applicant's agent, as the case may be, a copy or drawing of the layout design as well as information defining the electronic function that the integrated circuit is designed to perform; however, the request does not necessarily have to contain the parts of the copy or drawing which refer to the way in which the integrated circuit is manufactured, provided that the parts presented suffice for the identification of the layout design;
- indicate the date of the first commercial exploitation of the layout design anywhere in the world or contain a statement to the effect that such exploitation has not yet commenced;
- provide elements establishing the right to protection under Article 221.

Article 226: In the event that the application fails to meet the requirements of Article 225, the Industrial Property Director shall inform the applicant of the irregularities and shall invite him to correct them within a period of two months.

If the irregularities are corrected within the period set, the Industrial Property Director shall assign as the date of filing the date on which the application was received, provided that, when it was received, the application contains an express or implicit statement that the registration of a layout design is sought and information making it possible to establish the applicant's identity, and that it is accompanied by a copy or drawing of the layout design.

If these conditions have not been met when the application is received but the irregularities have been corrected within the period set, the date of receipt for the required correction shall be considered to be the date on which the application is filed. The Industrial Property Director shall confirm the date of filing and communicate it to the applicant.

If the irregularities are not corrected within the period set, the application shall be considered not to have been filed.

Article 227: Each application for protection of a layout design shall be subject to payment of the prescribed fee. In the case of failure to pay the fee, the Industrial Property Director shall inform the applicant that the application shall be considered not to have been made unless payment is made within a period of two months as from the date of notification. If the fee is not paid within this period, the application shall be considered not to have been filed.

Section 2. Examination of applications

Article 228: If the application meets the requirements set out in Articles 224 and 225, the Industrial Property Director shall have the layout design entered in the register of layout designs.

Article 229: The register of layout designs shall contain the number, title and date of filing of the layout design and, if it is indicated in the application under Article 225,

paragraph 3, the date of its first commercial exploitation anywhere in the world, as well as the owner's name and address and the other required information.

Any interested person may consult the register of layout designs and obtain extracts thereof, subject to payment of the prescribed fee.

Article 230: Registration of a layout design shall be published in the Official Journal of Burundi and on the Internet site of the Ministry responsible for trade.

Section 3. Invalidation

Article 231: Any interested person may request that the registration of a layout design be invalidated on the grounds that:

- the layout design may not be protected under Articles 219, 220, 222 and 223 of this Law;
- the owner is not eligible for protection under Article 221 of this Law;
- if the layout design has been the subject of commercial exploitation anywhere in the world, prior to the filing of the corresponding application for registration, this application was not filed within the period set in Article 220.

In the event that the grounds for invalidation only affect part of the layout design, only the corresponding part of the registration shall be invalidated.

Article 232: The request for invalidation of the registration of the layout design must be filed with the competent court. It must be substantiated.

In case of a legal dispute concerning the right to register the layout design, the interested person may ask the court to transfer the title rather than invalidating it.

Article 233: Any registration or part of the registration of an invalidated layout design shall be considered to be null and void as from the date on which protection took effect.

Article 234: The final decision of the court shall be notified to the Industrial Property Director, who shall enter it in the register and publish a corresponding notice in accordance with the provisions of the regulations.

Chapter III. Rights conferred by certificates for layout designs of integrated circuits

Section 1. Rights conferred

Article 235: Certificates for the layout designs of integrated circuits shall confer on their owners the right to prevent third parties from exploiting the layout design of integrated circuits registered in Burundi.

Exploitation of the layout design of integrated circuits shall be understood as the following acts:

- manufacturing, importing, offering for sale, selling or using the product;
- holding this product with a view to offering it for sale, selling it or using it.

Article 236: Certificate holders shall also be entitled to assign or bequeath the layout design of integrated circuits and to sign licensing contracts.

Article 237: Holders of certificates for the layout designs of integrated circuits shall be entitled to institute judicial proceedings with the competent judge against any person who counterfeits a certificate for the layout design of integrated circuits, performing without their consent any of the acts which are mentioned in Article 235 or which make it likely that counterfeiting will occur.

Section 2. Protection and limitation of the rights conferred by certificates for layout designs of integrated circuits

Article 238: The protection provided for under this Law shall be granted whether or not the integrated circuit in which the protected layout design is incorporated is itself incorporated in an article. Subject to the provisions of Article 239, the protection shall imply that the following acts are illegal if they are accomplished without the holder's authorization:

- reproduction, whether it be via incorporation in an integrated circuit or in another fashion, of the entirety of a protected integrated circuit or any part thereof, unless this involves the reproduction of a part that does not meet the requirement of originality laid down in Articles 219 and 223;
- the import, sale or distribution in any manner, for commercial purposes, of the protected layout of an integrated circuit in which the protected layout design is incorporated or of an article incorporating such an integrated circuit insofar as it continues to contain an unlawfully reproduced layout design.

Article 239: The effect of the protection conferred on a layout design under this Law shall not cover:

- reproduction of the protected layout design for private purposes or for the sole purposes of evaluation, analysis, research or teaching;
- incorporation, in an integrated circuit, of a layout design created on the basis of such an analysis or evaluation and itself featuring an originality as per Articles 219 and 223, or the performance, in relation to this layout design, of any of the acts referred to in Article 238;
- performance of any of the acts referred to in Article 238, paragraph 2, if such an act is performed in relation to a protected layout design, or an integrated circuit in which such a layout design has been incorporated, which has been placed on the market in Burundi by the holder or with his consent, leading to the exhaustion of his rights;

- performance of any of the acts referred to in Article 238, paragraph 2, if such an act is performed in relation to a protected layout design, or an integrated circuit in which such a layout design has been incorporated, which has been placed on the market of any territory or country by the holder or with his consent, leading to the exhaustion of his rights;
- performance of any of the acts referred to in Article 238, paragraph 2, in relation to an integrated circuit incorporating an unlawfully reproduced layout design or any article incorporating such an integrated circuit, if the person accomplishing or commissioning this act was not aware or had no reason to think, when purchasing the integrated circuit or the article incorporating such an integrated circuit, that it contained an unlawfully reproduced layout design;
- performance of any of the acts referred to in Article 238, paragraph 2, if such an act is performed in relation to an identical original layout design that has been created independently by a third party.

However, once this person has been duly notified that the layout design has been unlawfully reproduced, he may only perform any of the acts referred to above in relation to the stock he has or had ordered before being so notified, and must pay the holder an amount equivalent to a reasonable fee that would be due under a freely negotiated license for such a layout design.

Article 240: Without prejudice to the provisions of Article 239, paragraph 3, the Minister responsible for trade shall be entitled to declare, on his own initiative or at the request of any interested party, that the rights to the certificate for a layout design of integrated circuits have been exhausted and to authorize a third party to import the certified product or a product manufactured directly or indirectly by means of the certified invention from another territory if this product is not available in the territory of Burundi or is available in insufficient quality or quantity to meet local demand or at prices which the Minister deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that:

1. the product has been introduced into commercial channels in the territory from which it is to be imported by the certificate holder or with his consent;
2. the certificate claiming the product or process used to produce it is in force in the territory from which the product is to be imported and is the property of the same person who holds the certificate in Burundi or that of a person under his control.

Article 241: If the importer does not perform the function which justified the Minister's decision to consider that the holder's rights have been exhausted, the Minister shall revoke the authorization on his own initiative or at the holder's request.

Article 242: In the event that the conditions underlying the Minister's decision to consider that the holder's rights have been exhausted no longer obtain, the Minister may, on his own initiative or at the holder's request, revoke the authorization provided

that the legitimate rights of the importer are duly taken into consideration, primarily to the effect that the importer shall retain the right to clear his stock.

Section 3. Term of validity of protection

Article 243: The protection conferred on a layout design shall take effect:

- on the date of the first commercial exploitation of the layout design anywhere in the world, by the holder or with his consent, provided that an application for protection has been filed by the holder with the Industrial Property Director within the period set in Article 220;
- on the date of filing assigned to the application for registration of the layout design filed by the holder, if the layout design has not previously been commercially exploited anywhere in the world.

Article 244: The protection conferred on a layout design under this Law shall cease at the end of the tenth calendar year following the date on which it took effect.

Chapter IV. Compulsory licenses

Article 245: Subject to the provisions of Article 246, the provisions of Articles 78 to 91 shall apply to registered layout designs of integrated circuits.

Article 246: Compulsory licenses for registered layout designs shall only be granted for non-commercial public use or to remedy a practice deemed anti-competitive following judicial or administrative proceedings.

TITLE V. TRADITIONAL KNOWLEDGE AND CRAFTS OBJECTS

Chapter I. Scope and purposes of protection

Section 1. Scope of protection

Article 247: For the purposes of this Law, traditional knowledge shall be defined as the following elements:

- inventions or other technical ideas, uses, designs, equipment, tools and instruments that can be used in the production of products and services, including the processes, equipment and products used to obtain them, as well as plants domesticated or grown or animal species and microorganisms;
- knowledge of the properties of biological resources as well as combinations of such resources;
- methods, processes and products relating to the fields of medicine, agriculture, food and textiles as well as the other products and services with a practical or spiritual function;

- names, symbols, emblems and other distinctive signs of a religious, spiritual, cultural or economic nature which are used by local indigenous communities in their native language or in any other language;
- designs and objects of a functional or esthetic nature, including clothing, porcelain and other crafts goods which may or may not be related to biological resources and which constitute indissociable elements of the culture, spirituality and traditions of the local indigenous communities.

Section 2. Purposes of protection

Article 248: The provisions of this title shall be designed to provide for industrial property rights for all aspects of the traditional knowledge of the local indigenous communities of Burundi by means of a system of registration.

Article 249: Effective protection and application of the industrial property rights to traditional knowledge must help to preserve the traditions and livelihood of the traditional communities; ensure respect for their cultural identity; and promote the creation, development and commercialization of traditional knowledge.

Chapter II. Traditional knowledge

Section 1. Registration of traditional knowledge

Article 250: Traditional knowledge that has not been disclosed to the public in any way or, even if it has been disclosed, has not been commercially or industrially exploited in Burundi, may be registered under the following conditions:

1. The traditional knowledge must be described and registered, with a reference to the community or communities that created it, in the register of traditional knowledge established and kept by the Industrial Property Director;

The procedure for registering traditional knowledge and the grant of the corresponding certificate shall not be subject to the payment of any fee.

2. The description set out in the previous paragraph must be made in such a way that it is reasonably possible for a third party to reproduce or use the traditional knowledge described and to obtain results identical or similar to those obtained by the communities which hold this traditional knowledge. This description shall be made without prejudice to the provisions of Article 254.

If the traditional knowledge concerns or comprises living beings or parts thereof, the description may be replaced by the deposit of samples, in accordance with the regulations under this Law.

The registration of traditional knowledge and a certificate attesting to such registration shall be granted without the examination, by the Industrial Property Director, of the elements referred to in Article 254.

Article 251: The registration of traditional knowledge may be revoked by the courts at any time at the request of the Industrial Property Director or a third party with a legitimate interest, if:

- the traditional knowledge registered has not been created by the community which the certificate designates as the owner; in the event that the traditional knowledge registered was created by another local community, the court may order the Industrial Property Director to transfer the title of ownership to this traditional knowledge to its true creator;
- the traditional knowledge registered has been disclosed to the public by some means, and has been commercially or industrially exploited in Burundi prior to the date on which registration was sought;
- the traditional knowledge registered has lost its value as a cultural identifier following its explicit abandonment, lack of persistent use or continued abuse by third parties, of which the holder of the traditional knowledge was aware.

Article 252: Any element of traditional knowledge protected under this Law may be registered separately and individually, in accordance with its technical characteristics, without prejudice to its holistic nature, that is, independent traditional knowledge, or as a whole, in its entirety, in a single registration combining, as the case may be, all of the elements of the knowledge.

The certificate of registration shall specify whether the registered traditional knowledge has been identified by the local community as independent traditional knowledge or as an inventory of traditional knowledge. In the latter case, the certificate shall contain a brief summary of the protected content of the inventory, in accordance with the regulations under this Law.

Article 253: Notice of the grant of a certificate of registration for traditional knowledge shall be published in the Official Journal of Burundi, without prejudice to the provisions of Article 254. Such notice shall include at least the following information:

1. A summary of the traditional knowledge registered, unless the local community seeking registration has opted for secrecy, as provided for in Article 254;
2. A reference to the community or communities that has/have created the traditional knowledge registered; such a reference must be accompanied by an indication of the geographical distribution of the community in question and the intrinsic characteristics which differentiate it;
3. The application and registration dates.

Article 254: When it files an application for registration of the traditional knowledge, the local community may inform the Industrial Property Director that it has opted to keep secret all or part of the elements for which it is seeking protection. The

non-disclosed information shall not appear in the publication referred to in Article 253.

Protection of the non-disclosed traditional knowledge shall be limited to the repression of unfair competition, in accordance with the provisions of Title I of Part IV.

Article 255: In the event that the local community seeking registration has opted to register its traditional knowledge in the form of inventories, it may modify the registration in question at any moment, without having to request a new registration, so as to include in the initial registration changes or improvements on the traditional knowledge registered. Should this be the case, the Industrial Property Director shall take note of the modification made to the registration and shall amend the certificate accordingly, noting the date on which the modification was entered.

Section 2. Customary practices

Article 256: Title and other rights in the traditional knowledge protected under this Part shall be collective in nature and shall be exercised by each local community in accordance with its customary practices. These customary practices shall also determine the exploitation of the traditional knowledge by the various members of the local communities.

Article 257: In the event that the customary practices establish special systems for legal representation of local communities, which may affect the management of the traditional knowledge, a description of said practices must be included in the description of the traditional knowledge that forms the subject matter of the registration.

Article 258: The means for distributing the profits arising from the exploitation of the traditional knowledge within each local community shall be established in accordance with the community's customary practices.

Article 259: In the event that several local communities which occupy the same territory have created and hold identical or similar elements of traditional knowledge, they may register these elements individually on behalf of each community. Each community concerned may also individually enforce its rights in these elements of traditional knowledge. Nevertheless, nothing shall prevent these communities from joining forces to exploit jointly the traditional knowledge they have in common.

Article 260: A local community which occupies both part of the territory of Burundi and part of the territory of a neighboring country may acquire rights in its traditional knowledge and enforce them in the territory of Burundi, in accordance with this Law.

If the community's traditional knowledge is also protected in the neighboring country, the registration and protection of such knowledge in the territory of Burundi shall not prevent this same community from acquiring rights in the

same traditional knowledge and enforcing them in the neighboring country in question.

Section 3. Rights conferred by registration

Article 261: Local communities' collective rights in the traditional knowledge registered shall be of an economic and moral nature.

Article 262: With regard to the traditional knowledge protected under this Law, local communities shall enjoy the following exclusive rights:

- the right to prevent third parties from manufacturing, using, storing, offering for sale or selling this product, or from importing or exporting this product for these purposes without the holder's consent if the subject matter of the protection is a product;
- the right to prevent third parties from using the process to store, offer for sale or sell products obtained directly or indirectly via this process, or from importing or exporting such products for these purposes without the holder's consent, if the subject matter of the protection is a process;
- the right to prevent third parties who do not have the holder's consent from reproducing the species or microorganism, and to prevent third parties from preparing the species or microorganism for purposes of its reproduction or propagation, offering it for sale, sale or any other form of commercialization, import and export, as well as possessing the species or microorganism for one or other of these purposes if the subject matter of the protection is a grown plant species, a domesticated animal species or a microorganism;
- the right to prevent third parties from manufacturing or reproducing, without the holder's consent, objects which are of a similar configuration in terms of forms, colors, materials and techniques and which display by and large the style and visual impression of the crafts of which they are characteristic if the subject matter of protection is a design or an object of a functional or esthetic nature, including a crafts element;
- the right to prohibit for third parties who do not have the holder's consent any type of use, in the language of origin or in any other language, consisting in affixing identical or similar signs to products, or to products related to services, or manufacturing labels, packaging or other materials which reproduce or contain these signs, for commercial purposes or for any other purpose, if the subject matter of protection is a name, symbol, emblem or other distinctive sign of a religious, spiritual, cultural or economic nature.

Article 263: The exclusive rights set out in Article 262 shall cover any commercial act and any other act likely to distort the spiritual and cultural identity of the community to which the registered traditional knowledge belongs.

Article 264: If a local community opts to keep secret part or all of the inventories of registered traditional knowledge, in accordance with Article 254, it shall be

entitled to prevent third parties from disclosing or acquiring without its consent undisclosed traditional knowledge, in a manner contrary to honest business practices, provided that the local community to which the undisclosed registered traditional knowledge belongs has taken reasonable steps to keep it secret.

Article 265: The rights conferred on local communities under this Law shall be industrial property rights which are peculiar to these communities.

These rights may not be assigned, confiscated or transferred in any way.

Article 266: Any proceedings concerning the protection and application of rights in traditional knowledge must be instituted by the local communities in their own name, in accordance with the measures relating to representation and legal capacity that are established in civil law, in this Law and in the customary practices of the communities.

Article 267: The State shall have the right to assist local communities, without replacing their representative bodies, in defending their rights and legitimate interests, at all levels of the public administration and the judiciary, at the national, regional and international level. Such assistance may consist in particular in taking the initiative to draw up inventories of traditional knowledge with a view to its registration; encouraging local communities to form associations in order to obtain legal capacity; and of instituting, on its own initiative, procedures for registering traditional knowledge when emergency situations so warrant.

Article 268: Protection of registered traditional knowledge shall only expire when such knowledge has lost its values, i.e.

- because it is no longer used as a cultural identifier;
- because it has been deliberately and expressly abandoned;
- because of persistent failure to use or continued abuse by third parties of which the local community to which the knowledge belongs is aware.

Section 4. Practices and acts excluded from protection

Article 269: The following shall be excluded from the protection conferred by this Law:

- traditional practices of commercial or industrial exploitation of traditional knowledge which forms part of the traditions and culture of the local communities;
- Non-traditional practices of commercial or industrial exploitation of traditional knowledge prior to the date of the application for registration;
- Commercial acts that have already been performed.

Article 270: If the general interest of a significant share of the population of Burundi so warrants, the Minister responsible for trade, after hearing the local community to

which the registered traditional knowledge concerned belongs, may authorize the scientific, commercial or industrial exploitation of one or more of the elements of this knowledge by a third party, provided that such exploitation does not distort the cultural identity of the local community in question or offend it and that the local community receives a fair share of any type of benefits arising from such scientific, commercial or industrial exploitation, in view of the circumstances at hand.

The scope and term of such authorization shall be limited for the specific purposes of public interest which warrant the authorization. Exploitation by the third party must cease once it is no longer justified by the public interest.

Section 5. Licensing contracts

Article 271: Local communities' collective rights in registered traditional knowledge shall include the right to sign exclusive or non-exclusive licensing contracts, subject to the provisions of Article 274.

Article 272: Licenses to exploit traditional knowledge are supposed to be granted on a fee-paying basis. They may give rise to different forms of payment, at the discretion of the local communities, including the payment of lump sums or fees or the sharing in the benefits arising from the commercial or industrial exploitation of products whose manufacturing is directly or indirectly derived from the use of the traditional knowledge for which the license has been granted, as well as other forms of benefits, such as scholarships or medical and pharmaceutical assistance.

Article 273: Local communities' collective rights in registered traditional knowledge shall include the right to give registered traditional knowledge as a guarantee, subject to the provisions of Article 274.

Article 274: Traditional knowledge which, owing to exploitation by a third party, has ceased to be a cultural identifier for the local community, such as crafts and signs with intrinsic sacred or religious value, may not form the subject matter of a licensing contract, even with the community's prior consent.

The signature of a licensing agreement or any other form of prior consent concerning the use of such traditional knowledge shall constitute misuse of the registered traditional knowledge. In such cases, the provisions of Article 268 shall apply.

Article 275: The State has a duty to help the local communities to negotiate and monitor licensing agreements involving traditional knowledge. All licensing agreements must be registered with the Industrial Property Director, failing which they shall be considered null and void.

Chapter III. Crafts

Section 1. Registration of crafts

Article 276: Designs and objects with an esthetic or functional configuration, including clothing, pottery and all other crafts which constitute indissociable elements of the culture, spirituality and traditions of local communities, may be registered, even if they have been commercialized prior to their registration, provided they retain the essential link with the culture and spirituality of the local community in question. Should this not be the case, the conditions set out in Articles 250 to 255 shall apply to crafts.

Article 277: In addition to the elements listed in Articles 249 to 255, applications to register crafts must contain a brief description of their use, the production methods and the choice, preparation and utilization of raw materials, as well as the general criteria which apply with regard to the esthetic or functional characteristics, with a view to characterizing the general style and overall impression of each series or type of product.

A general description of the history and development of the crafts in question must also be provided.

Article 278: Crafts shall be registered in a register separate from the one for traditional knowledge by the Industrial Property Director, at the request of the local community concerned.

Section 2. Protection of crafts

Article 279: In order to facilitate the protection of crafts, any article or product of a series or crafts type which existed before or which was created after registration may be added to the general registration at the request of the local community to which a registered series of articles or type of crafts belongs.

Article 280: The provisions of Articles 261 to 275 shall apply to crafts.

Exclusive rights in the registered crafts shall apply to the entirety of the crafts series or type which has been described and registered, in order to prevent third parties, without the holder's consent, from manufacturing, using, storing, selling, offering for sale, importing or exporting products likely to mislead the consumer, in any way whatsoever, as to the origin, creation or manufacturing of the crafts articles.

Section 3: Other measures for the protection of traditional knowledge and crafts

Article 281: All industrial property titles, in particular patents, marks, industrial designs or plant variety certificates, which have been granted in violation of rights in registered traditional knowledge, shall not be binding on third parties if the local community to which this traditional knowledge belongs has not given its consent.

Article 282: Any person may, in proceedings for the infringement of title to industrial property, raise as a defense or exception, the lack of prior consent or any other violations of the rights in protected traditional knowledge. In this case, the court shall hear the local community which holds the rights to the traditional

knowledge that have been infringed. If the means is accepted, and if the local community in question agrees, the court shall order the infringer to pay the local community an amount which it shall set in accordance with the provisions of Articles 419 to 421.

Article 283: The industrial property titles referred to under this Title shall be binding on third parties as from the date of publication of the court order fixing the amount and arrangements for the compensation to be paid. They shall have no effect in relation to acts performed by unauthorized third parties prior to this date.

Article 284: Without prejudice to Articles 281 to 283, if an industrial property title concerns an object which consists in part or in full of protected traditional knowledge and the holders of the rights in this knowledge have not given their prior consent, they may ask the court for a proportional transfer of the title. If the court notes that the holders are entitled to full ownership of the industrial property title in question, they may, at their entire discretion, waive the title.

Article 285: Local communities may also protect elements of their traditional knowledge in a complementary or different fashion by means of other industrial property regimes, without prejudice to the rights and interests protected by this Section.

Article 286: The provisions of this Section shall apply to traditional knowledge that has been registered or protected in other countries if these countries grant protection that is identical or equivalent to the protection conferred by this Law on the traditional knowledge belonging to the local communities in Burundi.

Nevertheless, the provisions of this Article shall not apply to traditional knowledge that belongs to foreign communities that is not protected or ceases to be protected in the country of origin for any reason whatsoever, in particular on the grounds set out in Article 268.

PART THREE: DISTINCTIVE SIGNS

TITLE I. PRODUCT MARKS, SERVICE MARKS, COLLECTIVE MARKS, TRADE NAMES AND CERTIFICATION SIGNS

Chapter I: Acquisition of exclusive rights in a mark and its registration

Article 287: Exclusive rights in a mark shall be acquired via registration in accordance with the provisions of this Law.

Article 288: A mark may not be validly registered if:

- it does not make it possible to distinguish the products or services of a firm from those of other firms; the smell, taste or any other material characteristic of a product shall not be deemed to distinguish the product if they are the normal result of the ordinary composition of this product;
- it is contrary to public order or morality; nevertheless, the nature of the goods or services to which a mark is to apply may not in any case hinder the registration of the mark;

- it is likely to mislead the public or business circles, especially as to the geographical origin, nature or characteristics of the goods or services considered; the provisions of Articles 330 and 331 shall apply;
- it reproduces, imitates or contains among its elements coats of arms, flags or other emblems, the name, abbreviation, acronym, an official sign or seal of control and guarantee of a State or intergovernmental organization established by an international convention, except by authorization of the competent authority of this State or this organization;
- it is identical or similar to such an extent that it leads to confusion with a trademark or name that is widely known in Burundi for identical or similar goods of another firm; or if it constitutes a translation of this trademark or name, or it is widely known and registered in Burundi for goods or services which are not identical or similar to those for which the registration of the mark is sought, provided that the use of this mark for these goods or services indicates a link between said goods or services and the holder of the registered mark and that this use is likely to harm the interests of the holder of the registered mark;
- it is identical or similar to a mark belonging to another holder and which is already registered, or where the date of filing or priority is earlier, for identical or similar goods or services or for goods or services which are very close, or it so closely resembles such a mark that there is a risk of deception or confusion;
- the application for registration was filed in bad faith; or the sign, if registered, would be used for purposes which constitute unfair competition.

Article 289: Notwithstanding the provisions of Article 288, the Industrial Property Director or the court may decide that a mark has acquired a secondary or distinctive character owing to continuous use. Should this be the case, it may be registered.

Article 290: In case of use by a fair competitor or in any other specific circumstance which, in the opinion of the court or that of the Industrial Property Director, justifies such a solution, the court or Industrial Property Director may authorize the registration of marks which are identical or which closely resemble each other for the same goods or services or for the description of goods or services by several owners, subject to any conditions or limitations which the court or the Industrial Property Director, as the case may be, may impose if it/he deems it appropriate.

Article 291: In the event that several applicants request registration as owners of marks which are identical or which closely resemble each other for goods or services which are identical, similar or related or for the description of goods or services, the Director may reject the registration until their rights have been determined by the court.

Article 292: Words or expressions that are commonly used by consumers and technical words or expressions from the field to which the goods and services belong shall be deemed not to be of distinctive nature, as provided for in Article 288.

Article 293: In determining whether a mark is well known, consideration shall be given to the degree of recognition of the mark in the sector in question, including the degree of recognition arising from the advertising made for the mark in accordance with the provisions of Article 288, paragraph 5.

There is a risk of confusion according to paragraph 6 of the same Article, in the case of use of an identical sign for identical goods or services.

Article 294: The prior user of a mark whose name does not appear in the register or who does not have an application pending under Article 288, paragraph 6, may lodge a statement of opposition to an application for registration of a similar or identical mark filed by a third party for similar or identical goods, in accordance with Articles 262 to 268 and with the provisions of the relevant regulations, provided that:

- he proves that he has used this mark in good faith for at least six months before the date of filing or, as the case may be, the date of priority;
- he proves that he has acquired a clientele and that this clientele attaches a certain reputation to the mark;
- he files an application to register his own mark before lodging a statement of opposition with the Industrial Property Director.

Article 295: The registration by a third party of a mark similar or identical to a mark that has lapsed, under Articles 300 and 301, or which has been abandoned, under Article 311, for similar or identical goods or services, shall only be admitted after the expiration of a period of at least two years as from the date on which the notice of the end of protection for the mark was published in the Official Journal of Burundi. This Article shall not apply to a party who holds a license for a mark that has been granted under license and abandoned under Article 311.

Chapter II: Applications for registration

Article 296: Applications for the registration of a mark must be filed with the Industrial Property Director and must contain a request, a reproduction of the mark and the list of goods and services for which the registration of the mark is sought, listed in the order of the relevant classes of the international classification.

The filing of the application shall be subject to payment of the prescribed fee.

Article 297: In the event that the mark consists of a sign that is not visually perceptible, the application must contain a graphic representation of the mark. This reproduction must be specific and may not consist of a mere general description of the sign.

Article 298: The application may contain a statement claiming priority for a prior national or regional application introduced by the applicant or his successor in title. Should this be the case, the Industrial Property Director shall require the applicant to provide, within the period set, a true copy of the prior application certified by the registration service with which it has been filed.

The term of priority shall be six months.

The filing of the application in Burundi before the expiration of the period mentioned may not be invalidated by acts which occur in the meantime, *inter alia* by another filing or by the use of the mark, and such acts shall not give rise to any right for a third party or any personal possession.

In the event that the Industrial Property Director notes that the conditions set out in this Article and in the relevant provisions of the regulations have not been met, said statement shall be deemed not to have been submitted.

Article 299: The applicant may, at any time, withdraw his application or reduce the list of goods or services covered in the application.

Chapter III: Examination, opposition, registration of marks and protection in Burundi for marks registered in other member countries of the Paris Union or the World Trade Organization (WTO)

Section 1: Examination, opposition, registration of marks

Article 300: The Industrial Property Director shall verify whether the application meets the conditions set out in Articles 288 and 289 and in the relevant provisions of the regulations.

In the event that the Director notes that the conditions have been met, he shall immediately publish the application in the prescribed fashion.

Article 301: Any interested person may, within a period of 30 days and in the prescribed forms, lodge an opposition to the registration with the Industrial Property Director on the grounds that one or more of the conditions set out in Article 288 and in the relevant provisions of the regulations has not been met.

Article 302: The Industrial Property Director shall publish a notice of opposition in the Official Journal of Burundi. Within a period of 90 days and in the prescribed forms, the applicant shall write to the Director, explaining the grounds on which his request is based. Failing this, he shall be deemed to have abandoned his request.

Article 303: If the applicant sends a reply, the Industrial Property Director shall forward a copy to the opposing party. After hearing the parties and carefully examining the case, he shall decide whether there are grounds to proceed with the registration of the mark.

Article 304: In the event that the Industrial Property Director notes that the conditions referred to in Article 300 to 303 have been met, he shall register the mark, publish a notice of registration, and grant a certificate of registration to the applicant. Should this not be the case, he shall reject the application.

Section 2: Protection of marks registered in other member countries of the Paris Union

Article 305: Any mark which has been duly registered in a territory or country of origin which is a member of the Paris Union or the World Trade Organization and which maintains reciprocal relations with Burundi in this respect shall be admitted for filing and protected in Burundi, subject to the reservations indicated in this Article. The Industrial Property Director, before proceeding to the final registration, shall require the production of a certificate of registration from the country of origin issued by the competent authority. No authentication shall be required for such certificates.

Article 306: The following shall be considered as the country of origin:

- the Paris Union country or WTO Member State in which the applicant has an effective industrial or commercial establishment;

- the country in which he has his domicile, if the applicant does not have such an establishment in a Paris Union country or on the territory of a WTO Member State;
- The country of his nationality, if the applicant does not have a domicile in a Paris Union country or on the territory of a WTO Member State but is a national of a Paris Union country or a WTO Member State.

Article 307: The marks covered by this Section may only be rejected for registration or invalidated in the following cases:

- if they are likely to infringe rights acquired by third parties in Burundi;
- if they do not have any distinctive character or are composed exclusively of signs or indications which can be used in business to designate the type, quality, quantity, destination, value or place of origin of the products or the time of production, or which have become common in everyday language or in the bona fide and established practices of the trade in the country where protection is sought;
- if they are contrary to public order or morality, in particular when they are of such a nature as to deceive the public; nevertheless, a mark may not be considered contrary to public order solely because it is not in compliance with any provision of this part, unless this provision itself concerns public order.

These provisions shall be without prejudice to the application of those relating to protection against unfair competition.

Article 308: The Industrial Property Director may not reject the registration of a mark under this Section solely on the ground that it only differs from the mark protected in the country of origin in terms of elements which do not alter the distinctive character and leave its identity intact, in the form in which the mark was registered in said country.

Article 309: No one may benefit from the provisions of this Section if the mark for which he claims protection is not registered in the country of origin.

Due account shall be taken of any de facto circumstances, in particular the term of use of the mark, in evaluating whether the mark is eligible for protection.

Article 310: The benefit of the priority shall remain for filings of marks made within the period of six months, even when registration in the country of origin is only made after the expiration of this period.

Chapter IV: Rights conferred by registration, term and renewal

Section 1: Rights conferred by registration

Article 311: Without prejudice to the provisions of Articles 304 and 305, holders of registered marks shall have the exclusive right to prevent any third party from making use, in the course of commercial operations, of identical or similar signs for goods or services that are identical or similar to those for which the mark has been registered, if such use would lead to confusion.

The provisions of this Article shall not cover the use by a third party of the registered mark for information purposes, such as sales promotion or comparative advertising, provided that such use is not of such a nature as to deceive the public or does not constitute unfair competition, under Title I of Part IV.

Article 312: Holders of a registered mark may, in addition to the rights, remedies or actions to which they are entitled, institute judicial proceedings against any party who infringes the mark by using it without their consent or who performs acts likely to constitute infringement.

This right shall cover the use of a sign similar to the registered mark and its use in relation to goods and services similar to those for which the mark has been registered, where this may lead to confusion.

Section 2: Limitations on rights conferred

Article 313: The rights conferred by the registration of a mark shall not cover acts relating to articles placed on sale in Burundi or in any other country by the holder of the registration or with his consent. Should this be the case, these rights shall be deemed to be exhausted.

Article 314: Without prejudice to the provisions of Article 313, the Minister responsible for trade may, on his own initiative or at the request of any interested party, declare that the rights in the mark have been exhausted and authorize third parties to import the goods identified by a mark which is registered or otherwise protected or bears such a mark from another territory, if such goods are not available on the territory of Burundi or are available in insufficient quality and quantity to meet local demand, or at prices which the Minister deems abusive or on any other grounds of public interest, including anti-competitive practices, provided that:

- the goods have been commercialized on the territory of Burundi or that of another country from which they have been imported by the holder of the mark or with his consent;
- a similar or identical mark has been registered or otherwise protected on the territory from which the product has been imported and it belongs to the holder of the mark registered or otherwise protected in Burundi or to a person over whom this holder has authority.

Article 315: If the importer fails to meet the goals which justified the Minister's decision to consider the rights in the mark exhausted, the Minister shall revoke the authorization on his own initiative or at the request of the owner of the mark.

Article 316: In the event that the conditions underlying the Minister's decision to consider the rights in the mark exhausted no longer obtain, the Minister may, on his own initiative or at the request of the owner of the mark, revoke the authorization without prejudice to the legitimate interests of the importer, in particular the right to clear his stock.

Article 317: The Minister responsible for public health may take steps to limit the use of marks in order to facilitate the prescription of pharmaceutical products and generic medical devices and access to such products and devices in order to dissuade the public from consuming products deemed harmful to health, provided these steps do not further unjustifiably reduce the capacity of the mark in question to distinguish the products of one firm from those of another.

Section 3: Term and renewal of marks

Article 318: Registrations shall have effect for 10 years as from the date on which the application for registration was filed.

Article 319: Registrations of a mark may, at the holder's request, be renewed for consecutive ten-year periods, subject to payment of the prescribed renewal fee.

In the case of late payment, a six-month period shall be granted for the payment of the renewal fee, increased by a prescribed surcharge for late payment. If payment is not made, the registered mark shall become invalid. Should this be the case, it may not be restored.

Chapter V: Revocation and removal owing to failure to use

Section 1: Revocation of marks

Article 320: Any interested person may request the court to revoke the registration of a mark.

Requests for revocation may be filed within a period of five years starting from the date of grant of the certificate of registration, except if the registration was obtained in bad faith or in violation of Article 288, paragraph 7, in which case there shall be no time limit for lodging such a request.

Article 321: The court shall revoke the registration if the applicant can prove that one of the conditions provided for in Articles 288 to 295 has not been met, or if the provisions of Articles 254 and 355 have not been respected.

Article 322: Revocation of the registration of a mark shall be deemed to take effect from the date of registration. It must be entered and give rise to a notice published in the regulations.

Section 2: Removal owing to failure to use

Article 323: Any interested person may ask the court to order the Industrial Property Director to remove a mark from the register, for any goods or services for which it has been registered, on the grounds that the mark, after its registration and up until one month before the submission of the request, has not been used either by the holder of the registration or by a licensee for an uninterrupted period of three years.

Article 324: The mark shall not be removed if it is proved that specific circumstances were opposed to its use, such as import restrictions or other barriers to commercialization imposed by the authorities or the market, and that there was no intention not to use it or to abandon it for the goods or services in question.

Chapter VI: Special provisions

Section 1: Collective marks

Article 325: Subject to the provisions of Articles 326 and 327, Articles 287 to 295 shall apply to collective marks.

Article 326: Anyone filing an application for registration of a collective mark shall not be required to own an industrial or commercial establishment on the territory of a member country of the Paris Union or a Member State of the World Trade Organization.

Article 327: Applications for registration of a collective mark must indicate that such a mark is involved and must be accompanied by a copy of the regulations stipulating the conditions for its use, if such regulations exist.

Any modification to these regulations must be communicated to the Industrial Property Director.

Section 2: Certification signs

Article 328: Applications for registration of a certification sign must indicate that such a mark is involved and must be accompanied by a copy of the regulations stipulating the conditions for use of this sign.

This provision shall apply to all certification signs, including those which belong to public bodies.

Article 329: Holders of a certification sign may not use this sign to identify or certify goods which are not concerned.

Article 330: In addition to the cases provided for in Article 320, the court shall revoke the registration of a certification sign if the person requesting revocation proves that the holder of the certification sign uses this sign, or allows its use, in violation of the regulations referred to in Article 328, or allows it to be used in a way which

is likely to deceive business circles or the public as to the source or any other common characteristic of the goods or services in question.

Any interested person may file a request for revocation of a certification sign, in particular the Industrial Property Director, the holder's competitors, the producers of the certified goods or services, associations and organizations which legitimately represent consumers as well as the Public Prosecutor's Office.

Article 331: Anyone who has proved that he satisfies the technical standards and other conditions of the regulations referred to in Article 328 may not be refused the right to use the certification sign in the conditions fixed by these regulations.

Section 3: Trade names

Article 332: A name or designation which, by its nature or the use that can be made of it, is contrary to public order or morality and which, in particular, is likely to deceive business circles or the public as to the nature of the firm designated by this name, may not be used as a trade name.

Article 333: Notwithstanding any legislative or regulatory provisions specifying the obligation to register trade names, these names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

Any subsequent use of the trade name by a third party, be it in the form of a trade name for a mark or collective mark, as well as any use of a similar trade name or a similar mark likely to mislead the public, shall be considered unlawful.

Section 4: Special provisions relating to licenses and assignments of marks

Article 334: Any licensing contract relating to a mark which has been registered or for which registration is sought must provide that the licensor shall exercise effective control over the quality of the licensee's goods or services for which the mark is used, if such control is appropriate or necessary.

If the licensing contract does not provide for such quality control or if such quality control is not effectively exercised, said contract shall not be valid and the court may declare the mark to be abandoned by its holder.

Abandonment may be invoked as a means of defense in proceedings for infringement of a mark.

Article 335: Abandonment of a mark shall be deemed to become effective starting from the date on which the licensing contract took effect. It must be entered and give rise to a notice published in the Official Journal of Burundi in accordance with the regulations.

Article 336: Registrations of a collective mark or applications for registration of such a mark may not be the subject of a licensing contract.

Article 337: The holder of a registered mark may assign such mark without there being any transfer of the firm to which the mark belongs.

This provision shall not apply to certification signs.

Article 338: Subject to the provisions of Articles 331, 334, 335, 336 and 337, the provisions of Articles 287 to 324 shall apply to certification signs.

TITLE II: GEOGRAPHICAL INDICATIONS

Chapter I: Applications for registration

Section 1: Filing of applications

Article 339: Applications for registration of a geographical indication shall be filed with the Industrial Property Director.

The following shall be entitled to file applications for registration:

1. Natural persons or legal entities as well as groups of such persons who are engaged in production in the geographical area indicated for the goods specified in the application;
2. Any competent authority.

Article 340: The Industrial Property Director may, on his own initiative or at the request of any person designated in Article 339, request, obtain and enforce the registration of geographical indications for goods whose producers have not officially formed an organization or association and may not therefore request, obtain and enforce the registration of these indications.

In such cases, the geographical indications shall be governed by the other provisions of this Law, except with regard to the entitlement to apply for their registration and their protection in Burundi and elsewhere.

The Industrial Property Director shall be the custodian of these geographical indications until he or the court has established that the persons or entities entitled to hold and enforce the rights in the geographical indication in question have organized themselves in accordance with the applicable laws or regulations.

Article 341: Applications must contain:

1. The name, address and nationality of the applicant, natural person or legal entity, as well as the capacity in which the applicant is seeking registration;
2. The geographical indication for which registration is sought;
3. The geographical area to which the geographical indication applies;

4. The goods for which the geographical indication applies;
5. The quality, reputation or other characteristic of the goods for which the geographical indication is used.

Applications for registration shall be subject to payment of the prescribed fee.

Section 2: Examination of applications for, opposition to and registration of geographical indications

Article 342: The Industrial Property Director shall examine the application and verify that it complies with the conditions set out in Articles 2, 339, 341 and 351, and with the relevant provisions of the regulations.

In the event that the Industrial Property Director notes that these conditions have been met, he shall have the application published in the Official Journal of Burundi.

Article 343: Any interested person or competent authority may, within the periods set and in the prescribed forms, lodge an opposition to the registration of a geographical indication with the Industrial Property Director, on the grounds that one or more of the conditions set out in Articles 2, 339, 341 and 351 has not been met.

Article 344: The Industrial Property Director shall publish a notice of opposition in the Official Journal of Burundi within a period of 90 days and in the prescribed forms.

The applicant must send the Industrial Property Director a reply setting out the grounds on which he bases his application.

Failing such a reply, he shall be deemed to have abandoned the application.

Article 345: If the applicant sends a reply, the Industrial Property Director shall forward a copy to the opposing party.

After hearing the parties and examining the merits of the case, he shall decide whether there are grounds to proceed with the registration of the geographical indication.

Article 346: In the event that the Industrial Property Director notes that the conditions set out in Articles 342 to 345 have been met, he shall register the geographical indication, publish a notice of registration and grant a certificate of registration to the applicant. Should this not be the case, he shall reject the application.

Section 3: Protection of geographical indications independently of registration

Article 347: The protection granted by this Law shall be:

1. applicable whether or not a geographical indication has been registered. Nevertheless, in connection with any proceedings instituted under this Law, a registration made in accordance with Articles 342 to 346 of this Law shall be based on the assumption that the indication registered is a geographical indication;
2. enforceable against any geographical indication which, even though it is literally exact as for the territory, region or locality from which the goods come, wrongly leads the public to think that the goods are from another territory.

Section 4: Homonymous geographical indications for wines

Article 348: In the case of homonymous geographical indications for wines, protection shall be granted for each indication, subject to the provisions of Article 323.

If parallel use of these indications is authorized, the Industrial Property Director shall determine the practical arrangements, specifying that the homonymous geographical indications in question are differentiated from each other, in view of the need to guarantee fair treatment of the producers concerned and to ensure that consumers are not misled.

Chapter II: Rights conferred by registration of geographical indications

Article 349: Only producers engaged in production in the geographical area indicated in the register shall be entitled to use, for commercial purposes, a registered geographical indication for the goods indicated in the register, provided that such goods possess the quality, reputation or other characteristics indicated in the register.

Article 350: Subject to the provisions of Part IV relating to the fundamental norms for protection of industrial property rights, any interested person or group of producers or consumers may institute proceedings with the court to prevent:

1. the use, in the designation or presentation of goods, of any means indicating or suggesting that the goods in question come from a geographical region other than the true place of origin in a way which misleads the public as to the geographical origin of the goods;
2. any use which constitutes an act of unfair competition within the meaning of this Law;
3. the use of a geographical indication to identify goods which do not come from the place designated by the geographical indication in question, or are used to identify spirits for those which are not from the place designated by that indication even in cases where the true origin of the goods is indicated or

in those where the geographical indication is used in translation or is accompanied by expressions such as kind, type, style, imitation or others.

Chapter III: Geographical indications excluded from protection

Article 351: The following shall not be protected as geographical indications:

1. Indications which do not fit the definition given in Article 2;
2. Indications which are contrary to public order or morality;
3. Geographical indications which are not protected or which are no longer protected in their country of origin, or which have fallen into disuse in this country;
4. Indications for goods which are identical to the term commonly used in current language as the common name for these goods in Burundi.

Chapter IV: Revocation or rectification of registration for geographical indications and marks which mislead or clash with a geographical indication

Section 1: Revocation or rectification of registration

Article 352: Any interested person or competent authority may request the court to order:

1. revocation of the registration of a geographical indication on the grounds that it does not meet the criteria for protection under the provisions of Articles 2, 339, 341 and 351;
2. modification of the registration of a geographical indication on the grounds that the geographical area indicated in the register does not correspond to the geographical indication, or that the indication for the goods for which the geographical indication is used or the indication of the quality, reputation or other characteristics of these goods is lacking or insufficient.

Article 353: In any proceedings instituted under this Chapter, notification of the petition for revocation or modification must be sent to the person who has filed the application for registration of the geographical indication or his successor in title.

It shall further be brought to the attention of all those who are entitled to use the geographical indication under Article 349, by means of publication in the Official Journal of Burundi.

The persons covered by this Article and any other interested party may, within a time limit set by the court and indicated in the foregoing notification, ask to intervene in the proceedings.

Section 2: Revocation or rectification of misleading marks and marks which clash with geographical indications for wines and spirits

Article 354: The court, at the request of an interested party or the Public Prosecutor's Office, shall refuse or revoke the registration of a mark which contains a geographical indication or is composed of such an indication, for goods that do not come from the territory indicated, if the use of this indication in the mark for such goods in Burundi is of such a nature as to mislead the public as to the true place of origin.

Article 355: Registration for wines of a mark which contains a geographical indication identifying wines or which is composed of such an indication, or registration for spirits of a mark which contains a geographical indication identifying the spirits or is composed of such an indication, shall be refused or invalidated by the Industrial Property Director or the court, on their own initiative or at the request of an interested party, with regard to wines or spirits which do not share this origin.

Article 356: No provision of this Law shall prevent the continuous and similar use in Burundi of a specific geographical indication from another country identifying wines or spirits, in relation to goods or services, by a national or a person domiciled in the territory of Burundi, who has used said geographical indication continuously for identical or related goods or services in the territory of Burundi, either for at least 10 years prior to April 15, 1994, or in good faith prior to this date.

Article 357: If a mark has been filed or registered in good faith, or in cases where the rights in a mark have been acquired by use in good faith prior to January 1, 2006; or before the geographical indication is protected in its country of origin, this Law shall not prejudice the admissibility or validity of the registration of this mark, or the right to make use thereof, on the grounds that this mark is identical or similar to a geographical indication.

Article 358: This Law shall not apply either to a geographical indication from any country whatsoever for goods or services whose indication is identical to the usual term used in current language as a common name for these goods or services in Burundi, or to a geographical indication from any other country for grapevine products whose relevant indication is identical to the usual name for a variety of grape existing in Burundi as of January 1, 1995.

This Law shall not prejudice in any way the right of any person to use, in the course of commercial operations, his name or that of his predecessor in trade, except if this name is used in such a way as to mislead the public.

Article 359: Any request for compensation made under this Law in relation to the use or registration of a mark must be submitted within five years after the prejudicial use of the protected indication is known in Burundi or after the date of registration of the mark in Burundi, provided that the mark was published on this date, if it is prior to the date on which the prejudicial use was known in Burundi, and provided that the geographical indication has not been used or registered in bad faith.

PART IV: FUNDAMENTAL NORMS FOR PROTECTION OF INDUSTRIAL PROPERTY RIGHTS

TITLE I: PROTECTION AGAINST UNFAIR COMPETITION

Chapter I: General principles

Article 360: In addition to the acts and practices covered in Articles 363 to 382, any act or practice which, in the exercise of industrial or commercial activities, is contrary to honest practices, shall constitute an act of unfair competition.

The following shall constitute acts or practices contrary to honest practices within the meaning defined by this Law: breach of contract; breach of trust and incitation to commit one of the two foregoing acts as well as the acquisition of information not disclosed by a third party who was aware that such acquisition entailed this kind of use or whose ignorance in this regard arose from gross negligence.

The following shall also constitute an act or practice contrary to honest practices: any violation of a legal obligation in general with a view to obtaining unlawful advantages over competitors or which lead to such advantages being obtained, as for example a violation of legislation on the environment or work.

Article 361: Any natural person or legal entity who/which has been harmed or is likely to be harmed by an act of unfair competition shall enjoy the legal remedies referred to in Title II of this Part.

Article 362: The provisions of this Title shall apply independently and in addition to any legislative provision protecting inventions, utility models, industrial designs, layout designs, distinctive signs, literary and artistic works and other intellectual property subject matter.

Chapter II: Acts of unfair competition

Section 1: Confusion with another's firm or its activities

Article 363: An act of unfair competition shall be defined as any act or practice which, in the course of industrial or commercial activities, creates or is likely to create confusion with another's firm or its activities, in particular with the goods or services offered by this firm.

This confusion may relate in particular to:

- a mark registered or not;
- a trade name;
- a distinctive corporate sign other than a mark or trade name;
- a product's external appearance;
- the presentation of goods or services;
- a famous person or well-known fictional character.

Section 2: Infringement of the image or reputation of others in the course of industrial or commercial activities

Article 364: Any act or practice which, in the course of industrial or commercial activities, harms or is capable of harming the image or reputation of another's firm, shall constitute an act of unfair competition, whether or not this act or practice creates confusion.

Article 365: The harm to another's image or reputation may arise in particular from the weakening of the image or reputation attached to:

- a mark registered or not;
- a trade name;
- a distinctive corporate sign other than a mark or common name;
- a product's external appearance;
- the presentation of goods or services;
- a famous person or well-known fictional character.

Article 366: The lessening of the distinctive nature or advertising value of a mark, trade name or any other distinctive corporate sign, a product's external appearance or the presentation of goods or services, or of a famous person or well-known fictional character, shall constitute a weakening of the image or reputation.

Section 3: Misleading the public

Article 367: Any act or practice which, in the course of industrial or commercial activities, misleads or is likely to mislead the public with regard to a firm or its activities, in particular the goods or services offered by this firm, shall constitute an act of unfair competition.

Article 368: The public may be misled by advertising or promotional activities, particularly with regard to the following elements:

- the manufacturing process for goods;
- the suitability of goods or services for a specific use;
- the quality, quantity or other characteristic of goods or services;
- the geographical origin of goods or services;
- the conditions on which goods or services are offered or supplied;
- the price of goods or services or the mode of calculation.

Section 4: Disparagement of others' firms and their activities

Article 369: Any false or abusive allegation which, in the course of industrial or commercial activities, discredits or is likely to discredit another's firm or its activities, in particular the goods or services offered by this firm, shall constitute an act of unfair competition.

Article 370: Disparagement may arise from advertising or promotion and concern, in particular, the following elements:

- the manufacturing process for goods;
- the suitability of goods or services for a specific use;
- the quality, quantity or other characteristic of goods or services;
- the conditions on which goods or services are offered or supplied;
- the price of goods or services or the mode of calculation.

Section 5: Unfair competition concerning confidential information

Article 371: Any act or practice which, in the course of industrial or commercial activities, entails the disclosure, acquisition or use by third parties of confidential information without the consent of the person who is legally entitled to dispose of such information, who is the legitimate holder and in a way contrary to honest business practices, shall constitute an act of unfair competition.

Article 372: The disclosure, acquisition or use of confidential information by third parties without the consent of the legitimate holder may, in particular, arise from the following acts:

- industrial or commercial espionage;
- breach of contract;
- breach of trust;
- incitation to commit industrial or commercial espionage, breach of contract or breach of trust;
- acquisition of confidential information by a third party who was aware that this acquisition entailed one of the foregoing acts or whose ignorance in this regard stemmed from gross negligence.

Article 373: Within the meaning of this Section, information shall be considered confidential if:

- it is not, in its entirety or in the exact configuration and assembly of its elements, widely known to persons belonging to circles which generally deal with the type of information in question or is not easily available to them;
- it has commercial value because it is confidential;
- its legitimate holder has taken reasonable steps, given the circumstances, to keep it confidential.

Article 374: Any act or practice which, in the course of industrial or commercial activities, constitutes or entails the following, shall be deemed an act of unfair competition:

- unfair exploitation in trade of confidential data resulting from trials or other confidential data, whose establishment requires considerable effort and which have been communicated to a competent authority with a view to obtaining authorization to commercialize pharmaceutical products or agrochemical products which involve new chemical entities;

- disclosure of such data, unless it is necessary to protect the public and unless measures have been taken to guarantee that the data have been protected against unfair exploitation in trade.

This Article shall apply until the first holder no longer controls the undisclosed data and they have been made available to the public anywhere in the world.

Article 375: It shall be prohibited for any person other than the one who has communicated undisclosed data resulting from trials or other data, whose establishment requires considerable effort, to rely on or mention such data in a request for authorization for commercialization filed by a third party, in the case at hand the first holder, within a reasonable period following the communication of the results of these trials or data.

This period must be set by the competent authority for each good whose commercialization has been approved, in view of the nature of the data as well as the efforts made by the first holder and the costs of conducting trials for each good.

Article 376: The period referred to in Article 375 must be a maximum of five years for all goods, starting from the date of approval.

The authority responsible for approving the commercialization of the goods shall set the term of protection for each good, in view of the nature of the data and the efforts made to finalize these data.

When it evaluates these efforts, the authority shall take due account of all aspects, notably the work and time needed to finalize the data in support of the first registration of the product in all countries and territories which have acceded to the Paris Convention or are members of WTO or when reciprocal treatment is recognized for citizens and residents of Burundi in any other country.

Article 377: If the applicant pays the first holder fair compensation, the amount of which is approved by the subsequent applicant and the first holder or, failing agreement, by the authority responsible for issuing the marketing approval, the competent authority may, during the period mentioned in Article 376, rely on undisclosed data resulting from trials and other undisclosed data communicated by the first holder with a view to the approval of the subsequent application in the following cases:

- if obtaining these undisclosed data resulting from trials or other data has caused suffering in human beings or animals;
- in cases of extreme urgency;
- if the goods concerning the undisclosed protected data resulting from trials or other data have not been commercialized in Burundi within a reasonable period after such commercialization has been approved by Burundi;

- if the undisclosed protected data resulting from trials or from other data are essential for the marketing approval of a product subject to a compulsory license, provided that the fair compensation arising from the compulsory license also takes due account of the economic value of the undisclosed data resulting from trials or from other data on the basis of which the authority grants the marketing approval for the product manufactured under license.

Article 378: The grant of marketing approval by the competent authority for goods whose commercialization depends on the approval referred to in Article 377 shall not take into consideration the existence or validity of the intellectual property rights in the goods concerned and must not be invoked as a personal defense, or in the form of immunity from prosecution following infringement of an intellectual property right.

Article 379: The provisions of Article 375 shall not prohibit a subsequent applicant from relying on data resulting from trials or on other data communicated by a prior applicant, provided that they come from sources available to the public, regardless of whether the prior applicant has given his consent.

In this case, the trials and data communicated by the subsequent applicant must meet the necessary legal conditions for obtaining marketing approval.

This provision shall not apply to the data obtained by the subsequent applicant further to an act deemed unfair in Burundi.

Article 380: Under Article 374, chemical entities shall be considered new if their marketing has not been approved or if they have not been marketed in another way in any territory within a period of 18 months starting from the date of the first grant of marketing approval or the first marketing anywhere in the world.

Undisclosed data resulting from trials or from other data on products whose main characteristic is to constitute a new indication, a new use, a new dosage or a new formulation, which do not contain a new chemical entity but which are nevertheless subject to marketing approval, must only be protected against disclosure.

Article 381: The provisions of this Section shall not apply to the undisclosed data resulting from trials or from other data concerning the following cases:

- if the use of these data is not unfair by nature or has no commercial character, particularly in the case of use by certain institutions such as universities or research centers which may be tasked by government authorities with verifying and testing the goods, even after marketing approval has been granted, provided that these authorities guarantee the confidential nature of the data;
- if the authorities responsible for granting the marketing approval rely on these data exclusively to anticipate the grant of marketing approval in Burundi, provided that the subsequent applicant undertakes not to market the good in Burundi prior to the expiration of the period provided for in Article 376;

- if the authorities responsible for issuing the marketing approval rely on these data exclusively to grant marketing approval for purposes of exporting the product, provided that the subsequent applicant undertakes not to try to market the product in Burundi prior to the expiration of the period provided for in Articles 375 to 380.

Article 382: Undisclosed data resulting from trials or other data on pharmaceutical products shall be protected in Burundi, after January 1, 2016.

This Article shall apply to applications for marketing approval which are being analyzed, filed on this date or subsequently.

TITLE II: PROCEEDINGS FOR INFRINGEMENT OF INDUSTRIAL PROPERTY RIGHTS

Chapter I: Infringements of industrial property rights and remedial action

Section 1: Infringements of patents or utility models and remedial action

Article 383: Subject to Articles 57 to 59 and 78 to 102, any act covered by Article 54 which has been committed in Burundi by someone other than the patent holder, without said holder's consent, shall constitute an infringement of a patent or utility model.

Article 384: At the request of the holder of the patent or utility model or the holder of an exclusive license, a compulsory license or a non-exclusive license if the holder of the license has asked the holder of the patent to institute proceedings with a view to obtaining compensation and the patent holder has refused or failed to do so within 90 days, the court may issue an injunction to prevent the infringement or avert an imminent infringement and, if the author of the infringement has acted in full knowledge of the facts or with valid reasons to know what this act will entail, to grant damages or take any other corrective measures provided for in general legislation or in Chapter V of this Title.

Article 385: The corrective measures provided for in this Part may also apply, as the case may be, to the holder of a foreign patent which has been the subject of a compulsory license with a view to supplying the market in Burundi with pharmaceutical products, in accordance with the system introduced by the decision of August 30, 2003 by the WTO General Council to avoid the re-export or diversion of the goods in question or to remedy the situation.

In the event that the foreign patent was granted further to an application filed in the country where the compulsory license was granted after the entry into force of this Law or in which priority is claimed in Burundi on the same date, only applications which are filed in accordance with Article 47 may qualify for the corrective measures provided for in this Title.

Article 386: Without prejudice to the payment of damages, the temporary or final injunctions covered by Article 405 may not be issued in the following cases:

1. after expiration of a four-year period starting from the date of filing of the patent application or three years starting from the date of grant of the patent, the applicant or the person with his consent fails to exploit the invention in a manner making it possible to meet market demand in terms of quantity, or has not begun serious preparations to this effect or do not actually intend to commence such exploitation; this period shall not apply if the invention is exploited in a manner that does not meet market demand in terms of quality;
2. the injunction causes serious harm to the public interest;
3. the patented goods or the goods manufactured according to a patented process are sold by the applicant or by a third party with the applicant's consent at a price deemed excessive in view of consumers' average purchasing power and the special nature of the need which the goods must meet, if there is no competing product on the market;
4. the patent was obtained in violation of the provisions of Articles 19 and 20; should this be the case, the court shall reject the appeal; after verifying compliance with Articles 19 and 20, the patent holder may at any time institute proceedings for infringement of the patent or utility model; however, he may not be granted any corrective measures for an act performed by a third party before being in compliance with said Articles.

Article 387: The rights attached to a patent concerning a pharmaceutical process shall not be binding on third parties before January 1, 2016 if other processes for manufacturing pharmaceutical products which are not subject to exclusive rights are not available, as a result of which these patents, if they were binding, would indirectly lead to commercial exclusivity for the pharmaceutical products in question.

Section 2: Infringement of marks, collective marks or certification signs and corrective measures

Article 388: Subject to Article 313, any act covered by Article 311 which has been committed in Burundi by a person other than the owner of the mark without the owner's consent shall constitute an infringement of a registered mark, a registered collective mark, a registered certification sign or a well known unregistered mark.

Article 389: Any use of a sign which is identical to a well known mark or similar to such an extent that it creates confusion with a well known mark without the consent of the owner of said mark shall constitute an infringement of a registered well known mark, provided that the sign is used for:

- goods or services which are identical or similar to goods or services for which the well known mark has been registered;

- goods or services which are not identical or analogous to those for which the well known mark was registered, provided that the use of the sign in relation to these goods or services brings out a link between these goods or services and the owner of the well known mark, and that his interests could be harmed by this use.

Article 390: Any use of a sign which is identical to a well known mark or similar to the extent that it leads to confusion with a well known mark without the consent of the owner of said mark, provided that the sign is used for goods or services which are identical or similar to the goods or services to which the well known mark applies, shall constitute an infringement of an unregistered well known mark.

Article 391: At the request of the owner of a registered mark or the holder of an exclusive license or a non-exclusive license if the holder has asked the owner of the mark to institute proceedings to obtain compensation and the owner of the mark has refused or failed to do so within 90 days, the court may issue an injunction to prevent the infringement or avert an imminent infringement, grant damages or take any other corrective measure provided for by legislation or this Title.

Article 392: At the request of any competent authority or any interested person, group, association or trade union, including producers, manufacturers or merchants, the court may also order compensation for harm in the same manner if it is convinced that an infringement covered by Articles 311 to 319 has been or is about to be committed.

Article 393: The owner of an unregistered well known mark shall be entitled to obtain an injunction to prevent infringement or avert imminent infringement as well as adequate damages.

Section 3: Infringement of industrial designs and corrective measures

Article 394: Any act covered by Article 205, which has been committed by a person other than the owner of the industrial design, without the consent of said owner, shall constitute infringement of an industrial design registered in accordance with this Law.

Article 395: At the request of the owner of an industrial model or that of the holder of an exclusive license or non-exclusive license, if the holder has asked the owner to institute proceedings with a view to obtaining compensation and the owner has refused or failed to do so within a period of 90 days, the court may issue an injunction to prevent infringement or avert imminent infringement, grant damages or take any other corrective measure provided for by legislation or this Title.

Section 4: Infringements of geographical indications and corrective measures

Article 396: Any act covered by Article 349 or any use of a geographical indication by a person who is not authorized to use the geographical indication in accordance

with this Law shall constitute infringement of a geographical indication protected under this Law.

Article 397: At the request of any interested person or any interested group of producers or consumers or any competent authority covered by Articles 339 to 341, the court may issue an injunction to prevent the illegal use of the geographical indication and grant damages or any other compensation provided for by legislation or this Title.

Section 5: Infringements of layout designs and corrective measures

Article 398: Any act covered by Article 238 which has been committed by a person other than the owner of the layout design, without said owner's consent, shall constitute infringement of a layout design or topography of an integrated circuit protected in accordance with this Law.

Article 399: At the request of the owner of a layout design or topography of an integrated circuit or that of the holder of an exclusive license, a compulsory license or a non-exclusive license, if the holder has asked the owner to institute proceedings to obtain compensation and the owner has refused or failed to do so within a period of 90 days, the court may issue an injunction to prevent infringement or imminent infringement, grant damages or take any other corrective measure provided for by legislation or this Title.

Section 6: Infringements of traditional knowledge or crafts products and corrective measures

Article 400: The provisions of this Title shall apply to any infringement of rights in protected traditional knowledge or crafts products, subject to the provisions of Articles 261 to 275 and 280.

Section 7: Infringements of copyright and related rights and corrective measures

Article 401: The provisions of this Title shall apply to any infringement of copyright or a related right, subject to the provisions of the Copyright Law.

Chapter II: Common provisions

Section 1: Acts of unfair competition and corrective measures

Article 402: The provisions of this Title shall apply to prevent any act of unfair competition or to put an end to any act of unfair competition covered by the provisions of Articles 254, 347, 360 to 382 and 441 to 444.

Article 403: If an act covered by Articles 374 and 375 to 382 is considered by the court to be an act of unfair competition, the court shall order:

- the government authority to revoke the marketing approval;

- the competitor of the holder of the undisclosed information not to market or to stop marketing the products whose registration constitutes an act of unfair competition because such registration is based on the authorized use of protected undisclosed data resulting from trials or from other data;
- the government authority to pay adequate damages for the unauthorized disclosure of the data;
- the competitor of the holder of the undisclosed data to pay adequate damages for the marketing of the products whose registration constitutes an act of unfair competition.

Section 2: Time limits

Article 404: The civil proceedings provided for in Articles 383 to 401 may be instituted within a period of five years starting from the date on which the right holder learned of the infringement or was supposed to have learned of the infringement, except in the case of bad faith constituting infringement of a distinctive sign or for purposes of unfair competition; in the latter case, no time limit shall be applied for instituting proceedings.

Section 3: Plurality of corrective measures

Article 405: If the court establishes that there has been an infringement of an intellectual property right protected in accordance with this Law, it shall issue an injunction to the effect that the author of the infringement must cease his acts on a temporary or final basis and shall order the payment of damages or any other corrective measure in accordance with the Law.

Article 406: The competent authority shall be entitled to claim ownership of any patent application filed or any patent granted in a manner which does not comply with the provisions of Article 21 concerning genetic resources. Should this be the case, the competent authority shall request the Industrial Property Director to assign to it or to assign to any body or entity designated by it, part of the application or the resulting patent, which may in no event be less than 20 per cent of the value of the claimed invention.

Article 407: If non-compliance with the provisions of Article 21 concerning genetic resources raises keen public concerns or questions of morality and public order, the competent authority, if it has complete control over the application or the resulting patent, may withdraw the application or abandon the patent, so that the claimed invention falls within the public domain.

Chapter III: Provisional measures

Article 408: The court shall order, in accordance with the procedure provided for in the Code of Civil Procedure, rapid and effective provisional measures to prevent any infringement or illegal use covered in the Chapter One of this Title or to safeguard relevant evidence relating to the alleged infringement.

Article 409: If any delay is likely to cause irreparable damage to the right holder or if there is a clear risk that evidence may be destroyed, the court shall order provisional measures without giving the other party an opportunity to be heard, provided that the claimant has:

- supplied all reasonably available evidence so that the court is satisfied that he is the holder of the right and that his right has been infringed or that such infringement is imminent;
- supplied sufficient security or an equivalent guarantee with a view to protecting the defendant and preventing abuses.

Article 410: If provisional measures have been ordered without the other party having been given an opportunity to be heard, the court shall notify the parties at the latest after the enforcement of the measures.

Article 411: If provisional measures have been ordered in accordance with Articles 409 and 410, the defendant may file a request for review with the court within a period of two weeks starting from notification of the decision.

During the review proceedings, the court shall hear the parties and shall uphold, amend or reverse the decision within a reasonable period after notification of the decision.

Article 412: In the event that the claimant has not initiated proceedings leading to a decision on the merits within a period of 20 working days, starting from the notification of the decision ordering provisional measures or within another reasonable period fixed by the court in the decision it has handed down, the judge shall revoke the provisional measures at the defendant's request.

Article 413: In the event that the provisional measures have been revoked or if the court decides after an examination of the merits within the framework of the proceedings covered by Article 412 that there has not been infringement or danger of infringement, the court shall grant the defendant, at his request, appropriate compensation at the plaintiff's expense.

Article 414: The measures provided for in this Chapter aimed at safeguarding relevant evidence may also be taken before the pending registration has been finalized if the court deems it necessary. Should this be the case, the plaintiff must institute proceedings leading to a decision on the merits within a period of 20 working days, starting from the publication of the pending registration.

Chapter IV: Administration of evidence and burden of proof

Article 415: If a party has submitted sufficient evidence to substantiate his allegations and has specified the evidence in support of these allegations held by the opposing party, the court may order that party to produce such evidence, provided that the protection of confidential information is guaranteed.

Article 416: In cases where a party to proceedings, without good cause, denies access to necessary information, fails to provide such information within a reasonable period or obstructs proceedings underway to enforce a right, the court may rule on the basis of the information submitted, including the complaint of the injured party, provided that the parties are given an opportunity to make their case.

Article 417: In the event that the subject matter of the patent is a process for obtaining a product, the court may, in civil proceedings concerning the infringement of a patent holder's rights, order the respondent to prove that the process used to obtain an identical product is different from the patented process. Any identical product manufactured without the patent holder's consent shall, unless proved otherwise, be considered as having been obtained via the patented process in one of the following cases:

- the product obtained via the patented process is new;
- there is a high probability that the identical product was obtained via the process and the patent holder has not been able to determine which process was in fact used.

Article 418: During the presentation of proof, the court which is hearing the matter in accordance with Article 417 shall take into consideration the legitimate interests of the presumed infringer by not disclosing either his manufacturing secrets or his trade secrets.

Chapter V: Damages and other corrective measures

Section 1: Damages

Article 419: If damages are granted in accordance with Articles 383 to 401, the court shall order the infringer to pay the sum to the right holder or his successors in title, provided that the infringer knew or is supposed to have known of the infringement.

Article 420: The court may order the infringer to pay damages for an infringement that has occurred:

- on or after the date on which the application for registration was made known to the public in the Official Journal of Burundi;
- on or after the date on which the applicant brought the content of his application to the attention of the presumed infringer;
- on or after the date on which the presumed infringer was informed of the content of the application.

Article 421: Applications to obtain the payment of damages from the court in accordance with Article 420 may only be filed after the grant of the industrial property title in question.

These provisions shall only apply to applications relating to industrial designs after January 1, 2016.

Article 422: The court shall order the party at whose request measures were taken and who has abused procedures for the enforcement of industrial property rights to provide to a party wrongfully enjoined or restrained appropriate compensation for the injury suffered because of such abuse.

Section 2: Other corrective measures

Article 423: Once it has been established that goods have infringed a right, the court shall order, in order to create an effective deterrent against infringements of rights and in view of the need to strike a balance between the seriousness of the infringement and the damages as well as the legitimate interests of third parties, without compensation, that the goods be destroyed or that they be removed from commercial channels so as to avoid causing injury to the right holder.

The court may also order that the materials and instruments which were primarily used to create or manufacture the goods in question be removed from commercial channels without compensation, so as to minimize the risk of new infringements.

For counterfeit trademark goods, merely withdrawing the unlawfully affixed mark shall not be sufficient, barring exceptional circumstances, to allow the introduction of the goods into commercial channels.

Article 424: In the event that a person is found to be at fault with regard to Articles 383 to 401, the court shall order, in order to create an effective deterrent against subsequent infringements, the seizure, confiscation or destruction of the counterfeit articles and of all materials and instruments which were primarily used to commit the criminal offense.

Article 425: If it deems it necessary, the court may order the infringer to inform the right holder of the identity of the third parties who participated in the production and distribution of the goods or services involved, as well as of their distribution channels.

Article 426: Any decision handed down by a commercial court in proceedings for infringement of industrial property rights may be appealed.

TITLE III: BORDER MEASURES

Chapter I: Border measures taken by the customs administration

Section 1: Suspension of customs clearance procedures

Article 427: The customs administration may, at the right holder's request or on its own initiative, suspend customs clearance procedures and the release of goods for free circulation if there are serious indications that counterfeit trademark goods or pirated goods harming the industrial property right holder have been or are about to be imported.

Article 428: If the release for free circulation has been suspended ex officio, the customs administration shall notify the right holder accordingly and shall give him an opportunity to file an application for suspension of the release for free circulation and to provide security in accordance with Article 440, and shall inform him that, if the security is not provided within three working days starting from the receipt of notification, the goods will be released for free circulation.

Article 429: If the customs administration is requested by the right holder to take measures in accordance with Article 427, Articles 439 to 441 shall apply.

Article 430: If the customs administration has suspended the customs clearance procedure in accordance with Articles 427 to 429, it shall notify the importer and the right holder, if it is aware of his identity, of the presumed infringement and the suspension.

Article 431: Without prejudice to the protection of confidential information, the customs administration shall authorize the right holder and the importer to examine the goods for which customs clearance has been suspended and to take samples for purposes of examination, testing and analysis with a view to supplying proof in support of their respective complaints.

Section 2: Information on the right holder and the release for circulation of goods

Article 432: If the customs clearance procedure for goods has been suspended by the customs administration in accordance with Articles 427 to 429:

- the customs administration may inform the right holder of the names and addresses of the importer, the consignor and the consignee as well as the quantity of the goods in question, provided that this measure is proportionate to the seriousness of the infringement;
- the owner, importer or consignee of the goods shall be entitled to have them released for free circulation against the posting of a sufficiently large bond to protect the right holder when the time limit set in Article 445 has expired without the court having granted provisional measures and provided that all of the conditions set for import have been met.

Article 433: Without prejudice to the protection of confidential information, the customs administration may also provide the right holder, at his request, with copies of documents concerning the goods in question or any other information or

documents concerning prior imports of identical or analogous goods for which the importer, consignor and consignee are the same.

Article 434: The customs administration shall not be responsible for measures taken or to be taken in good faith with regard to the release for free circulation or the suspension of the release for free circulation of counterfeit or pirated goods or goods which infringe an intellectual property right, especially in case of failure to identify these goods or the accidental release for circulation of such goods.

The customs administration may require the right holder to provide all information which is relevant to the exercise of its powers in accordance with this Title.

Chapter II: Border measures ordered by the court

Section 1: Possibility of obtaining border measures

Article 435: If the conditions provided for by this Title have been met, the court may order border measures to prevent the import of goods infringing industrial property rights recognized by Burundi in one of the following forms:

- a mark, collective mark, certification sign or trade name;
- an industrial design;
- a geographical indication;
- traditional knowledge or a crafts product;
- copyright or a related right, protected in accordance with the Law on the Protection of Copyright and Related Rights in Burundi.

Article 436: Border measures may also be ordered to prevent the import of goods whose production or marketing in Burundi constitutes an act of unfair competition, in accordance with this Law.

Article 437: The holder of an industrial property right who has valid grounds for suspecting that goods infringing his rights may be imported, may file an application with the court asking it to order the customs administration to suspend the customs clearance procedure for these goods.

Section 2: Contents of the application

Article 438: Applications must be in writing and must be substantiated. They must be accompanied by:

- a description of serious indications attesting that the complainant is the holder of the intellectual property right;
- a description of serious indications attesting that his rights have been or are about to be infringed;
- a sufficiently detailed description of the allegedly infringing goods for ease of recognition;

- proof of payment of the prescribed fee.

Article 439: Complainants shall provide all information in their possession which enables the court to take a decision. Such information may include the following elements:

- the names and addresses of the importers or consignees of the goods which are presumed to infringe his industrial property rights;
- the sample or photograph of the goods which are presumed to infringe his rights or any other element enabling the customs administration to identify said goods;
- the name of the country or countries of origin or manufacture of the goods which are presumed to infringe his rights;
- the names and addresses of the persons or commercial entities who/which were involved in the manufacture and distribution of the goods which are presumed to infringe his rights;
- the mode of transport as well as the names and addresses of the carriers of the goods which are presumed to infringe his rights;
- the name of the port or ports through which the goods which are presumed to infringe his rights are imported into the territory of Burundi and presented to the customs administration;
- the scheduled date of import and presentation to the customs administration;
- the sample of the authentic goods manufactured by the right holder or with the consent of said holder.

Section 3: Security

Article 440: The court may require the right holder to post a bond or any other equivalent guarantee for:

- fulfilling all obligations towards third parties affected by the border measures once the border measures have ended further to an act or omission by the right holder or it transpires subsequently that the goods in question do not infringe an industrial property right;
- paying the costs of the storage of the goods by the customs administration;
- preventing abuses.

The security or equivalent guarantee must not unduly discourage recourse to the procedure for suspension of the release of goods for free circulation.

Section 4: Procedure for suspension of customs clearance and the free circulation of goods

Article 441: The decision of the court to suspend the release for free circulation of the goods which are presumed to infringe the rights shall be taken within the framework of the procedure covered in Article 408 and may be rendered, in accordance with Article 409, without giving the opposing party an opportunity to be heard.

In its decision, the court shall specify the time frame within which the customs administration must act.

Article 442: The court shall notify, without delay to the customs administration which is responsible for the measures to be taken with regard to the goods that are presumed to infringe a right, its decision granting the holder's request.

Article 443: The customs administration, on a decision by the court, shall suspend the procedures for customs clearance and the release for free circulation of the goods suspected of infringing the industrial property rights, in accordance with Articles 383 to 401.

Article 444: The court may order the complainant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury suffered through the wrongful detention of goods or the detention of the goods released for circulation further to a failure to institute the proceedings leading to a decision on the merits of the case in accordance with Article 445.

Section 5: Proceedings on the merits of the case

Article 445: If, within a period of 10 working days after the complainant has been notified of the suspension of the release for free circulation of the goods, no proceedings leading to a decision on the merits have been instituted by a party other than the defendant and the customs administration has decided to suspend the release for free circulation of the goods and has not been notified accordingly, the goods

shall be released for circulation, provided that all other import-related conditions have been met.

The customs administration may, if it deems appropriate, extend the duration of the suspension by a maximum of 10 working days.

The court may extend this duration by the number of days it deems reasonable in the case in question.

Article 446: If the proceedings leading to a decision on the merits have been instituted, the court or the customs administration, depending on which of the two is the authority that decided to suspend the release for circulation of goods that are presumed to infringe an intellectual property right, shall review its decision, at the request of the defendant, with a view to deciding whether these measures must be amended, revoked or upheld.

Article 447: In the event that the suspension of the release for circulation of the goods is upheld in accordance with a provisional measure ordered by the court, the court shall set the duration of the extension of suspension. If no term is set, such extension must not exceed 20 working days.

Section 6: Destruction of goods

Article 448: If the conditions provided for in Article 423 have been met, the court shall order, without compensation, the destruction of the goods infringing a right or their exclusion from commercial channels in order to avoid any injury to the right holder.

Article 449: The following acts shall not be authorized:

- re-export of goods which infringe an industrial property right in their present state;
- mere withdrawal of the mark affixed to counterfeit goods without authorization, barring exceptional cases;
- submission of the goods to a different customs procedure.

Chapter III: Common provisions

Article 450: Goods which are not of a commercial nature and are contained in small quantities in the personal luggage of travelers or sent in small consignments may be excluded from the suspension of release for free circulation.

Article 451: The provisions of this Law concerning border measures shall not apply to goods in transit in the territory of Burundi.

Article 452: The injured party may lodge an appeal against any decision or measure taken by the customs administration with regard to the suspension of the release for free

circulation of goods presumed to be counterfeit or pirated, or in relation to such suspension.

The appeal must be lodged within a period of 15 working days starting from notification of the decision.

TITLE IV: GENERAL PROVISIONS

Chapter I: Changes in ownership or assignment and licensing contracts

Article 453: Any change in ownership of a patent, utility model certificate, registration of an industrial design, registration of a layout design, registration of a mark, collective mark or certification sign, registration of a geographical indication, as well as any change in ownership of an application relating to one of these titles, must be notified in writing, at the request of the interested party, by the Industrial Property Director, and be entered and published, except in the case of an application for non-publication. Such a change shall not be binding on third parties prior to such entry.

Article 454: Any change in ownership of a trade name must be accompanied by the transfer of the firm or part of the firm identified by the name and must be notified in writing.

Article 455: Any change in ownership of the registration of a mark or collective mark shall be invalid if it is likely to deceive or create confusion, particularly with regard to the nature, source, manufacturing process, characteristics or suitability for the use for which they are intended, of the goods or services in relation to which the mark or the collective mark is meant to be used or is used.

Article 456: An excerpt from each licensing contract relating to a registered patent, utility model or industrial design, a registered layout design, a registered mark, or to an application for one of these titles, must be submitted to the Industrial Property Director, who shall enter it and publish a mention of such entry. The licensing contract shall only be binding on third parties once it has been entered.

Article 457: The Industrial Property Director may refuse to enter a contract for the transfer of ownership or a licensing contract if he notes that the contract concerning the right in question contains one or more abusive or anti-competitive clauses or which, in any way, limit trade or are likely to produce such an effect.

The Industrial Property Director shall hear the allegations of the parties to the contract at the request of one or both of the parties. The parties to the contract may submit relevant evidence.

One or both of the parties may appeal against the decision of the Industrial Property Director to the court within a period of 60 days starting from the date on which the parties were notified of the decision not to record the contract.

Article 458: In accordance with Article 457, any limitations imposed on the assignee or licensee which do not arise from the rights conferred by the registration of the

right that is the subject of the license and which are not necessary for safeguarding this right shall be deemed to be abusive or anti-competitive.

Article 459: Without prejudice to the provisions of Article 458, the licensing contract may provide for the following limitations:

- the delimitation of the scope, geographical area and term of use;
- the preconditions for effective control of the quality of the goods and services, subject to the provisions of Article 56;
- the obligations for the licensee to refrain from any act which could harm the reputation of the right holder or the subject of this right.

Article 460: If the right which is the subject of the assignment or licensing contract is invalidated after the contract enters into force, it shall immediately cease to have legal effect. The parties may recover all or part of the payments made in connection with the contract or other advantages arising therefrom unless the party for whose benefit these payments were made or these advantages were granted has benefited in good faith from the contract and the invalidation neither prevents nor revokes these advantages.

Article 461: Procedures and penalties shall apply, in accordance with the Penal Code and the Code of Penal Procedure, for deliberate acts of counterfeit trademark or piracy infringing an intellectual right, which have been committed on a commercial scale.

The provisions of this Title shall apply to penal procedures, particularly with regard to the seizure, confiscation or destruction of the goods concerned and of all materials and instruments used to commit the offense.

Chapter II: The industrial property registration service

Section 1: Administrative organization

Article 462: A service for registration of industrial property is hereby set up within the Ministry responsible for trade and industry. Its organizational structure and the arrangements for its operation shall be determined by decree.

Article 463: The service for registration of industrial property shall be responsible for all functions relating to the procedure for granting patents and registering industrial designs, marks and collective marks, as well as administering the patents granted and the designs, marks and collective marks registered, in accordance with the provisions of this Law and the regulations.

Article 464: The service for registration of industrial property shall keep separate registers for patents, utility models, industrial designs, layout designs, marks, geographical indications, and traditional knowledge.

Collective marks and certification signs shall be registered in a special section of the marks register.

Crafts products shall be registered in a special section of the register of traditional knowledge. All entries provided for under this Law shall be made in said registers.

Anyone may consult the registers and obtain excerpts therefrom subject to the conditions provided for in the regulations.

Article 465: Right holders may indicate ownership of the subject of protection in accordance with this Law by relying on commonly used signs, namely, the initials of each legal title surrounded by a circle, provided that these initials do not lead to confusion and are not erroneous. The traditional knowledge and the crafts products registered may be indicated by the initials “TK”, surrounded by a circle. Any use of these signs which leads to confusion or which is erroneous may be considered an act of unfair competition for the purposes of Part IV of this Law.

Article 466: The service for registration of industrial property shall publish in the Official Journal of Burundi all publications provided for by this Law.

The Industrial Property Director may publish administrative instructions concerning the procedures provided for by this Law and by the regulations as well as the other functions for the industrial property registration service.

Article 467: A special law shall fix the rates and arrangements for the fees for applications for the grant of a patent or the registration of an industrial design, a mark or collective mark, and other formalities provided for by this Law.

Article 468: The holder of an industrial property right whose usual residence or main establishment is located outside Burundi must be represented either by a legal advisor who resides and practices in Burundi, or by a natural person or legal entity with professional experience in the field of industrial property who/which resides and exercises his/its profession of legal consultant in Burundi.

Section 2: Correction of errors and extension of deadlines

Article 469: The Industrial Property Director may, subject to the provisions of the regulations, correct any translation or transcription error, any material error or oversight noted in an application or a document filed with the service for registration of industrial property, or in an entry made in accordance with this Law and the regulations.

Nevertheless, substantive errors may only be changed by the court within the framework of the procedure provided for this purpose.

“Substantive error” shall be defined as an error which, once it has been corrected, has an impact on the rights conferred.

Article 470: Unless stipulated otherwise in this Law, the Industrial Property Director may, once a request to this end has been addressed to him in writing and he is convinced that the circumstances so warrant, extend the time limit granted for performing an act or a step in accordance with the provisions of this Law and the regulations and the conditions he sets, by notifying his decision to the parties concerned.

The extension may be granted if the period set for performing the act or the step has expired.

Article 471: Before taking a step against a person in proceedings taking place before him under the discretionary powers conferred upon him by this Law, the Industrial Property Director shall give this party an opportunity to be heard.

Section 3: Jurisdiction of the court and appeals

Article 472: The court shall have jurisdiction in disputes concerning the application of this Law or regulatory measures as well as matters which must be submitted to it under this Law or the regulatory measures.

Article 473: Any decision taken by the Industrial Property Director in accordance with this Law, concerning in particular the grant of a patent, a utility model certificate, the registration an industrial design, a layout design, the registration of a mark, collective mark, certification sign or geographical indication, the registration of traditional knowledge or crafts products, or the rejection of an application for grant or registration of such title, may be appealed before the court by any interested person within 60 days following the date of the decision.

Article 474: Any decision taken by the Minister responsible for trade in accordance with this Law and concerning in particular the grant of a compulsory license under the decision relating to the compensation provided for in connection with a compulsory license, may be appealed before the court by any interested party within 60 days following the date of the decision.

PART V: TRANSITIONAL AND FINAL PROVISIONS

Chapter I: Transitional provisions

Article 475: Unless otherwise stipulated, the provisions of this Law shall apply to any applications pending on the date of their entry into force.

Acts performed by the Industrial Property Director which already have legal effect shall be maintained.

All decisions handed down by the court, final or provisional, which already have legal effect, shall be maintained.

Article 476: In the event that this Law broadens the scope of the rights or creates new rights, including the extension of periods of protection, entries in force shall benefit from such broadening or creation.

In the event that this Law reduces the scope of rights or abolishes rights, entries in force shall not be affected and shall continue to have legal effect with the exception of provisions relating to respect for intellectual property rights, which shall apply in accordance with Article 475.

Article 477: In the event this Law provides for new classification systems, entries in force shall only be reclassified at the time of their renewal, as the case may be. The procedures and fees applicable to the reclassification of entries in force shall be governed by the texts in force.

Chapter II: Final provisions

Article 478: The provisions of the international industrial property treaties to which Burundi is a party shall apply to the matters governed by this Law, and shall prevail in the event of conflict with the provisions of this Law.

Article 479: Any prior provisions contrary to this Law are hereby repealed, more particularly:

- The Patent Law of August 20, 1964;
- The Law on Factory and Trademarks of August 20, 1964;
- The Law on Industrial Designs, of August 20, 1964;
- Decree-Law No. 1/169 of July 1, 1968 amending the Law on Factory and Trademarks of August 20, 1964;
- Decree-Law No. 1/170 of July 1, 1968 amending the Patent Law of August 20, 1964;
- Decree-Law No. 1/171 of July 1, 1968 amending the Law on Industrial Designs of August 20, 1964.

Article 480: This Law shall enter into force on the day of its enactment.

Done at Bujumbura, July 28, 2009

Pierre NKURUNZIZA

BY THE PRESIDENT OF THE REPUBLIC

SEEN AND STAMPED WITH THE SEAL OF THE REPUBLIC

THE MINISTER OF JUSTICE AND KEEPER OF THE SEALS

(signed) (stamped) Jean Bosco NDIKUMANA

